2019 CHINOOK PARK
MAINTENANCE AND OPERATION CONTRACT

THIS CONTRACT, made and entered into this day between The Port of Chinook, hereinafter called the PORT, a political subdivision of the State of Washington, and the County of Pacific, a municipal corporation of the State of Washington, hereinafter called the COUNTY.

WHEREAS, the Interlocal Cooperation Act, as amended, and codified in Chapter 39.34 of the Revised Code of Washington provides for interlocal cooperation between governmental agencies; and

WHEREAS, the COUNTY desires to have certain park maintenance and operation services performed, and the PORT 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 CHINOOK PARK.

2. The PORT shall have the park available for day use only by the general public between the hours of 7AM until dusk from May 1 through September 30, 2019. The park shall be open an additional thirty (30) days of consecutive operation, either prior to May 1 or after September 30, or a split combination thereof. The operation of the park can exceed six (6) months, but must be consecutive with the regular operating period and at the PORT’s discretion, but the COUNTY will not provide compensation for the extended period.

3. The PORT will provide the park user reasonable security from injury to themselves or damage to their possessions. Furthermore, after hour users of the Park authorized by the COUNTY will be provided entrance and exit from the park during hours of closure to the general public.

4. The PORT shall not collect fees from persons or groups using the park.

5. If a group requests permission for overnight camping for a special function, advance written authorization must be given by the COUNTY.

6. The COUNTY will pay a hosting fee of SIX THOUSAND AND NO/100 DOLLARS ($6,000) in equal monthly installments of SEVEN THOUSAND FIFTY AND NO/100 DOLLARS ($750), beginning in May for the 2019 calendar year.

7. No structures shall be erected on the premises and no residences will be permitted without prior approval of the COUNTY.
8. The storage of equipment or articles by the PORT within the park shall be limited to
   equipment or articles that are used for the park’s maintenance and that fit into the park
   storage shed.

9. **Custodial Services:** The PORT shall provide, at their expense, regular janitorial/custodial
   services which ensure the park and restrooms are at all times maintained in a sanitary
   condition.

10. The COUNTY agrees to allow the PORT to use their 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 PORT agrees to maintain the
    mower at their cost for the duration of this Contract. At the conclusion of this Contract, the
    mower shall be returned to the COUNTY in proper working order.

11. The PORT shall provide all general maintenance of the park grounds, equipment and
    facilities to include, but not limited to, mowing, weeding and litter pickup, etc., all to be
    completed with their own equipment, with the exception of the County mower.

12. The COUNTY shall be responsible for repairs and maintenance to existing road, seawall, and
    major 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 PORT or other affected parties.

13. The PORT will provide reasonable watchman security services.

14. The PORT agrees to provide all necessary operating supplies for the restrooms, supplied at
    the PORT’s sole cost and expense.

15. Electric power, water, sewerage, garbage disposal services and local phone service shall be
    provided by the COUNTY for park operations. No other utility services shall be provided.

16. The parties mutually understand and agree that the COUNTY shall make no deductions on
    account of taxes and the PORT further understands and agrees that the responsibility for
    payment of taxes remains with the PORT. It is further understood that the PORT 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.
17. This Contract shall commence May 1, 2019 and terminate December 31, 2019. 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 sixty (60) 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. The PORT shall be solely responsible for removing all their property from the park grounds within thirty (30) days of the notification of cancellation or termination of this Contract. If said property has not been removed within the time specified, the COUNTY shall have said property removed and the PORT shall be solely responsible for bearing all costs involved.

18. The PORT 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.

   It is understood that the PORT 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.

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 PORT are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the PORT agrees to make them promptly available to the COUNTY. If the PORT 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 the law, the PORT 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 PORT and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the COUNTY’s sole obligation shall be to notify the PORT (a) of the request and (b) of the date that such information will be released to the requester unless the PORT obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the PORT 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 PORT to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the PORT for releasing records not clearly identified by the PORT as confidential or proprietary. The COUNTY shall not be liable to the PORT 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 PORT or the PORT’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 PORT 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 PORT and is not “work made for hire” within the terms of this Agreement.

20. LIABILITY

Without limiting the PORT’s indemnification of COUNTY, and prior to commencement of this Contract, PORT 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. PORT 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 PORT employs personnel, the PORT 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 PORT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. PORT 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 PORT must name the COUNTY as an additional insured. The PORT agrees that its liability insurance shall be primary and non-contributory to the COUNTY’s and that PORT’s liability insurance policy shall so state.

21. INDEMNIFICATION

In accepting this Contract, the PORT, 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 PORT 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 PORT, including it successors or assigns, shall defend the suit or action at his or her sole cost and expense and shall fully satisfy any judgment that is rendered against the COUNTY, its officers, its employees, or any combination thereof. If the COUNTY determines in good faith that its interests cannot be represented by the PORT and it is necessary for it to employ separate counsel, the COUNTY shall notify the PORT in writing, and the costs for such separate counsel shall be the responsibility of the COUNTY.

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 PORT.

23. ADJUSTMENT OF CLAIMS

The PORT shall provide for the prompt and efficient handling of all claims for the bodily injury, property damage or theft arising out of the activities of the PORT under this Contract. The PORT agrees that all such claims, whether processed by the PORT or PORT’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 PORT 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 PORT 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.

DATED THIS _____ day of ____________________, 201____

BOARD OF COMMISSIONERS
THE PORT OF CHINOOK
PO BOX 185
CHINOOK, WA 98614

__________________________
By:
Chairperson for PORT of Chinook

ATTEST:

__________________________
By: Guy Glenn, Jr.
Manager of PORT of Chinook

APPROVED AS TO FORM:

Prosecutor's Office    WSBA#