

COVE ORCHARD SEWER SERVICE DISTRICT - YAMHILL COUNTY LEASE AGREEMENT

This Lease is made to be effective as of January 1, 2022, by and between the Cove Orchard Sewer Service District, a County Service District formed pursuant to authority granted under ORS 451 ("COSSD" or "Lessor"), and Yamhill County, a political subdivision of the State of Oregon ("Lessee").

RECITALS

- A. Lessee operates a system of county parks for the benefit of the public and seeks to increase the number of these parks for the benefit of the public; and
- B. Lessee desires to lease suitable property from the Cove Orchard Sewer Service District;

AGREEMENT

NOW, THEREFORE, based on the mutual covenants provided below, the parties agree as follows:

1. **Leased Premises.** Lessor will lease to Lessee a drain field that is approximately 6.7 acres in size, known colloquially as Wrex Cruse Park, and further described and depicted in Exhibits A and B attached hereto and by this reference incorporated herein (the "Premises"). If there is a conflict between the property description contained in Exhibit "A" and the property as shown in the Exhibit "B" map, the Exhibit "A" description shall control.
2. **Term.** The term hereof will commence on January 1, 2022, and will expire Five (5) Years from said commencement date.
3. **Consideration.** Lessor will not receive rent from Lessee as part of this lease. The lease is granted to Lessee for other valuable consideration, e.g., Lessee's assumption of the duty to maintain the Premises, the receipt and adequacy of which Lessor hereby acknowledges.
4. **Permitted Uses.** The Premises are to be used for a public park. Lessee will not use the Premises for any use which is not allowed under federal, state or local laws, including but not limited to applicable provisions of the Yamhill County Zoning Ordinance and other state and local land use regulations.
5. **Assignment and Subletting.** Lessor hereby grants Lessee the power to assign or sublet this lease without the permission or approval of the Lessor.

6. Taxes, Maintenance, and Repairs. Lessee will pay any and all real property taxes assessed to the Premises and any and all costs of maintenance required on the Premises during the term of this lease. Specifically, Lessee shall comply with all applicable laws and regulations respecting the use of the Premises; shall pay for all services or utilities used in the Premises during the term of this lease; shall not suffer any strip or waste of the Premises; shall not permit any lien to be placed or imposed upon the Premises or any part thereof; shall maintain the entire Premises and repair any damage to the Premises caused by Lessee's agents, person on the Premises with the permission of, for the benefit or in connection with Lessee's occupancy; and shall quit and deliver up the Premises at the expiration of said term or upon any sooner termination thereof to Lessor or those having COSSD's estate in the Premises, peaceably, quietly, and in good order and condition. Lessor will not be required to make any repairs, alterations, additions, or improvements to or upon the Premises during the term of this lease.

7. Possession and Right of Entry. Lessee shall have exclusive possession of the Premises. Lessor, by and through its duly authorized agents and representatives, reserves the right, without prior notice, to enter into or upon the Premises at any time to inspect, maintain fixtures, structures or equipment, or conduct other reasonable activities.

8. Indemnification and Insurance.

9.1. Lessee will defend, indemnify, and hold harmless Lessor, its employees, officers, owners, directors, agents, and subcontractors, from and against any and all causes of action, suits, judgments and costs and expenses incidental thereto which any or all of them may hereafter suffer, incur, be responsible for or pay out of with respect to claims by third parties for personal injury, property damage, or other loss not alleged to have been caused by pollution, contamination or release of chemicals arising from Lessor's use of or other conditions on the property which existed on the effective date of this Lease, to the extent directly or indirectly caused by, or arising from or in connection with the negligent or intentional actions or omission of Lessor, or its agents, employees, subcontractors, appointed and elected officials. The total sum recoverable under such indemnity will be limited to the amounts then available from Lessor's insurance policy. Further, such indemnity will be limited to exclude liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, judgments and costs and expenses or attorney fees to the extent they arise as a result of any negligent or intentional actions or omissions of Lessor or its employees, agents, subcontractors, officers, owners, or directors.

9.2. In the event of any suit against any party indemnified under this section, the indemnifying party shall appear and defend such suit, provided that the indemnifying party is notified in a timely manner of the suit. The indemnified party shall have the right to approve counsel chosen by the indemnifying party to litigate such suit, the approval of which shall not be unreasonably withheld. In the event a dispute exists over whether a party is entitled to indemnification, each party shall defend itself until the dispute is

resolved. Upon resolution of the indemnification dispute, the prevailing party shall be entitled to indemnification for its defense costs incurred prior to resolution.

9.3. For all costs and expenses related to third-party claims, the parties will first make and pursue claims against any available insurance coverage. Nothing in this Agreement shall constitute a waiver or relinquishment of any claims which the parties may have against insurers, nor shall any provision of this Agreement waive or relinquish any subrogation or contribution rights that the parties or their insurers may have against another insurer or other potentially liable party. Any monies received from the insurers shall be used to pay any claims covered by such insurance and reimburse the insured for all reasonable costs and expenses, including attorneys' fees, expended by it to seek recovery of sums from its insurers.

9. Improvements.

10.1. Lessee will have the right to make improvements to the premises, provided that no such improvement will interfere with Lessor's use of the Premises as a drain field. All improvements will be constructed in a good and workmanlike fashion and will be maintained in good order during the balance of the lease term. All improvements will become part of the leased premises and shall, at the expiration or earlier termination of this lease, remain on the premises.

10.2. Upon termination of this Agreement, Lessee may leave the improvements in place and shall not be required to return the property to the condition it was in before the lease was entered into.

10. Notices. All notices herein required or permitted to be given to or served upon either party hereto by the other party shall be sufficiently given if delivered personally or sent by mail addressed to such persons at the address set forth below.

In the case of notice to Lessor: Cove Orchard Sewer Service District
535 East 5th Street
McMinnville, Oregon 97128

In the case of notice to Lessee: Yamhill County Board of Commissioners
535 East 5th Street, Room 106
McMinnville, Oregon 97128

11. Remedies on Default. Lessor may terminate this lease and enter and repossess the premises and expel Lessee and remove and store Lessee's effects at Lessee's expense, all without being deemed guilty of trespass and without prejudice to any remedy which otherwise might be available, in the event Lessee shall fail or neglect to do, keep, perform or observe any of the covenants and Agreements contained herein on Yamhill County's

part to be done, kept, performed, and observed and such default shall continue for sixty (60) days or more after written notice of such failure or neglect shall be given to Lessee.

- 12. **Termination.** Lessor or Lessee may terminate this lease upon giving 60 days' written notice to the other party.
- 13. **Attorney Fees.** In case suit or action is instituted to enforce compliance with any of the terms, covenants, or conditions of this lease, and any appeal, each party shall be responsible for its own costs and attorney fees.
- 14. **Waiver.** Any waiver by Lessor of any breach of any covenant herein contained to be kept and performed by Lessee shall not be deemed or considered as a continuing waiver, and shall not operate to bar or prevent Lessor from declaring a forfeiture for any succeeding breach, either of the same condition or covenant or otherwise.
- 15. **Law Governing.** It is agreed that this lease shall be governed, construed, and enforced in accordance with the laws of the State of Oregon.
- 16. **Binding on Successors.** The covenants and conditions contained in this lease shall apply to and bind the heirs, legal representatives, and assigns, so far as this lease is assignable by the terms hereof, of the parties and all covenants are to be construed as conditions of this Lease.
- 17. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, all of the other provisions shall nevertheless continue to be in full force and effect.

IN WITNESS WHEREOF, this lease has been signed as of the day and year written adjacent to the signatures below.

Lessee

Yamhill County

By: *Lindsay Berschauer*
On behalf of the Board of Commissioners
for Yamhill County

Date: 8.17.23, 2023.

Lessor

Cove Orchard Sewer Service District

By: *Kit Johnson*
On behalf of the Board of Directors
for the Cove Orchard Sewer Service District

Date: 8.17.23, 2023.

Accepted by Yamhill County
Board of Commissioners on
8.17.23 by Board Order
BO. 23-331

3-28-25

193-323

EXHIBIT "A"

Parcel I

Beginning at a 5/8 inch iron rod which bears North 16°01'40" East 20.18 feet from the Northeast corner of Lot 127, F. C. Graham's Cove Orchard, a subdivision of record in Yamhill County, Oregon; thence North 16°01'40" East 479.23 feet to a 5/8 inch iron rod in the center of and at an angle point in a 10 foot wide path; thence South 43°02'30" East, along the center of said 10 foot wide path, 257.91 feet to a 5/8 inch iron rod 5.00 feet Northwesterly of when measured at right angles to the Easterly line of Lot 126 of said F. C. Graham's Cove Orchard; thence North 47°47'20" East 5.00 feet to a 5/8 inch iron rod in the center of said 10 foot wide path; thence South 43°02'30" East 470.64 feet to a 5/8 inch iron rod at the intersection of the North line of Lot 23 of said F. C. Graham's Cove Orchard with the Westerly right-of-way line of State Highway No. 47 (Tealacin Valley Highway); thence South 50°13' West, along said Westerly right-of-way line, 480.73 feet to a 5/8 inch iron rod on the Southwesterly line of Lot 123, said F. C. Graham's Cove Orchard; thence North 43°02'30" West, along said Southwesterly line of Lot 123 and the Northwesterly extension thereof, 421.95 feet to a 5/8 inch iron rod on the East line of Lot 127 of said F. C. Graham's Cove Orchard; thence North 21°01'20" East 51.78 feet to a 5/8 inch iron rod at the Northeast corner of said Lot 127; thence North 16°01'40" East 20.18 feet to the point of beginning.

Parcel II

Beginning at a 5/8 inch iron rod at the Northeast corner of Lot 127, of F. C. Graham's Cove Orchard, a subdivision of record in Yamhill County, Oregon; thence North 66°24'30" West 578.35 feet to a 5/8 inch iron rod at the Northwest corner of said Lot 127; thence North 23°59'30" East along the West line of Lot 126 of said F. C. Graham's Cove Orchard 30 feet (passing a 5/8 inch iron rod at 20 feet) to a point; thence South 66°24'30" East to a point which bears North 16°01'40" East 30 feet from the Northeast corner of said Lot 127, thence South 16°01'40" West 30 feet (passing a 5/8 inch iron rod at 9.82 feet) to the point of beginning.

Exhibit B

2 4 27AA

NE 1/4 NE 1/4 SEC 27 T2S R4W W.M.
YAMHILL COUNTY
1" = 100'

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY

CANCELLED
700



2 4 27AA

1005-1670
0.27 = 500
1000