

CITY OF SEBASTOPOL
CITY COUNCIL
AGENDA ITEM

Meeting Date: July 21, 2020
To: Honorable Mayor and Honorable City Councilmembers
From: City Administration
Subject: Amendment to Lease for Sebastopol Community Cultural Center (SCCC):
Amendment is to include Lease of Outdoor Space
Recommendation : That the Mayor and City Council Approve the Amendment to Lease
Funding: Currently Budgeted: _____ Yes _____ No XX N/A
Net General Fund Cost: N/A
Amount: \$0

Account Code/Costs authorized in City Approved Budget (if applicable) AK (verified by Administrative Services Department)

INTRODUCTION:

This item is to request that the City Council Approve the Amendment to Lease.

BACKGROUND:

The Sebastopol Community Cultural Center (SCCC) was established to provide community events, classes and social and cultural services to the City of Sebastopol and surrounding community. The Community Center functions as the City’s “de facto” parks and recreation department providing classes, events, and programs to the community.

DISCUSSION:

The City of Sebastopol owns the buildings located at 390 and 425 Morris Street and the Garzot Building located at 7985 Valentine Avenue which are leased to the Sebastopol Community Cultural Center. The lease is for use of the buildings only. Currently, for any event that uses these buildings, SCCC has an agreement with said users. However, for any event that uses the outside areas of SCCC, the City of Sebastopol retains control and would require a special event permit application to be submitted to the City of Sebastopol.

SCCC and the City are proposing that SCCC amend the current lease to allow SCCC to be responsible for permitting of these outdoor spaces. In the past, many events that occur in the buildings have requested the use of these outside areas and they have had to receive a special event permit application from the City of Sebastopol. This creates an additional burden of costs and time onto the applicant.

In light of the COVID-19 pandemic, as well as remodeling of the SCCC main building, there are events and/or classes that may be allowed to be conducted outside as long as they follow the County Health Order Directive and Protocols for Compliance. By amending this lease, this will allow SCCC to authorize and approve events/classes that could potentially be held outside on these areas.

The City is proposing to amend the lease to delegate approval of the outside areas as listed as Appendix A to the lease.

PUBLIC COMMENT:

No public comments have been received as of the writing of this staff report.

PUBLIC NOTICE:

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to scheduled meeting date.

FISCAL IMPACT:

There is no direct fiscal impact associated with the recommended action tonight.

RECOMMENDATION:

Staff recommends that the Mayor and Council Amendment to Lease for Sebastopol Community Cultural Center (SCCC): Amendment is to include Lease of Outdoor Space

Attachments:

Lease Agreement

**PROPERTY MANAGEMENT AND LEASE AGREEMENT BETWEEN THE CITY OF SEBASTOPOL AND
THE SEBASTOPOL COMMUNITY CULTURAL CENTER**

All previous lease agreements between the Sebastopol Community Center and the City of Sebastopol for the Community Center, Youth Annex and Garzot-Duffield Building are hereby voided and rescinded by both parties.

IT IS HEREBY AGREED between the City of Sebastopol, a Municipal Corporation, hereinafter referred to as CITY and the Sebastopol Community Cultural Center, a non-profit 501 (c) (3), hereinafter referred to as SCCC, as follows:

The CITY owns the following facilities: The Sebastopol Community Center located at 390 Morris Street, the Youth Annex located at 425 Morris St. and The Garzot Duffield Building, located at 7985 Valentine Avenue in Libby Park.

CITY is the owner of said real property and is desirous of cooperating with community groups to make said properties able for public recreational use, educational and cultural programs as well as community events.

All previous lease agreements between the Sebastopol Community Center and the City of Sebastopol for the Community Center, Youth Annex and Garzot-Duffield Building are hereby voided and rescinded by both parties.

The CITY grants to SCCC the use of these three facilities and area as attached on Exhibit A for the purpose of providing recreation, education and cultural programs for the City of Sebastopol. SCCC shall appoint and employ an Executive Director. SCCC shall provide all management, and supervision of staff, necessary to operate these three facilities. All agents, contractors and employees shall be under the exclusive management and control of SCCC and shall not be considered agents, contractors or employees of the City for any purpose. It is specifically acknowledged that the programs provided by SCCC and any of its agents, contractors and employees are entirely and exclusively under the supervision of SCCC.

The City agrees to lease the Community Center, Youth Annex and Garzot-Duffield Buildings to the Sebastopol Community Cultural Center until January 1, 2025, for no rent.

CITY shall have the right to use the buildings and premises, at times of natural disaster and/or a civic emergency. CITY shall have the right to use the buildings and premises for meetings of the CITY, subject to reservations with SCCC. The Sebastopol City Hall Administration, the Sebastopol Fire Department, Sebastopol Public Works Department and the Sebastopol Police Department shall be provided with keys to the three facilities. SCCC is informed that Emergency Vehicle Access (EVA) is still required around the Main Building, Youth Annex, and the gravel driveway and road areas behind the Annex and exceptions will be reviewed upon request during an outdoor event that could impact the EVA. SCCC shall be required to contact City of Sebastopol Fire Chief for review/approval of said EVA prior to any closures.

SCCC shall obtain necessary permits for the operation of these facilities. SCCC agrees to comply with all State, Federal, County and City regulations applicable to the programming in these three facilities. Any new construction shall conform to ordinances, laws, and other regulations. SCCC further agrees that all improvements shall become the property of the CITY and that no improvement shall be made without prior approval of the CITY.

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SCCC agrees to be responsible for day-to-day janitorial care and interior maintenance and agrees to maintain all interior premises in clean condition. The CITY is responsible for the maintenance and janitorial services for the exterior restrooms at the Garzot/Duffield Building. LESSEE shall keep premises in safe, clean and operable manner.

CITY agrees to be responsible for utility bills and exterior maintenance and repairs and landscaping maintenance. CITY agrees to be responsible for the collection of garbage from the Center, under the CITY'S Garbage Franchise. The City will be given the ability to conduct inspections of the property. For emergency repairs, the City may access the property without prior notice.

The City agrees to provide property damage, fire, earthquake and flood insurance in the same manner as the City does for all other buildings owned by the City, at no cost to the Community Center.

The LESSEE agrees to defend, hold harmless, indemnify and defend the City, its officers, officials, employees and volunteers from and against any and all claims, damages, losses and expenses, including attorney fees, real or alleged liability arising out of or in connection with the activities of SCCC.

SCCC shall take out and maintain during the life of this Agreement, Insurance as listed in Exhibit B insurance. Said insurance shall protect CITY from all claims for damages of personal injuries, including accidental death, which may arise from SCCC's operation under this Agreement. Insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it. SCCC will maintain Workers Compensation Insurance for all employees. All volunteers shall sign appropriate waivers on behalf of SCCC and CITY.

SCCC shall provide an annual report to the CITY and be available to give an annual presentation to the City Council. Said report can be included as part of the City Budget Sub-Committee Meetings.

This Agreement shall run through December 31, 2020 and shall automatically renew annually thereafter. If there is intent to terminate by either party, notice will be a minimum of 180 days. By mutual agreement, modifications to this Agreement may be made in writing. In the event the CITY requires said properties or the use thereof for other civic or public purposes, at the discretion of the CITY, the CITY shall have the right to terminate this lease upon giving SCCC 180 days' written notice prior to such termination.

In the event said property is condemned by a public agency other than the CITY and compensation is actually paid to CITY during the terms of this lease for any fixtures or improvements installed by LESSEE, then, and in that event, LESSEE shall be entitled to be reimbursed for the reasonable costs of such fixtures or other improvements placed thereon by LESSEE. Said sum shall be payable solely from the monies received by way of payment for the condemnation. Except as provided herein, upon termination of this lease CITY shall be the sole owner of all improvements and fixtures on said real property.

This lease shall not be assignable or sublet without the prior written consent of the City.

PROPERTY MANAGEMENT AND LEASE AGREEMENT BETWEEN THE CITY OF SEBASTOPOL AND THE SEBASTOPOL COMMUNITY CULTURAL CENTER

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The execution of this lease shall be deemed consideration by both parties and shall be in lieu of any payments or support by CITY to LESSEE for their use, operation or other purposes.

Little League shall grant to the Sebastopol Community Center reasonable requests to use Little League facilities, concession stands and rest rooms for the exclusive use of the Community Center and its members. Little League shall have the right to make reasonable charges for the use of the concession facilities or equipment installed or owned by Little League. In case of any dispute CITY shall make the final determination, which shall be binding on the parties.

The City will require that every lessee or sub-lessee will remain in good standing and full compliance with any other agreement, law, regulation, or requirement that involves the City. This will include, but is not limited to, a business license, use permit, accounts payable account related to a City debt, any other agreement or contract involving the City, etc.

Lease agreements may be amended from time to time. All amendments will be executed by written amendment to the lease and will require City Manager approval. If the original agreement required City Council action, all amendments involving substantive change to the lease terms will also require City Council action. Emergency amendments, temporary or otherwise, may be made by the City Manager on a case by case basis when the change is necessary to ensure continuity of operations for the City as well as the potential for significant loss and cost to the City.

Failure to remain in compliance with these items will constitute a breach of the lease agreement.

The City Manager may require other clauses as necessary to protect the interests of the City.

This Agreement shall be executed and shall be deemed an original unless amended in writing by mutual consent.

Sebastopol Community Cultural Center

City of Sebastopol

Printed Name/Title

Printed Name/Title

Signature

Signature



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EXHIBIT B

INSURANCE REQUIREMENTS FOR CONSULTANTS

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, or employees.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1187) covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions liability insurance appropriate to the consultant's profession.

Minimum Limits of Insurance

Consultant shall maintain limits no less than:

1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage **including operations, products and completed operations, as applicable.** If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Errors and Omissions liability: \$2,000,000 per occurrence.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **The City, its officers, officials, employees and volunteers** are to be covered as insureds as respects liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. The Workers Compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its

officers, officials, employees and volunteers for losses paid under terms of this policy which arise from the work performed by the named insured.

4. It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
6. **Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subsection (b) of Section 2782 of the Civil Code.**

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

Consultant shall furnish the City with original certificates and amendatory endorsements affecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All original, signed certificates and endorsements are to be received and approved by the City prior to City's approval of the contract and commencement of work. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

Subconsultants

Consultant agrees to include with all subconsultants in their subcontract the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the Subconsultant's work. Subconsultants hired by Consultant agree to be bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under the Contract Documents. Subconsultant further agrees to include these same provisions with any Sub-subconsultant. A copy of the contract indemnity and insurance provisions will be furnished to the Subconsultant upon request. The Consultant shall require all sub-consultant to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and Consultant will provide proof of compliance to the City.