

COUNCIL RESOLUTION No. 20-2018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, to authorize the City Manager to sign a lease agreement with Modern Building Systems (MBS) in the amount not to exceed \$325,000 to secure a modular unit for the purpose of the temporary relocation of the Milwaukie Ledding Library.

WHEREAS, the citizens of the City of Milwaukie authorized a \$9.2 million dollar bond measure to improve the Milwaukie Ledding Library; and

WHEREAS, the improvements to the Milwaukie Ledding Library necessitate that Library operations be moved off site during construction; and

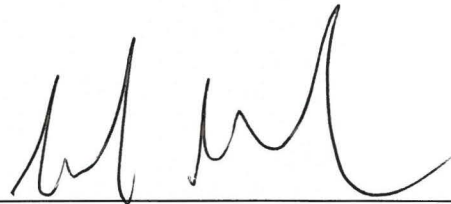
WHEREAS, after an exhaustive search for space the project team recommended the use of a modular unit for the temporary relocation of the Library; and

WHEREAS, on February 13, 2018, the City of Milwaukie Planning Commission approved the Library application for a temporary modular unit, and Community Service Use on the Tri Met park and ride site located at 9600 Main Street;

Now, Therefore, be it Resolved that the City of Milwaukie authorizes the City Manager to negotiate and sign a lease agreement with Modern Building Systems (MBS) in the amount not to exceed \$325,000 to secure a modular unit for the purpose of the temporary relocation of the Milwaukie Ledding Library.

Introduced and adopted by the City Council on 3/20/18

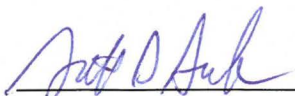
This resolution is effective on 3/20/18



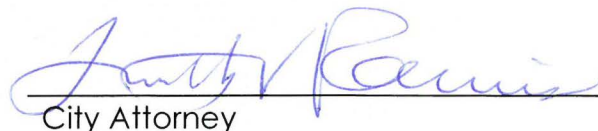
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC



Scott Stauffer, City Recorder



City Attorney

Project Change Order



Change Order Number	1
Date	10/9/2018
Modern Job Number	#1825-29,32,33
Job Name	City of Milwaukie
Phone Number	

Oregon Sales & Leasing / Manufacturing Facility
 PO Box 110 / 9493 Porter Rd SE
 Aumsville, OR 97325
 PH: 503.749.4949
 FAX: 503.749.4950

Washington Sales & Leasing
 1550 Thornton Ave SW
 Pacific, WA 98047
 PH: 253.863.8863
 FAX: 253.863.8867

California Sales & Leasing
 605 Sutter St
 West Sacramento, CA 95691
 PH: 916.985.9852
 FAX: 916.985.9865

TO: City of Milwaukie
Attn: Leila Aman
6101 SE Johnson Creek Blvd
Milwaukie, OR 97206

We hereby agree to make the change (s) specified below:	
Install (8) Interior Door Lock Lever Handle Sets	\$ 998.00
Subtotal	\$ 998.00
Plus Additional Cost of Bond (if Applicable)	\$ -
Total Change Order	\$ 998.00
Note: This Change Order becomes part of and in conformance with the existing contract.	
WE AGREE hereby to make the change(s) specified above at this price	
Previous Contract Amount	\$ 301,750.00
Revised Contract Amount	\$ 302,748.00

This Change Order adds 0 days to contract performance timeline.

Date of Change Order	10/10/2018
Modern Authorized Signature	<i>Ann Ober</i>

ACCEPTED-The above prices and specifications of this Change Order are satisfactory and are hereby accepted. All work to be performed under same terms and conditions as specified in original contract unless otherwise stipulated.

Date of Acceptance	10/10/2018
Owner Signature	<i>[Signature]</i>



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AGREEMENT - LEASE

LEASE AGREEMENT

Lessor: Modern Building Systems
 PO Box 110
 9493 Porter Road
 Aumsville, OR 97325
 Sales Contact:

Lessee: City of Milwaukie
 10722 SE Main St.
 Milwaukie, OR 97222
 PO#:
 Job#:

AGREEMENT

In consideration of the terms and conditions contained herein Lessor and Lessee agree as follows:

Lessee agrees to lease the Building (as defined below) from Lessor as of the 05/15/2018 for a minimum lease period of 18 months in accordance with the terms and conditions attached hereto.

The "Building" is a 144x60 building, unit #1825-1829,1832,1833 & #1499-1503, serial #2012.01.2A-2E, 3C-D, & 2009.33A-E containing 8,640 square feet of space, to be provided by Lessor as per the plans and specifications attached hereto as Exhibit A, which is incorporated herein by reference. The Building shall be located at 9600 SE Main St. Milwaukie, OR 97222.

Lessor will deliver and install the Building at the Location according to the Plans and Specifications. ~~LESSOR MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, CONCERNING THE BUILDING, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES FOR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.~~

RENTAL

For the minimum lease period, Lessee agrees to pay Lessor, by check at Lessor's office in Aumsville, Oregon, rent in the total amount of \$153,000.00, in monthly installments of \$8,500.00. Such monthly rent shall be paid by Lessee in advance on the 28th day of each month. (This rent amount is subject to adjustment as provided herein.) Applicable state and local sales and use taxes and other direct taxes (as provided in the Terms and Conditions) shall be due and payable to Lessor by Lessee monthly as invoiced.

INSTALLATION AND REMOVAL FEES

In addition to rent, Lessee agrees to pay Lessor, by check at Lessor's office in Aumsville, Oregon, a delivery and installation fee of \$65,000.00 and a removal and return fee ~~based upon the current rate of \$65,000~~ at actual time of Lease termination. The removal and return fee shall be paid with the final rental payment, before removal of the Building. Lessor is not responsible for any site work, excavation/backfill or utilities or their connections (e.g., power, water, sewer, telephone/data) at the Location, unless specifically contracted herein to do so.

ACCESS EQUIPMENT

Lessee agrees to lease 3 set(s) of aluminum stairs for \$200.00 per month. If the stairs are not returned to Lessor, Lessee will be charged \$1,500.00 per set. If the steps are returned damaged, Lessee will be charged accordingly for the repair or replacement. Lessee also agrees to lease Ramp for \$675.00 per month. Delivery and installation fee of \$3,000.00 and a removal and return fee of \$3,000.00 at the actual time of lease termination. If the ramp(s) are not returned to Lessor, Lessee will be charged \$8,500.00 per set. If the ramp(s) are returned damaged. Lessee will be charged accordingly for the repair or replacement.

DESCRIPTION OF ADDITIONAL ITEMS

- Tie Downs (Yes) - Included
- Skirting (Yes) - Included
- Modification(s) (Yes) Exterior Double Door Add & Book Drop \$6,238.00

CLEANING AND KEYS

The Building will be cleaned upon return to Lessor at Lessee's sole expense. The cleaning charge shall be Lessor's actual expense or \$577.50, whichever is larger. Lessee shall be liable for any and all damage to the Building and its accessories. If keys are not returned with the Building, Lessee will be charged \$50.00.



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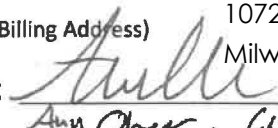
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AGREEMENT - LEASE

The terms of this Lease Agreement ("Lease") shall not be affected by the terms of any Lessee purchase order, all of whose terms are rejected.

SIGNED BY DULY AUTHORIZED AGENTS THIS 03/13/2018

Lessor: Modern Building Systems
 P.O. Box 110 / 9493 Porter Rd, Aumsville, OR
 97325
 X 
 Kenneth D. Mero, Vice President of Sales

Lessee: (Company) City of Milwaukie
 (Billing Address) 10722 SE Main St
 Milwaukie, OR 97222
 X 
Ann Ober, City Manager
 Print Name Title

TERMS AND CONDITIONS

1. This transaction is a lease and not a sale. Lessee does not acquire any right, title or interest in the Building, except the right to possess and use the Building under this Lease, so long as Lessee is not in default.
2. In addition to the payment of rent, Lessee shall pay Lessor for all sales and use taxes, other direct taxes and registration fees imposed by federal, state or other taxing authorities and allocated by Lessor on either an individual or prorated basis for any units of the Building.
3. Lessee will, at its sole cost, keep the Building at all times in good repair and operating condition and free of all liens and encumbrances. ~~Lessee shall replace all worn or broken parts with new parts acceptable to Lessor.~~ Upon termination of this Lease, Lessee will return the Building to Lessor in at least as good a condition and state of repair as delivered to Lessee, ordinary wear and tear excepted. Until restoration or repairs have occurred to the satisfaction of Lessor, Lessee shall continue to be liable for rent on any Building returned (a) with accessories, attachments or other items missing; (b) requiring repairs of any kind or requiring restoration to original specifications; or; (c) with alterations or modifications performed by Lessee. If Lessee does not make the required repairs or restoration, Lessor shall determine the amount due for them for which Lessee shall be responsible and rent on the Building will continue to accrue until that amount is paid by Lessee.
4. If this Lease is for a custom Building that is ordered in accordance with Lessee's specifications and is not from Lessor's current inventory, the rent commencement date shall be the date on which the Building is installed at the Location. If the installation is delayed by any act or omission of Lessee, rent payments shall commence once Lessee is notified of the completion of the Building.
5. In the performance of its obligations, Lessor shall not be responsible for events beyond its reasonable control, including, without limitation, delays or impossibility of manufacturing, delivery or installation due to fire, flood, windstorm, riot, civil disobedience, strikes and acts of God.
6. Any damage claim of Lessee against Lessor arising out of or related to this Lease shall be limited to an amount not exceeding the lesser of (a) the rent actually paid by Lessee or (b) six months of rent, whichever is less. In no event shall Lessor be responsible for consequential damages, including, without limitation, loss of use or lost profits. These damage limitations shall apply regardless of the nature of the claim, including without limitation, those based upon contract, tort ~~(including negligence)~~, warranty or statute.
7. Lessee shall provide free and clear access for delivery and return of the Building by standard mobile transport vehicle. Lessee shall provide firm and level ground or no more than a six-inch slope from one end to the other for safe and unobstructed installation of the Building. The site selection is the sole responsibility of Lessee. Lessor shall have no responsibility or liability for any inadequacy of the location for the setup or use of the Building. Lessee is solely responsible for obtaining any required permits for the installation and use of the Building at the Location.
8. Lessor may at any time following the expiration of the minimum lease period, request Lessee to return the Building to the location designated by Lessor. Lessor shall not be liable for claims or damages ~~of any kind whatsoever~~, whether to person or property, arising from or in any way connected with the Building or Lessee's use thereof, and Lessee will indemnify, defend and hold Lessor harmless from any and all such claims or damage arising therefrom.

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AGREEMENT - LEASE

- a. If Lessee, without any further written agreement, shall continue to possess or occupy the Building beyond the minimum lease period, Lessee shall then be deemed to have renewed this Lease on a month-to-month basis at the rental rate in Lessor's monthly published lease rate(s) then in effect.
- b. If Lessor elects to terminate this Lease upon the expiration of the minimum lease period, rent shall continue until the ~~returned to the location designated by Lessor~~ **Lessor has been notified the Building has been vacated completely and utilities disconnected,** and Lessee pays Lessor all unpaid rents and charges allocable to the returned Building that have accrued as of the date the Building is returned.
9. Lessor shall not be liable for claims or damages ~~of any kind whatsoever~~, whether to person or property, arising from or in any way connected with the Building or Lessee's use thereof, and Lessee will indemnify, defend and hold Lessor harmless from any and all such claims or damage arising therefrom.
10. Upon delivery of the Building to the Location, Lessee will assume the entire risk of loss to the Building until ~~returned to Lessor.~~ **the Lessor has been notified the Building has been vacated completely and utilities disconnected,** Building is returned to Lessor. Lessee represents that it is insured in all of its business activities and shall insure its interests in and obligations with respect to the Building. The Building shall be covered by a standard, comprehensive property insurance policy, covering the full replacement value of the Building with any insurance payment thereunder payable to Lessor. Lessee shall be responsible for any deductible amounts. If Lessee fails to obtain or maintain such insurance at Lessee's cost, Lessor may obtain such insurance, but Lessor shall not be obligated to do so. In the event of any damage to or loss or destruction of the Building occurring subject to insurance, Lessor may, at its sole election, determine to repair or replace the Building. Lessee shall maintain a general liability insurance policy in the minimum policy amount of \$1 million. Lessor shall be named as an additional insured under the policy. Lessee shall be responsible for any deductible amounts. Before the installation of the Building, Lessee shall provide Lessor a certificate of insurance verifying that Lessee has obtained the required insurance coverage.
11. The following shall constitute Events of Default:
- Lessee fails to pay any rent or any other amount herein provided within ~~10~~ **30** days after the same is due and payable;
 - Lessee fails to comply with any provisions of this Lease;
 - Lessee abandons the Building;
 - Lessee ceases doing business as a going concern; (e)
 - Any proceeding in bankruptcy, receivership or insolvency is commenced by or against Lessee or Lessee's property, or if Lessee makes an assignment for the benefit of creditors;
 - Lessee makes any misrepresentation or false statement as to Lessee's credit or financial standing in connection with the execution of this Lease;
 - Lessee commits any act of assignment, including permitting any other entity or person to use the Building;
 - Lessee makes a bulk transfer of its furniture, fixtures, furnishings or other Building inventory;
 - Lessee breaches any of the terms of any loan or credit agreements, or defaults thereunder;
 - If there is more than one lease existing between Lessor and Lessee, Lessee defaults under any other such lease. 12.
12. Upon the occurrence of an Event of Default, and without prejudice to any other rights or remedies Lessor may have, Lessor may exercise any one or more of the following remedies: Rents and charges not received by Lessor within ~~30~~ **60** days of the invoice date shall accrue a late charge of (a) 1 1/2 percent per month or (b) the maximum rate permitted by law, whichever is lower.
- Lessor may declare the entire amount of rent for the minimum lease period immediately due and payable ~~without further 30 days~~ **without further 30 days** notice or demand to Lessee.
 - Lessor may recover all rents and other amounts due as of the date of such default.
 - Lessor and its agents may, without notice, liability or legal process, enter into any premises of or under control of Lessee or any agent of Lessee where the Building and its accessories may be believed to be located and attempt to repossess the Building, disconnecting and separating it from any other property and using all means necessary or reasonable to take possession of the Building and its accessories. Lessee hereby waives any claim or cause of action of any kind whatsoever against Lessor growing out of the



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AGREEMENT - LEASE

- removal, repossession or retention of the Building, including, without limitation, claims for trespass or conversion.
- d. Lessor may obtain provisional process or injunctive relief to recover possession of the Building and its accessories. Lessee hereby waives any objection to such relief.
 - e. Lessor may pursue any other remedy now or hereafter existing at law or in equity.
 - f. All such remedies are cumulative, and may be exercised concurrently or separately.
13. Rents and charges not received by Lessor within ~~30~~ 60 days of the invoice date shall accrue a late charge of (a) 1 1/2 percent per month or (b) the maximum rate permitted by law, whichever is lower.
14. When the minimum term of this Lease exceeds ~~11~~ 18 months, the rental charge shall be subject to adjustment, based upon the All Items Consumer Price Index ("CPI") for the United States (United States Bureau of Labor Statistics, 1967 base period) calculated as follows: For each change of one index point in the CPI, the rental rate shall be adjusted by a factor of 0.5 percent **annually**. ~~Any adjustments shall take effect at the end of the sixth month following the commencement date of this Lease and will be further adjusted each six months thereafter. Said adjustment will be based on the most recent CPI indices before the invoicing of each rental charge.~~
15. Should the Lessee elect, for any reason, to terminate this Lease at any time before the end of the minimum lease period, the entire unpaid balance of the rent due hereunder shall immediately become due and payable. Such termination shall become effective only when the **Lessor has been notified the Building has been vacated completely and utilities disconnected**, Building is returned in good condition to the location designated by Lessor and pays Lessor all unpaid rents and charges allocable to the returned Building.
16. It has fulfilled all of its obligations under this Lease, Lessee has the option to extend this Lease in ~~one-year~~ **month to month** increments after the expiration of the initial term hereof. All of the terms and provisions of this Agreement shall remain the same in the event of any such annual extension, except that the CPI adjustment described above shall be applicable to the first months of the extension. Should Lessee wish to so extend this Lease, Lessee must give Lessor 30 days' written notice of such election before the expiration of the term hereof or before the expiration of any previously extended term hereof.
17. Lessee shall, at Lessee's sole cost, obtain any and all licenses, titles, permits and other certificates as may be required by law or otherwise for Lessee's lawful operation, possession or occupancy of the Building. Lessee shall provide for all maintenance, upkeep, repair, utilities and operational costs of any nature whatsoever pertaining to the Building in a careful manner so as not to expose the Building to damage. All permits, certificates of title or registration applicable to the Building shall reflect Lessor's ownership thereof.
18. Lessee shall not remove the Building from the Location without prior written approval from Lessor. Lessee shall notify Lessor immediately of any attempted levy or seizure of the Building and shall indemnify and hold Lessor harmless from and against any loss or damage resulting therefrom. Lessor may inspect the Building from time to time. If Lessor believes the Building to be overloaded beyond normal capacity or misused, abused or neglected, Lessor may summarily remove and repossess the Building upon ~~five~~ 30 days' prior written notice to Lessee. In that event, Lessee shall be liable for the total unpaid amount for the minimum lease period.
19. If at any time Lessor retakes the Building and there is any other property owned by Lessee or in the custody or control of Lessee attached to or contained within the Building, Lessor may take possession of such other property and hold the same for Lessee either in Lessor's possession or, in the exercise of Lessor's sole discretion, in public storage for the account of and at the sole expense of Lessee. ~~In addition, Lessee shall indemnify, defend and hold Lessor harmless from and against any claims relating to damage to the property of Lessee or any other persons suffered or sustained during repossession of the Building by Lessor~~
20. Lessee agrees that the Building will not be used for any residential purposes. Lessee shall not make or permit any unlawful use or handling of the Building and shall not, without Lessor's prior written consent, make or permit any changes, alterations or improvements in or to the Building or remove therefrom any parts, accessories or attachments. **Except as agreed upon in advance or in performance of ordinary maintenance.**
21. This Lease may not be assigned by Lessee, nor may all or any part of the Building be sublet by Lessee without the prior written consent of Lessor. Lessor may assign this Lease and the rent.
22. Any notice required or permitted to be given hereunder shall be in writing and shall be deemed properly given upon



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AGREEMENT – LEASE

delivering the same personally to an authorized representative of the party to be notified, or upon mailing such notice, by registered or certified mail, return receipt requested, to the party to be notified, at its address hereinafter set forth, or at such other address within the United States as the party to be notified may have designated prior thereto by written notice to the other party.

23. Each person signing this Lease represents and warrants that such person has all requisite power and authority necessary to execute this Lease and to perform the party's respective obligations hereunder and that this Lease is binding upon and enforceable against the party represented by that person. This Lease shall inure to the benefit of and shall be binding upon the respective successors in interest and permitted assigns of the parties hereto.
24. Lessee's obligations set forth herein shall survive the termination of this Lease.
25. This Lease contains the entire agreement and understanding between the parties and supersedes and replaces all prior or contemporaneous communications, understandings or agreements, whether verbal or written.
26. This Lease shall be governed by and construed in accordance with the laws of the state of Oregon. The exclusive venue for any dispute arising out of or related to this Lease shall be the Circuit Court of the State of Oregon in Marion or Multnomah County, at Lessor's option. However, nothing in this provision shall prevent Lessor from seeking equitable relief in any court with jurisdiction.
27. In the event of any dispute or claims arising out of or related to this Lease, the prevailing party shall be entitled to recover all litigation costs, including, without limitation, attorney fees and costs incurred at trial, on appeal, on review or in any bankruptcy proceeding.
28. All ideas, designs, arrangements, and plans indicated, represented or produced by Modern Building Systems Inc., are owned by, and the property of Modern Building Systems Inc. None of such ideas, designs, arrangements, or plans shall be used by any other person without prior written permission of Modern Building Systems Inc.

NOTES/SPECIAL TERMS

Teardown & Removal \$65,000 if returned after 18 months per quote. Longer rental period teardown & removal fee subject to review and potential application of prevailing rate at actual time of return.

Lease to start within ~~30~~ 60 days of ~~June~~ July 1, 2018. Or when building delivered to site whichever is sooner.

2% discount applicable if full lease amount paid in advance. 2% discount applicable if setup charges and removal charges paid in advance upfront.

~~\$50,000 deposit per Exhibit A attached to be applied to delivery and setup one time charges.~~

Rental charges and lease term shall commence once the building has been installed in accordance with plans and specifications and Lessor has finished its scope of work. Lessor's scope of work is as follows:

- Complete modifications detailed above: Install hollow metal double door, and install selected book drop.
- Deliver modules to site.
- Set, tie, and skirt modules according to Modern foundation plans and engineering.
- Set aluminum landings, ramps, and steps to plans and engineering
- Complete interior wall, floor, & ceiling finishes. Complete exterior finishes on siding and roof. Complete electrical, mechanical, & plumbing crossovers in the building.
- Exclusions: Electrical service connection, water service single point connection, sewer connection and underfloor plumbing manifold. Low voltage/fire alarm wiring and devices. Any other work required to obtain certificate of occupancy.



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AGREEMENT - LEASE

If Lessee gives notification to immediately mobilize on or before May 15th, Lessor will make best efforts to have the building installed at location designated by Lessee within 30 days. If notice is given after May 15th, Lessor will make best efforts to accommodate Lessee's desired schedule, but not to exceed 60 days.

If lease is terminated early and building is leased to another entity within minimum lease period lessee is entitled to a refund of lease paid for overlapping period.

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COUNCIL RESOLUTION No. 20-2018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, to authorize the City Manager to sign a lease agreement with Modern Building Systems (MBS) in the amount not to exceed \$325,000 to secure a modular unit for the purpose of the temporary relocation of the Milwaukie Ledding Library.

WHEREAS, the citizens of the City of Milwaukie authorized a \$9.2 million dollar bond measure to improve the Milwaukie Ledding Library; and

WHEREAS, the improvements to the Milwaukie Ledding Library necessitate that Library operations be moved off site during construction; and

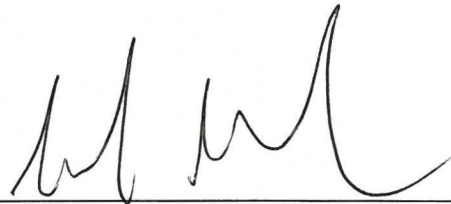
WHEREAS, after an exhaustive search for space the project team recommended the use of a modular unit for the temporary relocation of the Library; and

WHEREAS, on February 13, 2018, the City of Milwaukie Planning Commission approved the Library application for a temporary modular unit, and Community Service Use on the Tri Met park and ride site located at 9600 Main Street;

Now, Therefore, be it Resolved that the City of Milwaukie authorizes the City Manager to negotiate and sign a lease agreement with Modern Building Systems (MBS) in the amount not to exceed \$325,000 to secure a modular unit for the purpose of the temporary relocation of the Milwaukie Ledding Library.

Introduced and adopted by the City Council on 3/20/18

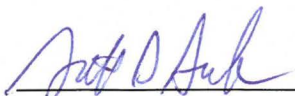
This resolution is effective on 3/20/18



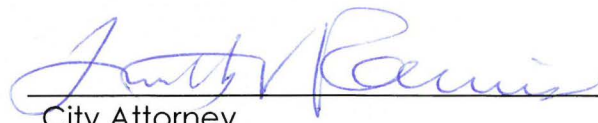
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC



Scott Stauffer, City Recorder



City Attorney

If the **member** is delinquent in compliance with the annual audit obligation, for more than 90 days past the **member's** anniversary date for compliance, the **Trust's** obligation under this section shall be suspended. The **member** is eligible for reinstatement at such time as the **member** 1) is in compliance with ORS 297.425 and ORS 297.435, and 2) the **member** has provided documentation to the **Trust** confirming no unresolved irregularities or deficiencies.

- I. Regardless of the number of years the **Named Member** has participated in the **Trust** property coverage program or the number of contributions paid, no limit of coverage cumulates from year to year or coverage period to coverage period.

11. POLICE DOGS

The **Trust** will pay the **Member** for **injury** to, or theft of, police dogs, subject to the following terms and conditions:

- A. "**Injury**" means:
 - (1) Physical injury, whenever and however incurred; and
 - (2) Disease contracted within, and exclusively caused by, the police dogs use in law enforcement activities on behalf of the **Member**.
 - (3) Death of police dog while in the line of duty.
- B. In the event of **injury**, the **Trust** will pay for reasonable and necessary veterinary care arising out of such **injury**. No coverage is provided under this coverage agreement for routine veterinary care. In the event an **injury** to a covered dog has been determined to be such as to preclude the dogs continued use as a police dog, the **Member** may elect either coverage for the costs related to the **injury** suffered or coverage for replacement of the injured dog, as outlined in 11D below, but not both.
- C. Coverage is provided only for those police dogs shown on the mobile equipment schedule currently filed by the **Member** with the **Trust**, unless such police dog was acquired by the **Member** during the coverage period noted above.
- D. In the event replacement of a covered police dog is necessary as the result of a covered loss, coverage will include the cost of additional training of the new dog and its handler, subject to the maximum liability for police dog coverage stated herein.
- E. The maximum liability of the **Trust** as to any single police dog during the coverage period noted above shall be \$15,000.

12. LOSS PAYABLE AND ADDITIONAL MEMBER

It is understood and agreed that the **Trust** will issue Certificates of Coverage under this coverage agreement to parties, other than the **Member**, having an interest in this coverage subject to the following provisions:

- A. Certificates issued to such other parties as evidence of coverage shall not constitute additional coverage.
- B. This coverage agreement shall extend to and cover the full insurable interest in the property covered hereby of such other parties to whom certificates have or will be issued

and to the extent of their insurable interest such other parties shall be considered as additional **Members**.

It is understood and agreed that whenever a **Member**, as part of any design, management or construction contract, has contracted to procure Builders' Risk CIS endorsement for or in the name of, or with loss payable to, any person, firm or corporation, such party shall be deemed as added to this coverage agreement as an additional **Member** but only until such time as the project requiring the Builders' Risk CIS endorsement is completed.

13. NO CONTROL

This agreement shall not be prejudiced by any act or neglect of the owner of any **building** if the **Member** is not the owner thereof, or by any act or neglect, when such act or neglect of the owner or occupant is not within the control of the **Member** or by failure of the **Member** to comply with any warranty or condition contained in any form or endorsement attached to this coverage agreement with regard to any portion of the premises over which the **Member** has no control.

14. CONTINGENT LIABILITY FOR THE OPERATION OF BUILDING CODES

The limit for this coverage is included within the limit of liability as described in Section 1 and is not an additional amount of coverage.

In the event loss or damage covered hereunder causes the enforcement of any law, ordinance, governmental directive or standard regulating the construction, repair, use, or occupancy of property, the **Trust** will pay:

- A. The cost of demolishing the undamaged property, including the cost of clearing the site, but not to exceed an amount equal to 25% of the scheduled value of the building;
- B. Increased cost of repair or reconstruction of the damaged and undamaged property on the same or another site, limited to the cost that would have been incurred in order to comply with the minimum requirements of such law or ordinance regulating the repair or reconstruction of the damaged property on the same site. However, the **Trust** shall not be liable for any increased cost of construction loss unless the damaged property is actually rebuilt or replaced, and in no case shall the Trust be liable for more than \$5 million per occurrence for increased costs associated with repair or reconstruction of property due to the operation of building codes.

15. OFF-PREMISES SERVICE INTERRUPTION

This coverage agreement covers consequential losses or damage to scheduled property arising from changes in temperature or humidity due to damage or destruction of:

- A. Public utility plants, transformers or switching stations, substations or transformers (including transmission lines) (on or) off the premises, furnishing heat, light, power or gas to the **Member's** premises.
- B. Pumping stations or water mains (on or) off the premises furnishing the water supply to the **Member's** premises.

CIS TRUST

GENERAL AND AUTO LIABILITY COVERAGE AGREEMENT

This is an agreement between the **Trust**, as defined herein, and the **named member** identified in the General & Auto Liability Coverage Declarations as "Named Member" for "Public Entity Liability Coverage" for the applicable coverage period. Various provisions of this agreement restrict coverage. Read the entire coverage agreement carefully to determine rights, duties, and what is and what is not covered. Words or phrases that appear in **bold-faced** type have special meaning and are defined in Sections 1, 10B, 11B, and 12C.

1. DEFINITIONS

A. "**Administration**" means:

- (1) Giving counsel to employees with respect to the **employee benefit programs**;
- (2) Interpreting the **employee benefit programs**;
- (3) Handling records in connection with **employee benefit programs**;
- (4) Effecting enrollment, termination or cancellation of employees under the **employee benefits programs**;

provided all such acts are authorized by the **named member**.

B. "**Airport**" means any area of land or water that is intended for the landing and takeoff of aircraft, and includes its buildings and related facilities, if any.

C. "**Bodily Injury**" means bodily injury, sickness or disease sustained by a person including death resulting from any of these.

D. "**Claim**" means any notice or demand to the **named member** by or on behalf of a party seeking **damages** that reasonably communicates to the **named member** the party's intent to seek money **damages** from the **member**.

E. "**Covered Auto**" means any vehicle designed for land transportation, whether or not licensed for highway use, and owned or operated by the **member**.

F. "**Damages**" means all sums recoverable by law from any liability covered under this coverage agreement, including punitive damages if awarded, but not including any sums awarded for plaintiff's attorney fees, or expert fees, under any statute including but not limited to, 42 U.S. Code, 1988, in any case in which monetary damages are not sought or not awarded. Damages do not include:

- (1) Costs necessary to comply with injunctions or declaratory relief.
- (2) Sums recoverable for breach of contract; express or implied.

- (3) Sums awarded as compensation due or accruing to the benefit of the employee while still employed by the **named member**.
 - (4) Sums sought or awarded for claims of unjust enrichment, money had and received or replevin.
 - (5) Sums due to taxing authorities, insurance programs, or retirement plans as a result of an award of damages or claim settlement.
 - (6) Fines or penalties assessed to the Member for non-payment of taxes, insurance contributions or retirement plan contributions.
- G. **"Employee benefit programs"** shall mean group life insurance, group health insurance, profit sharing plans, pension plan, employee stock subscription plans, workers' compensation, unemployment insurance, social security, disability benefits insurance and travel, savings or vacation plans.
- H. **"Fungus or fungi"** includes but is not limited to any form or type of mold, mushroom or mildew.
- I. **"Hazardous properties"** means radioactive, toxic or explosive properties.
- J. **"Hospital" or "nursing home"** means any facility with an organized medical staff, with permanent facilities that include inpatient beds and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment including but not limited to providing treatment for 1) acutely ill patients and accident victims, 2) mentally ill patients or 3) patients in special inpatient care facilities. However, in-patient care facilities incidental to correctional facilities shall not be considered a **hospital** or **nursing home**.
- K. **"Member"** means the entity named on the declarations page and its officers, employees and agents including volunteers, authorized to act on behalf of the **named member**, all acting within the scope of their employment or duties whether arising out of a governmental or proprietary function. The term **member** shall also include **additional members** to the extent coverage is afforded under the definition of **additional member**.
- (1) **"Named member"** means the entity named as such on the Declarations page of the coverage agreement,
 - (2) **"Additional member"** means any party whom a public body covered under this coverage agreement has agreed to hold harmless, indemnify or defend pursuant to a contract or other agreement lawfully entered into by such public body. However, in no event shall coverage under this coverage agreement extend to such party for any **claim** arising out of an **occurrence** after the expiration of this coverage agreement or the expiration of the contract or agreement entered into by the public body, whichever shall occur first. Further, in no event shall coverage under this coverage agreement extend to such party for any **claim**, however or whenever asserted, arising out of such party's sole negligence. Except as specified in this paragraph, such party shall have no rights under the **Trust Agreement**, Bylaws or Rules of the **Trust**. The term "additional insured" if used on a certificate of coverage, shall be understood to mean the same as **additional member**.
- L. **"Nuclear Facility"** means:
- (1) Any nuclear reactor;

- (2) Any equipment or device designed or used for:
 - a. separating the isotopes of uranium or plutonium,
 - b. processing or utilizing **spent fuel**, or
 - c. handling, processing, or packaging **nuclear waste**;
- (3) any equipment or device used for the processing, fabricating or alloying of special **nuclear material** if at any time the total amount of such material in the custody of the **member** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (4) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **nuclear waste**;

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

- M. **“Nuclear material”** means **source material, special nuclear material or by-product material**.
- N. **“Nuclear reactor”** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.
- O. **“Nuclear waste”** means any waste material:
 - (1) containing **by-product material** other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore process primarily for its **source material** content, and
 - (2) resulting from the operation by any person or organization of any nuclear facility included under the first two paragraphs of the definition of **nuclear facility**.
- P. **“Nursing home”** see **Hospital**.
- Q. **“Occurrence”** means:
 - (1) an incident, event, act, error or omission which occurs during the coverage period:
or
 - (2) a series of related incidents, events, acts, errors or omissions; or a continuous or repeated exposure to substantially the same general conditions, which occur during the coverage period. If the **occurrence** begins in one coverage period and ends in another, the **occurrence** shall be deemed to have taken place during the last such coverage period. Such incidents, events, acts, errors or omissions, or continuous or repeated exposures to substantially the same conditions shall be deemed to be a single **occurrence** for purposes of determining the “per occurrence” limit of liability and deductible, if any. Only the coverage and limits in effect for the last coverage period shall apply and only one “per occurrence” limit shall be available for each such multi-period **occurrence** regardless of the number of coverages under this coverage agreement which may apply to such **occurrence**.

- R. **"Personal Injury"** means false arrest, detention, imprisonment, malicious prosecution, libel, slander, or publication or utterance in violation of the individual's right of privacy, wrongful entry or eviction, or invasion of the right of private occupancy.
- S. **"Pollutants,"** as used in exclusion Section 4I, means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkali, and chemicals, bacteria, organisms, and pathogens. However, **pollutants** does not include sewage which through the negligence of the **member** escapes the confines of a municipal sewage treatment system owned or operated by the **member**.
- T. **"Property Damage"** means injury to or destruction of tangible property.
- U. **"Source material," "special nuclear material,"** or **"by-product material"** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- V. **"Spent fuel"** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**.
- W. **"Spore(s)"** include any reproductive body produced or arising out of any **fungus or fungi**.
- X. **"Trust Agreement"** means the CITY COUNTY INSURANCE SERVICES DECLARATION AND AGREEMENT OF TRUST.
- Y. **"Trust"** means the CIS or CIS Trust, as described in the **Trust Agreement**.
- Z. **"Waste"** as used in exclusion Section 4I, includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

2. COVERAGES

In accordance with and subject to the General & Auto Liability Coverage Declarations applicable to the **named member** to which this Coverage Agreement applies; the City County Insurance Services Declaration and Agreement of Trust (herein "**Trust Agreement**"); the Bylaws and Rules of the **Trust**; and the terms, conditions, and limitations of this Coverage Agreement and in consideration of the contribution for which this coverage agreement is written, the **Trust** will pay on behalf of the **member** all **damages** arising out of an **occurrence**, not to exceed the Limits of Liability as set further described in Section 4. of this Coverage Agreement because of:

- Coverage A: Liability arising under Oregon Revised Statutes 30.260 to 30.300; asserted pursuant to ORS 30.260 to 30.300.
- Coverage B: Liability arising under 42 U.S. Code 1983; 42 U.S. Code 2000e, et seq. (Title VII of the Civil Rights Act of 1964); 29 U.S. Code 621, et seq. (Age Discrimination in Employment Act of 1967); The Americans with Disabilities Act; The Civil Rights Act of 1991; 42 U.S. Code 1981; 42 U.S. Code 3601, et seq. (The Fair Housing Act); ORS Chapter 659; ORS Chapter 659A; ORS 652.355; ORS 654.062; 29 U.S. Code Sec. 261, et seq. (Family and Medical Leave Act); or any law amendatory thereof.
- Coverage C: Tort liability for **bodily injury, personal injury** and **property damage** for which the **member** is legally liable under the laws of any jurisdiction other than the State of Oregon and other than any United States Federal jurisdiction to which this coverage agreement applies.

Coverage D: Tort liability for the negligence of others assumed by the **named member** under contract, except as limited in the definition of the term "**member**" in Section 1. of this Coverage Agreement.

Coverage E: Liability to a **named member's** employee, prospective employee, former employee or the beneficiaries or legal representatives thereof, arising out of, and asserted pursuant to, ORS 30.260 to 30.300, and caused by an **occurrence** consisting of or based upon the **member's** negligent errors or omissions in the **administration** of the **named member's employee benefits program**.

Coverage F: Uninsured/Underinsured Motorists Coverage as set forth in Section 10 of this coverage agreement, pursuant to ORS 278.215. The Limits of Liability of such coverage with respect to a **member** shall be the Per Occurrence Limit for General and Auto Liability Coverage as set forth in the General and Auto Liability Declarations. The limits of liability of such coverage with respect to a permissive user of a **covered auto**, other than a **member**, shall be the amounts set forth in ORS 806.070 that is the minimum liability limits of the Financial Responsibility Law as provided in the Oregon Vehicle Code and as set forth in Section 8 of this coverage agreement.

In accordance with and subject to the Declarations, the **Trust Agreement**, Bylaws and Rules of the **Trust**, and in consideration of the contribution for which this Coverage Agreement is written, and independent of Coverages A - F above, the **Trust** will pay:

Coverage G: Legal expenses reasonably incurred by a public official of the **named member** arising out of defense of a complaint alleging violation of ORS 244.040 or 244.120 to 244.135, subject to the terms and conditions set forth in Section 7, ETHICS LEGAL EXPENSE COVERAGE of this coverage agreement.

Coverage H: The actual or alleged accidental discharge, dispersal, release or escape of pollutants, subject to the terms, conditions, and limitations set forth in this Coverage Agreement, specifically including, without limitation, Section 11, LIMITED POLLUTION LIABILITY COVERAGE.

Coverage I: Unless such expenses or **damages** are otherwise covered by this Coverage Agreement, CYBER SECURITY EXPENSE COVERAGE as set forth in Section 12.

The **Trust** shall have the right and duty to defend, with legal counsel selected by the **Trust**, any claim or suit against the **member** seeking **damages**, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient. The duty to defend any claim or suit shall terminate, except as provided hereafter, when such claim or suit ceases to seek **damages** against the **member**. Provided, however, that the duty to defend any claim or suit shall not terminate so long as the claim or suit includes an allegation of breach of an implied contract arising out of an employment relationship with the **named member**.

3. DEDUCTIBLES

A. CONDITIONAL DEDUCTIBLE: Employment Practices