

WORK SESSION AGENDA



**Casper City Council
 City Hall, Council Chambers
 Tuesday, July 28, 2020, 4:30 p.m.**




Work Session Meeting Agenda		Recommendation	Allotted Time	Beginning Time
Recommendations = Information Only, Move Forward for Approval, Direction Requested				
1.	Council Meeting Follow-up		5 min	4:30
2.	Engineering Fees	Direction Requested	30 min	4:35
3.	Street Outlaws	Direction Requested	15 min	5:05
4.	Fiscal Year 2021 Budget Amendment #1	Move Forward for Approval	30 min	5:20
5.	Parks and Recreation Facility Lease Agreement Template	Direction Requested	30 min	5:50
6.	Troopers Funding Discussion	Direction Requested	30 min	6:20
7.	Agenda Review		20 min	6:50
8.	Legislative Review		10 min	7:10
9.	Council Around the Table		10 min	7:20
Approximate End Time:				7:30

Please silence cell phones during the meeting

We are CASPER

Communication Accountability Stewardship Professionalism Efficiency Responsiveness

July 22, 2020

MEMO TO: J. Carter Napier, City Manager 
FROM: Tom Pitlick, Financial Services Director 
Pete Meyers, Assistant Financial Services Director 
SUBJECT: Engineering Service Fees FY21

Meeting Type and Date

Council Work Session
July 28, 2020

Action Type

Direction Requested

Recommendation

That a new system of engineering service fee assessment be implemented effective July 1, 2020.

Summary

Capital projects often require the services of a professional engineer for design and for construction management services. The employees of the City's Engineering Division often provide these services for various capital projects.

An engineering service fee has traditionally been assessed against the City's various capital projects. The two primary purposes of the fee are:

- **Purpose #1:** To fairly compensate the General Fund for the engineering services that it provides to the fund that is funding the project. The City already charges for interdepartmental services of many kinds; professional engineering is simply another type of interdepartmental service.
- **Purpose #2:** To properly account for the value of the City's fixed capital assets. Per accounting rules (GASB 34), a city's capital should be valued at the true cost that it took to acquire or build each fixed capital asset. Professional design and construction management services are often required for project execution, but these costs generally won't be accounted for if a fee is not assessed to cover them. If the fee is not assessed, then the fixed asset will be undervalued on the City's balance sheet.

In previous years, a small across-the-board-charge of roughly 3% was levied on all capital project line items. However, there were problems with this system:

- An across-the-board charge will hit every capital line item in the City, but many capital projects are not managed by Engineering. Fleet purchases are one example of this.

- It is often the case that a project is budgeted to occur, but then it is cancelled or delayed. A charge against a project on the first day of the year results in an engineering service fee that is assessed but unearned. As such, it is unfair to the funding department, and it creates a fixed asset cost that is not associated with an actual fixed asset.
- In other years, the charge was levied on the last day of the fiscal year, but this can result in charges that were assessed against projects that had no leftover funding. Adding the fee caused the project to be overspent.
- Some projects are entirely grant funded, and some grants will not pay an engineering service fee.
- An across-the-board charge is a poor way to assess the amount of value added (and earned) by the Engineering Division. Most construction projects require a professional engineer to provide design services and construction management services.
 - For some of the City's capital projects, design and construction management is outsourced to a private engineering firm. These projects require extra funding (to hire the outside firm) but they tend to require less staff time from the Engineering Division.
 - For other projects, design and construction management is done by City staff. These projects tend to require more time from Engineering Staff, but ironically, the measured cost of the project will be lower, because an outside firm does not need to be hired. This causes the fixed asset value to be lower than actual, and it causes the project to be underbilled for the services provided.

In order to address these problems, the proposal for assessing the Engineering Service Fee is as follows:

1. **No fee will be assessed against projects that have no involvement from the Engineering Division.**
2. **No fee will be assessed against projects that involve contracting with a private engineering or architectural firm.** For some projects, a professional engineering firm is hired to provide design and construction administration services. (Note that it is very rare to outsource design *or* construction administration, but not both.) These projects will still require some management from the staff of the Engineering Division, but their assistance will tend to be less intensive and time consuming. Historically, the Engineering Division has always provided many general services, even services that are not specifically tied to capital projects. These include plat and site plan review, curb cut permitting, tap fee administration, and so on. Under this proposal, the management of private engineering firms would be counted as one of these general (and unbilled) services.
3. **If the project is fully grant funded, and the grant will not pay for City staff time, then the engineering service fee will be waived.** It should generally be the case that a non-grant funding source should be found to pay for the engineering service fee. But if a non-grant funding source is not available, then the fee can be waived.

4. **Assess an Engineering Service Fee of 10% against projects that are designed and managed by staff of the Engineering Division.** The 10% fee is an estimate of what a private engineering firm would charge the City for the design and construction management of a capital project. The fee would be paid from the project budget. By assessing the fee, the value of these services will be added to the fixed asset value of the project.
5. **If an Engineering Service Fee is assessed, each project will pay its fee with a detailed invoice.** Engineering fees have generally been handled as a mass billing at either the beginning or end of the fiscal year. This can lead to errors, since some projects might be listed that ought to not pay the fee, or vice versa. By billing each project separately, it will be clear if and when the fee was paid.
6. **If an Engineering Service Fee is assessed, each project will pay when the City staff member begins design work on the project.** When a project is first envisioned, it might not be known when the project will begin, and it might not be known if the project will be designed in-house. Charging the fee when the City employee begins design work will ensure that (1) the fee will be charged in the proper fiscal year, and (2) the fee will only be charged to projects that actually used City staff for design and construction management. This proposal calls for administrative staff of the Engineering Division to create an AR that will bill the project, with the revenue going to the appropriate revenue line in the General Fund.

Financial Considerations

The City's General Fund already budgets to receive engineering service fees, and capital projects should already include an amount for professional design services, if professional design is needed. Therefore, no formal changes are likely to be needed to the Adopted FY21 Budget. It is believed that the new system will result in revenue that is similar to the amounts collected in previous years, but actual fluctuations are possible, depending on the number of capital projects executed and how each project is managed by the Engineering Division.

Oversight/Project Responsibility

Pete Meyers, Assistant Financial Services Director

Attachments

None

July 23, 2020

MEMO TO: J. Carter Napier, City Manager *JCN*
FROM: Tom Pitlick, Financial Services Director *TP*
Pete Meyers, Asst. Financial Services Director *PM*
SUBJECT: Amendment to the Fiscal Year 2021 Budget

Meeting Type & Date

Council Work Session
July 28, 2020

Action Type

Information Only

Recommendation

Move Forward For Approval

Summary

The Municipal Budget Act, Section 16-4-108, prohibits the expenditure or encumbrance of any money in excess of the amounts provided in the budget for each department. To comply with this requirement, City Council may authorize an adjustment of budgets.

The budget amendment being proposed would be the first amendment to the originally adopted Fiscal Year 2020-2021 budget. This amendment has the primary component of providing expenditure authority for purchases/projects budgeted in the Fiscal Year 2019-2020 budget but not contractually obligated as of June 30, 2020, at which time budgetary authority lapsed. It is now necessary to re-budget these planned expenditures in order to “carry over” the expenditure authority into the Fiscal Year 2020-2021 budget. To be clear, these “carry over” requests are for purchases/projects previously approved by Council to be paid by unspent Fiscal Year 2019-2020 dollars. “Carry Over” requests total \$7,861,324 and are itemized in ATTACHMENT A.

A second component of the budget amendment request is for expenditure authority to cover costs that were either unanticipated or otherwise not included during the Fiscal Year 2020-2021 budget preparation. Some of these additional costs will be covered through unanticipated revenues (i.e.; grants and transfers) while the remainder will come from available cash within the appropriate funds. Supplemental funding requests total \$1,675,398 and are itemized in ATTACHMENT B. Major projects included in the supplemental requests are \$657,000 for a Wastewater Treatment Plant Digester Boiler (new project), \$408,000 for MRF operations; \$142,395 for the VA Reservoir Dog Park, and \$131,302 to cover costs associated with reopening outdoor pools.

Financial Considerations

Total “carry over” funding requests = \$7,861,324. Net impact to projected fund balances = \$0 as expenditures were accounted for in the previous budget cycle.

Total supplemental budget requests = \$1,675,398. Net impact (after application of unanticipated revenues and transfers) to various funds is \$831,626 shown as follows:

Special Fire Assistance Fund	= \$ -0-	(offset by grant revenue)
Capital Fund	= \$ 131,302	(\$131,302 transfer to Aquatics – remainder offset by grant and contribution revenues)
WWTP Fund	= \$ 657,000	(Digester Boiler)
Property & Liability Fund	= \$ 43,324	(Police Vehicle replacement – insurance proceeds)
Aquatics Fund	= \$ -0-	(offset by transfer from Capital Fund)
Refuse Fund	= \$ -0-	(expense offset by new revenues)
River Fund	= \$ -0-	(expense offset by outside contribution)

Oversight/Project Responsibility

Tom Pitlick, Financial Services Director

Pete Meyers, Asst. Financial Services Director

Attachments

Attachment A- Carry Over Request Detail

Attachment B – Supplemental Funding Request Detail

Resolution Draft

ATTACHMENT A		
FY 2021 BUDGET AMENDMENT #1		
CARRY OVER FUNDING REQUESTS		
	CARRY OVER	
	FUNDING	
	REQUESTED	DESCRIPTION
General Fund		
City Council	\$1,623	Disability Council Operations
	\$111,562	COVID designated expenditures
City Manager	\$39,036	Marketing Expense
Financial Services	\$34,007	GEMS Software Maintenance Fees
Total General Fund	\$186,228	
Special Fire Assistance Fund		
	\$17,767	Equipment - Homeland Security Grant
Total Special Fire Assistance Fund	\$17,767	
Capital Projects		
	\$347,166	Midwest Ave. Reconstruction
	\$8,076	1% #16 Police Vehicles
	\$209,189	Morad Park to Walmart Trail
	\$93,300	1st & Poplar Enhancements
	\$79,786	CEC Fire Protection - Phase II
	\$216,750	Athletic Field Lighting Replace
	\$65,332	Trails trust Misc. Projects
	\$54,100	CEC Plumbing Repairs
	\$28,500	Tandem Axle Dump Truck-Streets
	\$13,017	Leased Facilities Capital Improve
	\$24,515	Fire Training Tower Improve
	\$39,005	Bullwheel rebuild - Hogadon
	\$38,129	Chairlift Cone Drive - Hogadon
	\$600,000	Fire Engine #3
	\$40,000	Painting of Stuckenhoff Shooters
	\$7,000	Station 6 Concrete Improvement
	\$125,000	Links Pumpstation
	\$23,050	Metal Detectors for CEC
	\$75,000	Station 3 Roof Replacement
	\$792,223	McKenzie Lake Project
Total Capital Projects	\$2,879,137	
WWTP Fund		
	\$90,000	Bar Nunn #2 Lift Station Gen. Repl
	\$900,000	North Platte Sanitary Sewer Rehab
	\$90,000	Grit System #1 Rehab
	\$20,000	WWTP Fleet Replacements
Total WWTP	\$1,100,000	
Refuse		
	\$120,000	Parks Rear Load Truck
	\$285,000	Recycling Depot Improve
	\$298,863	Front Loader
	\$50,000	Biosolids Facility Improve
	\$20,000	Trash Truck Tablets
	\$47,506	AVL System Replace (Zonar)
Total Refuse	\$821,369	
Balefill		
	\$41,250	Maintenance Bldg Redesign
	\$2,320,429	Old Landfill Cover Improve
	\$140,000	Locker Room Renovation
	\$57,495	Plasma Table
	\$210,000	Bagging System Upgrade
	\$20,000	GPS Equipment for Dozer
	\$26,100	Security Card Readers
	\$41,549	AVL System Replace (Zonar)
Total Balefill	\$2,856,823	
TOTAL CARRY OVER REQUESTED	\$7,861,324	

ATTACHMENT B			
FY 2021 BUDGET AMENDMENT #1			
SUPPLEMENTAL FUNDING REQUESTS			
	SUPPLEMENTAL FUNDING REQUESTED	DESCRIPTION	FUNDING SOURCE
Special Fire Assistance Fund	\$104,000	Fire cargo vehicle/equipment	Homeland Security Grant
Total Special Fire Assistance Fund	\$104,000		
Capital Fund	\$131,302	Transfer to Aquatics	1% #16
	\$12,410	Metal Detectors for CEC - grant funded	Grant
	\$142,395	VA Reservoir Dog Park	Private Contribution
Total Capital Funds	\$286,107	Transfer to Aquatics	
WWTP Fund	\$657,000	Digester Boiler Installation	Other Project Savings
Total WWTP Fund	\$657,000		
Property & Liability Insurance Fund	\$43,324	Replace 1013003 SUV-police	WARM Reimb. Proceeds
Total Property & Liability Insurance Fund	\$43,324		Available Fund Balance
Aquatics Fund	\$131,302	Expenses Related to Opening of Pools	1% #16 Transfer
Total Aquatics Fund	\$131,302		
Refuse Fund	\$408,000	Expenses related to recycling program	New Recycling revenues
Total Refuse Fund	\$408,000		
River Fund	\$45,665	Environmental Consulting - Golder Assoc.	Outside Contribution
Total River Fund	\$45,665		
TOTAL SUPPLEMENTAL FUNDING REQUESTED	\$1,675,398		

RESOLUTION NO.

A RESOLUTION AMENDING THE CURRENT BUDGET FOR THE FISCAL YEAR ENDING JUNE 30, 2021					
(FIRST AMENDMENT TO THE ORIGINAL ADOPTED BUDGET)					
Section 1. Following notice published July 29, 2020, and the public hearing held August 4, 2020, the originally adopted					
Fiscal Year 2021 budget is amended as set out herein and in the detail by fund type and activity that supports					
this resolution which was considered at that hearing:					
		Total Budget as certified	BA #1	Total Budget After Current Amendment	Amendment Funding Source(s)
General Fund Revenues & Other Financing Sources					
Taxes	101	4,403,676		4,403,676	
Licenses & Permits	101	5,939,395		5,939,395	
Intergovernmental	101	27,949,549		27,949,549	
Fines and Forfeits	101	877,888		877,888	
Charges for Services	101	4,307,330		4,307,330	
Interest	101	372,655		372,655	
Miscellaneous	101	435,175		435,175	
Application of Cash	101	1,827,908		1,827,908	
Operating Transfers	101	0		0	
Total GF Revenues and Other Sources	101	46,113,576		46,113,576	
General Fund Expenditures & Other Financing Uses					
Public Safety	101	24,563,302		24,563,302	
Public Works	101	3,684,159		3,684,159	
Health and Social Services	101	1,028,612		1,028,612	
Culture and Recreation	101	2,749,884		2,749,884	
General Government	101	9,588,443	186,228	9,774,671	FY '20 unspent appropriation carry forward
Transfers Out	101	4,499,175		4,499,175	
Total GF Activity Expenditures	101	46,113,576	186,228	46,299,804	
Business Type / Enterprises					
River Fund	106	63,402	45665	109,067	grant contribution
Weed & Pest	110	689,810		689,810	
CDBG	111	0		0	
Revolving Land Fund	113	42,462		42,462	
Perpetual Care	103	514,781		514,781	
Police Grants	114	421,566		421,566	
Special Fire Assistance	112	75,000	121,767	196,767	grant revenues
CATC	115	2,720,846		2,720,846	
MPO	116	1,159,703		1,159,703	
Local Assessment Districts	104	160		160	
Capital Projects	150	8,710,310	3,165,244	11,875,554	FY '20 unspent appropriation carry forward; \$131,302 available fund balance; \$12,410 grant; \$142,395 private contrib.
Opportunities Fund	102	1,004,922		1,004,922	
Water	201	14,936,837		14,936,837	
Sewer	203	6,812,274		6,812,274	
WWTP	204	13,575,565	1,757,000	15,332,565	FY '20 unspent appropriation carry forward plus \$657,000 available fund balance
Refuse Collection	205	7,441,384	1,229,369	8,670,753	FY '20 carry forward. \$408k offsetting rev.
Balefill	206	7,423,524	2,856,823	10,280,347	FY '20 unspent appropriation carry forward
Aquatics	221	761,071	131,302	892,373	Transfer from Capital Fund
Golf Course	222	855,049		855,049	
Ice Arena	223	505,653		505,653	
Hogadon	225	867,605		867,605	
Casper Events Center	226	886,836		886,836	
Parking	227	117,240		117,240	
PSCC	117	2,721,891		2,721,891	
CWR Water System	202	3,352,237		3,352,237	
Casper Recreation Center	224	1,491,164		1,491,164	
Redevelop Loan Fund	130	50,000		50,000	
Fleet Maintenance	251	2,384,527		2,384,527	
Buildings & Structures	252	1,026,475		1,026,475	
Employee Health Insurance	253	2,364,525		2,364,525	
Property and Liability Insurance	254	1,867,320	43,324	1,910,644	Insurance proceeds
Metro Animal Shelter	105	1,426,918		1,426,918	
Total Gov Activities & Business Expenditures		132,384,633	9,536,722	141,921,355	

Passed this _____ day of _____
(Day) (Month/Year)

APPROVED AS TO FORM:


ATTEST:

Fleur Tremel
City Clerk

CITY OF CASPER, WYOMING
A Municipal Corporation

Steven K. Freel
Mayor

July 13, 2020

MEMO TO: J. Carter Napier, City Manager 
FROM: Tim Cortez, Director of Parks and Recreation
Phil Moya, Recreation Manager
SUBJECT: Lease Agreement Templates

Meeting Type & Date

Work Session
July 28, 2020

Action type

Direction Requested

Recommendation

That Council direct staff in the process of determining if a more consistent lease agreement is needed for the City of Casper Parks and Recreation Department.

Summary

Currently, the Parks and Recreation oversees about two dozen lease agreements for the various user groups and facilities that recreate in the City of Casper. On a daily basis, questions arise about various nuances of the agreements. The Parks and Recreation Department along with the City Attorney's Office feels it is a worthy endeavor to further discuss lease and rental agreements across the department.

The main thought was to have a more consistent agreement across all facilities and programs. This would alleviate some of the thoughts of favoritism we often see. Furthermore, it would be easier to make consistent policy decisions going forward.

Staff does acknowledge the reason for such diverse agreements as it currently sits is due to specific nuances of individual facilities and programs. Furthermore, individuals lobby City Staff and Council for certain items to be adjusted.

The attached draft lease agreement is staff's best attempt to develop a more consistent arrangement for all entities going forward.

Financial Considerations

None.

Oversight/Project Responsibility

Phil Moya, Recreation Manager

Attachments

Draft Lease Agreement



LEASE AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 20____, between the City of Casper, Wyoming, a Municipal Corporation, hereinafter referred to as "City or **Lessor**," and _____, a Wyoming Corporation or a 501(c) (3) Non-Profit Corporation hereinafter referred to as "**Lessee**." This Agreement supersedes and replaces any previous agreements between the parties.

IN CONSIDERATION of the Lease, covenants, and conditions herein set forth, the **Lessor** and **Lessee** hereby covenant, promise, and agree as follows:

RECITALS:

- A. The City owns and operates the _____, located at _____, Casper, Wyoming; and
- B. **Lessee** desires to enter into a nonexclusive lease of the _____ and to reach other accommodations with the City, and the City is willing to enter a nonexclusive lease to the _____ and to define associated obligations of the parties as set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants contained herein, it is agreed:

1. PREMISES:

- A. **Lessor** hereby agrees to lease to **Lessee**, and **Lessee** hereby agrees to lease from **Lessor**, for the term hereinafter provided, and any extensions thereafter, and upon the terms and conditions set forth in this Agreement, the property described as _____, hereinafter referred to as the "_____".
- B. The "_____" is leased to **Lessee** in an AS IS CONDITION, WITHOUT WARRANTY, EXPRESSED OR IMPLIED. By signing this Agreement, **Lessee** agrees it has inspected the premises and accepts the property in its present condition.

2. PURPOSE:

The demised premises are leased to **Lessee** for the purpose of conducting _____ activities and or services. Such _____ activities and or services and related activities shall be conducted in a safe manner and shall conform to all federal, state, and municipal laws, and all regulations relating to possession, use, or maintenance of the property.

3. TERM:

The primary term of this Agreement shall be one (1) year ("Primary Term"), upon the first day of the month as indicated in the exercise of the option ("Commencement Date"). The Agreement shall automatically be extended for two (2) additional one (1) year extension terms ("Extension Terms").

The Extension Terms of this Agreement will be subject to the same terms and conditions herein with the exception of monthly rent payments which will be adjusted to reflect a 5% increase annually for the two (2) additional extension terms.

4. **FEES:**

Option I (Determined by the City – LT Rental)

Hourly Rental Fee: Lessee shall pay rent to the City as follows:

- A. The Lessee season schedule, and hourly rental fee, are listed in Exhibit "A." If this Agreement is extended, Exhibit "A" will be revised for each annual Agreement extension. Hourly rental fees are subject to change each year by a resolution approved by the Parks and Recreation Department Director or his/her designee.
- B. If additional scheduled dates and times are requested by Lessee and approved by the City, Lessee will pay the City the appropriate rate as described in Exhibit "A", scheduling of additional dates and times is subject to [redacted] availability and other schedule commitments and solely at the discretion of the City.
- C. Cancellations of scheduled dates and times will be allowed, and rent will be adjusted according to the rate defined in Exhibit "A" as a refund, provided that a cancellation notice is provided in writing to the City at least fourteen (14) days prior to the scheduled date. Cancellations of scheduled special events and tournaments will be allowed, and rent will be adjusted according to the rate defined in this Agreement as a refund, provided that a cancellation notice is provided in writing to the City at least fourteen (14) days prior to the scheduled special event / tournament. If the Lessee does not provide notice of cancellation within the time limits stated above, it will forfeit 50% of the rate defined in this Agreement as a refund. Furthermore, adjustments according to the rate defined in this Agreement will be made by the City, if, in its judgment, an event is canceled as a result of inclement weather or other circumstances beyond the reasonable control of Lessee which prevents advance notification of the City. All refunds may take up to two weeks or more to process.
- D. Payment: The City shall invoice Lessee, on a monthly basis, during the preceding month, in accordance with the rate identified in Exhibit "A." Lessee shall pay rent to the City within thirty (30) business days of receipt of the invoice. Rent not received on time is subject to a one and one half percent (1.5 %) late fee due the Lessor if the rental fee payment is not paid to the Lessor by the [redacted] day of the overdue month of this Agreement. Lessee's failure to pay Lessor the above described rent on or before the [redacted] day of any month of this Agreement shall be considered material a default by the Lessee of the terms and conditions of this Agreement.

Option II (Determined by the City - Lease)

Participant Fee: Lessee shall pay rent to the City as follows:

- A. Lessee shall pay to the Lessor annually as reimbursement for the costs of providing maintenance services for the Complex, the sum of [redacted] (\$[redacted].00) per player, said amount to be paid to the Lessor at its offices located at 1801 East 4th Street, Casper, Wyoming by [redacted] of each year.
- B. See details listed in Exhibit "A."

Option III (Determined by the City - Lease)

Percentage Fee:

- A. The Lessee shall pay the Lessor [redacted] percent of gross receipts in accordance with Exhibit "A" from all sales of food, beverages, and other products which sum shall be due and payable to the Lessor on or before the 15th day of each month. A late fee of an additional 1.5% of the gross receipts shall be due the Lessor if the monthly fee payment is not paid to the Lessor by the 15th day of each month of this Agreement. Lessee's failure to pay Lessor the above described fee on or before the 15th day of any month of this Agreement shall be considered a default by the

- Lessee** of the terms and conditions of this Agreement.
- B. See details listed in Exhibit "A," which is hereby made a part of this Agreement.

5. **ASSIGNMENT/SUBLEASING:**

Option I (Determined by the City)

- A. **Lessee** may not assign, sell, or transfer this Agreement in whole or part and may not sublet all or otherwise assign all or any part of the leased premises without the prior written consent of the **Lessor**.

Option II (Determined by the City)

- A. With the prior written consent of **Lessor**, the **Lessee** may assign this **Lease** in whole or in part and/or may sublet all or part of the leased premises; however, notwithstanding assignment or sublease, **Lessee** shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants, and conditions of this Agreement. Before any assignment or sublease is permitted, **Lessor** and **Lessee** must agree to a sublet/rental agreement for the use of City facilities. The **Lessor** will be entitled to 50% of the agreed upon sublet/rental total fee. **Lessee** will be responsible for the full payment of 50% of the sublease/rental seven (7) days after the agreement term. In the event of **Lessee's** failure to pay **Lessor** within the seven (7) days of the sublease/rental agreement, the **Lessee's** lease shall be considered a default by the **Lessee** of the terms and conditions of this Agreement. The terms of the sublease/rental agreement, fee structure and term limit will be approved by the Parks and Recreation Department Director or designee.

6. **CONCESSIONS / RETAIL SALES** (Determined by the City):

- A. The **Lessee** shall pay the **Lessor** a [] percent of gross receipts from all sales of food, beverages, and other products which sum shall be due and payable to the **Lessor** on or before the [] day of each month for open periods of seasonal operations, at the Crossroads Park Ball Field Complex Concessions.
- B. It is recognized that the **Lessee** may, during the Agreement term, conduct fund raising activities, including raffles, sale and lease of advertising upon the property or otherwise, the sale of personal property such as t-shirts, other clothing, and the like. All of the revenues generated from such activities are the sole and exclusive property of the **Lessee**. The **Lessee** must inform the **Lessor** of any plans for fundraising at City facilities.

7. **INVENTORY:**

Within thirty (30) days of the execution of this Agreement by all parties hereto, and on or before May 1 of each term of this Agreement, the **Lessor** and the **Lessee** shall jointly prepare and maintain an updated annual inventory of equipment and fixtures (which shall be signed off by both parties), separately listing those items, number of items, and approximate value(s) of items belonging to the **Lessor** and those belonging to the **Lessee** on the leased premises. **Lessee** shall not remove any **Lessor** owned equipment from the facilities without express written permission from the Parks and Recreation Department Director or his designee.

8. **TAXES AND ASSESSMENTS:**

Lessee agrees to pay to the Natrona County Treasurer, on behalf of the **Lessor**, any and all taxes and assessments which may be assessed against the property, upon reasonable notice by the **Lessor**, as to the amounts due and owing.

9. NON-DISCRIMINATION:

The **Lessee** agrees that neither it nor its subcontractors will discriminate against any employee or applicant for employment to be employed in the performance of this lease, with respect to his or her hire, tenure, terms, conditions, or privileges of employment because of his or her race, color, creed, religion, national origin, age, sex, or ancestry.

10. SCHEDULING:

- A. **Lessee** shall be responsible for the scheduling of the [redacted] for all [redacted] related activities. **Lessor** shall schedule any non-[redacted] activities based on the availability of the facility. **Lessee** shall provide the **Lessor** with a master schedule of all [redacted] activities per facility.
- B. For any special events or tournaments that deviate from the master schedule, the **Lessee** must notify the **Lessor** of such changes at least fourteen (14) days in advance.

11. LAWS AND REGULATIONS:

Lessee shall be solely responsible for compliance with all laws, orders, and regulations of federal, state, and municipal authorities and with any direction of any public officer, pursuant to law, which shall impose any duty upon **Lessee** with respect to the real property and fixed assets. **Lessee** shall obtain all licenses or permits which may be required for the conduct of its business within the terms of this Agreement, or for the making of repairs, additions, alterations, or improvements.

12. INSURANCE, INDEMNIFICATION AND IMMUNITY:

- A. **Lessee** agrees to indemnify and hold the City harmless from any and all claims arising out of **Lessee's** use and/or occupancy of the facility, field space and/or other City facilities described in this Agreement. To ensure its ability to indemnify the City as agreed, **Lessee** will obtain, at its own cost and expense, general liability insurance coverage in amounts not less than the City's maximum liability under the Wyoming Governmental Claims Act, W.S. § 1-39-101 et seq., currently two hundred fifty thousand dollars (\$250,000.00) to any claimant for any number of claims arising out of a single transaction or occurrence, and five hundred thousand dollars (\$500,000.00) for all claims of all claimants arising out of a single transaction or occurrence. **Lessee** shall also provide property damage insurance in the sum of not less than two hundred fifty thousand dollars (\$250,000) per occurrence. Such insurance shall provide that it will not be canceled without at least thirty (30) days prior written notification to the City, that the City, its Council, employees, officers, officials, and volunteers are to be named as an additional insured, and that it is primary insurance without any right of contribution from any other resource or insurance of the City. **Lessee** shall provide the City with a certificate of insurance, including necessary endorsement(s) evidencing such insurance as described above, immediately after execution of this Agreement, and prior to the use of the property listing the City of Casper, its employees, officers, officials, and volunteers as an additional insured. The City's failure to request or review such insurance policies or endorsements shall not affect the City's rights or **Lessee's** obligations hereunder.
- B. It is entirely the obligation of **Lessee** to provide insurance for its personal property and for that of its participants, players, employees and agents. The City assumes no responsibility for such property.

13. USE OPERATIONS PLAN:

The **Lessee**, prior to the execution of this Agreement, shall submit a Use Operations Plan to the Parks and Recreation Director or the Director's designee. The plan shall specify months, days, and

hours of operation for those months, the responsible organizational contact(s) and the contact's telephone number(s), during which the subject property shall be available to the public for related property use activities. The plan shall pertain to the time period of the Lease, in the event the Parks and Recreation Department Director or its designee does not disapprove of the plan within thirty (30) days from the date of its submission, it shall be considered approved.

14. ADVERTISING:

- A. **Lessee** shall have the right to procure and to install, affix, maintain, and replace appropriate signs displaying advertising matter at the facility and/or on the property. All advertising shall be subject to the City's right to accept or reject the same, including the right to accept or reject sponsors and advertising content, to ensure that any advertising placed at the facility and/or on the property is appropriate in connection with the intended use of the property and its related facilities. **Lessee** shall not, in procuring, installing, displaying, or replacing any advertising material, violate any person's right to privacy or infringe upon trademarks, trade names, copyrights, or proprietary rights of any person. Advertisement(s) cannot be pre-sold beyond the time periods or terms of the Agreement. It is understood that any approval by the City of advertising material shall not constitute a waiver of **Lessee** obligations concerning such violations or infringement. **Lessee** agrees to indemnify and hold the City harmless with respect to all claims without cost to the City.
- B. The parties agree that all advertising placed at the facility and/or on the property is owned by the **Lessee** and shall remain the property of **Lessee**, and shall be subject to removal by **Lessee** at any time.

15. RIGHT TO ENTRY:

The **Lessor** reserves the right to enter the leased property for the purposes of maintenance, public safety, and other general inspections. **Lessee** will be notified 24 hours in advance of any non-routine, non-emergency inspections, and may accompany **Lessor's** representative during such inspections.

16. MAINTENANCE:

Option I (Determined by the City – Lease)

- A. **Lessee** shall, during the term of this Agreement, keep the leased premises in good order and repair commensurate with the operation of the **Lessee's** intended use of those premises and facilities, and as necessary to adequately protect spectators, guests, invitees, and participants, and shall at its sole cost and expense, make any repairs necessary to the leased premises for these purposes. The **Lessee** must receive consent of the **Lessor** prior to the scheduled repairs. **Lessor** shall, during the term of this Agreement, provide services commensurate with the lease fee identified in this Agreement. Those services are related to normal facility upkeep including, but not limited to, plumbing, electrical and mechanical repairs to existing equipment that exceed \$750 per repair. The **Lessee** will be responsible for all repairs \$750 per repair or less. The **Lessee** is liable for all damages that occur to the facility during this lease term. The **Lessor** will be responsible for normal turf and related ground maintenance, and roadway repairs and parking lot repairs.
- B. Services in addition to the normal maintenance referred to above shall be the responsibility of the **Lessee**, including field preparations. **Lessee** will be responsible for maintaining and cleaning of office space, concessions space, storage space, restrooms and portable restrooms provided during the rental/event. The **Lessee** will be responsible for maintaining the rental area with trash receptacle garbage removal and trash bag replacement during the rental/event. The **Lessee** will also be responsible for litter collection on the grounds in the rental area that could accumulate

during the lease/event. **Lessee** will be responsible for paying **Lessor** for additional services needed for special events or tournaments including field prep, extra mowing, additional portable restroom service and additional trash removal service. The **Lessee** will need to request the additional services from the City and least fourteen (14) days prior to the rental/event. Additional services will only be provided based on availability of City staff. Fees for additional services shall be as shown in Exhibit "A."

Option II (Determined by the City – Rental)

- A. **Lessee** shall, during the term of this rental, keep the leased premises in good order and repair commensurate with the operation of the **Lessee's** intended use of those premises and facilities, and as necessary to adequately protect spectators, guests, invitees, and participants, and shall at its sole cost and expense, make any repairs necessary to the rented premises for these purposes. The **Lessee** must receive consent of the **Lessor** prior to the scheduled repairs. **Lessor** shall, during the term of this Agreement, provide services commensurate with the lease/rental fee identified in this agreement. Those services are related to normal facility upkeep including, but not limited to, plumbing, electrical and mechanical repairs to existing equipment. The **Lessee** is responsible for informing the **Lessor** of any repairs that are needed at the facility that are due to normal wear and tear. The **Lessee** is liable for all damages that occur to the facility during its events. The **Lessor** will be responsible for normal turf and related ground maintenance, and roadway repairs and parking lot repairs.

- B. Services in addition to the normal maintenance referred to above shall be the responsibility of the **Lessee**, including field preparations. **Lessee** will be responsible for maintaining and cleaning of office space, concessions space, storage space, restrooms and portable restrooms provided during the rental/event. The **Lessee** will be responsible for maintaining the rental area with trash receptacle garbage removal and trash bag replacement during the rental/event. The **Lessee** will also be responsible for litter collection on the grounds in the rental area that could accumulate during the rental/event. **Lessee** will be responsible for paying **Lessor** for additional services needed for special events or tournaments including field prep, extra mowing, additional portable restroom service and additional trash removal service. The **Lessee** will need to request the additional services from the City and least fourteen (14) days prior to the rental/event. Additional services will only be provided based on availability of City staff. Fees for additional services shall be as shown in Exhibit "A."

17. ADDITIONS, ALTERATIONS, AND IMPROVEMENTS:

- A. The **Lessee**, at its sole cost, risk, and expense, may construct temporary facilities and fixtures for its benefit and the benefit of participants and spectators. Such facilities and fixtures shall meet all applicable city, state, federal regulations and requirements, and such other requirements as may be prescribed by the **Lessor**.

- B. The plans and specifications for any additional temporary facilities and fixtures shall first be submitted to the City's authorized representative for approval in accordance with existing City codes, prior to the construction. At the time of submission, the **Lessee** shall designate whether the facility or fixture is temporary, and for what period of time it will remain in use. The Director of Parks and Recreation or its designee shall, in addition, have authority to approve or disapprove of all additional facilities or fixtures placed upon the leased premises.

- C. **Lessee** may, upon termination of this Agreement, remove all facilities or fixtures which it constructed and which are of a temporary nature, but must restore property and/or premises to conditions as they were prior to installation of the removed improvements.

- D. The **Lessor** reserves the right to make such improvements to the property, facilities, or fixtures as it may desire, upon reasonable notice to **Lessee**, provided the improvements do not substantially conflict with the use of the premises described herein, as determined by the Director of Parks and Recreation or its designated representative.

18. UTILITIES:

Option I (Determined by the City)

- A. **Lessor** shall, pay as and when due all charges for water and sewer services, electricity and natural gas.

Option II (Determined by the City)

- A. **Lessee** is responsible for all charges for water and sewer services, electricity and natural gas. The **Lessor** will determine the charges based on the billing/invoices during the Lease term and will send an invoice to the **Lessee** at the end of the term of the Agreement.

19. DEFAULT:

- A. In the event **Lessee** shall fail to make any payment called for within fifteen (15) days after the same shall fall due, then **Lessor** may terminate this Lease by giving **Lessee** written notice of such termination; or, in the event the **Lessee** fails to perform any other obligations called for herein on his part to be performed, and upon notice duly given of such deficiency by **Lessor**, and upon **Lessee's** failure to cure such deficiency within fifteen (15) days after such notice, then **Lessor** may, by written notice to **Lessee**, terminate this Agreement, effective upon proper delivery or mailing of said written termination notice by **Lessor**.
- B. Upon such termination, **Lessor** shall be entitled to possession of the leased premises and all permanent improvements therein made by **Lessee** without any further notice or demand, and **Lessee** shall peacefully surrender the leased premises and all other permanent improvements therein made by **Lessee**. If **Lessee** shall refuse to surrender and deliver upon the possession of the premises, then **Lessor** without further notice or demand, may re-enter the premises and repossess by force, summary proceedings, ejection, or otherwise using such help, assistance, and force, in doing so that may be equal and proper without being liable for prosecution of damages therefor, and without prejudice to any remedy allowed by law or equity.

20. REIMBURSEMENT OF DEFAULT AND EVICTION ACTION EXPENSES:

Lessee shall pay and indemnify **Lessor** against all legal costs and charges, including attorney's fees, in obtaining possession of the leased premises after a default of **Lessee** or after **Lessee's** default in surrendering possession upon the expiration or early termination of the term of this Agreement or enforcing any covenant of the **Lessee** herein contained. **Lessee** shall also be responsible for all costs required to either remove any temporary facility/fixture improvements or costs for **Lessor** to restore the property and premises to the original condition.

21. DESTRUCTION OF REAL PROPERTY OR FIXED ASSETS:

If the real property or fixed assets should be destroyed totally by fire or other cause, the tenancy created hereby shall be thereafter terminated. Real property and fixed assets not totally destroyed by fire or other cause, regardless of the cause of damage, will be the responsibility of the **Lessee** to repair, rebuild, or reimburse the **Lessor** to an equal to or better than condition or fairly compensate the **Lessor** in monetary value, as existed prior to the destruction of such real property or fixed assets.

22. SURRENDER OF REAL PROPERTY AND FIXED ASSETS:

Lessee shall, at the expiration of the lease term or any renewal thereof, or on termination thereof, surrender the leased premises free of subtenancies, liens, or other encumbrances, together with alterations and improvements which may have been made thereon, except for temporary facilities or fixtures put in at the expense of the **Lessee** or at the expense of any subtenants, subject, however, to the subsequent provisions hereof. All the property removable, pursuant to the provisions of this paragraph, shall be removed by the **Lessee** at the expiration of the lease term, or any extension thereof, and all property not so removed shall be deemed abandoned by **Lessee**. **Lessor** has the option to purchase all of the removable property that the **Lessee** has acquired for the operation of the leased premises and facility operations at the termination or expiration of this Agreement. The purchase price shall be the depreciated value of assets at the time of termination or expiration of the Agreement.

23. OPERATIONS:

Lessee shall have the right to solicit offerings and contributions from spectators and charge admission for **Lessee**-sponsored events. The details of its plan for same shall be submitted by the **Lessee** as part of the Annual Operations Plan and at such other times as may be convenient for the parties. All funds collected by the **Lessee**, by way of contributions or admission charges, shall be used solely for the purpose of promoting, maintaining, and continuing operations for the purposes of this Agreement including, but not limited to, defraying operating expenses, purchasing equipment, and improvement of the facilities. **Lessee** shall keep and maintain proper records reflecting all revenues and expenditures, and shall make an Annual Financial Report to the **Lessor** following the close of each year as part of the Annual Operations Plan.

24. NOTICE:

Any notice by either party shall be in writing and shall be considered to be duly given if delivered personally or if mailed by certified mail, postage prepaid, addressed as follows:

City of Casper Recreation Division
1801 East Fourth Street
Casper, Wyoming 82601

25. WAIVER:

No failure by **Lessor** to insist upon the strict performance of any terms or conditions of this Lease, or to exercise any right or remedy available on a breach thereof, and no acceptance of full or a partial rent during the continuance of any such breach shall constitute a waiver of any such breach or of any term or condition of this Agreement. No term or condition of this Lease required to be performed by **Lessee**, and no breach thereof, shall be waived, altered, or modified, except by a written instrument executed by **Lessor**. No waiver of any breach shall affect or alter any term or condition of this Lease, and such term or condition shall continue in full force and effect with respect to any other than existing or subsequent breach thereof.

26. ENVIRONMENTAL COMPLIANCE:

A. **Lessee** shall conduct its operation on the property in compliance with, and shall not permit the property to be in violation of any applicable local, state, or federal environmental laws. **Lessee** shall obtain and maintain in effect all permits required by any environmental laws for the property,

and its uses, and shall furnish to **Lessor** copies of the permits upon request. **Lessee** shall comply with all reporting requirements of 42 U.S.C. 11001, et seq. (Emergency Planning and Community Right to Know Act). **Lessee** shall not handle, store, dispose of, or allow the handling, storage, or disposal of any hazardous waste as defined in 42 U.S.C. 6903(5), or hazardous substance as defined in 42 U.S.C. 9601(14), on the property, and shall not discharge any waste onto lands or any surface water or ground water at or near the property. **Lessee** shall manage all hazardous substances and chemicals which it handles off-site, but in proximity to the subject property in accordance with all applicable laws and regulations. **Lessee** shall not bring onto the property any substances known to cause human injury, including, without limitation, cancer or reproductive toxicity, except those which are necessary for the prudent and necessary management of **Lessee's** lawful operations on the property. In addition, **Lessee** shall comply with all laws, regulations, and standards applicable to those substances.

- B. **Lessee** shall immediately advise **Lessor** in writing of (1) any and all governmental agencies regulatory proceedings or enforcement actions instituted or threatened, which require or could require investigation, mitigation, clean-up, alteration, or abatement of any conditions on the property; (2) all claims made or threatened by any party against **Lessee** or the property, relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any pollutant, or hazardous substance; and, (3) **Lessee's** discovery of any occurrence or condition on the property which might subject **Lessee**, **Lessor**, or the property to any restrictions on ownership, occupancy, transferability, or use of the property under any local, state, or federal environmental law.
- C. **Lessee** shall make and conduct regular investigations of the property to determine the presence thereon of any hazardous substance which may have been deposited on the property by any party, including third parties, and shall report any condition which indicates the presence of such substances immediately to **Lessor** and to the proper authorities. **Lessee** shall advise **Lessor**, upon request of all such investigations which had been made, the dates of such investigations, and the method of investigation. These investigations shall be made by **Lessee** not less than on a monthly basis. **Lessee**, in addition, shall take all reasonable precaution to prevent the dumping, discharge, or threatened discharge of any hazardous substance on the property by any third persons, and shall advise the **Lessor** in writing, upon request, of all such precautions which have been taken.

27. GOVERNING LAW:

This Agreement shall be governed, interpreted, construed, and regulated by the laws of the State of Wyoming. Any litigation regarding this Lease shall be resolved in a court of competent jurisdiction situated in Natrona County, Wyoming.

28. MISCELLANEOUS COVENANTS:

- A. Time is of the essence in this agreement and all obligations shall be performed in a timely manner.
- B. This agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors, heirs, devisees, and assigns.

29. TERMINATION OF LEASE AGREEMENT:

The City or [redacted] may terminate this Agreement anytime by providing thirty (30) days written notice to City or [redacted] of intent to terminate said Agreement. Notwithstanding the above, the [redacted] shall not be relieved of liability to the City through damages sustained by the City, by virtue of termination of the Agreement by [redacted] or any breach of the Agreement by [redacted].

30. WYOMING GOVERNMENTAL CLAIMS ACT:

The Lessor does not waive any right or rights it may have pursuant to the Wyoming Governmental Claims Act, Wyoming Statutes Section 1-39-101 et seq., and **the Lessor** specifically reserves the right to assert any and all rights, immunities, and defenses it may have pursuant to the Wyoming Governmental Claims Act.

31. NO THIRD PARTY BENEFICIARY RIGHTS:

The parties to this Agreement do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The parties to this Agreement intend and expressly agree that only parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.

32. ENTIRE AGREEMENT:

This Agreement contains the entire agreement between the parties and it is agreed that neither **Lessor** or anyone acting on its behalf has made any statements, promise, or agreement, or taken upon itself any engagement whatever, orally, or in writing, in conflict with the terms of this Agreement of that in any way modifies, varies, alters, enlarges, or invalidates any of its provisions, and that no obligation of **Lessor** shall be implied in addition to the obligations herein expressed.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written.

APPROVED AS TO FORM:

LESSOR:

CITY OF CASPER, WYOMING
A Municipal Corporation

ATTEST:

Fleur Tremel
City Clerk

Steven K. Freel
Mayor

LESSEE:

Address:

Phone:

E-Mail

ATTEST:

By: _____

By: _____
Title: _____

Exhibit A:

July 22, 2020

MEMO TO: J. Carter Napier, City Manager *scw*
FROM: Tim Cortez, Director of Parks and Recreation
SUBJECT: Troopers' Fundraising at Fort Caspar

Meeting Type & Date

Council Work Session, July 28, 2020

Action type

Direction Requested

Recommendation

That Council provide staff with direction regarding the Troopers wanting to use the grounds of Fort Caspar to raise funds for their program.

Summary

The Troopers have recently approached the City to ask for permission to build some raised flowerbeds at the entrance of the Fort Caspar Museum. The Troopers would ask donors for funds and in exchange, the Troopers would plant flowers in the beds on their behalf and put their name on a plaque to memorialize the gift to the organization.

The Troopers do have a long standing and positive relationship with Fort Caspar. Staff likes the thought and the fact that the Troopers have committed they will do all the infrastructure and maintenance associated with the project. However, the fact that it would probably be a permanent feature of the grounds, staff would like Council's direction.

Financial Considerations

None.

Oversight/Project Responsibility

Phil Moya, Recreation Manager
Rick Young, Parks and Recreation Supervisor

Attachments

None.