

**City of Oconomowoc
Committee-Of-The-Whole**

**Tuesday, September 15, 2020 - 6:15 PM
City Hall - Conference Room 3
(or immediately following Public Services)**



Notice: If a person with a disability requires that the meeting be accessible or that materials at the meeting be in accessible format, call the City Clerk at least 48 hours prior to the meeting to request adequate accommodations. Tel: 569-2186.

1. Call to order and confirmation of appropriate meeting notification
2. Committee Business
 - a. Presentation/Overview of the 2021 Proposed City Budget
 - b. Consider/recommend Lease Agreement with Lake Country Municipal Court (630 E. Wisconsin Avenue)
 - c. Closed Session:
Per Wis. Stats. 19.82(1) and 19.85(1)(e) for conducting other specified public business where competitive or bargaining reasons require a closed session (Wisconsin Professional Police Association Union Contract 2021-2023) and (City Administrator Agreement on Separation Procedures/Payments)
3. Adjourn

Diane Coenen, City Clerk
City of Oconomowoc

Notice is hereby given that a majority of the Common Council will be present at the above scheduled meeting to gather information about a subject over which they have decision-making responsibility. This constitutes a meeting of the Common Council pursuant to State ex rel. Badke v. Greendale Village Board, 173Wis. 2d 553, 494 N.W. 2d 408 (1993) and must be noticed as such, although the Common Council will not take any formal action at this meeting.

Municipal LAW

& L I T I G A T I O N G R O U P

DALE W. ARENZ, RETIRED
DONALD S. MOLTER, JR., RETIRED
JOHN P. MACY
H. STANLEY RIFFLE
COURT COMMISSIONER
ERIC J. LARSON
REMZY D. BITAR

730 N. GRAND AVENUE
WAUKESHA, WISCONSIN 53186
Telephone (262) 548-1340
Direct Dial (262) 806-0214
Facsimile (262) 548-9211
Email: sriffle@ammr.net

PAUL E. ALEXY
MATTEO REGINATO
LUKE A. MARTELL
SAMANTHA R. SCHMID
STEPHEN J. CENTINARIO, JR.
AMY E. FRY-GALOW
CHRISTOPHER SCHULZ
ANTHONY GARCIA
SADIE R. ZURFLUH

September 11, 2020

MEMO

To: Mayor and Common Council
Re: Municipal Court Lease

Mayor and Alderpersons:

The new draft Municipal Court lease is attached for your review in advance of the September 15 Common Council meeting. I understand that the rationale behind rent is that matches the pro-rata cost of the square footage build-out of Court space over the 20-year bond schedule. The Common Area charges will be calculated based upon actual pro-rata costs of maintenance and utilities. The remaining provisions are largely carryover of current lease provisions.

Although this has been shared with the Court for some time, I first heard from the Court's lawyer (a familiar name – John Fuchs) on Tuesday. John and I have had some discussions, but he has not been able to fully vet the draft with the Court's leadership. Accordingly, assuming the Council is accepting of this draft lease, I would ask that the Council also allow minor changes so long as they are non-substantive (i.e. no changes to monetary provisions) and are acceptable to me and the involved department heads. Alternatively, we would allow the Court to move in without a lease, and I could bring any revisions back to the Council in October for further discussion, approval and retroactive application.

LEASE

THIS LEASE is entered into as of the ____ day of _____ 2020, by and between the City of Oconomowoc, a Wisconsin municipal corporation (the "City"), and the Lake Country Municipal Court, a multi-jurisdictional municipal court of which the City of Oconomowoc is a member (the "Court").

RECITALS

WHEREAS, the City is the owner of property commonly known as Oconomowoc Public Safety Facility located at 630 East Wisconsin Avenue, Oconomowoc, Wisconsin; and

WHEREAS, the parties desire that there be a written lease arrangement for lease of specific areas of the Oconomowoc Public Safety Facility including dedicated Court Administrative Offices and Storage Area on a daily basis, periodic use of the Main Assembly Room for the conduct of Court proceedings and pretrial conferences during specific times and use of Common Areas, all as depicted on Exhibit A; and

WHEREAS, the City has agreed to lease to the Court, and the Court has agreed to lease from the City, the Oconomowoc Public Safety Facility space described below.

NOW THEREFORE, in consideration of the covenants, terms and conditions set forth herein, the parties agree and covenant as follows:

1. Grant. The City leases to the Court the following space within Oconomowoc Public Safety Facility located at 630 East Wisconsin Avenue, Oconomowoc, Wisconsin:

- a. Main Assembly and Conference Rooms
- b. Court Administrative Offices and Storage Area
- c. Common Areas

2. Occupancy and Use. The Court agrees to use the premises solely for the following purposes and during the following times:

- a. Main Assembly and Conference Rooms, for the purpose of conducting court on Friday of each week together with an additional four Thursdays per month.
- b. Court Administrative Offices and Storage: daily.

c. Common Areas: daily.

3. Restrictions on Use. The Court agrees to use the premises solely for the purpose of providing court service and court functions to the public pursuant to all rules and regulations prescribed by the City. The City and its employees shall at all times have access to the premises in the performance of their assigned duties. The City agrees to permit the Court to have access to and use all Common Areas so long as such use does not constitute a fire or safety hazard, or interfere with the City's use of such corridors, stairways and bathrooms or violate any federal, state or local laws, rules or regulations prescribed by the City. City personnel shall not be permitted to enter Court Administrative Offices and Storage when unoccupied without Court permission.

4. Term. The initial term of this lease shall commence retroactively on September 1, 2020, and shall terminate on December 31, 2040. After the termination of the initial term hereof, this lease shall renew itself from year to year unless either party notifies the other in writing on or before the 31st day of August in the year in which expiration of this lease is desired.

5. Rent. The Court agrees to pay the City during the initial term of this lease annual rent in the amount of Thirty-Four Thousand Five Hundred and No/100 (\$34,500.00) Dollars beginning on September 1, 2020. Rent shall be paid monthly in advance to the Finance Director.

6. Common Areas and Utilities. During the term of this lease, the City shall supply the leased premises with a reasonable amount of ventilation, air conditioning and heating as required by the season, but in no event more than the City customarily provides in Oconomowoc Public Safety Facility for the use of the premises, during the hours of 8:00 am. until 5:00 p.m. every Monday through Friday except for legal holidays. The City shall also provide its usual light, electrical power and water, as now installed. The City shall provide snowplowing and general maintenance for the parking lot and entrance areas. Any routine repair work needed on the leased premises shall be provided by the City at no expense to the Court. The City does not warrant that any of the services mentioned above will be free from interruptions caused by repairs, improvements, accidents or other causes beyond the reasonable control of the City, Notwithstanding the foregoing, the City agrees to make all reasonable efforts to restore utility services in the event of an interruption as soon as possible.

The Court shall pay to the City during the first year of this lease annual Common Area Charges and parking lot maintenance in the amount of Fourteen Thousand One Hundred and Eighty Eight (\$14,188.00) Dollars beginning on October 1, 2020. The Common Area charges shall represent payment for the Court's pro-rata share of expenses associated with utilities, upkeep and maintenance for the leased premises, janitorial services, and supplies, as detailed in the pro-

forma attached hereto as Exhibit B, together with the pro-rata share of parking lot maintenance at the rate of \$0.094 per square foot. The Common Area Charges shall be paid in monthly installments of \$1182.33 in advance to the Finance Director.

The Common Area Charges shall be adjusted annually, , effective on January 1 of each year, to reflect the Court's actual pro-rata share of expenses. The increase will be determined using the actual costs of maintenance and utilities for the previous year ending in June. Notification of increase will be given to the Court no later than July 31 of each year.

7. Furniture, Fixtures and Equipment. The Court shall supply all FF&E in the Court Administrative Offices and Storage Area. The City shall provide all FF&E in the Main Assembly Room, with the exception of the following:

- a. Bench and Counsel Tables, which shall be constructed/supplied at the Court's expense to specifications on file with the City.
- b. Audio, telephone, television and recording equipment in the Main Assembly Room.

8. Signage. The Court shall be permitted to erect an exterior monument sign of design and location reasonably acceptable to the City. The Court shall be responsible for the full costs of its monument sign and one-half of the cost of two (2) entrance signs.

9. Covenant of Quiet Enjoyment. The City covenants and agrees that the Court, upon paying the rent and upon observing and keeping the covenants, agreements and conditions of this lease on its part to be kept, observed and performed, shall lawfully and quietly hold, occupy and enjoy the premises (subject to the provisions of this lease) without hindrance or interference by the City or by any person or persons claiming under the City.

- a. Use of Main Assembly and Conference Rooms. The Court shall be responsible for set up of the Main Assembly and Conference Rooms for conduct of all Court proceedings. Upon completion of each Court session, the Court shall restore the room its prior condition.
- b. Any damage to the premises caused by Court personnel or invitees shall be repaired at the Court's expense.

10. Alterations and Additions. Except as specifically provided herein, the Court shall not make alterations, additions and improvements to the premises without first obtaining the prior

written consent of the City.

11. Duty to Maintain Premises. The Court shall surrender the Leased premises upon termination of this Lease in the condition it was in prior to the Court's use, ordinary wear and tear excepted. The City shall be responsible for maintaining and repairing the structural components of the premises except to the extent such structural components are damaged by the Court, its agents, employees or invitees. The Court agrees to promptly notify the City of any observed structural defects.

12. Insurance. The Court shall procure and maintain at its own expense during the term of this Lease the types and amounts of insurance as shall be required by the City's risk manager, with insurance companies authorized to do business in Wisconsin. The City shall be named as an additional insured on all such policies. The insurance protection furnished by it hereunder shall in no way limit its responsibility to indemnify and save harmless the City under the provisions of this Agreement. This obligation may be fulfilled by the City, at its sole option, adding the Court as a co-insured under its policy, in which case the Court shall be responsible for the co-insurance premium.

13. Indemnification. The Court agrees to defend, indemnify and hold the City, its officers, officials, agents and employees, completely harmless from and against any and all claims arising by reason of injury or death of any person or damage to property resulting from the Court's use or occupancy of the premises, or the acts or omissions of the Court's officers, agents, employees, contractors, subcontractors or licensees, except to the extent caused by the acts, omissions, negligence or willful misconduct of the City, its agents or employees. Upon notice from the City of any claim which the City believes to be covered hereunder, the Court shall timely appear in and defend all suits brought upon such claim and shall pay all costs and expenses incidental thereto, but the City shall have the right, at its option and at its own expense, to participate in the defense of any suit without relieving the Court of any of its obligations under this agreement. This section shall survive the expiration of this Lease and the expiration of any obligations owing to any party under this Lease.

The City agrees to defend, indemnify and hold the Court, its officers, officials, agents and employees, completely harmless from and against any and all claims arising by reason of injury or death of any person or damage to property resulting from the City's use or occupancy of the premises, or the acts or omissions of the City's officers, agents, employees, contractors, subcontractors or licensees, except to the extent caused by the acts, omissions, negligence or

willful misconduct of the City, its agents or employees. Upon notice from the Court of any claim which the Court believes to be covered hereunder, the City shall timely appear in and defend all suits brought upon such claim and shall pay all costs and expenses incidental thereto, but the Court shall have the right, at its option and at its own expense, to participate in the defense of any suit without relieving the City of any of its obligations under this agreement. This section shall survive the expiration of this Lease and the expiration of any obligations owing to any party under this Lease.

14. Notices. Unless otherwise specified, any notice, demand or request required under this agreement shall be given in writing at the addresses set forth below, by any of the following means: a) personal service; b) electronic communications, or c) registered or certified mail, return receipt requested.

If to the City: City Administrator
 P.O. Box 27
 Oconomowoc, WI 53066

If to the Court: Municipal Court Judge
 Lake Country Municipal Court
 630 East Wisconsin Ave.
 Oconomowoc, WI 53066

15. Miscellaneous Provisions.

- a. Partial Invalidity. If any covenant, condition, provision, term or agreement of this Lease is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining covenants, conditions, provisions, terms and agreements of this Lease shall not be affected thereby; but each covenant, condition, provision, term or agreement of this Lease shall be valid and in force to the fullest extent permitted by law.
- b. Governing Law. This Lease shall be construed and be enforceable in accordance with the laws of the State of Wisconsin.
- c. Captions and Section Numbers. The captions and section numbers appearing in this Lease are inserted only as a matter of convenience and do not define, limit, construe or describe the scope or intent of such sections of this Lease.
- d. Binding Effect of Lease. The covenants, agreements and obligations contained in this Lease shall extend to, and bind and inure to the benefit, of the parties and their representatives, successors and assigns.
- e. Time of the Essence. Time is of the essence of this Lease and of each and every provision of this agreement.

- f. No Principal/Agent or Partnership Relationship. Nothing contained in this Lease shall be deemed or construed by the parties nor by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties.
- g. Authorization to Execute Lease. The persons executing this Lease represent and warrant that they are duly authorized and acting representatives of the City and the Court respectively and that by their execution of this Lease it becomes the binding obligation of the City and the Court respectively, subject to no contingencies or conditions except as specifically provided in this agreement.
- h. Recordation. This Lease (or a memorandum of Lease) may be recorded with the office of the Waukesha County Register of Deeds. The party desiring such recordation shall pay the cost of recording the document.
- i. No Waiver. The waiver by a party of any breach or failure of the other party to perform any covenant or obligation contained in this agreement shall not constitute a waiver of any subsequent breach.
- j. Entire Agreement. This Lease constitutes the entire agreement of the City and the Court with respect to the subject matter of this Lease, and no act or omission of the City or the Court shall alter, change or modify any of the provisions in this Lease. Any amendments, changes or modifications of this Lease shall be effective only when made in writing and executed by authorized officers of the parties.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

CITY OF OCONOMOWOC

BY _____
Robert P. Magnus, Mayor

ATTEST:

Diane Coenen, Clerk

LAKE COUNTRY MUNICIPAL COURT

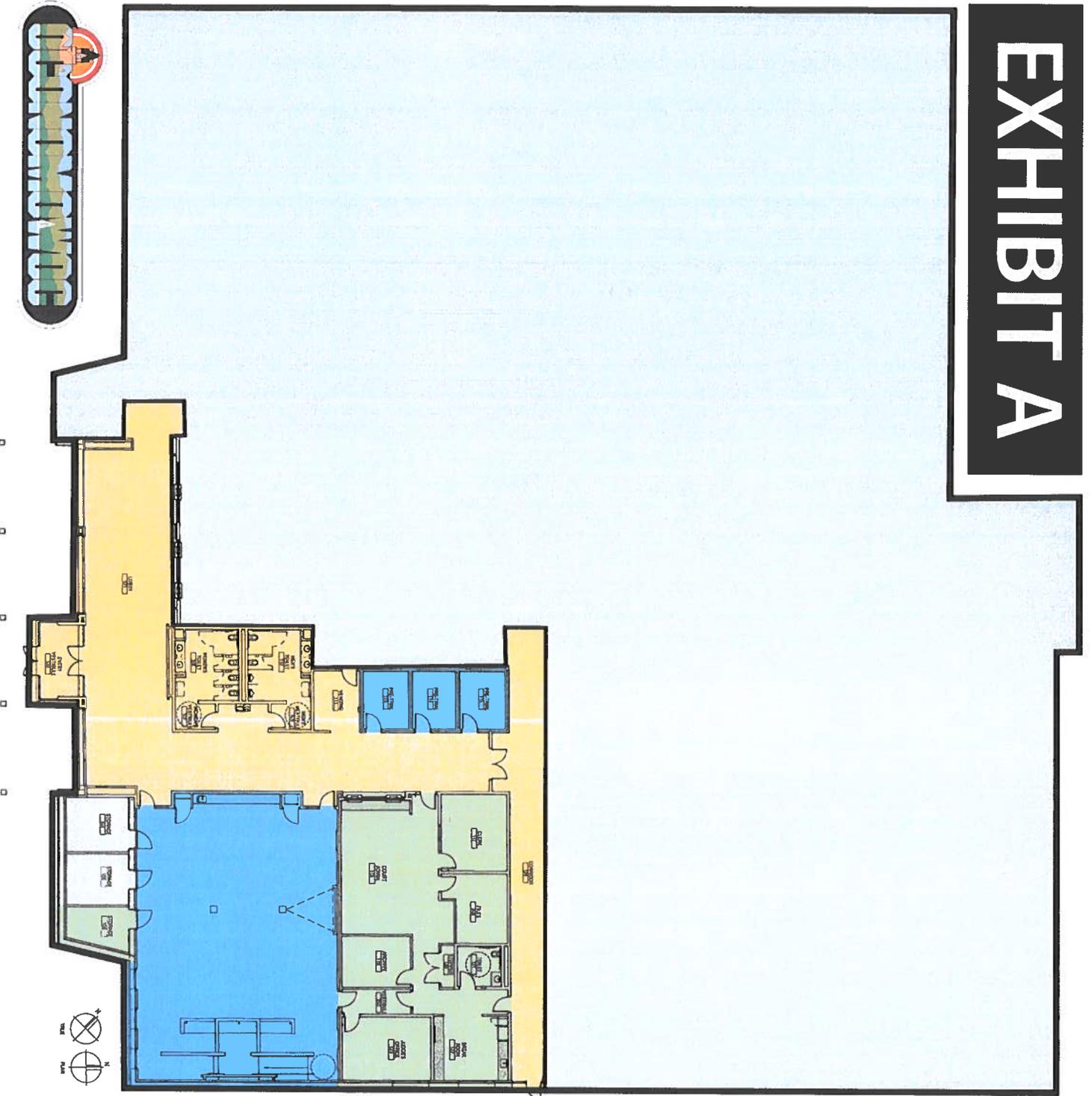
BY _____
Chair, Administrative Committee

ATTEST:

Pam Strunk, Clerk

DRAFT

EXHIBIT A



LEGEND

-  COURT
ADMINISTRATIVE
OFFICES &
STORAGE
-  MAIN ASSEMBLY
& CONFERENCE
ROOMS
-  COMMON AREA
-  PUBLIC SAFETY

Oconomowoc New Police Facility: Proposed Court Space

Clerk of Court - Police Facility Use		
Square Footage		
Dedicated Space-* In Blue on Diagram		
Room #	Description	Feet
	Court Administration	2008.0
	Storage-community room	110.0
	Upsized Court Room	536.0
Total SqFt Dedicated to Court Use		2654.0 *Payment based on cost and share of Op/maint
Court Shared Space -*In Tan on Diagram		
Room #	Description	Square Feet
	Conference Room #2	100.0
	Conference Room #3	100.0
	Conference Room #4	100.0
	Lobby	600.0
	Community Room	1760.0
	Restrooms	425.0
Total Sq Ft		3085.0
Shared Office Rate-1 court day/week		3171 sq ft X 25.11% *Based on estimated hour of usage
Total Shared sq/ft		774.5 *Payment based on share of Op/maint only
Total Sq Ft used for Court		5739.0

Clerk of Court - Cost of Court Space					
Dedicated space =	2654 sq ft	X	\$185/sf	\$	490,990
Annual Cost					
Dedicated Space/20 years	\$ 490,990	3.50%	20 years	\$	34,500
Op/Maint share= 2654 sf + 774.5sf	3428.5 sq ft	X	\$ 3.94	\$	13,507
Total Annual Cost =				\$	48,007
Total Monthly Cost =	\$ 48,007		12	\$	4,000.59

Compare to Current	Sq Ft		SqFt charge	Annual Charge
Current SqFt =	2465	X	\$ 9.80	\$ 24,163
Proposed SqFt =	5739	X	\$ 8.37	\$ 48,007