



301 W. MAIN ▪ OWOSSO, MICHIGAN 48867-2958 ▪ (989) 725-0599 ▪ FAX (989) 723-8854

DATE: 4.15.19
TO: CITY COUNCIL
FROM: CITY MANAGER
SUBJECT: Osburn Lakes Park Lease – 21 day posting

BACKGROUND:

The Osburn Lakes Home Owners Association has a long-term lease on two lots for a neighborhood park. The current lease is for 25 years and it expires in September 30, 2035. The HOA has requested an early lease renewal for a 50 year period. This new lease retains the same language as the old lease except for its term length. The new lease would expire in the spring of 2069. The HOA is asking for this lease extension so that it may be better eligible for grant funding for the park.

The city charter requires us to post the proposal for 21 days before it can be considered for approval.

FISCAL IMPACT:

None.

RESOLUTION NO.

**AUTHORIZING 21-DAY POSTING FOR
LEASE AGREEMENT FOR USE OF CITY PROPERTY
WITH OSBURN LAKES HOME OWNERS ASSOCIATION**

WHEREAS, the City of Owosso, Michigan ("City") is a municipal corporation organized under the provisions of the Home Rule City Act, Public Act 279 of 1909, as amended, and is governed by the provisions of the Owosso City Charter adopted April 6, 1964, as amended ("Charter"); and

WHEREAS, the City owns the vacant parcel commonly known as 1180 and 1190 Bluestem Court and described as follows;

UNIT 57, OSBURN LAKES RESIDENTIAL SITE CONDOMINIUM, PHASE 1
UNIT 56, OSBURN LAKES RESIDENTIAL SITE CONDOMINIUM, PHASE 1; and

WHEREAS, these parcels are vacant and serve as a park for the Osburn Lakes Neighborhood; and

WHEREAS, the land is strategically placed and should continue to be used as a recreational resource in the future; and

WHEREAS, the Osburn Lakes Home Owners Association is leasing the property from the city for use as a neighborhood park; and

WHEREAS, the Osburn Lakes Home Owners Association is interested in extending the lease to 2069 in order to be eligible for possible recreation grant funds to further develop the park; and

WHEREAS, Charter Section 14.3 (b)(2) provides for a twenty one day posting period to allow public inspection of the proposed lease and other potential offers.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that:

FIRST: the lease agreement for the property described above be posted for a 21-day period to allow for citizen comment and other offers.

SECOND: the proposed agreement be returned to Council at the meeting of Monday, May 6, 2015 for potential final disposition.

I hereby certify that the foregoing document is a true and complete copy of action taken by the Owosso City Council at the regular meeting of April 15, 2019.

Amy K. Kirkland

LEASE AGREEMENT
BETWEEN THE CITY OF OWOSSO AND
OSBURN LAKES RESIDENTIAL SITE CONDOMINIUM ASSOCIATION

This Lease Agreement is made and entered into as of the ___ day of May, 2019, by and between the city of Owosso, Michigan, a Michigan Municipal Corporation ("City") and Osburn Lakes Residential Site Condominium Association, a Michigan domestic nonprofit corporation ("Association").

In consideration of the covenants and conditions contained in this Lease Agreement, the parties agree as follows:

1. **Lease.** For and in consideration of the covenants and agreements contained herein, the City does hereby lease to the Association the real property and improvements described as Lots 56 and 57 of Osburn Lakes Subdivision, a part of the Southeast 1/4 of Section 18, Township 7 North, Range 3 East, city of Owosso, County of Shiawassee, Michigan; as recorded under Liber 1069, page 159, Shiawassee County Register of Deeds ("Leased Premises").
2. **Term.** This lease shall commence on the date of execution hereof and end on May 6, 2069, both dates inclusive, unless sooner terminated as herein provided.
3. **Rental.** Rental for this lease shall be One Dollar (\$1.00) per year for the lease term, paid in advance in the sum of Fifty Dollars (\$50.00), receipt of which is hereby acknowledged.
4. **Condition of Leased Premises.** The Association stipulates that it has examined the Leased Premises, and that they are, at the time of execution of this Lease Agreement, in acceptable condition. The Association accepts the Leased Premises in the existing "as is" condition, and acknowledges that the City makes no representation with regard to any condition of the Leased Premises. Use of the Leased Premises shall be managed and controlled by the Association. Upon termination of this Lease, unless otherwise agreed upon, the Association shall return the premises to its natural condition.
5. **Use of Leased Premises.** The Leased Premises shall be used by the Association exclusively for a private park and for recreational purposes and shall not be used at anytime during the term of this Lease Agreement by the Association for the purpose of carrying on any business, profession or trade or for any other purposes other than set forth herein.
6. **Assignment and Sublease.** The Association shall not assign its rights or interest under this Lease Agreement, or sublet or grant any concession or license to use the Leased Premises or any part thereof. An assignment, sublease, concession or license, or an assignment of sublease by operation of law, shall be void and shall, at the City's option, terminate this Lease Agreement.
7. **Alterations and Improvements.** The Association shall not make or erect any alterations or improvements to the Leased Premises without the prior written consent of the Owosso city manager. All alterations, changes and improvements built, constructed or placed on the Leased Premises shall be the property of the Association. The Association shall keep the Leased Premises and the City's interest therein free and clear of all liens arising out of or claimed by reasons of any work performed, materials furnished or obligations incurred or at the expense of the Association, and the Association shall indemnify and save the City and the Leased Premises harmless from and against all liens or claims of the type described in this paragraph, including reasonable attorney's fees.

8. **Surrender.** Upon the termination of the Lease Agreement, the Association shall quit or surrender the Leased Premises on the date of such termination.
9. **Repair and Maintenance.** The Association shall maintain the Leased Premises and all improvements, if any, constructed on the Leased Premises in good and safe order, appearance, repair and condition, at the Association's sole cost and expense, through the term of this Lease Agreement.
10. **Utilities.** The Association shall pay all charges and with the City's prior written consent to be granted in the City's sole discretion, arrange the installation and construction of all utility services that may be required for the use authorized in this Lease Agreement. The Association shall be responsible for all utility charges in connection with the Association's use of the Leased Property, including electricity charges, water charges, sewer charges and refuse removal charges.
11. **Taxes.** The Association shall pay all real property taxes pertaining to the Leased Premises. The Association shall be liable for and shall pay all taxes levied against personal property, trade fixtures, and other property placed by the Association in, on or about the Leased Premises and for any other taxes pertaining to the Association's use of the Leased Premises. In the event the Association shall default in the payment of real estate taxes or assessments, the City shall have the right to pay the same, and the amount so paid shall be payable by the Association to the City on demand with lawful interest thereon.
12. **Liability.** The Association shall be liable and responsible for any and all damage or injury to said premises or any person or property thereon during the period of occupancy hereunder, and shall reimburse, indemnify and hold the City harmless against any and all claims for injury to person or property (including claims of employees of the Association or any contractor, subcontractor, or invitee) arising out of the activities of the Association, its agents, members, guests, or invitees.
13. **Insurance.** The Association shall provide fire, theft and casualty insurance on the Association's personal property maintained on the Leased Premises as the Association determines suitable for the Association's uses and purposes. The Association, recognizing that the City carries no such coverage, and is therefore not responsible for any damage to or destruction of the Association's property which is kept or maintained within the Leased Premises.

The Association will provide and keep in force at all times during the term hereof on the Leased Premises and the Association's operations thereon, combined single limit insurance providing coverage for bodily injury and property damage in the amount of One Million Dollars (\$1,000,000) per occurrence. The Association shall deposit with the City certificates of all such insurance policies obtained at any time thereafter during the term of this Lease, and copies of all insurance policies obtained at any time thereafter during the term of this Lease. All such policies, including said policies referred to immediately above, shall provide that the same may not lapse or be cancelled without at least ten (10) days prior notice to the City.

The Association agrees that, in addition to the requirement of any insurance carrier pursuant to the foregoing insurance policies. The Association shall, immediately, cause a full and complete report to be made to the City of any and all injuries or accidents upon the Leased Premises.

In the event that the Association shall fail to deliver to the City certificates of all such insurance obtained, or copies of policies thereof, the City may cause such insurance to be issued and bills for the premiums therefore shall be rendered by the City to the Association, and shall be paid by the Association to the City within five (5) calendar days of receipt of such bills.

14. **Association's Property.**

- A. The Association shall be responsible for and shall pay before delinquency, all municipal, county or state assessments during the term of this Lease against any leasehold interest or personal property of any kind, owned by or placed in, upon or about the Leased Premises by the Association.
- B. The City shall not be liable for any damage or loss to property of the Association or of others located on the Leased Property by theft or otherwise, except that caused by the intentional acts or negligence of the City, their agents, employees, contractors or other such representatives. The City shall not be liable for any damage caused by other persons in the Leased Premises, occupants of adjacent property or the public, or caused by operations in construction of any private or public work except as set forth herein.

15. **Fixtures.** All fixtures and equipment installed by the Association in the Leased Premises shall remain the property of the Association and shall be removable at any time by the Association on or before vacating the Leased Premises upon the expiration or sooner termination of this Lease Agreement. Any damage caused to the Leased Premises as a result of such removal by the Association shall be repaired by the Association at its own expense. Any such fixtures not removed; it or prior to such termination shall become the sole property of the City.

16. **City's Right of Access.** The City and their agents, employees or representatives, may enter the Leased Premises at any time for the purpose of inspecting the Leased Premises to ascertain the Association's compliance with the terms and conditions of this Lease Agreement or to post notices of non-responsibility under any mechanic's lien law.

17. **Abandonment.** If the Association abandons the Leased Premises, this Lease shall terminate. Abandonment means the Association's vacation of the premises. If termination occurs by abandonment, then the City may consider any personal property belonging to Association and left on the Leased Premises to also have been abandoned, in which case the City may dispose of all such personal property in any manner the City shall deem proper and is hereby relieved of all liability for doing so. Abandonment shall be presumed if the Leased Premises are unused and/or not maintained for a continuous six (6) monthly period.

18. **Default.** If the Association shall fail to pay any sum required by this Lease to be paid to the City at the times or in the manner provided under this Lease or otherwise, or if default shall be made in any of the other covenants or conditions on its part agreed to be performed, besides other rights or remedies it may have, if such failure shall continue for a period of fifteen (15) days after written notice thereof has been given by the City, then the City may either terminate this Lease, or reenter the Leased Property by summary proceedings or otherwise, remove all persons and property from the Leased Property without liability to any person for damages sustained by reason of such removal. Nevertheless, the Association shall remain liable for any sums owed by the Association to the City in this Lease, plus the reasonable costs of obtaining possession of the Leased Property. No such reentry or taking possession of the Leased Property by the City shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to the Association or unless termination thereof is decreed by a court of competent jurisdiction. Should the City at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from the Association all damages it may incur by reason of breach, including the cost of recovering the Leased Premises. All remedies herein conferred upon the City shall be cumulative and no one exclusive of any other remedy conferred herein or by law. If the Association is in default, the City may prevent removal of property from the Leased Property by any lawful means it deems necessary to protect its interest.

19. **Attorney's Fees.** In the event of a default by either party in the performance of such party's obligations hereunder, the non-defaulting party shall be entitled to recover all costs and expenses incurred as a result thereof, including reasonable attorney's fees, whether suit is brought or not. If an action shall be brought on account of any breach of or to enforce or interpret any of the terms, covenants or conditions of this Lease, or for the recovery or possession of the Leased Premises, the prevailing party shall be entitled to recover from the other party, as part of the prevailing party's cost, as reasonable attorney's fee, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered.

20. **Notice.** All notices, demands or other writing in this Lease provided to be given, made or sent by either party hereto to the other shall be deemed to have been fully given, made or sent when made in writing and deposited in the United States mail, certified or registered and postage prepaid and addressed as follows:

If to the City:

City Clerk
City of Owosso
301 West Main Street
Owosso, Michigan 48867

If to the Association

Osburn Lakes Residential Site Condominium Association
PO Box 891
Owosso, Michigan 48867

-or at such other place as may be designated by either party from time to time in writing in the same manner as provided herein.

21. **Waiver.** The waiver by the City of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. None of the terms, covenants or conditions of this Lease can be waived by either the City or the Association except by appropriate written agreement duly executed by both of the parties hereto.

22. **Construction of Lease.** The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either the City or the Association. Paragraph headings in the Lease are for convenience only and are not to be construed as a part of this Lease or in any way defining, limiting, or amplifying the provisions hereof. Time is of the essence of this Lease and of every term, covenant and condition hereof. The words "City" and "Association" as herein used, shall include the plural as well as the singular. The neuter gender includes the masculine and feminine. The City and the Association agree that in the event that any term, covenant or condition herein contained is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant or conditions shall in no way affect any other term, covenant or condition herein contained.

23. **Entire Agreement.** This Lease Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof, and shall not be amended or modified except by written agreement signed by both parties. The instrument supersedes and replaces all prior agreements or understandings of the parties, whether written or oral.

- 24. **Relationship of Parties.** The relationship of the parties herein under is solely that of the City and the Association, and nothing in this Lease Agreement shall be construed to make or create the parties hereto as partners, joint ventures or any other form of joint participants with respect to the Leased Premises or any improvements constructed or placed thereon.
- 25. **Binding Effect.** All the terms, covenants and conditions of this Lease Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors, assigns and legal representatives.
- 26. **Possession.** The Association shall be entitled to enter onto the Leased Premises from and after the date of execution of the Lease.
- 27. **Representations.** It is mutually agreed that no representations, warranties, covenants, or agreements expressed or implied, have been made, other than expressly set forth herein.
- 28. **Execution.** This Lease Agreement may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.
- 29. **Time of Essence.** Time is of the essence of this Lease Agreement.
- 30. **Governing Law.** The law of the state of Michigan shall govern this Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Lease as of the day and year first above written.

Osburn Lakes Residential Site Condominium
Association:

Attest:

Name:
Title:

Name:

City of Owosso

Attest:

Christopher T Eveleth
Mayor

Amy K. Kirkland
City Clerk

Approved as to substance:

Nathan R. Henne, City Manager

Date

Approved as to form:

Scott Gould, City Attorney

Date

Approved by City Council:

Date

