



Item: Cian Enterprises, Inc. Lease Agreement
From: Park and Recreation Department
Initiated By: Park and Recreation Department
Presented By: Joseph Petrella, Park & Recreation Director
Action Requested: Set Public Hearing

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission set a public hearing to consider a lease agreement of City owned property located within the Community Recreation Center with the Cian Enterprises, Inc. for September 15, 2015.”

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

Staff Recommendation: Staff recommends the City Commission set a public hearing for September 15, 2015 for the Cian Enterprises, Inc. Lease Agreement.

Background:

The lease provides an area in the Community Recreation Center including the café, kitchen and adjoining large meeting room for the purpose of providing concessions/café services to citizens of Great Falls and visitors to the community.

The lease is for five years with the following rental schedule:

September 2015 through December 2015: \$1,800 plus utility costs, per month;
January 2016 through December 2016: \$1,800 plus utility costs, per month;
January 2017 through December 2017: \$1,850 plus utility costs, per month;
January 2018 through December 2018: \$1,850 plus utility costs, per month; and
January 2019 through December 2019: \$1,900 plus utility costs, per month.

Lessee agrees to maintain the leased premises, including the building and improvements, and all appurtenances, in good condition and repair by conducting ordinary day-to-day maintenance and repair. Lessee agrees to maintain the property 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.

The City 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. The City also agrees to provide maintenance, repair and snow removal of the parking lots and sidewalks adjacent to the leased premises.

The City of Great Falls Park and Recreation Department has held an agreement with Cian Enterprises, Inc. for use of an area in the Community Recreation Center since January of 2007.

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, until said 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 Agreement at their August 10th Park Board meeting.

Fiscal Impact:

The lease provides a consistent revenue source for the Community Recreation Center as per lease amounts listed above.

Alternatives:

The alternative would be to deny the Lease Agreement with Cian Enterprises, Inc., which would negatively impact the revenue and operation of the Community Recreation Center, and terminate a valuable service currently being provided.

Attachments/Exhibits:

Cian Enterprises, Inc. Lease Agreement

LEASE AGREEMENT

This Agreement, made and entered into this 1 day of September, 2015, by and between the CITY OF GREAT FALLS, a municipal corporation, P.O. Box 5021, Great Falls, Montana 59403-5021, hereinafter called "City" and Cian Enterprises, Inc. c/o John and Jan Williams, 113 2nd Street NW, Great Falls, Montana 59404 (phone 406-727-0335), hereinafter called "Lessee."

WHEREAS, Lessee desires to enter into a lease for a portion of City property, hereinafter called "Property" for the purpose of providing concession/café services to 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 Property 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 that Property, consisting of an area of the Community Recreation Center and adjacent space, including the café, kitchen, and adjoining large meeting room, (as depicted in the attached Exhibit), in the main level of the Community Recreation Center, located at 801 2nd Ave. No, Great Falls, MT 59401. Other than the Property identified herein to which this Agreement applies, the City shall retain the exclusive use of the remainder of the Community Recreation Center, without interference from Lessee.

TERM OF LEASE

The term of the lease will be for five (5) years effective 1st day of September, 2015 and expiring the 31st day of December, 2019. 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, may grant an extension of this agreement, with any conditions and covenants of this agreement, including but not limited to the rental amount, to be negotiated.

Notwithstanding the above term of lease, this lease is terminated if the Lessee's use of the Property ceases to be for a public purpose, in such event, the use of the Property immediately reverts to the City of Great Falls. Further, the agreement may be terminated prior to the expiration of the above term of lease by either party giving written notice not less than sixty (60) days prior to the annual anniversary date of this agreement.

LEASE DEPOSIT

Upon execution of this agreement, the Lessee will provide a lease deposit in the amount of one month's lease payment. This deposit shall serve as a credit against damage, unpaid rents, and any other charges reasonably owed by Lessee at the conclusion of this lease or immediately upon

Lessee's default. If damages exceed the deposit, Lessee remains responsible for such damage, unpaid rent or other reasonable charges.

RENTAL

In consideration therefore, the Lessee agrees to pay to the City the sums under the following schedule:

September 2015 through December 2015: \$1,800 plus utility costs, per month;
January 2016 through December 2016: \$1,800 plus utility costs, per month;
January 2017 through December 2017: \$1,850 plus utility costs, per month;
January 2018 through December 2018: \$1,850 plus utility costs, per month; and
January 2019 through December 2019: \$1,900 plus utility costs, per month.

All payments will commence on the effective date of this agreement, payable on or before 15th day of each month thereafter during the term of the lease. Said rental includes compensation for all utilities, including electricity, water, gas, or other utilities servicing the Property, which will be evaluated and determined annually, starting September 2015. If Lessee's payments are not made in a timely manner, a monthly finance charge of 1.5% will be applied to any balance over 15 days past due.

ACCEPTANCE OF CONDITION

Lessee acknowledges familiarity with the condition of said Property and 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 Property shall be conclusive evidence that Lessee accepts the same "as is" and that the Property was in good condition at the time possession took place. Lessee agrees to accept the Property 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 Property in a careful and proper manner and not commit any waste therein;
2. Generally abide by Lessee's estimated hours of operation, 8:00 a.m. to 4:00 p.m., Monday through Friday, to accommodate patrons, special events participants, and other users of the Community Recreation Center; additionally, upon mutual consent of the Lessee and City, Lessee agrees to open the café/concession facilities for special functions or events at the center. Otherwise, if Lessee desires access during times which the Community Recreation

- Center is closed, Lessee must arrange for access with the Community Recreation Center Supervisor;
3. Conduct criminal background checks on all its employees to ensure that its employees are appropriate for their position;
 4. Not use or occupy said Property 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, including but not limited to the requirements of the City/County Health Department;
 5. Provide copies of all Health Department reports to the City within 10 days of Lessee's receipt;
 6. Not use the Property for any purpose other than as stated herein, without written consent of Landlord;
 7. Procure, supply and post in City-designated locations, all permits and licenses required to operate its business;
 8. Pay all bills, taxes, assessments, debts and obligations incurred by Lessee as a result of operations under this Agreement;
 9. Store material and equipment by Lessee within the described premises;
 10. Keep shared entryways and hallways in the Community Recreation Center clear of all items which may obstruct access;
 11. Not assign the lease, nor sublet said Property, nor any part thereof, without the written consent of the City;
 12. Not use or occupy said Property, or permit the same to be used or occupied, for any purpose deemed extra hazardous on account of fire or otherwise;
 13. Not permit alcoholic beverages to be sold or consumed on the premises during the term of the agreement, unless prior approval is granted by the City, and all required permits, licenses or other authorizations are obtained;
 14. To not make any signage, alterations, changes, remodeling or capital improvements to the Property, without prior written permission signed by the City Park and Recreation Director, and in addition thereto, shall make such changes at Lessee's cost, in compliance with the law and by obtaining 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;
 15. Subject to Lessee's first right to reserve the area for its needs, allow the City to use the large dining room area at all other times;
 16. Lessee shall keep the large dining room free from stored items and in a clean and sanitary condition. Any stored items, regardless of length of time, must be approved by the Community Recreation Supervisor.
 17. Permit the City to enter upon the said premises at all reasonable to examine the condition of same;
 18. Ensure that routine janitorial, trash removal, and cleaning is effectively accomplished at its cost;
 19. Be responsible for all damage to property, public or private, that may be caused by Lessee's operations in the performance of this agreement; and

20. Leave Property 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

Lessee Maintenance of Leased Premises. Except as provided below, 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, 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 Property 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.

Lessee's maintenance shall include, but not be limited to: at its costs, keeping the counter, tabletops, chairs, walls, fixtures, cooking areas and floors cleaned in accordance with the City/County Health Department requirements and all local, state and federal ordinances, laws and regulations. All Health Department reports shall be provided to the Park and Recreation Director immediately upon receipt by Lessee.

Maintenance by City. Notwithstanding the paragraph above, City 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. City also agrees to provide maintenance, repair and snow removal of the parking lots and sidewalks adjacent to the leased premises. Otherwise, City 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. Notwithstanding the above, City 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.

Entry by City 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, City may, but need not, enter the leased premises and make such repairs or alterations 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 in addition to 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. 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. 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. City'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 for personal injury and property damage, 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 City on or before possession and thereafter on or before January 1st of each year, the certificate of insurance including a copy of the Additional Insured Endorsement, which shall be in a form acceptable to City. Claims-made policies are not acceptable and do not constitute compliance with the Lessee's obligation under this paragraph.

Lessee is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Lessee is not authorized to represent the City or otherwise bind the City in any dealings between Lessee and any third parties. 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 and employees 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 City with copies showing one of the following: **(1)** proof of registration as a registered contractor under Title 39, Chapter 9, MCA; **(2)** a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or **(3)** proof of exemption from workers' compensation granted by law for independent contractors.

Should the Lessee fail to maintain these coverages 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 its agents, assigns, renters, employees and others using the Property. 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 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, 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) 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.

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

CIAN ENTERPRISES, INC., Lessee

By: Adem Williams
(signature)

John Williams
(printed name)

Its: Owner
Title or Office