



**Item:** Set Public Hearing for the Lease of the Visitor Center (15 Overlook Drive)  
**From:** Jennifer Reichelt, Deputy City Manager  
**Presented By:** Jennifer Reichelt, Deputy City Manager  
**Action Requested:** Set Public Hearing for July 1, 2014 for the Lease of the Visitor Center

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**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission set a public a hearing for July 1, 2014 to consider the lease of city-owned property, the Visitor Center (15 Overlook Drive), to the Convention and Visitors Bureau.”

2. Mayor calls for a second, discussion, public comment, and calls the vote.

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**Staff Recommendation:** That the City Commission set a public hearing for July 1, 2014 to consider the lease of the Visitor Center, city-owned property, located at 15 Overlook Drive, to the Convention and Visitors Bureau (CVB).

**Background:**

The Visitor Center was built by the City of Great Falls in 1993. Originally it was operated in partnership with the Great Falls Area Chamber of Commerce (Chamber). The Chamber proposed that if the City built a new Visitor Center, the Chamber would operate it. The City entered into an operating agreement/contract with the Great Falls Area Chamber of Commerce on December 21, 1993. For 11 years, the City and Chamber shared the costs of the Visitor Center.

The Chamber’s operating contract expired on September 1, 2004. After much discussion and when both parties couldn’t come to a resolution, in 2005 the City decided to begin operating the Visitor Center. The City has continued operating the Visitor Center since 2005 through the Park and Recreation Department.

The Visitor Center is manned primarily by volunteers. There are three part time employees who share two part-time positions (through job-sharing), but the bulk of the hours are covered by the Retired Senior Volunteer Program. In 2013, 13,540 guests were served from every state in the United States and over 25 foreign countries.

The annual budget of the Visitor Center is just over \$60,000. In the past the CVB has provided an annual contribution of between \$12,000-\$16,000 towards the operation of the Visitor Center (funded through bed taxes), the Visitor Center also sells made in Montana merchandise, trolley tickets and applies for tourism grants.

Recognizing the stress the General Fund would be under this next year, as well as the need to get departments back in line with core services it was determined as staff began developing the FY 2014-15 budget that the City would no longer fund/operate the Visitor Center.

However, recognizing the important role the Visitor Center plays in the community for both the tourism and hospitality industries as well as for our residents, visitors and businesses, City staff reached out to our tourism partners early on in the process to find out if any of them would be interested or willing to operate the Visitor Center.

The Convention and Visitors Bureau (CVB) and Tourism Business Improvement District (TBID) as well as Great Falls Development Authority (GFDA) stepped up during the process and committed to help operate the center. The CVB will be the lead agency involved in operating the Visitor Center, with both the TBID and GFDA assisting. Their partnership and willingness to help has been truly appreciated.

Staff and representatives from the CVB, TBID and GFDA have been working on a lease agreement for the Visitor Center – the goal has been to provide the CVB with a turnkey operation that is ready to go starting July 1, 2014. The City has agreed to provide them with all the furnishings, fixtures and equipment in the building as of today with the understanding that they cannot dispose of any piece of furniture/equipment without the City's permission. It is also the CVB's intent to hire a Visitor Center Manager to oversee the operations of the center.

The lease is for three years for one dollar per year; other highlights include:

- Lessee is responsible for all utilities, including electricity, water, gas, or other utilities servicing the property in a timely manner;
- Provide to the Lessor all proceeds of the sale of inventory which is currently in the building;
- Independently arrange with the Retired Senior Volunteer Program any continuation of assignment of volunteer workers in the Visitor Center building;
- Lessee shall, throughout the term of this Lease Agreement, and at its own cost and without any expense to Lessor, keep and maintain the leased premises, including the building and improvements; and
- Lessor agrees to provide maintenance, repair and snow removal of the parking lot, sidewalks, and remaining parkland surrounding the leased premises.

It is the CVB's intent at the end of this year's tourism season to provide a complete facelift to the Visitor Center to make it more inviting and modern.

After publically announcing that the City would no longer be running the Visitor Center, there was no interest other than from the CVB in operating the Visitor Center, and thus there was no actual potential for more than one party being interested in making a bid. The agreement terms

also require the use of the Visitor Center to continue for a public purpose and to revert back to the City if the use is changed to any other purpose.

**Concurrences:** Since March 2014 City staff has met regularly (March 7, April 25, May 16, and May 21) with representatives from the CVB, GFDA and TBID to discuss the lease of the Visitor Center. The CVB, GFDA and TBID also held a visioning session at the Visitor Center on June 5, and have had many discussions on the future of the Visitor Center at their respective organizational meetings throughout the community.

**Fiscal Impact:** The City will no longer budget for the operation of the Visitor Center which was approximately \$62,875.

**Alternatives:** The City Commission could choose not to set the public hearing and instead continue to operate the Visitor Center.

Before the City Commission can officially lease City property, a public hearing must be held, per City Code 3.04.030. In order to meet the 15 day notice required by code, official notice has been made in the *Great Falls Tribune*. However, if the Commission chooses to not set the public hearing, a public hearing cancellation notice will be published.

**Attachments/Exhibits:**

Visitor Center Lease Agreement

**VISITOR CENTER LEASE AGREEMENT**

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the CITY OF GREAT FALLS, a municipal corporation, P.O. Box 5021, Great Falls, Montana 59403-5021, hereinafter called "City" and GREAT FALLS CONVENTION AND VISITORS BUREAU, \_\_\_\_\_, hereinafter called "Lessee."

**WHEREAS**, Lessee desires to enter into a lease a portion of City property (hereafter Visitor Center) for the purpose of providing an information center for citizens and visitors to the City of Great Falls, a public purpose, and;

**WHEREAS**, the City deems it to be in the public interest and serving a public purpose to lease the Visitor 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 lease, and let unto the Lessee the building, contents and parking lot, (commonly identified herein as the Visitor Center), on property located at 15 Overlook Drive, Great Falls, Cascade County, Montana, Parcel Number 1896510. Other than the property identified herein to which this Agreement applies, the City shall retain the exclusive use of the remainder of the property identified above, without interference from Lessee.

**TERM OF LEASE**

The term of the lease will be for three (3) years effective \_\_\_\_\_ day of \_\_\_\_\_, 2014 and expiring the \_\_\_\_\_ day of \_\_\_\_\_, 2017. Upon completion of the initial term 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 three (3) year extension of this agreement. If any extension is granted the City reserves and Lessee reserve the right to negotiate any conditions and covenants of this agreement, including but not limited to the rental amount. The Lessee may, with not less than 120 days written notice, terminate this Lease Agreement for reasonable cause at any time.

Notwithstanding the above term of lease, this lease is terminated if the Lessee's use of the Visitor Center ceases to be for a public purpose, in such event, the use of the Visitor Center immediately reverts to the City of Great Falls.

**RENTAL**

In consideration therefore, the Lessee agrees to pay to the City the sum of One dollar and other valuable consideration, commencing on the effective date of this agreement, payable on or before \_\_\_\_\_ day of \_\_\_\_\_, for each and every year during the term of the lease. If an

extension to this agreement is granted, the City has the right to increase the monthly rental amount for the period of the extension by an amount based upon the Consumers Price Index-Urban for the immediate previous calendar year.

#### ACCEPTANCE OF CONDITION

Lessee acknowledges familiarity with the condition of said Visitor Center states that no representation, statement or warranty, expressed or implied, has been made by or on behalf of the City as to such condition. In no event shall the City be liable for any defect in such property or for any limitation on its use. The taking of possession of the Visitor Center shall be conclusive evidence that Lessee accepts the same "as is" and that the Visitor Center was in good condition at the time possession took place. Lessee agrees to accept the Visitor Center in the condition in which it exists at the date of taking possession, without representation or warranty, express or implied, in fact or by law, by the City, and without recourse to the City as to the nature, condition or unsuitability thereof, or as to the uses to which the premises may be put.

#### COVENANTS OF THE LESSEE

The Lessee hereby covenants and agrees that the Lessee will:

1. Use and occupy said Visitor Center in a careful and proper manner and not commit any waste therein;
2. Not use or occupy said Visitor Center 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 use the Visitor Center for any purpose other than for providing a visitor's center and other Convention and Visitors Bureau purposes for the Great Falls area and for vehicle parking, without written consent of Landlord;
4. Provide routine maintenance of the flower pots near the entry of the building, ~~along with routine weeding and care for the landscaped areas immediately adjacent to the building;~~
5. Not assign the lease, nor sublet said Visitor Center, nor any part thereof, without the written consent of the City;
6. Not use or occupy said Visitor Center, or permit the same to be used or occupied, for any purpose deemed extra hazardous on account of fire or otherwise;
7. To not make any alterations, changes, remodeling or capital improvements to the Visitor Center, without prior written permission signed by the City Manager, and in addition thereto, shall make such changes in compliance with the law and shall obtain all permits required for such work under City ordinance. 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 with the exception of trade fixtures not affixed to the building, which shall remain the property of the Lessee;
8. Permit the City to enter upon the said premises at all reasonable times and with 24-hour notice (except in case of emergent or safety reasons) to examine the condition of same;
9. Ensure that routine janitorial, trash removal, and cleaning is effectively accomplished;

10. Pay all utilities, including electricity, water, gas, or other utilities servicing the Visitor Center in a timely manner;

~~11. Provide to the Lessor all proceeds of the sale of inventory which is currently in the building;~~

~~12.11.~~ Provide the Lessor the opportunity to reclaim any and all personal property which is in the building at the time of the initiation of the lease term, if Lessee intends to discard or not use such property;

~~13.12.~~ Independently arrange with the Retired Senior Volunteer Program, any continuation of assignment of volunteer workers in the Visitor's Center building;

~~14.13.~~ Be responsible for all damage to property, public or private, that may be caused by this operation in the performance of this agreement; and

~~15.14.~~ Leave Visitor Center at the expiration or prior to termination of this lease and any extension thereof in as good condition as received, except for reasonable wear and tear.

### REPAIRS AND MAINTENANCE

1. **Lessee Maintenance of Leased Premises.** Subject to a limitation of \$1,000.00 per ~~month occurrence~~ in actual costs with a \$3,000.00 per year maximum, Lessee shall, throughout the term of this Lease Agreement, and at its own cost and without any expense to Lessor, keep and maintain the leased premises, including the building and improvements, and all appurtenances thereto, excepting sidewalks adjacent thereto and parking lots, in good condition and repair by conducting ordinary day-to-day maintenance and repair, including but not limited to, timely removal of rubbish and trash. Lessee shall maintain the Visitor Center in a functional condition, inspect premises on a regular basis to determine any hazardous conditions which may exist, and take immediate action to correct such conditions if they exist.

For items less than \$1,000 ~~per month.00 per occurrence in which the \$3,000.00 per year maximum has not been met~~, Lessor shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the leased premises or any improvements thereon; PROVIDED further that Lessor shall not be responsible for repairs or maintenance resulting from the negligence of Lessee, its employees, agents, or invitees, which shall be the sole responsibility of Lessee.

For items more than \$1,000.00 per occurrence or after the \$3,000.00 maximum maintenance amount by Lessee has been reached, Lessor shall be obligated to make reasonable repairs, replacements or renewals of any kind, nature or description whatsoever to the leased premises or any improvements thereon; PROVIDED further that Lessor shall not be responsible for repairs or maintenance resulting from the negligence of Lessee, its employees, agents, or invitees, nor will Lessor be responsible for remodeling costs or expenses undertaken by Lessee, which shall be the sole responsibility of Lessee.

2. **Maintenance by Lessor.** Notwithstanding the paragraph above, Lessor agrees to maintain the foundation of the building, all structural components, concrete slabs, exterior walls and façade, roof, ceiling and all utility lines serving the premises regardless of the cost of repairs. Lessor also agrees to provide maintenance, repair

and snow removal of the parking lot, sidewalks, and remaining parkland surrounding the leased premises.

3. **Entry by Lessor for Maintenance.** Should Lessee at any time fail, neglect or refuse to fulfill this obligation to repair and maintain after receiving written notice of such default and a minimum of 30 days to correct such default, Lessor may, but need not, enter the leased premises and make such repairs or alternations as in its opinion it may deem necessary, and may charge the costs of the same to Lessee to be paid upon the first day of the following month as part of the rental, and should said costs not be so paid, this Lease Agreement shall be considered in default.

#### 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. That all merchandise stored or displayed in the Visitor Center at the Lease initiation date shall become the property of Lessee;
- ~~2-3.~~ 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 and the public 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;
- ~~3-4.~~ The City is not and never shall be liable to any creditor of Lessee or any claimant against the estate or property of Lessee for any debt, loss, contract or other obligation of Lessee. The relationship between the City and Lessee is solely that of landlord and tenant, and does not and never shall be deemed a partnership or joint venture.
- ~~4-5.~~ Lessor's interest in and to said leased premises shall not be subject to or permitted to become subject to any lien or claims from or arising out of the use and occupation of the leased premises by Lessee. If and in the event such liens or claims arise or occur, Lessee shall promptly and forthwith cause the same to be released or discharged to the extent that the interest of the City is encumbered thereby.

#### INSURANCE REQUIREMENTS

During the term of the Lease and its extensions the Lessee agrees to carry Commercial General Liability insurance in at least the following amounts: \$1,000,000 per occurrence; \$2,000,000 annual aggregate.

The insurance policy or policies 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 A.M. 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 Parks and Recreation Director on or before possession and thereafter on or before July 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.

Lessee shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Lessee shall maintain workers' compensation coverage for all members, employees and volunteers of Lessee's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

Lessee shall furnish Lessor with a certificate of insurance for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana.

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.

#### 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 Lessee's use of the premises, including use by his agents, assigns, renters, employees and others using the Visitor Center. ~~The City shall not be liable to Lessee or any third party for any damage or injury (including death) to persons or property resulting from any defect in the leased premises or the improvements thereon, whether such defects be the result of improper construction, lack of maintenance or repair, improper maintenance or repair or other cause whatsoever.~~

#### NONDISCRIMINATION

Lessee agrees that in the use of this Visitor Center 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, or any other classification protected under the law.

#### 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)~~ thirty (30) 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

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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.

**ENFORCEMENT**

In the event either party resorts to judicial proceedings to enforce any rights under this Lease or to obtain relief for the breach of any covenant hereof, the party ultimately prevailing in such proceedings shall be entitled to recover from the defaulting party the costs of such proceedings, including reasonable attorneys' (including city attorneys') fees and costs.

**INVALIDITY**

The invalidity or ineffectiveness, for any reason, of any portion of this Lease Agreement shall in no way affect the validity or enforceability of the remaining portion thereof and any invalid or unenforceable provisions shall be deemed severed from the remainder of the Lease Agreement.

**WAIVER**

The waiver by the City of, or the failure of the City to take action with respect to, any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or subsequent breach of same, or any other term, covenant or condition herein contained.

**EFFECT OF LESSEE'S HOLDING OVER**

Any holding over after the expiration of the term of this Lease Agreement with the consent of the City shall be construed to be a tenancy from month to month, at the same monthly rental as required pursuant to the terms of this Lease Agreement, and shall otherwise be on the terms and conditions herein specified so far as applicable.

**BINDING EFFECT**

It is mutually understood and agreed that each and every provision of this Lease Agreement shall bind and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto. Masculine pronouns shall be construed as feminine or neuter pronouns and singular pronouns and verbs shall be construed as plural in any place in which the context may require such construction.

**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 Manager 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, Lessor**

\_\_\_\_\_  
Gregory T. Doyon, City Manager

ATTEST:

\_\_\_\_\_  
Lisa Kunz, City Clerk

(SEAL OF THE CITY)

APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
Sara R. Sexe, City Attorney

**CONVENTION AND  
~~VISITOR'S~~ VISITORS BUREAU, Lessee**

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

Its: \_\_\_\_\_  
Title or Office

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

Its: \_\_\_\_\_  
Title or Office

