

License Agreement – Valet Parking

This License Agreement (License) is entered into between Licensee and the City of San Antonio (Licensor) under the authority of the Authorizing Ordinance.

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1. Pertinent Information.

Authorizing Ordinance: 2014-04-17-0253 & (specific Licensee CC Ordinance)

Licensee: [INSERT LICENSEE NAME AND ORGANIZATION]

Licensee's Address: [Enter address]

Term: Yearly with automatic renewals, but to end no later than April 1, 2024.

Fee: \$50 per space on a monthly basis for a total of \$2,250 per month. The fee may be increased by Licensor at the start of each annual term no more than 5% per year .

Premises: One Alamo Parking Garage located at 106 South St. Mary's.

Scope of License: The use of [UP TO 90] non-exclusive parking spaces from 6 pm until 7 am Monday through Friday and all

day on Saturdays and Sundays for valet services.

Effective Date:

Licensor's Address: City Clerk, City of San Antonio, P.O. Box 839966/2nd Floor, City Hall, San Antonio, Texas 78283-3966

2. Grant of License.

Licensor grants Licensee a license (License) to park vehicles through a valet service on the Premises within the Scope of the License.

This License is limited to the stated Term and is conditioned on Licensee's payment of the Fee. This license does not relieve Licensee of any other approvals, permits, or licenses that may otherwise be required.

3. Restrictions on Use/Recording.

3.01. This License does not grant Licensee authority to use any public rights-of-way or facilities other than the Premises.

3.02. This License grants only a privilege, not a real property interest. Licensor may enter the Premises at the allowed times to assert its interest.

3.03. Licensee shall comply with all rules and policies of Klabzuba Properties, Inc., attached as Exhibit A and incorporated herein for all purposes, and Licensor. The Licensor may create and enforce additional rules, regulations, and policies for the management and operation and use of the Premises, so long as such rules, regulations, and policies are demonstrated to be reasonable and enforceable upon Licensee. Licensee shall use the Premises in such a manner as not to create any nuisance or otherwise unreasonably interfere with Licensor's or owner's business operations as they pertain to the operation of the Premises.

3.04. Licensee shall not sublease parking spaces but shall use spaces for valet services related to Licensee business operations. Licensee must enter into a valet agreement in order to operate valet services, and provide proof of such agreement to Licensor. Spaces are only for use by designated Licensee staff. Licensee shall use only select magnetic parking cards for entry and exit of the facility.

3.05. Any vehicles left in the Premises outside of the Scope of License will be subject to penalties (including a tow or boot) by Licensor or the owner of the property. Any immobilization fees incurred will not be paid or subsidized by the Licensor, and shall be at the sole expense of Licensee.

3.06. Licensee shall be responsible for all cards issued under this license

and shall pay the posted fees for card activation and replacement. Licensee shall report any lost or stolen parking cards to Licensor immediately and shall be responsible for the costs of replacing lost or stolen cards.

3.07. Licensor shall not be responsible for any damage to property (including vehicles) or persons on the premises, for any reason. Licensor does not warrant the security of vehicles or persons under this License and accepts no responsibility or liability for any loss or damage of any kind for any reason. Licensee assumes sole responsibility or liability for any loss or damage of any kind for any reason occurring at the Premises. Licensee shall in no way obstruct ingress or egress or limit accessibility to the Premises and shall not make alterations or improvements to the Premises.

3.08. Licensee agrees that vehicles parking in the Premises shall be of a passenger-type car, truck, and motorcycle only. The following vehicles are explicitly excluded from utilizing the Premises:

3.08.1. Vehicles with a gross vehicle weight rating (GVWR) in excess of 20,000 lbs;

3.08.2. Vehicles longer or wider than can be reasonably and safely parked in a standard-sized parking space;

4. License Fee.

Licensee must pay the Fee monthly, on or before the 1st day of the month. The Fee must be paid at the City of San Antonio Parking Division, 243 Center Street, San Antonio, TX 78202. Parking fees and terms are specified in Exhibit B, which is attached and incorporated herein for all purposes. The fee may be increased by Licensor, through its City Manager or her designee without further City Council action, at the start of each annual term no more than 5% per year. Licensor shall notify Licensee of the increase no less than 5 business days prior to the start of such annual term.

5. Construction, Maintenance, and Operations.

5.01. Costs. Licensee is solely responsible for all costs of installation, repairs, maintenance, operation, and the like of any property placed on the Premises.

5.02. No Liability or Warranty. Licensor assumes neither liability nor expense under this License. Licensor is not liable to Licensee or otherwise for damage to the Premises or any property on the premises arising from or related to activities of Licensor in the vicinity. Licensee agrees that no representations are made as to the condition of the Premises and no promises to alter, repair, or improve the Premises, either before or after the execution of this license hereof, have been made by Licensor.

5.03. Relocation. Licensor may not relocate or adjust the Premises, or any improvements on the premises, in any way.

5.04. Maintenance and Safety. Licensee, at its sole cost and expense, must maintain all equipment or property belonging to Licensee located on the Premises during the term. In so doing, Licensee must adhere to all applicable safety standards and must adhere to all applicable federal, state, or local laws, rules, or regulations. Licensee shall ensure that all passengers, employees or other associated with Licensee's business maintain the premises in a safe and secure manner, and do not interfere in any way with the Licensor's ability to utilize the premises for its purposes.

5.05. No Power to Bind. Licensee shall not bind or permit another to bind Licensor for payment of money or for any other obligation.

5.06. Contractors and Subcontractors. Licensee must promptly pay anyone performing work on behalf of Licensee who could file a lien on the Premises. If any such lien is filed, Licensor may treat it as an event of default and terminate this License by delivering 4 days prior written notice to Licensee. But if the lien is removed or released of record within the notice period, this License remains in effect. Licensee remains obligated to clear the lien without cost to Licensor even after termination.

6. Indemnity.

6.01. Licensee agrees to indemnify Licensor and its elected officials, employees, agents, and representatives of and from any all loss, cost, liability, or expense, including court costs and attorneys fees, arising from or relating to (a) the grant of this License, (b) Licensee's activities under this License, (c) or Licensee's activities or presence on or about the Premises, whether or not authorized by this License.

6.02. Nothing in this License waives governmental immunity or other defenses of Licensor under Texas law.

6.03. This indemnity expressly covers the consequences of indemnitees' own negligence.

6.04. Licensee must promptly advise Licensor in writing of any claim subject to this indemnity and must, at its own cost, investigate and defend such claim. Despite any insurance policy, Licensor may, at its own expense, participate in the defense without relieving Licensee of this indemnity.

6.05. Licensee covenants and agrees to fully, indemnify, defend and hold harmless, the Licensor and the elected officials, employees, officers, directors, volunteers and representatives of the Licensor, individually and collectively, from

and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the Licensor directly or indirectly arising out of, resulting from or related to Licensee' activities under this Agreement, including any acts or omissions of Licensee, any agent, officer, director, representative, employee, licensee or sublicensee of Licensee, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of Licensor, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage.

IN THE EVENT LICENSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

6.06. The provisions of this indemnity are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Licensee shall advise the Licensor in writing within 24 hours of any claim or demand against the Licensor or Licensee known to Licensee related to or arising out of Licensee' activities under this agreement and shall see to the investigation and defense of such claim or demand at Licensee's cost. The Licensor shall have the right, at its option and at its own expense, to participate in such defense without relieving Licensee of any of its obligations under this paragraph.

7. Insurance.

7.01. Prior to the commencement of any work under this Agreement, Licensee shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Center City Development and Operations Department, which shall be clearly labeled "Licensee Name Agreement" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Center City Development and Operations

Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

7.02. The Licensor reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

7.03. A Licensee's financial integrity is of interest to the City; therefore, subject to Licensee's right to maintain reasonable deductibles in such amounts as are approved by the City, Licensee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Licensee's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Broad form Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you 	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. \$100,000

7.04. Licensee agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Licensee herein, and provide a certificate of insurance and endorsement that names the Licensee and the Licensor as additional insureds. Respondent shall provide the Licensor with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

7.05. As they apply to the limits required by the Licensor, the Licensor shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion,

revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Licensee shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to Licensor at the address provided below within 10 days of the requested change. Licensee shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Center City Development and Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

7.06. Licensee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- a) Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- b) Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- c) Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the Licensor.
- d) Provide advance written notice directly to Licensor of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

7.07. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Licensee shall provide a replacement Certificate of Insurance and applicable endorsements to Licensor. Licensor shall have the option to suspend Licensee's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

7.08. In addition to any other remedies the Licensor may have upon Licensee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the Licensor shall have the right to order Licensee to stop work hereunder, and/or withhold any payment(s) which

become due to Licensee hereunder until Licensee demonstrates compliance with the requirements hereof.

7.09. Nothing herein contained shall be construed as limiting in any way the extent to which Licensee may be held responsible for payments of damages to persons or property resulting from Licensee's or its subcontractors' performance of the work covered under this Agreement.

7.10. It is agreed that Licensee's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

7.11. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the Licensor shall be limited to insurance coverage provided..

7.12 Licensee and any Subcontractors are responsible for all damage to their own equipment and/or property.

8. Termination.

8.01. Licensor may terminate this License at any time without cause or reason by giving Licensee 4 days written notice.

8.02. Upon expiration or termination, all rights and privileges immediately cease, and Licensee must immediately cease use of the Premises. Licensor may direct Licensee to remove any and all property on the Premises under this license or restore the Premises, at Licensee's sole cost, to original condition. Any property not removed within 90 days after termination, whether by expiration or otherwise, become the property of Licensor. Licensor may, without liability to Licensee, dispose of such property at a public or private sale, without notice to Licensee. Licensee is liable for Licensor's costs incurred in connection with Licensee's property.

9. Assignment/Sublicensing.

This License may only be assigned or sublicensed by written permission of the Licensor authorizing such assignment or sublicense. Licensee must give Licensor at least 30 days' written notice prior to any proposed effective date for such an assignment or sublicense. The City Manager or her designee may authorize such assignment or sublicense on the same terms as the previous license.

10. Attorney's Fees and Court Costs.

In any action in which Licensee is found to have materially defaulted hereunder, Licensor can recover from Licensee its reasonable attorney's fees.

11. Taxes and Licenses.

Licensee must pay, on or before the due date all federal, state, and local taxes, license fees, permit fees, and similar charges now or hereafter levied (as applicable) on Licensee or its property or on the Premises and arising from Licensee's use thereof.

13. Prohibited Interests in Contracts.

13.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (a) a City officer or employee;
- (b) his parent, child or spouse;
- (c) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (d) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

13.02. Licensee warrants and certifies as follows:

- (a) Licensee and its officers, employees and agents are neither officers nor employees of the City.
- (b) Licensee has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

13.03. Licensee acknowledges that City's reliance on the above warranties and certifications is reasonable.

14. Consent/Approval of Licensor.

Licensor's consent and approval may be granted by the City Manager or her designee unless the City Charter requires Council action.

15. Miscellaneous Provisions

15.01. Relationship Limited. This instrument creates only the relationship of Licensor and Licensee. The parties are not principal and agent, partners, joint venturers, or participants in any other enterprise between them.

15.02. Nondiscrimination. Licensee must not discriminate against any individual or group on account of race, color, gender, age, religion, national origin, or handicap, in employment practices or in the use of the Premises.

15.03. Release From Liability. If Licensor transfers the Premises, Licensor will have no liability relating to the period after transfer. Licensor's transferee will succeed to all Licensor's rights hereunder.

15.04. Yielding Up. Licensee must, at termination, whether by expiration or otherwise, yield the Premises up peacefully, including any improvements and fixtures.

15.05. Authority to Execute. The party or parties executing this License on behalf of Licensee personally warrant that each of them has full authority to do so.

15.06. Acknowledgment of Reading. The parties acknowledge reading this License, including exhibits or attachments, and have received the advice and counsel necessary to form a complete understanding of their rights and obligations. Having so done, they execute this License freely and voluntarily.

15.07. Applicable Law. The Construction Of This License And The Rights, Remedies, And Obligations Arising Thereunder Are Governed By The Laws Of The State Of Texas. But the Texas conflicts of law rules must not cause the application of the laws of a jurisdiction other than Texas. The obligations of both parties are performable in San Antonio, Bexar County, Texas.

15.08. Severability. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

15.09. Successors. This License inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

15.10. Integration. This Written License Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.

15.11. Modification. This License may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. The time period in the Scope (6 p.m. to 7 a.m.) may be modified during the Term or any renewal period by the City Manager of the City of San Antonio, or her designee without further City Council action. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion. Fee increases as provided under Section 4 (License Fee) shall not be considered modifications under this section.

15.12. Third Party Beneficiaries. This License is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries.

15.13. Notices. Notices must be in writing and by certified mail, return receipt requested. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice. Unless changed, notice to Licensee goes to Licensee's address specified at the beginning, and notice to Licensor goes to:

City Clerk
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

With a copy to

Director,
Center City and Operations
Department, Parking Division
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

15.14. Pronouns. In construing this License, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire License, not to any particular provision of it.

15.15. Captions. Paragraph captions in this License are for ease of reference only and do not affect the interpretation hereof.

15.16. Counterparts. This License may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this License, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

15.17. Further Assurances. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the

provisions hereof. But no such additional document(s) may alter the rights or obligations of the parties under this License

15.18. Ambiguities Not to Be Construed Against Drafter. Ambiguities in this License must be resolved without constructing against the drafter.

In Witness Whereof, the parties have hereunto caused their representatives to set their hands.

Licensor:

City of San Antonio,
a Texas municipal corporation

By: _____

Printed
Name: _____

Title: _____

Date: _____

Licensee:

[LICENSEE NAME AND ORGANIZATION]

By: _____

Printed
Name: _____

Title: _____

Date: _____

Attest:

City Clerk

Approved As To Form:

City Attorney

Exhibit A
Klabzuba Properties Parking Policies and Requirements

Parking Requirement:

- One Alamo Center shall provide [up to 90 spaces] parking spaces after business hours
 - Hours of Parking:
 - 25 Spaces: 6:30 p.m. to 6:30 a.m., Monday through Friday
 - 20 Spaces: 7:00 p.m. to 7:00 a.m., Monday through Friday
 - All day, Saturday and Sunday
- The City of San Antonio or a third party shall have complete responsibility for monitoring all parking and pay for any costs associated with monitoring such parking.
- The City of San Antonio or a third party shall carry any insurance reasonably required by the owner to park in the Building.
- The City of San Antonio or a third party shall comply with the Building and parking rules.
- One Alamo Center shall have the right at no penalty to cancel the Agreement if The City of San Antonio or a third party consistently violates the parking regulations.
 - Consistently shall be defined as any item below:
 - A violation occurs more than three (3) times and One Alamo has provided a warning on all three (3) occasions.
 - A violation causes the Landlord to be in Default with a Building tenant more than once.
 - A violation causes the Landlord to be in Default with a Building tenant and such violation goes beyond Landlord's Cure period.
- One Alamo Center shall have the right to tow any vehicles that are in violation of the parking regulations and such expense shall be at the sole cost of the violator.
- One Alamo Center shall not be responsible for handling any parking related calls, problems or issues that arise after hours.
- The City of San Antonio or a third party shall provide the user name and contact information, license plate, make and model for any user that is issued a card key and is parking in the Building.
 - The only caveat to this shall be if such parkers are utilizing valet services. In such case, such valet shall be responsible for complying with all Building and parking rules.

Exhibit B

Use of spaces at One Alamo Parking Garage for valet services hired by [ENTER NAME] Term Sheet

For the use of [up to 90 spaces] parking spaces at the One Alamo Parking Garage located at 106 South St. Mary's from 6 pm until 6 am Monday through Friday and all day on Saturdays and Sundays:

1. [LICENSEE] will enter into a parking agreement with the City of San Antonio (the "City") agreeing to necessary insurance requirements, indemnification and compliance with City Parking regulations for the location established through the parking agreement with Klabzuba.
2. [LICENSEE] will pay \$50 per space on a monthly basis for a total of \$2,250 per month to the City of San Antonio Parking Division.
3. [LICENSEE] will enter into a valet agreement with a firm that can comply with the City's Parking Division requirements. A copy of the valet agreement shall be provided to the City with contact information and insurance verification.
4. The agreement can be terminated with 45 days advance notice from either party.
5. [LICENSEE] will present a project that includes the following items:
 - a. New river level retail is incorporated in the project. The lease agreement should be for a 5 year term at minimum.
 - b. The [LICENSEE] should identify the garage as the preferred valet parking venue on marketing materials for the theatre and for the new river level retail.
6. [LICENSEE] cannot "sublease" or sell parking spaces. Spaces are only for use by designated valet and [LICENSEE] staff if applicable. Designated parkers can only use select magnetic parking cards for entry and exit of the facility.
7. Any vehicles left in the garage outside of the designated time frames will be subject to tow or boot by Klabzuba Properties. Any immobilization fees incurred will not be paid or subsidized by the City of San Antonio.
8. [LICENSEE] will be responsible for all cards issued and will pay the posted fees for card activation and replacement.
9. City of San Antonio will not be responsible for any damage to vehicles, property or persons.