

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

RESOLUTION NO. 2017-084

Authorizing the County Chair to Execute a Utility Vault Lease of SW Naito Parkway Right of Way from the City of Portland in Conjunction with the Central Courthouse Project.

The Multnomah County Board of Commissioners Finds:

- a. Multnomah County (County) needs to construct an underground utility vault for the Central Courthouse Project's (Project's) exclusive use (UVE) adjoining the Project site to provide utility service for the new Central Courthouse. Based on existing public and private utility locations in the Rights of Way surrounding the Project site and following consultation with utility providers and City officials, the Project team has designed, engineered and secured permits for installation of the UVE on the Project's east frontage, beneath the SW Naito Parkway sidewalk.
- b. The Director of the Portland Bureau of Transportation (PBOT) has reviewed the proposed street opening and placement of utilities in the public right-of-way and, subject to County complying with certain conditions provided for in the Exclusive Utility Vault Lease (the Lease), has determined it to be consistent with approval criteria and policies pursuant to City rules governing "Placement of Utilities."
- c. PBOT's Director has determined that use of the Right of Way for the Lease will not unreasonably interfere with public use and utility use of the Right of Way, as provided by law during the term of the Lease.
- d. The Lease will become effective upon execution by both parties (Effective Date). The term of the Lease will be thirty (30) years, commencing on the Effective Date and will expire at 11:59 pm on the last day of the 30th (thirtieth) year (Initial Term), unless sooner terminated or extended as provided in the Lease. County will have the option to renew the Lease for two (2) separate, successive terms of thirty (30) years each (each, a Renewal Period) commencing on the expiration of the Initial Term.
- e. The Lease requires County to pay City annual rent (Rent) of \$17,595.00 per year, beginning upon County's completion of the UVE. Commencing at the beginning of the sixth (6th) full calendar year following the Effective Date of the Lease and thereafter on the first day of each succeeding five (5) year period throughout the remainder of the Initial Term and any subsequent Renewal Period, Rent shall be adjusted to equal Rent at the beginning of the previous five (5) year period for which Rents were fixed, increased by 3 percent (3%).
- f. PBOT has previously issued its Right-of-Way Permit #2016-261096 on May 10, 2017, for construction of the UVE as part of Project construction. The Lease will

permit County and its utility providers to install, operate, maintain and replace underground utilities required to serve the Central Courthouse throughout the projected useful life of the Courthouse.

- g. County's Project team and City's PBOT and Bureau of Development Services teams have met over the past several months to plan, design and permit installation of the UVE as part of the Project, in anticipation of entry into the Lease.

The Multnomah County Board of Commissioners Resolves:

- 1. The County Chair is authorized to execute the Lease with the City of Portland, acting by and through its Bureau of Transportation, in substantially the form attached hereto as Exhibit A. Board approval is needed for any modification or amendment that results in a material increase in the obligations of Multnomah County or a material decrease in the benefits for Multnomah County under the Lease.

ADOPTED this 19th day of October 2017.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON



Deborah Kafoury

Deborah Kafoury, Chair

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

By *Kenneth M. Elliott*
Kenneth M. Elliott, Assistant County Attorney

SUBMITTED BY: Sherry Swackhamer, Director, Department of County Assets

EXCLUSIVE USE UTILITY VAULT LEASE
Over SW Naito Pkwy between SW Jefferson St and SW Madison St
RW File # 8355

THIS LEASE (this “**Lease**”) is made and entered into this ____ day of _____, 20____ (the “**Effective Date**”) by and between the **CITY OF PORTLAND**, a municipal corporation of the State of Oregon, (“**City**”) and **MULTNOMAH COUNTY**, a political subdivision of the State of Oregon (“**County**” or “**Lessee**”). In this Lease, City and Lessee may individually be referred to as “**Party**” and jointly referred to as “**Parties.**”

RECITALS:

1. City owns, possesses, and/or controls certain property interests known as SW Naito Pkwy between SW Jefferson St and SW Madison St (the “**ROW**”);
2. County owns, controls or occupies property adjacent to the ROW located at 1200 SW 1st Ave, Portland, Oregon. For purposes of this Lease, “**Owner**” means a fee owner or ground lessee of all or any portion of the abutting property;
3. County desires to lease a portion of the ROW abutting Owner’s Property for an Exclusive Utility Vault (“**UVE**”);
4. County is making significant improvements in the vicinity of the ROW;
5. The Director of the Bureau of Transportation (the “**Director**”) has reviewed the proposed street opening and placement of utilities into the public right-of-way and, subject to County complying with certain conditions provided for in this Lease, has determined it to be consistent with approval criteria and policies pursuant to City rules “Placement of Utilities”;
6. The Director has determined that the use of the ROW for the UVE will not unreasonably interfere with public use and utility use of the ROW, as provided by law during the term of this Lease. It is understood that this Lease shall not affect the prior dedication or grant of the ROW for street and sidewalk purposes and that this Lease will give the best return to City for use of such area.

AGREEMENTS:

Now, therefore, in consideration of the leasing of the ROW and of the mutual agreements contained in this Lease, the consideration of which is acknowledged by each Party, the Parties do expressly covenant and agree as follows:

1. **Premises** - City agrees to lease to Lessee, for use by Lessee’s utility providers, a portion of the ROW, depicted on Exhibit A, Exhibit B, and Exhibit C, attached to this Lease and incorporated by reference (the “**Premises**”). The surface of the Premises shall not be exclusively for the use of Lessee; surface rights are limited to access of the vault within the Premises. The dimensions of the UVE within the Premises, including the vault, vents, and a

1.00 foot buffer on the north, east, and south sides of the UVE, are 78.17'L x 15'W x 18.75'D.

Contains approximately 21,985 cubic feet, more or less.

2. **Authority** - This Lease is entered into in accordance with general authorities provided under Oregon law, Portland City Charter and City Code. It is understood that this Lease shall not affect the prior dedication or grant of the right-of-way for street and sidewalk purposes.
3. **Term** - The term of this Lease shall be thirty (30) years, commencing on the Effective Date and will expire at 11:59 pm on the last day of the 30th (thirtieth) year ("**Initial Term**"), unless sooner terminated under the provisions hereof or extended pursuant to Section 4 below.
4. **Option to Renew:**
 - a) Lessee shall have the option to renew this Lease for two (2) separate, successive terms of thirty (30) years each (each, a "**Renewal Period**"), commencing on the expiration of the Initial Term.
 - b) In order to seek renewal, Lessee shall be in full compliance with the terms and conditions of this Lease at the time the option is exercised. Should Lessee exercise its option to renew this Lease, Lessee shall give City its written notice of such election not later than six (6) months prior to the expiration of the Initial Term or subsequent Renewal Period, nor earlier than twelve (12) months from said expiration. Within sixty (60) days of receipt of Lessee's written notice of election to exercise its option to renew this Lease, City shall contact Lessee and schedule a time and place to negotiate changes in the terms and conditions of this Lease for the Renewal Period. Lessee's exercise of an option shall be of no force or effect and any purported renewal null and void, if:
 - i. The Parties fail to negotiate mutually acceptable changes to the terms and conditions for the Renewal Period prior to expiration of the then current term; or
 - ii. Lessee fails to execute and return to City lease renewal documents within ten (10) calendar days after receipt; or
 - iii. Lessee becomes in default in the performance of any obligations under this Lease on any day after exercise of an option to the date lease renewal documents are executed.
 - c) Should Lessee exercise its option to renew, Rent for the renewal period will be subject to the City's Administrative Rules addressing the setting of rent for leases in the right-of-way and will be calculated pursuant to City Administrative Rule TRN- 8.11.
5. **Rent:**
 - a) Lessee shall pay City as annual rent ("**Rent**") for the Premises, the amount of \$17,595.00 per year ($\$300/\text{sf} \times 1,173 \text{ sf} \times 50\% \text{ alienation rate} \times 10\% \text{ rental rate}$). Rent shall be adjusted as provided in Section 6. Rent will be made payable to the City of Portland and sent to **City of Portland, Attn: General AR, PO Box 5066, Portland, OR 97208**, or

such other address as a duly authorized representative of the City may designate in writing.

- b) Lessee shall pay Rent to City in advance on or before the first (1st) day of the month that the Effective Date falls on each calendar year following the Effective Date during the Initial Term of this Lease or any subsequent Renewal Period, except the initial Rent, which shall be paid within ten (10) business days following execution of this Lease by all parties and delivery hereof (the “**Initial Rent**”).
 - c) All Rent to be paid by Lessee to City shall be in lawful money of the United States of America and shall be paid without deduction or offset at such place or places as may be designated from time to time by City.
 - d) Payment by Lessee or receipt by City of a lesser amount than the Rent and other charges due shall not be deemed full payment on the account. No endorsement or statement on any check or payment shall be deemed an accord and satisfaction. City may accept such check or payment without prejudice to City’s right to recover the balance of such installment or payment of Rent or other charges or fees, or pursue any other remedies available to City. Payments received shall be credited to the oldest outstanding amount due.
 - e) The Rent provided for in this Lease has been determined according to the limited use of the Premises by Lessee as described in this Lease. In the event Lessee requests, and the Director approves, use of the Premises for purposes other than those currently approved, City, at its sole discretion, may correspondingly review the terms and conditions of this Lease, including the amount of Rent.
 - f) In the event that any check, draft, or other instrument of payment given by Lessee is dishonored for any reason, City may exercise remedies available to it under this Lease or as otherwise available under law, which will be due immediately upon billing by City. City, at its sole discretion, may require Lessee to pay all future Rent by cashier's checks or other methods.
6. **Rent Adjustment:** Commencing at the beginning of the sixth (6th) full calendar year following the Effective Date and thereafter on the first day of each succeeding five (5) year period throughout the remainder of the Initial Term and any subsequent Renewal Period (the “**Rent Adjustment Dates**”), Rent shall be adjusted to equal Rent at the beginning of the previous five (5) year period for which Rents were fixed, increased by 3 percent (3%).
7. **Late Fees & Interest:**
- a) All amounts not paid by Lessee when due or demanded shall bear interest at the rate pursuant to City Code.
 - b) In addition to all of the remedies provided by this Lease, if any Rent or other charge required by this Lease is not received by City within ten (10) days after it is due, City may impose a late charge equal to the greater of Two Hundred and Fifty Dollars (\$250.00) or five percent (5%) of the amount of the delinquent Rent or other charge for the month in which Rent or other charge is delinquent. Lessee shall pay any late charges immediately upon billing by City. The imposition by City and/or the payment by Lessee

of any late charges shall not waive or cure Lessee's default hereunder. Failure to impose a late charge on one occasion does not affect a waiver of City's right to impose a late charge on subsequent delinquent payments.

8. **Net Lease** - It is the intention and purpose of the respective parties hereto that this Lease shall be a "net lease" to City; all cost or expense of whatever character or kind, general and special, ordinary and extraordinary, foreseen and unforeseen and of every kind and nature whatsoever that may be necessary in or about the operation of the Premises and Lessee's authorized use during the Initial Term, or any subsequent Renewal Period, to be paid by Lessee, including but not limited to taxes, utilities, insurance, and/or property assessments, if applicable. All provisions of this Lease relating to expenses are to be construed in light of such intention and purpose to construe this Lease as a "net lease".

9. **Permitted Use:**

- a) Lessee accepts full responsibility for its use of the Premises from and after the Effective Date during the Initial Term or any subsequent Renewal Period. Lessee's use of the Premises is limited exclusively to the purposes of entering into an agreement with Lessee's utility providers to place a utility vault, including utility equipment necessary to serve the Lessee's abutting property, within the Premises. The utility's construction, operation and maintenance of the utility vault and equipment within the Premises shall be separately subject to receiving the required permits. Lessee shall not allow any other use.
- b) In relation to Lessee's use and enjoyment of the Premises, Lessee shall not:
 - i. Use the Premises for any other uses other than those allowed in this Lease;
 - ii. Construct or permit to be constructed any improvements within the Premises without prior written approval of City;
 - iii. Allow any lien to be filed or fail to remove any lien filed against the Premises by anyone supplying labor or materials for any improvements by or for the benefit of Lessee;
 - iv. Damage survey monuments, witness corners and other location markers within or upon the Premises, without complying with City Code 17.96;
 - v. Interfere with or obstruct the rights of City, users, or occupants of the ROW, or nearby properties. Lessee shall not create, and shall use commercially reasonable efforts to avoid, any condition that would constitute a fire hazard or be unreasonably dangerous to persons or property. Lessee shall not install, or cause to have installed, any power machinery within the Premises except under the supervision and with the prior written consent of City.

10. **Hazardous Substances:**

- a) The term "Hazardous Substances", as used in this Lease, shall mean any hazardous, toxic, infectious, or radioactive substance, waste or material as defined or listed by any Environmental Law except for immaterial quantities of substances customarily and prudently used in the cleaning and maintenance of the Premises in accordance with any applicable law. The term "Environmental Law" shall mean any federal, state, or local statute, regulation, rule, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety, or the environment.

- b) Lessee is prohibited from generating, manufacturing, refining, producing, processing or disposing of any Hazardous Substances within the Premises. Lessee shall, at Lessee's own expense, comply with all Environmental Laws. Lessee shall not cause or permit to occur:
 - i. Any violation of Environmental Laws, at, above, from, or affecting the Premises, or arising from Lessee's use or occupancy of the Premises, including, but not limited to: soil, groundwater, indoor air or outdoor air quality conditions; or
 - ii. The storage, handling, or release of any Hazardous Substance at, above, from, or affecting the Premises, or the transportation to or from the Premises of any Hazardous Substance without City's prior written approval.
 - c) Lessee shall immediately notify City in writing of:
 - i. Any material spill, discharge, or release of any Hazardous Substance whether or not the release is in quantities that would legally require reporting to a regulatory agency and any spill, discharge, and release that must be reported to a regulatory agency; and
 - ii. Any inquiry, investigation, enforcement action, notice of potential violation, or other action that is instituted or threatened against Lessee that relates to the spill, release, or discharge of Hazardous Substances in, above, under, from, or affecting the ROW.
 - d) Lessee shall, at Lessee's own expense, make all submissions to, provide all information required by, and comply with all requirements of all regulatory authorities related to Environmental Laws. Should any regulatory authority or any third party require that a clean up plan be prepared and that clean up occur for any release of Hazardous Substances that occurs as a result of Lessee's use or occupancy of the Premises, Lessee shall, at Lessee's own expense, prepare and implement the required plans and provide all financial assurances in accordance with applicable requirements.
 - e) City may at any time request that Lessee provide information regarding the storage, handling, or release Hazardous Substances within the Premises. Lessee shall promptly respond by providing any information that is requested by City.
 - f) Lessee's obligations and liabilities under this section shall survive the expiration or termination of this Lease.
11. **Fire Prevention** – For purposes of this Section 11, "Lessee" includes Lessee's agents or any utilities using the Premises under an agreement with the Lessee. Lessee shall comply with all rules and regulations set forth by the Fire Marshal. Lessee shall promptly pay for any fire inspection or re-inspection fees assessed and make all corrections as ordered by the Fire Marshal. All paints, oils, and other flammable materials shall be stored in suitably protected outbuildings or compartments in accordance with rules and regulations as set forth by the Fire Marshal. Lessee shall comply with any building emergency or safety plan that may be implemented for Lessee's or its invitees' safety.

12. Acceptance of Premises:

- a) Lessee accepts the Premises in “as is” condition. City or its officers, agents, or employees have made no representations or warranties as to the condition of the Premises. City shall have no liability to Lessee for any damage or injury caused by the condition of the Premises.
- b) Lessee accepts the Premises subject to any and all valid interests of record, including, but not limited to existing permits, licenses, leases, easements, and franchise agreements. Without implying a warranty of any nature, City is not aware of any valid interests of record that would prevent City from leasing the Premises to Lessee.

13. Lessee Improvements:

- a) Lessee or Lessee’s utility provider shall not make or allow to be made any alterations, additions, or improvements to the Premises, or any part thereof, that requires a permit, without first obtaining the permit from City, which will not be unreasonably withheld.
- b) If consent is granted by City, all work performed by Lessee or Lessee’s utility provider shall be carried forward expeditiously, shall not interfere with City’s work and shall be completed within a reasonable time. All work shall be completed in a workmanlike manner.

14. Maintenance & Repair:

- a) Lessee agrees to maintain, or cause to be maintained, the Premises, but not the vault and facilities located within the Premises. If Lessee believes damages were caused by an act or omission of City, nothing in this Lease precludes Lessee from filing a tort claim for damages with the City's Risk Management Division. Lessee agrees to restore, to the reasonable satisfaction of the Director, any portion of the ROW which may be disturbed during operation, maintenance, or reconstruction of the UVE within the Premises and agrees to maintain the surface of the ROW against settlement caused by said operation, maintenance, or reconstruction of the UVE, provided said settlement is not caused by use of the surface of the ROW in excess of the load capability shown on the original final plans and specifications approved by City. If Lessee’s use of the Premises causes an immediate hazard in the ROW, Lessee must make immediate repairs, and, if such repairs are not made in a responsive manner as determined by the Director, then City, upon providing Lessee with written notice of its finding and reasonable opportunity to repair, may cause such repairs to be made and bill Lessee for such cost. Failure to make payment within thirty (30) days of billing shall constitute default in accordance with Section 21. The amount of such cost, if not paid to City, shall become a lien on Lessee’s interest in this Lease, or any successors or assigns of Lessee's interest in this Lease.
- b) Lessee shall at all times maintain or cause to be maintained the Premises and all improvements of any kind, in a neat condition, free of trash and debris, in good and substantial condition, order and repair.

15. **Licenses and Permits** - This Lease shall not exempt Lessee's utility provider from acquiring all licenses and permits required by any existing ordinance or law for the maintenance, construction, or reconstruction of the UVE within the Premises.
16. **Taxes & Assessments** - Lessee agrees to pay any taxes and assessments that are or may be levied upon the Premises. If Lessee objects in good faith to the validity or amount of any tax or assessment that is or may be levied upon the Premises, Lessee, at Lessee's sole expense, may contest the validity or amount of the tax or assessments levied upon the Premises, provided that City's interests are not put in any jeopardy of any levy or assessment.
17. **Indemnification:**
- a) Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300 as applicable to a "local public body" as defined therein (the "OTCA"), Lessee shall indemnify and hold harmless City, its officers, agents and employees from any and all liability, damage, expenses, attorney's fees, causes of actions, suits, claims, or judgments, arising out of or connected with: (1) Lessee's or its utility provider's use, occupancy, management, or control of the Premises; (2) any failure of Lessee to comply with the terms of this Lease or any violation of law or ordinance; and (3) the acts or omissions of Lessee, its agents, officers, directors, employees, or invitees; provided, however that Lessee shall not be liable for claims caused by the sole negligence of City, its officers, agents or employees. Lessee shall, at its own cost and expense but subject to the conditions and limitations of the OTCA, defend any and all claims, demands, actions or suits which may be brought against Lessee, or City or its officers, agents or employees, either alone or in conjunction with others upon any such above mentioned cause or claim, and shall satisfy, pay, and discharge any and all judgments; including attorney fees and costs, that may be recovered against Lessee, or City or its officers, agents, and employees, in any such action or actions in which they may be party defendants.
 - b) Lessee shall give City prompt written notice in case of casualty or accident on the Premises. As a material part of the consideration to City, Lessee assumes all risk of damage to property or injury to persons, in, upon or about the Premises from any cause other than City's sole negligence, and Lessee waives all claims in respect thereof against City.
 - c) Lessee shall release and hold harmless City and its officers, agents, and employees from and shall assume all risks of damage to the Premises and contents of the Premises constructed or maintained by Lessee or Lessee's utility provider, or to any personal property located in the Premises resulting directly or indirectly from the failure of water lines or sewers or any other utilities occurring, during or resulting from any reconstruction or maintenance of said utilities except for liability arising solely out of City's sole negligence.
 - d) City and its officers, agents, and employees shall not be liable for any latent defect in the Premises. Subject to the conditions and limitations of the OTCA, Lessee shall indemnify, defend and hold harmless City, and its officers, agents and employees, from any claims, judgments, damages, penalties, fines, costs and expenses, and liabilities or losses

(including, without limitation, diminution in value of the Premises) which arise during or after the term of the Lease as a result of environmental contamination as a result of acts or omissions of Lessee, its employees or agents. This indemnification of City by Lessee includes, subject to the conditions and limitations of the OTCA, costs incurred in connection with any investigation of site conditions or any environmental cleanup, remedial, removal or restoration work in response to hazardous substances, hazardous materials, pollutants, toxics or regulated environmental contaminants of any kind as a direct or indirect result of Lessee's activities. Lessee shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the release of contaminants. Except for immediate initial response actions necessary to protect human health and the environment from substantial imminent harm, Lessee shall obtain City's approval of all such response action, which approval shall not be unreasonably withheld. This environmental indemnity shall survive the expiration or earlier termination of the Lease.

- e) Nothing in this Section shall increase City's or Lessee's liability beyond the maximum limits contained in the OTCA. Nothing in this Section is intended to limit any recourse Lessee may have against third parties causing damage to the Premises or the contents of the Premises.

18. Liability Insurance:

- a) Except as otherwise provided in subparagraph (vi) hereof, Lessee agrees to maintain the following continuous, uninterrupted coverage for the duration of this Lease:
 - i. Lessee shall provide insurance coverage required under this Section from insurance companies acceptable to City. The insurance must be with a carrier licensed to do business in Oregon. The carrier must meet A.M. Best's rating of A- or better. The adequacy of the insurance coverage in compliance with this Section shall be subject to the review and approval of the City Attorney. The Lessee shall pay all costs and expenses related to any premiums, deductibles, self-insurance, or retention under this Section.
 - ii. **Commercial General Liability:** Lessee shall obtain, at Lessee's expense, and keep in effect during the term of this Lease, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that is reasonably satisfactory to the City. This insurance shall include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be written on an occurrence basis. The limit per occurrence shall not be less than \$1,000,000 for each site or location. Each annual aggregate limit shall not be less than \$1,000,000, subject to the terms and limitations of the Oregon Tort Claims Act, ORS 30.260 – 30.300.
 - iii. **Workers' Compensation:** Lessee shall comply with the workers' compensation law, ORS Chapter 656, and as it may be amended from time to time. Unless Lessee demonstrates to the satisfaction of City that Lessee is exempted from workers' compensation insurance requirements, Lessee shall maintain coverage for all subject

workers and provide to City proof of valid workers' compensation insurance covering the entirety of the Lease term.

- iv. **Additional Insured:** The liability insurance coverage required for performance of this Lease shall include the City of Portland, the Bureau of Transportation and its divisions, officers and employees as Additional Insured but only with respect to Lessee's activities to be performed under this Lease. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
 - v. **Notice of Cancellation or Change:** There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days' written notice from Lessee or its insurer(s) to City. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of this Lease and shall be grounds for immediate termination of this Lease by City.
 - vi. **Self-Insurance:** Lessee is self-insured for the risks for which insurance is required under this Section 18. So long as Lessee remains self-insured up to the minimum limits of coverage required under this Section 18, Lessee shall not be required to provide the insurance required by this Section 18. Lessee shall provide to City a certificate of self-insurance.
 - vii. **Certificate(s) of Insurance:** Lessee shall provide proof of insurance through acceptable certificate(s) of insurance, along with applicable endorsements, to City at execution of this Lease and prior to Lessee entering upon or otherwise using the Premises. The Certificate(s) will specify all of the Parties who are endorsed on the policy as Additional Insured (or Loss Payees). City reserves the right to require, at any time, complete and certified copies of the required insurance policies evidencing the coverage required.
- b) The limits of insurance coverage as provided under this Section 18 shall be subject to any changes increasing the maximum limits imposed on municipalities by the State of Oregon during the term of this Lease, consistent with City requirements established by City's Risk Management Department. The adequacy of the insurance shall be subject to the approval of the City Attorney.
 - c) In the alternative to providing written evidence of insurance to City under this Section, Lessee may provide City with an annual statement regarding its self-insurance. Lessee's statement of self-insurance shall provide at least the same amount and scope of coverage for Lessee and City, its officers, agents and employees, as otherwise required under this Section. The adequacy of such self-insurance shall be subject to the City Attorney's review and approval. Upon Lessee's election to provide self-insurance coverage under this Section, any failure by Lessee to maintain adequate self-insurance shall constitute an Event of Default under this Lease.
19. **Assignment and Subletting:**
- a) Lessee shall not assign or mortgage this Lease or any interest in this Lease and shall not sublet the Premises or any part thereof, or any right or privilege pertinent thereto, and shall not sell or otherwise transfer any ownership interest in any corporate Lessee, or

permit any other person (the agents, employees and invitees of Lessee excepted) to occupy or use the Premises or any portion thereof, without first obtaining the written consent of City, which City will not unreasonably withhold. Consent by City to one assignment, subletting, transfer, occupation, or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, transfer, occupation or use by another person.

- b) City consent to an assignment, sublet, transfer, occupation, or use shall not release the original named Lessee from liability for the continued performance of the terms and provisions on the part of Lessee to be kept and performed, unless City specifically and in writing releases the original named Lessee from liability.
- c) Any assignment, subletting, transferring, occupation or use without the prior written consent of the Director, except as expressly permitted in this Section, shall be void and shall be an Event of Default and City shall have all rights and remedies against Lessee as set forth herein.
- d) City shall not unreasonably withhold its consent to any assignment, subletting, transfer, occupation, or use provided Rent paid by the assignee or sublessee is not less than Rent required by this Lease and the proposed sublessee's use is compatible with City's normal standards for the Premises. If Lessee proposes a subletting, assignment, transfer, occupation, or use, City shall have the option of terminating this Lease and dealing directly with the proposed sublessee or assignee, or any third party.
- e) Lessee shall pay any costs incurred by City in connection with a request for assignment, subletting, transfer, occupation or use including reasonable attorneys' fees pursuant to Section 23b.
- f) Upon assignment, City reserves the right to require the assignee to deposit with City, a security deposit equal to three (3) years of the then current Rent to assure performance of this Lease, which will be used upon an Event of Default at City's sole discretion to satisfy past due Rent or to cure any uncured default by Lessee, and Lessee shall replenish the security deposit to the original amount immediately upon demand.

20. **Jurisdictional Transfer by City** - In the event that the ROW within which the Premises are located is transferred to the control and jurisdiction of another unit of government, City shall be relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease, arising out of any act, occurrence or omission occurring after the jurisdictional transfer. The entity, at such transfer or any subsequent transfer of the Premises, shall be deemed, without any further agreement between the Parties and any such entity, to have assumed and agreed to carry out any and all of the covenants and obligations of City under this Lease.

21. **Default by Lessee** - The following shall be "Events of Default":

- a) Failure of Lessee to pay any Rent within ten (10) days after it's due;
- b) Failure of Lessee to comply with any term or condition or to fulfill any obligation of this Lease (including the obligation to pay charges required by this Lease other than Rent), within thirty (30) days after written notice by City specifying the nature of the default

with reasonable particularity, or such longer period as may be provided for a specific default elsewhere in this Lease. However, if the default is of such a nature that it cannot be completely remedied within the thirty (30) day period, Lessee shall not be in default if Lessee begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to correct the default as soon as practical and to completion.

- c) The bankruptcy or insolvency of Lessee or if a receiver or trustee is appointed to take charge of any of the assets of Lessee or any sublessee or assignee within the Premises or in the event of judicial sale of the personal property within the Premises upon judgment against Lessee or any sublessee or assignee thereunder unless otherwise directed by order of a bankruptcy court.

22. Entry by City:

- a) City may at any and all times, upon notice to Lessee (except for emergencies) enter the Premises to inspect the same for the specific purpose of rectifying any nuisance condition, to undertake necessary repairs, or to restore the structural integrity to the condition, use and appearance intended by the Parties at the time this Lease was executed, without abatement of Rent, but only after City gives Lessee written notice of the defective condition and a reasonable period of time to correct the condition.
- b) City may erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed.
- c) In exercising any rights under this Section 22, City will take reasonable steps not to interfere with the business related to the Premises. Lessee otherwise waives any claims for damages or for any injury or inconvenience to or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned pursuant to this Section.
- d) Any entry to the UVE within the Premises by City by any means shall not under any circumstances be construed, or deemed to be, forcible or unlawful entry into, or a detainer of, the UVE, or an eviction of Lessee from all of, or any portion of, the UVE.

23. City's Remedies On Default by Lessee:

- a) If Lessee defaults in the performance of any of the covenants or conditions of this Lease and Lessee does not remedy the default within 30 days after written notice of such default has been received by Lessee, or within any additional period City allows in writing for good cause, Lessee will be subject to legal or any other administrative action deemed appropriate by City, including electing to terminate this Lease at the end of said 30-day period or any additional period allowed by City. In the event that the default is not remedied and a notice of termination is issued, City may re-enter, take possession of the Premises and remove any persons or property by legal action or self-help, with the use of reasonable force and without liability for damages. City shall have a security interest in Lessee's property on the Premises at the time of re-entry to secure all sums owed or to become owing City under this Lease. Perfection of such security interest shall be taking possession of the property or otherwise as provided by law.
- b) Following re-entry, City may recover from Lessee the following charges:

- i. All unpaid Rent or other charges for the period prior to re-entry, plus late charges as provided by this Lease.
 - ii. All costs incurred by City by reason of Lessee's default, including, but not limited to, the cost of recovering the Premises, including the reasonable cost of clean-up and repair, the cost of correcting any defaults or restoring any unauthorized alterations.
 - iii. Reasonable attorney's fees incurred in connection with the default, whether or not any litigation has commenced.
- c) City may institute actions periodically to recover damages as they accrue throughout this Lease and no action for accrued damages shall be a bar to a later action for damages subsequently accruing. Nothing in this Lease shall be deemed to require City to wait until this Lease terminates to institute action. City may obtain a decree of specific performance requiring Lessee to pay damages as they accrue. Alternately, City may elect in any one action to recover accrued damages plus damages attributable to the remaining term of this Lease.
- d) In the event that Lessee remains in possession following default and City does not elect to re-enter, this Lease shall remain in effect and City may enforce all of its rights and remedies hereunder and may recover all unpaid Rent or other charges, plus late charges, and shall have the right to cure any non-monetary default and recover the cost of such cure from Lessee. In addition, City shall be entitled to recover attorney's fees reasonably incurred in connection with the default, whether or not litigation has commenced. City may institute actions to recover such amounts as they accrue and no one action for accrued damages shall bar a later action for damages subsequently accruing.
- e) The foregoing remedies shall not be exclusive but shall be in addition to all other remedies and rights provided under applicable law, and no election to pursue one remedy shall preclude resort to another consistent remedy. Lessee's liability to City for default shall survive termination of this Lease.

24. Acknowledgments and Covenants of Lessee

- a) Lessee shall cause to be performed, without expense to City, all utility abandonment or relocation, including, but not limited to, storm and sanitary sewer facilities, water mains and services, street lights, traffic signals and fire hydrants, electrical, gas, telephone or other utilities necessitated by Lessee's construction of facilities in the Premises and shall cooperate with City in the incorporation, at no expense to City, of traffic control and signing systems in the construction of the facilities. Plans and specifications for the relocation of City owned utilities shall be subject to the reasonable approval of City, and, if the utility facilities are within Lessee's improvements constructed in the Premises, Lessee will make arrangements reasonably acceptable to all utilities to provide them access for maintenance of said relocated utilities after the completion of construction, including twenty-four (24) hour access to such relocated utilities for repair and maintenance purposes. In the event that City cannot cause any private utility or utilities to permanently relocate at the utilities' own expense, Lessee shall indemnify and hold harmless City for all expenses reasonably incurred by it in connection with said relocation, and will pay on an ongoing basis for all expenses of said relocation work. In the event that a judgment is entered against City for reimbursement of costs incurred by

private utilities in the relocation or abandonment of private utility facilities, Lessee shall indemnify and hold harmless City for the amount of such judgment, provided, however, that City shall, prior to responding to such claim, notify Lessee of any such claim made against City for reimbursement of relocation costs by a private utility, and Lessee shall have the option of paying such claim or paying City's reasonable costs of contesting such Claim, including reasonable costs of appeal. Lessee covenants and agrees to pay for any temporary relocation or improvements required to accommodate existing private utility networks necessitated by the project. Lessee covenants and agrees to pay for all relocation, abandonment or improvement costs of all public utility networks to the extent necessitated by the project.

- b) When used in this Lease, "private utilities" shall include, but not be limited to, natural gas, electrical, steam lines, chilled water systems from any district cooling facility, telecommunications, telephone and cable facilities.
- c) When used in this Lease, "public utilities" shall include, but not be limited to, water mains and services, storm and sanitary sewers, light rail facilities, street lights, traffic signals, and fire hydrants.

25. Default by City, Remedies - City shall not be in default unless City fails to perform obligations required of City within a reasonable time. However, City shall perform its obligations within thirty (30) days after receiving written notice from Lessee specifying where and how City has failed to perform its obligations. However, if the nature of City's obligations is such that more than thirty (30) days are required for performance then City shall not be in default if City commences performance within such thirty (30)-day period and thereafter proceeds with reasonable diligence and in good faith to perform the same as soon as practical and to completion.

26. City's or Lessee's Inability to Perform - City shall not be deemed in default for the non-performance or for any interruption or delay in performance of any of the terms, covenants and conditions of this Lease if due to any labor dispute, strike, lockout, civil commotion or operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain labor, services or materials, earthquakes, or through act of God or other cause beyond the reasonable control of City. In the event of City's inability to perform, Lessee's sole remedy shall be the refund of prepaid Rents, if any. Lessee shall not be deemed in default for the non-performance or for any interruption or delay in performance of any of the terms, covenants and conditions of this Lease (except for the obligation to pay Rent) if due to any labor dispute, strike, lockout, civil commotion or operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain labor, services or materials, earthquakes, or through act of God or other cause beyond the reasonable control of Lessee.

27. Unavoidable Delay: Each Party hereto shall be excused from performing any of its obligations or undertakings provided in this Lease (except any of its obligations to pay any sums of money under the applicable provisions of this Lease) for so long as the performance of such obligation is prevented or delayed by any cause which is beyond the control of such Party, including but not limited to such of the following: fire; earthquake;

flood; explosion; action of the elements; war; invasion; insurrection; riot; mob violence; sabotage; malicious mischief; inability to procure or general shortage or rationing or regulation of labor, equipment, facilities, sources of energy (including, without limitation, electricity, gas, gasoline or steam), materials or supplies in the open market; failure of transportation; strikes; lockouts; action of labor unions; condemnation; requisition; or order of government or civil or military or naval authorities; or any other cause, whether similar or dissimilar to the foregoing, not within the control of such Party; provided, however, that no Party shall be entitled to relief for delay of performance under this Section 27 by reason of any event if such Party has given the other Party notice of such event and the nature of such event within a reasonable time after the occurrence of such event.

28. Termination:

- a) Upon termination of this Lease, whether by expiration of the lease term or as otherwise provided hereunder, and except in the case of default, City's liability to Lessee shall be limited to the refund of prepaid Rents, if any to be calculated from the first of the month following the termination date.
- b) In the event that termination is after June 30th of any year, Lessee will be responsible for payment of real property taxes, if any are assessed, for the entire year without proration. Lessee shall be liable to City for failure to pay any taxes or assessments due.
- c) Notwithstanding anything to the contrary in this Lease, this Lease shall terminate one (1) year after the improvements served by this UVE are substantially destroyed, provided that prior to expiration of said one (1) year period, Lessee has not given notice to the City of its intention to rebuild, or cause to be rebuilt, the improvements. If Lessee gives the City notice within the one (1) year period of its intent to rebuild the improvements, then this Lease shall not terminate and thereafter Lessee shall commence, within one hundred and eighty (180) days from the date of such notice, good faith efforts to rebuild the improvements (such commencement will be deemed to have occurred by Lessee initiating the permitting, design, demolition, site work or other actions preliminary to reconstruction) and shall diligently pursue the same unto completion. If Lessee fails to commence to rebuild within the one hundred and eighty (180) day period or fails to diligently pursue the same, City may notify Lessee that it is in default of such obligations as provided under Section 21 of this Lease
- d) If City revokes the utility permit required in connection with the contents placed inside the Premises, City will work with utility provider and Lessee in their efforts to identify another suitable location. If, in the City's sole discretion, no suitable location can be found, this Lease will be terminated.
- e) If this Lease is terminated as provided in this Section, City will provide Lessee a 90-day notice.
- f) Lessee may terminate this Lease by providing City a 90-day notice.

29. Surrender Upon Termination:

- a) Upon termination of this Lease, whether by expiration of the Lease term or as otherwise provided herein, if City demands, Lessee shall surrender and deliver up possession of the Premises and the UVE constructed therein to City within a reasonable period of time, in a safe and well-maintained condition and free and clear of any liens and encumbrances, or,

at the option of City, remove the UVE and return the Premises to the physical condition as of the Effective Date of this Lease to the satisfaction of the Director. If Lessee does not comply with the provisions of this Section, Lessee agrees to reimburse City for reasonable costs incurred to repair or remove the UVE.

- b) Should Lessee fail to vacate the Premises when required, City may elect to take legal action to eject Lessee from the Premises and to collect any damages caused by Lessee's wrongful holding over.
- c) Lessee shall be responsible for all consequential damages to City as a result of Lessee's failure to surrender the Premises in accordance with this Lease, and this clause shall survive the termination of this Lease.
- d) Should Lessee elect to demolish the improvements served by the UVE, Lessee will notify City, as provided in this Section, of its intent to demolish the improvements.

30. Rights of Owners and Permitted Mortgagees:

- a) If an Event of Default occurs (as described in Section 21), City shall provide Lessee with notice as set forth in said Section. Within five (5) business days of Lessee being provided said notice, Lessee shall provide City written notification identifying any mortgagee whose interests include the Premises ("**Permitted Mortgagee**").
- b) Upon receipt of written notification of a Permitted Mortgagee from Lessee, City shall provide each Permitted Mortgagee with a copy of each notice sent to Lessee. Each Permitted Mortgagee shall have the same period as Lessee to remedy, cause to be remedied, or commence to remedy, and complete the remedy of an Event of Default. City shall accept such performance by, or commenced by, the Permitted Mortgagee as if the same had been done by Lessee.
- c) Nothing contained in this Lease requires a Permitted Mortgagee to cure any default that occurs as a result of a breach of or failure to comply or perform the terms of this Lease, such as Lessee's bankruptcy or insolvency, or to discharge any lien, charge, or encumbrance against Lessee's interest in this Lease junior in priority to the lien of the Permitted Mortgage.
- d) A Permitted Mortgagee shall notify the City of its election to proceed with due diligence to foreclose the Permitted Mortgage on this Lease or otherwise to proceed promptly to acquire possession of the Premises; and
 - i. During the period that any Permitted Mortgagee is in possession of the Premises and/or during the pendency of any such foreclosure or other proceedings and until the interest of Lessee in this Lease terminates, the Permitted Mortgagee will pay or cause to be paid to City all sums becoming due under this Lease for Rent pertaining to such time period; and consents to proceed promptly to acquire possession of the Premises and become the Lessee hereunder.
 - ii. If delivery of possession of the Premises is made to any Permitted Mortgagee, or successor to or purchaser of such interest ("**Acquirer**"), the Acquirer shall assume responsibility for performance of all Lessee's obligations under this Lease.

- e) If City terminates this Lease due to the occurrence of an uncured Event of Default, or this Lease expires because Lessee did not provide notice of extension as herein provided, City shall immediately notify Lessee and each Permitted Mortgagee or Acquirer of such termination or expiration. Upon written request of a Permitted Mortgagee or the Acquirer after receipt of the City's written notice of termination or expiration, City shall enter into a new lease of the Premises with such Permitted Mortgagee or Acquirer within twenty (20) days after receipt of such request. The new lease shall be effective as of the date of termination of this Lease for the remainder of the term of this Lease (and any extension periods), at the same Rent and upon the same terms; provided that the Permitted Mortgagee or Acquirer shall:
- i. At the time of delivery of the written request, pay to City all Rent owed by Lessee;
 - ii. At the time of delivery of the written request, pay to City all Rents that would have been due from the date of termination of this Lease to and including the date of the execution and delivery of a new lease, together with all expenses, including reasonable attorney's fees incurred by City, less the net amount of all sums received by City from any sublessees or licensees of any part of the Premises up to the commencement of the new lease; and
 - iii. Before execution of the new lease, agree in writing that the Permitted Mortgagee or Acquirer shall, with due diligence and within a reasonable time, perform all of the other obligations of Lessee. The new lease shall have the same relative priority in time and in right as this Lease and shall vest in Permitted Mortgagee or Acquirer all of the right, title, interest and privileges of Lessee under this Lease.

31. **Estoppel Certificates** - Each Party agrees that, at any time and from time to time at reasonable intervals, within thirty (30) days after request by the other Party, it will execute, and deliver to the requesting Party, or to any prospective Permitted Mortgagee, assignee or sublessee designated by such requesting Party, a certificate stating:

- a) That this Lease is unmodified and in force and effect (or if there have been modifications, that this Lease is in force and effect as modified, and identifying the modification agreements, or if this Lease is not in force and effect the certificate shall so state;
- b) Whether or not there is any existing default by the requesting Party in the performance of any of its obligations under this Lease and whether or not there is any other existing default by either Party under this Lease with respect to which notice of default has been served, and if there is any such default, specifying the nature and extent thereof;
- c) Whether or not there are any setoffs, defenses, or counterclaims against enforcement of the obligations of the requesting Party.

32. **Holding Over** - If Lessee remains in possession of the Premises or any part thereof after the expiration of the Initial Term or any subsequent Renewal Period, without the express written consent of City, such occupancy shall be a tenancy from month-to-month with Rent in the amount of 150% of the current Rent, plus all other charges payable hereunder, and upon all terms of this Lease, otherwise applicable to a month-to-month tenancy. The hold

over tenancy may be terminated at will at any time by City. City shall have the right to adjust Rent payments, charges, or use fees for such hold over upon thirty (30) days prior written notice to Lessee. In the event of hold over beyond June 30th of any year, Lessee shall be responsible for payment of real property taxes, if any are assessed, for the entire year without proration. Upon termination of this Lease, City may elect to take legal action and to collect any damages caused by Lessee's wrongful holding over.

33. **No Partnership** - Neither anything contained in this Lease nor any acts of the Parties shall be deemed or construed by the Parties, or either of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any other association between the Parties to this Lease, other than the obligations between City and Lessee as described in this Lease.

34. **General Provisions:**

- a) **Administrative Fees:** City reserves the right to require Lessee to pay reasonable administrative fees, including reasonable attorney's fees, for providing written consents, estoppel certificates, assignments, and other administrative actions that may be required under this Lease.
- b) **Ambiguity:** Both Parties have had the opportunity to provide input into the drafting of this Lease and have had the opportunity to review it with counsel, whether or not that opportunity has been exercised. Therefore, this Lease shall not be construed for or against either Party in order to resolve any ambiguity.
- c) **Americans With Disabilities Compliance:**

Lessee shall comply, at Lessee's sole expense, with all applicable sections of the Americans With Disabilities Act of 1990 (ADA), as it may be amended, including any duty the ADA may impose on City or Lessee as a result of Lessee's use, occupation, or alteration of the Premises.

 - i. Within ten (10) days after receipt, City and Lessee shall advise the other Party in writing, and provide the other Party with copies (as applicable) of any notices alleging violation of the ADA relating to any portion of the Premises; any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Premises; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Premises.
 - ii. In the event of any assignment or sublet of the Premises, Lessee and Lessee's assignee or sublessee shall agree to comply with the ADA, at their sole expense, and Lessee shall remain liable under this Lease for any duty the ADA may impose upon Lessee or Lessee's assignee or sublessee as a result of their use, occupation or alteration of the Premises.
- d) **Amendments:** This Lease shall not be amended or modified except by agreement in writing signed by duly authorized representatives of the Parties.
- e) **Authority of Lessee:** If Lessee is a corporation, each individual executing this Lease on behalf of that corporation shall provide satisfactory evidence verifying that they have been duly authorized to execute and deliver this Lease on behalf of the corporation, in

accordance with the bylaws of the corporation, and the corporation warrants and represents that this Lease is binding on the corporation.

- f) **Binding Terms and Conditions:** The covenants and conditions of this Lease shall be binding on any heirs, successors, executors, administrators, sublessees and assigns of the Lessee.
- g) **Choice of Law and Forum:** This Lease shall be governed by the laws of the State of Oregon without reference to any of its conflict of law provisions. Any litigation arising under this Lease shall occur, if in the state courts, in Multnomah County Circuit Court, and if in federal court, in the U.S. District Court located in Portland.
- h) **Consent of City:** Whenever consent, approval, direction, or decision by City is required or requested under this Lease, all such consents, approvals, directions, or decisions shall be in writing from the Director, and shall not be unreasonably withheld or delayed.
- i) **Construction:** In construing this Lease, if the context so requires, the singular pronoun shall be taken to mean and include the plural, and the masculine shall include the feminine and the neuter. All provisions of this Lease have been negotiated at arms-length, and this Lease shall not be construed for or against any Party by reason of the authorship of any provision of this Lease.
- j) **Cumulative Rights and Remedies:** No right or remedy or election provided by this Lease shall be deemed exclusive but shall, whenever possible, be cumulative with all other rights and remedies available under this Lease.
- k) **Days:** Whenever days are referenced in this Lease, all such references mean calendar days unless otherwise specified.
- l) **Merger:** This Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, advertising, agreements and understandings, oral or written, if any between City and Lessee or displayed by City or its agents to Lessee with respect to the subject matter of this Lease, the Premises. There are no representations between City and Lessee or between any real estate broker and Lessee, other than those contained in this Lease, and all reliance with respect to any representations is solely upon representations contained in this Lease.
- m) **Non-Waiver:** Neither acceptance by City of any rental nor acceptance by either Party of any other benefits under this Lease shall constitute a waiver of any default. Any waiver by either Party of the strict performance of any of the sections of this Lease shall not be deemed to be a waiver of subsequent breaches of a different character, occurring either before or subsequent to such waiver, and shall not prejudice that Party's right to strict performance of the same section in the future or of any other section of this Lease.
- n) **Obligations:** By granting this Lease the City is not obligating itself or any of its agencies with respect to any discretionary action relating to development or use of the Premises, including, but not limited to, re-zonings, variances, environmental clearances, or any other governmental agency approvals or permits which are or may be required. Lessee shall correct, at Lessee's own expense, any failure of compliance created by the fault or use of Lessee or its agents, employees or invitees.

- o) **Severability:** Any section of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other section of this Lease and other sections shall remain in full force and effect.
- p) **Quiet Possession:** Upon Lessee paying the Rent reserved hereunder and observing and performing all of the covenants, conditions, and provisions on Lessee's part to be observed and performed hereunder, Lessee shall have quiet possession of the Premises for the entire term hereof, subject to all sections of this Lease.
- q) **Recordation:** Neither City nor Lessee shall record this Lease, but a short form memorandum regarding the existence of this Lease, duly executed and notarized, shall be recorded by City at the request of either Party.
- r) **Section Headings and Capitalization:** The headings to the sections of this Lease are not part of this Lease and shall have no effect upon the construction or interpretation of any part of it. Capitalization of certain words is provided to assist the reader. Capitalization of words or lack thereof shall have no effect upon the construction or interpretation of this Lease.
- s) **Third Parties:** City and Lessee are the only Parties to this Lease and as such are the only Parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended beneficiaries of this Lease.
- t) **Time is of the Essence:** Time is of the essence in this Lease.

35. Notices:

- a) All Notices or other communications required or permitted under this Lease shall be in writing, and shall be:
 - i) Personally delivered (including by means of professional messenger service), which notices and communications shall be deemed given on receipt at the office of the addressee; or
 - ii) Sent by a confirmed e-mail copy (either by automatic electronic confirmation or by affidavit of the sender) directed to the e-mail address of the party set forth below; or
 - iii) Sent by registered or certified mail, postage prepaid, return receipt requested, which notices and communications shall be deemed given three (3) days after deposit in the United States mail; or
 - iv) Sent by overnight delivery using a nationally recognized overnight courier service, which notices and communications shall be deemed given one business day after deposit with such courier.
- b) Either party may specify to the other in writing, a change of physical or electronic address from time to time during the term of this Lease.

To City or Director:

CITY OF PORTLAND
Bureau of Transportation
Right-of-Way Acquisition Supervisor
1120 SW Fifth Avenue, 8th Floor
Portland, Oregon 97204
Email: rwaleases@portlandoregon.gov

To Lessee:

MULTNOMAH COUNTY
Attn: Central Courthouse Manager
401 N Dixon St
Portland, OR 97227
Email: fmdispatch@multco.us
Phone: 503-988-3322

IN WITNESS WHEREOF, Multnomah County, pursuant to a resolution of its Board of Directors, duly and legally adopted, has caused these presents to be signed by Deborah Kafoury as Chair this _____ day of _____, 20__.

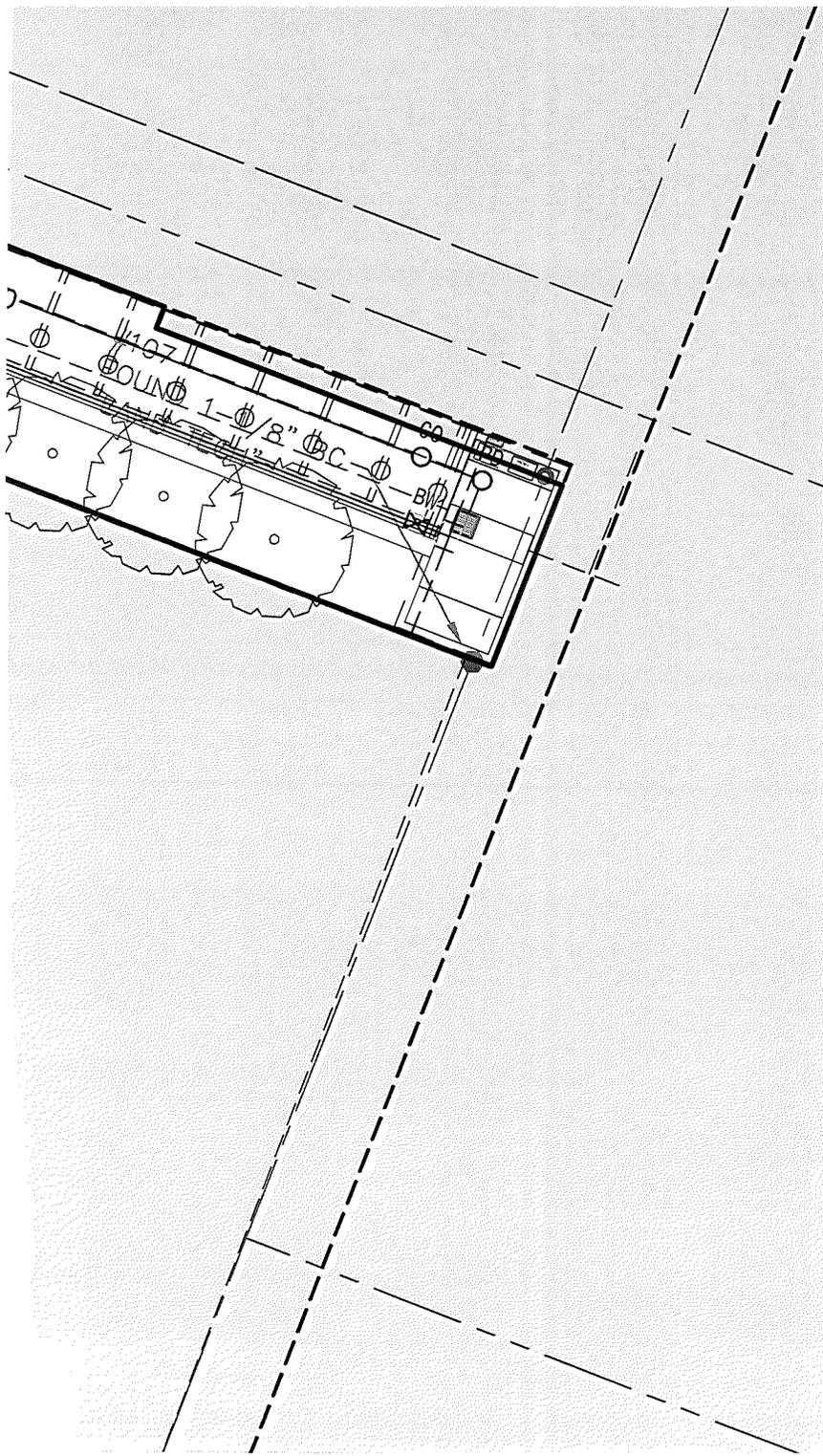
MULTNOMAH COUNTY
A POLITICAL SUBDIVISION OF THE STATE OF OREGON

By: _____
Deborah Kafoury, Chair

STATE OF OREGON)
)ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 20__
by Deborah Kafoury as Chair of Multnomah County, a political subdivision of the State of Oregon.

Notary Public for OREGON
My Commission expires _____



NEW BUILDING
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