



**DEPARTMENT OF FINANCE**

PUBLIC SERVICES BUILDING  
2051 KAEN ROAD | OREGON CITY, OR 97045

September 27, 2018

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Lease Agreement by and between Glenn and Glena Butler and  
Clackamas County for the District Attorney's Office

<b>Purpose/Outcomes</b>	This is a three-year lease for the Butler Building occupied by District Attorney's Office (DA) staff.
<b>Fiscal Impact</b>	Three-year total cost of \$195,535.
<b>Funding Source</b>	Budgeted as part of DA's operations. No new funds needed.
<b>Duration</b>	Effective July 1, 2018 and terminating on June 30, 2021
<b>Previous Action</b>	The first lease for this building was approved by the Board on April 11, 1996 through board order #96-287.
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"><li>• Ensure safe, healthy and secure communities</li><li>• Build public trust through good government</li></ul>
<b>Contact Person</b>	Eli Seely, Facilities Management, 503-557-6425

**BACKGROUND**

Clackamas County has leased the Butler Building, located at 108 8<sup>th</sup> Street in Oregon, since 1996. At present, it houses District Attorney's staff operations.

Until last year, this lease was a sublease to the County by an intermediary who held a master lease with the property owners. Last year, the master lease was terminated and the property owners, Glenn and Glena Butler, took full possession of the property. At the time, they agreed to honor the terms of our sublease until it expired. The new lease was negotiated by Facilities Management in consultation with DA staff.

**RECOMMENDATION**

Staff recommends the Board approve the Lease agreement between Clackamas County and Glenn and Glena Butler and that the Chair of the Board be authorized to execute the Lease.

Respectfully submitted,

Christa Bosserman Wolfe, CPA  
Interim Finance Director

## **LEASE**

This Lease (the "Lease") effective as of July 1, 2018, is made by and between CLACKAMAS COUNTY, a political subdivision of the State of Oregon, hereinafter called "Lessee" and GLENN KENT BUTLER, Trustee of the Glenn Kent Butler Revocable Living Trust dated March 2, 2000, as to an undivided fifty percent (50%) interest, and GLENA KAY BUTLER, Trustee of the Butler Living Trust dated January 29, 1998, as to an undivided fifty percent (50%) interest, as tenants in common of the real property located at 108 8<sup>th</sup> Street, Oregon City, Oregon, said trusts being hereinafter called "Lessor".

### **Recitals**

Whereas, Lessor is the owner of the building and other improvements commonly known as 108 8<sup>th</sup> Street, Oregon City, Oregon 97045 (the "Property");

Whereas, Lessor had a long term master lease with Howard Cohn d.b.a. MARBAR INVESTMENTS until said lease's expiration on June 30, 2017;

Whereas, on or about June 20, 2013, Clackamas County and Howard Cohn d.b.a. MARBAR INVESTMENTS executed a sublease for a portion of the Property (the "Cohn Lease");

Whereas Lessor agreed to honor the terms of the Cohn Lease until its expiration on June 30, 2018; and

Whereas Lessor and Lessee now wish to execute a new lease agreement;

Now, therefore, in consideration of the foregoing, and of the promises and mutual covenants, agreements, and conditions as above and hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties have agreed as follows:

#### **1. PREMISES**

The leased premises (the "Premises") consists of the entire first floor of the building on the Property, totaling approximately 3,000 square feet. In addition to the Premises, Lessee shall have the use of the parking lot with eight (8) spaces located to the northwest of the building between it and McLoughlin Boulevard, and five (5) spaces (13, 18, 19, 29, 30) in the parking lot located to the southwest of the building between the building and the property line in the center of the alley, located on Assessor's Map T2S, R2E, Section 31AB, Tax Lot 04800.

#### **2. LEASE TERM**

The Lessor does hereby let and lease the Premises to the Lessee to have and to hold the same for a term of three (3) years, beginning July 1, 2018 and ending at midnight on June 30, 2021.

#### **3. RIGHT OF FIRST REFUSAL**

If additional space becomes available in the building, Lessor shall not enter into any lease with any third party without first offering Lessee the opportunity to lease the additional space. Immediately following the date Lessor becomes aware such additional space will become available, whether by expiration or termination of existing lease for such space, Lessor shall offer the right to lease additional space to Lessee in writing. If Lessor does not receive Lessee's written election to lease additional space within ten

(10) business days, the rights of Lessee to lease additional space shall be null and void and Lessor shall be free to lease additional space to another tenant.

#### **4. BASE RENT**

Lessee shall pay to Lessor, at Lessor's address set forth herein, the following monthly rents for the duration of the Lease:

Building:

Months 1-2 (July 1– August 31, 2018): \$6,125.00 per month, reflecting a rate of \$18.00 per square foot per year;

Months 3-12 (September 1, 2018 – June 30, 2019): \$3,337.50 per month, reflecting a rate of \$13.35 per square foot per year;

Months 13-24 (July 1, 2019 – June 30, 2020): \$3,642.50 per month, reflecting a rate of \$14.57 per square foot per year;

Months 25-36 (July 1, 2020 – June 30, 2021): \$3,975.00 per month, reflecting a rate of \$15.90 per square foot per year.

Parking:

Months 1-36: (July 1, 2018 – June 30, 2021): \$1,625.00 per month, reflecting a rate of \$125.00 per space per month.

Rent for the period of July 1, 2018 through September 30, 2018, totaling the sum of seventeen-thousand two-hundred twelve dollars and fifty cents (\$17,212.50), shall be due upon execution of this Lease. All other rent is due and payable on or before the first day of the month. Rent not paid when due shall, after ten (10) days written notice, bear simple interest at the rate of one-and-one-half percent (1.5%) per month until paid. All rents shall be paid without set off, abatement, or deduction.

#### **5. POSSESSION**

Lessee shall be entitled to full use and possession of the Premises for the entire Lease term.

#### **6. USE AND ENJOYMENT**

Lessor covenants that Lessee shall be entitled to possession of the Premises for government offices and related purposes. Lessee covenants not to use the Premises for any other purpose without Lessor's prior written consent, or for any unlawful purpose. Lessee shall not allow the creation of any nuisance upon the Premises nor create any nuisance upon the same.

#### **7. OPERATING COSTS**

Lessee shall be responsible for charges for all utility services to the Premises, including telephone, electrical service, water/sewer, natural gas service, and landscape maintenance relating to this property.

#### **8. PROPERTY TAXES**

Lessee is applying for a property tax exemption on the property described above under the provisions of ORS 307.112. If the property tax exemption is granted, Lessee and Lessor agree that any tax savings resulting from the exemption shall inure solely benefit of Lessee. The rent payable by Lessee has been

established to reflect the savings resulting from the exemption granted in ORS 307.112. If the property tax exemption is not granted, or to the extent it is not totally granted if a partial exemption is granted, the Lessee shall pay the Lessor for the property taxes reasonably allocable to the Premises.

#### **9. ASBESTOS, CHEMICALS, AND OTHER MATERIALS AND CONDITIONS RELATING TO SAFE WORK ENVIRONMENT**

A. Lessor represents and warrants that the Premises are safe, healthful, and in compliance with all state and federal Occupational Safety and Health Administration (OSHA) rules and regulations, and all other state structural, building, fire, and specialty code requirements.

B. If conditions pre-exist, or arise, which are determined to be violations of any state or federal OSHA rule or regulation or any specialty code requirement, Lessor will be allowed a reasonable period in which to modify and correct the violation to achieve compliance. If Lessee deems that there is any imminent danger to employees or to the public, Lessor must correct the violations immediately. Lessor shall make every effort to achieve full compliance within thirty (30) days.

In the event Lessor does not correct any condition as required in items A and B above, Lessee has the right to terminate this Lease immediately, and shall have no further responsibility to Lessor under this Lease agreement.

#### **10. INSPECTION**

Lessor shall have the right personally and through Lessor's agents and workmen to enter into and upon the Premises at reasonable times to inspect the Premises and examine the condition thereof upon forty-eight (48) hours written notice, except in the event of an emergency, in which event no notice shall be necessary.

#### **11. ALTERATIONS**

Lessee may perform leasehold improvements and make subsequent non-structural modifications and alterations to the Premises, provided that Lessee will obtain Lessor's prior written approval of any proposed modifications or alterations of the improvements on the Premises. Such approvals will not be unreasonably withheld and will be given or denied within ten (10) business days after receipt of a written request for approval and such plans or other information as Lessor may reasonably require. Whether or not Lessor's consent is required under this Lease, Lessee will keep Lessor informed as to modifications and alterations of the Premises performed or to be performed by Lessee. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes.

All alterations undertaken by Lessee shall be at Lessee's sole expense. Any alterations or improvements by Lessee that cannot reasonably be removed by Lessee without damaging the Premises shall become the property of Lessor upon termination of this Lease.

#### **12. ELECTRICAL AND BUILDING OVERLOADS**

Lessee shall not overload the floors or electrical circuits or alter the plumbing or wiring of the Premises or building without the written consent of Lessor, which Lessor shall not unreasonably withhold.

### **13. MAINTENANCE**

Lessor shall be responsible for necessary maintenance and repair of the building foundation, roof, sidewalks, exterior walls, structural members, and for necessary water, sewage, and electrical repairs so long as not made necessary by Lessee's negligence, misuse, or failure to comply with any provisions of this Lease. Lessor shall be responsible for major repairs and/or replacement of heating and air conditioning components.

Any repairs or maintenance performed on or around the leased Premises by the Lessor shall be done in such a way as to interfere as little as reasonably possible with the use of the Premises by the Lessee. Lessee shall have no right to an abatement of rent nor any claim against Lessor for any inconvenience or disturbance resulting from Lessor's activities performed in conformance with the requirements of this provision.

Lessee shall be responsible for routine maintenance of heating and air conditioning equipment, including filter changes.

Lessee shall be responsible for keeping the sidewalks around the Premises free and clear of ice and snow.

Lessee shall be responsible for non-structural interior maintenance, including janitorial services. Lessee shall maintain Premises in a neat condition, free of trash and debris, in good order and repair.

Lessee shall promptly notify Lessor of any necessary repairs and shall, if necessary to protect the leased Premises from imminent damage prior to such notice, arrange for necessary emergency repairs. Payment for emergency repairs shall be the responsibility of Lessor.

Lessee shall be responsible for all damages to the Premises resulting from burglary or attempted burglary and shall repair and maintain all windows and doors.

### **14. REPAIR BY LESSOR**

Lessor shall have no liability for failure to perform required maintenance and repair unless written notice of the needed maintenance or repair is given by Lessee and Lessor fails to commence efforts to remedy the problem in a reasonable time and manner. Repair of damage caused by negligent or intentional acts or breach of this Lease by Lessee, its employees, invitees, or licensees shall be at Lessee's expense.

### **15. LIEN CLAIMS AND LIABILITY**

Lessee shall not allow any liens to attach to the building or Lessee's interest in the Premises as a result of any alterations or modifications done at Lessee's request, repairs or maintenance performed for which Lessor is not responsible, or obligations or judgments of Lessee unrelated to the Premises. Any labor or materials provided or construction done by Lessee at Lessor's request shall be deemed to have been provided by Lessor who shall be solely responsible for any liens or judgments arising from such provision or construction.

## **16. PLACE OF PAYMENT AND NOTICE**

Any notice to which Lessee shall be entitled under this Lease shall be delivered or sent to Clackamas County Facilities Management, 1710 S Red Soils Court #200, Oregon City, OR 97045. Place of payment and notice for Lessor shall be mailed to Glenn Butler, 11835 SW Ebberts Court, Beaverton, OR 97008. Place for notices may be changed by written notice from the party changing address.

## **17. TOTAL OR PARTIAL DESTRUCTION**

Lessor agrees to insure the building on the Premises against risks as covered by a standard all risk insurance policy, including water damage and sprinkler leakage, with extended coverage. So long as this provision does not invalidate or limit the extent of Lessor's coverage under such insurance policies, Lessor does hereby waive the right of subrogation against Lessee and Lessee's agents or employees under such insurance policy or policies. If the leased portion of the building on the Premises which is the subject of this Lease so insured shall be damaged by some cause covered by such insurance to the extent of less than thirty percent (30%) thereof, Lessor shall promptly remove all debris therefrom and repair and rebuild the same, restoring the Premises in substantially the same condition in which it was previous to the destruction. If the structure shall be damaged more than thirty percent (30%), Lessor shall not be required to build but may do so at Lessor's option. Percentage of damage shall be determined by the fire insurance underwriter. If Lessor shall elect to rebuild and repair the Premises in the last mentioned instance, Lessor shall give written notice of Lessor's intention to do so to the Lessee within thirty (30) days of the date of the damage. If Lessor fails to give such notice within thirty (30) days, this Lease shall terminate. If the Premises shall be damaged by some cause not covered by insurance and Lessor does not elect to rebuild or repair the Premises within sixty (60) days from date of damage, Lessee may terminate this Lease at Lessee's option. During any period of time during which the Premises shall be unusable, rental shall abate entirely and if the operation of the business on the Premises shall be impaired in part, rental shall abate during the terms of repairs or rebuilding proportionate to loss of use of the Premises and said impairment of business. If the insurance premium rates shall increase in any way by reason of Lessee's activities on the Premises, Lessee shall reimburse Lessor promptly for the cost of any premium in excess of the amount Lessor would have been required to pay for insurance had it not been for Lessee's activities or use and shall be added to the rent as charge against Lessee.

## **18. HAZARDOUS SUBSTANCES**

Lessee shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed or, or otherwise released on or under the Premises. Lessee may use or otherwise handle on the Premises only those Hazardous Substances typically used in the prudent and safe operation of the office. 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. Lessee shall remove all Hazardous Substances it stored on the Premises upon expiration or termination of this Lease. 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, or material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

#### **19. ASSIGNMENT AND SUBLETTING**

Lessee shall not have the right to assign this Lease without the prior written consent of Lessor.

Unless otherwise agreed by the parties, in writing, no assignment shall relieve Lessee of its obligation to pay rent or perform other obligations required by this Lease, and no consent to one assignment or subletting shall be a consent to any further assignment or subletting. Lessor shall not unreasonably withhold its consent to any assignment, or to subletting provided that subrental rate or effective rental paid by the assignee is not less than the current scheduled rental rate of the building for comparable space and the proposed lessee is compatible with Lessor's other lessees and Lessor's normal standards for the building. If Lessee proposes a subletting or assignment to which Lessor is required to consent under this paragraph, the parties may, upon mutual written consent, agree to terminate this Lease and permit Lessor to contract directly with the proposed sublessee or assignee, or any third party.

#### **20. EMINENT DOMAIN**

If the entire Premises or entire access shall be taken under power of eminent domain, this Lease shall terminate, and Lessee shall immediately vacate said Premises within ninety (90) days after receipt of notice of said termination, or earlier if directed by a court having jurisdiction. Lessee shall not participate in any award of damages or purchase price paid by the acquiring authority to Lessor for the building and Premises and Lessee shall not be liable for any subsequent rent. If only a part of the Premises or access shall be taken under eminent domain so that Lessee may continue to operate Lessee's business on substantially the scale on which such business was conducted prior to condemnation, rental shall be abated for the remaining portion of the term of this Lease or extension thereof, proportionate to the loss of use of the Premises by Lessee. In no event shall Lessee participate in any condemnation award or settlement.

#### **21. WAIVER**

Any waiver of any breach of covenants herein contained to be kept and performed by Lessee or Lessor shall not be deemed or considered to be a continuing waiver, and shall not operate to bar or prevent the other party from declaring a forfeiture or exercising any other rights as to any succeeding breach, either of the same condition or covenant or otherwise.

#### **22. TERMINATION AND BREACH**

If Lessee fails to pay any rental payment by the fifteenth (15<sup>th</sup>) day of the month in which it is due, Lessor may terminate this Lease by providing sixty (60) days written notice, with an opportunity to cure, to Lessee. Within sixty (60) days of receipt of said notice, Lessee shall either cure the default or vacate the Premises.

If Lessee defaults in performing its obligations under this Lease, other than payment of rent, Lessor may make any payment or perform any obligation which Lessee has failed to perform after not less than ten (10) days written notice to Lessee of Lessor's intention to pursue this remedy (except in cases of emergency, where no such prior notice shall be required), in which case Lessor shall be entitled to recover from Lessee upon demand all amounts so expended.

If Lessee breaches any covenants or conditions of this Lease, other than payment of rent, and such breach is not corrected within thirty (30) days after receipt of written notice from Lessor claiming a default by Lessee and Lessor's intention to terminate the Lease if such breach is not corrected (except that if the breach is of a type that cannot be fully corrected within such thirty day period, Lessee must commence correction within such period and thereafter diligently pursue the correction to completion), Lessor may terminate this Lease by sixty (60) days written notice thereof to Lessee, without waiver of any rights Lessor may have to initiate legal proceedings to recover damages or other relief. Within sixty (60) days of sending such notice, Lessee shall vacate the Premises.

If Lessor breaches any covenants or conditions of this Lease, and such breach is not corrected within thirty (30) days after receipt of written notice from Lessee claiming a default by Lessor and Lessee's intention to terminate the Lease if such breach is not corrected (except that if the breach is of a type that cannot be fully corrected within such thirty day period, Lessor must commence correction within such period and thereafter diligently pursue the correction to completion), Lessee may terminate this Lease by sixty (60) days written notice thereof to Lessor, without waiver of any rights Lessee may have to initiate legal proceedings to recover damages or other relief. Within sixty (60) days of sending such notice, Lessee shall vacate the Premises.

The rights and remedies specified in this section shall be non-exclusive. Either party's right to terminate this Lease for default as provided herein shall not be that party's sole remedy, and such party may exercise any other right or remedy provided in this Lease or otherwise available under applicable law.

### **23. SURRENDER**

On expiration or early termination of this Lease, Lessee shall deliver all keys to Lessor and surrender the Premises clean and in the same condition as at the commencement of the term subject only to reasonable wear and tear from ordinary use. Lessee shall remove all of its furnishings and trade fixtures that remain its property and restore all damage resulting from such removal. Failure to remove shall be an abandonment of the property, and Lessor may dispose of it in any manner without liability.

### **24. CONDITION OF PREMISES**

Lessee accepts the Premises as of the commencement date in "AS IS" condition. Lessee acknowledges that it has occupied the Premises for a number of years and is familiar with the condition thereof.

### **25. INDEMNITY**

Subject to the Oregon Tort Claim Act and the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, Lessee shall indemnify, defend, and hold harmless Lessor and its managing agents, and employees from any claim, liability, damage, or loss occurring on the Premises, or any cost or expense in connection therewith, arising out of or based upon damages or injuries to persons or property caused by the errors, omissions, fault or negligence of Lessee, its agents, employees, licensees, or contractors.

Lessor shall indemnify, defend, and hold harmless Lessee and its officers, elected officials, agents and employees from any claim, liability, damage, or loss occurring on the Premises, or any cost or expense in connection therewith, arising out of or based upon damages or injuries to persons or property caused by the errors, omissions, fault or negligence of Lessor, their agents, employees, licensees, or contractors.



## **26. HEIRS AND ASSIGNS**

All of the rights, remedies, and obligations given to, imposed upon, or undertaken by the parties to this Lease shall extend to, inure to the benefit of and bind, as the circumstances may require, the heirs, successors, officers, agents, insures (except as set forth herein), executors or personal representatives, and assigns (except as set forth herein) of each party.

## **27. MUTUAL EXECUTION**

This Lease shall not be binding upon Lessor or Lessee until such time as both parties shall have executed it.

## **28. CONSTITUTIONAL DEBT LIMITATION**

This agreement is expressly subject to the debt limitation of Oregon Counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefor. Any provisions herein which would conflict with law are deemed inoperative to that extent.

## **29. WARRANT OF AUTHORITY**

Lessor warrants and represents that Lessor is the sole owner of the Premises subject to this Lease and that Lessor has full authority to execute this Lease. The undersigned, Glenn Kent Butler, warrants and represents that he has full authority to sign on behalf of Lessor.

**LESSEE**

CLACKAMAS COUNTY BOARD  
OF COUNTY COMMISSIONERS by:

\_\_\_\_\_  
Jim Bernard, Chair

\_\_\_\_\_  
Mary Raethke, Recording Secretary

\_\_\_\_\_  
Christa Wolfe, Interim Finance Director

\_\_\_\_\_  
John Foote, District Attorney

Approved as to form:

\_\_\_\_\_  
Office of County Counsel

\_\_\_\_\_  
Date

**LESSOR**

GLENN KENT BUTLER REVOCABLE LIVING  
TRUST and BUTLER LIVING TRUST

\_\_\_\_\_  
Glenn Kent Butler, Trustee

\_\_\_\_\_  
Glena Kay Butler, Trustee

\_\_\_\_\_  
Date



**GEORGE MARLTON, JD**  
PROCUREMENT DIVISION DIRECTOR

**PROCUREMENT DIVISION**  
**PUBLIC SERVICES BUILDING**  
2051 KAEN ROAD | OREGON CITY, OR 97045

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of Purchase of Annual Technical Support Services from  
Oracle America, Inc.**

<b>Purpose/ Outcomes</b>	To authorized continued software support services for the County finance and human resource software.
<b>Dollar Amount and Fiscal Impact</b>	\$335,032.80
<b>Funding Source</b>	747-0228-00-437231
<b>Duration</b>	September 30, 2018 to September 29, 2019
<b>Previous Board Action</b>	Approval of original contract in 1998 and subsequent annual renewals thereafter.
<b>Strategic Plan Alignment</b>	Build Public Trust through Good Government
<b>Contact Person</b>	George Marlton, x5442

**BACKGROUND:**

In 1998, the County purchased licenses and technical support services from PeopleSoft USA, Inc. for its Enterprise Resource Planning and Human Resources Information Management software. Subsequently, Oracle America, Inc. purchased PeopleSoft USA along with the County's contract. To continue receiving software maintenance services for the software, the County pays an annual technical support service fee. The current technical support service term is set to expire on September 29, 2018 and the County would like to continue the services for an additional annual term.

The County is in negotiation with Oracle for an expansion of licenses and associated maintenance services, however, those negotiations are not complete at this time. In order to ensure continuity of technical support services for currently owned licenses, we are requesting approval to continue these critical services.

The original procurement process contemplated the license fees and the ongoing technical support services, therefore an additional procurement process is not required. This request is to obtain the Board's approval for expenditure authority for a new one year continuation of services.

County Counsel has reviewed and approved the documents associated with the transaction.

**RECOMMENDATION:**

Staff recommends the Board of County Commissioners authorize the Procurement Division Director to execute any necessary contracts required to continue technical support services with Oracle America, Inc. for an additional annual term.

Respectfully submitted,



Procurement Division Director

Placed on the Agenda of \_\_\_\_\_ by the Procurement Division