

**TOWN OF PINETOP-LAKESIDE**

**RESOLUTION NO. 23-1653**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PINETOP-LAKESIDE, ARIZONA, AUTHORIZING THE WATERCRAFT RENTAL CONTRACT WITH J&T'S WILD-LIFE OUTDOORS TO PROVIDE WATERCRAFT RENTALS AT WOODLAND LAKE PARK; AND AUTHORIZE THE TOWN MANAGER TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO COMPLETE THIS PROJECT.**

**WHEREAS**, the Town of Pinetop-Lakeside (Town) Town Council has advertised Requests for Proposals for Watercraft Rentals at Woodland Lake Park; and

**WHEREAS**, Town staff has received, reviewed and scored the proposals received for Watercraft Rentals at Woodland Lake Park; and

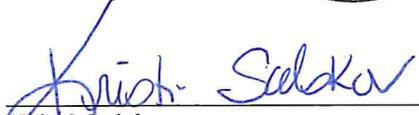
**WHEREAS**, Town staff deems it prudent and cost-effective to enter into an Agreement with J&T's Wild-Life Outdoors for Watercraft Rentals at Woodland Lake Park (Exhibit A);

**NOW, THEREFORE, BE IT RESOLVED**, that the Mayor and Town Council of the Town of Pinetop-Lakeside, Arizona approve the Town entering into an Agreement with J&T's Wild-Life Outdoors for Watercraft Rentals at Woodland Lake Park; and authorize the Town Manager to execute all documents necessary to complete this transaction.

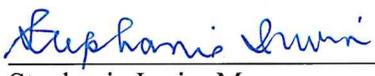
**PASSED AND ADOPTED** by a majority vote of the Mayor and Town Council of the Town of Pinetop-Lakeside in an open meeting on this 19<sup>th</sup> day of January 2023.



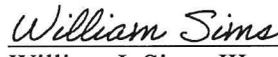
**ATTEST:**

  
\_\_\_\_\_  
Kristi Salskov  
Town Clerk

**TOWN OF PINETOP-LAKESIDE**

  
\_\_\_\_\_  
Stephanie Irwin, Mayor

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
William J. Sims, III  
Town Attorney

**EXHIBIT "A"**

**Contract with J&T's Wild-Life Outdoors for Watercraft Rentals at  
Woodland Lake Park.**

## WATERCRAFT RENTAL CONTRACT

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THIS WATERCRAFT RENTAL CONTRACT ("Contract") is made this 19<sup>th</sup> day of January 2023 by and between the Town of Pinetop-Lakeside (hereinafter the "Town"), and J&T's Wild-Life Outdoors (hereinafter the "Contractor").

### **WITNESSETH THAT**

WHEREAS, the Town has developed specifications and desires to provide annual Watercraft Rental services at Woodland Lake Park; and

WHEREAS, Contractor represents that it possesses the experience, competence, equipment, and financing to properly perform such work, and has formally proposed to do so, and to furnish all necessary labor, materials, and equipment and services therefore in accordance with said specifications and project location map, and subject of the terms and conditions hereof.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein set forth, it is hereby agreed as follows:

- 1. Services.** Contractor shall perform the work described as Watercraft Rental at the designated location as specified in Watercraft Rental Request for Proposals attached hereto as Exhibit A and made a part hereof, in a competent and professional manner to the satisfaction of the Town. Town reserves the right to subtract or add properties from the list in Exhibit A, and to make adjustments to the Contract Price in conjunction with the Contractor, as necessary.
- 2. Contractor's Expertise.** Contractor warrants that it has the ability, authority, capacity, and professional expertise to perform this Contract.
- 3. Contractor.** Contractor acknowledges that it is an independent Contractor. Neither party is or shall purport to be an agent, employee, partner, joint venture or associate of the other. An employee or agent of one party shall not be deemed an employer or agent of the other party for any purpose. Taxes or Social Security contributions will not be withheld from any payment by the Town, and Contractor will be solely responsible for such matters.
- 4. Subcontractor.** Contractor shall not enter into any subcontract with respect to any of the work to be performed hereunder without Town's prior written approval. All subcontractors shall comply with applicable federal and state laws and regulations and shall impose on the subcontractor the same obligations as are imposed on Contractor by this Contract. Contractor is responsible for full performance of this Contract regardless of whether Subcontractors are used.
- 5. Term of Contract.** The term of this Contract shall be a one (1) year period to commence upon the execution of this Contract by both parties and shall expire January 31<sup>st</sup>, 2024, unless terminated, canceled, or extended as otherwise provided herein. This Contract may be extended for up to four (4) additional one-year terms.

6. **Contract Price.** The Contractor agrees to perform all of the work described in the Contract Documents and pay five percent (5%) of gross sales and goods sold, as defined in the Technical Specifications, to the Town of Pinetop-Lakeside. One hundred percent (100%) of the funds received by the Town will be deposited into a restricted fund to be used for improvements to the concessionaire area at Woodland Lake Park.

7. "Contract Documents" means and includes the following:

- Notice of Request for Proposals/Request for Proposals Documents
- Proposal
- Contract
- Addenda

In the event that a conflict should arise between the various documents cited above, the following list of priority shall be used to resolve the conflict:

- a. Contract
- b. Addenda
- c. Notice of Request for Proposals/Request for Proposals Documents
- d. Proposal

8. This Contract shall be binding upon all parties hereto and their respective heirs, executors, administrators, successor, and assignees.

9. **Payment.** Contractor shall submit all monthly sales reports and payments to the Public Works Director for the Town of Pinetop-Lakeside, on the 10<sup>th</sup> of each month. All payments shall be made pursuant to Section 6 of this Contract.

10. **Insurance Requirements.**

**A. General**

General Aggregate	\$2,000,000
Products – Completed Operation Aggregate	\$500,000
Blanket Contractual Liability – Written & Oral	\$500,000
Fire Legal Liability	\$500,000
Each Occurrence	\$1,000,000

This policy shall be endorsed to include the following additional language: The Town of Pinetop-Lakeside, its officials, officers, employees and agents shall be named as Additional Insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

All policies shall contain a waiver of subrogation against the Town, its officials, officers, employees, and agents for losses arising from work performed by or on behalf of the Contractor.

**B. Business Automobile Liability**

The policy shall include bodily injury and property damage for any owned, hired, leased, borrowed and/or non-owned vehicles used in the performance of this Agreement.

Combined Single Limit	\$500,000
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**C. Commercial General Liability**

This policy shall include bodily injury, property damage, personal injury, and broad form of contractual liability, and at least the minimum limits of the following:

General Aggregate	\$2,000,000
Damage to Rented Premises	\$50,000
Medical Expenses	\$5,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

The policy shall be endorsed to include the following Additional Insured language: The Town of Pinetop-Lakeside, its officials, officers, employees and agents shall be named as Additional Insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

**D. Workers' Compensation and Employers' Liability**

- Workers' Compensation: Statutory
- Employers' Liability

Each Incident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

The contractor shall require Subcontractors to provide Workers' Compensation and Employers' Liability with at least as much coverage as the provided Contractor.

All policies shall contain a waiver of subrogation against the Town its officials, officers, employees, and agents with respect to liability arising out of the activities performed by or on behalf of the Contractor.

- E.** The policies of insurance required under this section are to be primary insurance policies and any insurance policies and any insurance policy maintained by the Town is considered excess insurance. The existence of excess insurance policies should in no way be construed to limit the requirements of insurance describe herein. The required insurance under this Contract shall not limit the liability of the Contractor hereunder.
- F.** Contractor shall provide Town with Certificates of Insurance documenting that Contractor has obtained the above coverages. Such certificates shall include the required provisions and endorsements required by this Agreement. Such certificates shall include a statement that

insurance may not be cancelled without 30 days prior written notice to Town by first class mail, postage prepaid, 10 days' notice in the event that cancellation is due to nonpayment of premium.

***In the event, any of the above insurance policies are written on a "claims made" basis, coverage must extend for two years past the completion and acceptance of the work or services as evidenced by annual Certificates of Insurance which shall be delivered to the Town upon execution hereof and annually updated thereafter.***

**11. Indemnity.** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the Town its agents, officers, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs and the costs of appellate proceedings) relating to, arising out of or resulting from the negligent acts, errors, mistakes, omissions work or services of the Contractor, its agents, employees or subcontractors in the performance of the Contract. Contractor's duty to defend and hold harmless and indemnify the Town, its agents, officers, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death or injury to, impairment or destruction of property including loss of use resulting therefrom, caused in whole or in part by any negligent act, error, mistake or omission in the performance of this Contract including those by any person for whose negligent acts, errors, mistakes or omissions Contractor may be liable. The amount and type of insurance coverage requirements set forth above shall not limit the scope of the indemnity in this paragraph.

**12. Non-Assignment.** Contractor shall not assign any right or interest in this Contract without Town's prior written approval, nor shall Contractor delegate any duty hereunder without Town's prior written approval.

**13. Claims and Disputes.** All claims, disputes and matters in question between the Town and Contractor arising out of this Contract, which are not resolved to the satisfaction of either of the parties after having been submitted to the Public Works Director, will be decided by the Town Manager upon his receipt of a demand for review. The demand for review shall be initiated by filing a written demand with the Town Manager. The demand shall include the material previously filed with the Public Works Director, the written opinion of the Contractor in response thereto, and concise statement of the alleged errors in the decision of the Public Works Director and the specific ground or grounds upon which the party contends it is entitled to relief. The decision of the Town Manager shall be made within ten (10) calendar days of filing of the written demand. Failure to complete the review procedure specified herein shall be a complete bar to any legal action for any question which could have been submitted to the Town for determination.

**14. Suspension and Termination by the Town.**

**A. Suspension.** The Town may, without cause, order Contractor in writing to suspend, delay or interrupt its performance in whole or part. A payment adjustment shall be made for any services not provided resulting from suspension, delay, or interruption.

**B. Termination for Cause.** Town may terminate this Contract for cause if Contractor fails to have certification, is arrested, or convicted of any criminal offense, misdemeanor, or felony which in

the opinion of the Town impairs the Contractor's performance of its duties: disregards laws, ordinances, rules, regulations or order of the Town or a public authority having jurisdiction; or otherwise commits a breach of this Contract. When any of the foregoing causes exist, the Town shall give the Contractor written notice and a ten (10) day opportunity to cure the default. If the default remains uncured, the Town may (without prejudice to any other rights or remedies it may have) terminate this Contract.

**C. Termination for Convenience.** The Town, by written notice to Contractor, may terminate this Contract in whole or part when, by the sole discretion of the Town, it is in the Town's best interests to do so. Contractor shall be paid for all services provided, as well as reasonable termination expenses (but excluding any claims for lost profits or overhead), provided that such payments shall not exceed the total amount payable pursuant to Section 6 less any payments previously made to the Contractor.

**D. Contractor's Responsibilities.** Upon receipt of a termination notice, Contractor shall (a) promptly discontinue all services (unless the notice directs otherwise); (b) return any Town property in possession of Contractor; (c) at the Town's choice, deliver or otherwise make available to the Town all data, reports, summaries and other information and materials developed or accumulated by the Contractor in performing the Contract.

**15. Termination by Contractor.** Contractor may terminate this Contract upon written notice to the Town if performance is made impossible for a period of 30 consecutive calendar days for any of the following reasons through no act or fault of Contractor or its agents, employees, or act of government, such as a declaration of national emergency, or a natural disaster or other act of God. Contractor may also terminate this Contract, upon written notice and a ten (10) day opportunity to cure, if the Town fails to fulfill its obligation or comply with obligations set forth in section 6.

**16. Governing Law.** This Contract shall be governed by the laws of the State of Arizona.

**17. Incorporation of Applicable Laws.** Every provision of law required by statute or regulation to be in this Contract will be read and enforced as though included herein. Each party shall promptly notify the other upon discovery that any such provision has been omitted.

**18. Non-Collusion.** This Contract is subject to the provisions of A.R.S. §38-511; the Town may cancel this Contract without penalty or further obligations by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract or extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of the Contract.

**19. One-Year Limitation on Actions.** No actions shall be maintained by the Contractor on any claim based upon or arising out of this Contract unless such action is commenced within one year after the Town's final payment hereunder.

**20. Satisfaction of Services.** If, for any reason, the work or services performed fail to meet Town standards during the Contract period, the Contractor will repair or redo the work or services provided to the Town's satisfaction within fifteen (15) days of notice.

**21. Sanitary, Health and Safety Provisions.** The Contractor shall provide and maintain in a neat sanitary condition such accommodations for the use of its employees as required to comply with the requirements of the State and local boards of health or of other bodies or tribunals having jurisdiction.

Attention is directed to Federal, State, and local laws, rules and regulations concerning safety and health standards. The Contractor shall not require any worker to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to their health or safety as determined under the Arizona Occupational Safety and Health Standards for Construction adopted by the Industrial Commission of Arizona pursuant to the Authority in A.R.S. §23-410.

**22. Compliance with Federal and State Laws/Legal Arizona Workers Act.** The Contractor understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform Control Act of 1986 and the Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: The Contractor must comply with A.R.S. §34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. §34-302 as amended, "Residence Requirements for Employees".

Under the provisions of A.R.S. §41-4401, Independent Contractor hereby warrants to the Town that the Contractor and each of its Subcontractors will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the contractor to penalties up to and including termination of this Contract at the sole discretion of the Town.

The Town retains the legal right to inspect the papers of the Contractor or Subcontractors employee who work on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the Town in regard to any such inspections.

The Town may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of Subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the Town in regard to any random verifications performed.

Neither the Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor enters into agreements with any and all of its Subcontractors who provide services under this Contractor or any Subcontracts. Services are defined as furnishing labor, time, or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

This Agreement is subject to termination pursuant to A.R.S. § 38-511, as may be amended. Pursuant to A.R.S. § 35-394, as may be amended, unless exempt, the Contractor hereby certifies that it does not use, and agrees not to use during the term of the Contract, any of the following: forced labor of

ethnic Uyghurs in the People’s Republic of China; any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; or any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China.

**23. Entire Contract.** This contract and those documents incorporated by reference represent the entire understanding between the parties. No amendment shall be effective unless executed by both parties with the same formality of this Contract. Provided, however, that the Town’s Public Works Director or designee is authorized to modify the Scope of Work as described in Section 1 in writing, with the concurrence of the Contractor so long as significant additional compensation is required.

**24. Severability.** The provisions of this Contract are severable. Any provision held to be invalid or unenforceable shall not affect the validity or enforceability of any other provision.

**25. Notices.** All notices, invoices and payments shall be in writing and may be given by personal delivery or certified mail. The designated recipients are as follows:

To Contractor:      Name:            Jason & Trisha Spear, Owners  
                                 Company:        J&T’s Wild-Life Outdoors  
                                 Address:        1588 Eagle Rest Road  
                                                    Pinedale, AZ 85934  
                                 Phone:         (928) 892-9170  
                                 Email:         [trisha@jtwildlifeoutdoors.com](mailto:trisha@jtwildlifeoutdoors.com)

To Town:              Name:            Matt Patterson  
                                 Company:        Town of Pinetop-Lakeside  
                                 Address:        958 S. Woodland Rd.  
                                                    Lakeside, AZ 85929  
                                 Phone:         (928) 368-8885  
                                 Email:         [mpatterson@pinetoplakesideaz.gov](mailto:mpatterson@pinetoplakesideaz.gov)

**26. Waiver.** A party’s waiver of any term, condition, or covenant, or breach of any term, condition or covenant of this Contract shall not constitute the waiver of any subsequent breach of any other term, condition, or covenant of this Contract.

**27. Captions.** The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

**28. No Israel Boycott.** The parties agree that they are not currently engaged in and agree that for the duration of this Contract they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

**IN WITNESS WHEREOF,** the duly authorized representatives of the parties have executed this Contract as of the date first written above.

TOWN OF PINETOP-LAKESIDE

By: \_\_\_\_\_  
Keith Johnson,  
Town Manager

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Kristi Salskov  
Town Clerk

*William Sims*  
\_\_\_\_\_  
William J. Sims, III  
Town Attorney

CONTRACTOR: J&T's Wild-Life Outdoors

By: \_\_\_\_\_  
Authorized Signature/Title

STATE OF ARIZONA            )  
  ) ss.  
  )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
Date