

LEASE AGREEMENT

THIS INDENTURE OF LEASE is made this _____ day of _____, 2021, and entered into by and between WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT, a quasi-municipal corporation in the State of Washington, hereinafter called the "FCZD," and BRIAN MELLEMA, hereinafter called the "TENANT."

WHEREAS, FCZD owns property on River Road, which was purchased from the Washington State Department of Natural Resources in 2008; and

WHEREAS, at the time the property was purchased, the property was being leased and FCZD became the lessor of that lease; and

WHEREAS, the TENANT currently leases the property and that lease's original term expired on January 1, 2020; and

WHEREAS, the TENANT has remained in possession of the leased premises in accordance with Section 3 of the lease; and

WHEREAS, the lease has a renewal clause that the FCZD may, at its sole discretion, exercise to renew the lease for an additional term, said term to be mutually agreed upon by FCZD and TENANT, but in any event to be no longer than five (5) additional years; and

WHEREAS, Whatcom County Public Works River & Flood staff is supportive of renewing the lease; and

WHEREAS, in accordance with RCW 86.15.080, the FCZD may lease surplus lands in a manner consistent with RCW 36.34; and

NOW THEREFORE, the FCZD, in consideration of \$3,537.53 per year, which includes leasehold tax at the rate hereinafter specified, and the terms, conditions, covenants and performances contained herein, MUTUALLY AGREES with TENANT that:

The FCZD does hereby lease to the TENANT and TENANT does hereby lease from the FCZD the premises (the "leased premises"), designated by the Whatcom County Assessor as tax parcel number 400236 190361 0000, consisting of 20.9 acres that are cultivatable, as further described on Exhibit "A" attached hereto and by this reference incorporated herein.

1. TERM. The term of this lease shall be for **Five (5)** years COMMENCING ON THE DATE OF EXECUTION OF THIS LEASE BY the County Executive, acting on behalf of the FCZD Board of Supervisors and terminating on January 1, 2025 ("Lease Term").

2. TERMINATION: Either the FCZD or the TENANT may terminate this agreement without cause by giving written notice to the other party one hundred eighty (180) days in advance of the effective date of termination. If such notice is given by either party, any rent or refund owing shall be determined by proration on a daily basis, and lessor may, for money owing by the TENANT, draw funds from the Security Deposit.

3. HOLDING OVER. In the event the TENANT shall hold over or remain in possession of the leased premises with the consent of the FCZD after the expiration of the stated term of this lease, or any written extension or renewal of the term of this lease, such holding over or continued possession shall create a tenancy from month to month only, upon the same terms and conditions as are herein set forth, to the extent said terms and conditions apply.

4. SECURITY DEPOSIT. TENANT paid previously the sum of \$ 1,000.00 ("Security Deposit"), and/or other security required under Exhibit B, Section 12 as approved by the Prosecuting Attorney's Office, as partial security for the performance by TENANT of its obligations under this Lease. The FCZD may at any time apply such Security Deposit against any loss or damage suffered by reason of any default by TENANT under this Lease, including, without limitation, the cost of cleaning and repairing the leased premises caused by the actions of TENANT, but the FCZD shall return any remaining portion of the security deposit to TENANT within thirty (30) days after termination of the Lease or after all remaining financial obligations of the TENANT have been satisfied, whichever is later. If any portion of the security deposit is used or applied by the FCZD at any time, TENANT will upon demand deposit additional cash, or

other security in a form approved by lessor, to the security deposit to restore it to its original amount. The FCZD's obligations with respect to the security deposit are those of a debtor and not of a trustee, and the FCZD can commingle the security deposit with the FCZD's general and other funds, and the FCZD shall not be required to pay TENANT interest on such security deposit.

5. RENT FOR LEASE TERM. The TENANT covenants and agrees to pay in U.S. Funds only, at the FCZD address set forth below, an annual rental payment of \$3,135.00 (three thousand one hundred thirty five dollars and no cents) plus Washington State Leasehold Tax of 12.84% of annual rental payment totaling \$402.53 (four hundred two dollars, and fifty three cents) for a total payment of \$3,537.53 (three thousand five hundred thirty seven dollars and fifty three cents), on or before January 1st of each year during the term of this Lease.

Rent will be paid during the entire term of this lease at the address designated by the FCZD. In no event shall the rent be less than the aforementioned amount.

TENANT paid the FCZD the previous annual rental payment of \$2,880.00 for 2020 and 2021. TENANT agrees to pay the difference between the previously paid amounts and the new annual rental payment for 2020 and 2021 upon execution hereof, that amount being \$ 510.00.

6. USE OF PREMISES. It is agreed by FCZD and TENANT that the property herein described shall be maintained and may only be used as set forth in Exhibit B, attached hereto and incorporated herein by reference. If an annual crop is planted, it shall be immediately followed by a winter cover crop to reduce erosion during winter storms and flood events. No other use than those generally identified in Exhibit B is permitted without the prior written approval of the FCZD. In using the leased premises, the TENANT shall comply with all policies and regulations heretofore adopted or hereafter promulgated by the FCZD, including those set forth in Exhibit B attached hereto. The TENANT hereby agrees to hold the FCZD harmless from all claims or suits resulting from the TENANT's failure to comply with such requirements.

7. SOIL TESTING. The FCZD shall have the soil of the rental property tested as provided in Exhibit B attached hereto. The TENANT agrees to be responsible for the costs of First Test and Second Test, and agrees to be billed directly by the company or companies performing the First Test and the Second Test. If the results of the Second

Test necessitate remediation as provided in Exhibit B, that remediation shall be performed at the expense of the TENANT consistent with provisions therefor as set forth in Exhibit B.

8. HOLD HARMLESS/INDEMNIFICATION. The TENANT, its successors and assigns, will protect, save, and hold harmless the FCZD and its authorized agents and employees from all claims, actions, costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions of the TENANT, its assigns, agents, contractors, licensees, invitees, employees, or any person whomsoever, arising out of or in connection with any acts or activities authorized by this lease or any amendments thereto. The TENANT further agrees to defend the FCZD, its agents or employees in any litigation, including payment of any costs or attorneys' fees, for any claims or action commenced, arising out of, or in connection with acts or activities authorized by this lease or any amendments thereto, whether those claims, actions, costs, damages, or expenses result from activities of persons or livestock occurring on or off the leased premises. This obligation shall not include such claims, costs, damages, or expenses which may be caused by the sole negligence of the FCZD or its authorized agents or employees; PROVIDED, that if the claims or damages are caused by or result from the concurrent negligence of (a) the FCZD, its agents or employees and (b) the TENANT, its agents, sublessees, or employees, or livestock, and involves those actions covered by Ch. 4.24.115 RCW, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the TENANT or the TENANT's agents, employees or livestock.

9. GENERAL INSURANCE REQUIREMENTS. The TENANT shall, at all times during the term of the lease, at its cost and expense, buy and maintain insurance of the types and amounts listed below:

- A. General liability coverage: \$1,000,000 per occurrence for both property damage and bodily injury.
- B. Worker's Compensation Coverage as required by the Industrial Insurance laws of the State of Washington.

Failure to buy and maintain the required insurance may result, at the FCZD's option, in default of this lease. By requiring insurance herein, the FCZD does not represent that coverage and limits will be adequate to protect the TENANT, and such

coverage and limits shall not limit the TENANT's liability under the indemnities granted to the FCZD in this lease. The limits of insurance may be increased by the FCZD, as deemed necessary.

10. PERSONAL PROPERTY. The FCZD shall not be liable in any manner for, or on account of, any loss or damage sustained to any personal property of whatsoever kind, including livestock, unharvested crops, or any machinery or equipment operated, stored, kept or maintained on or about the leased premises. Upon termination of this agreement or upon abandonment of the leased premises by the TENANT, the FCZD or its agent may remove all personal property of the TENANT from the leased premises at the TENANT's expense and dispose of it in any manner the FCZD deems appropriate.

11. ADDITIONAL CONSTRUCTION PROHIBITED. No construction of buildings or other appurtenances to the land by the TENANT is permitted for the duration of this lease, except as may be approved in advance and in writing by the FCZD.

12. ASSIGNMENT. Neither this lease nor any rights created by it may be assigned, sublet, or transferred without written permission of the FCZD.

13. DEFAULT, TERMINATION OR ABANDONMENT. The TENANT shall be in default immediately upon the breach of any material covenant in this lease.

a. Notice of Default: At any time after the occurrence of a default or defaults under this lease or any amendments thereto, and while any such default remains unremedied, the FCZD shall have the option of giving notice in writing of its intention to terminate this lease by personal service upon or by written notice directed to the TENANT. Such notice of intention to terminate shall specify the default or defaults then outstanding. Waiver or acceptance of any default of the terms of this agreement by the FCZD shall not operate as a release of the TENANT's responsibility for any prior or subsequent default.

b. Termination and Extension: After the expiration of 90 days from the giving of such notice in the case of default, if one or more defaults described in such notice then remain unremedied, this lease shall terminate without further notice, and all rights of the TENANT shall cease. The FCZD may in writing, at its option, extend the above period, if in the judgment of the FCZD an extension is justified.

c. Multiple Defaults: If the TENANT defaults in any regard on this lease, the third and any subsequent default shall be deemed “noncurable” and the lease may be terminated by the FCZD on thirty (30) days’ notice.

d. Disposition of Improvements: Upon receipt of a written notice of termination of this agreement the TENANT has 90 days to remove any encroaching improvements from the property of the FCZD. As previously set forth in this agreement, this lease is not assignable. Except as provided elsewhere herein, upon termination of this lease under any provision thereof, any improvements constructed by the TENANT on the leased premises shall become the property of the FCZD or, at the option of the FCZD, shall be removed by the TENANT at the TENANT's expense in a manner prescribed by the FCZD. In the event the TENANT fails to remove said improvements within thirty (30) days, the FCZD may remove said improvements and charge the TENANT for reasonable direct and indirect costs. The TENANT shall reimburse the FCZD within 30 days of the date of the FCZD’s invoice for such costs.

e. FCZD Access to Remove Crops or Equipment: In the event the TENANT fails to remove crops or equipment or restore the leased premises to the FCZD’s satisfaction at the end of this lease, then if necessary or desirable in the FCZD’s judgment for reasons of safety or economy, the FCZD or its agents shall have the right to cross any lands owned or otherwise controlled by the TENANT for the purpose of accomplishing said removal or restoration. Said right shall expire 180 days after the date of termination of this agreement, or when removal and restoration is complete in the FCZD's judgment, whichever is the earlier.

f. Vacation of Premises: Upon termination of this lease, the TENANT shall cease its operations on and/or use of the leased premises. In the event the TENANT fails to vacate the premises on the date of termination, the TENANT shall be liable for any and all costs to the FCZD arising from such failure.

g. Abandonment: In the event that it becomes apparent in the FCZD’s sole judgment that the premises have ceased to be used or have been abandoned for a continuous period of sixty (60) days, the FCZD at its option shall have the right to terminate this lease, provided due notice of termination shall be given the TENANT not less than thirty (30) days prior to the proposed termination date.

14. BINDING CONTRACT. This lease shall not become binding upon the FCZD unless and until accepted and approved for the FCZD by its Board of Supervisors or its duly authorized representative.

15. MODIFICATIONS. This instrument contains all the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by an agreement in writing signed by all parties thereto.

16. INTERPRETATION. This lease shall be governed by and interpreted in accordance with the laws of the State of Washington and Whatcom County, Washington. The titles to paragraphs or sections of this lease are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

17. VENUE AND CHOICE OF LAW. In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this lease, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

18. DISPUTE RESOLUTION. In the event of any dispute, claim, question, or disagreement arising from or relating to this lease or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 60 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration through Whatcom County Superior Court's procedures. The procedure for selection of the single arbitrator and the rules under which the arbitrator shall conduct the arbitration and make the award shall be determined in accordance with the Washington State Superior Court Mandatory Arbitration Rules and Whatcom County Superior Court Local Mandatory Arbitration Rules as they now exist or may hereafter be amended. Judgment upon the award may be entered in such court and thereafter in any court having competent jurisdiction in the matter. The arbitrator shall have full power under law and equity to conform final resolution of any dispute without regard to any monetary limits that may then otherwise

be in force under the rules of arbitration then in existence in Whatcom County, Washington.

19. NOTICES. Wherever in this lease written notices are to be given or made, they will be sent by certified or overnight mail addressed to the parties at the address listed below unless a different address has been designated in writing and delivered to the other party.

TENANT:

Brian Mellema
838 N. Park Street
Lynden, WA 98264

FCZD:

Attn: Paula Harris
Engineering Manager, River & Flood
Whatcom County Public Works
322 N. Commercial, Suite 120.
Bellingham, WA 98226
Telephone: (360) 778-6200

TENANT:

Brian Mellema
Brian Mellema

Date: 3-9-21

STATE OF WASHINGTON)
 : ss
County of Whatcom

On this 9th day of March 2021, before me personally appeared Brian Mellema, to me known to be the individual described herein and who executed the foregoing instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

Andrew M Hester
Notary Public in and for the State
of Washington
Residing at: Bellingham
My Commission Expires: 8-9-2023



Accepted for FCZD:

By: _____ Date: _____
Satpal Singh Sidhu, Acting on
behalf of the FCZD Board of Supervisors

STATE OF WASHINGTON)
 :ss
COUNTY OF WHATCOM)

On this ____ day of _____ 2021, before me personally appeared
Satpal Singh Sidhu, to me known to be acting on behalf of the Board of
Supervisors of the FCZD, a Quasi-Municipal Corporation in the State of
Washington, that executed the within and foregoing instrument, and acknowledged
said instrument to be the free and voluntary act and deed of FCZD, for the uses
and purposes herein mentioned, and on oath stated that he was authorized to
execute said instrument on behalf of the FCZD Board of Supervisors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official
seal the day and year first above written.

Notary Public in and for the State
of Washington
Residing at: _____

My Commission Expires: _____

Approved as to form:

Christopher Quinn _____ Date: 3-8-2021
Civil Deputy Prosecutor
(Approved electronically 3/8/2021)

EXHIBIT A

FCZD leases to TENANT and TENANT leases from FCZD the following real property:

Government Lot 6 of Section 36, Township 40 North, Range 2 East, Willamette Meridian, Whatcom County, Washington.

Subject to any other covenants, conditions, restrictions and easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

EXHIBIT B

LIMITATIONS UPON AND REQUIREMENTS FOR USE OF RENTAL PROPERTY:

1. No fill can be brought onto the property. Minor land grading of the property to make it level and farmable is permissible.
2. No structures can be constructed on the property without the written permission of the FCZD.
3. Only grasses or annual crops are allowed, with winter cover crop required if annual crop is used. Grazing by livestock during the growing season is also an allowed use.
4. Application of commercial fertilizer and manure are allowed only if they are included in the farm plan. Methods and timing of fertilizer and manure application must be in accordance with that plan.
5. All activities must be done in accordance with all applicable federal, state and local rules and regulations.
6. Tenant agrees to keep in good repair all terraces, open ditches, inlets and outlets of tile drains; preserve all established watercourses or ditches including grassed waterways, and refrain from any operations or practice that will damage such structures or adversely affect their function.
7. Tenant must have a current farm plan for this property following current NRCS standards and specifications. If an approved farm plan has not already been established, then within 30 days of the commencement of the lease the Tenant must contact the Whatcom Conservation District to create an approved farm plan for the property. The implementation of such plan must begin within 120 days of the commencement of the lease and be followed during the term of the lease.
8. Prior to the commencement of the lease the County shall commission a comprehensive soil chemistry analysis ("First Test") comparable to those typically used by knowledgeable buyers as part of their typical pre-purchase inspections of agricultural land. A copy of the results shall be retained by the County and a copy shall be provided to the tenant.
9. No sooner than 90 days and no later than 30 days prior to the termination of the lease term the County shall commission a new comprehensive soil chemistry analysis ("Second Test") substantially identical to the First Test. A copy shall be retained by the County and copy shall be provided to the tenant.
10. If the Second Test establishes that the soil has nutrient value and health equal to or greater than shown by the First Test, then the Tenant shall have no further obligation to improve the soil once the lease term expires.

11. If the Second Test establishes that the soil has been depleted or its health is has otherwise been impaired since the First Test, then it shall be the Tenant's obligation to immediately repair and replenish the land as soon as weather permits. Should the Tenant fail to do this within 90 days of the weather permitting, the County may elect to employ others to repair the land and bill the Tenant for all associated costs. This obligation of the Tenant shall survive the termination of the lease term, if such termination precedes the fulfillment of the obligation.
12. The Tenant shall provide security to guarantee payment of costs referred to in items #6, #8, #9, and #11 above, in a form and amount approved by the Prosecuting Attorney's Office.