

LAND LEASE AGREEMENT

This Land Lease Agreement (this "Agreement") is entered into as of the ____ day of _____, 20____, (the "Effective Date") by and between the City of Coburg, an Oregon municipal corporation, ("Landlord") and the Coburg Fire District,, ("Tenant"). Each Landlord and Tenant may be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Landlord owns certain real property identified as Map 16-03-28, tax lot 200 in Coburg, Oregon. See attached Exhibit "A"; and

WHEREAS, the property currently contains Landlord's wastewater treatment facility; and

WHEREAS, Landlord desires to lease to Tenant, and Tenant desires to lease, a portion of tax lot 200, as depicted on Exhibit "A" and described in attached Exhibit "B"; and

WHEREAS, the Premises is approximately 1.4 acres; and

WHEREAS, Landlord and Tenant wish to construct a building along the south boundary line of the area described in Exhibits A and B, which Tenant will occupy;

WHEREAS, Landlord and Tenant wish to enter into this Agreement for the lease of the Premises for use by Tenant and to set forth the terms for construction of the new building.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration stated herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Agreement to Lease.** Landlord agrees to lease to Tenant and Tenant agrees to lease from Landlord, according to the terms and conditions set forth herein, the real property described in Exhibit B attached hereto (the "Premises"), and the building that will be constructed along the southern boundary of the

2. **Use of Premises.** The Premises may be used and occupied only for the following purposes (the "Permitted Use"): uses in furtherance of the business and purposes of the Tenant, including the conduct of training and drills and equipment storage. Nothing herein shall give

Tenant the right to use the Premises for any other purpose without the prior written consent of Landlord. Tenant will, at its sole expense, maintain the Premises in good repair and make all necessary repairs thereto, and will not commit waste upon the Premises. Tenant will not use the Premises for any unlawful purpose or in any manner that will materially harm Landlord's interest in the property, including any practices that would cause unusual erosion or release of chemicals or materials that may leach into the ground surface on the Premises.

3. **Term.** This Agreement will be for a term beginning on January 1, 2020 or the date executed by both parties, whichever occurs first, and ending at midnight on December 30, 2040 (the "Term").

4. **Rent.** Tenant has paid Landlord \$176.00 per acre per year, or \$4,928, for the entire term.

5. **Pre-Construction Contribution for New Structure.** Landlord will construct a new structure in the approximate location shown on attached Exhibit A. On or before June 30, 2023, Tenant shall pay Landlord \$90,000 as contribution towards the costs of constructing the new building. In exchange, Tenant may occupy the building for the duration of the lease term.

6. **Condition of the Premises.** Tenant has examined the Premises and accepts it in its current condition "AS IS" and "WITH ALL FAULTS." EXCEPT AS EXPRESSLY SET FORTH HEREIN, LANDLORD MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, HABITABILITY, SUITABILITY, OR CONDITION. Tenant acknowledges that Tenant has not relied on any representations or warranties by Landlord in entering this Agreement.

7. **Access to Premises.** Tenant may access the Premises only via the "Sewer Treatment Access Road," subject to use limitations, which include (a) vehicles crossing the access road bridge must conform to H-25 and HS-25 standards (Attachment B) and be no more than 14 feet wide, (b) vehicles may only access the Premises when gates are unlocked, and (c) vehicles may not hinder access by City staff or their agents nor hinder sewage treatment operations.

8. **Improvements and Alterations.** Tenant may not make improvements, alterations, additions, or other changes to the Premises without the written approval of the Landlord. All improvements, alterations, additions, or other changes to the Premises shall become the property of Landlord upon the termination of this Agreement. The Parties acknowledge that Tenant may wish to construct a building on the property at some time in the future. However, the parties agree that this Agreement will be amended, pursuant to Section 36, prior to the Tenant undertaking any such improvements.

9. Leasehold Mortgage. Tenant has the right to grant a mortgage, deed of trust, or other security instrument in Tenant's interest to the Premises created by this Agreement (the "Leasehold Mortgage") to secure repayment of a loan made to Tenant to finance construction of any improvements made to the Premises during the Term.

10. No Mechanics Lien. Tenant will not permit any mechanics or other liens to be filed against Landlord's interest to the Premises as a result of any work performed for or obligations incurred by Tenant. Tenant will indemnify Landlord for any liability, cost, or expense, including attorney's fees, in the event any such lien is filed.

11. Permits and Approvals. Tenant will be responsible for obtaining all licenses, permits, and approvals required by any federal, state or local authority in connection with its use of the Site. Landlord will cooperate with Tenant and provide the necessary documents to obtain such licenses, permits, and approvals.

12. Compliance with Laws. Tenant covenants and agrees to comply with all federal, state and local laws, regulations and ordinances affecting the Premises and use of the Premises, including applicable environmental laws. In addition, Tenant will comply with all requirements necessary to keep in force fire and liability insurance covering the Site.

13. Hazardous Substances. Tenant will not keep or store on the Site any item of a dangerous, flammable, or explosive character that might unreasonably increase the danger of fire or explosion on the Premises or that might be considered hazardous or extra hazardous by any responsible insurance company.

14. Liability Insurance. At all times during the Term, Tenant will maintain liability insurance, with an insurer satisfactory to Landlord, for the following:

- A. Injury to one person: Not less than \$2,000,000
- B. Injuries to all persons arising out of any single incident or incidents: Not less than \$2,000,000
- C. Damage to property: No less than \$2,000,000
- D. Combined Single Limit: Not less than \$2,000,000

Such policies shall insure both the Landlord and the Tenant against all liability for damage to persons or property in, upon, or about the Premises and provide each part with no less than 30 days' notice of cancellation. All insurance policies shall name Landlord as an additional insured or interested party. Tenant will provide Landlord certificates evidencing the required insurance policies prior to the start date of the Term.

15. Waiver of Subrogation. Landlord and Tenant each waive any and all claims or rights to recovery against the other Party for any loss or damage to the extent such loss or damage is covered by insurance or would be covered by insurance as required under this Agreement. Landlord and Tenant will cause each insurance policy carried by Landlord or Tenant relating to the Site to include or allow a full waiver of any subrogation claims.

16. Indemnification. To the extent permitted by law, Tenant agrees to indemnify, defend, and hold harmless Landlord from any and all claims, actions, liabilities, suits, demands, damages, losses, or expenses, including attorneys' fees, arising out of or relating to (i) Tenant's use and occupancy of the Premises, (ii) any work done by or on behalf of Tenant on the Premises, (iii) Tenant's negligence or willful misconduct, and/or (iv) Tenant's breach or default of any of the terms of this Agreement, provided however, Tenant's obligations under this section shall not extend to any claims actions, liabilities, suits, demands, damages, losses, or expenses arising from the sole negligence or willful misconduct of Landlord.

17. Right of Entry. Landlord, its agents or representatives may enter into or upon the Premises at any reasonable time for the purpose of examining into the condition thereof, or for any other lawful purpose, including without limitations any related to Lessor's operation of the wastewater facility and/or other public facilities on the Premises.

18. Default. The following shall each constitute an "Event of Default" by Tenant:

- A. Tenant fails to make any required payment due under this Agreement.
- B. Failure of Lessee to comply with any other term or condition, or fulfil any other obligation of the lease within 30 days after written notice by Lessor specifying the amount of the default with reasonable particularity.
- C. Dissolution, termination of existence, insolvency, business failure, discontinuance as a going business (except for labour disputes), appointment of a receiver of any of the Premises, assignment of the benefit of creditors, or commencement of any proceedings under any bankruptcy or insolvency laws by or against Lessee
- D. Abandonment of the Premises by Tenant

19. Termination by Landlord. Upon the occurrence of an Event of Default by Tenant which continues for a period of 30 days after receiving written notice of the default from Landlord, Landlord has the right to terminate this Agreement, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages. Landlord's rights hereunder shall be in addition to any other right or remedy now or hereafter existing at law or equity. Upon termination by Landlord, Landlord shall refund to Tenant an amount equal to amount of rent prepaid for the period of the remaining Term.

20. Termination by Tenant. In the event of a breach by Landlord of any of its obligations, covenants, or agreements under this Agreement which continues for a period of 30 days after receiving written notice of the breach from Tenant, Tenant has the right to terminate this Agreement, upon written notice to Landlord, without penalty. Landlord shall return to Tenant any prepaid or prorated rent if Tenant terminates this Agreement pursuant to this section.

21. Surrender of the Premises. Tenant shall return the Premises, including the structure, to Landlord upon termination of this Agreement in good condition and repair, ordinary wear and tear excepted. Within 30 days following the termination of this Agreement, Tenant will remove all equipment, materials, fixtures and other personal property belonging to Tenant from the Premises. Any property left on the Premises after 30 days following the termination of this Agreement will be deemed to have been abandoned by Tenant and may be retained by Landlord.

22. Holdover Tenancy. Unless this Agreement has been extended by mutual written agreement of the Parties, there will be no holding over past the Term under the terms of this Agreement under any circumstances. If Tenant does retain possession past the Term, Tenant shall pay \$50.00 per for each month or portion thereof during such holdover. In addition, Tenant shall be liable for any damages incurred by Landlord as a result of the holdover. Holding over shall not be deemed to operate as a renewal or extension of this lease, but shall constitute a month-to-month lease, subject to immediate termination by Landlord.

23. Subordination. This Agreement and Tenant's right hereunder shall be subject and subordinate in all respects to any mortgage, deed of trust, or other lien now or hereinafter incurred by Landlord. Upon request of Landlord, Tenant will enter into a subordination agreement or other customary form as required by the lien holder.

24. No Partnership. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or any other fiduciary relationship between the Parties other than that of Landlord and Tenant. Neither Party is authorized to act as an agent or on behalf of the other Party.

25. Condemnation. In the event that all or a material portion of the Premises necessary for Tenant's Permitted Use of the Premises is taken for any public or quasi-public use under any governmental law, ordinance or regulation or by the right of eminent domain, this Agreement shall terminate on the date of such taking, and all rent under this Agreement shall be prorated and paid to such date. In the event such taking is less than a material portion of the Site, this Agreement shall remain in full force and effect; provided however, the rent due under this Agreement shall be reduced to such extent as may be fair and reasonable under the circumstances. Landlord and Tenant shall each be entitled to receive and retain such separate

awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings.

26. Limitation of Liability. Landlord is not responsible or liable for any loss, claim, damage or expense as a result of any accident, injury or damage to any person or property occurring anywhere on the Premises, unless resulting from the negligence or wilful misconduct of Landlord.

27. Assignment and Subletting. Tenant will not assign this Agreement as to all of or any portion of the Premises or make or permit any total or partial sublease or other transfer of all of or any portion of the Premises without Landlord's consent.

28. Quiet Enjoyment. If Tenant pays the rent and performs all other obligations under this Agreement, Tenant may peaceably and quietly hold and enjoy the Premises during the Term.

29. Force Majeure. In the event that Landlord or Tenant shall be delayed or hindered in or prevented from the performance of any act other than Tenant's obligation to make payments of rent, additional rent, and other charges required hereunder, by reason of strikes, lockouts, unavailability of materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, the act, failure to act, or default of the other Party, war or other reason beyond its control, then performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay.

35. Notices. All notices given under this Agreement must be in writing. A notice is effective upon receipt and shall be delivered in person, sent by overnight courier service or sent via certified or registered mail, addressed to Landlord or Tenant at the address stated above, or to another address that either Party may designate upon reasonable notice to the other Party.

30. Further Assurances. Each Party hereto agrees to execute and deliver any additional documents and to do all such other acts as may be necessary to carry out this Agreement and each Party's rights and interests in this Agreement.

31. No Waiver. No Party shall be deemed to have waived any provision of this Agreement or the exercise of any rights held under this Agreement unless such waiver is made expressly in writing.

32. Severability. If any provision of the Agreement is held to be invalid, illegal, or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal, and enforceable as though the invalid or unenforceable parts had not been included in this Agreement.

33. **Governing Law.** The terms of this Agreement shall be governed exclusively by the laws of the State of Oregon, without regard to its conflicts of laws rules.

34. **Disputes.** Any dispute arising from this Agreement shall be resolved in the courts of the State of Oregon.

35. **Attorneys' Fees.** If either Party brings legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover from the other Party its expenses (including reasonable attorneys' fees) incurred in connection with the action and any appeal.

36. **Amendments.** This Agreement may not be modified except in writing signed and acknowledged by both Parties.

37. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together, shall constitute one and the same document.

38. **Headings.** The section heading herein are for reference purposes only and shall not otherwise affect the meaning, construction, or interpretation of any provision in this Agreement.

39. **Entire Agreement.** This Agreement constitutes the entire understanding between the Parties and supersedes, terminates, and cancels all prior agreements of the Parties, whether oral or written, with respect to the Site, specifically including the Land Lease Agreement executed by Chad Minter for Tenant on February 11, 202 and Anne Heath for the City of Coburg on December 18, 2019.

IN WITNESS WHEREOF, the Parties hereto, individually or by their duly authorized representatives have executed this Agreement as of the Effective Date.

TENANT

LANDLORD

Chad Minter, Chief
Coburg Fire District

Anne Heath, City Administrator
City of Coburg

Dated

Dated