



**AGENDA ITEM #10.3**

**REPORT TO CITY COUNCIL**

**Report Prepared by: Nancy Malecha**

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**Date:** May 7, 2019

**Subject:** Trailside Building Lease Agreement

**Report:** The Pequot Lakes Chamber of Commerce (affiliated with the Brainerd Lakes Area Chamber of Commerce) currently has a lease with the City for the Trailside Building in Trailside Park. The current lease expires on August 31, 2019. Attached is an updated lease for the next five-year period. The Public Works Director and I analyzed the Lease Agreement and monthly rent amount and are recommending no major changes.

**Council Action Requested:** Council motion adopting the resolution for the Trailside Building Lease Agreement.

## TRAILSIDE BUILDING LEASE AGREEMENT

### RESOLUTION 19-\_\_\_

**THIS LEASE AGREEMENT** (the “Lease” or “Agreement”) is made this 7<sup>th</sup> of May, 2019 by and between the City of Pequot Lakes, a Minnesota municipal corporation, (the “Landlord”), and the Brainerd Lakes Area Chambers of Commerce, a Minnesota non-profit corporation, (the “Tenant”); (collectively the “Parties”).

**WHEREAS**, the Landlord owns and operates the Trailside Building located at 30951 Government Drive, Pequot Lakes, Minnesota 56472 (the “Building”); and

**WHEREAS**, the Tenant desires to lease the Building for the purpose of office space for Chamber operations and related visitor services; and

**WHEREAS**, the Landlord is willing to lease the Building to Tenant upon the terms and conditions contained herein.

**NOW, THEREFORE**, in consideration of the terms and conditions of this Lease, Landlord and Tenant agree as follows:

1. **Definitions.** As used in this Lease, the following terms shall have the specific meanings set forth below:
  - 1.1. “Landlord” means the City of Pequot Lakes, having as its address for notice purposes, 4638 Main Street, Pequot Lakes, Minnesota 56472; Attention: City Administrator.
  - 1.2. “Tenant” means the Brainerd Lakes Area Chambers of Commerce, having as its address for notice purposes, P.O. Box 208, Pequot Lakes, Minnesota 56472.
  - 1.3. “Commencement Date” means September 1, 2019.
  - 1.4. “Expiration Date” means August 31, 2024, or such mutually agreed up renewal date as provided in this Agreement.
  - 1.5. “Premises” means the Trailside Building located at 30951 Government Drive, Pequot Lakes, Minnesota 56472.
2. **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 exclusive right to use the Premises for the purposes provided herein.

**3. Term and Possession.**

- 3.1. This Lease shall be for a term five (5) years, beginning on the Commencement Date and ending on the Expiration Date, unless terminated prior to the Expiration Date or renewed as provided herein. Except as otherwise provided in this Lease, termination of the Lease prior to the Expiration Date requires mutual agreement by the Landlord and Tenant. Tenant shall be entitled to possession on the Commencement Date and shall give up possession on the Expiration Date.
- 3.2. The Parties shall have the option of renewing the Lease for two additional one (1) year periods. Renewal shall occur only upon Tenant's delivery to Landlord by sixty (60) days prior to the Expiration Date, a written request to renew the Lease for the additional period. Upon said delivery, Landlord shall have thirty (30) days to provide written notice of its acceptance or rejection of Tenant's renewal offer. If Tenant fails to deliver such renewal notice, the Lease shall terminate at the end of the initial term; conversely, if Landlord fails to notify Tenant in writing of its decision, the Lease shall automatically renew for the additional period.

**4. Rent and Adjustment of Rent.**

- 4.1. Tenant shall pay Landlord monthly rent for the Premises for the entirety of the Lease term. The rent shall be payable to Landlord in the amount of \$775.00 per month. Rent shall be payable by the Tenant to the Landlord on the last day of each month. If any rental payment is not paid within ten (10) days of its due date, Tenant agrees to pay an additional late charge of five percent (5%) of the rental installment due and the late charge shall increase by one percent per month for each month the payment is late.
- 4.2. Notwithstanding any provision of this Agreement, the Landlord shall have the right to annually adjust the amount of rent paid by Tenant as provided herein after two years following the Commencement Date for reasons, including but not limited to, increases in Landlord's operation and maintenance costs for the Building. Any adjustment shall only be effective following 90 days written notice from Landlord to Tenant. Such notice shall include the amount of adjusted rent, the effective date of adjustment, and the reason for the adjustment. In the event that Tenant objects to the adjustment, Tenant may seek to negotiate with Landlord the amount of the adjustment within the 90 day notice period. If Tenant seeks to negotiate the adjustment and no agreement is reached with the Landlord to alter the original noticed adjustment amount within the 90-day notice period, Tenant may either 1) prior to the expiration of the 90-day notice period, provide written notice to Landlord of termination of this Lease, or 2) remain in possession of the Premises in which case the rent will be adjusted as originally noticed by Landlord. If Tenant provides notice of termination, Tenant shall, within 30 days following the expiration of the 90-day notice period, surrender possession of the Premises as provided in this Agreement.

5. **Subletting and Assignment.** Tenant shall not assign its interest in this Lease and shall not sublet any portion of the Premises, or any right or privilege provided under the Lease or use of the Premises, or suffer any other person to occupy or use any portion of the Premises.

6. **Quiet Possession and Subordination.**

6.1. Landlord covenants that Tenant, upon paying the rent and performing the covenants under this Lease, shall peaceably and quietly have, hold and enjoy the leased Premises for the term of the Lease. Except as herein provided, the Landlord shall deliver possession of the Premises in the condition required by this Lease on the Commencement Date. The taking of possession of the Premises by the Tenant shall be conclusive evidence that the Premises are in the agreed condition at the commencement of the Lease term. The Tenant acknowledges that it has inspected the Premises and, accepts the Premises in an "as is" condition.

6.2. This Lease is subject and subordinate to all present or future financial encumbrances on the Premises, and is further subject to all present and future easements, conditions and encumbrances of record, and to all applicable laws, ordinances and governmental rules and regulations. Such subordination shall be self-executing without further act on the part of Landlord or Tenant; provided, however, that Tenant shall at any time hereafter, at the request of Landlord or any lien holder, or any purchaser of the Premises, execute any instruments that may be required, and Tenant hereby irrevocably authorizes Landlord to execute and deliver in the name of Tenant any such instrument if Tenant fails to do so.

7. **Permitted Uses and Tenant Responsibilities.**

7.1. Tenant agrees to use the Building only for the purpose of operating a Chamber office with related Chamber visitor services.

7.2. Tenant shall be responsible for trash disposal necessary for the operation of its offices and related activities.

7.3. Tenant shall be responsible for all costs of its operations on the Premises, including but not limited to, telephone, cable, internet and any other utilities service charges, unless otherwise provided in this Agreement.

7.4. Tenant shall maintain the Premises in good condition. At the termination of this Lease, Tenant agrees to leave the Premises in the same condition as it was received, except for normal wear and tear.

7.5. Tenant shall be solely responsible for security of the Premises, including its equipment and for any loss, damage, or destruction thereof.

7.6. Tenant shall not cause, maintain or permit any nuisance in, on or about the Premises. More specifically, Tenant shall not use or store any noxious chemicals on the Premises.

7.7. Tenant shall be responsible for all taxes and assessments upon the Premises, if any.

8. **Landlord Responsibilities.**

8.1. Landlord shall be responsible for heat, electric, and water utility charges for the Building. Unless otherwise provided herein, Landlord shall be responsible for all costs of operation and maintenance of the septic system serving the Building.

8.2. Landlord shall provide snowplowing of the sidewalks, lawn maintenance, maintenance of outside lighting including bulbs, and flag replacement for the Building and the real property upon which it is located.

8.3. Landlord shall maintain the exterior of the Building and the mechanical equipment therefore, including the heating and cooling equipment for the Building.

8.4. Landlord shall maintain and clean the bathroom facilities and the main lobby within the Building. The cost for supplies for the bathroom shall be the responsibility of the Landlord.

8.5. Landlord shall maintain the freestanding sign and be responsible for event postings and messages on the sign at the Building.

9. **Landlord's Reserved Rights.** 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, Building and the real property upon which it is located, including repairs, alterations, decorations, additions or improvements, whether structural or otherwise, in and about the Premises or any part thereof; and (b) to enter the Building 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.

10. **Alterations and Improvements.**

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

10.2. Tenant 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 whether the improvement is to be severed from the Premises at the termination of the Lease or is to be left on the Premises, 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.

10.3. Tenant shall allow no mechanic's liens to be incurred or filed against the Premises or real property upon which it is located. 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.

**11. Repairs and Maintenance.**

11.1. Tenant, at its expense, shall keep the Premises in a safe and tenantable condition based on the purpose 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 section shall not apply to damage or destruction otherwise provided for in this Lease.

11.2. Tenant shall be responsible for all major and minor maintenance, repairs, or replacement of any and all alterations or improvements to the Premises made under the Lease. Improvements made under this Lease that are capable of severance may be removed by Tenant at any time or within 30 days after termination of the Lease even though they may be fixtures, provided that Tenant leaves in good condition that part of the Premises from which such improvements are removed.

11.3. Improvements not capable of severance shall become the property of Landlord at termination of the Lease without compensation to the Tenant.

**12. Landlord's Property Insurance.** Landlord shall obtain and at all times maintain in force, fire and extended coverage insurance (including coverage against loss or damage by fire, wind, lightning, extended perils, vandalism and malicious mischief) on the leased premises and all structures, improvements, fixtures and equipment constituting the leased premises, other than building foundations and excavations, on a replacement cost basis to the extent of the full insurable value of the property to be so insured (without deduction for depreciation, architectural, engineering, legal or administrative fees), together with broad form boiler and machinery insurance on all equipment and objects customarily covered by such insurance and providing for full repair and replacement cost coverage.

**13. Tenant's Insurance.** Tenant shall maintain, at Tenant's expense, insurance on Tenant's property located in and upon the Premises, and shall assume the risk of loss to such property

on the Premises. Tenant further agrees to maintain at Tenant's expense general commercial liability insurance with reference to the leased premises in the amount of \$1,500,000.00 per occurrence. The Landlord shall be named as an additional insured under any such policy. Any such insurance policies issued to satisfy the requirements of this Lease shall be so written or endorsed as to make losses, if any, payable to the Landlord and the Tenant as their respective interests may appear. Each such insurance policy shall contain a provision to the effect that the insurance company shall not cancel the same without first giving written notice thereof to the Landlord at least 30 days in advance of such cancellation, and the Tenant shall deliver to the Landlord duplicate copies of certificates of insurance pertaining to each such policy of insurance procured by the Tenant and agrees to keep such duplicate copies of certificates up to date.

14. **Hold Harmless.** Tenant agrees to defend and indemnify the Landlord and its officials and employees for all expenses, liabilities and claims, including reasonable attorney fees, arising out of Tenant's use of the Premises and real property upon which it is located or Tenant's operations thereon or Tenant's performance or failure to perform its obligations under this Lease and for any claims by third parties arising out of the use and occupancy of the Premises. The indemnification provision of this section 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. Tenant knows, understands and acknowledges the risks and hazards associated with using the Premises as provided 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 and hereby irrevocably releases and discharges the Landlord and any of its officials, employees or agents from any and all claims of liability.
15. **Surrender of Possession.** Unless otherwise provided herein or otherwise agreed by the Landlord, upon the termination of this Lease for any reason, Tenant shall immediately surrender the Premises (together with any alterations and improvements that are not severable) 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 equipment, trade fixtures and other items of Tenant's property from the Premises. Tenant shall 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 excepted. If Tenant fails or refuses to remove Tenant's property from the Premises, Tenant shall be presumed to have abandoned the property and Landlord may dispose of the property without incurring liability, at Tenant's expense.
16. **Compliance with Laws, Ordinances and Regulations.** Throughout the Term of this Lease, 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. Throughout the Term of this Lease, Landlord shall comply with all local, state, and federal laws and regulations with respect to its management and operation of the Premises. 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.

17. **Default and Remedies.** If Tenant shall default in the payment of any installment of Rent or in the payment of any other sum required to be paid by Tenant under this Lease and such default shall continue for fifteen (15) days after written notice to Tenant, or if Tenant shall default in the observance or performance of any of the other 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 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.
  
18. **Notices.** All notices required under the terms of this Lease shall be deemed to have been properly served or given three (3) days after their deposit in the United States mail if sent by registered or certified mail, return receipt requested, postage prepaid, or two (2) days after deposit in a nationally recognized overnight courier service, addressed to Landlord or Tenant at the addresses identified in Article One or to such other address within the continental limits of the United States and to the attention of such party as the parties may from time to time designate by written notice to the other.
  
19. **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.
  
20. **Miscellaneous.**
  - 20.1. **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.
  
  - 20.2. **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.
  
  - 20.3. **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.

20.4. **Governing Law.** This Lease shall be deemed to have been made and accepted in Crow Wing 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.

20.5. **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.

20.6. **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.

20.7. **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.

20.8. **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.

20.9. **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.

*[Signature page to follow]*

**IN WITNESS WHEREOF**, as of the day and year first hereinabove written the parties have executed this Lease.

**LANDLORD:  
CITY OF PEQUOT LAKES**

By \_\_\_\_\_ Date \_\_\_\_\_  
James Tayloe  
Its: Mayor

By \_\_\_\_\_ Date \_\_\_\_\_  
Nancy Malecha  
Its: Administrator

**TENANT:  
BRAINERD LAKES AREA CHAMBERS OF COMMERCE**

By \_\_\_\_\_ Date \_\_\_\_\_  
Matt Kilian  
Its: Chief Executive Officer