

## FACILITY USE AGREEMENT

THIS FACILITY USE AGREEMENT (the "Agreement") is made and entered into as of this 17<sup>th</sup> day of February, 2021 by and between the CITY OF GRANITE FALLS, a municipal corporation operating as a code city under the laws of the State of Washington, (hereinafter referred to as the "City"), and the BOYS AND GIRLS CLUBS OF SNOHOMISH COUNTY, a Washington State non-profit Corporation duly and currently registered and existing in the State of Washington with its primary offices located at 8223 Broadway, Suite 100, Everett WA 98203, (hereinafter "BGCSC"), collectively, (the "Parties").

WHEREAS, for the past five years, the BGCSC has had a facility in the City for the purpose of operating a Boys and Girls Club and a Day Care Center, in which BGCSC has provided family and youth services, after-school programs, and recreation services to the City and the citizens of Granite Falls; and

WHEREAS, the BGCSC is planning to build a new building to be utilized by the BGCSC as a Boys and Girls Club Gymnasium and multi-use recreational facility so that BGSCS can provide youth and community programs and activities to the citizens and youth of the City of Granite Falls on a long-term basis; and

WHEREAS, the City finds construction of an additional BGCSC facility will provide long-term benefits to the City of Granite Falls, in the form of needed services for fostering, developing, and nurturing youth in the Granite Falls community; and

WHEREAS, the City has determined that in addition to providing the needed activities, recreation, and services to the youth of the City, such additional facility can assist all city residents, especially the most vulnerable members of the City; and

WHEREAS, such additional facilities can be used for City-sponsored community events and can be available for a variety of emergencies as a disaster relief shelter; and

WHEREAS, the City finds that it is in the best interests of the public health, safety, and welfare of residents to enter into this Facility Use Agreement to secure and provide for the long-term location and provision of youth and community services to the City of Granite Falls, and to provide a facility for community events and emergency services at a newly constructed expanded facility of BGCSC, upon the terms and conditions set forth therein;

NOW, THEREFORE, in consideration of the mutual undertakings and promises contained herein and the benefits to be realized by each party, and in further consideration of the benefit to the general public to be realized by and through the performance of this Agreement, and as a direct benefit to the City, the parties hereto agree as follows:

### ARTICLE 1. DEFINITIONS:

For purposes of the Agreement, the following terms, phrases, words, and their derivations and those such terms, phrases, words, and their derivations as defined throughout this Agreement, shall have the meaning given herein where capitalized; words not defined herein shall have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender

shall apply to all genders whenever the sense requires. The words "shall" and "will" are mandatory, and the word "may" is permissive. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein be renumbered, then the reference shall be read to refer to the renumbered provision.

- 1.1 "Agreement" means this Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits and schedules hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified.
- 1.2 "Contribution" shall be that payment made by City to BGCSC within 60 days of the effective date of this agreement in the amount of \$ 180,000.00.
- 1.3 "Effective Date" means the date entered above in the first paragraph of this Agreement.
- 1.4 "Executive Director" shall mean the person, regardless of name, authorized by the BGCSC to be the chief executive officer of the BGCSC responsible for the day-to-day management, maintenance, and operation of the BGCSC Center.
- 1.5 "Financing Obligations" shall mean the obligations of the BGCSC related to the financing of the Project as described in Article 3 of this Agreement.
- 1.6 "Improvements" shall mean all facilities installed, constructed, improved, or located upon the Property as part of this Project, including but not limited to: conduit, wire, fiber optics, electronics, mechanical systems, buildings, seating, fencing, fixtures, equipment, turf, landscaping, fencing, and signage; however, in no event shall the term "Improvements" be deemed to include any portion of movable personal property.
- 1.7 "Manage," or any derivation thereof shall mean to direct, control, govern, determine, oversee and administer the Operation of the BGCSC Center in accordance and compliance with the terms and conditions of this Agreement.
- 1.8 "Manager" means the City Manager of the City of Granite Falls or their designee.
- 1.9 "Operate," or any derivation thereof shall mean to carry out, conduct, put into, or continue in operation, the directives of the Executive Director in accordance and compliance with the terms and conditions of this Agreement.
- 1.10 "Parties" means City and BGCSC collectively.
- 1.11 "Party" means City and BGCSC individually.
- 1.12 "Person" means and includes natural persons, corporations, limited partnerships, general partnerships, joint-stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts, or other organizations, whether or not legal entities.

- 1.13 "Premises" shall mean all such land, buildings, structures, attachments, and appurtenances that make up and are a part of the Boys and Girls Club.
- 1.14 "Project" shall mean the design and construction of the Improvements to be made to the Property and contemplated herein to be constructed by the BGCSC, and shall include all Project Components to construct the BGCSC Gymnasium/Multi-Use Facility.
- 1.15 "Project Component" shall mean an identifiable and defined element of the Project that can be financed and constructed or installed and completed independently from the entire Project.
- 1.16 "Boys and Girls Club Facility" (or "BGCSC Facility") shall mean collectively the Premises and Improvements described herein.

## **ARTICLE 2. PURPOSE:**

- 2.1 Incorporation of Recitals: The Parties acknowledge and agree that the above-stated recitals are true and correct to the best of their knowledge and are incorporated as though fully set forth herein.
- 2.2 General: The City requires the use of BGCSC facilities and services at the BGCSC Center as described in the recitals. The purpose of this Agreement is to set forth the contribution and the services and rights of use City will have.
- 2.3 Goals: The following are the substantive goals of the City and the BGCSC:
  - 2.3.1 BGCSC Facility Preservation. The BGCSC agrees that it will, at no cost to the City of Granite Falls, construct or cause to be constructed, and to manage, maintain and operate the BGCSC Facility and its grounds in a manner to ensure that the BGCSC facility and the components and systems therein are maintained and preserved for future generations and to provide the services and uses to the City set forth in this Agreement. Such facilities and the uses and services to the City are a necessary and integral part of this Agreement.
  - 2.3.2 Funding. The City agrees to provide the Contribution in exchange for the BGCSC's agreement to the terms of this Agreement. BGCSC agrees that should BGCSC fail to complete construction of the new BGCSC Facility and/or to begin the provision of services and allow use by the City in accordance with the terms of this Agreement by December 31, 2022; the City Contribution shall be repaid to the City in accordance with Section 2.3.3.
  - 2.3.3 BGCSC. The BGCSC agrees that the new BGCSC Facility will be available for use, and services will commence by December 31, 2022. Failure to occupy the BGCSC Facility and to begin services under this Agreement shall be deemed a breach of this Agreement, not subject to the procedures set out in Article 20 of this Agreement, and BGCSC shall immediately pay the City the amount of the Contribution together with interest at a rate of 4% per month calculated from the date of the effective date of this Agreement.

2.3.4 Additional Funding. BGCSC Center facilities and related recreational programs, in general, are not self-supporting and typically require financial assistance from the public and private sector. Thus, the BGCSC will actively engage and cultivate the funding community and stakeholders to embrace the fundraising mission and ensure the long-term viability of the BGCSC facilities in the City of Granite Falls.

2.3.5 Programs/Education/Outreach. It is important that students participate as a means of integrating their education with the real world and broadening their educational opportunities. The BGCSC will actively participate in and support educational, recreational, and youth programs within the BGCSC facilities and work with the City as needed to support community education and outreach programs.

2.4 City's Regulatory Role Reserved. Any City design review and approvals provided for herein are independent of, in addition to, and do not in any way obligate the City with respect to usual and customary City permitting, code compliance, and other regulatory reviews, except that the City shall use its efforts to expedite such reviews. The outcome of any such regulatory review is independent of and is in no way biased, prejudiced, or predetermined in any way by this Agreement. Nothing in this Agreement is intended or shall be construed to require that the City exercise its discretionary authority under its regulatory Ordinances to further either the Project development or bind the City to do so. The City will process applications for permits and approvals associated therewith as if such applications were made without any City participation in such Project, to the extent not preempted by federal laws, regulations, or other requirements.

2.5 Overriding Legal Requirements. Notwithstanding anything contrary to this Agreement, nothing shall be deemed to preclude or excuse the City or the BGCSC from complying with all applicable Laws and Ordinances and Environmental Standards. Mandated requirements shall include measures uniformly applicable to all similar projects or properties which, if not observed, would subject the City or the BGCSC to penalties, sanctions, loss of funds or other restrictions, or findings of noncompliance.

### **ARTICLE 3. FINANCING COMMITMENTS:**

3.1 Except with regard to funds otherwise made available by or through the City, the BGCSC shall be responsible for financing 100% of all design, construction, and development of the Project including, without limitation, design, engineering, materials, labor, construction management and administration, change orders, substitutions, and carrying costs for the construction of the facility (whether "hard" or "soft" costs).

3.2 The BGCSC shall be responsible for fulfilling any commitments to private donors by being directly involved in design and construction decisions that relate to incorporating donor recognition features into the Project and identifying any requirements from donors that must be considered during the design and construction phases.

### **ARTICLE 4. PROJECT MANAGEMENT:**

4.1 Generally. The Parties hereby agree that the BGCSC shall have sole responsibility for the Project's design and construction of the Project and shall be responsible for obtaining all necessary building and

mechanical permits and all other required permits or approvals for construction. The BGCSC, at the BGCSC's sole cost and expense, shall promptly comply with all applicable Laws and Ordinances as they relate to the Property and Improvements.

- 4.2 Standards of Performance. The BGCSC shall perform the terms of this Agreement according to the following standards:
- 4.2.1 All construction hereunder shall comply with and be performed in accordance with all applicable Laws and Ordinances, and Environmental Standards, free and clear of all liens.
  - 4.2.2 The BGCSC agrees to diligently design, construct and complete the Improvements in a good and workmanlike manner and of good quality.
  - 4.2.3 BGCSC will use materials that are of first-class quality and workmanship.

## **ARTICLE 5. CONSTRUCTION:**

- 5.1 Conditions Precedent to Commencement of Construction. The following conditions shall have been satisfied prior to Commencement of Construction:
- 5.1.1 Compliance with Agreement. The BGCSC shall be in material compliance with this Agreement.
  - 5.1.2 Financing. The BGCSC shall have met its Financing Commitments and shall have obtained and maintained the necessary permits for construction.
  - 5.1.3 No objection. The City has made no objection to the Construction Plans and specifications.
- 5.2 Modification Process. When final construction plans and specifications are available for the BGCSC Facility, a copy shall be supplied to City. The City shall have a right of objection and to request modification. Any material change to the approved Construction Plans or the general Construction Schedule, with the exception of modifications required to comply with legal requirements or previous written agreement of the parties, shall be submitted to the Manager and Executive Director, who together shall have 30 days to agree on the modification.

Nothing shall prevent BGCSC's seeking modification and submittals for the same shall be in writing or other form approved by the Manager. It shall include sufficient information and other information to permit the Manager to make an informed review and provide input with respect thereto (the "Request"). If the Manager fails to provide comments or objections within said 30 days, the Request shall be deemed acceptable to the City. If the Manager submits comments or objections, BGCSC shall respond and address any such comments or objections, in writing, within 30 days of receipt thereof. The above deadlines may be modified by written agreement of the Manager and the Executive Director. This process shall not be required for any modification, replacement, alteration, or addition (but excluding any relocation) to any previously approved submission unless there is a material change from the previously approved submission.

- 5.2.1 Preparation of Site. The City shall not be responsible for any site preparation or other work connected with the Property or any Improvements thereon.
- 5.2.2 Construction of All Improvements. The BGCSC agrees it is responsible for all work and construction of the Project. Once construction has begun on the Project, it will proceed diligently with such construction until the Project has been fully completed. All construction hereunder shall be substantially completed by the applicable dates set forth in the Construction Schedule and in conformance with Article 7 (Construction on the Property).
- 5.3 Disclaimer of Liability by City. Notwithstanding any provision of this Agreement to the contrary, the City has undertaken no obligation, duty, or action to design, supervise the design, construct or supervise the construction of the Improvements. The Manager's review of the Construction Plans and specification and any Construction Schedule, as provided above, is for the sole purpose of protecting the City's rights to receive the services and access to the Facilities set out in this Agreement and shall not constitute any representation or warranty, express or implied, as to the adequacy of the design, or any obligation on the City to ensure that work or materials comply with the Construction Plans or any building requirements imposed by a governmental entity, which shall at all times remain the sole responsibility and liability of the BGCSC.
- 5.4 Governmental Approvals. The BGCSC shall apply, at its sole cost, to the City and appropriate governmental authorities or Third Parties for, and shall diligently pursue and obtain, any permit, license, permission, consent, or approval as required by law in connection with the construction of the Improvements. The BGCSC shall apply for, diligently pursue, and use its best efforts to obtain the building and other permits allowing the construction of the Improvements.

#### **ARTICLE 6. ENVIRONMENTAL LIABILITY:**

- 6.1 In the event BGCSC's property contains hazardous substances or construction results in a release (as determined under applicable Environmental Laws) of Hazardous Substances, and if the discharge is caused in whole or in part by the BGCSC, or BGCSC is the responsible party under applicable law, then the BGCSC shall indemnify, defend and hold the City harmless from the costs of all necessary Remedial Actions which are required under the applicable Environmental Laws, to the extent of BGCSC's share of the liability for the release.

#### **ARTICLE 7. CONSTRUCTION ON THE PROPERTY:**

- 7.1 Entry upon Property. The City, its servants, employees, agents, contractors, or subcontractors shall have access to the Property in connection with the BGCSC's construction of the facility as is reasonably necessary in accordance with this Agreement and to satisfy the City's permitting and regulatory obligations.
- 7.2 Facilities Drawings. As promptly as possible, but in no event later than three months after issuance of the Certificate of Occupancy, the BGCSC shall furnish to the City "record drawings" of the BGCSC Facility.

- 7.3 Use of Property. The BGCSC shall not store or temporarily place any goods, materials, or equipment (i) near a roadway, private grade, intersection or crossing in such a manner as to interfere with the sight distance of persons approaching such crossing, or (ii) within such greater distance as required by public authority. Fuel and other hazardous substances shall not be stored unless in a manner approved by appropriate officials of the Snohomish County Fire Marshall or designee.
- 7.4 Compliance with Laws, Rules, and Regulations. The BGCSC, at the BGCSC's sole cost and expense, will furnish all materials, parts, components, equipment, and structures necessary to construct the BGCSC Facility, or any part thereof, in accordance with this Agreement. Any work by the BGCSC shall be done in a good and workmanlike manner, in conformity with all applicable engineering, safety, and other statutes, laws, ordinances, regulations, rules, codes, orders or specifications of any public body or authority having jurisdiction.
- 7.5 Installation. All facilities and installations must meet or exceed applicable specifications and comply with all applicable federal, state or local laws, ordinances, and regulations.
- 7.6 Artifacts. If during the construction of the Improvements, the BGCSC, its agents, servants, employees, contractors or subcontractors discover scientific or historical artifacts, graves or cultural artifacts, then in that case, the BGCSC shall immediately notify the City, Tribal, and other appropriate state and federal authorities of said discovery and protect such artifacts or materials until identified and removed by the proper authorities exercising jurisdiction.

## **ARTICLE 8. INDEMNITY:**

8.1 BGCSC hereby agrees to indemnify, defend and hold harmless the City, its officers, officials, employees, and contractors (excluding BGCSC) from and against any and all claims, losses, damages, liabilities, actions, judgments or execution of third parties of any kind or nature whatsoever, whether at law or in equity, including, but not limited to, reasonable attorney's fees and court costs, arising out of, relating to, resulting from, or caused by BGCSC, its officers, board members, employees, servants, contractors, subcontractors and representatives in its construction, use, Management or Operation of the BGCSC Facility or any part thereof or of any property or equipment related thereto, or the performance of its obligations under this Agreement or any aspect of the Management, use or Operation of the BGCSC Facility or any part thereof or of any property or equipment related thereto, during the term of this Agreement, regardless of whether or not the same is caused in part by the City or any other person indemnified under this Section, except to the extent that the same is caused by the negligence or willful misconduct of the City or other person to be indemnified under this Section. A party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of City, BGCSC, and all other negligent entities and individuals. No claim or litigation shall be settled without prior written approval of the City.

8.2 BGCSC hereby expressly relieves and discharges the City from all liability for any loss, injury, or damage to person or property which may be sustained by reason of BGCSC use or occupancy of the BGCSC Facility or any part thereof under this Agreement or by virtue of BGCSC's agreements with third parties.

8.3 THE BGCSC SPECIFICALLY ASSUMES POTENTIAL LIABILITY FOR ACTIONS BROUGHT BY THE BGCSC'S EMPLOYEES AGAINST THE CITY AND, SOLELY FOR THE PURPOSE OF THIS INDEMNIFICATION AND DEFENSE; THE BGCSC SPECIFICALLY WAIVES ANY IMMUNITY UNDER THE STATE INDUSTRIAL INSURANCE LAW, TITLE 51 RCW.

8.4 Survival. This Article 8 shall remain in force despite termination of this Agreement with respect to acts and omissions occurring before termination of this Agreement (whether by the expiration of the term or otherwise) and termination of the services of BGCSC under this Agreement.

8.5 BGCSC shall be given prompt notice of any claims for which the indemnification will be sought and shall be provided full cooperation from the City in the defense of all such claims. When BGCSC is required to indemnify, defend and hold harmless the City with respect to a claim under this Article 8, the City shall not unreasonably withhold, condition, or delay its consent to any defense and the manner thereof proposed by BGCSC under which the City would not be required to pay any money or undertake any liability. Notwithstanding anything to the contrary, the obligations of BGCSC under this Article 8 in respect of injury or death to persons or damage to property, so long as BGCSC has maintained the insurance required by Article 9 shall be limited to the proceeds of insurance required to be maintained under Article 9, actually received by BGCSC. However, if BGCSC fails to comply with Article 9 (such as failing to keep in force policies of insurance as required by Article 9), then in that case, the preceding sentence shall be deemed modified so that the proceeds of insurance "actually received by BGCSC" shall be the proceeds that BGCSC would have been entitled to receive had BGCSC complied with Article 9.

## **ARTICLE 9. INSURANCE:**

9.1 Operational and Facility Insurance. BGCSC shall carry and maintain the following insurance ("BGCSC's Insurance"), at its sole cost and expense: (1) Commercial General Liability insurance to cover liability, bodily injury, blanket additional insured's coverage, and property damage, all applicable to the Premises and its appurtenances providing, on an occurrence basis, a minimum combined single limit coverage of \$2,000,000.00; (2) All Risk Property Insurance with a waiver of subrogation of claims against the City, or its elected or appointed officials, officers, employees or agents, written at replacement cost value and with a replacement cost endorsement covering all of BGCSC's trade fixtures and personal property within the Premises ("BGCSC's Property"); and, (3) Workers' Compensation Insurance as required by Law. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect BGCSC, and such coverage and limits shall not limit BGCSC's ability under the indemnities and reimbursements granted to the City in this Agreement. BGCSC agrees to waive all rights of subrogation against City for loss or damage to BGCSC's property arising out of fire, lightning, and perils of Extended Coverage in, on, or about the BGCSC Facility. BGCSC agrees



that any policy of insurance acquired pursuant hereto, or sought to be applied to the terms hereof by BGCSC, shall contain a Waiver of Subrogation clause consistent with the terms of this paragraph.

9.2 Insurance Policies. All Insurance policies required herein:

9.2.1 Shall be issued by companies authorized to do business in the State of Washington with the following qualifications:

- a The companies must be rated no less than "A," as to general policyholders rating and no less than "X" as to the financial category in accordance with the latest edition of Best's Key Rating Guide, published by A.M. Best Company, Incorporated.
- b The policies shall name the City as an additional insured for liability purposes.
- c The policies shall be issued as primary policies.

9.2.2 As to each such policy or certificate of insurance mentioned and required in this Section:

9.2.2.1 Such policy or certificate of insurance shall not be canceled or materially changed without at least 30 days prior written notice to the City.

9.2.2.2 The insurance as to anyone insured shall not be invalidated by any act or neglect of any other insured.

9.2.2.3 The insurance carrier shall waive all rights of subrogation against the Parties hereto.

9.2.2.4 The insurance shall be primary and noncontributory.

9.2.2.5 The policy limits shall not limit the amount of damages that may be recovered.

9.2.3 The applicable certificates of insurance and insurance policies shall be furnished to the City prior to commencing any construction under this Agreement. The certificate(s) shall clearly indicate the insurance and the type, amount, and classification required for strict compliance with this Section.

9.2.4 Cancellation of any insurance or non-payment by the BGCSC of any premium for any insurance policies required by this Agreement shall constitute an Event of Default under Article 20 of this Agreement. In addition to any other legal remedies, the City at its sole option after written notice and opportunity to cure as required for an Event of Default may obtain such insurance and pay such premiums for which, together with costs and attorneys' fees, the BGCSC shall be liable to the City.

9.2.5 If the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of construction, then, in that event, the BGCSC shall furnish, at least 30 days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof

that equal and like coverage has been or will be obtained prior to any such lapse or termination during the balance of the period of the construction.

9.3 Adjustments. The types of policies, risks insured, coverage amounts, deductibles, and endorsements may be adjusted from time to time as the BGCSC and the City may mutually determine.

## **ARTICLE 10 DESTRUCTION OR CONDEMNATION:**

### **10.1 Total or Partial Destruction.**

10.1.1 If the Project or any portion of the Project is totally or partially destroyed at any time after execution of this Agreement, and the Insurance Proceeds are or would have been sufficient to pay the cost of reconstruction or restoration, or if the uninsured cost of reconstruction or restoration is less than One Hundred Thousand Dollars (\$100,000.00), and the damage or destruction is such that as a result thereof the BGCSC cannot meet its obligations under this Agreement, the BGCSC shall reconstruct or restore the damage consistent with the terms of this Agreement within six months of the destruction; provided, that if the damage or destruction is such that the BGCSC may, notwithstanding such damage or destruction, continue to fulfill its obligations under this Agreement, the BGCSC shall have the discretion to use the Insurance Proceeds to restore and repair the Property to the extent necessary and appropriate for purposes of the intended use. If the Insurance Proceeds are insufficient and the uninsured cost is more than One Hundred Thousand Dollars (\$100,000.00), the BGCSC may elect to reconstruct or restore the damage or to terminate this Agreement by delivery of a written notice to the City within 30 days after the destruction. "Insurance Proceeds" means the greater of (i) the proceeds from the insurance policies actually maintained by the BGCSC with respect to the Project; or (ii) the proceeds that would have been available had the BGCSC maintained the insurance policies required to be maintained by the BGCSC under this Agreement.

10.1.2 If the BGCSC elects not to reconstruct or restore the damage and terminates the Agreement, the BGCSC shall immediately pay the City the amount of \$180,000.00 together with interest at a rate of 4% per month pro-rated and calculated from the date of the effective date of this Agreement.

## **ARTICLE 11. PREMISES/PERSONAL PROPERTY:**

11.1 Property and Equipment. Title to all property and equipment furnished by the City, if any, shall remain to the City. Any property or equipment the City may furnish to the BGCSC shall, unless otherwise provided herein or approved by the City, be used only for the performance of this Agreement. Title to all property and equipment purchased by the BGCSC to carry out its rights and obligations herein, shall, upon dissolution of the BGCSC or upon termination or expiration of this Agreement shall transfer in accordance with the articles of dissolution for BGCSC.

11.2 Reservation of Rights. The City reserves the right to request access to the BGCSC Facility at all times for itself and its agents, contractors, and representatives to enter into and upon any part of the BGCSC Center and

premises for any purpose; provided that such entry does not contravene the rights of any users of the BGCSC Center under agreement with the BGCSC or unreasonably interfere with BGCSC Facility Operations and programming. The City shall also have the right (but not the obligation) to temporarily close the BGCSC Center if the City reasonably determines that there is an imminent danger of significant damage to the building or personal injury to City's employees or any occupants of the building. The circumstances under which City may temporarily close the BGCSC Facility shall include, without limitation, electrical interruptions, earthquakes, and civil disturbances. Closure of the building under such circumstances shall not constitute a constructive eviction nor entitle BGCSC to damages resulting from the temporary closure of any of the BGCSC Facility. BGCSC shall include appropriate language in its agreements with third parties protecting it from liability resulting from such temporary closures. Nothing herein shall limit the City's authority to otherwise lawfully enter the premises or to enter or access the premises for emergencies.

## **ARTICLE 12. BGCSC PROGRAMMING AND OPERATION OBLIGATIONS:**

12.1 General. The BGCSC shall exclusively and, at its sole cost and expense, manage the day-to-day operations of the BGCSC Center and Operate, repair and maintain the BGCSC Facility in accordance with the terms and conditions of this Agreement. BGCSC Maintenance obligations shall be as set forth in Article 15 herein.

12.2 Cost Obligations. Except as may otherwise be set forth expressly herein, any obligations of the BGCSC hereunder shall be performed at the sole cost and expense of the BGCSC and at no cost to the City of Granite Falls. The BGCSC additionally agrees to provide and pay for the cost of power supplied from the new building through electrical conduit installed by the City for any future parking lot lighting installed at the City's expense on the adjacent lot to the west owned by the City for the purpose of public parking for facility use.

12.3 Booking & Rental Policies/Procedures. In the event that the BGCSC makes the BGCSC Facility available for rent or use by third-parties, not including the City or emergency responders, the BGCSC shall establish, implement and publish its booking and rental policies, procedures, rates, and charges. The BGCSC shall have authority to book the BGCSC Facility in accordance with such policies, procedures, rates, and charges and shall charge users in accordance with the published rates and charges for the use and occupancy of the BGCSC Facility and related components and equipment; provided that, such use and occupancy is compatible with and enhances the goals and purposes set forth herein for the use of the BGCSC Facility, and such uses and occupancy are allowed on a nondiscriminatory basis.

### **12.4 Programming.**

12.4.1 In General. The BGCSC facilities are a community-based, not-for-profit youth organization in Snohomish County with programs for all ages. BGCSC offers daycare, summer recreation and youth programs, and after-school programs consisting of classroom, recreation, and field trips with a primary focus on elementary, middle school, and high school students on an ongoing basis. BGCSC engages families through a wide variety of programs. BGCSC also provides educational programming and related activities through partnerships with schools and other organizations. The goal of the BGCSC to promote and enhance the development of boys and girls of all backgrounds and abilities on a nondiscriminatory basis by instilling a sense

of competence, usefulness, belonging, and influence through recreational and educational activities that will enhance their lives and shape their future.

12.4.2 Programming Requirements. The BGCSC agrees that it will maintain an on-going level of programming consistent with and supportive of its goals as stated above and the terms and conditions of this Agreement. Such programming shall ensure that the BGCSC Facility is being effectively utilized to carry out the purposes of this Agreement and, towards that end, shall ensure program hours for each year of this Agreement.

12.4.3 Programs Hours and Activities. In general, BGCSC shall provide the following type of general activities:

- Various Sports, Before School Care, Kindergarten Care, Arts/Crafts Technology/Homework Teen Center Meals/snacks Games room Activity
- Recreation/Low Organized Games
- Summer Day Camp

The BGCSC shall provide services and programs in support of its goals as stated above, and provide, at a minimum, the following number of hours of operation.

School Year Hours of Operation: Monday-Saturday: 56 hours/week

Non-School Hours of Operation: Monday-Friday: 66 hours/week

This schedule is representative of the schedule of services to be provided but shall not be interpreted as a constraint on BGCSC management to make adjustments as appropriate to meet service needs and accomplish the goals of the City and the BGCSC. To that end, it is understood that the hours of service may be adjusted by written authorization of the City Manager, provided that should the hours be a reduction of 6 hours or more than the minimum hours set forth above, the City Manager shall submit the request to the City Council for final approval.

12.4.4 Report. The City Council may require, by Resolution that the BGCSC provide to the City an annual written report documenting the programming that has been made available through the BGCSC Facility for the preceding Program. Said report, if requested, shall be provided within thirty (30) days following the end of the Program Year. Such report shall be of sufficient detail for the City to verify that required programming and hours of operation have been met; provided that, regardless of whether the City requires such a written report, BGCSC shall make its books and records available to the City for the purpose of verifying that the obligations of the BGCSC hereunder have been met.

12.4.5 Schedule. Upon written request of the City, at least thirty (30) days prior to the commencement of the Program year, the BGCSC shall publish and make available to the City a program curriculum/schedule identifying all programming for the following program year. The BGCSC shall, in conjunction therewith, identify all of the times and dates that the BGCSC Facility will be used directly for programming and other BGCSC operational and program activities. Such times and dates shall be referred to as "dark" and not available for use by third parties or the City. All other remaining times and dates shall be referred to as "open."

12.4.6 Open Dates/Hours. The BGCSC shall make the BGCSC Facility available to the City for its use on open dates at no charge; provided that such use will not unreasonably interfere with the authorized activities of the BGCSC or its programming partners, and will be subject to the reasonable rules and regulations and booking

policies of the BGCSC. The City shall be required to provide additional insurance and agrees to hold harmless and indemnify BGCSC for such use, except to the extent that any such damage, loss, or claim arises from the negligence, concurrent negligence, or willful misconduct of BGCSC.

12.4.7 Limitation of City's Liability. BGCSC is not authorized to enter into any agreements, and any such agreements are voidable, related to the use of the BGCSC Facility that does not include a contract term in substantially the form of the following:

12.4.7.1 Notwithstanding any provision in this agreement to the contrary, User agrees that it shall look solely to the estate and interest of BGCSC for the collection of any judgment arising out of this agreement requiring the payment of money by BGCSC or for the enforcement of any other judgment or remedy against the BGCSC arising out of this agreement and no assets of the City shall be subject to levy, execution or other procedure for the satisfaction of User's remedies.

12.4.7.2 Regulations. BGCSC agrees that BGCSC and all of BGCSC's employees, agents and any Persons connected with BGCSC's use of BGCSC Facility, and all third parties using or occupying the BGCSC Center under agreement with the BGCSC, and their employees and agents, shall:

12.4.7.2.1 Abide by and conform to all Federal, State and Local ordinances, laws, rules and regulations and all lawful orders of the police and fire departments or other municipal authorities and by all facility rules and regulations.

12.4.7.2.2 Adhere to all applicable Federal, State and Local laws, rules and regulations pertaining to, and including but not limited to WISHA and OSHA. BGCSC will provide all necessary and related safety equipment for its employees and agents to be in compliance with Federal, State, and Local laws.

12.4.7.2.3 Obtain and pay for all necessary permits and licenses, and will not do, nor suffer from being done, anything on said BGCSC Facility during the term of this Agreement in violation of any such laws, ordinances, rules, or orders.

12.4.7.2.4 Abide by and comply with all aspects of the Americans with Disabilities Act in the presentation of all performances other than requirements directly related to the structure of the building and surrounding facility. BGCSC shall be responsible for ensuring that all services for individuals with disabilities, as outlined in this Act, are fulfilled in regard to events and performances.

12.4.7.2.5 Not discriminate against any employee or any applicant for employment or any program participant because of race, national origin, religion, sex, gender identity, sexual orientation, age, marital status, familial status, or the presence of any sensory, mental, or physical handicap and further agree to likewise not discriminate for those same reasons against any persons relative to admission, services or privileges offered to or enjoyed by the general public.

## **ARTICLE 13. CITY USE OF BGCSC FACILITY FOR COMMUNITY EVENTS**

In addition to the City's use of the BGCSC Facility for open dates under 12.4.6 above, the City shall have the right to use such parts of the BGCSC Facility for community events at no charge as the City shall designate from time to time by Council Resolution or Ordinance. The nature and scope of use shall be as agreed by the Manager and the Executive Director. This right of community event use shall be allowed for a period of 20 years from the date of completion and occupancy of the BGCSC Facility.

#### **ARTICLE 14. CITY AND OTHER PUBLIC USE OF BGCSC FOR EMERGENCIES**

In addition to the City's use of the BGCSC Facility for community events, at no charge, the City shall have an ongoing right of use of such parts of the BGCSC Facility to respond to public emergencies as circumstances require. Such use shall be for the duration the emergency requires and shall be for the City, other governmental responders, and contractors. An emergency shall be one declared by the Federal or State government, Snohomish County, or the City. The City shall declare any emergency by council resolution or otherwise as allowed by the City's emergency management plan(s). This right of emergency use shall be allowed for a period of 20 years from the date of completion and occupancy of the BGCSC Facility.

#### **ARTICLE 15. MAINTENANCE AND CLEANING:**

Maintenance and Cleaning Obligations. Except for damage caused by the City or its agents, the BGCSC shall, at its sole cost and expense, be responsible for maintenance and repair of the Building Structure and exterior grounds and landscaping and shall keep and maintain the Building Structure in good repair and working order. The BGCSC shall promptly make repairs (considering the nature and urgency of the repair), in accordance with and subject to applicable Laws. The City may, but is not obligated to, make its staff available to the BGCSC on a case-by-case basis as necessary or desirable to facilitate and support inspections, maintenance and repairs of the BGCSC Facility.

During the periods of the Facility use by the City, the City shall be responsible for the control of its members, agents, employees, participants, spectators, and others admitted to the Facility by the City. The City shall perform general cleanup at the conclusion of any City-sponsored event. General cleanup includes the cleaning necessary to return the Facility to a clean, safe, orderly, and sanitary condition. If there is any damage to the Facility as a result of the City using the Facility, the City shall be responsible for the repair.

#### **ARTICLE 16. CONTRACT REPRESENTATIVES:**

- 16.1 City. The Manager or designee shall be the City Contract Administrator and responsible for ensuring performance with this Agreement. Except as may be otherwise agreed to in writing by the Parties, the BGCSC's Executive Director or designee shall be the BGCSC's Representative and the person for all communications regarding the performance of BGCSC under this Agreement. All communications given or received from the BGCSC's Representative shall be binding on the BGCSC. BGCSC's Representative shall ensure supervision and coordination of BGCSC's obligations under this Contract and shall take corrective action as necessary to meet the requirements of this Agreement. BGCSC's Representative shall be available at all times during normal working hours throughout the term of the Agreement.

#### **ARTICLE 17 FINANCIAL OBLIGATIONS:**

- 17.1 Revenue. Subject to the terms of this Agreement, the BGCSC shall have the exclusive right to receipt of all revenue from the use of the BGCSC Center, including but not limited to rental fees, license fees, concessions, naming rights, and all other charges and fees associated with the use of the BGCSC Center.
- 17.2 Capital Reserve Funding. After completing capital construction obligations, the BGCSC shall dedicate a portion of its revenue towards capital replacement and improvements for the BGCSC Facility as needed over time.
- 17.3 Taxes. The BGCSC shall pay and be liable for any general or special ad valorem taxes, if any, and rental, sales, and use taxes imposed upon or measured by any rental owed in accordance with all statutes, codes, ordinances, orders, rules, and regulations of any municipal or governmental entity that apply to any part of the Premises ("Law(s)"), and shall indemnify, hold harmless, and defend City against any failure by the BGCSC to duly pay such taxes. In the event that leasehold excise taxes are levied by the State of Washington pursuant to RCW 82.29A, as hereafter may be amended, the BGCSC shall be responsible for collecting and paying the State all such Leasehold excise taxes.
- 17.4 Accounting Records. According to the Generally Accepted Accounting Principles (GAAP), the BGCSC shall maintain books and records as are customarily and necessarily kept for the purpose of managing, maintaining, and operating the BGCSC Center. The City shall be allowed access to accounting records to satisfy state audit and financial requirements.

#### **ARTICLE 18 TERM OF AGREEMENT:**

- 18.1 Initial Term. This Agreement shall be effective from the date of the execution of this Agreement and shall be in full force and effect for a term of twenty (20) years unless sooner terminated by either Party.
- 18.2 Extension. This Agreement may be extended for an additional five (5) year term upon the same terms and conditions by mutual agreement of the Parties approved in the same manner as the original Agreement; provided that the Parties may mutually agree to adjust the insurance requirements.

#### **ARTICLE 19 DISPUTE AVOIDANCE:**

- 19.1 The Parties are fully committed to working with each other throughout the term of this Agreement and agree to communicate regularly with each other at all times to avoid or minimize disputes. The Parties agree to act in good faith to prevent and resolve potential sources of conflict before they escalate into a question or controversy. If a question or dispute arises between the Parties concerning the observance, performance, interpretation or implementation of any of the terms, provisions, or conditions contained herein or the rights or obligations of either Party under this Agreement (a "Dispute"), the Parties each commit to resolving such Dispute in an amicable, professional and expeditious manner. The Parties

further agree that in the event a Dispute arises, they will first attempt to resolve any such Disputes through discussions between representatives of each Party. If a Dispute cannot be resolved through discussions by each Party's representative, upon the request of either Party, each Party shall each designate a senior representative ("Senior Representative"), and the Senior Representatives for the Parties shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve the Dispute. Prior to any meetings between the Senior Representatives, the Parties will exchange relevant information to assist the Parties in resolving the dispute.

The obligations of this Section are not intended and shall not be construed to prevent a Party from issuing an order to cure an alleged Non-Material Breach or taking Corrective Action in the event of an Emergency. The intent of the Parties is to require compliance with this Section before taking Legal Action.

## **ARTICLE 20 BREACH,DEFAULT, TERMINATION:**

- 20.1 Termination. Either Party may terminate this Agreement, at any time, for material breach of this Agreement, by giving ninety (90) calendar days written termination notice to the other Party; provided that, if termination arises out of a Dispute, the Parties must first comply with Article 19 herein.
- 20.2 Breach. "Breach" shall mean any failure of a Party to keep, observe, or perform any of its duties or obligations under this Agreement. "Material Breach" shall mean any circumstances defined as a material breach herein and any one of the following circumstances:
- Breach of a Party's obligation to defend or indemnify the other Party;
  - If a Party attempts to evade any material provision of this Agreement or to practice any fraud or deceit upon the other Party;
  - If BGCSC becomes insolvent, or if there is an assignment for the benefit of BGCSC's creditors;
  - If BGCSC fails to provide or maintain the insurance required by this Agreement;
  - A bad faith Breach;
  - Breach of Article 19 (Dispute Avoidance);
  - Abandonment of the BGCSC Center (a continuous period of 90 days or more with no scheduled Programming hours shall constitute abandonment);
  - Any Breach that cannot be cured; or
  - Any non-material breach that is not cured as required pursuant to Section 14.4 (Programming Hours) that is not cured as provided at Section 20.3 herein.
- 20.3 Right to Cure Breach.
- 20.3.1 Notice. Except as provided in Section 20.4 below for Breach of programming requirements, if a Party believes that the other Party is in Breach, such Party shall give written notice to the Noticed Party stating with reasonable specificity the nature of the alleged non-material Breach. The Noticed Party shall have ninety (90) days or such lesser or greater time as specified in the notice, from the receipt of such notice to:



- a Respond to the other Party, contesting that Party's assertion that a Breach has occurred, and request a meeting in accordance with Article 19; or
- b Cure the Breach; or
- c Notify the other Party that the Noticed Party cannot cure the Breach within the time provided in the Notice because of the nature of the Breach. In the event the Breach cannot be cured within the time provided in the notice, the Noticed Party shall promptly take all reasonable steps to cure the Breach and notify the other Party in writing and detail as to the exact steps that will be taken and the projected completion date. In such a case, the other Party may set a meeting in accordance with Article 19 to determine whether additional time beyond the time provided in the Notice is indeed needed and whether the Noticed Party's proposed completion schedule and steps are reasonable.

20.3.2 Communication. If the Noticed Party does not cure the alleged Breach within the cure period stated above or denies the alleged Breach, the Parties shall meet in accordance with Article 19 to attempt to resolve the Dispute.

20.3.3 Time to Cure. When specifying the time period for cure, the Party giving notice shall take into account the nature and scope of the alleged Breach, the nature and scope of the work required to cure the Breach, whether the Breach has created or will allow to continue an unsafe condition, the extent to which delay in implementing a cure will result in adverse financial consequences or other harm to the Party giving notice, and whether delay in implement a cure will result in a violation of Law or breach of contract.

20.3.4 Failure to Cure. If the Noticed Party fails to promptly commence and diligently pursue cure of a Breach to completion to the reasonable satisfaction of the Party giving notice and in accordance with the agreed-upon timeline or the time provided for in the Notice of Breach, then the Breach shall become a Material Breach.

#### 20.4 Youth Programming:

- 20.4.1 Notice of Material Breach. Subject to Section 20.3.1, in the event that the City is unable to verify to its reasonable satisfaction that the BGCSC has complied with the minimum programming or operation hours required pursuant to Section 12.4 of Article 12 herein, the City may give notice to the BGCSC of a material breach of this Agreement.
- 20.4.2 Dispute. In the event that the BGCSC disputes its alleged non-compliance with Section 12.4 of Article 12 herein, the parties agree first to attempt to resolve such dispute pursuant to Article 19 (Dispute Avoidance).
- 20.4.3 Meeting. In the event that the BGCSC does not dispute its non-compliance with the programming and operation requirements of Section 12.4 of Article 12 herein, the Parties agree to meet within thirty (30) days of the notice of a material breach to identify and develop a mutually agreeable plan to cure the material breach.

- 20.4.4 **Amendment.** In the event that the Parties agree that a change in circumstances requires an amendment to the Programming hours requirement of the Agreement, the Parties may enter into discussions pursuant to Section 21.17(c) of Article 21 herein to amend the Agreement accordingly.
- 20.4.5 **Right to Cure.** BGCSC shall have the right to cure the material breach by bringing its educational programming into compliance with Section 12.4 herein, as now or may be hereafter amended, by no later than the close of the Program year (the "Cure Year") following the Program year in which the material breach is alleged.
- 20.5 **Failure to Cure.** In the event that the City is unable to verify to its reasonable satisfaction that the BGCSC has, at the conclusion of the Cure Year, complied with the minimum number of Programming hours required pursuant to Section 12.4 of Article 12 herein, the City may terminate this Agreement upon ninety (90) days written notice with no further opportunity to cure.
- 20.6 **BGCSC's Obligation upon Termination.** In the event of termination pursuant to Section 20.4. above, other than termination as a result of the BGCSC's failure to occupy the premises and provide services as set out in Section 2.3.3, the BGCSC agrees that it shall pay to the City, the amount of \$300,000.00 together with interest at a rate of 4% per month calculated from the date of the effective date of this Agreement within 30 days of termination, provided BGCSC shall be entitled to pro-rata credit for services provided prior to the date of the breach of the Agreement.

#### ARTICLE 21 MISCELLANEOUS:

- 21.1 **Controlling Law.** This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Washington (without reference to conflict of law principles).
- 21.2 **Venue.** BGCSC and City hereby consent and agree that venue of any action brought under this Agreement shall be in Snohomish County, Washington; provided, however, that venue of such action is legally proper.
- 21.3 **Time of Essence.** Time is of the essence of this Agreement and each provision hereof.
- 21.4 **Liens.** BGCSC shall not cause or permit mechanic's or other liens to be placed upon the Premises in connection with any work or service done or purportedly done to benefit the BGCSC. BGCSC shall promptly pay and discharge all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by BGCSC on any part of the BGCSC Center. The City is hereby authorized to post any notices or take any other action upon or with respect to any part of the BGCSC that is or may be permitted by law to prevent the attachment of any such liens to the BGCSC; provided, however, that failure of City to take any such action shall not relieve BGCSC of any obligation or liability under Article 14 or any other Article of this Agreement.
- 21.5 **Interest on Amounts Owed.** All amounts due shall be paid within ninety (90) days after the date of Notice or Breach, or sooner if required by this Agreement or by law. In the event that a Party shall fail to pay any monies to another Party as and when due hereunder, then in addition to any other requirement

of this Agreement, such Party shall pay interest on such unpaid sum from forty-five (45) days after the date due at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in The Wall Street Journal in the preceding December plus two and one-half percent (2-1/2%), and for the period July 1 through December 31, the prime rate last published in The Wall Street Journal in the preceding June plus two and one-half percent (2-1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less. Invoices shall be directed to the addresses identified in Section 13 herein.

- 21.6 Assignment. BGCSC may transfer or assign this Agreement to another Person. However, no transfer or assignment shall be effective except after prior written notice to City and transferee/assignee's written commitment, delivered to City, that transferee/assignees shall thereafter be responsible for all obligations under the Agreement. Such a transfer/assignment shall relieve the BGCSC of any further obligations under the Agreement, including any obligations not fulfilled by BGCSC's transferee/assignee; provided that the transfer/assignment shall not in any respect relieve the BGCSC, or any of its successors in interest, of responsibility for acts or omissions, known or unknown, or the consequences thereof, which acts or omissions occurring prior to the time of the transfer/assignment.
- 21.7 Waiver. The Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.
- 21.8 Attorney Fees. In the event of commencement of legal action at law or in equity in an appropriate forum by a Party to enforce any covenant or any of such Party's rights or remedies under this Agreement, including any action for declaratory, injunctive, or equitable relief, the substantially prevailing Party in any such action shall be entitled to reimbursement of its reasonable attorneys' fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the Parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute, in addition to any other relief to which such Party or Parties may be entitled.
- 21.9 Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday, or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.
- 21.10 Amendment. This Agreement may be amended only by a written contract signed by authorized representatives of the City and BGCSC. In addition to any authority, the Manager may otherwise have to amend this Agreement, the Manager is authorized to, without prior approval of the governing body of the City, execute amendments to this Agreement that do not increase the term of the Agreement or the compensation to be paid by the City to the BGCSC and do not otherwise materially increase the monetary obligations of the City.

21.11 Limited severability. The City and the BGCSC each believe that the execution, delivery, and performance of this Agreement comply with all applicable Laws. However, in the unlikely event that any provision of this Agreement is declared illegal, invalid, void, or unenforceable under present or future laws (or is construed as requiring the City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, City code or City charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed Agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments, and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

21.12 Joint and Several Liability. BGCSC acknowledges that, in any case in which BGCSC and BGCSC's Contractors are responsible under the terms of this Agreement, such responsibility is joint and several as between BGCSC and any such BGCSC's Contractors; provided that the BGCSC is not prohibited from allocating such liability as a matter of contract.

21.13 Notices.

21.13.1 Except as otherwise required by law, any notice, demand, or other communication given hereunder shall be in writing and shall be given by personal delivery or be sent by certified or registered U.S. Mail, return receipt requested, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph, or by telecopy, facsimile machine or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid:

To: City of Granite Falls  
PO Box 1440  
Granite Falls, WA 98252

And

To: Boys & Girls Clubs of Snohomish County  
8223 Broadway, Suite 100  
Everett, WA 98203

The address or other information specified herein for either Party may be changed by providing notice to the other Party no less than thirty (30) days' advance written notice of such change in address.

21.13.2 Effective Date of Notices. All such notices, demands, or other communications will (i) if delivered personally or delivered through a same-day delivery/courier service be deemed effective upon delivery or refusal to accept delivery by the addressee, or (ii) if delivered by U.S. mail in the manner described above be deemed effective upon the earlier of receipt or three business days after deposit in a post office operated by the United States or with a United States postal officer (in each case regardless of whether such notice, demand or other communication is received by any other person to whom a copy of such notice, demand or other communication is to be delivered pursuant to this paragraph). Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any notice sent by telecopy or facsimile machine shall be deemed effective upon confirmation of the successful transmission by the sender's telecopy or facsimile machine. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee.

21.14 Force Majeure. Neither Party hereto shall be liable to the other Party for any failure to perform any obligation set forth herein to the extent such failure is caused by war, an act of terrorism, or an act of God, provided that such Party has made and is making all reasonable efforts to perform such obligation and minimize all resulting loss or damage.

21.15 Annual Review. Commencing on the first anniversary of the Agreement and on or about each one-year anniversary of this Agreement thereafter, BGCSC and City may, except as may be otherwise agreed to by the Parties, meet face-to-face to discuss the implementation of this Agreement and any changes that either Party believes should be made. The Parties shall negotiate any proposed amendments to this Agreement in good faith..

21.16 Performance Monitoring. The City will monitor the performance of the BGCSC against the goals and performance standards required herein. Substandard performance, as determined by the City, will constitute non-compliance with this agreement and breach or material breach as the case may be. If action to correct such substandard performance is not taken by the BGCSC within a reasonable period of time after being notified by the City, the procedures above may be initiated.

21.17 Subsequent Action. In the event that after this Agreement becomes effective, (a) there is a change in the law which requires the City or the BGCSC to perform any act or cease performing any act which is inconsistent with this Agreement; (b) there is a change in the law which broadens the authority of the City or the BGCSC with respect to any act permitted or authorized under this Agreement; or (c) the City or the BGCSC believe that amendments to this Agreement are necessary or appropriate, then the City and the BGCSC agree to enter into good faith negotiations to amend this Agreement to enable the Parties to address, in a manner reasonably acceptable to all Parties, such change or other development which formed the basis for the negotiations. The Parties recognize that the purpose of the negotiations would be to preserve the scope and purpose of the Agreement to the maximum extent consistent with law.

- 21.18 Good Faith and Reasonableness. The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inference be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of a Party being given "sole discretion" or being allowed to make a decision in its "sole judgment."
- 21.19 Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.
- 21.20 Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings. The Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.
- 21.21 Right Limited. BGCSC may not enter into agreements with a third party for use or occupancy of the BGCSC Facility, or use of equipment, that provide any rights that are greater than the rights granted to the BGCSC herein or for a term longer than the term of this Agreement, or for a term that extends beyond termination of this Agreement. Any provisions in such agreements that conflict with any provisions herein shall be voidable by the City or BGCSC.
- 21.22 Third-Party Beneficiaries. No person or entity shall be a third-party beneficiary to this Agreement, except for permitted transferees or assignees to the extent that they assume or succeed to the rights or obligations of the BGCSC under this Agreement, and except that the indemnified Parties referred to in the indemnification provisions of this Agreement shall be third-Party beneficiaries of such indemnification provisions.
- 21.23 Independent Contractor. Nothing contained in this agreement is intended to or shall be construed in any manner as creating or establishing the relationship of employer/employee between the parties. The BGCSC shall, at all times, remain an independent contractor with respect to the services to be performed under this agreement. Any and all employees of BGCSC or other persons engaged in the performance of any work or services required by BGCSC under this agreement shall be considered employees or sub-contractors of the BGCSC only and not of the City. All claims that might arise, including worker's compensation claims under the Worker's Compensation laws of the State of Washington or any other state, on behalf of said employees or other persons while so engaged in any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the BGCSC.
- 21.24 Books and Records. The BGCSC shall maintain books, records, documents, and other evidence of accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract and reflect all sums received by the BGCSC

for the use of the BGCSC Facility. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the City. The BGCSC will retain all books, records, documents, and other materials relevant to this Agreement for six years after the Facility Use Agreement and make them available for inspection by persons authorized under this provision. Such books and records may be subject to the Public Records Act of the State of Washington, and BGCSC shall cooperate with City to respond to public record requests.

- 21.25 Nonliability of City Officials, Etc., and of Employees, Members and Partner, Etc. of the BGCSC. No City Council member, official, representative, agent, attorney or employee of the City shall be personally liable to any of the other Parties hereto, or any successor-in-interest to any of the other Parties, in the event of any default or breach by the City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of the City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of the BGCSC under this Agreement shall be limited solely to the assets of the BGCSC and shall not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of the general partners or members of the BGCSC; (ii) the shareholders, members or managers or constituent partners of the BGCSC; or (iii) officers of the BGCSC.
- 21.26 Survival. All obligations to release, hold harmless, defend and indemnify contained in this Agreement shall survive the execution and delivery of this Agreement, the closing of any transaction contemplated herein, and the rescission, cancellation, expiration, or termination of this Agreement upon the terms and for the period set forth in each respective Section.
- 21.27 Exhibits. The Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.
- 21.28 Entire Agreement. This Agreement is the full and complete Agreement of City and BGCSC with respect to all matters covered herein, and all prior and contemporaneous agreements, representations, negotiations, and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein. The foregoing sentence shall in no way affect the validity of any instruments executed by the Parties in the form of the exhibits attached to this Agreement.
- 21.29 Representation of Parties.
- 21.29.1 The City's Representations. The City hereby represents and warrants to BGCSC that it has the full statutory right, power and authority to enter into this Agreement and perform in accordance with its terms and provisions; that the Parties signing this Agreement on behalf of the City have the authority to bind the City and to enter into this transaction; and that the City has taken all requisite action and steps to legally authorize the execution, delivery, and performance of this Agreement.
- 21.29.2 BGCSC's Representations and Warranties. BGCSC hereby represents and warrants to the City that it has full power and authority to enter into this Agreement and perform in accordance with

its terms and provisions; that the Parties signing this Agreement on behalf of the BGCSC have the authority to bind BGCSC and to enter into this transaction; and that BGCSC has taken all requisite action and steps to legally authorize the execution, delivery, and performance of this Agreement.

- 21.30 Conflict of Interest. No member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested.
- 21.31 Discrimination. BGCSC, for itself and its successors and assigns, agrees that during the term of this Agreement, BGCSC will not discriminate in any employment or program action because of race, creed, color, national origin, marital status, sex, sexual orientation, age, or the presence of any sensory, mental or physical handicap. In the event of non-compliance by the BGCSC with any of the non-discrimination provisions of this Agreement, the City shall be deemed to have cause to terminate this Agreement, in whole or in part for a material breach.
- 21.32 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all so executed shall constitute one Agreement, binding on the Parties.

IN WITNESS WHEREOF, authorized representatives of City and BGCSC hereby execute this Agreement as of the date first set forth herein.

CITY OF GRANITE FALLS

BOYS AND GIRLS CLUBS OF  
SNOHOMISH COUNTY



City Manager

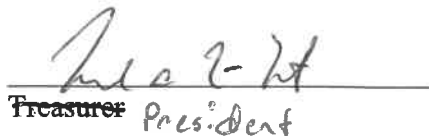


Executive director

Attest:



City Clerk

  
~~Treasurer~~ President

Approved as to form:

  
THOM H GRAAFSTRA, City Attorney