

AGREEMENT BETWEEN WHATCOM COUNTY AND THE CAMP HORIZON FOUNDATION FOR THE USE AND OPERATION OF BAY HORIZON PARK

DRAFT 5.5.22 For NPS Review

WHATCOM COUNTY, a municipal corporation, hereinafter referred to as the “COUNTY” and CAMP HORIZON FOUNDATION, a 501(c)3 organization (UBI No. 601 132 375) hereinafter referred to as the “FOUNDATION”, enter into an agreement for the use, operation and improvement of Bay Horizon Park, a Whatcom County property located at Gemini Street, Blaine WA, subject to written approval of the Secretary of Interior or his/her delegated representative, National Park Service, and all terms and conditions of the *Federal Lands to Parks Program* under which Whatcom County acquired the property (GSA Control #: WA 749 A,B,C). Parties acknowledge that this agreement is subservient to the deed restrictions between the COUNTY and United States of America.

Whereas, the FOUNDATION has operated Camp Horizon, a residential camp setting providing recreational, educational and social activities for teens and adults with developmental and medical disabilities since 1987; and

Whereas, the FOUNDATION has maintained and improved the facilities at Bay Horizon Park over this period of time to the mutual benefit of all parties and public; and

Whereas, the COUNTY and FOUNDATION desire to continue this relationship; and

NOW, THEREFORE, for the reasons set forth above and in consideration of the mutual covenants and agreements as hereinafter set forth, the COUNTY agrees to allow the FOUNDATION to provide services and facilities hereinafter to be mentioned upon a portion of real property know as Bay Horizon Park, located at Gemini Street, Blaine WA.

SECTION I – DESCRIPTION OF OBLIGATIONS

The COUNTY hereby grants to FOUNDATION full use and operational control of certain buildings, land and facilities of Bay Horizon Park. Included are building Nos. 416 (Recreation Hall), buildings 510, 514, 516, 518 (Barracks), 532 (Administration Building), 534 (Kitchen/Dining Hall), 542 (Shop), 616 (Hobby Shop), 634 (Base Exchange) and 636 (Commissary). Use of building 425 (Gymnasium) is in collaboration with the Blaine Birch Bay Park District’s Use under a separate interlocal agreement between Whatcom County and the District.

Land includes all that is not occupied by others or is not required by the COUNTY for public access or use of thereby. Facilities include utility systems, walks, roads, parking areas, play fields, courts and similar amenities. Map of Bay Horizon Park attached as “Exhibit C”.

Additional obligations of COUNTY are detailed in Exhibit “A”, attached to and incorporated herein by reference.

FOUNDATION agrees to operate Bay Horizon Park as a public park and recreational facility, providing those activities and services which are appropriate to the recreational needs of the public, are in keeping with the nature and location of the park, and which are mutually agreed upon by the parties to this AGREEMENT.

FOUNDATION will be allowed during the term of this agreement to operate for six weeks during the month of June, July and/or August each year and at such other times as may be mutually agreed upon, in and on the facilities of Bay Horizon Park, a residential camp for recreational, educational and social activities for teens and adults with developmental and/or medical disabilities to be known as “*Camp Horizon*” and other park related uses as agreed to by the Whatcom County Parks Director or their representative.

SECTION II – CONSIDERATION

1. The principle consideration to be exchanged is this AGREEMENT shall be the mutual benefits to be derived by both parties from their performance of the obligations and conditions set forth herein. The FOUNDATION is authorized to charge appropriate fees for the public’s use of the facilities and services, as approved by the COUNTY. Income from said fees shall be used to defray FOUNDATION’S cost of management and operation of the Park, and to maintain and repair buildings, grounds and facilities in a state of repair satisfactory to COUNTY.
2. In the event FOUNDATION shall generate funds from the operation of Bay Horizon Park in excess of amounts required to defray operation and maintenance costs of the Park for any fiscal year, and in excess of those required to meet the Bay Horizon Park budget for the next fiscal year, FOUNDATION shall pay to COUNTY a percentage of such excess as rated set forth in Exhibit “B” attached to and incorporated herein by reference. Such fee shall be paid before December 31st of the calendar year in which the affected fiscal year has ended.
3. For the purposes of this section of the AGREEMENT, the income and expenses of Camp Horizon shall not be included in the determination of the existence of excess funds.

SECTION III - TERM OF AGREEMENT

The term of this AGREEMENT shall commence upon execution of this AGREEMENT by the parties and run for five-years. Upon satisfactory performance and review of the terms and conditions, the FOUNDATION will have the option to renew this agreement for four consecutive five-year periods terminating on December 31, 2048, unless terminated earlier within the provisions of this AGREEMENT. Any changes reached by the COUNTY and FOUNDATION for renewal of this AGREEMENT shall be subject to the written approval of the

Secretary of Interior or his/her delegated representative, National Park Service, if any significant changes to the AGREEMENT are included.

SECTION IV - GENERAL PROVISIONS

1. ADMINISTRATION OF THE AGREEMENT: The COUNTY hereby appoints and the FOUNDATION hereby accepts the Whatcom County Parks & Recreation Director, hereinafter known as the “Director”, as the COUNTY’S representative for the purpose of administering the provisions of the AGREEMENT, including the COUNTY’S documents related to the AGREEMENT, to request and receive additional information from the FOUNDATION, to assess the general performance of the FOUNDATION under this AGREEMENT, to determine if contracting obligations are being performed in accordance with the federal, state, or local law, and to administer any other right granted to the COUNTY under this AGREEMENT. The COUNTY and the FOUNDATION expressly reserve the right to terminate this AGREEMENT as provided herein and also expressly reserve the right to commence civil action for the enforcement of this AGREEMENT.

2. ANNUAL MEETING OF THE PARTIES: Representatives of each party to this AGREEMENT will meet annually at a date, time and place to be mutually agreed upon to review the past fiscal year’s operation, financial statement and adopt a plan for the coming year. FOUNDATION will present a summary of the past year’s operation and a budget for the next fiscal year. The schedule of fees and charges to be collected by FOUNDATION for the use of Bay Horizon Park will be reviewed and changed as appropriate. Proposals for changes or amendments to this AGREEMENT will be presented and discussed, and acted upon if appropriate. This requirement for an annual meeting shall not prevent the parties from meeting jointly at other times to discuss and act upon matters affecting the AGREEMENT.

3. EXTENT OF AGREEMENT: This AGREEMENT contains terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this AGREEMENT.

4. NON-DISCRIMINATION: COUNTY’S policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation (including gender identity), age, marital status, disability, or veteran status. FOUNDATION shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation (including gender identity), age, marital status, disability, political affiliation, or veteran status, except where such constitutes a bona fide occupational qualification. Furthermore, in those cases in which FOUNDATION is governed by such laws, FOUNDATION shall take affirmative action to ensure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including

gender identity), disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, FOUNDATION shall state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status, except where such constitutes a bona fide occupational qualification.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, to sole proprietorships with no employees or individuals or businesses contracted to perform maintenance, repairs and minor improvements at the property.

FOUNDATION shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

5. LICENSING IN COMPLIANCE WITH LAWS AND REGULATIONS: The FOUNDATION agrees that any and all individuals employed by the FOUNDATION shall be licensed, certified and/or accredited in compliance with all applicable federal, state and county ordinances and statutes.

6. ASSIGNMENT AND/OR SUBLETTING: The FOUNDATION shall not assign this AGREEMENT or any interest therein, nor let or sublet the said premises or any part thereof or any right or privilege appurtenant thereto, nor permit the occupancy or use of any part thereof by any other person. Said let or sublet shall be grounds for termination of AGREEMENT by COUNTY possible reversion to the United States of America.

7. INSPECTION: The FOUNDATION agrees that the COUNTY by and through the Director may make periodic inspection of the entire work product of the FOUNDATION including, but not limited to materials of every nature whatsoever, which may be prepared, created or manufactured by the FOUNDATION during the completion of this agreement. The FOUNDATION agrees to notify the COUNTY in advance of any inspections, audits or program review by an individual, agency or governmental unit whose purpose is to review the services

provided within the terms of this Agreement. If no advance notice is given by such individual, agency or governmental unit, then the FOUNDATION agrees to notify the COUNTY as soon as it is practical of any inspection that has taken place.

8. RELATIONSHIP OF THE PARTIES: The parties intend that an independent FOUNDATION/COUNTY relationship will be created by this AGREEMENT. The COUNTY is interested only in the results to be achieved. No agent, employee, servant or representative of the FOUNDATION shall be deemed to be an employee, agent, servant or representative of the COUNTY for any purpose. Employees of the FOUNDATION are not entitled to any of the benefits the COUNTY provides for COUNTY employees. The FOUNDATION will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors, volunteers or otherwise during the performance of this AGREEMENT. In the performance of the obligations herein contemplated, the FOUNDATION is an independent contractor as to the performance of the details of the work; however, the results of the work contemplated herein must meet the approval of the COUNTY and shall be subject the COUNTY'S general rights of inspection and review to secure the satisfactory completion thereof.

9. INDEMNIFICATION AND HOLD HARMLESS: To the fullest extent permitted by law, the FOUNDATION agrees to indemnify, defend and hold the COUNTY and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) are caused in whole or in part by any act or omission, negligent or otherwise, of the FOUNDATION, its employees, agents or volunteers or FOUNDATION'S subcontractors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this AGREEMENT; or 3) are based upon the FOUNDATION or its subcontractors' use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of the FOUNDATION shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the COUNTY. This indemnification obligation of the FOUNDATION shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the FOUNDATION hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the FOUNDATION are a material inducement to COUNTY to enter into this AGREEMENT, are reflected in the FOUNDATION'S compensation, and have been mutually negotiated by the parties. FOUNDATION'S initials acknowledging indemnity terms required.

Initial

Participation by County – No Waiver. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of Provider’s indemnity obligations under this Agreement.

Survival of Provider’s Indemnity Obligations. The Camp Horizon Foundation agrees all Foundation indemnity obligations shall survive the completion, expiration or termination of this Agreement for a period of three (3) years beyond.

Indemnity by Subcontractors. In the event the Camp Horizon Foundation enters into subcontracts to the extent allowed under this Agreement, the Foundation’s subcontractors shall indemnify the County on a basis equal to or exceeding Foundation’s indemnity obligations to the County.

10. INSURANCE: The FOUNDATION shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this agreement, which shall include insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the FOUNDATION, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the COUNTY) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Agreement or the coverage limits provided or available under the policies maintained by the FOUNDATION without regard to this AGREEMENT, whichever are greater.

1. Commercial General Liability

Property Damage \$500,000.00, per occurrence
General Liability & bodily injury \$2,000,000.00, per occurrence
Annual Aggregate \$4,000,000.00

At least as broad as ISO form CG 00 01 or the equivalent, which coverage shall include personal injury, bodily injury and property damage for Premises Operations, Products and Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractor Liability, medical payments and Stop Gap/Employer’s Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the County.

2. Business Automobile Liability

\$1, 000,000.00 Minimum, per occurrence
\$2,000,000.00 Minimum, Annual Aggregate
Contractor shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$1,000,000 per accident. If Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

3. Additional Insurance Requirements and Provisions

a. All insurance policies shall provide coverage on an occurrence basis.

b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Foundations and Foundation's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Foundation and subcontractor, whichever is greater.

c. Primary and Non-contributory Insurance. Foundation shall provide primary insurance coverage and the County's insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention or insurance pooling maintained or participated in by the County shall be excess and non-contributory to Foundation's insurance.

d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Agreement. When required by an insurer, or if a policy condition does not permit Foundation to enter into a pre-loss agreement to waive subrogation without an endorsement, then Foundation agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Foundation enter into such a waiver of subrogation on a pre-loss basis.

e. Review of and Revision of Policy Provisions. Upon request, the Foundation shall provide a full and complete certified copy of all requested insurance policies to the County. The County reserves the right, but not the obligation, to revise any insurance requirement, including but not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the requirements of this Agreement. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington.

f. Verification of Coverage/Certificates and Endorsements. The Foundation shall furnish the County with a certificate of insurance and endorsements required by this contract. The certificates and endorsements for each policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificate and endorsements for each insurance policy are to be on forms approved by the County prior to commencement of activities associated with the Foundation. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "D". If Exhibit D is not attached, the Foundation must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work or activity on the park. A certificate alone is insufficient proof of the required insurance; endorsements must be included with the certificate. The certificate of insurance must reflect the insurance required in this contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the park, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.

g. The County must be notified immediately in writing of any cancellation of the policy, exhaustion of aggregate limits, notice of intent not to renew insurance coverage, expiration of policy or change in insurer carrier. Foundation shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.

h. No Limitation on Liability. The insurance maintained under this agreement shall not in any manner limit the liability or qualify the liabilities or obligations of the Foundation to the

coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.

i. Use of County Property Conditioned on Insurance and Failure to Maintain Insurance. Use of the property by the Foundation under this Agreement is expressly conditioned upon the Foundation's compliance with all insurance requirements. Failure on the part of the Foundation to maintain the insurance as required shall constitute a material breach of contract. Foundation's use of the park may be suspended in the event of non-compliance, upon which the County may, after giving twenty-five business days' notice to the Foundation to correct the breach or immediately terminate the agreement.

j. Workers Compensation. The Foundation shall maintain Workers Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Foundation's employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act, to the extent that coverage for volunteers is optional in the State of Washington, the Foundation is not obligated to provide this coverage to volunteers.

k. Failure of the Foundation to take out and/or maintain required insurance shall not relieve the Foundation or subcontractors from any liability under the agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification. The County does not waive any insurance requirements even in the event the certificate or endorsements provided by the Foundation were insufficient or inadequate proof of coverage but not objected to by the County. The County's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the Foundation's insurance requirements under this Agreement.

l. Availability of Foundation Limits. If the Foundation maintains higher insurance limits than the minimums shown above, the County shall be insured for the full available limits, including Excess or Umbrella liability maintained by the Foundation, irrespective of whether such limits maintained by the Foundation are greater than those required by this contract or whether any certificate furnished to the County evidences limits of liability lower than those maintained by the Foundation.

m. Insurance for Subcontractors. If the Foundation subcontracts (if permitted in the Agreement) any portion of this Agreement, the Foundation shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages by subcontractors must comply with the insurance requirements of the Foundation in this agreement and shall be subject to all of the requirements stated herein, including naming the County as additional insured.

n. The Foundation agrees Foundation's insurance obligation shall survive the completion or termination of this agreement for a minimum period of three years.

11. COMMUNICATION: Communications between the FOUNDATION and COUNTY shall be addressed to the regular place of business.

In the case of the FOUNDATION:

President
Camp Horizon Foundation
7506 Gemini Street, Blaine WA 98230
360 371-0531
info@lionscamphorizon.org

In the case of the COUNTY:

Director
Whatcom County Parks & Recreation Department
3373 Mt. Baker Highway
Bellingham WA 98226
360 778-5850
parks@co.whatcom.wa.us

12. SEVERABILITY: It is understood and agreed to by the parties hereto that if any part of this AGREEMENT is illegal, the validity of the remaining provisions shall not be affected and the rights and obligations of the parties shall be construed as if the agreement did not contain the particular illegal part. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision shall be deemed inoperative and null and void insofar as they may be in conflict therewith, and shall be modified to conform to such statutory provisions.

13. MODIFICATION: No change or additions to this AGREEMENT shall be valid or binding upon either party unless such change or addition be in writing and executed by both parties.

14. VENUE STIPULATION: This AGREEMENT has been and shall be construed as having been made and delivered within the State of Washington and it is mutually understood and agreed by each party hereto that this AGREEMENT shall be governed by the laws of the State of Washington, both as to interpretation and performance.

15. NON-WAIVER OF BREACH: The failure of the COUNTY or the FOUNDATION to insist upon strict performance of any of the covenants and agreement of this AGREEMENT or to exercise any option herein conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such or any other covenants or agreements, but the same shall be and shall remain in full force and effect.

EXHIBIT "A"

Description of COUNTY Obligations

The COUNTY agrees to provide or perform the following obligations.

On the condition that the FOUNDATION satisfy its obligations in Exhibit "B", the COUNTY shall make available under the terms of this AGREEMENT, the buildings named and the surrounding area as a summer camp facility for the FOUNDATION.

The COUNTY may make improvements and assist the FOUNDATION when funds and time permit.

Buildings Number:

416 Recreational Hall

510, 514, 516, 583 Barracks

532 Administrative Building

534 Kitchen/Dining Hall

542 Shop

616 Hobby Shop

634 Base Exchange

636 Commissary

424 Gymnasium *Use of this building is in collaboration with the Blaine Birch Bay Park & Recreation District No. 2's use under a separate interlocal agreement between Whatcom County and the Park District.*

EXHIBIT “B”

Description of FOUNDATION Obligations

The FOUNDATION agrees to provide or perform the following services and obligations:

1. Use for park and recreation purposes: Use the buildings and land covered by this AGREEMENT for the primary purpose of providing park and recreational services and facilities to the general public. Such recreational activities shall be limited to those which are reasonably within the financial and managerial capability of the FOUNDATION and in any event, shall be those activities that are in compliance with the general rules and policies of the COUNTY and the terms and conditions of the *Federal Lands to Parks Program* under which Whatcom County acquired the property (GSA Control no. WA 749 A, B, C) in 1980.
2. Utilities: Pay all utility costs including electricity, water, sewer, gas, telephone, garbage, alarm monitoring and stormwater fees.
3. Maintenance and Repair: Maintain the facilities and grounds in a safe, clean, usable condition. Provide and pay all costs thereof, normal customary and reasonable maintenance and repair of all buildings and grounds used under this AGREEMENT.
4. Closure of Areas to the Public: Except during FOUNDATION camp sessions, the general grounds areas need to remain open to the public for park use. During camping sessions, the FOUNDATION may restrict public access, install temporary fencing, barricades and signs around the camp’s activity area(s).
5. Inspection: The FOUNDATION shall allow the Director or his/her designee and/or the Secretary of the Interior’s designated representative, National Park Service, at any and all reasonable times to inspect any facility operated under this AGREEMENT
6. Pay all costs of advertising of facilities and activities provided at the site by the FOUNDATION.
7. Provide and maintain the required insurance in the amount and term required for the duration of this AGREEMENT.
8. Charge fees: Submit to COUNTY for approval a schedule of fees and charges, if any, to be made for use of facilities, services, or activities to be operated on the premises. All revenues over and above expenses of operations and maintenance shall accrue to the benefit of the FOUNDATION.

9. Pay to the COUNTY a percentage of any moneys that are determined to be excess after operation needs are met (See Paragraph 2, Section II), on the following scale:

- a) When excess is under \$5,000 for the year, five percent (5%) of the excess.
- b) When excess is \$5,000 to \$10,000 for the year, ten percent (10%) of the excess.
- c) When excess is over \$10,000 for the year, twenty percent (20%) of the excess.

10. Improvements: Obtain prior written approval from the COUNTY for all major improvements. Unless agreed upon in writing, Improvements made under this AGREEMENT shall become property of the COUNTY.

11. Permits and licenses: Pay, obtain and maintain all necessary permits, licenses and inspections to operate FOUNDATION programs, facilities and services.

12. FOUNDATION shall keep the premises free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by the FOUNDATION during the term of this AGREEMENT or any extension or renewal.

EXHIBIT “C”

***INSERT BAY HORIZON PARK DIAGRAM OF AREAS/BUILDINGS PERTAINING TO
AGREEMENT***

EXHIBIT “D”

Attach Certificate of Insurance and Endorsements