

SULTAN CITY COUNCIL AGENDA ITEM COVER SHEET

ITEM #: Action A 3

DATE: December 2, 2010

SUBJECT: Sky Valley Chamber Lease Agreement and Agreement for Services

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the city council is to authorize the Mayor to sign a 5-year lease agreement and agreement for services with the Sky Valley Chamber of Commerce for use of office space at the Visitor Information Center located at 320 Main Street.

In exchange for the use of office space, the Sky Valley Chamber will provide staffing for the Visitor Information Center and promote Sultan as a tourist destination.

STAFF RECOMMENDATION:

Authorize the Mayor to sign a 5-year lease agreement and agreement for services with the Sky Valley Chamber of Commerce for use of office space at the Visitor Information Center located at 320 Main Street.

SUMMARY:

In 2004 the City and Sky Valley Chamber of Commerce (chamber) entered into a Service Agreement for operations and maintenance of the Visitor Information Center and Transportation Museum. The Agreement had 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 received a request from Grow Washington for permission to set up a desk and small office area for the purpose of business promotion and economic development. Grow Washington is a non-profit organization started by Mayor Eslick to promote small business development.

The original lease agreement between the city and the chamber allowed the chamber to sub-lease the premises to other organizations but lacked criteria for

reviewing and approving requests. This prompted both the city and the chamber to reevaluate the lease agreement.

The city council discussed the lease agreement and other uses of the facility at the August 26, 2010 meeting with a specific request to approve use of the premises by Grow Washington. The approval of the additional user was a separate issue from the renewal of the lease agreement. The Council approved the use of the facility by Grow Washington until the lease with the Chamber was revised and approved.

Prior to the council meeting on October 14, 2010, the city attorney determined the Mayor's involvement with Grow Washington created a conflict of interest. The action items scheduled to approve the chamber lease and sub-lease with Grow Washington were removed from the agenda. Grow Washington has since relocated to the City of Snohomish. The Mayor continues to maintain a desk at the Visitor Information Center. This adds a city presence in the building and allows the Mayor to be more accessible to residents and business owners.

The city council further discussed the lease and service agreement with the chamber on October 28, 2010. The city council expressed concern with the use and required services; term; criteria for subleasing the premises; recordkeeping and reporting; and insurance requirements for the chamber and third party users of the lease.

The city council directed a sub-committee of the city council to meet with the city attorney and chamber representatives to review the lease agreement and make recommended changes. The subcommittee included Mayor Eslick, Councilmember Blair, City Attorney Margaret King and Chamber Director, Debbie Cople. Attachment A is the result of the subcommittee's efforts.

DISCUSSION:

The proposed agreement provides for the following terms:

Sections 3 and 4 of the agreement describe the business purpose of the building and required services provided by the chamber:

3. Business Purpose. There are no proposed changes to the 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."

4. Use and Required Services. The proposed agreement adds specific details regarding the chamber's ability to make the premises available to other users:

"The chamber may make portions of the premises available at reasonable cost for commercial businesses, and at no cost to non-profit and community organizations, during normal business hours. Additionally, the chamber may rent out additional space during non-tourism center/museum hours. The chamber shall retain 50% of the rental amount and shall provide the other 50% to the city."

The subcommittee felt that equally sharing any revenues compensated the city for the utility costs and the chambers costs for staffing the Visitor Information Center.

Section 4 (e) Reporting. The chamber is required to submit an annual report to the city by October 1st of each year outlining the activities of the center, including the chamber's annual operating costs.

Section 5 Term. The term of the agreement is for 5 years. The chamber shall have the option of renewing the agreement for additional 5-year periods on the approval of the city. Under Section 31, either party may terminate the agreement with 90-days notice to the other party.

Section 6 Rental Fee. The annual rental fee of \$1 is unchanged. The section clarifies the chamber is to provide in-kind services as set forth in paragraph (section) 4 in order to meet the city's objective of promoting tourism and economic development in the city.

6. RENTAL FEE. In consideration of and in exchange for the right to lease the premises, the chamber shall provide in-kind services set out in paragraph 4... to meet the city council's objectives of promoting tourism and economic development...The additional annual rental amount for the chamber office shall be \$1.00 to be paid in advance for the entire initial term of the 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 – paid in advance. 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 8 Additional Users and Rentals and Section 9 Purpose of Center. The initial agreement signed will allowed other uses of the premises. The agreement

did not provide criteria and/or priority for allowing space to be occupied or rented. Sections 8 and 9 spell-out how requests for space will be processed.

The Chamber may rent-out portions of the premises consistent with the intended purpose (Sections 3 and 4). To be consistent with this purpose, the chamber will consider criteria when considering allowing space to be occupied or rented including:

- First priority is to non-profit organization. There may be no charge or a de-minimis charge.
- 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.
- All part-time office space users must indemnify the city and meet liability insurance requirements as set forth in the agreement or as determined by the city's insurance carrier.
- The chamber will notify the city at least 14 business days before renting office space to another user and provide the city with a copy of the rental or use agreement along with proof of indemnification.
- The city has 7-days to determine if the renter or user meets the criteria and notify the chamber of the city's concerns. If the city "misses" the 7-day notice period, there is an additional opportunity to object. The chamber has 30 days to correct any violations of the terms of the agreement

Sections 19 and 20 Indemnification and Insurance. The city and the chamber agree to jointly indemnify each organization. All part-time office space users must also agree to indemnify the city.

The chamber is required to carry \$1,000,000 in general liability insurance per occurrence. The city shall be named as an additional insured on all policies. The chamber shall require all third party renters to execute a separate Facility Lease and Indemnification Agreement on a form provided by the city.

The city shall carry fire and additional insurance on the building. All contents of the building owned by the chamber shall be covered by the chamber.

ANALYSIS:

The city and chamber have had a successful partnership operating the Visitor Information Center together since 2004. The chamber provides staffing to greet visitors to Sultan and enhances the city's attractiveness for economic development. The proposed changes to the lease agreement bring additional clarity to the relationship.

Clarification of the process to allow third-party users to occupy the building further improves the facility's use as a city resource.

ALTERNATIVES:

There are two alternative for the Council to consider:

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

RECOMMENDATION:

Authorize the Mayor to sign a 5-year lease agreement and agreement for services with the Sky Valley Chamber of Commerce for use of office space at the Visitor Information Center located at 320 Main Street.

ATTACHMENTS

- A. Lease Agreement with Sky Valley Chamber

**LEASE AGREEMENT AND AGREEMENT FOR SERVICES
BETWEEN CITY OF SULTAN AND
SKY VALLEY CHAMBER OF COMMERCE**

The parties to this Agreement 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 is the owner of a building located at 320 Main Street, Sultan, for use as a Tourist Information Center (“Center”) and Transportation Museum (together referred to as “Premises”); 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, RCW 35.21.703 provides that it is a public purpose for the City “to engage in economic development programs” and that the City may “contract with nonprofit corporations in furtherance of this and other acts relating to economic development”; and

WHEREAS, the City Council desires to promote tourism in the City as permitted by the above referenced statutes; and

WHEREAS, the Sky Valley Chamber of Commerce supports the City’s efforts to promote tourism in the City and engage in economic development programs, and desires to assist the City in these efforts; 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 and economic development 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

1. **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, hereinafter referred to as "Premises".

2. **BUILDING CONSTRUCTION ON PREMISES.** A structure called "The Sky Valley Tourist Information Center and Transportation Museum" is currently located on the above referenced Premises. The Chamber shall not commence any construction on the Premises without written consent of the City.
3. **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 as provided for in this Agreement.
4. **USE AND REQUIRED SERVICES.** The Chamber agrees to make their services and the Premises available to the public as a Tourist Information Center and Transportation Museum. The Chamber will also maintain an office for Chamber business on the Premises and shall provide the following services:
 - a. At a minimum, the Chamber shall provide a part-time employee working 20 hours 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 and shall provide all necessary supplies and equipment for promoting Sultan as a destination for local, state, national and international visitors and events.
 - b. The Chamber will keep the Center open a minimum of four (4) days per week, six (6) hours each day during the hours of 10:00 am to 4:00 pm. During such times, it shall handle all tourist inquiries and generally promote the attraction of visitors to the community.
 - c. The Chamber may make portions of the Premises available at reasonable cost for commercial businesses, and at no cost to non-profit and community organizations, during the normal operating hours of the Center unless there is a conflict with the building's tourism-related activities. Additionally, the Chamber may rent out additional space during non-Tourism Center/Museum hours. The Chamber shall retain fifty (50) percent of the rental amount and shall provide the other fifty (50) percent to the City. The Chamber may charge a refundable damage deposit to all parties using the Premises.
 - d. The Chamber shall be responsible for all 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 are properly insured.

- e. The Chamber shall submit an annual report to the City by October 1st of each year outlining the activities of the Center, including their annual operating costs.
 - f. Failure to provide adequate services necessary to support the operation of the Center constitutes a default of this Agreement.
5. **TERM.** The term of this Agreement shall be for five (5) years, commencing upon execution of this Agreement and ending at midnight five (5) years thereafter. The Chamber shall have the option of renewing this Agreement for additional 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 ninety (90) days written notice of its intent to renew said Agreement.
6. **RENTAL FEE.** In consideration of and in exchange for the right to lease the Premises, the Chamber shall provide the in-kind services set out in Paragraph 4 of this Agreement in order to meet the City Council's objective of promoting tourism and economic development in the City. The additional annual rental amount for the Chamber office shall be One Dollar (\$1.00) to be paid in advance for the entire initial term of this Agreement.
7. **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.
8. **ADDITIONAL USERS AND RENTALS.** The Chamber may rent out portions of the Premises in accordance with Paragraph 9 when space is not necessary to meet the purposes and requirements set out in Paragraph 4 of this Agreement and if the use of the Premises would be consistent with the intended purpose of this Agreement.
9. **PURPOSE OF CENTER.** The purpose of the Tourist Information Center is to promote and encourage economic development and tourism. To be consistent with this purpose, the following criteria and priority shall be used when the Chamber considers allowing space to be occupied or rented as provided for in Paragraph 8:
 - a. First priority is for non-profit organizations.
 - b. Use of office space for non-profit organizations only.
 - c. Use for office space shall only be a maximum of twenty (20) hours per week, in order to allow others to share the space.
 - d. There may be no charge or a de-minimis charge for the use by non-profit organizations.
 - e. Office space for each entity is limited to one (1) year with an annual renewal process to allow others the opportunities to use the space.

- f. All part-time office space users must indemnify the City of Sultan and if applicable, meet the insurance requirements as set forth in this Agreement or as determined by the City's insurance carrier.
- g. The Chamber shall provide information to the City regarding use of such office space, and shall also notify the City at least fourteen (14) days in advance of rental of the facility to a third party and provide the City with a copy of the rental or use agreement along with the required proof of indemnification and insurance before allowing such entity to rent the Premises. The City may agree to a shorter notice requirement based on special circumstances.
- h. If the City determines the user or renter does not meet the criteria or intended use of the Premises it shall so notify the Chamber in writing within seven (7) days of receiving notice from the Chamber of the intended rental or use. Upon receiving such notice, the Chamber must address the City's objections before moving forward with the occupancy. Should the Chamber be unable to adequately address the City's objections, the Premises shall not be occupied by that entity.
- i. Notwithstanding the foregoing, if the City does not object within the seven (7) day time period, but subsequently determines that the Premises are being rented in violation of the purposes of the Center, the City shall notify the Chamber and the Chamber shall have thirty (30) days to correct the violation.
- j. The Chamber may charge a reasonable rent to commercial users when not in conflict with the purposes of the Center or with the use priorities set out above. Rents collected by the Chamber shall be shared with the City as provided in paragraph 4(c) and be remitted annually to the City.
- k. Other than the uses defined above, no other users may occupy the building without express written permission from the City Council.

10. 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 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. RECORD KEEPING AND REPORTING.

- a. Maintenance of Accounts. The Chamber shall maintain accounts and records, including personnel, property, financial and programmatic records which sufficiently and properly reflect all direct and indirect costs of any nature expended for the activities described herein and claimed as reimbursement along with any other such records as may be deemed necessary to the City to ensure proper accounting for all funds contributed by the City for the performance of this Agreement and compliance with this Agreement. These records shall be maintained for a period of seven (7) years after termination hereof unless permission to destroy them is granted by the City.

- b. Audits and Inspections. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review or audit during the performance of this Contract by the City. The City shall have the right to an annual audit of the Chamber's financial statements and conditions.

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.
- d. The Chamber shall be responsible for replacement of keys or rekeying of the Premises to secure Chamber assets. The Chamber shall provide notice to the City prior to rekeying, and shall provide new keys to the City within twenty-four (24) hours.
- e. The City agrees that the expense of maintaining the foundation, walls and roof of the Premises will be the responsibility of the City.

13. MAINTENANCE OF GROUNDS. The City shall maintain the grounds and parking areas for the five (5) 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.

14. 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.

15. DISCRIMINATION PROHIBITED. The Chamber shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Chamber to be provided under this Agreement on the basis of

race, color, religion, creed, sex, age, national origin, marital status, sexual orientation or presence of any sensory, mental or physical handicap.

16. **STORAGE OF MATERIALS, SUPPLIES, ETC.** The Chamber covenants not to store or deposit materials, supplies or other objects on the exterior of the Premises without the permission of the City. Failure of the Chamber to fully carry out this Agreement shall be a breach of covenant of this Agreement.
17. **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 the 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. The Chamber shall promptly notify Fire District #5 of the existence of dangerous wastes, hazardous wastes or extremely hazardous wastes as required by state and federal regulations. The Chamber shall comply with any provisions of the local Hazardous Waste Plan as now in existence or hereinafter enacted. The 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.
18. **VACATING THE PREMISES.** The 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.
19. **INDEMNITY.** All personal property on said Premises shall be at the risk of the Chamber. The City shall not be liable for any damage, either to person or property, sustained by the 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 the Chamber 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. The Chamber covenants to defend, protect, save, indemnify and hold the City, its elected and appointed officials and employees, agents and volunteers harmless from and against all claims, injuries, damages, losses, demands or causes of action of any kind or character, including the cost of defense thereof, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Chamber and the City, its officers, officials, employees, agents and

volunteers, the Chamber's liability hereunder shall be only to the extent of the Chamber's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Chamber's waiver of immunity under industrial insurance, Title 51 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver. The Chamber's waiver of immunity under the provisions of this section does not include, or extend to, any claims by the Chamber's employees directly against the Chamber. The provisions of this section shall survive the expiration or termination of this Agreement.

20. **INSURANCE.** The Chamber shall procure and maintain in force, without cost or expense to the City, on or before the commencement date of this Agreement and throughout the Agreement term or as long as the Chamber remains in possession of the Premises, a broad form comprehensive general liability policy of insurance covering bodily injury and property damage, with respect to the use and occupancy of the Premises with liability limits of not less than One Million Dollars (\$1,000,000) per occurrence. The City shall be named as additional insured on all such policies, which policies shall in addition provide that they may not be cancelled or modified for any reason without fifteen (15) days prior written notice to the City. The Chamber shall provide the City with a certificate or certificates of such insurance within (10) days of the execution of this Agreement.

- a. Said liability insurance shall be from a company or companies rated in the current edition of Best's General Ratings as at 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 the 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 One Million Dollars (\$1,000,000.00) combined single limit. The Chamber shall require all users or renters of the Premises to demonstrate that it has the same coverage and requirements as set forth above or as required by this Agreement.
- b. The Chamber shall require all third party renters under paragraph 9(j) to execute a separate Facility Lease and Indemnification Agreement on a form provided by the City.

21. **FIRE AND ADDITIONAL 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. All of the contents owned

by the Chamber in the building shall be covered under the Chamber's separate insurance policy.

22. 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. If the City elects to rebuild as above provided, the City shall prosecute the work of such rebuilding or repairing without delay. If the City fails to give notice of intention to build within ninety (90) days, both the City and Chamber shall have the right to declare this Agreement terminated.
- 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 any loss immediately and of intention to repair or rebuild within sixty (60) days of loss.
- d. Nothing in this section shall establish liability for the underlying loss.

23. LEASEHOLD EXCISE TAXES. In the event this Agreement is construed either at present or at some time in the future as a lease subject to the leasehold tax imposed by Chapter 82.29A RCW, the Chamber agrees to pay said taxes to the Washington State Department of Revenue in accordance with applicable laws.

24. INDEPENDENT CONTRACTOR. The parties intend that an independent contractor relationship will be created by this Agreement. No agent, employee, representative or sub-consultant of the Chamber shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Chamber is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the insurance and unemployment insurance is available from the City to the employees, agents, representative, or sub-consultants of the Chamber. The Chamber will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement.

25. LEGAL RELATIONSHIP. With respect to the occupation of the Premises, the parties of this Agreement execute the same solely as a Lessee and a Lessor. No partnership, joint venture or joint undertaking shall be construed from these presents, and except as herein specifically provided, neither party shall have the right to make any representations for, act on behalf of, or be liable for the debts of the other. All terms, covenants and conditions to be observed and performed by either of the parties hereto shall be joint and several if entered into by more than one person.

26. **ASSIGNMENT AND SUBLETTING.** Any assignment of this Agreement by the Chamber without the written consent of the City shall be void. If the City shall give its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the City's written consent.

27. **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:

Sky Valley Chamber of Commerce
PO Box 46
Sultan WA 98294

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

28. **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 the Premises by any officer thereof shall be paid by the Chamber.

29. **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 the Chamber shall maintain the signs and 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 the Chamber, then the City may have the same removed at the Chamber's expense. The Chamber shall in respect to signs conform to all requests of the City of Sultan Sign Code and Building Code and pay applicable fees.

30. **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, the 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.

31. **TERMINATION.** Either party may terminate this Agreement upon ninety (90) days written notice to the other party. Upon the termination of this Agreement, the Chamber agrees to surrender the Premises to the City in as good a condition as they are now in, reasonable wear and tear and damages by the elements excepted.
32. **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 reason of the breach or default by the other under this Agreement.
33. **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.
34. **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 the 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 the Chamber to the City under any of the terms hereof and the balance, if any, to be paid to the Chamber.
35. **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.

36. HOLD OVER. If the Chamber shall, with the written consent of the 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 the Chamber agrees to pay the City the same rate of rental or services 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.

37. VENUE. The venue of any suit which may be brought by either party under the terms of this Agreement or growing out of the tenancy under this Agreement shall be in Snohomish County, Washington.

38. AGREEMENT NOT ENFORCEABLE BY THIRD PARTIES. This Agreement is neither expressly nor impliedly intended for the benefit of any third party and is neither expressly nor impliedly enforceable by any third party.

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

Jeff Cofer, President

Attest:

Laura Koenig, City Clerk

Approved as to form:

Margaret King, City Attorney