

## **Agenda**

### **Shady Cove Parks and Recreation Commission Special Meeting**

Shady Cove City Council Chamber  
22451 Highway 62, Shady Cove, Oregon  
Wednesday, July 31, 2019  
10:00 a.m.

#### **I. Call to Order**

- A. Roll Call
- B. Announcement by Presiding Officer

- 1. This meeting is being digitally recorded.
- 2. The next regularly scheduled meeting of the Parks and Recreation Commission will be August 6, 2019, at 6:00 p.m. in the Council Chamber.
- 3. Public may comment on agenda items – Public must state name, address and standing to discuss an issue. Issues must have a city-wide impact and not be personal issues.

#### **II. New Business**

- A. Upper Rogue Regional Park Proposal (pg. 2-21)

#### **III. Public Comment on Non-Agenda Items**

None.

#### **IV. Parks and Recreation Commissioner Comment on Non-Agenda Items**

- A. City Administrator

#### **V. Adjournment**

# Memo

**TO: Tom Corrigan**  
**FROM: Mark Bartholomew**  
**DATE: July 25, 2019**  
**RE: Park Lease**

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Tom: I reviewed the park lease with you, redlined it, and negotiated changes favorable to Shady Cove. I have reached an agreement with the County Attorney regarding the lease, and I find it acceptable to execute.

## INTERGOVERNMENTAL AGREEMENT AND LEASE

THIS INTERGOVERNMENTAL AGREEMENT AND LEASE (“Agreement”) is made between the County of Jackson, a home rule political subdivision of the State of Oregon, hereinafter referred to as “COUNTY”, and the City of Shady Cove, an incorporated Oregon city, hereinafter referred to as “CITY”. County and City are hereinafter individually referred to as the “Party” and collectively referred to as the “Parties.”

### RECITALS

The COUNTY is the owner of certain real property commonly known as the Upper Rogue Regional Park (“Park”) located in Jackson County, Oregon.

The Park consists of five tax lots totaling 8.64 acres and includes improvements of the River House rental facility, boat ramp, concrete angling platform, playground, private residence, parking lots and restrooms.

CITY desires to lease the Park for public park uses, to construct certain improvements, and for no other purpose, on the terms and conditions set out in this Agreement.

Now, therefore, the premises being as stated in the foregoing recitals, and the parties, intending to be legally bound by the terms of this Agreement, agree as follows:

### AGREEMENT

#### SECTION 1 – LEASED PREMISES

**1.1 - Description.** Subject to the terms and conditions herein, COUNTY hereby leases to the CITY the real estate depicted on Exhibit A and described on Exhibit B attached hereto (the “Park”), together with all improvements existing or to be built at the Park by either the COUNTY or the CITY including, but not limited to, roadways and rights-of-way, buildings, sidewalks, parking areas, driveways, landscaping, fencing, infrastructure, boat ramp, signs (collectively, “Improvements”). The Park, together with all Improvements located thereon and depicted in Exhibit A and described in Exhibit B is referred to herein as the “Premises.”

**1.1.1 Termination of Prior Agreements.** It is mutually agreed that this Agreement shall terminate and supersede any prior agreements between the parties hereto covering all or any portion of the Premises.

**1.2 - Reservations to County.** The Premises are accepted as-is and where-is by CITY subject to any and all existing easements and free of encumbrances. COUNTY reserves all rights of way, and the right to install, lay, construct, maintain, repair, and operate sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, under, and along the Premises or any part thereof, and to enter the Premises for any and all such purposes. COUNTY also reserves the right to grant easements, rights of way, and permits in, over, upon, through, across, under, and along any and all portions of the Premises. No right reserved by COUNTY in this Section shall be so exercised as to interfere unreasonably with CITY’s operations

hereunder or to impair the security of any secured creditor of CITY.

**1.2.1 Entry for Inspection.** COUNTY shall have the right to enter upon the premises at any time to determine CITY's compliance with this Agreement, to make necessary repairs to the Improvements or to the Premises and to complete maintenance activities. COUNTY must notify CITY a minimum of twenty-four (24) hours in advance of any repairs that will affect the operations of the Park.

## **SECTION 2 - TERM**

**2.1 - Term.** This Agreement is effective once fully executed by all Parties, but not before 12:00 AM, July 1, 2019 ("Effective Date"), and unless otherwise terminated under the provisions in this Agreement, shall continue until 12:00 AM, July 1, 2024 ("Expiration Date").

**2.2 - Option to Purchase.** Immediately following the Term, if the CITY is not then in default, COUNTY Board of Commissioners shall hold a public hearing to consider selling the park to the CITY. If approved by the County Board of Commissioners, CITY shall have the option to purchase the Premises from the COUNTY. Compensation for the purchase shall be one dollar (\$1.00) or such other amount mutually acceptable to the parties. If CITY exercises its purchase option under this Agreement, an appropriate instrument of sale shall be developed by COUNTY within 60 days of the Expiration Date and the actual sale of the Premises shall occur within 180 days of the Expiration Date. The Park shall remain under the control of CITY as bound by this agreement while a sale of the Premises is being executed. All documents transferring the Premises from the COUNTY to the CITY shall have the following condition:

**2.2.1 Restrictions of Use.** The Premises shall be maintained and used by the CITY for public use as a public park, open space and/or natural area in perpetuity. Should the CITY fail to maintain and use the Premises as a public park, open space and/or natural area, the title to the Premises shall automatically revert to COUNTY. Notwithstanding the foregoing, the CITY may lease the Riverhouse and portions of the Park to third parties for periods of up to 72 hours so long as the vehicle entrances, boat ramp, parking areas, and at least 50% of the Park area remain open to the public.

## **SECTION 3 – PAYMENTS**

For the privileges granted hereunder, CITY shall pay the following concession payment:

**3.1 - Payment.** CITY agrees to pay the COUNTY an annual fee of one dollar (\$1.00) per year of the term for a total of five dollars (\$5.00) over the entire term. Payment shall be submitted to the address listed below no later than July 10 of each calendar year, beginning July 10, 2019.

Payments shall be submitted to:

Parks Program Manager  
Jackson County Parks  
7520 Table Rock Rd  
Central Point, Oregon 97502  
Tel. (541) 774-8183 Fax (541) 774-6320

**3.2 - Additional Payment.** CITY agrees to pay all taxes, insurance, utilities including electricity, phone, internet data, potable and irrigation water, sewer, and garbage, and all other fees which are required to operate, manage, maintain and improve the Park by this Agreement. In addition, if there are any other rents or fees associated with this Agreement which the COUNTY is required to pay to a third party, the CITY agrees to pay this sum to the COUNTY as additional rent.

**3.3 - Late Charge.** All payments as specified in this agreement not paid by CITY when due shall bear a delinquency charge (the delinquency rate), from the date such rent and fees are due until they are paid in full. The delinquency rate shall be calculated by adding two percent (2%) to the Prime Rate as published on July 1<sup>st</sup> of each calendar year, or 8%, whichever is larger. Imposition of a delinquency charge shall not constitute a waiver of any other right of action available to COUNTY in the event of default in payment of rent or fees.

**3.4 - Acceptance of Payment.** The COUNTY'S acceptance of a late or partial payment and/or late charge shall not constitute a waiver of any Event of Default, nor shall it prevent the County from exercising any of its other rights and remedies granted to the COUNTY under the Agreement or by law. It is hereby agreed that any endorsements or statements on checks of waiver, compromise, payment in full or any other similar restrictive endorsement shall have no legal effect. CITY shall remain in violation of this Agreement and shall remain obligated to pay all payments due even if COUNTY has accepted a partial or late payment.

#### **SECTION 4 - USES OF THE PREMISES**

**4.1 – Recreational Activities.** CITY use of the Premises shall be limited to public use as a public park, open space or natural area.

**4.2 - Specified Uses.** The following uses of the Premises are required and have to be provided to the general public for the term of this Agreement:

- (A) Park and open space including maintained turf, picnicking and public gathering areas and public restrooms.
- (B) Public boat ramp
- (C) Parking for Park patrons
- (D) Use of the Riverhouse facility through a reservation system available for the public

**4.3 – Capital Improvements.** CITY may complete capital improvements at the Park with prior written consent of COUNTY. All capital improvements must be approved in writing by the Parks Program Manager and all necessary permits and approvals must be obtained prior to work being done by CITY. The COUNTY may withhold consent in its sole discretion for any or no reason. All improvements will become property of the COUNTY at the expiration or termination of the Agreement, unless the CITY purchases the Premises. CITY acknowledges that COUNTY is not required to complete any capital improvements at the Premises during the term of the Agreement.

**4.3.1 Capital Improvement Annual Report** – Before September 1 of each calendar year, CITY shall provide the COUNTY an annual report itemizing the following:

- (A) A list of each Capital Improvement completed;
- (B) The total cost of each completed capital improvement project; and,
- (C) Total out-of-pocket cost to the CITY of each completed capital improvement

project. This cost shall only include actual cash outlays from the CITY and shall not include any funds from grants from federal, state, local or private sources, public or private gifts or donations to the city, or time or materials from volunteers.

**4.3.2 Capital Improvement Repayment.** Should the CITY complete COUNTY-approved capital improvements as allowed under this Agreement and the COUNTY terminates this Agreement for COUNTY's convenience pursuant to Section 15.3.1, the COUNTY shall reimburse the CITY for the CITY's unamortized out-of-pocket costs for such COUNTY-approved capital improvements.

**4.4 - Ingress and Egress.** CITY, its agents, patrons, guests, and suppliers shall have the non-exclusive right of ingress to and egress from the Premises over and across public roadways serving the Premises, subject to such ordinances, rules and regulations as now or may hereafter have application at the Premises.

**4.5 - Signs.** CITY shall not erect, install, nor permit any signs upon the Premises without first having obtained the Park Program Manager's written consent and the sign must meet regulatory requirements of County and State, and other entities with jurisdiction. COUNTY shall not unreasonably withhold approval. CITY shall have the right to install sponsor advertising signage and temporary signs for short duration on the Premises without COUNTY approval. CITY shall remove all signs and sign hardware upon expiration or earlier termination of this Agreement and restore the sign location to its former state, unless the County elects to retain all or any portion of the signage.

**4.6 – [Intentionally omitted]**

**4.7 – Remedy.** In addition to other remedies provided in this Agreement or available under applicable law, in the event CITY breaches this Agreement by using or permitting the Premises to be used in any manner other than as expressly permitted under this Agreement or by providing unauthorized services on the Premises, CITY shall pay COUNTY within thirty (30) business days from the receipt of written notice from the COUNTY a sum equal to fifty percent (50%) of the gross receipts for such service or use not permitted in this Agreement. Gross receipts shall be defined as any revenues related in any manner to the service. As used in this Section, the term "CITY" shall include CITY, their agents, assistant managers, concessionaires, or licensees, or any person acting under contract with CITY.

## **SECTION 5 – GENERAL OBLIGATIONS OF CITY**

**5.1 - Conduct of Business.** CITY shall continuously carry on the permitted uses at the Premises at all times after the Effective Date of this Agreement. CITY agrees to notify the COUNTY of any closure or cessation in operations expected to last more than one (1) week.

**5.1.1 - Compliance with Applicable Laws.** CITY agrees to comply with all applicable portions of the Americans with Disabilities Act, as it now exists or shall be amended when designing and constructing new improvements. Any alterations required by the Americans with Disabilities Act to facilities which existed prior to this agreement will be addressed through a cooperative process between the Parties. CITY agrees to comply with all other applicable local, state or federal laws and ordinances, and any rules and regulations adopted in writing by the COUNTY ("County

Rules"), as they may be amended from time to time. Current copies of the County's Rules, if any, may be obtained during normal office hours from the office of the County Administrator, 10 S. Oakdale Avenue, Room 214, Medford, OR 97501. Failure to comply with such requirements shall constitute a breach of contract and shall be grounds for contract termination. Without limiting the generality of the foregoing, CITY agrees to comply with the following as applicable: (i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) The Health Insurance Portability and Accountability Act of 1996; (iv) The Americans with Disabilities Act of 1990, as amended; (v) ORS Chapter 659A, as amended; (vi) All regulations and administrative rules established pursuant to the foregoing laws; and (vii) All other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. CITY's performance under this Agreement is conditioned upon CITY's compliance with the provisions of ORS Chapter 279A, B, and C, which are incorporated by reference herein. CITY shall promptly provide the COUNTY with copies of all communications from any government entity which relate to CITY's noncompliance or alleged noncompliance with any law, regulation or other governmental requirement relating to its operations on the Premises.

**5.2 Master Plan.** Before the expiration of the Term, CITY shall complete a Master Plan of the park showing the long-term development plans for the Premises that the CITY plans to complete with special emphasis on future plans for the Riverhouse rental facility and the vacant lot. COUNTY shall be included in reviewing and commenting on the Master Plan during its development.

**5.3 – Financial Commitment.** Within 3-months after the beginning of the Term, CITY shall adopt a resolution committing the CITY to financial support for management of the Premises for the duration of the Term. This resolution shall commit the CITY to financial support adequate to meet the requirements of Section 6 of this Agreement.

**5.4 - Permits and Licenses.** CITY shall be required to obtain any and all approvals, permits and/or licenses, bonds, security deposits, certificates of insurance, and worker's compensation which may be required in connection with the operation of the Premises as set out herein. No permit approval or consent given hereunder by COUNTY in its governmental capacity shall affect or limit CITY's obligations hereunder, nor shall any approvals or consents given by COUNTY, as a party to this Agreement, be deemed approval as to compliance or conformance with applicable governmental codes, laws, ordinances, rules, or regulations.

**5.4.1 Required Verifications.** Upon execution of this Agreement, CITY will have in place and will provide COUNTY with proof of all applicable permits and/or licenses, bonds, security deposits, certificates of insurance, and worker's compensation required, without exception.

**5.5 - Facility Standards.** CITY expressly agrees to operate the Premises in compliance with all zoning, building, fire, health and safety codes and all other applicable laws, rules, regulations and ordinances of federal, state, county, municipal, or other governmental agencies having or claiming jurisdiction. If CITY fails to maintain operations in compliance with the Agreement, or make corrections as required herein, the COUNTY shall notify CITY in writing of said failure. Should CITY fail to diligently pursue action to correct the situation within three (3) days after receipt of written notice and without unreasonable delay or interruption complete the correction, the COUNTY may make the necessary correction or cause it to be made. The cost thereof, including, but not limited to, the cost of labor, materials, and equipment and an administrative fee equal to fifteen percent (15%) of the sum of

such items, shall be paid by CITY within ten (10) days of receipt of a statement of said cost from the COUNTY. The COUNTY may, at the COUNTY's option, choose other remedies available herein, or by law.

**5.6 - Emergency Notification.** CITY shall notify the Parks Program Manager in person or by telephone as soon as reasonably possible but not later than twenty-four hours after any emergency, major accident, insurance claim, insurance cancellation, or event giving rise to CITY's inability to conduct business as scheduled. CITY shall also send notification in writing within twenty-four (24) hours. CITY shall notify the Parks Program Manager immediately by phone or in person if any fatalities occur on the Premises. Emergency notifications shall be made to:

Jackson County Parks  
c/o Program Manager  
7520 Table Rock Rd.  
Central Point, Or 97502  
Phone 541-401-2460 Fax 541-774-6320

**5.7 - Trash, Garbage, and Refuse.** CITY shall provide or cause to be provided a complete and proper arrangement for the adequate and sanitary handling and disposal, into a CITY-supplied refuse bin, of all trash, garbage and other refuse caused as a result of the operations conducted on the Premises. CITY shall provide and use suitable covered cans for all such garbage, trash, and other refuse collection at the Premises. Piling of trash, boxes, cartons, barrels, damaged vehicles, or other similar items, in an unsightly or unsafe manner, on or about the Premises, shall not be permitted.

## **SECTION 6 –MAINTENANCE**

**6.1 - Condition of Premises.** CITY accepts the Premises in its present condition, subject to and including all defects latent and patent unless otherwise excepted within this agreement.

**6.2 – CITY's Responsibilities.** CITY shall be responsible for all management, maintenance, and operations of the Premises including but not limited to: obtaining all permits, licenses, scheduling; advertising; event management, fee collection; building custodial services; landscape maintenance; trash removal; law enforcement and all other tasks normally associated with the management and operations of a public park. CITY will make the Premises available to members of the general public for the purposes of outdoor recreation and public and private gatherings. CITY can charge for use of the Premises at rates agreed to by CITY and COUNTY annually.

CITY shall, at CITY's expense and to the satisfaction of the COUNTY, keep and maintain the Premises and all improvements of any kind which may be erected, installed, or made thereon in good condition and in substantial repair. It shall be CITY's responsibility to take all steps necessary or appropriate to maintain such a standard of condition and repair.

CITY shall more specifically be responsible for the following tasks: Promoting Park events to be scheduled on the Premises, all aspects of managing and coordinating events, including but not limited to hiring and supervising required staffing; All aspects of building maintenance at a level acceptable to the COUNTY, including providing all necessary maintenance supplies, services and materials; Cleaning all public restrooms; Managing all daily and special Park events and providing all necessary services and supplies including but not limited to, Park preparation, scheduling and supplying adequate emergency services as required by insurance provider, collection of all fees, charges, and revenue from Park patrons; Managing concession services, if provided, to provide adequate food and beverage items in compliance



with all laws, codes, and requirements by state and local health officials. All landscape maintenance, including mowing of grass on the Premises and irrigation system repair, maintenance, and replacement, in addition to maintenance and operations of the public water system that serves the park. All maintenance shall be performed to a satisfactory level at the reasonable discretion of the COUNTY. CITY shall be responsible for all repairs needed for structures and improvements on the Premises including, but not limited to, buildings, fences, potable water and irrigation distribution systems, sewer systems, electrical systems, and other amenities.

CITY expressly agrees to maintain the Premises and all improvements constructed thereon in a safe, clean, wholesome, sanitary condition, to the reasonable satisfaction of the COUNTY, and in compliance with all applicable laws throughout the term of this Agreement, ordinary wear and tear excepted. CITY shall not commit or suffer to be committed any waste upon the Premises.

**6.3 - Daily Operational Condition of the Premises.** As described in Section 6.2, the CITY shall manage, maintain and operate the daily conditions of the Park and Improvements to standards of repair, sightliness, orderliness, neatness, sanitation and safety to the reasonable satisfaction of COUNTY. The condition of the Park and Improvements shall be determined by periodic unannounced inspections by COUNTY.

**6.3.1 Disrepair or Poor Condition outside CITY's Reasonable Control.** The Parties agree that conditions directly caused by extraordinary events outside the reasonable control of the CITY shall not be a default under this Agreement so long as CITY diligently pursues to cure such conditions.

**6.3.2 Continuous Disrepair or Poor Condition.** Should the COUNTY reasonably determine that operational condition of the Premises to be continuously in a state of poor condition for a period of 30 days or more, the COUNTY may terminate the Agreement upon written notice to the CITY.

**6.4 - Major Maintenance of Improvements.** The CITY shall manage, maintain and operate all Improvements in good repair, as mutually determined by a joint annual inspection by both parties and in accordance with an approved annual work plan. The annual work plan will be driven by the need to correct deficiencies and to adhere to recommendations and will be developed jointly between the Parties. The joint annual inspection will be scheduled by COUNTY and will occur annually before October 1.

**6.5 – County Responsibilities.**

**6.5.1** COUNTY shall supply access to the Premises for the CITY to operate the public park.

**6.5.2** COUNTY will permit use of existing equipment that is located at the Riverhouse including appliances, chairs and tables. COUNTY will permit use of existing irrigation pump at the Riverhouse and park. COUNTY shall not be responsible for replacement or maintenance of said equipment.

**6.5.3** COUNTY shall cooperate with CITY on grant applications for park improvements that the CITY desires to apply for that require landowner agreement. COUNTY shall not be responsible for any required grant match.

**6.5.4** COUNTY shall provide payment to CITY once Agreement is fully executed equal to any revenues collected by COUNTY for future reservations, or other use related to the Premises. Payment shall be made within thirty (30) calendar days.

**SECTION 7 - ALTERATIONS, RECONSTRUCTION, SIGNS**

**7.1 - Alterations.** CITY may from time to time construct, improve, demolish, remove, replace,

alter, reconstruct, remodel, or add to any existing improvements in whole or in part ("alterations") as CITY shall deem necessary or desirable on the following conditions:

**7.1.1** Plans and specifications are submitted to and approved by the COUNTY Parks Program Manager; such approval to be granted or withheld in COUNTY's sole and absolute discretion.

**7.1.2** The value of the improvements on the Premises upon completion of such alterations shall equal or exceed the value of the improvements on the Premises just prior to such work.

**7.1.3** All such work shall be done in a good and workmanlike manner in compliance with all applicable zoning, building, fire, health, and safety codes and all other laws, ordinances, orders, and requirements of all authorities having or claiming jurisdiction.

**7.2 - Reconstruction after Damage.** If any building or other improvement on the Premises is damaged or destroyed by fire or any other cause at any time during the Agreement term, whether or not covered by insurance, CITY shall promptly repair the damage and restore the improvement. The complete repair, restoration or replacement shall be at a minimum equal in value, quality and use to the condition of the improvement immediately before the damage.

## **SECTION 8 - OWNERSHIP OF THE IMPROVEMENTS**

**8.1** All improvements installed on the Premises by CITY shall be owned by CITY until expiration or termination of this Agreement. All improvements and fixtures (with the exception of trade fixtures) located on the Premises at the expiration or termination of this Agreement shall become the property of COUNTY, free and clear of all claims of CITY or anyone claiming under CITY, and CITY shall indemnify and defend COUNTY, its elected officials, officers, agents, employees and volunteers against all liability and loss arising from such claims. Nothing in this Section shall alter other provisions of this Agreement, including without limitation restrictions on removal or alteration of the building on the Premises.

## **SECTION 9 - INSURANCE:**

**9.1 - Liability Insurance.** Prior to entering the Premises and at all times during the term of this Agreement, CITY, at CITY's expense, shall obtain the insurance coverage specified below and maintain the insurance in full force throughout the duration of this Agreement.

A. General Liability Insurance at least as broad as ISO form CG 00 01 covering Bodily Injury and Property Damage on an "occurrence" form in an amount of not less than \$2,000,000 per occurrence, \$4,000,000 annual aggregate.

B. Automobile Liability Insurance. CITY shall obtain Automobile Liability Insurance subject to the limits of \$1,000,000 each person / \$1,000,000 per occurrence in a form at least as broad as ISO form CA 00 01 covering all owned, hired, and non-owned vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability").

C. Property Insurance, Fire and Extended Coverage Form in an amount sufficient to reimburse CITY and COUNTY for all of their equipment, trade fixtures, inventory, fixtures and other personal property located on or in the Premises. The proceeds from property insurance for other than personal property shall be held in a special account which requires joint execution by COUNTY and CITY for

release of such funds and shall be used only to rebuild improvements on the Premises.

D. Workers' Compensation Insurance in compliance with ORS 656.017 and Employer's Liability Insurance with limits of not less than \$1,000,000 per accident for bodily injury or disease.

E. Notice of cancellation or change. Each insurance policy required herein shall not be canceled, except with not less than 30 days written notice to COUNTY.

F. Additional Insured. The General Liability Insurance and Commercial Automobile Liability Insurance must include Jackson County and its elected officials, officers, employees, agents, and volunteers as Additional Insured with respect to the CITY's activities to be performed under this Agreement.

G. Primary Coverage. For any claims related to this Agreement, the CITY's insurance coverage shall be primary coverage as least as broad as ISO form CG 20 01 04 13 as respects the COUNTY and its elected officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by COUNTY shall be excess of CITY's insurance and shall not contribute with it.

H. intentionally omitted

I. "Tail" Coverage. If any of the required insurance policies is on a "claims made" basis, the CITY shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the expiration or earlier termination of this Agreement.

J. Verification of Coverage. CITY shall furnish COUNTY with original Certificates of Insurance including all required amendatory endorsements (or copies of applicable policy language effecting coverage required by this contract) and a copy of the Declarations and Endorsement Page of the General Liability policy listing all policy endorsements to COUNTY before entering the Premises under this Agreement. CITY shall provide COUNTY complete, certified copies of all insurance policies, including the endorsements required by these specifications, upon COUNTY request.

The insurance limits set forth in this Section may be modified periodically by the Parks Program Manager upon not less than 30 days written notice to CITY.

## **SECTION 10 - INDEMNIFICATION**

**10.1 - CITY Independent Contractor.** For all purposes hereunder, CITY is and shall be deemed an independent contractor, and it is mutually agreed that nothing contained herein shall be deemed or construed to constitute a partnership or joint venture between the parties hereto. It is understood and agreed that CITY is not an agent or employee of COUNTY with respect to its acts or omissions hereunder.

**10.2 - General Indemnity.** Subject to the conditions and limitations of the Oregon Tort Claims Act and the Oregon Constitution, CITY shall defend, save, hold harmless, and indemnify COUNTY, and its elected officials, officers, employees, agents, and volunteers, from all claims, suits, or actions of whatever nature whether actual, threatened, or alleged including but not limited to personal injury, death, property damage and incidental and consequential damages, resulting from or arising out of the activities of CITY or its officers, employees, agents, volunteers, guests, or customers in connection with this Agreement, but only to the extent such claims, suits, or actions are not caused by the negligence or willful

misconduct of COUNTY, its elected officials, officers, agents, or employees.

**10.3 – CITY Environmental Indemnity.** Except as provided in Section 10.4 below and without in any way limiting the generality of Section 10.2, CITY shall be solely responsible for and agrees to defend, indemnify and hold harmless COUNTY and its elected officials, officers, employees, agents, and volunteers, from and against all liability, damage, expense (including reasonable attorney fees and costs), causes of action, suits, claims or judgments arising from or related to the presence of Environmental Contamination on the Premises during the term of this Agreement. This indemnity shall include the cost of investigation, removal, remediation, restoration and/or abatement of Environmental Contamination. “Environmental Contamination” means the presence of any hazardous material, including but not limited to any substances defined as or included in the definition of “hazardous substance,” “hazardous material” or “toxic substances” in the Environmental Laws, or any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, council, board, or instrumentality of the United States, State of Oregon, Jackson County, or the City of Shady Cove.

**10.4. COUNTY Environmental Indemnity.** Notwithstanding Section 10.3 above, COUNTY shall defend, indemnify and hold harmless CITY and its elected officials, officers, employees, agents, and volunteers, from and against causes of action, suits, claims or judgments arising from or related to the presence of Environmental Contamination which existed on the Premises prior to the Commencement Date of this Agreement or which is caused by the negligence or willful misconduct of COUNTY.

**10.4 - Liens.** Except with respect to activities for which COUNTY is responsible, CITY shall pay as due all claims for work done on and for services rendered or material furnished to the Premises and shall keep the Premises free from any liens. If CITY fails to pay any such claims or to discharge any lien, COUNTY may do so and collect the cost as additional payment. Any amount so added shall bear interest at the rate of nine percent (9%) per annum from the date expended by COUNTY and shall be payable on demand. Such action by COUNTY shall not constitute a waiver of any right or remedy which COUNTY may have on account of CITY’s default.

**10.4.1** CITY may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, so long as County's property interests are not jeopardized. If a lien is filed as a result of nonpayment, CITY shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien or deposit with COUNTY cash or sufficient corporate surety bond or other surety satisfactory to COUNTY in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

## **SECTION 11 - UTILITIES**

**11.1 - Utilities.** CITY shall pay for all costs of electricity, phone, internet, data, potable and irrigation water, sewer, and garbage associated with the use of the Park during the term of the Agreement.

## **SECTION 12 - ASSIGNMENT AND SUBAGREEMENT**

**12.1 - Right to Sublease.** CITY shall not sublet all or any part of the Premises or the improvements on the Premises without COUNTY’s written consent; provided, however, CITY may lease the Riverhouse and portions of the Park for individual periods of up to 72 hours without COUNTY’s written consent so long as the vehicle entrances, boat ramp, parking areas, and at least 50% of the Park area remain open to the public.

**12.2 - Assignment.** CITY shall not assign or otherwise transfer CITY's interest in this Agreement or the estate created by this Agreement without the prior written consent of COUNTY.

**12.3 - Leasehold Mortgages.** CITY may not obtain any mortgages or place any other encumbrances on the Premises or any improvements located on the Premises as security for a loan or loans or other obligations of CITY.

**12.4 Private Residence.** Notwithstanding the foregoing, CITY may lease the existing private residence to a residential tenant. CITY is entitled to all rental proceeds from existing or future tenants during the term of this Agreement.

### **SECTION 13 - DEFAULT**

The following shall be events of default:

**13.1 - Default in Payment.** Failure of CITY to pay any payment or other charge within ten (10) days after written notice that it is due.

**13.2 - Default Due to Condition of Premises.** Failure of CITY to comply with Section 6.3 or Section 6.4 under the following conditions:

- (A) Inspections by COUNTY staff find Premises conditions failing to meet Section 6.3 standards for a period of three consecutive weeks (21 days) after written notice from COUNTY to CITY; or,
- (B) Inspections by COUNTY staff find Premises conditions repeatedly failing to meet Section 6.3 standards on 12 or more occurrences during any 6-month period.
- (C) Failure of CITY to manage, maintain and operate all Improvements in good repair as agreed to in the approved annual work plan and as required in Section 6.4 of this Agreement.
- (D) Notwithstanding the foregoing, the Parties agree that that conditions directly caused by extraordinary events outside the reasonable control of the CITY shall not be a default under this Agreement so long as CITY diligently pursues to cure such conditions.

**13.3 - Default in Other Covenants.** Except as specified in Section 13.2 - Default Due to Condition of Premises, failure of CITY to comply with any term or condition or fulfill any obligation of the Agreement (other than the payment of rent or other charges) within thirty (30) days after written notice by COUNTY specifying the nature of the noncompliance with reasonable particularity. If the noncompliance is of such a nature that it cannot be completely remedied within the 30-day period, this it shall not be an event of default if CITY begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

### **SECTION 14 - REMEDIES ON DEFAULT**

**14.1 - Termination.** In the event of a default by CITY, and subject to the cure periods in Section 13, the Agreement may be terminated immediately at the option of COUNTY by notice in writing to CITY delivered via certified mail. If the Agreement is not terminated by election of COUNTY or otherwise, COUNTY shall be entitled to recover damages from CITY for the default. If the Agreement is terminated, CITY's liability to COUNTY for damages shall survive such termination, and COUNTY may enter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the

use of reasonable force and without liability for damages.

**14.2 - Damages.** In the event of termination on default, COUNTY shall be entitled to recover immediately, without waiting until the due date of any future payment or until the date fixed for expiration of the Agreement term, the following amounts as damages:

**14.2.1** The loss of reasonable payment value from the date of default until the COUNTY has reestablished the Premises into an operational Park.

**14.2.2** The reasonable costs of reentry and including without limitation the cost of any cleanup, refurbishing, removal of CITY's property and fixtures, or any other expense occasioned by CITY's failure to quit the Premises upon termination and to leave them in the required condition, any remodeling costs, attorney fees, court costs, broker commissions, and advertising costs.

**14.2.3** Any excess of the value of the rent and all of CITY's other obligations under this Agreement over the reasonable expected return from the Premises for the period commencing on the earlier of the date of trial or the date the Premises are re-let and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of major Oregon banks in effect on the date of trial.

**14.3 - Right to Sue More Than Once.** COUNTY may sue periodically to recover damages during the period corresponding to the remainder of the Agreement term, and no action for damages shall bar a later action for damages subsequently accruing.

**14.4 - County's Right to Cure Defaults.** If CITY fails to perform any obligation under this Agreement, COUNTY shall have the right to do so after reasonable written notice to CITY. All of COUNTY's actual expenditures to correct the failure to perform shall be reimbursed by CITY on demand with interest at the rate of 9% per year from the date of expenditure by COUNTY. Such action by COUNTY shall not waive any other remedies available to COUNTY because of the default.

**14.5 - Remedies Cumulative.** The foregoing remedies shall be in addition to and shall not exclude any remedy available to COUNTY under applicable law.

## **SECTION 15 - TERMINATION**

**15.1 - Expiration.** This Agreement shall expire at the end of the full term hereof, unless sooner terminated as provided hereinafter, or unless purchased pursuant to Section 2.2 above, and CITY shall have no further rights, interests, or privileges hereby granted by this Agreement.

### **15.2 - Cancellation by CITY .**

**15.2.1** The CITY may cancel this Agreement for convenience with not less than 180 days' notice to COUNTY.

**15.2.2** The CITY may cancel this Agreement with not less than 30 days' notice if, in the exercise of its reasonable administrative discretion, it has insufficient funds available and authorized for expenditure to finance the costs of this Agreement within the CITY'S fiscal year budget.

### **15.3 - Cancellation by COUNTY.**

**15.3.1 County's convenience.** County may terminate this Agreement:

**15.3.1.1** If COUNTY, in the exercise of its reasonable administrative discretion, has insufficient funds available and authorized for expenditure to finance the costs of this Agreement within the COUNTY's fiscal year budget.

**15.3.1.2** If COUNTY funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for funding or support of the facility or Premises;

**15.3.1.3** If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the COUNTY support is no longer allowable or appropriate under this contract or COUNTY is no longer eligible for the funding of the facility or Premises; or

**15.3.1.4** If any license or certificate required by law or regulation to be held by CITY to provide the services or perform the activities required by this contract is for any reason denied, revoked, suspended, or not renewed.

**15.3.2 For Cause:** Subject to the provisions of Section 15.1, COUNTY may terminate this Agreement in the event CITY:

**15.3.2.2** Defaults in the payment to COUNTY of the whole or any part of the amounts agreed upon hereunder if such default continues for a period of ten (10) days after receipt of written notice from COUNTY of said default; or

**15.3.2.3** Makes a general assignment for the benefit of creditors; or

**15.3.2.4** Files a voluntary petition in bankruptcy; or

**15.3.2.5** Abandon the Premises.

**15.4.** It is agreed by the parties that failure to declare this Agreement terminated upon the default of CITY for any of the reasons set forth above shall not operate to bar or destroy the right of COUNTY to declare this Agreement terminated by reason of any subsequent violation of the terms of this Agreement.

## **SECTION 16 - SURRENDER AT EXPIRATION**

**16.1 - Condition of Premises.** Upon expiration of the Agreement term, and if CITY does not exercise its purchase option under Section 2.2 of this Agreement, CITY shall surrender possession of the Premises to COUNTY, including all improvements then located on the Premises, free of occupants and broom clean, all in good condition except for reasonable wear and tear since the last necessary restoration, repair or reconstruction made pursuant to this Agreement. All property that CITY is required to surrender shall become COUNTY's property at the date of expiration of this Agreement.

**16.2 - Fixtures.** Prior to expiration or termination of the Agreement, CITY shall remove all furnishings, furniture, and trade fixtures which remain its property. If CITY fails to do so, this shall be an abandonment of the property, and COUNTY may retain the property and all rights of CITY with respect to it shall cease or, by notice in writing given to CITY within twenty (20) days after removal was required, COUNTY may elect to hold CITY to its obligation of removal. If COUNTY elects to require CITY to remove, COUNTY may effect a removal and place the property in public storage for CITY's account. CITY shall be liable to COUNTY for the cost of removal, transportation to storage, storage, and repair, if any, of any physical damage resulting from the removal with interest at the legal rate on all such expenses from the date of expenditure by COUNTY.

**16.3 - Holdover.** Failure by CITY to vacate the Premises at the time specified in this Agreement shall not constitute a renewal or extension or give CITY any rights in or to the Premises or any improvements. Upon such a holdover, CITY shall defend and indemnify COUNTY from all liability and

expense resulting from the failure or delay of CITY to timely surrender the Premises, including, without limitation, claims made by any succeeding lessee founded on or resulting from CITY's failure to so surrender. CITY shall also be obligated to perform all terms and conditions of this Agreement during any holdover period.

**16.3.1** Notwithstanding the above, if CITY does not vacate the Premises at the time required, COUNTY shall have the option to treat CITY as a month-to-month tenant, subject to all of the provisions of this Agreement except the provisions for term and renewal, or to eject CITY from the Premises and recover damages caused by wrongful holdover. Failure of CITY to remove fixtures under this Agreement shall constitute a failure to vacate to which this Section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another lessee or with occupancy by CITY for any purpose, including preparation for a new lessee.

**16.3.2** If month-to-month tenancy results from a holdover by CITY under this Section, the Agreement shall be terminable at the end of any monthly rental period on written notice from COUNTY. The notice shall be given at least ten (10) days prior to the termination date. CITY waives any notice that would otherwise be provided by law with respect to a month-to-month basis. CITY will pay COUNTY a total of five hundred dollars (\$500) per month rent during the holdover period. Rent shall be due on the first each month during the holdover period, without deduction or offset, to the address listed in Section 3.1 of this agreement.

## **SECTION 17 - MISCELLANEOUS**

**17.1 - Time of the Essence.** Time is of the essence of each of CITY's obligations under this Agreement.

**17.2 - Headings.** The section and subsection headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

**17.3 - Attorney's Fees.** In any action or arbitration brought by the other party under this Agreement, the prevailing party shall be entitled to recover interest, costs and reasonable attorney fees, including those of in-house counsel.

**17.4 - Mediation.** Any dispute between the parties that is not resolved through informal discussion may be submitted to mediation upon the consent of both parties. If informal discussions or mediation are unsuccessful, either party may initiate litigation to resolve the dispute. The parties specifically disclaim any right to arbitration of disputes.

**17.5 - Notice.** Any notice required or permitted under this Agreement is deemed received 3 days after deposited in the United States mail, certified and postage paid, and addressed to the following address or to such other address as may be specified from time to time by either of the Parties in writing; or confirmed delivery date by nationally recognized overnight courier; or upon the date of personal delivery or service:

COUNTY: Jackson County Parks  
c/o Program Manager  
7520 Table Rock Rd.  
Central Point, OR 97502

With a copy to:



Jackson County Counsel  
10 S. Oakdale, Room 214  
Medford, OR 97501

CITY: City Administrator  
PO Box 1210  
Shady Cove, OR 97539

**17.6 - Consent.** If approval or consent is required pursuant to the terms of this Agreement, CITY agrees that approval or consent is in the absolute discretion of COUNTY.

**17.7 - Public Records.** Any and all written information submitted to and/or obtained by COUNTY from CITY or any other person or entity having to do with or related to this Agreement and/or the Premises, either pursuant to this Agreement or otherwise, at the option of COUNTY, may be treated as a public record open to inspection by the public pursuant to the Oregon Public Records Statutes as now in force or hereafter amended, or any Act in substitution hereof, or otherwise made available to the public and CITY hereby waives, for itself, its agents, employees, subtenants and any person claiming by, through or under CITY, any right or claim that any such information is not a public record or that the same is a trade secret or confidential information and hereby agrees to indemnify and hold COUNTY harmless from any and all claims, demands, liabilities and/or obligations arising out of or resulting from a claim by CITY or any third party that such information is a trade secret, confidential, or not subject to inspection by the public, including without limitation reasonable attorney's fees and costs.

**17.8 - Disposition of Abandoned Personal Property.** If CITY abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to CITY and left on the Leased Premises 15 days after such event shall be deemed to have been transferred to COUNTY. COUNTY shall have the right to remove and to dispose of such property without liability therefor to CITY or to any person claiming under CITY, and shall have no need to account therefor.

**17.9 - Partial Invalidity.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

**17.10 - Non-Waiver of Rights.** The failure of COUNTY or CITY to insist upon strict performance of any of the terms, covenants, or conditions of this Agreement shall not be deemed a waiver of any right or remedy that COUNTY or CITY may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of this Agreement thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of the Agreement. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

**17.11 - Brokers.** CITY and COUNTY each represent to one another that they have not dealt with any leasing agent or broker in connection with this Agreement and each (for purposes of this Section only) agrees to indemnify and hold harmless the other from and against all damages, costs and expenses (including attorney, accountant and paralegal fees) arising in connection with any claim of an agent or broker.

**17.12 - Entire Agreement.** This Agreement represents the entire agreement between COUNTY and CITY relating to CITY's use of the Premises and shall supersede all previous communications, representations, or agreements, whether verbal or written, between the Parties hereto with respect to such use. It is understood and agreed by CITY that neither COUNTY nor COUNTY's agents or employees have made any representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by CITY against COUNTY for, and COUNTY shall not be liable by reason of, the claimed breach of any representations or promises not expressly stated in this Agreement, any other oral agreement with COUNTY being expressly waived by CITY. Any modifications, changes, additions, or deletions to this Agreement must be approved by CITY and COUNTY in writing and attached and incorporated by reference into this Lease.

**17.13 - Calculation of Time.** Unless referred to as Business Days, all periods of time referred to in this Agreement include Saturdays, Sundays, and Legal Holidays. However, if the last day of any period falls on a Saturday, Sunday or legal holiday, then the period shall be extended to include the next day which is not a Saturday, Sunday or Legal Holiday. "Legal Holiday" shall mean any holiday observed by the Federal Government. "Business Days" shall mean Monday through Friday and shall exclude Saturday, Sunday and Legal Holidays.

**17.14 - Agreement Subject to Bonds and Ordinances.** This Agreement shall be subject and subordinate to the bonds and ordinances which create liens and encumbrances affecting the Premises. CITY agrees that COUNTY may hereafter adopt bond ordinances which impose liens or encumbrances on said land and COUNTY's interest in the leasehold, and CITY shall, upon request by COUNTY, execute and deliver agreements of subordination consistent therewith. Furthermore, in order to comply with the requirements of existing COUNTY bond ordinances and any bond ordinances that may be enacted in the future, CITY hereby makes an irrevocable commitment not to claim depreciation, cost recovery, or an investment credit with respect to any of the Premises or to any improvements constructed by COUNTY using COUNTY funds or COUNTY Bond proceeds.

**17.15 - Governing Law; Jurisdiction; Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit or proceeding (collectively, "the claim") between the COUNTY (and/or any other County or department of the State of Oregon) and the CITY that arises from or relates to this contract shall be brought and conducted solely and exclusively within the Circuit Court of Jackson County for the State of Oregon. If, however, the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon filed in Jackson County, Oregon. CITY, by the signature herein of its authorized representative, hereby consents to the *in personam* jurisdiction of said courts. In no event shall this section be construed as a waiver by COUNTY of any form of defense or immunity, based on the Eleventh Amendment to the United States Constitution, or otherwise, from any claim or from the jurisdiction.

**IN WITNESS WHEREOF**, the parties hereby enter into this Agreement effective as of the last date signed below.

**JACKSON COUNTY**

BY: \_\_\_\_\_  
Danny Jordan, County Administrator  
Date: \_\_\_\_\_

**CITY OF SHADY COVE**

BY: \_\_\_\_\_  
Thomas J. Corrigan, City Administrator  
Date: \_\_\_\_\_

EXHIBIT A

Upper Rogue Regional Park

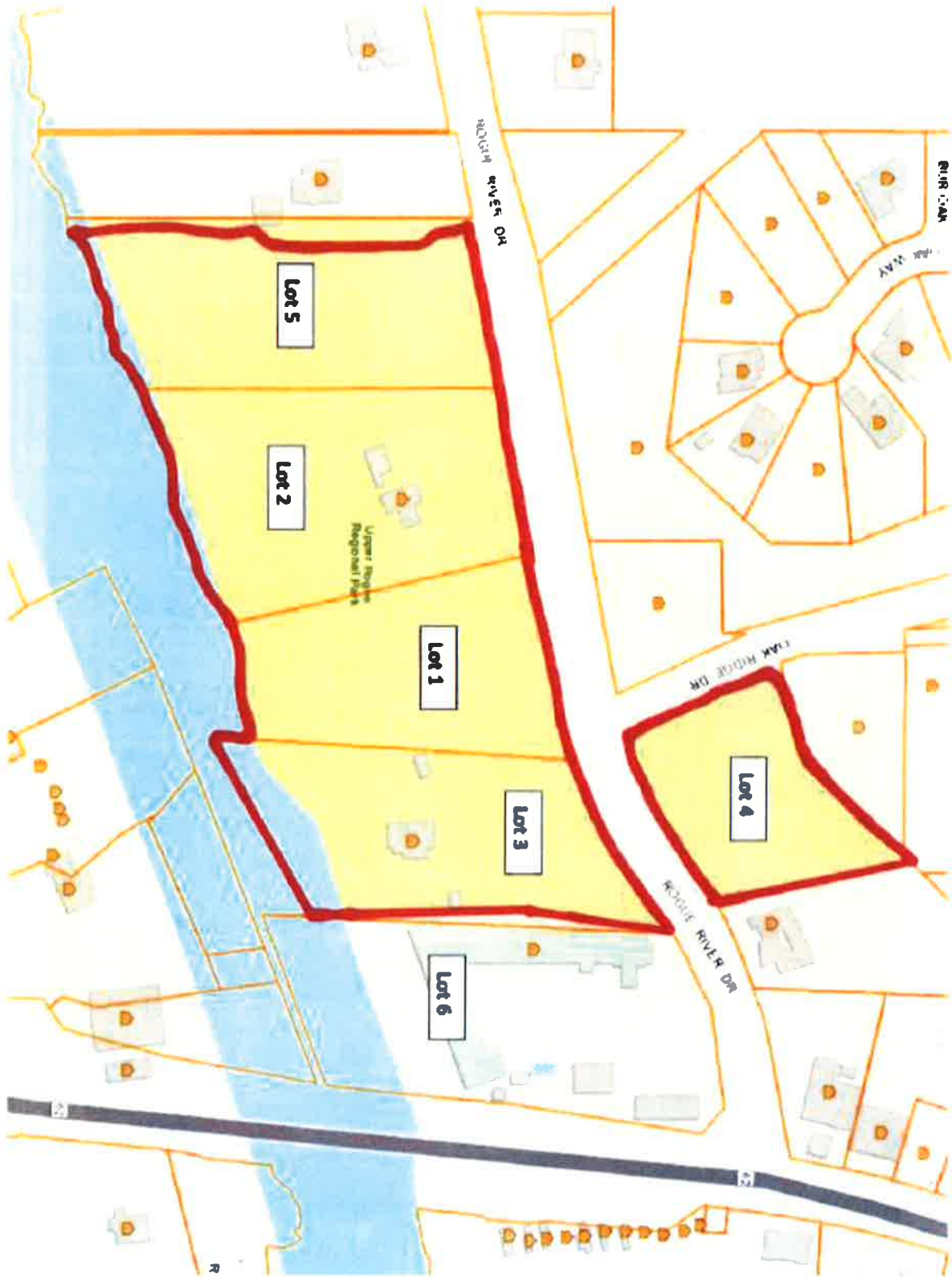


EXHIBIT B

Upper Rogue Regional Park - Improvements

List of Improvements - TBD