

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

**DEPARTMENT:** Department of Transportation

**AGENDA DATE:** Introduction: October 12, 2010  
Public Hearing: October 19, 2010

**CONTACT PERSON NAME AND PHONE NUMBER:** Mirian Spencer, (915) 541-4482,  
spencermd2@elpasotexas.gov

**DISTRICT(S) AFFECTED:**

**SUBJECT:**

An Ordinance amending Ordinance No. 012393 which granted a special privilege to the El Paso Electric Company, owner, and El Paso Parking Inc., Lessee, to permit off-street parking within a portion of Rim Road right-of-way, by extending the term five years, and revising the consideration, notification and indemnification provisions. SP-9558c (District 1)

**BACKGROUND / DISCUSSION:**

City Council approved Ordinance No. 012393 on March 16, 1995 which authorized El Paso Electric Company (Owner) and El Paso Parking, Inc. (Lessee) to encroach eight (8) feet onto a portion of City right-of-way at Rim Road for off-street parking purposes for a term of ten years.

City Council approved Ordinance No. 016167 on September 20, 2005 which extended the term of Ordinance No. 012393 for five years through May 16, 2010.

The Lessee has requested an additional extension for ten years. In reviewing Ordinance No. 012393, amendments were needed to the notification and indemnification provisions of the agreement. The annual consideration was recalculated based on the present market value of the property per square foot resulting in an increase in the annual consideration from \$1,220.00 to \$2,040.00. The total amount paid to the City, including the proposed 5 year term is \$21,820.00.

**PRIOR COUNCIL ACTION:**

City Council approved Ordinance No. 012393 on March 16, 1995 and Ordinance No. 016167 on September 20, 2005.

**AMOUNT AND SOURCE OF FUNDING:**

N/A

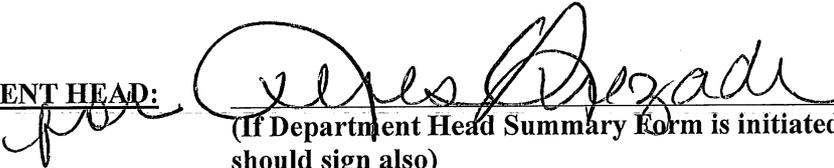
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**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

*Information copy to appropriate Deputy City Manager*

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING ORDINANCE NO. 012393 WHICH GRANTED A SPECIAL PRIVILEGE TO THE EL PASO ELECTRIC COMPANY, OWNER, AND EL PASO PARKING, INC., LESSEE, TO PERMIT OFF-STREET PARKING WITHIN A PORTION OF RIM ROAD RIGHT-OF-WAY, BY EXTENDING THE TERM FIVE YEARS, AND REVISING THE CONSIDERATION, NOTIFICATION AND INDEMNIFICATION PROVISIONS.**

**WHEREAS**, the El Paso City Council approved a Special Privilege License by Ordinance No. 012393 on March 16, 1995 as amended by Ordinance No. 016167 (hereinafter referred to as "the License"), which authorized El Paso Electric Company, (Owner), and El Paso Parking, Incorporated, (Lessee), (hereinafter referred to as "Grantees"), temporary use of a portion of public right-of-way more particularly Rim Road (hereinafter referred to as "Premises") for off-street parking purposes; and

**WHEREAS**, Grantees have submitted written request to extend the grant of the special privilege license originally provided by Ordinance 012393, for an additional five (5) years to use this portion of public right-of-way; and

**WHEREAS**, the El Paso City Council finds that the grant of a Special Privilege extension, upon the terms and conditions hereinafter set forth, is not inconsistent with and will not unreasonably impair the public use of the right-of-way.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:**

**A.** That Paragraph 2 (Term) of The License, is deleted in its entirety and substituted with the following paragraph:

2. **TERM.** This special privilege shall be for a term of five (5) years from the date of execution of this agreement. The City shall have the sole option to renew this Special Privilege upon the request to renew this Special Privilege upon the Grantee for one (1) additional term of five (5) years. If the Grantee desires that the City renew this special privilege for an additional five (5) year term, Grantee shall submit a request in writing to the City no later than three (3) months prior to the expiration date of this Special Privilege. The approval of the

request for the additional five-year term is subject to authorization by the City Council.

**B.** That Paragraph 3 (Consideration) of The License, is deleted in its entirety and substituted with the following paragraph:

3. **CONSIDERATION.** As consideration for the use of the Premises, the Grantee shall pay the City the fee of TWO THOUSAND FORTY AND NO/100 DOLLARS (\$2,040.00) per year for the use of City right-of-way. The annual fee shall be due the first day of the month in which the License is extended by the El Paso City Council. The annual fee shall remain the same for a period of one year from the date the license is extended, and is subject to change after each one-year period the license remains in effect. Grantee expressly agrees to pay any additional amounts as consideration for this Special Privilege, which could result from a re-computation or assessment of fees pursuant to enactment of future amendments to Section 15.08.120 of the El Paso City Code. The City shall notify the Grantees of any proposed changes in fees as prescribed in Paragraph 12 E. (Notices) of the License. This extension is granted under the condition that Grantees agree to pay all costs associated with the off-street parking, as well as all costs for restoration of the Premises upon the termination of the License.

The payments shall be in the form of a business check or cashier's check delivered to the Financial Services Department – Capital Assets Division. If the Special Privilege amendment is disapproved by the City Council, the Financial Services Department – Capital Assets Division shall make a full refund of the payment within fifteen (15) days of the denial action.

**C.** That Paragraph 7 (Indemnity) of the License is deleted in its entirety and substituted with the following paragraph:

7. **INDEMNITY.** As a condition of the Special Privilege, the Grantee or its insurer shall INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTIONS, LIABILITY,

DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT. Without modifying the conditions of preserving, asserting, or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to the Grantee every demand, notice, summons, or other process received by the City in any claim or legal proceeding contemplated herein. The Grantee will 1). Investigate or cause the investigation of accidents or occurrences involving such injuries or damage; 2). Negotiate or cause to be negotiated the claim as the Grantee may deem expedient; and 3). Defend or cause to be defended on behalf of the City all suits for damages even if groundless, false, or fraudulent, brought on because of such injuries or damages. The Grantee shall pay all judgments in actions defended by the Grantee pursuant to this section along with all attorney's fees and costs incurred by the City including interest accruing to the date of the payment by the Grantee, and premiums on any appeal bonds. The City, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of damage to the Grantee's property from any cause.

- D. That Paragraph 12 C (Laws and Ordinances) of the License is amended to replace "Public Inspections Department" with "Department of Engineering and Construction Management" throughout.
- E. That Paragraph 12 E (Notices) of the License is amended to delete notification to the Mayor and City Clerk, include notification to The Department of Transportation and to Financial Services – Capital Assets Division, and modify notification to the El Paso Electric Company as follows:

**City of El Paso**

Department of Transportation

Attn: Traffic Engineering

7968 San Paul  
El Paso, Texas 79907-1261

**City of El Paso**

Attn: Financial Services – Capital Assets Division  
#2 Civic Center Plaza 7<sup>th</sup> Floor  
El Paso, Texas 79901-1196

**El Paso Electric Company**

100 North Stanton  
El Paso, Texas 79901

F. This amendment of the Special Privilege shall not take effect unless Grantees file written acceptance with the Department of Transportation prior to its passage and approval by the El Paso City Council. The effective date of the amendment shall be the date entered below.

G. Except as herein amended, Ordinance No. 012393, executed on May 16, 1995 as amended by Ordinance No. 016167, executed on September 20, 2005, shall remain in full force and effect.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**THE CITY OF EL PASO**

**ATTEST:**

\_\_\_\_\_  
John F. Cook, Mayor

\_\_\_\_\_  
Richarda Duffy Momsen, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Mark Shoosmith  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Teresa Quezada, Deputy Director  
El Paso Department of Transportation

**ACCEPTANCE**

The above instrument, with all conditions thereof, is hereby accepted this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

**Reviewed and Approved  
Legal Department**

*[Handwritten signature]*

GRANTEE: EL PASO ELECTRIC COMPANY  
(OWNER)

By: *H. Wayne Soza*  
Title: Director

**ACKNOWLEDGEMENT**

THE STATE OF TEXAS §  
  §  
COUNTY OF EL PASO §

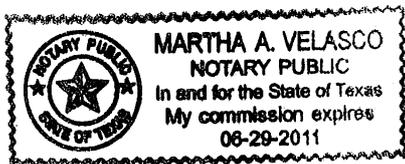
This instrument is acknowledged before me on this 23 day of September, 2010, by H. WAYNE SOZA, on behalf of EL PASO ELECTRIC COMPANY.

Notary Public, State of Texas: (signature)

*Martha A. Velasco*

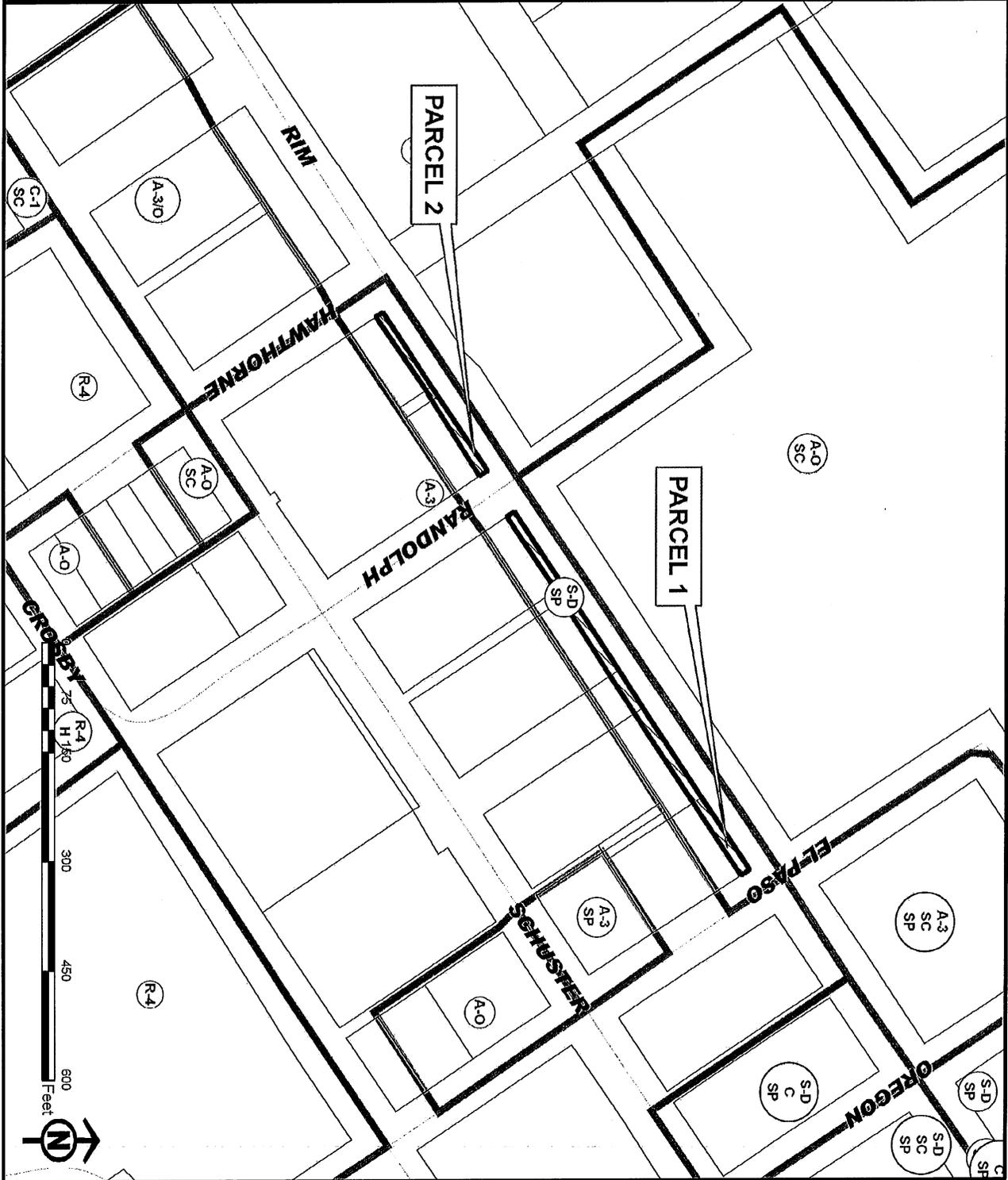
Notary's Printed/Typed Name: Martha A. Velasco

My Commission Expires: JUNE 29, 2011



LOCATION MAP

# SP-9558



AERIAL MAP

SP-9558



LINE	DIRECTION	DISTANCE
T1	N 37°36'00" W	8.00'
T2	S 37°36'00" E	8.00'
T3	N 37°36'00" W	8.00'
T4	S 37°36'00" E	8.00'

PROVIDENCE  
HOSPITAL



NOT A GROUND SURVEY

PARCEL 1  
4,720 SQ. FT.  
PARCEL 2  
2,080 SQ. FT.

**Faught & Associates Inc.**  
CONSULTING ENGINEERS

433 Executive Center Blvd.  
El Paso, Texas 79902  
(915) 542-4900

EXHIBIT  
PORTION OF RIM ROAD IN  
BLOCKS 79, 80, AND 81,  
ALEXANDER ADDITION,  
CITY OF EL PASO, EL PASO COUNTY, TEXAS

Drawn By: JC

Date: 3-21-95

Scale: 1"=100'

Job No: 5662-06

PARCEL 1  
4,720 SQUARE FEET

Being a portion of Rim Road (70 feet wide) located in Blocks 79 and 80, Alexander Addition, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at the northeasterly corner of Lot 10, said Block 79 at the intersection of the south right-of-way line of Rim Road with the west right-of-way line of El-Paso Street;

THENCE, along the south line of said Rim Road, South 52°24'00" West, a distance of 590.00 feet to the southwest corner of Lot 11, Block 80 in the easterly right-of-way line of Randolph Street;

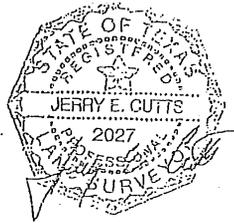
THENCE, North 37°36'00" West, a distance of 8.00 feet to a point;

THENCE, North 52°24'00" East, a distance of 590.00 feet to a point;

THENCE, South 37°36'00" East, a distance of 8.00 feet to the POINT OF BEGINNING and containing 4,720 square feet of land.

NOT A GROUND SURVEY

PREPARED BY:  
Faught & Associates Inc.  
El Paso, Texas  
March 21, 1995  
Job No. 5662-06



PARCEL 2  
2,080 SQUARE FEET

Being a portion of Rim Road (70 feet wide) located in Block 81, Alexander Addition, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at the northwest corner of Lot 11, said Block 81 at the intersection of the east right-of-way line of Hawthorne Street with the south right-of-way line of Rim Road;

THENCE, North 37°36'00" West, a distance of 8.00 feet to a point;

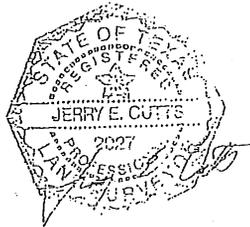
THENCE, North 52°24'00" East, a distance of 260.00 feet to a point;

THENCE, South 37°36'00" East, a distance of 8.00 feet to the northeast corner of Lot 10, said Block 81 at the intersection of the west right-of-way line of Randolph Street with the south right-of-way line of said Rim Road;

THENCE, along the south right-of-way line of said Rim Road, South 52°24'00" West, a distance of 260.00 feet to the POINT OF BEGINNING and containing 2,080 square feet of land.

NOT A GROUND SURVEY

PREPARED BY:  
Faight & Associates Inc.  
El Paso, Texas  
March 21, 1995  
Job No. 5662-06



ORDINANCE NO. 16167

AN ORDINANCE AMENDING ORDINANCE NO. 012393 WHICH GRANTED A SPECIAL PRIVILEGE TO THE EL PASO ELECTRIC COMPANY, OWNER, AND EL PASO PARKING, INC., LESSEE, TO PERMIT OFF-STREET PARKING WITHIN A PORTION OF RIM ROAD RIGHT-OF-WAY, BY EXTENDING THE TERM THROUGH MAY 16, 2010.

WHEREAS, the El Paso City Council approved Ordinance No. 012393 on March 16, 1995, a copy of which is attached as Exhibit "A," which authorized El Paso Electric Company, (Owner), and El Paso Parking, Incorporated, (Lessee), (hereinafter referred to as "Grantees"), temporary use of a portion of public right-of-way more particularly Rim Road (hereinafter referred to as "Premises") for off-street parking purposes; and

WHEREAS, Grantees have submitted written request to extend the grant of the special privilege license originally provided by Ordinance 012393, for an additional ten (10) years to use this portion of public right-of-way; and

WHEREAS, the Development Coordinating Committee has recommended that the term extension be granted for an additional five (5) years instead of the ten (10) years requested by the Grantees without amendment to other conditions numerated in Ordinance No. 012393 as amended; and

WHEREAS, the El Paso City Council finds that the grant of a Special Privilege extension, upon the terms and conditions hereinafter set forth, is not inconsistent with and will not unreasonably impair the public use of the right-of-way.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:

A. That Paragraph 2 (Term) of Ordinance No. 012393 Exhibit "A", shall be deleted in its entirety and substituted with the following paragraph:

"2. TERM. This Special Privilege shall commence upon execution and continue until May 16, 2010 at which time it shall expire. The City shall have the sole option to renew this Special Privilege upon the request of the Grantees for additional terms of 10 years or any smaller portion thereof. If the Grantees wish the City to renew this Special Privilege for an additional term, Grantees shall submit a request in writing to the City no later than three (3) months prior to the expiration date of this Special Privilege. This Special Privilege shall expire without notice at the end of such expiration period unless a request for renewal is submitted in writing to the City by the Grantees as herein required. Should Grantees fail to submit such request for the renewal of this Special Privilege to the

City as herein required, the Special Privilege shall expire upon the date of expiration. Grantees understand, agree and accept that the City may require the terms, conditions, and provisions of this Special Privilege be modified as a condition for renewing the grant of the encroachment upon or through public right-of-way as permitted by this Special Privilege."

B. That Paragraph 3 (Consideration) of Ordinance No. 012393 Exhibit "A", shall be deleted in its entirety and substituted with the following paragraph:

"3. **CONSIDERATION.** As consideration for the use of the Premises, the Grantee shall pay the City Eleven Thousand Six Hundred Twenty No/100 Dollars (\$11,620.00) for the fifteen (15) year term of this Agreement. Payment of this consideration shall be made to the City in two (6) installments:

- First Installment: First installment of Five Thousand Five Hundred and No/100 Dollars (\$5,500.00) shall be due on or before May 16, 1995 (already paid).
- Second Installment: Second installment of One Thousand Two Hundred and Twenty and No/100 Dollars (\$1,220.00) shall be due on or before August 23, 2005.
- Third Installment: Third installment of One Thousand Two Hundred and Twenty and No/100 Dollars (\$1,220.00) shall be due and payable on or before August 23, 2006.
- Fourth Installment: Fourth installment of One Thousand Two Hundred and Twenty and No/100 Dollars (\$1,220.00) shall be due and payable on or before August 23, 2007.
- Fifth Installment: Fifth installment of One Thousand Two Hundred and Twenty and No/100 Dollars (\$1,220.00) shall be due and payable on or before August 23, 2008.
- Sixth Installment: Sixth installment of One Thousand Two Hundred and Twenty and No/100 Dollars (\$1,220.00) shall be due and payable on or before August 23, 2009.

The payments shall be in the form of a cashier's check delivered to the City Department of Planning, Research and Development for remittance to the Office of the City Comptroller. If the Special Privilege is disapproved by the City Council, the Office of the City Comptroller shall make a full refund of the payment within fifteen (15) days of the denial action.

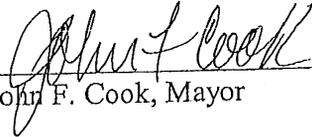
C. That this amendment to Ordinance No. 012393, executed on May 16, 1995, shall not be effective until grantees submit a written acceptance (Exhibit "B") to all conditions

contained herein, such acceptance to be submitted within 30 days from approval of the El Paso City Council.

D. Except as herein amended, Ordinance No. 012393, executed on May 16, 1995, shall remain in full force and effect.

PASSED AND APPROVED this 20th day of September, 2005.

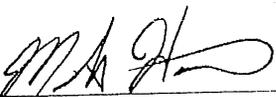
THE CITY OF EL PASO

  
\_\_\_\_\_  
John F. Cook, Mayor

ATTEST:

  
\_\_\_\_\_  
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Matt Watson  
Assistant City Attorney  
Doc No. 14803

APPROVED AS TO CONTENT:

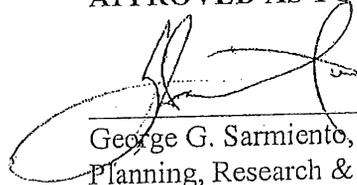
  
\_\_\_\_\_  
George G. Sarmiento, AICP, Director  
Planning, Research & Development  
Department

EXHIBIT "B"

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this 18<sup>th</sup> day of August 2005.

GRANTEE: EL PASO ELECTRIC COMPANY  
(OWNER)

By: Kerry Lore  
Title: Vice President - Administration

ACKNOWLEDGEMENT

APPROVED AS TO FORM  
OFFICE OF THE GENERAL COUNSEL

THE STATE OF TEXAS §  
  §  
COUNTY OF EL PASO §

This instrument is acknowledged before me on this 18 day of August, 2005,  
by Kerry B. Lore, on behalf of EL PASO ELECTRIC COMPANY, as  
Owner.

Notary Public, State of Texas: (signature)  
Carolina Peña

Notary's Printed/Typed Name:  
Carolina Peña

My Commission Expires:  
3-24-07

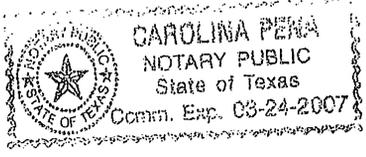


EXHIBIT "B"

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this 22 day of August 2005.

GRANTEE: EL PASO PARKING  
INCORPORATED (LESSEE)

By: Laura Pople

Title: PRESIDENT

ACKNOWLEDGEMENT

THE STATE OF TEXAS §  
  §  
COUNTY OF EL PASO §

This instrument is acknowledged before me on this 22 day of AUGUST, 2005, by LAURA POPLER, on behalf of EL PASO PARKING INCORPORATED, as Lessee.

Notary Public, State of Texas: (signature)

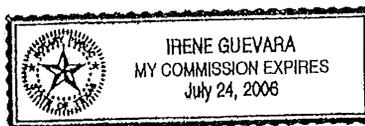
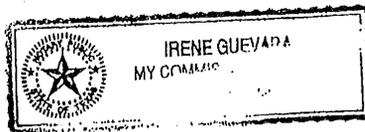
Irene Guevara

Notary's Printed/Typed Name:

IRENE GUEVARA

My Commission Expires:

7/24/2006



012393

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO  
THE EL PASO ELECTRIC COMPANY, OWNER, AND EL PASO  
PARKING, INC., LESSEE, TO PERMIT OFF-STREET  
PARKING WITHIN A PORTION OF RIM ROAD  
RIGHT-OF-WAY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign, on behalf of the City of El Paso, a Special Privilege upon the following terms to the EL PASO ELECTRIC COMPANY, Owner, and EL PASO PARKING, INC., Lessee:

1. This Special Privilege shall be in a form which is attached and incorporated as Exhibit "A";

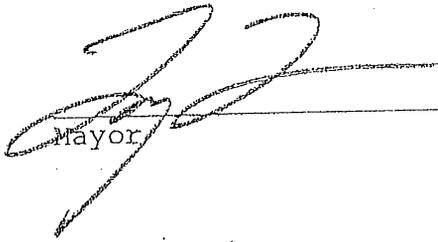
2. The Special Privilege is to permit the EL PASO ELECTRIC COMPANY, Owner, and EL PASO PARKING, INC., Lessee, of property located on Lots 9 through 12, Blocks 79, 80, and 81, Alexander Addition, City and County of El Paso, Texas to encroach eight feet (8'0") onto a portion of City right-of-way, as more particularly shown in the attached and incorporated Exhibit "B";

3. As consideration for this Special Privilege, the EL PASO ELECTRIC COMPANY, Owner, and EL PASO PARKING, INC., Lessee, shall pay the City of El Paso the sum set forth in Section 3 of Exhibit "A", subject to the terms and conditions of this ordinance and Special Privilege; and

4. This Special Privilege shall last a term of ten (10) years.

PASSED AND APPROVED this 16<sup>th</sup> day of May, 1995.

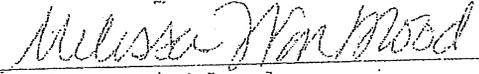
THE CITY OF EL PASO

  
\_\_\_\_\_  
Mayor

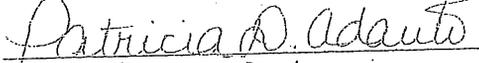
ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Melissa Winblood  
Asst. City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Patricia D. Adauto  
Department of Planning,  
Research and Development

a:\spr9558  
04/28/95

THE STATE OF TEXAS )  
                          )  
COUNTY OF EL PASO  )

EXHIBIT "A"  
SPECIAL PRIVILEGE

THIS SPECIAL PRIVILEGE, made this 16<sup>th</sup> day of May, 1995, by and between the CITY OF EL PASO, hereinafter called "City", and the EL PASO ELECTRIC COMPANY, Owner, and EL PASO PARKING, INC., Lessee, hereinafter called "Grantees", of property located on Lots 9 through 12, Blocks 79, 80, and 81, Alexander Addition, El Paso County, El Paso, Texas.

WHEREAS, Grantees are developing a public parking lot within their property; and

WHEREAS, Grantees are requesting permission from the City to utilize a portion of public right-of-way on Rim Road to accommodate a better parking design allowing perpendicular spacing on the property; and

WHEREAS, no portion of the public right-of-way is proposed to be used to satisfy a required off-street parking requirement for an adjacent use; and

WHEREAS, the Department Heads Development Coordinating Committee recommended that no portion of the public right-of-way be vacated for the purpose herein contemplated; and

WHEREAS, the Grantees propose to encroach no more than eight feet onto a portion of public right-of-way adjacent to Lots 9 through 12, Blocks 79, 80, and 81, Alexander Addition; and

WHEREAS, the City Council finds that the grant of a Special Privilege upon the terms and conditions hereinafter set forth is

not inconsistent with and will not unreasonable impair the public use of the right-of-way;

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree and covenant as follows:

1. DESCRIPTION. The City hereby grants a Special Privilege to Grantees to encroach no more than eight feet (8'0") onto a portion of public right-of-way, as shown in Exhibit "B", and more particularly described in Exhibits "C" and "D", all of which are attached hereto and made a part hereof for all purposes, and which are hereinafter referred to as "Premises".

2. TERM. The term of this Special Privilege shall be for ten (10) years from the date of execution of this agreement. The City shall have the sole option to renew this Special Privilege upon the request of the Grantees. If the Grantees wish the City to renew this Special Privilege, Grantees shall submit a request in writing to the City no later than three months prior to the expiration date of this Special Privilege. Should Grantees fail to submit such request for the renewal of this Special Privilege to the City as herein required, the Special Privilege shall expire upon the expiration date. Grantees understand, agree, and accept that the City may require that the terms, conditions, and provisions of this Special Privilege be modified as a condition for renewing the grant of the encroachment upon or through public rights-of-way as permitted by this Special Privilege.

3. CONSIDERATION. As consideration for this Special

Privilege, Grantees shall pay to the City, pursuant to the fee structures set forth in Ordinance 10363, as amended, Section 15.08.120.D., the sum of Five-Hundred Fifty and No/100 Dollars (\$550.00) per year. This Special Privilege is granted on the condition that Grantees shall pay for all costs associated with the parking lot, as well as all costs for the restoration of the Premises. The first year's payment shall be made within thirty (30) days of the execution of the Special Privilege, and each subsequent years' fees shall be due on the anniversary date.

4. USE OF PROPERTY. This Special Privilege is granted solely for the encroachment onto the Premises with an off-street parking area. As an express condition of this Special Privilege, Grantees shall be required to obtain approval from the Department of Traffic and Transportation for the design of the public parking lot, and its relation to the Premises, prior to the issuance of any building permits. The Premises shall be used by Grantees for off-street parking only. This Special Privilege shall not be construed to waive any City permit requirements. Grantees shall be responsible for all maintenance of the Premises.

Nothing contained herein shall grant or be construed to grant any real property interest to the Grantees, nor shall it give rise to any vested right in the Grantees, their assigns or successors in interest who shall not have a cause of action for damages upon revocation of this Special Privilege.

Nothing contained herein shall be construed to imply that the City is involved in the design, construction, maintenance or repair

of the parking lot.

5. IMPROPER USE. This Special Privilege shall not permit or be construed to permit any other private use of the City's right-of-way which impairs its function as a right-of-way. Grantees shall not construct any additional improvements, or make any additions or alterations on or over the City right-of-way, without the prior written consent of the City Council.

6. REPAIRS. Grantees shall keep the Premises in good condition and repair and in a clean, orderly and attractive condition during the term of this Special Privilege. Grantees shall be responsible for all maintenance of the Premises and shall repair any damage to the Premises regardless of the cause of such damage, at Grantees' sole expense.

7. INDEMNITY. As a condition of the Special Privilege, Grantees shall indemnify, defend and hold harmless the City, its officers, agents, servants and employees from any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation for injury or death of any person, or for damage to any property, arising out of or in connection with Grantees use of the public right-of-way, regardless of whether such injuries, death, or damages are caused in whole or in part by the negligence of the City.

8. LIABILITY INSURANCE. Grantees shall provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and.

Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one accident or other cause. These amounts are not a limitation upon the Grantees agreement to indemnify and hold the City harmless.

Grantees shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Grantees, their officers, agents, servants or employees. All policies shall name the City of El Paso, its officers, agents, servants and employees as additional insured to the full amount of the policy limits.

No special privilege license shall be granted by City Council until Grantees file a copy of the policy or certificate of liability insurance as herein setforth with the City Clerk and the City Attorney. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the term of the Special Privilege, shall be grounds for cancellation of this Special Privilege.

9. CANCELLATION. Should the City at any time or for any

reason decide that the right-of-way onto which the Premises is encroaching is needed for public use, the City may upon thirty (30) days written notice, cancel this Special Privilege at no cost to the City and may take possession of the public right-of-way. All rights of Grantees in the Premises shall then be terminated. Grantees may cancel this Special Privilege, for any reason, upon thirty (30) days prior written notice to the City, and all rights of Grantees shall then be terminated.

In addition, if, for a period of six (6) months, Grantees shall cease to use or occupy the property for the purposes herein contemplated, or if Grantees default in any of their obligations under this Special Privilege and fail to correct such defaults within thirty (30) days after written notice to do so; the City may cancel this Special Privilege and take possession. All rights of the Grantees on the City right-of-way shall then terminate.

Any waiver by the City of any breach of any of Grantees obligations shall not be deemed a continuing waiver, and shall not prevent the City from exercising any remedy it may have for any succeeding breach of the same or another obligation of the Grantees.

Upon termination of this Special Privilege for whatever reason, the encroaching Premises shall become the property of the City and shall, at the option of the City, be removed by the Grantees without cost to the City.

10. LIENS AND ENCUMBRANCES. Grantees shall defend and indemnify the City against any liability and loss of any type

arising from any lien or encumbrance on the property that arises or is alleged to have arisen from Grantees use of the Premises.

11. ASSIGNMENT. Grantees shall not assign this Special Privilege without the prior written consent of the City Council.

12. MISCELLANEOUS.

a. SIGNS: This Special Privilege does not grant any permission to erect signage, but, rather, only authorizes an encroachment upon public right-of-way as described herein.

b. RIGHT OF ENTRY AND INSPECTION: The City's authorized representative shall have the right to enter upon the property at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Special Privilege.

c. LAWS AND ORDINANCES: Grantees shall comply with all statutes, laws, codes and ordinances applicable to Grantees construction and maintenance of the Premises, as well as Grantees use of the Premises, except as specifically provided by the grant of this Special Privilege. This Special Privilege shall not grant permission for Grantees to use the Premises without first having obtained any required permits and building permits from the Public Inspection Department. In addition, Grantees shall obtain any and all other required permits and inspections and shall pay the necessary permit fees.

d. SUCCESSORS AND ASSIGNS: All of the terms, provisions, covenants and conditions of this Special Privilege

shall inure to the benefit and be binding upon the parties, their successors and assigns. This Special Privilege is a restriction, condition and covenant running with the property and a charge and servitude thereon, and shall bind the Grantees and their successors in title. Any further lease or conveyance of this property known as Lots 9 through 12, Block 79, 80, and 81, Alexander Addition shall contain this restriction, condition and covenant and shall embody this Special Privilege by express reference.

e. NOTICES: All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso  
Attn: Mayor  
#2 Civic Center Plaza, 10th Floor  
El Paso, Texas 79901-1196

with copy to:

City of El Paso  
Attn: City Clerk  
#2 Civic Center Plaza, 10th Floor  
El Paso, Texas 79901-1196

and:

El Paso Electric Company  
303 North Oregon  
El Paso, Texas 79901

with copy to:

El Paso Parking, Inc.  
300 East Main, Suite 108  
El Paso, Texas 79901

or to such other address as the parties may designate to each other in writing from time to time.

f. ENTIRE AGREEMENT: This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

g. SEVERABILITY: The invalidity or illegality of any provision hereof shall not affect the remaining provisions hereof.

h. LAW GOVERNING: The laws of the State of Texas shall govern the validity, performances and enforcement of this Special Privilege and if legal action is necessary to enforce it, exclusive venue shall be in El Paso County, Texas.

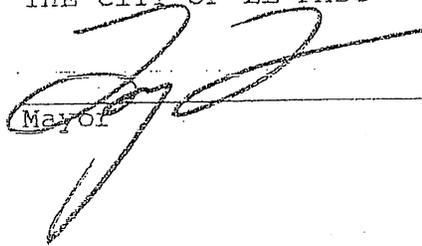
13. RESTRICTIONS AND RESERVATIONS: This Special Privilege is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. If, at any time during the initial term of this Special Privilege, or any extension thereof, any such rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with Grantees use of the Premises, Grantees shall have the right to terminate this Special Privilege upon giving the City prior written notice of its intention to do so.

14. EFFECTIVE DATE: This Special Privilege shall be null and void unless signed by Grantees within thirty (30) days after its passage and approval by City Council. This Special Privilege shall not take effect unless Grantees shall, within thirty (30) days after its passage and approval, file their written acceptance with the City Clerk. If Grantees accept the terms and conditions of this Special Privilege as a corporation, each of the persons accepting on behalf of such Grantees warrant to the City that the corporate Grantee is a duly authorized and existing corporation, that the corporate Grantee is qualified to do business in the State

of Texas, that the corporate Grantee has full right and authority to accept the terms and conditions of this Special Privilege and that each and every person signing on behalf of the corporate Grantee is authorized to do so. Upon the City's request, the corporate Grantee will provide evidence satisfactory to the City confirming these representations.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

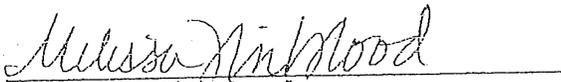
THE CITY OF EL PASO

  
\_\_\_\_\_  
Mayor

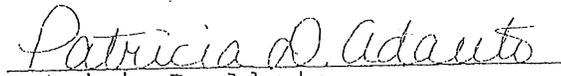
ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Melissa Wirblood  
Asst. City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Patricia D. Adauto  
Department of Planning,  
Research & Development