



CITY OF POMONA

VEHICLE PARKING DISTRICT

STAFF REPORT

Date: September 12, 2019 Agenda Item No. : 09-12-05

To: Chair and Commissioners of the Vehicle Parking District

Submitted by: Kirk Pelsner, Deputy City Manager *Pelsner*

Prepared By: Joaquin Wong, Senior Project Manager

Subject: APPROVAL OF A VEHICLE PARKING DISTRICT LICENSE AGREEMENT WITH WESTERN UNIVERSITY FOR THE ANNUAL AMOUNT OF \$397,740

SUMMARY

Recommendation – That the Vehicle Parking District (VPD) Board of Parking Place Commissioners approve the updated VPD parking license agreement with Western University of Health Sciences and authorize the Board of Parking Place Commissioners Chairperson to sign on behalf of the VPD.

Fiscal Impact – The calculated revenue generated from the above license with Western University is \$99,435.00 per (annual) quarter. The annual income is \$397,740.00. This is based on licensing 947 parking spaces at \$35 per month. Revenues will be deposited into the VPD's operating revenue account.

Previous Vehicle Parking District Action – In July of 2012, the Board of Parking Place Commissioners approved the current license agreement with Western University. The initial term of that agreement has since expired and is on a year-to-year basis. Prior versions of the license were previously approved by the VPD Board.

BACKGROUND / DISCUSSION

The term of the previous Western University VPD parking license agreement was from July 1, 2012 to June 30, 2013. Thereafter, the agreement continued under the same terms and conditions on a yearly basis. Since the rates and the number of parking stall were unchanged there was no pressing need to execute a new agreement right away.

Since then, the VPD has adopted new parking rates (from \$30 per space to \$35 per space per month) and the University has slightly amended their parking numbers / arrangements. The original agreement licensed a total of 1,135 parking spaces. They currently purchase 947 parking spaces. This was mainly due to the sale of Lot 26 and 27 to Hanover Pacific / Providence Group for the Daumier student housing project. Additionally, the University only allowed their students

and staff to purchase a parking permit from the University. However, some faculty and students only attend part-time, and the University now purchases 50 individual "All Lot Non-Specific" (\$45 per mount) parking permit from the VPD, making it more convenient for their attendees to park in any VPD lot at various times of the day.

The terms of the new Western University parking license agreement would retroactively begin on July 1, 2019 and expire on June 30, 2024. Lots 26 and 27 are no longer included in the license and are replaced with Lot 26T. Additionally, the new license includes the sub-lease of Lot 25 which is licensed to the Helix by the VPD (the University negotiated an agreement with the Helix, since 95% of the tenants are Western University students).

With the exception of Lot 21 (licensed to Western University 24 hours a day, 7 days a week), Lot 24 (Free to the public after 8 pm) and Lot 25 (licensed 24/7 to the Helix), Lots: 15 (partial, 20 spaces), 17, 18, 20, 21, 23, 24 and 26T are exclusive to Western University from 7 am to 8 pm and open to the public (at the adopted parking rate) from 8 pm to 7 am.

If approved by the Board of Parking Place Commissioners, following the Chair's signature, the VPD would enter into this updated license with Western University.

Attachmen : License Agreement

Licensee: Western University of Health Sciences
Lot Nos.: 15 (partial), 17, 18, 19, 20, 21, 23, 24, 25 (Helix sub-lease)
and 26T

City of Pomona Vehicle Parking District Commission

LICENSE AGREEMENT

(General Use)

THIS LICENSE AGREEMENT (hereinafter referred to as "LICENSE") is made and entered into on July 1, 2019, by and between the BOARD OF PARKING PLACE COMMISSION (hereinafter referred to as "LICENSOR"), and Western University of Health Sciences (hereinafter referred to as "LICENSEE").

RECITALS

A. LICENSEE desires to use 947 parking spaces in Vehicle Parking District ("VPD") Lot Nos. 15 (partial), 17, 18, 19, 20, 21, 23, 24, 25 (Helix sub-lease) and 26T for the purpose of parking passenger vehicles.

B. LICENSOR has determined that the LICENSE for the use of 947 parking space(s) in VPD Lot Nos. ("LOTS") 15 (partial), 17, 18, 19, 20, 21, 23, 24, 25 (Helix sub-lease) and 26T is reasonable for the use by LICENSEE and is in the best interests of the parties hereto and other property owners within Vehicle Parking District.

TERMS AND CONDITIONS

1. LICENSE.

1.1 LICENSEE is allotted 947 space(s) in accordance with the authority granted by Section 31791 of the California Streets and Highways Code, upon the terms and conditions hereinafter set forth.

1.2 LICENSOR agrees to provide LICENSEE the use of 947 parking spaces in the LOTS located at Lots 15 (partial), 17, 18, 19, 20, 21, 23, 24, 25 (Helix sub-lease) and 26T ("Licensed Premises") as described below and specifically shown on Exhibit "A" attached hereto:

- A. Lot No. 15 (Partial), located south of the railroad tracks between Gibbs Street and Palomares;
- B. Lot No. 17, located south of the railroad tracks between Gibbs Street and Palomares;
- C. Lot No. 18, located south of Centennial Park;
- D. Lot No. 19, located at the northeast corner of S. Gibbs & E. 3rd Streets;
- E. Lot No. 20, located at the southeast corner of 3rd & Gibbs Streets;
- F. Lot No. 21, located at the northeast corner of 3rd & Elm Streets;
- G. Lot No. 23, located at the northeast corner of Elm & Forth Streets

- H. Lot No. 24, located south of the rail road track between Palomares & Eleanor Streets;
- I. Lot No. 25 (Helix Apartments sub-lease), located south of the rail road track between Palomares & Eleanor Streets; and
- J. Lot No. 26T, located at the northeast corner of Mission Boulevard and Palomares Streets.

2. **TERM.** The term of the LICENSE will begin on July 1, 2019 and expire on June 30, 2024. Thereafter, said LICENSE will automatically renew annually under the same terms and conditions, unless cancelled by either LICENSOR or LICENSEE upon ninety days' written notification to the other Party of its intent to terminate the LICENSE.
3. **FEE.** LICENSEE shall pay to LICENSOR **\$105 per calendar quarter (Three months at a time) which equals to \$35.00 per month, for each parking space, or a total of \$99,435 quarterly.** Quarterly payments shall be received by LICENSOR by the first working day of the beginning of every quarter (July 1, October 1, January 2nd and April 1st). During the term of this License, parking fees are subject to change with City Council approval.
4. **USE.** The use of the Licensed Premises shall be for the use by LICENSEE for LICENSEE'S employees, students, contractors, clients, vendors and/or customers, subject to the following provisions:
 - 4.1. LICENSEE shall be responsible to issue hang tags to its guests, students, employees or other users of the parking spaces to display from the users' rearview mirror inside the vehicle.
 - 4.2. No LICENSEE parking in time restricted spaces.
 - 4.3. No parking in stenciled or marked spaces other than that for the LICENSEE.
 - 4.4. LICENSEE parking shall be restricted to designated parking lots. (VPD Lot No. 15 (partial), 17, 18, 19, 20, 21, 23, 24, 25 (Helix sub-lease) and 26T, as shown in Exhibit "A." as follows:
 - 4.5. LICENSEE has use of Lots 18, 21 and 25 (Helix sub-lease) 24 hours a day 7 days a week.
 - 4.6. LICENSEE has exclusive use of spaces in Lots 15 (partial), 17, 18, 19, 20, 21, 23, 24, and 26T Monday through Friday from 7 a.m. to 8 p.m.
 - 4.7. All other times these lots are open for general public use at the standard daily and permitted parking fee rates.
 - 4.8. No vehicles over 5 tons shall park in any of the Licensed parking lots.
 - 4.9. LICENSOR is not responsible for any damages and or stolen property from any parked vehicles and/or equipment in the Licensed Premises or adjacent City property.
5. **LICENSEE COMPLIANCE.** LICENSEE shall comply with the following provisions:
 - 5.1. LICENSEE may stencil the parking spaces at its own cost, but only with the prior consent of LICENSOR.

- 5.2 LICENSEE shall not make any alterations to the parking lot, the parking lot layout or the designation of handicap spaces without the prior consent of LICENSOR. Any approved alterations / modifications to the parking lots shall be done to City of Pomona standards and at the sole cost of the LICENSEE.
6. **RESERVATION.** LICENSOR reserves the right to use the licensed premises from time to time for City of Pomona authorized special events. LICENSOR shall give LICENSEE advance notice of said use.
7. **ASSIGNMENT AND SUBLETTING.** The LICENSEE shall not assign this Agreement or any interest therein or sublicense the premises or any portion thereof without in each instance first obtaining the written consent of LICENSOR. Notwithstanding the foregoing, LICENSEE may charge a parking permit fee to its students, employees, guests, vendors and other users for use of the parking spaces.
8. **SECURITY.** LICENSEE may utilize its own security services. The responsibility and liability of such security services will remain with LICENSEE. By accepting and signing this License Agreement the LICENSEE agrees to indemnify the Vehicle Parking District, the City of Pomona, its elected and appointed officials, employees and representatives of the Vehicle Parking District and the City of Pomona of any actions attributed to the LICENSEE's security company and or personnel.
9. **MAINTENANCE.** LICENSEE may perform parking lot maintenance at the LICENSEE's cost with the approval of LICENSOR. All contractors and /or employees performing such service shall be properly insured, licensed, certified, bonded and qualified to perform the necessary work. Such contractor and/or LICENSEE's employee shall be the sole responsibility and liability of LICENSEE. By accepting and signing this License Agreement LICENSEE agrees to indemnify the Vehicle Parking District, the City of Pomona, its elected and appointed officials, employees and representatives of the Vehicle Parking District and the City of Pomona of any actions attributed to LICENSEE's maintenance company and or personnel.
10. **DAMAGES.** Repairs for damages caused by the LICENSEE's use of parking lots are the sole cost and responsibility of the LICENSEE. All repairs must be pre-approved by the LICENSOR. All contractors and /or employees performing such service shall be properly insured, licensed, certified, bonded and qualified to perform the necessary work. Such contractor and/or LICENSEE's employee shall be the sole responsibility and liability of LICENSEE. By accepting and signing this License Agreement the LICENSEE agrees to indemnify the Vehicle Parking District, the City of Pomona, its elected and appointed officials, employees and representatives of the Vehicle Parking District and the City of Pomona of any actions attributed to the LICENSEE's contractor and/or personnel.
11. **SIGNAGE.** LICENSEE may install special signage at its own cost. Sign material, size, design, colors, verbiage, placement, and installation method shall be pre-approved by the LICENSOR.
12. **WASTE.** LICENSEE shall not commit, or allow to be committed, placing of any waste upon said licensed premises.

13. **NON-LIABILITY OF LICENSOR FOR DAMAGES.** LICENSEE hereby agrees to hold LICENSOR harmless and indemnify it against all liability, loss, cost or obligation on account of or arising out of any injuries to property or any person or persons, including LICENSEE, its agents or customers, from any cause or causes whatsoever while in, upon, or in any way connected with the licensed premises during the term of this Agreement or any extension thereof.
14. **REMEDIES.** All rights and remedies of LICENSOR contained in this Agreement shall be construed and held to be cumulative and not exclusive. LICENSOR shall have the right to pursue any one or all of such remedies, or any other remedy which may be provided by law, whether or not stated in this Agreement. A waiver by LICENSOR of any breach of any of the covenants of this Agreement by LICENSEE shall not constitute a waiver of any succeeding or preceding breach of the same or any other covenant or condition herein contained.
15. **TERMINATION.** Should LICENSEE default in the payment of any installment fee, or any other sum due as herein provided, or default in the performance of, or breach of any other covenant, condition or restriction of this Agreement herein provided to be kept or performed by LICENSEE, and should such default or breach continue uncured for a period of five days from and after written notice thereof by LICENSOR to LICENSEE by certified mail, and in any such event, LICENSOR may at its option terminate this Agreement by giving LICENSEE written notice thereof, and thereupon this Agreement shall cease and terminate, and LICENSEE'S rights in and to the licensed premises and improvements erected and placed thereon shall cease and end, and the LICENSOR may without further notice or demand or legal process, re-enter and take possession of said premises and all improvements thereon and oust LICENSEE, and all persons claiming under LICENSEE therefrom, and except as otherwise provided herein, LICENSEE and all such persons shall quit and surrender possession of said premises and all improvements thereon to LICENSOR, provided, however, that such termination shall not relieve LICENSEE from the payment of any sums then due and payable from LICENSEE, or any claims for damages then accrued against LICENSEE hereunder, and such termination shall not prevent LICENSOR from recovering any such sums or damages, or from enforcing such obligations or recovering damages from any default thereof by any remedy provided by law.
16. **SURRENDER OF POSSESSION.** At the expiration of said term, or any sooner termination of this Agreement, the LICENSEE hereby agrees to quit and surrender possession of the licensed premises to LICENSOR in as good condition as reasonable use and wear will permit, damage by the elements or other casualty excepted. All signs and markings erected or placed by LICENSEE shall be removed at LICENSEE'S expense.
17. **BINDING ON ASSIGNS.** The covenants and conditions herein contained shall bind and inure to the benefit of the parties hereto, their successors and assigns.
18. **TIME** is of the essence of this Agreement. Should payments not be received by LICENSOR within thirty-one (31) days of the invoice date, a late fee of \$3.00 per space for each of the 31 day period payment is overdue shall be charged to Licensee.
19. **COLLECTION AND ATTORNEY'S FEES.** If LICENSOR employs the services of a collection agency to collect any fees, charges or penalties due pursuant to this Agreement, LICENSOR shall

be entitled to collect all costs of collection including staff time and collection agencies fees from LICENSEE. In the event LICENSOR commences litigation to collect any fees, charges or penalties due pursuant to this Agreement, LICENSOR shall be entitled to collect all costs of collection including staff time, collection agencies fees, court costs, expert fees and attorney's fees from LICENSEE.

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

BOARD OF PARKING PLACE COMMISSIONERS

By: _____
Chairman Vehicle Parking District

LICENSEE:

By: _____
It's
Western University of Health Sciences
309 E. Second Street, College Plaza
Pomona, CA 91766

Exhibit "A"

Vehicle Parking District
Parking Lot Location Map

