

City of Santa Fe, New Mexico

memo

Date: January 27, 2016

To: Governing Body

Via: Brian Snyder, City Manager
Jon Bulhuis, Transportation Department Director

From: Noel Correia, Parking Division Director

Re: Canyon Road Lease Agreement

ITEM AND ISSUE:

Lease Agreement with Roman Salazar, Trustee of the Salazar Survivor's Trust, for a parcel of land located on Canyon Road to be used as a parking lot for vehicles.

BACKGROUND AND SUMMARY:

The City of Santa Fe Parking Division has maintained and operated a parking lot at the Canyon Road property under a lease agreement since the Division was incorporated. The most recent iteration of the lease expired on December 31, 2015 and the City stopped operating the parking lot effective at midnight that day. Due to limited parking opportunities on and in the vicinity of Canyon Road and the number of businesses that operate in the area, it is important to provide public parking to facilitate public access to those businesses and to minimize unauthorized parking that impedes vehicle and pedestrian traffic and creates health and safety concerns.

Since the expiration of the prior lease on December 31, 2015, the parties have negotiated a new lease agreement (attached), which provides for an initial one-year term, effective as of January 1, 2016, with three one-year renewal options. The rent remains fixed at fifty four thousand dollars (\$54,000) per year, payable in monthly increments. The Santa Fe County Assessor's office has assigned a value of approximately \$640,000 to the land on which the lot is located. Using the assessor's valuation, the lease rate would represent a 8.44% lease yield. This is in line with the market rate for ground leases which, depending on various factors, are in the range of 7 to 10%.

The City proposes to enter into the Lease Agreement effective January 1, 2016, and restart operations on Friday, January 22, 2016.

Staff recommends approval of the lease agreement.

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter "Lease") is made and effective as of January 1, 2016, by and between the City of Santa Fe, a municipal corporation (hereinafter "Lessee") and Roman Salazar, the duly appointed and acting Trustee of the Salazar Survivor's Trust created June 3, 2006 (hereinafter "Lessor").

WITNESSETH:

In consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. Premises. Lessor does hereby lease to Lessee the following described premises located in Santa Fe, New Mexico (hereinafter the "Premises"): See Exhibit A, attached hereto. Lessee accepts the Premises in its present state and agrees that it is in good condition, without any representation or warranty by Lessor as to the condition of the Premises or as to the use which may be made thereof.

2. Use of the Premises. The Premises shall be managed and used by Lessee as a public parking lot for vehicles. Lessee will use said Premises as a public parking lot seven days per week or as determined by operational needs. Lessor shall have access to three vehicle parking spaces on the premises at no charge to Lessor at all times. Lessor shall designate these parking spaces with appropriate signage.

3. Term. This Lease shall be effective January 1, 2016 and shall terminate on December 31, 2016, unless terminated sooner pursuant to Article 14 or Article 15, below, or unless renewed and extended for additional Terms, pursuant to Article 4, below.

In the event Lessee shall remain in possession of the Premises after the expiration of the Initial Term of this Lease, without exercising its option to extend, or after the expiration of any extended term, such possession may, at the sole option of Lessor, be continued as a month-to-

month tenancy. During any such month-to-month tenancy, rent shall be payable on a monthly basis at the same rate and in the same manner as that in effect during the preceding term and the terms and conditions of this Lease shall be applicable.

4. Option to Renew. This Lease Agreement may be extended by mutual consent of Lessor and Lessee for three (3) additional one (1) year Terms for a maximum of four (4) consecutive years from the start date of the Lease. The option shall be exercised by Lessee, notifying Lessor in writing at least sixty (60) days prior to the expiration date of this Lease of its election to exercise the option. This Lease may not be renewed and extended beyond December 31, 2020.

5. Rent. Lessee hereby agrees to pay as monthly rent for the Premises, four thousand five hundred dollars (\$4,500) without notice or demand and without deduction or offset for any cause. The total rent for the initial Term of January 1, 2016 to December 31, 2021 shall be fifty-four thousand dollars (\$54,000). This amount reflects monthly rent of \$4,500 for the 12 months of 2016. The total rent for the years January 1, 2016 to December 31, 2020 (should Lessee exercise all three options to renew) shall not exceed two hundred and sixteen thousand dollars (\$216,000).

6. Payment of Rent. All payments of rent shall be made by Lessee to Lessor on or before the first of each calendar month at the Lessor's offices in Santa Fe, New Mexico or at such other place as the Lessor may designate from time to time for any purpose. Rental payments received by Lessor after the fifth day of the month shall be subject to and include an additional late charge equal to one and one-half percent (1 ½ %) of such past due monthly rental payment. Any extension of time for the payment of any installment of rent shall not be a waiver of Lessor's right to insist on having all other payments of rent made in the manner and at the time herein specified.

7. Ingress and Egress. Lessor shall retain a right of ingress and egress to the property on the northwest corner as shown on "Exhibit B" attached hereto and incorporated herein by this reference.

8. Buildings and Structures on the Premises. Lessee shall not be responsible for the repair or upkeep of the existing shed and water storage tank situated on the east and north part of the property as shown on the map attached hereto and referenced herein as Exhibit A.

9. Utilities. Lessee shall promptly pay all utilities, including but not limited to, charges for electricity, gas, garbage, water, sewage, telephone, and other services, which may be incurred in connection with Lessee's use of the Premises, and to save Lessor harmless therefrom.

10. Contents Insurance. Lessee, at its sole expense, shall insure any contents or equipment, owned by Lessee, on the Premises. Lessor shall not be required to furnish such insurance.

11. Signs. Lessor hereby consents to any and all of Lessee's signs located on the Premises and adjacent grounds as of the date hereof. Upon the expirations of the term of this Lease, or any extension thereof, Lessee shall remove any and all of such signs and shall repair any damage to the Premises and adjacent grounds caused thereby at Lessee's expense.

12. Alterations and Improvements. Lessee shall make no alteration, addition or improvement to the Premises without the prior, written consent of Lessor, which consent shall not be unreasonably withheld. Any alteration, addition or improvement made by Lessee after such consent shall have been given, and any fixtures installed as part thereof, shall become the property of Lessor upon the termination of this Lease, unless Lessee elects to remove them and restore the Premises to the condition existing prior to the installation of such fixtures, ordinary wear and use excepted; provided, however, that Lessor shall have the right to require Lessee to remove such fixtures at Lessee's expense, upon the termination of this Lease. Lessee agrees to

indemnify and hold Lessor harmless against any and all mechanic's, materialman's or other lien or claim of lien arising out of the making or any alteration, addition or improvement by Lessee to the Premises.

13. Repair and Maintenance. Lessee shall not cause or permit any waste, damage or injury to the Premises. Lessee shall, at its own expense keep and maintain the Premises in good condition and good working order (reasonable wear and tear excepted), and subject to paragraph 11 hereof, shall, at its own expense, make all necessary repairs and replacements to the Premises. Repairs and replacements required to be made by the Lessee shall be made promptly as and when necessary and shall be at least equal in quality of materials and workmanship to that originally existing in the Premises. In the event of a default by Lessee in making such repairs and replacements, Lessor may, but shall not be required to, make such repairs and replacements at Lessee's expense, and the expense thereof shall constitute and be collectible as additional rent. At all reasonable times during the term of this Lease, Lessor, or its duly authorized representatives, shall have the right to enter upon the Premises to inspect the Premises, perform any work under this Lease, or to make any improvements, alterations, and additions that Lessor may elect to make.

14. Termination of Lease by Lessee. The Lessee may terminate this lease at any time upon sixty (60) days notice to Lessor for either of the following reasons:

- a. If insufficient appropriations and authorization are not made by the City. The City's decision as to whether sufficient appropriations are available shall be accepted by the Lessor and shall be final.
- b. If revenue received by the Lessee for the Premises becomes, by determination of Lessee, economically unfeasible.

15. Termination of Lease by Lessor. The Lessor may terminate this Lease at any time upon six (6) months notice to the City if he intends to develop the property.

16. Destruction.

- a. Lessee covenants with Lessor that in the event the Premises is damaged, destroyed or condemned pursuant to a right of eminent domain, totally or so as to be untenable, this Lease shall terminate, and in the event any part of the Premises is damaged, destroyed or condemned pursuant to a right of eminent domain, this Lease of the Premises shall terminate as to the part so damaged, destroyed or condemned, and the rent payable to Lessor shall be adjusted so that Lessee shall pay for the remainder of the calendar month(s) during which said damage, destruction, or condemnation occurs that portion of the rent in relation to the rent provided hereunder which the Premises remaining after such damage, destruction or condemnation bears to the whole of the Premises before such damage, destruction or condemnation. In the event of partial or total damage, destruction or condemnation of the Premises, Lessor shall be under no obligation to rebuild or repair the same. All payments and damages paid or resulting from any damage, destruction or condemnation as aforesaid shall accrue to and belong to Lessor, and Lessee shall have no right to any portion or part thereof.
- b. In the event of total or partial condemnation or taking of the Premises as aforesaid, Lessee shall have not right or cause of action against Lessor, nor shall Lessee participate in any award received by Lessor; provided, however, Lessee reserves and shall have the right to proceed independently of Lessor with any claims for compensation for damages sustained by Lessee as a result of the termination of this Lease or diminution of the leasehold estate and the value of any improvements and fixtures condemned or taken

which were constructed or installed and are owned by Lessee and are located upon the Premises at the time of such condemnation or taking.

17. Insurance. Lessee shall name Lessor as an additional insured on its insurance policy and pay any deductible that is assessed per occurrence.

18. Recording – Short Form Memo. This Lease shall not be recorded in its entirety. If desired by either party, both parties shall execute in recordable form a short form memorandum of this Lease which may be placed of record.

19. Notice. Any and all notice provided for hereunder shall be in writing and shall be deemed delivered, given and received when (i) personally delivered, or (ii) seventy-two (72) hours after the same are deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the applicable party at the address indicated below for such party, or at such other address as may be designated by either party in a written notice to the other party:

To Lessee: City of Santa Fe Parking Division
200 Lincoln, P.O. Box 909
Santa Fe, NM 87504-0909

To Lessor: Roman Salazar, Trustee
The Salazar Survivor's Trust u/a dated 6/3/06
803 Canyon Road
Santa Fe, NM 87504

20. Captions. Any captions to or headings of the paragraphs of this Lease are solely for the convenience of the parties, are not a part of this Lease and shall not be used for the interpretation or determination of validity of this Lease or any provisions hereof.

21. Severability. In case any one or more of the provisions contained in this Lease or any

application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22. Applicable Law. This Lease shall be construed, enforced and interpreted in accordance with and governed by the laws of the State of New Mexico.

23. Gender. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in either the masculine, the feminine or the neuter gender shall include the masculine, feminine and neuter.

24. Assignment and Sublease. Lessor shall have the right to transfer and assign, in whole or in part, its rights and obligations under this Lease and in the Premises. Lessee shall not assign or sublet this Lease or any part of the Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld. In the event of any assignment or sublease, Lessee shall nevertheless at all times remain fully responsible and liable for the payment of the rent and for compliance with all of its other obligations under the terms, provisions and covenants of this Lease. Upon the occurrence of Lessee's default hereunder, if all or any part of the Premises are then assigned or sublet, Lessor, in addition to any other remedies provided by this Lease or provided by law, may, at its option, collect directly from the assignee or subtenant all rents becoming due to Lessee by reason of the assignment or sublease, and Lessor shall have a security interest in all properties on the Premises to secure payment of such sums. Any collection directly by Lessor from the assignee or subtenant shall not be construed to constitute a novation or a release of Lessee from the further performance of its obligations under this lease.

25. No Waiver. No waiver of a breach of any of the covenants contained in this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

26. Entire Lease. The foregoing constitutes the entire agreement between Lessor and Lessee, represents their entire understanding and defines all of their respective rights, title, and interest as well as all of their duties, responsibilities and obligations. Any and all prior agreements and understandings between the parties are merged herein. This Lease shall not be modified or amended except by a written document.

27. Binding Effect. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of this ___ day of January, 2016.

LESSOR:

SALAZAR SURVIVOR'S TRUST

Roman Salazar, Trustee

LESSEE:

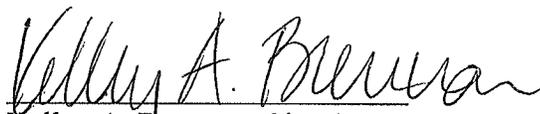
CITY OF SANTA FE

Javier M. Gonzales, Mayor

ATTEST:

Yolanda Y. Vigil, City Clerk

APPROVED AS TO FORM:



Kelley A. Brennan, City Attorney

Oscar Rodriguez, Finance Director