

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/PHONE: Mirian Spencer (915) 541-4482, spencermd2@elpasotexas.gov

DISTRICT(S) AFFECTED: 8

SUBJECT:

An Ordinance granting a special privilege license to Union Valet LLC. For the use of portions of City right-of-way on San Francisco Street to install a removable valet parking stand and to use the two (2) existing dedicated loading zones on San Francisco Street for vehicle drop off and pick up zones for valet parking within the Union Plaza Entertainment District. SPL10-00020 (District 8).

BACKGROUND / DISCUSSION:

The applicants are requesting to install a removable valet parking stand on portions of City right-of-way on San Francisco Street, and use the two existing dedicated commercial loading zones on San Francisco Street for vehicle drop off and pick up in conjunction with the valet services. The applicants were granted a License agreement with the City on February 9, 2010 for the use of Parking Lot #4 in the Union Depot area for valet parking. They are also working with the Convention and Visitors Bureau for the use of Parking Lot #5 in the Union Depot area for valet parking.

The City required the applicants to provide signatures of approval from the other establishments within the Union Plaza Entertainment District acknowledging their approval of the use of the loading zones for this purpose and their understanding the grantees will be utilizing the only approved valet parking location within the Union Plaza Entertainment District.

The Special Privilege is for a term of one year, with two additional renewable terms. The applicants will pay an annual consideration of \$1,020.00 for the special privilege and will be required to provide general liability insurance and garage insurance for personal injuries and death for any one (1) accident or other cause in a minimum amount of \$1,000,000.00 per person in any one accident, and property damage liability insurance of at least \$1,000,000.00 for any one accident or other cause. The applicants will also have to meet all requirements under the Texas Transportation Code for valet parking services.

PRIOR COUNCIL ACTION:

City Council approved a Resolution granting the applicants the use of Parking Lot #4 of Union Depot on February 9, 2010 for valet parking.

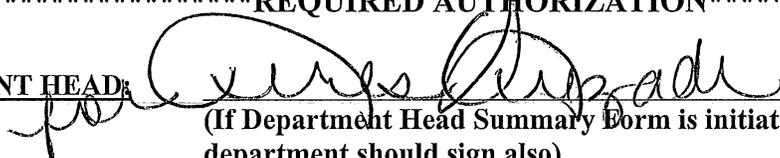
AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

The Development Coordinating Committee approved the special privilege application (SPL10-00020) for the valet parking on August 11, 2010.

*****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 GRANTING A SPECIAL PRIVILEGE LICENSE TO UNION VALET LLC, FOR THE USE OF PORTIONS OF CITY RIGHT-OF-WAY ON SAN FRANCISCO STREET TO INSTALL A REMOVABLE VALET PARKING STAND AND TO USE THE TWO (2) EXISTING DEDICATED LOADING ZONES ON SAN FRANCISCO STREET FOR VEHICLE DROP OFF AND PICK UP ZONES FOR VALET PARKING WITHIN THE UNION PLAZA ENTERTAINMENT DISTRICT.

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

SECTION 1. PURPOSE

This is a special privilege license ("license") granted by the City of El Paso ("City") to Union Valet, LLC ("Grantee") for the use of portions of City right-of-way on San Francisco Street, and as more particularly described in Exhibit "A" which is attached hereto and made a part hereof for all purposes (hereinafter, "the licensed area").

The City hereby grants a license for the licensed area. The licensed area consists of (1) the existing dedicated loading/unloading areas on San Francisco Street to be used for vehicle drop off and pick up for valet parking and (2) the sidewalk area between the two loading/unloading areas where Grantee may place a single two-foot by two-foot by four (4) foot high removable valet parking stand (hereafter, the "parking stand"), all as shown in Exhibit "A". Use of the designated loading/unloading areas is limited to vehicle drop off and pick up of those vehicles for which Grantee provides valet parking services utilizing the parking spaces at the parking lots Grantee is allowed to use pursuant to its February 9, 2010 License Agreement with the City or any successor parking license agreement with the City for parking in the Union Depot area show in Exhibit "B", attached hereto and incorporated herein for all purposes (hereafter, the "parking lot"). This license does not permit nor shall it be construed to permit any other private use of the City right-of-way that impairs its function as a City right-of-way other than specifically allow in this License. Grantee shall not construct any improvements, or make any additions or

alterations on, above or below the licensed area, without prior written consent of the El Paso City Council.

SECTION 2. USE OF LICENSED AREA

The following provisions shall apply to Grantee's use of the licensed area. (a) Vehicles shall not be parked within the licensed area. Any vehicle in the licensed areas for more than fifteen minutes shall be considered a parked vehicle. (b) When the parking lot has no available spaces, Grantee shall place signage on the valet parking stand stating "Lot Full, No Valet Parking Available". (c) The parking stand shall be removed from the licensed area after valet parking activities cease and shall not be stored on any City right-of-way. Removal of the parking stand is not required during those temporary periods when the parking lot is full. (d) Grantee shall not allow vehicles to be double parked at or near the licensed area at any time while waiting for valet parking service. (e) At all times Grantee shall make the licensed area available to all emergency vehicles, including but not limited to fire and law enforcement vehicles and all City vehicles. (f) Grantee shall not obstruct streetlights, city furniture and City signage. (g) Traffic control signs shall not be removed, altered, or damaged for any reason by the Grantee.

SECTION 3. SIGNS

The City will install "Valet Drop-off" signs near the loading/unloading areas ("valet zone signage") at locations that are determined by the City. Grantee shall pay for all costs associated with the creation, installation relocation or removal of the valet zone signage. Grantee shall pay for all costs associated with the sign indicating that the parking lot is full. Grantee may place its name on the valet parking stand. Grantee shall not be entitled to place any other signs in the licensed are or in the City's right-of-way.

SECTION 4. WORK IN AND AROUND THE LICENSED AREA

Grantee is not allowed to construct, alter, repair, any of the structures or infrastructure in the licensed area or in any City right-of-way.

SECTION 5. DAMAGES TO CITY RIGHT-OF-WAY

Grantee covenants and agrees that Grantee shall, at its own expense, repair all water lines, storm and sanitary sewer lines, service lines and water meters or any other elements of the infrastructure and structures within the City's right-of-way that Grantee, its employees, contractors, agents or assigns, damage. Such repair shall not be made until

approved by the City Engineer in addition to obtaining all applicable city permits prior to making such repairs.

SECTION 6. ABATEMENT OF DANGEROUS CONDITIONS

The City shall have the power at any time to order and require Grantee to remove and abate any conditions that are dangerous to life or property. Should Grantee, after notice, fail or refuse to comply within a reasonable time, the City shall have the power to remove or abate the condition, at the expense of Grantee. In the event City removes or abates the dangerous condition, Grantee shall not be compensated for the loss of its property involved in such removal or abatement nor shall the City be liable to the Grantee for any direct, indirect or consequential damages due to the removal or abatement of the Grantee's property.

SECTION 7. TERM

This license shall be for an initial term of one (1) year from the effective date hereof, unless terminated earlier as provided herein, provided that Grantee has parking spaces pursuant to its License Agreement with the City dated February 9, 2010 or such other agreement allowing it to use parking spaces in the Union Depot parking area shown in Exhibit "B" for the valet parking service allowed in this license. In the event Grantee has no such parking agreement or license, this license shall immediately terminate regardless of whether such event occurs in the initial term of this license or any extension thereof. At the end of the initial term, the City shall have the unilateral option of renewing this License for two (2) additional one (1) year terms upon the request of the Grantee. If Grantee wishes the City to renew this license, Grantee shall submit a written request to the City no later than three (3) months prior to the expiration of the initial term or extension term, as applicable. Should Grantee fail to submit such request for the renewal of this license to the City as herein required, this license shall expire upon the expiration date of the then existing term. Grantee understands, agrees, and accepts that the City may require that the terms, conditions, and provisions of this license be modified as a condition for renewing the grant of the encroachment within the licensed area.

SECTION 8. WORK IN THE LICENSED AREA AND CITY RIGHT-OF-WAY

The City expressly reserves the right to install, repair, or reconstruct the City right-of-way used or occupied by Grantee, any streets or alleys and all ancillary public uses,

usual and customary in connection with streets and alleys, expressly including but not limited to, drainage facilities and structures.

The City reserves the right, subject to further conditions described in this paragraph, to lay and permit to be laid, utility lines including, but not limited to, storm and sanitary sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the City in, across, along, over or under the City right-of-way occupied by Grantee, and to change any curb or sidewalk or the street grade of any street. The City shall notify Grantee of work to be performed as herein described. The City shall not be liable to Grantee for any damage resulting there from, nor shall the City be liable to Grantee for any damages arising out of the performance of any work by the City, its contractors or subcontractors, not willfully and unnecessarily occasioned; provided, however, nothing herein shall relieve any other persons or entities from liability for damage to Grantee's Structure. If the City requires Grantee to remove, alter, change, adapt, or conform its valet parking services because of changes in the grade of the City right-of-way or in the location or manner of constructing a water pipe, sewer pipe or other underground or aboveground pipes owned by the City, Grantee shall make the alterations or changes as soon as practicable when ordered in writing by the City Engineer without claim for reimbursement or damages against the City. If these requirements impose a financial hardship upon Grantee, Grantee shall have the right to present alternative proposals for the City Engineer's. If the City requires Grantee to remove, alter, change, adapt or conform its valet parking services to enable any other entity or person, except the City, to use, or to use with greater convenience, the City right-of-way, Grantee shall not be required to make such changes until such other entity or person shall have undertaken with solvent bond, to reimburse Grantee for any loss and expense which will be caused by or arise out of such removal, alteration, change, adaptation or conformance of Grantee's valet parking services; provided, however, the City shall not be responsible nor liable for such reimbursement.

SECTION 9. RESERVATION OF SURFACE, SUBSURFACE, AND AIRSPACE RIGHTS

The City reserves the right to use the surface or subsurface or airspace within the City right-of-way covered by this license for any public purposes allowed by law and

deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said City right-of-way occupied by Grantee; and whenever by reason of said work in connection with said purposes it shall be deemed necessary by the City to alter, change, adapt, conform or relocate portions of Grantee's valet parking service, such alteration or change or relocation shall be made by Grantee when ordered in writing by the City Engineer without any claim for reimbursement or damages against the City.

SECTION 10. CONSIDERATION

A. As consideration for this License, Grantee shall pay to the City the sum of One Thousand Twenty and NO/100 DOLLARS (\$1,020.00) for the first twelve month term of this License. The annual fee for each subsequent year is subject to change for each year the license remains in effect. The City shall provide Grantee written notice of such increases prior to the effective date of the increases.

B. The first annual fee shall be due and owing prior to City Council approval of this license. The advance payment shall be in the form of a cashier's check or business check payable to "The City of El Paso" and delivered to the Department of Transportation for remittance to the Financial Services Department. If the License is disapproved by the City Council, a full refund of the payment shall be made by the Financial Services Department within fifteen (15) days of the denial action.

C. The fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including, but not limited to, the ad valorem taxes, and assessments for public improvements.

D. The fee established in this Section shall not be affected by any relocation of Grantee's valet parking services required by the terms of this License.

E. The fee payment shall be exclusive of and in addition to all costs of obtaining required permits, plans and other approvals as necessary to conform to all other applicable City regulations.

F. Grantee shall also pay all costs related to creation, installation, and modification of the valet zone parking signage that will be placed by the City in the existing loading zones.

SECTION 11. INSURANCE

A. Prior to commencement of providing valet parking services, Grantee shall provide the City with a certificate of insurance and shall maintain such insurance in effect during the term of this license. Grantee shall provide public liability insurance or general liability and garage insurance for personal injuries and death for any one (1) accident or other cause in a minimum amount of One Million and No/100 Dollars (\$1,000,000.00) per person in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Million and No/100 Dollars (\$1,000,000.00) for property damage growing out of any one (1) accident or other cause. These amounts are not a limitation upon Grantee's agreement to indemnify and hold the City harmless required in this License.

Grantees agree to meet all of the requirements under The Texas Transportation Code pertaining to valet parking services including but not limited to the financial responsibility provisions of Section 686.002 or its successor section.

Additional and Co-insured Requirements: The City shall be named as an additional insured and each employee of licensee who operates a motor vehicle for Grantee's the valet parking service shall be named as an co-insured in the insurance policy Grantee obtains to comply with this Section.

The Grantee shall provide proof of compliance by providing a certificate of insurance listing the City as an additional insured and the applicable employees as co-insured or attach to the certificate of insurance a rider to the insurance policy showing compliance of this requirement.

Grantee shall procure said insurance with a solvent insurance company authorized to do business in Texas. Such policy or certificate shall provide that the insurance cannot be canceled, modified or the amount of coverage changed without thirty (30) days prior written notice to the City Clerk or ten (10) days prior written notice to the City Clerk for cancellation based on non-payment of insurance premiums. Grantee shall file a copy of the policy or certificate of insurance with the City Clerk and the Traffic Engineer. If the policy is not kept in full force and effect throughout the term of this License, the License shall automatically become void.

SECTION 12. INDEMNITY

As a condition of this License, Grantee agrees to indemnify, defend and hold harmless the City, its officers, agents, servants and employees from and against any and all costs, claims, liens, damages, losses, expenses (including but not limited to attorneys' fees and costs), fees, fines, penalties, proceedings, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death or property damage, arising out of, resulting from or related to the GRANTEE'S activities under this License, including any act or omission by the GRANTEE, its agents, employees or subcontractors, all, without, however, waiving governmental immunity available to the City, hereafter, the "damages". This indemnification shall apply even where such damages described above involve the negligence or allegations of negligence on the part of the City, its officers, agents or employees.

The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any person or entity. 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. GRANTEE shall investigate or cause the investigation of accidents or occurrences involving such damages, negotiate or cause to be negotiated the claim as the GRANTEE may deem expedient, and defend or cause to be defended on behalf of the City all suites for damages, even if groundless, false or fraudulent brought because of such damages. GRANTEE shall pay all judgments finally establishing liability of the City in actions defended by Contractor pursuant to this section, along with all attorneys' fees and costs incurred by the City, including interest accruing to the date of payment by 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. In addition, the GRANTEE shall promptly advise the City in writing of any claim or demand against the City or the GRANTEE known to the GRANTEE related to or arising out of the GRANTEE'S

activities under this License. **The City will not be responsible for any loss of or damage to the GRANTEE'S property from any cause.**

SECTION 13. RIGHTS IN THE EVENT OF ABANDONMENT

As an express condition of this License, and not as a mere covenant, in the event Grantee cease to use the licensed area for providing valet parking services as allowed in this License, for any period of thirty (30) consecutive days or longer, this license shall automatically revert to the City, its successors or assigns, free and clear of any right, title, or interest in Grantee, without the necessity of any notice to Grantee or any re-entry by the City.

SECTION 14. CANCELLATION

City and Grantee shall have the option to terminate this license without cause at any time upon giving the other party written notice thirty (30) days in advance of such termination.

In the event Grantee fails to have any agreement or license for parking spaces as required in Section 7 of this license, the City shall be entitle to give written notice that this license is terminated. The termination date of such notice shall coincide with the termination date of the parking space agreement or license.

In addition, the City shall have the option to cancel and terminate this agreement for failure of Grantee to comply with any material provision or requirement contained in this agreement after fifteen (15) days written notice to Grantee. However, if said breach or failure to comply cannot be reasonably cured within fifteen (15) days, if the breaching party shall proceed promptly to cure the same with due diligence, the time for curing such failure to comply shall be extended for such period of time as may be deemed reasonably necessary by the City to complete such curing unless such breach involves public safety.

Upon termination of this license Grantee shall remove any personal property owned by Grantee and located in the City right-of-way at no cost to the City. If the City Engineer has allowed any structure or object to be affixed by Grantee to the surface of the right of way or any structure thereon, upon removal of such structure or object from the City right-of-way, Grantee shall restore all pavement or base or other object that is damaged due to such removal at Grantee's own cost and expense. Any such restoration shall be subject to the approval of the City. If the Grantee fails to make the restorations required by the City, the City may, at its option, make the restoration and charge such

costs to Grantee who shall be responsible for payment of such repair and restoration costs.

SECTION 15. RECORDS

The El Paso City Council and the Traffic Engineer or designee shall be kept fully informed by Grantee as to matters pertaining in any way to Grantee's exercise of its rights under this License.

SECTION 16. NOTICE

Any notice or communication required in the administration of this License shall be sent in writing by prepaid certified mail, return receipt requested, to the following addresses:

CITY: Traffic Engineer
Department of Transportation
7969 San Paulo Dr.
El Paso, Texas 79907

with copy to: City of El Paso
ATTN: Financial Services – Capital Assets Division
2 Civic Center Plaza 7th Floor
El Paso, Texas 79901

GRANTEE: Union Valet, LLC
ATTN: Alberto Medina
1640 Golden Hill Terrace
El Paso, Texas 79902

or to such other addresses as Grantee may designate from time to time by written notice as required in this paragraph.

SECTION 17. SUCCESSORS AND ASSIGNS:

All of the terms, provisions, covenants, and conditions of this license inure solely to the benefit the Grantee and City and shall not be a benefit for the successors and assigns of Grantee. This license shall not be construed as a covenant running with the licensed area or any real property owned or leased by grantee or any other entity. Any assignee or sub grantee of this license shall not be entitled to operate under the provisions of this license without the express consent of the El Paso City Manager.

SECTION 18. NO PROPERTY RIGHTS

Nothing herein shall grant any real property interest to the Grantee nor give rise to any vested right in the Grantee, his assigns or successors in interest, none of who shall have a cause of action for damages upon revocation or termination of this license in accordance with the terms herein.

SECTION 19. LEASING OR DEDICATION OF FACILITIES

Grantee, without the consent of the El Paso City Manager or designee, shall not lease, assign or give any right of use of any of the City right-of-way it uses in connection with its valet parking service to any person or entity.

SECTION 20. ADMINISTRATION OF LICENSE

The Traffic Engineer or designee is the principal City official responsible for the administration of this License and Grantee agrees that questions regarding the interpretation or application of this license shall be referred to the Traffic Engineer.

SECTION 21. LIENS AND ENCUMBRANCES. Grantee shall defend and indemnify the City against any liability and loss of any type arising from any lien or encumbrance on the licensed area that arises or is alleged to have arisen from Grantee's use of the licensed area.

SECTION 22. RIGHT OF ENTRY AND INSPECTION: The City's authorized representative shall have the right to enter upon the licensed area at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this license.

SECTION 23. LAWS AND ORDINANCES: Grantee shall comply with all statutes, laws, codes and ordinances applicable to Grantee's use of the licensed area.

SECTION 24. 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.

SECTION 25. SEVERABILITY: Every provision of this license is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality shall not affect the validity of the remainder of this license.

SECTION 26. LAWS GOVERNING: The laws of the State of Texas shall govern the validity, performances, and enforcement of this license and if legal action is necessary to enforce it, exclusive venue shall be in El Paso County, Texas.

SECTION 27. RESTRICTIONS AND RESERVATIONS. This license 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 license, 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 Grantee' use of the licensed area, Grantee shall have the right to terminate this license upon giving the City thirty (30) days prior written notice of its intention to do so.

SECTION 28. EFFECTIVE DATE

This License shall not take effect unless Grantee shall, prior to the approval of this License by the El Paso City Council, files its written acceptance with the Department of Transportation and the City Clerk.

PASSED AND APPROVED this ____ day of _____, 2010.

WITNESS THE FOLLOWING SIGNATURES AND SEALS

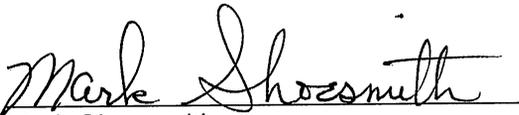
THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Mark Shoosmith,
Asst. City Attorney

APPROVED AS TO CONTENT:



Teresa Quezada, Deputy Director
El Paso Department of Transportation

(Acceptance to follow on next page)

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this 29
day of September, 2010.

GRANTEE:
Union Valet, LLC

By: _____

Title: OWNER

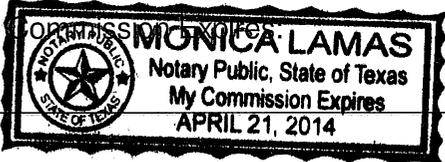
ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

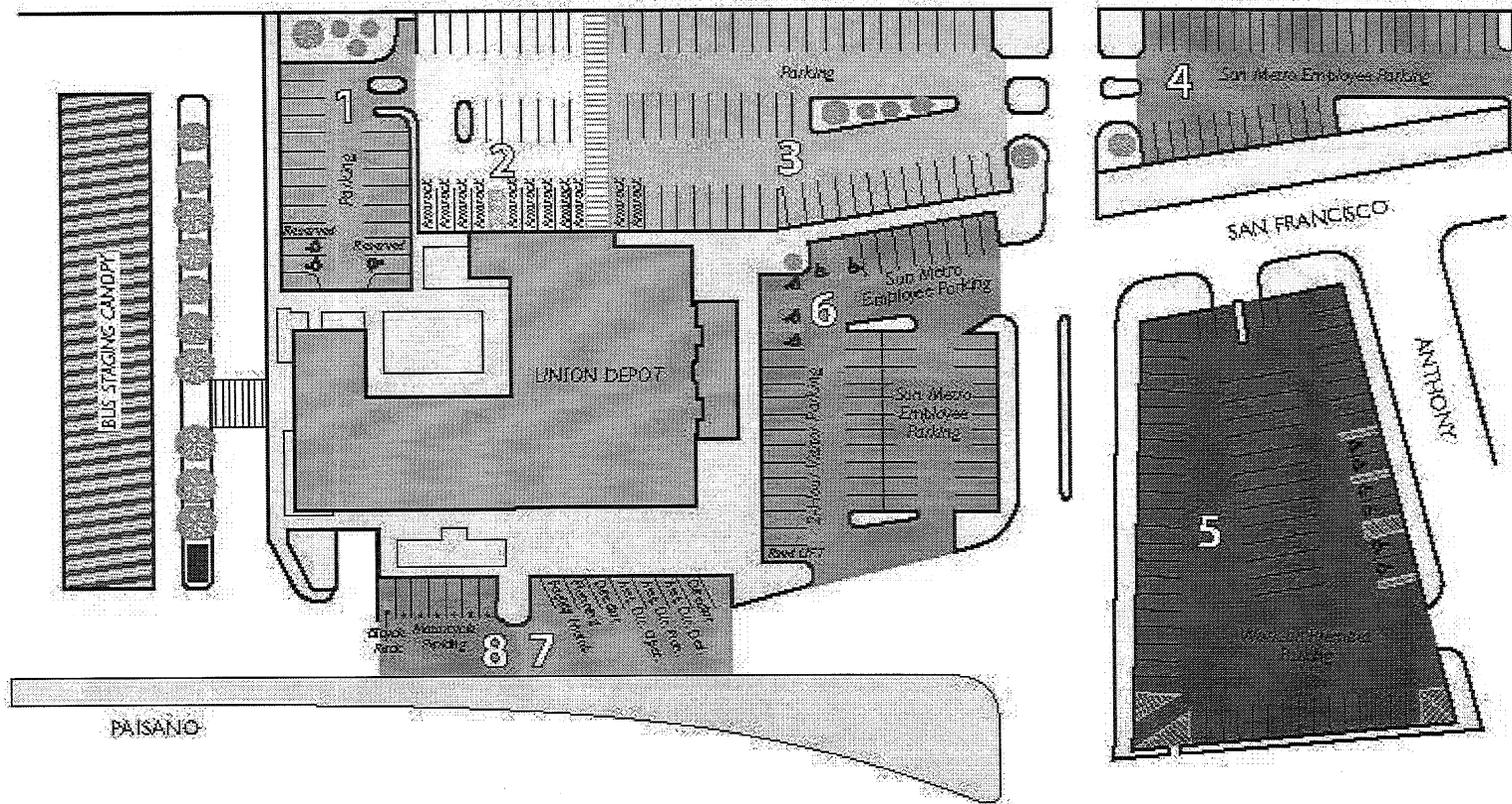
This instrument is acknowledged before me on this 29 day of September, 2010, as Rafael Cuernavallano on behalf of UNION VALET, LLC, as Grantee.

Monica Lamas
Notary Public, State of Texas
Notary's Printed or Typed Name:

April 21, 2014

My Commission Expires: _____


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

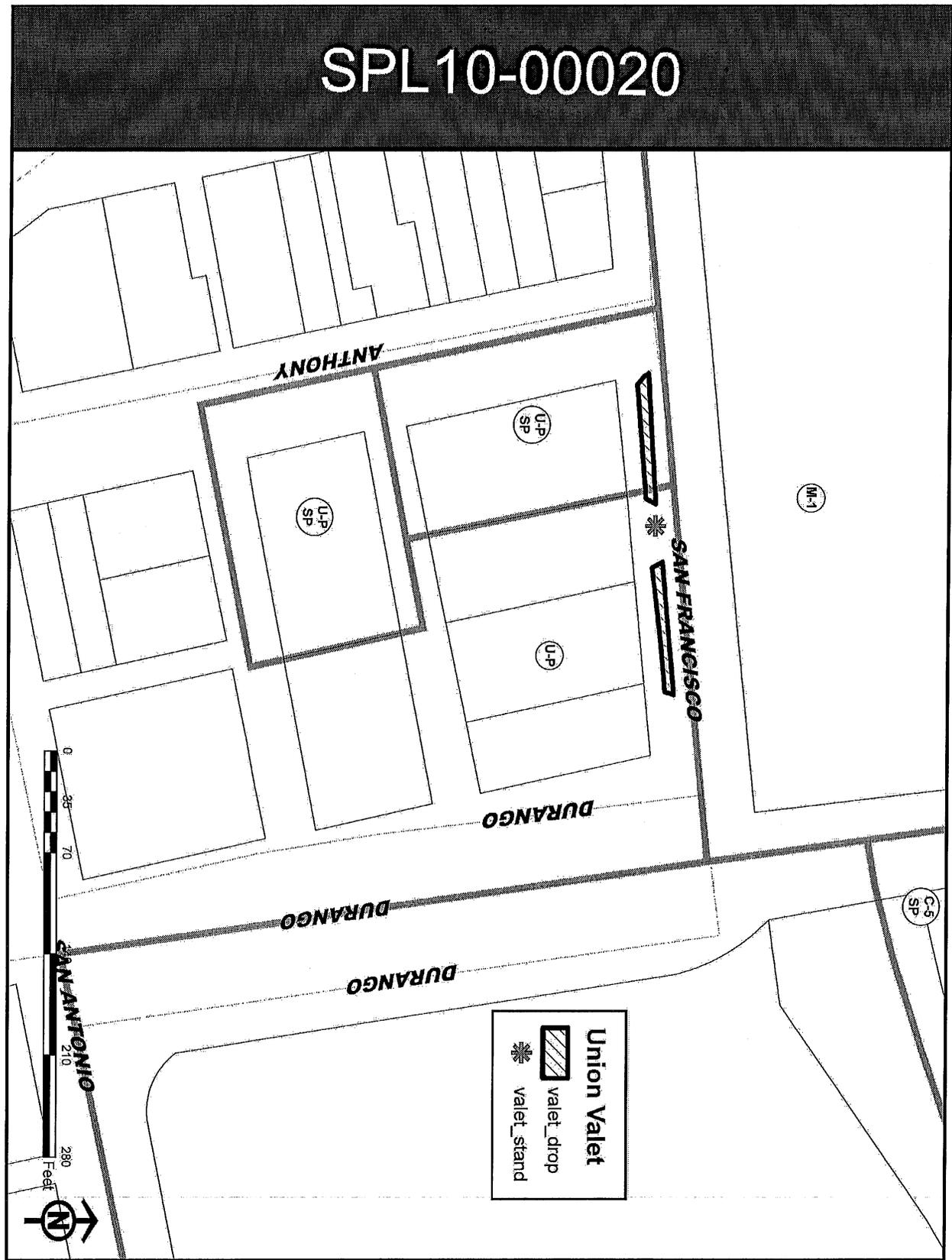
- ▲ Lot 5: 74 spaces total (6 handicapped)
- ▼ Lot 6: 59 spaces total (5 handicapped, 1 LIFT)
- ▲ Lot 7: 7 reserved spaces
- ▼ Lot 8: 6 motorcycle spaces

EXHIBIT B



LOCATION MAP

SPL10-00020



Department of Transportation

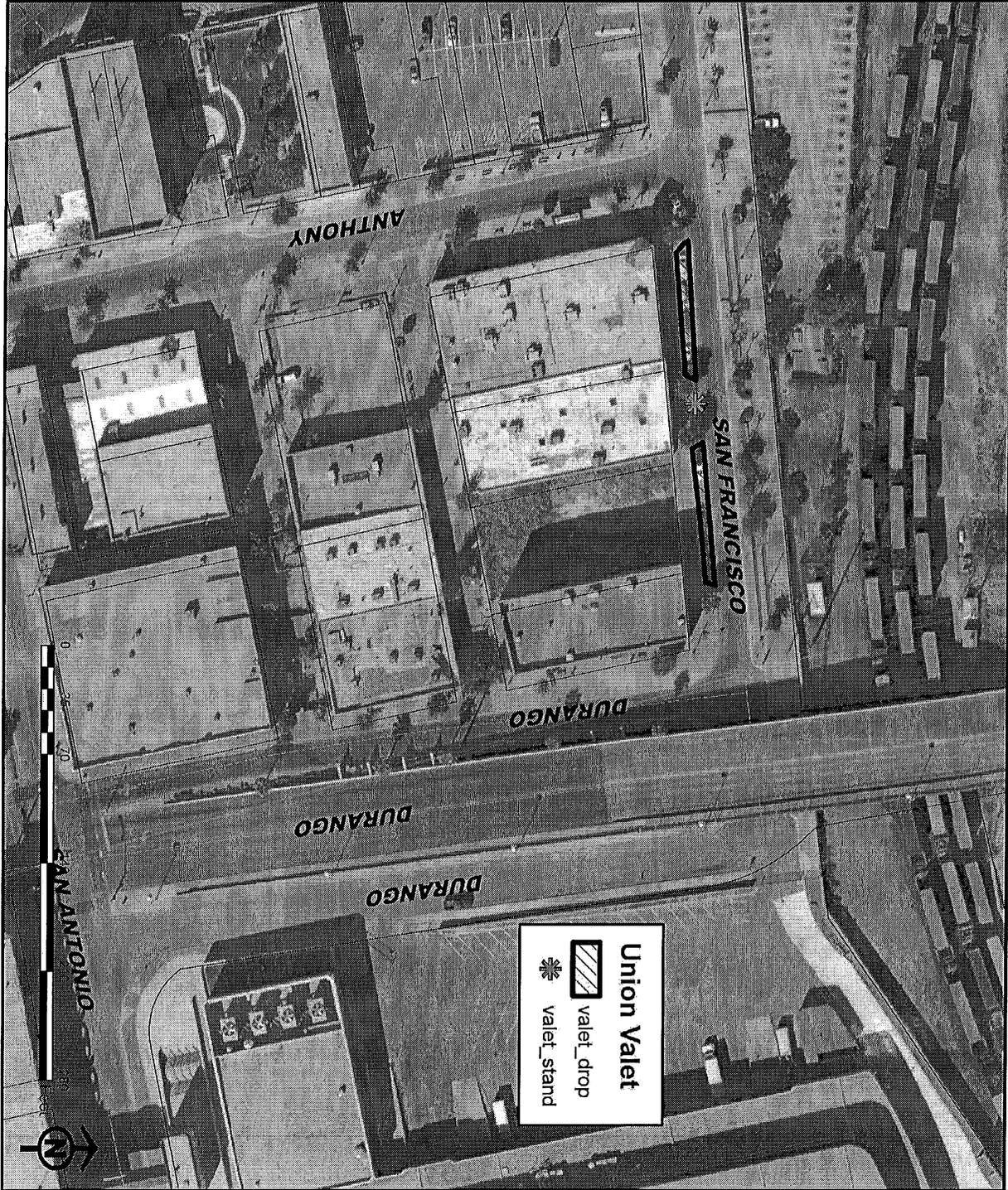
Daryl Cole, Director

2 Civic Center Plaza – 6th Floor · El Paso, Texas 79901 · (915) 541-4050 · Fax (915) 541-4050



AERIAL MAP

SPL10-00020



Department of Transportation

Daryl Cole, Director

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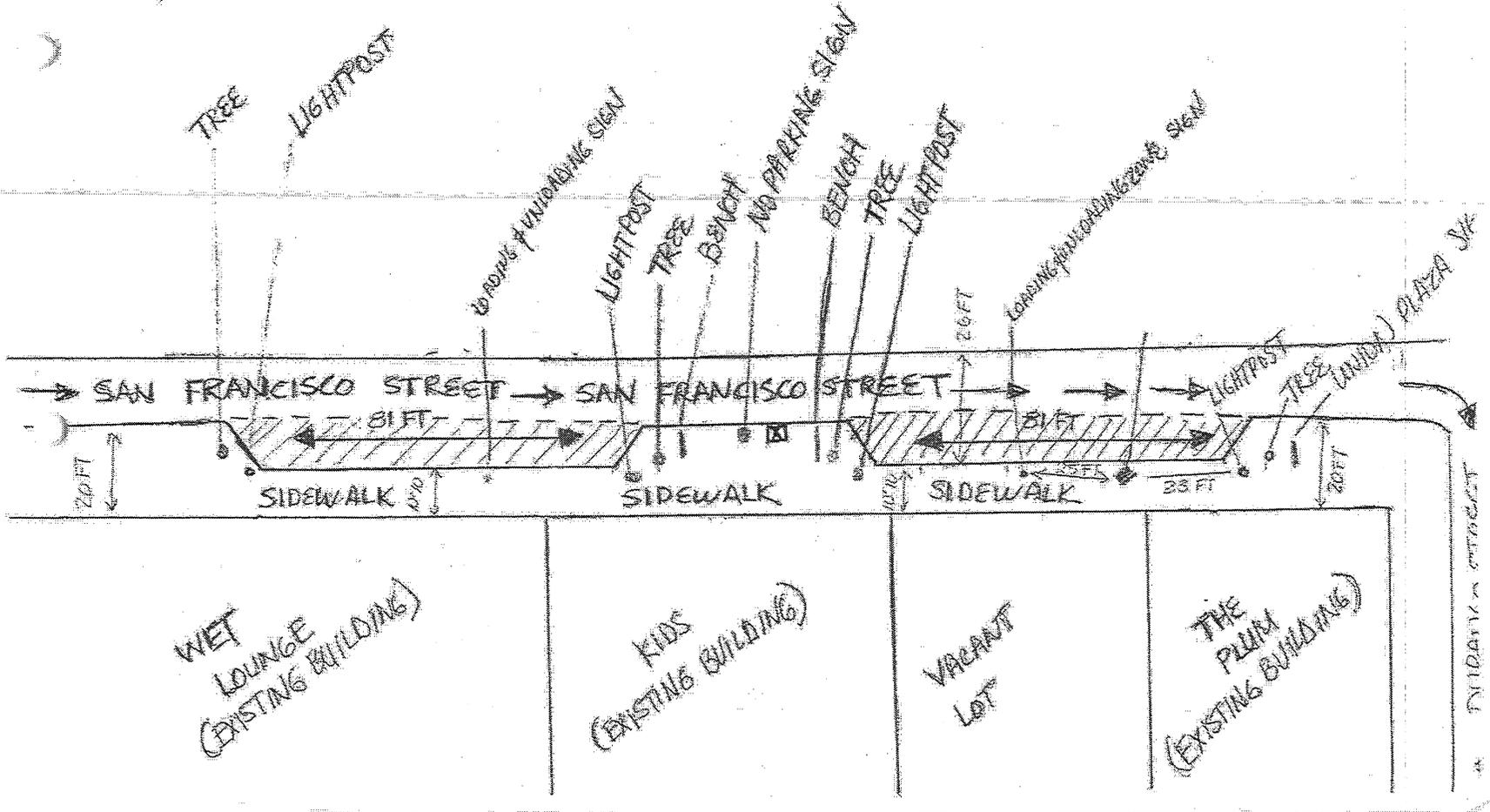


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SERVICE SOLUTIONS SUCCESS

PROJECT SUMMARY

- VALET PARKING PERMIT ALONG LOADING/UNLOADING ZONE BLOCK OF 500 SAN FRANCISCO
- 161 FT. OF LOADING & UNLOADING ALLOWING UP TO 8 VEHICLES (162 FT. TOTAL SPACE)
- VALET STAND DIMENSIONS: 23 1/2 INCHES WIDE, 19 INCHES DEEP, 48 INCHES IN HEIGHT
- WILL BE AT LEAST 8'10 FROM NEAREST CITY STRUCTURE (TREES, SIGNS, ETC.)
- PROPOSED AREA SHADED AS SUCH  VALET STAND



Department of Transportation

Daryl Cole, Director

2 Civic Center Plaza - 6th Floor - El Paso, Texas 79901 - (915) 541-4050 - Fax (915) 541-4050