



CITY of THE DALLES

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THE DALLES, OREGON 97058

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AGENDA STAFF REPORT CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
November 8, 2010		

TO: Mayor and City Council

FROM: Nolan K. Young, City Manager *NKY*

DATE: November 5, 2010

ISSUE: Lease of the Transportation Center

BACKGROUND: November 2nd at 2pm was the deadline for the receipt of proposals for the lease of the Transportation Center. We previously sent copies of the Request for Proposals to interested parties and advertised in the local newspaper. We received one proposal "By and on behalf of Veterans". The leasing party for this proposal would be Wasco County. Attached is a copy of their proposal. We received a second proposal one day late, and did not consider it because it did not meet the deadline.

We have met with Wasco County officials and negotiated the attached lease. It is a two-year lease beginning December 1, 2010. There is no cash rent/lease payments required. Instead, the following in lieu of rent provisions have been agreed to:

1. Lessee shall be responsible for all utility payments.
2. Lessee agrees that they will replace the carpet, paint the interior of the facility at their cost, and be responsible for repair and maintenance of the interior of the building.
3. Lessee shall maintain the restrooms in the building as public restrooms from 9am to 5pm Monday – Friday, except on holidays.
4. Lessee shall pay for all needed paper products for and cleaning of the restrooms.
5. Lessee shall allow the City to place a 4' x 8' visitor's pamphlet kiosk in the foyer with 50% of the space being available for use by the Veterans Office and the remaining 50% to be used for visitor information. Lessee will work with the Chamber of Commerce to make sure the kiosk is properly stocked.

6. Lessee shall allow the Chamber through its downtown merchants to use the foyer for Santa visits the day after Thanksgiving and every Saturday from Thanksgiving to Christmas.

Because there was only one proposal, the City Attorney has advised that it is not necessary for us to hold an executive session. After reviewing the Staff Report and receiving public comments the Council could approve the Lease as proposed.

BUDGET IMPLICATIONS: The City will be losing about \$10,000 in rent but will not be spending (under the proposed lease) about \$800 a year on restroom paper supplies and approximately \$3,320 in utility cost for that portion which was the City's responsibility under our prior leases.

COUNCIL ALTERNATIVES:

1. ***Staff Recommendation:*** *Authorize the City Manager to sign the proposed lease for the Transportation Center with Wasco County for use the Veteran's Affairs Office.*
2. Amend the proposed lease and authorize the City Manager to sign the lease if the changes are accepted by Wasco County.
3. Delay action to allow for further research.
4. Decline to lease the Transportation Center to Wasco County and send out a new RFP.

LEASE

This Agreement of Lease made as of the 1st day of December, 2010 between the City of The Dalles, a municipal corporation of the State of Oregon, hereinafter referred to as City, and Wasco County, a municipal corporation and political subdivision of the State of Oregon, hereinafter referred to as County;

WITNESSETH:

WHEREAS, the City owns the property commonly known as the Transportation Center located at 201 E. Federal, in The Dalles, Oregon; and

WHEREAS, the City issued a Request for Proposals from interested persons and organizations setting forth the terms for a potential lease agreement of the Transportation Center; and

WHEREAS, on behalf of the Mid-Columbia Veterans' organization, the County submitted a response to the City's Request for Proposals; and

WHEREAS, the City and County have mutually agreed upon the terms of a lease for the Transportation Center based upon the response submitted by the County;

NOW, THEREFORE, In consideration of the above stated facts and the mutual covenants and agreements contained herein, and other valuable consideration, the parties agree as follows:

AGREEMENT

Section 1. Lease of Facilities.

City leases to County and grants to Wasco County for Mid-Columbia Veterans' organization, its employees, agents, officers and clients the use of the entire area located within the Transportation Center measuring approximately 50 feet by 30 feet, which area is shown on the map attached as Exhibit "A".

Section 2. Term.

The initial term of the Agreement of Lease shall be from the 1st day of December, 2010, until the 1st day of December, 2012. City has agreed that representatives of the Wasco County for Mid-Columbia Veterans' organization may begin moving personal property into the leased premises prior to December 1, 2010. This Agreement shall thereafter be automatically renewed on an annual basis, subject to the right of termination by either party as set forth in Section 24.

Section 3. Rental.

County shall pay no monetary rent to the City for this Lease. In lieu of rent, County has agreed that County will have the interior walls repainted and replace the existing carpet in the Transportation Center, and the County will arrange to have the utilities placed in the name of the County as set forth in Section 4 of this Lease. County will be responsible for the maintenance of the restroom located in the Transportation Center, including the costs or providing paper products and cleaning supplies for the restroom.

Section 4. Utilities.

County shall place all utility accounts in the name of the County, and the County shall be responsible for payment of the costs of all utilities for the leased premises.

Section 5. Uses of Premises.

County agrees to use the leased premises for the operation of a facility serving veterans. The County has agreed to allow the City to place a four foot by eight foot visitor kiosk in the foyer of the leased premises. Fifty percent of the space in the kiosk may be used for the display of brochures and information related to the activities and services of the Mid-Columbia Veterans' organization, and the remaining fifty percent of the space in the kiosk shall be used for the display of tourist related services. The Mid-Columbia Veterans' organization shall work with representatives of The Dalles Area Chamber of Commerce to facilitate placement of brochures and other information in the portion of the kiosk dedicated for tourism information. The restrooms in the Transportation Center will be posted with signs indicating they can be used by the public between 9:00 AM to 5:00 PM, Monday through Friday, except for holidays.

County also agrees the area consisting of the foyer in the leased premises will be available for use by representatives of The Dalles Chamber of Commerce and downtown merchants, on the day after Thanksgiving and every Saturday during the month of December, for Christmas and holiday-related activities.

County agrees to make no unlawful, improper or offensive use of the premises or to use the premises in such a manner as to constitute a nuisance to other tenants or the public, or for any purpose which would increase the fire hazard to the building, to the extent that fire insurance rates on the rented premises would increase.

Section 6. Remodeling and Repair.

A. County agrees to keep the premises in a neat, clean and proper condition at all times. City shall be responsible for repair and maintenance of the exterior of the Transportation Center building, and County will be responsible for repair and maintenance of the interior of the building. In the event County or shall desire to renovate or remodel the premises or any part thereof, the same may be done by County only after first having obtained the express written consent of City and then only at the expense of the County. County shall not permit any structural change or allow any changes to be made which will weaken the structure of the building in which the rented premises are located. Any remodeling or renovation of any kind and any maintenance and repair required to be performed by the County shall not increase the fire hazard and shall conform with state laws, City ordinances and regulations and with rules of all political subdivisions, commissions, boards and agencies having authority over the premises in regard to safety, sanitation, fire protection and building requirements, and shall be constructed by licensed contractors.

Section 7. Assignment, Selling or Subletting.

County shall not assign, sell or transfer its interest in this agreement or sublet any part of the premises without first having obtained the express written consent of the City, which consent shall not be unreasonably withheld by City. In the event County shall attempt to assign, sell or transfer its interest in this lease agreement or any part hereof, without having first obtained the express written consent of City, this agreement shall be null and void and City shall have an immediate right of entry.

Section 8. Hold Harmless and Indemnification.

County shall indemnify, defend, save, protect, and hold harmless the City, its officers, agents and employees from any and all claims, costs, and liability, including reasonable attorneys' fees, for any damage, injury, or death, including without limitation all consequential damages from any cause whatsoever, to persons or property arising directly or indirectly from or connected with the County's performance of their operations, the acts, errors or omissions of the County, their agents, contractors, guests, or employees, or the use and possession of the premises, by County, or any sub-tenant, their agents, contractors, guests, or employees, save and except claims or litigation arising through (and only to the extent of) the sole negligence or sole willful misconduct of the City, its agents, officers, or employees, and if required by the City, will defend any such actions at the sole cost and expense of the County.

Section 9. Insurance.

County shall maintain a policy of comprehensive premise liability insurance upon the leased premises, naming City as additional insured. The terms of such policy shall provide thirty (30) days notice to City prior to cancellation and shall be in the form of Comprehensive General Liability coverage and shall have combined single limit coverage of \$1,000,000 per occurrence. An original certificate showing coverage shall be presented to the City Attorney for approval, which approval may be withheld in the event that either the policy or the carrier are unsatisfactory to the City. Failure of County to maintain an approved policy of insurance shall constitute a default under this agreement.

Section 10. Waiver of Subrogation.

Either party may insure the improvements on the leased premises as their interest may appear and for their separate insurable interest in whatever amount is desired against loss or damage or destruction by fire or other casualty without naming the other party as a named insured. Neither party shall be liable to the other for any loss or damage to the improvements caused by fire or any of the risks enumerated in a standard fire insurance policy with or without an extended coverage endorsement if such insurance was affordable at the time of such loss or damage. If requested by the other party, each party to this lease shall obtain from their respective fire insurance carriers, if issued, waivers of subrogation against the other party, and its agents, officers and employees.

Section 11. Access to Premises; Lessee Not to Commit Waste.

City and its agents may have free access to the premises at all times for the purposes of examining and inspecting the premises to ascertain whether covenants or agreements contained in this agreement are being performed by County. County shall not commit, or allow to be committed, any waste upon the premises, or any nuisance or other act or thing which may disturb the quiet enjoyment of the use of the Transportation Center or surrounding property. County shall at all times comply with all applicable laws, rules and regulations of federal, state or local governmental agencies.

Section 12. Damage or Destruction by Fire or Other Casualty.

In the event the Transportation Center shall be partially or wholly damaged by fire or other casualty, City shall have the option to either rebuild the structure, or terminate this lease agreement. In the event City elects to proceed with rebuilding the structure, City will use it best

efforts to allow the County to remain in the structure while the rebuilding is in progress. In the event the City elects to terminate the lease agreement, City shall provide notice of the termination to County within fourteen (14) days of the date the casualty occurred.

Section 13. Removal of Fixtures, Furniture and Equipment.

Upon termination of this agreement or during the term of this agreement, County shall have the right to remove all equipment, furniture and fixtures owned by the County, which have not become attached to the leased premises. In the event County removes any said equipment, furniture or fixtures which County is empowered and entitled to remove and by such removal causes damage or injury to the leased premises, County agrees to repair the damages or injury immediately, at County's expense, and to restore the premises to as good a state or condition as the premises were at the beginning date of this agreement.

Section 14. Limitation of City's Responsibility.

City shall not be liable for any injury or damage of any kind to persons or property, including but not limited to County's equipment or property belonging to the County's clients or customers, resulting from a condition of the premises created by an act or omission to act in regard to maintenance or repair of the leased premises. City shall not be responsible for any theft of or damage to equipment or personal property stored on the premises by County or the County or Mid-Columbia Veterans' organizations clients or customers.

Section 15. Default.

If County breaches any of the covenants set forth in this agreement, then City may give thirty (30) days notice of intent to terminate the lease. If the default has not been cured within thirty (30) days after notice has been given to County, City may enter upon the premises and any part thereof, at its option, and repossess the premises. In case of a default, City may elect to use the remedy provided herein for repossession in addition to any other remedy provided by law. In the event it is necessary or desirable to institute a suit or action to enforce any of the covenants or provisions of this agreement, to affect reentry upon the premises let by City, County agrees to pay City its attorney fees and expenses in such suit or action. County agrees on the last day of occupancy, to peaceably and quietly surrender the premises to City in as good a state or condition as the same are now or hereafter may be put into, the reasonable use, wear and tear thereof, and damage by the elements excepted.

Section 16. Notices.

Any and all notices given under this Lease, or otherwise, may be served by enclosing the notice in a sealed envelope addressed to the party intended to receive the notice, at its address, and deposited in the United States Post Office as certified mail with postage prepaid. Unless otherwise provided in writing by the parties hereto, the address of City and County and the proper party to receive any such notices is set forth below:

CITY
City Manager
313 Court Street
The Dalles, OR 97058

COUNTY
Commission Chair
511 Washington
The Dalles, OR 97058

Section 17. Savings Clause.

In the event that any part of this agreement or application thereof shall be determined to be invalid by a court of competent jurisdiction such findings shall have no effect on the remaining portions of this lease.

Section 18. Mechanic's and Materialman's Liens.

Neither City nor County shall permit any mechanic's, materialman's, or other lien against the premises or the property of which the premises forms a part in connection with any labor, materials, or services furnished or claimed to have been furnished. If any such lien shall be filed against the premises or property of which the premises form a part, the party charged with causing the lien will cause the same to be discharged; provided, however, that either party may contest any such lien, so long as the enforcement thereof is stayed.

Section 19. Waiver.

The waiver by City of performance by County of any covenant, term, or condition of this lease shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

Section 20. Written Agreement.

Neither party has relied upon any promise or representation not contained in this lease. All previous conversations, negotiations, and understandings are of no further force or effect. This lease agreement may be modified only in writing signed by both parties. The headings of the paragraphs are for convenience only and are not part of this lease, nor shall they be considered in construing the intent of this lease agreement.

Section 21. Applicable Law.

This agreement shall be governed by the law of the State of Oregon.

Section 22. Quiet Enjoyment.

The City agrees that it will not interfere with County's quiet and peaceful enjoyment of the demised premises, or that of County's employees, agents, officers, or clients, subject, however, to the provisions hereof.

Section 23. Signs.

All signs erected, placed or maintained by County or the Mid-Columbia Veterans' organization or allowed to be erected, placed, or maintained by it, on the demised premises must be first approved by the City and shall relate to the business conducted by the Mid-Columbia Veterans' organization on the demised premises. County and the Mid-Columbia Veterans' organization shall not place any sign on the demised premises in violation of any law or ordinance or rule of any governmental agency.

Section 24. Renewal.

It is understood and agreed that after the initial term of this Agreement of Lease, the agreement will be renewed on annual basis beginning with the lease term that will commence on

least sixty (60) days prior to the annual renewal date of December 1. Either party may terminate this lease at any time with written 90 day notice.

IN WITNESS WHEREOF, the parties have caused this Agreement of Lease to be executed by the appropriate officers acting pursuant to due authorization all al of the day and year first above written.

WASCO COUNTY, a municipal corporation and political subdivision of the State of Oregon

By _____
Chair

CITY OF THE DALLES, a municipal corporation of the State of Oregon

Nolan K. Young, City Manager

Attest:

Julie Krueger, MMC City Clerk

Approved as to form:

Gene E. Parker, City Attorney

FLOOR PLAN.

EXHIBIT "A"

