

AGENDA REPORT

TO: Mayor & City Commissioners
FROM: Ken Hibl, City Manager
DATE: May 13, 2016
RE: Depot Lease – Clare County Arts Council

For the Agenda of May 16, 2016

Background. The construction of the basement of the Clare Depot has been completed to accommodate the Clare County Arts Council as its first-ever permanent home. The Council is scheduled to occupy the facility within the next two weeks.

As the depot is a City-owned facility, a lease agreement (*copy att'd*) was crafted by our City Attorney to outline the terms of occupancy of the building by the Arts Council. The Arts Council has reviewed the proposed lease agreement and agrees to the terms outlined therein.

The Commission is asked to approve the proposed lease agreement.

Issues & Questions Specified. Should the City Commission approve the lease agreement between the City and the Arts Council?

Alternatives.

1. Approve the lease agreement.
2. Approve the lease agreement with changes, modifications, or stipulations.
3. Disapprove the lease agreement.
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 ultimately the Chamber of Commerce also) 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 Chamber when the top floor of the depot is completed) will pay the utility costs needed to operate the building.

Recommendation. I recommend that the City Commission approve the lease agreement by adoption of Resolution 2016-050(*copy att'd*).

Attachments.

1. Lease Agreement.
2. Resolution 2016-050.

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 the basement 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 basement of the Depot to groups who have had a role in promoting the building such as the 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 _____ from and after the first day of _____, 2016, through the ____ day of _____, 20____, 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 90 day written notice by either party. After the initial ___ 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 CCAC and their proportionate share of all utilities of said building along with occupying and maintaining the building's availability to the public during established hours of operation. Further, 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 sublet 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 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 ____ day of _____, 2016.

WITNESSES

CITY OF CLARE

BY PATRICK HUMPHREY
ITS MAYOR

CLARE COUNTY ARTS COUNCIL

BY
ITS

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 _____ 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 May 2016.

Diane Lyon, City Clerk