

City of Northfield

City Hall
801 Washington Street
Northfield, MN 55057
ci.northfield.mn.us



Legislation Text

M2017-069

File #: 17-852, Version: 1

City Council Meeting Date: June 6, 2017

To: Mayor and City Council
City Administrator

From: David E. Bennett, Public Works Director/City Engineer

Consider Approval of DJJD North Babcock Park Lease Agreement

Action Requested:

The Northfield City Council considers a motion to approve a Lease Agreement with Defeat of Jesse Days Committee, Inc. for North Babcock Park.

Summary Report:

In November of 2015, City Council passed Resolution 2015-116 approving the installation of new bleachers in North Babcock Park. When the resolution passed in 2015, staff indicated they were working through the 2003 lease agreement with DJJD.

The new lease agreement is similar to the existing agreement, which allows for storing DJJD property including an information booth, ticket booths, bleachers, and stage in North Babcock Park. DJJD is responsible for maintenance of their personal property within the park. This includes the new bleachers.

When the new bleachers were acquired by DJJD, it was discussed that the bleachers may be donated to the City, hence they would be City owned and maintained. However, at this time DJJD wants to keep them under their ownership.

The lease agreement term is three years with an automatic renewal for three additional years. The DJJD committee indicated the bleachers will be installed this summer for the 2017 Celebration.

LEASE AGREEMENT

This Agreement ("Lease" or "Agreement") is made as of this 30 day of May, 2016, by and between the City of Northfield, a Minnesota municipal corporation (the "City" or "Landlord"), and Defeat of Jesse James Days Committee, Inc., a nonprofit corporation under the laws of the State of Minnesota (the "Committee" or "Tenant"); (collectively the "Parties").

WITNESSETH THAT:

WHEREAS, the City owns real property in the City of Northfield, Rice County, Minnesota, known as North Babcock Park (the "Park"), as shown on the aerial photograph, which is attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, the Park is used for a variety of public purposes, and the City also licenses the Park to the Committee from time to time for purposes related to the annual Defeat of Jesse James Days community celebration (the "Celebration"), which is a festival of benefit to the community as a whole; and

WHEREAS, the Committee owns certain personal property, including bleachers, an information booth, and ticket booth (a stage will also be added in the future), which it uses for the Celebration (the "Personal Property"); and

WHEREAS, the Committee desires to lease space at the Park upon which it may store the above-referenced personal property and to allow the use of the same for events in the Park including the Celebration; and

WHEREAS, the City and the Committee desire to define the terms and conditions under which the Committee may continue to use the Park for the purposes stated herein; and

WHEREAS, the Committee's other uses of the Park for the Celebration are provided in a separate license agreement between the City and the Committee and are not a part of this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, it is hereby agreed by the Parties as follows:

ARTICLE ONE **Definitions and Terms**

As used in this Lease, the following terms shall have the specific meanings set forth below:

1.1 "Commencement Date" means May 15, 2017.

1.2 "Expiration Date" means April 30, 2020.

1.3 "Personal Property" means the personal property owned by the Committee including bleachers, an information booth, ticket booth, and a stage in the future.

1.4 "Premises" means the area located in North Babcock Park leased hereby by the Committee for purposes of storage of the Personal Property as depicted on Exhibit B, which is attached hereto and incorporated herein by reference.

ARTICLE TWO **Demising Clause**

2.1 Landlord leases to Tenant and Tenant leases from Landlord the Premises on the terms and conditions contained in this Lease.

2.2 Tenant shall have the right to use the Premises for the purposes of the storage of the personal property owned by Tenant during term of this Lease. Such storage may be done at the Park year-round during the term hereof unless the City has a need for the space occupied by the Personal Property, in which case the City is authorized to move it to an alternate location either temporarily or otherwise. The City may direct the Committee as to where readily movable items of the Personal Property should be stored from time to time. If any item cannot be stored at the Park because of a need on the part of the City, the City shall make reasonable efforts to find an alternative place for such items to be stored.

ARTICLE THREE **Term and Possession**

3.1 Term. This Lease shall be for an initial term of three (3) years, beginning on the Commencement Date and ending on the Expiration Date, unless either; (a) sooner terminated as provided in this Agreement, or (b) renewed as provided in this Agreement (the "Lease Term").

3.2 Renewal. Notwithstanding any provision of this Agreement, this Lease shall automatically renew for successive additional 3 year term(s) and the Expiration Date shall be adjusted accordingly for the renewal term(s), unless a Party hereto provides 90 days written notice to the other of its intent to terminate this Lease upon the Expiration Date. Unless agreed otherwise by the Parties, the Lease shall terminate following proper notice effective on the Expiration Date.

ARTICLE FOUR
Rent

4.1 Tenant shall, for the entire Lease Term, pay to Landlord without demand, annual rent in the amount of One Dollar (\$1.00) (the "Rent"). For the calendar year 2017, the annual rent amount shall be paid upon execution hereof. Thereafter, the annual rent shall be paid on or before May 31 of each year. All payments shall be made to Northfield City Hall, 801 Washington St., Northfield, MN 55057.

ARTICLE FIVE
Landlord's Reserved Rights

5.1 Landlord reserves the following rights: (a) to take any and all measures necessary or desirable for the operation, safety, protection or preservation of the Premises, including repairs, alterations, decorations, additions or improvements, whether structural or otherwise, in and about the Premises or any part thereof; and (b) to enter to verify use of the Premises. Landlord may enter upon the Premises and may exercise any or all of the foregoing rights without being deemed guilty of an eviction (actual or constructive) or disturbance of Tenant's use or possession and without being liable in any manner to Tenant and without abatement of Rent or affecting Tenant's obligations hereunder.

ARTICLE SIX
Alterations and Improvements

6.1 Landlord has made no promise to alter, remodel, repair or improve the Premises and has made no representation of the condition of the Premises or the suitability of the Premises for the purpose stated herein other than what is contained in this Lease.

6.2 The Committee shall not make material alterations or improvements to the Premises without the written consent of Landlord. Consent shall be obtained by submitting a written description to Landlord of the proposed improvement, including its location, size, proposed use, and any other information that may be required by the Landlord. Landlord may approve, disapprove, require more information, or require certain modifications to the proposed improvement in its sole judgment and discretion. Tenant's final written proposal including a clear indication of Landlord's assent and signed by Landlord shall constitute written consent of Landlord. Unless otherwise agreed by both parties, approved improvements shall be at the sole expense of Tenant.

6.3 Tenant shall allow no mechanic's liens to be incurred or filed against the Premises. Tenant shall promptly pay for all alterations and improvements, which it may make under this Lease that are approved by Landlord, and shall save and hold harmless Landlord from any and all losses, including attorneys' fees, incurred by reason of mechanic's liens or other claims for skill, labor or material furnished or performed, or

claimed to have been furnished or performed, on account of any such alteration or improvement made by Tenant hereunder. Tenant may contest any such mechanic's liens and prosecute all proceedings for the purpose of such contest pursuant to Minn. Stat. § 514.01, et seq. Tenant shall indemnify Landlord against any loss or liability by reason of such contest.

6.4 Tenant shall not place or maintain any signs on the Premises, without authorization by Landlord, except temporary banners related to the annual Celebration in accordance with the City ordinance on temporary signs as well as any additional requirements as may be applicable as provided in the annual License for the Celebration.

6.5 Any leasehold improvements to the Premises shall be and remain the property of Landlord and no compensation shall be paid to the Tenant when and if the Tenant vacates the Premises.

ARTICLE SEVEN

Operation, Repairs and Maintenance

7.1 Tenant, at its expense, shall keep the Premises in a safe and tenantable condition when used by the Committee for the purposes of this Lease. If Tenant does not do so, Landlord may (but need not) restore the Premises to a safe and tenantable condition, and Tenant shall pay the cost upon being billed by Landlord. This Article shall not apply to damage or destruction otherwise provided for in this Lease.

7.2 Tenant, at its expense, shall be responsible for all operation and maintenance costs of the personal property on the Premises as well as major and minor maintenance, repairs, or replacement of any and all alterations or improvements to the Premises or the personal property.

7.3 Tenant shall bear maintenance or repair costs for damage to the Premises and/or personal property caused by acts or omissions of Tenant, its agents, employees, contractors, guests or invitees at all times including during the Celebration.

7.4 Tenant will construct the bleachers in the Park in compliance with the requirements of the Bleacher Safety Act, Minn. Stat. § 326B.112. Tenant shall at all times and at Tenant's cost and expense operate, maintain, repair, inspect and replace the bleachers owned by Tenant located in the Park in compliance with the requirements of the Bleacher Safety Act, Minn. Stat. § 326B.112.

7.5 Tenant shall keep and maintain all improvements which it has constructed, or shall in the future construct, in good and safe condition.

ARTICLE EIGHT
Destruction or Damage

8.1 Tenant agrees:

- a. That it will obtain all necessary state and local permits for its operations as necessary.
- b. That it will operate in accordance with all federal, state and local laws and regulations.
- c. That it will be solely responsible for security of the Personal Property and for any loss, damage, or destruction thereof during the Celebration and at all other times, except if the personal property is being used for other non-Committee events in which case the Tenant and user shall determine responsibility for the same, but in no event shall the City be responsible for the same.
- d. That it will keep the Premises in such repair as at the commencement of the Lease Term or may be put in during continuance thereof, reasonable wear and tear and damage by fire or extended peril coverage perils only excepted.
- e. That it will not injure, overload or suffer to be injured or overloaded the Premises, bleachers or any part thereof.
- f. That it will not make or suffer any unlawful, improper or offensive use of the Premises or any use thereof contrary to any law of the State of Minnesota or any ordinance of the City of Northfield now or hereafter made, or which shall be injurious to any person or property or which shall be liable to endanger or affect any insurance on the said Premises.

ARTICLE NINE
Hold Harmless

9.1 Tenant shall defend, indemnify and hold Landlord harmless from any liability, loss, cost, and obligations, including reasonable attorneys' fees, arising out of the condition, maintenance, use or operation of the Premises or its personal property located thereon, including 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 Premises, or due directly or indirectly to this Lease, or the condition, maintenance, use or operation of the Premises by Tenant, Tenant's employees, members, board, officers, agents, volunteers, clients and invitees, at all times, except if the personal property is being used for other non-Committee events in which case the user shall be so responsible and the Committee shall require the user to so indemnify the Landlord. The indemnification

provision of this Article shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of Landlord. All indemnification obligations shall survive termination, expiration or cancellation of this Lease.

9.2 Tenant knows, understands and acknowledges the risks and hazards associated with using the Premises for the purposes stated herein and hereby assumes any and all risks and hazards associated therewith. Tenant hereby irrevocably waives any and all claims against the Landlord or any of its officials, employees or agents for any bodily injury (including death), loss or property damage incurred by Tenant as a result of using the Premises, except to the extent such claims arise out of the negligence or willful misconduct of Landlord, and hereby irrevocably releases and discharges the Landlord and any of its officials, employees or agents from any and all claims of liability, except to the extent such claims arise out of the negligence or willful misconduct of Landlord.

ARTICLE TEN **Surrender of Possession**

10.1 Upon the termination of the Lease Term, Tenant shall immediately surrender the Premises (together with any alterations and improvements) to Landlord in good order, repair and condition, ordinary wear and fire or casualty losses for which Tenant is not responsible excepted, and shall remove all personal property and other items of Tenant's property from the Premises. Tenant shall repair or pay Landlord upon demand the cost of repairing any damage to the Premises caused by such removal. Tenant shall leave the Premises in its pre-Lease condition, reasonable wear and tear and any approved improvements and alterations excepted. If Tenant fails or refuses to remove Tenant's personal property from the Premises, Tenant shall be presumed to have abandoned the same and Landlord may dispose of the personal property without incurring liability, at Tenant's expense. In the alternative, by written agreement of the Parties, the City may purchase the bleachers from the Committee for their depreciated value.

ARTICLE ELEVEN **Compliance with Laws, Ordinances and Regulations**

11.1 Throughout the Lease Term, Tenant, at its sole cost and expense, shall promptly comply with all present and future laws, ordinances, orders, rules, opinions, directives, regulations and requirements of all federal, state, city and other local governments, including but not limited to compliance with the requirements of the Bleacher Safety Act, Minn. Stat. § 326B.112.

11.2 Tenant shall likewise observe and comply with, or shall cause to be observed and complied with, all the requirements of all policies of comprehensive general liability, fire and other insurance at any time in force with respect to the Premises.

ARTICLE TWELVE
Insurance

12.1 Tenant shall maintain, at Tenant's expense, insurance on Tenant's personal property and use thereof located in and upon the Premises, and shall assume the risk of loss to such property on the Premises. Tenant shall maintain sufficient commercial general liability (CGL) insurance to cover the City's liability up to the City's maximum liability pursuant to the Minnesota Tort Claims Act, Minn. Stat. § 466.04, and the City shall be named as an additional insured.

ARTICLE THIRTEEN
Default and Remedies

13.1 If Tenant shall default in the observance or performance of any of the covenants or conditions in this Lease, which Tenant is required to observe or perform, and such default shall continue for thirty (30) days after written notice to Tenant, or if a default involves a hazardous condition and is not cured by Tenant immediately upon written notice to Tenant, or if the interest of Tenant in this Lease shall be levied upon under execution or other legal process, or if any voluntary petition in bankruptcy or for corporate reorganization or any similar relief shall be filed by Tenant, or if any involuntary petition in bankruptcy shall be filed against Tenant under any federal or state bankruptcy or insolvency act and shall not have been dismissed within thirty (30) days following the filing thereof, or if a receiver shall be appointed for Tenant or any of the property of Tenant by any court and such receiver shall not be dismissed within thirty (30) days from the date of appointment, or if Tenant shall make an assignment for the benefit of creditors, or if Tenant shall abandon or vacate the Premises, then Landlord may treat the occurrence of any one or more of the foregoing events as a breach of this Lease and thereupon at its option may, without notice or demand of any kind to Tenant or any other person, terminate this Lease and immediately repossess the Premises, in addition to all other rights and remedies provided at law or in equity. The provisions of this section shall survive any termination of this Lease.

13.2 No right or remedy conferred upon or reserved to Landlord or Tenant by this Agreement shall be exclusive of any other right or remedy herein or by law provided; all rights and remedies conferred upon Landlord and Tenant by this Agreement or by law shall be cumulative and in addition to every other right and remedy.

ARTICLE FOURTEEN
Notices

14.1 All notices required under the terms of this Lease shall be deemed to have been properly served or given two days after their deposit in the United States mail to the attention of such Party or immediately, if sent by email.

If to Landlord:

Northfield City Administrator
801 Washington St.
Northfield, MN 55057

If to Tenant:

General Chairman
Defeat of Jesse James Days Committee, Inc.
P.O. Box 23
Northfield, MN 55057

ARTICLE FIFTEEN

Landlord's Title

15.1 Tenant acknowledges that this is an agreement to operate, maintain and use the Premises for the purpose stated herein only and that the Tenant does not in any way acquire title to the Premises under this Agreement.

15.2 Without the prior written consent of Landlord, Tenant agrees not to do any act to encumber, convert, pledge, sell, assign, lease, lend, conceal, abandon, give up possession of, or destroy the Premises.

ARTICLE SIXTEEN

Miscellaneous

16.1 **Voluntary and Knowing Action.** The Parties, by executing this Lease, state that they have carefully read this Lease and understand fully the contents thereof; that in executing this Lease they voluntarily accept all terms described in this Lease without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.

16.2 **Authorized Signatories.** The Parties each represent and warrant to the other that (1) the persons signing this Lease are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Lease against it; each Party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

16.3 **No Partnership, Joint Venture, or Fiduciary Relationship.** Nothing contained in this Lease shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the Parties, it being understood that the sole relationship created hereby is one of landlord and tenant. No third party is entitled in any way to rely upon any provision in this Lease. This Lease is intended solely for the benefit of Landlord and Tenant and no third party shall have any rights or interest in

any provision of this Lease, or as a result of any action or inaction of the Landlord in connection therewith.

16.4 Records—Availability and Retention. Pursuant to Minn. Stat. § 16C.05, subd. 5, the Tenant agrees that the Landlord, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the Tenant and involve transactions relating to this Lease. The Tenant agrees to maintain these records for a period of six years from the date of termination of this Lease.

16.5 Governing Law. This Lease shall be deemed to have been made and accepted in Rice County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Lease without regard to its choice of law or conflict of laws principles.

16.6 Data Practices. The Parties acknowledge that this Lease is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.

16.7 No Waiver. Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Lease or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Lease. Any express waiver of a term of this Lease shall not be binding and effective unless made in writing and properly executed by the waiving Party.

16.8 Severability. The invalidity or unenforceability of any provision of this Lease shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Lease to the extent of its invalidity or unenforceability, and this Lease shall be construed and enforced as if the Lease did not contain that particular provision to the extent of its invalidity or unenforceability.

16.9 Headings and Captions. Headings and captions contained in this Lease are for convenience only and are not intended to alter any of the provisions of this Lease and shall not be used for the interpretation of the validity of the agreement or any provision hereof.

16.10 Survivability. All covenants, indemnities, guarantees, releases, representations and warranties by any Party or Parties, and any undischarged obligations of Landlord and the Tenant arising prior to the expiration of this Lease (whether by completion or earlier termination), shall survive such expiration.

16.11 **Exhibits.** The exhibits attached to this Lease are considered an integral part of it as if fully set forth within it. In the event of a conflict or inconsistency between the terms of this Agreement and those of the Joint Powers Agreement, the terms of this Agreement shall govern.

16.12 **Entire Agreement.** All prior understandings, letters of intent, discussions and agreements are merged in the governing terms of this Lease, which is a complete and final written expression of the intent of the Parties with respect to storage of the personal property and the same shall supersede all prior agreements and understandings. The Parties acknowledge, agree and understand that there is a License Agreement between the Parties providing the specific terms and conditions for use of the Park by the Committee for those events associated with the Celebration and that said License Agreement shall otherwise govern the relationship of the Parties, except for the specific purposes contained herein.

16.13 **Modification/Amendment.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Lease shall only be valid when they have been reduced to writing, and signed by authorized representative of the Landlord and the Tenant.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first mentioned above.

LANDLORD:
CITY OF NORTHFIELD, MINNESOTA

TENANT:
DEFEAT OF JESSE JAMES DAYS COMMITTEE, INC.

By: Rhonda Pownell
Its Mayor

By: Debra L. Anthony
Its: General Chairman

By: Deb Little
Its City Clerk

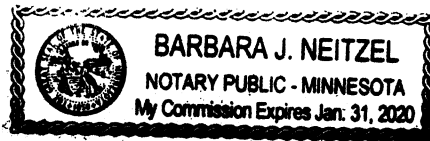
By: Lynn A. Ziegler
Its: Rodeo Site Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF RICE)

On this 9th day of June, 2017, before me, a notary public within and for said County, personally appeared Rhonda Pownell and Deb Little, to me personally known, who being each by me duly sworn did say that they are respectively the Mayor and City Clerk of the City of Northfield, Minnesota, and that the foregoing instrument was signed and sealed on behalf of said municipal corporation by authority of its City Council.

Barbara J. Neitzel
Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF RICE)



On this 30th day of May, 2017, before me, a notary public within and for said County, personally appeared Debra L. Anthony and Lynn A. Ziegler, to me personally known, who, being each by me duly sworn, did say that they are respectively the General Chairman and Rodeo Site Manager of Defeat of Jesse James Committee, Inc., and that the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors.



Jean M. Hintz
Notary Public

EXHIBIT A

North Babcock Park Aerial Photograph



Exhibit A

North Babcock Park

 Park Boundary



5/30/2017
0 75 150 Feet




EXHIBIT B

Depiction of Leased Premises



Exhibit B

North Babcock Park

 Leased Premises



5/31/2017

0 75 150 Feet



North Babcock Park Bleacher Improvement Request

Updated: 11/2/2015

30 15 0 30 Feet



City of
Northfield
Minnesota

FUTURE BLEACHER FOOTPRINT: 150' X 40'
WESTERN BLEACHERS

EASTERN BLEACHERS

700
HWY 3 S

HWY 3 S

