



OC  
5/31/18

**ROSEBURG CITY COUNCIL  
SPECIAL MEETING AGENDA  
JUNE 4, 2018  
City Council Chambers, City Hall  
900 S. E. Douglas Avenue, Roseburg, OR 97470**

**4:00 p.m.**

**CALL TO ORDER – Mayor Larry Rich**

**City Councilors**

Alison Eggers	Linda Fisher-Fowler	Ashley Hicks	Steve Kaser
John McDonald	Brian Prawitz	Tom Ryan	Andrea Zielinski

**PUBLIC HEARING**

**A. Lease Option Agreement - 1409 NE Diamond Lake Boulevard**

**DEPARTMENT ITEMS**

**A. Cooperative Improvement Agreement – Douglas ESD**

**SPECIAL PRESENTATION**

**B. League of Oregon Cities (LOC) Presentation**

**Adjournment**

**\*\*\* AMERICANS WITH DISABILITIES ACT NOTICE \*\*\***

Please contact the City Recorder's Office, Roseburg City Hall, 900 SE Douglas, Roseburg, OR 97470-3397 (Phone 541-492-6866) at least 48 hours prior to the scheduled meeting time if you need an accommodation. TDD users please call Oregon Telecommunications Relay Service at 1-800-735-2900.

ROSEBURG CITY COUNCIL  
AGENDA ITEM SUMMARY

PUBLIC HEARING A  
06-04-2018

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PUBLIC HEARING ON THE LEASE/OPTION OF REAL PROPERTY  
LOCATED AT 1409 NE DIAMOND LAKE BOULEVARD

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Meeting Date: June 4, 2018  
Department: City Manager  
[www.cityofroseburg.org](http://www.cityofroseburg.org)

Agenda Section: Public Hearing  
Staff Contact: Lance Colley  
Contact Telephone Number: 492-6866

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### ISSUE STATEMENT AND SUMMARY

Pursuant to RMC 3.20.020, the Council will be conducting a public hearing on the proposed lease with option to sell City-owned real property located at 1409 Diamond Lake Boulevard. The property consists of land and building commonly referred to as the "Library".

### BACKGROUND

#### Council Action History.

- On February 8, March 14, and March 28, 2016, City Council heard input from the Save Our Libraries group regarding placement of a library district on the November ballot.
  - On April 11, 2016, Council adopted Resolution 2016-6 regarding the inclusion of the City of Roseburg boundary in a proposed library district with a permanent tax on a county wide ballot in November 2016.
  - On November 8, 2016 the Ballot Measure was defeated 25,499 against; 20,703 in favor.
  - The City Council has received regular reports regarding the Library Task Force's meetings, but no action has been considered by the City Council.
  - On May 8, 2017, City Council directed staff to evaluate facilitation of a Roseburg Branch Library.
  - On June 7, 2017, Staff provided an update of work to date and Council directed staff to proceed with acquiring a deed to the property subject to completing our due diligence.
  - On December 11, 2017, Council authorized the transfer of the Library Facility to the City and continued work with the Douglas ESD to finalize renovation plans and work on intergovernmental agreements to reopen a City Library.
  - On May 14, 2018 Council reviewed information provided in executive session.
- A. Analysis.** Staff has been working with Council and representatives from Douglas ESD (ESD) to develop a long-term lease and operating agreement to co-locate in the facility located at 1409 NE Diamond Lake Blvd. As part of the negotiations, building in protections for both the City and the ESD were considered. The City received the deed to the property from Douglas County subject to a reversionary clause if a portion of the facility was not used for Public Library purposes in accordance with state statute.

Please find attached the final draft of a proposed lease to be executed between the City of Roseburg and the ESD. As discussed previously, the basic term of the lease is 99 years, however because we have included an option provision for the ESD to acquire the property in section 4.4 if the City were to cease to provide Library services, Council must first hold a public hearing prior to directing the City Manager to execute the document.

Thursday May 31, 2018, City and ESD staff met with the City's architects, Pivot, and our CM/GC contractor, Vitus Construction, to review preliminary cost estimates to provide assurance that we can jointly move forward with the renovation project that is outlined in the memo relating to the funding agreement which follows this agenda item. Based on this recent information, it appears that we will be able to move forward with project amendments on June 11th and July 9th.

We are currently finalizing the square footage that will be dedicated to the ESD, dedicated to the Library, and identified as joint use space. In section 1.4, we anticipate the ESD space to be just under 12,000 square feet and the joint use space to be just less than 6,000 square feet (see attached diagram). The ground level of the building is approximately 35,000 square feet with approximately 6,000 square feet on the second level which is primarily storage and mechanical room area. In section 1.8, the ESD has requested 40 parking spaces. We will likely word that section to include those spaces in the Library lot and/or the City of Roseburg Deer Creek lot. Section 2.3 will include the square footage agreed to in section 1.4.

Staff is requesting that Council approve the lease as presented and direct the City Manager to finalize the square footage requirements as estimated above prior to execution of the document.

**B. Financial and/or Resource Considerations.** If the lease is approved, the City is committing to operate a library and co-locate in the facility with the Douglas ESD. Future operating costs and major maintenance/improvement commitments are outlined in section 3. Each entity will be required to pay for 50% of the operating costs. We currently anticipate total lease hold operating costs to be between \$110,000 and \$125,000 annually, subject to future cost increases. Douglas ESD is committing to operate an ESD in accordance with state statute, pay for 50% of the lease hold operating costs and provide additional services outlined in section 3.

In accordance with the funding agreement, they will also pay 100% of the cost associated with the improvements necessary to meet the ESD's needs and a portion of the costs associated with the shared space as agreed on prior to execution of the guaranteed maximum contract price agreement with our CM/GC contractor.

**C. Timing Issues.** In an effort to move forward with the renovation project in a timely manner, staff is requesting that Council authorize the City Manager to execute the

attached lease when we reach an agreement on the square footage dedicated to each activity.

### **COUNCIL OPTIONS**

Under the authority of RMC 3.20.020 (A), the Council, in its sole discretion, has the following options at the conclusion of the public hearing:

1. Accept the offer negotiated for the lease with option to sell the property; or
2. Reject the offer received and direct that the agreement not include an option to sell;

### **STAFF RECOMMENDATION**

Staff recommends the City Council approve the attached lease agreement with an option to sell.

### **SUGGESTED MOTION**

1. "I MOVE TO ACCEPT THE OFFER FROM DOUGLAS ESD TO LEASE (WITH OPTION TO PURCHASE) A PORTION OF THE BUILDING LOCATED AT 1409 NE DIAMOND LAKE BOULEVARD AND DIRECT THE CITY MANAGER TO EXECUTE THE "LEASE".

### **ATTACHMENTS**

- #1 - Lease/Option of Real Property
- #2 - Area diagram
- #3 - Public Hearing Notice

**LEASE**

Date: \_\_\_\_\_

Between: City of Roseburg, Oregon (“Landlord”)   
 900 SE Douglas Avenue   
 Roseburg, OR 97470

And: Douglas Education Service District (“Tenant”)   
 1871 NE Stephens Street   
 Roseburg, OR 97470

Landlord leases to Tenant and Tenant leases from Landlord the property described in the following Section 1 (the “Premises”) on the terms and conditions stated below:

**Section 1. Lease Terms**

**1.1 Date of Lease:** Date shown above

**1.2 Tenant:** Douglas Education Service District   
 Notice Address: 1871 NE Stephens Street, Roseburg, OR 97470

**1.3 Landlord:** City of Roseburg, Oregon   
 Notice Address: 900 SE Douglas Avenue, Roseburg, OR 97470

**1.4 Premises:** Suite of offices consisting of approximately \_\_\_\_\_ square feet in the Library Building (the “Building”) with a street address of 1409 NE Diamond Lake Blvd., Roseburg, OR 97470, as generally described on the Floor Plan attached hereto as Exhibit A. The

remainder of the Building not part of the aforesaid Premises shall be used by Landlord. The Building is located on certain real property owned by Landlord in Roseburg, Oregon (the "Land"), which real property is more particularly described in Exhibit A.1 and Exhibit A.2, attached hereto.

**1.5 Permitted Use of Premises:** Offices for and services provided by an education service district as defined in ORS Chapter 334 or future amendment(s) thereof.

**1.6 Common Areas:** Certain areas and facilities outside the Premises and within the Building which are for the nonexclusive use of Landlord, Tenant, and their respective employees, guests, and invitees.

**1.7 Initial Term of Lease:** 99 years, or until terminated sooner as provided herein.

Lease Commencement Date: December 31, 2018

Lease Expiration Date: December 31, 2117

**1.8 Parking:** \_\_\_\_\_ spaces.

**1.9 Exhibits:** A; A.1; A.2.

THIS LEASE is made and entered into between Landlord and Tenant on the Date of Lease set forth in Section 1.1. The defined terms used in this Lease ("Lease Terms") have the meanings and definitions given them in Section 1. The Lease Terms, the Exhibits, and this Lease

agreement are and will be construed as a single instrument and are hereinafter referred to as the "Lease."

Now, therefore, for valuable consideration, Landlord and Tenant covenant and agree as follows:

**Section 2. Lease of Premises**

**2.1 Lease.** Subject to the terms and conditions of this Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises.

**2.2 Term.** The Initial Term of this Lease is set forth in Section 1.7 above.

**2.2.1 Termination by Tenant.** Tenant may at any time give notice to Landlord of termination of this Lease, and in that event this Lease shall terminate 365 days following such notice.

**2.3 Delivery of Possession and Commencement.** Tenant desires Landlord to remodel the Building to provide approximately \_\_\_\_\_ square feet of office space for Tenant's use. Landlord and Tenant have contemporaneously entered into a Cooperative Improvement Agreement setting forth the parties rights and obligations regarding the remodel work. In the event of any conflict between this Lease and the Cooperative Improvement Agreement, the latter will govern. Landlord will deliver the Premises to Tenant with all improvements to be provided

by the Landlord substantially completed. If Landlord fails to deliver possession of the Premises to Tenant on the Lease Commencement Date for any reason other than a delay caused by the Tenant, the Lease will not commence until Landlord tenders possession of the substantially complete Premises to Tenant. If timely completion of the Landlord's improvements is delayed by the Tenant, then the Lease Commencement Date will not be delayed even though the Premises are not fully prepared for Tenant's occupancy by the Lease Commencement Date. If Landlord fails to deliver possession of the substantially complete Premises to Tenant within three hundred sixty-five (365) days after the Lease Commencement Date due to a Landlord-caused delay, then Tenant may, by delivering written notice to Landlord within thirty (30) days of the expiration of the three hundred sixty-five (365)-day period, terminate this Lease. If Landlord is unable to deliver possession of the substantially complete Premises within three hundred sixty-five (365) days after the Lease Commencement Date for reasons beyond the reasonable control of either Landlord or Tenant, then either party may terminate this Lease by delivering written notice to the other party within thirty (30) days of the expiration of the three hundred sixty-five (365)-day period. If possession of the Premises is delivered before the Lease Commencement Date, Tenant will have the right to occupy the Premises subject to all the terms and provisions of this Lease. By acceptance of possession of the Premises hereunder, but subject to the completion of all improvements to be performed by Landlord in accordance with the Cooperative Improvement Agreement, Tenant acknowledges that Tenant accepts the Premises "AS-IS, WHERE IS" and as suitable for Tenant's intended use, in good and sanitary operating order, condition, and repair, and without representation or warranty by Landlord as to the condition, use, or occupancy that may be made thereof and that the area of the Premises is as set forth in Section 1.4 above.

**2.4 Common Areas.** Tenant will have the nonexclusive right (in common with Landlord, and any other person granted use by Landlord) to use the Common Areas. Common Areas include portions of the Building used in common, including, but not limited to, parking areas, landscaped areas, lobby areas, building corridors, Ford Room, training room(s), fire vestibules, elevators, foyers, electrical and telephone closets, common restrooms, mechanical and service rooms, janitor's closets, loading docks, and other similar facilities.

**2.5 Parking.** During the term of this Lease, Landlord will make available to Tenant and Tenant's employees the number of parking space(s), if any, set forth in Section 1.8 of this Lease in the parking areas servicing the Building.

### **Section 3. Rent Payment**

**3.1 Rent.** In lieu of monetary rent, the Tenant shall, at Tenant's sole expense, during the entire term of this Lease perform the following services for Landlord's benefit:

- (a) Provide complete information and communications technology (ICT) functions for Landlord's Library operation including: Internet Access, Troubleshooting of Networked devices; provision of voice, video and data services from main distribution frame (MDF) and intermediate distribution from (IDF) via network cabling and wireless network infrastructure.
- (b) Provide Inter-Library System (ILS) support by maintaining connections to ILS services and/or servers, ensuring backup of ILS systems, updates and patching of ILS system.

- (c) Patron and end-user technical support and assistance is not included. Nor is the purchase and/or replacement of equipment or devices for use in the library or by library patrons.
- (d) Provide courier services for Landlord's Library, as and when requested by Landlord, to and from other libraries in Douglas County.

**3.2 Additional Rent.** The term *Additional Rent* means amounts set forth under this Section 3.2 and any other sums payable by Tenant to Landlord under this Lease.

**3.2.1 Operating Expenses.** During the entire term of this Lease, as additional rent, Tenant shall pay 50% ("Tenant's Proportionate Share") of any and all operating expenses for the Building and the Land. For purposes of this Lease, the term *Operating Expenses* means all expenses paid or incurred by Landlord (or on Landlord's behalf) reasonably determined by Landlord as necessary or appropriate for the operation, maintenance, and repair of, and to insure, the Building and the Land. Landlord and Tenant may agree from time to time that Tenant will provide some or all of Tenant's Proportionate Share of operating expenses by Tenant directly paying for or contracting for such items. Tenant shall also pay 50% of Taxes if any.

**3.2.2 Collaboration on Capital Improvements and Major Repairs.** If at any time Landlord desires to undertake capital improvements or major repairs which would be included in Operating Expenses, Landlord shall confer with Tenant on the cost thereof prior to commencing. The parties shall pursue good faith discussions towards reaching agreement. In the event the

parties are not able to agree, the issue shall be resolved as provided under Section 14.5, Dispute Resolution.

**3.2.3 Taxes.** The term *Taxes* includes the following, unless exemption(s) apply: (i) all ad valorem and other real property taxes and assessments and personal property taxes, charges, rates, user fees, duties, and assessments rated, levied, or imposed by any governmental authority with respect to the Land, the Building, and any improvements, fixtures, and equipment located therein or thereon, and with respect to all other property of Landlord, real or personal, located in or on the Land or the Building and used in connection with the operation of the Building; (ii) any tax in lieu of a real property tax; (iii) any tax or excise levied or assessed by any governmental authority on the Rentals payable under this Lease or rentals accruing from the use of the Land or the Building; and (iv) any tax or excise imposed or assessed by or against Landlord that is measured or based in whole or in part on the capital employed by Landlord to improve the Land and construct the Building. Taxes do not include federal or state, corporate or personal income taxes. In addition to the foregoing, Tenant will pay before delinquency all taxes, assessments, licenses, fees, and charges assessed, imposed, or levied on (a) Tenant's business operations, (b) all trade fixtures, (c) leasehold improvements, (d) merchandise, and (e) other personal property in or about the Premises.

**3.2.4 Operating Year.** The term *Operating Year* means each fiscal year (July 1 - June 30) of the Term. In the event the Lease Commencement Date or the Expiration Date occurs on any date other than the first day of the fiscal year, the calculations, costs, and payments referred to herein will be prorated for that fiscal year.

**3.2.5 Written Statement of Estimate.** Before the Lease Commencement Date, Landlord will furnish Tenant with a written statement setting forth Tenant's Proportionate Share of the estimated Operating Expenses and Taxes for the first year of the Term. Such estimate shall take into account any amount(s) which the parties have agreed will be paid for or contracted for directly by Tenant. Thereafter, before the commencement of each Operating Year or as soon thereafter as reasonably possible, Landlord will furnish Tenant with a written statement setting forth Tenant's Proportionate Share of the estimated Operating Expenses and Taxes for the next Operating Year. Tenant will pay to Landlord as Additional Rent commencing on July 1 of the next Operating Year, and thereafter on the first day of each calendar quarter, an amount equal to one-fourth (1/4th) of the amount of Tenant's Proportionate Share of the estimated Operating Expenses and Taxes, as shown in Landlord's written statement.

**3.2.6 Final Written Statement.** Within sixty (60) days after the close of each Operating Year during the Term, Landlord will deliver to Tenant a written statement (the "Operating Statement") setting forth Tenant's Proportionate Share of the actual Operating Expenses and Taxes for the preceding Operating Year for each such item. In the event Tenant's Proportionate Share of the actual Operating Expenses and Taxes is greater than the amount paid by Tenant for the Operating Expenses and Taxes, Tenant will pay the amount due to Landlord as Additional Rent within thirty (30) days after receipt by Tenant of the statement. In the event Tenant's Proportionate Share of the actual Operating Expenses and Taxes is less than the amount paid by Tenant for the Operating Expenses and Taxes, then Landlord will, at Landlord's election, either (i) pay the amount of Tenant's overpayment to Tenant within thirty (30) days

following the date of the statement or (ii) apply the overpayment to Tenant's next Rent payment, reimbursing only the excess over the next Rent payment, if any.

#### **Section 4. Use of Premises**

**4.1 Permitted Use.** Tenant shall only use the Premises for Tenant's Permitted Use and for no other purpose without Landlord's written consent. Tenant will not use the Premises in a manner that obstructs, annoys, or interferes with the rights of Landlord or other occupants of the Building. Tenant will not cause any nuisance nor permit any objectionable fumes, electromagnetic waves, vibration, noise, light, or radiation to be emitted from the Premises.

**4.2 Equipment.** Tenant will install only such equipment in the Premises as is customary for the Permitted Use and will not overload the floors or electrical circuits of the Premises or Building or change the wiring or plumbing of the Building or Premises. Any equipment, cables, wiring, conduit, additional dedicated circuits, and any additional air conditioning required because of any such equipment installed by Tenant will be installed, maintained, and operated at Tenant's sole expense and in accordance with Landlord's requirements.

**4.3 Compliance with Laws.** Both parties will give prompt notice to the other of any notice it receives of the violation of any law or requirement of any public authority with respect to the Premises or the use or occupancy thereof. Tenant will, at Tenant's expense, comply with all laws and requirements of any public authorities ("Laws") that, in respect of the Premises or the use and occupancy thereof, or the abatement of any nuisance in, on, or about the Premises,

imposes any violation, order, or duty on Landlord or Tenant, arising from (a) Tenant's use of the Premises; (b) the manner of conduct of Tenant's business or operation of its installations, equipment, or other property therein; (c) any cause or condition created by or at the instance of Tenant; or (d) breach of any of Tenant's obligations hereunder.

**4.3.1 ADA Law Compliance.** Landlord and Tenant acknowledge that the provisions of the Americans with Disabilities Act (the "ADA") allow allocation of responsibility for compliance with the terms and conditions of the ADA in this Lease. Responsibility for compliance with the ADA is allocated as set forth in this Section. Tenant is responsible for compliance with the applicable provisions of the ADA with respect to all improvements within the Premises except that Landlord represents that any improvements designed by Landlord's office planner and installed by Landlord or its contractors under this Lease will conform to the requirements of the ADA Compliance Guidelines in effect as of the date of substantial completion of the work. Landlord is responsible for compliance with the provisions of Title III of the ADA with respect to the exterior of the Building and the Land including sidewalks and walkways and the like, together with all entrances, lobbies, elevators, common restrooms, and the other common areas of the Building. Neither Landlord nor Tenant is obligated to supervise, monitor, or otherwise review the compliance activities of the other. References in this Lease to "Laws" are deemed to include the ADA.

**4.3.2 Environmental Law Compliance.** For purposes of this Section, the term *Hazardous Substances* means and includes all hazardous and toxic substances, waste, or materials, any pollutant or contaminant, including, without limitation, PCBs, asbestos, asbestos-

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containing materials, and raw materials that are included under or regulated by any Environmental Laws. For purposes of this Lease, the term *Environmental Laws* means and includes all federal, state, and local statutes, ordinances, regulations, and rules presently in force or hereafter enacted relating to environmental quality, contamination, and clean-up of Hazardous Substances. References in this Lease to *Laws* are deemed to include Environmental Laws. Landlord represents that to the best of its current actual knowledge, the Building is in compliance with all Environmental Laws respecting Hazardous Substances, and that Landlord has received no notice of any pending or threatened lien, action, or proceeding respecting any alleged violation of Environmental Laws affecting the Building.

**4.3.3 Indemnity Regarding Legal Violations.** Tenant will indemnify and hold harmless Landlord and its respective officers, agents, and employees from and against any and all claims arising from or in connection with the violation of Laws including but not limited to the ADA and Environmental Laws, occurring in, at, or about the Building and the Land due to the acts or omissions of Tenant or its directors, officers, agents, and employees, together with all costs, expenses, and liabilities incurred or in connection with each such claim, action, proceeding, or appeal, including, without limitation, all attorney fees and expenses. Landlord will indemnify and hold harmless Tenant and its officers, agents, and employees from and against any and all claims arising from or in connection with the violation of Laws, including but not limited to the ADA and Environmental Laws, occurring in, at, or about the Building and the Land due to the acts or omissions of Landlord or its partners, directors, officers, agents, and employees, together with all costs, expenses, and liabilities incurred or in connection with each

such claim, action, proceeding, or appeal, including, without limitation, all attorney fees and expenses.

**4.4 Library.** Landlord intends to operate within the Building a public library, as that term is defined in ORS Chapter 357, or future amendment(s) thereof (public library). The parties hereto understand and agree that the Landlord's operation of a public library is subject to and dependent upon future appropriations, on a year-to-year basis, of sufficient funds for the performance thereof, and that the source and amount of all such appropriations are within the unfettered discretion of the budget committee and City Council at the time each future annual appropriation is considered. Before Landlord ceases to operate a public library within the Building, either directly or through another public agency, Landlord shall notify Tenant in writing and Tenant shall have the option of leasing from Landlord the remaining portion of the Building outside the Premises for the purpose of operating a public library (Tenant's Library Lease). Under Tenant's Library Lease, Tenant shall use all or part of said portion of the Building for public library purposes and operate such library at Tenant's sole cost and expense. Tenant may also sublet said portion to a public agency to operate a public library in the Building. Under Tenant's Library Lease and this Lease, Tenant shall not owe rent to Landlord under Section 3.1 during the period of Tenant's Library Lease, but Tenant's proportionate share of the items of additional rent under Section 3.2 shall then be changed to 100% based on Tenant occupying 100% of the Building. As part of Tenant's Library Lease, Landlord shall also allow Tenant to use free of charge for public library purposes the book collection and other equipment then existing within the Building. Tenant's Library Lease shall extend until Landlord chooses to resume operating a public library within the Building, either directly or through another public agency. However, in the event Landlord does not choose to resume operating a public library

within the Building, either directly or through another public agency, within five (5) years from the commencement of Tenant's Library Lease, and as long as Tenant is not then in default, then Tenant will have the option to acquire the Building and the Land, together with the book collection and other equipment then existing within the Building, from Landlord for a total consideration of \$1.00. If Landlord elects to cease operating a public library within the Building, either directly or through another public agency, more than one time during the Term of this Lease, Tenant shall, at its choosing, have the options of entering into a Tenant's Library Lease again under the terms herein or acquiring the Building and Land, together with the book collection and other equipment then existing within the Building, from Landlord for a total of \$1.00.

## **Section 5. Maintenance and Repair**

**5.1 Landlord Repairs.** Landlord will repair, maintain, and/or replace, where necessary, the Common Areas and the roof, foundation, exterior walls, interior structural walls, all structural components, and all systems such as mechanical, electrical, HVAC, and plumbing systems of or in the Building and the Premises. As additional rent, Tenant shall reimburse Landlord for 50% of such costs. Tenant expressly waives the benefits of any statute now or later in effect that would otherwise give Tenant the right to make repairs at Landlord's expense and deduct that cost from Rent owing to Landlord.

**5.1.1 Collaboration on Landlord Repairs.** If at any time Landlord desires to undertake repairs for which Tenant would be responsible to reimburse Landlord under Section

5.1, Landlord shall confer with Tenant on the cost thereof prior to commencing such repairs. The parties shall pursue good faith discussions directed towards reaching agreement. In the event the parties are not able to agree, the issue shall be resolved as provided under Section 14.5, Dispute Resolution.

**5.2 Tenant's Repairs.** Except for Landlord Repairs set forth in Section 5.1 above, Tenant will at Tenant's sole expense:

- (a) maintain all portions of the Premises and fixtures situated within the Premises in good order and repair;
- (b) maintain, repair, and replace, if necessary, all special equipment and decorative treatments installed by or at Tenant's request and that serve the Premises only;
- (c) make all necessary repairs and replacements to all portions of the Premises and pay Landlord for the repairs or replacements to the Building if any such repairs or replacements are needed because of Tenant's misuse or primary negligence; and
- (d) not commit waste to the Premises, Building, Common Areas, or Property.

If Tenant fails to perform Tenant's obligations under this Section or under any other Section of this Lease, after thirty (30) business days' prior written notice to Tenant, except in an emergency when no notice will be required, Landlord may enter the Premises, perform the obligations on Tenant's behalf, and include 100% of the cost of performance, together with interest at the rate of twelve percent (12%) per year, as Additional Rent payable by Tenant as provided in Section 3.2.

**5.3 Costs of Repair.** All costs of repair and maintenance incurred by Landlord under Section 5.1 will be considered Operating Expenses for purposes of this Lease, except that Tenant will reimburse Landlord upon demand for 100% of the cost of repair incurred by Landlord for damage caused by the negligent or intentional acts or any breach of this Lease by Tenant, its employees, contractors, agents, or invitees.

## **Section 6. Alterations**

**6.1 Alterations by Landlord.** As long as the modification, alteration, or change does not materially interfere with the operation by Tenant of its business in the Premises, Landlord may modify, alter, or change any improvements in the Building, the parking area, and other Common Areas.

**6.2 Alterations by Tenant.** Tenant will not make any alterations, additions, or improvements to the Premises that require a local government building permit, modify the color of the interior of the Premises, or install any wall or floor covering therein without notifying Landlord thirty (30) days in advance. Tenant will (i) obtain all necessary governmental permits and approvals and deliver copies thereof to Landlord, and (ii) cause all alterations to be completed with all due diligence. All alterations will be performed in a manner so as to minimize any interference with the quiet enjoyment of other occupants of the Building. Except for removable machinery and unattached movable trade fixtures, all improvements, alterations, wiring, cables, or conduit installed by Tenant will immediately become part of the Premises,

with title vested in Landlord. Landlord may require that Tenant remove any such improvements, alterations, wiring, cables, or conduit installed by or for Tenant and restore the Premises to good condition and repair upon expiration or earlier termination of this Lease. Landlord may post notices of nonresponsibility in connection with any work being performed in the Premises by or at the request of Tenant. All work in the Premises by or at Tenant's request must comply with all applicable Laws. Tenant will not permit any liens to attach to the Building or Tenant's interest in the Premises as a result of any work performed by or at Tenant's request.

## **Section 7. Utilities and Services**

**7.1 General.** As part of Operating Expenses, Landlord will furnish water and electricity to the Building at all times and will furnish heat, ventilation, and air conditioning (if the Building is air conditioned), at Building standard levels consistent with general office use, during the normal Building hours as reasonably established by Landlord. Janitorial service will be provided in accordance with the regular schedule of the Building, which schedule and service Landlord may change from time to time.

Landlord will furnish the Premises with (1) electricity for lighting and the operation of office machines (electrical service furnished will be 110 volts unless different service already exists in the Premises); (2) heat and air conditioning reasonably required for the comfortable occupation of the Premises when being used by Tenant.

Unless caused by the negligence or intentional misconduct of Landlord, interruption of any service or utility will not render Landlord liable to Tenant for damages, relieve Tenant from performance of Tenant's obligations under this Lease, or be deemed an eviction or disturbance

of Tenant's use and possession of the Premises.

**7.2 Security.** Landlord may, but will have no obligation to, provide security service or adopt any security measure concerning the Premises and the Building, and Tenant will abide by all reasonable security measures adopted by Landlord. Landlord will consider any suggestions Tenant may have regarding security.

## **Section 8. Signs and Other Installations**

No signs, awnings, or other apparatus will be painted on or attached to the Building or anything placed on any glass or woodwork of the Premises or positioned so as to be visible from outside the Premises, including any window covering (e.g., shades, blinds, curtains, drapes, screens, or tinting materials) without Landlord's written consent, and Landlord's approval of design, size, location, and color. Landlord will confer with Tenant regarding such matters and will not unreasonably withhold its consent and approval. All signs installed by Tenant will comply with Landlord's standards for signs and all applicable codes. All signs and sign hardware will be removed by Tenant, at Tenant's sole cost and expense, upon termination of this Lease, with the sign location restored to its former state unless Landlord elects to retain all or any portion thereof. Landlord will provide Tenant with Building-standard signage located adjacent to the entry doorway of the Premises and on the Building directory.

## **Section 9. Insurance**

Tenant, at its expense, will maintain at all times during the Term of this Lease,

commercial general liability insurance in respect of the Premises and the conduct or operation of business therein, naming Landlord and its managing agent, if any, as additional insureds, with a combined single limit of not less than two million and no/100 dollars (\$2,000,000.00). All such insurance will insure the performance by Tenant of the contribution agreement with regard to liability for bodily injury to, illness of, or death of persons and damage to property set forth in this Lease. Tenant will deliver to Landlord and any additional insured the fully paid-for policies or certificates of insurance, in form reasonably satisfactory to Landlord, issued by the insurance company or its authorized agent, at least ten (10) days before the Lease Commencement Date. Tenant will procure and pay for renewals of the insurance from time to time before the expiration thereof, and Tenant will deliver to Landlord and any additional insured the renewal policy at least thirty (30) days before the expiration of any existing policy. All the policies will contain a provision prohibiting cancellation or modification unless Landlord and any additional insured are given at least thirty (30) days prior written notice of the cancellation or modification. All insurance policies required to be carried by Tenant hereunder will be issued by responsible insurance companies authorized to issue insurance in the State of Oregon and rated B+ VIII or higher by Best's Insurance Rating Service.

**Section 10. Third Party Claims.**

**10.1** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against either

Landlord or Tenant with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim. **10.2**

With respect to a Third Party Claim for which Landlord is jointly liable with

Tenant (or would be if joined in the Third Party Claim), Landlord shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Tenant in such proportion as is appropriate to reflect the relative fault of Landlord on the one hand and of Tenant on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Landlord on

the one hand and of Tenant on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Landlord's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

**10.3** With respect to a Third Party Claim for which Tenant is jointly liable with Landlord (or would be if joined in the Third Party Claim), Tenant shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Landlord in such proportion as is appropriate to reflect the relative fault of Tenant on the one hand and of Landlord on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Tenant on the one hand and of Landlord on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Tenant's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

## **Section 11. Eminent Domain**

If the entire Building or any portion of the Premises is permanently taken under any right of eminent domain, or any transfer in lieu thereof, and the taking renders the Premises unsuitable for Tenant's use, then either party may terminate this Lease by giving thirty (30) days' prior written notice to the other party, and the termination will be effective on the date possession of the Building or Premises is delivered to the condemning authority. If this Lease is not so terminated, Landlord will repair and restore the Premises, and this Lease will continue, but, commencing with the date on which Tenant is deprived of the use of any portion of the Premises or of any rights under this Lease, Base Rent will be proportionately abated or reduced, based on the extent to which Tenant's use of the Premises is impaired. Any and all awards payable by the condemning authority in connection with a taking will be the sole property of Landlord; however, nothing contained herein will prevent Tenant from prosecuting a separate claim for the value of its interest, as long as that award does not diminish the award that Landlord would otherwise be entitled to as a result of the taking.

## **Section 12. Fire or Casualty**

**12.1 Major Damage.** In case of Major Damage, Landlord may elect to terminate this Lease by notice in writing to Tenant within thirty (30) days after the date of the Major Damage. *Major Damage* means damage by fire or other casualty to the Building or the Premises (i) that causes the Premises or any substantial portion of the Building to be unusable, (ii) the repair of which will cost more than twenty-five percent (25%) of the replacement value of the Building, or (iii) that is not required under this Lease to be covered by insurance. If Landlord does not terminate this Lease after any Major Damage, or if damage occurs to the Building or Premises that is not Major Damage, Landlord will promptly restore the Premises to the condition existing

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immediately before the damage, and this Lease will continue in full force and effect. In the event of any damage to the Building or Premises from a fire or other casualty, Tenant will promptly repair and restore all tenant improvements or alterations installed or paid for by Tenant or pay the cost of the restoration to Landlord if Landlord performs the restoration. In the event the Premises are damaged by any casualty, Rent will be reduced in proportion to the unusable portion of the Premises from the date of damage until the date restoration work to the Premises is substantially complete.

**12.2 Waiver of Subrogation.** Both parties will secure an appropriate clause in, or an endorsement on, each property insurance policy obtained by it and covering or applicable to the Premises or the personal property, fixtures, and equipment located therein or thereon, under which the insurance company waives subrogation or permits the insured, before any loss, to agree with a third party to waive any claim it might have against the third party without invalidating the coverage under the insurance policy. The waiver of subrogation or permission for waiver of any claim will extend to the parties and their respective agents and employees. Each party releases the other and its agents and employees in respect of any claim (including a claim for negligence) that it might otherwise have against the other party or its agents or employees for loss, damage, or other casualty (including rental value or business interest, as the case may be) occurring during the Term of this Lease and normally covered under a special form property insurance policy in the form normally used in respect of similar property in Portland, Oregon.

### **Section 13. Assignment and Subletting**

Tenant will not assign, transfer, or encumber its interest under this Lease or sublet all or any portion of the Premises without having first obtained Landlord's written consent, which Landlord will not unreasonably withhold. Any sale, assignment, encumbrance, subletting, occupation, lien, or other transfer of this Lease that does not comply with the provisions of this Section 13 will be void. Following any request by Tenant to transfer all or any part of the Premises and delivery to Landlord of such information as Landlord may require, Landlord will have the right to: (a) permit the transfer on any conditions Landlord may reasonably impose; or (b) deny Tenant's request if reasonable grounds exist, in which event this Lease will continue in full force and effect and unmodified. As a condition to Landlord's prior written consent as provided for in this Section 13, (a) Tenant will pay Landlord its reasonable legal fees and costs incurred due to the transfer; (b) the transferee(s) will agree in writing to comply with and be bound by all the terms, covenants, conditions, provisions, and agreements of this Lease, and (c) Tenant will deliver to Landlord, promptly after execution, an executed copy of each transfer instrument and an agreement of the compliance by each transferee. Landlord may withhold consent in its sole and unfettered discretion with respect to the assignment or subletting (i) to a third party with whom Landlord has been negotiating to lease space elsewhere in the Building, (ii) for a term of less than six (6) months, or (iii) that would result in more than two (2) parties occupying the Premises simultaneously.

#### **Section 14. Default**

**14.1 Events of Default.** Each of the following is an Event of Default by Tenant under this Lease:

**14.1.1** Failure by Tenant to pay Rent or any other charge due under this Lease within thirty (30) days after receipt of written notice from Landlord that the same is then due.

**14.1.2** Failure by Tenant to comply with any other obligation of this Lease within thirty (30) days following written notice from Landlord specifying the failure (except in the case of emergency, in which event Landlord will be required to give only such notice as is reasonable under the circumstances); however, if the nature of Tenant's default requires more than thirty (30) days to correct, Tenant will not be deemed in default of this Lease as long as Tenant commences the cure of the failure within the thirty (30)-day period and thereafter proceeds in good faith and with all diligence to complete the cure as soon as possible but in no event later than ninety (90) days after the date of Landlord's notice of default.

**14.1.3** Tenant's abandonment of the Premises or failure by Tenant to occupy the Premises within thirty (30) days after notice from Landlord.

**14.1.4** Assignment or subletting by Tenant in violation of Section 13.

**14.1.5** Tenant's ceasing to function as an education service district as defined in ORS Chapter 334 or future amendment(s) thereof.

**14.2 Remedies for Default.** Upon the occurrence of an Event of Default described in Section 14.1, Landlord may exercise the following remedies as well as any other remedies at law or in equity, by statute or as set forth in this Lease:

**14.2.1** Landlord may terminate this Lease, reserving all rights to damages resulting from Tenant's breach. Whether or not Landlord terminates this Lease, Landlord may retake possession of the Premises by any legal means including self-help and any relet or use of the Premises by Landlord will not be deemed a surrender or waiver of Landlord's right to damages. If Landlord retakes possession of the Premises, Landlord's mitigation efforts will be deemed sufficient if Landlord follows standard procedures otherwise used by Landlord for locating tenants for the Building and otherwise complies with Law.

**14.2.2** Tenant will be liable to Landlord for all damages caused by Tenant's default, including, but not limited to, an amount equal to all unpaid and future Rent for up to a maximum period of 365 days, lease commissions incurred for this Lease. Landlord may periodically sue Tenant to recover damages as they accrue, and no action therefor will bar a later action for damages accruing thereafter. Landlord may elect in any one action to recover both accrued damages as well as damages attributable to the remaining term of the Lease. Any damages attributable to the remaining term of the Lease will be equal to the difference between the Rent under this Lease and reasonable rental value of the Premises (including Additional Rent) for the remainder of the term, discounted at the prevailing interest rate on judgments to the date of the judgment.

**14.3 Landlord's Right to Cure Default.** Landlord may, but will not be obligated to, make any payment or perform any obligation under this Lease that Tenant has failed to perform, as and when required hereunder. Tenant will pay Landlord for all expenditures and costs incurred by Landlord in performing any obligation of Tenant, upon demand, with interest

thereon at the rate of one percent (1%) per month, but in no event at a rate in excess of that allowed by Law. Landlord's right to cure any Tenant default is for the sole protection of Landlord and in no event will Tenant be released from any obligation to perform all of Tenant's obligations and covenants under this Lease, and the contents of this Section will not be deemed a waiver by Landlord of any other right that Landlord may have arising from any default of this Lease by Tenant, whether or not Landlord exercises its rights under this Section.

**14.4 Landlord's Default.** Landlord will not be deemed to be in default of the performance of any obligation required to be performed by Landlord hereunder unless and until Landlord fails to perform the obligation within thirty (30) days after written notice by Tenant to Landlord specifying the nature of Landlord's alleged default; however, if the nature of Landlord's alleged default is such that more than thirty (30) days are required for its cure, then Landlord will not be deemed to be in default if Landlord commences performance within the thirty (30)-day period and thereafter diligently prosecutes the same to completion. In the event of any default by Landlord, Tenant may exercise any and all rights and remedies available at law or in equity.

**14.5 Dispute Resolution.**

**14.5.1** Disputes about any matters related to this Lease shall be resolved expeditiously and informally whenever possible.

**14.5.2** Disputes shall be referred first to the Landlord's designee and the Tenant's

designee for discussion and resolution. If they are unable to agree on a resolution and the matter is one that requires prompt resolution, they shall attempt to reach a temporary compromise, pending permanent resolution using a more formal process.

**14.5.3** If the Landlord's designee and Tenant's designee fail to reach agreement, the matter shall be referred to the elected officials. The City Council and Tenant's Board shall each designate two members to meet as a group of four. They shall meet within two weeks of referral of the matter. They shall attempt to agree on a neutral person to serve as the deciding vote in case the four elected officials do not reach an agreement.

**14.5.4** If the foregoing processes do not yield an agreement, the parties shall submit the matter to binding arbitration pursuant to ORS 190.710 to 190.800.

**Section 15. Survival.**

The obligations and liabilities of Tenant arising during the term of this Lease will survive the expiration or earlier termination of this Lease and the termination of the right of possession of Tenant.

**Section 16. Notices.**

All notices, demands, consents, approvals, and other communications provided for herein will be invalid unless set forth in a writing and delivered by facsimile transmission, overnight air

courier, personal delivery, or registered or certified U.S. mail with return receipt requested to the appropriate party at its address as set forth in Section 1.2 for Tenant and Section 1.3 for Landlord.

Addresses for notices may be changed from time to time by written notice to all other parties. Any communication given by facsimile transmission must be confirmed within forty-eight (48) hours by overnight air courier. If any communication is given by mail, it will be effective upon the earlier of (a) forty-eight (48) hours after deposit in the U.S. mail, with postage prepaid, or (b) actual receipt, as indicated by the return receipt; if given by facsimile, when sent; and if given by personal delivery or by overnight air courier, when delivered.

**Section 17. Access.**

Tenant will have access to the Premises 24 hours per day, 7 days per week, and 52 weeks per year.

**Section 18. Nonrecourse Lease.**

Tenant will look only to Landlord's estate and property in the Land and the Building (or the proceeds thereof) for the satisfaction of Tenant's remedies, including the collection of an arbitration award, a judgment, or another judicial process requiring the payment of money by Landlord in the event of any default by Landlord hereunder, and no other property or assets of Landlord or its partners or principals, disclosed or undisclosed, will be subject to levy, execution, or other enforcement procedure for the satisfaction of Tenant's remedies under or

with respect to this Lease, the relationship of Landlord and Tenant hereunder, or Tenant's use or occupancy of the Premises.

## **Section 19. Subordination**

**19.1 Subordination.** This Lease, and all rights of Tenant, will be subject and subordinate to the right of reversion under the deed from Douglas County recorded on January 5, 2018, as Instrument No. 2018-000244 in the Deed Records of Douglas County, Oregon.

## **Section 20. Surrender; Holdover**

Upon expiration or earlier termination of this Lease, Tenant will surrender the Premises and, at Landlord's option, all improvements and alterations therein, vacuumed, swept, and free of debris and in good and serviceable condition, subject to ordinary wear and tear. Tenant will remove all of its personal property and any conduits, wiring, cables, or alterations if required by this Lease and will repair all damage to the Premises and the Building resulting from that removal. If Tenant fails to remove any such personal property or alterations, those items will be deemed abandoned, and Landlord may remove or dispose of the items without liability to Tenant or others. Upon demand, Tenant will reimburse Landlord for the cost of such removal.

If Tenant fails to surrender the Premises and remove all its personal property as set forth herein, Landlord may either: (i) recognize Tenant as a month-to-month tenant at sufferance, and such tenancy will be subject to all terms of this Lease, except that all options or other rights regarding extension of the term or expansion of the Premises will automatically terminate; or (ii) evict Tenant from the Premises and recover all damages resulting from Tenant's wrongful

holdover.

## **Section 21. Hazardous Materials**

Neither Tenant nor Tenant's agents or employees will cause or permit any Hazardous Material, as hereinafter defined, to be brought, stored, used, generated, released into the environment, or disposed of on, in, under, or about the Premises, Building, or Common Areas, except reasonable quantities of cleaning supplies and office supplies necessary to or required as part of Tenant's business that are generated, used, kept, stored, or disposed of in a manner that complies with all laws regulating any such Hazardous Materials and with good business practices. Tenant covenants to remove from the Premises (or the Building or Common Areas, if applicable), upon the expiration or sooner termination of this Lease and at Tenant's sole cost and expense, any and all Hazardous Materials brought, stored, used, generated, or released on, in, or into the environment by Tenant, its agents, employees, or invitees during the term of this Lease. To the fullest extent permitted by law, Tenant hereby agrees to indemnify, defend, protect, and hold harmless Landlord, Landlord's managing agent, their respective agents and employees, and their respective successors and assigns, from any and all claims, judgments, damages, penalties, fines, costs, liabilities, and losses that arise during or after the term directly or indirectly from the use, storage, disposal, release, or presence of Hazardous Materials by Tenant, its agents, employees, or invitees on, in, or about the Premises, the Building, or the Common Areas that occurs during the term of this Lease.

As used herein, the term *Hazardous Material* means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local governmental authority, the state of Oregon, or the United States government. The term *Hazardous Material* includes, without

limitation, any material or substance that is (i) defined as a “hazardous waste,” “extremely hazardous waste,” “restricted hazardous waste,” “hazardous substance,” “hazardous material,” or “waste” under any federal, state, or local law, (ii) petroleum, and (iii) asbestos. The provisions of this Section 21, including, without limitation, the indemnification provisions set forth herein, will survive any termination of this Lease.

### **Section 22. Attorney Fees**

If suit or action is instituted in connection with any controversy arising out of this Lease, including any bankruptcy proceeding and arbitration proceeding, the prevailing party will be entitled to recover, in addition to costs, such sums as the court may adjudge reasonable as attorney fees at trial and on all appeals or petitions for review arising out of the suit or action. If Landlord engages a collection agency to pursue any delinquent amounts owed by Tenant, Tenant will pay all collection agency fees charged to Landlord, in addition to all other amounts payable under this Lease.

### **Section 23. Quiet Enjoyment**

Subject to Section 19 above, Landlord warrants that as long as Tenant complies with all terms of this Lease, Tenant will have quiet and peaceful possession of the Premises free of disturbance by Landlord or others claiming by or through Landlord.

### **Section 24. Force Majeure**

If the performance by either party of any provision of this Lease (other than the payment of rent) is prevented or delayed by any strikes, lockouts, labor disputes, acts of God, government

actions, civil commotions, fire or other casualty, or other causes beyond the reasonable control of the party from whom performance is required, the party will be excused from such performance for the period of time equal to the time of that prevention or delay up to a maximum of 365 days.

#### **Section 25. Governing Law**

This Lease will be construed and interpreted and the rights of the parties determined in accordance with the laws of the state of Oregon (without reference to the choice-of-law provisions of Oregon law). Regarding matters of law concerning the internal corporate affairs of any corporate entity that is a party to or the subject of this Lease, the law of the jurisdiction under which the entity derives its powers will govern.

#### **Section 26. Nonwaiver**

No delay by either party in promptly enforcing any right or remedy set forth in this Lease will be deemed a waiver thereof, and that right or remedy may be asserted at any time after the delaying party becomes entitled to the benefit of the right or remedy notwithstanding the delay.

#### **Section 27. Captions**

The Section headings of this Lease are for descriptive purposes only and in no way define, limit, or describe the scope, intent, or meaning of this Lease.

#### **Section 28. Consent**

Except where otherwise specifically provided in this Lease to the contrary, whenever a

party's consent is required under this Lease, the party will not unreasonably withhold its consent.

**Section 29. Time of the Essence and Holidays**

Time is of the essence of each and every provision hereof. If the final date of any period of time set forth herein occurs on a Saturday, Sunday, or legal holiday, then the expiration of the period of time will be postponed to the next day that is not a Saturday, Sunday, or legal holiday.

**Section 30. Complete Agreement; No Implied Covenants**

Except as expressly set forth in this Lease, this Lease and the attached Exhibits and schedules, if any, contain the entire agreement of the Landlord and Tenant concerning the Premises, Building, Common Areas, and Land, and all prior oral agreements and representations between the parties are void. Landlord and Tenant agree that there are no implied covenants or other agreements between the parties except as expressly set forth in this Lease. Neither Landlord nor Tenant is relying on any representations of the other party except those expressly set forth herein.

**Section 31. Successors**

This Lease will bind and inure to the benefit of the parties, their respective heirs, successors, and permitted assigns.

**Section 33. Authority**

The persons executing this Lease on behalf of their respective parties hereto represent that their respective Board and Council have approved this Lease and authorized them to execute it.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Lease:

LANDLORD:

CITY OF ROSEBURG, OREGON

\_\_\_\_\_

By: C. Lance Colley

Title: City Manager

Date: \_\_\_\_\_

TENANT:

DOUGLAS EDUCATION SERVICE  
DISTRICT

\_\_\_\_\_

By: Michael Lasher

Title: Superintendent

Date: \_\_\_\_\_

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

Title: Board Chairperson

Date: \_\_\_\_\_

**EXHIBIT A**

*[Floor Plan]*

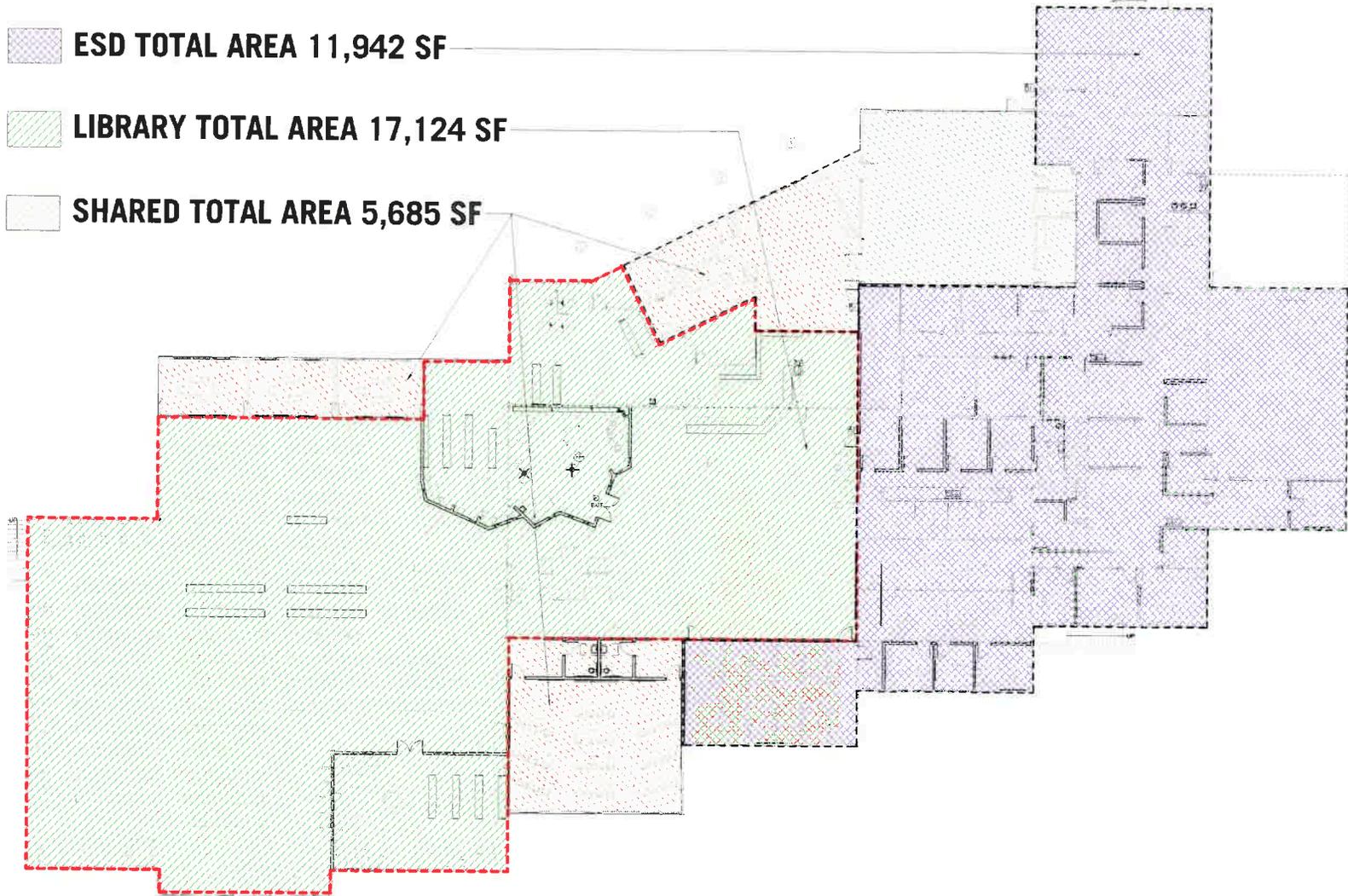
**EXHIBIT A.1**

*[Land Description]*

**EXHIBIT A.2**

*[Map of Property]*

-  **ESD TOTAL AREA 11,942 SF**
-  **LIBRARY TOTAL AREA 17,124 SF**
-  **SHARED TOTAL AREA 5,685 SF**



**CITY OF ROSEBURG NOTICE OF PROPOSED LEASE-OPTION AGREEMENT FOR  
A PORTION OF THE PROPERTY LOCATED AT 1409 NE DIAMOND LAKE  
BOULEVARD  
AND PUBLIC HEARING RELATED THERETO**

**NOTICE IS HEREBY GIVEN**, that the City of Roseburg is proposing a lease-option agreement with the Douglas Education Service District (the ESD) for a portion of the real property located at 1409 NE Diamond Lake Boulevard, commonly referred to as "the Library Building".

The property is owned by the City of Roseburg. The property is legally identified as Township 27S, Range 5W, Section 19, Tax Lot 100.

For fiscal reasons, the City deems it advisable and in the interests of the citizens of Roseburg to enter into this lease agreement with the ESD for joint operation of the Library Building.

The proposed lease agreement is for a term up to 99 years and includes the ESD leasing a portion of the building from the City for offices and services provided by an education district. The property is subject to a deed requirement that a public library be operated on the property in perpetuity. As part of the lease agreement, the ESD will provide certain services to the City for operation of the library. The lease also contains provisions which would allow the ESD to buy the property and continue to operate the library, if at some future time during the term of the lease the City were to cease operating the library.

A public hearing to consider the lease-option agreement will be held on Monday, June 4, 2018 at 4:00 p.m. in the City Hall Council Chambers, 900 SE Douglas in Roseburg. Public comments regarding the proposed lease-option agreement will be heard prior to the Council approving the final agreement.

Anyone desiring more information regarding the property subject to this notice, or subsequent public hearing related thereto, may contact City Recorder Amy L. Sowa by calling 541-492-6866.

  
Amy L. Sowa, City Recorder

Posted at City Hall and published in the News Review on May 29, 2018.

**ROSEBURG CITY COUNCIL  
AGENDA ITEM SUMMARY**



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**COOPERATIVE IMPROVEMENT AGREEMENT  
LIBRARY REMODEL PROJECT**

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**Meeting Date: June 4, 2018**  
**Department: City Manager**  
[www.cityofroseburg.org](http://www.cityofroseburg.org)

**Agenda Section: Department item A**  
**Staff Contact: Lance Colley**  
**Contact Telephone Number: 492-6866**

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**ISSUE STATEMENT AND SUMMARY**

The City has been working with Douglas ESD since December 2017 to enter into agreements to co-locate operations of the ESD and the Library in the facility located at 1409 NE Diamond Lake Boulevard. At your June 4, 2018 meeting, a public hearing was held to determine if a long-term lease with an option to sell would be entered into to provide the guidelines for long-term Library and ESD operations. The "Lease" contains a reference to this Cooperative agreement.

**BACKGROUND**

**Council Action History.**

- On February 8, March 14, and March 28, 2016, City Council heard input from the Save Our Libraries group regarding placement of a library district on the November ballot.
- On April 11, 2016, Council adopted Resolution 2016-6 regarding the inclusion of the City of Roseburg boundary in a proposed library district with a permanent tax on a county wide ballot in November 2016.
- On November 8, 2016, the Ballot Measure was defeated 25,499 against; 20,703 in favor.
- The City Council has received regular reports regarding the Library Task Force's meetings, but no action has been considered by the City Council.
- On May 8, 2017, City Council directed staff to evaluate facilitation of a Roseburg Branch Library.
- On June 7, 2017, Staff provided an update of work to date and Council directed staff to proceed with acquiring a deed to the property subject to completing our due diligence.
- On December 11, 2017, Council authorized the transfer of the Library Facility to the City and continued work with the Douglas ESD to finalize renovation plans and work on intergovernmental agreements to reopen a City Library.
- On May 14, 2018, Council reviewed information provided in executive session.

- A. Analysis.** Staff has been working with Council and representatives from Douglas ESD (ESD) to develop a long-term lease and operating agreement to co-locate in the facility located at 1409 NE Diamond Lake Blvd as well as a cooperative funding agreement to pay for improvements. Section 2.3 of the "Lease" outlines how the provisions of the Lease and the Cooperative agreement relate.

Thursday May 31, 2018, City and ESD staff met with the City's architects, Pivot, and our CM/GC contractor, Vitus Construction, to review preliminary cost estimates to provide assurance that we can jointly move forward with the renovation project that is outlined in the funding agreement. Based on this recent information, it appears that we will be able to move forward with project amendments on June 11th and July 9th.

We are currently finalizing the square footage (and the cost associated with each) that will be dedicated to the ESD, dedicated to the Library, and identified as joint use space. In section 1.4, we anticipate the ESD space to be just under 12,000 square feet and the joint use space to be just less than 6,000 square feet. The ground level of the building is approximately 35,000 square feet with approximately 6,000 square feet on the second level, which is primarily storage and mechanical room area. The cooperative agreement requires that the ESD and City agree on each entity's associated costs prior to Council award of the final guaranteed maximum price contract. We currently anticipate one amendment to the contract at your June 11 meeting and final amendment for the maximum guaranteed price at your July 9 meeting.

**B. Financial and/or Resource Considerations.** If the Lease and the cooperative agreement are both executed, the cooperative agreement will spell out the cost of improvements for the facility renovation and the amount to be provided by the City and Douglas ESD. The City has currently received grants and/or commitments for the Library and shared space in the amount of \$520,500. We also have additional requests pending for \$225,000. Douglas ESD has secured financing for their portion of the costs, subject to execution of the attached cooperative agreement.

**C. Timing Issues.** In an effort to move forward with the renovation project in a timely manner, staff is requesting that Council authorize the City Manager to execute the attached cooperative agreement when we reach an agreement on the proportionate share costs as outlined in section 3 of the cooperative agreement.

## COUNCIL OPTIONS

1. Direct the City Manager to execute the cooperative agreement with Douglas ESD; or
2. Direct staff to provide additional information

## STAFF RECOMMENDATION

Staff recommends the City Council direct the City Manager to execute the cooperative agreement.

**SUGGESTED MOTION**

"I MOVE TO DIRECT THE CITY MANAGER TO EXECUTE THE ATTACHED COOPERATIVE AGREEMENT BETWEEN THE CITY OF ROSEBURG AND THE DOUGLAS ESD.

**ATTACHMENTS**

#1 - Cooperative Improvement Agreement

**COOPERATIVE IMPROVEMENT AGREEMENT  
LIBRARY REMODEL PROJECT**

This Agreement is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the CITY OF ROSEBURG, hereinafter referred to as "CITY," and DOUGLAS EDUCATION SERVICE DISTRICT, hereinafter referred to as "ESD."

**RECITALS**

- A. CITY owns the Library Building located at 1409 NE Diamond Lake Blvd., Roseburg, OR 97470 (the "Building"). CITY plans to make improvements, renovations and remodels to the Building (the "Project"). The preliminary floor plan of the Project is approximately as shown on the diagram attached hereto marked Exhibit "A", and by this reference made a part hereof.
  
- B. ESD is contemporaneously executing a Lease (the "Lease") with CITY for a portion of the completed, remodeled Building. In the event of any conflict between this Agreement and the Lease, this Agreement will govern.
  
- C. ESD desires to contribute funds to the Project to enable ESD to occupy the remodeled Building, as provided in the Lease.

**NOW, THEREFORE, THE CITY AND ESD AGREE AS FOLLOWS**

1. **Incorporation of Recitals:** The above Recitals are true and are incorporated into this Agreement.
  
2. **Authority.** This Agreement is authorized by ORS 190.003 through 190.110.
  
3. **Design of Improvements:** CITY, through its consultant, Pivot Architecture, shall conduct all necessary design and engineering work for the Project; identify and obtain all required permits; advertise for proposals for a Construction Manager/General Contractor (CMGC) for the Project; award all contracts; and perform all other necessary functions for administration of the Project. ESD shall pay 50% of the total cost for Pivot Architecture's design and engineering work for the Project within thirty (30) days of receipt of copy(s) of invoice(s) for such work. CITY shall provide Pivot Architecture's design for the Project to ESD for ESD's review and approval. ESD shall then have ten (10) days to approve the design and to agree with CITY on the percentage ESD will contribute to the total cost of the Project (ESD's Proportionate Share). If ESD does not approve the preliminary design or does not agree with CITY on ESD's Proportionate Share within ten (10) days, then this Agreement shall be terminated as provided hereinbelow. If this Agreement is terminated, the Lease shall be void as well.
  
4. **Payment.** After CITY has selected a CMGC for the Project and before CITY executes a price agreement with the CMGC for the Project, CITY shall notify ESD of the estimated total Project cost amount arrived at in discussions with the CMGC for the Project. ESD shall then have ten (10) days from the notice to elect in writing whether to terminate this Agreement as provided hereinbelow. If ESD elects to terminate this Agreement, the Lease shall be void as

well. If ESD does not elect to terminate this Agreement, ESD shall pay ESD's Proportionate Share of the estimated total Project cost to CITY as an initial deposit within thirty (30) days of receipt of notice from CITY. CITY shall apply said initial deposit amount to costs for the Project. Any portion of said initial deposit exceeding ESD's Proportionate Share of the final total cost of the Project shall be refunded to ESD following completion of the Project. CITY will maintain records during the Project which are adequate for determining the final total cost of the Project. Following completion of the Project, CITY shall submit an invoice to ESD for costs for the Project in addition to said initial deposit amount, in order that ESD's total contribution to the Project equals ESD's Proportionate Share of the final total cost of the Project. ESD shall pay such invoice within thirty (30) days of issuance of the invoice. Failure to pay such amount shall be a default under the Lease as well as a default under this Agreement.

**5. Termination.** Either party shall have the right to terminate this Agreement upon thirty (30) days advance written notice at any time prior to execution by CITY of a price agreement with the CMGC for the Project. Following execution by CITY of a price agreement for the Project, this Agreement shall not be terminated except upon mutual consent of ESD and CITY. If this Agreement is terminated upon mutual consent, the Lease shall be void as well, any unexpended portion of the ESD's initial deposit shall be refunded to ESD. The obligations and liabilities of the parties arising under this Agreement shall survive the termination of this Agreement.

**6. Default.** There will be a default under this Agreement if either party fails to pay any amount required hereunder within the time required, or fails to comply with any other provision of this Agreement within thirty (30) days after the other party gives notice specifying the default.

7. **Notices**. Any notices required to be given under this Agreement, or required by law, shall be in writing and delivered to the parties at the following addresses:

**CITY OF ROSEBURG**

**C. Lance Colley, City Manager**

**900 SE Douglas Avenue**

**Roseburg, Oregon 97470**

**DOUGLAS EDUCATION SERVICE DISTRICT**

**Michael Lasher, Superintendent**

**1871 NE Stephens Street**

**Roseburg, Oregon 97470**

8. **No Third-Party Beneficiaries**. Nothing in this Agreement, express or implied, is intended or may be construed to confer on any person, other than the parties to this Agreement, any right, remedy, or claim under or with respect to this Agreement.

9. **Amendments**. This Agreement may be amended only by an instrument in writing executed by all the parties.

10. **Further Assurances**. Each party agrees to execute and deliver such other documents and to do and perform such other acts and things as any other party may reasonably request to carry out the intent and accomplish the purposes of this Agreement.

11. **Time of Essence**. Time is of the essence with respect to all dates and time periods set forth or referred to in this Agreement.

12. **Expenses.** Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear its own expenses in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement.

13. **Representation.** This Agreement has been prepared by Bruce R. Coalwell, of the law firm of Dole Coalwell, Attorneys, at the specific request of CITY. This law firm has only provided legal advice to CITY regarding the terms of this Agreement and transaction. ESD is informed that ESD should obtain their own legal representation in regard to this Agreement and transaction.

14. **Attorney Fees.** If any suit, or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in the preparation, prosecution, or defense of such suit, or action as determined by the trial court, and, if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

15. **Force Majeure.** If the performance by either party of any provision of this Agreement (other than the payment of rent) is prevented or delayed by any strikes, lockouts, labor disputes, acts of God, government actions, civil commotions, fire or other casualty, or other causes beyond the reasonable control of the party from whom performance is required, the party will be excused from such performance for the period of time equal to the time of that prevention or delay up to a maximum of 365 days.

16. **Complete Agreement; No Implied Covenants.** Except as expressly set forth in this Agreement, this Agreement and the attached Exhibits, if any, contain the entire Agreement of

CITY and ESD concerning the Building and the Project, and all prior oral agreements and representations between the parties are void. CITY and ESD agree that there are no implied covenants or other agreements between the parties except as expressly set forth in this Agreement. Neither CITY nor ESD is relying on any representations of the other party except those expressly set forth herein.

17. **Authorization.** The persons executing this Agreement on behalf of their respective parties hereto represent that their respective Board and Council have approved this Agreement and have authorized them to execute it.

18. **Certification.** ESD certifies at the time this Agreement is executed that sufficient funds are available and authorized for expenditure to finance all obligations of ESD hereunder within ESD's current appropriation of the current approved budget.

**CITY OF ROSEBURG**

**DOUGLAS EDUCATION SERVICE DISTRICT**

\_\_\_\_\_  
C. Lance Colley, City Manager  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Michael Lasher, Superintendent  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Board Chairperson  
Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Amy L. Sowa, City Recorder  
Dated: \_\_\_\_\_

Exhibit A  
[Floorplan]

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ofc

SPECIAL  
PRESENTATION A  
06-04-2018

# ROSEBURG CITY COUNCIL AGENDA ITEM SUMMARY



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## LEAGUE OF OREGON CITIES (LOC) PRESENTATION

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**Meeting Date:** June 4, 2018  
**Department:** Administration  
[www.cityofroseburg.org](http://www.cityofroseburg.org)

**Agenda Section:** Special Presentation A  
**Staff Contact:** Amy L. Sowa, City Recorder  
**Contact Telephone Number:** 541-492-6866

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### ISSUE STATEMENT AND SUMMARY

The League of Oregon Cities (LOC) Executive Director Mike Cully, Legislative Director Craig Honeyman, Marketing and Communications Director Kevin Toon, Operations Director Megan George, and General Counsel Patty Mulvihill will provide a presentation to the Mayor and Council regarding the mission of LOC.

### BACKGROUND

Councilor Steve Kaser recently attended an LOC Regional Meeting in Grants Pass and found the presentation very informative. Following that meeting, LOC Executive Director Mike Cully offered to come to Roseburg to meet personally with the Roseburg City Council to discuss the LOC's vision and commitment. Also attending to provide information and answer questions are Legislative Director Craig Honeyman, Marketing and Communications Director Kevin Toon, Operations Director Megan George, and General Counsel Patty Mulvihill.

Today's presentation is informational only and does not require any Council action.

**ATTACHMENTS:** None