



MARION COUNTY BOARD OF COMMISSIONERS

## Board Session Agenda Review Form

Meeting date: October 27, 2021

Department: Board of Commissioners

Agenda Planning Date: Oct 27, 2021

Time required: 10

☐ Audio/Visual aids

Contact: Rebecca Werner

Phone: 503-566-3964

Department Head Signature:

### TITLE

Property Lease 112 E. Central Ave - Gates, OR BO-4398-21

Issue, Description & Background

County will lease 2.06 acres of vacant land with one shop building for use as short term recovery housing. County will sublease to third party to locate and place tiny homes for short term residence by individuals displaced by 2020 Santiam Canyon wildfires or for other uses as determined by County. Term of lease through October 31, 2023.

Financial Impacts:

Property lease rate shall be \$60,000 per year; total contract amount not to exceed \$120,000.

Impacts to Department & External Agencies

Department does not anticipate financial impacts to other departments.

Options for Consideration:

1. Approve property lease 112 E. Central Ave-Gates, OR BO-4398-21
2. Deny approval of property lease 112 E. Central Ave-Gates, OR BO-4398-21
3. Take no action at this time

Recommendation:

Department recommends approval of property lease 112 E. Central Ave-Gates, OR HE4398-21

List of attachments:

Property Lease 112 E. Central Ave-Gates, OR BO-4398-21

Presenter:

Scott McClure, Matt Lawyer

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to:



Marion County  
OREGON  
FINANCE DEPARTMENT

# Contract Review Sheet

Contract #: BO-4398-21

Person Sending: Rebecca Werner Department: Board of Commissioner's Office

Contact Phone #: 503-566-3964 Date Sent: \_\_\_\_\_

☐ Contract ☐ Amendment# \_\_\_\_\_ ☒ Lease ☐ IGA ☐ MOU ☐ Grant (attach approved grant award transmittal form)

Title: Property Lease 112 E. Central Ave - Gates, OR - Wildfire Housing

Contractor's Name: Ron and Mei-Lan Evans

Term - Date From: retroactively to Oct 1, 2021 Expires: Oct 31, 2023

Contract Total: \$120,000.00 Amendment Amount: \_\_\_\_\_ New Contract Total: \_\_\_\_\_

Source Selection Method: Exemption (identify rule/statute) # 50-0600

## Additional Considerations (check all that apply)

- |   |   |
|---|---|
| <input type="checkbox"/> Board Order# _____   | <input type="checkbox"/> Feasibility Determination (attach approved form)           |
| <input type="checkbox"/> Incoming Funds   | <input type="checkbox"/> Federal Funds (attach sub-recipient / contractor analysis) |
| <input type="checkbox"/> Independent Contractor (LECS) approval date: _____                 | <input type="checkbox"/> Reinstatement (attach written justification)               |
| <input type="checkbox"/> Insurance Waiver (attach) _____                                    | <input type="checkbox"/> Retroactive (attach written justification)                 |
| <input type="checkbox"/> CIP# _____ (required for all goods /software greater than \$5,000) |   |

## Description of Services or Grant Award:

County will lease 2.06 acres of vacant land with one shop building for use as short term recovery housing. County will sublease to third party to locate and place tiny homes for short term residence by individuals displaced by 2020 Santiam Canyon wildfires or for other uses as determined by County. Term of lease through October 31, 2023.

### FOR FINANCE USE

Date Finance Received: \_\_\_\_\_ BOC Planning Date: \_\_\_\_\_ Date Legal Received: \_\_\_\_\_

Comments: \_\_\_\_\_

## REQUIRED APPROVALS:

Finance - Contracts \_\_\_\_\_ Date \_\_\_\_\_ Risk Manager \_\_\_\_\_ Date \_\_\_\_\_

Legal Counsel \_\_\_\_\_ Date \_\_\_\_\_ Chief Administrative Officer \_\_\_\_\_ Date \_\_\_\_\_

Date \_\_\_\_\_ ☐ To be filed ☐ Added to Finance Table

☐ Date \_\_\_\_\_ Returned to department for signature

## REQUEST FOR AUTHORIZATION OF CONTRACT

**Date:** October 11, 2021  
**To:** Chief Administrative Officer  
**Cc:** Contract File  
**From:** Rebecca Werner  
**Subject:** Retroactive

The Marion County Board of Commissioner's Office is requesting approval of a retroactive contract as described in Section 10-0580 of the Marion County Public Contracting Rules. The contract is with Ron and Mei-Lan Evans for a property lease for the purpose of providing temporary housing for individuals displaced by Santiam Canyon wildfires with a value of \$120,000 and will be effective retroactive to October 1, 2021 upon approval.

As required in Section 10-0580(2)(a), Department staff will provide an explanation of why the contract was not submitted before performance began:

Parties are in agreement as to the official start date of this property lease. Final version of lease was not approved until shortly after agreed upon effective date.

As required in Section 10-0580(2)(b), Department staff will provide a description of the steps being taken to prevent similar occurrences in the future:

Department staff shall continuously strive to attempt to resolve issues and allow for timely processing of contractual actions.

Submitted by:

*Rebecca Werner*

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Rebecca Werner  
Finance

Acknowledged by:

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Department Head

## LEASE AGREEMENT

THIS AGREEMENT (Lease) is entered this \_\_\_\_ day of October, 2021, between Ron and Mei-Lan Evans thereafter referred to as “Lessor”, and MARION COUNTY, a political subdivision of the State of Oregon, hereinafter referred to as “Lessee.”

### RECITAL:

Lessor owns vacant property located at 112 E. Central Ave, Gates, OR 97346. Lessor wishes to lease the entire Premise to Lessee and Lessee wishes to lease the entire Premise from Lessor upon the terms and conditions contained in this Lease.

### AGREEMENT:

1. **Lease.** Lessor leases to Lessee and Lessee leases from Lessor the following described property (the Premises) on the terms and conditions contained in this Lease.

The Premise is 2.06 acres of vacant land with one shop building, as described in Attachment A. Lessee will have exclusive use of and access to the Premises. Lessee may use and sublease the Premises as a short term recovery housing, and will sublease to a third party to locate and place tiny homes for short term residence by individuals who have been displaced by the 2020 Santiam Canyon wild fires or for other reasons as determined by the Lessee or Lessee’s Sub-lessee.

Lessee and its Sub-Lessees shall also have the exclusive right to use any part of the property including infrastructure, septic, water, sidewalks, entryways, driveways, passageways, parking areas and all common areas serving the improvements in which the Premises are located.

2. **Term.** The term of this Lease shall be for two (2) years, retroactive to October 1, 2021 and continue through October 31, 2023. Lessee will be responsible to ensure all Sub-Lessees are relocated off Premise at the termination of the Lease Agreement, including any extensions.
  - a. Early Termination. Lessee may terminate the lease at any time for any reason with a minimum of 90 days’ written notice to Lessor.
3. **Option to Extend.** Lessee shall have and is hereby given the option to extend this Lease for four (4) one (1) year periods. Lessee shall provide Lessor with not less than ninety (90) days’ notice prior to the termination date, if Lessee desires to exercise this option to extend.
4. **First Right of Refusal.** If, at any time during the term of this Agreement, Lessor shall, in response to a bona fide offer to purchase all or part of its interest in the Premises from a third party, desire to sell or otherwise dispose of such interest, it shall notify Lessee in writing of the party to whom it desires to sell such interest and

shall notify Lessee in writing of the party to whom it desires to sell such interest and the price at which and the terms upon which it desires to sell the same, less the actual cost of any Lessee improvements listed in Exhibit A, and Lessee shall, within 30 days of receipt of the notice, notify Lessor in writing whether it wishes to purchase such interest at the adjusted price and on the terms set forth in the notice. If Lessee elects to purchase such interest, Lessor shall be bound to convey, assign, or otherwise transfer such interest to Lessee promptly thereafter at such price and on such terms. If Lessee elects not to purchase such interest or fails to give notice of its intention within the 30- day period, Lessor shall be free to convey, assign, or otherwise transfer such interest to the third party at a price not less than stated in the notice or on terms more favorable than those stated in the notice. Any conveyance by Lessor to a third party shall be subject to the terms of this Agreement, including without limitation Lessee's right to explore and mine on the Premises. If Lessor shall not have so disposed of such interest to said third party within 90 days after receipt of notice that Lessee elects not to exercise its right of first refusal or after expiration of that party's 30-day period within which to give notice, the provisions of this Section shall again apply to the disposition by Lessor of any such interest.

5. **Possession.** Lessee's right to possession and obligations under the lease shall continue beginning October 1, 2021.
6. **Rent.** Lessee shall pay to Lessor as rent the sum of \$5,000 per month.  
Rent shall be payable on the first day of each month in advance at such place as may be designated by Lessor.
7. **Restrictions of Use.** In connection with the use of the Premises, Lessee shall:
  - a. Conform to all applicable laws and regulations of any public authority affecting the Premises and the use of the Premises. Lessee, at Lessee's own expense, shall correct any noncompliance under this section which is created by reason of Lessee's specific use of the property or by Lessee's other actions or failure to act which result in the failure to comply. However, Lessee shall not be required to make any structural changes to the Premises which are necessary for compliance, unless the changes are required as a result of Lessee's specific use of the Premises.
  - b. 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, unless Lessee pays the additional cost of the insurance.
8. **Repairs and Maintenance.**  
The following shall be the responsibility of Lessee:
  - (1) Any repairs arising as a result of the actions or negligence of Lessee, their clients or Sub-Lesseees, normal wear and tear excepted.

9. **Inspections and Other Entries.** Lessor shall have the right to inspect the Premises at any reasonable time with prior notification and with a Marion County escort to determine the necessity of repair and for any other purpose. Whether or not such inspection is made, the duty of Lessor to make repairs shall not mature until a reasonable time after Lessor has received from Lessee written notice of the repairs that are required. Lessor shall have the right to enter upon the Premises at any reasonable time with prior notification and with an escort to determine Lessee's compliance with this Lease, to make necessary repairs to the Premises, or to show the Premises to any prospective Lessee or purchaser, and in addition shall have the right, at any time during the last two months of the term of this Lease, unless the Lease has been extended pursuant to Section 3 above, to place and maintain upon the Premises notices for leasing or selling of the Premises.

10. **Alterations or Improvements.** Lessee may elect to make, at its own expense, any improvements, including but not limited to, those listed in Exhibit A. Any tenant improvements become the property of Lessor upon the expiration of the lease term.

11. **Insurance.** Lessor shall at the Lessor's expense maintain at all times property insurance and general liability insurance covering the Premises. Lessee will meet the requirements for maintaining comprehensive general liability coverage during the term of the lease and any renewals thereof through its self-insurance program and provide Lessor a self-insurance letter upon request.

Both parties agree to waive any and all recovery rights against the other or against the officers, agents and employees for any loss or damage from any cause covered by any property insurance required to be carried under this agreement or any other insurance coverage carried by the parties. 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.

12. **Taxes.** Lessee will apply for exemption from ad valorem property taxes for the Premises under ORS 307.112, and will file claim for such exemption in a timely manner, as prescribed by ORS 307.112 and applicable administrative rule. Any tax savings resulting from exemption shall inure solely to the benefit of the Lessee.

13. **Damage or Destruction.** If the Premises are destroyed or damaged to the extent of 40% of the Premises, excluding Lessee improvements, Lessor may elect to terminate the Lease as of the date of the damage or destruction by notice given to Lessee in writing not more than 45 days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination, and Lessee shall be entitled to the reimbursement of any prepaid amounts paid by Lessee and attributable to the anticipated term. If less than 40% of the Premises are damaged or

destroyed or Lessor elects not to terminate, Lessor 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. Rent shall be abated during the repair of any damage to the extent the Premises are untenable, except that there shall be no rent abatement where the damage occurred as the result of the fault of Lessee.

#### **14. Eminent Domain.**

- a. Partial Taking. If a portion of the Premises is condemned and paragraph 14b. below does not apply, the lease shall continue on the following terms:
  - (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.
  - (2) Lessor, at Lessor's election, may proceed as soon as reasonably possible to make repairs and alterations to the Premises that are necessary to restore the remaining Premises to a condition as comparable as reasonably practicable to that existing at the time of the condemnation.
  - (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. If the parties are unable to agree on the amount of the reduction of rent, the amount shall be determined by an independent appraiser selected by Lessor. The cost of such appraiser shall be divided equally between Lessor and Lessee.
  - (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 this paragraph 14. applies, 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.
- b. 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. Upon termination, 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.
- c. 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 as a taking by condemnation.

- 15. Indemnification.** Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, Lessee agrees to indemnify, defend and hold harmless the Lessor against any and all liability, loss and costs arising from actions, suits, claims or demands attributable solely and exclusively to acts or omissions of Lessee, and Lessee's officers, agents and employees, under this Lease.

During the term of the Lease the Lessor shall defend, indemnify and hold Lessee harmless against any claim of liability of loss from personal injury or property damage caused by the negligence or willful misconduct of the Lessor, its employees or agents except to the extent that such claims or damages may be due to or caused by the acts or omissions of the Lessee, its employees or agents.

- 16. Assignment or Subletting.** Lessee may assign or sublet any portion of the Premises throughout the duration of this Agreement.

- 17. Default.** The following shall be events of default:

- a. Default in Rent. Failure of Lessee to pay any rent or other charge within 30 days after it is due;
- b. Default in Other Covenants. Failure of Lessee to perform any obligation of the Lease (other than the payment of rent or other charges) within 20 days after 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 20-day period, this provision shall be complied with if Lessee begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to affect the remedy as soon as practicable;
- c. 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 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 10 days shall constitute a default; or
- d. Default by Lessor. Lessor will be in default of this Lease if Lessor fails to perform obligations within twenty (20) days after written notice from Lessee to Lessor describing the default; provided however that if the nature of Lessor's obligation is such that more than twenty (20) days are required for performance, then Lessor shall not be in default if Lessor commences performance within the



twenty (20) day period and thereafter diligently prosecutes the same to completion.

**18. Remedies on Default.** The following shall be remedies in the event of default:

- a. Lessor Remedies. In the event of default by Lessee, and such violation is not cured within the time allowed under Section 18, the Lease may be terminated at the option of Lessor by 30 day written notice to Lessee.
- b. Lessee's Remedies. If the Lessor shall violate or default in the performance of any Lessor's obligations within this Lease, and such violation is not cured within the time allowed under Section 18, the Lessee may immediately terminate this Lease at the option of Lessee by providing written notice, and may recover damages and costs incurred by Lessee.

**19. Surrender at Expiration.**

Upon expiration of the Lease term or earlier termination on account of default, Lessee shall surrender the Premises in good condition and broom clean including removal of all rubbish and debris. Lessee's obligations under this section shall be subordinate to the provisions relating to destruction.

**20. Notice.**

Except as otherwise expressly provided in this contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing, to Contractor or County at the address or number set forth below or to such other addresses or numbers as either party may hereafter indicate in writing. Delivery may be by personal delivery, or mailing the same, postage prepaid.

- a. Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- b. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Contract shall be mailed by first class postage delivered to:

To Lessor  
Ron and Mei-Lan Evans  
50531 Linnwood Dr  
Gates, OR 97346

To Lessee:  
Chief Administrative Officer  
P.O. Box 14500  
Salem, Oregon 97309  
Fax No. 503-588-5237

**21. Miscellaneous.**

- a. 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.
- b. Succession. This Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.
- c. Recordation. This Lease shall not be recorded without the written consent of Lessor.
- d. 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.
- e. Time of Essence. Time is of the essence of the performance of each of Lessee's and Lessor's obligations under this Lease.
- f. Use. Lessee and its SubLessees shall have exclusive use of the Premise for the duration of this Lease Agreement.
- g. Civil Rights. Lessor agrees to comply with the Civil Rights Act of 1964 and 1991, and Section 504 of the Rehabilitation Act of 1973 as implemented by 45 CFR 84.4 which states in part, "No qualified person shall on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which received or benefits from federal financial assistance."
- h. Termination. This Lease may be terminated by mutual consent of both parties if set forth in writing.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first set forth above.

**MARION COUNTY SIGNATURE  
BOARD OF COMMISSIONERS:**

\_\_\_\_\_  
Chair Date

\_\_\_\_\_  
Commissioner Date

\_\_\_\_\_  
Commissioner Date

Authorized Signature: \_\_\_\_\_  
Marion County Chief Administrative Officer Date

Reviewed by Signature: \_\_\_\_\_  
Marion County Legal Counsel Date

Reviewed by Signature: Cambu Senlag 10/21/21  
Marion County Contracts & Procurement Date

**LESSOR SIGNATURE**

Authorized Signature: \_\_\_\_\_  
Date

Title: \_\_\_\_\_

## **Exhibit A**

### **COUNTY ACQUISITION PRIORITY:**

**PROPERTY LOCATION** 112 E Central Ave Gates, Oregon

**PROPERTY ID** 541610

**PROPERTY TYPE** CR

**STATUS** Lease agreement in process with Marion County for use of this site.

**LOT SIZE UNIT** 2.06 Acres

**EXISTING AMENITIES** Damaged Septic, flat clean ground

**ADDITIONAL FEATURES** Existing onsite laundry room and shop building

**ASKING PRICE** Lease at \$5,000 per month or \$60,000 per year.

### **LESSEE IMPROVEMENTS**

Site Utilities & Septic System

Demolition & Site Prep

Site Improvements & Pavements

Erosion Control