

RECREATION, LIBRARIES, & AUTHORITIES COMMITTEE

12-0407R

RESOLUTION AUTHORIZING AN AMENDMENT TO THE AMENDED AND RESTATED LEASE AGREEMENT WITH HARTLEY NATURE CENTER INCORPORATED.

CITY PROPOSAL:

RESOLVED, that the city and Hartley Nature Center Incorporated (Hartley) entered into an amended and restated lease agreement on or about July 22, 2002 (city contract no. 19253) related to the maintenance and operation of a nature center in Hartley Park; and

FURTHER RESOLVED, that the parties desire to amend the agreement to expand the leased area and extend the lease by a period of thirty years.

NOW THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to execute an amendment to the agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. _____.

Approved:



Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

PARKS KB:SLW:le 12/06/2012

STATEMENT OF PURPOSE: The purpose of this resolution is to approve an amendment to the agreement with Hartley Nature Center Incorporated (Hartley) to (a) expand the leased area to include some of Hartley's trail improvement projects and recently completed amphitheater and (b) extend the lease by a period of thirty years to December 31, 2052 to support Hartley endowment growth and strengthen Hartley's finances by providing an ongoing and reliable funding source. The amendment also incorporates standard city contract language into the agreement.

AMENDMENT TO AGREEMENT

The Amended and Restated Lease Agreement (the "Agreement") between City of Duluth ("City") and Hartley Nature Center Incorporated ("Lessee") relating to the development, maintenance and operation of a Nature Center at the City's Hartley Park is amended as set forth below. Capitalized terms used in this Amendment but not defined herein shall have the meanings ascribed to them in the Agreement.

WHEREAS, the City and Lessee entered into an Amended and Restated Lease Agreement on or about July 22, 2002; and

WHEREAS, the City and Lessee desire to make certain modifications to the Agreement as described in more detail herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties agree as follows:

1. Article I K. is modified as follows:

Leased Premises: shall refer to that portion of Harley Park leased to Lessee for its exclusive use consisting of approximately 479,160 ~~49,700~~ square feet of land as generally shown on Amended Exhibit C attached hereto and made a part hereof and shall include the Building ~~when the same has been constructed.~~

2. Article III is modified as follows:

The City hereby declares its intention that the primary use of Hartley Park shall be that of a Nature Center and, as such, that Hartley Park be used as a facility to foster and enhance educational and recreational activities aimed at promoting the preservation of, learning about and understanding of the natural environment of the Duluth Area. In order to serve this purpose, the City hereby declares its intention to maintain ownership and control of Hartley Park as it presently exists, to develop, in cooperation with Lessee, a management plan for Hartley Park ~~manage Hartley Park~~ with the intent of protecting its natural qualities and to authorize only those uses, events and physical modifications of ~~the~~ Hartley Park, including trails and other structures, which, in the determination of the City, do not materially interfere with its use as a Nature Center. The City further declares its intention to consult fully with Lessee as well as representatives of other interested groups in the community regarding any material changes in use of Hartley Park and to cooperate with Lessee in Lessee's use of the facilities of Hartley Park; provided, however, that nothing contained in this Article shall be deemed to confer any legally-enforceable rights upon Lessee or any other persons or groups.

3. Article X is modified as follows:

~~The parties hereto have been informed by the City's Finance Director that the useful depreciable life of the improvement to be made hereunder is Forty (40) years and therefore stipulate to the same. In acknowledgement thereof, t~~ The term of this Agreement shall run from the date hereof until December 31, ~~2022~~ 2052 unless sooner terminated as provided for herein.

4. Article XI A. is deleted in its entirety and replaced with the following:

A. ~~Construction Standards and Approvals~~

~~Any construction or other modifications done to or on the Leased Premises or Hartley Park by Lessee, or under its direction, shall conform to all applicable regulations, building codes and health standards, as well as the following requirements:~~

- ~~1. All construction shall meet the requirements of Type V (one hour rated) construction as set forth in the Minnesota State Building Code (current editions).~~
- ~~2. For all work costing in excess of Ten Thousand (\$10,000) Dollars, complete contract drawings and specification on all work, including alterations, additions or replacements, must be submitted for and receive approval of the Administrative Assistant.~~
- ~~3. All work must be done by competent contractors and for work costing in excess of Ten Thousand (\$10,000) Dollars, in time and manner approved by the Administrative Assistant and coordinated with the Administrative Assistant. Lessee shall comply with the indemnity and insurance bond requirements of this Agreement.~~
- ~~4. An authorized representative of Lessee shall be available at all reasonable times at the site to coordinate the work of the Leasehold Improvements.~~

A. Alterations and Improvements:

1. Lessee may, at its sole cost and expense, make suitable improvements or alterations to the Leased Premises upon advance written approval from the City's Facility Projects Specialist. All such improvements (excluding appliances and equipment plugged into an electricity source) shall become the property of the City. Prior to commencing any improvements or alterations, Lessee shall submit to the City a Project Proposal Request along with detailed plans. A copy of the Project Proposal Request is attached to this Agreement as Exhibit D. These documents shall be submitted to the City at least forty-five (45) days before the planned commencement of the work. No work may begin on any approved project until all necessary building permits are secured. All construction shall conform to state law and the Duluth City Codes.
2. Lessee agrees that not less than thirty (30) days prior to commencement of any construction, alteration or improvement on said Leased Premises, Lessee will provide the City with sufficient proof of required insurance, including worker's compensation. Such proof of insurance must be approved by the City Attorney before the commencement of any construction hereunder.

5. Article XII D. is modified as follows:

D. Consultation with Lessee

City acknowledges that Lessee has a special interest in and relation to Hartley Park and to its maintenance and use as an area for the study of nature and recreation. Therefore, to the extent practical, City hereby agrees to work in partnership ~~consult~~ with Lessee with regard to the City's policies for the use of Hartley Park and with regard to any physical modifications proposed to be made to Hartley Park. Provided that the City shall have sole discretion with regard to the final decisions regarding such matters and the failure of the City to ~~so consult~~ work in partnership with Lessee shall not invalidate any decision made by City with regard to the same or to give the Lessee a cause of action against the City with regard to the same.

6. The following sections are added to Article XII

N. Communications

The parties agree that a full and complete exchange of information is necessary for a successful relationship, and each party agrees to communicate openly and regularly with the other with regard to any services or other activities contemplated under this Agreement. Lessee agrees to provide reports as requested by the City's Park Manager including reports providing information

about activities held on the Leased Premises including date of the activity, name of activity, number of people in attendance and brief description of the activity. The City Parks Manager agrees, whenever possible, to provide the Lessee with notice of City's activities within Hartley Park.

O. Incident Reports

Lessee shall promptly notify the City's Parks Manager in writing of any incident of injury or loss or damage to the property of City or any Lessee's participants or invitees occurring within the Leased Premises during the Term of this Agreement. Such written report shall be in a form acceptable to the City's Claims Investigator and Adjuster. A copy of the City's form of Incident Report is attached hereto as Exhibit F.

7. Except as specifically amended pursuant to this Amendment, the Agreement remains in full force and effect. In the event of a conflict between the provisions of this Amendment and the provisions of the Agreement, the provisions of this Amendment shall govern.

IN WITNESS WHEREOF, the parties have set their hands the day and date first shown below.

CITY OF DULUTH

**HARTLEY NATURE CENTER
CORPORATION**

By: _____
Its Mayor

By: _____
Its Chair
Date: _____

Attest: _____
Its City Clerk
Date: _____

By: _____
Its Secretary
Date: _____

Countersigned:

By: _____
Its City Auditor

Approved as to form:

By: _____
Its City Attorney

AMENDED EXHIBIT C

AMENDED EXHIBIT C

Hartley Nature Center
Deer Exclosure and Proposed Leased Premises



150 75 0 150 Feet



Legend

Id



Additional leased space



Original Leased Space

EXHIBIT D
Form of Incident Report