CONTRACT
BETWEEN PACIFIC COUNTY FAIR
AND
PITCHWOOD, INC.

THIS CONTRACT is made by and between **Pitchwood, Inc.** ("VENDOR") and PACIFIC COUNTY, a political subdivision of the State of Washington, hereinafter referred to as "COUNTY", operator of the annual Pacific County Fair, hereinafter referred to as "FAIR".

THIS CONTRACT allows the VENDOR to operate a "beer garden" at the County Fair from August 24 through 27, 2016, inclusive, from the hours of 1:00PM ~~to 9:00PM.~~ 10PM

THE VENDOR AGREES AS FOLLOWS:

1. The VENDOR will lease the following described space during the period of August 24 through 27, 2016 for the 2016 Pacific County Fair: *Fenced enclosure between the Commercial Building and the Willapa Valley Booster Club building.*

2. Pay 100% of the total rental fee in the amount of one hundred fifty dollars ($150) upon signing the CONTRACT. Checks must be payable to the Pacific County Fair. There will also be 20% of total profit (after expenses) due upon completion of the Fair.

3. A Certificate of Liability Insurance (in accordance with Section 18) and Form W-9 (attached) shall be submitted to the Commissioners' Office with the signed CONTRACT by 12:00PM on Monday, August 22, 2016.

4. Shall provide certified security during the hours of operation (1:00PM – 9:00PM) and the security plan shall be submitted to the Fair Manager by 12:00PM on Monday, August 24, 2015, with a copy to the Pacific County Sheriff's Office.

5. Be in compliance with Title 314 Washington Administrative Code for the WA State Liquor Control Board.

6. Post in a conspicuous place a placard, plainly printed, showing menus and prices of all foods/drinks sold.

7. Not sell food or goods for less than the average price charged by all concessionaires at the Fair.

8. VENDOR shall ensure that no alcoholic beverage is removed from the "beer garden.

9. Provide copy of Liquor License issued by the WA State Liquor Control Board enabling the sale of alcohol at the Pacific County Fairgrounds before opening.

10. The beer garden shall be cordoned off at all times and minors shall not be allowed to enter at any time.

11. VENDOR shall obtain a Temporary Food Service License from the Pacific County Department of Community Development. This is the responsibility of the VENDOR. Failure to have license will result in a late fee to be charged by said department and possible shut down of booth, should VENDOR fail to obtain said license. Temporary Food Service License Application can be obtained from Department of Community Development; 360/875-9356, Monday through Thursday 7:30AM to 12:30PM.

VENDOR shall also ensure that one person with a valid food worker's card is present **at all times** during the "beer garden" hours of operation. Food handler card(s) must be available for the Community Development Food Inspector to check during a food inspection (Chapter 246-217 WAC). Food handler's cards can be obtained from the Department of Community Development; 360/875-9356, Monday through Thursday 7:30AM to 12:30PM.

The Food Inspector will be visiting the Fairgrounds throughout the Fair. All rules and guidelines of this department will be strictly adhered to and the Inspector's decision is final and will be upheld by the Fair staff.

12. The VENDOR shall not employ at the Fair persons required to register under Chapter 9A.44.130 RCW.

13. Perform no electrical wiring on the Fairgrounds without the permission of the FAIR. Electrical work permitted by the FAIR must be done under the supervision of an electrician appointed by the FAIR.

14. Agree to decorate leased space, furnish booth signs and to provide all extra carpenter work and material used. VENDOR shall only use clean canvas flameproof paper, plastics or other decorating material. VENDOR must keep leased area neat and orderly at all times. VENDOR and its help must be neat and tidy in their dress and fully clothed, including shoes.

15. Remove all debris and temporary structures from County Fair property by 2:00PM on Sunday, ~~August 28, 2016, or~~ secure written permission to further hold leased space and later remove said property or said property shall be forfeited to the County at its option.

SEPT 4, 2016

16. IMDEMNIFICATION/HOLD HARMLESS

A) **Indemnification by Vendor.** To the fullest extent permitted by law, the VENDOR 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) which 1) are caused in whole or in part by any action or omission, negligent or otherwise, of the VENDOR, its employees, agents or volunteers or VENDOR's subvendors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this CONTRACT; or 3) are based upon the VENDOR'S or its subvendors' use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of the VENDOR 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 VENDOR shall not be limited in any way by the Washington State Industrial Insurance Action RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the VENDOR hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the VENDOR are a material inducement to COUNTY to enter into the CONTRACT, are reflected in the VENDOR's compensation, and have been mutually negotiated by the parties.

B) **Survival of VENDOR's Indemnity Obligations.** The VENDOR agrees all VENDORS's indemnity obligations shall survive the completion, expiration or termination of this CONTRACT.

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

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.

A) **Disputes.** Differences between the VENDOR 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 VENDOR 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.**

B) **Choice of Law, Jurisdiction and Venue.** 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.

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.

C) **Severability.** 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.

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.

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.

18. INSURANCE

Without limiting the VENDOR'S indemnification of COUNTY, and prior to commencement of this CONTRACT, VENDOR 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.** VENDOR 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.** VENDOR 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 VENDOR or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. VENDOR hereby waives its own right of recovery against COUNTY, and shall require similar written express waivers and insurance clauses from each of its sub-vendors.

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

19. PUBLIC RECORDS ACT

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 VENDOR are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the VENDOR agrees to make them promptly available to the COUNTY. If the VENDOR 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 VENDOR 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 VENDOR 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 VENDOR (a) of the request and (b) of the date that such information will be released to the requester unless the VENDOR obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the VENDOR fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

The COUNTY has, and by this section assumes, no obligation on behalf of the VENDOR to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the VENDOR for releasing records not clearly identified by the VENDOR as confidential or proprietary. The COUNTY shall not be liable to the VENDOR for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

20. CAUSE FOR TERMINATION: This contract may be terminated by the COUNTY if:

A) In the judgment of the COUNTY, it is unable to present an agricultural fair on the dates specified in this CONTRACT.

B) There is shown to exist fraud, collusion, or conflict of interest on the part of any of the parties and/or their agents in obtaining this CONTRACT or carrying out the provisions hereof. For these purposes, the above terms are as defined by the laws of the State of Washington, including, but not in lieu of these laws, conflict of interest is also defined to include the giving or receiving of any gratuity or the entering of any employment relationship between a COUNTY officer or employee and the VENDOR that is not first disclosed and approved by the COUNTY in public meeting.

C) Termination by the COUNTY as otherwise provided for in this CONTRACT.

VENDOR agrees that VENDOR will perform services under this CONTRACT as an independent VENDOR and not as an agent, employee, or servant of COUNTY. The parties agree that VENDOR is not entitled to any benefits or rights enjoyed by employees of COUNTY. COUNTY specifically has the right to direct and control VENDOR'S own activities in providing services in accordance with the specifications set out in this CONTRACT. COUNTY shall only have the right to ensure performance. VENDOR agrees that it shall not in any manner represent itself or permit itself to be represented to the public as an agent of the COUNTY.

THIS CONTRACT may not be modified orally and modifications must be accomplished with the same formalities as are required for the execution of this CONTRACT.

FURTHER, THIS CONTRACT may be renewed for the 2016 Pacific County Fair.

The VENDOR may not delegate or assign their duties or rights without written permission of the COUNTY.

Should the need arise during the term of this CONTRACT for either party to notify the other for a change in address or otherwise, the following contacts shall be used:

For the COUNTY: Kathy Spoor, County Administrative Officer/Risk Manager
P O Box 187
South Bend, WA 98586
360/875-9334

For VENDOR: Pitchwood, Inc.
74 Washington Cemetery Road
Raymond, WA 98577

IN WITNESS WHEREOF, representatives of both the COUNTY and the VENDOR executed this CONTRACT on the date(s) so noted below.

PITCHWOOD , INC.

8/2/16

Signature Date

BOARD OF COUNTY COMMISSIONERS
PACIFIC COUNTY, WASHINGTON

_____
Frank Wolfe, Chairman

_____
Steve Rogers, Commissioner

_____
Lisa Ayers, Commissioner

ATTEST:

_____
Marie Guernsey, Clerk of the Board

Date:_____