

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.

202010005

Originating Department:	Parks
Division/Program: (i.e. Dept, Division and Program)	Administration
Contract or Grant Administrator:	Michael McFarlane
Contractor's / Agency Name:	Blaine Birch Bay Park & Recreation District No. 2
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/> Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____ Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Contract Cost Center: _____	
Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000. <input checked="" type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>N/A</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when : 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Summary of Scope: _____	
Interlocal agreement for use of the gymnasium at Bay Horizon Park by the Blaine Birch Bay Parks & Recreation District No. 2.	
Term of Contract: 29.5 Months Expiration Date: 12/31/22	

Contract Routing:	1. Prepared by: Michael McFarlane	Date: 9/9/20
	2. Attorney signoff: <u>JW</u>	Date: <u>9/11/20</u>
	3. AS Finance reviewed: <u>abcnct</u>	Date: <u>10/2/20</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: <u>by District</u> ✓	Date: <u>8-22-2020</u>
	6. Submitted to Exec.: _____ ✓	Date: <u>10-6-2020</u>
	7. Council approved (if necessary): _____ ✓	Date: <u>10-27-2020</u>
	8. Executive signed: _____ ✓	Date: <u>10-29-2020</u>
	9. Original to Council: _____ ✓	Date: <u>11-13-2020</u>

INTERLOCAL AGREEMENT FOR OPERATION OF GYMNASIUM AND PLAYGROUND AT BAY HORIZON PARK

WHATCOM COUNTY, through its **PARKS & RECREATION DEPARTMENT**, hereinafter referred to as "**The County**" whose principal office is located at 3373 Mount Baker Highway, Bellingham, Washington 98226, and **THE BLAINE BIRCH BAY PARK & RECREATION DISTRICT No. 2**, hereinafter referred to as "**The District**," whose local address is 7511 Gemini Street, Blaine, Washington 98230, hereby enter into an agreement as authorized per RCW 39.34, for the operation and maintenance of the gymnasium and playground at Bay Horizon Park, 7467 Gemini Street, Blaine, Washington 98230, for the **sole purpose** of providing park and recreation activities to the public. This agreement is subject to all terms and conditions of the *Federal Lands to Parks Program* as identified in the original instrument of conveyance to Whatcom County.

IT IS MUTUALLY AGREED as follows:

COUNTY RESPONSIBILITIES

The County shall make available to the District the gymnasium and playground at Bay Horizon Park under such conditions as are hereinafter set forth.

The County shall allow the District to collect reasonable fees and charges related to its recreational programming costs.

DISTRICT RESPONSIBILITIES

The District shall pay for all costs and provide all labor associated with the operation, maintenance, repair and improvement of the gymnasium and the playground, including performing and documenting weekly playground inspections. All improvements must be approved in advance by the County.

The District shall work with the Camp Horizon Foundation in developing and executing a scheduling agreement for the gymnasium to accommodate Camp Horizon's needs.

Assume all responsibility and liability for the gymnasium and playground.

Protect, defend, save and hold harmless Whatcom County, its authorized agents, elected officials, employees and volunteers, from all claims, costs, damages or expenses of any nature whatsoever arising out of or in connection with the operation of the gymnasium and playground by the District.

Designate, and report to the Parks Director the name of an individual(s) who shall act as a qualified coordinator of all District activities at Bay Horizon Park. This individual shall be the person with whom the Parks staff will work on day-to-day matters of operation and maintenance of the gymnasium and playground. Report any accidents that occur to the Whatcom County Parks & Recreation Department Office within 24-hours.

Not interfere with normal, customary use of Bay Horizon Park by the visiting public and Camp

Horizon Foundation, its participants or activities.

District will maintain the gymnasium and immediate area in a neat, clean, safe and sanitary manner at all times.

District agrees to not discriminate and make its programs and activities available to all Whatcom County residents. District will provide to the County an annual report on its activities, attendees and use of Bay Horizon Park.

TERM

The term of this Agreement shall commence on July 14th, 2020 and expires December 31st, 2022. Provided, it may be amended or terminated at any time by mutual written agreement of both parties, and may be terminated by either party upon 60 days written notice to the other party.

FEES

The District shall pay all fees, utilities and assessments related to its use of facilities at Bay Horizon Park, including any lease hold tax should it be required.

SUBLETTING

No subletting is permitted.

RELATIONSHIP OF THE PARTIES

The parties intend that an independent contractor/department relationship will be created by this Agreement. No agent, employee, servant, or representative of the District shall be deemed to be an employee, agent, servant or representative of the Parks & Recreation Department or Whatcom County for any purpose. Employees of the District are not entitled to any of the benefits that Whatcom County provides for its employees. The District will be solely and entirely responsible for its acts and for the acts of its agents, employees, volunteers, elected officials, servants, subcontractors or otherwise during the performance of this Agreement. In the performance of the services herein contemplated, the District is an independent contractor with the authority to control and direct the performance of the details of the work. However, the results of the work contemplated herein must meet the approval of the Parks & Recreation Department and shall be subject to the Parks & Recreation Department's general rights, inspection and review to secure the satisfactory completion thereof.

INSURANCE

The District 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 District, its agents, representatives, subcontractors, volunteers 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. The aforementioned insurance coverage may be provided by comparable insurance risk pool

coverage, authorized by State of WA Chapter 48.62 RCW. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the District without regard to this Agreement, whichever are greater.

1. Commercial General Liability

Property Damage	\$500,000.00, per occurrence
General Liability & bodily injury	\$1,000,000.00, per occurrence
Annual Aggregate	\$2,000,000.00

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

District 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 District owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

3. Additional Insurance Requirements and Provisions

All insurance policies shall provide coverage on an occurrence basis.

Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on District's and District's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the District and subcontractor(s), whichever is greater. In the alternative, either party to this agreement may fulfill the insurance obligations contained herein by maintaining membership in a joint self-insurance program authorized by RCW 48.62. In this regard, the parties understand that the party to this agreement who is a member of such a program is not able to name the other party as an "additional insured" under the liability coverage provided by the joint self-insurance program.

Primary and Non-contributory Insurance. District 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 District's insurance.

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 District to enter into a pre-loss agreement to waive subrogation without an endorsement, then District 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 District enter into such a waiver of subrogation on a pre-loss basis.

Review of and Revision of Policy Provisions. Upon request, the District 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.

Verification of Coverage/Certificates and Endorsements. The District 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 agreement. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the District must submit the certificate and endorsements required in this Agreement to the County prior to the commencement of any work or activity on the County Property. 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 Agreement, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County Property, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.

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. District shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.

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

Payment Conditioned on Insurance and Failure to Maintain Insurance. Use of the County Property by the District is expressly conditioned upon the District's compliance with all insurance requirements. Failure on the part of the District to maintain the insurance as required shall constitute a material breach of contract. Use of the County Property by the District may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the District to correct the breach, immediately terminate the Agreement or, at its discretion.

Workers' Compensation. The District shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Districts' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.

Failure of the District to take out and/or maintain required insurance shall not relieve the District 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 District 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 District's insurance requirements under this Contract.

Availability of District's Limits. If the District 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 District, irrespective of whether such limits maintained by the District 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 District.

Insurance for Subcontractors. If the District subcontracts (if permitted in the agreement) any portion of this Agreement, the District 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 District in this Agreement and shall be subject to all of the requirements stated herein, including naming the County as additional insured.

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

INDEMNIFICATION BY DISTRICT

To the fullest extent permitted by law, the District 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 District, its employees, agents or volunteers or District'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 District's or its subcontractors' use of, presence upon or proximity to the property of the County. This indemnification shall be effective regardless of whether or not District's act or omission caused, in whole or in part, the claims, damages, losses or expenses. This indemnification obligation of the District shall not apply in the limited circumstance where if the claims, damages, losses or expenses are caused by the sole negligence of the County. This indemnification obligation of the District 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 District hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the District are a material inducement to County to enter into this Agreement, are reflected in the District's use of County Property, and have been mutually negotiated by the parties.

Provider's initials acknowledging indemnity terms: 

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 District's indemnity obligations under this Agreement.

Survival of Provider's Indemnity Obligations. The District agrees all District's indemnity obligations shall survive the completion, expiration or termination of this Agreement

NON-WAIVER OF BREACH

The failure of the Parks & Recreation Department to insist upon strict performance of any of the covenants and agreements of this Agreement or to exercise any option herein conferred in any one or more instance 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 remain in full force and effect.

EXTENT OF AGREEMENT

The Agreement contains all the 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.

MODIFICATION

No change or addition to this Agreement shall be valid or binding upon either party unless such

change or addition be in writing, executed by both parties.

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. Furthermore, any cause of action arising out of this Agreement shall be filed in the Superior Court of Whatcom County.

SEVERABILITY

It is understood and agreed by the parties hereto that if any part of this Agreement is determined to be 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 herein is in conflict with any statutory provision of the State of Washington, said provision shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be modified to conform to such statutory provision.

DATED this 29th day of October, 2020.

EzraBat25
WHATCOM COUNTY
Parks & Recreation
3373 Mount Baker Highway
Bellingham, WA 98226-7500



Michael G. McFarlane, Director
Christ Thomsen, Parks Operations Manager

RECEIVED

OCT 6 - 2020

MEMORANDUM

TO: Members of the Council and County Executive Satpal Sidhu

FROM: Michael McFarlane, Director 

DATE: October 2, 2020

RE: **Blaine Birch Bay Parks & Recreation District No. 2 Interlocal Agreement for use of Gymnasium at Bay Horizon Park**

WHATCOM COUNTY
EXECUTIVE'S OFFICE

Enclosed please find an interlocal agreement for the use of the County owned Gymnasium and playground at Bay Horizon park by the Blaine Birch Bay Park & Recreation District No. 2.

The term of this agreement coincides with Whatcom County's lease agreement with Camp Horizon because the gymnasium was initially included in the camp's lease. Under separate agreement, the district agrees to make the gymnasium available for the camp's use when it's in session at no cost.

If there are any questions, I can be reached at extension 5855.

Thank you.