



Board of County Commissioners Agenda Request

SA
Agenda Item #

Requested Meeting Date: March 10, 2020

Title of Item: Approve SWCD Lease Agreement Revisions

<input checked="" type="checkbox"/> REGULAR AGENDA	Action Requested:	<input type="checkbox"/> Direction Requested
<input type="checkbox"/> CONSENT AGENDA	<input checked="" type="checkbox"/> Approve/Deny Motion	<input type="checkbox"/> Discussion Item
<input type="checkbox"/> INFORMATION ONLY	<input type="checkbox"/> Adopt Resolution (attach draft)	<input type="checkbox"/> Hold Public Hearing* <i>*provide copy of hearing notice that was published</i>

Submitted by: Jessica Seibert, County Administrator	Department: Administration
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Presenter (Name and Title): Jessica Seibert, County Administrator	Estimated Time Needed: 5 min.
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Summary of Issue:

A Lease Agreement was previously signed with the Aitkin County Soil & Water Conservation District (SWCD) for space leased in the Government Center. The SWCD has requested a change related to IT support and data storage. Please see the attached agreement with revision noted in red. The changes have been reviewed by the County Administrator, County Attorney, former County IT Director, and SWCD manager. Changes have also been reviewed with the Facilities Committee who recommends Board approval.

Alternatives, Options, Effects on Others/Comments:

Deny SWCD Lease Agreement Revisions

Recommended Action/Motion:

Approve SWCD Lease Agreement Revisions

Financial Impact:

Is there a cost associated with this request? Yes No

What is the total cost, with tax and shipping? \$

Is this budgeted? Yes No

Please Explain:

Property Lease

This lease is made and entered into by and between Aitkin County, Minnesota, hereinafter referred to as "Lessor," and Aitkin County Soil and Water Conservation District, hereinafter referred to as "Tenant."

In consideration of the mutual covenants hereinafter set forth, and intending to be legally bound, the parties do hereby agree as follows:

1. PREMISES

1.1 Demise. Lessor does demise, lease and rent to Tenant and Tenant does hire, rent and take from Lessor the following "Leased Premises":

1.2 Premise Description. The leased premises are located in the Aitkin County Government Services Building, Second Floor office area. Included is a second floor storage room. Building address is 307 Second St NW, Room #216, premise map is included as Exhibit A.

1.3 Condition of Premises. Parties agree that the leased premises are being leased "AS IS." The Lessor makes no other representations, either express or implied regarding the quality and condition of the building.

1.4 Use of Premises. Tenant shall use and occupy the leased premises solely for the purpose of carrying out the duties of the Aitkin County Soil and Water District and related tasks. No other use is authorized without the prior written consent of Lessor.

1.4(a) No Unlawful Uses. Tenant will not use, occupy or permit the leased premises or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose, nor for any business, use or purpose deemed by Lessor to be disreputable or extra-hazardous, nor in such manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any present or future laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, or of the State, county or city government, or other municipal, governmental or lawful authority whatsoever, and shall indemnify and hold Lessor harmless from the consequences of any such violation. If Tenant receives any written notice of any such violation, applicable to the leased premises, it shall give prompt notice thereof to Lessor.

1.4(b) Obligation of Tenant to Conform to Lawful Uses. Tenant shall, at its expense, conform to all laws, orders, ordinances and regulations of federal, state, county and municipal authorities and with any directives made pursuant to law by any public officer or officers which shall, with respect to the occupancy, use or manner of use of the leased premises or to any abatement of nuisance, impose any order or duty upon Lessor or Tenant arising from Tenant's occupancy, use or manner of use of the leased premises.

1.4(c) Landlord's Rules and Regulations. Tenant, its officers, employees, agents and invitees, shall observe and comply with all reasonable rules and regulations governing the building

and the adjacent parking facilities as may be determined from time to time in writing by Lessor for the general safety, comfort and convenience of the Tenant, other tenants and the general public. Any failure to observe any such rule or regulation shall constitute failure to perform a term of this Lease and, consequently, a breach on the date of execution of this Lease.

2. TERM

2.1 Term of Lease. The term of this Lease shall be for two (2) years commencing on _____, 2019, unless earlier terminated by law or as provided herein. After the initial 2 year lease has expired, lease will be automatically renewed for one (1) year on an annual basis unless one party gives sixty (60) days notice.

2.3 Holding Over. If Tenant does not vacate the leased premises at the end of the lease term, or upon other termination of Tenant's right of possession, then Tenant's further possession shall be wrongful and Tenant shall be subject to eviction at any time, pursuant to law. Tenant shall be liable to pay Lessor as damages for wrongful holding over.

3. RENT

3.1 Base Rent. The Tenant will not be charged any lease, rental or similar fees for use of the leased space. Prior to this agreement, Lessor provided annual appropriations to the Tenant which included an amount for rent and utilities. Lessor will reduce its annual appropriation to the Tenant by the amount provided for rent and utilities in their previous space and any other agreed upon expenses. It is agreed by Lessor and Tenant that the leased premise and furnishings will be provided by lessor at the initial move in date. All initial work stations and related furnishings will be provided by lessor. Any current or future additional furniture, technical or related costs or expenses will be at tenant's expense and must receive prior written approval from the Lessor. This arrangement will continue for the length of the lease.

4. UTILITIES; SERVICES

4.1 Lessor's Obligations. All services and utilities are the Lessors obligation to provide. The Tenant has no obligation, duty, or responsibility to provide any services or utilities with exceptions noted in Section 4.1 (vii).

Lessor shall be obligated to provide any and all services and utilities for the leased premises including, but not limited to, the following:

- (i) Janitor services and customary cleaning of the building;
- (ii) General trash removal including any additional charges due to the removal of large, bulky or excess trash.
- (iii) Heating and air-conditioning.

(iv) City water and sewage, service for drinking, lavatory and toilet purposes drawn through fixtures installed by Lessor. Any additional water service required by Tenant for purposes in addition to those described in the preceding sentence shall be installed and paid for at Tenant's expense.

(v) Electricity for lighting and general office purposes. Any additional capacity required by Tenant shall be installed and paid for at Tenant's expense. Lessor shall furnish and install all replacement lighting, tubes, lamps, bulbs and ballasts as required in the leased premises.

(vi) Gas & Electric. Lessor shall be responsible for the furnishing of gas and electricity for general office purposes, and heating and cooling of the building.

(vii) Internet Services and Equipment. Lessor will provide internet connection and VOIP phones. Tenant will provide ~~and maintain~~ their own computers ~~and~~ related equipment. **Tenant will be responsible for listing all SWCD equipment on the SWCD MCIT insurance inventory list, and IT services at their own expense. Lessor will provide anti-virus software and a separate storage server at the Tenant's cost. Lessor will provide on-going IT support, including trouble-shooting, server management, and equipment ordering assistance.**

5. MAINTENANCE AND REPAIRS

5.1 Lessor's Obligations. It is the Lessor's duty and responsibility to provide any leased premise maintenance or repairs unless otherwise noted in this agreement.

6. LOSS OR DAMAGE

6.1 Tenant's Property. All property and improvements of Tenant in or about the leased premises shall be kept, stored and/or maintained at the sole risk of Tenant without any liability of Lessor for loss or damage thereto, including but not limited to loss from fire, explosion, wind, rain, hail, water leakage, bursting of pipes or conduits, sprinklers, gas, electricity, or structural failure, regardless of negligence, nor shall Lessor be liable to Tenant for any interruption of business conducted by Tenant, regardless of cause.

6.2 Casualty; Termination of Lease. If the Building is damaged or destroyed by fire or other casualty and the Lessor, by notice given to Tenant not later than one hundred eighty (180) days after such damage or destruction, elects not to restore the Building, then this Lease shall cease and terminate, and any rents and all additional payments due hereunder shall be apportioned, as of the date of such damage or destruction, and Tenant shall vacate the leased premises and surrender the same to Lessor on or before thirty (30) days after the giving of such notice.

6.3 Casualty; Restoration of Building. If a portion of the leased premises is damaged by a fire or other casualty and Lessor does elect to restore the Building, then this Lease shall not terminate and Lessor shall, at its expense, restore the leased premises, exclusive of any

improvements or other changes made to the leased premises by the Tenant, to as near the condition which existed immediately prior to such damage or destruction as reasonably possible.

7. ALTERATIONS

7.1 Alterations by Tenant.

7.2(a) Consent Required. Tenant will not make any additions or improvements to the leased premises without first obtaining the prior written consent of Lessor as to the character of such alterations, additions or improvements and the manner of doing the work, which consent may, except as to interior decorating, be withheld. If any such alterations, decoration, addition or improvement is made without the prior written consent of Lessor, Lessor may correct or remove the same and the Tenant shall be liable for any and all expenses incurred by Landlord in the performance of this work. Tenant shall obtain, at its own cost, all necessary permits and licenses.

7.2(b) Quality of Work. Tenant agrees that all work shall be done in a good and workmanship like manner, in conformance with all municipal and other government codes and that the structural integrity of the building shall not be impaired.

7.2(c) Restoration to Original Condition/Ownership. All alterations, additions, improvements and all fixtures and equipment attached to, or built into, the leased premises, whether by Lessor at its own expense or at the expense of the Tenant, or by the Tenant, shall remain as Lessor's property and shall be surrendered with the leased premises as a part thereof, and shall not be removed by the Tenant at the end of the term, unless otherwise agreed. However, if before termination or within fifteen (15) days after, the Lessor so directs by written notice, the Tenant shall promptly remove the aforesaid alterations, additions, improvements, which shall be designated in such notice, and the Tenant shall repair any damage caused by removal. Tenant shall, however, remain the owner of any installed trade fixture and shall have the right to remove such trade fixture at the expiration of this Lease Agreement, so long as Tenant's not then in default and the premises are restored to the original condition.

8. INDEMNIFICATION

8.1 Tenant to Indemnify. Tenant shall hold Lessor harmless from and indemnify Lessor against any and all liability, damage, loss and expense arising or resulting from the acts or omission of or caused by Tenant or Tenant's employees, servants, agents, guests, assigns, subtenants, visitors or licensees in, upon or about the demised premises, the Building or the adjacent areas, including all common areas or arising out of or related to the use and occupancy of the demised premises or the business or activity conducted with respect thereto, including injuries to person and property.

8.2 Limit of Lessor's Liability. In the event Tenant shall have any claim of any nature whatsoever in respect to this Lease or Tenant's use of the leased premises or any part of the Building and notwithstanding any other provisions of this Lease to the contrary, Tenant expressly consents as a condition of this Lease to look solely to Lessor's interest in the Building and underlying land and any insurance thereon in the event of any such claim.

8.3 Liens. Tenant will not commit or suffer any act or neglect whereby the leased premises or any part of the Building or land on which the Building is located will, at any time during the term of this Lease, become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, and will indemnify and hold Lessor harmless from all loss, cost and expense with respect to such encumbrance. If Tenant shall fail to discharge any such lien within ten (10) days after notice from Lessor, Lessor may, at its option, discharge the same and treat the cost thereof, plus interest thereon at the rate of eight percent (8%) per annum, as additional rent payable with the monthly installment of base rent next becoming due, it being expressly agreed that such discharge by Lessor shall not be deemed to waive or release the default of Tenant in not discharging the same.

8.4 Joint and Several Liability. If more than one person or entity shall sign this Lease, the obligations set forth herein shall be deemed joint and several obligations of each such party.

9. INSURANCE

9.1 Tenant Insurance. Tenant further agrees that in order to protect itself as well as the Lessor under the indemnity provision hereinabove set forth, it will at all times during the term of the Lease have and keep in force a single or combined limit or excess umbrella general liability insurance policy of an amount of not less than \$1,500,000 for property damage arising from one occurrence, \$1,500,000 for total bodily or personal injuries or death and/or damages arising from one occurrence. Tenant have and keep in force Workers Compensation and Unemployment Insurance and any and all workers related claims. Such policy shall also include contractual liability coverage protecting the Lessor, its officers, agents, and employees by specific endorsement or certificate acknowledging the Lease between the Tenant and the Lessor, naming the Lessor as an additional insured.

10. Employee's and Rights

10.1 Personnel Policy. Lessor and Tenant agree that lessor and tenants employees are unique and separate from each other. Tenant agrees that Tenant employees will follow and abide by the Aitkin County Employee Personnel Policy except in such cases where Tenant has a specific provision in their policy that differs from the Lessor's such as paid holidays. It is further agreed by Lessor and Tenant that each of their employees may have certain unique situations where data and other privacy right work is being complete by their respective employees. In such cases, it is up to the Lessor and Tenant to ensure their respective employees take all precautions and follow established policies in maintaining the privacy of that work.

10.2 Building Entry. Lessor and Tenant agree that tenant employees will have the same right to enter the leased premise as Lessor employees under the Lessor's building key code policy.

11. LESSOR'S RIGHT OF ENTRY

10.1 For Inspection. Lessor and Lessor's agents and representatives shall have the right to enter into or upon the leased premises, or any part thereof at all reasonable hours for the purpose of examining the same.

12. CONDEMNATION

12.1 Total or Material Partial Condemnation. If the entire Building or appurtenant parking facilities is taken or condemned by any authority having the power of eminent domain, this Lease shall at once cease and terminate and any rents and all additional payments due hereunder shall be apportioned, as of the date when Tenant shall by reason of such taking or condemnation, lose the right to the possession of the leased premises. If fifty percent (50%) or more of the rentable area of the Building is taken or condemned by any authority having the power of eminent domain or if a material portion of the leased premises is so taken that Tenant's business can no longer be carried on therein, either party hereto shall have the right to terminate this Lease by giving written notice thereof to the other party hereto within ninety (90) days after the taking or condemnation. If either party hereto elects to terminate this Lease by reason of said taking or condemnation, this Lease shall cease and terminate, and any rents and all additional payments due hereunder shall be apportioned. In the event of condemnation, Tenant shall look to condemner for any relocation benefits pursuant to Minn. Stat. § 117.52, et seq. (1990).

12.2 Non-Material Partial Condemnation. If any portion of the building is taken or condemned by any authority having the power of eminent domain and this Lease is not thereby terminated by either party hereto, Lessor shall, at its expense, restore the leased premises, exclusive of any improvements or changes made to the leased premises by Tenant, to as near the condition which existed immediately prior to the day of taking as reasonably possible, and rent shall abate during such period of time as the leased premises is untenable, in the proportion that the untenable portion of the leased premises bears to the entire leased premises; provided, however, that Lessor shall have no obligation to expend any amount for such restoration beyond the net amount received by Landlord as damages for the portion of Building so taken.

12.3 Disposition of Condemnation Award. All compensation awarded for any taking of the building or any part thereof, including both the fee and the leasehold estate, shall belong to and be the property of Lessor; provided, however, that any compensation awarded for any alterations, additions or improvements made at the Tenant's expense shall be the Tenant's. Any separate award made to Tenant for moving expenses shall be Tenant's sole property.

13. ASSIGNMENT; SUBLETTING

13.1 Consent Required to Assign or Sublet. Tenant shall not (1) sell, assign, mortgage, pledge, hypothecate or in any manner transfer this Lease or any estate or interest hereunder; or (2) sublet the leased premises or any part or parts thereof without the prior written consent of Lessor in each instance. Such consent may be upon such terms and conditions as required by Lessor. Consent by Lessor to any sale, assignment, mortgage, pledge, hypothecation, sublease or other transfer shall not be a consent to any other of the same.

13.2 Change in Identity of Tenant. If, at any time during the term of this Lease, Tenant, and/or the guarantor hereof, if any, is (i) a corporation or a trust whether or not having

shares of beneficial interest and there shall occur any change in the identity of any of the persons then having power to participate in the election or appointment of the directors, trustees or other persons exercising like functions and managing the affairs of Tenant or (ii) a partnership or association of otherwise not a natural person and is not a corporation or a trust and there shall occur any change in the identity of any of the persons who then are members of such partnership or association or who comprise Tenant, then the occurrence of any such change shall be deemed to be a prohibited assignment or subletting within the meaning of Section 12.1 for which the written consent of Lessor shall be required. This section shall not apply if Tenant or any guarantor is a corporation whose outstanding voting stock is listed on a national securities exchange or is wholly owned by another corporation whose stock is so listed.

14. SUBORDINATION

This Lease and Tenant's rights hereunder are and shall be subject and subordinate to the operation and effect of all terms and conditions contained in any mortgage, leasehold mortgage, trust deed, other security instrument, ground or underlying lease and to all renewals, extensions and modifications thereof, now or hereafter on the Building, the parcel of land on which the Building is located, or any part thereof. In the event Lessor or any such mortgagee, trust beneficiary, secured party or underlying Lessor requests in writing confirmation of such subordination, Tenant shall, within ten (10) days following receipt, execute, acknowledge and deliver to the requesting party any instrument reasonably required to evidence such subordination. In the event Tenant fails so to execute, acknowledge and deliver a required instrument within said limited period, it hereby irrevocably appoints Lessor its attorney-in-fact to execute, acknowledge and deliver the same.

15. DEFAULT

15.1 Lessor's Breach. Should Lessor breach any of the covenants or obligations of this Lease, Tenant shall give Lessor written notice of such breach. Lessor shall commence to cure such breach within ten (10) days following the giving of such notice, and having commenced, shall diligently proceed with and complete the curing of such breach within a reasonable time. If Lessor fails to cure such breach after notice as herein provided, Tenant shall have the right to terminate this Lease.

15.2 Tenant's Breach. Should Tenant breach any of the terms of this Lease including the covenant to pay rent, Lessor shall give Tenant written notice of such breach and Tenant shall immediately commence to cure such breach, and shall diligently proceed with and complete the curing of such breach within a reasonable time.

15.3 Force Majeure. The time within which the parties hereto shall be required to perform any act or acts under this Lease except for payment of monies shall be extended to the extent that the performance of such act or acts shall be delayed by acts of God, fire, windstorm, flood, explosion, collapse of structures, riot, war, delays or restrictions by governmental authorities, inability to obtain or use necessary materials, or any other cause beyond the reasonable control of a party unless the occurrence could have been foreseen and reasonable action could have

been taken to prevent the delay, provided, however, that the party entitled to such extension hereunder shall give notice to the other party of the occurrence causing said delay. Any such extension of time to perform shall not serve to extend the term of this Lease.

16. TERMINATION

16.1 Expiration of Term. . The term of this Lease shall be for two (2) years commencing on _____, 2019, unless earlier terminated by law or as provided herein. After the initial 2 year lease has expired, lease will be automatically renewed for one (1) year on an annual basis unless one party gives sixty (60) days notice.

16.2 Removal of Tenant's Property. If Tenant shall vacate or surrender the leased premises after the termination of this Lease without removing all of Tenant's personal property and fixtures as agreed, Lessor may, in Lessor's sole discretion, elect to treat such property as having been abandoned by Tenant and, in such event, Tenant hereby authorizes Lessor to dispose of such property without advance notice to Tenant. Upon demand, Tenant shall reimburse Lessor for all such costs of disposal.

17. ELECTION OF REMEDIES/NON-WAIVER

No remedy provided hereunder shall be deemed an exclusive remedy and the election of any such remedy shall not bar pursuit of any other remedy or any combination thereof, or subsequent seeking of the same remedy for other damages or otherwise, whether available hereunder or existing at law or in equity. No waiver of any breach of any covenant, condition or agreement herein contained shall operate as a waiver of any subsequent breach thereof. No payment by Tenant or receipt by Lessor of a lesser amount than the monthly rent installment due shall be deemed to be other than on account of the earliest rent due. Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such rent or to pursue any other remedy provided in this Lease. Lessor, at its option, may demand payment by certified check or money order. Any endorsement or statement on any check or letter accompanying a check for payment of rent shall not be deemed an accord and satisfaction unless so stated in writing by Lessor. No re-entry of Lessor, and no acceptance by Lessor of keys from Tenant, shall be considered an acceptance of a surrender of the Lease, unless so stated in writing by Lessor.

18. GENERAL USE

Lessor warrants that it has the right to lease the leased premises and that so long as Tenant shall perform each and every term, condition and covenant to be performed and observed by Tenant hereunder, Tenant shall have general use and possession of the leased premises without hindrance on the part of Lessor.

19. NOTIFICATION

Whenever notice is required by the terms hereof, it shall be in writing and delivered by hand or by certified or registered mail addressed to Lessor at Aitkin County Courthouse, 307 2nd

Street NW, Aitkin, MN 56431, Attention: Aitkin County Administrator, and to Tenant, at the leased premises, Attention: Aitkin County SWCD District Manager, 307 Second St NW, Room #216, Aitkin, MN 56431. If notice is given by mail, it shall be effective three (3) days after mailing.

20. CONTRACT INTERPRETATION

20.1 Captions; Meanings. The section captions and headings herein are for convenience and reference only and do not limit or construe the provisions hereof. When the context so requires, the neuter gender includes the masculine and/or feminine; and the singular includes the plural.

20.2 Entire Agreement. This Lease represents the entire agreement between the parties hereto, and there are no agreements, understandings or undertakings except as set forth herein. All prior negotiations and writings between the parties and their representatives are superseded hereby. This Lease may not be amended, modified or supplemented except by a writing, duly and properly executed, and no term, condition or covenant hereof may be waived other than by such writing.

20.3 Applicable Law; Severability. The validity, performance, interpretation and enforcement of this Lease shall be governed by the laws of the State of Minnesota. If any provision of this Lease, or portion thereof, or the application thereof to any person or circumstance shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

21. AUTHORITY

Each individual executing this Lease on behalf of a corporation or organization represents and warrants that they are duly authorized to execute and deliver this Lease on behalf of said corporation or organization and that this Lease is a valid and binding obligation of said corporation or organization in accordance with the terms hereof.

22. MISCELLANEOUS

22.1 No Partnership. Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture of or between Lessor and Tenant, or to create any other relationship between the parties hereto other than that of Landlord and Tenant.

22.2 Brokers. Lessor and Tenant each represent and warrant one to another that except as hereinafter set forth neither of them has employed any broker in carrying on the negotiations relating to this Lease. Lessor shall indemnify and hold Tenant harmless, and Tenant shall indemnify and hold Lessor harmless, from and against any claim or claims for brokerage or other commission arising from or out of any breach of the foregoing representation and warranties by the respective indemnitors.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

TENANT:
Aitkin County Soil and Water Conservation District

BY: _____
District Manager

Date of signature: _____

BY: _____
Chairperson

Date of signature: _____

LESSOR:
COUNTY OF AITKIN

BY: _____
Chairperson

Date of signature: _____

BY: _____
County Administrator

Date of signature: _____

APPROVED AS TO FORM & EXECUTION

BY: _____
County Attorney

Date of signature: _____