


MEMORANDUM

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

FROM: Max Royle, City Manager 

DATE: July 23, 2020

SUBJECT: Former Police Garage West of Former City Hall: Review of Lease with St. Augustine Beach Civic Association

INTRODUCTION

For years, the Civic Association leased the former police garage from the City for storage and an office and paid the City \$1 a year for the lease. However, with the current five-year lease with the Association expiring on August 3, 2020, the City's Police Department and the County's Marine Rescue Department have said they want to use 400 square feet, or half of the building's 800 square feet of interior space, for their needs.

At your July 6th meeting, Mr. William Jones, President of the Civic Association, told you that it wanted to renew the lease so that the remaining storage space could be used by it and a coalition of several nonprofit associations. Accordingly, you extended the current lease with the Association for 30 days, so as to give it time to work out the details with the other non-profits and for the City Attorney to prepare a new lease.

ATTACHMENTS

Attached for your review is the following information:

- a. Pages 1-4, the minutes of that part of your July 6th meeting when you discussed the lease and continuing it for 30 days. .
- b. Pages 5-8, the new lease prepared by the City Attorney.
- c. Pages 9-12, four memoranda of understanding with the non-profit groups that will use the remaining 400 square feet in the garage.

CERTAIN MAJOR PROVISIONS IN THE LEASE

They are:

1. Which entity the lease is with: The Civic Association, not the coalition. As the City Attorney informed you at your July 6th meeting "...one entity would have to be responsible for the lease and that the coalition [of non-profits] would not be able to get insurance if they are not a legal entity" (from the meeting's minutes, page2, attached).

2. Term: Five years with the right of the Association to renew for an additional five years. The City has the right to terminate the lease with 90-day notice.
3. Fee: \$1.00 a year
4. Maintenance and utilities: The Civic Association is responsible for the maintenance and cleaning of the property and for paying any utility charges. Also, the Association is to maintain all glass and nonstructural elements of the building while the City will maintain structural elements, such as the electric panel, roof, and garage door.
5. Insurance: The Association will provide a general liability policy with the City named as an additional insured.
6. Subletting of the premises: Lease is non-assignable, and the premises cannot be used for any commercial purposes.
7. Allowed use of the property: storage space, not as an office.

ACTION REQUESTED

It is that you discuss the terms of the proposed lease with Mr. Jones or his representative. If there is agreement to the terms, then we request that you approve the lease with the initial five-year period to begin on September 3, 2020, which is when the 30-day extension of the current lease will expire

FROM MINUTES OF JULY 6, 2020, COMMISSION MEETING

6. City Building West of Former City Hall: Consideration of Leasing Part of It (Presenter: Max Royle, City Manager)

Mayor England introduced Item 6 and asked City Manager Royle to give his staff report.

City Manager Royle advised that the current lease expires in a month and the Police Department only needs half of the building, which leaves 400 square feet for others to use and asked the Commission for guidance.

Discussion ensued regarding that there was a consortium of non-profits that would like to use the space available; to use the current lease and have all the non-profit consortiums listed; the Police Chief determined what space was needed in the garage and they would use the door and the garage door for access; St. Johns Fire Rescue Division and the City's Police Department would be using half the garage space.

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

Rich Gallik, 471 High Tide Drive, St. Augustine Beach, FL, explained that he is an officer for St. Augustine Beach Civic Association who is part of the consortium of non-profits and would like to request storage space at the garage for events the Civic Association has.

Marge Rooyakkers, 9 Madera Court, Palm Coast, FL, represents the Friends of Historic A1A Coastal Byway and handed out maps and tour guides for the Commission (Exhibit 3) and would like to store the maps at the garage.

Michael Longstreet, 11 13th Street, St. Augustine Beach, FL, explained that he is a member of the Civic Association and has contributed for many years to the City. He advised that he would do the renovations for the garage at no costs to the City.

Michael Castagno, 35103 Harbour Vista Circle, St. Augustine, FL, thanked the Commission for allowing St. Auggie Bocce League to use the garage for storage of their materials for the bocce courts.

Tom Reynolds, 50 Brigantine Court, St. Augustine Beach, FL, asked the Commission to vote no because the Civic Association is a political organization and is under the designation of 501 (C) 4.

Bill Jones, P.O. Box 341, St. Augustine Beach Civic Association President, St. Augustine Beach, FL, discussed what the City has received a return on investments for allowing the Civic Association to use the garage by contributing to the City events approximately \$40,000 and helped local businesses by \$4,000,000.

Jocelyn Soto, 354 Ocean Forest Drive, St. Augustine Beach, apologized for her behavior at last night's meeting.

Mayor England closed the Public Comments section and then asked if there were any further Commission discuss.

Commissioner Rumrell advised had no comments.

Commissioner George had no comments.

Commissioner Samora had no comments.

Vice Mayor Kostka asked if the same lease would be use and what the costs are for the facility to the City.

City Manager Royle advised that is would be minimum costs since it is a storage facility and there would be no air conditioning and there is no restroom.

Vice Mayor Kostka asked who insures the building.

City Manager Royle advised that the City pays for ensuring the building, but the consortium would have to insure their contents. He explained that the City has a general insurance policy to cover our contents and liability.

City Attorney Douglas asked if the consortium was provided the declarations of insurances to the City.

City Manager Royle advised yes.

City Attorney Douglas asked the Commission to discuss the dollar amount of that the consortium would have to have for their contents.

Mayor England asked that City Manager Royle, City Attorney Douglas and the consortium discuss the lease and bring the lease back to the Commission in August.

Commissioner Samora advised that the current lease would expire on August 3rd and asked if the Commission would like to extend the lease.

Discussion ensued regarding the 30 day extension; before voting on the lease it should be advertised to all non-profits; whether charitable organizations should be considered instead of the Civic Association as a 501 (C) 4; requesting more information on the item before voting on the lease; the lease is only temporary; who should sign the lease document; should this be publicly noticed; and who would be responsible for what.

City Manager Royle advised that the City would advertise if it were for commercial use, but this is not. He explained that the land use is institutional, and the uses are restrictive.

Mayor England advised that there are no guarantees that the building could be used for any length of time since it could be taken back if the City needs it. She listed the organizations requesting to lease the space.

Commissioner Rumrell advised that if the Commission put it out to bid other local non-profits may not qualify for the lease. He asked if it is the coalition asking for the lease, not the Civic Association.

Mayor England advised yes.

Commissioner George advised that there is not a legal entity for the consortium or coalition and asked City Attorney Douglas his thoughts.

City Attorney Douglas advised that one entity would have to be responsible for the lease and that the coalition would not be able to get insurance if they are not a legal entity.

Mr. Jones advised that the four non-profits have done a memorandum of understanding. He explained that the Civic Associations started as a 501 (C) 3 and was told that they had to

change to a 501 (c) 4 because if it had the word civic in the title the IRS reclassified them to a 501 (c) 4. He explained that electrical costs were under .05 cents per kilowatt for the City and the County and would cost less than \$50 a year. He commented that the Civic Association always insures the property for liability and the carrier has had no problem sharing space with other non-profits. The Civic Association took the lead because they started using the garage and because they are in a better financial situation than others. He will send a listing of all four non-profits using the space.

Commissioner George advised that the Commission could look at the lease agreement at the August Regular Commission meeting; however, it does not address the bidding issue and feels that it should be noticed to give others an opportunity.

Mayor England asked for a motion.

Motion: to extend the lease another 30 days until the next Regular Commission meeting and ask that the attorneys work on the lease agreement with the consortium with the Civic Association being the lead. **Moved by** Mayor England, **Seconded by** Commissioner Samora.

Roll Call was as followed:

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

Motion passes unanimously.

Mayor England asked Commissioner George to make a motion about advertising if she wanted to.

Commissioner George requested that notice be sent as it has been done at the old city hall. She felt that others should be able to utilize the garage.

City Manager Royle advised that the City could advertise in the local newspaper.

Mayor England asked if City Manager Royle could work with Commissioner George to see if any other entities would be interested in the space. She advised that the limitations need to be stated.

Commissioner George advised that instead of a formal advertisement, the City could contact the Chamber of Commerce and local non-profits. She commented that she would be happy to work with City Manager Royle on this.

Motion: that the City advertise the availability of this space to other non-profit organizations ten days in advance of the Regular Commission meeting that this item appears on the agenda. **Moved by** Commissioner George, **Seconded by** Vice Mayor Kostka.

Roll Call was as followed:

Vice Mayor Kostka	Yes
Commissioner George	Yes
Mayor England	No

Commissioner Rumrell No
Commissioner Samora No

Motion fails 3 to 2.

Motion: to extend the meeting until 10:00 p.m. **Moved by** Commissioner Samora, **Seconded by** Mayor England.

Roll Call was as followed:

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

Motion passes unanimously.

Commissioner Samora asked to hear Item 10 since several people in the audience have been waiting since the beginning of the meeting.

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 Beach, 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 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. The City will maintain structural elements of the building including the electrical panel, roof, and garage door. The City will place a sign prohibiting parking in front of the garage doors. 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 creditor. 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 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
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. Hazardous chemicals do not include ordinary household cleaning supplies. 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 acknowledges the property is not connected to water or sewer and that Landlord is not providing access to these services. Tenant shall be responsible for 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:

For the City: City Manager
 City of St. Augustine Beach
 2200 A1A South
 St. Augustine Beach, Florida 32080

For Tenant: _____

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

ATTEST: _____
Secretary

ATTEST: _____
City Manager

ST. AUGUSTINE BEACH CIVIC ASSOCIATION, INC.

BY: _____
President

CITY OF ST. AUGUSTINE BEACH

BY: _____
Mayor-Commissioner

Memorandum of Understanding

WHEREAS the organizations listed below have agreed to collaborate for the good of the City of St Augustine Beach, its citizens and visitors as the Better Beach Coalition (BBC): and

WHEREAS the partners listed within, enter into a Memorandum of Understanding for use of available space in the old police garage owned by the City of St Augustine Beach: and

WHEREAS the partners agree the St Augustine Beach Civic Association (SABCA) will fund the demolition and construction costs involved in creating a space that is separate from the space utilized for Public Safety: and

WHEREAS the partners listed within agree to Hold Harmless the City of St Augustine Beach and its duly elected officials while utilizing the garage for the good of the community:

Partner Agencies

Friends of Scenic A1A - Is a non-profit organization with a mission to preserve, protect, promote and enhance the resources of the 72-mile A1A corridor through NE Florida's coastal communities including the City of St Augustine Beach

- Is a non-profit organization with a mission to preserve, protect, promote and enhance the resources of the 72-mile A1A corridor through NE Florida's coastal communities including the City of St Augustine Beach
- The Art Studio Group – this non-profit's start up was funded in part by SABCA. created to inspire, create and promote arts and culture in Saint Augustine Beach. The studio serves as a place to explore art, take classes, attend workshops and offers free workshops to children
- SAB Bocce Group & Sons of Italy – SABCA funds paid for materials used to construct and maintain the Bocce courts at Pier Park. The courts are open to the public (outside of league nights)
- SABCA – formed 40 years ago to monitor local government, inform citizens of vital issues and support the local economy through the production and promotion of community events, donation to other non-profits and sponsorships including City events. Over the last 20 years, SABCA events have had a positive economic impact of more than \$15,000,000

NOW THEREFORE it is agreed the partners listed withing will utilize space at the old City garage to store items utilized in their efforts to promote tourism, local shopping and healthy outdoor activities within the City of St Augustine Beach and the surrounding areas. The partners agree to support each other and community good. The partners understand with 30 days written notice, the City may remove the BBC should the garage be needed for Public Safety or other necessary use.

St Augustine Beach Civic Association

Agency Name

William Torres - Pres.

Name

W. Torres

Signature

6-18-20

Date

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Friends of A1A Scenic & Historic Coastal Byway, Inc.
Agency Name

Danielle Anderson
Name

Danielle Andersson
Signature

6/25/20
Date

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ST AUGUSTINE BOCCIE LEAGUE

Agency Name

Michael R Casanova

Name

Michael R Casanova

Signature

6/12/10

Date

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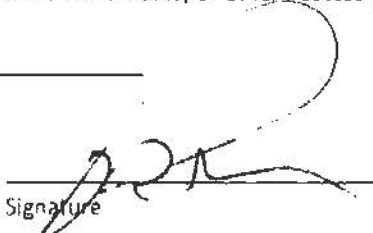
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THEART STUDIO

Agency Name

PAUL SLAVA

Name


Signature

6/19/20
Date