

REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE: November 18, 2008

SUBJECT: Extension of Los Caporales Time Period for Removal of Improvements

Report in Brief

The City Council authorized the City Manager to enter into a limited lease agreement with Los Caporales starting March 1, 2007 – September 30, 2008. The terms of the agreement required Los Caporales to pay the City \$1,000 (one thousand dollars) per month during the term of the lease. The City is required to refund to Los Caporales all lease payments made during the Lease Term if Los Caporales, within 60 (sixty) days after expiration of the Lease Term, removes all improvements and other property from the Leased Premises to the satisfaction of the Director of Parks & Recreation Department.

The president of Los Caporales, Abdon Loza sent a letter to the Director of Parks & Recreation on October 30, 2008 requesting an extension of their time to remove and clean-up their improvements to the leased property.

Staff recommends that the City Council direct and authorize the City Manager to amend the lease agreement between the City of Woodland and Los Caporales de Woodland to extend the time period for the clean-up and removal of their improvements on the leased property to January 31, 2009.

Background

In September of 1995 the City of Woodland entered into an agreement with the Los Caporales de Woodland, a non-profit organization, to allow the use of City property at Regional Park for the establishment of a facility that would periodically accommodate a traditional Mexican rodeo or related equestrian events. Over the years the programs provided by the organization have been well accepted by the community, particularly the Hispanic community, as they were interpretative of Hispanic culture and heritage.

At the Council Meeting on October 3, 2006 the City Council extended a limited term lease agreement with the Los Caporales group for 24 months at a monthly rent of \$1,000. The term of the lease agreement ended on September 30, 2008. Los Caporales then had sixty (60) days following the expiration of the lease to remove their improvements from the leased premises to the satisfaction of

the Director of Parks & Recreation. If the improvements were removed in accordance with this condition, Los Caporales would receive a refund of the monthly lease payments paid during the lease term of \$24,000.

On October 30, 2008, staff received a letter from Los Caporales de Woodland president Abdon Loza requesting an extension of the removal of the improvements. Mr. Loza cites the complications associated with members' work schedules and economic conditions that make it difficult for volunteers to take time off from their jobs in order to complete the removal of the improvements. Staff understands these difficulties and believes that the organization is intending to comply with the terms of the lease. However, staff believes that the language approved within the lease agreement clearly requires the City Council to approve any change that would extend the time period for removal of the improvements. Therefore, staff has presented this request to the City Council for consideration.

Discussion

In consideration of this request, staff realizes that Los Caporales de Woodland has had two years to plan their move and clean-up of the site. However, the organization has continued to hold events at the site up to the end of their lease term. Most of the members of the organization work during the week and sometimes on weekends and the impacts of the regional and local economy would certainly suggest that taking days off from work would be very difficult. The importance of completing the removal of the improvements is measured by the fact that Los Caporales will receive a refund for their lease payments over the two-year term. It is anticipated that the group would utilize these funds to relocate their activity to another site.

The letter from Mr. Loza does not declare how long the group will need to remove the improvements. However, staff proposes that the City Council direct the City Manager to prepare an amendment to the current lease that authorizes a sixty day extension effective December 1, 2008 through January 31, 2009 to fulfill their contractual obligation. It is anticipated that the additional 60 days will be sufficient to complete the removal of the improvements. If the City Council directs and authorizes the City Manager to prepare the amendment as described herein, staff will work with the City Attorney to draft the amendment and have it executed by both parties prior to November 30, 2008.

It is also important for the City Council to note how staff proposes to utilize the regional park property in the future. As stated in previous staff reports to the City Council regarding surplus property (January 8, 2008), update on strategies to address the City's unfunded OPEB liability (February 26, 2008) and summary of the FY 2008-09 operating budget (May 13, 2008), this property is one of two parcels that hold significant future value. In order to generate the resources necessary to establish an irrevocable trust fund that would enable the City to address its currently unfunded future retiree medical obligation with minimal impact on operating expenses, staff has proposed that the regional park property be reserved for sale for development purposes. The exact land use is unclear at this point and staff has suggested that the General Plan update should be completed in order to consider the use of the property in the context of the entire City. However, the value of the approximate 150 acre property could be significant under certain land use designations when the economy improves and land values increase. Therefore, it is important to keep the property in tact

and prepare for its future sale. It is impossible to state a timetable for the sale although it is unlikely that it would occur within three years.

Fiscal Impact

There is no fiscal impact associated with the City Council's approval of the sixty day time period for removal of the improvements as described herein.

Public Contact

Posting of the City Council agenda. A copy of the agenda and report was provided to Los Caporales de Woodland president Abdon Loza.

Recommendation for Action

Staff recommends that the City Council direct and authorize the City Manager to amend the lease agreement between the City of Woodland and Los Caporales de Woodland to extend the time period for the clean-up and removal of their improvements on the leased property to January 31, 2009.

Prepared by: Daniel W. Gentry, Director
Parks and Recreation Department

Mark G. Deven
City Manager

Attachments: Letter from Los Caporales de Woodland president Abdon Loza
Los Caporales lease agreement



Los Caporales de Woodland
17722 County Road 96 Woodland, CA 95694
Phone (530) 668-0968 Cell (530) 867-1176
E-mail: abbullriding@aol.com

October 30, 2008

2001 East Street
Woodland CA 95694

Subject: Los Caporales de Woodland

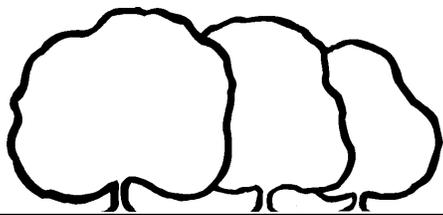
Mr. Dan Gentry:

I am writing this letter on behalf of the members from Los Caporales. The reason for this letter is to request more time for the clean up of the Regional Park. I understand you want to uphold the lease agreement, but with our members work schedule and having the economy it is difficult for our members to take time off from work. It will be very difficult for us to finish the cleanup by the end of November. If you have any questions or comments please contact Grace Cruz at (530) 574-2663. Thank you for taking the time to consider our request, and I hope to hear from you soon.

Sincerely,

Abdon Loza
President

CC: Dan Rice



City of Woodland

PARKS & RECREATION DEPARTMENT

Los Caporales de Woodland
Lease Agreement

October 3, 2006

LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) is entered into this 3rd day of October, 2006, by and between the CITY OF WOODLAND, a California municipal corporation (“City”), and the Los Caporales de Woodland, a California nonprofit corporation (“Los Caporales”), on the terms and conditions set forth below:

1. **PROPERTY.**

City hereby leases to Los Caporales all of the following described real property (“Leased Premises”) situated in the City of Woodland, County of Yolo, State of California, and more particularly described as follows:

The Los Caporales site, located in Woodland Regional Park beginning at the intersection of the south line of County Road 25A with the east line of County Road 102; thence, Easterly along the south line of County Road 25A and an old fence line 648 feet to a point; thence, West 691 feet more or less to the east line of County Road 102; thence, Northerly along said east line and the existing fence line 649 feet to the point of beginning, and containing 9.9 acres. This facility features are oriented to conduct Hispanic rodeo and/or equestrian events and include:

- (i) Circular Arena
- (ii) Stables
- (iii) Storage Areas
- (iv) Fencing
- (v) Bleachers
- (vi) Stages
- (vii) Shade Structures
- (viii) Temporary Lighting
- (ix) Dance Area
- (x) Beer Garden
- (xi) Concession Area
- (xii) Landscaping

2. TERM OF LEASE.

Term. The term of this Lease shall be for two (2) years (“Term”) commencing on October 1, 2006 (“Effective Date”), and ending on September 30, 2008. The Lease Term shall not be renewable and may not be extended.

3. RENT.

Los Caporales shall pay to City \$1,000.00 (one thousand dollars) per month, payable the first day of each month, during the Lease Term. City shall refund to Los Caporales all Lease payments made during the Lease Term if Los Caporales, within 60 (sixty) days after expiration of the Lease Term, removes all improvements and other property from the Leased Premises to the satisfaction of the Parks & Recreation (“P & R”) Director. Such improvements and property to be removed shall include, but not be limited to, the property described in Paragraph 1(i)-(xii) and any improvements constructed pursuant to Paragraph 8 of this Lease.

4. UTILITIES.

Los Caporales shall be responsible for all utility charges and fees incurred for the Leased Premises.

5. USE OF LEASED PREMISES.

(A) In exchange for the use of the Leased Premises, it is expressly agreed by the Parties that Los Caporales shall:

- (i) Provide a minimum of four (4) youth horse riding classes in Spanish during each twelve (12) month period beginning on the Effective Date of this Lease.
- (ii) Make the Leased Premises available to 4-H, high school groups and other equestrian groups at no charge.
- (iii) Provide a full range of Hispanic rodeo and/or equestrian events open to the public. The following conditions apply to Hispanic rodeo or equestrian events:
 - (a) Steer tailing shall be prohibited.
 - (b) Horse tripping shall be prohibited.

(c) Los Caporales shall ensure that a large-animal veterinarian licensed to practice in the State of California is at, or is available on call during, all events.

(d) Los Caporales shall give local animal control agencies two weeks advance notice of any upcoming events involving animals.

(iv) Make all reasonable and necessary efforts to maintain law and order on the Leased Premises including, but not limited to, hiring security.

(v) Maintain a City business license.

(vi) Comply with all state and local laws, ordinances and regulations.

(B) Los Caporales may use the Leased Premises for any other legitimate purpose subject to the following:

(i) All events must be reviewed by the City of Woodland's Special Events Committee and approved by the P & R Department Director or Designee.

(ii) Los Caporales shall not commit or suffer to be committed any nuisance or waste upon the Leased Premises.

6. SALE OF ALCOHOLIC BEVERAGES.

All beer and wine sales shall be in compliance with the Alcoholic Beverage Control rules and regulations. Beer and wine shall be consumed only in the areas designated by City (Beer Garden only) and alcoholic beverage sales must conclude at least one (1) hour before the scheduled end time of an event.

7. MAINTENANCE.

(A) Los Caporales shall maintain the Leased Premises, and every part thereof, in a safe, clean and sanitary condition and repair, structurally sound and free from fire hazards, and shall repair all damage resulting from use by Los Caporales or any sublessee.

(B) Without limiting the generality of the foregoing, Los Caporales' duty to maintain shall include replacing the bleachers on the Leased Premises.

(C) Comply with recommendations for repairs and replacement as outlined in reports by YCPARMA and other agents of the City of Woodland.

8. IMPROVEMENTS.

(A) Los Caporales shall not construct improvements to the Leased Premises without the express written approval of the Parks & Recreation Director. A request to construct improvements to the Leased Premises shall include a construction plan.

(B) Construction of approved improvements shall comply with City construction standards and be subject to inspections by City staff. Copies of City construction standards may be obtained from the Public Works Department. Approved improvements shall be constructed at Los Caporales' sole cost and expense. All such improvements remaining on the Leased Premises after the expiration of 60 days following the end of the Lease Term shall become the property of City.

(C) Los Caporales is aware of the requirements of Labor Code section 1720 et seq., and 1770 et seq., as well as California Code of Regulations, Title 8, section 16000 et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If any improvement is subject to the Prevailing Wage Laws, Los Caporales agrees to fully comply with such Prevailing Wage Laws.

(D) Los Caporales shall be as fully responsible to City for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, as it is for the negligent acts and omissions of persons directly employed by Los Caporales.

(E) "Improvements" shall have the same meaning and interpretation as "fixtures" as defined by Civil Code section 660.

9. INDEMNIFICATION.

Los Caporales shall indemnify, hold harmless and defend City and its elected officials, officers, agents, employees and volunteers ("Indemnified Persons") against all liability (including without limitation court costs and reasonable attorneys' fees), claims, losses, demands or actions for injury to, or death of a person or persons, or damage to property relating to, arising out of, alleged to arise out of or in consequence of Los Caporales' possession of or activity on the Leased Premises, to the extent such liability, claims, losses, demands or actions are caused by or result from the negligent acts or omissions of Los Caporales, its representatives, officers, agents, employees, invitees, spectators or participants in Los Caporales events or other activities on the Leased Premises, or others permitted or allowed on the Leased Premises by Los Caporales.

10. INSURANCE.

(A) Los Caporales and its contractor(s) and subcontractor(s) shall maintain in full force and effect during the term of this Lease a comprehensive general liability and property damage insurance policy issued by a reputable insurance company acceptable to City. This policy shall be in an amount of not less than \$2,000,000 (two million dollars) combined single limit for all bodily injury and property damage claims. Los Caporales shall name City and all Indemnified Persons as additional insureds on such insurance policy. Los Caporales shall, prior to signing this Lease, provide City with complete certified copies of all required policies, including endorsements evidencing the coverage and shall be subject to the satisfaction of the City Attorney. Los Caporales insurance shall be a primary policy and not contributory to or in excess of any policy of City. Said insurance policy shall provide that it shall not be cancelled or

reduced in amount of coverage until thirty (30) days' written notice of cancellation or reduction in coverage has been mailed to City.

(B) Los Caporales shall furnish City with an insurance endorsement prior to the exercise of any of the rights and privileges granted by this Lease and each subsequent year of this Lease. Upon request of City, Los Caporales shall provide City with a copy of its insurance policy evidencing the issuance of the foregoing policy.

(C) If Los Caporales employs any individual on the premises or contracts for services to be rendered by a contractor's employee on the Leased Premises, any such employee on the Leased Premises shall be covered by applicable workers' compensation insurance as required by law. Los Caporales shall submit proof of current, effective workers' compensation insurance to City both annually and upon request by City.

11. ENTRY AND INSPECTION.

City shall have the right to enter and inspect the Leased Premises from time to time upon reasonable notice to Los Caporales. Except in cases of emergency or when Los Caporales has abandoned or surrendered the Leased Premises, or when it is impractical to do so, 24-hour notice shall be deemed reasonable notice.

12. SURRENDER.

Los Caporales shall, at the expiration or on sooner termination of this Lease, surrender the Leased Premises, remove all improvements and property within 60 days as provided in Paragraph 3 hereinabove, and give peaceable possession of the Leased Premises to the City, in satisfactory condition as determined by the P&R Director.

13. TAXES AND ASSESSMENTS.

Los Caporales shall pay personal property taxes, real property taxes and all other taxes, fees and assessments attributable to or resulting from Los Caporales' operations under this Lease. In accordance with Revenue and Taxation Code section 107.6, Los Caporales is advised that, to the extent this Lease creates a possessory interest subject to property taxation, Los Caporales will be subject to the payment of such property taxes.

14. TERMINATION.

(A) Either Party may terminate this Lease upon sixty (60) days written notice.

(B) City may also terminate this Lease prior to its expiration upon the happening of one or more of the following events, and the occurrence of any such event shall constitute an event of default:

- (i) Los Caporales remains in arrears in any payment of rent required by Paragraph 3 for a period of at least five (5) days following receipt of written notice of such arrearage from City;

- (ii) Los Caporales fails or refuses to:
 - (1) Pay any fees required to be paid by it within fifteen (15) days following receipt of written notice of such arrearage from City;
 - (2) Obtain or maintain the insurance required by this Lease;
 - (3) Maintain the Leased Premises as set forth in this Lease;
- (iii) Los Caporales files a voluntary petition in any proceedings in Bankruptcy Court;
- (iv) Abandonment of the Leased Premises by Los Caporales.
- (v) Except as otherwise provided, default by Los Caporales in the performance of any promise, term, condition, duty or covenant required of it hereunder, provided Los Caporales fails to cure such default within thirty (30) days following receipt of written notice of such default from City.

Early termination by City pursuant to this subparagraph (B) shall be upon not less than fifteen (15) days advance written notice to Los Caporales. This notice shall state both the basis of such termination and the effective date thereof. Thereafter, City, upon the effective date of such termination, may take possession of the Leased Premises, without further notice or demand to Los Caporales unless Los Caporales has cured the default by the effective date of the termination.

Failure to serve notice of termination upon the happening of any of the events described in this subparagraph (B) shall not operate to bar or otherwise cause the waiver of City's right to thereafter declare such termination upon the subsequent happening of any such event.

15. ASSIGNMENT AND SUBLETTING.

Los Caporales shall not assign or transfer any of its rights or duties under this Lease or sublease the Leased Premises without the prior written consent of City.

16. NONWAIVER OF RIGHTS.

No waiver of default by either Party hereto of any of the terms, promises, covenants or conditions hereof to be performed, kept and observed by the other Party shall be construed as, or shall operate as, a waiver of any subsequent default by such Party.

17. FORCE MAJEURE.

Neither City nor Los Caporales shall be deemed to be in breach of this Lease if either is prevented from performing any of its obligations hereunder by reason of strike, boycott, labor dispute, embargo, shortage of energy or material, act of God, act of a public enemy, act of a

superior governmental authority, weather conditions, rebellion, riot, sabotage or any other circumstance for which it is not responsible, or which is not within its control.

18. NOTICES.

All notices shall be in writing, and delivered in person or transmitted by mail, postage prepaid.

Notices required to be given to City shall be addressed as follows:

Director
Parks & Recreation Department
1100 Main Street, Suite 260
Woodland, CA 95695

Notices required to be given to Los Caporales shall be addressed as follows:

President
Los Caporales de Woodland
17722 County Road 96
Woodland, CA 95695

19. SEVERABILITY.

Should any provision of this Lease be deemed unlawful, that provision shall be severed, and the remaining terms shall continue to be valid and fully enforceable.

20. AMENDMENT.

This Lease may be amended by further agreement of the Parties. Mutually agreed changes shall be incorporated in written amendments to this Lease.

21. COMPLETE AGREEMENT.

This Lease supersedes any and all agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each Party to this Lease acknowledges that no representation by any Party which is not embodied herein or any other agreement, statement or promise not contained in this Lease shall be valid and binding.

22. AUTHORITY TO EXECUTE.

Each signatory to this Lease warrants that he or she is authorized to enter into this Lease on behalf of his or her principal.

23. INTERPRETATION.

The Parties hereto acknowledge and agree that each has been given the opportunity to independently review this Lease with legal counsel, and/or has the requisite experience and

sophistication to understand, interpret and agree to the particular language of the provisions of the Lease.

In the event of a controversy or dispute between the Parties concerning the provisions herein, this Lease shall be interpreted according to the provisions herein and no presumption shall arise concerning the draftsmanship of such provision.

24. APPLICABLE LAW.

The Parties hereto understand and agree that the terms of this Lease have been negotiated and executed within the State of California and shall be governed by and construed under the laws of the State of California.

In the event of a dispute concerning the terms of this Agreement, the Parties hereto expressly agree that the venue for any legal action shall be with the appropriate court in the County of Yolo, State of California.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement effective on the day and year first written above.

CITY OF WOODLAND

LOS CAPORALES DE WOODLAND

By: _____
Richard Kirkwood, City Manager

By: _____
Abdon Loza, President

Date Signed: _____

Date Signed: _____