



City of San Leandro

Meeting Date: October 1, 2018

Staff Report

File Number: 18-406 **Agenda Section:** CONSENT CALENDAR

Agenda Number: 8.H.

TO: City Council

FROM: Jeff Kay
City Manager

BY: Keith Cooke
Engineering & Transportation Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a City of San Leandro City Council Resolution to Approve a Right of Entry Agreement Between the City of San Leandro and Satellite Healthcare, Inc. for City Properties Located Adjacent to 801 Davis Street

SUMMARY AND RECOMMENDATIONS

Staff requests that the City Council grant the City Manager the authority to enter into a new Right of Entry Agreement, subject to the City Attorney's approval as to form, with Satellite Healthcare, Inc. for City properties located adjacent to 801 Davis Street for a period of ten years with the option of two additional five-year extensions.

BACKGROUND

The City controls three parcels which total 4,275 square feet immediately adjacent to 801 Davis Street: a portion of West Estudillo Ave (1,981 SF), a portion of APN 075-0047-011-01 (375 SF), and a portion of APN 075-0060-005 (1,919 SF). On June 15, 1992, the City entered into a twenty-five year license agreement with Pethan, Cornelius, Miller & Bronstein for use of a portion of W. Estudillo Avenue and the parcel located at APN 075-0047-011-01 as a parking lot for their facility located at 801 Davis Street. There was no monthly rental rate established under this previous license.

During the license term, the property at 801 Davis Street was renovated and converted into a dialysis and renal care services clinic operated by Satellite Healthcare, Inc. (Satellite) and the agreement was transferred to Satellite. The agreement expired on June 15, 2017 at which time the City agreed to allow Satellite to continue to occupy the premises on a month-to-month basis. Staff recommends entering into a new Right of Entry Agreement (Agreement) with Satellite for ten years with an effective date of August 1, 2018 and with the option of two additional five-year extensions.

Analysis

On the three City controlled parcels, there are seven paved and striped parking spaces on two of the parcels and one parcel is not improved. Satellite is the current licensee of two of the three parcels and uses them as part of its parking lot. Satellite provides an important medical service that is walkable from BART and AC Transit lines nearby.

Staff hired a consultant, The Schmidt-Prescott Group (Schmidt-Prescott), to provide a valuation of the subject parcels for this right of entry agreement as well as a portion of the landlocked remnant parcel located at APN 075-0060-005. Schmidt-Prescott determined that the highest and best use for these parcels is the continuation of their current, improved use as parking spaces. Upon review of monthly parking rates in the surrounding San Leandro area, Schmidt-Prescott recommended a median rate of \$100 per month per space or a monthly rent of \$700.

In recognition of Satellite's nonprofit status, staff recommends a permit fee of \$500 per month for the duration of the ten year Agreement and if mutually desired, for each of the two five-year extensions.

Current Agency Policies

Place San Leandro on a firm foundation for long-term fiscal sustainability
Support and implement programs, activities and strengthen communication that enhances the quality of life and wellness, celebrates the arts and diversity and promotes civic pride

Applicable General Plan Policies

Policy LU-2.1 (Land Use) - Complete Neighborhoods

Strive for "complete neighborhoods" that provide an array of housing choices; easy access to retail stores, commercial services, and medical care; quality public schools, great parks and open spaces, affordable transportation options; and civic amenities.

Environmental Review

This Agreement is not subject to the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15378, in that it is not a project as defined by CEQA.

Board/Commission Review and Actions

On February 15, 2018, per Government Code Section 65402, the Planning Commission found that the Right of Entry Agreement and License of these parcels conforms to the City's 2035 General Plan.

Legal Analysis

The subject Agreement has been reviewed and approved by the City Attorney.

Fiscal Impacts

The City will receive \$60,000 for the first ten years of the Agreement and another \$30,000 per each additional five year extension, of which there are two possible, if the lease is extended.

ATTACHMENTS

Attachment to Related Legislative File

- Right of Entry Agreement

PREPARED BY: Kirsten Foley, Administrative Services Manager, Engineering & Transportation Department



City of San Leandro

Meeting Date: October 1, 2018

Resolution - Council

File Number: 18-407

Agenda Section: CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Jeff Kay
City Manager

BY: Keith Cooke
Engineering & Transportation Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION of the City of San Leandro City Council to Approve a Right of Entry Agreement Between the City of San Leandro and Satellite Healthcare, Inc. for the Properties Located Adjacent to 801 Davis Street (provides for the City to allow use and collect payments from Satellite Healthcare for use of City property)

WHEREAS, the City of San Leandro ("City") controls certain real property comprised of a portion of West Estudillo Ave, a portion of APN 075-0047-011-01, and a portion of APN 075-0060-005, upon which seven parking spaces are located; and

WHEREAS, on June 15, 1992, the City entered into a license agreement for these seven parking spaces (the "Premises") with Pethan, Cornelius, Miller & Bronstein, which has since been transferred to Satellite Healthcare, Inc. ("Satellite"), a nonprofit healthcare provider of dialysis and renal care services; and

WHEREAS, the License expired on June 15, 2017, at which time the City agreed to allow Satellite to continue to occupy the Premises on a month-to-month basis; and

WHEREAS, the purposes and work of Satellite are of interest and benefit to, and will promote the general welfare of, the residents of San Leandro; and

WHEREAS, the City desires to license the Premises once again to Satellite, and Satellite desires to license from the City the Premises by execution of a new Right of Entry license agreement substantially in the form attached to this Resolution, and as detailed in the Staff Report accompanying this Resolution (the "Agreement"); and

WHEREAS, under the Agreement, Satellite will pay the City a monthly fee of \$500 for the ten year term of the agreement (\$6,000 per year, or \$60,000 for the entire ten year term), with the option of two additional five year extensions.

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

That the City Manager is hereby authorized and directed to execute said Agreement, subject to approval of the Agreement as to form by the City Attorney.

RIGHT OF ENTRY AGREEMENT

This Right of Entry Permit Agreement (“**Agreement**” or “**Permit**”) is entered into effective as of August 1, 2018 (“**Effective Date**”) by and between the City of San Leandro, a California charter city (“**City**”) and Satellite Healthcare, Inc., a Not for Profit Organization (“**Company**”). City and Company are hereinafter referred to as the “**Parties**.”

RECITALS

A. City is the owner of that certain property located adjacent to 801 Davis Street, identified as Parcel A and Parcel B on Exhibit A, in the City of San Leandro, known as Alameda County Assessor’s APN No. 075-0047-011-01 (Parcel B) and more particularly described in attached hereto (the “**Permit Property**”).

B. Company has requested access to the Permit Property for parking spaces for patient and healthcare service provider parking for those partaking of or rendering services at Satellite Dialysis San Leandro and City has agreed to permit the Company to enter the Permit Property under the conditions provided herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grant of Permit, fees. City hereby grants to Company, its contractors, subcontractors, employees and agents (collectively, the “**Company Parties**”) a revocable right of entry permit to the Permit Property for the purpose of, and limited to, non-commercial vehicle parking for patient and healthcare service providers (“**Permitted Activities**”). Subject to the terms and conditions of this Agreement, the rights of entry granted under this Permit include the right of access for the Company Parties onto and through areas of the Permit Property as required to perform the Permitted Activities.

- a. Permit Fee. On or before the first day of each month during the Term of this Agreement, Company shall pay to City a fee (the “**Permit Fee**”) in the amount of five hundred dollars (\$500) per month for Company’s access and use of the Property. For any partial month at the beginning or end of the term of this Agreement, the Permit Fee shall be prorated based on the actual number of days in such month to be prorated. This Agreement is not intended to, nor shall it be interpreted to, create or vest in Company any leasehold or any other property rights or interests in the Property or the improvements located thereon, or any part thereof.

1.1 Late Charge. Company acknowledges that the late payment of the Permit Fee will cause City to incur administrative costs and other damages, the exact amount of which would be impracticable or extremely difficult to ascertain. Company and City agree that if City does not receive any such payment within ten (10) calendar days after such payment is due, Company shall pay to City an amount equal to ten percent (10%) of the overdue amount as a late charge for each month or partial month that such amount remains unpaid. The Parties

acknowledge that this late charge represents a fair and reasonable estimate of the costs that City will incur by reason of the late payment by Company, but the payment of such late charge shall not excuse or cure any default by Company under this Agreement. The Parties further agree that the payment of late charges pursuant to this Section 1.1 and the payment of interest pursuant to Section 1.2 are distinct and separate from one another in that the payment of interest is to compensate City for the use of City's money by Company, while the payment of a late charge is to compensate City for the additional administrative expense incurred by City in handling and processing delinquent payments, but excluding attorneys' fees and costs incurred with respect to such delinquent payments. Acceptance of any late fees and late charges shall not prevent City from exercising any of the other rights and remedies available to City under this Agreement for any other default by Company.

1.2 Interest. Any amount due from Company to City which is not paid when due shall bear interest at the lesser of ten percent (10%) per annum or the maximum rate which City is permitted by law to charge, from the date such payment is due until paid, but the payment of such interest shall not excuse or cure any default by Company under this Agreement.

2. Nonexclusiveness of Permit. This Permit is nonexclusive and nonpossessory. The Company Parties must allow access to Permit Property by representatives of City and any other parties possessing prior rights, unless separate arrangements are made with such parties. This Agreement is not intended to, nor shall it be interpreted to, create or vest in Company any leasehold or any other property rights or interests in the Permit Property.

3. Prior Rights. This Permit is made subject and subordinate to the prior and continuing right of City to use the Permit Property for any uses in which City is engaged on the Permit Property as of the date hereof.

4. Term of Permit. The term of the Permit and right of entry granted hereby, shall commence on August 1, 2018 ("**Commencement Date**"), and shall terminate on July 31, 2028 ("**Term**"). City may terminate or suspend the Permit by notice to Company following Company's breach of its obligations under this Agreement, but only if Company has failed to cure such breach within three (3) days of written notice from City. Company's indemnity obligations set forth in this Agreement survive termination of the Permit for any reason.

4.1 Options to Extend. Company shall have the option to extend the term for two (2) additional periods of five (5) years each (each option herein referred to as an "Option", and each extension period herein referred to as an "Extension Period") upon all terms and conditions of the Agreement, except that Company, after the second Extension Period, shall have no further right to extend the term, and the Permit Fee shall be increased to the lower of: a) the then current Fair Market Value Permit Fee for property comparable to the Permit Property, or b) 110% of the then current Permit Fee. Each Option may be exercised only by Company giving City written notice thereof no later than one hundred eighty (180) days before the commencement of the Extension Period for which the Option applies. Said exercise shall, at City election, be null and void if Company is in default under the Agreement at the date of said notice or at any time thereafter and prior to commencement of said Extension Period to which the Option applies.

5. Conditions of Access. The Company Parties' entry onto the Permit Property shall be limited to performing the Permitted Activities. Without limiting the foregoing, the Company Parties will adhere to the following specific requirements:

a. Company covenants that it shall enter the Permit Property in such manner and at such time as shall not interfere with any other existing use of the Permit Property. City covenants that it shall reasonably cooperate with Company so that the Company Parties' entry may be handled in an efficient manner and so as to avoid any unreasonable delays with respect to the Permit or the Permitted Activities. Company hereby waives and releases City for any claim for damages against City in the event that Company's entry onto the Permit Property or any of the Permitted Activities are delayed for any reason whatsoever, except and to the extent caused by the gross negligence or willful misconduct of any representatives of the City.

b. The Company Parties shall be liable for any damage to the Permit Property or other City Property ("**City Property**") that occurs as a result of this Permit and the Permitted Activities, except and to the extent: 1) such damage is required as a condition to Company's completion of the Permitted Activities, in which case Company shall, to the extent necessary and feasible, promptly restore the City Property to its condition existing prior to the commencement of such activities; and 2) the damage is caused by the gross negligence or willful misconduct of the City. Any damage to City Property caused by the Company Parties in violation of this Agreement shall be immediately repaired to the satisfaction of City at Company's sole cost and expense.

c. Company shall not encroach on the public right of way adjacent to the Permit Property unless Company has applied for and received any necessary approvals and/or permits. All equipment and material storage shall be secured by Company on the Permit Property.

d. Company shall at all times keep the Permit Property free and clear of all liens and encumbrances affecting title to the Permit Property in connection with any work performed by the Company Parties under this Agreement. Upon notice of any such lien or claim, Company may bond and contest in good faith the validity and the amount of such lien, but Company shall immediately pay any judgment rendered, shall pay all proper costs and charges, and shall have the lien or claim released at its sole expense.

e. Company shall comply with all applicable state, federal and local laws, regulations, rules and orders, with respect to this Permit and the Permitted Activities, including, without limitation, all Environmental Laws (defined in Exhibit B, attached hereto). Company shall not cause or permit any Hazardous Material (defined in Exhibit B) to be generated, brought onto, used, stored, or disposed of in or about the Permit Property. Company shall provide evidence of such compliance to City upon request.

f. Company shall, at Company's own cost and expense during the term of this Agreement, keep and maintain the Premises in good order and repair, as determined by City

in City's sole discretion, and free of any environmental contamination (including without limitation gas, oil, diesel, and other hydrocarbon contamination from vehicles, equipment and property brought onto the Premises during the term of this License); and shall remove any such contamination at Company's sole cost and expense.

6. Indemnification. Company agrees to defend (with Counsel approved by City) and hold City and its elected and appointed officers, officials, employees, agents and representatives (all of the foregoing collectively "**Indemnitees**") harmless 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 attorney's fees and costs of litigation) (all of the foregoing collectively "**Claims**") resulting from or arising in connection with entry upon the Permit Property by Company or Company's agents, employees, consultants, contractors or subcontractors pursuant to this Permit; except and to the extent caused by the gross negligence or willful misconduct of Indemnitees. Company's indemnification obligations set forth in this section shall survive the termination of this Agreement.

7. Release of Claims. Company hereby waives, releases, and discharges forever Indemnitees from all present and future Claims arising out of or in any way connected with entry upon the Permit Property by Company or Company's agents, employees, consultants, contractors or subcontractors pursuant to this Permit, except and to the extent caused by the gross negligence or willful misconduct of Indemnitees.

8. Insurance. Throughout the Term of this Permit, Company and all contractors working on behalf of Company with respect to this Permit shall maintain a commercial general liability policy in the amount of Two Million Dollars (\$2,000,000) combined single limit, or such other policy limit as City may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name City and its respective elected and appointed officers, officials, employees, agents and representatives as additional insureds.

Throughout the Term of this Permit, Company and all contractors, including subcontractors of every tier, working on behalf of Company with respect to this Permit shall maintain a comprehensive automobile liability coverage in the amount of One Million Dollars (\$1,000,000), combined single limit including coverage for owned and non-owned vehicles and shall furnish or cause to be furnished to City evidence satisfactory to City that Company and any contractor with whom Company has contracted for the performance of work on the Permit Property pursuant to this Permit carries workers' compensation insurance as required by law. Automobile liability policies shall name City and its respective elected and appointed officers, officials, employees, agents and representatives as additional insureds.

Throughout the Term of this Permit, Company shall maintain worker's compensation insurance in the amount required under applicable state law, covering Company's employees, if any, at work upon the Permit Property or engaged in services or operations in connection with the Permitted Activities or the Permit Property. Company shall require that any contract entered into by Company with respect to this Permit or the Permitted Activities include a contractual

undertaking by the contractor to provide worker's compensation insurance for its employees in compliance with applicable state law.

Companies writing the insurance required hereunder shall be licensed "on an Admitted or Non-Admitted bases" to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. Prior to the Effective Date, Company shall furnish City with certificates of insurance in form acceptable to City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation, termination or non-renewal, except in the event of non-payment of premium a ten (10) day notice will be provided. Coverage provided by Company shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City. Company shall provide City with certified copies of the required insurance policies upon City's request.

9. Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant hereto shall be made in writing, and sent to the Parties at the addresses specified below, or such other address as a Party may designate by written notice delivered to the other Party in accordance with this section. All such notices shall be sent by:

- a. personal delivery, in which case notice shall be deemed 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: **Kirsten Foley**
 City of San Leandro
 835 E. 14th Street
 San Leandro, CA 94577

Company: **Juston Nobiling**
 Senior Director of Finance and Real Estate Services
 Satellite Healthcare, Inc.
 300 Santana Row, Suite 300

San Jose, CA 95128

10. Entire Agreement; Amendments. This Agreement together with Exhibits A through B attached hereto and incorporated herein by reference, constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statement with respect thereto. This Agreement may be amended only by a written instrument executed by the Parties hereto.

11. Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged thereby.

12. Waiver. A waiver by either party of the performance of any covenant or condition herein shall not invalidate this Agreement nor shall the delay or forbearance by either party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

13. Captions; Interpretation. The section headings used herein are solely for convenience and shall not be used to interpret this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning, and not strictly for or against any party, in order to achieve the objectives and purposes of the Parties.

14. Attorney's Fees. In any action at law or in equity, arbitration or other proceeding arising in connection with this Agreement, the prevailing party shall recover reasonable attorney's fees and other costs, including but not limited to court costs and expert and consultants' fees incurred in connection with such action, in addition to any other relief awarded.

15. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

16. Governing Law and Venue. This Agreement, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret 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.

17. Right of First Offer. City hereby grants to Company a right of first offer to negotiate to purchase the Permit Property on the terms set forth in this Section 17. If, during the Term, City intends to offer the Permit Property for sale to a third party or if City receives an offer from a third party to purchase the Permit Property on terms acceptable to City, City will first offer Company the right to submit an offer to purchase the Permit Property by sending to Company a written notice of such right. Company shall have a period of two (2) weeks ("Negotiation Period") commencing with its receipt of said written notice in which to negotiate in good faith to purchase the Permit Property from City. If no agreement has been entered into within the Negotiation Period, then City shall thereafter be free to sell the Permit Property to any

party upon any terms City may desire, and Company shall have no further rights under this Section 17.

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

SIGNATURES ON THE NEXT PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

SATELLITE HEALTHCARE, INC.:

By: _____

Print Name: _Susan L. Del Bene

Title: _Chief Financial Officer

CITY OF SAN LEANDRO:

Jeff Kay, City Manager

Attest

Marian Handa, Acting City Clerk

Approved As To Form:

Richard D. Pio Roda, City Attorney

Exhibit A

PROPERTY

(Attach legal description and map of Property.)

The land referred to is situated in the County of Alameda, City of San Leandro, State of California, and is described as follows:

Exhibit B

DEFINITION OF HAZARDOUS MATERIAL, ENVIRONMENTAL LAWS

As used in this Permit, the term "**Hazardous Material**" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", "infectious waste", "toxic substance", "toxic pollutant", or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term "hazardous material" shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methy tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

As used in this Permit, the term "**Environmental Laws**" means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 et seq.), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, et seq.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 et seq.), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 et seq.), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 et seq.).