

**FACILITY USE AGREEMENT BETWEEN THE CITY OF PUYALLUP
AND THE PUYALLUP MAIN STREET ASSOCIATION**

This Facility Use Agreement (“Agreement”) is made and entered into this 4th day of December 2006 by and between the City of Puyallup (“City”) and the Puyallup Main Street Association (“PMSA”), a Washington nonprofit corporation.

WHEREAS, the City is the owner of the Pioneer Park Pavilion, located at 330 S. Meridian, as well as the adjoining Pioneer Park property; and

WHEREAS, it is in the City’s and the public’s interest to allow PMSA to use the Pioneer Park Pavilion and Pioneer Park properties for operation of the popular farmers’ market subject to the terms specified within this Agreement;

NOW THEREFORE, in consideration of the promises and commitments made herein, the sufficiency of which is hereby acknowledged, it is agreed as follows:

1. **Premises.** The City hereby agrees to allow PMSA to use the enclosed Public Market area, referenced as the “Pavilion”, certain portions of Pioneer Park, and the area referenced as the “Village Green”, which are graphically depicted on Exhibit “A”, a copy of which is attached and incorporated by this reference, for the sole purpose of operating a farmers’ market upon the following terms and conditions.
2. **Term.** For planning purposes, this Agreement shall be deemed in full force and effect as of the date of execution. The use permitted under this Agreement shall be on the dates and times specified herein. This Agreement shall expire no later than December 1, 2007, unless extended or modified in a subsequent written Agreement between the parties.
3. **Use.** PMSA shall use said Premises for the sole purpose of operating a farmers market. All other uses are expressly prohibited without the prior written consent of the Parks and Recreation Director. Additional compensation at fair market rates shall be required for authorization of any extended or additional uses of the Premises.
4. **Improvements and Alterations.**
 - a) PMSA shall make no alterations or improvements to or upon the Premises, or install any fixtures (other than trade fixtures which can be removed without injury to the Premises) without first obtaining written approval from the Parks and Recreation Director.
 - b) Unless otherwise stipulated, all improvements or alterations erected or made on the Premises shall, upon expiration or earlier termination of this Agreement, belong to the City without compensation to the PMSA; however, the City shall have the option, to be exercised on expiration or earlier termination of the Agreement, to require the PMSA, at PMSA’s expense, to remove any or all such improvements or alterations.
5. **Dates and Hours of Operation.**
 - a) **Pavilion.**
 - i. The PMSA shall have use of the Pavilion beginning May 5, 2007, and continuing through October 27, 2007. Such use shall be between the hours of 9:00 am and 2:00 pm on Saturdays.

ii. The PMSA shall have use of the Pavilion beginning May 6, 2007, and continuing through August 26, 2007. Such use shall be between 10:00 am and 2:00 pm on Sundays.

b) Village Green/Pioneer Park.

i. The PMSA shall have use of the Village Green and Pioneer Park beginning Saturday, May 5, 2007 and continuing through October 27, 2007. Such use shall be between the hours of 9:00 am and 2:00 pm on Saturdays.

ii. The PMSA shall have the use of the Village Green and Pioneer Park beginning Sunday, May 6, 2007 and continuing through August 26, 2007. Such use shall be between 10:00 am and 2:00 pm on Sundays.

c) General. The City agrees the Pavilion and the Village Green shall be available two (2) hours prior to the times established above for set-up purposes. The PMSA agrees to clean up and vacate the Pavilion no later than one (1) hour after the stated time of the market as referenced previously. The Farmers' Market days and hours of operation for 2006 attached as Exhibit B and incorporated herein by this reference.

6. Rental Fees. In executing this Agreement, the parties expressly agree and affirm that the use permitted herein is subject to fee charges. The PMSA agrees to pay the City \$20,500.00 (Twenty Thousand Five Hundred Dollars) for the use of the Pavilion and Pioneer Park, plus a \$1,500.00 refuse fee, per the schedule listed below:

May	\$4,100.00
June	\$4,100.00
July	\$4,100.00
August	\$4,100.00
September	\$2,050.00
October	\$2,050.00
Refuse Fee	\$1,500.00

The PMSA shall pay the City by the fifth working day of the month, commencing in June 2006. The PMSA agrees to pay the City the rental fee of \$20,500.00 whether the Pavilion or Pioneer Park is ultimately used or not, unless the City, at its sole discretion, waives the rental fee.

7. Duties of the PMSA.

a) The PMSA agrees to include in its vendor guidelines and market promotion that the farmers' market will adhere to the City's policy of no smoking in city parks and public facilities.

b) The PMSA agrees to give local farmers priority in taking part in the farmers' market.

c) The PMSA understands that this agreement and the terms described above solely cover the use of the Pavilion, Pioneer Park and the Village Green for the specified days for the farmers' market. Any additional uses of the Pavilion, Pioneer Park or Village Green will be subject to additional rental fees.

e) The PMSA agrees to include in its vendor guidelines and market promotion that the City has a no smoking policy in city buildings and parks.

8. Indemnification. PMSA shall defend, indemnify and hold harmless the City of Puyallup, its officials, employees and volunteers from and against any and all claims, suits, actions or liabilities for injury or death of any person, or for loss or damage to property, which arises out of the use of facility or premises or from any activity, work or thing done, permitted, or suffered by User in or about the facility or premises, except only such injury or damage as shall have been occasioned by the sole negligence of the City of Puyallup.

9. Insurance. The PMSA shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the use of the facility or premises. The PMSA shall provide a certificate of insurance evidencing:

General Liability insurance covering premises, products-completed operations and contractual liability. The City shall be named as an insured on the PMSA's *General Liability* insurance policy. The *General Liability* insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

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

The PMSA shall provide a certificate of insurance evidencing the required insurance before using the facility or premises.

Insurance is to be placed with insurer's current A.M. Best rating of not less than A:VII.

10. Assignment. This agreement may not be assigned or transferred without the written approval of the City.

11. Anti-Discrimination. In all services or activities and all hiring or employment made possible by or resulting from this Agreement, there shall be no discrimination against any employee or applicant for participation in the farmers market operation because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status, sexual orientation, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification. PMSA shall observe and fully comply with any and all applicable federal, state, or local law or regulations regarding non-discrimination. Any violation of this provision shall be considered a violation of a material provision of this Agreement and shall be grounds for cancellation, termination, or suspension, in whole or in part of the Agreement by the City, and may result in ineligibility for further City agreements. The PMSA will also comply with other anti-discrimination laws or requirements of any and all jurisdictions having authority.

12. Compliance with All Laws and Regulations. In using the Premises, PMSA will comply with all applicable laws, ordinances, and regulations from any and all authorities having jurisdiction. The PMSA specifically agrees to comply and pay all costs associated with achieving such compliance without any notice from the City, and further agrees that the City of Puyallup does not waive this section by giving notice of demand for compliance in any instance.

13. Captions. The captions in this Agreement are for convenience only and do not in any way limit or amplify particular provisions.

14. Notice. Any notice or information required or permitted to be given to the parties under this Agreement may be sent to the following addresses unless otherwise specified in a subsequent written directive:

City of Puyallup
Ralph Dannenberg, Director
Parks and Recreation Department
330 3rd St SW
Puyallup, WA 98371

Puyallup Main Street Association
Sonie Hansen, Executive Director
Puyallup Main Street Association
P.O. Box 476
Puyallup, WA 98371

15. Governing Law. This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Washington. Venue for any claims that might flow from this Agreement shall be with the Pierce County Superior Court.

16. Severability. If any provision of this Agreement or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

17. Entire Agreement. By signing below the City of Puyallup and the PMSA understand and concur to this Agreement. This Agreement is considered to be all of the covenants, promises, agreements, and conditions, oral or written, between the parties. The parties hereby agree that this document contains the entire agreement between the parties and this Agreement shall not be modified, changed, altered or amended in any way except through a written amendment signed by all of the parties hereto.

IN WITNESS WHEREOF, the City and the PMSA have executed this Agreement the date and year indicated.

CITY OF PUYALLUP

PUYALLUP MAIN STREET ASSOCIATION

Ralph W. Dannenberg
Parks and Recreation Director
Date: _____

Glen Zevenbergen
President
Date: _____

APPROVED AS TO FORM:

Gary N. McLean
City Attorney

Sonie Hansen
Executive Director
Date: _____

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EXHIBIT “B”

Farmer’s Market days and hours of operation for the 2007 Season:

Saturdays, May 5 – October 27, 9 am – 2 pm

Sundays, May 6 – August 26, 10 am – 2 pm

EXHIBIT "B"

Calendar for year 2007 (United States)

January 2007

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