

## CITY OF [MEMBER NAME] SPECIAL USE AGREEMENT

WHEREAS, [County or Entity name] (“County”) is a municipal corporation of the State of Washington; the City of [Member Name] (“City”) is a municipal corporation of the State of Washington; and

WHEREAS, on January 21, 2020, the first reported case of COVID-19 in Washington State occurred in Snohomish County; and

WHEREAS, COVID-19 is a respiratory disease that can cause serious illness or death, and can easily spread from person to person; and; and

WHEREAS, February 28, 2020 Public Health – Seattle and King County announced the first County and United States death due to COVID-19 in Kirkland, Washington, and

WHEREAS, the United States Centers for Disease Control and Prevention (“CDC”) identifies the potential public health threat posed by COVID-19, both globally and in the United States, as “very high” and has advised that person-to-person spread of COVID-19 will continue to occur globally, including within the United States, the State of Washington, County, and the City; and

WHEREAS, on February 29, 2020, the Governor of the State of Washington proclaimed a state of emergency in response to COVID-19 in all counties in the State of Washington; and

WHEREAS, on March 1, 2020, the King County Executive proclaimed an emergency in King County in response to COVID-19; and

WHEREAS, on March 11, 2020, the World Health Organization classified the global spread of COVID-19 as a pandemic and urged all governments to take immediate action to stem the spread of the disease; and

WHEREAS, on March 11, 2020, the Washington State Governor and the Local Health Officer for Public Health-Seattle & King County issued proclamations and the CDC issued recommendations for mitigation strategies for Seattle, King, Pierce, and Snohomish Counties based on COVID-19; and

WHEREAS, on March 12, 2020, the [City Manager/Mayor] of the City of [Member Name] issued a City of [Member Name] Proclamation of Emergency authorized the utilization of emergency powers granted under Chapter 38.52 RCW and Chapter [Municipal Code Section] of the [Member Name] Municipal Code (“\_\_MC”), and

WHEREAS, the City of [Member Name] Proclamation of Emergency will be considered for adoption, confirmation, and ratification by the [Member Name] City Council on [Date, 2020]; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency due to the COVID-19 pandemic; and

WHEREAS, since this time, national and local governments have imposed restrictions, including the closures of schools, businesses, and other non-essential operations to prevent community spread of COVID-19; and

WHEREAS, the County has requested the use of the City’s property and facilities located at [Property Location], for the purpose of siting a COVID-19 drive-up testing operation to address community-wide testing needs related to the COVID-19 pandemic; and

NOW, THEREFORE, the parties agree to the following terms and conditions:

- 1. Special Use Permit.** The County and shall apply for and receive a Special Use Permit from the City as provided in Chapter [Municipal Code Section \_\_MC]. Pursuant to [Municipal Code Section \_\_\_\_\_], the County shall be solely responsible for the adequate operation and maintenance of any improvements constructed by the permittee to the City Property and shall assume liability for all injuries to persons or property as the result of activities pursuant to a special event permit. This assumption of liability is in addition to and supplements the indemnification provided for in Section 2 of this Agreement.

**Facilities and Use of City Property.** The County shall have the use of the [Facility Name] (“City Property”) for conducting a drive-up testing operation for COVID-19 (“Testing Operation”) for use 24 hours per day. Proposed facilities for the Testing Operation currently include \_\_\_\_\_.

The County shall use the City Property only for the purpose of the Testing Operation, which includes the following: [NEED EXPLANATION OF EXACTLY WHAT THE TESTING WILL BE TO THE EXTENT POSSIBLE]. City Property may not be used for any commercial activity or any other purpose without the advance, written consent of the City. Due to the emergency nature the exact configuration and operational details are in flux and are flexible. City of [Member Name] Police, Community Development, Public Works, Emergency Management, City Manager will continue to meet with the County to work through details and revise this Agreement as needed.

**Term.** This term of this Agreement shall be for a period of [days/months]. The Parties may mutually agree in writing to extend the term of this Agreement for any length of time necessary for the Testing Operation to be conducted.

**Repair and Sterilization.** The City understands that the Testing Operation shall require sterilization and that certain alterations such as staking or digging may need to occur in order to place the emergency facilities on the City Property. The County, at its sole expense, shall return the City Property sterilized and in the same or better condition than at the time of occupancy and shall timely provide all required repairs.

**Fees.** The County shall pay the City [\$XXX] per day for each day of use of the City Property.

**Property Acceptance in “As Is” Condition.** The County accepts the City Property in its “AS IS” condition existing on the effective date of this Agreement, without any express or implied warranties of any kind by the City regarding the City Property, and the City shall not have any obligation to construct or repair any County improvements or alterations or to pay for any such construction or alteration. The County represents that it has conducted an independent investigation of the City Property and its suitability for the Testing Operation and is relying solely upon its own judgement in connection therewith.

**Maintenance.** At the sole cost of the County, the County shall at all times keep the premises and improvements in good and clean order and condition and in accordance with the laws of the State of Washington and all directions, rules, and regulations of the health officer, fire marshal, building inspector, or other proper officer of any pertinent and authorized public authority. The County shall arrange for garbage pickup and disposal and custodial service such that the premises are in good, sanitary, and clean order and condition. The City shall not be required to maintain, later, or repair any part of the City Property or improvements under this Agreement.

## **2. Indemnification**

The County agrees to defend, indemnify, and hold harmless the City, its elected officials, officers, agents, employees, representatives, and volunteers from and against any and all claims, damages, injuries, liabilities, actions, fines, penalties, costs and expenses (including reasonable attorney fees) that arise out of or are related to the acts, errors or omissions of the County (and its elected officials, officers, agents, employees, representatives, and volunteers acting within the course and scope of their employment), and in the performance of County's obligations under this Agreement or the exercise of the County's rights and privileges under this Agreement for all but those injuries or damages caused by the sole negligence of the City.

The foregoing provisions specifically and expressly intend to constitute a waiver of the County's immunity under industrial insurance, Title 51 RCW, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. This waiver has been mutually negotiated.

The provisions of this Section 2 (Indemnification) will survive any expiration or termination of this Agreement.

## **3. Insurance**

The County shall also obtain insurance of the types described below during the term of this agreement and extensions or renewals. These policies are to contain, or be endorsed to contain, provisions that 1) County's insurance coverage shall be primary insurance with insurance or insurance pool coverage maintained by the City as excess of the County's insurance (except for professional liability insurance); and 2) County's insurance coverage shall not be cancelled.

- A. Professional Liability, Errors or Omissions insurance with limits of liability not less than \$10,000,000 per claim and \$10,000,000 policy aggregate limit.
- B. Commercial General Liability insurance at least as broad as ISO occurrence for CG 00 01 and shall cover liability arising from premises, operation, stop-gap independent contractors and personal injury and property damage with a limit of no less than \$10,000,000 each occurrence and \$10,000,000 general aggregate. The City shall be named as an additional insured on this policy using an endorsement at least as broad as ISO endorsement form CG 20 11. The County shall submit to the City copies of the insurance certificates and relevant endorsement(s) as evidence of insurance coverage acceptable to the City.
- C. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage with combined single limits of liability not less than \$5,000,000 for bodily injury, including personal injury or death and property damage per accident.
- D. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington

## **4. 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.

## **5. Compliance with Applicable Laws**

The Parties agree to comply with all applicable federal, state, and local laws, rules, and regulations, including those pertaining to nondiscrimination, and agree to require the same of any subcontractors providing services or performing any work related to the Agreement. During the performance of this Agreement neither Party shall discriminate or tolerate harassment on the basis of sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the administration or delivery of services or any other benefits under this Agreement.

## **6. 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, in writing or not, are void if not set forth in this final Agreement.

## **7. Execution of Agreement – Counterparts**

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

## **8. Effective Date.** The effective date of this Agreement shall be the last date recorded below.

IN WITNESS WHEREOF, each person executing this Agreement on behalf of a Party represents and warrants that he or she is fully authorized to execute this Agreement of behalf of the Party for which he or she is signing on the date indicated next to their signatures.

[Signature page follows]

**[NAME OF COUNTY]**

\_\_\_\_\_  
By:  
Its:

\_\_\_\_\_  
Date

**[MEMBER NAME]**

\_\_\_\_\_  
By: [Name of CEO]  
Its: [City Manager/Mayor]

\_\_\_\_\_  
Date