

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

DEPARTMENT: ENVIRONMENTAL SERVICES

AGENDA DATE: **Introduction:** August 9, 2016
 Public Hearing: August 23, 2016

CONTACT PERSON: ELLEN A. SMYTH, P.E., DIRECTOR, ENVIRONMENTAL SERVICES
212-6060

DISTRICT (S) AFFECTED: All

STRATEGIC GOAL: Goal 3: Promote the Visual Image of El Paso

SUBJECT:

An ordinance granting until August 22, 2019, a non-exclusive franchise to "VALU Advertising" to place and maintain up to 150 waste containers on sidewalks and other City property within the City of El Paso, subject to the terms and conditions described in the ordinance.

BACKGROUND / DISCUSSION:

A franchise agreement is required for the placement of solid waste containers on City property. The ordinance, acknowledged by the franchisee, identifies standards to be maintained for the placement, maintenance, and use for advertising of the solid waste containers at locations identified in the ordinance.

Franchisee will compensate the City an annual franchise fee of \$2,000, and a monthly fee of \$2.00 per container (per Schedule C). In addition, the City reserves the right to use 10% of the total advertising space on placed containers for its own use or the use of its sponsors.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

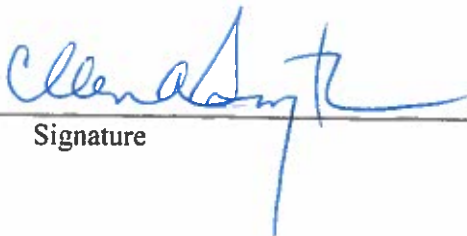
BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:

Ellen Smyth, P.E.



August 1, 2016

Name

Signature

Date

ORDINANCE NO. _____

**AN ORDINANCE GRANTING TO VALU ADVERTISING A
NON-EXCLUSIVE FRANCHISE FOR WASTE
CONTAINERS ON SIDEWALKS AND OTHER CITY
PROPERTY**

WHEREAS, VALU Advertising desires to place waste containers on sidewalks and other City property; and

WHEREAS, the City of El Paso (the "City") desires to allow VALU Advertising to place waste containers on sidewalks and other City property;

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

1. There is hereby granted to VALU Advertising, hereinafter called "Grantee," and his assigns, a non-exclusive franchise to place and maintain up to 150 "waste containers" meeting the criteria discussed herein, on sidewalks and other City property. The size of the waste containers shall not exceed thirty-six (36) inches in height and thirty-six (36) inches in width, or as otherwise specified in the El Paso City Code, and the design and construction of the waste containers shall be subject to prior approval by the Director for the Department of Environmental Services (the "Director") of the City. The waste containers must be durable and attractively constructed and shall at all times be maintained by Grantee in such condition as not to constitute a hazard to persons or property, or impede in any way the flow of vehicular or pedestrian traffic, with five (5) feet of free and unobstructed passage around the waste container. The specific, fixed locations of existing waste containers are on Exhibit "A", provided, however, that should the Traffic Engineer determine that any of the waste containers on Exhibit "A" do not meet the requirements set forth herein, the Traffic Engineer shall direct Grantee to relocate or remove such waste containers in conformity with this franchise and City Code. Grantee shall comply with City Code Section

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20.18.020C, and shall register any new locations with the City's Planning Department if any changes to Exhibit "A" locations are sought subsequent to the approval of this franchise by City Council. This franchise does not grant the right to locate waste containers on property owned or controlled by the Texas Department of Transportation (TxDOT). The location of any waste containers on TxDOT property must be by separate agreement with said state department or agency.

2. The term of this franchise shall be a three (3) year period beginning August 23, 2016, unless the agreement is otherwise terminated as provided herein. In the event the Grantee issues a written request to the City to extend the franchise at least one hundred eighty (180) days prior to the end of the initial term, the parties may agree to a one-year extension option, unless or until otherwise cancelled or terminated as provided for herein. The option may be exercised on behalf of the City administratively via signature of the City Manager.

3. Grantee may use the space on the waste containers for advertising such reputable and reliable business concerns as may contract for the space. Grantee shall not be prohibited from placing on his/her waste containers any advertisement based on content. No advertising will be permitted, however, which is for any illegal business or activity, which advertises a political party or the candidacy of any person for political office, or which is of a character deemed by the City Council to be improper for exhibition in the public streets or parks when judged by contemporary community standards.

4. If any improvements are to be constructed or repairs made, whether by the City or a utility company, on any sidewalk or other City property where Grantee has placed any waste containers, Grantee shall, upon written notice from the Director, remove any waste containers located on the affected City property. The Director shall give Grantee fourteen (14) days written notice of the

date when the construction of improvements on such City property is to begin, and Grantee shall remove such waste containers prior to the commencement of construction.

5. During the life of this franchise, Grantee shall maintain, repair or replace the waste containers as necessary, and shall keep them reasonably clean, in neat and attractive appearance, and free of odors. Grantee may change the design of the waste containers if it deems advisable, but such changes shall be subject to prior approval of the Director.

5.1 The City will provide written notice to the Grantee in the case of any problem waste container(s) and if the problem is not cured within seven (7) days of that notice, the City can order the removal of said waste container(s).

5.2 If Grantee does not remove the problem waste container(s) within seven (7) days of the City's removal order, the City will remove and dispose of the waste container(s) at the Grantee's cost.

5.3 The timeframes referenced in this Section 5 may be accelerated by the City in the case of an imminent public health or safety hazard.

6. As part of the consideration for the grant of this franchise, Grantee agrees during the term hereof:

6.1 To collect all refuse from the waste containers on a schedule to be approved by the Director within five (5) days of the City's approval of this ordinance and within the timeframe subsequently approved by the Director after any change to the initially approved schedule.

6.2 To dispose of such refuse in a legal and proper manner including, but not limited to applicable City ordinance.

7. If Grantee collects and disposes of the refuse or uses his own employees to collect and dispose of the refuse, Grantee shall obtain, pay for and keep in effect a City commercial hauler's license, and shall comply with all laws, codes and ordinances applicable to the collection, hauling and disposal of refuse. Grantee may contract with a permitted hauler to collect and dispose of the refuse.

8. Grantee shall be deemed at all times to be an independent contractor and shall be responsible for his own acts. Grantee agrees to indemnify, defend and hold harmless the City, its

officers, agents and employees from and against any and all loss, liability, damage, expense or claim of any nature whatsoever arising out of or incident to this franchise, which are the result of any act or omission of Grantee. Grantee shall give the City reasonable notice of any such claims or actions. Grantee shall use legal counsel reasonably acceptable to the City in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this franchise.

9. During the term of this franchise, the Grantee will carry public liability insurance by a solvent insurance company authorized to do business in Texas, for the protection of itself and the City, which shall be named as an additional insured. The limits of liability shall be at least \$250,000 for bodily injury or wrongful death of one person, \$500,000 for more than one person in the same accident, and \$100,000 property damage. The form of the policy shall be subject to approval by the City and a copy, or a certificate of insurance, shall be filed with the City Clerk. The policy shall provide that it cannot be canceled without ten (10) days prior notice in writing to the City Clerk.

10. Grantee shall comply with all applicable laws, regulations and ordinances.

11. The City may terminate this franchise without cause, for any reason whatsoever, upon thirty (30) days written notice to Grantee.

12. Upon termination of this franchise, the grant hereof, as well as the property of Grantee situated in and upon the sidewalks and other public places shall, at the option of and upon the payment by the City to Grantee of a fair valuation therefore, be and become the property of the City. The fair valuation shall be ascertained by the arbitration and appraisal of a majority of three appraisers, one of whom shall be appointed by the City of El Paso, one of whom shall be appointed by the Grantee, and one of whom shall be appointed by the first two appraisers so appointed by

the City and Grantee. If said two appraisers shall be unable to agree upon the designation of a third appraiser, or if the City or Grantee shall refuse within a period of thirty (30) days after notice to appoint or designate an appraiser, the County Judge of El Paso County, Texas, shall designate such appraiser. The valuation as fixed by a majority of three appraisers shall not include any payment or valuation because of any value derived from the franchise or the fact that it is or may be a going concern, duly installed and operated. If the City Council shall not desire to acquire the property by the payment of a fair valuation therefore, the property shall be removed by the Grantee without cost or expense to the City, and the sidewalk or other public place where the property was located shall be restored to its former condition.

13. This franchise shall not be assigned without the prior written consent of the City, which consent shall not be unreasonably withheld.

14. As consideration for this franchise, Grantee will pay to the City the annual franchise fee in the amount authorized by City Council on or before the 15th day following the granting of this franchise. In addition, on March 31, June 30, September 30 and December 31 of each year during the term of this franchise, the Grantee will submit a quarterly payment in the amount authorized by City Council per waste container in service per month. By way of example, the March 31, 2016 payment shall cover the period from the date of execution to March 31, 2016, and the June 30, 2016 payment shall cover the period from April 1, 2016 to June 30, 2016. This fee will include a report listing the number of waste containers in service, their location and reason for removing a waste container. If the City does not receive one or more of the referenced franchise fees by their due date, the City shall send a written notice of default to the Grantee for lack of payment. The City will give Grantee ten (10) calendar days from the date of such notice to pay in full or the franchise will be terminated at the end of the ten (10) day period. If the Grantee is found to be

violating the provisions of this franchise or submitting false records listing locations or number of waste containers, the penalties listed in Section 1.08.030 of the City Code shall be pursued by the City against Grantor. All payments shall be submitted to the Comptroller of the City of El Paso, at the following address: P.O. Box 1890, El Paso, Texas 79950-1890.

15. The City may conduct periodic audits of the waste container locations to ensure quarterly reporting is accurate. The Department of Environmental Services may also investigate any and all complaints addressing waste container condition, locations, and nuisances caused by these waste containers.

16. In addition, Grantee shall allow the City to use ten percent (10%) of its advertising space on its waste containers to publicize upcoming City-sponsored events and City-related community services messages. The Grantee will meet with the Director within 10 days following the execution of this ordinance and again annually as of the date of the granting of this franchise to discuss the number and location of spaces available for City use. The locations shall be fixed until such time as the City agrees to a different location. The City shall be entitled to use ten percent (10%) of the total advertising spaces which the Grantee had available during the immediately preceding three (3) months. There shall be no more than one space for City use per waste container. The Grantee reserves the right to try to solicit sponsorship for the spaces allotted for City use. The City reserves the right to approve the wording and design of such advertisements and to accept sponsors. If the Grantee does not have a sponsor for the spaces allotted for City use, the City has the option to furnish its own signs for placement by the Grantee on the waste containers. The City reserves the right to give the Grantee thirty (30) days written notices to update or change the advertisement wording or design of a space reserved for City use.

17. Grantee herein shall indicate the acceptance of the provisions of this Ordinance in writing within five (5) days after the passage thereof.

PASSED AND APPROVED this _____ day of _____, 2016.

CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Josette Flores
Assistant City Attorney

Ellen A. Smyth, P.E., Director
Environmental Services

(Acceptance and Acknowledgment follow on next page)

ACCEPTANCE AND ACKNOWLEDGMENT

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this ____ day of _____, 2016.

VALU ADVERTISING

By: Ruben Torres
Its: Owner

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2016, by Ruben Torres, (written/typed name), acting as the Owner of VALU Advertising.

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

My Commission Expires:

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EXHIBIT "A"

Site locations for VALU Advertising waste containers:

| Main Street | Cross Street | No Authorized |
|-------------------|------------------|---------------|
| ARTCRAFT | SOUTH DESERT | 2 |
| ARTCRAFT | WESTSIDE | 4 |
| EAST FRANKLIN | NORTH SANTA FE | 2 |
| EAST PAISANO | SOUTH CAMPBELL | 2 |
| EAST PAISANO | SOUTH EL PASO ST | 2 |
| EAST PAISANO | SOUTH KANSAS | 3 |
| EAST PAISANO | SOUTH MESA | 4 |
| EAST PAISANO | SOUTH OREGON | 3 |
| EAST PAISANO | SOUTH PIEDRAS | 3 |
| EAST PAISANO | SOUTH STANTON | 4 |
| EAST PAISANO | TROWBRIDGE | 2 |
| EXECUTIVE CENTER | RIO BRAVO | 2 |
| EXECUTIVE CENTER | WEST PAISANO | 2 |
| GATEWAY BLVD EAST | GERONIMO | 1 |
| GATEWAY BLVD EAST | GILES | 2 |
| GATEWAY BLVD EAST | HAWKINS | 2 |
| GATEWAY BLVD EAST | LEE TREVINO | 2 |
| GATEWAY BLVD WEST | GERONIMO | 2 |
| MONTANA | CHELSEA | 4 |
| MONTANA | COPIA | 3 |
| MONTANA | GLOBAL REACH | 4 |
| MONTANA | HAWKINS | 4 |
| MONTANA | MC RAE | 3 |
| MONTANA | NORTH MESA | 2 |
| MONTANA | RAYNOLDS | 2 |
| MONTANA | RUTHERGLEN | 2 |
| MONTANA | SIoux | 2 |
| MONTANA | TROWBRIDGE | 2 |
| MONTANA | WEDGEWOOD | 2 |
| NORTH CAMPBELL | EAST FRANKLIN | 2 |
| NORTH CAMPBELL | EAST MISSOURI | 2 |
| NORTH DESERT | REDD | 2 |
| NORTH KANSAS | EAST FRANKLIN | 2 |
| NORTH KANSAS | EAST MISSOURI | 2 |
| NORTH KANSAS | MAIN | 1 |
| NORTH KANSAS | MILLS | 2 |
| NORTH KANSAS | OVERLAND | 2 |
| NORTH KANSAS | SAN ANTONIO | 1 |
| NORTH KANSAS | TEXAS | 2 |

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| | | |
|-----------------|-------------------|-----|
| NORTH MESA | ARGONAUT | 2 |
| NORTH MESA | BALTIMORE | 1 |
| NORTH MESA | BRENTWOOD | 2 |
| NORTH MESA | CASTELLANO | 2 |
| NORTH MESA | DONIPHAN | 2 |
| NORTH MESA | EAST FRANKLIN | 2 |
| NORTH MESA | EAST UNIVERSITY | 2 |
| NORTH MESA | EAST YANDELL | 2 |
| NORTH MESA | GLORY ROAD | 1 |
| NORTH MESA | MESITA | 1 |
| NORTH MESA | RIM | 2 |
| NORTH STANTON | EAST FRANKLIN | 2 |
| NORTH STANTON | EAST UNIVERSITY | 2 |
| NORTH STANTON | KERBEY | 2 |
| RAYNOLDS | GATEWAY BLVD EAST | 2 |
| SAN ANTONIO | DURANGO | 2 |
| SHADOW MOUNTAIN | PEBBLE BEACH | 2 |
| SOUTH STANTON | E 8TH | 1 |
| THORN | BARTLETT | 1 |
| TROWBRIDGE | GATEWAY BLVD WEST | 2 |
| VISCOUNT | WESTMORELAND | 2 |
| ZARAGOZA | AMERICAS | 2 |
| | | 133 |