COUNTY COUNCIL

OF

TALBOT COUNTY

2019 Legislative Session, Legislative Day No.: May 14, 2019

Resolution No.: 274

Introduced by: Mr. Callahan, Mr. Divilio, Mr. Lesher, Mr. Pack, Ms. Price

A RESOLUTION TO APPROVE EXECUTION OF A LEASE OF A PORTION OF THE BELLEVUE LANDING WHARF, LOCATED AT 5536 BELLEVUE ROAD, ROYAL OAK, MARYLAND 21662, TO OBFY, INC., WHICH OPERATES THE HISTORIC OXFORD-BELLEVUE FERRY, FOR A TERM OF FIVE (5) YEARS WITH UP TO FIVE (5) ONE YEAR (1-YEAR) RENEWAL TERMS FOR GOOD AND VALUABLE CONSIDERATION, BUT NO MONETARY CONSIDERATION, INCLUDING THE OBLIGATION TO RUN THE FERRY SEASONALLY FOR THE BENEFIT OF THE PUBLIC AND TO MAINTAIN THE FERRY SLIP IN GOOD REPAIR

By the Council: May 14, 2019

Introduced, read the first time, and ordered posted, with Public Hearing scheduled on Tuesday, June 11, 2019 at 6:30 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

By order: Susan W. Moran

Susan W. Moran, Secretary

A RESOLUTION TO APPROVE EXECUTION OF A LEASE OF A PORTION OF THE BELLEVUE LANDING WHARF, LOCATED AT 5536 BELLEVUE ROAD, ROYAL OAK, MARYLAND 21662, TO OBFY, INC., WHICH OPERATES THE HISTORIC OXFORD-BELLEVUE FERRY, FOR A TERM OF FIVE (5) YEARS WITH UP TO FIVE (5) ONE YEAR (1-YEAR) RENEWAL TERMS FOR GOOD AND VALUABLE CONSIDERATION, BUT NO MONETARY CONSIDERATION, INCLUDING THE OBLIGATION TO RUN THE FERRY SEASONALLY FOR THE BENEFIT OF THE PUBLIC AND TO MAINTAIN THE FERRY SLIP IN GOOD REPAIR

WHEREAS, Local Government Article ("LG") § 10-312, Md. Code Ann., states that the County may dispose of any real or leasehold county property provided that "before the county makes any disposition, grant, or lease of county property, the county shall publish notice of the disposition, grant, or lease once a week for 3 successive weeks in at least one newspaper of general circulation in the county and shall include the terms of compensation to be received and give opportunity for objections."

NOW, THEREFORE, BE IT RESOLVED by the County Council of Talbot County, Maryland that:

1. The County Council finds that:

   (a) The County has duly advertised the proposed transfer and given opportunity for public comment pursuant to LG § 10-312;

   (b) The requirements of LG § 10-312 have been fulfilled; and,

   (c) The subject space is not currently needed for public use and the County is lawfully authorized to lease the space on the terms and conditions set forth herein.

2. The terms of the proposed lease are attached hereto as Exhibit "A", which is incorporated by reference herein, shall be and are hereby APPROVED.

3. The Council President is hereby authorized and directed to execute the same on behalf of Talbot County, Maryland.

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately upon its date of passage.

PUBLIC HEARING

Having been posted and Notice, Time and Place of Hearing, and Title of Resolution No. _____having been published, a public hearing was held on _____, 2019, in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

BY THE COUNCIL

Read the second time:

Enacted: _____

By Order: _____
Susan W. Moran, Secretary

Pack -

Divilio -

Callahan -

Price -

Lesher -

EFFECTIVE: _____

Exhibit "A"

LEASE AGREEMENT

THIS LEASE, dated this _____ day of _____2019, is made by and between **TALBOT COUNTY, MARYLAND**, a charter county and political subdivision of the State of Maryland, ("**Lessor**") and **OBFY, Inc.**, a Maryland corporation with its principal office located at 27456 Oxford Rd., Oxford, Maryland 21654 ("**Lessee**").

WHEREAS, Lessee operates a ferry between Oxford, Maryland, and Bellevue, Maryland, on the waters of the Tred Avon River; and,

WHEREAS, Lessor owns the landing, wharf, piers, and associated water structures at the Bellevue Landing, Bellevue, Maryland, with a street address of 5536 Public Landing Rd., Royal Oak, Maryland 21662, further described as Tax Map 46, Grid 18, Parcel 46 (the "**Landing**"), a portion of which Lessee uses to load, unload, and transport pedestrians, passengers, vehicles, and freight; and,

WHEREAS, the parties desire to formalize their understanding regarding the terms and conditions of the use of the Landing;

NOW, THEREFORE, WITNESSETH, that for and in consideration of Lessee's undertaking to operate and maintain a ferry between the Town of Oxford, and the Village of Bellevue, in Talbot County, Maryland, and for NO CASH CONSIDERATION and for the mutual promises, covenants, conditions, and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of Rights.

Subject to the terms and conditions of this Lease and in addition to any other rights expressly enumerated herein, Lessor does hereby grant to Lessee: (i) the sole and exclusive right to operate a commercial ferry service between Bellevue and Oxford from the Landing, (ii) a lease to that portion of the Landing comprising the steel ramp, cables, and the pilings and docking facilities at the Landing which form the slip for the ferry boat (the "Facilities") to use as a point of arrival and embarkation in the operation of said commercial ferry service and to load, unload, and transport pedestrians, passengers, vehicles, and freight to and from the Oxford landing on the opposite side of the Tred Avon River; (iii) a non-exclusive right-of-way over the wharf to facilitate access to the ferry as described in Paragraph 7 below; (iv) the right to dock the ferry at the Bellevue Public Landing overnight, and during periods of non-operation; and, (v) the right to hook up to and use electric and water service at the Bellevue Public Landing as reasonably necessary for operation of the ferry, provided that Lessee shall have no claim against the Lessor for loss or interruption of such utilities or inability to use the same.

2. Term of Lease

This Lease and the rights and obligations herein shall commence upon full execution and continue for a term ending on June 30, 2024 (completing the "**Initial Term**"). Thereafter, this Lease shall automatically renew for up to five (5) additional one (1) year terms, unless terminated by written notice by either party to the other at least six (6) months prior to then expiring term.

3. Rent

Lessee is subject to the jurisdiction of the Maryland Public Service Commission with regard to the rates it may set and charge for providing ferry service. Because the amount of rent would be included in the Lessee's overhead costs and passed on to the general public through an increase in fares, subject to the terms and conditions of Paragraph Eight (8) concerning operation of the ferry for the public benefit, and subject to Lessee's performance of all other terms and conditions of this Lease, Lessee may use Lessor's facilities rent-free.

4. Taxes, Assessments, and Fees

Lessee shall pay, as the same shall become due and payable, and before they become delinquent, all taxes, assessments, tariffs, fees, and other public charges levied upon or assessed against the Lessee or the Landing arising by reason of Lessee's occupancy, use or possession of the Facilities, excluding any annual public landing user fee imposed by Talbot County on the general public.

5. Property, Liability and Other Insurance

Lessee shall continue in effect, all insurance coverages with respect to, and relating to the use of the Facilities and operation of the ferry of the types, in the amounts, with deductibles and with companies satisfactory to Lessor to include, as a minimum, property damage liability coverage in amounts not less than Five Hundred Thousand Dollars ($500,000) and bodily injury liability coverage in amounts not less than One Million Dollars ($1,000,000). Such insurance policy or policies shall provide that each insurance company may not cancel the coverage for any reason whatsoever without mailing such notice of cancellation to the Lessor at least twenty (20) days prior to the effective date of cancellation. Lessee shall bear the cost of such insurance and shall pay all premiums or assessments directly to each insurance company. Lessee shall furnish Lessor with a certificate from each insurance company providing such coverage not less than ten (10) days prior to execution hereof, and, thereafter, at least ten (10) days prior to the start of each Lease year, Lessee shall furnish Lessor with renewal certificates from each insurance company, evidencing such continuing coverages. All such certificates shall show Lessor named as an additional insured party.

6. Use of Facilities

Lessee may use and occupy the Facilities only for the purposes of operating a ferry between Bellevue and Oxford and for any other lawful purpose which is customary or incidental thereto, provided that such use does not unreasonably interfere with other lawful users of the Landing, including without limitation recreational boaters and watermen. No unlawful business, occupation, or activity shall be carried on by Lessee or permitted on the Facilities. The Facilities shall be used in a careful and prudent manner and no waste, damage, or destruction shall be committed or permitted thereon.

7. Right of Way Over Wharf

Lessor hereby grants to Lessee the right, in common with others legally entitled to use the same, to use the wooden wharf leading to and from the Facilities to the terminus of the Bellevue-Royal Oak Road as a means of access for motor vehicles, pedestrians and bicycles boarding and embarking from the ferry. Neither this grant, nor any other provision of this Lease, shall confer upon the Lessee or any successor or assign, any right to require the County to repair, maintain, construct or reconstruct the wharf, road, or any part thereof. The County reserves the right in the exercise of its discretion to discontinue use of or to re-locate the wharf.

8. Operation

Lessee shall establish, continue to provide, and maintain at its expense, a ferry boat or boats to ply between the Town of Oxford and the Village of Bellevue. The said ferry boats shall accommodate not less than nine (9) automobiles or trucks and shall be designed, constructed, and maintained as to assure the safe transport of all passengers, vehicles, and freight offered for carriage between said points; provided however, that the receiving, loading, and transporting of extra heavy or hazardous freight shall be optional with the Lessee, and, provided further that Lessee may refuse to transport any truck too heavily loaded for safe transportation. Lessee agrees to operate the ferry continuously on a shuttle basis between the hours of 9:00 a.m. and sunset on each week-day, subject to Lessee's election to offer other, additional week-day and week-end hours of operation in the summer months, scheduled or unscheduled. Operation of the ferry may be temporarily interrupted in Lessee's sole judgment due to inclement weather, storms, rain, wind, ice, snow, or high seas. Operation of the ferry may be interrupted by unavoidable delays from the breakdown of machinery or necessary repairs to the boat(s) provided, however, no such delay shall continue for more than four (4) weeks. Notwithstanding any other provision of this Agreement to the contrary, Lessee shall be permitted to close its ferry operations for the months of November through April of each year during the term hereof.

9. Repairs and Alterations

Lessee agrees to accept the Facilities in the condition existing at the commencement of the Initial Term and shall use the Facilities in a careful and prudent manner, reasonable wear and tear excepted. Lessee agrees, at Lessee's expense, to make all non-structural repairs and replacements, whether or not deemed to be a capital expense, in and about the Facilities, which may be necessary to preserve and maintain the Facilities in the same condition of repair as exists at the commencement of the Lease, ordinary wear and tear alone excepted, except that Lessee shall have no obligation to repair or replace the ramp or any pilings in the ferry slip unless the same are damaged by Lessee's negligence. Without limitation of the foregoing, Lessee shall maintain the cables in good repair, at its expense, in a condition satisfactory to the Lessor and shall also be

responsible for purchase, installation, repair, and replacement of the one-inch (1") thick oak wear boards on the pilings of the ferry boat slip. At the expiration or earlier termination of this Lease, any alteration to the Facilities which Lessee has made during the Lease Term shall, at Lessor's option, either remain with the Facilities and become the property of Lessor, or shall be removed by Lessee at Lessee's expense and the Facilities restored to their former condition.

10. Demolition of Improvements
Except as necessary in connection with construction of improvements approved by Lessor, Lessee shall not demolish any improvement on the Facilities without the prior written consent of Lessor.

11. Indemnification
In no event shall Lessor, its officials, employees, agents, servants, or contractors be held liable to or by Lessee, its officers, employees, agents, servants, or contractors, or to or by any third person, firm, or corporation for any act or omission arising out of or based upon the design, maintenance, operation, or non-operation of the ferry or Lessee's use or maintenance of the Facilities, including, without limitation, any claim, suit, action, demand, attorney's fees, or cause of action in law, equity, or admiralty. Lessee shall indemnify Lessor, its officials, employees, agents, servants, and contractors and hold them harmless from all liability and expense of any kind, nature, or description arising from or relating to any such claim.

12. Assignment and Subletting
Neither Lessee nor Lessee's successors or assigns shall transfer, assign, or sublet this Lease, or permit the Facilities or any part thereof to be used by other vessels without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

13. Rates
Subject to any prohibition imposed by law or by the Maryland Public Service Commission regarding fares or rates, school children and school teachers during the school term, and Talbot County employees and vehicles while on County business shall be transported free.

14. Quiet Enjoyment
Lessor covenants that Lessee, upon performing and observing all the terms, covenants, conditions, and provisions of this Lease, shall quietly hold, occupy, and enjoy the Facilities during the term of the Lease without hindrance, disturbance, or ejection by Lessor or any party claiming through or under Lessor, but Lessor shall not be liable to Lessee for any interruption in service or loss of business or profits due to Lessee's inability to use the Facilities for any cause beyond Lessor's control.

15. Surrender of the Facilities
Upon the expiration or earlier termination of this Lease, Lessee shall quit and surrender the Facilities to Lessor in good order and condition, ordinary wear and tear and acts of God excepted.

16. Governing Law and Waiver of Jury Trial.
This Lease shall be construed and applied in accordance with the laws of the State of Maryland. The parties hereby waive their right to a jury trial in any proceeding to enforce the terms of this Lease.

17. Notices
All notices to be give hereunder by either party to the other shall be directed to the following addresses or to such other addresses as are designated from time to time in writing to the other:

LESSOR:	LESSEE:
Mr. R. Andrew Hollis	Capt. Judy L. Bixler, President
Talbot County Manager	OBFY, Inc.
11 North Washington Street	27456 Oxford Rd.
Easton, Maryland 21601	Oxford, Maryland 21654

18. Lessor's Support of Lessee's Use of Oxford Landing
Lessor covenants and agrees to take all reasonable steps to support Lessee's continued use of the landing historically used by the ferry on the Oxford side of the Tred Avon River and upon request shall communicate such support to the State Highway Administration and/or the Town of Oxford as may be reasonably necessary to assist Lessee in securing such facilities during the term of this

lease, including any extensions. Nothing in this paragraph shall require Lessor to provide any financial assistance or support to Lessee in connection therewith.

19. Entire Agreement
This Lease contains the entire agreement between the parties hereto and neither the Lessor nor Lessee shall be bound by any terms, statements, conditions, or representations, oral or written, expressed or implied, not herein contained.

20. Default and Remedies
In the event either party is in material default under this Lease, the non-defaulting party may elect to terminate this Lease, provided written notice is given to the defaulting party at least fifteen (15) days prior to the date of termination, during which time the defaulting party shall have the opportunity to cure the default. If the defaulting party is diligently pursuing a cure, the fifteen (15) day period shall be extended for such additional periods of time, not to exceed sixty (60) days, as are reasonably needed to accomplish such cure. In addition to the foregoing, the parties reserve to themselves all additional rights and remedies available under the law to enforce the terms of this Agreement.

21. Compliance with Applicable Law
In using the Facilities under this Lease, Lessee shall comply with all applicable federal, State, and local laws, rules, and regulations, including obtaining any and all required governmental approvals needed to authorize any improvements Lessee makes to the Landing and/or Facilities.

22. Waiver and Modification
The failure of either party to insist, in one or more instances, upon strict performance of any obligation of this Lease or to exercise any right herein appearing, shall not be construed as a waiver or relinquishment of such obligation, right, but the same shall continue and remain in full force and effect. Further, the terms of this Lease may be modified only if done so in writing and signed by both parties.

23. Successors and Assigns
This Lease shall be binding upon both parties and the rights and obligations hereunder shall inure to the benefit of their respective heirs, successors, and assigns.

24. Public Landing
Nothing in this Lease is intended to prevent the Landing's continued use as a public landing.

IN WITNESS WHEREOF, the parties hereto have executed this Lease under seal.

WITNESS

_____
(SEAL)

TALBOT COUNTY, MARYLAND

_____

By: Corey W. Pack, President
Talbot County Council
Date: _____

OBFY, INC.

_____
(SEAL)

_____

By: Judy L. Bixler, President
Date: _____

STATE OF MARYLAND, COUNTY OF TALBOT, to wit:

I hereby certify that on this ____ day of _____, 2019, before me, a Notary Public in

and for the State and County aforesaid, personally appeared Corey W. Pack, who executed the foregoing Lease Agreement for the purposes therein contained and who acknowledged that consideration for this transfer is as stated.

Witness my hand and seal.

_____
NOTARY PUBLIC

My Commission expires:

STATE OF MARYLAND, COUNTY OF TALBOT, to wit:

I hereby certify that on this ____ day of _____, 2019, before me, a Notary Public in and for the State and County aforesaid, personally appeared Judy L. Bixler, who executed the foregoing Lease Agreement for the purposes therein contained and who acknowledged that consideration for this transfer is as stated.

Witness my hand and seal.

_____
NOTARY PUBLIC

My Commission expires: