

GROUND LEASE

Lessor: Multnomah County, Oregon
Facilities and Property Management
401 N. Dixon Street
Portland, OR 97227

Lessee: Gallagher Asphalt Corporation
18100 S. Indiana Avenue
Thornton, IL 60476

Parties:

This Lease is entered into between Multnomah County ("Lessor") and Gallagher Asphalt Corporation ("Lessee").

Term/Early Termination:

This Lease is effective beginning 5/27/14, and expire July 31, 2014. Either party may terminate this agreement by written notice to the other party given not less than sixty (60) days prior to the termination date.

General Conditions:

Section 1. Use of Premises

1.1 Subject to the provisions of this Lease, Lessor leases to Lessee and Lessee leases from Lessor a **portion of the real property ("Premises")** described as "**Vance Pit**" as shown on the attached Exhibit "A" and incorporated in this Lease by this reference.

1.2 Lessee will use the Premises for the storage of **up to four (4) pieces of equipment**. Lessee will not store gasoline, petroleum products, explosives or other flammable materials on the Premises.

1.3 Lessee shall provide reasonable hazard mitigation with respect to fire hazard, attractive nuisance, and any hazardous materials or conditions found on the property.

1.4 Lessee will make no unlawful or offensive use of the Premises and will, at the expiration of the Term of this Lease or upon any sooner termination thereof, quit and deliver up the Premises and all future improvements to or upon the Premises to the Lessor peacefully, quietly and in as good order and condition, excepting therefrom reasonable wear and tear and damage from fire and other unavoidable causes, as the same are now.

1.5 The parties stipulate that the Premises are made available under this Lease "AS IS, WHERE IS"; with no representations, warranties, guarantees of any kind by the County (express or otherwise) that the Premises are useable, suitable or appropriate for any use of specifically for any of the proposed uses under this Lease. Lessee or its authorized representatives have examined the Premises and are satisfied and accept the same "AS IS, WHERE IS" and assume full responsibility and any liability for the condition and use of the Premises. Lessor shall have no liability because of, or as a result of, the existence of any subsurface or soil condition, either on the Premises or on adjacent land that might affect Lessee's use and enjoyment of the Premises.

Section 2. Rent and Utility Services

2.1 Rent shall be on a gratis basis.

2.2 Lessee shall also pay without notice, except as may be provided in this Lease, and without abatement, deduction, or setoff, as additional rent, all sums, impositions, costs, and other payments which Lessee in any of the provisions of this Lease assumes or agrees to pay, and

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in the event of any nonpayment, Lessor shall have all the rights and remedies provided for in this Lease or by law in the case of nonpayment of rent.

2.3 Lessee will pay for all water, light, gas, and other utility services that may be provided to the premises during the Term of this Lease.

Section 3. Use

3.1 Lessee shall use the Premises for storage of **up to four (4) pieces of equipment** and for no other purpose.

3.2 Lessee shall not use or occupy, or permit or suffer all or any part of the Premises to be used or occupied (1) for any unlawful or illegal business, use, or purpose, (2) in any such manner to constitute a nuisance of any kind, (3) for any purpose or in any way in violation of any legal requirements, including but not limited to requirements respecting hazardous Substances, or (4) for any business, use or purpose deemed disreputable. As used in this section, "hazardous substances" means any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements, including but not limited to the items listed in the United States Department of Transportation Hazardous materials Table (49 CFR 172.01) or designated as hazardous substances by the United States Environmental Protection Agency (40 CFR pt 302). As used in this section, "legal requirements" includes, but is not limited to, all environmental protection laws such as the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC 9601-9675), the Water Pollution Prevention and Control Act (33 USC 1251-1387), and the Air Pollution Prevention and Control Act (43 USC 7401-7671q). Any dispute between Lessor and Lessee arising under the provision of clause (4) of the preceding sentence shall be resolved in favor of the Lessor.

3.3 Lessee shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including but not limited to zoning variances, special exceptions, and nonconforming uses), privileges, franchises and concessions that now apply to the Premises or that have been granted to or contracted for by Lessor or Lessee in connection with any existing or presently contemplated use of the Premises.

3.4 Lessee shall not suffer or permit the Premises or any portion to be used by the public, as such, without restriction or in such manner as might reasonably tend to impair Lessor's title to the Premises or any portion, or in such manner as might reasonably make possible a claim or claims of adverse usage, adverse possession, or prescription by the public, as such, or of implied dedication, of the Premises or any portion. Lessee acknowledges that Lessor does not consent, expressly or by implication, to the unrestricted use or possession of the whole or any portion of the Premises or by the public, as such.

Section 4. Liens

4.1 Lessee shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage, or other encumbrance on the Premises.

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

Section 5. Taxes and Other Charges

5.1 Lessee shall pay and discharge all property taxes, privilege taxes, excise taxes, business and occupation taxes, gross sales charges, assessments (including, but not limited to, assessments for public improvements or benefits), and all other governmental impositions and charges of every kind and nature whatsoever which, at any time during the Term, shall be or become due and payable against the Premises.

5.2 If by law any tax is payable, or may at the option of the taxpayer be paid, in installments, Lessee may, whether or not interest shall accrue on the unpaid balance, pay the same, and any accrued interest on any unpaid balance, installments as each installment becomes due and payable, but in any event before any fine, penalty, interest, or cost may be added for nonpayment of any installment or interest.

5.3 Any tax relating to a fiscal period of the taxing authority, as part of which is within the Term and a part of which is before or after the Term, whether or not such tax shall be assessed, levied, imposed, or become a lien on the Premises, or shall become payable during the Term, shall be apportioned and adjusted between Lessor and Lessee so that Lessee shall pay only the portions that correspond with the portion of such fiscal periods included within the Term. With respect to any tax for public improvements or benefits that by law is payable, or at the option of the taxpayer may be paid, in installments, Lessor shall pay the installments that become due and payable after the Term expires, and Lessee shall pay all such installments which become due and payable at any time during the Term.

5.4 Lessee covenants to make available to Lessor, within thirty (30) days after the last date when any tax must be paid by Lessee as provided in this section, official receipts or other proof satisfactory to Lessor, evidencing payment.

5.5 Lessee shall have the right at Lessee's expense to contest or review the amount or validity of any tax or to seek a reduction in the assessed valuation on which any tax is based, by appropriate legal proceedings.

Section 6. Insurance

6.1 Lessee, at its expense, shall maintain at all times during the Term of this Lease commercial general liability insurance in respect of the Premises and the conduct or operation of its business, covering bodily injury and property damage on an "occurrence" form with \$2,000,000 minimum combined sign-limit coverage. Multnomah County, its agents, officers and employees shall be named as additional insureds on the policy by endorsement. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. All policies of insurance shall be issued by good, responsible companies, reasonably acceptable to Lessor.

6.2 Lessor from time to time may require that the amount of commercial general liability insurance be increased so that the amount adequately protects Lessor's interest.

Section 7. Compliance with Legal Requirements

7.1 Throughout the Term, Lessee shall promptly comply with all legal requirements that may apply to the Premises or to the lessee's use of the Premises, whether or not such requirements interfere with lessee's use and enjoyment of the Premises and whether or not compliance with such requirements is required by reason of any condition, event, or circumstance existing before or after the Term commences. Lessee shall pay all costs of compliance with all legal requirements.

7.2 Lessor shall execute and deliver to Lessor any appropriate papers that may be necessary or property to permit Lessee to contest the validity or application of any legal requirement.

Section 8. Lessor's Right to Perform Lessee's Covenants

8.1 if Lessee at any time fails to pay any tax in accordance with the provisions of this lease or fails to make any other payment or perform any other act on its part to be made or performed, then Lessor, after ten (10) days' notice to lessee (or without notice in case of an emergency) and without waiving or releasing Lessee from any obligation of Lessee contained in this Lease or from any default by Lessee and without waiving Lessor's right to take such action as may be permissible under this Lease as a result of such default, may (but shall be under no obligation):

8.1.1 Pay any tax payable by Lessee pursuant to the provisions of this Lease;
or

8.1.2 Make any other payment or perform any other act on Lessee's part to be made or performed as provided in this Lease, and may enter the Premises and any improvements for any such purpose, and take all such action, as may be necessary.

8.2 All sums so paid by Lessor and all costs and expenses incurred by Lessor, including reasonable attorney fees, in connection with the performance of any such act, together with, if Lessee does not pay the same within the thirty (30) day period after notice from Lessor, interest from the date of such payment or incurrence by Lessor of such cost and expense until paid, at the annual rate of eighteen percent (18%), shall constitute Additional Rent payable by lessee under this Lease and shall be paid by Lessee to Lessor on demand.

Section 9. Repair and Maintenance

9.1 Throughout the Term of this Lease, Lessee shall maintain, repair, and replace the Premises and the improvements as necessary to keep them in good order, condition, and repair through the entire Term.

9.2 Lessor shall not be required to furnish to Lessee any facilities or services of any kind whatsoever during the Term, such as, but not limited to, water, steam heat, gas, hot water, electricity, light, and power. Lessor shall in no event be required to make any alterations, changes, additions, improvements, or repairs during the Term.

Section 10. Title to Improvements

Title to any improvements to the Premises made during the Term of this Lease shall be and remain in Lessee until the expiration of the Term, unless this Lease is terminated sooner. On such expiration or sooner termination, title to the improvements shall automatically pass to, vest in, and belong to Lessor without further action on the part of either party and without cost or charge to Lessor. During the Term, Lessee shall be entitled for all taxation purposes to claim cost recovery deductions and the like on the improvements.

Section 11. No Waste

Lessee shall not do or suffer any waste or damage, disfigurement, or injury to the Premises.

Section 12. Inspection and Access

12.1 Lessee shall permit Lessor to enter the Premises at all reasonable times during usual business hours for the purpose of inspecting the same, making any repairs or performing any work that Lessee has neglected or refused to make in accordance with the terms, covenants and conditions of this Lease. Nothing in this Lease shall imply any duty or obligation on the part of Lessor to do any such work or to make any improvements of any kind whatsoever to the Premises. The performance of any work by Lessor shall not constitute a waiver of Lessee's default in failing to perform the same.

12.2 During the progress of any work on the Premises, Lessor may keep and store on the Premises all necessary materials, tools, supplies, and equipment. Lessor shall not be liable for the inconvenience, annoyance, disturbance, loss of business, or other damage of Lessee or any user by reason of making such repairs or performing any such work, or on account of bringing materials, tools, supplies, and equipment onto the Premises during the course of the work and the obligations of Lessee under this Lease shall not be affected by the work.

12.3 Lessor shall have the right to enter on the Premises at all reasonable times during usual business hours for the purpose of showing the same to prospective purchasers of the Premises, and, at any time within two (2) years before the Term expires, for the purpose of showing the same to prospective Lessees.

12.4 Except for emergency repairs, all entry to the premises by Lessor shall require at least twenty-four (24) hours' advance notice to Lessee. In the event of any emergency repairs, Lessor shall use reasonable efforts to give lessee the earliest possible notice of the same.

Section 13. Lessor's Exculpation and Indemnity

13.1 Lessee is and shall be in exclusive control of the Premises and Lessor shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the Premises or any injury or damage to the Premises, whether belonging to Lessee or to any other person.

13.2 Lessee shall indemnify and hold Lessor harmless against and from all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architect and attorney fees, that may be imposed on or incurred by or asserted against Lessor by reason of any of the following occurrences during the Term:

13.2.1 Any work or thing done in, on, or about all or any part of the Premises or the Improvements by Lessee or any party other than Lessor;

13.2.2 Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of all or any part of the Premises or the Improvements or any adjacent alley, sidewalk, curb, vault, passageway, or space;

13.2.3 Any negligence on the part of the Lessee or any of its agents, contractors, servants, employees, sublessees, licensees, or invitees;

13.2.4 Any accident, injury, or damage to any person or property occurring in, on, or about the Premises or the Improvements, even if caused in part by the negligence of Lessor, but only up to the limits of Lessee's liability insurance coverage with respect to any such negligence of Lessor; or

13.2.5 Any failure on the part of Lessee to perform or comply with any of the covenants, agreements, terms, provisions, conditions, or limitations contained in this Lease on its part to be performed or complied with.

13.3 In case any action or proceeding is brought against Lessor by reason of any such claim, Lessee on written notice from Lessor shall, at Lessee's expense, resist or defend such action or proceedings by counsel approved by Lessor in writing, which approval shall not be unreasonably withheld. Lessee shall defend, hold harmless and indemnify Lessor, its officers, agents and employees from all claims, suits or actions of whatever nature arising on or about the Premises.

Section 14. Assignment and Subletting. Lessee may not sell, assign, sublet, or in any other manner transfer this Lease.

Section 15. Default; Remedies

15.1. The occurrence of any one or more of the following events of default constitutes a breach of this Lease by Lessee: If Lessee, whether by action or inaction, is in default of any of its obligations under this Lease and such default continues and is not remedied within fifteen (15) days after Lessor has given Lessee a notice specifying the same, or, in the case of a default that cannot be cured within a period of fifteen (15) days, if lessee has not (1) commenced curing such default with such fifteen (15) day period, (2) notified Lessor of Lessee's intention to cure the default, of (3) continuously and diligently completed the cure of the default.

15.2 In the event of default, Lessor may exercise any one or more of the remedies set forth in this section or any other remedy available under applicable law or contained in this Lease.

15.2.1. In the event of default, Lessor or Lessor's agents and employees may immediately or at any time thereafter reenter the Premises, repossess the same, and remove any person from the Premises to the end that Lessor may have, hold, and enjoy the Premises. .

15.2.2. Whether or not Lessor retakes possession or relets the Premises, Lessor has the right to recover its damages, including without limitation all lost rentals, all legal expenses, all costs incurred by Lessor in restoring the

Premises or otherwise preparing the Premises for reletting, and all costs incurred by Lessor in reletting the Premises.

15.2.3. To the extent permitted under Oregon law, Lessor may sue periodically for damages as they accrue without barring a later action for further damages.

15.3. No failure by Lessor to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent on a breach, and no acceptance of full or partial Rent during the continuance of any such breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Lessee, and no breach by Lessee, shall be waived, altered, or modified except by a written instrument executed by Lessor. No waiver of any breach shall affect or alter this Lease, but each every agreement, term, covenant, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach.

15.4. Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lessor or Lessee of any one or more of the rights or remedies provided for in this lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

15.5. In the event of Lessor's bankruptcy and the rejection of this Lease by Lessor's bankruptcy trustee and in the event Lessee elects to retain its rights pursuant to 11 USC 365(h)(1), the trustee and Lessee shall continue to be governed by the terms and conditions of this Lease and under applicable Oregon landlord-tenant law.

Section 16. No Abatement of Rent

16.1 Except as otherwise specifically provided in this Lease, no abatement, refund, diminution, or reduction of Rent or other compensation shall be claimed by or allowed to Lessee under any circumstances, whether for inconvenience, discomfort, interruption of business, or otherwise, arising from work on improvements, by virtue or because of any legal requirements, or the occurrence of casualty damage, condemnation or for any other reason, cause, or occurrence.

16.2 Unless caused by Lessor, if any adjoining Building or structure encroaches on the Premises, no claim, demand, or objection of any kind shall be made by Lessee against Lessor by reason of such encroachments; no claim for abatement of Rent due under this Lease shall be made by reason of such encroachments or acts of, or in connection with, removal of the encroachments. The rights, liabilities, and obligations of the parties shall be the same as if there were no encroachments. In any related legal proceedings, the Premises may properly and without prejudice be described according to the description previously used without reference to any such encroachments. Lessor may, in its discretion, cooperate with Lessee in any proceedings sought by Lessee to remove such encroachments, provided such cooperation does not cause Lessor to incur any expense.

Section 17. Transfer of Interest by Lessor

Lessor may sell, exchange, assign, transfer, convey, contribute, distribute, or otherwise dispose of all or any part of its interest in the Premises.

Section 18. Surrender

18.1 Except as otherwise provided, Lessee, on the last day of the Term, shall surrender and deliver up the Premises to the possession and use of Lessor without fraud or delay, free and clear of all lettings and occupancies other than subleases to which Lessor has specifically consented, and free and clear of all liens and encumbrances other than those, if any, created or suffered by Lessor.

18.2 When furnished by or at the expense of Lessee, furniture, fixtures, and equipment may be removed by Lessee at or before termination of this Lease, provided, however, that the removal will not injure the Premises or necessitate changes in or repairs to the same. Lessee shall pay or cause to be paid to Lessor the cost of repairing any damage arising from such removal and restoration of the Premises to their condition before such removal.

18.3 Any personal property of Lessee or any sublessee that remains on the Premises after the termination of this Lease may, at the option of Lessor, be deemed to have been abandoned by Lessee or such sublessee and may either be retained by Lessor as its property or be disposed of, without accountability, in such manner as Lessor may see fit, or if Lessor gives written notice to Lessee to such effect, such property shall be removed by Lessee at Lessee's sole cost and expense. If this Lease terminates early for any reason other than the default of Lessee then, anything to the contrary notwithstanding, Lessee any sublessee shall have a reasonable time thereafter to remove its personal property.

18.4 Lessor shall not be responsible for any loss or damage occurring to any property owned by Lessee or any sublessee.

18.5 The provisions of this section shall survive any termination of this Lease.

Section 19. Severability

If any term or provision of this Lease or the application of the Lease to any person or circumstances is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 20. Force Majeure

If the performance by either of the parties of their respective obligations under this Lease (excluding monetary obligations) is delayed or prevented in whole or in part by any legal requirement (and not attributable to an act or omission of the party), or by any acts of God, fire or other casualty, floods, storms, explosions, accidents, epidemics, war, civil disorders, strikes or other labor difficulties, shortage or failure of supply of materials, labor, fuel, power, equipment, supplies or transportation, or by any other cause not reasonably within the party's control, whether or not specifically mentioned, the party shall be excused, discharged, and released of performance to the extent such performance or obligation (excluding any monetary obligation) is so limited or prevented by such occurrence without liability of any kind. If such a condition excusing performance of a party continues for more than one hundred eighty (180) days, then the other party may terminate this Lease by notice to the excused party.

Section 21. Notices

Any notice required or permitted by the terms of this Lease shall be deemed given if delivered personally to an officer of the party to be notified or sent by United States first-class mail and address as follows:

To Lessor:
Multnomah County
Facilities & Property Management
Attn: Lease Management
401 N. Dixon Street
Portland, OR 97227

To Lessee:

GALLAGHER ASPHALT
18100 S. INDIANA AVE.
THORNTON, IL 60476

Or such other addresses as may be designated by either party by written notice to the other. Except as otherwise provided in this Lease, every notice, demand, request, or other communication shall be deemed to have been given or service on actual receipt.

Section 22. Entire Agreement, No Recordation

This Lease contains the entire agreement between the parties and, except as otherwise provided, can be modified, amended, or terminated only by an instrument in writing executed by the parties. It is mutually acknowledged and agreed by Lessee and Lessor that there are no verbal agreements, representations, warranties, or other understandings affecting this Lease. This Lease shall not be recorded.

Section 23. Applicable Law

This Lease shall be governed by, and construed in accordance with, the laws of the State of Oregon. Any litigation arising under this Permit shall be in Multnomah County Circuit Court

Section 24. Interest on Rent Arrearages

All arrearages in the payment of rent that Lessee fails to pay within the ten (10) day period for payment of such rent shall bear interest from the date due until paid, at the rate of eighteen percent (18%) per annum.

Section 25. Covenants to Bind and Benefit Parties

The covenants and agreements contained in this Lease shall bind and inure to the benefit of Lessor, its successors and assigns, and Lessee, its successors and assigns.

IN THE WITNESS WHEREOF, Lessee and Lessor have caused this Lease to be executed by their duly authorized officers.

Lessor: Multnomah County, Oregon

Lessee: Gallagher Asphalt Corporation

By: _____
Marissa Madrigal, Chair
Date: _____

By: Alan Aul
Title: VICE-PRESIDENT OF CONSTRUCTION
Date: 5/21/14

Reviewed

By: _____
Matthew O. Ryan, Asst. County Attorney



Gallager Storage Location for Agreement

For 2013 HIR Project

Yeon Parking Lot

1620 SE 190th Avenue

Portland, OR 97233

Exhibit "A"

