

RESOLUTION NO. 3032

RESOLUTION AUTHORIZING THE MAYOR TO SIGN A SIX-PAGE "NO-CHARGE FACILITY USE AGREEMENT WITH INDEPENDENT CONTRACTOR" FOR OPERATION OF AFTER SCHOOL PROGRAMS AT THE CIVIC CENTER DURING THE 2023-2024 SCHOOL YEAR BY EXPLORE YOUR WILD

WHEREAS, on January 10, 2023, the City Council unanimously approved Resolution No. 2968, which authorized the Mayor to sign a "No-Charge Facility Use Agreement with Independent Contractor" with the entity of Explore Your Wild so that such entity could begin operating after school programs at the Civic Center during the second half of the 2022-2023 school year; and

WHEREAS, the term of the prior Agreement has expired, and the parties desire to renew their relationship and enter into an updated Agreement; and

WHEREAS, an updated six-page "No-Charge Facility Use Agreement with Independent Contractor" has been drafted and the operator has signed a copy in advance of the City Council acting on the instant Resolution; and

WHEREAS, City staff recommends that the City Council approve the updated Agreement, and the City Council finds that good cause exists for approving it;

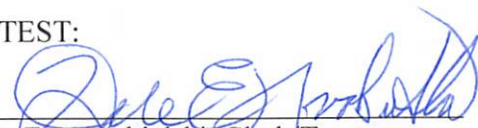
NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, that the Mayor be and is authorized to sign the updated six-page "No-Charge Facility Use Agreement with Independent Contractor" in the form appended hereto.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 22nd day of August, 2023.




Sherry Raymond, Mayor

ATTEST:



Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:



Rob Case, City Attorney

NO-CHARGE FACILITY USE AGREEMENT WITH INDEPENDENT CONTRACTOR

This No-Charge Facility Use Agreement With Independent Contractor (“Agreement”) is entered into between the City of Selah as a municipal corporation (“City” or “Owner”) on the one part, and on the other part Explore Your Wild as a non-profit corporation operating under uniform business identification number 604-380-638 (“User”) and also its owner-operator Jeni Rice as a natural adult human (“Guarantor”).

1. **Use of Premises.** City will allow User to possess and use interior and exterior portions of City’s Civic Center building located at 216 South First Street, Selah, WA 98942 (“Premises”), for the purpose of operating after school programs for area school children during the hours of 3:30 p.m. to 5:30 p.m. on days Monday through Friday during the months of August 2023 through June 2024 (“Operation Times”).
 - a. **After School Programs.** Without modifying paragraph 3 below, User acknowledges and agrees that the after school programs will include tutoring, help with homework, and recreational activities.
 - b. **Portions of Premises.** The specific portions of Premises that User is entitled to use during Operation Times shall be designated on a case-by-case basis by City. User acknowledges and agrees that it is not being granted, and is not entitled to, an exclusive franchise or the exclusive use of Premises.
 - c. **As-Is Condition.** User acknowledges and agrees that it has conducted a thorough examination and evaluation of Premises and has made its own assessment as to suitability of Premises for User’s intended usage. User acknowledges and agrees that User will accept and use Premises in its existing as-is condition and without any warranties by City with regard to quality, quantity, kind or condition.

2. **No Fees.** City shall not charge any rental fees to User, because the after school programs will benefit residents – both children and their parents/guardians –of the City without the City directly incurring any fees or costs. During Operation Times, User and its guests/participants may make ordinary use of the parking lot stalls at Premises, ordinary use of the restroom facilities at Premises, ordinary consumption of restroom supplies at Premises, ordinary use and consumption of potable water at Premises, and ordinary use and consumption of electricity and heating/cooling, each and all without any corresponding charges or costs. User shall not charge any fees, charges or costs to City, because User

will be entitled to retain the enrollment or participation fees (if any) that User charges and collects from participating children and/or their parents/guardians and also the grant funds (if any) and/or third-party-provided funds (if any) that User receives or collects due to its operation of the after school programs.

3. **Independent Contractor Relationship.** User shall operate as an independent contractor and not, by contrast, as a direct agent or subordinate of City. User shall be exclusively responsible and liable for all decisions, actions and omissions related to or stemming from its actual or intended use of Premises – including but not limited to deciding what types of after school programs to operate, how much (if any) to charge for enrollment or participation fees, how to screen and select participants, how to select and screen employees or agents who oversee and operate the after school programs, or any legal or financial issues or consequences related to or stemming from User’s actions or omissions. City shall have no role in planning, organizing or operating the after school programs.
 - a. **Sufficient Staffing and Supervision.** Without modifying paragraph 3 above, User acknowledges and agrees that it must ensure that sufficient staffing levels are always maintained and sufficient supervision of the participating children always occurs.
 - b. **Staff Background Screening.** The after school program participants are contemplated to primarily be minor children under the age of 16. Certain staff members and volunteers are contemplated to have unsupervised access to program participants at varying times, for varying degrees and in varying circumstances. Accordingly, prior to allowing any staff member or volunteer (including but not limited to staff members and volunteers who are themselves under the age of 18) to work at, be present during and/or transport participant children to or from the after school programs, User shall ensure that the person has been cleared via a national criminal background screening process that is compliant with the Child and Adult Abuse Information Act, RCW 43.43.830 through 43.43.845.
 - c. **Relationship to City Shall be Disclosed.** In all communications, including but not limited to solicitation of potential participants and/or staff, User shall plainly and consistently inform and disclose that User is an independent contractor with no formal or legal connection to City and that City has no role in planning, organizing or operating the after school programs.
 - i. **Relationship to Selah School District Shall be Disclosed.** Similarly, User shall plainly and consistently inform and disclose that the Selah School

District also has no formal or legal connection to User or the after school programs, and that the Selah School District has no role in planning, organizing or operating the after school programs.

- d. Suggestions by City or Selah School District as to Program Content. If City and/or the Selah School District ever provide any suggestions to User with regard to the content or nature of the after school programs, User acknowledges and agrees that all suggestions are only suggestions and that all actual decisions with regard to such issues are and will be exclusively made by User.
 - i. Directions by City as to Noise Levels. User acknowledges and agrees that it shall endeavor to operate the after school programs in such a manner as to not unreasonably interfere with or interrupt co-usage of portions of the Civic Center by other users, and that noise levels are the City's primary concern in this regard. User acknowledges and agrees that it shall comply with all reasonable directions and instructions from City with regard to noises and sounds, including making efforts to quiet down the participating children and staff when requested.
 - e. Transport of Children. User acknowledges and agrees that City shall have no role in transporting participating children or staff to or from Premises.
4. Compliance with Laws. User shall comply with all federal, state and city laws, regulations and rules at all times. User shall be exclusively responsible and liable for ensuring that its employees or agents likewise comply with all laws, regulations and rules.
 5. Indemnity. Without necessity of demand by City, User shall hold City harmless, indemnify City and also defend City and all of City's employees, agents and insurers, at User's immediate and ongoing personal expense, via legal counsel of City's choice, from, against and with regard to any claim, lawsuit, administrative action, demand, liability, fine, punishment, enforcement action, vandalism, theft or burglary, waste of Premises or property, or other disadvantageous or financially-impactful event or result that in any way is caused by, stems from or relates to User's operation, User's use and possession of Premises, User's planning, organizing or operating of the after school programs, and/or actions or omissions at, during and/or in transport to or from the after school programs, including but not limited to claims and damages for workers compensation, on-the-job injury or industrial insurance under RCW Title 51 or other applicable law, and also including but not limited to claims and damages for bodily injury, assault, battery, inappropriate touching, harassment, discrimination, stalking, bullying, sexual misconduct,

sexual molestation, and mental suffering by any staff member, volunteer, participant or third-party.

- a. Actions by Children. User acknowledges and agrees that its obligations established by paragraph 5 above include, but are not limited to, any and all conduct by participating children toward one another, by one child toward himself/herself, by any child toward any staff member, by any child toward any City employee or agent, by any child toward any other occupant of Premises, and by any child toward the Premises itself or toward any third-party or other property. This includes, but is not limited to, violence, abuse, sexual assault, kidnapping, theft, and vandalism. All participating children shall be legal invitees of User.
 - b. Actions by Staff. User acknowledges and agrees that its obligations established by paragraph 5 above include, but are not limited to, any and all conduct by staff toward one another, by one staff member toward himself/herself, by any staff member toward any child, by any staff member toward any City employee or agent, by any staff member toward any other occupant of Premises, and by any staff member toward the Premises itself or toward any third-party or other property. This includes, but is not limited to, violence, abuse, sexual assault, kidnapping, theft, and vandalism. All staff members shall be legal agents of User.
6. Insurance. At its sole cost and expense, User shall maintain general liability insurance with an applicable coverage limit of not lesser than one million dollars (\$1,000,000.00) that applies to and covers User's operation, User's use and possession of Premises, and User's full scope of indemnity under paragraph 5 of this Agreement. User shall ensure that City is named as an additional insured on the declarations page or certificate of insurance, and User shall deliver a copy of the same to City.
 7. Termination. City may unilaterally terminate this Agreement in the event of any breach or violation by User, including but not limited to User's failure to fulfill its obligations established by paragraph 5 above such as allowing waste or vandalism to occur and/or failing to properly remedy such or reimburse City for such. Also, City may unilaterally terminate this Agreement if Premises becomes condemned or otherwise unsuitable for User's use, or if any aspect of this Agreement proves to be contrary to any law, regulation or rule. User acknowledges and agrees that User shall have no legal recourse, claim for damages, lawsuit or other action or interest due to a unilateral termination of this Agreement by City pursuant to this paragraph 7.

8. **Potential Renewal.** User acknowledge and agrees that it is not entitled to any renewal or extension of this Agreement, and that City shall have unlimited discretion as to all decisions about potentially renewing or extending this Agreement including but not limited to any modifications of terms and provisions that will be application to any renewal or extension.
9. **Notices.** Any written or electronic notice, demand or communication by a party to another party may be validly sent and made to the following addresses and accounts, and shall be deemed actually received three days after dispatch, sending or mailing:

a. **To City:** City of Selah
ATTN: Mayor, City Administrator, Clerk-Treasurer and City Attorney
City Hall
115 West Naches Avenue
Selah, WA 98942
Email: sherry.raymond@selahwa.gov
Email: joe.henne@selahwa.gov
Email: dale.novobielski@selahwa.gov
Email: rob.case@selahwa.gov

b. **To User:** Explore Your Wild
1001 West Yakima Avenue, Suite 101
Yakima, WA 98902-3095
Email: jeni@yakimatutoring.com

Explore Your Wild
525 Selah Ridge Drive
Selah, WA 98942-9687
Email: jeni@yakimatutoring.com

Explore Your Wild
P.O. Box 993
Selah, WA 98942-0993
Email: jeni@yakimatutoring.com

c. **To Guarantor:** Jeni Rice
525 Selah Ridge Drive
Selah, WA 98942-9687
Email: jeni@yakimatutoring.com

Jeni Rice

P.O. Box 993
Selah, WA 98942-0993
Email: jeni@yakimatutoring.com

10. Guarantor's Personal Guarantee. By signing below on the signature block labeled "Guarantor's Personal Guarantee", Guarantor thereby guarantees – on a personal individual basis and also as a representative of any marital community, committed intimate partnership relation and/or affiliate, subsidiary or insured status – without any limitation or exception the full, faithful and timely performance, satisfaction and discharge by User of all obligations and requirements. Guarantor acknowledges and agrees that all of Guarantor's personal money and assets, and also all money and assets that Guarantor has any legal interest in or connection to, are subject this guarantee and exposed to liability, lawsuit and seizure.

CITY OF SELAH ("City" or "Owner")

By: Sherry Raymond Dated: 8-23-23
Sherry Raymond, Mayor

EXPLORE YOUR WILD ("User")

By: _____ Dated: _____
Jeni Rice, Owner-Operator

GUARANTOR'S PERSONAL GUARANTEE

_____ Dated: _____
JENI RICE