

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON,  
APPROVING A RIGHT-OF-WAY USE AGREEMENT BETWEEN THE CITY OF OLYMPIA AND  
FIDDLEHEAD MARINA, INC.**

**WHEREAS**, there exists within the City of Olympia a platted right-of-way known as Columbia Street, southerly of Corky Avenue and northerly of Olympia Avenue; and

**WHEREAS**, in or around 1982, Olympia and Fiddlehead Marina, Inc. entered into agreement that allowed Fiddlehead Marina, Inc. to place a structure and related appurtenances within the Columbia Street right-of-way. Pursuant to that agreement, the structure and appurtenances remains in the Columbia Street right-of-way; and

**WHEREAS**, Fiddlehead Marina, Inc. is interested in a new Right-Of-Way Use Agreement that would allow continued placement of its existing structure and related appurtenances within the Columbia Street right-of-way; and

**WHEREAS**, Olympia has determined the right-of-way use area for the existing structure and attached appurtenances is approximately 94 feet by 19 feet, or a total of 1760 square feet; and

**WHEREAS**, Olympia has determined that Fiddlehead Marina, Inc.'s continued use of the structure and related appurtenances within the Columbia Street right-of-way is acceptable subject to the conditions within the proposed new Right-of-Way Use Agreement; and

**WHEREAS**, as a lease holder of certain Department of Natural Resources aquatic lands, Fiddlehead Marina, Inc. subleased to the City of Olympia a portion of its aquatic lands lease area for a pedestrian boardwalk, and related facilities, adjacent to Fiddlehead Marina, Inc.'s structure. This boardwalk is part of the broader Percival Landing. That sublease was most recently renewed in 2014 for a term of 19 years, which expires in 2032; and

**WHEREAS**, Olympia and Fiddlehead Marina, Inc. have a mutual interest in Percival Landing being maintained for public access and use. To this end, the City and Fiddlehead are separately entering into a renewed aquatic lands sublease, to allow the City's continued use of the subleased area for the Percival Landing boardwalk and related facilities. That renewed sublease is expected to have a term of 30 years, to correspond with the term of a renewed aquatic lands lease Fiddlehead expects to receive from the Department of Natural Resources; and

**WHEREAS**, under the terms of the proposed new Right-of-Way Use Agreement between the City and Fiddlehead Marina, Inc. Fiddlehead Marina, Inc.'s rights under the Right-of-Way Use Agreement may be assigned by Fiddlehead Marina, Inc. to any successor in interest taking fee ownership of the structure and related appurtenances. The City must consent in writing to any such assignment, but consent may not be unreasonably withheld if the assignee is a purchaser for value of the structure and related appurtenances; and

**WHEREAS**, the City and Fiddlehead Marina, Inc. anticipate that Fiddlehead Marina, Inc. will be transferring its fee ownership of the structure and related appurtenances to Fiddlehead Marina, LLC, a different legal entity, which is purchasing Fiddlehead Marina Inc.'s structure and related appurtenances for value.

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

1. The Olympia City Council hereby approves the form of Right-of-Way Use Agreement between the City of Olympia and Fiddlehead Marina, Inc. and the terms and conditions contained therein.
2. The City Manager is authorized and directed to execute on behalf of the City of Olympia the Right-of-Way Use Agreement with Fiddlehead Marina, Inc., and any other documents necessary to execute said Agreement, and to make any minor modifications as may be required and are consistent with the intent of the Agreement, or to correct any scrivener's errors.
3. The City Council hereby recognizes the Fiddlehead Marina Inc.'s structure and appurtenances subject to the Right-of-Way Use Agreement are anticipated to be transferred to Fiddlehead Marina, LLC, and that Fiddlehead Marina Inc.'s rights and interest under the Right-of-Way Use Agreement will be transferred to Fiddlehead Marina, LLC. The City Manager is authored to consent to such assignment on behalf of the City.

**PASSED BY THE OLYMPIA CITY COUNCIL** this 21<sup>st</sup> day of July 2020.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

*Michael M. Young*  
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DEPUTY CITY ATTORNEY