

**WORTHINGTON CITY COUNCIL/WATER & LIGHT COMMISSION
SPECIAL JOINT MEETING**

AGENDA

**3:30 P.M., May 8, 2018
City Hall Council Chambers**

A. CALL TO ORDER

**B. CITY COUNCIL / WATER & LIGHT COMMISSION DISCUSSION
ITEMS**

1. Prairie View/Boy Scout Lease
2. Public Works and Public Utilities Facilities
 - a. Renovation of the MC Fitness Building, Diagonal Shop and Former Liquor Store will be a large investment by both entities. This meeting is to consider the long term commitment, or right of first refusal by Water & Light, that Public Utilities will take over the entire Diagonal Shop and Former Liquor Store and that Public Works will move the Street and Parks Department to MC.
 - b. Source of funds: Staff's recommendation is that the preferred source of funds for renovation of the MC Building be in the proposed local option sales tax.
 - c. Schedule: Renovation of MC will take place following the resolution of the City's pursuit of re-imposing of the sales tax

C. ADJOURNMENT

Lease Agreement

This Agreement made and entered into by and between, the City of Worthington, a municipal corporation under the laws of the State of Minnesota, hereinafter called the "City"; and Noon Kiwanis Club, Inc. a nonprofit corporation organized under the laws of the State of Minnesota, hereinafter called the "Lessee".

WITNESSETH, in consideration of the mutual covenants and agreements herein, the City hereby grants permission to the Lessee to use a portion of the former Prairie View Golf Course premises, hereinafter more specifically described, subject to the following agreements, terms and conditions:

ARTICLE 1 OBJECTIVES AND PURPOSE OF AGREEMENT

A. PURPOSE

Lessee is the Charter Representative for Boy Scout Troop No. 134 and Cub Scout Pack No. 134 which operate in the Worthington, Minnesota area. The Lessee is granted the exclusive use of the Clubhouse Building located upon the former Prairie View Golf Course (PVGC) property. It is intended by the parties that the end-user of the leased premises be Boy Scout Troop No. 134 and Cub Scout Pack No 134 which organizations will hold meetings and other activities incidental to their organizations. This Agreement shall not be construed in any manner to grant Lessee or those claiming under it the exclusive right to the use of the premises of said former PVGC other than those premises leased exclusively to the Lessee as set forth in this Agreement.

B. LEASED PREMISES

The City hereby leases the Clubhouse Building to the Lessee for its exclusive use for Scout meetings and other scouting-related activities. Such activities may include the sale of food and/or other goods from the Buildings by the Scouts.

The City also shall allow the Lessee to relocate that certain "Boy Scout Cabin" building presently located at Chautauqua Park in Worthington to a place near the Clubhouse Building to which Lessee shall have exclusive use. The term "Buildings" hereafter refers to both the Clubhouse Building and the Boy Scout Cabin.

Lessee shall also have non-exclusive use of a parking lot located southwesterly of the Clubhouse Building although it is entirely within the discretion of the Lessor to determine the future size of said parking lot.

Lessee shall not have use of the remainder of the former Prairie View Golf Course except as may be necessary for the Lessee to perform its maintenance obligations pursuant to Article I and except to the same extent as other members of the public.

The legal description of former Prairie View Golf Course is attached as Exhibit 'A'.

The location of the Clubhouse Building and the parking lot are shown on Exhibit 'B' as is the area designated for the relocation of the Boy Scout Cabin.

C. RENT

In lieu of rent, Lessee agrees to:

1. Install a furnace in the Clubhouse Building so as to make the building usable year-round.
2. Pay all propane bills or other utilities needed to provide heat in both Buildings.
3. Be responsible for the pumping of the septic tank located upon the premises as needed.
4. Provide an average of six (6) hours of unskilled, semi-skilled, and/or skilled labor per month for building maintenance and/or repairs. Examples of skilled labor include but are not limited to plumbing and electric. It is expected that some of such labor may be provided by parents of Scouts but in such case any parent providing skilled labor must be appropriately licensed and such work is subject to permitting, inspection and the Building Code.
5. Mow and maintain the grounds around the Buildings.
6. Mow the hiking trails located and to be located upon the entire tract described on Exhibit 'A.'

Lessor shall provide and maintain the mower to be used by Lessee. Lessee shall designate one or more persons to liaise with the Director of Public Works for the City of Worthington for the purpose of ensuring that the Lessee complies with the requirements of this Section C.

Lessee shall be responsible for all repairs and maintenance for the Cabin once it is relocated onto the premises.

Lessee shall maintain the premises in the same condition as is present at the commencement of this Agreement, ordinary wear excepted.

Lessee shall abide by all federal, state, and local laws while upon the premises.

D. LESSOR'S OBLIGATIONS

Lessor shall pay for all utilities except for propane. Lessor shall be responsible for all capital improvements and repairs to the Clubhouse Building which, in the sole discretion of the Lessor, are necessary.

Lessor shall be responsible for all insurance to be maintained upon the Buildings except that Lessee or the Scouts will insure the personal contents belonging to Lessee and Lessee or the Scouts will also maintain liability insurance to cover its own activities upon the leased premises.

E. REPORTING AND WORKING RELATIONSHIPS

The parties agree that the Director of Public Works, or his appointed designee, shall be the Lessee's contact person for the City as to all matters.

ARTICLE II. INSURANCE

The Lessee, sublessee(s), and/or assigns of this Agreement shall procure, certify and maintain in effect during the term of this Agreement:

Liability insurance; at least \$1,000,000 per occurrence for bodily injury and property damage. The City shall be named as an additional insured.

Lessee, sublessee(s), and/or assigns of this Agreement shall maintain property insurance on all personal property kept upon the Premises.

A certified copy of each policy (or binder) or a certificate evidencing the existence thereof shall be delivered to the City within ten (10) days after the execution of this Agreement.

The City shall carry liability insurance during the term of this Agreement.

In the event of a fire and extended coverage loss in an amount less than fifty percent (50%) of the building value, the City agrees to repair the Buildings. Fire or extended coverage loss greater than fifty percent (50%) would allow the City the option of repairing or replacing the building or doing nothing to repair or replace said Buildings.

In the event of damage to or destruction or loss of the Buildings by an uninsured cause whether due to the negligence of the Lessee or not, the City will have the option to terminate this Agreement rather than to repair the Buildings.

ARTICLE III SUBLESSEES AND ASSIGNMENTS PROHIBITED

The parties agree and understand that Lessee may sublet and/or assign this Lease to Boy Scout Troop No. 134 and/or Cub Scout Pack No. 134. Neither the Lessee or the Sublessee or Assign may sublet, assign, or further sublet or assign this Lease to any other party.

ARTICLE IV NONDISCRIMINATION

The Lessee for itself, its personal representatives, successors in interest, sublessees and assigns, as a part of the consideration hereof, does hereby covenant and agree that no person on the basis of race, color, creed, national origin, sex, religion, marital status, status with regard to public assistance, disability, familial status, or sexual orientation shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said premises.

ARTICLE V TERM OF AGREEMENT

This Agreement shall be in effect for a period of ten (10) years from and after March 1, 2018, or the date of its execution and approval, whichever is later.

ARTICLE VI ALTERATIONS AND IMPROVEMENTS

A. ALTERATIONS OR REPAIR TO PREMISES

The Lessee shall not construct, install, remove, and/or modify any of the buildings constructed on the leased premises without the prior written approval of the City. The Lessee shall submit for approval by the City, its plans and specifications for any proposed project as well as complying with other such considerations considered by the City to be necessary.

B. OWNERSHIP OF IMPROVEMENTS

Upon termination of this Agreement, any building, fixture, structure, addition or improvement, excluding personal property on the leased premises, shall immediately become the property of the City, as owner, subject only to the right of the Lessee to use during the term of this Agreement, and shall remain the property of the City thereafter with the sole rights, title and interest thereto.

ARTICLE VII TERMINATION AND MODIFICATION OF AGREEMENT

A. TERMINATION BY THE CITY

Each of the following shall constitute an "Event of Default by the Lessee":

1. Lessee fails perform or to comply with the terms of Article I. C. when due or required if such default continues for a period of ten (10) days after receipt of written notice from the City that such non-performance and/or non-compliance constitutes an Event of Default.
2. Lessee fails after receipt of written notice from the City to keep, perform or observe any term, covenant or condition of this Agreement, other than set forth in subsection 1 (above) and such failure continues for thirty (30) days after such receipt, or by its nature such event of default by Lessee cannot be cured within such thirty (30) day period, Lessee fails to commence to cure or remove such event of default by the Lessee within said thirty (30) days and to cure or remove same as promptly as reasonably practicable.
3. Lessee abandons or surrenders any of the demised premises. The premises shall be considered abandoned if Lessee fails to use the premises for a period of six (6) months. If Lessor believes that abandonment has occurred, Lessor shall cause to have served a Notice of Abandonment upon Lessee at Lessee's address set forth herein or at such other address as Lessee has provided to Lessor. Service shall be either in-person or by certified mail. Lessor shall, within thirty (30) days following service of said Notice, file such Notice and proof of service with the Nobles County Recorder. If Lessee fails to record and Affidavit of Non-Abandonment within thirty (30) days thereafter, this Lease shall terminate.

In any of the aforesaid events, the City may take immediate possession of the demised premises and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing. Upon said entry, this Agreement shall terminate. Failure of the City to declare this Agreement terminated upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of the City to cancel this Agreement by reason of any subsequent violation of the terms hereof.

B. TERMINATION BY LESSEE

Lessee shall retain the right to terminate this Agreement at any time for any reason. Lessee may exercise said right to terminate this Agreement by providing 30 days advance written notice to City.

C. RIGHTS UNDER TERMINATION

Fixed Improvements: Upon termination of this Lease by either party, the Lessee shall remove the Boy Scout Cabin. The ground underneath said Cabin shall be returned to the state in which it was at the commencement of this Agreement. It is otherwise the intent of this Agreement that any other leasehold improvements and alterations, and items affixed thereto shall be and remain the property of the Lessee during the entire term of this Agreement. Upon termination, all leasehold improvements and items affixed thereto shall revert to the sole ownership of the City. Personal Property: Upon termination of this Agreement, the Lessee shall remove all personal property, and items not affixed, from the leased premises within thirty (30) days after said termination and restore the leased premises to its original condition. If the Lessee fails to remove said personal property, said property shall revert to City ownership and may thereafter be removed by the City at the Lessee's expense.

D. MODIFICATION OF LEASE

The City intends to make application to have the entire premises as described in Exhibit 'A' designated by the State of Minnesota as a Regional Park. The State of Minnesota has certain requirements to be met and guidelines to be followed as a part of the determination as to whether or not Regional Park status is granted. If the City determines that a modification of this Lease Agreement is necessary or would make it more likely that the premises would be designated as a Regional Park, both parties agree to such modifications as may be necessary to accomplish that goal.

ARTICLE VIII ASSIGNMENTS

Due to the unique situation of this Lease, Lessee may not assign this Agreement or any part thereof in any manner whatsoever or assign any of the privileges recited herein except as to Boy Scout Troop No. 134 and/or Cub Scout Pack No. 134. Any attempt by Lessee to assign or sublet this Lease to any other person or entity shall be grounds for immediate termination of this Lease Agreement.

ARTICLE IX QUIET ENJOYMENT

The City covenants that the Lessee, upon payment of the rentals reserved herein and the performance of each and every one of the covenants, agreements, and conditions on the part of the Lessee to be observed and performed, shall and may, peaceably and quietly, have, hold, and enjoy the leased premises for the term of aforesaid, free from molestation, eviction or disturbance.

ARTICLE X GENERAL PROVISIONS

A. ATTORNEY'S FEES

In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover interest and its reasonable attorney's fees.

B. LICENSE FEES AND PERMITS

Lessee shall obtain and pay for all licenses, permits, fees or other authorization or charges as required under federal, state or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder Lessee shall furnish copies of all certificates, ratings, licenses, permits, etc., to the City.

C. NON-EXCLUSIVE RIGHTS

It is hereby specifically understood and agreed between the parties that nothing herein contained shall be construed as granting or authorizing the granting of exclusive rights to the Lessee or others, as to any portion of the property described on Exhibit 'A' except for those portions specifically leased hereunder.

D. PARAGRAPH HEADINGS

The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of the Agreement

E. INTERPRETATIONS

This Agreement shall be interpreted in accordance with the laws of the State of Minnesota. Should any part of this Agreement be adjudicated, venue shall be proper only in the District Court of Nobles County, Minnesota.

F. NON-WAIVER

No waiver of any condition or covenant in this instrument contained or of any breach thereof, shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

G. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement of the application of such term of provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be valid and be enforced to the fullest extent permitted by law.

H. BINDING EFFECT

This Agreement, including all of its covenants, terms, provisions, and conditions, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

I. NO PARTNERSHIP

Nothing contained in this Agreement shall be deemed to create the relationship of principal and agent of a partnership or joint venture or any relationship between the City and the Lessee other than the relationship of the City and Lessee.

K. NOTICES

Whenever any notice or payment is required by this Agreement to be made, given or transmitted to the parties hereto, such notice or payment shall be enclosed in an envelope with sufficient postage attached to insure delivery and deposited in the United States Mail, addressed to:

City Clerk
P.O. Box 279
Worthington, MN 56187

and notices, consents and approvals to the Lessee addressed to:

Worthington Noon Kiwanis Club, Inc.
c/o Chamber of Commerce
1121 Third Avenue
Worthington, MN 56187

or such place as either party shall, by written directive, designate in the manner herein provided.

IN WITNESSETH WHEREOF, the parties have caused this instrument to be executed on their behalf by their duly authorized officers.

Dated this ____ day of _____, 2018.

CITY OF WORTHINGTON

WORTHINGTON NOON
KIWANIS CLUB, INC.

Its Mayor

Its President

Its City Clerk

Its Secretary