



Staff Report

Date: June 7, 2016

To: City Council

From: Valerie J. Barone, City Manager

Reviewed by: Victoria Walker, Director of Community and Economic Development

Prepared by: Pedro Garcia, Economic Development Specialist
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(925) 671-3048

Subject: **Considering authorizing a license agreement to allow Pacific Plaza Imports, Inc. the temporary right to park up to 15 vehicles at the City of Concord Civic Center Parkside Drive parking lot**

Report in Brief

Pacific Plaza Imports, Inc., located at 3018 Willow Pass Road, has requested a license agreement to allow temporary parking of up to 10 employee vehicles in the Civic Center Parkside Drive parking lot on a month to month basis for a fee of \$250 per month, with the option to allow parking of up to 5 additional employee vehicles for a fee of \$25 per vehicle per month. The City Council can authorize a license agreement with Pacific Plaza Imports that will provide parking for their employees, establish conditions to the agreement, and would generate \$3,000 of annual revenue for the City.

Recommended Action

Staff recommends that the City Council approve the attached license agreement (Attachment 1) between the City and Pacific Plaza Imports, Inc. to allow temporary parking for up to 10 employee vehicles within the Parkside Drive parking lot of the City of Concord's Civic Center for a fee of \$250 per month, and authorize the City Manager to execute the agreement. The license agreement includes an option to allow Pacific Plaza Imports employee parking for an additional five employee vehicles (i.e. up to a total of 15 employee vehicles) at the Parkside Drive lot for a fee of \$25 per vehicle per month.

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Authorize the City Manager to negotiate and enter into a license agreement to allow Pacific Plaza Imports, Inc. the temporary use of up to 15 parking stalls at the City of Concord Civic Center Parkside Drive parking lot
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Background

Pacific Plaza Imports, Inc. (PPI) is a leading importer and distributor of fresh caviar and fine foods since 1989. PPI purchased their current building on Willow Pass Road and moved their headquarters from Pittsburg to Concord in June of 2014. Earlier this year, PPI approached Economic Development staff with a proposal to park 10 to 15 employee vehicles at the Parkside Drive parking lot of the City of Concord Civic Center. PPI made this proposal because the City's parking lot is in close proximity to their headquarters building. PPI has quadrupled in business since they relocated into the City of Concord and now require additional employee parking that does not impinge on their on-site client and visitor parking. The use of City parking spaces would be limited to PPI employees only.

Economic Development staff obtained a commercial broker's opinion of value in order to determine the appropriate license fee. The broker surveyed paid parking spaces in Concord and determined a value of \$25 per vehicle per month, a rate that is currently charged in downtown Concord. Under the license agreement, PPI would pay the City \$250/month for up to 10 vehicles, and would have the option to park up to an additional 5 employee vehicles for a fee of \$25 per vehicle per month.

Staff conducted an informal survey of weekday parking demand at peak hours of 8 a.m. and 5 p.m. in the Parkside Drive lot and observed an average of 40 parking stalls available during the one week period of May 9 - May13.

Analysis

The proposed license agreement provides parking for 10 PPI employee vehicles during the hours of 8:30 a.m. to 5:00 p.m., Monday through Friday, under a month-to-month license agreement. PPI employee vehicles utilizing the City's parking spaces would be required to display parking passes on their windshields. The employees will be allowed to park in any location in the Parkside Drive parking lot, but it is expected that they would be parking in the south end portion of the lot, as that is the closest location to access the PPI offices. The license agreement benefits PPI due to their need for expanded employee parking in proximity to their headquarters building, and it will provide additional revenue to the City.

The Parkside Drive parking lot was selected because of its proximity to the signalized intersection, which PPI employees would use to access the PPI site and Parkside Drive parking lot. Staff's review/survey of the available parking space in the parking lot determined that even with use by PPI employees, there would still be adequate parking available for Civic Center guests and employees. The license agreement also provides that, upon notice by the City, PPI would make other parking arrangements if the Parkside Drive parking lot is needed for any Special Event at the Civic Center.

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California traffic laws require that PPI employees abide by proper pedestrian crossing of Willow Pass Road from Parkside Drive at all times. PPI employees will use the signalized street intersection crosswalk and abide by the crosswalk directions at all times. Illegal pedestrian crossing may lead to termination of this license agreement.

The agreement also provides for the City to terminate the agreement either upon the event of default, or upon a 30 day notice for any other reason.

Financial Impact

The license agreement would provide \$3,000 annually to the City. The license agreement also provides the possibility of PPI using up to an additional 5 employee vehicles for a fee of \$25 per vehicle per month.

Public Contact

Pacific Plaza Imports, Inc. has received a copy of the agenda report, and the agenda has been posted.

Attachments

1. License Agreement
2. Location Map

LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into on June 7, 2016 (“Effective Date”) between the City of Concord, a California municipal corporation (“City”) and Pacific Plaza Imports, Inc., a California corporation (“Licensee”).

Recitals

- A. City owns certain real property located at 1950 Parkside Drive, Concord, California, APN 111240014 (“Property”).
- B. Licensee would like to obtain a temporary, non-exclusive, and limited right, privilege, and permission to use a portion of the Property as shown on Exhibit A (“License Area”) for that certain Permitted Use (defined in Section 4 below).
- C. City is willing to allow such use pursuant to the terms of this Agreement.

Terms and Conditions

NOW, THEREFORE, in consideration of the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Licensee agree as follows:

1. License

A. Grant of License. City hereby grants to Licensee a temporary, non-exclusive, and limited right, privilege, and permission to use the License Area (including reasonable access to the License Area) for the purpose of the Permitted Use, and for no other purpose, subject to all leases, subleases, easements, restrictions and reservations now or subsequently pertaining to the License Area, the Property, or any portion thereof.

D. City Access. Licensee agrees that the City or its appointed representatives shall have access to the License Area at all times. City shall have the unrestricted right to observe all activities by Licensee and/or any Licensee Party at the Property. “Licensee Party” means any of Licensee’s partners, officers, officials, volunteers, shareholders, members, employees, agents, invitees, representatives, contractors, subcontractors, sub-licensees, successors, assigns, consultants, experts, and any other person or entity affiliated with Licensee or under Licensee’s direction or control.

C. Condition of Property. Licensee represents and warrants that Licensee has inspected and examined the License Area and accepts the License Agreement in its present “as is” condition. Licensee acknowledges and agrees that neither City, nor anyone acting for or on behalf of City, has made any representations, warranties, or promises to Licensee, or to anyone acting for or on behalf of Licensee, concerning the condition of the License Area, the Property, any portion thereof, or any other aspect thereof including any structures or improvements located thereon, the availability of utilities, or the absence or presence of hazardous materials. Licensee shall keep the License Area in a clean, orderly and sanitary condition to the satisfaction of the

City Engineer or his/her designee. Licensee agrees to take proper care to maintain and preserve the property of City. Upon expiration or other termination of this Agreement, Licensee shall remove all of its equipment and other installations from and shall repair and restore the License Area, the Property, and all portions thereof, and shall peaceably surrender such areas to the City clean and in the same condition as when received, reasonable wear and tear excepted.

D. Risk of Loss. City assumes no responsibility for loss or damage to the property of the Licensee.

E. Advertising. Licensee shall not at any time display any advertising sign without City's prior written approval, which City may withhold in its sole discretion.

2. Term. The term of this License Agreement shall commence on the Effective Date, and shall run on a month-to-month basis, unless terminated by the mutual agreement of both parties. Either party may terminate this License Agreement upon thirty (30) days written notice to the other party.

3. License Fee. License shall pay to City a fee of \$250.00 per month for up to ten (10) employee vehicles (even if fewer than 10 employee vehicles utilize the License Area), commencing as of the Commencement Date. Such sum, together with other monies due to City under this Agreement (including any amendments) are collectively referred to herein as the "License Fee." So long as Licensee is not in default under any of the terms or conditions of this Agreement, and subject to parking availability as determined by the City, Licensee may park an additional five (5) employee vehicles at the License Area subject to payment of a \$25 per vehicle per month fee and execution of an amendment to this Agreement signed by the parties. Licensee shall pay the License Fee to City without notice, demand, offset or deduction, in advance, on the first day of each month of the Term. If the License Fee is due for a period of less than a full month, it shall be prorated for such partial month on the basis of a 30-day month. Licensee shall remit the License Fee to the City of Concord Finance Department, 1950 Parkside Drive MS/06, Concord, CA 94519 or at such other address as Landlord may from time to time designate in writing to Licensee for the payment of the License Fee. Licensee further agrees to pay when due any taxes of any kind and every nature, including but not limited to possessory interest tax that may be imposed upon the License Area or Licensee's use thereof.

4. Permitted Use. "Permitted Use" means the parking of Licensee's employees in the south end parking lot of the City of Concord's Civic Center (as shown in attached map) and compliance with applicable laws, including pedestrian crossing as further set forth below. License shall ensure that its employees obey and comply with California traffic laws and other applicable laws including use of the signalized crosswalk at Willow Pass Road and Parkside Drive. City shall have the right (but not the obligation) to immediately terminate this agreement upon actual notice of any breach of this provision. Absent an amendment or modification of this Agreement, no activities other than those described above are allowed. All Permitted Use shall be conducted in accordance with all applicable Laws (defined in Section 7 below), and best industry practices. No alterations (including temporary or permanent structures, changes and/or additions) shall be made and no work or activities shall be allowed without City's prior written consent, which City may condition or withhold in its sole discretion. All Permitted Use and all other activities

pursuant to this Agreement shall be at the sole cost and expense of Licensee. The provisions of this Section 4 (Permitted Use) are in addition to those of Sections 5 (Indemnification) and 7 (Compliance with Laws).

5. Indemnification. The following obligations are in addition to those imposed by applicable provisions of the Concord Municipal Code. Licensee agrees to and shall defend (with independent counsel approved by the City), indemnify and hold harmless the City, its officers, officials, employees, agents, representatives and volunteers (each, a “City Party”) from and against any and all claims, demands, actions, losses, damages, injuries, and liability, including all attorney’s fees, expert fees, consultant fees, and other litigation costs and expenses (“Claims”) arising out of or connected in any way with: (a) the Permitted Use; (b) Licensee’s or any Licensee Party’s activities on or about, operation of, access to and/or from, and/or use of, the License Area, the Property, or any portion thereof; (c) this Agreement; or (d) Licensee’s or any Licensee Party’s performance, non-performance, breach, or default under this Agreement (individually and collectively, “Activities”), except to the extent caused by City’s sole or active negligence or willful misconduct.

6. Insurance. Licensee shall, at its own expense, procure and maintain in full force at all times during the term of this Agreement the following insurance:

A. Commercial General Liability Coverage. Licensee shall maintain commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal injury, and property damage.

B. Automobile Liability Coverage. Licensee shall maintain automobile liability insurance covering all vehicles used in the performance of this Agreement providing a one million dollar (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

C. Compliance with State Workers’ Compensation Requirements. Licensee covenants that it will insure itself against liability for Workers’ Compensation pursuant to the provisions of California Labor Code §3700, et seq. Licensee shall, at all times, upon demand of the City, furnish proof that Workers’ Compensation Insurance is being maintained by it in force and effect in accordance with the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by Licensee for City. This provision shall not apply upon written verification by Licensee that Licensee has no employees.

D. Other Insurance Provisions. The policies are to contain, or be endorsed to contain the following provisions:

(1) Additional Insured. City, its officers, agents, employees, and volunteers are to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf of Licensee and operations of Licensee, premises owned, occupied, or used by Licensee. The coverage shall contain no special limitations on the scope or protection afforded to City, its officers, officials, employees, or volunteers. Except for worker’s compensation and professional liability insurance, the policies mentioned in this subsection shall name City as an

additional insured and provide for notice of cancellation to City. Licensee shall also provide timely and prompt notice to City if Licensee receives any notice of cancellation or nonrenewal from its insurer.

(2) Primary Coverage. Licensee's insurance coverage shall be primary insurance with respect to City, its officers, officials, employees, and volunteers. Any insurance, risk pooling arrangement, or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be in excess of Licensee's insurance and shall not contribute with it.

(3) Reporting Provisions. Any failure to comply with the reporting provisions of the policy shall not affect the coverage provided to the City, its officers, officials, employees, or volunteers.

(4) Verification of Coverage. Licensee shall furnish City with certificates of insurance and the original endorsements effecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to City at the time of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form approved by the City Attorney. City reserves the right to require complete certified copies of all required insurance policies at any time.

7. Compliance With Laws. Licensee shall at all times comply with, and shall pay all costs and expenses which may be incurred or required to be paid in order to comply with, any and all laws, statutes, ordinances, rules, regulations, permitting requirements, labor codes, prevailing wage requirements, hazardous materials laws, the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, covenants and restrictions of record, life and fire safety and similar requirements, including those of the State of California, the County of Contra Costa, the City of Concord, or other applicable authority, all as amended from time to time ("Laws") which apply to any licensee activities and/or any Permitted Use, including those requiring payment of any fees, charges or assessments arising out of or in any way related to any Activities or any portion thereof as a source of adverse environmental impacts or effects. Licensee shall not permit or suffer any mechanic's lien to be filed against the License Area, the Property, any portion thereof, or any interest therein, and shall immediately discharge any such lien. Licensee agrees to and shall protect, defend (with independent counsel approved by the City), indemnify and hold harmless the City and each City Party from and against any and all Claims arising out of or connected in any way with any such lien, except to the extent caused by City's sole or active negligence or willful misconduct.

8. Environmental Matters.

A. Definitions. "Hazardous Materials" means hazardous waste (as defined in 42 U.S.C. 16901, *et seq.*), hazardous substance (as defined in 42 U.S.C. §9601, *et seq.*), and any

other hazardous, toxic, radioactive, carcinogenic, or prohibited materials, substances or wastes. “Hazardous Materials Laws” means all Laws concerning the management, use, generation, storage, transportation, presence, discharge or disposal of Hazardous Materials.

B. Generator. City shall not be identified on any documents or otherwise as the generator of any materials or wastes on any manifests or similar documents regarding any Hazardous Materials, or any other materials or wastes resulting from the Permitted Use.

C. Compliance with Hazardous Materials Laws. Licensee shall, at its sole cost and expense, comply with all Hazardous Materials Laws. Neither Licensee nor any Licensee Party shall use, handle, store, transport, release or dispose of any Hazardous Materials anywhere in, on, under or about the License Area, the Property, or any portion thereof. Licensee shall cause any and all Hazardous Materials brought onto, used, generated, stored or discharged in, on, under or about the License Area, the Property, or any portion thereof to be removed from the License Area, the Property, and all portions thereof, and transported for disposal in accordance with applicable Hazardous Materials Laws. City shall have the right to conduct tests, inspections and surveys concerning Hazardous Materials and to monitor Licensee’s compliance with its obligations concerning Hazardous Materials and Hazard Materials Laws. Licensee shall immediately notify City in writing of any voluntary clean-up or removal action instituted or proposed by Licensee, any enforcement, clean-up, removal or other governmental or regulatory action instituted or threatened, or any claim made or threatened by any person against Licensee, the License Area, the Property, or any portion thereof, relating to Hazardous Materials or Hazardous Materials Laws. Licensee shall also supply to City as promptly as possible, and in any event within five (5) business days after Licensee receives or sends same, copies of all claims, reports, complaints, notices, warnings or asserted violations concerning Hazardous Materials or Hazardous Materials Laws which in any way relate to any of the Activities.

D. Indemnification. Except to the extent caused by City’s sole or active negligence or willful misconduct, Licensee agrees to and shall defend (with independent counsel approved by the City), indemnify and hold harmless the City and each City Party from and against any and all Claims (including investigation, removal, remediation, cleanup and monitoring costs), asserted against or incurred at any time and from time-to-time by reason of or arising out or connected in any way with (a) the presence or release of any Hazardous Materials in, on, under or about the License Area, the Property, or any portion thereof; (b) any Activities; (c) the use, generation, storage, treatment, handling, transportation, disposal or release of any Hazardous Materials by or for Licensee or any Licensee Party; or (d) the violation of any Hazardous Materials law by Licensee or any Licensee Party. Such indemnity obligation shall include any Claims for tangible or intangible property damage; compensation for lost wages, business income, profits or other economic loss; damage to the natural resource or the environment; nuisance; trespass; and/or contamination, leak, spill, release or other adverse effect on the environment.

9. Choice of Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Contra Costa, California.

10. Non-Waiver. The waiver by either party of any breach of any term, covenant, or condition contained in this Agreement, or any default in their performance of any obligations under this Agreement shall not be deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

11. Enforceability; Interpretation. All duties and obligations of Licensee hereunder shall also be deemed to the duties and obligations of each Licensee Party, and Licensee shall be responsible for any breach of any provision of this Agreement by any Licensee Party. In the event that any of the provisions or portions of application of any of the provisions of this Agreement are held to be illegal or invalid by a court of competent jurisdiction, City and Licensee shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward affecting the purpose of this Agreement. The illegality or invalidity of any of the provisions or portions of application of any of the provisions of this Agreement shall not affect the legality or enforceability of the remaining provisions or portions of application of any of the provisions of this Agreement. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted. Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. Headings used in this Agreement are for convenience of reference only and shall not be used in construing this Agreement. Where the context so requires, the use of the singular shall include the plural and vice versa. The words “include” and “including” shall be interpreted as though followed by the words “without limitation.”

12. Integration. The recitals and any exhibits attached to this Agreement are incorporated by reference as though fully restated herein. This Agreement contains the entire agreement and understanding between the parties as to the subject matter of this Agreement, and merges and supersedes all prior or contemporaneous agreements, commitments, representation, writings, and discussions between Licensee and City, whether oral or written.

13. Successors and Assigns; No Third Party Beneficiaries; No Joint Venture. Licensee binds itself and its successors and assigns to the terms and obligations of this Agreement. Licensee shall not assign or transfer any interest in this Agreement without the City’s prior written consent, which City may condition or withhold in its sole discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is not intended and shall not be construed to create any third party benefit, or any joint venture, partnership, employment, or agency relationship between the parties.

14. Notices. All notices required hereunder shall be in writing and mailed postage prepaid by certified or registered first class United States mail, return receipt requested, or by personal delivery to the City’s address as shown below, or such other places as City or Licensee may, from time to time, respectively, designate in a written notice given to the other. Notices shall be deemed effectively served upon deposit in the United States Mail, or upon personal delivery.

To City: City of Concord
Attention: Economic Development
Pedro Garcia
1950 Parkside Drive, MS/40
Concord, CA 94519-2578
Telephone: (925) 671-3048

To Licensee: _____
Attention: _____

Telephone: () ___ - ____

For purposes of this Agreement, _____ is hereby authorized to act as Licensee’s agent for service of process.

15. Non-Liability. Neither City nor any City Party shall be personally liable to Licensee or otherwise in the event of any default or breach of the City, or for any amount which may become due to Licensee or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

16. Execution; Counterparts; Amendment. Each individual or entity executing this Agreement on behalf of Licensee represents and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of Licensee and that such execution is binding upon Licensee. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. This Agreement may be amended or modified only by a writing duly executed by authorized representatives of both parties, and made and approved in compliance with the City of Concord Municipal Code.

17. No Title; No Recording. Nothing in this Agreement or any activities pursuant to this Agreement shall convey or create in Licensee any right, title or interest in the License Area, the Property, or any portion thereof. Licensee may not record this Agreement or a memorandum referring to this Agreement without City’s prior written consent, which City may condition or withhold in its sole discretion.

18. Survival. The terms and conditions of the following Sections shall survive any termination or expiration of this Agreement: Section 4 (Permitted Use), Section 5 (Indemnification), Section 6 (Insurance), Section 7 (Compliance with Laws), Section 8 (Environmental Matters), Section 9 (Choice of Law), Section 15 (Non-Liability), and Section 18 (Survival).

[signatures follow on next page]

IN WITNESS WHEREOF, City and Licensee have respectively entered into this Agreement as of the Effective Date.

LICENSEE:

Pacific Plaza Imports, Inc.,
a California corporation

By:

Name:

Its:

By:

Name:

Its:

CITY:

City OF CONCORD,
a California municipal corporation

By:

Valerie J. Barone, City Manager

ATTEST:

By:

Joelle Fockler, MMC, City Clerk

APPROVED AS TO FORM:

By:

Susanne Meyer Brown, City Attorney

Exhibit A

License Area

[to be inserted]



Concord Civic Center



Pacific Plaza Imports

Parkside Dr

Consuelo Rd

El Segundo Blvd