

RESOLUTION NO. 73310

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ACCEPTING REVISED BUSINESS TERMS FOR AN AGREEMENT WITH DONALD F. IMWALLE DBA IMWALLE STEGNER AS MASTER TENANT FOR DEVELOPMENT OF RETAIL SPACE FOR RESTAURANT SERVICES LOCATED ON THE FOURTH STREET SIDE OF THE NEW CITY HALL AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A FINAL LEASE CONSISTENT WITH SUCH REVISED BUSINESS TERMS

WHEREAS, on June 28th, 2005, Council approved the selection of Donald F. Imwalle to provide food services in approximately 6,278 square feet of space in the new City Hall along Fourth Street; and

WHEREAS, Donald F. Imwalle proposes to operate Imwalle City Hall, LLC, to serve as a Master Tenant and Developer for subtenant food service providers; and

WHEREAS, by Resolution No. 72825, Council authorized certain business terms, and the circumstances merit revisions to the previously approved terms and conditions,

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

- A.** The revised business terms as outlined in the staff report dated June 16, 2006 and in the "Summary of Lease Provisions" attached hereto as "Attachment I", are accepted, with direction to conclude negotiations for a final lease consistent with the terms of the revised business terms.
- B.** The City Manager is hereby authorized to negotiate and execute a Master Lease Agreement with Imwalle-City Hall, LLC.

ADOPTED this 27th day of June, 2006, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, NGUYEN,
PYLE, WILLIAMS, YEAGER

NOES: LeZOTTE, REED; GONZALES

ABSENT: NONE

DISQUALIFIED: NONE

VACANT: NONE

RON GONZALES
Mayor

ATTEST:

LEE PRICE, CMC
City Clerk

Attachment 1

Summary of Lease Provisions

Contractual relationship

The lease will be between Imwalle-City Hall, LLC and the City. The assets of the LLC will be limited to the lease, the revenues from any subtenants and the improvements made pursuant to the lease. Imwalle will serve as the Master Tenant, and will provide initial improvements to bring the premises to warm shell, obtain and manage the subtenants that provide the food services, and provide ongoing maintenance of the leased premises.

Final "fit-out" of the subtenant space will be the responsibility of the subtenant and is a contractual matter between Imwalle and the subtenants (subject to City's normal permitting processes). The City may approve subtenants, and may not unreasonably withhold its consent.

Basic Financial Provisions

Term: An initial term of 25 years, and grants the Master Tenant 2 ten year options to renew, for a potential total term of 45 years.

Rent: The rentals to the City for the first ten years of the lease are to be \$6,000 per year for years 1-5 of the lease, and \$12,000 per year for years 6 through 10, payable annually in advance.

At the 11th year of the lease, the City will receive 50% of net revenues, payable annually in arrears. The revenues are principally the rentals received by the Master Tenant from the subtenants, minus certain deductions for certain expenses incurred by the Master Tenant in subleasing the space, such as tenant improvement costs, leasing commissions, specified accounting or legal expenses, taxes, insurance, and a management fee of 5% to the Master Tenant.

City Contribution: The lease provides for a City contribution of \$300,000 to the costs of bringing the interior space to "warm shell". The City's contribution will not be made until Imwalle has incurred expenses in excess of \$857,476.00 in constructing the space. Due to the fact that not all subtenants are presently known, the lease does not require an estimated amount for the subtenants to expend on their spaces.

Lease Contingencies: The term of the lease does not commence until subtenants for 2/3 of the space have been approved by Imwalle and the City, and all permits and approvals for the construction of the Master Tenant's improvements and the Subtenant's improvements have been obtained on terms and conditions reasonably satisfactory to the Master Tenant. If all of the contingencies to the commencement of

the lease term have not been fully satisfied 240 days after execution of the lease, either party may terminate the lease.

Rental payments commence on a pro-rated basis as space is occupied by subtenants. Full rentals commence no later than 180 days after all of the lease contingencies discussed above have been removed and the term of the lease thereby commenced.

Leased Premises: The leased premises include approximately 5365 square feet of interior space, the service corridor, trash area, and exterior patio area. A sidewalk café permit is required for use of the exterior area.

Loss or interference with outdoor patio space: The lease requires the City to compensate the Master Tenant if, in the future, regulations are issued (or any other actions are taken by City), which interfere with the Master Tenant's use of the exterior seating area (not due to noncompliance of the Master Tenant or subtenant with the Sidewalk Café permit). The amount is based upon a formula to compensate for lost revenues and expenses incurred by the Master Tenant, as follows: (a) the unamortized cost of the improvements, alterations and leasehold improvements made by Master Tenant and its Subtenants to the Premises (amortized on a straight line basis over ten years) plus (b) an amount calculated to be the projected loss of Master Tenant's share of sublease over the remainder of the initial term, in accordance with the following formula: fifty percent (50%) of the average of the net sublease income from the preceding three (3) calendar years, increased by two percent per annum (compounded) for the remainder of the initial term, and discounted to present value as of the date such damage accrues to Master Tenant.

Operational Provisions

Hours of Operation: The Master Tenant is to use its best efforts to cause at least one subtenant to be open for business from 7 AM to 7 PM, Monday through Friday, with the ability to close on all national, state, and City holidays.

Exclusivity: The Master Tenant has the exclusive rights to operate as the sole fixed location restaurateur within the City Hall complex. These rights do not preclude food service brought into City Hall under the following circumstances:

- City Hall employees bringing into City Hall food service or products as long as such foods are for their own use and not for commercial resale;
- catering of special events by off-site food service providers;
- any internal fundraisers conducted by City employees;
- the installation of vending machines in City Hall;
- any events authorized on the Plaza under the Municipal Code

Approval of subtenants: The Master Tenant is obligated to use its best efforts to find reasonable restaurant subtenants for the premises with an effort to match downtown needs and the needs of City employees. If after such efforts, the Master Tenant is not

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successful at locating subtenants of the type and quality preferred by the City (such as Starbucks or Prolific Oven), the Master Tenant may sublease to other subtenants as are available for the space, and the City cannot unreasonably withhold its consent.

Master Tenant/City contacts: The City Manager is delegated the authority to approve or disapprove proposed subtenants in the lease. At the request of Imwalle, the Director of OED has been initially designated the City's principal point of contact for requests of Imwalle to the City.

City Requirements: Payment of prevailing wages is required for construction by the Master Tenant. The lease contains the standard City provisions regarding non-discrimination, reference to City's ethics and revolving door ordinances, First Source Program and Environmental Procurement Program.

Labor Peace Update: The specific Labor Peace provision has not yet been completed, but the Labor Peace provision will be as described in the staff memorandum.