



CITY OF MARTINEZ

**CITY COUNCIL
March 16, 2011**

TO: Mayor and City Council
FROM: Michael Chandler, Senior Management Analyst
SUBJECT: Kiwanis Lease Agreement
DATE: March 10, 2011

RECOMMENDATION:

Adopt a resolution authorizing the City Manager to execute a Lease Agreement with the Kiwanis Club of Martinez for non-exclusive use of City real property located at 750 Allen Street.

BACKGROUND

The Kiwanis Club of Martinez constructed the facility located at 750 Allen Street in the 1950's and subsequently transferred ownership to the City of Martinez. To recognize the contribution of the Club to the community of Martinez, the City entered into a series of lease arrangements with the Kiwanis for use of the facility. The most recent arrangement between the parties was a 30 year lease (consisting of an initial five year term, plus five successive five-year options, all of which were exercised) commencing April 1, 1981 and ending on April 1, 2011. The Kiwanis Club of Martinez sent a letter to the City Manager dated November 11, 2010, indicating its interest in discussing a renewal of the lease arrangement between the parties for use of the facility.

The City began discussions on a new lease arrangement with members of the Kiwanis Board in early 2011. The proposed lease is for 30 years, consisting of the same initial term and renewal options as before, with the following key provisions:

- 1) Rent will commence at the same rate the Club paid from 2006-2011 of \$840/year, paid semiannually by April 30th and October 31st of each year
- 2) Rent for each successive five-year option will increase by 5%
- 3) Use of premises is established as three consecutive hours each week (for regular weekly meetings); three consecutive hours each month (for monthly board meetings); and six (6) hours twelve (12) times per year for special activities sponsored by the Club
- 4) Termination may be done by either party with 180 days' prior written notice
- 5) Public liability insurance will be set at the current standard of \$2M per occurrence

The Kiwanis Club met on March 8th and its Board of Directors approved the proposed lease at that time.

FISCAL IMPACT:

The annual rent remains consistent at \$840/year, paid semiannually as before, for the period April 1, 2011 to March 31, 2016, and will increase by 5% for each successive five year option that is exercised.

ACTION:

Motion to adopt a resolution authorizing the City Manager to execute a Lease Agreement with the Kiwanis Club of Martinez for non-exclusive use of City real property located at 750 Allen Street.

Attachments:

Resolution

Kiwanis Club Letter Dated November 11, 2010

Lease Agreement

Exhibit A to Lease Agreement

A handwritten signature in black ink, appearing to read "Phil Vire". The signature is written in a cursive style with a large initial "P".

APPROVED BY: City Manager

RESOLUTION NO. -11

AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH THE KIWANIS CLUB OF MARTINEZ FOR NON-EXCLUSIVE USE OF CITY REAL PROPERTY LOCATED AT 750 ALLEN STREET

WHEREAS, the Kiwanis Club of Martinez ("Club") constructed the building located at 750 Allen Street in the 1950's and subsequently donated the building to the City of Martinez; and

WHEREAS, the City subsequently began entering into a series of lease arrangements with the Club for use of the City's real property located at 750 Allen Street ("Premises"); and

WHEREAS, the current lease agreement between the City and the Kiwanis Club of Martinez ("Club") for use of the Premises expires April 1, 2011; and

WHEREAS, the Club has expressed in writing its interest to continue to lease the Premises from the City for hosting its various meetings and activities; and

WHEREAS, the City recognizes the many contributions the Club has made to the Martinez community over the course of over 50 years, including donating the Premises to the City; and

WHEREAS, the City desires to enter into a new lease agreement to provide the Club non-exclusive use of the Premises.

NOW, THEREFORE, BE IT RESOLVED that the City Council authorizes the City Manager to execute a new Lease Agreement with the Kiwanis Club of Martinez upon the mutually agreeable terms, considerations, covenants, and conditions as set forth in the form attached to this resolution for the non-exclusive use of the City's Real Property located at 750 Allen Street.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City council of the City of Martinez at a Regular Meeting of said Council held on the 16th day of March, 2011, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G HERNANDEZ, CITY CLERK
CITY OF MARTINEZ



Kiwanis Club of Martinez
P.O. Box 1886, Martinez CA 94553

November 11, 2010

Philip Vince, City Manager
City of Martinez
525 Henrietta Street
Martinez CA 94553

Dear Phil,

The lease between the City and the Kiwanis Club of Martinez for the Kiwanis Youth Center at 750 Allen Street expires on March 31, 2011. The club is interested in discussing a renewal. Please refer this matter to an appropriate member of your staff and ask them to contact me so those discussions can begin .

A copy of the current lease is enclosed. As you can see the lease has been in existence for almost 30 years. The Kiwanis Youth Center was built by the club in the 1950s and has always been used for club meetings and activities ever since. In addition, many youth organizations have used it both through club sponsorship and through the city's recreation department. The club considers the building its home.

We thank you for your recent informative talk to the club. We hope for many more years of close relationship with the city and its building.

Sincerely,

Tom Watrous, Secretary

LEASE AGREEMENT

1. PARTIES AND DATE. Effective _____, 2011, the City of Martinez, a municipal corporation, hereinafter referred to as “Lessor,” or “City,” and the Kiwanis Club of Martinez, hereinafter referred to as “Lessee,” or “Club,” mutually agree and promise as set forth herein.

2. DESCRIPTION AND PURPOSE. The Lessor desires to enter into a non-exclusive lease for the real property located at 750 Allen Street, Martinez, California, hereinafter referred to as “Premises,” constituting one building and adjacent grounds as depicted in Exhibit “A” attached hereto and incorporated herein by reference, to Lessee for a certain number of days per year as hereinafter set forth, for the purpose of hosting regular meetings and activities sponsored by the Lessee.

3. TERM. The Term of this Lease Agreement is for five (5) years, effective April 1, 2011, with the option to renew the Lease for five (5) successive five (5) year periods, with the options to be automatically exercised in the absence of Lessee giving the City sixty (60) days prior written notice of intent not to renew the Lease, except as set forth in Section 6: Termination.

4. RENT. In consideration of this Lease, the Lessee shall pay annually to the Lessor the following amounts over the following periods (if the aforementioned renewal options are exercised):

Initial Period: April 2011 – March 2016: \$ 840/year
1st renewal option: April 2016 – March 2021: \$ 882/year
2nd renewal option: April 2021 – March 2026: \$ 926/year
3rd renewal option: April 2026 – March 2031: \$ 972/year
4th renewal option: April 2031 – March 2036: \$1021/year
5th renewal option: April 2036 – March 2041: \$1072/year

Rent shall be paid semi-annually by April 30th and October 31st of each year.

5. USE OF THE LEASED PREMISES. Club shall have the sole and exclusive right to use the building and grounds at the following times:

- a. For a period of three (3) consecutive hours each week (currently 11 a.m. to 2 p.m. each Thursday) for its regular meeting; and
- b. For a period of three (3) consecutive hours each month (currently the second Tuesday of each month from 4 to 7 p.m.) for its board meetings; and
- c. For a period of six (6) hours, twelve (12) times each year for activities sponsored by the Club.

Club shall give City reasonable notice of times of use, and any requested changes in the times of use listed above, and will cooperate in good faith with City staff in arranging for times and days for use of the Premises.

Club will provide custodial maintenance for all Club use periods, or will have the option of paying rates determined by the City for such service if City is agreeable to providing such services. Should the City decide Club clean-up does not meet a reasonable standard, the City may bill the Club for custodial maintenance work it determines is necessary at a rate equal to the City cost for such labor, equipment, supplies and other pertinent costs. The City shall in its sole and absolute judgment determine the reasonable standard of clean-up.

City shall have the right to use or to permit other tenants to use the Premises at all other times. Tables, chairs and other property owned by the Club and located in the building on the Premises, which are pertinent to public use, may be used by other tenants, provided that the City will reimburse the Club for loss or damage to such property caused by the other tenants.

Club shall have the sole and exclusive use of the cupboards near the entrance to the main area of the building on the Premises; the storage room adjacent to the main area; and the cupboards between the stove and refrigerator in the kitchen area.

Club shall not use or permit the Premises to be used 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. Club 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.

6. TERMINATION. Lessor or Lessee may terminate this Lease for any or no reason during its term by giving the other party one hundred eighty (180) days prior written notice of its intention to so terminate.

7. 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. 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. Said fixtures shall become the property of the Lessor unless Lessor otherwise elects. If the Lessee elects to remove or is directed by Lessor to remove such permitted fixtures, equipment, or signs, such removal shall be at Lessee's expense.

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

9. HAZARDOUS MATERIAL. Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises in violation of any law or regulation and Lessee shall defend, 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 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 due to Lessee's use and occupancy thereof, Lessee, at Lessee's expense, shall clean all property affected thereby to the to the reasonable satisfaction of Lessor and to the level required by any applicable statute, ordinance, regulation or 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 9 shall survive the termination of this Lease.

10. 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 leased Premises and regardless of the concurrent negligence of another, including Lessor.

11. INSURANCE. Lessee agrees to procure and maintain, at its own cost and at all times during the Term of this Lease, public liability and property damage insurance in the amount of two million dollars (\$2,000,000) per occurrence for bodily and personal injury, and property liability insurance in the amount of one hundred thousand dollars (\$100,000) per occurrence for damage to the rented Premises. 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 insureds with respect to liability arising out of the Kiwanis Club of Martinez's use of the Premises located at 750 Allen Street, Martinez, CA, 94553.

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

12. UTILITY SERVICES. Lessor shall pay all utility costs or expenses for electricity, gas, water and garbage service.

13. PROPERTY TAXES. Execution of this Lease 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.
14. INSPECTION. The Lessor or its agents shall at any and all times have the right to enter upon and inspect the Premises to protect any and all rights of Lessor.
15. 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 Premises or the surrounding property.
16. DESTRUCTION OF PREMISES. If the Premises or any essential part thereof is destroyed by fire, act of God, or other casualty, this Lease shall, in the case of partial or complete 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 Lease.
17. DEFAULT. If Lessee defaults in performing any promise or condition herein, Lessor may at its option immediately cancel this Lease 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 Lease shall be a waiver of any subsequent default of the same or any other terms, covenants, or conditions herein contained.
18. SURRENDER OF PREMISES. On the last day of the term, or upon sooner termination of this Lease, 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, and excepting any damages occurring through use of the Premises unrelated to Lessee's use. Except as is otherwise provided in Section 7, Lessee shall, prior to the expiration or termination of this Lease, remove as its personal property any fixtures or signs installed hereunder and restore the Premises to a safe, clean and usable condition, in good order and repair, reasonable wear and tear excepted.
19. TIME OF THE ESSENCE. It is understood and agreed that time is of the essence of this Lease and of each and every term, covenant, and condition thereof.
20. NOTICES. Any and all notices desired or required to be given to the Lessor by the terms of this Lease 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 Lease shall be given in writing addressed to the Lessee, c/o Kiwanis Club of Martinez, P.O. Box 1886, Martinez, CA 94553.
21. COSTS AND ATTORNEY FEES. In the event any legal action or proceeding is necessary on behalf of the parties to this Lease 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 hereto have subscribed their names, the day and year first hereinabove written.

LESSOR

LESSEE

City of Martinez

By: _____
City Manager, City of Martinez

Kiwanis Club of Martinez

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: Map of 750 Allen Street

