

AN ORDINANCE 2008-06-12-0530

APPROVING AN AMENDMENT TO A LEASE AGREEMENT WITH RIO PLAZA, L.P. FOR USE OF CITY-OWNED PROPERTY LOCATED IN SUBSURFACE SPACE UNDER CROCKETT STREET AND ADJACENT RIVER WALK PATIO SPACE, EXTENDING THE TERM TO JUNE 30, 2018, ADJUSTING THE RENTAL RATE BEGINNING ON JULY 1, 2014 BASED ON A MARKET RENTAL STUDY AND COMBINING A PREVIOUS LICENSE AGREEMENT FOR RIVER WALK PATIO SPACE WITH THE SUBSURFACE SPACE IN A SINGLE LEASE AGREEMENT.

* * * * *

WHEREAS, Rio Plaza, L.P. leases improved space beneath Crockett street bridge as well as adjacent patio space on the River Walk; and

WHEREAS, this amendment, will combine the patio space lease with the lease under Crockett street and make a variety of amendments to the combined lease agreement; **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 Downtown Operations Department or her designee, is authorized to execute an amendment to a Lease Agreement with Rio Plaza, L.P. for use of City-owned property located under Crockett Street and adjacent River Walk patio space, extending the term to June 30, 2018, adjusting the rental rate beginning on July 1, 2014 based on a Market Rental Study and combining a previous license agreement for River Walk patio space with the subsurface space in a single lease agreement. A copy of the amendment is attached hereto and incorporated herein for all purposes as Attachment I.

SECTION 2. Funds generated by this ordinance will be deposited into Fund 11001000 General Fund or 29093000 Riverwalk Capital Improvement, Internal Order 219000000001 River Operations or WBS OR-00001-01-01-01-01 Proceeds, General Ledger 4407711 Lease - Patio Space or 4401150 Lease - Rental of City Land.

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.

SECTION 4. This ordinance shall be effective on and after June 22, 2008.

PASSED AND APPROVED this 12th day of June, 2008.

ATTEST: 
City Clerk


MAYOR
PHIL HARDBERGER

APPROVED AS TO FORM: 
for City Attorney

AMENDMENT OF LEASE AGREEMENT

RIO PLAZA, L.P.

WHEREAS, the City of San Antonio, a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. 79744, passed and approved by the City Council on March 3, 1994, as LANDLORD ("CITY"), entered into that certain **Lease Agreement** with **PAT MALONEY DEVELOPMENT PARTNERSHIP, LTD.**, for the lease of 7,754 square feet of City-owned subsurface space under Crockett Street between Navarro Street and the west boundary line of an extension of the Maloney Property into such subsurface; and

WHEREAS, the City of San Antonio, has entered into separate Lease Agreements for the use of River Walk patio abutting the City-owned subsurface space under Crockett Street for use as River Walk restaurant patios; and

WHEREAS, on November 26, 2003 **PAT MALONEY DEVELOPMENT PARTNERSHIP, LTD.** assigned its rights and obligations under Ordinance No. 79744 to **RIO PLAZA, L.P.**; and

WHEREAS, Lease Agreements for the use of River Walk patio space in use by **RIO PLAZA, L.P.** ("**LESSEE**") are now expired; and

WHEREAS, it is necessary to amend the leased premises "Exhibit A" to the subsurface lease agreement so that the boundary line of the subsurface meets the River Walk patio boundary and the current use of premises; and

WHEREAS, **CITY** and **LESSEE** agree that combining the subsurface lease agreement (the **Lease Agreement**) and River Walk patio lease agreement and amending the **Lease Agreement** is in **CITY'S** and **LESSEE'S** best interest; **NOW THEREFORE**,

In consideration of the mutual covenants and agreements set forth below the parties agree as follows:

1. **ASSIGNMENT OF LEASE AGREEMENT:** **Lease Agreement** is amended to show **RIO PLAZA, L.P.** as **LESSEE** for all purposes as evidenced herein.
2. **AMENDING RESPONSIBLE CITY OF SAN ANTONIO DEPARTMENT:** All references in this **Lease Agreement** to the Parks and Recreation Department and to the Director are hereby amended to indicate the Downtown Operations Department and the Director of the Downtown Operations Department.
3. **AMENDING THE DEMISE OF PREMISES:** Article I of the **Lease Agreement** is amended to replace section 1.1 with the following:
 - 1.1 **CITY**, for and in consideration of the rents, covenants, and promises herein contained to be kept, performed and observed by **LESSEE**, does hereby lease and demise to **LESSEE**, and **LESSEE** does hereby rent and



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 24

Name:	8, 9, 12, 14, 15, 18, 20, 22, 23, 24, 26, 27, 28A, 28B, 29A, 29B, 30, 31, 32, 33, 37, 38, 39A, 39B, 39C
Date:	06/12/2008
Time:	10:17:35 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving an amendment to a Lease Agreement with Rio Plaza, L.P. for use of City-owned property located in subsurface space under Crockett Street and adjacent River Walk patio space, extending the term to June 30, 2018, adjusting the rental rate beginning on July 1, 2014 based on a Market Rental Study and combining a previous license agreement for River Walk patio space with the subsurface space in a single lease agreement. [Pat DiGiovanni, Deputy City Manager; Paula X. Stallcup, Director, Downtown Operations]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x			x	
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				

accept from CITY for the term hereinafter set out, the real property owned by the CITY as follows:

1.1.1 **Crockett Street Subsurface Area:** Area of real property adjacent to the San Antonio River Walk area and located below Crockett Street, as outlined on the drawings which are attached hereto as Exhibit A and incorporated by reference herein for the purposes of this **Lease Agreement**, the same as if fully copied and set forth at length. Said real property and improvements (hereinafter referred to as the **Leased Premises**) are further described as follows:

An area containing a total of 6,884.0 square feet (0.178 acre) being the property more fully described on the attached EXHIBIT A incorporated herein for all purposes.

1.1.2 **River Walk Patio Leased Premises:** Area of real property owned by the CITY in the San Antonio River Walk Area as outlined on the drawing which is attached hereto as EXHIBIT D incorporated by reference herein for the purposes of this **Lease Agreement**, the same as if fully copied and set forth at length. Said real property and improvements (hereinafter referred to as the **River Walk Patio Leased Premises**) are further described as follows:

An area containing 665.31 square feet of City-owned River Walk patio space located adjacent to **Leased Premises** and as specifically outlined on the drawing which is attached hereto as EXHIBIT D.

4. **AMENDING USE OF PREMISES:** Article II is amended to replace section 2.3 and add sections 2.4 and 2.5 as follows:

2.3 During the term of this **Lease Agreement**, **LESSEE**, as owner of the adjoining street surface building, shall either continue to operate a business on the Leased Premises, either directly or shall lease the premises to a sublessee and cause such sublessee to operate a business, and failure to do so for a period not exceeding one-hundred eighty (180) contiguous days shall not be a default hereunder. Notwithstanding the preceding, **LESSEE** shall have the right to cease operations for periods of time not to exceed 2 years in the event that **LESSEE** shall have undertaken renovation or construction of the Leased Premises with the prior written approval of the Director consistent with the terms of section 7.1 of this **Lease Agreement**.

2.4 **LESSEE** agrees that the **River Walk Patio Leased Premises** shall be utilized for the sole purpose of outdoor dining, including the:

service of food and alcoholic and non-alcoholic beverages, in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas, and the City of San Antonio, Texas.

- 2.5 **CITY'S** Reservation of Rights – In addition to the **CITY'S** Reservations set out in Article XV and other sections of the **Lease Agreement**, **CITY** reserves the right to a public right-of-way along the River Walk area to follow a path designated by the **CITY** for safe passage by pedestrians and further described by the diagram attached hereto and incorporated herein as **EXHIBIT D**. **LESSEE** shall keep said right of way free of obstructions in the form of either fixed or movable objects and shall not allow patrons to queue, or wait for entrance into **LESSEE'S** business establishment, in said public right of way. **LESSEE** shall comply with the **CITY'S** laws pertaining to queuing along the River Walk area and in addition to the right of way restrictions described above, shall not use any public space along the River Walk area for the queuing or waiting of patrons without first obtaining the consent of **CITY**. Failure to comply with this section may, at **CITY'S** option, constitute default under this **Lease Agreement**. **CITY'S** rights under this section shall not include the right to interfere with **LESSEE'S** use of the Leased Premises or the River Walk Patio Leased Premises.

5. **AMENDING TERM:** Article III is amended to replace section 3.1 and add section 3.3 as follows:

- 3.1 **LESSEE**, its successors and assigns are to have and to hold its rights to lease those properties described in **EXHIBIT A** and **EXHIBIT D** as follows:
- 3.1.1 **Leased Premises** as fully described in **EXHIBIT A** shall commence on July 1, 2008 and expire on June 30, 2018.
- 3.1.2 **River Walk Patio Leased Premises** as fully described in **EXHIBIT D** shall have a term commencing ten (10) days after approval of this Lease Amendment and shall expire on the same date as the **Leased Premises** expiration date as per section 3.1.1 above.
- 3.3 The right is expressly reserved to the **CITY**, acting through the City Council, to terminate use of the **River Walk Patio Leased Premises** as outlined in this **Lease Agreement** for the following:
- 3.3.1 In the event **LESSEE** shall default in the performance of any covenants or agreements contained herein and shall fail, following thirty (30) days' written notice of such default, to remedy same, save and except a ten (10) days' notice period will apply in the case of Default in the payment of rent.

6. **AMENDING RENTAL:** Article IV is amended as follows: It is hereby specified that sections 4.1 through 4.2 shall apply to **Leased Premises** only. A new subsection 4.1(c) is added as follows:

4.1(c) The Monthly Rental Rate for the Leased Premises for the period 7/1/2014 through the end of the Term shall be based on a market rate study that CITY shall cause to be conducted by an MAI approved appraiser. In the event CITY does not to have such an appraisal conducted, the rental rate shall be increased by 5% per year for all such years that no such market rate study has been conducted.

Section 4.3 is amended as follows:

4.3 Payment shall be submitted to:
City of San Antonio
Revenue Division
P. O. Box 839975
San Antonio, Texas 78283-3975

ALL MONTHLY PAYMENTS OF RENT ARE DUE ON OR BEFORE THE FIRST DAY OF EACH AND EVERY MONTH DURING THE TERM OF THIS LEASE AGREEMENT.

Sections 4.4 and 4.5 shall apply only to **River Walk Patio Leased Premises**;

4.4 The monthly rental for **River Walk Patio Leased Premises** shall be \$1.67 per square foot per month or \$20.04 per square foot for the first Lease year, and shall increase by a rate of five percent (5%) per square foot per year, commencing upon the anniversary date of each remaining Lease year. The rental may be paid in one lump sum in advance or in monthly installments in advance on the first day of each month in accordance with the following payment schedule:

- 4.4.1. 7/1/2008 – 6/30/2009 (\$1.67 per square foot per month):
\$13,332.81 payable in one lump sum in advance per year or
\$1,111.07 per month.
- 4.4.2. 7/1/2009 – 6/30/2010 (\$1.75 per square foot per month):
\$13,971.51 payable in one lump sum in advance per year or
\$1,164.29 per month.
- 4.4.3. 7/1/2010 – 6/30/2011 (\$1.84 per square foot per month):
\$14,690.04 payable in one lump sum in advance per year or
\$1,224.17 per month.
- 4.4.4. 7/1/2011 – 6/30/2012 (\$1.93 per square foot per month):
\$15,408.58 payable in one lump sum in advance per year or
\$1,284.05 per month.

- 4.4.5. 7/1/2012 – 6/30/2013 (\$2.03 per square foot per month):
\$16,206.95 payable in one lump sum in advance per year or
\$1,350.58 per month.
- 4.4.6 7/1/2013 – 6/30/2014 (\$2.13 per square foot per month):
\$17,005.32 payable in one lump sum in advance per year or
\$1,417.11 per month.
- 4.4.7 The monthly rental rate for the River Walk Patio Leased Premises for the period 7/1/2014 through the end of the Term shall be based on a market rate study that CITY shall cause to be conducted by an MAI approved appraiser. In the event CITY does not to have such an appraisal conducted, the rental rate shall be increased by 5% per year for all such years that no such market rate study has been conducted.

Sections 4.6 and 4.7 are added as follows:

4.6 A twenty (\$20.00) dollar late charge will be assessed on any payment received on the eleventh (11th) day of the applicable month or any day thereafter. All past due rentals under the terms of this Lease Agreement shall bear interest at the rate of 12% per annum from the date due until paid in full by LESSEE, or at the highest rate allowed by law, should 12% be deemed usurious.

4.6.1. The ten (10) day period before the twenty (\$20.00) dollar late charge is applied should not be considered a "GRACE PERIOD;" nor shall the late charge provision be considered as an "option" for rental payments to be made late. All payments are considered late if not received in the CITY'S Treasury office by the close of business on the first day of each calendar month.

4.6.2. At any time during the Lease term if more than two (2) Insufficient Funds Checks are presented to the CITY in payment of rental or other considerations during a twenty-four (24) month period, LESSEE will be placed on a cash or money order basis for the following two (2) Lease years. No exceptions will be made

4.6.3. At any such time, should the CITY'S Department of Finance establish and issue uniform policies related to late payment of rent and/or Insufficient Funds Checks, which may be contrary to the terms stated in subsections 4.6.1 – 4.6.2 above, the Department of Finance's policies shall prevail. CITY shall make every effort to formally notify LESSEE of any such change(s) in advance.

4.6.4. Notwithstanding anything to the contrary set forth in this Lease Agreement, if LESSEE shall fail to make the timely payment of any rent or any additional charges due the CITY from LESSEE or the payment of any other money due the CITY from LESSEE under the terms of this Lease

Agreement; and any such failure shall be repeated two (2) times in any period of twelve (12) consecutive months, then notwithstanding that any such failure shall have been cured within the period after notice, as provided in this **Lease Agreement**, any further similar failure within said twelve (12) month period shall be deemed to be a Repeated Event of Default.

4.6.5. In the event of a Repeated Event of Default, **CITY**, without giving **LESSEE** any notice and without affording **LESSEE** an opportunity to cure the default, may terminate this **Lease Agreement** forthwith without notice to **LESSEE**.

4.7 Payment shall be made in a manner consistent with Treasury division rules and regulations and shall be subject to various charges and requirements for failure to comply with those rules including, but not limited to, charges and requirements imposed for the submittal of insufficient fund checks

7. AMENDING ACCEPTANCE AND CONDITION OF PREMISES: All references to Leased Premises in article V shall also refer to the **River Walk Patio Leased Premises**.

8. AMENDING IMPROVEMENTS TO PREMISES:

Section 7.1 is amended as follows:

7.1 **LESSEE** shall not construct, or allow to be constructed, any improvements or structures on the **River Walk Patio Leased Premises** or that affect the exterior of the **Leased Premises** nor shall **LESSEE** make, or allow to be made, any alterations to the **Leased Premises** or **River Walk Patio Leased Premises** without the prior written approval of the **CITY** through the Director of the Downtown Operations Department, such approval not to be unreasonably withheld, and any and all other necessary departments, boards or commissions of the City of San Antonio, including, but not limited to the Historic and Design Review Commission.

7.2 All references to Leased Premises in section 7.2 shall also refer to the **River Walk Patio Leased Premises**.

9. AMENDING MAINTENANCE OF PROPERTY: All references to Leased Premises in section 8.2, 8.4, and 8.5 shall also refer to the **River Walk Patio Leased Premises**.

Sections 8.6 and 8.7 are added as follows:

8.6 **LESSEE** shall, at all times, maintain the sidewalks adjacent to the **River Walk Patio Leased Premises** free from obstructions of any kind and shall maintain a minimum clearance of six (6) feet on the

sidewalk adjacent to the River Walk free and clear of any tables or other property placed by **LESSEE** on such **River Walk Patio Leased Premises**, and **LESSEE** shall not use any of said sidewalk area in the exercise of privileges granted herein, except to pass to and from the **River Walk Patio Leased Premises**; however, **LESSEE'S** use may at no time obstruct public access to the six (6) feet River Walk public right-of-way.

8.7 **LESSEE** shall, at its sole expense, keep the **River Walk Patio Leased Premises** in good order, repair, and leasable condition at all times during the term hereof and shall promptly repair all damages to the **River Walk Patio Leased Premises** or replace any broken fixtures or appurtenances within a reasonable period of time. All such repairs and replacements shall be subject to the approval of the **CITY** through the Director of the Downtown Operations Department and any and all other necessary departments, boards, or commissions of the City of San Antonio, including, but not limited to, the Historic and Design Review Commission. If **LESSEE** does not promptly make such arrangements, **CITY** may, but is not required to, make such repairs and replacements and the costs paid or incurred by **CITY** for such repairs and replacements shall be deemed additional rent due and payable forthwith.

10. **AMENDING TAXES AND LICENSES:** All references to Leased Premises in article IX shall also refer to the **River Walk Patio Leased Premises**.

11. **AMENDING ASSIGNMENT AND SUBLETTING:**

Section 10.1 is amended as follows:

10.1 **LESSEE** shall not assign this **Lease Agreement** or allow same to be assigned by operation of law or otherwise, or sublet the **Leased Premises** or **River Walk Patio Leased Premises** or any part thereof without the prior written consent of **CITY** through the Director of the Downtown Operations Department following the receipt of approval from the appropriate **CITY** boards, commissions, or other entities. **LESSEE'S** assignment of this **Lease Agreement** to a purchaser of the adjoining street surface building without the prior written consent of **CITY** as required in the immediately preceding sentence shall not be deemed a violation of this provision provided that **LESSEE** gives notice of such assignment to the **CITY** within 30 days of the date of such assignment. Assignment to a parent, subsidiary, or affiliated company or the organization of a partnership (limited or general), including **LESSEE** as a party; joint venture, including **LESSEE** as a party; or limited liability company, including **LESSEE** as a party, and the contribution or transfer to such entity by **LESSEE** of this

Lease Agreement shall not be deemed a violation of this provision, provided that **LESSEE** remains liable under this **Lease Agreement**. All sublessees shall be subject to **ARTICLE XIV** of the **Lease Agreement**, and such transferees, either assignees or sublessees, shall agree to be bound to the terms hereof. Any assignment or subletting by **LESSEE** without such permission shall constitute grounds for termination of this **Lease Agreement** by the **CITY**. **LESSEE** may collaterally assign, mortgage or hypothecate this **Lease Agreement** and any tenant lease to obtain financing for the operation of its business without the prior consent of **CITY** and in the event thereof, the **CITY** agrees as follows:

- (1) Any party that receives such assignment, mortgage or hypothecation shall be entitled to forty-five (45) additional days (beyond that accorded to **LESSEE**) notice and the opportunity to cure any default of **LESSEE**, as **LESSEE** hereunder, or sublessees, prior to **CITY** pursuing any remedy for default; and
- (2) Provided that no default exists under the terms of this **Lease Agreement** of date of transfer of this **Lease Agreement**, whether by means of foreclosure or sale or transfer in lieu of foreclosure, the party that finances the operation of **LESSEE'S** business or its tenant's business, or its successor or any party receiving an assignment of the rights of **LESSEE** or **LESSEE'S** tenants by means of foreclosure, or sale or transfer in lieu of foreclosure, may continue to occupy and enjoy the **Leased Premises** and **River Walk Patio Leased Premises** and such transfer shall not be deemed to be an assignment that violates the provisions hereof, so long as such party pays rent and fulfills **LESSEE'S** obligations hereunder.

LESSEE and **LESSEE'S** tenants may grant security interests in personal property and fixtures installed in the **Leased Premises** (not to include **River Walk Patio Leased Premises**) and **CITY** agrees to subordinate its landlord's liens, both contractual and statutory to such security interest so long as (i) **CITY** is to receive prior written notice of any action to take possession of the personal property or fixtures; (ii) **CITY** is afforded the opportunity to be present if any such property or fixtures are to be removed; (iii) the Secured Party repairs any damage occasioned by its removal of such property and fixtures; and (iv) **CITY'S** fee simple interest in the **Leased Premises** is **NOT** subordinated to such security interests.

12. **AMENDING DEFAULT AND REMEDIES:** All references to **Leased Premises** in article XI shall also refer to the **River Walk Patio Leased Premises**.

Section 11.1 (D) is replaced with the following:

11.1

D. The encroachment on the public right-of-way beyond the authorized River Walk Patio Leased Premises.

13. **AMENDING INDEMNIFICATION:** All references to Leased Premises in article XII shall also refer to the River Walk Patio Leased Premises.

12.1 **LESSEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, 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 CITY directly or indirectly arising out of, resulting from or related to LESSEE'S activities under this Agreement, including any acts or omissions of LESSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LESSEE, 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 CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LESSEE 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.**

12.2 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. LESSEE shall advise the CITY in writing within 2 business days of any claim or demand against the CITY or LESSEE known to LESSEE related to or arising out of LESSEE'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at LESSEE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LESSEE of any of its obligations under this paragraph.

14. **AMENDING INSURANCE:** All references to Leased Premises in article XIII shall also refer to the **River Walk Patio Leased Premises**.

Article XIII is amended in its entirety as follows:

- 13.1. Any and all employees, representatives, agents or volunteers of **LESSEE** while engaged in the performance of any work required by the **CITY** or any work related to a lease of space or Concession Agreement with the **CITY** shall be considered employees, representatives, agents or volunteers of **LESSEE** only and not of the **CITY**. Any and all claims that may result from any obligation for which **LESSEE** may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of **LESSEE**.
- 13.2. Prior to the commencement of any work under this Lease Agreement, **LESSEE** shall furnish an original completed Certificate(s) of Insurance, including endorsements, to the **CITY'S** Director, Downtown Operations Department, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s), and endorsements, must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the **CITY**. The **CITY** shall have no duty to pay or perform under this Lease Agreement until such certificate shall have been delivered to the **CITY'S** Director, Downtown Operations Department, and no officer or employee shall have authority to waive this requirement.
- 13.3. Upon any renewal of the term of this Lease Agreement, the **CITY** shall have the right to review the insurance requirements of this section during the effective period of the Lease Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Lease Agreement, but in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.
- 13.4. **LESSEE'S** financial integrity is of interest to **CITY**, therefore, subject to **LESSEE'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **LESSEE** shall obtain and maintain in full force and effect for the duration of this Lease Agreement, and any extension hereof, at **LESSEE'S** sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-or better by A.M. Best Company and/or otherwise.

acceptable to the CITY, in the following types and for an amount not less than the amount listed:

	TYPE	AMOUNT
1.	Workers' Compensation and Employers Liability **	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2.	Commercial General (Public) Liability Insurance to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence and \$2,000,000.00 Aggregate, or its equivalent.
	a. Premises/Operations	
	b. Independent Contractors	
	c. Broad Form Contractual Liability	
	d. Products/completed operations	
	e. Broad form property damage, to include fire legal liability	
	f. Personal Injury	
	g. Explosion, collapse, underground	
3.	Comprehensive Automobile Liability **	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
	a. Owned/Leased Vehicles	
	b. Non-owned Vehicles	
	c. Hired Vehicles	
4.	Property Insurance: For physical damage to the property of LESSEE, including improvements and betterment to the Leased Premises.	Coverage for a minimum of eighty percent (80%) of the Replacement Cost of LESSEE'S property
5.	Motor truck cargo insurance including loading and unloading coverage; written on an inland marine form and an all risk basis.	\$1,000,000
6.	Liquor Liability	\$1,000,000 per occurrence, aggregate of \$3,000,000

** If Applicable.

13.5. During the period of any construction, repairs, alterations, additions, or reconstruction ("construction") in, on, or about the Leased Premises by LESSEE, its contractors or subcontractors, LESSEE agrees, at LESSEE'S sole cost and expense, to obtain and maintain (or cause its contractors or subcontractors to obtain and maintain), LESSEE'S portion of Commercial or Comprehensive General Liability (\$5,000,000 coverage), including "XCU", Builder's Risk Insurance, Professional Liability Property Insurance (architects and engineers), Workers Compensation (or an alternative program) and Employers Liability Insurance, adequate to fully protect CITY, as well as LESSEE, from and against any and all liability for death of or

injury to persons or damage to property caused in or about or by reason of such construction referenced herein and in Article VII.

- 13.6. The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the **CITY**, and may make a reasonable request for 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). Upon such request by the **CITY**, the **LESSEE** shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.
- 13.7. **LESSEE** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:
- 13.7.1. Name the **CITY** and its officers, 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;
- 13.7.2. 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;
- 13.7.3. Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the **CITY**.
- 13.8. **LESSEE** shall notify the **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the **CITY** at the following address:
- City of San Antonio
Downtown Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966
- 13.9. If **LESSEE** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may initiate agreement termination proceedings on the first event of default. Upon **LESSEE'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **LESSEE** to stop the use of the Leased Premises hereunder until **LESSEE** demonstrates compliance with the requirements hereof.
- 13.10. Nothing herein contained shall be construed as limiting in any way

the extent to which **LESSEE** may be held responsible for payments of damages to persons or property resulting from **LESSEE'S** or its subcontractors' performance of the work covered under this Lease Agreement.

13.11. All personal property placed in the Leased Premises shall be at the sole risk of **LESSEE**. **CITY** shall not be liable, and **LESSEE** waives all claims for any damage either to the person or property of **LESSEE** or to other persons: (i) due to the Leased Premises or any part of appurtenances thereof becoming out of repair; (ii) arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current (unless caused by the sole negligence or willful misconduct of **CITY** or its elected officials, employees, officers, directors, volunteers and/or representatives); (iii) from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; or (iv) due to the happening of any accident in or about the Leased Premises. **LESSEE** shall save and hold harmless **CITY** from any claims arising out of damage to **LESSEE'S** property or damage to **LESSEE'S** business, including subrogation claims by **LESSEE'S** insurers.

15. **AMENDING RULES AND REGULATIONS:** All references to Leased Premises in article XIV shall also refer to the **River Walk Patio Leased Premises**.

Sections 14.7, 14.8, 14.9, 14.10, 14.11, and 14.12 are hereby added as follows:

- 14.7 **LESSEE** shall observe and comply with all laws and ordinances of the **CITY** affecting **LESSEE'S** business, including but not limited to, the **CITY'S** noise ordinance and the provisions concerning operation of businesses in the River Walk area in the Downtown Central Business District.
- 14.8 **LESSEE** shall be allowed to place only those chairs, tables, umbrellas, hostess stations, and/or any other furnishings as approved by **CITY** and all applicable boards and/or commissions of the City of San Antonio, including, but not limited to the Historic and Design Review Commission (HDRC).
- 14.9 Encroachment on the public sidewalk beyond the authorized **River Walk Patio Leased Premises** or into the Public Right-of-Way is not permitted.
- 14.10 **LESSEE** shall not place speakers or amplified music on or near the patio of the **River Walk Patio Leased Premises** or in any other location outside the enclosed building on any side of the premises that can be seen from the San Antonio River. **LESSEE** shall comply with **CITY'S** laws pertaining to noise. **LESSEE** agrees to comply with any requests by **CITY** representatives including the park police, police officers or noise abatement officers to close the windows and doors of **LESSEE'S** business establishment after the hour of 11:00 p.m., except as necessary for entry

to and exit from the establishment. Failure to comply with this section may, at CITY'S option, constitute default under this Lease Agreement.

14.11 **LESSEE** shall not engage in, or allow its employees, agents, invitees, guests or any other person to engage in vending on the **River Walk Patio Leased Premises**, other than the ordinary and customary restaurant service with wait staff bringing food and beverages to **LESSEE'S** customers seated at tables within the **River Walk Patio Leased Premises**.

14.12 **LESSEE** shall abide by Vending Requirements and Regulations as set forth in Section 16-236 of the City Code of the City of San Antonio and Section 35-679 of the Unified Development Code.

14.12.1 Notwithstanding the preceding, **LESSEE** shall be allowed to provide entertainment to its customers in the form of traditional Mariachis so long as such Mariachis are employees of **LESSEE** and the Mariachis are not allowed to engage in solicitation of business to **LESSEE'S** customers or any other persons on the **Leased Premises** or **River Walk Patio Leased Premises**.

16. **AMENDING RESERVATIONS:** All references to Leased Premises in article XV shall also refer to the **River Walk Patio Leased Premises**.

Section 15.3 is added as follows:

15.3 **CITY** park police and other safety personnel shall have the right of entry on and into the **Leased Premises** as needed to investigate any circumstances, conditions, or person(s) that may appear to be suspicious. **LESSEE** shall cooperate with all reasonable requests by such personnel to facilitate public safety and orderly conduct by persons in the River Walk area. **LESSEE** expressly understands and agrees that **CITY** has not agreed to act and does not act as an insurer of **LESSEE'S** property and does not guarantee security against theft, vandalism, or injury of whatever nature and kind to persons or property.

17. **AMENDING HOLDING OVER:** All references to Leased Premises in article XVI shall also refer to the **River Walk Patio Leased Premises**.

18. **AMENDING QUIET ENJOYMENT:** All references to Leased Premises in article XVII shall also refer to the **River Walk Patio Leased Premises**.

19. **AMENDING CONFLICT OF INTEREST:** All references to Leased Premises in article XVIII shall also refer to the **River Walk Patio Leased Premises**.

Section 18.1 is amended as follows:

18.1 **LESSEE** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, 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 City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

Section 18.2 is added as follows:

18.2 LESSEE warrants and certifies, and this Lease Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City or any of its agencies such as City owned utilities.

20. AMENDING NOTICES: All references to Leased Premises in article XX shall also refer to the **River Walk Patio Leased Premises**.

Section 20.1 is amended as follows:

20.1 Notices to CITY required or appropriate under this Lease Agreement shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to:

City of San Antonio
Downtown Operations Department
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

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

or to such other address as may have been designated in writing by the City Manager of the CITY OF SAN ANTONIO from time to time.

Notices to LESSEE shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to LESSEE at:

Rio Plaza LP
1121 E. Pecan Suite 1212
San Antonio, Texas 78205

Or at such other address on file with the City Clerk as LESSEE may provide from time to time in writing to CITY.

21. AMENDING LIEN FOR RENT: All references to Leased Premises in article XXIII shall also refer to the **River Walk Patio Leased Premises**.
22. AMENDING EMINENT DOMAIN: All references to Leased Premises in article XXIV shall also refer to the **River Walk Patio Leased Premises**.

23. ESTOPPEL CERTIFICATES: Each party, within ten (10) days after notice from the other party, shall execute and deliver to the other party, a certificate stating whether the **Lease Agreement** is unmodified and in full force; whether the other party in default in performing any covenant, agreement or condition in the **Lease Agreement**; and such other information as may reasonably requested. The **CITY'S** Director of the Downtown Operations Department is authorized to execute any such certificates on behalf of the **CITY**.
24. OTHER TERMS: All other terms and provisions of the **Lease Agreement** remain unchanged by this amendment.

EXECUTED this _____, 2008.

LESSOR:

**CITY OF SAN ANTONIO,
A Texas Municipal Corporation**

LESSEE:

RIO PLAZA, L.P.

By:

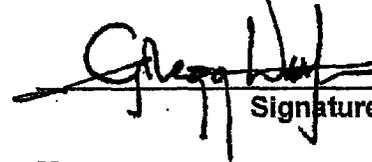
City Manager

By: Gregg Weston

Printed Name

ATTEST:

City Clerk


Signature

Manager

Title

112 E. Pecan, Suite 1212

Address

San Antonio, Tx 78205

APPROVED AS TO FORM:

City, State, and Zip Code

City Attorney

210-223-9141

Area Code/Telephone Number



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 24
Council Meeting Date: 6/12/2008
RFCA Tracking No: R-3479

DEPARTMENT: Downtown Operations

DEPARTMENT HEAD: Paula Stallcup

COUNCIL DISTRICT(S) IMPACTED:
Council District 1

SUBJECT:
Amendment of Lease Agreement with Rio Plaza, L.P.

SUMMARY:

This ordinance approves an amendment to a Lease Agreement with Rio Plaza, L.P. for use of City-owned property located in subsurface space under Crockett Street and adjacent River Walk patio space. The amendment affirms the assignment of the subsurface lease to Rio Plaza, L.P., extends the expiration date from June 30, 2014 to June 30, 2018, includes a provision whereby City will have the ability to collect an adjusted rental amount beginning on July 1, 2014 based on a Market Rental Study for the subsurface lease, reduces the footprint of the subsurface space to reflect unusable portions of space and combines a previous license agreement for River Walk patio space with the subsurface space in a single lease agreement. Since the City owns the subsurface space as well as the patio space, staff proposes a ten-year agreement which will combine these spaces into one lease agreement. This is an exception to the standard five-year patio leases on the RiverWalk.

BACKGROUND INFORMATION:

The amendment under consideration reduces the footprint of the leased premises located under Crockett Street from 7,754 square feet to 6,884 square feet and eliminates portions of the subsurface space that are inaccessible and unusable due to a utility room wall and a large tree ball root. The boundary line of the subsurface meets the River Walk patio boundary and reflects the current use of premises.

The amendment also combines the lease of Crockett Street subsurface space with the lease of 665.31 square feet of River Walk patio space currently in use by lessee under a previous lease agreement. The amendment further provides an automatic assignment upon the purchase of the adjoining property, as well as, approval by the Downtown Operations Director before assignment of the lease or sub-lease of leased premises. This provision would facilitate the pending sale of the property schedule for Summer 2008.

The term of the lease agreement is amended to July 1, 2008 through June 30, 2018. Previously, the term of the subsurface Lease Agreement was scheduled to expire on June 30, 2014. The

updated term includes an adjustment in rental rates for the subsurface space beginning on July 1, 2014 whereby the City may increase the rental rates for subsurface space which are currently based on a development agreement approved in 1994. These rates will be based on a Market Rental Study to be conducted by the City.

The current rental rate is based on a Market Rental Study conducted in June 2006, for the River Walk patio space is \$1.67 per square foot per month, and escalates at the rate of 5% each year. This River Walk patio lease space, currently used by Rio Plaza, L.P. is on a month-to-month basis at the rate of \$1.66 per square foot per month. If approved, River Walk patio leased premises will increase from 215.13 square feet to 665.31 square feet and monthly rental will increase from \$357.12 to \$1,111.07 at \$1.67 per square foot.

ISSUE:

Since the City owns the subsurface space as well as the patio space, staff proposes a ten-year agreement which will combine these spaces into one lease agreement. This is an exception to the standard five-year patio leases on the RiverWalk. The amendment will update the boundary lines for the subsurface space and the River Walk patio space to reflect current use based on a survey conducted in May 2008, and the Lease Agreement for use of River Walk patio space must reflect current rates and terms offered to other River Walk businesses. Additionally, the extension of the subsurface lease agreement includes an opportunity for the City to adjust the rental rate for use of the subsurface space based on a Market Rental Study to be conducted in upcoming years. Combining the two separate agreements into one agreement increases efficiency in contract monitoring and administration and makes it more convenient for the client.

ALTERNATIVES:

The available alternative is to not amend the Lease Agreement for subsurface space, thereby eliminating the opportunity to renew the lease of River Walk patio space, combine the two agreements and results in the loss of \$167,658 in revenue to the City over the ten-year term.

FISCAL IMPACT:

Under the terms of this Lease Agreement, Rio Plaza, L.P. will pay monthly rental of \$596.34 for use of the subsurface space under Crockett Street, which will increase annually based on Consumer Price Index, and monthly rental of \$1,111.07 for use of River Walk patio space which will increase at the rate of 5% per year for a total ten-year revenue of \$167,658.12. The proceeds generated from the lease of Subsurface space under Crockett Street will be deposited into the General Fund and proceeds generated from the lease of River Walk patio space will be deposited into the River Walk Capital Improvements Fund.

RECOMMENDATION:

Staff recommends approval of the Lease Amendment with Rio Plaza, LP to extend the existing lease expiration date, update the lease to reflect current usage and provide a provision for adjusted rental rates beginning July 1, 2014.

ATTACHMENT(S):

File Description	File Name
Signed Amendment to Lease Agreement	amendment.pdf
Discretionary Disclosure Form	dd.pdf
Voting Results	
Ordinance/Supplemental Documents	200806120530.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Paula Stallcup Director Downtown Operations

APPROVED FOR COUNCIL CONSIDERATION:

Pat DiGiovanni Deputy City Manager