

ORDINANCE 2021-04-29-0295

AUTHORIZING AMENDMENT NO. 9 TO THE LEASE WITH OPERATING STANDARDS AGREEMENT WITH THE WITTE FOR ITS RETURN TO THE CITY OF PREVIOUSLY TRANSFERRED REAL PROPERTY INCLUDING THE MAYS FAMILY CENTER, THE FEIK FAMILY PAVILION, THE ADMISSIONS BUILDING, AND THE PARKING LOTS ASSOCIATED TO THOSE BUILDINGS.

* * * * *

WHEREAS, on September 8, 1997, the City of San Antonio (“the City”) and the Witte entered into a Lease with Operating Standards Agreement (“the Lease”) for use and operation of the Witte Museum as a vital educational and recreational asset for the benefit of the citizens of San Antonio; and

WHEREAS, on December 15, 2016, Amendment No. 6 transferred ownership interest of the Mays Family Center, the Feik Pavilion, and the Admissions Building, excluding the parking lot, which were funded by the Witte thus allowing the Witte to secure financing to cover increased construction costs. On April 16, 2020, Amendment No. 8 transferred ownership interest of the parking lot adjacent to the Mays Family Center, the Feik Pavilion, and the Admissions Building to allow for the Witte to refinance an existing construction loan; and

WHEREAS, in October 2020, the Witte requested assistance from the City with their existing \$15.7 million construction loan (“the Loan”) with Frost Bank because their operations as well as their ability to fundraise was dramatically impacted by COVID-19. The land and most of the buildings at the Witte were used as collateral for the Loan in which operating and fundraising revenues were the projected sources of repayment; and

WHEREAS, the City of San Antonio, Texas Combination Tax and Revenue Certificates of Obligation, Taxable Series 2021 (the “Certificates”) are being issued to provide funding for the Witte to pay off the Loan by providing consideration to the Witte for its return to the City of previously transferred real property. Under the Loan Funding Agreement, the Witte will be required to pay for all costs of financing (including semi-annual debt service) for the City issued debt and will also require that the debt be repaid in full before the Witte moves forward with any major future expansion; and

WHEREAS, Amendment No. 9 to the Lease will return the previously transferred real property including the Mays Family Center, the Feik Family Pavilion, the Admissions Building, and the parking lots associated with those buildings to the City; and

WHEREAS, The Lease amendment also includes the requirement for the City to have two seats on the Witte Board, of which one will be filled by appointment of the Mayor and one will be ex officio filled by the City Manager or his designee;

2020-05-10-1505

WHEREAS, Additionally, the Witte will continue to identify opportunities to assist other local art agencies in line with its current practices; **NOW THEREFORE**:

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

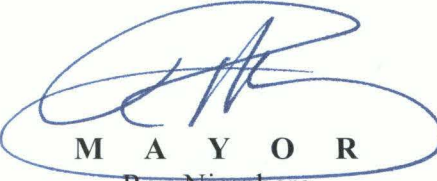
SECTION 1. The City Manager or designee, or the Director of the Parks and Recreation Department or designee, is authorized to execute Amendment No. 9 to the Lease with Operating Standards Agreement with the Witte Museum. A copy of the Lease Amendment in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. Any costs pertaining to the proposed transaction will be paid for from the proceeds derived from the issuance and sale of the Certificates and the debt service will be paid from by the Witte Museum.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

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 29th day of April, 2021.



M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:



Tina J. Flores, City Clerk



Andrew Segovia, City Attorney



City of San Antonio

City Council

April 29, 2021

Item: 26C

File Number: 21-3230

Enactment Number:

2021-04-29-0295

Ordinance approving Amendment No. 9 to the Lease with Operating Standards Agreement with the Witte for its return to the City of previously transferred real property including the Mays Family Center, the Feik Family Pavilion, the Admissions Building and the parking lots associated to those buildings.

Councilmember John Courage made a motion to approve. Councilmember Ana E. Sandoval seconded the motion. The motion passed by the following vote:

Aye: 11 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia, Gonzales, Cabello Havrda, Sandoval, Pelaez, Courage and Perry

SW
04/29/21
Item No. 26C

ATTACHMENT I

**AMENDMENT NO. 9 TO
WITTE MUSEUM LEASE WITH OPERATING STANDARDS**

THIS AMENDMENT NO. 9 TO MUSEUM LEASE WITH OPERATING STANDARDS (this "*Ninth Amendment*") is executed by and between CITY OF SAN ANTONIO, a Texas municipal corporation ("*CITY*"), pursuant to Ordinance 2021-__-__-_____, passed and approved by the San Antonio City Council on _____, 2021, and THE WITTE MUSEUM, a Texas not-for-profit corporation ("*WITTE*"), to be effective as of the later date on which this Ninth Amendment has been signed by CITY or WITTE. CITY and WITTE are sometimes referred to herein individually as a "*Party*" and collectively as the "*Parties.*"

RECITALS

- A. The Parties entered into that certain Witte Museum Lease with Operating Standards dated August 28, 1997 (the "*Lease*"), which has been amended by CITY and WITTE as follows (the Lease, as so amended, herein called the "*Agreement*"):
- (1) Amendment No. 1 to Witte Museum Lease with Operating Standards dated June 4, 2003;
 - (2) Amendment No. 2 to Witte Museum Lease with Operating Standards dated May 31, 2007;
 - (3) Amendment No. 3 to Witte Museum Lease with Operating Standards dated May 31, 2012;
 - (4) Amendment No. 4 to Witte Museum Lease with Operating Standards dated September 13, 2012;
 - (5) Amendment No. 5 to Witte Museum Lease with Operating Standards dated March 9, 2015;
 - (6) Amendment No. 6 to Witte Museum Lease with Operating Standards dated December 15, 2016 (the "*Sixth Amendment*");
 - (7) Amendment No. 7 to Witte Museum Lease with Operating Standards dated September 21, 2017;
 - (8) Amendment No. 8 to Witte Museum Lease with Operating Standards dated April 16, 2020 (the "*Eighth Amendment*").
- B. Capitalized words or phrases not otherwise defined in this Ninth Amendment will have the same meaning ascribed to such words or phrases in the Agreement, unless the context clearly indicates otherwise.

- C. In the Sixth Amendment, the Parties acknowledged that WITTE had constructed or caused to be constructed, from time to time, buildings and other improvements on the Premises, including (but not limited to):
- (1) The completed Mays Family Center (herein so called), as more particularly described and depicted on an instrument attached to the Sixth Amendment as **Exhibit A-1** for all purposes;
 - (2) The completed Feik Family Pavilion (herein so called) as more particularly described and depicted on an instrument attached to the Sixth Amendment as **Exhibit A-2** for all purposes;
 - (3) The group Admissions Building (herein so called) as more particularly described and depicted on an instrument attached to the Sixth Amendment as **Exhibit A-3** for all purposes;
 - (4) The on-going renovation and expansion of the Main Building (herein so called, being the original structure on the Premises); and
 - (5) The addition of other new gallery space.
- D. The Sixth Amendment provided that:
- (1) The Mays Family Center, Feik Family Pavilion and group Admissions Building are leasehold improvements on the Premises that, for and during the remainder of the term of the Agreement, title and beneficial ownership to all such leasehold improvements shall be held by WITTE; and
 - (2) WITTE may encumber the Mays Family Center, Feik Family Pavilion and group Admissions Building, or any part thereof or interest therein, to secure one or more mortgage loans that conform to applicable terms of the Agreement and the Sixth Amendment.
- E. The Eighth Amendment provided that the ownership and encumbrance of the Mays Family Center, the Feik Family Pavilion and the Admissions Building could be extended to the parking lots associated with those buildings in order to facilitate the required financing.
- F. WITTE has requested assistance from CITY with its existing approximately \$15,700,000.00 loan with Frost Bank (the "**Frost Loan**") because its operations as well as its ability to fundraise was dramatically impacted by COVID-19.
- G. CITY has agreed to provide funding for WITTE to pay off the Frost Loan by providing consideration to WITTE for its return to CITY of previously transferred real property including the Mays Family Center, the Feik Family Pavilion, the Admissions Building and the parking lots associated with such buildings.

H. The Witte Museum is also known as “The City’s Museum” and “The People’s Museum” and CITY recognizes the public benefit of the renovation, expansion and construction of the New Witte and desires to amend the Agreement as requested by WITTE.

NOW, THEREFORE, for the mutual benefits accruing hereunder to each of the undersigned Parties, each Party has agreed to amend the Agreement as set forth in this Ninth Amendment.

ARTICLE 1
AMENDMENTS TO LEASE

1.1 Ownership of Certain Improvements. Section 4.2 of the Agreement is amended by deleting the sentences shown in strikethrough (which were previously added thereto by the Sixth Amendment and the Eighth Amendment, respectively) and adding the sentences shown in underline:

4.2 Notwithstanding the Sixth Amendment and the Eighth Amendment to the contrary, the improvements to the Premises comprising and constituting the Mays Family Center, the Feik Family Pavilion and the Admissions Building, together with the adjacent parking lot (as those improvements are identified in EXHIBIT A-1 through A-3 of the Sixth Amendment and EXHIBIT A-4 of the Eighth Amendment) shall be beneficially owned and title held by CITY.

~~“Notwithstanding the foregoing to the contrary, the improvements to the Premises comprising and constituting the Mays Family Center, the Feik Family Pavilion and the Admissions Building (as depicted on EXHIBIT A 1, EXHIBIT A 2 AND EXHIBIT A 3, respectively), together with all personal property, equipment and fixtures in anywise appertaining, belonging, affixed or incidental to such improvements (collectively herein, the “Privately Funded Improvements”) shall be beneficially owned and title held by WITTE for and during the term of this Agreement only (including all extensions of the term of this Agreement, if any). Upon the termination of the beneficiary Agreement, all rights and interests of WITTE in the Privately Funded Improvements, together with all other Premises, shall be the sole property of CITY for all purposes, whether real, personal or mixed property, as if any ownership of WITTE therein had not occurred. CITY and WITTE shall execute a Memorandum of Lease in the form attached hereto as EXHIBIT B, which recognizes the ownership rights of WITTE in the Privately Funded Improvements as herein set forth. Notwithstanding such ownership by WITTE, the Privately Funded Improvements shall continue to be subject to the terms of this Agreement, including (without limitation) Article III, USE, of this Agreement. At its election, WITTE may transfer, assign or convey its ownership interests in the Privately Funded Improvements only to the Witte Museum Foundation, subject in all respects to the Agreement. Subject to the rights granted to WITTE to encumber its interests pursuant to Section 5.1, below and the rights set forth in the preceding sentence, any other transfer, assignment or conveyance of WITTE’s interests shall be subject to the prior written consent of CITY.”~~

~~“Notwithstanding the foregoing to the contrary, the improvements to the Premises comprising and constituting the parking lot adjacent to the Mays Family Center, the Feik Family Pavilion and the Admissions Building (as depicted on EXHIBIT A 4 “Parking Lot~~

Improvements”), together with all personal property, equipment and fixtures in anywise appertaining, belonging, affixed or incidental to such improvements shall be beneficially owned and title held by WITTE for and during the term of this Agreement only (including all extensions of the term of this Agreement, if any). The Parking Lot Improvement shall for all purposes be considered part of the “Privately Funded Improvements identified in Amendment No. 6, including for purposes of section 1.2 Encumbrances. Upon the termination of the Agreement, all rights and interests of WITTE in the Parking Lot Improvements, together with all other Premises, shall be the sole property of CITY for all purposes, whether real, personal or mixed property, as if any ownership of WITTE therein had not occurred. CITY and WITTE shall execute a Memorandum of Lease in the form attached hereto as EXHIBIT B, which recognizes the ownership rights of WITTE in the Parking Lot Improvements as herein set forth. Notwithstanding such ownership by WITTE, the Parking Lot Improvements shall continue to be subject to the terms of this Agreement, including (without limitation) Article III, USE, of this Agreement. At its election, WITTE may transfer, assign or convey its ownership interests in the Parking Lot Improvements only to the Witte Museum Foundation, subject in all respects to the Agreement. Subject to the rights granted to WITTE to encumber its interests pursuant to Section 5.1, below and the rights set forth in the preceding sentence, any other transfer, assignment or conveyance of WITTE’s interests shall be subject to the prior written consent of CITY.”

1.2 Encumbrances. Article V: “Encumbrances” is deleted in its entirety.

1.3 Default and Remedies. Article 28, Section 28.1 of the Agreement is amended by the addition of a new subsection G to read as follows in the underlined text:

G. WITTE shall fail to pay any amounts owed under the Loan Funding Agreement entered into contemporaneously with the Ninth Amendment.

ARTICLE 2 MISCELLANEOUS

2.1 Ratification of Agreement. Except as expressly amended by this Ninth Amendment, all terms and provisions of the Agreement remain in full force and effect as therein set forth. The Agreement, as so amended, and all rights and powers created pursuant thereto, are in all respects ratified and confirmed. From and after the execution of this Ninth Amendment by all Parties, all references to the Agreement shall be deemed to mean the Agreement as amended by this Ninth Amendment. The amendments to the Agreement set forth in this Ninth Amendment and the exhibits added to the Agreement as applicable by this Ninth Amendment will be deemed to be a part of the Agreement as if originally set forth therein or attached thereto.

2.2 Validity and Authority. The execution and delivery of this Ninth Amendment by each undersigned Party has been duly and validly authorized, and no other proceeding on the part of any Party is necessary, as a matter of law or otherwise, to authorize this Ninth Amendment or to effect the amendments to the Agreement set forth in this Ninth Amendment. This Ninth Amendment has been duly and validly executed and delivered by the Parties. The execution hereof by the Parties complies with all requirements for a valid and binding amendment of the Agreement.

2.3 The City will have two seats on The Witte Board of Directors designated by the Mayor of which one position will be *ex officio* filled by the City Manager or designee.

2.4 Local Art Agencies. WITTE will continue to identify opportunities/assist other local art agencies in line with its current practices, which include partnerships with and advocacy for city arts institutions, special building rental rates for nonprofit arts events and opportunities for performing and visual arts collaborations.

2.5 Counterparts. This Ninth Amendment may be executed in counterparts, each of which, when executed and delivered, shall for all purposes be deemed an original. All of the counterparts, when taken together, shall constitute but one and the same Ninth Amendment. The Parties agree to circulate for execution all executed such counterparts in order that each Party may obtain a counterpart executed by all Parties. Electronic or facsimile signatures will have the same force and effect as original signatures.

EXHIBITS: Exhibit A: Form of Memorandum of Lease

[Remainder of page intentionally blank; signatures appear on following pages.]

Executed to be effective as of the later date on which this Ninth Amendment has been signed by each of the undersigned Parties.

CITY:

CITY OF SAN ANTONIO

By: _____

Name: _____

Title: _____

Date: _____, 2021

ATTEST:

By: _____

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

[Signatures continue on following page.]

WITTE:

THE WITTE MUSEUM

By: 

Name: Marise McDermott

Title: President + CEO

Date: 4/27, 2021

EXHIBIT A TO AMENDMENT NO. 9

MEMORANDUM OF LEASE

THE STATE OF TEXAS §

COUNTY OF BEXAR §

This Memorandum of Lease ("**Memorandum**") is entered into by and between CITY OF SAN ANTONIO, a Texas municipal corporation ("**CITY**"), and THE WITTE MUSEUM, a Texas not-for-profit corporation ("**WITTE**").

1. **Lease**. CITY, as landlord, and WITTE, as tenant, entered into that certain Witte Museum Lease With Operating Standards dated August 28, 1997, which has been amended by CITY and WITTE by Amendment No. 1 to Witte Museum Lease with Operating Standards dated June 4, 2003, Amendment No. 2 to Witte Museum Lease with Operating Standards dated May 31, 2007, Amendment No. 3 to Witte Museum Lease with Operating Standards dated May 31, 2012, Amendment No. 4 to Witte Museum Lease with Operating Standards dated September 13, 2012, Amendment No. 5 to Witte Museum Lease with Operating Standards dated March 9, 2015, Amendment No. 6 to Witte Museum Lease with Operating Standards dated December 15, 2016, Amendment No. 7 to Witte Museum Lease with Operating Standards dated September 21, 2017, Amendment No. 8 to Witte Museum Lease with Operating Standards dated April 16th, 2020, and Amendment No. 9 to Witte Museum Lease with Operating Standards dated ____, 2021 (as amended, "**Lease**") under which CITY has leased to WITTE and WITTE has leased from CITY the tracts of land described on Exhibit "A" attached hereto and incorporated herein by reference for all purposes ("**Premises**").

2. **Purpose of Memorandum**. This Memorandum is entered into by CITY and WITTE and recorded in the Official Public Records of Real Property of Bexar County, Texas, for the sole purpose of giving record notice to the public of the existence of the Lease and of certain terms thereof.

3. **Ownership of All Improvements**. CITY owns all improvements on the Premises subject to the terms of the Lease.

4. **Interpretation**. The provisions of this Memorandum are not intended to, and shall not, amend, modify or alter the terms and provisions of the Lease or otherwise affect the agreements, responsibilities and obligations of the parties under the Lease. Provisions of this Memorandum shall not be used in interpreting the Lease. In the event of a conflict between the Lease and this Memorandum, the Lease shall control.

5. **Mechanic's and Materialman's Liens**. CITY shall not be liable for any labor, services or materials furnished to WITTE or delivered to the Premises, or to anyone holding the Premises through or under WITTE, upon credit and that no mechanic's or other lien for such labor, services or materials shall attach to or affect the estate or interest of CITY in and to the Premises. WITTE

has no rights under the Lease to serve as CITY's agent or to bind the fee interest of CITY in the Premises.

[Remainder of page intentionally blank; signatures appear on following pages.]

EXECUTED the ____ day of _____, 2021.

CITY:

CITY OF SAN ANTONIO

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

THE STATE OF TEXAS §

§

COUNTY OF BEXAR §


This instrument was acknowledged before me on the _____ day of _____, 2021,
by _____ of CITY OF SAN ANTONIO,
a Texas municipal corporation, on behalf of said corporation.

[Seal]

Notary Public in and for the State of Texas

WITTE:

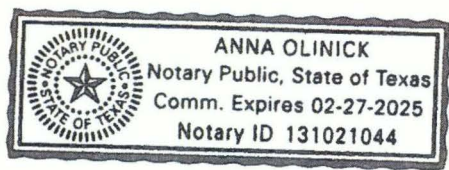
THE WITTE MUSEUM

By: 
Name: Marise McDermott
Title: President + CEO

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the 27th day of April, 2021, by Marise McDermott, President + CEO of THE WITTE MUSEUM, a Texas not-for-profit corporation, on behalf of said not-for-profit corporation.

[Seal]



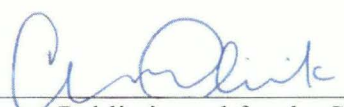

Notary Public in and for the State of Texas

EXHIBIT A
TO
MEMORANDUM OF LEASE

DESCRIPTION OF PREMISES

[To be attached]