



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: March 17, 2016

Staff Contact: Roger Moellendorf, Parks and Recreation Director, Rmoellendorf@carson.org

Agenda Title: For Possible Action: To approve a lease agreement between the city and the Foundation for Carson City Parks and Recreation, Inc. for the use of the Wungnema House.

Staff Summary: : Attached is a proposed lease agreement between the City of Carson City and the Foundation for Carson City Parks and Recreation, Inc. for the use of the Wungnema House. The property is located in the southwest corner of Mills Park, 844 North Saliman Road, APN No. 002-181-01. The lease was approved by the Carson City Parks and Recreation Commission during their December 1, 2015 meeting.

Agenda Action: Formal Action/Motion

Time Requested: 15 minutes

Proposed Motion

I move to approve a lease agreement between the city and the Foundation for Carson City Parks and Recreation, Inc. for the use of the Wungnema House.

Board's Strategic Goal

Quality of Life

Previous Action

N/A

Background/Issues & Analysis

The Foundation for the Betterment of Parks and Recreation has been dissolved. A new foundation called the Foundation for Carson City Parks and Recreation, Inc. (FCCPRD) has been created by some of the former foundation members. The former foundation had a lease agreement with the city for the use of the Wungnema House. The new foundation would like to continue this practice. The purpose of the FCCPRD is to raise funds for various parks, recreation and open space projects and programs. The Wungnema House is available for rental for small group meetings and events. Approval of the proposed lease agreement will allow the FCCPRD to continue management of the Wungnema House, which would facilitate the FCCPRD's mission to raise funds for public projects and programs.

Applicable Statute, Code, Policy, Rule or Regulation

CCMC 2.16 Parks and Recreation Commission.

Financial Information

Is there a fiscal impact? Yes No

If yes, account name/number:

Is it currently budgeted? Yes No

Explanation of Fiscal Impact: N/A

Alternatives

Alteration or rejection of the proposed lease agreement.

LEASE AGREEMENT

THIS LEASE made and entered in 2016, by and between the Consolidated Municipality of CARSON CITY, hereinafter referred to as Lessor and The Foundation for Carson City Parks and Recreation, Inc., a non-profit Nevada corporation, hereinafter referred to as Lessee.

WITNESSETH

WHEREAS, Carson City owns certain real property located in the southeast corner of Mills Park, 844 North Saliman Road and commonly known as Assessor's Parcel No. 002-181-01 which real property is a city park and which real property is the site of certain improvements consisting of a historic building commonly known as the Wungnema House, which real property and all its improvements are hereinafter referred to as the Premises; and

WHEREAS, Lessee is a non-profit, charitable, civic organization that exists for the purpose of raising funds and investing those funds into various park, recreation and open space projects and/or programs; and

WHEREAS, through the efforts of the members of the Lessee's organization those members have acquired knowledge about the Premises and its history; and

WHEREAS, the Lessee desires to use the Premises for charitable and civic purposes, to-wit: an area for local groups to display items, maintaining a historic landmark and providing a facility available to the public for small-sized events consistent with the purposes of the Premises; and

WHEREAS, NRS 244.284 allows Carson City to lease any real property of Carson City for a term not exceeding thirty (30) years if such real property is not needed for the public purposes of the county and is let to or for any non-profit charitable or civic organization, and the property is actually used for charitable or civic purposes; and

WHEREAS, the Carson City Board of Supervisors specifically finds that this Lease meets the conditions of NRS 244.284; and

IN CONSIDERATION of the mutual promises of both parties and other good and valuable consideration as hereafter set forth, the parties therefore agree as follows:

1. LEASE AND TERM:

Lessor does hereby lease to Lessee, and Lessee does hereby lease from Lessor, the Premises. This Lease becomes effective after approval by the Carson City Board of Supervisors and on the date it is signed by all the necessary parties as indicated by the signature lines below. The term of this Lease is from the effective date and will be valid for one year unless terminated sooner by mutual agreement of the parties or for a violation of any term or condition of this Lease as specified below. After one year, if both parties agree, this contract can be renewed.

2. RENT:

As rent for the Premises, Lessee agrees to pay Lessor the sum of One Dollar (\$1.00) per year.

3. THE USE OF PREMISES:

The Premises are leased to Lessee for use in education, and for the maintenance of a historic landmark and for use as a facility available to the public for small-sized events consistent with the purposes of the Premises. Any change of said use shall not be made unless such change of use is lawful and Lessee first obtains the written consent of Lessor. Lessee will not use the Premises for any illegal trade, manufacturing or other business, or any other illegal purpose or for any purpose not expressly allowed by this Lease. Lessee will comply with all applicable statutes, ordinances, and regulations in its use of the Premises. Due to the requirements of the National Park Service, the Lessee shall open the Wungnema House to the public at least 12 days per calendar year and keep records of such public availability.

4. REPAIRS AND MAINTENANCE:

Lessor shall maintain the roof, foundation, exterior walls, electrical system, heating and air conditioning systems, outdoor benches, outdoor lights, fences, and landscaping. Lessee shall perform scheduling, booking, and all routine maintenance and housekeeping of the interior of the building to a level or degree to meet the Lessor's requirements in the maintenance and preservation of a historic landmark.

5. ALTERATIONS, LIENS, and ENCUMBRANCES AND REPAIRS:

Lessee will not make any permanent alterations, additions, improvements or repairs to the Premises without first obtaining the consent of the Lessor in writing. All alterations, additions, and improvements which are made will be at the sole cost and expense of Lessee and will become the property of Lessor upon the completion of the improvements (trade fixtures excluded). On expiration of the lease, or if the Lease is terminated prior to expiration, Lessee shall peacefully and quietly surrender to Lessor the Premises and all Lessee's improvements and alterations in good order and condition (except for ordinary wear and tear that results from the agreed-upon use of the Premises). If the Lessee performs any work with the consent of Lessor, Lessee agrees to comply with all laws, ordinances, rules and regulations of the local agencies having jurisdiction hereof. The Lessee further agrees to hold the Lessor free and harmless from all damage, loss and expense arising out of said work. Lessee agrees to keep and maintain the leased Premises free from any liens or encumbrances caused by any act of the Lessee.

6. NON-STORAGE:

Lessee will not conduct any business activity outside the Premises, nor store vehicles or other property, nor perform any services on any sidewalk, parking lot or other public area provided by Lessor without the written consent of Lessor, which consent shall not be

unreasonably withheld, for exhibits or activities which relate directly to the operation of the Premises as described above.

7. ENTRY AND INSPECTION:

Lessee agrees to permit Lessor or its authorized agents to enter the Premises without prior notice to Lessee to perform Lessor's duties under the Lease or for any reasonable purpose. Persons entering the Wungnema House under this paragraph without the presence of an authorized representative of the Lessee must sign the entrance log and note the reason for the entry on the log.

8. ASSIGNMENT AND SUBLEASING:

Lessee may not transfer or assign this Lease or sublet the leased Premises in whole or in part without first obtaining the written consent of Lessor. If Lessor consents, no assignments or sublease will be effective until Lessee delivers a copy of the assignment and the assignee or sublessee executes a new lease assuming all of the obligations of the Lessee. No assignment or subletting will relieve Lessee from any obligation under this Lease. The consent by Lessor to any transfer, assignment, or sublease, will not be deemed to be a waiver on the part of Lessor of any prohibition against any future transfer, assignment, or sublease.

9. INDEMNIFICATION:

Unless due to the negligence of Lessor or Lessor's failure to abide by the terms of this Lease, Lessee hereby indemnifies and agrees to hold Lessor harmless from and against all claims, which either arise from or in connection with, the possession, use, occupation, management, repair, maintenance, or control of the Premises or any portion thereof or which, claim results from any default, breach, violation, or non-performance of this Lease or any provision of this Lease by Lessee. Lessee will defend any claims against Lessor with respect to the foregoing or in which it may be impleaded. Lessee will pay, satisfy, and discharge any judgments, orders and decrees which are recovered against Lessor in connection with the foregoing, including attorney's fees. Lessor hereby indemnifies and agrees to hold Lessee harmless and will defend any claims against Lessee in any action where Lessor was negligent or failed to abide by the terms of this Lease.

10. LIABILITY INSURANCE:

A. GENERALLY:

Prior to Lessee's occupation of the Premises, Lessee shall obtain a commercial liability insurance policy in the face amount of ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, and TWO MILLION DOLLARS (\$2,000,000.00) for aggregate limits, and will add Lessor's name as additional insured. The policy shall provide coverage for the following: Premises and operation, products and completed operations, broad form property damage, incidental malpractice, contractual liability, host liquor, limited worldwide liability, employees as additional insureds, and extended bodily injury.

A certificate of said insurance shall be presented to Lessor prior to occupancy. Said policy of insurance shall not be suspended, voided, canceled or reduced in coverage without the prior written consent of the Lessor. Except for ten (10) calendar days notice for non-payment of premium, the insurance policy shall be endorsed to state that: without thirty (30) calendar days prior written notice to Lessor the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph be delivered by personal service or certified mail to Lessor.

Lessor will not be liable to Lessee for any loss or damage caused by the acts or omissions of any persons occupying any space adjacent to or adjoining the Premises unless the Lessor or its agents caused the loss or damage. Except for loss or damage caused by Lessor's negligence, Lessor shall not be responsible or liable to Lessee for any loss or damage resulting to Lessee or Lessee's property from water, gas, or steam or the bursting, stoppage or leakage of pipes.

11. DEFAULT:

A. DEFINITION OF DEFAULT:

Each of the following events shall constitute a default:

1. Insolvency of Lessee (this includes as assignment for the benefit of creditors; filing or acquiescing to a petition in any court in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings).
2. Assignment by operation of law,
3. Vacating or abandoning the Premises after occupation. Vacating or abandoning means permitting the Premises to remain unoccupied and/or unattended for a period longer than thirty (30) days without written notice to the Lessor.
4. Refusing to take possession of the Premises or permitting the Premises to remain unoccupied and unattended after renovation has been completed.
5. Failure to pay any installment of rent or any other charge required to be paid by Lessee under this Lease when due and payable and failure shall continue for ten (10) days after written notice.
6. Failure to perform any other conditions required to be performed by Lessee under this Lease and the failure shall continue for fifteen (15) days after written notice.
7. Loss of non-profit status.

B. EFFECT OF DEFAULT:

If a default occurs, Lessor shall give Lessee a written notice of intention to cancel this Lease at the expiration of a thirty (30) day notice period. The written notice shall specify the breach. At the expiration of the notice period, the term of this Lease shall end if said default has not been cured by Lessee. Lessee must then quit and surrender the Premises to Lessor. Lessee's liability under all of the provisions of this Lease will continue notwithstanding any expiration and surrender, or reentry, repossession or disposition pursuant to the following paragraph with a set off to Lessee for any new rents collections by Lessor from any new tenant during the term of this Lease.

If the term of this Lease expires, Lessor or its agents or employees may immediately or anytime thereafter reenter the Premises and remove Lessee, Lessee's agents, any subtenants, any licensees, any concessionaires and any invitees, and any of its or their property from the Premises. Reentry and removal may be effectuated by summary dispossession proceedings or by a suitable action or proceeding at law, by force, or otherwise. If the term of this Lease expires, Lessor may repossess and enjoy the Premises. Lessor will be entitled to the benefits of all provisions of law respecting the speedy recovery of lands and tenements held over by Lessee or proceedings in forcible entry and detainer. Lessee's liability, subject to any set off; will survive Lessor's reentry, the institution of summary proceedings, and the issuance of any warrants with respect thereto.

C. DEFICIENCY:

If this Lease is canceled pursuant to (B) above, Lessee will remain liable (in addition to accrued liabilities) to the extent legally permissible for the rent and all other charges Lessee would be required to pay until the date this Lease would have expired had such cancellation not occurred, Lessee's liability for rent shall continue notwithstanding reentry or repossession of the Premises by Lessor subject to a set off pursuant to (B) above.

D. ATTORNEY'S FEES AND COSTS:

The non-prevailing party in any action or lawsuit instituted by Lessor or Lessee to enforce any provision of this lease shall be responsible for paying the prevailing party's reasonable attorneys fees and court costs.

E. WAIVER OF REDEMPTION:

Except for set offs discussed above, Lessee hereby waives (to the extent legally permissible), for itself and all persons, claims, to any right of redemption or for the restoration of the operations of this Lease in case Lessee is dispossessed for any cause, or in case Lessor obtains possession of the Premises as herein provided.

F. LESSOR MAY CURE LESSEE'S DEFAULT:

If Lessee is in default under this Lease, Lessor may cure the default at anytime for Lessee. If Lessor cures a default for Lessee, Lessee will reimburse Lessor for any amount expended by Lessor in connection with the cure. Lessor will also be entitled to interest at the maximum legal rate on any amount advanced by Lessor to cure a default of Lessee from the date the expense is incurred to the date of reimbursement. The rights and remedies of Lessor set forth herein are in addition to any other right and remedy now and hereinafter provided by law. All rights and remedies shall be cumulative and not exclusive of each other. No delay or omission by Lessor in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to, a default. No waiver of a default shall extend to or affect any other default or impair any right or remedy with respect thereto. No waiver of a default will be effective, unless it is in writing.

12. HOLDING OVER:

Should Lessee holdover the term hereby created with the consent of Lessor, Lessee will become a tenant from month to month on the terms herein specified, but at a monthly rental of (a fair market rent) per month, payable monthly in advance on the first day of each month, and Lessee will continue to be a month-to-month tenant until the tenancy is terminated by Lessor or until Lessee has given Lessor a written notice at least one month prior to the termination of the monthly tenancy of his intention to terminate the tenancy.

13. SALE OF PREMISES:

In the event of a sale or conveyance by Lessor of the building containing the Premises, said sale shall be subject to the terms and conditions of this Lease. In such event, Lessee agrees to look solely to the successor in interest as the successor in interest will have assumed responsibility of the Lease. Lessor will transfer any security deposits held from Lessee to the successor in interest.

14. SUBORDINATION:

Lessee agrees that this Lease is and will be subordinate to any mortgage, deed of trust or other instrument of security, existing on the land and building of which the Premises is part. Such subordination is hereby made effective without any further act by Lessee. Lessee agrees at any time, upon request by Lessors to execute and deliver any instrument, release or other document that may be required in connection with subjecting and subordinating this Lease to the lien of any mortgage, deed of trust or other instrument of security.

This provision will be without effect unless and until the holder of the mortgage, deed of trust or other instrument of security in questions delivers to Lessee a written agreement providing, in effect, that so long as Lessee is not in default in the observance of performance of

any obligation to be observed or performed by it hereunder, Lessee will not be disrupted in its possession of the Premises.

15. SIGNS:

Lessee will not place or permit to be placed any sign, marquee, awning, decoration or other attachment on or to the roof, front, windows, doors or exterior walls of the Premises without first obtaining a City permit and the written consent of Lessor. Lessor may, without liability, enter upon the Premises and remove any such sign, marquee, awning, decoration or attachment affixed in violation of this paragraph. Lessee agrees to pay the cost of removal thereof.

16. SURRENDER OF LEASE:

No act or conduct of Lessor, whether consisting of the acceptance of the keys to the Premises, or otherwise, shall be deemed to or constitute an acceptance of the surrender of the Premises by Lessee prior to the expiration of the term hereof. Acceptance by Lessor of surrender by Lessee must be evidenced by a written acknowledgment of acceptance of surrender by Lessor. The voluntary or other surrender of this Lease by Lessee or a mutual cancellation thereof, will not constitute a merger, and Lessor may terminate all of the existing subleases or subtenancies, or concessions, or may at the option of Lessor, operate as an assignment to him or any or all such subleases or subtenancies or concessions.

17. NOTICES:

Notices to the respective parties must be in writing and sent by certified or registered mail, addressed to the respective party at the address set out below, or at such other address as either party may elect to provide in advance in writing, to the other party.

Lessor: Parks and Recreation Director, City of Carson City, 3303 Butti Way,
Building #9, Carson City, Nevada 89701; 887-2262.

Lessee: The Foundation for Carson City Parks and Recreation:
112 N Curry Street, Carson City, Nevada 89703.

18. NO ORAL CHANGES:

This Lease may not be changed or terminated orally.

19. SUCCESSOR AND ASSIGNS:

Except as otherwise provided, the Lease shall bind inure to the benefit of the parties and their respective successors, representatives, heirs and assigns.

20. UTILITIES:

The following utilities will be supplied to the Premises by Lessor: heating, electrical power, water, sewer, and garbage service. Lessor will not be liable for failure to furnish any of the above services when such failures are caused by conditions beyond the control of Lessor, or by accidents, repairs or strikes, nor will Lessor be liable, except for Lessor's own negligence, for loss or injury to property, however occurring, through or in connection with or incidental to the furnishing of any of the aforementioned services.

21. QUIET ENJOYMENT:

The Lessor agrees that the Lessee, paying rental provided herein, and observing all of the terms, conditions and provisions hereof, will quietly enjoy the Premises for the full term of this Lease. No use will be made or permitted to be made of the Premises or any part thereof and no acts will be done therein which may disturb the quiet enjoyment of any other tenant in the building of which the Premises are a part.

22. SNOW AND ICE REMOVAL:

Lessor and Lessee agree that Lessor shall be responsible for routine snow and ice removal, and it will be performed at the discretion of the Lessor. If there is snow and ice buildup not known to Lessor and Lessee becomes aware of the conditions prior to its removal, Lessee shall notify Lessor that snow and/or ice removal needs to be performed. Snow and ice removal, will be performed at the discretion of the Lessor.

23. PUBLIC PURCHASING:

The ownership of the Premises by Lessor, a public agency, and the use of public money on improvements to the Premises generally require the satisfaction of public purchasing and public works statutes. Lessor agrees, to the extent permitted by state law, that it will allow a representative of the Lessee to participate in the design and construction of any improvements made to the Premises during the term of this Lease.

IN WITNESS WHEREOF, the parties hereto have subscribed their names, and if corporations executed this Lease by officers thereunder duly authorized by resolution of said corporations, in duplicate, the day and year executed by the Mayor of Carson City as shown below.

LESSEE

The Foundation for Carson City Parks and Recreation

Dated this ____ of _____, 2016

David Bugli, President, acting on behalf of Secretary

Dated this ____ day of _____ 2016

LESSOR

ATTEST:

Robert Crowell, Mayor

Dated this ____ day of _____, 2016

Susan Merriweather, Clerk Recorder

Dated this ___ day of _____, 2016

APPROVED AS TO FORM

By: _____ Deputy District Attorney

Dated this ____ day of _____, 2016

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