

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

DEPARTMENT: Environmental Services

AGENDA DATE: November 22, 2022

PUBLIC HEARING DATE: December 6, 2022

CONTACT PERSON NAME AND PHONE NUMBER: Ellen Smyth, Director 915-212-6000

DISTRICT(S) AFFECTED: All Districts

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

SUBJECT:

An Ordinance terminating the Sign Design non-exclusive franchise for waste containers on sidewalks and other City property.

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.

The franchisee does not wish to continue with the franchise, therefore staff is asking Council to terminate the franchise that was approved on November 12, 2019.

PRIOR COUNCIL ACTION:


A franchise expiring on November 11, 2024 was approved by Council on November 12, 2019.

AMOUNT AND SOURCE OF FUNDING:

N/A

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

DEPARTMENT HEAD:

 Nicholas Ybarra for Ellen Smyth

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

ORDINANCE NO. _____

AN ORDINANCE TERMINATING THE SIGN DESIGN NON-EXCLUSIVE FRANCHISE FOR WASTE CONTAINERS ON SIDEWALKS AND OTHER CITY PROPERTY.

WHEREAS, Ordinance No. 019001 granted to Robert Mowad d/b/a Sign Design (“Grantee”) a non-exclusive franchise for waste containers on sidewalks and other city property (Exhibit “A”); and

WHEREAS, Ordinance No. 019001 states the City may terminate this franchise without cause, for any reason whatsoever, upon thirty days written notice to Grantee; and

WHEREAS, Grantee desires to terminate this franchise and the City agrees to terminate the Sign Design non-exclusive franchise for waste containers on sidewalks and other city property; and

WHEREAS, the City has complied with the notice requirements set out in Ordinance No. 019001 by giving Grantee thirty days written notice that City is terminating the Sign Design non-exclusive franchise for waste containers on sidewalks and other city property; and

WHEREAS, the City of El Paso now requests the non-exclusive franchise for waste containers on sidewalks and other City property granted in Ordinance No. 019001 to Robert Mowad d/b/a Sign Design, be terminated.

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

That the Non-Exclusive Franchise for Waste Containers on Sidewalks and other City Property granted by Ordinance No. 019001 to Robert Mowad d/b/a Sign Design shall be terminated as of the date that this ordinance is approved by City Council.

ADOPTED this _____ day of _____, 2022.

THE CITY OF EL PASO:


ATTEST:

Oscar Leeser
Mayor

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Joyce Garcia
Assistant City Attorney



Nicholas Ybarra for
Ellen A. Smyth,
Chief Transit and Field Operations Officer

ORDINANCE NO. _____

Exhibit A

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ORDINANCE NO. _____

**AN ORDINANCE GRANTING TO ROBERT MOWAD
D/B/A SIGN DESIGN A NON-EXCLUSIVE FRANCHISE
FOR WASTE CONTAINERS ON SIDEWALKS AND
OTHER CITY PROPERTY**

WHEREAS, Sign Design desires to place waste containers on sidewalks and other City property in accordance with El Paso City Code Section 13.20.120; and

WHEREAS, the City of El Paso (the "City") desires to allow Sign Design 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 Robert Mowad, d/b/a Sign Design, hereinafter called "Grantee," and his assigns, a non-exclusive franchise under El Paso City Code 13.20.120 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 feet of free and unobstructed passage around the waste container. The specific, fixed locations for Grantee's waste containers are on Exhibit "A", however, if the Traffic Engineer determines that any of the locations or container placements do not meet these requirements or hinders pedestrian or

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vehicular traffic, 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 the sign regulations contained in City Code Section 20.18.020C, and shall register any new locations with the City's Planning Department if any changes to Exhibit "A" are sought after City Council approvals this franchise. 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 property or right of way not owned or controlled by the City of El Paso must be by separate agreement with the appropriate entity.

2. The term of this franchise shall be a five year period beginning November 12, 2019, unless the agreement is otherwise terminated as provided herein. If Grantee is not in default of this agreement, the Grantee may request a one year extension in writing no later than ninety days before the end of the term, unless or until cancelled or terminated as provided for herein. The City Manager or designee is authorized to approve this option to extend.

3. Grantee may use the space on the waste containers for advertising reputable and reliable business concerns that contract for the space. Grantee will not be prohibited from placing any advertisement on the waste containers based on content. This agreement does not allow advertising for any illegal business or activity, a political party, the candidacy of any person for political office, or that 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 days written

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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 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 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 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 is deemed, at all times, an independent contractor and is responsible for his own acts. GRANTEE AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE

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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 must be named as an additional insured. The limits of liability must 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 is subject to approval by the City and a copy, or a certificate of insurance, must be filed with the City Clerk. The policy must provide that it cannot be canceled without ten days prior notice in writing to the City Clerk.

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

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

12. Upon termination of this franchise, the City Council may either require Grantee to remove the containers or the City may acquire the containers as described. If the City opts to acquire the property of Grantee located in accordance with this Agreement, the grant hereof, and

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such property will be transferred to the City upon the payment by the City to Grantee of a fair valuation. 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 are unable to agree on the designation of a third appraiser, or if the City or Grantee refuses for a period of thirty 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 may not be assigned without the prior written consent of the City, which consent will 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 the El Paso City Council in Schedule C of the City's Budget Resolution, as amended 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 December 31, 2019 payment shall cover the period from the date of execution to December 31, 2019, and the March 31, 2020 payment shall cover the period from January 1, 2020 to March 31, 2020. This fee will

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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 calendar days from the date of such notice to pay in full or the franchise will be terminated at the end of the ten 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 Grantee. 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 must allow the City to use ten percent 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 ten 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 is entitled to use ten percent of the total advertising spaces that the Grantee had available during the immediately preceding three months. There will be no more than one space per waste container for City use. 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

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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 days written notice 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 days after the passage thereof.

18. Written notice to the other party may be provided at the following addresses, or at a new address as provided in writing to the nonmoving party by a party that has moved its physical location within thirty days of said relocation without the necessity of amending this contract:

City: City of El Paso
Attn: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

Grantee: Sign Design
Attn: Owner
4334 Emory Rd.
El Paso, Texas 79922

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PASSED AND APPROVED this 12th day of NOV., 2019.



CITY OF EL PASO

Handwritten signature of Dee Margo in blue ink.

Dee Margo
Mayor

ATTEST:

Handwritten signature of Laura D. Prine in blue ink.

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Handwritten signature of Kristen Lynn Hamilton-Karam in blue ink.

Kristen Lynn Hamilton-Karam
Assistant City Attorney

APPROVED AS TO CONTENT:

Handwritten signature of Ellen A. Smyth in blue ink.

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

(Acceptance and Acknowledgment follow on next page)

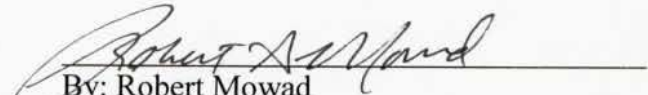
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ACCEPTANCE AND ACKNOWLEDGMENT

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this 25 day of November, 2019.

Robert Mowad d/b/a SIGN DESIGN

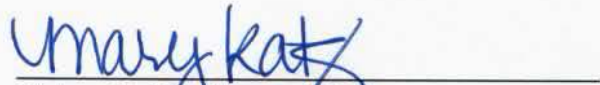

By: Robert Mowad
Its: Owner

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 25th day of November, 2019, by Robert Mowad, acting as the Owner of Sign Design.




Notary Public, State of Texas

Notary's Printed or Typed Name:

Mary Katz

My Commission Expires:

06/04/2022

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| | | |
|---------------|--------------|---|
| Gateway West | Giles | 1 |
| Geronimo | Hughey | 1 |
| Hercules | Diana | 1 |
| Hondo Pass | Diana | 1 |
| Mesa | Camille | 1 |
| Mesa | Crosby | 1 |
| Mesa | Cliff | 1 |
| Mesa Hills | Onix | 1 |
| Montana | Dallas | 1 |
| Montana | Mescalero | 1 |
| Montana | Stanton | 1 |
| Montana | Kansas | 1 |
| Montana | Piedras | 2 |
| North Loop | Hawkins | 4 |
| Oregon | Arizona | 1 |
| Oregon | River | 1 |
| Pebble Hills | Oak Crest | 1 |
| Pebble Hills | Lee | 3 |
| Pebble Hills | Arrambide | 1 |
| Pebble Hills | Running Deer | 1 |
| Pershing | Trowbridge | 1 |
| Pershing | Raynor | 1 |
| Piedras | Altura | 1 |
| Piedras | Pershing | 1 |
| Piedras | Fort Blvd. | 1 |
| Piedras | Tularosa | 2 |
| Stanton | Arizona | 1 |
| Suncrest | Mesa Hills | 1 |
| Trowbridge | Frederick | 1 |
| Trowbridge | Chelsea | 1 |
| Trowbridge | Howze | 1 |
| Vista Del Sol | Vista De Oro | 1 |
| Woodrow Bean | Rushing | 1 |
| Yandell | Oregon | 1 |
| Yandell | El Paso | 2 |
| Yarbrough | Springwood | 1 |
| Yarbrough | Woodward | 1 |
| Yarbrough | Album | 1 |
| Yarbrough | Edgemere | 1 |
| Zaragoza | Roseway | 1 |

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EXHIBIT "A"

Site locations for Sign Design waste containers:

| Main Street | Cross Street | No Authorized |
|--------------------|---------------------|--------------------------|
| Alabama | Nashville | 1 |
| Alabama | Richmond | 1 |
| Alabama | Wheeling | 1 |
| Alabama | Harrison | 1 |
| Alabama | Fort Blvd. | 1 |
| Alameda | Ysleta | 1 |
| Alameda | Harris | 1 |
| Altura | Pershing | 1 |
| Brown | Cliff | 1 |
| Campbell | Arizona | 1 |
| Campbell | Arizona | 1 |
| Copia | Pershing | 1 |
| Copia | Aurora | 1 |
| Copia | Altura | 1 |
| Copia | Frankford | 1 |
| Copia | Fort | 2 |
| Copia | Douglas | 1 |
| Cotton | Arizona | 1 |
| Cotton | Arizona | 1 |
| Cotton | Texas | 2 |
| Cotton | Wyoming | 1 |
| Cotton Grant | Riogrande | 1 |
| Dyer | Alps | 1 |
| Dyer | Hercules | 1 |
| Dyer | Yvette | 1 |
| Dyer | Maila | 1 |
| Dyer | Rushing | 1 |
| Dyer | Diana | 1 |
| Dyer | Rutherford | 1 |
| Dyer | Marwell | 1 |
| Dyer | Broadus | 1 |
| Dyer | Fred Wilson | 1 |
| Dyer | Mobile | 1 |
| Dyer | Rutherford | 1 |
| Dyer | Van Buren | 1 |
| Gateway West | Sumac | 2 |

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