

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, APPROVING AN AQUATIC LANDS AGREEMENT AMENDMENT BETWEEN THE CITY OF OLYMPIA AND WASHINGTON DEPARTMENT OF NATURAL RESOURCES TO EXPAND THE LEASE AREA ON FLOAT D AT PERCIVAL LANDING.

WHEREAS, the City of Olympia (City) and Washington Department of Natural Resources (DNR) entered into Lease No. 22-A02391 on July 1, 2008; and

WHEREAS, the Parks, Arts & Recreation Department received a letter of intent to lease 60 feet of dock space at Percival Landing to a private charter company; and

WHEREAS, the purpose of the charter company lease would be to operate the Spirit of Olympia during tour season from approximately May through October, including educational tours, scheduled public passenger tours, and events and corporate gatherings; and

WHEREAS, in order to allow such a concessionaire, the City's Aquatic Lands Lease with DNR needs to be amended to accommodate a boat the size of the Spirit of Olympia; and

WHEREAS, the Finance Committee received an oral report on this topic and expressed support for staff to pursue steps to lease Float D to tourism concessionaires

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

1. The Olympia City Council hereby approves the attached form of Aquatic Lands Agreement Amendment between the City of Olympia and Department of Natural Resources to expand the lease area on Float D at Percival Landing and the terms and conditions contained therein.
2. The City Manager is directed and authorized to execute on behalf of the City of Olympia the attached Aquatic Lands Agreement Amendment and any other documents necessary to obligate funds to expand the lease area on Float D at Percival Landing and to make any minor modifications as may be required and are consistent with the intent of the attached Aquatic Lands Agreement Amendment, or to correct any scrivener's errors.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____ 2017.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Darren Nienaber DCA

CITY ATTORNEY

When recorded, return to:
City of Olympia
PO Box 1967
Olympia WA 98507-1967



HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

AQUATIC LANDS AGREEMENT AMENDMENT

Lease No. 22-A02391

Grantor: Washington State Department of Natural Resources
Grantee(s): City of Olympia
Legal Description: Section 14, Township 18 North, Range 2 West, W.M.
Assessor's Property Tax Parcel or Account Number: 91003300000
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this Lease: Not Applicable

THIS LEASE AMENDMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and the CITY OF OLYMPIA, a Government Agency/Entity ("Tenant").

BACKGROUND

Lease No. 22-A02391 was entered into on the 1st day of July, 2008, by and between CITY OF OLYMPIA as Tenant and the STATE OF WASHINGTON, acting by and through the Department of Natural Resources, as landlord ("State"), and recorded with the Thurston County Auditor's office under recording number 4039504.

Lease No. 22-A02391 as amended is hereinafter referred to as the "Agreement." Tenant now possesses the rights, duties, and liabilities under the Agreement.

The parties now desire to amend the Agreement under the following terms and conditions:

THEREFORE, the parties agree as follows:

SECTION 1 AMENDMENTS

Sections 2.2, 4.1, and Exhibit B of the Lease are amended to read as specified in Exhibit 1 attached hereto.

SECTION 2 EFFECTIVE DATE

The amended provisions shall become effective as of May 1, 2017.

SECTION 3 NO RELEASE

State is not releasing any previous Assignor from fully performing the provisions of the Agreement in effect at the time of such assignment or as otherwise agreed in writing between the State, previous Assignor, and the Grantee.

SECTION 4 WARRANTIES

Tenant represents and warrants to State that (i) the Agreement is in full force and effect; (ii) Tenant is not in default or breach of the Agreement; (iii) Tenant has no knowledge of any claims, offsets, or defenses of the Tenant under the Agreement; and (iv) to the best of Tenant's knowledge, the Property is in full compliance with all applicable federal, state, and local governmental permits, rules, ordinances, and laws.

SECTION 5 CONFIRMATION OF AGREEMENT

All other terms of the Agreement not inconsistent with this Amendment are hereby affirmed and ratified.

SECTION 6 RECORDATION

At Tenant's expense and no later than thirty (30) days after receiving the fully-executed Amendment, Tenant shall record this Amendment in the county in which the Property is located. Tenant shall include the parcel number of the upland property used in conjunction with the Property, if any. Tenant shall provide State with recording information, including the date of recordation and file number. If Tenant fails to record this Agreement, State may record it and Tenant shall pay the costs of recording upon State's demand.

THIS AGREEMENT requires the signature of all parties and is executed as of the date of the last signature below.

CITY OF OLYMPIA

Dated: _____, 20__

By: _____
Title: STEVE HALL
City Manager

Approved as to form:

Darren Nienaber

Deputy City Attorney

Address: 601 4th Avenue East
Olympia, WA 98501

Phone: (360) 753-8447

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES**

Dated: _____, 20__

By: _____
Title: MEGAN DUFFY
Deputy Supervisor for Aquatics

Address: 950 Farman Avenue North
Enumclaw, WA 98022-9282

Approved as to Form this
This 22nd day of July 2016
Jennifer Clements, Assistant Attorney General

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that STEVE HALL is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the City Manager of the City of Olympia to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Signature)

(Print Name)
Notary Public in and for the State of Washington,
residing at _____

My appointment expires _____

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)

) ss

County of

)

I certify that I know or have satisfactory evidence that MEGAN DUFFY is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Deputy Supervisor for Aquatics of the Department of Natural Resources, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Signature)

(Print Name)

Notary Public in and for the State of Washington,
residing at _____

My appointment expires _____

EXHIBIT 1

The Lease is amended as follows:

Subsection 2.2 of SECTION 2 is amended to add the following:

2.2 Restrictions on Use

- (g) Tenant shall not cause or permit grounding, scour, or damage to aquatic land and vegetation. This prohibition includes the following limitations:
 - (1) Tenant shall avoid damage caused by propeller wash from vessels.
 - (2) Tenant shall not allow moorage or anchorage of vessels in water shallower than extreme low tide, and shall not allow vessels to come in contact with underlying tidelands (“ground out”) at any time.

Subsection 4.1 of SECTION 4 is amended to read as follows:

4.1 Annual Rent.

- (a) Until adjusted as set forth below, Tenant shall pay to State an annual rent of Three Hundred Two Dollars and Fifty Cents (\$302.50) related to the water-dependent use.

The EXHIBIT B is amended as follows:

The second paragraph of Subsection 2.1 of SECTION 2 is amended to read as follows:

Parcel 2 shall be a mixed use with a majority of the area for public use and access and 2,250 square feet reserved for tourism concessionaires contracted with the City of Olympia.

The second paragraph of Subsection 4.1 in SECTION 4 is amended to read as follows:

Pursuant to WAC 332-30-123 water dependent rent shall be charged for 2,250 square feet encumbered by the tourism concessionaires contracted with the City of Olympia.