

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
ASSET MANAGEMENT DEPARTMENT**

TO: Mayor and Council

FROM: Rebecca Waldman, Director, Department of Asset Management

THROUGH: Terry M. Brechtel, City Manager

COPIES: Erik J. Walsh, file

SUBJECT: Ordinance Authorizing an Amendment to the Centro de Artes
(Museo Americano) Lease Agreement

DATE: December 18, 2003

SUMMARY AND RECOMMENDATIONS

An ordinance authorizing a Second Amendment to the Lease Agreement with Centro Alameda, Inc. for the Centro de Artes Building, which will house the Museo Americano, to modify certain provisions of the Lease Agreement in consideration of an extension of the date by which the improvements must be completed.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

In December 1997 the City authorized a Lease Agreement with CAI for the Centro de Artes Building in Market Square. Earlier that year, CAI became the first organization to sign an affiliation agreement with the Smithsonian Institution in an effort to establish a Latino Arts and Cultural Museum in San Antonio. The First Amendment to the Lease Agreement was approved in October 2001 and extended the date by which the improvements must be completed from December 31, 2000 to December 31, 2003. In addition, other provisions of the Lease were modified, including a redefinition of the size of the building, establishing the Tenant's obligations with regard to landscaping and trees, as well as other miscellaneous modifications.

Construction began in August 2002 but was suspended for several months during the summer of 2003 due to a shortage of funding. CAI obtained a loan secured by pledges and construction began again in early August 2003. The exterior shell is expected to be completed by January 2004. CAI indicates that the interior work and remaining exterior work will commence in early 2004 and be completed to allow the operation of the museum no later than April 30, 2005.

Recently, CAI was awarded a \$1 million gift from the Cortez family for construction costs and CAI continues their effort to raise additional funds for this project. An

additional \$350,000 is needed to complete the exterior shell work and \$1 million for the interior and remaining exterior site work (\$400,000 will be provided in the recently approved 2003 Bond Funding). In addition to the construction, CAI will also raise funds for furniture, fixtures, equipment, programming, and operating expenses.

This proposed Second Amendment includes the following changes:

- Establishes the date of April 30, 2005 for the Museo improvements to be completed and for CAI to begin operating the premises.
- Increases the number of days that the City can use the facility on a rent-free basis from 15 to 25. In addition, the language regarding City costs associated with such events has been clarified to limit such expenses to those specifically incurred by CAI as a result of the event.
- Modifies the Common Area Maintenance (CAM) charges to CAI. The Lease Agreement established the CAM charges at \$100 per month until the 5th anniversary of the commencement of the Lease Agreement, or through June 2003. The Lease anticipated that the City would begin collecting actual CAM charges from CAI at that time. The proposed Second Amendment provides for \$100 monthly CAM charges through December 2004, then an increase to \$150 monthly through 2009, \$200 monthly from 2010 through 2014; \$250 monthly from 2015 through 2019, and \$300 monthly from 2020 through the end of the initial term in June 2023. It does, however, reserve the right for the City with sixty (60) days prior written notice to CAI, to begin collecting the prorata share of operating expenses at any time.
- Modifies the Casualty and Condemnation provisions. These sections have been modified to provide that all insurance or condemnation proceeds would remain with the City in the event of a casualty or partial condemnation if the lease is to be terminated and the premises not rebuilt.

POLICY ANALYSIS

This action is consistent with the City's policy to amend Lease Agreements as needed to reflect changes in the contractual obligations of the parties.

FISCAL IMPACT

There is no fiscal impact for this proposed action except that there is a provision for an increase in reimbursement of CAM charges collected from this tenant in future years until such time as the City elects to collect based on prorata share of actual expenses.

COORDINATION

This item was coordinated with the following departments: City Attorney's Office and Parks & Recreation.

SUPPLEMENTAL COMMENTS

A Discretionary Contract Disclosure form is attached.

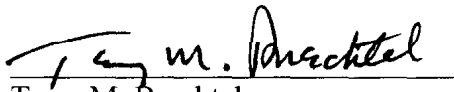


Rebecca Waldman, Director
Department of Asset Management



Erik J. Walsh
Assistant to the City Manager

Approved:



Terry M. Brechtel
City Manager

City of San Antonio

Discretionary Contracts Disclosure*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

Centro Alameda, Inc.

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

(3) the identity of any **lobbyist** or **public relations firm** employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

Taylor West Advertising (contracted for general Public Relations & Marketing services for Centro Alameda / Museo Americano)

Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one

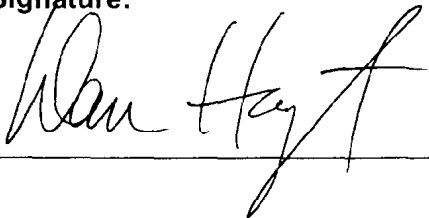
¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current or former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:	Made by (CAI Board member):
Roger O. Flores	\$250	2003	Charles Barrett
Ed Garza	\$500	2003	Bob Crittenden
Carroll Schubert	\$250	2003	Bob Crittenden
Joel Williams	\$100	2003	Bob Crittenden
Ed Garza	\$100	2003	AnaPaula and Mark Watson III
Art Hall	\$500	2003	Henry Muñoz
Chip Haas	\$500	2003	Henry Muñoz
Enrique Martin	\$500	2002	Henry Muñoz
Carroll Schubert	\$100	2002	AnaPaula and Mark Watson III
John Sanders	\$1,000	2001	Henry Muñoz
Carroll Schubert	\$500	2001	Henry Muñoz
Enrique Barrera	\$500	2001	Henry Muñoz
Bobby Perez	\$500	2001	Henry Muñoz
Julian Castro	\$500	2001	Henry Muñoz
Enrique Martin	\$1,000	2001	Henry Muñoz

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Signature: 	Title: Executive Director Company: Centro Alameda, Inc.	Date: October 14, 2003

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

**SECOND AMENDMENT TO LEASE AGREEMENT
("CENTRO DE ARTES")**

This Second Amendment to Lease Agreement is made and entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation, as **LANDLORD**, hereinafter called "**CITY**"), acting by and through its City Manager or the City Manager's designee, pursuant to **CITY Ordinance No. _____**, passed and approved on _____, 2003, and **CENTRO ALAMEDA, INC.**, a Texas non-profit corporation, as **TENANT**, (hereinafter called "**TENANT**"), for the purpose of further amending the original Lease Agreement ("**Centro de Artes**") dated December 23, 1997, approved by **CITY Ordinance No. 87148**, passed and approved on December 18, 1997, and amended by **CITY Ordinance No. 94779**, passed and approved on October 25, 2001, covering the Leased Premises consisting of the Centro de Artes Building ("**Building**"), located in Market Square at 101 S. Santa Rosa Street, San Antonio, Bexar County, Texas, for its use as the Museo Americano.

Now therefore, in consideration of the recitals set forth above, which are hereby deemed the contractual part hereof, and in consideration of the mutual agreements hereinafter set forth, **CITY** and **TENANT** agree as follows:

1. ARTICLE III. USE, Section 3.5 (top of Page 3 of the original Lease) is deleted in its entirety and the following new **Section 3.5** is substituted in place thereof:

" **3.5 CITY EVENTS:** **TENANT** agrees that **CITY** will have the right to use the Leased Premises for up to twenty-five (25) events per calendar year for **CITY** special events or receptions ("**CITY Event**"), with prior notice to **TENANT**, based on availability of the facility. A **CITY Event** shall not necessarily constitute the use of a full twenty-four (24) hour period. Unless required by the owner of an exhibit or display, **CITY** will not be charged rent, or ticket admission prices for use of the Premises for a **CITY Event**; however, **CITY** will pay **TENANT** for any specific costs incurred by **TENANT** as a result of the use of the Premises for such **CITY Event**, limited to the actual costs of (1) additional security, if **TENANT** and **CITY** determine a need for additional security staff; (2) cleaning performed by **TENANT** in connection with the use of the facility for the **CITY Event**; (3) any **TENANT** staff requested by **CITY**; (4) equipment owned by **TENANT** and requested by **CITY**; (5) utility costs if the event would result in utilities being operated outside **TENANT**'s regular operating hours, and (6) any other specific costs incurred by **TENANT** and agreed to in advance by **TENANT** and **CITY**."

2. ARTICLE V. RENT/PRESERVATION FEES/COMMON AREAS, Section 5.3 (middle of Page 7 of the original Lease) is deleted in its entirety and the following new **Section 5.3** is substituted in place thereof:

"**5.3 COMMON AREA MAINTENANCE:** In order to offset common area maintenance expenses of Market Square, **TENANT** agrees to pay **CITY** a monthly fee commencing one (1) year after the Commencement Date, in the amount of \$100 per month through December 2004. This fee will increase as follows:

January 2005 through December 2009:	\$150 monthly
January 2010 through December 2014:	\$200 monthly
January 2015 through December 2019:	\$250 monthly

January 2020 through end of Initial Term:

\$300 monthly

These fees shall continue during the Extended Term, if the Initial Term is renewed and extended and approved, pursuant to the provisions of **Section 2.4**, subject to renegotiation and approval by both parties. The above notwithstanding, CITY reserves the right at any time during the Initial or Extended Term to charge TENANT for its actual pro rata share of the total common area maintenance expenses at Market Square. CITY will provide TENANT with sixty (60) days prior written notice of this change. Payment of any such fees shall relieve the TENANT of the payment of any other similar common area maintenance fees to any Market Square Tenant's Association or any other similar association. At such time as the CITY begins charging TENANT for its prorata share of common area expenses, TENANT may request an annual, itemized accounting of such common area charges from CITY."

3. ARTICLE VII. IMPROVEMENTS, Section 7.3 (middle of Page 8 of the original Lease), as previously amended, is deleted in its entirety and the following new Section 7.3 is substituted in place thereof:

"7.3 TENANT anticipates completion of TENANT's Initial Work by April 30, 2005 ("Completion Date"). However, if for any reason TENANT fails to complete the Initial Work and also to begin operating the Premises according to the intended uses set forth in **Section 3.1** by April 30, 2005, subject to (1) Force Majeure, as defined hereafter, and (2) CITY's right, upon thirty (30) days prior written request from TENANT, to extend the Completion Date, considering the circumstances causing the delay, then TENANT, at the option of CITY, agrees, at TENANT's sole cost and expense, to return the Leased Premises to the same condition, or better, as determined by CITY, as existed prior to the commencement of TENANT's Initial Work, unless CITY agrees to accept return of the Leased Premises in its improved condition, incorporating improvements already made by TENANT as part of TENANT's Initial Work. "Force Majeure" is defined herein to mean any delay in the completion of TENANT's Initial Work caused by labor disputes, casualties (which are not the result of negligence or misconduct of TENANT or its contractors, subcontractors, agents, employees or others for whose acts TENANT is responsible); acts of God [including more than ten (10) consecutive days of rainy weather]; or the public enemy, governmental embargo restrictions, strikes, material shortages, action or non-action of public utilities or CITY. If CITY exercises its right hereunder to extend the Completion Date beyond April 30, 2005, then any such extension must be approved by the passage of a future CITY Ordinance."

4. ARTICLE VII. IMPROVEMENTS, Section 7.5 A)1) (Page 9 of the original Lease), as previously amended, is further amended by deleting the wording in the amended Section 7.5 A)1) starting with the words "Such schedule" and continuing through the words "by CITY in writing," and substituting the following wording in place thereof:

"7.5 A)1) Such schedule shall consist of new construction milestones providing for TENANT's Initial Work (**Revised Exhibit B** attached), which is defined herein to mean the substantial completion, as determined solely by CITY, of all initial renovations of the Leased Premises by April 30, 2005."

Further, the original 8th line of **Section 7.5 A)1)**, as previously amended, is further amended by deleting the date "December 31, 2003" and substituting the date "April 30, 2005 " therefor.

Also, the original 4th line of **Section 7.5 C)2)**, (**Page 10 of the original Lease**), as previously amended, is further amended by deleting the date "December 31, 2003" and substituting the date "April 30, 2005 " therefor.

5. ARTICLE XV. FIRE AND OTHER CASUALTY, Section 15.2 A. and B. (Top of **Page 20 of the original Lease**) are modified by adding the word "or" following the end of **Section 15.2 A.** and deleting the word "or" at the end of **Section 15.2 B.**

6. ARTICLE XV. FIRE AND OTHER CASUALTY, Section 15.7 (**Page 21 of the original Lease**) is deleted in its entirety.

7. ARTCLE XXI. CONDEMNATION, Section 21.7 (**Middle of Page 26 of the original Lease**) is deleted in its entirety.

8. All other terms and conditions of the Lease and Amendment shall remain in full force and effect.

THE EFFECTIVE DATE OF THIS SECOND AMENDMENT TO LEASE AGREEMENT ("CENTRO DE ARTES") IS DECEMBER 28, 2003.

CITY:

CITY OF SAN ANTONIO, a Texas
Municipal Corporation

By: *Dan Hagerty*

Name: *Daniel Hagerty*
Title: *Executive Director*

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

TENANT:

CENTRO ALAMEDA, INC.,
a Texas nonprofit corporation

By: _____

Name: _____
Title: _____

APPROVED AS TO FORM:

Counsel for TENANT

Exhibit B

Revised: December 2003

Museo Americano, Renovation and Construction Schedule

Time	Activity
August 2002 – January 2004	Construction and Renovation: COMPLETION OF EXTERIOR SHELL
May 2004 – August 2004	Construction and Renovation: COMPLETION OF INTERIOR & REMAINING EXTERIOR / SITE WORK
September 2004 – December 2004	FF&E, Test & Balance
January 2005 – March 2005	Exhibition design, construction & installation
April 2005	Museum Opening