

LAND USE AGREEMENT

THIS AGREEMENT, made and entered into this 18th day of June, 2024, by and between Lewis County, Washington, a political subdivision of the State of Washington, hereinafter referred to as the "County", and the White Pass Country Historical Society, a Washington non-profit corporation, hereinafter referred to as the "Museum",

WITNESSETH:

IT IS HEREBY COVENANTED AND AGREED as follows:

1. Definitions.

a. "Board" means the Board of County Commissioners.

b. "Project" shall mean the development and construction of the grounds and/or lands on Parcel 035226-001-000 with the exception of the existing buildings. The project will renovate an existing tennis court area, parking areas, baseball field, and playground located behind the White Pass Country Historical Museum.

2. Control and Tenure. The Museum authorizes the County to undertake project planning, design, engineering, permitting, and construction.

3. Project Scope and Approval-Permits and Approvals. The County shall obtain and be responsible for all applicable approvals and permits for the Project work and is responsible for compliance with all applicable laws, rules, and regulations.

4. It is understood and agreed that all work as provided for herein shall be accomplished by the County, on behalf of the Museum, in accordance with the requirements of the Washington State Recreation and Conservation Office (RCO) Funding Board Agreement for 24-2160 Packwood Museum Park & Pickleball Crt Improvements.

5. This Agreement is considered to be of mutual benefit to the County and Museum and there is no other consideration beyond that mutual benefit.

6. Hold Harmless and Indemnification. To the maximum extent permitted by law, each Party shall defend, indemnify and hold harmless the other Party, and all of its officers, officials, employees, agents, contractors and volunteers, from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or resulting from any negligent acts, errors, omissions of the indemnifying Party and its officers, officials, employees, agents, contractors and volunteers in performing obligations under this Agreement or in implementing the Project. However, if any such injuries and damages to persons or property are caused by or

result from the concurrent negligence of the Museum or its officers, officials, employees, agents, contractors and volunteers, and the County or its officers, officials, employees, agents, contractors and volunteers, each Party's obligation hereunder applies only to the extent of the negligence of such Party or its officers, officials, employees, agents, contractors, or volunteers.

The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party'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 by the Parties.

7. Insurance Prior to the beginning of and throughout the duration of the Work, the Museum will maintain insurance in conformance with the requirements set forth below. The Museum will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, it will be amended to do so. The Museum acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to County. The Museum shall provide the following types and amounts of insurance:

a. **Commercial General Liability Insurance** using Insurance Services Office "Commercial General Liability" policy form CG 00 01, with an edition date prior to 2004, or the exact equivalent. Coverage for an additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits. Limits shall be no less than \$1,000,000 per occurrence for all covered losses and no less than \$1,000,000 general aggregate.

b. **Workers' Compensation** on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses.

c. **Business Auto Coverage** on ISO Business Auto Coverage form CA 00 01 including owned, non-owned and hired autos, or the exact equivalent. Limits shall be no less than \$1,000,000 per accident, combined single limit. If the Museum owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If the Museum or Museum's employees will use personal autos in

any way on this project, the Museum shall obtain evidence of personal auto liability coverage for each such person.

d. **Excess or Umbrella Liability Insurance** (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Such policy or policies shall include as insureds those covered by the underlying policies, including additional insureds. Coverage shall be "pay on behalf", with defense costs payable in addition to policy limits. There shall be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to County for injury to employees of the Museum, subcontractors or others involved in the Work. The scope of coverage provided is subject to approval of County following receipt of proof of insurance as required herein.

8. Term. This Agreement shall take effect on June 18, 2024, or as soon thereafter as all of the following events have occurred ("Commencement Date") and end June 18, 2049:

- a. Approval of the Agreement by the official action of the governing bodies of each of the Parties;
- b. Execution of the Agreement by the duly authorized representative of each of the Parties; and
- c. Filing a copy of this Agreement or posting a copy of this agreement to the Parties' websites or recording a copy with the County Auditor as required by RCW 39.34.040.

9. Grant Funding. It is understood and agreed that the work described herein is subject to grant funding. If said grant funding is procured, RCO and/or designee shall have the right to inspect the project area on Parcel 035226-001-000, with the exception of buildings, without notice. If said grant funding is not procured, this Agreement shall be null and void.

10. Continuous public access to the parcel will be provided for the duration of this agreement with the exception of when construction is occurring. Signs will be installed at the site indicating when the outdoor recreation facilities are available to the public and acknowledging the project received funds from RCO.

11. Termination. This Agreement may be terminated by either the Museum or the County, in whole or in part, if either party fails to materially comply with the aforementioned terms

of this Agreement. Termination of this Agreement by either party at any time during the term shall not constitute a breach of contract by the party terminating. Further, if at any time grant funding becomes unavailable, this Agreement shall automatically terminate.

12. The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Termination of this contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County.

13. Time is of the essence for all terms, conditions, obligations, and duties set forth or referred to in this Agreement.

14. Amendment. This Agreement shall only be modified by written instrument approved by the Museum governing body and the Board and signed by the authorized representatives of the Parties.

15. Governing law; Venue. This Agreement is made in Lewis County, Washington. It shall be construed, interpreted, and governed in accordance with the laws of the State of Washington, without reference to its choice of law principles. Any action to enforce any rights or obligations created by this Agreement or to construe this Agreement shall be brought exclusively in the courts of the State of Washington in and for the County of Lewis.

16. This Agreement shall be binding upon and inure to the benefit of the parties hereto and all of their respective heirs, successors, and assigns. The terms, conditions, and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation, or termination of this Agreement shall so survive.

17. No Third-Party Rights. Nothing in this Agreement shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party.

18. Entirety. This Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated are excluded. This Agreement merges and supersedes all prior negotiations, representations, and agreements between the Parties relating to the project and constitutes the entire agreement between the Parties.

19. Severability. If any provision of this Agreement is found to be invalid or contrary to law or public policy or is declared null and void by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect and binding upon the parties.

20. Waiver. Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by the parties hereto or by their authorized representatives.

21. Administration. This Agreement will be jointly administered by the Museum and the County. This Agreement does not create any separate legal or administrative entity.

22. Financing; Budget. This Agreement does not contemplate joint financing of the activities within its scope, nor does it contemplate a joint budget.

23. Headings Not Controlling. The headings in the Agreement are for convenience only and shall not affect the meaning of the terms as set out in the text.

24. This Agreement has been mutually negotiated and prepared and shall not be construed or interpreted adversely to any Party.

25. Museum shall assist County and fully cooperate with County to fulfill all of County's obligations under the Washington Public Records Act (chapter 42.56 of the Revised Code of Washington) concerning any request made to County that concerns records possessed by Museum by timely and fully responding and providing documents and records in response to County's request for the same. The obligations created by this section shall survive the termination of this Agreement.

26. This Contract shall be binding upon and inure to the benefit of the parties hereto and all of their respective heirs, successors, and assigns. The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation, or termination of this Contract shall so survive.

27. This Agreement may be executed in counterparts, and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

APPROVED AS TO FORM:
Jonathan L. Meyer, Prosecuting Attorney

BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON

Deputy Prosecuting Attorney

Scott J. Brummer, Chair

ATTEST:

Lindsey R. Pollock, DVM, Vice Chair

Rieva Lester, Clerk of the Lewis
County Board of County Commissioners

Sean D. Swope, Commissioner

WHITE PASS COUNTRY HISTORICAL SOCIETY

Gene Seiber

Gene Seiber, President

Board of Directors

ATTEST:

Tracy Croshaw

Tracy Croshaw, Vice President

Board of Directors

Signing Date: 4/12/24