



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: June 21, 2022

Agenda Item 4K
Approvals:
City Manager CS
Dept. Head _____
Attorney CJ
Finance JWR

Department: Economic Development Department
Prepared By: Jonathan Lightfoot, Economic Development Officer

Subject: *1ST AMENDMENT TO CONTRACT C07-22 FOR THE PARKING LOT AT 175 AVE. CABRILLO*

Fiscal Impact: Yes. If the Council authorizes an increase from \$350 per month to \$500 per month, there will be an \$1800 per year increase in expenses. This increase is accounted for within the existing Economic Development / Rental of Land account #001-151-43710-000-00000.

Summary: The City established a program 15 years ago to improve the availability of downtown parking by renting private lots for public use. This program improved the overall efficiency of parking resources in the downtown. The leases were set at a fixed rate that did not include an escalator. Staff recommends that Council authorize the requested rental rate increase to maintain public availability of this downtown surface parking lot.

Background: The City first entered into a lease for the 175 Avenida Cabrillo lot in 2007. The lease was assigned in 2016 to reference additional property owners (see Attachment 1). The City has paid \$350 per month since 2007.

Discussion: The existing contract, C07-22, established a rate of \$350 per month and did not include an escalator. If CPI had been incorporated, the current rate would be \$493. The property owners are requesting an updated rate to \$500 per month. Staff is supportive of this increase. Staff will need to increase future budget allocation requests under Economic Development in order to account for this increase and any other negotiated increases of these private parking lot facilities.

Recommended

Actions: STAFF RECOMMENDS THAT the City Council:

1. Authorize the City Manager to execute an Amendment to contract C07-22 to increase the monthly lease rate to \$500.

Attachments:

1. Contract C07-22, Lease of 175 Ave. Cabrillo

Notification: Marjorie Boughton, ownership representative

ATTACHMENT 1

PARKING LOT LEASE AGREEMENT

This PARKING LOT LEASE AGREEMENT ("Agreement") is made and entered into as of this 12 day of February, 2016 by and between Cynthia Taylor Carrick, William Dowling Taylor, and Marjorie Taylor Boughton ("Owner"), and the CITY OF SAN CLEMENTE, a California municipal corporation ("City"). Owner and City are hereinafter sometimes referred to collectively as "parties" and individually as a "party."

RECITALS

A. Owner is the owner in fee of that certain real property located at 175 Avenida Cabrillo, Assessor's Parcel Number ("APN") 058-081-02 located in the downtown area of the City of San Clemente, County of Orange, State of California (the "Property").

B. City has requested to lease, and Owner is willing to lease, those portions of the Property more particularly depicted in Exhibit "A", attached hereto and incorporated by this reference (the "Premises"), for the purpose of providing public parking according to the terms and conditions of this Agreement.

COVENANTS

Based upon the foregoing Recitals, which are incorporated into this Agreement by reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, Owner and City hereby agree as follows:

1. Grant of Lease. Owner hereby leases to City, and City hereby leases from Owner, the Premises and all landscaping, improvements, and structures that will be used for the Permitted Uses (defined below) according to the terms and conditions of this Agreement.

2. Term.

2.1 Automatic Renewal. The lease of the Premises shall be divided into one (1) year renewable terms, wherein each one (1) year term is hereinafter referred to as a "Renewable Term." The first Renewable Term shall commence upon the date the agreement is signed, and each subsequent Renewable Term shall automatically commence on the date that is the day immediately after the expiration of the previous Renewable Term. The lease of the Premises for any time during any and all Renewable Terms is hereinafter referred to as the "Extended Term."

2.2 Termination of Lease. Either party, in its sole and absolute discretion, may terminate the lease of the Premises at any time during the Extended Term. The party seeking to terminate the lease shall deliver to the other party written notice thereof no later than sixty (60) days prior to the date of termination. The City may also unilaterally cancel the lease after a delivery of a written notice to the Owner no later than sixty (60) days prior to the date of termination at any time after the execution of this lease.

3. Rent and Security Deposit.

3.1 Rent. City shall pay to Owner as rent for the Premises Three Hundred Fifty Dollars (\$350:00) per month (the "Rent"). The first payment of Rent shall be prorated pursuant to Section 3.4 below (if applicable) and shall be delivered to Owner no later than the date that is three (3) weeks after the Commencement Date. Each and every subsequent payment of Rent shall be delivered to Owner no later than the tenth (10th) day of the month for which the Rent is due.

3.2 Security Deposit. City shall deliver to Owner, no later than the date that is three (3) weeks after the Commencement Date, a security deposit in the amount of One Thousand Dollars (\$1,000:00) (the "Security Deposit"). The Security Deposit shall be held by Owner as security for the performance by City of the terms and conditions of this Agreement to be kept and performed by City. Prior to the use of the Security Deposit for any obligation to be performed by City pursuant to this Agreement, Owner shall deliver written notice to City of the reason for the use, and Owner shall provide City with an opportunity to cure any failure to perform said obligation prior to the use of the Security Deposit pursuant to the cure provisions set forth in Section 10 below. If City fully performs every obligation of this Agreement to be performed by it, the Security Deposit or any balance thereof shall be returned to City upon termination of this Agreement.

3.3 Delivery. All payments and charges due under this Agreement shall be paid by City in lawful money of the United States of America, which shall be legal tender at the time of payment, at:

Cynthia Taylor Carrick, William Dowling Taylor, Marjorie Taylor Boughton
12917 Caminito Beso
San Diego, CA 92130

or to such other person or at such other place as Owner may from time to time designate in writing. Owner shall promptly deliver to City any change in address or person responsible for receiving payment of Rent. City shall not be in default of this Agreement if Owner fails to receive any payment of Rent when Owner fails to promptly deliver any change in address or person responsible for receiving payment.

3.4 Prorated Amounts. Any Rent due under this Agreement for any fractional part of a calendar month shall be prorated based on the ratio that the number of days in that month during the Term bears to the total number of days in that month.

4. Permitted Uses. For the duration of the Term, the Premises shall be used for parking by the general public and incidental uses relating thereto (the "Permitted Uses"), and for no other purpose, subject to the following conditions: (i) no overnight parking shall be permitted; (ii) parking for each vehicle used by a member of the general public shall be limited to three (3) hours for any twenty-four (24) hour period, provided, however, that the time limits may be adjusted by mutual consent of the parties; (iii) any vehicle, [up to three (3)] used by current employees of current or subsequent tenants using the Premises for employee parking, may park all day on the Premises, but only if such vehicle has a mirror hanger permit for such all day use clearly posted; and (iv) any other rules and regulations that City may impose on the general public for the use of the Premises. The property may be used as an individual public

parking resource or in combination with the adjacent HRH parking lot (APNs 058-081-04 and 058-081-50) as depicted in Exhibit "B," if the HRH Partnership agrees to provide public use parking.

5. Improvement and Maintenance of Premises. City, at its own cost and expense, shall be responsible for the improvement and maintenance, as needed, of the Premises for use as a public parking lot, including but not limited to: (i) removing trees; (ii) surfacing the parking lot; (iii) striping parking lot spaces; and (iv) providing signage, as needed. Signage shall indicate, where City determines is appropriate, that the parking lot is open for use by the general public.

6. Insurance.

6.1 General Liability. City shall obtain and keep in force and effect for the entire term a commercial general liability insurance policy which names Owner as an additional insured, protecting against claims of bodily injury, personal injury and property damage based upon, involving, or arising out of the use or maintenance of the Premises by City. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.

6.2 Certificates. City shall provide to Owner a certificate of insurance evidencing insurance coverage as provided herein no later than the date that is three (3) weeks after the Commencement Date, and thereafter as requested by Owner until the termination of this Agreement.

6.3 Self-Insurance. In lieu of the obligations set forth in Section 6.1 and 6.2 above, City may satisfy its obligation to provide general liability insurance for the Premises through a self-insurance program, but only if City remains self-insured for no less than One Million Dollars (\$1,000,000.00) in liability claims. In the event that City is self-insured, City shall deliver to Owner, no later than the date that is three (3) weeks after the Commencement Date, a statement, certificate, or other proof of financial responsibility, duly acknowledged by City's authorized representative, for One Million Dollar (\$1,000,000.00) in self-insurance.

7. Indemnity. City shall indemnify, defend, and hold harmless Owner and its officers, officials, employees, agents, or representatives (collectively the "Indemnitees") against any and all claims, demands, causes of action, damages, costs, expenses, losses and liabilities, at law or in equity arising out of or relating to: (i) any activity or work done, permitted, or suffered on the Premises; (ii) use of the Premises by City and its officers, officials, employees, agents, representatives, invitees, patrons, or sub-lessees; or (iii) the acts or omissions of City or its officers, officials, employees, agents, or representatives acting in an official capacity. This indemnity shall specifically include the right to indemnification for any claims, demands, causes of action, damages, costs, expenses, losses and liabilities, at law or in equity arising from the acts or omissions, whether negligent, reckless, willful or otherwise, of any member of the public (as that term is defined below) while that member of the public is or was on or about the Premises. Notwithstanding the forgoing sentences in this Section 7, City shall have no obligation to indemnify, defend, and hold harmless the Indemnitees for any claim, demand, cause of action, damages, costs, expenses, losses and liabilities arising from or relating to (i) a pre-existing

environmental condition concerning hazardous substances on or under the Premises; or (ii) any negligent, reckless, or willful act or omission of Indemnitee(s) while on or about the Premises.

For purposes this Agreement, the term "hazardous substance" shall mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous or toxic substance, or other similar term by any federal, state, or local environmental statute, regulation, or ordinance. For purposes of this Section 7, the term "member of the public" shall mean any person other the officers, officials, employees, agents, or representatives, acting in an official capacity, of Owner or City.

8. Peaceable Possession. Owner hereby warrants and represents that it has the authority to lease the Premises and to execute this Agreement. Owner further covenants and agrees that City, upon performing and quietly observing the terms and conditions of this Agreement, shall have the right to hold, occupy, and enjoy the Premises for the Permitted Uses during the Term without any interruption or hindrance from Owner, its successors or assigns, or any person or entity lawfully claiming by or through it.

9. Default. The occurrence of any one or more of the following events shall constitute a material default ("default"): (i) the vacating or abandonment of the Premises by City; (ii) the failure by City to pay Rent when due pursuant to this Agreement, and such failure continues for a period of ten (10) days after delivery of written notice from Owner to City of said failure; and (iii) the failure by either party to observe or perform any of the obligations of this Agreement to be observed or performed by the responsible party (other than the obligation described in clause (ii) above), where such failure either: (A) continues for a period of thirty (30) days after delivery of written notice thereof from the party seeking performance, or (B) if performance cannot be completed within thirty (30) days, cure of such failure has not commenced within thirty (30) days after delivery of written notice thereof and diligently prosecuted until completion within sixty (60) days of the expiration of the thirty (30) day period (for a total of ninety (90) days). Upon an event of default and after the expiration of the applicable cure period, this Agreement and City's right to lease the Premises shall terminate upon the date that is one day after the date of expiration of the applicable cure period unless the party in default cures the default within the applicable cure period.

10. Miscellaneous.

10.1 Binding on Heirs. This Agreement shall be binding upon the parties hereto and inure to their respective representatives, transferees, successors, and assigns.

10.2 Litigation Expenses. If either party to this Agreement commences an action against the other party to this Agreement arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, expert witness fees, costs of investigation, and costs of suit from the losing party.

10.3 Notices. All notices required to be delivered under this Agreement to another party must be in writing and shall be effective: (i) when personally delivered by the other party or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) one (1) business day after deposit before the daily

deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission, provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in the foregoing (i) through (iii); in each case postage fully prepaid and addressed to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other parties hereto:

To City: City of San Clemente
City Hall
100 Avenida Presidio
San Clemente, CA 92672
Attn: City Manager
Telecopier: (949) 361-8316

Copy to: Best Best & Krieger, LLP
18101 Von Karman Ave, Suite 1000
Irvine, CA 92612
Attn: Scott C. Smith, Esq.
Telecopier: (949) 260-0972

To Owner: Cynthia Taylor Carrick, William Dowling Taylor,
Marjorie Taylor Boughton
12917 Caminito Beso -
San Diego, CA 92130
Attn: _____
Telecopier: _____

Copy to: _____

Attn: _____
Telecopier: _____

10.4 Entire Agreement, Waivers, and Amendments. This Agreement incorporates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to all or part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the party to be charged. A waiver of the breach of the covenants, conditions or obligations under this Agreement by either party shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or obligations of this Agreement. Any amendment or modification to this Agreement must be in writing and executed by the appropriate authorities of City and Owner.

10.5 Interpretation; Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared by all of the parties hereto. This Agreement shall be construed in accordance with the internal laws of the State of California without regard to any conflict of law principles in effect at the time of the execution of this Agreement.

10.6 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

10.7 Force Majeure. In the event that either party is delayed, hindered, or prevented from performing any act required hereunder by reason of strikes, lockouts, or other labor troubles, inability to procure or shortage of materials or supplies, failure of power, energy shortages, restrictive governmental laws or regulations, inclement weather, fire, explosion, earthquake or other casualty, riots, insurrection, war, act of God, or other causes that are without the fault and beyond the reasonable control of such Party, then the performance of the party obligated to perform under this Agreement shall be excused for and extended by the period of such delay.

10.8 Headings. Section and Subsection headings in this Agreement have been inserted solely for the convenience of the parties, and such captions, headings, and titles shall in no way define or limit the scope, intent, or application of any provision of this Agreement.

10.9 Time is of the Essence. Time is of the essence with respect to every provision of this Agreement.

10.10 Computation of Time. Unless otherwise specified in this Agreement, use of the word "days" shall mean calendar days, and any provision requiring the computation of time shall be based upon a standard calendar of three hundred sixty five and one-quarter (365 ¼) days.

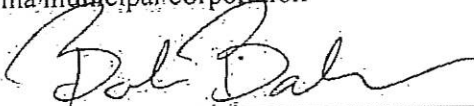
10.11 Execution in Counterpart. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

[signatures on next page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

"CITY"

CITY OF SAN CLEMENTE,
a California municipal corporation


By: 
Mayor

ATTEST:


City Clerk

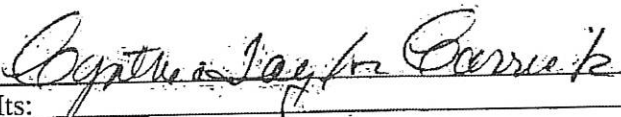
By: 
City Manager

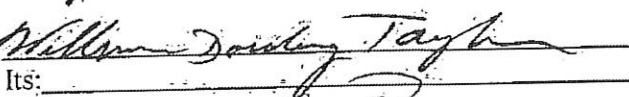
APPROVED AS TO FORM:


Scott C. Smith
City Attorney

"OWNER"

CYNTHIA TAYLOR CARRICK, WILLIAM
DOWLING TAYLOR, MARJORIE TAYLOR
BOUGHTON

By: 
Its: _____

By: 
Its: _____

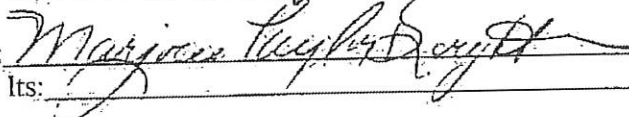
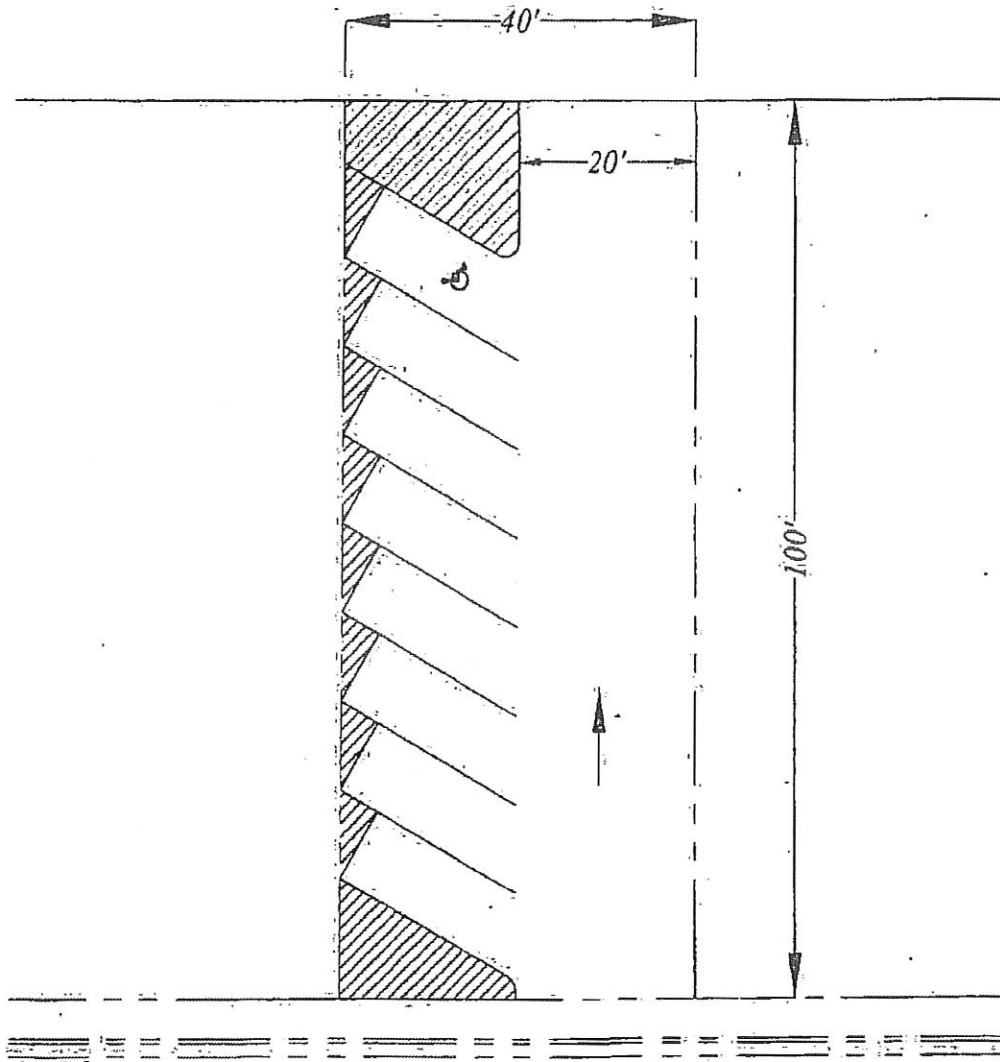
By: 
Its: _____

EXHIBIT "A"

DEPICTION OF THE PREMISES

Alley



175 Avenida Cabrillo

60 degree parking layout = 8 stalls

EXHIBIT "A"

-1-

A notary, public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

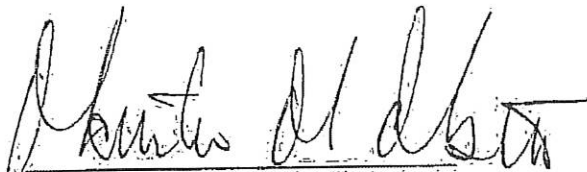
State of California

County of Orange

On February 12th 2016 before me, Matthew M Mestaz, Notary Public, personally appeared William D. Taylor, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same on his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument:

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


(Notary Public Signature)

