

**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: July 5, 2016**

<b>AGENDA ITEM:</b>	
Mother Nature's Window Caretaker Agreement and Lease	
<b>PREPARED BY:</b>	<b>DIRECTOR APPROVAL:</b>
Jim Ballew	
<b>DEPARTMENT:</b>	
Parks, Culture and Recreation	
<b>ATTACHMENTS:</b>	
Agreement for Caretaker Services and Lease	
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>
<b>SUMMARY:</b>	

The Mother Nature's Window Park residence has been rented for the past 4 years with no Caretaker duties assigned. Due to increasing activity and maintenance of the site as well as the development of a park master plan staff is recommending reinstating the Caretaker position at the site. The former tenant lease has been terminated and the residence is vacant.

Staff is recommending the City Council consider authorizing the Mayor to sign the Agreement for Caretaker Services and Lease Agreement with David and Betty Nelson. Both have experience in this field and are capable of managing the site as required within the Scope of Work associated with the Agreement. The value of the lease is offset by duties performed as Caretaker. The lease value is \$1,100.00 per month and offset by duties to a monthly rent of \$450.00 plus all utilities and Leasehold excise tax of 12.84% for a total monthly rent of \$591.24.

**RECOMMENDED ACTION:**

Staff is recommending the City Council consider authorizing the Mayor to sign the Agreement for Caretaker Services and Lease Agreement with David and Betty Nelson.

## AGREEMENT FOR CARETAKER SERVICES

THIS AGREEMENT is made and entered into this 12 day of June, 2016, by and between THE CITY OF MARYSVILLE, WASHINGTON, a municipal corporation, herein referred to as "City," and DAVID R NELSON and BETTY L NELSON, an individual independent contractor herein referred to as "Contractor."

WITNESSETH:

WHEREAS, the City is a municipal corporation which is engaged in the area of parks, culture and recreation; and

WHEREAS, Contractor is an individual who has expertise and is qualified in the area of performing services as a caretaker and is capable of providing such services to the City; and

WHEREAS, the parties hereto being desirous of having certain services available from each other; NOW, THEREFORE,

For and in consideration of the mutual promises and agreements hereinafter set forth, the parties agree as follows:

1. SERVICES. Commencing July, 6, 2016, Contractor agrees to perform the following services and related work as necessary and under the terms and conditions as hereinafter set forth.

See attached Scope of Work, which is incorporated herein as EXHIBIT A.

2. COMPENSATION. The City agrees to compensate Contractor for services rendered by providing the residence and appurtenances located in Mother Nature's Window Park, more particularly described Portion of Section 15, Township 30 North, Range 05 East, SW Quarter., described as follows: Parcel No.30051500300501 as set forth on Exhibit A attached hereto and incorporated herein.

Street address: 9623 55<sup>th</sup> Avenue NE, Marysville, WA. 98270

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**ORIGINAL**

without rent pursuant to the Lease Agreement entered into between the parties, which is attached hereto as EXHIBIT B. For purposes of this agreement, the value of the leasehold interest is agreed to be \$1,000.00 per month. Caretaker is to maintain a separate telephone line for personal use. Caretaker to pay all utilities which include power, water and garbage/recycling.

3. EQUIPMENT/TOOLS. From time to time the City may provide the use of certain tools and/or equipment, supplies and materials for Contractor's use. It shall be the sole responsibility of the Contractor to maintain and protect from damage or theft any equipment, supplies or materials provided by the City or third parties.

4. EMPLOYMENT OF THIRD PARTIES. The City is contracting for the special services of the Contractor, and as such, the Contractor shall not subcontract or employ other persons to perform the caretaking services, without the specific written authorization of the City.

5. INDEPENDENT CONTRACTOR. This Service Agreement is not intended in any fashion to create the relationship of employer-employee with respect to the City and Contractor. Neither Contractor nor any person residing with Contractor is to be considered at any time an employee of the City. Neither party to this Service Agreement is the agent of the other and neither party shall have the right to bind the other by contract or otherwise, except as herein specifically provided.

6. EMPLOYEE BENEFITS/WITHHOLDING. Contractor agrees to pay any and all withholding taxes, Employment Security taxes, Social Security or FICA taxes, Labor & Industry premiums or fees, and otherwise shall pay all other government-imposed fees or charges with respect to the business of Contractor. Contractor shall be solely responsible for all of his own benefits including, but not limited to vacation, sick leave, pension, life insurance, medical insurance, paid leave, and such other benefits as he may wish to acquire for himself.

7. RECORDS. Contractor shall keep such books and records as are necessary for general reporting and business purposes and shall provide copies to the City upon request. It shall also be the Contractor's sole responsibility to keep all books and records required by law for the reporting of wages and hours. Contractor shall provide copies of such books and records to the City upon request.

8. TERMINATION. Either party may terminate this Agreement by giving at least 30 days' written notice of intent to terminate. Upon the termination of this Agreement for any reason, Contractor agrees to remove all tools, equipment, furniture, personal property, and other materials owned by Contractor from the leased premises and Contractor further agrees to deliver and return to the City any and all equipment and materials belonging to the City in the custody or control of Contractor.

9. LITIGATION. In the event of any litigation involving the rights or obligations of the City or Contractor hereunder, the prevailing party in such litigation shall be entitled to receive from the other such reasonable attorney's fees and all costs as the court may award.

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10. INTERPRETATION. This Agreement shall be governed by the laws of the State of Washington. There are no other or further agreements between the parties hereto except as set forth herein, or as specifically attached to this Agreement and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date herein above first written.

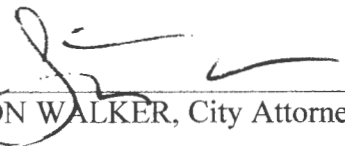
CITY OF MARYSVILLE

By \_\_\_\_\_  
JON NEHRING, Mayor


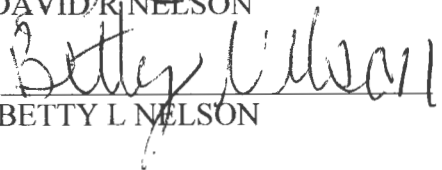
ATTEST:

By \_\_\_\_\_  
ALLINA HOLMQUIST, City Clerk

APPROVED AS TO FORM:

By  \_\_\_\_\_  
JON WALKER, City Attorney

Contractor:

By  \_\_\_\_\_  
DAVID R. NELSON  
By  \_\_\_\_\_  
BETTY L. NELSON

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## EXHIBIT A

### Addendum to Agreement

#### SCOPE OF WORK

Contract Title: Caretaker

Location: Mother Nature's Window Park

#### Contract Purpose

Provide daily inspection and evening security duties related to designated park properties within the Marysville Parks and Recreation Department. Contractor will also provide open and closing services for respective facilities within the Doleshel Park(s).

#### Reporting Relationships

Reports to the Director of Parks and Recreation and/ or Parks Maintenance Manager as well administrative support personnel.

#### Scope of Work

1. Secures park gates and each evening in the following City park facilities:  
Doleshel Park gates
2. Daily Trail Maintenance Requirements Include:  
Maintain current and future trails from litter, errant limbs or branches that may cause injury or access challenges.
3. Protect park from vandal damage by reporting any and all suspicious activities to law enforcement and public safety agencies through 911.
4. Report all facility repair needs to Parks Maintenance Manager in writing.
5. Meet staff and provide access to all park facility areas in need of repairs as scheduled by Parks and Recreation Department staff.

#### **Requirements and Qualifications**

1. Must have the physical ability to perform all duties described.
2. Must have the ability to read and speak English.
3. Must have a valid Washington State Drivers License and Automobile Insurance.
4. Must maintain good customer service.

#### Special Requirements and Compensation

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1. Must live on park property in housing leased by the City of Marysville Parks and Recreation Department.
2. Housing is provided to Caretaker in lieu of monetary compensation for services rendered.
3. Lessee/Caretaker will pay all utilities including water, sewer and garbage.
4. Caretakers are required to have an additional telephone line installed at their own expense (cell phone is acceptable).
5. Caretaker is to provide exterior landscape maintenance for improvements surrounding the leased residence.
6. Caretaker is to notify Director of Parks and Recreation to arrange for any short term or extended leave of absence from residence and or/duties. Caretaker is to provide approved substitute individuals upon request for leave. Substitute must provide their own transportation at all times.
7. City reserves the right to change open and closing schedules and duties of similar nature within the scope of work, provided additional facilities are developed and or renovated.

EXHIBIT B

LEASE AGREEMENT

THIS AGREEMENT is entered into this 12 day of June 2016, by and between the CITY OF MARYSVILLE, a municipal corporation, hereinafter designated the "Lessor", and DAVID R NELSON and BETTY L NELSON, hereinafter designated the "Lessee".

WITNESSETH:

Lessor does by these presents lease and demise unto Lessee the following described real estate and premises situate in the City of Marysville, County of Snohomish, State of Washington, to wit:

Portion of Section 15, Township 30 North, Range 05 East, SW Quarter., described as follows:

Parcel No.30051500300501 as set forth on Exhibit A attached hereto and incorporated herein.

Street address: 9623 55<sup>th</sup> Avenue NE, Marysville, WA.98270

PROVIDED that this lease shall apply to the residence situated upon the subject property. Lessor reserves the right to use the outbuildings situated upon the property. Lessor shall have access to the yard at all times.

The parties hereto mutually agree on the following terms and conditions governing said lease:

1. The term for said lease shall be from month to month, commencing on the ~~1st~~ <sup>6<sup>th</sup></sup> day of July, 2016.

2. The market value of the leasehold interest is agreed to be ONE THOUSAND AND ELEVEN HUNDRED NO/100THS DOLLARS (\$1,100.00) per month. The Lessor shall be compensated for this value in the following manner:

Lessee shall pay cash rent in the amount of \$450.00 per month for the above premises, payable in advance on or before the first day of each month of the lease term. Rents not received by Lessor on or before the 5<sup>th</sup> day of each month shall include a 5% late fee, which will constitute additional rent hereunder. In addition Lessee shall pay leasehold excise tax to Lessor in the amount of 12.84% of the rent obligation, for a total of \$591.24.

the market value of the leasehold interest

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3. The Lessor shall be compensated for this value in the following manner:

The Lessee(s), DAVID R NELSON and BETTY L NELSON, shall perform all regular and necessary duties as an independent contractor pursuant to the terms of a separate Contract for Caretaker Services between the CITY OF MARYSVILLE and Lessee, attached hereto as EXHIBIT A. It is understood and agreed that the Lessee will not be obligated to pay the City the monthly rental for the premises in question for any month during which the Lessee has fully performed pursuant to the terms complied with the terms of this agreement.

4. All interior maintenance of the premises shall be performed by the Lessee. Lessor shall provide all exterior maintenance to structures and repairs to the physical plant and roof systems of the premises. Lessor shall provide yard pruning services at lease once every three months during the growing season., Lessee shall provide all services identified within the scope of work within the Contract for Caretaker Services as needed.

5. Lessor and Lessor's agents and employees shall have the right to access to the premises for the purposes of:

(a) Inspection;

(b) Maintenance, yard work, repairs, alterations or improvements;

(c) Display of the premises to prospective or actual workers or contractors;

Whenever practical, Lessor shall give Lessee advance notice of Lessor's intent to enter the property. Lessor shall not alter the property or home in any way so as to make the home uninhabitable by lessee.

6. Lessee agrees that the premises will be used as the residence for Lessee only. Lessee agrees not to let or sublet the whole or any part of the premises nor assign this lease, or any interest therein. Lessee agrees not to operate any retail or service-oriented business within the residence or property described.

7. Lessee agrees that all personal property kept at the lease premises by Lessee shall be at the risk of Lessee. Lessee further agrees not to hold Lessor liable in any manner or on account of any loss or damage sustained by action of fire, water, elements, theft or any third party.

8. Lessee shall maintain casualty insurance coverage for Lessee's personal property located at the premises and shall maintain public liability insurance for injuries to persons or property in at least the amount of \$500,000.00. Lessor shall provide



hazard insurance for the improvements situated on the lease premises and shall also provide public liability insurance.

Lessor shall pay the real estate taxes for the lease premises.

Lessor shall pay all charges for utilities supplied to the residence including, but not limited to, electricity, water and garbage. The Lessor maintains telephone service to the residence. The Lessee will pay for all long distance telephone calls. The Lessor will invoice the Lessee for all charges each month. The Lessee is expected to make payments within 30 days of the invoice date.

9. It is agreed that if default should occur on any of the conditions herein contained, or in the Contract for Caretaker Services, then it shall be lawful for the Lessor to re-enter said premises and remove all persons and property therefrom.

10. This lease agreement may be terminated prior to the end of the lease term by Lessee giving thirty (30) days' written notice to the City. This lease shall automatically terminate in the event the Lessee ceases to occupy the subject premises for any reason for a period of thirty (30) consecutive days. Upon the expiration or early termination of this lease, the Lessee will quit and surrender the premises in as good state and condition as they were at the commencement of the lease term (ordinary wear and damage by the elements or fire excepted).

10. SECURITY DEPOSIT: Lessee has deposited the sum of \$250.00 receipt of which is hereby acknowledged AND shall be deposited by Lessor. All or a portion of such deposit may be retained by Lessor and a refund of any portion of such deposit is conditioned as follows:

- (a) Lessee shall fully perform its obligations hereunder;
- (b) Lessee shall clean and restore said residence and return the same to Landlord in its initial condition, except for reasonable wear and tear;
- (c) Lessee shall have remedied or repaired any damage to the premises;
- (d) Lessee shall surrender to Landlord the keys to the premises.

Any refund from security deposit, as by itemized statement shown to be due to Lessee, shall be returned to Lessee within 14 days after the termination of the tenancy and vacation of the premises. Lessor may apply the security deposit to the payment of any sums owing to Lessor in connection with this lease including, but not limited to, unpaid rent, tenant damage to the lease premises, normal wear and tear resulting from ordinary

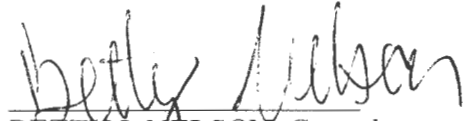
use of the premises excepted, Lessor's attorney's fees and costs in enforcing this lease, and payment of any judgment obtained by Lessor in connection with the enforcement of this lease or the eviction of Lessee; provided that nothing herein shall be construed as requiring Lessor to apply the security deposit to payment of any such judgment.

\_\_\_\_\_ NONREFUNDABLE FEES: The sum of \$0.00 is paid to Lessor herein and shall be retained by Lessor as a nonrefundable fee for cleaning, and is in addition to the security and damage deposit, and not a part thereof.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

**Lessee:**

  
\_\_\_\_\_  
DAVID R NELSON, Caretaker

  
\_\_\_\_\_  
BETTY L NELSON, Caretaker

**CITY OF MARYSVILLE, Lessor**

\_\_\_\_\_  
JON NEHRING, MAYOR

**ATTEST:**

By \_\_\_\_\_  
ALLINA HOLMQUIST, CITY CLERK

**APPROVED AS TO FORM:**

By  \_\_\_\_\_  
JON WALKER, CITY ATTORNEY

STATEMENT OF CONDITION  
AND CLEANLINESS AND EXISTING  
DAMAGE TO PREMISES AND FURNISHINGS

The premises contain the following defects, damages, and physical conditions at the commencement of the tenant's occupancy, and its state of cleanliness is as follows:

- ii) Walls:
- iii) Floors:
- iv) Countertops:
- v) Carpets:
- vi) Drapes:
- vii) Windows:
- viii) Doors:
- ix) Furniture:
- x) Appliances:
- xi) Plumbing, Heating, Electrical:
- xii) Yard, Plants, Shrubbery:
- xiii) Other:

Dated: \_\_\_\_\_  
CITY OF MARYSVILLE, LESSOR

\_\_\_\_\_  
LESSEES: