

AGENDA REPORT

TO: Mayor & City Commissioners
FROM: Ken Hibl, City Manager
DATE: April 12, 2018
RE: Approval of Depot Lease Agreements-Clare County Arts Council and Clare Area Chamber of Commerce

For the Agenda of April 16, 2018

Background. As the depot is a City-owned facility, two lease agreements (*copies att'd*) were crafted by our City Attorney to outline the terms of occupancy of the building by these two tenants – the agreements are identical with the exception of the names of the lessees. The City approved a lease agreement with the Clare County Arts Council nearly two years ago (*see copy of att'd Resolution 2016-050*); however, we were unable to obtain an occupancy permit until the elevator was operational, thus we could not allow the CCAC to commence tenancy in the building. All work on the elevator is now completed, and it is functional. But we have elected not to place it into service until the building is occupied as we (the City) will have to commence paying service fees (fire, alarm, & inspection) when it is placed into service. When we presented the lease agreement to the Clare Area Chamber of Commerce, they asked for two changes to the lease agreement: that the initial term of the lease agreement be five years in lieu of three years and that the “opt-out” clause to the agreement be a 180-day period versus the proposed 90-day opt-out clause incorporated in the initial lease agreement offered to the CCAC. As we’re recommending to the City Commission that we agree to the proposed lease change requested by the CACC, it is deemed prudent to concurrently change the current lease agreement with the CCAC to keep the terms and conditions of both agreements identical. The City Commission is asked to approve the two lease agreements with the CACC and the CCAC.

Issues & Questions Specified. Should the City Commission approve the two lease agreements between the City and the Arts Council and with the Chamber of Commerce?

Alternatives.

1. Approve both agreements.
2. Approve both lease agreement with changes, modifications, or stipulations.
3. Disapprove the lease agreements.
4. Set aside decision regarding this matter to a later date.

Financial Impact. There is no revenue generated as a result of this lease agreement. The primary purpose of rehabilitating the depot building has always been to preserve the building as a historic element of Clare for current and future generations. The intent of the occupancy of the depot by the Arts Council and the Chamber of Commerce is to provide accessibility and use of the depot to the citizens of Clare and the Greater Clare Area Community. In return for occupying the depot and thereby providing access of the building to local residents, the Arts Council and the Chamber of Commerce will pay the utility (electric, natural gas, water & sewer, respective provider fees for wi-fi, phones, & internet) costs needed to operate the building.

Maintenance of the grounds and building will be the responsibility of the City, to include elevator service, inspection, and protection fees.

Recommendation. I recommend that the City Commission approve the lease agreements by adoption of Resolution 2018-042 and Resolution 2018-043 (*copies att'd*).

Attachments.

1. Lease Agreement – Clare Area Chamber of Commerce.
2. Lease Agreement – Clare County Arts Council.
3. Resolution 2016-050.
4. Resolution 2018-042.
5. Resolution 2018-043.

LEASE

IT IS HEREBY AGREED between CITY OF CLARE, hereinafter referred to as "CITY", and CLARE AREA CHAMBER OF COMMERCE, hereinafter referred to as "CACC", as follows:

The City, in consideration of the rents and covenants herein specified, does hereby **Let and Lease** to CACC offices of the main floor of the building known as the Depot, situated and being in the City of Clare, County of Clare, and State of Michigan, described as:

PURPOSE: The purpose of this agreement is to allow the CACC to occupy the subject space while providing space in the remainder of the Depot to groups who have had a role in promoting the building such as the Clare County Arts Council, Clare Visitor's Bureau, the City of Clare Recreation Department, historical groups, railroad groups to also use the building.

TERM. The term of the lease is five years from and after the 16th day of April, 2018, through the 15th day of April, 2023, on the terms and conditions hereinafter mentioned, to be occupied for any and all events of the Clare Area Chamber of Commerce, and in no case to be used for any business deemed extra hazardous on account of fire. This Agreement may be terminated at any time upon 180-day written notice by either party. After the initial 5 year term, this agreement shall renew automatically for one year periods without any action by any party.

PROVIDED, that in case any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for CITY, its certain attorney, heirs, representatives and assigns, to re-enter into and re-possess the said premises, and CACC, and each and every other occupant, to remove and put out.

CACC does hereby hire the said premises for the term as above mentioned, and does covenant and promise to pay to the CITY, its representatives and assigns, in lieu of rent of said premises for said term all insurance for CACC and their proportionate share of all utilities of said building, said proportionate share to be determined by the Governing Board, appointed by the City Commission to oversee the operations of the Depot, along with occupying and maintaining the building's availability to the public during established hours of operation, which will also be determined by the aforementioned Governing Board. CACC shall be duly represented on the Governing Board, said representation to be determined by the President of CACC. The utilities will be maintained under the CITY as account holder. The CITY will prorate the cost of the services and invoice Lessee monthly on an equitable basis. Payment of the utility invoices shall be due within thirty (30) days of receipt.

INSURANCE. The CITY will provide umbrella insurance coverage for the building under its municipal insurance binder. However, CACC will protect, indemnify and save harmless the CITY from and against any and all loss, costs, damage and expense occasioned by or arising out of any accident or other occurrence causing or inflicting injury and/or damage to any person or property, happening or done in, upon, or about the Leased Premises, or due directly or indirectly to the tenancy, use or occupancy thereof, or any part thereof by the CITY or any person claiming through or under the CITY. Further, CACC covenants and agrees that it will at its own expense, procure and maintain its own casualty and liability insurance with its regular carrier that is authorized to do business in the State of Michigan in amounts not less than \$1,000,000 DOLLARS for any one person and \$1,000,000 DOLLARS for any one accident, and with the limits of \$1,000,000 DOLLARS for property damage, protecting the party of the first part against such claims, damages, costs or expenses on account of injury, etc. CACC agrees to accept responsibility and hold CITY harmless for any liability related to activities held within the building.

CACC further covenants that it will not assign nor transfer this Lease, or sub-let said premises, or any part thereof, without the written consent of the CITY; however, Lessee may charge fees for holding events, such as classes or admission to special events, which will not be considered subletting and Lessee would not be prohibited from such practices and any revenues realized remain with the Lessee.

CACC will at its own expense, during the continuance of this lease, keep the said premises and every part thereof in as good repair, and at the expiration of the term, yield and deliver up the same in like condition as when taken, reasonable use and wear thereof and damage by the elements excepted;

The CITY does covenant that CACC, on paying the aforesaid installments and performing all the covenants aforesaid, shall and may peacefully and quietly have, hold and enjoy the said demised premises for the term aforesaid.

The CITY shall not be responsible or liable to CACC for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying adjoining premises or for any loss or damage resulting to CACC or its property from burst, stopped or leaking water, gas, sewer or steam pipes, or for any damage or loss of property within the Premises from any cause whatsoever, and no such occurrence shall be deemed to be an actual or constructive eviction from the premises or result in an abatement of rent.

The CITY will provide an internet connection point in the building. Lessee is solely responsible for establishing accounts and paying fees for internet service. However, the CITY has full control of where and how these services are installed.

The CITY shall be responsible for all operating and maintenance costs associated with the elevator in the building.

The covenants, conditions and agreements, made and entered into by the several parties hereto, are declared binding on their respective heirs, representatives and assigns.

This Agreement shall be construed under and in accordance with the laws of the State of Michigan.

No amendment, modification, or alteration of the terms of this Lease Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the Parties hereto.

No waiver by any Party hereto of any default or breach of any term, condition, or covenant of this Lease Agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition, or covenant contained herein.

In the event either party breaches any of the terms of this Lease Agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorney/s fees so incurred by such other party.

WITNESS our hands and seals, this 16th day of May, 2016.

WITNESSES

CITY OF CLARE

BY PATRICK HUMPHREY
ITS MAYOR

CLARE AREA CHAMBER OF COMMERCE

BY LINDA GUILIANI
ITS BOARD PRESIDENT

PREPARED BY:

JAYNIE SMITH HOERAUF
JAYNIE SMITH HOERAUF, P.C.
601 Beech, Box 67
Clare MI 48617

LEASE

IT IS HEREBY AGREED between CITY OF CLARE, hereinafter referred to as "CITY", and CLARE COUNTY ARTS COUNCIL, hereinafter referred to as "CCAC", as follows:

The City, in consideration of the rents and covenants herein specified, does hereby **Let and Lease** to CCAC offices of the main floor of the building known as the Depot, situated and being in the City of Clare, County of Clare, and State of Michigan, described as:

PURPOSE: The purpose of this agreement is to allow the CCAC to occupy the subject space while providing space in the remainder of the Depot to groups who have had a role in promoting the building such as the Clare Area Chamber of Commerce, Clare Visitor's Bureau, the City of Clare Recreation Department, historical groups, railroad groups to also use the building.

TERM. The term of the lease is five years from and after the 16th day of April, 2018, through the 15th day of April, 2023, on the terms and conditions hereinafter mentioned, to be occupied for any and all events of the Clare County Arts Council, and in no case to be used for any business deemed extra hazardous on account of fire. This Agreement may be terminated at any time upon 180-day written notice by either party. After the initial 5 year term, this agreement shall renew automatically for one year periods without any action by any party.

PROVIDED, that in case any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for CITY, its certain attorney, heirs, representatives and assigns, to re-enter into and re-possess the said premises, and CCAC, and each and every other occupant, to remove and put out.

CCAC does hereby hire the said premises for the term as above mentioned, and does covenant and promise to pay to the CITY, its representatives and assigns, in lieu of rent of said premises for said term all insurance for CACC and their proportionate share of all utilities of said building, said proportionate share to be determined by the Governing Board, appointed by the City Commission to oversee the operations of the Depot, along with occupying and maintaining the building's availability to the public during established hours of operation, which will also be determined by the aforementioned Governing Board. CCAC shall be duly represented on the Governing Board, said representation to be determined by the President of CCAC. The utilities will be maintained under the CITY as account holder. The CITY will prorate the cost of the services and invoice Lessee monthly on an equitable basis. Payment of the utility invoices shall be due within thirty (30) days of receipt.

INSURANCE. The CITY will provide umbrella insurance coverage for the building under its municipal insurance binder. However, CCAC will protect, indemnify and save harmless the CITY from and against any and all loss, costs, damage and expense occasioned by or arising out of any accident or other occurrence causing or inflicting injury and/or damage to any person or property, happening or done in, upon, or about the Leased Premises, or due directly or indirectly to the tenancy, use or occupancy thereof, or any part thereof by the CITY or any person claiming through or under the CITY. Further, CCAC covenants and agrees that it will at its own expense, procure and maintain its own casualty and liability insurance with its regular carrier that is authorized to do business in the State of Michigan in amounts not less than \$1,000,000 DOLLARS for any one person and \$1,000,000 DOLLARS for any one accident, and with the limits of \$1,000,000 DOLLARS for property damage, protecting the party of the first part against such claims, damages, costs or expenses on account of injury, etc. CCAC agrees to accept responsibility and hold CITY harmless for any liability related to activities held within the building.

CCAC further covenants that it will not assign nor transfer this Lease, or sub-let said premises, or any part thereof, without the written consent of the CITY; however, Lessee may charge fees for holding events, such as classes or admission to special events, which will not be considered subletting and Lessee would not be prohibited from such practices and any revenues realized remain with the Lessee.

CCAC will at its own expense, during the continuance of this lease, keep the said premises and every part thereof in as good repair, and at the expiration of the term, yield and deliver up the same in like condition as when taken, reasonable use and wear thereof and damage by the elements excepted;

The CITY does covenant that CCAC, on paying the aforesaid installments and performing all the covenants aforesaid, shall and may peacefully and quietly have, hold and enjoy the said demised premises for the term aforesaid.

The CITY shall not be responsible or liable to CCAC for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying adjoining premises or for any loss or damage resulting to CCAC or its property from burst, stopped or leaking water, gas, sewer or steam pipes, or for any damage or loss of property within the Premises from any cause whatsoever, and no such occurrence shall be deemed to be an actual or constructive eviction from the premises or result in an abatement of rent.

The CITY will provide an internet connection point in the building. Lessee is solely responsible for establishing accounts and paying fees for internet service. However, the CITY has full control of where and how these services are installed.

The CITY shall be responsible for all operating and maintenance costs associated with the elevator in the building.

The covenants, conditions and agreements, made and entered into by the several parties hereto, are declared binding on their respective heirs, representatives and assigns.

This Agreement shall be construed under and in accordance with the laws of the State of Michigan.

No amendment, modification, or alteration of the terms of this Lease Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the Parties hereto.

No waiver by any Party hereto of any default or breach of any term, condition, or covenant of this Lease Agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition, or covenant contained herein.

In the event either party breaches any of the terms of this Lease Agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorney/s fees so incurred by such other party.

WITNESS our hands and seals, this 16th day of May, 2016.

WITNESSES

CITY OF CLARE

BY PATRICK HUMPHREY
ITS MAYOR

CLARE COUNTY ARTS COUNCIL

BY CAROL SANTINNI
ITS COUNCIL PRESIDENT

PREPARED BY:

JAYNIE SMITH HOERAUF
JAYNIE SMITH HOERAUF, P.C.
601 Beech, Box 67
Clare MI 48617

RESOLUTION 2016-050

A RESOLUTION OF THE CLARE CITY COMMISSION APPROVING A LEASE AGREEMENT WITH THE CLARE COUNTY ARTS COUNCIL.

WHEREAS, in order to preserve the historic Clare Railroad Depot as a community asset for the City's residents, the Clare City Commission purchased this iconic building approximately fifteen years ago and entered into a partnership with the MidMichigan Community Action Agency and a group of local volunteers under the supervision of the City of Clare Planning Commission to preserve and rehabilitate said building; and

WHEREAS, said dedicated group of volunteers has raised in excess of \$600,000 in the past decade to facilitate relocation of the building and complete construction of a new basement under the building to serve as the first-ever permanent "home" to the Clare County Arts Council, said organization being among the core group of volunteers responsible for the fund-raising activities to rehabilitate the depot; and

WHEREAS, the basement of the building is ready for occupancy by the Arts Council, and it is the intent of the Council to move into the depot in May 2016; and

WHEREAS, the City Attorney has crafted a lease agreement to outline the terms and conditions of occupancy of the City-owned building by the Clare County Arts Council; and

WHEREAS, the City and the Arts Council have reviewed the terms and conditions of said lease agreement have mutually agreed to the terms and conditions outlined therein.

NOW THEREFORE BE IT RESOLVED THAT the Mayor and City Commission of the City of Clare, hereby approves a lease agreement between the City of Clare and the Clare County Arts Council outlining terms and conditions of tenancy of the Historic Clare Railroad Depot by the Arts Council.

ALL RESOLUTIONS AND PARTS OF RESOLUTIONS INsofar AS THEY CONFLICT WITH THE PROVISIONS OF THIS RESOLUTION BE AND THE SAME ARE HEREBY RESCINDED.

The Resolution was introduced by Commissioner McConnell and supported by Commissioner Swanson. The Resolution declared adopted by the following roll call vote:

YEAS: Bob Bonham, Pat Humphrey, Jean McConnell, Carolyn (Gus) Murphy, and Karla Swanson.

NAYS: None.

ABSENT: None.

Resolution approved for adoption on this 16th day of May 2016.

Diane Lyon, City Clerk

RESOLUTION 2018-042

A RESOLUTION OF THE CLARE CITY COMMISSION APPROVING A LEASE AGREEMENT WITH THE CLARE COUNTY ARTS COUNCIL.

WHEREAS, in order to preserve the historic Clare Railroad Depot as a community asset for the City's residents, the Clare City Commission purchased this iconic building approximately fifteen years ago and entered into a partnership with the MidMichigan Community Action Agency and a group of local volunteers under the supervision of the City of Clare Planning Commission to preserve and rehabilitate said building; and

WHEREAS, said dedicated group of volunteers has raised sufficient funds (in excess of \$500,000) and invested immense amounts of "sweat equity" in the past decade to facilitate relocation of the building and complete the rehabilitation of the building, thereby allowing occupancy by the Clare County Arts Council, said organization being among the core group of volunteers responsible for the fund-raising activities to rehabilitate the depot; and

WHEREAS, the City Attorney has crafted a lease agreement to outline the terms and conditions of occupancy of the City-owned building by the Clare County Arts Council; and

WHEREAS, the City and the Arts Council have reviewed the terms and conditions of said lease agreement have mutually agreed to the terms and conditions outlined therein.

NOW THEREFORE BE IT RESOLVED THAT the Mayor and City Commission of the City of Clare, hereby approves a lease agreement between the City of Clare and the Clare County Arts Council outlining terms and conditions of tenancy of the Historic Clare Railroad Depot by the Arts Council.

ALL RESOLUTIONS AND PARTS OF RESOLUTIONS INsofar AS THEY CONFLICT WITH THE PROVISIONS OF THIS RESOLUTION BE AND THE SAME ARE HEREBY RESCINDED.

The Resolution was introduced by Commissioner _____ and supported by Commissioner _____. The Resolution declared adopted by the following roll call vote:

YEAS:

NAYS:

ABSENT:

Resolution approved for adoption on this 16th day of April 2018.

Diane Lyon, City Clerk

RESOLUTION 2018-043

A RESOLUTION OF THE CLARE CITY COMMISSION APPROVING A LEASE AGREEMENT WITH THE CLARE AREA CHAMBER OF COMMERCE.

WHEREAS, in order to preserve the historic Clare Railroad Depot as a community asset for the City's residents, the Clare City Commission purchased this iconic building approximately fifteen years ago and entered into a partnership with the MidMichigan Community Action Agency and a group of local volunteers under the supervision of the City of Clare Planning Commission to preserve and rehabilitate said building; and

WHEREAS, said dedicated group of volunteers has raised sufficient funds (in excess of \$500,000) and invested immense amounts of "sweat equity" in the past decade to facilitate relocation of the building and complete the rehabilitation of the building, thereby allowing occupancy by the Clare Area Chamber of Commerce, said organization being among the core group of volunteers responsible for the fund-raising activities to rehabilitate the depot; and

WHEREAS, the City Attorney has crafted a lease agreement to outline the terms and conditions of occupancy of the City-owned building by the Clare Area Chamber of Commerce; and

WHEREAS, the City and the Chamber of Commerce have reviewed the terms and conditions of said lease agreement have mutually agreed to the terms and conditions outlined therein.

NOW THEREFORE BE IT RESOLVED THAT the Mayor and City Commission of the City of Clare, hereby approves a lease agreement between the City of Clare and the Clare Area Chamber of Commerce outlining terms and conditions of tenancy of the Historic Clare Railroad Depot by the Chamber of Commerce.

ALL RESOLUTIONS AND PARTS OF RESOLUTIONS INsofar AS THEY CONFLICT WITH THE PROVISIONS OF THIS RESOLUTION BE AND THE SAME ARE HEREBY RESCINDED.

The Resolution was introduced by Commissioner _____ and supported by Commissioner _____. The Resolution declared adopted by the following roll call vote:

YEAS:

NAYS:

ABSENT:

Resolution approved for adoption on this 16th day of April 2018.

Diane Lyon, City Clerk