



WSU Contract No. 29254

FACILITY USE AGREEMENT

This Rental Agreement is entered into by Mason Transit Authority, a Washington municipal corporation and the User:

USERNAME: WASHINGTON STATE UNIVERSITY, an institution of higher education and agency of the state of Washington, by and through its Mason County 4-H Youth Development program

WSU/Mason County Extension
303 N 4th Street
Shelton, WA 98584
360-427-9670 Ext 681
fuller@wsu.edu

LEGAL BUSINESS NAME: SAME

This Agreement will commence on the date of final signature herein and remain in effect for three (3) years, unless otherwise terminated as provided herein. This agreement may be modified or extended only upon the mutual, written agreement of the parties.

Commercial GYM Facility: MTA, hereafter referred to as "MTA," has a shared-use, commercial GYM facility (hereafter "facility").

- I. **Services and Facility:** MTA agrees to provide the User and its employees, contractors, and other personnel as authorized by MTA under this Agreement's subordinate agreements access to and use of the GYM facility for community athletic use.
2. **Authorized GYM Usage:** The User is authorized to use the GYM space within MTA facilities only for those lawful purposes that MTA has expressly approved;
 - A. **Schedule:** User shall have use of the facility on the dates and times booked. Times and dates can be scheduled as needed and as available. Upon meeting the MTA requirements, the User will receive access to the MTA GYM area. The User agrees to vacate the MTA premises at the end of their reserved time.
3. **Rates:** MTA GYM rental rates are based on the number of hours rented per month, **at the end of each month MTA will invoice the User for all scheduled hours in the previous month at the rate of \$25 per hour.** MTA reserves the right to change rental rates at any time; written notice will be given to the User at least (30) days before the change takes effect. Based upon the schedule provide for herein, User's initial rental rate shall be determined payable within thirty (30) days upon invoice, after each event.
4. **Payment.** MTA will invoice the User **at the end of every month after the event(s) for times and dates performed.** User will be charged a \$35.00 insufficient check fee from MTA, if the

User's payment should be found insufficient. The User will lose check writing privileges after one (1) insufficient fund check.

5. **Cancellation.** GYM rental reservations may be canceled with at least 07 days' notice before the reserved time. Cancellations received less than seven (07) days in advance of the reserved time will be billed at the agreed to rate.
6. **Relationship of Parties.** This Agreement permits the User to use the GYM facilities at such times and for such durations as the User and MTA mutually agree. The User is a separate business entity from MTA and is responsible for complying with all applicable municipal, county, state and federal regulations. This Agreement is not a lease and does not give the User any interest in any real property. Additionally, this Agreement shall not be construed as a partnership, joint venture or otherwise, and unless otherwise agreed in writing and signed by both parties, MTA has no right, title or interest in and to the User's business or profits. No employees or contractors of the User shall be considered an employee or contractor of MTA. The User agrees to indemnify, defend (such defense shall be provided at the sole discretion of the Office of the Attorney General for Washington), and hold MTA harmless from any claim made by or through the User or by any employee or contractor of the User, as a result of the negligent acts or omissions of the User, its officers, employees, agents, or registered volunteers who are acting in good faith in the performance of their official duties with respect to this Agreement. Additionally, User agrees to indemnify, defend (such defense shall be provided at the sole discretion of the Office of the Attorney General for Washington), and hold MTA harmless from any claims or damages resulting from User's negligent use of the facility or from any claims or damages resulting from any food or other product produced in the facility, to the extent that such claims or damages are a result of the negligent acts or omissions of User, its officers, employees, agents, or registered volunteers who are acting in good faith in the performance of their official duties with respect to this Agreement.
7. **Prohibited Use.** Within its reasonable control (a) the User shall not use or permit MTA to be used by any person in violation of any municipal, county, state or federal ordinance or law; (b) the User shall not use or permit MTA to be used by any person in any manner disruptive to MTA or any other Authorized Users of MTA, and (c) the User shall not use or permit any portion of the facility to be accessed by any person not authorized by MTA. Without limitation to the foregoing, the User shall not use the facility or within its reasonable control permit the facility to be used by any person in violation of this Agreement.
8. **Access to the MTA Facility.** MTA, without liability to MTA, reserves the right to refuse access to the facility to anyone, including Authorized Users, for any reason.
9. **User's Responsibility for Authorized Users.** Unless otherwise authorized by MTA, the User must be present at MTA facility during their reserved GYM time. Further, the User is responsible, to the extent within its reasonable control, for the safety and the actions of any and all Authorized Users, and within its reasonable control the conduct of the User's other invitees and anyone else present in the reserved GYM facility during the User's reserved GYM time. However, notwithstanding anything in this section to the contrary, the parties expressly acknowledge and agree that the User's liability and indemnification obligations hereunder are subject to the coverage limits as described in the State of Washington Self-Insurance Liability Program (SILP) and the Tort Claims Act (RCW 4.92.060 et seq.).
10. **Security.** MTA assumes no responsibility for the security of any equipment or supplies provided by the User for their own use in MTA. Any additional security of storage arrangements shall be the User's sole responsibility.

11. **Video Surveillance.** The User acknowledges that MTA reserves the right, but assumes no duty, to conduct video surveillance at any or all times. Without limitation, the User acknowledges that it and anyone, including all Authorized Users of the facility, will not have an expectation of privacy when present at MTA. The User acknowledges that any activity taking place within MTA may be recorded for possible future review if MTA or any of its Users experiences a loss of property. The video contents, whether physical or digital, is the sole property of MTA:
12. **Liability.** Unless otherwise agreed in writing, the User agrees to use the MTA facility "as-is." MTA shall not be liable for any damage to either person or property sustained by the User or by any third party arising in any way out of the User's negligent use of MTA facility. In the event of any liability, loss, lost, damage or expense that User may incur arising from such negligent use, the User agrees to look first to such insurance as they may maintain pursuant to this Agreement or the User may additionally elect to maintain. Without limitation to any such rights MTA may have under the policies of insurance the User will maintain, the User covenants and agrees to indemnify, defend (such defense shall only be provided at the sole discretion of the Office of the Attorney General for Washington), and hold harmless MTA, and its officials, employees, agents, and independent contractors from any and all claims, costs, and liabilities arising from or in connection with: damages or injuries to persons (including death) or property in, upon, or about MTA's premises, or resulting from the negligent acts and/or omissions of User, its officers, agents, employees, and registered volunteers during the sale, distribution, consumption, and use of any service provided or product produced or manufactured by the User using MTA's facility.
13. **Damages to MTA Facility and Property.** The User will be responsible for any and all damage and other loss to and/or in MTA's facility, including all fixtures, furnishings, equipment and any durable supplies provided by MTA for the User's use (collectively called MTA's "Equipment") which is caused or occasioned by the negligent acts and/or omissions of User, its officers, agents, employees, and registered volunteers who are acting in good faith and within the scope of their official duties in the performance of this Agreement and during the User's reserved time. The User will pay for any such damage or loss within thirty (30) days upon receipt of an invoice from MTA. The User agrees to pay the full replacement cost for any damaged or destroyed equipment which may not otherwise be fully or cost-effectively restored, to the extent any such damage or destruction is the result of the negligent acts and/or omissions of the User, its officers, agents, employees, or registered volunteers. In the event User loses any keys issued, User is responsible for any costs incurred due to re-keying of the facility.
14. **Insurance.** The User must obtain and maintain the following policy or policies of insurance at the users' sole expense.:
 - a. General Liability Insurance or Self-Insurance with minimum limits of liability in the amount of \$1 million (\$1,000,000.00) per occurrence for bodily injury, personal injury or death; and/or with respect to damage to property, and \$2 million (\$2,000,000.00) annual aggregate. This insurance policy shall name Mason County Transit Authority an additional insured.
 - b. The User agrees to provide proof of insurance to MTA prior to this Rental

Agreement being deemed effective and maintain the insurance in full force and effect while using MTA facility.

15. **Unauthorized Use of MTA Name.** The User is prohibited from using the name "Mason County Transit Authority," "Mason Transit" or "MTA" in connection with any good or service without prior written approval from MTA. Without limitation to the forgoing, the User is prohibited from using the "Mason County Transit Authority," "Mason Transit" or "MTA" names and/or acronym in connection with any product manufactured at MTA or elsewhere without prior written approval from MTA.
16. **Confidentiality.** MTA and the User acknowledge and agree that the MTA GYM is a shared use facility and may be occupied by and used by other MTA Users. MTA and the User furthermore acknowledge and agree that the conduct of the User's business and the production of the User's food products may involve the use of recipes, techniques, ingredients, financial and business records and other information that is owned and used exclusively by the User that constitute trade secrets or proprietary knowledge that must remain confidential for the protection of the User's business. The User agrees and acknowledges that other MTA Users may also have confidential information that applies to the conduct of their own businesses. In the course of using the facility, the User shall make reasonable efforts to protect User's confidential information from disclosure. The User shall also respect that others using the facility may be applying their confidential information and shall take a care not to discover other MTA User's confidential information. Any deliberate attempt to obtain confidential information from MTA or any of MTA's Users, as determined solely by MTA, shall be grounds for termination of this Agreement. User acknowledges that it is User's responsibility to protect User's confidential information and that MTA shall make reasonable efforts to assist User in the protection of User's confidential information. MTA specifically reserves the right to disclose any and all information as required by applicable law or regulation or by order of a court of competent jurisdiction.
17. **Default.** The User shall abide by the terms of this Rental Agreement and all other MTA policies, as set forth herein. A violation, breach, or failure to keep or perform any provision of this Rental Agreement shall constitute a breach upon its occurrence which must be promptly resolved. As time is of the essence, the User will, as a function of the severity of the problem, have no more than three (3) business days after the situation is, by written notice, brought to the User's attention by MTA to cure such default. Without limitation on MTA's right to terminate the Agreement at any time, if more than three (3) business days should pass without any corrective action taken by the User, MTA's management may declare the User's rights terminated with no further notice. Furthermore, MTA may take possession and remove the User's property. The User will be charged any reasonable storage cost. MTA maintains the right to at any time immediately eject any non-authorized user with or without cause. MTA reserves the right to, at any time, eject any Authorized User, including the User, from the facility or any part hereof, in the event MTA believes the Authorized User is creating or potentially creating a public health hazard, creating a disturbance, threatening bodily harm, and/or is engaged or threatening to engage in any unlawful action, or for any other reason. MTA may suspend the User's access to the facility without such action constituting a breach by MTA hereunder.
18. **Termination.** Notwithstanding any provision contained in this Agreement, MTA may, in MTA's sole and absolute discretion terminate this Agreement without further liability:
 - a. Immediately and with no prior notice to the User when a provision of this Agreement has been breached by the User; or

- b. With thirty (30) days prior written notice to the User.
 - c. The User may also terminate this Agreement at any time, for any reason, with thirty (30) days prior written notice to MTA.
- 19. **Assignment.** This agreement is solely between MTA and the User. The parties shall not transfer or assign any of its rights or obligations under the terms of this Agreement without prior written consent from the other Party.
- 20. **General.**
 - a. The laws of the State of Washington shall govern this agreement. Venue for any action arising out of this agreement shall exclusively be in Mason County, Washington.
 - b. MTA makes no representations, warranties or guarantees express or implied, including without limitation, any warranties for the merchantability or the fitness of the intended use of the facility, including the GYM facilities, other than those contained in this agreement. The User may inspect the MTA's facility at the immediate commencement of the User's designated period and upon the User's use, the facility will be deemed accepted "as is".
 - c. The User acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. Further, User agrees that this Agreement constitutes the entire agreement between parties and supersedes all proposals, oral and written, and all negotiations, conversations or discussions had between the User and MTA related to the subject matter of this agreement. Further, this Agreement may only be amended by a writing signed by all Parties.
- 21. **Non-Binding Until Fully Executed.** This Agreement does not constitute a formal offer by either party. This Agreement is not and will not be binding on either party until or unless it is fully executed by both parties. As of the date of execution by both parties, this Rental Agreement shall revoke and replace any previous Rental Agreement made between MTA and the User.
- 22. **Entity as User.** If the User is an entity (e.g. a limited liability company or corporation), the person signing on behalf of the entity hereby warrants that he or she is a duly authorized agent of such entity and acknowledges that he or she executes this Agreement both in his or her representative capacity on behalf of the entity.
- 23. **Notices and Communications.** All written notices or official written communications which may be required under this Use Agreement shall be delivered personally, e-mailed, or sent by regular mail, postage prepaid, addressed as follows unless additional mailing requirements are required by this agreement.

Written notices and communications to MTA from the User should be mailed or delivered to:

EMAIL: sweisenbach@masontransit.org
MAIL: Transit Community Center
601 West Franklin Street Shelton, WA 98584
(360) 432-5758
Fax: (360) 426-0899

Notices delivered personally or emailed shall be deemed effective when transmitted. Notices sent by mail shall be effective when delivered or three days after mailing, whichever is earlier. MTA and the User agree to keep the foregoing contact information current. It is the User's responsibility to maintain a valid and operational email address and telephone number in MTA's records.

Notwithstanding anything in this Agreement to the contrary, the Parties expressly acknowledge and agree (1) User and its officers, employees, agents, assigns and registered volunteers, while acting in good faith within the scope of their official duties, are covered by the State of Washington Self-Insurance Liability Program (SILP) and the Tort Claims Act (RCW 4.92.060 et seq.). Successful claims to pay legal liabilities and defense costs of the state resulting from the tortious conduct of User and its employees, officers, agents, assigns and registered volunteers in the performance of their official duties in good faith under this Agreement will be paid from the Tort claims liability account as provided in RCW 4.92.130. Notwithstanding anything in this Agreement to the contrary, the extent of the liability User contractually assumes under this Agreement is limited to those risks for which User is covered by the SILP and the Tort Claims Act, and (2) User will only provide a defense to Mason Transit Authority if the Office of the Attorney General of the State of Washington determines that (a) coverage for the costs of the same are within the scope of the coverage afforded to User by the SILP and the Tort Claims Act, or (b) that notwithstanding a lack of coverage for such defense costs, it is appropriate and advantageous to User and the State of Washington to do so.

INITIALS of User: SS

INITIALS of Other Party: MS

TO EVIDENCE THEIR AGREEMENT, these parties have subscribed their names to be effective the date this Agreement is fully executed.

Username: WASHINGTON STATE UNIVERSITY, by and through its Mason County 4-H Youth Development program

WSU/Mason County
303 N 4th Street
Shelton, WA 98584
360-427-9670 Ext 681
fuller@wsu.edu

BY:

Signed: [Signature]
Print Name: Samuel Schirer
Title: Contracts Specialist

Date: 2-28-2020

Mason Transit Authority
790 E Johns Prairie Road
Shelton, WA 98584
360-427-5033

BY:

Signed: [Signature]

Date: 3/2/2020