



Item: Lease Agreement with Great Falls Saddle Club
From: Great Falls Saddle Club
Initiated By: Joseph Petrella, Park and Recreation Director
Presented By: Joseph Petrella, Park and Recreation Director
Action Requested: Conduct Public Hearing and Approve Lease Agreement

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 a lease agreement of City owned property for a portion of Wadsworth Park with Great Falls Saddle Club.”

2. Mayor calls for a second, discussion, and calls for the vote (4/5 vote required).
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Staff Recommendation: Staff recommends that the City Commission approve the lease with Great Falls Saddle Club. Lease will continue the use of a portion of Wadsworth Park with the Saddle Club.

Summary:

The Great Falls Saddle Club is an organization existing for the purpose of promoting community interest in equestrian activities and is requesting to continue leasing a portion of Wadsworth Park for the use of its members and the public.

The term of the lease will be for five (5) years effective January 1, 2016 and expiring December 31, 2020. 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 agree to an extension of this agreement.

As required by Title 3, Chapter 4, OCCGF, before final consideration of lease of City Property, the City Commission shall hold a public hearing to receive comment regarding such lease.

Background:

On March 2, 2010 the City Commission approved a 5 year lease with an automatic renewal for an additional five years at the City's sole discretion.

On December 1, 1998 the City Commission approved Resolution 8973, Wadsworth Park Master plan. It was recommended at that time that "all existing leases continue in Wadsworth Park, renewable on a year to year basis, until the City is ready to begin actual physical implementation of the Master Plan." Currently there is no funding available for capital improvements in Wadsworth Park.

The Great Falls Saddle Club has leased a portion of Wadsworth Park since 1971.

Fiscal Impact: The Great Falls Saddle Club agrees to pay the City the sum of Three Hundred Seventy Five Dollars (\$375) on or before January 1 of each year. If the lease is renewed the City shall have the right to negotiate a lease rental rate for any additional years.

Alternatives: An alternative would be to not lease a portion of Wadsworth Park to the Great Falls Saddle Club.

Concurrences: The Park and Recreation Board approved the lease with the Great Falls Saddle Club on December 7, 2015.

Attachments/Exhibits: Great Falls Saddle Club lease

LEASE AGREEMENT

This Agreement, made and entered into this _____ day of _____, 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 Great Falls Saddle Club, a Montana Non-Profit Corporation P.O. Box 2963, Great Falls, Montana 59403 hereinafter called "Lessee."

WHEREAS, Lessee desires to enter into a lease of City property known as Wadsworth Park, hereinafter called "Property" for the purpose of providing equestrian activities to residents 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 Lessee is an organization existing for the purpose of promoting community interest in equestrian activities and desires to secure a portion of said Property for the use of its members and the public, 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 a portion of Property, lying and being in the County of Cascade, State of Montana, particularly described as follows: Tract of land beginning at the SW corner of SE1/4NE1/4 of Section 18, TWP 20N, R4E M.P.M.; thence N 89° 42' E 130.10 ft to the true point of beginning; thence North 400.0 feet, thence S 89° 42' W 500.0 ft to the true point of beginning.

TERM OF LEASE

The term of the lease will be for five (5) years effective January 1, 2016 and expiring December 31, 2020. 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 agree to 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 sixty (60) days written notice to the City, or Lessee. In the event of termination either prior to , or upon expiration of the term of this lease, Lessee shall have the right to remove any movable structures, improvements or equipment constructed or installed and maintained by Lessee on the property.

RENTAL

In consideration therefore, the Lessee agrees to pay to the City the sum of Three Hundred Seventy Five Dollars (\$375.00) on or before January 1 of each year. If the lease is renewed, the City shall have the right to negotiate a lease rental rate for any additional years.

ACCEPTANCE OF CONDITION

Lessee acknowledges familiarity with the condition of said Property 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. 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;
3. Not use the Property for any purpose other than as stated herein, without written consent of the Park and Recreation Director or the Director's designee;
4. Pay all bills, taxes, assessments, debts and obligations incurred by Lessee as a result of operations under this Agreement;
5. Not use or occupy said Property, or permit the same to be used or occupied, for any purpose deemed hazardous;
6. Not permit alcoholic beverages to be sold on the premises during the term of the agreement, unless prior approval is granted by the City, and in such case all required permits, licenses or other authorizations are obtained;
7. Not make any signage, alterations, changes, remodeling or capital improvements to the Property, other than livestock facilities, lighting, electrical or water improvements and installation of equipment, , without prior written permission signed by the Park and Recreation Director or the Director's designee, and in addition thereto, shall make such approved 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;

8. Permit the City to enter upon the said premises at all reasonable times to examine the condition of same;
9. Ensure that routine maintenance, trash removal, and cleaning is effectively accomplished at its cost;
10. 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
11. 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.

Maintenance by City. 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 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 in addition to the rental, and should said costs not be so paid, this Lease Agreement shall be considered in default.

SUBLETTING, USE AND ASSIGNMENT

Lessee is authorized to allow third persons or organizations to temporarily use or rent the leased premises for periods of no more than five consecutive days, without the prior written permission of City. For any longer time periods, Lessee shall not have the right to assign this Lease Agreement or sublet the premises, or any part thereof, without the prior written permission of City.

Any assignment, use or sublease, temporary or otherwise approved, shall be subject to all the provisions of this Lease Agreement, and not affect the rental payable to City in any manner whatsoever.

With any assignment, use or sublease, Lessee shall continue to be bound by all the terms, conditions and covenants of this Lease Agreement. Permission given by City to an assignment or sublease shall not be deemed to be permission given to any subsequent assignment or sublease. Other than as stated herein, any assignment or sublease made without the prior written permission of City shall be void, and shall, at the option of City, terminate this Lease Agreement.

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 shall not 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 shall not be construed or deemed to be 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 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 and its agents, employees or representatives are not subject to the terms and provisions of the City's personnel policies handbook and may not be considered City employees 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 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 as required except for applicable statutory exemptions, exceptions or exclusions. 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 as necessary 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, sublessees, 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 are 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 Park and Recreation Director, 1700 River Drive North, 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:

(SEAL OF THE CITY)

Lisa Kunz, City Clerk

APPROVED FOR LEGAL CONTENT*:

Sara R. Sexe, City Attorney

*By law, the City Attorney may only advise or approve contract or legal document language on behalf of the City of Great Falls, and not on behalf of other parties. Review and approval of this document was conducted solely from the legal perspective, and for the benefit, of the City of Great Falls. Other parties should not rely on this approval and should seek review and approval by their own respective counsel.

Great Falls Saddle Club, Lessee

By: _____
(signature)

(printed name)

Its: _____ (Title or Office)