

**RIGHT-OF-WAY USE AGREEMENT
BETWEEN THE CITY OF OLYMPIA
AND FIDDLEHEAD MARINA.**

THIS AGREEMENT is by and between the City of Olympia, a Washington municipal corporation, ("Olympia") and Fiddlehead Marina, Inc., a Washington corporation, ("Fiddlehead Marina") (jointly "the Parties") and is effective as of the date of the last authorizing signature affixed hereto. This Agreement provides the terms by which Fiddlehead Marina may use certain City right-of-way for Fiddlehead's building and attached appurtenances.

RECITALS

1. 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.
2. In or around 1982, Olympia and Fiddlehead Marina entered into agreement that allowed Fiddlehead Marina 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.
3. Fiddlehead Marina 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.
4. 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.
5. Olympia has determined that continued use of the structure and related appurtenances within the Columbia Street right-of-way is acceptable subject to the conditions within this Agreement.
6. As a lease holder of certain Department of Natural Resources aquatic lands, Fiddlehead Marina 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'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.

7. Olympia and Fiddlehead Marina 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.

AGREEMENT

1. Olympia hereby grants to Fiddlehead Marina the right to temporarily use the Columbia Street right-of-way, as described in Exhibit 1, for use of an existing structure and related appurtenances.
2. The term of this Agreement is for 30 years from the date of this Agreement.
3. In consideration therefor, Fiddlehead Marina shall annually pay to Olympia, on or before November 1 of each year, the amount of Three Thousand and Fifty Dollars and Eight Cents (\$3,050.08), plus Washington State Leasehold Tax, if any. Said amount will be proportionately discounted or reimbursed if this Agreement is terminated within any year prior to November 1. At Fiddlehead Marina's option, the above amount may be paid in two installments, to wit, One Thousand Five Hundred and Twenty-Five Dollars and Four Cents (\$1,525.04) on November 1 and May 1 of each year. The payment will be adjusted with a 4% annual escalation on November 1.
4. Fiddlehead Marina shall maintain the existing structure and related appurtenances (as defined in Exhibit 1) at its own expense and shall maintain said facilities in good repair. Olympia is not liable for any costs or expense of construction, maintenance, or otherwise for the existing structure and attached appurtenances by reason of this Agreement.
5. Olympia does not warrant that the portion of the structure or related appurtenances within the Columbia Street right-of-way will be available for use in the event of sea level rise and associated potential flooding. This Agreement creates no obligation for Olympia to take any remedial action to allow for on-going use of the structure and related appurtenances. Any loss of use of the structure or appurtenances is the sole responsibility of and will be borne by Fiddlehead Marina.
6. Olympia may construct underground utilities through the entire length and breadth of the right-of-way, but shall, upon completion of any such construction during the term of this Agreement, restore the site to the condition created by Fiddlehead

Marina. During construction, Olympia will maintain reasonable access to the marina property.

7. Fiddlehead Marina and its successors and assigns, shall defend, indemnify, and hold Olympia harmless from any claim, suit, action, damages, liability, or expense incurred by reason of Fiddlehead Marina's design, construction, use, repair, or maintenance of the structure and appurtenances. The intent of this paragraph is that Fiddlehead Marina, its successors, or assigns, will have full, complete, and exclusive care, maintenance, and responsibility for its structure and related appurtenances, and their design, construction, and use; therefore, ensuring that Olympia will incur no expense or liability by reason of Fiddlehead Marina's use of the portion of the Columbia Street right-of-way which is the subject of this Agreement. Fiddlehead Marina shall maintain insurance in sufficient amounts to ensure liability coverage in an amount not less than \$1,000,000 per occurrence.
8. This Agreement may be assigned by Fiddlehead Marina to any successor in interest taking fee ownership of the structure and related appurtenances. To secure a release from liability under this Agreement, Fiddlehead Marina shall advise Olympia of such change or assignment and secure Olympia's consent in writing to the assignment of this Agreement. Such consent may not be unreasonably withheld if the assignee is a purchaser for value of the structure and related appurtenances.
9. This Agreement is in all respects governed by the laws of the State of Washington. If it is necessary to enforce any of the terms of this Agreement, any action must be brought in Thurston County Superior Court for the State of Washington.
10. Should either party bring suit to enforce this Agreement, the prevailing party in such lawsuit is entitled to an award of its reasonable attorneys' fees and costs incurred in connection with such lawsuit.
11. This Agreement constitutes the entire understanding and agreement of the Parties with respect to its subject matter and any and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The Parties do not intend to confer any benefit under this Agreement to any person, firm, corporation, or entity other than the Parties.
12. This Agreement must not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it.
13. If any term or provision of this Agreement or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this

Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, is not affected thereby; and each such term and provision of this Agreement is valid and must be enforced to the fullest extent permitted by law.

14. The Recitals set forth above are incorporated by this reference into this Agreement and are made a part hereof.

CITY OF OLYMPIA

I hereby declare under penalty of perjury pursuant to the laws of the State of Washington that I have read the foregoing Right-of-Way Use Agreement, I am authorized to execute the same, I know the contents thereof, and I sign the same as my free act and deed.

Steven J. Burney
City Manager

Date

Approved as to form:

Michael M. Young
Deputy City Attorney

FIDDLEHEAD MARINA

I hereby declare under penalty of perjury pursuant to the laws of the State of Washington that I have read the foregoing Right-of-Way Use Agreement, I am authorized to execute the same, I know the contents thereof, and I sign the same as my free act and deed.

Robert Wubbena
Robert Wubbena, Fiddlehead Marina, Inc.

07/09/2020
Date

EXHIBIT 1

EASEMENT DESCRIPTION FIDDLEHEAD MARINA

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 18 NORTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, AND A PORTION OF NORTH COLUMBIA STREET, FRONTING BLOCK 3 AS SHOWN ON THE OFFICIAL MAPS OF THE OLYMPIA TIDE LANDS ON FILE WITH THE DEPARTMENT OF NATURAL RESOURCES AT OLYMPIA, WASHINGTON DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE INNER HARBOR LINE AT THE INTERSECTION OF THE EXTENDED NORTH RIGHT-OF-WAY LINE OF C AVENUE WEST AS SHOWN ON SAID OFFICIAL MAPS OF OLYMPIA TIDE LANDS; THENCE SOUTH 04°06'12" EAST, 137.84 FEET ALONG THE INNER HARBOR LINE TO THE POINT OF BEGINNING;
THENCE CONTINUING ALONG SAID INNER HARBOR LINE, SOUTH 04°06'12" EAST, 96.21 FEET;
THENCE NORTH 85°41'17" EAST, 19.54 FEET;
THENCE NORTH 04°41'34" WEST, 84.82 FEET;
THENCE SOUTH 85°41'17" WEST, 4.23 FEET;
THENCE NORTH 04°18'43" WEST, 7.61 FEET;
THENCE SOUTH 85°36'08" WEST, 6.41 FEET;
THENCE NORTH 04°16'12" WEST, 3.80 FEET;
THENCE SOUTH 85°36'08" WEST, 8.00 FEET TO SAID INNER HARBOR LINE AND THE POINT OF BEGINNING;

CONTAINING 1760 SQUARE FEET, MORE OR LESS.

SITUATE IN THE CITY OF OLYMPIA, THURSTON COUNTY WASHINGTON.

PREPARED BY:

Blair Prigge, PLS
MTN2COAST, LLC
3/25/2020

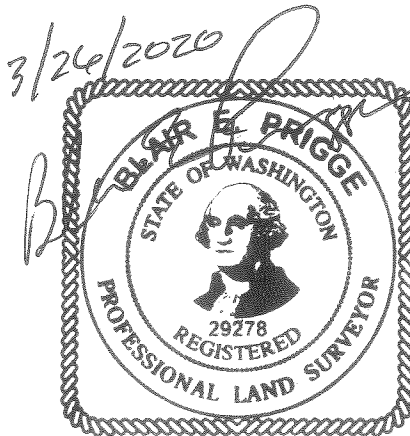


EXHIBIT 1

