

AN ORDINANCE **2009 - 11 - 05 - 0889**

EXTENDING AND AMENDING THE AGREEMENT WITH THE SAN ANTONIO PARKS FOUNDATION FOR THE "FIESTAS FANTASIAS" FIESTA EVENT AT MARKET SQUARE.

* * * * *

WHEREAS, the City entered into a five-year license agreement with the San Antonio Parks Foundation in December 2004 for the Fiestas Fantasias event held during Fiesta at Market Square through 2009; and

WHEREAS, the City Council approved two amendments to this license agreement in 2006 and 2008 which provided a provision wherein the Parks Foundation could renegotiate the fiscal structure of the agreement should the Fiesta Carnival be relocated from the downtown area; and

WHEREAS, in 2008, upon relocation of the Fiesta Carnival to the Alamodome, this provision was triggered and the payment structure was subsequently amended; and

WHEREAS, prior to these amendments the Parks Foundation paid the City of San Antonio an annual license fee for a minimum guarantee of \$110,000.00 with a 50/50 split for all net revenue over \$220,000.00; and

WHEREAS, following the relocation of the carnival, the fiscal structure was redefined to eliminate the flat license fee and create an equal sharing of all net revenues with a 50/50 split; and

WHEREAS, city staff recognize the need to continue a Fiesta event in Market Square; however, it is also in the City's best interest to go through the process to determine whether another organization can produce the event without the City's support for security; and

WHEREAS, therefore, the City will be issuing a Request for Proposal for a 2011 Fiesta event in Market Square; **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 or her designee is hereby authorized to execute an amendment to the agreement with the San Antonio Parks Foundation for the "Fiestas Fantasias" Fiesta event at Market Square. A copy of the draft amendment is attached hereto and incorporated herein for all purposes as **Attachment I**, provided however such amendment shall not be executed until such time as the draft

amendment is changed to reflect the following: the term shall be for one (1) year and there shall be no renewal options.

SECTION 2. The City Manager, or her designee, or the Director of the Downtown Operations or her designee is hereby directed to issue a Request for Proposal no later than May 1, 2010 soliciting proposals for the 2011 Fiesta Event at Market square.

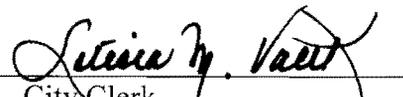
SECTION 3. The revenue generated from the extension of this contract will be deposited to Fund 29604001 Market Square Improvements Fund, General Ledger 4407700, entitled C&R Commissions from Contracts, Internal Order 219000000015, Market Square Association Fiesta Concessions.

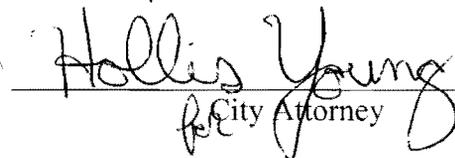
SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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 shall become effective immediately upon passage by eight (8) or more affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

PASSED AND APPROVED this 5th day of November 2009.


M A Y O R

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
City Attorney

Agenda Item:	22						
Date:	11/05/2009						
Time:	11:50:40 AM						
Vote Type:	Other: Parks Fndnt & RFP for 2011 Fiesta Event						
Description:	An Ordinance extending and amending the agreement with the San Antonio Parks Foundation for the "Fiestas Fantasias" Fiesta event at Market Square. [Pat DiGiovanni, Deputy City Manager; Paula X. Stallcup, Director, Downtown Operations]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				x
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

**FOURTH AMENDMENT TO LICENSE AGREEMENT
FIESTA EVENT AT MARKET SQUARE**

**State of Texas
County of Bexar**

This Fourth Amendment to License Agreement – Fiesta Event at Market Square is made and entered into between the City of San Antonio, A Texas Municipal Corporation (“City”), acting herein through its City Manager pursuant to Ordinance # _____ passed and approved on _____, 2009 and San Antonio Parks Foundation, a Texas Non-Profit Corporation (“Licensee”), which amends the License Agreement – Fiesta Event at Market Square, passed and approved pursuant to Ordinance #100180 on December 16, 2004. First amendment was approved November 30, 2006 via Ordinance #2006-11-30-1370, which authorized revisions to the agreement, including the addition of Item 5.8 that authorized LICENSEE to renegotiate the annual license fee and/or percentage of net revenues payable to City in the event that the Fiesta San Antonio Carnival location was relocated so that it is not in the vicinity of Market Square. Second amendment was approved February 21, 2008 via Ordinance #2008-02-21-0126, which modified the premises of the event to add Hidalgo Plaza and revised the Parks Foundation’s payment to the City of San Antonio for 2008 & 2009. Third amendment was approved May 8, 2008 via Ordinance #2008-05-08-0381, which established a payment to the City of 50% of net revenues above \$89,174.00 in 2008 and established a 50/50 split of all net revenues in 2009. City and LICENSEE hereby agree to amend the License Agreement as follows:

1. Amending Article 3, DEMISE OF PREMISES

The following section 3.7 is added:

- 3.7 Hours of operation for Fiesta event in Market Square shall be no more than from 10 a.m. until 12:00 a.m. midnight daily, except for the last Saturday of Fiesta which shall be no more than from 10 a.m. until 1 a.m. Days and hours for set-up shall be no more than from 12:00 p.m. noon beginning four (4) calendar days prior to the first day of Fiesta until 10 a.m. on the first day of Fiesta each year. Days and hours of removal (“tear down”) shall be no more than from 1:00 a.m. on the first day after the last day of Fiesta until 5:00 p.m. on the second day after the last day of Fiesta for each year. The beginning and ending dates of Fiesta for the following years are as follows: April 16-25, 2010; April 8-17, 2011; April 20-29, 2012; April 19-28, 2013; April 19-27, 2014; April 17-26, 2015.

2. Amending Article 5. CONSIDERATION

The following section 5.1.6 is added to make payment due on same date as audit:

- 5.1.6 LICENSEE shall make payment in full to CITY no later than August 31 in each year LICENSEE conducts Fiesta event in Market Square.

The second sentence of section 5.5 is revised to change July 31 to August 31 and read as follows:

- 5.5 LICENSEE agrees to provide a deposit in the amount of Ten Thousand dollars (\$10,000.00) in the form of either a cashiers check or certified check to ensure compliance with the terms of this agreement. LICENSEE shall remit this deposit not later than April 1 in each Event year and CITY shall release this deposit, less deductions if any, along with a list of such deductions, upon the satisfactory restoration of the licensed premises at the sole discretion of the CITY through the Director of the Department of Downtown Operations, provided restoration and all fees due under this License Agreement have been made by August 31.

The following section 5.6 is revised to add new agreement years:

- 5.6 CITY and LICENSEE agree that annual license fee shall be waived and LICENSEE shall retain 50% of net revenue and shall pay CITY 50% of net revenue in 2010, 2011, and any additional option years of agreement as may be exercised.

3. Amending Article 7. TERM & TERMINATION

The following section 7.3 is added to extend term for two years with option to exercise up to two 2 year terms:

- 7.3 CITY and LICENSEE hereby agree to an extension of the term of this license agreement for a two (2) year period through August 31, 2011 on the same terms and conditions, except as amended herein. City Manager or her designee may authorize up to 2 two year options to extend agreement for 2012-2013 and 2014-2015, if agreeable to both parties.
- 7.4 Notwithstanding the preceding, either party may terminate this agreement no later than 180 days prior to Fiesta by giving written notice of such termination to the other party.

4. Amending Article 11. MAINTENANCE OF PREMISES

The following section 11.9 is amended to delete reference to Fiesta Carnival:

- 11.9 LICENSEE shall insure that all drinks or beverages (including beer) are dispensed only in plastic or paper containers not to exceed sixteen ounces (16 oz.) per unit ~~and that the price per 16 oz. unit shall be no less than the authorized price established by the City for the Carnival operator.~~

5. Amending Article 17. PERFORMANCE GUARANTEE

The following sections 17.1 and 17.2 are amended to delete the reference to the irrevocable letter of credit:

~~17.1—Contemporaneously with the execution of this License by LICENSEE and as condition to the effectiveness of this license, for each year of the Contract, Licensee shall provide CITY (in form and content satisfactory to the CITY at its sole discretion) an irrevocable letter of credit (ILOC) in the amount of Fifty thousand dollars (\$50,000.00) for the first year of the Agreement and in the amount of Seventy five thousand dollars (\$75,000.00) which shall provide security for Licensee's performance on its obligations hereunder. The initial ILOC will be effective for a period of one year from issuance. Subsequent ILOCs shall be due fifteen days prior to the expiration of the previous year's ILOC, and shall be required to remain effective until one hundred twenty (120) days after final expiration of this License. Any recovery by the CITY under the Letter of Credit shall be in addition to, and not in lieu of, any remedies which may be available to the CITY hereunder or under law or equity.~~

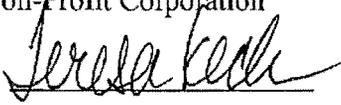
~~17.2—In the event that at any time during the Term, CITY shall draw all or any part of the Performance Guaranty (ILOC) pursuant to a LICENSEE Default or any other right of CITY to draw from the Performance Guaranty pursuant to the terms of this License, LICENSEE shall, within fifteen (15) calendar days of such draw by CITY, replenish the Performance Guaranty or provide an additional Performance Guaranty in the same form and subject to the same requirements as the Performance Guaranty, so that the aggregate amount of the Performance Guaranty is Fifty thousand dollars (\$50,000.00) for the first year of the Agreement and in the amount of Seventy thousand dollars (\$75,000.00). LICENSEE's failure to do so within such time period shall constitute a Default by LICENSEE.~~

CITY and LICENSEE agree that all other terms and conditions of the License Agreement remain unchanged.

IN WITNESS WHEREOF, we have affirmed our signatures on this ____ day of _____, 2009.

LICENSEE:

San Antonio Parks Foundation
A Texas Non-Profit Corporation

Signature: 
Teresa Keck, Executive Vice President

CITY:

City of San Antonio, Texas
A Texas Municipal Corporation

Signature: _____
Sheryl Sculley, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney