

# *CITY OF BRISBANE*

## *AGENDA REPORT*

To: Mayor Conway and Members of the Brisbane City Council

From: Clay Holstine, City Manager

Subject: License Agreement Concerning a Portion of the Park and Ride Lot

Date: October 18, 2018

### **Background**

The City owns property at 3501 Bayshore Boulevard that is used as a park and ride lot. The property has 35 parking spaces but is rarely are all spaces utilized by commuters. Recently, a Brisbane resident, Sava Pentchek, requested use of a portion of the property (an area encompassing 11 parking spaces) for the purposes of using that area for a food truck and ancillary uses, such as a couple of picnic tables. The Council's Economic Development Subcommittee considered this proposal as did the City Council in closed session. Based thereon, Council directed this item be placed on its agenda for consideration.

### **Discussion**

Food trucks have become a popular and alternative form of meeting a community's needs for take out food services. Currently there is no location in the City where residents (or those traveling through the community) have ready access to a food truck. Under this Agreement, Mr. Pentchek, through his LLC, Vasani Group, would provide this service along Bayshore Boulevard in a location that is safely accessible to residents and commuters.

The City would charge the licensee \$.35/square foot for the area to be licensed under the Agreement, 1648 square feet (\$576.80/month) for one year. The price is somewhat less than what vacant property might otherwise rent for in the community but given the uncertainty whether this will be a successful business at this location, that the licensee will be responsible for all costs associated with this endeavor, such as utilities and that the City has the right to terminate the Agreement at any time for any reason, the price that the licensee will pay for the use of the property is fair to the City. If the operation continues beyond one year, the City will re-negotiate the monthly charges.

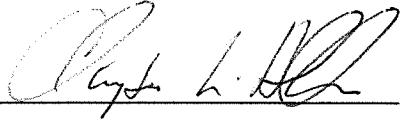
The park and ride lot will continue to provide plenty of parking (24 spaces) for commuters as the daily use of the lot for such purpose is typically less than that.

### **Fiscal Impact**

The City will receive \$576.80 per month under the License Agreement.

**Recommendation**

Staff recommends the City Council authorize the City Manager to sign the License Agreement when in a final form as approved by the City Attorney.



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Clay Holstine, City Manager

Attachment : License Agreement.

# LICENSE AGREEMENT

**THIS LICENSE AGREEMENT**, dated October 18, 2018 between the City of Brisbane, a municipal corporation ("City") and Vasani Group, LLC, 87 Lily Court, Brisbane, CA 94005 ("Licensee") is made with reference to the following facts:

A. City is the owner of certain real property in the City of Brisbane, County of San Mateo, State of California, as described on Exhibit A.

B. Licensee desires to license from the City a portion of the property depicted on Exhibit B ("the Licensed Property") for the purposes of providing a food truck operation and the City is willing to license such property to Licensee, on the terms and conditions hereinafter set forth.

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

## ARTICLE 1 LICENSED PREMISES

**1.01** City licenses to Licensee the Licensed Property.

**1.02** Licensee shall operate on the Licensed Property a food truck operation. Licensee shall maintain the Licensed Property. Any and all costs of maintenance of the Licensed Property shall be the sole and exclusive obligation of Licensee. Licensee expressly warrants that the City shall not be liable for any funds concerning costs associated with this License Agreement, whether for maintenance or otherwise.

## ARTICLE 2 TERM

**2.01** The term of this License shall be for 12 months or until either (a) the City, in its sole discretion, terminates this License or (b) this License is terminated as provided herein.

## ARTICLE 3 LICENSE PAYMENT

**3.01** Licensee shall pay to the Successor Agency for its use of the Licensed Premises the sum of \$576.80 per month (1648 square feet x \$.35/square foot), payable on the first day of each month during the term of this License Agreement.

**3.02** Licensee shall hold the City harmless from and against all insurance premiums, carrying charges, costs, expenses, property or other taxes or assessments, and

obligations of every kind and nature whatsoever relating to the Licensed Property which may arise, accrue, or become due during the term of this License.

#### **ARTICLE 4 POSSESSION AND USE**

**4.01** The Licensed Property shall be used by Licensee solely for the purpose of conducting a food truck operation and for no other or additional purpose without the prior written approval of the City. Licensee may allow its food truck to remain on the Licensed Property even when the Licensee is not actively conducting the food truck business.

**4.02** Licensee shall not use the Licensed Property or permit anything to be done in or about the Licensed Property which is prohibited by or will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be in force. Licensee shall not use or allow the Licensed Property to be used for any unlawful or objectionable purpose, nor shall Licensee cause, maintain or permit any nuisance in, on or about the Licensed Property or commit or suffer to be committed any waste in, on or about the Licensed Property.

#### **ARTICLE 5 CONDITION OF LICENSED PROPERTY**

**5.01** Licensee acknowledges and agrees that the Licensed Property is being licensed to Licensee in "AS IS" condition and the Successor Agency shall have no obligation to make any alterations or improvements to the Licensed Property for the benefit of Licensee. Licensee further acknowledges that neither the City nor anyone acting on City's behalf has made any representation or warranty as to the suitability or fitness of the Licensed Property for the intended use thereof by Licensee and it is the sole responsibility of Licensee to satisfy itself with respect to all such matters.

#### **ARTICLE 6 IMPROVEMENTS**

**6.01** Licensee shall install on the Licensed Property only those improvements, such as a connection for water and/or sewer service as approved by the Public Works Director of the City of Brisbane.

**6.02** All fees and costs for construction of any improvements on the Licensed Property, including application and permit fees charged by the City of Brisbane and any other governmental agency, design and construction costs, and the cost of any financing obtained by Licensee for such improvements, shall be the sole responsibility and obligation of Licensee.

**6.04** Upon the termination of this License Agreement, Licensee shall remove from the Licensed Property, without cost, expense or obligation of any kind or nature to the City, all improvements.

## **ARTICLE 7 REPAIRS AND MAINTENANCE**

**7.01** Licensee shall, during the term of this License, at its own cost and expense, keep and maintain all the improvements which may be placed on the Licensed Property in good and neat order and repair and shall allow no nuisance to exist or be maintained therein. The City shall not be obligated to make any repairs of any kind, nature or description whatsoever to the Licensed Property or the improvements thereon.

## **ARTICLE 8 UTILITIES**

**8.01** Licensee shall pay the cost of all utility and other services furnished to the Licensed Property, including, but not limited to, electricity, gas, water, sewer, telephone, and garbage collection service. Whenever possible, Licensee shall establish a separate account and meter with the utility or service provided so that all charges for service are billed directly to Licensee.

## **ARTICLE 9 INDEMNITY**

**9.01** Licensee hereby waives any and all claims against the City for damage to any property or injury to or death of any person in, upon or about the Licensed Property, arising at any time and from any cause other than solely by reason of the negligence or willful misconduct of the City. Licensee shall indemnify, defend, and hold the City, and their officers, officials, boards, commissions, employees, and agents, 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 Licensed Property, or occasioned by any act or omission of Licensee and Licensee's agents, servants, employees, invitees or other persons who may come upon the Licensed 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 City. The indemnity obligations of Licensee set forth herein shall survive and continue beyond the term of this License.

## **ARTICLE 10 INSURANCE**

**10.01** Licensee shall, at no cost to the City, obtain and keep or cause to be kept in force during the term hereof, fire and extended coverage insurance on all improvements on the Licensed Property that are destructible by fire or such perils as insured by a Standard Form fire and extended coverage policy of insurance and in amounts not less than 100 percent of the insurable value of such improvements. The City shall be named in

the loss payable clause of such policy, as its interest may appear. All policies placed by Licensee upon the Licensed Property shall contain waivers of any right of subrogation said insurer might otherwise have against the City.

**10.02** During the term of this License, Licensee shall procure and maintain in full force and effect at Licensee's expense: (i) comprehensive general liability insurance with an aggregate limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, insuring against all liability of Licensee, the City for bodily injury and property damage arising out of or in connection with Licensee's maintenance, use, or occupancy of the Licensed Property and also insuring performance by Licensee of the indemnity provisions set forth in Section 9.01 of this License. The amount of such insurance shall be at least \$1,000,000.00, combined single limit. However, the amount of such general liability insurance shall not limit Licensee's liability nor relieve Licensee of any obligations under this License. The general liability insurance policy shall name the City, and their officers, officials, boards, commissions, employees, and agents, as an insured parties thereunder, and shall be endorsed to provide that: (i) the insurance coverage thereunder shall be primary with respect to the City; and (ii) no cancellation or reduction in coverage will be made without twenty (20) days prior written notice to the City by the carrier.

**10.03** Licensee shall provide the City with a copy of each insurance policy required to be maintained hereunder, and each such policy shall be subject to approval as to form, content and amount by the City or their authorized representatives.

## **ARTICLE 11 DAMAGE OR DESTRUCTION**

**11.01** In case of any damage to or destruction of the improvements on the Licensed Property, or any part thereof, and such damage is covered by insurance, Licensee shall have the election to: (i) utilize the insurance proceeds for the restoration, replacement or rebuilding of the improvements with such alterations and additions as may be approved by the City; or (ii) not restore the improvements so damaged or destroyed and apply the insurance proceeds to the clean-up and removal of the damaged or destroyed Improvements so as to restore the Licensed Premises to their condition at the time of execution of this License. Any balance of insurance proceeds shall be paid to Licensee.

**11.02** In the case of any damage to or destruction of the improvements which is not covered by the insurance required to be maintained under Section 10.01 hereof, and such damage exceeds fifty percent (50 percent) of the replacement cost of such Improvements, Licensee may, at its option, terminate this License by giving written notice of termination to the City. Otherwise, Licensee shall restore the Improvements to their original configuration or in such other manner as shall be approved in writing by the City.

## **ARTICLE 12 ASSIGNMENT AND SUBLETTING**

**12.01** Licensee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, pledge, hypothecate or encumber all or any part of Licensee's interest in this License or in the Licensed Property or any part thereof, without the City's prior

written consent and any attempt to do so without such consent being first had and obtained shall be wholly void and shall constitute a breach of this License. The City may withhold its consent in the City's absolute and sole discretion.

**12.02** No consent by the City to any assignment or subletting by Licensee shall relieve Licensee of any obligation to be performed by Licensee under this License, whether occurring before or after such consent, assignment or subletting. The consent by the City to any assignment or subletting shall not relieve Licensee from the obligation to obtain the City's express written consent to any other assignment or subletting. The acceptance of payment by the City from any other person shall not be deemed to be a waiver by the City of any provisions of this License or to be a consent to any assignment, subletting or other transfer. Consent to one assignment, subletting or other transfer shall not be deemed to constitute consent to any subsequent assignment, subletting or other transfer.

### **ARTICLE 13 PERFORMANCE BY CITY ON LICENSEE'S DEFAULT**

**13.01** In the event that Licensee shall fail or neglect to do or perform any act or thing herein provided for it to be done or performed and such failure shall continue for a period of thirty (30) days after written notice from the City specifying the nature of the act or thing to be done or performed, or shall continue beyond the time reasonably required for the performance of any act if the same could not reasonably be performed within said thirty (30) day period, then the City may, but shall not be required to, perform or cause to be performed such act or thing (including the entering upon the Licensed Property for such purpose, if the City elects so to do), and the City shall not be liable or in any way responsible for any loss, inconvenience, annoyance or damage resulting to Licensee on account thereof; and Licensee shall repay to the City, upon demand as additional rent, the entire reasonable cost and expense thereof, including compensation to the employees, agents and contractors of the City. Any act or thing done by the City, pursuant to the provisions of this Article 13 shall not be, or be construed as, a waiver of any covenant, term or condition herein contained or of the performance thereof.

### **ARTICLE 14 BREACH**

**14.01** Should Licensee 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 City to do, observe, keep and perform any of the terms, covenants, agreements and provisions of this License which Licensee hereunder is required to do, observe, keep or perform.

- (b) The permanent abandonment of the Licensed Property by Licensee without making adequate provision for the protection thereof; the adjudication of Licensee as a bankrupt; the making by Licensee of a general assignment for the benefit of creditors; the taking by Licensee of the benefit of any insolvency act or law; the appointment of a permanent receiver or trustee in bankruptcy for Licensee's property; or the appointment of a temporary receiver which is not vacated or set aside within one hundred and twenty (120) days from the date of such appointment.

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

**14.03** In the event of a breach of this License and upon the failure of Licensee to cure same after notice as provided in this Article, the Successor Agency, in addition to all other rights and remedies provided by law or equity, the City may, but is not obligated to, declare this License terminated by written notice to Licensee, as of a date specified in the notice which shall not be less than thirty (30) days after the date of serving such notice, and in such event the City shall be entitled to re-enter and repossess the Licensed Property, together with the improvements thereon

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## **ARTICLE 15 WAIVER**

**15.01** 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. Acceptance by the City of any performance by Licensee after the time the same shall have become due shall not constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.

## **ARTICLE 16 INSPECTION OF PREMISES**

**16.01** The City shall be entitled, at all reasonable times, to go upon and into the Licensed Property for the purpose of: (i) inspecting the same; (ii) inspecting the performance by Licensee of the terms and conditions of this License; and (iii) posting and keeping posted thereon notices of non-responsibility for any construction, alteration or repair thereof as required or permitted by any law or ordinance. The aforesaid rights of the City shall be exercised so as not to unreasonably interfere with Licensee's use of the Licensed Property.



**ARTICLE 17  
HOLD HARMLESS**

**17.01** Should the City,, without fault on the City's part, be made a party to any litigation instituted by Licensee against any third party or by any third party against Licensee, Licensee shall save, defend, and hold the City harmless from any judgment rendered against the City or the Licensed Property or any part thereof, and all costs and expenses, including reasonable attorney's fees, incurred by the City in connection with such litigation.

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**ARTICLE 18  
NOTICES**

**18.01** Any notices or other communications required or permitted to be given under this License 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 Licensee:

Vasani Group  
87 Lily Court  
Brisbane, CA 94005

**ARTICLE 19  
AUTHORITY OF LICENSEE TO EXECUTE LICENSE**

**19.01** Licensee represents and warrants to the City that: (i) this License is duly executed and delivered by and is binding upon and enforceable against Licensee; and (ii) Licensee has the capacity to enter into this License and consummate the transactions herein provided and nothing prohibits or restricts the right or ability of Licensee to carry out the terms hereof.

**ARTICLE 20  
SURRENDER**

**20.01** Upon the termination of this License, Licensee shall surrender the Licensed Property and remove all of Licensee's personal property and trade fixtures. Any personal property or trade fixtures not removed at the termination of this License shall be deemed abandoned by Licensee. Licensee shall also remove the improvements installed by Licensee and Licensee shall restore the Licensed Property to its condition prior to such installation.

**20.02** Should Licensee fail to remove any personal property or trade fixtures, or fail to remove the improvements as requested by the City, Licensee shall be liable to the City for any and all removal costs, transportation and storage expenses, and the cost of restoring the Licensed Property as required herein. Licensee shall indemnify the City against any loss, damage or liability resulting from delay by Licensee in so surrendering the Licensed Property.

**ARTICLE 21  
MISCELLANEOUS**

**21.01 Captions.** The captions used in this License 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.

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

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

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

**21.05 Choice of Law.** This License shall be governed by and interpreted in accordance with the laws of the State of California.

**21.06 Successors and Assigns.** Subject to the restrictions against assignment and subletting by Licensee, this License 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:

VASANI GROUP, LLC

By: \_\_\_\_\_  
City Manager

\_\_\_\_\_  
Sava Pentchev

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**EXHIBIT "A"**  
**Legal Description**

Two parcels of land situated in the City of Brisbane, County of San Mateo, State of California, described as follows:

**PARCEL 1:**

A portion of Lot 21 in Section 10, Township 3 South, Range 5 West, M.D.B & M., as designated and delineated on said "OFFICIAL MAP NO. 1 OF SALT MARSH AND TIDE LANDS, SITUATE IN THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA", said portion being bounded

On the North by the Northerly line of Tide Land Lot Number Twenty-One (21);

On the East by the Westerly line of that parcel of land described as Tract No. 3 in Deed from Crocker Estate Company to Southern Pacific Railroad Company, recorded May 26, 1904 in Book 106 of Deeds, at Page 567, Records of San Mateo County;

On the South by the Easterly line of said Tide Land Lot Number Twenty-One (21);

And on the West by:

- I) The Northeasterly line of that parcel of land as described in Deed dated February 15, 1934 from Southern Pacific Company to the State of California, recorded March 8, 1934, in Book 617 of Official Records, at Page 402, and
- II) A line that is parallel with and 100.00 feet Westerly of, when measured at right angles, the Westerly line of that parcel of land described as Tract No. 3 in Deed recorded May 26, 1904, in Book 106 of Deeds, at page 567, Records of San Mateo County;

**PARCEL 2:**

All that parcel of land as described in Deed from the Crocker Land Company, to the Southern Pacific Company, recorded July 14, 1969, in Book 5664 of Official Records, at Page 512, Records of said County, being described as follows:

BEGINNING at a point in the Southwesterly line of land of Southern Pacific Company that is the most Westerly corner of land described as Parcel No. 2 in Deed dated February 15, 1934 from Southern Pacific Company to State of California, said point being distant North 44° 09' 00" East, 62.50 feet from Station "A" 95 + 32.85 P.O.T. on the centerline of the survey from the location of the State Highway designated as Road IV, San Mateo County. Route 68, Section 'A'; thence North 33° 48' 40" West along said Southwesterly line 152.86 feet; thence South 89° 09' 00" West, 45.09 feet to a point in the Northeasterly line of State Highway that is distant thereon North 45° 51' 00" West, 181.38 feet from said point of beginning; thence South 45° 51' 00" East, along last said line 181.38 feet to the point of beginning.

Containing 1.329 Acres, more or less.

Exhibit **B** 3501 Bayshore Boulevard

