

2.9 Lease Agreement with Scott's Park Avenue SJ, LLC for the Rotary Summit Center Located at 88 South Fourth Street.

Recommendation:

Adopt a resolution authorizing the City Manager or her designee to negotiate and execute:

- (a) A lease agreement between the City of San José, as Landlord, and Scott's Park Avenue SJ, LLC, doing business as Scott's Seafood, as Tenant, for use of the approximately 12,365 square feet of space, including a banquet hall, office space, lobby, and commercial kitchen at 88 South Fourth Street for a 120-month initial term at an annual rent equal to 8% of gross revenues per lease year, net of credit card discounts and certain expenses provided at cost, with a total minimum rent for the term of the agreement of \$3,680,000, inclusive of rent credits, over the 120-month term and including the 60-month option period; and
- (b) All other necessary and/or ancillary documents to effectuate the lease of the property to the tenant.

CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. Council District 3. (Economic Development and Cultural Affairs)

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein

SUBJECT: SEE BELOW

DATE: May 28, 2024

Approved



Date

6/6/24

COUNCIL DISTRICT: 3

**SUBJECT: LEASE AGREEMENT WITH SCOTT'S PARK AVENUE SJ, LLC FOR
THE ROTARY SUMMIT CENTER LOCATED AT 88 SOUTH FOURTH
STREET**

RECOMMENDATION

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- (a) A lease agreement between the City of San José, as Landlord, and Scott's Park Avenue SJ, LLC, doing business as Scott's Seafood, as Tenant, for use of the approximately 12,365 square feet of space, including a banquet hall, office space, lobby, and commercial kitchen at 88 South Fourth Street for a 120-month initial term at an annual rent equal to 8% of gross revenues per lease year, net of credit card discounts and certain expenses provided at cost, with a total minimum rent for the term of the agreement of \$3,680,000, inclusive of rent credits, over the full 180-month term, including the option period; and
- (b) All other necessary and/or ancillary documents to effectuate the lease of the property to the tenant.

SUMMARY AND OUTCOME

Approval of these recommendations will allow the City of San José (City) to negotiate and execute a lease agreement for the use of an approximately 12,365 square foot facility located at 88 South Fourth Street, Seventh Floor with Scott's Park Avenue SJ, LLC, DBA Scott's Seafood Restaurant (Scott's Seafood) for a 120-month initial term and mutual option for a 60-month lease extension. The space is known as the Rotary Summit Center and consists of a 6,600 square-foot banquet hall, a 3,380 square-foot commercial kitchen and storage area, and a 2,385 square-foot lobby.

The lease will:

- Generate revenue to the City equal to 8% of gross revenues, net of certain services provided at cost.
 - Generate minimum guaranteed rent of \$3,680,000 over the full 180-month term, including the option period. Rental proceeds to the City will likely exceed the minimum guaranteed rent, especially in the initial years of the lease, as the guaranteed rent level scales up (see the table included in the analysis section of this memorandum).
- Scott's Seafood will assume all City obligations to provide service to the Rotary Club of San José (Rotary).
- Scott's Seafood will assume responsibility for all facility maintenance except for structural building elements such as the HVAC system and elevators.

BACKGROUND

In 1999, the City and the Redevelopment Agency of the City of San José entered into an agreement to develop a 750-space parking garage at the corner of South Fourth Street and San Fernando Street. Prior to the construction of the parking garage, Rotary approached the City about constructing a banquet room on the top of the parking garage. On June 30, 1999, Rotary and the City entered into an "Agreement to Contribute Funds," as subsequently amended and restated on May 13, 2003, whereby Rotary agreed to contribute \$1,000,000 for the construction of the property in exchange for certain rights to the space. The operator would market the property on available days for weddings, conferences, non-profits, and more. Operations were intended to draw significant numbers of people to the downtown.

On June 22, 1999, the Rotary and the City entered into an agreement known as the "Banquet Facility Agreement," which was subsequently amended and restated on May 13, 2003, for Rotary's use of the property for a term of 35 years. The Banquet Facility Agreement obligates the City to secure an operator for the property and provide Rotary with exclusive use of the property for up to 50 luncheons per year and up to four additional events annually.

On March 30, 2005, the City and Light Tower Associates LP entered into an agreement to provide catering management services at the property and fulfill the City's obligations to Rotary in the Banquet Facility Agreement. In October 2005, Light Tower Associates LP assigned its rights to San José Fairmont Lessee, LLC (Fairmont). The Fairmont and City executed a continuation of the Catered Event Management Services Agreement on May 15, 2014, to continue providing the catering services for the property and agreed to extend the Catered Event Management Services Agreement on September 5, 2018, until May 15, 2020.

In 2020, the COVID-19 pandemic led to the closing of the banquet center to comply with state and federal shelter-in-place mandates. During this closure, the Fairmont shuttered its doors and

filed for bankruptcy. The closure of the Fairmont left the City without an operator/caterer for the property. A temporary solution for catering service only was found to satisfy the obligations to Rotary, however, the property has been left without a long-term operator to manage and market it as an event space.

ANALYSIS

The partnership with Rotary is longstanding and is a valued relationship, as Rotary provides numerous philanthropic investments for the community. Likewise, Scott's Seafood has been an institution in downtown San José for nearly 40 years, with other locations in Oakland, Sacramento, and Folsom. Scott's Seafood is known for serving high-quality fresh seafood and award-winning clam chowder. Scott's Seafood plans to operate the property as a full-time banquet hall offering to host events such as weddings, corporate events, and non-profit galas. The banquet hall can accommodate 400-plus attendees.

Scott's Seafood will pay 8% of its gross revenues per lease year, excluding credit card discounts and revenue from services provided at cost, such as non-profit and City-use events and Rotary lunches. Scott's Seafood will issue a payment to the City if the share of gross revenue does not exceed the minimum guaranteed rent amount for each lease year, as set forth below. Scott's Seafood is an operator well equipped to maximize revenue in running the property, and ultimately rent payments to the City.

Scott's Seafood will enter a formal catering agreement with Rotary in which Scott's Seafood will agree to provide dishes, services, and amenities commensurate with Rotary's desire and provide Rotary with Wednesday club lunches from 10:00 a.m. to 3:00 p.m. and up to four day or evening events per year. Scott's Seafood shall provide Rotary catering services at cost.

Scott's Seafood supports the non-profit community in the Bay Area and South Bay and desires to continue this support through its operation of the facility. Scott's Seafood will provide up to 12 events per year, at cost, to non-profit organizations, up to four of which may be used by the City. Scott's Seafood will also donate 10% of its profit to non-profit organizations of its choice, such as the 5 Buckets Foundation, which focuses on providing financial literacy and education tools to youth and young adults, or The Reading Bridge, which provides children throughout the Bay Area with access to new and inclusive books. At least 2% of profits shall be donated to the San José Public Library Foundation or other non-profit charitable organizations that support City of San José programs.

The property will be delivered to Scott's Seafood as-is. However, some kitchen equipment and freezers need minor repairs due to the lack of use during the COVID-19 pandemic through today. The City shall provide Scott's Seafood with a rental credit for half of the out-of-pocket costs, up to \$10,000, incurred to repair or replace kitchen equipment before opening the facility.

Scott's Seafood will assume maintenance responsibility for all fixed assets, including all fixtures, furnishings, and equipment in the property. The City will retain responsibility for the upkeep of structural building systems, such as the HVAC and elevators. Ten percent of the City lease revenue will be directed to a reserve fund for these future capital needs.

The City and Scott's Seafood have executed a letter of intent outlining the following terms of a lease agreement.

Property Address:	88 South Fourth Street, 7 th Floor, San José, CA 95113.
Landlord:	City of San José, a municipal corporation of the State of California.
Tenant:	Scott's Park Avenue SJ, LLC, a California limited liability company.
Property:	Approximately 12,365 square feet located at 88 South Fourth Street, 7th Floor, known as the Rotary Summit Center, including a 6,600 square foot banquet hall, a 1,970 square foot commercial kitchen, a 1,410 square foot storage area, and a 2,385 square foot entry lobby.
Utilities:	Scott's Seafood shall be responsible for paying its own utilities metered directly (PG&E, water, sewer, etc.) and any possessory interest tax levied by the County of Santa Clara.
Facility Maintenance:	Scott's Seafood shall be responsible for all fixed asset improvements, furniture, and fixtures, including all necessary repairs, replacements, and maintenance, including appliances, carpeting, and operating supplies, such as lightbulbs. The City will retain responsibility for elevator maintenance, HVAC maintenance, and structural building systems, which shall continue to be maintained, repaired, and operated by the City.
Security Deposit:	\$10,000.
Use of Subject Property:	Full-service banquet hall and catering, including catering obligations to Rotary.
Condition of Subject Property:	The property shall be delivered as-is. Scott's Seafood may use any and all furniture, fixtures, and equipment in the space at no cost. Scott's Seafood shall receive a rental credit for half of the out-of-pocket costs, up to \$10,000, incurred to repair or replace kitchen equipment prior to opening the property to the public.

Term: 120 months, and a mutual option to extend for 60 months, for a total potential term of 15 years.

Rent Commencement: Upon mutual lease execution.

Rent: Scott's Seafood shall pay to the City 8% of gross revenues per lease year, excluding credit card discounts and events provided at-cost, including rotary lunches, non-profit events, and City-use events.

If the share of gross revenue is less than the minimum annually guaranteed rent for each lease year, as set forth below, Scott's Seafood shall remit to the City an additional payment that would make the total payment equivalent to the minimum guaranteed rent.

MONTHS:	RENT/MONTH	MINIMUM ANNUAL GUARANTEE TOTAL
1-12	\$0	\$0
13-24	\$10,000/month	\$120,000
25-36	\$12,500/month	\$150,000
37-48	\$15,000/month	\$180,000
49-60	\$20,000/month	\$240,000
61-120	\$25,000/month	\$300,000

Non-Profit Support: Scott's Seafood shall provide up to 12 events per year at cost to non-profit organizations, including up to four events per year to the City of San José.

Scott's Seafood shall donate 10% of profits to non-profits of its choice, provided that 2% of profits shall be donated to the San José Public Library Foundation or other non-profit charitable organizations that support City of San José programs.

EVALUATION AND FOLLOW-UP

Staff will negotiate and execute the new lease agreement with Scott's Seafood consistent with the recommendations in this memorandum. Staff will apply the rent credit of up to \$10,000 for half of the out-of-pocket expenses incurred to repair or replace kitchen equipment before opening to the public. The Public Works Department has begun the process of switching barrel locks in all elevators and rekeying the locks on all exterior doors accessing the property, which is necessary to perform before executing the lease. Scott's Seafood and Rotary have begun conversations to enter into a formal catering agreement, which must be executed before or

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concurrent with the lease, to provide catering services for Rotary's Wednesday luncheons and quarterly events.

COST SUMMARY/IMPLICATIONS

The estimated revenue to the General Fund will be a minimum of \$3,680,000 over the full 180-month term, including the option period. Revenue from the lease will very likely exceed the minimum guaranteed rent, especially in the initial years of the lease, as the minimum guarantee scales up over time. The City will apply a rent credit equal to half of the out-of-pocket costs, up to \$10,000, incurred by Scott's Seafood for the repair or replacement of kitchen equipment before the property opens to the public. The Public Works Department will maintain and repair the HVAC system and other structural building systems and the Department of Transportation will maintain and repair the elevators. Ten percent of rent collected by the City will be deposited into a reserve fund to address future capital needs associated with the Fourth Street Garage's maintenance.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, the Departments of Planning, Building, and Code Enforcement, and Public Works.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the June 18, 2024 City Council meeting.

Rotary, the City, and Scott's Seafood have met and discussed obligations that Scott's Seafood will have to cater the Rotary Wednesday lunches during the term of this agreement.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. The proposed action is not a project pursuant to California

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Environmental Quality Act Guidelines Section 15378 because there is no potential for either a direct or a reasonably foreseeable indirect physical change in the environment.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

NANCI KLEIN

Director of Economic Development and
Cultural Affairs

For additional information, please contact Kevin Ice, Assistant to the City Manager, Senior Manager, Real Estate Services, at kevin.ice@sanjoseca.gov. The principal author of this memorandum is Thomas Cavanagh-Harris, Senior Executive Analyst, Real Estate Services.