

RESOLUTION NO. 2280

A RESOLUTION AUTHORIZING A REAL PROPERTY LEASE FOR A PORTION OF THE OLD WASTEWATER TREATMENT PLANT SITE TO HAMILTON CONSTRUCTION.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. In 2014 Hamilton Construction was selected by ODOT to construct the I-84 Marine Dr. bridges.
2. The Site Lease provides for Rent of \$1,000.00 per month, for a period of 12 months.
3. The Lease is a mutually beneficial contract arrangement which provides revenue to the City and a laydown yard and office space to Hamilton Construction during construction of the I-84 Marine Dr. bridges.
4. The Lease supports the City Council goals to improve and support livability in Troutdale, to promote fiscal solvency and improve fiscal prioritization and budget accountability.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. Agrees now that the City enter into the real property Lease Agreement ("Lease Agreement") with Hamilton Construction.

Section 2. Designates the City Manager, Craig Ward, or Public Works Director, Steve Gaschler (each a "City Official"), or a designee of the City Official, to act on behalf of the City, and without further action by the City Council the City Official is hereby authorized, empowered and directed to sign the Lease Agreement on behalf of the City, and any and all other required and necessary documents to implement the intent of the agreement.

Section 3. The City Official is hereby authorized to execute, acknowledge and deliver the Lease Agreement in substantial conformity with Exhibit A of the Staff Report, including any other supporting and implementing documents, and to take any other action as may be advisable, convenient, necessary, or appropriate to give full force and effect to the

terms and intent of the resolution, and the execution thereof by any such City Official shall be conclusive as to such determination.

Section 4. Further, consistent with intent of the Lease Agreement, and in the best interest of the City, the City Official is authorized to determine, execute, acknowledge and deliver any subsequent addendums, appendices, extensions, revisions, modifications, or successor documents of the Lease Agreement, and the execution thereof by any such City Official shall be conclusive as to such determination.

Section 6. This Resolution shall be effective upon adoption.

YEAS: 6
NAYS: 0
ABSTAINED: 0



Doug Daoust, Mayor

Date 4/15/15



Debbie Stickney, City Recorder
Adopted: April 14, 2015

COMMERCIAL LEASE

Date: December 1, 2014 ("Effective Date")

Between: THE CITY OF TROUTDALE, an Oregon municipal corporation ("Landlord")
342 SW 4th Street
Troutdale, OR 97060
(503) 674-3300

And: HAMILTON CONSTRUCTION COMPANY, an Oregon corporation ("Tenant")
P.O. Box 659
2213 South F Street
Springfield, OR 97477
(503) 907-3015

Landlord and Tenant are referred to collectively herein as the "Parties."

Landlord leases to Tenant and Tenant leases from Landlord the following described property (the "Premises") on a non-exclusive basis, on the terms and conditions stated below:

A parcel of land approximately 41,215 square feet in size, the boundaries of which are illustrated and identified as the "area used by Hamilton Construction on the map attached to this Lease as Exhibit A.

Section 1. Occupancy.

1.1 Original term. The term of this Commercial Lease ("Lease") shall be for one year commencing December 1, 2014, and continuing through November 30, 2015 (the "Expiration Date"), unless sooner terminated as hereinafter provided ("Original Term").

1.2 Possession. Tenant's right to possession and obligations under the Lease shall commence on December 1, 2014.

1.3 Supersession. This Lease supersedes all previous leases to the Premises.

Section 2. Rent

2.1 Base rent. Tenant shall make a monthly base rent payment to the Landlord of \$1,000.00 due and payable to the Landlord on the first day of every month under the Lease, beginning December 1, 2014, except as provided in Section 2.2. Each such payment is referred to

herein as a "Base Rent Payment." The parties agree that the use of Landlord's property under this lease, for the above-specified Original Term, is valued at \$12,000.00

2.2 Utilities. If Tenant requires any utilities at the Premises, such as water, sewer, storm drainage, routine weekly solid waste collection (not the cost of collection and disposal of materials by special request), general site security services (except for public agency law enforcement calls for service), or other supportive utility service, it is Tenant's responsibility to identify, procure, and pay for any such utility. If Landlord pays for any such utilities, Tenant must reimburse Landlord for Tenant's proportionate share of such utility service.

Section 3. Use of the Premises

3.1 Permitted Use. Tenant may use the Premises for the purposes embodied in City of Troutdale Contract No. 14 PW 011, as well as for construction staging and office purposes in service of Tenant's current work for the Oregon Department of Transportation's I-84 Sandy River Bridge Construction Project, and for I-84 Marine Drive Interchange and other reasonably-related purposes.

3.2 Protective Restrictions.

- (1) Tenant shall not cause or permit use of herbicides or pesticides on the Premises without permission of Landlord. A written request for such use must be presented to Landlord at least forty-five (45) days in advance and reviewed by the City's Water Quality Control Coordinator and the Oregon Drinking Water Program Hydrologist. The request must contain the following information:
 - a. Purpose of chemical use.
 - b. Label name of product and copy of label and Material Safety Data Sheet (MSDS).
 - c. Graphic depiction of area of use.
 - d. Application rate and total use.
- (2) Storage of Hazardous Substances (other than routine office cleaning supplies in less than one gallon containers) is prohibited. The term "Hazardous Substance" shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material organic or synthetic as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions. The term "Environmental Law" means any federal, state, or local laws, ordinances, codes, statutes, regulations, administrative rules, policies and orders, and other authority existing now or in the future that classify, regulate, list, or define Hazardous Substances.

3.3 Non-exclusive grant. Landlord expressly reserves the right, for itself and its successors and assigns, to grant such other easements, rights, and licenses to such other persons or entities as Grantor may determine in its sole and absolute discretion, so long as they do not interfere with Grantee's permitted uses.

3.4 Lease not a bar to Landlord's rights to sell Premises. Landlord may transfer any or all of its interests in the Premises. If the city transfers a fee interest to any portion of the Premises, the following conditions apply :

- (1) This lease automatically terminates 30 days after the recordation date of a deed that embodies transfer of a fee interest in the Premises.

Section 4. Obligations

4.1 Landlord's obligations. The following shall be the responsibility of the Landlord:

- (1) Landlord shall not cause unreasonable interference with use of the Premises by Tenant

4.2 Tenant's obligations. The following shall be the responsibility of Tenant:

- (1) While this Lease is in effect, Tenant shall maintain the Premises, at its sole cost and expense, as a safe and workmanlike construction staging area and construction and demolition area.
- (2) Tenant shall comply with all local, state, and federal rules, laws, ordinances, and requirements regarding its maintenance and use of the Premises and shall obtain any and all required permits and licenses at its sole cost and expense.
- (4) Tenant is responsible for performing and paying for any improvements or alterations required under Tenant's obligation to comply with laws and regulations as set forth in Section 4.2(1).
- (5) Tenant shall repair any and all damage to the Premises caused by its actions, including its own negligence or that of a Tenant Party (as that term is defined in Section 7.2).

4.3 Inspection of Premises. Landlord shall have the right to inspect the Premises at any reasonable time with twenty-four (24) hour written notice to Tenant or upon shorter notice if

necessitated by an emergency.

Section 5. Insurance

5.1 Insurance Required. Landlord shall keep the Premises insured at Landlord's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Tenant shall carry similar insurance insuring the personal property of Tenant on the Premises against such risks.

5.2 Waiver of Subrogation. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

5.3 Liability Insurance. As a condition of remaining in possession of the Premises, Tenant shall procure, and thereafter during the term of the Lease shall continue to carry, the following insurance at Tenant's cost: Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	1,000,000
Products-Completed Operations Aggregate	1,000,000
Personal & Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one fire)	50,000
Medical Expense (Any one person)	5,000
Worker's Compensation	n/a

Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the premises. Such insurance shall protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant, and shall name Landlord as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring a 10-day written notice to Landlord prior to any change or cancellation shall be furnished to Landlord prior to Tenant's taking possession of the Premises.

Section 6. Taxes

6.1 Personal property taxes. Tenant shall pay as due all taxes on its personal property

located on the Premises.

6.2 Real property Taxes. Landlord is exempt from paying real property taxes levied against the Premises for property that is in public use. However, Tenant is responsible for any real property taxes assessed by Multnomah County or the State of Oregon stemming from the tenancy created by this Lease. Tenant shall pay, on the date due, any such full tax obligation. As used herein, real property taxes includes any fee or charge relating to the ownership, use, or rental of the Premises, other than taxes on the net income of Landlord or Tenant or personal property.

6.3 Deleted

Section 7. Liability and indemnity

7.1 Liens.

- (1) Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent which shall be payable within thirty (30) days of demand. Such action by Landlord shall not constitute a waiver of any right or remedy that Landlord may have on account of Tenant's default.
- (2) Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien, bond around the lien as provided under Oregon law, or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

7.2 Indemnification by Tenant. Tenant agrees to indemnify, defend (with counsel reasonably acceptable to Landlord), and hold Landlord and its directors, officers, representatives, agents, property managers, and employees harmless from and against all liabilities, damages, claims, losses, judgments, charges, and expenses (including reasonable attorneys' fees and court costs) arising from or in any way related, directly or indirectly, to (i) Tenant's or its directors, officers, members, managers, agents, employees, subtenants, or invitees ("Tenant Parties") use of the Premises, (ii) the conduct of Tenant's business, (iii) from any activity, work or thing done or permitted by Tenant or a Tenant Party in or about the Premises, (iv) in any way connected with the Premises or with the improvements or personal property therein, including, but not limited to, any liability for injury to person or property of Tenant, Tenant Parties, or third party persons, and/or (v)

Tenant's failure to perform any covenant or obligation of Tenant under this Lease. Tenant's agreement to indemnify Landlord pursuant to this Section 7.2 is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease. Tenant agrees that the obligations of Tenant herein shall survive the expiration or earlier termination of this Lease.

Section 8. Quiet enjoyment

Landlord warrants that it is the owner of the Premises and has the right to lease the Premises free of all encumbrances. Landlord will defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term, subject to the provisions of Section 3.4.

Section 9. Assignment and Subletting

Tenant may not assign, mortgage, or sublease the whole or any part of the Premises, nor may Tenant grant a right of use of any portion of the Premises to any third person by any other means, without the prior written consent of Landlord which Landlord may withhold in its sole and absolute discretion. This provision shall apply to all transfers by operation of law. Landlord may withhold or condition such consent in its sole and arbitrary discretion.

Section 10. Tenant Termination. Notwithstanding any other provision of this Lease, Tenant may terminate this Lease, prior to the Expiration Date, by providing thirty (30) days prior written Notice to Landlord. Termination or abandonment by Tenant shall not give rise to a claim for reimbursement of rent payment for work performed pursuant to Section 2.2.

Section 11. Default

The following shall be events of default:

11.1. Default in rent. Failure of Tenant to perform its obligations as stated in Section 2.

11.2. Default in other covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of the Lease (other than Section 2) within fifteen (15) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the fifteen (15-) day period, this provision shall be complied with if Tenant begins correction of the default within the fifteen (15-) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

11.3. Insolvency. Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary

petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within ten (10) days shall constitute a default. If Tenant consists of two or more individuals or business entities, the events of default specified in this Section 10.3 shall apply to each individual unless within ten (10) days after an event of default occurs, the remaining individuals produce evidence satisfactory to Landlord that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the Lease.

11. 4. Abandonment. Failure of Tenant for thirty (30) days or more to occupy the Premises for one or more of the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease.

11. 5. Breach of public works contract. Any breach of the terms of City of Troutdale Contract 14 PW 011 constitutes a default under this Lease.

Section 12. Remedies of default

12. 1. Termination. In the event of a default, the Lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not the Lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant of the default, and Landlord may reenter, 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 and without having accepted a surrender.

12. 2. Reletting. Following reentry or abandonment, Landlord may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use or purpose other than that specified in the Lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant that Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

Section 13. Surrender at expiration

13. 1. Condition of premises. Upon expiration of the lease term or earlier termination of the Lease on account of default, Tenant shall surrender the Premises, first rendering it safe by removing or remediating all known or reasonably-suspected dangers. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be accepted but repairs for which Tenant is responsible shall be completed to the latest practical date prior to such surrender.

13. 2. Fixtures.

- (1) All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures, shall, at Landlord's option, become the property of Landlord. If Landlord so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure.
- (2) Prior to expiration or other termination of the lease term Tenant shall remove all furnishings, furniture, temporary offices, trailers, construction debris that is not becoming or intended to become fill, and trade fixtures that remain its property. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within ten (10) days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Landlord.

13.3. Holdover.

- (1) If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month-to-month, subject to all of the provisions of this Lease except the provisions for base rent, term and renewal, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Base rent during every holdover period shall be 125% of the base rent in effect at the time the applicable Lease term expires or is terminated. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this Lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.
- (2) If a month-to-month tenancy results from a holdover by Tenant under this Section 13(2), the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than sixty (30) days prior to the termination date that shall be specified in the notice. Tenant waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

Section 14. Miscellaneous.

14. 1. Nonwaiver. Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

14. 2. Notices. Any notice required or permitted under this Lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this Lease or to such other address as may be specified from time to time by either of the parties in writing.

14. 3. Succession. Subject to the above-stated limitations on transfer of Tenant's interest, this Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

14. 4. Recordation. Tenant shall not record this Lease without Landlord's written consent.

14. 5. Time of essence. Time is of the essence of the performance of each of Tenants obligations under this Lease.

14. 6. Modification. Any modification of the provisions of this Agreement shall be reduced to writing and signed by the parties.

14. 7. Governing laws; venue. This Agreement shall be governed by the laws of the State of Oregon. Venue shall be in the Circuit Court for Multnomah County, Oregon.

14. 8. Entire agreement. This Agreement contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the services described herein.

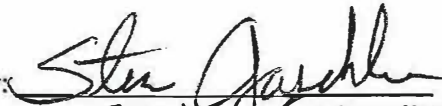
14. 9. Severance. If any provision of this Agreement is held to be invalid, it will not affect the validity of any other provision. This Agreement will be construed as if the invalid provision had never been included.

14. 10. Counterparts. This Agreement may be executed in counterparts, each of which, when taken together, shall constitute fully executed originals.

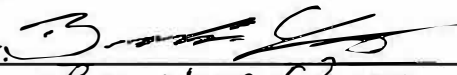
Section 15. Dispute resolution. The Parties agree that it is in their respective best interests to attempt to resolve disputes that arise under this Lease in a quick and inexpensive manner. To that end, the Parties commit to use their best efforts to resolve disputes informally. For all disputes that arise pursuant to this Lease, the Parties shall negotiate with one another in good faith in an effort to reach resolution of the dispute. In the event that the Parties'

Section 15. Dispute resolution. The Parties agree that it is in their respective best interests to attempt to resolve disputes that arise under this Lease in a quick and inexpensive manner. To that end, the Parties commit to use their best efforts to resolve disputes informally. For all disputes that arise pursuant to this Lease, the Parties shall negotiate with one another in good faith in an effort to reach resolution of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) days after the commencement of negotiations, the Parties shall submit the issue to a qualified mediator in good faith to attempt to resolve the dispute and the cost of the mediator shall be shared equally by the Parties. If the dispute cannot be resolved through mediation within ninety (90) days, then the dispute shall be submitted to and resolved by binding arbitration. The arbitration shall be held in the Portland, Oregon metropolitan area, consistent with the rules of the Arbitration Services of Portland, Inc. Cost of the arbitrator will be shared equally by the Parties. Except as otherwise required by law, the arbitrator's final award shall be final, binding, and non-appealable; and no Party may seek any amendment to or reconsideration of the arbitrator's final award except for correction of non-substantive scrivener's or administrative errors. Judgment upon the arbitration award may be entered in any court having jurisdiction. Notwithstanding the foregoing, the Parties may resort to a court of competent jurisdiction for any matter in which injunctive relief is an appropriate remedy.

THE CITY OF TROUTDALE, an Oregon
Municipal Corporation

By: 
Name: STEVE GASCHLER
Its: PUBLIC WORKS DIRECTOR
4-16-15

HAMILTON CONSTRUCTION
COMPANY, an Oregon
corporation

By: 
Name: Brandon Gowdy
Its: 3-11-15