

Meeting Date: 11/26/2013

Report Type: Consent

Report ID: 2013-00883

Title: Parking Agreement: California Fruit Building

Location: Downtown, District 4

Issue: California Fruit Building, LLC is purchasing the California Fruit Building, located at 1006 Fourth Street, and wants to enter into a parking agreement with the City to provide a long-term source of convenient parking for the tenants of its building.

Recommendation: Pass a Motion authorizing the City Manager or his designee to execute a six-year parking agreement with California Fruit Building, LLC. for up to 80 parking permits at Old Sacramento Garage.

Contact: Matt Eierman, Parking Services Manager (Interim), (916) 808-5849;
Department of Public Works

Presenter: None

Department: Public Works Department

Division: Off-Street Parking Admin

Dept ID: 15001211

Attachments:

1-Description/Analysis

2-Agreement

City Attorney Review

Approved as to Form

Gerald Hicks

11/18/2013 9:00:33 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt

Russell Fehr

11/12/2013 9:36:48 AM

Approvals/Acknowledgements

Department Director or Designee: Jerry Way - 11/15/2013 7:21:44 AM

Description/Analysis

Issue Detail: California Fruit Building, LLC (CFB) is purchasing the California Fruit Building, located at 1006 Fourth Street. To ensure tenants of the building have a long-term, convenient source of parking, CFB wants to enter into a six-year parking agreement with the City for up to 80 parking permits located in the Old Sacramento Garage. The cost of each parking permit issued under the agreement will be at market rate. Parking permits will be used to tenants of the building only and use is limited to Monday through Friday 6:00 a.m. to 6:30 p.m.

Policy Considerations: The action requested support the Central City Parking Master Plan goals to:

1. Make parking safe, secure, attractive and convenient
2. Operate City-owned parking in a financially sound manner
3. Supply parking to meet need

Economic Impacts: None.

Environmental Considerations:

California Environmental Quality Act (CEQA): This project is exempt from CEQA under Section 15301, "Operation of existing public structures or facilities involving no expansion of use."

Sustainability Considerations: This action supports the City of Sacramento's sustainability goals to improve and optimize the transportation infrastructure.

Other: None.

Commission/Committee Action: None.

Rationale for Recommendation: When CFB completes improvements to the California Fruit Building, it will have approximately 49,000 square feet of office space and 10,000 square feet of retail space. To secure project funding and attract future tenants, CFB wants to enter into a long-term parking agreement with the City for parking spaces at Old Sacramento Garage.

Financial Considerations: The current market rate for monthly parking permits at Old Sacramento Garage is \$115. After the first year, CFB will also pay a 2% Option Payment for each parking permit it had not yet purchased.

To provide time for building improvements, CFB will not be required to purchase parking permits during the first three years of the agreement; however, CFB must purchase 20 permits in years four and five, and 40 permits in year six. If CFB purchases less than the

required amount of permits in any year during the last three years, it will permanently forfeit its rights to those permits it did not purchase.

Local Business Enterprise (LBE): There are no LBE considerations with the requested action.

PARKING AGREEMENT

Between California Fruit Building, LLC and the City of Sacramento
For Parking Permits at Old Sacramento Garage

This Parking Agreement (“Agreement”) is made on Nov 15, 2013, between the City of Sacramento (“City”), a charter municipal corporation, and California Fruit Building, LLC (“Licensee”), who agree as follows:

1. **Term of Agreement.** Unless earlier terminated pursuant to these provisions, the Initial Term of the Agreement expires February 17, 2020.
2. **Allocated Parking Permits.** Licensee may purchase up to eighty (80) monthly parking permits for use at Old Sacramento Garage (“OSG”), located at 200 I Street. Payment shall be made in accordance with sections 7 and 8, below. Licensee may purchase all or any portion of the eighty (80) permits within the first three (3) years of this agreement with no minimum purchase requirement. Within the first ten (10) days of year four (4) and continuing within the first ten (10) days of each successive year through year six (6), Licensee shall purchase and maintain through the term of the agreement:
 - Twenty (20) permits in year four (4)
 - Twenty (20) permits in year five (5)
 - Forty (40) permits in year six (6)If, Licensee purchases less than the required number of permits within the first ten (10) days of year four (4), five (5), or six (6), it will permanently forfeit its right to purchase the remainder of those permits for the term of this agreement.
3. **Use of Parking Permits.** Permits issued under this agreement shall only be distributed to and used by tenants of the California Fruit Building located at 1006 Fourth Street. Parking permits can only be used Monday through Friday from 6:00 a.m. to 6:30 p.m. Parking permits will not function outside these times and all cardholders are responsible for extra fees for entering or exiting outside of these times.
4. **Right of First Refusal.** In the event City approaches the maximum number of monthly permits it sells at OSG and receives an offer to purchase permits that would otherwise be held for Licensee, City shall notify Licensee. Licensee shall have thirty (30) days from the date of such notice to purchase any desired permits. If Licensee declines to purchase additional permits, licensee forfeits its right to monthly permits until more become available.
5. **Parking Garage.** Permits issued under this agreement are for use at Old Sacramento Garage, located at 200 I Street (See Attachment A). Upon providing sixty (60) days written notice to Licensee, City, at its sole discretion, may re-assign any and all permits to another City-owned or operated parking facility located within a 4-block radius of the California Fruit Building.

6. **Renewal of Issued Permits.** Each permit issued shall be automatically renewed as of the first day of each month.

7. **Compensation to City.**
 - Licensee shall pay a monthly parking fee (“Permit Fee”) equal to the market rate for Old Sacramento Garage, for each permit issued.
 - After the first year, Licensee will pay a 2% Option Payment on the full Permit Fee each month for each parking permit not purchased or forfeited as described in Section 2.
 - Payment shall be made in the form of one check for all permits issued and option payments due.
 - **Late Fee.** If full payment for all permits issued and the option payments due is not received by or on the first day of the month for which it is due, the total parking fee for all permits issued and the option payment that month will be increased 10%.

8. **Monthly Payments.** On or before the first day of each month during the term of this Agreement, Licensee shall pay to City, in advance, the monthly payment required by section 7, above, at 300 Richards Blvd, 2nd Floor, Sacramento, CA 95811, or at such other location as City may designate to Licensee in writing. The monthly payment shall be for use of the issued permits and option payments for the month in which the payment is due. Failure to make full payment by the 10th day of the month for which it is due, including any late fee, will result in the deactivation of all permits issued under this agreement. Failure to make payment by the last business day of any month as required herein shall constitute a default by Licensee, and this Agreement shall terminate.

9. **Building Use.** The California Fruit Building is comprised of approximately 49,000 square feet of office space and approximately 10,000 square feet of commercial retail space. Any change in use, without City’s prior written consent, will immediately terminate this Agreement.

10. **Use of Lot.** The rules and conditions attached hereto, marked Attachment “B” and fully incorporated herein by this reference, shall apply to each and every permit issued hereunder. Licensee shall inform the individuals parking under a permit issued to Licensee hereunder of these rules and conditions. Subject to the rules and conditions set forth in Attachment “B,” the users of issued permits shall have the right of ingress and egress from the Lot; however, that such rights are subject to such interference as may be necessary from time to time, in the sole discretion of City, for special events, repairs, reconstruction or maintenance of the parking structure or any appurtenances thereto, or associated improvements.

11. **Insurance Requirements.** During the term of this Agreement, Licensee shall purchase at its sole cost and expense and maintain in full force the following insurance coverage:

- **Commercial General Liability Insurance,** providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy. Licensee's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers.

The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insured as respects general liability arising out of activities performed by or on behalf of Licensee, products and completed operations of Licensee, premises owned, leased or used by Licensee.

Licensee shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in section 19. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

Licensee is responsible for requiring and verifying that the minimum scope and limits of insurance coverage shall be maintained by, or on behalf of, all subcontractors.

The CITY may cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement.

CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

12. **Termination.** In addition to provisions for termination specified elsewhere in this Agreement, City shall provide written notice of a violation or default to Licensee, who shall forthwith use its best efforts to take action to remedy the default or violation. In the event the Licensee fails, within ten (10) days from the date of the notice or such longer time period as may be specified by City, to take the necessary corrective action, this Agreement will terminate automatically, upon written notice from City to Licensee, provided that City may, in its discretion, extend the time for correction. Permits issued hereunder will cease to be valid at the end of the month during which the termination occurs. The termination procedures specified above shall not apply in the event that the City determines,

in its sole discretion that an emergency situation exists, in which case City may take any action deemed necessary by City to respond to the emergency situation.

13. **Permit Distribution.** Quarterly, during the term of this Agreement, Licensee shall provide City an updated and current list of all names and vehicle license numbers of each person to whom a permit is distributed. Multiple incidents of misuse, including those obligations set forth in section 3, of a permit by any individual as reasonably determined by the City shall constitute a default by Licensee, and shall entitle City to terminate this Agreement. City may deactivate permit upon the initial occurrence of an incident of misuse. Said permit will remain deactivated until Licensee takes necessary corrective action as determined by the City.
14. **Access to Records.** City shall have reasonable access to the records of Licensee regarding the administration of parking permits issued under this agreement.
15. **Damage to or Destruction of the Lot.**
 - **Temporary Damage:** In the event that the Lot is temporarily damaged to such an extent that it may not be used for parking, or such that its use is so restricted that all or a portion of Licensee's issued permits may in City's reasonable judgment no longer be accommodated, then City may cancel the affected permits until such time as the damaged facilities have been restored; provided, however, that at the request of Licensee, and only to the extent that City determines, in its sole and exclusive judgment after considering the parking space requirements of other City parking customers and City employees, that space is available in another City parking facility or facilities, City shall use its best efforts to redesignate the affected permits for use at another City parking facility or facilities until the Lot is repaired, rather than cancel the affected permits. Licensee shall pay for such redesignated permits in accordance with the provisions of this Agreement. Licensee may reject any proposed redesignation of permits, in which case the affected permits shall be canceled until such time as the damaged facilities have been restored.
 - **Destruction:** If the City is prevented or delayed, or is rendered unable to provide Licensee the parking services described in this Agreement by reason of any act of God, strike, lockout, labor trouble, restrictive governmental laws or regulations, or any other cause not the fault of the City, which removes the City's right to possess and occupy the site of the Lot for purposes of operating parking services at the Lot, the City's performance hereunder shall be excused. Nothing in this Agreement shall be construed to obligate the City to reconstruct the Lot in order to perform its obligations under this Agreement, nor shall cause an extension of the term of this Agreement.

16. **Nondiscrimination.** Licensee covenants that there shall be no discrimination against any person or group of persons on account of race, color, creed, sex, marital status, disability, national origin, ancestry, or any other basis prohibited by local, state, or federal law or regulation, in the distribution or use of permits. Any breach of this covenant shall constitute a default by Licensee, and this Agreement shall be subject to termination by City pursuant to the procedures specified in section 10.
17. **Assignment.** Licensee's rights under the Agreement shall not be transferred or assigned, by operation of law or otherwise. Any attempt to transfer or assign will immediately terminate this Agreement.
18. **Conflict.** In the event of a material conflict between any provisions of this Agreement and any rule, regulation or law enacted by any governmental agency including, but not limited to City, the County of Sacramento, the Sacramento Air Quality Maintenance District or any successor thereto, or any state or federal agency or legislative body, the enactment of the governmental agency or legislative body shall prevail and the obligations of the parties to this Agreement shall be modified accordingly. In the event that City determines that the provisions of this section would require modification of the Agreement, City shall so notify Licensee and the parties shall meet and endeavor in good faith to reach resolution of the issues. In the event that a good faith impasse is reached in such negotiations, the parties shall submit the unresolved issues to the Sacramento City Council, acting in its quasi-legislative capacity, for resolution.
19. **Subordination.** This Agreement shall be subject and subordinate at all times to the lien of any mortgage or trust deed or deeds or other evidence of obligation which may now exist upon or which may be placed upon the Lot, or any other lot which in the future is utilized as a substitute lot for parking permits issued pursuant to this Agreement. "Evidence of obligation", for purposes of this section, includes but is not limited to documents relating to any form of public financing (e.g., bonds, certificates of participation) wherein the said parking facilities or any of them are used as an asset securing the public financing in any manner. Licensee covenants that it will execute and deliver to City, or its nominee, at no cost to City and subject to no conditions or other limitations, proper subordination agreements to this effect at any time upon the request of City.
20. **Notice.** Any notice, documentation, or other communication required or desired to be given pursuant to this Agreement shall be given in writing either by personal service, by certified mail, return receipt requested, postage fully prepaid or by national overnight delivery service, to the following respective addresses:

| City | Licensee |
|---|---|
| Parking Services Division City of Sacramento 300 Richards Blvd., 2 nd Floor Sacramento, CA 95811 | California Fruit Building, LLC 2020 Capital Ave, Suite 1 Sacramento, CA 95811 |

The above addresses may be changed by written notice in accordance with this section.

21. **Condemnation.** In the event that any portion or all of the Lot should be taken by eminent domain or acquired under the threat of the exercise of the power of eminent domain, this Agreement shall automatically, without the need for action by either party, terminate, and Licensee shall have no interest whatsoever in any proceeds from such taking payable to City, and City shall be under no legal obligation whatsoever to pay to or reimburse Licensee for any loss or damage whatsoever relating to or arising out of the taking of the structure. Provided, however, that at Licensee's request, City shall make a reasonable effort to, but shall not be under legal obligation to, provide alternate City parking facilities for some or all of the permits issued hereunder. In the event that City determines, in its sole discretion, that alternate City parking facilities are available and City agrees that such facilities may be used for some or all of the issued permits, the parties shall enter into a new and different agreement for the issuance of parking permits for such facilities. Provided, further, that Licensee shall be entitled to exercise any right it may have, in law or in equity, to independently seek compensation from the condemning agency for any of Licensee's losses or damages.

22. **Security.** The nature of any permit issued pursuant to this Agreement is that of a license, and no agency or relationship of landlord and tenant shall arise from this Agreement. City shall not be responsible for the personal security of any person or personal property in the Lot, or in any substitute or alternate facilities furnished pursuant to this Agreement or otherwise.

23. **Failure To Terminate Not A Waiver.** No failure of City to terminate this Agreement for default upon any breach shall constitute a waiver of the right to terminate this Agreement for the same or any other default or violation subsequently occurring.

24. **Time is of the Essence.** Time is of the essence to each and every term and condition of this Agreement.

25. **Indemnity and Hold Harmless.** Licensee shall indemnify and save harmless the City, its officers, employees, and agents and each and every one of them, from

and against any and all liability, loss, expense, including reasonable attorney's fees, or claims for injury or damages arising out of, caused by or resulting from the negligent or intentional acts or omissions of Licensee, its directors, trustees, officers, employees, or agents in connection with this Agreement or any permit issued hereunder. The provisions of this section 25 shall survive any termination of this Agreement, notwithstanding anything herein to the contrary.

26. **Third Party Beneficiaries.** Unless otherwise expressly provided, this Agreement shall not create any third-party beneficiary rights for any person or entity.
27. **Complete Agreement.** This Agreement contains all of the terms and conditions of the agreement between City and Licensee regarding use of City parking facilities.
28. **Execution.** By their signatures below, each of the following represent that they have authority to execute this agreement and to bind the party on whose behalf their execution is made.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

LICENSEE:



By: Richard Rich
Its: Manager

30-4772343
Federal Tax ID

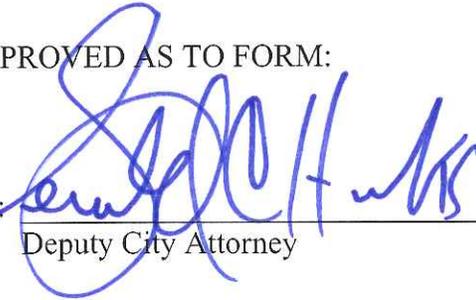
City of Sacramento
Business Operations Tax Cert. No.

CITY:

CITY OF SACRAMENTO,
A Municipal Corporation

By: _____

APPROVED AS TO FORM:



By: _____
Deputy City Attorney

ATTEST:

By: _____
City Clerk

ATTACHMENT B

RULES AND CONDITIONS

1. Care of the computer access cards issued under this Parking Agreement is the Licensee's responsibility, such as protecting the computer access cards issued to permit users from abnormal wear due to warping by not leaving it in the sun or clipped to visors and other reasonable measures to prevent damage.
2. Licensee shall pay a replacement fee established by resolution (the current replacement fee is \$25.00) of the City Council for the replacement of computer access cards that are lost or damaged beyond normal wear and tear.
3. Permits issued under this agreement are for the sole use of the registered Permit user and are non-transferable. The permit authorizes the parking of one (1) passenger vehicle or light truck at any single time. Permit is for ingress to and egress from designated facility or lot only and no definite space is assigned. Computer access card must be used to enter and exit facility at all times. Use of an invalid permit is prohibited and use of said invalid permit shall be charged the daily parking rate. There shall be no refunds for daily fees paid for use of an invalid card, lost card or improper use of card.
4. Permit users shall comply at all times with the conditions of this Agreement, as well as all regulations established by State law or City Code and/or posted in the parking facilities (such as No Parking, Red Zone, Handicap Park, parking between the lines, Compact Car Only, Speed Limits, Directional Flows, etc.) and any violation of such regulations by any permit user shall be punished as provided by State law and/or the City Code, in addition to any remedies available under this Agreement.