

LICENSE AGREEMENT FOR CARNIVAL OPERATOR AT THE SNOHOMISH COUNTY EVERGREEN STATE FAIR

I. PREAMBLE

1.1 Parties. THIS AGREEMENT is made and entered into this date by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington, hereinafter referred to as “County,” operator of the annual Evergreen State Fair, hereinafter referred to as the “Fair,” and Butler Amusements Inc., a California corporation authorized to transact business in the State of Washington, hereinafter referred to as “Licensee.”

1.2 Purpose. The purpose of this agreement is to provide for operation of a carnival and related facilities for family entertainment during the 2022, 2023, 2024, 2025 and 2026 Fairs. The carnival and related facilities shall include:

- (a) Amusement rides,
- (b) Shows,
- (c) Novelty concessions,
- (d) Game concessions, and
- (e) Food concessions.

1.3 Grant of License. The County grants a license to Licensee to occupy and use certain real property at the times and for the purposes set out herein subject to all terms and conditions hereof.

1.4 Premises. The real property subject to this Agreement consists of designated portions of Sections 35 and 46, Township 28, Range 6 E.W.M., commonly known as the Snohomish County Fairgrounds, Monroe, Washington. As described in section 6.1 below, annually the Fairgrounds Manager will designate one or more specific areas within the Fairgrounds consisting in the aggregate of approximately 235,200 square feet for use by Licensee, hereinafter referred to as the “Premises,” as depicted on Attachment A hereto.

1.5 Dates of use and hours of operation.

(a) This Agreement provides for operation of carnival and related facilities during the 2022, 2023, 2024, 2025 and 2026 Fairs. Licensee is licensed to occupy and use the Premises for the purposes herein permitted. The parties anticipate operating the Fair, carnival, and related facilities on the following dates:

| Year | Move In Dates | Fair Dates | Carnival Operating Hours | Move Out Dates |
|------|---------------|----------------------------|--|----------------|
| 2022 | August 18-24 | August 25-30 and Sept. 1-5 | 11a.m.-11p.m. 11a.m.-7p.m. Labor Day | September 6-8 |
| 2023 | August 17-23 | August 24 – September 4 | 11a.m.-11p.m. | September 5-7 |

| | | | | |
|-------------|--------------|-------------------------|--|----------------|
| | | | 11 a.m.-7p.m. Labor Day | |
| 2024 | August 15-21 | August 22 – September 2 | 11 a.m.-11p.m. 11 a.m.-7p.m. Labor Day | September 3-5 |
| 2025 | August 14-20 | August 21 – September 1 | 11 a.m.-11p.m. 11 a.m.-7p.m. Labor Day | September 2-4 |
| 2026 | August 20-26 | August 27 – September 7 | 11 a.m.-11p.m. 11 a.m.-7p.m. Labor Day | September 8-10 |

(b) The final dates and hours of operation shall be determined by the Fairgrounds Manager no later than May 15 of each year of this Agreement. All carnival operations shall open on time. Any variances with the times listed above require Fair Management approval.

(c) The County has the option to extend this Agreement for an additional five (5) years (2027-2031 Fairs), subject to review and/or modification of the terms and conditions by the County; PROVIDED any changes to the terms and conditions shall be agreed to by both parties before the Agreement may be extended.

1.6 Possession. Possession of the Premises shall at all times remain in the County and the rights of use and occupancy are subject to limitation, suspension, or revocation by the County when the County determines it has a need for the Premises inconsistent with the rights herein granted; provided, the County shall give such notice as is reasonable under the circumstances.

II. AMUSEMENT RIDES AND SHOWS

2.1 Basic Obligations. Licensee is obligated to bring to the Snohomish County Fairgrounds and cause to be operated during the carnival hours of operation, determined by the Fairgrounds Manager, a carnival consisting of at least the following minimum amusement rides and shows. Minimum rides and shows are:

- (a) At least two (2) super spectacular rides;
- (b) At least four (4) spectacular rides;
- (c) At least fourteen (14) major adult rides;
- (d) At least fourteen (14) family/kiddie rides; and
- (e) At least two (2) (with a maximum of 6) walk-through funhouse shows.

2.2 Kiddie Land obligation. Licensee will operate a separate carnival facility to be known as “Kiddie Land” which will contain amusement rides designed to accommodate small children or families.

2.3 Amusement ride and show price and duration. The gross price to be charged for an amusement ride or show shall include any local, state, or federal taxes collected by Licensee in connection with selling admission tickets for the amusement ride or show. The gross price charged by Licensee must be approved by the Fairgrounds

Manager as provided for in paragraph 6.4. The period of each ride shall be not less than three minutes, including loading and unloading.

2.4 Tickets and Reporting. Licensee shall provide an electronic cashless midway purchasing system (self-serve kiosks and cashless point of sale system) for guests.

Licensee shall submit a daily report showing daily tickets redeemed by rides, on-site wristbands sold, and pre-sale wristbands redeemed. The term “gross receipts” in this Agreement shall mean all receipts from the operation of amusement rides and shows, before any deduction of any nature whatsoever, but shall not include any sales tax collected by Licensee. Licensee shall submit daily reports to Fair Administration by 12:00 Noon the day following sales.

2.5 Advance Sale Program. Licensee and the County will review and agree upon amusement ride and show prices on an annual basis. Licensee shall provide an Advance Sale Program in which amusement ride coupons will be greatly discounted over the price of individual coupons at the carnival. Licensee shall pay to the County each year of the agreement a % of the gross revenue (refer to Exhibit “A”) from the Advance Sale Program on or before thirty (30) days after the close of the Fair. This payment is in addition to the guarantee as stated in the “Financial Proposal Form,” Exhibit “A,” attached hereto.

2.6 Special Promotions. Licensee will provide on an annual basis a presentation of special promotions featuring for example, unlimited Pay One Price for amusement rides. On these days, Licensee shall make available in addition to regular tickets, a unit price ticket for all amusement rides and shows. The dates and operating hours of such special promotions, ticket price, and supplemental ticketing system shall be presented to the Fairgrounds Manager on or before May 1 of each year, and the Fairgrounds Manager will approve or deny, in his or her sole discretion, on or before May 15 of each year.

2.7 Payment. Licensee hereby agrees to pay the County each year of this Agreement according to the attached “Financial Proposal Form,” Exhibit “A,” which is incorporated herein and made part of this Agreement for the amusement rides and shows.

III. NOVELTY AND GAME CONCESSIONS

3.1 Concession obligation. Licensee shall provide no more than five (5) nor less than three (3) miscellaneous novelty and no more than thirty-five (35) nor less than twenty (20) game concessions. Additional novelty and game concessions may not be provided unless authorized by a separate “Concessionaire License Agreement.”

3.2 Restrictions. Licensee shall not operate any games which are in violation of state laws or regulations; offer cash prizes or re-purchase prizes in any game; offer as prizes live ducks, chicks, or other live animals, (goldfish are permitted); offer as prizes knives, firearms, or any items which could be used as a weapon; offer as prizes or display drug paraphernalia, posters or other items deemed to be inappropriate for a family audience by the Fairgrounds Manager.

3.3 Payment. Licensee hereby agrees to pay the County each year of this Agreement according to the attached “Financial Proposal Form,” Exhibit “A,” which is incorporated herein and made part of this Agreement for novelty and game concessions.

IV. FOOD CONCESSIONS

4.1 Concessions obligation. Licensee may operate no more than seven (7) food concessions. Additional food concessions may not be provided unless authorized by a separate “Concessionaire License Agreement.” Licensee

must submit to the Fairgrounds Manager a list of menu items for approval on an annual basis, refer to Section 6.4b. All concessions shall conform to the State Board of Health, County Health District or Health Department, and other regulatory agencies' rules and regulations. Licensee must use the Fairgrounds' soft drink and dairy exclusive contractors, if such exists. All drinks shall be served in paper or plastic containers. Licensee shall not sell beer or alcoholic beverages. All concessions will be located within the carnival area as designated by the Fairgrounds Manager or Designee.

4.2 Payment. Licensee hereby agrees to pay the County each year of this Agreement according to the attached "Financial Proposal Form," Exhibit "A," which is incorporated herein and made part of this Agreement for food concessions.

V. PAYMENT PROCEDURE

5.1 Payments due. Final payment of the amounts owed to the County each year shall be made on or before the fifth day following the closure of the Fair in that year, except as otherwise provided in paragraphs 2.5 and 7.4.

5.2 Annual report and adjustment. The Licensee shall annually provide the County a verified statement of its gross receipts from the operation of the amusement rides and shows at the Fair. The verified statement shall be submitted to the County at the end of each Fair and in no event shall be later than five (5) days following the closing date of each Fair. Gross receipts from amusement rides and shows will be subject to adjustment as provided in paragraph 2.4.

5.3 Deposit and accounting requirements. Gross receipts shall be initially deposited in a single bank located in the State of Washington. The name of the designated bank must be disclosed in writing to the County at the time of execution of this Agreement and may not be changed without prior written notice and approval. Daily expenses paid in cash shall be accounted for by a detailed ledger listing those parties paid and the amount received, to be initialed by recipient. County agents, employees and officers of the State Auditor's office shall be provided access to bank statements, deposit slips, canceled checks, check registers, and such other supporting data as reasonably incident to the audit and/or review of Licensee's business.

VI. CONDITIONS OF USE

6.1 Location of carnival. The amusement rides, shows and concessions shall be operated exclusively within the areas designated annually by the Fairgrounds Manager, which designation shall be made at least thirty (30) days prior to the Fair opening day. The County will designate a separate area to be known as "Kiddie Land." This separate area may be within, adjacent to, or separated from the general carnival area and other rides, within the discretion of the Fairgrounds Manager.

6.2 Operation terms. The Licensee shall:

- (a) Conform to and comply with all federal, state, county and local sanitation, safety and health rules, regulations and laws governing such use, and shall further facilitate daily safety checks by an official state ride inspector.
- (b) Report and pay all federal, state, county and local taxes that may be due or payable by reason of any operation hereunder.
- (c) Reduce the volume of sound amplifying devices when determined necessary by the Fairgrounds Manager.
- (d) Restrict all activities, signs, and advertising matter to the space assigned and place no signs or advertising on the outside of permanent buildings. Signs must be professionally made and installed. No handmade signs will be permitted.

- (e) Post in a conspicuous place a plainly printed placard showing menus and the prices of all menu items.
- (f) Provide public relations areas with personnel to deal with complaints/concerns from the general public.
- (g) Use the Fairgrounds' soft drink and dairy exclusive contractors, if such exists. All drinks shall be served in containers per current concessionaire guidelines.
- (h) Maintain designated area free of all garbage and debris at all times. Garbage and debris to be bagged and deposited in designated collection area. Food concessions must abide by Snohomish Health District and/or Health Department and County's Zero Waste rules.
- (i) Provide bench seating throughout the main carnival and "Kiddie Land" for guest seating.
- (j) Promptly close operation of concessions, games, or novelties, which in the sole discretion of the Fairgrounds Manager are offensive to the Fair's primary audience of families with children.
- (k) Abide by all general conditions and rules and regulations, written or orally made by the County from time to time and at any time governing the conduct of concessionaires during the Fair, including future oral or written conditions and rules and regulations which shall become part of this Agreement the same as now published.
- (l) Use only fire resistant materials for decorating.
- (m) Put grease in designated containers.
- (n) Provide own extension cords and hoses for water and sewer hookup to County facilities where necessary.
- (o) Be responsible for and remove any hazardous products generated during the Fair and comply with all laws, rules and regulations concerning hazardous waste.
- (p) Require all employees to wear distinctive uniforms in a color and design approved in advance by the Fairgrounds Manager, which uniforms shall be maintained and laundered as necessary. The cost of such uniforms and their maintenance and laundering shall not be borne by the County.
- (q) Require all employees be safety-trained and perform background checks on all employees. Have all employees provide courteous, efficient, and sanitary service to patrons. Abusive language will not be tolerated. Persons handling and vending products under this Agreement shall meet all applicable county and state health regulations.
- (r) Upon request by the Fairgrounds Manager, provide portable showers for carnival employees in an area designated by the Fairgrounds Manager.
- (s) Refrain from bringing onto the Fairgrounds bicycles, skateboards, or rollerblades.
- (t) Provide its own power source (i.e. generators) and wiring for rides, games, and equipment operation, except where provided and metered by the County at the expense of the Licensee.
- (u) Refrain from bringing onto the Fairgrounds dogs, birds or other pets, including in vehicles or living quarters. Exception: service/physical assistance animals (i.e. seeing eye, etc.).
- (v) Provide Midway Accessibility Guidelines to guests on website and hard copy when requested.
- (w) Have select rides open with no lights or sounds for Fair's "Morning of Dreams" one-hour event on one select fair date. Guests to pay for rides, unless sponsored.

6.3 Alterations. The Licensee shall:

(a) Permit no electrical wiring to be done on any portion of the Fairgrounds electrical system without permission from the Fairgrounds Manager and then only under the supervision of the Fairgrounds Maintenance Supervisor. Licensee must comply with all laws, rules, and regulations including local ordinances and electrical codes.

(b) Make no alterations to County property without prior approval of the Fairgrounds Manager.

6.4 County approval. Only those amusement rides, shows and concessions approved by the Fairgrounds Manager shall be allowed on the Fairgrounds and operated by Licensee under this Agreement.

(a) On or before May 15 of each year of this Agreement, Licensee shall submit to the County for its approval a written listing of all amusement rides and shows, which Licensee intends to operate, and the prices which it intends to charge for each. The County shall on or before June 1 of each year of this Agreement, indicate its approval or disapproval of the listing or portion thereof. If any amusement ride, show, or price is disapproved by the County, Licensee shall on or before June 15 of each year of this Agreement submit an alternative to meet the approval of the County.

(b) On or before May 15 of each year of this Agreement, Licensee shall submit to the County for its approval a written listing of all food concessions which Licensee intends to operate and items to be sold. The County shall on or before June 1 of each year of this Agreement, indicate its approval or disapproval of the listing or portion thereof. If any food concession or item to be sold is disapproved by the County, Licensee shall on or before June 15 of each year of this Agreement submit an alternative to meet the approval of the County.

(c) On or before May 15 of each year of this Agreement, Licensee must submit a written listing with specific names of each game concession.

(d) Approval of all amusement rides, shows, and concessions shall be at the sole discretion of the County. Failure of Licensee to submit the listings as required by this section 6.4 shall constitute a breach of this Agreement.

(e) Nothing in this section shall preclude Licensee from adding additional or substitute amusement rides and shows within seven (7) days prior to the Fair when, in the opinion of the County, such addition or substitution would materially enhance the overall quality of the Fair. Any additional or substitute amusement ride or show shall be submitted to the County for its approval.

6.5 Annual review. There will be an annual review for a period of thirty (30) days after the close of each Fair during which either party may cancel this Agreement. Written notice of such cancellation shall be effective if mailed to the other party within the same time period by certified or registered mail.

6.6 Approvals conditional. Any approval by County under this Agreement is conditional upon the amusement rides, shows and concessions meeting the requirements of all federal, state, and local laws and the County reserves the right at any time without liability or penalty, to disapprove any ride, show, or concession upon its sole determination that there is or may be a violation of any law. The responsibility and cost of obtaining any and all permits as may be necessary to assure compliance with law shall be borne entirely by the Licensee.

6.7 Compliance with law required. Licensee covenants that its carnival and all amusement rides, shows, novelty and game concessions, and food concessions or those of any sub-licensee or subcontractor shall strictly comply in all particulars with every provision of this Agreement, and with applicable city, county, state, and federal laws, rules, and regulations, in any matter concerning the operations contemplated by this Agreement. Licensee further covenants that in operation of its carnival and in the operation of all amusement rides, shows, and concessions under this Agreement there shall be no obscene or objectionable devices or practices, shows, or exhibits of any

kind whatsoever. Licensee will immediately upon demand of the County close and remove from the Fairgrounds any such device or practice, show or exhibit that is operated in violation of any city, county, state, or federal law, rule, or regulation, or which is, in the County's opinion, in any manner obscene or otherwise objectionable to the Fair's primary audience of families with children. Licensee agrees to save the County and its officers and employees harmless from any liability or damage for closure or removal from the Fairgrounds. Such closure or removal will in no way reduce the amount of money due the County from Licensee under this Agreement.

6.8 Exclusivity of Licensee's rights. The County shall not permit any commercial carnival offering mechanized amusement rides, except animal rides, to be operated on the fairgrounds during the Fair, except that of Licensee, unless Licensee fails to comply with the terms and conditions of this Agreement, thereby making it necessary for the County to obtain the services of another operator; PROVIDED THAT the County or its other contractors may operate any activity classed as transportation, motorized or otherwise, to convey visitors to or from the Fair, to or from the parking lot, and to or from various points on the Fairgrounds; and PROVIDED FURTHER that such exclusivity of right shall not apply to the operation of novelty, game, and food concessions, and the County shall be free to authorize such additional concessions as it may deem necessary so long as said concessions are not located within the designated carnival area; and, PROVIDED FURTHER that the County may operate or cause to be operated a specialty ride which the Licensee cannot or will not provide, such operation to be no less than fifteen (15) yards away from the designated carnival area.

6.9 Abide by rules and regulations. Licensee shall cause all its agents, employees, and any sub-licensee or subcontractor to abide by all rules and regulations prescribed by the County Council, County Risk/Safety Personnel, or the Fairgrounds Manager governing the operation of and admission to and exit from the Fairgrounds during the Fair or providing for parking or traffic control and by such other reasonable rules and regulations of the Fairgrounds Manager as may be communicated to Licensee prior to or during the Fair.

6.10 Vehicles. Personal vehicles and business vehicles of the Licensee, Licensee's agents, employees and any sub-licensee or subcontractor, not needed for actual carnival operation shall at no cost to Licensee be parked only in a parking area to be designated annually by the Fairgrounds Manager.

6.11 Condition of premises. Licensee accepts the Premises, including any designated carnival areas, structures, grounds, and access thereto, in the condition which they now are. The Licensee agrees that they County shall not be bound by any warranty or representation regarding the condition of Premises except as expressly stated in this Agreement.

6.12 Clean premises. Licensee agrees to clean at Licensee's expense, the designated carnival area and dispose of all refuse within twenty-four (24) hours of the close of the Fair and to repair all damage to such area and restore it to the same condition as originally found. Additionally, during the period which the Fair is operating, Licensee shall observe good housekeeping practices and keep the area provided for operation of its facilities and those of its subcontractors and sub-Licensees neat and clean at all times so that they will be in a presentable condition as will be deemed reasonably satisfactory to the Fairgrounds Manager. All refuse shall be placed in containers to be provided by the County, with the County to assume the expense of transportation for disposal of such waste at an approved landfill site. Any failure to comply gives the County authority to restore and clean the premises at Licensee's expense.

6.13 Sustainability: The following is a list of sustainable practices, services and products Licensee shall implement:

- Own and operate (WA state compliant) fuel efficient generators to power the carnival which meet the strictest EPA standards.
- Utilize LED lighting packages which use up to 90% less electricity and last longer than traditional incandescent bulbs.
- Cashless midway system utilizes reusable/rechargeable cards eliminating thousands of paper ride tickets traditionally used at fairs.
- Food concessions offer reusable/souvenir cups and offer refills for a fee to reduce waste.
- Comply with the recycling program that the Fair has for cardboard and other recyclables.
- Uses Electronic Log Device Systems in our entire trucking fleet to reduce fuel waste and emissions by monitoring idle-time.
- Comply with anyFair program for collection of cooking oil for conversion to biodiesel.
- Vehicle fleet meets the strictest environmental standards required in the Western United States.

6.14 National Pollutant Discharge Elimination System (NPDES). Licensee will be compliant with the NPDESmunicipal stormwater permit held by Snohomish County. NPDES Compliance Procedures are provided in Attachment B and made a part of this Agreement by this reference.

VII. GENERAL CONDITIONS

7.1 Payments. All payments due and owing under this Agreement shall be paid to the County by the Licensee in accordance with paragraphs 2.5, 2.7, 3.3, 4.2, 5.1, and 7.4.

7.2 Liquidated damages.

(a) In the event that any required item of equipment, or its equivalent, herein agreed to be furnished by Licensee should not be so available during the Fair, the sum of TEN THOUSAND DOLLARS (\$10,000.00) for each item of equipment shall be paid by Licensee to the County, in addition to other amounts herein provided for. This subsection shall not apply where unavailability is not longer than three (3) days.

(b) If Licensee fails or refuses to bring its carnival to the Fair in accordance with this Agreement, Licensee will pay to the County the sum equal to the minimum guarantee of the corresponding year, as stated in Exhibit "A" for each year Licensee defaults and County may terminate this Agreement upon notice to Licensee.

(c) In the event that the Licensee shall fail to meet any of the terms specified in Section 7.2 (a) or (b) herein, the Licensee hereby agrees that the County will sustain irreparable, immediate and immeasurable injury and shall be entitled to an injunction and specific performance in any competent court to enjoin and restrain the breach of this Agreement. The County shall be entitled to its costs, expenses, and attorney's fees of such enforcement of this Agreement, in addition to any other damages or remedy available to it under the law.

7.3 County or State Auditor may audit sales.

(a) The County or State Auditor, as designated by the County, may take steps it deems reasonable and necessary to monitor and to audit ticket sales and any other business records relating to business of the Licensee, including but not limited to auditing receipts by:

- (1) Stationing its own representative in any booth;
- (2) Checking cash register/point-of-sale totals or subtotals;
- (3) Examining Licensee's ticket sales booths;

- (4) Checking ticket inventories; and
 - (5) Taking all other steps necessary or appropriate to monitor the use and distribution of tickets and audit the amount or gross receipts from sales of goods and services.
- (b) Licensee agrees to keep accurate and complete books and records of accounts including but not limited to payroll and general ledgers which will be available on reasonable notice for inspection by agents or employees of the County or State Auditor. Licensee shall keep all records required by this Agreement for five (5) years after termination of this Agreement.

7.4 Capital and Operational Improvements.

Licensee shall be responsible for providing capital and operational improvements over the initial term of this Agreement in an amount no less than \$75,000 as further described in Exhibit "B" attached hereto and incorporated herein by this reference. Those capital improvements shall include but are not limited to asphalt paving, electrical, RV hookups, or other projects mutually agreed upon and designed to increase carnival sales and promotion. These projects shall be completed in two phases: Phase I improvements shall be completed in 2022 in the amount the amount of \$37,500; Phase II improvements shall be completed in 2023 in the amount of \$37,500. If this Agreement is extended for an additional five years, Licensee will be required to provide capital and operational improvements at the same or greater level for the first three years of the extended term.

All projects must meet industry and government standards, including payment of prevailing wages. Specific timelines and projects must be mutually agreed upon by Fair Management and Licensee. All Capital and Operational Improvement Projects must meet with the Fairground Manager's advanced approval and be signed off by the Fairgrounds Manager or his Designee upon completion. All capital improvements will become the property of Snohomish County.

The County, at its sole option, may either contract with third party contractors for the improvements or perform the work in-house using County personnel. The County shall bill Licensee for the cost of all such capital improvements (including but not limited to time and materials, permitting, and any other expense associated with the capital improvements), and Licensee shall remit payment within thirty (30) days of billing.

7.5 County to furnish water. The County agrees to furnish to Licensee for use on the Fairgrounds reasonable quantities of potable water for domestic purposes only. All other utilities and services required or convenient to Licensee for the operation of its amusement rides, shows, concessions, and equipment will be arranged for, obtained, and furnished by at the expense of Licensee. House trailers and motor homes parked within the designated carnival area will be charged by the County during the Fair at the established RV parking rate per unit parking space and furnished water and electric hookups.

7.6 Hold Harmless agreement. Licensee shall protect, save harmless, indemnify, and defend at its own expense, Snohomish County, its elected and appointed officials, officers, employees, and agents, from any loss or claim for damages of any nature whatsoever, arising out of the performance of this agreement, including claims by Licensee's employees, third parties, or sub-contractors, except for those damages solely caused by the negligence or willful misconduct of Snohomish County, its elected and appointed officials, officers, employees, or agents. Neither Snohomish County, nor its elected and appointed officials, officers, employees, and agents shall be liable for any damage or injury to the Licensee, its sub-Licensees or sub-contractors or its or their employees or its or their properties occurring through or caused by a defect to the premises used or property licensed pursuant to this agreement. Licensee shall assume the entire risk by loss of or damage to its property or property of its sub-Licensees or sub-contractors used in connection with this agreement. Property shall include but not be limited to

the amusement rides, shows, novelty and game concessions, and food concession booths together with all of their fixtures, supplies, and inventory of merchandise for sale, owned or leased by or consigned to the Licensee or his sub-Licensees or sub-contractors.

This hold harmless agreement expressly provides for waiver of the Licensee's immunity under RCW Title 51 Industrial Insurance for claims by its employees and this hold harmless agreement and waiver of immunity were mutually and expressly negotiated and agreed between the parties.

Indemnification for damage to County. The Licensee's duty to indemnify the County shall include any and all damages to the County's property caused by the Licensee's, its sub-Licensees' or sub-contractors' acts or negligence.

7.7 Insurance Requirements

By requiring the minimum insurance coverage set forth in this Section 7.7, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Licensee under this Agreement. The Licensee shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. The Licensee shall maintain continuously for the duration of this Agreement the following insurance minimum limits of liability and meet the requirements below:

1. **Commercial General Liability Insurance** on a coverage form at least as broad as CG 00 01 current edition, including coverage for Premises and Operations; Products and Completed Operations; Broad Form Property Damage (including Completed Operations); Contractual Liability insurance obligations assumed in this agreement; Personal Injury and Advertising Liability, Severability of Interest Clause, Waiver of Subrogation endorsement in favor of Owner as required by contract.

Minimum Limits of Liability shall be:

\$ 10,000,000 Each Occurrence; OR the full per occurrence limit of the Contractor's policy, whichever is greater; and Personal Injury Liability;

\$ 10,000,000 General Aggregate limit; and Products & Completed Operations Aggregate;

Stop Gap shall be included (unless insured as Employers Liability under Part B. of a Workers Compensation Insurance Policy).

2. **Automobile Liability Insurance:** \$5,000,000 combined single limit for bodily injury and property damage, including Waiver of Subrogation endorsement in favor of County, on a coverage form at least as broad as CA 0001 current edition, on all owned, non-owned and hired autos.

Umbrella/Excess Liability insurance is acceptable to meet the above defined CGL and Auto requirements. Licensee shall cause each insurance company to provide the insurance on an umbrella basis in excess over and no less broad than the liability coverages required herein (including as to Company's additional insured status), with the same inception and expiration dates as Commercial General Liability insurance, and with coverage that "drops down" for exhausted underlying aggregate limits of liability coverage.

3. **Workers' Compensation** for Washington State as required by Title 51 RCW;
4. **This Section 4 is waived for the initial 5 year term of the agreement and will be reinstated or renegotiated if the agreement is extended or amended.**

Commercial Crime/Employee Dishonesty Insurance: \$2,000,000 Commercial Crime policy providing blanket employee dishonest must be maintained by Licensee, including an endorsement for third party liability. The policy shall cover “client’s property,” not just when legally liable and shall have a Joint Loss Payee Endorsement in favor of Snohomish County. If the Licensee maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Licensee.

a. Insurance Provisions and Requirements. The insurance coverages required in this Agreement for all liability policies except workers’ compensation must contain, or must be endorsed to contain, the following provisions:

(i) The County, its officers, officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Licensee in connection with this Agreement. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees, and agents. Additional Insured Endorsement shall be included with the certificate of insurance as evidence of coverage (at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38, as applicable; **and** CG 20 37 forms if later revisions used).

(ii) The Licensee's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(iii) Any deductibles or self-insured retentions greater than \$25,000 must be declared to the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Licensee's liability to the County and shall be the sole responsibility of the Licensee.

(iv) Insurance coverage must be placed with insurers with a Best’s Underwriting Guide rating of no less than A:VIII, or, if not rated in the Best’s Underwriting Guide, with minimum surpluses the equivalent of Best’s surplus size VIII. Professional Liability, Errors and Omissions insurance coverage, if applicable, may be placed with insurers with a Best’s rating of B+:VII. Any exception must be approved by the County.

(v) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits until after forty-five (45) calendar days’ prior written notice has been given to the County.

If at any time any of the foregoing policies fail to meet minimum requirements, the Licensee shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

b. Evidence of Insurance: Licensee shall furnish complete, certified copies of all required insurance policies including all endorsements, as well as certificates of insurance. All policies, certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Licensee’s obligation to provide them.

c. No Limitation on Liability. The Licensee’s maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Licensee to the coverage provided by such insurance, or otherwise limit the County’s recourse to any remedy available at law or in equity.

d. Subcontractors. The Licensee shall include all subcontractors and sublicensees as insureds under its policies or shall furnish separate certificates of insurance and policy endorsements for each subcontractor/sublicensees. Insurance coverages provided by subcontractors/sublicensees instead of the

Licensee as evidence of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein.

7.8 Governing law and stipulation of venue. This Agreement shall be governed by the laws of the State of Washington and the parties stipulate that any lawsuit regarding this agreement must be brought in Snohomish County, Washington.

7.9 Service of process. Service of process on the Licensee may be made on the registered agent of the Licensee as set forth in paragraph 7.11.

7.10 Attorney's fees. The prevailing party shall be entitled to recover its reasonable attorney's fees and costs in the event it is necessary to commence any legal action, suit or proceeding against the other party by reason of any breach of this Agreement.

7.11 Registered office and address. The name, street address, city, and telephone number of the Washington registered agent of Licensee is: CT Corporation System, 520 Pike Street, Seattle, Washington 98101, (206) 622-4511. Any notices given or service of process under this Agreement may be given to Licensee's Washington registered agent.

7.12 Impossibility. If either party is prevented from performing its obligations under this agreement because of any act of God, pandemic, fire, strike, riot, war, blackout, or by any law or act of the United States, State of Washington, or any political subdivision thereof, then this Agreement, at the option of either party, shall become null and void and each party shall be released from any or all terms and provisions thereof as of the date of such occurrence.

7.13 Termination. This Agreement 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 Agreement;
- (b) There is failure to make payment as required or violation of any term or condition provided for herein which Licensee, having been given written notice of any such violation, has failed to correct within two (2) calendar days;
- (c) There occurs an assignment for the benefit of creditors by, or an institution of bankruptcy proceedings for or against, the Licensee;
- (d) 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 Agreement 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 Licensee that is not first disclosed and approved by the County in public meeting.
- (e) There is compelling governmental need for the premises which the County determines is inconsistent with the privileges granted herein.
- (f) There is a sale of more than forty-nine percent (49%) of the stock of Licensee's corporation to a person not now a shareholder, or the officers or directors of Licensee's corporation are changed. Licensee agrees to promptly inform the County of any such sale or change.

(g) Termination by the County is otherwise provided for in this Agreement.

7.14 Termination rights. In the event of termination, the Licensee shall be obligated to pay all sums due and owing at the date of termination and the County shall not be liable for any damages resulting from the termination.

7.15 License is personal. It is agreed that the personal and business integrity of Licensee's officers and directors is a major consideration on the part of the County in entering into this agreement, and that the Agreement is personal to Licensee and may not be assigned, delegated, transferred, or seized by or through any legal proceedings, either voluntarily or involuntarily without express written approval of the County.

7.16 Independent contractor. Licensee agrees that Licensee will perform services under this Agreement as an independent contractor and not as an agent, employee, or servant of County. The parties agree that Licensee and its employees are not entitled to any benefits or rights enjoyed by employees of County. Licensee specifically has the right to direct and control Licensee's own activities in providing services in accordance with the specifications set out in this agreement. County shall only have the right to ensure performance. Licensee agrees that neither it nor its employees, agents, subcontractors, or sub-Licensees shall in any manner represent itself or themselves or permit itself or themselves to be represented to the public as an agent of the County.

7.17 Modifications. This Agreement may not be modified orally, and modification must be accomplished with the same formalities as are required for the execution of this agreement.

7.18 County Non-discrimination. It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The Licensee shall comply with the substantive requirements of Chapter 2.460 SCC, which are incorporated herein by this reference. Execution of this Agreement constitutes a certification by the Licensee of the Licensee's compliance with the requirements of Chapter 2.460 SCC. If the Licensee is found to have violated this provision, or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to this Agreement or Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Licensee's obligations under other federal, state, or local laws against discrimination.

7.19 Public Records Act. 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 Licensee are needed for the County to respond to a request under the Act, as determined by the County, the Licensee agrees to make them promptly available to the County. If the Licensee 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 Licensee 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 Licensee 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 Licensee (a) of the request and (b) of the date that such information will be

released to the requester unless the Licensee obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Licensee 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 Licensee to claim any exemption from disclosure under the Act. The County shall not be liable to the Licensee for releasing records not clearly identified by the Licensee as confidential or proprietary. The County shall not be liable to the Licensee for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

This Agreement constitutes the whole and entire agreement between the parties.

Dated this 10th day of August, 2022.

SNOHOMISH COUNTY:

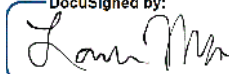
Lacey Harper Digitally signed by Lacey Harper
Date: 2022.08.10 15:21:36 -07'00'

County Executive

Lacey Harper, Executive Director

Print Name

LICENSEE: Butler Amusements Inc.

DocuSigned by:

0AD1819AF911427...

Name: Lance Moyer

Title: President

Address: P.O. Box 2210
Fairfield CA 94533

Phone #: 707.429.4788

Email: info@butleramusements.com

APPROVED AS TO FORM:



07-19-2022

Deputy Prosecuting Attorney

INSURANCE APPROVAL:

Baer, Diane Digitally signed by Baer, Diane
Date: 2022.08.02 09:12:12 -07'00'

Risk Management

COUNCIL USE ONLY

Approved 8/10/2022

ECAF # 2022-0747

MOT/ORD Motion 22-320

EXHIBIT A

PAYMENT

Licensee will pay the following amounts to the County, which in no case shall equal less than \$900,000 per year for years 2022-2025, and \$950,000 in 2026:

1. Except on super spectacular rides as described in number 2 below, 45% on the first \$200,000 in gross sales on rides, thereafter 40% on the next \$400,000 in gross sales on rides, thereafter 35% on gross sales on rides where gross sales exceed \$600,000;
2. For up to three (3) super spectacular rides as designated by Contractor each year, such designation to be pre-approved by the Fairgrounds Manager not less than 60 days prior to the opening day of the annual Fair, 22% on the gross sales on super spectacular rides;
3. \$2,000 from gross novelty sales;
4. \$1,500 on gross game concession sales for each game concession (\$1,500 x 30 game concessions = \$45,000)
5. \$2,000 on gross food concession sales for each food concession (\$2,000 x 5 food concessions = \$10,000)

The County will also receive 35% of the advance sale gross each year, which is in addition to the above specified items and not included in the \$900,000 minimum payment.

EXHIBIT B

CAPITAL AND OPERATIONAL IMPROVEMENTS TO THE EVERGREEN STATE FAIRGROUNDS:

Refer to Section 7.4 of the Agreement:

PHASE I: 2022

Proposed Capital Improvements: East side of main carnival - electrical

Estimated Value: \$37,500

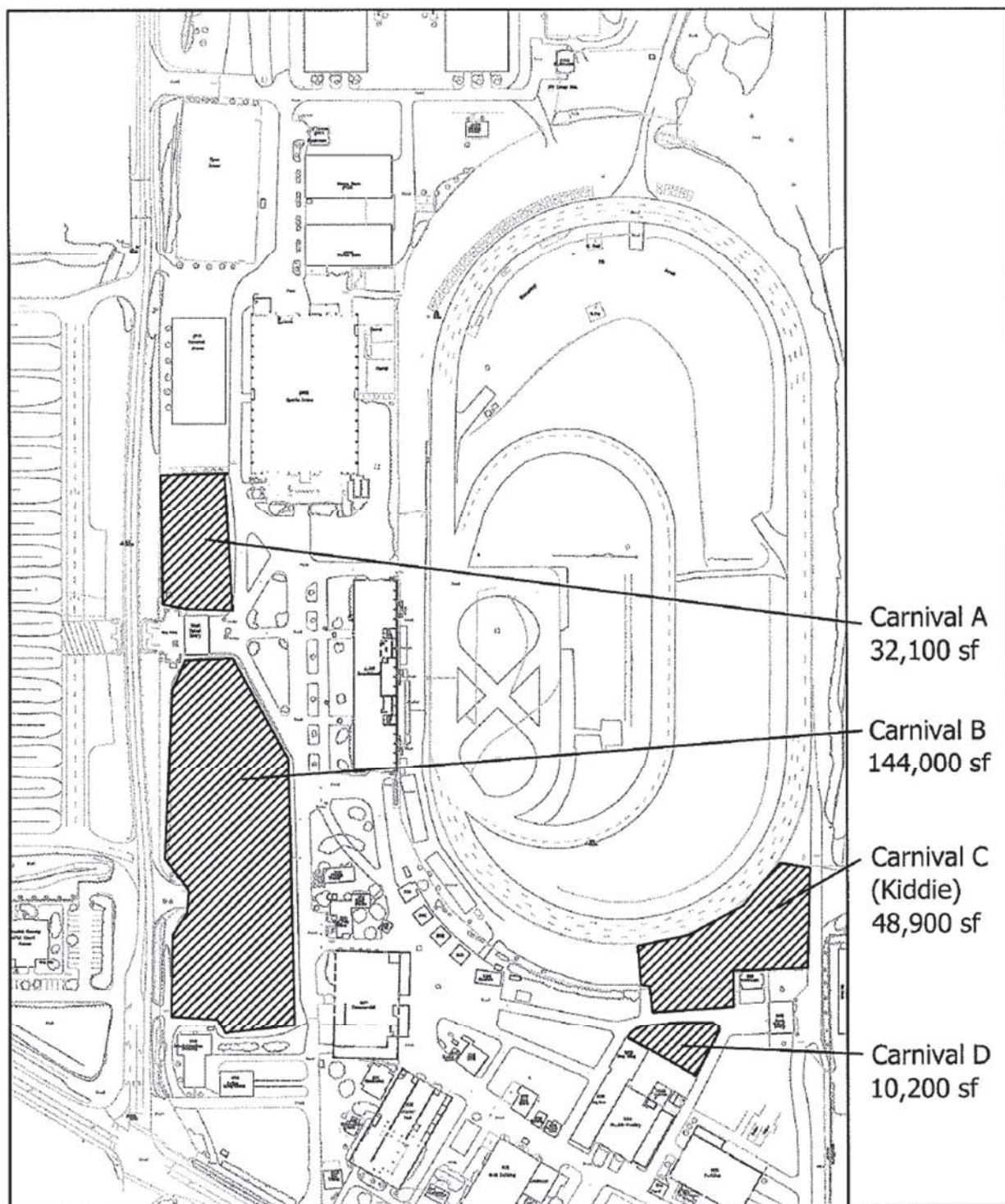
PHASE II: 2023

Proposed Capital Improvements: Electrical along SouthWest fenceline and asphalt preservation

Estimated Value: \$37,500

TOTAL ESTIMATED VALUE: \$75,000

Attachment A Carnival Layout Area

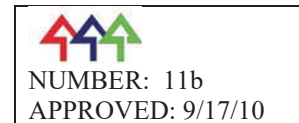


Attachment A

All Areas Approximate

Attachment B

DCNR/Snohomish County Parks and Recreation – Evergreen State Fair Park – Monroe, WA.



NPDES COMPLIANCE PROCEDURES FOR ALL PARTIES UNDER CONTRACTUAL AGREEMENTS WITH SNOHOMISH COUNTY PARKS & RECREATION

- 1.0 PURPOSE: This Procedure outlines responsibilities of all parties under any contractual agreement, as defined in Section 3.0, with Snohomish County Parks & Recreation Department in regard to the National Pollutant Discharge Elimination System (NPDES) municipal stormwater permit held by Snohomish County.
- 2.0 AUTHORITY: A Phase I Municipal Stormwater Permit, was issued to Snohomish County by Washington State Department of Ecology on January 17, 2007 as authorized by the State of Washington Water Pollution Control Law, Chapter 90.48 Revised Code of Washington (RCW), and the Federal Water Pollution Control Act. The permit requires the County to establish procedures that will eliminate, reduce, or minimize pollutant discharges to surface waters.
- 3.0 APPLICABILITY: This Procedure applies to all parties (PART(Y/IES)) under contractual agreement with Snohomish County Department of Parks & Recreation (PARKS). Contractual agreements covered by this procedure include, but are not limited to, construction contracts, lease agreements, facility license agreements, right-of entry permits, special use permits, and interlocal and interdepartmental agreements.
- 4.0 COMPLIANCE WITH OTHER LAWS: Compliance with this procedure does not constitute waivers of the requirements of any other law or regulations; nor does it indicate compliance with any other law or regulation. Compliance with all applicable federal, state, and local laws and regulations is required.
- 5.0 ACRONYMS:

| | |
|----------------|---|
| BMP | Best Management Practice |
| CESCL | Certified Erosion and Sediment Control Lead |
| Ecology or DOE | Washington State Department of Ecology |
| IVM | Integrated Vegetation Management |
| NPDES | National Pollutant Discharge Elimination System |
| SCC | Snohomish County Code |
| SWM | Surface Water Management |
| SWPPP | Stormwater Pollution Prevention Plan |
- 6.0 DEFINITIONS:
 - 6.1 "Contaminant" means a solid, liquid, or gaseous substance that, if discharged to a drainage facility, natural drainage system, receiving waters or groundwater, will alter the physical, chemical, or biological properties thereof to the extent that the discharge will render the facility, system, or water harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life. Contaminants may include, but are not limited to the following: Trash or debris; construction materials; petroleum products including but not limited to oil, gasoline, grease, fuel oil or heating oil; antifreeze and other automotive products; metals in either particulate or dissolved form; flammable or explosive materials; radioactive materials; batteries; acids, alkalis, or bases; paints, stains, resins, lacquers, or varnishes; degreasers and solvents; drain cleaners; pesticides, herbicides, or fertilizers; steam cleaning wastes; soaps, detergents, or ammonia; chlorine, bromine, or other disinfectants; heated water; animal wastes; sewage; animal carcasses; food wastes; bark, soils, sediment, rock and other fibrous materials; collected lawn clippings, leaves, or branches; dyes, except as allowed in SCC 7.53.090(11); and wastewater generated by commercial or industrial activities.
 - 6.2 "Discharge" means to throw, drain, release, dump, spill, empty, emit, or pour any matter into receiving waters, groundwater, a natural drainage system, or a drainage facility, or to cause or allow matter to be thrown, drained released, dumped, spilled, emptied, emitted or poured into receiving waters, groundwater, a natural drainage system, or a drainage facility, or to cause or allow matter to flow, run, or seep from land into receiving waters, groundwater, a natural drainage system, or a drainage facility.

6.3 “Drainage Facility” means any part of a man-made physical system designed or constructed to collect, treat convey, store, or control the flow of stormwater. Drainage facilities include, but are not limited to, storm water conveyance and containment facilities, including pipelines, constructed channels and ditches, infiltration facilities, retention and detention facilities, stormwater treatment facilities, erosion and sedimentation control facilities, and all other drainage structures and appurtenances.

6.4 “Prohibited Discharges” means the following discharges to any drainage facility, natural drainage system, receiving water, or groundwater within Snohomish County except as allowed in SCC 7.53.090 or conditionally allowed in SCC 7.53.095: (1) Any discharge not completely composed of stormwater; (2) Any discharge that causes or contributes to a violation of State Water Quality Standards or State Sediment Management Standards; (3) Any discharge that causes or contributes to a violation of any NPDES permit or State Waste Discharge permit issued to the County; (4) Any discharge that causes the County to be in violation of the State Underground Injection Control Program (Chapter 173-218 WAC); and (5) Any discharge that contains contaminants.

6.5 “Source control best management practices” or “source control BMPs” means structures, equipment, supplies, or operations that are intended to prevent pollutants from coming into contact with stormwater through physical separation or areas or careful management of activities that are sources of pollutants.

6.6 “Waters of the state” include those waters as defined as “waters of the United States” in 40 CFR Subpart 122.2 within the geographic boundaries of Washington State and “waters of the state” as defined in Chapter 90.48 RCW which includes lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses including storm drainage systems and ditches within the jurisdiction of the State of Washington.

7.0 COUNTY ACCESS: County personnel shall have reasonable access to all Park property to conduct annual inspection and maintenance activities, perform audits of user activities, and respond as necessary to all spills or other emergencies.

8.0 SOURCE CONTROL: SCC Chapter 7.53 requires any person storing or using materials that may contain contaminants in a manner that could result in prohibited discharges to streams, lakes, groundwater, or the County’s storm sewer to implement source control BMPs. Source control BMPs include but are not limited to those described in Volume IV of the County Stormwater Management Manual. The PARTY shall be responsible for utilizing all known, available, and reasonable methods of prevention, control and treatment (AKART) to prevent pollution from entering waters of the State, and for providing the proper training to all individuals engaged in such activities. The PARTY shall conduct all activities in a safe, responsible manner and in accordance with all governing regulations or laws. Activities that have the potential for being pollution generating and are subject to this requirement include, but are not limited to the following:

- Application of Fertilizers and Pesticides
- Building Exterior Cleaning and Maintenance
- Chemical Handling
- Cleaning of Animal Handling Areas
- Dust Control
- Fueling of Equipment and Vehicles
- Land Disturbance Activities (soil erosion)
- Landscape Maintenance and Vegetation Disposal
- Maintenance of equipment and vehicles
- Paving operations
- Trash management
- Vehicle Washing

9.0 SPILL RESPONSE, CONTAINMENT AND REPORTING REQUIREMENTS: PARTIES that engage in activities that pose a risk of polluting waters of the State must have a spill response plan that addresses prevention, spill control, containment, cleanup, and response. A copy must be made available to PARKS at their request. Spill containment and cleanup kits must be readily accessible. All spills shall immediately be reported to PARKS by contacting the Parks NPDES Compliance Officer at (425) 508-6614 and to all appropriate agencies identified in the PARTIES Spill Response Plan.

10.0 REVISIONS TO PROCEDURE: This procedure shall be revised and updated as needed to adhere to Snohomish County Phase I Municipal Stormwater Permit revisions, or procedure modifications required by PARKS. All revisions shall be numbered and dated and provided to PARTIES.