

MEMORANDUM

TO: Mayor England
Vice Mayor Kostka
Commissioner George
Commissioner Samora
Commissioner Rumrell

FROM: Max Royle, City Manager 

DATE: June 26, 2020

SUBJECT: City Building West of Former City Hall: Consideration of Leasing Part of It

INTRODUCTION

The building is the former police garage. For years, the Civic Association leased it from the City for storage and an office. The current lease expires on August 3, 2020. At your May 4, 2020, meeting, you approved a motion to let the lease with the Civic Association expire.

ATTACHMENTS

Attached for your information is the following:

- a. Pages 1-4, the minutes of that part of your May 4th meeting when you discussed the Civic Association's request that the lease be renewed.
- b. Pages 5-9, the lease with the Civic Association that expires this coming August 3rd.

USE OF THE BUILDING

The interior space of the former police garage is approximately 800 square feet. The Police Department and the County Fire and Marine Rescue want to use half of it for their needs. This would be 400 square feet on the east side of the building.

The land use district where the building is located is Institutional. The permitted uses in an Institutional land use district are city offices, farmers' markets, school, churches, museums, recreational facilities, medical clinics, hospitals, public utilities, and parking lots. Office use is not listed as a permitted use. Whether storage facilities are a permitted or not a permitted use is not shown in the Table of Uses in the Land Development Regulations for an Institutional Land Use District.

Despite that lack of clarity about storage as a permitted use, it is reasonable to conclude that since half of the building will be used for storage by the Police Department and the County, the remaining half could be used for storage by another organization.

The Civic Association has told the City Manager that it is interested in using the remaining space for storage. The Association would make some of that space available to the Bocce League for its storage needs. The Association would put in a door so that the space would be accessible.

ACTION REQUESTED

It is that the Commission decide whether the City should have a new lease with the Civic Association for it to use the remaining 400 square feet of the former police garage for storage and, if so, the rent that should be charged.

Another possibility is for the City to advertise for proposals from non-profit, civic, charitable organizations that need storage space. The rent for it could be based on what the private market in the area charges for storage space or what the Commission decides should be charged.

However, consideration should be given to the fact that there may not be any non-profit organizations other than the Civic Association interested in the space, which is small and will be inaccessible unless the organization is willing to put in a door.

4. Former Police Department Garage at Former City Hall: Request by Civic Association to Renew Lease (Presenter: Mr. Bill Jones, Civic Association President)

Mayor England introduced Item 1 and then asked City Manager Royle for a staff report.

Mr. Merrill Roland asked for a copy of what was being handed out, Exhibit 2.

Mayor England advised staff to give a copy to the public.

City Manager Royle advised that the Police Department moved to the new police station in 1999, then the Civic Association asked for a year to year lease for the garage after the police moved. He said that the Civic Association wanted to use it for the farmers market and other events. In 2006 the lease changed from a garage to office use. Every five-years the lease has been renewed at a cost of \$1 per year. The lease expires in August 2020. He advised that on February 19, 2020, Mr. Jones, President of the Civic Association, asked to renew the lease via email and then gave a formal request with what the building would be used for.

After an interruption from the public regarding Exhibit 3 not being given to the virtual Commissioners, Mayor England asked the Commission to not look at Exhibit 3 until Mr. Jones speaks.

Mr. Bill Jones, President of Civic Association, advised that Exhibit 3 is a script of what he is saying to the Commission, but appreciated Mr. Roland's concern for transparency of the meeting. He explained that the Civic Association rented the garage and painted a beach mural on the outside of the building to enhance Pier Park. He commented that the Civic Association has allowed other non-profits in the community use the facility as well. He explained that the Civic Association does not have the farmers market anymore due to St. Johns County bidding it out. He commented that the Civic Association operates the Music by the Sea concerts, City's Christmas Tree event, gives free WiFi for Pier Park, and always promotes the City. He commented that the Police Department has a need for housing their four-wheel vehicles in the garage and explained that the Civic Association would be willing to change the layout of the garage to fit the Police Department needs and could do so immediately. He commented that St. Johns County expressed an interest in the garage as well for rescue vehicles to be on the beach and suggested that St. Johns County could use the Mosquito Control property, which is less than a mile away. The Civic Association recommended forming a think tank consisting of citizens and interested parties to develop the whole property and to find funding. He requested to renew the lease for five-years at a \$1 per year with an escape clause if a need arises from the City.

Mayor England noted that the emails have been received from the members of the Civic Association to the Commission. She then asked if the Commission had any questions at this time. Being none, Mayor England asked Commander Ashlock to give his presentation.

Commander Ashlock advised that the City's Police Department and St. Johns County would like to use the garage for rescue vehicles, to shelter the vehicles from the elements, and to save time coming from the Police Department to the beach. He explained two different options and showed a presentation, (Exhibit 4).

Mayor England asked Commander Ashlock if the Police Department wants to take over the garage or if the Police Department wants to share the space with the Civic Association.

Commander Ashlock advised that the Police Department would need more space than the Civic Association has suggested. He commented that the Police Department would like the entire building because the space is not conducive to put multi vehicles in the space suggested by the Civic Association.

Police Chief Hardwick advised that he does not want air conditioning or office space and is looking for a place to store at least two ATV's in the summertime. He explained that St. Johns County rescue vehicles are bigger because they carry patients. He commented that all the local agencies around us do not have storage either and explained that the Police Department's ATV's were in the elements under the parking garage at Embassy Suites for two to three years. He explained that he has three ATV's that need protection, which are stored at Embassy Suites and the Police Department. One of the ATV's was unserviceable and is now at Public Works.

Discussion ensued regarding storing the vehicles closer to the beach and service calls at night are handled by police officers.

Mayor England opened the Public Comments section. The following addressed the Commission:

Tom Reynolds, 50 Brigantine Court, St. Augustine Beach, FL, wanted the garage to be a police substation and not just for storage. He asked the Commission not to renew the lease.

Merrill Roland, 6281 Old Dixie Drive, St. Augustine, FL, advised that the Civic Association has a sponsor that owns a storage facility; the Civic Association did not get a permit or inspections for their construction in 2006; Civic Association has been subletting and is against the contract; Civic Association came in last place in the bidding process for the farmers market; the Civic Association does not provide WiFi; and is not a good security risk to take.

Ed Slavin, P.O. Box 3084, St. Augustine, FL, advised that the insurance rates will not be the same with the Police Department and the Civic Association sharing the same building; and Police Department needs to be on the beach because of the COVID-19. He requested that the Police Department take over the building.

Mayor England closed the Public Comments section and asked for any further Commission discussion.

Vice Mayor Kostka explained that at the time the lease was made, there was no need for the garage. She advised that the City needs to take care of their resources and it takes time for the Police Department to go to calls on the beach because they have no storage at the beach, which could make a difference to someone's life. She agrees with sharing the space with St. Johns County and believes that the Police Department does have a need and should take the garage over. She explained that City should rent facilities at fair market value and advised that her storage unit 10 x 25 feet is \$125 a month.

Commissioner Samora advised that the garage is sought after and agreed with Vice Mayor Kostka that times have changed and there is a need for the Police Department. He commented that we need to take care of the City's needs first, St. Johns County needs second and if something can be worked out with the Civic Association that would be fine. He advised that it could be for the Police Department only if they need it, but if they want to share with St. Johns County it's fine.

Commissioner George commended the Civic Association for their community involvement and their teamwork on problem solving this issue. She agreed with the other Commissioners and advised that public safety is the City's number one priority, especially now and preservation of City assets are important as well. She pointed out that the City's Land Use Regulations do not allow storage facilities or office spaces and because the Civic Association does not have the farmers market, it might be illegal to allow them to lease the property. She agreed with public safety first but thanked the Civic Association for all they do in the community.

Commissioner Rumrell agreed with all the Commissioners regarding public safety. He thought that it was great that St. Johns County could utilize the space as well and would like to build bridges with them. He commented that if the City and St. Johns County does not need all the space, then a discussion could be done with the Civic Association.

Mayor England explained that the City needs should come first; however, the Civic Association has worked and has been a benefit to the City for years and so if the City takes back the garage, the City should help them out month to month if they are going to share space. She wanted to give more time to the Civic Association to find another location.

Vice Mayor Kostka disagreed with Mayor England. She advised that the City is not able to put stipulations on what the Police Department should use the space for. She explained that the lease does not expire until August 2020 and for 15 years they have had the building for free. She commented that the Commission must put the City's needs first. She suggested giving the building to the Police Department and letting the lease expire.

Commissioner Samora said that the City's needs come first, County second and the Civic Association third. He commented that there are three months for the them to work it out, which is enough time. He said if the Civic Association needs more time, the Commission could discuss it then.

Commissioner George advised that the Police Department and Civic Association have time to work out the details. She commented that safety must come first and the concerts and other events that the Civic Association put on are not essential. She agreed with the lease being terminated.

Commissioner Rumrell agreed with Commissioners Samora and George, which is a good compromise for everyone. He asked if the Police Department takes the lease over, do they have sole discretion of who they allow to use the building.

Vice Mayor Kostka advised that the Police Department does not need a lease but wanted that confirmed by the City Attorney.

Assistant City Attorney Douglas advised that it would not be a lease to the Police Department because it was an asset of the City.

Police Chief Hardwick asked the Commission to allow the Police Department and St. Johns County lay out the footprint of the building and see if there is any space left over. He explained that he does not want to sublease the building.

Mayor England asked for a motion.

Motion: to allow the lease between the Civic Association and the City of St. Augustine Beach

to expire at the end of the term and turn the use and control of the building over to the Police Department to prioritize shared use with County Fire and Rescue, Marine Rescue, the Public Works Department, and Beach Services. **Moved by** Vice Mayor Kostka.

Commissioner George advised that she would second the motion if Vice Mayor Kostka would amend the motion to allow the lease to expire. She asked for clarification if the use must be determined.

City Attorney Douglas advised that the motion does not have to include the use.

Vice Mayor Kostka agreed and amended her motion.

Motion: to allow the lease to expire between the Civic Association and the City of St. Augustine Beach. **Moved by** Vice Mayor Kostka, **Seconded by** Commissioner George.

Roll call as follows:

Mayor England	YES
Vice Mayor Kostka	YES
Commissioner George	YES
Commissioner Rumrell	YES
Commissioner Samora	YES

Motion passed unanimously.

LEASE

THIS LEASE agreement made and entered into this 3rd day of August, 2015, by and between the City of St. Augustine Beach, a Florida municipal corporation (the "City"), and the Augustine Beach Civic Association, Inc., a Florida non-profit corporation, (the "Tenant"), whose address is 2200 A1A Beach Blvd, St. Augustine Florida, 32080.

WITNESSETH:

That for and in consideration of the mutual covenants herein after contained, the parties mutually agree as follows:

1. Recitals. The following recitals are true and constitute a material inducement to the City to enter into this Lease Agreement: The City is the owner in fee simple absolute of certain property located adjacent to the County Pier Parking Lot, said property being formerly used by the City as the Police Garage (the "Garage"). The City is agreeable to leasing the Garage to the Tenant to enable it to provide storage space for the operation of Tenant's Farmers' Market and for other civic activities. The City does not have an immediate need for the Garage. The City finds that such activities serve a public purpose for the betterment of the citizens of the City.

2. Consideration. The Tenant agrees that during the term of this lease that it will continue to provide civic related activities and services of the nature currently provided to the citizens of the City and will pay the City the sum of \$1.00 a year and provide insurance as hereinafter provided. Additionally the Tenant shall maintain all glass and non-structural elements of the building and its mechanical and electrical systems in a good and workmanlike manner. It will paint the exterior and interior of the building. The City will maintain structural elements of the building including the roof. Any alterations to the building will require the advance approval of the City Commission

3. Term of Lease. The term of the lease shall be for five (5) years unless sooner terminated by the City Commission as herein provided. The City Commission in the event that the lands leased to the Tenant shall be required for another public use, in its sole discretion, upon ninety (90) day notice elect to terminate this Lease. The Lease shall also be terminated without notice in the event of the filing of a petition for bankruptcy by the Tenant or the Tenant's filing of an assignment for the benefit of creditors. It is understood that upon application the Association shall have the right to renew this lease for one additional term of five (5) years upon the same terms and conditions. Upon termination of this Lease, whether by expiration of the term hereof or early termination as above provided, the Tenant shall in a good and workmanlike manner, remove any of its improvements from the land. In the event that the Tenant shall fail or refuse to remove such improvements, the City may cause such improvements to be removed and may recover from the Tenant the cost of such demolition.

4. Insurance. For so long as this Lease shall remain in full force and effect, the Tenant shall maintain a general liability policy, naming the City as an additional insured, such policy to be in form, content, and amount satisfactory to the City. Certificates of such insurance shall be filed with the City Manager at such intervals, as the City Manager shall prescribe.

5. Assignment and Subletting of Lease. This lease is non-assignable. The demised premises shall be not be used for any commercial purposes or for any purpose primarily for the benefit of private individuals. Tenant's unique composition is the sole reason for City procuring this Agreement. Tenant shall not sublet the property.

6. Recording of this Instrument. This instrument shall be not be recorded. Recordation of this lease by the Tenant or by anyone acting on its behalf shall act as an automatic termination of this lease.

7. Tenant Improvements. Tenant shall not make any improvements, alterations, or modifications to the property without the approval of City.

8. Binding Effect. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to only the parties to this Agreement. This Agreement is made for the sole benefit and protection of the parties no other persons shall have any right of action hereunder.

9. Applicable Law; Jurisdiction of Venue. This Agreement, and the rights and obligations of the parties hereto as they may appear herein, shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusively in state court in St. Johns City, Florida. The parties waive trial by jury. If any provision of this Agreement, or the application thereof to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The fact that this Agreement does not detail all laws, rules, regulations, permits, conditions, terms and restrictions that must be satisfied to complete the development contemplated by this Agreement shall not relieve any party, or its successors in interest of the obligation to comply with the law governing such permit requirements, conditions, terms, and restrictions.

10. Joint Preparation. Preparation of this Agreement has been a joint effort of the parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

11. Exhibits. All exhibits attached hereto contain additional terms of this Agreement and are incorporated herein by reference.

12. Captions or Paragraph Headings. Captions and paragraph headings contained in this Agreement are for convenience and reference only, and in no way define, describe, extend or limit the scope of intent of this Agreement, nor the intent of any provision hereof.

13. Counterparts. This Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Agreement.

14. Effective Date. This Agreement shall become effective as of the date signed by all parties.

15. Amendment. This Agreement may only be amended by written instrument signed by the parties.

16. Limitation on City's Damages. City's liability under this Agreement shall be solely and exclusively limited to the amount to be paid to City by Tenant and Tenant shall have no other remedy at law or in equity for any breach of contract or other action related to the matters herein.

17. Notice to Third Parties. Tenant shall notify each of its contractors, subcontractors, suppliers, vendors, invitees, guests and others that Tenant acts on its own account and not for the City and that the City assumes no responsibility for the payment or protection thereof

18. Waste and Damage. Tenant agrees to neither permit or commit waste or damage to the City's Property, facilities, equipment, furnishings, structures and space that are the subject of this Agreement and further agrees to comply with all applicable federal, state, county and city laws and rules and regulations, including payment of all applicable taxes and compliance with all laws and regulations pertaining to its operations. Upon termination of this Agreement by lapse of time or otherwise, Tenant agrees that its right to use the facilities, structures and space which are the subject of this Agreement shall be terminated and that Tenant shall leave same in at least as good a condition as received, reasonable wear and tear excepted.

19. Hazards and Chemicals. Tenant represents and warrants that no Hazardous Materials will be generated, stored, disposed of or are present on or within any part of the City's Property. Tenant shall indemnify, defend, protect and hold City harmless from and against any and all claims, costs, fines, judgments, liability, actions, causes of action, liens and expenses; including, without limitation, penalties and reasonable attorney's fees, incurred or suffered by or asserted against City, arising out of or in any way relating to any one or more of the following which are not caused by Tenant: (a) the presence of any Hazardous Materials in, on, or under the City's Property, (b) any past, present or threatened release of Hazardous Materials in, on, under or from the City's Property; and (c) any activity by Tenant in connection with any actual, proposed or threatened use, treatment, storage, existence, disposition or other release, production, manufacturing, management, abatement, removal, handling, transfer or other means in connection with the City's Property.

20. Maintenance, Utilities and Trash Collection. The Tenant shall be responsible for the maintenance and cleaning of the City's Property. The Tenant shall be responsible for water, sewer, electric and any other utilities. Tenant shall be responsible for regular cleaning of the City's Property and shall maintain the City's Property in a clean and safe condition.

21. No Discrimination. Tenant shall operate in a fair and reasonable manner and shall not discriminate against any person on the basis of race, color, religion, sex, familial status, national origin, handicap, sexual orientation, gender identity or expression, or any other reason prohibited by law.

22. Other Regulations. Tenant is also required to fully comply with all federal, state, and local laws pertaining to their use of the Garage.

23. Indemnity. Tenant agrees to indemnify and save City harmless from any liability, claim or demand by any third party resulting from or arising out of the Tenant's actions under this Agreement or its use or occupancy of the City's Property that is the subject of this Agreement. The indemnity provisions of this section shall survive the termination of this Agreement

24. Severability. If any provision of this Agreement or the application of this Agreement to any entity or circumstances becomes invalid or unenforceable to any extent, then the remainder of this Agreement or the application of such provisions to such other entity or circumstance will not be affected by such invalidity or unenforceability and will be enforced to the greatest extent permitted by law.

25. Waiver. No consent or waiver, expressed or implied, by any Party to or of any breach or default by the other Party in the performance by such other Party of the obligations under this Agreement will be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such other Party under this Agreement. Failure on the part of a Party to complain of any act or failure to act of the other Party or to declare such other Party in default, irrespective of how long such failure continues, will not constitute a waiver by such Party of its rights under this Agreement

26. Notices. All notices, demands, requests and other communications required or permitted under this Agreement (a "Notice") must be in writing and will be deemed to have been duly given (a) upon the date of the Notice if delivered personally, or (b) by facsimile or electronic mail provided that a duplicate copy is promptly mailed by U.S. Mail, certified, return receipt requested, or (c) upon the date following the date of the Notice if delivered by overnight courier which provides a receipt, such as Federal Express. In each case the Notice must have adequate postage prepaid, addressed to the appropriate Party and marked to a particular individual's attention as provided in this Section. The Notice will be effective upon being so deposited, but the time period in which a response to any Notice must be given or any action taken with respect to the Notice will commence to run from the date of receipt of the Notice by the addressee as evidenced by the return receipt. Rejection or other refusal by the addressee to accept or the inability of the United States Postal Service or air courier service to deliver because of a changed address of which no Notice was given will be deemed to be the receipt of the Notice sent as of the Business Day following deposit. If either Party to this Agreement changes their address, that Party must notify the other Party of such change by Notice delivered in accordance with this Section. Any person acquiring any interest in the Property will be entitled to receive copies of Notices upon giving Notice to the other Party of its name and address and the nature of its interest. The initial addresses of the Parties will be as set forth below:

27. For the City: City Manager

City of St. Augustine Beach
2200 A1A South
St. Augustine Beach, Florida 32080

For Tenant:

207 Woodland Ave
St Augustine, FL 32080

IN WITNESS WHEREOF, the Parties have hereunto caused these presents to be executed,
this the day and year first above written.

ATTEST: [Signature]
Secretary

ST. AUGUSTINE BEACH
CIVIC ASSOCIATION, INC.
BY: [Signature]
President

ATTEST: [Signature]
City Manager

CITY OF ST. AUGUSTINE BEACH
BY: [Signature]
Mayor-Commissioner