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AGENDA COVER MEMO

AGENDA DATE: December 17, 2003

TO: LANE COUNTY BOARD OF COMMISSIONERS

DEPT.: LANE COUNTY OFFICE OF LEGAL COUNSEL

PRESENTED BY: Teresa J. Wilson, County Counsel 

AGENDA ITEM TITLE: In the Matter of Ratifying the Authority of the County Administrator to Execute a Lease with the Oregon Military Department

I. MOTION: I MOVE TO RATIFY THE AUTHORITY OF THE COUNTY ADMINISTRATOR TO EXECUTE A LEASE OF THE CURRENT NATIONAL GUARD ARMORY SITE BACK TO THE OREGON MILITARY DEPARTMENT

II. ISSUE OR PROBLEM: The County has agreed to purchase the current National Guard Armory site, and lease it back to the Oregon Military Department (hereinafter, OMD). The County Administrator, at the conclusion of protracted negotiations and to implement the underlying action, executed the lease. The Board now needs to ratify his authority to do so.

III. DISCUSSION:

A. Background. On July 2, 2003, the Board authorized the execution of an amendment to a 1998 Intergovernmental Agreement with the State, whereby the County acquires the current National Guard Armory site, and then agrees to lease it back to the OMD. I will not repeat the information in that earlier Board packet here, but if anyone needs an additional copy for reference, please let me know. Pursuant to that Agreement, the OMD requested and received payment in order to enable it to close the transaction for its new site. The Agreement provided that within 30 days of that event, the OMD is to deliver a statutory warranty deed for its current site to the County, and the parties are to execute a lease back to OMD of that site. We are beyond the 30 days due to protracted lease negotiations, but the good news is the last issues were resolved the week of December 8. At the conclusion of those negotiations and consistent with the Board's intent last July, the County Administrator executed three copies of the lease, so that the OMD could begin processing them through the State system. The Board now needs to ratify his authority to execute the documents.

B. Analysis. The Lease, as currently drafted, is of the current OMD site except for that which is currently being used for the Looking Glass programs at the Serbu campus under an earlier lease from the State. The proposed Lease to the OMD has a one-year term that began on October 17. It provides for automatic annual renewals until such time as OMD has completed construction of their new facilities. The lease payments are \$1/year, as agreed to in the Intergovernmental Agreement.

Other aspects of the Lease provide that OMD is not to place any liens on the property, and to only use the facilities as allowed by law. In order to accommodate the programs on the Youth Campus, in particular the substance abuse programs, the OMD has agreed to work with their lessees and permittees to prohibit the display and consumption of alcohol in the parking areas. The OMD is responsible for any environmental cleanup that may be needed on the property

when they vacate, and for the abatement of any asbestos that may exist which they disturb; the County will have the responsibility of asbestos abatement of the building when we take possession. The County will thoroughly inspect the property within the first 90 days, and periodically thereafter; those inspections will serve to permit the County and OMD to develop and negotiate regarding any situations that have the potential of affecting the long-term structural integrity of the facilities, and to address matters that can prevent deterioration.

C. Alternatives/Options. The Board can choose to direct that any alternative provisions it desires be negotiated with OMD. The Board did commit in the Intergovernmental Agreement to a lease back, which means that not agreeing to some type of a lease would be a breach of that Agreement.

D. Recommendations. I recommend the Order as prepared, which ratifies the authority of the County Administrator to execute the lease in a form substantially similar to that which is attached to the Order.

V. ATTACHMENTS:

Board Order
Lease

IN THE BOARD OF COUNTY COMMISSIONERS
OF LANE COUNTY, OREGON

ORDER NO. 03-12-17-

) IN THE MATTER OF RATIFYING
) AUTHORITY TO THE COUNTY
) ADMINISTRATOR TO EXECUTE A
) LEASE WITH THE OREGON MILITARY
) DEPARTMENT

WHEREAS, Lane County and the State of Oregon, acting by and through its Military Department, known as the Oregon Military Department (OMD), have been working cooperatively since 1994 towards the OMD acquiring a site and funding for a new armed forces reserve center complex, and towards a sale of the existing Eugene National Guard Armory site to the County for use in conjunction with the Lane County Juvenile Justice Center and Youth Campus, and

WHEREAS, by Intergovernmental Agreement dated December 31, 1998, and by an Amendment No. 1 to the Intergovernmental Agreement, dated July 23, 2003 and authorized by the Board of County Commissioners in Board Order No. 03-7-2-3, OMD agreed to sell and the County agreed to buy the existing National Guard Armory site, and

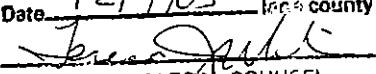
WHEREAS, as part of the Agreement and Amendment, the parties also agreed that concurrently with the conveyance by OMD of a statutory warranty deed, the County would lease the current site back to OMD on certain terms and conditions, for a period of time necessary to enable OMD to construct its new complex, and

WHEREAS, the parties have negotiated a lease which the County Administrator has executed, and the OMD is prepared to provide a statutory warranty deed to the County in conformity with the Agreement and Amendment,

NOW, THEREFORE IT IS HEREBY ORDERED that the Board reaffirms its support for a lease back of the Oregon Military Department of the existing armory site for a reasonable period of time to enable construction of a new armed forces reserve center, and it is further

ORDERED that the action of the County Administrator in executing the lease to the Oregon Military Department in a form substantially similar to that attached as Exhibit A and incorporated by this reference is hereby ratified.

DATED this 17th day of December, 2003.

APPROVED AS TO FORM
Date 12/19/03 Lane County

OFFICE OF LEGAL COUNSEL

Peter Sorenson, Chair
Lane County Board of Commissioners

LEASE

This Lease is entered into by and between LANE COUNTY, a political subdivision of the State of Oregon, hereinafter "LESSOR", and the STATE OF OREGON acting by and through its Military Department, hereinafter "LESSEE".

RECITALS:

A. Lane County and the State of Oregon, acting by and through its Military Department, known as the Oregon Military Department (OMD), have been working cooperatively since 1994 towards the OMD acquiring a site and funding for a new Armed Forces Reserve Center Complex, and towards a sale of the existing Eugene National Guard Armory site (Premises) to the County for use in conjunction with the Lane County Juvenile Justice Center and Youth Campus.

B. On July 12, 1994, OMD leased a portion (1.32 acres) of the Premises to Lane County, to be used for the first project of the County's Youth Campus.

C. By Intergovernmental Agreement dated December 31, 1998, and by an Amendment No. 1 to the Intergovernmental Agreement, dated July 23, 2003, OMD agreed to sell and the County agreed to buy the Premises. This Agreement and Amendment are hereinafter referred to collectively as the Intergovernmental Agreement, and are incorporated in this Lease by this reference. The parties also agreed that concurrently with the conveyance by OMD of a statutory warranty deed to the Premises, the County would lease the Premises back to OMD on certain terms and conditions, for a period of time necessary to enable OMD to construct its new complex.

The parties therefore agree as follows:

SECTION 1. AGREEMENT TO LEASE

LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR the Premises on the terms and conditions set forth below. The Premises are more fully described in Exhibit A attached hereto and incorporated by this reference. The Premises leased hereby do not include the property leased by Lane County from the OMD as described in the instrument recorded July 26, 1994, Reception No. 9454570, Lane County Official Records.

SECTION 2. TERM

2.1 Term. The term of this Lease shall begin on October 17, 2003, and shall continue to midnight on October 16, 2004, subject to the renewal provisions stated in Section 2.2.

2.2 Renewal. If the Lease is not in default, it will automatically renew from year to year for a period of time required for LESSEE to complete construction of the Armed Forces Reserve Center Complex to be built on property recently purchased by LESSEE and located in Springfield, Oregon (or on any subsequently acquired property that LESSEE determines to be most suitable for location of the Armed Forces Reserve Center Complex), and will terminate on the date LESSEE vacates the Premises and occupies that new Armed Forces Reserve Center Complex. LESSEE agrees to regularly advise LESSOR of the progress of its activities in

funding and building a new Armed Forces Reserve Center Complex. LESSOR and LESSEE agree to work cooperatively to evaluate all options available to the parties to reduce the term of the Lease and to facilitate LESSEE's vacation of the Premises upon occupancy of the new Armed Forces Reserve Center Complex.

SECTION 3. RENT

3.1 Base Rent. LESSEE shall pay to LESSOR as base rent the sum of \$1.00 per year, payable not later than November 1 of each year.

3.2 Additional Rent. All taxes, insurance costs, utility charges or other costs that LESSEE is required to pay by this Lease, and any other sum LESSEE is required to pay LESSOR or third parties shall be additional rent.

SECTION 4. USE OF PREMISES

4.1 Permitted Use. The Premises shall be used for a National Guard Armory as specified under applicable laws and regulations, and such further activities as are authorized by Oregon law, including those described in ORNGR 405-2, Rental of Facilities and Installations.

4.1.1 Under ORS Chapter 297, LESSEE is required to earn a substantial portion of its budget through revenues derived from rental of facilities and equipment, vending machine commissions, and recycling. ORS 396.540 defines authorized use/rentals of armories by veteran's organizations, federal, state, county, and municipal organizations, persons, firms, associations or corporations.

4.1.2 LESSOR agrees that LESSEE may rent or authorize use of that portion of the Premises not required for military purposes for any lawful revenue generating activity, including the activities enumerated above, during the term of the Lease.

4.1.3 LESSOR and LESSEE agree to consult regularly during the term of the Lease to provide a schedule/calendar of LESSEE'S pending uses of the Premises, including their permittees, and to cooperate with each other to avoid conflicts that will affect the productive use and enjoyment of the Premises by both parties; provided, that LESSEE shall have no obligation to alter scheduled activities or events on the Premises.

4.1.4 LESSEE agrees to include in any new leases or licenses that grant to any third party permission to use the Premises under the authority of ORNGR 405-2, a provision that prohibits the display or consumption of alcoholic beverages in parking areas used by such third parties, and LESSEE agrees to attempt in good faith to negotiate and execute an amendment to existing third party leases and licenses that will include this prohibition in such existing leases and licenses.

4.1.5 LESSEE shall not use the Premises for any other purpose without the consent of LESSOR, which consent shall not be withheld unreasonably.

4.2 Restrictions on Use. In connection with the use of the Premises, LESSEE shall:

4.2.1 Conform to all applicable laws and regulations of any public authority affecting the Premises and its use, and correct at LESSEE'S own expense any failure of compliance created through LESSEE'S fault or by reason of LESSEE'S use, but LESSEE shall not be required to make any structural changes to effect such compliance unless such changes are required because of LESSEE'S specific use.

4.2.2 Notwithstanding any other provision of this Lease, refrain from entering into any contractual or other arrangement with a user of the Premises that in any manner jeopardizes the tax-exempt status of the County-issued general obligation bonds (or any refunding bonds), the proceeds of which financed the acquisition of this property by the LESSOR.

4.2.3 Refrain from loading the electrical system, floors or other infrastructure beyond the point considered safe by a competent engineer or architect selected by LESSOR.

4.2.4 Refrain from and not suffer any waste, damage, disfigurement or injury to the Premises or any improvements, other than ordinary wear and tear of the type, degree and nature to be expected from the kinds of operations conducted by LESSEE on the Premises and the types of uses to which LESSEE puts the Premises.

4.3 Hazardous Substances.

4.3.1 Environmental Assessment and Required Cleanup. At least 60 days prior to the LESSOR assuming possession of the Premises upon expiration or termination of this Lease, the LESSEE shall provide the LESSOR with a Level I Environmental Site Assessment. If the Level I assessment indicates that the Premises merits further investigation, a Level II assessment shall be conducted at LESSEE'S expense. The LESSOR shall cooperate with the LESSEE and LESSEE'S consultants to facilitate the Level I and II assessment and report preparation. In the event that the Level I or Level II assessment indicates the presence of environmental contamination and the need for cleanup as determined by state or federal law, the LESSEE will have 30 days within which to initiate all necessary environmental cleanup. If the required cleanup is not initiated by LESSEE promptly, or if LESSEE does not proceed diligently to completion, the LESSOR may initiate or take over any cleanup activity, and LESSEE agrees to pay all costs and expenses incurred by LESSOR to perform the necessary cleanup.

4.3.2 Hazardous Substances during Lease. During the period from the date of this Lease through the time possession is delivered to the LESSOR through expiration or termination of this Lease, LESSEE shall be responsible for ensuring that there are no environmentally hazardous materials or waste on or under the Premises, or that if there are any, that they are managed in a manner consistent with applicable environmental laws and regulations. LESSEE shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises.

4.3.3 Definition. The term Environmental Law shall mean any federal or state statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety, or the environment. The term Hazardous Substance shall mean

any hazardous, toxic, infectious, or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

SECTION 5. INSPECTION OF PREMISES

5.1 Initial. Within 30 days of the beginning of this Lease, LESSOR shall have the right to initiate, and 90 days to complete, a thorough physical and structural inspection of the Premises. The inspection shall be conducted in accordance with the security policies and procedures of the LESSEE, and LESSEE shall have the right to accompany LESSOR'S authorized representatives who perform the inspection. LESSOR shall provide LESSEE with a copy of the inspection report. This report shall establish the condition of the Premises and all buildings thereon as of the beginning of this Lease.

5.2 Periodic. Thereafter, LESSOR may perform a periodic (once every two-three years) inspection of the Premises, after giving LESSEE reasonable notice (not less than 30 days) of the desire to do so. The inspection shall be conducted in accordance with LESSEE'S security policies and procedures. LESSEE shall be entitled to a copy of any written report of the periodic inspections. The purpose of these inspections is to provide the parties with information and to identify any situation which has a likely potential of affecting the long-term structural integrity of the facilities. Once such a situation is identified, the parties' representatives will consult and cooperate within their respective governmental limitations to address any major repair or replacement to maintain the condition of the premises and prevent deterioration.

5.3 Asbestos. LESSEE will provide LESSOR with copies of any existing asbestos survey of the Premises. LESSEE has no obligation by virtue of this lease to remove or abate any asbestos that may be present, unless LESSEE performs any alterations pursuant to Section 5, or engages in any other activity which disturbs any existing asbestos or otherwise makes it friable, in which case, LESSEE shall be obliged to manage the disturbance in a manner that meets all legal requirements.

SECTION 6. REPAIRS AND MAINTENANCE

6.1 LESSEE'S Obligations. LESSEE shall maintain, repair and replace the Premises and all improvements as necessary in order to keep them in good order, condition and repair throughout the term of this Lease, ordinary wear and tear excepted, and in accordance with all applicable laws, rules, regulations and ordinances of federal, state, county, municipal or other governmental agencies having or claiming jurisdiction. LESSEE'S obligations shall extend to both structural and nonstructural items and to all maintenance, repair and replacement work, including but not limited to, unforeseen and extraordinary items.

6.2 LESSOR'S Obligations. LESSOR shall have no obligation to make or perform any repairs, improvements, alterations, rebuilding or replacements to the Premises during the term of the Lease.

SECTION 7. ALTERATIONS

7.1 Alterations. LESSEE 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 LESSEE shall deem necessary or desirable on the following conditions:

7.1.1 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.

7.1.2 All such work shall be done in a good and skillful manner in compliance with all applicable building and zoning laws and all other laws, ordinances, orders and requirements of all authorities having or claiming jurisdiction.

7.2 Alterations over \$50,000. If the Alteration is over \$50,000, LESSEE shall comply with each of the following conditions:

7.2.1 Obtain all necessary land use approvals or permits, building permits or any other governmental permit or approval required prior to commencing work and comply with all governmental laws, rules and regulations applicable to the Alteration.

7.2.2 Deliver to LESSOR for LESSOR'S reasonable approval two (2) sets of preliminary plans and specifications prepared by an architect or engineer licensed in the State of Oregon which are sufficient to enable LESSOR to make an informed judgment about the design and quality of the Alteration. LESSOR shall not unreasonably disapprove such plans and specifications. Approval or disapproval shall be communicated to LESSEE in the manner provided for notices within ten (10) days after receipt of complete plans and specifications by LESSOR. Any disapproval shall be accompanied by a statement of the reasons for such disapproval. Following any disapproval LESSEE may elect either to revise the plans and specifications and resubmit them to LESSOR pursuant to this Paragraph or to contest the reasonableness of the disapproval. LESSOR'S approval or disapproval under this Paragraph is recognized as being only in its role as landowner, and does not affect its rights or duties as a regulatory governmental entity. The Alteration shall conform in all significant respects with the approved plans and specifications except as otherwise authorized in writing by LESSOR.

7.2.3 Deliver to LESSOR such other proofs and copies as LESSOR shall reasonably request, including without limitation, proof that workers' compensation insurance has been procured to cover all persons employed in connection with the Alteration, and proof of issuance of all building and other permits required for the Alteration.

7.2.4 If the Alteration is of sufficient size to require competitive bidding under the laws of the State of Oregon, deliver to LESSOR a performance bond to guarantee the performance of the Alteration work and the payment of laborers and material suppliers, issued by a company licensed to do business in the State of Oregon, in a form sufficient to meet the provisions of ORS ch. 279 and in an amount equal to the full amount of the Alteration.

7.3 Completion of Alteration. LESSEE shall prosecute the Alteration work to completion with diligence. LESSEE shall pay or cause to be paid the total cost of the Alteration.

7.3.1 LESSEE shall pay or cause to be paid prevailing wages, if required by law, for the Alteration in full conformance with state law.

7.3.2 LESSEE shall indemnify LESSOR against all loss, cost, expense and liability arising out of or connected with the Alteration and with compliance with all building and land use laws, regulations and permits and with all laws and regulations relating to public improvements. LESSEE shall secure the completion of the Alteration free from all liens and claims of contractors, subcontractors, mechanics, laborers and material suppliers.

SECTION 8. OWNERSHIP OF THE IMPROVEMENTS

All improvements constructed on the Premises by LESSEE shall be deemed as owned by LESSEE until expiration or sooner termination of this Lease. All improvements located on the Premises at the expiration or sooner termination of this Lease shall become the property of LESSOR, free and clear of all claims of LESSEE or anyone claiming under LESSEE, and LESSEE shall indemnify and defend LESSOR against all liability and loss arising from such claims. Nothing in this Section 8 shall alter other provisions of this Lease, including without limitation restrictions on removal or alteration of the building on the Premises.

SECTION 9. TAXES AND ASSESSMENTS; UTILITIES

9.1 Waiver or Exemption of Property Taxes. LESSEE shall be responsible for taking any and all steps necessary to seek any applicable waiver or exemption for real or personal property taxes or general or special property assessments. LESSOR shall cooperate as necessary to enable LESSEE to seek such waiver or exemption. If LESSEE fails to file for such waiver or exemption in a timely manner, LESSEE shall be responsible for payment of any resulting taxes or assessments.

9.2 Utilities. LESSEE shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation and maintenance of the Premises, including but not limited to charges for fuel, electricity, natural gas, water, sewage, telephone, refuse collection and all other services or utilities used on or in connection with the Premises.

SECTION 10. DAMAGE AND DESTRUCTION

10.1 Reconstruction After Partial Damage. If any building or other improvement on the Premises is partially damaged or destroyed by fire or any other cause at any time during the Lease term and Paragraph 10.2 does not apply, whether or not covered by insurance, LESSEE shall promptly repair the damage and restore the improvement. The completed repair, restoration or replacement shall be equal in value, quality and use to the condition of the improvement immediately before the damage.

10.2 Destruction. If the Premises are destroyed or damaged such that the cost of repair exceeds 50% of the value of the structure before the damage, either party may elect to terminate the Lease as of the date of the damage or destruction by notice given to the other in writing not more than 45 days following the date of damage. In such event, all rights and obligations of the parties shall cease as of the date of termination except those duties of LESSEE relating to Paragraph 4.3 Hazardous Substances. In addition, LESSEE shall pay over to LESSOR the proceeds of any applicable insurance. If neither party elects to terminate, LESSEE shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction.

10.3 Work Deemed to Be Alteration. Any work undertaken pursuant to this Section shall be deemed to be Alteration and shall be subject to the conditions of Alteration specified in Section 7.

SECTION 11. CONDEMNATION

11.1 Total or Substantial Taking.

11.1.1 A taking or condemnation shall be considered to be total or substantial if it includes all of the Premises or so much of the Premises that a reasonable amount of reconstruction would not make the land and improvements a practical development and reasonably suited for the uses and purposes for which the Premises were used just prior to the condemnation.

11.1.2 In the event of a total or substantial taking, the Lease shall terminate as of the date title or possession passes to the condemning authority. All rent, additional rent and other charges payable by LESSEE under this Lease shall be prorated as of the date of termination.

11.1.3 LESSOR shall be entitled to receive, regardless of when the taking occurs, that portion of the award which represents the value of the Premises considered as unimproved and encumbered by this Lease, plus the value of the site improvements, together with interest and costs in proportion to such land value.

11.1.4 LESSEE shall be entitled to the balance of the award.

11.1.5 The portion of the award received by LESSEE shall be used first, to pay any real and personal property taxes which are a lien on the Premises, and thereafter, for any legitimate purpose of LESSEE.

11.2 Partial Taking.

11.2.1 This Paragraph 11.2 shall apply to any taking or condemnation which is not subject to Paragraph 11.1.

11.2.2 LESSOR shall be entitled to receive the portion of the award which represents the value of the Premises considered as unimproved and unencumbered by this Lease, plus the value of the site improvements, together with interest and a proportionate share of the costs awarded.

11.2.3 LESSEE shall be entitled to receive the entire balance of the award.

11.2.4 LESSEE shall promptly restore the building and all improvements on the Premises as nearly as reasonably possible to the condition existing prior to the taking or condemnation. The award balance shall be used for such repair and restoration. To the extent that the award balance is insufficient for that purpose, LESSEE shall nevertheless make such repairs and restorations at LESSEE'S expense.

11.3 Participation and Proceedings. Either party receiving any notice of intended taking, any service of legal process relating to condemnation or any other notification in connection with any taking, condemnation or purchase, sale or transfer in lieu of condemnation shall promptly give the other party notice of such receipt. LESSOR and LESSEE shall each have the right to represent its respective interest in each such proceeding or negotiation and to make full proof of its claims. No sale, transfer, agreement or settlement with the condemning authority shall be made without the consent of LESSOR and LESSEE. For purposes of this Lease, taking or condemnation includes a sale to a purchaser with the power of eminent domain in the face of a threat or the probability of the exercise of the power.

SECTION 12. LIABILITY AND INDEMNITY

12.1 Liens.

12.1.1. LESSEE shall have no power to do any act or make any contract that may create or be the foundation for any lien, mortgage or other encumbrance on the interest of LESSOR in the Premises without LESSOR'S prior written consent.

12.1.2. LESSEE shall not suffer or permit any liens to attach to any interest in all or part of the Premises by reason of any work, labor, services or materials done for, or supplied to, or claimed to have been done for or supplied to LESSEE or anyone occupying or holding an interest in any part of the Premises through or under LESSEE. If any such lien shall at any time be filed against the Premises, LESSEE shall cause the same to be discharged of record within 30 days after the date of filing the same, by either payment, deposit or bond.

12.2 Indemnity. Subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution, Article XI, Section 7, LESSEE shall indemnify and defend LESSOR from, and reimburse LESSOR for, any cost, claim, loss or liability suffered directly or from a third-party claim arising out of or related to any negligent activity of LESSEE on the Premises or any condition of the Premises in the possession or under the control of LESSEE, including without limitation any cost, claim, loss or liability suffered directly or from a third-party claim for damages to the Premises or any other person or property arising out of or related to LESSEE'S failure to comply with Paragraph 4.3 Hazardous Substances.

SECTION 13. INSURANCE

13.1 Fire and Hazard Insurance. LESSEE shall throughout the Lease term keep all buildings on the Premises insured against loss or damage by fire and other hazards covered by a standard form of fire insurance with an extended coverage endorsement including vandalism and malicious mischief. The amount of the insurance shall not be less than the replacement cost of the insured improvements, subject to a LESSOR-approved deductible amount, and shall also be sufficient to prevent LESSEE from becoming a coinsurer under the provisions of the insurance. LESSOR shall not carry any insurance which would result in a reduction of the protection or payment to LESSEE under any insurance described above.

13.2 Proceeds of Fire and Hazard Insurance.

13.2.1 The proceeds of the insurance described above shall be used to repair, restore and replace any damaged or destroyed improvements as provided in Section 10. LESSOR shall cooperate fully with LESSEE to obtain the largest possible recovery but LESSOR shall have no expense or cost in that connection.

13.2.2 All insurance required by Paragraph 13.1 shall provide that the proceeds shall be paid to LESSEE and the proceeds shall be deemed to be held in trust by LESSEE for the uses and purposes required by this Lease.

13.3 Comprehensive General Liability Insurance. LESSEE shall procure and continuously maintain during the term of this Lease comprehensive general liability and property damage insurance with limits of \$1 million per occurrence. The insurance shall be in a form sufficient to protect LESSOR and LESSEE against claims of third persons for personal injury, death or property damage arising from the use, occupancy or condition of the Premises or improvements on the Premises.

13.4 General Insurance Provisions. In lieu of insurance from a private insurance carrier, LESSOR agrees that LESSEE may satisfy the requirements of insurance coverage outlined in this Section 13 by providing LESSOR with evidence of self insurance.

SECTION 14. ASSIGNMENT AND SUBLETTING

14.1 Assignment.

14.1.1 LESSEE shall not assign or otherwise transfer LESSEE'S interest in this Lease or the estate created by this Lease without the prior written consent of LESSOR which shall not be unreasonably withheld. No consent in one instance shall remove the requirement for consent in any subsequent instance.

14.1.2 The terms of any assignment, whether or not the assignment requires the consent of LESSOR, shall include a covenant by the assignee that it assumes and agrees to pay and perform all of LESSEE'S obligations under this Lease. No assignment shall release LESSEE of its obligations under this Lease unless LESSOR so agrees in writing.

SECTION 15. DEFAULT

Each of the following events shall be a default by LESSEE and a breach of this Lease:

15.1 Failure to Pay Rent. Failure of LESSEE to pay any rent or other charge within 30 days of when it is due.

15.2 Performance Failures. Failure of LESSEE to perform any other term, condition or covenant of this Lease within twenty (20) days after written notice from LESSOR specifying the nature of the failure with reasonable particularity. If the failure is of such a nature that it cannot be completely remedied within the twenty (20) day period, the failure shall not be a default if LESSEE begins correction of the failure within the twenty (20) day period and thereafter proceeds with reasonable diligence and in good faith to correct the failure as soon as practicable.

15.3 Attachment. Attachment, execution, levy or other seizure by legal process of any right or interest of LESSEE under this Lease if not released within thirty (30) days.

15.4 Bankruptcy. An assignment by LESSEE for the benefit of creditors, the filing by LESSEE of a voluntary petition in bankruptcy, the filing of an involuntary petition in bankruptcy and failure of LESSEE to secure a dismissal of the petition within thirty (30) days after filing, the appointment of a receiver to take possession of the Premises or improvements or the leasehold estate or of LESSEE'S operations on the Premises for any reason. For purposes of this Paragraph the term "bankruptcy" includes all arrangements and chapters in the Bankruptcy Code.

SECTION 16. REMEDIES ON DEFAULT

16.1 LESSOR'S Right to Cure. After expiration of the applicable period during which LESSEE could cure, and before that in the event of an emergency, LESSOR may, but is not obligated to, make any payment required of LESSEE under this Lease or under any note, mortgage or other document pertaining to the financing of improvements or fixtures on the Premises or perform or comply with any other covenant or condition imposed on LESSEE under this Lease or under any such note, mortgage or document. All amounts so paid by LESSOR plus the cost of any performance or compliance, including attorney fees, plus interest on such sums at the rate of twelve (12) percent per annum, or the highest rate allowed by law, from the date of payment, performance or compliance shall be deemed to be additional rent payable by LESSEE with the next due installment of rent, or thirty (30) days, whichever occurs first. No such payment or performance by LESSOR shall constitute a waiver of a default or of any other remedy for default or render LESSOR liable for any loss or damage resulting from any such payment or performance.

16.2 LESSOR'S Remedies. Upon default, LESSOR may elect any one or more of the following consistent remedies:

16.2.1 Termination. LESSOR may by notice to LESSEE terminate this Lease as of the date of the notice. All of LESSEE'S rights in the Premises shall terminate as of the date of termination. Promptly after such notice LESSEE shall surrender and vacate the Premises and all improvements broom clean and in good condition. LESSOR may reenter and take possession of the Premises and of all improvements and eject some or all parties in possession. Termination under this Section shall not relieve LESSEE from the payment of any sum then due to LESSOR or from any claim for damages previously accrued or then accruing against LESSEE, or from performance of any obligations under Paragraph 4.3 Hazardous Substances.

16.2.2 Reletting. LESSOR may elect to reenter the Premises without terminating this Lease and from time to time relet the Premises including any improvements or parts of improvements on the Premises for the account and in the name of LESSEE or otherwise. LESSOR may elect to eject some or all persons then in possession. Any reletting may be for the remainder of the term or for a longer or shorter period and LESSOR may execute any leases made under this provision either in LESSOR'S name or in LESSEE'S name. LESSOR shall apply all rents from the reletting first to the costs of reentry and reletting including reasonable attorney fees and then to rents and other amounts payable by LESSEE under this Lease including without limitation any amounts which became payable prior to reletting.

LESSEE shall nevertheless pay to LESSOR on the due date specified in this Lease all sums payable by LESSEE under this Lease, plus LESSOR'S expenses of retaking and reletting including any attorneys fees, less amounts received by LESSOR from the reletting, if any. No act by or on behalf of LESSOR under this Section shall constitute a termination of this Lease unless LESSOR gives LESSEE a notice of termination.

16.2.3 Use. LESSOR may elect to use all or any part of LESSEE'S personal property and trade fixtures remaining on the Premises without compensation to LESSEE and without liability for use or damage; or LESSOR may store all or any of LESSEE'S personal property and trade fixtures for the account of and at the cost of LESSEE. The election of one remedy for any one item shall not preclude an election of any other remedy for another item or for the same item at a later time.

16.3 Damages. In the event of a termination LESSOR shall be entitled to damages for the reasonable cost of: reentry and reletting, including the cost of any cleanup, removal of LESSEE'S property and fixtures, costs or expenses incurred by LESSOR in curing any of LESSEE'S defaults, broker's or finder's fees, attorney fees and court costs.

16.4 Remedies Cumulative. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to LESSOR under applicable law.

SECTION 17. SURRENDER AT EXPIRATION

17.1 Surrender. Upon expiration or termination of the Lease term or renewal term LESSEE shall surrender possession of the Premises to LESSOR, 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, alteration or reconstruction made by LESSEE pursuant to this Lease. LESSEE shall deliver all keys and any operational or maintenance manuals applicable to the Premises or equipment thereon to LESSOR. All property that LESSEE is required to surrender shall become LESSOR'S property at the date of expiration of this Lease. All property that LESSEE is not required to surrender, but that LESSEE does abandon shall, at LESSOR'S election, become LESSOR'S property on the date of expiration or termination of this Lease. LESSEE shall be entitled to remove all furnishings, furniture and personal property.

17.2 Holdover. Failure by LESSEE to vacate the Premises at the time specified in this Lease shall not constitute a renewal or extension or give LESSEE any rights in or to the Premises or any improvements. Upon such a holdover, LESSEE shall defend and indemnify LESSOR from all liability and expense resulting from the failure or delay of LESSEE to timely surrender the Premises including, without limitation, claims made by any succeeding tenant founded on or resulting from LESSEE'S failure to so surrender.

SECTION 18. MISCELLANEOUS

18.1 Nonwaiver. Waiver by either party of strict performance of any provision or term of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision or any other provision.

18.2 Notices. All notices under this Lease shall be effective on the earlier of actual receipt or two (2) days after deposit as registered or certified mail, return receipt requested, postage prepaid and addressed to LESSOR or LESSEE at the addresses stated below, or to such other address as either party may specify by notice to the other party:

LESSOR: LANE COUNTY
c/o Management Services Director
125 East 8th Avenue
Eugene, OR 97401

LESSEE: STATE OF OREGON, by and through the Oregon Military Department
Attention: AGI
1776 Militia Way SE
P.O. Box 14350
Salem, OR 97309

18.3 Attorney Fees. Subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution, Article XI, Section 7, if suit or action is instituted to collect rent, to enforce this Lease, or in connection with any claim or controversy arising out of this Lease, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action.

18.4 Severability. The invalidity or illegality of any provision of this Lease shall not affect the remainder of the Lease.

18.5 Time of Essence. Time is of the essence in the performance of each of LESSEE'S obligations under this Lease.

18.6 Nondiscrimination.

18.6.1 LESSEE agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, creed, color or national origin in the use of the Premises.

18.6.2 LESSEE further agrees that it shall comply with the applicable provisions of the Americans with Disabilities Act of 1990, ORS 659A.142, ORS 659A.145, ORS 659A.400 to 659A.409 and all regulations and administrative rules established pursuant to those laws, in the construction, remodeling, alteration, maintenance and operation of any structures, facilities and programs on the Premises.

18.7 Governing Law. This Lease and the party's rights under it shall be construed and regulated by the laws of the State of Oregon.

18.8 Non-appropriation. If sufficient funds have not been provided in the legislatively approved budget of LESSEE to permit LESSEE in the exercise of its reasonable administrative discretion to continue this Lease, LESSEE may terminate this Lease without further liability to LESSOR with not less than one hundred twenty (120) days prior written notice to LESSOR.

18.9 Merger. THIS LEASE CONSTITUTES THE ENTIRE LEASE BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS LEASE SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS LEASE. LESSOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT LESSOR HAS READ THIS LEASE, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

18.10 Compliance with Applicable Law. LESSOR agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to this Lease, including without limitation, ORS 279.312, 279.314, 279.316, 279.318 and 279.320, which are incorporated by reference herein.

18.11 Memorandum of Lease. At the request of either party the parties will execute and acknowledge a Memorandum of Lease in recordable form which shall include a legal description of the premises and the term of the Lease, and either party may record the memorandum.

18.12 Compliance with Oregon Tax Laws. I, the undersigned, hereby swear or affirm under penalty of perjury that I am authorized to act in behalf of LESSOR, named herein, that I have authority and knowledge regarding the payment of taxes, and that LESSOR is, to the best of my knowledge, not in violation of any Oregon tax laws. For the purposes of this certificate, "Oregon tax laws" means the state inheritance tax, gift tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, Elderly Rental Assistance Program and local taxes administered by the Department of Revenue (Lane Transit District Tax, Tri-Metropolitan Transit District Employer Payroll Tax, and Tri-Metropolitan Transit District Self-Employment Tax).

LESSOR: LANE COUNTY

By: _____

William A. Van Vactor

Title: County Administrator

Date: _____

LESSEE: STATE OF OREGON, acting by and through its Military Department.

By: _____

Raymond C. Byrne

Title: The Adjutant General

Date: _____

Our No: CT-238574

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PROPERTY DESCRIPTION

A parcel of land lying in the Southeast one-quarter of Section 29, Township 17 South, Range 3 West, Willamette Meridian, and being a portion of the tract of land conveyed by that certain deed to Lane County Oregon, recorded on Reel 269-D, Recorder's Reception No. 10755, Lane County Oregon Deed Records, and being described as follows: Beginning at the Northeast corner of that tract conveyed to Lane County by that deed recorded on Reel 103-57-D, Recorder's Reception No. 18770 of Lane County Oregon Deed Records, said point being 112.76 feet North and 826.95 feet East of the Southwest corner of County Survey No. 1781; thence South 212.77 feet to the Northwest corner of that tract conveyed to Lane County by that deed recorded on Reel 214-D, Recorder's Reception No. 3793; thence North $88^{\circ} 57' 30''$ East 70.0 feet; thence North $89^{\circ} 24' 40''$ East 756.25 feet; thence North $01^{\circ} 22' 10''$ East 273.09 feet, to the Southerly line of a Diversion Floodway; thence along said Diversion Floodway line South $89^{\circ} 24' 40''$ West 832.77 feet to a point due North of the place of beginning; thence South 60.72 feet to the place of beginning, in Lane County, Oregon.

The bearing used herein are based upon the Oregon Coordinate System, South Zone.

TOGETHER with a non-exclusive easement for ingress and egress over the following described tract: Beginning at the Northeast corner of the tract of land conveyed to Lane County by that certain deed recorded on Reel 103-57D, Recorder's Reception No. 18770, Lane County Oregon Deed Records, said point also being 112.76 feet North and 826.95 feet East of the Southwest corner of County Survey No. 1781 and run thence South 212.77 feet to the true point of beginning; thence North $88^{\circ} 57' 30''$ East 70.0 feet; thence South 480.00 feet; thence South $88^{\circ} 57' 30''$ West 70.0 feet; thence North 480.00 feet to the true point of beginning, in Lane County, Oregon.

The bearings used herein are based upon the Oregon Coordinate Systems, South Zone.

Exhibit A