

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
PARKS AND RECREATION DEPARTMENT**

TO: Mayor and City Council

FROM: Malcolm Matthews, Director, Parks and Recreation Department

THROUGH: Terry M. Brechtel, City Manager

COPIES: Christopher J. Brady; Finance; Management and Budget; Legal; File

SUBJECT: Ordinance Authorizing Execution of Amendment Number One to Concession Agreement for the Tower of the Americas with Tower Foods, Inc.

DATE: December 4, 2003

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes executing Amendment Number One to the concession agreement between the City and Tower Foods, Inc. for use of the Tower of the Americas in City Council District 1, as requested by the City, to extend the contract term and to increase percentage of revenue paid to the City.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

On May 8, 1986 the City entered into a concession agreement with Tower Foods, Inc. for food concession services at the Tower of the Americas. Tower Foods, Inc. has held the concession agreement at the Tower since 1968. The current agreement expires on December 31, 2003.

As previously approved by City Council, staff has implemented a Request for Proposal process to solicit proposals for the operation and renovation of the Tower of the Americas restaurant and observation deck. It is anticipated that selection of a concessionaire will occur in February 2004 and that several months may be needed to allow a transition period for the concessionaire and to perform required capital improvements to the facility. In order to maintain a restaurant presence in the Tower, staff approached Tower Foods, Inc. to implement an extension to the agreement. The proposed amendment will allow Tower Foods, Inc. to continue operation until the latter of August 31, 2004 or the last day of the month following the month in which the City gives them notice of termination.

As consideration for the additional time that Tower Foods, Inc. will operate the concession at the Tower of the Americas during these additional months, the payments to the City will be increased from 8% to 10% of gross sales. No other changes to the original concession agreement are recommended. At the request of Tower Foods, Inc. we have added language to the amendment that affirms the City's maintenance responsibilities for the elevators and major utilities, as already identified in the current agreement.

The RFP has been advertised and the City will hold a pre-bid conference on December 4, 2003. The proposals will be received by the City Clerk's Office not later than January 9, 2004. City Council will consider the selection committee's recommendation for selection of a concessionaire in February 2004.

Additionally, with the passage of the 2003 Bond program, the \$1.6 million for the Tower will be integrated into the improvements to be made in association with the selected Tower operator. This construction will be initiated after the end of the extended term being proposed by this Council action.

POLICY ANALYSIS

This extension is consistent with City Council policy to approve agreement extensions when reasonable and when in compliance with the intent of the original agreement. The amendment will allow continued restaurant service to the public at the Tower of the Americas.

FISCAL IMPACT


The total revenue payments to the City will be approximately \$251,500.00 as a result of the extended time period. The 2% payment increase accounts for \$42,600.00 of this amount. This revenue will be deposited into City's General Fund.

COORDINATION

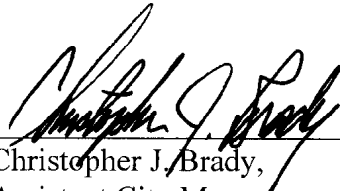
This action has been reviewed and approved by the City Attorney's Office.

SUPPLEMENTARY COMMENTS

A Discretionary Contracts Disclosure Form from Tower Foods, Inc. is attached.

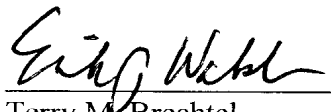


Malcolm Matthews,
Director of Parks and Recreation



Christopher J. Brady,
Assistant City Manager

Approved:



for 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, Section 1&2

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 that would be a party to the discretionary contract and the name of:

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

Tower Foods, Inc.

--

(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;

See Attached

--

(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.

See Attached

--

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 hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any member of 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 entity include, but are not limited to, contributions made through the officers, owners, or registered lobbyists of the entity.

To Whom Made:

See Attached

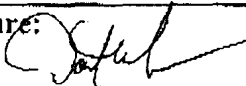
Amount:

Date of Contribution:

--	--	--

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 question¹ as to whether any city official would violate Section 1 of Part B by participating in official action relating to the discretionary contract.

Signature: 	Date: 11/21/03

¹ 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.

City of San Antonio
Discretionary Contracts Disclosure

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

Section 2(B) Ownership

Hasslocher Enterprises, Inc. (50%)

Eric Byrne Stumberg (25%)

Helen Louise Womack (16.75%)

Leonora Belle Berg (8.25%)

(3) Lobbyist or Public Relations Firms:

William Kaufman & Associates

Political Contributions:

Roger Flores	\$250	Date: July 11, 2002
Roger Flores	\$250	Date: December 16, 2002
Roger Flores	\$150	Date: May 15, 2003
Roger Flores	\$100	Date: November 19, 2003

We presume that our lobbyist and has made contributions to members of City Council. We do not know how much, to whom or when these contributions were made.

THE TOWER OF THE AMERICAS CONCESSION AGREEMENT

AMENDMENT NO.1

The City of San Antonio, hereinafter called "CITY", entered into an agreement with Tower Foods, Inc. hereinafter called "CONCESSIONAIRE", pursuant to Ordinance No. 62850, passed and approved on by the City Council of the City of San Antonio on May 8, 1986. Both the City and Concessionaire wish to amend said agreement and hereby agree to the following amendments to said agreement:

1. Section 15 c of the agreement "PAYMENTS TO CITY", is amended to replace Eight (8%) with Ten (10%).
2. Exhibit A, Section 1. TERM is amended as follows: Concessionaire and City mutually agree to extend the term of this agreement to the latter of either August 31, 2004; or the last day of the month following the month in which either the City gives Concessionaire written notice of termination of this agreement or Concessionaire gives the City written notice of Termination. For example, if City gives notice of Concessionaire to terminate this agreement August 1, 2004, then the agreement would terminate the first full month after receipt of said notice on September 30, 2004. City may submit notice of termination prior to July 31, 2004 and said notice will effect the termination of this agreement August 31, 2004 with no further notice to Concessionaire required.
3. During the Term, as extended, the City shall maintain the elevators, HVAC system, electrical and mechanical systems in operating condition as stated in the agreement

Executed this _____ day of December, 2003.

TOWER FOODS, INC.



Vice-President

CITY OF SAN ANTONIO

TERRY M. BRECHTEL

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM: _____

City Attorney