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Staff Report

Date: October 11, 2016

To: City Council

From: Valerie J. Barone, City Manager

Prepared by: Justin Ezell, Director of Public Works
Justin.ezell@cityofconcord.org
(925) 671-3231

Subject: **Considering a one year contract term extension with the Contra Costa Horsemen's Association for the lease of two parcels of real property located on Grant Street**

Report in Brief

The Contra Costa Horsemen's Association leases two parcels of real property from the City. The property is situated at 3119 Grant Street where the Don Fernando Pacheco Adobe is located. The Contra Costa Horsemen's Association wishes to extend the term of their Agreement through September 30, 2017.

Recommended Actions

1. Extend the Horsemen's Association Lease Agreement for a period of one year and direct the City Manager to sign the Agreement; and
2. Direct the Recreation, Cultural Affairs and Community Services Committee to evaluate the lease, consider the need for investment in the maintenance/upkeep of the facility, and consider future uses of the facility.

Background

The Don Fernando Pacheco Adobe is situated next to the 26-acre Hillcrest Park at Grant Street and Olivera Road. The Adobe is listed by the National Register of Historic Places and the California State Parks Office of Historic Preservation. The City acquired the Don Fernando Pacheco Adobe from Contra Costa County in 1979. The conveyance was subject to a lease between the County and the Contra Costa Horsemen's Association, which was executed on December 11, 1940.

Following conveyance, the lease between Contra Costa County and the Horsemen's Association was terminated, and the City entered into a twenty-five (25) year lease of

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two parcels of real property with the Horsemen's Association on March 26, 1979. The two parcels contain the Don Fernando Pacheco Adobe, a caretaker home, and a horse arena. The 1979 lease was amended in 1997 and a new expiration date of March 26, 2014 was set. For the last two years the City and the Contra Costa Horsemen's Association have entered into one-year extensions of the lease, with the second of the two lease extensions expiring on September 30, 2016. Since 1979 the rent amount has been one dollar per year.

Analysis

The Don Fernando Pacheco Adobe was erected in 1844 and restored by the Contra Costa Horsemen's Association in 1941. The building has undergone various renovations since that time. Maintenance of the property has mostly been completed by the Horsemen's Association. The City will periodically make minor electrical, plumbing and carpentry repairs upon request of the Horsemen's Association. Both the adobe and the caretaker home are currently in need of significant structural and aesthetic repairs, in addition to updated fixtures and furnishings.

The Horsemen's Association property is made available for self-guided public tours on each Friday. These tours are managed by the Horsemen's Association and are available at no cost to visitors. Additionally, the Adobe can be rented by the public through the Horsemen's Association. The Horsemen's Association has event rentals approximately 15-20 times per year. The City does not receive any revenue through these rentals.

In recent months the City was approached by a business owner with an idea of turning the property leased by the Horsemen's Association into a marketable event venue. Staff advised the business owner to discuss these ideas with the Horsemen's Association before making any proposals to the City. Staff facilitated a discussion by putting the two parties in contact with one another. The Horsemen's Association and the business owner have since met to discuss potential uses of the facility. City staff has not yet heard any proposals as an outcome of the discussion.

The Horsemen's Association has stated it is their desire to continue leasing the property. Several meetings and phone discussions have occurred; however, no formal request to extend the lease or proposal for a new lease has been submitted to the City. The Horsemen's Association has a 76-year history with the Don Fernando Pacheco Adobe and staff recommends that a one-year lease extension be granted to them.

Considering the current state of the Don Fernando Pacheco Adobe, its need for significant capital investment, the lack of revenue from its operation, and the interest of private business and the Horsemen's Association, staff further recommends that the Recreation, Cultural Affairs and Community Services Committee be directed to consider

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future uses of the facility, taking into consideration the potential for a public/private partnership.

Financial Impact

As previously mentioned the Contra Costa Horsemen's Association pays one dollar per year to lease the two parcels of property. The City receives no revenue from the facilities. The City periodically makes minor electrical, plumbing and carpentry repairs to the facility; the costs of which total less than \$5,000 over the last few years. The building's onsite have significant deferred maintenance.

Public Contact

The City Council Agenda was posted. Staff contacted the Contra Costa Horsemen's Association and the business owner interested in the property to inform them of the date, time and location of this City Council meeting, and the recommendations that staff will make to the City Council.

Attachments

1. Lease Agreement

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

LICENSEE:

CITY:

Contra Costa Horsemen's Association,
a non-profit corporation,

CITY OF CONCORD,
a California municipal corporation

By:

By:

Name:

Valerie J. Barone, City Manager

Its:

ATTEST:

By:

Joelle Fockler, MMC, City Clerk

APPROVED AS TO FORM:

By:

City Attorney

1 subject to the conditions and covenants set forth herein.

2 3. Terms. This lease will run from the date first written above for
3 a period of 25 years from said date, or until either party terminates this
4 lease, at any time, with or without cause, by giving the other party a 60-day
5 written notice of an intent to terminate.

6 4. Rent. The rent for both parcels shall be one dollar per year,
7 payable in advance on or before January 1 of each year. Rent may be paid in
8 advance for any number of years chosen by HORSEMEN. In the event of cancella-
9 tion, rent for years in advance shall be returned to HORSEMEN within 30 days
10 of termination of this lease. Yearly rent will not be prorated for periods of
11 time within the year.

12 5. Utilities. HORSEMEN shall provide all utilities to said parcels
13 at its own expense. Utilities include water, gas, electricity, and garbage
14 service.

15 6. Maintenance. Maintenance of both parcels shall be provided for as
16 follows:

17 a. Gardening. HORSEMEN shall be responsible for keeping the
18 landscaped areas in a healthy, weed-free and thriving condition, that
19 includes, but is not limited to, mowing the lawn, trimming hedges and
20 regular irrigation and fertilization. CITY shall provide tree trimming
21 and removal, weed spraying and discing of unlandscaped areas at those
22 times to be determined by the City Director of Public Works.

23 b. Cleaning. HORSEMEN shall be responsible for cleaning all
24 structures located on both parcels, including all restrooms and facili-
25 ties open to the public or HORSEMEN. Facilities must be cleaned within
26 24 hours after use. HORSEMEN shall be responsible for the dusting and
27 care of exhibits on display in the Adobe located on Parcel A, as needed.

28 c. Refuse, Animals and Flies. HORSEMEN shall prevent the

1 accumulation of refuse and animal excretion in accordance with the
2 provisions of the Concord Municipal Code and prevent the spreading of
3 excess dust and flies according to the procedures recommended by the
4 Contra Costa County Mosquito Abatement District.

5 d. Fences, Fixtures, & Structures. CITY will be responsible for
6 interior and exterior painting and plaster repair, the repair and
7 maintenance of driveways and the well and pump. HORSEMEN will maintain and
8 repair all fences existing on the premises as of the date first written
9 above. Any new fences erected by the CITY shall be maintained by the
10 CITY. CITY will be responsible for structural, electrical, mechanical,
11 plumbing and heating repairs to all structures. In accordance with
12 Section 12 of this agreement, HORSEMEN shall be prohibited from making
13 alterations to the Adobe that would diminish its historic value.

14 e. Renovation. Major renovation as referenced to in Section 11
15 of this agreement is to be undertaken strictly at the discretion of the
16 City. All repairs required by this lease are to maintain the structures
17 only in the condition in which they are received.

18 7. Caretaker. HORSEMEN will provide a resident caretaker on the
19 premises. Said caretaker will live in the cottage located on Parcel A and
20 shall function as a watchman for both parcels. The caretaker or a substitute
21 must sleep on the premises every night.

22 8. Noise. HORSEMEN shall reasonably control noise and disturbances
23 emanating from the premises and refrain from disturbing the peace and quiet of
24 the surrounding neighborhood.

25 9. Sewer Installation. If HORSEMEN desire to connect a sewer to
26 Parcel B, it shall do so solely at its own expense.

27 10. Public Use and Access. The Adobe shall be available for public
28 use and access at those times when it is not being used by HORSEMEN.

1 a. Museum Day. At least one day of the week, which will be
2 designated by the CITY, the Adobe shall be reserved between 9:00 a.m.
3 and 5:00 p.m. for viewing by the public. HORSEMEN's caretaker shall
4 be present on the property to unlock and lock the Adobe.

5 b. Public Tours. When the Adobe is not being used by HORSEMEN,
6 public tours may be scheduled in advance with HORSEMEN's caretaker for
7 days in addition to Museum Day. HORSEMEN's caretaker shall be present
8 to unlock and lock the Adobe.

9 c. Other Public Use. When the Adobe is not being used by
10 HORSEMEN, other occasional use by CITY or other public, commercial or
11 private organizations may be permitted. Such use shall be authorized
12 and arranged by HORSEMEN. HORSEMEN shall be permitted to charge other
13 organizations an amount adequate to meet custodial and maintenance
14 costs related to such use. A list of occasions when the Adobe is used
15 by other organizations shall be submitted to the CITY Director of
16 Public Works annually. The list shall state the organization's name,
17 type of event and date of use and fee charged, if any. If HORSEMEN
18 refuses access to the Adobe to any organization on any basis other than
19 the proposed event conflicts with a HORSEMEN's scheduled event, HORSEMEN
20 shall be obligated to inform the organization that its decision to deny
21 use of the Adobe to that organization may be appealed to the CITY Director
22 of Public Works. In such cases, the CITY Director of Public Works will
23 arbitrate and may choose to authorize such use. Whenever the Adobe is
24 used by an organization, HORSEMEN shall provide two members to be present
25 during said use and to unlock and lock the Adobe. HORSEMEN and the CITY
26 shall be the sole keyholders of the Adobe keys and the Adobe shall not be
27 used by any other organization as a mailing address or a repository for
28 property and effects.

1 11. City Access. The CITY shall have reasonable access to Parcels
2 A and B, at all times, to make inspections and repairs. In the event the CITY
3 undertakes major renovation of the Adobe located on Parcel A, HORSEMEN's
4 right to use said Adobe may temporarily cease. Displacement shall be for that
5 period of time necessary to complete renovation. HORSEMEN's rent and other
6 obligations to be performed under this agreement shall remain in full force
7 and effect.

8 12. Improvements. HORSEMEN shall not erect or remove or substantially
9 alter any improvements to either parcel without the prior written approval of
10 the CITY. Improvements constructed by HORSEMEN shall become and remain the
11 property of the CITY.

12 13. Personal Property. Personal property purchased and stored on said
13 property by HORSEMEN shall remain its personal property.

14 14. Indemnification. HORSEMEN will hold harmless, indemnify and defend
15 the CITY from and against all costs, claims and causes of action of the CITY
16 or others relating to HORSEMEN's lease of said parcels. HORSEMEN shall secure
17 public liability insurance for not less than \$100,000 for injury to each
18 person, \$300,000 for each occurrence, and \$50,000 for property damage for each
19 occurrence. HORSEMEN shall provide the CITY with an Insurance Certificate
20 indicating said coverage which states that the Insurer will give the CITY ten
21 (10) days' written notice prior to cancellation of said insurance.

22 14. Notice. Any and all notices required to be given under this agree-
23 ment shall be to the parties as follows:

24 (a) CITY OF CONCORD
25 City Hall
26 1950 Parkside Drive
27 Concord, California 94519
28 Attention: City Manager

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(b) CONTRA COSTA COUNTY HORSEMEN'S ASSOCIATION
3119 Grant Street
Concord, California 94520

Notices are deemed sufficiently served upon deposit in the United States
Mail with first class postage affixed thereto, or by personal delivery.

16. Assignment. HORSEMEN shall not assign any of the duties, responsi-
bilities, or obligations of this agreement to any other firm, company, entity,
association, or individual, except with the express written consent of CITY.

17. Possessory Tax. HORSEMEN are solely responsible for any possessory
interest tax which may be imposed pursuant to HORSEMEN's lease of said parcels.

18. Entire Agreement. This agreement constitutes the entire lease
between the parties and may only be amended in a writing signed by both parties.

19. Attorney's Fees. In the event either party is required to litigate
any provision of this lease, the prevailing party shall be entitled to
attorney's fees and costs to be paid by the other party.

DATE: March 26, 1979 CITY OF CONCORD, a municipal corporation

By: *William H. Dejo*
Mayor

APPROVED AS TO FORM:
Kenneth S. ...
City Attorney

ATTEST:
By: *Doradette ...*
City Clerk

DATE: June 26-1979 CONTRA COSTA COUNTY HORSEMEN'S ASSOCIATION

By: *Fred B. Gilman*

Note: Attach a certified copy of (a) the By-Laws, or (b) the Resolution
of the Board of Directors, authorizing execution of this contract.



DON FERNANDO PACHECO ADOBE
ERECTED 1846

RECONSTRUCTED UNDER THE AUSPICES OF CONTRA COSTA COUNTY
HORSEMEN'S ASSOCIATION 1940-41

Contra Costa County Horsemen's Association

3119 GRANT STREET
CONCORD, CALIFORNIA

June 22, 1979

City of Concord:

We, the Contra Costa County Horsemen's Association authorize Fred B. Nilsson to sign the lease for the club.

Pres. Frank Gibbons

Sec. Lois Gibbons

MISCELLANEOUS RECEIPT

City of Concord

1950 PARKSIDE DRIVE • CIVIC CENTER • 671-3177

DATE 26 June 79

NAME CCC Horsemen's Assoc. c/o F.

STREET ADDRESS 188 Brown Drive
Dilsaver
CITY Pacheco, CA STATE ZIP 94553

NOT AN OFFICIAL RECEIPT UNLESS
VALIDATED BY FINANCE DEPARTMENT

AMOUNT RECEIVED	CODE	INVOICE	PARCEL
\$ 25.00	068	CHECK	110-550-1120
		CASH	25.00-
	06/26/79	3136	110-550-0130-
			.00

TOTAL RECEIVED

\$ 25.00

DESCRIPTION
Received for rental of above
listed parcels for the period of
25 years for use by the C.C.C.
Horsemen's Association

RECEIPT NO. 132152

PREPARED BY: *[Signature]*

CUSTOMER:

FIN-2-1 MAR 76

AMENDMENT

to
 Lease dated March 26, 1979
 between
 the City of Concord, a Municipal Corporation, as Landlord
 and
 the Contra Costa County Horsemen's Association, as Tenant

The above lease covering the premises commonly known as 3119 Grant Street, Parcel A and B, Don Fernando Pacheco Adobe, Concord, California, is hereby amended as follows:

1. The term of this lease shall be extended for an additional ten (10) years, with the new expiration date of March 26, 2014.
2. The tenant is given the option to extend the term on all the provisions contained in this lease for a ten (10) year period ("extended term") following the expiration of the extension described in paragraph No. 1 of this amendment, by giving notice of exercise of the option ("option notice") to the Landlord at least 90 days before the expiration of the term. Provided that, if Tenant is in default on the date of giving the option notice, the option notice shall be totally ineffective, or if Tenant is in default on the date the extended term is to commence, the extended term shall not commence and this lease shall expire on March 26, 2014.

Tenant shall have no other right to extend the term beyond the extended term.

3. The occurrence of any of the following shall constitute a default by Tenant:
 1. Failure to pay rent when due, if the failure continues for 30 days after notice has been given to Tenant.
 2. Abandonment and vacation of the premises (failure to occupy the premises for 5 consecutive days shall be deemed an abandonment and vacation).
 3. Failure to perform any other provision of this lease if the failure to perform is not cured within 30 days after notice has been given to Tenant. If the default cannot reasonably be cured within 30 days, Tenant shall not be in default of this lease if Tenant commences to cure the default within the 30-day period and diligently and in good faith continues to cure the default.

Notices given under this paragraph shall specify the alleged default and the applicable lease provisions, and shall demand that Tenant perform the provisions of this lease within the applicable period of time, or quit the premises. No such notice shall be deemed a forfeiture or a termination of this lease unless Landlord so elects in the notice.

4. Indemnification. Tenant will hold harmless, indemnify, and defend the Landlord from and against all costs, claims, and causes of action of the Landlord or others relating to Tenant's lease of

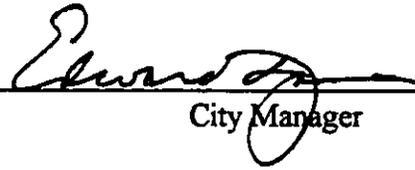
*Amendment to Lease with the Contra Costa County Horsemen's Association
November 18, 1997*

said parcels. Tenant shall secure public liability insurance for not less than \$500,000 for injury to each person, \$1,000,000 for each occurrence, and \$300,000 for property damage for each occurrence. Tenant shall provide the Landlord with an Insurance Certificate indicating said coverage which states that the Insurer will give the Landlord ten (10) days' written notice prior to cancellation of said insurance. *Tenant shall name Landlord as Additional Insured.*

5. All other terms and conditions of the above Lease shall remain in full force and effect.

DATE: 11/20/97

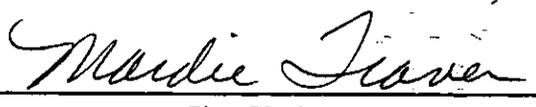
CITY OF CONCORD, a municipal corporation

By: 
City Manager

APPROVED AS TO FORM:

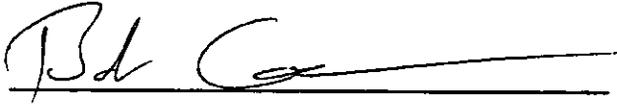
ATTEST:


City Attorney


Deputy City Clerk

DATE: 11-19-97

CONTRA COSTA COUNTY HORSEMEN'S
ASSOCIATION

BY: 

Extension of Contract Term – November 20, 1997 Contra Costa County Horsemen’s Association Agreement

On or about November 20, 1997, the City of Concord (“City”) and the Contra Costa County Horsemen’s Association (CCCHA) entered an agreement relating to the lease of two parcels of real property located on Grant Street in Concord, California. That Agreement is attached hereto (Attachment A), and is hereinafter referred to as the Horsemen’s Association Agreement.

CCCHA wishes to extend the term of the Horsemen’s Association Agreement through September 30, 2015. City hereby agrees to the proposed extension, as memorialized in this document. With the exception of the term extension formalized herein, all other terms of the Horsemen’s Association Agreement shall remain unchanged, in full force and effect.

Contra Costa Horsemen’s Association

By: Beverly Snead - Beverly Sneadlen
(Sign name and print title) President: Contra Costa County Horsemen’s Assoc.

City of Concord

Justin Ezell
Justin Ezell, Public Works Director

Attest Joelle Fockler
Mary Rae Lehman, City Clerk
Joelle Fockler

Approved as to Form

Mark S. Coon
Mark S. Coon, City Attorney

COPY

Extension of Contract Term – November 20, 1997 Contra Costa County Horsemen’s Association Agreement

On or about November 20, 1997, the City of Concord (“City”) and the Contra Costa County Horsemen’s Association (CCCHA) entered an agreement relating to the lease of two parcels of real property located on Grant Street in Concord, California. That Agreement is attached hereto (Attachment A), and is hereinafter referred to as the Horsemen’s Association Agreement.

CCCHA wishes to extend the term of the Horsemen’s Association Agreement through September 30, 2016. City hereby agrees to the proposed extension, as memorialized in this document. With the exception of the term extension formalized herein, all other terms of the Horsemen’s Association Agreement shall remain unchanged, in full force and effect.

Contra Costa Horsemen’s Association

By: Jill Hernandez
(Sign name and print title)

City of Concord

Justin Ezell
Justin Ezell, Public Works Director

Attest Joelle Fockler
Joelle Fockler, City Clerk

Approved as to Form
Mark S. Coon
Mark S. Coon, City Attorney