



CITY OF MARTINEZ

PARKS, RECREATION, MARINA & CULTURAL
COMMISSION

DATE: July 20, 2010
TO: Parks, Recreation, Marina & Cultural Commission
FROM: Mitch Austin, Recreation Manager
Naomi Mosser, City Intern
SUBJECT: Boreland House Sublease

Recommendation

Discuss, provide feedback, and recommend approval of the Historical Society's sublease of the Boreland House Museum.

Background and Analysis

The City currently leases the Boreland House from the Contra Costa Community College District under an agreement that ends July 1, 2014.

Historically, the City subleased the Boreland House to the Historical Society under an agreement that ran concurrently with the Master Lease. A management review of City leases indicated that the sublease agreement between the City and the Historical Society had expired. The agreement under consideration establishes a new sublease effective through July 1, 2014, to again establish a coterminous Master Lease and sublease for the property. The sublease agreement has been approved by the Contra Costa Community College District via a "Consent to Sublease Agreement" which outlines the specific terms under which its consent is granted, such as:

1. The sublease cannot be modified without the approval of the College District
2. The Historical Society is subject to the same insurance and indemnity obligations as the City, and is required to include the College District as additionally insured on its policy
3. The sublease does not release the City from any of its obligations under the terms of the Master Lease

Attachments

Attachment 1: Consent to Sublease Agreement

Attachment 2: Historical Society Sublease of Museum

SUB-LEASE AGREEMENT

1. PARTIES AND DATE. Effective _____, 2010, the City of Martinez, a municipal corporation, hereinafter referred to as “Lessor,” or “City,” and the Martinez Historical Society Corporation, hereinafter referred to as “Lessee,” mutually agree and promise as set forth herein.

2. DESCRIPTION AND PURPOSE. The Lessor desires to sublease the real property located at 1005 Escobar Street, Martinez, California, hereinafter referred to as “Premises,” constituting one building as depicted in Exhibit “A” attached hereto and incorporated herein by reference, to Lessee for the purposes of operating the Martinez Museum.

3. SUB-LEASE. The Premises are subject to that certain Lease Agreement between the Contra Costa Community College District (“District”) as Master Lessor and the City of Martinez as Master Lessee dated July 1, 2004 (attached hereto as Exhibit B and incorporated herein by reference as “Master Lease”). Lessor agrees to sublease and Lessee agrees to sublease the Premises under the following terms and conditions consistent with the Master Lease. Lessee shall be responsible for performing all acts and covenants required of City pursuant to the Master Lease.

4. TERM. The Term of this sublease is effective immediately upon execution, and will expire on July 1, 2014 to run coterminous with the Master Lease, unless earlier terminated in accordance with the terms herof. It is understood by Lessee and Lessor that the terms of this sublease are subordinate to the terms of the Master Lease and as such, this sublease is subject to the approval of the District.

5. RENT. In consideration of this sublease, the Lessee shall pay annually to the Lessor one dollar (\$1), payable each January 1 in advance.

6. TERMINATION. Lessor or Lessee may terminate this sublease for any or no reason during its term by giving the other party ninety (90) days prior written notice of its intention to so terminate.

7. USE OF PREMISES. The subleased Premises shall be used during the term of this sublease exclusively for educational, cultural, or historical museum purposes. No activities shall be conducted on the Premises by the Lessee that would in any way classify any participant therein as a student or pupil of the Lessor. No adult school activities pursuant to Education Code Section 52500 et seq. shall be conducted by the Lessee on the subleased Premises. Lessee shall not use or permit the subleased Premises to be used in whole or in part during the term of this sublease for any purpose other than as hereinabove set forth, nor for any use in violation of any present or future laws, ordinances, general rules or regulations at any time applicable thereto of any public or governmental authority relating to sanitation or the public health, safety or welfare. Lessee shall at all times faithfully obey and comply with all laws, rules and regulations

applicable thereto adopted by federal, state, local or other governmental bodies or departments or officers thereof.

8. ALTERATIONS, IMPROVEMENTS, FIXTURES AND SIGNS. Lessee shall not make any alterations, additions to, or improvement of the Premises, including the installation of fixtures, equipment, or signs in or upon the Premises, without the prior written consent of the Lessor and the District. If consent is granted, any such alteration or installation, including the cost of obtaining all necessary permits, shall be at Lessee's sole cost and expense. Upon termination of the sublease, only original fixtures and signs shall remain. Lessee, prior to the expiration or termination of this sublease, shall restore the Premises to its original condition.

9. ASSIGNMENT AND SUBLETTING. Lessee shall not and cannot assign, let or sublet the demised Premises for any purpose whatsoever without obtaining the prior written consent of Lessor and District, which Lessor consent may be withheld for any reason or no reason whatsoever.

10. HAZARDOUS MATERIAL. Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises and/or the Parking Area in violation of any law or regulation and Lessee shall indemnify and hold harmless Lessor, its officers, agents and employees from and against any and all losses, liabilities, claims and/or costs and expenses (including, without limitation, any fines, penalties, judgments, litigation costs, attorneys' fees, and consulting, engineering and construction costs) arising from or as a result of a breach of this warranty and representation or as a result of the, disposal, storage, generation or release on the Premises and/or Parking Area at any time during the term of this Lease of any Hazardous Materials, except to the extent caused by the gross negligence or willful misconduct of Lessor or any Lessor indemnitee regardless of whether such liability, cost or expense arises during or after the Lease Term. Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Premises and/or the Parking Area due to Lessee's use and occupancy thereof, Lessee, at Lessee's expense, shall clean all property affected thereby to the satisfaction of Lessor and any governmental body having jurisdiction thereover.

As used in this paragraph, "Hazardous Material" shall mean any substance, chemical or waste that is identified as hazardous material, hazardous substance, hazardous waste or toxic substance in any federal, state or local law or regulation. Lessee acknowledges that Lessee is not looking to or relying upon Lessor to disclose any matters which Lessor might be required to disclose under California Health and Safety Code Section 25359.7 and that all such matters have been investigated by Lessee to Lessee's satisfaction. In this regard, Lessee specifically waives any and all rights it may have pursuant to the provisions of California Health and Safety Code Section 25359.7.

The indemnifications provided pursuant to this Section 18 shall survive the termination of this Sublease.

11. INDEMNIFICATION AND HOLD HARMLESS. Lessee covenants and agrees to defend, release, indemnify, and hold harmless the Lessor and its officers and employees, in their capacities as such, from all liabilities, claims, demands, or causes of action by any person, including Lessee, for injury, death, or property damage, in any way arising from or connected with the use, maintenance or operation of the subleased Premises and regardless of the concurrent negligence of another, including Lessor. Hazmat indemnification.

12. INSURANCE. Lessee agrees to procure and maintain, at its own cost and at all times during the Term of this sublease, public liability insurance and property liability insurance in the amount of two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage. The liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

- a. The City of Martinez, its elected or appointed officers, officials, employees, agents and volunteers, are to be covered as additional insured with respect to liability arising out of the Martinez Historical Society's use of the Premises located at 1005 Escobar Street, Martinez, CA, 94553.

Lessee is solely responsible for insurance coverage of objects stored or displayed within the subleased Premises.

13. UTILITY SERVICES. Lessee shall pay all telephone costs or expenses.

14. TAXES. Execution of this sublease may create a possessory interest in Lessee subject to taxation. Lessee shall promptly and timely pay all taxes and assessments which may be levied or assessed upon any interest or property in the ownership of the Lessee.

15. GARDENING AND GROUNDS SERVICES. Lessee shall at all times maintain the grounds of the subleased Premises in a neat and clean appearance and condition.

16. JANITORIAL SERVICES. During the Term of this sublease, the Lessee shall continuously maintain the Premises, at its own cost, in a good, clean and orderly condition, and shall make and pay for all repairs, including repair of minor defects and dilapidations, necessary to protect any and all rights of Lessor.

17. INSPECTION. The Lessor or its agents shall at any and all times have the right to enter upon and inspect the demised Premises to protect any and all rights of Lessor.

18. WASTE AND QUIET CONDUCT. Lessee shall not commit, or suffer to be committed, any waste upon said Premises, or any nuisance which may disturb the quiet enjoyment or use of the surrounding property.

19. DESTRUCTION OF PREMISES. If the Premises or any essential part thereof is destroyed by fire, act of God, or other casualty, this sublease shall, in the case of partial destruction or damage which prevents the occupancy of the Premises by the Lessee, terminate at the option of the Lessee or Lessor, upon one party giving written notice to the other. In the event of any destruction or damage whatsoever, Lessor has no duty to repair or restore the Premises for use by the Lessee during the remaining term of this sublease. In the event of partial destruction of the Premises, Lessee shall have the option to rebuild or refurbish the Premises at their expense or with any funds available through insurance coverage. In the event Lessee exercises this right to rebuild or refurbish, it shall notify the Lessor in writing within thirty (30) days from the date of the loss, and the Lessee shall then have a reasonable period of time depending on the nature and extent of the damage in which to complete said repairs.

20. DEFAULT. If Lessee defaults in performing any promise or condition herein (or in the Master Lease), Lessor may at its option immediately cancel this sublease and terminate all Lessee's rights hereunder, and Lessee shall immediately and peaceably surrender the Premises to Lessor. No waiver of default in any of the terms, covenants, or conditions in this sublease shall be a waiver of any subsequent default of the same or any other terms, covenants, or conditions herein contained. Lessee is obligated to fulfill all obligations of City and terms and condition of the Master Lease and to the extent that the provisions of the sublease are inconsistent with the Master Lease, the more restrictive to the Lessee shall control.

21. SURRENDER OF PREMISES. On the last day of the term, or upon sooner termination of this sublease, Lessee shall peaceably and quietly leave, surrender and yield up to the Lessor the Premises with all structures, appurtenances, property, and fixtures in good order, condition, and repair, excepting reasonable use and wear thereof. Lessee shall, prior to the expiration or termination of this sublease, remove as its personal property any fixtures or signs installed hereunder and restore the Premises to its original condition.

22. TIME OF THE ESSENCE. It is understood and agreed that time is of the essence of this sublease and of each and every term, covenant, and condition thereof.

23. NOTICES. Any and all notices desired or required to be given to the Lessor by the terms of this sublease shall be given in writing addressed to the Lessor at 525 Henrietta Street, Martinez, California 94553. Any and all notices desired or required to be given to Lessee by the terms of this sublease shall be given in writing addressed to the Lessee, c/o Martinez Historical Society, 1005 Escobar Street, Martinez, CA 94553.

24. COSTS AND ATTORNEY FEES. In the event any legal action or proceeding is necessary on behalf of the parties to this sublease agreement, all costs and attorneys' fees

as awarded by the Court in connection therewith shall be paid by the losing party to the prevailing party.

IN WITNESS WHEREOF the parties here to have subscribed their names, the day and year first hereinabove written.

LICENSOR

LICENSEE

City of Martinez

By: _____
Mayor, City of Martinez

Martinez Historical Society

Date: _____

Date: _____

Attest: City Clerk

Attest:

By: _____

By: _____

Approved as to Form:

Approved as to Form:

By: _____
City Attorney, City of Martinez

By: _____

Attachments:

Exhibit A: Diagram of 1005 Escobar Street

Exhibit B: City Lease of 1005 Escobar Street from Contra Costa Community College District

CONTRA COSTA COMMUNITY COLLEGE DISTRICT

CONSENT TO SUBLEASE

THIS CONSENT TO SUBLEASE ("Consent Agreement") is entered into as of the ___ day of _____, 2010, by and between Contra Costa Community College District, a public school district of the state of California ("Lessor") and City of Martinez, a municipal corporation ("Lessee"), and Martinez Historical Society, a California corporation ("Sublessee").

RECITALS

A. WHEREAS, Lessor and Lessee are parties to the Lease Agreement, dated July 1, 2004 ("Lease"), with respect to certain real property leased by Lessor to Lessee known as the Museum Site located at 1005 Escobar Street, Martinez, California ("Museum Site");

B. WHEREAS, the term of the Lease was extended until July 1, 2014;

C. WHEREAS, the Sublease is not intended to include the Parking Lot also leased by Lessee in the Lease;

D. WHEREAS, Lessor has requested Lessor's consent to enter into the Sublease;

E. WHEREAS, Lessor has agreed to give such consent upon the terms and conditions contained in this Consent Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals which by this reference are incorporated herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor hereby consents to the Sublease subject to the following terms and conditions, all of which are hereby acknowledged and agreed to by Lessee and Sublessee.

1. Sublease Agreement. Lessee and Sublessee hereby represent that a true and complete copy of the Sublease is attached hereto and made a part hereof as Exhibit 1, and the Lessee and Sublessee agree that the Sublease shall not be modified without Lessor's prior written consent, which consent shall not be unreasonably withheld.

2. Representations. Lessee represents and warrants that Sublessee: (i) has not transferred or conveyed its interest in the Lease to any person or entity collaterally or otherwise; and (ii) has the full power and authority to enter into the Sublease and Consent Agreement. Sublessee hereby represents and warrants that Sublessee has full power and authority to enter into the Sublease and this Consent Agreement.

3. Indemnity and Insurance. Sublessee hereby assumes, with respect to Lessor, all of the indemnity and insurance obligations of the Lessee under the Lease with respect to the Museum Site, provided that the foregoing shall not be construed as relieving or releasing the Lessee from any such obligations under the Lease. As a precondition to this

Consent Agreement becoming effective, Sublessee shall provide Lessor with a certificate of insurance naming Lessor as an additional insured for the limits specified in the Lease.

4. No Release. Nothing contained in the Sublease or this Consent Agreement shall be construed as relieving or releasing Lessee from any of its obligations under the Lease.

5. Lease. The parties agree that the Sublease is subject to and subordinate to the terms of the Lease and all terms of the Lease pertaining to the Museum Site are incorporated into the Sublease. In no event, shall the Sublease or this Consent Agreement be construed as granting or conferring upon the Lessee or Sublessee any greater rights than those contained in the Lease nor shall there be any diminution of the rights and privileges of the Lessor under the Lease, nor shall the Lease be deemed modified in any respect.

6. Authority. Each signatory of this Consent Agreement represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting.

7. Interpretation and Governing Law. This Agreement shall be construed according to its fair meaning as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the state of California.

8. Counterparts. This Consent Agreement may be executed in counterparts and shall constitute an agreement binding on all parties notwithstanding that all parties are not signatories to the original or the same counterpart provided that all parties are furnished a copy or copies thereof reflecting the signature of all parties.

IN WITNESS WHEREOF, Lessor, Lessee and Sublessee have executed this Consent Agreement as of the date set forth above.

LESSOR:

CONTRA COSTA COMMUNITY COLLEGE
DISTRICT

By: _____

Name: Valorie Gale

Title: Director of Purchasing

LESSEE:

CITY OF MARTINEZ

By: _____

Name: _____

Title: Mayor

ATTEST: City Clerk

SUBLESSEE:

MARTINEZ HISTORICAL SOCIETY

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

ATKINSON, ANDELSON, LOYA,
RUUD & ROMO

Elizabeth B. Hearey

