

LICENSE AGREEMENT FOR USE OF CITY PROPERTY FOR OPEN AIRE MARKET

This License Agreement is made this 9 day of May, 2007, between the City of Sequim, a municipal corporation, a code city ("City"), and the Sequim Open Aire Market, a Washington corporation.

RECITALS

1. Whereas the City of Sequim has the authority to establish public markets pursuant to RCW 35.21.010, RCW 35.24.290(15) and RCW 35.24.305, and

2. The City Council for the City of Sequim has passed Resolution No. R-98-5 authorizing the execution of this Agreement to provide permission to Sequim's Open Aire Market to continue operating its farmers' market on City-managed property more particularly described below, now, therefore,

In consideration of the mutual covenants and provisions hereinafter set forth, the parties agree as follows:

AGREEMENT

1. **Grant of License; Description of Premises.** The City hereby grants to Sequim's Open Aire Market the non-exclusive privilege of using the following described real property in the City, for the uses and purposes and at such times and in such manner as hereinafter set forth:

That portion of City-managed property and/or Rights of Way as designated on the attached Exhibit B, and

Adjacent City-managed and/or private property as approved by the City and in agreement with private property owners, if applicable.

2. **Consideration.** In and for consideration of the privilege granted by this Agreement, in addition to the other terms and conditions set forth herein, Sequim's Open Aire Market shall provide management services on a continuing basis for the market, pay the costs of the insurance required under Exhibit A, remit to the City ten dollars (\$10.00) per week for the use of electrical service and other incidental expenses, and agree to maintain the landscaped area located along Cedar Street adjacent to the Open Aire Market during hours of operation.

3. **Term of License.** The term of this License, unless sooner terminated as set forth below, shall be for a period of one year with an option to renew on a yearly basis.

4. **Purpose of License.** Sequim's Open Aire Market shall only use the property for the establishment and operation of its farmers' market, between the hours of 6:00 a.m. and 9:00 p.m., on weekends and holidays, and as otherwise approved by the City.

5. **Conduct of Business.** Sequim's Open Aire Market shall conduct or cause the farmers' market to be conducted in a manner consistent with the purpose and objectives of the Sequim Open Aire Market. The business shall at all times be conducted in a proper, legal and safe manner.

6. **Compliance with Applicable Law/Necessary Permits.** At all times during the term of this Agreement, Sequim's Open Aire Market will comply with any and all applicable federal, state and local laws, rules and regulations, and shall obtain or cause to be obtained any and all state or local licenses or

permits required of or applicable to the business to be conducted upon the property. As per the Washington State Department of Revenue, vendors are responsible for reporting all sales made at the Market as sales which occurred within the City of Sequim for sales tax reporting purposes. Sales are to be recorded under Location Code No.0503 at the applicable rate.

All participating vendors who do not already have a Sequim business license must obtain a City of Sequim seasonal business license. Such license fee shall be \$10 per week up to 7 weeks or \$75 for the entire season, or as established by resolution. The Market Manager will ensure that each vendor has a valid license prior to participating at the market. The Market Manager will forward an upcoming vendor list to the city on a weekly basis. This section does not apply to farmers exempted by law from city license requirements.

7. Improvements and Alterations. Sequim's Open Aire Market shall not allow any improvements or alterations to the property whatsoever, except those specifically approved by the City in advance in writing.

8. Insurance. Throughout the term of this License Agreement and any extension or renewal hereof, Sequim's Open Aire Market shall maintain insurance as set forth in attached Exhibit B, which is by this reference incorporated herein as if set forth in full. Sequim's Open Aire Market will provide proof of such insurance coverage satisfactory to the City prior to beginning operation of the Open Aire Market for each annual season and at any time as requested by the City.

9. Indemnification and Hold Harmless. Sequim's Open Aire Market, shall indemnify and hold harmless the City, its officers, agents and employers from and against any and all liability, claim, cost, damages, or expense of whatsoever kind or nature, including attorney's fees, for any loss of or damage to property and for injuries to or deaths of persons arising or resulting directly or indirectly from the use of the premises by Sequim's Open Aire Market, or arising or resulting directly or indirectly from any business conducted thereon, or from the performance of any of its obligations under this Agreement. Sequim's Open Aire Market agrees that it has fully and carefully inspected the premises and finds them suitable for its purposes and that it will perform similar inspections prior to each use of the premises to determine for itself whether any conditions exist which might make the premises dangerous or not suitable for its purposes.

10. Nondiscrimination of Services and Employment. Sequim's Open Aire Market covenants and agrees that, in all matters pertaining to the performance of this Agreement, the Market shall at all times conduct its business in a manner which assures fair, equal and nondiscriminatory treatment of all persons with respect to race, color, national origin, religion, gender, age, marital status, or disability; including compliance with all requirements of applicable federal, state and local laws and regulations issued pursuant thereto relating to the establishment of any nondiscriminatory requirements in hiring and employment practices.

11. Safety and Accessibility. It is further understood and agreed between the parties to this Agreement that Sequim's Open Aire Market shall assure, at its own cost and expense, that the facilities licensed under this Agreement to Sequim's Open Aire Market or made available by Sequim's Open Aire Market shall be at all times during the term of this Agreement reasonably accessible to and reasonably safe for use by all persons including, but not limited to, those who are wheelchair dependent.

12. No Interest or Estate. Sequim's Open Aire Market expressly agrees that it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the premises of the City

23. Severability. If any term or provision of this Agreement is determined to be unenforceable or invalid by any Court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby but shall continue in full force and effect.

24. Modification of Agreement. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

CITY OF SEQUIM, a Washington
Municipal corporation



William B. Elliott, City Manager

SEQUIM'S OPEN AIRE MARKET, a Washington
nonprofit corporation



Tim Grady, Board President

Attest:



Karen Kuznek-Reese, City Clerk



Mark Ozias, Market Manager

Approved as to form:



Craig Ritchie, City Attorney

EXHIBIT B

INSURANCE REQUIREMENTS FOR LESSEES (NO AUTO RISKS)

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
2. Workers' Compensation insurance as required by the State of Washington (for lessees with employees).

B. MINIMUM LIMITS OF INSURANCE

Lessee shall maintain limits no less than:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial, General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Workers' Compensation: Limits as required by the State of Washington.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. OTHER INSURANCE PROVISIONS

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of premises owned, occupied or used by the Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

2. The Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Lessee's insurance and shall not contribute with it.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
4. Coverage shall state that the Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

E. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

F. VERIFICATION OF COVERAGE

Lessee shall furnish the City with certificates of insurance, original endorsements and a workers' compensation status letter effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by the City. All certificates, letters and endorsements are to be received and approved by the City before the lease commences. The City reserves the right to require complete, certified copies of all required policies, at any time.