

SULTAN CITY COUNCIL AGENDA ITEM COVER SHEET

ITEM #:	Action A 3
DATE:	October 14, 2010
SUBJECT:	Sky Valley Chamber Service Agreement and Use of Facility
CONTACT PERSON:	Laura J. Koenig, Clerk/Deputy Finance Director

ISSUE:

The issue before the Council is to approve the five-year renewal of the Lease Agreement with the Sky Valley Chamber of Commerce (Chamber) to maintain the Visitor Information Center.

At the August 26, 2010 meeting, the lease agreement and other uses of the facility were discussed with a specific request to approve use of the premises by Grow Washington. The approval of the additional user is a different issue from the renewal of the lease agreement and is addressed in Action Item 4 of this agenda.

SUMMARY:

In 2001, the City applied for and received a grant to build a Visitor Information Center (VIC) and Transportation Museum through the Washington State Transportation Enhancement program. The original plan was to build the VIC in Highway Park and it incorporated the waterfall and a gazebo. The plan was changed to purchase the current building and do improvements. The application for the grant included a community service element which included the installation and donation of the waterfall and gazebo by volunteers and the staffing of the VIC by Sky Valley Chamber. Staff is researching the terms of the grant to determine the responsibility the City has to maintain and operate the VIC. Donna Murphy, Grants Coordinator, managed the grant and was unavailable to provide information for this report. Staff will have the information regarding the terms of the grant at the meeting on October 14th.

In 2004 the City and Sky Valley Chamber of Commerce entered into a Service Agreement for operations and maintenance of the Visitor Information Center and Transportation Museum. In exchange for providing staffing for the VIC, the City provided an 8 x 10 foot office space to the Chamber. Prior to the agreement, the Chamber used an office in the old City Hall building on First Street. Moving into the VIC provided a benefit to the Chamber as they were visible to the business community and a benefit to the City by providing staffing for the VIC.

The Agreement has a five-year term with an option for an additional five-year term at the request of the Chamber. The first five-year term ended in August 2009. The Chamber has indicated a desire to continue the agreement.

Section 4 of the agreement deals with the business purpose of the building and reads:

4. BUSINESS PURPOSE The premises are to be used primarily for the purpose of a Tourist Information Center and Transportation Museum and related Chamber activities. Other uses may be permitted on a space available basis and with approval by both the City and Chamber.

Section 5 of the agreement deals with the use of the building and service to be provided by the Chamber:

5. USE. The Chamber will make their services and the premises available to the public as Tourist Information Center and Transportation Museum. The Chamber will also maintain an office for Chamber business on the premises.

- a. The Chamber shall provide a part-time employee working 20-per week to coordinate the activities of the Center. In addition, the Chamber will provide additional staffing for the Center by volunteers organized and recruited by the Chamber.
- b. The Chamber will keep the Center open a minimum of 4-days per week 6-hours each day during the hour of 10:00 am to 4:00 pm.
- c. The Chamber shall be responsible for other uses of the premises. The Chamber shall be responsible for ensuring that any use of the premises is consistent with the intended purposes and uses of the premises as stated herein and that such other users as approved by the City and Chamber are properly insured.
- d. The Chamber shall submit an annual report to the City outlining the activities of the Center, including their annual operating costs.
- e. Any future construction on the site is specifically excluded from this agreement and the terms herein. The preparation of any agreement arrangements and terms for any new construction of additions will be at the sole discretion of the City.
- f. Failure to provide adequate services necessary to support the operation of the Center constitutes a default of this agreement. In such an event, the City will notify the Chamber, in writing, of such and the Chamber shall correct same within ninety (90) days of the date of the Notification. Failure to correct such condition constitutes grounds for termination of this agreement.

Section 7 of the agreement addresses the annual rental fee for use of the building by the Chamber:

7. RENTAL FEE. In consideration of and in exchange for a contribution of providing experienced and qualified part-time staff and volunteers to service the City Council's objective of promoting tourism in the City, the annual rental amount for the Chamber office shall be \$1.00 to be paid in advance for the entire initial term of this agreement.

In exchange for providing the staffing for the Visitor Information Center, the Sky Valley Chamber may use an 8 x 10 foot office space in the building for a fee of \$1 per year. The Center is required to be open 6 hours per day 4 days per week. This amounts to 24 hours per week and 1,248 hours per year. At minimum wage, the value of the staff time provided is approximately \$11,000 per year.

Section 9 of the agreement originally addressed revenues and was not clear as to how revenues would be determined. The City Attorney recommended the section be changed to provide for a sub-lease of the premises. The revised language reads:

1. **SUB-LEASE:** The Chamber may enter into a sub-lease of the premises consistent with the intended purpose.

The purpose of the Visitor Information Center is to promote and encourage economic development. To be consistent with this purpose, the sub-leasee must meet the following criteria:

- a. The sub-leasee shall be a registered 501(c) non-profit organization.
- b. The purpose of the organization shall be to promote economic development.
- c. The sub-leasee must have liability insurance meeting the requirements in Section 19 of this Agreement or insurance acceptable to the City.

The Chamber may limit the part-time office space use to a maximum of 20 hours per week to limit someone from monopolizing the opportunity and to allow others to share the space. The Chamber will review the sub-lease on an annual basis to determine if: 1) they want to continue the lease or 2) the space is needed for the Chamber and/or Visitor information Center.

The Chamber may charge a reasonable rent to offset costs. Rents collected by the Chamber from sub leases shall be shared equally with the City.

The Chamber will notify the City at least 14 business days before sub-leasing the premises. The Chamber will provide the City with a copy of the signed sub-lease along with the required insurance naming the City as an additional insured.

ALTERNATIVES:

There are two alternative for the Council to consider:

1. Approve the five-year extension of the Lease Agreement as revised. This will continue the City's partnership with the Chamber to staff the Visitor Information Center.
2. Do not approve the five-year extension of the Lease Agreement as revised and direct staff to areas of concern.

RECOMMENDATION:

Approve the five-year renewal of the Service Agreement with the Sky Valley Chamber of Commerce to maintain the Visitor Information.

Attachments: A. Lease Agreement with Sky Valley Chamber

~~AGREEMENT FOR SERVICES~~
LEASE AGREEMENT

**City of Sultan
And
SKY VALLEY CHAMBER OF COMMERCE**

The parties hereto are the CITY OF SULTAN a municipal corporation of the State of Washington ("City") and the Sky Valley Chamber of Commerce, a non-profit Washington corporation (Chamber).

RECITALS

WHEREAS, the City of Sultan has ~~acquired~~ a building located at 320 Main Street, Sultan, for use as a Tourist Information Center and Transportation Museum; and

WHEREAS, RCW 35.21.700 provides that the City has the "power to expend monies and conduct promotion or resources and facilities in the City or town, or general area, by advertising, publicizing, attracting visitors and encouraging tourist expansion."; and

WHEREAS, The City Council desires to promote tourism in the City as permitted by the above reference statute; and

WHEREAS, The Sky Valley Chamber of Commerce supports the City's efforts to promote tourism in the City and desires to assist the City in this effort; and

WHEREAS, the City Council and the Sky Valley Chamber of Commerce, with its experienced and qualified part-time staff and volunteers can service the City Council's objective of promoting tourism in the City of Sultan; and

WHEREAS, the City Council believes contracting with the Chamber for these services will be less expensive than hiring City personnel to perform the functions to be performed by the Chamber as set forth in this Agreement.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF the mutual covenants hereinafter contained, the parties agree as follows:

COVENANTS

2. **AGREEMENT AND DESCRIPTION.** Upon the terms and conditions hereinafter set forth, the City does hereby provide to the Chamber for the operation of a Tourist Information Center and Transportation Museum and the Chamber does hereby accept from the City those certain premises situated at 320 Main Street in the City of Sultan, County of Snohomish,

State of Washington, ~~according to the map thereof filed with the City Clerk and being described in Attachment A,~~ hereinafter the above described property is called "premises".

3. **BUILDING CONSTRUCTION ON PREMISES.** The premise is located at 320 Main Street, Sultan, Washington. A structure called "The Sky Valley Tourist Information Center and Transportation Museum" is located on the premises. The Chamber shall not commence any construction on the premises without written consent of the City.
4. **OCCUPANCY.** The Chamber shall not occupy or use any part of the building until a certificate of occupancy thereof shall have been issued by the City's Building Official.
5. **BUSINESS PURPOSE.** The premises are to be used primarily for the purpose of a Tourist Information Center and Transportation Museum and related Chamber Activities. Other uses may be permitted on a space available basis and with approval by both the City and Chamber.
6. **USE.** The Chamber will make their services and the premises available to the public as Tourist Information Center and Transportation Museum. The Chamber will also maintain an office for Chamber business on the premises.
 - a. The Chamber shall provide a part-time employee working 20-per week to coordinate the activities of the Center. In addition, the Chamber will provide additional staffing for the Center by volunteers organized and recruited by the Chamber.
 - b. The Chamber will keep the Center open a minimum of 4-days per week 6-hours each day during the hour of 10:00 am to 4:00 pm.
 - c. The Chamber shall be responsible for other uses of the premises. The Chamber shall be responsible for ensuring that any use of the premises is consistent with the intended purposes and uses of the premises as stated herein and that such other users as approved by the City and Chamber are properly insured.
 - d. The Chamber shall submit an annual report to the City outlining the activities of the Center, including their annual operating costs.
 - e. Any future construction on the site is specifically excluded from this agreement and the terms herein. The preparation of any agreement arrangements and terms for any new construction of additions will be at the sole discretion of the City.
 - f. Failure to provide adequate services necessary to support the operation of the Center constitutes a default of this agreement. In such an event, the City will notify the Chamber, in writing, of such and the Chamber shall correct same within ninety (90) days of the date of the Notification. Failure to correct such condition constitutes grounds for termination of this agreement.

7. **TERM.** The term of this agreement shall be for five (5) years, commencing upon the issuance of a Certificate of Occupancy and ending at midnight five (5) years thereafter. The Chamber shall have the option of renewing this agreement for five (5) year periods; such renewal conditional on the approval of the City and based on the Chamber's full adherence to the terms of this agreement. The Chamber shall give the City not less than sixty (60) days written notice of its intent to renew said agreement.
8. **RENTAL FEE.** In consideration of and in exchange for a contribution of providing experienced and qualified part-time staff and volunteers to service the City Council's objective of promoting tourism in the City, the annual rental amount for the Chamber office shall be \$1.00 to be paid in advance for the entire initial term of this agreement.
9. **UTILITIES.** The City shall pay for utilities, such as power, heat, gas, water and sewer and garbage. The Chamber shall pay for telephone and Internet access.

~~10. **SUB-LEASE-REVENUES.** All revenues generated by additional users of the Center shall, at the end of each quarter, be dispersed to the City and Chamber on a prorata basis to offset their respective costs for the utilities, insurance and maintenance of the building and staffing of the Center. The Chamber may enter into a sub-lease of the premises consistent with the intended purpose.~~

~~The purpose of the Visitor Information Center is to promote and encourage economic development. To be consistent with this purpose, the sub-leasee must meet the following criteria:~~

- ~~a. The sub-leasee shall be a registered 501(c) non-profit organization.~~
- ~~b. The purpose of the organization shall be to promote economic development.~~
- ~~c. The sub-leasee must have liability insurance meeting the requirements in Section 19 of this Agreement or insurance acceptable to the City.~~

~~The Chamber may limit the part-time office space use to a maximum of 20 hours per week to limit someone from monopolizing the opportunity and to allow others to share the space. The Chamber will review the sub-lease on an annual basis to determine if: 1) they want to continue the lease or 2) the space is needed for the Chamber and/or Visitor information Center.~~

~~The Chamber may charge a reasonable rent to offset costs. Rents collected by the Chamber from sub-leases shall be shared equally with the City.~~

4. The Chamber will notify the City at least 14 business days before sub-leasing the premises. The Chamber will provide the City with a copy of the signed sub-lease along with the required insurance naming the City as an additional insured.

~~10~~.11. **ACCESS.** The Chamber will allow the City or the City's agents free access at all reasonable times and upon at least twenty-four (24) hours written notice to said premises during normal business hours for the purpose of inspection. Nothing herein shall be construed as in any way limiting the authority of the City's Building Official under existing law.

~~11~~.12. **CARE OF PREMISES.**

- a. The Chamber shall at all times keep the premises neat, clean and in a sanitary condition and shall at all times preserve said premises in good repair except for reasonable wear and tear and damage by fire or other unavoidable casualty.
- b. All maintenance and operating costs shall be borne by the City. This includes but is not limited to, all HVAC systems and fixtures and the replacement or major repairs to these systems unless said replacement or repairs are necessitated by Chamber neglect.
- c. The Chamber will commit or permit no waste, damage or injury to the premises. This includes but is not limited to the replacement of any glass of all broken windows and doors of the building as may become cracked or broken; keeping all drainage pipes free and open and protecting water, heating and other pipes so they will not freeze or become clogged; and the repair of all leaks and all damages caused by leaks or by reason of the Chamber's failure to protect and keep free, open and unfrozen any of the pipes and plumbing on said premises. All such maintenance and repairs shall be at the sole expense of the Chamber.
- a. The Chamber shall be responsible for replacement or keys or rekeying of _____ the premises to secure Chamber assets.
- ~~c~~.d. _____ To the extent permitted by law, the City may assist Chamber in soliciting donations and in kind services for purposes of this section.
- ~~d~~.e. _____ City agrees that the expense of maintaining the foundation, walls and roof of the premises will be the responsibility of the City.

~~12~~.13. **MAINTENANCE OF GROUNDS.** The City shall maintain the grounds and parking areas for the five parking spaces adjacent to the building designated specifically for Visitor Information parking. The Chamber shall make every effort to keep the grounds and parking areas clean and free of debris.

~~13~~.14. **STORAGE OF MATERIALS, SUPPLIES, ETC.** The Chamber covenants to not store or deposit materials, supplies or other objects on

the exterior of the premises without the permission of the City. Failure of Chamber to fully carry out this agreement shall be a breach of covenant of this agreement.

~~14-15.~~ **HAZARDOUS WASTES.** The Chamber shall not permit dangerous wastes, hazardous wastes or extremely hazardous wastes as defined by RCW 70.105.010, et seq. to exist on the premises and shall at Chamber's sole expense, undertake to comply with all rules, regulations and policies of the Washington State Department of Ecology and the United States Environmental Protection Agency. Chamber shall promptly notify the Fire District #5 of the existence of dangerous wastes, hazardous wastes or extremely hazardous wastes as required by state and federal regulations. Chamber shall comply with any provisions of the local Hazardous Waste Plan as now in existence or hereinafter enacted. Chamber shall comply with any requirements for hazardous waste disposal as may be imposed by RCW 70.105D.030 and the State Department of Ecology.

~~15-16.~~ **MOTOR VEHICLE PARKING.** The City shall provide three (3) parking spaces designated for use by visitors of the Center in the Community Center Building parking lot located at 319 Main Street.

~~16-17.~~ **VACATING THE PREMISES.** Chamber agrees that at the expiration or sooner termination of this agreement, the Chamber will quit and surrender said premises without notice and in a neat and clean condition and will deliver to the City all keys to all buildings on the premises. At the expiration or termination of this agreement, the City will work in good faith with the Chamber to secure a location at which Chamber activities can be provided.

~~17-18.~~ **INDEMNITY.** All personal property on said premises shall be at the risk of Chamber, The City shall not be liable for any damage, either to person or property, sustained by Chamber or others, caused by any defects now in said premises or hereafter occurring therein, or due to the condition of any buildings hereafter erected to any part or appurtenance thereof becoming out of repair or caused by fire or by the bursting or leaking of water, gas, sewer or steam pipes or from any act or neglect of Chambers or other occupants of said buildings or any other persons or due to the happening of any accident from any cause in or about said buildings Chamber covenants to protect, save and indemnify City, its elected and appointed officials and employees while acting within the scope of their duties as such, harmless from and against all claims, demands and causes of action of any kind or character, including the cost of defense thereof, arising in favor of Chamber employees or third parties on account of personal injuries, death or damage to property arising out of the premises occupied by Chamber or in any way resulting from the willful or negligent acts or omissions of the Chamber and/or its agents,

employees or representatives. City covenants to protect, save and indemnify Chamber its elected and appointed officials and employees while acting within the scope of their duties as such, harmless from and against all claims, demands and causes of action of any kind or character, including the cost of defense thereof, arising in favor of the City's employees or third parties on account of personal injuries, death or damage to property arising out of the City's obligations under this agreement or in any way resulting from the willful or negligent acts or omissions of the City and/or its agents, employees or representatives.

~~18-19.~~ **LIABILITY INSURANCE.** Chamber shall at all times carry and maintain liability insurance in a company or companies rated in the current edition of Best's General Ratings as a least A (Excellent) and Financial Size Category of not less than Class X or in such other company or companies not so rated which may be acceptable to the City, insuring Chamber against all claims for damages for personal injury, including death and against all claims for damage and destruction of property, which may arise by the acts or negligence of the Chamber, its agents, employees or servants or by any means of transportation whatsoever including owned, non-owned and hired automobiles, to the extent of at least Two Million Dollars (\$2,000,000.00) combined single limit. City shall be named in all such policies as an additional insured and a duplicate true certified copy of the original of such insurance policy or policies shall be furnished to the City. Each such policy shall provide that the policy may not be cancelled without the company first giving the City at least thirty (30) days written notice.

~~19-20.~~ **FIRE INSURANCE.** The City shall, at all times, carry at its own expense fire insurance, extended coverage and vandalism and malicious mischief fire insurance on the building. Contents owned by the Chamber in the building shall be covered under the Sky Valley Chamber insurance.

~~20-21.~~ **INSURANCE PROCEEDS IN EVENT OF LOSS.**

- a. Total Destruction. If the premises are totally destroyed by fire, earthquake or other casualty during the term of this agreement, and if the City desires to rebuild, the proceeds of insurance shall be used for the purpose of rebuilding such building. The balance of funds shall be payable pro rata to the City and Chamber based on the investment of the parties; the Chamber's portion subject further to being reduced proportionately to the remaining length of the agreement. If either the City or Chamber elects to rebuild as above provided, such party shall prosecute the work of such rebuilding or repairing without delay. If both the City and Chamber fail to give notice of intention to build as aforesaid, within the times specified, both the City and Chamber shall have the right to declare this

agreement terminated by written notice served upon the other party by mail as in this agreement provided.

- b. Partial Destruction. In the case of partial destruction, the proceeds shall be used for repairing the damage.
- c. Duties Regardless of Extent of Destruction. The Chamber shall give notice of loss immediately and of intention to rebuild within sixty (60) days of loss. Prior to termination of this agreement whether by expiration of the term or by notice as in this paragraph, rent for the premises shall not abate as between the City and Chamber in the event of loss or destruction of any buildings placed on the premises.

21-22. **LIENS AND INSOLVENCY**. Chamber shall keep the premises and the property in which the premises are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by Chamber, except for financing instruments obtained with the written consent of the City. If the Chamber becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee or other liquidating officer is appointed for the business of the Chamber, the City may cancel this agreement at City's option, provided at least ninety (90) days prior notice is given to Chamber.

22-23. **ASSIGNMENT AND SUBLETTING**. This agreement may not be assigned or sublet because the agreement calls for Chamber to rent the premises at less than fair market value. Notwithstanding the above, this agreement may be assigned to an assignee such as a bank for security for money loaned or advanced to the Chamber for construction on the premises or other business purposes of the Chamber. No such assignment for security purposes shall have priority over the interest of the City.

23-24. **NOTICE**. All notices and consents hereunder shall be given in writing, delivered in person or mailed by certified mail, postage prepaid, to the receiving party at its address below, or to such other address as the receiving party may notify the sender beforehand referring to this agreement:

~~Carolyn Eslick, President~~
Sky Valley Chamber of Commerce
PO Box 46
Sultan WA 98294

City of Sultan
319 Main Street #200
PO Box 1199
Sultan WA 98294

24. **GOVERNMENTAL FEES.** Except for those which may be approved by Resolution of the City Council of the City of Sultan, all fees due under applicable law to the City, County or State on account of any inspection made on premises by any officer thereof shall be paid by Chamber.
25. **SIGNS.** All signs and symbols placed in the windows or doors or elsewhere about the premises or upon the exterior part of the building, shall be subject to the approval of the City or City's agents. Any signs so placed on the premises shall be so placed upon the understanding and agreement that Chamber will remove same at the termination of the tenancy herein created and repair any damage or injury to the premises caused thereby and if not so removed by Chamber, then the City may have the same removed at Chamber's expense. Chamber shall in respect to signs conform to all requests of the City of Sultan Sign Code and Building Code and pay applicable fees.
26. **ALTERATIONS.** The Chamber shall not make any material alterations, additions or improvements to the agreement premises without written consent of the City and all alterations, additions and improvements which shall be made, shall be at the sole cost and expense of the Chamber and shall become the property of the City except those not attached to the building and shall remain in and be surrendered with the premises as part thereof at the termination of this agreement, without disturbance, molestation or injury. The term "material alterations additions or improvements" shall include but not be limited to any structural modification of the building or its components. If the Chamber shall perform work with the consent of the City, as aforesaid, Chamber agrees to comply with all laws ordinances, rules and regulations of the pertinent and authorized public authorities. The Chamber further agrees to save the City free and harmless from damage, loss or expense arising out of said work. Heating systems, plumbing systems (including hot water tanks) and all lighting and electrical systems and parts thereof shall be considered fixtures and become part of the real estate upon being installed in any building.
27. **DEFAULT AND RE-ENTRY.** If any rents above reserved r any part thereof, shall be and remain unpaid when the same shall become due or if the Chamber shall violate or default in any of the covenants and agreements therein contained, then the City may cancel this agreement upon giving the written notice required by law and re-enter said premises but notwithstanding such re-entry by the City, the liability of the Chamber for the rent provided for herein shall not be extinguished for the balance of the term of this agreement and the Chamber covenants and agrees to make good to the City any deficiency arising from a re-entry and re-letting of the premises at a lesser rental than herein agreed to. The Chamber shall pay such deficiency each month as

the amount thereof is ascertained by the City. Notwithstanding anything contained herein to the contrary, City shall provide Chamber with written notice of default and shall allow the Chamber a sixty (60) day period to cure (or, in case of impracticability, commence to cure) such default

28. **COSTS AND ATTORNEY'S FEES.** If by reason of any default on the part of either party, litigation is commenced to enforce any provision of this agreement or to recover for breach of any provision of this agreement, the prevailing party shall be entitled to recover from the other party reasonable attorney's fees in such amount as is fixed by the court and all costs and expenses incurred by the reason of the breach or default by the other under this agreement.
29. **NON-WAIVER OF BREACH.** The failure of either party to insist upon strict performance of any of the covenants and agreements of this agreement 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 strict performance or of the exercise of such option or any other covenants or agreements but the same shall be and remain in full force and effect.
30. **REMOVAL OF PROPERTY.** In the event of default and failure to cure or taking possession of the premises as aforesaid, the City shall have the right but not the obligation to remove from the premises all personal property located therein or thereon and may store the same in any place selected by City, including but not limited to a public warehouse at the expense and risk of the owners thereof with the right to sell such stored property with notice to the Chamber after it has been stored for a period of at least sixty (60) days, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from Chamber to City under any of the terms hereof and the balance, if any, to be paid to Chamber.
31. **HEIRS AND SUCCESSORS.** Subject to the provisions hereof pertaining to assignment and subletting, the covenants and agreements of this agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of any of all of the parties hereto.
32. **HOLD OVER.** If the Chamber shall, with the written consent of City, hold over after the expiration of the term of this agreement, such tenancy shall be determined as provided by the laws of the State of Washington. During such tenancy Chamber agrees to pay City the same rate of rental as set forth herein, unless a different rate is agreed upon and to be bound by all

of the terms, covenants and conditions as herein specified, so far as applicable.

33. **VENUE.** The venue of any suite which may be brought by either party under the terms of this agreement or growing out of the tenancy under this agreement shall at the option of the City be in court or courts in Snohomish County, Washington.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on this

_____ day of _____, _____.

CITY OF SULTAN

**SKY VALLEY CHAMBER OF
COMMERCE**

Carolyn Eslick, Mayor

Debbie Copple, President

Attest:

Laura Koenig, CITY CLERK

Approved as to form:

Margaret King, City Attorney