



Board of County Commissioners Agenda Request

2K
Agenda Item #

Requested Meeting Date:

Title of Item: License Center rental agreement

- REGULAR AGENDA
- CONSENT AGENDA
- INFORMATION ONLY

Action Requested:

- Approve/Deny Motion
- Adopt Resolution (attach draft)

- Direction Requested
- Discussion Item
- Hold Public Hearing*

**provide copy of hearing notice that was published*

Submitted by:
Kirk Peysar, County Auditor

Department:
County Auditor

Presenter (Name and Title):
Kirk Peysar, County Auditor

Estimated Time Needed:
n/a

Summary of Issue:

Approve and authorize signatures to the rental contract with Patrick and Maryann Holder.

Please note Article I was amended to allow for a 90 day early termination notice in the event the license center moves to the new courthouse addition prior to the end of the lease period of December 31, 2021.

Alternatives, Options, Effects on Others/Comments:

Recommended Action/Motion:

Approve and authorize signatures to the renewal contracts

Financial Impact:

Is there a cost associated with this request?

Yes

No

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

Is this budgeted?

Yes

No

Please Explain:

Kirk Peysar
Aitkin County Auditor
209 Second Street Northwest Room 202
Aitkin, Minnesota 56431
218.927.7354

November 7, 2017

To: Board of Commissioners

From: Kirk Peysar, County Auditor 

Re: Lease agreement for License Center

The County leases approximately 800 square feet of space from Patrick and Maryann Holder for the operations of the license center. The term of the lease is for five years at a monthly rate of \$825 which includes utilities except telephone.

Please note the lease language was amended with permission of Patrick and Maryann Holder to include a written 90 day termination notice in the event of the license center moving to the courthouse expansion addition.

I am requesting authorization from the County Board to sign the agreement with the Holder's.

LEASE AGREEMENT

THIS LEASE AGREEMENT, entered into this ____ day of October, 2017 and made effective January 1, 2017, by and between **Patrick L. Holder and Maryann K. Holder, as Trustees of the Maryann K. Holder Revocable Trust under Agreement dated June 16, 2009**, hereinafter referred to as "Landlord", and Aitkin County License Center, hereinafter referred to as "Tenant."

WITNESSETH:

Landlord hereby demises and leases to the Tenant, and Tenant hereby hires from the Landlord, the premises situated in the City of Aitkin, County of Aitkin, and State of Minnesota, located at 2 Second Street NW, containing approximately 800 square feet, hereinafter referred to as the "Premises."

ARTICLE I. INITIAL TERM; POSSIBLE EARLY TERMINATION

The initial term of this lease shall be for five (5) years from January 1, 2017 through December 31, 2021, provided, however, that either party may terminate this lease prior to the end of the initial term by providing the other party with not less than 90 days prior written notice of such early termination.

ARTICLE II. RENT

Rent shall be in the amount of \$9,900.00 per year, payable in monthly installments of \$825.00 each to Landlord, payable by Tenant in advance on or before the 1st day of each month commencing January 1, 2017 and continuing on the 1st of each month thereafter until December 31, 2021 (or such possible early termination date as provided in Article I above) at 28248 Pinewood Place, Aitkin, Minnesota 56431 or at such other place designated by Landlord, without prior demand therefore, and without any deduction or set-off whatsoever.

ARTICLE III.
INSURANCE

3.1. Tenant agrees to procure and maintain a policy or policies of insurance, at its own cost and expense, insuring Landlord and Tenant from all claims, demands or actions, for injury or death of any one person in an amount of not less than \$1,000,000.00 and for injury to or death of more than one person in any one accident to the limit of \$1,000,000.00 and for damage to property in an amount of not less than \$ 2,000,000.00 made by or on behalf of any person or persons, firm, corporation or other entity arising from, related to or connected with, the conduct and operation of Tenant's business in or on the leased Premises. Said insurance shall not be subject to cancellation except after at least thirty (30) days prior written notice to Landlord. The policy or policies, or duly executed certificate or certificates for the same, naming Landlord as additional insured, together with satisfactory evidence of the payment of premium thereon, shall be deposited with Landlord at the commencement of the term and renewals thereof not less than thirty (30) days prior to the expiration of the term of such coverage. If Tenant fails to comply with such requirement, Landlord may obtain such insurance and keep the same in effect, and Tenant shall pay Landlord the premium cost thereof upon demand.

3.2. Tenant will, at its sole cost, carry state required workers compensation for its employees, in addition to the other insurance required hereunder or by law. All insurance shall be placed with an insurance company satisfactory to Landlord.

ARTICLE IV.
USE OF PREMISES

Tenant accepts the Premises "AS IS" and acknowledges that Tenant has inspected the Premises prior to taking possession. The leased Premises may be used and occupied for the operation of a license center. Tenant shall promptly comply with all the laws, ordinances and

regulations affecting the leased Premises and promulgated by duly constituted governmental authority and including insurance company requirements affecting the cleanliness, safety, use and occupation of the leased Premises.

ARTICLE V. EXTERIOR SIGNAGE

Tenant shall not erect any exterior signage without first obtaining Landlord's approval. Further, all of Tenant's exterior signage must be in compliance with all applicable City of Aitkin Ordinances.

ARTICLE VI. INSTALLATIONS AND ALTERATIONS

6.1. Tenant, at its expense, during the term of this lease may make such non-structural alterations to the interior of the Premises as it deems appropriate; provided that all such alterations shall be completed in a good and workmanlike manner and shall not impair the structural soundness or integrity of the Premises. Tenant shall make no additions or alterations whatsoever to the exterior of the Premises and no structural changes whatsoever within the Premises without the prior written consent of the Landlord. All alterations and modifications are to be made in conformity with all local, state and Federal codes, laws, rules, regulations and ordinances.

6.2. Tenant may install in or upon the Premises and remove therefrom such trade fixtures as it may deem necessary or appropriate to its business operations; provided that the removal of such trade fixtures shall cause no material damage to the Premises. Any damage which may be caused to the Premises by the removal of any of Tenant's trade fixtures shall be repaired by Tenant at its expense forthwith upon the removal of any such trade fixtures.

6.3. Tenant shall not permit any mechanic's, laborer's or materialman's liens to be or remain filed against the Premises for any labor or material furnished to the Premises or to Tenant or claimed to have been furnished to the Premises or to Tenant in connection with work of any character performed or claimed to have been performed on the Premises by or at the

direction of Tenant and shall hold Landlord and the Premises harmless therefrom. Tenant agrees to pay all sums of money in respect to any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to Tenant in, at or about the Premises, or furnished to Tenant's agents, employees, contractors, or subcontractors, which may be secured by any mechanics, materials men, suppliers or other type of lien against the Premises or the Landlord's interest therein. In the event any such or similar lien shall be filed, Tenant shall within twenty-four (24) hours of receipt thereof, give notice to the Landlord of such lien and Tenant shall within ten (10) days after receiving notice of the filing of the lien, discharge such lien, or provide Landlord with a bond or other security acceptable to Landlord in an amount equal to one hundred twenty-five percent (125%) of the lien. Failure of Tenant to discharge the lien or provide acceptable security therefor shall constitute a default under this lease and in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same of record by paying the amount claimed to be due, and the amount so paid by Landlord and all costs and expenses incurred by Landlord therewith, including reasonable attorney's fees shall be due and payable by Tenant to Landlord.

ARTICLE VII. INDEMNITY

Tenant agrees to indemnify and save Landlord harmless against any and all claims, demands, damages, costs and expenses, including, but not limited to, reasonable attorney's fees for the defense thereof, arising from the conduct of or management of the business conducted by Tenant in the leased Premises or from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this lease, or from any act or negligence of Tenant, its agents, contractors, servants, employees, sublessees, concessionaires or licensees, in or about the leased Premises and the sidewalks adjoining the same. In case of any action or proceeding brought against Landlord by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel reasonably satisfactory to Landlord. Landlord shall not be liable to

Tenant, its business, invitees, employees, or other persons, and Tenant waives all claims against Landlord for damage to person or property sustained by Tenant or Tenant's employees, agents, servants, invitees and customers in, on or about the leased Premises or any equipment or appurtenances thereto appertaining becoming out of repair, or resulting from any accident in or about the leased Premises. This shall apply especially, but not exclusively, to the flooding of the leased Premises, and to damages caused by sprinkling devices, air conditioning apparatus, water, snow, frost, steam, gas, excessive heat or cold, falling plaster, broken glass, sewage, odors or noise, or the bursting or leaking of pipes or plumbing fixtures. All property belonging to Tenant or any occupant of the leased Premises shall be there at the risk of Tenant, and Landlord shall not be liable for damage thereto or theft or misappropriation thereof.

Landlord hereby waives and releases all claims, liabilities and causes of action against Tenant and its agents, assigns, servants and employees for loss or damage to, or destruction of, the buildings and other improvements situated on the Premises resulting from fire, explosion or other perils includable in All Risk coverage insurance, caused by the negligence of any of said persons. Landlord or Tenant agree to obtain this waiver from its insurer, and if additional premium is charged, Tenant shall be required to pay the same to keep this waiver in force. Tenant hereby waives and releases all claims, liabilities and causes of action against Landlord and its agents, servants and other employees for loss or damage to, or destruction of, any of the improvements, fixtures, equipment, supplies, merchandise and other property, whether that of Tenant or of others in, upon or about the leased Premises resulting from fire, explosion or the other perils includable in All Risk coverage insurance, caused by the negligence of Landlord. Tenant agrees to obtain this waiver from its insurer.

In no event shall Landlord be obligated to incur expenses in restoring the Premises in excess of insurance proceeds received by Landlord for any restoration or in the event of any damage to the Premises by fire, flood, the elements or any other casualty if the Premises are insured under a Landlord Policy.

In no event, in the case of any such destruction to the Premises, shall Landlord be required to repair or replace Tenant's equipment, stock and trade, leasehold improvements, fixtures, furnishings, floor coverings or inventory.

ARTICLE VIII.
ASSIGNMENT AND SUBLETTING

8.1. Tenant may not assign or in any manner transfer this lease or any interest therein, or sublet said Premises or any part or parts thereof, without the prior written approval of the Landlord.

8.2. Neither this Lease nor any interest therein, nor any estate thereby created, shall pass to any trustees or receiver in bankruptcy, or any assignee for the benefit of creditors, or by operation of law.

8.3 In the event of any such assignment or subletting, Tenant shall nevertheless at all times remain fully responsible and liable for the payment of rent and the performance and observance of all of Tenant's other obligations under the terms, conditions and covenants of this lease.

ARTICLE IX.
CONSENT NOT UNREASONABLY WITHHELD

Landlord agrees that whenever under this lease provision is made for Tenant securing the written consent of Landlord, such written consent shall not be unreasonably withheld.

ARTICLE X.
DEFAULT

Default on the part of the Tenant in paying the rentals herein set out or in keeping or performing any term or condition hereunder shall authorize Landlord, at its option, to (a) declare this lease in default and, at Landlord's sole discretion, terminate the lease immediately without notice, and Tenant specifically waives any other demand or notice or (b) immediately re-enter the Premises, without terminating this Lease, and take possession of all personal

property therein found without legal process; also, upon such default, all rentals due hereunder for the balance of the term of the lease shall become immediately due and payable, but Tenant shall remain obligated to keep and perform each other term and condition other than the payment of rentals and continued occupancy, and shall be liable for additional damages for failure to keep any such other term and condition.

In the event of any default or breach of any condition of this lease by Tenant, Landlord, in addition to having any other rights or remedies to which it is entitled, shall have the immediate right of re-entry and may remove any and all persons and property from the leased Premises and any such property may be removed or relocated and/or stored in any facility or public warehouse chosen by Landlord, including its own, at the cost of, and for the account of Tenant, all without service of notice or resort to legal process and without being deemed guilty of trespass, or being liable for any loss or damage which may be occasioned thereby.

ARTICLE XI. ACCESS TO PREMISES

Landlord shall have the right to enter upon the Premises at all reasonable hours for the purpose of inspecting the Premises and for the purpose of showing prospective tenants, making repairs, additions or alterations thereto; provided, that such entry shall not unreasonably interfere with the conduct of the Tenant's business.

ARTICLE XII. SURRENDER OF POSSESSION

Upon termination of the lease, by expiration of term, or otherwise, Tenant shall redeliver to Landlord the Premises in good order and condition, cleared of all goods and equipment belonging to Tenant and broom clean and shall make good all damages to the Premises, ordinary wear and tear excepted, and shall remain liable for holdover rent until the Premises shall be returned in such order to Landlord.

ARTICLE XIII.
NOTICES

Whenever under this lease a provision is made for notice of any kind, such notice and the service thereof shall be deemed sufficient if such notice to Tenant is in writing addressed to Tenant at the address provided to Landlord and is sent by standard U.S. mail, with postage prepaid and if such notice to Landlord is in writing addressed to Landlord at 28248 Pinewood Place, Aitkin, Minnesota 56431 and is sent by standard U.S. mail, with postage prepaid. Either party may by notice to the other party change the address at which it wishes to receive any notice given under this lease.

ARTICLE XIV.
EMINENT DOMAIN

14.1 If the whole or any part of the Premises shall be taken under power of eminent domain, this lease shall terminate as to the part so taken on the date of taking ("Taking Date"). Tenant is required to yield possession thereof to the condemning authority. Landlord shall make such repairs and alterations as may be necessary in order to restore the part not taken to useful condition. Effective with the Taking Date the Rent shall be reduced in proportion to the amount of the Premises so taken. If the amount of the Premises so taken substantially impairs the usefulness of the Premises for the use permitted, either party may, by notice to the other delivered at least sixty (60) days prior to the Taking Date, terminate this lease as of the Taking Date.

14.2 The term "eminent domain" shall include the exercise of any similar governmental power and any purchase or other acquisition in lieu of condemnation. All compensation awarded for taking of the fee and the leasehold shall belong to and be the property of Landlord, provided, however, that Landlord shall not be entitled to any award made to Tenant for relocation or moving expenses.

ARTICLE XV.
ESTOPPEL, SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT

15.1 Landlord hereby warrants that it and no other person or corporation has the right to lease the Premises hereby demised. So long as Tenant shall perform each and every covenant to be performed by Tenant hereunder, Tenant shall have peaceful and quiet use and possession of the Premises without hindrance on the part of Landlord, and Landlord shall warrant and defend Tenant in such peaceful and quiet use and possession under Landlord. Tenant's rights under this lease are and shall always be subordinate to the operation and effect of any mortgage, deed of trust, ground lease or other security instrument now or hereafter placed upon the Premises, or any part or parts thereof by Landlord. This clause shall be self-operative, and no further instrument of subordination shall be required. However, in confirmation thereof, Tenant may be required to execute an instrument as may be required by any mortgage, lessor or trustee. Any mortgage, ground lessor or trustee under such mortgage, deed of trust, ground lease or other security instrument may elect that this lease shall have priority over its mortgage, deed of trust, ground lease or other security instrument and upon notification of such election by such mortgagee, ground lessor or trustee to Tenant, this lease shall be deemed to have priority over said mortgage, deed of trust, ground lease or other security instrument whether this Lease is dated prior to or subsequent to the date of such mortgage, deed of trust, ground lease or other security instrument.

15.2 Tenant agrees that at any time and from time to time at reasonable intervals, within ten (10) days after written request by Landlord, Tenant will execute, acknowledge and deliver to Landlord, Landlord's mortgagee, or other designated by Landlord, an instrument as may from time to time be provided, ratifying this lease and certifying (a) that Tenant has entered into occupancy of the Premises and the date of such entry if such is the case; (b) that this lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way (or if there has been any assignment, modification, supplement or amendment identifying the same); (c) that this lease represents the entire agreement between

Landlord and Tenant as to the subject matter hereof (or if there has been any assignment, modification, supplement or amendment identifying the same); (d) the Commencement and Termination dates of the Term; (e) that all conditions under this lease to be performed by Landlord have been satisfied (and if not, what conditions remain unperformed); (f) that to the knowledge of the signer of such writing no default exists in the performance or observance of any covenant or condition in this lease, and there are no defenses or offsets against the enforcement of this lease by Landlord or specifying each default, defense or offset of which the signer may have knowledge; (g) that no Rent or other rental has been paid in advance and (h) the date to which Rent and all other rentals have been paid under this lease. Tenant hereby irrevocably appoints Landlord its attorney-in-fact to execute such a writing in the event Tenant shall fail to do so within ten (10) days of receipt of Landlord's request.

ARTICLE XVI.
GENERAL

16.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, to create the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of occupation or rent, nor any other provision contained herein, nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant. Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.

16.2 Cumulative Rights - The rights, options, elections and remedies of both parties contained in this lease shall be cumulative and may be exercised on one or more occasions and none of them shall be construed as excluding any other or any additional right, priority or remedy allowed or provided by law.

16.3 Notice of Casualty Loss - Tenant shall give immediate notice to Landlord in case of fire or other casualty loss and accidents affecting the Premises.

16.4 Paragraph Titles - The titles of the various articles of this lease have been inserted merely as a matter of convenience and for reference only and shall not be deemed in any manner to define, limit or describe the scope or intent of the particular paragraphs to which they refer or to affect the meaning or construction of the language contained in the body of such articles.

16.5 Binding Agreement - All rights and liabilities herein given to or imposed upon the respective parties hereto shall extend to bind the legal representatives, successors and assigns of said parties.

16.6 Unenforceability - Unenforceability of any provision contained in this lease shall not affect or impair the validity of any other provision of this lease.

16.7 Governing Law - This lease shall be governed by and construed in accordance with the laws of the State of Minnesota.

16.8 Severability - If any provision of this lease shall be declared legally invalid or unenforceable, then the remaining provisions of this lease nevertheless shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law.

ARTICLE XVII. HOLDOVER

In the event the Tenant remains in possession of the Premises after the termination of this lease or without the execution of a new lease should the Landlord desire to grant a new lease, then Tenant shall be deemed to be occupying the Premises as Tenant from month to month, with Rent due in an amount one and a half (1½) times Rent due under this lease, subject to all of the conditions, provisions and obligations of this lease, but without any rights to extend the term of this lease; and either party may then terminate this lease upon not less than thirty (30) days prior written notice to the other party.

ARTICLE XVIII.
WAIVERS

One or more waivers by Landlord or Tenant of a breach of any covenant or condition by the other of them shall not be construed as a waiver of the subsequent breach of the same covenant or condition, and the consent or approval by Landlord or Tenant to any act by either requiring the other's consent or approval shall not be deemed to waive or render unnecessary either party's consent to or approval of any subsequent similar act by the other party.

ARTICLE XIX.
ENTIRE AGREEMENT

Tenant and Landlord hereby agree that this lease as written represents the entire agreement between the parties hereto and that there are no other agreements, written or verbal, between the parties hereto pertaining to the Premises or the subject matter hereof. This lease may not be amended or supplemented orally but only by an agreement in writing which has been signed by both parties.

ARTICLE XX.
TITLE

Landlord covenants and warrants that it has full right and authority to enter into this lease for the full term hereof Landlord further warrants that the Premises has access to a public roadway. Landlord further covenants that Tenant, upon paying the fixed minimum rent provided for herein and upon performing the covenants and agreements of this lease to be performed by said Tenant, will have, hold and enjoy quiet possession of the leased Premises.

ARTICLE XXI.
ENVIRONMENTAL MATTERS

Without the prior written consent of Landlord, Tenant shall not cause or permit to be brought upon or kept or used in, on or about the Premises by Tenant, its employees, agents,

contractors or invitees any toxic or hazardous material, substance or waste or any other material which may adversely affect the environment, except for materials used in the ordinary course of business of the Tenant, provided such use is a legal use and such materials are used in accordance with all industry and legal standards. If the presence of any such material, substance or waste caused or permitted by Tenant, its employees, agents, contractors or invitees results in any contamination of the Premises, then Tenant shall promptly take all actions at its sole expense as are necessary to return the same to the condition existing prior to the introduction of any such material, substance or waste to the Premises, provided that Landlord's approval of such actions shall first be obtained. Tenant hereby indemnifies and holds Landlord harmless from all loss or damage including reasonable attorney fees, costs and disbursements resulting or caused by Tenant pursuant to this paragraph. Landlord indemnities Tenant against, and states to the best of its knowledge that, no toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, and any hazardous substance as defined in the comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sec. 9601-9657, as amended) have been generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on the Premises, nor has any activity been undertaken on the Premises that would cause or contribute to (i) the Premises to become a treatment, storage or disposal facility within the meaning of, or otherwise bring the Premises within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S. C. Sec. 6901 et seq. , or any similar state law or local ordinance, (ii) a release or threatened release of toxic or hazardous wastes or substances,

pollutants or contaminants, from the Premises within the meaning of, or otherwise bring the Premises within the ambit of, CERCLA, or any similar state law or local ordinance, or (iii) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. sec. 1251 et seq., or the Clean Air Act, 42 U.S.C. Sec. 7401 et seq., or any similar state law or local ordinance. Landlord indemnifies Tenant against and states to the best of its knowledge there are no substances or conditions in or on the Premises that may support a claim or cause of action under RCRA, CERCLA or any other federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements.

IN WITNESS WHEREOF, Landlord and Tenant have signed and sealed this as of the date and year first written.

LANDLORD

**THE MARYANN K. HOLDER REVOCABLE
TRUST UNDER AGREEMENT DATED JUNE 16,
2009**

By: Patrick L. Holder, Trustee

TENANT

AITKIN COUNTY LICENSE CENTER

By: Kirk Peysar
Its Treasurer