



TOWN COUNCIL – AGENDA REQUEST FORM

THIS FORM WILL BECOME PART OF THE BACKGROUND INFORMATION USED BY THE COUNCIL AND PUBLIC

Please submit Agenda Request Form, including back up information, 8 days prior to the requested meeting date. **Public Hearing requests must be submitted 20 days prior to requested meeting date to meet publication deadlines** (exceptions may be authorized by the Town Manager, Chairman/Vice Chair).

MEETING INFORMATION

Date Submitted: January 3, 2022
 Submitted by: Town Manager Paul T. Micali
 Department:
 Speakers: Town Manager Paul T. Micali

Date of Meeting: January 27, 2022
 Time Required: 20 minutes
 Background Info. Supplied: Yes: No:

CATEGORY OF BUSINESS (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Appointment:	<input type="checkbox"/>	Recognition/Resignation/ Retirement:	<input type="checkbox"/>
Public Hearing:	<input type="checkbox"/>	Old Business:	<input type="checkbox"/>
New Business:	<input checked="" type="checkbox"/>	Consent Agenda:	<input type="checkbox"/>
Nonpublic:	<input type="checkbox"/>	Other:	<input type="checkbox"/>

TITLE OF ITEM

First Church of Merrimack Lease Agreement Review and Discussion

DESCRIPTION OF ITEM

The Town Council to review and discuss a lease agreement with the First Church of Merrimack.

REFERENCE (IF KNOWN)

RSA: Warrant Article: _____
 Charter Article: Town Meeting: _____
 Other: N/A

EQUIPMENT REQUIRED (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Projector:	<input type="checkbox"/>	Grant Requirements:	<input type="checkbox"/>
Easel:	<input type="checkbox"/>	Joint Meeting:	<input type="checkbox"/>
Special Seating:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Laptop:	<input type="checkbox"/>	None:	<input type="checkbox"/>

CONTACT INFORMATION

Name: Paul T. Micali Address: 6 Baboosic Lake Road
 Phone Number: 603-424-2331 Email Address: pmicali@merrimacknh.gov

APPROVAL

Town Manager: Yes No: Chair/Vice Chair: Yes No:
 Hold for Meeting Date: _____

LEASE AGREEMENT

LEASE AGREEMENT (this "Lease") made and effective as of the __ day of February, 2022 (the "Effective Date"), by and between **First Church of Merrimack**, with a mailing address of 7 Baboosic Lake Road, Merrimack, New Hampshire 03054 (hereinafter referred to as the "Landlord"), and **Town of Merrimack**, a New Hampshire municipal corporation having offices at 6 Baboosic Lake Road, Merrimack, New Hampshire 03054 (hereinafter referred to as the "Tenant").

WITNESSETH:

ARTICLE I

Premises

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and subject to the terms and provisions of this Lease, a certain parcel of real estate, known as the parking lot for the existing First Church of Merrimack consisting of approximately 15550 square feet of paved parking area located off of Baboosic Lake Road in Merrimack, New Hampshire, more particularly described in Exhibit A attached hereto and made a part hereof (Hereinafter referred to as the "Premises",

ARTICLE II

Term of Lease Initial Term.

This Lease shall remain in full force and effect for a term of one year from July 1, 2021 and for successive terms of one year unless either party shall, at least ninety (90) days prior to the termination of the original or any successive term, give written notice of the party's intention to terminate this Lease at the conclusion of the term then in progress. Notwithstanding the foregoing, in the event the Landlord receives and accepts a bona fide offer to sell the Premises, this Lease shall terminate upon the conveyance of the premises to such purchaser.

ARTICLE III

Rent

Commencing on the Effective Date and so continuing during the term hereof, Tenant covenants and agrees to pay to Landlord rent for the term of this lease \$1.00 plus the services set forth herein as payable by Tenant as additional rent.

ARTICLE IV

Taxes and Assessments

Landlord is a religious organization not subject to taxation. Tenant is a governmental entity not subject to taxation. To the extent Landlord should become taxable, Landlord shall pay the amount of all real estate taxes assessed for and with respect to the Premises including assessments for betterments or improvements ("Real Estate Taxes") for all tax periods included in the Term of this Lease. The parties agree that as of the Effective Date the Real Estate Taxes upon the Premises are \$0.00 per annum.

ARTICLE V

Insurance

- a. [appears to be addressed by Art. XII]
- b. **Liability Insurance:** During the term of this Lease and extension thereof, the Tenants, at their sole expense, shall maintain, as respect to the Premises, parking lot premises liability insurance. The Tenants must obtain an insurance certificate evidencing such coverage and provide Landlord with the same and any replacement or extension thereof at or prior to the commencement of each term. Such insurance certificate shall provide that the policy shall not be cancelled without at least thirty (30) days prior written notice to each insured named therein, and the Landlord shall be named as an additional insured. Such insurance shall provide:
- c. Minimum protection in the limits of not less than One Million Dollars (\$1,000,000.00) Dollars combined single limit in respect to bodily injury or death to one or more persons.
- d. Not less than Five Hundred Thousand (\$500,000.00) Dollars in the aggregate of property damage. All such insurance shall be effected under standard form policies issued by insurers of recognized responsibility qualified to do business in and licensed by the New Hampshire Insurance Department, and insure against injury to persons or damage to property.

ARTICLE VI

Maintenance of Premises, Etc.

Tenant's Obligations. Tenant shall as additional rent, at its sole cost and expense, perform such ordinary maintenance work as shall be reasonably required to: (a) maintain the fence located between the Landlord's property and the John O'Leary Adult Community Center (JOACC) which presently exists; (b) provide snow removal and sanding of the Premises as needed and (c) maintain the Premises by sealing its surface as necessary but-not more often than every 7 years and, (d) agree to share the cost to repave the Premises when needed but not more than every Thirty (30) years on a basis of 70% paid by the Tenant and 30% paid by the Landlord, the use of Town forces, materials and/or contractor, to be chosen at the sole discretion of the Tenant. Nothing herein shall prevent the Landlord from paving the Premises on a more frequent basis at its sole cost.

Landlord's Obligations. Except as otherwise set forth below, Landlord shall be responsible for repairs required due to any act, omission, or default of Landlord. Notwithstanding the above, Tenant shall be responsible for all damage to the Premises caused by any act, omission, or default of Tenant, its officers, agents, servants, customers, or employees.

ARTICLE VII

Use of Premises, Etc.

Use of Premises. Tenant shall have the right to the unlimited use of the Premises in the conduct of activities associated with the John O'Leary Adult Community Center (JOACC), subject to the terms and provisions as follows: ~~(a) the activity or uses at the JOACC shall be for not for profit organizations~~ (a) the Tenant through the Board of Directors of the JOACC shall provide the Landlord with a monthly calendar of the events to take place at the JOACC no later than the first day of each month during the Term; (b) the Tenant shall not use the Premises on Sundays. (c) the Tenant shall not use the Premises on official church holidays - the Church to provide the Tenant at the beginning of each ~~month year~~ a calendar setting forth what has been deemed an official church holiday; ~~In addition on the occasion that an event comes up the church will notify the JOACC at the beginning of each month of such events.~~ and, (d) the Landlord shall be entitled to use the JOACC at **no cost** provided the JOACC is available and the use is approved by the Directors.

ARTICLE VIII

Utilities, Etc.

Payment by Tenant. Tenant shall through Town forces or contractors of its choosing be responsible for the costs associated with the Tenant's obligations set forth in Article VI of this Lease for the Premises.

ARTICLE IX

Landlord's Access to Premises

Access. Landlord shall have access to the Premises for purposes of inspecting the same and also for purposes of making repairs which Landlord is required to make by the terms of this Lease, except that Landlord may proceed more quickly and without prior notice if the situation so requires. Except as aforesaid, such repairs shall be made at such times and in such manner as to minimize interference with Tenant's use of the Premises

ARTICLE X

Alterations During Term

Alterations. During the term hereof, Tenant may not, without first obtaining (a) Landlord's consent in writing (which Landlord agrees not to unreasonably withhold or delay), alter, renovate, redecorate, or otherwise improve the Premises or other improvements now or hereafter situated on the Premises, or construct additional improvements thereon; and further, any such alterations, renovations, redecorations and improvements shall strictly comply with the terms and provisions of this Lease.

Liens. Tenant agrees to hold Landlord free and harmless from any liability for labor or materials supplied for any work done by Tenant pursuant to the preceding section and shall keep the Premises free from mechanic's liens or liens of any kind by removing or bonding any said lien filed, within thirty (30) days after receipt of the notice of the filing thereof

Removal by Tenant. Notwithstanding anything to the contrary set forth herein, any and all (a) alterations, renovations, improvements, additions, and changes to the Premises made by Tenant during the term of this Lease, and (b) other fixtures, improvements, and additions placed in or upon the Premises by Tenant, whether or not the same have become permanently affixed to the Premises, shall immediately become and remain the property of Landlord upon the termination of this Lease for whatever reason, without payment therefore being due from Landlord to Tenant.

ARTICLE XI

Mortgages

It is hereby expressly understood and agreed that Landlord has no mortgages on the Premises and that this Lease is not subordinate to any mortgage now upon the Premises or the building of which the Premises are a part and any mortgage or other security interest hereafter placed upon said Premises or said building.

ARTICLE XII

Indemnity

Indemnification by Tenant. Tenant agrees to and shall indemnify and hold Landlord harmless from and against any and all claims arising from (a) Tenant's use of the Premises, (b) the conduct of Tenant's business at the JOACC,. Tenant shall further indemnify and hold Landlord harmless from and against any and all claims arising from (i) any breach or default of the performance of any obligation on Tenant's part required to be performed under the terms of this Lease, (ii) any negligent or intentional act or omission of Tenant or any of Tenant's agents, employees, representatives, contractors, , and (iii) any and all costs, attorney's fees, expenses, and liabilities incurred by Landlord in the defense of any such claim or any action or proceeding brought thereon.

Indemnification by Landlord. Landlord agrees to and shall indemnify and hold Tenant harmless from and against any and all claims arising from (a) Landlord's use of the Premises, (b) the conduct of Landlord's business at the First Church of Merrimack,. Landlord shall further indemnify and hold Tenant harmless from and against any and all claims arising from (i) any breach or default of the performance of any obligation on Landlord's part required to be performed under the terms of this Lease, (ii) any negligent or intentional act or omission of Landlord or any of Landlord's agents, employees, representatives, contractors, , and (iii) any and all costs, attorney's fees, expenses, and liabilities incurred by Tenant in the defense of any such claim or any action or proceeding brought thereon.

ARTICLE XIII

Damage Clause

Options upon Damage. If the Premises shall be damaged, in whole or in part, by fire, casualty, or action of public authority in consequence thereof, then:

The rent herein, or a just and proportional part thereof, according to the nature and extent of the injuries sustained and/or the obligation to perform maintenance required by Article VI, shall be suspended or abated until Landlord shall have repaired or restored the Premises to substantially their condition at the time of their damage; or

If the damage to the Premises is of a magnitude in dollar terms equal to sixty percent (60%) or more of the fair market value of the Premises, then this Lease may be terminated at the election of

Landlord or Tenant, any such election to be made by written notice given to Landlord or Tenant, as the case may be, within thirty (30) days after such damage or destruction occurs, and if any such election is made, then this Lease shall terminate in accordance therewith as of the date of such damage or destruction.

Nontermination of Lease. In the event of any damage or destruction and this Lease is not to terminate, as aforesaid, then Landlord shall exercise Landlord's best efforts promptly to commence and complete such repairs or restoration

Termination of Lease. If this Lease shall be terminated at the election of Landlord or Tenant in accordance with the foregoing provisions of this Article, then the term of this Lease shall cease and come to an end as of the date of such damage or destruction, with the same force and effect as if such date had originally been set forth as the expiration of the term hereof, and any rental payments in advance shall be promptly refunded by Landlord to Tenant.

ARTICLE XIV

Eminent Domain

Taking. If the Premises, or such portion thereof as to render the balance unsuitable for the purposes of Tenant, shall be taken by condemnation or right of eminent domain, either party upon thirty (30) days' prior written notice to the other, shall be entitled to terminate this Lease.

Apportionment. Notwithstanding any contrary provision of law, the award granted for any such taking shall belong solely to Landlord.

Termination or Abatement. In the event that this Lease is terminated as a result of such taking, the term of this Lease shall cease and come to an end as of the date of such taking, with the same force and effect as if such date had originally been set forth as the expiration of the term hereof, and any rental payments in advance shall be promptly refunded by Landlord to Tenant. If this Lease is not terminated as a result of such taking, a fair and just proportion of the rent thereafter payable and/or obligations to maintain pursuant to Article VI shall be suspended or abated, depending upon the extent to which Tenant may be required to discontinue its business in the Premises and depending upon the nature and extent of the taking.

ARTICLE XV

Remedies

Tenant's Default. If Tenant shall fail to cure any material default of Tenant set forth below of which it has been notified by Landlord in writing, within the time reasonably required to cure

such default, then Landlord shall have the right to terminate this Lease, which right shall be in addition to any and all other remedies available to it.:

Tenant shall neglect or fail to pay the rent or other charges payable hereunder and such default shall continue for a period of fifteen (15) days;

Tenant shall neglect or fail to perform or observe any of the other covenants, terms, provisions, or conditions on its part to be performed or observed under this Lease and such default shall continue for a period of thirty (30) days;

Landlord's Default. If Landlord shall fail to cure any material default of Landlord of which it has been notified by Tenant in writing, within the time reasonably required to cure such default, then Tenant shall have the right to terminate this Lease, which right shall be in addition to any and all other remedies available to it.

ARTICLE XVI

Assignment and Subletting

Except with the prior written consent or approval of both parties, given or withheld in its and their sole discretion, neither party shall be permitted to assign (for security or otherwise) or to sublet any part or the whole of the Premises.

ARTICLE XVII

Miscellaneous Provisions

Headings. The article, section headings, and subheadings throughout this Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Lease.

Succession. Except as otherwise set forth herein, all of the terms and provisions of this Lease shall be binding upon and shall inure to the benefit of the legal representatives, successors and assigns of the respective parties thereto.

Severability. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to persons or circumstances other than to those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of New Hampshire, as the same exist as of the date of this Lease.

Counterparts. This Lease may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

ARTICLE XVIII

Option to Purchase

Grant of Option. Though not to be construed as an additional term or condition of this lease, Tenant acknowledges that Landlord has a right of first refusal to purchase the property described in the "Right of First Refusal" dated January 5, 1989 under the terms and conditions set forth in that document. In addition the Tenant shall have a "Right of First Refusal" of the Premises which Right shall be exercised within 15 days written notice of Landlord's intent to offer for sale to a third party and if not so exercised shall be deemed waived.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement all as of the date first above written.

WITNESS:

LANDLORD:

FIRST CHURCH OF
MERRIMACK

By:-----

Member, Duly Authorized

TENANT:

TOWN OF MERRIMACK

By:-----

Its:-----

STATE OF NEW HAMPSHIRE COUNTY OF HILLSBOROUGH

On this the _____ day of _____,2022, before me, the undersigned officer, personally appeared _____,known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and who acknowledged himself/herself to be duly authorized Officer of the First Church of Merrimack and who as such officer, being authorized so to do, executed foregoing Lease Agreement for the purpose therein contained

Justice of the Peace/Notary Public