

"Placerville, a unique historical past forging into a golden future."

City Manager's Report
November 10, 2015 City Council Meeting
Prepared by: Cleve Morris, City Manager
Item #: 12.1



Subject: Adopt a Resolution Approving a Lease Agreement with David's Ale Works, Inc., a California Corporation for 3,358 Square Feet of Commercial Parking and Signage Area Adjacent to the Business Located at 209 Main Street.

Discussion: In 2014, CalTrans relinquished to the City certain properties adjacent to Hwy 50 that were part of the Hwy 50 improvement project. Several of those properties included leases with adjacent businesses for use of the property. One of the leases was with the former Carrow's restaurant located at 209 Main Street. The lease has continued at that location since the relinquishment by CalTrans.

Earlier this year, the Carrow's restaurant closed its doors. David's Ale Works, also known as Jack Russell Brewery, has negotiated a lease with the owner of the property. The new business owner desires to enter into a lease for the same area, which includes 9 parking spaces on the North end of the parking lot, and the area where the free standing sign is for the business.

Staff is proposing a new lease which allows for use of the parking area and the sign area for an initial term of 10 years with an option to renew for an additional 10 years. The term shall begin on the first day of the month in which the business is open or received a permanent or temporary occupancy permit. The rent for the project shall be \$430.18 per month. In addition, there will be a rate review annually with the potential to increase the rent based on the Consumer Price Index. These terms and conditions are consistent with the other lease agreements the City has.

For the past year, Staff has been working with the Placerville Downtown Association to install an event notification sign on Highway 50. Several options are currently under review. One of the options is to add an event sign to the lower portion of the new Jack Russell Brewery free standing sign. The owner of the business has offered this as an option. The Council committee assigned to review the sign options consisted of Councilmembers Wilkins and former Councilmember Patton. At the last meeting, Mayor Borelli volunteered to replace Councilmember Patton on the committee. We will continue to review all options and bring back a recommendation to the City Council. If the Jack Russell Brewery sign is chosen, it may be necessary to amend this agreement to reflect a lower price for the lease.

The new restaurant/brewery will be a great addition to Placerville and the downtown. The owner is completely remodeling the building and adding an outdoor eating area. Plans are currently in plan check and it is anticipated remodel of the interior of the building will begin soon with an opening around the first of the year.

Staff recommends approval of the lease agreement.

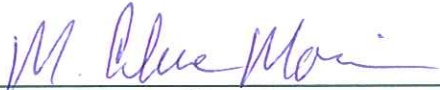
Options:

1. Approve the agreement as recommended.
2. Approve the agreement with revisions.
3. Reject the agreement.

Cost: There are only minor administrative costs associated with the agreement. Revenue will be generated in the amount of \$5,162 annually, which will cover any costs.

Budget Impact: The lease payments are anticipated in the budget; therefore, there will be no budget impact.

Recommendation: Adopt a Resolution Approving a Lease Agreement with David's Ale Works, Inc., a California Corporation for 3,358 Square Feet of Commercial Parking and Signage Area Adjacent to the Business Located at 209 Main Street.



M. Cleve Morris, City Manager

Attachments:

1. Resolution
2. Agreement

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF PLACERVILLE ADOPTING A LEASE AGREEMENT
BETWEEN THE CITY OF PLACERVILLE
AND DAVID'S ALE WORKS, INC.**

BE IT, AND IT IS HEREBY RESOLVED that the City Council of the City of Placerville hereby approves a Lease Agreement between the City of Placerville and David's Ale Works, Inc., a copy of which Agreement is attached hereto and by reference made a part hereof.

The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Placerville held on November 10, 2015, by Councilmember _____, who moved its adoption. The motion was seconded by Councilmember _____. The motion was passed by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Mayor Patricia Borelli

ATTEST:

Susan Zito, City Clerk

LEASE AGREEMENT

THIS LEASE is made and entered into this _____ day of _____, 20____, at Placerville, California, by and between the City of Placerville, hereinafter known as "City," and David's Ale Works, Inc., a California Corporation, hereinafter known as "Lessee," whose current business address is _____, _____, CA.

WITNESSETH

- 1) DESCRIPTION: The City, in consideration of the payment of the rent hereinafter specified to be paid by the Lessee, and the covenants and agreements herein contained, does hereby lease, demise, and let unto Lessee that certain property (the Premises) in the County of El Dorado, State of California, the address of which is adjacent 209 Main Street, Placerville, CA, south of Highway 50 and further described as 3,358 square feet of commercial parking area as depicted on Exhibit "A" attached hereto and made a part hereof.
- 2) TERM: Rental of the Premises shall be for a term of ten (10) years commencing on the first day of the month in which a certificate of occupancy for the building is issued by the Placerville Building Department and ending 10 years from that date, with the right of cancellation and termination by both City and Lessee as hereinafter set forth. Provided that Lessee is not in default hereunder, Lessee shall have an option to renew this lease upon the same terms and condition as set forth herein for an additional ten (10) years after the initial term of this lease. Lessee may exercise this option by giving City six (6) months written notice of its intent to do so.
- 3) RENT: The rental rate of Four Hundred Thirty Dollars and eighteen cents (\$430.18) per month payable in advance on the first day of each month during the term of this lease.
- 4) RENTAL RATE REVIEW: City will review the rental rate annually on the anniversary date of this lease and will adjust the rental rate according to the increase, if any, in the Consumer Price Index—All Items, U.S. City Average for the United States, published monthly by the Bureau of Labor Statistics of the United States Department of Labor (or the equivalent index) ("CPI Index"), using the CPI Index for January, 2017, the anniversary date of the Lease, as the base for computing the increase. For example, if the January, 2016 base CPI Index equals 250 and the 2016 Index equals 254, then the rent for the period from January, 2017 through January, 2018 shall be \$430.18 x 254 divided by 250, which equals \$437.06. In no event shall the monthly rent be increased by more than five percent (5%) from the monthly rent payable for the preceding one year period.
- 5) SECURITY DEPOSIT: Lessee shall deposit with City \$ 500 as a guarantee for faithful performance of the conditions of this Lease. City may use such amounts as are reasonably necessary to remedy Lessee default in the payment of rent; repair damages caused by Lessee, or by a guest or a licensee of the Lessee; clean the Premises, if necessary, upon termination of tenancy; and replace or return personal property or appurtenances, exclusive of ordinary wear and tear. If used toward rent or damages during the term of tenancy, Lessee agrees to reinstate said total security deposit upon five (5) days' written notice delivered to

Lessee in person or by mail. City shall furnish Lessee with an itemized written statement of the basis for, and the amount of, any security received and the disposition of the security, and shall return any remaining portion of the security to Lessee in accordance with California Civil Code Section 1950.5.

- 6) **PAYMENTS:** All rental payments shall be made payable to the City of Placerville. Lessee shall make payment to City's mailing address or street location as indicated below:

City of Placerville
Attn: City Manager
3101 Center Street
Placerville, CA 95667

- 7) **LATE PAYMENT CHARGE:** Lessee hereby acknowledges that late payment by Lessee to City of rent and other sums due hereunder will cause City to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or any other sum due from Lessee shall not be received by City within ten (10) days after such amount shall be due, Lessee shall pay to City a late charge of \$50.00. In no event shall the late charge exceed the maximum allowable by law. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs City will incur by reason of Lessee's late payment. Acceptance of such late charge by City shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent City from exercising any of the other rights and remedies granted hereunder.

- 8) **DISHONORED CHECK CHARGE:** Lessee hereby agrees:

- a) That Lessee shall pay to City a fee of \$25.00 for the first dishonored check and \$35.00 for a second dishonored check.
- b) That if Lessee has two (2) dishonored checks within any twelve- (12-) month period, the City will no longer accept personal checks for payments due under this Lease.

- 9) **UTILITIES:** If applicable, Lessee shall pay when due all utility and other charges accruing or payable, including utility deposits in connection with Lessee's use of the Premises during the term of this Lease. Lessee shall contact utility providers to request that utility service be established in Lessee's name from January 1, 2016. In the event Lessee fails to establish service in Lessee's name by the above-mentioned date, this Lease will be terminated.

- 10) **NOTICES:** All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when served personally, or when made in writing and mailed addressed as follows: To Lessee at the above-stated address and to City at:

City of Placerville
Attn: City Manager
3101 Center Street
Placerville, CA 95667

The address to which the notices shall be mailed to either party shall be changed by written notice by either party to the other, but nothing herein shall preclude the giving of notice by personal service. City shall also be able to serve notices by posting and subsequent mailing to Lessee.

- 11) USE: Lessee shall use the Premises for the following purposes only:
- a) Commercial Parking Area for employee vehicles and customer vehicles only, abiding by the provided "Parking Lot" Best Management Practices (BMP).
 - b) Lessee shall not commit, suffer, or permit any waste on said property.
 - c) Lessee may place signage for Lessee's business on the property, including maintaining the existing sign on the property provided Lessee complies with the City's sign regulations.
 - d) Lessee shall comply with all federal, state and local laws and ordinances concerning said property and the use thereof.
 - e) Lessee shall not allow vehicle or equipment washing, fueling, maintenance or repair on the Premises.
- 12) ASSIGNMENT AND SUBLETTING: Lessee shall not assign or sublet this Lease without City's written consent. Any request by Lessee to assign this Lease shall be subject to the following:
- a) An assignment will only be allowed to a person or entity of equal or greater financial responsibility than Lessee.
 - b) The proposed use must be the same or similar to that employed by Lessee.
 - c) A written application from the proposed assignee is required. Lessee will pay all charges incurred for verifying information in the application process.
 - d) City has the right to raise the rent to current market value upon Lessee's exercise of a right to assign.
 - e) Assignment does not relieve the Lessee of any duties or obligations under the Lease.
 - f) Any assignment is not deemed a consent to any subsequent assignment.
- 13) MAINTENANCE: Lessee shall keep property in a neat, clean, and orderly condition at all times during occupancy, including watering of shrubs and lawns (if applicable), and shall not permit rubbish, garbage, etc., to accumulate at any time.
- 14) CONDITIONS AND REPAIRS: Lessee shall not call on City to make any improvements or repairs on the Premises, but Lessee hereby specifically covenants and agrees to keep the

Premises, including furnishings and equipment, if applicable, in good order and condition at Lessee's cost and expense. Lessee further agrees to provide an adequate number of garbage and trash receptacles in clean condition and good repair.

- 15) ALTERATIONS: Lessee shall not make or suffer any alteration to be made in or on the Premises without City's written consent.
- 16) TERMINATION: Lessee acknowledges the following: Lessee commenced occupancy of the Premises after the City acquired title to it; City acquired the Premises in the event it was needed for a potential public project; Lessee may be required to vacate the Premises to allow construction of the public project. This Lease shall be subject to cancellation or termination by City in the event that the Premises is necessary for a public project. In said event, City shall give Lessee one (1) year written notice of such termination.
- 17) VACATING THE PREMISES: At the expiration of the term, or any sooner termination of this Lease, Lessee agrees to quit and surrender possession of the Premises and its appurtenances to City in as good order and condition as the Premises was delivered to the Lessee. Lessee agrees to reimburse the City for any damage done to the Premises caused by Lessee's occupation or tenancy excepting reasonable wear and tear and damage by the elements. Lessee shall not leave or allow to remain on the Premises any garbage, refuse, debris, or personal property. Lessee will pay City any removal costs incurred by city on the date the Premises is vacated.
- 18) RELOCATION PAYMENT: Lessee acknowledges the following: Lessee commenced occupancy of the Premises after the City acquired title to it; City acquired the Premises in the event it was needed for a potential public project; Lessee may be required to vacate the Premises to allow construction of the public project; and Lessee is not entitled to and waives any claim to receive any payments under either the State or the Federal Uniform Relocation Assistance Act. (Government Code, Section 7260, et seq.; 42 United States Code, Section 4601, et seq.)
- 19) POSSESSORY INTEREST: Tax bills inadvertently received by Lessee should be forwarded to City for processing.
- 20) RIGHT OF ENTRY: Lessee shall permit City or its authorized agent to enter into and upon the Premises during normal business hours, subject to a twenty-four-hour (24-hour) notice, for the following purposes: routine inspection, maintaining the Premises, installing protective or conservation devices and for showing the Premises to prospective purchasers and/or tenants. City reserves its right, without notice, to enter property in case of emergency or to prevent imminent harm to persons or property.
- 21) INSURANCE: City is self-insured and will not keep the Premises insured against fire or any other insurable risk, and Lessee will make no claim of any nature against City by reason of any damage to Lessee's property in the event it is damaged or destroyed by fire or by any other cause.

- 22) **LIABILITY AND PROPERTY DAMAGE INSURANCE:** Lessee shall, at Lessee's expense, take out and keep in force during the full term of the tenancy:

General liability insurance providing coverage in the amount of one million dollars (\$1,000,000) per occurrence for Bodily Injury and Property Liability combined, in a company or companies to be approved by City, to protect City, its officers, agents and employees against all claims, suits or actions of every name, kind, and description brought forth, or on account of, injuries to or death of any person occurring in or about the Premises or on account of damage to property incident to the use of, or resulting from, any and every cause occurring in or about the Premises which is the subject of this Lease, including any and all claims, suits or actions for damage to vehicles on the Premises.

With respect to third-party claims against Lessee, Lessee waives any and all rights to any type of express or implied indemnity against City, its officers or employees.

It is the intent of the parties that Lessee will indemnify, defend and hold harmless City, its officers and employees from any and all claims, suits or actions as set forth above regardless of the existence or degree of fault or negligence on the part of City, Lessee, the officers or employees of either of these, other than the sole negligence of City, its officers and employees.

Nothing in this Lease is intended to create the public or any member thereof a third-party beneficiary hereunder, nor is any term or condition or other provision of the Lease intended to establish a standard of care owed to the public or any member thereof.

Said policies shall name City as an additional insured and shall inure to the contingent liabilities, if any, of City and the officers, agents and employees of City and shall obligate the insurance carriers to notify City, in writing, not less than thirty (30) days prior to the cancellation thereof, or any other change affecting the coverage of the policies. Lessee shall furnish to City either a certified copy of each and every such policy or a fully executed "CERTIFICATE OF INSURANCE WITH ENDORSEMENT FOR LEASE OF CITY-OWNED PROPERTY" within not more than ten (10) days after the effective date of the policy. Lessee agrees that if Lessee does not keep such insurance in full force and effect, City shall have the right to immediately terminate this Lease.

- 23) **INDEMNIFICATION:** Lessee shall indemnify, defend, and hold City, its officers, agents and employees harmless from and against any loss, cost, or expense, including, but not limited to, attorney fees and court costs, resulting from any claim by any third party arising out of or connected to the actions of Lessee and/or regarding all acts and omissions, including, but not limited to, the willful misconduct or negligence of the Lessee.

Further, it is the parties' intent that the indemnity provisions stated herein apply to losses resulting from Lessee's negligence or any cause other than the willful misconduct or sole negligence of City, its officers, agents or employees.

- 24) **HAZARDOUS MATERIALS:** Hazardous materials are those substances listed in California Code of Regulations, Title 22, Section 66261.126, Appendix X, or those which meet the toxicity, reactivity, corrosivity or flammability criteria of Title 22 of the above Code, as well

as any other substance which poses a hazard to health or environment.

Except as otherwise permitted in this Lease, Lessee shall not use, create, store or allow any such substances on the Premises; however, fuel stored in a motor vehicle for the exclusive use in such vehicle is permissible.

In no case shall Lessee cause or allow the deposit or disposal of any such substance on the leased property. However, household products necessary for routine cleaning and maintenance of the Premises may be kept on the leased Premises in quantities reasonable for current needs.

City, or its agents or contractors, shall at all times have the right to go upon and inspect the leased Premises and the operations conducted thereon to assure compliance with the requirements herein stated. This inspection may include taking samples of substances and materials present for testing, and/or testing soils or underground tanks on the Premises.

Breach of any of these covenants, terms and conditions shall give City authority to immediately terminate this Lease. It is the intent of the parties hereto that Lessee shall be responsible for and bear the entire cost of removal and disposal of hazardous materials or waste introduced to the Premises during Lessee's period of use and possession as owner, operator or Lessee of the Premises. Lessee shall also be responsible for any cleanup and decontamination on or off the leased Premises necessitated by such materials or waste.

Lessee shall further hold City, and any officer or employee, harmless from all responsibility, liability and claim for damages resulting from the presence or use of hazardous materials on the Premises during Lessee's period of use and possession.

- 25) WATER POLLUTION CONTROL: Lessee shall not allow discharge of contaminated storm water runoff or unauthorized non-storm water discharges to private or public storm water drainage systems. Lessee shall comply with state and federal water pollution control requirements, and those of municipalities, counties, drainage districts, and other local agencies regarding discharges of storm water and non-storm water to sewer systems, storm drain systems, or any watercourses under jurisdiction of the above agencies.

Lessee shall implement and maintain the best management practices (BMPs) shown in the attached Stormwater Pollution Prevention Fact Sheet(s) for: GENERAL LAND USE, PARKING LOTS, VEHICLE EQUIPMENT STORAGE AND TRUCK/VEHICLE REPAIR STORAGE.

Lessee shall identify any other potential sources of storm water and non-storm water pollution resulting from Lessee's activities on the Premises, which are not addressed by the BMPs, contained in the attached Fact Sheet(s), and shall implement additional BMPs to prevent pollution from those sources.

City, or its agents or contractors, shall at all times have the right to go upon and inspect the Premises and the operations conducted thereon to assure compliance with the requirements herein stated. This inspection may include taking samples of substances and materials present for testing, and/or testing of sewer systems, storm drains, or watercourses on the Premises.

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- 26) **WAIVER:** If any part of this Lease is invalid by reason of law or governmental regulation, or if any provisions hereof are waived by City, the remaining portions of this Lease shall remain in full force and effect. City's receipt of rent with the knowledge of any breach of a provision of this Lease shall not constitute a waiver of such breach.
- 27) **AMENDMENTS:** The terms of the Lease may be, in writing, amended, revised, altered, or changed, by mutual consent of the parties hereto upon thirty (30) days' written notice. Any amendment, revision, alteration, or change shall operate with the same force and effect as the original agreement.
- 28) **PREVIOUS AGREEMENTS:** Any existing Lease or Rental Agreement between Lessee and City (or its predecessor in interest) covering this property are terminated as of the effective date of this Lease.
- 29) **LITIGATION COSTS:** In the event that a suit is necessary to enforce any of the provisions herein contained, or to recover possession of the Premises, the prevailing party shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.
- 30) **HOLD OVER:** Should Lessee hold over after the expiration of the term of this Lease with City's consent, express or implied, the tenancy shall be deemed to be a tenancy only from month to month, subject otherwise to all the terms and conditions of this Lease so far as applicable.
- 31) **NONDISCRIMINATION:** Lessee, for themselves, their heirs, personal representatives, successors in interest, and assigns as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that Lessee shall maintain and operate any facilities on the land or services offered thereon in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- Lessee also agrees that in the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate the Lease and to reenter and repossess said land and the facilities thereon and hold the same as if said Lease had never been made or issued.
- 32) **ENCUMBRANCES:** Lessee shall not encumber the leased Premises in any manner whatsoever.
- 33) **ASSIGNMENT FOR BENEFIT OF CREDITORS, INSOLVENCY, OR BANKRUPTCY:** Appointment of a receiver to take possession of Lessee's assets, Lessee's general assignment for benefit of creditors, or Lessee's insolvency or taking or suffering action under the Bankruptcy Act is a breach of this Lease and this Lease shall terminate.
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- 34) POSTING OF PROPERTY: City or its agents shall at all times have the right to serve or to post thereon any notice required or permitted by law for protection of any right or interest of the City.
- 35) HEADINGS: The marginal or clause headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

Lessee:

David Coody, President, David's Ale Works, Inc.

City of Placerville:

M. Cleve Morris, City Manager