

SUBMERGED AND SUBMERSIBLE LAND LEASE

153069

ML-500 (2)

The parties to this lease are the STATE OF OREGON, acting by and through the Division of State Lands, hereinafter referred to as STATE, (Lessor) and PORTLAND BUREAU OF PARKS hereinafter referred to as LESSEE.

STATE leases to LESSEE, on the terms and conditions stated below, the following described lands:

All State-owned submerged land in the bed of the Willamette River, between the low water line of the left bank and a line parallel to and 200 feet distant riverward from the line of Ordinary Low Water of said left bank.

Beginning at the intersection of the Ordinary Low Water line and the north line of the southern 27 feet of Lot 11, Tax Lot 1, Section 15, Township 1 South, Range 1 East, Willamette Meridian, and running upstream a distance of 237 feet along said bank, encompassing 1.09 acres, more or less, all in Multnomah County, Oregon.

I
TERM

This lease shall commence January 1, 1982 and continue through December 31, 1986.

II
RENTAL

LESSEE shall pay to STATE as rental the sum of \$ 150.00 per year, subject to an initial redetermination after five (5) years. Rent shall be payable not later than the 10th day of January of each year in advance at the office of the Division of State Lands, Salem, Oregon, except that rent for the first year has been paid upon the execution of this lease, and STATE acknowledges receipt of this sum.

LESSEE fully acknowledges the character of the leased lands and assumes any risk of using the same.

III
REDETERMINATION

STATE may redetermine the yearly rental sum at any time after the period specified in paragraph II of this lease. Subsequent redeterminations may be made at any time, but the period between redeterminations must be at least the period of time specified in paragraph II for the initial redetermination. The LESSEE shall be notified of the redetermined value at least 30 days prior to the due date of the yearly rental sum. The redetermined yearly rent shall commence with the year immediately following the redetermination.

In the event LESSEE does not agree on any redetermined yearly rent by STATE, including a redetermination pursuant to a partial termination of the lease, LESSEE may apply to any court of record for the appointment of an arbitrator and thereafter the arbitration proceedings shall be in accordance with ORS 33.210 to 33.340.

IV
PURPOSE

The leased lands shall be used for a commercial marina, non-motorized boats

----- and for no other purposes without the written consent of STATE. This lease does not authorize any injury to private property or invasion of private rights or any infringement of federal, state, or local laws or regulations, nor does it obviate the necessity of obtaining other federal, state, or local government's assent required by law for the structure or work proposed. LESSEE shall conform to all applicable laws and regulations of any public authority respecting the lands and use. [Federal law prohibits any construction or work riverward of the normal high water line unless a valid permit for said work is obtained from the U. S. Army Corps of Engineers. See Section 10 of the Act of 3 March 1899 (30 Stat. 1151; 33 USC 403).]

V
ASSIGNMENT

Except as otherwise provided herein, the leased lands or any part thereof shall not be assigned, mortgaged or subleased, nor shall any right of use of said lands be conferred on any third person by any other means without the prior consent of STATE.

STATE may consent to an assignment of lease (novation) provided:

- a. A fee of \$50 is prepaid to cover administrative costs, and
- b. LESSEE has satisfied all conditions of the lease precedent to assignment, and
- c. The STATE standard form application for Assignment is completed by both LESSEE and assignee.

Subject to approval of STATE and upon request, LESSEE will obtain release from liability after assignment.

VI
RIGHT OF WAY

The interest of LESSEE under this lease shall at all times be subject to STATE granting rights-of-way in and over the said lands, or any part thereof, for railroad, telegraph and telephone poles, electric poles, oil pipelines,

water pipes, irrigation or other water canals and ditches, and to lease all or part thereof for discovery, development and production of petroleum, mineral oil or minerals of any nature whatsoever, provided such right-of-way or lease does not unreasonably interfere with the purpose of this lease.

VII DEFAULT

The following shall be events of default:

- a. Delinquency in the payment of rent in excess of 60 days beyond the rental due date unless specifically extended in writing by STATE. Within 40 days after the rental due date, the STATE shall notify the LESSEE by registered or certified mail of the pending default. Failure of LESSEE to receive or to acknowledge receipt of notice shall not invalidate the default.
- b. Failure of LESSEE to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within 10 days after written notice by STATE specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 10-day period, this provision shall be complied with if LESSEE begins correction of the default within the 10-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.
- c. Failure of LESSEE to use the leased lands for the purposes authorized under the terms of this lease.
- d. LESSEE maintaining a nuisance on the leased lands.
- e. Failure to remove any lien or encumbrance placed upon the leased lands.

VIII TERMINATION

In the event of default by LESSEE, the lease may be unilaterally terminated at the option of the STATE by notice in writing to the LESSEE. The notice may be included in a notice of failure of compliance given under paragraph VIII.

STATE will consent to termination of all or part of the lease:

- a. If intended operations under lease are halted by another governmental agency and such action is not due to action or failure to act by LESSEE, or
- b. Upon application of LESSEE providing LESSEE has satisfied all conditions of the lease precedent to date of termination and, in addition, upon payment of one-quarter, or the equivalent thereof, the total sum of future rentals as consideration for said termination, or
- c. Upon mutual consent and such termination would be in the best interest of both the people and natural resources of the state.

Upon partial termination of this lease, STATE shall make a redetermination of the lands remaining subject to lease, and redetermine the rent therefore accordingly.

IX
REMEDIES

In the event of unilateral termination, STATE may elect to pursue whatever legal, equitable, or other remedies are available to it. In case of termination, or at the expiration of the term of this lease, the STATE may re-enter, take possession of the state lands and remove any persons or property by legal action.

In the event STATE brings suit to compel performance of any term or condition of this lease, or to recover for breach of such term or condition, the prevailing party shall recover in addition to costs and disbursements, such sums as the court may adjudge reasonable as attorney fees, including any appeals therefrom.

X
MAILING ADDRESS

Any notice required or permitted under this lease shall be given when actually delivered or when deposited in the United States mail as registered or certified mail addressed as follows:

TO STATE: Division of State Lands
1445 State Street
Salem, Oregon 97310

TO LESSEE: Portland Bureau of Parks
409 S. W. 9th Avenue
Portland, OR 97205

or to such other address as may be specified from time to time by either the STATE or LESSEE in writing.

XI
TAXES, LIENS

LESSEE shall pay all taxes or assessments levied upon the leased land during the term of the lease. LESSEE shall not cause any liens or encumbrances to be imposed upon the lease land and if any lien or encumbrance is imposed upon such land, LESSEE shall proceed immediately to remove said lien or encumbrance.

XII
INDEMNIFICATION

LESSEE shall be responsible and liable for all injuries to persons, or property resulting from any negligence or otherwise tortious acts or omissions of LESSEE, its servants or agents. LESSEE shall indemnify the STATE and hold it harmless against any and all claims, demands, lawsuits, injuries, damages, and costs, including litigation costs, which STATE may sustain by reason of any such acts or omissions.

XIII
EXPIRATION

Upon expiration of the lease term or earlier termination on account of default, or mutual consent, LESSEE shall surrender the leased lands in substantially their original condition. STATE may require LESSEE, within a reasonable time after expiration or termination, to restore the leased lands to substantially their original condition.

XIV
HOLDOVER

If LESSEE does not vacate the lease premises at the time required, STATE shall have the option to treat LESSEE as a lessee from month to month, subject to all the provisions of this lease except the provision for TERM. In the event of a holdover and STATE exercises its option to treat the holdover as a month-to-month tenancy, the monthly rental fee shall be one-twelfth of the yearly rental fee.

IN WITNESS WHEREOF, the said parties have on this _____ day of _____, 19 __, in pursuance of due authority given, caused this instrument to be executed in duplicate.

STATE OF OREGON (Lessor):
Division of State Lands

Ed Zajonc, Director

LESSEE:

An ordinance authorizing an agreement with the State of Oregon, Division of State Lands, to lease waterlands adjacent to the north end of Willamette Park, authorizing the drawing and delivery of a warrant, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

1. The City owns certain real property along the Willamette River known as Willamette Park.
2. In order to maintain jurisdiction over the waterlands adjacent to the north end of Willamette Park, it has been necessary to lease State-owned submerged lands through the Division of State Lands since 1977.
3. The lease previously authorized by Ordinance 143590, passed by the council on May 11, 1977, has expired and a new lease is required.
4. The Division of State Lands is willing to lease these submerged lands at a rental fee of \$150 per year.
5. Funds are available in the 1981-82 approved Bureau of Parks and Recreation budget for this purpose.

NOW, THEREFORE, the Council Directs:


- a. The auditor and Commissioner of Public Safety are authorized to execute a lease agreement with the State Of Oregon for a lease of submerged lands, such agreement to be substantially shown in Exhibit "A".
- b. The Mayor and the Auditor hereby are authorized to draw and deliver a warrant chargeable to the Bureau of Parks, General Fund when demand is presented, approved by the proper authorities, BUC 13070067.440.

Section 2. The Council declares that an emergency exists because delay in leasing this property will cause loss of jurisdiction of the waterlands adjacent to the north end of Willamette Park; therefore, this Ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, **APR 7 1982**

Commissioner Jordan
Ronald N. Maynard/je
March 30, 1982

Attest:


Auditor of the City of Portland

Calendar No. 918

ORDINANCE No. 153069

Title

An ordinance authorizing agreement with the State of Oregon, Division of State Lands, to lease waterlands adjacent to the north end of Willamette Park, authorizing the drawing and delivery of a warrant, and declaring an emergency

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
JORDAN		
LINDBERG		
SCHWAB		
STRACHAN		
IVANCIE		

FOUR-FIFTHS CALENDAR	
JORDAN	
LINDBERG	
SCHWAB	
STRACHAN	
IVANCIE	

Filed APR 2 1982

GEORGE YERKOVICH
Auditor of the CITY OF PORTLAND

By Robert Powell
Deputy

INTRODUCED BY
Commissioner Charles R. Jordan

NOTED BY THE COMMISSIONER
Affairs
Finance and Administration
Safety <i>CO/FE</i>
Utilities
Works

BUREAU APPROVAL
Bureau: Parks and Recreation
Prepared By: Ronald N. Maynard Date: 3-30-82
Budget Impact Review: <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Not required
Bureau Head: <i>W.V. Owens</i> William V. Owens

CALENDAR
Consent Regular <i>X</i>

NOTED BY
City Attorney
City Auditor
City Engineer