

RESOLUTION NO. 2009- 9 R

A resolution authorizing the City Manager to execute an Amended Lease Agreement between the City of Victoria and the Victoria Horseman's Club of Victoria, Texas for approximately 4 acres of property bordering Memorial and Red River Streets for the Operation of a Rodeo Arena Sports Complex; and declaring an effective date.

IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF VICTORIA, TEXAS:

1.

The City Manager is authorized to execute an Amended Lease Agreement between the City of Victoria and the Victoria Horseman's Club, attached hereto as **Exhibit "A"** and incorporated herein, with exhibits and minor changes as are approved by the City Attorney.

2.

This resolution shall become effective immediately upon adoption.

PASSED, this the 20th day of January, 2009.

AYES: **6**

NAYS: **0**

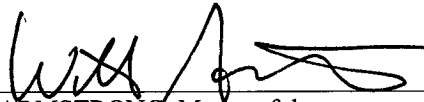
ABSTENTIONS: **0**

APPROVED AND ADOPTED, this the 20th day of January, 2009.



ATTEST:


SCARLET SWOBODA, City Secretary


WILL ARMSTRONG, Mayor of the
City of Victoria, Texas

APPROVED AS TO LEGAL FORM:


MILES K. RISLEY, City Attorney

Distribution: Legal Department
Parks Department

Copies Sent: JANUARY 21, 2009

Amended Lease Agreement

The City of Victoria, Texas, a Texas municipal corporation, hereinafter referred to as "City," and Victoria Horseman's Club of Victoria, Texas, an unincorporated association in the City of Victoria, Victoria County, Texas, hereinafter referred to as "Lessee" agree as follows:

1. Leased Property. The City hereby leases and demises unto the Lessee the surface of and improvements upon the tract of land in Victoria County, Texas, (hereinafter referred to as the "leased premises" or "facility") described as "Victoria Horsemen's Club" on **Exhibit "A"**, which is attached hereto and incorporated herein.

2. Improvements. Lessee shall not modify, improve, construct, or allow to be constructed any improvement or structure on the leased premises unless the plans have first been approved by the City's Director of Parks and Recreation (hereinafter referred to as the "Director"). All facilities that are attached to the Premises shall become fixtures to the property and may not be removed at the end of the lease. The following items may be removed at the termination of the lease: chutes, announcers stand, livestock pens, light poles and lights

At the termination of the lease, the City will continue to be the sole owner of all fixtures on the leased premises. Prior to constructing any improvements, Lessee shall apply for all permits required by federal, state, or local regulation, ordinance or other law, and shall comply with the requirements of any federal, state, or local regulation, ordinance or other law.

Within one year of executing this agreement, Lessee shall:

- Repaint all facilities on the Leased Premises
- Provide to the Director a Strategic Plan specifying estimated cost, timeframe, and funding for facility improvements, which will include but not be limited to:
 1. Restroom improvements to address ADA issues

Within two years after executing this Amended Lease Agreement, Lessee shall replace/repair the perimeter fence on west side (front of facility that parallels Memorial Drive) with a minimum 6-foot high, 9 gauge fence.

Lessee shall provide the City of Victoria's Director of Parks and Recreation a site plan of the proposed improvements prior to securing a contractor to build the improvements. Victoria Horseman's Club will be responsible for securing the necessary permits to perform the work. Victoria Horseman's Club will provide the Director or his designee monthly updates on the progress of said work and allow the Director or his designee to inspect the progress of the work at all reasonable times. If additional work is needed that is outside the scope described herein, then Victoria Horseman's Club shall, in writing, provide the Director a list of proposed improvements with the anticipated cost.

3. Term. The term of this Amended Lease Agreement shall be for the period from January 1, 2009 to December 31, 2014 unless earlier terminated by City in accordance with the provisions herein.

4. Consideration. In consideration of this Lease Agreement, Lessee shall provide evidence of at least \$1,100 per year in improvements or maintenance of facility, in lieu of rent. For purposes of this contract, improvements or maintenance shall mean painting, roof repair, fence repair, or tangible improvements that may be seen from the perimeter of the facility. It shall not include the disposal of waste material, dirt replacement to arena, interior road repair, or payment of utilities. Lessee shall also construct the required improvements in the time-schedule required by this lease, maintain the leased premises in accordance with the provisions of this lease, and comply with the other terms of this lease. Failure to construct the required improvements in the year required shall constitute a breach of this lease and create an obligation in Lessee to construct the aforementioned improvements in the year following the year for which construction was originally required.

5. Use of Premises. Lessee shall have use of the surface of the leased premises for:

1. The operation of a rodeo arena,
2. The conduct of horse training, riding, and rodeo events, and
3. Educational seminars

No business operation may be conducted on the leased premises, including, but not by way of limitation, the operation of rides, exhibits or games for which an admission or viewing fee is charged. The Lessee shall use the leased premises in compliance with all City, state, and federal Laws. Lessee shall be responsible for proper disposal of animal waste at an approved site. Animal excrement shall be removed from lease area on a bi-monthly basis. Lessee shall be responsible for adhering to all state and federal guidelines and the compliance thereof. Should guidelines change during the course of this agreement Lessee shall be responsible for bringing leased area into compliance solely at Lessee's expense.

Lessee will not construct any type of permanent stalls for the permanent placement of horses or other animals on the leased premises. Lessee may install temporary stalls for a period of up to 4 days for the storage of livestock needed to conduct, education seminars, rodeos, animal exhibitions or as listed in Section 5. Use of Premises. The Parks and Recreation Director shall be notified when the temporary stalls will be installed and the date of removal.

6. Memberships. Lessee may offer memberships, which shall be made available to the public regardless of race, religion, gender, national origin, age or handicap. Memberships may entitle persons to special benefits in use of the leased premises such as participation in training programs and rodeo events. All proceeds from membership fees shall be used by Lessee for maintenance, operation, and improvement of the leased premises. Lessee will be allowed to fund a scholarship program with membership fees. Lessee shall provide City with guidelines of scholarship program.

7. Condition of Premises.

a. Lessee accepts the leased premises and all improvements thereto in their present condition, subject to all known, unknown, visible, and hidden hazards, throughout the term of this lease.

b. Lessee shall maintain and be responsible for the leased premises at Lessee's sole expense. Lessee shall maintain the leased premises in a condition equal or better to the condition of the premises on the date of execution hereof. Lessee shall maintain the grounds of the Leased Premises in a manner acceptable to the Director of the City's Department of Parks & Recreation or designee, hereinafter referred to as the "Director." Failure to maintain the leased premises in accordance herewith shall be considered a breach of this agreement. Lessee shall maintain an area of ten (10) feet around the outside fenced boundary of the leased area on the east, south, west and north sides.

c. Lessee shall be solely responsible for the provision of electricity, water, sewer and any other utilities to the leased premises.

d. Lessee may construct improvements upon the leased premises only with the express written permission of the Director. All improvements, except as noted in Section 2, to the leased premises shall become the property of the City of Victoria when constructed and shall remain on the leased premises upon termination of this lease unless otherwise expressly agreed in writing by the Director.

e. Upon termination of this lease, Lessee shall return the leased premises to the City in the same condition as they were in at the beginning of this lease, with the exception of improvements constructed thereon and reasonable wear and tear.

f. Lessee shall not remove soil, gravel, sand, or mineral deposits from the leased premises.

g. Lessee shall not destroy or remove trees or shrubs on the leased premises without the consent of the City.

h. Lessee shall not use water from fire hydrants without the approval of the Director of Utilities or designee.

8. Inspection, Auditing, Use of Revenue, and Fees:

a. Any authorized agent of the City may inspect, at any time, the leased premises or any part thereof.

b. Prior to charging any fee to a third party for the use of the Leased Premises, Lessee shall obtain the approval of the Director. Lessee shall submit a letter of intent to establish new fees to the Director at least 30 days before said fees are adopted. The letter of intent shall indicate the following as a minimum:

1. current fee structure (even if fee is not changing)
2. new fee structure
3. purpose of new fee

c. The Director may audit Lessee at any time. If the Director so requests, Lessee shall provide to the Director all of the books and records of Lessee, which shall include the following information or any requested part thereof within 14 days of such audit request:

1. Lessee's balance sheet for a time within 30 days of the date of audit;
2. Lessee's income statement for at least one year preceding the date of the audit;
3. Lessee's bank statements for any given year of operations;
4. Copies of the lessee's federal income tax returns.

5. Copies of sales tax reports.
6. Lessee's current cash flow statement.

On November 1st of each year, Lessee shall provide the City the following:

1. Lessee's current annual statement of revenues and expenditures;
2. Lessee's current operating and admission policies;
3. An annual statement of revenues and expenditures for the concession stand, and
4. A current list of Lessee's members, officers, directors, and employees.

d. Lessee shall use all of its revenue for maintenance, operations, and improvements on the leased premises.

e. Lessee shall ensure that the members of its governing body are chosen by its membership in elections that are announced at least 10 days in advance to all of its members. Lessee shall submit names and addresses of all members of Lessee's governing body to the Director and inform the Director within 30 days of any changes in the membership of Lessee's governing body. Lessee shall inform the Director of the time and place of all meeting of Lessee's governing body at least 3 days prior to any meeting and the Director shall be permitted to attend such meetings. Further, Lessee will permit the Director to call meetings of Lessee's governing body. In any event, the Director shall not be a member of the Lessee's governing body and shall have no responsibility for any actions taken thereby.

9. Indemnity Agreement. Lessee shall defend, indemnify and hold harmless the City and all its officers, agents, and employees from all suits, actions, or claims of any character, name and description, including attorneys' fees expenses incurred in defending same, arising from any injuries to persons or damages to property occurring in connection to, arising from, or in relation to this agreement or Lessee's use of the leased premises. Lessee expressly agrees to defend, indemnify and hold harmless the City, its officers, agents, and employees in accordance with this clause regardless of whether the injury or damage is caused in whole or in part by the acts or omissions, including negligence, of the City, its officers, agents or employees or any condition of the leased premises.

10. Insurance. Lessee shall maintain in full force and effect during the term of this lease a public liability insurance policy issued by a company authorized to issue insurance in the State of Texas, naming the City as an additional insured, providing coverage in amounts of at least \$500,000 for injuries or death to all persons in a single occurrence, \$250,000 per person for injury or death, and \$100,000 for property damage in each occurrence. Lessee shall provide to, at least annually, and maintain with the City Secretary a certificate of insurance evidencing compliance with these terms. This certificate shall provide that coverage under the policy shall not be canceled or materially changed unless at least 30 days written notice in advance of such cancellation or change is given to the City Secretary. Lessee understands that neither the City nor any other government agency will insure or replace any property damaged by any event on the leased premises, and the leased premises will NOT be eligible for Federal Emergency Management Agency (FEMA) assistance in the event of a disaster.

11. Advertising. Lessee may paint any improvements or erect signs only in accordance with plans and specifications approved by the Director. The Director may issue such permission in his sole discretion after reviewing any plans and specifications offered by Lessee.

12. Subletting and Assignment. Lessee may not sublease or assign the leased premises without the express written permission of the Director. Lessee shall be allowed to rent the arena to a third party for events and special occasions without written permission from the Director.

13. Hours and Special Events. Lessee shall maintain regular hours of operation and shall notify the Director of these hours. Lessee shall provide the Director with information about special events as they occur.

14. Termination. The City may terminate this lease agreement either with cause by giving written notice to the other party at least 30 days in advance of the termination date, or in advance of an annual renewal date described in Paragraph 3 of this agreement.

15. Breach; Notice; Termination by City. In the event of a breach by the Lessee of any of its obligations under this lease, the City may notify the Lessee of such breach in writing by registered or certified mail addressed to the Lessee at P.O. Box 1442, Victoria, Texas 77902. If the Lessee fails to correct the breach within 30 days of the date of such notice, the City may, without further notice declare this lease terminated, and enter upon and take possession of the leased premises.

16. Conflict of Interest. No member of the City Council, the Board of Directors of the Lessee, nor any member of any other City board or any appointive officer or employee of the City shall ever be pecuniarily interested, directly or indirectly, in this Agreement except on behalf of the City or the Lessee as an officer or employee. Any violation of the Section with the knowledge, express or implied, of the person involved shall render this Agreement voidable by the City Manager or City Council.

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EXECUTED, in duplicate original copies, this the _____ day of _____, **2009**

Victoria Horseman's Club of Victoria, Texas City of Victoria

Signature: *[Handwritten Signature]*
Name & Title: Charles E. Windwachen, City Manager

(cont)

ATTEST:

ATTEST:

Signature: _____
Name: _____, Secretary

Scarlet Swoboda, City Secretary

APPROVED AS TO LEGAL FORM

MILES K. RISLEY, CITY ATTORNEY

EXHIBIT "A"

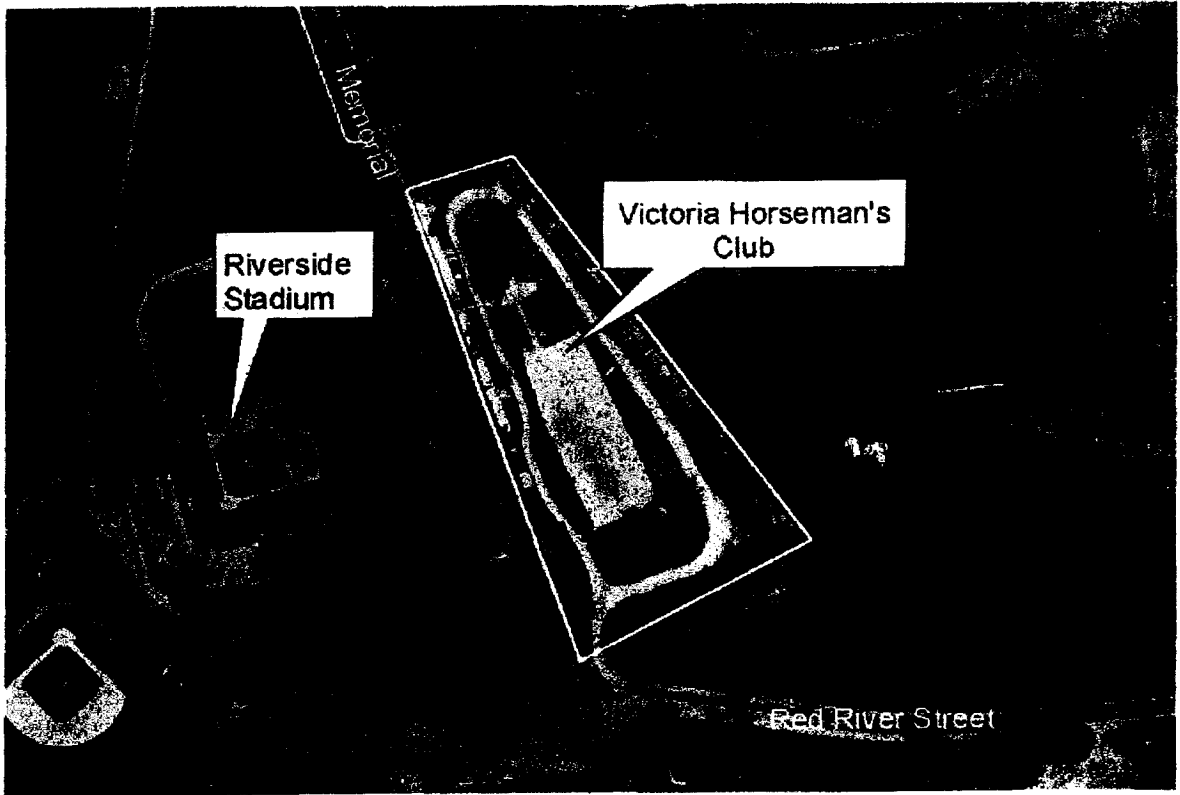


EXHIBIT "A"