

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Sun Metro
AGENDA DATE: August 10, 2010
CONTACT PERSON/PHONE: Jay Banasiak, Director (915) 533-1220
DISTRICT(S) AFFECTED: 6 and 7

SUBJECT:

That the City Manager be authorized to sign the Mission Valley Visitor's Center Operating Agreement by and between the City of El Paso and the El Paso Mission Trail Association for the management and operation of the Mission Valley Transfer Center Visitor's Center, at no cost to the City.

BACKGROUND / DISCUSSION:

Mission Valley Transfer Center is scheduled to open in September, 2010. The El Paso Mission Trail Association ("Association"), a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, has agreed to operate and manage the Visitor's Center. The Association was organized for the purposes of promoting, educating, and preserving tourism efforts along the Mission Trail and other historic routes in El Paso County. In exchange for the management and operation of the Visitor's Center, the Association will have the right to continuously display art at the Visitor's Center and will have access to Union Depot for thirty (30) continuous days annually for an art exhibit to be presented in coordination with the El Paso Art Association

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

Sun Metro will provide uniforms for the Association's employees at an annual estimated cost of \$500.

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD: _____

Information copy to appropriate Deputy City Manager

R E S O L U T I O N

BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF EL PASO:

That the City Manager be authorized to sign the Mission Valley Visitor's Center Operating Agreement by and between the City of El Paso and the El Paso Mission Trail Association for the management and operation of the Mission Valley Transfer Center Visitor's Center, at no cost to the City.

PASSED AND APPROVED this _____ day of _____, 2010.

THE CITY OF EL PASO

John Cook
Mayor

ATTEST:

Richarda D. Momsen
City Clerk

APPROVED AS TO FORM:

Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:

Jay Banasiak, Director
Mass Transit Department

STATE OF TEXAS)
)
COUNTY OF EL PASO)

**MISSION VALLEY VISITOR’S CENTER
OPERATING AGREEMENT**

THIS Mission Valley Visitor’s Center Operating Agreement hereinafter referred to as the “Agreement”, is entered into this _____ day of _____, 2010, by and between the **CITY OF EL PASO**, Texas, a home rule municipal corporation, hereinafter referred to as the “City”, and the **EL PASO MISSION TRAIL ASSOCIATION**, an Internal Revenue Code, Section 501(c)(3) nonprofit organization, hereinafter referred to as the “Association”.

WHEREAS, the City of El Paso’s Mass Transit Department, also known as Sun Metro, operates and maintains several Transfer Centers throughout the City, for the purpose of providing mass transportation services to the public; and

WHEREAS, the Mission Valley Transfer Center located at 9065 Alameda Avenue, El Paso, Texas 79907, is expected to completed in September, 2010; and

WHEREAS, the City has determined that it would be of benefit to the traveling public to establish a Visitor’s Center at the Mission Valley Transfer Center to assist the public with transit information and provide historical information for the area; and

WHEREAS, the Association was organized for the purposes of promoting, educating, and preserving tourism efforts along the Mission Trail and other historic routes in El Paso County; and

WHEREAS, the Association is willing and able to provide management and operation services with respect to the Mission Valley Transfer Center Visitor’s Center; and

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and conditions contained herein, the parties agree as follows:

**SECTION I
PREMISES**

An area located within the Mission Valley Transfer Center which includes the entire east wing of the “L” shaped building including the east main entrance reception area, two art exhibition halls and a theatre room, as well as an office in the center area, access to the restroom facilities, an information room next to the restrooms, and shared access to the employee lounge, of the Mission Valley Transfer Center located at 9065 Alameda Avenue, El Paso, Texas, hereinafter referred to as “Visitor’s Center”.

An area located in the Union Depot main floor which includes the Rotunda, adjacent areas within the structure, access to the restroom facilities located on the first floor, the snack room and the parking lot shown on **Exhibit “A”** which is commonly known as Lot 6, of the Union Depot

located at 700-A San Francisco Avenue, El Paso, Texas, hereinafter referred to as “Union Depot”.

Collectively, the Visitor’s Center and the Union Depot will hereinafter be referred to as “the Premises”.

SECTION II SCOPE

The parties acknowledge and expressly agree that during the term of this Agreement, the Association shall operate and maintain the Visitor’s Center pursuant to the terms and conditions set forth herein, in exchange for the opportunity to use the Visitor’s Center as a location for the continuous display of local art. In addition, during the term of this Agreement, and subject to the terms and conditions set forth herein, the Association shall have the right to use the Union Depot on an annual basis, for a period of thirty (30) continuous days, for a joint art exhibit by the Association and the El Paso Art Association.

SECTION III TERMS AND CONDITIONS

3.1 Rights of the City.

The City shall have the right to exercise satisfactory continuing control over the use of the premises to carry out the intended purpose of providing public transportation. Any interference by the Association with the City’s right of satisfactory continuing control over the use of the premises shall be grounds for termination of this Agreement.

The City shall have the right to safely conduct operations on the premises for the intended purpose of providing public transportation. Any interference by the Association with the City’s right of safe conduct shall be grounds for termination of this Agreement.

The City shall retain ownership of any furnishings purchased by the City for the Visitor’s Center.

The City shall have the right to utilize the theater area of the Visitor’s Center by providing at least one week’s notice to the Association, prior to use.

At the request of the Director of the Mass Transit Department, the City may utilize the projection system at the Visitor’s Center for public service messages.

The City shall not be responsible for any theft, loss, or damage to any artwork on display or located on the premises.

The City shall have the right to remove any obscene material on display as that term is defined in Texas Penal Code § 43.21, as amended.

3.2 Responsibilities of the City.

The City shall provide the following furnishings for the Visitor’s Center:

- a. Furniture for a reception/information area to include an information desk, chair, and guest chairs.
- b. Information displays for Sun Metro materials.
- c. Chairs or benches for the theater area.
- d. Overhead projector, screen, and public address system in the theater.
- e. Overhead track lighting or spotlights for artwork, to be determined by the Association.
- f. Telephone outlet for the information desk.
- g. A Full 5.1 surround sound system and necessary conduit in the theater room.
- h. Picture hanging line for the purpose of hanging the art pieces on the wall.

The City is responsible for developing and providing the public service messages to be displayed at the Visitor's Center.

The City shall maintain the premises, including the providing of electric power, heating and air conditioning, janitorial service, and any necessary repairs.

3.3 Rights of the Association.

The Association shall have the right to continuously display artwork at the Visitor's Center for the term of this Agreement.

During the term of this Agreement, the Association shall have access to Union Depot for thirty (30) continuous days annually for an art exhibit to be presented in association with the El Paso Art Association. The first art exhibit shall take place September 20, 2010 – October 9, 2010. Thereafter, the dates shall be as requested by the Association, subject to approval by the Director of the Mass Transit Department.

It is anticipated that the artwork displayed on the premises may be sold to the public. Any proceeds derived from the sale of artwork will be dispersed as agreed to between the Association, the El Paso Art Association, and the individual artists. The City claims no right to any portion of the proceeds from the sale of artwork displayed on the premises.

The City provides general security on the premises. However, since the City shall not be responsible for any theft, loss, or damage to any artwork on display or located on the premises, the Association shall have the right to hire additional security during the annual art exhibit at Union Depot.

The Association shall retain ownership of any furnishings purchased by the Association for the Visitor's Center.

3.4 Responsibilities of the Association.

The Association shall not interfere with the City's exercise of satisfactory continuing control over the use of the premises to carry out the intended purpose of providing public transportation.

The Association shall not interfere with the City's right to safely conduct operations on the premises for the intended purpose of providing public transportation.

The Association shall not interfere with the operations of the Amtrak Passenger Station at Union Depot.

The Association shall provide the necessary personnel to operate the Visitor's Center. Such personnel shall be required to complete a two (2) hour orientation provided by Sun Metro staff prior to beginning their service at the Visitor's Center.

Association personnel shall be required to wear uniforms, the specifics of which shall be mutually agreed upon by the Association and the City, with final determination to be made by the Director of the Mass Transit Department.

The operating hours of the Visitor's Center shall be 9am to 4pm Monday through Saturday, and 9am to 3pm on Sunday.

Hours of operation for the Visitor's Center may be changed by written approval from the Director of the Mass Transit Department.

Visitor's Center personnel shall be required to answer questions and provide direction for Sun Metro patrons related to Sun Metro services.

The Association shall provide all art exhibits and informational exhibits related to the El Paso Mission Trail Association or other historical information at the Visitor's Center.

Artists shall be required to sign a waiver in the same form as the waiver attached hereto as **Exhibit "B"** stating that the City is not responsible for any theft, loss, or damage to any artwork on display or located on the premises.

No nails or other permanent hangers shall be installed for art displays.

The Association shall provide signage directing Sun Metro patrons to the historical information or art presentations within the Visitor's Center.

The Association shall provide any insurance required by the artists.

The Association shall maintain and publish a monthly calendar of events and activities taking place at the Visitor's Center.

The Association shall be required to execute a License Agreement each year prior to the use of the Union Depot for the annual art exhibit, in substantially the same form as the License Agreement attached hereto as **Exhibit "C"**.

The Association shall provide the necessary personnel to operate the annual art exhibit to be held at Union Depot. The City shall not be responsible for the security, the operation or the dissemination of information during the annual art exhibit.

During the annual art exhibit to be held at Union Depot, the Association shall obtain written approval from the Director of the Mass Transit Department for any event that is expected to be held outside of Sun Metro's regular operation hours of 8am to 5pm Monday through Friday.

SECTION IV TERM

The initial term of this Agreement shall commence on the effective date and shall continue for a period of three (3) years from the effective date. In addition to the initial term, the Association shall have two (2) additional, one (1) year options to extend this Agreement. The Association may exercise the first option by notifying the City in writing of the Association's election at least thirty (30) days prior to the expiration of the initial term. Similarly, to exercise the second term, the Association shall provide written notification to the City at least thirty (30) days in advance of the expiration of the first option period. In the event these options to extend are so exercised, this Agreement shall be extended on the same terms and conditions as noted herein, subject to any applicable amendments.

The Effective Date of this Agreement shall be the opening date of the Mission Valley Transfer Center. The opening date for the Mission Valley Transfer Center is anticipated to be on or about September 19, 2010.

SECTION V TERMINATION

If either party determines that it can no longer participate in the requirements of this Agreement for any reason, that party shall notify the other party in writing at least thirty (30) days in advance of its intent to withdraw from this Agreement and terminate its participation in the activities required hereunder. Such termination shall become effective upon the thirty-first (31st) day after receipt of such notice.

This Agreement shall also be subject to termination by the City in the event the Association shall default in the performance of any of the covenants, conditions or agreements required herein to be kept and performed by the Association and such default continues for a period of thirty (30) days after receipt of written notice from the City to cure such default, unless during such thirty (30) day period the Association shall commence and diligently perform such action as may be reasonably necessary to cure such default.

Failure of the City to declare this Agreement terminated upon the default of the Association shall not operate to bar or destroy the right of the City to terminate this Agreement by reason of any subsequent violation of the terms herein.

Except as otherwise provided herein, all duties, obligations, or undertakings as are set forth herein of the City and the Association shall cease upon termination of this Agreement.

**SECTION VI
INSURANCE AND INDEMNIFICATION.**

6.1 Insurance.

The Association, at its sole cost and expense shall, throughout the term of this Agreement, provide and keep in force for the benefit of the City and the Association, as their respective interests may appear, comprehensive general liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence, One Million Dollars (\$1,000,000.00) for bodily injuries to more than one person arising out of each occurrence, One Million Dollars (\$1,000,000.00) for property damage arising out of each occurrence, and Five Hundred Thousand Dollars (\$500,000.00) Fire Damage Liability, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

The Association shall maintain said insurance with a solvent insurance company authorized to do business in the State of Texas. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without thirty (30) days prior written notice to the City.

Certificates of insurance shall be delivered to the Director of the Mass Transit Department at least ten (10) days prior to the effective date of this Agreement and shall name the City, its officers, agents, servants and employees as additional insureds.

Any failure to maintain the required insurance shall be grounds for termination of this Agreement.

6.2 Indemnification.

THE ASSOCIATION AGREES TO INDEMNIFY AND HOLD THE CITY HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF THE ASSOCIATION'S BUSINESS ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF THE ASSOCIATION OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF THE ASSOCIATION, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF THE CITY. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST THE CITY BY REASON OF ANY SUCH CLAIM, THE ASSOCIATION, UPON NOTICE FROM THE CITY, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO THE CITY.

**SECTION VII
WORKER'S COMPENSATION**

For the duration of this Agreement the Association shall carry Worker's Compensation and Employers' Liability Insurance in the amount required by Texas law, for any employees of the Association that will be working on the premises. The policy must be endorsed to include a waiver of subrogation in favor of the city. Any termination, cancellation, or non-renewal of worker's compensation insurance coverage for the Association shall grounds for termination of this Agreement.

If at any time during the life of the Agreement the Association fails to maintain the required worker's compensation insurance in full force and effect; all work under the Agreement shall be discontinued immediately.

**SECTION VIII
INDEPENDENT CONTRACTOR**

The City shall not be subject to any obligations or liabilities of the Association, its volunteers, or its employees, incurred in the performance of the Agreement unless otherwise authorized herein. The Association, its volunteers, or its employees, shall, individually and collectively, be deemed at all times to be independent contractors of the City and nothing contained herein shall constitute or designate them or any of their volunteers or employees as employees of the City. In carrying out the terms of this Agreement, the Association shall select its own volunteers and employees and such volunteers and employees shall be and act under the exclusive and complete supervision and control of the Association. Neither the Association nor its volunteers or employees shall be entitled to any of the benefits established for City employees, nor shall they be covered by the City's Workers' Compensation Program.

**SECTION IX
GOVERNMENTAL FUNCTION**

The Association expressly agrees that, in all things relating to this Agreement, the City is performing governmental functions, as defined by the Texas Tort Claims Act. The Association further expressly agrees that every act or omission of the City that, in any way, pertains to or arises out of this Agreement falls within the definition of governmental function. Accordingly, the Association further agrees that liability, if any, for damages for injury to or death of any person or for damage to any property, arising, if at all, out of or in connection with activities under this Agreement, shall be determined under the limited waiver of sovereign immunity contained in the Texas Tort Claims Act.

**SECTION X
RIGHT OF ENTRY**

The City's authorized representative shall have the right to enter upon the premises at all times for the purpose of inspecting, maintaining and repairing the premises.

SECTION XI GENERAL PROVISIONS

11.1 Compliance with Laws.

The City and the Association shall comply with all applicable local, state, and federal laws in performance of their obligations under this Agreement.

11.2 Complete Agreement.

This Agreement, together with the Attachment(s) attached hereto, constitutes the entire Agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto.

11.3 Amendment/Assignment.

This Agreement and the obligations hereunder shall not be amended, assigned, transferred or encumbered, in any manner, unless done so in writing and signed by the authorized representatives of the parties.

11.4 Governing Law.

This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the City.

11.5 Venue.

The Parties hereto agree that this Agreement shall be enforceable in El Paso, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in El Paso County, Texas. Should the need for dispute resolution arise, venue is in El Paso County, Texas.

11.6 Severability.

All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.

11.7 Section Headings.

The section headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

11.8 Notices.

All notices provided under this Agreement shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City: City Clerk
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901

Copy to: Director
Mass Transit Department
700-A San Francisco
El Paso, Texas 79901

El Paso Mission Trail Association:
PO Box 2009
San Elizario, Texas 79849

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Either party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other party in the manner set forth herein.

11.9 Representation of Counsel; Mutual Negotiation.

Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

11.10 Execution and Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts when making such proof.

11.11 Warranty of Capacity to Execute Contract.

The person signing this Agreement on behalf of the Association warrants that he/she has the authority to do so and to bind the Association to this Agreement and all the terms and conditions contained herein.

(Signatures begin on following page)

EXECUTED this _____ day of _____, 2010.

CITY OF EL PASO

Joyce A. Wilson
City Manager

**EL PASO MISSION TRAIL
ASSOCIATION**

Mary Perez, President

Al Borrego, Board of Directors

APPROVED AS TO FORM:

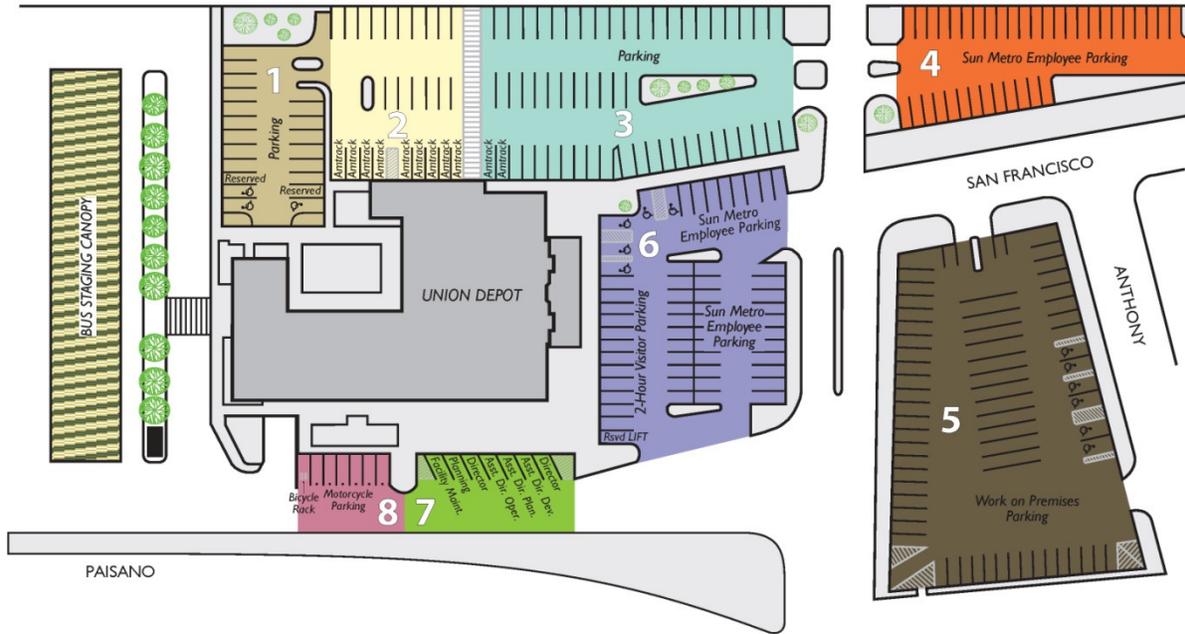
Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:

Jay Banasiak, Director
Mass Transit Department

EXHIBIT "A"

Union Depot Parking



- Lot 1: 21 spaces total (2 handicapped, 2 reserved)
- Lot 2: 34 spaces total (9 Amtrak)
- Lot 3: 67 spaces total (2 Amtrak)
- Lot 4: 36 spaces total
- Lot 5: 74 spaces total (6 handicapped)
- Lot 6: 59 spaces total (5 handicapped, 1 LIFT)
- Lot 7: 7 reserved spaces
- Lot 8: 6 motorcycle spaces

EXHIBIT "B"

LIABILITY RELEASE AND EXPRESS ASSUMPTION OF RISK

THIS IS A LEGALLY BINDING RELEASE, WAIVER, AND INDEMNIFICATION OF LIABILITY, AND EXPRESS ASSUMPTION OF RISK ("WAIVER"). Please read it carefully and fill in all blanks prior to signing before a notary public.

I, _____, am requesting that the City of El Paso allow my artwork to be displayed at the Mission Valley Transfer Center/Union Depot (circle one). I understand that the City of El Paso has entered into an Operating Agreement with the El Paso Mission Trail Association for the management and operation of the Mission Valley Transfer Center Visitor's Center. Pursuant to the terms of that Agreement the El Paso Mission Trail Association shall be permitted to display artwork at the Mission Valley Transfer Center and shall also be permitted to partner with the El Paso Art Association for an annual art display at Union Depot.

For and in consideration of the City of El Paso agreeing allow my artwork to be displayed at the Mission Valley Transfer Center/Union Depot (circle one), I, _____, do hereby knowingly, intentionally, and voluntarily agree to **INDEMNIFY, WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, AND AGREE TO HOLD HARMLESS** the City of El Paso, its officers, agents and employees from and against any and all liability claims, suits, losses, damages or causes of action, including all expenses of litigation and settlement for any damage, injury, illness, physical or mental impairment, loss, death, or debt to any person, or any property arising out of or in connection with the theft, damage, or loss of any of my artwork on display or located at one of the facilities indicated above, whether or not such damage, injury, illness, physical or mental impairment, loss, or death results from **NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF THE CITY OF EL PASO.**

This liability release and express assumption of risk will remain in effect for as long as I have artwork displayed at either the Mission Valley Transfer Center or Union Depot.

I have read and understand this liability release and express assumption of risk, and execute this document voluntarily, understanding that the terms herein are contractual and not a mere recital, and with full knowledge of its significance.

Signed this ____ day of _____, 200__.

Signature Date

Printed Name

(Acknowledgment on next page)

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

BEFORE ME, the undersigned authority, on this day personally appeared _____,
_____, of _____, known to me to be the person whose name is
subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same
for the purposes and considered therein expressed, in the capacity therein stated and as the act
and deed of said undersigned.

Given under my hand and seal of office this ____ day of _____, 200_.

Notary Public, the State of Texas

Notary's name (printed)

Notary's Commission Expires:

EXHIBIT "C"

STATE OF TEXAS)
)
COUNTY OF EL PASO)

**UNION DEPOT ROTUNDA
LICENSE AGREEMENT**

This Union Depot Rotunda License Agreement, hereinafter referred to as the "Agreement", is made and entered into on this ____ day of _____, 20__, by and between the **MASS TRANSIT DEPARTMENT OF THE CITY OF EL PASO**, hereinafter referred to as "Sun Metro", and _____, hereinafter referred to as "Licensee".

WITNESSETH:

WHEREAS, Licensee desires use of the Union Depot Rotunda and adjacent areas of Sun Metro's Union Depot Facility, as more fully described below, hereinafter referred to as the "Premises", for the purpose of a _____;

WHEREAS, Licensee desires use of the Union Depot Rotunda and adjacent areas of the Union Depot Rotunda during the following date(s) and time(s):

Decoration /Set up -

Event -

Take Down -

WHEREAS, pursuant to and in accordance with an approved Mass Transit Department Board Resolution of March 22, 2005, the City Manager is authorized to execute an agreement for the use of Sun Metro facilities for special events, when such events are appropriate and in accordance with existing policies, with such authorization being subject to the City Attorney's review and approval of said agreement;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. **THE PREMISES.** In return for the consideration described, the covenants set out herein to be kept by Licensee and other restrictions noted herein, Sun Metro does hereby permit Licensee's use of the Premises, as more fully described, to-wit:

An area located in the Union Depot main floor which includes the Rotunda, adjacent areas within the structure, access to the bathroom facilities, located on

the first floor, the snack room, and the parking lot commonly known as Lot 6, of the Union Depot located at 700-A San Francisco Avenue, El Paso, Texas.

2. **TERM OF THE AGREEMENT.** The term of this Agreement shall be from the date of full execution of this Agreement through _____.

3. **TERMS AND CONDITIONS.**

A. Licensee agrees and covenants to keep the Premises in good repair and condition during the event for which this license is granted, including setup and removal of any pre-approved equipment. It is understood and agreed that Licensee will pay a **janitorial fee of ONE HUNDRED FIFTY AND 00/100 DOLLARS (\$150.00)** in addition to the license fee, for janitorial services to be furnished by Sun Metro or its contractors.

B. Food or other refreshments will be allowed within the Premises during the course of the scheduled activity, for consumption by persons participating in the activity. If food is to be served it must be catered. Only plastic or paper containers are to be used in serving food and refreshments. Licensee agrees that he/she will comply with all applicable federal, state and local laws while using the Premises pursuant to this Agreement including, but not limited to, any laws applicable to the consumption of alcoholic beverages on the Premises. No smoking will be permitted in the rotunda of Union Depot, restrooms or snack room, as required by **Chapter 9.50 of the El Paso City Code**, as may be amended. Violators will be reported to the Fire Department or Police Department for enforcement.

If a caterer is to be used, Licensee shall cause the certificate at **Exhibit "B"** to this Agreement to be signed by the parties indicated. The certificate shall be completed in triplicate: one copy for the Licensee; one copy for the caterer; and one copy for Sun Metro. Failure to furnish Sun Metro with a properly executed copy of the certificate will be cause for prohibiting the use of food and other refreshments at the event(s).

C. It is understood and agreed that Licensee may request security guard service through Sun Metro's security guard contractor during the proposed event. Licensee shall pay Sun Metro its actual cost for the provision of security guards.

D. All furniture and equipment furnished by Licensee for the activity shall be removed not later than 24 hours after the conclusion of the annual art exhibit. Licensee will ensure that no sliding or dragging of furniture or equipment across the tile floor is allowed. Items with casters will be allowed to be rolled across the floor. It is expressly understood and agreed that any damage to the tile floor caused by such sliding of equipment or furniture will be repaired by Sun Metro, with all repair costs to be reimbursed by Licensee. It is further agreed that the Mass Transit Department Director must approve any posters used for decoration prior to the proposed event. Licensee understands and agrees that the activity for

which this Agreement is entered into will in no way interfere with AMTRAK operations or passengers and that Licensee will comply with any instructions from the Director, Mass Transit Department, or the Director's designee, concerning any such actual or potential interference.

- E. It is understood and agreed that the **number of attendees may not exceed three hundred fifty (350) individuals for events requiring tables and chairs. For events utilizing theatre seating or otherwise not requiring seating, maximum capacity will be established by the Director, dependent upon proposed layout and guidance of the Fire Marshal.** It is further understood and agreed that if the number of people present during the event exceed the capacities stated above, the Director may order the event to be terminated and order all attendees to leave the Premises. Licensee agrees that he/she will ensure compliance with this provision, the Agreement, and other lawful orders of the Director, Fire Marshal, Police Department, or security guards relating to fire or other safety issues. **Licensee shall pay directly to the Fire Department any fees or charges for the attendance of Fire Inspectors in the event required by the Fire Marshal.** Such fees or charges shall be in addition to license fees and charges paid to Sun Metro, as required by this Agreement.
- F. It is agreed and understood between the parties that liability insurance is required for the use of the Premises. Licensee may either pay Sun Metro an **insurance fee of NINETY-FIVE AND 00/100 DOLLARS (\$95.00) per event**, or may supply its own coverage, subject to the review and approval of the Director. In the event Licensee desires to use its own insurance, such coverage must comply with the minimum insurance currently provided by Sun Metro, which include the following special event coverage: **ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) per individual occurrence and TWO MILLION AND 00/100 DOLLARS (\$2,000,000.00) aggregate.** Further, Licensee agrees to include Sun Metro and the City of El Paso, as owner of the Premises, as an additional insured. A copy of the insurance policy, or certificate, issued by an insurance company authorized and licensed to do business in the State of Texas and reflecting the coverage required herein, shall be furnished to Sun Metro **at least forty-eight (48) hours prior to the use of the Premises.** It is understood and agreed that failure to provide the required insurance fees or evidence of insurance coverage shall preclude the use of the Premises, as otherwise agreed herein. Licensee does hereby state and warrant that any entity providing services to Licensee fully complies with all workmen's compensation requirements in the State of Texas.
- G. Licensee further agrees to abide by the Policies for Use of the Union Depot, dated February 11, 1992, which is attached hereto as **Exhibit "A"** and made a part hereof.
- H. Licensee shall also cause the certificate at **Exhibit "C"** to this Agreement to be signed by the parties indicated. The certificate is to ensure that the event is to conform with acceptable Union Depot Uses.

- I. This Agreement shall be effective as of the date this Agreement is fully executed by both parties. All proposals, negotiations, notices and representations with reference to matters covered by this Agreement are merged in this instrument, and no amendment or modification thereof shall be valid unless evidence in writing is signed by both parties. Admission to the Premises for the activities covered by this Agreement shall not be denied to any person on account of race, color, national origin or handicap, as provided in **Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973, or any other applicable laws.**
- J. The person signing this Agreement, if done so on behalf of the Licensee, warrants that he/she has both the authority to do so and the authority to bind the Licensee to this Agreement and all the terms and conditions contained herein.

4. ALLOCATION OF RISK.

- A. **GOVERNMENTAL FUNCTION.** The Licensee expressly agrees that, in all things relating to this Agreement, Sun Metro is performing governmental functions, as defined by the Texas Tort Claims Act. The Licensee further expressly agrees that every act or omission of Sun Metro which, in any way, pertains to or arises out of this Agreement falls within the definition of governmental function. Accordingly, the Licensee further agrees that liability, if any, for damages for injury to or death of any person or for damage to any property, arising, if at all, out of or in connection with activities under this Agreement, shall be determined under the limited waiver of sovereign immunity contained in the Texas Tort Claims Act.
- B. **EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES.** Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, SUN METRO WILL NOT BE LIABLE TO LICENSEE (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM LICENSEE'S RIGHTS) FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND -- including lost profits, loss of business, or other economic damage, and further including injury to property, mental anguish and emotional distress -- AS A RESULT OF BREACH OF ANY TERM OF THIS AGREEMENT, REGARDLESS OF WHETHER SUN METRO WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.
- C. **MAXIMUM AGGREGATE LIABILITY.** Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement IN NO EVENT SHALL SUN METRO'S AGGREGATE LIABILITY TO THE LICENSEE (INCLUDING LIABILITY - TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR

DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY LICENSEE), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE SUM OF ALL AMOUNTS ACTUALLY PAID BY LICENSEE TO SUN METRO UNDER THE TERMS OF THIS AGREEMENT.

D. **INTENTIONAL RISK ALLOCATION.** The Licensee expressly and independently acknowledges that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between the Licensee and Sun Metro of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the parties.

WITNESS THE FOLLOWING SIGNATURES on the day and year first written above.

MASS TRANSIT DEPARTMENT BOARD

Joyce A. Wilson
City Manager

LICENSEE:

By: _____
Printed Name:
Title: _____

APPROVED AS TO FORM:

Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:

Jay Banasiak, Director
Mass Transit Department

**LICENSE AGREEMENT
EXHIBIT A**

POLICIES FOR USE OF THE UNION DEPOT

1. Security cameras, fire alarms, pull boxes and annunciation panel are not be covered or blocked.
2. No nails or tape may be used on walls, pillars or marble. No wire, tape or nails may be used on baluster.
3. Electrical boxes are not to be opened for drop cords.
4. Power in excess of 110v is not be used from the outlets.
5. Exit and interior doors of the Union Depot are not to be blocked.
6. Electrical fixtures are to be turned on or off by Sun Metro Personnel only.
7. Food and/or beverages are to be consumed in the rotunda and front patio areas only.
8. Smoking is allowed only in the front patio area.
9. No furniture or other objects are to be dragged across the floors. Items with casters will be allowed to be rolled.
10. Patrons are not to park on the south side of the building (Paisano Street side).
11. A janitorial person is to be present throughout the license period to mop up any spills and maintain restroom facilities.
12. The Amtrak benches are not to be moved.
13. The on-duty radio dispatcher and Director's designated appointee are representatives of the Director of Sun Metro and are authorized to speak for the Director during the time of this use.
14. Glass containers are not be used for beverage or food consumption.
15. Sun Metro Officials are not responsible for equipment used by Licensee.

Date: February 11, 1992

LICENSE AGREEMENT

EXHIBIT B

CATERING CERTIFICATE

I, _____, a representative of _____, a catering service located in _____, have been advised by representatives of the _____ (LICENSEE), who is holding an event at the Union Depot on _____, that the use of glass containers for food or beverage is prohibited.

LICENSEE:

CATERER:

By: _____
Printed Name: _____
Title: _____

Printed Name: _____

Date

Date

**LICENSE AGREEMENT
EXHIBIT C**

EVENT CONFORMANCE CERTIFICATE

I, _____, an authorized representative of _____ (LICENSEE), acknowledge that the authorization to use the Sun Metro Union Depot is dependent upon the conforming use of such facility. In furtherance of said understanding, I understand that only community-based, non-profit, charitable organizations may use the facility for general civic or artistic purposes and that private citizens and/or businesses may also use the facility for any function that is non-commercial, not for profit, not a solicitation for customers, not a solicitation for campaign contributions, and does not engage in any activity promoting a commercial enterprise. The proposed event complies with all such restrictions.

LICENSEE:

By: _____

Printed Name: _____

Title: _____

Date

LICENSE AGREEMENT

RECAP SHEET

EVENT FEE SCHEDULE & CHECK-LIST

_____, "Licensee" desires use of the Union Depot Rotunda and adjacent areas of the Sun Metro Union Depot at the rates and period(s) noted below. In the event of conflict between this Recap Sheet and the License Agreement, the License Agreement shall control.

DATE: _____

1. LICENSE FEE: N/A

TOTAL AMOUNT	<u>\$ 0.00</u>
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2. JANITORIAL FEE:

Flat rate of \$150.00 per event

TOTAL AMOUNT	<u>\$ 150.00</u>
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3. SECURITY GUARD FEE:

Actual cost of security guards

TOTAL AMOUNT	<u>\$ _____</u>
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4. INSURANCE FEE:

\$95.00 per event (1 event x \$95.00) Licensee will provide insurance coverage

TOTAL AMOUNT	<u>\$ _____</u>
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GRAND TOTAL AMOUNT: \$ _____

Items to be provided to Sun Metro by Licensee prior to the event:

Total Required Fees by Signed Contract & Exhibits by Proof of Liability Insurance by
