

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONSENT AGENDA REQUEST

TO: Board of County Commissioners

FROM: Mark McCauley, Jefferson County Administrator

DATE: March 24, 2025

SUBJECT: USDA Right-of-Way Certificate for Early Learning/Family support Center

STATEMENT OF ISSUE:

The USDA federal grant application for the Early Learning/Family Support Center requires a Rights-of-Way Certificate acknowledging the use of the rights-of-way that are adjacent to the project site location ("premises") at the Port Townsend School District Property.

ANALYSIS:

The Jefferson County Prosecuting Attorney's Office and Public Works have reviewed the subject rights-of-way and prepared the attached materials for the BoCC's review. This is a requirement of the USDA grant application and necessary to move the Early Learning Center project forward.

Based on the PAO's review of the City of Port Townsend's Street and Zoning Maps, those portions of Blaine Street and Harrison Street adjacent to and abutting the Premises are open public rights-of-way with streets maintained by the City of Port Townsend. As such, it is the PAO's understanding that the County (as USDA applicant) and YMCA (as Lessor and the Center's operator) have legal authority to use the public rights-of-way in order to construct, use and maintain the Center, subject to compliance with City engineering standards and codes.

FISCAL IMPACT:

The County is a grant applicant for a USDA federal grant to help fund the Early Learning/Family Support Center. Information about this project has come before BoCC previously. This specific request regarding the rights-of-way certificate has no individual fiscal impact.

RECOMMENDATION:

Approve BoCC Chair, Heidi Eisenhour, to sign Right-of-Way Certificate on behalf of BoCC so the Right-of-Way Packet can be approved.

REVIEWED BY:


Mark McCauley, County Administrator

3/18/25
Date

RIGHT- OF - WAY CERTIFICATE

The undersigned, Jefferson County Board of County Commissioners,
hereby certifies except as noted in item 4 below:

1. That the undersigned has acquired and presently holds continuous and adequate rights-of-way on private lands needed for the construction, operation, and maintenance of the facilities to be installed, repaired, or enlarged with the proceeds of a loan made or insured by, and/or a grant from, United States Department of Agriculture and such omissions, defects, or restrictions as may exist will in no substantial way or manner endanger the value or the operation of the facilities.
2. That the undersigned has acquired the necessary permits, franchises, and authorizations or other instruments by whatsoever name designated, from public utilities and public bodies, commissions, or agencies authorizing the construction, operation, and maintenance of the facilities upon, along or across streets, roads, highways, and public utilities.
3. That the attached "Right-of-way Map" shows the location and description of all land and rights-of-way acquired by right of use or adverse possession and by legal conveyances such as right-of-way or easement deeds, permits, or other instruments.

4. Exceptions:

Please see the attached Attorney Declaration and Opinion of Counsel by Jefferson County Civil Deputy Prosecuting Attorney describing the rights-of-way circumstances specific to this project.

WITNESS WHEREOF, applicant hereunto affixes its name and corporate seal this 24th day of

March, 2025.

By Heidi Eisenhour

Attest:

Title County Commissioner, Chair

(Secretary)

(Affix Corporate Seal Here)

OPINION OF COUNSEL RELATIVE TO RIGHTS-OF-WAYDate 03-11-2025

Dear Sir:

I have reviewed the action taken by Jefferson County (hereinafter called the "Corporation") in obtaining a right-of-way for the construction, operation, and maintenance of the facilities to be installed, repaired, or enlarged with the proceeds of a loan made or insured by, and/or a grant from Rural Development to the Corporation. I have examined the right-of-way instruments, permits, or licenses obtained from landowners, public bodies, and public utilities and made such searches of the public records necessary to determine the legal sufficiency of the instruments covered by the "Right-of-way

Certificate," executed by the Corporation on March 11, 20 25. I also have examined the "Right-of-way Map" to determine whether continuous and adequate land and rights-of-way are owned or have been acquired by the instruments covered in the "Right-of-way Certificate".

Based on the foregoing examination, and to the best of my knowledge, information, and belief, I am of the opinion that:

- A. The legal instruments by which the Corporation has acquired said rights-of-way (a) are in appropriate and due legal form and adequately confer upon the Corporation the necessary rights-of-way for the construction, operation, and maintenance of its facilities in their present or proposed location, and such omissions or defects as may exist will in no substantial way or manner endanger the value or operation of the facilities, and (b) have each been properly recorded in the appropriate public land records of each County in which any of the land affected thereby is situated. Such consents, releases, or subordinations from lienholders recommended by me or required by Rural Development have been obtained.
- B. The legal instruments referred to above give unto the Corporation a continuous and adequate right-of-way to permit the construction, operation, and maintenance of the Corporation's facilities except as below noted.

C. Exceptions:

Please see the attached Attorney Declaration describing the rights-of-way circumstances specific to this project.

Very truly yours,

Ariel J. Speser

Attorney for Jefferson County, WA

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6 UNITED STATES DEPARTMENT OF AGRICULTURE
7 RURAL DEVELOPMENT
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9 OPINION OF COUNSEL RELATIVE
10 TO RIGHTS-OF-WAY
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DECLARATION OF
ATTORNEY ARIEL J.
SPESER, CIVIL DEPUTY
PROSECUTING ATTORNEY
FOR JEFFERSON COUNTY,
WA

13 I, **Ariel J. Speser**, Declare that:

- 14 1. I am over the age of 18 and am competent to be a witness.
15 2. I make these statements on personal knowledge.
16 3. I am a Civil Deputy Prosecuting Attorney in the Office of the
17 Prosecuting Attorney for Jefferson County ("PAO").
18 4. This declaration supplements the Opinion of Counsel Relative to
19 Rights-of-Way and Right-of-Way Certificate, Forms OMB No. 0575-0015.
20 5. Jefferson County has the authorization and legal authority to commit
21 to and complete the Early Learning/Family Support Center (the Center), and that
22 includes whatever work is necessary to be completed on the leased land according
23 to the Lease Agreement.
24 6. **Attachment A** is an annotated Jefferson County Parcel Map,
25 showing the Center's site location (the "Premises") on the Port Townsend School
26 District property and the adjacent streets on City of Port Townsend rights-of-way.
27 7. Based on my review of the City of Port Townsend's Street and Zoning
28 Maps, those portions of Blaine Street and Harrison Street adjacent to and abutting

DECLARATION OF ATTORNEY ARIEL J.
SPESER, CIVIL DEPUTY PROSECUTING
ATTORNEY FOR JEFFERSON COUNTY, WA

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Jefferson County Prosecuting Attorney
1820 Jefferson Street/P.O. Box 1220
Port Townsend, WA 98368
360-385-9180

1 the Premises are open public rights-of-way with streets maintained by the City. As
2 such, it is my understanding that the County (as USDA applicant) and YMCA (as
3 Lessor and the Center's operator) have legal authority to use the public rights-of-
4 way in order to construct, use and maintain the Center, subject to compliance with
5 City engineering standards and codes.

6 8. **Attachment B** is the Educational Property Ground Lease. In the
7 PAO's opinion, the Lease Agreement allows for all improvements to the leased
8 property as necessary. See Lease Agreement Section 2.5 Tenant Improvement,
9 stating:

10 "Such improvements may include, without limitation, running utilities to
11 the Property, constructing a foundation, constructing buildings, paving,
12 constructing driveways or other means of ingress and egress, and any other
13 improvements needed for YMCA's use."

14 Lease Agreement, page 4-5.

15 9. **Attachment C** is a Declaration of Attorney from City of Port
16 Townsend, verifying the City's support for the Center and confirming that the
17 Blaine Street and Harrison Street rights-of-way adjacent to the Center's location
18 may be lawfully used for the completion of the project.

19 10. Jefferson County respectfully requests it be allowed to move this
20 project forward. Please reach out with any questions or concerns.

21 I declare under penalty of perjury under the laws of the State of Washington
22 that the foregoing is true and correct.

23 Signed at Port Townsend, Washington on this 11th day of March, 2025.

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26 Ariel Speser, WSBA No. 44125
27 Civil Deputy Prosecuting Attorney
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Attachment A



Attachment B

EDUCATIONAL PROPERTY GROUND LEASE

FOR CONSIDERATION BY THE PORT TOWNSEND SCHOOL BOARD ON
OCTOBER 20, 2022

This Ground Lease ("**Lease**") is made as of the 12th day of December, 2022, by and between Olympic Peninsula YMCA, a Washington non-profit corporation which is a 501(c)(3) charitable organization, (the "**YMCA**") and Port Townsend School District No. 50 of Jefferson County, Washington, a Washington quasi-municipal corporation (the "**District**") (collectively, "**Parties**").

RECITALS

A. The District is a public school district organized under Title 28A RCW and the owner of the certain real property described on Exhibit A attached hereto (the "**Premises**"), a portion of which is vacant land comprised of approximately 1.16 acres;

B. The YMCA is a nonprofit organization committed to strengthening the community by empowering young people, improving the health and well-being of people of all ages, and inspiring action in and across communities. The YMCA desires to lease and develop the Premises as an Early Learning/Family Support Center (the "**Center**" or the "**Facility**");

C. The Parties recognize that there is a need for high-quality early learning opportunities in the Port Townsend community and have a shared interest in ensuring that children and their families have access to early learning opportunities and safe and engaging enrichment programs;

D. The District is willing to lease the Premises to the District for nominal rent so that the YMCA may construct certain improvements on the Premises and operate the Premises for an Early Learning/Family Support Center for a period of at least 15 years;

D. The Board of Directors of the Port Townsend School District ("Board of Directors") has declared the Premises to be surplus property pursuant to RCW 28A.335.040;

E. The use of the Premises for an Early Learning/Family Support Center will promote the objectives of the District because it has been shown that early childhood education (pre-K) increases kindergarten preparedness so children start school ready to learn; and participation in a quality early learning program lowers risk factors and improves health outcomes in adulthood; and because the work of the Family Resource Navigator is aligned with the District's Academic and Student Wellbeing Recovery Plan; and because the commercial kitchen will help support children struggling with food insecurity; and because there are School District employees who need access to child care in order to work and limited access leads to attrition, the cost of which can be avoided by providing priority registration at the Center, and NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

ARTICLE 1

THE DEMISE

1.1. Demise. In consideration of the rents, covenants and agreements contained in this Lease, the District hereby leases the Premises to the YMCA, and the YMCA hereby leases the Premises from the District upon and subject to the conditions set forth in this Lease, and subject to all liens, encumbrances and matters of record as of the date of this Lease.

1.2 Use of Premises. The Premises shall be used and occupied only for the purpose of the building, development, operation and maintenance of Early Childhood/Family Support Center and related facilities, landscaped areas, parking areas and for other purposes related to the operation and maintenance of the Early Childhood/Family Support Center as the YMCA and the District deems appropriate.

ARTICLE 2

TERM

2.1 Duration. The term of this Lease shall be co-terminus with the term of the leasehold interest granted by the District as lessor to the YMCA as lessee, and such term may be extended, as follows:

The initial term of the lease shall be twenty (20) years, contingent upon the completion of the YMCA's development plans within five (5) years of the effective date of this Lease, as discussed in Section 2.4 below.

Following the initial term of the lease, the YMCA shall have the option to extend the lease for up to two additional periods of ten (10) years each, on the same terms as the original lease, for a total of forty (40) years. Should the District decide to sell the surplus Property during the term of this Agreement, the YMCA will have first right to purchase the Property, subject to the public notice provisions and other requirements of state law, including RCW 28A.335.120. There is no obligation of the YMCA to exercise the option to purchase the Property. Should the YMCA choose to exercise this purchase option, such terms will be detailed in a separate agreement.

Pursuant to RCW 28A.335.040, should the Board of Directors determine that the Premises is needed for school purposes, the District has the right to terminate the lease before the scheduled termination date by giving the YMCA at least 9 months' advance written notice.

2.2 Ownership of improvements and disposition at end of lease.

The improvements and buildings constructed by the YMCA on the Premises shall be the property of the YMCA, subject to the provisions of the next two paragraphs.

Upon early termination of the Lease by the District, the District shall own fee simple title to the Premises, including improvements, and shall reimburse the YMCA for all leasehold improvement costs per calendar year (with partial years prorated), less

depreciation (which shall be calculated on the basis of 40-year straight line amortization), up to a maximum amount of \$2,000,000. Proceeds from the reimbursement, less any operating deficits incurred by the YMCA during the term of the lease, shall be used by the YMCA to continue supporting community benefits related to child care, food security, and/or family support services or to other services most closely aligned to the original purpose of the Early Learning/Family Support Center.

At the end of the second renewal term, the improvements and buildings shall become property of the District, unless a further agreement between the YMCA and the District provides otherwise. The YMCA shall continue to own the furniture and other personal property, including office and similar machines, and may remove it from the Facility. The provisions on furniture and other personal property shall also apply if the lease is terminated before the end of the second renewal term.

2.3 Subleasing.

The YMCA may sublease portions of the Center to non-profit organizations or government entities for purposes of providing early childhood learning or family support, or for purposes of supporting those operations, provided that any such sublease is approved by the District and contains a clause allowing for termination of the lease should the Board of Directors determine that the Premises is needed for school purposes, pursuant to RCW 28A.335.040.

2.4 Termination for Delay.

If YMCA's development plans, including funding, are not completed within five (5) years of the effective date of the lease, the District or the YMCA may terminate this Lease by giving a minimum of six (6) months' notice of termination, which notice shall be deemed void if YMCA completes such plans within the six (6) month notice period. "Development plan" refers to the site and construction plans, including funding plans, as set forth in an Operating Agreement between the YMCA and the District.

2.5 Tenant Improvement.

The YMCA may make improvements to the Property, subject to approval of the District, which shall not be unreasonably withheld. The YMCA shall be responsible for the design, payment, and performance of such improvements. All improvements must be completed by a licensed contractor and in compliance with federal, state, and local laws, regulations, and ordinances. Such improvements may include, without limitation, running utilities to the Property, constructing a foundation, constructing buildings, paving, constructing driveways or other means of ingress and egress, and any other improvements needed for YMCA's use. When making such improvements, the YMCA shall comply with the following:

2.5.1 Except during construction, fencing shall not be installed around the perimeter of the Property, except on the written agreement of the Parties.

2.5.2 Prior to construction of any tenant improvements on the Property, the YMCA shall give reasonable notice to the District of commencement of construction and shall provide evidence that it has received all required permits and approvals. The District agrees to cooperate with the YMCA and assist in obtaining any required approvals and permits.

2.5.3 During the course of construction of any improvements upon the Property, the YMCA shall maintain the Property in a safe and clean manner and shall not unreasonably interfere with the District's operation of its adjoining educational and recreational facilities. Construction fencing shall be adequate to protect students from gaining access to the construction area.

2.5.4 No alteration or improvements shall interfere with the District's utilities or utility easements either on, above, or below the surface of the ground.

2.5.5 Following construction of any improvements, the YMCA shall remove all rubbish and debris and return any disturbed property to its condition prior to such construction activity to the extent reasonably possible, unless otherwise agreed in writing between the Parties.

ARTICLE 3

RENT

3.1 Total Amount. YMCA shall pay to the District in advance upon the commencement of the Term the sum of One Dollar (\$1.00) as prepaid rent for the initial year of the Term and One Dollar (\$1.00) per year thereafter. The latter sum shall be paid to the District, in annual installments, no later than the first week of each new rental year. District also acknowledges and agrees that the YMCA's construction and operation of an early childhood center at the Premises is valuable and beneficial services that support the District's programs, services, and purpose with measurable value to the District. District employees will receive priority enrollment of five seats at the Early Learning Center. District employees will also have waitlist priority in the event of a vacancy of any of the District's five seats. This access reduces the chances of staff attrition, which is estimated at \$20,000 per employee. The District also benefits when the community is welcoming to families because student enrollment increases, contributing to the costs of district functions. Finally, when future students receive high-quality early learning, they are less likely to require interventions, which currently cost the district over \$1 million per year.

ARTICLE 4

TAXES AND UTILITIES

4.1 Utilities. The YMCA shall be solely responsible for the payment of all utilities serving the Premises during the term of the Lease, and shall pay and discharge all utility charges which are incurred for utilities used at the Early Learning/Family Support Center during the term of the Lease.

4.2 Real Estate Taxes and Assessments. The YMCA shall pay all real estate taxes and assessments that are imposed upon the Premises. If the property is purchased by the YMCA, the District, as the seller, shall be obligated to pay Real Estate Excise Taxes if due.

4.3 Leasehold Excise Tax. The YMCA shall pay any leasehold excise tax imposed under Ch. 82.29A RCW. Upon taking possession of the Premises, the YMCA shall complete the necessary paperwork to receive an exemption from the leasehold excise tax, if any is available. In the event the State of Washington makes any demand upon the District for payment of any leasehold excise tax under RCW 82.29A resulting from the YMCA's leasehold interest or the YMCA's use or occupancy of the Premises, the YMCA shall indemnify the District for all sums expended by the District or withheld by the State from the District in connection with such taxation.

ARTICLE 5

MAINTENANCE AND REPAIR

5.1 Condition of Premises. The YMCA hereby accepts the Premises in its existing condition. The District makes no representation and no warranty, expressed or implied, as to the condition, merchantability, or fitness of the Premises.

5.2 Condition of Early Learning/Family Support Center. The YMCA covenants and agrees to construct and maintain the Facility on the Premises in a condition meeting all applicable requirements under federal, state, and local law for such facilities; provided, however, both parties understand that the Center may be required to obtain certification or licensing under such requirements. The YMCA will use its best efforts to construct and obtain approval for the Center's use as quickly as practical.

5.3 YMCA's Duties. The YMCA shall not permit, commit, nor suffer waste, and shall at all times during the Term hereof, and at YMCA's sole cost and expense, keep, maintain and repair the Center and related improvements in good, neat and sanitary order and condition.

5.4 District's Right to Inspect. The District shall have the right to inspect the Premises during reasonable hours to insure compliance with the provisions of this Lease.

ARTICLE 6

LIENS; SECURITY INTEREST

6.1 YMCA's Duty. The YMCA will not directly or indirectly create or permit to be created or to remain, and will discharge any mortgage, lien, security interest, encumbrance or charge on, pledge of or conditional sale or other title retention agreement with respect to the District's interest in the Premises or any part thereof. Although the YMCA intends to fully fund construction costs before incurring them, they may, if necessary, allow such mortgage, etc., to be created on the building(s) and improvements only, subject to section 6.2 below.

6.2 Indemnity and Hold Harmless. YMCA will indemnify and hold the District harmless from any mortgage, lien, security interest, encumbrance or charge on, pledge of or conditional sale or other title retention agreement imposed upon the Premises by or as a result of the actions of the YMCA.

ARTICLE 7

YMCA INSURANCE

7.1 YMCA's Obligations. The YMCA to obtain and maintain in force any insurance required by federal, state, or local law applicable to Early Childhood Education Facilities. If not included in the legally required insurance, the YMCA shall also be required to maintain Commercial and General Liability insurance acceptable to the District (which acceptability shall not be unreasonably denied). In addition, the YMCA shall maintain property insurance covering the replacement costs of all of the YMCAs Improvements on the Premises. By requiring such insurance coverage, the District shall not be deemed to, or construed to, have assessed the risks that may be applicable to the YMCA in this Lease. The YMCA shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage than is herein specified.

7.2 Scope and Limits of Insurance. Coverage shall be at least as broad as:

(A) Property Insurance: YMCA's property insurance policy shall: be no less broad than that provided by the Insurance Services Office (ISO) "Cause of Loss – Special Form" (CP 10 30); be in an amount equal to, at all times, the full replacement cost of all tenant improvements, excluding the cost of excavation and foundations; be written as a primary policy.

(B) General Liability: Insurance Services Office form number (CG00 01 Ed. 12-07) covering Commercial General Liability, with a limit of not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 aggregate; provided that upon the opening and operation of the Facility and thereafter while this AGREEMENT remains in effect, the limit shall be not less than \$5,000,000 combined single limit per occurrence, \$5,000,000 aggregate. The policy shall name the District as an "Additional Insured" to

the extent of YMCA's obligations under the indemnification provisions set forth in this Lease, or the coverage provided to the YMCA under its policy, whichever is greater and must include but not be limited to:

- (1) Coverage for Premises and operations;
- (2) Contractual liability (including specifically liability assumed herein);
- (3) Employers Liability ("Stop-Gap" coverage).

(C) Automobile Liability: Insurance Services Office form number (CA 00 01 Ed. 03 06) Covering Business Automobile Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9, for a limit of not less than \$1,000,000 combined single limit per occurrence.

(D) Workers' Compensation: Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington statutory limits.

(E) Other Insurance Provisions. The insurance coverages required by this Lease are to contain or be endorsed to contain the following provisions where applicable:

Liability Coverages:

(1) To the extent of the YMCA's acts (including the acts of the YMCA's employees, agents and consultants), the YMCA's insurance coverage shall be primary insurance in respect to the YMCA, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the District, its officers, officials, employees, and agents shall be excess to any available YMCA insurance coverages.

(2) The YMCA's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

7.3 All Policies. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limit by claims paid, until after fifteen (15) days' prior written notice has been given to the District.

7.4 Acceptability of Insurers. Unless otherwise consented to by the District, insurance coverage is to be placed with insurers with a Best's rating of no less than AVII, or, if not rated by Best's, with minimum surpluses the equivalent of Best's surplus size VII.

7.5 Verification of Coverage. The YMCA shall furnish the District with certificates of insurance and endorsements required by this Lease. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to

bind coverage on its behalf. The certificates and endorsements are to be on forms generally accepted in the insurance industry and are to be received and approved by the District prior to the commencement of activities associated with this Lease. The District reserves the right to require complete certified copies of all required policies at any time.

7.6 Waiver of Subrogation. YMCA and District hereby release and discharge each other, their agents or employees, from all claims, losses and liabilities arising from any cause covered by insurance required to be carried by each of them. Each party shall provide notice to the insurance carrier or carriers of this mutual waiver of subrogation and shall cause its respective insurance carriers to waive all rights of subrogation against the other.

ARTICLE 8

DISTRICT'S INSURANCE

8.1 District Obligations. The District agrees to maintain Commercial General Liability insurance (or similar insurance applicable to governmental entities) acceptable to the YMCA covering injuries to persons and damage to property, with the YMCA included as an Additional Insured, covering the District's activities under this Lease. The District shall bear the responsibility for payment of any deductibles or self-insured retention amount. By requiring such insurance coverage, the YMCA shall not be deemed to, or construed to, have assessed the risks that may be applicable to the District in this Lease. The District shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage than is herein specified.

8.2 Scope and Limits of Insurance. Coverage shall be at least as broad as:

(A) Property Insurance: Property insurance shall be written on an all risk basis, covering the full value of District's interest in the leased property with no coinsurance provisions.

(B) General Liability: Insurance Services Office form number (CG00 01 Ed. 12-07) covering Commercial General Liability, with a limit of not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 aggregate. The policy shall include but not be limited to:

(1) Coverage for the District's interest in the Premises and any operations conducted by the District;

(2) Contractual liability (including specifically liability assumed herein);

(3) Employers Liability ("Stop-Gap" coverage).

(C) Automobile Liability: Insurance Services Office form number (CA 00 01 Ed. 03 06) Covering Business Automobile Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9, for a limit of not less than \$1,000,000 combined single limit per occurrence.

(D) Workers' Compensation: Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington statutory limits.

(E) Other Insurance Provisions. The insurance coverages required by this Lease are to contain or be endorsed to contain the following provisions where applicable:

Liability Coverages:

(1) The YMCA, its officers, officials, employees, and agents are to be endorsed as Additional Insured in respects to: liability arising out of activities by or on behalf of the District in connection with this Lease.

(2) To the extent of the District's acts and willful misconduct of the District or its officials, officers, employees, agents, or contractors, in performance of this agreement, the District's insurance coverage shall be primary insurance in respect to the YMCA, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the YMCA, its officers, officials, employees, and agents shall be excess to the District's available insurance coverages.

(3) The District's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

8.3 All Policies. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limit by claims paid, until after fifteen (15) days' prior written notice has been given to the YMCA.

8.4 Acceptability of Insurers. Unless otherwise consented to by the YMCA, insurance coverage is to be placed with insurers with a Best's rating of no less than AVII, or, if not rated by Best's, with minimum surpluses the equivalent of Best's surplus size VII.

8.5 Verification of Coverage. The District shall furnish the YMCA with certificates of insurance and endorsements required by this Lease. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms generally accepted in the insurance industry and are to be received and approved by the District prior to the commencement of activities associated with this Lease. The District reserves the right to require complete certified copies of all required policies at any time.

8.6 Waiver of Subrogation. YMCA and District hereby release and discharge each other, their agents or employees, from all claims, losses and liabilities arising from any cause covered by insurance required to be carried by each of them. Each party shall provide notice to the insurance carrier or carriers of this mutual waiver of subrogation and shall cause its respective insurance carriers to waive all rights of subrogation against the other.

ARTICLE 9

INDEMNIFICATION AND LIABILITY

9.1 The YMCA shall defend, indemnify, and hold harmless the 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 YMCA's use of the Premises, or from the conduct of YMCA's business, or from any activity, work or thing done, permitted, or suffered by the YMCA in or about the Premises, except only such injury or damage as shall have been occasioned by the negligence and willful misconduct of the District, its officers, officials, employees or volunteers in the performance of this agreement. In no event shall the YMCA be responsible for the injury or damage as shall have been occasioned by the actions of the District in regard to activities performed under this agreement, and the District shall defend, indemnify, and hold harmless the YMCA, 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 District's actions on or about the Premises, except only such injury or damage as shall have been occasioned by the negligence and willful misconduct of the YMCA, its officers, officials, employees or volunteers in the performance of this agreement.

9.2 Survival. The provisions of this Section shall survive the expiration or termination of this Lease.

ARTICLE 10

EMINENT DOMAIN

10.1 Option to Terminate. If the whole or any part of the Premises shall be taken by any public authority under the power of eminent domain, both the District and YMCA shall have the right at its option to terminate this Lease, exercisable by written notice to the other party given within thirty (30) days after the date of the taking. If neither party exercises its right to terminate this Lease, YMCA may continue in possession of the remainder of the Premises under the terms of this Lease.

10.2 Award. In the event of any taking, partial or whole, District shall be entitled to the entire award judgment or settlement from the condemning authority for the value of the Premises taken by the condemning authority, less the unamortized value of the YMCA's improvements, which amount shall be allocated to the YMCA to the extent it is included in the award.

ARTICLE 11

EVENTS OF DEFAULT AND REMEDIES

11.1 Events of Default by the YMCA. Any of the following occurrences or acts shall constitute an event of default by the YMCA under this Lease:

Failure to Perform. If the YMCA shall

(1) default in making payment when due of any rent or any other amount payable by the YMCA hereunder; or

(2) fail to maintain the Early Learning/Family Support Center in the manner required by this Lease; or

(3) default in the observance or performance of any other substantial provision of this Lease to be observed or performed by the YMCA hereunder; and

if such default shall continue as to subsection (1) for thirty (30) days or as to subsections (2) and (3) above for sixty (60) days, in each case after District shall have given to the YMCA notice specifying such default and demanding that the same be cured, or, with respect to a default under subsections (2) and (3), if by reason of the nature thereof such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such period of sixty (60) days, if the YMCA shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default and with all due diligence, it being intended in connection with a default not susceptible of being wholly cured with due diligence within such period that the time within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with all due diligence;

then the District may exercise the remedies set forth in subsection 11.2.

11.2 Remedies Upon YMCA's Default. In the event of any default by the YMCA as defined hereinabove which default remains uncured after the expiration of the respective period set forth above, the District may exercise the following remedies:

(A) Terminate Lease. If there is a default which, within District's reasonable discretion, affects YMCA's ability to operate and maintain the Facility, the District may terminate the YMCA's right to possession of the Premises by any lawful

means, in which case this Lease shall terminate and the YMCA shall surrender possession of the Premises to the District.

(B) Other Remedies. Any other remedy which may be available to the District at law or equity, including but not limited to actions for damages and/or injunctive relief.

11.3 Events of Default by the District. Any of the following occurrences or acts shall constitute an event of default by the District under this Lease:

Failure to Perform. If the District shall

(1) fail to give the YMCA possession of the Premises or without good cause interferes with the YMCA's possession of the premises; or

(2) by acts on or around the Premises, make the Premises unsafe or otherwise unsuitable for the Early Learning/Family Support Center;

(3) default in the observance or performance of any other substantial provision of this Lease to be observed or performed by the District hereunder; and

if such default shall continue as to subsection (1) for thirty (30) days or as to subsections (2) and (3) above for sixty (60) days, in each case after the YMCA shall have given to the District notice specifying such default and demanding that the same be cured, or, with respect to a default under subsections (2) and (3), if by reason of the nature thereof such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such period of sixty (60) days, if the District shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default and with all due diligence, it being intended in connection with a default not susceptible of being wholly cured with due diligence within such period that the time within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with all due diligence;

then the YMCA may exercise the remedies set forth in subsection 11.4.

11.4 Remedies Upon District's Default. In the event of any default by the District as defined hereinabove which default remains uncured after the expiration of the respective period set forth above, the YMCA may exercise the following remedies:

(A) Terminate Lease. If there is a default by the District which, within the YMCA's reasonable discretion, affects the YMCA's ability to operate and maintain the Facility, the YMCA may terminate this Lease by any lawful means, in which case the YMCA shall surrender possession of the Premises to the District, and the District shall pay to the YMCA the unamortized value of the YMCA's improvements as specified in Section 2.2.

(B) Other Remedies. Any other remedy which may be available to the YMCA at law or equity, including but not limited to actions for damages and/or injunctive relief.

11.5 Cumulative Rights and Remedies. The rights and remedies reserved to each party herein, including those not specifically described, shall be cumulative, and except as prohibited by Washington statutory law in effect at the time, either party may pursue any and all such rights and remedies at the same time or independently.

11.6 No Waiver. No delay or omission of either party to exercise any right or remedy shall, except as expressly provided herein or as expressly accepted by the other party, be construed as a waiver of any such right or remedy or of any default by hereunder. The acceptance or waiver of a default shall not be construed as an acceptance of any other instance of default, whether past or future.

11.7 Attorneys' Fees. If either party incurs any expenses, including but not limited to reasonable attorneys' fees, consultant and expert witness fees, in connection with any action or proceeding instituted by any party by reason of any default or alleged default of a party hereunder, the party prevailing in such action or proceeding shall be entitled to recover its reasonable expenses from the other party hereof. For purposes of this provision, in any action or proceeding instituted pertaining to the Lease, a party shall be deemed the prevailing party if (a) judgment is entered substantially in favor of said party, or (b) before trial or judgment the other party shall pay all or any portion of the charges claimed by said party, or the other party shall eliminate the condition(s), cease the act(s) or otherwise cure the omissions(s) claimed by said party to constitute a default by the other party hereunder.

ARTICLE 12

PARTIES TO COMPLY WITH APPLICABLE LAWS AND AGREEMENTS

The YMCA shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. The YMCA shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and obtain all permits, licenses or other approvals required by governmental agencies or bodies; except that the District shall, at its sole cost and expense, promptly remedy any problem in, on, or coming from its property which would cause any violation of such laws or requirements in or on the Premises.

Similarly, the District shall not use the Premises or permit anything to be done on or around the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or

promulgated which would prevent the YMCA from lawfully and safely constructing, maintaining or operating the Center.

ARTICLE 13

WAIVER

The waiver by either party of any term, covenant or condition herein contained on the part of the other party to be performed shall not be deemed a waiver of such term, covenant or condition for any subsequent breach of the same or any other term, covenant or condition herein contained.

ARTICLE 14

SIGNS

The YMCA may post or erect necessary and useful signs on the Premises with prior approval of the District. The YMCA agrees to post signs acknowledging the District's contribution to the Early Childhood/Family Support Center at the request of the District.

ARTICLE 15

NOTICES

All notices, requests, demands, instructions or other documents to be given hereunder to any party shall be in writing, shall be effective upon proof of receipt, and shall either be personally delivered to the party at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery) or delivered by overnight express mail service or delivered by mail, sent by registered or certified mail, return receipt requested, as follows:

If to YMCA: President/CEO

Olympic Peninsula YMCA
675 N. 5th Avenue, Ste 3A
Sequim, WA 98382

If to District: Superintendent

Port Townsend School District No. 50, of Jefferson County,
Washington

1610 Blaine Street
Port Townsend, WA 98368

ARTICLE 16

ASSIGNMENT AND SUBLEASING

Except as permitted in Articles 2 and 7, the YMCA shall not assign, sublease, mortgage, or encumber this Lease or delegate the duties of YMCA under this Lease (each a "**Tenant Transfer**") without the prior written consent of the District, which consent shall not be unreasonably withheld. A consent to one Tenant Transfer shall not be deemed to be a consent to any subsequent Tenant Transfer, by Tenant or by another person. This Lease shall not, nor shall any interest of the District herein, be assignable by operation of law, without prior written consent of the District. No assignment or sublease of this Lease shall relieve the YMCA from liability hereunder.

The District shall not sell, assign, or otherwise dispose of the Premises unless the leasehold interests (including rights to renew for two ten year periods) of the YMCA are protected.

ARTICLE 17

MISCELLANEOUS

17.1 Merger. All understandings and agreements heretofore made or reached between the parties respecting the transactions contemplated by this Lease are merged in this Lease. This Lease fully and completely expresses the agreement of the parties. There are no representations, warranties or agreements except as specifically set forth in this Lease. However, this Lease may be elaborated upon or explained by an Operating Agreement or Memorandum of Understanding between the parties, executed contemporaneously with or after the execution of this Lease.

17.2 No Joint Venture or Agency. Nothing contained in this Lease nor any of the acts of the parties hereto shall be construed nor is it the intent of the parties, to create a joint venture between YMCA and the District, nor is either party the agent or representative of the other, and nothing in this Lease shall be construed to create any such agency relationship or to hold either party liable to anyone for goods delivered or services performed at the request of the other party.

17.3 Amendments. No change in or addition to or waiver or termination of this Lease any part hereof, shall be valid unless made in writing and signed by or on behalf

of the party charged therewith. The Operating Agreement or Memorandum of Understanding described in section 17.3 may be treated as such a change or addition.

17.4 Governing Law and Venue. This Lease shall be construed in accordance with and governed by the laws of the State of Washington and its relevant agencies and subdivisions, except to the extent that federal law may impose requirements on one or both of the parties concerning the funding, construction, operation, or other matter concerning the Center. Venue for any suit between the Parties arising out of this Lease shall be in the Superior Court of Jefferson County, Washington.

17.5 Interpretation. Any questions concerning the interpretation or application of this Lease shall, if reasonably possible, be decided so as to promote the objective, shared by the parties, of funding, constructing, and operating the Center for the benefit of the community.

It is understood between the parties that the YMCA is engaged in an effort to complete raising funds for construction and operation of this Center. The YMCA has obtained and will be seeking further grant funding. Any questions concerning the interpretation or application of this Lease which might affect compliance with conditions of this grant funding shall be decided, if reasonably possible and consistent with applicable law, so as to permit compliance with the conditions of grant funding.

17.6 Headings. The article, section and paragraph headings herein contained are for the purposes of identification and reference convenience only and shall not be considered in construing this Lease.

17.7 Successors and Assigns. Subject to the provisions hereof restricting the sublease or assignment, all the terms and provisions of this Lease shall be binding upon and to the benefit of and be enforceable by the parties and the successors and assigns of the parties.

17.8 Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed an original for all purposes.

17.9 Schedule of Exhibits. This Agreement includes the following exhibit attached hereto and incorporated herein by this reference.

Exhibit A Premises – Description

87-294

DEEDS

DP

11-1-19

City of Port to School District No. 1

✓ Beg at a point on the east side line of Pierce St in P. T., distant 100 feet North from the NE corner of Pierce and Blaine Streets and running thence North along said Pierce St 150 feet; thence at a ra East 285.8 feet; thence at a ra South 250 feet to Blaine St; thence at a ra West along the North line of said Blaine Street 135.8 feet; thence at a ra North 100 feet and thence at a ra West 150 feet to the pob.

Just 10 ft in SE & SW + SW & SE & N

2-30-1 W

The leasehold interest only applies to the portion of the legally described property outlined in orange dotted line in Exhibit A.

IN WITNESS WHEREOF YMCA and District have executed this Lease as of the date set forth in the first paragraph of this Lease to evidence their agreement to the terms of this Lease.

YMCA:

Olympic Peninsula YMCA

Wendy Bart
By Wendy Bart

Its Executive Director

DISTRICT:

Port Townsend School District No. 50
of Jefferson County, Washington

Linda Rosenbury
By Dr. Linda Rosenbury

Its Superintendent

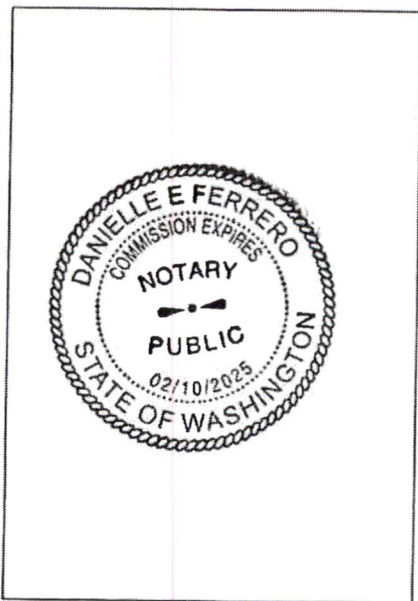
STATE OF WASHINGTON)

) ss:

COUNTY OF JEFFERSON)

I certify that I know or have satisfactory evidence that Dr. Linda Rosenbury is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Superintendent of PORT TOWNSEND SCHOOL DISTRICT NO. 50, OF JEFFERSON COUNTY, WA, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: March 23, 2023



(Use this space for notarial stamp/seal)

Danielle E Ferrero

Notary Public

Print Name Danielle E Ferrero

Residing at: Port Townsend

My commission expires 02/10/2025

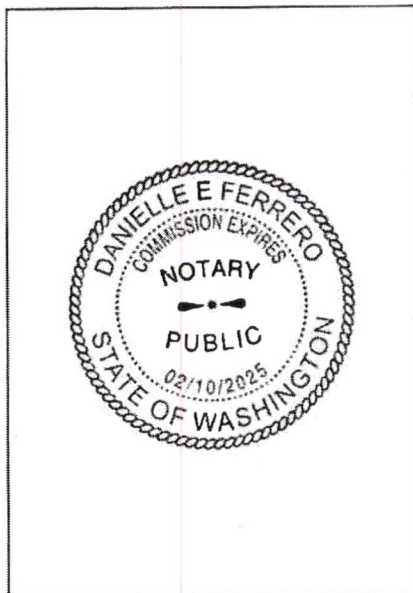
STATE OF WASHINGTON)

) ss:

COUNTY OF JEFFERSON)

I certify that I know or have satisfactory evidence that Wendy Bart is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Executive Director of OLYMPIC PENINSULA YMCA to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: March 23, 2023



(Use this space for notarial stamp/seal)

Danielle E Ferrero

Notary Public

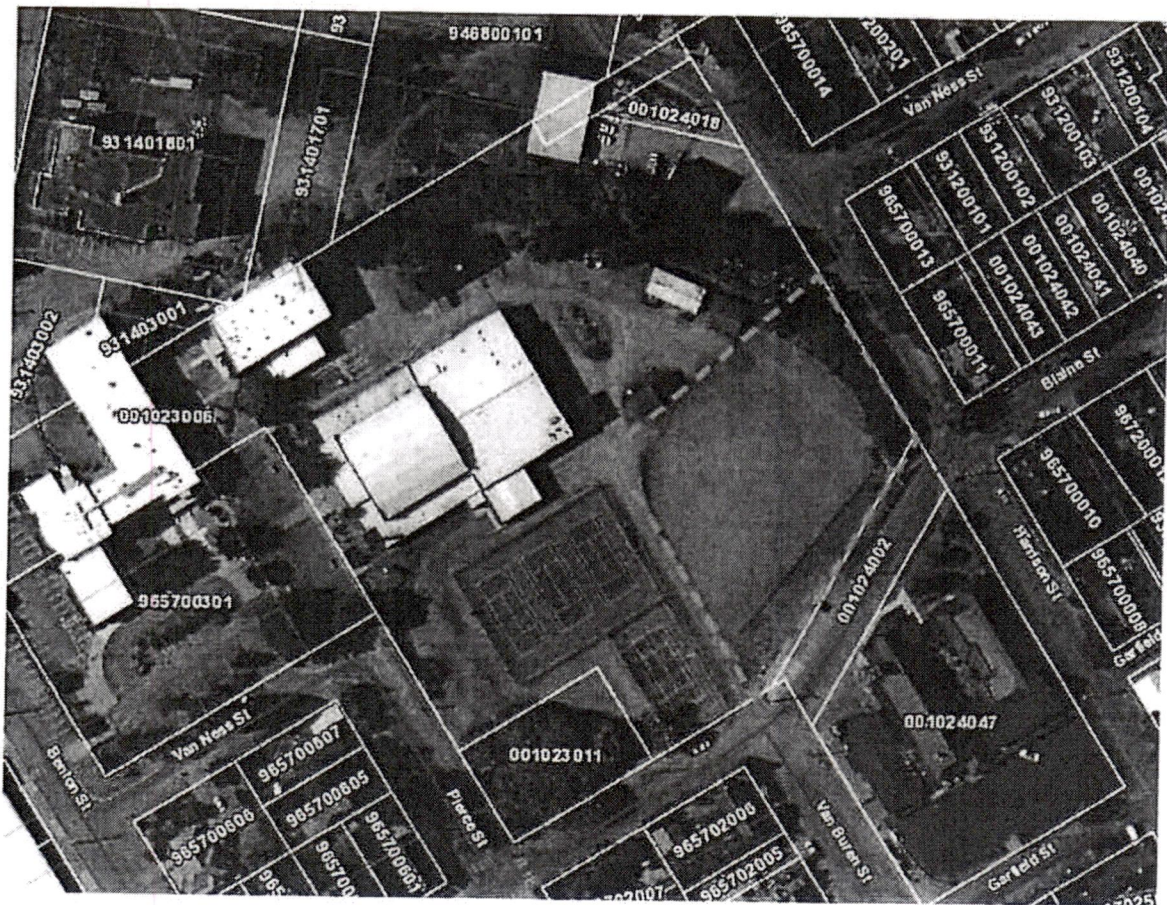
Print Name Danielle E Ferrero

Residing at: Port Townsend

My commission expires 02/10/2025

Premises - Description

The image below depicts the property described in the Statutory Warranty Deed. The area to be leased is a south-east portion of the property described in the Statutory Warranty Deed. The lease area is 1.16 acres comprising the field on the high school campus (1500 Van Ness Street) bordering Harrison and Blaine Street, indicated with the orange dotted line below. Excluded from the leased property are all other areas not enclosed in the below orange dotted line, which include a public high school, recreational facilities, various buildings owned by the District, and all other developed or undeveloped property other than what is specifically described herein.



ATTACHMENT C

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT

OPINION OF COUNSEL RELATIVE
TO RIGHTS-OF-WAY

DECLARATION OF
ATTORNEY FOR CITY OF
PORT TOWNSEND, WA

I, Alexandra L. Kenyon, **Declare** that:

1. I am over the age of 18 and am competent to be a witness.
2. I make these statements on personal knowledge.
3. I am a Civil Attorney for the City of Port Townsend.
4. This declaration supplements Jefferson County's Opinion of Counsel Relative to Rights-of-Way and Right-of-Way Certificate, Forms OMB No. 0575-0015.
5. I have reviewed Jefferson County's Forms OMB No. 0575-0015 and Declaration of Attorney Ariel J. Speser, Civil Deputy Prosecuting Attorney for Jefferson County, along with Attachments A (Map) and B (Lease Agreement between Port Townsend School District and Olympic Peninsula YMCA).
6. The City of Port Townsend has no objection to Jefferson County, or any parties involved in the Lease Agreement, to using adjacent Blaine Street and Harrison Street, and their rights-of-way, for the completion of the Early Learning/Family Support Center's construction.
7. The City of Port Townsend supports this project moving forward. Please reach out with any questions or concerns.

DECLARATION OF ATTORNEY FOR CITY
OF PORT TOWNSEND, WA - 1



Jefferson County Prosecuting Attorney
1820 Jefferson Street/P.O. Box 1220
Port Townsend, WA 98368
360-385-9180

1 I declare under penalty of perjury under the laws of the State of Washington
2 that the foregoing is true and correct.
3

4 Signed at Great Falls, Montana on this 17th day of March, 2025.
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Alexandra L. Kenyon,
WSBA No. 49575
Attorney for City of Port Townsend

