

WORTHINGTON CITY COUNCIL

ADDENDUM

7:00 P.M., Monday, February 14, 2022

City Hall Council Chambers

CASE ITEM

F. CITY COUNCIL BUSINESS - ADMINISTRATION (WHITE)

2. Appointment of Designated Building Official Revised

I. CITY COUNCIL BUSINESS - COMMUNITY EC. DEVELOPMENT (GRAY)

2. Parking Lease - Thompson Apartments

ADMINISTRATION MEMO

DATE: FEBRUARY 14, 2022

TO: HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: ITEMS REQUIRING CITY COUNCIL ACTION OR REVIEW

CASE ITEMS

2. APPOINTMENT OF DESIGNATED BUILDING OFFICIAL

Minnesota Statute 326B.133 mandates that municipalities have a designated Building Official to administer the code and perform inspections. ~~on exempt classified buildings (generally identified as commercial buildings). While the~~ The City's building inspector, Brent Jacobsen, recently attained certification as Building Official-Limited ~~and shall be designated as Worthington's Building Official. However, Mr. Jacobsen's certification does not allow him to perform inspections on non-exempt (generally identified as commercial buildings) classes of buildings. the City must continue to employ or contract with a Certified Building Official.~~ Council previously approved the appointment of Gene Abbott as the Designated Building Official at the November 22, 2021 meeting for what was intended to be a short-term appointment.

The City of Windom has graciously agreed to allow their Certified Building Official, Andrew Spielman, ~~to perform inspections on non-exempt buildings in Worthington to be designated as Worthington's Certified Building Official~~ until Mr. Jacobsen attains his certification, expected to occur in the next six to twelve months. Under the terms of the agreement, included as Exhibit ___, Worthington will pay Windom \$60.00 per hour plus expenses for Mr. Spielman's services for an estimated six hours per week of oversight and inspections. If approved by both entities, the designation will be effective on February 16, 2022.

Gene Abbott will continue as the City's Plans Examiner and code consultant.

The agreement has been reviewed by the City attorney.

Council action is requested to approve the agreement designating Andrew Spielman ~~to perform inspections on non-exempt buildings as the City's Certified Building Official~~ contingent upon approval by Windom's City Council and authorize execution of the agreement by the Mayor and Clerk.

AGREEMENT FOR SERVICE
City of Windom and City of Worthington

This Agreement made this ____ day of _____, 2022, by and between the City of Windom, a municipal corporation of Cottonwood County, Minnesota, hereafter called "Windom" and the City of Worthington, a municipal corporation of Nobles County, Minnesota, hereafter called "Worthington"

WITNESSETH that whereas, Windom currently employs a full-time Certified Building Official; and

WHEREAS, WORTHINGTON currently employs a full-time Certified Building Official - Limited who is designated as the Building Official who will perform code administration for all one- and two-family homes, their accessory structures, and all other exempt classes of buildings; and

WHEREAS, WORTHINGTON needs to employ a part-time Certified Building Official to oversee its Certified Building Official - Limited who is working toward credentials as a Certified Building Official as their permanent resolution to its need for such services; and

WHEREAS, WORTHINGTON will separately engage for the services of a professional, reputable firm or individual to perform Plan Reviews and said reviews will not be part of the contracted services; and

WHEREAS, WORTHINGTON has requested Windom to assist it in satisfying its need for staffing within its Community Development Department, and Windom has expressed a willingness to work with WORTHINGTON on a contract basis, to facilitate WORTHINGTON's request according to the terms described herein;

NOW, THEREFORE, in consideration of the premises and promises herein contained, the parties agree as set forth below.

1. **BUILDING OFFICIAL SERVICES:** Windom Building Official Andrew Spielman, CBO Certification BO737127, shall be Worthington's Designated ~~Building Official~~ **Inspector of Non-Exempt structures** and perform required inspections on non-exempt building projects.
2. **TERM:** The term of this Agreement commences on February 16, 2022 and terminates on February 15, 2023. The parties may mutually agree to extend this term in writing.
3. **TERMINATION:** Either Windom or WORTHINGTON may terminate this Agreement by providing the other party thirty (30) days written notice.

4. NOTICES: All written notices between the parties (including billing) will be addressed as follows:

City of Windom

Attention: City Administrator
444 9th Street
P.O. Box 38
Windom, MN 56101

City of WORTHINGTON

Attention: City Administrator
303 9th Street
Worthington, MN 56187

5. COMMITMENT OF TIME: To the extent requested by WORTHINGTON, Windom will provide to WORTHINGTON its Certified Building Official, up to six (6) hours per week. It is acknowledged by both parties that the dates\times spent by Windom's Certified Building Official at WORTHINGTON may change from week to week depending upon the requirements of each of the respective organizations, and that cooperation and flexibility in arranging and scheduling time will be of primary importance. However, Windom is not required to provide its Certified Building Official for more than the equivalent of three hundred and twelve hours (312 hours) as measured during the full term of this Agreement.
6. INSURANCE: Certified Building Official will remain an employee of Windom. Windom will maintain workers compensation, liability insurance, health insurance and insure automobiles owned by Windom that may be utilized by the Certified Building Official. WORTHINGTON will insure automobiles owned by WORTHINGTON that may be utilized by the Certified Building Official. WORTHINGTON will also maintain liability insurance for its operations, for all work performed by WORTHINGTON, and will carry its own Errors and Omissions policy.
7. COMPENSATION: WORTHINGTON shall pay to Windom for said Certified Building Official's services the amount of Sixty dollars (\$60.00) per hour for the hours spent by said Certified Building Official in performing services for WORTHINGTON regardless of when those hours are incurred. Any time spent by Certified Building Official traveling to or from WORTHINGTON to or from Windom, or to some other destination on behalf of WORTHINGTON, will count as hours worked for WORTHINGTON.

Vacation time or sick leave used by Certified Building Official during the time period covered by this Agreement will be prorated between Windom and WORTHINGTON according to the percent of time spent working at Windom or WORTHINGTON (herein estimated to be 85% Windom and 15% WORTHINGTON).

Certified Building Official's time will be documented by the Certified Building Official on a timesheet provided by Windom covering two-week segments. Windom is not otherwise responsible for documentation of Certified Building Official's time.

8. VEHICLE and CELL PHONE: Windom will be reimbursed at the IRS mileage rate for the Certified Building Official traveling to or from WORTHINGTON, to or from Windom, or to some other destination on behalf of WORTHINGTON. Mileage will be documented solely by Certified Building Official on a form to be provided by Windom. Windom is not otherwise responsible for documentation of Certified Building Official's mileage claim. Certified Building Official has been provided a cell phone and applications by Windom for its use for business purposes. WORTHINGTON will reimburse Windom 15% of the monthly charge for Certified Building Official's cell phone and user fees.
9. BILLING: Windom shall submit a monthly invoice to WORTHINGTON setting forth the hours worked by the Certified Building Official on behalf of WORTHINGTON during the preceding month, any mileage charges and for cell phone expenses. WORTHINGTON shall pay said invoice in full within thirty (30) days of its receipt. If WORTHINGTON disputes a charge it shall do so in writing within ten (10) days of its receipt of the invoice, but it shall be required to pay invoice as defined herein. Within ten (10) business days of a written dispute being received by Windom its City Administrator will meet with the WORTHINGTON City Administrator and Certified Building Official for resolution. In the event the parties are unable to resolve that dispute, the matter shall be determined by binding arbitration.
10. EMPLOYMENT: Windom's Certified Building Official shall remain an employee of Windom and nothing herein shall create an employer - employee relationship between Certified Building Official and WORTHINGTON. Without limiting the generality of the foregoing, the parties agree as follows:
 - a. Windom shall be liable for all wages and other compensation and benefits due to its Certified Building Official, and for collecting, remitting, and reporting employment and withholding taxes related thereto and for all workers' compensation coverage, unemployment, and retirement contributions. The Certified Building Official shall be considered to be acting in the course of his employment with Windom at all times he is serving either Windom or WORTHINGTON, including any time spent in traveling to or from either location or traveling elsewhere on behalf of either party. It is hereby acknowledged and understood by WORTHINGTON that Certified Building Official has a duty to represent the best interests of Windom; Certified Building Official will promptly inform WORTHINGTON of any conflicts of interest of which he becomes aware.
 - b. Windom retains right, at any time, for any reasons whatsoever, to remove and replace the individual serving as its Certified Building Official subject only to the law and any agreements governing its employment relationship with said Certified Building Official. Should Windom's employment of its Certified Building Official end, for whatever reason, Windom shall promptly give notice to WORTHINGTON. At that point, either party may promptly and immediately terminate this Agreement by written notice, with no further

obligation to the other party beyond payment for services (and expenses) rendered prior to the date of termination.

- c. WORTHINGTON has conducted its own review of Windom's current Certified Building Official and has made its own independent judgment of said Certified Building Official's suitability for its purposes, and Windom makes no assurances or guarantees regarding either its Certified Building Official nor any outcomes that may be anticipated by WORTHINGTON under this Agreement. Should WORTHINGTON determine that said Certified Building Official is not fully satisfactory to its purpose, its only remedy shall be to provide notice of termination under Section 2 of this Agreement, refrain from requesting any additional time be provided to it by said Certified Building Official, and fully compensate Windom for any already used, but not yet paid for time or services.
 - d. WORTHINGTON acknowledges the need for Windom to retain the ability to direct the work of its Certified Building Official and agrees that WORTHINGTON will not enter into any additional agreements or contract for services with Windom's Certified Building Official for a period of one year following the termination of this Agreement.
11. IDEMNIFICATION: Windom agrees to defend and indemnify WORTHINGTON, and its employees, officials, and agents from and against all claims, actions, damages, losses and expenses arising out of Windom's or its Certified Building Official's performance or failure to perform any duties under this Agreement. WORTHINGTON agrees to defend and indemnify Windom, and its employees, officials, and agents from and against all claims, actions, damages, losses and expenses arising out of Certified Building Official's performance or failure to perform his duties where such performance or failure to perform was directly caused by WORTHINGTON.
12. CONFIDENTIALITY: Each party recognizes and acknowledges that said Certified Building Official has and will have access to certain confidential information of the other party, including but not limited to non-public data relating to employees and/or facilities and operations of each party. Each party will treat as confidential all confidential information of the other party; will implement reasonable procedures to prohibit the disclosure, unauthorized duplication, use misuse, or removal of the other party's confidential information; and will comply with the provisions of the Minnesota Data Practices Act.
13. NO SOLICITATION: WORTHINGTON shall not solicit, induce, recruit, or otherwise take any action the result of which is the creation of an employment relationship between it and Certified Building Official at any time during the term of this Agreement nor during a period extending from the date this Agreement is terminated through the date which is one year thereafter.

14. NO PARTNERSHIP OR JOINT VENTURE: The parties hereby specifically declare that the legal relationship created hereby shall not, under any circumstances, constitute a partnership, joint venture, or employee relationship.
15. NO THIRD-PARTY BENEFICIARIES: Nothing in this Agreement is intended to confer rights or remedies under or by reason of this Agreement on any person, other than the parties hereto. Nothing in this Agreement is intended to relieve or discharge the obligations or liabilities of any third persons to any party hereto or to give any third party any right of subrogation or action over or against any party hereto.
16. ASSIGNMENT PROHIBITED: This Agreement may not be assigned by either party for any purpose without the prior written consent of the other party.
17. AMENDMENTS: Either party may request to amend this agreement in writing to the other party. If both parties agree to amend the agreement any amendment shall be in writing with an effective date established. Any said amendments shall be approved by the respective boards\commissions and signed by authorized representatives of both parties.
18. SEVERABILITY: If any provision of this Agreement is held illegal, invalid, or unenforceable, that provision will be fully severable and this Agreement will be construed and enforced as if the illegal, invalid, or unenforceable provision had never been part of this Agreement, and the remaining provisions of this Agreement will remain in full force and effect, and there will be added automatically to this Agreement a legal, valid, and enforceable provision that is as similar to the severed provision as possible.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed:

City of Windom

City of Worthington

Mayor

Mayor

City Administrator

City Clerk

WORTHINGTON CITY COUNCIL**ADDENDUM**

**7:00 P.M, Monday, February 14, 2022
City Hall Council Chambers**

COMMUNITY DEVELOPMENT CASE ITEM**2. Parking Lease – Thompson Apartments**

On December 28, 2021 City Council approved the removal of 10 two-hour parking stalls from the Municipal Parking Lot located behind the Thompson (between Park Lane and 11th Street). As part of this change the City is proposing to lease the ‘block’ of 35 stalls to the Thompson management on an annual basis for the amount of \$4,300. They will then sublease the stalls out to their residents and it will be up to them as to how they choose to manage the 35 stalls.

Council is requested to approve the contract shown in Exhibit 2.

PARKING LEASE

1. **Parties.** The parties to this Lease, entered into this ___ day of February, 2022, are the CITY OF WORTHINGTON, a municipal corporation organized under the laws of the State of Minnesota ("Landlord") and Mitchell Ryan Clark, individual dba The Thompson Hotel ("Tenant").
2. **Lease of Parking Spaces.** The Landlord hereby leases to Tenant the use of 35 parking spaces located within the BLUE lines graphically depicted on the attached Exhibit A in the parking lot located between Eleventh Street and Park Lane and between Third and Fourth Avenues in the City of Worthington, Minnesota, ("Parking Lot"), together with a right of reasonable access thereto.
3. **Term.** This Lease shall be on an annual basis commencing on the date written above (the "Commencement Date").
4. **Rent.** From and after the Commencement Date, Tenant shall pay to Landlord annual rent in the amount of Four Thousand three Hundred and No/100 Dollars (\$4,300.00), payable in advance, on or before the Commencement Date each year during the term of the lease.
5. **Usage Time.** The Landlord and Tenant hereby understand that the Tenant will be sublease individual parking spaces to the resident tenants of the Thompson Hotel to use as a part of rental agreements by and between the Tenant and such residents.
6. **Permits.** The Landlord will provide Tenant with 41 blue permits which Tenant may issue to the Thompson residents. Tenant may utilize their own permits of differing design provided the permits are blue. Landlord may issue replacement permits annually with the renewal of this lease. Tenant may purchase replacement permits from Landlord at any other time for ten dollars (\$10) per permit. Landlord will ticket and/or tow away any vehicle not displaying a blue permit. All vehicles to which permits are affixed must be currently licensed, in operable condition, and currently insured.
7. **Maintenance.** Landlord will maintain the parking lot in which the spaces are located. Tenant and the residents of the Thompson Hotel will cooperate with the City in moving vehicles for maintenance. Landlord will remove snow from driving and access lanes only. Tenant and the residents of the Hotel Thompson shall be responsible for removing snow from the stalls and around vehicles.
8. **Use of Parking Spaces.** Tenant and their subtenants, invitees and guests may use the Parking Spaces solely for vehicular parking of passenger vehicles and motorcycles, subject to the terms and conditions set forth in this Section. All vehicles shall be located entirely within the boundaries of a single designated Parking Space. The Parking Spaces shall be available for use by Tenant twenty-four (24) hours per day, seven (7) days per week. Tenant shall use the Parking Spaces in accordance with the terms of this Lease and such additional rules and regulations as may from time to time be reasonably made by Landlord for the general safety, security, comfort and convenience of the owners and users of the Parking Lot. Tenant may not use or occupy the

Parking Lot or any single Parking Space within the Parking Lot for any unlawful purpose, and Tenant's use and occupancy of the Parking Lot will comply with all present and future laws, ordinances, regulations and orders of all governmental units having jurisdiction over the Parking Lot. Tenant shall not cause or permit any noxious or unusual noise, odors, emissions or nuisance in or about the Parking Lot or use the Parking Lot in a manner which unreasonably disturbs the residents of adjacent properties in any way. Tenant may not use or store in or about the Parking Lot any flammable, toxic or hazardous substance (as defined in any applicable local, state or federal environmental law), except fluids customarily found in automobiles, which fluids shall be properly and lawfully contained within each vehicle.

9. **Signage.** The Tenant is responsible for any labor and expense for the installation and maintenance of signage required to mark the Parking Lot as available to its officers, directors, employees, tenants, invitees and guests during the term of this lease. The Tenant must first have the plans for the signage and its location approved by the Landlord.
10. **Rights Reserved By Landlord.** Landlord reserves all rights with respect to the Parking Lot not specifically and exclusively granted to Tenant under this Lease, including, without limitation, the right to:
 - (a) Tow away, or otherwise impound, at the vehicle owner's sole cost and expense, any vehicle (i) improperly parked in a Parking Space; (ii) parked in a "no parking" zone; or (iii) parked in violation of any state or local law; (iv) otherwise parked in violation of this Lease, including permit violations.
 - (b) Close all or any part of the Parking Lot (and deny Tenant's access to the Parking Lot) in connection with any repairs made by Landlord to the Parking Lot or in the event of any emergency, without liability or cost to Landlord and without entitling Tenant to any abatement of any Rent; provided, however, that Tenant shall be entitled to an apportioned abatement of rent during the period of such closure if Landlord is unable to provide alternative parking to Tenant in the Parking Lot;
 - (c) Make any change, either temporary or permanent, to the Parking Lot Landlord deems necessary in its sole discretion; provided that such change does not materially interfere with Tenant's ability to use the Parking Lot in accordance with the terms hereof.
11. **Waiver and Release of Claims and Subrogation.** To the extent not prohibited by law, Landlord and Tenant, on behalf of themselves, each waives, releases and discharges the other from all claims arising out of damage to or destruction of the Parking Lot or any vehicles or other personal property within the Parking Lot from any occurrence whatsoever, regardless whether any such claim results from the negligence or fault of either party. Landlord and Tenant will each look only to their own insurance coverage, if any, in the event of any such claim. Tenant's vehicles and other personal property are in the Parking Lot at Tenant's sole risk. Landlord is not liable for any damage to such property or for any theft, misappropriation or loss of such property. Tenant is solely responsible for obtaining and maintaining such insurance as may be

required to protect Tenant, Subtenants, and their property within the Parking Lot. Landlord and Tenant each expressly waives, releases and discharges the other party from all claims arising out of bodily injury, harm or death occurring within the Parking Lot.

12. **Insurance.** Landlord and Tenant shall each be responsible for maintaining appropriate commercial liability insurance policies, which policies shall specifically insure against liability due to occurrences in the Parking Lot. On or prior to the Commencement Date, and as a condition to having access to the Parking Spaces, Tenant shall provide Landlord with a certificate or other reasonable evidence of such liability insurance.

13. **Default.** In the event Tenant fails to perform any obligation set forth herein and such failure is not cured within ten (10) days following written notice to Tenant of such default, it shall be an event of default ("Event of Default"). If an Event of Default occurs, Landlord may (a) terminate this Lease by notice to Tenant; (b) terminate Tenant's access to and possession of the Parking Lot and Parking Spaces; (c) cure Tenant's default and collect from Tenant the costs incurred by Landlord to effect such cure; (d) collect from Tenant all unpaid Rent hereunder; (e) collect contract damages resulting from the Event of Default; and (f) exercise such other remedies as are available to Landlord at law.

14. **Condemnation.** In the event of a taking, Tenant shall not be entitled to any award or payment made by the condemning authority and Landlord may, in the event of a partial taking, terminate this Lease with respect to fewer than all of the Parking Spaces (in proportion to the extent of any partial taking) by notifying Tenant. In the event of taking, Tenant shall not be entitled to any award or payment made by the condemning authority, and the Tenant hereby assigns to Landlord all of its rights to any award or payment on account of such a taking.

15. **Notices.** Notices contemplated by this Lease shall be in writing and shall be deemed effective on the next business day following deposit in the U.S. mail, certified mail, postage paid, addressed as follows:

If to Landlord: City of Worthington
 PO Box 279
 Worthington, MN 56187
 Attn: City Clerk

If to Tenant: Mitchell Clark
 7601 Blue Sage Ct
 Summerfield NC 27358

Notice delivered in any other manner shall be effective upon receipt by the addressee.

16. **Attorney's Fees.** If either Landlord or Tenant commences any litigation or judicial action to determine or enforce any provision of this Lease, the prevailing party in such litigation or judicial action is entitled to recover all of its costs and expenses (including, without limitation, reasonable attorneys' fees, costs and expenses) from the non-prevailing party. In addition,

Tenant shall pay to Landlord on demand all legal fees reasonably incurred by Landlord in connection with the drafting, negotiation and review of this Lease, as evidenced by a statement of such fees.

17. **Miscellaneous.** This Lease sets forth the entire Lease between the parties with respect to the subject matter hereof, and supersedes and revokes all prior or contemporaneous negotiations, discussions, representations, understandings and leases between the parties with respect to such subject matter. This Lease may be amended only in a written instrument signed by all parties hereto and setting forth the nature of such amendment and the specific intent to so amend. Rights under this Lease may be waived only in a written instrument signed by the waiving party and setting forth the specific right being waived and the specific intent to so waive. A waiver of any particular right in any particular instance shall not be deemed a waiver of any other right or a waiver of such right in any other instance. Headings in this Lease are for convenience of reference only, and shall not alter the interpretation, meaning or effect of any provision of this Lease. The validity, enforceability, interpretation and effect of this Lease shall be governed by the laws of Minnesota. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

LANDLORD:

TENANT:

Mike Kuhle, Mayor

Mitchell Clark

Mindy Eggers, City Clerk

Parking for Thompson Lot
Exhibit A



- Blue:** Thompson Parking (35 Stalls).
- Red:** 5 Stalls leased to businesses.
- Black:** 5 Stalls remaining as 2-hour parking.
- Yellow:** Stalls leased to businesses/individuals.