

## PACIFIC COUNTY FACILITY USE AGREEMENT

### Willapa Harbor Senior Center

**THIS AGREEMENT** is made by and between the Coastal Community Action Program ("CCAP"), 117 East Third Street, Aberdeen, WA 98520, a private non-profit 501(c) 3 corporation, and the Board of Pacific County Commissioners (the "BOARD") on behalf of Pacific County ("the COUNTY"), a political subdivision and municipal corporation of the State of Washington.

**WHEREAS**, the COUNTY owns a facility located at 324 Jackson Street, Raymond, Washington 98577 ("the FACILITY") that was acquired for the purpose of housing programs serving Pacific County's senior population; and

**WHEREAS**, as of July 2011 the COUNTY intends to complete renovations of the FACILITY and to make it available for occupancy; and

**WHEREAS**, CCAP is currently providing on-site and home-delivered nutritional services to low income seniors in Pacific County from a dilapidated facility also owned by the COUNTY; and

**WHEREAS**, relocating to the new facility will allow CCAP a newer, more wholesome, and more accessible setting to provide senior nutrition programs, and may allow CCAP to expand and enhance the delivery of other services and programs to Pacific County's senior population.

**WITNESSETH**, that in consideration of the mutual benefits and covenants herein contained; it is agreed by and between the parties hereto as follows:

1. **OCCUPANCY OF FACILITY:** CCAP shall retain the right to occupy the FACILITY for the specific purposes listed in Section 2 for the full term specified in Section 3, unless terminated earlier as per Section 4, of this FACILITY USE AGREEMENT.
2. **USE OF FACILITY:** CCAP shall occupy and use the FACILITY for the express purpose of providing nutritional and other services and programs to qualified senior citizens in Pacific County. With the exception of on-site and home delivered senior nutritional services which shall be provided on a continuous basis throughout the term of this FACILITY USE AGREEMENT, CCAP may initiate, expand, retract, or terminate senior and/or related administrative services at the FACILITY as directed by the CCAP Board of Directors.
3. **TERM:** Unless terminated by either party as per Section 4 of this FACILITY USE AGREEMENT, the term of this FACILITY USE AGREEMENT shall be for a period of five (5) years from July 1, 2011 through June 30, 2016. This term of this FACILITY USE AGREEMENT shall automatically extend for an additional five year period, unless one of the parties notifies the other in writing of its intent to end this Agreement on or before April 30, 2016.
4. **TERMINATION BY EITHER PARTY:** Either party to this FACILITY USE AGREEMENT shall have the right to terminate this FACILITY USE AGREEMENT by presenting ninety (90) days written notice to the other party as specified in Section 16 of this FACILITY USE AGREEMENT. If CCAP ceases to provide senior nutrition services in Pacific County and/or at the FACILITY, CCAP agrees to cooperate with the COUNTY and to vacate the FACILITY in such a manner and at such a time to promote the efficient transition to a new provider of senior nutrition services and occupant of the FACILITY.

5. **OBLIGATIONS OF THE CCAP:** CCAP shall continuously occupy the FACILITY and shall not sublet or provide space in any portion thereof to any other party or organization that does not provide services to low or moderate income residents or seniors in Pacific County without the express prior written approval of the COUNTY. CCAP shall maintain the FACILITY in a clean, safe and sanitary condition during the entire term of this FACILITY USE AGREEMENT. CCAP shall perform such interior and exterior cleaning and grounds maintenance as required to maintain the FACILITY free from a cluttered, unsightly and/or hazardous condition. CCAP shall provide janitorial supplies to the Facility sufficient to support its operations and for its employees, visitors and clients. CCAP shall provide, and pay for at its own expense, continuous electrical service, heating, air conditioning and ventilation at a level sufficient to prevent the freezing of pipes and/or accumulation of mold or other rot or decay that might be caused by lack of such heating and/or ventilation. CCAP shall cause to be completed at its sole expense annual maintenance of the heating/air conditioning/ventilation system and heat pump mechanical systems by a licensed heating/air conditioning maintenance firm, and shall pay for usual and customary routine maintenance supplies for said system. CCAP shall perform, or cause to be performed, routine maintenance of kitchen equipment to promote its continuous and efficient operation. CCAP will inform the COUNTY of any and all leaks, systems failures, or repair and maintenance needs in a timely fashion in order to minimize damage to the structure and/or systems. CCAP will be responsible to repair any damage to the FACILITY caused by CCAP, its employees, volunteers, program participants, clients, contractors, and/or visitors. CCAP shall be responsible for all costs associated with repairs resulting from CCAP's failure to perform routine maintenance identified as specified in this section. In addition, the CCAP shall at its sole expense repair the plumbing, electrical and associated systems fixtures as they may become worn and in need of replacement or repair due to normal wear and tear. CCAP shall continuously and at its sole cost, assure the provision of municipal water and sewer service, electrical service, and propane/gas service throughout the term of this FACILITY USE AGREEMENT. CCAP may, at its sole discretion, install, secure or remove phone, internet, cable or satellite television and/or radio, or other communication services in the FACILITY. CCAP shall, to the best of its abilities, take care to maintain COUNTY kitchen equipment in a clean and operational condition. CCAP shall be responsible to ensure that routine inspections and maintenance of chair lifts, smoke and carbon monoxide detectors, refrigeration units, and kitchen fire suppression units are conducted at intervals consistent with industry standards and regulatory requirements. In compensation for use of the facility, CCAP shall pay the COUNTY the sum of \$\_\_\_\_\_ per month of occupancy.
6. **OBLIGATIONS OF THE COUNTY:** The COUNTY shall maintain the FACILITY in habitable condition and shall make such structural and mechanical systems repairs as required during the term of this FACILITY USE AGREEMENT to ensure continued occupancy. The County shall allow CCAP full access to and full use of all kitchen equipment located within the FACILITY. The COUNTY shall retain ownership of said kitchen equipment, and shall retain the right to determine whether kitchen equipment shall be repaired or replaced in the event of significant damage or disrepair. The COUNTY shall also maintain property insurance on the FACILITY and its grounds, but shall not be required to provide insurance of CCAP contents, or liability insurance for CCAP operations and/or programs, employees, volunteers or governing board members. The COUNTY shall make available the exclusive use of the parking lot adjacent to the FACILITY for CCAP's employees, contractors, volunteers, clients and visitors.

7. **INDEMNIFICATION:** Each of the parties to this FACILITY USE AGREEMENT agrees to indemnify and hold the other harmless from and against any and all loss and damage, and any and all claims, demands, suits, liabilities and payments, including cost of defense, arising in whole or in part, out of the negligent act or omission of an indemnitor, its officers, employees, agents or subcontractors, or the negligent act or omission of any person for which an indemnitor or subcontract is held liable. If any losses, damages, claims, demands, suits, liabilities and/or payments, including costs of defense, arise out of or result from the concurrent negligence of (a) the COUNTY, its officers, employees, agents, subcontractors or any other person for which the COUNTY is held liable, and (b) CCAP, its officers, employees, agents, subcontractors or any other person for which CCAP is held liable, this indemnity provision shall be valid and enforceable only to the extent of the negligence of any indemnitor's officers, employees, agents, subcontractors, or any other person for which an indemnitor is held liable.
8. **INSURANCE:** CCAP shall provide proof of professional general liability insurance to the COUNTY in the amount of \$2,000,000 for each occurrence, specifically identifying activities at the FACILITY. Said insurance shall be maintained for the term of this FACILITY USE AGREEMENT. The insurance provided by CCAP shall list the COUNTY as additionally insured, and shall be primary to any liability insurance policy of the COUNTY.
9. **FACILITY IMPROVEMENTS:** CCAP may not alter the FACILITY structure in any manner without express prior written approval of the COUNTY. Non-permanent, minor, cosmetic enhancements may be made by CCAP, so long as the FACILITY is returned by CCAP to its pre-occupancy condition at the termination of this FACILITY USE AGREEMENT.
10. **NONDISCRIMINATION:** CCAP shall comply with all federal and state nondiscrimination laws, including, but not limited to chapter 49.60 RCW – Washington's Law Against Discrimination and 42 U.S.C. 12101 et seq. – the Americans with Disabilities Act (ADA). In the event CCAP fails or refuses to comply with any nondiscrimination law, regulation, or policy, the AGREEMENT may be rescinded, canceled or terminated in whole or in part, and CCAP may be declared by the COUNTY ineligible for further Pacific County Funds or FACILITY USE AGREEMENTS. The CCAP shall be given a reasonable time in which to cure any such noncompliance. Any dispute may be resolved in accordance with "Disputes" procedures set forth herein.
11. **EMPLOYMENT RELATIONSHIPS:** CCAP, its employees, volunteers or agents performing under this FACILITY USE AGREEMENT are not deemed to be employees of the COUNTY, nor volunteers or agents of the COUNTY in any manner whatsoever. No officer, employee, volunteer or agent of CCAP will hold themselves out as, or claim to be, an officer, employee, volunteer or agent of the COUNTY by reason hereof, nor will they make any claim, demand or application to or for any right or privilege applicable to an officer, employee volunteer or agent of the COUNTY. The parties agree that the COUNTY will not be responsible for the payment of any industrial insurance premiums or related claims or other benefits that may arise during the performance of services under this FACILITY USE AGREEMENT for any CCAP employee or volunteer, or for any consultant's, contractor's or subcontractor's employee(s) or agent(s) that has been retained by CCAP.

12. **ENTIRE AGREEMENT/MODIFICATIONS:** This FACILITY USE AGREEMENT represents all the terms and conditions agreed to by the parties. No other understandings, oral or otherwise, regarding the subject matter of this FACILITY USE AGREEMENT shall be deemed to exist or to bind any parties hereto. The COUNTY and CCAP may, from time to time, request changes in this agreement. Any such changes that are mutually agreed upon shall be incorporated herein by written amendment to this FACILITY USE AGREEMENT. Costs incurred in contravention of this Paragraph are the sole responsibility of CCAP.
13. **SEVERABILITY:** In the event any provision or any portion thereof contained in this FACILITY USE AGREEMENT is held to be unconstitutional, invalid or unenforceable, then said provision(s) or portion(s) thereof shall be deemed severed and the remainder of this FACILITY USE AGREEMENT shall not be affected and shall remain in full force and effect. Furthermore, if such an event occurs, the parties agree to negotiate a modification to replace the unacceptable provision(s) as soon as possible.
14. **DISPUTE RESOLUTION:** Except as otherwise provided in this FACILITY USE AGREEMENT, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute by majority vote. The team shall consist of (a) representative appointed by the COUNTY, (b) a representative appointed by CCAP, and (c) a third party mutually agreed upon by the two (2) appointed representatives. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.
15. **GOVERNING LAW AND VENUE:** This FACILITY USE AGREEMENT shall be construed and enforced in accordance with, and its validity and performance governed by, the laws of the state of Washington. The Superior Court of and for Pacific County, Washington shall be the venue for any suit between the parties arising out of the FACILITY USE AGREEMENT.
16. **NOTIFICATION:** Should the need arise during the term of this FACILITY USE AGREEMENT for either party to notify the other for a change in address or otherwise, the following contacts shall be used:

For the COUNTY:

Clerk of the Board of Pacific County Commissioners  
P.O. Box 187  
South Bend, WA 98586-0187  
360/875-9337

For CCAP:

Craig Dublanko, CEO  
Coastal Community Action Program  
117 East Third Street  
Aberdeen, WA 98520  
360/533-5100

**IN WITNESS WHEREOF** legal representatives of both CCAP and the COUNTY have executed this FACILITY USE AGREEMENT on the date(s) so noted below.

Coastal Community Action Program

Board of County Commissioners  
Pacific County, Washington

\_\_\_\_\_  
Print Name Title

\_\_\_\_\_  
Norman B. Cuffel, Chair

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Jon Kaino, Commissioner

ATTEST:

\_\_\_\_\_  
Lisa Ayers, Commissioner

\_\_\_\_\_  
Print Name Title

ATTEST:

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Clerk of the Board Date

APPROVED AS TO FORM:

\_\_\_\_\_  
David J. Burke Date  
Prosecuting Attorney