

**2023 CHINOOK PARK
MAINTENANCE AND OPERATION CONTRACT**

THIS CONTRACT, made and entered into this day between LARRY THOMAS and DOREENA THOMAS, 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. **LOCATION.** The park maintenance and operation site shall be CHINOOK PARK, located at 16 Chinook Park Rd, Chinook, WA 98614.
2. **DESCRIPTION OF SERVICES.** During the term of this CONTRACT, the CONTRACTOR shall provide the following services:
 - A. Keep the park clean and available for renters of the park.
 - B. Have the park available for daily use by the general public between the hours of 8:00 AM and 10:00 PM, beginning May 1, 2023, through September 30, 2023. The operation of the park can exceed five (5) months, but must be consecutive with the regular operating period and only upon approval by the COUNTY.
 - C. Provide the proper janitorial/custodial service for the park restrooms. The COUNTY will provide all necessary operating supplies for the restrooms, supplied at the COUNTY'S sole cost and expense.
 - D. Provide all general maintenance of the park grounds, equipment and facilities to include, but not limited to, mowing, weeding and litter pickup, all to be completed with equipment provided by the COUNTY. The COUNTY agrees to allow the CONTRACTOR to use the COUNTY's riding lawn mower (Husqvarna, Serial No. 021911A001634) with no usage fee, for the purpose of park mowing and for park maintenance within the boundaries of Chinook Park. The COUNTY agrees to maintain the mower for the duration of this CONTRACT. The COUNTY will provide fuel for the riding lawn mower. At the conclusion of this CONTRACT, the mower shall be returned to the COUNTY in proper working order.
 - E. Provide reasonable watchman security services.
 - F. The CONTRACTOR shall not allow property owned by the COUNTY to be removed from premises. This includes, but is not limited to, any fallen trees located within the park.

3. **PARK FEES.** The CONTRACTOR shall not collect fees from persons or groups using the park.
4. **PARK CLOSURE.** The CONTRACTOR may temporarily close the park upon prior approval of the COUNTY with at least seven (7) days' prior written notice of the Pacific County Department of Public Works. Closing of the park on short notice is only allowed during an emergency or a severe weather event.
5. **LONG TERM USE.** As this is a day use only park, the CONTRACTOR will not allow long term use.
6. **STRUCTURES.** No structures shall be erected on the premises, and no residence will be permitted, without prior written approval of the COUNTY. The CONTRACTOR shall bear all costs associated with placement and/or
7. **PAYMENT.** The COUNTY will provide a space at the park for the location of a self-contained recreation vehicle for the CONTRACTOR; the COUNTY will provide electrical power, water, sewer and garbage disposal services to the site. No other utility shall be provided.

The COUNTY will pay a one-time reimbursement to the CONTRACTOR in an amount not to exceed \$900 (NINE HUNDRED AND NO/100 DOLLARS) for the CONTRACTOR'S cost of obtaining the insurance policy as described in Paragraph 22 below. The CONTRACTOR will pay the insurance premium and present a receipt to the COUNTY for reimbursement. In the event that the cost of the insurance exceeds \$900, CONTRACTOR shall be solely responsible for paying the remaining balance due.

8. **STRUCTURES.** The storage of equipment or articles by the CONTRACTOR within the park shall be limited to equipment or articles that are used for the park's maintenance and that can be stored in the park storage shed. No structures shall be erected on the premises, and no residence will be permitted, without prior written approval of the COUNTY. The CONTRACTOR shall bear all costs associated with placement and/or removal of CONTRACTOR'S facility.
9. **APPEARANCE.** The CONTRACTOR shall keep and maintain their recreational vehicle, and the area outside of their recreational vehicle, in a neat and sanitary condition at all times. The COUNTY reserves the right to request removal of personal items around the recreational vehicle, if it appears to be disorderly.
10. **REPAIRS OR MAINTENANCE BY COUNTY.** The COUNTY shall be responsible for repairs and maintenance to existing road, seawall, and COUNTY owned buildings and will provide tree and brush maintenance when necessary. 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. The COUNTY reserves the right to determine whether 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. **EMPLOYEES OF CONTRACTOR.** The CONTRACTOR shall not employ anyone in fulfillment of this CONTRACT who is required to register as a sex offender under Chapter 9A.44.130 RCW or who has been prohibited from contact with a vulnerable adult under Chapter 74.34.130 RCW.
12. **RELATIONSHIP OF PARTIES.** It is understood by the parties that CONTRACTOR is an independent contractor with respect to COUNTY, and it not an employee of COUNTY. COUNTY shall not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of CONTRACTOR or its employees.
13. **FEDERAL, STATE AND LOCAL PAYROLL TAXES.** No federal or state income tax, or payroll tax of any kind shall be witheld or paid by COUNTY on behalf of CONTRACTOR or the employees of CONTRACTOR. No employees of CONTRACTOR shall be treated as employees with respect to services performed hereunder for federal or state tax purposes. CONTRACTOR shall be solely responsible for paying any and all taxes, FICA, worker's compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit-sharing, and other benefits for CONTRACTOR and its employees, servants, and agents.
14. **WORKER'S COMPENSATION.** No workers' compensation insurance shall be obtained or paid for by the COUNTY concerning CONTRACTOR or the employees of CONTRACTOR. CONTRACTOR shall comply with workers' compensation laws concerning CONTRACTOR and its employees of CONTRACTOR.
15. **FRINGE BENEFITS.** Because CONTRACTOR is an independent business, neither CONTRACTOR nor any employees of CONTRACTOR shall be eligible for or participate in any employee pension, health or fringe benefit plan of COUNTY.
16. **TERM AND TERMINATION.** This CONTRACT shall commence on January 1, 2023, and terminate on December 31, 2023. 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, return receipt requested, of such intent to cancel or terminate this entire CONTRACT at least thirty (30) 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 removing 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.
17. **RETURN OF RECORDS.** Upon termination of this CONTRACT, CONTRACTOR shall deliver all records, notes, data, memoranda, models, and equipment of any nature that are in CONTRACTOR'S possession or under CONTRACTOR'S control and that are the COUNTY'S property.
18. **ASSIGNMENT/SUBCONTRACTORS.** CONTRACTOR's obligation under this CONTRACT may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of the COUNTY. CONTRACTOR shall not subcontract any part of the work to be performed under this CONTRACT or assign this CONTRACT without the specific written consent of the COUNTY.
19. **COMPLIANCE WITH LAWS.** CONTRACTOR shall comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this CONTRACT, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination, and licensing laws and regulations.
20. **PUBLIC RECORDS ACT.**
- A. This CONTRACT and all public records associated with this CONTRACT 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 CONTRACT, 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 CONTRACT 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 CONTRACT 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 CONTRACT.

21. **INSURANCE.** 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.

- D. **Additional Insured.** The CONTRACTOR shall provide the COUNTY with properly executed certificate of insurance and provide a policy endorsement naming the COUNTY as an additional insured. 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.

22. **INDEMNIFICATION/HOLD HARMLESS.**

- A. To the fullest extent permitted by law, the CONTRACTOR agrees to indemnify, defend and hold the COUNTY and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property, including the loss of use resulting therefrom. The indemnity includes but is not limited to: 1) liability arising in whole or in part by any action or omission, negligent or otherwise, of the CONTRACTOR, its employees, agents or volunteers or CONTRACTOR's subcontractors and their employees, agents or volunteers; or 2) liability directly or indirectly arising out of, resulting from, or in connection with performance of this CONTRACT; or 3) liability based upon the CONTRACTOR'S or its subcontractors' use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of the CONTRACTOR shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the COUNTY. This indemnification obligation of the CONTRACTOR shall not be limited in any way by the Washington State Industrial Insurance Act RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the CONTRACTOR hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the CONTRACTOR are a material inducement to COUNTY to enter into the CONTRACT, are reflected in the CONTRACTOR's compensation, and have been mutually negotiated by the parties
- B. **Participation County – No Waiver.** The COUNTY reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of CONTRACTOR's indemnity obligations under the CONTRACT.
- C. **Survival of Contractor's Indemnity Obligations.** The CONTRACTOR agrees all CONTRACTORS's indemnity obligations shall survive the completion, expiration or termination of this CONTRACT.

23. **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.
24. **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.
25. **ATTORNEY'S FEES.** 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.
26. **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.
27. **NOTICES.** All notices required or permitted under this CONTRACT shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, certified mail, return receipt requested, addressed as follows:

For COUNTY:

Pacific County Department of Public Works
211 N Commercial St
Raymond, WA 98577
360-875-9368

For INDEPENDENT CONTRACTOR:

Larry and Doreena Thomas
PO Box 337
Chinook, WA 98614
402-515-0333

Either party may change such address from time to time by providing written notice to the other in the manner set forth above.

28. **AMENDMENT.** This CONTRACT may be modified or amended if the amendment is made in writing and is signed by both parties and approved by the Board of County Commissioners.
29. **APPLICABLE LAW.** This CONTRACT shall be governed by the laws of the State of Washington. The venue of any litigation between the parties relating to this CONTRACT shall be the Superior Court of Pacific County, State of Washington.

30. **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.

31. **NON-WAIVER.** The failure of either party to exercise any of its rights under this CONTRACT for a breach thereof shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach.

32. **ENTIRE CONTRACT.** This CONTRACT contains the entire CONTRACT of the parties and there are no other promises or conditions in any other CONTRACT whether oral or written. This CONTRACT supersedes any prior written or oral contracts between the parties.

DATED THIS _____ DAY OF _____, 2023

INDEPENDENT CONTRACTOR

BOARD OF COMMISSIONERS
PACIFIC COUNTY, WASHINGTON

Larry Thomas

Lisa Olsen, Chair

Doreena Thomas

Jerry Doyle, Vice-Chair

State of Washington
Unified Business ID Number

David Tobin, Commissioner

APPROVED AS TO FORM

ATTEST

Prosecutor's Office WSBA #

Amanda Bennett Date
Clerk of the Board