

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

CITY CLERK DEPT.
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DEPARTMENT: Sun Metro

AGENDA DATE: September 1, 2009

CONTACT PERSON/PHONE: Jay Banasiak, (915) 533-5810, BanasiakJ1@elpasotexas.gov

DISTRICT(S) AFFECTED: All

SUBJECT:

That the City Manager be authorized to sign a License Agreement by and between the CITY OF EL PASO and the NEW MEXICO DEPARTMENT OF TRANSPORTATION for the use of City property located at 400 West San Antonio Street, El Paso, Texas 79901 (the Union Plaza Transit Terminal), 601 Santa Fe Street, El Paso, Texas 79901 (the Bert Williams Downtown Santa Fe Transfer Center) and 7535 Remcon Circle, El Paso, Texas 79912 (the Westside Transfer Center), as bus stops for the New Mexico Park and Ride Bus Service connecting El Paso County, Texas and Doña Ana County, New Mexico. The initial term of the License Agreement is two (2) years with an option to renew on a year-by-year basis by mutual written consent of both parties.

BACKGROUND / DISCUSSION:

The New Mexico Department of Transportation and the City of El Paso recognize the need for transportation services linking El Paso County, Texas and Doña Ana County, New Mexico. This service will provide El Paso ridership with convenient public transportation to and from Las Cruces, New Mexico. An agreement between the parties is necessary to allow the New Mexico Department of Transportation to use City property for bus stops within the City of El Paso.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

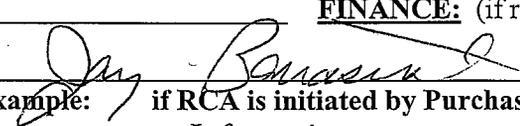
No funding is necessary at this time.

BOARD / COMMISSION ACTION:

This License Agreement was approved by the Mass Transit Board on August 25, 2009.

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____
(Example:  if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____

DATE: _____

RESOLUTION

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

That the City Manager be authorized to sign a License Agreement by and between the **CITY OF EL PASO** and the **NEW MEXICO DEPARTMENT OF TRANSPORTATION** for the use of City property located at 400 West San Antonio Street, El Paso, Texas 79901 (the Union Plaza Transit Terminal), 601 Santa Fe Street, El Paso, Texas 79901 (the Bert Williams Downtown Santa Fe Transfer Center) and 7535 Remcon Circle, El Paso, Texas 79912 (the Westside Transfer Center), as bus stops for the New Mexico Park and Ride Bus Service connecting El Paso County, Texas and Doña Ana County, New Mexico. The initial term of the License Agreement is two (2) years with an option to renew on a year-by-year basis by mutual written consent of both parties.

ADOPTED this _____ day of _____, 2009.

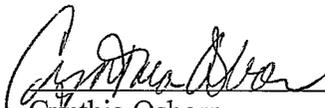
THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:



Jay Banasfak, Director
Mass Transit Department

STATE OF TEXAS)
)
COUNTY OF EL PASO)

LICENSE AGREEMENT

This License Agreement is made this ____ day of _____, 2009, by and between the **City of El Paso**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as "the City", and the **New Mexico Department of Transportation**, hereinafter referred to as "the Department".

WITNESSETH

WHEREAS, the New Mexico Department of Transportation desires to implement a New Mexico Park and Ride Bus Service beginning September 1, 2009, linking El Paso County, Texas and Doña Ana County, New Mexico; and

WHEREAS, the parties desire to enter into an agreement whereby the Department may use City property for bus stops in the City of El Paso.

NOW, THEREFORE, in consideration of the promises and mutual agreements hereinafter set forth, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto do mutually agree as follows:

1. **DESCRIPTION:** The City hereby grants a non-exclusive license to use its property located at the following locations, as bus stops for users of the New Mexico Park and Ride bus service operated by the Department through its Contractor, "Stop(s)":
 - A. 400 West San Antonio, El Paso, Texas 79901, also known as the Union Plaza Transit Terminal, as depicted in Exhibit "A".
 - B. 601 Santa Fe Street, El Paso, Texas 79901, also known as the Bert Williams Downtown Santa Fe Transfer Center.
 - C. 7535 Remcon Circle, El Paso, Texas 79912, also known as the Westside Transfer Center.

The parties intend to use Location "A", Union Plaza Transit Terminal, beginning September 1, 2009 until such time as Location "B", Bert Williams Downtown Santa Fe Transfer Center, becomes available for use by the Department. Location "C", Westside Transfer Center, will be available for purposes of this agreement when construction is completed. The Department may use any or all of these locations for purposes of this agreement during the period this agreement is in effect. The specific

bus stops at Locations "B" and "C" will be designated in writing by the Director of the Mass Transit Department once construction of those facilities is complete.

The City hereby reserves the right to renegotiate this agreement, if at any time during the term of this agreement, more than ten (10) percent of the available public parking at locations "B" or "C" is being used by identified users of the New Mexico Park and Ride bus service, unless otherwise agreed to by the parties in writing.

2. **TERM:** The term of this License Agreement shall be for two (2) years, beginning September 1, 2009 and ending August 26, 2011. This Agreement may be extended on a year-by-year basis by mutual written consent of both parties. If the parties do not agree in writing to an extension beyond August 26, 2011, the Department's holding over or continued use or occupancy shall be construed as a month to month use subject to the same terms and conditions set forth in this License Agreement.
3. **CONDITION OF THE STOP:** The City makes no warranty or representation of the suitability of the Stop for the intended use. All claims for injuries or damages associated with the Department's use of the Stop shall be the responsibility of Department.
4. **IMPROVEMENTS:** No improvements or modifications of the Stop are allowed without the written approval of the City, including but not limited to any signs the Department may place at the Stop. Further, no obstructions, temporary or permanent, shall be placed at the Stop, which interfere with the right of access or other operations of the City or the public. All alterations and improvements made to or placed at the Stop by the Department are and shall remain the Department's property except as the parties mutually agree otherwise in writing, if such alterations and improvements can be removed without undue damage to the Stop and are, if fact, removed by Department prior to termination of this License Agreement or any renewal thereof or within a reasonable time after termination. Alterations and improvements of a permanent nature that cannot be removed without undue damage to the Stop shall become the City's property except as the parties mutually agree otherwise in writing.
5. **MAINTENANCE AND SECURITY:** The City shall be responsible for maintenance and security of the Stop. Except that it shall be the sole responsibility of the Department to keep, maintain and repair any signs placed at the Stop by the Department or its Contractor, at Department's sole cost and expense.
6. **SALE OF BUS PASSES:** The City may sell bus passes to users of this service for all segments of the route. Proceeds from the sale of bus passes shall be remitted monthly to the Department's Contractor, AAA!, Inc. The City shall maintain an accurate accounting of all sales and proceeds for inspection by the Department.

7. **CONDITION OF STOP UPON SURRENDER:** At the termination of this License Agreement, the Department shall surrender the Stop in the condition in which it was at the inception of this License Agreement, excepting:
 - a. deterioration caused through reasonable use and ordinary wear and tear;
 - b. alterations, improvements or conditions made with City's written approval; and
 - c. any change, damage or destruction not resulting from Department's willful act.

8. **TORT CLAIMS ACTS:** Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this License Agreement. Any liability incurred in connection with this License Agreement within the State of Texas is subject to the immunities and limitations of the Texas Tort Claims Act. Any liability incurred in connection with this License Agreement within the State of New Mexico is subject to the limitations and immunities of the State of New Mexico Tort Claims Act. This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the Texas or New Mexico Tort Claims Acts. The Department and its "public employees" as defined in the Texas or New Mexico Tort Claims Act, and the City and its "public employees" as defined in the Texas or New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and/or do not waive any limitation of liability pursuant to law. No provision in this License Agreement modifies and/or waives any provision of the Texas or the New Mexico Tort Claims Act.

This License Agreement is not intended by any of the provisions of any part of the License Agreement to create in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to the License Agreement to maintain a suit for wrongful death, bodily and/or personal injury to persons, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this License Agreement.

9. **TERMINATION:** Each party has the option of canceling this License Agreement by giving thirty (30) days written notice to the other party. By such termination neither party may nullify obligations already incurred for performance of the License Agreement prior to the date of termination of this License Agreement.

10. **SUCCESSION:** Provisions of this License Agreement shall apply and extend to all successors and assigns of the parties.

11. **AMENDMENTS:** This License Agreement shall not be altered except by an instrument in writing executed by the parties.

APPROVED the _____ day of _____, 2009 by the City Council of the City of El Paso.

CITY OF EL PASO

Joyce A. Wilson
City Manager

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:

Jay Banasiak
Director, Mass Transit Department

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

APPROVED the _____ day of _____, 2009.

**NEW MEXICO DEPARTMENT OF
TRANSPORTATION**

BY: _____
Gary L. J. Giron,
CABINET SECRETARY

Approved as to form and legal sufficiency by the Department's Office of General Counsel.

BY: _____ DATE: _____
ASSISTANT GENERAL COUNSEL

UNION PLAZA TRANSIT TERMINAL

EXHIBIT A

