



City of San Leandro

Meeting Date: May 2, 2016

Staff Report

File Number: 16-187 **Agenda Section:** CONSENT CALENDAR

Agenda Number: 8.D.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Resolution Authorizing the City Manager to Execute a Lease Agreement with the Sung Hui Paskewitz Living Trust for Operation of the Pelton Center Way Parking Lot at 100 Pelton Center Way (APNs 77-545-32-1 and 77-545-9)

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City enter into a lease agreement with the property owners of Pelton Center in order to keep the parking at Pelton Center open to the general public, and to enforce reasonable parking regulations to govern its use.

BACKGROUND

In April 1959, the City leased the Pelton Center Way parking lot from Pelton Estates, a California corporation, for public use and commenced enforcement of parking regulations to govern the use and enjoyment of the premises. The Pelton property changed ownership over several incarnations between 2001 and 2009, the last of which rendered Sung Hui Paskewitz the sole owner under the Sung Hui Paskewitz Living Trust. Throughout the changes in ownership, the terms of the 1959 lease remained in effect. Due to the many changes in ownership over the years, the need arose to establish a new and up-to-date lease agreement that appropriately represents the parties and their objectives.

Analysis

The execution of this Lease Agreement would terminate the 1959 Lease and enter into updated terms for operating and enforcing the approximately 75 public off-street parking spaces in the Pelton Center lot. By leasing the lot, the City essentially makes the Pelton Center parking lot part of the City's public parking system. Use of this lot would continue to significantly boost the inventory of publically available parking for shoppers and visitors in Downtown San Leandro, for which a Downtown Parking Strategy is currently being developed. The new Lease Agreement was negotiated jointly by the Community Development

Department and the Police Department.

Most of the 75 spaces are currently permitted for two-hour parking. Under the previous and now proposed lease terms, the City maintains the authority to set parking regulations and issue citations. Pelton acknowledges in the lease that the parking on the Premises must be available to the general public without restriction and further agrees that it will not post any signage that restricts the use of any parking spaces for Pelton's owners, agents, employees, tenants, customers, business invitees or specific members of the general public. Revenue from citations will continue to go to the General Fund.

The term of the lease is for one (1) year from the effective date and will automatically extend for an additional year on each annual anniversary of the effective date upon payment of rent, unless terminated. Either party may terminate the agreement, with or without cause, upon sixty (60) days' advance written notice to the other party.

Current Agency Policies

Pursuant to Section 6-1-845 of the San Leandro Municipal Code, City shall adopt reasonable parking regulations to govern the use and enjoyment of the Premises. The City may adopt regulations which may include, among other things, regulations pertaining to parking time limits, but shall exclude regulations providing for the installation and use of parking meters. The City agrees to confer with Pelton prior to implementation of changes to the parking regulations.

Previous Actions

- In April 1959, City of San Leandro and The Pelton Estates Company executed a lease with respect to Pelton Center Way, an off-street parking lot in Pelton Plaza Shopping Center that has been held open to the public.

Legal Analysis

This Lease Agreement has been reviewed by the City Attorney and approved as to form.

Fiscal Impacts

There is no fiscal impact, as this agreement continues a long-term arrangement. The City's annual rent paid to the Pelton Center is \$1.

ATTACHMENT

Attachment to Resolution

- Lease Agreement

PREPARED BY: Lars Halle, Development Coordinator, Business Development



City of San Leandro

Meeting Date: May 2, 2016

Resolution - Council

File Number: 16-186 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION Approving Lease Agreement with Sung Hui Paskewitz for Use of Pelton Center Way to Operate a Public Off-Street Parking Lot

WHEREAS, a lease agreement between the City of San Leandro and Sung Hui Paskewitz, Trustee of the Sung Hui Paskewitz Living Trust, for the use of the Pelton Plaza Parking lot by the City for \$1.00 annually, a copy of which is attached, has been presented to this City Council; and

WHEREAS, the City Council is familiar with the contents thereof; and

WHEREAS, the City desires to use Pelton Plaza to expand the inventory of publically available parking for shoppers and visitors in Downtown San Leandro; and

WHEREAS, the Pelton ownership desires to have the City conduct regular parking enforcement on the lot; and

WHEREAS, the City Manager recommends approval of said lease agreement.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

That said lease agreement is hereby approved and execution by the City Manager is hereby authorized.

**LEASE AGREEMENT BETWEEN *SUNG HUI PASKEWITZ, TRUSTEE OF THE SUNG HUI PASKEWITZ LIVING TRUST*, AND
THE CITY OF SAN LEANDRO
(APN: 077-545-32-1 and 77-545-9)**

This Lease (this “Agreement”) is entered into this ____ day of September, 2016 (the “Effective Date”), by and between the City of San Leandro, a California charter city (“City”), and *Sung Hui Paskewitz, Trustee of the Sung Hui Paskewitz Living Trust, owner of Pelton Plaza Shopping Center at 100 Pelton Center Way, San Leandro, California* (“Pelton”). City and Pelton are each referred to herein as a “Party” and collectively referred to as the “Parties.”

RECITALS

- A. On April 6, 1959, City and The Pelton Estates Company, a California corporation (“Pelton Estates”) executed a lease (the “1959 Lease”), attached hereto and incorporated herein by reference as Exhibit A, with respect to Pelton Center Way, an off-street parking lot in Pelton Plaza Shopping Center that has been held open to the public (the “Premises”), as further defined below.
- B. *On or around September 20, 2001, Antonio Orlando Freitas and Sung Hui Paskewitz, Husband and Wife, acquired a 60% undivided community property interest, as tenants in common, and Kil Hoon Jung and Sun Hui Kim, Husband and Wife, acquired at 40% undivided community property interest, as tenants in common, of Pelton, effectively succeeding Pelton Estates as lessor of the Premises under the 1959 Lease. On May 18, 2006, Sung Hui Paskewitz succeeded to the entire 60% undivided community property interest of Antonio Orlando Freitas and Sung Hui Paskewitz, Husband and Wife, in Pelton as a result of the death of Antonio Orlando Freitas, said 60% undivided interest being held as tenants in common with Kil Hoon Jung and Sun Hui Kim, Husband and Wife, owners of a 40% undivided community property interest. On or about August 14, 2007, Sung Hui Paskewitz conveyed her undivided 60% separate property interest in Pelton to Sung Hui Paskewitz, Trustee of the Sung Hui Paskewitz Living Trust. On or about July 15, 2009, Sung Hui Paskewitz, Trustee of the Sung Hui Paskewitz Living Trust, became the sole owner of Pelton by the exchange of certain parcels of real property between Sung Hui Paskewitz and Kil Hoon Jung and Sun Hui Kim, Husband and Wife, pursuant to a Memorandum of Understanding and Intent to Exchange Commercial Property Interests, represented by the exchange of deeds to the subject properties which were duly executed and recorded in the Office of the County Recorder of the County of Alameda, State of California. Sung Hui Paskewitz, Trustee of the Sung Hui Paskewitz Living Trust, is currently the sole owner of Pelton. Tanya M. Paskewitz is the Property Manager of Pelton and pursuant to a Durable Power of Attorney is authorized to execute any and all documents pertaining to Pelton, including this Lease Agreement.*
- C. The Parties desire to terminate the 1959 Lease and City desires to lease the Premises for the purposes delineated in Section 5 below.

Now, therefore, in consideration of the mutual covenants set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The Parties hereby acknowledge the truth of the Recitals set forth above, and such Recitals are hereby incorporated into this Agreement.
2. **The 1959 Lease.** The Parties hereby terminate the 1959 Lease upon the Effective Date of this Agreement.
3. **Leased Premises.** Subject to the terms of this Agreement Pelton Leases the Premises to City, and City leases the Premises from Pelton to operate a public off-street parking lot. The Premises are more particularly described in Exhibit C, attached hereto and incorporated herein by this reference.
4. **Term.** The term of this Agreement commences on the Effective Date and shall remain in full force and effect for one (1) year from the Effective Date, unless terminated by either Party. Either Party may terminate this Agreement, with or without cause, upon sixty (60) days' advance written notice to the other Party to this Agreement. This Agreement shall automatically extend on the annual anniversary of the Effective Date upon payment of rent pursuant to Section 6.
5. **Use.** The City shall have a nonexclusive right to the Premises, whereby City and its elected and appointed officers, officials, employees, agents and representatives may enter, exit, and travel upon, over and across the Premises to enforce parking regulations at any and all appropriate times in accordance with the terms and conditions of this Agreement (all of the foregoing, collectively, "Permitted Activity").

City's nonexclusive right to the Premises is strictly limited to the Permitted Activity. Without limiting the foregoing, the Parties agree to comply with all of the following specific requirements (all of the following, collectively, "Conditions of Use"):

- a. Applicable Laws and Regulations. The Parties shall comply with, and City shall enforce, all applicable local, state and federal laws, regulations, rules and orders, including without limitation, all duly passed and adopted resolutions and ordinances of the City Council, Title 6 of the San Leandro Municipal Code, the California Vehicle Code and the California Streets and Highways Code. Pelton shall not operate Pelton Plaza Shopping Center or the Premises in a manner contrary to the foregoing laws, regulations, rules and orders and shall not enforce said laws, regulations, rules and orders.
- b. Entry Onto Premises. City's use of the Premises shall not impair, interfere with or prohibit the activities of Pelton, including without limitation, activities conducted at Pelton Plaza Shopping Center or the Premises by its owners, agents, employees, tenants, customers, business invitees or members of the general public who are on the Premises, except as provided for by this Agreement. City shall not require prior consent, written or otherwise, from Pelton or its employees, agents or representatives to enter onto the Premises pursuant to this Agreement.
- c. Parking Regulations. Pursuant to Section 6-1-845 of the San Leandro Municipal Code, City shall adopt reasonable parking regulations to govern the use and enjoyment of the Premises. The City may adopt regulations which may include, among other things, regulations pertaining to parking time limits, but

shall exclude regulations providing for the installation and use of parking meters. The City agrees to confer with Pelton prior to implementation of changes to the parking regulations. Pelton acknowledges that the parking on the Premises shall be available to the general public without restriction and agrees that it shall not post any signage that restricts the use of any parking spaces for Pelton's owners, agents, employees, tenants, customers, business invitees or specific members of the general public.

d. Upkeep, Maintenance, Repairs and Improvements. Pelton acknowledges and agrees that City shall have no obligation to provide any upkeep, maintenance or repairs to the Premises or improvements thereon, including without limitation street sweeping, street flushing, streets signs or the painting of lines indicating parking spaces and parking time limits, and that if Pelton elects to undertake the aforesaid activities they shall be at its sole expense without reimbursements and pursuant to Section 5.a.

e. Safe Condition. Pelton shall keep and maintain the Premises in a safe condition for the public at Pelton's sole expense.

f. Liability for Damages to City Property. Pelton shall be liable for any damages or destruction to any City property that occurs as a result of this Agreement, unless caused by the *sole* negligence or willful misconduct of City or its elected and appointed officers, officials, employees, agents or representatives. Such damage or destruction shall be repaired to the satisfaction of the City at Pelton's sole expense.

g. Successor in Interest. In the event that Pelton is unable to reasonably fulfill its obligations as one of the Parties to this Agreement for any reason, including without limitation, an encumbrance, transfer, sale or partition of any or all of Pelton Plaza Shopping Center or the Premises, then Pelton shall inform its successor in interest of the existence and nature of this Agreement and provide City with the contact information of the successor in interest with a written notice delivered pursuant to Section 18.

6. **Rent.** City shall pay Pelton One Dollar (\$1.00) per year, payable within thirty (30) days of the Effective Date of this Agreement, and within thirty (30) days of any extension pursuant to Section 4.
7. **Indemnification.** Pelton agrees to indemnify, defend (with counsel approved by the City) and hold harmless City and its elected and appointed officers, officials, employees, agents and representatives (all of the foregoing, collectively, "Indemnitees") from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense, including without limitation, reasonable attorneys' fees and costs of litigation (all of the foregoing, collectively, "Claims") resulting from or arising in connection with the use of Pelton Plaza **Shopping Center** or the Premises by its owners, agents, employees, tenants, customers, business invitees or members of the general public who are on the Premises, including without limitation, Claims arising as a result of or in connection with any bodily injury, death, or property damages, or in connection with any violation of law or regulation by the owners, agents, employees, tenants, customers, business invitees or members of the general public who are on the Premises.

City agrees to indemnify, defend (with counsel approved by Pelton) and hold harmless Pelton and its elected and appointed officers, officials, employees, agents and representatives from and against all Claims resulting from or arising in connection with the use of the Premises caused by the sole negligence or willful misconduct of City. Pelton's and *City's* indemnification obligations, as set forth in this Section 7, shall survive the termination of this Agreement.

8. Insurance.

- a. Type, Amounts and Documents Required. Pelton shall, at its sole expense, procure and maintain throughout the term, and any extensions, of this Agreement all of the following reported on a Certificate of Insurance with A.M. Best rating of A:VII or better:
 - i. Commercial general liability insurance including contractual liability coverage, written on an "occurrence" policy form, covering bodily injury, property damage and personal injury arising out of or relating (directly or indirectly) to Pelton's operations, conduct, assumed liabilities, or use or occupancy of the Premises naming the Indemnitees as additional insured, with minimum coverage in the amount of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit for bodily injury and property damage and Four Million Dollars (\$4,000,000.00) in the aggregate;
 - ii. Property insurance protecting Pelton against loss or damage by fire and such other risks as are insurable under then available standard forms of "all risk" insurance policies, covering Pelton's personal property and trade fixtures in or about the Premises, and any improvements and/or alterations in the Premises, in an amount not less than one hundred percent (100%) of their actual replacement cost or highest insurable value;
 - iii. Workers' compensation insurance in the statutory amounts shall be provided with limits of not less than One Million Dollars (\$1,000,000.00) per accident. In the alternative, Pelton may rely on a self-insurance program to meet these requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code.
- b. The foregoing policies shall protect Pelton as named insured, and City and the other Indemnitees as additional insureds, and if subject to deductibles shall provide for deductible amounts not in excess of \$100,000.00. City reserves the right to increase the foregoing amount of required liability coverage from time to time (but not more often than once each calendar year) to adequately protect Indemnitees and to require that Pelton cause any of its contractors, vendors or other parties conducting activities in or about or occupying the Premises to obtain and maintain insurance as determined by City and as to which the Indemnities shall be additional insured.
- c. Insurance of Pelton's Contractors and Agents. In addition to any other insurance requirements, Pelton expressly agrees that none of its agents, contractors, workmen, merchants, mechanics, suppliers or invitees performing construction or repair work in the Premises shall commence such work unless and until each of them shall furnish Pelton and City with satisfactory evidence of insurance coverage, financial responsibility and appropriate written releases of mechanic's or materialmen's lien, or

stop notice claims, as necessary. Commercial General Liability insurance shall be endorsed so as to make the City an additional insured, and the endorsement must be submitted to the City for review and acceptance annually. In addition, an endorsement for primary coverage must also be submitted to the City for review and acceptance annually.

- d. **Waiver of Subrogation.** Pelton and City each agree to waive, and as applicable shall cause the insurance companies issuing their respective property (first party) insurance, to waive any subrogation rights that each Party and such companies may have against Pelton or City, respectively, as long as the insurance is not invalidated by the waiver. If the waivers of subrogation are contained in their respective insurance policies, City and Pelton waive any right that either may have against the other on account of any loss or damage to their respective property to the extent that the loss or damage is insured under their respective insurance policies. An endorsement for waiver of subrogation must be submitted to the City for review and acceptance annually.
9. **Employees.** No relationship of employer and employee is created by this Agreement. City is not the agent, employee or employer of Pelton in any capacity whatsoever and Pelton is not the agent, employee or employer of City in any capacity whatsoever. Neither City nor any of its employees, contractors or agents shall by virtue of this Agreement or by the performance of actions pursuant to this Agreement be an employee of Pelton for any purpose whatsoever nor shall they be entitled to any of the rights, privileges or benefits of Pelton employees. Neither Pelton nor any of its employees, contractors or agents shall by virtue of this Agreement or by the performance of actions pursuant to this Agreement be an employee of City for any purpose whatsoever nor shall it or they be entitled to any of the rights, privileges or benefits of City employees.
10. **Taxes.** Pelton shall pay all real property taxes and general assessments levied and assessed against the Premises during the term of this Agreement.
11. **Alterations.** During the term of this Agreement, City shall not make any change, alteration or addition to the Premises (collectively, the “Alterations”) that would materially alter the function of the Premises or the exterior appearance of the Premises, without the prior written consent of Pelton. Any Alterations and improvements made by City shall remain the property of City and, *subject to restoration of the Premises to its condition prior to City making the Alterations or improvements*, may be removed from the Premises upon the termination of this Agreement. Any Alterations installed or provided by Pelton shall remain the property of Pelton, and City shall not be required nor have the right to remove any such Alterations of improvements.
12. **Non-Transferable.** Neither Party shall assign or transfer any interest in this Agreement without prior written approval of the other Party.
13. **Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the Party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
14. **Event of Default.** An Event of Default under this Agreement shall occur if any Party fails to comply with any of the covenants or obligations hereunder and does not cure such

failure within thirty (30) days after receipt of written notice thereof (or fails to commence to cure such default within such thirty (30) day period and thereafter fails to proceed with due diligence to cure such default). Upon the occurrence of an Event of Default hereunder, the Parties may pursue all remedies at law or in equity, expressly including the remedy of specific performance of this Agreement.

15. **Entire Agreement.** This Agreement, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between City and Pelton relating to the use of the Premises. As used herein, Agreements refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the Parties and sets forth the entire understanding of the Parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both Parties.
16. **Headings.** Headings herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.
17. **Severability.** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable or invalid provision.
18. **Notices.** Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section 18. All such notices shall be sent by:
 - (a) personal delivery, in which case notice shall be deem delivered upon receipt;
 - (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid, in the United States mail;
 - (c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or
 - (d) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

City: City of San Leandro
835 East 14th Street
San Leandro CA 94577-3767

Attention: Business Development Manager

Owner: Sung Hui Paskewitz Living Trust
110 Pelton Center Way
San Leandro CA 94577-4816

Attention: Sung Hui Paskewitz and Tanya M. Paskewitz

19. **Governing Law; Venue.** This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any legal action filed in connection with this Agreement shall be filed in the Superior Court of Alameda County, California, or in the Federal District Court for the Northern District of California.

IN WITNESS WHEREOF, THE Parties hereto have executed this Agreement the day and year first above written,

Executed as of the day first above stated:

City of San Leandro

Attest: _____
Tamika Greenwood, City Clerk

By: _____
Chris Zapata, City Manager

Sung Hui Paskewitz Living Trust

By: _____
Sung Hui Paskewitz

Pelton Plaza Shopping Center

By: _____
Tanya M. Paskewitz, Property Manager

Approved as to form:

Richard D. Pio Roda, City Attorney
2595573.1

EXHIBIT A

**1959 Lease Agreement by and between The Pelton Estates Company
and the City of San Leandro**