

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

TO: Mayor and City Council

FROM: Malcolm Matthews, Director, Parks and Recreation Department

SUBJECT: Contract for Operation of the Tower of the Americas

DATE: November 18, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the execution of a fifteen (15) year lease agreement with Willie G's Post Oak, Inc., a wholly owned subsidiary of Landry's Restaurants, Inc., for operation of the Tower of the Americas, approves assignment of a license agreement with Lions Club of San Antonio for operation of telescopes and appropriates funds for capital improvements to the Tower.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

During a City Council B Session on March 13, 2003, City staff briefed the City Council on issues facing the Tower of the Americas. The need for major capital improvements, the pending January 1, 2004 expiration date of the restaurant concession agreement, and the possibility of combining the restaurant, observation level and other operations into one management operation were each part of the report. City Council authorized issuing a Request for Proposals (RFP) for operation of the entire facility, extending the current restaurant concession agreement to allow time for this process, and coordinating City capital improvements with any improvements by the selected proposer. (Subsequently, the Tower of the Americas was included in the 2003-2007 Bond Issue in the amount of \$1.6 million, to be added to \$482,700 in Certificates of Obligation and \$72,000 in other capital funds that were authorized for infrastructure renovations).

Fessel International Hospitality Consultants was selected through Ordinance 97880 on June 26, 2003 to assist with the RFP process, including development of the RFP, solicitation of public input and evaluation of the submitted proposals.

Proposals were received from Landry's Restaurants, Inc. and Tower Foods, Inc., the lessee of the restaurant level since its opening in 1968. Landry's Restaurants, Inc. was selected on March 4, 2004 as the private entity with whom staff would negotiate a contract. On June 24, 2004, the City Council authorized a contract with the law firm of Bracewell and Patterson, LLP of Houston

to prepare the agreement in accordance with the conditions set forth in the RFP. In addition, on August 12, 2004, an amendment was approved to extend the Tower Foods, Inc. agreement until February 28, 2005, with allowance for month-to-month operation until May 31, 2005 in order to give the needed time for contract, design and permit approvals for the Landry's project.

The negotiated contract carefully details responsibilities of both Landry's and the City. Highlights of the contract are noted below:

Term

The license agreement is a 15-year term. There is one 10-year renewal option, which must be mutually agreed and will require approval by City Council. The construction period will begin with closure of the facility and the 15-year operating term will begin upon the date that the renovated Tower reopens.

Operations

In addition to the existing restaurant and the parking lot, Landry's will be responsible for the observation deck, security and new ground level facilities that they will construct. Landry's operation will include new food service facilities at both the observation deck and at ground level, including some banquet and private dining areas. A new 4D theater and a gift shop will be installed at ground level and interactive, educational kiosks will be installed at the observation deck. The current lease for the telescope contract on the observation level with the Lions Club of San Antonio will be assigned to Landry's.

The City will retain some maintenance functions related to the Tower infrastructure, including the elevator mechanical maintenance, all utility connections to the base of the Tower, electrical service to the top of the Tower, antenna leases, roof and top house maintenance, maintenance of the Tower shaft and the parking structure.

Capital Investment & Timeline

One of the primary goals of the City's RFP process was to obtain a lessee that could commit to major capital improvements at the Tower of the Americas. In 2003, the City hired James T. Rodriguez Engineering to complete a study of the Tower's structural, architectural, mechanical and electrical systems. The study identified over \$3.6 million of needed improvements. Many of these identified needs will be constructed as part of the renovation by Landry's, such as restaurant improvements, ground floor improvements, parking improvements, observation deck upgrades, etc. These improvements are directly tied to the Landry's capital investment of at least \$9,025,000 associated with their proposal. Landry's, through commitment in the RFP process, agreed to construct the identified capital improvements that remain the responsibility of the City, consisting of items such as structure and mechanical repairs, elevator and fire protection upgrades, upgrades to the structure, and electrical upgrades. These City improvements are for those items that the City will retain as its infrastructure responsibility. The Rodriguez study

identified those particular items to cost approximately \$2.8 million to repair. The City will provide available funding of \$2,154,700 to Landry's to make these improvements as part of the overall renovation. These funds are available from:

| | |
|--|------------------|
| Certificates of Obligation | \$ 482,700 |
| 2003-2007 Park Bond Funds | \$1,600,000 |
| Facility Improvement and Maintenance Program Funds | <u>\$ 72,000</u> |
| Total Available City Funding | \$2,154,700 |

As indicated by the Rodriguez study estimate, the City-identified improvements could exceed these available funds. The contract specifies that Landry's will finance additional City improvements stipulated by the City up to \$2,873,000 (an additional \$719,000 over the available \$2.154 million). Since Landry's will make these improvements on behalf of the City, they will be reimbursed for this amount by receiving a credit of \$150,000 per year from the minimum guaranteed payment due the City, which is \$984,375, until the amount expended by Landry's is reached. If Landry's revenue to the City exceeds the base payment amount of \$984,375, Landry's may reimburse itself from the amount owed the City from the percentage rent payment, if any, that is above \$984,375 until the full \$719,000 is reimbursed. It is projected that the reimbursement, if fully needed, will take approximately two years based upon Landry's revenue projections. Also, if both the City and Landry's agree, the City's capital improvements can be limited to \$2.3 million if the improvements have no material impact to the project. This will be determined when the final plans are completed for the entire project. This financing mechanism will permit these capital improvements to be accomplished without additional up-front City financing. Landry's will expend the City's capital improvement funds in accordance with municipal procurement statutes.

In addition to the City's projects, Landry's Restaurants, Inc. has committed to a facility investment of at least \$9,025,000 prior to the start of the first year of the contract term. The improvements will include complete renovation of the **restaurant level** with construction of a "signature series" restaurant. The **observation level** renovation will include repairs to the exterior railing, security systems and sound system, signage, lighting, a new moderate food venue, private dining and banquet space, and interactive kiosks that will provide historical and educational information about the Tower and San Antonio. New development at the **ground level** will include retail space (gift shop), a 50 seat 4D theater and a new café with indoor and outdoor dining, also in the moderate price range. The **parking lot** improvements will include repainting, resurfacing and re-striping the parking deck, new lighting and signage, and the addition of video surveillance and security components. The improvements will be part of a comprehensive development plan that ties into HemisFair Park, to include site signage and retention of pedestrian and emergency access.

The design approval process and permitting process will begin immediately upon contract execution. City staff has met to discuss the permit approval process for this landmark. Landry's will adhere to the City's approval guidelines, including review and approval by the Historic and Design Review Commission. Upon approval of the final construction permits, the Construction

Period for capital improvements will begin and the Tower will be closed. The City will not terminate the existing Tower Foods, Inc. contract nor will construction commence for Landry's until the project permits are complete. This is anticipated to be in May 2005. The contract stipulates that the construction will reach Substantial Completion within 300 calendar days of construction start. An additional 120 days will be allowed for Project Completion, to finish tasks that do not impact the public's use of the facility after the facility has reopened. If the facility is not open and paying the City rent prior to the 120 day project completion period, Landry's will pay a Late Opening Charge of \$2,000 per day over the next 30 days. Over the following 90 days, the Late Opening Charge will continue at a rate of \$2,735 per day. After these 120 days, the contract will terminate.

In addition to these initial capital improvements, Landry's will set aside 1% of gross revenue each year (beginning with year 2) for improvements to the Tower's public areas, to be utilized as needed throughout the term of the agreement. In the RFP, Landry's made a commitment to allocate 1% for an improvement fund for 7.5 years, which was to be used at the contract's mid term. It was negotiated to have the funds readily available so that aesthetic upgrades could be made on an as-needed basis to keep the public areas looking fresh for the entire length of the contract.

Maintenance and Tenants Self-Help

The City will continue to be responsible for ongoing maintenance of major components of the Tower infrastructure, such as the utilities connections, concrete structures, elevators and roof. The City staff will monitor these elements and make repairs as necessary and will respond to Landry's notification of maintenance issues as needed. Should the City not respond to a maintenance concern impacting the operation in a timely manner, Landry's may make the needed repair. If the repair expenses are deemed necessary by the City, then Landry's may utilize a Self-Help Credit of up to \$150,000 per year toward the minimum rent payment. The Self-Help Credit can be continued from one year to the next until the full value of the repair is reimbursed.

Price Strategy

There are to be various venue options and price categories for visitors to the Tower. The pricing for these venues is based upon Landry's proposal and the various issues negotiated in the contract. The City has been extremely protective of the affordability factor associated with the observation level. The fees for the observation level will be no more than \$5.00 for adults, \$4.00 for seniors and \$3.00 for children (age under 12) at opening and cannot increase more than \$1 for adults and \$.50 for seniors/children every two-year period. A group rate of 10% off of regular rates at any time and 50% off every non-holiday Monday from opening time (varies by season) until 3:00 p.m. will be available for the observation level.

The ticket cost for the theater initially will be no more than \$8.95 for adults, \$7.95 for seniors and \$6.95 for children (age 4-12, under 4 free) and cannot increase more than \$1 every two years.

The new food venues at the ground level and observation deck will be moderately priced, based on the pricing standards for a moderately priced food venue in the City of San Antonio. The City did not desire to set pricing for the restaurant level "Signature Series" restaurant.

Parking rates at the Tower garage will initially be no more than \$6.00 per visit. The Special Event parking rate will be no more than \$11.00 per visit. Parking rates cannot increase more than \$1 every two years.

With the exceptions of food venue prices and the observation level prices noted above, should Landry's desire to increase the pricing for any operation by more than 5% over the prices from the previous lease year, then they must obtain City approval.

Financial Consideration

Upon contract execution, a Performance Bond or equal instrument of \$850,000 is required. It will remain in effect until 120 days after the contract expiration date. Should Landry's fall into default on any applicable term of the contract, an appropriate amount may be deducted from the Bond and Landry's will have to replenish it to the \$850,000 value.

The projected gross sales by Landry's over the 15 year contract are \$153,651,000. The payment to the City based on this projection is estimated at \$22,119,150 for the 15 year term. This is based upon percentage revenues from the Tower venues as follows:

| | | |
|-------------------------------|-----|---|
| Restaurant | 10% | Signature restaurant, observation level and ground level cafés, banquet and private dining room rentals, snacks |
| Observation Deck | 35% | Admission fees |
| Parking | 30% | Regular fees, valet and special events |
| Retail | 15% | Gift shop at ground level, souvenirs at observation deck |
| Entertainment | 5% | Theater tickets, vending |
| Telescopes and other revenues | 50% | Telescope revenues or contract buy-out with Lions Club, plus revenues not otherwise listed |

The guaranteed annual minimum payment to the City is \$984,375. All payments due to the City will be made monthly. As noted above, the base payment may be credited by \$150,000 per year if Landry's finances the City-specified capital improvements above the available City funds or if City maintenance repairs are made by Landry's. Monthly payments to the City will begin when the Construction Period ends.

Landry's will adhere to standard insurance and indemnification requirements specified by the City's Risk Management Office and City Attorney's Office. These policies will include Builder's Risk and General Liability coverage until the facility is opened and General Liability (\$5 million), Excess/Umbrella Liability (\$50 million) and Business Interruption coverage after it is opened.

SBEDA

Landry's has committed to following the City's policy on SBEDA and will conduct local outreach for small/minority firms' participation as specified in that policy.

Marketing Plan

Landry's has committed to spending 5% of adjusted total gross sales for marketing of the Tower of the Americas facility up to \$6 million in total adjusted gross sales, and 4% above \$6 million.

POLICY ANALYSIS

The issuance of the RFP for operation of the City's Tower of the Americas was part of a recommendation to the City Council during a B Session on March 13, 2003. The RFP evaluation criteria were presented to City Council during an A Session on October 16, 2003 and a B Session on October 23, 2003. Landry's Restaurants, Inc. was selected on March 4, 2004 through Ordinance 98910, at which time negotiation of a contract commenced. City Council must approve the contract with Landry's before the project can begin.

FISCAL IMPACT

It has been reflected in the FY05 budget that the City's General Fund will be impacted by the closing of the Tower in the Spring of 2005. The net revenue to the City (revenues minus expenses) during FY05, because of approximately seven months of operation before the Tower closes for renovation, is estimated to be \$160,000. A reasonable estimate of downtime for the Landry's capital improvements would be approximately May 2005 through February 2006, leaving seven months for revenue generation in FY06, creating net revenue to the City during FY06 to be approximately \$490,000. The first fiscal year to fully realize the contract revenue is FY07 when the net revenue to the City will be approximately \$875,000.

In regard to City capital improvements, the City will provide available funding of \$2,154,700 to Landry's to make the improvements. These funds are available from:

| | |
|--|-------------|
| Certificates of Obligation | \$ 482,700 |
| 2003-2007 Park Bond Funds | \$1,600,000 |
| Facility Improvement and Maintenance Program Funds | \$ 72,000 |
| Total Available City Funding | \$2,154,700 |


These funds will be provided to Landry's on a reimbursement basis during construction of the City's capital improvements to be funded up front by Landry's during the redevelopment phase of the Tower.

COORDINATION

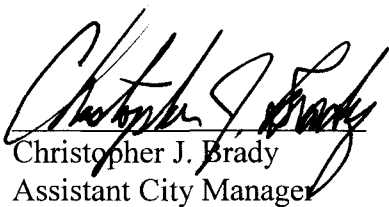
This contract was coordinated with the City Attorney's Office and Contract Services Department.

SUPPLEMENTARY COMMENTS

An Ethics Ordinance Disclosure Statement from Willie G's Post Oak, Inc., a wholly owned subsidiary of Landry's Restaurants, Inc., is attached.



Malcolm Matthews
Director of Parks and Recreation



Christopher J. Brady
Assistant City Manager



J. Rolando Bono
Interim City Manager

City of San Antonio
Discretionary Contracts Disclosure*

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

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

** This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, 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.*

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:

Not Applicable

(2) the identity of any **business entity** that would be a party to the discretionary contract:

Landry's Restaurants, Inc. and a wholly owned subsidiary

and the name of:

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

Not Applicable

and the name of:

(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:

Landry's Restaurants, Inc. (Parent Company)

(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.

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.

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San Antonio, Texas 78205
(210) 225-6700 - Telephone

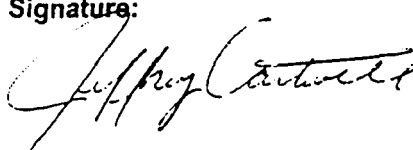
Political Contributions

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 *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 (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

| To Whom Made: | Amount: | Date of Contribution: |
|---------------------|---------|-----------------------|
| Please 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 question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

| | | |
|--|---|------------------------|
| | | |
| Signature:  | Title: Executive Vice-President Company: Landry's Restaurants, Inc. | Date: 2/1/04 |

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.

CONTRIBUTIONS MADE BY BALTAZAR R. SERNA, JR.

| CANDIDATES | DATES | AMOUNT |
|-------------------|--------------|----------------------|
| Thomas Aguillon | 2/5/03 | \$250.00 |
| Enrique Barrera | 8/11/03 | \$500.00 |
| Julian Castro | 9/4/02 | In Kind - \$1,300.00 |
| Julian Castro | 3/12/03 | In Kind - \$1,033.26 |
| Phil Cortez | 5/20/03 | \$250.00 |
| Phil Cortez | 1/14/03 | \$500.00 |
| Edward Garza | 11/17/03 | \$1,000.00 |
| Edward Garza | 2/24/03 | \$500.00 |
| Edward Garza | 4/2/03 | \$500.00 |
| Chip Haas | 9/03 | \$500.00 |
| Toni Moorehouse | 3/25/03 | \$350.00 |
| John Sanders | 5/2/03 | \$300.00 |
| John Sanders | 4/16/03 | \$750.00 |
| Carroll Schubert | 7/30/02 | \$1,000.00 |
| Ron Segovia | 6/2/03 | \$250.00 |
| Ron Segovia | 5/27/03 | In Kind - \$714.80 |
| Joel Williams | 11/5/03 | \$500.00 |

AN ORDINANCE

AUTHORIZING THE EXECUTION OF A FIFTEEN (15) YEAR LEASE AGREEMENT WITH WILLIE G'S POST OAK, INC., A WHOLLY OWNED SUBSIDIARY OF LANDRY'S RESTAURANTS, INC., FOR OPERATION OF THE TOWER OF THE AMERICAS IN CITY COUNCIL DISTRICT 1, APPROVING ASSIGNMENT OF A LICENSE AGREEMENT WITH LIONS CLUB OF SAN ANTONIO FOR OPERATION OF TELESCOPES AND APPROPRIATING FUNDS FOR CAPITAL IMPROVEMENTS TO THE TOWER.

* * * * *

WHEREAS, on October 28, 2003, the City of San Antonio issued a Request for Proposals (RFP) for operation of the Tower of the Americas which subsequently was closed on January 9, 2004; and

WHEREAS, the City Council selected the proposal from Landry's Restaurants, Inc. and authorized staff to negotiate an agreement on March 4, 2004 through Ordinance 98910; and

WHEREAS, the City and Landry's Restaurants, Inc. have negotiated an agreement; and

WHEREAS, the agreement specifies that a current agreement with the Lions Club of San Antonio dated August 27, 1998 will be assigned to Landry's Restaurants, Inc.; and

WHEREAS, the agreement also stipulates that Landry's Restaurants, Inc. will complete capital improvements that have been identified by the City and authorized through City funding ordinances;
NOW THEREFORE:

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

Section 1. The Interim City Manager or his designee is hereby authorized to execute a fifteen year lease agreement with Willie G's Post Oak, Inc, a wholly owned subsidiary of Landry's Restaurants, Inc., for operation of the Tower of the Americas. A copy of said lease agreement is affixed hereto, approved hereby and incorporated herein for all purposes as Attachment I.

Section 2. In connection with the expenditure of funds for the Landlord Supported Improvements under the lease agreement, the City hereby delegates to Willie G's Post Oak, Inc., as its designated representative, the City's authority and the administrative task of complying with the Procurement Statutes pursuant to section 271.114(a) of the Texas Local Government Code and the City's authority as a home rule municipality.

Section 3. Pursuant to the terms of the lease agreement with Willie G's Post Oak, Inc., the current agreement with the Lion's Club of San Antonio dated August 27, 1998 is hereby assigned to Landry's Restaurant, Inc.

Section 4. The total amount of \$2,154,700.00 is hereby appropriated as follows in Fund _____, Tower Rehabilitation Project, in WBS _____, entitled Reimbursement for Tower Contractor Improvements, and is authorized to be encumbered and made payable to Willie G's Post Oak, Inc.:
AWAITING INFORMATION FROM FINANCE

| | |
|--|----------------|
| Certificates of Obligation | \$ 482,700.00 |
| 2003-2007 Park Bond Funds | \$1,600,000.00 |
| Facility Improvement and Maintenance Program Funds | \$ 72,000.00 |
| | \$2,154,700.00 |

Section 5. Revenue associated with this contract shall be deposited into the following WBS elements: **AWAITING INFORMATION FROM FINANCE**

_____, entitled Tower Restaurant Operations
_____, entitled Tower Observation Deck Operations
_____, entitled Tower Parking Operations
_____, entitled Tower Retail Operations
_____, entitled Tower Telescope and Other Operations
_____, entitled Tower Theater and Incidental Operations

Section 6. This ordinance shall be effective on and after November 28, 2004.

PASSED AND APPROVED this _____ day of November 2004.

M A Y O R

ATTEST: _____
City Clerk

APPROVED AS TO FORM: Hollis Young
for City Attorney