



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

March 7, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Commercial Lease with Milne Masonry, Inc.

Purpose/Outcome	Execute a lease with Milne Masonry, Inc. for Agency owned property located 14489 SE Highway 212
Dollar Amount and Fiscal Impact	Monthly rent payment of \$1,502.00
Funding Source	N/A.
Duration	Lease will expire on December 31, 2019 with the option to extend for a period of 12 months
Previous Board Action/Review	None
Strategic Plan Alignment	Build public trust through good government
Contact Person	David Queener, Development Agency Program Supervisor, 503-742-4322

The Agency owns property located at 14489 SE Highway 212, which has been leased by Milne Masonry since January 2005. Per the terms of the previous lease, Milne has the option to renew the lease for a term of 12 months.

Milne has requested the renewal, therefore this new lease will expire on December 31, 2019. Terms of the lease include monthly rent in the amount of \$1,502.00. Property taxes are paid as a component of rent. The lease requires a six (6) month notification by the Agency of its intent to terminate the lease in the event the property is needed for another use.

County Counsel has reviewed and approved the proposed lease.

RECOMMENDATION

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency, execute this lease with Milne Masonry, Inc.

Respectfully submitted,

David Queener, Program Supervisor
Development Agency

COMMERCIAL LEASE

Date: March _____, 2019

Between: Clackamas County Development Agency (“Lessor”)

And: Milne Masonry, Inc. (“Lessee”)

As to Property: 14489 SE Highway 212
Clackamas, Oregon

RECITALS

The Clackamas County Development Agency, as Lessor ("Lessor") has continuously leased to Milne Masonry, Inc. as Lessee ("Lessee") premises located at 14489 SE Highway 212 in Clackamas, Oregon from January 1, 2005 to the present. Lessor and Lessee now undertake to sign a new lease under the same or similar terms for the period from January 1, 2019 through December 31, 2019, with an option to renew so long as Lessee is not in default, for one (1) additional term of twelve (12) months.

NOW, THEREFORE, Lessor leases to Lessee and Lessee leases from Lessor the following described property (the “Premises”) on the terms and conditions stated below:

See the attached Exhibit A, which is incorporated by this reference.
AKA: 14489 SE Hwy 212, Clackamas, Oregon 97015

Section 1. Occupancy

1.1 Original Term. The term of this Lease shall commence January 1, 2019 and continue through December 31, 2019, unless sooner terminated as hereinafter provided.

1.2 Possession. At the time of this Lease Lessee, by virtue of its existing tenancy, is already in possession of the Premises.

1.3 Renewal Option. Subject to Lessor’s termination rights under Section 18, if the Lease is not in default when the option is exercised or when the renewal term is to commence and Lessor has not provided the notice to terminate set forth in Section 18, Lessee shall have the option to renew this Lease for one (1) term of twelve (12) months, as follows:

1.3.1. The first day of the renewal term shall commence on the day following expiration of the preceding term.

1.3.2. The terms and conditions of the Lease for the renewal term shall be identical with the original term except for rent, term, and renewal option.

1.3.3. The option to renew may be exercised by written notice to Lessor given not less than sixty (60) days prior to the last day of the expiring term. Giving such

notice shall be sufficient to make the Lease binding for the renewal term without further act of the parties.

1.3.4. Rent during the renewal period shall be the greater of (a) the rental during the preceding original term or (b) a reasonable rental for the ensuing renewal term. If Lessor and Lessee do not agree on the rent within thirty (30) days after notice of election to renew, an independent real property appraiser familiar with commercial rental values in the area shall determine the rent. Lessee shall choose the appraiser from a list of not fewer than three such persons submitted by Lessor. If Lessee does not make the choice within five days after submission of the list, Lessor may do so. If Lessor does not submit such a list within 10 days after written request from Lessee to do so, Lessee may name as an appraiser any individual with such qualifications. Within 30 days after his or her appointment, the appraiser shall return his or her decision, which shall be final and binding on both parties. The cost of the appraiser's determination shall be borne equally by both parties.

Section 2. Rent

2.1 Base Rent. During the original term Lessee shall pay to Lessor as Base Rent the sum of one thousand five hundred and two dollars (\$1,502.00) per month, calculated as one twelfth of the ad valorem taxes, insurance policy premium and the Lessor's staff overhead for administering this Lease. Rent shall be payable on the first day of each month in advance at such place as may be designated by Lessor.

2.2 Security Deposit. To secure Lessee's compliance with all terms of this Lease, Lessee has paid Lessor the sum of one thousand forty-three dollars (\$1043.00) as a deposit, at the start of the initial lease term. The deposit shall be held for all subsequent terms of the Lease. The deposit shall be a debt from Lessor to Lessee, refundable within 30 (thirty) days after expiration of the final lease term or other termination not caused by Lessee's default. Lessor may commingle the deposit with its funds and Lessee shall not be entitled to interest on the deposit. Lessor shall have the right to offset against the deposit any sums owing from Lessee to Lessor and not paid when due, any damages caused by Lessee's default, the cost of curing any default by Lessee should Lessor elect to do so, and the cost of performing any repair or cleanup that is Lessee's responsibility under this Lease. Offset against the deposit shall not be an exclusive remedy in any of the above cases, but may be invoked by Lessor, at its option, in addition to any other remedy provided by law or this Lease for Lessee's nonperformance. Lessor shall give notice to Lessee each time an offset is claimed against the deposit and, unless the Lease is terminated, Lessee shall within ten (10) days after such notice deposit with Lessor a sum equal to the amount of the offset so that the total deposit amount, net of offset, shall remain constant throughout the Lease term.

2.3 Additional Rent. All additional taxes, insurance costs, utility charges incurred for the operation of the Premises and any other sum that Lessee is required to pay to Lessor or third parties shall be additional rent.

Section 3. Retention Incentive. Lessee acknowledges in section 18 of this Lease that it may receive notice to quit the Premises. After Lessee receives the notice, if Lessee relocates its business within Clackamas County, Lessor shall return any rent

paid between the date of the notice and the date Lessee quits the Premises. However, if Lessee moves out of Clackamas County, Lessor shall retain the rent.

Section 4. Use and Condition of the Premises

4.1 Permitted Use. The Premises shall be used for the current operations of Lessee's business and for no other purpose without the consent of Lessor, which consent shall not be withheld unreasonably. Lessee's use is the storage of materials (e.g. brick and mortar) and equipment used in its masonry business and general office use. If law or governmental regulation prohibits this use, this Lease shall terminate.

4.2 Restrictions on Use. In connection with the use of the Premises, Lessee shall:

4.2.1 Conform to all applicable laws and regulations of any public authority affecting the Premises and the use, and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use.

4.2.2 Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Lessor from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Lessor to obtain reduced premium rates for long-term fire insurance policies, unless Lessee pays the additional cost of the insurance.

4.2.3 Refrain from any use that would be reasonably offensive to other Lessees or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the premises.

4.2.4 Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Lessor.

4.2.5 Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the premises without the written consent of Lessor.

4.3 Hazardous Substances. Lessee shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Lessee may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in Section 4.1. Lessee may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Lessee's reasonably anticipated needs. Lessee shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. On the expiration or termination of this Lease, Lessee shall remove all Hazardous Substances from the Premises. The term *Environmental Law* shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety, or the environment. The term *Hazardous Substance* shall mean any hazardous, toxic, infectious, or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

4.4 Asbestos. Lessee has delivered to Lessor a copy of the asbestos survey of the Premises that identifies the presence, location, and quantity of asbestos-

containing material (ACM) and presumed asbestos-containing material (PACM) in the Premises. ACM is any material containing more than 1% asbestos. PACM is thermal insulation and surfacing material found in buildings constructed no later than 1980. Lessee shall notify its employees and its agents or contractors whose employees can reasonably be expected to work in or adjacent to areas containing ACM or PACM of the presence, location, and quantity of ACM and PACM. Lessee has posted signs outside mechanical rooms that contain ACM or PACM. These signs identify the presence of the material, its locations, and the work practices necessary to ensure that it will not be disturbed. Lessee has also affixed labels or posted signs notifying visitors of the presence of ACM or PACM in other areas of the Premises. Lessee shall cause its employees, agents, and contractors to conform to the work practices described on these signs. Lessee shall provide asbestos-awareness training as required by law to all employees who perform custodial work. Lessee shall provide asbestos training as required by law to all employees who perform asbestos-related work. Lessee shall make copies of Occupational Safety and Health Administration ACM rules and an asbestos material safety data sheet available to all employees who work in the Premises. Lessee shall provide information relating to self-help smoking cessation programs to employees as required by law.

4.5 “As-Is.” Lessee accepts the Premises in its “as is” condition without any warranty or representation by Lessor as to the condition, fitness for any particular purpose, or habitability of the Premises. Lessee acknowledges that Lessor has no obligation to make any change or improvement to the Premises or to pay any cost, expend any funds or suffer any liability to make any change or improvement. All work done by Lessee within, on, under or adjacent to the Premises will be performed in a good and workmanlike manner in compliance with all governmental requirements. It is Lessee’s sole and exclusive responsibility to perform all work necessary or required by any governmental entity, to permit Lessee to occupy the Premises. Lessee agrees to indemnify, defend and hold Lessor harmless against any loss, liability, claim or damage resulting from work on the Premises.

Section 5. Repairs and Maintenance

5.1 Lessor’s Obligations. Lessor shall be under no obligation to make or perform any repairs, maintenance, replacements, alterations, or improvements on the Premises.

5.2 Lessee’s Obligations. Lessee, at its expense, shall keep the Premises in safe and working order, and in good and tenantable repair and condition.

5.3 Lessor’s Interference with Lessee. In the event Landlord performs any repairs, replacements, alterations, or other work on or around the Premises, Lessor shall not cause unreasonable interference with use of the Premises by Lessee. Lessee shall have no right to an abatement of rent or any claim against Lessor for any inconvenience or disturbance resulting from Lessor’s activities performed in conformance with the requirement of this provision.

5.4 Reimbursement for Repairs Assumed. If Lessee fails or refuses to make repairs that are required by this Section 5, Lessor may make the repairs and charge the actual costs of repairs to Lessee. Lessee shall reimburse such expenditures by Lessor on demand together with interest at the rate of nine percent (9%) per annum from the date of expenditure by Lessor. Except in an emergency creating an immediate

risk of personal injury or property damage, Lessor may not perform repairs that are the obligation of the Lessee and charge the Lessee for the resulting expense unless at least ten (10) days before work is commenced, the Lessee is given notice in writing outlining with reasonable particularity the repairs required, and Lessee fails within that time to initiate such repairs in good faith and pursue the repairs to completion with all due diligence.

5.5 Inspection of Premises. Lessor shall have the right to inspect the Premises at any reasonable time or times to determine the necessity of repair. Whether or not such inspection is made, the duty of Lessor to make repairs shall not mature until a reasonable time after Lessee has given Lessor written notice of the repairs that are required.

Section 6. Alterations

6.1 Alterations Prohibited. Lessee shall make no improvements or alterations on the Premises of any kind without first obtaining Lessor's written consent. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes. *Alterations* include the installation of computer and telecommunications wiring, cables, and conduit.

6.2 Alterations Required. Lessee shall perform no improvements or alterations to the Premises without identifying the improvements or alterations and securing Lessor's approval. Completing the Work Sheet set out as Exhibit B to this Lease shall do this. The improvements and alterations delineated on the Work Sheet shall be performed by the party designated and within the time stated in the work sheet.

6.3 Ownership and Removal of Alterations. All improvements and alterations performed on the Premises by either Lessor or Lessee shall be the property of Lessor when installed unless the applicable Lessor's consent or work sheet specifically provides otherwise. Lessee shall at Lessor's option, remove improvements and alterations installed by Lessee and restore the Premises to a commercially reasonable state unless the applicable Lessor's consent or work sheet specifically provides otherwise.

6.4 Waiver. Lessor may condition its consent to installation of "a work of visual art" in the premises, as defined in the Visual Artists Rights Act of 1990 (VARA) at 17 USC §101, on Lessee's delivery to Lessor of a written waiver of moral rights under the VARA executed by the artist and to be executed by Lessor acknowledging that the work may be subject to destruction on removal.

Section 7. Insurance

7.1 Insurance Required. Lessee, as set out in Section 2.1, shall pay as a component of its monthly rent the costs of keeping the Premises insured at Lessee's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Lessee shall bear the expense of any insurance insuring the property of Lessee on the Premises against such risks. Lessee shall deliver to Lessor a copy of the insurance policy with an endorsement evidencing the Lessor is an additional insured.

7.2 Waiver of Subrogation. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the

risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

Section 8. Taxes; Utilities

8.1 Property Taxes. Lessee shall pay as due all taxes on its personal property located on the Premises. Lessee, as set out in Section 2.1, shall pay as a component of its monthly rent all real property taxes and special assessments levied against the Premises. As used herein, real property taxes include any fee or charge relating to the ownership, use, or rental of the Premises.

8.2 Special Assessments. If an assessment for a public improvement is made against the Premises, Lessor may elect to cause such assessment to be paid in installments, in which case all of the installments payable with respect to the lease term shall be treated the same as general real property taxes for purposes of Section 8.1.

8.3 Contest of Taxes. Lessee shall not be permitted to contest the amount of any tax or assessment.

8.4 Proration of Taxes. Lessee shall pay its proportionate share of real property taxes and assessments for the years in which this Lease commences or terminates.

8.5 New Charges or Fees. If a new charge or fee relating to the ownership or use of the Premises or the receipt of rental therefrom or in lieu of property taxes is assessed or imposed, then, to the extent permitted by law, Lessee shall pay such charge or fee.

8.6 Payment of Utilities Charges. Lessee shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the Premises, including charges for fuel, water, gas, electricity, sewage disposal, power, refrigeration, air conditioning, telephone, and janitorial services. If any utility services are provided by or through Lessor, charges to Lessee shall be comparable with prevailing rates for comparable services. If the charges are not separately metered or stated, Lessor shall apportion the charges on an equitable basis, and Lessee shall pay its apportioned share on demand.

Section 9. Damage and Destruction

9.1 Partial Damage. If the Premises are partly damaged and Section 9.2 does not apply, the Premises shall be repaired by Lessee at Lessee's expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Lessee and shall be performed in accordance with the provisions of Section 5.

9.2 Destruction. If the Premises are destroyed or damaged such that the cost of repair exceeds fifty percent (50%) of the value of the structure before the damage, either party may elect to terminate the Lease as of the date of the damage or destruction by notice given to the other in writing not more than ten (10) days following

the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination. If neither party elects to terminate, Lessee shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Lessee's reasonable control.

9.3 Rent Abatement. Rent shall not be abated during the repair of any damage to the extent the premises are untenable.

9.4. Sunrise Corridor. If at the time the Premises are partially damaged or destroyed at a time when construction of the Sunrise Corridor Transportation Project is scheduled to begin within the following twelve (12) months, either party may elect to terminate the Lease according to the terms of Section 9.2

Section 10. Eminent Domain

10.1 Partial Taking. If a portion of the Premises is condemned and Section 10.2 does not apply, the Lease shall continue on the following terms:

10.1.1 Lessor shall be entitled to all of the proceeds of condemnation, and Lessee shall have no claim against Lessor as a result of the condemnation.

10.1.2 Lessor shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises as are necessary to restore the remaining Premises to a condition as comparable as reasonably practicable to that existing at the time of the condemnation.

10.1.3 After the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Lessor to restore the balance of the Premises in anticipation of taking, the rent shall be reduced in proportion to the reduction in value of the Premises as an economic unit on account of the partial taking.

10.1.4 If a portion of Lessor's property not included in the Premises is taken, and severance damages are awarded on account of the Premises, or an award is made for detriment to the Premises as a result of activity by a public body not involving a physical taking of any portion of the Premises, this shall be regarded as a partial condemnation to which Sections 10.1.1 and 10.1.3 apply, and the rent shall be reduced to the extent of reduction in rental value of the Premises as though a portion had been physically taken.

10.2 Total Taking. If a condemning authority takes all of the Premises or a portion sufficient to render the remaining premises reasonably unsuitable for the use that Lessee was then making of the premises, the Lease shall terminate as of the date the title vests in the condemning authorities. Such termination shall have the same effect as a termination by Lessor under Section 9.2. Lessor shall be entitled to all of the proceeds of condemnation, and Lessee shall have no claim against Lessor as a result of the condemnation.

10.3 Sale in Lieu of Condemnation. Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this Section 10 as a taking by condemnation.

Section 11. Liability and Indemnity

11.1 Liens. Except with respect to activities for which Lessor is responsible, Lessee shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens.

11.1.1 If Lessee fails to pay any such claims or to discharge any lien, Lessor may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of nine percent (9%) per annum from the date expended by Lessor and shall be payable on demand. Such action by Lessor shall not constitute a waiver of any right or remedy that Lessor may have on account of Lessee's default.

11.1.2 Lessee may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Lessor's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Lessee shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien or deposit with Lessor cash or sufficient corporate surety bond or other surety satisfactory to Lessor in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

11.2 Indemnification. Lessee shall indemnify and defend Lessor from, and reimburse Lessor for, any cost, claim, loss, or liability suffered directly or from a third-party claim arising out of or related to any activity of Lessee on the Premises or any condition of the Premises in the possession or under the control of Lessee including any such cost, claim, loss, or liability that may be caused or contributed to in whole or in part by Lessor's own negligence or failure to effect any repair or maintenance required by this Lease including any cost, claim, loss, or liability suffered directly or from a third-party claim for damage to the Premises or any other persons or property arising out of or related to Lessee's failure to comply with Section 4.3. Lessor shall have no liability to Lessee for any injury, loss, or damage caused by third parties, or by any condition of the Premises. Lessor shall have no liability for the failure or interruption of utilities.

11.3 Liability Insurance. Before going into possession of the Premises, Lessee shall procure and thereafter during the term of the Lease shall continue to carry the following insurance at Lessee's cost: commercial general liability policy (occurrence version) in a responsible company with coverage for bodily injury and property damage liability, personal and advertising injury liability, and medical payment with a general aggregate limit of not less than \$3,000,000 and a per occurrence limit of not less than \$1,000,000. Such insurance shall cover all risks arising directly or indirectly out of Lessee's activities on or any condition of the Premises whether or not related to an occurrence caused or contributed to by Lessor's negligence. Such insurance shall protect Lessee against the claims of Lessor on account of the obligations assumed by Lessee under Section 11.2, and shall name Lessor as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring thirty (30) days' written notice to Lessor before any change or cancellation shall be furnished to Lessor before Lessee's occupancy of the Premises.

Section 12. Quiet Enjoyment; Mortgage Priority

12.1 Lessor's Warranty. Lessor warrants that it is the owner of the Premises and has the right to lease them free of all encumbrances except those set forth on the attached schedule entitled "Exceptions to Title". Subject to these exceptions Lessor will defend Lessee's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

12.2 Estoppel Certificate. Either party will, within twenty (20) days after notice from the other, execute and deliver to the other party a certificate stating whether or not this Lease has been modified and is in full force and effect and specifying any modifications or alleged breaches by the other party. The certificate shall also state the amount of monthly base rent, the dates to which rent has been paid in advance, and the amount of any security deposit or prepaid rent. Failure to deliver the certificate within the specified time shall be conclusive on the party from whom the certificate was requested that the Lease is in full force and effect and has not been modified except as represented in the notice requesting the certificate.

Section 13. Assignment and Subletting. No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conferred on any third person by any other means, without the prior written consent of Lessor. This provision shall apply to all transfers by operation of law. If Lessee is a corporation, limited liability company, or partnership, this provision shall apply to any transfer of a majority voting interest in stock, membership or partnership interest of Lessee. No consent in one instance shall prevent the provision from applying to a subsequent instance. Lessor may withhold or condition such consent in its sole and arbitrary discretion.

Section 14. Default. The following shall be events of default:

14.1 Default in Rent. Failure of Lessee to pay any rent or other charge within ten (10) days after it is due.

14.2 Default in Other Covenants. Lessee fails to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within twenty (20) days after the date of written notice by Lessor specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the twenty (20) day period, this provision shall be complied with if Lessee begins correction of the default within the twenty (20) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

14.3 Insolvency. Insolvency of Lessee; an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten (10) days shall constitute a default. If Lessee consists of two or more individuals or business entities, the events of default specified in this Section 14.3 shall apply to each individual unless within ten

(10) days after an event of default occurs, the remaining individuals produce evidence satisfactory to Lessor that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Lessee under the Lease.

14.4 Abandonment. Failure of Lessee for ten (10) days or more to occupy the Premises for one or more of the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease.

Section 15. Remedies on Default

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

15.2 Reletting. Following reentry or abandonment, Lessor may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Lessor shall not be required to relet for any use or purpose other than that specified in the Lease or which Lessor may reasonably consider injurious to the Premises, or to any Lessee that Lessor may reasonably consider objectionable. Lessor may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, on any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

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

15.3.1 The loss of rental from the date of default until a new Lessee is, or with the exercise of reasonable efforts could have been, secured and paying rent.

15.3.2 The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Lessee's property and fixtures, costs incurred under Section 15.5, or any other expense occasioned by Lessee's default including any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.

15.3.3 Any excess of the value of the rent and all of Lessee's other obligations under this Lease over the reasonable expected return from the Premises for the period commencing on the earlier of the date of trial or the date the Premises are relet, and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the average prime loan rate of three largest Oregon banks based on total deposits in effect on the date of trial.

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

15.5 Lessor's Right to Cure Defaults. If Lessee fails to perform any obligation under this Lease, Lessor shall have the option to do so after ten (10) days' written notice to Lessee. All of Lessor's expenditures to correct the default shall be reimbursed by Lessee on demand with interest at the rate of nine percent (9%) per annum from the date of expenditure by Lessor. Such action by Lessor shall not waive any other remedies available to Lessor because of the default.

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

Section 16. Surrender at Expiration

16.1 Condition of Premises. On expiration of the lease term or earlier termination on account of default, Lessee shall deliver all keys to Lessor and surrender the Premises in first-class condition and broom clean. Alterations constructed by Lessee with permission from Lessor shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Lessee is responsible shall be completed to the latest practical date before such surrender. Lessee's obligations under this section shall be subordinate to the provisions of Section 9 relating to destruction.

16.2 Fixtures

All fixtures placed on the Premises during the term, shall remain the property of Lessee. Before expiration or other termination of the lease term, Lessee shall remove all furnishings, furniture, and trade fixtures. If Lessee fails to do so, this failure shall be an abandonment of the property, and Lessor may retain the property and all rights of Lessee with respect to it shall cease or, by notice in writing given to Lessee within twenty (20) days after removal was required, Lessor may elect to hold Lessee to its obligation of removal. If Lessor elects to require Lessee to remove, Lessor may effect a removal and place the property in public storage for Lessee's account. Lessee shall be liable to Lessor for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Lessor.

16.3 Holdover

16.3.1 If Lessee does not vacate the Premises at the time required, Lessor shall have the option to treat Lessee as a Lessee from month to month, subject to all of the provisions of this Lease except the provisions for term and renewal and at a rental rate equal to 110% of the highest monthly rent payable by Tenant to Landlord during the term of this Lease, or any extension thereof, or to eject Lessee from the Premises and recover damages caused by wrongful holdover. Failure of Lessee to remove fixtures, furniture, furnishings, or trade fixtures that Lessee is required to remove under this Lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another Lessee or with occupancy by Lessor for any purpose including preparation for a new Lessee.

16.3.2 If a month-to-month tenancy results from a holdover by Lessee under this Section 16.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Lessor given not less than ten (10) days before the

termination date which shall be specified in the notice. Lessee waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

Section 17. Miscellaneous

17.1 Nonwaiver. Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. The acceptance of a late payment of rent shall not waive the failure to perform an obligation under this Lease except for the failure to pay the rent so accepted when due and shall not affect Lessor's remedies for failure to perform such other obligations.

17.2 Notices. Any notice required or permitted under this Lease shall be given when actually delivered or forty eight (48) hours after deposited in United States mail as certified mail return receipt requested addressed to the address set out below or to such other address as may be specified from time to time by either of the parties in writing.

Lessor: David Queener
Clackamas County Development Agency
Development Services Bldg.
150 Beavercreek Rd.
Oregon City, OR 97045

Lessee: George T. Milne
Milne Masonry
14489 SE Highway 212
Clackamas, OR 97015

17.3 Succession. Subject to the above-stated limitations on transfer of Lessee's interest, this Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

17.4 Recordation. This Lease shall not be recorded without the written consent of Lessor.

17.5 Entry for Inspection. Lessor shall have the right to enter on the Premises at any time to determine Lessee's compliance with this Lease; to make necessary repairs to the building or to the Premises; to show the Premises to any prospective Lessee or purchaser; to conduct surveys, inspections, tests and analysis necessary for the proposed Sunrise Corridor Transportation Project and in addition shall have the right, at any time during the last two months of the term of this Lease, to place and maintain on the Premises notices for leasing or selling of the Premises.

17.6 Interest on Rent and Other Charges. Any rent or other payment required of Lessee by this Lease shall, if not paid within ten (10) days after it is due, bear interest at the rate of nine percent (9%) per annum from the due date until paid. In addition, if Lessee fails to make any rent or other payment required by this Lease to be paid to Lessor within five (5) days after it is due, Lessor may elect to impose a late charge of five cents per dollar (\$0.05/\$1.00) of the overdue payment to reimburse Lessor for the costs of collecting the overdue payment. Lessee shall pay the late charge on demand by Lessor. Lessor may levy and collect a late charge in addition to all other

remedies available for Lessee's default, and collection of a late charge shall not waive the breach caused by the late payment.

17.7 Proration of Rent. In the event of commencement or termination of this Lease at a time other than the beginning or end of one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Lessee or paid on its account.

17.8 Time of Essence. Time is of the essence of the performance of each of Lessee's obligations under this Lease.

Section 18. Termination and Relocation. Lessee understands that the Premises are available for lease only for a limited period of time and that the improvements on the Premises will be completely removed at such time as Lessor desires to regain possession of the Premises.

This Lease may be terminated by Lessor prior to December 31, 2019 according to the following terms and conditions:

(1) Lessor agrees to give Lessee six (6) months prior written notice of Lessor's intent to take possession of the Premises. The date set forth in Lessor's notice shall be the effective date of any termination pursuant to this section. Lessee's sole and exclusive remedy for Lessor's failure to provide the notice under either scenario is the abatement or reimbursement of Rent for the period of time the notice was delayed. (e.g. If the notice is one month late the Lessee receives one month free rent).

(2) Termination under this section shall have the same effect as if the Lease had expired pursuant to its original term.

(3) Lessee will be required to relocate. Lessee acknowledges that it does not have any federal, state or local relocation benefits and if it acquires any relocation benefits for any reason, they are waived, released and forgiven.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease as of the date and year written above. The persons signing below each represent and warrant that each has the full right and authority to enter into this Lease and to bind the party for whom such person signs to the terms and provisions of this Lease.

Lessor:

Clackamas County Development Agency

By: _____
Jim Bernard, Chair

Lessee:

Milne Masonry, Inc.

By: _____
George T. Milne, President

Exhibit A
IDENTIFICATION OF THE PREMISES

“WORK SHEET

The following work is to be done on the Premises by _____ at the _____'s expense:

The work shall be commenced promptly by _____, 20____.
In all instances where Lessor is not doing the work on the Premises, Lessee consents to Lessor's posting of a sign, consistent with ORS 87.030, giving notice that Lessor will not be responsible for construction liens under ORS 87.001 to 87.060 and 87.075 to 87.093.

Lessee shall be required on termination of the Lease to remove the alterations and improvements effected by the above work and to restore the premises to the condition that existed before the work was done.

Lessor: _____

Lessee: _____



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

March 7, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Commercial Lease with W.E. Given Contracting, Inc.

Purpose/Outcome	Execute a lease with W.E. Given Contracting, Inc. for Agency owned property located 13621 SE Ambler Road
Dollar Amount and Fiscal Impact	Monthly rent payment of \$100.00
Funding Source	N/A.
Duration	Lease will expire on December 31, 2019 with an option to extend for a period of 12 months
Previous Board Action/Review	None
Strategic Plan Alignment	Build public trust through good government
Contact Person	David Queener, Development Agency Program Supervisor, 503-742-4322

The Agency owns property located at 13621 SE Ambler Road, which has been leased by W.E. Given Contracting since March 2007. Given uses the gravel lot for parking of equipment for their business, which is located on the adjacent property. Per the terms of the previous lease, Given has the option to renew the lease for a term of 12 months.

Given has requested the renewal, therefore this new lease will expire on December 31, 2019. Terms of the lease include monthly rent in the amount of \$100.00. Property taxes are paid as a component of rent. The lease requires a six (6) month notification by the Agency of its intent to terminate the lease in the event the property is needed for another use.

County Counsel has reviewed and approved the proposed lease.

RECOMMENDATION

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency, execute this lease with W.E. Given Contracting, Inc.

Respectfully submitted,

David Queener, Program Supervisor
Development Agency

COMMERCIAL LEASE

Date: March_____, 2019

Between: Clackamas County Development Agency (“Lessor”)

And: W.E. Given Contracting, Inc. (“Lessee”)

As to Property: 13621 SE Ambler Road
Clackamas, Oregon 97015

RECITALS

- A. On March 1, 2007 the Clackamas County Development Agency, as Lessor (“Lessor”) leased to W.E. Given Contracting, Inc. as Lessee (“Lessee”) premises located at 13621 SE Ambler Road, Clackamas, Oregon (the “Premises”) for a term ending December 31, 2007.
- B. Among other terms, the March 1, 2007 Lease contained a renewal option at Section 1.3. The renewal option was for one (1) twelve (12) month period.
- C. Lessor and Lessee agreed to renew the Lease according to Section 1.3 for the period from January 1, 2008 through December 31, 2008.
- D. Lessor and Lessee agreed to renew the Lease according to Section 1.3 for the period from January 1, 2009 through December 31, 2009, and from January 1, 2010 through December 31, 2010.
- E. Lessor and Lessee agreed to renew the Lease according to Section 1.3 for the period from January 1, 2011 through December 31, 2011; from January 1, 2012 through December 31, 2012; from January 1, 2013 through December 31, 2013; January 1, 2014 through Dec. 31, 2014; from January 1, 2015 through December 31 2015; from January 1, 2016 through December 31, 2016; from January 1, 2017 through December 31, 2017, and again from January 1, 2018 through December 31, 2018.
- F. Lessor and Lessee now undertake to sign a new lease under the same or similar terms for the period from January 1, 2019 through December 31, 2019, with an option to renew, so long as Lessee is not in default, for one (1) additional term of twelve (12) months.

NOW, THEREFORE, Lessor leases to Lessee and Lessee leases from Lessor the property located at 13621 SE Ambler Road, Clackamas Oregon, 97015 (the “Premises”) on the terms and conditions stated below:

Section 1. Occupancy

1.1 Original Term. The term of this Lease shall commence January 1, 2019 and continue through December 31, 2019, unless sooner terminated as hereinafter provided.

1.2 Possession. At the time of this Lease Lessee, by virtue of its existing tenancy, is already in possession of the Premises.

1.3 Renewal Option. If the Lease is not in default when the option is exercised or when the renewal term is to commence, Lessee shall have the option to renew this Lease for one (12) month term, as follows:

1.3.1. The first day of the renewal term shall commence on the day following expiration of the preceding term.

1.3.2. The terms and conditions of the Lease for the renewal term shall be identical with the original term except for rent, term, and renewal option.

1.3.3. The option to renew may be exercised by written notice to Lessor given not less than sixty (60) days prior to the last day of the expiring term. Giving such notice shall be sufficient to make the Lease binding for the renewal term without further act of the parties.

1.3.4. Rent during the renewal period shall be Rent the greater of (a) the rental during the preceding original or renewal term or (b) a reasonable rental for the ensuing term.

Section 2. Rent

2.1 Base Rent. During the original term Lessee shall pay to Lessor as Base Rent the sum of one hundred dollars (\$100.00) per month, calculated as one twelfth of the ad valorem taxes, insurance policy premium and the Lessor's staff overhead for administering this Lease. Rent shall be payable on the first day of each month in advance at such place as may be designated by Lessor.

2.2 Additional Rent. All additional taxes, insurance costs, utility charges incurred for the operation of the Premises and any other sum that Lessee is required to pay to Lessor or third parties shall be additional rent.

2.3 Rocking. Tenant shall, as additional rent, gravel the portion of the site to be used for parking to a depth of six (6) inches, and otherwise maintain the property in first class condition.

Section 3. Condition of the Premises

3.1 "As-Is." Lessee accepts the Premises in its "as is" condition without any warranty or representation by Lessor as to the condition, fitness for any particular purpose, or habitability of the Premises. Lessee acknowledges that Lessor has no obligation to make any change or improvement to the Premises or to pay any cost, expend any funds or suffer any liability to make any change or improvement. All work done by Lessee within, on, under or adjacent to the Premises will be performed in a good and workman-like manner in compliance with all governmental requirements. It is Lessee's sole and exclusive responsibility to perform all work necessary or required by any governmental entity, to permit Lessee to occupy the Premises. Lessee agrees to

indemnify, defend and hold Landlord harmless against any loss, liability, claim or damage resulting from work on the Premises.

3.2 Improvements Constructed by Tenant. The work to be performed in connection with Lessee's improvements on the Premises by Lessee or Lessee's contractor shall proceed only after satisfaction of the following:

3.2.1 Lessor's written approval of each of the following items: (a) Lessor's contractor; (b) public liability and property damage insurance carried by Lessee or its contractor; and (c) schematic plans and specifications for such work. Lessee shall prepare the detailed construction plans and specifications at Lessee's expense. All such work shall be done in strict conformity with such final plans and specifications subject to field change orders prepared and approved by Landlord.

3.2.2 All work shall be done in conformity with a valid building permit (Lessee to pay the actual fee charged by Clackamas County and the balance of any cost to be Lessee's expense) when required, a copy of which shall be furnished to Lessor before such work is commenced, and in any case, all such work shall be performed in accordance with all applicable government regulations at Lessee's sole expense. Notwithstanding any failure by Lessor to object to any such work, Lessor shall have no responsibility for Lessee's failure to meet all applicable regulations.

3.2.3 Lessee or Lessee's contractor shall arrange for necessary utility service and shall pay such reasonable charges for such service.

3.2.4 Lessee shall promptly reimburse Lessor upon demand for any extra expense incurred by the Lessor by reason of faulty work done by Tenant or its contractors.

Section 4. Use and Condition of the Premises

4.1 Permitted Use. The Premises shall be used for the current operations of Lessee's business and for no other purpose without the consent of Lessor, which consent shall not be withheld unreasonably. Lessee's use is the storage of vehicles, materials and equipment used in its contracting business. If law or governmental regulation prohibits this use, this Lease shall terminate.

4.2 Restrictions on Use. In connection with the use of the Premises, Lessee shall:

4.2.1 Conform to all applicable laws and regulations of any public authority affecting the Premises and the use, and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use.

4.2.2 Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Lessor from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Lessor to obtain reduced premium rates for long-term fire insurance policies, unless Lessee pays the additional cost of the insurance.

4.2.3 Refrain from any use that would be reasonably offensive to other Lessees or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the premises.

4.3 Hazardous Substances. Lessee shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Lessee may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the

business specified in Section 4.1. Lessee may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Lessee's reasonably anticipated needs. Lessee shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. On the expiration or termination of this Lease, Lessee shall remove all Hazardous Substances from the Premises. The term *Environmental Law* shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety, or the environment. The term *Hazardous Substance* shall mean any hazardous, toxic, infectious, or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

Section 5. Repairs and Maintenance

5.1 Lessor's Obligations. Lessor shall be under no obligation to make or perform any repairs, maintenance, replacements, alterations, or improvements on the Premises.

5.2 Lessee's Obligations. Lessee, at its expense, shall keep the Premises in first-class repair, operating condition, working order, and appearance.

5.3 Lessor's Interference with Lessee. In the event Landlord performs any repairs, replacements, alterations, or other work on or around the Premises, Lessor shall not cause unreasonable interference with use of the Premises by Lessee. Lessee shall have no right to an abatement of rent or any claim against Lessor for any inconvenience or disturbance resulting from Lessor's activities performed in conformance with the requirement of this provision.

5.4 Reimbursement for Repairs Assumed. If Lessee fails or refuses to make repairs that are required by this Section 5, Lessor may make the repairs and charge the actual costs of repairs to Lessee. Lessee shall reimburse such expenditures by Lessor on demand together with interest at the rate of nine percent (9%) per annum from the date of expenditure by Lessor. Except in an emergency creating an immediate risk of personal injury or property damage, Lessor may not perform repairs that are the obligation of the Lessee and charge the Lessee for the resulting expense unless at least ten (10) days before work is commenced, the Lessee is given notice in writing outlining with reasonable particularity the repairs required, and Lessee fails within that time to initiate such repairs in good faith and pursue the repairs to completion with all due diligence.

5.5 Inspection of Premises. Lessor shall have the right to inspect the Premises at any reasonable time or times to determine the necessity of repair. Whether or not such inspection is made, the duty of Lessor to make repairs shall not mature until a reasonable time after Lessee has given Lessor written notice of the repairs that are required.

Section 6. Alterations

6.1 Alterations Prohibited. Lessee shall make no improvements or alterations on the Premises of any kind without first obtaining Lessor's written consent.

All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes. *Alterations* include the installation of computer and telecommunications wiring, cables, and conduit.

6.2 Alterations Required. Lessee shall perform no improvements or alterations to the Premises without identifying the improvements or alterations and securing Lessor's approval. Completing the Work Sheet set out as Exhibit B to this Lease shall do this. The improvements and alterations delineated on the Work Sheet shall be performed by the party designated and within the time stated in the work sheet.

6.3 Ownership and Removal of Alterations. All improvements and alterations performed on the Premises by either Lessor or Lessee shall be the property of Lessor when installed unless the applicable Lessor's consent or work sheet specifically provides otherwise. Lessee shall at Lessor's option, remove improvements and alterations installed by Lessee and restore the Premises to a commercially reasonable state unless the applicable Lessor's consent or work sheet specifically provides otherwise.

6.4 Waiver. Lessor may condition its consent to installation of "a work of visual art" in the premises, as defined in the Visual Artists Rights Act of 1990 (VARA) at 17 USC §101, on Lessee's delivery to Lessor of a written waiver of moral rights under the VARA executed by the artist and to be executed by Lessor acknowledging that the work may be subject to destruction on removal.

Section 7. Taxes; Utilities

7.1 Property Taxes. Lessee shall pay as due all taxes on its personal property located on the Premises. Lessee, as set out in Section 2.1, shall pay as a component of its monthly rent all real property taxes and special assessments levied against the Premises. As used herein, real property taxes include any fee or charge relating to the ownership, use, or rental of the Premises.

7.2 Special Assessments. If an assessment for a public improvement is made against the Premises, Lessor may elect to cause such assessment to be paid in installments, in which case all of the installments payable with respect to the lease term shall be treated the same as general real property taxes for purposes of Section 7.1.

7.3 Contest of Taxes. Lessee shall not be permitted to contest the amount of any tax or assessment.

7.4 Proration of Taxes. Lessee shall pay its proportionate share of real property taxes and assessments for the years in which this Lease commences or terminates.

7.5 New Charges or Fees. If a new charge or fee relating to the ownership or use of the Premises or the receipt of rental therefrom or in lieu of property taxes is assessed or imposed, then, to the extent permitted by law, Lessee shall pay such charge or fee.

7.5 Payment of Utilities Charges. Tenant shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the Premises,

Section 8. Damage and Destruction

8.1 Partial Damage. If the Premises are partly damaged and Section 8.2 does not apply, the Premises shall be repaired by Lessee at Lessee's expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Lessee and shall be performed in accordance with the provisions of Section 5.3.

8.2 Destruction. If the Premises are destroyed or damaged such that the cost of repair exceeds fifty percent (50%) of the value of the structure before the damage, either party may elect to terminate the Lease as of the date of the damage or destruction by notice given to the other in writing not more than ten (10) days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination. If neither party elects to terminate, Lessee shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Lessee's reasonable control.

8.3 Rent Abatement. Rent shall not be abated during the repair of any damage to the extent the premises are untenable.

Section 9. Eminent Domain

9.1 Partial Taking. If a portion of the Premises is condemned and Section 10.2 does not apply, the Lease shall continue on the following terms:

9.1.1 Lessor shall be entitled to all of the proceeds of condemnation, and Lessee shall have no claim against Lessor as a result of the condemnation.

9.1.2 Lessor shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises as are necessary to restore the remaining Premises to a condition as comparable as reasonably practicable to that existing at the time of the condemnation.

9.1.3 After the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Lessor to restore the balance of the Premises in anticipation of taking, the rent shall be reduced in proportion to the reduction in value of the Premises as an economic unit on account of the partial taking.

9.1.4 If a portion of Lessor's property not included in the Premises is taken, and severance damages are awarded on account of the Premises, or an award is made for detriment to the Premises as a result of activity by a public body not involving a physical taking of any portion of the Premises, this shall be regarded as a partial condemnation to which Sections 9.1.1 and 9.1.3 apply, and the rent shall be reduced to the extent of reduction in rental value of the Premises as though a portion had been physically taken.

9.2 Total Taking. If a condemning authority takes all of the Premises or a portion sufficient to render the remaining premises reasonably unsuitable for the use that Lessee was then making of the premises, the Lease shall terminate as of the date the title vests in the condemning authorities. Such termination shall have the same effect as a termination by Lessor under Section 8.2. Lessor shall be entitled to all of the proceeds of condemnation, and Lessee shall have no claim against Lessor as a result of the condemnation.

9.3 Sale in Lieu of Condemnation. Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this Section 9 as a taking by condemnation.

Section 10. Liability and Indemnity

10.1 Liens. Except with respect to activities for which Lessor is responsible, Lessee shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens.

10.1.1 If Lessee fails to pay any such claims or to discharge any lien, Lessor may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of nine percent (9%) per annum from the date expended by Lessor and shall be payable on demand. Such action by Lessor shall not constitute a waiver of any right or remedy that Lessor may have on account of Lessee's default.

10.1.2 Lessee may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Lessor's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Lessee shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien or deposit with Lessor cash or sufficient corporate surety bond or other surety satisfactory to Lessor in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

10.2 Indemnification. Lessee shall indemnify and defend Lessor from, and reimburse Lessor for, any cost, claim, loss, or liability suffered directly or from a third-party claim arising out of or related to any activity of Lessee on the Premises or any condition of the Premises in the possession or under the control of Lessee including any such cost, claim, loss, or liability that may be caused or contributed to in whole or in part by Lessor's own negligence or failure to effect any repair or maintenance required by this Lease including any cost, claim, loss, or liability suffered directly or from a third-party claim for damage to the Premises or any other persons or property arising out of or related to Lessee's failure to comply with Section 4.1. Lessor shall have no liability to Lessee for any injury, loss, or damage caused by third parties, or by any condition of the Premises. Lessor shall have no liability for the failure or interruption of utilities.

10.3 Liability Insurance. Before going into possession of the Premises, Lessee shall procure and thereafter during the term of the Lease shall continue to carry the following insurance at Lessee's cost: commercial general liability policy (occurrence version) in a responsible company with coverage for bodily injury and property damage liability, personal and advertising injury liability, and medical payment with a general aggregate limit of not less than \$3,000,000 and a per occurrence limit of not less than \$1,000,000. Such insurance shall cover all risks arising directly or indirectly out of Lessee's activities on or any condition of the Premises whether or not related to an occurrence caused or contributed to by Lessor's negligence. Such insurance shall protect Lessee against the claims of Lessor on account of the obligations assumed by Lessee under Section 10.2, and shall name Lessor as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring thirty (30) days' written notice to Lessor before any change or cancellation shall be furnished to Lessor before Lessee's occupancy of the Premises.

Section 11. Quiet Enjoyment; Mortgage Priority

11.1 Lessor's Warranty. Lessor warrants that it is the owner of the Premises and has the right to lease them free of all encumbrances except those set forth on the attached schedule entitled "Exceptions to Title". Subject to these exceptions Lessor will defend Lessee's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

11.2 Estoppel Certificate. Either party will, within twenty (20) days after notice from the other, execute and deliver to the other party a certificate stating whether or not this Lease has been modified and is in full force and effect and specifying any modifications or alleged breaches by the other party. The certificate shall also state the amount of monthly base rent, the dates to which rent has been paid in advance, and the amount of any security deposit or prepaid rent. Failure to deliver the certificate within the specified time shall be conclusive on the party from whom the certificate was requested that the Lease is in full force and effect and has not been modified except as represented in the notice requesting the certificate.

Section 12. Assignment and Subletting. No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conferred on any third person by any other means, without the prior written consent of Lessor. This provision shall apply to all transfers by operation of law. If Lessee is a corporation, limited liability company, or partnership, this provision shall apply to any transfer of a majority voting interest in stock, membership or partnership interest of Lessee. No consent in one instance shall prevent the provision from applying to a subsequent instance. Lessor may withhold or condition such consent in its sole and arbitrary discretion.

Section 13. Default. The following shall be events of default:

13.1 Default in Rent. Failure of Lessee to pay any rent or other charge within ten (10) days after it is due.

13.2 Default in Other Covenants. Lessee fails to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within twenty (20) days after the date of written notice by Lessor specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the twenty (20) day period, this provision shall be complied with if Lessee begins correction of the default within the twenty (20) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

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

a default. If Lessee consists of two or more individuals or business entities, the events of default specified in this Section 14.3 shall apply to each individual unless within ten (10) days after an event of default occurs, the remaining individuals produce evidence satisfactory to Lessor that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Lessee under the Lease.

13.4 Abandonment. Failure of Lessee for ten (10) days or more to occupy the Premises for one or more of the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease.

Section 14. Remedies on Default

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

14.2 Reletting. Following reentry or abandonment, Lessor may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Lessor shall not be required to relet for any use or purpose other than that specified in the Lease or which Lessor may reasonably consider injurious to the Premises, or to any Lessee that Lessor may reasonably consider objectionable. Lessor may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, on any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

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

14.3.1 The loss of rental from the date of default until a new Lessee is, or with the exercise of reasonable efforts could have been, secured and paying rent.

14.3.2 The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Lessee's property and fixtures, costs incurred under Section 14.5, or any other expense occasioned by Lessee's default including any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.

14.3.3 Any excess of the value of the rent and all of Lessee's other obligations under this Lease over the reasonable expected return from the Premises for the period commencing on the earlier of the date of trial or the date the Premises are relet, and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the average prime loan rate of three largest Oregon banks based on total deposits in effect on the date of trial.

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

14.5 Lessor's Right to Cure Defaults. If Lessee fails to perform any obligation under this Lease, Lessor shall have the option to do so after ten (10) days' written notice to Lessee. All of Lessor's expenditures to correct the default shall be reimbursed by Lessee on demand with interest at the rate of nine percent (9%) per annum from the date of expenditure by Lessor. Such action by Lessor shall not waive any other remedies available to Lessor because of the default.

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

Section 15. Surrender at Expiration

15.1 Condition of Premises. On expiration of the lease term or earlier termination on account of default, Lessee shall surrender the Premises in first-class condition. Alterations constructed by Lessee with permission from Lessor shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Lessee is responsible shall be completed to the latest practical date before such surrender. Lessee's obligations under this section shall be subordinate to the provisions of Section 8 relating to destruction.

15.2 Fixtures

All fixtures placed on the Premises during the term shall remain the property of Lessee. Before expiration or other termination of the lease term, Lessee shall remove all furnishings, furniture, and trade fixtures. If Lessee fails to do so, this failure shall be an abandonment of the property, and Lessor may retain the property and all rights of Lessee with respect to it shall cease or, by notice in writing given to Lessee within twenty (20) days after removal was required, Lessor may elect to hold Lessee to its obligation of removal. If Lessor elects to require Lessee to remove, Lessor may effect a removal and place the property in public storage for Lessee's account. Lessee shall be liable to Lessor for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Lessor.

15.3 Holdover

15.3.1 If Lessee does not vacate the Premises at the time required, Lessor shall have the option to treat Lessee as a Lessee from month to month, subject to all of the provisions of this Lease except the provisions for term and renewal and at a rental rate equal to 110% of the highest monthly rent payable by Tenant to Landlord during the term of this Lease, or any extension thereof, or to eject Lessee from the Premises and recover damages caused by wrongful holdover. Failure of Lessee to remove fixtures, furniture, furnishings, or trade fixtures that Lessee is required to remove under this Lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another Lessee or with occupancy by Lessor for any purpose including preparation for a new Lessee.

15.3.2 If a month-to-month tenancy results from a holdover by Lessee under this Section 15.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Lessor given not less than ten (10) days before the termination date which shall be specified in the notice. Lessee waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

Section 16. Miscellaneous

16.1 Nonwaiver. Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. The acceptance of a late payment of rent shall not waive the failure to perform an obligation under this Lease except for the failure to pay the rent so accepted when due and shall not affect Lessor's remedies for failure to perform such other obligations.

16.2 Notices. Any notice required or permitted under this Lease shall be given when actually delivered or forty eight (48) hours after deposited in United States mail as certified mail return receipt requested addressed to the address set out below or to such other address as may be specified from time to time by either of the parties in writing.

Lessor: David Queener
Clackamas County Development Agency
Development Services Building
150 Beaver Creek Rd.
Oregon City, OR 97045

Lessee: W.E. Given
W.E. Given Contracting, Inc.
13651 SE Ambler Road
Clackamas, Oregon 97015

16.3 Succession. Subject to the above-stated limitations on transfer of Lessee's interest, this Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

16.4 Recordation. This Lease shall not be recorded without the written consent of Lessor.

16.5 Entry for Inspection. Lessor shall have the right to enter on the Premises at any time to determine Lessee's compliance with this Lease; to make necessary repairs to the building or to the Premises; to show the Premises to any prospective Lessee or purchaser; to conduct surveys, inspections, tests and analysis necessary for the proposed Sunrise Corridor Transportation Project and in addition shall have the right, at any time during the last two months of the term of this Lease, to place and maintain on the Premises notices for leasing or selling of the Premises.

16.6 Interest on Rent and Other Charges. Any rent or other payment required of Lessee by this Lease shall, if not paid within ten (10) days after it is due, bear interest at the rate of nine percent (9%) per annum from the due date until paid. In addition, if Lessee fails to make any rent or other payment required by this Lease to be

paid to Lessor within five (5) days after it is due, Lessor may elect to impose a late charge of five cents per dollar (\$0.05/\$1.00) of the overdue payment to reimburse Lessor for the costs of collecting the overdue payment. Lessee shall pay the late charge on demand by Lessor. Lessor may levy and collect a late charge in addition to all other remedies available for Lessee's default, and collection of a late charge shall not waive the breach caused by the late payment.

16.7 Proration of Rent. In the event of commencement or termination of this Lease at a time other than the beginning or end of one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Lessee or paid on its account.

16.8 Time of Essence. Time is of the essence of the performance of each of Lessee's obligations under this Lease.

Section 17. Termination and Relocation. Lessor acquired the Premises to provide right of way for the Sunrise Corridor Transportation Project (the "Project"). The Premises are available for lease only for a limited period of time and the improvements on the Premises will be completely removed when the Project is built. This Lease will be terminated by construction of the Project according to the following terms and conditions:

(1) Once construction of the Project begins, this Lease may be terminated at Lessor's discretion.

(2) Lessee will be required to relocate. Lessee acknowledges that it does not have any federal, state or local relocation benefits and if it acquires any relocation benefits associated with the Project, they are waived, released and for given. In consideration of this waiver and release, Lessor agrees to give Lessee six (6) months prior written notice of Lessor's intent to take possession of the Premises for the initiation of the Project. Lessee's sole and exclusive remedy for Lessor's failure to provide the notice is the abatement or reimbursement of Rent for the period of time the notice was delayed. (e.g. If the notice is one month late the Lessee receives one month free rent).

///

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease as of the date and year written above. The persons signing below each represent and warrant that each has the full right and authority to enter into this Lease and to bind the party for whom such person signs to the terms and provisions of this Lease.

Lessor:

Lessee:

Clackamas County Development Agency

W.E. Given Contracting, Inc.

By: _____
Jim Bernard, Chair

By: _____
W.E. Given

EXHIBIT B
“WORK SHEET”

The following work is to be done on the Premises by _____ at the _____’s expense:

The work shall be commenced promptly by _____, 20____.
In all instances where Lessor is not doing the work on the Premises, Lessee consents to Lessor’s posting of a sign, consistent with ORS 87.030, giving notice that Lessor will not be responsible for construction liens under ORS 87.001 to 87.060 and 87.075 to 87.093.

Lessee shall be required on termination of the Lease to remove the alterations and improvements effected by the above work and to restore the premises to the condition that existed before the work was done.

Lessor: _____

Lessee: _____”



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

March 7, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Second Amendment to the Owner Participation Development Agreement
with Hoodland Fire District**

Purpose/Outcome	To amend the existing Owner Participation Development Agreement with Hoodland Fire District
Dollar Amount and Fiscal Impact	No change
Funding Source	N/A.
Duration	This amendment will extend the date that Hoodland Fire District must complete construction of improvements to the Government Camp station by 18 months.
Previous Board Action/Review	Discussed at a Policy Session on January 8, 2019
Strategic Plan Alignment	Build public trust through good government
Contact Person	David Queener, Development Agency Program Supervisor, 503-742-4322

The Agency entered into an Owner Participation and Development Agreement (OPDA) with the Hoodland Fire District on January 29, 2015. As part of the agreement, the Agency provided \$600,000 to the District to be used toward design and construction of a remodel to the existing station in Government Camp. The agreement stipulates that they must commence design within 2 years and complete construction within 4 years.

Since the agreement was signed, the District has been working on a design that meets their needs and can be constructed with the funds available. As design progressed, they obtained construction cost estimates, which came in much higher than anticipated. In order to stay within their budget, the design was modified and subsequent cost estimates are now feasible.

The construction documents are nearing completion and the district is prepared to solicit bids this spring, once the winter weather subsides. Construction would begin this summer and be completed in early 2020.

The agreement currently required construction to be completed by January 29, 2019. This requirement cannot be met so the District requested an amendment to the OPDA to allow completion of construction by July 29, 2020, an extension 18 months.

County Counsel has reviewed and approved the proposed this amendment.

RECOMMENDATION

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency, execute this second amendment to the Owner Participation Development Agreement with the Hoodland Fire District.

Respectfully submitted,

David Queener, Program Supervisor
Development Agency

**SECOND AMENDMENT TO THE
OWNER PARTICIPANT AND DEVELOPMENT AGREEMENT**

This Second Amendment to the Owner Participation and Development Agreement is entered into and is effective as of this ____ day of _____, 2019 by and between Clackamas County Development Agency, the Urban Renewal Agency of Clackamas County, Oregon (the "Agency"), and Hoodland Fire District No. 74 (the "Owner Participant").

RECITALS:

A. The Agency is undertaking to carry out the Government Camp Village Revitalization Plan & Report (the "Plan") pursuant to ORS Chapter 457. The Plan was duly adopted and approved by the Board of County Commissioners by Board Order No. 89-1143 on November 14, 1989.

B. On January 29, 2015, the Board of County Commissioners acting as the governing body of the Clackamas County Development Agency approved an Owner Participation Development Agreement (the "OPDA") whereby the Agency provided \$570,000 to the Owner Participant for the purposes of designing and constructing improvements to the Government Camp Fire Station.

C. On June 29 2016, the Board of County Commissioners acting as the governing body of the Clackamas County Development Agency approved the first amendment to the Owner Participation Development Agreement (the "OPDA") whereby the Agency provided an additional \$30,000 to the Owner Participant for the purposes of designing and constructing improvements to the Government Camp Fire Station.

The Agency and Owner Participant, having presented the preceding recitals as true and correct, now agree as follows:

1. That the OPDA is now amended at Section 1(B) to reflect that the Owner Participant agrees to develop, construct, maintain and operate the Project substantially as provided in the Project Description, Exhibit "C," within five (5) years and six (6) months.
2. The OPDA is otherwise unchanged.

IN WITNESS WHEREOF, the Agency and the Owner Participant have executed this Agreement as of the date first above written.

[Signatures and Acknowledgements on Following Page]

“AGENCY”

BOARD OF COUNTY COMMISSIONERS acting as
the governing body of the Clackamas County
Development Agency

By: _____
Jim Bernard
Chair

By: _____
Mary Raethke
Recording Secretary

“OWNER PARTICIPANT”

Hoodland Fire District No. 74

By: _____
John Ingrao
Fire Chief

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on _____, 2019 by Jim
Bernard as Chair of the Clackamas County Development Agency

Notary Public for Oregon
My Commission expires _____

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on _____, 2019 by John
Ingrao as Fire Chief of Hoodland Fire District No. 74

Notary Public for Oregon
My Commission expires _____