



December 19, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Facility and Property License Agreement between River City Boat Sales, LLC and Clackamas County

Purpose/Outcomes	Approval of the Facility and Property License Agreement will allow River City Boat Sales, LLC to continue occupying and using certain property at the Boone's Ferry Marina while the County develops and finalizes a longer-term lease for Marina operations.
Dollar Amount and Fiscal Impact	The agreement will provide \$10,394.16 per month in revenue.
Funding Source	N/A
Duration	January 1, 2020 through December 31, 2020
Strategic Plan Alignment	<ul style="list-style-type: none">• Build public trust through good government
Previous Board Action	N/A
Counsel Review	This agreement was reviewed and approved by County Counsel on December XX, 2019.
Contact Person	Laura Zentner, <i>BCS Director</i> , 503-742-4351 Greg Williams, <i>BCS Deputy Director</i> , 503-742-4399 Rick Gruen, <i>County Parks and Forest Manager</i> , 503-742-4345

BACKGROUND:

The County Parks division of Business and Community Services (BCS) maintains and oversees the Boone's Ferry Marina facility which covers approximately 3.5 acres of waterfront and upland property along the Willamette River. The marina currently supports a commercial business, a public boat ramp, fee-based public parking, as well as seasonal moorage for approximately 100 day-use type water craft in support of the summer recreation boating season.

The Boones Ferry Marina facility has been leased out by the County for the past twenty (20) years under a Master Lease Agreement which terminates in full on December 31, 2019. The current Lessee has seasonally operated the marina with a separate sub-lease agreement covering the upland commercial buildings. The current sub-lessee (River City Boat Sales, LLC, "River City") operates a year-round boat sales and service business utilizing these commercial buildings.

BCS County Parks is currently working to negotiate a new agreement with River City for comprehensive on-site management, operations, and maintenance of Boone's Ferry Marina. These negotiations will not be completed by December 31, 2019 when River City's existing sub-lease agreement terminates. This Facility and Property License Agreement will prevent River City from being in trespass and will allow River City to continue using and occupying the commercial buildings while a longer-term lease agreement is negotiated and finalized.

RECOMMENDATION:

Staff respectfully recommends approval of the Facility and Property License Agreement between River City Boat Sales, LLC and Clackamas County.

ATTACHMENTS:

- Facility and Property License Agreement between River City Boat Sales, LLC and Clackamas County

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Laura Zentner".

Laura Zentner
Director, Business & Community Services

Clackamas County Facility and Property License Agreement

This Facility and Property License Agreement (“Agreement”) is made between River City Boat Sales, LLC, an Oregon limited liability company (“User”) and **Clackamas County** (“County”) as of January 1, 2020. For good and valuable consideration, the receipt of which is acknowledged, County hereby issues to User a non-exclusive, revocable-at-will license to enter upon, occupy, and use the real property described below (“Property”) for the limited purposes described in this Agreement. This Agreement is subject to the following terms and conditions:

1. Property: The Property is generally described as a portion of the following real properties:

Parcel 1 – Tax Lot 31W23DC02000

Parcel 2 - Tax Lots 31W23DC00900 and 31W23DC00800

The Property only includes the boat sales and service buildings and their surrounding footprint depicted on Exhibit A. The Property does not include other County-owned real property including, but not limited to, the adjacent marina, public parking lot and related structures.

2. Scope of Use: User shall have the right to use the Property solely for the purpose described in Exhibit B attached hereto and incorporated by this reference herein. User is further authorized to bring all personnel, equipment, and other personal property onto the Property as may be reasonably necessary for the purposes described in Exhibit B. User shall operate and maintain the Property and store materials thereon in a neat, orderly way in compliance with all applicable federal, state, and local laws. Any other use of the Property is unauthorized and shall constitute a trespass of County property.
3. Compensation: User shall pay to County the sum of \$10,394.16 per month. Payment is due the 1st day of each month following execution of this Agreement.
4. Revocable at Will. County’s license to use the Property under this Agreement is non-exclusive and revocable at will by County, for any reason and in County’s sole discretion, without additional notice to User. The license provided herein conveys no interest in the Property.
5. Dates. The Property shall be available for use by User on the following dates and times: User’s license shall terminate on December 31, 2020, unless otherwise revoked or terminated under the terms of this Agreement.

6. Compliance with Applicable Law. User shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to User's use of the Property.
7. Prior Approvals. User shall obtain all necessary permits and approvals from all federal, state, and local governments prior to or concurrent with applying to the County. The County may, in its sole discretion, require User to demonstrate such approvals as a condition precedent to User's use of the Property.
8. Condition of Property: County makes no representations or warranties, express or implied, as to the condition of the Property or its fitness for any particular use by User. User is responsible for all water, sewer, electrical, and other utilities or other services necessary for User's use of the Property.
9. Cleaning and Repair Costs: User agrees to leave the Property in its original, clean condition. User will be responsible for keeping the Property, including any improvements to the same, in good and working condition during the term of this Agreement. User will remove all equipment and personal property brought onto the Property. User will use reasonable care to prevent damage to the Property. User shall be responsible for any cleaning, repair, or remediation costs arising from or related to User's use of the Property.
10. Release, Assumption of Risk, and Indemnity: User agrees to waive, release, and discharge Clackamas County, its officers, employees, officials, and agents, from any and all claims, causes of action, demands, damages, costs, of any nature whatsoever, whether known or unknown, arising out of or in any way connected with use of the Property.

User understands and appreciates the risks involved in its use of the Property and hereby expressly assumes any and all risks arising out of or relating to use of the Property, whether or not specified herein, and understand Clackamas County is not a guarantor of User's safety.

User agrees to hold harmless, defend, and indemnify Clackamas County, its elected officials, officers, employees, officials, and agents against from and against any and all claims, causes of action, demands, damages, costs, of any nature whatsoever, whether known or unknown, arising out of or in any way connected with use of the Property.

The release of claims, assumption of risk, and indemnification provided herein is intended to be as broad and inclusive as permitted by Oregon law, and that if any portion thereof is held invalid, it is agreed that the balance, notwithstanding, shall continue in full force and effect. This provision shall expressly survive revocation of this Agreement.

11. Insurance: User agrees to maintain Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form in the amount of not less than \$ \$1 million per occurrence/\$2 million general aggregate for the protection of the County, its elected officials, officers, commissioners, and employees. Such insurance shall include "Clackamas County, its elected officials, agents, officers, and employees" as an additional insured. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by User to the County. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. User shall submit certificates of insurance to the County prior to any use of the Property.
12. Reservation of Rights: The County reserves all rights of every kind and nature whatsoever in connection with use of the Property by User. The County shall have full and unfettered access to and use of the Property at any time when User is occupying the Property, regardless of whether such access and use conflicts with User's use of the Property.
13. Oregon Law and Forum. This Agreement, and all rights, obligations, and disputes arising out of it, will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim, action, or suit that arises out of or relates to the performance of this Agreement 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 must 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
14. No Agency Status. Neither User nor User's employees, members, or invitees shall be considered to be employees, officers, or agents of the County for any purpose.
15. Integration. This Agreement contains the entire agreement between County and User and supersedes all prior written or oral discussions or agreements.
16. Amendments. County and User may amend this Agreement at any time. No amendment shall bind either party unless in writing and signed by all parties. Any such amendment shall be effective only in the specific instance and for the specific purpose given.
17. Waiver. Failure of County to enforce any provision of this Agreement shall not constitute a waiver or relinquishment by County of the right to such performance in the future nor of the right to enforce any other provision of this Agreement. Waiver of any default under this Agreement by County shall not be deemed to be

a waiver of any subsequent default or a modification of the provisions of this Agreement.

18. Debt Limitation. This Agreement 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.
19. No Third Party Beneficiaries. County and User are the only parties to the Agreement and are the only parties entitled to enforce its terms. Nothing in the Agreement 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 the Agreement.
20. Assignment. User shall not assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from County which shall be granted or denied in County's sole and absolute discretion. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
21. Execution and Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
22. No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

By their signatures below, the parties to this Agreement agree to the terms, conditions, and content expressed herein.

River City Boat Sales, LLC



[name/title] *Tim Coleman*
owner

12/12/19
Date

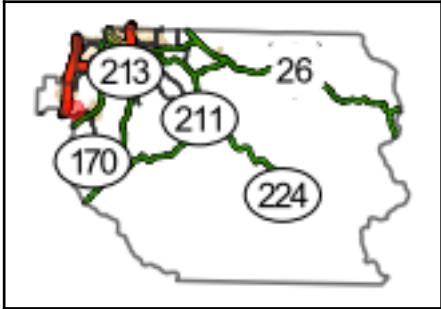
Clackamas County

Jim Bernard, Board Chair

Date

Clackamas County

EXHIBIT A - Facility Use Agreement



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 Facility and Property License Agreement

EXHIBIT B: Scope of Use

Said Property shall include the use of the existing commercial buildings and grounds and be used solely in support of on-going boat sales and service activities including:

- Boat sales
- Boat repairs
- Boat servicing
- Boat detailing
- Boat storage
- Boat demos