

Approved: 8/9/2023
Effective: 8/25/2023

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ORDINANCE NO. 23-066

APPROVING FORM AGREEMENT FOR EMERGENCY USE FACILITY LICENSE

WHEREAS, the Snohomish Health District was integrated into Snohomish County effective December 31, 2022, and now operates as the Snohomish County Health Department; and

WHEREAS, prior to its integration into Snohomish County, the Snohomish Health District entered into emergency use of facility agreements with numerous public entities for use of their sites during emergency events; and

WHEREAS, the Snohomish County Health Department would like to continue these partnerships to ensure these sites would be available on demand in the event of an emergency; and

WHEREAS, during a disaster or emergency event, Snohomish County would utilize the facility sites to provide emergency shelter and mass clinic services to individuals and families who are victims or otherwise affected by disaster or an emergency event; and

WHEREAS, the County has developed a form agreement for use with facility sites within Snohomish County, copy of which is attached hereto as Exhibit A and incorporated herein by this reference, to be used with any such public entity desiring to participate in the Emergency Use License Agreement; and

WHEREAS, the County Council held a public hearing on August 9, 2023, to consider approval of form agreement for emergency use facility license between Snohomish County and public entities owning facility sites within Snohomish County and to authorize the Snohomish County Executive to enter into such agreement in substantially the form attached as Exhibit A.

NOW, THEREFORE, BE IT ORDAINED:

Section 1. The County Council hereby adopts the foregoing recitals as findings of fact and conclusions as if set forth in full herein.

Section 2. The County Council hereby approves and authorizes the County Executive, or designee, to negotiate facility license agreements for emergency use when such agreements are in substantially the same form as that attached hereto as Exhibit A. Such agreements shall be approved by motion of the County Council.

1 PASSED this 9th day of August, 2023.
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4 SNOHOMISH COUNTY COUNCIL
5 Snohomish County, Washington
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7 Jared Mead
8 Council Chair
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11 ATTEST:

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13 M. Glendon
14 Deputy Clerk of the Council
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- 16
17 (X) APPROVED
18 () EMERGENCY
19 () VETOED
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21 DATE: August 15, 2023

22 [Signature]
23 County Executive
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25 ATTEST:

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28 Melissa Geraghty
29 Approved as to form only:
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31 [Signature] 06-15-2023
32 Deputy Prosecuting Attorney
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EXHIBIT A

EMERGENCY USE LICENSE AGREEMENT SNOHOMISH COUNTY

This EMERGENCY USE LICENSE AGREEMENT (herein referred to as the "Agreement") is between and [FACILITY NAME], a Washington _____, (herein referred to as "Licensor" or "[FACILITY NAME]") and Snohomish County, a political subdivision of the State of Washington, (herein referred to as "Licensee" or "County"). In consideration of covenants, conditions, performances, and promises hereinafter contained, the parties mutually agree as follows:

1. PREMISES. Licensor hereby grants to Licensee a license over the following described real property:
[Include property name and description of location(s), e.g. northwest parking lot, building number/floor]

(herein referred to as the "Premises") The Premises is located on a portion of Snohomish County real property known as [PROPERTY NAME] and located at [PROPERTY ADDRESS] and identified as a portion of tax parcel number [PARCEL NUMBER] (herein referred to as the "Property").

2. CONSIDERATION. The Licensee shall pay no fee as Licensee's use of the Premises is considered a public benefit to the citizens of Snohomish County as follows: During a disaster or emergency event, the Licensee may utilize the Premises to provide emergency shelter and mass clinic services to individuals and families who are victims or otherwise affected by disaster or an emergency event.

3. TERM. The term of this Agreement shall commence upon full execution by the Licensor and Licensee and end _____, 20__, unless earlier terminated as provided in Section 15.

If the Licensor desires to relocate the Premises, the Licensor will present a written request to the County requesting relocation and proposing a new location for the Premises, and the County will review and provide written acceptance or denial within two (2) weeks of written request.

If the County desires to increase or decrease size of the Premises, the County will present a written request to the Licensor indicating the requested increase or decrease, and the Licensor will review and provide written acceptance or denial within two (2) weeks of written request.

It is agreed by the approval of this Agreement that the Snohomish County Property Officer of the Department of Facilities and Fleet has the authority to sign on behalf of the County any relocation, decrease, or increase to the Premises as approved by the County and Licensor pursuant to this Section 3.

4. SCOPE OF LICENSE. The Premises shall be accessed and used solely by the County, its employees, contractors, subcontractors, representatives, and agents (herein referred to as "County Users"), for the purposes of siting emergency shelter and mass clinic services during a disaster or emergency event. Licensee rights under this Agreement shall also include rights of ingress and egress over the Property to gain access to the Premises and for the uses authorized in this Agreement.

During the term of this Agreement the County will keep the Premises clean and in good working condition, free from any defects or accumulation of debris and will not be allowed to park any non-licensed motor vehicle or inoperable vehicle to park on the Premises at any time. No illegal

use shall be made thereof, nor shall any property that creates any nuisance or fire, explosive, or other hazard be stored therein. The County's authority to use the Premises shall not be considered exclusive possession or control.

In the event the Premises shall at any time during the term of this Agreement become subject to any suit brought to enforce a lien or any statement of claim of lien filed to enforce a lien resulting from the furnishing of materials or labor to the County on the Premises and contracted for or agreed to by the County, the County may contest such a lien by legal proceedings but shall, in that event, cause such a lien, at its sole cost, to be discharged within thirty (30) calendar days after notice thereof by the substitution thereof of a mechanic's lien release bond, by posting of adequate security for the payment thereof (including all expenses incident thereto), or by such other method as shall be reasonably satisfactory to the Licensor.

No illegal use shall be made thereof, nor shall any property that creates any nuisance or fire, explosive, or other hazard be stored therein. The County's authority to use the Premises shall not be considered exclusive possession or control. Licensor may enter the Premises at any time to determine whether improper or hazardous use is being made of the Premises.

5. ACCESS. During the term of this Agreement the County will be granted ingress and egress, over and across existing roadways located on the Property as access to the Premises at any time for the purposes described under Section 4 of this Agreement. the County and County Users will not place any items on, or directly in front of any entrance or exit on, or otherwise block ingress or egress to the Property for Licensor's uses or, where applicable, the public's use of the Property.

6. KEYCARDS. Where applicable, the Licensor will provide the County access to one (1) keycard for ingress and egress over the Property for access to the Premises outside of the normal working hours of 8 a.m. to 4 p.m. Monday through Friday (excluding federal holidays).

7. CARE AND CONDITION. The County shall be responsible for the Premises herein described and return the same in a neat and clean condition upon termination.

The Licensor shall not be liable to the County or County Users for any loss or damage to the County's property, County User's property, or any other property from theft, fire, or any other cause either before or after termination. The Licensor is under no obligation to maintain, replace or repair any of its facilities or any other obligation not stated in this Agreement.

The County has examined the Premises and accepts the same in its present condition. It is agreed that the Licensor shall not be bound by any warranty or representation as to the condition of the Premises, or in any other manner except as stated herein.

This Agreement shall not limit any legal remedies of the Licensor not stated herein. If the Licensor is required to expend any money to enforce any of its rights, or to clean or renovate the Premises, such sum, including reasonable attorney's fees, shall be immediately due and payable to the Licensor.

8. EQUIPMENT. The County will be responsible for providing all equipment required for the uses specified under this Agreement.

9. MAINTENANCE. The Licensor shall not be called upon to make any repairs occasioned by the acts, operations, or negligence of the County, its agents or employees.

10. UTILITIES. The County will be allowed to utilize the external power of the Licensor facility.

11. HOLD HARMLESS. To the extent permitted by law, the Licensor shall protect, hold harmless, indemnify, and defend, at its own expense, the County, its appointed and elected officials, officers, employees, and agents from any loss or claim for damages of any nature whatsoever, including claims by third parties or by Licensor employees from which it would otherwise be immune under Title 51, RCW or other law, arising out of any act or omissions on or about the Premises or relating to this Agreement by the Licensor, its officers, assignees, agents, employees, invitees, contractors or subcontractors. If a loss or claim is caused by or results from the concurrent negligence of the Licensor, its officers, assignees, agents, employees, invitees, contractors or subcontractors and the County, its appointed or elected officials, officers, agents, employees, invitees, contractors or subcontractors, this clause shall be valid and enforceable only to the extent of the negligence of the Licensor, its officers, assignees, agents, employees, invitees, contractors and subcontractors.

The County shall protect, hold harmless, indemnify, and defend, at its own expense, the Licensor, its officers, employees, and agents from any loss or claim for damages of any nature whatsoever, including claims by third parties or by the County employees from which it would otherwise be immune under Title 51, RCW or other law, arising out of any act or omission on or about the Premises or relating to this Agreement by the County, its appointed or elected officials, officers, assignees, agents, employees, invitees, contractors or subcontractors. If a loss or claim is caused by or results from the concurrent negligence of the County, its appointed or elected officials, officers, assignees, agents, employees, invitees, contractors or subcontractors and the Licensor, its officers, assignees, agents, employees, invitees, contractors or subcontractors, this clause shall be valid and enforceable only to the extent of the negligence of the County, its appointed or elected officials, officers, assignees, agents, employees, invitees, contractors and subcontractors.

The parties acknowledge that the foregoing indemnity provisions were mutually negotiated.

12. INSURANCE. The Licensor shall obtain and maintain continuously for the term of this Agreement (a) All-Risk Property Insurance covering the full value of the Premises; and b) Primary Commercial General Liability Insurance with endorsements and/or other insurance to indemnify for all damage, loss, cost and expense arising out of the Premises and/or actions by Licensor officers, employees or agents. Minimum limit of coverage shall be for \$1,000,000 per occurrence for bodily injury and property damage.

The County shall procure and maintain for the duration of this Agreement, insurance or self-insurance against claims for injuries to persons or damage to property which may arise from or in connection with the County's operation and use of the Premises.

a. Minimum Scope and limits of Insurance: Snohomish County, a charter county government under the constitution of the State of Washington, hereinafter referred to as "County", maintains a fully funded Self-Insurance program as defined in Snohomish County Code 2.90 for the protection and handling of the County's liabilities including injuries to persons and damage to property.

Licensor acknowledges, agrees and understands that the County is self-funded for all of its liability exposures. The County agrees, at its own expense, to maintain, through its self-funded program, coverage for all of its liability exposures for this Agreement. The County agrees to provide the Licensor with at least 30 days prior written notice of any material change in the County's self-funded program and will provide the Licensor with a certificate of self-insurance as adequate proof of coverage. Licensor further acknowledges, agrees and understands that the County does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore, the County does not have the ability to add the Licensor as an additional insured.

Should the County elect cease self-insuring its liability exposures and purchase Commercial General Liability insurance, County agrees to add the Licensor as an additional insured.

b. Verification of Coverage. The County shall furnish the Licensor with an original certificate of self-insurance, evidencing the insurance requirements of the County.

c. Waiver of Subrogation. The County and District hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the Premises or Building. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

13. ASSIGNMENT OR SUBLETING. This Agreement may not be assigned, sublet, or possession thereof transferred voluntarily or involuntarily by the County without the permission of the Licensor, such permission not to be unreasonably withheld.

14. NOTICES. Notice as required by any term of this Agreement shall be given by registered or certified mail or fax. Such communication or notice shall be deemed to have been given and received when deposited in the United States Mail, properly addressed, with postage prepaid or upon receipt by the sender of a facsimile transmission report. Such notice or communication shall be given as follows:

If to the County: Snohomish County Health Department
 Attention: Dennis Worsham
 3020 Rucker Avenue, Suite 306
 Everett, WA 98201
 Phone: 425.339.8687

and to: Snohomish County Property Management
 Attention: Property Officer
 3000 Rockefeller Avenue M/S 404
 Everett, WA 98201
 Phone: 425.388.3400
 Fax: 425.388.7008

If to Licensor: _____
 Attention: _____

 Phone: (425) _____
 Fax: _____
 Email: _____

15. TERMINATION.

(a) If Licensor breaches any term of this Agreement and fails to cure the same within five (5) business days of written notice to do so by the County, the County may terminate this Agreement by providing written notice to Licensor.

(b) Either party may terminate this Agreement by providing sixty (60) days prior written notice to the other party.

(c) Termination shall not affect the rights of the County under any other paragraph in this Agreement.

16. REPRESENTATION AND WARRANTIES. Each party to this Agreement represents and warrants to the other party that it has the full right, power, and authority to enter into and perform its obligations under this Agreement and that, by engaging in this Agreement, such party is not in breach of any obligation to any third party.

17. CONFLICTS BETWEEN ATTACHMENTS AND TEXT. Should any conflict exist between any attached exhibit or schedule and the text of this Agreement, the text shall prevail.

18. REMEDIES. The rights and remedies of the County and Licensor under this Agreement are cumulative, and either party may enforce any of its rights or remedies under this Agreement or other rights and remedies to it at law or in equity.

19. PUBLIC RECORDS. This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, Licensor agrees to make them promptly available to the County. If Licensor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, Licensor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by Licensor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify Licensor (a) of the request and (b) of the date that such information will be released to the requester unless Licensor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If Licensor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of Licensor to claim any exemption from disclosure under the Act. The County shall not be liable to Licensor for releasing records not clearly identified by Licensor as confidential or proprietary. The County shall not be liable to Licensor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

20. AMENDMENTS AND WAIVER. No waiver will be effective under this Agreement except by an amendment expressly in writing identifying the rights waived and signed by the authorized representative of the County and Licensor to be bound thereby. Without limiting the generality of the foregoing, the County or Licensor will not be deemed to modify any term or waive any right or remedy under this Agreement by failing to insist on compliance with any of the terms of this Agreement or by failing in one or more instances to exercise any right hereunder.

21. CONSTRUCTION. Each addendum and exhibit associated with this Agreement is hereby incorporated by reference, as if fully set forth herein. If any provision of this Agreement is determined to be unenforceable in any jurisdiction, the parties intend that this Agreement be enforced in such jurisdiction as if the unenforceable provisions were not present and that any partially valid and enforceable provisions be enforced in such jurisdiction to the extent that they are enforceable, and further agree to substitute for the invalid provision a valid provision (with respect to such jurisdiction) which most closely approximates the intent and economic effect of the invalid provisions. The section headings of this Agreement are for convenience only and have no interpretive value. References to currency or "\$" in this Agreement refer to the United States of America dollar unless otherwise expressly noted. The use of the word "including" and similar terms in this Agreement will be construed without limitation. References in this Agreement to "business days" will refer to each day other than a Saturday or Sunday or a day that commercial banking institutions in Snohomish County, Washington are authorized or required by law to remain closed.

