



CITY OF NEWBERG
CITY RECORDER INDEX NO. 1600

***INTERGOVERNMENTAL
LEASE AGREEMENT***

BETWEEN

CITY OF NEWBERG

AND

YAMHILL COUNTY

FOR SPACE IN THE NEWBERG PUBLIC SAFETY FACILITY

April 22, 1998

8098-291



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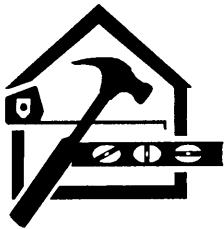




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**INTERGOVERNMENTAL LEASE AGREEMENT
BETWEEN
CITY OF NEWBERG
AND
YAMHILL COUNTY**

FOR SPACE IN THE NEWBERG PUBLIC SAFETY FACILITY

This AGREEMENT is made and entered into this 23 day of April, 1998, by and between the following parties:

CITY OF NEWBERG,
an Oregon Municipal Corporation
414 East First Street
Newberg, OR 97132
hereinafter referred to as "CITY"

YAMHILL COUNTY,
a County of the State of Oregon
Yamhill County Courthouse
535 East 5th Street
McMinnville, OR 97128
hereinafter referred to as "COUNTY"

RECITALS:

1. CITY is presently constructing a public safety facility to house the operations of the Newberg Police Department, the emergency dispatch center, and other necessary governmental administration.
2. The COUNTY provides services to the citizens of Newberg and Yamhill COUNTY for probation, parole, and other necessary services for which the COUNTY has need of space in the East end of the COUNTY.
3. The CITY can construct and provide space for the COUNTY to deliver the necessary services if the necessary funds for construction are immediately made available.
4. It would be to the benefit of the CITY, COUNTY and the citizens that they serve to have available certain services of the COUNTY in the Newberg Public Safety Facility (NPSF) as well as a benefit to both by enhancing communication and allowing better coordination between the entities.
5. The CITY and COUNTY have the authority under ORS Chapter 190 to enter Intergovernmental Agreements for the purpose of leasing or letting facilities for it's operations.



NOW, THEREFORE, CITY AND COUNTY IN CONSIDERATION OF MUTUAL PROMISES AND COVENANTS CONTAINED HEREIN, AGREE AS FOLLOWS:

SECTION 1 - PREMISES

The CITY leases to the COUNTY and the COUNTY leases from the CITY the following described premises on the terms and conditions stated below:

See Attached Exhibit "A"

Further, the space and layout is contained within the overall plans of the Newberg Public Safety Facility which have been furnished to the COUNTY and are incorporated as part of this Agreement. Such overall plans shall indicate the egress and exit to the space, available parking for facility which COUNTY may use, public meeting room and restroom facilities.

SECTION 2 - OCCUPANCY

- 2.1 Original Term:** The CITY shall Lease to the COUNTY the premises for the term of twenty-five (25) years, unless sooner terminated as hereinafter provided. The term of this Lease shall commence on the first day of the month following the issuance to the CITY of an occupancy permit for the NPSF. Parties will attach to this Lease a Certificate designating the dates of the commencement and termination of the original term substantially in the form attached to this Lease and designated as Certificate of Original Term.
- 2.2 Possession:** The COUNTY's right to possession and obligations under the Agreement shall commence on the first day of the month following the issuance to the CITY of an occupancy permit for NPSF. The CITY shall have no liability for delays in delivery of possession and the COUNTY will not have the right to terminate this Lease Agreement because of delays caused by matters not within the CITY's reasonable control. The COUNTY shall have reasonable access to the premises for purposes of inspection of construction, improvements and other necessary work as long as there is no interference with the construction activity of the CITY's contractor.
- 2.3 Renewal Option:** At the end of the original term, the COUNTY may renew the Lease for an additional one (1) year term, or any other agreed upon term if the following conditions and terms are agreed upon and met:
- 2.3.1 The Lease Agreement is not in default at the time of renewal option is exercised.
- 2.3.2 The COUNTY gives the CITY six (6) months notice prior to the end of the original term that the COUNTY wishes to renew the Lease Agreement.
- 2.3.3 The CITY does not need the premises for the CITY's operations and services.
- 2.3.4 The parties agree on the rent for the term. If the rent cannot be agreed upon, the rent shall be determined by a qualified, independent real property appraiser familiar with commercial or similar rental values in the area. The appraiser shall be chosen by COUNTY from a list of not less than five (5) such individuals submitted by the CITY. If COUNTY does not



make the choice within five (5) days after submission of the list, the CITY may do so. If CITY does not submit such a list within ten (10) days after written request from the COUNTY to do so, COUNTY may name as an appraiser any individual with such qualifications. Within thirty (30) days after his/her appointment, the appraiser shall return his/her decision, which shall be final and binding upon both parties. The cost of the appraisal shall be born equally by both parties.

SECTION 3 - RENT

- 3.1 Base Rent:** The COUNTY shall pay to the CITY as base rent for the original twenty-five (25) year term of this lease the sum of Eighty-five Thousand Nine Hundred Sixty-nine dollars (\$85,969.00). Such amount is immediately due and payable. The CITY acknowledges receipt of such payment. Attached are the calculations for the base rent which is marked as Exhibit "B" and by this reference incorporated. This amount is the cost of construction of the premises to be leased to the COUNTY based upon the CITY's overall cost to construct. Such amount has been calculated upon the square footage of the premises.
- 3.2 Additional Rent:** Utility charges that the COUNTY is required to pay by this lease agreement and any other sum that COUNTY is required to pay to CITY shall be additional rent.

SECTION 4 - USE OF PREMISES

- 4.1 Permitted Uses:** The premises shall be used by Yamhill COUNTY Community Corrections Department for probation and parole services furnished by that Department including office space for personnel, interview rooms, clients and waiting area for clients. In addition, if authorized by the Board of Commissioners, the premises may be used for interview of clients and other related activities by the Yamhill COUNTY Juvenile Department. Further, COUNTY may use the premises for County interdepartmental meetings approved by the Community Correction's Manager which relate to departmental functions.
- 4.2 Other Uses:** Any other uses other than the permitted uses shall be agreed upon by the parties.

SECTION 5 - REPAIRS AND MAINTENANCE

- 5.1 CITY'S Obligations:** The following shall be the responsibility of the CITY:
- 5.1.1 Repair and maintenance of the roof, gutters, exterior walls (including painting), bearing walls, structural members, floor slabs and foundation.
- 5.1.2 Repair of sidewalks, driveways, curbs, parking areas and areas used in common by CITY and COUNTY.
- 5.1.3 Repair and maintenance of exterior water, sewage, gas and electrical service up to the point of the entry to the leased premises.
- 5.1.4 Repair and maintenance of the central heating and central air conditioning system.



5.2 COUNTY'S Obligations: The following shall be the responsibility of the COUNTY:

- 5.2.1 Repair of the interior walls, interior ceiling, interior doors, interior windows, and related hardware-like fixtures, switches and wiring and plumbing from the point of entry to the premises. Repair or replacement, if necessary, of carpet provided by CITY under Section 6.1.
- 5.2.2 Any repair necessitated by the negligence of the COUNTY, it's agents, employees, and invitees.
- 5.2.3 Any repairs to the leasehold improvements that the COUNTY has installed.

5.3 Reimbursement for Repairs Assumed: If either party fails or refuses to make repairs that are required by this Section, the other party may make the repairs and charge the actual cost of the repairs to the first party.

5.4 Inspection of Premises: CITY shall have the right to inspect the premises at any reasonable time or times to determine the necessity of repair. Whether or not such inspection is made, the duty of the CITY to make repairs shall not mature until reasonable time after City has received from COUNTY written notice of the repairs that are required.

SECTION 6 - ALTERATIONS AND IMPROVEMENTS

6.1 Leasehold Improvements: The CITY leases the premises to the COUNTY with finished exterior and interior walls, finished ceiling, floor with carpet, electrical outlets, telephone outlets and light fixtures. The COUNTY shall provide and install its own equipment, furniture, and non-fixture accessories necessary to make the premises usable for the COUNTY's purposes. Prior to making improvements or modifications to the premises which would constitute revisions to real property, the COUNTY shall provide the CITY with 10 days advance written notification of the planned improvements or modifications. The CITY may withhold permission to make the planned improvements or modifications within the 10 day period, but permission shall not be unreasonably withheld. If no response is received by the COUNTY within the 10 day period, the COUNTY may construct the improvements or modifications at its own expense.

6.2 Access to Premises for Purpose of Making Improvements: The CITY shall grant the COUNTY access to the premises for purposes of making the leasehold improvements during the construction period if the access does not interfere with the CITY's contractor. The CITY and COUNTY shall cooperate in allowing the COUNTY to commence improvements as soon as possible even prior to occupancy of the building. The CITY shall allow the COUNTY access where possible to the facility in order to complete the improvements in a timely fashion.

6.3 Ownership and Removal of Alterations and Improvements: All improvements and alterations performed on the premises by either the CITY or the COUNTY shall be the property of the CITY when installed unless agreed to otherwise.



SECTION 7 - INSURANCE

- 7.1 Insurance Obligations:** The CITY shall keep the premises insured at CITY'S expense against fire and other risk covered by the standard fire insurance policy with an endorsement for extended coverage. The COUNTY shall carry similar insurance insuring all COUNTY personal property of the COUNTY on the premises. It is the intent of this agreement that the CITY shall insure all real property including fixtures and the COUNTY shall be responsible for insuring all of its personal property on the premises. CITY and COUNTY shall coordinate insurance coverage to insure coverage is adequate to satisfy the parties.
- 7.2 Proof of Insurance:** Either party shall furnish proof of the required insurance to the other party upon request. Insurance shall be in the form and amount reasonably satisfactory to the other parties legal counsel.

SECTION 8 - UTILITIES

- 8.1 Utilities:** COUNTY shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the period, including but not limited to charges for fuel, water, gas, electricity, sewage disposal, power, refrigeration, air conditioning, telephone, and janitorial services. If any utility services are provided by and through the CITY, and the charges are not separately metered or stated, CITY shall apportion the charges on an equitable basis and COUNTY shall pay it's apportioned share on demand.
- 8.2 Telephone Services:** The COUNTY shall be responsible for providing its own telephone services for it's use on the premises. The CITY shall allow reasonable access to the building for the provision of phone services. The CITY will cooperate with the COUNTY in joint use of any necessary equipment in order to facilitate the delivery of phone services to the COUNTY. CITY shall retain ownership of such joint use equipment with the COUNTY paying a portion of the cost on a pro-rated basis based upon use.

SECTION 9 - ACCESS TO THE FACILITY

- 9.1 Common Area:** The COUNTY shall have access to all entries, hallways, and other entrances in order to access their space. The CITY may control the method of access to the COUNTY premises based upon security needs. CITY and COUNTY shall cooperate in determining the best access and all necessary security needs.
- 9.2 Public Meeting Room:** The NPSF shall have a large public meeting room. The COUNTY may have access and use of the public meeting room based upon availability with no charge by the CITY other than normal prorated charge for cleaning or janitorial services.
- 9.3 Parking:** The COUNTY shall have access to the parking area for the NPSF. The citizens wishing service from the COUNTY shall have access to the public parking areas. Employees of the COUNTY shall have access to the private parking areas and may be assigned parking spaces. The CITY shall have the right to designate the exact location of the parking areas.



SECTION 10 - DAMAGE AND DESTRUCTION

- 10.1 Partial Damages:** If the premises are partly damaged and Section 10.2 does not apply, the premises shall be repaired by CITY at CITY's expense. The repairs shall be accomplished with all reasonable dispatch subject to interruption and delays caused by labor disputes and other necessary process to contract and construct the improvements. In performing any other work performed on or around the premises, the CITY shall not cause unreasonable interference with the use of the premises by the COUNTY. The COUNTY shall have no right to an abatement of rent or any claim against the CITY for any inconvenience or disturbance resulting from the CITY's activities performed in conformance with the requirements of this provision.
- 10.2 Destruction:** If the premises are destroyed or damaged such that the cost of repairs exceeds fifty percent (50%) of the value of the structure before the damage, either party may elect to terminate the lease as of the date of the damage or destruction by notice given to the other in writing not more than forty-five (45) days following the date of damage. In such event all rights and obligations of the party shall cease as of the date of termination. The COUNTY shall be entitled to reimbursement of the entire amount of the base rent if such destruction occurs during the first ten (10) years of the lease and the termination amount if destruction occurs during the last fifteen (15) years of the lease. After such time, COUNTY shall be entitled to any prepaid amounts paid by COUNTY. If neither party elects to terminate, CITY shall proceed to restore the premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for normal labor disputes and other processes required to contract the work.

SECTION 11 - LIABILITY AND INDEMNITY

- 11.1 Indemnification:** Each party is a public entity. Each party shall indemnify and defend the other party from any claims, loss, or liability arising out of or relating to the sole negligence of that party and/or that party's agents, officers, or employees.
- 11.2 Liability Insurance:** Each party shall carry comprehensive general liability insurance to the limits required under the Oregon Governmental Tort Claim's Act with a responsible company. Certificates evidencing such insurance and bearing endorsements shall be furnished to the other party with endorsements requiring ten (10) days written notice to the other party in case of change or cancellation upon request by the other party. Such insurance shall be satisfactory to each parties legal counsel.

SECTION 12 - ASSIGNMENT AND SUBLETTING

No part of the premises may be assigned or subleased nor may a right of use to any portion of the property be conferred on any third person by any other means without the prior written consent of the CITY. No consent in one instance shall prevent the provisions from applying to subsequent instances.



SECTION 13 - DEFAULT AND TERMINATION

- 13.1 Default in Rent:** Failure of COUNTY to pay any rent or other charge within twenty (20) days after written notice thereof shall be an event of default.
- 13.2 Default in Other Covenants:** Failure of COUNTY to comply with any terms and conditions or fulfill any obligations of the Lease Agreement (other than the payment of rent or other charges) within twenty (20) days after written notice by CITY specifying the nature of the default with reasonable particularities is an event of default. If the default is of such a nature that it cannot be completely remedied within the twenty (20)- day period, this provision shall be complied with if COUNTY begins correction of the default within the twenty (20) -day period and thereafter proceeds with reasonable diligence and in good faith to effect remedy as soon practicable.
- 13.3 Termination in the First Fifteen (15) Years of the Original Term:** During the first fifteen (15) year period of the original term, the Lease Agreement cannot be terminated except for events of default which the COUNTY has refused to remedy. The CITY shall give the COUNTY a sixty (60)-day notice that the COUNTY is in default, has failed to comply with its obligation under paragraph 13.1 or 13.2 within the twenty (20)-day period after receiving written notice, that the COUNTY has sixty (60)-days to remedy the default, and that if the default is not remedied within the sixty (60)-day period, the Lease Agreement is terminated.
- 13.4 Termination During the Last Ten (10) Years of the Original Period:** After the first fifteen (15) years of the original term of the Lease Agreement, and during the following ten (10) years of the original term, the Lease can be terminated due to default in accordance with the notice procedures set out above. In addition to termination due to default, the CITY may terminate the lease with six (6) months notice to the COUNTY subject to payment of the termination pay set out in the following paragraph (paragraph 13.5).
- 13.5 Termination Pay:** If, during the final ten (10) years of the original term, the CITY terminates the lease when the COUNTY is not in default, the CITY shall repay to the COUNTY the base rent sum minus one-tenth (1/10th) for each year or part of a year past the first fifteen (15) years of the original term. Attached is a schedule showing the calculations for such repayment. It is marked and attached as Exhibit "C."
- 13.6 Remedy on Default and Termination:** The CITY shall be entitled to recover damages from COUNTY for the default and the CITY may reenter, take possession of the premises and remove any property by legal action or self-help and without liability from damages and without having to accept that as surrendered.

SECTION 14 - SURRENDER AT EXPIRATION

- 14.1 Conditions of Premises:** Upon expiration of the Lease term or earlier termination, COUNTY shall deliver all keys to CITY and surrender the premises in first class condition and broom cleaned. Alterations constructed by COUNTY with permission from CITY shall not be removed or restored to the original condition unless terms of permission for alteration so require.



- 14.2 **Fixtures:** All fixtures placed upon the premises during the term shall become the property of the CITY unless otherwise agreed. If fixtures are removed in accordance with an agreement, the COUNTY shall repair any physical damages resulting in removal.
- 14.3 **Furnishings & Furniture:** Prior to the expiration or other termination of the Lease, COUNTY shall remove all furnishings, furniture, and fixtures if agreed upon that remain on premises. If COUNTY fails to do so, it shall be the abandonment of the property and all rights to the property by the COUNTY shall cease upon CITY giving COUNTY thirty (30) days written notice of removal and the COUNTY failing to remove property.

SECTION 15 - HOLDOVER

If COUNTY does not vacate the premises by the time required, the CITY shall treat the COUNTY as a tenant from month to month subject to all provisions of this lease except the provisions for term and renewal. The rental rate shall be the rate determined in accordance with the provision for determining rent under the renewal option, Section 2, paragraph 2.3. If a month-to-month- tenancy results from the holdover by the COUNTY under this section, the tenancy shall be terminable at the end of any monthly rental period on written notice from the CITY given not less than ten (10) days prior to the termination date which will be specified in the notice. COUNTY waives any notice which would otherwise be provided by law with respect to month-to-month tenancy.

SECTION 16 - CHANGES OR MODIFICATIONS

The parties agree that no change or modification to this lease agreement, or any attachments hereto, shall have any force or effect unless change is reduced to writing, dated, and made part of this lease agreement. The execution of the change shall be authorized and signed in the same manner as this lease agreement.

SECTION 17 - LEASE AGREEMENT

17.1 **Extent of Lease Agreement:** This lease agreement, including all exhibits, and any and all amendments, modifications, and supplements duly executed by the parties in accordance with this lease agreement, govern and supersede any and all inconsistent or contradictory terms, prior oral or written representations or understandings.

17.2 **Notices:** Any notice provided for under this lease agreement shall be sufficient if in writing and delivered personally to the following addresses or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

CITY OF NEWBERG,
an Oregon Municipal Corporation
c/o Office of City Attorney
414 East First Street
Newberg, OR 97132

YAMHILL COUNTY,
a County of the State of Oregon
c/o Office of County Counsel
Yamhill County Courthouse
535 East 5th Street
McMinnville, OR 97128



SECTION 18 - ARBITRATION

Any dispute arising out of or in connection with this lease agreement which is not settled by mutual agreement of CITY and COUNTY within sixty (60) days of notification in writing by either party, shall be submitted to an arbitrator mutually agreed upon by the parties. In the event the parties cannot agree on the arbitrator, then the arbitrator shall be appointed by the presiding judge of the Circuit Court of the State of Oregon, for the County of Yamhill. The arbitrator shall be selected within thirty (30) days from the expiration of the sixty (60) day period following notification of the dispute. The arbitration shall be conducted in Newberg, Oregon, and shall be governed by the laws of the State of Oregon. The applicable arbitration rules for the Yamhill COUNTY Courts shall apply unless the parties agree in writing to other rules. The arbitrator shall render a decision within forty-five (45) days of the first meeting of CITY and COUNTY. Insofar as CITY and COUNTY legally may do so, they agree to be bound by the decision of the arbitrator. The cost of the arbitration shall be split equally by the parties.

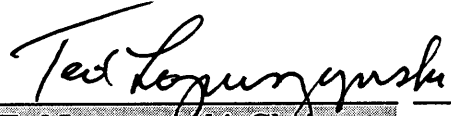
IN WITNESS WHEREOF, the parties have executed this Lease Agreement which is effective as of the day and year first written above.

CITY OF NEWBERG

YAMHILL COUNTY

Board of Commissioners:

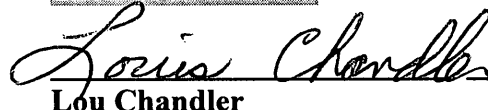

Duane R. Cole
City Manager
April 22, 1998
Date


Ted Lopuszynski, Chairman
Date
4-23-98

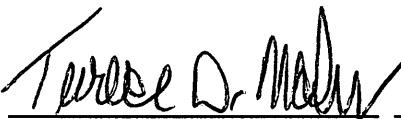

Robert Johnstone
Date
4-23-98


Thomas E. E. Bunn
Date
4-23-98


Robert Tardiff
Police Chief
April 22, 1998
Date


Lou Chandler
Parole and Probation Corrections Manager
Date
4-23-98

APPROVED AS TO FORM/CONTENT:


Terrence D. Mahr
City Attorney
4/23/98
Date

APPROVED AS TO FORM/CONTENT:

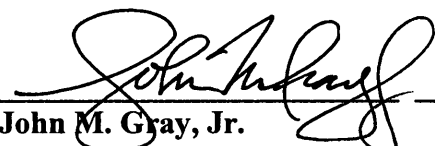

John M. Gray, Jr.
County Counsel
Date
4/23/98



EXHIBIT "A"
To Intergovernmental Lease Agreement
for Space in the NPSF
between the City of Newberg and Yamhill County

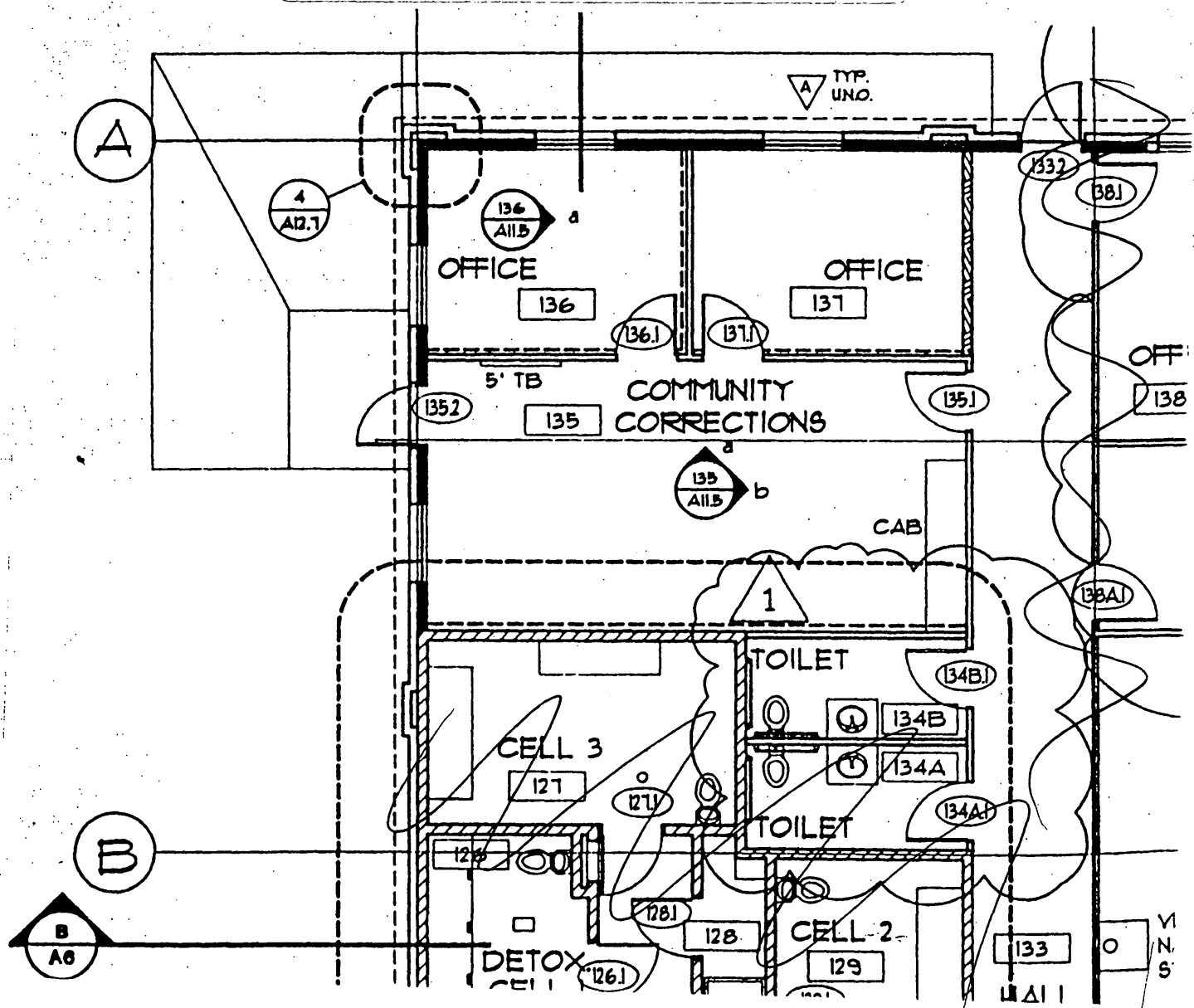
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**COPY OF SECTION OF ARCHITECTURAL
DRAWINGS SHOWING PREMISES**
(To be furnished in paper copies, not on City's computer system.)



**To Intergovernmental Lease Agreement
for Space in the NPSF
between the City of Newberg and Yamhill County**

Page 2 of 2



Certificate of Original Term

On this 18th day of August, 1998, the parties to this Lease agree as follows:

1. The Occupancy Permit was issued to the CITY for the NPSF on 2nd day of JUNE, 1998.
2. The original term of this Lease shall commence on 1st day of June, 1998, and continue through 31st day of May, 2023, unless sooner terminated as provided in this Lease.

IN WITNESS WHEREOF, THE PARTIES HAVE AFFIXED THEIR SIGNATURES:

CITY OF NEWBERG

COUNTY

Duane R. Cole Aug 3, 1998
Duane R. Cole, City Manager Date

Lou Chandler 8-6-98
Lou Chandler Date
Parole and Probation Corrections Manager

APPROVED AS TO FORM AND CONTENT:

APPROVED AS TO FORM AND CONTENT:

Terrence D. Mahr Aug 18, 1998
Terrence D. Mahr, CITY Attorney Date

John M. Gray, Jr. 7/10/98
John M. Gray, Jr., County Counsel Date



EXHIBIT "B"

To Intergovernmental Lease Agreement
for Space in the NPSF
between the City of Newberg and Yamhill County

Expense	Budget
Architect	\$228,000
Sub-total	\$228,000
Phone/Comp. Wiring	\$25,000
Security System	\$9,250
Builders Insurance	\$3,400
Building Construction	\$2,354,903
Permits	\$2,500
Site Preparation	\$7,000
Sub-total	\$2,402,053
Contingency	\$35,000
TOTAL	\$2,665,053

Est. Minimum	\$2,665,053	X 3.23%	\$85,969
TOTAL			\$85,969

Comm. Corr. Sq. Ft.	700	3.23% of Total
Total Sq. Ft.	21700	



EXHIBIT "C"

(page 1 of 2)

To Intergovernmental Lease Agreement
for Space in the NPSF
between the City of Newberg and Yamhill County

TERMINATION PAYMENT SCHEDULE BASED ON THE BASE RENT OF \$85,969.00 *[after the first fifteen (15) years]*

TERMINATION PAYMENT BREAKDOWN <i>[after the first fifteen (15) years]</i>		TERMINATION PAYMENT
1.	First (1st) year through fifteenth (15 th) year of Lease. Lease Agreement can only be terminated for default.	\$85,969.00
<i>For Years 16 - 25: Subtract 10% for each fully completed year after the fifteenth (15th) year.</i>		
2.	Sixteen (16 th) year or any part thereof. Base rent less zero percent (0%) equals termination payment.	\$85,969.00
3.	Seventeenth (17 th) year or any part thereof. Base rent less ten percent (10%) equals termination payment.	\$77,372.10
4.	Eighteen (18 th) year or any part thereof. Base rent less ten percent (10%) equals termination payment.	\$68,775.20
5.	Nineteenth (19 th) year or any part thereof. Base rent less ten percent (10%) equals termination payment.	\$60,178.30
6.	Twentieth (20 th) year or any part thereof. Base rent less ten percent (10%) equals termination payment.	\$51,581.40
7.	Twenty-first (21 st) year or any part thereof. Base rent less ten percent (10%) equals termination payment.	\$42,984.50
8.	Twenty-second (22 nd) year or any part thereof. Base rent less ten percent (10%) equals termination payment.	\$34,387.60



EXHIBIT "C" - Continued
(page 2 of 2)

9.	Twenty-third (23 rd) year or any part thereof. Base rent less ten percent (10%) equals termination payment.	\$25,790.70
10.	Twenty-fourth (24 th) year or any part thereof. Base rent less ten percent (10%) equals termination payment.	\$17,193.80
11.	Twenty-fifth (25 th) year or any part thereof. Base rent less ten percent (10%) equals termination payment. [Ten percent (10%) termination payment.]	\$8,596.90

