



CITY COUNCIL AGENDA REPORT

Meeting Date: April 18, 2019

From: Clay Holstine, City Manager

Subject: Lease of the Parking Lot at the Brisbane Inn for Public Parking

Community Goal

Safe Community

Purpose

To provide additional public parking in downtown Brisbane

Recommendation

Authorize the Mayor to sign the Lease when in final form as approved by the City Attorney.

Background

Linda Greer and Brad Melvin are the owners of property located at 50 Visitacion Avenue on which the Brisbane Inn is located. The Inn is temporarily not in operation, but has a paved parking lot on parcels accessed from Mariposa Street. City staff has discussed with the owners the public's use of this parking lot. The owners have agreed to such use as provided in the attached lease, the salient points of which are discussed below.

Discussion

The City would lease the parking lot area for public parking purposes for twelve months at a cost of \$2500/month. After twelve months, the arrangement would continue on a month to month basis but subject to termination with a 60 day notice. The City would be leasing the property as is and any improvements to the parking lot, such as striping and a curb cut along Visitacion in order to provide better ingress and egress, would be at the City's expense. The City would indemnify the owners in the unlikely event that a member of the public was damaged as a result of the use of the parking lot.

Fiscal Impact

The annual cost of the lease would be \$30,000 plus the cost to stripe the parking lot and make a curb cut along Visitacion. There are funds available for this purpose.

Measure of Success

Additional parking in downtown Brisbane.

Attachment

Lease between the City and Linda Greer/Brad Melvin

Clay Holstine, City Manager

Attachment A

LEASE

THIS LEASE, dated April 18, 2019 between Linda Greer and Brad Melvin (“Owners”) and the City of Brisbane, a municipal corporation (“City”) is made with reference to the following facts:

A. Owners are the owners of certain real property in the City of Brisbane, County of San Mateo, State of California, commonly known as ____ Visitacion Avenue, on which is situated a commercial building (the Brisbane Inn).

B. City wishes to lease from the Owners the parking lot portion of the property, generally depicted on Exhibit A (“the Leased Property”) for the purposes of providing public parking and Owners are willing to lease such property to the City, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the following promises, the parties agree as follows:

**ARTICLE 1
LEASED PREMISES**

1.01 Owners lease to the City the Leased Property.

1.02 City shall use the Leased Property for public parking purposes. City shall maintain the Leased Property and all costs of maintenance of the Leased Property shall be the sole and exclusive obligation of the City.

**ARTICLE 2
TERM**

2.01 The term of this Lease shall be for twelve months unless this Lease is terminated earlier as provided herein. After twelve months, the term of this Lease shall continue on a month to month basis; provided, however, that either party may then terminate this Lease with 60 days written notice.

**ARTICLE 3
LEASE PAYMENT**

3.01 City shall pay to the Owners for its use of the Leased Property the sum of \$2500 per month, payable on the first day of each month during the term of this Lease.

**ARTICLE 4
POSSESSION AND USE**

4.01 The Leased Property shall be used by the City for the purpose of providing public parking.

**ARTICLE 5
CONDITION OF LICENSED PROPERTY**

5.01 The Leased Property is being leased to City in "AS IS" condition and the Owners shall have no obligation to make any alterations or improvements to the Leased Property for the benefit of the City.

**ARTICLE 6
IMPROVEMENTS**

6.01 At its own cost and expense, the City shall make a curb cut along Visitacion Avenue, remove two bollards currently on the Leased Property and may place on the Leased Property such improvements, such a striping, as the City deems necessary in order to provide public parking

**ARTICLE 7
REPAIRS AND MAINTENANCE**

7.01 City shall at its own cost and expense keep and maintain in good order all the improvements that the City places on the Leased Property.

**ARTICLE 8
INDEMNITY**

9.01 City hereby waives any and all claims against the the Owners for damage to any property or injury to or death of any person in, upon or about the Leased Property, arising at any time and from any cause other than solely by reason of the negligence or willful misconduct of the Owners. City shall indemnify, defend, and hold the Owners, and their employees, agents successors and assigns, harmless from and against any and all claims, demands, causes of action, liabilities, costs or expenses, including attorney's fees, occasioned by or in any way connected with the condition, use or misuse of the Leased Property, or occasioned by any act or omission of the City and City's employees, agents, invitees or other persons who may come upon the Leased Property, except for damage to any property or injury to or death of any person caused solely by the negligence or willful misconduct of the Owners.

**ARTICLE 9
BREACH**

9.01 Should the City fail to perform or cause to be performed any act required hereunder, including, but not limited to, the following, such failure shall constitute an event of default on the part of Licensee.

(a) The failure for a period of more than thirty (30) days after written notice from the Owners to do, observe, keep and perform any of the provisions of this Lease which the City is required to do, observe, keep or perform.

9.02 Any notice given under this Article shall specify the event of default and the applicable Lease provisions, and shall demand that the City perform the provisions of this Lease within the applicable period of time. No such notice shall be deemed a forfeiture or a termination of this Lease provided the City cures the default within the applicable period of time.

9.03 In the event of a breach of this Lease and upon the failure of the City to cure same after notice as provided in this Article, the Owners, in addition to all other rights and remedies provided by law or equity, may, but are not obligated to, declare this Lease terminated by written notice to the City as of a date specified in the notice which shall not be less than thirty (30) days after the date of serving such notice.

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**ARTICLE 10
WAIVER**

10.01 No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.

**ARTICLE 11
NOTICES**

11.01 Any notices or other communications required or permitted to be given under this Lease shall be in writing and shall be either personally delivered or sent by certified mail, return receipt requested, or by a delivery service such as Federal Express which provides a receipt or other written evidence of delivery, addressed to the other party at such address as may be furnished from time to time as the place for delivery of notices hereunder. Any notice or other communication sent by mail shall be deemed received on the third business day after deposit of the notice in the U.S. Mail with full postage prepaid thereon. Pursuant to this section, notices or other communications shall be addressed to the following recipients:

If to the City:

City of Brisbane
50 Park Place
Brisbane, CA 94005
Attn: City Manager

If to Owners:

Brisbane, CA 94005

**ARTICLE 12
AUTHORITY OF OWNERS TO EXECUTE LEASE**

12.01 Owners represent and warrant to the City that: (i) this Lease is duly executed and delivered by and is binding upon and enforceable against the Owners; and (ii) Owners have the right and authority to enter into this Lease and consummate the transactions herein provided and nothing prohibits or restricts the right or ability of the Owners to carry out the terms hereof.

**ARTICLE 13
MISCELLANEOUS**

13.01 Captions. The captions used in this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any provision contained herein.

13.02 Entire Agreement. This Lease constitutes the entire agreement between the parties and supersedes and cancels any prior agreements or understandings, whether written or oral. This Lease can only be modified by a written amendment hereto executed by both parties.

13.03 Severability. If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

13.04 Calendar Days. All references herein to any acts or obligations to be performed within a certain number of days shall mean calendar days.

13.05 Choice of Law. This Lease shall be governed by and interpreted in accordance with the laws of the State of California.

13.06 Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto.

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IN WITNESS WHEREOF, the parties have executed this License Agreement the day and year first above written.

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/CITY OF BRISBANE:

OWNERS

By: _____
City Manager

Linda Greer

Brad Melvin

APPROVED AS TO FORM:

City Attorney