

**DATE:** November 16, 2012  
**MEETING OF:** November 27, 2012  
**FROM:** Staff  
**RE:** **ACTION ITEMS X.5 – AHP Long Term Lease**

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**BACKGROUND**

The Agricultural History Project has a 25-year lease with the 14<sup>th</sup> DAA for 3.82 acres of the Santa Cruz County Fairgrounds that terminates in 2015. A long-term lease is necessary for AHP to secure future financial support.

The Board must approve the lease draft in order for AHP to request approval from, Department of Food and Agriculture and DGS for a long-term lease.

**FISCAL IMPACT**

Monthly rental income of \$350, annually adjusted to reflect any increase in Cost of Living Index. AHP will pay all costs incurred with DGS.

**STAFF RECOMMENDATION**

That the Board approves a motion to accept the Agricultural History Project Long Term Lease Draft and send to DGS for approval.

**ATTACHMENTS**

- Agricultural History Project Long Tem Lease Agreement Draft.

## Overview of Agricultural History Project Lease Agreement

The Agricultural History Project (AHP) is a 501(c)(3) charitable organization whose mission is to preserve and promote the history of agriculture on the Central Coast. AHP leases 3.82 acres on the Fairgrounds (approximately 1.98 is at the entrance to the Fairgrounds and 1.84 acres on the right hand side of the exit road from the Fairgrounds) to operate an agricultural museum and living history farm on the premises.

AHP has financed and constructed 4 buildings, valued at approximately \$3,000,000, which houses agricultural artifacts and exhibits and items used as teaching tools for school groups and the general public. DAA owns the ground and buildings. AHP owns the contents. DAA is not expected to rebuild in case of destruction of the buildings.

AHP has a 25-year lease with the 14<sup>th</sup> District Agricultural Association (DAA) for 3.82 acres of the Santa Cruz County Fairgrounds that terminates in 2015 and wishes to sign a 99-year lease. A long-term lease is necessary for AHP to secure future financial support for any additional buildings and facilities.

AHP is asking for right to use the 3.82 acres, the main entrance roadway, the parking areas and bathroom facilities located on DAA's fairgrounds. AHP will pay a prorated cost to DAA of repairing, replacing and maintaining those portions of the fairgrounds.

AHP will pay \$350 per month lease payment for the first year, annually adjusted to reflect any increase in Cost of Living Index. The rent increase will be determined by multiplying a factor equal to the increase in the index (if any) during the preceding term by the rent payable during that same term. Rental increases will not be more than 3%/year.

## AGRICULTURAL HISTORY PROJECT LEASE AGREEMENT

This Agricultural History Project Lease Agreement (hereinafter "Lease" or "Agreement") is made and entered into on \_\_\_\_\_, 2012, by and between the 14<sup>th</sup> District Agricultural Association, a state institution, ("DAA") and the Agricultural History Project, a California nonprofit public benefit corporation, ("AHP") (collectively referred to as "Parties").

### RECITALS:

**WHEREAS** in 1990, the DAA and AHP entered into a long term lease agreement that allowed for the construction of buildings and other museum facilities on approximately 1.98 acres of DAA property with a subsequent addition of approximately 1.84, for the purpose of preserving the agricultural history of the California central coast and enhancing educational programs by constructing acceptable facilities for public use to display historical artifacts, to develop a living history farm and to provide educational programs;

**WHEREAS** the AHP has undertaken the financing, construction and operation of four (4) buildings, valued at approximately \$3,000,000, that have added aesthetic beauty to the Fair Grounds and has been instrumental to AHP in accomplishing its mission;

**WHEREAS** the DAA recognizes the substantial contributions made by AHP in bringing the public to the Santa Cruz County Fair Grounds to view its agricultural artifacts, attend its educational programs and learn about the rich agricultural history of the California central coast;

**WHEREAS** the DAA recognizes that an integral part of the AHP mission is to provide educational opportunities to elementary school students of Santa Cruz County, allowing student groups to visit AHP and learn how food is grown and harvested. More than 500 students attend this program each school year. This educational opportunity has been extended to the entire community through the program "Day on the Farm", which continues to grow in popularity.

**WHEREAS** the DAA recognizes the commitment AHP has made during the annual "County Fair" with contributions of volunteers, exhibits and interactive programs to ensure the Fair's success;

**WHEREAS** the DAA recognizes that for AHP to secure ongoing financial support, AHP requires a long term commitment from DAA in AHP's use and operation of the buildings and facilities it has constructed on the leased premises;

**WHEREAS** the DAA, understanding the substantial commitment AHP has made to the Santa Cruz County Fair Grounds and AHP's commitment to agriculturally based educational programs, and recognizing the importance of AHP's continuing operations to the success of the Fair Grounds, it is in the best interests of DAA for AHP to secure a long term lease agreement;

NOW, THEREFORE, the Parties hereto, incorporating the above recitals as part of their Agreement and in consideration of the mutual covenants, terms and conditions contained herein, do hereby agree as follows:

## **ARTICLE 1 – LEASE OF PREMISES:**

### **1.01 GRANT OF LEASE**

- a. DAA hereby leases to AHP and APH hereby leases from DAA that certain property consisting of approximately three (3) acres of land as shown in the highlighted areas noted as Parcels 1 & 3 of Exhibit A, attached hereto and incorporated herein (“Premises” or “Leased Premises”).
- b. DAA agrees that AHP shall have the right to use the main entrance roadway, the parking areas and bathroom facilities located on DAA’s fairgrounds. For use of these DAA facilities, AHP shall pay DAA the prorated cost (based on AHP’s prorate use and limited to the facilities current conditions) of repairing, replacing and maintaining those portions of DAA’s fairgrounds.
- c. This Lease is subject to the covenants, terms and conditions as herein set forth. AHP agrees that it shall obtain all necessary licenses, permits and approvals from all applicable governmental entities for the operation on the Leased Premises.
- d. On termination of this Lease for any reason, DAA acknowledges that AHP is the owner of certain fixtures, personalty, equipment and agricultural artifacts and AHP shall be allowed to remove all of these items from the Leased Premises.

### **1.02 SUBLEASE AND ASSIGNMENT**

AHP shall not rent or sublease the Premises or any portion thereof or assign this Agreement without DAA’s prior written consent, which consent shall not be unreasonably withheld.

## **ARTICLE 2 – TERM OF LEASE**

### **2.01 TERM**

The term of this Lease shall be for ninety nine (99) years commencing upon the approval of this lease by the Department of General Services on \_\_\_\_\_, 2012 and ending 99 years later, unless sooner terminated pursuant to the provisions in this Lease.

## **2.02 HOLDING OVER**

In the event AHP holds over and continues in possession of the Premises after the expiration of any term of this Lease, then AHP's continued occupancy of the Premises shall be considered on a 6-month to 6-month basis subject to all the terms and conditions of this Lease.

## **ARTICLE 3 - RENT**

### **3.01 RENT**

The Parties agree and acknowledge that this Lease is a gross rent lease, except as expressly set forth herein, AHP shall pay monthly to DAA as rent for the Premises the sum of \$350 per month on or before the first day of each and every calendar month beginning on the date of approval of this Lease by the California State Department of General Services. Thereafter, there shall be an annual increase in the amount of the rent as described below in Section 3.02 commencing on the first anniversary of this Lease and continuing every year thereafter.

Rental payments shall be mailed to the DAA office at the Santa Cruz County Fair Grounds or to such other person or such other place as DAA may from time to time designate to AHP in writing.

### **3.02 ADJUSTMENTS TO FIXED RENT**

The rent payable under this Lease for each successive period of the lease term shall be adjusted to reflect any increase (but not a decrease) in the Cost of Living Index. The increase shall be calculated on the basis of the Consumer Price Index for all urban consumers published by the United States Department of Labor for the San Francisco-Oakland-San Jose region (1993-1995 = 100). The rent increase shall be determined by multiplying a factor equal to the increase in the index (if any) during the preceding term by the rent payable during that same term.

If at the rental adjustment date, the index specified shall not exist in the same form as existing on the date of this Lease, the parties shall substitute any official index published by the Bureau of Labor Statistics, or other agency as may be comparable thereto, in order to carry out the intent of this provision.

Notwithstanding the forgoing provisions, in no event shall the Cost of Living adjustment for any one year hereunder result in an increase of more than three percent (3%).

### **3.03 LATE CHARGES**

All rents shall be paid to DAA without deduction or offset and shall be subject to an additional late payment charge equal to ten percent (10%) of the base rental rate then existing for

payments not made within ten (10) days following the date such payments are otherwise due under Section 3.01.

#### **ARTICLE 4 – USE OF THE PREMISES**

##### **4.01 PERMITTED USE**

During the term of this Lease, AHP agrees to operate an agricultural museum and living history farm (“Project”) on the premises. The Project shall consist of the museum facility, a living history farm and related educational programs and activities, as conceptually described in Exhibit B attached hereto. The parties anticipate that the concept of the project will be modified from time to time to reflect changes in community preferences and available resources. In addition, AHP can use the Premises to conduct fundraising events intended to provide funds for the exclusive use of AHP and/or DAA. AHP shall obtain DAA’s prior written approval for the date and time of all fundraising events. AHP shall not commit any waste or conduct any nuisance on the Premises. AHP shall comply with all applicable laws and all reasonable written regulations established, from time to time, by DAA, including the “Rules and Regulations Governing Rental Space” attached hereto as Exhibit C.

##### **4.02 DAA’S USE OF THE PREMISES**

AHP agrees that DAA may use the portion of the Premises described in Exhibit D, attached hereto and incorporated herein, for pedestrian and vehicular ingress and egress during the period beginning one week before the scheduled opening and ending one week after the close of each annual Santa Cruz County Fair.

##### **4.03 COMPLIANCE WITH THE LAWS**

AHP shall, at AHP’s own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, both federal, state, county and municipal (including those required capital improvements to the Premises) relating to AHP’s use and the occupancy of the Premises whether those statutes, ordinances, regulations and requirements are not enforced or are subsequently enacted. The judgment of any court of competent jurisdiction, or the admission by AHP in a proceeding brought against AHP by any governmental agency, that AHP has violated any such statute, ordinance, regulation or requirement shall be conclusive as between AHP and DAA and shall constitute grounds for termination of this Lease by DAA.

#### **ARTICLE 5 – CONSTRUCTION, ALTERATIONS AND REPAIRS**

5.01 AHP shall maintain the buildings and other facilities located on the Leased Premises in a reasonable manner and will not undertake any substantial work (valued in excess of \$10,000) on the Leased Premises without first obtaining DAA’s prior written consent to the subject work. All construction work shall be performed in accordance with plans and specifications approved by DAA and whatever applicable state agency authority is required. AHP shall comply with all directives promulgated by any state agency regarding construction work. Construction work on the Premises and other improvements under this Lease may be “public projects” requiring the

payment of prevailing wages under Labor Code Section 1720 *et seq.* AHP shall comply with all laws relating to the payment of prevailing wages

### ARTICLE 6 – OPERATIONS AND MAINTENANCE

6.01 OPERATION AND MAINTENANCE: AHP shall operate the project in a reasonable manner and shall maintain the Premises, including all landscaping, in a neat and clean condition. AHP shall, at its cost, provide all personnel, goods and services required for such operation. AHP shall keep the Project open to the public without charge during the Santa Cruz County Fair for the same hours as the fair is open to the public. AHP shall provide security for the Premises and its use of other portions of the Fair Grounds. AHP shall pay all costs associated with its use of the Premises, including the costs of utilities provided to the Premises.

### ARTICLE 7 – INDEMNITY AND INSURANCE

7.1 LIENS: With respect to all AHP maintenance, repairs and alterations, AHP shall keep the Premises free and clear from any and all liens, claims, demands for work performed, materials furnished, or operations conducted on the Premises at the insistence or request of DAA. AHP shall give DAA five (5) days written notice prior to commencing any construction on the Premises in excess of \$10,000 or prior to hiring any mechanic, contractor to perform work upon or deliver materials to the Premises in excess of \$500 for any job. DAA may, at DAA's option, pay and discharge any such lien which AHP may cause to accrue against the Premises and all such amounts shall be reimbursed to DAA as herein provided.

7.02 INDEMNITY: AHP shall indemnify, defend, and hold DAA and the State of California and their officers, agents, employees, contractors, guests and invitees harmless from any and all claims, liabilities, losses, damages, expenses and causes of action ("Losses") arising out of or in connection with any negligent or willful misconduct by AHP, its officers, directors or volunteers; provided that AHP shall not be obligated to indemnify, defend or hold a person or entity harmless for Losses resulting from that person's or entity's own negligence or willful misconduct.

7.03 LIABILITY INSURANCE: During the term of this Agreement, AHP shall maintain the insurance described in Exhibit E attached hereto and incorporated herein.

### ARTICLE 8 – DESTRUCTION OF PREMISES

8.01 OBLIGATIONS TO REPAIR OR REBUILD: If at any time during the term of this Lease, the Premises (including any improvements thereto) are damaged or destroyed, DAA shall have no obligations to repair, restore or rebuild the Premises, or the building or improvements situated on the Premises and shall have the option of terminating this Lease unless AHP, within one hundred and eighty days (180) from the date of the loss gives notice of its intention to repair, restore or rebuild the damaged Premises.

## ARTICLE 9 – DISPUTE RESOLUTION

### 9.01 MEDIATION

The parties agree that if any controversy, dispute or claim arising out of this Lease, or its breach, termination, interpretation or validity cannot be promptly settled by direct communications these disputes shall first be submitted for resolution by mediation by a mediator to be agreed upon by all parties. If the parties cannot agree on a mediator, either party may petition the appropriate court for selection of a mediator pursuant to California Code of Civil Procedure (CCP) Section 1775.6. Each party shall share equally in the costs of the mediator. A party's request or petition for mediation must be in writing and must be submitted to the other party within one hundred and eighty days (180) following the event giving rise to the dispute. The mediation shall take place in Santa Cruz County, California, before a single mediator, with specific location to be agreed upon by all parties.

### 9.02 BINDING, NON APPEALABLE ARBITRATION

If the best efforts of all parties to mediate the disputes do not result in a settlement of their differences, then any remaining claim, dispute or controversy shall be determined by **binding, non-appealable arbitration** pursuant to CCP Section 1280 *et seq.* The arbitration shall take place in Santa Cruz County, California before a single arbitrator agreed upon by all parties or, if no agreement, as selected by the court as provided in CCP Section 1281.6. In the event of arbitration, the decision of the arbitrator shall be binding and conclusive on all parties and **each party waives their right to appeal** except as allowed in CCP Section 1285 *et seq.*

This Agreement is intended to bind and benefit all successors in interest to the parties. Judgment on any award may be entered in any court having jurisdiction. **Any right to a jury trial is intentionally waived.** The costs of arbitration shall be in accordance with CCP Section 1284.2. Any demand for arbitration must be made within ninety (90) days **after a failed mediation.**

Notwithstanding anything herein to the contrary, nothing in this Section will preclude any party from seeking interim or provisional relief, in the form of a temporary restraining order, preliminary injunction, or other interim equitable relief concerning the dispute, either prior to or during the proceeding, if necessary to protect the interest of such party.

## ARTICLE 10 – MISCELLANEOUS

10.01 **NOTICES:** All notices shall be deemed given when made in writing and deposited in the United States mail, certified, postage prepaid and addressed to such party at its address follows:

To AHP:                      Agricultural History Project  
P.O. Box 1181  
Watsonville, CA 95077



To DAA: Santa Cruz County Fair  
14<sup>th</sup> District Agricultural Association  
2601 East Lake Avenue  
Watsonville, CA 95076

Either party may change its address for the receipt of notices by giving written notice of such change to the other party. Either party may give personal notice to the other party.

10.02 **ESSENCE OF TIME:** Time is of the essence for every provision, covenant, and condition of this Agreement.

10.03 **ENTIRE AGREEMENT:** This Agreement contains all the agreements of the parties hereto and supersedes all prior negotiations and agreements related to the Premises. There have been no representations by DAA or understandings made between DAA and AHP other than those set forth in this Agreement.

10.04 **AMENDMENTS:** This Agreement may only be modified or amended by a written instrument duly executed by the parties hereto.

10.05 **PARTIAL INVALIDITY:** If any provision of this agreement is held by a court or arbitrator to be either invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect unimpaired by the holding.

10.06 **SIGNATURES:** Each party may sign this Agreement by facsimile, electronic signature or email and each affirms and warrants that such signatures are valid and enforceable as original signatures. It is acknowledged that this Agreement can be executed in counterparts or duplicate copies, which when taken together, shall be equivalent to a signed original for all purposes.

14<sup>th</sup> District Agricultural Association,

The Agricultural History Project,  
A California nonprofit corporation and  
a 501(c)(7) corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Chief Executive Officer

\_\_\_\_\_  
\_\_\_\_\_

