

Agenda item #21

**CITY OF SAN ANTONIO
PARKS AND RECREATION DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Sheryl Sculley, City Manager

FROM: Malcolm Matthews, Director, Parks and Recreation Department

SUBJECT: Assignment and Amendment of Lease Agreement El Mercado Stall N-3: "Ortiz Pizano Imports" to Mr. Paulino R. Velasquez Jr. and Ms. Magali M. Garcia d/b/a "Mi Pueblito Arts and Crafts" (with Landlord's Consent)

DATE: June 1, 2006

SUMMARY AND RECOMMENDATIONS

This ordinance approves the Assignment of an eight (8) year El Mercado Lease Agreement from Mr. Julio R. Ortiz d/b/a "Ortiz Pizano Imports" to Mr. Paulino R. Velasquez Jr. and Ms. Magali M. Garcia d/b/a "Mi Pueblito Arts and Crafts", for the use of approximately 498 square feet in Stall N-3, El Mercado, in Market Square, in City Council District 1. In addition, the agreement is amended to reflect current lease terms and conditions.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

On May 18, 2000, the City Council approved thirty-four (34) lease agreements in El Mercado, located at 514 W. Commerce in City Council District 1 in Market Square. One agreement was with Mr. Julio R. Ortiz d/b/a "Ortiz Pizano Imports", a sole proprietorship. This agreement was for lease of stall N-3 with approximately 498 square feet of space used for commercial retail purposes. Mr. Julio R. Ortiz has requested the City to grant an assignment of this current lease to Mr. Paulino R. Velasquez Jr. and Ms. Magali M. Garcia d/b/a "Mi Pueblito Arts and Crafts", a sole proprietorship.

Mr. Ortiz has maintained his lease account with the City in good standing and Mr. Velasquez and Ms. Garcia have provided the Parks and Recreation Department with financial information and personal references.

Mr. Velasquez and Ms. Garcia will take over the lease payments and use of the space after approval by City Council. The term will be from June 1, 2006 through December 31, 2007. They will be required to pay utility costs and garbage collection fees, abide by use clauses and minimum hours of operation, provide for all improvements and maintenance of the leased space, and provide insurance levels specified by the City's Risk Manager as set forth in the original lease agreement.

The lease agreement is amended to update lease language to include more current provisions regarding operation of the business, such as an "Owner Presence" requirement and limiting events of default by tenant.

POLICY ANALYSIS

It is the long-standing policy of the City of San Antonio to lease public property in El Mercado for retail sales purposes under regulations established in Chapter 32, Article II of the City Code of the City of San Antonio. The assignment of a lease agreement requires passage of a City ordinance.

FISCAL IMPACT

Mr. Velasquez and Ms. Garcia will continue payments according to the original lease agreement, when an eight (8) year rental rate schedule was established. The year 7 (beginning January 1, 2006) rate is \$1.42 per square foot per month or \$707.16 per month. This will increase to a rental rate of \$1.45 per square foot or \$722.10 per month in the last year of the lease agreement (beginning January 1, 2007). Anticipated calendar year revenues are:

June 1, 2006 – December 31, 2006:	\$4,950.12
January 1, 2007 – December 31, 2007:	\$8,665.20

The assignment application required a fee of \$1,000.00; such fee has been paid by Mr. Velasquez and Ms. Garcia and deposited into the City's General Fund.

COORDINATION

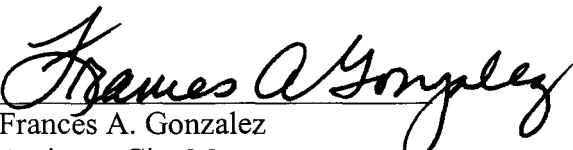
This assignment was coordinated with the City Attorney's Office, Risk Management, and the Department of Asset Management.

SUPPLEMENTARY COMMENTS

Copies of the Discretionary Contracts Disclosure Form completed by Mr. Julio R. Ortiz, Mr. Paulino R. Velasquez, and Ms. Magali M. Garcia are attached.



Malcolm Matthews
Director of Parks and Recreation



Frances A. Gonzalez
Assistant City Manager

Approved for Council Consideration:



Sheryl Sculley
City Manager

**ASSIGNMENT AND AMENDMENT OF LEASE AGREEMENT
EL MERCADO STALL N-3
(WITH LANDLORD'S CONSENT)**

WHEREAS, the City of San Antonio, a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. 91799, passed and approved by the City Council on May 18, 2000, as **LANDLORD ("CITY")**, entered into that certain Lease Agreement effective **January 1, 2000 ("LEASE")** with **Mr. Julio R. Ortiz, a Sole Proprietor, d/b/a "Ortiz Pizano Imports" ("ASSIGNOR")**, for the lease of the following described tract or parcel of real property situated in El Mercado at Market Square, San Antonio, Bexar County, Texas to-wit:

A portion of the real property and improvements owned by **CITY** located at 514 W. Commerce Street, San Antonio Bexar County, Texas within the area commonly known as El Mercado at Market Square (said real property and improvements hereinafter referred to as the **"Leased Premises"**). Said **Leased Premises** contain approximately 498 square feet and is identified as El Mercado area number N-3 in Exhibit A, attached hereto and incorporated by reference herein for all purposes; and

WHEREAS, **Mr. Julio R. Ortiz, a Sole Proprietor, d/b/a "Ortiz Pizano Imports"**, desires, as **ASSIGNOR**, to convey and assign **TENANT'S** leasehold interest under the **LEASE** to **Mr. Paulino R. Velasquez and Ms. Magali M. Garcia, a Sole Proprietorship, d/b/a "Mi Pueblito Arts and Crafts"**, as **ASSIGNEE**; and

WHEREAS, said assignment is authorized with prior approval of **CITY**; and

WHEREAS, **ASSIGNEE** desires to assume from **ASSIGNOR** all of **ASSIGNOR'S** rights, title, and interest as **TENANT** in and to the **LEASE**, and all of **ASSIGNOR'S** benefits and obligations thereunder; and

WHEREAS, **ASSIGNEE** has satisfied the **CITY** that they are financially able to undertake the obligations of **TENANT** under said **LEASE**, and **CITY** desires to give its consent to **ASSIGNOR'S** assignment of **ASSIGNOR'S** interest in the **LEASE** to **ASSIGNEE** and to **ASSIGNEE'S** assumption of **TENANT'S** obligations thereunder; and

WHEREAS, amending the **LEASE** is in **CITY** and **TENANT'S** best interest; **NOW THEREFORE**,

In consideration of the mutual covenants and agreements set forth below the parties agree as follows:

1. **CONVEYANCE AND ASSIGNMENT**: **ASSIGNOR** does hereby grant, bargain, sell, convey, assign, transfer, set over, and deliver to **ASSIGNEE**, all of **ASSIGNOR'S** rights, title, and interest in and to the **LEASE**, including and also without limitation, all of the rights, duties, obligations, and liabilities of **ASSIGNOR** in, to, and under the **LEASE** to pay rent and to observe and perform all other covenants and duties of **TENANT** there under.
2. **ASSUMPTION**: By its execution hereof, **ASSIGNEE** hereby assumes and agrees to perform all of the terms, covenants, and conditions of the **LEASE** on the part of the **TENANT** therein required to be performed arising from and after the date hereof, and **ASSIGNEE** releases **ASSIGNOR** from all liability for such obligations.

ASSIGNEE hereby accepts the assignment of said **ASSIGNOR'S** rights, title, and interest in and to the **LEASE** and; **ASSIGNEE** recognizes the superior fee title in and to the land and premises held by the **CITY**, as Landlord, and **CITY'S** right of reversion at the end of the **LEASE** term, whether occasioned by default or passage of time, as well as, the rights and benefits of every description whatsoever belonging to or accruing to the benefits of the **CITY** under the **LEASE**.

3. **CONSENT:** **CITY** hereby consents to the assignment by **Mr. Julio R. Ortiz, a Sole Proprietor, d/b/a "Ortiz Pizano Imports"**, as **ASSIGNOR**, and the assumption by **Mr. Paulino R. Velasquez and Ms. Magali M. Garcia, a Sole Proprietorship, d/b/a "Mi Pueblito Arts and Crafts"**, as **ASSIGNEE** of said **ASSIGNOR'S** liability and obligations as **TENANT**, in that certain **LEASE** between the **CITY** and **Mr. Julio R. Ortiz, a Sole Proprietor, d/b/a "Ortiz Pizano Imports"**, originally approved by City Council pursuant to Ordinance No. 91799, passed and approved on May 18, 2000.

4. **REPRESENTATION AND WARRANTIES:** **ASSIGNOR** and **ASSIGNEE** represent and warrant that the following statements are true.

Mr. Paulino R. Velasquez and Ms. Magali M. Garcia, as the **ASSIGNEE**, will be the exclusive owners of the business, formerly owned by **Mr. Julio R. Ortiz** and operating under the **d/b/a "Ortiz Pizano Imports"**. **Mr. Paulino R. Velasquez and Ms. Magali M. Garcia** will take full control of the business immediately upon City Council approval and will operate as **"Mi Pueblito Arts and Crafts"**.

Mr. Julio R. Ortiz will not have any ownership or serve as employee, or agent in the new enterprise operating from the premises. This individual will have no authority, financial or otherwise, in the new enterprise operating from the premises.

In the event that any such representations and warranties are found by **CITY** not to be true, then **CITY** shall have authority to revoke its consent to this assignment and automatically terminate the contract without allowing **ASSIGNOR** or **ASSIGNEE** an opportunity to cure.

5. **USE OF PREMISES:** **ASSIGNEE** agrees that that the **Leased Premises** shall be utilized for the sole purpose of retail sales of products reflecting an open market with a Mexican Market theme and excluding alcoholic goods and beverages in accordance with applicable statutes, laws, ordinances, rules, and regulations of the United States of America, the State of Texas, and the City of San Antonio, Texas.
6. **AMENDING USE AND CARE OF PREMISES:** Section 2.4 of **LEASE** is amended to include the following provisions:

2.4.1 Further, **TENANT** covenants and agrees, in keeping with the intent and spirit of El Mercado and Market Square, to operate the business conducted on the **Leased Premises** in an **"OWNER PRESENCE"** capacity, physically participating in the day-to-day operations of **TENANT'S** business, as opposed to employing a non-owner manager of said premises, hence an "absentee owner" posture, unless such management is first approved by the Director, Department of Parks and Recreation, or his designee. Failure to operate the business on the **Leased Premises** in such a manner will constitute an act of

default hereunder and will be grounds, at **CITY'S** option to terminate this **Lease Agreement** upon ten (10) days written notice to **TENANT**.

7. AMENDING DEFAULT PROVISIONS: Section 5.5 of **LEASE** is amended to include the following provisions:

5.5.1 Notwithstanding anything to the contrary set forth in this **Lease Agreement**, if **TENANT** shall fail to make the timely payment of any rent or any additional charges due **CITY** from **TENANT**, or the payment of any other money due **CITY** from **TENANT** under the terms of this **Lease Agreement**, and any such failure shall be repeated two (2) times in any period of twelve (12) consecutive months, then, notwithstanding that such failure shall have been cured within the period after notice, as provided in this **Lease Agreement**, any further similar failure within said twelve (12) month period shall be deemed to be a Repeated Event of Default.

5.5.2 In the event of a Repeated Event of Default, **CITY**, without giving **TENANT** any notice and without affording **TENANT** an opportunity to cure the default, may terminate this **Lease Agreement** forthwith without notice to **TENANT**.

8. AMENDING THE TERM: Article III of the **LEASE** is amended to include the following provisions:

3.1 The term of this **Lease Agreement**, as amended, is for a one (1) year, seven (7) month period beginning June 1, 2006 ("Commencement Date") and terminating December 31, 2007, unless it is sooner terminated under the provisions hereof. **TENANT** acknowledges that no promise to extend or renew this agreement beyond this original term is made or implied.

9. RENTAL RATES: Article V of the above-referenced **LEASE** outlines the monthly rental rates. The monthly rental rates for the term of the **Lease Agreement** are as follows:

Lease Year	Begin Jan 1	Rate per Sq. Ft. per month	Area (Sq. Ft.)	Total Monthly Square Footage Rental Payment
1.	2006	\$1.42	498	\$707.16
2.	2007	\$1.45	498	\$722.10

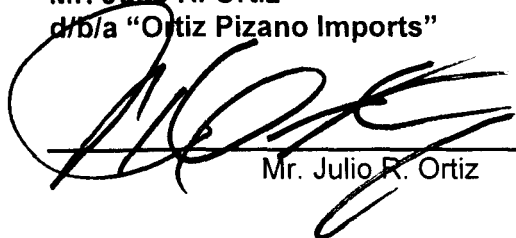
***Above table does not include charges for garbage, electricity, lighting, air conditioning, or gas service. Please refer to sections 5.2, 5.3, 5.4, and 5.5 of LEASE.**

10. ACKNOWLEDGEMENT OF READING: The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatsoever competent advice and counsel which was necessary for them to form a full and complete understanding of their rights and obligations herein, and having done so, do hereby execute this Agreement.

EXECUTED this _____, 2006.

ASSIGNOR:

Mr. Julio R. Ortiz
d/b/a "Ortiz Pizano Imports"



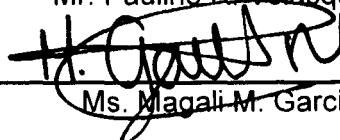
Mr. Julio R. Ortiz

ASSIGNEE:

Mr. Paulino R. Velasquez and Ms. Magali M. Garcia
d/b/a "Mi Pueblito Arts and Crafts"

Paulino V.

Mr. Paulino R. Velasquez



Ms. Magali M. Garcia

108 Herweck dr.

Address

San Antonio, Tx. 78213

City, State, Zip Code

Business Telephone Number

210-979-6832

Other Telephone Number

LANDLORD:

CITY OF SAN ANTONIO, a Texas Municipal Corporation

ATTEST:

City Manager

City Clerk

APPROVED AS TO FORM:

City Attorney

City of San Antonio
Discretionary Contracts Disclosure

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.*

(1) Identify any individual or business entity¹ that is a **party** to the discretionary contract:

N/A

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):



No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.



No subcontractor(s); or

List subcontractors:

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.



No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

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. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made 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 Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):



No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:

(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.



Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information 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, whichever occurs first.

Signature:	Title:	Date:
Magali G.	Company or D/B/A: Mi Pueblito Arts and crafts	05.04.06

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.

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Signature:	Title:	Date:
Paulino V.	Company or D/B/A: Mi Pueblito Arts and crafts.	05-4-06

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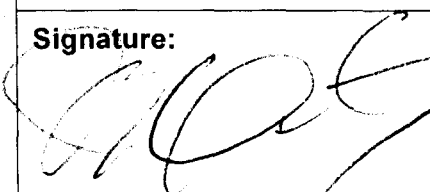
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Signature:



Title:

DWNIX

Date:

5-04-06

Company or D/B/A:

Ortiz Pizano
Imports

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