



Item: Westside Community Center Lease
From: Park and Recreation Department
Initiated By: Boys & Girls Club of Cascade County
Presented By: Marty Basta, Park and Recreation Director
Action Requested: Conduct Public Hearing and Approve Lease

Public Hearing:

1. Mayor conducts public hearing, calling three times each for proponents and opponents.
2. Mayor closes public hearing and asks the will of the Commission.

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission (approve/deny) the Westside Community Center Lease Agreement.” (Approval requires a 4/5 majority.)

2. Mayor calls for a second, discussion, and calls for the vote.
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Staff Recommendation: Staff recommends that the City Commission conduct a public hearing and approve the Boys and Girls Club of Cascade County Lease Agreement for the Westside Community Center.

Background: The Westside Community Center is an 8,693 square foot masonry building located at the southwest corner of the intersection of Sixth Street Southwest and First Avenue Southwest. The legal description of the property is Lot 6 and 7, Block 575, Fifth Addition to Great Falls, Cascade County, Montana.

The proposed lease with the Boys and Girls Club of Cascade County is for five (5) years, March 1, 2013 through February 28, 2018. The rental is one dollar (\$1.00) for the term of the lease. The Boys and Girls Club of Cascade County is responsible for improvements, repairs and maintenance of the facility, with the exception of the boiler.

The Boys and Girls Club was granted a lease for the Westside Community Center in 1999 for the term of ten years beginning June 15, 1999 through June 14, 2010. In addition, the Boys and Girls Club was granted first option to purchase the property at a fair market value to be determined by an independent appraisal. The rental rate was established at Two Hundred Dollars (\$200) per month for the first two years of the agreement, with incremental increases thereafter. Beginning December of 2006, the City agreed to waive the rental fee.

As required by Title 3, Chapter 4, OCCGF, before final consideration of a lease of City property, the City Commission shall hold a public hearing. Bids were not solicited for this lease since City ordinance provides an exception "where the use is to continue for a public purpose and the same is subject to a revision to the City should use ever be changed to any other purpose". Approval of the lease will require a four-fifths (4/5) vote of all the members of the City Commission.

Concurrences: The Park and Recreation Advisory Board recommended approval of the lease at its December 2012 meeting.

Fiscal Impact: If the lease is not approved, the City will be responsible for repairs and maintenance of the building.

Alternatives: The alternative would be to deny the lease to the Boys and Girls Club of Cascade County and displace their youth program.

Attachments/Exhibits: Lease Agreement

LEASE AGREEMENT

This Agreement, made and entered into this _____ day of _____, 2013, by and between the CITY OF GREAT FALLS, a municipal corporation, P.O. Box 5021, Great Falls, Montana 59403-5021, hereinafter called "City" and BOYS AND GIRLS CLUB OF CASCADE COUNTY, P.O. Box 652, Great Falls, MT 59403, hereinafter called "Lessee."

WHEREAS, Lessee desires to enter into a lease of City property for the purpose of conducting activities and administration of a non-profit organization, and;

WHEREAS, the City deems it to be in the public interest to lease the property formerly known as the Westside Community Center under the conditions as hereinafter set forth, and;

WHEREAS, the parties do hereby covenant and agree as follows.

WITNESSETH:

The City, for and in consideration of the lease amounts to be paid and the agreement to be performed by Lessee, does hereby demise, lease, and let unto the Lessee the following described property in Great Falls, Cascade County, Montana, to-wit:

An 8,693 square foot masonry building located at the southwest corner of the intersection of Sixth Street Southwest and First Avenue Southwest. The legal description of the property is Lot 6 and 7, Block 575, Fifth Addition to Great Falls, Cascade County, Montana.

TERM OF LEASE

The term of the lease will be for five (5) years effective 1st day of March, 2013 and expiring the 28th day of February, 2018. Upon completion of the initial five (5) years of the agreement, the City, at its sole discretion, may terminate the lease or if requested by Lessee thirty (30) days prior to expiration, grant an additional five (5) year extension of this agreement. If the extension is granted, the City may, upon request by Lessee given thirty (30) days prior to completion of the extension, extend the term for an additional five years. If any extension is granted, the City reserves the right to negotiate any conditions and covenants of this agreement, including but not limited to the rental amount.

RENTAL

In consideration therefore, the Lessee agrees to pay to the City the sum of one dollar (\$1.00) for the term of the lease, commencing on the effective date of this agreement.

COVENANTS OF THE LESSEE

The Lessee hereby covenants and agrees that the Lessee will:

1. Use and occupy said premises in a careful and proper manner and not commit any waste therein;
2. Not use or occupy said premises for any unlawful purpose, and will conform to and obey all present and future laws, ordinances, and all rules and regulations of all governmental authorities or agencies, respecting the use and occupation of the premises;
3. Not assign the lease, nor sublet said premises, nor any part thereof, without the written consent of the City. The City shall require no more than thirty (30) days for such approval upon written request by the Lessee and shall not unreasonably withhold such approval;
4. Not use or occupy said premises, or permit the same to be used or occupied, for any purpose deemed extra hazardous on account of fire or otherwise;
5. To not make any alterations; changes or revamping, remodeling or capital improvements in or to the premises, without prior written permission signed by the Park & Recreation Director, and in addition thereto, shall obtain all permits required for such work under City ordinance. Approvals of any such improvements/changes must be granted or rejected by the City within thirty (30) days of written notice by the Lessee for such work, or the work may proceed the same as if such approval was received. Approval for such proposed work shall not be unreasonably withheld. Any such alterations or additions shall be the sole responsibility of the lessee inclusive of any and all financial, material, or labor considerations and will become the property of the City upon termination of this or any subsequent lease;
6. Permit the City to enter upon the said premises at all reasonable times to examine the condition of same;
7. Use City's sanitation services;
8. Pay for the use and maintenance of utility services on the premises, including but not limited to gas, electricity, sanitation, water and telephone;
9. Conduct ordinary day-to-day maintenance and repair necessary to keep both the interior and exterior of the premises in a good state of repair and acceptable condition. Maintain property in a functional condition, inspect facilities on a regular basis to determine any hazardous conditions which may exist, and take immediate action to correct such conditions if they exist;
10. Provide custodial services or contract with a professional custodial company to insure entire area is cleaned on a daily basis. If facilities are not cleaned to acceptable standards, the City may have the facilities cleaned and charge the Lessee the entire cost;
11. Be responsible for all repair and maintenance of the HVAC system; the Lessee will enter into a maintenance agreement with a qualified company to perform inspections and maintenance of the roof top units/HVAC system. The Lessee will continue to pursue funding to replace the existing boiler with a rooftop HVAC unit. The City agrees to regularly inspect the existing boiler to insure that it is functioning properly and further agrees to replace, with a comparable unit, if unit is inoperable;
12. Provide the City with hours of operation and inform the City of any changes to these hours;
13. Not display signs, or advertising materials of any kind, on the exterior of the building except with prior approval of the Park and Recreation Director;
14. Be responsible for all damage to property, public or private, that may be caused by this operation in the performance of this agreement; and
15. Leave premises at the expiration or prior to termination of this lease and any extension thereof in as good condition as received, reasonable wear and tear alone accepted.

MUTUAL COVENANTS:

It is mutually agreed by and between the City and Lessee that:

1. If the Lessee pays the rental as herein provided, and keeps, observes and performs all of the other covenants of this lease, the Lessee may, peaceably and quietly, have, hold and enjoy the said premises for the term aforesaid;
2. This lease and all the covenants and provisions herein contained shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that no assignment by, from, through or under the Lessee in violation of any of the provisions hereof shall vest in the assigns any right, title or interest whatsoever;

INSURANCE REQUIREMENTS

During the term of the Lease and its extensions the Lessee agrees to carry the following insurance coverage in the minimum amounts:

Commercial General Liability - \$1,000,000 per occurrence; \$2,000,000 annual aggregate
Damage to Rented Premises - \$300,000.

The policy must be issued by a company licensed to do business in the State of Montana and having at least an "A" rating in the current Best's Manual. All such policies will be written on an occurrence basis. The policy must include the City as a named insured and primary with no right of subrogation against the City. The Lessee shall furnish to the Park and Recreation Director on or before January 1 of each year the certificate of insurance including a copy of the Additional Insured Endorsement. Claims-made policies are not acceptable and do not constitute compliance with the Lessee's obligation under this paragraph.

The City and the Lessee hereby grant to each other, on behalf of any insurance company providing insurance under this agreement, a waiver of any right of subrogation which any insurer or party may acquire against the other party by virtue of payment of any loss under any insurance policy.

Should the Lessee fail to maintain this coverage or to provide such certificate(s) or make other arrangements as required by this Lease, this failure constitutes a breach of this Lease.

The City shall maintain fire and extended coverage insurance on the building and city-owned equipment but not on other contents of the building owned by the Lessee or others.

The Lessee will have to obtain its own policy of insurance as desired to protect its equipment and inventory.

INDEMNIFICATION

The Lessee agrees to defend, indemnify, and hold the City harmless against claims, demands, suits, damages, losses, and expenses connected therewith that may be asserted or claimed

against, recovered from or suffered by the City by reason of any injury or loss, including but not limited to, personal injury, including bodily injury or death, property damage, occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Lessee or Lessee's agents or employees.

NONDISCRIMINATION

Lessee agrees that in the use of this property Lessee will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

DEFAULT AND TERMINATION

If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party, at its option, may terminate this Agreement and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

NOTICE

Any notice required to be given under this lease shall be in writing and may be served on either of the parties by mailing same in a sealed, postpaid envelope addressed to the City at the Civic Center, Great Falls, Montana, and to the Lessee at address above stated, and by depositing such notice in any United States Post Office or letter receptacle, and which notice shall be deemed to have been made upon the date of mailing.

ENTIRE AGREEMENT

There are no conditions to the lease, either subsequent or precedent, except as set forth herein. This Lease constitutes the entire agreement between the parties and no representations or warranties have been made by the City to the Lessee save those contained herein.

APPLICABILITY

This Lease and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana.

CITY OF GREAT FALLS

Gregory T. Doyon, City Manager

ATTEST:

Lisa Kunz, City Clerk

(SEAL OF THE CITY)

APPROVED FOR LEGAL CONTENT:

David L. Nielsen, Interim City Attorney

LESSEE

By: _____
(signature)

(printed name)

Its: _____
Title or Office