

ORDINANCE 2020-05-21-0338

AUTHORIZING A FIRST AMENDMENT AND EXTENSION OF A LEASE AGREEMENT WITH SUBWAY REAL ESTATE, LLC (“SUBWAY”) FOR THE CONTINUED OPERATION OF A SUBWAY RESTAURANT AT 240 E. HOUSTON, LOCATED AT STREET LEVEL WITHIN THE HOUSTON STREET PARKING GARAGE FOR FIVE YEARS IN COUNCIL DISTRICT 1.

* * * * *

WHEREAS, The City of San Antonio (“City”) owns and operates the Houston Street Parking Garage, located at the southwest corner of Houston and Navarro Streets, which includes retail and restaurant space at street level; and

WHEREAS, in 2013 the City entered into a lease agreement with Subway for approximately 1,870 Square feet of restaurant space on the ground floor of the parking garage; and

WHEREAS, the lease agreement provided two renewal options of five years each, potentially through December 2028, and City exercised the first renewal effective January 1, 2019; and

WHEREAS, Subway and City have agreed to make adjustments to the lease providing an increased rental rate in exchange for an additional five-year renewal option; and

WHEREAS, City utilized Providence Commercial Real Estate Services to assist with the negotiation of the terms and facilitation of the renewal process; **NOW THEREFORE:**

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

SECTION 1. The City Council authorizes the City Manager or designee to execute a First Amendment and Extension to Lease Agreement substantially in the form as shown in **Attachment I** with Subway Real Estate, LLC for the continued operation of a Subway restaurant at 240 E. Houston, in Council District 1 at an increased rental rate \$23.98 per square foot annually with a 3% annual rent increase in exchange for an additional five-year renewal option payable as follows:

| Lease Period | Monthly Rent | Annual Rent |
|------------------------------------------------------|---------------------|--------------------|
| Jan 1, 2019 - Dec 31, 2019 | \$3,736.88 | \$44,842.60 |
| Jan 1, 2020 - Dec 31, 2020 | \$3,849.08 | \$46,189.00 |
| Jan 1, 2021 - Dec 31, 2021 | \$3,964.40 | \$47,572.80 |
| Jan 1, 2022 - Dec 31, 2022 | \$4,082.83 | \$48,993.96 |
| Jan 1, 2023 - Dec 31, 2023 | \$4,205.94 | \$50,471.30 |
| Total Rent During the Five-Year Renewal Term: | | \$238,069.66 |

SECTION 2. The City Council authorizes the City Manager or designee to authorize payment to Providence Commercial Real Estate Services in the amount of \$8,332.44 pursuant City’s contract

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with Providence Commercial Real Estate Services from the Parking Fund for its assistance with the negotiation and facilitation of the renewal process. All funds collected in association with this lease will be deposited into the Parking Fund.

SECTION 3. Funds generated by this ordinance will be deposited in Fund 53001000, Internal Order 219000000117, and General Ledger Account 4401120.


SECTION 4. Funding in the amount of \$8,332.44 for this ordinance is available in Fund 53001000, Cost Center 191010001 and General Ledger 5202020 as part of the Fiscal Year 2020 budget.

SECTION 5. Payment is authorized to Providence Commercial Real Estate Services.

SECTION 6: The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer 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.

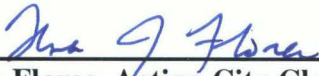
SECTION 7: This Ordinance becomes effective immediately upon its passage by eight (8) votes or more and 10 days after passage upon its approval by less than eight (8) votes.

PASSED AND APPROVED this 21st day of May, 2020.




M A Y O R
Ron Nirenberg

ATTEST:


Tina Flores, Acting City Clerk

APPROVED AS TO FORM:


Andrew Segovia, City Attorney



City of San Antonio

City Council

May 21, 2020

Item: 13

File Number: 20-2603

Enactment Number:

2020-05-21-0338

Ordinance approving the renewal of a Lease Agreement with Subway Real Estate, LLC for the Subway restaurant located in the Houston Street Parking Garage at 240 E. Houston, generating revenue to the City of approximately \$238,069.66 over five years. All funds collected in association with this lease will be deposited into the Parking Fund. [Lori Houston, Assistant City Manager; John Jacks, Director, Center City Development and Operations]

Councilmember Manny Pelaez made a motion to approve. Councilmember Rebecca Viagran seconded the motion. The motion passed by the following vote:

Aye: 11 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia, Gonzales, Cabello Havrda, Sandoval, Pelaez, Courage and Perry

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Attachment I

Attachment I

1st Renewal and Amendment of Lease Agreement

(Subway/Houston St. Garage)

This 1st Renewal of Lease Agreement is entered into between Landlord and Tenant.

1. Identifying Information.

Authorizing Ordinance: 2013-06-06-0390

Landlord: City of San Antonio

Landlord's Address: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Leasing Manager, Center City Development Office)

Tenant: Subway Real Estate, LLC

Tenant's Address: 325 Sub Way, Milford, Connecticut 06461, with a notice copy to Irish Ideas, 12042 Blanco Road, Suite 102, San Antonio, TX 78216; and the Premises

Lease: Approximately 1,870 square feet of net rentable area located at 240 E. Houston St., San Antonio, 78205.

Address for Payment of Rent: City of San Antonio
Financial Services Division
Revenue Collections
P.O. Box 839975
San Antonio, TX 78238-3975

1st Renewal: Renews the lease agreement for a period of 5 years.

1st Renewal Term Commencement Date: January 1, 2019

1st Renewal Term Expiration Date: December 31, 2023

2. Defined Terms.

All terms used in this instrument and not otherwise defined herein but defined in the Lease or any previous amendment to it have the meanings previously ascribed to them. References to "Lease" in this Renewal include the original Lease.

Attachment I

3. Term, Extension.

3.01. The term of the Lease is extended from the Beginning of Renewal Term through and including the Expiration of Renewal Term. The Extended Lease Term is a five (5) years until December 31, 2023.

4. Rent.

Tenant shall pay monthly rent, which includes Base Rent and Additional Rent as defined in the original Lease, for the five (5) year term of this renewal at the rates listed below:

| Lease Period | Annual Per Square Foot Rental Rate | Monthly Rent | Annual Rent |
|-------------------------------------|------------------------------------|--------------|-------------|
| January 1, 2019 – December 31, 2019 | \$23.98 | \$3,736.88 | \$44,842.60 |
| January 1, 2020 – December 31, 2020 | \$24.70 | \$3,849.08 | \$46,189.00 |
| January 1, 2021 – December 31, 2021 | \$25.44 | \$3,964.40 | \$47,572.80 |
| January 1, 2022 – December 31, 2022 | \$26.20 | \$4,082.83 | \$48,993.96 |
| January 1, 2023 – December 31, 2023 | \$26.99 | \$4,205.94 | \$50,471.30 |

5. Amendments.

5.01. Section 3. Rent, of the original Lease is hereby amended to remove Additional Rent. The provisions in Sections 3.03 and 3.04.01 of the original Lease are deleted in their entirety and each marked “[*Intentionally Omitted*]”.

5.02. Section 4. Term, Renewal, Subsection 4.02. of the original Lease is hereby removed and replaced with the following language:

4.02. Tenant may ask to renew the Lease for an additional five-year term until December 31, 2028 (2nd renewal term), and a subsequent five-year term until December 31, 2033 (3rd renewal term), by delivering to Landlord written notice no later than one hundred and eighty (180) days prior to the expiration of each renewal term. Landlord must allow renewal of the lease provided that all of the following conditions have been met: 1.) Tenant is not in default under the Lease beyond the applicable cure period, and 2.) Landlord has received Tenant’s timely renewal notice, and 3.) Tenant and Landlord agree on the renewal term rent. The initial rent for either renewal term is subject to negotiation by the parties, but will not exceed three percent (3%) above the fair market rent for the applicable San Antonio, Texas market. The rent will increase three percent (3%) annually on the anniversary of the applicable Renewal Term Commencement Date. In the event that Tenant and Landlord are unable to reach an agreement as to the rent by the Renewal Term Expiration Date, then Tenant will vacate the Premises no later than the Renewal Term Expiration Date. Any future Renewals in conformity with this section will require City of San Antonio Council approval as evidenced by the issuance of an Authorizing Ordinance. Landlord’s acquiescence in Tenant’s holding over is not acquiescence to renewal.

Attachment I

6. Brokerage Commission.

Upon execution and delivery of this Renewal, Landlord must pay a commission equal to 3.5% of the total Annual Rent to be paid throughout the life of this Renewal to Providence Commercial Real Estate Services, Inc.

7. No Default.

Neither Landlord nor Tenant is in default under the Lease, and neither party is aware of a cause of action against the other arising out of or relating to the period before this Renewal of Lease Agreement.

8. Same Terms and Conditions.

This Renewal of Lease Agreement is a fully integrated statement of the modifications to the Lease. Except as expressly modified by this Renewal, the Lease remains a comprehensive statement of the rights and obligations of Landlord and Tenant. Landlord and Tenant reaffirm the Lease as modified by this agreement and represent to each other that no written right or obligation of either party has been waived such that it would impair exercise of the right or enforcement of the obligation on a future occasion. If this Renewal conflicts with the Lease, this Renewal of Lease Agreement controls.

9. Public Information.

Landlord acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

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Attachment I

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

Tenant

Subway Real Estate, LLC, a Delaware
limited liability company

By:  _____

Printed Name: Steven G. Merrick
Duly Authorized

Title: _____

Date: JAN 16 2020

Landlord

City of San Antonio, a Texas municipal
corporation

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Approved as to Form:

City Attorney

Attest:

City Clerk