

CITY OF HIGH POINT

AGENDA ITEM



Title: Parks & Recreation Equipment Rental Agreement

From: Lee Tillery
Director, Parks & Recreation

Meeting Date: Monday, November 15, 2021

Public Hearing: No

Advertising Date: N/A

Advertised By: N/A

Attachments: Agreement

Purpose/Background:

Council is requested to ratify an agreement between the City of High Point and the City of Kannapolis for the rental of the C.P. Huntington train engine located at the City Lake Park.

The City of Kannapolis approached the High Point Parks and Recreation Department about using High Point's train engine for their upcoming holiday events. The City of Kannapolis has a train, however it's unavailable to run through the end of the year. High Point and Kannapolis' trains are similar C.P. Huntington engines that run on like tracks. The City will not be needing the use of its train during the time period which Kannapolis has requested. Kannapolis will pay High Point a rental fee of \$6,000.

Budget Impact:

\$6,000 in additional revenue.

Recommendation:

Staff recommends Council ratify the Equipment Rental Agreement between the City of High Point and the City of Kannapolis, as executed by the City Manager or designee.

EQUIPMENT RENTAL AGREEMENT

THIS EQUIPMENT RENTAL AGREEMENT ("Agreement") is effective as of the date of last signature ("Effective Date"), and is made between **CITY OF HIGH POINT**, a North Carolina municipal corporation, ("Lessor"), and **CITY OF KANNAPOLIS**, a North Carolina municipal corporation ("Lessee"). Lessor and Lessee are hereinafter collectively referred to as "Parties".

WITNESSETH

Lessor hereby leases to Lessee the following described property, subject to the terms and conditions of this Agreement pursuant to the provisions of North Carolina General Statute 160A-274:

1. Equipment. 2018 C. P. Huntington Engine (the "Engine").
2. Term. This Agreement shall commence on November 9, 2021 and remain in full force and effect until Engine is returned to Lessor. However, Lessee shall return the Engine on or before January 3, 2022, unless terminated earlier consistent with the provisions herein.
3. Rent. Lessee shall pay the sum of Six Thousand Dollars (\$6,000.00) for use of the Engine during the Term.
4. Additional Charges. Lessee shall also pay the following charges in accordance with this Agreement due upon return of Engine, to the fullest extent allowed by law, including but not limited to:
 - (a) Loss of, or damage or repair to the Engine, loss of use, diminution of the Engine's value caused by damage to it or repair to it, and costs to enforce such charges including fees for processing the claim and legal expenses; and
 - (b) All expenses Lessor incurs due to Lessee's failure to return the Engine including costs in locating and recovering the Engine; and
 - (c) All costs incurred to collect unpaid monies due; and
 - (d) All charges for transportation of the Engine to and from Lessor's premises.
5. Location of Engine. During the Term, Engine shall be located at Village Park in Kannapolis, unless expressly agreed otherwise in writing by Lessor.
6. Care of Engine. Engine shall be properly maintained and only used in a careful and proper manner. Lessee shall arrange and assist with any required State inspection.
7. Repair and Alterations. The costs of all repairs made during the Term shall be paid by Lessee, including but not limited to labor, material, parts and other items. Engine shall not be serviced or repaired and parts and accessories shall not be replaced without Lessor's prior consent.
8. Transport. The High Point train engine will be lifted off the track by a rented telehandler that the City of Kannapolis secures. Equipment will be operated by City of Kannapolis personnel. Train will be placed on one of the Kannapolis train transfer pallets. The palletized engine will then be

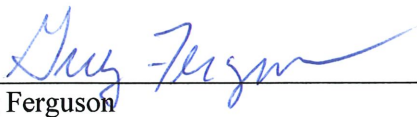
placed on a Kannapolis owned flatbed, covered to protect it in transport to Kannapolis. Upon arrival, the Engine will be lifted off the pallet with a lift and placed on the rails at Village Park. The Engine will be housed and secured indoors at our train station protected by a fire suppression system as well as a comprehensive alarm system.

9. Insurance. Lessee agrees to carry throughout the term of this Agreement public liability insurance arising from use and operation of the Engine with a minimum combined coverage for bodily injury and property damage of \$2,000,000.00, and casualty coverage in an amount equal to the full replacement value of the Engine with all coverages naming Lessor as an Additional Insured.
10. Restrictions on Use. Lessee shall not:
 - (a) Permit the Engine to be used by any person who is not authorized to use such Engine;
 - (b) Operate, use, maintain or store the Engine in a manner likely to cause damage to the Engine; and/or
 - (c) Operate or use the Engine or permit it to be operated or used to commit a violation of law.
11. Loss or Damage. Lessee shall alert Lessor to any damage to the Engine and missing Engine upon return to Lessor.
12. Condition of Engine. Lessee acknowledges that Lessee has examined the Engine and that it is in good condition except as otherwise specified. LESSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, AND EXPRESSLY EXCLUDES AND DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.
13. Return of Engine. Lessee shall return Engine on or before the date specified in Section 2 in the same condition as Lessee received it, except for normal wear and tear. Lessee shall return the Engine to the agreed return location. If Engine is not returned on said date, Lessor reserves the right to take any action necessary to regain possession of the Engine.
14. Termination. This Agreement shall terminate on the date specified in Section 2 or upon default by Lessee.
15. Indemnification and Liability. Lessee shall indemnify, defend and hold harmless Lessor from and against any claim, demand, cause of action, loss or liability (including attorney's fees and expenses of litigation) for any property damage or personal injury arising from Lessee's operation or use of Engine. The provisions of this Article shall survive the termination of this Agreement with respect to any claims or liability accruing before such termination. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGES ARISING FROM LESSEE'S USE OF ENGINE, INCLUDING BUT NOT LIMITED TO LOSS PROFITS AND LOSS REVENUE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

16. Ownership. Lessor shall at all times retain Lessorship and title to the Engine.
17. Waiver. No failure of Lessor to exercise or enforce any of its rights under this Agreement shall act as a waiver of subsequent breaches; and the waiver of any breach shall not act as a waiver of subsequent breaches. Lessor's acceptance of payment with knowledge of a default by Lessee shall not constitute a waiver of any breach.
18. Severability. In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, that provision will be enforced to the maximum extent permissible under applicable law, and the other provisions of this Agreement will remain in full force and effect. The parties further agree that in the event such provision is an essential part of this Agreement, they will begin negotiations for a suitable replacement provision.
19. Entire Agreement. This Agreement represents the entire understanding relating to the subject matter hereof and prevails over any prior or contemporaneous, conflicting or additional communications. This Agreement can only be modified by a written amendment signed by the party against whom enforcement of such modification is sought.
20. Assignment. Lessee may not, without the prior written consent of Lessor, transfer or assign this Agreement or any part thereof. Any attempt to do so shall be a material default of this Agreement and shall be void.
21. Headings. Paragraph headings used in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.
22. Counterparts. This Agreement, and any amendment thereof, may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

Lessee acknowledges receipt of a copy of this Agreement and acknowledges having read and understood the foregoing.

CITY OF HIGH POINT



Greg Ferguson
Assistant City Manager

Date: 11/09/2021

CITY OF KANNAPOLIS

Michael B. Legg
City Manager

Date: _____