COUNCIL AGENDA: 06-22-10
ITEM: 2.20

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Peter Jensen

SUBJECT: SEE BELOW

DATE: 06-04-10

Approved

Date 6/8/10

COUNCIL DISTRICT: Citywide

SUBJECT: ADOPTION OF A RESOLUTION AUTHORIZING THE DIRECTOR OF GENERAL SERVICES TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH DAVID AKBAR AND MANVIR GILLON, A PARTNERSHIP DOING BUSINESS AS SAVU, FOR THE LEASE OF REAL PROPERTY LOCATED AT 150 S. 2ND STREET

RECOMMENDATION

Adoption of a resolution authorizing the Director of General Services to negotiate and execute an agreement with David Akbar and Manvir Gillon, a partnership doing business as SAVU ("SAVU") for the lease of real property located at 150 S. 2nd Street for purposes of operating a restaurant and sports bar, for rentals as follows: Year 1 $88,978; Year 2 $122,197; Year 3 $125,863; Year 4 $129,639; Year 5 $133,528; Year 6 $137,534; Year 7 $141,660; Year 8 $145,910; Year 9 $150, 287; Year 10 $154,796 for total compensation to City of $1,330,392.

OUTCOME

The lease of 150 S. 2nd Street to SAVU will allow for the operation of a neighborhood restaurant and sports bar at the property. The ten-year projected lease revenue to the City would be $1,276,365 (net income after the payment of brokerage fees), with additional revenues to the City if SAVU exercises its two five-year options to renew. The lease will also ensure continued occupancy of the retail space, due to the fact that the current tenant Hawgs Seafood Restaurant has decided to leave the space.

BACKGROUND

The subject property is part of the Paseo de San Antonio in downtown San Jose, encompassing San Jose Repertory Theatre, Hawgs Seafood Restaurant, Circle A Skate and Rosies & Posies. A map of the Paseo de San Antonio is attached as Exhibit A. 150 S. 2nd Street has been occupied by Hawgs Seafood Restaurant since December 1999 pursuant to a ten year lease between Hawgs and the San Jose Redevelopment Agency, with two additional ten year options. In October 2003, the SJRA transferred ownership of the property and assigned the lease to the City of San Jose.

Hawgs' rental rate was lowered several times throughout the ten year term, and is currently at $4,000 per month (approximately $0.79 per square foot). On or about November 15, 2009, Hawgs informed staff that it did not intend to exercise its first ten year option, and was attempting to sell or assign its restaurant business to a third party. In January 2010 Hawgs agreed to continue leasing the property on a month-to-month holdover basis at the existing rental rate, for approximately six to eight months until the City secured a new tenant for the space.

ANALYSIS

In January 2010, staff conducted research on the market value of the lease space through discussions and meetings with a number of brokers experienced with the downtown San Jose retail market. Based upon this research, staff determined the fair market value of the space to be $1.95 per square foot per month. Thereafter, staff issued a request for proposal to brokers for the lease of 150 S. 2nd Street and interviewed three prospective brokers in late January. Colliers International was selected through this process to market the space on behalf of the City at the determined rate. Beginning in February 2010, Colliers performed extensive online and direct marketing of the property, resulting in three tenancy proposals to staff for consideration (one of which was subsequently withdrawn). After analysis of the proposed business terms and calculations of projected revenue, staff determined that the SAVU proposal presented the most beneficial terms to the City.

A lease with SAVU would provide the City with a market-rate tenant at 150 S. 2nd Street for the first time in several years. It would ensure that a highly visible space within downtown San Jose will be occupied by a tenant, thereby bolstering the Paseo de San Antonio and surrounding businesses. The ten-year projected lease revenue to the City would produce $1,276,365 for the City's General Fund (net of the lease payments less a brokerage fee), with additional revenues to the City if SAVU exercises its two five-year options to renew. Furthermore, the City would be supporting a local business owner, as one of the partners in SAVU also owns and operates Azucar, a Latin bistro located at 71 E. San Fernando Street in downtown San Jose.

In summary, SAVU proposes to operate a neighborhood restaurant and sports bar on the property, with an initial ten-year term and two additional five-year options. Rent for the first year will be $9,886.50 per month ($1.95 per square foot), with 3% annual escalations. An outline of the SAVU business terms, along with a chart of the projected revenues and broker fees, are attached as Exhibit B.

SAVU has been informed of the use limitations under which it is likely to operate, the key one being that the City does not expect to issue an entertainment license for the property. SAVU has expressed its willingness to proceed with the lease with that understanding.

EVAULUATION AND FOLLOW-UP

The lease of this property is expected to be effective on or about September 1, 2010.

PUBLIC OUTREACH/INTEREST

- ☐ **Criterion 1**: Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The subject lease agreement does not meet any of the above criteria; however, this memorandum will be posted on the City's website for the June 22, 2010 Council agenda.

COORDINATION

This item has been coordinated with the City Manager's Office, Office of Economic Development, Redevelopment Agency and the City Attorney's Office. The lease document will be reviewed and approved as to form by the City Attorney's Office.

COST SUMMARY/IMPLICATION

The ten-year rental revenue under the lease will be $1,330,392.21. The total brokerage fee will be $54,027.64, with 50% to be paid upon full execution of the lease and 50% to be paid upon rent commencement. Therefore, the net revenue to the City for the first ten years will be $1,276,364.58, which will be applied as real property rental revenue. The revenue for the two five-year options will be based on the market rental rate in year ten, but will be no less than the rate charged in year ten.

CEQA

Exempt PP10-095

/s/
PETER JENSEN
Director, General Services

For questions please contact MATT MORLEY, DEPUTY DIRECTOR OF GENERAL SERVICES, at 975-7200.

Exhibit A
Map of Property

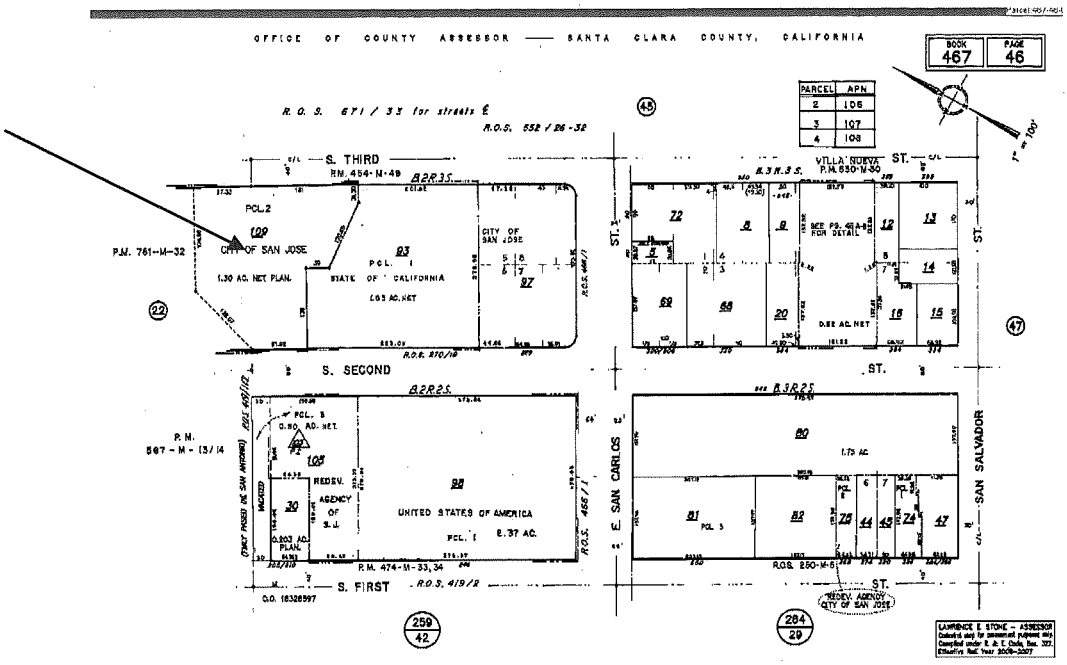

Exhibit B
Business Terms

- The business terms described herein are the minimum terms set forth between staff and SAVU; final negotiations may result in more favorable terms to the City.
- Lessee: David Akbar and Manvir Gillon, a partnership doing business as SAVU.
- Venue Type: Restaurant and sports bar.
- Term: 10 years initial term.
- Option: Two 5-year options to extend.
- Rent:
  - Months 1-3 $ 0.00
  - Months 4-12 $9,886.50 ($1.95 per sq ft).
  - 3% annual escalation.
  - At end of year 10, rent to be adjusted to market (but cannot be lower than immediately preceding period).
- NNN Expenses: $0.10 per sq. ft. per month common area maintenance fee; equates to $507.00 per month.
- Security Deposit: $10,488.59
- Utilities: Separately metered by City, utilities bills paid for by Tenant.
- Improvements: Tenant responsible for building out the space to create a neighborhood restaurant and sports bar.
- Prevailing Wage: Applies to construction of improvements on-site.
- Condition: Tenant to take the premises in as-is, where-is condition.
- Assignment/Subleasing: Generally must have City's prior written approval.
- Termination: City has right to terminate the lease without cause upon 180 days prior written notice. If City terminates without cause during the first five years and there are unamortized costs of improvements, City will pay the lower of (i) unamortized costs according to a 5-year schedule to be included in the lease, or (ii) the fair market value of the improvements at the time of termination. There will be a cap on the reimbursement amount.
- Signage: City to cooperate with Tenant to acquire signage consistent with Downtown Signage Program.
- Due Diligence: City to obtain info on (a) Tenant's experience in starting & operating a restaurant and (b) Tenant's financing for construction & operation of the restaurant.
- Broker Fee: The broker fee for this transaction will be $54,027.64. Fifty percent is due upon lease execution, and fifty percent is due upon Rent Commencement.

Projected Rent and Broker Fees

Term	Year	Escalation	Price PSF	Monthly Rent	Annual Rent	Broker %	Broker $
Initial	1		$ 1.95	$ 9,886.50	$ 88,978.50	6%	$ 5,338.71
	2	3%	$ 2.01	$ 10,183.10	$ 122,197.14	6%	$ 7,331.83
	3	3%	$ 2.07	$ 10,488.59	$ 125,863.05	5%	$ 6,293.15
	4	3%	$ 2.13	$ 10,803.25	$ 129,638.95	5%	$ 6,481.95
	5	3%	$ 2.19	$ 11,127.34	$ 133,528.11	5%	$ 6,676.41
	6	3%	$ 2.26	$ 11,461.16	$ 137,533.96	3%	$ 4,126.02
	7	3%	$ 2.33	$ 11,805.00	$ 141,659.98	3%	$ 4,249.80
	8	3%	$ 2.40	$ 12,159.15	$ 145,909.78	3%	$ 4,377.29
	9	3%	$ 2.47	$ 12,523.92	$ 150,287.07	3%	$ 4,508.61
	10	3%	$ 2.54	$ 12,899.64	$ 154,795.68	3%	$ 4,643.87
Option 1	11	FMR but not < Year 10				0%	0
	12	3%				0%	0
	13	3%				0%	0
	14	3%				0%	0
	15	3%				0%	0
Option 2	16	3%				0%	0
	17	3%				0%	0
	18	3%				0%	0
	19	3%				0%	0
	20	3%				0%	0
				Total 10 Years	$ 1,330,392.21	**Broker Total**	**$ 54,027.64**
				Net 10 Years	$ 1,276,364.58		

* Year 1, Months 1-3 Rent is $0.00