

ORDINANCE 2020-04-16-0264

**APPROVING THE PARKS AND RECREATION DEPARTMENT TO
EXECUTE AMENDMENT NO. 8 TO THE LEASE AGREEMENT WITH
THE WITTE MUSEUM IN BRACKENRIDGE PARK. THERE IS NO
FISCAL IMPACT ASSOCIATED WITH THIS ORDINANCE.**

* * * * *

WHEREAS, the Witte is a non-profit organization whose mission is to promote lifelong learning through innovative exhibitions, programs and collections in natural history, science and South Texas heritage; and

WHEREAS, the museum, which first opened in 1923, has grown to welcome an average of 600,000 visitors per year, including 250,000 school age children; and

WHEREAS, on September 8, 1997, the City and the Witte entered into a Lease with Operating Standards Agreement 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; and

WHEREAS, on November 15, 2017, Amendment No. 7 allowed administrative approval for adjusting admission fee increases in accordance with the terms of the lease which is capped at 18% over a rolling 2-year period; and

WHEREAS, the Witte desires to refinance an existing loan with Frost Bank which requires collateral. Amendment No. 6 authorized the use of Mays Family Center, the Feik Pavilion, and the Admissions Building as collateral, but the parking lot was not included. Under the proposed Amendment No. 8, the parking lot adjacent to the Mays Family Center, the Feik Pavilion, and the Admissions Building will be included in the list of amenities authorized for the use of collateral; and

WHEREAS, all other terms of the agreement remain the same; **NOW THEREFORE:**

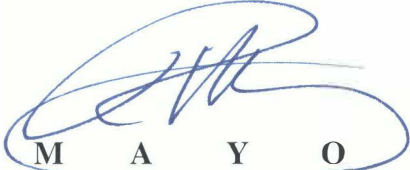
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or designee, or the Director of the Parks and Recreation Department or designee, is authorized to execute Amendment No. 8 to the Lease Agreement with The Witte Museum in Brackenridge Park. A copy of the Amendment, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. 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 3. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 16th day of April, 2020.



M A Y O R
Ron Nirenberg

ATTEST:

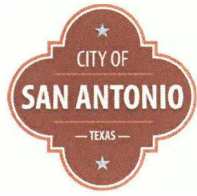


Tina Flores, Acting City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney



City of San Antonio

City Council

April 16, 2020

Item: 10

Enactment Number:

File Number: 20-2688

2020-04-16-0264

Ordinance approving an amendment to the Lease Agreement with The Witte Museum in Brackenridge Park to transfer ownership interest of the parking lot adjacent to the Mays Family Center. There is no fiscal impact associated with this ordinance. [Colleen M. Bridger, MPH, PhD, Assistant City Manager; Homer Garcia III, Director, Parks & Recreation]

Councilmember John Courage made a motion to approve. Councilmember Manny Pelaez seconded the motion. The motion passed by the following vote:

Aye: 10 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia,
Gonzales, Cabello Havrda, Pelaez, Courage and Perry

Absent: 1 Sandoval

SW/ah
04/16/20
Item No. 10

ATTACHMENT I

**AMENDMENT NO. 8 TO
THE WITTE MUSEUM LEASE WITH OPERATING STANDARDS**

THIS AMENDMENT NO. 8 TO MUSEUM LEASE WITH OPERATING STANDARDS (this "*Eighth Amendment*") is executed by and between CITY OF SAN ANTONIO, a Texas municipal corporation ("*CITY*"), pursuant to Ordinance 2020-04-__-_____, passed and approved by the San Antonio City Council on April ___, 2020, and THE WITTE MUSEUM, a Texas not-for-profit corporation ("*WITTE*"), to be effective as of the later date on which this Eighth 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:

- (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;
and
- (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;
- (7) Amendment No. 7 to Witte Museum Lease with Operating Standards dated September 21, 2017;
(the Lease, as so amended, herein called the "*Agreement*").

B. Capitalized words or phrases not otherwise defined in this Eighth Amendment will have the same meaning ascribed to such words or phrases in the Agreement, unless the context clearly indicates otherwise.

C. Amendment No. 6 acknowledged that the 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 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. Amendment No. 6 provided that:

- (1) The Mays Family Center, Feik Family Pavilion and 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 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 this Sixth Amendment.
- E. WITTE requires additional funding for the continued financing of the renovations and has requested that CITY agree to amend the Agreement to provide that provisions relating to the ownership and encumbrance of the Mays Family Center, the Feik Family Pavilion and the Admission be extended to the parking lot associated with those buildings in order to facilitate the required financing.
- F. 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 Eighth Amendment.

ARTICLE 1 AMENDMENTS TO LEASE

1.1 Ownership of Certain Improvements. Section 4.2 of the Agreement is amended to add the following additional sentences following the last sentence of such section as amended by Amendment No. 6:

"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 Improvements 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, of the Agreement 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 Exhibits. The following additional exhibits are attached as exhibits to the Agreement: Exhibit A-4, Description of the Parking Lot Improvements, and Exhibit B, form of Memorandum of Lease.

ARTICLE 2 MISCELLANEOUS

2.1 Ratification of Agreement. Except as expressly amended by this Eighth Amendment, all terms and provisions of the Agreement remain in full force and effect as therein set forth. The Amendment, 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 Eighth Amendment by all Parties, all references to the Agreement shall be deemed to mean the Agreement as amended by this Eighth Amendment. The amendments to the Agreement set forth in this Eighth Amendment and the exhibits added to the Agreement by this Eighth 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 Eighth 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 Eighth Amendment or to effect the amendments to the Agreement set forth in this Eighth Amendment. This Eighth 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 Counterparts. This Eighth 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 Eighth 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.

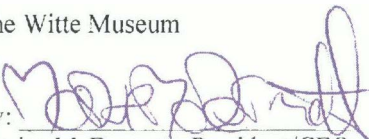
EXHIBITS: Exhibit A-4: Description of Parking Lot Improvements
 Exhibit B: Form of Memorandum of Lease

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

City of San Antonio

The Witte Museum

By: _____
Homer Garcia III, Director

By: 
Marise McDermott, President/CEO

Attest: _____
City Clerk

Approved as to Form: _____
City Attorney

EXHIBIT A-4 TO EIGHTH AMENDMENT
DESCRIPTION OF PARKING LOT IMPROVEMENTS
[TO BE ATTACHED]

EXHIBIT B TO AMENDMENT NO. 8
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, and 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 (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 Certain Improvements.** WITTE has constructed or caused to be constructed, from time to time, buildings and other improvements on the Premises with funds provided with private donations, including but not limited to the Parking Lot Improvements depicted on Exhibit A-4. Pursuant to the Lease and subject to the terms thereof title and beneficial ownership of the improvements to the Premises comprising and constituting the Mays Family Center, the Feik Family Pavilion, the Admissions Building and the Parking Lot Improvements, 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 held by WITTE for and during the term of the Lease only (including all extensions of the term of the Lease, if any). Upon the termination of the Lease, 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.


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 the CITY's agent or to bind the fee interest of the CITY in the Premises.

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

EXECUTED the _____ day of _____, 2020.

By: _____
Homer Garcia III, Director

By: 
Marise McDermott, President/CEO

Attest: _____
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 _____, 2020,
by _____ of CITY OF SAN ANTONIO, a Texas
municipal corporation, on behalf of said corporation.

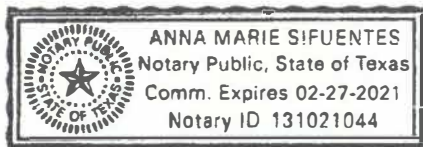
[Seal]

Notary Public in and for the State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the 12 day of April, 2020, by Marise McDermott,
President and CEO of THE WITTE MUSEUM, a Texas not-for-profit corporation, on behalf of said corporation.

[Seal]



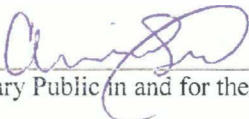

Notary Public in and for the State of Texas

EXHIBIT A
TO
MEMORANDUM OF LEASE
DESCRIPTION OF PREMISES

[To be attached]

EXHIBIT A-4
TO
MEMORANDUM OF LEASE

DESCRIPTION OF PARKING LOT IMPROVEMENTS

[To be attached]