



## Board of Aldermen Request for Action

**MEETING DATE:** 3/7/2023

**DEPARTMENT:** Parks and Recreation

**AGENDA ITEM:** Resolution 1192, Agreement with the Smithville Senior Center for the use of the building at 113 West Main Street

---

**REQUESTED BOARD ACTION:**

Motion to approve Resolution 1192, authoring and directing the Mayor to enter into an agreement with the Smithville Senior Center for the use of the building at 113 West Main Street.

**SUMMARY:**

City staff met with representatives from the Smithville Senior Board and agreed on terms for the annual agreement for use of the Smithville Senior Center for senior services. The proposed contract period is from March 1, 2023, to December 31, 2023.

The Smithville Senior Center was renovated in conjunction with Clay County Senior Services to provide the Smithville Senior Citizens Center a place to improve the health, nutrition, and quality of life of Clay County residents sixty years or older. The City's lease agreement with the Smithville Senior Citizen Center was signed on August 6, 2013, and runs through August 5, 2023. The agreement allows for use of the building by the Smithville Senior Citizen Center from 9:00 a.m. to 4:00 p.m. Monday through Friday of each week for a rental fee of \$1 per year. Currently, the group uses the building Monday, Wednesdays, and Fridays for meals and activities. The building is used on Tuesday and Thursdays for Senior Center office hours.

In 2020, the Board of Aldermen provided short-term guidance on the desired expanded use of the building by the City for rental and other purposes and to adjust fees to be consistent with other facility rentals in the area. In 2021 Clay County Senior Services requested city assistance in managing and processing the senior grant. The Parks and Recreation Department has provided this assistance since that request.

Staff met with representatives from the Smithville Senior Board and worked with the City attorney to outline agreed upon terms. By the recommendation of the City attorney, a cooperative agreement was developed and will be renewed annually, rather than a long-term lease with a yearly rent cost.

The proposed agreement reduces the time the building would be available to seniors to the hours between 9:00 a.m. and 2:00 p.m. on Monday, Wednesday and Fridays, leaving the facility available for rental all day on Tuesday and Thursday. The agreement also allows the Senior Center exclusive use of the office and pool room.

On Friday, February 10, 2023, the Senior Board agreed to terms for the annual agreement for use of the building for senior services.

**PREVIOUS ACTION:**

**POLICY OBJECTIVE:**

Click or tap here to enter text.

**FINANCIAL CONSIDERATIONS:**

Click or tap here to enter text.

**ATTACHMENTS:**

☐ Ordinance

☒ Resolution

☐ Staff Report

☐ Other:

☒ Contract

☐ Plans

☐ Minutes

## **RESOLUTION 1192**

### **A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO AN AGREEMENT WITH SMITHVILLE SENIOR CENTER FOR THE USE OF THE BUILDING AT 113 WEST MAIN STREET**

**WHEREAS** the City owns the building at 113 West Main Street (hereinafter "Building"); and

**WHEREAS** in 2013 the Smithville Senior Center and the City of Smithville jointly obtained a grant for \$250,000.00. In exchange for using those funds toward renovation of the building, the City granted the Center a lease to use a portion of the building. That lease will soon terminate; and

**WHEREAS** during the term of the existing lease, Center has provided a safe place for senior citizens to safely congregate, socialize and to receive mid-day meals. The City believes that there is a public purpose in having a location and space for senior citizens to safely congregate, socialize and where they can receive mid-day meals; and

**WHEREAS** there is space in the building during the times allocated herein during which the City does not currently have a need; and

**WHEREAS** the parties hereto wish to cooperate to allow the Center to provide services to seniors under the terms herein set forth; and

**WHEREAS** this Agreement is entered into by the parties pursuant to the authority granted to governmental entities under Chapter 70 R.S.Mo. *et seq.*

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI:**

**THAT THE MAYOR IS HEREBY AUTHORIZED AND DIRECTED TO EXECUTE THE ATTACHED AGREEMENT WITH SMITHVILLE SENIOR BOARD FOR THE USE OF THE SMITHVILLE SENIOR CENTER**

**PASSED AND ADOPTED** by the Mayor and Board of Aldermen and **APPROVED** by the Mayor of the City of Smithville, Missouri, the 7<sup>th</sup> day of March, 2023.

---

Damien Boley, Mayor

ATTEST:

---

Linda Drummond, City Clerk

## COOPERATIVE AGREEMENT

THIS **COOPERATIVE AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, between Smithville Senior Center, a Missouri Non-Profit Corporation, (the "Center"), and Smithville, Missouri, a fourth-class municipal corporation of the State of Missouri ("City").

**WHEREAS** the City owns the building at 113 W. Main Street Smithville Mo (hereinafter "Building").

**WHEREAS** in 2013 Center obtained a grant for \$250,000.00. In exchange for using those funds toward renovation of the Building, the City granted the Center a lease to use a portion of the Building. That Lease will soon terminate.

**WHEREAS** during the term of the existing lease, Center has provided a safe place for senior citizens to safely congregate, socialize and to receive mid-day meals. The City believes that there is a public purpose in having a location and space for senior citizens to safely congregate, socialize and where they can receive mid-day meals.

**WHEREAS** there is space in the Building during the times allocated herein during which the City does not currently have a need.

**WHEREAS** the parties hereto wish to cooperate to allow the Center to provide services to seniors under the terms herein set forth.

**WHEREAS** this Agreement is entered into by the parties pursuant to the authority granted to governmental entities under Chapter 70 R.S.Mo. *et seq.*;

**NOW, THEREFORE, in the consideration of the mutual covenants and agreements set forth herein, the parties hereby agree as follows:**

**Sec. 1. Building Space Use And Time.** The City authorizes the Center to provide services to seniors in the designated portions of the Building at the designated times. Nothing in this Agreement shall be construed to require the City to provide or facilitate the listed services to seniors. The City retains the right to review the number of seniors benefiting from this Agreement and the need for the building space. Accordingly, the City retains the right to either provide the same or similar services itself (in the Building or elsewhere) or to use the Building for any other needed purpose.

A. The non-exclusive portions of the Building which the Center may use are Monday, Wednesday, and Friday between the hours of 9:00 a.m. and 2:00 p.m. as follows:

- (i) The main meeting room.
- (ii) The kitchen.
- (iii) The table/chair storage room.
- (iv) Portions of the kitchen cabinets.

B. Until this agreement is terminated by either the City or the Center, the Center shall have exclusive use of the following portions of the Building:

- (i) The Office.
- (ii) The pool room.
- (iii) The kitchen pantry.
- (iv) Portions of the kitchen cabinets.

C. The Center shall only have access to the portions of the Building listed in paragraphs 1A and 1B above on Monday, Wednesday, and Friday between the hours of 9:00 a.m. and 2:00 p.m.

D. Until new locks are installed, the Center will be provided 2 key(s) to the building and 2 keys to the office. The City will always retain keys to all spaces. Lost keys or fobs will be replaced at the rates charged to the City. The City reserves the right to install new locks to the Building at any time. After new locks are installed, the Center will no longer be provided with keys to the building but, may check out from City Hall a key to the Building before 8:30 a.m. on Monday, Wednesday, and Friday. Said key to the Building will be returned by Center to City Hall by 2:30 p.m. on the same day as when checked out.

**Sec. 2. Equipment:** Center shall not place any equipment or furniture anywhere in the Building spaces designated in Section 1(A) without the express permission of the City.

**Sec. 3. Maintenance:** City shall maintain the Building in all respects. The City shall have access to all the Building for all reasonably needed repairs or maintenance. The City shall be responsible of all utilities. The City will provide the nonexclusive use of the following:

- (A) Internet Access
- (B) Telephone
- (C) Cleaning Services
- (D) Pest Control

**Sec. 4. Current Equipment and Fixtures:** The City and Center agree that the following equipment, fixtures, and furniture in the Building are owned by the Center:

Pool Table, Ice Maker, Bookshelves (x3), Plants and Seasonal Decorations,

Any equipment, fixtures and/or furniture owned by the Center, (including the above) may remain, or be brought into the Building only with the express permission of the City. Upon termination, any such equipment, fixtures and/or furniture located in the Building shall be removed pursuant to the terms of Section 11.

**Sec. 5. Reporting:** Center will report to the City no less than quarterly, the number of senior citizens for whom it has provided services for each day it has provided services.

**Sec 6. Indemnification-Insurance.**

(A) Center shall indemnify, release, defend, become responsible for and forever hold harmless the City, its officers, agents, employees, elected officials and attorneys, each in their official and individual capacities, subject to the provisions set forth in the Missouri Sovereign

Immunity Statute(s), from and against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney's fees and other defense costs or liabilities, of any character and from any cause whatsoever brought because of bodily injury or death received or sustained, or loss or damage received or sustained by any person, persons, or property arising out of or resulting from any act, error, omission or intentional act of Center or its agents, employees or subcontractors, or in any way connected with any program supervised by the Center.

(B) Center shall, at its own expense, at all times during the term of this Agreement, maintain in force a policy or policies of insurance, written by one or more responsible insurance carriers subject to the reasonable approval of the City, that will insure the City its elected officials, officers, employees, agents, representatives and contractors, against liability for injury to or death of persons or loss or damage to property occurring as the result of Center's use of the Building or the adjoining property. The liability under such insurance shall not be less than \$1,000,000 combined single limit. Center shall use commercially reasonable efforts to cause all liability insurance obtained by the Center under this Agreement to contain a provision by which the insurance company waives any right of subrogation it may have against the City, its elected officials, officers, employees, agents, representatives, and contractors. Center shall also obtain insurance covering any of its furniture, equipment, machinery, goods or supplies and/or fixtures located or left in the Building.

(C) For all person(s) employed by the Center, Center shall maintain and keep in force all workers' compensation insurance required under the laws of the State of Missouri, and such other insurance as may be reasonably necessary to protect the City against any other liability of person or property arising hereunder by operation of law, whether such law is now in force or is adopted subsequent to the execution hereof, as the result of the Center's use of the Building or the adjoining property.

(D) Center shall use commercially reasonable efforts to cause the policies of insurance carried pursuant to this Agreement to provide that at least 30 days' (or to the extent 30 days is not reasonably available, at least 15 days') prior written notice shall be given to the City by the underwriters of any proposed termination, cancellation, lapse or modification of such insurance. If the Center receives any notice referred to in the preceding sentence, the Center shall promptly deliver a copy of such notice to the City.

(E) If the City receives notice of termination, cancellation, or lapse of such insurance, it may elect to notify the Center to cease operations in the Building immediately and not to resume operations in the Building until the City receives copies of policies evidencing that the insurance required under this Agreement is in full force and effect.

## **Sec. 7. Special Events:**

(A) "Special Events" as designated herein shall be events not normally provided or available from the Center. Prior to any such Special Event or thirty (30) days before the event whichever is longer, the Center shall notify the City of any Special Events it plans to hold or conduct during its designated times. The City may veto any proposed Special Event in its absolute sole discretion.

(B) Center may request such additional times in addition to its designated times set forth above for the purpose of holding Special Events. The City may deny any proposed additional time in its absolute sole discretion.

**Sec. 8. Extent of Relationship.** Nothing set forth in this Agreement shall be construed as establishing any agency, partnership, joint venture or other business relationship between the Center and City regarding the matters hereof.

**Sec. 9. No Compensation.** The Center shall not pay any compensation for the use of the Building as described herein but shall reasonably return the spaces to which it has nonexclusive use in the same condition in which it found them.

**Sec. 10. Subcontract:** Center shall not assign, transfer, convey, or otherwise dispose of its rights and obligations under this Agreement without the prior written consent of the City.

**Sec. 11. Term.**

(A) This agreement may be terminated at any time for Cause. "Cause" as used herein shall mean:

- (i) Either party's failure to abide by the terms of this agreement.
- (ii) Fire, Act of God, or other event which makes the Building unusable for its intended purpose.
- (iii) This Agreement or any portion thereof, being held by a Court of Competent Jurisdiction to be unenforceable.

(B) This Agreement shall be perpetual unless terminated by either party with or without cause upon One Hundred Twenty (120) day's written notice to the other party.

(C) Upon termination, Center shall remove any of its' furniture or equipment without damaging the Building.

**Sec. 12. Notices.** All notices required by this Agreement shall be in writing sent by regular U.S. mail, postage prepaid, commercial overnight courier, hand delivery or facsimile to the following:

**To CITY:**

Attn: MAYOR  
107 West Main Street  
Smithville, MO 64089

**To the Center:**

**Attn:**

\_\_\_\_\_  
\_\_\_\_\_

All notices mailed by regular U.S. mail are effective 2 days after mailing.

**Sec. 13. Governing Law.** This Agreement shall be construed and governed in accordance with the law of the State of Missouri. Any action regarding this Agreement or arising out of its terms



and conditions must be instituted and litigated in the courts of the State of Missouri within Clay County, Missouri. The parties submit to the jurisdiction of the courts of the State of Missouri and waive any objection to venue.

**Sec. 14. Compliance with Laws.** Center shall comply with all federal, state, and local laws, ordinances, and regulations applicable to this Agreement and every action to be taken hereunder. Center shall not allow any alcohol within the Building. Center shall not allow any hazardous materials to be brought into the Building or stored in the Building.

**Sec. 15. Waiver.** Waiver by any party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant, or condition. No term, covenant, or condition of this Agreement can be waived except by written consent of the parties, and forbearance or indulgence by the parties in any regard whatsoever shall not constitute a waiver of same to be performed by the parties to which the same may apply and, until complete performance by the parties of the term, covenant or condition, the parties shall be entitled to invoke any remedy available to them under this Agreement or by law despite any such forbearance or indulgence.

**Sec. 16. Rights and Remedies Cumulative and Not Exclusive.** All rights and remedies granted to the parties herein and any other rights and remedies which the parties may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that the parties may have exercised any remedy without terminating this Agreement shall not impair the parties' rights thereafter to terminate or to exercise any other remedy herein granted or to which each party may be otherwise entitled.

**Sec. 17. Modification.** Unless stated otherwise in this Agreement, no provision of this Agreement may be waived, modified, or amended except by written amendment signed by the parties. No act, conversation or communication with any officer, agent or employee of City or the Center either before or after the execution of this Agreement, shall affect or modify any term or terminology of this Agreement and any such act, conversation or communication shall not be binding upon the parties.

**Sec. 18. Severability of Provisions.** Except as specifically provided in this Agreement, all the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

**Sec. 19. Representations and Warranties.** City and the Center each certify that it has the power and authority to execute and deliver this Agreement, and to perform this Agreement in accordance with its terms.

**Sec. 20. Conditions Precedent:** This Agreement shall not be in effect unless and until it has been executed by City and the Center.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

By: Harley Holak  
Smithville Senior Center  
President  
Polly A. Delehant  
Smithville Senior Center Secretary

**SMITHVILLE MISSOURI**

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk