



April 16, 2020

Board of County Commissioners  
 Clackamas County

Members of the Board:

Approval of a Lease Agreement between Clackamas County and  
River City Boat Sales, LLC to Lease, Manage and Operate the Boones Ferry Marina Facility

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| <b>Purpose/Outcomes</b>                | Business & Community Services (BCS) - County Parks division has negotiated in good faith with River City Boat Sales, LLC for the lease of the commercial buildings and operations and management of the marina at the Boones Ferry Marina facility located along the Willamette River near Wilsonville. The lease agreement will provide a long term, sustainable revenue stream to County Parks. |
| <b>Dollar Amount and Fiscal Impact</b> | Approximately \$199,000 in annual lease revenue to County Parks.  |
| <b>Funding Source</b>                  | Fee Revenue from Lessee   |
| <b>Duration</b>                        | Through April, 2025   |
| <b>Previous Board Action</b>           | Lease terms and conditions were presented to the Board of County Commissioners (BCC) in Executive Session on March 25, 2020.  |
| <b>Strategic Plan Alignment</b>        | <ol style="list-style-type: none"> <li>1) This lease aligns with BCS goals to secure a sustainable source of revenue to help meet capital repair/replace funding requirements.</li> <li>2) This lease further supports growing a vibrant economy with the Lessee being able to provide up to 15 family wage jobs at the Boones Ferry Marina facility.</li> </ol>                                  |
| <b>County Counsel Review</b>           | County Counsel Review Date: March 24, 2020<br>Counsel Initials: ARN   |
| <b>Procurement Review</b>              | Was the item processed through procurement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/><br>This is a lease agreement.   |
| <b>Contact Person</b>                  | Rick Gruen, BCS – County Parks Manager (503) 742-4345   |
| <b>Contract No.</b>                    | N/A   |

**BACKGROUND:**

In April, 2019, BCS - County Parks division had the Boones Ferry Marina facility appraised by a qualified appraisal company to determine fair market value lease rates and assess the deferred maintenance and capital improvement requirements for the facility.

A Request for Information (RFI) was publicized to solicit proposals from parties interested in leasing the marina facility. Proposers were asked to outline how they would use the facility to maximize revenue potential if they were awarded a lease of the property. River City Boat Sales, LLC was identified as the top proposer. BCS – County Parks division has negotiated in good faith with River City Boat Sales, LLC to reach an Agreement in Principal, which was presented to the BCC in Executive Session on March 25, 2020. The lease includes provisions for a five year term with one additional five year renewal, fixed monthly payments on the commercial buildings, a revenue share arrangement for the seasonal operation of the marina, and a yearly capital contribution payment.

**RECOMMENDATION:**

Staff respectfully recommends Board approval of the Lease Agreement between Clackamas County and River City Boat Sales, LLC for the lease of the Boones Ferry Marina facility.

**Attachments:**

- Lease Agreement
- Exhibits A – D

Respectfully submitted,

*Laura Zentner*

Laura Zentner, CPA  
Director, Business & Community Services

**LEASE BETWEEN  
BETWEEN CLACKAMAS COUNTY  
AND RIVER CITY BOAT SALES, LLC**

THIS LEASE (“Lease”) is entered into by and between Clackamas County (“County”), a political subdivision of the State of Oregon, and River City Boat Sales, LLC (“Lessee”), collectively referred to as the “Parties” and each a “Party.”

**RECITALS**

County owns certain real property described as follows:

Tax Lots 31W23DC02000, 900 and 800, more commonly known as Boones Ferry Marina, 26117/26177 Boones Ferry Landing, Aurora, OR 97002,

together with any and all rights, privileges, easements, and appurtenances (collectively, the “Premises”). The Premises includes any and all fixtures, rights, privileges, easements, and appurtenances (collectively the “Improvements”) that may now or exist in the future.

The Premises is comprised of the following components:

1. A boat sales building and a services building (collectively the “Sales and Service Buildings”), totaling approximately 18,700 square feet, as detailed on Exhibit A-1, attached hereto and incorporated by this reference herein.
2. A public marina with associated docks, 98 boat slips and limited 15 stall parking area (hereinafter the “Marina”), totaling approximately 93,000 square feet, as detailed on Exhibit A-2, attached hereto and incorporated by this reference herein.
3. A public boat ramp, boarding dock and associated infrastructure (hereinafter the “Boat Ramp”), totaling approximately 10,200 square feet, as detailed on Exhibit A-3, attached hereto and incorporated by this reference herein.

County desires to lease to Lessee, and Lessee desires to lease from County, the Premises subject to the terms and conditions in this Lease.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**TERMS**

1. **Lease of Premises; Condition of Premises.** County hereby leases the Premises to Lessee, subject to the terms and conditions contained herein. Lessee acknowledges that it has examined the Premises and agrees to accept the Premises in “as-is” condition, and that County has made no representations or warranties regarding the condition of the Premises or its fitness for any particular use.
2. **Term.** Upon execution of this Lease by both parties (“Effective Date”), the Premises will be leased for a term of five (5) years, with one optional renewal for an additional five (5) years upon written agreement by the Parties, unless earlier terminated pursuant to the terms of the Lease.

**3. Rental Payment.** Lessee shall make rent payments monthly on or before the 1<sup>st</sup> day of each month following the Effective Date of this Lease (the “Rental Payment”). Lessee shall have no right to offset rent due under this Lease. The amount of the Rental Payment shall be determined as follows:

- a. First year.** For the first year of the Lease, Lessee agrees to pay County the annual sum of \$124,730.00, to be paid in twelve equal monthly payments of \$ 10,394.16. (Annual lease rate is calculated based on 18,700 square feet x 6.67/sq.ft).
- b. Annual rental adjustment.** For each subsequent year of the Lease, the annual Rental Payment shall increase by the greater of either: (1) three percent (3%) over the prior year’s annual rent; or (2) the percentage rate of change in the West Region (Size Class A) of the Consumer Price Index (“CPI”) of the US Dept. of Labor, Bureau of Labor Statistics (the “Index”) from the last month reported to the same month of the preceding year. Lessee shall pay the adjusted annual rent in twelve equal monthly payments.

If the Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used in lieu of such Index.

**4. Annual Income Revenue Payment.**

- a. Amount of Revenue Payment.** On November 1 of each year, Lessee agrees to pay the County the greater of either: (1) \$60,000.00; or (2) thirty-five percent (35%) of the net income received from the operation of the Marina (the “Revenue Share Payment”) received from April 1 through October 1 of each year. The Revenue Share Payment includes, but is not limited to, net income received from rental of boat slips, concession stand sales, fuel sales, kayak/canoe rentals, and similar transactions. As used herein, “net income” means the amount paid or payable for use of the Marina, including sales or services rendered by Lessee, either directly or indirectly from its licensees, invitees, agents, subleases, or otherwise, less the direct expenses incurred by Lessee in operating the Marina.
- b. Annual audit.** Within ninety (90) days after the end of Lessee’s fiscal year, but no later than December 31, Lessee will cause to be delivered to County a compiled financial statement prepared by an independent certified public accountant showing the results of operations including, but not limited to, all gross income received, expenses incurred, and any other data County determines is reasonably necessary to review and assess the Revenue Share Payment. The cost of such audit, if required, shall be borne by Lessee.
- c. Annual tax return.** Lessee shall annually provide the County a copy of its annual tax return.
- d. Periodic Review/Adjustment of Revenue Share.** County and Lessee shall agree to review and evaluate the revenue share formula following the completion of year #2 of the lease.

- 5. Capital Contribution.** Lessee shall make monthly capital contribution payments (“Capital Contribution Payment”) in the amount of \$1,250.00 on or before the 1<sup>st</sup> day of each month following the Effective Date of this Lease. The Capital Contribution Payments are in consideration for capital improvements or repairs that County expects to perform over the Term of this Lease. Provided, however, that nothing herein shall be construed as a promise or commitment of County to perform a particular capital improvement or repair. Whether to make a capital improvement or repair shall be made by County, in its sole administrative discretion, and is contingent upon funds being appropriated thereto. County’s failure or delay in performing a capital improvement shall not relieve Lessee of its obligation to make its Capital Contribution Payment. An anticipated capital project list is attached hereto as Exhibit B and incorporated by this reference herein.
- 6. Security Deposits.** In consideration for entering into the Lease, and to ensure Lessee’s compliance with the terms of the Lease, Lessee has paid County the sum of twenty thousand, seven hundred and eighty-eight dollars (\$20,788.00) as a security deposit which represents the first and last month of the Rental Payment. No interest will accrue on the security deposit. With no notice to Lessee, County may claim all or a portion of the security deposit to offset against (1) any unpaid Rental Payment, Revenue Share Payment, or Capital Contribution Payment, (2) any damages arising from Lessee’s default under this Lease including, but not limited to, the cost of repairing or remediating damage caused by Lessee to the Premises. Any amounts of the security deposit not claimed by the County will be returned to Lessee within thirty (30) days following termination of this Lease.
- 7. Net Lease.** This Lease is a net lease. Except as specifically provided in this Lease, Lessee will be responsible for paying all costs and expenses relating to the Premises, including any personal property taxes, fees, utilities, maintenance, interior and exterior repairs, insurance, and all other costs and expenses relating to the general occupancy and use of the Premises and the Tenant Improvements. Without notice or demand and without abatement, deduction, or setoff except as may be otherwise provided in this Lease, Lessee is required to pay, all sums, impositions, costs, and other payments that Lessee assumes or agrees to pay in any provision of this Lease. If Lessee fails to make a payment, County will have (in addition to all other rights and remedies) all the rights and remedies provided for in this Lease or by law for nonpayment of rent.
- 8. Management Obligations.** Lessee shall direct, manage, supervise, and operate the Premises, including the Sales and Service Buildings, Marina, Boat Ramp, and all other related or subsequently constructed facilities. Lessee will employ all personnel necessary for these operations, and perform all other activities necessary to operate and maintain the Premises pursuant to the following:

  - a. Sales and Service Buildings.** Lessee shall be responsible for the daily and routine operation and maintenance of the Sales and Service Buildings.
  - b. Marina.** Lessee shall be responsible for the daily and routine operation and maintenance of the Marina, subject to the following:



- e. **Adjoining Public Parking.** Lessee and its employees and customers have a nonexclusive right to use the public parking area adjoining the Premises for temporary, short-term day use for parking of vehicles and trailers. Lessee may not use the parking area to store any inventory, including boats and trailers. Lessee's right to use the public parking area shall be in conformance with applicable law. The public parking area is depicted on the map attached hereto as Exhibit E and incorporated by this reference herein.

Any use of the Premises other than those reasonably necessary to those described above is strictly prohibited.

**11. Compliance with Legal Requirements.** Lessee shall observe and comply with all "Legal Requirements," defined below, that may apply to the Premises, or to the use or manner of uses of the Premises. Lessee will pay all costs of compliance with the Legal Requirements.

"Legal Requirements" means all applicable present and future federal, state, and local laws, ordinances, orders, rules, regulations, codes, and requirements that now or hereafter apply to the Premises, the Improvements, or any component hereof or any activity conducted thereon, including but not limited to those pertaining to Environmental Laws and the use and storage of Hazardous Substances (as these terms are defined below).

"Environmental Laws" means all present or future federal, state, and local laws or regulations related to the protection of health or the environment, including the Resource Conservation and Recovery Act of 1976 (RCRA) (42 USC § 6901 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 USC § 9601 et seq.), the Toxic Substances Control Act (15 USC § 2601 et seq.), the Federal Water Pollution Control Act (the Clean Water Act) (33 USC § 1251 et seq.), the Clean Air Act (42 USC § 7401 et seq.), amendments to the foregoing, and any rules and regulations promulgated thereunder.

"Hazardous Substances" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local, state, or federal governmental authority, including without limitation, any hazardous material, hazardous substance, ultra-hazardous material, toxic waste, toxic substance, pollutant, radioactive material, petroleum product, and PCB, as those and similar terms are commonly used or defined by Environmental Laws.

**12. Restrictions on Use of the Premises.**

- a. Lessee shall not use or occupy the Premises, or permit or suffer all or any part of the Premises to be used or occupied: (a) for any unlawful or illegal business, use, or purpose; (b) in any manner so as to constitute a nuisance of any kind; (c) for any purpose or in any way in violation of any Legal Requirements, including Legal Requirements respecting Hazardous Substances; or (d) for any business, use, or purpose deemed disreputable.

- b. Lessee shall not cause or permit any waste, damage, disfigurement, or injury to the Premises.
- c. Lessee shall not use the Premises in any manner that would conflict with the terms and conditions of this Lease.
- d. Lessee shall not engage in any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent County from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing County to obtain reduced premium rates for long-term fire insurance policies.
- e. Lessee shall refrain from any use that would be reasonably offensive to other tenants, owners, or users of neighboring properties, or that would create a nuisance or damage the reputation of the Premises.
- f. Lessee shall not load the electrical system or floors beyond the point considered safe by an engineer or architect selected by County.
- g. Lessee shall not make any marks on or attach any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the Premises without the written consent of County.

**13. Continuous Operation.** Lessee shall occupy, operate, and manage the Premises continuously for the purposes stated herein and, subject to Section 21 below, carry on business during normal business hours. Lessee may close portions of the Premises for brief periods necessary to perform reasonable repairs and maintenance. However, any closure of any portion of the Premises shall, to the maximum extent practical, be performed in a manner that does not interfere with, damage, disturb, hinder, or prevent the use and enjoyment of those portions of the Premises open for public use and access. Lessee may not close portions of the Premises for greater than ten (10) business days without the prior written consent of County.

**14. Improvements.** Lessee may not make any modifications, alterations, or improvements to the Premises or the Improvements without first obtaining County's prior written consent. Any such modification, alteration, or improvement will be performed in compliance with all Legal Requirements and in a good and workmanlike manner. Unless otherwise agreed to in writing, all modifications, alterations, and improvements will become property of the County.

**15. Taxes and Utilities.**

- a. **"Taxes" Defined.** As used in this Lease, the terms "Tax" and "Taxes" mean any and all taxes, service payments in lieu of taxes, general or special assessments, excise taxes, transit charges, utility assessments, and any and all charges, levies, fees, or costs, general or special, ordinary or extraordinary, of any kind that are levied or at the direction of laws, rules, or regulations of any federal, state, or local authority on the Premises or the Improvements, or based on or otherwise in connection with the use, occupancy, or operations of the Premises or the Improvements, or with respect to services or utilities in connection with the use, occupancy, or operations of the Premises or the Improvements, or on County with respect to the Premises or the Improvements, or on any act of leasing space in the Improvements, or in connection with the business of leasing space in the

Improvements, including any tax on rents, whether direct or as a part of any “gross receipts” tax, and whether or not in lieu of, in whole or in part, ad valorem property taxes. Taxes will include, but not be limited to, state and local taxes, levies, and assessments, and any tax, fee, or other excise, however described, that may be levied or assessed in lieu of, or as a substitute, in whole or in part, for, or as an addition to any other taxes, and all other governmental impositions and governmental charges of every kind and nature relating to the Premises or the Improvements, including, but not limited to, any road-user or transportation-system-maintenance fee and any charges or fees measured by trip generation or length, parking spaces, impervious surfaces, buildings, vehicle usage, or similar bases for measurement.

- b. Payment of Taxes.** Except for real property taxes, throughout the Term, Lessee shall pay any Taxes that may be applicable as they become due. If by law any Tax is payable, or may at the option of the taxpayer be paid, in installments, Lessee may pay the same in installments as each installment becomes due and payable, but in any event shall do so before any fine, penalty, interest, or cost may be added for nonpayment of any installment or interest.
- c. Contesting Taxes.** If Lessee in good faith desires to contest the validity or the amount of any Tax, Lessee may be permitted to do so by giving to County written notice requesting permission to do so before commencement of such contest. If approved, Lessee may contest with respect to the Property and/or the Improvements. County may, at Lessee’s expense (including reimbursement of attorney fees reasonably incurred by County), cooperate with Lessee in any such contest to the extent that Lessee may reasonably request, but County shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by Lessee, and Lessee shall indemnify and save County harmless from any such costs or expenses. Any rebates on account of the Taxes required to be paid and paid by Lessee under the provisions of this Lease shall belong to Lessee, except that to the extent any rebates or refunds are related to a period of time in which this Lease is not in effect (either before commencement or after expiration or termination), the portion of the rebate attributable to such time shall be returned to County to the extent previously paid by County.
- d. Evidence of Payment.** Promptly after payment, Lessee shall provide County with evidence reasonably satisfactory to County that all Taxes required to be paid by Lessee have been paid.
- e. Utilities and Services.** Lessee shall pay, directly to the appropriate supplier, for all water, sanitary sewer, storm sewer, gas, electric, telephone, cable, garbage pickup, and all other utilities and services used by Lessee on the Premises as they become due, together with any taxes thereon, from and after the Effective Date. County shall not be in default hereunder nor be liable in damages or otherwise for any failure or interruption of any utility or other service being furnished to the Premises, and no such failure or interruption will entitle Lessee to terminate this Lease.
- f. Real property taxes.** County will pay any real property taxes and special assessments that may be levied against the Premises.

**16. Insurance.** Lessee shall secure at its own expense and keep in effect during the term of the performance under this Lease the insurance required and minimum coverage indicated below. Lessee shall provide proof of said insurance and name Clackamas County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address:  
**Clackamas County Parks, 150 Beavercreek Road, Suite 419, Oregon City, OR 97045**

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| <input checked="" type="checkbox"/> Required - Workers Compensation: Lessee shall comply with the workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.126.  |
| <input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.             |
| <input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts. |
| <input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.  |

This policy(s) shall be primary insurance as respects to County. Any insurance or self-insurance maintained by County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

**17. Responsibility for Damages; Indemnity.**

Lessee shall be in exclusive control of the Premises. Lessee shall be solely responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, use of the Premises, or from any act, omission, or neglect of Lessee, its subcontractors, agents, or employees.

To the fullest extent permitted by law, Lessee agrees to indemnify, hold harmless and defend County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of Lessee or Lessee's employees, subcontractors, or agents. However, neither Lessee nor any attorney engaged by Lessee shall defend the claim in the name of County, or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Lessee settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

## 18. Liens.

- a. **No Liens.** Lessee shall not suffer or permit any construction liens to attach to or be filed against any part of the Premises owned by County by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Lessee or any person occupying or holding an interest in any part of the Premises or the Improvements owned by Lessee. If any such lien is filed against any portion of the Premises or the Improvements, Lessee shall cause the same to be discharged of record within 15 days after the date of its filing by payment, deposit, or bond.
- b. **County Right to Post Notices.** County may post and keep posted at all reasonable times on the Premises notices of non-responsibility and any other notices that County desires or is required to post for the protection of County's interest in the Premises from any such lien.
- c. **No Right to Lien County's Interest.** Nothing in this Lease may be deemed to be, or be construed in any way as constituting, the consent or request of County, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Premises, or as giving Lessee any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against County's interest in the Premises or against County's interest, if any, in the Improvements. Lessee shall not be an agent for County.

## 19. Repairs and Maintenance.

- a. **Lessee's Obligation.** Except as expressly provided in Section 19(b), below, Lessee, at its sole expense, must maintain, repair, and replace the Premises and the County-owned Improvements as and when needed so as to keep them clean and in good in good condition and repair, throughout the entire Term. Lessee's obligations extend solely to nonstructural items, all tenant-owned improvements, and to all ordinary maintenance, repair, and replacement work. All of Lessee's maintenance, repairs, and replacements required under this Lease shall be performed in a good and workmanlike manner, of a quality at least equal to the original work, and shall be in compliance with all standards and requirements of law, licenses and municipal ordinances. Lessee's obligations includes, but are not limited to, the repairs described in Exhibit C, attached hereto and incorporated by this reference herein.
- b. **County's Obligation.** Consistent with Section 6 of this Lease, County is not required to furnish to Lessee or the Premises any facilities, utilities, or services of any kind whatsoever during the Term of this Lease except for significant structural repairs, maintenance, or upgrades. A list of structural repairs, maintenance, or upgrades that County anticipates will be performed during the Term of this Lease is attached hereto as Exhibit B and incorporated by this reference herein.

In performing its obligations hereunder, County shall have exclusive access to all or a portion of the Premises.

**20. Inspection and Access.** County may enter onto the Premises at reasonable times during reasonable business to perform inspections, to inspect and take measurements, samples or other activities to access any potential contamination issues, to perform repairs and maintenance under Section 19, above, and to ensure compliance with the terms of this Lease. Nothing in this Lease implies any duty or obligation, however, on County's part to make such inspections or perform such work unless County is otherwise obligated to do so under this Lease. County's performance of any work will not constitute a waiver of Lessee's default in failing to perform the same.

**21. Closures.**

- a. Generally.** County may, in its reasonable discretion, close all or a portion of the Premises, and exclude Lessee from use thereof, for the following reasons:
  - i.** High-water events that cause the river to exceed or overtop the Boat Ramp;
  - ii.** Any closures of roads providing access to all or a portion of the Premises due to flooding from high water or for debris removal activities;
  - iii.** County's inspection of all or a portion of the Premises, including regular Boat Ramp inspections;
  - iv.** Performance of any repair or maintenance described under Section 19, above.
- b. No liability.** County will endeavor to minimize the impact of closing all or a portion of the Premises to the maximum extent practicable. However, Lessee shall have no right to offset any payment obligation under this Lease as a result of a closure under this Section 21. County shall have no liability for any damages arising from a closure under this Section 21, including any damages for lost profits, expense, inconvenience, delay, or any indirect, incidental, consequential or special damages arising from, or related to, such a closure.

**22. Damage and Destruction.** If any Lessee owned Improvement(s) on the Premises are damaged or destroyed by flood, fire or other casualty, Lessee's obligations under the lease will not abate and Lessee shall promptly determine whether to repair, replace, reconstruct, demolish or abandon the Improvement(s). Lessee shall promptly inform County of its decision and its proposed plan of action. Should the Lessee decide to abandon or demolish the damaged Lessee owned Improvement(s), Lessee shall at Lessee's expense clear the remains of the Improvement(s) from the premises unless otherwise directed by County.

**23. Condemnation.** The Parties expressly acknowledge and understand that the Premises may be subject to condemnation by right of eminent domain as a result of one or more potential projects including, but not limited to, the French Prairie Bridge Crossing project. In the event the Premises is subject to condemnation by right of eminent domain by any federal, state, or local agency, the following provisions shall govern.

- a. Total Taking.** If all the Premises is taken or condemned by right of eminent domain or by purchase in lieu of condemnation (a "Taking"), or if in Lessee's reasonable judgment the Taking of any portion of the Premises renders the portion remaining insufficient and unsuitable to permit the restoration of the

Improvements following the Taking, then either party may terminate this Lease by providing written notice thereof within 30 days after the terminating party is notified of the Taking, in which case the Lease will cease and terminate (except those provisions intended to survive the expiration or termination of the Lease) and Lessee shall vacate the Premises as of the date on which the condemning authority takes possession (any Taking in this section being called a “Total Taking”).

- b. Partial Taking and Award for Partial Taking.** If, during the Term, there is a Taking of the Premises, but the Taking is not a Total Taking and not a temporary taking of the kind described below, this Lease will not terminate but will remain in full force and effect with respect to the portion of the Premises not taken.
- c. Temporary Taking.** If there is a Taking of all or a part of the Premises for temporary use, this Lease will continue without change, as between County and Lessee, and Lessee will be entitled to the entire award made for that use.
- d. Award for Total Taking.** It is specifically understood and agreed that County shall be entitled to all of the proceeds of a Total or Partial Taking, and Lessee shall have no claim against County as a result of condemnation. Lessee shall be entitled to the relocation benefits, if any, and all the proceeds of condemnation which are on account of the taking of the improvements, equipment, fixtures or personal property, if any, belonging to Lessee.
- e. Dispute Resolution.** In the event of any dispute between Lessee and County regarding any issue of fact arising out of a Taking mentioned in this Article, the dispute shall be resolved by the same court in which the condemnation action is brought, in any proceedings that are appropriate for adjudicating the dispute.

**24. Assignment and Subletting.** Lessee shall not sell, assign, sublet, grant, or transfer this Lease, or any portion of Lessee’s interest therein, without the prior written consent of County. Any attempted assignment or sublet without such prior written consent will be void. County’s consent to an assignment or sublease will in no event release Lessee from its liabilities or obligations under this Lease, nor relieve Lessee from the requirement of obtaining County’s prior written consent to any further assignment or sublease. County’s acceptance of Rental Payments, Revenue Share Payment, or Capital Contribution Payments from any other person will not be deemed to be a waiver by County of any provision of this Lease or consent to any assignment or sublease.

**25. Sale of Premises.** County may actively market the Premises for sale at any time during the Term of this Lease. Upon sale of the Premises during the Term of this Lease or any extensions, this Lease shall be terminated. County shall not agree to any sale terms that shorten the notice of termination period required to be given to Lessee under this Lease.

**26. State Lease Sublease.** The Premises includes tidelands leased by County from the State of Oregon for purposes of operating and accessing moorage facilities under that certain lease described as 10937-ML (the “State Tideland Lease”), a copy of which is attached hereto as Exhibit D and incorporated by this reference herein. County hereby subleases to Lessee County’s interest under the State Tideland Lease. Lessee shall comply with all terms and conditions of the State Tideland Lease throughout the term of this Lease. County will pay the fees due and owing under the State Tideland Lease.

**27. Default.** The following constitute a default under this Lease:

- a. Lessee's failure to pay any amount required to be paid by Lessee to County under this Lease within 10 days after written notice of such nonpayment is given to Lessee;
- b. Lessee's violation of any term or condition in this Lease following 10 days' notice and opportunity to cure, after written notice of such violation;
- c. Lessee's failure to occupy the Premises for one or more of the purposes permitted under this Lease for a period of ten (10) business days or more, unless such failure is excused by County;
- d. Lessee becomes insolvent, makes an assignment for the benefit of creditors, a receiver is appointed for Lessee's properties.

**28. Termination.**

- a. **Non-default Termination.** This Lease may be terminated for the following non-default reasons:

- i. By mutual agreement of the parties;
- ii. By County for the following reasons:
  1. Upon one hundred and eighty (180) days' written notice to Lessee, for convenience provided, however, that County may not terminate for convenience during the first two (2) years of the Lease; or
  2. If County fails to receive expenditure authority sufficient to allow County, in the exercise of its reasonable administrative discretion, to continue to perform under this Lease; or
  3. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Lease is prohibited.
- iii. Upon one hundred and eighty (180) days' written notice to County, by Lessee for convenience subject to the following terms and conditions:
  1. Lessee may not terminate this Lease for convenience during the first two (2) years of the Lease;
  2. The termination of the Lease may not occur from July 1 through October 1 of any given year of the Lease. Any notice of termination that would have the effect of terminating the Lease during this time period shall automatically be extended to October 2. Lessee shall remain responsible for all obligations under this Lease until the October 2 termination date.

- b. **Termination for Default.** Upon occurrence of an event of default and failure to cure, if permitted, County may immediately terminate this Lease upon written notice to Lessee and exercise any remedy provided herein.

**29. Remedies.**

- a. Upon the occurrence of an event of default, County may exercise any one or more of the remedies set forth in this section or any other remedy available under applicable law or contained in this Lease:

- i. Termination.** County may terminate this Lease by written notice to Lessee, which is effective immediately.
- ii. Removal.** County or County's agent or employee may immediately or at any time thereafter, with or without terminating the Lease, at County's sole discretion, reenter the Premises either by summary eviction proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution, or damages, and may repossess the same, and may remove any person from the Premises, to the end that County may have, hold, and enjoy the Premises and the Improvements.
- iii. Reletting.** County may relet the Premises, but County shall not be required to relet the Premises for the purposes specified in the Lease or which purposes County may reasonably consider injurious to the Premises, or to any lessee that County may reasonably consider objectionable. County may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, on any reasonable terms and conditions County determines, in its sole discretion, to be in the County's best interest. To the extent allowed under Oregon law, County shall not be liable for refusing to relet the Premises or, in the event of reletting, for refusing or failing to collect any rent due on such reletting; and any action of County will not operate to relieve Lessee of any liability under this Lease or otherwise affect such liability. County at its option may make any physical change to the Premises that County, in its sole discretion, considers advisable and necessary in connection with any reletting or proposed reletting, without relieving Lessee of any liability under this Lease or otherwise affecting Lessee's liability.
- iv. Damages.** Whether or not County retakes possession of or relets the Premises, County may recover its damages from Lessee, including without limitation, all lost rentals and all costs incurred by County in restoring the Premises or otherwise preparing the Premises and for reletting, and all costs incurred by County in reletting the Premises.
- v. Right to Sue More than Once.** County may sue periodically to recover damages during the period corresponding to the remainder of the Term, and no action for damages shall bar a later action for damages subsequently accruing.
- vi. Self-Help.** If Lessee at any time (a) fails to pay any Tax in accordance with the provisions of this Lease, (b) fails to make any other payment required under this Lease, or (c) fails to perform any other obligation on its part to be made or performed under this Lease, then after 10 days' written notice to Lessee (or without notice in the event of an emergency) and without waiving or releasing Lessee from any obligation of Lessee contained in this Lease or from any default by Lessee and without waiving County's right to take any action that is permissible under this Lease as a result of the default, County may, (i) pay any Tax or make any other payment required of Lessee under this Lease, and (ii) perform any other

act on Lessee's part to be made or performed as provided in this Lease, and may enter the Premises and the Improvements for any such purpose, and take any action that may be necessary. All payments so made by County and all costs and expenses incurred by County in connection with the performance of any such act will constitute additional costs payable by Lessee under this Lease and must be paid to County on demand. In no instance shall Lessee be entitled to attorney's fees relating to any default, remedy or self-help, even if it is determined that County did not act appropriately with respect to the same.

- vii. All Other Remedies.** the County shall have any remedy available to it in law or equity, whether or not specified herein.
- b. No Waiver.** No failure by County to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent upon a breach, and no acceptance of full or partial Rental Payments, Revenue Share Payments, or Capital Contribution Payments during the continuance of any such breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Lessee, and no breach by Lessee, may be waived, altered, or modified except by a written instrument executed by County. No waiver of any breach will affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach.
- c. Remedies Cumulative and Nonexclusive.** Each right and remedy provided for in this Lease is cumulative and is in addition to every other right or remedy provided for now or hereafter existing at law or in equity or by statute or otherwise, and County's or Lessee's exercise or beginning to exercise of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise will not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

### **30. Surrender and Holdover.**

- a. Condition of Premises and Improvements.** Upon expiration of the Term or earlier termination of this Lease, Lessee shall deliver to County the Premises in good condition, free and clear of all occupancies other than subleases to which County has specifically consented and free and clear of all liens and encumbrances other than those, if any, existing on the date of this Lease or created or suffered by County. Lessee shall surrender the Premises and County-owned Improvements in good condition and repair (reasonable wear and tear excepted), free and clear of all occupancies other than subleases to which County has specifically consented and free and clear of all liens and encumbrances other than those, if any, existing on the date of this Lease or created or suffered by County. Lessee shall be solely responsible for the removal or remediation, in compliance with all Legal Requirements, of any Hazardous Substances on the Premises.

- b. Lessee's Property.** Before the expiration or earlier termination of this Lease, Lessee shall remove all Lessee owned Improvements, furnishings, furniture, and trade fixtures that remain Lessee's property (the "Lessee's Property"). If Lessee fails to do so, at County's option, (a) the failure to remove Lessee's Property will be deemed an abandonment of Lessee's Property, and County may dispose of Lessee's Property in any manner permitted by law; or (b) by written notice given to Lessee, County may elect to hold Lessee to Lessee's obligation of removal, in which case County may remove, transport, and store Lessee's Property and Lessee shall reimburse County for the costs incurred in connection therewith on demand.
- c. Holdover.** There shall be no holdover permitted under this Lease.

**31. Notice.** All notices given pursuant to this Lease shall be in writing and shall either be (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested, or (ii) delivered in person or by nationally recognized overnight courier, or (iii) sent by email.

| Lessee   | County   |
|--|--|
| Administrator: River City Boats<br>Attn: Tim Coleman<br>Phone: 503-797-2222<br>Email: <a href="mailto:tim@rivercityboatsales.com">tim@rivercityboatsales.com</a> | Administrator: Clackamas County Parks Manager<br>Attn: Rick Gruen<br>Phone: 503.742.4345<br>Email: <a href="mailto:rgruen@clackamas.us">rgruen@clackamas.us</a>                  |
| Administrator: River City Boats<br>Attn: Ken Guerins<br>Phone: 503-797-2222<br>Email: <a href="mailto:ken@rivercityboatsales.com">ken@rivercityboatsales.com</a> | Administrator: Business and Community Services Director<br>Attn: Laura Zentner<br>Phone: 503.742.4351<br>Email: <a href="mailto:LZentner@clackamas.us">LZentner@clackamas.us</a> |

**32. General Terms and Conditions.**

- a. Relationship.** Nothing contained in this Lease will create a joint venture or partnership, establish a relationship of principal and agent, establish a relationship of employer and employee, or any other relationship of a similar nature between County and Lessee.
- b. Independent Contractor.** The service(s) to be rendered under this Lease are those of an independent contractor. Although the County reserves the right to determine work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Lessee's performance. Lessee is responsible for determining the appropriate means and manner of performing under this Lease. Lessee is not to be considered an agent or employee of County for any purpose. This Lease is not intended to entitle the Lessee to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical

and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.

- c. **Waiver.** Failure of either party at any time to require performance of any provision of this Lease shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be waiver of any succeeding breach of the provision or waiver of the provision itself or any other provision.
- d. **Integration.** Except as otherwise set forth herein, this Lease constitutes the entire agreement between the parties on the subject matter of this Lease. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Lease.
- e. **Further Assurances.** The parties to this Lease agree to execute and deliver such additional documents and to perform such additional acts as may be reasonably necessary to give effect to the terms and provisions contemplated herein.
- f. **Survival.** All rights and obligations shall cease upon termination or expiration of this Lease except for the rights and obligations set forth in Sections 6, 11, 12, 14, 15, 17, 18, 22, 27, 29, 30, and 32, and all other rights and obligations which by their context are intended to survive.
- g. **Invalidity.** If any term or provision of this Lease or the application of the Lease to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected, and each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.
- h. **Force Majeure.** If either party's performance of an obligation under this Lease (excluding a monetary obligation) is delayed or prevented in whole or in part by (a) any Legal Requirement (and not attributable to an act or omission of the party); (b) any act of God, fire, or other casualty, flood, storm, explosion, accident, epidemic, war, terrorism, civil disorder, strike, or other labor difficulty; (c) shortage or failure of supply of materials, labor, fuel, power, equipment, supplies, or transportation; or (d) any other cause not reasonably within the party's control, whether or not the cause is specifically mentioned in this Lease, the party will be excused, discharged, and released of performance to the extent that such performance or obligation (excluding any monetary obligation) is so limited or prevented by the occurrence without liability of any kind.
- i. **Non-Waiver of Governmental Rights.** Subject to the terms and conditions of this Lease, County is specifically not obligating itself with respect to any discretionary action relating to the Premises including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental approvals that are or may be required.
- j. **Entire Agreement; Counterparts.** This Lease contains the entire agreement between the parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. Lessee and County mutually acknowledge and agree that there are no verbal agreements or other representations, warranties, or understandings affecting this Lease. This Lease may be executed in any number of counterparts, including by

fax signatures, each of which will constitute an original, but all of which will constitute one Lease.

- k. Binding Effect.** The covenants and agreements contained in this Lease are binding on and inure to the benefit of County, Lessee, and their respective successors.
- l. Recordation of Lease.** County may elect that a copy of this Lease or a memorandum of it, executed and acknowledged by both parties, be recorded in the public records of Clackamas County, Oregon. Lessee will pay the recording costs.
- m. Time Is of the Essence.** Time is of the essence as to the performance of this Lease.
- n. No Third Party Beneficiaries.** County and Lessee are the only parties to this Lease and are the only parties entitled to enforce its terms. Nothing in this Lease gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Lease.
- o. Access to Records.** Lessee shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Lease. County and its duly authorized representatives shall have access to the books, documents, papers, and records of Lessee, which are directly pertinent to this Lease for the purpose of making audit, examination, excerpts, and transcripts. Lessee shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Lease, or until the conclusion of any audit, controversy or litigation arising out of or related to this Lease, whichever date is later.
- p. Governing Law.** This Lease, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Lessee that arises out of or relates to the performance of this Lease shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Lessee, by execution of this Lease, hereby consents to the personal jurisdiction of the courts referenced in this section.
- q. No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

- r. Limitation of Liabilities.** This Lease is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Neither party shall be liable for any indirect, incidental, consequential or special damages under this Lease or any damages of any sort arising solely from the termination of this Lease in accordance with the non-default termination provisions of Section 28(a).
- s. Merger.** This Lease constitutes the entire agreement between the parties with respect to the subject matter referenced therein. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Lease. No amendment, consent, or waiver of terms of this Lease shall bind either party unless in writing and signed by all parties. Any such amendment, consent, or waiver shall be effective only in the specific instance and for the specific purpose given. Lessee, by the signature hereto of its authorized representative, agrees to be bound by the terms and conditions of this Lease.

[Signature Pages to Follow]

IN WITNESS WHEREOF, Clackamas County has caused this instrument to be executed by duly elected officers this \_\_\_\_ day of April, 2020.

CLACKAMAS COUNTY

By: \_\_\_\_\_  
Chair of the Board of County Commissioners

STATE OF OREGON            )  
  ) ss.  
County of Clackamas        )

On this \_\_\_\_ day of April, 2020, before me the undersigned, a notary public in and for such state, the foregoing instrument was acknowledged before me by \_\_\_\_\_, Chair of the Board of County Commissioners on behalf of Clackamas County.

Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF, River City Boat Sales, LLC has caused this instrument to be executed by duly elected officers this \_\_\_\_ day of April, 2020.

River City Boat Sales, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss.  
County of Clackamas        )

On this \_\_\_\_ day of April, 2020 before me the undersigned, a notary public in and for such state, the foregoing instrument was acknowledged before me by \_\_\_\_\_, the \_\_\_\_\_, on behalf of River City Boat Sales, LLC.

Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of a Lease of  
Property to River City Boat Sales,  
LLC Described as the Boones  
Ferry Marina in Clackamas  
County, Oregon



Board Order No. \_\_\_\_\_  
*Page 1*

**Whereas**, Clackamas County owns property generally described as follows: Tax Lots 31W23DC02000, 900 and 800, more commonly known as Boones Ferry Marina, 26117/26177 Boones Ferry Landing, Aurora, OR 97002 (the "Property"); and

**Whereas**, River City Boat Sales, LLC desires to lease the Property; and

**Whereas**, River City Boat Sales, LLC is willing to agree to the terms and conditions set forth in the Commercial Lease attached to this Order as Exhibit "A"; and

**Whereas**, ORS 271.360 requires leases to be authorized by ordinance or order of the public body executing the same; now therefore,

**IT IS HEREBY ORDERED** that the Chair of the Clackamas County Board of Commissioners is authorized to execute the Commercial Lease attached to this Order as Exhibit "A".

**DATED** this \_\_\_ day of \_\_\_\_\_, 2020.

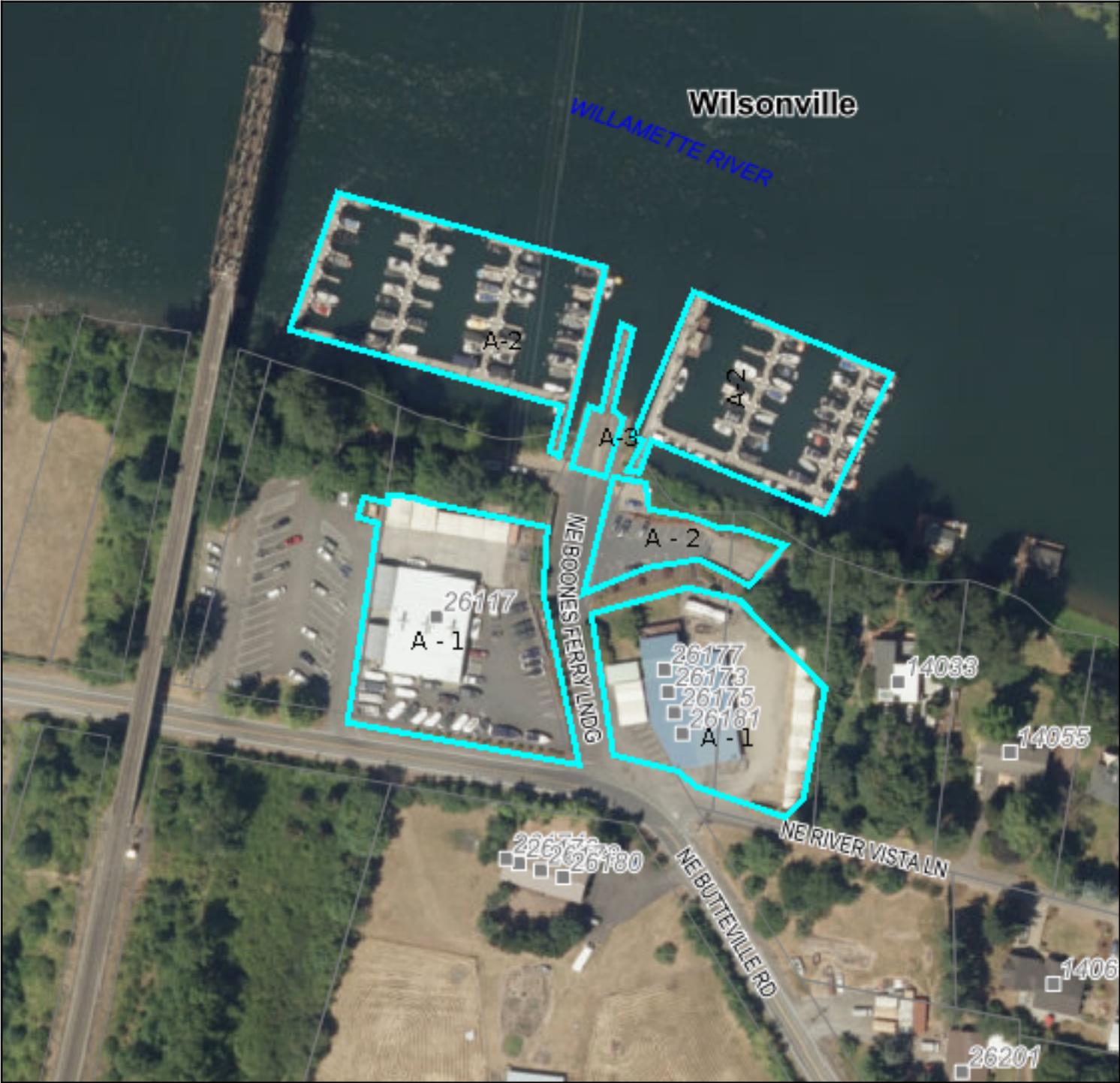
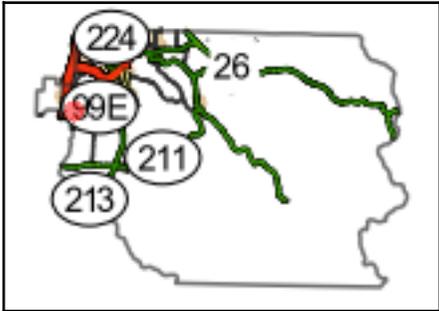
**BOARD OF CLACKAMAS COUNTY COMMISSIONERS**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

# Clackamas County

EXHIBIT A

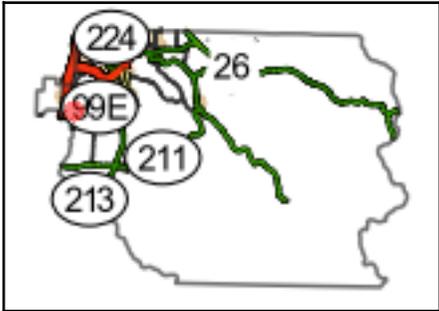


**Geographic Information Systems**  
168 Warner Milne Road  
Oregon City, OR 97045

This map and all other information have been compiled for preliminary and/or general purposes only. This information is not intended to be complete for purposes of determining land use restrictions, zoning, title, parcel size, or suitability of any property for a specific use. Users are cautioned to field verify all information

# Clackamas County

EXHIBIT A (1-4)



**Geographic Information Systems  
168 Warner Milne Road  
Oregon City, OR 97045**

This map and all other information have been compiled for preliminary and/or general purposes only. This information is not intended to be complete for purposes of determining land use restrictions, zoning, title, parcel size, or suitability of any property for a specific use. Users are cautioned to field verify all information



## **Exhibit B**

### **Anticipated Boones Ferry Marina Capital Improvement Plan**

#### **CAPITAL PROJECTS LIST**

Roof Repair/Replacement (Service Bldg)  
Roof Repair/Replacement (Sales Bldg)  
Electrical Panel Upgrade (Service Bldg)  
Asphalt Paving - main drive/road apron  
Storm Drain / Gutters / Winterization  
Asphalt surface - Sales Storage Area  
Well Collar - Sales Parking Lot  
Fuel Tank Cleanup  
Boarding Dock Replacement  
General Dock Upgrades  
Bank Stabilization  
Exterior Painting/Fascia replacement  
Bathrooms (TI) - Sales Bldg  
Apartment Modifications (TI)

EXHIBIT C

**Boones Ferry Marina Operating and Maintenance Plan**

| Task  | Responsibility |        |         |
|---|----------------|--------|---------|
|   | County         | Lessee | Shared* |
| Monitor driftwood buildup on marina docks   |                | X      |         |
| Monitor driftwood buildup on launch dock    |                | X      |         |
| Pike pole/skim driftwood/debris             |                | X      |         |
| Remove driftwood from marina docks          |                |        | X       |
| Remove driftwood from launch dock           |                |        | X       |
| Blow off parking lots/rake leaves           | X              |        |         |
| Monitor for flood damage                    |                | X      |         |
| Repair flood damage, remove silt            |                |        | X       |
| Re-center launch dock post flood            |                | X      |         |
| Start up water system                       | X              |        |         |
| Repair broken water lines                   | X              |        |         |
| Repair broken/detached faucets              |                | X      |         |
| Test backflow prevention devices            | X              |        |         |
| Water system testing                        | X              |        |         |
| Pressure wash docks                         |                | X      |         |
| Repair/replace marina dock components       |                |        | X       |
| Dock components cleaning and maintenance    |                | X      |         |
| Repair/replace dock boxes                   | X              |        |         |
| Repair/replace launch dock components       | X              |        |         |
| Seasonal re-connect fuel line to dock       | X              |        |         |
| Start up other fuel system components       |                | X      |         |
| Fuel system maintenance and servicing       |                | X      |         |
| Start up sanitary pumpout system            | X              |        |         |
| Garbage dumpster, coordinate                |                | X      |         |
| Garbage dumpster, pay for                   | X              |        |         |
| Porta-Potty Service, coordinate             |                | X      |         |
| Porta-Potty Service, pay for                | X              |        |         |
| Clean up landscaping                        |                |        | X       |
| Parking lot maintenance                     |                |        | X       |
| Check/repair/replace/update park signage    | X              |        |         |
| Check/repair/replace/update marina signs    |                | X      |         |
| Pick up litter, empty garbage, remove items |                | X      |         |

| Task  | Responsibility |        |         |
|---|----------------|--------|---------|
|   | County         | Lessee | Shared* |
| Open overflow lot                           |                |        | X       |
| Parking and fee enforcement                 | X              |        |         |
| Fee collection and processing               | X              |        |         |
| Keep up landscaping and appearance          |                |        | X       |
| Monitor and repair marina dock components   |                |        | X       |
| Monitor and repair launch dock components   |                |        | X       |
| Routine testing of sanitary pumpout system  | X              |        |         |
| Keep marina docks clean                     |                | X      |         |
| Keep launch dock clean                      |                | X      |         |
| Water system testing                        | X              |        |         |
| Winterize water system                      | X              |        |         |
| Winterize sanitary pumpout system           | X              |        |         |
| Seasonal disconnect fuel line from dock     | X              |        |         |
| Shut down/winterize fuel system components  |                | X      |         |
| Close overflow lot                          |                |        | X       |
| Move porta-potty out of flood area          |                | X      |         |
| Remove fire extinguisher(s) from flood area |                | X      |         |
| Pump septic holding tank                    | X              |        |         |

\* Shared responsibility generally means the Lessee will monitor issues, address minor repairs or projects and deal with quick on-site response to emerging issues, and report complex issues or major repairs to County for resolution.

**STATE OF OREGON  
DEPARTMENT OF STATE LANDS  
AMENDED AND RESTATED  
SUBMERGED AND SUBMERSIBLE LAND LEASE**

10937-ML

This Lease is an amendment to and restatement of that certain submerged and submersible lands lease, ML-9300/10937-ML, dated the 31<sup>st</sup> day of March, 1995 and amended on April 5, 1999, by and between the State of Oregon, by and through the Oregon State Land Board and the Department of State Lands, and Clackamas County Parks, as lessee:

The State of Oregon, by and through the Oregon State Land Board and the Department of State Lands ("State"), hereby leases to the person(s) herein named ("Lessee"), the following described lands on the terms and conditions stated herein (the "Lease"):

|                                 |                                |
|---------------------------------|--------------------------------|
| NAME of LESSEE:                 | ADDRESS:                       |
| Clackamas County Parks          | 150 Beaver Creek Rd, Suite 419 |
| Attn: Rick Gruen, Parks Manager | Oregon City, OR 97045          |

Legal classification of Lessee is a Political Subdivision,

Lands situated in Clackamas County more fully described as follows:

All state-owned submerged lands in the Willamette River in Section 23, Township 3 South, Range 1 West, Willamette Meridian, Clackamas County, Oregon, more particularly described as follows:

**PARCEL A**

Commencing at a point on the intersection of the Westerly line of Tax Lot 2100 (Clackamas County Assessor's Map Number 3 1W 23DC) and the line of Ordinary High Water on the left bank of the Willamette River;

thence riverward along a line perpendicular to the thread of the stream to the line of Ordinary Low Water and the TRUE POINT OF BEGINNING;

thence continuing riverward along said perpendicular line a distance of 150 feet;

thence downstream and 150 feet parallel to said line of Ordinary Low Water a distance of 300 feet, more or less, to a point which lies 150 feet riverward from the line of Ordinary Low Water as extended perpendicular to the thread of the stream from a point which is the intersection of the Easterly line of Tax Lot

2000 (Clackamas County Assessor's Map Number 3 1W 23DC) and the line of Ordinary High Water;

thence shoreward along said perpendicular line a distance of 150 feet to the line of Ordinary Low Water;

thence upstream along said line of Ordinary Low Water a distance of 300 feet, more or less, to the TRUE POINT OF BEGINNING, containing 1.03 acres, more or less.

## PARCEL B

Commencing at a point on the intersection of the Westerly line of Tax Lot 900 (Clackamas County Assessor's Map Number 3 1W 23DC) and the line of Ordinary High Water on the left bank of the Willamette River;

thence riverward along a line perpendicular to the thread of the stream to the line of Ordinary Low Water and the TRUE POINT OF BEGINNING;

thence continuing riverward along said perpendicular line a distance of 150 feet;

thence downstream and 150 feet parallel to said line of Ordinary Low Water a distance of 210 feet, more or less, to a point which lies 150 feet riverward from the line of Ordinary Low Water as extended perpendicular to the thread of the stream from a point which is the intersection of the Easterly line of Tax Lot 800 (Clackamas County Assessor's Map Number 3 1W 23DC) and the line of Ordinary High Water;

thence shoreward along said perpendicular line a distance of 150 feet to the line of Ordinary Low Water;

thence upstream along said line of Ordinary Low Water a distance of 210 feet, more or less, to the TRUE POINT OF BEGINNING, containing 0.72 acres, more or less.

Total number of acres: 1.75 acres or 76,230 square feet, more or less.

Hereinafter referred to as the "Leasehold".

## SECTION 1 - LEASE TERM; RENEWAL; TERMINATION

- 1.1 Term: This Lease will continue for a period of 15 years commencing on October 1, 2014, the month and date of which will be known as the "Lease Anniversary Date," and expiring on September 30, 2029, unless terminated earlier as provided under Section 1.4 or Section 7.2 below.
- 1.2 Renewal: Lessee may apply to renew this Lease for successive 15 year terms by submitting a completed lease renewal application form to State not less than 180

days prior to the expiration of the current term. Upon receipt of the application, State shall renew this Lease unless:

1.2.1 State determines, in its sole discretion, that Lessee has not complied with the terms of this Lease, the applicable statutes or Oregon Administrative Rules; or

1.2.2 Lessee is no longer the preference right holder as provided in ORS 274.040(1) and defined in OAR 141-082-0255; or

1.2.3 State determines that the renewal of this Lease for all or any portion of the Leasehold would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-082-0260.

1.3 Notice of Intent Not to Renew: Except as otherwise provided in this Lease, State shall provide written notice to Lessee two years in advance if State intends not to renew this Lease for all or any portion of the Leasehold. If State determines not to renew this Lease, but less than two years remain in the Lease term, State shall, at Lessee's request, extend the term of this Lease to complete the two year notice period, within which time Lessee shall vacate that portion of the Leasehold upon which the Lease is not being renewed and relocate any sublessees in an orderly fashion.

1.4 Termination Upon Mutual Consent: This Lease may be terminated by mutual written consent of Lessee and State.

1.5 Holdover: If Lessee does not vacate the Leasehold at the expiration or upon termination of the Lease, State may treat Lessee as a tenant from month to month, subject to all of the provisions of this Lease except the provisions for term, renewal, and Rent. State may unilaterally establish a new Rent for the month-to-month tenancy, payable monthly in advance. If a month-to-month tenancy results from holdover by Lessee under this Section, the tenancy will be terminable at the end of any monthly rental period upon Notice from State given not less than 30 days prior to the termination date specified in the Notice.

## SECTION 2 – RENT; OTHER ASSESSMENTS

2.1 Initial Annual Rent: The rental payment to be paid by Lessee to State (the "Rent") for the first year of the Lease is \$2,081.08, based on the following Flat Rate. Receipt of the first year's Rent is hereby acknowledged.

| Use Class                    | Area (square ft.)  | Rate Choice | Annual Rent      |
|------------------------------|--------------------|-------------|------------------|
| Commercial<br>Marina/Moorage | 76,230 square feet | Flat Rate   | \$2,081.08       |
| <b>TOTAL</b>                 |                    |             | <hr/> \$2,081.08 |

- 2.2 Annual Rent Adjustment: The Rent will be adjusted annually in accordance with the provisions of OAR 141-082-0305 in effect at the time. Each payment is due on the Lease Anniversary Date established in Section 1.1.
- 2.3 Address for Rent Payments: Until State provides notice of a change in address (using a method described in Section 10.4), Lessee shall deliver all Rent payments to the following address:  
Department of State Lands  
775 Summer St. NE, Suite 100  
Salem, OR 97301-1279
- 2.4 Assessments: Lessee shall pay all taxes or assessments, or both, that are levied against the Leasehold, whether or not such taxes or assessments, or both, have been levied in the past against the Leasehold or State by the assessing agency.
- 2.5 Liens: With the exception of mortgages or other security interests authorized by State under Section 6, Lessee shall immediately cause to be discharged any lien or other charge placed on the Leasehold or its Improvements, arising directly or indirectly out of Lessee's actions. State may terminate this Lease if Lessee fails to discharge any lien or charge or provide State with a sufficient bond covering the full amount of the lien after ten days Notice to do so by State. Lessee shall pay and indemnify State for all costs, damages or charges of whatsoever nature, including attorney's fees, necessary to discharge such liens or charges whether the costs, damages or charges are incurred prior or subsequent to any termination of this Lease.
- 2.6 Late Charges and Interest: Late payments by Lessee of Rent and other charges due under the Lease will cause State to incur costs and other damages not otherwise addressed in this Lease, the exact amount of which will be difficult to ascertain, including costs associated with administrative processing and accounting. In recognition of the foregoing, the parties agree that, notwithstanding other remedies permitted under the Lease and in addition to these remedies, if Lessee has not made full payment of amounts due within 20 days of the date payment is due, Lessee shall pay an additional charge equal to five percent of the amount of the late Rent or other charge. In addition, all amounts due and owing under this Lease, including late charges, will bear interest at the lower of: (a) the highest interest rate allowable by law, or (b) 12% per year.

### SECTION 3 - USE AND RESTRICTIONS ON USE

- 3.1 Authorized Use: This Lease grants to Lessee the right to use the Leasehold for the specific purpose(s) described below in accordance with the Lease terms and conditions, applicable local (including local comprehensive land use planning and zoning ordinances), state and federal laws and the applicable Oregon Administrative Rules.

Commercial Marina/Moorage and Floating Home Moorage

3.2 Restrictions on Use: Lessee shall:

3.2.1 comply with all applicable local, state and federal laws and regulations affecting the Leasehold and its use, including local comprehensive land use planning and zoning ordinances, and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use;

3.2.2 dispose of all waste in a proper manner and not allow debris, garbage or other refuse to accumulate within the Leasehold, and, if Lessee allows debris, garbage or other refuse to accumulate within the Leasehold, allow State to remove the debris, garbage and other refuse, and collect the cost of such removal from Lessee;

3.2.3 not cut, destroy or remove, or permit to be cut, destroyed or removed, any vegetation that may be upon the Leasehold except with written permission of State, and promptly report to State the cutting or removal of vegetation by other persons;

3.2.4 conduct all operations within the Leasehold in a manner which conserves fish and wildlife habitat, protects water quality, and does not contribute to soil erosion or the growth of noxious weeds;

3.2.5 maintain all buildings, docks, pilings, floats, gangways, similar structures, or other improvements (each an "Improvement") in a good state of repair; and

3.2.6 not unreasonably interfere with the public's trust rights of commerce, navigation, fishing or recreation.

3.3 Condition of Leasehold and Improvements: Lessee represents that it has inspected the Leasehold and Improvements, if any, and accepts the Leasehold and all Improvements in their present condition, AS IS. State has made no oral or written representations concerning the condition of the Leasehold or its Improvements, if any, nor their fitness or suitability for any purpose.

3.4 Limitation on Improvements: Lessee may not construct or place upon the Leasehold any Improvement that exceeds \$15,000 in cost or value unless Lessee has first obtained the prior written authorization of State or the Improvement is exempt under OAR 141-082-0300. State shall not unreasonably withhold or delay its approval for Improvements consistent with the purposes of this Lease. All Improvements must be consistent with the authorized use(s) of this Lease stated in Section 3.1 and in compliance with all applicable laws, regulations, and ordinances as stated in Section 3.2.1.

3.5 Disposition of Unauthorized Improvements or Structures: Lessee shall remove all unauthorized Improvements from the Leasehold upon receiving Notice from State, unless State elects to remove the Improvements at Lessee's cost and expense.

3.6 Removal of Authorized Improvements: Lessee shall remove all authorized Improvements within 90 days after the termination or expiration of the Lease or

modification of the Lease under Section 4.2, unless otherwise agreed by the parties or the Improvement is exempt under OAR 141-082-0310. Lessee is responsible for any damage done to the Leasehold as a result of the removal of any Improvement. Any Improvement remaining on the Leasehold after the 90 days will at the option of State become the property of State, unless otherwise agreed by the parties.

3.7 Liability: Lessee shall defend, indemnify and hold State harmless from and against all claims, demands, actions, suits, judgment, losses, damages, penalties, fines, costs, and expenses (including expert witness fees and costs and attorney's fees in an administrative proceeding, at trial, or on appeal) arising from or attributable, in whole or in part, to the Lease or any operations conducted or allowed by Lessee on the Leasehold. As used in this Section 3.7 only, "State" means the State of Oregon and its boards, commissions, agencies, officers, employees, contractors, and agents.

3.8 Waste Water Disposal: In addition to any other applicable laws and regulations, Lessee shall obtain any permits required by state or local authorities and shall comply with Oregon Department of Environmental Quality and Oregon State Marine Board requirements for sewage collection and waste water disposal for boats and floating structures.

3.9 Hazardous Substances:

3.9.1 Lessee shall not use, store, or dispose of, or allow the use, storage, or disposal within the Leasehold of any material that may pose a threat to human health or the environment, including without limitation, hazardous substances, pesticides, herbicides, or petroleum products (a "Hazardous Substance") except in strict compliance with applicable laws, regulations and manufacturer's instructions, and Lessee shall take all necessary precautions to protect human health and the environment and to prevent the release of any Hazardous Substance on or from the Leasehold.

3.9.2 Lessee shall keep and maintain accurate and complete records of the amount of all Hazardous Substances stored or used on the Leasehold, and shall immediately notify State of any release or threatened release of any Hazardous Substance on or from the Leasehold or otherwise attributable to operations or activities on the Leasehold.

3.9.3 If any Hazardous Substance is released, and the release arises from or is attributable, in whole or in part, to any operations conducted or allowed by Lessee on the Leasehold, Lessee shall promptly and fully remediate the release in accordance with state and federal regulations and requirements. If Lessee fails to so remediate, State may remove and remediate any release of a Hazardous Substance on or from the Leasehold or attributable to operations or activities conducted or allowed by Lessee on the Leasehold and collect the cost of removal or remediation from Lessee either as additional Rent or as damages.

3.9.4 In addition to any duty to indemnify specified elsewhere in this Lease, Lessee shall indemnify State to the fullest extent allowed by Oregon law against

any claim or costs arising from or related to a release of a Hazardous Substance arising from or attributable, in whole or in part, to any operations conducted or allowed by Lessee on the Leasehold.

- 3.10 Weed Control: Lessee shall control plant pests and diseases and noxious weeds, including aquatic weeds, within the Leasehold as directed by the local county weed control district, the Oregon Department of Agriculture or any other governmental authority which has authority for the prevention or control, or both, of noxious weeds, plant pests or diseases, or as may be authorized or directed by State.

#### SECTION 4 - MODIFICATION OF LEASEHOLD AREA OR USE

- 4.1 Change of Leasehold Area or Use: Lessee may request that State amend the Lease to expand or reduce the size, or change the authorized use, of the Leasehold using a form provided by State. However, no such amendment will be effective unless authorized in writing by State. State shall process and review requests to amend the Lease in the same manner as a new lease application.
- 4.2 Special Conditions Applicable to Reductions in Leasehold Area. This Lease may be amended to reduce the Leasehold area only if the portion of the Leasehold to be removed from the Lease does not contain any Improvement. If the amendment results in a reduction of Rent due under the Lease, the reduction will be effective commencing on the Lease Anniversary Date that falls at least 12 months after the later of: (a) the date of the reduction in the Leasehold area; or (b) the date on which the amendment is fully executed.
- 4.3 Lessee Liable for Violations. Notwithstanding any reduction in the Leasehold area under this section, Lessee shall remain liable for any violation of Section 3.8 or 3.9 occurring on lands removed from the Leasehold prior to the amendment removing such lands.

#### SECTION 5 – RESERVATIONS

- 5.1 Access: State reserves a right of access to the Leasehold, which, subject to any applicable provisions of the Oregon Residential Landlord and Tenant Act, ORS chapter 90, the State may exercise at all reasonable times to inspect and manage the State's interest in the Leasehold and to evaluate and ensure compliance with the terms and conditions of this Lease. State may examine pertinent records of Lessee for the purpose of ensuring compliance with the Lease.
- 5.2 Minerals: State reserves all rights to coal, oil, gas, geothermal resources and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining, or commercial purposes including, without limitation, the right to explore, mine, develop, produce and remove such minerals and other deposits, along with the right of ingress and egress for these purposes, and to terminate this Lease as to all or any portion of the Leasehold when required for these purposes with 120 days prior written notice to Lessee or as otherwise provided by law.

- 5.3 Easements: State reserves the right at any time to grant easements across the Leasehold for tunnels, telephone and fiber optic cable lines, pipelines, power lines, or other lawful purpose, along with the right of ingress and egress for these purposes, subject to the inclusion in any such grant of easement of a requirement that the easement holder take all reasonable precautions to ensure that exercise of their easement rights does not unreasonably interfere with Lessee's use(s) authorized in the Lease.
- 5.4 Public Access and Recreational Use: All state-owned submerged and submersible land must remain available and open to the public for commerce, navigation, fishing and recreation unless restricted or closed by State to public entry pursuant to the provisions of applicable Oregon Administrative Rules. Lessee may request State, but State is not obligated, to close the Leasehold to public entry or restrict recreational use by the public on all or portions of the Leasehold to protect persons or property from harm arising from or in connection with Lessee's activities.
- This reservation does not grant the public any right to use or occupy, without Lessee's permission, Lessee-owned property or structures authorized under this Lease.
- 5.5 Other: State reserves all other rights not expressly granted to Lessee under this Lease.

## **SECTION 6 – ASSIGNMENTS; SUBLEASES**

### 6.1 Assignment and Sublease:

6.1.1 Except as provided in Section 6.2, Lessee may not assign this Lease or sublease the Leasehold or any portion of the Leasehold nor enter into any third party agreement respecting the Lease or the Leasehold without first obtaining the prior written consent of State pursuant to the requirements of the applicable Oregon Administrative Rules. Requests must be in writing using an application form prescribed by State. The application must be received by State at least 30 calendar days prior to the proposed effective date of the sublease or assignment. State shall make a good faith effort to complete its review of Lessee's application within 30 days following receipt. If the application is incomplete, or if State requests additional information concerning the proposed assignment or sublease, the time period for reviewing applications may be extended and the proposed sublease or assignment may be delayed pending the completion of such review.

6.1.2 State reserves the right to condition its consent to an assignment or sublease as State deems reasonably prudent, including the right to require changes to the terms of this Lease. Each assignee, sublessee, and third party interest will be required to comply with all of Lessee's obligations under this Lease, and the applicable Oregon Administrative Rules. Lessee will remain liable for the performance of all obligations under this Lease unless State's written consent expressly releases Lessee from further liability.

6.1.3 For the purposes of this section, if Lessee is a corporation or partnership or limited liability company, the transfer of any corporate stock or

partnership or membership interest (including by operation of law) will be deemed an assignment subject to the provisions of this section if the result of the transfer is a change of management control or controlling interest in Lessee.

6.1.4 Lessee may not grant a mortgage or security interest in this Lease without prior written consent of State, which consent shall not be unreasonably withheld. Any subsequent assignment by the creditor will require the prior written approval of State.

6.2 Permitted Assignments and Subleases: Notwithstanding Section 6.1 of this Lease, the following assignments, mortgages and security interests, and subleases of Lessee's interest in the Leasehold are permitted and written notice to State is not required:

6.2.1 subleases of portions of Lessee's interest in the Leasehold area in the ordinary course of Lessee's business for the purposes approved under Section 3.1;

6.2.2 the sublease of the entire Leasehold for a term that is less than one year for a purpose specified in Section 3.1; or

6.2.3 the transfer of Lessee's interest in the Lease to a surviving spouse or immediate family member following the death of Lessee; except that, any other transfer of ownership following the death of Lessee is considered an assignment requiring State's approval.

## SECTION 7 – DEFAULT

7.1 Default: The following are events of default:

7.1.1 Failure of Lessee to pay any rent, tax, reimbursement or other charge or payment due under the Lease within 20 days after the date payment is due. For the purposes of this subsection, if the due date for payment is not otherwise stated in this Lease or otherwise defined in statute or administrative rule, payment is due on the date set forth in the Notice from State to Lessee informing Lessee of its obligation to pay the charge or payment.

7.1.2 Failure of Lessee to comply with any non-payment-related term or condition or obligation of the Lease within 30 days after Notice by State specifying the nature of the deficiency, or, in the event of an emergency, within the time specified by State to resolve the emergency. Upon timely request from Lessee, State may in its good faith discretion permit the deadline for curing non-compliance to be extended if it finds that: (1) the default cannot reasonably be cured within the 30 day period; (2) the interests of State will not be harmed by an extension; (3) default was not due to the willful act or gross negligence of Lessee; and (4) State and Lessee mutually agree upon a written plan and timeline for curing the non-compliance.

7.1.3 Any of the following:

- a) insolvency of Lessee;
- b) the filing by Lessee of a voluntary petition in bankruptcy;
- c) an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee;
- d) the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within 30 days after filing;  
or
- e) attachment of or the levying of execution on the Leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten days.

If Lessee consists of two or more individuals or business entities, the events of default specified in this paragraph apply to each individual or entity unless within ten days after an event of default occurs the remaining individuals or entities produce evidence satisfactory to State that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned under Section 6 of this Lease, the events of default specified in this subsection apply only with respect to the one then exercising the rights of Lessee under the Lease.

7.1.4 Notwithstanding the above, if State in good faith believes that a material default has occurred which may imperil State's rights in the land or the discharge of its Constitutional obligations with respect to the land, State may declare an immediate default without any right of Lessee to cure the deficiency.

7.2 Termination of Occupancy Upon Default: State may terminate Lessee's right to occupy the Leasehold for any default by Lessee that remains uncured past the time provided in Section 7.1. State shall exercise its right to terminate Lessee's occupancy under this section by providing Notice to Lessee of the default and of State's intent to terminate Lessee's right of occupancy under the Lease upon the date provided in the Notice. State may recover from Lessee all costs arising out of State's re-entry and, if State and Lessee mutually agree to terminate the Lease as provided in Section 1.4, all costs of re-letting the Leasehold. If State and Lessee mutually agree to terminate the Lease, State may recover the amount of unpaid rent that otherwise would have been required to be paid under the Lease from the date of default until a new Lease has been secured or, if State and Lessee do not agree to terminate the Lease and State is unable to secure another lessee for the Leasehold, until such time as the Lease expires. Lessee shall dispose of all Improvements as specified in Section 3.6 of this Lease. If Lessee owns a floating home and has placed the home on the Leasehold pursuant to the provisions of Section 3.1 of this Lease, the lease termination provisions of ORS chapter 90 will apply to the extent the provisions of this Lease are inconsistent with this chapter.

7.3 State's Right to Cure Defaults:

7.3.1 If Lessee fails to perform any obligation under this Lease, State may perform the obligation of the Lease 30 days after providing Notice to Lessee. All of State's expenditures to carry out the obligation must be reimbursed by Lessee on demand with interest at the rate of one percent per month accrued from the date of expenditure by State.

7.3.2 Notwithstanding Section 7.3.1, but subject to ORS chapter 90 if applicable, if any violation of a term or condition of this Lease, including without limitation use of the Leasehold in a manner not permitted under the Lease, is causing or threatens to cause personal injury or damage to the Leasehold or other property, or if damage to the Leasehold arises from some other cause, State may immediately enter upon the Leasehold and take such action as it deems necessary to stop the use or mitigate the injury or damage. If the injury or damage is due to a violation of the terms or conditions of this Lease, Lessee will be liable for all costs incurred by State as a result of the violation and the action taken by State to mitigate the injury or damage. State, at its option, may send Notice to Lessee of the violation and, upon receipt of the Notice, Lessee shall immediately cease the violation and repair the injury or correct all damage caused by the violation. State's failure to provide Notice of a violation may not be deemed a waiver of the violation by State or authorization to Lessee to continue or fail to correct the violation.

### SECTION 8 – INSURANCE; BONDS

- 8.1 LESSEE shall maintain during the term of this License, the required insurance coverages described in attached Exhibit B.
- 8.2 Bond: State reserves the right to require Lessee to furnish to State a surety bond or an equivalent cash deposit or certificate of deposit, in an amount to be determined by State in the exercise of its reasonable discretion, which names the State of Oregon as co-owner to ensure that Lessee will perform in accordance with all terms and conditions of the Lease.

### SECTION 9 - ADDITIONAL CONDITIONS AND STIPULATIONS

- 9.1 N/A

### SECTION 10 - MISCELLANEOUS

- 10.1 Entire agreement: This Lease, together with the attached exhibits and attachments, constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Lease will bind either party unless in writing. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given, and will be valid and binding only if it is signed by each party. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Lease. This Lease supersedes all prior or existing lease or rental agreements between the parties with respect to the Leasehold described in this Lease.
- 10.2 No Partnership: State is not a partner nor in a joint venture with Lessee in connection with any business carried on in connection with this Lease or the Leasehold and has no obligation for Lessee's debts or other liabilities.

10.3 Non-Waiver: Waiver by either party of strict performance of any provisions of this Lease will not be a waiver nor prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

10.4 Notices:

10.4.1 Any communication required by the terms of this Lease to be given in writing (hereafter, a "Notice") must be given or be served by:

- a) depositing the same in the United States mail, postage prepaid; registered or certified mail, with return receipt requested; or
- b) personal delivery service with all charges billed to shipper; or
- c) expedited delivery service with all charges billed to shipper; or
- d) prepaid telegram, telex or facsimile;

addressed to the party for whom the Notice is intended at the address set forth below or at such other address as the party may designate from time to time.

For Notices to Tenant:

Clackamas County Parks,  
Attn: Rick Gruen, Parks Manager  
150 Beaver Creek Rd., Suite 419  
Oregon City, OR 97045

For Notices to Landlord:

Department of State Lands  
775 Summer Street NE, Suite 100  
Salem, OR 97301-1279

10.4.2 Notice is deemed received:

- a) upon receipt if sent by telegram, telex or facsimile or if personally delivered (as long as delivery is confirmed by the receiving telex or facsimile operator, including electronic confirmation of receipt, or by the courier delivery service, as the case may be); or
- b) three business days after the date of deposit in a post office or other official depository under the care and custody of the United States Postal Service, if sent by United States mail; or
- c) on the date of delivery by any expedited delivery service, or
- d) on the date any party declines to accept any Notice given as provided in this section.

10.4.3 Each party shall have an address, for Notice purposes, that is within the continental United States and, if any party resides outside the continental United States, the party shall designate an agent for the purpose of receiving Notices whose address is within the continental United States. Any party may change its address for the purpose of receiving Notices by delivering a Notice of the change of address to the other party as described in this section 7.3.

10.4.4 Communications between the parties that are not required by this Lease to be in writing may be by any mutually acceptable method.

- 10.5 Governing Law; Venue: This Lease and all matters related to the rights and responsibilities of the parties under it are governed by and subject to the laws of the State of Oregon and the administrative rules of the Department of State Lands and the State Land Board, as they may change from time to time. The Oregon Administrative Rules contain terms and conditions which relate to the rights and responsibilities of the parties under this Lease, and all such terms and conditions (as they may change from time to time) are hereby incorporated by reference and made a part of this Lease. Any claim, action, suit or proceeding (collectively, a "Claim") between State and Lessee that arises from or relates to the Lease must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; except that, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. However, in no way is this section or any other provision of this Lease to be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any Claim or from the jurisdiction of any court. Lessee, by execution of this Lease, hereby consents to the personal jurisdiction of all such courts.
- 10.6 Binding on Successors: This Lease is binding on and will inure to the benefit of the successors and assigns of the parties to it, but nothing in this section may be construed as a consent by State to any disposition or transfer of the Lease or any interest in it by Lessee except as otherwise expressly provided in this Lease.
- 10.7 Nondiscrimination: The Leasehold must be used in a manner, and for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender, or national origin.
- 10.8 Right To Sue More Than Once: State may sue periodically to recover damages accrued to date and no action for damages will bar later actions for damages subsequently accruing.
- 10.9 Remedies Cumulative: The remedies contained in this Lease are in addition to, and do not exclude, any other remedy available at law or in equity, and the exercise by either party of any one or more of its remedies does not preclude the exercise by it at the same or different times of any other remedies for the same default or breach by the other party.
- 10.10 Attorney Fees: If suit or action is instituted in connection with any controversy arising out of or in connection with this Lease, the prevailing party is entitled to recover all costs and disbursements incurred, including such sums as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action, and in any bankruptcy case or proceedings. State's obligation under this section is subject to the limitations of Article XI, section 7 of the Oregon Constitution.

- 10.11 Exhibits: All Exhibits to which reference is made in this Lease are incorporated in this Lease by the respective references to them, whether or not they are actually attached. References to "this Lease" include matters incorporated by reference.
- 10.12 Survival. Termination or expiration of the Lease will not extinguish or prejudice State's right to enforce the provisions of this Lease relating to indemnification, access to records, governing law, venue and consent to jurisdiction.

Lessee, by the signature below of its authorized representative, hereby acknowledges that Lessee has read this Lease, understands it and agrees to be bound by its terms and conditions.

**STATE:**

The State of Oregon, acting by and through the Oregon State Land Board and the Department of State Lands  
775 Summer ST NE, STE 100  
Salem, OR 97301-1279

**LESSEE:**

Clackamas County Parks  
Political Subdivision  
150 Beaver Creek Rd., Suite 419  
Oregon City, OR 97045

Lori Warner-Dickson *Lori Warner-Dickson*

DSL Authorized Signature/  
Printed Name

[Signature] *Manager*

Signature/Title

8.28.14

Date

(Note requirement below)

8-12-14

Date

Note: If Lessee is a corporation, partnership, limited liability company or other form of business entity, signer warrants that s/he has the authority to sign the Lease on behalf of such entity by resolution of its Board of Directors or equivalent, or through delegation of authority to the signer.



STATE OF Oregon )  
County of Clackamas )ss

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of

August, 2014, by Rick Gruen  
(name of officer or agent of political entity)

the Manager of Clackamas County Parks  
(title of officer or agent) (name of political entity)

[Signature]  
Signature  
My commission expires 6/5/16

**CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS**

By signature on this Lease for Lessee, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Lessee and that Lessee is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes), 403.200 to 403.250 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Timber and Forest Land Taxation) and 323 (Cigarettes And Tobacco Products) and the elderly rental assistance program under ORS 310.630 to 310.706 and any local taxes administered by the Department of Revenue under ORS 305.620.

Signature: 

Date: 8-12-14

Printed Name: Rick Bowen

Title: Manager

# Oregon Department of State Lands Land Management Division



31W23DB01100

10937-ML  
Clackamas County  
Boone's Ferry Marina  
Parcel A

10937-ML  
Clackamas County  
Boone's Ferry Marina  
Parcel B



Copyright © 2013 Esri, DeLorme, NAVTEQ, TomTom, Sources: Esri, DeLorme, USGS, NPS, Source: Esri, DigitalGlobe, GeoEye, iSatbird, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community



1 inch = 131 feet

Map Projection:  
Oregon Statewide Lambert  
Datum NAD83  
International Feet



Vicinity Map

**Legend**  
— Legal Description

This map depicts the approximate location and extent of a Department of State Lands, Land Management Division authorization for use and/or property transaction. This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

## Exhibit A

Contact:  
State of Oregon  
Department of State Lands  
Land Management Division  
503-986-5309  
[www.oregon.gov/dsl/LW](http://www.oregon.gov/dsl/LW)  
Date: 6/27/2014

**Exhibit B**  
**INSURANCE REQUIREMENTS**

During the term of the Lease Lessee shall maintain in force at its own expense, each insurance noted below:  
**(State must check boxes for #2, #3, #4, #5 and #6 to indicate whether insurance is required or not.)**

1. **Required by State of lessee with one or more workers, as defined by ORS 656.027.**

**Workers' Compensation.** All employers, including Lessee, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Lessee shall require and ensure that each of its sublessees (if permitted) complies with these requirements.

2.  **Required by State**  **Not required by State.**

**Professional Liability coverage,** insuring against claims for damages caused by error, omission or negligent acts related to professional services to be provided under this Lease. Lessee shall provide proof of insurance of not less than the following amounts:

\$ \_\_\_\_\_

or

Amounts not less than the amounts listed in the following schedule:

Per occurrence limit for any single claimant:

From commencement of the Lease term to June 30, 2015: \$2,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Per occurrence limit for multiple claimants:

From commencement of the Lease term to June 30, 2015: \$4,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

3.  **Required by State**  **Not required by State.**

**General Liability coverage**, insuring against claims for bodily injury, death and property damage. Coverage must include contractual liability coverage for the indemnity provided under this Lease. **The commercial general liability insurance coverages required under this Lease must include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as additional insureds. See Number 9 below.**

Lessee shall provide proof of liability or commercial general liability insurance in not less than the following amounts:

**Bodily Injury/Death:**

\$1,000,000.00 combined single limit per occurrence

\$2,000,000.00 aggregate limit for all claims per occurrence

or

- Amounts not less than the amounts listed in the following schedule:

Per occurrence limit for any single claimant:

From commencement of the Lease term to June 30, 2015: \$2,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Per occurrence limit for multiple claimants:

From commencement of the Lease term to June 30, 2015: \$4,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

**Property Damage:**

\$100,000.00

or

- Amounts not less than the amounts listed in the following schedule:

Per occurrence limit for any single claimant:

From commencement of the Contract term to June 30, 2015: \$109,400.

From July 1, 2015, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

Per occurrence limit for multiple claimants:

From commencement of the Contract term to June 30, 2015: \$546,800.

From July 1, 2015, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

4.  Required by State  Not required by State.

**Automobile Liability coverage**, insuring against claims for bodily injury and property damage, including coverage for owned, hired or non-owned vehicles, as applicable. **The automobile liability insurance coverages required under this Lease must include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as additional insureds. See Number 9 below.** Lessee shall provide proof of insurance of not less than the following amounts:

**Bodily Injury/Death:**

- \$\_\_\_\_\_ combined single limit per occurrence  
 \$\_\_\_\_\_ aggregate limit for all claims per occurrence

or

- Amounts not less than the amounts listed in the following schedule:

Per occurrence limit for any single claimant:

From commencement of the Lease term to June 30, 2015: \$2,000,000.  
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Per occurrence limit for multiple claimants:

From commencement of the Lease term to June 30, 2015: \$4,000,000.  
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

**Property Damage:**

- \$\_\_\_\_\_

or

- Amounts not less than the amounts listed in the following schedule:

Per occurrence limit for any single claimant:

From commencement of the Contract term to June 30, 2015: \$109,400  
From July 1, 2015, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

Per occurrence limit for multiple claimants:

From commencement of the Contract term to June 30, 2014: \$546,800.  
From July 1, 2015, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

5.  Required by State  Not required by State.

**Marine Protection and Indemnity Coverage.** Lessee shall obtain, at Lessee's expense, and keep in effect during the term of the Lease, marine protection and indemnity coverage. Shall not be less than \$\_\_\_\_\_.

6.  Required by State  Not required by State.

**Pollution Liability:** Lessee shall obtain at Lessee's expense, and shall keep in effect during the term of the Lease, pollution liability insurance covering Lessee's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Lessee, all arising out of Lessee's lease of the Leasehold. Shall not be less than \$100,000.00.

7. **"Tail" Coverage.** If any of the required liability insurance is on a "claims made" basis, Lessee shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Lease, for a minimum of 24 months following the termination or expiration of the Lease.

8. **Certificates of Insurance.** As evidence of the insurance coverages required by this Lease, the Lessee shall furnish acceptable insurance certificates to State prior to commencing any work to be performed under the Lease. The certificate must specify all of the parties who are additional insureds. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to State. Lessee shall pay for all deductibles, self-insured retention and self-insurance.

9. **Additional Insured.** The commercial general liability and automobile liability insurance coverages required under this Lease must include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as additional insureds but only with respect to Lessee's activities to be performed under this Lease. Coverage shall be primary and non-contributory with any other insurance and self-insurance.



Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Contract with Janz Enterprises, Inc. for the  
Carver Boat Launch Parking Lot Curb Replacement and Asphalt Overlay**

|  |   |
|--|---|
| <b>Purpose/Outcomes</b>                | This Contract will resurface the Carver boat launch and site curbing along with its adjacent sidewalks.   |
| <b>Dollar Amount and Fiscal Impact</b> | Contract value is \$231,098.00  |
| <b>Funding Source</b>                  | 213-7641-06606-485150-64077<br>Department funds   |
| <b>Duration</b>                        | Contract execution through June 1, 2020   |
| <b>Previous Board Action</b>           | None  |
| <b>Strategic Plan Alignment</b>        | This project will provide strong infrastructure and ensure safe communities by maintaining the County's existing road infrastructure. This project will further reduce the backlog of deferred maintenance projects in County Parks |
| <b>Counsel Approval</b>                | April 7, 2020   |
| <b>Contact Person</b>                  | Rick Gruen, 503-742-4345  |

**Background:**

Work will consist of replacing a substantial amount of the Carver boat launch site curbing and adjacent sidewalks. Work also will include a subsequent resurfacing of the boat launch main parking lot and the boat launch loop with modified C hot mix asphalt ("HMAC").

The main parking lot and the launch loop will receive a nominal 2-inch lift asphalt overlay. Some required per-leveling in one identified low area and a 2-inch linear patch paving along the face of the replacement curbs is also required. Approximately 2260 feet of former extruded perimeter and island curbing had failed due to age and abuse. Additionally, approximately 580 feet of former curb in contact with a curb tight sidewalk running along the north perimeter required an upgrade. All of these curbs and mentioned sidewalk were previously removed following a neat asphalt saw cut line and now need to be replaced with Type "C" curb set 1 foot from the asphalt saw cut line. Excavation and reuse of the existing underlying aggregate base is included in this work in order to form and cast the new "C" curbs having a 7" exposure subsequent to the overlay resembling the pre-existing curb alignment at the slightly raised elevation. 320 feet of new 5-foot wide curb tight sidewalk running along the north side from the ADA parking then westerly to the boat ramp requires reconstruction.

The project work is anticipated to begin immediately following contract signing. Substantial completion will be not later than June 1, 2020, with final completion no later than June 30, 2020.

**Procurement Process:**

This project was advertised in accordance with ORS and LCRB Rules on February 19, 2020. Bids were opened on March 19, 2020. The County received ten (10) bids: Berrien Concrete, LLC., \$336,487.00; D&D Concrete and Utilities, Inc., \$277,200.00; MJ Hughes, \$372,065.00; Hals Construction, \$348,146.00; Eagle-Elsner, Inc., \$241,680.00; North Santiam Paving Co, \$284,980.00; Knife River Corporation, \$281,355.00; Janz Enterprises, Inc, \$222,388.00; 3 Kings Environmental, Inc., \$266,478.00; and Brix Paving Northwest, \$305,20.00. After review of the bids, Janz Enterprises, Inc. was determined to be lowest responsive bidder.

Bidders were asked to submit alternates to their bids which included Alternate #1: South Side Curb Replacement and Alternate #2: Eastward Sidewalk Extension. Upon accepting Janz Enterprises bid, the department opted to accept bid Alternate #2 at an increase of \$8,710.00. Total contract value inclusive of Alternate #2 will be \$231,098.00.

**Recommendation:**

Staff respectfully recommends that the Board approve and sign this public improvements contract with Janz Enterprises, Inc. for the Carver Boat Launch Parking Curb Replacement and Asphalt Overlay.

Sincerely,

Laura Zentner,  
BCS Director

Placed on the BCC Agenda \_\_\_\_\_ by Procurement



CLACKAMAS COUNTY
PUBLIC IMPROVEMENT CONTRACT

Contract #2563

This Public Improvement Contract (the "Contract"), is made by and between the Clackamas County, a political subdivision of the State of Oregon, hereinafter called "Owner," and Janz Enterprises, Inc., hereinafter called the "Contractor" (collectively the "Parties"), shall become effective on the date this Contract has been signed by all the Parties and all County approvals have been obtained, whichever is later.

Project Name: #2020-20 Carver Boat Launch Parking Lot Curb Replacement and Asphalt Overlay

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of two hundred thirty-one thousand ninety-eight Dollars (\$231,098.00) (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the Clackamas County General Conditions for Public Improvement Contracts (1/1/2020) ("General Conditions") referenced within the Instructions to Bidders, all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Work includes the Carver Boat Launch Curb Replacement and Asphalt Overlay as well as the Eastward Sidewalk Extension. The Contract Price is the amount contemplated by the Base Bid plus Alternate #2 as indicated in the accepted Bid.

Also, the following documents are incorporated by reference in this Contract and made a part hereof:

- Notice of Contract Opportunity
• Supplemental Instructions to Bidders
• Bid Form
• Performance Bond and Payment Bond
• Supplemental General Conditions
• Instructions to Bidders
• Bid Bond
• Public Improvement Contract Form
• Clackamas County General Conditions
• Prevailing Wage Rates

2. Representatives.

Contractor has named John Sayles as its Authorized Representative to act on its behalf. Owner designates, or shall designate, its Authorized Representative as indicted below (check one):

[X] Unless otherwise specified in the Contract Documents, the Owner designates Rick Gruen as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to Contract performance, payment, authorization, and to carry out the responsibilities of the Owner.

[ ] Name of Owner's Authorized Representative shall be submitted by Owner in a separate writing.

3. Key Persons.

The Contractor's personnel identified below shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the Contractor intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, the Contractor shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the project concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner. The Contractor's project staff shall consist of the following personnel:

Project Executive: John Sayles shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

**Project Manager:** John Sayles shall be the Contractor's project manager and will participate in all meetings throughout the project term.

**Job Superintendent:** John Sayles shall be the Contractor's on-site job superintendent throughout the project term.

#### **4. Contract Dates.**

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed ("NTP")

SUBSTANTIAL COMPLETION DATE: June 1, 2020

FINAL COMPLETION DATE: 120 days from NTP

Time is of the essence for this Contract. It is imperative that the Work in this Contract reach Substantial Completion and Final Completion by the above specified dates.

#### **5. Insurance Certificates.**

In accordance with Section G.3.5 of the General Conditions, Contractor shall furnish proof of the required insurance naming Clackamas County as an additional insured. Insurance certificates may be returned with the signed Contract or may be emailed to [Procurement@clackamas.us](mailto:Procurement@clackamas.us).

#### **6. Tax Compliance.**

Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

#### **7. Confidential Information.**

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of Owner ("Confidential Information"). Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third

parties or use Confidential Information for any purpose unless specifically authorized in writing under this Contract.

**9. Counterparts.**

This Contract may be executed in several counterparts, all of which when taken together shall constitute an agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

**10. Integration.**

All provisions of state law required to be part of this Contract, whether listed in the General or Special Conditions or otherwise, are hereby integrated and adopted herein. Contractor acknowledges the obligations thereunder and that failure to comply with such terms is a material breach of this Contract.

The Contract Documents constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

**11. Liquidated Damages**

The Contractor acknowledges that the Owner will sustain damages as a result of the Contractor's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities.

11.1 Liquidated Damages shall be as follows if the actual Substantial Completion exceeds the required date of Substantial Completion:

11.1.1. \$300 per Calendar day past the Substantial Completion date.

**12. Compliance with Applicable Law.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract including, but not limited to, compliance with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default.

**13. Responsibility for Taxes.** Contractor is solely responsible for payment of any federal, state, or local taxes required as a result of the Contract or the Work including, but not limited, to payment of the corporate activity tax imposed under enrolled HB 3427 (2019 Oregon regular legislative session). Contractor may not include its federal, state, or local tax obligations as part of the cost to perform the Work.

**In witness whereof,** Clackamas County executes this Contract and the Contractor does execute the same as of the day and year first above written.

Contractor DATA:  
**Janz Enterprises, Inc.**  
**P.O. Box 127**  
**Boring, Oregon 97009**

Contractor CCB #204540 Expiration Date: 11/4/2020  
Oregon Business Registry #1051227-90 Entity Type: DBC State of Formation: Oregon

**Signature page to follow.**

