

**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: 3/23/2020**

<b>AGENDA ITEM:</b>	
Little League Contract for Cedar Fields	
<b>PREPARED BY:</b>	<b>DIRECTOR APPROVAL:</b>
Tara Mizell TM	TM
<b>DEPARTMENT:</b>	
Parks, Culture and Recreation	
<b>ATTACHMENTS:</b>	
YES	
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>
<b>SUMMARY:</b>	

Marysville Little League will be leasing the office space, concession stand/space, and restrooms at Cedar Fields. Each season the league will work with the City's Athletic Supervisor to complete a field use agreement for the season in addition to this lease. Fees for field use will be paid separately from the annual rental of the facility.

**RECOMMENDED ACTION: Staff recommend the Mayor sign the agreement with Marysville Little League for the use of Cedar Fields.**

## LEASE

THIS LEASE is made and entered into as of the last signature date set forth below, by and between the CITY OF MARYSVILLE, a municipal corporation of the State of Washington, hereinafter "City," and MARYSVILLE LITTLE LEAGUE, hereinafter "Lessee."

1. **DESCRIPTION OF PREMISES.** City hereby leases to Lessee and Lessee leases from City on the terms, covenants and conditions set forth herein, the following- described premises:

The office space, concession stand/space, and restrooms on the following parcel (lease does not include the building housing the Boys and Girls Club):

Commencing at a point 100 feet east of where the North side of 10th Street intersects the East side of Beach Street in the Edward Steele's Suburban Addition to Marysville; thence South 300 feet; thence West along the North side of 10th Street 267 feet to the point of beginning, situate in the city of Marysville, County of Snohomish, State of Washington .

Situated in the County of Snohomish State of Washington.

Snohomish County Tax Parcel 00585600200100

Commonly known as 1010 CEDAR Street, Marysville, WA.98270

TOGETHER WITH non-exclusive use of all paved parking areas located upon the above-described property. Throughout this agreement referred to as the "Leased Premises." City reserves the right to use the outbuildings situated on the Leased Premises during the off-season. City shall have access to the yard at all times.

2. **TERM.**

- (a) Initial Term. The initial term of this Lease shall be for THIRTY-FOUR (34) months, commencing on March 1, 2020, and ending December 31, 2022, at 11:59 p.m..
- (b) Renewal. By mutual agreement of the parties, this Lease may be renewed for two additional twelve-month terms.

3. **RENT.**

- (a) Rental Amount. Rent will be paid on an annual basis, and will be calculated at \$150 dollars per month, plus State leasehold excise tax of 12.84% (subject to adjustment per Section 3(c). This calculates to an initial annual payment of \$2,031.12.

- (b) Payments. The first annual rental payment will be due within ten days of the effective date of this Lease. Subsequent annual payments shall be due on March 1<sup>st</sup> of each year of the lease term and shall be paid at:

CITY OF MARYSVILLE  
Parks, Culture & Recreation  
6915 Armar Road  
Marysville, WA 98270

or at such other place as may be designated by City.

- (c) Leasehold Excise Tax. As additional rent Lessee shall pay to City with the monthly rent a sum equal to 12.84% of the monthly rent for leasehold excise tax (\$19.26). This additional rent rate shall be modified to be consistent with any change in the leasehold excise tax rate occurring during the term of this Lease, or any extension or holdover, which modification shall be effective on the date the tax rate changes. City shall give written notice to Lessee of any change in the leasehold excise tax rate.
- (d) Late Charge. In the event Lessee should fail to pay any installment of rent or any sum due hereunder within ten (10) days after the date it is due, Lessee shall pay City a late charge of 5% of the delinquent payment, which late charge shall constitute additional rent due hereunder.

#### 4. USE OF PREMISES.

- (a) The Leased Premises will be used baseball and related activities by the Marysville Little League (Lessee), and for no other purpose or purposes, without City's prior written consent. Lessee agrees not to operate any retail or service-oriented business on the Leased Premises with the exception of game day concessions.
- (a) Lessee shall comply with all laws, ordinances, orders, and regulations now in effect, or as hereafter amended, affecting the Leased Premises and their cleanliness, safety, occupation and use. Lessee will not use or permit the use of the premises in any such manner as will tend to create a nuisance, or unnecessarily or unreasonably disturb other lessees or occupants of the Leased Premises. Lessee shall not serve or permit alcohol to be consumed in the Leased Premises.
- (b) Lessee shall not use any machinery or equipment in the Leased Premises that might be injurious to the building. Lessee will not perform any act or carry on any practices that may damage the Leased Premises or be a nuisance to or menace or injure the public, other Lessees, or City's employees, contractors or agents. Lessee shall not commit or suffer any waste upon the Leased Premises.
- (c) Upon termination of the Lease, Lessee shall quit and surrender the Leased Premises in as good a state and condition as they were at the commencement of the Lease, reasonable

wear and tear or other actions not caused by Lessee, its employees, agents, customers or invitees, excepted. Lessee shall return all keys to City.

5. **UTILITIES.** City shall pay the expense of water and sewer service to the Leased Premises. Lessee shall exercise prudent conservation practices and keep plumbing fixtures well maintained to assure no waste of water and sewer facilities. City will pay for garbage and electricity and bill Lessee for these costs. Lessee shall reimburse Lessor for the costs of these services for the Leased Premises upon receiving a bill from City.

City shall not be liable for any loss, injury, or damaged property caused by or resulting from any variation, interruption, or failure of any utility service beyond City's reasonable control. No temporary interruption or failure of such services incident to the making of repairs, alterations, or improvements, or due to accident or strike, or conditions or events beyond City's reasonable control shall be deemed an eviction of Lessee or shall release Lessee from any of Lessee's obligations under this Lease.

#### 6. **ACCEPTANCE OF PREMISES/LESSEE AND CITY RESPONSIBILITIES**

Lessee acknowledges that Lessee has examined the Leased Premises and accepts the same in their condition on the date of Lessee's execution of this Lease.

- (a) The Lessee shall perform all interior maintenance of the premises. City shall provide all exterior maintenance to structures and repairs to the physical plant, roof systems, lights, netting, fencing, bleachers, dugouts, alley and restrooms of the premises. City shall provide year round facility maintenance on the field and surrounding structures weekly.
- (b) Lessee will be required to supply the season schedule and execute a FIELD USE AGREEMENT no later than March 1st of each season. Lessee shall pay all associated game fees according to the Field Use Agreement with City. Lessee shall provide all game preparation for scheduled games. Lessee shall be responsible for all equipment and maintenance of the concession facility housed within the office building.
- (c) City and City's agents and employees shall have the right to access to the premises for the purposes of:
  - (1) Inspection;
  - (2) Maintenance, yard work, repairs, alterations or improvements;
  - (3) Display of the premises to prospective or actual workers or contractors;
  - (4) Whenever practical, City shall give Lessee advance notice of City's intent to enter the property. City shall not alter the Leased Premises in any way to make the space unusable by Lessee.

**7. ALTERATIONS, LIENS, CONDITION OF PREMISES UPON TERMINATION OF LEASE.** Except as specifically permitted above:

- (b) No alterations shall be made to the Leased Premises without prior written consent of City. Any alterations to the Leased Premises excepting movable furniture and trade fixtures shall, at City's option, become part of the realty and belong to City.
- (c) Should Lessee desire to alter the Leased Premises and if City consents to such alterations, then at City's option, such improvements shall be performed by City's employees, or Lessee shall contract with a licensed, bonded and insured contractor approved by City for the construction of such alterations.
- (d) All work approved by City shall be done at such times and in such manner as City may from time to time designate. Lessee shall give City written notice five (5) days prior to employing any laborer or contractor to perform work resulting in an alteration of the Leased Premises so that City may post a notice of non-responsibility.
- (e) In the event the Leased Premises shall at any time during the term of this Lease become subject to any suit brought to enforce a lien, or any statement or claim of lien is filed to enforce a lien resulting from the furnishing of materials or labor to the Leased Premises contracted for or agreed to by Lessee, Lessee may contest such lien by legal proceedings, but shall nevertheless cause such lien, at its sole cost, to be discharged within thirty (30) days after notice thereof by the substitution therefor of a mechanic's lien release bond, by posting of adequate security for the payment thereof (including all expenses incident thereto), or by such other method as shall be reasonably satisfactory to City.
- (f) Trade fixtures installed by Lessee may be removed by Lessee at the termination of the Lease, provided that the premises are returned to as good condition as they were prior to the installation of the same. Structural alterations of the premises shall also be removed, at the option of City, at the termination of the Lease, and Lessee shall bear the full cost thereof and shall repair any damage to the Leased Premises caused thereby. Lessee's obligations to observe or perform this covenant shall survive the expiration or the termination of the term of this Lease.

**8. INSURANCE/LIABILITY.**

**A. Insurance Term**

The Lessee shall procure and maintain for the duration of the term of this Lease, any renewal term, and/or any holdover period, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the use of the facilities and the activities of the Lessee and his or her guests, representatives, volunteers and employees.

**B. 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.

**C. Required Insurance**

Lessee's required insurance shall be as follows:

General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 covering premises, operations, and contractual liability. The City shall be named as an additional insured on Lessee's General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or an endorsement providing at least as broad coverage. The General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate. General Liability insurance shall include coverage for participant liability with limits of not less than \$1,000,000 per occurrence.

The insurance policy shall contain, or be endorsed to contain that the Lessee's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Lessee's insurance and shall not contribute with it. City Full Availability of Lessee Limits.

If the Lessee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Lessee, irrespective of whether such limits maintained by the Lessee are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Lessee.

**E. Certificate of Insurance and Acceptability of Insurers**

The Lessee shall provide a certificate of insurance evidencing the required insurance before using the Premises.

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

9. **RISK OF LOSS.** All personal property of Lessee kept or maintained at the Leased Premises shall be at the risk of Lessee. 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 City liable in any manner or on account of any loss or damage sustained by action of fire, water, elements, theft or any third party.

10. **INDEMNIFICATION.**

Lessee shall defend, indemnify and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of

any person, or for loss or damage to property, which arises out of the use of the Premises or from any activity, work or thing done, permitted, or suffered by Lessee in or about the Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the City. The parties acknowledge that the foregoing indemnity provisions were mutually negotiated and survive the termination of this Lease.

11. **HAZARDOUS SUBSTANCES.** As used in this Lease, the term "Hazardous Substance" means any substance or material, the storage, use or disposal of which is or becomes regulated under any law now or hereafter in effect, including, but not limited to any flammable explosives, radioactive materials, asbestos, petroleum and related byproducts and hydrocarbons, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxins, pollutants, contaminants, hazardous wastes, toxic substances or related materials.

Without City's prior written consent, Lessee shall not receive, store or otherwise allow any Hazardous Substance on the Leased Premises. In the event of any release or presence of any Hazardous Substance on or about the Leased Premises occurring on or after the commencement date of this Lease, Lessee agrees to immediately, fully and completely remove all of such Hazardous Substance from the Leased Premises and to dispose of such in accordance with applicable law, even if the quantity or concentration of such Hazardous Substance would not require remediation under the provision of law. Lessee further agrees to defend, indemnify, and hold harmless City, its elected officials, officers, employees, agents and contractors from and against any and all losses, claims, liabilities, damages, demands, fines, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from any release or presence of any Hazardous Substance on or about the Leased Premises; the provisions of this sentence shall survive and be enforceable after the termination or expiration of the Lease and the surrender of the Leased Premises by Lessee. If Lessee becomes aware of the release or presence on the Leased Premises of any Hazardous Substance, Lessee shall immediately notify City in writing of such release or presence, and Lessee shall promptly provide City with copies of any reports, studies, recommendations or requirements received by Lessee from any third person, including a governmental agency.

12. **SIGNS AND LANDSCAPING.** Lessee shall be permitted to erect a business sign and directional signage; provided City shall have the right to control and approve the location, size, quality and appearance of the same. Lessee shall make no alterations or additions to the landscaping of the Leased Premises and shall place no exterior signs on the Leased Premises without the prior written consent of City. Lessee shall be required to maintain Lessee's signs in good, safe, attractive condition. Any signs not in conformity with this Lease may be removed and destroyed by City. All sponsor or advertising signage is to be removed and stored at the conclusion of each season.

13. **TAXES.**

- (a) City shall be responsible for all real property taxes and assessments levied or assessed against the Leased Premises by any governmental entity, including any special

assessments imposed on or against the Leased Premises for the construction or improvement of public works in , on or about the Leased Premises; provided, however, that the Lessee shall conduct no activity on the Leased Premises nor place any articles on the Leased Premises that will increase the real property taxes levied or assessed against the Leased Premises.

- (b) Lessee shall pay before delinquency any and all taxes, assessments, license fees, and public charges levied, assessed or imposed and which become payable during the Lease upon Lessee's fixtures, furniture, appliances and personal property installed on or located in the Leased Premises.
- (c) Lessee agrees to pay the amount of all taxes levied upon or measured by the rent payable hereunder, whether as a sales tax, transaction privilege tax, leasehold excise tax, or otherwise. Except as provided in paragraph 3(c) above, such taxes shall be due and payable at the time the same are levied or assessed.

14. **CASUALTY; REBUILDING; CONDEMNATION.** In the event the building at the Leased Premises shall be destroyed or damaged by fire or other causes (and regardless of the extent of the damage to the Leased Premises) to such an extent that the City shall decide to discontinue the operation of the building, which decision shall be communicated to the Lessee within sixty (60) days after such damage or destruction, then this Lease shall be terminated as of the date of such damage or destruction. In the event of damage to the Leased Premises by fire or other causes, other than under the circumstances described in the preceding sentence, City shall repair the Leased Premises within a reasonable time and as quickly as circumstances will permit upon the same plan as immediately before the damage or destruction. Until the Leased Premises are repaired and put in a good and usable order, the rents herein provided for, or a fair and just proportion thereof according to the nature and extent of the damage sustained, shall be abated until the Leased Premises shall have been restored to the same condition as they were before such damage or destruction.

In the event that the Leased Premises are not usable as contemplated in this agreement for over ninety (90) days due to the damage, Lessee shall have the right to terminate this Lease.

If any part of the Leased Premises shall be taken by public or quasi-public authority under any power of eminent domain or condemnation, Lessee shall have no claim or interest in or to any award of damages for such taking. If such taking materially reduces usefulness of the Leased Premises for the purposes for which it is leased, then Lessee shall have the option of terminating this Lease.

15. **ASSIGNMENT AND SUBLETTING.** Lessee shall not sublease, sublet or assign the Leased Premises, or any portion thereof, except by the written permission and consent of City, in City's sole discretion. This Lease shall not be assignable by operation of law.



16. **INSOLVENCY OF LESSEE.** (a) the appointment of a receiver to take possession of all or substantially all of the assets of Lessee, or (b) a general assignment by Lessee for the benefit of creditors, or (c) any action taken or suffered by Lessee under any insolvency or bankruptcy act shall, if any such appointments, assignments or action continues for a period of thirty (30) days, constitutes a breach of this Lease by Lessee, and City may at its election without notice, terminate this Lease, and in that event be entitled to immediate possession of the Leased Premises and damages as provided below.

17. **LESSEE DEFAULT.**

- (a) If Lessee shall fail to perform any of the covenants and agreements herein contained (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency, or other legal or equitable proceedings that have or might have the effect of preventing the Lessee from complying with the terms of this Lease), then City may cancel this Lease upon giving the notice required by law, and re-enter said premises. Notwithstanding such re-entry by City, the liability of Lessee for the rent provided for herein shall not be extinguished for the balance of the term of the Lease, and Lessee covenants and agrees to make good to City any deficiency arising from re-entry and re-letting of the Leased Premises at a lesser rental than herein agreed to. Lessee shall pay such deficiency each month as the amount thereof is ascertained by City. In computing such deficiency, Lessee shall be charged with the monthly rental that would have been owed by Lessee had Lessee continued to lease the Leased Premises.
- (b) NSF Check Charge. Lessee agrees to pay a \$40.00 fee for each check returned for insufficient funds or that cannot be cashed on the day it is received or presented for payment. Said NSF charge shall be in addition to any applicable late charge, and shall constitute additional rent due hereunder. No postdated checks will be accepted as rental payment.
- (c) If City must commence an unlawful detainer action to seek restitution of the rental premises as a result of Lessee's default in the payment of rent, City shall be entitled to judgment in the amount of double the rent due at the time of judgment pursuant to RCW 59.12.170.
- (d) In the event of any entry in, or taking possession of, the Leased Premises, City shall have the right, but not the obligation, to remove from the Leased Premises all personal property located thereon, and may place the same in storage at a public warehouse, at the expense and risk of the owners.
- (e) If at any time City waives any breach or default, or any right or option, such waiver shall not be construed to be a waiver of any other right or option, or any other past, existing or future breach or default.

(f) In the event Lessee is in default on any provision of this Lease and City seeks the services of an attorney to enforce such provision in default, City shall be entitled to recover all attorney's fees and costs expended in such enforcement, including the cost of preparation and service of all notices, and such fees, costs and expenses shall constitute additional rent due hereunder.

18. **CITY DEFAULT.** In the event City shall neglect or fail to perform or observe any of the covenants, provisions or conditions contained in this Lease on its part to be performed or observed within 30 days after Lessee's written notice to City (or if more than 30 days shall be required because of the nature of the breach, if City shall fail to proceed diligently to cure such breach after notice), then, in that event, City shall be in default under the provisions of this Lease, and Lessee will have the option to terminate this Lease.

19. **NOTICES.** All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, or designations under this Lease by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by certified mail, return receipt requested, postage prepaid, and addressed as follows:

LESSEE:

MARYSVILLE LITTLE LEAGUE

\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

CITY:

CITY OF MARYSVILLE  
Parks, Culture & Recreation  
6915 Armar Road  
Marysville, WA 98270

or at such other address as either party designates by written notice to the other party. All notices shall be effective upon the earlier of personal delivery or three (3) days after being mailed.

20. **NO WAIVER OF COVENANTS.** No waiver shall be implied from an omission by either party to take any action related to breach of any covenant, term, or condition of this Lease. The acceptance by City of rent with knowledge of the breach of any of the terms, conditions, or covenants of this Lease by Lessee shall not be deemed a waiver of any such breach. One or more waivers of any breach of any covenant, term, or condition of this Lease shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

21. **SUCCESSORS AND ASSIGNS.** The rights, liabilities, and remedies provided for herein shall extend to the heirs, legal representatives, successors and, so far as the terms of this Lease permit, assigns of the parties hereto. The words "City" and "Lessee" and their accompanying verbs or pronouns, wherever used in this Lease, shall apply equally to all persons, firms or corporations which may be or become parties to this Lease.

22. **TIME.** Time is of the essence of this Lease.

23. **ENTIRE AGREEMENT AND AMENDMENTS.** This Lease contains all of the agreements between the parties with respect to any matter covered or mentioned in the Lease, and no prior agreement, letter of intent, or understanding relating to any such matter will be effective for any purpose. No provision in this Lease may be amended or added to except by an agreement in writing signed by the parties or their respective successors in interest and using the same formalities as are required by the execution of this Lease.

DATED \_\_\_\_\_, 2020

DATED \_\_\_\_\_, 2020

THE CITY OF MARYSVILLE, City

MARYSVILLE LITTLE LEAGUE, Lessee

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

By \_\_\_\_\_  
Its \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_  
Jon Walker, City Attorney

STATE OF WASHINGTON    )  
  )ss.  
COUNTY OF SNOHOMISH    )

I certify that I know or have satisfactory evidence that the JON NEHRING is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath acknowledged that he was authorized to execute the instrument, and acknowledged it as the Mayor 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 \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
(Notary Signature)

\_\_\_\_\_  
(Print Name)  
NOTARY PUBLIC in and for the State of Washington  
Residing at (city): \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF WASHINGTON    )  
  )ss.  
COUNTY OF SNOHOMISH    )

I certify that I know or have satisfactory evidence that the \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath acknowledged that he was authorized to execute the instrument, and acknowledged it as the \_\_\_\_\_ of Marysville Little League to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
(Notary Signature)

\_\_\_\_\_  
(Print Name)  
NOTARY PUBLIC in and for the State of Washington  
Residing at (city): \_\_\_\_\_  
My commission expires: \_\_\_\_\_