

LEASE/LICENSE AGREEMENT

THIS LEASE/LICENSE AGREEMENT, hereinafter referred to as "this Lease," is made as of the 29th day of June, 2016, by and between the WHATCOM TRANSPORTATION AUTHORITY ("WTA"), a Washington Public Transportation Benefit Area, and the FERNDAL FOOD BANK ("Tenant"), a Washington non-profit corporation.

WHEREAS:

- A. WTA owns that real property located at 1671 Main Street, Ferndale, Washington, which is legally described in Exhibit A attached hereto and incorporated by reference ("Property");
- B. The easterly portion the Property is a WTA park and ride facility, which includes a bus concourse and shelter substantially as shown on the maps attached hereto and incorporated by reference as Exhibit B;
- C. That area between the bus concourse and shelter and the improved parking lot on the Property is approximately 26,382 square feet of vacant area. WTA has determined that those portions of this vacant area that do not comprise pedestrian pathways between the park and ride parking spaces and the concourse of WTA's park and ride is surplus property that is not necessary for WTA's present or future use;
- D. WTA has determined that the 131 current parking spaces on the Property are more than an adequate number for park and ride purposes, and therefore would not be impacted if used by clients of Tenant;
- E. WTA has determined that there would be a public benefit to allow Tenant portions of the vacant area, especially since its intended use would occur during non-peak transit usage, and subject to the terms and conditions of this Lease;
- F. Tenant desires to lease from WTA, and WTA is desirous of leasing to Tenant, approximately 2,500 square feet of area in the vacant area, along with the right to use contiguous parking spaces as shown on Exhibit B as the "Premises"; and
- G. WTA has determined that leasing the Premises to Tenant will not interfere with the public use of the Property, nor interfere with WTA's operations.

NOW, therefore, for good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Right to Use and Occupy the Premises

For that consideration set out herein, WTA grants to Tenant the right to use and occupy the Premises. Notwithstanding the above, WTA retains the right for the general public and transit patrons to access and use existing and future improved pathways situated on the Premises.

2. Parking Spaces

In addition to the right to occupy the Premises, Tenant and its invitees may use parking spaces on the Premises, but only in association with Tenant's operations. Notwithstanding the above, if WTA at any time concludes that its operations require the availability of more than 131 parking spaces, then it may provide Tenant with notice of such need, and the creation of additional spaces shall occur under the following parameters:

a. WTA will have exclusive discretion for the design, location, and construction of additional parking spaces, unless otherwise mutually agreed by the parties. If Tenant provides such services, it shall provide WTA with a construction and performance bond guaranteeing full performance and completion of the construction of the additional parking spaces; and all plans, specifications, and exact locations shall be subject to the final determination of WTA;

b. Any additional parking spaces shall be constructed on the Property adjacent and southerly of the existing parking spaces. The additional parking spaces shall be constructed using the same design and specifications as the existing parking spaces, including lighting, drainage, curbing, fill and ballast, surfacing, and landscaping; and

c. Tenant shall pay for fifty percent (50%) of the cost of the design and construction of any additional parking spaces; but only for those spaces required by the City of Ferndale at the time the parking is constructed.

3. Interaction With WTA Service

Tenant shall take all reasonably necessary actions and precautions to avoid interfering with or interrupting WTA's operations on the Property, including, but not limited to, recognition of the following practices:

a. Tenant will not allow its invitees to congregate or block access to the concourse used by transit vehicles; and

b. Tenant's invitees will adhere to transit rules with regard to the transport of foods and goods on transit vehicles.

4. Purpose

The Premises shall only be used by Tenant as a food bank, unless otherwise specifically authorized by WTA.

5. Term of Lease and Option to Renew

Tenant's rights under the Lease shall be for a term of five (5) years ("Term"), which shall commence on JULY 1, 2016 and end on JUNE 30, 2021. Tenant's right to occupy shall automatically terminate at the end of the Term. Notwithstanding the above, Tenant is hereby granted a right to extend the Lease for one (1) additional term of five (5) years, so long as the Premises remains surplus property to WTA, and Tenant's continued use will not interfere with the public use of the Property nor interfere with WTA's operations. The extended period shall be included in the reference "Term" throughout this Lease.

6. WTA's Right to Terminate Lease Without Cause

Since the Premises is property owned by a governmental entity, WTA may terminate this Lease without cause, if WTA concludes that the Premises is no longer surplus property, or Tenant's continued use of the Premises will interfere with the public use of the Property or with WTA's operations, or WTA lacked authority or right to enter the Lease. Such termination will be subject to WTA's giving of a sixty- (60) day notice of termination.

Tenant agrees and hereby waives any claim it may have that it has any residual right, title, or interest in this Lease if terminated by WTA, and/or that it is entitled to just compensation. Such waiver is an essential consideration relied upon by WTA to enter this Lease.

7. Base Rent

As consideration for the right to use and occupy the Premises, Tenant shall pay to WTA Two Hundred and No/100 Dollars (\$200.00) on or before the first (1st) day of each month during the Term. The monthly rent shall be subject to an annual two percent (2%) adjustment during the Term and any extension.

In lieu of this payment, and as a substitute for a monetary base rent, Tenant may provide the following services during any entire month of the Term, so long as this alternative is not terminated by WTA by the giving of a thirty- (30) day notice:

a. offering and selling WTA bus passes to the general public at the Premises; and

b. minimum of three days per week, typically on food distribution days, maintaining, cleaning, and policing the Property, including in the following manner:

1. supervising and providing all cleaning of public restrooms on the Premises, basic litter control and sanitation services, and wet mopping floors;

2. removing litter from parking lot and grounds in vicinity where Food Bank clients park and congregate, and from sidewalks, shelters and concourse on the Property; and

3. notifying WTA immediately regarding property security and maintenance issues not solely the responsibility of the Food Bank.

8. Utilities

Tenant shall pay any and all utilities and other expenses associated with use of the Premises. In addition, Tenant shall pay four percent (4%) of any and all electrical and lighting costs associated with the parking lot, which shall be paid within net thirty (30) days from receipt of an invoice from WTA.

9. Deposit

Tenant shall pay to WTA Six Hundred and No/100 Dollars (\$600.00) as a damage deposit and deposit securing Tenant's obligations hereunder, including payment of base rent and/or lighting costs.

10. Restrooms

The Premises includes public restrooms which were intended to be, and have operated as, public facilities for WTA's operations. These restrooms shall remain open and available for use by WTA's patrons during the Term on a "requested use basis," until such time that WTA has constructed separate facilities, which shall occur at the

discretion of WTA. Tenant shall make such restrooms generally available to WTA's patrons during WTA's regular operational hours, subject to Tenant's reasonable rules and conditions. Tenant shall be responsible to clean these public restrooms, so long as used by WTA patrons.

11. Non-Discrimination and ADA Compliance

Tenant shall, in performance of the Lease, conduct its activities in a non-discriminatory manner and treat all persons, regardless of race, creed, color, sex, age, or presence of handicap, and shall comply with all federal and state laws, rules, or regulations concerning hiring and employment. Tenant shall comply with all requirements imposed by the Americans With Disabilities Act, and any equivalent requirements imposed by the state of Washington.

12. Maintenance of Improvements

Tenant shall maintain the Premises and improvements, at its sole cost and expense, in a good, neat, clean, safe, and sanitary condition. Upon termination of the Lease, Tenant shall return the Premises to WTA with all improvements in good condition and repair, normal wear and tear excepted.

13. Indemnification and Hold Harmless Provision and Insurance

Tenant shall hold harmless, indemnify, and defend WTA from and against any and all claims, demands, and suits arising out of Tenant's use of the Premises and any other part of the Property. Such obligation shall include the responsibility to pay for all costs and attorneys' fees associated with defense of any claim, demand, or suit. Moreover, such duty shall apply to any claim, demand, or suit brought by an employee of Tenant, and to this limited extent only, Tenant waives all exclusivity provisions under the Washington State Industrial Insurance Act. Such duties shall extend to and include any and all claims arising out of the presence of any hazardous waste or other contamination in the License Area or Common Area, including, but not limited to, any and all claims arising out of the Washington State Model Toxics Control Act or Comprehensive Environmental Response, Compensation, and Liability Act, but only to the extent that Tenant caused or contributed to the presence of the hazardous waste. These indemnity and hold harmless obligations shall survive expiration or termination of this Lease. Any counsel retained by Tenant to defend WTA shall be subject to WTA's acceptance. The obligations under this provision shall survive expiration and/or termination of this Lease.

Tenant shall carry during the Term liability insurance in the amount of at least One Million and No/100 Dollars (\$1,000,000.00) for each event, and a Two Million and No/100 Dollars (\$2,000,000.00) aggregate. Such policy shall name WTA as an

additional named insured. In addition, Tenant shall obtain and maintain during the Term a policy of standard fire insurance with broad form coverage, including coverage against glass breakage, vandalism, and malicious mischief on any improvements on the Premises.

For each such policy, the following shall apply:

a. Insurance shall be placed with a reputable insurance company or underwriter satisfactory to WTA, with the amount of deductible satisfactory to the WTA;

b. By endorsement, there shall be a cross liabilities clause and a statement that Tenant's policy is primary and not contributory with any insurance carried by WTA. Inclusion of WTA as an additional insured shall not create premium liability for WTA. Tenant shall furnish WTA with appropriate documentation in form and content satisfactory to WTA evidencing the coverages required to be kept are in full force and effect;

c. Insurance policies shall not be subject to cancellation or material change except after written notice to WTA at least thirty (30) days prior to the date of such cancellation or material change; and

d. The types of coverage and limits of coverage along with the indemnity and hold harmless obligations set out in this Lease may be re-evaluated by WTA thirty-six (36) months from the original effective date of this Lease, and re-evaluated annually thereafter.

14. Assignment

This Lease shall run with and attach to the Premises throughout the Term, and shall have full force and effect as to all assignees and devisees of WTA. Tenant may only assign the Lease subject to written consent of WTA, which WTA may exercise in its discretion. Any assignment by Tenant without express authority of WTA shall be cause for immediate termination.

15. Hazardous Waste and Approvals

Tenant shall comply with all government regulations regarding the use or presence of hazardous wastes, chemicals, sprays, or fungicides. Tenant shall obtain all necessary approvals, licenses, and permits to conduct its operation and to make any improvements to the Premises.

16. Non-Waiver of Breach

The failure of either party to insist upon strict performance of any of the provisions of this Lease 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, or any other covenants or agreements, but the same shall be and remain in full force and effect. WTA's acceptance of any rent or other consideration shall not waive any prior breach of this Lease by Tenant.

17. Costs and Attorneys' Fees

In any claim, demand, or action to interpret or enforce the terms of this Lease, then in such claim, suit, or action, the prevailing party shall be entitled, in addition to any other damages, recovery of its attorneys' fees and costs from the non-prevailing party.

18. Severability

If any part of this Lease is found to violate any law or is found to be otherwise legally defective, this Lease shall be construed and interpreted without reference to such part, but all remaining parts and sections shall remain in full force and effect.

20. Applicable Law and Choice of Forum

This Lease shall be governed by and interpreted in accordance with the laws of the state of Washington. Any and all disputes arising from this Lease shall be subject to the jurisdiction of the Superior Court of the State of Washington, Whatcom County.

21. Entire Agreement

This Lease constitutes the entire understanding of the parties hereto and supersedes any and all prior or contemporaneous representations or agreements, whether written or oral, between the parties, and cannot be changed or modified, unless in a writing signed by all the parties hereto, except as otherwise specified hereinabove.

22. Destruction or Damage to Building or Improvement

If during the Term, any building or improvement on the Premises is damaged or destroyed, or rendered inaccessible or unusable, and the damages are not covered by any applicable insurance policy, Tenant has the right to terminate the Lease subject to the providing of at least thirty (30) days' written notice of termination. Where any

damage or destruction of any building or improvement is covered by applicable insurance policy of either Tenant or WTA, or either party chooses to pay for any repair costs, then the covered insured in such case shall apply all proceeds of such coverage to the repair of the building or improvement, and this Premises shall remain in full force and effect, subject to any appropriate rent reduction. Where any repair work prohibits Tenant from full use of the Premises, then it shall be entitled to a reduction in monthly rent, based upon the proportionate reduction in usable Premises, in comparison to the total Premises.

23. Access by WTA

Tenant shall permit WTA and/or its agents and representatives to enter the Premises at all reasonable times for the purpose of inspection of the same for any reason, including, but not limited to, the taking of any tests, samplings, borings, and analyses, subject to the giving of at least three (3) days' notice to Tenant, unless there is an emergency situation that makes the giving of such notice impractical or impossible.

24. Events of Default

Occurrence of any of the following shall constitute a default of this Lease by Tenant:

- a. a failure to pay any amount due within five (5) days of the date said amount is due;
- b. abandonment and vacation of the Premises; or
- c. failure to perform any other provision of this Lease.

25. WTA's Remedies Upon an Event of Default

In the event of any default, WTA may, at any time without or eliminating any other right or remedy, re-enter and take possession of the Premises, terminate this Lease, accelerate all amounts due under this Lease, which obligations will become immediately due and payable, or pursue any other remedy allowed by law. Tenant shall pay WTA the costs and attorneys' fees of recovering possession of the Premises and any other costs and fees for damages arising out of Tenant's default. Notwithstanding any re-entry or termination, Tenant shall remain liable for all sums it is obligated to pay hereunder for the balance of the Term. Unless WTA elects to accelerate the rent owed hereunder, Tenant shall pay such deficiency each month as the amount thereof is ascertained by WTA.

26. Surrender and Holding Over

Upon expiration of the Term, Tenant shall surrender the Premises and return all improvements and alterations in good condition, except for ordinary wear and tear. Tenant shall remove its personal property before expiration of the Term and shall repair the Premises upon such removal, subject to normal wear and tear.

If Tenant, with WTA's consent, remains in possession of the Premises after expiration or termination of the Term, such possession shall be allowed month-to-month, terminable on thirty (30) days' notice at any time by either party. All provisions of this Lease, except those pertaining to term and as otherwise agreed to by the parties, shall apply to the month-to-month occupancy.

27. Improvements and Signage

Any structural work or improvements of any kind to the Premises, and any proposed signage by Tenant, shall be subject to written pre-approval by WTA, which it may grant or deny in its discretion. Any allowed signage shall be removed upon the end of the Term or termination of the Lease.

28. Notices

All notices and payments hereunder may be delivered in person or by mail. All notices provided herein shall be delivered as follows:

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| To WTA: | WHATCOM TRANSPORTATION AUTHORITY c/o Shonda Shipman 4111 Bakerview Spur Road Bellingham, Washington 98226 Phone No. (360) 676-6843 Fax No. (360) 738-7302 |
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| To the Food Bank: | FERNDALE FOOD BANK Attn: Suzanne Nevan PO Box 1593 Ferndale, Washington 98248 Phone No. (360) 384-1506 Cell Phone No. (360) 223-0788 |
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29. Corporation or Limited Liability Company Representations

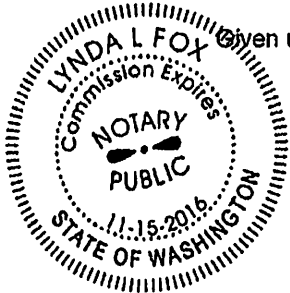
WHATCOM TRANSPORTATION AUTHORITY:

Date: 7/11/16

Pete Stark
By: Pete Stark
Title: Executive Director

STATE OF WASHINGTON)
) ss.
County of Whatcom)

On this day personally appeared before me PETE STARK to me known to be the Executive Director of WHATCOM TRANSPORTATION AUTHORITY, the Washington Public Transportation Benefit Area that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said Public Transportation Benefit Area for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument on behalf of said Public Transportation Benefit Area.



Given under my hand and official seal this 11th day of July, 2016.

Lynda L. Fox
NOTARY PUBLIC in and for the State of
Washington, residing at Bellingham, WA
My commission expires November 15, 2016

APPROVED AS TO FORM

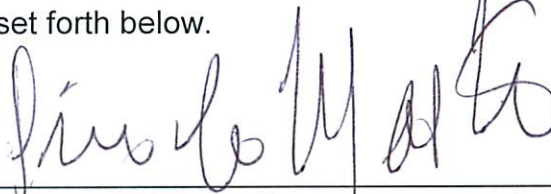
Mark J. Lee
Mark J. Lee
Counsel for Whatcom Transportation Authority

Tenant represents and warrants as follows:

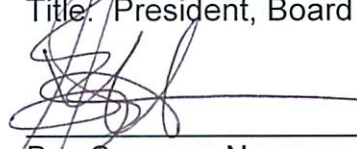
- a. Tenant is an active Washington State non-profit corporation;
- b. throughout the Term, Tenant shall maintain its status as an active Washington State non-profit corporation; and
- c. The person signing on behalf of Tenant has authority to execute this Lease on behalf of Tenant, and shall produce appropriate proof of the same upon request by WTA.

Executed by each party on the dates set forth below.

FERNDAL FOOD BANK:


By: Jim Lemaster
Title: President, Board of Directors

Date: 6/29/16



By: Suzanne Nevan
Title: Executive Director

STATE OF WASHINGTON)
) ss.
County of Whatcom)

On this day personally appeared before me SUZANNE NEVAN, to me known to be the Executive Director of the FERNDAL FOOD BANK, the Washington non-profit corporation that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said non-profit corporation for the uses and purposes therein mentioned, and on oath stated that she is authorized to execute the said instrument on behalf of said non-profit corporation.

Given under my hand and official seal this 29 day of June, 2016.




NOTARY PUBLIC in and for the State of
Washington, residing at Ferndale, WA.
My commission expires 7/29/19