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IDENTIFICATION OF ITEM

**Lease agreement with High Trek Ventures, LLC at  
Paine Field Community Park**

COUNCIL FILE DATE

JAN 30 2017

FILE NO.

D-2

COPY RECEIVED:

2-1-17 - Parks - Russ Bosanko  
- mot & 2 Agrees

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FEB 01 2017

SNOHOMISH COUNTY  
EXECUTIVE OFFICE

D. File

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

MOTION NO. 17-035

AUTHORIZING THE COUNTY EXECUTIVE TO SIGN A LEASE AGREEMENT WITH  
HIGH TREK VENTURES, LLC AT SNOHOMISH COUNTY'S PAINE FIELD  
COMMUNITY PARK

WHEREAS, Snohomish County, through its Department of Parks and Recreation, solicited for requests for proposals ("RFP") allowing for partnerships with private vendors at county parks by license or lease agreements; and

WHEREAS, High Trek Ventures, LLC, a Washington corporation (the "Lessee"), submitted a proposal through Snohomish County's Purchasing Department, RFP-17-16SB, in which they propose building, construction, and operation of an Aerial Adventure Course and accompanying zip lines on an unused portion of Paine Field Community Park, approximately 1 acre in size, that was originally cleared and leveled for a possible natural grass soccer field when the parking lot, playground, and permanent restroom building was constructed in 2009; and

WHEREAS, the proposal received favorable scoring from the four (4) member RFP Evaluation Committee; and

WHEREAS, the County Parks Department since 2009 has met with three (3) different soccer organizations (Mukilteo Youth Soccer, Tynecastle Soccer Club, and a youth Hispanic soccer league), and none of these discussions have led to a submittal of a RFP for development of the cleared land into a playable soccer field; and

WHEREAS, the parks department has negotiated a Lease Agreement with the Lessee, attached hereto as Schedule A, allowing for the Aerial Adventure Course at Paine Field Community Park; and

WHEREAS, the Lessee would pay Snohomish County a base rent of \$2,083.33 per month for an annual base rent fee of \$25,000 for years 1 – 4, with increase in the base rent for years 5-8, and years 9-12; and

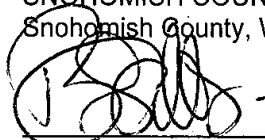
WHEREAS, in addition to the base rent fee, the Lessee will assist the county parks department by performing routine tasks at the park (i.e. opening the main parking lot entry gates daily, picking up litter and trash, wiping down picnic tables, etc.); and

WHEREAS, once constructed, the Aerial Adventure Course and zip lines could be easily and expeditiously removed should either party terminate this Lease Agreement;

NOW, THEREFORE, ON MOTION, the Snohomish County Council hereby approves the Lease Agreement and authorizes the County Executive to sign and execute the Lease Agreement with High Trek Ventures, LLC, at Paine Field Community Park, and further authorizes the County Executive to sign any future related amendment documents.

PASSED this 30<sup>th</sup> day of January, 2017.

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington



\_\_\_\_\_  
Council Chair

ATTEST:



\_\_\_\_\_  
Asst. Clerk of the Council

D-2

## LEASE AGREEMENT FOR PAINE FIELD COMMUNITY COUNTY PARK

THIS LEASE AGREEMENT FOR PAINE FIELD COMMUNITY COUNTY PARK (this "Lease") is entered into as of this 1<sup>st</sup> day of February, 2017 (the "Execution Date"), by and between Snohomish County, a political subdivision of the State of Washington ("Lessor") and High Trek Ventures LLC., a Washington limited liability company ("Lessee").

### RECITALS

A. Lessor is the owner of certain real property located in Snohomish County, Washington, as more particularly described on Exhibit A to this Lease (the "Property"), which is improved with four (4) baseball/softball fields, paved and gravel parking lots, playground, permanent restroom building, art work, sidewalk (the "Improvements") and that is commonly known as the *Paine Field Community County Park*, having a street address of 11928 Beverly Park Road, Everett, *WA 98203*. The portions of the Property and Improvements that the Lessee will be responsible for will be collectively referred to herein as the "Premises." The approximate site plan of the Premises is shown on a diagram attached to this Lease as Exhibit B.

B. The Lessee has submitted a proposal (Exhibit C) through Snohomish County's Purchasing Department, RFP-17-16SB, in which they propose building, construction, and operation of an Aerial Adventure Course and accompanying zip lines on an unused portion of Paine Field Community Park, approximately 1 acre in size, that was originally cleared and leveled for a possible natural grass soccer field when the parking lot, playground, and permanent restroom building was constructed in 2009.

C. The proposal received favorable scoring from the four (4) member RFP Evaluation Committee. The County Parks Department since 2009 has met with three (3) different soccer organizations (Mukilteo Youth Soccer, Tynecastle Soccer Club, and a youth Hispanic soccer league), and none of these discussions have led to a Use Agreement or development of the cleared land into a playable soccer field.

D. Once constructed, the Aerial Adventure Course and zip lines may be easily and expeditiously removed should either party terminate this Lease Agreement as provided in Section 2.3 below.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises stated herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

#### 1. LEASE OF PREMISES

Lessor leases the Premises to Lessee, and Lessee leases the Premises from Lessor, on the terms and conditions set forth in this Lease.

## **2. TERM**

### **2.1 Initial Term**

Unless terminated earlier pursuant to Section 2.3, the term of this Lease (the "Lease Term") shall be for twelve (12) years commencing on the Execution Date, plus an additional term as provided in Section 2.2 below.

### **2.2 Extension Options**

Lessee shall have two options (respectively, the "First Extension Option" and the "Second Extension Option," and collectively, the "Extension Options") to extend the Lease Term, each of which shall be for an extension period of 4 years. If Lessee desires to exercise one or both of its Extension Options, it must do so by delivering written notice (the "Extension Notice") to Lessor no fewer than 180 days prior to the expiration of the then current Lease Term. Lessee may only exercise an Extension Option if at both the time the Extension Option is exercised and at the time the relevant extended term would commence, Lessee is not then in Default (as such term is defined in Section 19 below) under this Lease. If Lessee fails to timely exercise its First Extension Option, Lessee's Second Extension Option shall thereafter be null and void.

### **2.3 Right to Terminate**

Either party may terminate this Lease for any reason by giving the other party three hundred sixty five (365) days' written notice of its intent to do so. If termination is initiated by Lessor within the first 12 years, all rent for the final year will go to Lessee for removal of the structure and other expenses. Lessor may terminate this Lease as provided below:

(a) Default. If either Party to this Agreement breaches it, then the other Party may terminate this Agreement; provided, that the dispute resolution procedure set forth in this Agreement is completed before termination; except the notice and dispute resolution requirements do not apply where protection of the public's health, welfare or safety requires immediate termination by the County.

(b) If Lessee determines that it cannot reasonably continue to operate the Premises, Lessee may terminate this Agreement after giving Snohomish County six (6) months' advance written notice of termination

(c) County funding in support of this Agreement beyond the current appropriation year is conditioned upon appropriation by the County Council of sufficient funds to undertake the activities described in this Agreement as determined solely by the County. Should such an appropriation not be approved, this Agreement shall terminate at the close of the current appropriation year.

(d) Lessee's Waiver of Rights upon Termination by County. The Lessee hereby expressly waives the right to claim or recover against the County and/or any official, employee, or representative thereof for any damages whatsoever incurred due to termination by the County.

## **3. RENT**

### 3.1 Base Rent

#### RENT SCHEDULE

From and after the Base Rent Due Date, Lessee shall pay Lessor a "Base Rent", inclusive of a donation of funds to Snohomish County Parks and Recreation, in advance, on or before the first day of each calendar month of the Lease Term, in lawful money of the United States of America, without notice, deduction or offset, to Lessor's address set forth in Section 24 of this lease, or to such other party or at such other place as Lessor may hereafter from time to time designate to Lessee in writing.

The Base Rent shall be Two Thousand Eighty Three Dollars and Thirty Three Cents (\$2,083.33) due each month of the initial Lease Term, with a portion of said Base Rent revenue in the amount of \$250.00 per month to be applied to a donation account held by Snohomish County Parks and Recreation. The accumulated donation funds shall be used solely for the purpose of purchasing new machinery and equipment that is mutually agreed to by the parties, for maintenance, improvement and beautifying of Paine Field Community Park. The initial term of the Lease shall be for a term of twelve years and future Base Rent shall be adjusted automatically and without notice per the chart below, inclusive of said donation of funds. In the event that the due date of this Lease occurs after the first day of the month, the monthly lease rent for that first month shall be prorated based on the number of days remaining for that particular month.

Operating Years Tiers	Monthly Installments	Annual Rent Total
Years 1 - 4	\$2,083.33	\$25,000.00
Years 5 - 8	\$2,500.00	\$30,000.00
Years 9 - 12	\$3,000.00	\$36,000.00
Additional 4 year increments	+20% over prior tier (i.e. \$3,600.00)	+20% over prior tier (i.e. \$43,200)

The Base Rent due date: Lessee shall begin rent payments when the Premises is built and operations begin (defined by the first ticket sale and redemption). It is anticipated that the construction of the Premises will take at least three (3) months from when the contractor breaks ground until the structure is up and operating.

### 3.2 Additional Rent

In addition to the above Base Rent, Lessee shall pay to Lessor any and all taxes and fees including admission tax, leasehold excise tax, sales tax, surface water management fees, and any and all permit fees required to manage and operate the aerial adventure course and premises (the "Additional Rent"). Lessee specifically authorizes the Lessor to remit to the respective taxing authority any amounts paid by Lessee to the Lessor in payment of any such taxes, and agrees that the Lessor shall not be held responsible or liable in any manner for reimbursement of any amounts so paid if said taxes or fees, or any part thereof, are determined to be invalid, improper or unenforceable. If the applicable taxing authority requires the Lessor to collect the taxes and Lessee does not agree on the amount to be so paid, the Lessee shall pay the amount requested by the Lessor, and Lessee's sole recourse shall be against the applicable taxing authority with respect to the amount, propriety, and validity of such tax. The Lessor, in collecting or designating such tax or any amount thereof, in no way warrants the validity or propriety or correction thereof, and the

sole obligation of the Lessor in the event of the collection of such tax shall be to remit the same to the appropriate taxing authority.

### **3.3 Interest on Late Payments**

The term "Rent" shall mean all sums due and owing from Lessee to Lessor under this Lease, including but not limited to the above described Base Rent and Additional Rent. All Rent not paid within thirty (30) business days of the due date hereunder shall bear interest from the date due at the rate of twelve (12) percent per annum or the maximum permitted by law, whichever is less.

### **3.4 Collection Fees on Late Payments**

Lessee acknowledges that late payment of any Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amounts of which are extremely difficult and impracticable to ascertain. Accordingly, if any Rent is not received within ten (10) business days of the date due, Lessee shall pay a collection fee in the amount of Fifty Dollars (\$50.00) (the "Collection Fee"). Lessor and Lessee agree that the Collection Fee represents a fair and reasonable estimate of the costs that Lessor will incur by reason of a late payment of Rent and that the Collection Fee is in addition to any and all other remedies available to Lessor, and that assessment and/or collection of the Collection Fee shall not be deemed a waiver of any default.

## **4. SECURITY DEPOSIT**

### **4.1 Letter of Credit/Security Bond**

As security for the full and faithful performance of every covenant and condition of this Lease to be performed by Lessee, Lessee shall provide to Lessor a Letter of Credit or Security Bond, in the sum of Two Thousand Dollars (\$2,000.00) as a security deposit ("Security Deposit") prior to January 1 of each year of the Term. Subsequent year security deposits will be made in the amount necessary to replenish the Lessor's available deposit fund to a balance of \$2,000.00. If Lessee shall breach or default with respect to any covenant or condition of this Lease, including but not limited to the payment of Rent, Lessor may apply all or any part of the Security Deposit to the payment of any sum in default or any damage suffered by Lessor as a result of the breach or default, including without limitation any sum which Lessor may be required, or in its reasonable discretion deems necessary, to spend or incur by reason of Lessee's breach or default. In such event, Lessee shall upon demand deposit with Lessor the amount so applied so that Lessor shall have the full amount of the Security Deposit on hand at all times during the Lease Term. In no event shall Lessee have the right to apply any part of the Security Deposit to any Rent or other sums due under this Lease. If Lessee shall have fully complied with all of the covenants and conditions of this Lease, but not otherwise, the Security Deposit then remaining shall be released within sixty (60) days after the expiration or earlier termination of this Lease. In the event of Lessee's default, Lessor's right to apply and/or retain the Security Deposit shall be in addition to all other rights available to Lessor at law or in equity for Lessee's default, and Lessor's retention of the Security Deposit shall not be construed as a payment of liquidated damages.

## **5. CONSTRUCTION AND USE**

The Lessee is solely responsible for any and all costs associated with the construction,

operation, maintenance and repair of the Aerial Adventure Course, accompanying zip lines, and base of operation building. At all times during the Lease Term, the Premises shall be used solely for the operation of an Aerial Adventure Course, accompanying zip lines, and activities reasonably associated therewith (e.g., teambuilding services, birthday parties and events, branded apparel, beverages and other revenue generating products and services as agreed to with Snohomish County Parks) and for no other purpose or use whatsoever, unless prior written approval from the County has been provided. Lessee acknowledges that County has not made any representation or warranty as to the suitability of the Premises for the conduct of Lessee's business. Future restroom improvements, serving the Premises, may be proposed where Lessee pays for 50% of improvements and 50% will be paid by Lessor, but such improvements will be in the sole discretion of the County. Lessee may seek to build a picnic shelter and will pay for 50% of construction while Lessor will pay the remaining 50%, but such building of a picnic shelter will be in the sole discretion of the County.

Lessee acknowledges and agrees that: (a) it has had an adequate opportunity to inspect the Premises; (b) in entering into this Lease it is relying solely on its own investigation of the Premises and is not relying on any statements, representations or warranties made by Lessor or its agents regarding same; (c) it is accepting the Premises in their current condition, "AS-IS, WHERE-IS," subject to further reasonable wear and tear that may occur before the Execution Date; and (d) Lessor has no obligation whatsoever to make any improvements to the Premises now or at any time in the future as a condition to Lessee's acceptance of the Premises.

## **6. MAINTENANCE AND OPERATIONS**

### **6.1 Maintenance Standards**

Lessee shall, at Lessee's sole cost and expense, throughout the Lease Term keep and maintain the Premises and the fixtures and improvements located therein in good condition and repair, subject to ordinary wear and tear and shall be responsible for all non-structural repairs to the Premises. All maintenance and repair for which Lessee is responsible shall be promptly performed by Lessee in a good and workmanlike manner in compliance with all applicable laws. The Lessee shall maintain the Premises in accordance with current Association for Challenge Course Technology (ACCT) Standards and customary management practices as provided for in Exhibit D attached. In addition, Lessee and Lessor's day to day maintenance tasks and responsibilities are identified in Exhibit E.

### **6.2 Professional Requirements**

Lessee agrees that during all hours of operations that there will be Association for Challenge Course Technology (ACCT) Certified Practitioner on hand to assure all rules, procedures, and safety precautions are being followed.

Lessee also agrees to provide and maintain a contact sheet with Snohomish County Parks that includes key contacts to escalate issues to. Sheet will include a minimum of employee name, cell phone number, and email address.

### **6.3 Equipment**

The Lessee shall furnish all equipment and personal property reasonably necessary for the



operation of an aerial adventure park and zip line and all associated activities. Any machinery, tools, structures, appliances and/or equipment of any kind and nature placed or installed on the Premises by the Lessee shall remain the property of the Lessee, PROVIDED that:

(a) The Lessee shall remove such structures, machinery, etc., prior to the expiration or termination of this Lease and shall restore the Premises to its original condition, reasonable wear and tear excepted;

(b) Any such structures, machinery, etc., which is not removed by the Lessee before the expiration or termination of the lease shall, at the Lessor's option upon the Lessor giving the written notice thereof, become the property of the Lessor;

(c) If such structures, machinery, etc., is not removed by the Lessee as provided above or if any other personal property is left on the Premises upon expiration or termination of this Lease, the Lessor shall also have the right to remove and store any or all of such machinery, etc., at the sole risk and expense of the Lessee. The Lessor shall have a lien on such property for reasonable storage and removal charges and any other charges the Lessor may have against the Lessee and shall have the right to sell any or all of such property and dispose of the proceeds as provided in RCW 60.60.030 and .040. At all times the Lessee shall bear all risk of loss or damage to any machinery, etc., or personal property placed in or on the leased Premises.

#### **6.4 Compliance with Laws**

Lessee shall comply with all applicable zoning, municipal, county, and state laws, ordinances and regulations relating to its use and occupancy of the Premises, and accepts this Lease subject thereto and to all matters disclosed thereby and by any Exhibits attached hereto. Lessee shall not commit or allow to be committed any waste upon the Premises, or any public or private nuisance or other act or thing that disturbs the quiet enjoyment of the surrounding community, that would not reasonably be associated with the use identified in Section 5.

#### **6.5 Access to Books and Records**

Lessee shall keep accurate and complete business and maintenance records (including receipts) in accordance with accounting practices customarily employed in aerial adventure course operations. Lessor, or its agents, shall have the right, at any reasonable time and on giving two business days' notice to Lessee, to examine the books and records of the Lessee as such books and records pertain to or are connected with the business conducted on the Premises. Such books and accounting practices shall include at a minimum:

(a) Adequate financial control and record retention, as reasonably determined by the Snohomish County Department of Budget and Finance, over cash receipts, financial records and other fiscal matters;

(b) An accounting system that accurately identifies the gross receipts and other appropriate accounts pertaining to the Premises separate from any other business operations conducted by Lessee;

(c) A cash register or other receipt issued for any business activity requiring payment, and the customer will be requested to keep such receipt on his or her person and a sign or signs to

that effect will be posted in conspicuous places; and

(d) Gross receipts to be initially deposited in a single bank located in the State of Washington in Snohomish County, and the name of the designated bank disclosed to the Lessor at the time of executing this Lease and may not be changed without prior written notice and approval of the Lessor. Lessee agrees to give the Lessor, its agents and/or representatives of the State Auditor's Office, access to bank statements, deposit slips, cancelled checks, check registers, federal and state tax returns and such other supporting data as are necessary incident to the audit of the Lessee's business pursuant to this lease.

## **7. UTILITIES AND SERVICES**

Lessee shall pay directly to the appropriate service provider all costs, charges and expenses for electrical, telephone, cable television, internet, janitorial and garbage removal service to the Premises.

Lessor will be responsible for all water & sewer utilities including the maintenance of the bathrooms.

## **8. SIGNAGE**

Lessee shall have the right to place identifying signage on and about the Premises subject to compliance with all applicable laws and building standards of the County, PROVIDED HOWEVER, no such signage shall advertise, support, or promote any political cause, issue, candidate, or the election thereof. Lessee shall at all times while such signage remains on display, at its sole cost and expense, maintain such signage in good condition and repair. Upon the expiration or earlier termination of this Lease, Lessee shall, at its sole cost and expense, remove all signage and repair any resulting damage to the Premises. This duty shall survive termination of this Lease.

## **9. ALTERATIONS**

### **9.1 Lessor's Approval Required**

Except as expressly provided to the contrary in Section 9.2 below, Lessee may not make additions, changes, alterations or improvements to the Premises or to any electrical, mechanical or other systems or facilities located in or otherwise serving the Premises (collectively, the "Alterations") without first obtaining the prior written consent of Lessor which shall not be unreasonably withheld, conditioned or delayed. Lessee shall provide Lessor with detailed plans and specifications detailing any proposed Alteration. Should Lessor consent to any proposed Alteration, such consent shall not be deemed a representation or warranty as to the adequacy of the architectural design or plans for such Alteration, and Lessor hereby expressly disclaims any responsibility or liability for same.

### **9.2 Manner of Performance**

All Alterations shall be performed: (a) at Lessee's sole cost and expense; (b) in a good and workmanlike manner, with all materials used being of a quality at least as good as those already used in the Premises; (c) in accordance with plans and specifications approved by Lessor; and

(d) in compliance with all applicable laws, codes and regulations, including, but not limited to those related to prevailing wages (see RCW 39.12), retainage (see RCW 60.28), bonding (see RCW 39.08), use of licensed contractors (see RCW 39.06), and competitive bidding (see RCW 36.32 and RCW 35.21.278). In addition, Lessor may require that any or all Alterations be performed under Lessor's supervision; provided that any such supervision by Lessor shall not be deemed a representation or warranty as to the adequacy of the design, workmanship, quality of materials or construction of the Alterations at issue, and Lessor hereby expressly disclaims any responsibility or liability for same.

### **9.3 Liability for Damage**

Lessee shall bear the sole liability for any damage or injury occurring in, on, around, upon or to the Premises, the Improvements and/or other portions of the Property due to the acts or omissions of Lessee, its agents, employees, contractors, licensees, invitees and/or any other persons who may be in, on, around or upon the Premises, the Improvements or other portions of the Property with the express or implied consent of Lessee in connection with the performance of Alterations, and Lessee shall indemnify and hold Lessor harmless from and against same. Lessee shall notify Lessor of damage and/or injuries within 24 hours.

### **9.4 Surrender of Lessee's Alterations**

Upon the expiration or earlier termination of this Lease, all Alterations shall remain in and be surrendered with the Premises as a part thereof, unless, with respect to any Alteration, Lessor specifies in its consent to the construction of such Alteration that such Alteration must be removed prior to surrender, in which case Lessee shall, prior to surrender, remove the Alteration in question and repair any damage to the Premises caused by such removal.

### **9.5 Alterations by Lessor**

Lessor may at its option, in its sole discretion, make any repairs, alterations, additions or improvements to the Premises that Lessor may deem necessary or advisable, provided that, except in the event of an emergency, Lessor shall perform any such work in accordance with the following provisions: (a) prior to performing any such work, Lessor shall give Lessee reasonable prior written notice of the dates, times, locations and types of work Lessor will be performing, and (b) Lessor shall make commercially reasonable efforts to minimize the disruption such work may cause to Lessee's activities on the Premises. Lessor shall incur no liability to Lessee, nor shall Lessee be entitled to any abatement of Rent, on account of any noise, vibration, or other disturbance to Lessee's activities on the Premises arising out of or due to Lessor's performance of any such work, so long as Lessee at all times continues to have reasonable access to and use of the Premises.

## **10. NO LIENS, MORTGAGES OR OTHER SECURED INTEREST**

Lessee shall keep the Premises free from any liens arising out of work performed for, materials furnished to, or obligations incurred by or on behalf of Lessee. Any construction liens filed against the Premises for work claimed to have been furnished to Lessee will be discharged by Lessee, by bond or otherwise, within ten (10) days after the filing of the claim or lien, at Lessee's sole cost and expense. Should Lessee fail to discharge any such construction lien, Lessor may at Lessor's election pay that claim or post a bond or otherwise provide security to eliminate

the lien as a claim against title and the cost to Lessor shall be immediately due and payable by Lessee as Additional Rent. Lessee shall indemnify and hold Lessor harmless from and against any liability arising from any such lien.

Lessee shall not cause or permit the lien of any mortgage, purchase money obligation, or other security interest to be placed against the Premises. If such an encumbrance is nevertheless so recorded, the Lessee shall cause such encumbrance, at its sole cost, to be removed promptly and shall provide evidence reasonably satisfactory to the County of such prompt removal.

## **11. HAZARDOUS MATERIALS**

### **11.1 Compliance with Environmental Laws**

Lessee, at all times during the Lease Term and including any extension thereto, shall, at its own expense and with all due diligence, observe and comply with federal, state or local law, ordinance, regulation, rule, order, guideline or policy relating to the environment, health and safety, hazardous or toxic materials, air and water quality, waste disposal and/or other environmental matters which are now in effect or may later be adopted by any governmental authority and which may be applicable to Premises or any Improvement on it or any use of it. The foregoing includes, but is not limited to, the Lessor's National Pollutant Discharge Elimination System Compliance Procedure, attached hereto as Exhibit F and incorporated herein by this reference.

### **11.2 Use and Storage of Hazardous Materials**

Lessee shall not cause or permit any hazardous materials, substance, waste, pollutant, or contaminant (hereinafter "Hazardous Materials") to be used, stored, generated, or disposed of on or in the Premises by Lessee, Lessee's agents, employees, contractors, or invitees, except that Lessee may (a) use and store small quantities of such Hazardous Materials as are commonly used in connection with the uses permitted under Sections 5 and 6 above so long as Lessee's use and storage of such Hazardous Materials at all times complies with Section 11.1 above, or (b) use and store quantities of such Hazardous Materials as consented to in writing by Lessor, whose consent may be withheld in Lessor's sole and absolute discretion.

### **11.3 Remediation**

(a) Should, during the Lease Term, the presence of Hazardous Materials in, on, under, around or about the Premises or any other portion of the Property as a result of Lessee's acts or omissions be confirmed, Lessee shall, at its sole cost and expense, promptly comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, treatment, disposal, storage, control, removal or cleanup of such Hazardous Materials in, on, under, around or about the Premises, other portions of the Property, and/or any adjacent property. After notice to Lessee and a reasonable opportunity for Lessee to effect such compliance, Lessor may, but shall not be obligated to, enter upon the Premises and take such actions and incur such costs and expenses to effect such compliance as it deems advisable, and Lessee shall promptly thereafter reimburse Lessor for all such costs and expenses as Additional Rent. However, Lessor shall not be obligated to first give Lessee notice and an opportunity to effect compliance if: (i) such a delay might result in material adverse harm to Lessor, the Premises or other portions of the Property; (ii) Lessee has

already had actual knowledge of the situation and a reasonable opportunity to effect compliance, and/or (iii) Lessor reasonably believes that an emergency exists.

(b) Should, after the expiration or earlier termination of the Lease Term, the presence of Hazardous Materials in, on, under, about or around the Premises or other portions of the Property as a result of Lessee's acts or omissions occurring during the Lease Term be confirmed, Lessee shall reimburse Lessor for the full amount of all costs and expenses incurred by Lessor relating to such Hazardous Materials, including, without limitation, all costs and expenses incurred to comply with applicable statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the investigation, remediation, treatment, disposal, storage, control, removal and/or cleanup of such Hazardous Materials.

#### **11.4 Lessee's Indemnification of Lessor**

Lessee agrees to indemnify, defend and hold harmless Lessor, its elected and appointed officials, officers, employees, and agents, against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, cleanup costs, remedial actions, costs and expenses (including, without limitation, attorneys' and other professional fees and disbursements) that may be imposed on, incurred or paid by, or asserted against Lessor by any third party and including governmental agencies, the Premises or any other portion of the Property by reason of, or in connection with (a) any misrepresentation, breach of warranty or other default by Lessee under this Section 11.4, or (b) the acts or omissions of Lessee or its officers, directors, agents, employees, contractors, licensees or invitees (collectively, the "Lessee Parties"), resulting in the release of any Hazardous Materials, regardless of when such release may be discovered.

#### **11.5 Survival**

The provisions of this Section 11 shall survive the expiration or earlier termination of this Lease.

### **12. ASSIGNMENT AND SUBLETTING**

#### **12.1 No Assignment**

This Agreement is personal to Lessee. Lessee shall not sell interest in, subcontract, assign or delegate any of the rights, duties or obligations covered by this Agreement without the express written consent of the Lessor which may be withheld in Lessor's sole discretion.

#### **12.2 No Transfer of Agreement**

No transfer of the Agreement shall occur without the prior written consent of the Lessor, which consent may be granted or withheld in Lessor's sole discretion. Any transfer of the Agreement without the written consent of Lessor shall be a default of this Agreement and shall be void for all purposes. Transfer of the Agreement means any transaction in which (a) an ownership or other interest in Lessee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that Control of Lessee is transferred; or (b) the rights held by Lessee under the Agreement are transferred, delegated, conveyed, hypothecated, pledged, subcontracted or assigned to another Person or group of Persons. "Control" means the ability to

exercise de facto or de jure control over day-to-day policies and operations or the management of Lessee's affairs. "Person" or "Persons" mean an individual, partnership (general or limited), association, joint stock company, trust, corporation, governmental entity, limited liability company, or any other legal entity, however constituted. Any consent by Lessor to a transfer of the Agreement shall not relieve Lessee from the obligation to obtain the prior written consent of Lessor to any other transfer of the Agreement. The transfer restrictions under this Section 12.2 shall not apply in the case of Lessee's transfer to an entity wholly owned by Lessee or to any entity in which Lessee's members own at least eighty percent (80%) of the equity and voting rights.

### **13. TRANSFERS BY LESSOR**

In the event of any transfer or transfers of Lessor's interest in the Premises, the Lessor shall be automatically relieved of any and all obligations and liabilities on the part of Lessor accruing from and after the date of such transfer to the extent those obligations and liabilities are assumed in writing by the transferee. Lessee agrees to attorn to the transferee and such attornment shall be deemed to occur automatically without further agreement of Lessee.

### **14. LESSOR'S ACCESS**

Lessor may at all reasonable times (and at any time in case of emergency) enter the Premises for the purpose of inspecting, cleaning, repairing, altering or improving the Premises or other portions of the Improvements.

### **15. INDEMNIFICATION**

The Lessee agrees to indemnify and hold Lessor harmless as provided herein to the maximum extent possible under law. Accordingly, the Lessee agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless Lessor, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to Lessee's exercise of rights and privileges granted by this Lease, except to the extent of Lessor's sole negligence.

The Lessee's obligations under this section shall include: (a) The duty to promptly accept tender of defense and provide defense to the County at the Lessee's own expense; (b) Indemnification of claims made by the Lessee's own employees or agents; and, (c) Waiver of the Lessee's immunity under the industrial insurance provisions of Title 51 RCW but only to the extent necessary to indemnify Lessor, which waiver has been mutually negotiated by the parties. Lessee agrees to defend, indemnify, and hold harmless the Lessor for claims by Lessee's employees and agrees to waiver of its immunity under Title 51 RCW, which waiver has been mutually negotiated by the parties.

In the event it is determined that RCW 4.24.115 applies to this Lease, the Lessee agrees to defend, hold harmless, and indemnify Lessor to the maximum extent permitted thereunder, and specifically for its negligence concurrent with that of Lessor to the full extent of Lessee's negligence.

In the event it is necessary for the Lessor to incur attorney's fees, legal expenses or other costs to enforce the provisions of this Section, all such fees, expenses and costs shall be recoverable

from the Lessee.

The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Agreement.

## **16. INSURANCE**

### **16.1 Liability Insurance**

By the Execution Date of this Lease, Lessee shall procure and maintain for the duration of this Lease, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with exercise of the rights and privileges granted by this Lease, by Lessee, his agents, representatives, employees and/or subcontractors. The cost of such insurance shall be paid by Lessee. Each insurance policy shall be written on an "Occurrence" form.

(a) By requiring such minimum insurance coverage, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Lessee under this Agreement. The Lessee shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

(b) **No Limitation on Liability.** The Lessee's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Lessee to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or in equity.

(c) **Minimum Scope and Limits of Insurance.** The Lessee shall maintain coverage at least as broad as, and with limits no less than:

- (i) **General Liability:** \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$5,000,000 aggregate limit. CG 00 01 current edition;
- (ii) **Automobile Liability:** \$1,000,000 combined single limit per accident for bodily injury and property damage. CA 0001 current edition, Symbol 1;
- (iii) **Workers' Compensation:** Statutory requirements of the state of residency; and
- (iv) **Employers' Liability or "Stop Gap" coverage:** \$1,000,000;
- (v) **All Risk Property Insurance:** Lessee will carry All-Risk Property insurance with rent interruption endorsement in an amount equal to the full insurable value of all

improvements, structures, and buildings located on the Premises. The policy shall include Lessor as an insured for its vested interest in the Premises. A certificate of insurance must be provided to Lessor. Lessor will not carry insurance on Lessee's property. In the event of the total or partial destruction by fire, regardless of origin, or otherwise of the building, structures, or facilities currently on the Premises or subsequently constructed by Lessee, Lessee shall have the obligation to reconstruct such facilities to their original condition within six (6) months after their destruction.

Other Insurance Provisions and Requirements. The insurance coverages required in this Agreement for all liability policies except Workers Compensation are to contain, or be endorsed to contain, the following provisions:

(i) The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents. Additional Insured Endorsement shall be included with the certificate of insurance, "CG 2010 11/85" or its equivalent is required. The County requires this Endorsement to complete the Agreement.

(ii) The Contractor's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(iii) Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor

(iv) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after forty-five (45) calendar days' prior written notice, has been given to the County.

(v) Insurance coverage is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

If at any time any of the foregoing policies fail to meet minimum requirements, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

(e) Subcontractors. The Contractor shall include all subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each subcontractor. Insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of this Agreement, not provided by the Contractor, shall be subject to all of the requirements stated herein.



## **16.2 Insurance during construction**

### **A. Minimum Scope of Insurance and Limits**

**Contractor shall obtain insurance of the types described below:**

**1. Commercial General Liability insurance with limits no less than \$1,000,000 each occurrence, \$1,000,000 aggregate. Insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises operations, products-completed operations, personal injury/advertising injury, and liability assumed under an insured contract. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage.**

**2. Automobile Liability insurance covering Any Auto (Symbol 1) with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent auto liability coverage.**

**3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.**

**4. Builders Risk insurance covering interests of the County, the Contractor, Subcontractors, and Sub-subcontractors in the work in the amount of the completed value of the project with no coinsurance provisions. Builders Risk insurance shall be on a all-risk policy form and shall insure against the perils of fire and extended coverage for physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. Deductibles for flood and earthquake perils may be accepted by the County upon written request by the Contractor and written acceptance by the County. Any increased deductibles accepted by the County will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the County.**

### **B. Other Insurance Provisions**

**The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Commercial General Liability and Builders Risk insurance:**

**1. Snohomish County, its officers, elected officials, agents and employees shall be named as an additional insured with respect to work performed by or on behalf of the Contractor.**

**2. Insurance placed with insurers with a current A.M. Best rating of not less than A:VII.**

3. The Contractor's insurance coverage shall be primary insurance with respect to the County. Any Insurance or self-insurance coverage maintained by the County shall be excess of the Contractor's insurance and shall not contribute with it. The County reserves the right to approve all deductibles.

4. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the County.

**C. Contractor's Insurance For Other Losses**

The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

**D. Waiver of Subrogation**

The Contractor and the County waive all rights against each other any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

**E. Verification of Coverage**

Contractor shall furnish the County with a Certificate of Insurance and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the County a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project.

**F. Subcontractors**

Contractor shall ensure that each subcontractor of every tier obtain at a minimum the same insurance coverage and limits as stated herein for the Contractor (with the exception of Builders Risk insurance). At the request of the County, the Contractor shall provide evidence of such insurance.

### **16.3 Mutual Release and Waiver**

To the extent a loss is covered by insurance in force, Lessor and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance policies, including any extended coverage endorsements hereto; provided that this Section 16.3 shall be inapplicable if it would have the effect of invalidating any insurance coverage of Lessor or the Lessee.

### **16.4 Insurance Review**

In consideration of the duration of this Lease, the Parties agree that this Section 16, at the discretion of the County Risk Manager, may be reviewed and adjusted with each amendment and within ninety (90) days of the end of the first twelve (12) year period of the Lease and the end of each successive five (4) year period thereafter.

Any adjustments made as determined by the County Risk Manager, shall be in accordance with reasonably prudent risk management practices and insurance industry standards and shall be effective on the first day of each successive five (4) year period.

Adjustment, if any, in insurance premium(s) shall be the responsibility of the Lessee. Any failure by the County to exercise the right to review and adjust at any of the aforementioned timings shall not constitute a waiver of future review and adjustment timings.

## **17. DAMAGE OR DESTRUCTION**

If the Premises are damaged by fire or other casualty, then within thirty (30) days after the date of the casualty, Lessor's employee, agent, or contractor shall estimate the amount of time reasonably required to restore the affected portions of the Premises and Lessor shall deliver written notice of such estimate to Lessee. If, in Lessor's reasonable estimation, the Premises have been damaged to such an extent that a reasonably diligent restoration will require more than nine (9) months from the date of the casualty to complete, then either party may elect to terminate this Lease by giving the other party written notice of termination no later than the 60<sup>th</sup> day following the date of the casualty. In the event of such election: (a) this Lease shall be deemed to terminate on the 5<sup>th</sup> day after the delivery of such termination notice and Lessee shall surrender possession of the Premises within a reasonable time thereafter, with Rent to be apportioned as of the date of Lessee's surrender; (b) Lessee shall have no obligation to restore the Premises; and (c) Lessor shall retain the entirety of any insurance proceeds except for proceeds of insurance for Lessee's trade fixtures and personal property. If this Lease is not terminated under the above provisions, Lessor shall, to the extent of available insurance proceeds, diligently proceed to repair and restore the Improvements made or installed by Lessor in and to the Premises to the same or better condition than they were in immediately prior to the casualty, subject to delays beyond Lessor's reasonable control. Promptly upon completion of Lessor's restoration work in the Premises, Lessee shall fully and completely repair or replace any damaged improvements that were installed by Lessee as well as any damage to Lessee's trade fixtures, furniture or equipment. If the Premises are rendered untenantable or partially untenantable for Lessee's customary business operations as a result of any casualty, Rent shall proportionately abate during the period of such untenantability.

## **18. INSOLVENCY**

If Lessee becomes insolvent or voluntarily or involuntarily bankrupt, or if a receiver, trustee or other liquidating officer is appointed for the business of Lessee, Lessor at its option may terminate this Lease and Lessee's right of possession under this Lease and in no event shall this Lease or any rights or privileges hereunder be an asset of Lessee in any bankruptcy, insolvency or reorganization proceeding, or Lessor may treat such insolvency as a "Default" under Section 19 of this Lease and invoke any and all remedies available thereunder. In the event of an action for a receiver or petition for involuntary bankruptcy, Lessee shall have twenty (20) days within which to have such action or petition dismissed before the provisions of this Section 18 go into effect.

## **19. DEFAULT REMEDIES**

### **19.1 Events of Default**

Each of the following shall be deemed a default by Lessee (a "Default") and a material breach of this Lease:

(a) The failure by Lessee to pay when due any Rent hereunder if such failure shall continue for a period of ten (10) business days after written notice thereof has been delivered to Lessee;

(b) The failure by Lessee to perform or observe any of the other terms, covenants, conditions, agreements or provisions of this Lease if such failure shall continue for a period of twenty (20) days or more after written notice thereof has been given to Lessee; provided, however, that if any such failure cannot reasonably be cured within such twenty (20) day period, then Lessee shall not be deemed to be in Default if Lessee commences to cure such failure within such twenty (20) day period and thereafter diligently pursues such cure to completion within sixty (60) days after Lessor's original written notice;

(c) Any material misrepresentation or material omission of information made by Lessee to Lessor in connection with this Lease; or

(d) Any abandonment by Lessee of the Premises. As used herein, "abandonment" shall mean an absence from the Premises of thirty (30) days or more.

### **19.2 Lessor Remedies for Lessee Default**

In the event of Lessee's Default, Lessor may, at any time thereafter and without waiving any other rights provided by this Lease or by law, exercise any one or more of the following rights, as well as any other right that may be available at law or in equity.

(a) Lessor may terminate this Lease by delivering written notice of termination to Lessee, and may thereafter enter onto the Premises with due process of law, and expel, remove or put out Lessee and/or any other persons who may be thereon, and remove any and all personal property found therein. In such event, Lessee shall be liable to Lessor for the present value of the entire amount of Rent reserved by this Lease for the balance of the Lease Term, as the same may have been extended pursuant to Section 2.2, over the then fair market rental value of the Premises for the same period, plus all expenses, including court costs and attorneys' fees, incurred by Lessor in the collection of same, and for all other damages provided by law. No reentry or taking possession of the Premises shall be construed as an election by Lessor to terminate this Lease

unless Lessor delivers a written notice of termination to Lessee.

(b) Lessor may, without terminating the Lease, enter onto the Premises with due process of law, and expel, remove or put out Lessee and/or any other persons who may be thereon, and remove any and all personal property found therein. In such event, Lessor (i) shall make reasonable efforts to re-let the Premises for the account of Lessee at such rental or rentals and upon such other terms and conditions as Lessor in its sole discretion may deem advisable, with Lessee remaining liable for any deficiency, and (ii) shall have the right to repair, renovate, remodel, redecorate, alter and change the Premises as Lessor deems desirable. In such case, Lessee shall also be liable to Lessor for any expenses incurred by Lessor in re-letting the Premises, including, but not limited to, attorneys' fees, advertising expenses, brokerage fees and/or the cost of putting the Premises in good order and preparing the same for re-rental. At Lessor's option, any rents received by Lessor from any re-letting of the Premises may be applied to Lessee's account in the following order: (i) first, to the payment of any indebtedness of Lessee to Lessor other than Rent; (ii) second, to the payment of any costs and expenses of said re-letting; and (iii) third, to the payment of Rent due and to become due to Lessor under this Lease. Lessee shall pay any deficiency to Lessor monthly and any payment made or suits brought to collect the amount of the deficiency for any month or months shall not prejudice in any way the right of Lessor to collect the deficiency for any subsequent month. Should Lessor initially elect to proceed under this Section 19.2(b), Lessor may, at any time thereafter, elect to terminate the Lease as provided in Section 19.2(a) above.

(c) All rights and remedies of Lessor enumerated in this Section 19 shall be cumulative, and none shall exclude any other right or remedy allowed at law or in equity.

## **20. DISPUTE RESOLUTION.**

If either Party claims that the other Party has breached any term of this Agreement or is otherwise in default, the following procedures shall be followed if, and when, informal communications such as telephone conversations, fail to satisfy the claiming Party:

(a) The claiming Party's representative shall provide a written notice to the other Party's representative of the alleged default. The notice shall identify the act or omission at issue and the specific term(s) of the Agreement which the complaining Party alleges was violated.

(b) The responding Party's representative shall respond to the notice in writing within seven (7) working days. The response shall state that Party's position regarding the alleged default as well as what, if any, corrective action the responding Party agrees to take.

(c) The claiming Party shall reply in writing, indicating either satisfaction or dissatisfaction with the response. If satisfied, any corrective action shall be taken within fourteen (14) calendar days of the receipt of the responding Party's reply. If dissatisfied, the claiming Party shall call an in-person meeting. The meeting shall occur within a reasonable period of time and shall be attended by the Representatives of each Party, and such others as they individually invite. If the claiming Party remains dissatisfied with the results of the meeting, it may sue to enforce the terms of this Agreement or it may terminate this Agreement. The Parties also may agree to an alternate dispute resolution process, such as arbitration.

## **21. SURRENDER**

Subject to the terms of Section 17 relating to damage and destruction, upon the expiration or earlier termination of the Lease Term (as the same may be extended pursuant to Section 2.2 above), Lessee at its expense shall: (a) remove Lessee's personal property that does not constitute fixtures and repair and restore any damage to the Premises or other portions of the Property caused by such removal; (b) remove all Alterations performed by Lessee that, at the time the same were approved by Lessor, were expressly required by Lessor to be removed prior to surrender, and restore all damage caused by such removal; and (c) promptly and peacefully surrender the Premises in as good or better a condition as they were in when received from Lessor, reasonable wear and tear excepted. Any personal property left on the Premises after the expiration or termination of the Lease Term shall, at Lessor's option, be deemed to have been abandoned and to have become the property of Lessor to dispose of as Lessor deems expedient, and Lessee shall be liable for all costs associated with the disposal of such personal property. Lessee hereby waives all claims for damages that may be caused by Lessor's re-entering and taking possession of the Premises or removing and storing Lessee's personal property as herein provided, and Lessee shall indemnify and hold Lessor harmless from same.

## **22. HOLDING OVER**

If Lessee, with the written consent of Lessor, holds over after the expiration of the Lease Term (as the same may be extended pursuant to Section 2.2 above), such tenancy shall be for an indefinite period of time on a month-to-month basis, which may be terminated upon thirty (30) days written notice given by either party to the other party. During such tenancy, Base Rent shall be an amount equal to 150 percent of the Base Rent most recently payable, and Lessee shall be bound by all terms, covenants and conditions of in this Lease, so far as the same are applicable. If Lessor has not consented to such holdover, Lessee shall pay Lessor an amount equal to 200 percent of the Base Rent most recently payable, and Lessee shall indemnify, defend and hold Lessor harmless from all out-of-pocket costs, including attorney's fees, sustained by Lessor by virtue of Lessee's unauthorized holding over.

## **23. NON-DISCRIMINATION**

It is the policy of Lessor to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law Against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

From and after the Execution Date, Lessee shall comply with the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC, which is incorporated herein by this reference. Execution of this Lease constitutes a certification by Lessee of Lessee's compliance with the requirements of Chapter 2.460 SCC. If Lessee is found to have violated this provision or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to Chapter 2.460 SCC, this Lease may be subject to a declaration of default and termination at Lessor's discretion. This provision shall not affect the Lessee's obligations under other federal, state, or local laws against discrimination.

## **24. NOTICES**

Each notice, demand, request, consent, approval, disapproval, designation or other communication that is permitted or required to be given by one party to the other party under this Lease shall be in writing and shall be given or made or communicated by (a) United States registered or certified mail, postage prepaid, return receipt requested, (b) any nationally recognized overnight carrier or express mail service (such as FedEx or DHL) that provides receipts to indicate delivery, or (c) by personal delivery. All such communications shall be addressed as follows:

Addressed to Lessor at:

Snohomish County Parks  
6705 Puget Parks Drive  
Snohomish, WA 98296  
Attn: Parks Director

Addressed to Lessee at:

Brad Halbach, President  
6464 195<sup>th</sup> Place NE  
Redmond, WA 98052

Luke Goff, Vice President Sales and Marketing  
7009 136<sup>th</sup> Place SE  
Snohomish, WA 98296

Either party may designate a different address by notice similarly given at least five (5) days in advance. Unless specifically stated to the contrary elsewhere in this Lease, any notice shall be deemed to have been given, made or communicated as the case may be, on the date personal delivery is effected or, if couriered, on the delivery date or attempted delivery date shown on the return receipt, or, if mailed, three (3) business days after being mailed as provided herein.

## **25. MISCELLANEOUS**

### **25.1 Entire Agreement**

This Lease constitutes the entire agreement between the parties regarding the lease of the Premises, and supersedes any and all prior oral or written agreements between the parties regarding the subject matter contained herein, including but not limited to the Original Lease PROVIDED HOWEVER, that the parties' duties and obligations under the Original Lease regarding insurance and indemnification shall survive as to any claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and attorneys' fees in defense thereof, known or unknown, for injury, sickness, disability or death to persons or damage to property or business, arising prior to the Execution Date of this Agreement.

## **25.2 Amendment**

This Lease may not be modified or amended in any manner except by a written document executed with the same formalities as required for this Lease and signed by the party against whom such modification is sought to be enforced.

## **25.3 Conflicts between Text and Exhibits**

Should any conflicts exist between any attached exhibit or schedule and the text or main body of this Lease, the text or main body of this Lease shall prevail.

## **25.4 Governing Law and Venue**

This Lease shall be construed and enforced in accordance with the laws of the State of Washington. The venue of any action arising out of this Lease shall be in the Superior Court of the State of Washington, in and for Snohomish County. In the event that a lawsuit is instituted to enforce any provision of this Lease, the prevailing party shall be entitled to recover all costs of such a lawsuit, including reasonable attorney's fees.

## **25.5 Interpretation**

This Lease and each of the terms and provisions of it are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Lease shall, in all cases, be construed according to its fair meaning and not strictly for or against either party. The captions and headings in this Lease are used only for convenience and are not intended to affect the interpretation of the provisions of this Lease. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

## **25.6 Severability**

If any provision of this Lease or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Lease and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

## **25.7 No Waiver**

Waiver by Lessor of any term, covenant or condition herein contained or any breach thereof in one instance shall not be deemed to be a permanent waiver of such term, covenant, or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of any Rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular Rent so accepted, regardless of Lessee's knowledge of such preceding breach at the time of acceptance of such Rent.

## **25.8 Time of Essence**



Time is of the essence of this Lease.

### **25.9 Successors and Assigns**

Subject to the restrictions contained in Sections 12 and 13 above, all of the covenants, agreements, terms and conditions contained in this Lease shall inure to and be binding upon Lessor and Lessee and their respective successors and assigns.

### **25.10 Warranty of Authority**

Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Lease on behalf of the party for whom he or she purports to sign this Lease.

### **25.11 Lessor's Right to Performance**

If Lessee fails to pay any sum of money, other than Rent, required to be paid by it under the terms of this Lease or fails to perform any other act on its part to be performed, and that failure continues for ten (10) days after notice of such failure is delivered to Lessee, Lessor may (but need not), without waiving or releasing Lessee from any of Lessee's obligations, make any payment or perform any act on Lessee's part to be performed under the provisions of this Lease. Should Lessor choose to make any payment or perform any obligation on Lessee's behalf pursuant to this Section, Lessee shall promptly thereafter reimburse Lessee as Additional Rent for all costs and expenses incurred by Lessor in the course of such performance.

### **25.12 Survival**

Those provisions of this Lease which, in order to be given full effect, require performance by either Lessor or Lessee following the expiration or earlier termination of this Lease shall survive said expiration or earlier termination, as the case may be.

### **25.13 Computation of Time/Force Majeure**

Except as may be expressly provided to the contrary elsewhere in this Lease, the word "day" shall mean "calendar day," and the computation of time shall include all Saturdays, Sundays and holidays for purposes of determining time periods specified in this Lease. Except with respect to Lessee's obligation to timely pay Rent, the time periods for either party's performance under any provisions of this Lease shall be extended for periods of time during which that party's performance is prevented due to circumstances beyond that party's control, including without limitation, force majeure, strikes, embargoes, shortages of labor or materials, governmental regulations, acts of God, war or other strife.

### **25.14 Delayed Possession**

In the event of the inability of the Lessor to deliver possession of the Premises for any reason whatsoever at the Execution Date, neither the Lessor nor its agents shall be liable for any damage caused thereby, nor shall this Lease thereby become void or voidable, nor shall the term herein specified be in any way extended, but in such event Lessee shall not be liable for any rent until such as Lessor can deliver possession.

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this Lease as of the day and year first above written.

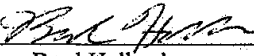
**Lessor:**

SNOHOMISH COUNTY, a political  
Subdivision of the State of Washington  
Company

By  2/1/17  
Name: KEN KLEIN  
Title: Executive Director

**Lessee:**

High Tech Ventures, L.L.C., a  
Washington Limited Liability Corporation

By   
Name: Brad Halbach  
Title: President

By   
Name: Luke Goff

Title: Vice-President Sales and Marketing

COUNCIL USE ONLY	
Approved:	<u>1.30.17</u>
Docfile:	<u>D-2</u>

Approved as to Form:

\_\_\_\_\_  
Deputy Prosecuting Attorney

Approved:

Keira Mitchell via Email 1-24-17  
Risk Management

High Trek Aerial Adventure Lease Agreement

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IN WITNESS WHEREOF, the Lessor and the Lessee have executed this Lease as of the day and year first above written.

**Lessor:**

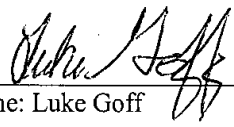
SNOHOMISH COUNTY, a political  
Subdivision of the State of Washington  
Company

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

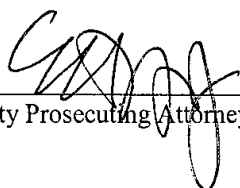
**Lessee:**

High Tech Ventures, L.L.C., a  
Washington Limited Liability Corporation

By \_\_\_\_\_  
Name: Brad Halbach  
Title: President

By  \_\_\_\_\_  
Name: Luke Goff  
Title: Vice-President Sales and Marketing

Approved as to Form:

 11/15/16  
\_\_\_\_\_  
Deputy Prosecuting Attorney

Approved:

Keith Mitchell via 1-24-17 Email  
Risk Management

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

COUNTY: **SNOHOMISH COUNTY**

LESSEE: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SNOHOMISH )

STATE OF: \_\_\_\_\_ )  
 ) ss.  
COUNTY OF: \_\_\_\_\_ )

On this day personally appeared before me

On this day personally appeared before me

to me known to be the \_\_\_\_\_  
of the \_\_\_\_\_  
and the person who executed the within and  
foregoing instrument, and acknowledged that  
he signed the same as its free and voluntary  
act and deed, for the uses and purposes  
therein mentioned.

to me known to be the \_\_\_\_\_  
of the \_\_\_\_\_  
and the person who executed the within and  
foregoing instrument, and acknowledged that  
he signed the same as its free and voluntary  
act and deed, for the uses and purposes therein  
mentioned.

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

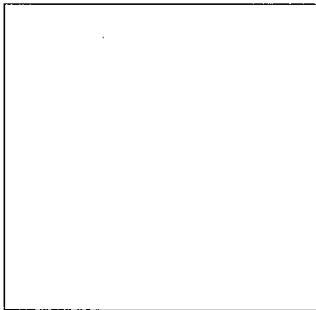
Notary Public in and for the State of \_\_\_\_\_  
Residing at: \_\_\_\_\_

Notary Public in and for the State of \_\_\_\_\_  
Residing at: \_\_\_\_\_

My appointment expires:

My appointment expires:

Please  
place  
Notary  
stamp  
in  
box



Please  
place  
Notary  
stamp  
in  
box

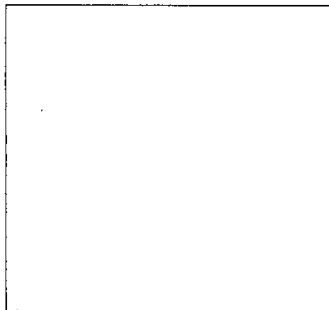


EXHIBIT A

LEGAL DESCRIPTION

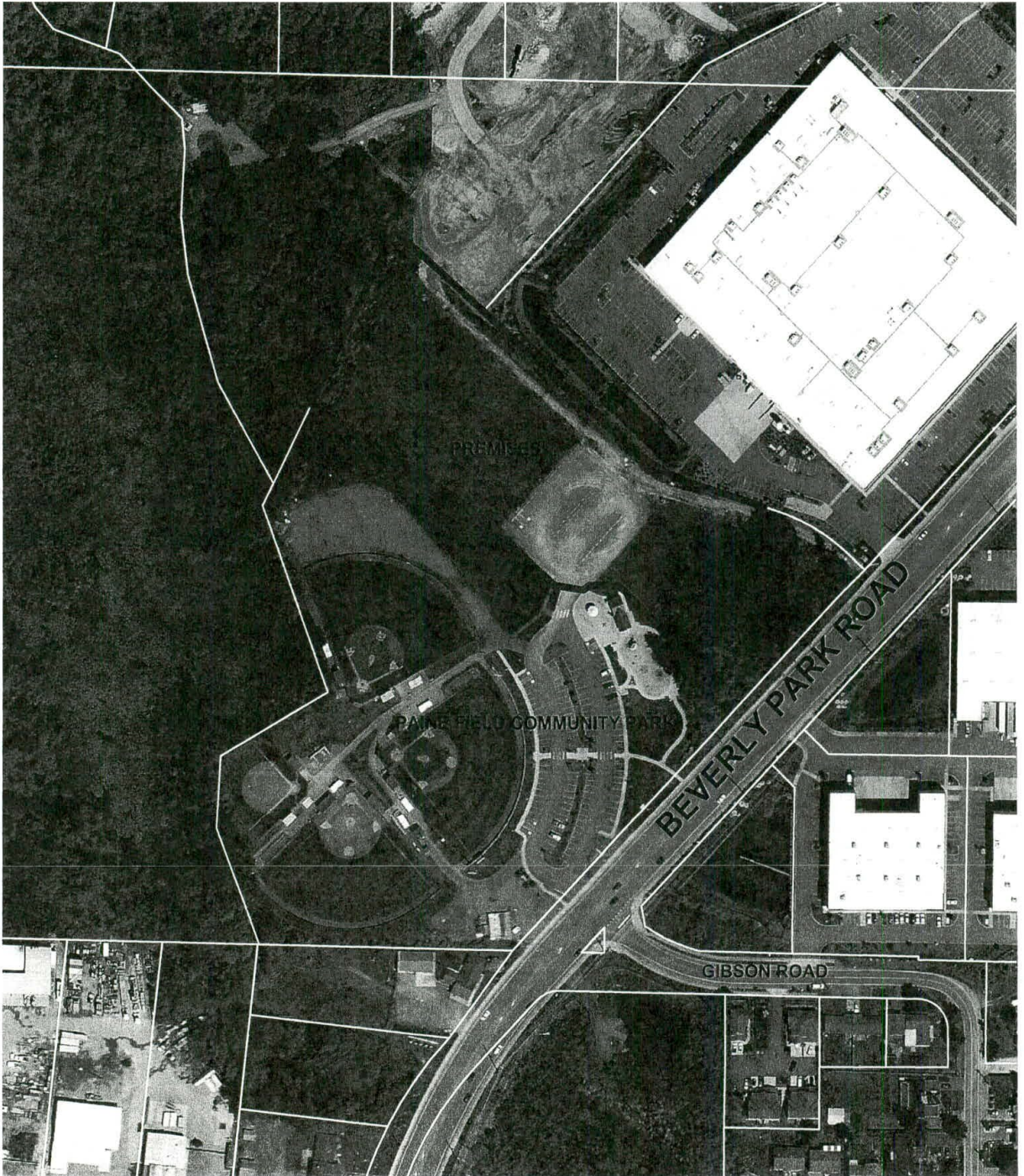
PAINÉ FIELD COMMUNITY PARK

Section 27 Township 28 Range 4 Quarter NE - SEG'D FOR TAX PURPOSES ONLY THAT  
PTN N1/2 NE1/4 DAF: COM NE COR SD SEC TH S00\*51 20W ALG E LN SD NE1/4  
1315.15 M/L TO S LN SD N1/2 TH N88\*43 33W ALG SD S LN 1450.93FT M/L TO WLY  
MGN OF BEVERLY PARK RD & TPOB TH CONT ALG SD S LN N88\*43 33W 430.00FT  
TH N20\*52 32W 190.00FT TH N03\*23 29E 110.00FT TH N60\*14 57E 195.00FT TH N20\*06  
18W 300.00FT TH N26\*4054E 465.00FT TH48\*45 00E 490.00FT TO BEG OF CRV CONC  
TO NE HAV RAD OF 300FT TH ALG SD CRV 125.02FT THRU C/A OF 23\*52 35 TH  
S72\*37 35E 130.10FT TO BEG OF CRV CONC TO SW HAV RAD OF 300FT TH ALG SD  
CRV137.55FT THRU C/A OF 26\*16 10 TH S46\*21 25E 50.00FT TO WLY MGN OF  
BEVERLY PARK RD TH ALG SD WLY MGN S43\*38 35W 780.00FT TO TPOB; LESS  
ROW TO SNO CO PER SNO CO COUNCIL MOTION 04-245

SITUATE COUNTY OF SNOHOMISH, STATE OF WASHINGTON

EXHIBIT B

PREMISES



## PREMISES MAP



SCALE 1" = 200'



**Snohomish County**

Parks and Recreation  
6705 Puget Park Drive Snohomish, WA 98296  
[www.snocoparks.org](http://www.snocoparks.org) Phone (425) 388-6600



EXHIBIT C

HIGH TREK AERIAL ADVENTURE COURSE AND ACCOMPANYING ZIP LINE  
PROPOSAL



**Snohomish County**  
**Purchasing Division**  
 (425) 388-3344  
 purchasing@snoco.org

# REQUEST FOR PROPOSAL

RFP Number: **RFP-17-16SB**

Advertised Date: **6/20/2016**

**REQUEST FOR PROPOSAL (RFP) TITLE:**

**Public Private Partnerships for Snohomish County Parks**

**DUE DATE: 7/6/2016**

**- not later than 3:00 p.m., Local Time**

**SEALED** Proposals are hereby solicited and will only be received by:

Snohomish County Purchasing Division  
 Robert J. Drewel Building, 6<sup>th</sup> Floor  
 3000 Rockefeller Avenue, M/S 507  
 Everett, WA 98201  
 Office Hours: 8:00 a.m. – 4:30 p.m.  
 Monday - Friday

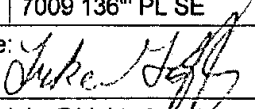
**Pre-proposal Conference:**

*There will be no pre-proposal conference for this RFP.*

**BIDDERS SHALL COMPLETE AND SIGN THE FORM BELOW**

We acknowledge that all Addenda ( 1 through 4 ) have been examined as part of the Proposal documents.

Company Name: **High Trek Ventures, LLC**

Address:	7009 136 <sup>th</sup> PL SE	City/State/Zip Code:	Snohomish
Signature:		Authorized Representative / Title (Please Print Name and Title):	Luke Goff / Operations Manager
E-mail:	luke@hightrekventures.com	Phone:	425-770-6608
		Fax:	

**Please complete the following information:**

Is your firm a:

- Women Business Enterprise (WBE)? Yes  No
- Minority Business Enterprise (MBE)? Yes  No
- Disadvantaged Business Enterprise (DBE)? Yes  No
- Small Business Enterprise? (SBE)? Yes  No
- Veteran Business Enterprises? (VBE)? Yes  No

Do you have a certification number?

Yes  No

If yes, please provide certification number and state or entity who issued the number:

Certification No.:		State or Entity Issued:	
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# Paine Field Community Park Aerial Adventure Course Proposal

High Trek Ventures, LLC

Brad Halbach – President, Brad@HighTrekVentures.com c: 206-949-4800

<https://www.linkedin.com/in/bradhalbach>

6464 195<sup>th</sup> PL NE, Redmond, WA 98052

Luke Goff – Operations, Luke@HighTrekVentures.com c: 425-770-6608

7009 136<sup>th</sup> PL SE, Snohomish, WA 98296

<https://www.linkedin.com/in/luke-goff-9030466>

## Definitions for Acronyms used in the proposal:

HTV – High Trek Ventures

SC – Snohomish County

PFCP – Paine Field Community Park

## Proposed Location

HTV proposes that the aerial adventure course and accompanying ziplines be located in the northern corner of Paine Field Community Park located at: 11928 Beverly Park Rd, Everett, WA 98203.

The diagram to the right represents a potential layout and scale of the installation. Small sales office located near parking lot, C shaped structure is the primary course, and the remaining squares are remote towers for the ziplines. There would be between 800'-900' of total ziplines with the longest run extending about 320'.



## **Project Description**

HTV is proposing to build an aerial adventure park in Paine Field Community Park. The course design features an organic look and feel through the use of wood pole construction and offers guests amazing views of Paine Field Community Park and surrounding area. The main course has been designed using the cutting-edge technology which promotes self-exploration, while an integrated kids course uses continuous belay to provide age-appropriate challenges for kids as young as 4 years of age. A self-navigating 4-line mini zip tour travels around the perimeter of the course, punctuating this dynamic aerial park.

Most rope courses and zipline parks in our region are linear in their design. Those linear design tours creates a number of limitations. For example, the format requires all guests to follow a designated path. They are not free to deviate from the path because there is only one way to advance. As a result, if a single guest is struggling with a particular element, all of the guests behind that person are forced to wait.

A linear park also requires that each element is simple enough for the majority of visitors to traverse. Those capable of a more challenging experience are left wanting more. Finally, it is important to note that most conventional ziplines require guides which adds to the number of employees and can create a less fluid experience.

HTV's proposed adventure park design is unique in that it addresses all of these issues. The technology empowers guests to safely guide themselves through their entire experience. If there is a guest struggling with a particular element, other guests are not impeded, but can simply choose from a number of alternate routes in order to avoid a delay.

Guests desiring more thrill or advanced challenges can proceed to the upper levels of the course, and are not forced to go through all basic challenges. Since the course allows you to choose your own adventure and level of difficulty, guests are more likely to return to the park because their experience will be different every time. Staff are primarily used in the course to provide coaching and encouragement, rather than guiding individuals through each element. Guests are free to move at their own pace and work at their own skill level.

All these factors play into a global user experience designed to engage a variety of age and skill levels. This past summer, our family visited the Yellowstone Aerial Adventures Park in West Yellowstone, Montana. This park has three elevation levels which accommodate 4 different skill levels (White- being the easiest, Green, Blue and Black). Our 5-year-old started in the White section, gradually worked his way up to the Green elements and ultimately the zipline. Our 8-year-old spent the majority of his time in the Blue elements located on the 2<sup>nd</sup> level and then challenged himself with some of the Black elements on the 3<sup>rd</sup> level. Grandma who is in her upper 60's enjoyed Green and Blue elements as well as the zipline. Lastly, I initially spent my time assisting my 5-year-old, but when he was comfortable enough to work independently, I explored the challenging Black elements.

The aerial adventure park at Paine Field Community Park is modeled after the Yellowstone Aerial Adventures Park as well as the High Gravity Adventures park in Boone, North Carolina. It will include the same three elevation levels and 4 different skill levels. Each elevation level will have 20-25 different challenge elements which test balance, strength, and/or comfort with height.

The structure requires a minimal footprint and is designed for extreme seismic conditions. To ensure the safety of our guests, each participant will be provided a full body harness and be required to attend a brief training session explaining the course elements and how to properly use the equipment. Once a guest enters the course, he or she is immediately locked onto the safety line, and cannot become separated from the line unless released by either a key located at the ground level exit point or a staff member.

The course will be designed to operate year round with only a few exceptions that would prompt closure. Only in cases of high winds, snow, or lightning storms will the course be required to close. The course will have canopies stretched over the upper levels to provide shade as well as some coverage for rain.

HTV will also offer guests of the park a zipline only option for those who would like to zip and not use the challenge course.

### **Benefits to Snohomish County**

The new adventure park uses cutting edge technology to provide a variety of challenges that are not currently found in our region. The adventure park will draw additional visitors to the Paine Field Community Park thereby generating providing a steady income stream for other park operations. HTV will assume all of the risk and take on the approximately \$1.2M capital investment to build out the adventure park.

The course would also provide an excellent venue for local businesses and organizations to host team building activities. The adventure park can also increase the diversity of visitors to Paine Field Community Park in that it appeals to individuals who might normally shy away from team sports or athletics.

The esthetics of the park will naturally spur the attention of passers by, drawing new visitors in to enjoy the diversity and beauty of Paine Field Community Park. The park encourages wellness and fosters an appreciation of the outdoors.

Finally, this feature will be a unique amenity that can be enjoyed by a broad spectrum of ages ranging from 4 to active retirees and will be used by varied Snohomish County groups such as businesses and their employees as well as Snohomish County residents.

### **Proposed Terms**

HTV would propose that Snohomish County would provide HTV permission to build and operate an Aerial Adventure Park in Paine Field Community Park. HTV would finance all costs associated with constructing the Adventure Park. HTV will pay for all design, infrastructure improvements, and necessary permits. HTV will insure, maintain, and operate the park without any assistance from Snohomish County.

HTV is seeking a minimum of 10 year lease, but would prefer a 15 year lease based on the capital investment. HTV would own all equipment and structures above ground. If Snohomish County decided not to renew the lease at least 12 months in advance of the end date of the lease HTV would execute the *Exit and Removal Procedure*.

During the term of the lease HTV would pay Snohomish County a 10% revenue share on the first \$1M annual gross revenues from all park receipts. HTV would pay 15% on all annual gross revenues exceeding \$1M. HTV will share State Sales Tax filings with Snohomish County for determination of gross revenues before tax.

### **Projected Revenue**

Minimum Revenue Share: \$48,000 a year

Projected Revenue Share: \$100,000-\$300,000 annually.

Projected revenues are based on annual visitors ranging from 30k-80k

### **Experience & Qualifications**

HTV has partnered with Challenge Towers who is an industry leader and provides the following services for HTV:

- Course Design and Engineering
- Offsite Prefabrication of course elements and equipment
- Onsite construction and build out of course.
- Staff Training and Certification
- Annual Accredited Inspections and Maintenance

For additional information see additional document titled: *Proposal Supplement - CT Experience*

### **Implementation Schedule**

The course itself can be installed in a 6-8 week construction schedule. Challenge Towers and HTV have a construction window available in **September and October 2016**. Initial designs are completed and much of the implementation schedule would depend on the requirements as determined by Snohomish County. In other states permits have only been required for the Quad Deck central entrance to the course.

## **Phasing Construction**

### *Phase One*

1. Informal approval of proposal
2. Soil/Geo Testing
3. Final Site Design and Engineering
4. Verbal OK from Snohomish PDS
5. Formal RFP Submission and Approval
6. Permitting
7. Course Construction (6-8 weeks)
8. Electricity (and water as necessary)
9. Temp Sales Office delivered and connected to utilities.

### *Phase Two*

1. Permit for more permanent Sales Office structure and potential for dedicated bathrooms.
  - a. HTV recommend starting with a non-permanent mobile office trailer to act as the sales office and equipment storage location. This will simplify of the initial startup and permitting requirements, by only requiring power. The assumption would be that HTV would initially leverage Paine Field Community Park's existing restrooms, until a permanent structure can be designed and water and sewer can be connected.
2. Construction of Sales Office.

### *Phase Three (optional and depending on performance of park)*

1. Additional course features/attractions and swap outs to keep it "fresh"
  - a. Climbing wall for more advanced climbing
2. Additional park amenities and services such as team building stations
3. Addition of covered group event areas.
4. Room for skate park if desired.

## **Insurance**

HTV will purchase several types of insurance to protect against loss including Builder's Risk Insurance, General Liability Insurance, Property Insurance, and Workers Compensation Insurance. HTV will provide insurance certificates as required.

## **Exit and Removal Procedure**

In the event that the course needs to be removed, 12 months notice must be provided. The cost of the removal of the course will be \$100,000. This cost will be charged against Snohomish County's revenue share for the final 12 months of operation. In the event the revenue share during this period exceeds \$100,000, HTV will remit any excess revenue share.

In the event that the revenue share does not cover the \$100,000, HTV will not seek any further funding from Snohomish County to pay for the removal of the course.

Removal of the course is defined by the removal of all course towers and poles. All concrete footings will be left below ground and filled. The surfaces below the course will then be returned to the state that they were prior to construction. Any permanent buildings will become the property of Snohomish County. Any non-permanent buildings or storage containers on the site will also be removed.

#### **Snohomish County Parks Involvement**

HTV asks that Snohomish County Parks facilitate the access to basic utilities such as electricity, water, garbage to HTV at PFCP. Most importantly HTV will require parking for visitors and staff and cooperation from Snohomish County to meet the parking requirements. HTV also looks for this to be a partnership whereby Snohomish County Parks takes pride in this amenity at PFCP and is encouraged to market, promote, and evangelize the availability of the aerial adventure park to their constituency through cross-promotion with Snohomish County Parks or other traditional marketing methods.

#### **Course Capacity**

The capacity of the proposed course is approximately 125 people, however HTV plans on limiting the capacity at any given time to 75 active guests on the course (60 Bornack & 15 Safe Roller). HTV will leverage a capacity based Point of Sale system to enforce these requirements. Passes will be sold in 1 hour or 2 hour time blocks but will be able to be scheduled on half hour intervals and individuals will be rotated in and out on the half hours.

#### **Parking Requirements**

Based on course capacity and staffing levels, HTV would require 40 parking spaces. However, the more the parking the better.

#### **Zipline Only Option**

HTV will offer a zipline only pass which allows guests to do 2 revolutions on the zipline for a fixed cost. These guests will be required to go through the same training as all other guests but will bypass all challenge elements and advance directly to the zipline entry.

#### **Team Building and Other Programming**

As the park matures, HTV intends to be able to build a more advanced programming schedule. This could include summer camp programs, corporate or youth team building, and specialized climbing training.

#### **HTV Community Involvement**

HTV believes in taking care of those less fortunate and building programs to provide access to the park for these individuals. HTV will provide free admission to a foster child with any adult paid admission.



### **Daily Operations & Hours**

The courses hours of operations will vary over the course of the year. During the winter months, for example, the course will be closed on week days, except for group events booked in advance. The course will be open on weekends year round with the exceptions of a few holidays. The course will normally never open before 9am and should never stay open past dusk.

The course is outdoors and as a result peak seasons will be the months with nice weather. Peak summer weekends we expect between 400-500 guests a day.

### **Staffing Matrix**

<b>Event or Day</b>	<b>Active Guests in course</b>	<b>Number of Staff</b>
<b>Private Group</b>	<b>20</b>	<b>2-3</b>
<b>Weekday operation</b>	<b>40</b>	<b>3-4</b>
<b>Weekday operation</b>	<b>60</b>	<b>5-6</b>
<b>Weekend Peak</b>	<b>80</b>	<b>7-8</b>

**Photos, Videos, and Details regarding course design.**

<https://sway.com/iQFCphpFGw8QOG3>

### **Additional References**

<http://www.yellowstoneparkzipline.com>

<http://www.highgravityadventures.com>

<http://www.challengetowers.com>

EXHIBIT D

ASSOCIATION FOR CHALLENGE COURSE TECHNOLOGY (ACCT) STANDARDS

## **ANSI/ACCT Challenge Course and Canopy/Zip Line Tour Standard**

The ACCT has been developing standards for the challenge course industry since 1994. Between 1994 and 2012, the ACCT published eight editions of the ACCT Standards. The ANSI/ACCT 03-2016 Challenge Course and Canopy/Zip Line Tour Standard received final approval January 11, 2016 from the ANSI Board of Standards Review. It is now an approved American National Standard (ANS), thus discontinuing the publication nomenclature of 1st through 8th edition.

Standard Includes:

- Definitions of Terminology
- Design, Performance, and Inspection Standards
- Operation Standards
- Training Standards
- Practitioner Certification Standards
- Appendices with information including, but not limited to:
  - o Discussion of Conventional Challenge Course Design
  - o Zip Line Brake Systems
  - o Certification of People with Disabilities
  - o Essential Functions of a Challenge Course Facilitator

## High Trek Aerial Adventures Visitor Agreement

(Including assumption of risks and agreements of release and indemnity)

Please read this document carefully. It provides important information regarding the activities and risks of the High Trek Aerial Adventures Park (HTAA or The Park). It must be signed by each adult (18 years of age or older) visitor to The Park. If the visitor is a minor, it must be signed by his or her parent or other legal guardian (both herein referred to as "parent") to reflect consent to the minor's visit and participation in activities at The Park and agreement to these terms and conditions. If the parent or legal guardian is also a visiting adult, this agreement is binding upon him or her in both capacities.

In consideration of the services of the HTAA, I, an adult visitor and/or parent of one or more minor visitors, hereby acknowledge and agree as follows:

Activities: HTAA activities are conducted on leased premises operated by High Trek Adventures, LLC and owned by Snohomish County, Washington. The improvements on the premises are owned and maintained by HTAA. The activities include ziplines, high (some, approximately 55 feet) and low challenge course elements (a variety of structures over, through and on which participants may walk, swing or climb), team building and training activities and otherwise moving about the premises of The Park.

Risk: Activities of The Park and its premises expose participants and other visitors to certain risks, including: moderate physical exertion; falls and abrupt and possibly harmful contact with structures, objects, and persons; anxieties and fears associated with heights and close contact with other participants; carelessness and misjudgments on the part of other visitors and HTAA staff; the failure of structures and equipment; and the unpredictable forces of nature. Training activities provided by staff are instructional in nature and are designed to expand and challenge the skills and judgment of participants. Injuries associated with a visit and participation in HTAA activities include breaks, sprains, bruises and other contusions and trauma and, in extreme cases, emotional upset, anxiety and even death. Visitors have responsibilities for managing the risks to themselves and others and must not assume that they are being supervised or even observed by staff. Participants under the age of 14 will be subject to certain supervisory requirements which must be understood and strictly observed. These requirements are described at the HTAA website (HighTrekEverett.com) and signage in the registration area of HTAA.

The risks described above, and others, are inherent in HTAA activities and moving about its premises; that is, without them the visit would lose its essential character and value. The description of these risks above is not complete and other unknown or unanticipated risks may result in property loss, injury or death. Visitors and parents acknowledge that their visit to The Park and participation in its activities are purely voluntary, and with full knowledge of the inherent and other risks.

Acknowledgment and Assumption of Risks: Understanding the nature of the activities and their risks, and that other risks may be encountered, I acknowledge and hereby assume all risks of my, or the minor child's, visit to The Park including participating in its activities, whether or not described in this document, known or unknown and inherent or not. If I am the parent of a minor visitor, I have discussed the activities and risks with the child, who understands them, and who chooses to participate nevertheless.

**Release and Indemnity:** I, an adult visitor or the parent of a minor visitor, agree, for myself and, to the extent allowed by the laws of the State of Washington, on behalf of the minor visitor(s) for whom I sign below, **TO RELEASE AND NOT TO SUE** High Trek Adventures, LLC, its owners, managers and staff, and Snohomish County, Washington, its officials, officers, employees and agents ("Released Parties"), with respect to any and all claims of injury, disability, death, or other loss or damage to person or property suffered by me or by the child, arising in whole or part from my or the child's visit to The Park. In addition, I agree **TO INDEMNIFY** (that is, defend and satisfy by payment or reimbursement, including costs and attorneys fees) Released Parties from any claim of loss, injury or death, brought by or on behalf of the minor for whom I sign, another visitor, a rescuer, a member of my, or the minor child's, family, or anyone else, arising out of or in any way related to a loss suffered by me or the child for who I sign below, or caused by me or the child. These agreements of release and indemnity include loss or damage caused or claimed to be caused in whole or in part by the negligence of a Released Party, but not intentional wrongs or the gross negligence of a Released Party.

**Additional Provisions:**

**Media Consent:** I hereby give my permission and consent to the taking of photographs, videotapes, and other images of me, or the child, and agree that such images may be published and otherwise used by High Trek Ventures, LLC for advertising, publicity, or such other purpose as it deems appropriate, without compensation to me or to the child.

**Suitability and Medical:** Visitors must be able to participate in The Park's activities and move about its premises without being a danger to themselves or others. A decision to participate in a Park activity is solely the responsibility of the visitor and the parents of a minor visitor, in consultation with their physician, as they deem necessary and, without exception, if the visitor is pregnant or believes she might be pregnant. In accordance with the specifications of The Park's manufacturer, participants in activities must weigh less than 265 pounds. Participants must not be under the influence of drugs or alcohol. HTAA's acceptance of a participant with a medical condition must not be interpreted as HTAA's acceptance of any responsibility for the management of a medical emergency or other event arising from that condition. I authorize HTAA to provide or obtain for me, or for the minor, such medical care as it considers necessary and appropriate, and I agree to pay all costs associated with such care and related transportation.

**Duration of this agreement:** This Agreement pertains to visits to The Park occurring at any time during the next year (365 days) from the date this agreement is signed. Participation in HTAA activities thereafter, if any, will be the subject of another agreement

**Applicable law and venue:** Any dispute between a Released Party and a parent or minor visitor will be governed by the substantive laws of the State of Washington (not including laws which might apply the laws of another jurisdiction), and any mediation, arbitration or suit shall take place only in that State, in Snohomish County. I will pay all costs and attorney's fees incurred by any Released Party in defending a claim or suit brought by me, or by or on behalf of the minor participant, if the claim or suit is withdrawn or to the extent a court, arbitration panel or mediator determines that the Released Party is not responsible for the claimed injury or loss.

I acknowledge and agree that I have read this agreement in its entirety, understand it completely, and agree to be bound by its terms. I agree that it may not be modified except by a written document signed by me and an authorized representative of HTAA. I understand and agree that it is binding, to the fullest extent allowed by law, in addition to all persons signing below, their respective heirs, executors, administrators, wards, minor children (whether or not they are visitors) and other family members. If any part of this agreement is found by a Court or other appropriate authority to be invalid, the remainder of the agreement nevertheless shall be in full force and effect.

Participant

First Name:

Middle Name:

Last Name:

Male/Female

Home Address:

Phone Number:

Birth Date:

Email:

Confirm Email:

Location:

Participant #2

First Name:

Middle Name:

Last Name:

Male/Female

Date of Birth

Parent or Legal Guardian's Name

First Name:

Last Name:

Phone Number:

Email:

Emergency Contact

First Name:

Last Name:

Phone Number:

Electronic Signature Authorization

By applying my electronic signature to this agreement, I agree that my electronic signature is the legally binding equivalent of my handwritten signature on paper. I will not, at any future time, claim that my electronic signature is not legally binding or enforceable. By electronically signing and submitting this agreement, I

- 1) acknowledge that I have read and fully understand the terms of the agreement;
- 2) voluntarily agree to be bound by this agreement; and
- 3) certify that I am 18 years of age or older. My signature applies to all pages of this contract.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED – OWNERS OR OTHER INTERESTS FROM WHOM LAND HAS BEEN LEASED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERED PART  
SCHEDULE

# Specimen

Name Of Person(s) Or Organization(s)	Designation Of Premises (Part Leased To You)
Snohomish County	11928 Beverly Park Rd Everett, WA 98204-3529
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Schedule.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to lease that land;

2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

**C.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



EXHIBIT E

Charts of Responsibilities

General Maintenance

Tasks:	High Trek	Snohomish County Parks
Raising flag (in season late morning) **	X	
Lowering flag (in-season)	X	
Raising Flag (off season)		X
Lowering Flag (off-season)		X
Opening main gate		X
Closing main gate (in season)	X	
Opening overflow lot gate (in season)	X	
Closing overflow lot gate (in season)	X	
Updating bulletin boards	X	
Picnic tables / shelter	X	
Picking up litter day use	X	

\*In Season – Is expected to be January 1 – November 30, Monday – Sunday, 7am – Dusk, except beginning November 1 – November 30 each calendar year where operations will be limited to Saturday and Sunday only, 7am – Dusk ( approximate dusk time 4pm)

Restroom Maintenance

Tasks:	High Trek	Snohomish County Parks
Checking permanent restrooms (in season)*		X
Cleaning permanent restrooms		X
Stocking permanent restrooms (in season)		X
Trash (in season)		X

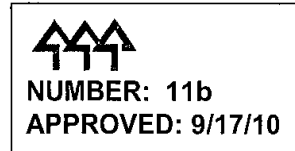
- Permanent Restrooms are winterized (water lines blown out/closed/Locked) typically October 15 – March 31 each calendar year. County Parks has rented one (1) ADA portable restroom with weekly pumping/cleaning/re-stocking services provided by United Site Services.

Utilities Maintenance

	High Trek	Snohomish County Parks
Electrical	X	
Phone	X	
Water		X
Sewer		X
Cable	X	
Garbage	X	

Grounds Maintenance

Tasks:	High Trek	Snoho Parks
Mowing grassy area in and around course		X
Watering grassy area in and around course		X
Fertilizing grassy area in and around course		X
Ropes course area cleanup	X	
Thatching, aerating, overseeding grassy area in and around course		X
Gravel parking lot trash	X	
Weeding around course	X	
Dumping garbage cans around aerial course and picnic shelter	X	
Picnic shelter trash and wiping down tables	X	



**NPDES COMPLIANCE PROCEDURE  
FOR  
ALL PARTIES UNDER CONTRACTUAL AGREEMENTS WITH  
SNOHOMISH COUNTY PARKS & RECREATION**

- 1.0 **PURPOSE:** This Procedure outlines responsibilities of all parties under any contractual agreement, as defined in Section 3.0, with Snohomish County Parks & Recreation Department in regards to the National Pollutant Discharge Elimination System (NPDES) municipal stormwater permit held by Snohomish County.
- 2.0 **AUTHORITY:** A Phase I Municipal Stormwater Permit was issued to Snohomish County by Washington State Department of Ecology on January 17, 2007 as authorized by the State of Washington Water Pollution Control Law, Chapter 90.48 Revised Code of Washington (RCW), and the Federal Water Pollution Control Act. The permit requires the County to establish procedures that will eliminate, reduce or minimize pollutant discharges to surface waters.
- 3.0 **APPLICABILITY:** This Procedure applies to all parties (PART(Y/IES)) under contractual agreement with Snohomish County Department of Parks & Recreation (PARKS). Contractual agreements covered by this procedure include, but are not limited to, construction contracts, lease agreements, facility license agreements, right-of entry permits, special use permits and interlocal and interdepartmental agreements.
- 4.0 **COMPLIANCE WITH OTHER LAWS:** Compliance with this procedure does not constitute waivers of the requirements of any other law or regulation; nor does it indicate compliance with any other law or regulation. Compliance with all applicable federal, state, and local laws and regulations is required.
- 5.0 **ACRONYMS:**

BMP	Best Management Practice
CESCL	Certified Erosion and Sediment Control Lead
Ecology or DOE	Washington State Department of Ecology
IVM	Integrated Vegetation Management
NPDES	National Pollutant Discharge Elimination System
SCC	Snohomish County Code
SWM	Surface Water Management
SWPPP	Stormwater Pollution Prevention Plan

## 6.0 DEFINITIONS:

- 6.1 "Contaminant" means a solid, liquid, or gaseous substance that, if discharged to a drainage facility, natural drainage system, receiving waters or groundwater, will alter the physical, chemical, or biological properties thereof to the extent that the discharge will render the facility, system, or water harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life. Contaminants may include, but are not limited to the following: trash or debris; construction materials; petroleum products including but not limited to oil, gasoline, grease, fuel oil or heating oil; antifreeze and other automotive products; metals in either particulate or dissolved form; flammable or explosive materials; radioactive material; batteries; acids, alkalis, or bases; paints, stains, resins, lacquers, or varnishes; degreasers and solvents; drain cleaners; pesticides, herbicides, or fertilizers; steam cleaning wastes; soaps, detergents, or ammonia; chlorine, bromine, or other disinfectants; heated water; animal wastes; sewage; animal carcasses; food wastes; bark, soils, sediment, rock and other fibrous materials; collected lawn clippings, leaves, or branches; dyes, except as allowed in SCC 7.53.090(11); and wastewater generated by commercial or industrial activities.
- 6.2 "Discharge" means to throw, drain, release, dump, spill, empty, emit, or pour any matter into receiving waters, groundwater, a natural drainage system, or a drainage facility, or to cause or allow matter to be thrown, drained, released, dumped, spilled, emptied, emitted or poured into receiving waters, groundwater, a natural drainage system, or a drainage facility, or to cause or allow matter to flow, run, or seep from land into receiving waters, groundwater, a natural drainage system, or a drainage facility.
- 6.3 "Drainage facility" means any part of a man-made physical system designed or constructed to collect, treat convey, store, or control the flow of stormwater. Drainage facilities include, but are not limited to, storm water conveyance and containment facilities, including pipelines, constructed channels and ditches, infiltration facilities, retention and detention facilities, stormwater treatment facilities, erosion and sedimentation control facilities, and all other drainage structures and appurtenances.
- 6.4 "Prohibited Discharges" means the following discharges to any drainage facility, natural drainage system, receiving water, or groundwater within Snohomish County except as allowed in SCC 7.53.090 or conditionally allowed in SCC 7.53.095: (1) Any discharge not completely composed of stormwater; (2) Any discharge that causes or contributes to a violation of State Water Quality Standards or State Sediment Management Standards; (3) Any discharge that causes or contributes to a violation of

any NPDES permit or State Waste Discharge permit issued to the county;  
(4) Any discharge that causes the county to be in violation of the State Underground Injection Control Program (Chapter 173-218 WAC); and (5) Any discharge that contains contaminants.

6.5 "Source control best management practices" or "source control BMPs" means structures, equipment, supplies, or operations that are intended to prevent pollutants from coming into contact with stormwater through physical separation of areas or careful management of activities that are sources of pollutants.

6.6 "Waters of the state" includes those waters as defined as "waters of the United States" in 40 CFR Subpart 122.2 within the geographic boundaries of Washington State and "waters of the state" as defined in Chapter 90.48 RCW which includes lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses including storm drainage systems and ditches within the jurisdiction of the state of Washington.

7.0 COUNTY ACCESS: County personnel shall have reasonable access to all Park property to conduct annual inspection and maintenance activities, perform audits of user activities, and respond as necessary to all spills or other emergencies.

8.0 SOURCE CONTROL: SCC Chapter 7.53 requires any person storing or using materials that may contain contaminants in a manner that could result in prohibited discharges to streams, lakes, groundwater or the County's storm sewer to implement source control BMPs. Source control bmps include, but are not limited to those described in Volume IV of the county Stormwater Management Manual. The PARTY shall be responsible for utilizing all known, available, and reasonable methods of prevention, control and treatment (AKART) to prevent pollution from entering waters of the state, and for providing the proper training to all individuals engaged in such activities. The PARTY shall conduct all activities in a safe, responsible manner and in accordance with all governing regulations or laws. Activities that have the potential for being pollution generating and are subject to this requirement include, but are not limited to the following:

- Application of Fertilizers and Pesticides
- Building Exterior Cleaning and Maintenance
- Chemical Handling
- Cleaning of Animal Handling Areas
- Dust control
- Fueling of Equipment and Vehicles
- Land Disturbance Activities (soil erosion)
- Landscape Maintenance and Vegetation Disposal
- Maintenance of equipment and vehicles
- Paving operations
- Trash Management
- Vehicle washing

- 9.0 SPILL RESPONSE, CONTAINMENT AND REPORTING REQUIREMENTS: PARTIES that engage in activities that pose a risk of polluting waters of the state must have a spill response plan that addresses prevention, spill control, containment, cleanup, and response. A copy must be made available to PARKS at their request. Spill containment and cleanup kits must be readily accessible. All spills shall immediately be reported to PARKS by contacting the Parks NPDES Compliance Officer at (425)508-6614 and to all appropriate agencies identified in the PARTIES Spill Response Plan.
- 10.0 REVISIONS TO PROCEDURE – This procedure shall be revised and updated as needed to adhere to Snohomish County Phase I Municipal Stormwater Permit revisions, or procedure modifications required by PARKS. All revisions shall be numbered and dated and provided to PARTIES.

## MOTION ASSIGNMENT SLIP

TO: Clerk of the Council

TITLE OF PROPOSED MOTION:

AUTHORIZING THE COUNTY EXECUTIVE TO SIGN A LEASE AGREEMENT WITH  
HIGH TREK VENTURES, LLC AT SNOHOMISH COUNTY'S PAINE FIELD  
COMMUNITY PARK

Clerk's Action:

Proposed Motion No. 17-035

Assigned to: COW

Date: JAN 30 2017

### STANDING COMMITTEE RECOMMENDATION FORM

On \_\_\_\_\_, the Committee made the following recommendation:

\_\_\_\_\_ Move to Council for action on: \_\_\_\_\_

\_\_\_\_\_ Move to Council as amended for action on: \_\_\_\_\_

\_\_\_\_\_ Move to Council with no recommendation

**This item should/should not be placed on the Consent Agenda.**

(Consent agenda may be used for routine items that do not require public hearing and do not need discussion at General Legislative Session)

**This item should/should not be placed on the Administrative Matters Agenda**

(Administrative Matters agenda may be used for routine action to set time and date for public hearings)

\_\_\_\_\_  
Committee Chair

D-2



## Snohomish County Council

**Committee:** Administrative Session COW      **Analyst:** Brandi Vena  
**ECAFs:** 8099  
**Proposal:** Mot 17-035      **Date:** January 30, 2017

### Summary

Motion approves a lease agreement with High Trek Ventures, LLC at Paine Field Community Park.

### Background

The Snohomish County Parks and Recreation Department solicited requests for proposals from private vendors interested in partnering with the department to provide services under license or lease at county parks. High Trek Ventures, LLC responded to the request with a proposal to build, construct, and operate an "aerial adventure course" on an unused portion of Paine Field Community Park. The course would include a self-navigating 4-line mini zipline tour as well as an integrated kid's course for children as young as four years old.

Under the lease agreement, High Trek Ventures, LLC would pay Snohomish County an annual base rent of \$25,000 for years one through four; \$30,000 for years five through eight; and \$36,000 for years nine through 12. High Trek Ventures, LLC would also assist the department in routine duties at the park.

**Approved-as-to-form:** Yes.

**Request:** Consider taking action at Administrative Session on January 30, 2017.