

AN ORDINANCE 2006-01-05-40

**APPROVING THE ASSIGNMENT OF AN EIGHT (8) YEAR LEASE AGREEMENT FROM MR. ANTONIO MARES, DBA MARES IMPORTS, TO MS. MARIA ROBLEDO, DBA MEMORIES OF MEXICO, IN THE EL MERCADO AT MARKET SQUARE LOCATED IN DISTRICT 1; AND AUTHORIZING AMENDMENTS TO THE AGREEMENT TO REFLECT CURRENT LEASE TERMS AND CONDITIONS.**

\* \* \* \* \*

**WHEREAS**, it is the policy of the City of San Antonio to lease public property in El Mercado in Market Square, located at 514 W. Commerce Street in City Council District 1, for retail sales purposes as per the policies established in Chapter 32, Article II of the City Code of the City of San Antonio; and

**WHEREAS**, most recently, Ordinance No. 91799, passed and approved on May 18, 2000 authorized the execution of eight (8) year Lease Agreements with the current tenants in the City's El Mercado for the period January 1, 2000 through December 31, 2007; and

**WHEREAS**, Mr. Antonio Mares d/b/a Mares Imports, one of the current thirty-four (34) tenants in this City facility, presently leases the space identified as Space E-4 of approximately 800 square feet; and

**WHEREAS**, Mares Imports has requested to assign its lease agreement to Memories of Mexico, owned and operated by Ms. Maria Robledo, and has submitted the required application fee; and

**WHEREAS**, Ms. Maria Robledo has provided City staff with all required documents; and

**WHEREAS**, Ms. Maria Robledo will continue to pay rent, utilities, and garbage collection fees as required by the original agreement; and

**WHEREAS**, the lease agreement will be amended to include revised language regarding operation of the business, such as an "Owner Presence" requirement and limiting events of default by tenant as it pertains to rent payments; and

**WHEREAS**, it is in the best interest of the City of San Antonio to assign the lease of said public property in the City's El Mercado to the new tenant; **NOW THEREFORE:**

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

**Section 1.** The City Manager or her designee, is hereby authorized to execute an Assignment of Lease Agreement (with Landlord's Consent) with Ms. Maria Robledo d/b/a "Memories of Mexico" for Stall E-4 with approximately 800 square feet of space. A copy of said assignment of Lease Agreement (with Landlord's Consent) is affixed hereto and incorporated herein for all purposes as Attachment I.

**Section 2.** The proceeds of this Lease will be deposited into Fund 11001000 entitled, "General Fund," Internal Order 226000000015, entitled "Market Square El Mercado," and General Ledger Accounts 4407718, 4407719, and 4407720 entitled "Service Charge-Tenant Utilities, Service Charge-Waste Collection, and Lease-Land & Buildings" respectively.

**Section 3.** The financial allocations in this Ordinance are subject to approval by the Director of Finance for the 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 Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

**Section 4.** This ordinance shall become effective on and after January 15, 2006.

PASSED AND APPROVED this 5<sup>th</sup> day of January, 2006.

  
M A Y O R  
PHIL HARDBERGER

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
City Attorney

# Agenda Voting Results

**Name:** 27.

**Date:** 01/05/06

**Time:** 03:10:24 PM

**Vote Type:** Multiple selection

**Description:** An Ordinance approving the assignment of an eight (8) year Lease Agreement from Mr. Antonio Mares, dba Mares Imports, to Ms. Maria Robledo, dba Memories of Mexico, in the El Mercado at Market Square located in District 1; and authorizing amendments to the agreement to reflect current lease terms and conditions. [Presented by Malcolm Matthews, Director, Parks and Recreation; Frances A. Gonzalez, Assistant City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1	Not present			
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3	Not present			
RICHARD PEREZ	DISTRICT 4			x	
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9	Not present			
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

**ASSIGNMENT AND AMENDMENT OF LEASE AGREEMENT  
EL MERCADO STALL E-4  
(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. Antonio Mares, a Sole Proprietor, d/b/a "Mares 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 800 square feet and is identified as El Mercado area number E-4 in Exhibit A, attached hereto and incorporated by reference herein for all purposes; and

**WHEREAS, Mr. Antonio Mares, a Sole Proprietor, d/b/a "Mares Imports",** desires, as **ASSIGNOR**, to convey and assign **TENANT'S** leasehold interest under the **LEASE** to **Ms. Maria Robledo, a Sole Proprietorship, d/b/a "Memories of Mexico",** 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 there under; 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 there under; 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. Antonio Mares, a Sole Proprietor, d/b/a "Mares Imports"**, as **ASSIGNOR**, and the assumption by **Ms. Maria Robledo, a Sole Proprietorship, d/b/a "Memories of Mexico"**, as **ASSIGNEE** of said **ASSIGNOR'S** liability and obligations as **TENANT**, in that certain **LEASE** between the **CITY** and **Mr. Antonio Mares, a Sole Proprietor, d/b/a "Mares Imports"**, originally approved by City Council pursuant to Ordinance number 91799, passed and approved on May 18, 2000.

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

**Ms. Maria Robledo**, as the **ASSIGNEE**, will be the exclusive owners of the business, formerly owned by **Mr. Antonio Mares** and operating under the **d/b/a "Mares Imports"**. **Ms. Maria Robledo** will take full control of the business immediately upon City Council approval and will operate as **"Memories of Mexico"**.

**Mr. Antonio Mares** 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, as amended, is for a one (1) year, eleven (11) month period beginning February 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 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	800	\$1,136.00
2	2007	\$1.45	800	\$1,160.00

**\*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. EFFECTIVE February 1, 2006.

**ASSIGNOR:**  
Mr. Antonio Mares  
d/b/a "Mares Imports"

**ASSIGNEE:**  
Ms. Maria Robledo  
d/b/a "Memories of Mexico"

Antonio Mares  
Mr. Antonio Mares

Maria J Robledo  
Ms. Maria Robledo

514 W Commerce - E 4  
Address

S. Antonio Tex 78207  
City, State, Zip Code

(210) 226.4202  
Business Telephone Number

(210) 533.0344  
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 entity<sup>1</sup> that is a **party** to the discretionary contract:

NOT

(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:

NOT

(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:

NOT

<sup>1</sup> 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 question<sup>2</sup> 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:

*Muriel Toledo*

Title: *Owner*

Date: *12-13-05*

Company or D/B/A:

*MEMORIES OF MEXICO*

<sup>2</sup> 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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N/C

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No partner, parent or subsidiary; or

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

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List subcontractors:

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Party aware of the following facts:

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Signature: <i>Antonio J. Mares</i>	Title: Company or D/B/A: <i>Mares Imports</i>	Date: <i>12/20/05</i>
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<sup>2</sup> 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.