

Request for Qualifications
2023-007
Kitsap County Parks Department
Forestry Division
for
Brush Harvest License(s)

Response Deadline: Wednesday, February 14, 2023 @ 2:00PM

PROJECT DESCRIPTION:

Kitsap County Parks Department is seeking qualifications from brush and bow harvesters to License designated park properties. All vendors must submit a qualification packet, following the procedures listed below. This packet must be received no later than 2 PM, February 14, 2023. Kitsap County will not be responsible for lost mail or late delivery of the packet.

ATTACHMENTS:

1. Bidders Qualification Form for BrushLicense
2. Property parcel maps showing harvesting boundaries
3. Sample Professional Services Agreement

BIDDER'S QUALIFICATION PACKET:

The following items and information must be included and individually identified in the order shown:

- A. General Information: Name, address and telephone number of the bidders and any other individual to be contacted for further information. Give the name(s) to use on the License document. If the bidder is married, the name of bidder's spouse, if applicable, must also be included.
- B. Financial Statement: A statement of the bidders' ability to carry out the proposed operation, including payment of rent and obtaining qualifying insurance.
- C. Brush License Experience: A qualified person for a special forest products License is someone who has two (2) years of work experience in harvesting, knowledge of handling and marketing of special forest products. References attesting to this experience are required unless the interested person has established their qualifications as the holder of a previous Kitsap County or Washington State Department of Natural Resources special forest products License.
- D. The first year's proposed minimum rent plus a \$25 application fee. The deposit submitted by the successful proposer will be applied as payment toward the first year's rental and fees.

PROPOSAL SUBMITTAL

Three original copies of the proposal must be submitted with the Request for Proposal Number, the date and time of the response deadline and the name and address of the respondent clearly stated on the outside of the envelope.

Proposal must be submitted separately. Proposals received after the specified date and time will be automatically rejected and will not receive any further consideration. Faxed or e-mailed proposals will **not** be accepted.

Please submit by mail to:

OR

Hand Deliver to:

Vicki Martin, Buyer
Kitsap County Purchasing Office
614 Division Street, MS-7
Port Orchard, WA 98366

Vicki Martin, Purchasing
Kitsap County Administration Building
Purchasing Office - Fourth Floor
619 Division Street
Port Orchard, WA 98366

All costs for proposal preparation and negotiation incurred by the proposer, whether they lead to execution of a contract and agreement with Kitsap County must be borne entirely and exclusively by the proposer. Proposal packets shall not exceed 10 pages in length, double-sided, exclusive of resumes. However, full resumes are not encouraged.

Kitsap County reserves the right for acceptance, modification, and/or rejection of submitted proposals such as:

1. Rejection of any or all proposals
2. Rejection of any proposal not in compliance with proposal requirements.
3. Providing of addenda, amendments, supplementary material or other modifications to the proposal specifications.
4. Cancellation of this Request for Proposals without issuance of another Request for Proposal.
5. Issuance of subsequent requests for new proposals.
6. Request for submission of further information by the proposer in order to complete evaluation by Kitsap County Parks Department.
7. Determination to select one or more proposers for attempted negotiation of a final contract(s). Decisions made by Kitsap County Parks will be final.

QUESTIONS

All questions regarding this solicitation must be submitted by email and should be directed to:

Arno Bergstrom
Forester
Kitsap County Parks
614 Division Street, MS#1
Port Orchard, WA 98366
360-620-8907
abergstr@co.kitsap.wa.us

Failure to request clarification of any inadequacy, omission, or conflict will not relieve the vendor of any responsibilities under this solicitation or any subsequent contract. It is the responsibility of the interested vendor to assure that they received responses to questions if any are issued.

There are gate and lock requirements and License access restrictions in the contract. To preview the proposed License areas, walk-in access is available immediately past any gates. Vehicular access through some gates will need to be arranged with the Kitsap County Parks Department 360- 337-5350. Gates must remain closed and locked at all times while previewing License area.

LICENSE AND PROPERTY INFORMATION:

Bidders desiring to bid on more than one License application listed herein need submit only one qualification packet for the entire auction. The minimum rent as shown in this Notice of Leasing is the minimum acceptable bid for each License.

License	Parcel #	Minimum Acres	Minimum Bid/Acre	Rent/Year	Term
Coulter Creek Horseshoe Lake Wicks Lake Calvinwood Square Lake	Total: 182301-1-040- 2008 162301-2-004- 2002 162301-3-001- 2003 162301-4-002- 2000 162301-4-001- 2001 292301-1-014- 2007 292301-1-016- 2005 292301-4-010- 2005 292301-3-021- 2004 292301-2-006- 2005 292301-2-017- 2002 292301-2-004- 2007 4860-001-001- 0008	1,700 Brush	\$11/Acre	\$18,700	2 Years with option of a one-year renewal
Newberry Hill Heritage Park	Total: 252501-3-017- 1004 252501-3-017- 1103	1,083 Brush	\$9/Acre	\$9,747	2 Years with option of a one-year renewal
Banner Forest Heritage Park Bandix Dog Park	Total: 162302-1-005- 2002 012201-1-030- 2000	500 Brush	\$7/Acre	\$3,500	2 Years with option of a one-year renewal

Port Gamble Forest Heritage Park	Total: 182702-1-014-2005 132701-1-012-2003 072702-3-014-2004	1,100 Brush	\$8/Acre	\$8,800	2 Years with option of a one-year renewal
North Kitsap Heritage Park	Total: 032602-2-006-2001 042602-1-005-2003	800 Brush	\$5/Acre	\$4,000	2 Years with option of a one-year renewal



QUALIFICATION FORM FOR BRUSH HARVESTING

DATE _____

RFQ Number _____

General Information:

Company Name _____

Authorized Company Representative _____

Street Address _____

City, State and Zip Code _____

Telephone Number _____

Cell Number _____

Brush or Christmas Greens (Non-Plantation) Harvesting: A qualified person for a special forest products License is someone who has two (2) years of work experience in harvesting, knowledge of handling and marketing of special forest products.

References attesting to this experience are required unless the interested person has established their qualification as the holder of a previous State special forest products License.

(LICENSE CHECK ONE)

] Existing or previous Licensee of a Kitsap County or State special forest products License

OR

] Reference(s) attached

Contractors Statement: A statement of the Contractors ability to carry out the proposed operation, including payment of rent and obtaining qualifying insurance.

'I certify that all information provided on this form is accurate and true, that I am qualified to bid on a State specialized forest products License, and if awarded, I will provide annual rent payments, other required payment and performance bonds, required certificate(s) of insurance and other documentation as requested'.

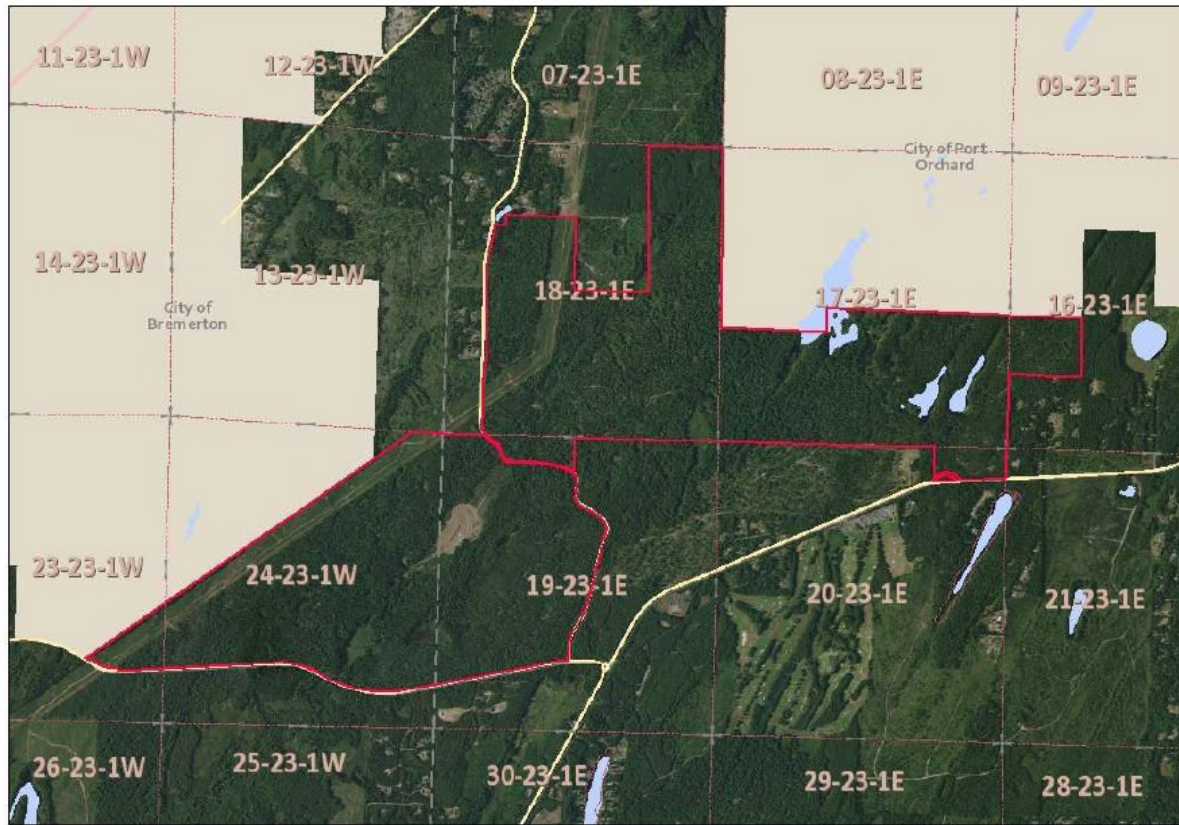
Signature

Name and phone number of your company's financial institution

Name and phone number of your company's liability insurance provider

COULTER CREEK

Coulter Creek, Calvinwood



Comments Parcel No: 192301-1-040-2006 TaxPayer: KITSAP COUNTY PARK & REC Site Address: MULTIPLE ADDRESSES ON FILE
Coulter Creek and Calvinwood Park

** This map is not a substitute for field survey **

Map Scale: 1 inch = 2,000 feet

Kitap Co. Parcel Search Application



Printed: January 5, 2023

HORSESHOE LAKE

Horseshoe Lake Park Boundary



0 0.0275 0.055 0.11 Miles



WICKS LAKE

Wicks Lake Park Boundary

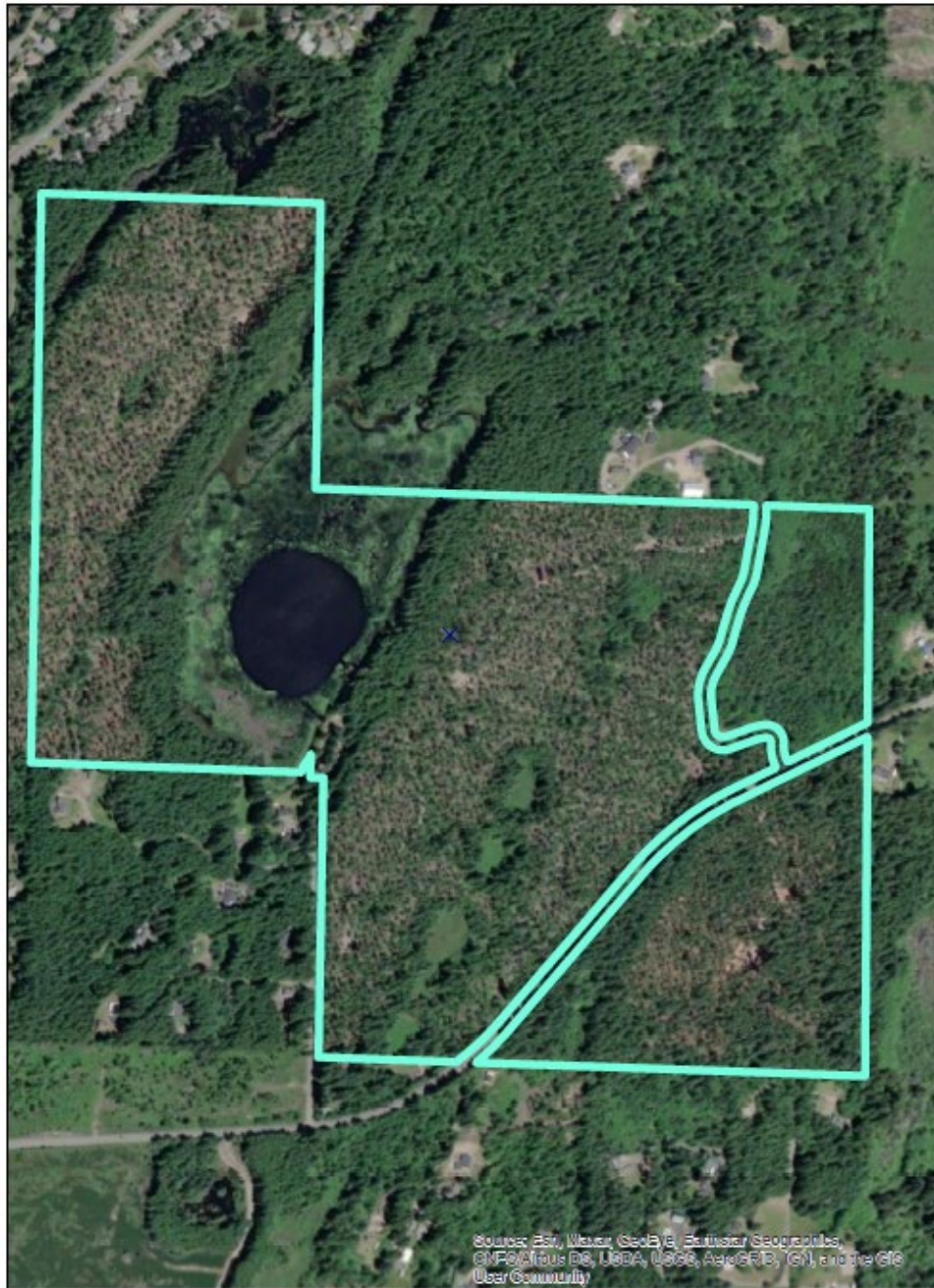


Source: Esri, DeLorme (GeoB), Earthstar Geographics, CNRS/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



SQUARE LAKE

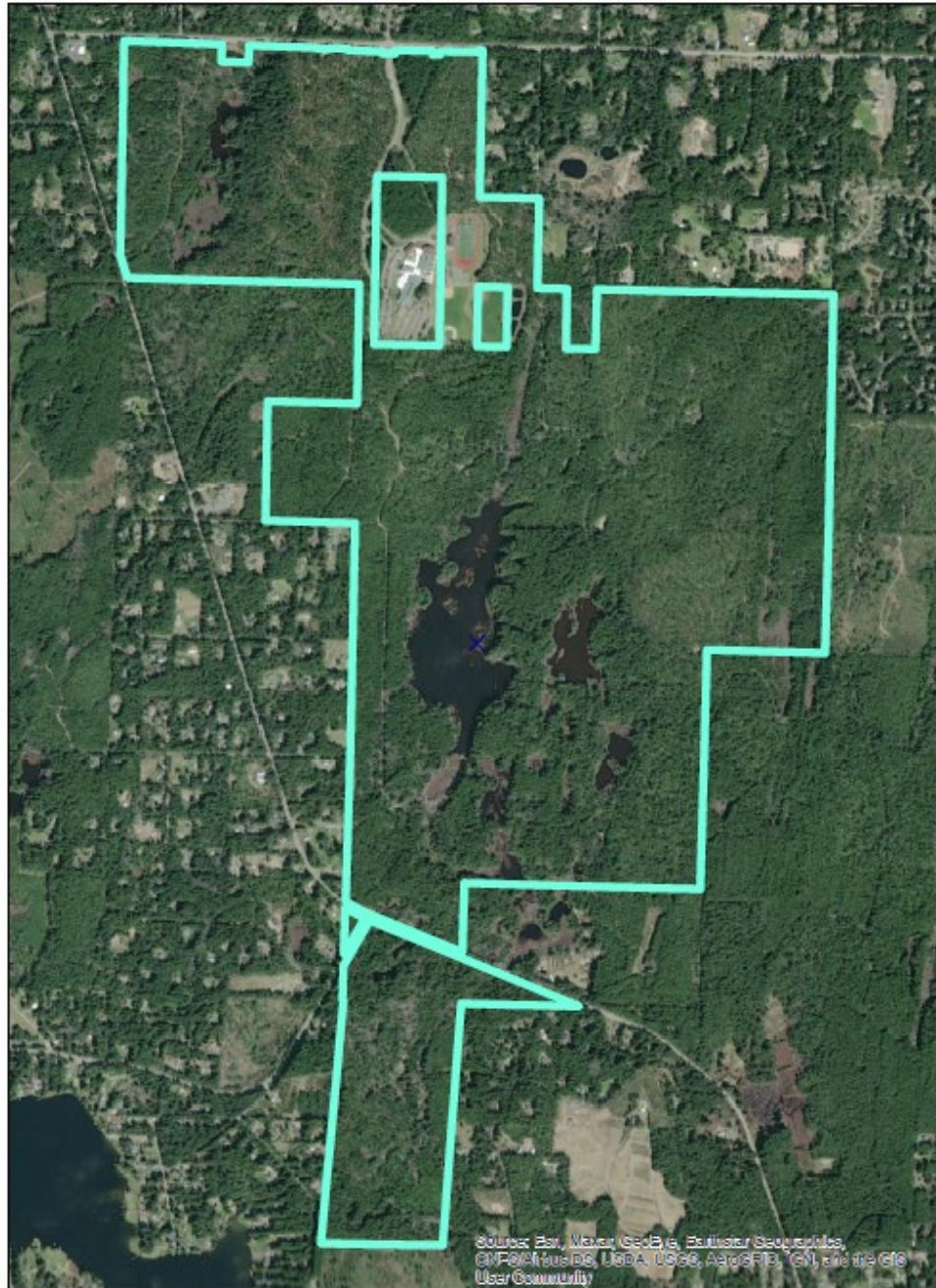
Square Lake Boundary



0 0.05 0.1 0.2 Miles



Newberry Hill Heritage Park Boundary



0 0.15 0.3 0.6 Miles



NEWBERRY HILL HERITAGE PARK

Map Scale: 1 : 4,800

Printed: Thursday, Jan 5, 2023



** This map is not a substitute for field survey **

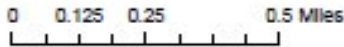
0 200 400ft



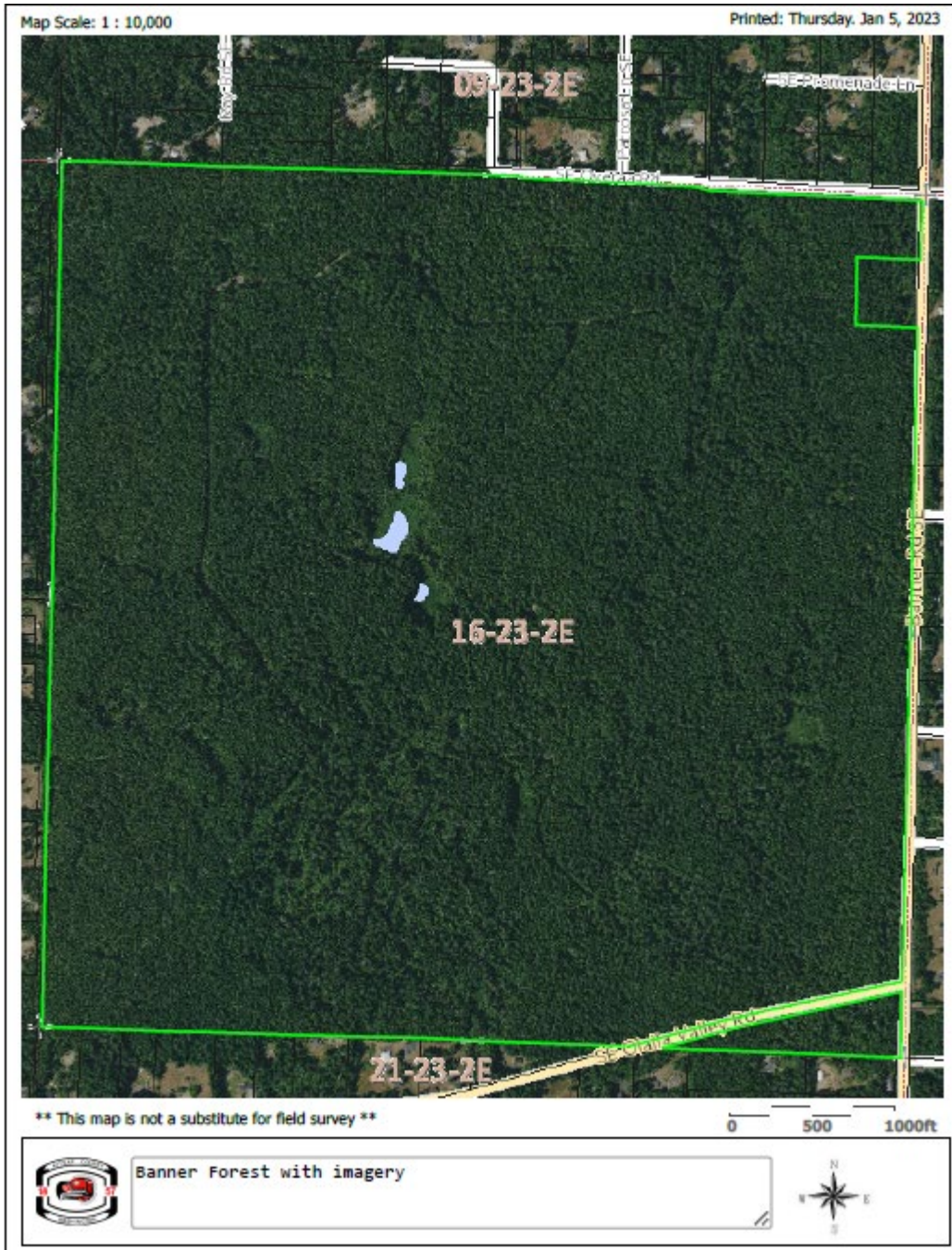
Bandix Dog Park

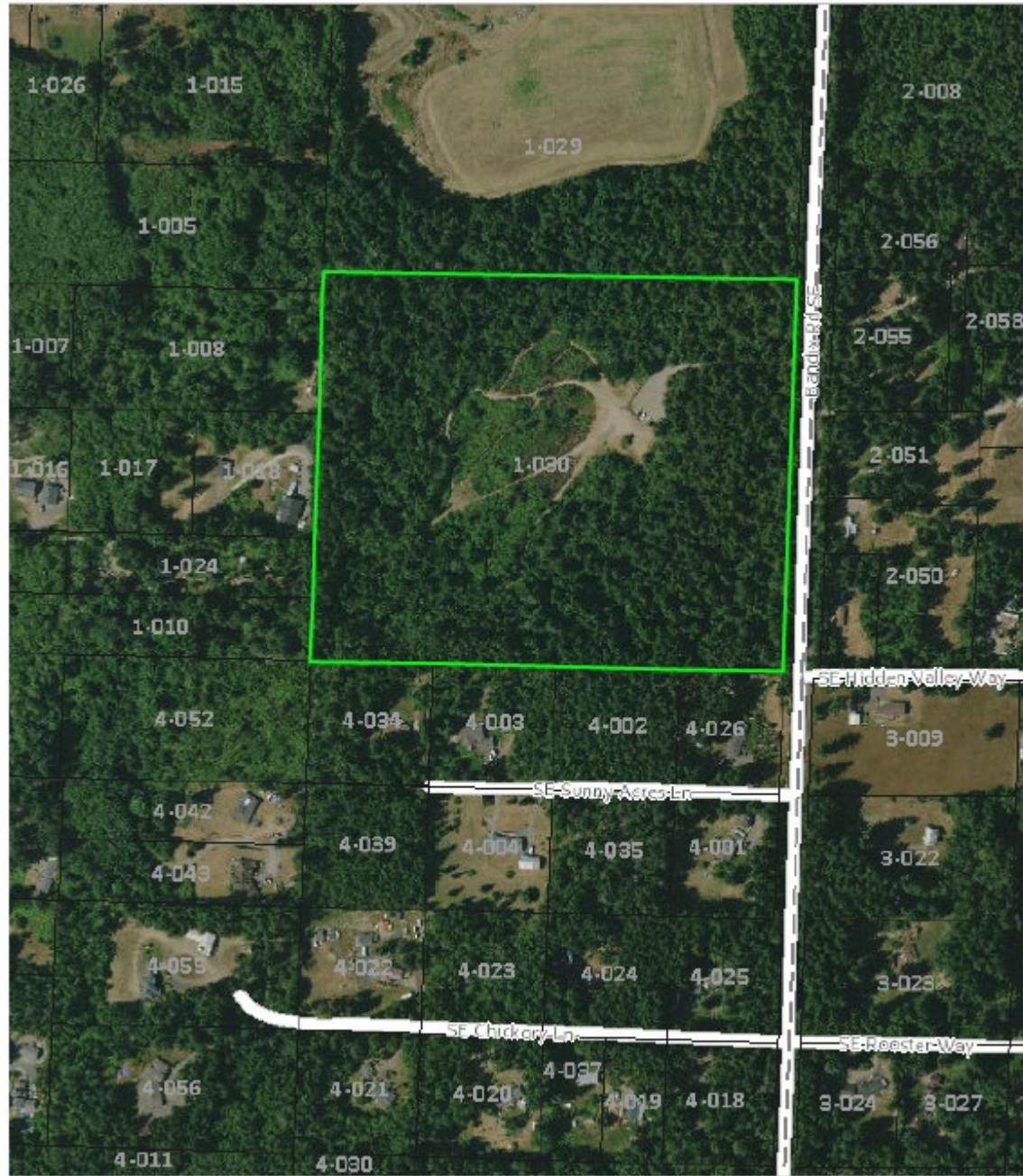


North Kitsap Heritage Park Boundary



BANNER FOREST
BANDIX DOG PARK





** This map is not a substitute for field survey **



Bandix Dog Park





KITSAP COUNTY FORESTRY BRUSH LICENSE

License No _____

License Name _____

BY THIS LICENSE (hereinafter "Agreement"), the County of Kitsap, Department of Parks, (hereinafter "County") Licenses to _____ (hereinafter "Licensee") the premises in Kitsap County, Washington, the legal description of which is set forth in Exhibit A. This Agreement is made upon the terms and conditions and for the consideration enumerated herein. Said premises and rights License hereby and hereinafter referred to as the License "Premises".

License Term. This Agreement shall commence on _____ ("Commencement Date") and expires _____

No Warranty of Quiet Enjoyment. County makes no warranty of quiet enjoyment of the License Premises.

Condition of Premises. Licensee has had an opportunity to inspect License Premises and enters into this Agreement solely in reliance on Licensee's own examination and not by reason of any representation by County. License Premises are accepted in its present condition "AS IS WHERE IS". No reliance shall be placed on any opinion, material, or information provided by or through County, and Licensee does so at its own risk, cost and expense.

Permitted Use. For this Agreement, the following products are permitted for harvest and payment will be made as required as rent in Section 3.01.

Permitted Use Approximate Acres	Authorized Products
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Optional Permitted Use. For this Agreement, the following products can be harvested at the option of the Licensee. Payment for all Optional Use products harvested will be made as required as Special Payment Conditions in Section 3.02.

Optional Use Approximate Acres	Authorized Products
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In the event the Licensee desires a change in acreage or use, authorization must be obtained in advance and in writing from the County. Approval may be conditioned upon adjustment of the payment in accordance with changes in acreage products, or use. In the event the County acquires adjoining property to that which is currently License, the Licensee affected by said acquisition will have the option of including said property under the License agreement by addendum. Permitted use may be further limited by SECTION 5.

2.1 Hauling and Harvest Schedule

The hauling and harvest of forest products will not be permitted from 1 hour after sunset to 1 hour before sunrise based on sunrise/sunset for 47 Degrees North Latitude unless authorized in writing by the License Administrator.

2.2 Operational License Provisions.

- a) Before commencing any commercial activity, Licensee will provide the County, a list, known as the "Approved Harvester List", of authorized individuals engaged in any commercial harvest activity. Licensee will provide the name of each authorized harvester, Special Forest Products Harvesting Permit number, type of picture identification and corresponding identification number on the Approved Harvester List. Licensee will timely notify License Administrator of any authorized harvester added or deleted from the Approved Harvester List. Licensee will notify the County two weeks prior to commencement of harvest.
- b) All persons engaged in any commercial activity on the License Premises will carry a valid photo identification card.
- c) All persons engaged in any commercial activity on the License Premises will carry a *valid* Special Forest Products harvest Permit per Chapter 76.48 RCW.
- d) Any vehicle engaged in commercial operations on the License Premises will be required to have a Windshield Card which will always be visible and readable from the outside of the vehicle and contain the following information:
 - 1) Signature of approval to transport or harvest by Licensee;
 - 2) Driver's name and Vehicle license number;
 - 3) Dates authorized to harvest or transport valuable material.
 - 4) Proof of commercial vehicle insurance shall be displayed on the dashboard of the vehicle where it can be plainly viewed.
- e) **A** working vehicle must remain on the premises during any commercial operations, not more than 2 miles from any harvester and shall be available for transportation.
- f) Only authorized gates shown on Exhibit D shall be used to access License area.
- g) Licensee is responsible for providing and maintaining locks on authorized gates.
- h) Gates shall be kept closed and locked except to allow immediate passage of vehicles.
- i) Do not block roads or gates at any time.
- j) Vehicle access and parking is restricted to existing County-maintained roads and public roads. Access from private roads and private land is prohibited unless approved in writing from the contract administrator.
- k) Licensee is responsible to provide mobile or portable sanitary facilities for human waste.
- l) Orange safety vests to be worn by harvesters always.

Section 3 Payment

Payments made hereunder will be applied first to interest, then to outstanding or delinquent rent, License-hold tax and other charges owed then to current rent, License-hold tax, and charges.

3.1 Payments.

- a) **Rent.** The Licensee shall pay to the County, at Port Orchard, Washington, 98366, in advance, the required rent of _____ for the period of _____ to 20__, and annually thereafter subject to adjustment under Subsection 3.07.
- b) **Cash Bond.** In addition, a Cash Bond in the amount of \$ _____ (10% of the annual payment) will be obtained by _____ and held until _____ the term of the License. This Cash Bond will be held to assure the County receives all payments set forth in this contract. If the Licensee fails to follow the payment schedule resulting in cancellation of the License the Cash Bond will not be refunded at the end of the term.
- c) **Performance Security.** Licensee agrees to furnish, within 10 days of the confirmation date, security acceptable to the County in the amount of \$1,000,000. The Security provided shall guarantee performance of all provisions of this contract and payment of any damages caused by operations under this contract or resulting from Purchaser's noncompliance with any rule or law. Acceptable performance security may be in the form of a performance bond, irrevocable letter of credit, cash or savings account assignments and must comply with Title 62A RCW, Article 5. Performance security must remain in full force over the duration of the contract length. Surety bonds issued shall conform to the issuance and rating requirements in clause G-150. The County shall retain the performance security pursuant to RCW 79.15.100. Purchaser shall not operate unless the performance security has been accepted by the County. If at any time the State decides that the security document or amount has become unsatisfactory, Purchaser agrees to suspend operations and, within 30 days of notification, to replace the security with one acceptable to the County or to supplement the amount of the existing security.

3.2 Special Payment Conditions. In addition to the cash rent required under Subsection 3.01, Licensee shall make payments to the County based on the removal of the following products, subject to adjustment as provided in Subsection 3.07.

No additional products may be harvested under this contract.

3.3 License-hold Tax. Licensee shall pay to the County, the License-hold tax as set forth in RCW Chapter 82.29A- License-hold Excise Tax as may be amended. The tax shall be due and payable at the same time the rental charged herein is due and payable.

3.4 No Counterclaim, Setoff or Abatement of Rent. Rent and other sums payable by Licensee hereunder shall be paid without the requirement of prior notice or demand by the County, and shall not be subject to any counterclaim, setoff, deduction or defense and without abatement. The obligations and liabilities of Licensee hereunder shall in no way be discharged or otherwise affected, except as expressly provided in Subsection 13.06 (Condemnation).

3.5 Interest Charged for Past-Due Rent and Other Sums Owed. Licensee shall pay interest at the rate of one percent (1%) per month (or at such higher rate as may be authorized by statute after the Commencement Date hereof), until paid, on rent or other sums owing u under the terms of this Agreement commencing the date such rent or other sum is due

and payable. In the event the County pays any sum or incurs any expense which Licensee is obligated to satisfy or pay under this Agreement, or which is made on behalf of Licensee, The County shall be entitled to receive reimbursement thereof from the Licensee upon demand, together with interest thereon from the date of expenditure at the rate stated above.

- 3.6 Late Charge for Failure to Pay.** In the event the Licensee fails to make any payment of rent due hereunder upon the date due, the County shall be entitled to collect from the Licensee a late charge equal to six percent (6%) of the amount of the delinquent payment. Any failure to pay rent or any amount specified in this Section 3, or any other amount to be paid by Licensee under terms of this Agreement within thirty (30) days of the date due, shall be a material default hereunder by the Licensee and such default shall entitle the County to pursue all remedies specified in this Agreement, including the right to terminate this Agreement, through failure to exercise such right shall not be construed as a waiver of the right and thereafter pursue any remedies available at law or equity including those contained in Chapter 59.12 RCW.
- 3.7 Adjustment of Rent.** County shall have the right to adjust the rent beginning _____ and at intervals of one (1) year thereafter (the "Adjustment Date"). Adjusted rent established after the designated Adjustment Date shall be due retroactive to such Adjustment date. The method for such adjustment shall be selected solely by the County from the following options:
- 1) Rent. Section 3.01 shall be adjusted based on the percentage increase in the United States Department of Labor, Bureau of Labor Statistics, "All Items " Consumer Price Index for All Urban Consumers ("CPI"), US City Average (1982-84 =100); other benchmark, since the Commencement Date or date of last Adjustment. In the event the above index ceases to be published, the County may substitute such other comparable index as then may be in publication.
- 3.8 Failure to Adjust Not Waiver.** Failure of the County to adjust rent or payments pursuant to Subsection 3.07 above at the Adjustment Date shall not be a waiver by the State of the right to make such adjustments at any other Adjustment Date.
- 3.9 Records.** Licensee shall prepare, maintain, and keep a clear, complete, detailed record and accounting of business of every kind and character affecting payment due the County and products harvested. These records shall be maintained at a location in Washington for a period of at least three years. Further, Licensee shall prepare, maintain, and keep records of all management practices conducted on the License Premises, including, but not limited to, the use of pesticides, for the term of this Agreement or as required by law.
- 3.10 Audit.** The County shall have a right to conduct, at any reasonable time upon forty-eight (48) hours' notice, an audit of the Licensee's business records. If an audit discloses that additional payments are due the County, Licensee shall make such payments no later than thirty (30) days after receipt of a bill from the County plus interest from the date the payment was originally due and payable. The acceptance by the County of any payment under Section 3 herein shall be without prejudice to the County's right to examine the Licensee's books and records to verify the rent and payments due hereunder.

SECTION 4 RESERVATIONS

- 4.1 Compliance.** The County shall have access to the License Premises at all reasonable times to determine and secure compliance with this Agreement. Failure to inspect or enforce compliance

shall not be construed as a waiver of the County's right to declare a breach, nor relieve Licensee of any liability to the County for any breach of the terms, conditions, or requirements of this Agreement.

- 4.2 Compatible Uses.** County reserves for itself, its successors and assigns, the right at all times for any purpose to cross and re-cross the License Premises, to sell, or otherwise dispose of County owned minerals, coal, oil, timber, gas or other valuable materials from the License Premises insofar as the County's activities on the License Premises and any grant of rights the County makes to any person entity shall not unreasonably interfere with the activities permitted hereunder.
- 4.3 Non-Default Termination.** County reserves the right to terminate this Agreement upon sixty (60) days' written notice in the event the County includes the License Premises in a plan for higher and better use, land exchange or sale.
- 4.4 Public Hunting, Fishing or Recreational Purposes:** The License Premises shall be open and available to the public for the purpose of hunting, fishing or recreational purposes unless a closure is authorized in writing by the County. In the event that a closure is authorized for hunting, fishing or recreational purpose., or all, the Licensee shall post the License Premises accordingly with signs to inform the public of such closure. Authority to close the License Premises may be given to protect the interests of the Licensee, the County, or the general public.

SECTION 5 SPECIAL RESTRICTIONS

5.1 Permits and Conformance with Laws.

- 1) Licensee shall obtain all building permits and other required permits, licenses, permissions, consents, and approvals from governmental agencies or third parties in connection with this Agreement and Licensee's permitted use including construction of any improvements, changes alterations, additions, repairs, maintenance to or replacement of the License Premises, or for the conduct of any business upon the License Premises at the sole cost and expense of the Licensee. Copies of such permits, licenses, permissions, consents, and approvals shall be supplied to the State on request.
- 2) Licensee shall conform to all applicable laws, regulations, permits, orders, or requirements of any public authority affecting the License Premises and the use thereof and shall correct at the Licensee's own cost and expense any failure of compliance created through the Licensee's fault or by reason of the Licensee's use. In no event shall Licensee undertake or suffer any activity to be conducted upon the License Premises which constitutes a nuisance, or which is a threat to the health or welfare of the general public.
- 3) Licensee shall cause all work on the License Premises and all business conducted thereon during the term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction.
- 4) Licensee assumes all risks associated with government regulatory actions including actions taken pursuant to the Forest Practices Act Ch.76.09 and the Endangered Species Act 16 U.S.C. of 1531-1544.

- 5.2 County owned valuable material.** Subject to the provisions of this Agreement, Licensee shall not cut County- owned timber or remove County-owned valuable material without prior written consent of the County. Prior to the County's authorization for the cutting of County owned timber or removal of valuable material, the Licensee must pay to the County the fair market value of the timber or valuable material as determined by the County.
- 5.3 Fire.** Licensee shall take all reasonable precautions to protect the land and improvements on the License Premises from fire and make every reasonable effort to report and suppress such fires as may affect the License Premises. Licensee and any Licensee's agents, employees, contractors, sub-contractors or approved harvesters shall have in possession at the location of its vehicle, when working on the License Premises between April 15 and October 15 of each year, the following fire protection equipment: one (1) Fire Extinguisher, one (1) Shovel with handle at least 40 inches long.
- 5.4 No residential use.** Licensee shall not live or reside or permit others to live or reside on the License Premises.
- 5.5 Plan of Operations**
- a) The Licensee shall meet with a designated County employee ("License Administrator") to develop and seek County's approval of a plan of operations for all activities authorized under this License before beginning any harvest operations. To the extent that the plan of operations is inconsistent with the License, the terms of the License shall prevail.
 - b) The plan of operations shall be in writing and be signed by the Licensee and License Administrator. County's acceptance and approval of Licensee's plan of operations shall not be construed as a statement or warranty that the plan of operations is adequate for Licensee's purposes or complies with applicable laws.
 - c) Licensee shall meet with the License Administrator annually thereafter to review and update the plan of operations. The existing plan of operations will remain in effect until a new plan of operations is approved by the State.
- 5.6 Closure.** Shutdowns of all or a portion of the area near or surrounding the License Premises for any reason beyond the control of the County or shutdowns by the County or any other agencies of the State of Washington because of fire danger shall not be a basis of claim against the County.
- 5.7 Condition of Premises.** At all times Licensee shall manage and maintain the License Premises in accordance with customary industry standards. Licensee shall prevent accumulation of trash, equipment parts, or "bone yards" on the License Premises. Upon vacating the License Premises at the end of the License, Licensee shall leave the License Premises in the state of repair and cleanliness required to be maintained by Licensee during the License and shall peaceably surrender the same to County.

SECTION 6 UTILITIES, TAXES AND LIENS

- 6.1 Utilities and Maintenance.** During the term of this Agreement, Licensee shall pay all expenses incurred by Licensee in the use, enjoyment, and operation of the License Premises, including, but not limited to, utility charges and all costs of maintaining and repairing the License Premises and all improvements thereon whether now existing or hereafter installed. Licensee shall indemnify and

hold the County harmless against any loss, liability, or expense resulting from any failure of Licensee to pay all such charges when due.

6.2 Taxes and Assessments.

- a) Licensee shall pay during the term of this Agreement all taxes and other governmental charges of any kind applicable or attributable to the installation of Licensee owned improvements on the License Premises, Licensee's License-hold interest therein, and Licensee's use and enjoyment thereof.
- b) Licensee shall pay its prorated share of all assessments that are legally required to be paid now or may be charged during the License term to the License Premises or Licensee owned improvements thereon. Licensee shall not cause or suffer the imposition of any assessment upon the License Premises without the prior written consent of the State. In the event any new assessment is proposed which affects the License Premises, Licensee shall immediately notify the County of such proposal after Licensee has knowledge or receives notice thereof. Any assessment upon the License Premises shall be made in compliance with all applicable statutes, including, but not limited to, Chapter 79.44 RCW.

- 6.3 Licensee Liens.** Licensee shall not suffer or permit any lien to be filed against the County's interest in the License Premises or improvements thereon by reason of work, labor, or services performed thereon or materials supplied to, by or through the Licensee. If any such lien is filed, Licensee shall cause the same to be discharged of record within thirty (30) days after the date of filing or creation of such lien unless other arrangements are authorized in writing by the County in advance. Licensee shall indemnify the County for any costs, damages or expenses (including attorneys' fees and courts' costs) incurred as a result of such liens or in obtaining their discharge whether such costs, damages or expenses were incurred prior or subsequent to termination or cancellation of this Agreement.

SECTION 7 LICENSEES INDEMNITY; INSURANCE REQUIREMENTS

- 7.1 Indemnity.** Licensee Licenses and shall indemnify and defend (with counsel acceptable to County) County, its employees, officers, and agents from and against any and all claims arising out of the use, occupation or control of the License Premises by Licensee, its agents, and employees. A "claim" as used in this subsection means any claim of any nature whatsoever for penalties, financial loss, damages (including but not limited to bodily injury, sickness, disease or death, or injury to or destruction of property, land and other natural resources including the loss of use thereof), costs or expenses (including but not limited to attorney's fees), whether or not resulting in a suit or action or reduced to judgment. This License and the obligation to indemnify shall not be eliminated or reduced by the concurrent negligence of the County, its officials, employees, or agents, except as provided in this subsection. To the extent that RCW 4.24.115 applies, Licensee shall not be required to indemnify County from County's sole or concurrent negligence. Licensee waives its immunity under Title 51 to the extent it is required to indemnify the County herein.

- 7.2 Insurance Requirements.** Licensee shall, at all times during the term of this contract at its cost and expense, buy and maintain insurance of the types and amounts listed below. Failure to buy and maintain the required insurance may result in the termination of the contract at the County's option.

If the Licensee fails to procure and maintain the insurance described below, Licensee shall be in material breach of this contract. In case of breach, the County, at its election, shall have the right to

terminate the contract or to procure and maintain, at the Licensee's expense, substitute insurance with right of offset against any money due the Licensee.

All insurance and surety bonds should be issued by companies admitted doing business within the County of Kitsap and have a rating of A-, Class VII or better in the most recently published edition of Best's reports. Any exception shall be reviewed and approved by County risk manager before the contract is accepted. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

Kitsap County shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications:

- a) Insurers subject to Chapter 48.18 RCW (admitted and regulated by the Insurance Commissioner): The insurer shall give the County 45 days advance notice of cancellation or non--renewal. If cancellation is due to non-payment of premium, the County shall be given 10 days advance notice of cancellation.
- b) Insurers subject to Chapter 48.15 RCW (surplus lines): The County shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium the County shall be given 10 days advance notice of cancellation.

Kitsap County, it's elected, and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella, and property insurance policies.

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the County.

Before starting work, Licensee shall furnish Kitsap County, Risk Manager, with a certificate(s) of insurance and amendatory endorsements, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in the contract and, if requested, copies of insurance policies to the County. The certificate of insurance shall reference the County of Kitsap, and the License number. Failure to provide proof of additional insured provisions may result in non-payment for services.

Licensee waives all rights against the County for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this contract. All insurance policies must expressly waive any right of subrogation by the insurance company against the County and the County's officials, employees, and agents.

If Licensee is self-insured, evidence of its status as a self-insured entity shall be provided to the County. Additionally, Licensee shall describe its financial condition and the self-insured funding mechanism and provide evidence of its financial capacity to self-insure.

By requiring insurance herein, the County does not represent that coverage and limits will be adequate to protect Licensee and such coverage and limits shall not limit Licensee's liability under the indemnities and reimbursements granted to the County in this contract.

The limits of insurance, which may be increased by the County, as deemed necessary, shall not be less than as follows:

Commercial General Liability (CGL) Insurance. Licensee shall maintain general liability (CGL) insurance covering claims for bodily injury, personal injury, or property damage arising on the property and/or out of Licensee's operations and, if necessary, commercial umbrella insurance with a limit of not less than

\$1,000,000 per each occurrence. If such CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00)1 (or a substitute form providing equivalent coverage). All insurance shall cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract), and contain separation of insured (cross liability) condition.

Workers' Compensation Coverage. Licensee shall comply with all State of Washington workers' compensation statutes and regulations. Workers' compensation coverage shall be provided for all employees of Licensee and employees of any subcontractor or sub-contractor. Coverage shall include bodily injury (including death) by accident or disease, which exists out of or in connection with the performance of this contract. Except as prohibited by law, Licensee waives all rights of subrogation against the County for recovery of damages to the extent they are covered by workers' compensation, employer's liability, commercial general liability, or commercial umbrella liability insurance.

If Licensee, contractor or sub-contractor fails to comply with all State of Washington workers' compensation statutes and regulations and the County incurs fines or is required by law to provide benefits to or obtain coverage for such employees Licensee shall indemnify County. Indemnity shall include all fines, payment of benefits to Licensee or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees.

Business Auto Policy (BAP). Licensee shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto".

Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

Licensee waives all rights against the County for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

In the event of any loss, damage or casualty which is covered by one or more of the types of insurance described above, the parties to this agreement shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which shall be held in trust by the County, including interest earned by the County on such proceeds, for use according to the terms of this agreement. The parties agree that such insurance proceeds shall be used to repair and restore damaged improvements to their former condition and usefulness or replacement of the same with equivalent or more suitable improvements.

When sufficient funds are available, using insurance proceeds described above, the parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:

- a) Repair and restore damaged buildings(s) and/or improvements to their former condition, or
- b) Replace said building(s) and/or improvements with a new building(s) and/or improvements on the premises of a quality and usefulness at least equivalent to, or more suitable than, damaged building(s) and/or improvements.

SECTION 8 HARMFUL SUBSTANCES

8.1 Hazardous, Toxic, or Harmful Substances.

- a) Deleterious Material, Licensee shall not make or suffer to be made, any filling in of the License Premises or any deposit of rock, earth, ballast, refuse, garbage, waste matter, chemical, biological or other wastes, hydrocarbons, any other pollutants, or other matter within or upon the License Premises, except as approved in writing by the County, or unless permitted by Subsection 2.01 (Permitted Use). If the Licensee fails to remove all non-approved fill material, refuse, garbage, wastes or any other of the above materials from the License Premises, the Licensee agrees that the County may, but is not obligated to, remove such materials and charge the Licensee for the cost of removal and disposal.
- b) Hazardous, Toxic, or Harmful Substances.
 - 1) Licensee shall not keep on or about the License Premises, any substances now or hereinafter designated as or containing components now or hereinafter designated as hazardous, toxic, dangerous, or harmful, and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state, or local law, regulation, statute or ordinance (hereinafter collectively referred to as "Hazardous Substances") unless such are necessary to carry out Licensee's permitted use under Subsection 2.01 (Permitted Use) and unless Licensee fully complies with all federal, state and local laws, regulations, statutes, and ordinances, now in existence or as subsequently enacted or amended. Licensee shall:
 - i) Immediately notify the State of: all spills of any Hazardous Substance affecting the License Premises; all failures to comply with any federal, state, or local law, regulation or ordinance, as now enacted or as subsequently enacted or amended; all inspections of the License Premises by, or any correspondence, orders, citations or notifications from any regulatory entity concerning Hazardous Substances affecting the License Premises; and all regulatory orders or fines or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private party concerning the License Premises; and
 - ii) On request, provide copies to the State of any and all correspondence, pleadings, and/or reports received by or required of Licensee or issued or written by Licensee or on Licensee's behalf with respect to the use, presence, transportation or generation of Hazardous Substances related to the License Premises.
 - 2) Licensee shall be fully and completely liable to the County, and shall indemnify, defend, and save harmless County, and its agencies employees officers, and agents with respect to any and all damages, costs, fees (including attorneys' fees and costs), penalties (civil and criminal), and cleanup costs assessed against or imposed as a result of Licensee's use, disposal, transportation, generation and/or sale of Hazardous Substances of that of Licensee's

employees, agents, assigns, sub-Licensees, contractors, subcontractor's licensees or invitees, and for any breach of his subsection.

SECTION 9 ASSIGNMENTS

Assignment. Licensee shall not hypothecate, mortgage, assign, sub-License, transfer or otherwise alienate this Agreement ("Assignment") or any interest therein, without the prior written consent of County, which consent shall not be unreasonably withheld. In granting any such consent under this clause the County shall be entitled to consider, among other items, the proposed assignee's, sub Licensee's or transferee's financial condition, business reputation, business, and such other factors as may reasonably bear upon the suitability of the assignee, sub Licensee, or transferee as Licensee of the License Premises. If Licensee is a corporation, partnership, or other association, (1) the transfer of more than fifty percent (50%) of the ownership interest in such entity, or (2) the sale of all or substantially all of the assets of the Licensee shall be deemed to constitute an "assignment" of this Agreement which requires consent of the County. The consent of the County to any one assignment shall not constitute a waiver of the County's right to consent to subsequent assignments, nor shall consent of the County to any one assignment relieve any party previously liable as Licensee from any obligations under this Agreement, who shall remain join and severally liable as primary obligor and not as surety. The acceptance by the County of the payment of rent following an assignment shall not constitute consent to any assignment and the County's consent shall be evidenced only in writing. The County may require reimbursement for any additional administrative costs resulting from this assignment.

SECTION 10 IMPROVEMENTS

10.01 Improvements. No improvement shall be placed on the License Premises. Unauthorized improvements shall either be removed by the Licensee without damage to the License Premises, removed by the County at the Licensee's expense, or become the property of the County at the County's option.

SECTION 11 ROADS

11.1 Access Across Premises. Licensee is authorized, subject to any rights previously granted to third parties, to use existing roads on the License Premises as needed to enjoy the permitted uses. Licensee may, with written approval of the County, construct additional roads.

11.2 Access to Premises.

Adjacent County Land Access to License Premises may include a non-exclusive right to use an existing road over the location shown on the map(s) attached as Exhibit _____ for the purpose of exercising the rights granted herein.

11.3 Road Repair. Licensee shall repair or cause to be repaired at its sole cost and expense that damage to said road(s) occasioned by it which is in excess of that which it would cause through normal and prudent use of said road(s). Within fifteen (15) days of the damage, Licensee shall meet with the County and provide a plan of operation for the repair.

11.4 Road Maintenance. Road maintenance is defined as work normally necessary to preserve and keep the roads in their present condition or as hereafter improved. At a minimum, roads shall be maintained to meet forest practice standards set for the in WAC 222-24-050 as now written or hereafter amended. Unless contrary to the terms of an express easement authorizing access, the cost of performance of road maintenance and resurfacing shall be allocated on the basis of respective uses of said road.

During periods when a road, or portions thereof, is used solely by Licensee, Licensee shall solely maintain that portion of said road to the standards set forth above; provided the County reserves the right to make reasonable allocations concerning priority of use and maintenance of said roads by it and others. Where there is joint use of a road, or portion thereof, Licensee shall perform or cause to be performed, or contribute or cause to be contributed, that share of the maintenance and resurfacing occasioned by such use as hereinafter provided.

During periods when more than one party is using the same road or any portion thereof, the parties hereto shall meet and establish necessary maintenance provisions. Such provisions shall include, but shall not be limited to:

- a) The appointment of a maintainer, which may be one of the parties hereto or any third party, who will perform or cause to be performed at a reasonable and agreed upon rate the maintenance and resurfacing of the road or the portion thereof being used; and
- b) A method of payment by which each party using said road or a portion thereof, shall pay its pro rata share of the cost incurred by said maintainer in maintaining or resurfacing said road or a portion thereof.

11.5 Road Improvements. Licensee shall construct no improvements to roads where access has been provided by the County without prior written consent of the County, which shall not be unreasonably withheld. Unless the County agrees to share in the cost of the improvement in writing, the improvements shall be at the sole cost of the improver.

11.6 Insurance. The provisions under Section 7- Licensees' Indemnity; Insurance Requirements shall apply to Licensee's use of roads authorized herein.

SECTION 12 DEFAULT AND REMEDIES

12.1 Default. In the event of any material breach of any provision of this Agreement by Licensee, the County shall be entitled to cancel this Agreement and seek any other remedies set forth in this Agreement or otherwise available at law or equity. County shall not cancel this Agreement if the breach pertains to a matter other than the payment of any monies due under this agreement and Licensee shall promptly commence to cure the breach and shall cure the breach within forty- five (45) days. If such breach is non-monetary in nature, and, as determined by the County, is not reasonably susceptible of being cured in said forty-five (45) days (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), Licensee shall commence to cure such breach within said period and diligently pursue such action with continuity to completion. If Licensee fails to cure a material breach, all Licensee owned improvements shall at the option of the County, be removed by Licensee, be removed by the County at the cost to Licensee or be forfeited to the County.

12.2 Reentry. Except as provided in 12.01, in the event of material breach by the Licensee, County shall have the right, with or without canceling the License, to reenter the License Premises and remove all persons and property from the License Premises and take whatever actions may be necessary or advisable to relent, protect or preserve the License Premises. Any property so removed may be stored in a public warehouse or other suitable place or otherwise disposed of in County's discretion at the expense and for the account of the Licensee. County shall not be responsible for any damages or losses suffered by Licensee as a result of such reentry, removal, storage or other disposition, and no such action shall be construed as an election to terminate this License unless a written notice of termination is given to Licensee.

- 12.3 Termination of Agreements.** Whether or not the County elects to terminate this Agreement on account of any breach by Licensee and subject to any non-disturbance and attornment agreements, if any, the County shall have a right to terminate any and all sub-Licenses, licenses, Licenses or other arrangement for possession affecting License Premises. Alternatively, the County, in its sole discretion, may succeed to Licensee's interest in such sub-License, license, License or arrangement, and Licensee shall have no further right to or interest in the rent or other consideration receivable thereunder.
- 12.4 Survival.** All obligations of Licensee to be performed prior to the expiration or earlier termination shall not cease upon the termination or expiration of this Agreement and shall continue as obligations until fully performed. All clauses of this Agreement that require performance beyond the termination or expiration date shall survive the termination or expiration date of this Agreement. Upon expiration or earlier termination of this Agreement, the rights of Licensee and of all persons, firms, corporations, and entities claiming under Licensee in and to the License Premises and all improvements hereon, unless specified otherwise in this Agreement, shall cease.
- 12.5 County's Right to Cure Defaults.** If Licensee fails to perform and is in breach of any undertaking or promise contained herein, the County shall have the option, but is not obligated, to make such performance after giving (10) days written notice to the Licensee. The County costs and expense to correct Licensee's failure to perform shall be reimbursed by Licensee and shall be immediately due and payable, together with interest accruing from the date such cost or expense is incurred.
- 12.6 Remedies Cumulative.** The specified remedies to which the County may resort under the terms of this Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress to which the County may lawfully be entitled in case of any breach or threatened breach by Licensee of any provision of this Agreement.
- 12.7 Nonwaiver.** Waiver by the County of strict performance of any provision of this Agreement shall not be a waiver of nor prejudice the County's right to require strict performance of the same provision in the future or of any other provision. The acceptance of performance, rent, or any other sum owing, by the State following a breach by the Licensee of any provision of this Agreement shall not constitute a waiver of any right of the County with respect to such breach and the State shall be deemed to have waived any right hereunder only if the County shall expressly do so in writing.
- 12.8 Force Majeure.** The Licensee's failure to comply with any of the obligations under this Agreement shall be excused only if due to causes beyond Licensee's control and without the fault or negligence of the Licensee, including acts of God, acts of the public enemy, acts of any government, fires, floods, epidemics and strikes.
- 12.9 Insolvency of Licensee.** If the Licensee becomes insolvent, a receiver is appointed, or Licensee's interest is transferred by operation of law by reason of insolvency, the County may terminate this Agreement at its option. Insolvency as used herein will mean the inability of the Licensee to meet its monetary obligations under this Agreement as they come due.

SECTION 13 GENERAL PROVISIONS

- 13.1 Governing Law.** This Agreement shall be construed, interpreted and enforced pursuant to the laws of the State of Washington. Venue shall be in Kitsap County. The terms of this Agreement shall be given their ordinary meaning and shall not be presumed construed in favor or against either party hereto.

13.2 No Partnership. The County is not a partner nor a joint venture with the Licensee in connection with the activities conducted and business carried on under this Agreement, and the County shall have no obligation with respect to the Licensee's debts or other liabilities.

13.3 Licensee's Authority. Persons executing this Agreement on behalf of Licensee represent that they are authorized to do so and warrant that this Agreement is a legal, valid, and binding obligation on behalf of Licensee, and is enforceable in accordance with its terms.

13.4 County's Authority. This agreement is entered into by the County pursuant to the authority granted by statute and the Constitution of the State of Washington. The terms and conditions hereof are subject to such statutory and constitutional provisions as may be now in effect and such provisions which do not impair the contractual rights of the Licensee under this Agreement which may lawfully be enacted subsequent to the date of this Agreement.

13.5 Preservation of Markers. Licensee shall not destroy any land survey corner monuments and reference points (including but not limited to corner markers, witness objects, or line markers) without prior written approval from the County, which shall not be unreasonably withheld. Monuments or reference points that must necessarily be disturbed or destroyed during construction or operations must be adequately referenced and replaced, at the Licensee's cost, under the direction of a Kitsap County of Washington Professional Land Surveyor, in accordance with all applicable laws of the State of Washington, including but not limited to RCW 58.24, and all relevant regulations.

13.6 Condemnation. If all of the License Premises are taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Agreement, this Agreement terminates as of the date the condemner takes possession. If part of the License Premises is taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Agreement, the State or Licensee may choose to terminate this Agreement as of the date the condemner takes possession. If either the County or Licensee elects to terminate this Agreement, the rents or other charges to be paid by Licensee will be apportioned by the County and paid by the Licensee to the date of taking. If neither the County nor Licensee elects to terminate this Agreement, the rent will be reduced in the same proportion that the value of the portions of the site to be taken bears to the value of the entire site as of the date the condemner takes possession.

If the taking is for a period which will end on or extend beyond the expiration of the term of this Agreement, Licensee will have no claim or interest in or to any award of damages for the whole or partial taking of the site, except that the Licensee will be entitled to an amount equal to the fair market value of any improvements as of the date of taking (except trade fixtures) considered by this Agreement to be owned by the Licensee taken by the condemner.

If temporary use of all or part of the site is taken by any lawful authority under the power of eminent domain for a period ending before the expiration of the term, this Agreement will continue in full force and the Licensee will be entitled to receive any award from the condemner for the use of all or part of the License Premises.

The County and Licensee will give to the other immediate written notice of any proceedings with respect to a condemnation and of any intentions of any authority to exercise the power of eminent domain.

13.7 Interpretation and Numbering. Section numbers, headings, or titles are for convenience only and are not to be construed to limit or to extend the meaning of any part of this Agreement.

13.8 Time of Essence. Time is expressly declared to be of the essence of this Agreement and each and every covenant of Licensee and the County hereunder.

13.9 Amendments. Any amendments, revisions, supplements, or additions to this Agreement or the attached exhibits shall be made in writing executed by the parties hereto, and neither County nor Licensee shall be bound by verbal or implied agreements. Such changes may be made by re-execution of the signature page and the deletion and addition of the appropriate new effective pages or exhibits governing the change, if any.

13.10 Entire Agreement. This written Agreement or its successor or replacement contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, statement or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein shall be binding or valid.

13.11 Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent prove to be invalid, unenforceable, void, or illegal, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall be not affected thereby, and each term and provision of this Agreement shall be valid and be enforced as written to the fullest extent permitted by law.

13.12 Notices and Submittals. Any notice or submittal given under this Agreement shall be deemed as received when delivered by hand or five (5) days after deposit in the United States mail with first-class postage affixed, addressed as noted. Changes of address may be given in accordance with this section. Any notice or submittal given under this Agreement shall be:

To the County:

Where Agreement provisions require submittal to County office:

Kitsap County Parks Department
Attn: Arno Bergstrom Forester
614 Division Street M.S. #1
Port Orchard, WA 98366

To the Licensee at the address affixed with signature or Licensee's last known address.

13.14 Exhibits. This Agreement is subject to the terms and conditions of exhibits referenced herein, which are attached hereto and by this reference made a part hereof.

Exhibits

- A. Legal Description of Premises and Encumbrances
- B. HCP Requirements
- C. Gates and Locks
- D. Authorized gate list
- E. License Area Map

13.15 Proprietary Information/Public Disclosure. Materials or information submitted as required in this Agreement shall become public records within the meaning of RCW Chapter 42.56.

Any submitted materials or information that the Licensee claims as exempt from disclosure under the provisions of RCW 42.56.210 must be clearly designated. The page must be identified and the particular exemption from disclosure upon which the Licensee is making the claim must be identified by the RCW citation number.

The County will consider a Licensee's request for exemption from disclosure; however, the County will make an independent decision on the applicability of any claimed exemption consistent with applicable laws. The portion of a document claimed as exempt must qualify for exempt status as identified in RCW 42.56. Marking the entire submitted materials or information exempt from disclosure cannot be honored. If a public records request is made regarding materials that the Licensee has requested exempt, the affected Licensee will be given notice of the request and allowed ten business days to seek a court injunction against the requested disclosure prior to the County fulfilling the public records request.

Dated _____

Dated _____

LICENSEE

KITSAP COUNTY
BOARD OF COUNTY COMMISSIONERS

Printed Name

Edward E. Wolfe, Chair

Signature

Charlotte Garrido, Commissioner

Federal Tax ID Number

Robert Gelder, Commissioner

ATTEST:

Dana Daniels, Clerk of the Board