



MONROE CITY COUNCIL

Agenda Bill No. 19-131

SUBJECT:	Resolution No. 013/2019, Sky Valley Food Bank Lease Agreement
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DATE:	DEPT:	CONTACT:	PRESENTER:	ITEM:
06/11/2019	Administration	Deborah Knight	Deborah Knight	Consent Agenda #10

Discussion: 06/11/2019
Attachments: 1. Resolution No. 013/2019
 Exhibit A: Sky Valley Food Bank Lease Agreement

REQUESTED ACTION: Move to approve Resolution No. 013/2019, authorizing the City’s execution of a lease agreement with the Sky Valley Food Bank; and expressly authorizing further minor revisions as deemed necessary or appropriate.

POLICY CONSIDERATIONS

Under RCW 35A.11.020, the City Council has the power to regulate the leasing of real property. Section 3.04.025 of the Monroe Municipal Code provides for the lease or disposition of property by resolution. The policy question for the City Council is whether to sign a new twenty-seven year lease agreement with the Sky Valley Food Bank. The current lease with the Sky Valley Food Bank executed on December 16, 2008 expires on January 1, 2024.

DESCRIPTION/BACKGROUND

The City owns the facility commonly known as the Sky Valley Food Bank located at 223 Sky River Parkway (formerly 784 Village Way). The Food Bank is proposing to remodel the existing building which is leased to the Food Bank for one dollar (\$1) per year.

The Food Bank was awarded a \$250,000 Community Development Block Grant through Snohomish County. The grant will replace the walk-in cooler, add a waiting room and have room to expand to a shopping model. Almost all the food banks in Snohomish County operate with a shopping model for their clients. Most of the other food banks also have a dry, warm waiting area for clients.

Under Section 8.2 “Alternations,” of the current lease, the Food Bank may not make any alterations, additions or improvements to the premises without the prior written consent of the City. City approval of proposed improvements to the premises as the Landlord is separate from the City Council’s approval of this proposed lease agreement.

The Sky Valley Food Bank is requesting a new twenty-five year lease for the facility. The need for the extended lease is to meet the requirements of the Community Development Block Grant. Under the grant agreement, the Food Bank is required to have a one year lease for every \$10,000 requested in funding.

The City Attorney and City’s Insurance Representative reviewed the proposed lease. Key terms of the agreement include:

Section 2.3 Parking. The Food Bank and Boys and Girls Club share parking. City staff recommend adopting a Joint Parking Agreement. A draft agreement is recommended for council approval under separate cover.

Section 3.1 Term. The recommended term is twenty-seven years. The lease would expire in 2046.

Section 3.3 Termination for Breach. The City may terminate the lease for material breach of the lease with an opportunity for the tenant to cure or correct the condition causing the breach.

Section 4 Rent. The rent is one dollar (\$1.00) per year paid within ten days of the date of execution and annually by January 1 of succeeding years through the term of the lease.

Section 8.1 Acceptance of Premises. The City has no responsibility to make any improvements or repairs to the premises including the building. The Food Bank accepts the premises "as is" and "where is".

Section 9. Maintenance of Premises. The Food Bank is responsible for keeping the premises in repair.

Section 13 Insurance. Updated insurance requirements as recommended by the City's insurance pool representative.

Section 18 Miscellaneous. Legal boilerplate provisions (Section 18.2-18.12).

FISCAL IMPACTS

The Sky Valley Food Bank would continue to pay the \$1 per year lease payment. There are no further fiscal impacts associated with approval of the lease.

TIME CONSTRAINTS

The Food Bank is requesting council approval of the lease agreement prior to accepting the Community Development Block Grant in July 2019.

ALTERNATIVES

1. Do not approve the proposed lease agreement. This alternative indicates the City Council has questions or concerns about the proposed building improvements and/or terms of the lease agreement. A decision to not approve the lease would limit the Food Bank grant to a maximum \$50,000 (5 years remaining on the lease x \$10,000/year).
2. Do not approve the proposed lease agreement and provide direction to Mayor and city staff. This alternative indicates the City Council supports the lease agreement. However, the City Council may have additional questions or want to amend the terms of the lease agreement prior to approval.

**CITY OF MONROE
RESOLUTION NO. 013/2019**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MONROE, WASHINGTON, AUTHORIZING THE CITY'S
EXECUTION OF A LEASE AGREEMENT WITH THE SKY
VALLEY FOOD BANK

WHEREAS, on December 16, 2008, the City of Monroe executed a fifteen-year ground lease with the Sky Valley Food Bank, on City-owned real property located at 223 Sky River Parkway (formally 784 Village Way), Monroe, WA 98272; and

WHEREAS, the City and the Food Bank have negotiated a new twenty-seven year lease agreement to replace the existing 2008 ground lease; and

WHEREAS, the City Council desires to formally approve and authorize the Mayor to execute said lease agreement on the City's behalf.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF MONROE AS FOLLOWS:

Section 1. Findings. The City Council makes the following findings in support of this resolution:

- A. The Sky Valley Food Bank has been distributing food to needy individuals and families for over forty years.
- B. There are at least thirteen hundred families in the Monroe community who don't know where their next meal is coming from.
- C. The Sky Valley Food Bank is a nonprofit entity providing valuable social and community resources to residents.
- D. The City is authorized by law, including without limitation Article VIII, Section 7 of the Washington Constitution, to avail the City's real property for uses providing necessary support of the poor and infirm.
- E. The City desires to replace the existing 2008 Sky Valley Food Bank ground lease with a new lease agreement for a term of twenty-five years.

Section 2. Approval of Lease Agreement; Signatory Authority. The City Council hereby approves the Sky Valley Food Bank lease agreement in substantially the form attached hereto as Exhibit A and incorporated herein by this reference as if set forth in full. The Mayor is authorized to execute said lease agreement on behalf of the City, together with any minor revisions the Mayor may deem necessary or appropriate.

Section 3. Effective Date. This resolution shall take effect immediately upon passage.

ADOPTED by the City Council of the City of Monroe, at its regular meeting thereof, and APPROVED by the Mayor this _____ day of _____, 2019.

Approved: June 11, 2019
Effective: June 11, 2019

CITY OF MONROE, WASHINGTON

(SEAL)

Geoffrey Thomas, Mayor

ATTEST:

APPROVED AS TO FORM:

Elizabeth M. Adkisson, MMC, City Clerk

J. Zachary Lell, City Attorney

EXHIBIT A

LEASE AGREEMENT BEETWEEN THE CITY OF MONROE AND THE SKY VALLEY FOOD BANK

THIS LEASE AGREEMENT ("Lease") is made this 11th day of June, 2019 between the City of Monroe, a Washington municipal corporation ("Landlord"), and Sky Valley Food Bank, a Washington non-profit corporation ("Tenant").

FOR AND IN CONSIDERATION of the terms and conditions set forth in this Lease, including without limitation the public interest, Landlord hereby rents and leases to Tenant, and Tenant hereby takes and leases from Landlord, the Leased Premises, as defined herein, upon all the following terms and conditions:

1. **AGREEMENT TO LEASE.**

Landlord desires to lease certain Premises to Tenant, as specifically described in Section 2, and Tenant desires to lease said Premises from Landlord.

2. **PREMISES.**

2.1 **Description of Leased Premises.** Landlord is the owner of the Premises physically located at 233 Sky River Parkway, (formerly 784 Village Way) Monroe, Washington, ("the Property"), identified as APN 00558300800900 and legally described in Exhibit A, attached hereto and incorporated herein by this reference as if set forth in full. Upon the Property is located a metal building occupied by the Sky Valley Food Bank ("the Building"). Collectively the Property and Building are referred to herein as "the Leased Premises." The Leased Premises is depicted in the site diagram contained in Exhibit B, attached hereto and incorporated herein by this reference as if set forth in full.

2.2 **Use of Leased Premises.** Except as otherwise expressly provided herein, Tenant shall use the Leased Premises exclusively for the purpose of operating a non-profit community food resource center serving the needs of the local population, including poor, infirm and/or otherwise needy people of the Monroe Community and the Skykomish Valley. Tenant shall not use the Leased Premises for any other purpose without Landlord's prior written consent, which may be withheld for any reason in Landlord's sole discretion.

2.3 **Services to be rendered.**

A. **Management:** The Tenant agrees to operate and manage the services provided on the Leased Premises effectively and agrees to provide adequate supervision during open hours.

- B. Hours of operation: The Tenant agrees to conduct activities on the Leased Premises to conform with the hours and days of operation identified in Exhibit C. The hours may be modified with prior notice to the City.
- C. Employees of Tenant: The Tenant will ensure that its paid and unpaid staff shall conduct themselves in a professional manner. The Tenant shall make every effort to maintain staffing adequate to administer the operations specified above and to provide adequate supervision for all activities that take place on the Premises. The Tenant will ensure that the Leased Premises are adequately staffed to provide on-site referral services to any first-time clients who come to the Premises without a referral.
- D. Continue Occupancy: The Tenant agrees to continuously and uninterrupted, during the term of the Lease, occupy and use the Leased Premises for the purposes specified above, unless the Leased Premises are untenable by reason of fire, flood, or unavoidable casualty.
- E. Inspections: City reserves the right to make inspections of the Leased Premises. Except in unusual circumstance, these inspections will be made after notification and during normal business hours.

2.4 Parking. Tenant's rights under this Lease shall include the periodic use of the parking area located upon the adjacent Landlord-owned property at 261 Sky River Parkway (previous address – 816 Village Way), Monroe.

3. LEASE TERM: TERMINATION.

3.1 Term. The term of this Lease ("Lease Term") shall commence on June 11, 2019, and shall expire automatically on June 30, 2046. Provided, that the parties may mutually agree to extend the Lease Term by executing a written amendment hereto to such effect.

3.2 Termination for Breach. Landlord may terminate this Lease in response to Tenant's material breach hereof. In such event, Landlord shall provide written notice to Tenant describing the alleged breach. Provided, that Tenant shall be afforded the opportunity to cure or otherwise correct the condition(s) causing the breach, or agreeing to a remediation schedule acceptable to Landlord, as provided by Section 14.

4. RENT.

In consideration for use of the Leased Premises hereunder, Tenant shall remit to Landlord a total payment amount of one dollar (\$1.00) per year. Such sum shall be paid within ten (10) days from the date of the execution of this Lease, and thereafter annually by January 1st of each succeeding year throughout the Lease Term. The parties mutually agree and acknowledge that Tenant's operation of the Sky Valley

Food Bank upon the Leased Premises effectuates a fundamental government purpose and public benefit such as to obviate the necessity of additional compensation.

5. PERMITTED USE.

5.1 Use. The permitted use of the Leased Premises is exclusively for the purposes described in Section 2.2 herein. Tenant shall not use nor permit or suffer the use of the Leased Premises for any other business or purpose without Landlord's consent.

5.2 Compliance with Laws. Tenant shall, at Tenant's sole cost and expense, comply fully with all local, state and federal laws, statutes, ordinances, governmental rules, regulations or requirements now in force or which may hereafter be in force with respect to Tenant's use and occupancy of the Leased Premises. Tenant is solely responsible for maintaining compliance with all applicable laws as well as any permitting conditions for any construction upon or use of the Leased Premises by Tenant.

6. UTILITIES

Tenant shall be and remain responsible for all charges for all utilities, including without limitation all telephone, internet, cable, water, gas, heat, electricity, power, and/or sewer service, charged or attributable to the Leased Premises, including the Building.

7. LICENSES AND TAXES

7.1 Business and Regulatory Licenses. Fees and Charges. Tenant shall be liable for, and shall pay before delinquency throughout the Lease Term, all applicable license fees, regulatory charges, excise fees, and occupation taxes covering Tenant's use of and business conducted on the Leased Premises.

7.2 Leasehold Excise Tax. The parties acknowledge that this Lease is exempt from leasehold excise taxes pursuant to Chapter 458-29A WAC.

7.3 Personal Property Taxes. Tenant shall pay, or cause to be paid, before delinquency, any and all applicable taxes levied or assessed during the Lease Term upon all of Tenant's leasehold improvements, equipment, furniture, fixtures, and any other personal property of Tenant located upon the Leased Premises.

8. ALTERATIONS

8.1 Acceptance of Premises. Except as otherwise expressly provided herein, Tenant acknowledges that Landlord has absolutely no responsibility to make any improvements or repairs to the Leased Premises, including the Building, at any time, including but not limited to the time of possession or any other

time during the Lease Term, even if conditions necessitating improvement or repair do not arise or become manifest until after possession. Tenant accepts the Leased Premises "AS IS" and "WHERE IS."

8.2 Alterations by Tenant. Tenant shall not make any alterations, additions or improvements in or to the Leased Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Any such alterations, additions or improvements consented to by Landlord shall be made at Tenant's sole cost and expense; provided, that Tenant shall be solely responsible for ascertaining and paying any prevailing wages applicable therefor to the extent required by Chapter 39.12 RCW. Tenant shall secure any and all governmental permits, approvals or authorizations required in connection with any such work and shall hold Landlord harmless from any and all liability, costs, damages, expenses (including attorneys' fees), and any and all liens resulting therefrom.

9. MAINTENANCE OF PREMISES

Tenant agrees to keep the Leased Premises in such repair (routine maintenance) as they are at the commencement of said lease term, reasonable wear and tear excepted, and shall maintain the same in a safe, operable and legally compliant condition. Tenant will at its sole expense promptly replace any broken or damaged property with material of equal size and quality. Tenant will not knowingly allow the Property or the Building to be damaged in any way and shall yield up the Leased Premises at the end of the above referenced term in good repair, except for reasonable wear and tear.

10. SURRENDER OF PREMISES

In the event this Lease is terminated, or in the event Tenant desires to relocate its operations to a different site, Tenant may remove the improvements installed by Tenant (excluding the Building) from the Property, restoring the Property to its original condition. Tenant may also work with Landlord to identify a new tenant acceptable to Landlord in Landlord's sole discretion. Provided, that nothing herein shall be construed as requiring Landlord to accept any new tenant or otherwise as limiting or constraining Landlord's discretion regarding the use of the Property.

11. LIENS AND ENCUMBRANCES

Tenant shall keep the Leased Premises free from any liens or encumbrances arising out of any work performed, materials furnished or obligations incurred by arising therefrom. Landlord may require, at Landlord's sole option, that Tenant provide to Landlord, at Tenant's sole cost and expense, payment and performance bonds in an amount equal to one and one-half (1 and 1/2) times the estimated cost of any improvements, additions, or alterations in the Leased Premises which the Tenant desires to make, in order to insure Landlord against any liability for the completion of such work. Nothing

in this section shall be construed as an acknowledgment or concession that the Leased Premises is subject to any lien or encumbrance.

12. ASSIGNMENT AND SUBLETTING.

Tenant shall not assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, nor sublet the whole or any part of the Leased Premises, nor shall this Lease or any interest hereunder be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise, without the prior written consent of Landlord. Any such assignment, transfer, pledge, hypothecation or encumbrance without the prior written consent of Landlord shall be void.

13. INDEMNIFICATION, INSURANCE, AND RISK OF LOSS.

13.1 Indemnification. Tenant shall protect, defend, indemnify, and hold harmless Landlord, its officers, officials and employees 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 Tenant's use or occupation of the Leased Premises, or from the conduct of Tenant's business, or from any activity, work or thing done, permitted, or suffered by Tenant in or about the Leased Premises, except only such injury or damage as shall have been occasioned by the sole negligence of Landlord. Tenant's obligations under this section expressly include without limitation responsibility for any injury or loss caused or suffered by any employee, agent or invitee of Tenant.

It is further specifically and expressly understood that the indemnification provided herein constitutes Tenant's waiver of immunity under the Industrial Insurance provisions of Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this subsection shall survive the expiration or termination of this Lease.

13.2 Insurance. The Tenant shall procure and maintain for the duration of the Lease, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Tenant's operation and use of the leased Premises.

A. No Limitation.

The Tenant's maintenance of insurance as required by the Lease shall not be construed to limit the liability of the Tenant to the coverage provided by such insurance, or otherwise limit the Landlord's recourse to any remedy available at law or in equity.

B. Minimum Scope of Insurance.

The Tenant shall obtain insurance of the types and coverage described below:

- i. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The Landlord shall be named as additional an insured on Tenant's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing at least as broad coverage.
- ii. Property insurance shall be written on a Special Form basis with Earthquake and Flood included.

C. Minimum Amounts of Insurance.

The Tenant shall maintain the following insurance limits:

- i. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- ii. Property insurance shall be written covering the full value of Tenant's property and improvements with no coinsurance provisions.

D. Other Insurance Provisions.

The Tenant's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the Landlord. Any insurance, self-insurance, or self-insured pool coverage maintained by the Landlord shall be excess of the Tenant's insurance and shall not contribute with it.

E. Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII. Membership in a self-insured risk pool will be acceptable and not require an A. M. Best Rating.

F. Verification of Coverage.

The Tenant shall furnish the Landlord with original certificates and a copy of the amendatory endorsements, including but not necessarily limited

to the additional insured endorsement, evidencing the insurance requirements of the Tenant.

G. Waiver of Subrogation.

Tenant and Landlord hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the premises or said building. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

H. Landlord's Property Insurance.

Landlord shall purchase and maintain during the term of the lease all-risk property insurance covering the Building for its full replacement value without any coinsurance provisions.

I. Notice of Cancellation.

The Tenant shall provide the Landlord with written notice of any policy cancellation within two business days of their receipt of such notice.

J. Failure to Maintain Insurance.

Failure on the part of the Tenant to maintain the insurance as required shall constitute a material breach of lease, upon which the Landlord may, after giving five business days' notice to the Tenant to correct the breach, terminate the Lease or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Landlord on demand.

K. Landlord's Full Availability of Tenant Limits.

If the Tenant maintains higher insurance limits than the minimums shown above, the Landlord shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Tenant, irrespective of whether such limits maintained by the Tenant are greater than those required by this contract or whether any certificate of insurance furnished to the Landlord evidences limits of liability lower than those maintained by the Tenant.

- 13.3 Risk of Loss. Tenant exclusively assumes all risk of loss in storing, doing any work upon, using or operating any personal property upon the Leased Premises, and Landlord shall have no responsibility whatsoever for the safety, protection, integrity or preservation thereof.

13.4 Limitation of Individual Liability. Tenant agrees that no officer, official or employee of Landlord will be personally liable for any obligation of Landlord hereunder, and that Tenant must look solely to the interest of Landlord in its corporate capacity for the enforcement of any claims arising hereunder.

14. TENANT'S DEFAULT.

14.1 The occurrence of any one or more of the following shall constitute a material default and breach of this Lease by Tenant:

A. Vacating the Premises. The vacating or abandonment of the Leased Premises by Tenant for more than fifteen (15) Days.

B. Failure to Pay Rent. The failure by Tenant to make any payment of rent or adjusted rent, or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof by Landlord to Tenant.

C. Unpermitted Use of Leased Premises. Use of the Leased Premises for any purpose not authorized by Section 2.2 herein shall be grounds for immediate default.

D. Failure to Perform. Other than as specified in Section 14.1 (B) and (C) above, the failure by Tenant to observe or perform any of the covenants or provisions of this Lease to be observed or performed by Tenant, specifically including without limitation Tenant's failure to utilize the Property for the purposes set forth in this Lease, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant, provided, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

14.2 Remedies in Default. In the event of any default or breach by Tenant under this Lease, in addition to any other remedies at law or in equity, Landlord may at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of a right or remedy which Landlord may have by reason of such default or breach:

A. Terminate Lease. Terminate Tenant's right to possession of the Leased Premises by any lawful means, in which case, this Lease shall terminate and Tenant shall immediately surrender possession of the Leased Premises to Landlord to the maximum extent permissible by law. In such event, Landlord shall be entitled to recover from Tenant: (i) all past due rents, and other charges; (ii) the expenses of removing fixtures installed by Tenant and restoring the Leased Premises to pre-possession status;

(iii) Landlord's reasonable attorneys' fees, if applicable; (iv) the worth, at the time of court award, of the amount by which the unpaid rent and other charges called for herein covering the balance of the Lease Term after the time of such award exceeds the amount of such loss for the same period that Tenant proves could have reasonably been avoided by Landlord; or,

- B. Other Remedies. Pursue any other remedy now or hereafter available to Landlord under the laws of the State of Washington. Landlord expressly reserves the right to recover from Tenant any and all actual expenses, costs and damages caused in any manner by reason of Tenant's default or breach.

Without prejudice to the forgoing, Landlord and Tenant may mutually agree upon a remediation schedule to cure any default or breach.

- 14.3 Legal Expenses. If either party is required to bring or maintain any action (including assertion of any counterclaim or cross-claim, or claim in a proceeding in bankruptcy, receivership or any other proceeding instituted by a party hereto or by others), or otherwise refers this Lease to any attorney for the enforcement of any of the covenants, terms or conditions of this Lease, the prevailing party in such action shall, in addition to all other payments required herein, receive from the other party all the costs incurred by the prevailing party, including reasonable attorneys' fees.

- 14.4 Remedies Cumulative - Waiver. Landlord's remedies hereunder are cumulative and the Landlord's exercise of any right or remedy due to a default or breach by Tenant shall not be deemed a waiver of, or to alter, affect or prejudice any right or remedy which Landlord may have under this Lease or by law. Neither the acceptance of rental payments nor any other acts or omission of Landlord at any time or times after the happening of any event authorizing the cancellation or forfeiture of this Lease shall operate a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof or to deprive Landlord of its right to cancel or forfeit this Lease, upon the written notice provided for herein, at any time that cause for cancellation or forfeiture may exist or be construed so as at any time to stop Landlord from promptly exercising any other option, right or remedy that it may have under any term or provision of this Lease, at law or in equity.

15. DEFAULT BY LANDLORD.

Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord. The notice shall specify wherein Landlord has failed to perform such obligation; provided, that if the nature of Landlord's obligation is such

that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. Tenant further agrees not to invoke any remedies until such thirty (30) days have elapsed.

16. ACCESS AND USE BY LANDLORD: AUDIT RIGHTS.

16.1 Right of Entry. Upon forty-eight (48) hours written notice to Tenant, Landlord or Landlord's employees, agents, and contractors shall have the right, but no obligation, to enter the Leased Premises at any time to examine the same and/or to make such inspections, repairs, alterations, improvements or additions as Landlord may deem necessary or desirable. If Tenant is not personally present to permit entry and an entry is necessary in Landlord's reasonable discretion, Landlord may in case of emergency forcibly enter the same, without rendering Landlord liable therefor. Nothing contained herein shall be construed to impose upon Landlord any duty of repair with respect to the Leased Premises except as otherwise specifically provided for herein.

16.2 Audit. Tenant shall keep and retain for a period of six (6) years accurate books, records and financial statements regarding Tenant's use and occupation of the Leased Premises, and shall promptly avail the same to Landlord upon request for the purpose of inspection and audit. Tenant shall fully cooperate with Landlord with respect to any such inspection and audit.

17. SURRENDER OR ABANDONMENT OF LEASED PREMISES

17.1 Surrender of Possession. Tenant shall promptly yield and deliver to Landlord possession of the Leased Premises at the expiration or prior termination of this Lease.

17.2 Abandonment. Should Tenant vacate or abandon the Leased Premises or be dispossessed by process of law or otherwise, such abandonment, vacation or dispossession shall be deemed a breach of this Lease, and, in addition to any other rights which Landlord may have, Landlord may remove any personal property belonging to Tenant which remains on the Leased Premises and store or dispose of the same to the fullest extent legally permissible, the cost of such removal, storage and/or disposal to be charged to Tenant.

18. MISCELLANEOUS.

18.1 Notices. Any notices, demands and other communications to be given or delivered under this Lease shall be in writing and shall be deemed effective: (i) when personally delivered; (ii) when received via facsimile or electronic mail where the receiving party provides confirmation of transmission; or (iii) three (3) days after being mailed by certified mail, return receipt requested. Notices, demands and communications will, unless notice is given specifying another

address, be sent to the addresses indicated below. Any party may change the address to which notices are to be sent by notifying the other party of such change.

If to Landlord:

City of Monroe
806 West Main Street
Monroe, WA 98272

If to Tenant:

Sky Valley Food Bank
P.O. Box 724
Monroe, WA 98272

- 18.2 Governing Law; Venue. This Lease shall be governed by the Laws of the State of Washington. The venue for any litigation arising out of this Lease shall be the Superior Court for Snohomish County, Washington.
- 18.3 Time. Time is of the essence with respect to this Lease and each and all of its provisions in which performance is a factor.
- 18.4 Non-Waiver. The failure of either Landlord or Tenant to insist upon strict performance of any of the covenants, promises or agreements contained in this Lease shall not be construed as a waiver thereof. Waiver of a particular breach or default shall not be deemed to be a waiver of any subsequent breach or default.
- 18.5 Severability. If any term, covenant, or condition of this Lease or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Lease shall be valid and enforced to the fullest extent permitted by law.
- 18.6 Entire Agreement. The provisions of this Lease constitute the entire agreement of the parties regarding the Leased Premises, and supersede all understandings, offers, negotiations, and other leases concerning the subject matter contained herein. There are no representations or understandings of any kind between the parties not set forth herein. Any amendment or modification of this Lease must be in writing and signed by both parties.
- 18.7 No Third-Party Beneficiary. This Lease is executed for the exclusive benefit of the signatory parties and their respective successors and assigns. Nothing herein shall be construed as creating any enforceable right, claim or cause of action in or for any third-party.
- 18.8 Regulatory Authority Preserved. Tenant acknowledges that Landlord has executed this Lease in Landlord's capacity as owner of the Property. Nothing herein shall be construed as a waiver, abridgement or limitation of the City of Monroe's regulatory authority, which the City hereby reserves in full.

- 18.9 No Employment Relationship. Nothing herein shall be construed as establishing an employment relationship between Landlord and any employee, agent or contractor of Tenant, or between Tenant and any employee, agent or contractor of Landlord.

- 18.9 Public Records Disclosure. Tenant expressly acknowledges that Landlord is an “agency” as defined by Chapter 42.17 RCW, and is fully subject to the provisions governing the disclosure of public records codified at Chapter 42.56 RCW. To the extent required or otherwise authorized by said statutes or other applicable law:
 - A. Any public records submitted to or generated by Landlord in connection with this Lease are potentially subject public to inspection and copying upon request. Tenant expressly waives any claim or cause of action against Landlord arising out of such disclosure.

 - B. Tenant shall fully cooperate with and assist Landlord with respect to any request for public records received by Landlord and related to any public records generated, produced, created and/or possessed by Tenant and related to this Lease. Upon written demand by Landlord, the Tenant shall furnish Landlord with full and complete copies of any such records within five business days. Tenant’s failure to timely provide such records upon demand shall be deemed a breach of this Lease. To the extent that Landlord incurs any monetary penalties, attorneys’ fees, and/or any other expenses as a result of such breach, Tenant shall fully indemnify and hold harmless Landlord.

 - C. For purposes of this section, the term “public records” shall have the same meaning as defined by Chapter 42.17 RCW and Chapter 42.56 RCW, as said chapters have been construed by Washington courts.

 - D. The provisions of this section shall survive the expiration or termination of this Agreement.

- 18.11 Signatory Warranty. Each signatory hereto represents and warrants that he/she is authorized to sign this Lease on behalf the party whom he/she is purporting to sign.

- 18.12 Recording. This Lease, or a Memorandum of Lease referring hereto in a form mutually acceptable to the parties, shall be recorded with the Snohomish County Auditor by Landlord.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above set forth.

LANLORD:

CITY OF MONROE

TENANT:

SKY VALLEY FOOD BANK

Geoffrey Thomas, Mayor

Name: _____
Title _____

ATTEST/AUTHENTICATED

Elizabeth Adkisson, MMC, City Clerk

APPROVED AS TO FORM

Office of the City Attorney

STATE OF WASHINGTON)
) SS
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that Geoffrey Thomas is the person who appeared before me, and said person acknowledged that s/he was authorized to execute the instrument and acknowledged it as the Mayor of **City of Monroe** to be the free and voluntary act and deed of such party for the uses and purposes mentioned in this instrument.

DATED _____, 2019

(Signature)

(Print Name)

NOTARY PUBLIC

Residing at _____

My commission expires: _____

STATE OF WASHINGTON)
) SS
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he was authorized to execute the instrument and acknowledged it as the _____ of **Sky Valley Food Bank** to be the free and voluntary act and deed of such party for the uses and purposes mentioned in this instrument.

DATED _____, 2019

(Signature)

(Print Name)

NOTARY PUBLIC

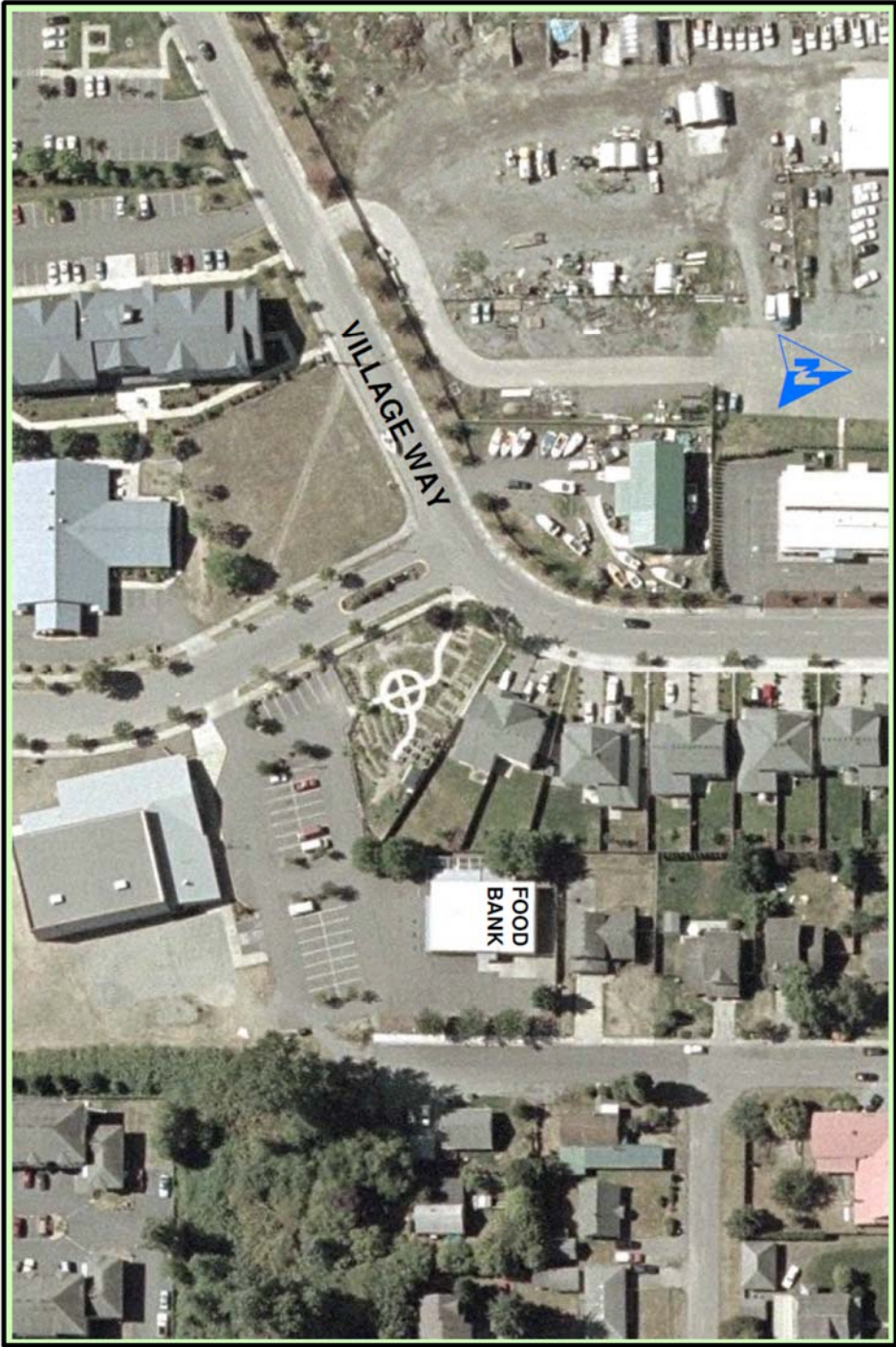
Residing at _____

My commission expires: _____

Exhibit A
Legal Description

ROBERTS BROS 1ST ADD TO MONROE BLK 008 D-00 TH PTN OF LOT 9 DAF COM SE COR OF SD LOT 9 TPB TH S88*46 31W 116.38FT TO SW COR OF SD LOT 9 TH N01*1150W 9.37FT TH N88*50 05E 116.38FT TO E LN OF SD LOT 9TH S01*12 21E 9.25FT TO POB & TGW ALL LOTS 10,11 & 12 & ALSO TGW TH PTN VAC PARK ST LY ADJ TO LOT 7 THRU 12 INCL & TGW TH PTN OF ALLEY VAC BY CITY OF MON ORD NO 934 PER BLA REC AF NO9008090343 AKAPARCEL E SD BLA

**Exhibit B
Site Diagram**



**EXHIBIT C
HOURS AND DAYS OF OPERATION**

Monday and Friday 9:00–11:30 AM
Wednesday, 4:00–7:00 PM