

## LEASE

THIS LEASE made and entered into this day by and between the CITY OF CAMAS, a municipal corporation organized and existing under the laws of the state of Washington, hereinafter called "Lessor", and, CRAIG MARK and DEBEE MARK, husband and wife, hereinafter called "Lessee".

### WITNESSETH:

Section 1. PREMISES LEASED: For and in consideration of the payment unto it by the Lessee of the rentals hereinafter specified, and performance by the Lessee of the covenants and obligations hereinafter provided to be kept and performed by Lessee, the Lessor does hereby lease, demise and let unto the Lessee all of that certain real property more particularly described in Exhibit "A", attached hereto and by this reference incorporated herein, including all appurtenances thereto (the "premises").

Section 2. TERM: The Initial Term of this lease shall be for a period of five (5) years, commencing January 1, 2022, and expiring December 31, 2026, unless sooner terminated as provided by this lease. The Agreement will be automatically extended for one (1) successive five (5) year renewal term, unless: (i) Lessee provides Lessor written notice of termination at least ninety (90) days prior to the expiration of the Initial Term, or (ii) Lessor provides Lessee notice of its intent not to renew at least one-hundred eighty (180) days prior to the expiration of Initial Term.

Section 3. RENT: Lessee shall pay to Lessor, without any setoff or deduction except as specifically set forth herein, in addition to all assessments and other charges required to be paid

hereunder by Lessee, rent for the premises as follows:

A. **Year One**: For the period commencing January 1, 2022, and ending December 31, 2022, Lessee shall pay to the Lessor, in advance, the sum of \$ 1,700 per month.

B. **Year Two**: Commencing on January 1, 2023, and ending December 31, 2023, Lessee shall pay to the Lessor, in advance, the sum of \$ 1,742.50 per month.

C. **Year Three**: Commencing on January 1, 2024, and ending December 31, 2024, Lessee shall pay to the Lessor, in advance, the sum of \$ 1,786.00 per month.

D. **Year Four**: Commencing on January 1, 2025, and ending December 31, 2025, Lessee shall pay to the Lessor, in advance, the sum of \$ 1,830.65 per month.

E. **Year Five**: Commencing on January 1, 2026, and ending December 31, 2026, Lessee shall pay to the Lessor, in advance, the sum of \$ 1,876.42 per month.

F. **Extension**: Should the Extension as provided for in Section 2 occur, commencing on January 1, 2027 and every year thereafter on January 1, the Lessee shall pay to the Lessor, in advance, a sum equal to two and one-half percent (2.5%) times the prior years' payment, such that payment in Year Six would be \$1,923.33, and so forth.

In addition to the rental specified above, Lessee shall pay to the Lessor with each monthly rental payment the Washington State Leasehold Tax on the leased premises, which tax is currently 12.84% of the monthly rental payment.

Rental leasehold tax payment are payable in advance on the first day of each month. The parties agree that a late charge equal to five (5%) percent of the rental payment shall be added to any rental payment received after the 10<sup>th</sup> day after the date it was due.

Section 4. **LEASE BOND**: Lessor hereby waives its right to require a lease bond

pursuant to RCW 53.08.085.

**Section 5. TAXES AND UTILITIES:**

Lessee shall pay all reasonable charges related to electricity, water, sewer, and garbage disposal, phone and any other public utility associated with Lessee's use of the premises.

Lessee shall pay all assessments, and other expenses, which arise from Lessee's possession of the premises, or the operation of Lessee's business, or as are required, because of Lessee's operations, to make the property conform to governmental regulations, or which are imposed upon Lessor due to the existence of this lease; provided Lessee shall not be obligated to make any improvements to the Premises.

Lessee shall pay and discharge promptly, as the same becomes due and before delinquency, the assessments and other charges described herein. Lessee shall pay, upon demand, any assessments and other charges imposed upon the Lessor which are payable by Lessee as a result of this section, or if this is not permitted by law, Lessee shall reimburse Lessor for the amount of any assessment and other charge paid by Lessor, provided that Lessee shall have the right to contest any such assessment at its own expense, as provided in Section 7.

**Section 6. LIENS:** Lessee shall keep the premises free and clear of all liens, including mechanic's, materialmen's, or other liens for work or labor done, and liens for services, materials, appliances and power performed, contributed, furnished or used or to be used in or about the premises, or in connection with any operations of Lessee, or any alteration, improvement, repair, or addition which Lessee may make, permit, or cause to be made or any work or construction by, for, or permitted by Lessee on or about the premises. Lessee shall not be responsible for liens caused by Lessor's activities on the premises.

Nothing in this lease shall be deemed or construed in any way as constituting the consent or request of Lessor, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer, or materialman, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to, or repair of the premises or any part thereof, nor as giving Lessee any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any lien against the premises or any part thereof.

In the event that any lien, charge, or order for the payment of money described as the responsibility of Lessee in this section is filed against Lessor or any portion of the premises, Lessee shall, at its own cost and expense, cause the same to be discharged of record or bonded within sixty (60) days after notice from Lessor to Lessee, in the manner provided in Section 24, of the filing thereof; and Lessee shall indemnify and save harmless Lessor against and from all costs, liabilities, suits, penalties, claims, and demands, including reasonable counsel fees, resulting therefrom.

**Section 7. CONTESTING LIENS AND TAXES:** Lessee may contest any lien set forth in Section 6 or any assessment or other charge which Lessee shall pay under Section 5, provided that Lessee notifies Lessor, in the manner provided in Section 24, of their intention to do so within sixty (60) days of the filing of such lien or within thirty (30) days of receipt of notice of such assessment or other charge; and provided further that Lessee posts a bond or other security with Lessor, prior to the contest, in an amount equal to the amount of the contested lien assessment, or other charge.

Within sixty (60) days of the determination of its validity, Lessee shall satisfy and

discharge any remaining lien, or pay and discharge any remaining assessment, or other charge, and all penalties, interest, and costs in connection therewith. Satisfaction and discharge shall not be delayed until execution is had on any judgment rendered, nor shall satisfaction, payment and discharge be delayed until sale is made of the whole or any part of the premises on account thereof. Any such delay shall be a default of Lessee under this lease.

In the event of any such contest, Lessee shall protect and indemnify Lessor against all loss, expense, and damage resulting therefrom.

**Section 8. USE OF PREMISES:** Lessee covenants and agrees as follows:

A. To use the premises solely for the purpose of storing pipe, steel pilings, crane booms, and other materials and equipment used in Lessee's piledriving business.

B. Not to use or occupy the premises, or permit the premises to be used or occupied, for other than legal purposes or those allowed in this Section 8, or in a manner which shall violate any certificate of occupancy in force relating to any building or improvement hereafter erected thereon;

C. To conform to and abide by all lawful rules, laws and regulations in connection with the use of said premises and the operation of Lessee's business thereon, and not to permit said premises to be used in violation of any lawful rule, law, regulation or other authority.

D. Not to commit or permit any waste of the premises, except as necessary for the construction of any authorized improvements thereon, and to use all reasonable precaution to prevent waste, damage or injury to the land, buildings or improvements on the premises.

**Section 9. IMPROVEMENTS; TRADE FIXTURES:** No additions shall be added to

the premises by Lessee, and Lessee shall not make structural modifications, improvements or alterations which materially change any portion of the premises, without the written consent of the Lessor being first obtained. All improvements to the premises which are now on the premises or which may hereafter be constructed thereon, whether constructed by Lessor or Lessee, are, and/or shall immediately become upon their construction, the property of the Lessor. At the expiration or other termination of this lease, all improvements shall remain upon the premises; provided, however, that all fixtures and equipment installed by the Lessee, may be removed at the termination of the lease by the Lessee, provided that the removal of the same may be done without damage to the premises.

Section 10. MAINTENANCE AND REPAIR: The Lessee agrees to maintain the premises and all improvements in a good state of repair. At the termination of this lease the Lessee shall return the premises and all improvements to the Lessor in as good state and condition as the same are in at the time Lessee commences occupying same, reasonable wear and tear from the normal use thereof and fire or other casualty being excepted. Lessee agrees to keep the premises at all times free from debris and objectionable material.

Section 11. NO REPRESENTATION: Lessee has leased the premises after an examination thereof, and without any representation on the part of the Lessor, as to fitness of for the purposes intended by the Lessee.

Section 12. INDEMNITY: Lessee shall indemnify and save harmless the Lessor from and against any and all liability, claims, damage, penalties, or judgments arising from any loss, injury, death or damage to person or property sustained by any person in or about the premises resulting from the act or omission of the Lessee, including Lessee's officers, agents, employees,

contractors, and sublessees, or of any occupant, visitor, or user of any part of Lessee's premises. Lessee further covenants and agrees to indemnify and hold the Lessor harmless against the claims of all and every person whomsoever arising out of or in any way connected with the Lessee's occupation or use of the premises, except for claims by Lessor's employees or agents for injuries sustained during the course of employment through no fault of the Lessee. Lessee shall pay all attorneys' fees and other expenses incurred by the Lessor in defending any and all suits which may be brought against the Lessor or in which the Lessor may be impleaded with others upon any of the aforementioned matters, except as may result from the acts set forth in the paragraph immediately below.

Lessor shall indemnify and save harmless the Lessee from and against any and all liability, claims, damage, penalties, or judgments arising from any loss, injury, death or damage to person or property sustained by any person in or about the premises resulting from the act or omission of the Lessor, including Lessor's officers, agents, employees, contractors. Lessor further covenants and agrees to indemnify and hold the Lessee harmless against the claims of all and every person whomsoever arising out of or in any way connected with the Lessor's obligation to maintain the premises, except for claims by Lessee's employees or agents for injuries sustained during the course of employment through no fault of the Lessor. Lessor shall pay all attorneys' fees and other expenses incurred by the Lessee in defending any and all suits which may be brought against the Lessee or in which the Lessee may be impleaded with others upon any of the aforementioned matters, except as may result from the acts set forth in the paragraph immediately below.

Lessee covenants and agrees to reimburse the Lessor for all costs or expenses of repair or

replacement of any of the Lessor's property damaged or destroyed as a result of Lessee's use or occupation of the premises or use of Lessor's property or facilities.

**Section 13. INSURANCE:**

A. Lessee agrees to carry liability insurance protecting themselves and the Lessor, its agents, officers and employees, from any claims or persons for injuries to life, person or property by reason of anything done or permitted to be done or suffered or omitted to be done by Lessee in and about the occupation and use of said premises.

Lessee shall carry commercial general liability insurance at least as broad as Insurance Services Office (ISO) Occurrence Form CJ0001 and shall cover premises and contractual liability. The Lessor shall be named as an additional insured on Lessee's general liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CJ2011 or a substitute endorsement providing that least is broad coverage. Commercial general liability insurance shall be written with limits with no less than \$1,000,000.00 each occurrence, \$2,000,000.00 general aggregate. Property insurance shall be written on an all-risk basis and shall be written covering the full value of Lessee's property and improvements with no co-insurance provisions.

B. Lessee shall deliver to Lessor on or before the date on which the term commences, and thereafter at least ten (10) days before the expiration dates of expiring policies, certified copies of its insurance policies, or a certificate evidencing the same issued by the insurer thereunder, showing that all premiums have been paid for the full policy period; and in the event Lessee shall fail to procure such insurance, or to deliver such policies or certificates, Lessor may, at its option and in addition to Lessor's other remedies in the event of a default by



Lessee hereunder, procure the same for the account of Lessee, and the cost thereof shall be paid to Lessor within ten (10) days following written demand therefor.

C. Lessee shall maintain at its sole cost and expense and keep in effect by the date of this lease and at all times until the end of the term standard fire and extended coverage insurance, including coverage against vandalism, malicious mischief, and flood, on all buildings and improvements located upon the premises on a full replacement value basis.

The parties agree that "full replacement value" shall be reevaluated by Lessor and Lessee every three years, and that the replacement value of the improvements shall be established to conform to the Marshal Swift Guidelines (or any comparable index agreed to by both parties) which are in effect at the time of each such evaluation.

Lessee shall furnish Lessor with a copy of said insurance policy or other acceptable evidence that the insurance is in effect and in an amount sufficient to satisfy this paragraph.

D. Lessee shall, on demand of Lessor, procure and keep in force such other forms, types, and amounts of insurance as may be appropriate, customary, and generally required for the premises and types of buildings and improvements in question by responsible and reasonable owners of property. Such insurance shall name Lessor as an insured.

**Section 14. HAZARDOUS SUBSTANCES - LESSEE'S OBLIGATIONS:** Lessee shall not, without Lessor's prior written consent, keep on or about the premises, for use, disposal, treatment, generation, storage or sale, any substances designated as, or containing components designated as hazardous, dangerous, toxic or harmful, and/or which are subject to regulation by any federal, state or local law, regulation, statute or ordinance, collectively referred to as

“hazardous substances”.

Section 15. DESTRUCTION BY FIRE OR CASUALTY: In the event the premises are substantially damaged or destroyed by fire or other casualty to the extent that the same shall become unsuitable for the business of Lessee to be conducted thereon and cannot be repaired or restored within thirty (30) days after such occurrence, then Lessor or Lessee may terminate this lease by giving written notice to the other of its election to do so, in the manner provided in Section 24, within thirty (30) days after such damage or destruction. In the event of such termination, Lessee will not be responsible for rental for the premises for the balance of the term nor for damages for breach of covenant, nor shall Lessor in such event be required to rebuild, repair, replace or reconstruct the premises, nor be held for damages for breach of covenant. In such event, however, all unearned rentals shall be returned to Lessee.

Section 16. ASSIGNMENT/SUBLETTING: The Lessee shall not assign this lease nor sublet the whole or any part of the premises without the advance written consent of the Lessor, which consent shall not be unreasonably withheld. Any attempt to assign or sublet the premises without the advance written consent of the Lessor shall be null and void. Any approved assignment or sublease shall not relieve this Lessee, or any personal guarantor of this lease, from the responsibility of paying the rentals accruing under this lease, as provided in Section 3 or from keeping and performing all other obligations herein imposed upon and assumed by Lessee. It is understood and agreed that any consent by the Lessor to any assignment or subletting by the Lessee shall not be considered or construed to be a consent to any subsequent assignment or subletting nor as a waiver of the right of the Lessor to refuse to consent to any subsequent assignment or subletting.

**Section 17. QUIET ENJOYMENT:**

A. Lessee, upon paying the rent and all other sums and charges to be paid by it as herein provided, and observing and keeping all covenants, warranties, agreements, and provisions of this lease on its part to be kept, shall quietly have and enjoy the premises during the lease term, subject to the provisions herein, without hindrance by Lessor.

B. Lessor warrants that it has fee simple title to the premises and the power and authority to execute this lease and to carry out and perform all covenants to be performed by it hereunder.

**Section 18. ACCESS:** Lessor or Lessor's agents and designees shall have the right to enter upon the premises at all reasonable times to examine said area.

**Section 19. CURE BY LESSOR:** If Lessee shall default in the performance of any provision under this lease, and after the notice and cure periods provided in Section 20, Lessor, at its option, may perform the same for the account and at the expense of Lessee. Upon notification to Lessee of the cost thereof to Lessor, Lessee shall promptly reimburse Lessor the amount of that cost, plus interest at the rate of six (6%) percent per annum from the date of incurring of such cost to the date of repayment. In the event of such default by Lessee, Lessor may enter upon the premises for the purpose of causing such provisions to be fulfilled. Such entry shall not be deemed an eviction of Lessee. Lessor's action hereunder shall not be deemed a waiver of Lessee's default. Lessor, at its option, without relinquishing any remedy or right, may separately commence proceedings against Lessee for reimbursement of Lessor and for any other remedies for breach of this lease.

**Section 20. DEFAULT:**

A. In the event any one or more of the following events shall have occurred and shall not have been remedied as hereinafter provided:

1. Lessee's failure to pay any installment of rent when the same shall be due and payable and the continuance of such failure for a period of three (3) days after receipt by Lessee of notice in writing from Lessor, in the manner provided in Section 24, specifying in detail the nature of such failure; or

2. Lessee's failure to perform any of the other covenants, provisions, and agreements herein contained on Lessee's part to be kept or performed and the continuance of such failure without the curing of same for a period of ten (10) days after receipt by Lessee of notice in writing from Lessor, in the manner provided in Section 24, specifying in detail the nature of such failure, or Lessee shall not cure said failure as provided in Paragraph B of this Section 20, then Lessor may, at its option, give to Lessee written notice, in the manner provided in Section 24, of its election to terminate the lease term upon a date specified in such notice, which date shall not be less than twenty (20) business days (Saturdays, Sundays and legal holidays excluded) after the date of receipt by Lessee of such notice from Lessor. Upon the date specified in said notice, the term and estate hereby vested in Lessee shall cease and any and all other right, title, and interest of Lessee hereunder shall likewise cease without further notice or lapse of time, as fully and with like effect as if the entire lease term had elapsed, but Lessee shall continue to be liable to Lessor as provided herein. Simultaneously with the sending of the notice to Lessee, Lessor shall send a copy of such notice to any sublessee of the premises or portions thereof that Lessor may select, in writing from time to time, and any additional persons or parties having an interest in the premises that Lessor may select, in writing, from time to time. The

curing of any default within the above time limits by any of the aforesaid parties or combination thereof, shall constitute a curing of any default hereunder with like effect as if Lessee had cured the same hereunder.

B. In the event that Lessor gives notice of a default of such a nature that it cannot be cured within the period prescribed in Paragraph A-4 of this Section 20, then such default shall not be deemed to continue, so long as Lessee, after receiving such notice, proceeds to cure the default as soon as reasonably possible and continues to take all steps necessary to complete the same within a period of time which, under all prevailing circumstances, shall be reasonable. No default under Paragraph A-4 of this Section 20 shall be deemed to continue if and so long as Lessee shall be proceeding to cure the same in good faith.

C. In the event that any default of Lessee shall be cured in any manner hereinabove provided, such default shall be deemed never to have occurred and Lessee's rights hereunder shall continue unaffected by such default.

D. Upon any termination of the lease term pursuant to Paragraph A of this Section 20, or at any time thereafter, Lessor may, in addition to and without prejudice to any other rights and remedies Lessor shall have at law or in equity, re-enter the premises and recover possession thereof and dispossess any or all occupants of the premises in the manner prescribed by statute relating to summary proceedings, or similar statutes; but Lessee in such case shall remain liable to Lessor as provided herein.

E. In case of any such default, re-entry, termination and/or disposition by summary proceedings:

1. The rent shall become due thereupon and be paid up to the time of such

re-entry, termination and/or disposition;

2. Lessor may re-let the premises or any part thereof, either in the name of Lessor or otherwise, for a term which may, at Lessor's option, be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent, but such re-letting shall not be construed as an acceptance of a surrender of the leasehold interest; and

3. Lessee or the representatives of Lessee shall also pay Lessor as liquidated damages for the failure of Lessee to observe and perform Lessee's covenants herein contained any deficiency between the rent hereby collected on account of the lease of the premises for each month of the period which would otherwise have constituted the balance of the lease term. In computing liquidated damages, there shall be added to the said deficiency such reasonable expenses and counsel fees as Lessor may incur in connection with the default and re-letting. Any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Lessor to collect the deficiency for any subsequent month by a similar proceeding.

Lessor, at its option, may make such alterations, repairs, replacements, and/or decorations in the premises as Lessor, in Lessor's sole judgment, considers advisable and necessary for the purpose of re-letting the premises; and the making of such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Lessee or any personal guarantor from liability hereunder. Lessor agrees to mitigate in good faith all damages and to re-let the premises in the event of any default specified herein.

Section 21. WAIVERS: Failure of Lessor to complain of any act or omission on the part

of Lessee, no matter how long the same may continue, or the receipt of rent by Lessor with knowledge of any breach or default of this lease by Lessee, shall not be deemed to be a waiver by Lessor of any of its rights herein. No waiver by Lessor at any time, express or implied, of any breach of any provision of this lease shall be deemed a waiver of any subsequent breach of the same or any other provision. Failure of Lessor to insist upon strict performance or to exercise any option herein conferred in any one or more instances in the event of default shall not be construed to be a waiver or relinquishment of any such or any other right herein extended to the Lessor.

Section 22. **GOVERNMENTAL REGULATIONS:** During the lease term, Lessee shall, in the conduct of its operations, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, county, town, and city governments and of all other governmental authorities affecting the premises or appurtenances thereto or any part thereof whether the same are in force at the commencement of the lease term or may in the future be passed, enacted, or directed, and Lessee shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of the failure of Lessee to comply with the covenants of this Section 22.

Section 23. **NOTICE OF LITIGATION AND COUNSEL FEES:**

A. Within ten (10) days of Lessee having knowledge of any litigation or other proceeding that shall be commenced against Lessee or against the premises to secure or recover possession thereof or that may affect the interests of Lessor in the premises, Lessee shall give





remedies of Lessor, as provided herein, shall be deemed to be cumulative, and no one of them shall be exclusive of any other, or of any other right, power, or remedy allowed by law.

Section 26. **TIME OF THE ESSENCE:** Time and punctual and exact performance and observation by the Lessor and Lessee of the provisions herein are of the essence of this lease.

Section 27. **SEVERABILITY:** In the event that any provision of this lease shall be declared invalid by any court of competent jurisdiction, such provisions shall be severed from this lease, and such declaration shall not affect the remainder of this lease. This lease shall remain in full force and effect for the balance of its lease term.

Section 28. **INTERPRETATION:** Whenever the singular number is used herein, the same shall include the plural, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only. Upon any sale or assignment of the interest of either Lessor or Lessee herein, their respective successors in interest shall, during the term of this ownership of their respective estates herein, be deemed to be Lessor or Lessee, as the case may be.

Section 29. **SUCCESSORS:** All of the terms, conditions, covenants and agreements of this lease shall extend to and be binding upon the Lessor, Lessee, and their respective heirs, personal representatives, successors and assigns, and upon any person coming into ownership or possession of any interest in the premises by operation of law, or otherwise, and shall be construed as covenants running with the land.

Section 30. **ENTIRE AGREEMENT:** This lease constitutes and shall be construed as the entire agreement of the parties. No oral statement shall have any force or effect. This agreement shall not be modified or canceled except by writing subscribed by Lessor and Lessee.





