(21.)

NPC:cls
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AN ORDINANCE 44737

AUTHORIZING EXECUTION OF AN AGREEMENT WITH THE TEXAS HIGHWAY DEPARTMENT PROVIDING FOR CONSTRUCTION, MAINTENANCE AND OPERATION OF A PUBLIC PARKING FACILITY ON INTERSTATE 37 RIGHT-OF-WAY FROM TENTH STREET TO NINTH STREET.

* * * * *

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

The City Manager is authorized to execute an agreement with the Texas Highway Department providing for construction, maintenance and operation of a public parking facility on Interstate 37 right-of-way from Tenth Street to Ninth Street. A copy of said agreement is attached hereto and incorporated herein by reference.

PASSED AND APPROVED this 19th day of December, 1974.

M A Y O R

Charles L. Becker

ATTEST: J H Fuselman
City Clerk

APPROVED AS TO FORM: [signature]
CityAttorney

74-63

AGREEMENT FOR PUBLIC PARKING
ON HIGHWAY RIGHTS-OF-WAY

THE STATE OF TEXAS

COUNTY OF BEXAR

This agreement made this 19th day of December, A.D. 1974, by and between the State Highway Department, hereinafter referred to as "State," party of the first part, and the City of San Antonio, Bexar County, Texas, hereinafter called the City, party of the second part.

WITNESSETH

WHEREAS, the City has requested the State to permit the construction, maintenance and operation of a public offstreet parking facility located on the route of Interstate Highway 37 under the portion of a structure from 10th Street (Sta. 497+89.15) and 9th Street (Sta. 502+23.75). and

WHEREAS, the State has indicated its willingness to approve the establishment of such facility conditioned that the City will enter into agreements with the State for the purpose of determining the respective responsibilities of the City and State with reference thereto, and conditioned that such use is definitely in the public interest and will not damage the highway facilities, impair safety, impede maintenance or in any way restrict the operation of the highway facility, all as determined from engineering and traffic investigations conducted by the State.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

I.

1. The parties hereto will prepare or provide for the construction plans for the facility, and will provide for the construction work as required by said plans. Said plans shall include a map or plat indicating detail limits of the facility, the design of the access control, necessary horizontal and vertical clearances from highway structures, adequate landscape treatment, and general layout; and they shall also delineate and define the construction responsibilities of both parties hereto and when approved shall be attached to the agreement and made a part thereof in all respects. Any future revisions or addition of permanent improvements shall be made after prior approval of the State.

2. Ingress and egress shall be allowed at all times to such facility for State forces and equipment when highway maintenance or construction operations are necessary, and for inspection purposes; and upon request, all parking or other

activities for periods required for such operations will be prohibited.

3. Parking regulations shall be established limiting parking to single unit motor vehicles of size and capacity no greater than prescribed for 1-1/2 ton trucks, such vehicles to conform in size and use to governing laws. Parking shall be permitted only in marked spaces.

4. Regulations shall be established prohibiting the parking of vehicles transporting inflammable or explosive loads and prohibiting use of the area in any manner for peddling, advertising, or other purposes not in keeping with the objective of a public facility. Overnight parking shall be prohibited. Parking areas shall be completely cleared of all vehicles for the period from 1 A.M. to 5 A.M. each day. The erection of signs other than those required for proper usage of the area will be prohibited. All signs shall be approved by the State.

5. Maintenance and operation of the parking facility shall be entirely the responsibility of the City. Such responsibility shall not be transferred, assigned or conveyed to a third party without approval of the State. Further, such responsibility shall include picking up trash, furnishing water, irrigating and otherwise caring for landscaping plants, prompt replacement of dead and sickly plants, mowing, and keeping the facility in a neat, clean and sanitary condition. Maintenance of all pavement markings shall be the responsibility of the City. Surveillance by police patrol to eliminate the possible creation of a nuisance or hazard to the public shall be provided. Hazardous or unreasonably objectionable smoke, fumes, vapor or odors shall not be permitted to rise above the grade line of the highway, nor shall the facility subject the highway to hazardous or unreasonably objectionable dripping, droppings or discharge of any kind, including rain or snow.

6. Any fees levied for use of the parking facility shall be nominal and no more than are sufficient to defray the cost of construction, maintenance and operation thereof, and shall be subject to State approval. Fee schedules shall be prominently posted at all times.

7. This provision is expressly made subject to the rights herein granted to both parties to terminate this agreement upon notice; and upon the exercise of any such right by either party, all obligations herein to make improvements to said facility shall immediately cease and terminate.

8. All structures located or constructed within the area covered by the agreement shall be fireproof. The storage of inflammable materials or other operations deemed to be a potential fire hazard shall be subject to regulation by the State.

9. If in the sole judgment of the State it is found at any future time that traffic conditions have so changed that the existence or use of the parking facility is impeding maintenance, damaging the highway facilities, impairing safety, or that the parking facility is not being properly operated, that it constitutes a nuisance, or if for any other reason it is the State's judgment that such facility is not in the public interest, this agreement under which the facility was constructed may be: (1) modified if corrective measures acceptable to both parties can be applied to eliminate the objectionable features of the facility, or (2) terminated and the use of the area as proposed herein discontinued.

10. Upon written notification by either party hereto that the parking facility should be discontinued, each party shall, within thirty (30) days, clear the area of all facilities that were its construction responsibility under this agreement, as necessary to restore the area to a condition satisfactory to the State.

11. It is understood that this agreement in no way modifies or supersedes the terms and provisions of any existing agreements between the parties hereto.

12. The City shall, insofar as it is legally permitted and subject to such limitations, indemnify the State against any and all damages and claims for damages, including those resulting from injury to or death of persons or for loss of or damage to property, arising out of, incident to or in any manner connected with its construction, maintenance or operation of the parking facility, which indemnification shall extend to and include any and all court costs, attorney's fees and expenses related to or connected with any claims or suits for damages and shall, if requested in writing by the State to do so, assist the State with or relieve the State from defending any suit brought against it. Neither party hereto intends to waive, relinquish, limit or condition its right to avoid any such liability by claiming its governmental immunity.

When notified by the State to do so, the City, or its duly authorized agents or employees, shall promptly pay the State for the full cost of repairing any damages to the highway facilities which may result from construction, maintenance or operations of the parking facility and shall promptly reimburse the State for costs of construction and/or repair work made necessary by reason of such damages.

Nothing in this agreement shall be construed as creating any liability in favor of any third party or parties against either of the parties hereto nor shall it ever be construed as relieving any third party or parties from any liabilities of such third party or parties to the parties hereto, but the other party hereto shall become fully subrogated to the State and shall be entitled to maintain an action over and against third party or parties legally liable for having caused it to pay or disburse any sum of money hereunder.

13. The City shall provide necessary safeguards to protect the public on State-maintained highways including adequate insurance for payment of any damages which might result during the construction of the parking facility occupying such air-space or thereafter, and to save the State harmless from damages, to the extent of said insurance coverage and insofar as it can legally do so.

14. It is to be understood that the State by execution of this agreement does not impair or relinquish the State's right to use such land for right-of-way purposes when it is required for the construction or reconstruction of the traffic facility for which it was acquired, nor shall use of the land under such agreement ever be construed as abandonment by the State of such land acquired for highway purposes.

II.

The City, for itself, its personal representatives, successors and interests and assigns, as part of the consideration hereof, does hereby covenant and agree as a

covenant running with the land that: (1) no person, on the ground of race, color or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facility; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that the City shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49 Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 12, Non-discrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That if in the event of any breach of the above nondiscrimination covenants, the State shall have the right to terminate the lease and re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures, the City of San Antonio on the 19th day of December A.D., 1974, and the State on the _____ day of _____ A.D., 19____.

City of San Antonio

By: _____
Title City Manager

ATTEST:

_____
Title City Clerk

STATE OF TEXAS

Certified as being executed for the purpose and effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved by the State Highway Commission.

By: _____
State Highway Engineer

APPROVAL RECOMMENDED:

_____
District Engineer

_____
Chief Engineer of Maintenance Operations

_____
Chief Engineer of Highway Design