

City of La Quinta

CITY COUNCIL MEETING: September 15, 2015

STAFF REPORT

AGENDA TITLE: APPROVE ABATEMENT OF LA QUINTA CHAMBER OF COMMERCE LEASE PAYMENTS FOR SEPTEMBER 2015 THROUGH JUNE 2016

RECOMMENDATION

Approve a request from the La Quinta Chamber of Commerce to abate lease payments for the remaining months of Fiscal Year 2015/16.

EXECUTIVE SUMMARY

- The La Quinta Chamber of Commerce (“Chamber”) leases office space in the main lobby area at City Hall.
- The Chamber is currently undergoing a leadership transition. The process has uncovered a number of unexpected financial obstacles.
- The Chamber requests to have rent and utility payments abated for the remaining contract year.

FISCAL IMPACT

The impact for 2015/16 is a reduction in revenue of \$8,000, which represents ten payments of \$800 per month (\$600 rent and \$200 utilities).

BACKGROUND/ANALYSIS

In August 2015, the Chamber’s Board of Directors elected to replace their Chief Executive Officer (CEO). On an interim basis they have brought in an experienced leader, Susan Harvey. During this transition period, a number of financial obstacles and shortfalls have been discovered. The Chamber Board and their staff have identified new policies and procedures that prioritize existing membership investment collections, new member fees, and outstanding payables and receivables. They are confident that these policies will help them overcome their financial challenges.

On August 20, 2015, the City received a letter from Board Chairman, Jason Schneider and Interim President/CEO, Susan Harvey asking for an abatement of lease payments from September 2015 through June 2016. The Chamber entered into a lease agreement (Attachment 1) with the City in November 2014 to lease office space in the main lobby at City Hall. The agreement term is valid through November 30, 2017 and states that the Chamber is to make monthly payments of \$800. As required by the lease, the Chamber delivered a written request for a waiver of lease payments (Attachment 2).

ALTERNATIVES

Alternatives to total abatement include:

- 1) Deferring the lease payments to a later date; or
- 2) Modifying the amount of rent and/or utility reimbursement to be collected; or
- 3) Denying the request for abatement and continuing with the lease as approved.

Report prepared by: Tustin K. Larson, Marketing & Events Supervisor

Report approved by: Edie Hylton, Deputy City Manager

Attachments: 1. Lease Agreement
 2. Abatement Request Letter

**LEASE AGREEMENT BETWEEN THE CITY OF LA QUINTA
AND THE LA QUINTA CHAMBER OF COMMERCE**

THIS LEASE AGREEMENT (the "Lease") is made effective this 18 day of November 2014 (the "Effective Date"), by and between THE CITY OF LA QUINTA, a municipal corporation and charter city ("Landlord"), and the LA QUINTA CHAMBER OF COMMERCE, a California non-profit organization ("Tenant"). Landlord hereby leases the property described below to Tenant upon the following terms and conditions:

1. **Premises.** Landlord is the owner of that certain real property located in the City of La Quinta, County of Riverside, State of California, with a physical address of 78495 Calle Tampico, commonly known as the La Quinta City Hall. The portion of the La Quinta City Hall that is the subject of the Lease is identified on Exhibit "A," attached hereto and incorporated herein by this reference ("Premises").

2. **Grant of Lease.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, together with the right to use the parking areas located on the Premises, upon the terms and conditions stated in this Lease. Tenant shall also have use under this Lease a conference room space in the La Quinta City Hall located on the Premises and identified on Exhibit "B," attached hereto and incorporated herein by this reference, for up to eight (8) approximately two hour meetings each month for the purpose of holding its Board and various committee meetings. Tenant shall secure written approval from Landlord no less than fifteen (15) business days prior to said monthly meetings for use of the classroom. Landlord may, for good cause, deny Tenant's request for the desired date at its sole discretion.

3. **Scope of Lease.** Landlord hereby leases the Premises to Tenant for the primary purpose of promoting, encouraging and representing the business community of La Quinta and vicinity, but the Premises may be used by Tenant for other official business, such as putting on events, when first approved in writing by the City Manager or his/her designee.

4. **Term.** The Term of this Lease shall commence on December 1, 2014 and shall end on November 30, 2017, unless sooner terminated as provided herein (the "Term").

5. **Term Extension.** The Term of this Lease may be extended for a period of one (1) year with a written amendment to this Lease approved and executed by both Landlord and Tenant.

6. **Rent and Operating Charges.** Beginning December 1, 2014, and continuing throughout the Term, Tenant shall pay to Landlord monthly rent for use

of the Premises in the amount of Six Hundred Dollars (\$600.00) plus a flat monthly rate equal to Two Hundred Dollars (\$200.00) for gas, water, and electric utility charges, for a total of Eight Hundred Dollars (\$800.00) per month. Tenant shall be responsible to pay all possessory interest or other taxes (if any) and charges or fees (if any) for services provided by other utilities not covered under the flat monthly rate set forth in the preceding sentence directly to the collector of any such taxes or utility provider of such service for the Premises and Tenant's use thereof. All payments required to be made under this Lease shall be hereinafter referred to as "Rent." Except for taxes and utility fees or charges (if any) to be paid directly to the tax collector or utility provider as provided in this Section, all payments shall be paid by Tenant to Landlord in advance on the first (1st) day of each month without notice or demand from Landlord at Landlord's address as provided by Section 24 below.

7. **Late Charges.** If any of the Rent is not received by Landlord within fifteen (15) days after the first (1st) day of each month, then, without any requirement for notice by Landlord, Tenant shall pay to Landlord an additional amount of Twenty Dollars (\$20.00) for each day that such Rent is delinquent.

8. **Custodial Services.** As a condition to this Lease, Tenant shall contract with a custodial service company approved by Landlord both in writing and at Landlord's sole discretion, to perform custodial services on the Premises during the Term.

9. **Tenant's Annual Report.** Tenant shall prepare and submit to Landlord, on an annual basis and no earlier than December 15 but no later than December 31 of each year, a report specifying the activities pursued and results that Tenant has achieved in connection with its efforts to locate a permanent physical location for its operation. Tenant hereby represents to Landlord that it shall in good faith make such effort to secure a permanent physical location for its operation.

10. **Maintenance, Repair, and Replacement on Premises.**

(a) Tenant shall not do, or permit anything to be done, in or on the Premises, which in any way will (1) increase the rate of fire insurance on the Premises; (2) invalidate or conflict with the fire insurance policies on the Premises or fixtures or on personal property kept therein; (3) obstruct or interfere with the rights of Landlord or Landlord's other tenants at the La Quinta City Hall; (4) subject Landlord to any liability for injury to persons or damage to property; or (5) interfere with the good order of the Premises or the La Quinta City Hall.

(b) Landlord shall not be liable under this Lease to Tenant for injuries to Tenant's person or damage to property occurring on the Premises or La Quinta City Hall or to any persons entering the Premises or La Quinta City Hall related to Tenant's use or occupancy thereon, including, without

limitation: (1) a loss of property by theft or burglary; (2) damage or injury to person or property on the Premises or the La Quinta City Hall; (3) any damage or injury caused by action of the natural elements; or (4) damage or injury resulting from (i) the conduct of Tenant, Tenant's contractors, licensees or invitees, whether negligent or otherwise, or (ii) any other act, event or occurrence in or about the Premises or La Quinta City Hall other than the grossly negligent or intentional acts of Landlord or Landlord's employees, contractors, licensees or invitees. Tenant shall not make any claim against Landlord for any loss or damage described in this Section.

(c) Upon expiration of the Term, or any earlier termination of this Lease, Tenant shall surrender to Landlord the Premises, including all alterations, improvements and other additions made by Landlord or Tenant, in good order, condition, and repair, reasonable wear and tear excepted. Tenant shall also remove any improvements made by Tenant to the Premises (e.g., office spaces, equipment) without any compensation due by Landlord to Tenant or, at Landlord's sole discretion, Tenant shall take the necessary steps to return the Premises to the configuration of the Premises as found by Tenant at the commencement of the Term absent any, or at the request of the City some but not all, of such improvements and in good order, condition, and repair.

11. **Improvements.** Any alterations, improvements, or installations of fixtures to be undertaken by Tenant shall have the prior written consent of the Landlord after Tenant has submitted such proposed alterations, improvements, or fixtures in writing to Landlord.

12. **Tenant's Insurance.**

(a) **Types.** Tenant, at no cost and expense to Landlord, shall procure and keep in full force and effect during the Term, insurance policies meeting the minimum requirements set forth below:

(i) Comprehensive general liability insurance with respect to the Premises and the operations of or on behalf of Tenant or its agents, officers, directors, and employees in, on or about the Premises in an amount not less than One Million Dollars (\$1,000,000) per occurrence combined single limit bodily injury, personal injury, death and property damage liability per occurrence, subject to such increases in amount as Landlord may reasonably require from time to time. The policy or policies shall include that Landlord and its officers, employees, and agents shall be named as additional insureds under such policy or policies, with an endorsement evidencing same;

(ii) Worker's compensation coverage as required by the laws of the State of California together with employer's liability coverage;

and

(iii) With respect to the improvements, fixtures, furnishings, equipment and other items of personal property located on or in the Premises, insurance against fire, peril of flood, extended coverage, vandalism and malicious mischief, and such other additional perils, hazards and risk as now are or may be included in standard "all risk" forms in general use in Riverside County, California, for an amount equal to not less than the full current actual replacement cost thereof. Landlord shall be named as an additional insured under such policy or policies and such insurance shall contain a replacement cost endorsement.

(b) **Standard.** All policies of insurance required to be carried by Tenant under this Lease shall be written by responsible and solvent insurance companies authorized to do business in the State of California. A copy of each paid-up policy evidencing such insurance (appropriately authenticated by the insurer) or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required by this Section and containing provisions specified herein, as well as accompanying endorsements, shall be delivered to Landlord prior to the date Tenant is given the right of possession of the uniform Premises or as Landlord may otherwise require, and upon renewals, not less than thirty (30) days prior to the expiration of such coverage.

13. **Events of Default.**

(a) An event of default (an "Event of Default") shall occur under this Lease if:

(i) Tenant shall fail to perform any of the terms, conditions or covenants of this Lease to be observed or performed by Tenant and such failure shall continue for more than thirty (30) days thereafter, unless such default is of a nature that it cannot practically be cured within such thirty (30) day period but can be cured within a reasonable time but in no event later than ninety (90) days, and Tenant is proceeding with due diligence to cure such default; or

(ii) Tenant's abandonment of the Premises in a manner not otherwise permitted herein.

(b) The failure of Landlord to insist, in any one or more instances, upon a strict performance of any of the covenants of this Lease or to exercise any right or remedy contained herein, shall not be construed as a waiver or a relinquishment for the future of such covenant or option.

14. **Termination.** Landlord and Tenant can mutually agree to terminate this Lease by way of a written document reflecting the parties' desire to terminate. Tenant or Landlord can unilaterally terminate this Lease upon Tenant's locating and securing a new physical location for its operation. Upon any such aforementioned termination, Tenant shall surrender the Premises, in accordance with the provisions contained in this Lease, no later than the effective date of termination, and pay Rent to Landlord, on a pro rated basis, for each day leading up to the termination date.

15. **Tenant's Indemnity.** To the fullest extent permitted by law, Tenant shall, at Tenant's sole expense and with counsel reasonably acceptable to Landlord, defend, indemnify, and hold harmless Landlord, its agents, and any and all affiliates of Landlord, including, without limitation, any public agency or other entities controlling, controlled by or under common control with Landlord, from and against any and all claims (including demands, losses, actions, causes of action, damages, liabilities, expenses, charges, assessments, fines or penalties of any kind, and costs including consultant and expert fees, court costs and attorney's fees) or liabilities from any cause arising out of or relating (directly or indirectly) to Tenant's use or occupancy of the Premises or the conduct of its business or from any activity, work, or thing done, permitted or suffered by Tenant in or about the Premises, and shall further defend, indemnify, and hold harmless Landlord, its agents, and affiliates against and from any and all claims or liabilities arising from any breach or default in the performance of any obligation on Tenant's part to be performed hereunder, or arising from any act or negligence of Tenant, or of its agents, employees, visitors, patrons, guests, invitees or licensees, including vendors, servicing Tenant, and from and against all costs, attorneys' fees, expenses and liabilities incurred in or about any such claims or liabilities or any actions or proceedings brought thereon. Notwithstanding the foregoing, Tenant shall not be liable for damage or injury occasioned by the gross negligence or willful misconduct of Landlord or its designated agents, servants or employees, unless covered by insurance Tenant is required to provide. This obligation to indemnify shall include Tenant's payment of reasonable attorneys' fees and investigation costs and all other reasonable costs, expenses and liabilities incurred or suffered by Landlord from Landlord's receipt of the first notice that any claim or demand is to be made or may be made.

Tenant's indemnification obligation hereunder shall survive the expiration or earlier termination of this Lease until all claims against Landlord involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitation.

16. **Right to Enter.** Landlord shall have the right to enter the Premises (a) at reasonable hours upon prior reasonable notice to Tenant (verbal or written) for any purpose permitted or required by this Lease; or (b) at any time that an emergency exists, to examine the Premises or to make such repairs and alterations as shall be reasonably necessary for the safety and preservation of the Premises.

17. **Landlord Contact Person.** During the Term, Tenant shall direct all questions, concerns, and correspondence regarding repairs or other issues relating to this Lease to Landlord's representative, City Manager, at the address set forth in Section 24 herein.

18. **Assignment and Subletting.** Tenant shall not have the right to sublet the Premises, or any portion thereof, or to assign or mortgage Tenant's interest in this Lease, or any portion thereof, without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion. In the case of any such subletting or assignment approved by Landlord, Tenant shall remain fully obligated to Landlord for the performance of all terms and conditions of this Lease. Notwithstanding the foregoing, Landlord may, without Tenant's consent, assign this Lease to any of its affiliates, successors or assigns.

19. **Title.** No part of this Lease shall be interpreted as conveying any portion of the title to the Premises or La Quinta City Hall to the Tenant.

20. **Applicable Laws.** Tenant hereby covenants and warrants that Tenant shall comply with all applicable laws, rules, and regulations, including, without limitation, Landlord's rules and regulations, in connection with its operations on the Premises.

21. **Governing Law.** This Lease shall be construed and applied in accordance with the laws of the State of California without regard to conflict of law principles.

22. **Severability.** Any provision or provisions of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision, and the remaining provisions shall remain in full force and effect.

23. **Headings.** The headings of the various Sections of this Lease are inserted for reference only and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Lease.

24. **Notices.** All notices, demands, elections, deliveries and other communications between Landlord and Tenant required or desired to be given in connection with this Lease ("Notices"), to be effective hereunder, shall, except as otherwise expressly provided in this Lease, be in writing, and shall be deemed to be given and received (a) when delivered personally; or (b) two (2) days after being deposited with a national overnight courier service (e.g., Federal Express) or with the United States Postal Service as certified mail, return receipt requested, in either event with all charges or postage prepaid and addressed as follows:

If to Landlord: City of La Quinta
78495 Calle Tampico
La Quinta, CA 92253

With a Copy to: Rutan & Tucker, LLP
611 Anton Boulevard, 14th Floor
Costa Mesa, CA 92626

If to Tenant: La Quinta Chamber of Commerce
78275 Calle Tampico
La Quinta, CA 92253

With a Copy to: Law Offices of Thomas McDermott
77530 Enfield Lane, Suite H-2
Palm Desert, CA 92211

Either Landlord or Tenant may from time to time designate another address for the receipt of future Notices by a Notice given as provided in this Section 24 to the other party at the address set forth herein, or as last provided by such other party in accordance with this Section 24.

25. **Amendments and Waivers.** Neither this Lease nor any term or provision hereof may be changed, waived, or discharged orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, or discharge is sought.

26. **Successors and Assigns.** Notwithstanding anything contained herein to the contrary, but subject to the provisions concerning assignment and transfers set forth herein, this Lease shall be binding upon and inure to the benefit, as the case may require, of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

27. **Rules and Regulations.** Landlord shall have the right, from time to time, to issue reasonable rules and regulations regarding the use of the Premises. When so issued, such rules and regulations shall be considered a part of this Lease. Landlord shall not be liable to Tenant in the violation of any rules and regulations or the breach of any covenant or condition in any lease by any other of the Landlord's tenants.

28. **Entire Agreement.** This Lease contains the entire agreement of the parties with regard to the matters set forth herein. Any other agreements, promises or representations, oral or written, between the parties with respect to such matters are hereby superseded and merged into this Lease.

29. **Execution of Counterparts.** This Lease may be executed in several counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

30. **Relationship Between the Parties.** Notwithstanding the existence of other relationships between the parties to this Lease, this Lease only controls the relationship between Landlord, as Landlord under this Lease, and Tenant, as Tenant under this Lease.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed to be effective as of the date first written above.

CITY OF LA QUINTA,
a municipal corporation and charter city

By: _____
FRANK J. SPEVACEK, City Manager

ATTEST:

SUSAN MAYSELS, City Clerk

APPROVED AS TO FORM:



WILLIAM H. IHRKE, City Attorney

LA QUINTA CHAMBER OF COMMERCE,
a California non-profit organization


By:  _____ David Archer
Title: President / CEO

EXHIBIT "A"

MAP OF THE PREMISES

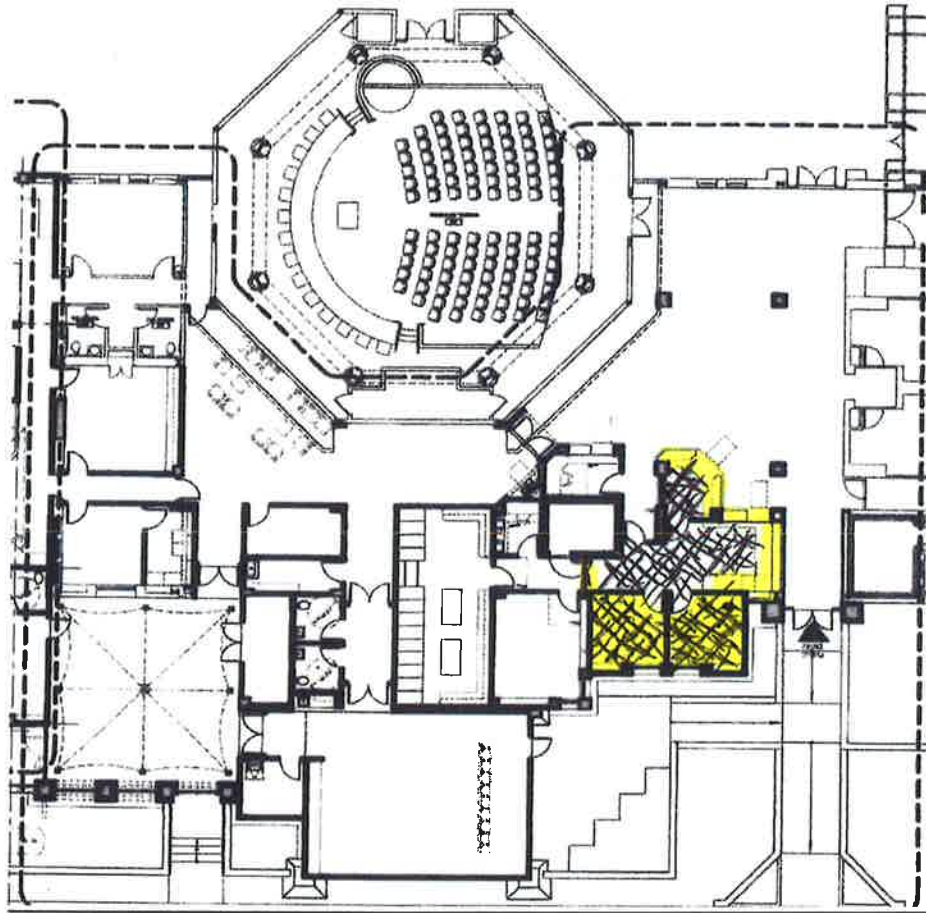


EXHIBIT "B"

USE OF CONFERENCE ROOMS

The Chamber may have use of the Study Session Room for up to eight (8) two hour meetings a month. The City reserves the right to relocate these meetings to other conference rooms in City Hall as needed. Pre-approval and early scheduling is required for the use of the Study Session room as outlined in Section 2. Grant of Lease.



GRANT REQUEST

TO: Mayor, Members of City Council, City of La Quinta
FROM: La Quinta Chamber of Commerce
DATE: August 20, 2015
RE: Request for Rent & Utilities Abatement

BACKGROUND: The La Quinta Chamber of Commerce is currently located within La Quinta City Hall. The Chamber pays \$600 monthly rent, plus \$200 monthly utilities, for this space. We are very grateful to the City for allowing us to be within the confines of City Hall. Our location provides many opportunities for us to meet potential new members and work with existing businesses for the betterment of the economic development of our City. Additionally, the location serves as a visitor center for new residents and tourists.

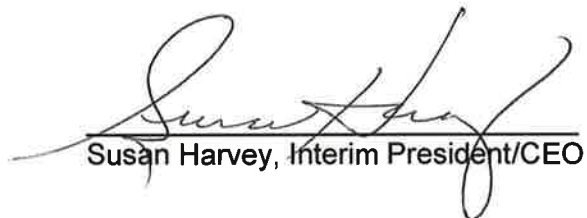
SITUATION: The Chamber is currently undergoing a period of transition. While we expect a bright future, we are uncovering many unexpected obstacles to our current success. We have already put in place several new policies and procedures that should help us overcome our current financial shortfalls. Membership investment collections have been prioritized, new member fees have been reviewed, receivables are being pursued, payables are being addressed, and there is a new atmosphere of positive energy. We can only go up from here.

REQUEST: The La Quinta Chamber of Commerce respectfully requests rent abatement for the balance of fiscal year 2015-2016. At \$800 per month, this would total \$8,000. (Assuming the abatement would start in September.)

Thank you for consideration of our request.



Jason Schneider, Chairman of the Board



Susan Harvey, Interim President/CEO

