

# REPORT OF THE COMMITTEE ON BUDGET

## Voting Members:

Ann H. Kobayashi, Chair; Stanley Chang, Vice Chair;  
Carol Fukunaga, Joey Manahan, Kymberly Marcos Pine

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Committee Meeting Held  
November 20, 2013

Honorable Ernest Y. Martin  
Chair, City Council  
City and County of Honolulu

Mr. Chair:

Your Committee on Budget, which considered Resolution 13-282 entitled:

"RESOLUTION APPROVING A 15-YEAR RENTAL AGREEMENT FOR THE CITY-OWNED PAVED PARKING AREA ABUTTING THE WAILANI FLOOD CONTROL CHANNEL, AREA OF 5,850 SQUARE FEET, TMK: 9-4-19:39."

transmitted by Communication D-836, dated October 21, 2013, from the Department of Budget and Fiscal Services, reports as follows:

The purpose of the Resolution is to approve a 15-year rental agreement for the City-owned paved parking area abutting the Wailani Flood Control Channel.

The Deputy Director of the Department of Budget and Fiscal Services testified in support of the Resolution, and that the department will correct all technical errors in the rental agreement prior to adoption by the Council.

Your committee received two testimonies in support from members of the public. Your committee also received six testimonies from members of the public providing comments on the Resolution.

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**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ADOPTED ON DEC 11 2013

COMMITTEE REPORT NO. 370

# REPORT OF THE COMMITTEE ON BUDGET

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Your committee received three testimonies in support of Resolution 13-282 from the following institutions, organizations, and governmental agencies:

1. Senator Clarence K. Nishihara, State Senator District 17, Waipahu, Pearl City, Palisades and Crestview
2. Lynn Y. Tanioka, VP, Tanioka's Fish Market, Inc.
3. Dolly Buenconsejo-Kunz, Sales Associate/Fundraising, Tanioka's Seafoods & Catering

Your Committee considered and approved a proposed handcarried CD1 version that makes the following amendments:

1. Amends the title of the Resolution to read:

AUTHORIZING A 15-YEAR RENTAL OF THE CITY-OWNED PAVED PARKING AREA ABUTTING THE WAILANI FLOOD CONTROL CHANNEL, AREA OF 5,850 SQUARE FEET, TMK: 9-4-19:39.

2. Attaches the Rental Agreement as Exhibit B.
3. Amends language in the last WHEREAS and the BE IT RESOLVED clauses to specify that the Council is authorizing a 15-year rental pursuant to the newly attached Rental Agreement.
4. Makes various technical and non-substantive amendments.

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## CITY COUNCIL

CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ADOPTED ON DEC 11 2013

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Your Committee on Budget is in accord with the intent and purpose of Resolution 13-282, as amended herein, and recommends its adoption in the form attached hereto as Resolution 13-282, CD1. (Ayes: Kobayashi, Chang, Fukunaga, Manahan, Pine – 5; Noes: None.)

Respectfully submitted,

  
\_\_\_\_\_  
Committee Chair

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## CITY COUNCIL

CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ADOPTED ON DEC 11 2013

COMMITTEE REPORT NO. 370



## RESOLUTION

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AUTHORIZING A 15-YEAR RENTAL OF THE CITY-OWNED PAVED PARKING AREA ABUTTING THE WAILANI FLOOD CONTROL CHANNEL, AREA OF 5,850 SQUARE FEET, TMK: 9-4-19:39.

WHEREAS, the City and County of Honolulu ("City") owns the Wailani Flood Control Channel ("Channel") and the 5,850 square feet paved parking area abutting the Channel, as shown cross-hatched in blue on the Exhibit A, attached hereto and by reference made a part of this resolution; and

WHEREAS, both properties are under the jurisdiction of the Department of Facility Maintenance ("DFM") which maintains the Channel and uses a portion of the paved parking area, as needed, to access the Channel for maintenance; and

WHEREAS, due to heavy usage by delivery and garbage trucks servicing the entire area on a daily basis, the costs to reconstruct and repave the City-owned paved parking area are estimated at a cost of \$35,000.00 to \$40,000.00; and

WHEREAS, the continued maintenance of the City-owned paved parking area, which includes installing parking blocks and striping, repairing potholes and asphalt cracks, doing trash pickup, clearing and maintaining the area, and hiring security to patrol and discourage vandalism around the drainage channel and the adjacent vicinity has a cost of more than \$2,000.00 per month; and

WHEREAS, the various City agencies, including DFM and the Department of Design and Construction, have no objections to the long-term rental of the paved parking area; and

WHEREAS, Section 28-4.1(1) ROH permits the Council to authorize by resolution the leasing or renting of property of the City and County of Honolulu for a longer period than five years when deemed necessary in the public interest and when the lessee or tenant is required by the terms of the proposed contract to expend the sum of \$25,000.00 or more for capital assets or to provide for the renovation or maintenance of any capital asset, or the lessee's or tenant's expenditure is equal to or in excess of the sum of \$25,000.00 as determined by the Council; and

WHEREAS, the proposed reconstruction and repavement of the City-owned paved parking area and the ongoing maintenance and security costs meet the requirement of \$25,000.00 or more for capital assets or to provide for the renovation or maintenance of any capital asset, or the expenditure is equal to or in excess of the sum of \$25,000.00; and



RESOLUTION

WHEREAS, the Department of Budget and Fiscal Services is recommending the Council authorize a 15-year rental of the parking area based on the expenses to reconstruct and repave the paved parking area and the ongoing maintenance and security costs; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu, that it authorizes a 15-year rental pursuant to the terms of the Rental Agreement attached hereto as Exhibit B for the 5,850 square feet City-owned paved parking area abutting the Wailani Flood Control Channel based on the proposed reconstruction and repavement expenses and the ongoing maintenance and security costs; and

BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Director of the Department of Budget and Fiscal Services.

INTRODUCED BY:

Ernest Martin (BR)

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DATE OF INTRODUCTION:

November 14, 2013  
Honolulu, Hawaii

\_\_\_\_\_  
Councilmembers



**RENTAL AGREEMENT  
FOR A 15-YEAR RENTAL AGREEMENT TO USE A PORTION  
OF THE CITY-OWNED WAILANI FLOOD CONTROL CHANNEL  
WAIPAHU, OAHU, HAWAII  
TMK: 9-4-19:39  
FOR PARKING**

THIS RENTAL AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by and between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of  
the State of Hawaii, hereinafter referred to as the "City" and \_\_\_\_\_ a  
corporation, whose post office address \_\_\_\_\_,  
hereinafter referred to as the "Tenant."

**WITNESSETH:**

The parties hereto mutually agree:

That the City, in consideration of the Rental Agreement hereinafter mentioned and of the covenants herein contained, hereby grant unto the Tenant, a Rental Agreement to use the City-owned property located along the Wailani Flood Control Channel, TMK: 9-4-19:39 for parking only, as shown colored in blue on the attached map and described in the "Terms and Conditions," attached hereto, which is hereby incorporated by reference and made a part hereof.

That the term of this Rental Agreement shall be for a term not to exceed fifteen (15) years, commencing on the date designated by the City in its "NOTICE TO PROCEED," unless sooner terminated as provided for herein.

That the Tenant , in consideration of the Rental Agreement and use of the above-described premises and other valuable consideration, agrees to pay to the City the amount bid of \_\_\_\_\_ for the first year as the monthly rental fee. The monthly rental rate for each succeeding year thereafter will be subject to a reappraisal by the City, but not lower than the prior year's rent. The Tenant shall pay to the City the monthly rent on or before the first day of each month at the Office of the Division of Treasury, City Hall. Checks shall be made payable to the "City Director of Finance." Any overdue payment of rentals shall bear

interest at the rate of 1% simple interest per month.

That this Rental Agreement shall be subject to the terms and conditions set forth in the "Terms and Conditions" for a Rental Agreement to use the City-owned property located along the Wailani Flood Control Channel, Tax Map Key No. 9-4-19:39 for Parking, hereinabove mentioned.

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

**CITY AND COUNTY OF HONOLULU**

By \_\_\_\_\_  
Its  
Department of Budget and Fiscal Services

CITY

**NAME OF TENANT**

By \_\_\_\_\_  
Its

TENANT

APPROVED AS TO CONTENTS:

By \_\_\_\_\_  
Its  
Department of Facility Maintenance

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

**TERMS AND CONDITIONS  
FOR A 15-YEAR RENTAL AGREEMENT TO USE A PORTION  
OF THE CITY-OWNED WAILANI FLOOD CONTROL CHANNEL  
WAIPAHU, OAHU, HAWAII  
TMK: 9-4-19:39  
FOR PARKING**

**A. NOTICE TO BID**

Written Notice of Intention to Bid, together with the Application to Bid, must be filed by each prospective bidder with the Director, Department of Budget and Fiscal Services at the Division of Purchasing, City Hall, on or before **11:00 a.m., December 30, 2013**.

**B. FILING OF BIDS**

All bids shall be submitted on or before **10:30 a.m., January 7, 2014** on forms furnished by the Director, Department of Budget and Fiscal Services, City and County of Honolulu, hereinafter referred to as the Director of BFS, and shall be enclosed in a sealed envelope provided by said Director of BFS.

All bid envelopes must bear the Purchasing Divisions time stamp mark.

No bids received after the above-stated time and date will be considered.

No bidder may withdraw its bid between the filing thereof and sixty (60) days after the opening of the bids.

The Director of BFS shall reject all bids submitted on other than the official bid form or which modifies, adds, or deletes any term, consideration, or condition, other than those contemplated by the Notice to Bidders, the Bid Proposal Form, and the Terms and

Conditions. Bid proposals must be signed in ink by the person or persons duly authorized to sign the bid in the space provided for signature on the bid proposal form.

In the case of a corporation, the title or titles of the officer or officers signing must be stated, the corporate seal affixed, and a certified, sealed copy of a resolution of the

Board of Directors of such corporation, authorizing the corporation to so bid (and accept

the award, if the successful bidder) and the officers signing to execute all necessary documents in connection therewith, attached thereto.

A bidder may not submit more than one bid proposal. If a bidder submits more than one bid proposal, all bids submitted by it shall be rejected. For the purposes herein, bidders considered to be submitted more than one bid proposal shall include but not be limited to:

- a. An individual submitting more than one bid whether in its own name or through an agent;
- b. An individual or legal entity submitting a bid who also owns directly or indirectly more than a 25% interest in a joint venture, partnership, or corporation, which has also submitted a bid;
- c. A joint venture, partnership, or corporation submitting a bid where a person owning directly or indirectly more than a 25% interest in such joint venture, partnership, or corporation has also submitted a bid; and
- d. A joint venture, partnership, or corporation submitting a bid where a person owning directly or indirectly more than a 25% interest in such joint venture, partnership, or corporation also owns more than a 25% interest in another joint venture, partnership, or corporation which has submitted a bid.

If there are reasonable grounds to believe that collusion exists among two or more bidders, all of the bid proposals of the parties to such collusion shall be rejected, and the parties to such collusion shall be prohibited from bidding on future contracts.

**C. BIDS**

All bids shall be in an amount equal to or higher than the upset rental fee. The upset rental fee shall be \$1,200.00 per month. The term upset rental fee shall mean the minimum bid amount acceptable to the Director of BFS for use of the property for parking. Any bids for a portion of the rented area shall be rejected.

The successful bidder shall pay as monthly rental fee, the amount bid, for the first year.

The monthly rental rate for each succeeding year thereafter, will be subject to a reappraisal by the City, but not lower than the prior's year's rent.

**D. PROPOSAL GUARANTEE**

All bids must be accompanied by legal tender or a certified check or cashiers check made payable to the City and County of Honolulu in a sum of TWO HUNDRED AND NO/100 DOLLARS (\$200.00) as evidence of good faith and as a guarantee that, if awarded the bid, the bidder will execute the Rental Agreement.

Should the successful bidder fail to enter into an Agreement within the time stated herein, the proposal guarantee shall be forfeited as liquidated damages and not as penalty.

The proposal guarantee of all bidders shall be returned after the execution of the Rental Agreement by the successful bidder, or if no Agreement is entered into, after the expiration of sixty (60) days after the opening of bids, or sooner if deemed to be in the best interest of the City and County of Honolulu, hereinafter referred to as the City, determination as to which shall be made by the Director of BFS.

**E. TAX CLEARANCE REQUIRED**

The bidder to whom the contract is awarded must obtain an original or certified copy of a tax clearance issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS) before entering into contract with the City. The tax clearance shall be obtained on the two-part TAX CLEARANCE APPLICATION (Form A-6) that combines DOTAX and IRS tax clearances.

The Tax Clearance Certificate should be provided by the successful bidder within ten (10) days after receiving the contract document from the City or within such further time as the Director of BFS may allow.

The Tax Clearance Certificate is valid for forty-five (45) days. Bidders may submit a valid

Tax Clearance Certificate with the submittal of their bid proposal. The tax clearance submitted with the bid proposal must be valid on the legal advertisement date soliciting bids or any date thereafter up to the bid opening date.

Failure to obtain the Tax Clearance Certificate within the specified time shall result in rejection of the bid proposal and the City may award the contract to the next bidder.

The Tax Clearance is required by Act 314 of the State of Hawaii signed into law on July 3, 1996.

**F. AWARD OF BID**

All bids shall be publicly opened at **10:30 a.m., January 7, 2014**, in the office of the Division of Purchasing, Department of Budget and Fiscal Services, City Hall.

The City reserves the right to reject any and all bids. Award of the contract for the rental shall be made to the responsible bidder proposing to pay the highest monthly rental. The award shall be by written notice and shall be as of the date therein specified.

**G. EXECUTION OF AGREEMENT**

The successful bidder, hereinafter referred to as the Tenant, shall, within ten (10) days after receiving the Rental Agreement or within such further time as the Director of BFS may allow, enter into and execute a Rental Agreement with the City and County of Honolulu for the use of said property, not to exceed fifteen (15) years, commencing on the date designated by the City in its Notice to Proceed; the said Agreement to be in the form of the Rental Agreement attached hereto.

The City reserves the right to cancel award of any contract at any time prior to the execution of the Rental Agreement by the City.

**H. COST OF ADVERTISEMENT**

The Tenant shall pay for the cost of advertisement calling for bids.

**I. COMMENCEMENT OF CONTRACT**

After the Rental Agreement is executed, the Director of BFS shall issue to the Tenant a written NOTICE TO PROCEED designating the official commencement date of the Rental Agreement.

Should the Tenant incur expenditures for material, supplies and equipment or for any installation work prior to execution of the Rental Agreement by the City, such expenditures shall be considered as having been done at its own risk and expense and shall not obligate the City in any way.

**J. TERM OF RENTAL AGREEMENT**

The term of the Rental Agreement shall be fifteen (15) years, commencing on the date designated by the City in its NOTICE TO PROCEED, unless said term is sooner terminated as provided herein.

**K. RENTAL PAYMENT**

Rental payment is due on or before the first day of each month, at the Office of the Division of Treasury, 530 South King Street, Room 115, Honolulu, Hawaii 96813.

Checks shall be made payable to the City and County of Honolulu. Failure to pay the rental fee when due shall constitute a breach of the Rental Agreement and shall be grounds for termination of the Rental Agreement without prior written notice by the City. Interest at the rate of 1% simple interest per month shall be assessed for any overdue payment of the rental fee.

If commencement of the operation of the Rental Agreement is other than the first day of the calendar month, the rental fee for less than the full month of operation at commencement and termination of the Rental Agreement shall be according to the following formula:

$$\frac{\text{No. of Days of Operation}}{\text{No. of Days in a Month}} \times \text{Monthly Rental Fee Bid} = \text{Monthly Rental Fee Payable}$$

**L. LOCATION AND DESCRIPTION OF PREMISES**

The rented area is a portion of the Wailani Flood Control Channel, Waipahu, Oahu, Hawaii, identified as TMK: 9-4-19:39. The rented area is more particularly described as follows:

The property is described as that certain strip of property (5,850 square feet) along Wailani Flood Control Channel, as shown colored in blue on the Tax Map marked Exhibit A attached hereto and made a part hereof.

**M. SCOPE OF USE**

The rented premises shall be used for parking.

**N. ALTERATIONS AND IMPROVEMENTS**

The tenant accepts the premises in as "AS IS" condition, without any guarantees, warranties, or representations of any kind whatsoever, express or implied, by the City as to its condition or its viability, feasibility, or suitability for the Tenant's purpose. Tenant has examined the premises and accepts the premises in its present condition. The Tenant shall not construct or install any improvements or fixtures on the premises or make alterations thereto without the prior written consent of the Director of the Department of Facility Maintenance (DFM).

All landscaping, if any, shall be of such width that will not impede the maintenance work of the channel.

The Tenant shall be responsible for maintenance of that portion of fence along the rental premises.

The Tenant shall not post any signs without obtaining the prior written consent of the Director of DFM.

The Tenant shall be required at its own expense to expend a sum of \$25,000 or more to reconstruct and repave the City-owned paved parking area, install parking blocks and striping, repair potholes and asphalt cracks, do trash pickup, clean and maintain the

area, and hire security to patrol and discourage vandalism. The parking blocks shall be placed within each stall to prevent vehicular damage to the fence. Subsequent repair, replacement, and readjustment when needed shall be the Tenant's responsibility.

Any and all improvements and alterations to the premises shall be done at the Tenant's own expense.

**O. PERFORMANCE SECURITY**

At the time of signing of the Rental Agreement, the Tenant shall deposit with the Director of BFS legal tender or certified check in an amount of two months rental fee as security for the full and faithful performance of the Rental Agreement by the Tenant. In lieu thereof, the Tenant may post a bond in said sum, executed by a surety or sureties authorized to do business in the State of Hawaii, naming the City as obligee and the Tenant as principal. If the Tenant elects to furnish cash as security, it is understood that no interest shall be paid by the City on any such deposit.

**P. UTILITIES, TAXES, AND OTHER CHARGES**

The Tenant shall, at its expense, furnish all utility services, including water services. The Tenant shall pay all charges, taxes, including real property taxes and fees incurred or assessed against the property rented or the use of the rented premises.

**Q. COMPLIANCE WITH LAWS**

The Tenant shall observe and comply with all applicable laws, statutes, ordinances, rules and regulations of the United State Government, the State of Hawaii, the City or any department or agency of the above.

**R. SUBLETTING AND ASSIGNMENTS**

The Tenant shall not sublet the whole or any part of the premises, nor assign, hypothecate, or mortgage the Rental Agreement or any or all rights thereunder.

**S. INDEMNITY**

The Tenant shall so conduct its activities upon the premises as not to endanger any person lawfully thereon. The Tenant shall indemnify, save and hold harmless the City and all of its officer, agents, and employees from any and all claims for losses, injuries, damages, and liabilities to persons, or property, including themselves, or their property, occasioned wholly or in part by acts or omissions of the Tenant, its agents, officers, employees, or any person or persons admitted to said premises which are used by or under the control of the Tenant. The Tenant shall keep any article, equipment, vehicle, or personal property on the premises at its own risk and expense.

The Tenant shall be liable for any damage to the City's flood control channel resulting from the Tenant's use of the rented premises.

**T. INSURANCE**

The Tenant shall, at its expense, procure and maintain commercial general liability (CGL) and if necessary commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence and general aggregate, and shall cover liability arising from premises, operation, and personal injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the City. The policy shall name the City and County of Honolulu as additional insured and shall contain a clause whereby the insurance company agrees to give written notice to the Director of BFS THIRTY (30) DAYS prior to the cancellation or alteration of said policy.

All insurance required herein shall be secured from an insurance company or companies authorized to do business in the State of Hawaii. All insurance premiums shall be the obligation of and shall be paid for by the Tenant. All insurance policies or, in lieu thereof, certificates issued by the insurance carrier that said insurance has been purchased shall

be delivered to the Director of BFS at the time of signing of the Rental Agreement, and shall be held by the City for the term of the Rental Agreement. The Tenant shall at all times during the term of the Rental Agreement maintain such insurance in effect.

**U. MAINTENANCE OF PREMISES**

The Tenant shall be responsible for the reasonable and proper care of the premises.

The Tenant shall repair, or cause to be repaired, any damages to said premises caused by it, its employees, agents or any person or persons admitted to said premises. The Tenant shall keep and maintain the premises in a clean and sanitary condition at all times. The Tenant shall take necessary precautions to prevent fire hazards from being created on the premises.

The Tenant shall keep the premises free and clear of abandoned vehicles at all times.

**V. CHANNEL MAINTENANCE**

That the City, by its Director of BFS and/or Director of DFM, reserves the right to withdraw from the use of the Tenant the entire rented area or any part thereof, at any time during the term of the Rental Agreement for maintenance and/or repair of the channel or other City purposes. The rental shall be prorated during such period of withdrawal. The Tenant shall comply with DFM's schedule on heavy maintenance equipment access through the paved parking area as needed.

**W. INSPECTION BY CITY**

The City shall be given unrestricted entry rights to the rented premises at all times. The City reserves the right to make inspections at any reasonable time to insure compliance with the Rental Agreement. The City reserves the right to enter upon and make topographical surveys and test bores preliminary to any proposed construction work to be undertaken by the City.

**X. BREACH OF CONTRACT**

In the event of any breach of any of the terms or provisions hereof, the City shall have, in addition to any other recourse, the right to terminate the Rental Agreement, to enter and obtain possession of the entire premises, to remove and exclude any and all persons from the premises, and to remove and exclude all property of the Tenant therefrom, all without service of notice or resort to any legal process and without any legal liability on its part.

**Y. DESTRUCTION OF PREMISES**

If during the term of the Rental Agreement the demised premises are destroyed or are damaged by acts of God, war, or other catastrophe, so that the same is unfit for occupancy or use, the Rental Agreement shall abate until such time that the premises shall have been duly restored. A prorated portion of any rental fee prepaid prior to such destruction or damage, as is contemplated by this paragraph, shall be refunded for the period the demised premises are unoccupied by the Tenant, or credited to the rental fee next falling due.

**Z. SURRENDER OF PREMISES UPON TERMINATION**

Upon termination of the Rental Agreement, the Tenant shall peaceably surrender and deliver possession to the City of the demised premises, in good order and condition, reasonable wear and tear excepted. The Tenant shall remove all improvements and clean the premises of all debris and rubbish to the satisfaction of the Director of DFM.

**AA. SEXUAL HARASSMENT POLICY**

The Tenant shall have and enforce a policy prohibiting sexual harassment. The Tenant's sexual harassment policy must set forth the same or greater protection than those contained or required by City Ordinance No. 93-84.

**BB. INTERPRETATION OF CONTRACT DOCUMENT**

Whenever the context of the contract requires it, the masculine shall be deemed to embrace and include the feminine and neuter, and the singular shall be deemed to include and embrace the plural.

If any question arises with respect to any provisions of the Rental Agreement, the interpretation given and made by the Director of BFS shall govern and control.

**CC. COSTS OF LITIGATION**

In the event the City shall, without any default, be made a party to any litigation, other than condemnation or like proceedings, commenced by or against the Tenant arising out of the Tenant's use of occupancy of the premises or attributable to any structure or objects placed thereupon or therein by the Tenant, then the Tenant shall pay all costs and reasonable attorneys fees incurred by or imposed upon the City in connection with such litigation.

