

AGENDA ITEM FOR ADMINISTRATIVE  
MEETING ( ) Discussion only  
( X ) Action

FROM (DEPT/ DIVISION): County Counsel

SUBJECT: PATH Project - Lease

<p>Background:</p> <p>The draft lease is before the Board for review and approval. The initial term of the lease will be for up to five years. No rent will be charged under the lease.</p>	<p>Requested Action:</p> <p>Approve Lease and authorize signing of finalized document</p>
---	---

ATTACHMENTS: Proposed Lease

\*\*\*\*\*For Internal Use Only\*\*\*\*\*

Checkoffs:

- ( ) Dept. Head (copy)
- ( ) Human Resources (copy)
- ( X ) Legal (copy)
- ( ) (Other - List:)

To be notified of Meeting:

Needed at Meeting:

\*\*\*\*\*

Scheduled for meeting on: October 5, 2022

Action taken:

\*\*\*\*\*

Follow-up:

## LEASE

### Project PATH Site

1. DATE

The date of this Lease (this “**Lease**”) is \_\_\_\_\_, 2022.

2. PARTIES and TERMINOLOGY

2.1 The parties to this Lease are **UMATILLA COUNTY**, 216 SE 4th Street, Pendleton, Oregon, 97801 (“**County**”), and **CITY OF UMATILLA**, PO Box 130, Umatilla, Oregon, 97882 (“**City**”).

2.2 The paragraph captions and titles are for descriptive purposes only and are not intended to constitute a substantive part of this Lease.

2.3 Any notices under this Lease will be in writing and will be effective when actually delivered or when deposited in the mail, registered or certified, addressed to the parties at the address set forth in paragraph 2.1, or such other address as either party may designate by written notice to the other.

3. PROPERTY TO BE LEASED

3.1 County is the owner of property located at the intersection of Bensel Road and Lind Road, identified as Umatilla County Tax Lot 5N2822-2300, consisting of 18.50 acres of unimproved property, more particularly described as follows:

West Half of Southwest Quarter of Southwest Quarter, Section 22, Township 5 North, Range 28, E. W. M., Umatilla County, Oregon. Subject to rights of way and easements of record.

The area subject to this Lease is the North 2 acres (approximately North 132 feet) of the above described property (the “**Premises**”) and further depicted in Exhibit A.

3.2 County agrees to lease the Premises described in paragraph 3.1 to City under the terms and conditions set forth in this Lease.

3.3 City agrees to lease the Premises described in paragraph 3.1 from County under the terms and conditions set forth in this Lease.

3.4 Upon prior written notice to City, County reserves the right for County, its representatives or agents to enter the Premises for purposes of inspection or for the making of repairs, but shall be subject to the right to privacy rules established for tenants and their private sleeping quarters.

4. TERM and RENT

4.1 The initial term of this Lease will be for a two year period beginning September 8, 2022 and ending December 31, 2024.

4.2 The term of the Lease may be renewed for one year periods, for up to three years (for a total of five years 115 days) unless sooner terminated as provided by paragraph 14.

4.3 The rent for the Premises will be \$-0-.

5. USE OF PREMISES

5.1 The Premises will be used for temporary housing and related purposes under the PATH (Practical Assistance through Transitional Housing) Project, or similar program for temporary transitional housing for unhoused people (the “**Project**”) pursuant to an intergovernmental agreement dated of even date herewith among County, City, and the Cities of Hermiston, Stanfield, and Echo (the “**Intergovernmental Agreement**”). All parties to the Intergovernmental Agreement shall have the right to use the Premises subject to the terms and conditions set forth therein.

5.2 City will not make any unlawful or any improper use of the Premises, or do anything that will create a nuisance.

5.3 City will not allow the Premises at any time to fall into a state of disrepair or disorder so as to cause a fire hazard.

5.4 City will promptly comply with all laws, ordinances, regulations, directions, rules and requirements of all governmental authorities applicable to its use or occupancy of the Premises.

5.5 City will not suffer or permit any lien to be filed against the Premises by reason of work, labor, services or materials performed or supplied to City. If any such lien is filed against the Premises or City’s leasehold interest, City will cause the same to be discharged of record within 30 days after the date of filing the same.

6. MAINTENANCE

6.1 City will maintain all improvements and condition of the Premises. City expressly waives the benefits of any statute now or later in effect that would otherwise give City the right to make repairs at County’s expense and deduct that cost from rent owing to County.

6.2 City will make any repairs required by this Lease within a reasonable time after receipt from County of written notice of any such needed repairs.

6.3 City will be responsible for all repairs and maintenance for any fixtures it installs on the Premises.

7. UTILITIES and TAXES

7.1 City will pay for all utilities, including electric, internet, garbage, water and sewer for the Premises.

7.2 City will pay all real property taxes, if any, assessed against the Premises, due to the use of the Premises by City.

8. INSURANCE

City will at all times during the term of this Lease, at City’s sole and separate expense, maintain insurance, insuring both City and County against liability for damages to persons or property in and upon the Premises, as required by the Oregon Tort Claims Act. A certificate evidencing the policy will be delivered to County and, if available from the insurer, will contain a stipulation providing that coverage will not be cancelled without a minimum of 10 days written notice to County. The insurance

will cover all risks arising directly or indirectly out of City's activities on or any condition of the Premises. The insurance will cover any claims by third parties against County and City.

## 9. ALTERATIONS

9.1 City will not make any alterations, additions or improvements to the Premises without prior consent of County; provided, however, that such consent will not be unreasonably or untimely withheld. County consents to the following alternations:

- All necessary ground excavation and work required for the construction and installation of all utilities;
- Construction and installation of all utilities;
- Preparation of the construction or installation of all buildings, structures, access areas, parking areas, and similar improvements; and
- Construction of buildings, structures, access areas, parking areas, and similar improvements.

9.2 All alterations, additions or improvements to the Premises shall remain City's personal property regardless of whether such alterations, additions or improvements are deemed fixtures and/or affixed to the Premises.

9.3 County authorizes City to file applications for any land use approvals or any building permits or utility permits (the "**Permitting Documents**") necessary or appropriate in City's reasonable discretion to construct, use and operate the Project. County will execute all applications for Permitting Documents promptly.

## 10. DESTRUCTION OF PREMISES

In the event the Premises are subject to eminent domain or condemnation and render the Premises unsuitable for City's purposes, the Lease may be terminated by either party on written notice to the other party, and this Lease will have no further effect. County will be entitled to any proceeds of condemnation, except that City shall have the right to file a separate claim for City's moving expenses, so long as such claim does not diminish the award available to County.

## 11. PAYMENTS TO THIRD PARTIES and INDEMNIFICATION

11.1 In the event either party fails to pay, when due, any amounts required of that party to be paid to third parties under this Lease, the non-defaulting party may pay any or all such amounts. If the non-defaulting party makes any such payments, the amounts thereof will be immediately due and payable. Until paid, such amounts bear interest at the rate of nine percent per annum. The non-defaulting party's election to make any payments pursuant to this paragraph will not constitute a waiver of that party's right to declare the other party to be in default of this Lease.

11.2 To the fullest extent allowed by law, but subject to the applicable limits set forth in the Oregon Tort Claims Act, City will indemnify, defend and hold harmless County from any claim or liability arising out of or related to any activity of City on the Premises or any condition of the Premises under the control of City, except to the extent such claim or liability arises from County's actions or inactions, and in which case, but subject to the applicable limits set forth in the Oregon Tort Claims Act, County will indemnify, defend, and hold harmless City. This provision will survive any termination or expiration of this Lease.

11.3 Notwithstanding anything to the contrary in this Lease, to the fullest extent allowed by law, but subject to the applicable limits set forth in the Oregon Tort Claims Act, County shall indemnify, defend and hold harmless City from any claim or liability arising out of or related to, unless

caused by City, the presence of hazardous substances or wastes, toxic and nontoxic pollutants and contaminants including, but not limited to, petroleum products and asbestos at the Premises.

12. DEFAULT

12.1 Time is of the essence of this Lease.

12.2 A default will occur if either party fails to perform any other obligations imposed by this Lease and does not correct or commence corrections of such failure within 10 days after receipt of written notice from the non-defaulting party specifying the manner in which the other party is in default.

13. REMEDIES ON DEFAULT

13.1 In the event of a default, the non-defaulting party may take any one or more of the following steps:

- (a) Terminate this Lease;
- (b) Specifically enforce the terms of this Lease by suit in equity.

13.2 In the event suit or action is instituted to enforce any of the terms of this Lease, venue for any such suit or action will be in Umatilla County, Oregon, each party will pay its own attorney fees and costs.

13.3 Waiver by either party of strict performance of any provisions of this Lease will not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or any other provision.

14. TERMINATION

14.1 Either party may terminate this Lease with 365 days' prior written notice to the other party.

14.2 On the termination of this Lease, City will surrender the Premises in as good as order and condition as when received, reasonable wear and tear and damage from elements, fires, acts of God, or other casualty excepted, and remove all improvements, aggregate, product, equipment and any other personal property of City.

14.3 If City remains in possession of the Premises after the expiration of this Lease, without a written Lease, it will be deemed to be occupying and using the Premises as a tenant from month-to-month, subject to all the conditions, provisions and obligations of this Lease as applicable to such month-to-month tenancy.

15. SUCCESSOR INTERESTS

15.1 This Lease will be binding upon and inure to the benefit of the parties, their successors and assigns.

15.2 No interest of City will be assigned, sub-leased or otherwise transferred, voluntarily or involuntarily, without prior written consent of County, such consent not to be unreasonably or untimely withheld.

16. PRIOR AGREEMENTS

This document is the entire, final and complete agreement of the parties pertaining to the Lease of the Premises, and supersedes and replaces all written and oral agreements heretofore made or existing by and between the parties or their representatives insofar as the Premises is concerned.

*[signatures on following page]*

039419\00005\13592254v3

The parties have executed this Lease as of the date first above written.

**UMATILLA COUNTY**, by its Board of Commissioners

\_\_\_\_\_  
John M. Shafer, Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Daniel N. Dorran, Commissioner

\_\_\_\_\_  
Date

\_\_\_\_\_  
George L. Murdock, Commissioner

\_\_\_\_\_  
Date

**CITY OF UMATILLA**

By: \_\_\_\_\_

\_\_\_\_\_  
Date

Exhibit A

Depiction of Premises