

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

**DEPARTMENT:** Environmental Services

**AGENDA DATE:** September 30, 2014 – Introduction  
October 7, 2014 – Public Hearing

**CONTACT PERSON NAME AND PHONE NUMBER:** Ellen A. Smyth, P.E., Director (915) 212-6060

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

An ordinance renewing a non-exclusive franchise to Paul Berube for waste containers on sidewalks and other city property.

**BACKGROUND / DISCUSSION:**

The proposed franchise agreement will allow Paul Berube to place a minimum of 150 waste containers on sidewalks and other City property. Grantee will pay \$2.00 per waste container to the City every month, payment due at the end of each quarter. The Grantee will also pay \$2,000 at the beginning of the agreement each year.

The current litter receptacle agreement was from March 18, 2014 through August 31, 2014. The renewed agreement will be for four (3) years with a one (1) year option to extend.

**PRIOR COUNCIL ACTION:**

March 18, 2014

**AMOUNT AND SOURCE OF FUNDING:**


<b>Annual Amount:</b>	<b>\$18,400.00 (4 years)</b>
<b>Department:</b>	<b>Environmental Services</b>
<b>Accounting:</b>	<b>334-3100-34060-420000</b>

**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 GRANTING TO PAUL BERUBE A NON-EXCLUSIVE FRANCHISE FOR WASTE CONTAINERS ON SIDEWALKS AND OTHER CITY PROPERTY**

**WHEREAS**, Paul Berube desires to place waste containers on sidewalks and other City property; and

**WHEREAS**, the City of El Paso (the “City”) desires to allow Paul Berube 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 Paul Berube, 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 obtain the appropriate permit from 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 October 7, 2014, 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.

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 December 31, March 31, June 30, and September 30 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 December 31, 2014 payment shall cover the period from the date of execution to December 31, 2014, and the March 31, 2015 payment shall cover the period from January 1, 2015 to March 31, 2015. 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 Department of Environmental Services, located at 7968 San Paulo, El Paso, Texas 79907.

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 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. 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 \_\_\_\_\_, 2014.**

CITY OF EL PASO

\_\_\_\_\_  
Oscar Leaser  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Josette Flores  
Assistant City Attorney

APPROVED AS TO CONTENT:

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

(Acceptance and Acknowledgment follow on next page)

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

PL MATTER # 14-1005-737.001 - PL DOC #323675v2 -PAUL BERUBE TRASH CAN FRANCHISE ORD /JF



ACCEPTANCE AND ACKNOWLEDGMENT

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

PAUL BERUBE

By: \_\_\_\_\_

ACKNOWLEDGEMENT

THE STATE OF TEXAS     )  
  )  
COUNTY OF EL PASO     )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Paul Berube.

\_\_\_\_\_  
Notary Public, State of Texas

Notary's Printed or Typed Name:

\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

## EXHIBIT “A”

Site locations for Paul Berube waste containers:

Geronimo/Edgemere  
Edgemere/Airway  
Airway/Viscount  
Hawkins at Cielo Vista  
Hawkins/Viscount  
Hawkins/Gazelle  
Viscount/Larry Watkins  
Viscount/Acer  
Copia/Gateway E  
Yarbrough/Vista del Sol  
Yarbrough/Montwood  
Trawood/Lomaland  
Lee Trevino/Rojas  
Lee Trevino/Pellicano  
Lee Trevino/Vista de Oro  
Lee Trevino/Trawood  
Lee Trevino/Montwood  
Lee Trevino/Ben Crenshaw  
Trawood/Ben Crenshaw  
George Dieter/Zaragosa  
George Dieter/Rojas  
George Dieter/Pellicano  
George Dieter/Trawood  
George Dieter/Montwood  
George Dieter/Pebble Hills  
Pebble Hills/Saul Kleinfield  
Montwood /Lee  
Montwood/Trawood  
Montwood/Saul Kleinfield  
Montwood/Zaragosa  
Saul Kleinfield/Zaragosa  
Zaragosa/Vista del Sol  
Zaragosa/Pellicano  
Zaragosa/Don Haskins  
Zaragosa/Rojas  
Zaragosa/Adair Margo  
Medical Center/Cliff  
Mesa/Kerby  
Mesa/Sun Bowl

Mesa/Executive Center  
Mesa/Festival  
Mesa/Mesa Hills  
Mesa/Crestmont  
Mesa/Sunland Park  
Mesa/Shadow Mountain  
Mesa/Resler  
Mesa/Remcon  
Mesa/Osbourne  
Mesa/Crossroads  
Resler/Cloudview  
Resler/Escondido  
Resler/Belvidere  
Resler/Redd  
Resler/Highridge  
Resler/Helen of Troy  
Redd/Southwestern  
Redd/Westwind  
Redd/Highridge  
Westwind/Thunderbird  
Westwind/Escondido  
Westwind/Belvidere  
Sunland Park/Mesa Hills  
Sunland Park/Payless  
Sunland Park/Circuit City  
Dyer/Hondo Pass  
Dyer/Wren  
Dyer/Sanders  
Fairbanks/Rushing  
Kenworthy at Gateway N  
McCombs/Sean Haggerty  
Jon Cunningham/MLK  
Dyer/Trans Mountain