

2022 BUSH PIONEER PARK MAINTENANCE AND OPERATION CONTRACT

THIS CONTRACT, made and entered into this day between THE CHINOOK INDIAN NATION, hereinafter called the CONTRACTOR, and the County of Pacific, a municipal corporation of the State of Washington, hereinafter called the COUNTY.

WHEREAS, the COUNTY desires to have certain park maintenance and operation services performed and the CONTRACTOR has the necessary skills and capabilities and experience to perform said park maintenance and operation services, as set forth below;

NOW THEREFORE, in consideration of the terms, conditions and performance contained herein, the parties hereto agree as follows:

1. The park maintenance and operation site shall be **BUSH PIONEER PARK**.
2. The CONTRACTOR shall have the park clean and available for renters of the park.
3. The CONTRACTOR shall have the park available for daily use by the general public between the hours of 6 AM and 10 PM, beginning May 27, 2022 through December 31, 2022. The CONTRACTOR may temporarily close the park at CONTRACTOR'S discretion, but with at least 7 days' prior written notice to Pacific County Department of Public Works. Closing of the park on short notice is only allowed during an emergency or a severe weather event.

Agreements with park users for use of the facilities in excess of three (3) weeks shall require prior approval of the COUNTY. The fee-paying user will be provided entrance to the park through the exit during hours of closure to the general public.

4. The CONTRACTOR will be solely responsible for providing reasonable security in the park during the period of this Contract. This includes preventing users from injury and damage to their possessions as well as protection of COUNTY's property.
5. **PARK FEES**
 - a. The park fees shall be established or revised by resolution of the Board of Pacific County Commissioners (presently Resolution No. 2022-020, adopted March 22, 2022).
 - b. The CONTRACTOR shall collect fees and applicable taxes, including Lodging Taxes in accordance with Chapter 67.28.180 RCW. Said fees collected by the CONTRACTOR shall be retained by the CONTRACTOR and shall constitute partial payment to the CONTRACTOR for serviced provided.

- c. CONTRACTOR understands and agrees to forward the taxes collected to the WA State Department of Revenue and other appropriate parties at the appropriate times and provide proof to the Parks Manager of such annually.
 - d. The fiscal records of such collections and disbursements will be kept by the CONTRACTOR, and reported monthly on the attached form (Attachment A) to the Parks Manager, **no later than the 10th day of each month**. A numbered receipting system will be provided by the CONTRACTOR and used to receipt all camping fees. This system shall consist of a three-part receipt with original copy to the customer, the second copy is to accompany the monthly report sent to the COUNTY, and the third copy to be retained by the CONTRACTOR.
- 6. In addition to fees collected (referenced in Section 4) the COUNTY will:
 - a. Provide a space at the park for the location of a recreation vehicle for the CONTRACTOR; This space shall be kept clean, orderly and free from all debris.
 - b. The COUNTY will provide electrical power, basic phone, water, sewer and garbage disposal services to the site. The CONTRACTOR will reimburse the COUNTY for any phone charges deemed to be used for the CONTRACTOR'S private use upon receiving a copy of the bill showing the itemization for those changes.
 - c. The COUNTY will pay a hosting fee of \$2,400 (Two Thousand Four Hundred Dollars) for the contract period to the CONTRACTOR in eight equal monthly installments. The first installment in the amount of \$300 (Three Hundred Dollars) will be paid by the 30th of June, 2022. The following payments will be paid by the 10th day following the close of the previous month. For example, June will be paid by July 10, July will be paid by August 10th, etc.
 - d. The COUNTY will also pay up to \$900 (Nine Hundred Dollars) upon the renewal of Insurance Policy.
- 7. No structures shall be erected on the premises, and no residence will be permitted, without prior approval of the COUNTY. The CONTRACTOR shall bear all costs associated with placement and/or removal of CONTRACTOR'S facility.
- 8. The CONTRACTOR shall provide the proper janitorial/custodial service for the park restrooms.
- 9. The CONTRACTOR shall provide all maintenance of the park grounds, equipment and facilities to include, but not limited to, mowing, weeding and litter pick up, all to be completed with equipment provided by the COUNTY (riding lawn mower).

10. The COUNTY reserves the right to determine whether or not repairs and maintenance shall be performed and the right to schedule such repairs and maintenance. Maintenance by the COUNTY will be performed at the convenience of the COUNTY, and the COUNTY shall not be held liable for any losses of any nature by the CONTRACTOR or other affected parties.
11. The CONTRACTOR shall not employ anyone in fulfillment of this CONTRACT who is required to register as a sex offender under RCW 9A.44.130 or who has been prohibited from contact with a vulnerable adult under RCW 74.34.130.
12. The COUNTY agrees to provide all necessary operating supplies for the restrooms, supplies at COUNTY'S sole cost and expense.
13. Electric power, phone, water, sewer and garbage disposal services shall be provided by the COUNTY for park operations. No other utility services shall be provided.
14. The parties mutually understand and agree that the COUNTY shall make no deductions on account of taxes and the CONTRACTOR further understands and agrees that the responsibility for payment of taxes remains with the CONTRACTOR. It is further understood that the CONTRACTOR is not entitled to medical insurance, retirement benefits, workers compensation or any other incidents of employment from the COUNTY because no employee/employer relationship exists.
15. This Contract shall commence on May 27, 2022 and terminate on December 31, 2022. Either party shall have the right of cancellation or termination of this Contract with or without reason, by serving notice on the other party by certified mail, of such intent to cancel or terminate this entire Contract at least (30) thirty days prior to any such proposed cancellation or termination date; such cancellation or termination to be without recourse, except for any sums owing to either party at the end of cancellation or termination.
 - a. The CONTRACTOR shall be solely responsible for removal all their personal property from the park grounds within thirty (30) days of the notification of cancellation or termination of this Contract. If said personal property has not been removed within the time specified, the COUNTY shall have said property removed and the CONTRACTOR shall be solely responsible for bearing all costs involved.
 - b. Should criminal charges be filed in a jurisdictional court, against the CONTRACTOR, this Contract may be terminated, and all personal property of the CONTRACTOR must be removed, within three (3) days.

16. It is mutually understood and agreed between the parties hereto that this Contract does not create an employee/employer relationship and that the COUNTY assumes no liability to the independent CONTRACTOR and that in all of the activities pursuant to this Contract, THE CHINOOK INDIAN NATION is, and shall be, an independent CONTRACTOR under the laws of the State of Washington.
17. The CONTRACTOR shall not assign this Contract without the specific written consent of the COUNTY.
18. The CONTRACTOR shall not allow property owned by the COUNTY to be removed from the premises. This includes, but is not limited to, any fallen trees located within the park.
19. PUBLIC RECORDS ACT
 - a. This Agreement and all public records associated with this Agreement shall be available from the COUNTY for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the CONTRACTOR are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the CONTRACTOR agrees to make them promptly available to the COUNTY. If the CONTRACTOR considers any portion of any record provided to the COUNTY under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the CONTRACTOR shall clearly identify any specific information that it claims to be confidential or proprietary. If the COUNTY receives a request under the Act to inspect or copy the information so identified by the CONTRACTOR and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the COUNTY's sole obligations shall be to notify the CONTRACTOR (a) of the request and (b) of the date that such information will be released to the requester unless the CONTRACTOR obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the CONTRACTOR fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.
 - b. The COUNTY has, and by this section assumes, no obligation on behalf of the CONTRACTOR to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the CONTRACTOR for releasing records not clearly identified by the CONTRACTOR as confidential or proprietary. The COUNTY shall not be liable to the CONTRACTOR for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

- c. Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the CONTRACTOR or the CONTRACTOR's subcontractors or consultants for delivery to the COUNTY under this Agreement shall be the sole and absolute property of the COUNTY. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the COUNTY at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the CONTRACTOR uses to perform this Agreement but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the COUNTY is owned by the CONTRACTOR and is not "work made for hire" within the terms of this Agreement.

20. LIABILITY

Without limiting the CONTRACTOR'S indemnification of COUNTY, and prior to commencement of this Contract, CONTRACTOR shall obtain, provide and maintain during the term of this Contract, policies or insurance of the type and amounts described below and in a form satisfactory to the COUNTY.

- a. General Liability Insurance. CONTRACTOR shall maintain commercial general liability insurance with at least as broad as Insurance Services Office form CG 00 0, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.
- b. Workers' Compensation Insurance. If the CONTRACTOR employs personnel, the CONTRACTOR shall, at its own expense, maintain Workers' Compensation Insurance (statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).
- c. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against COUNTY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONTRACTOR or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONTRACTOR hereby waives its own right of recovery against COUNTY, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

The CONTRACTOR must name the COUNTY as an additional insured. The CONTRACTOR agrees that its liability insurance shall be primary and non-contributory to the COUNTY's and that CONTRACTOR's liability insurance policy shall so state.

21. INDEMNIFICATION

In accepting this Contract, the CONTRACTOR, including its successors and assigns, does hereby covenant and agree to indemnify and protect and save harmless the COUNTY and its officers and employees from all claims, actions, or damages of every kind and description which may accrue to or be suffered by any person, partnership, corporation, or other entity of any kind that arise in whole or in part from intentional tort(s), or negligent act(s) or omission(s), or strict liability of the CONTRACTOR or its employees, agents, successors, or assigns. If the above sentence applies and any suit or action is brought against the COUNTY, its officers, its employees, or any combination thereof, the CONTRACTOR, including its successors or assigns, shall defend the suit or action at his or her or their sole cost and expense and shall fully satisfy any judgment that is rendered against the COUNTY, its officers, its employees, or any combination thereof.

22. ASSUMPTION OF RISK

The placement and storage of personal property on said premises shall be the responsibility, and at the sole risk, of the CONTRACTOR.

23. ADJUSTMENT OF CLAIMS

The CONTRACTOR shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of the CONTRACTOR under this Contract. The CONTRACTOR agrees that all such claims, whether processed by the CONTRACTOR or CONTRACTOR's insurer, either directly or by means of an agent, will be handled by one key person.

24. ATTORNEY'S FEES/COST OF SUIT AND VENUE

- a. If either party files suit to enforce this Contract, parties agree that the prevailing party in any such action shall be entitled to collection costs, reasonable attorney's fees, and costs of suit.
- b. The parties agree that any suit pertaining to this Contract shall be filed in the Pacific County Superior Court.

25. DISPUTES

Differences between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due CONTRACTOR shall be decided by the COUNTY'S Contract representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S contract representative shall be final and conclusive, subject to their right to seek judicial relief pursuant to Choice of Law, Jurisdiction and Venue.

26. CHOICE OF LAW, JURISDICTION, AND VENUE

- a. This Contract has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.
- b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Pacific County, Washington.

27. SEVERABILITY

- a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
- b. If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.
- c. Should the COUNTY determine that the severed portions substantially alter this Contract so that the original intent and purpose of the Contract no longer exists, the COUNTY may, in its sole discretion, terminate this Contract.

28. CUTTING AND SALE OF FIREWOOD

- a. With prior approval of the County Parks Manager, the CONTRACTOR may cut particular fallen trees in Bush Pioneer Park for firewood to be sold only to campers for use while staying at county parks.
- b. Under no circumstances may the firewood cut in the park be donated or sold to the general public, the CONTRACTOR or CONTRACTOR's volunteers or employees, nor may the Contractor sell any firewood which has not been approved by the County Parks Manager.
- c. The CONTRACTOR will include a monthly accounting of all revenue received from the sale of firewood on the monthly report provided to the County Parks Manager.
- d. Violation of any of the terms within this section will result in revocation of this section of the Contract immediately. Any firewood that has been cut will be removed by the COUNTY with no reimbursement due to the CONTRACTOR.

29. CONTRACT PROVISIONS

Payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's strict compliance with all insurance requirements under this Contract. Payment to the Contractor shall be suspended in the event of non-compliance. Upon receipt of evidence of full compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.

DATED THIS 18th DAY OF March, 2022.

THE CHINOOK INDIAN NATION

BOARD OF COMMISSIONERS
PACIFIC COUNTY, WASHINGTON

 3/18/22
Name Date

Lisa Olsen, Chair

State of Washington
Unified Business ID Number

Frank Wolfe, Vice Chair

602 048 970

Mike Runyon, Commissioner

APPROVED AS TO FORM

ATTEST

Prosecutor's Office WSBA#

Amanda Bennett, Clerk of the Board