

AN ORDINANCE

2016-06-30-0513

AUTHORIZING A LEASE GUARANTY AGREEMENT WITH RIVERBEND GARAGE, LLC OBLIGATING THE CITY OF SAN ANTONIO UNDER THE TERMS OF THE LEASE TO GUARANTEE THE TIMELY PAYMENT OF RENT TO BE PAID BY TENANT, UNITED SERVICE ORGANIZATION, INC., FOR 5,130 SQUARE FEET OF RETAIL SPACE AT THE PRIVATELY OWNED RIVERBEND GARAGE BUILDING, LOCATED AT 210 N PRESA STREET, IN CITY COUNCIL DISTRICT 1, FOR A TERM ENDING SEPTEMBER 30, 2020

* * * * *

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

SECTION 1. The City Manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the City a lease guaranty agreement substantially in the form of **Attachment I**, which is incorporated by reference for all purposes as if fully set forth. The City Manager and designee, severally, should take all other actions reasonably necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing and delivering all ancillary instruments and agreements conducive to effectuating the transaction.

SECTION 2. Funding in the amount of \$8,333.32 for this ordinance is available in Fund 11001000, Cost Center 1208020001 and General Ledger 5206010, as part of the Fiscal Year 2016 Budget.

SECTION 3. Payment not to exceed the budgeted amount is authorized to Riverbend Garage L.L.C. and should be encumbered with a purchase order.

SECTION 4. Future funding through the term of this lease agreement is contingent upon City Council approval of subsequent fiscal year budgets for Fund 11001000, Cost Center 1208020001 and General Ledger 5206010.

SECTION 5. If approved by City Council, payment not to exceed the budgeted amount is authorized to Riverbend Garage L.L.C. and should be encumbered with a purchase order.

SECTION 6. 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.

SECTION 7. This Ordinance is effective immediately upon receipt of eight affirmative votes; otherwise, it is effective 10 days after passage.

PASSED AND APPROVED this 30th day of June, 2016.



M A Y O R

Ivy R. Taylor

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


Martha G. Sepeda, Acting City Attorney

Agenda Item:	15 (in consent vote: 4, 6, 7, 8, 9, 10, 11, 12A, 12B, 13, 15, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 35, 36, 37, 39A, 39B)						
Date:	06/30/2016						
Time:	09:25:19 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a lease guaranty agreement with Riverbend Garage, LLC obligating the City of San Antonio under the terms of the lease to guarantee the timely payment of rent to be paid by Tenant, United Service Organization, Inc., for 5,130 square feet of retail space at the privately owned Riverbend Garage Building, located at 210 N Presa Street, in City Council District 1, for a term ending September 30, 2020. [Lori Houston, Assistant City Manager, John Jacks, Interim Director, Center City Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x			x	
Michael Gallagher	District 10		x				

ATTACHMENT 1

LEASE GUARANTY

THIS LEASE GUARANTY (this "Guaranty") is executed by **The City of San Antonio**, a Texas municipal corporation ("Guarantor") in consideration of, and as an inducement for **Riverbend Garage, L.L.C.**, a Texas limited liability company ("Landlord"), to enter into an Amendment of Lease Agreement (the "Amendment") with respect to that certain Lease Agreement (as modified and extended by the Amendment, the "Lease") dated as of November 1, 2009, by and between Landlord and United Services Organizations, Inc. (Tenant") concerning certain leased premises located on the street level of the Riverbend Parking Garage located at 210 N. Presa Street, San Antonio, Bexar County, Texas, as more particularly described in the Lease. Guarantor has requested Landlord to agree to and enter into the Amendment, and Landlord has required Guarantor to execute this Guaranty as a condition to Landlord's entering into the Amendment. Landlord is relying upon the representations and warranties of Guarantor contained herein.

In consideration of the foregoing, and subject to the remaining terms of this Guaranty, Guarantor hereby guarantees to Landlord, its successors, and assigns, the timely payment of rent to be paid by Tenant under the Lease during the period (the "Guaranty Period") commencing on the date of this Guaranty and ending on September 30, 2020; provided, however, that (i) with respect to the rent due under the Lease for the months May 2016 through September 2016, Guarantor's obligation to pay such rent shall be limited to \$4,166.66 per month, (ii) Guarantor acknowledges and agrees that, as of the date of Guarantor's execution of this Guaranty, the remaining unpaid funds appropriated by Guarantor's City Council for payments under this Guaranty during Guarantor's current fiscal year ending September 30, 2016, are sufficient for Guarantor to pay \$4,166.66 per month for each full calendar month in the remainder of the period described in clause (i) above, (iii) beginning October 1, 2016, and continuing thereafter, with respect to all rent payments that become due under the Lease through the remainder of the Guaranty Period, Guarantor guarantees payment of the full amount of the rent that comes due under the Lease, such rent being acknowledged to be \$4,666.55 per month; and (iv) if Tenant terminates the Lease pursuant to the termination right set forth in Section 3 of the Amendment, Guarantor shall have no obligation to pay any rent under the Lease for the period of time after the effective date of such termination of the Lease.

This Guaranty shall remain in full force and effect notwithstanding any assignment or subletting of Tenant's interests under the Lease, only if Guarantor consents in writing to assignment or sublease of Tenant's interest. If the Lease is terminated prior to the expiration of its stated term by reason of a breach thereof by Tenant, Landlord shall use commercially reasonable efforts, upon and subject to the terms and conditions set forth in the Lease, to relet the premises covered by the Lease or any part thereof for such rent and upon such terms as Landlord, in its sole discretion, shall determine (including the right to relet such premises for a greater or lesser term than that remaining under the Lease, the right to relet such premises as a part of a larger area, and the right to change the character or use of such premises). The validity of this Guaranty and the obligations of Guarantor hereunder shall not in any way be terminated, affected, or impaired by reason of any action which Landlord might take or be forced to take against Tenant, provided such act is in compliance with the Lease and with applicable law, or by reason of any waiver of or failure to enforce any of the rights or remedies reserved to Landlord in the Lease or otherwise, or by reason of extension of time or other forbearance granted to Tenant by Landlord. In order to hold the undersigned Guarantor liable hereunder, there shall be no obligation on the part of Landlord, at any time, to resort to Tenant or to any other guaranty or to any security or other rights and remedies for payment or performance, and Landlord shall have the right to enforce this Guaranty irrespective of whether or not other proceedings or actions are pending or being taken seeking resort to or realization upon or from any of the foregoing.

Without limiting the generality of the foregoing, Guarantor agrees that:

(a) At Landlord's option, but without expansion of the scope of Guarantor's obligations with respect to the payment of rent under the Lease as set forth above, Guarantor may be joined in any actions or proceedings commenced by Landlord against Tenant based on nonpayment of the Lease, and recovery may be had against Guarantor in such actions or proceedings, or in any independent actions or proceedings against Guarantor without requirement that Landlord, its successors, or assigns, first assert, prosecute, or exhaust any remedy or claim against Tenant, its successors, or assigns, or any other guarantor or other person who may now or hereafter become liable for performance of Tenant's obligations under the Lease;

(b) In the event of any bankruptcy, reorganization, winding up, or similar proceedings with respect to Tenant, no limitation on Tenant's liability under the Lease which may now or hereafter be imposed by any federal, state, or other statute, law, regulation, or judicial or administrative determination applicable to such proceedings shall in any way limit Guarantor's obligations hereunder; and

(c) Guarantor waives notice of any and all notices or demands which may be given by Landlord to Tenant, or required to be given under the Lease, other than any notice or demand with respect to any default in the payment of rent guaranteed by Guarantor hereby, copies of which notices or demands shall be provided to Guarantor.

Guarantor's liability hereunder with respect to any installment of rent under the Lease will not be released, reduced, impaired, or affected by the occurrence of any event save full payment by Tenant (or a third party on Tenant's behalf) of such installment of rent or Landlord's written release of Guarantor from liability.

The obligations of Tenant and all guarantors shall be joint and several and Landlord may enforce this Guaranty against Guarantor without joinder of Tenant or any other guarantor (hereunder or otherwise).

Other agreements similar to this Guaranty may be executed by other persons with respect to the Lease. This Guaranty shall be cumulative of any such agreements and the liabilities and obligations of the undersigned Guarantor under this Guaranty shall not be affected or diminished by reason of any such other agreements. Moreover, if Landlord obtains another signature of more than one guarantor on this Guaranty or by obtaining additional guaranty agreements, or both, Guarantor agrees that Landlord, in Landlord's sole discretion, may (a) bring suit against all Guarantors of the Lease, jointly and severally, or against any one or more of them (b) compound or settle with any one or more of the guarantors for such consideration as Landlord may deem proper, and (c) release one more of the guarantors from liability. No such action shall impair the rights of Landlord to enforce the Lease or any guaranty obligations against any remaining guarantor or guarantors, including the undersigned Guarantor.

This Guaranty is an irrevocable, absolute, continuing guarantee of payment and not a guarantee of collection (it being understood that this sentence shall not limit the provisions set forth below regarding appropriation of money by Guarantor's City Council as required to perform Guarantor's obligations hereunder).

If any provision of this Guaranty or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Guaranty, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision of this Guaranty shall be valid and enforceable to the fullest extent permitted by law.

This Guaranty shall be binding upon Guarantor and shall inure to the benefit of Landlord and its successors and assigns.

Any default by Guarantor under this Guaranty (it being understood that any failure by Guarantor's City Council to appropriate money required to perform Guarantor's obligations hereunder shall not be a default by

Guarantor under this Guaranty) that is not cured within the 30-day notice and cure period under the Lease shall be deemed a material default by Guarantor as tenant under that certain lease agreement (the "Centro Lease") dated as of November 24, 2008, by and between Guarantor and Landlord with respect to the Centro Information Center located in approximately 2,056 square feet at the Riverbend Parking Garage. If the premises covered by the Lease are damaged or destroyed by fire or other casualty and as a result thereof Tenant asserts in good faith that Tenant is entitled to a reduction in the amount of the monthly rent due under the Lease but Tenant and Landlord have a good faith dispute as to the applicability or amount of any such reduction, then, until such dispute is resolved, Guarantor shall not be required to pay the disputed portion of such monthly rent and Landlord shall not exercise any remedy under the Centro Lease that may be available to Landlord by virtue of Guarantor paying less than the full amount of monthly rent under the Lease in accordance with the preceding provisions.

This Guaranty shall be construed under the laws of the State of Texas and venue for any action brought hereunder shall be in Bexar County, Texas.

All obligations of Guarantor under this instrument are limited by the following:

All obligations of the City of San Antonio under this Guaranty are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year. The City has no liability under this Guaranty for any period as to which the City Council fails to appropriate money for this Guaranty in an annual City of San Antonio Budget.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the date set forth below.

GUARANTOR:

City of San Antonio,
a Texas municipal corporation

By: _____

Printed
Name: _____

Title: _____

Date: _____

Approved As To Form:

City Attorney