

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 7/24/2017

AGENDA ITEM: Farmer's Market Lease	
Farmer's Market Lease	
PREPARED BY: Jim Ballew	DIRECTOR APPROVAL:
Jim Ballew	
DEPARTMENT: Parks, Culture and Recreation	
Parks, Culture and Recreation	
ATTACHMENTS:	
Lease Agreement Exhibit A Insurance	
BUDGET CODE:	AMOUNT:
SUMMARY:	

The Marysville Farmer's Market that started in 2015 wishes to continue its operation with on city property. The all-volunteer team recognizes that they "must be active in our community and intentionally shaping our culture. If not, someone or something will shape it in a way that may not be what's best for our citizens, families, businesses and city officials. We have a unique opportunity to define what success looks like and the Farmer's Market is one key way to ensure we all have an opportunity to engage in a healthy community."

The Allen Creek Community Church provides support for the project and prepaid the lease last year at the beginning of the season. The lease for each month will \$100 plus leasehold excise tax. The church will also provide the necessary insurance.

RECOMMENDED ACTION:

Staff recommends the City Council consider authorizing the Mayor to sign the Lease Agreement with the Allen Creek Community Church for the purpose of providing a Farmer's Market at 1035 State Ave from June 19, 2017 to October 31, 2017.

LEASE

THIS LEASE, made in duplicate this 11th day of June, 2017 between the CITY OF MARYSVILLE hereinafter referred to as Lessor, and Walter Cook, Trustee of Marysville, Washington, hereinafter referred to as Lessee,

WITNESSETH:

1. The Lessor does hereby lease to Lessee, and Lessee does hereby lease from Lessor, a portion of those certain properties situated in Snohomish County, Washington, and described as follows:

A portion of the following described property Parcel A:

1035 State Avenue- Sec 28 Twp 30 Range 05 Parcel No. 30052800215700

The initial lease premises will be the portion of the above-described property depicted in **Exhibit A- Parcel A**, hereinafter called the "premises."

2. **PURPOSE:** The premises are to be used for the purpose of operating a Farmers Market and for no other purpose, without the written consent of Lessor. For purposes of this agreement, farmers market means an open-air market, including temporary stalls, for sale of produce, plants, flowers, handmade goods, prepared food and arts and crafts. Storage equipment and portable restrooms may be located on site with approval from the city for the duration of this agreement. The sale of alcoholic beverages and tobacco products are prohibited.

Lessee's use of the lease premises shall be **nonexclusive**.

3. **TERM:** The term of this lease shall be from June 19, 2017 to October 31, 2017; provided, this lease will be for Farmers Market Activities only from 8:00 a.m. to 3:00 p.m., unless otherwise authorized in writing by Lessor. The site will not be available for use on the third weekend of June due to the city's use of the property for the annual Strawberry Festival.

4. **EXTENSION:** If at the end of the lease term, or any extension thereof, Lessee has performed all terms and conditions of this lease in a manner reasonably satisfactory to Lessor, (in Lessor's sole subjective discretion), Lessee shall have the option to renew this lease for the following season (i.e. from May through October of each year), not to exceed a total of three (3) extensions.

If Lessee elects to exercise the extension right, Lessee shall give written notice to Lessor of the desire to extend not later than December 1st of the year prior to the next extension period. Lessor shall give written notice to Lessee of its acceptance or denial of the extension not later than ninety (90) days prior to commencement of the extension period.

5. **RENT:** Lessee covenants and agrees to pay the Lessor as rental for said premises a minimum monthly rental of \$100.00, in advance payable, on or before the 1st day of each month of the lease term.

6. **VENDOR SUBLESSEES:** Lessee is specifically granted the right to let stall spaces to vendors who will be subtenants of Lessee. During the initial lease term, the stall space rental shall not exceed \$40.00 per stall. In the event of the extension of this lease as provided above, the stall rental shall not increase more than \$5.00 per stall per year. Each Sub-lessee shall be required to secure a City business license as a condition of any sublease or participation in the farmers market.

7. **UTILITIES:** Lessee shall pay the City for water and electric utilities on or before the 1st day of each month for the prior months use of such utilities. Lessee shall provide a minimum of one portable restroom on site that complies with American Disabilities requirements for public use during any and all hours the Market operates. Portable facilities acquired for use by patrons will be maintained weekly and insured against loss by the Lessee for the duration of this agreement. Said facilities can remain on site for the duration of this Agreement and may be locked during periods the market is closed.

Lessee shall be solely responsible for and promptly pay all other charges for other utilities which may be used by Lessee on the leased premises.

8. **CONDITION OF PROPERTY:** The premises have been inspected and are accepted by Lessee in their present condition.

9. **IMPROVEMENTS/MODIFICATIONS:** Lessee shall not make any material modifications on the leased property or to it without the prior written consent of the Lessor. All improvements placed upon the property by the Lessee will become the property of the Lessor at the end of the lease unless the parties have made other written agreement with respect to such improvements; PROVIDED, upon written demand from Lessor to Lessee given within thirty (30) days after expiration or termination of this lease, Lessee shall remove any improvements made by Lessee and restore the affected portion of the lease premises to its condition prior to commencement of this lease. Such removal and restoration shall be completed within thirty (30) days after Lessor's demand to Lessee for such removal.

10. **LIABILITY INSURANCE**

The Lessee shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Lessee's operation and use of the leased Premises.

No Limitation

Lessee's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Lessee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance

Lessee shall obtain insurance of the types described below:

1. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The City shall be named as an insured on Lessee's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage.
2. Property insurance shall be written on an all risk basis.

A. Minimum Amounts of Insurance

Lessee shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
2. Property insurance shall be written covering the full value of Lessee's property and improvements with no coinsurance provisions.

B. Other Insurance Provisions

The Lessee's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Lessee's insurance and shall not contribute with it.

C. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

D. Verification of Coverage

Lessee shall furnish the City with original certificates, a copy of the additional insured endorsement, and a copy of the amendatory endorsements evidencing the insurance requirements of the Lessee.

E. Waiver of Subrogation

Lessee and City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the premises or said building. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

F. Notice of Cancellation

The Lessee shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

G. Failure to Maintain Insurance

Failure on the part of the Lessee to maintain the insurance as required shall constitute a material breach of lease, upon which the City may, after giving five business days notice to the

Lessee to correct the breach, terminate the Lease or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

11. **COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS:** Lessee and all vendors shall obtain all required business licenses and permits and pay all license and vendor fees required by law or City ordinance. Lessee shall comply with all laws, ordinances, orders, and regulations affecting the leased premises and their cleanliness, safety, occupation and use. Lessee will not perform any act or carry on any practices that may injure the leased premises or be a nuisance or menace to the public or adjoining premises.

Leasehold Excise Tax. During any month when tenant does not qualify for exemption from leasehold excise tax pursuant to Chapter 82.29A RCW, as additional rent Tenant shall pay to Landlord with the monthly rent a sum equal to 12.84% of the monthly rent for leasehold excise tax.

12. **INDEMNIFICATION:** Lessee shall defend, indemnify and hold the Lessor, its officers, elected officials, employees and volunteers, harmless from any and all claims, injuries, damages, losses or suits, including attorneys fees and costs of suit, arising out of or resulting from the acts, errors or omissions of the Lessee in performance of this lease, except for injuries or damages caused by the sole negligence of Lessor.

The obligations of the Lessee under this section arising by reason of any occurrence taking place during the term of this lease shall survive any termination of this lease.

13. **LIENS AND INSOLVENCY:** Lessee shall keep the leased premises and the property in which the leased premises are situated, free from any liens arising out of any work performed, materials furnished or obligations incurred by Lessee. In the event Lessee becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee or other liquidating officer is appointed for the business of the Lessee, then the Lessor may cancel this lease at Lessor's option.

14. **ASSIGNMENT:** EXCEPT as provided above, Lessee shall not assign this lease or any part thereof and shall not let or sublet the whole or any portion of the premises without the written consent of the Lessor. This lease shall not be assignable by operation of law. If consent is once given by the Lessor to the assignment of this lease, or any interest therein, Lessor shall not be barred from afterwards refusing to consent to any further assignment.

15. **ACCESS:** Lessee will allow Lessor free access at all reasonable times to the leased premises for the purpose of making inspection to assure compliance with the provisions of this lease.

16. **NOTICES:** Any notice required to be served in accordance with the terms of this lease, shall be sent by mail, addressed in care of the address stated below.

17. **DEFAULT & RE-ENTRY:** If any rents above reserved, or any part thereof, shall be and remain unpaid when the same shall become due, or if Lessee shall violate or default in any of the covenants and agreements herein contained, then the Lessor may cancel this lease upon giving the notice required by law, and reenter said premises, but notwithstanding such reentry by the Lessor, the liability of the Lessee for the rent provided for herein shall not be extinguished for the balance of the term of this lease, and Lessee covenants and agrees to make good to the Lessor any deficiency arising from a reentry and re-letting of the premises at a lesser rental than herein agreed to. The Lessee shall pay such deficiency each month as the amount thereof is ascertained by the Lessor.

18. **COSTS AND ATTORNEY'S FEES:** If by reason of any default on the part of the Lessee it becomes necessary for the Lessor to employ an attorney or in case Lessor shall bring suit to recover any rent due hereunder, or for breach of any provision of this lease or to recover possession of the leased premises, or if Lessee shall bring any action for any relief against Lessor, declaratory or otherwise, arising out of this lease and Lessor shall prevail in such action, then and in any of such events Lessee shall pay Lessor a reasonable attorney's fee and all costs and expenses expended or incurred by the Lessor in connection with such default or action.

19. **NON-WAIVER OF BREACH:** The failure of the Lessor to insist upon strict performance of any of the covenants and agreements of this lease or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

20. **HEIRS AND SUCCESSORS:** Subject to the provisions hereof pertaining to assignment and subletting, the covenants and agreements of this lease shall be binding upon the heirs, legal representatives, successors and assigns of any or all of the parties hereto.

21. **HOLD OVER:** If the Lessee shall, with the written consent of Lessor, hold over after the expiration of the term of this lease, such tenancy shall be for an indefinite period of time on a month to month tenancy, which tenancy may be terminated as provided by the Laws of the State of Washington. During such tenancy Lessee agrees to pay to the Lessor the same rate of rental as set forth herein, unless a different rate is agreed upon, and to be bound by all the terms, covenants, and conditions as herein specified, so far as applicable.

IN WITNESS WHEREOF the parties hereto have executed this lease the day and year first above written.

CITY OF MARYSVILLE, Lessor

By: _____
JON NEHRING
MAYOR

Approved as to form

By: 
Lessee- Dan Hazen – Executive Pastor
Allen Creek Community Church

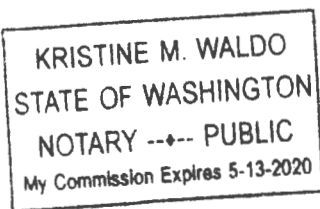
Address: 1049 State Avenue
Marysville, WA 98270

Address: 7314 44th Ave NE
Marysville, WA 98270

STATE OF WASHINGTON)
)ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that Dan Hazen is the person who appeared before me, and said person acknowledged that (HE)SHE signed this instrument, on oath acknowledged that (HE)SHE was authorized to execute the instrument, and acknowledged it as the lease of the City of Marysville to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 11th day of June, 2017.



Kristine M. Waldo
Kristine M. Waldo
(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at Marysville, WA
My commission expires 05-13-2020

Exhibit A
Parcel



