

2022 BUSH PIONEER PARK HOST AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into _____, by and between THE CHINOOK INDIAN NATION, hereinafter called the HOST, 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 HOST 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 BUSH PIONEER PARK located at 1 Park Street, Bay Center, WA 98527.
2. **TERM.** This Agreement shall commence on May 27, 2022 and shall terminate on December 31, 2022.
3. **DESCRIPTION OF SERVICES.** During the term of this Agreement, the HOST 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 6:00 AM and 10:00 PM. The fee-paying user will be provided entrance via the exit from the park during hours of closure to the general public.
 - C. Provide the proper janitorial/custodial service for the park restrooms. The COUNTY agrees to provide all necessary operating supplies for the restrooms, supplied at 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 (riding lawn mower).
 - E. The HOST 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.

4. **PARK FEES.**

- A. The park fees shall be as established or revised by resolution of the Board of Pacific County Commissioners (Presently Resolution No. 2022-029, adopted March 22, 2022).
- B. The HOST shall collect fees and applicable taxes, including Lodging Taxes in accordance with Chapter 67.28.180 RCW. Said fees collected by the HOST shall be retained by the HOST and shall constitute partial payment to the HOST for services provided.
- C. The HOST understands and agrees to forward the taxes collected to the Washington State Department of Revenue and other appropriate parties at the appropriate times and provide proof to the Department of Public Works of such annually.
- D. The fiscal records of such collections and disbursements will be kept by the HOST, and reported monthly on the attached form (Attachment A) to the Department of Public Works, **no later than the 10th day of each month.** A consecutively numbered receipting system shall be provided by the HOST and used to receipt all camping fees. This system shall consist of a three-part receipt with the original copy to the customer, the second copy to be kept by the HOST and the third copy to be sent to the COUNTY with weekly deposits.

5. **PARK CLOSURE.** The HOST may temporarily close the park upon prior approval of the COUNTY with at least seven (7) days' prior written notice to the Pacific County Parks Manager. Closing of the park on short notice is only allowed during an emergency or a severe weather event.

6. **LONG TERM USE.** Agreements for long-term use of the facilities in excess of three (3) weeks shall require prior approval of the COUNTY.

7. **PAYMENT.** The COUNTY will pay a hosting fee of \$2,400 (Two Thousand Four Hundred Dollars) for the contract period to the HOST 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 10th, July will be paid by August 10th, etc.

8. **ADDITIONAL COMPENSATION.** In addition to the hosting fee (referenced in Section 7 above):

- A. The COUNTY will provide a space at the park for the location of a recreation vehicle for the HOST; the COUNTY will provide electrical power, basic phone, water, sewer and garbage disposal services to the site. No other utility services shall be provided.

- i. The HOST will reimburse the COUNTY for any phone charges deemed to be used for the HOST's private use upon receiving a copy of the phone bill showing itemization for those charges.
- B. The COUNTY will pay a one-time reimbursement to the HOST in an amount not to exceed \$900 (Nine Hundred Dollars) for the HOST's cost of obtaining the insurance policy as described in Paragraph 23 below. The HOST will pay the insurance premium and present a receipt to the COUNTY for reimbursement. In the event that the cost of the insurance premium exceeds \$900, the HOST shall be solely responsible for paying the remaining balance due.

9. **CUTTING AND SALE OF FIREWOOD.**

- A. With prior approval of the County, the HOST 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 HOST or HOST's volunteers or employees, no may the HOST sell any firewood which has not been approved by the Department of Public Works.
- C. The HOST will include a monthly accounting of all revenue received from the sale of firewood on the monthly report provided to the Department of Public Works.
- 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 the COUNTY with no reimbursement to the HOST.

- 10. **STRUCTURES.** No structures shall be erected on the premises, and no residence will be permitted, without prior written approval of the COUNTY. The HOST shall bear all costs associated with placement and/or removal of HOST's facility.
- 11. **APPEARANCE.** The HOST 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 recreation vehicle if it appears to be disorderly.
- 12. **REPAIRS OR MAINTENANCE BY COUNTY.** 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 HOST or other affected parties.

13. **EMPLOYEES OF HOST.** The HOST shall not employ anyone in fulfillment of this Agreement 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.
14. **RELATIONSHIP OF PARTIES.** It is understood by the parties that HOST is an independent contractor with respect to COUNTY, and is 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 HOST or its employees.
15. **FEDERAL, STATE, AND LOCAL PAYROLL TAXES.** No federal or state income tax, or payroll tax of any kind shall be withheld or paid by COUNTY on behalf of HOST or the employees of HOST. No employees of HOST shall be treated as employees with respect to services performed hereunder for federal or state tax purposes. HOST 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 HOST and its employees, servants, and agents.
16. **WORKERS' COMPENSATION.** No workers' compensation insurance shall be obtained or paid for by COUNTY concerning HOST or the employees of HOST. HOST shall comply with workers' compensation laws concerning HOST and the employees of HOST.
17. **FRINGE BENEFITS.** Because HOST is an independent business, neither HOST nor any employees of HOST shall be eligible for or participate in any employee pension, health or fringe benefit plan of COUNTY.
18. **TERMINATION.** Either party shall have the right of cancellation or termination of this Agreement 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 Agreement 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 HOST shall be solely responsible for removing all their personal property from the park grounds within (30) thirty days of the notification of cancellation or termination of this Agreement. If said personal property has not been removed within the time specified, the COUNTY shall have said property removed and the HOST shall be solely responsible for bearing all costs involved.
- B. Should criminal charges be filed in a jurisdictional court, against the HOST, this Agreement may be terminated, and all personal property of the HOST must be removed, within three (3) days.

19. **RETURN OF RECORDS.** Upon termination of this Agreement, HOST shall deliver all records, notes, data, memoranda, models, and equipment of any nature that are in HOST'S possession or under HOST'S control and that are the COUNTY'S property.
20. **ASSIGNMENT/SUBHOSTS.** HOST's obligations under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of the COUNTY. HOST shall not subcontract any part of the work to be performed under this Agreement or assign this Agreement without the specific written consent of the COUNTY.
21. **COMPLIANCE WITH LAWS.** HOST 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 Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination, and licensing laws and regulations.
22. **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 HOST are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the HOST agrees to make them promptly available to the COUNTY. If the HOST 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 HOST 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 HOST 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 HOST (a) of the request and (b) of the date that such information will be released to the requester unless the HOST obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the HOST 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 HOST to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the HOST for releasing records not clearly identified by the HOST as confidential or proprietary. The COUNTY shall not be liable to the HOST 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 HOST or the HOST's sub Hosts 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 HOST 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 HOST and is not "work made for hire" within the terms of this Agreement.
23. **INSURANCE.** Without limiting the HOST'S indemnification of COUNTY, and prior to commencement of this Agreement, HOST shall obtain, provide and maintain during the term of this Agreement, policies or insurance of the type and amounts described below and, in a form, satisfactory to the COUNTY.
- A. General Liability Insurance. HOST 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 HOST employs personnel, the HOST 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 Agreement shall be endorsed to waive subrogation against COUNTY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow HOST or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. HOST hereby waives its own right of recovery against COUNTY, and shall require similar written express waivers and insurance clauses from each of its sub Hosts.
- D. Additional Insured. HOST shall provide the COUNTY with properly executed certificate of insurance and provide a policy endorsement naming the COUNTY as an additional insured. HOST agrees that its liability insurance shall be primary and non-contributory to the COUNTY's and that HOST's liability insurance policy shall so state.

24. **INDEMNIFICATION.** In accepting this Agreement, the HOST, 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 HOST 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 HOST, 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.
25. **ASSUMPTION OF RISK.** The placement and storage of personal property on said premises shall be the responsibility, and at the sole risk, of the HOST.
26. **ADJUSTMENT OF CLAIMS.** The HOST 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 HOST under this Agreement. The HOST agrees that all such claims, whether processed by the HOST or HOST's insurer, either directly or by means of an agent, will be handled by one key person.
27. **ATTORNEY'S FEES.** If either party files suit to enforce this Agreement, parties agree that the prevailing party in any such action shall be entitled to collection costs, reasonable attorney's fees, and costs of suit.
28. **DISPUTES.** Differences between the HOST and the COUNTY, arising under and by virtue of this Agreement, 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 HOST shall be decided by the COUNTY'S representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S representative shall be final and conclusive, subject to their right to seek judicial relief.

29. **NOTICES.** All notices required or permitted under this Agreement 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 North Commercial Street
Raymond, WA 98577
360-875-9368

For HOST:

The Chinook Indian Nation
PO Box 368
Bay Center, WA 98527

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

30. **AMENDMENT.** This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.
31. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of Washington. The venue of any litigation between the parties relating to this Agreement shall be the Superior Court of Pacific County, State of Washington.
32. **SEVERABILITY.**
- A. If a court of competent jurisdiction holds any part, term or provision of this Agreement 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 Agreement did not contain the particular provision held to be invalid.
 - B. If any provision of this Agreement 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 Agreement so that the original intent and purpose of the Agreement no longer exists, the COUNTY may, in its sole discretion, terminate this Agreement.

33. **NON-WAIVER.** The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach.
34. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties. +

DATED THIS ____ DAY OF _____, 2022

HOST

THE CHINOOK INDIAN NATION

Name

Date

State of Washington

Unified Business ID Number

APPROVED AS TO FORM

Prosecutor's Office

WSBA #

BOARD OF COMMISSIONERS
PACIFIC COUNTY, WASHINGTON

Lisa Olsen, Chair

Frank Wolfe, Vice-Chair

Michael Runyon, Commissioner

ATTEST

Amanda Bennett, Clerk of the Board