

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

PARKING LICENSE AGREEMENT

This Parking License Agreement (“**Agreement**”) is made this _____ day of _____, 2021 (“**Effective Date**”) between the City of El Paso, a municipal corporation organized and existing under the laws of the State of Texas, (“**City**”), and El Paso Chamber of Commerce, a (“**Licensee**”). For the convenience of the parties, all defined terms appear in **bold face** print when first defined.

The parties agree as follows:

SECTION 1. PARKING SPACES.

- A. Subject to the terms of this Agreement, the City grants the Licensee a license to use 25 parking spaces (“**Parking Spaces**”) located at the Civic Center Parking Garage, El Paso, Texas 79901 (“**Parking Garage**”). This Agreement does not authorize the Licensee to use any other areas of the Parking Garage other than the dedicated access pathways to access the Parking Spaces.

SECTION 2. CONSIDERATION.

- A. Beginning on the Effective Date and throughout the term of this Agreement, the Licensee shall pay the City a monthly fee in the amount of \$___1__ (“**Monthly Fee**”). The Licensee will pay the Monthly Fee on the 1st day of each month, provided that the first payment is due on the Effective Date. In addition to the Monthly Fee, the Licensee will provide print and broadcast advertisement for City of El Paso services and City of El Paso sponsored events in an amount equal to \$19,500 per year (“**Advertisement Amount**”) for the term of this Agreement. The Licensee will provide the City proof of advertisement expenditures at the end of each calendar year for the duration of the term and any Renewal Periods to the e-mail address listed in this Agreement. The City may recalculate the Advertisement Amount within thirty calendar days of the start of a Renewal Period and send notification to the Licensee of the new Advertisement Amount. Upon receipt of notification of the new Advertisement Amount, the Licensee will spend up to the new Advertisement Amount and provide the City proof of such expenditures as provided above.

SECTION 3. TERM.

- A. The Agreement commences on the Effective Date and ends three years from the Effective Date (“**Term**”). Prior to the expiration of the Term, the City Manager, or designee, may extend the Term for two additional terms of three years each (“**Renewal Period**”).

SECTION 4. USE POLICIES

- A. The Licensee will abide by all policies, current and future, enacted by the City regarding the use of the Parking Garage and Parking Spaces. The Licensee understands and agrees that the City may modify its policies at the sole discretion of the City.
- B. The Licensee understands and agrees that the Licensee may only use the Parking Spaces during the hours of operation of the Parking Garage. The City may change the Parking Garage hours of operation at the City's sole discretion.
- C. The Licensee may allow its customers and visitors to use the Parking Spaces, provided that all customers and visitors must abide by all hours of operation and policies and procedures of the Parking Garage and Parking Spaces. The Licensee will be responsible for providing its customers and visitors with parking validation. The Licensee agrees that any customers or visitors of the Licensee that cannot present a valid parking validation will be required to pay the standard parking fee and that such fee is not refundable. No later than the Effective Date, the Licensee will provide the City with the form of parking validation that the Licensee will be providing to its customers and visitors.
- D. The Licensee understands and agrees that the Parking Spaces are not designated or reserved and that they are available on a first come first served basis. Licensee may use any of the parking spaces at the Parking Garage only during the hours of 8:00 A.M. to 5:00 P.M., Monday through Friday.
- E. The Licensee will provide employees with a parking pass that employees must display on their vehicles when using the Parking Garage. Any employees that do not display the parking pass will be required to pay the standard parking fee and such fee is not refundable. Employees may only use the Parking Garage during the hours of 8:00 A.M. to 5:00 P.M., Monday through Friday. Any employees using the Parking Garage after such hours will be charged the standard parking fees.
- F. The Licensee agrees that any persons not authorized to use the Parking Spaces or the Parking Garage may be towed in accordance to applicable law.
- G. The Licensee will not do any alterations or improvements to the Parking Spaces.

SECTION 5. DAMAGES TO CITY PROPERTY.

- A. The Licensee is responsible for all damages caused to the Parking Spaces and/or the Parking Garage by the Licensee and/or the Licensee's employees, agents, customers, visitors or other licensees/invitees. If the Licensee or any of the Licensee's employees, agents, customers, visitors or other licensees/invitees damages any City property, then the City may repair such damage to the City's standards and the City may send an invoice to the Licensee for the full costs of the repairs. The Licensee will pay in full any invoice sent by the City under this section within 30 calendar days of receipt.

SECTION 6. RELEASE.

- A. The Licensee releases the City from all claims of property damage, property loss, personal injury, illness, and death sustained by the Licensee while using the Parking Spaces or the Parking Garage regardless of whether such property damage, property loss, personal injury, illness, or death was caused by the negligence of the City or the City's officers, employees, and/or agents.

- B. The Licensee will communicate to their employees, customers, and visitors that the City is not responsible for any property damage, property loss, personal injury, illness, and death sustained while using the Parking Spaces or the Parking Garage regardless of whether such property damage, property loss, personal injury, illness, or death was caused by the negligence of the City or the City's officers, employees, and/or agents.

SECTION 8. INDEMNIFICATION.

- A. **Licensee will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, 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 the use of the parking garage or parking spaces by the Licensee or the Licensee's employees, agents, customers, visitors or other licensees/invitees. 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 Licensee every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Licensee will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Licensee 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 because of such injuries or damages. Licensee will pay all judgments finally establishing liability of the City in actions defended by Licensee pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Licensee, 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 or damage to the Licensee's property from any cause.**

SECTION 9. TERMINATION.

- A. Either party may terminate this Agreement at any time for any reason, or no reason, following a 30 calendar day notice to the other party.
- B. **TERMINATION NOT A RELEASE.** Termination by either party is not a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party is not relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

SECTION 11. GENERAL PROVISIONS

- A. **NO WAIVER.** Either party may waive any default without waiving any prior or subsequent defaults. Either party’s failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.
- B. **INDEPENDENT LICENSEE RELATIONSHIP.** This Agreement does not create an employee-employer relationship between the Licensee and the City. As such, the City is not subject to the liabilities or obligations the Licensee obtains under the performance of this Agreement.
- C. **TIME IS OF THE ESSENCE.** The times and dates specified in this contract are material to this Agreement. For the purpose of this Agreement **“business days”** means Monday through Friday excluding City of El Paso holidays and **“calendar days”** means Monday through Sunday excluding City of El Paso holidays.
- D. **NOTICES.** The parties will send all notices required by this Agreement in writing, postmarked, and delivered by certified mail. All notices are considered received 3 business days after the postmark date. Parties may change their address by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this section. Upon receipt of proper notification of change of address, the notified party will send all further notifications to the new address. Parties will address notices as follows:

To the City:

The City of El Paso
Attn: City Manager
Realestate@elpasotexas.gov

To the Licensee:

El Paso Chamber of Commerce

Attn: David Jerome

Address: 303 N Oregon, Ste 610 , El Paso, TX 79901

david@elpaso.org

- E. **CONFIDENTIALITY.** The Licensee acknowledges that this Agreement is subject to Chapter 552 of the Texas Government Code (Texas Public Information Act). The release of the Agreement as a whole or in part must comply with Chapter 552 of the Texas Government Code (Texas Public Information Act).
- F. **GOVERNING LAW.** This Agreement is governed by Texas law.
- G. **VENUE.** The venue for disputes regarding this Agreement between the parties will be El Paso County, Texas.
- H. **SEVERABILITY.** A future finding of invalidity of any provision of this Agreement does not affect the validity of any remaining provisions of this Agreement.
- I. **HEADINGS.** The headings and subheadings of this Agreement are for information purposes only and are not substantive terms.
- J. **COMPLIANCE WITH THE LAWS.** The parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement.
- K. **FORCE MAJEURE.** There is no breach of contract should either party's obligations within this Agreement be delayed due to an act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party must resume performing its obligations in this Agreement after the reason for the delay is resolved.
- L. **SUCCESSORS AND ASSIGNS.** This Agreement is binding on the City and the Licensee, and the Licensee's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.

M. THIRD-PARTY BENEFICIARIES. There are no third party beneficiaries for this Agreement.

N. PROVISIONS SURVIVING THIS AGREEMENT. Representations, releases, warranties, covenants, indemnities, and confidentiality survive past the execution, performance, and termination of this Agreement.

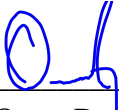
O. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties.

WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

CITY OF EL PASO:

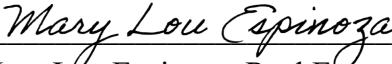
Tomas Gonzalez
City Manager

APPROVED AS TO FORM:



Omar De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT:



Mary Lou Espinoza, Real Estate Division
Capital Improvement Department

LICENSEE:



Printed Name: Stephen Voglewede

Title: Corporate Secretary