

CUSTODIAL AGREEMENT

BETWEEN WHATCOM COUNTY AND THE SOUTH FORK VALLEY COMMUNITY ASSOCIATION FOR OPERATION OF THE VAN ZANDT COMMUNITY HALL AND JOSH VANDERYACHT PARK

WHATCOM COUNTY, a municipal corporation, hereinafter referred to as the “**COUNTY**” and South Fork Valley Community Association, a 501C3 nonprofit service association, hereinafter referred to as the “**ASSOCIATION**”, hereby agree to the following terms:

WITNESSETH:

WHEREAS, the County owns approximately 2 acres and improvements located at 4106 Valley Highway, Deming WA known as the VanZandt Community Hall and Josh VanderYacht Park; and

WHEREAS, the Association desires to have use of the said property for community purposes and events; and

WHEREAS, the County and Association has had a long and successful relationship in the operation and maintenance of this property,

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

Section 1. ADMINISTRATION OF AGREEMENT:

The County hereby appoints and the Association accepts the Whatcom County Parks & Recreation Director hereinafter “Director”, or his designee, as the County’s representative for the purpose of administering the provisions of this Agreement, including the County’s right to receive and act on all reports and documents related to this Agreement, to request and receive additional information from the Association and to assess the general performance of the Association under the Agreement, and to administer any other right granted to the County under this Agreement. The County expressly reserves the right to terminate this Agreement as provided herein and also expressly reserves the right to commence civil action for the enforcement of the Agreement.

Section 2. PREMISES:

The County hereby makes available to the Association the use of the following described property for recreational and community activities scheduled by the Association and for its operation of its KAVZ radio station. The subject property is legally described in Exhibit “A”

and attached hereto and incorporated herein by reference. The Association will make the Hall and grounds available to the public for a variety of activities including recreational, educational, social, ceremonial, political, informational and public service events. The Hall will be available on a first-come-first serve basis with users required to make reservations in advance. To defray operating and maintenance costs, a reasonable fee may be charged and retained by the Association for use of the Hall. Whatcom County reserves the right to reserve use of the Hall at no cost for County purposes.

Section 3. CONSIDERATION:

In consideration of scheduling and managing use of the Hall and Park by the public, Whatcom County agrees to pay the Association \$1,000 annually.

Section 4. CONDITION OF PREMISIS:

The Association shall perform routine maintenance and will consult with the Director before undertaking significant alterations to the structure. The Association agrees to all costs for repair of damages to the premises incurred during the Association's use of the premises. The Association agrees to return the premises to the County with all fixed improvements in adequate condition upon the termination or expiration of this Agreement. The Association will maintain the Center and grounds to the satisfaction of the County.

Section 5. TERM:

The term of this Agreement shall commence upon execution of the Agreement by the parties and shall terminate on December 31st, 2021. Upon satisfactory performance, the Association will be granted the option to renew this Agreement for an additional five year period.

Section 6. IMPROVEMENTS/EQUIPMENT:

The Association agrees to be responsible for and to bear the full cost of any additional improvements or equipment upon the premises and facilities thereon, including but not limited to construction, installation and maintenance of improvements and equipment. The Association may make improvements to the premises subject to the express written approval of the Director. The Association agrees to submit construction plans to the Director for his approval. The Association agrees to secure the necessary permits required for the improvements. The County reserves the right to require the ownership of the fixed improvements to be deeded to the County upon expiration of the Agreement. The Association agrees that it shall pay all costs and expenses for work done and materials used for the construction of improvements or installation of equipment.

Section 7. MAINTENANCE:

The parties agree and understand that the County shall not have any obligation to perform ordinary or extraordinary maintenance on the premises or facilities therein. The parties agree

that the Association may submit written requests to the Director for such work to be done. Upon such request, the County may provide maintenance service and the Association agrees to reimburse the County for the maintenance expense performed including, but not limited to, the cost of labor, materials and equipment used by the County. Within sixty (60) days of any maintenance performed, the County agrees to submit an itemized statement to the Association specifying the charges. The Association agrees to remit payment to the County within sixty (60) days following receipt of this statement.

Section 8. OPERATION COST:

The Association agrees to pay all costs of operation on the premises including, but not limited to the following: electricity, water, waste, sewer/septic and gas. Further, the Association and County will equally share the annual cost of one portable accessible Sani Can to be located on the premises to serve the park. The County will bill the Association annually for its share of the cost.

Section 9. CONCESSIONS:

The Association may operate a concession area on the premises for the sale of food items. The Association may sublet the concession rights herein, subject to the approval of the concessionaire by the Director. The Association agrees to assume all liability for the sale of food whether by the Association itself or by a sub lessee. The Association shall provide liability insurance which shall include products liability, in accordance with the limits and insurance provisions required in Section 12 of this Agreement.

Section 10. TAXES AND FEES:

The Association shall pay all licenses, excise taxes, permits and taxes applicable to its operations on the premises and all taxes on the leasehold interest created by this Agreement. The Association shall be responsible for securing necessary permits and licenses or the payment of any other fiscal obligations imposed by applicable local, state, or federal law with respect to Association's employees or the Association's property or activities on the premises. Provided, leasehold taxes shall be paid to the County.

Section 11. INDEMNIFICATION AND HOLDHARMLESS:

The Association agrees to defend, indemnify and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including, but not limited to, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Association, its subcontractors, its successor or assigns, or its agents, servants, or employees, the County, its appointed or

elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County or its appointed or elected officials or employees. In case of damages caused by the concurrent negligence of Association, its subcontractors, its successors or assigns, or its agents, servants, or employees, and the County, it's appointed or elected officers, employees or their agents, then this indemnification provision is enforceable only to the extent of the negligence of the Association, its agents, or its employees.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this agreement is for the benefit of the parties only and this agreement shall create no rights in any third party.

Initialed on behalf of the Association: _____

Section 12. INSURANCE:

The Association shall obtain and maintain insurance at its own cost for the duration of this Agreement. The insurance(s) shall provide the minimum coverage as set forth below:

Property Damage per occurrence - \$500,000.00

General Liability Insurance of \$1,000,000.00 which includes general aggregate, products, completed operation, personal injury, fire damage and medical expense.

If alcohol is served the Association shall procure and maintain for the duration of the Agreement or event, Liquor Liability insurance in the amount of \$1,000,000 each occurrence. The County is to be named as an additional insured on Liquor Liability insurance. HOST LIQUOR LIABILITY INSURANCE coverage may be substituted when alcohol is consumed and not sold on premises with the prior written approval of the County.

ADDITIONAL INSURED ENDORSEMENT REQUIRED:

General Liability Insurance and Liquor Liability, when alcoholic beverages are served or dispensed, must state that:

A) Whatcom County, it's officers, agents volunteers and employees, are named as additional insured(s) for all coverage provided by the policy of insurance.

B) That this insurance shall be considered as primary and shall waive all rights of subrogation. The County's insurance shall be noncontributory.

Events. Separate event insurance with the same terms and conditions shall be required for all events not specifically covered under the Association's general liability policy.

Notice of cancellation. Association agrees to oblige its insurance agent or broker and insurers to provide to County with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Timely notice of claims. Contractor shall give County prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Proof of Insurance. A certificate showing proof of adequate insurance will be provided to the County annually. Upon request, the Association shall forward to the County the original policy, or endorsement obtained, to the Association's policy currently in force.

Liability in excess. Providing coverage in the amounts listed shall not be construed to relieve the Association from liability in excess of such amounts.

Failure to provide insurance. Failure of the Association to fully comply with the insurance requirements set forth herein, during the term of the Agreement, shall be considered a material breach of contract and cause for immediate termination of the Agreement at the County's discretion.

Section 13. ENTRY ONTO PREMISES:

The County reserves the right to enter onto the premises at reasonable times to inspect them, or make modifications and the Association shall permit the County to do so.

Section 14. NON DISCRIMINATION CLAUSE:

The Association agrees not to discriminate against any participant, volunteer, employee or individual based upon race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability or veteran status.

Section 15. TERMINATION AND REMEDIES OF COUNTY FOR BREACH BY THE ASSOCIATION:

The County shall have the right to terminate this Agreement upon breach of this Agreement by the Association, or any sub lessee of the Association, upon giving sixty (60) days' written notice of termination to the Association. The written notice shall specify the reason for the termination and the Association shall be given a reasonable time to cure said problem. Said remedies shall be in addition to any other remedies available to the County.

Section 16. COMMUNICATION:

Communication between the parties shall be addressed to their regular places of business.

For the COUNTY;

ATTN: Director, Whatcom County Parks & Recreation
3373 Mount Baker Highway
Bellingham WA 98226

For the ASSOCIATION;

ATTN: South Fork Valley Community Association
5464 Potter Road
Deming WA 98244

Section 17. SEVERABILITY:

If any term or condition of this agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this agreement are declared severable.

Section 18. MODIFICATION:

No change or addition to this Agreement shall be valid or binding upon either party unless such change or addition is in writing, executed by the parties and approved by the County.

Section 19. RESPONSIBILITY FOR PREMISES:

While the premises are used by or under the control of the Association, the Association hereby assumes full responsibility for the character, acts and conduct of all persons admitted to said premises. The Association shall use the premises only in the manner permitted by this Agreement and shall not permit the use of the premises for any other purpose or for any immoral, objectionable, or unlawful acts. Failure to abide by this section shall amount to breach of contract and bring to bear Section 15 of this Agreement (Termination and Remedies of County for Breach by the Association)

FOR WHATCOM COUNTY

Satpal Sidhu, Whatcom County Executive

STATE OF WASHINGTON)

)ss.

COUNTY OF WHATCOM)

On this ____ day of _____, 2021, before me personally appeared Satpal Sidhu to me known to be the Whatcom County Executive and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the
State of Washington residing at

My commission expires _____

Michael McFarlane
Whatcom Parks & Recreation Director

APPROVED AS TO FORM:

Brandon Waldron
Senior Deputy Prosecuting Attorney

EXHIBIT A

Property ID 84345/Geographic ID 380508 286016 located at 4106 Valley Highway, Deming WA to include all buildings and structures.

Legal: BEG 20 FT N OF SW COR OF SW SE-TH N 140 FT-TH E 88.7 FT-TH N 85 FT-TH E 21.3 FT-TH N 15 FT-TH E 308.7 FT-TH S 232.5 FT-TH W ALG N LI OF RD TO BEG-PER CVL 44012-TOG WI PTN CO RD AS VAC AF 466699