

## CONTRACT FOR SERVICES

(Pursuant to Resolution & Order No. 2024-068)

**THIS CONTRACT** is made and entered into by and between LINN COUNTY, a political subdivision of the State of Oregon, (the "County"), of P.O. Box 100, Albany, Oregon, 97321, and

**NAME OF CONTRACTOR**, of Address, (the "Contractor"), whose Federal Employer Identification No. is XXXXXXXX.

**BRIEF PROJECT DESCRIPTION:** Linn County Parks Food Service and Recreation Rentals Concession (hereinafter referred to as the "Project"). Contractor will have permission to provide food services and recreation rentals at the following Linn County managed parks; Lewis Creek County Park, Sunnyside County Park, Edgewater Park (on Foster Reservoir), and Waterloo County Park. Please see Exhibit A (request for proposal) for a description of the scope of services.

**TOTAL NOT-TO-EXCEED AMOUNT:** Proposed Permit Fee

**WHEREAS**, The County requires the work and services described herein, and the Contractor is willing, skilled, and agrees to perform all the work and services described herein, now, therefore, **IT IS AGREED:**

1. **Term of the Contract.** This Contract shall be effective and services required hereunder shall commence on the date the Contract is executed by both parties, and shall terminate one year from date Contract is executed unless otherwise terminated or extended as provided herein.
2. **Consideration.** As consideration for the performance of all terms and conditions set forth in this Contract, as described in Exhibit A, the Contractor shall pay the County \$XXX. The Contractor shall pay the County within 30 days following the date the invoice is received. If the Contractor fails to pay within 45 days of such date, the Contractor may be assessed overdue account charges up to a rate of 2/3% per month (8% APR) or the maximum rate allowed by law on the outstanding balance and the permit to operate will be revoked.
3. **Services to be performed by the Contractor.** Contractor agrees to perform the following services to the satisfaction of the County:
  - a. Contractor will be responsible for providing project services on mutually-agreed dates, with the selected vendor(s) assisting the County in identifying peak days and times that serves the interest of both the County visitors and vendor.  
Contractor is encouraged to offer services and/or products that would be complementary to the existing use of the park(s), facilities and events. At counties sole discretion,

special events maybe allowed to bring additional vendors to meet the needs of their events.

**b. Concession Locations:** The County anticipates concessionaires at the following locations within designated spots to be determined by Parks Staff:

**i. Lewis Creek County Park, North River Rd, Foster, OR 97345**

- (1) Potential of 2-3 vendors primarily between Memorial Day and Labor Day.
- (2) All types of vendors encouraged, including food, beverage and ice cream/novelty vendors, and recreational equipment rentals.
- (3) The Park's hours of operation are 10:00 AM to dusk from Memorial Day weekend through Labor Day weekend.
- (4) The County will supply space in the Park for the vendors to set up their equipment. All other equipment required to perform concession services, including storage and preparation of concession items, must be provided by the vendor.
- (5) Vendors must be self-contained; the County may, but not guaranteed, be able to supply electrical power and water depending on the vendor's needs.

**ii. Sunnyside County Park, 44930 Quartzville Road, Foster , Oregon 97345**

- (1) Potential of 2-3 vendors primarily between Memorial Day and Labor Day.
- (2) All types of vendors encouraged, including food, beverage and ice cream/novelty vendors, and recreational equipment rentals.
- (3) The Park's day use hours of operation are Dawn to dusk from Memorial Day weekend through Labor Day weekend.
- (4) The County will supply space in the Park for the vendors to set up their equipment. All other equipment required to perform concession services, including storage and preparation of concession items, must be provided by the vendor.
- (5) Vendors must be self-contained; the County may, but not guaranteed, be able to supply electrical power and water depending on the vendor's needs.

**iii. Waterloo County Park, 39510 Gross St., Waterloo, OR 97355**

- (1) Potential of 2-3 vendors primarily between Memorial Day and Labor Day.
- (2) All types of vendors encouraged, including food, beverage and ice cream/novelty vendors, and recreational equipment rentals.
- (3) The Park's day use hours of operation are Dawn to dusk from Memorial Day weekend through Labor Day weekend.
- (4) The County will supply space in the Park area for the vendors to set up their equipment. All other equipment required to perform concession services, including storage and preparation of concession items, must be provided by the vendor.
- (5) Vendors must be self-contained; the County may, but not guaranteed, be able to supply electrical power and water depending on the vendor's needs.

**iv. Edgewater Park, 1400 60<sup>th</sup> Ave., Sweet Home, OR 97396**

- (1) Potential of 1-2 vendors primarily between Memorial Day and Labor Day.
- (2) All types of vendors encouraged, including food, beverage and ice cream/novelty vendors, and recreational equipment rentals.
- (3) The Park's day use hours of operation are Dawn to dusk from Memorial Day weekend through Labor Day weekend.
- (4) The County will supply space in the Park area for the vendors to set up their

equipment. All other equipment required to perform concession services, including storage and preparation of concession items, must be provided by the vendor.

- (5) Vendors must be self-contained; the County may, but not guaranteed, be able to supply electrical power and water depending on the vendor's needs.
- 4. Compliance with ORS 279B.220.** For all services provided under this Contract, the Contractor shall: (i) pay promptly, as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the Industrial Accident Fund from the Contractor or any subcontractor; (iii) not permit any lien or claim to be filed or prosecuted against the County or any subdivision thereof; and (iv) pay to the State of Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If the Contractor does not pay promptly any claim that is due for the services furnished to the Contractor by any subcontractor in connection with this Contract, the County may pay such claim and charge that payment against any payment due to the Contractor under this Contract. The County's payment of a claim does not relieve the Contractor or its surety, if any, from their obligations for any unpaid claims.
- 5. Warranty of Services.** The Contractor represents and warrants that: (i) the Contractor shall perform all services set forth herein in a good and workmanlike manner, in conformance with the terms, conditions, and requirements of this Contract, and in accordance with the highest applicable professional and/or industry standards; (ii) the Contractor warrants that each of the Contractor's employees assigned to perform services under this Contract has the proper skill, training, and background to be able to perform the services in a competent, timely, and professional manner and that all services shall be so performed; and (iii) the Contractor shall at all times maintain and keep current all licenses and certifications required to perform the work set forth in this Contract.
- 6. Declaration of the Nature of the Contractual Relationship.** The Contractor is an independent contractor and not an employee of or agent of the County. The County shall not be responsible for any claims, demands, or causes of action of any kind or character arising in favor of any person, on account of personal injuries, or death, or damage to property occurring, growing out of, incident to, or resulting directly or indirectly from the operations or activities of the Contractor.
- 7. Acknowledgment and Acceptance of U.S. Army Corps of Engineers (ACOE) Lease Requirements.** Contractor acknowledges and accepts that all concession activities are subject to the lease conditions set forth in the ACOE lease No.: DACW57-DACW57-1-22-0041 Lewis Creek (Exhibit C) and ACOE lease No.: DACW57-1-10-0031 Sunnyside (Exhibit D), which describes the requirements for Linn County's management of these county parks.
- 8. Hours of Labor.** Pursuant to ORS 279B.235, no person shall be employed by the Contractor for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases the laborer shall be paid at least time-and-a-half pay for all overtime in excess of 40 hours a week and for work performed on any legal holiday as specified in ORS 279B.020.
- 9. Workers' Compensation Provisions.**

  - a. The Contractor may employ workers, and if the Contractor employs workers, the Contractor shall obtain and at all time keep in effect Workers' Compensation insurance. The Contractor represents to the County that it presently maintains coverage sufficient to meet the requirements of Oregon law through **Name of Insurance Co.**, Policy No. **XXXXX**.
  - b. The parties hereto specifically agree that this Contract will render the Contractor and the

Contractor's employees, if any, ineligible for benefits under ORS 656.029 and that the County shall not be liable for, responsible for, or in any way or manner be required to provide Workers' Compensation benefits for the Contractor or the Contractor's employees.

- c. The Contractor knowingly waives any rights, as against Linn County, under the Workers' Compensation Law.
- d. The Contractor agrees that all employers, working under this Contract, including but not limited to the Contractor, are "subject employers" as defined in ORS 656.005, that will comply with ORS 656.017.
- e. The Contractors who are not subject workers under ORS 656.027 who will provide services under this contract agree to either elect workers' compensation coverage under ORS 656.128 or specifically release County of any and all claims that would be covered by the workers' compensation laws of the state of Oregon if the Contractor was a subject worker under ORS 656.027.

**10. Indemnification.** To the fullest extent permitted by law, and in accordance with Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, the Contractor shall indemnify, defend, save, and hold harmless (with counsel of the County's choice) the County and its officers, employees and agents from and against all claims, suits, actions, liabilities, damages, losses, or expenses, including attorney fees, arising out of the acts or omissions of the party, its officers, agents, or employees performing under this Contract. The Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract.

- a. **Granting of Authority Required.** Neither the Contractor nor any attorney engaged by the Contractor shall defend the claim in the name of the County or any department or office of the County, nor purport to act as legal representative of the County or any of its departments or offices without first receiving from the County's legal counsel authority to act as legal counsel for the County, nor shall the Contractor settle any claim on behalf of the County without the approval of the County's legal counsel. The County may, at its election and expense, assume its own defense and settlement.

**11. Amendments.** This Contract may be amended to the extent permitted by applicable statutes, administrative rules, ordinances, and Linn County Code. No amendment shall bind either party unless in writing and signed by both parties.

**12. Insurance.**

- a. **General Liability.** The Contractor shall obtain and at all times keep in effect, commercial general liability insurance covering activities and operations of the Contractor. Commercial general liability shall cover bodily injury, death, and property damage, and shall include personal injury liability, products and completed operation insurance. Such liability insurance, whatever the form, shall carry at least liability coverage sufficient to meet the following requirements:

- (1) **\$1,000,000** to any single claimant arising out of a single accident or occurrence; and
- (2) **\$2,000,000** to all claimants, for any number of claims, arising out of a single accident or occurrence.

- i. The Contractor has obtained insurance required by this section through Policy No. **XXXXXX**, written by **Name of Insurance Co.**

b. **Automobile Liability Insurance.** The Contractor shall maintain Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in the performance of services under this Contract. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for “Commercial General Liability” and “Automobile Liability”). Such liability insurance, whatever the form, shall carry at least liability coverage sufficient to meet the following requirements:

- (1) **\$1,000,000** to any single claimant arising out of a single accident or occurrence; and
- (2) **\$2,000,000** to all claimants, for any number of claims, arising out of a single accident or occurrence.

ii. The Contractor has obtained insurance required by this section through Policy No. **XXXXXX**, written by **Name of Insurance Co.**

c. **General Insurance Provisions.**

i. All insurance policies shall be written on an occurrence basis and be in effect for the term of this Contract. Written authorization from the County is required for any insurance policy written on a claims made basis. Any insurance policy authorized to be written on a claims made basis shall be in effect for the term of this Contract plus for three (3) years after the termination of this Contract.

ii. Insurance coverage shall apply on a primary and non-contributory basis.

iii. Prior to commencing services, the Contractor shall furnish current Certificate(s) of Insurance for all required insurance to the County. The insurance must be provided by an insurance company or entity that is authorized to transact the business of insurance and issue coverage in the State of Oregon, with an AM best rating of at least A-. The Certificate shall provide, by policy endorsement, if necessary, that the County, its officers, employees, agents, and volunteers are additional insureds with respect to the Contractor's services provided under this Contract and that there shall be no cancellation, termination, non-renewal, material change to, potential exhaustion of aggregate limits, or reduction of limits of the required insurance without at least 30 days written notice from the Contractor or its insurer to the County. If requested, the Contractor shall provide complete copies of insurance policies to the County.

d. **Policy Changes.** In the event of unilateral cancellation by the insurance company of an insurance policy referred to in this section, the Contractor shall immediately notify County orally and in writing within three (3) business days.

13. **Termination.**

a. **The County's Termination for Convenience.** The County may terminate this Contract in whole or in part whenever the County determines that termination of the Contract is in the best interest of the County. The County will provide the Contractor with written notice of a termination for convenience at least thirty (30) calendar days before the intended termination date. After such notice, the Contractor shall provide the Owner with immediate and peaceful possession of the Project site. Such termination shall be without liability or penalty, and in no circumstance shall Contractor be entitled to lost profits for Work not performed due to termination. No termination for convenience shall prejudice any obligations or liabilities of either party already accrued prior to the effective date of



termination.

- b. The County's Termination For Cause.** The County may immediately terminate this Contract without liability or penalty for either of the following causes by the mailing of written notice to the Contractor at the Contractor's address provided herein, specifying the cause:

    - i.** The Contractor breaches any of the provisions of this Contract. The Contractor shall be liable for any and all damages suffered by the County as the result of the Contractor's breach of Contract, including, but not limited to, incidental and consequential damages, as provided in ORS 72.7110 to 72.7170;

      - (1)** In the event of breach for unsatisfactory performance or nonperformance, the Linn County Board of Commissioners is the sole judge of the Contractor's unsatisfactory performance or nonperformance.
    - ii.** The Contractor no longer holds all licenses or certificates that are required to perform the services required under this Contract;
    - iii.** The County lacks lawful funding, appropriations, limitations, or other expenditure authority at levels sufficient to allow the County, in the exercise of its reasonable discretion, to pay for the Contractor's services; or
    - iv.** Federal, state, or local laws, regulations, or guidelines are modified or interpreted in such a way that either the services under this Contract are prohibited or the County is prohibited from paying for such services from the planned funding source.
  - c. The Contractor's Termination for Cause.** The Contractor may terminate this Contract for cause if the County fails to pay the Contractor pursuant to this Contract. The Contractor may also terminate this Contract for cause if the County commits any material breach or default of any covenant, warranty, obligation, or agreement under this Contract and such breach or failure is not cured within thirty (30) calendar days after delivery of the Contractor's notice, or such longer period as the Contractor may specify in such notice.
  - d. Force Majeure.** Neither party to this Contract shall be held responsible for delay or default caused by fire, riot, acts of God, and/or war, which is beyond the party's reasonable control. The affected party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under the Contract. The County may terminate this Contract upon written notice after determining such delay or default will reasonably prevent successful performance of this Contract.
- 14. Waiver.** The failure of either party to enforce any provision of this agreement shall not constitute a waiver by that party of that or any other provision of this agreement, or the waiver by that party of the ability to enforce that or any other provision in the event of any subsequent breach.
- 15. Records Maintenance; Access.** The Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, the Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document the Contractor's performance hereunder. The Contractor acknowledges and agrees that the County, the Oregon Secretary of State's Office, the Federal Government and their duly authorized representatives shall have access to such fiscal records and all other documents that are pertinent to this Contract for the purpose of performing audits and examinations and making transcripts and excerpts. All such fiscal records and pertinent

documents shall be retained by the Contractor for a minimum of ten (10) years (except as required longer by law) following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

- 16. Assignment; Delegation; Successors.** The Contractor shall not assign, delegate, nor transfer any of its rights or obligations under this Contract without the County's prior written consent. The County's written consent does not relieve the Contractor of any obligations under this Contract, and any assignee, transferee, or delegate is considered the Contractor's agent. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties to the Contract and their respective successors and assigns.
- 17. Severability.** If any provision of this Contract shall be held invalid or unenforceable by any court or tribunal of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision, and the obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 18. Entire Agreement.** This Contract constitutes the entire agreement between the parties on the subject matter hereof. No waiver, consent, modification or change of terms or provisions of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.
- 19. Compliance with Applicable Laws.** The Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the provision of goods and/or services under this Contract, including, without limitation, the provisions of ORS 279B.220 through 279B.235 and the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No 101- 336), ORS 659.425, and all amendments of and regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.
- 20. Foreign Contractor.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, the Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. The County shall withhold final payment under this Contract until the Contractor has met this requirement.
- 21. Governing Law, Jurisdiction, Venue, & Attorney Fees.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, suit, or proceeding (collectively, "the claim") between the County (and/or any other agency or department of Linn County) and the Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Linn County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. The Contractor hereby consents to the in personam jurisdiction of said courts. Each party shall be responsible for the party's attorney fees, costs and disbursements at all times including appeals.
- 22. Notices.** Any notice or other communication required or permitted to be given under this

Contract shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, addressed to the parties at the addresses first set forth below. Any notice or other communication shall be deemed to be given at the expiration of forty-eight (48) hours after the deposit in the United States mail. The addresses to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other party as provided in this section.

**a. The County's Contact Information:**

Stacey Whaley  
Linn County Parks and Recreation Director  
3010 Ferry St. SW  
Albany, Oregon 97322  
(541) 967-3917  
Swhaley@co.linn.or.us

**b. The Contractor Contact Information:**

Name  
Address  
Phone  
Email

- 23. Tax Certification.** The individual signing this Contract on behalf of the Contractor certifies under penalty of perjury both individually and on behalf of the Contractor that he or she is authorized to act on behalf of the Contractor and that the Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means those programs listed in ORS 305.380(4).
- 24. Survival.** All rights and obligations shall cease upon termination of this agreement, except for those rights and obligations that by their nature or express terms survive termination of this agreement. Termination shall not prejudice any rights or obligations accrued to the parties prior to termination.

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**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be executed in duplicate by the duly authorized persons whose signature appear below. Each party, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions. Each person signing this Contract represents and warrants to have the authority to execute this Contract.

CONTRACTOR

LINN COUNTY PARKS AND RECREATION

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Stacey Whaley, Director Parks and Recreation

\_\_\_\_\_  
Name, Typed or Printed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
APPROVED AS TO CONTRACT FORM:

\_\_\_\_\_  
Phillip Van Leuven  
Deputy County Attorney for Linn County