

ORDINANCE 2018-06-14-0440

**AMENDING THE PARKING LOT LEASE AGREEMENT
WITH MARKET SQUARE PARKING, LLC, EXTENDING
THE LEASE FOR FIVE (5) YEARS WITH AN OPTION TO
EXTEND FOR FIVE (5) ADDITIONAL YEARS WITH
ESTIMATED ANNUAL REVENUE OF APPROXIMATELY
\$60,000.00.**

* * * * *

WHEREAS, beginning July 1, 2003, Market Square Parking, LLC (MSP) has leased from the City of San Antonio approximately 14,615 square feet of space located south of La Margarita Restaurant, east of Concho Plaza, north of Dolorosa St. and west of the Mogul building; and

WHEREAS, Market Square Parking, LLC uses the leased space to provide parking to Market Square patrons and tenants; and

WHEREAS, the current lease expires June 30, 2018; and

WHEREAS, at the request of MSP to extend agreement, the City of San Antonio is offering to extend the lease for five (5) years until June 30, 2023 with an option to renew for an additional five (5) years until June 30, 2028; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee or the Director of the Center City Development and Operations Department or his designee, is authorized to execute an amendment to the Dolorosa St. Parking Lot Agreement to extend the lease term by five (5) years with an option to extend for five (5) additional years. A copy of the lease amendment in final form is attached hereto as **Attachment I**.

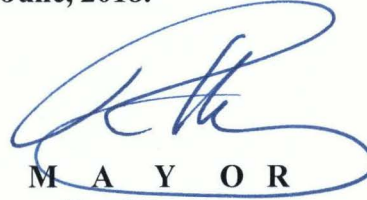
SECTION 2. Funds generated by this ordinance will be deposited into Fund 296040001, Internal Order 219000000148 and General Ledger 4407714.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

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SECTION 4. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

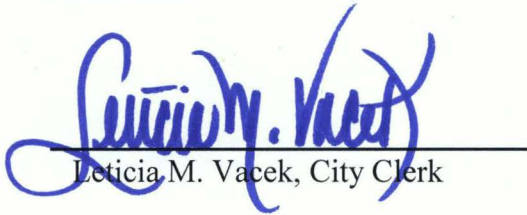
PASSED AND APPROVED this 14th day of June, 2018.



M A Y O R

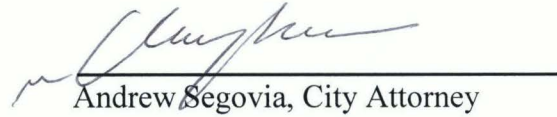
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	15 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19A, 19B, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33)						
Date:	06/14/2018						
Time:	10:22:38 AM						
Vote Type:	Motion to Approve						
Description:	Ordinance amending the Parking Lot lease agreement with Market Square Parking, LLC, extending the lease for the Market Square parking lot for five years with an option to extend for five additional years with estimated annual revenue of approximately \$60,000.00. [Lori Houston, Assistant City Manager; John Jacks, Director, Center City Development & Operations]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
William Cruz Shaw	District 2		x				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

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ATTACHMENT I

DOLOROSA ST. PARKING LOT LEASE AGREEMENT

AMENDMENT NO. 2

The City of San Antonio ("CITY") and Market Square Parking, LLC ("TENANT") entered into the Dolorosa St. Parking Lot Lease Agreement ("Lease Agreement") pursuant to Ordinance No. 97882, which was approved by the San Antonio City Council ("City Council") on June 26, 2003. The Parties to the Lease Agreement ("Parties") executed an amendment ("Amendment No. 1") to the Lease Agreement on June 28, 2013 to extend the term of the Lease Agreement and to provide for additional terms, which was approved by City Council pursuant to Ordinance 2013-05-16-0335. The Parties now wish and agree to enter into this amendment ("Amendment No. 2") to amend the Lease Agreement and Amendment No. 1, which will extend the term of the Lease Agreement and provide certain amendments as described herein.

Except as otherwise provided herein, deleted language is represented by a ~~strike through~~ and added language is represented by an underline.

1. Section 3.1 is hereby amended in its entirety to read as follows:

~~The term of this Lease Agreement is for a ten (10) year period ("Initial Term") beginning on July 1, 2003 and ending on June 30, 2013. So long as TENANT is not in default at the end of the initial term, TENANT may request renewal of the term of this LEASE and the LEASE may be renewed and extended for a period of five (5) years ("Extended Term"), subject to approval of the CITY as evidenced by passage of a subsequent ordinance by the City Council of San Antonio. So long as TENANT is not in default at the end of the term (or extended term(s)), TENANT may request renewal(s) of the term of this LEASE and the LEASE may be renewed and extended for an agreed period of time ("Extended Term"), subject to the written approval of the Director of the Center City Development and Operations Department. The City Council Director of the Center City Development and Operations Department shall evaluate any such requested renewal in light of all available facts. Notwithstanding any provision herein to the contrary, in the event of a conveyance of the Leased Premises to TENANT, or to any parent, affiliate, or subsidiary of the TENANT, this Lease Agreement shall terminate on the effective date of such conveyance without any further requirement or obligation of CITY and/or TENANT.~~

2. Section 3.1.1 is hereby amended in its entirety to read as follows:

~~The five (5) year extension is approved for the period beginning July 1, 2013 and ending June 30, 2018. A five (5) year term extension, for the Lease Agreement, is approved for the period beginning July 1, 2018 and ending June 30, 2023. The Lease Agreement may be renewed for another five (5) year term extension, for the period beginning July 1, 2023 and ending June 30, 2028, with the written administrative approval of the Director of the Center City Development and Operations Department; such approval shall not be unreasonably withheld, conditioned or delayed.~~

3. Section 3.2 is hereby amended in its entirety to read as follows:

The Extended Term(s) shall continue on the same terms and conditions set forth herein; provided TENANT notifies CITY the Director of the Center City Development and Operations Department of its desire to renew said term no sooner than 365 calendar days and no later than 180 calendar days prior to the expiration of the initial-term or Extended Term(s) hereof and further provided that TENANT is not then in default hereunder.

4. Section 3.3.3 is hereby amended as follows:

References to Section 3.1.1 and Section 3.1.2 are deleted and replaced with Section 3.3.1 and Section 3.3.2, respectively.

5. Section 4.2.1.1 is hereby amended in its entirety to read as follows:

The Annual Rental for the five (5) year extension period shall be as follows:

<u>Contract Year</u>	<u>Annual Rental</u>
7/1/2013-6/30/2014	\$54,800.04
7/1/2014-6/30/2015	\$55,896.00
7/1/2015-6/30/2016	\$57,013.92
7/1/2016-6/30/2017	\$58,154.16
7/1/2017-6/30/2018	\$59,317.20

The Annual Rental for the extension periods, described in Section 3.1.1, shall be as follows:

<u>Year #</u>	<u>Contract Year</u>		<u>Annual Rent</u>
	<u>Start</u>	<u>End</u>	
<u>1</u>	<u>7/1/2018</u>	<u>6/30/2019</u>	<u>\$ 59,629.20</u>
<u>2</u>	<u>7/1/2019</u>	<u>6/30/2020</u>	<u>\$ 61,383.00</u>
<u>3</u>	<u>7/1/2020</u>	<u>6/30/2021</u>	<u>\$ 63,136.80</u>
<u>4</u>	<u>7/1/2021</u>	<u>6/30/2022</u>	<u>\$ 64,890.60</u>
<u>5</u>	<u>7/1/2022</u>	<u>6/30/2023</u>	<u>\$ 66,644.40</u>
<u>6</u>	<u>7/1/2023</u>	<u>6/30/2024</u>	<u>\$ 66,644.40</u>
<u>7</u>	<u>7/1/2024</u>	<u>6/30/2025</u>	<u>\$ 68,398.20</u>
<u>8</u>	<u>7/1/2025</u>	<u>6/30/2026</u>	<u>\$ 70,152.00</u>
<u>9</u>	<u>7/1/2026</u>	<u>6/30/2027</u>	<u>\$ 71,905.80</u>
<u>10</u>	<u>7/1/2027</u>	<u>6/30/2028</u>	<u>\$ 73,659.60</u>

6. Section 4.2.6 is hereby amended in its entirety to read as follows:

~~The maximum parking rate fees Tenant may charge for the period July 1, 2013 through June 30, 2014 are identified below.~~

The maximum parking rate fees TENANT may (but is not required to) charge during the extension periods, described in Section 3.1.1, may not exceed the following:

Time in hours	Maximum Parking Rates
0 - .5	\$2.00
.5 - 1	\$4.00
1 - 1.5	\$6.00
1.5 - 2	\$7.00 <u>\$8.00</u>
2 - 2.5	\$8.00 <u>\$10.00</u>
2.5 - 3	\$9.00 <u>\$12.00</u>
Over 3	\$10.00 <u>\$16.00</u>
Lost Ticket	\$17.00 <u>\$20.00</u>
Event Rates: M - Th, F - Su	\$12.00, \$17.00 <u>\$15.00, \$20.00</u>
Monthly Rate	\$70.00 <u>\$80.00</u>

7. Section 4.3 is hereby amended in its entirety to read as follows:

~~If any rental payment is not received by CITY by the second (2nd) tenth (10th) day of the month in which it is due, TENANT shall pay a late charge equal to \$20.00 per day from the second (2nd) day of the month until the rental is received in full by CITY a one-time late charge to CITY equal to \$50.00 total.~~

Payment shall be submitted to:

Treasury Supervisor
 City Hall Annex
 City of San Antonio
 Financial Services Division
 Revenue Collections
 P.O. Box 839975
 San Antonio, Texas 78283-3975

8. Section 5.5 is hereby amended in its entirety to read as follows:

~~Parking Rates. Except as set forth herein or unless otherwise agreed by the CITY, parking rates charged by TENANT for contract years one (1) through five (5) of the initial term must not exceed those charged by the CITY at the Farmer's Market garage located adjacent to Market Square. Parking rates for years six (6) through ten (10), and eleven (11) through fifteen (15), may be adjusted not to exceed the market parking fees as determined pursuant to Section 4.3 hereinbefore. In the event the CITY increases the rates it charges at the Farmer's Market garage during years one (1) through five (5) of the initial term of this Lease Agreement, TENANT may change its rates from time to time to conform its rates to those charged by the CITY at the Farmer's Market garage. If following any such rate increases, the CITY were to ever decrease the rates it charges at the Farmer's Market garage, TENANT would not be required to lower its rate to the new rate charged by the CITY, it being understood and agreed by the CITY that the TENANT, throughout the term of this Lease Agreement, shall always be entitled to charge a rate at least equal to the highest rate in effect by the CITY at the Farmer's Market garage at any time during the term of this Lease Agreement. Notwithstanding anything to the contrary herein, the TENANT may request temporary rate adjustments in excess of the Farmer's Market posted rates for the annual two week "Fiesta" period celebrated in San Antonio, Texas, which request shall be subject to the approval by the Director of the Department of Parks and Recreation for the City of San Antonio, which approval shall not be unreasonably withheld, conditioned or delayed.~~

Notwithstanding anything herein to the contrary: (1) the TENANT may request temporary rate adjustments in excess of the Farmer's Market parking rates and/or the maximum parking rate fees, as described in Section 4.2.6, for the annual two week "Fiesta" period celebrated in San Antonio, Texas, with the written approval of the Director of the Center City Development and Operations Department, which approval shall not be unreasonably withheld, conditioned or delayed; and (2) at any time during the extension period beginning July 1, 2023 and ending June 30, 2028, as described in Section 3.1.1, the TENANT may increase the maximum parking rate fees described in Section 4.2.6 with the written approval of the Director of the Center City Development and Operations Department, which approval shall not be unreasonably withheld, conditioned or delayed.

9. Section 5.6 is hereby amended in its entirety to read as follows:

~~Validation Program. CITY acknowledges that TENANT may, in TENANT'S discretion, implement a parking validation program that would be available to all Market Square property owners and tenants equally. As per Section 16.1, TENANT agrees that record keeping related to any validation program will be tracked through the fee computer and cash management system, and included in the annual financial statements. However, n~~Nothing contained herein shall preclude TENANT from offering a validation program under which Market Square property owners and/or tenants validation rates are based on validation volumes.

10. Section 8.1 is hereby amended in its entirety to read as follows:

~~Except for those required by this Lease, TENANT shall not construct, or allow to be constructed, any improvements or structures on the Leased Premises nor shall the TENANT make, or allow to be made, any material alterations to the Leased Premises without the prior written approval of the CITY through the DIRECTOR, if required, and such approval will not be unreasonably withheld or delayed. In addition to the Director's approval, TENANT shall also obtain all building permits and other CITY approvals generally applicable to improvements of the type contemplated by TENANT.~~

11. Section 8.1.1 is hereby amended in its entirety to read as follows:

TENANT agrees to ~~install or construct and/or refurbish~~ maintain the existing cashier booth to adequately maintain secure and effective operation of the parking lot operations. ~~This includes the secure placement and storage of the parking operations system stated in Article Five (5).~~

12. Section 8.1.2 is hereby amended in its entirety to read as follows:

TENANT shall also ~~resurface and subsequently~~ maintain the entire premises to a condition consistent with the condition and operation of a CITY parking lot.

13. Section 12.3 is hereby amended in its entirety to read as follows:

~~Any termination of this Lease Agreement as herein provided, except under Article Three (3), Section 3.1.1 and 3.1.2. Except as provided under Section 3.1, Section 3.3.1, and Section 3.3.2, any termination of this Lease Agreement as herein provided~~ shall not relieve the TENANT from the payment of any sum or sums that shall then be due and payable to CITY hereunder, or any claim for damages then or theretofore accruing against the TENANT hereunder. All rights, options and remedies of CITY contained in this Lease Agreement shall be cumulative of the other, and CITY shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Lease Agreement. No waiver by CITY of a breach of any of the covenants, conditions or restrictions of this Lease Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.

14. Section 14.4 is hereby amended as follows:

Any reference to, or requirement to provide, "Garage keeper's Liability" (in the amount of \$1,000,000) is deleted in its entirety.

15. Section 16.2 is hereby amended in its entirety to read as follows:

~~The TENANT agrees to submit to the CITY an annual financial statement related to TENANT'S business at the Leased Premises, which statement shall be prepared by a certified public accountant in accordance with generally accepted accounting principles or accounting principles used for federal income tax purposes. The CITY, at its sole cost and expense, shall have the right, if CITY provides a prior written notice to TENANT at least thirty (30) calendar days beforehand, to conduct an reasonable audit and examine all the records and accounts, which are related to the Leased Premises during the effective extension periods described in Section 3.1.1.; provided such audit shall take place at the location of TENANT'S offices where such records and accounts are maintained, during TENANT'S normal business hours for such office.~~

16. Section 23.1 is hereby amended as follows:

The notice information provided for the Director of Parks and Recreation is deleted and replaced with:

Director of Center City Development and Operations
City of San Antonio
Center City Development and Operations
P.O. Box 839975
San Antonio, Texas 78283-3975

17. All references in the Lease Agreement to "Parks and Recreation" are hereby deleted and replaced with "Center City Development and Operations."

18. Section 4.2.1, Section 4.2.2, Section 4.2.3, Section 4.2.4, Section 4.2.5, Section 4.4, Section 4.5, Section 5.3, Section 5.3.1, Section 5.3.2, Section 5.3.3, Section 5.3.4, Section 5.3.5, Section 5.4, Section 5.4.1, Section 5.4.2, Section 8.1.3, and Section 12.5 are hereby deleted in their entirety.

This Amendment No. 2 supersedes Amendment No. 1 and is hereby incorporated into the Lease Agreement as if the same had been made a part thereof as originally executed.

The Lease Agreement, as hereby amended, is in all respects ratified and confirmed and shall remain in full force and effect.

Signatures on Following Page

THEREFORE, IN WITNESS WHEREOF, the Parties have executed this Amendment No. 2
this _____ day of _____ 2018.

CITY OF SAN ANTONIO,
a Texas municipal corporation

MARKET SQUARE PARKING, LLC
a Texas limited liability company

BY: _____

BY: George Cortez

Name: _____

Name: George Cortez

Title: _____

Title: Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney