KLB [04/06/06]
Item No. 21

2006-04-06-0442

AN ORDINANCE

AUTHORIZING A LICENSE FOR AN EXISTING CANOPY AND SUPPORTING POSTS EXTENDING INTO PUBLIC RIGHT OF WAY AT KARAM'S RESTAURANT, 121 N. ZARZAMORA ST., NCB 2289, DISTRICT 5, FOR A 10-YEAR TERM AND FOR A $5,000 FEE.

* * * * *

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

SECTION 1. The City Council authorizes and directs granting a license to encroach on public right of way in District 5, for a 10-year term and a $5,000 fee. In furtherance of the preceding, the City Council authorizes and directs the City Manager or her designee to execute and deliver on behalf of the City a License Agreement substantially in the form attached as **Attachment I**, which is incorporated into this ordinance by reference for all purposes as if it were fully set forth. The City Manager and her designee should take all other actions reasonably necessary or convenient to effectuate the transaction described in Attachment I, including agreeing to nonmaterial changes to its terms.

SECTION 2. The $5,000 fee generated by this ordinance will be deposited in to Fund 11001000, General Fund, Internal Order 224000000002, LICENSE AGREEMENTS IN ROW, General Ledger 4202410, License Agreements - Use of ROW, when received.

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 allocation 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 April 16, 2006.

PASSED AND APPROVED this 6th day of April 2006.

M A Y O R

PHIL HARDBERGER

Attest:

City Clerk

Approved As To Form:

City Attorney KLB

Attachment I

License Agreement
(Karam's Restaurant)

This License Agreement (License) is entered into by and between Licensee and the City of San Antonio, a Texas municipal corporation, (Licensor) pursuant to the Authorizing Ordinance.

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1. Pertinent Information.

Authorizing Ordinance
(No. and Date):

Project No. SP 309

Licensee: Karam's, Inc.

Licensee's Address: 121 N. Zarzamora St., San Antonio, Texas 78207

Term: 10 Years

Fee: $5,000

Premises: 121 N. Zarzamora Street, NCB 2289, San Antonio,

	Bexar County, Texas as graphically depicted in **Exhibit A**, which is incorporated herein by reference for all purposes as if it were fully set forth.
Scope of License:	Use, maintain, repair, and replace as necessary an existing canopy with supporting posts over public right-of-way adjacent to Karam's Restaurant
Effective Date:	October 9, 2005
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.

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.

3. Restrictions on Use/Recording

3.01 This License does not grant Licensee authority to use any area beyond the Premises. Canopies and posts must not be raised higher than their present height of eight feet, two inches.

3.02 This License grants only a privilege to use the Premises. This instrument does not convey any real property interest. Licensor reserves the right to enter upon the Premises at any time for asserting its real property interest or for other purposes not interfering unreasonably with Licensee's Scope of License. Nothing in this License Agreement impairs any existing easements.

3.03 A Memorandum of License Agreement, incorporated herein as **Exhibit B**, will be recorded by Licensor in the Official Public Records of Real Property of Bexar County, Texas. Licensee is responsible for recording fees.

4. License Fee

4.01. Licensee must pay the fee in five annual installments in advance. The installments are $1,000 each, and the first installment is due on or before the Effective Date of this License. The remaining four installments are due on or before each successive October 9.

4.02. The License Fee must be paid at the office of the Department of Asset Management, 114 W. Commerce St., 2nd Floor (% Property Disposition Manager), San Antonio, Texas 78205.

4.03. Failure to timely pay any part of the License Fee is a default and entitles Licensor to terminate on 10 days' notice and opportunity to cure.

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 in the Premises, (Licensee's Responsibilities).

5.02 No Liability. Licensor assumes no liability or no 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 constructed or installed by Licensee. 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 60 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. Specific Conditions

Intentionally omitted.

7. Indemnity

7.01 Licensee must indemnify Licensor and its elected officials, employees, agents, and representatives of and from any all loss, cost, liability, or expense, including court costs and attorneys fees, arising from or relating to (a) the grant of this License, (b) Licensee's activities under this License, (c) or Licensee's activities or presence on or about the Premises, whether or not authorized by this License.

7.02 Nothing in this License waives any governmental immunity or other defenses available to Licensor under Texas law and without waiving any defenses of the parties under Texas Law.

7.03 This indemnity expressly covers the consequences of indemnitees' own negligence.

7.04 Licensee must promptly advise Licensor in writing of any claim or subject to this indemnity and must investigate and defend such claim at Licensee's cost. Notwithstanding any insurance policy, Licensor may, at its own expense, participate in the defense without relieving Licensee of any of its indemnity obligations.

8. Insurance

8.01 Without limiting Licensor's rights to indemnity, Licensee must provide and maintain insurance, at its own expense, with companies admitted to do business in the State of Texas and with a rating of A- or better by A. M. Best and Company or provide evidence of self-insurance, in the following types and amounts:

	Type	Amount
1.	Employers' Liability during improvements to the Premises or an approved alternate plan at other periods during the Term.	$500,000 per category, with a waiver of subrogation in favor of Licensor
2.	Commercial General (Public) Liability – to include coverage for the following where the exposure exists: (a) Premises/Operations (b) Independent Contractors (c) Products/Completed (d) Personal Injury Liability (e) Contractual Liability (f) Explosion, Collapse and Underground Property (g) Broad Form Property Damage	For Bodily Injury and Property Damage: $1,000,000 per Occurrence, $2,000,000 general aggregate or its equivalent in Umbrella or Excess Liability coverage.
3.	Property Insurance -- for physical damage to the property of Licensee including improvements and betterments to the Premises.	Coverage for a minimum of 80% of the actual cash value of the improvements.

8.02 Licensor's Risk Manager may reasonably modify the requirements set forth above if he determines that such modification is in the Licensor's best interest. If Licensee believes the requested change is unreasonable, Licensee has 60 days to give notice of termination. The termination provisions hereof then apply.

8.03 With respect to the above required insurance, each insurance policy required by this License must contain the following clauses:

> "No insurance or self-insurance provided by Licensee can be canceled, limited in scope or coverage, or non-renewed until after 30 days' prior written notice has been given to:
>
> (a) City Clerk, City of San Antonio
> City Hall/Military Plaza
> P.O. Box 839966/2nd Floor, City Hall
> San Antonio, Texas 78283-3966
> Attention: Risk Manager
>
> **And**
>
> (b) Department of Asset Management
> City of San Antonio

P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: Property Disposition Manager"

"Any insurance or self-insurance provided by Licensee is primary to any insurance or self-insurance maintained by the City of San Antonio."

"Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, not in contribution with, insurance provided by this policy."

8.04 Each insurance policy required by this License, excepting policies for Workers' Compensation, Employer's Liability and Professional Liability, must contain the following clause:

"The City of San Antonio, its elected officials, employees, agents, and representatives are added as additional insureds."

8.06 Licensee must deliver to Licensor, within 30 days after the Effective Date, endorsements to the above-required policies adding the applicable clauses referenced above. Such endorsements must be signed by an authorized representative of the insurance company and show the signatory's company affiliation and title. Licensee must deliver to Licensor documentation acceptable to Licensor confirming the authority of those signing the endorsements.

8.07 The Notices and Certificates of Insurance must be provided to:

(a) City Clerk, City of San Antonio
P.O. Box 839966/2nd Floor, City Hall
San Antonio, Texas 78283-3966
Attn: Risk Manager

And

(b) Department of Asset Management
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
Attn: Property Disposition Manager

8.08 This License does not limit Licensee's liability arising out of or related to the Premises or Licensee's activities thereon.

8.09 Licensee waives all claims against Licensor for injury to persons or property on or about the Premises, whether or not caused by Licensor's negligence.

9. Termination

9.01 Either party may terminate this License at any time before expiration by giving the other 12 months' written notice. If Licensee terminates, it must remove the encroachment.

9.02 Upon expiration or termination, all rights and privileges immediately cease, and Licensee must immediately cease use of the Premises. Licensor, at its option, may direct Licensee to either (a) abandon the encroaching improvements and appurtenances, including lines and equipment; or (b) remove all or any part of the improvements and appurtenances and restore the Premises, at Licensee's sole cost, to original condition. Improvements or appurtenances not removed within 90 days after termination of the License, 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.

10. Assignment/Sublicensing

This License cannot be assigned or sublicensed by Licensee, other than to Licensee's parent or subsidiaries. Licensee must give Licensor 30 days prior written notice before assigning or sublicensing to a parent or subsidiary. Licensee cannot lease or sublease the Premises.

11. Condemnation

If the Premises are taken, in whole or in part, by eminent domain, then this License ceases on the date title to the land so taken or transferred vests in the condemning authority.

12. Taxes and Licenses

Licensee must pay, on or before their respective due dates, to the appropriate collecting authority, all federal, state, and local taxes, license fees, permit fees, debts, and obligations, now or hereafter levied on Licensee or its property or on the Premises, if any, and arising from or relating to Licensee's use thereof.

13. Prohibited Interests in Contracts

13.01. 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.

13.02 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.

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

14. Licensee Financing.

Licensee may encumber Licensee's personal property located within the Premises, and any lien of Licensor against Licensee's personal property (whether by statute or under the terms of this License) is subject and subordinate to such security interest. Licensor will execute such documents as Licensee's lenders may reasonably request in connection with any such financing, if the documents do not modify the rights and obligations of this License. The City Manager of the City of San Antonio or a designee, including the Director, Department of Asset Management, is authorized hereunder to execute such documents, without the necessity of a specific City of San Antonio ordinance. But if the documents modify the rights and obligations of the License, then the documents can be approved only by specific ordinance.

15. Lien for License Fee, Taxes, Fees and Other Charges.

Licensee grants Licensor a security interest in all Licensee's property now or hereafter placed on the Premises. The security interest secures payment of the Fee and all taxes, fees, and other charges to be paid by Licensee hereunder. Encumbered property may be disposed of free of the security interest in the ordinary course of business. At Licensor's request, Licensee must execute and deliver to Licensor a financing statement. This security interest is cumulative of any liens provided by law.

16. Consent/Approval of Licensor.

Licensor's consent and approval may be granted by the Director, Department of Asset Management, City of San Antonio, as designee of the City Manager, unless the City Charter requires that the City Council consent by the passage of a City ordinance.

17. Subsequent Transfer by Licensor.

17.01 Upon written request, Licensee must, in writing,

(a) subordinate this License to the interest of any transferee of the Premises and to the lien of any mortgage or deed of trust, now or hereafter in force encumbering the Premises and to all advances made or hereafter to be made upon the security thereof.

(b) attorn to any transferee of Licensor and

(c) if Licensee is not in default hereunder, execute and deliver a Certificate of Estoppel and Subordination, Non-Disturbance and Attornment Agreement in form and substance acceptable to Licensor, if the transferee agrees not to disturb Licensee's possession of the Premises.

17.02. Foreclosure. Licensee must attorn to the purchaser at any foreclosure sale and recognize such sale and such purchaser as Licensor, if the purchaser recognizes Licensee's rights under this License and agrees not to disturb Licensee's possession of the Premises so long as Licensee is not in default hereunder.

18. Miscellaneous Provisions

18.01. 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.

18.02. 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.

18.03. Release From Liability/Notice of Sale. If Licensor transfers ownership of the Premises, Licensor will have no liability or obligation relating to the period after transfer. Licensor's transferee will succeed to all Licensor's rights hereunder.

18.04. Yielding Up. Licensee must, at termination, whether by expiration or otherwise, yield the Premises up peacefully, including any improvements and fixtures (other than trade fixtures).

18.05. Authority To Execute. The party or parties executing this License on behalf of Licensee personally warrant that each of them has full authority to do so.

18.06. Acknowledgment Of Reading. The parties acknowledge that they have thoroughly read this License, including any exhibits or attachments, and have sought and received whatever advice and counsel was necessary to form a full and complete understanding of their rights and obligations and, having so done, execute this License freely and voluntarily.

18.07. Applicable Law. This License is entered into in San Antonio, Bexar County, Texas. **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 performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

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

18.09. 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.

18.10. 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.

18.11. 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.

18.12. 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.

18.13. Notices. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. The giving of 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 effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

18.14. Pronouns. In construing this License, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire License, not to any particular provision of it.

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

18.16. 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.

18.17. 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, may alter the rights or obligations of the parties as contained in this License

18.18. Ambiguities Not to Be Construed against Drafter. Any ambiguities found in this License must be resolved without resort to construction against the drafter.

In Witness Whereof, the parties have hereunto caused their representatives to set their hands.

Licensor:

City of San Antonio,
a Texas municipal corporation

By:_____

Printed
Name:_____

Title:_____

Date:_____

Licensee:

Karam's, Inc., a Texas Corporation

By:_____

Printed
Name:_____

Title:_____

Date:_____

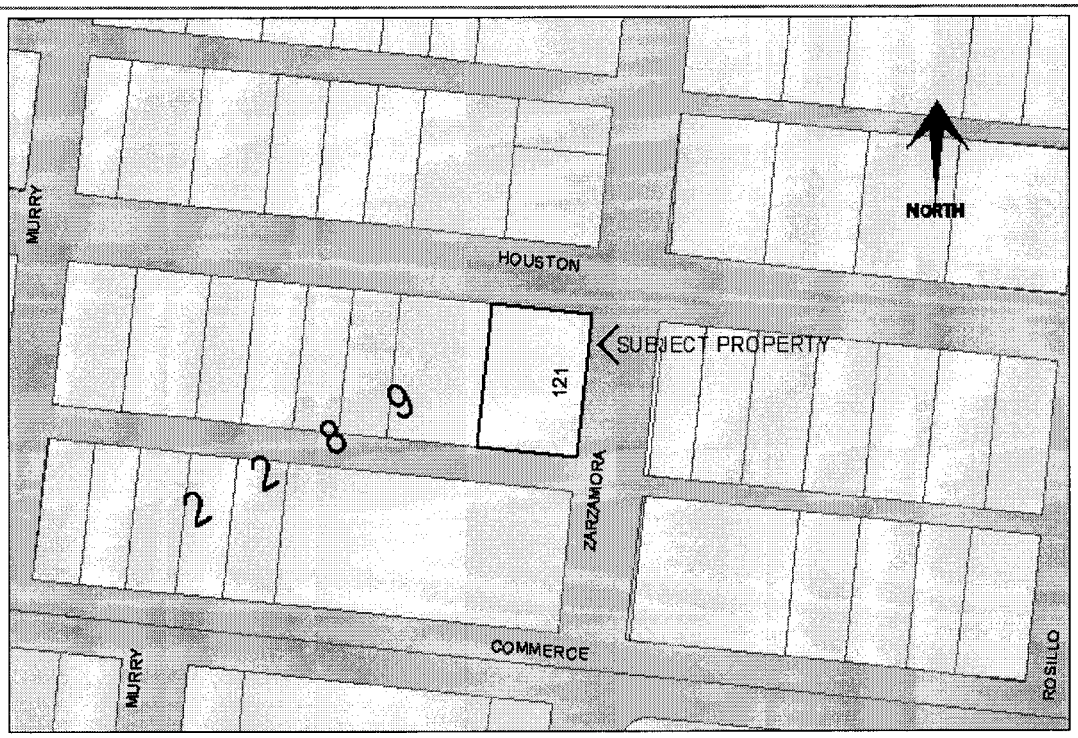
Attest:

_____
City Clerk

Approved As To Form:

_____
City Attorney

Exhibit A



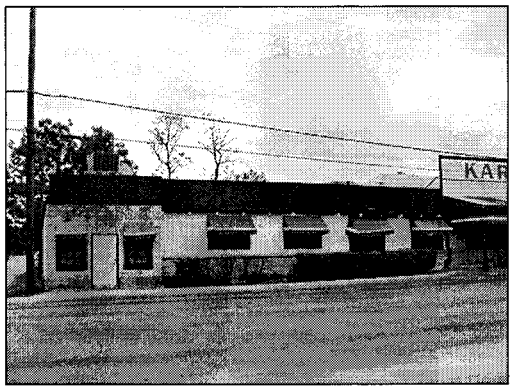


Exhibit "A"

S. P. No. 309
Petitioner: Karam's Restaurant

Exhibit B

Memorandum of License Agreement

This is a Memorandum of License Agreement ("Agreement") entered into by and between Licensee and the City of San Antonio, a Texas municipal corporation (Licensor), acting by and through its City Manager, or designee, pursuant to the Authorizing Ordinance.

Authorizing Ordinance (No. and Date):	
Licensee:	Karam's, Inc.
Licensee's Address:	121 N. Zarzamora St., San Antonio, Texas 78207
Term:	10 Years from the Effective Date
Premises:	121 N. Zarzamora Street, NCB 2289, San Antonio, Bexar County, Texas as graphically depicted in **Exhibit A**, which is incorporated herein by reference for all purposes as if it were fully set forth.
Scope of License:	Use, maintain, repair, and replace as necessary seven existing canopies with supporting posts over public right-of-way adjacent to Karam's Restaurant
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

Licensor has granted a license to Licensee as described above. For more detailed terms, refer to the License Agreement.

The License is personal to Licensee and cannot be assigned or sublicensed except as provided in the License.

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

Licensor:

City of San Antonio,
a Texas municipal corporation

_____
(Signature)

_____
(Printed Name)

_____
(Representative Capacity)

_____
(Date)

Licensee:

Karam's, Inc.,
a Texas corporation

_____
(Signature)

_____
(Printed Name)

_____
(Representative Capacity)

_____
(Date)

Attest:

_____
City Clerk

Approved As To Form:

_____
City Attorney

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me by _____, _____ of the City of San Antonio, a Texas municipal corporation, on behalf of that municipal corporation.

Dated:_____

_____
Notary Public, in and for State of Texas

My Commission Expires:_____

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me by _____, on behalf of Karam's, Inc. in the capacity stated.

Dated:_____

_____
Notary Public, in and for State of Texas

My Commission Expires:_____

After Recording Return to:

City of San Antonio
Department of Asset Management
P.O. Box 839966/2nd Floor, Municipal Plaza
San Antonio, Texas 78283-3966
Attn: Property Disposition Manager