

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

DEPARTMENT: City Development Department

AGENDA DATE: December 10, 2013, Introduction
December 17, 2013, Regular Agenda

CONTACT PERSON NAME AND PHONE NUMBER: Shamori Whitt, (915) 541-4477, whittSR@elpasotexas.gov

DISTRICT(S) AFFECTED: 8

SUBJECT:

An Ordinance granting a Special Privilege License to Mills Plaza Parking, LP for the use of portions of City Right-of-Way along Oregon Street adjacent to the property located at 303 N. Oregon to place one "A" Frame informational sign, one portable valet parking podium, and for a vehicle drop off and pick up zone for valet parking for a term of one year with two one-year options to renew.

BACKGROUND / DISCUSSION:

The applicant is requesting the use of an 86 x 16 portion of City ROW directly in front of 303 N. Oregon to provide valet parking service with an "A" Frame informational sign and removable valet stand. The hours of operation will be limited from 11:00am to 2:00am daily. The valet parking shall be removed from the License Area outside of the hours of operation. As a condition of the License Agreement, the City reserves the right to request that the valet parking service be terminated if it becomes a public safety issue and the applicant has agreed.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

The item was presented to DCC for consideration on July 31, 2013 and the DMD Downtown Construction Committee on August 12, 2013. There were no objections to the proposal.

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

DEPARTMENT HEAD:

**Mathew S. McElroy, Director
City Development Department**

Information copy to appropriate Deputy City Manager

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE LICENSE TO MILLS PLAZA PARKING, LP. FOR THE USE OF PORTIONS OF CITY RIGHT-OF-WAY ALONG OREGON STREET ADJACENT TO THE PROPERTY LOCATED AT 303 NORTH OREGON TO PLACE ONE “A” FRAME INFORMATIONAL SIGN, ONE PORTABLE VALET PARKING PODIUM, AND FOR A VEHICLE DROP OFF AND PICK UP ZONE FOR VALET PARKING FOR A TERM OF ONE YEAR WITH TWO ONE-YEAR OPTIONS TO RENEW.

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

SECTION 1. PURPOSE

The City of El Paso (hereinafter called “City”) hereby grants a Special Privilege License (hereinafter called “License”) to Mills Plaza Parking, LP. (hereinafter referred to as the “Grantee”) for a valet parking service which shall include a vehicle drop-off and pick-up zone for valet parking and for the placement, operation, use, and future maintenance of one (1) “A” frame informational sign and one (1) portable valet parking podium (hereinafter referred to as the “Podium”) within portions of City right-of-way along Oregon Street as shown in Exhibit “A,” which is made a part hereof for all purposes (hereinafter referred to as the “License Area”).

SECTION 2. USE OF PROPERTY

This License is granted solely for the encroachment onto City rights-of-way for vehicle drop-off and pick-up in conjunction with a valet parking service with the Podium and informational sign. The encroachment shall be used in conjunction with a vehicle drop off and pick up zone for a valet parking service in the License Area. The estimated size of the Podium stand shall be twenty-four inches (24 in.) by nineteen inches (19 in.) by forty-eight inches (48 in.), and the estimated size of the informational sign shall be twenty-four inches (24 in.) by thirty-six inches (36 in.), as shown in Exhibit “B,” which is made a part hereof for all purposes. Should the need arise to replace the Podium and a new podium in the exact dimensions is not available, Grantee may use another

commercially available podium so long as the foot-print of the new podium does not exceed five (5) square feet in size. Use of the License Area is limited to vehicle drop off and pick up associated with the valet parking and as otherwise agreed to by the parties hereto. Any use of City right-of-way other than the use of the City right-of-way in connection with the use of the License Area is not authorized by this License. Nothing herein shall grant any real property interest to the Grantee other than the right to use the City right-of-way as described herein, nor give rise to any vested right in the Grantee, its assigns or successors in interest, none of whom shall have a cause of action for damages upon revocation or termination of this License in accordance with the terms herein.

This License shall not permit or be construed to permit any other private use of the City right-of-way that impairs its function as a City right-of-way, nor give Grantee any right to construct any improvements, or make any additions or alterations to the right-of-way without prior written consent of the El Paso City Council.

SECTION 3. REGULATION OF CONSTRUCTION

The work done by Grantee in placing, replacing, repairing, or maintaining the License Area shall be subject to and governed by all laws, rules and regulation of the City, State of Texas, and the U.S. Government that are applicable to ensuring that the work done does not unreasonably inconvenience the public in the use of the City right-of-way. The City Council shall have the power at any time to order and require Grantee to remove and abate any portion of the License Area that is 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 same, at the expense of Grantee. In the event City removes or abates the License Area as provided in this subparagraph, Grantee shall not be compensated for the loss of the valet parking service, nor shall the City be

liable to the Grantee for any direct, indirect or consequential damages due to the removal or abatement of the License Area.

Work done in connection with the use, repair and maintenance of such facilities is subject to the continuing police power of the City.

SECTION 4. TERM

This License shall be for an initial term of one (1) year from the effective date hereof, unless terminated earlier as provided herein. At the end of the initial term, the Grantee shall have the option of renewing this License for two (2) additional one (1) year terms upon the request of the Grantee and approval of the El Paso City Manager or designee. If Grantee wishes the City to renew this License, Grantee shall submit a request in writing to the City no later than one (1) month prior to the expiration date of this License. Should Grantee fail to submit such request for the renewal of this License to the City as herein required, the Special Privilege shall expire upon the expiration date. Grantee agrees that the hours of operation of the valet parking service shall be limited from 11:00 am to 2:00 am, seven days a week. The Podium and information sign shall be removed from the License Area when the service is not in operation.

SECTION 5. WORK DONE BY OTHERS

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 the Podium or informational sign.

SECTION 6. RESERVATION OF SURFACE, SUBSURFACE, AND AIRSPACE RIGHTS

Nothing in this agreement in any way waives or limits the rights of the City which it might otherwise have, 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 zone, Podium , or informational sign, such alteration, change or relocation shall be made by Grantee when ordered in writing by the City Manager or designee without any claim for reimbursement or damages against the City.

SECTION 7. CONSIDERATION

A. As consideration for this License, Grantee shall pay to the City the sum of One Thousand and No/100 DOLLARS (\$1,000.00) per year. The annual fee shall remain the same for

a period of one year from the date of execution by City Council, and is subject to change after each one year period if the license is renewed. The City shall notify Grantee of increases as prescribed in Section 13 (Notices) of this agreement. This License is granted on the condition the Grantee pay for all costs associated with the Podium and informational sign.

B. The first annual consideration shall be due and owing prior to City Council approval of the Special Privilege. 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 City Development Department Planning Division for remittance to the Financial Services Department. If the Special Privilege 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. Subsequent annual considerations shall be due the first day of the month in which the License has been granted by the El Paso City Council and remitted to the Financial Services Department.

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 except as hereinafter provided as may be enacted during the term of this License or any renewal.

D. The fee established in this Section shall not be affected by any relocation of Grantee's valet parking zone, Podium, or informational sign required by the City pursuant to 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 Special Privileges and regulations.

F. Grantee shall also pay all costs related to creation, installation, and modification of no parking signage for the use of the right-of-way.

SECTION 8. INSURANCE

A. Prior to commencement of any future construction, repairs, or maintenance operations during the term of this License, 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 obtain and provide a commercial general liability policy with a minimum one million dollar (\$1,000,000.00) limit, per occurrence, for personal injury, death, and property damage, with a minimum one million dollar (\$1,000,000.00) general aggregate limit. These amounts are not a limitation upon Grantee's agreement to indemnify and hold the City harmless.

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. If the Grantee chooses to meet its requirements of financial responsibility for valet parking services pursuant to the Texas Transportation Code, Section 686.002 (1) by providing motor vehicle liability or general liability and garage insurance policy in the amounts no less than those established in Section 686.004 in addition to the requirement that the city be name as an additional insured, each employee of Grantee who operates a motor vehicle for the valet parking service shall be named as a co-insured and that the Grantee shall provide proof of compliance by providing a certificate of insurance listing such employees as co-insured's 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. All policies shall list the City of El Paso, its officer, agents, servants and

employees as additional insureds. 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 Financial Services Department, or ten (10) days prior written notice to the Financial Services Department for cancellation based on non-payment of insurance premiums. Grantee shall file a copy of the policy or certificate of insurance with Financial Services and the City Development Department. If the policy is not kept in full force and effect throughout the term of this License, the Special Privilege shall automatically become void.

SECTION 9. INDEMNITY

As a condition of this License, Grantee shall 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. This indemnification shall apply even where such damages described above involve the negligence or allegation 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 10. RIGHTS IN THE EVENT OF ABANDONMENT

As an express condition of this License, and not as a mere covenant, in the event Grantee abandons the valet parking service, Podium, or informational sign, or the valet parking service operation in the City right-of-way hereby ceases to be used by Grantee for the purposes enumerated herein for any consecutive period of six (6) months or longer, the Special Privilege 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 11. CANCELLATION

Grantee shall have the option to terminate this agreement at any time upon giving the City written notice thirty (30) days in advance of such termination. 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 thirty (30) days written notice to Grantee. However, if said breach or failure to comply cannot be reasonably cured within thirty (30) 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, prior to the expiration of the original term, Grantee shall remove its Podium and informational sign located in the City right-of-way at no cost to the City. When said Podium and informational sign are removed from the City right-of-way, Grantee shall restore all pavement or base, damaged, or removed during the term of this License, if any, at Grantee's own cost and expense, as determined by the Director of City Development and in accordance with City specifications. Any such restoration shall be subject to the reasonable approval of the City. If the Grantee fails to restore the pavement as required by the City, the City may at its option restore the pavement and charge such costs to Grantee who shall be responsible for payment of such repair and restoration costs.

If Grantee acquires fee simple title to the property underlying the License Area, this License shall automatically terminate and have no further effect.

SECTION 12. RECORDS

The El Paso City Council and the City Manager 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,

including the construction, replacement, reconstruction, maintenance, and repair of the License Area. Grantee shall keep complete and accurate maps, construction drawings, and specifications describing the location of the Podium and informational sign within the City right-of-way. The City shall have the right, at reasonable times to inspect such maps, construction drawings, and specifications.

SECTION 13. 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: City of El Paso
ATTN: City Development Department- Planning Division
222 S. Campbell
El Paso, Texas 79901

with copy to: City of El Paso
ATTN: Financial Services – Capital Assets Division
300 N. Campbell
El Paso, Texas 79901

GRANTEE: Mills Plaza Parking, LP.
ATTN: Brent Harris
123 W. Mills Ave, Ste. 600
El Paso, Texas 79901

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

SECTION 14. ASSIGNMENT

The rights granted by this License inure to the benefit of the Grantee, and any parent, subsidiary, or successor entity now or hereafter existing. If there is any attempt by Grantee to

assign the rights granted under this License without prior written consent of the City Manager, the assignment shall automatically be deemed void. A written copy of any such assignment must be filed with the City.

SECTION 15. LEASING OR DEDICATION OF FACILITIES

Grantee, without the consent of the El Paso City Manager or designee, shall not lease any of the License Area to any non-grantee person or entity; however, Grantee shall have the option of charging a fee to its customers for the use of the valet parking service.

SECTION 16. MISCELLANEOUS

The City Manager or designee is the principal City official responsible for the administration of this License.

SECTION 17. NO PROPERTY RIGHTS

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

SECTION 18. 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 License Area that arises or is alleged to have arisen from Grantee's use of the Licensed Area.

SECTION 19 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 20. LAWS AND ORDINANCES

Grantee shall comply with all statutes, laws, codes and ordinances applicable to Grantee's construction, repair, renovation, alteration or use of the License Area.

SECTION 21. 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 22. 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 23. LAWS GOVERNING/VENUE

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 24. 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's use of the License Area, Grantee shall have the right to terminate this License upon giving the City prior written notice of its intent to do so.

SECTION 25. EFFECTIVE DATE

The effective date of this License shall be the date last entered below. This License shall not take effect unless Grantee files its written acceptance with the City prior to the enactment of this License by the El Paso City Council.

PASSED AND APPROVED this ____ day of _____, 2013.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

THE CITY OF EL PASO

Oscar Lesser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Lauren K. Ferris
Assistant City Attorney

APPROVED AS TO CONTENT:

Mathew McElroy, AICP, CNU-A
Director, City Development Department

(Acceptance to follow on next page)

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this _____
day of _____ 2013.

GRANTEE:
Mills Plaza Parking, LP.

By: _____

Title: _____

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

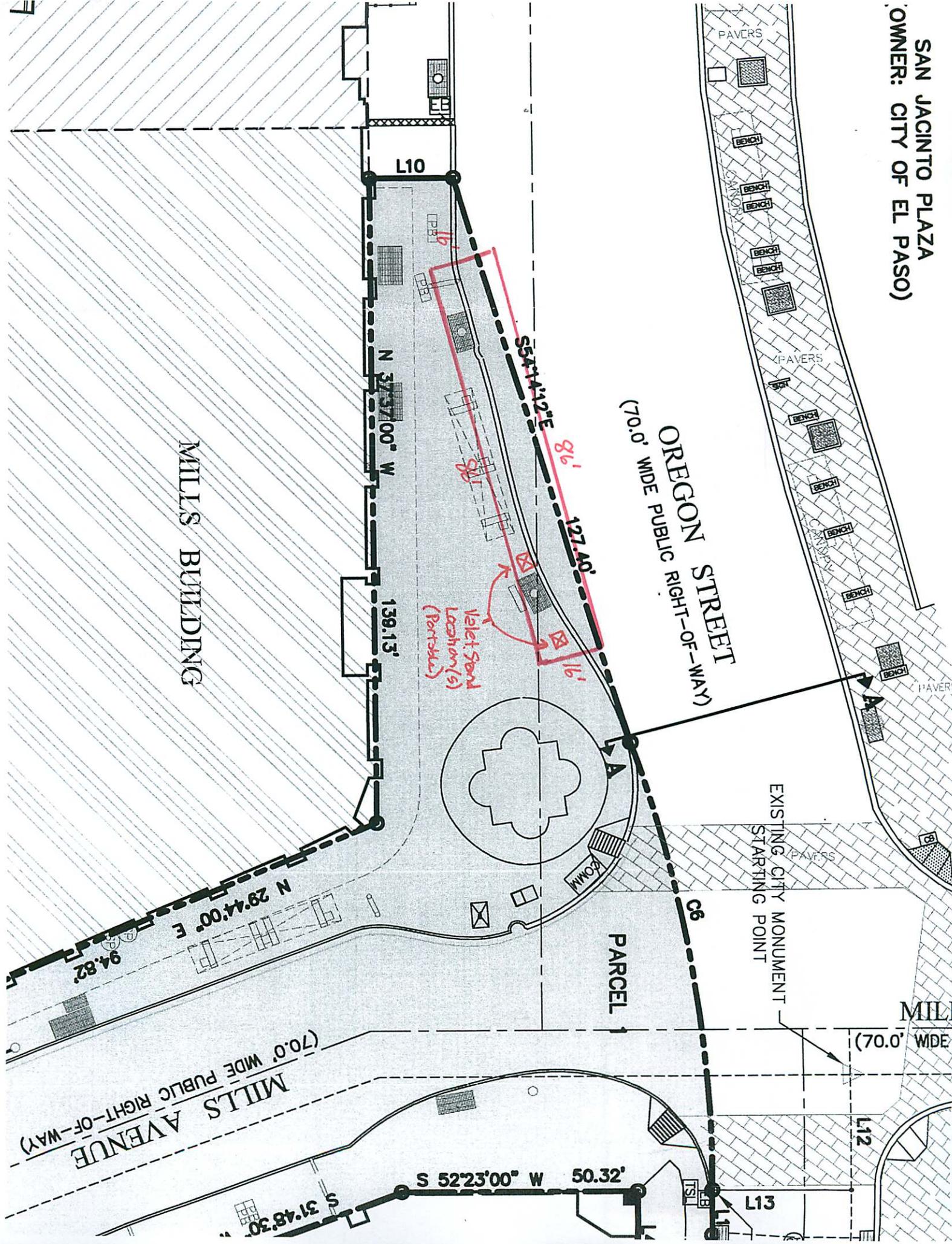
This instrument is acknowledged before me on this _____ day of _____, 2013,
as _____ on behalf of Mills Plaza Properties, LP., as Grantee.

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

My Commission Expires:

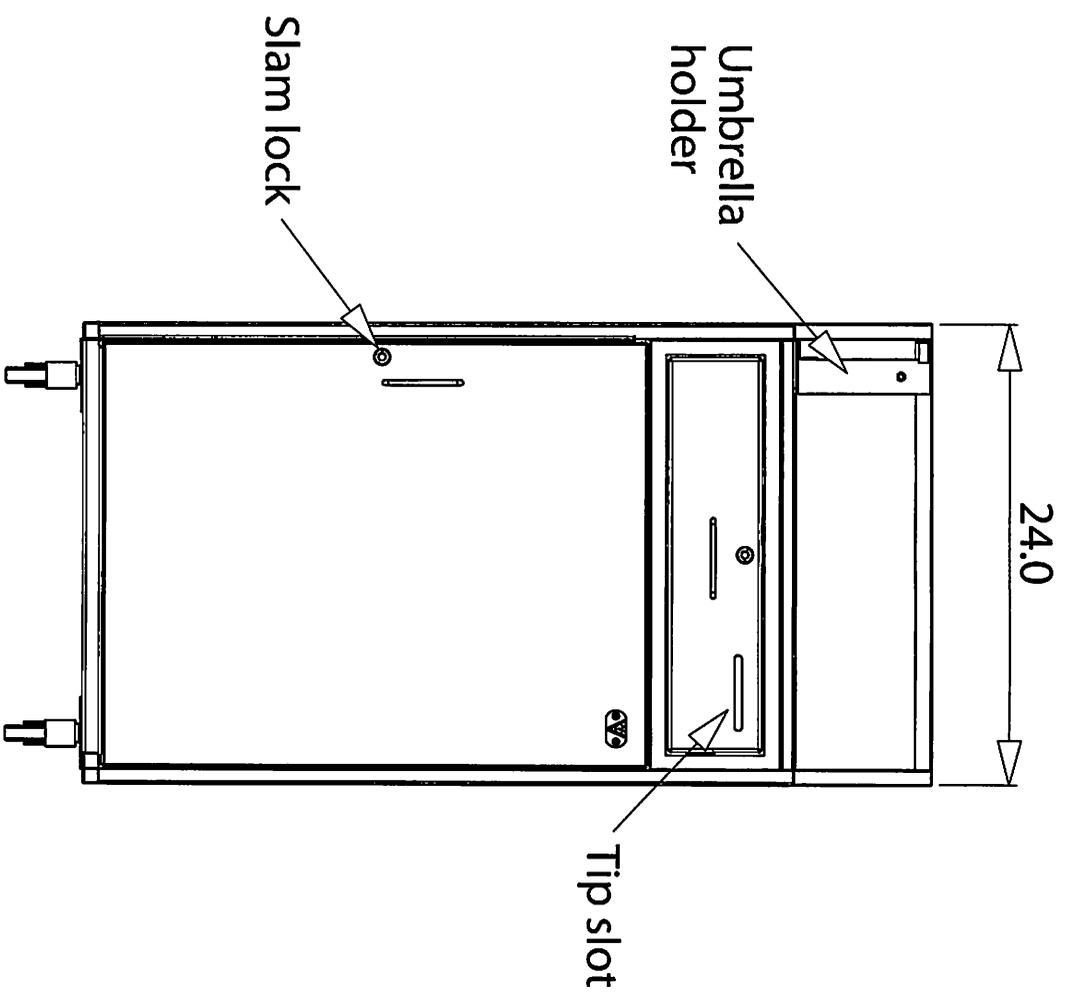
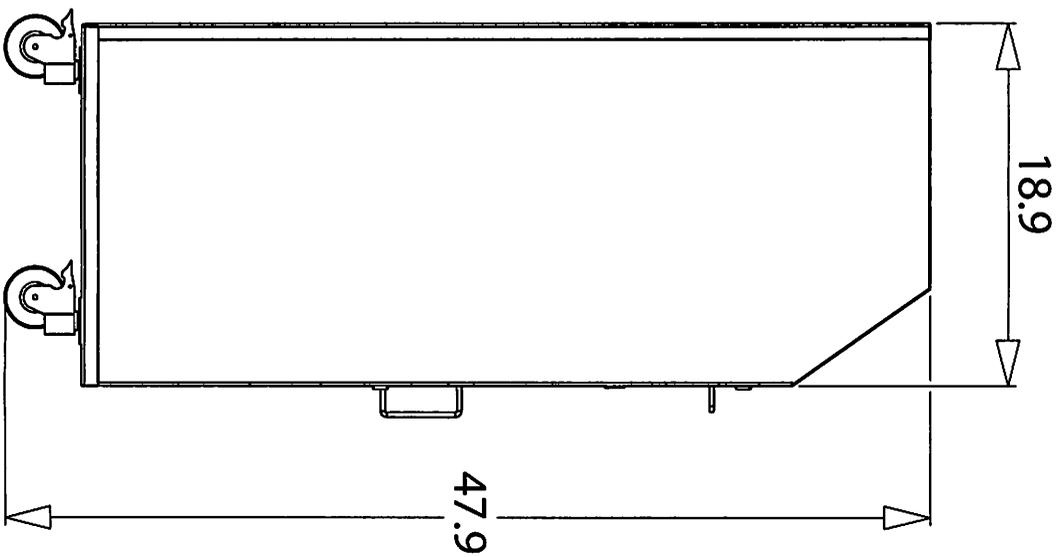
EXHIBIT A

SAN JACINTO PLAZA
OWNER: CITY OF EL PASO



THE
VALET
SPOT

Standard Valet Podium







NESV13-00022: Special Privilege License

- Applicant: Mills Plaza Parking, LP
- Location: 303 N. Oregon
- Zoning: C5H
- Representative District: 8 (Downtown)
- Type of Encroachment: Right of Way
 - 86 x 16 section of ROW
- Proposed Use: “A” Frame Informational Sign & Valet Parking Service with Portable Valet Parking Podium
 - Hours of Operation: 11am to 2am daily

THE CITY RESERVES THE RIGHT TO REQUEST THAT THE VALET PARKING SERVICE BE TERMINATED IF IT BECOMES A PUBLIC SAFETY ISSUE.



NESV13-00022

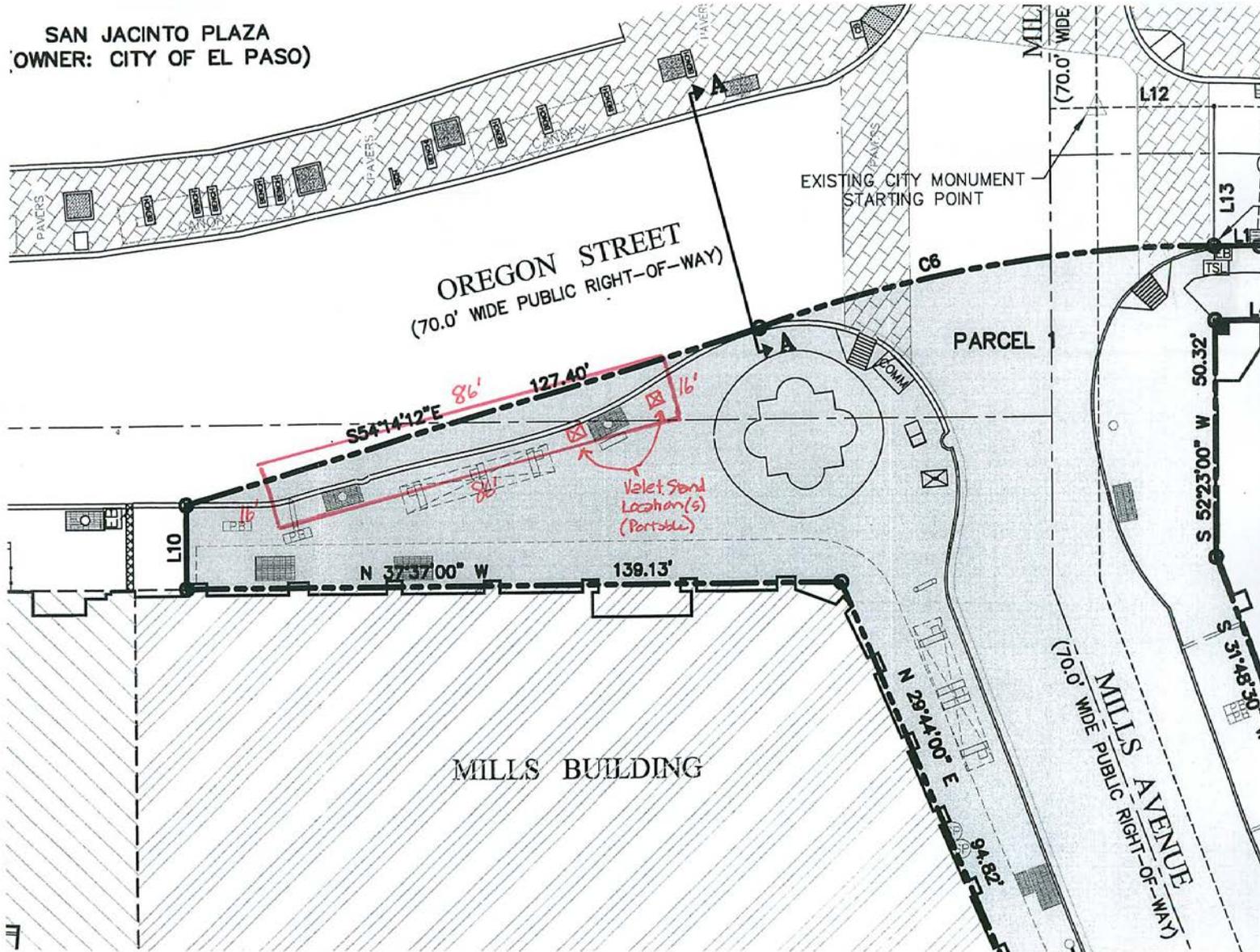




NESV13-00022



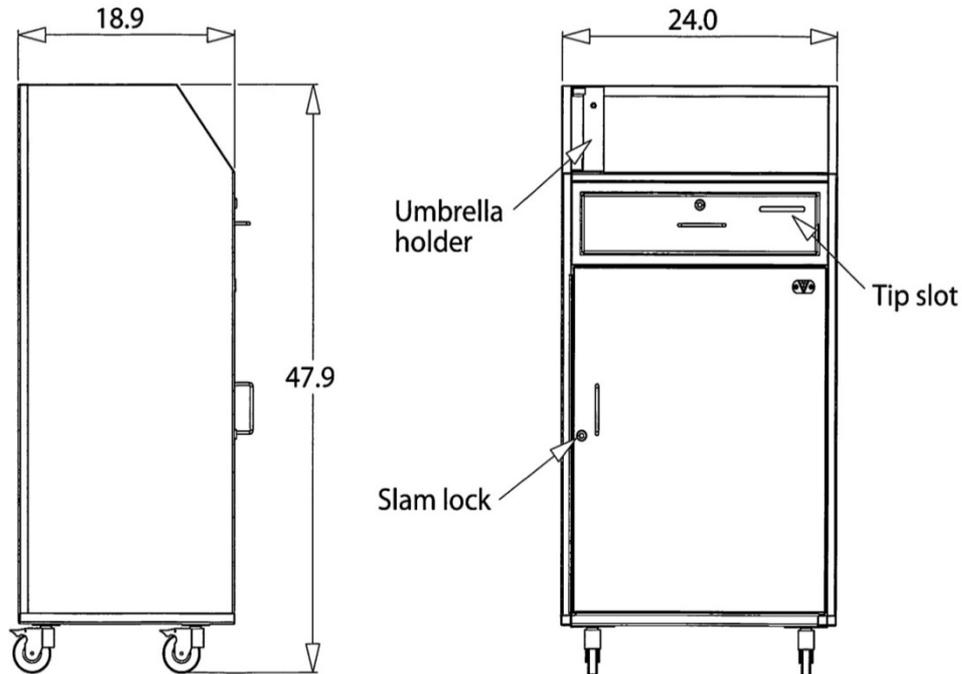
SAN JACINTO PLAZA
OWNER: CITY OF EL PASO





THE
VALET
SPOT

Standard Valet Podium



Please Note: Applicant may use another commercially available podium that does not exceed five square feet (5 sq. ft.) in size.



Typical "A" Frame Informational Sign, Public Parking



SERVICE SOLUTIONS SUCCESS





As per EPDoT, a work order was issued on 7/24/2013 for “NO PARKING” signs on the depicted portion Oregon St.



Staff/Public Committees:

- Development Coordinating Committee- 7/31/2013: No objections as proposed
- DMD Downtown Construction Committee- 8/12/2013: No objections as proposed