

**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 to Concession Agreement for the Tower of the Americas with Tower Foods, Inc.

DATE: August 12, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes executing an amendment to the concession agreement between the City and Tower Foods, Inc. for use of the Tower of the Americas in City Council District 1 to extend the contract term and to revise the percentage of revenue paid to the City.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

Tower Foods, Inc. has held the food concession services agreement at the Tower of the Americas since 1968. On May 8, 1986, the City entered into an agreement with Tower Foods that was scheduled to expire on December 31, 2003. On December 4, 2003, this contract was amended to extend until August 31, 2004, as approved through Ordinance 98567, in order to get the City's RFP process for Tower operations and new contract negotiations completed.

Following the Tower Operator RFP process, a proposal from Landry's, Inc. was selected by City Council on March 4, 2004. Staff was authorized to negotiate a contract with Landry's for proposed capital improvements and operations of the entire Tower for a lease term of 15 years with a 10 year renewal option. Both sides hired outside legal counsel to assist with the many details associated with the contract, which caused delays with getting the negotiations underway immediately. Ordinance 99387, passed and approved on June 24, 2004, authorized a contract with the Bracewell and Patterson, L.L.P. law firm and authorized staff to continue negotiations until a satisfactory contract is reached. Our contract team is working diligently

with Landry's and it is anticipated that a contract will be submitted for City Council consideration in late September or early October 2004.

The longer time associated with the Landry's contract negotiation has enabled Tower Foods, Inc. to consider remaining longer than previously anticipated. It would benefit the City to maintain a restaurant presence in the Tower and staff has negotiated an amendment that will allow Tower Foods to continue operation until February 28, 2005. The period between Council approval of the Landry's contract and the end of Tower Foods operation will be utilized by Landry's to complete plans for their development and to obtain City approvals and building permits for the final design. It is anticipated that in March 2005 the Tower will close for several months so that the capital improvements may be constructed.

Percentage of Sales Revenue

The City and Tower Foods, Inc. have negotiated a revised payment schedule for the additional time that the company will operate. During this time, the payments to the City will be 5% of adjusted gross sales per month. The amount reflects a reduction in sales percentage payment to the City because the expanded time frame covers the slower winter months. Operational costs to Tower Foods during these months are substantial and the profit margin is less during this time of year. The more profitable summer months are used by Tower Foods to subsidize the lower revenue generating months of the year.

The previous original contract with Tower Foods, which expired December 31, 2003, had a percentage payment to the City of 8% of adjusted gross sales with 100% of the restaurant elevator fees passed through to the City. The amendment on December 4, 2003 increased the percentage payment to the City to 10%, primarily for two reasons: one, the extended period included mostly strong revenue months and two, the 10% on restaurant payments was identified as a restaurant base percentage for the RFP process.

Restaurant Elevator Fee Revenue

Tower Foods will pay the City 50% of restaurant level elevator fees and utilize the remaining 50% during this time frame for promotions and marketing for the Tower restaurant. The original agreement specified that 100% of the restaurant elevator revenue be paid to the City. The promotion of the Tower restaurant's continued operation will also benefit the City in its operation of the observation deck and associated revenue collection. Promotional efforts will include marketing inside the Convention Center complex, reinstating shuttle service to the Tower from downtown hotels, advertising in the local market and working with the CVB on other marketing efforts. Again, this will have a direct benefit to the City through sustaining and hopefully increasing revenue at this facility.

As part of the amendment, Tower Foods, Inc. will agree to allow uninhibited access to the facility by Landry's consultants who will be performing inspections and designing plans, as

long as it does not disrupt the restaurant operation. Other operational and maintenance terms of the current agreement remain the same.

Tower Foods has a time consideration on this issue that impacts them directly. At this point, the current employees, perishable orders, reservations, etc. are scheduled to cease and close at the end of this month. They are desirous of a quick resolution of this issue in order to extend the entire operation until February 28, 2005 and inform employees, supplies and guests of this extension.

Over the next few weeks, as time frames with the capital improvements associated with the Landry's contract are finalized, additional time can be added to the Tower Foods extension, if needed, in a month-to-month basis until May 31, 2005. June is a high revenue producing month and payment to the City would need to be increased prior to extending into the summer.

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

If Tower Foods, Inc. closes on August 31, 2004, the City's anticipated revenue from only the observation deck admissions is projected to be \$368,693.00 from that date until February 28, 2005. If Tower Foods remains in operation until February 28, 2005, then it is anticipated the City will receive additional revenue from restaurant sales of \$72,108.00 and from the restaurant elevator fees of \$37,990.00. The contract extension will be beneficial to the City's collection of observation deck admissions by maintaining a presence in the Tower and by increased traffic. The estimated total amount of Tower Foods payment to the City during this extension to February 28, 2005 would be \$110,098.00. All revenue estimates are based on the actual collected revenue for the same months last year.


This revenue will be deposited into City's General Fund.

COORDINATION

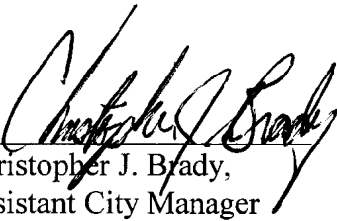
This action has been coordinated with the City Attorney's Office.

SUPPLEMENTARY COMMENTS

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

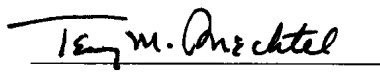


Malcolm Matthews,
Director of Parks and Recreation



Christopher J. Brady,
Assistant City Manager

Approved:



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:

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(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.

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(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

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(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

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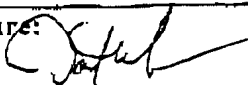
Political Contributions

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:	Amount:	Date of Contribution:
See Attached		

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.