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DEPARTMENT OF PARKS
AND COMMUNITY SERVICES

CITY OF SACRAMENTO
CALIFORNIA

1231 I STREET
SUITE 400
SACRAMENTO, CA
95814-2977

ROBERT P. THOMAS
DIRECTOR

October 24, 1986

916-449-5200

G. ERLING LINGGI
ASSISTANT DIRECTOR

DIVISIONS:

CROCKER ART MUSEUM
GOLF
METROPOLITAN ARTS
MUSEUM & HISTORY
PARKS
RECREATION
ZOO

Budget and Finance Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: Sacramento Garden and Arts Center Lease

SUMMARY

This report provides information relating to a new lease with the Sacramento Garden and Arts Center and requests authorization to execute a lease.

BACKGROUND INFORMATION

The Sacramento Garden and Arts Center is a nonprofit service organization consisting of nearly 60 garden, conservation, historical and arts clubs. The Center has provided gardeners, artists and handcrafters with a gathering place for education and socializing for 45 years. Over 25 floral and art shows and exhibits are hosted by the Sacramento Garden and Arts Center annually, all of which are open free to the public.

From 1941 to 1958, the City provided the Sacramento Garden and Arts Center a meeting place in a small building located in the Rose Garden in McKinley Park. In 1958, construction of the Shepard Garden and Arts Center was completed at a cost of \$119,280. Until 1982, the City paid all maintenance and operation costs for the Center, including annual costs of approximately \$50,000 and over \$23,000 in capital improvements.

Since 1958, the Sacramento Garden and Arts Center has taken responsibility for all programming at the Shepard Garden and Arts Center and has been an acceptable steward of the property. In addition to entirely furnishing the interior of the building and landscaping the grounds, the Sacramento Garden and Arts Center has contributed nearly \$17,000 toward capital improvements to the site.

In 1982, the City and Sacramento Garden and Arts Center entered a co-sponsorship agreement in order to meet City and Department goals of encouraging greater public-private partnership and increasing levels of operational self-sufficiency. The terms of the agreement required the Garden and Arts Center to reimburse the City for costs of building monitors and the City continued to pay all other operation and maintenance costs. The current co-sponsorship program agreement with Sacramento Garden and Arts Center, Inc. was amended January 14, 1986 in order to continue the agreement until a formal lease agreement is executed for the operation of the 28-year old Shepard Garden and Arts Center, located in McKinley Park.

Significant terms of the four-year lease agreement include reporting requirements and insurance coverage to the City standard of \$1 million. In addition, the Sacramento Garden and Arts Center will continue to provide garden and arts related community services, provide for utilities and reimburse the City for the cost of the building monitors.

FINANCIAL DATA

The Sacramento Garden and Arts Center shall annually reimburse the City for certain operational costs as billed by the City. The amount of payment for FY 1986-87 is approximately \$18,500. Revenue from the lease will be deposited in the Recreation Division Building Rental Trust.

RECOMMENDATION

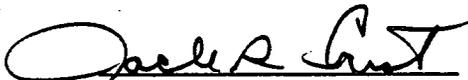
It is recommended that the Budget and Finance Committee approve this report and refer it to the full City Council for action. Further, it is recommended that the City Council, by resolution, authorize the City Manager to execute said lease.

Respectfully submitted,



ROBERT P. THOMAS, Director
Parks and Community Services

Recommendation Approved:



JACK R. CRIST
Deputy City Manager

RPT:ja

November 5, 1986
District No. 3

RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

A RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE
BETWEEN THE CITY OF SACRAMENTO AND THE SACRAMENTO
GARDEN AND ARTS CENTER FOR THE
SHEPARD GARDEN AND ARTS CENTER

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

The City Manager is hereby authorized and directed to execute, on behalf of the City of Sacramento, that certain lease between the City of Sacramento and the Sacramento Garden and Arts Center for the Shepard Garden and Arts Center in McKinley Park.

MAYOR

ATTEST:

CITY CLERK

LEASE

THIS LEASE is made as of _____, by and between the CITY OF SACRAMENTO, a municipal corporation ("Lessor"), and the Sacramento Garden and Arts Center, a California nonprofit corporation ("Lessee"), who agree as follows:

1. Lease

Subject to the terms and conditions hereinafter set forth, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, a parcel of property owned by Lessor, located in the City of Sacramento, County of Sacramento, State of California, commonly known as the Shepard Garden and Arts Center, 3330 McKinley Boulevard, Sacramento, California 95816.

2. Term

The term of this Lease shall be for four years commencing on July 1, 1986, and ending June 30, 1990, subject to prior termination by the City in the event of breach of any of the terms or conditions of the Lease or pursuant to Section 21 hereof.

3. Rent

a. In lieu of rent, Lessee shall reimburse the Lessor for the entire cost of building monitors as billed by the City. The building monitors will be employees of the City of Sacramento and subject to all policies and procedures governing such employees. Hours and schedule of building monitors and duties shall be mutually agreed upon by both parties annually.

b. Method of payment for the building monitors shall be by semi-annual reimbursement payments. The first payment shall be made on or before January 31, 1987, as billed by the City of Sacramento, for the previous six

months. Payments for subsequent contract years shall be made on a semi-annual basis as billed by the City of Sacramento. Lessee shall make reimbursement payment to the City of Sacramento on or before January 31st for the months of July-December, and on or before July 31st for the months of January-June. Each payment shall be made to the Department of Parks and Community Services, 1231 "I" Street, Suite 400, Sacramento, California 95814.

4. Utilities

Lessee shall pay all charges and assessments for telephone; utilities, including gas and electricity; and security; used on the leased premises during the term of this Lease.

5. Permitted Use

a. Because the leased premises are a part of publicly-owned land and Lessor desires as wide a use of the leased premises as possible, it is agreed by the Lessee that the above-described premises and any or all of the facilities developed thereon shall be available to all persons desiring to use the same; subject, however, to necessary rules and regulations invoked by the Lessee for the purpose of conducting its activities and protecting the premises and the rights of all persons who desire to use the facilities in a peaceful and lawful manner. The Lessor reserves the right to apply rules and regulations of the Department of Parks and Community Services of the City of Sacramento to the area herein leased which shall supersede those of Lessee.

b. The Lessee shall, during the term of this Lease, occupy, maintain, and operate the premises for the purposes of garden and arts clubs meetings, activities, and exhibitions and the failure of the Lessee to so occupy, maintain, and operate the premises shall result in termination of the Lease.

c. Lessee shall neither permit nor carry on any activity nor allow any condition on the real property which is a public or private nuisance.

d. Lessee shall not operate any amplified sound or music system in a manner which interferes with the reasonable enjoyment by the public of adjacent areas or of private citizens within adjacent private property. Lessee shall immediately comply with any written request of the Director of Parks and Community Services or his authorized designee concerning the use of such sound system, including but not limited to, a request to: (1) cease the use of said equipment; (2) restrict the hours of use of such system; or (3) reduce the level of sound output of such system.

6. No Warranties by Lessor

Lessor makes no representation or warranty concerning the suitability of the property or of the state of the law concerning the property for any use of the property which Lessee may contemplate. Lessee represents and warrants that it has independently made a full and thorough investigation and examination of the property and that it is entering this Lease relying only upon facts ascertained from said independent investigation.

7. Lessor's Right of Entry

The Lessor and its agents shall have the right to enter upon said premises at all reasonable times for the purpose of inspecting, maintaining, and repairing any of the premises owned by the Lessor.

8. Operation and Maintenance of Premises

a. Lessee agrees that the facility shall be operated on a nonprofit basis.

b. Lessee agrees that no discrimination, distinction, or restriction shall be made on account of sex, color, race, religion, ancestry, or national origin contrary to the provisions of Section 51 of the Civil Code of the State of California, which is incorporated herein by reference as if set forth hereat in full. Upon a final determination by a court of competent jurisdiction that

the Lessee has violated said section, this Lease may, at City's option, be deemed forfeited.

c. Lessee agrees to comply promptly with written reasonable orders that may be issued from time to time by the Director of Parks and Community Services or his authorized designee as to matters concerning the operation of the facility as it may affect the best interests of the public using the facility.

d. Lessee shall conduct his activities in accordance with all applicable regulations and ordinances of the City and County of Sacramento and the laws of the State of California and the United States.

9. City Provided Services

a. City shall provide the building monitors to assist the Lessee in the conduct of its activities; including supervision of the facility, incidental assistance with set-ups for special events and other programs, and monitoring of the rules and regulations governing the operation of the center in accordance with any applicable City policies.

b. City shall maintain the premises including, but not limited to, the Shepard Garden and Arts Center grounds, structures, appurtenances, and all other incidentals necessary for the operation of garden and arts clubs activities, shows, and exhibits.

c. City shall provide custodial services and supplies including the disposal of garbage, refuse, and rubbish.

10. Reporting and Notification Requirements

a. Lessee shall, at all times during the term of this Lease and for a period of three years thereafter, keep true, accurate, and complete financial records and accounts of its operations of the facility similar to those records that have been kept and furnished. The Director or authorized City

representatives shall have the right at all times to examine and audit said records and accounts.

b. Lessee shall provide the City's Department of Parks and Community Services with a record of all facility use. Records are to stipulate numbers of shows, exhibits, meetings, participants, and attendees. The records shall be submitted on a calendar year basis. Such reports are due on or before the first day of February.

c. Lessee shall annually provide the City's Department of Parks and Community Services with a list of member clubs and of the rental fees. Such reports are due on the first day of February.

d. Lessee shall annually provide the Department of Parks and Community Services with a list of Sacramento Garden and Arts Center, Inc. officers, including names, addresses, and telephone numbers, and shall notify Lessor of any changes in officers. This list shall be provided on or before the first day of February.

e. Lessee agrees to secure and provide all necessary licenses and permits and shall pay before delinquency all lawful taxes, assessments, fees, or charges which at any time may be levied by the State of California, County of Sacramento, City or any tax or assessment-levying body on any interest in this Lease or any possessory right which Lessee may have in or to premises covered hereby or improvements thereon by reason of his use or occupancy thereof or otherwise, as well as all taxes, assessments, fees, licenses, and charges on goods, merchandise, fixtures, appliances, and equipment owned or used by him in or about said premises. Lessee shall provide the Department of Parks and Community Services with current copies of all necessary licenses as they are renewed.

f. Lessee shall provide the Department of Parks and Community Services with an annual financial statement indicating revenues produced from the operation of the facility and the manner in which said revenues were expended or retained.

This statement must detail the gross amount realized from each and every revenue source including membership and rental fees. The annual statement shall be submitted on or before April 15 for the previous calendar year.

11. Security Devices

Lessee may provide at his own expense any legal devices, installations, or equipment designed for the purpose of protecting the demised premises from theft, burglary, or vandalism; provided, however, that written approval for any such installation be obtained from the Director.

12. Indemnity and Hold Harmless

Lessee shall assume the defense of, and indemnify and save harmless, the City, its officers, employees, and agents, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, and expenses of every type and description to which any or all of them may be subjected by reason of, or resulting from, or arising out of the use and operation of the premises by Lessee. The foregoing includes, but is not limited to, any attorney fees reasonably incurred by City.

13. Insurance

During the term of this Lease, Lessee shall maintain in full force and effect at his own cost and expense, the following insurance coverage:

a. General Liability Insurance

The Lessee must provide sufficient broad coverage to include:

Comprehensive Auto and General Liability Insurance

Broad Form Property Damage Liability

Personal Injury Liability

Products and Completed Operation Liability

Contractual Liability

Legal Liability

The amount of the policy shall be no less than Three Hundred Thousand Dollars per person or One Million Dollars aggregate per occurrence, issued by an admitted insurer or insurers as defined by the California Insurance Code, providing that the City of Sacramento, its officers, employees, and agents are to be named as "Additional Insureds" under the policy, and the policy shall stipulate that this insurance will operate as Primary Insurance and that no other insurance effected by the City or other Named Insured will be called on to contribute to a loss covered thereunder.

b. Certificate of Insurance

The Lessee will have the City's standard Certificate of Insurance completed and filed with the City's Risk Management and Insurance Division, 5730 24th Street, Sacramento, California 95822, within fifteen days of the execution of this Lease and prior to engaging in any operation or activity set forth in this Lease. Said policies shall provide that no cancellation, change in coverage, or expiration by the insurance company or the insured shall occur during the term of this Lease without 30 days written notice to the City prior to the effective date of such cancellation or change in coverage.

Should Lessee fail to maintain the required insurance coverage in full force and effect throughout the entire term of the Lease or fail to provide the City with the required "Certificate of Insurance" within ten (10) days of written notice requesting same at any time during the term of the Lease, City shall have the right to terminate this contract.

14. Assignment, Subletting, Hypothecation, Etc.

Lessee shall not directly or indirectly assign, sublet, or hypothecate any interest in the leasehold estate under this Lease. Lessee shall not directly or indirectly use, or permit to be used, the property or improvements for security for any debt. Excepting only a change in name, the term "assignment" shall include any change in the form of business entity of the Lessee from that of a California nonprofit corporation whether voluntarily or by operation of law; provided, however, that a change of status due only to a change in the California Corporation Code shall not be deemed to be an assignment.

15. Violations of Lease Provisions

The Director of Parks and Community Services may terminate this Lease in the event that Lessee violates any provision hereof.

In the event Lessee fails, refuses, or neglects to perform any of the duties required to be performed by him by virtue of the provisions of this Lease, City may enter upon the leased premises and perform such services, but this right shall not be construed to be a duty on the part of the City to provide said services. Lessee shall reimburse City for costs of such services on the first day of the month following the month in which the service was performed.

The waiver by City of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of any sum due hereunder by City shall not be deemed to be a waiver of any prior occurring breach by Lessee of any term, covenant, or condition of this Lease, other than the failure

of Lessee to pay the particular sum so accepted, regardless of City's knowledge of such prior existing breach at the time of acceptance of such sum.

16. Captions

The captions of the various articles and paragraphs of this Lease are for convenience and ease of reference only and do not define, limit, augment, or describe the scope or intent of this Lease or any part or parts of this Lease.

17. Entire Agreement

This Lease contains the entire agreement between the two parties. No promise, representation, warranty, or covenant not included in this Lease has been or is relied on by either party. Each party has relied on his own examination of this Lease, the counsel of his own advisors, and the warranties, representations, and covenants in the Lease itself. The failure or refusal of either party to inspect the premises or improvements, to read the Lease or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice.

18. Surrender

At the end of the term of this Lease, or at any time this Lease may be terminated, Lessee shall surrender to Lessor said premises in as good order and condition as reasonable use and wear thereof shall permit. After such surrender, Lessee shall have no right, title, or interest in the premises or improvements thereon and Lessee shall have no right to any compensation thereof. In the event that Lessee shall hold over at the end of the term of this Lease with the consent of Lessor, such holding over shall be from month-to-month only, subject to the terms and conditions of this Lease, but shall not be a renewal hereof, and the rental to be paid shall be at the rate prevailing under the terms of this Lease.

19. Notices

Any notices and orders that may be given under this Lease may be served by first-class mail or in person to City at Department of Parks and Community Services, 1231 I Street, Suite 400, Sacramento, California 95814, and to Lessee at 3330 McKinley Boulevard, Sacramento, California 95816, or to such other address as either may provide to the other in writing. Service shall be deemed complete upon deposit in the mail or upon personal delivery.

20. Attorney's Fees

In the event either party hereto shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any term, covenant, or condition of this agreement by him to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover, in addition to other relief as may be granted in such litigation and his court costs, a reasonable attorney's fee to be fixed by the court, and such recovery shall include court costs and attorney's fees on appeal.

21. Amendment in Writing

This agreement may be amended only by a writing signed by both parties.

22. Termination

The Lessor or the Lessee shall have the option of terminating this Lease on ninety (90) days written notice.

23. No Joint Venture

The parties to this Lease do not constitute a joint venture, partnership, or association other than that of Lessor and Lessee pursuant to this Lease.

24. Time of Essence

Time is expressly declared to be in the essence of this agreement.

CITY:

City of Sacramento, a municipal
corporation

By _____
City Manager "Lessor"

Sacramento Garden and Arts Center, Inc.,
a nonprofit organization

By *Durdel Gornell*
President "Lessee"

ATTEST:

City Clerk

APPROVED AS TO FORM:

Diane B. Miller 10/20/86
Deputy City Attorney Date