

AN ORDINANCE 2013-02-21-0128

**AUTHORIZING TEN YEAR LICENSE AGREEMENTS WITH  
TWO PRIVATE PROPERTY OWNERS IN MARKET SQUARE  
TO ENCROACH OVER CITY-OWNED PROPERTY IN  
EXCHANGE FOR A \$1,000.00 FEE PER ENCROACHMENT.**

\* \* \* \* \*

**WHEREAS**, the licensed improvements or facilities will not be located on, extend onto, or intrude on (A) the roadway; or (B) a part of the sidewalk needed for pedestrian use;

**WHEREAS**, the licensed improvements or facilities will not create a hazardous condition or obstruction of vehicular or pedestrian travel on the municipal street; and

**WHEREAS**, the design and location of the licensed improvements and facilities include all reasonable planning to minimize potential injury or interference to the public in the use of the municipal street.

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

**SECTION 1.** The City Manager or her designee is authorized and directed to execute and deliver on behalf of the City an instrument in substantially the form attached as **Attachments I and II**, which are incorporated for all purposes as if fully set forth. The City Manager and her designee should take all other actions necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing all necessary or convenient ancillary instruments and agreements.

**SECTION 2.** Both the licenses authorized by this ordinance may, despite their written terms, be assigned by the licensee one time not later than 90 days after the effective date of this Ordinance.

**SECTION 3.** Funds generated by this ordinance will be deposited into Fund 29604001, Internal Order 228000000148 and General Ledger 4407720.

**SECTION 4.** 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.

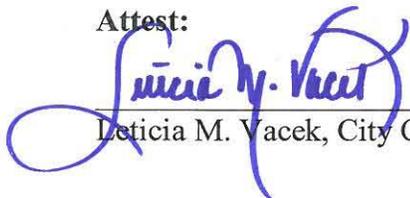
**SECTION 5.** This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

**PASSED AND APPROVED** this 21<sup>st</sup> day of February 2013.



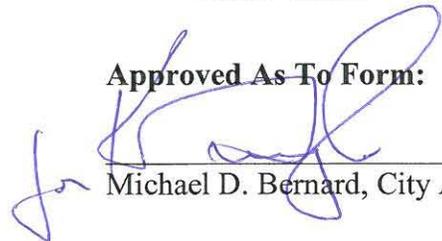
**M A Y O R**  
Julián Castro

**Attest:**



\_\_\_\_\_  
Leticia M. Vacek, City Clerk

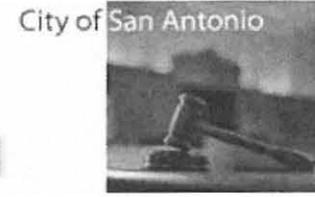
**Approved As To Form:**



\_\_\_\_\_  
Michael D. Bernard, City Attorney



Request for  
**COUNCIL  
ACTION**



## Agenda Voting Results - 13

<b>Name:</b>	9, 10, 12, 13, 15, 16A, 16B, 17, 18, 19, 20, 21, 25, 26A, 26B, 26C						
<b>Date:</b>	02/21/2013						
<b>Time:</b>	09:56:55 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing ten year license agreements with two private property owners in Market Square to encroach over City-owned property in exchange for a \$1,000.00 fee per encroachment. [Ed Belmares, Assistant City Manager; Felix Padron, Director, Culture and Creative Development]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				x
David Medina Jr.	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7	x					
W. Reed Williams	District 8		x			x	
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

## Attachment I

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### License Agreement (Meza, 110 Produce Row)

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

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#### 1. Identifying Information.

**Authorizing Ordinance:**

**Licensee:** Carlos Meza

**Licensee’s Address:** 1554 Palmer, Laredo, Texas 78045

**Term:** 10 Years

**Fee:** \$2,000

**Premises:** Encroachment upon areas A and B as described below:

**A:** A portion of the public right-of-way of Produce Row in front of 110 Produce Row (Lot 9, NCB 340) encroached upon by Licensee within the Scope of the License.

**B:** A portion of the public right-of-way of an alley to the south of 110 Produce Row (Lot 9, NCB 340) encroached upon by Licensee within the Scope of the License.

**Scope of License, Encroachment A:** Covered balcony with vertical supports sitting in Produce Row right-of-way, as graphically depicted on **Exhibit A**, which is incorporated by reference for all purposes as if fully set forth.

**Scope of License, Encroachment B:** Fire-exit stairway in alley right-of-way, as graphically depicted on **Exhibit B**, which is incorporated by reference for all purposes as if fully set forth.

**Effective Date:** The effective date of the Authorizing Ordinance

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

## 2. Grant of License, Renewal.

2.01. Licensor grants Licensee a license ("License") to use, maintain, and operate the Premises within the Scope of the License. This License is limited to the stated Term and is conditioned on Licensee's payment of the Fee. This license does not relieve Licensee of any other approvals, permits, or licenses that may otherwise be required including but not limited to right-of-way management permits. This license is subject to all pre-existing rights of the San Antonio Water System, CPS Energy, telecommunications and cable companies, and others who have rights in the Premises. Licensor expressly disclaims a covenant of quiet enjoyment as to this License.

2.02. The fee to renew this License for an additional ten-year term is the fee charged for the original term, adjusted according to changes in the Consumer Price Index—All Urban Consumers, CUUR0000SA0, Not Seasonally Adjusted, U.S. city average, All items, 1982-84=100. Adjustments are determined by multiplying the Fee under this License by a fraction, the numerator being the index number for the 114<sup>th</sup> month of the term then in effect and the denominator being the index number for October 2012. If the product is greater than the previous term's Fee, Tenant will pay this greater amount as the Fee for a renewal term. The Fee will never be less than the fee for the previous term. If the Department of Labor ceases publishing the Consumer Price Index—All Urban Consumers, CUUR0000SA0, Not Seasonally Adjusted, U.S. city average, All items, 1982-84=100, Licensor may specify an alternative index to be used.

2.03. The original term and each successive renewal term may be renewed by Licensee delivering to Licensor both written notice of intent to renew and the fee for the renewal term, calculated as specified above. The notice of intent to renew must show how Licensee calculated the renewal fee.

### **3. Restrictions on Use/Recording.**

3.01. This License does not grant Licensee authority to use any public rights-of-way beyond the Premises.

3.02. This License grants only a privilege, not a real property interest. Licensor may enter the Premises at any time to assert its real property interest or for other purposes not interfering unreasonably with the Scope of License.

3.03. A Memorandum of License Agreement in form satisfactory to Licensor will be recorded by Licensor in the Official Public Records of Real Property of Bexar County, Texas. Licensee must pay the recording fees.

### **4. License Fee.**

Licensee must pay the Fee in a one-time lump sum, on or before the Effective Date. The Fee must be paid at the Department of Downtown Operations, 400 N. St. Mary's, Suite 100, San Antonio, Texas 78205.

### **5. Construction, Maintenance, and Operations.**

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

5.02. **No Liability.** Licensor assumes neither liability nor expense under this License. Licensor is not liable to Licensee or otherwise for damage to the Premises arising from or related to activities of Licensor in the vicinity.

5.03. **Relocation.** If Licensor's needs require relocation, maintenance, or adjustment in the Premises or improvements by Licensee thereto, the relocation, maintenance, or adjustments will be at Licensee's sole cost and expense.

5.04. **Maintenance.** Licensee, at its sole cost and expense, must maintain all improvements it has constructed or will construct or install on the Premises. In so doing, Licensee must adhere to all applicable safety standards and must adhere to all applicable federal, state, or local laws, rules, or regulations.

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

**5.06. Contractors and Subcontractors.** Licensee must promptly pay anyone performing work on behalf of Licensee who could file a mechanics' or materialmen's lien on the Premises. If any such lien is filed, Licensor may treat it as an event of default and terminate this License by delivering 45 days prior written notice to Licensee. But if the lien is removed or released of record within the notice period, this License remains in effect. Licensee remains obligated to clear the lien without cost to Licensor even after termination.

## **6. Indemnity.**

6.01. These definitions apply to the indemnity provisions of this Contract:

6.01.01. **"Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising, in whole or in part, out of acts or omissions of any person other than an Indemnitee that give rise to assertions of Indemnitee liability under this Contract, whether or not the person is a party to this agreement. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death. Indemnified Claims also include claims in which an Indemnitee shares liability with the Indemnitor, excluding only claims as to which Indemnitees are solely negligent.**

6.01.02. "Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

6.01.03. "Indemnitor" means Licensee.

### **6.02. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.**

6.03. **If Indemnitor and one or more Indemnitees are finally adjudged to be jointly liable for Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees' adjudicated share of liability. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.**

6.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees..

6.05. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

6.06. In addition to the indemnity required under this Contract, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

6.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

6.08. Nothing in this Contract waives governmental immunity or other defenses of Indemnitees under applicable law.

6.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

## **7. Termination.**

7.01. Licensor may terminate this License at any time before expiration by giving Licensee 30 days' written notice.

7.02. Upon expiration or termination, all rights and privileges immediately cease, and Licensee must immediately cease use of the Premises. Licensor may direct Licensee to either (a) abandon the encroaching improvements and appurtenances, including lines

and equipment; or (b) remove all or any part of them and restore the Premises, at Licensee's sole cost, to their condition before encroachments were installed. Improvements or appurtenances not removed within 90 days after termination, whether by expiration or otherwise, become the property of Licensor. Licensor may, without liability to Licensee, dispose of such property at a public or private sale, without notice to Licensee. Licensee is liable for Licensor's costs incurred in connection with Licensee's property.

### **8. Assignment/Sublicensing.**

This License cannot be assigned or sublicensed, other than to Licensee's parent or subsidiaries. Licensee must give Licensor 30 days' written notice before such an assignment or sublicense. Licensee cannot lease or sublease the Premises.

### **9. Condemnation.**

If the Premises are taken, in whole or in part, by eminent domain, Licensor may terminate this License as of the date title to the taken land vests in the condemning authority. Licensee waives any claim to condemnation proceeds paid to Licensor. Licensee may seek a separate condemnation award.

### **10. Attorney's Fees and Court Costs.**

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

### **11. Taxes and Licenses.**

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

### **12. Prohibited Interests in Contracts.**

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

- (a) a City officer or employee;
- (b) his parent, child or spouse;

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

**12.02.** Licensee warrants and certifies as follows:

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

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

**13. Licensee Financing.**

Licensee may encumber Licensee's personal property on the Premises, and any lien of Licensor (whether by statute or under this License) is subordinate to the financing lien. Licensor will acknowledge this subordination in writing, if the proffered documents do not modify the rights and obligations of this License. The City Manager or a designee may execute such documents, without a further ordinance. But if the documents modify the License, then a specific ordinance is required.

**14. Lien for License Fee, Taxes, Fees and Other Charges.**

Licensee grants Licensor a security interest in Licensee's property on the Premises. The security interest secures payment of the Fee and all taxes, fees, and other charges owing because of Licensee's use under this License. Licensee may dispose of the property free of the security interest in the ordinary course of business. At Licensor's request, Licensee must execute a financing statement.

**15. Consent/Approval of Licensor.**

When Licensor's consent and approval is called for under this License, the consent and approval may be granted or withheld by the Director of Downtown Operations, unless the City Charter requires Council action.

## **16. Appropriations.**

All obligations of the City of San Antonio under this instrument are funded at the discretion of City Council. The City need not pay any sum not appropriated by City Council.

## **17. Miscellaneous Provisions**

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

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

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

**17.04. Yielding Up.** Licensee must, at termination, whether by expiration or otherwise, yield the Premises up peacefully.

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

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

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

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

**17.09. Modification.** This License may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

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

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

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

With a copy  
to

Director, Downtown Operations  
Department  
City of San Antonio  
400 N. St. Mary's, Suite 100  
San Antonio, Texas 78205

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

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

**17.14. Further Assurances.** The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. But no such additional document(s) may alter the rights or obligations of the parties under this License

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

**Remainder of Page Intentionally Left Blank**

**18. Public Information.**

Licensee acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

**In Witness Whereof**, the parties have caused their representatives to set their hands:

**Licensor:**

**Licensee:**

**City of San Antonio,**  
a Texas municipal corporation

By: \_\_\_\_\_

\_\_\_\_\_  
Carlos Meza

Printed  
Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

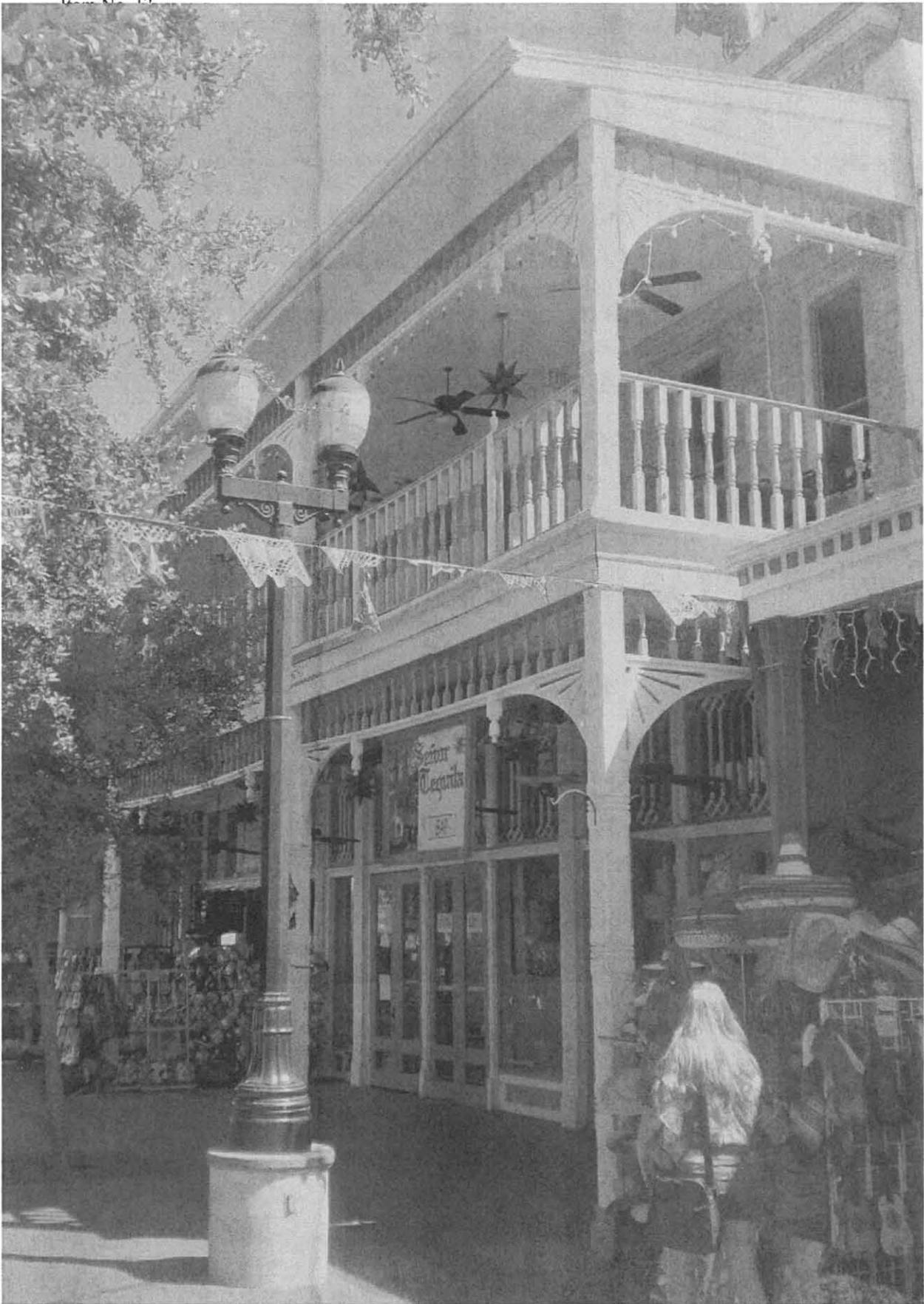
**Approved As To Form:**

\_\_\_\_\_  
City Attorney

**Exhibit A**

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KB [2/21/2012]  
Item No. 13



KB [2/21/2012]  
Item No. 13



KB [2/21/2012]  
Item No. 13



**Exhibit B**



KB [2/21/2012]  
Item No. 13



## Attachment II

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### License Agreement (Velasquez, 112 Produce Row)

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

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#### 1. Identifying Information.

**Authorizing Ordinance:**

**Licensee:** Paulino B. and Petra R. Velasquez

**Licensee's Address:** 112 Produce Row, San Antonio, Texas 78207

**Term:** 10 Years

**Fee:** \$1,000

**Premises:** A portion of the public right-of-way of Produce Row and Concho and next to of 112 Produce Row (Lot 10, NCB 340) encroached upon by Licensee within the Scope of the License

**Scope of License:** Overhang with vertical supports sitting in right-of-way, as graphically depicted on **Exhibit A**, which is incorporated by reference for all purposes as if fully set forth.

**Effective Date:** The effective date of the Authorizing Ordinance

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

## **2. Grant of License, Renewal.**

2.01. Licensor grants Licensee a license ("License") to use, maintain, and operate the Premises within the Scope of the License. This License is limited to the stated Term and is conditioned on Licensee's payment of the Fee. This license does not relieve Licensee of any other approvals, permits, or licenses that may otherwise be required including but not limited to right-of-way management permits. This license is subject to all pre-existing rights of the San Antonio Water System, CPS Energy, telecommunications and cable companies, and others who have rights in the Premises. Licensor expressly disclaims a covenant of quiet enjoyment as to this License.

2.02. The fee to renew this License for an additional ten-year term is the fee charged for the original term, adjusted according to changes in the Consumer Price Index—All Urban Consumers, CUUR0000SA0, Not Seasonally Adjusted, U.S. city average, All items, 1982-84=100. Adjustments are determined by multiplying the Fee under this License by a fraction, the numerator being the index number for the 114<sup>th</sup> month of the term then in effect and the denominator being the index number for October 2012. If the product is greater than the previous term's Fee, Tenant will pay this greater amount as the Fee for a renewal term. The Fee will never be less than the fee for the previous term. If the Department of Labor ceases publishing the Consumer Price Index—All Urban Consumers, CUUR0000SA0, Not Seasonally Adjusted, U.S. city average, All items, 1982-84=100, Licensor may specify an alternative index to be used.

2.03. The original term and each successive renewal term may be renewed by Licensee delivering to Licensor both written notice of intent to renew and the fee for the renewal term, calculated as specified above. The notice of intent to renew must show how Licensee calculated the renewal fee.

## **3. Restrictions on Use/Recording.**

**3.01.** This License does not grant Licensee authority to use any public rights-of-way beyond the Premises.

**3.02.** This License grants only a privilege, not a real property interest. Licensor may enter the Premises at any time to assert its real property interest or for other purposes not interfering unreasonably with the Scope of License.

**3.03.** A Memorandum of License Agreement in form satisfactory to Licensor will be recorded by Licensor in the Official Public Records of Real Property of Bexar County, Texas. Licensee must pay the recording fees.

#### **4. License Fee.**

Licensee must pay the Fee in a one-time lump sum, on or before the Effective Date. The Fee must be paid at the Department of Downtown Operations, 400 N. St. Mary's, Suite 100, San Antonio, Texas 78205.

#### **5. Construction, Maintenance, and Operations.**

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

**5.02. No Liability.** Licensor assumes neither liability nor expense under this License. Licensor is not liable to Licensee or otherwise for damage to the Premises arising from or related to activities of Licensor in the vicinity.

**5.03. Relocation.** If Licensor's needs require relocation, maintenance, or adjustment in the Premises or improvements by Licensee thereto, the relocation, maintenance, or adjustments will be at Licensee's sole cost and expense.

**5.04. Maintenance.** Licensee, at its sole cost and expense, must maintain all improvements it has constructed or will construct or install on the Premises. In so doing, Licensee must adhere to all applicable safety standards and must adhere to all applicable federal, state, or local laws, rules, or regulations.

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

**5.06. Contractors and Subcontractors.** Licensee must promptly pay anyone performing work on behalf of Licensee who could file a mechanics' or materialmen's lien on the Premises. If any such lien is filed, Licensor may treat it as an event of default and terminate this License by delivering 45 days prior written notice to Licensee. But if the lien is removed or released of record within the notice period, this License remains in

effect. Licensee remains obligated to clear the lien without cost to Licensor even after termination.

## **6. Indemnity.**

6.01. These definitions apply to the indemnity provisions of this Contract:

6.01.01. **“Indemnified Claims” mean all loss, cost, liability, or expense, directly or indirectly arising, in whole or in part, out of acts or omissions of any person other than an Indemnitee that give rise to assertions of Indemnitee liability under this Contract, whether or not the person is a party to this agreement. Indemnified Claims include attorneys’ fees and court costs and include claims arising from property damage and from personal or bodily injury, including death. Indemnified Claims also include claims in which an Indemnitee shares liability with the Indemnitor, excluding only claims as to which Indemnitees are solely negligent.**

6.01.02. **“Indemnitees” means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.**

6.01.03. **“Indemnitor” means Licensee.**

### **6.02. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.**

**6.03. If Indemnitor and one or more Indemnitees are finally adjudged to be jointly liable for Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees’ adjudicated share of liability. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.**

6.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees..

6.05. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel’s hourly rates do not exceed the usual and customary charges for counsel handling sophisticated

and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

6.06. In addition to the indemnity required under this Contract, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

6.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

6.08. Nothing in this Contract waives governmental immunity or other defenses of Indemnitees under applicable law.

6.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

## **7. Termination.**

7.01. Licensor may terminate this License at any time before expiration by giving Licensee 30 days' written notice.

7.02. Upon expiration or termination, all rights and privileges immediately cease, and Licensee must immediately cease use of the Premises. Licensor may direct Licensee to either (a) abandon the encroaching improvements and appurtenances, including lines and equipment; or (b) remove all or any part of them and restore the Premises, at Licensee's sole cost, to their condition before encroachments were installed. Improvements or appurtenances not removed within 90 days after termination, whether by expiration or otherwise, become the property of Licensor. Licensor may, without liability to Licensee, dispose of such property at a public or private sale, without notice to Licensee. Licensee is liable for Licensor's costs incurred in connection with Licensee's property.

## **8. Assignment/Sublicensing.**

This License cannot be assigned or sublicensed, other than to Licensee's parent or subsidiaries. Licensee must give Licensor 30 days' written notice before such an assignment or sublicense. Licensee cannot lease or sublease the Premises.

## **9. Condemnation.**

If the Premises are taken, in whole or in part, by eminent domain, Licensor may terminate this License as of the date title to the taken land vests in the condemning authority. Licensee waives any claim to condemnation proceeds paid to Licensor. Licensee may seek a separate condemnation award.

## **10. Attorney's Fees and Court Costs.**

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

## **11. Taxes and Licenses.**

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

## **12. Prohibited Interests in Contracts.**

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

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

**12.02.** Licensee warrants and certifies as follows:

(c) Licensee and its officers, employees and agents are neither officers nor employees of the City.

(d) Licensee has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

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

**13. Licensee Financing.**

Licensee may encumber Licensee's personal property on the Premises, and any lien of Licensor (whether by statute or under this License) is subordinate to the financing lien. Licensor will acknowledge this subordination in writing, if the proffered documents do not modify the rights and obligations of this License. The City Manager or a designee may execute such documents, without a further ordinance. But if the documents modify the License, then a specific ordinance is required.

**14. Lien for License Fee, Taxes, Fees and Other Charges.**

Licensee grants Licensor a security interest in Licensee's property on the Premises. The security interest secures payment of the Fee and all taxes, fees, and other charges owing because of Licensee's use under this License. Licensee may dispose of the property free of the security interest in the ordinary course of business. At Licensor's request, Licensee must execute a financing statement.

**15. Consent/Approval of Licensor.**

When Licensor's consent and approval is called for under this License, the consent and approval may be granted or withheld by the Director of Downtown Operations, unless the City Charter requires Council action.

**16. Appropriations.**

All obligations of the City of San Antonio under this instrument are funded at the discretion of City Council. The City need not pay any sum not appropriated by City Council.

**17. Miscellaneous Provisions**

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

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

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

**17.04. Yielding Up.** Licensee must, at termination, whether by expiration or otherwise, yield the Premises up peacefully.

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

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

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

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

**17.09. Modification.** This License may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

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

**17.11. Notices.** Notices must be in writing and by certified mail, return receipt requested. Notice is complete three calendar days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does

not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice. Unless changed, notice to Licensee goes to Licensee's address specified at the beginning, and notice to Licensor goes to:

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

With a copy  
to

Director, Downtown Operations  
Department  
City of San Antonio  
400 N. St. Mary's, Suite 100  
San Antonio, Texas 78205

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

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

**17.14. Further Assurances.** The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. But no such additional document(s) may alter the rights or obligations of the parties under this License

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

**18. Public Information.**

Licensee acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

**In Witness Whereof**, the parties have caused their representatives to set their hands:

**Licensor:**

**Licensee:**

**City of San Antonio,**  
a Texas municipal corporation

By: \_\_\_\_\_

\_\_\_\_\_  
Paulino B. Velasquez

Printed  
Name: \_\_\_\_\_

\_\_\_\_\_  
Petra R. Velasquez

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved As To Form:**

\_\_\_\_\_  
City Attorney

**Exhibit A**

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