

**EMERGENCY INTERLOCAL AGREEMENT  
CITY OF FERNDALE—FERNDALE SCHOOL DISTRICT  
AGREEMENT FOR SPECIAL FACILITY USE**

The CITY OF FERNDALE, a first-class municipal corporation of the State of Washington (the City) and FERNDALE PUBLIC SCHOOL DISTRICT #502, (the School District) (collectively, the Parties), in consideration of mutual covenants herein, agree to enter into this EMERGENCY INTERLOCAL AGREEMENT FOR SPECIAL FACILITY USE.

WHEREAS, pursuant to RCW 39.34 the City and School District are authorized to execute interlocal agreements for the purpose of providing services and facilities; and

WHEREAS, the Ferndale community has experienced and is continuing to experience a major flooding event, known as the 2021 Atmospheric River (#21-4321 or the Flood Event); and

WHEREAS, this Flood Event has caused widespread damage, road closures, and has prompted a voluntary evacuation that will cause Ferndale citizens and others from surrounding areas to be displaced from their homes; and

WHEREAS, there is significant potential for property damage, injury, and loss of life; and,

WHEREAS, on November 16, 2021, the Mayor of the City of Ferndale declared an Emergency Proclamation pursuant to Ferndale Municipal Code (FMC) Chapter 2.07 and Chapter 38.52 RCW that the Flood Event within the boundaries of Whatcom County, Washington could have a significant impact on the citizens of Ferndale; and

WHEREAS, the Flood Event and voluntary evacuations have created the need for emergency shelter for Ferndale citizens and others from surrounding areas impacted by the Flood Event; and

WHEREAS, the City and School District have enjoyed a relationship of cooperation in the use of City and School District facilities and now wish to enter into a special facility use agreement whereby the School District would make the Ferndale High School facility available for City use for the purposes of providing emergency shelter to displaced citizens of Ferndale and other surrounding areas impacted by the Flood Event; and

WHEREAS, the City and School District understand that such an arrangement is necessary for the public health safety and welfare of the general public and desire to work together to confer this mutual benefit to the community; and

WHEREAS, time is of the essence in executing this Agreement due to the nature of the emergency; and

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS AND AGREEMENTS HEREINAFTER CONTAINED, the Parties agree as follows:

1. DESCRIPTION OF PROPERTY, FACILITY, PURPOSE AND ADMINISTRATION:

A. The School District hereby makes available to the City, subject to the conditions set forth in this interlocal agreement (Agreement), the following property: The Ferndale High School cafeteria facility located at 5830 Golden Eagle Drive, Ferndale, Washington (the Property) and specifically certain areas of the School District building located on the Property (the Facility).

B. "The Facility" is defined herein as including use of the following areas of the School District building: Ferndale High School cafeteria, including interior restrooms but excluding kitchen facilities..

1. The City shall be permitted to utilize the School District's guest Wi-Fi and any furniture currently contained in the Facility space.
2. The City shall not be permitted to make any permanent improvements, to utilize the School District's computer networks, or to utilize any other equipment without the express authorization of the School District.
3. The City and members of the public who are present onsite at the City's invitation, shall not utilize classrooms or kitchen equipment or other areas within the Facility.

C. The purpose of this Agreement is to make the Facility available to the City for the purpose of providing emergency shelter to displaced citizens of Ferndale and the surrounding areas impacted by the Flood Event.

D. The City shall use the School District Facility only for the purpose of providing emergency shelter, which includes the following: use of the temporary indoor shelter Facility, as defined herein, for individuals displaced by the flood event, limited to the time in which a voluntary evacuation order is in place. The Facility may not be used for any commercial activity or any other purpose without the advance, written consent of the School District. Due to the emergency nature the exact configuration and operational details are in flux and are flexible. The Mayor, City Police, Community Development, Public Works, Emergency Management, and the City Administrator will continue to meet with the School District to work through details and revise this Agreement as needed.

E. The Agreement shall be administered by a joint board consisting of:

1. For the City, its Mayor and/or City Administrator
2. For the School District, its Interim Superintendent, or his designee.

2. TERM:

This Agreement shall take effect immediately once signed by both Parties and shall continue in effect until the Parties determine that the Flood Event has passed and the emergency shelter services are no longer necessary to protect the public, health, and safety of displaced persons impacted by the Flood Event. Due to the urgent and immediate need for shelter, the Facility opened

for City use prior to the execution of this Agreement; therefore, this Agreement shall apply retroactively to the time at which the Facility first opened to provide emergency shelter to the community. The Facility shall be available 24 hours per day during the term of the Agreement. The Parties may mutually agree in writing to extend the term of this Agreement for any length of time necessary for emergency shelter services to be provided.

3. ACCEPTANCE OF THE FACILITY:

The School District agrees to make the Facility available subject to the terms of this Agreement and the City agrees to accept the Facility in the condition that existed on the date of execution of this Agreement, except as otherwise specified herein.

4. CONSIDERATION FOR USE OF THE FACILITY:

The Parties recognize the mutual benefit in providing emergency shelter to those displaced persons impacted by the Flood Event. Therefore, the School District is not requiring payment for use of the Facility, and consideration for the use shall be limited to what is contained in this Agreement and shall be deemed sufficient

5. SURRENDER OF THE FACILITY:

A. The City will surrender possession of the Facility upon termination of this Agreement in the same condition in which it was received, ordinary wear and tear and other improvements specified herein excepted.

B. Final surrender of the Facility at the conclusion of the City's use will include a full cleaning at the City's sole cost (including but not limited to vacuuming, wiping down of all surfaces with Clorox or equivalent, and other anti-bacterial cleaning). The City further agrees to abide by Washington State masking and social distancing requirements during post-use cleaning services.

C. The Parties shall conduct a tour of the Facility following the conclusion of the City's use to determine whether any damage occurred as a result of the City's use and the City's responsibility for such damage. The City will be responsible for conducting any necessary maintenance or repair to cure such damage or will supplement or pay for any necessary maintenance or repair conducted by the District related to the City's use of the Facility. The City's obligations to cure damage following the conclusion of the City's use must be identified by the School District in writing at the time of the tour and provided to the City no later than five (5) business days after the tour.

6. COMPLIANCE WITH LAWS AND REGULATIONS:

Each Party shall comply with all applicable laws, ordinances, and regulations issued pursuant to competent authority and will obtain all necessary licenses and permits governing its use of the Facility.

7. INDEMNIFICATION:

The City shall defend, indemnify and hold harmless the School District, its officers, officials,

employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of the City's use of the Facility or from any activity, work or thing done, permitted, or suffered by City in or about the Facility, except only such injury or damage as shall have been occasioned by the sole negligence of the School District.

The School District shall defend, indemnify and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of the District's ownership, maintenance and use of the Facility or from any activity, work or thing done, permitted, or suffered by District in or about the Facility, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

8. INSURANCE:

The City and the School District shall procure and maintain for the duration of the use period, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the use of the Premises.

The City's and District's required insurance shall be as follows:

General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 covering premises, operations, products-completed operations and contractual liability. The General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

9. ALCOHOLIC BEVERAGES:

The City shall make reasonable efforts to prohibit the use or possession of alcoholic beverages on the Property and in the Facility.

10. DAMAGE OR ALTERATIONS TO THE FACILITY:

The City agrees not to either damage, or permit the damage of, the Facility either its own acts or the acts of third persons. The City is responsible for the cost of any repairs due to Facility damage beyond normal wear.

11. ADVERTISING:

City posting of notices (such as location of shelter services) of any kind on the Facility shall be agreed upon and in places designated by the City and School District for such purposes. City shall not post any advertisement or notice in the Facility that is unrelated to its use of the Facility as described in this Agreement. This Agreement shall not be construed in any way to restrict the School District's right(s) to post and advertise in the Facility and on the Property.

12. ENTRY FOR INSPECTION:

The School District retains the right to enter onto the Property and into the Facility at any

reasonable time to inspect the Property and Facility, and to conduct necessary maintenance, repair or alteration.

13. CARE OF PLUMBING FIXTURES:

No restroom facility or other drainage apparatus shall be used for any purpose other than that for which it was constructed. Each Party shall be liable for damages to plumbing fixtures arising from its negligent conduct.

14. CARE OF BUILDINGS AND FIXTURES:

Each Party shall be fully responsible for the care and protection of buildings and fixtures on the Property while the Facility is under its control; damages to such buildings and fixtures shall be repaired under supervision of the School District and costs for repair shall be borne by the Party liable for the damage according to the terms of this Agreement.

15. ASSIGNMENT AND IMPROPER USE:

A. The City shall not assign this Agreement or sublet the Facility without written consent of the School District. Any assignment or sublease of the Facility by the City shall be subject to all terms of this Agreement and such additional terms as may be imposed by the School District.

B. The City shall take all necessary and proper steps to ensure that its use of the Facility is limited to that set out in this Agreement.

16. IMPOSSIBILITY OF PERFORMANCE DUE TO DESTRUCTION OF THE FACILITY:

If any of the buildings or fixtures on the Property are destroyed or damaged in such a manner as to make the Facility unusable, through no fault of either Party, then this Agreement shall be deemed terminated on the happening of the event if either Party so elects. In case of such a termination, neither Party shall be liable for damages or compensation for any losses to the other arising from the termination.

17. STATUS OF EMPLOYEES; DISCRIMINATION:

A. No personnel employed or utilized by each Party shall acquire any rights or status in the other's personnel system or any other form of employment, nor shall he or she be deemed employees or agents of the other for any purpose, absent a separate written contract to the contrary. Each Party shall be responsible in full for any payment due its employees, including Workers Compensation, insurance, payroll deduction and all related costs.

B. Neither Party shall discriminate, in employment, use of the Facility, provision of services, or any other activity, against any person on the grounds of race, color, creed, mental or physical handicap, age or sex.

18. SPECIAL CONDITIONS:

A. Each Party agrees to provide adequate personnel and volunteers to supervise its

activities which take place on the Property and in the Facility.

B. Each Party will furnish and supply all expendable materials (except sanitation supplies) necessary for operating its programs on the Property and within the Facility.

C. The School District reserves the right to bill the City for all janitorial services provided to the City as a result of the City's use of the Facility under this Agreement that are not covered by Section 5., herein.

D. All City use of the Facility shall be subject to School District policy(s) and such other reasonable requests as the School District may from time to time make (e.g., smoking is prohibited on school grounds, therefore the City may not permit smoking in the Facility during its use).

E. All consideration for use of the School District Facility by the City under this Agreement is set forth herein.

F. Except as may be otherwise stated herein, the School District will maintain the Facility, as defined herein, during the term of this Agreement and will provide the supplies and materials for Facility maintenance and all site utilities.

G. The City shall adhere to COVID-19 safety guidelines consist with Ferndale School District policies, as may be amended and shall seek to enforce such guidelines to the best of its ability when utilizing the Facility.

19. RECORDS:

The Parties acknowledge that they are all public agencies subject to Washington's Public Records Act, Chapter 42.56 RCW, and, as such, this Agreement and records arising from the performance of this Agreement are public records subject to disclosure unless an exemption applies. The Parties will retain this Agreement and all records related to this Agreement consistent with the records retention schedule for contracts/agreements issued by the Washington Secretary of State pursuant to Chapter 40.14 RCW.

20. FINAL AGREEMENT:

This is the final agreement of the Parties and any and all prior agreements, statements, promises, representations, and/or discussions between or among the Parties with regard to this matter, in writing or not, are void if not set forth in this final Agreement.

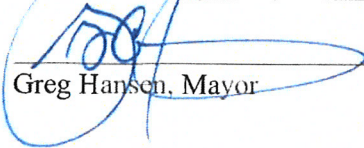
21. EXECUTION OF AGREEMENTS—COUNTERPARTS:

This Agreement may be executed in counterparts, which together shall be regarded for all purposes as single original Agreement.

22. EFFECTIVE DATE:

The effective date of this Agreement shall be the last date recorded below.

Executed this 16<sup>th</sup> day of November, 2021, for CITY OF FERNDALÉ.

  
\_\_\_\_\_  
Greg Hansen, Mayor

Executed this 17<sup>th</sup> day of November, 2021, for THE FERNDALÉ SCHOOL DISTRICT.

  
\_\_\_\_\_  
Mark Deebich, Interim Superintendent