

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 12/13/21

AGENDA ITEM:	
Leaseback of Public Safety Building	
PREPARED BY:	DIRECTOR APPROVAL:
Jon Walker	
DEPARTMENT:	
Legal	
ATTACHMENTS:	
BUDGET CODE:	AMOUNT:
<p>SUMMARY: On April 23, 2019, voters approved the creation of a regional fire authority (RFA). The plan creating the RFA required that the City of Marysville convey the Public Safety Building to the new RFA by December 31, 2021, and that the RFA convey the Fire Administration Building to the City by the same date. The Public Safety Building was valued in the RFA Plan at \$4,500,000. The Administration Building was valued at \$975,000. The RFA would pay the City the difference of \$3,525,000.</p> <p>At the time the Plan was approved, it was anticipated that the portion of the Civic Campus to be utilized by police and the jail would be ready for occupancy. However, it will not be ready on January 1st and so the RFA (Marysville Fire District) and the City will complete the conveyances as required by the Plan and at the same time execute leaseback agreements to allow for continued operations and an orderly transition. Under the terms of the two leaseback agreements, Police will have ninety days after a certificate of occupancy is issued for the Civic Campus to complete the move from the Public Safety Building to the Civic Campus. MFD will have ninety days after the City has vacated the Public Safety Building to remain in the Administration Building while completing necessary remodeling of the Public Safety Building. The agreements provide that an additional ninety day extension may be approved by the Mayor and the Fire Chief without further Council action. Any additional extensions must be approved by Council.</p>	

<p>RECOMMENDED MOTION: I move to authorize the Mayor to execute the leaseback agreement for the Fire Administration Building.</p>
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LEASE BACK AGREEMENT

THIS LEASE, is made by and between the CITY OF MARYSVILLE, a municipal corporation of the State of Washington, hereinafter "Landlord," and THE MARYSVILLE FIRE DISTRICT , hereinafter "Tenant."

1. **PURPOSE.** Through a voter approved measure, Marysville Fire District and City of Marysville established the Marysville Fire District, a regional fire authority. As a part of the operating plan for the regional fire authority, the premises which is the subject of this lease located at 1094 Cedar Ave. Marysville Washington will be conveyed by Marysville Fire District to City of Marysville effective January 1, 2022. Also pursuant to the operating plan, effective January 1, 2022 City of Marysville will convey the property it owns located at 1635 Grove Ave. to Marysville Fire District. The parties executed a Letter of Understanding in 2019 regarding these premises, a copy of which is attached as **EXHIBIT A**. City of Marysville is constructing a new Civic Center Campus which will house the Marysville Police Department but it will not be available for occupancy by January 1, 2022. As a result, each party hereto has agreed to lease back to the other the premises until occupancy of the Civic Center Campus is available for occupancy and there is adequate time for Marysville Police Department to move to the Civic Campus and for Marysville Fire District to move to 1635 Grove Ave.

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

See **EXHIBIT B**

attached hereto and incorporated herein by this reference

hereinafter the "Leased Premises"; TOGETHER WITH use of all paved parking areas located upon the above-described property.

3. **TERM.**

- (a) **Initial Term:** This Lease shall commence January 1, 2022, and will run for (1) the City's use of the Public Safety Building (except for additional uses as set forth in Exhibit A, to wit, Fenced Storage Area, Evidence Room, use of Bay for Bearcat, and Communications and Data Rooms and Infrastructure which will be governed by the terms of Exhibit A) until 90 days after the issuance of a Certificate of Occupancy for the police portion of the Civic Center to provide time for the City to transfer to the new facilities in the Civic Center; and (2) the Fire District's use of the Administration Building until 90 days after the City has vacated the Public Safety Building.
- (b) **Renewal/Extension:** By mutual written agreement of the parties, this Lease may be renewed or extended as necessary for the Marysville Police to relocate to the Civic Center Campus and/or for the Marysville Fire District to relocate to the Public Safety Center located at 1635 Grove Ave. The initial terms may be extended by written agreement executed by the Mayor and Fire Chief for an additional 90 days if additional time is needed for the agencies' respective moves or for remodeling of the Public Safety Building. Any extension beyond the additional 90 days will require approval of the City Council and Fire Board.
- (c) **Termination:** This lease shall terminate at any time without penalty upon notice from the Tenant that personnel, equipment, and operations have been removed from the Leased Premises.

4. **RENT.** Because the parties each have a public safety interest in a smooth transition of police and fire personnel, and because each party will be executing a leaseback of public facilities to the other during the time of transition and relocation, no rent shall be paid under this lease or any extension or renewal thereof. Consideration for this lease shall be the mutual benefit to public safety and the leaseback of each party's property to the other.

5. **USE OF PREMISES.**

- (a) The Leased Premises may be used and occupied only for Tenant business and purposes in the manner it is currently utilized by the Marysville Fire District, and all uses incidental thereto which are consistent with the permitted uses in the Marysville Zoning Code, and for no other purpose or purposes, without Landlord's prior written consent.
- (b) Tenant shall promptly 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. Tenant will not use or permit the use of the premises in any such manner as will tend to create a nuisance.
- (c) Upon termination of the Lease, Tenant 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 Tenant, its employees, agents, customers or invitees, excepted. Tenant shall return all keys to Landlord.

6. **UTILITIES.** Tenant shall be solely responsible for and promptly pay all charges for all utilities to the Leased Premises, including, but not limited to, water, sewer, garbage, electricity, telephone, cable, internet and any other utility not herein mentioned which may be used by Tenant on the Leased Premises.

7. **ALTERATIONS, LIENS, CONDITION OF PREMISES UPON TERMINATION OF LEASE.** No alterations shall be made to the Leased Premises without prior written consent of Landlord.

8. **INSURANCE: INSURANCE/CASUALTY:** All of Tenant's personal property on the Leased Premises shall be at the risk of Tenant. Each party hereto waives any and every claim which arises, or may arise, in its favor and against the other party hereto during the term of this Lease for all loss of, or damage to, any of its property located within or upon, or constituting a part of the Leased Premises, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies to the extent such loss or damage is recoverable under said insurance policies. Said mutual waivers shall be in addition to and not a limitation or derogation of any other waiver or release contained in this Lease with respect to any loss of or damage to property of the parties hereto. Inasmuch as the above mutual waivers will preclude the assignment of any such claim by way of subrogation to an insurance company (or any other person), each party hereby agrees immediately to give each insurance company which has issued to it policies of fire and extended coverage insurance written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent invalidation of said insurance coverages by reason of said waivers.

Tenant acknowledges that Landlord's casualty insurance upon the leased premises is for the benefit of Landlord, and will not benefit Tenant or provide any coverage for Tenant's contents or possessions.

9. **INSURANCE/LIABILITY:** During the term of this Lease and any extension or renewal thereof, Tenant shall keep in full force and effect a policy, or policies, of public liability and property damage insurance with respect to the Leased Premises and common areas, and the business operated thereat by Tenant, through a public insurance pool or through commercial lines of insurance in which the limits of public liability shall be not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate, and in which the property damage liability shall be not less than \$500,000, excluding perils of flood and earthquake, with not less than a \$1,000 deductible. Notwithstanding any other provisions contained herein, the insurance carrier shall endeavor to give Landlord thirty (30) days prior notice of cancellation or modification of said policy(ies). Tenant shall give written notice to Landlord within three (3) business days of receipt of any notice of cancellation or modification from insurer and shall not request any modification to insurance which reduces any coverage without advance written approval of Landlord.

10. **RISK OF LOSS:** All personal property of Tenant kept or maintained at the Leased Premises shall be at the risk of Tenant.

11. **INDEMNIFICATION:**

- (a) Landlord shall protect, hold harmless, indemnify, and defend, at its own expense, the Tenant, its officers, employees, and agents from any loss or claim for damages of any nature whatsoever, including claims by third parties or by Landlord's employees from which it would otherwise be immune under Title 51 RCW or other law, arising out of any act or omission on or about the Leased Premises or relating to this Lease by Landlord, its appointed or elected officials, officers, assignees, agents, employees, invitees, contractors or subcontractors. If a loss or claim is caused by or results from the concurrent negligence of Landlord, its appointed or elected officials, officers, employees, or agents and the Tenant, its officers, employees, or agents, this clause shall be valid and enforceable only to the extent of the negligence of the Landlord, its appointed or elected officials, officers, employees, or agents.
- (b) Tenant shall protect, hold harmless, indemnify, and defend, at its own expense, the Landlord, its appointed or elected officials, officers, employees, and agents from any loss or claim for damages of any nature whatsoever, including claims by third parties or by the Tenant's employees from which it would otherwise be immune under Title 51 RCW or other law, arising out of any act or omission on or about the Leased Premises or relating to this Lease by the Tenant, its officers, employees, or agents. If a loss or claim is caused by or results from the concurrent negligence of the Tenant, its officers, employees, or agents and the Landlord, its appointed or elected officials, officers, employees, or agents, this clause shall be valid and enforceable only to the extent of the negligence of the Tenant, its officers, employees, or agents.

The parties acknowledge that the foregoing indemnity provisions were mutually negotiated and survive the termination of this Lease.

12. MAINTENANCE AND REPAIRS.

- (a) Exterior Walls and Roof. Landlord shall maintain exterior walls, roof and the heating, air-conditioning and ventilation system at Landlord's expense.
- (b) Tenant Maintenance. Tenant shall, at its sole cost, keep and maintain all other elements of the Leased Premises and appurtenances and every part thereof including windows and skylights, doors, and the interior of the Leased Premises, in good, clean and sanitary order, condition, and repair. Tenant shall, at its sole cost, keep and maintain all utilities, plumbing, fixtures, and mechanical equipment used by Tenant in good order, condition, and repair and furnish all expendables (light bulbs, paper goods, soaps, etc.) used in the Leased Premises during the term or any extended term of the Lease. Tenant shall provide all janitorial services to the Leased Premises. Tenant shall maintain the common areas adjacent to the building, including sidewalks, landscaping, service areas, and automobile parking areas. Tenant shall be liable for the removal of ice and snow from the sidewalks and parking areas in front of and about the Leased Premises.

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

14. **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:

TENANT:

The Marysville Fire District
1094 Cedar AVE
Marysville, WA 98270

Telephone: _____

Email: _____

LANDLORD:

City of Marysville
1635 Grove ST
Marysville, WA 98270

Telephone: _____

Email: _____

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.

15. **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 Landlord of rent with knowledge of the breach of any of the terms, conditions, or covenants of this Lease by Tenant 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.

16. **EFFECT OF HOLDING OVER.** If Tenant should remain in possession of the Leased Premises after the expiration of the Lease term, or the renewal thereof, without executing a new lease, then such holding over shall be construed as a tenancy from month to month, subject to all the conditions, provisions, and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.

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

18. **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.

IN WITNESS WHEREOF Landlord and Tenant have executed this Lease as of the day and year first above written. Individuals signing on behalf of a principal warrant that they have the authority to bind their principals.

DATED this _____ day of December, 2021.

CITY OF MARYSVILLE, Landlord

By: _____
JON NEHRING, Mayor

DATED this _____ day of December, 2021.

MARYSVILLE FIRE DISTRICT, Tenant

By _____
MARTIN McFALLS, Chief

EXHIBIT A
(Letter of Understanding)

LETTER OF UNDERSTANDING BETWEEN THE CITY OF MARYSVILLE, AND THE MARYSVILLE FIRE DISTRICT REGIONAL FIRE AUTHORITY REGARDING REAL PROPERTY TO BE USED BY THE MARYSVILLE FIRE DISTRICT REGIONAL FIRE AUTHORITY PENDING ITS TRANSFER TO THE REGIONAL FIRE AUTHORITY IN 2021 AND AFTER ITS TRANSFER

The City of Marysville (“City”) and the Marysville Fire District Regional Fire Authority (“RFA”) each own real property that is subject to provisions of the Marysville Fire District Regional Fire Authority (RFA) Plan (“Plan”). Beginning October 1, 2019, the RFA will provide fire and emergency medical services within the jurisdictions of the District and City. This letter of understanding is to memorialize the parties’ intent that the RFA utilize two properties that will continue under the ownership of the RFA and the City until December 31, 2021.

PROPERTIES

The RFA owns property located at 1094 Cedar Avenue in Marysville (TPN 00585600301000) commonly known as the Fire Administration Building.

The City owns property located at 1635 Grove Street in Marysville (TPN 30052800200500) commonly known as the Public Safety Building/Station 61.

Each of these properties, pursuant to an interlocal agreement, were utilized by the Marysville Fire District, jointly operated by the City and Fire Protection District No. 12 pursuant to an interlocal agreement. The parties intend that the RFA continue to use these properties until December 31, 2021, in the same manner as the jointly operated Marysville Fire District has and in accordance with the Regional Fire Authority Plan (“Plan”) and this LOU.

The Plan contemplated that a letter of understanding would be executed by the City and the RFA regarding a portion of the Public Safety Building that is used for communications and data infrastructure. The Plan also contemplated that a letter of understanding would be executed by the City and the RFA regarding the fenced storage area adjacent to the Public Safety Building that is used for secure evidence storage by the Marysville Police Department.

RFA PLAN

Section 6.C of the Plan addresses disposition of assets and provides that the Public Safety Building will be conveyed to the RFA at midnight December 31, 2021, if certain conditions are met, including the conveyance of the Administration Building to the City by the RFA.

USE AND MAINTENANCE OF PROPERTIES UNTIL DECEMBER 31, 2021

The RFA will utilize the Administration Building between October 1, 2019, and December 31, 2021, for RFA business and purposes.

The City and the RFA intend that the RFA will continue to utilize the Station 61 portion of the Public Safety Building between October 1, 2019, and December 31, 2021, for RFA business and purposes in the manner it is currently utilized by the Marysville Fire District, jointly operated by the City and Fire Protection District No. 12.

The RFA agrees to insure the Administration Building through membership in the Washington Cities Insurance Authority or other appropriate insurance and to provide for maintenance of the building and its

premises. The City and RFA may enter into further understandings regarding the insurance and maintenance of the building.

The use and maintenance of the Public Safety Building will continue under the terms set forth in the letter of understanding between the City and the Marysville Fire District dated February 28, 2008, with the RFA assuming the responsibilities of the Marysville Fire District. A copy of this LOU is attached as Exhibit A.

Use of Public Safety Building January 1, 2022, to December 31, 2023.

Police and Public Safety Uses.

Fenced Storage Area.

The City will retain access to and control over the fenced storage area located to the north of the Public Safety Building and currently utilized by the Marysville Police Department for storage and secure evidence storage until December 31, 2023. On December 31, 2023, the City will cease utilizing this area and relinquish control of it to the RFA. Until December 31, 2023, the City will be responsible for maintaining all fencing and security until it relinquishes control over the storage area to the RFA.

Evidence Room.

The City will retain use of and access to the Evidence Room until December 31, 2023. On December 31, 2023, the City will cease utilizing this area and relinquish control of it to the RFA. Until December 31, 2023, the City will be responsible for maintaining security for the Evidence Room until it relinquishes control to the RFA.

Use of Bay for Bearcat Armored Vehicle.

The City's Bearcat armored vehicle is currently stored in one of the vehicles bays of the Public Safety Building. The City will retain access to the bay until December 31, 2023, and will be permitted to store the Bearcat in the bay. The City and the RFA will cooperate in providing security to the bay. On December 31, 2023, the City will cease utilizing this area and relinquish control of it to the RFA.

Future Use of Police Areas.

The RFA and the City may negotiate a lease for the City's use of any of these areas to extend beyond December 31, 2023.

Use of Communications and Data Rooms and Infrastructure beginning January 1, 2022.

The parties agree that those portions of the Public Safety Building currently used for communications and data purposes by the City will continue to be controlled by the City and that the RFA will ensure City access to the rooms at all times. The parties also agree that the monopole/communications tower currently attached to the building will continue to be controlled by the City and that the RFA will ensure City access to the tower at all time. The City will have responsibility for and the RFA will cooperate in making available any power, fiber, climate control, security, or other infrastructure necessary for the proper functioning of the rooms, communications tower, or data infrastructure.

The parties agree that both the City and RFA benefit from this agreement because the infrastructure supports public safety functions including fire and emergency medical services. The City's access to and

control of the rooms and tower will continue until such time as the infrastructure is moved to another location or is no longer needed, at which time the City and the RFA will terminate this portion of the letter of understanding in writing. The governing bodies that approved this agreement authorize the mayor of the City and the fire chief of the RFA to execute the writing terminating this agreement regarding the rooms in the Public Safety Building and the communications tower.

AUTHORITY TO CARRY OUT TERMS OF LOU

The parties agree that these arrangements will enhance public health and safety by facilitating the delivery of fire and emergency medical services throughout the RFA.

The governing bodies of the parties authorize appropriate staff to carry out the terms of this letter of understanding.

CITY OF MARYSVILLE

APPROVED by the City Council at an open public meeting this 30th day of September, 2019.

CITY OF MARYSVILLE

By




Jon Nehring, Mayor

ATTEST:


APPROVED AS TO FORM:

By



Jan Berg, City Clerk *deputy*
Tina Block

By



Jon Walker, City Attorney


MARYSVILLE FIRE DISTRICT, A REGIONAL FIRE AUTHORITY

PASSED by the Marysville Fire District, A Regional Fire Authority, this _____ day of October, 2019

GOVERNING BOARD


Chair

ATTEST:


Board Secretary



PUBLIC WORKS
Paul A. Roberts, *Director*

City
Original

80 Columbia Avenue
Marysville, Washington 98270
Phone (360) 363-8100
Fax (360) 363-8284
ci.marysville.wa.us

LETTER OF UNDERSTANDING

To: Greg Corn, Fire Chief

From: Mike Shepard, Fleet & Facilities Manager

Date: February 28, 2008

RE: Agreement for Joint Operation of Fire and Emergency Medical Protection Facilities and Use Agreement for Marysville Public Safety Center.

This Letter of Understanding will serve as a process for the City of Marysville (COM) to use and also to clarify and communicate the process to Marysville Fire District (MFD) in support of the referenced documents.

1. All utility bills will be paid for out of the Public Safety Building operating account 00100010.547000. The COM Finance will in turn bill MFD monthly using the percent rates listed below:

PUD/Electrical:	33.3%
Puget Sound Energy/Gas	50%
Water, Garbage, and Sewer/City of Marysville	33.3%

2. All insurance premiums will be paid for out of the Public Safety Building operating account 00100010.546000. The COM Finance will in turn bill MFD monthly at the rate of 33.3% of the total premium.
3. Maintenance and Repairs

All maintenance and repairs performed by the COM for MFD in their 13,288 sq. ft. of occupied space will be paid for out of the Public Safety Building operating account 00100010 and charged to the appropriate BARS object code. This includes heating, cooling, and ventilation systems that support this space. The COM will in turn bill MFD 100% of the actual cost of these services and materials with no burden/markup as they occur or on a monthly basis. The Public

Works Business Office will be in charge of making a second copy of these requisitions and mailing them to COM Finance, Lisa Schultz to be processed and billed to MFD.

COM employee labor charges for maintenance and repairs will be paid for out of the Public Safety Building operating account 00100010.598100.
The COM Finance will in turn bill MFD a cost allocated rate on a yearly basis for these services.


4. Fire Alarm System

All fire alarm system maintenance and monitoring fees will be paid out of the Public Safety Building operating account 00100010 and charged to the appropriate BARS object code. The COM will in turn bill MFD 33.3% of the total cost as they occur. The Public Works Business Office will be in charge of making a second copy of these requisitions and mailing them to COM Finance, Lisa Schultz to be processed and billed to MFD.

If MFD disputes any of the billings then please contact the COM Fleet and Facilities Manager, Mike Shepard at 360-363-8106.


Mike Shepard, Fleet and Facilities Manager

2-28-08
Date


Greg Corn, Fire Chief

3-5-08
Date

Cc: Allena Olson
Denise Gritton
Mary Swenson
Paul Roberts
Sandy Langdon
Tonya Miranda

EXHIBIT B
(Legal Description)

The West 188.00 feet, as measured perpendicular to and parallel with the West line, of Lot 10 AND the West 188.00 feet, as measured perpendicular to and parallel with the West line, of the South 10 feet of Lot 11, Block 3, Edward Steele's Second Addition to Marysville, Snohomish County, Washington, according to the plat recorded in Volume 5 of plats, page 12, records of Snohomish County, Washington.

Also known as Lot 2 of Boundary Line Adjustment 99-004, recorded under recording number 199906115002.

Assessors Tax Parcel ID# 005856-003-010-00.

Commonly known as 1094 Cedar AVE, Marysville, WA 98270.