



Request for Council Action

TO: Mayor and City Council
THROUGH: Tim Murray, City Administrator
FROM: Paul J. Peanasky, Parks and Recreation Director
MEETING DATE: January 22, 2019
SUBJECT: Approve Maple Lawn Cemetery Agreement Extension

Background:

At the December 4, 2018, Joint Committee meeting, the City Council discussed the conditions for the City and the Cemetery Association on the continued use of Maple Lawn Park. We agreed on the following conditions: 1) the City will continue to plow the sidewalk along 4th Street in front of the cemetery; 2) the City will spray and/or remove vines and small trees along Maple Lawn Cartway fence line; 3) the City agrees to replace decorative block along the sidewalk that have been damaged; 4) the City agrees to pay the sum of \$1,375 to the Association to relocate a dirt pile in the cemetery; 5) the Cemetery Association will allow use of the park and they will be allowed to place unused material in the pit in Maple Lawn Park; 6) the new renewal notification must begin two (2) years prior to the expiration of this agreement; and 7) this new agreement will extend the current agreement by ten (10) years until May 10, 2029.

The City of Faribault has an agreement with Maple Lawn Cemetery Association to lease surplus property for use as Maple Lawn Park. The original agreement had a term of 25 years commencing in 1979 and expiring in 2004. In 1999, this lease was extended for 10 years therefore expiring in 2014 rather than 2004. The Association provided a five-year notice to the City that automatic renewal would not occur. The second amendment extended the lease until May 10, 2019. With the new agreement, we will have a 10-year extension until 2029.

Maple Lawn Park is developed with limited facilities. Existing facilities include a picnic shelter, youth playground and youth ball fields.

The Rugby Association and soccer groups are users of the facility. The park is not a high-use facility but does serve the neighborhood and community. Programming is limited by lack of facilities and access. Significant investment into these items has not been recommended since the area is only leased.

Recommendation:

Staff recommends approving the agreement and extending the lease of Maple Lawn Park until May 10, 2029.

Attachments:

- Proposed Agreement
- Letter from Maple Lawn Cemetery Association
- Previous Agreements

CITY OF FARIBAULT

**THIRD AMENDMENT TO AGREEMENT
DATED MAY 10, 1979
BETWEEN MAPLE LAWN CEMETERY ASSOCIATION
AND THE CITY OF FARIBAULT**

This Third Amendment to the Agreement is made this 22nd day of January, 2019, by and between the Maple Lawn Cemetery Association, a Minnesota corporation, hereinafter called First Party and the City of Faribault, a Minnesota municipal corporation, hereinafter called Second Party.

WHEREAS, First Party and Second Party entered into an agreement dated May 10, 1979, granting the Second Party possession and use of certain property owned by the First Party for a period of twenty-five (25) years; and

WHEREAS, the Agreement provided that it would be automatically extended for an additional ten (10) years unless one party gives the other party five years notice of its intent to terminate; and

WHEREAS, on October 13, 1999, the parties entered into a First Amendment to the Agreement to allow for the additional ten (10) year term, expiring May 10, 2014; and

WHEREAS, on May 10, 2014, the parties entered into a second amendment to the Agreement to allow for the additional five (5) year term, expiring May 10, 2019; and

WHEREAS, the Agreement and the First Amendment are hereinafter referred to collectively as the Agreement; and

WHEREAS, the parties have had discussions about the continuance of the Agreement past the additional five (5) year term, which will expire on May 10, 2019; and

WHEREAS, the parties desire to amend the Agreement; and

NOW, THEREFORE BE IT RESOLVED, that the parties agree as follows:

1. Upon expiration of the Agreement on May 10, 2019, the Agreement shall continue for an additional ten (10) year term, expiring on May 10, 2029.
2. Renewal notification must be given by either party two (2) years prior to agreement expiration to discuss future continuation. This date will be May 10, 2027.

3. As consideration for the First Party agreeing to extend the term of the Agreement, the Second Party agrees that it will remove snow on the sidewalk along 4th Street.
4. The Second Party agrees to spray and/or remove the vines and small trees along Maple Lawn Cartway fence line.
5. The Second Party agrees to replace the decorative concrete block along the sidewalk that has been damaged.
6. The Second Party agrees to pay First Party the sum of \$1,375 to the First Party to relocate a dirt pile in the cemetery.
7. Second Party agrees to allow First Party to place fill into the southeast corner of the property where a hole is currently located. The parties shall mutually agree upon when the hole has been sufficiently filled. At that time, any dumping of fill shall cease.
8. Except as specifically noted in this Third Amendment, all terms and conditions of the Agreement shall remain the same and in full force and effect.

IN WITNESS WHEREOF, First Party and Second Party have caused this Third Amendment to be duly executed in their names and behalves on or as of the date first written above.

Maple Lawn Cemetery Association

By: _____
Its: **President**

By: _____
Its: **Secretary**

City of Faribault

By: _____
Kevin F. Voracek
Its: **Mayor**

By: _____
Timothy C. Murray
Its: **City Administrator**

November 27, 2018

Maple Lawn Cemetery

Faribault, MN 55021

City of Faribault Parks and Rec Department

Faribault, MN 55021

RE: Maple Lawn Park Agreement

Dear Paul Peanasky,

In exchange for granting the City of Faribault (City) use of Maple Lawn Park for the next lease period Maple Lawn Cemetery (MLC) requests, from the City, the following as discussed earlier with Paul:

1. Snow plowing of sidewalk on the north side of MLC- Fourth Street.
2. Spray vines and small trees along east fence line. Repair fence where snow plow has damaged it.
3. Replace broken decorative concrete blocks along sidewalk where snow plow has damaged some.
4. Relocate dirt pile on west side of upper level to pit in Maple Lawn Park.
5. Allow (MLC) to relocate, at our expense, future burial dirt to pit.

Since earlier discussions the (City) has determined removal of the dirt pile to the pit would be too large a project for their equipment. A quotation of \$1,375.00 for removing the dirt pile to the pit has been received by (MLC). The quote is valid through May 15, 2019 . The (City) would be responsible for any increase in the removal bid if payment to (MLC) is not received by May 15, 2019.


Chairman Board Trustee
Maple Lawn Cemetery

CITY OF FARIBAULT

**SECOND AMENDMENT TO AGREEMENT
DATED MAY 10, 1979
BETWEEN MAPLE LAWN CEMETERY ASSOCIATION
AND THE CITY OF FARIBAULT**

This Second Amendment to the Agreement is made this 26 day of November, 2013, by and between the Maple Lawn Cemetery Association, a Minnesota corporation, hereinafter called First Party and the City of Faribault, a Minnesota municipal corporation, hereinafter called Second Party.

WHEREAS, First Party and Second Party entered into an agreement dated May 10, 1979 granting the Second Party possession and use of certain property owned by the First Party for a period of twenty-five (25) years; and

WHEREAS, the Agreement provided that it would be automatically extended for an additional ten (10) years unless one party gives the other party five years notice of its intent to terminate; and

WHEREAS, on October 13, 1999, the parties entered into a First Amendment to the Agreement to allow for the additional ten (10) year term, expiring May 10, 2014; and

WHEREAS, the Agreement and the First Amendment are hereinafter referred to collectively as the Agreement; and

WHEREAS, the parties have had discussions about the continuance of the Agreement past the additional ten (10) year term, which will expire on May 10, 2014; and

WHEREAS, the parties desire to amend the Agreement; and

NOW, THEREFORE BE IT RESOLVED, that the parties agree as follows:

1. Upon expiration of the Agreement on May 10, 2014, the Agreement shall continue for an additional Five (5) year term, expiring on May 10, 2019.
2. Renewal notification must be given by either party 2 years prior to agreement expiration to discuss future continuation. This Date will be

May 10, 2017.

3. As consideration for the First Party agreeing to extend the term of the Agreement, the Second Party agrees that it will remove snow on the sidewalk along 4th Avenue. *Street*
4. Second Party agrees to allow First Party to place fill into the southeast corner of the property where a hole is currently located. The parties shall mutually agree upon when the hole has been sufficiently filled. At that time, any dumping of fill shall cease.
5. Except as specifically noted in this Second Amendment, all terms and conditions of the Agreement shall remain the same and in full force and effect.

IN WITNESS WHEREOF, First Party and Second Party have caused this Second Amendment to be duly executed in their names and behalves on or as of the date first written above.

**Maple Lawn Cemetery
Association**

By: *Darold A. Egan*
Its: **President**

By: *Kathleen M. Kuehn*
Its: **Secretary**

City of Faribault

By: *[Signature]*
John R. Jasinski
Its: **Mayor**

By: *[Signature]*
Brian J. Anderson
Its: **City Administrator**

AGREEMENT

THIS AGREEMENT, made this 10th day of May, 1979, by and between THE MAPLE LAWN CEMETERY ASSOCIATION, a Minnesota corporation, hereinafter called First Party, and THE CITY OF FARIBAULT, a Minnesota municipal corporation, hereinafter called Second Party, witnesseth that

WHEREAS First Party is the owner of the following described tract of Land:

The North 1110 feet of the East 11 chains and 40 links of Lots 41, 42 and 43 in the State Subdivision of the Southwest Quarter (SW¹/₄) of Section 36, Township 110 North, Range 21 West of the Fifth Principal Meridian, in the City of Faribault, Rice County, Minnesota;

and said land is not presently used for burial purposes, and First Party has determined that it will not be needed for such purpose in the immediate future;

AND WHEREAS Second Party has determined a need for a recreational park area to serve its residents in the community within the vicinity of said described tract and desires to utilize the tract for such purposes;

NOW THEREFORE, in consideration of the sum of Ten Thousand and no/100 Dollars (\$10,000.00) in hand paid by Second Party, the receipt of which is hereby acknowledged by First Party, First Party hereby grants to Second Party the possession and use of said above described tract, for the term of twenty-five (25) years from date hereof, upon the following terms and conditions:

PURPOSE. Said land shall be used by Second Party only for public recreational or park purposes and incidental uses thereto.

IMPROVEMENTS. Second Party may make such improvements on the premises as are reasonable and necessary for said purposes, including fencing, planting of trees, filling and leveling, seeding and sodding, and the construction of temporary structures thereon. No improvements shall be made by Second Party within 250 feet of the

Northerly boundary of said described tract without the prior approval of First Party as to the nature and location or such improvement; except that boundary fencing within said area shall not require prior approval. Upon termination of Second Party's use of the premises in accordance with the provisions of this Agreement, First Party agrees to accept return of the property with all such improvements thereon as have been made by Second Party in accordance with the terms of this Agreement.

MAINTENANCE. Second Party agrees to maintain said land during the full term of this Agreement and hereby agrees to indemnify and hold harmless the First Party from liability for any claim arising out of the condition of said premises or any activity occurring thereon during such term.

ASSIGNMENT. The rights granted to Second Party hereunder shall not be assigned, nor shall any lease or sub-lease of the premises be made, without the prior written approval of First Party.

TERMINATION OR RENEWAL. This Agreement shall be automatically extended for an additional ten (10) years from May 10, 2004 (end of 25 year term), unless notice be given by either party, to the other, within five (5) years of said termination date, declaring its intention not to extend this Agreement. Additional ten-year extensions shall also occur automatically; unless such five-year notice be given by either party, prior to the termination date of any previous extension.

IN TESTIMONY WHEREOF the said First Party has caused these presents to be executed in its corporate name by its President and its Secretary and its corporate seal to be hereunto affixed, and Second Party has caused these presents to be executed by its proper officials, the day and year first above written.

THE MAPLE LAWN CEMETERY ASSOCIATION

By Carl P. Christie
President

Leo V. Hieser
Secretary

THE CITY OF EARLEDALE

By Robert C. Larson
Mayor

Robert H. Yorkum
City Administrator

**AMENDMENT TO AGREEMENT
DATED MAY 10, 1979,
BETWEEN MAPLE LAWN CEMETERY ASSOCIATION
AND THE CITY OF FARIBAULT**

WHEREAS, the Maple Lawn Cemetery Association, a Minnesota Corporation, hereinafter called First Party, and the City of Faribault, a Minnesota Municipal Corporation, hereinafter called Second Party, entered into an Agreement dated May 10, 1979, granting the Second Party possession and use of certain property owned by the First Party for a period of twenty-five (25) years; and

WHEREAS, the Agreement provides that it will be automatically extended for an additional ten (10) years unless one party gives the other party five years notice of its intent to terminate; and

WHEREAS, the parties have had discussions about the continuance of the Agreement past the current term which expires May 10, 2004;

NOW THEREFORE, the Parties agree as follows:

That the Agreement shall continue for an additional ten (10) years beyond the term, expiring May 10, 2014;

As consideration for the First Party's promise to extend the Agreement, the Second Party agrees to install a fence along the west side of Maple Lawn Cartway, on the cemetery property boundary, from Division Street to the end of the property in use as the existing cemetery.

The fence shall be six feet high, shall be installed by December 1, 1999, and, after installation, shall become the property of the first party. All future maintenance/repairs shall be the responsibility of the first party.

Dated: 9/27/99

MAPLE LAWN CEMETERY ASSOCIATION

By: *William R. Kozlowski*
President

William R. Kozlowski
Secretary

Dated: ~~10-27-99~~
10-27-99

CITY OF FARIBAULT

By: *Cliff P. Pich*
Mayor

Cynthia Madigan
City Administrator