AZJ
01/29/2015
Item No. 8

AN ORDINANCE 2015-01-29-0059

AUTHORIZING AN AMENDED AND RESTATED PARKING AGREEMENT WITH THE UNIVERSITY OF TEXAS AT SAN ANTONIO TO REVISE THE LOCATION AND AVAILABIITY OF PARKING SPACES FOR USE BY THE INSTITUTE OF TEXAN CULTURES AND INCREASE THE PAYMENT TO THE CITY FROM $5000.00 TO $7,997.28 ANNUALLY IN CITY COUNCIL DISTRICT 1.

* * * * *

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

SECTION 1. The City Manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the City an amended parking agreement substantially in the form of **Attachment I**, which is incorporated by reference for all purposes as if fully set forth. The City Manager and designee, severally, should take all other actions reasonably necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing and delivering all ancillary instruments and agreements conducive to effectuating the transaction.

SECTION 2. Funds generated by this ordinance will be deposited into Fund 53001000, Internal Order 219000000139 and General Ledger 4401180.

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 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 **29th** day of **January, 2015**.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for **Martha G. Sepeda, Acting City Attorney**

Agenda Item:	**8 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 27)**
Date:	01/29/2015
Time:	11:23:36 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing an Amended and Restated Parking Agreement with the University of Texas at San Antonio to revise the availability of parking spaces for use by the Institute of Texan Cultures and increase the payment to the City from $5,000.00 to $7,997.28 annually. [Carlos Contreras, Assistant City Manager; Lori Houston, Director, Center City Development and Operations]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1		x				
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x			x	

Attachment I

Amended and Restated UTSA Parking Agreement

Effective Date:	_____, 20__
Original Ordinance:	2013-06-06-0389
Ordinance Authorizing Amended and Restated UTSA Parking Agreement:	
City:	City of San Antonio, a Texas municipal corporation
City's Address:	City Clerk, 100 Military Plaza, San Antonio, Texas 78205
UT:	The University of Texas at San Antonio
UT's Address:	One UTSA Circle San Antonio, Texas 78249-0605
Description of Parking Lots ("Parking Lots"):	Parking Lots shown in **Exhibit A**
ITC Visitor Parking Spaces:	Parking spaces within the area illustrated on **Exhibit B**

Predicate Facts

City owns the property described in **Exhibit A.**

UT operates the Institute of Texan Cultures ("ITC") and needs parking for visitors, employees, volunteers, and students.

UT and City previously entered into a similar agreement pertaining to the subject matter of this Agreement, dated August 9, 2005, authorized by City Council Ordinance 100852 on May 12, 2005, and terminated January 28, 2014. A subsequent Agreement between UT and City was authorized by City Council Ordinance 2013-06-06-0389 on June 6, 2013 with an effective date of January 29, 2014.

The Board of Regents of The University of Texas System provided an amended access easement to facilitate construction activities at the City's convention center and, as a part of the changes to the roadway, the parking booth used by City's tenant was relocated, necessitating a change in the location of the entry to the ITC visitor parking lot then in existence.

The change in the location of the entry to the visitor parking lot for ITC necessitated certain changes in that parking lot, including re-organizing the parking spaces and restriping, and UT carried out maintenance of the lot at the same time.

A portion of the work completed by UT relating to the visitor parking lot for ITC, and affecting as many as 20 parking spaces, inadvertently occurred on City property.

Pursuant to the Parking Agreement authorized by City Council Ordinance 10082, and the subsequent Agreement authorized by City Council Ordinance 2013-06-06-0389, UT paid to City a $5,000 parking fee for the use of 50 parking spaces per year.

The parties now wish to be governed wholly by this Amended and Restated UTSA Parking Agreement.

Rights and Obligations

1. Parking Rights, Payment.

1.01. City will designate 50 parking spaces ("Designated Parking Spaces") in a parking lot or garage convenient to the ITC, whether or not the spaces are located within the area shown on **Exhibit A,** for UT's sole use from 7:00 AM to 7:00 PM, seven days a week. The parties agree that the Designated Parking Spaces will include any and all spaces that are located in what is currently the visitor parking lot for the ITC and are located, in whole or in part, on property owned by the City ("ITC Visitor Parking Spaces"). The ITC Visitor Parking Spaces are designated for UT's sole use 24 hours a day, seven days a week. For the remainder of the Designated Parking Spaces, City will place appropriate signage, reasonably acceptable to UT, marking the Designated Parking Spaces, maintain the area in a condition satisfactory for use as parking, and control access to the parking areas in which the Designated Parking Spaces are located using the same means as at other City facilities. City may designate alternative parking spaces from time to time on 30-calendar-days notice, but any new location must also be convenient to ITC.

1.02 UT will provide City, at UT's expense, a survey drawing with field notes certified by a licensed surveyor, identifying UT's west boundary line adjoining City's property and showing any ITC Visitor Parking Spaces located in whole or in part on City property. Such survey will include field notes. The field notes and survey drawing will then become a part of this agreement as if originally a part thereof, identified as **Exhibit B**, and will be the definitive description of the ITC Visitor Parking Spaces. If UT does not provide the survey within 3 months of execution of this Agreement, City, through its director of Center City Development and Operations Department, may terminate this Agreement without any further cause, in its sole discretion.

1.03. In addition to the $5,000 fee paid by UT to City under the Agreement authorized by City Council Ordinance 2013-06-06-0389 for the use of 50 parking spaces for a one-year period beginning January 29, 2014, which amount the parties agree is not refundable, UT will pay City $1,668.96 upon execution of this Agreement for the use of the ITC Visitor Parking Spaces for 305 days (60 days withheld) during January 29, 2014 to January 28, 2015; there will be no charge for 60 day period before UT completed inadvertent construction of parking spaces on City property. Starting January 29, 2015, UT will pay City a pre-paid annual parking fee of $7,997.28 per 365 (or

366)-day period from January 29 through the following January 28 for the 50 Designated Parking Spaces City is providing to UT. Payment of each annual parking fee is due in advance not later than January 29 of each year at City of San Antonio Center City Development & Operations Department, Parking Division, 400 N. St. Mary's Street, San Antonio, Bexar County, Texas 78205. City will send invoices for payment to ITC Accounts Payable, 801 E. Cesar Chavez, San Antonio, TX 78205.

1.04. There are no restrictions on who UT may allow to park in the Designated Parking Spaces, but all such parkers must have window hangers, placards, decals, or a similar device to show parking authorization from UT, except that those who park in the ITC Visitor Parking Spaces need not have window hangers, placards, decals or a similar device.

1.05. City will give UT 50 passes for free parking during evening hours (after 7 p.m.) convenient to the Institute of Texan Cultures each calendar year of this Agreement, prorated for partial years, except during major downtown events during which parking is at a premium.

2. Buses and Delivery Vehicles.

Buses may enter the Parking Lots for free for the purpose of discharging or picking up visitors to the ITC. Buses must not park in the Parking Lots and shall discharge and pick up passengers on UT's property. Tractor- trailer and heavy duty trucks making deliveries or providing services to ITC may enter for free for the purpose of accessing UT's property for deliveries and loading and unloading, but must not park in the Parking Lots.

3. Term and Termination.

The term of this Parking Agreement is from January 29, 2014 until and including January 28, 2017. The term may be extended if both parties are agreeable to the period of extension, as well as any revisions to the Parking Agreement. Prior to January 28, 2017, UT may terminate this Parking Agreement at any time with 60 days prior written notice. After January 28, 2017, either party may terminate this Parking Agreement at any time with 60 days prior written notice. Upon the termination date of this Agreement in accordance with this section, City will refund to UT the prorated amount of the pre-paid parking fee. All days are calendar days. Upon termination UT will use all reasonable efforts to remove painted stripes on non-asphalt surfaces within the ITC Visitor Parking Spaces to a condition substantially equivalent to their pre-existing condition prior to being included in this agreement; however, City may waive this obligation.

4. Disclaimer of Condition.

UT accepts the Designated Parking Spaces as-is, where-is, with all faults. City disclaims all warranties regarding the Designated Parking Spaces and their suitability for any purpose, including but not limited to the purpose of worker and visitor parking.

5. Security.

City may, but shall have no obligation to, provide security for the Designated Parking Spaces.

6. City of San Antonio Ethics Code.

6.01. 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:

(i) a City officer or employee;

(ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10percent or more of the voting stock or shares of the business entity, or (ii) 10 percent or more of the fair market value of the business entity;

(iv) 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.

6.02. UT warrants and certifies that UT and its officers, employees and agents are neither officers nor employees of the City with a prohibited financial interest in this contract.

7. Miscellaneous.

7.01. *Place of Performance*. All obligations performable under this agreement must be performed in San Antonio, Bexar County, Texas.

7.02. *Successors*. This Agreement inures to the benefit of and be binding upon the successors and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

7.03. *Integration*. **This Agreement 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.**

7.04. *Modification*. This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to the foregoing, any of the terms of this Agreement may be modified at any time by the party entitled to the benefit thereof, but no such modification, express or implied, shall affect the right of the modifying party to require observance of either (i) the same term or condition as it applies on a subsequent or previous occasion or (ii) any other term hereof.

7.05. *Third Party Beneficiaries*. This Agreement benefits only the parties and their successors and permitted assigns. No third parties can enforce this agreement.

7.06. *Notices*. Any notice provided for or permitted hereunder shall be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble hereof. Notice is complete three days after its 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 given only upon actual receipt. Address for notice may be changed by giving notice hereunder.

7.07. *Counterparts*. This Agreement 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 agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

7.08. *Further Assurances*. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, can alter the rights or obligations of the parties as contained in this agreement.

7.09. *Assignment/Sublicensing*. This License may only be assigned or sublicensed by written permission of the Licensor authorizing such assignment or sublicense. The City Manager or her designee may authorize such assignment or sublicense on the same terms as the previous license.

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IN WITNESS WHEREOF, the parties have hereunto set their hands to be effective as of the Effective Date, which shall be the latter of the two dates below.

The University of Texas at San Antonio

By_____
Pamela S. Bacon
Associate Vice President for Business Affairs

Date: 12.04.2014

The City of San Antonio

By_____
Carlos J. Contreras, III
Assistant City Manager

Date:_____

Approved as to content:
Institute of Texan Cultures

By: _____
Name: Aaron S. Parks
Title: Assistant Executive Director

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Attachment:

Exhibit A: Parking Lots

Exhibit B: ITC Visitor Parking Spaces

Exhibit A
City-Owned Parking Lots

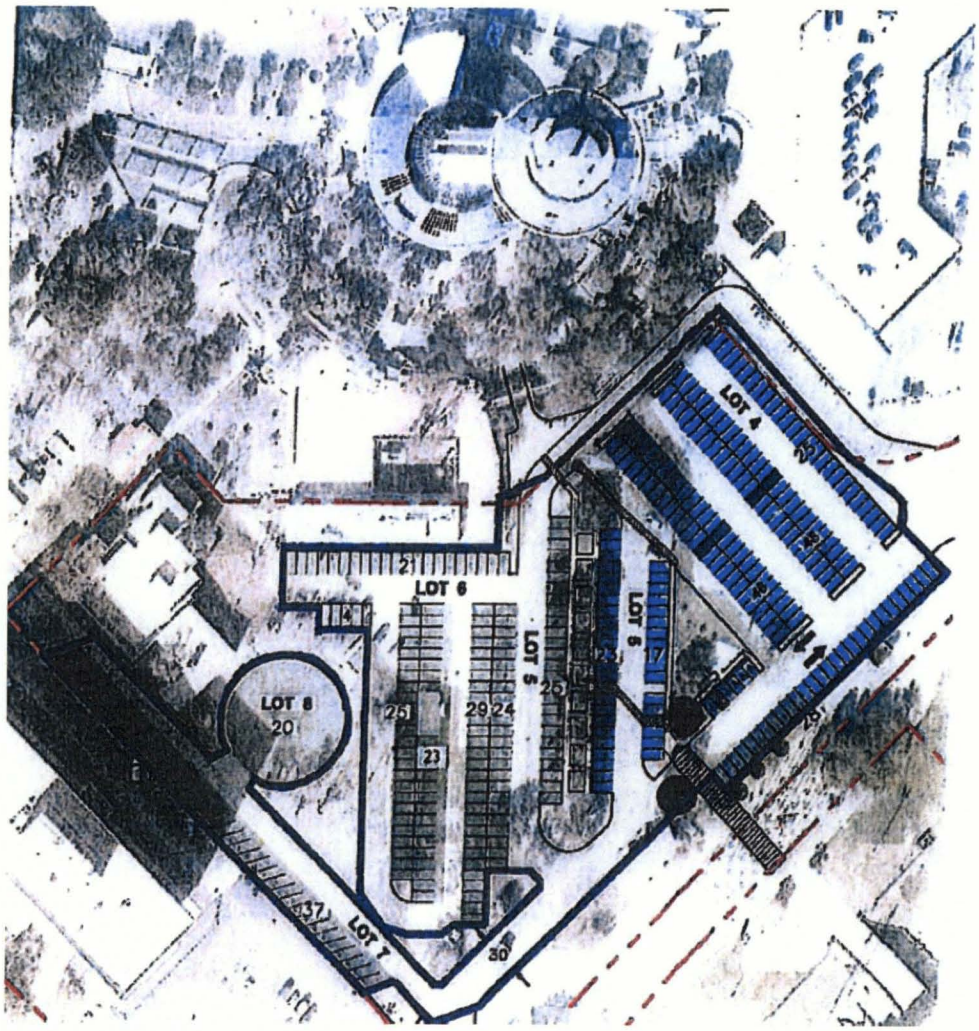

Exhibit "B"
Field Notes & Survey Drawings