

**LICENSE AND EMERGENCY AUTHORIZATION TO USE CITY FACILITIES
WHATCOM COUNTY
1100 RAILROAD AVENUE**

The CITY OF BELLINGHAM, a Washington municipal corporation (“City”) whose address for notices is 210 Lottie St., Bellingham, WA 98225, for and in consideration of Licensee’s compliance with the conditions set forth herein, hereby grants to Whatcom County, a Washington municipal corporation (“Licensee”) whose address for notices is 311 Grand Avenue Bellingham, WA 98225, a revocable, non-exclusive license (“License”) to enter and use City-owned real property only for the purposes set forth herein.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Licensed Premises. The licensed premises is located at 1100 Railroad Avenue, Bellingham, Whatcom County Parcel #380330145032 and is depicted on Exhibit A attached hereto (“Licensed Premises”).

2. License Term and Termination. This License is hereby issued pursuant BMC 20.15.100(A)(3) by the City to Licensee to operate an emergency severe weather shelter at 1100 Railroad Avenue and will become effective when: (1) it is fully executed by both parties; and (2) the City has completed all site preparation (the Effective Date). The City’s building official and fire marshal and the Whatcom County Health Department find that the proposed temporary location poses no threat to human life, health, or safety. No guests will be allowed until the Effective Date. The License shall expire on March 31, 2022 (the Expiration Date), unless terminated sooner. The City may terminate this License for cause (breach of any provision of this License) if Licensee fails to cure any default within ten (10) days of receipt of written notice of such default. The City may terminate this license for convenience on thirty (30) days written notice. Notwithstanding the foregoing, any violation of the conditions listed in section 9 hereof may result in immediate termination of this License. Licensee shall immediately inform its guests of all such terminations. By 5:00 p.m. on the effective date of termination, Licensee shall remove any and all materials located on the Licensed Premise related to the severe weather shelter unless placed on the Licensed Premise by the City. In the event Licensee fails to remove any such materials, the City reserves the right to remove them immediately. Costs associated with removal and any subsequent storage will be at the expense of Licensee. Prior to removal, the City will provide twenty-four (24) hour written notice to Licensee. Email is sufficient for written notice.

3. Permitted Use. Once the site is fully operational, Licensee may use the Licensed Premises only for the operation and management of the severe weather shelter to serve a maximum number of individuals not greater than the number allowed pursuant to the occupancy limit (“Guests”), social and health services and overnight shelter or other uses as authorized by Whatcom County. Licensee agrees to keep the Licensed Premises in a neat and clean condition, and to be responsible for all damages caused to the Licensed Premises by Licensee, its agents, invitees, members, or contractors on the Licensed Premises. Licensee shall not use or permit the Licensed Premises to be used in violation of any municipal, county, state or federal law, ordinance, rule or regulation, or in

any manner that may create a nuisance. Firearms and/or other weapons are prohibited on the Licensed Premises. Registered sex offenders and people who are required to register as a sex offender will be prohibited from the Licensed Premises.

4. City's Right to Bar Guests. The City has the right to issue trespass notices to Licensee's Guests and thus bar them from entry to the Licensed Premises they fail to comply with any applicable criminal codes or laws.

5. Responsibilities of City. The City shall provide the following:

- 5.1 The facility located at 1100 Railroad Avenue;
- 5.2 Power, garbage, water, and sewer services;
- 5.3 Exterior site lighting that will be active during hours of darkness.

6. Responsibilities of Licensee. It is the sole responsibility of Licensee to operate the severe weather shelter, including, among other requirements in this License:

6.1 No fewer than one staff member, which shall be either Licensee's staff members or designated contractor staff or trained volunteers, must be physically present at Licensed Premises at all times during the hours of operations (7:00 p.m. to 9:00 a.m.) for the duration of the License. The staff member shall serve as site manager and supervise the operation of the shelter. The site manager is the primary point of contact for public safety and emergency services and shall address day-to-day operational issues as they arise. A complete listing of all staff members who will serve as a site manager shall be submitted to the City before occupancy. Licensee shall ensure that site managers are made aware of their duties, receive training defined by Whatcom County for a severe weather shelter and understand to call 9-1-1 in an emergency.

6.2 Licensee shall ensure that any damage to the Licensed Premises caused by Guests through either negligence, intentional abuse, accident beyond normal use is repaired.

6.3 Licensee, and Guests shall comply with all health and safety regulations promulgated by local, state, or federal authorities, specifically including all COVID-related gathering limits and mask mandates.

6.4 Licensee will provide custodial services, including bathroom maintenance.

6.5 Licensee shall insure that there are no open flames, unvented fuel-fired heaters (i.e. propane heaters), or cooking operations which produce grease-laden vapors.

7. No Disposal of Wastewater. Under no circumstances may wastewater be discharged directly to the ground or into a stormwater conveyance.

8. Prohibited Use/Condition. Except as otherwise expressly stated herein, Licensee may not install signs, dig, change grade, alter, or improve any part of the Licensed Premises in any manner whatsoever without the City's prior written consent, which may be withheld in the City's sole and absolute discretion. Licensee will not, store, release, or deposit (or permit the same) any hazardous, toxic or dangerous substances onto the Licensed Premises. **THE CITY MAKES NO**

REPRESENTATIONS OR WARRANTIES AS TO THE CONDITION OF THE LICENSED PREMISES, INCLUDING WITH REGARD TO THE POSSIBLE PRESENCE OF CONTAMINANTS, POLLUTION, OR OTHER ENVIRONMENTAL HAZARDS. FOR PURPOSES OF THIS LICENSE, LICENSEE ACCEPTS THE CONDITION OF THE LICENSED PREMISES "AS IS" WITH ALL FAULTS AND DEFICIENCIES, AND ACCEPTS ALL RISKS, WHETHER KNOWN OR UNKNOWN. LICENSEE UNDERSTANDS THAT THE LICENSED PREMISES ARE LOCATED ON A WASHINGTON STATE DEPARTMENT OF ECOLOGY SITE LISTED FOR CONTAMINATION AND ACCEPT ALL RELATED RISKS ASSOCIATED WITH DIGGING OR ANY OTHER ACTIVITY WHICH MAY CAUSE A RELEASE.

9. Release. Licensee hereby releases and waives any and all claims related to the severe weather shelter against the City, including all claims relating to environmental contamination. In the event Licensee engages contractors to do work on the Licensed Premises, it hereby agrees to require those contractors to be licensed and bonded and comply with all other applicable state, local and federal laws, and regulations and to release this City and waive any all claims related to environmental contamination.

10. Indemnification. Licensee shall indemnify, hold harmless and defend the City, its officers, agents and employees, from and against any and all loss, claims, expense and liability whatsoever arising out of, or in connection with this License or Licensee's exercise of rights hereunder, except for those losses and claims arising solely from the City's negligence. This indemnity includes, but is not limited to, all expenses incurred by or for the City, or its officers, agents or employees, including but not limited to judgments, settlements, costs, investigation, expenses and attorney fees, including any and all costs associated with the release of environmental contamination on the Licenses Premises. The parties hereto agree that the City shall not be responsible to the Licensee for any property loss or damage done to the Licensee's property, whether real, personal or mixed, occasioned by reason of any fire, storm, or other casualty whatsoever. It shall be the Licensee's responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the City, Licensee, third party, or act of nature.

11. Insurance. Licensee agrees to maintain in force during the term of this License, including the right of entry period referenced in Section 6, above, and as to which the City shall be named as additional insured (with any endorsement required by the policy):

Workers Compensation:	Statutory Amount
Broad Form Comprehensive	\$1,000,000 per occurrence
General Liability:	\$2,000,000 aggregate
Automobile Liability:	\$1,000,000

Said insurance shall be primary and noncontributory with any other insurance for which the City is a named insured. All insurance coverages required under this Agreement shall include a waiver of subrogation against the City for losses arising from work performed by the Licensee.

Addendum A

An insurance certificate showing the coverage required under this section will be submitted to the City for approval at least annually.

Licensee may satisfy its insurance obligations herein through Licensee's participation in a joint self-insurance program, through the Washington Counties Risk Pool (WCRP).

Licensee certifies that it is a member of the Washington Counties Risk Pool, as provided by RCW 48.62.031, and that it is covered by the Pool's Joint Self-Insurance Liability Memorandum of Coverage Document (MLC).

12. Default. Should either party hereto believe that the other has failed to perform an obligation under this License, it shall deliver written notice to that effect to the other, specifying the alleged default and giving the other party fifteen (15) days to cure such default. Thereafter, should the default not be remedied to the satisfaction of the non-defaulting party, this License may be terminated upon seven (7) days written notice (delivered by certified mail).

13. Class of Persons. The issuance of this License and the provisions herein do not create or designate any particular class of persons who will or should be specifically protected by it.

14. Project Managers. The following individuals are hereby designated as Project Managers and shall be contacted during regular business hours regarding any issues arising under this License:

For the City: Public Works: Tom Bredeson, Facilities Manager; City of Bellingham; 360-7787833; tbredeson@cob.org.

For the County: Ann Beck, Whatcom County Health Department, Human Services Supervisor, 509 Girard Street, Bellingham, WA 98225, Direct: (360) 778-6055 | Cell: (360) 543-3043; ABeck@co.whatcom.wa.us.

15. After Hours Contact. After 5:00 p.m. and prior to 8:00 a.m. and on weekends and holidays, issues related to the License should be directed to Post Point emergency number 360-778-7700.

16. No Assignment. Licensee is prohibited from either assigning or subletting all or any portion of the Licensed Premises.

17. Enforcement and Venue. Licensee shall reimburse the City upon demand for all costs and expenses, including without limitation, reasonable attorney fees incurred by the City in enforcing its rights under this License or in otherwise protecting its interests in connection with the Licensed Premises, whether or not a lawsuit is instituted. This document shall be construed according to the laws of the state of Washington and venue in any lawsuit shall be Whatcom County, Washington.

18. Notices. All notices required or permitted hereunder shall be in writing and shall be delivered personally or sent by certified mail to the Project Manager at the addresses set forth above or to such other address as Licensee shall notify the City of in writing.

Addendum A

19. No Waiver. No waiver of any provision of this License will be valid unless in writing and signed by the person against whom such waiver is sought to be enforced, nor will failure to enforce any right hereunder constitute a continuing waiver of the same or a waiver of any other right hereunder.

20. Complete Agreement. This License sets forth the complete agreement of the parties with respect to the Licensed Premises, and it shall not be amended or modified except by a further written agreement signed by the parties. This License shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

21. Signing Authority. The person(s) signing this License warrant that they have the authority to sign this License and bind their respective parties to the terms hereof.

DATED as of the _____ day of _____, 2022.

WHATCOM COUNTY:

Satpal Singh Sidhu, County Executive

Approved as to Form:

Royce Buckingham, Senior Civil Deputy Prosecutor

Addendum A

CITY OF BELLINGHAM, a first class
municipal corporation

Seth Fleetwood, Mayor

Attest:

Andy Asbjornsen
Finance Director

Approved as to form:

Office of City Attorney

Department Approval:

Public Works Director