

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

RESOLUTION NO. 2014-085

Declaring Certain County Real Property Temporarily Surplus, Approving Lease of Said Property, Authorizing the County Chair to Execute Appropriate Documents.

The Multnomah County Board of Commissioners Finds:

- a. Multnomah County Land Use and Transportation Program (LUTP) awarded and executed a contract with Gallagher Asphalt Corporation (Gallagher) in 2013 for road paving work on county roads; however because of contracting delays the contract was not fully executed until too late in the construction season last year to begin the work.
- b. Gallagher's offices were out of state and Gallagher had brought its equipment to Oregon in 2013; LUTP determined that it was most cost effective to provide outdoor storage space at the John B. Yeon Facility (Yeon) for that equipment until it could be used this year.
- c. The Gallagher equipment has been at Yeon since September 2013, the lease terms were negotiated over the ensuing months with the lease rental rate to be gratis; but this lease proposal saved additional costs towards completing the contracted for road paving work.
- d. A final version of a the proposed lease, a copy of which is attached and identified as Exhibit 1, has been negotiated with Gallagher for placement of up to four (4) pieces of equipment at Yeon and is retroactive to September 19, 2013 and runs through July 31, 2014.
- e. The proposed lease space and access route (the "Premises") was not being used by the County, and does qualify for a temporary designation as "surplus" for the duration of the proposed lease term.
- f. It is in the best interest of the County to lease the Premises on the terms and conditions set forth in the attached lease identified as Exhibit 1.

The Multnomah County Board of Commissioners Resolves:

1. The Premises as identified herein are designated as surplus for the duration of the Lease Term as set forth in the Lease attached as Exhibit 1, said designation shall immediately expire at the end of the Lease Term.
2. The County Chair is authorized to execute a Lease substantially in conformance with the attached Lease identified as Exhibit 1.

3. The County Chair is authorized to execute renewals of the Lease and execute amendments to the Lease without further Board action.

ADOPTED this 26th day of June 2014.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury

Deborah Kafoury, Chair

REVIEWED:
JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By *Matthew O. Ryan*
Matthew O. Ryan, Assistant County Attorney

SUBMITTED BY: Sherry Swackhamer, Director, Dept of County Assets.

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 Gallagher Asphalt Corp Ground Lease

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

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

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

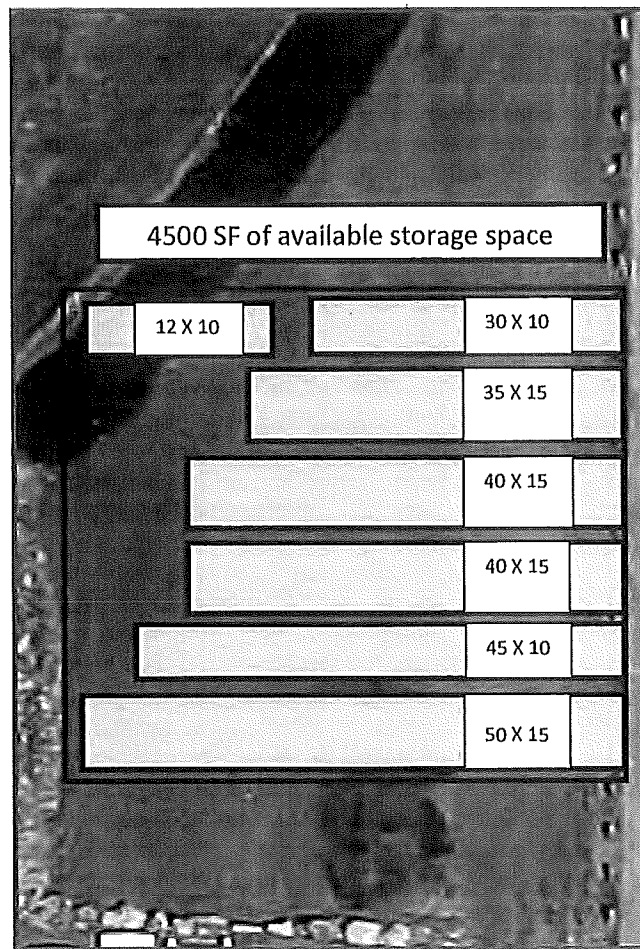
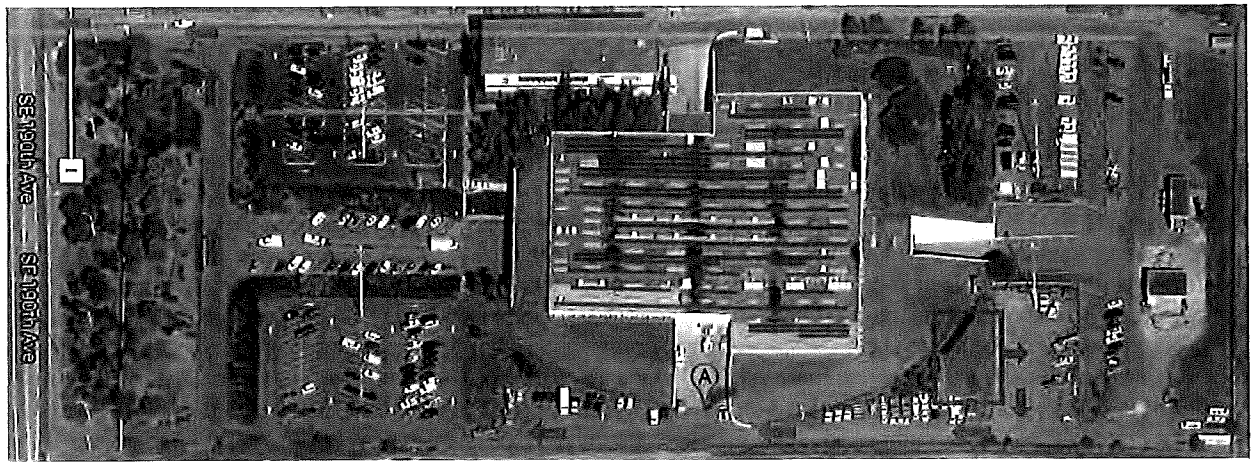
If the performance by either of the parties of their respective obligations under this Lease (excluding monetary obligations) is delayed or prevented in whole or in part by any legal requirement (and not attributable to an act or omission of the party), or by any acts of God, fire or other casualty, 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



Gallager Storage Location for Agreement

For 2013 HIR Project

Yeon Parking Lot

1620 SE 190th Avenue

Portland, OR 97233

Exhibit "A"

