

# CITY COUNCIL MEETING AGENDA

**June 13, 2024**

7:00 PM

Central Point City Hall, Council Chambers

140 S 3rd St, Central Point, OR

[www.centralpointoregon.gov](http://www.centralpointoregon.gov)



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## **10. Meeting Called to Order**

## **20. Pledge of Allegiance**

## **30. Roll Call**

## **40. Public Comments**

The City Council sets aside 20 minutes for in-person public comments on non-agenda items. Comments are limited to two minutes per individual, 5 minutes per group or organization. Please complete a public comment form before speaking.

The City Council encourages written comments. Please submit your comments by regular mail to City Council, 140 S Third St, or by email to [meetings@centralpointoregon.gov](mailto:meetings@centralpointoregon.gov). Comments must be received by noon on the date of the meeting to be noted in the record. Please include the date of the Council meeting with your comments.

## **50. Consent Agenda**

- A. Approval of May 9, 2024, Meeting Minutes
- B. Arts Commission Appointment
- C. Juneteenth Proclamation

## **60. Items Removed from the Consent Agenda**

## **70. Ordinances and Resolutions**

- A. Ordinance Adding Chapter 4.02 - Limited Liability for Use of Trails and Unimproved Right-of-Way  
Sydnee Dreyer, City Attorney
- B. Ordinance Changing Council Meeting Times  
Chris Clayton, City Manager
- C. Resolution Updating Public Records Policy  
Sydnee Dreyer, City Attorney
- D. Resolution Approving Community Center Lease

Sydnee Dreyer, City Attorney  
Chris Clayton, City Manager

**80. Business**

**90. Mayor's Report**

**100. City Manager's Report**

**110. Council Reports**

**120. Department Reports**

**130. Executive Session**

The City Council will adjourn to executive session under the provisions of ORS 192.660. Under the provisions of the Oregon Public Meetings Law, the proceedings of an executive session are not for publication or broadcast.

**140. Adjournment**

# CITY COUNCIL MEETING MINUTES

**May 9, 2024**

7:00 PM

Central Point City Hall, Council Chambers

140 S 3rd St, Central Point, OR

[www.centralpointoregon.gov](http://www.centralpointoregon.gov)

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## **1 Meeting Called to Order**

The meeting was called to order at 7:00 PM by Mayor Hank Williams

## **2 Pledge of Allegiance**

## **3 Roll Call**

The following members were present: Mayor Hank Williams, Ward IV Taneea Browning, At Large Rob Hernandez, At Large Michael Parsons, Ward II Kelley Johnson, Ward I Neil Olsen, Ward III Melody Thueson

The following staff were also present: City Manager Chris Clayton, Acting City Attorney Dan O'Connor, Parks and Public Works Director Matt Samitore, Finance Director Steve Weber, Planning Director Stephanie Powers, Police Lt. Chadd Griffin, and City Recorder Rachel Neuenschwander.

## **4 Public Comments**

## **5 Consent Agenda**

### **A. Approval of April 25, 2024, Meeting Minutes**

**Michael Parsons moved to approve the minutes as amended.**

**Motion:** Amend

**Moved By:** Michael Parsons

**Seconded by:** Rob Hernandez

**Roll Call:** Members Tanea Browning, Hank Williams, Rob Hernandez, Michael Parsons, Kelley Johnson, Neil Olsen, Melody Thueson voted yes. None voted no.

**6 Items Removed from the Consent Agenda**

**7 Ordinances and Resolutions**

**A. Ordinance Repealing City Treasurer & Expanding Finance Director Duties 2nd Reading**

City Manager Chris Clayton presented the second reading of an Ordinance Repealing City Treasurer & Expanding Finance Director Duties. No changes were made since the first reading.

**Kelley Johnson moved to approve Ordinance No. 2115 the Ordinance amending CPMC Chapter 2.12 - repealing provisions for City Treasurer and expanding Finance Director duties.**

**Motion:** Approve

**Moved By:** Kelley Johnson

**Seconded by:** Tanea Browning

**Roll Call:** Members Tanea Browning, Hank Williams, Rob Hernandez, Michael Parsons, Kelley Johnson, Neil Olsen, Melody Thueson voted yes. None voted no.

**B. Mobile Food Business Code Amendments**

Planning Director Stephanie Powers presented a Resolution of Intent to the Council regarding the Mobile Food Business Code Amendments. City staff is seeking direction from the council to initiate code amendments to clarify mobile food business definitions and regulations. Since the new rules have been adopted, the City has observed an increase in mobile food business service and has noted what seems to be working well and where changes to the code should be considered. Based on complaints, staff observations, and input from the Citizen's Advisory Committee and the Planning Commission, the following issues have been identified:

- Mobile food businesses are locating or requesting permission to locate in areas where they are not currently allowed, including the High Mix Residential (HMR) zone in Twin Creeks, the Employment Commercial (EC) zone outside the Central Business District, and

the public right-of-way;

- Every mobile food truck in the city has set up a temporary shelter for patrons to wait for food and consume food on-site. This is not currently permitted in the development and operational standards. Additionally, the Transit-oriented Development Overlay requires a higher level of design that is not met by temporary pop-up style shelters;
- Based on implementation, the application process and requirements are not transparent and vary from other cities in the valley; and
- There is a more significant impact on the street system than was initially considered, which has promoted re-evaluation of the application requirements and System Development Charges for mobile food business operations in the City.

Staff and Council discussed different options for amendments to the code so that it is easily understood. Planning will work on making amendments to clarify the code and to bring it back to the council at a future meeting.

**Melody Thueson moved to recommend approval of Resolution No. 1785, A Resolution Declaring the City Council's Intent to Initiate Amendments to the Central Point Municipal Code in Chapter 5.44, Mobile Food Businesses, and Various Chapters in Chapter 17, Zoning, to Expand Mobile Food Business Location Opportunities, Clarify Application Requirements and Standards and Make Other Minor Revisions.**

**Motion:** Approve

**Moved By:** Melody Thueson      **Seconded by:** Kelley Johnson

**Roll Call:** Members Taneea Browning, Hank Williams, Rob Hernandez, Michael Parsons, Kelley Johnson, Neil Olsen, Melody Thueson voted yes. None voted no.

## **8 Business**

### **A. Community Center Lease and Cost Estimates**

Parks and Public Works Director updated the Community Center to the Council. Since the last update, the City and County have agreed upon a 119,000-square-foot community center. The City's portion has

grown to 31%. This includes two meeting rooms, an exercise room, a community teaching kitchen, a pre-school/teen room, staff offices, a concession stand, and two gymnasiums. The City's maximum amount would be 18.7 million.

The land use process has been completed, and Adroit Construction has been hired as the facility's contractor. An early design package is ready to be submitted to Jackson County, RVSS, and the City of Central Point for construction in June. Additionally, the team is prepared to move forward on the final design and purchase of the steel building.

The current maximum price includes an almost six million-dollar contingency from Adroit and an additional 1.5 million from Jackson County. We are still awaiting connection costs from Pacific Power, RVSS, and Avista.

City staff worked with County staff to identify various value engineering and cost options to help reduce the City's obligations. Adroit Construction has identified various construction-level changes and a potential grant for Solar. These cost savings equate to around 2.5 million. Other cost-saving options are to remove a proposed wall between the County and City sides, change the exercise room to a classroom, delay the playground until year 2, and an option to reduce the number of classrooms the City has access to.

The Council would like to keep the multi-purpose room and hold off on putting in the kitchen equipment. There was talk about using the rooms for a Pre-school, as there is a need for this in the community.

City Manager Chris Clayton spoke to the Council regarding the financial aspect of the Community Center. The City has been working on a use agreement to be presented to the County next week. If the City chooses not to go forward with this project, with the past agreement, the City agreed to pay 50% of the design cost, which would be about \$800,000. The Jackson County Lease Terms are a 35-year Amortization of a 15 million dollar base, with a balloon payment in years 6-10 and an interest rate of 4.5%. After the initial term, lease rates would be renegotiated based on market factors.

Mr. Clayton shared the Urban Renewal Financial Projections with the Council. The 2024 UR Tax Increment Projection was \$1,086,764.73, and the amount collected is slightly higher than this projected amount.

As undeveloped properties within the Urban Renewal district develop, the amount of property taxes that will be received is projected to increase to \$2,498,948.33 by 2030. Also presented were estimated Fund Balance and Expenditures from 2024-2040, showing that the lease could be paid in full in 10 years, still leaving the ending fund balance of the Urban Renewal in a good position for any future projects to be completed.

The Council has concerns over the lease agreement. The facility would benefit the City and the community. The user agreement needs to be one that will survive staffing changes; the City Council and the County Board of Commissioners will change in the next ten years. The Council had questions about why the use agreement had not been discussed. The primary benefit to the facility is that both sides have relinquished some control over the facility. The process has been very complicated, and there has been a lack of communication between all involved parties. The user agreement will help build a relationship between the City and the County regarding how the facility operations will take place, as the County is great at running special events, and the City is great at running the day-to-day operations of recreation classes and other smaller community events.

City staff will meet with Jackson County next week regarding the user agreement and will return more information at the May 23, 2024, Council Meeting.

#### **C. Planning Commission Report - May 7, 2024**

Planning Director Stephanie Powers presented to the council the Planning Commission report from the May 7, 2024, commission meeting. There were four items on the agenda including two quasi-judicial public hearings for a Master Plan and Tentative Subdivision Plan for property within the Eastside Transit Oriented Development (ETOD) Overlay area, a public hearing for Pheasant Creek Estates Phase II and the Housing Authority Partition.

The City Planning Staff and the Planning Commission bid farewell to Don Dixon, who has served on the Planning Commission since the fall of 2023. He is moving out of the area for a couple of years.

### **9 Mayor's Report**

Mayor Williams reported that:

- He attended a Meet and Greet at Twin Creeks for Representative

Christine Goodwin.

- He was on a Zoom call with Placer.ai, and they wanted the city to use their program.

## **10 City Manager's Report**

City Manager Chris Clayton reported that:

- He will be sending out an updated emergency evacuation map tomorrow.
- He has been talking with the Grange Co-op regarding a land swap for the Bush St. and Community Garden property that is located behind the Grange Co-op on First St., as they are looking for more storage.
- CIS let the City know that the management insurance increase would be 9.2%.
- Rachel has been working with Public Works and Police regarding Weed Abatements.
- He will share an article tomorrow that Scott Logue shared with him regarding the top states in which to be a police officer.
- He discussed possibly putting together an ad-hoc committee regarding the diesel fuel tax.
- The City has received approximately 300 responses to the community survey so far.

## **11 Council Reports**

Council Member Melody Thueson reported that:

- She attended the School Board meeting.
- She went to the opening of the Cake Bar in downtown Central Point.

Council Member Mike Parson reported that he attended the Planning Commission report.

Council Member Rob Hernandez reported that:

- He attended the Rotary Auction.
- He attended the Crater Foundation 100% event, for seniors receiving scholarships.

Council Member Tanea Browning reported that:

- She attended the LOC Spring Conference.



- She attended the study session.
- She attended the Rotary Auction.
- There will be a Ribbon Cutting at the park that is being donated back to the school from Fire Dist. 3 on Saturday.

Council Member Neil Olsen reported that he attended the Planning Commission meeting.

## 12 Department Reports

Planning Director Stephanie Powers reported that the Wash-n-Go submitted a revised plan of just painting the trim.

Parks & Public Works Director Matt Samitore reported that the Made in Southern Oregon Event is this weekend. The food court area has expanded and invited all the council to visit the event.

Finance Director Steve Weber reported that he handed out copies of letters from the Auditors, which are normal letters that Moss Adams sends out to all clients.

Police Lt. Chadd Griffin reported that:

- At the end of this month, the North West Accreditation Alliance will be on site.
- Officer Lex will be graduating from the Police Academy at the end of this month.

## 13 Adjournment

**Neil Olsen move to adjourn.** All said aye and the meeting was adjourned at 9:08 p.m.

The foregoing minutes of the May 9, 2024, Council meeting were approved by the City Council at its meeting of \_\_\_\_\_, 2024.

Dated:

\_\_\_\_\_  
Mayor Hank Williams

ATTEST:

\_\_\_\_\_

City Recorder



**DEPARTMENT:** Administration

**MEETING DATE:** June 13, 2024

**STAFF CONTACT:** Rachel Neuenschwander, City Recorder

**SUBJECT:** Arts Commission Appointment

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**SUMMARY AND BACKGROUND:**

The Arts Commission reviews public art projects, develops public art projects and serves as a sounding board for art-related items to be presented to the city council for approval.

The Arts Commission was re-established in December 2023 and will consist of seven members serving three-year terms. The first six members were appointed at the April 11, 2024, Council Meeting. After amendments to the Code, the City is recommending the Council appoint Lindsey Rice to fill the seventh position.

**ATTACHMENTS/EXHIBITS:**

1. Lindsey Rice

City of Central Point, Oregon  
140 S 3rd Street, Central Point, OR 97502  
541.664.3321 Fax 541.664.6384  
[www.centralpointoregon.gov](http://www.centralpointoregon.gov)

Chris Clayton, City Manager Rachel  
Neuenschwander, City Recorder Elizabeth  
Simas, Human Resource Director

Administration Department

**APPLICATION FOR APPOINTMENT TO  
CITY OF CENTRAL POINT COMMITTEE**

Name: Lindsey Rice Date: 1/22/2024

Address: [REDACTED]

Phone: [REDACTED] Business Phone: [REDACTED] Cell Phone: [REDACTED]

Fax: [REDACTED] E-mail: [REDACTED]

Are you a registered voter with the State of Oregon? Yes X No [REDACTED]

Are you a city resident? Yes X No [REDACTED] If Yes, How long: 43 years

Which committee(s) would you like to be appointed to: *(Please make sure the dates below work with your schedule before applying. Council and Planning Commission members are required to file an Annual Statement of Economic Interest to the State of Oregon.)*

**Meeting Dates (All meeting dates are subject to change or additions, times vary for each committee):**

X Arts Commission: Meets quarterly

**Employment, professional, and volunteer background:** I have owned and operated Rogue Valley Zipline Adventures since 2010. Rogue Valley Zipline Adventures has been named Central Points #1 attraction since inception. Our Awards also include 11 consecutive TripAdvisor Travelers Choice Awards and we also won the #1 Fan Favorite Destination in Oregon Award the past 2 years. I have served on the Travel Medford Tourism Council since 2016. The council makes decisions on how transient lodging tax dollars are applied to improve and enhance tourism in the Rogue Valley. I am also a recent Rogue Valley Mentoring Volunteer.

**Community affiliations and activities:** I am a Central Point Chamber Member and am an active supporter of the Crater Foundation, Denim and Diamonds, Crater Sports, DECA, FFA and 4-H, Hearts with a Mission, My business has sponsored a C.P. Little League Team, Youth 715 and St. Jude Children's Hospital to name a few.

Previous City appointments, offices, or activities: I attended John Shalerts Destination Boot Camp in 2023.

Central Point Committee Application

Page 2

**To provide additional background for the Mayor and City Council, please answer the following questions. 1. Please explain why you are interested in the appointment and what you would offer to the community.**

I am a 3rd generation Central Point resident and consider it my forever home. Our family owns 4 Central Point businesses and my parents and children have also gone through School District 6. Our roots and care for Central Point and the community runs deep. I am creative, ambitious and like achieving grand long term goals. Proper planning and investing with collaborative efforts can achieve great things!

**2. Please describe what you believe are the major concerns of the City residents and businesses that this committee should be concerned about.**

1. Safety: Safe places to gather/homelessness, cleanliness/receptacles, Lighting/visibility, police presence/emergency service response times.

I think that the Art Commission can lend a creative hand in helping handle some of the city needs and wants at the same time. I think that ultimately safety and function should be at the forefront if possible when it comes to putting time and resources towards some art projects (definitely not all).

For example: To help maintain the appearance and function of our City we could add a garbage can that is

a character or Garbage Monster that talks when you throw garbage in it. School District 6 could hold a contest for the kids to come up with the Character and the Art commission could vote on a winner. It would be a unique statement piece downtown that the future generations were a part of designing and it would serve a purpose at the same time, "Don't Litter!"

**3. Please provide any additional information or comments which you believe will assist the City Council in considering your application.**

I was pretty lengthy with my other answers. :)

**4. Do you anticipate that any conflicts of interest will arise if you are appointed; and if so, how would you handle them?**

The Commission will meet quarterly with the tentative first meeting being on April 4<sup>th</sup> at 6 pm.

I am available for the first meeting and should be able to attend quarterly.

*Please feel free to use additional sheet if you have more information to help the Council make a final decision.*

My signature affirms that the information in this application is true to the best of my knowledge. I understand that misrepresentation and/or omission of facts are cause for removal from any council, advisory committee, board or commission I may be appointed to. All information/documentation related to service for this position is subject to public record disclosure.

Signature: \_\_\_\_\_ Lindsey Rice \_\_\_\_\_ Date: \_\_\_\_\_ 1/22/24 \_\_\_\_\_

# AMENDED ANNUAL REPORT



Corporation Division  
[www.filinginoregon.com](http://www.filinginoregon.com)

**E-FILED**  
Mar 27, 2023  
**OREGON SECRETARY OF STATE**

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**REGISTRY NUMBER**

84532796

**REGISTRATION DATE**

03/28/2012

**BUSINESS NAME**

MDP, LLC

**BUSINESS**

AUTO REPAIR/AUTO PARTS REMANUFACTURING

**MAILING ADDRESS**

250 N FRONT ST  
CENTRAL POINT OR 97502 USA

**TYPE**

DOMESTIC LIMITED LIABILITY COMPANY

**PRIMARY PLACE OF BUSINESS**

250 N FRONT ST  
CENTRAL POINT OR 97502 USA

**JURISDICTION**

OREGON

**REGISTERED AGENT**

MATT ROBERT DUSTE

250 N FRONT ST  
CENTRAL POINT OR 97502 USA

If the Registered Agent has changed, the new agent has consented to the appointment.

**MEMBER**

MATT ROBERT DUSTE

5505 KANE CREEK  
CENTRAL POINT OR 97502 USA

**MEMBER**

MATT DUSTE

5505 KANE CREEK RD  
CENTRAL POINT OR 97502 USA



I declare, under penalty of perjury, that this document does not fraudulently conceal, fraudulently obscure, fraudulently alter or otherwise misrepresent the identity of the person or any officers, managers, members or agents of the limited liability company on behalf of which the person signs. This filing has been examined by me and is, to the best of my knowledge and belief, true, correct, and complete. Making false statements in this document is against the law and may be penalized by fines, imprisonment, or both.

By typing my name in the electronic signature field, I am agreeing to conduct business electronically with the State of Oregon. I understand that transactions and/or signatures in records may not be denied legal effect solely because they are conducted, executed, or prepared in electronic form and that if a law requires a record or signature to be in writing, an electronic record or signature satisfies that requirement.

**ELECTRONIC SIGNATURE**

**NAME**

PAMELA THOREN

**TITLE**

OFFICE ADMINISTRATOR

**DATE**

03-27-2023





**DEPARTMENT:** Administration

**MEETING DATE:** June 13, 2024

**STAFF CONTACT:**

**SUBJECT:** Juneteenth Proclamation

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**SUMMARY AND BACKGROUND:**

On January 1, 1863, President Abraham Lincoln issued the Emancipation Proclamation, setting in motion the end of slavery in the United States. The Civil War ended with the surrender of General Lee at Appomattox Court House on April 9, 1865. The news reached Texas when Union General Gordon Granger arrived in Galveston Bay with Union troops. It was on June 19, 1865, that he announced: "The people of Texas are informed that, in accordance with a proclamation from the Executive of the United States, all slaves are free."

Celebration of the end of slavery, which became known as Juneteenth, is the oldest known public celebration of the end of slavery in the United States. The candid acknowledgment of this history is necessary if we, as a nation, state, or city, are successful in our effort to build a truly equitable community that exemplifies and promotes the fundamental American values of freedom, diversity, equality, liberty, and justice.

In its 2021 term, the Oregon legislature adopted House Bill 2168 declaring Juneteenth a paid state legal holiday. In May 2022, the Jackson County Board of Commissioners approved Juneteenth as an official paid County holiday.

**ATTACHMENTS/EXHIBITS:**

1. Juneteenth Proclamation

# **JUNETEENTH PROCLAMATION**

**Whereas**, Juneteenth is a holiday marking the end of slavery in the United States; and

**Whereas**, when Union Army General Gordon Granger landed at the Texas Port City of Galveston in 1865 as the Civil War drew to a close, one of his first actions was to read General Order #3, which stated that all slaves are free and the former masters and slaves have absolute equality of personal and property rights; and

**Whereas**, following his statement, June 19<sup>th</sup> (Juneteenth) became the emancipation date of those long suffering for freedom; and

**Whereas**, since then, as the oldest known celebration commemorating the end of slavery in America, this tradition has remained strong well into the 21<sup>st</sup> century to recognize the triumph of the human spirit over the cruelty of slavery and to honor the strength, endurance and faith of African American ancestors; and

**Whereas**, it is imperative that citizens join together to acknowledge a time in our history that carried on the nation's ideals of equality and democracy and celebrate the joys of liberty and justice for every citizen.

**NOW THEREFORE**, I, Mayor Hank Williams, hereby proclaim June 19, 2024 as

## **Juneteenth Celebration Day**

in the City of Central Point and urge all citizens to join us in the commemoration.

Date this \_\_\_\_\_ Day of \_\_\_\_\_, in the Year 2024.

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Mayor Hank Williams



**DEPARTMENT:** Administration **MEETING DATE:** June 13, 2024

**STAFF CONTACT:** Sydnee Dreyer, City Attorney

**SUBJECT:** Ordinance Adding Chapter 4.02 - Limited Liability for Use of Trails and Unimproved Right-of-Way

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**SUMMARY AND BACKGROUND:**

ORS 105.668 provides immunity against negligence claims arising from personal injury or property damage from the use of a trail or structures in an unimproved right of way or public easement.

ORS 105.668 immunity extends automatically to:

- Cities with populations of 500,000 or more;
- those cities' agents, officers, and employees, to the extent they are covered by ORS 30.285;
- owners of the land abutting the public unimproved right of way or public easement; and
- nonprofits and their volunteers that construct or maintain the trail or structure in the right of way or public easement.

Cities with populations fewer than 500,000 residents may choose to opt into ORS 105.668 and the same immunity will apply. Because Central Point has fewer than 500,000 residents, Council must choose to opt into ORS 105.668 immunity. This can be done by resolution or ordinance. Staff recommends that Council opt into ORS 105.668 via ordinance so that the Council's action becomes part of the Central Point Municipal Code.

The City owns and maintains a system of public trails and easements for public non-motorized activities such as walking, biking and hiking. Adoption of the Ordinance would extend the liability protection of ORS 105.668 to the use of these trails and easements.

**FINANCIAL ANALYSIS:**

**LEGAL ANALYSIS:**

Opting into ORS 105.668 immunity is recommended because the immunity provided by ORS 105.668 is broader than the recreational immunity already extended to the City through ORS 105.682. ORS 105.668 provides immunity for negligence claims arising out of personal injuries or property damage resulting from any use, so long as the use is of a trail or structure located on or in an unimproved right of way or easement. Whereas, the protection for landowners under ORS 105.682 is limited to recreational use of that land.

ORS 105.668's language also explicitly extends immunity to a city's officers, employees, and agents, whereas the Oregon Supreme Court has held that ORS 105.682 recreational immunity only applies to the "owner" of the land, which may not include officers, employees, and agents of a city. Therefore, ORS 105.668 fills a gap left open by the "recreational" limitation of ORS 105.682.

Additionally, ORS 105.668 offers landowners an incentive to grant public easements and rights of way by providing increased protection from liability in the same way as it does cities and their officers, employees, and agents.

ORS 105.668 only grants immunity for personal injuries or property damage arising from negligence, not from all causes of action. Therefore, the City and the other entities could still be held liable for some personal injury or property damage claims, such as claims arising from intentional acts or activities for which a person is strictly liable.

#### **COUNCIL GOALS/STRATEGIC PLAN ANALYSIS:**

GOAL 2 - Create opportunities for all segments of the population to enjoy Central Point places and events.

STRATEGY 1 – Continue to provide high-quality events that are historically recognized in the City of Central Point. When considering the addition of new events, staff and council should be thoughtful of existing partnerships, and prioritize quality over quantity.

STRATEGY 2 – Community events should be planned to enhance the family-friendly, safe, and small-town quality of life that is valued in Central Point. These events should also celebrate the unique cultural elements of our community.

STRATEGY 3 – Event programming should target a truly generational and varied audience that provides a welcoming atmosphere to all segments of the Central Point population.

STRATEGY 1 – Plan events to accommodate and welcome people of all socio-economic status and ability levels. (In other words, disabilities and hardship should not prevent our citizens from enjoying these events. All are welcome).

STRATEGY 2 – Plan park designs with forethought for accommodating all populations and needs. Ensure equitable access to safe and attractive parks and facilities that meet community needs. Offer high-quality recreation programs to all age groups, varied interests, and neighborhoods. Culture is defined in the dictionary as the customs, arts, social institutions, and achievements of a particular social group or people, in this case, the Central Point Community.

#### **ATTACHMENTS/EXHIBITS:**

1. ORD - Adding Ch 4 Recreational Immunity

**STAFF RECOMMENDATION:**

Make a motion to forward the Ordinance to a second reading.

**RECOMMENDED MOTION:**

I move to forward the Ordinance Amending Title 4 of the Central Point Municipal Code to Create a New Chapter 4.02 Limited Liability Arising from Use of Trails and /or Structures in Public Easements and Unimproved Right-of-Way under ORS 105.668 to a second reading.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING TITLE 4 OF THE CENTRAL POINT MUNICIPAL CODE TO  
CREATE A NEW CHAPTER 4.02, LIMITED LIABILITY ARISING FROM USE OF TRAILS  
AND/OR STRUCTURES IN PUBLIC EASEMENTS AND UNIMPROVED RIGHT-OF-WAY  
UNDER ORS 105.668**

**FINDINGS:**

- A. Pursuant to CPMC, Chapter 1.01.040, the City Council, may from time to time make revisions to its municipal code which shall become part of the overall document and citation.
- B. ORS 105.668(2) limits certain claims and causes of action against a city, adjacent property owner(s) and certain nonprofit groups and their volunteers that arise from recreational use of trails or structures in public easements and/or unimproved right-of-way.
- C. ORS 105.668(3) authorizes cities with populations less than 500,000 to adopt such limitation of liability by ordinance or resolution.
- D. The City owns, operates and maintains a system of public trails and easements for public non-motorized activities such as walking, biking and hiking.
- E. The City Council finds that the City's trails and structures are an important public amenity, and that the public's use of such trails or structures is important for the health and enjoyment of the community, and that such use should be encouraged.
- F. The City finds that adopting the limitation of liability in ORS 105.668(2) will provide the City, adjacent property owners, and nonprofit groups with such protection and will encourage the public's continued use of trails and structures in Philomath's public easements and unimproved rights of way.
- G. Words ~~lined through~~ are to be deleted and words **in bold** are added.

**THE PEOPLE OF THE CITY OF CENTRAL POINT DO ORDAIN AS FOLLOWS:**

SECTION 1. Title 4 of the Central Point Municipal Code is hereby amended to add Chapter 4.02 entitled "Immunity from Liability Limited from Private Claims Resulting from Use of Trails in Public Easements or Unimproved Right-of-Way" as provided in the attached Exhibit A.

SECTION 2. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Recitals A-C)

need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

SECTION 3. Effective Date. The Central Point City Charter states that an ordinance enacted by the Council shall take effect on the thirtieth day after its enactment. The effective date of this ordinance will be the thirtieth day after the second reading.

**PASSED** by the Council and signed by me in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_ 2024.

\_\_\_\_\_  
Mayor Hank Williams

ATTEST:

\_\_\_\_\_  
City Recorder

EXHIBIT A

## **4.02 Immunity from Liability Limited from Private Claims Resulting from Use of Trails in Public Easements or Unimproved Right-of-Way**

### **4.02.010 Purpose**

The city council has determined it is in the public interest to opt into the immunities from liability for public use of trails or structures in public easements/right-of-way that is available to cities under ORS 105.668.

### **4.02.020 Definitions.**

As used in this chapter, the following definitions apply:

A. Public easement means a platted or dedicated easement for public access that is accessible by a user on foot, horseback, bicycle or other similar conveyance, but does not include a platted or dedicated public access easement over private streets.

B. Structures means improvements in a trail, including, but not limited to, stairs and bridges, that are accessible by a user on foot, horseback, bicycle or other nonmotorized vehicle or conveyance.

C. Trail means a travel way for pedestrians and bicycles that is separate from automobiles, and includes a multi-use path or multi-use trail, and includes the Greenway, but does not include a bike lane, shoulder bikeway, or shared roadway.

D. Unimproved right-of-way means a platted or dedicated public right-of-way over which a street, road or highway has not been constructed to the standards and specifications of the City with jurisdiction over the public right-of-way and for which the City has not expressly accepted responsibility for maintenance.

### **4.02.030. Liability Limited.**

A. A personal injury or property damage resulting from use of a trail that is in a public easement or an unimproved right-of-way, or from use of structures in a public easement or unimproved right-of-way, by a user on foot, on a horse, on a bicycle or other nonmotorized vehicle or conveyance does not give rise to a private claim or right of action based on negligence against:

1. The City of Central Point;



**2. The City of Central Point's officers, employees or agents to the extent the officers, employees or agents are entitled to defense and indemnification under ORS [30.285](#);**

**3. The owner of land abutting the public easement or unimproved right-of-way; or**

**4. A nonprofit corporation and its volunteers for the construction and maintenance of the trail or the structures in a public easement or unimproved right-of-way.**

**B. The immunity granted by this section from a private claim or right of action based on negligence does not grant immunity from liability:**

**1. Except as provided in subsection A(2) of this section, to a person that receives compensation for providing assistance, services or advice in relation to conduct that leads to a personal injury or property damage;**

**2. For personal injury or property damage resulting from gross negligence or from reckless, wanton or intentional misconduct; or**

**3. For an activity for which a person is strictly liable without regard to fault.**



**DEPARTMENT:** Administration

**MEETING DATE:** June 13, 2024

**STAFF CONTACT:** Chris Clayton, City Manager

**SUBJECT:** Ordinance Changing Council Meeting Times

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**SUMMARY AND BACKGROUND:**

Staff proposed modifying the start time for Council meetings from 7:00p.m. to 6:00p.m. which Council indicated it would support. The proposed change would allow the Council and staff to complete regular meetings at an earlier time, and in the event of lengthy agendas, provide additional time to consider the matters before the Council. Additionally, this enables the community to view the meetings in person or virtually at a time that is potentially more convenient, particularly for those with young children. Such a change requires a revision to the Central Point Municipal Code as the code specifies the time, day and place for Council meetings.

**FINANCIAL ANALYSIS:**

**LEGAL ANALYSIS:**

If approved, Council will forward the Ordinance to a second reading. The change would go into effect 30-days following the second reading. The first meeting that would be subject to the new start time would be the first meeting in July.

**COUNCIL GOALS/STRATEGIC PLAN ANALYSIS:**

GOAL 2 - Promote community and city government through volunteerism.

STRATEGY 2 – Utilize practical communication approaches to reach and engage as many community members as possible. Adapt approaches as preferences in the community change.

STRATEGY 2 – Promote volunteer opportunities regularly. Maintain a database of volunteers and their interests to further this objective.

STRATEGY 4 – Continue to embrace volunteerism, including the Central Point Police VIPS Program.

GOAL 3 - Keep the community informed about growth and what officials are doing to manage it.

STRATEGY 1 – Regularly post-growth statistics, planning boundary adjustments, public works project information on-line, and in newsletters.

STRATEGY 2 – Invite residents and businesses to participate in city planning processes.

**ATTACHMENTS/EXHIBITS:**

1. ORD - Amending Ch 2.04.010 Council Meetings

**STAFF RECOMMENDATION:**

No recommendation.

**RECOMMENDED MOTION:**

I move to forward the Ordinance Amending in Part CPMC Chapter 2.04.010 Regarding Time of Council Meetings to a second reading.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING IN PART CPMC CHAPTER 2.04.010 REGARDING TIME OF COUNCIL MEETINGS**

**FINDINGS:**

- A. Pursuant to CPMC, Chapter 1.01.040, the City Council, may from time to time make revisions to its municipal code which shall become part of the overall document and citation.
- B. CPMC Chapter 2.04.010 states that Council meetings shall regularly begin at seven p.m. Council desires to amend the provisions to begin such meetings at six p.m. in lieu thereof.
- C. The proposed amendment would change the regular start time for Council meetings.
- D. Words ~~lined through~~ are to be deleted and words **in bold** are added.

**THE PEOPLE OF THE CITY OF CENTRAL POINT DO ORDAIN AS FOLLOWS:**

SECTION 1. CPMC 2.04.010 is amended in part as follows:

**2.04.010 Time, day and place held.**

The city council shall regularly meet beginning at ~~seven~~ **six** p.m. on the second and fourth Thursdays of each month at the Central Point City Hall, except on holidays prescribed by the laws of the state of Oregon, in which event the council shall meet on the next Thursday following the holiday. Council meetings shall conclude prior to ten p.m. unless:

- A. Extended for one additional hour by a two-thirds vote of council members present, but in no event shall a regular meeting extend beyond eleven p.m.; however, a majority of council members may, at a meeting called to review and render a decision on a significant land use public hearing, make a motion to extend the meeting past the eleven p.m. adjournment.
- B. Adjourned to a later time, date and place certain by majority vote of the council, in which event the adjourned meeting shall be considered to be the concluding portion of the regularly scheduled council meeting.

Special meetings may be held as prescribed or permitted by Charter, law, ordinance, rule or resolution.

SECTION 2. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Recitals A-C)

need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

SECTION 3. Effective Date. The Central Point City Charter states that an ordinance enacted by the Council shall take effect on the thirtieth day after its enactment. The effective date of this ordinance will be the thirtieth day after the second reading.

**PASSED** by the Council and signed by me in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_ 2024.

\_\_\_\_\_  
Mayor Hank Williams

ATTEST:

\_\_\_\_\_  
City Recorder



**DEPARTMENT:** Administration

**MEETING DATE:** June 13, 2024

**STAFF CONTACT:** Sydnee Dreyer, City Attorney

**SUBJECT:** Resolution Updating Public Records Policy

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**SUMMARY AND BACKGROUND:**

As the custodian of public records, the City must comply with certain minimum requirements set forth by ORS 192.311 - 192.431, and to make available to the public a written procedure for making public records requests. The City last updated its procedures in 2022. The purpose of the proposed policy is to provide a more detailed policy on how to request and process public records requests, update fees for such work, and update the public records request form which contained outdated references to the Oregon statutes, and outdated fees.

**FINANCIAL ANALYSIS:**

**LEGAL ANALYSIS:**

The proposed policy is consistent with ORS 192.311 to 192.431.

**COUNCIL GOALS/STRATEGIC PLAN ANALYSIS:**

**Strategic Priority - Responsible Governance**

GOAL 2 - Invite Public Trust.

STRATEGY 1 – Be a trusted source of factual information.

STRATEGY 2 – Protect our customers/citizen s’ information in a responsible and legal manner.

STRATEGY 3 – Celebrate our successes and admit our mistakes.

STRATEGY 4 – Report biennially on the status/results of the 2040 strategic plan. Biennial reporting will provide an avenue for the city to “follow-up” when and where appropriate.

STRATEGY 5 – Communicate effectively and transparently with the public.

**ATTACHMENTS/EXHIBITS:**

1. Public Records Request Policy Effective 2024

2. Public Records Request Form 2024
3. Reso -Adopting Public Records Policy 6-13-2024

**STAFF RECOMMENDATION:**

Move to approve the Resolution.

**RECOMMENDED MOTION:**

I move to approve Resolution No. \_\_\_\_\_ a Resolution Approving and Adopting Public Records Request Policy Effective June 13, 2024.



**CITY OF CENTRAL POINT  
PUBLIC RECORDS REQUEST POLICY  
Effective June 13, 2024**

**I. Purpose and General Information**

The City of Central Point recognizes that Oregon Public Records Law (ORS 192.311-192.478) gives members of the public the right to inspect and copy public records that are not otherwise exempt from public disclosure. It is the policy of the City of Central Point to respond to public records requests in an orderly, consistent and reasonable manner in accordance with Oregon Public Records Law.

The purpose of this Policy is to:

- Establish an orderly and consistent procedure for responding to public records requests;
- Establish the basis for a fee schedule designed to reimburse the City for the actual costs incurred in responding to public records requests; and
- Inform individuals, staff and officials of the procedures and guidelines that apply to public records requests.

**II. Definitions**

**A. “Business Day”** means a day other than Saturday, Sunday or a legal holiday and on which at least one paid employee of the public body that received the public records request is scheduled to and does report to work.

**B. “City”** refers to the City of Central Point and all employees, appointees and elected officials associated therewith.

**C. “Custodian”** refers to the City Recorder or the Recorder’s designee mandated, directly or indirectly, to create, maintain, care for or control a public record.

**D. “Public Record”** has the meaning established in ORS 192.311(5). In general, it refers to any writing containing information relating to the conduct of the public’s business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics. A record may be handwritten, typed, photocopied, printed, microfilmed, or exist in an electronic form such as email or a word processing document, or other types of electronic recordings.



CITY OF CENTRAL POINT  
**PUBLIC RECORDS REQUEST POLICY**

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**III. Procedures for Public Records Request**

**A. Making a Request**

1. A request to inspect or obtain copies of a public record must be made in writing. Persons are encouraged to use the City's Public Records Request Form that is available on the Forms page of the City's website at: <https://www.centralpointoregon.gov/forms>. All written requests, in any form, must include at a minimum the following information:

- Name, address, email or other contact information of the person requesting the records;
- Date of request; and
- A detailed description of the requested records including subject matter and year(s) of creation or range of dates. Sufficient keywords must be provided to locate requested electronic records.

2. The written request shall be delivered (by email, in person by mail or facsimile) to:

City of Central Point

City Recorder

140 S. 3<sup>rd</sup> St.

Central Point, OR 97502

Email: [Rachel.neuenschwander@centralpointoregon.gov](mailto:Rachel.neuenschwander@centralpointoregon.gov)

Phone: (541) 423-1015

Facsimile: (541) 664-6384

Requests for Police Reports direct to the Police Department:

City of Central Point Police Department

Attn: Custodian of Records

155 S. 2<sup>nd</sup> Street

Central Point, OR 97502

Email:

Phone:

Facsimile:

*Note: The Public Records Law does not require the City to create new records. Nor does it require the City to disclose the reasoning behind its actions; answer questions about its records; analyze its records.*

**B. Initial Response to Public Records Request**

After receiving a request for a public record, the City will reply to the requester within five (5) business days with one or more of the following responses:

- A statement that the City does or does not have custody of the

CITY OF CENTRAL POINT  
**PUBLIC RECORDS REQUEST POLICY**

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requested public record(s);

- Copies of all requested public records for which the City does not claim an exemption from disclosure under ORS 192.311 to 192.478;
- A statement that the City is the custodian of some responsive records, an estimate of time in which copies will be provided or inspection will be available, and an estimate of the fees the requester must pay prior to receiving the records;
- A statement that the City is uncertain whether it possesses any requested records and that it will search for the requested records and respond as soon as practicable; or
- A statement that state or federal law prohibits the City from acknowledging whether the record exists and a citation to the relevant state or federal law.

**C. Clarification of Request**

If the City receives an unusual request, or the scope of the request is unclear, the City may request additional clarification before responding to the request. Once the City makes a request for additional information or clarification, its obligation to complete its response to the request is suspended until the requester provides the information or clarification or affirmatively declines to provide additional information or clarification. If the requester does not respond to the City's request for clarification or additional information within 60 days, the City will close the request.

**D. Completed Response Deadline**

Within 10 business days after the date by which the City is required to acknowledge receipt of a public records request, the City will either complete its response to the request or provide a written statement that the City is still processing the request and provide an estimated date by which the City expects to complete its response. The timeframes established to acknowledge and respond to a request do not apply if compliance would be impracticable due to staffing unavailability, the City's ability to perform other necessary services, or the volume of other public records requests being simultaneously processed. If the City cannot comply with the 5-business day acknowledgement or 10-business day response deadlines, the City must complete the public records request as soon as practicable and without unreasonable delay.

CITY OF CENTRAL POINT  
**PUBLIC RECORDS REQUEST POLICY**

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**IV. Fees.**

The Oregon Public Records law, ORS 192.324(4), allows the City to recover its actual costs of fulfilling a public records request. If the estimated fee is greater than \$25, the City will provide the requester with written notice of the estimated amount of the fee and request written confirmation that the requester wants to proceed with fulfilling the request. In such instances, the City will not continue processing the public records request until the requester makes a deposit in the amount of the estimated fee. If a requester fails to provide written confirmation of its desire to proceed within 60-days of the City's estimate, the City shall close the request.

**A. Fee Schedule.** The fees listed below are reasonably calculated to reimburse the City for its actual cost in making the records available, and may include:

- Charges for the time spent by City staff to locate the requested public records, to review the records in order to determine whether any requested records are exempt from disclosure, to segregate exempt records, to supervise the requester's inspection of original records, to copy records, to certify records as true copies and to send records by special or overnight methods such as express mail or overnight delivery;
- Fees set by the Council may be calculated at an hourly rate equivalent to the salary plus benefits (computed at an hourly rate) of each employee involved in processing the request;
- Charges for the time spent by the City attorney reviewing, redacting and segregating records at the City's request;
- A per-page charge for photocopies of requested records; and
- A per-item charge for providing CDs, DVDs, audiotapes, or other electronic copies of requested records.

The City's public records fee schedule is as follows:

**Copies:**

|                        |                                               |
|------------------------|-----------------------------------------------|
| 8.5 x 11 Black & White | .25 cents per page                            |
| 8.5 x 11 Color         | .50 cents per page                            |
| 11 x 17 Black & White  | .50 cents per page                            |
| 11 x 17 Color          | \$1.00 per page                               |
| Photo Paper            | Additional charge                             |
| Police Reports         | \$5 for first page, \$1 every additional page |

CITY OF CENTRAL POINT  
**PUBLIC RECORDS REQUEST POLICY**

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**Electronic Format:**

|                                  |                                              |
|----------------------------------|----------------------------------------------|
| CD/DVD readily available         | \$5                                          |
| Electronic search of City Server | \$5 for CD/DVD + \$100 per hour research fee |
| Nonstandard Documents            | Actual cost to reproduce                     |

**Research Fees:**

|                       |                              |
|-----------------------|------------------------------|
| Up to 30 Minutes      | Copy cost only               |
| 30 Minutes to 2 hours | Copy Cost + \$25 per hour    |
| Over 2 hours          | Employee costs plus overhead |

**B. Application of Fees.** All staff time associated with researching and processing public records requests will be recorded in 10-minute increments. The first 30-minutes of staff time is not charged. If the requester was required to make a deposit, fees will be debited against that deposit. If the fees are less than the deposit, the City will provide the records along with a refund of the deposit, less the fee. If the deposit is insufficient to cover the entire cost of completing the public records request, or if the requester was not required to pay a deposit, the City will generate an invoice for the unpaid costs of completing the public records request. The requester must pay the amount owing before the City will deliver the requested records or make them available for viewing.

**V. Inspection of Records**

**A.** Inspection of records will occur during regular City business hours, by appointment at the City of Central Point's place of business. A person making a public records request may personally inspect the requested records, but the right to inspect records does not include the right to access file cabinets or the right to disassemble or change the order of records in files or binders. Original records may not leave the custody of the City. A City staff member must be present while any records are inspected to ensure protection of the records and City staff will document the date, time, name and contact information of the individual reviewing the record. If any person attempts to alter, remove, or destroy any record, the City staff shall immediately terminate review and notify the City Attorney.

**B.** If the City maintains copyrighted material, the City will permit the person making the request to inspect the copyrighted material, and may allow limited copying of such material if allowed under Federal copyright law. The City may require the requester to obtain written consent from the copyright holder before allowing copying of such material.

CITY OF CENTRAL POINT  
**PUBLIC RECORDS REQUEST POLICY**

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**VI. Fee Waiver Request.**

**A.** Requests for fee waiver or reduced fees may be made in writing to the City's contact address listed above. Requests for a fee waiver must identify the reason for the request and the public interest served in waiving or reducing fees. The decision to waive or reduce fees is within the reasonable discretion of the City. The City may decide whether to furnish copies without charge or at a substantially reduced fee if providing the records for free or at a reduced cost is found to be in the public interest.

**B.** In accordance with ORS 192.324 (6), a requester who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the district attorney in the same manner as a requester who petitions when inspection of a public record is denied under ORS 192.311 to 192.478.



# PUBLIC RECORDS REQUEST

Office of the City Recorder  
140 South Third Street  
Central Point OR 97502  
Rachel Neuenschwander  
Rachel.neuenschwander@centralpointoregon.gov  
(541) 423-1015  
(541) 664-6384 fax

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Home Phone: (\_\_\_\_)\_\_\_\_\_ Business: (\_\_\_\_)\_\_\_\_\_ Fax (\_\_\_\_)\_\_\_\_\_

PUBLIC RECORDS/INFORMATION BEING REQUESTED: (Be specific, attach additional sheet if needed)

Please check how you would like to receive these records:

Review at City offices \_\_\_\_ Pick Up \_\_\_\_ Email \_\_\_\_ U.S. Mail \_\_\_\_

## REQUESTOR TO READ AND SIGN UPON SUBMITTING REQUEST

I understand that every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.311 to 192.431. Further, I understand that fees will be charged to reimburse the City for its actual cost in making the records available. Such calculation may include staff time, costs for summarizing, compiling, or tailoring a record to meet my request. Copies of large documents are sometimes taken to a commercial copy business. For those documents the fee will be actual cost plus staff time. I hereby request that the City of Central Point Records Officer produce, as best to their ability, the records specified above. Payment in advance is required for charges estimated to be over \$25.00. For estimates above \$25.00, the City will provide a written estimate of cost and will seek confirmation to proceed or cancel the request. I understand that if the fee is not paid or additional information is not provided within 60-days, the request will be closed.

\_\_\_\_\_  
Signature of Requestor

\_\_\_\_\_  
Date of Request

## RECORDS OFFICER ACKNOWLEDGMENT OF REQUEST (within 5 business days):

\_\_\_ The City is the custodian of records.

\_\_\_ The City is NOT the custodian of records. This completes the request and no further action is required.

\_\_\_ The City is unsure whether it is the custodian of the requested records. We will search for the records and make an appropriate response as soon as practicable.

Additional details: \_\_\_\_\_

\_\_\_ We request the following additional information to clarify and/or expedite the request:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ Copies of the requested record(s) are attached.

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# Procedure for Public Records Request

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1. Complete and return the Records Request form with as much detailed information as you can. For general City Records return this form to City Recorder. For Police Department Records return the form to Police Department Custodian of Records.
  2. The City will provide a written cost estimate and MUST receive confirmation that you want the City to proceed with your request. Estimates over \$25 must be paid in advance.
  3. The City will contact you with the estimate and a time the records will be available for inspection. Do you wish them to be mailed or will you pick them up?
  4. If you are inspecting records at City Hall you will be called with an available time to inspect the records. A place for ONE person will be provided for reviewing the files. One file at a time will be made available. When you are through with it, return it, and receive the next file. Any pages to be copied should be marked with sticky notes provided by the city.
  5. When your inspection has been completed, return the last file. If staff is available the copies will be available at that time. If staff is not available to copy the requested pages at that time you will be called at the phone number on this form once staff has had time to copy the requested pages.
  6. If more than one person wishes to review records at the same time, reservations must be made in advance for use of a conference room. Research fees will be charged to cover a staff person's time for remaining in the room with the files.
- 

## Fees for Public Records Requests

|                                           |                                               |
|-------------------------------------------|-----------------------------------------------|
| <b>Copies:</b>                            |                                               |
| <b>8.5 x 11</b>                           | .25 per page                                  |
| <b>8.5 x 11 Color</b>                     | .50 per page                                  |
| <b>11 x 17</b>                            | .50 per page                                  |
| <b>11 x 17 Color</b>                      | \$1.00 per page                               |
| <b>Photo Paper</b>                        | Additional Charge                             |
| <b>Police Reports</b>                     | \$5 for first page, \$1 every additional page |
| <b>Electronic Format:</b>                 |                                               |
| <b>CD/DVD readily available</b>           | \$5                                           |
| <b>Electronic Searches of City Server</b> | \$5 for CD/DVD + \$100 per hour research fee  |
| <b>Nonstandard Documents</b>              | Actual cost to reproduce                      |
| <b>Research Fees:</b>                     |                                               |
| <b>Up to 30 Minutes</b>                   | Copy cost only                                |
| <b>30 Minutes to 2 hours</b>              | Copy Cost + \$25 per hour                     |
| <b>Over 2 hours</b>                       | Employee costs plus overhead                  |

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**FOR OFFICE USE ONLY**

This request is best handled by the \_\_\_\_\_ Department. Therefore, for purposes of processing a copy of this request was provided to: \_\_\_\_\_ on: \_\_\_\_\_. Copied to: \_\_\_\_\_. The schedule for this request is as follows:

City staff must advise the City Recorder if documents are not able to  
be produced within 5 working days.

**Date Request Acknowledged:** \_\_\_\_\_

**Estimated Completion Date:** \_\_\_\_\_

**Info. Compiled by:** \_\_\_\_\_

**Date Completed:** \_\_\_\_\_

**Date Cost Estimate Provided:** \_\_\_\_\_

**Amount Due:** \_\_\_\_\_

**Date Letter Provided (attach):** \_\_\_\_\_

**Receipt No.** \_\_\_\_\_

**Date picked up/mailed/emailed:** \_\_\_\_\_

**ACTION TAKEN ON:** Day 1: \_\_\_\_\_ Day 2 \_\_\_\_\_ Day 3 \_\_\_\_\_ Day 4 \_\_\_\_\_ Day 5 \_\_\_\_\_  
Location of Records: \_\_\_\_\_ On Site \_\_\_\_\_ Off Site in Box/ID # \_\_\_\_\_

**Notes:** \_\_\_\_\_

Reason for delay or inability to comply: \_\_\_\_\_

This request was **not** satisfied for the following reasons: \_\_\_\_\_

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**(Completed request form to be filed with the City Recorder)**



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING AND ADOPTING PUBLIC RECORDS REQUEST POLICY  
EFFECTIVE JUNE 13, 2024

Recitals:

- A. The City last adopted its public records request procedures a number of years ago.
- B. The City last updated its public records request form in 2022.
- C. The City has determined that certain updates are necessary to more clearly outline the process to request public records, and staff procedures to process such requests, as well as to update fees and the public records request form.

The City of Central Point resolves as follows:

Section 1. The Public Records Request Policy Effective June 13, 2024, attached hereto as Exhibit "A", is approved and adopted.

Section 2. The Public Records Request form attached hereto as Exhibit "B" is approved and adopted.

Passed by the Council and signed by me in authentication of its passage this \_\_\_\_\_ day of June, 2024.

\_\_\_\_\_  
Mayor Hank Williams

ATTEST:

\_\_\_\_\_  
City Recorder



**DEPARTMENT:** Administration **MEETING DATE:** June 13, 2024

**STAFF CONTACT:** Sydnee Dreyer, City Attorney  
Chris Clayton, City Manager

**SUBJECT:** Resolution Approving Community Center Lease

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### **SUMMARY AND BACKGROUND:**

The City and County have been involved in ongoing negotiations for a long-term intergovernmental lease of the future Multi-Use Pandemic Response Center located at 1 Peninger Drive for City's use as a community center. Under the negotiated terms, the City's share of the cost to design, engineer and construct the multi-use building would be amortized over a 35-year term, paid at 4.5% interest, with such payments constituting base rent. At the end of the term, the City would have four options of 5-years each to extend the lease. In addition to base rent, the City would pay its share of the Operating Expenses for the Facility, which include costs to maintain the parking lot, driveways, sidewalks for the Facility, shared roof and exterior walls, landscaping, and shared building systems, if any. The City's proportionate share of these costs is 30.8%, which is equivalent to the City's lease of the total square footage of the building.

While the City has a strong desire to establish a joint use agreement with the County and the Expo, at this time, such agreements have not been negotiated. *See legal analysis below.*

The lease and the obligation to pay rent will begin when the City is given possession of the premises.

Amortization of the costs to design, engineer and construct the building are based on a total cost of \$15,000,000, which would result in an annual lease payment of \$852,000. If the costs exceed \$15,000,000, the City will be obligated to make one or more balloon payments, with interest, prior to year 10 for those additional costs.

### **FINANCIAL ANALYSIS:**

In addition to the previously presented financial information, staff will update the council with the latest development information.

### **LEGAL ANALYSIS:**

Shared Use. The lease contains two provisions which address a joint use agreement in Sections 10.2 and 10.3.

10.2 Joint Use of the Facility for Special Events. This section mandates that the parties make the entirety of the Facility available from time to time for purposes of "hosting

major sporting events, trade shows, conventions, or other similar activities as the parties may mutually agree." It requires that the parties enter into a joint use agreement prior to the commencement of the lease and before the first day of each year thereafter. The agreement would include provisions regarding the type of event, rates for rental, shares of revenue, staffing, management and oversight responsibilities for the event, and indemnification and insurance provisions. It is the parties' intention that the agreement, at least initially, would run for a 1-year term, which would allow the parties to adjust the terms following experience with hosting special events at the Facility. While this section makes clear that the parties must negotiate a shared use agreement, it does not contain any provisions for how those dates and types of events will be determined, how they will be staffed or how, and if, revenue will be shared vs. a straight rental rate.

10.3 Rental/Use of Vacant Space. This section addresses the desire of the City to allow rental of vacant space in the Facility should such space be available. For example, if the Expo makes not use of its gyms Monday - Thursday outside special events, the City desires to use such facilities for its recreation programs. This requires the parties to enter into good-faith negotiations for such use, which would include reasonable rental rates for the gym, seeking priority for City use, provisions for staffing, etc. Again, no such an agreement has been entered into at this time and while the lease provides that the parties must negotiate for such terms, there is no guarantee such an agreement will be reached. More importantly, even if the parties reach agreement, there is no guarantee that there will be vacant space available for the City's use, if for example, the County were to rent its gyms to a 3rd party for weekday operations.

Based on the foregoing, it is conceivable that there will be much less shared use of the Facility than the City initially contemplated and/or that ideas about how the Facility should be used are difficult to reconcile. Given timing for construction, the County has advised that the lease cannot be delayed pending joint use negotiations. The Council should determine whether it is in the public interest to execute the lease even if the City and the County ultimately have little shared use of the Facility.

### **COUNCIL GOALS/STRATEGIC PLAN ANALYSIS:**

GOAL 2 - Be a city filled with happy, healthy people who are thriving.

STRATEGY 5 – Plan, design, build, and maintain a comprehensive system of sustainable facilities, trails, and park spaces, (setting the highest standards) to provide attractive places people will use and enjoy. Acquire additional lands for active and passive recreation use based on current deficiencies and public demands created by increasing population or the environmental and recreational significance of the area. (Be mindful of the budget and plan trail locations).

GOAL 3 - Provide opportunities for youth education, recreation, and support. (Kids are the future. Happy, well-adjusted kids are the canary in the coal mine for true community/family wellbeing).

STRATEGY 5 – Develop more indoor Winter activities utilizing existing public spaces in addition to building and use of a new Central Point Community Center.

**ATTACHMENTS/EXHIBITS:**

1. Reso - Approving Community Center Lease Agt
2. 2024-06-04 MPERC Lease Comparison (City edits)

**STAFF RECOMMENDATION:**

The Council can approve the Resolution which authorizes the City to enter into the lease, direct staff to revise the lease provisions, or reject the lease. In the event the City does not enter into a lease, it has liability for costs incurred to date for design and engineering of the project, estimated to be approximately \$1,000,000.

**RECOMMENDED MOTION:**

Options:

Move to approve Resolution No. \_\_\_\_\_ a Resolution Approving that Intergovernmental Lease Agreement with Jackson County for Community Center and Authorizing City Manager to Execute Same.

Move to direct staff to revise the draft lease with (list proposed revisions) and bring it back for consideration at the June 27, 2024 County meeting.

Move to reject lease and direct staff to terminate negotiations with County.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING THAT INTERGOVERNMENTAL LEASE AGREEMENT WITH JACKSON COUNTY FOR COMMUNITY CENTER AND AUTHORIZING CITY MANAGER TO EXECUTE SAME

Recitals:

- A. County owns land known as the Jackson County Exposition and Events Center at 1 Peninger Drive, Central Point, OR 97502 (the "Property") upon which the County intends to develop a multi-use pandemic response center (the "Facility").
- B. County intends to develop, construct, operate and manage the Facility and has designed a facility large enough to accommodate a portion of the building for City's use as a community center which County intends to lease to City, and City wishes to lease from County on the terms and conditions provided herein.
- C. City will be obligated to pay for its prorata share of the design, engineering and construction of the Facility which the City shall pay to County amortized over a period of 35-years and which such payments shall constitute Base Rent under the Lease Agreement.
- D. The City and the County have authority to enter into intergovernmental agreements pursuant to ORS Chapter 190.
- E. The City Council finds that the ability to partner with the County to construct the Facility and to finance the construction of the Facility under the terms of the Lease is in the public interest. The citizens of the City have expressed support for construction of a community center, and the proposed agreement provides economically favorable terms to allow the City to do so.

The City of Central Point resolves as follows:

Section 1. The Central Point City Council Approves that Intergovernmental Lease Agreement attached hereto as Exhibit "A", and authorizes the City Manager to execute same.

Passed by the Council and signed by me in authentication of its passage this \_\_\_\_\_ day of June, 2024.

\_\_\_\_\_  
Mayor Hank Williams

ATTEST:

\_\_\_\_\_  
City Recorder

# INTERGOVERNMENTAL LEASE AGREEMENT

**BETWEEN:**           **City of Central Point,**  
an Oregon municipal corporation                                 **(Tenant)**

**AND: Jackson County,**  
a political subdivision of the State of Oregon **(Landlord)**

This agreement, which consists of the Basic Lease Terms and the Standard Lease Provisions, together with attached exhibits and addenda, concerns the lease by Landlord to Tenant of space in the Facility defined below.

## RECITALS

A. County owns land known as the Jackson County Exposition and Events Center at 1 Peninger Drive, Central Point, OR 97502 (the “Property”); and

B. The development of a Multi-Use Pandemic Response Center (the “Facility”) will help serve the needs of both City and County;

C. County intends to develop, construct, operate and manage the Facility and has designed a facility large enough to accommodate a portion of the building for City's use as a community center which County intends to lease to City, and City wishes to lease from County on the terms and conditions provided herein; and

D. City's share of the construction costs shall be based upon a proportionate share of the design, engineering and construction which the City shall repay to County amortized over a period of 35-years and which such payments shall constitute Base Rent hereunder.

## BASIC LEASE TERMS

**A.** Date of Lease: June 1, 2026  
(for reference purposes only)

**B.** Facility: (paragraph 1.5) Approximately 118,562 square feet as described on attached **Exhibit A** and as shown on the site plan on attached **Exhibit B**, located in Jackson County, Oregon.

C. Premises: (paragraph 1.12) The area shown on attached **Exhibit C**, consisting of approximately 36,853 square feet of Leasable Floor Area.

Address of the Premises: 1 Peninger Drive, Central Point, Oregon 97502

|           |                                                                           |                                                                                                                                                                                                                                                                                                   |
|-----------|---------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>D.</b> | Initial Term: (paragraph 3.1)                                             | 35 years, plus the number of days from the Commencement Date through the end of the month in which the Commencement Date occurs if the Commencement Date is a date other than the first day of a month, subject to the termination provisions below.                                              |
| <b>E.</b> | Commencement Date: (paragraph 3.2)                                        | The date Landlord delivers possession of the Premises to Tenant.                                                                                                                                                                                                                                  |
| <b>F.</b> | Base Rent: (paragraph 5.1)                                                | \$852,000/year (See para. 5.1 and <b>Exhibit D</b> )                                                                                                                                                                                                                                              |
| <b>G.</b> | Extension Options: (paragraph 3.4)                                        | Up to 4 options for 5 years each                                                                                                                                                                                                                                                                  |
| <b>H.</b> | Late Charge: (paragraph 5.6.1)                                            | 5 percent of amounts more than 10 days past due.                                                                                                                                                                                                                                                  |
| <b>I.</b> | Tenant's Percentage Share of Operating Expenses: (paragraph 1.17 and 6.1) | 30.8%                                                                                                                                                                                                                                                                                             |
| <b>J.</b> | Tenant's Share of Real Property Taxes: (paragraph 7.1)                    | 30.8%                                                                                                                                                                                                                                                                                             |
| <b>K.</b> | Permitted Use: (paragraph 10.1)                                           | Pandemic response center and other uses activities not inconsistent with a pandemic response center, including but not limited to a municipal community and recreation center.                                                                                                                    |
| <b>L.</b> | Landlord's Address for Payments and Notices: (paragraphs 5.4.5 and 34)    | Jackson County Administrator<br>10 S. Oakdale Ave., Room 214<br>Medford, OR 97501                                                                                                                                                                                                                 |
| <b>M.</b> | Tenant's Address for Notices: (paragraph 34)                              | Central Point City Manager<br>140 S. 3 <sup>rd</sup> Street<br>Central Point, OR 97502                                                                                                                                                                                                            |
| <b>N.</b> | Exhibits: (paragraph 45)                                                  | <b>Exhibit A - Facility Legal Description</b><br><b>Exhibit B - Facility Site Plan</b><br><b>Exhibit C - Premises Diagram</b><br><b>Exhibit D – Base Rent Schedule</b><br><b>Exhibit E - Description of Landlord's Work</b><br><b>(if applicable)</b><br><b>Exhibit F - Rules and Regulations</b> |

The paragraphs of the Standard Lease Provisions identified above in parentheses are those provisions where references to particular Basic Lease Terms appear. Each such reference to an

item of Basic Lease Terms, wherever it may appear in the Standard Lease Provisions, shall incorporate the applicable Basic Lease Terms set forth above.

## STANDARD LEASE PROVISIONS

**1. Definitions.** Unless the context otherwise specifies or requires, the following terms shall have the meanings specified:

1.1. Additional Rent. All charges payable by Tenant to Landlord which are in addition to Base Rent, as described in paragraph 5.3.

1.2. Building. The building in which the Premises are a part. The Building is depicted at **Exhibit B**.

1.3. Commencement Date. Defined in **item E** of the Basic Lease Terms.

1.4. Common Area. All areas, spaces, improvements and facilities in or near the Building provided by Landlord for the common or joint use and benefit of the occupants of the Building, their officers, agents, employees, servants, customers and invitees, including, but not limited to parking areas, driveways, entrances, exits, sidewalks, malls, courts, loading zones, ramps, retaining walls, roof, exterior walls of the Building and landscaped areas surrounding the Building and parking areas for the Facility.

1.5. Default Rate. Interest at 8 percent per annum.

1.6. Facility. Includes the Building in which the Premises are a part, and all other improvements on or appurtenances to the Building, as well as parking, landscaping, walkways, courtyards, loading zones and driveways which serve the Building. The Facility is depicted at **Exhibit B**.

1.7. Hazardous Substance. Defined in paragraph 10.7.

1.8. Landlord's Work. Landlord's obligations, if any, for work prior to Tenant's occupancy, described in paragraph 4.1.

1.9. Leasable Floor Area. All areas in the Premises which are measured from the center of exterior walls (and from extensions thereof in the case of openings) and from the center of interior demising walls or other dividers which separate the rentable Premises from other portions of the Building or Common Area.

1.10. Lease Year. Each one-year period from the Commencement Date to the end of the same month of the following year and each one-year period thereafter, except if the Commencement Date occurs on a date other than the first day of a month, include the initial partial month and the following twelve full calendar months.

1.11. Base Rent. Defined in paragraph 5.1.



1.12. Operating Expenses. All costs paid or incurred by Landlord in connection with the operation, maintenance, and repair of the Common Area located within the Facility (except as provided below), including, without limitation, all costs and expenses paid or incurred with respect to the following: operating, cleaning, sweeping, re-striping, repairing and resurfacing the parking lot and driveway areas for the Facility; maintenance and replanting of landscaping; maintenance, repair and replacement of landscape sprinkler systems, parking bumpers, directional signs and other signs and markers, lights and light standards (including bulb replacement), drainage systems and utility systems; janitorial services for Common Area; operation and maintenance of Facility signs, including depreciation on such signs if purchased and rent for such signs if leased; cleaning, maintenance, repair and replacement of all sidewalks within the ~~F~~Facility as well as those situated on the perimeter of and adjacent to the boundaries of the Facility (but nothing herein contained shall be construed as obligating Landlord to clean, maintain or repair any areas or improvements outside the Facility boundaries); operation, maintenance and repair of any security and alarm systems, including smoke alarms, and sprinkler and fire protection systems, if any, in the Common Area; fire sprinkler/backflow monitoring and inspection fees and costs, if any; the reasonable cost of personnel to implement such services and to provide security for the Common Area and the Facility, including all social security and other contributions, and including worker's compensation insurance costs paid or incurred with respect to such personnel (but excluding the cost of personnel to provide security to other portions of the Building that are under the direct control of Landlord or any tenant); all premiums for liability and property damage insurance (including, without limitation, extended and broad form coverage risks, mudslide, land subsidence, volcanic eruption, flood and earthquake) and rental loss insurance for the Common Area (but excluding the costs of such liability or rental loss insurance for other portions of the Building that are under the direct control of Landlord or any ~~Tenant~~tenant); any assessment or other charges imposed by any governmental agency including, but not limited to, assessments or other charges related to federal or state environmental protection regulations, and storm water charges based on impervious surfaces of the Facility; except as provided otherwise in paragraph 1.14, any and all governmental impositions and charges of every kind and nature whatsoever relating to the Facility or improvements therein, including but not limited to any road user or transportation system maintenance fee and any charges or fees measured by trip generation or length, parking spaces, buildings, vehicle usage or similar bases for measurement; the cost of repainting the exterior of the Building; roof repairs and overlays for the Building; snow and ice removal from Common Areas and the roof of the Building; costs of electricity, water and other utilities used with respect to the operation and maintenance of the Common Area, as well as all general service water charges for the Common Area, and water and sewer charges for the Common Area; and garbage and refuse removal for the Common Area. Also included in Operating Expenses are capital expenditures incurred by Landlord which benefit, maintain or improve the Common Area, capital expenditures reasonably calculated to reduce the operating cost of Common Area, and capital expenditures required to comply with governmental laws, rules, regulations, codes or ordinances. Notwithstanding the foregoing, any significant capital expenditure to the Common Area in the last 5-years of the term shall only be charged to Tenant, if Tenant and Landlord mutually agree to the work before it is performed. The costs of significant capital expenditures permitted in this paragraph 1.12 shall be amortized over such period as the parties mutually agree upon with interest at a rate of two percent over the Wall Street Journal prime rate determined at the time the work or purchase is completed. There shall be excluded from Operating Expenses the following expenses: expenses which are the responsibility of Tenant under this agreement; expenses incurred by Landlord for any part of the Building under its exclusive control and or expenses incurred by any other tenant for any part of the Building under said Tenant's-tenant's exclusive control, provided

that expenses incurred for systems jointly used by Landlord (or another tenant) and Tenant shall be deemed an Operating Expense.

1.13. Premises. That portion of the Building outlined on the site plan attached as **Exhibit B**, consisting of the Leasable Floor Area described in **item C** of the Basic Lease Terms.

1.14. Property Taxes. Landlord and Tenant are governmental entities exempt from Real Property taxation. For purposes of this Agreement Property Taxes shall mean all general and special assessments or installments thereof which are now or hereafter may be assessed against the land and improvements which constitute the Facility. The term shall include personal property taxes levied on or assessed against property owned by Landlord and used in connection with Common Areas for the Facility (personal property taxes levied on or against real property owned by Landlord under its exclusive control shall not be deemed property taxes for purposes of this agreement). Nothing contained in this agreement shall require Tenant to pay any estate or inheritance tax or any income, revenue or other tax on the rent payable by Tenant under this agreement; provided, however, that if at any time during this agreement the methods of taxation are altered, wholly or partially, so that in lieu of any tax under this paragraph 1.14, there is levied, assessed or imposed a tax, assessment, levy, imposition, or charge, then all such taxes, assessments, levies, impositions, or charges shall be deemed to be included within the term Property Taxes for the purpose of this agreement.

1.15. Rent. Collectively, Base Rent, Balloon Payment (if any) and all Additional Rent.

1.16. Signs. Defined in paragraph 10.6.

1.17. Subtenant. Any sublessee, licensee, concessionaire or other person which uses space in the Premises for the purpose of making sales of goods or services.

1.18. Tenant's Percentage Share. The fraction, the numerator of which is the Leasable Floor Area of the Premises and the denominator of which is the Leasable Floor Area of the Building. In the event the Leasable Area of the Premises changes or there is a change in the Leasable Floor Area of the Building, Tenant's Percentage Share shall be appropriately adjusted effective either as of the last day of the calendar quarter in which the change occurs or as of the calendar year in which the change occurs, as reasonably determined by Landlord.

**2. Lease of Premises.** Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord subject to all of the terms, covenants and conditions under the Basic Lease Terms and the Standard Lease Provisions.

**3. Term/Commencement.**

3.1. Term. The duration of the term of this agreement shall be the period described in **item D** of the Basic Lease Terms. The phrase "lease term" or "term of this agreement", as used in this agreement shall be the term described in **item D** of the Basic Lease Terms and any renewal or extension of that term.

3.2. Commencement. The term of this agreement shall commence on the date stated in **item E** of the Basic Lease Terms.

3.3. Early Possession. In the event Landlord permits Tenant to enter the Premises prior to commencement of the lease term to undertake permitted improvements or alterations or to fixture or equip the Premises under circumstances in which paragraph 3.3 does not apply, as a condition of such early possession, Tenant's indemnification obligations under paragraph 15 shall become effective upon Tenant's entry.

3.4. Option(s) to Extend Lease. If applicable, Tenant shall have an option to extend the term of this ~~lease agreement~~Agreement for the additional period(s) specified in **item G** of the Basic Lease Terms, subject to the following:

3.4.1. Each extension option term shall commence on the day following expiration of the preceding term.

3.4.2. Each option shall be exercised, if at all, by written notice from Tenant to Landlord given not less than 12 months prior to the expiration of the preceding term.

3.4.3. The exercise of an option to extend shall not be effective if at the time of the exercise of the option or at the time that the option term would commence there is an existing default in this ~~lease agreement~~Agreement or an event of default which with notice or lapse of time, or both, would constitute a default.

3.4.4. The terms and conditions of this ~~lease agreement~~Agreement for an extension term shall be identical with the initial term except for Base Rent (which shall be the amount determined in accordance with paragraph 5.3) and except that Tenant will no longer have an option to extend this lease agreement for the option term that has been exercised.

#### **4. Improvement/Acceptance of Premises.**

4.1. Landlord Obligations. Landlord, at its sole cost and expense, shall diligently perform and pursue the construction of the Facility described in **Exhibit E** (Landlord's Work). Landlord's sole obligations, if any, with respect to the Premises prior to delivery to Tenant shall be as set forth in **Exhibit E**. Subject to delays occasioned by causes beyond Landlord's reasonable control, Landlord shall use reasonable speed and diligence to perform Landlord's Work, if any, pursuant to **Exhibit E**; provided, however, the failure to complete Landlord's Work by any estimated completion date for such work shall not affect the terms, validity or commencement of this agreement. All Landlord's Work shall be performed in a good and workmanlike manner substantially according to the Plans. Landlord shall obtain at its own expense all building permits, approvals and certificates required by any governmental or other applicable authority for the Landlord's Work and shall, upon request of Tenant, promptly deliver copies of same to Tenant.

4.2. Acceptance. Tenant acknowledges that the Premises will be delivered by Landlord in the condition described on **Exhibit E**, and that Landlord has no obligation to alter, repair, renovate, or render fit for Tenant's occupancy, any part of the Premises except as described therein. The acceptance by Tenant of the Premises shall constitute an acknowledgment by Tenant that the Premises are then in the condition called for by this agreement, that Landlord has performed all of

Landlord's Work, if any, with respect to the Premises, and that the Premises are in good condition and repair.

4.3. **Tenant Improvements.** Tenant shall obtain Landlord's written consent prior to performing any alteration, addition, or improvement on or to the Premises, provided however, that Landlord's consent shall not be required where the contemplated work: (i) does not include any alteration or of the structural components of the Premises, ~~and (ii) will not adversely affect joint use of the Building, and (iii)~~ will not cost more than Two-Hundred Fifty Thousand Dollars (\$250,000) to complete. In the event Landlord's consent is required, such consent shall not be unreasonably withheld, conditioned or delayed. In all events, Tenant shall provide Landlord a written description of any alterations (other than alterations involving expenditure less than \$15,000). All alterations, additions and improvements shall be constructed in a good and workmanlike manner by licensed contractors and in compliance with all applicable laws, regulations, zoning ordinances and building codes.

5. **Rent.** Tenant shall pay to Landlord as rental for the use and occupancy of the Premises, at the times and in the manner provided, the following:

5.1. **Base Rent.** Tenant's Base Rent has been calculated based upon Tenant's ~~prorate~~prorata share of the costs of construction of the Facility, being 30.8%, payable as follows: Fifteen Million Dollars (\$15,000,000) amortized over 35 years at 4.5% interest ~~plus, to the extent Tenant's share of the costs of construction exceeds \$15,000,000, such additional costs shall be paid in one or more balloon payments during years 6-10 of the lease term.~~ The amortization table for such Base Rent is attached hereto at Exhibit D. Base Rent shall be payable annually in the amount of \$852,000, and on or before the first day of each and every successive year during the term of this lease, without any offset or deduction. Base Rent for any partial year in which this lease commences or expires shall be prorated on the basis of a 365-day year. Tenant may, at its sole option, prepay the Base Rent in whole or in part without premium or penalty for the entire term beginning year ten. In such event, Base Rent shall not be due for the remainder of the term.

5.2. **Balloon Payment(s).** In addition to Base Rent, to the extent Tenant's percentage share of the costs of construction of the Facility exceeds \$15,000,000, such additional amounts plus 4.5% interest compounded monthly from the Commencement Date, shall be paid to Landlord in one or more installments at any time during or before the end of year 10 of the lease term.

~~5.2.5.3.~~**Base Rent for Extension Term(s).** Base Rent during any extension term described in Paragraph 3.4 that is exercised and effective shall be fair market rent for the extension term, as agreed by the parties, following Tenant's exercise of the option. If the parties are unable to agree on Base Rent for the extension term, prior to 90 days before commencement of the term, ~~a~~ Base Rent shall be determined by arbitration conducted in accordance with the rules of the Arbitration Service of Portland, Inc., and either party may initiate the arbitration. Fair market rent shall be determined without regard to any trade fixtures, equipment, furnishings, or other personal property located on the Premises which are owned by Tenant.

~~5.3.5.4.~~**Additional Rent.** Tenant shall pay, as Additional Rent, in the manner set forth in paragraph 6, Tenant's Percentage Share of all Operating Expenses (which include Property Taxes) during the term hereof, along with all other sums of money or charges required to be paid by Tenant to Landlord under this agreement in addition to Base Rent, whether or not the same are

designated as “Additional Rent.” If such amounts or charges are not paid at the time provided in this agreement, they shall nevertheless be collectible as Additional Rent with the next installment of Base Rent thereafter falling due, but nothing herein shall be deemed to suspend or delay the payment of any amount of money or charge at the time it becomes due and payable under this agreement or limit any other remedy of Landlord.

5.4.5.5. Additional Provisions. The following additional provisions shall apply to Tenant’s obligations to pay Rent under this agreement:

5.4.1-5.5.1. Late Charge. In the event any Rent is not paid within 30 days after it becomes due, Tenant shall pay to Landlord a late charge equal to ~~one-half of one percent (-.5%)~~ 2% of the past-due amount. Payment by Tenant and acceptance by Landlord of the late charge shall not constitute a waiver of Tenant’s default for failure to pay or Landlord’s remedies in the event of a default.

5.4.2-5.5.2. Interest. All Rent payable by Tenant to Landlord shall bear interest at the Default Rate from the date that is 30 days after the due date for payment of such amount.

5.4.3-5.5.3. Prorating Rent. When it is necessary to prorate Rent or any portion thereof, the proration shall be based on a 30-day month and 365-day year.

5.4.4-5.5.4. When Payments Made. A payment of Rent shall be considered made when it is received by Landlord.

5.4.5-5.5.5. Place for Making Payments. Until directed otherwise in writing by Landlord, Tenant shall make all payments due Landlord under this agreement to the address specified in **item L** of the Basic Lease Terms.

## **6. Payment for Operating Expenses.**

6.1. Tenant’s Obligation. Tenant shall pay Tenant’s Percentage Share of Operating Expenses specified in **item I** of the Basic Lease Terms, determined in accordance with paragraph 1.18. Payments shall be made in accordance with this paragraph 6.

6.2. Estimated Payments. Prior to the commencement of each fiscal year (as determined by Landlord’s fiscal calendar) during the term of this agreement, Landlord shall furnish Tenant with a written statement setting forth Tenant’s Percentage Share of the estimated Operating Expenses for the next ~~calendar~~ fiscal year. During the first fiscal year of this agreement, Tenant’s Percentage Share of estimated Operating Expenses shall be the amount determined by Landlord at the commencement of this agreement. Tenant shall pay in advance to Landlord as Additional Rent on the first day of each fiscal year during the term of this agreement an amount equal to Tenant’s Percentage Share of the estimated Operating Expenses for that fiscal year.

6.3. Annual Adjustment. Within 90 days after the close of each fiscal year (as determined by Landlord’s fiscal calendar) or as soon thereafter as practicable, Landlord shall deliver to Tenant a statement of the actual amount of Tenant’s Percentage Share of Operating Expenses payable for the fiscal year just concluded. If on the basis of such statement Tenant owes

an amount that is less than the estimated payments for such fiscal year previously made by Tenant and Tenant is not in default, Tenant shall receive a credit in the amount of such excess against the next payment due under this paragraph 6.3. If on the basis of the statement Tenant owes an amount that is in excess of the estimated payments for that fiscal year, Tenant shall pay such amount to Landlord within 30 days after the statement from Landlord.

6.4. Adjustments on Commencement and Termination. If this agreement commences on a date which is not the first day of the fiscal year or terminates on a date which is not the last day of the fiscal year, the adjustment described in paragraph 6.3 applicable to the fiscal year in which the commencement or termination occurs shall be prorated on the basis of the number of days during which this agreement is in effect. If the adjustment is not determined until after expiration or termination of this agreement, any excess amount due Tenant or deficiency amount due from Landlord shall be paid within 30 days after the annual statement, subject to Landlord's right to deduct any sum due Tenant under this provision from any other sums remaining due from Tenant to Landlord.

## **7. Taxes.**

7.1. Tenant's Share of Property Taxes. The parties acknowledge that each is a public entity exempt from Property Taxes. However, all Property Taxes, if any, that are hereafter assessed shall be included in Operating Expenses. Tenant's Percentage Share of such Property Taxes shall be paid in the manner described in paragraph 6.

7.2. Tenant's Taxes. Tenant shall pay before delinquency all taxes and other assessments levied upon Tenant's furniture, fixtures, equipment and other personal property located on the Premises.

8. Utilities. Tenant shall pay all initial utility deposits and fees and shall pay all monthly service charges for water, electricity, sewage, gas, telephone and all other utility services furnished to the Premises during the entire term of this agreement. In the event any such services are not separately metered or submetered to Tenant, but rather are shared and are billed to and paid by Landlord, Tenant shall reimburse Landlord on a proportional basis. If Landlord determines that such use is not proportional, Landlord may rely on the utility service provider for its estimate based on the type of use and estimated consumption and may utilize such devices as may be appropriate for determining the amount of use.

8.1. Reimbursements as Additional Rent. All reimbursements under this paragraph 8 shall be considered Additional Rent and shall be due upon statement from Landlord.

8.2. No Landlord Liability. Landlord shall not be liable to Tenant for any loss of or interruption in utility services provided to the Premises and there shall be no reduction or abatement of rent in the event of any such loss or interruption of utility service, and any such loss or interruption shall not be construed as a constructive eviction.

## **9. Maintenance and Use of Common Area.**

9.1. Tenant's Rights. The use and occupation by Tenant of the Premises shall include a right to the use in common with others entitled thereto of the Common Areas and other facilities



as may be mutually agreed by the parties, subject, however, to the terms and conditions of this agreement. The rights of Tenant in and to the Common Area shall at all times be subject to the rights of Landlord to use the same in common with Tenant, and it shall be the duty of ~~Landlord and Tenant~~each party to keep all of the Common Area free and clear of any obstructions created or permitted by ~~Landlord or Tenant~~such party or resulting from ~~Landlord or Tenant's~~such party's operation and to permit the use of the Common Area only for the purpose set forth above.

9.2. Landlord's Rights. Landlord shall at all times during the term of this agreement have the following rights with respect to the Common Area:

9.2.1. Landlord shall have the right from time to time to make changes in the Common Area, including the location and relocation of driveways, entrances, exits, parking spaces, the direction and flow of traffic, landscaped areas, and all other facilities thereof.

9.2.2. Landlord may at any time and from time to time exclude and restrain any person from use or occupancy of the Common Area, excepting, however, patrons and service suppliers of Tenant who make use of the Common Area in accordance with the rules and regulations established by Landlord from time to time.

9.2.3. Landlord shall have the right to post temporary or permanent signs and to temporarily close any portion or all of the Common Area to address emergency repairs that are necessary for health, life or safety. To the extent such closure is necessary for non-emergency maintenance of the Facility, Landlord shall schedule all such closures in cooperation with Tenant to assure Tenant's use of the Facility is not significantly impacted.

9.3. Rules and Regulations. Tenant shall faithfully observe and comply with the rules and regulations set forth on attached **Exhibit F**, as may be modified by Landlord from time to time, governing the use and occupancy of the Facility, including Common Areas, provided that any new rules and regulations shall not have the effect of materially limiting Tenant's permitted use of the Property.

9.4. Parking. Tenant and Tenant's patrons and invitees shall have the right to use the parking areas in the Facility which are available for such use in common with all other permitted users of the Facility. Landlord shall have the right to designate parking areas in the Facility for employee parking, provided that designated employee parking does not have the effect of materially limiting Tenant's permitted use of the Property.

## 10. Use.

10.1. Permitted Use. Except as otherwise provided herein, the Premises shall be used solely for the purpose specified in **item K** of the Basic Lease Terms, subject to the terms of the Joint Use Agreement. Tenant shall not use or permit the Premises to be used for any other purpose or under any other trade name without Landlord's prior consent which Landlord may withhold in the exercise of Landlord's sole discretion.

10.2. Joint Use of Facility for Special Events. The parties shall make the entirety of the Facility available to a party from time to time for the purposes of hosting major sporting events, trade shows, conventions, or other similar activities as the parties may mutually agree (each, a “Special Event”). Prior to the Commencement Date of this agreement, and before the first day of Each Lease Year thereafter, or on such frequency as the parties shall otherwise agree, the parties shall negotiate and enter into a Joint Use Agreement, which shall detail the terms and conditions of a party’s use of the Facility for a Special Event. Such Joint Use Agreement shall describe the date(s) of the events, type of event, the rates at which the Facility will be rented, indemnification, insurance, and/or risk-related obligations by any third-party users, the share of revenue to each party, responsibilities for oversight, staffing and management of such events, use of other on-site property by a party, marketing and related matters.

10.3. Rental/Use of Vacant Space. The parties acknowledge that significant funds are being expended to develop the Facility and that the community as a whole benefits from a Facility that is utilized to the fullest extent. To that end, the parties shall enter into good-faith negotiations as part of the Joint Use Agreement to allow a party to rent vacant space within the Facility when not in use by ~~that~~the other party. Such provisions will include reasonable rental rates to be charged by the parties, provisions encouraging a preference to rent vacant space to city when vacant space is available, a process to request rental of the Facility or any portion thereof, provisions for staffing, management and oversight of the Facility during the rental period, indemnification, insurance, and other risk related obligations by third-party users, and related provisions.

10.4. Public Health Emergency Use of Facility. During any period of governmentally declared public health emergency in Jackson County, Landlord shall have the right to the exclusive use of the entirety of the Facility, including the Premises, for purposes of responding to such public health emergency for so long as such use is responsibly necessary to respond to such public health emergency. Landlord may exercise such right by providing written notice to Tenant. In such event, Landlord will abate Tenant’s rent during such public health emergency and extend the rental term by the period of time the Facility is under Landlord’s exclusive use. If Landlord exercises this right to a portion of the Premises, such abatement shall be proportional to the reduction in area of the Premises during such public health emergency. The partial abatement shall continue for the period commencing with such loss of use and ending with the return of exclusive use of the Premises to Tenant. If Landlord’s emergency use of the facility is subject to reimbursement from FEMA, or another agency, Landlord shall pay to Tenant Tenant’s Percentage Share of any such reimbursement received by Landlord.

10.5. Restrictions. In regard to the use and occupancy of the Premises and the Common Areas, ~~Tenant will not~~neither party shall: (a) place or maintain any trash, refuse or other articles in any vestibule or entry of the Premises, on the sidewalks or corridors adjacent thereto or elsewhere on the exterior of the Premises, nor obstruct any driveway, corridor, sidewalk, parking area, or any other portion of the Common Area; or (b) use or permit or suffer the Premises to be occupied or used in a manner which is offensive or objectionable by reason of noise, odors, or vibrations.

10.6. Compliance with Laws. Throughout the term of the agreement, Tenant shall comply with all applicable laws, rules and regulations affecting Tenant’s use and operations on the Premises (including, but not limited to, the Americans with Disabilities Act) and shall correct,



at Tenant's sole cost, any failure of compliance because of such use or operation including any alterations or improvements of the Premises that may be required to cure such deficiencies. Notwithstanding the foregoing, if any exterior or structural alterations to the Premises are required and such alterations are not acceptable to Landlord (approval shall not be unreasonably withheld), Tenant shall cease the use or operation which requires such alteration or improvement.

10.7. Signs. All Tenant's Signs shall strictly comply with all applicable sign codes, laws, rules and regulations. As used in this paragraph 10.6, "Signs" means all signs, designs, monuments, logos, banners, projected images, pennants, decals, advertisements, pictures, notices, lettering, numerals, graphics, or decoration.

10.8. Hazardous Substances. Tenant shall not cause or permit any Hazardous Substance (defined below) to be spilled, leaked, disposed of, or otherwise released on or under the Premises or the Building in which the Premises are located or elsewhere within the Facility. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in paragraph 10.1. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws (defined below) 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. Upon the expiration or termination of this agreement, Tenant shall remove all Hazardous Substances from the Premises.

10.8.1. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities or losses (including diminution in value of the Premises or the Facility, investigatory costs, costs and fees of environmental consultants, attorneys and other professionals, and damages for loss or restriction on use of rentable or usable space or of any amenity of the Premises or Facility) that arise during or after the term of this agreement, as a result of or in connection with any contamination of the Premises by Hazardous Substance by Tenant or any officer, agent, employee, contractor, or invitee of Tenant.

10.8.2. As used in this agreement, the term "Environmental Laws" means all federal, state and local statutes, regulations and ordinances, and any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term "Hazardous Substance" means any hazardous, toxic, infectious, or radioactive substance, waste, or material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

## **11. Alterations and Improvements**

11.1. By Tenant. Except as otherwise permitted in Section 4.3 herein, Tenant shall not make or suffer to be made any alterations, additions, or improvements to or of the Premises or any part thereof, or attach any fixture or equipment thereto, without first obtaining Landlord's written consent, which shall not be unreasonably withheld. Any alterations, additions or improvements to the Premises consented to by Landlord shall be made by Tenant at Tenant's sole cost and expense according to plans and specifications approved by Landlord, and any contractor or person selected by Tenant to make the same must first be approved by Landlord. All additions, improvements and

alterations shall be performed by Tenant with quality materials and workmanship and shall be constructed strictly in accordance with all applicable codes, ordinances, laws, rules and regulations. Tenant shall require Tenant's contractor to (a) obtain liability insurance and worker's compensation insurance with coverages not less than the coverages required under paragraph 16, (b) name Landlord and its elected officials, officers, agents, employees, and volunteers as additional insureds, by separate endorsement, on the contractor's liability policy, and (c) provide Landlord with a waiver of claims and waiver of subrogation with respect to liability and worker's compensation claims arising out of or relating to the work. As a condition of commencing the work, evidence that all of the foregoing requirements have been satisfied shall be furnished to Landlord. In the event any improvements or alterations installed by Tenant in the Premises (whether at the time of or subsequent to the commencement of this agreement) require modifications to the parking areas or any other portion of the Common Area to comply with the Americans with Disabilities Act, or any other applicable local, state or federal law, Tenant shall reimburse Landlord the cost incurred by Landlord in making such modifications. All alterations, additions, fixtures and improvements made in or upon the Premises either by Tenant or Landlord (other than furnishings, trade fixtures and equipment installed by Tenant) shall be Landlord's property.

11.2. By Landlord. Landlord shall have the right at all times during the term of the agreement to renovate and remodel buildings and other improvements in the Facility and to make alterations or additions to and build additional structures, in the Facility, all as Landlord deems appropriate, provided any such work by Landlord shall not unreasonably interfere with access to or use of the Premises by Tenant. In the event such work will increase Tenant's Operating Expenses, Landlord shall provide the proposed ~~increase~~increased expenses to Tenant at least 90-days prior to imposition of such increased costs to allow Tenant to budget and plan for such increased expense.

12. Liens. Tenant covenants to keep the Premises free from all construction liens and all other liens of any type whatsoever arising out of Tenant's repair, alteration, maintenance, and use of the Premises.

13. Repairs and Maintenance. The parties' obligations with respect to maintenance and repair are as follows:

13.1. Tenant's Obligations. Tenant shall at all times during this agreement, at Tenant's sole cost, keep the Premises (including exterior doors and hardware and glass) and all doors, fixtures, trade fixtures, signs (interior and exterior), ceilings, inside walls, wall coverings, floor coverings and surfaces, furnishings, equipment and appurtenances thereof, including lighting, heating and plumbing fixtures, utility lines from the point of entry into the Premises, the heating and air conditioning system that serves the Premises, and all individual or building systems in the Premises, including fire protection (including fire sprinklers) and security, if any, in good order, condition and repair and in good operating order. In addition, Tenant shall be responsible for any repairs to the exterior surfaces of the Building and the roof membrane resulting from abuse, or negligence by Tenant or any of Tenant's employees, agents, contractors or invitees. All repairs which Tenant is required to make under this paragraph shall be equal in quality and class to the original work. Tenant shall obtain and maintain equipment maintenance contracts with licensed and bonded contractors, in form and with contractors reasonably satisfactory to Landlord, covering all mechanical systems within the Premises, including heating, air conditioning and ventilating

equipment (HVAC) that serves the Premises, and shall provide evidence of such contracts as requested from time to time by Landlord. If Landlord undertakes the maintenance of ~~all~~ any such systems and equipment in the Facility, the cost thereof shall be included as an Operating Expense and such costs shall be considered Additional Rent.

13.2. Roof Penetrations/Antennae. Tenant shall not undertake any penetrations of the roof or make installations on the exterior walls or roof of the Premises without Landlord's prior written consent, which Landlord may withhold in the exercise of Landlord's reasonable discretion. With respect to any roof penetrations permitted by Landlord, Tenant shall be responsible for any damage caused by such work and any losses resulting from any adverse impact on the roof warranty resulting from such work. If Tenant shall install such equipment, Tenant shall do so at its sole cost and expense and in accordance with all applicable laws, rules and regulations. Tenant shall also defend, indemnify and hold Landlord harmless from and against any claims, costs or expenses incurred by Landlord as a result of such installation by Tenant. If Tenant installs such equipment, Tenant shall be responsible for maintenance and repair thereof, at Tenant's sole cost. At the expiration or other termination of the agreement, any such equipment shall remain the property of Tenant and shall be removed by Tenant unless Landlord consents in writing to allow such equipment to remain place.

13.3. Landlord's Responsibilities. Except for Tenant's obligations under paragraph 13.1 and 13.2, Landlord shall be responsible for maintenance and repair of the exterior surfaces and roof of the Building which comprises the Premises (the cost of which shall be included in Operating Expenses) and for repair and replacement of structural portions of the Building in which the Premises are located, consisting of foundations, structural floors, structural ceilings, structural walls and columns, and for repair and replacement of utility lines and conduits outside the Premises at the exterior wall of the Building.

13.4. Reimbursement for Repairs Assumed. If either party fails or refuses to make repairs that are required by this paragraph 13, the other party may make the repairs and charge the actual costs of repairs and maintenance to the first party. Such expenditures by shall be reimbursed by the first party on demand together with interest at the Default Rate from the date of expenditure. Except in an emergency creating an immediate risk of personal injury or property damage, neither party may perform repairs which are the obligation of the other party and charge that party for the resulting expense unless at least 30 days before work is commenced the defaulting party is given notice outlining with reasonable particularity the repairs required and such party fails within that time to initiate such repairs in good faith.

13.5. Common Area Maintenance. Landlord shall be responsible for all maintenance, replacement and repair of the Common Area improvements and facilities, the cost of which shall be included in Operating Expenses.

## **14. Damage and Destruction**

14.1. Repair and Restoration. Except as provided in paragraphs 14.3 and 14.4, if the Premises or the portion of the Facility necessary for Tenant's occupancy should be damaged or destroyed during the term of this agreement, Landlord shall repair or rebuild the Premises to substantially the condition in which the Premises were immediately prior to such destruction (excluding improvements installed by Tenant).

14.2. Rent Abatement. Subject to the limitations below, Base Rent shall be abated proportionately during any period in which, by reason of any damage or destruction not occasioned by the negligence or willful misconduct of Tenant or any agent, contractor, employee or invitee of Tenant, there is a substantial interference with the operations of the Premises for its intended purposes and the Lease Term shall be extended by such period equal to the period in which Tenant suffered substantial interference with the operations of the Premises. Such abatement shall be proportional to the measure of ~~business-use~~ in the Premises which Tenant may be required to discontinue. The abatement shall continue for the period commencing with such destruction or damage and ending with the completion by Landlord of such work, repair or reconstruction as Landlord is obligated to do. For avoidance of doubt, no refund of prepaid Base Rent under paragraph 5.1 shall be due in lieu of abatement; however, in such case the Lease Term shall be extended with prepaid Rent credited for such extended Lease Term for so long as there is a substantial interference with the operations of the Premises for its intended purposes.

14.3. Right to Terminate. Notwithstanding the foregoing, if the Premises, or the portion of the Facility necessary for Tenant's occupancy should be damaged or destroyed (a) to the extent, in Landlord's reasonable opinion, of 30% percent or more of the then replacement value of either, (b) by a cause or casualty other than those covered by Landlord's insurance, or (c) to the extent that it would take, in Landlord's sole opinion, in excess of 365 days to complete the requisite repairs, then Landlord may either terminate this agreement or elect to repair or restore the damage, in which event Landlord shall repair or restore the same as provided in paragraph 14.1, except as provided in paragraph 14.4. If such damage or destruction occurs and this agreement is not so terminated by Landlord, this agreement shall remain in full force and effect. Landlord's election to terminate the agreement under this paragraph shall be exercised by notice to Tenant given within 60 days following the damage or destruction. Such notice shall set forth the effective date of the termination of this agreement. In the event of termination by Landlord, all rights and obligations of the parties shall cease as of the date of termination, and Tenant shall be entitled to the reimbursement of any prepaid ~~amounts~~Rent paid by Tenant and attributable to the ~~anticipated term~~unrealized portion of the Lease Term.

14.4. Damage Late in Term. If damage or destruction ~~to which Section 14.1 would apply~~ occurs within three (3) years before the end of the then-current Lease Term such that it would take in excess of 180 days to complete the requisite repairs, Landlord or Tenant may elect to terminate the Lease by written notice to the other given within 30 days after the date of the damage. Such termination shall have the same effect as a termination under Section 14.3.

14.5. Tenant's Obligations. Upon the completion of any work of repair or restoration by Landlord, Tenant shall forthwith repair, restore or replace, as necessary, all of Tenant's improvements, trade fixtures, equipment, and furnishings to at least the condition existing at the time of the damage.

## 15. Indemnification.

15.1. Tenant Indemnification. Subject to the conditions and limitations of the Oregon Tort Claims Act and the Oregon Constitution, Tenant shall indemnify and hold Landlord harmless from and defend Landlord against any and all claims, liability, damage or loss, and from and against all costs and expenses (including reasonable attorneys' fees), arising out of any injury to

or death of any person or damage to or destruction of any property arising out of the negligence or willful misconduct of Tenant, its elected officials, officers, agents, employees, and volunteers, except any cause resulting solely from the negligence or willful act of Landlord or its elected officials, officers, agents, employees, or volunteers.

15.2. Landlord Indemnification. Subject to the conditions and limitations of the Oregon Tort Claims Act and the Oregon Constitution, Landlord shall indemnify and hold Tenant harmless from and defend Tenant against any and all claims, liability, damage or loss, and from and against all costs and expenses (including reasonable attorneys' fees), arising out of any injury to or death of any person or damage to or destruction of any property arising out of the negligence or willful misconduct of Landlord, its elected officials, officers, agents, employees, and volunteers, except any cause resulting solely from the negligence or willful act of Tenant or its elected officials, officers, agents, employees, or volunteers.

15.3. Survival. The provisions of this paragraph 15 shall survive termination or expiration of this Agreement.

## **16. Insurance.**

16.1. Insurance by Landlord. Landlord shall keep improvements in the Facility, including the Building in which the Premises are located, insured against fire and other perils, with such coverages and endorsements and in such amounts as Landlord considers prudent, which may include land subsistence, volcanic eruption, flood and earthquake coverage. Landlord may also maintain rental abatement/rent loss insurance for the Facility at Landlord's sole cost. The cost of all such insurance (excluding rental abatement/rent loss insurance) shall be included as an Operating Expense.

16.2. Insurance by Tenant. On or before the earliest of the Commencement Date or the date Tenant takes possession of the Premises or commences or causes to commence any work of any type in or about the Premises, and continuing during the term of this agreement, Tenant shall, at its sole expense, procure and maintain the following insurance.

16.2.1. *Property Insurance*. Special form insurance for direct physical loss covering Tenant's trade fixtures, furniture, and equipment situated in or on the Premises and improvements installed by Tenant in the Premises.

16.2.2. *General Liability Insurance*. A policy of commercial general liability insurance covering all operations by or on behalf of Tenant, providing insurance for bodily injury and property damage liability and including coverage for premises and operations, products and completed operations, contractual liability (including Tenant's indemnification obligations under this agreement), broad form property damage (including completed operations), explosion, collapse, and underground hazards, and personal injury liability, and, if the permitted use described in paragraph 10.1 includes the sale of alcoholic beverages, liquor liability. The limits of liability shall not be less than \$2 million per occurrence (combined single limit for bodily injury and property damage) and personal injury liability, and \$4 million general aggregate and aggregate for products and completed operations.

16.2.3. *Automobile Liability Insurance.* Bodily injury and property damage liability insurance, including coverage for owned, hired, and non-owned automobiles. The limits of liability shall not be less than \$1 million combined single limit for each accident for bodily injury and property damage.

16.2.4. *Workers Compensation.* Workers compensation and employers' liability insurance as required by Oregon law, with coverage of not less than statutory limits.

Landlord may require the limits of liability coverage to be increased, from time to time, to an amount which is common in the community for uses similar to Tenant's use. Tenant's liability coverage shall be on an occurrence form and shall not be under any claims made or modified occurrence form. Tenant's liability insurance policy shall provide that it is primary insurance and not "excess over" or contributory with any other valid, existing and applicable insurance in force for or on behalf of Landlord. Tenant's policy(ies) shall not eliminate cross-liability and shall contain a severability of interest clause. Each insurance policy Tenant is required to maintain shall be (a) in a form reasonably acceptable to Landlord, (b) be issued by an insurer licensed to do business in the State of Oregon, and (c) name Landlord and Landlord's elected officials, officers, agents, employees, and volunteers as additional insureds, by separate endorsement. Tenant shall give at least 30 days written notice to Landlord prior to any expiration, cancellation, termination, or material change. Upon execution of this agreement, and thereafter from time to time at Landlord's request, Tenant shall furnish to Landlord a certificate of insurance or other evidence satisfactory to Landlord that the insurance required by this agreement is in effect. If requested by Landlord, Tenant shall furnish a complete copy of the insurance policies, together with endorsements, required to be maintained by Tenant.

**17. Mutual Waiver of Subrogation.** Landlord and Tenant agree to have their respective insurance companies issuing property damage insurance waive any rights of subrogation that such companies may have against Landlord or Tenant, as the case may be. Anything in this Lease to the contrary notwithstanding, Landlord and Tenant hereby waive and release each other of and from any and all rights of recovery, claims, actions or causes of actions against each other, their respective agents, officers and employees, for any loss or damage that may occur to the Premises, Facility, or personal property within the Facility, regardless of cause or origin, including the negligence of Landlord and Tenant and their respective agents, officers, employees and contractors. Each party agrees to give immediately to its respective insurance company which has issued policies of insurance covering any risk of direct physical loss, written notice of the terms of the mutual waivers contained in this paragraph 17, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waivers. If either Landlord or Tenant fails to provide the insurance policy or policies required hereinabove, the waiver of subrogation contained in this paragraph 17 shall no longer inure to the benefit of the party failing to provide such insurance, and the party claiming against such uninsured party shall be entitled to restitution of all damages and expenses suffered and/or claimed, without limitation.

**18. Eminent Domain.**

18.1. Right of Termination. Landlord or Tenant shall have the right to terminate this agreement in the event of a taking of all the Premises or a portion sufficient to render the remaining Premises reasonably unsuitable for the use that Tenant was then making of the Premises. As used

herein, the term “taking” means the condemnation by a competent governmental authority pursuant to the exercise of eminent domain or a sale in lieu of condemnation. A termination by Landlord or Tenant under this provision shall be effective on the date of the earlier of the date of title transfer or the date of the taking of possession by the condemning authority. An election to terminate pursuant to these provisions shall be exercised, if at all, by notice from the electing party to the other party within 60 days after Landlord notifies Tenant of the impending condemnation. In the event of termination under this paragraph, all rights and obligations of the parties shall cease as of the date of termination, and Tenant shall be entitled to the reimbursement of any prepaid ~~amounts~~ Rent paid by Tenant and attributable to ~~the anticipated term~~ the unrealized portion of the Lease Term.

18.2. Restoration. If a portion of the Premises is taken and this agreement is not terminated by either Landlord or Tenant pursuant to paragraph 18.1, this agreement shall terminate as to the part so taken on the date Tenant is required to yield possession to the condemning authority and Base Rent and Additional Rent shall be reduced commensurate with the reduction in area of the Premises. If this agreement will continue after a taking, Landlord shall commence diligently and continue thereafter to restore or cause to be restored any portion of the Premises and parking areas remaining after the taking. If during the pendency of such restoration, Tenant is unable to conduct its normal business operations from the Premises, Base Rent and Additional Rent shall be equitably adjusted to the extent of such disruption or, if Tenant is unable to conduct any business operations from the Premises, ~~and Additional~~ Rent shall abate until such restoration has been completed or Tenant resumes its operations from the Premises.

18.3. Proceeds and Claims. In the event of a taking, Tenant shall have the right to make a claim against the condemning authority for the value of any fixtures, furniture or other personal property taken by the condemning authority, any damages available for interruption of business, and for relocation expenses. Landlord shall be entitled to receive the entire award for the taking of real estate, including damages for a partial taking.

## **19. Assignment and Subletting**

19.1. Restriction. Without the prior written consent of Landlord in each instance, Tenant shall not (a) assign, transfer or encumber this agreement or any interest in this agreement; (b) suffer a transfer of this agreement by operation or law; (c) allow the use of any portion of the Premises by a Subtenant; provided that, subject to mutually acceptable indemnification and insurance requirements agreed upon by the Landlord and Tenant, Tenant shall be permitted to allow use/rental of the Premises by third parties such as athletic organizations, school districts, preschools, recreational users and/or special events and programs without Landlord’s prior consent; or (d) permit the use of occupancy of the Premises or any part thereof, including the use by any permitted Subtenant, for any purpose other than the uses permitted under paragraph 10.1.

19.2. Consent. Landlord shall not unreasonably withhold its consent to a proposed assignment, sublease, or use by another person (collectively, “Transfer”). Landlord may withhold consent to a proposed Transfer if Landlord determines in Landlord's sole but reasonable judgment that:



19.2.1. The transferee does not possess the qualifications reasonably equivalent to those of Tenant or has not demonstrated experience in successfully operating a similar facility which the transferee intends to operate from the Premises; or

19.2.2. The transferee does not possess financial qualifications sufficient for the successful operation and use of the Premises.

19.3. Requirements. With respect to any Transfer, the following requirements and conditions shall apply:

19.3.1. In the case of an assignment, the transferee shall expressly assume all of Tenant's obligations under this agreement;

19.3.2. Landlord shall not be required to consent to a sublease of less than the entire Premises; and

19.3.3. The transferee shall not use the Premises for any purpose other than the uses permitted under paragraph 10.1.

19.4. Additional Provisions. Any dissolution, merger, consolidation, or other reorganization of Tenant shall be deemed an assignment of this agreement by Tenant.

19.5. Recapture. Notwithstanding any provision of this agreement to the contrary, if Tenant desires to assign this agreement or sublet the Premises, Tenant shall deliver to Landlord an Assignment Notice of Tenant's request to assign or sublet not less than 30 days prior to the proposed effective date of such assignment or sublease. The Assignment Notice shall identify the particular entity or entities to which Tenant desires to assign this agreement or sublet the Premises. Not later than 15 days after receipt of the Assignment Notice, Landlord shall have the right to request additional information (Supporting Information) regarding the proposed assignment or sublease as is reasonably required by Landlord in order for Landlord to determine whether to grant or withhold its consent. Tenant shall provide the Supporting Information within 30 days after Landlord's request. Landlord shall have the right to approve the assignment or sublease, disapprove the assignment or sublease, or terminate this agreement within 60 days after Landlord's receipt of the Assignment Notice and all Supporting Information. If Landlord elects to terminate this agreement, it shall terminate on the date which is the later of (a) the proposed effective date of any assignment or sublease as set forth in the Assignment Notice, or (b) the date which is 180 days after the date of receipt by Landlord of the Assignment Notice.

**20. Landlord's Access.** Landlord shall have the right to inspect the Premises at any reasonable time or times, upon reasonable notice and in compliance with applicable laws to determine the necessity of repairs, maintenance or replacements. Whether or not such inspection is made, any duty of Landlord to begin repairs, maintenance or replacements shall not mature until 15 days after Landlord either has received from Tenant written notice of the work that is required or has actual notice of the need for the relevant repair. Each of Landlord and Tenant shall complete any repairs required of it under this Section 20 within a reasonable timeframe, considering the nature and extent of the repair. In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Landlord shall not cause unreasonable interference with use of the Premises by Tenant.



**21. Subordination and Attornment.** This agreement shall at all times be subject and subordinate to any mortgage or trust deed (Encumbrance) hereafter placed on the Facility, or any portion thereof, and to any and all modifications, renewals or extensions of an Encumbrance. In the event the Facility is sold or transferred in connection with the judicial or non-judicial foreclosure of any Encumbrance, or by deed in lieu of foreclosure, Tenant shall attorn to the purchaser as landlord. Within 30 days after request by Landlord or any existing or prospective lender of Landlord, Tenant shall execute a subordination and attornment agreement in a form required by the lender.

**22. Estoppel Certificate.** Within 30 days after written request from Landlord, Tenant shall execute, acknowledge and deliver to Landlord an estoppel certificate certifying: (a) that this agreement is unmodified and in full force and effect (or, if there has been a modification, that this agreement is in full force and effect, as modified, and stating the date and nature of each modification); (b) the date to which rental and other sums payable under this agreement have been paid; (c) that no notice has been received by Tenant of any default which has not been cured, except as to any default specified in the certificate; and (d) such other matters as may be reasonably requested by Landlord or Landlord's lender, assignee or purchaser (or proposed lender, assignee or purchaser). Any such estoppel certificate may be relied upon by such purchaser, lender or assignee for estoppel purposes only.

**23. Surrender on Expiration.**

23.1. Condition of Premises. Upon expiration of the lease term or earlier termination of this agreement, Tenant shall surrender the Premises in a state of good condition and repair and broom clean. Alterations, additions and improvements made by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for such work so require or Tenant is required to remove and restore pursuant to any other provision of this agreement. Tenant's obligations under this paragraph shall be subordinate to the provisions of paragraph 14 relating to damage or destruction.

23.2. Fixtures.

23.2.1. All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures and Signs, shall, at Landlord's option, become the property of Landlord.

23.2.2. Prior to expiration or other termination of the lease term Tenant shall remove all furnishings, furniture, and trade fixtures that remain Tenant's property.

23.3. Holdover. If Tenant does not vacate the Premises at the time required, Landlord shall have the option (a) to treat Tenant as a tenant from month-to-month, subject to all of the provisions of this agreement except the provisions for term and extension, if any, and at a Base Rent equal to 110 percent of the Base Rent in effect immediately prior to the expiration or termination, in addition to Additional Rent, or (b) to eject Tenant from the Premises and recover damages caused by wrongful holdover. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this agreement shall constitute a failure to vacate to which this paragraph shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

24. **Sale by Landlord.** In the event the original Landlord under this agreement, or any successor owner of the Facility, shall sell or convey the Facility, all liabilities and obligations on the part of the original Landlord, or such successor owner, under this agreement accruing thereafter shall terminate, and thereupon all such liabilities and obligations shall be binding upon the new owner. Tenant agrees to attorn to such new owner.

25. **Default.** The following shall be events of default:

25.1. **Default in Rent or Other Charges.** Failure by Tenant to pay any Rent required to be paid by Tenant to Landlord under this agreement within 10 days after it becomes due.

25.2. **Default in Other Covenants.** Failure of Tenant to comply with any term or condition or fulfill any obligation of this agreement (other than the payment of Rent) within 30 days after written notice by Landlord specifying the nature of the default with reasonable particularity.

25.3. **Insolvency.** Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within 30 days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within 10 days shall constitute a default.

26. **Remedies on Default.**

26.1. **Termination.** In the event of a default this agreement may be terminated at the option of Landlord by written notice to Tenant. Whether or not this agreement is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default, and Landlord may re-enter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

26.2. **Reletting.** Following re-entry or abandonment, Landlord may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this agreement, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

26.3. **Damages.** In the event of termination or retaking of possession following default, Landlord shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

26.3.1. All sums due and not then paid at the time of such election; and

26.3.2. Liquidated damages calculated pursuant to paragraph 28.

26.4. Right to Sue More than Once. Landlord may sue periodically to recover damages during the period corresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing.

26.5. Landlord's Right to Cure Defaults. If Tenant fails to perform any obligation under this lease, Landlord shall have the option to do so after 30 days' written notice to Tenant. All of Landlord's expenditures to correct the default shall be reimbursed by Tenant on demand with interest at the Default Rate from the date of expenditure by Landlord and shall be considered Additional Rent. Such action by Landlord shall not waive any other remedies available to Landlord because of the default.

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

27. Early Termination by Tenant. Tenant may terminate this agreement prior to the expiration of the Initial Term upon not less than 365 days' written notice to Landlord, provided that Tenant shall pay to Landlord liquidated damages as set forth in paragraph 28 below.

28. Liquidated Damages. If Tenant terminates this agreement early pursuant to paragraph 27, or if Landlord terminates this lease for Tenant's default, Tenant shall, as an additional, cumulative obligation upon any such termination, pay to Landlord as liquidated damages a sum equal to the present value of all of the Base Rent reserved for the residue of the then current term. In calculating such present values under this paragraph, the parties shall use the "Discount Rate", which shall be defined as the rate which, when compounded monthly, is equivalent to the Treasury Rate when compounded semi-annually. The "Treasury Rate" is defined as the semi-annual yield on the Treasury Constant Maturity Series with maturity equal to what would have otherwise been the remaining Initial Term of this Lease for the week prior to the Discount Rate, as reported in Federal Reserve Statistical Release H.15 – Selected Interest Rates, as determined by Landlord as of the applicable date. The rate will be determined by linear interpolation between the yields reported in Release H.15, if necessary. In the event Release H.15 is no longer published, Landlord shall select a comparable publication to determine the Treasury Rate.

TENANT AGREES THAT THIS SECTION 28 IS A MATERIAL INDUCEMENT FOR LANDLORD TO UNDERTAKE CONSTRUCTION OF THE FACILITY AND ENTER INTO THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE FACILITY IS A HIGHLY SPECIALIZED, SHARED FACILITY, WHICH IS DESIGNED FOR A UNIQUE AND SPECIFIC PUBLIC PURPOSE AND HAS LIMITED FUTURE MARKETABILITY AND UTILITY. THUS, THE PARTIES ACKNOWLEDGE AND AGREE THAT THE LIQUIDATED DAMAGES CONTEMPLATED HEREUNDER ARE NOT A PENALTY, BUT ARE A FAIR AND REASONABLE DETERMINATION OF THE ACTUAL DAMAGES THAT WOULD BE INCURRED BY LANDLORD FOR TERMINATION OF THIS AGREEMENT PRIOR TO THE EXPIRATION OF THE INITIAL TERM. THIS PARAGRAPH 28 SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY LAW.

29. No Merger. The voluntary or other surrender of this lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or

any existing subleases or sub-tenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or sub-tenancies.

**30. No Partnership.** It is expressly understood that Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Tenant.

**31. No Recording.** Neither this lease nor any memorandum of this lease shall be recorded.

**32. Corporate Authority.** Tenant does hereby covenant and warrant that Tenant is duly organized and existing, that Tenant has full right and authority to enter into this lease, and that each person signing on behalf of Tenant is authorized to do so.

**33. No Light and Air Easement.** No diminution or shutting off of light, air, or view by any structure which may be erected on lands adjacent to or in the vicinity of the Facility shall in any way affect this lease or impose any liability on Landlord.

**34. Notice.** All notices required by this agreement shall be in writing addressed to the party to whom the notice is directed at the address of that party set forth in **item L** (for Landlord) and **item M** (for Tenant) of the Basic Lease Terms and shall be deemed to have been given for all purposes upon receipt when personally delivered; one day after being sent, when sent by recognized overnight courier service or three days after deposit in United States mail, postage prepaid, certified mail, return receipt requested. Any party may designate a different mailing address or a different person for all future notices by notice given in accordance with this paragraph. If no address for notice purposes is set forth in the Basic Lease Terms, such address shall be the last known address of the party to whom the notice is directed.

**35. Attorney Fees.** In any dispute involving the interpretation or enforcement of this agreement or involving issues related to bankruptcy (whether or not such issues relate to the terms of this agreement), the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney fees (including in-house counsel), paralegal fees, costs, disbursements, and other expenses incurred by the prevailing party in the dispute, including those arising before and at any trial, arbitration, bankruptcy, or other proceeding, and in any appeal or review thereof. In addition, the amount recoverable by the prevailing party shall include an amount estimated as the fees, costs, disbursements, and other expenses that will be reasonably incurred in collecting a monetary judgment or award, or otherwise enforcing any order, judgment, award, or decree entered in the proceeding.

**36. Modification.** No modification of this agreement shall be valid unless it is in writing and is signed by all of the parties.

**37. Integration.** This agreement is the entire agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained in this agreement. This agreement shall supersede all prior communications, representations, and agreements, oral or written, of the parties.

**38. Interpretation.** The paragraph headings are for the convenience of the reader only and are not intended to act as a limitation on the scope or meaning of the paragraphs themselves. This agreement shall not be construed against the drafting party.

**39. Severability.** The invalidity of any term or provision of this agreement shall not affect the validity of any other provision.

**40. Waiver.** Waiver by any party of strict performance of any provision of this agreement shall not be a waiver of or prejudice any party's right to require strict performance of the same provision in the future or of any other provision.

**41. Binding Effect.** Subject to restrictions in this agreement upon assignment, if any, this agreement shall be binding on and inure to the benefit of the heirs, legal representatives, successors, and assigns of the parties.

**42. Governing Law.** This agreement shall be interpreted and enforced according to the laws of the State of Oregon.

**43. Counterparts.** This agreement may be executed in multiple counterparts, each of which shall constitute one agreement, even though all parties do not sign the same counterpart.

**44. Exhibits.** All exhibits referred to in **item N** of the Basic Lease Terms and this agreement are incorporated by reference.

**45. Status.** This lease shall not become effective or be binding on any party unless it is signed by all parties.

**Landlord**

**Tenant**

\_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT A**

### **Facility Legal Description**

**EXHIBIT B**  
**Facility Site Plan**

**EXHIBIT C**  
**Premises Diagram**



## **EXHIBIT D**

### **Schedule of Rent Payments**

## **EXHIBIT E**

### **Description of Landlord's Work**

## **EXHIBIT F**

### **Rules and Regulations**

1. The sidewalks, passages, exits, entrances, stairways and elevators (if any) of the Facility shall not be obstructed by any tenant or Landlord or used by any tenant or Landlord for any purpose other than for ingress to and egress from the tenant's premises. No tenant and no employee or invitee of any tenant shall go upon the roof of the Facility without prior written consent of Landlord or Landlord's property manager.

2. In the case of invasion, mob, riot, public excitement, or other circumstances rendering such action advisable in Landlord's opinion, Landlord reserves the right to prevent access to the Facility during the continuance of the same by such an action as Landlord may deem appropriate, including closing entrances to the Facility.

3. Landlord shall have the right to change the name and street address of the Facility.

4. These Rules and Regulations are in addition to and shall not be construed to in any way modify, alter or amend, in whole or in part, the terms, covenants, agreements and conditions of any lease of premises in the Facility.

5. Landlord reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Facility, and for the preservation of good order therein, provided that no such future rules and regulation may have the effect of materially interfering with Tenant's permitted use of the Premises and the Facility.

**FACILITY LEASE**

**Between**

---

**And**

---

**\_\_\_\_\_ Facility**

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