

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

DEPARTMENT:

AGENDA DATE:

PUBLIC HEARING DATE:

CONTACT PERSON NAME:

PHONE NUMBER:

2nd CONTACT PERSON NAME:

PHONE NUMBER:

DISTRICT(S) AFFECTED:

STRATEGIC GOAL:

SUBGOAL:

SUBJECT:

BACKGROUND / DISCUSSION:

COMMUNITY AND STAKEHOLDER OUTREACH:

PRIOR COUNCIL ACTION:

AMOUNT AND SOURCE OF FUNDING:

REPORTING OF CONTRIBUTION OR DONATION TO CITY COUNCIL:

NAME	AMOUNT (\$)

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

DEPARTMENT HEAD: _____

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

RESOLUTION

WHEREAS, University of Texas at El Paso (“UTEP”) contracts with Van Wagner to offer Marketing Partner packages on behalf of UTEP’s Intercollegiate Athletics Department (“UTEP Athletics”); and

WHEREAS, entering into an Agreement for the purchase of a Marketing Partner package allows the Marketing Partner to obtain benefits such as advertising opportunities during UTEP’s athletic games and UTEP Athletics social media postings; and

WHEREAS, UTEP games are attended by citizens and non-citizens of the City and therefore messages displayed during the games and on UTEP Athletics social media reach a large and unique population; and

WHEREAS, the City desires to enter into this Agreement as a Marketing Partner to use the advertising opportunities offered by UTEP and Van Wagner in order to educate the public about services provided by the Mass Transit Department of the City (“Sun Metro”) as well as encourage participation in the various services; and

WHEREAS, the Marketing Partner package the City wishes to purchase is for an initial term of one year at a cost of \$35,000.00 and two, one-year options to extend the contract, each option at a cost of \$35,000, for a total contract cost of \$105,000.00; and

WHEREAS, entering into this Agreement serves the public purpose of promoting the visual image of the City as well as nurturing and promoting a healthy and sustainable community.

NOW THEREFORE, BE IT RESOLVED BY THE MASS TRANSIT DEPARTMENT BOARD OF THE CITY OF EL PASO:

That the Mass Transit Department Board of the City of El Paso finds the above recitals to be true and correct.

That the City Manager or designee(s) be authorized to sign a Marketing Partner Agreement between the City of El Paso and Van Wagner for the City to obtain advertising opportunities for the services provided by Sun Metro and as further described in the Agreement for an initial term of one year at a cost of \$35,000.00, and two, one-year options to extend the contract for a total cost of \$105,000.00.

That the City Manager or designee be authorized to administratively exercise future options without the need for further Mass Transit Department Board approval.

That the City Manager or designee be authorized to take actions necessary and effectuate any budget transfers, sign all related agreements, amendments to such agreements and related

documents after review and approval by the City Attorney's office, necessary to carry out the intent of this resolution.

APPROVED this _____ day of _____, 20__.


MASS TRANSIT DEPARTMENT BOARD:

Renard U. Johnson
Chair

ATTEST:


Laura Prine
Secretary

APPROVED AS TO CONTENT:



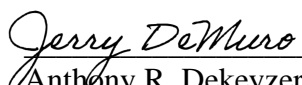
Claudia A. Garcia, Director
Purchasing & Strategic Sourcing

APPROVED AS TO FORM:



Joyce Garcia
Assistant City Attorney

APPROVED AS TO CONTENT:



Deputy Transit Officer for
Anthony R. Dekeyzer, Director
Mass Transit Department/ Sun Metro

MARKETING PARTNER AGREEMENT

THIS MARKETING PARTNER AGREEMENT (this "**Agreement**") is effective this _____ day of _____, 2025 between the **City of El Paso** by and through its **El Paso Sun Metro Department**, a home rule municipal corporation ("**City**" and "**MARKETING PARTNER**"), and Van Wagner Sports & Entertainment, LLC, College Division, a New York limited liability company ("**Licensee**").

RECITALS:

Subject to the approval of the **BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM ("Board")** and **THE UNIVERSITY OF TEXAS AT EL PASO ("University")**, Licensee has the right to grant MARKETING PARTNER certain MARKETING PARTNER benefits on behalf of the University's Intercollegiate Athletics Department ("**Athletics Department**"). Board and University are sometimes collectively referred to as "University."

MARKETING PARTNER desires to identify itself as an official MARKETING PARTNER ("**Official MARKETING PARTNER**") of University's Athletics Department and receive the MARKETING PARTNER rights provided for in this Agreement in exchange for the MARKETING PARTNER payment described in **Section 4** of this Agreement.

MARKETING PARTNER desires to enter into the Agreement to educate the public about services provided by the El Paso Sun Metro Department in order to enhance the quality of life of the citizens of El Paso, promote the visual image of the City of El Paso and nurture and promote a healthy and sustainable community.

MARKETING PARTNER is aware that the terms of this Agreement will not incorporate or affect any philanthropic gifts issued to University by MARKETING PARTNER.

In consideration of good and valuable consideration received and hereby acknowledged to be adequate, MARKETING PARTNER and Licensee agree as follows:

1. MARKETING PARTNER Recognition.

1.1 Recognition. MARKETING PARTNER will be recognized as set forth on **Attachment X to SCHEDULE 2 EXHIBIT C**, attached herein and incorporated for all purposes, so long as such recognition complies with **Section 1.2** below, and satisfies the qualified MARKETING PARTNER requirements under the then current Treasury Regulations. All MARKETING PARTNER recognition provided under this Agreement is collectively referred to as "**MARKETING PARTNER Recognition**." All MARKETING PARTNER Recognition materials provided or permitted under this Agreement are collectively referred to as "**MARKETING PARTNER Recognition Material**." If because of any change, cancellation or other event or circumstance Licensee is not able to provide any MARKETING PARTNER Recognition or substitute or alternative MARKETING PARTNER Recognition of comparable value that MARKETING PARTNER approves (such approval not to be unreasonably withheld, delayed or conditioned), the MARKETING PARTNER Payment for the applicable Contract Year(s) shall be reduced by the value of the MARKETING PARTNER Recognition that was not provided as such value shall reasonably be determined by Licensee and MARKETING PARTNER acting in good faith.

1.2 No Endorsements or Calls to Action. Notwithstanding any other term or condition of this Agreement to the contrary, no MARKETING PARTNER Recognition Material or recognition of MARKETING PARTNER of any other any kind, may state or imply that University endorses a particular company, organization or any other entity, including MARKETING PARTNER, or any other entity's goods or services, including MARKETING PARTNER's goods or services. MARKETING PARTNER will not have the right to display a message in MARKETING PARTNER Recognition Material that contains a comparative or qualitative description of MARKETING PARTNER's goods or services, price information about MARKETING PARTNER's goods or

services, or any other message that is a call to action related to MARKETING PARTNER's goods or services.

2. Term; Termination.

2.1 Term. The term ("**Term**") of this Agreement will commence on September 1, 2025 (the "**Effective Date**"). The initial term will be for a duration of one year, from September 1, 2025 through August 31, 2026. The City will have the right to extend the term of the agreement for 2 (two), one-year periods (each an "**Option to extend**"). To exercise the option to extend the agreement, the City shall provide notice to Licensee at least 30 days prior to the expiration of the agreement in accordance with the notice provisions of this agreement. The City shall have the sole right to extend the agreement past the initial term. "**Contract Year**" means for the first Contract Year that period of time beginning on the Effective Date and ending on August 31, 2026. "**Option Contract Year 2**", means for the Second Contract Year that period of time beginning on September 1, 2026, and ending on August 31, 2027; "**Option Contract Year 3**", means for the Third Contract Year that period of time beginning on September 1, 2027 and ending on August 31, 2028.

2.2 Term Subject to Rights Agreement; Termination upon Expiration or Termination of Rights Agreement. MARKETING PARTNER acknowledges and agrees that the rights and privileges granted by Licensee under this Agreement are subject to (1) that certain Trademark License Agreement dated effective May 1, 2019 between Licensee, University and Board; and (2) that certain Agreement for Use of Designated Marks in connection with Multimedia Rights Marketing Program dated effective May 1, 2019, between Licensee, University and Board, (collectively, the "**Rights Agreement**"). If the Rights Agreement expires or terminates at any time during the Term of this Agreement, University may, at its option, assume all obligations and rights under this Agreement. If the Rights Agreement expires or terminates at any time during the Term of this Agreement and if University does not assume all obligations and rights under this Agreement, Licensee may, at its option, terminate this Agreement. Any amounts that have accrued and are due to Licensee at the time of termination of this Agreement will be paid to Licensee within thirty (30) days after MARKETING PARTNER's receipt of written notice of termination. Any amounts that accrue and are due after the termination of this Agreement will be paid to University in accordance with the terms of this Agreement.

If Licensee terminates this Agreement under this Section, the parties acknowledge that MARKETING PARTNER will only be required to pay for a pro-rata portion of the MARKETING PARTNER Payment based on MARKETING PARTNER Recognition actually provided to MARKETING PARTNER prior to termination of this Agreement. If MARKETING PARTNER has, as of the effective date of termination of this Agreement, paid to Licensee more than that pro-rata amount, Licensee will promptly refund the difference to MARKETING PARTNER.

2.3 Termination for Convenience. Either party may terminate this Agreement for convenience by providing sixty (60) days written notice to the other Party.

2.4 Termination with Cause.

2.4.1 Licensee may terminate this Agreement, effective upon delivery of a written termination notice, without prejudice to any other legal or equitable rights to which it may be entitled, if:

(i) (a) MARKETING PARTNER defaults in the payment of any amounts owing to Licensee hereunder or the delivery of any In Kind Payment due hereunder when due and such default is not cured within five (5) days of MARKETING PARTNER's receipt of written notice thereof from Licensee; or (b) MARKETING PARTNER fails to perform a material duty or obligation under this Agreement, and that failure is not (1) cured to the satisfaction of Licensee within thirty (30) days following written notice of the failure to MARKETING PARTNER, or (2) to the extent not reasonably curable within the thirty (30) day time period, attempted to be cured within the thirty

(30) day period and, thereafter, pursued diligently until cured to the satisfaction of Licensee within a reasonable time period, and in the event of each of the foregoing, MARKETING PARTNER shall pay to Licensee promptly but in no event more than fifteen (15) days following the termination date, all remaining unpaid portions of the Cash MARKETING PARTNER Payment owing hereunder for the remainder of the Term and, if applicable, at the request of Licensee or University, deliver to University any remaining In Kind MARKETING PARTNER Payment owing under this Agreement for the remainder of the Term; or

(ii) any of the representations or warranties made by MARKETING PARTNER prove to be untrue or inaccurate in any material respect, in which event, MARKETING PARTNER shall pay to Licensee promptly but in no event more than fifteen (15) days following the termination date, all remaining unpaid portions of the Cash MARKETING PARTNER Payment owing hereunder for the remainder of the Term and, if applicable, at the request of Licensee or University, deliver to University any remaining In Kind MARKETING PARTNER Payment owing under this Agreement for the remainder of the Term; or

(iii) MARKETING PARTNER (or any of MARKETING PARTNER's representatives, employees, agents, or assigns) has engaged in conduct that is a violation of Rules and Regulations, or University shall determine that continued affiliation with MARKETING PARTNER would be inconsistent with the University's mission and philosophy and/or would adversely affect the reputation of the University, and in the event of each of the foregoing, MARKETING PARTNER will only be required to pay for a pro-rata portion of the MARKETING PARTNER Payment due to Licensee based on the MARKETING PARTNER Recognition actually provided to MARKETING PARTNER by Licensee prior to termination. In the event that MARKETING PARTNER has, as of the effective date of termination, paid to Licensee more than the pro-rata amount, Licensee will promptly refund the difference to MARKETING PARTNER.; or

(iv) MARKETING PARTNER becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated businesses, whether voluntarily or otherwise, in which event, MARKETING PARTNER shall pay to Licensee, promptly but in no event more than fifteen (15) days following the termination date, all remaining unpaid portions of the Cash MARKETING PARTNER Payment owing hereunder and, if applicable, at the request of Licensee or University, deliver to University any remaining In-Kind MARKETING PARTNER Payment owing hereunder, for the remainder of the Term.

2.4.2 MARKETING PARTNER may terminate this Agreement, effective upon delivery of a written termination notice, without prejudice to any other legal or equitable rights to which it may be entitled if:

(i) Licensee fails to perform a material duty or obligation under this Agreement, and that failure is not (1) cured to the satisfaction of MARKETING PARTNER within thirty (30) days following written notice of the failure to Licensee, or (2) to the extent not reasonably curable within the thirty (30) day time period, attempted to be cured within the thirty (30) day period and, thereafter, pursued diligently until cured to the satisfaction of MARKETING PARTNER within a reasonable time period; or

(ii) any of the representations or warranties made by Licensee in this Agreement prove to be untrue or inaccurate in any material respect; or

(iii) Licensee becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated businesses, whether voluntarily or otherwise; or

(iv) an officer or senior administrator of University or University's Athletic Department engages in behavior or activity that has caused damage to MARKETING PARTNER's brand image, and/or engages in conduct involving moral turpitude or is shocking, insulting, or offensive to a substantial number of people of any class or group.

In the event of termination under this Section 2.3.2, MARKETING PARTNER shall not be obligated to pay any further Cash MARKETING PARTNER Payment or In Kind Property Payment for the Contract Years subsequent to the termination of this Agreement, and Licensee shall return to MARKETING PARTNER a pro rata refund of the Cash MARKETING PARTNER Payment paid by MARKETING PARTNER for the Contract Year in which the termination occurs based on the MARKETING PARTNER Recognition provided to MARKETING PARTNER by Licensee prior to termination.

2.5 University's Rights to Terminate. Because University is a third-party beneficiary of this Agreement, in addition to University's rights to terminate under **Section 3**, University may immediately terminate this Agreement upon written notice to Licensee and MARKETING PARTNER, if University determines that MARKETING PARTNER (or any of MARKETING PARTNER's representatives, employees, agents, or assigns) has engaged in conduct that is a violation of University Rules and Regulations and/or continued affiliation with MARKETING PARTNER is inconsistent with University's mission or philosophy and/or adversely impacts the reputation of University. If University terminates this Agreement under this **Section 2.5**, MARKETING PARTNER will only be required to pay for a pro-rata portion of the MARKETING PARTNER Payment due to Licensee based on the MARKETING PARTNER Recognition actually provided to MARKETING PARTNER by Licensee prior to termination. In the event that MARKETING PARTNER has, as of the effective date of termination, paid to Licensee more than the pro-rata amount, Licensee will promptly refund the difference to MARKETING PARTNER.

2.6 Continuing Obligations. Expiration or termination of this Agreement for any reason will not relieve either party from its obligation to (i) perform up to the effective date of such expiration or termination, or (ii) perform such obligations as may survive expiration or termination.

3. **Approval of Agreement by University.**

This Agreement is subject to the approval by University. Licensee will submit this Agreement to University to obtain approval prior to Licensee's execution of this Agreement. In the event University's approval is not given, this Agreement will be void and of no effect and each party will be relieved of any and all obligations hereunder.

4. **MARKETING PARTNER Payment.**

As consideration for the rights granted to MARKETING PARTNER under this Agreement, MARKETING PARTNER will pay to Licensee thirty-five thousand DOLLARS (\$35,000) in Year one (1) ("**Cash MARKETING PARTNER Payment**"). The Cash MARKETING PARTNER Payment will be payable in one (1) installment on the dates and in the amounts indicated below:

Contract Year 1	\$35,000	due September 1, 2025 (FOOTBALL ONLY)
Option: Contract Year 2	\$35,000	due September 1, 2026 (FOOTBALL ONLY)
Option: Contract Year 3	\$35,000	due September 1, 2027 (FOOTBALL ONLY)

5. **Payment and Billing.**

5.1 Manner of Payment. Unless otherwise provided by this Agreement, MARKETING PARTNER Payments under this Agreement will be made by check or ACH payable to Licensee thirty (30) days from the invoice date.

5.2 Time/Late Payments. MARKETING PARTNER (or MARKETING PARTNER's agent executing this Agreement in the event MARKETING PARTNER fails to make payments) will pay the MARKETING PARTNER Payment in accordance with **Section 4** of this Agreement. Failure to pay the MARKETING PARTNER Payment on the date(s) specified in **Section 4** of this Agreement will constitute a breach of this Agreement, except where Licensee fails to issue an invoice to MARKETING PARTNER for the amount due. In the event of a breach, Licensee may exercise all its legal rights and remedies and immediately suspend all future MARKETING PARTNER Recognition under this Agreement MARKETING PARTNER.

6. Reserved.

7. MARKETING PARTNER's Agent.

Any person signing this Agreement as an agent of MARKETING PARTNER represents and warrants that he or she has full power and authority as an agent of MARKETING PARTNER to sign this Agreement on behalf of MARKETING PARTNER and bind MARKETING PARTNER to all of the terms and conditions of this Agreement. Any person signing this Agreement as an agent must provide to Licensee for Licensee's approval documentation evidencing the authority of agent to represent and bind MARKETING PARTNER (the "**Evidence of Authority**"). Agent must provide, and Licensee must approve, the Evidence of Authority prior to MARKETING PARTNER receiving any MARKETING PARTNER Recognition or any other rights provided under this Agreement.

8. Notices.

Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of the Agreements will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mailed, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received.

If to Licensee: Van Wagner Sports & Entertainment, LLC
800 Third Avenue, 28th Floor
New York, NY 10022
Attn: Mike Palisi, Executive Vice President
Email: mpalisi@vanwagner.com

With copy to: Van Wagner Sports & Entertainment, LLC
800 Third Avenue, 28th Floor
New York, NY 10022
Attn: Steve S. Pretsfelder, Esq.
Email: spretsfelder@vanwagner.com

and copies to University: The University of Texas at El Paso
VP for Business Affairs
500 West University Ave.
El Paso, TX 79968
Attn: Mark McGurk
Email: _____

If to MARKETING PARTNER: City of El Paso
Attn: City Manager

P.O. Box 1890
El Paso, TX 79950-1890

And: City of El Paso Mass Transit Department (Sun Metro)
Attn: Director
10151 Montana Ave.
El Paso, Texas 79925
Email: _____

or such other person or address as may be given in writing by either party to the other in accordance with this Section.

9. General.

9.1 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between MARKETING PARTNER and Licensee and will supersede any and all other agreements between the parties whether verbal or otherwise. Any amendment or modification of this Agreement must be in writing and signed by an authorized representative of both parties.

9.2 Confidentiality; Texas Public Information Act. Notwithstanding any terms and conditions herein to the contrary, Licensee understands and acknowledges that (i) University is an agency of the State of Texas, (ii) MARKETING PARTNER is a home rule municipal corporation, and (iii) the parties acknowledge that both MARKETING PARTNER and University are subject to the provisions of the Texas Public Information Act, Chapter 552, *Texas Government Code ("Act")*. Nothing in this Section 10.2 or elsewhere in this Agreement will be construed to prevent or restrict University or MARKETING PARTNER from full compliance with the Act.

9.3 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered will constitute an original of this Agreement, but all the counterparts will together constitute the same agreement. No counterpart will be effective until each party has executed at least one counterpart.

9.4 Subject to Laws, Regulations and Rules. This Agreement and all rights granted under this Agreement are subject to and MARKETING PARTNER agrees to comply with (i) all applicable federal, state, and municipal, laws, regulations, codes, ordinances and orders (**collectively, the "Applicable Laws"**), (ii) all applicable provisions of the constitution, bylaws, rules, legislation, interpretations, policies and procedures of the National Collegiate Athletic Association ("**NCAA**") (including those related to the use of a student-athlete's name or likeness), and **University's** intercollegiate athletic conference, and any other athletic organization with jurisdiction (**collectively, "Athletic Organization Rules"**); and (iii) all applicable University Rules. For purposes of this Agreement, "**University Rules**" means (i) the *Rules and Regulations* of the Board of Regents of The University of Texas System found at <https://www.utsystem.edu/offices/board-regents/regents-rules-and-regulations>; (ii) the policies of The University of Texas System found at <https://www.utsystem.edu/sites/policy-library>; (iii) the institutional rules and regulations and policies of University (which may be found at <https://www.utep.edu/vpba/hoop/>; and University's *Standards of Conduct Guide*, which is located at <https://www.utep.edu/compliance/resources/index.html>.

9.5 Controlling Law; Interpretation. El Paso County, Texas, will be the proper place of venue for suit on or in respect of this Agreement and any legal proceeding brought in connection with disputes relating to or arising out of this Agreement will be filed and heard and each party waives any objection that it might raise to such venue and any right it may have to claim that such venue is inconvenient. This Agreement and all of the rights and obligations of the parties to this Agreement and all of the terms and conditions of this Agreement will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without regard to any conflict of laws rule or principle. No provision of this Agreement will be construed against or interpreted to the disadvantage of any party by any court or other

governmental or judicial authority by reason of that party having or being deemed to have drafted, structured or dictated such provision. This paragraph shall survive termination of this Agreement.

9.6 Assignment; Waiver. This Agreement, including the rights under it, may not be assigned or transferred by MARKETING PARTNER, nor may Licensee be required to broadcast or publish MARKETING PARTNER Recognition Materials that recognize or benefit any entity other than MARKETING PARTNER. Failure of Licensee or MARKETING PARTNER to enforce any provision of this Agreement will not be construed as a general relinquishment or waiver as to that provision or any other provision of this Agreement.

9.7 Captions. The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

9.8 Binding Effect. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

9.9 Severability. In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.

9.10 Independent Contractor. MARKETING PARTNER and Licensee shall be and act as independent contractors, and under no circumstances shall this Agreement be construed as one of agency, legal partnership or joint venture of employment between MARKETING PARTNER and Licensee.

9.11 Survival of Provisions. No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive expiration or termination.

9.12 University Third Party Beneficiary. The parties agree that University is a third-party beneficiary of this Agreement.

9.13 Authorization to Enter Agreement. The individual signing this Agreement on behalf of each party acknowledges that he or she is authorized to do so and said individual further warrants that he or she is authorized to commit and bind the party to the terms and conditions of this Agreement.

9.14 Governmental Function. The Parties expressly agree that, in all things relating to this Agreement, the City is performing a governmental function as defined by the Texas Tort Claims Act. The Parties further expressly agree that every act or omission of the City, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

(signatures begin on the following page)

The parties have executed this Agreement as of the dates indicated below.

"Licensee"

Van Wagner Sports & Entertainment, LLC

By: Ryan Brookins

Name: Ryan Brookins

Title: Director of Sales


Date: 7/15/2025

EXECUTED this the _____ day of _____, 2025.

THE CITY OF EL PASO:


Dionne L. Mack
City Manager

APPROVED AS TO CONTENT:



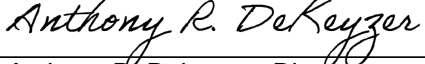
Claudia A. Garcia, Director
Purchasing & Strategic Sourcing

APPROVED AS TO FORM:



Joyce Garcia
Assistant City Attorney

APPROVED AS TO CONTENT:



Anthony R. Dekeyzer, Director
Mass Transit Department / Sun Metro

Attached:

**Attachment X to SCHEDULE 2 of EXHIBIT C — MARKETING PARTNER
Recognition & Guidelines**

Attachment X to Schedule 2 of EXHIBIT C
MARKETING PARTNERSHIP RECOGNITION &
GUIDELINES

1. Specific Recognition

1.1 Official Marketing Partner Designation

Marketing Partner may incorporate the designation "El Paso Sun Metro" as an Official Marketing Partner of The University of Texas at El Paso Intercollegiate Athletics" in banners, announcements, logos, commercials, or products and other material used in connection with this Agreement.

Rights to use the UTEP Athletics marks for internal and external marketing, as well as for promotional purposes per prior written approval from UTEP/Van Wagner.

1.2 Sun Bowl Football Videoboard Commercial

Marketing Partner will receive one (1) :30 commercial on the main videoboard at the Sun Bowl Stadium. Commercial will air once during pregame or once during halftime TBD.

1.3 Sun Bowl Football LED Signage

Marketing Partner will receive a minimum of 2:00 minutes of exposure on all five LEDs during each home football game at Sun Bowl Stadium. Opportunities include:

- Two (2) 36' x 7' TV- Visible field level LEDs
- Two (2) 60' x 4' South end-zone LEDs
- One (1) 240' x 3' North LED

1.4 Football Sun Metro Streetcar Pickup

Marketing Partner will be the Marketing Partner of the Sun Metro Streetcar Pickup location that's located in front of the Don Haskins Center on Glory Rd. Opportunities include:

- Static sign on wall at Glory Rd. location that is co-branded with UTEP
- :10 PA announcement before every game reminding fans of the streetcar pickup location.
- Videoboard recognition during announcement.

1.5 Football In-game Promotion

Marketing Partner will be the Marketing Partner of a TBD in game promotion at all home UTEP Football games played at Sun Bowl Stadium. Opportunities include:

- Videoboard recognition
- :10 PA announcement
- MOE (Moment of Exclusivity. Own all LED's simultaneously) on LED's

1.6 Football Digital Game Day Programs

Marketing Partner will receive one (1) full-page color ad in the UTEP football digital game day programs for each home UTEP Football game.

1.7 Digital

Marketing Partner will receive rotating banner ad on main UTEP Athletics website Marketing Partner will receive logo placement on UTEP Athletics website tab Marketing Partner will receive logo placement on UTEP Athletics Marketing Partner scroll.

1.8 Social Media

Marketing Partner will receive General Posts promoting El Paso Sun Metro initiatives.

Marketing Partner will receive one (1) post pre-game Football reminding fans about the Sun Metro Streetcar Pickup location.

1.9 ESPN+ TV Streaming Commercial

Marketing Partner will receive one (1) :30 commercial on a select number of UTEP Football games airing on ESPN+ TBD.

1.10 Radio

Marketing Partner will receive two (2) :30 radio spots (pre-game, in-game or post-game) in each UTEP Football Radio broadcast.

1.11 Promotional Product and Printed Material Distribution

1.11.1 Products and Materials. Subject to the terms and conditions of this Agreement, including **Section 2** of this Exhibit, Marketing Partner will have the following Marketing Partnership Recognition Material distribution rights:

Section 1.1 Official Marketing Partner Designation: UTEP Athletics marks and logos

Section 1.8 Social Media Campaign: Videos and marketing content

In accordance with Section 1 of the Marketing Partnership Agreement, Marketing Partnership Recognition Material must meet the qualified Marketing Partnership requirement under the then current Treasury Regulations and comply with other requirements of Section 1 of the Marketing Partnership Agreement.

Marketing Partner understands, acknowledges, and agrees that the method of distribution and the amount, scope, and type of promotional products that may be distributed in accordance with this Section will be determined by University.

1.11.2 Policy Limitations. University Rules, including Regents' Rule 80301, place restrictions on the display and distribution of promotional products and the distribution of printed material related to goods or services provided by Marketing Partner.

Among other restrictions, such activities: (i) may not interfere with the use of facility entrances and exits or the flow of pedestrian or vehicular traffic; (ii) may not harass, embarrass, or intimidate the people being solicited; (iii) may not violate any applicable law or regulation; (iv) may only be authorized the day before and the day of an intercollegiate athletic event or an athletic related event taking place in a facility used for athletic events; (v) may only be conducted from booths, tables, and kiosks or in a University designated area for display of

motorized vehicles, immediately adjacent to an athletic facility, the location and number of which shall have been previously authorized by University; (vi) must be conducted in accordance with University Rules, including those regarding safety; and (vii) must not include making sales or taking orders.

- 1.11.3 License Required. Any promotional products distributed under this Agreement that are imprinted with Designated Marks may only be imprinted pursuant to a license issued by Learfield Licensing Partners or any successor identified by University.

2. Guidelines

2.1 Approval of Marketing Partnership Recognition Material; Use of Designated Marks; Use of University Name; License; Required Approval

- 2.1.1 Approval of All Marketing Partnership Recognition Material. All Marketing Partnership Recognition Material is subject to approval by University, which will not be unreasonably withheld. All Marketing Partnership Recognition Material must comply with Applicable Laws, Athletic Organization Rules and University Rules. All Marketing Partnership Recognition Material must be submitted to:

The University of Texas at El
Paso 500 W. University Ave
El Paso, TX 79968
Attention: Ric Romero
Email:
rromero@utepas.com

for written approval prior to production and use. The parties will cooperate with each other in order to assure compliance with this Section. Requests for written approval of Marketing Partnership Recognition Material will be in writing, accompanied by the material to be approved, and transmitted by facsimile, express mail, overnight carrier, or regular mail depending upon the expected response time. University will use reasonable efforts to respond to approval requests within ten (10) business days after the date the request is received by University in accordance with this Section. Failure to obtain prior written approval required by this Section will be a material breach of this Agreement and will entitle University to terminate this Agreement.

2.2 Inability to Broadcast or Publish

If University, due to public emergency or necessity, legal restrictions, labor disputes, strikes, boycotts, secondary boycotts, acts of God, (whether or not such acts of God have occurred frequently or habitually or are of a common or seasonal occurrence in the general locality of such broadcasting or publishing), or for any reason, including mechanical breakdowns beyond the control and without the fault of University, is unable to broadcast or publish Marketing Partnership Recognition Materials at the time specified, University will not be liable to Marketing Partner except to the extent of allowing a pro rata reduction in the Marketing Partnership Payment or reasonably suitable alternate broadcast or publication arrangements.

2.3 Marketing Partnership Recognition Material Preparation

- 2.3.1 Licensee Obligations. Licensee will provide broadcast time or publication space for Marketing Partnership Recognition Material prepared by Marketing Partner or Marketing Partner's agent. Production of Marketing Partnership Recognition Material, supplying talent, and other services will be arranged, coordinated and paid for by Marketing Partner and are not covered by this Agreement. Licensee's obligation under this Section to provide broadcast time or publication space for

Marketing Partnership Recognition Material is conditioned upon Marketing Partner providing Licensee the necessary Marketing Partnership Recognition Material and any related services, all of which must have been approved pursuant to **Section 2.1** and submitted to Licensee no later than fourteen (14) days prior to broadcast or publication (the "**Material Due Date**"). If Marketing Partner uses an agency to purchase, create, format, manage or produce any of the Marketing Partnership Recognition Material, Marketing Partner shall be responsible for payment of any fees or commissions due for that agency. If, with the consent of Marketing Partner, Licensee arranges for the purchase, creation, formatting, managing or production of any of the Marketing Partnership Recognition Materials, Marketing Partner shall be responsible for all cost associated therewith in addition to the In-Kind Property Payment set forth herein. Licensee shall invoice Marketing Partner separately for any such additional costs, and payment shall be due from Marketing Partner within thirty (30) days following Marketing Partner's receipt of invoice from Licensee.

- 2.3.2 Right to Substitute Marketing Partnership Recognition Material for Broadcast. If Licensee does not receive the Marketing Partnership Recognition Material for broadcast, previously approved as required by **Section 2.1** of this Exhibit, by the Material Due Date, Licensee will notify the following Marketing Partner representative both verbally and in writing and in accordance with **Section 8** of the Agreement: City of El Paso Sun Metro Department, Special Projects Manager, Karl C. Rimkus; RimkusKC@elpasotexas.gov; 915-212-3317. If Marketing Partner fails to provide Licensee with the approved Marketing Partnership Recognition Material at least twenty-four (24) hours after the Material Due Date, Licensee will not be obligated to broadcast the Marketing Partnership Recognition Material. Licensee's failure to broadcast the Marketing Partnership Recognition Material as a result of Marketing Partner's failure to meet the Material Due Date will in no way relieve Marketing Partner of any of its obligations and duties under this Agreement, including the obligation to pay the Marketing Partnership Payment in full.
- 2.3.3 Failure to Deliver Marketing Partnership Recognition Material for Print Publications. If Licensee does not receive the Marketing Partnership Recognition Material for print publications, previously approved as required by **Section 2.1** of this Exhibit, by the Material Due Date or if copy corrections are submitted after that date, Licensee will not be obligated to publish the Marketing Partnership Recognition Material. Licensee's failure to publish the Marketing Partnership Recognition Material as a result of Marketing Partner's failure to meet the Material Due Date will in no way relieve Marketing Partner of any of its obligations and duties under this Agreement, including the obligation to pay the Marketing Partnership Payment in full.
- 2.3.4 Revisions to Marketing Partnership Recognition Material. Any revision to or rewrites of Marketing Partnership Recognition Material will be at the sole cost of Marketing Partner.
- 2.3.5 Positions/Timing of Marketing Partnership Recognition Material. The specific placement or timing of Marketing Partnership Recognition Material in broadcasts or print publications is not guaranteed unless expressly specified in this Exhibit.
- 2.3.6 Handling of Marketing Partnership Recognition Material. Licensee will exercise normal precautions, but will assume no liability for losses or damages to Marketing Partnership Recognition Material or other property furnished by Marketing Partner in connection with this Agreement.
- 2.3.7 Releases and Clearances. Marketing Partner represents and warrants that for all Marketing Partnership Recognition Material, Marketing Partner has

procured any and all necessary exclusive rights, clearances and permissions for Marketing Partner's production and Licensee's broadcast and publication of the Marketing Partnership Recognition Material as contemplated in this Agreement, including any and all rights, clearances and/or permissions necessary to use all locations, names, likenesses, identities, trademarks and service marks.