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MEMO

*ALSO ADMITTED IN WISCONSIN
◊ALSO ADMITTED IN NORTH DAKOTA
◻ALSO ADMITTED IN MASSACHUSETTS
◻ALSO ADMITTED IN OKLAHOMA

TO: Sunfish Lake Mayor and Councilmembers
FROM: Timothy J. Kuntz, City Attorney
DATE: January 2, 2013
**RE: Lease between the City of Sunfish Lake and St. Anne's Episcopal Church –
January 8, 2013 City Council Meeting; Agenda Item 8(a)**

Section 1. Background. At the December 4, 2012 Council meeting, the Council approved the terms of a lease agreement between the City of Sunfish Lake and St. Anne's Episcopal Church for use of the church facilities for Council meetings, Planning Commission meetings and elections. The material lease terms are as follows:

1. The lease term is three years (for calendar years 2013, 2014 and 2015).
2. The church will lease space to the City in "St. Anne's Room" for meetings on the first Tuesday and the third Wednesday of each month. If the Council changes the dates of the meetings, other suitable space will be made available.
3. In every election year (the even numbered years), the City will have space in the "Parish Hall" to conduct the election process on Monday and Tuesday in August for the primary election and on Monday and Tuesday in November for the general election.
4. The City will also have storage space at the church to store the ballot boxes, voting machines and election signs.
5. If the City needs additional meeting space on days outside of the regular meeting dates or times, then the church agrees in good faith to make such space available.
6. During the meetings and election times, the City will have non-exclusive use of the parking lot, restrooms, hallways, and the tables and chairs. The City will also have the right to post notices and other literature on the bulletin board. The City will be able to use the fax machine and kitchen facilities during the election days in August and

November. The City will also have a mail slot at the church and the right to place a literature rack in the hallway.

7. If the City damages the church premises during its use, the City will repair the damage. When the City leaves the church premises, the City will turn off the lights and lock the doors. The City will leave the space in substantially the same condition that existed when the City began the meeting.
8. The City will hold the church harmless from any claims arising out of the City's use of the lease space, except for claims resulting from the negligence of the church.
9. The City will carry liability insurance up to the tort liability limits.
10. The rent will be \$165 per month for calendar year 2013 and \$169 per month for calendar year 2014 and \$173 per month for calendar year 2015.
11. The church will give the City two keys to the building. If the City loses a key, the City will immediately notify the church and pay the church to re-key the locks on the various church doors and to issue new keys to both church and City personnel. All key holders of the City (the Clerk and Mayor) must complete a training course relating to "safe church" principles.

Section 2. Additional Provisions. Since the December 4, 2012 Council meeting, City Treasurer Mike Blair has obtained a Certificate of Insurance from the City's insurance carrier. St. Anne's Episcopal Church has been named as an additional insured.

Since the December 4, 2012 Council meeting, the City has asked the church to consider a provision that would address future lighting improvements in or around the entrance way to the church and the church parking lot. The City asked the church to consider the following alternate provisions:

Alternate 1: By January 1, 2014, St. Anne's Church will make lighting improvements to the entrance way, sidewalk and parking area.

Alternate 2: By January 1, 2014, St. Anne's Church will prepare cost estimates for making lighting improvements to the entrance way, sidewalk and parking area and will consider whether such improvements are financially feasible.

The church has responded and indicated that it is not in a position at this time to agree to either of the alternate provisions. At this point in time, the church is only having initial discussions about such future improvements and does not want to commit to any particular course of action. As a result, the attached Lease does not contain either Alternate 1 or Alternate 2 listed above.

Section 3. Council Action. The Council is asked to consider the attached Lease between the City of Sunfish Lake and St. Anne's Episcopal Church at the January 8, 2013 Council meeting.

Attachment

LEASE AGREEMENT

THIS LEASE AGREEMENT (Agreement) is made and entered into this 1st day of January, 2013, by and between the City of Sunfish Lake, a Minnesota municipal corporation (“Tenant”) and St. Anne’s Episcopal Church, a _____ (“Landlord”). Landlord and Tenant hereby agree:

ARTICLE 1 **RECITALS**

Recital No. 1. Landlord desires to lease to Tenant and Tenant desires to lease from Landlord the Leased Space, as defined in this Agreement, together with the non-exclusive right to use of the parking lot, restrooms, hallways, tables and chairs during meeting times and election times. The Leased Space is located at St. Anne’s Episcopal Church at 2035 Charlton Road, Sunfish Lake, Minnesota (hereafter the “Premises”).

Recital No. 2. The Leased Space consists of and is defined as the following space located on the Premises:

1. Space in the “St. Anne’s Room” for City Council meetings on the first Tuesday of each month from approximately 6:30 p.m. to 10:00 p.m.;
2. Space in the “St. Anne’s Room” for Planning Commission meeting on the third Wednesday of each month from approximately 6:30 p.m. to 10:00 p.m.;
3. Space in the “Parish Hall” to conduct the election process on the first Monday and Tuesday in August from approximately 6:00 a.m. to 9:00 p.m. for the primary election and on the first Monday and Tuesday in November from approximately 6:00 a.m. to 9:00 p.m. for the general election in every election year (even numbered years);
4. Space to store election ballot boxes, voting machines and election signs in an area designated by the Landlord;
5. The non-exclusive right to use of the parking lot, restrooms, hallways, tables and chairs during meeting times and election times,

hereinafter collectively referred to as the “Leased Space”.

Recital No. 3. The parties desire that the term of this Agreement be for three years beginning on January 1, 2013 and ending on December 31, 2015.

ARTICLE 2 AGREEMENT

2.1 Lease of Premises. Under the terms and conditions hereafter set forth, Landlord leases to Tenant and Tenant hereby leases from Landlord the Leased Space at the Premises:

- A. Rent. The rent shall be \$165 per month for calendar year 2013 and \$169 per month for calendar year 2014 and \$173 per month for calendar year 2015. The monthly rent shall be payable to Landlord no later than the tenth day of each month for that month.
- B. Duration of Lease. The lease shall be for a three (3) year term commencing on January 1, 2013 and ending on December 31, 2015.
- C. Termination. Either party may cancel and terminate this Agreement upon giving the other party a written notice prior to the end of the month that this Agreement will terminate on the last day of the following month. If Tenant has not timely paid rent or if Tenant has otherwise breached a provision of this Agreement, Landlord may terminate this Agreement by giving Tenant written notice ten (10) days in advance of the termination date.
- D. Permitted Uses. Tenant may only use the Leased Space for the purposes defined in Recital No. 2 of this Agreement. The use of the parking lot, restrooms, hallways, tables and chairs is on a non-exclusive basis during meeting times and election days. The Tenant shall have the right to post notices and other literature on the bulletin board. The Tenant shall have the use of the fax machine and kitchen facilities during the two election days in August and November. The Landlord will provide Tenant with a mail slot at the Premises. The Tenant may place a literature rack containing City of Sunfish Lake related materials in the hallway of the Premises.
- E. Utilities. Landlord shall pay for all utilities relating to the Premises including gas, electric, telephone and trash collection.
- F. Repair and Maintenance. If the Tenant damages the Premises during its use of the Leased Space, the Tenant will repair the damage. When the Tenant leaves the Premises, the Tenant will turn off the lights and properly secure the doors. The Tenant shall leave the Leased Space in an orderly condition and in substantially the same condition that existed when the Tenant began using the Leased Space. Tenant has no responsibility to snow plow the parking lot or remove snow from the sidewalks or entrance to the Premises. The Landlord agrees to use reasonable care to plow the parking lot and sidewalks and make the parking lot and sidewalks available to the Tenant at the times specified in Recital No. 2 of this Agreement.
- G. No Alterations. Tenant shall not make any alterations or improvements to the Premises without first obtaining the written consent of Landlord.

- H. Insurance. Tenant, at the Tenant's sole cost and expense, shall maintain comprehensive general public liability insurance up to the tort liability limit of \$500,000 per person and \$1,500,000 per occurrence.

Landlord shall be listed as a co-insured on the comprehensive general public liability insurance policy.

All policies of insurance shall be in form and substance reasonably satisfactory to the Landlord, shall be written with companies reasonably satisfactory to the Landlord, and shall provide for at least ten (10) days written notice to Landlord prior to cancellation or reduction in coverage. Such policies, or certificates thereof, shall be delivered to Landlord prior to the commencement of the Lease Term; and evidence of renewal of such insurance shall be delivered to Landlord not less than thirty (30) days prior to the expiration of such coverage.

- I. Indemnification. Tenant hereby agrees to indemnify, defend and hold the Landlord harmless from any claims, losses or damages made against Landlord or incurred by Landlord that arise out of or relate to Tenant's use of the Premises, except for claims resulting from the negligence or intentional acts of the Landlord.

- J. Real Estate Taxes. Landlord shall pay the real estate taxes and special assessments related to the Premises.

- K. Notices. Any notices required to be given shall be personally delivered to the party or sent by certified mail (return receipt requested) to the following address:

Landlord: St. Anne's Episcopal Church
Attention: Rev. Lydia H. Brown
2035 Charlton Road
Sunfish Lake, MN 55118

Tenant: City of Sunfish Lake
c/o Catherine Iago, City Clerk
7378 Jordon Avenue South
Cottage Grove, Minnesota 55016

- L. Keys to Premises. The Landlord will provide the Tenant with two (2) keys to the Premises. The two (2) keys will be held by the Mayor and City Clerk. All key holders of the Tenant (the Mayor and City Clerk) must complete a training course relating to "safe church" principles. If the Tenant loses a key, the Tenant will immediately notify the Landlord and pay all costs associated with re-keying the locks on the various doors on the Premises and the costs associated with issuing new keys to the authorized users of both the Landlord and Tenant.

- M. Need for Additional Leased Space. Landlord and Tenant acknowledge that from time to time the City Council and the Planning Commission have meetings where the expected attendance could exceed the capacity of "St. Anne's Room". In such an instance, if the Tenant needs additional meeting space, the Landlord agrees in good faith to make such space available to the Tenant in the "Parish Hall" provided the meetings are on the regularly scheduled meeting dates. The Tenant will notify Landlord of such need by contacting the Landlord by telephone at least one week in advance of the meeting. There is no additional charge to Tenant for the additional Leased Space.
- N. Changes to Meeting Dates and Times. If the Tenant has the need to change a particular meeting date or time, the Landlord in good faith agrees when it is practicable to make "St. Anne's Room" available to Tenant or other suitable space available to Tenant if the "St. Anne's Room" is not available. The Tenant will notify Landlord of such need by contacting the Landlord by telephone at least one week in advance of the meeting. There is no additional charge to Tenant for the substitute Leased Space.

IN WITNESS WHEREOF, the parties have executed this Lease effective on the date shown above.

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LANDLORD:
ST. ANNE'S EPISCOPAL CHURCH

By: _____
Rev. Lydia H. Brown
Its: Rector

Dated: January _____, 2013

TENANT:
CITY OF SUNFISH LAKE

By: _____
Molly Park
Its: Mayor

ATTEST:

Catherine Iago, City Clerk

Dated: January 8, 2013