

## EQUIPMENT LEASE AGREEMENT

This equipment lease agreement ("Lease") is made between the parties described in Section 1.

### 1. Identification of the parties.

1.1 Lessor	
Lessor's name:	Grays Harbor County
Lessor's mailing address:	100 W. Broadway, Suite 31, Montesano, WA 98563
Lessor's phone number:	(360) 249-4222
Lessor's Authorized Representative:	John Becker
Authorized Representative's title:	Interim County Engineer
Authorized Representative's email address:	pwd@graysharbor.us

1.2 Lessee	
Lessee's name:	Pacific County
Lessee's mailing address:	211 North Commercial Street, Raymond, WA 98577
Lessee's phone number:	(360) 875-9368
Lessee's Authorized Representative:	Jennifer Oatfield
Authorized Representative's title:	Public Works Director
Authorized Representative's email address:	joatfield@co.pacific.wa.us

### 2. Background information.

2.1 Under RCW 39.33.010, a county may lease personal property to another county.

2.2 The Lessee requests to lease certain Equipment from the Lessor pursuant to the terms and conditions of this Lease.

The parties agree as follows:

### 3. Definitions. Each of the following terms has the meaning assigned to it:

"Lessor" means the Grays Harbor County as described in Section 1.1

"Lessee" means Pacific County as described in Section 1.2.

"Equipment" means all items of equipment described the Equipment List. Throughout this Lease and where appropriate, the term "Equipment" may be used to refer to individual items of equipment.

### 4. Equipment List.

4.1 The parties shall specify each item of Equipment subject to this Lease in the Equipment List, which is attached to this Lease as Exhibit 1 and incorporated herein. At a minimum, the form must include the following information for each item of Equipment:

- (a) a description of the Equipment and its identification number;
- (b) the rental rate for the equipment; and
- (c) the operator rate for the equipment.

4.2 Each party understands and acknowledges that the terms and conditions of this Lease apply to each item of Equipment in the Equipment List.

**5. Inspection by Lessee.** Upon receipt of each item of Equipment from the Lessor, the Lessee shall inspect the Equipment and notify the Lessor of any material damage or defect. If the Equipment is materially damaged or defective, then the Lessee shall refuse to accept such Equipment. Where the Lessee has taken possession and control of Equipment and has used the Equipment to perform any work, the Lessee will be deemed to have received the Equipment in good working order and condition.

**6. Use by Lessee.** For each item of Equipment,

6.1 The Lessee shall:

- (1) use the Equipment solely for the purposes for which the Equipment is intended and in accordance with the Equipment manufacturer's specifications.
- (2) at its own expense, perform any and all appropriate maintenance and keep the Equipment in good working order and condition. "Maintenance" includes but is not limited to providing all labor (except as provided in Section 7), fuel, lubrication, parts, and supplies of any kind whatsoever required to operate and maintain the Equipment. Upon request by the Lessor, the Lessee shall provide proof of maintenance in accordance with the Equipment manufacturer's specifications.
- (3) store and secure the Equipment in a safe manner free from any hazards, and reasonably protected from weather, vandalism, theft, and unauthorized use.
- (4) notify the Lessor of any damage to, failure by, or loss of the Equipment. The Lessee shall provide such notice in writing within 24 hours of having knowledge of any such damage or loss. The Lessee may request authorization from the Lessor (1) to make or provide for repairs and (2) to deduct the costs for such repairs from the payments due to the Lessor.

Except as provided in this section, the Lessor is not liable to the Lessee for any loss, damage, or expense, either incidental or consequential arising out of the delivery, delay in delivery, or operation of the equipment. In the event that any item of Equipment fails to perform through no fault of the Lessee, the Lessor's sole liability is limited to repair or replacement of parts or equipment, if available, at the location of Equipment use and, in such event, the rental rate will be abated from the date of notice of damage, failure, or loss by the Lessee to the date of repair or substitution. At its option, the Lessor may elect to terminate the lease for the failed Equipment and request return of the equipment pursuant to Section 11.

- (5) where necessary, provide access roads to the work site that are adequate to accommodate the Equipment. The Lessor is not liable for any damage or loss to the Equipment or suffered by the Lessee for the Lessee's failure to provide such roads. In the event that the Equipment becomes stuck at the work site, then the Lessee shall pay all costs relating to and arising out of freeing the Equipment.
- (6) return the Equipment to the Lessor in the same condition as received, ordinary wear and tear excepted.

6.2 The Lessee shall not allow the Equipment to be:

- (1) subjected to improper use, use in violation of any federal, state, or local laws or regulations, or use beyond the safe or manufacturer's rated limits, or the capacity of the Equipment.
- (2) altered or modified in any way without the Lessor's written consent. "Altered or modified" includes but is not limited to removing or covering any numbering, lettering, or insignia placed upon the Equipment.
- (3) used to transport hazardous materials or wastes, or explosives without the Lessor's written consent.

**7. Use and by Lessor; training and supervision.** The Lessor may at any time and for any reason lease of any item of Equipment on the condition that:

- (a) a Lessor's employee will operate the Equipment; and/or

- (b) a Lessor's employee will accompany the Equipment and train a Lessee's employee ("Trainee") on how to operate the Equipment. At the Lessor's discretion, the Lessor's employee may accompany the Equipment for any duration while the Trainee uses the equipment and supervise the Trainee.

**8. Inspection by Lessor; repair and replacement.** Upon receipt of each item of Equipment from the Lessee, the Lessor shall immediately inspect the Equipment and notify the Lessee of any damage or defect that did not exist prior to the Lessee's possession or use of the Equipment. If the Equipment is materially damaged or defective, then the Lessor may refuse to accept such Equipment and the Lessee shall (1) pay the Lessor any and all necessary and reasonable costs to repair or replace such Equipment, and (2) pay the Lessor any and all costs and expenses relating to or arising out of the Lessor's inability to further use the Equipment. If the Lessor refuses to accept the Equipment, then the Lessee shall maintain possession of the Equipment and the parties shall negotiate in good faith the disposition of the Equipment.

**9. Term; renewal.** This Lease is effective as of the date last executed below and terminates (a) twenty-one (21) days after the effective date, (b) upon return of the Equipment by the Lessee and acceptance by the Lessor, whichever is sooner, or (c) upon termination of this Lease pursuant to Section 17.

**10. Payment.**

**10.1 Rental and operator rates.** For each item of equipment, the Lessee shall pay the Lessor the rental rates specified in the Equipment List. Additionally, where the Lessor (a) operates the Equipment or (b) provides training or supervision pursuant to Section 7, the Lessee shall pay the Lessor the operator rates specified in the Equipment List attached as Exhibit 1.

**10.1.2 Changes to rates.** The parties understand and accept that the rates in the Equipment List are based on rates adopted by the Grays Harbor County Board of Commissioners ("Board") and may change from time to time. Where there is conflict between the rates in the Equipment List and the rates adopted by the Board, the rates adopted by the Board will control.

**10.2 Taxes; other costs and expenses.** The Lessee is solely responsible for payment of all federal, state, and local taxes. (2) all costs associated with labor, equipment, materials, loading and unloading, transportation, and (3) all other related expenses, including loss or damage to any item of equipment except as provided in Section 6.1(4).

**10.3 Vouchers.** Not later than thirty (30) days after return of Equipment and/or completion of work, the Lessor shall submit a certified itemized voucher of costs to the Lessee. Unless otherwise agreed, the Lessee shall pay the submitted voucher amount in full to the Lessor within thirty (30) days of receipt.

**11. Refusal; request for return.** The Lessor may at any time and for any reason (a) refuse to lease any requested item of Equipment or provide training and/or supervision; or (b) request the return of any item of Equipment in the Lessee's possession and control. Upon the Lessor's request to return any item of Equipment, the parties shall negotiate in good faith the timely return of such Equipment. Where the Lessor refuses to lease Equipment and/or provide training or supervision, the Lessor will not be held liable for such refusal for any reason.

**12. Title to Equipment.** The Equipment is and will remain the Lessor's personal property. No right, title, or interest in or to the Equipment will pass to the Lessee, except for the Lessee's rights to possession, quiet enjoyment, and use of the Equipment subject to the terms and conditions of this Lease and for so long as the Lessee is not in default of this Lease. Title to the Equipment is and will remain in the Lessor's name and the Lessee will, at its own cost and expense, protect and defend the Lessor's title from and against all claims, liens, encumbrances, and legal processes of creditors of the Lessee or of others claiming by or through the Lessee, and keep the Equipment free and clear from all such claims, liens, encumbrances, and processes. The Lessee acknowledges and agrees that Lessor is the owner of the Equipment for federal income tax purposes.

**13. No option to purchase.** Nothing in this Lease is intended to or may be construed as an agreement to purchase any Equipment or as giving the Lessee any option to purchase any Equipment.

**14. Disclaimer of Warranty and Limitation of Liability.** The Lessee acknowledges that the Equipment is of a size, design, type, and manufacture selected by the Lessee and that the Equipment is leased where is and as is.

The Lessee acknowledges and agrees that each item of Equipment listed on the Equipment List has been selected by the Lessee for inclusion in this Lease based solely upon the Lessee's own judgment and without reliance upon any representations or warranties by the Lessor. The Lessor is not the designer, manufacturer, distributor, or seller of the Equipment leased hereunder, and the Lessor makes no representations and specifically disclaims all warranties, express or implied, with respect to the equipment leased hereunder, including without limitation, the warranties of merchantability and fitness for a particular purpose or intended use. The Lessor shall

have no liability to the Lessee for any claim, loss or damage caused or alleged to be caused directly, indirectly, incidentally, or consequentially by the Equipment, by any inadequacy thereof or defect or deficiency therein, or by any incident whatsoever therewith, whether arising in tort, strict liability, negligence, contract or otherwise, or in any way related to or arising from this Lease. During the term of the Lease of each item of Equipment, the Lessor hereby assigns to the Lessee all of the rights and benefits of any warranties made by the manufacturer or seller of such Equipment, and the Lessor further agrees to exercise for the benefit of the Lessee any such rights and benefits which cannot be assigned.

**15. Indemnification.** Each party agrees to and shall defend, indemnify and hold harmless the other party, its officials, officers, agents and employees from and against all claims, losses, damages, judgments, or liabilities of whatever nature, including any portion thereof, arising from or related to the Indemnifying party's acts, omissions, or performance under this Lease. It is the intent of the parties that each party be responsible for its own actions occurring under this Lease. The parties agree all indemnity obligations shall survive the completion, expiration, or termination of this Lease.

**16. Insurance.** Pacific County shall obtain and maintain personal injury and property damage liability insurance through the Washington Counties Risk Pool. Grays Harbor County shall obtain and maintain personal injury and property damage liability insurance through the Washington Rural Counties Insurance Pool.

**17. Termination.** If the Lessee fails to comply with any of the provisions of this Lease, or if Lessor at any time and for any reason deems itself insecure, the Lessor may, at its option, cancel this Lease and immediately retake possession of the Equipment, without notice and with or without legal process, in which event the Lessee agrees to pay all costs in connection with repossession. In addition to the right to repossess the Equipment, the Lessor shall have the right to pursue any other remedy afforded to the Lessor by law or equity for breach of this Lease, regardless of the nature of such remedy. It is expressly understood and agreed that no remedy granted to the Lessor herein shall be exclusive of any other remedy, but rather, may be exercised by the Lessor separately or cumulatively.

**18. Assignment and delegation.**

**18.1 No assignments.** No party may assign any of its rights under this Lease except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law, or any other manner.

**18.2 No delegations.** No party may delegate any performance under this Lease except with the prior consent of the other party. That party shall not unreasonably withhold its consent.

**18.3 Ramifications of purported assignment or delegation.** Any purported assignment of rights or delegation of performance in violation of this section is void.

**19. Third party beneficiaries.** This Lease does not and is not intended to confer any rights or remedies upon any person other than the Parties.

**20. Governing law and forum selection.**

**20.1** The laws of the State of Washington govern all matters arising out of or relating to this Lease and all of the transactions it contemplates, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

**20.2** Any party bringing a legal action or proceeding against any other party arising out of or relating to this Lease shall bring the legal action or proceeding in the Superior Court of Grays Harbor County, Washington.

**21. Force majeure.**

**21.1 Definition of a Force Majeure Event.** As used in this Lease, a "Force Majeure Event" means any act or event, whether foreseen or unforeseen, that:

- (a) prevents a party (the "Nonperforming Party"), in whole or in part, from performing its obligations under this Lease or satisfying any conditions to the Performing Party's obligations under this Lease,
- (b) is beyond the reasonable control of and not the fault of the Nonperforming Party, and
- (c) the Nonperforming Party has been unable to avoid or overcome by the exercise of due diligence.

**21.2 Acts and events deemed to be Force Majeure Events.** In furtherance of the definition of Force Majeure Event and not in limitation of that definition, each of the following acts or events is deemed to meet the requirements of Section 21.1 and to be a Force Majeure Event: war, flood, lightning, drought, earthquake, fire, volcanic eruption, landslide, hurricane, cyclone,

typhoon, tornado, explosion, civil disturbance, act of God or the public enemy, terrorist act, military action, epidemic, famine or plague, shipwreck, action of a court or public authority or strike.

**21.3 Obligations of the Nonperforming Party.** During the continuation of the Force Majeure Event, the Nonperforming Party shall:

- (a) exercise commercially reasonable efforts to mitigate damages to the Performing Party;
- (b) exercise commercially reasonable due diligence to overcome the Force Majeure Event;
- (c) to the extent it is able, continue to perform its obligations under this Lease; and
- (d) cause the Suspension of Performance to be of no greater scope and no longer duration than the Force Majeure Event requires.

**21.4 Conditions precedent to continued suspension of performance.** During the continuation of the Force Majeure Event, the Nonperforming Party's performance of the covenants set forth in Section 21.3 are conditions precedent to its continued Suspension of Performance.

**21.5 Termination under force majeure.** If the Suspension of Performance continues for a period of more than twelve consecutive months as a result of a Force Majeure Event, then either party is entitled to terminate this Lease by giving notice to the other party pursuant to the notice provisions of this Lease.

## **22. Notices.**

**22.1 Requirement of a writing; permitted methods of delivery.** Each party giving any notice pursuant to this Lease shall give the Notice in writing and use one of the following methods of delivery, each of which for purposes of this Lease, is a writing: personal delivery, Registered or Certified Mail (in each case, return receipt requested and personal postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

**22.2 Addressees and addresses.** Each party giving a Notice shall address the Notice to the receiving party's Authorized Representative (the "Addressee") at the address listed in Section 1.

**22.3 Effectiveness of a Notice.** Except as provided elsewhere in this Lease, a Notice is effective only if the party giving the Notice has complied with Sections 22.1 and 22.2 and if the Addressee has received the Notice.

## **23. Amendments and Waivers.**

**23.1** The parties may not amend or waive this Lease, except pursuant to a writing executed by the party or parties against whom any amendment or waiver is sought to be enforced.

**23.2** No failure or delay in exercising any right or remedy or requiring satisfaction of any condition under this Lease, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

**23.3** A waiver made in writing on one occasion is effective only in that instance and only for the purpose that it is given and is not construed as a waiver on any future occasion.

**24. Severability.** If any provision of this Lease is determined to be invalid, illegal, or unenforceable, then the remaining provisions of this Lease remain in full force, provided that the essential terms and conditions of this Lease for each party remain valid, binding, and enforceable.

**25. Merger.** All prior and contemporaneous negotiations and contracts between the parties on the matters contained in this Lease are expressly merged into and superseded by this Lease.

**26. Counterparts.** The parties may execute this Lease in counterparts, each of which is an original, and all of which constitute only one Lease between the parties.

## **27. Signatures.**

**27.1** Each person signing below represents and warrants that they have the legal authority to enter into this Lease.

**27.2** Each party's electronic signature(s) is intended to authenticate this writing and to have the same force and effect as the use of manual signatures.

28. Exhibits. The following documents are attached and incorporated into this Lease by reference:

Exhibit No.	Exhibit title
1	Equipment List

IN WITNESS WHEREOF, the parties have executed this Lease as of the date last executed below.

**GRAYS HARBOR COUNTY  
BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Jill Warne, District 1, Chair

\_\_\_\_\_  
Kevin Pine, District 2

\_\_\_\_\_  
Vickie Raines, District 3

Attest:

\_\_\_\_\_  
Wendy Chatham, Clerk of the Board  
Date: \_\_\_\_\_

**PACIFIC COUNTY  
BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Lisa Olsen, Chair

\_\_\_\_\_  
Jerry Doyle, Commissioner

\_\_\_\_\_  
David Tobin, Commissioner

Attest:

\_\_\_\_\_  
Amanda Bennett, Clerk of the Board  
Date: \_\_\_\_\_

Exhibit 1: Equipment List

Item Description	Equipment ID#	Lease term	Rental rate	Operator rate	Date of inspection and acceptance by Lessee	Lessee initials	Date of inspection and acceptance by Lessor	Lessor initials
2021 Etnyre Chispreader	281	See Section 9 of Lease	\$88.36 per hour	\$51.65 per hour				