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AGENDA COVER MEMORANDUM

Agenda Date: January 28, 2003

DATE: January 15, 2003

TO: Board of County Commissioners

DEPARTMENT: Management Services

PRESENTED BY: Jeff Turk, Property Management Officer

SUBJECT: REPORT BACK ON LEASE NEGOTIATIONS WITH ST. VINCENT DE PAUL
FOR COUNTY PROPERTIES ADJACENT TO THE FAIRGROUNDS

1. **PROPOSED MOTION:** NO MOTION IS PROPOSED

2. **ISSUE/PROBLEM:** The Board has directed staff to negotiate a lease with St. Vincent de Paul (SVDP) for use of two county properties next to the Fairgrounds to provide affordable housing.

3. **DISCUSSION:**

3.1 Background

The Fairgrounds manages two properties on the West side of Jefferson St. between 13th and 14th Avenues (1308 and 1396 Jefferson) which have houses on them. The houses are vacant and have become problematic for the Fairgrounds as they are subject to break-ins and vandalism. The situation is of concern to residents of the area who have expressed that concern to the Fair Board and requested that the properties be sold and returned to private ownership.

The Board requested that staff investigate whether any of the local agencies providing affordable housing would be interested in using the properties. SVDP expressed such an interest and was willing to enter into an agreement with the county for use of the properties.

SVDP and county staff are in the process of finalizing a lease agreement – a draft agreement is attached. A synopsis of some of the proposed terms are:

- Term: the lease term would be 15 years.
- Rent: Rent would be \$1.00/year
- Improvements: SVDP would own the improvements during the lease term. County retains title to land. Improvements revert to county at the end of the lease. SVDP has option to remove improvements.
- Use: Property must be used to provide affordable housing.

3.2 Analysis

Issues still being finalized deal with procedures in the event major damage occurs to the improvements (fire, etc.) – at what point does SVDP reconstruct the improvements, how will insurance proceeds be used if reconstruction isn't done. The current proposal would require that insurance proceeds first be used to pay off loans obtained by SVDP for the initial remodeling of the houses. Funds would next be used to raze and remove the houses from the property. Remaining funds would be split equally between the county and SVDP. These issues are being resolved.

3.3 Alternatives/Options

The Board can direct staff to negotiate terms desired by the Board.

3.4 Recommendation

It is recommended that staff finalize negotiations consistent with the draft lease proposal.

3.5 Timing

It is anticipated that a proposed agreement will be presented to the Board for approval at the February 12th, meeting.

4. **IMPLEMENTATION/FOLLOW-UP:** Staff will continue lease negotiations
5. **ATTACHMENTS:**
Draft Lease Proposal

LEASE

This lease is entered into by and between LANE COUNTY, a political subdivision of the State of Oregon, hereinafter "LESSOR", and ST. VINCENT DE PAUL SOCIETY OF EUGENE, a private, not-for-profit corporation, hereinafter "LESSEE".

RECITALS:

- A. LESSOR is the owner of real property located on Jefferson Street in Eugene, Oregon commonly known as 1308 Jefferson Street and 1396 Jefferson Street (Premises). Said real property is more particularly described in attached Exhibit "A".
- B. Said real property is improved with houses which LESSOR currently is not using.
- C. LESSEE can use said real property to provide affordable residential housing for the citizens of Lane County.
- D. LESSOR is willing to lease said real property to LESSEE under the terms and conditions as follows.

SECTION 1. AGREEMENT TO LEASE

1.1 LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR the Premises on the terms and conditions set forth below.

SECTION 2. TERM

2.1 The term of this lease shall begin on March 1, 2003 and shall continue to midnight on February 28, 2018 unless it is sooner terminated as provided in this lease.

SECTION 3. RENT

3.1 Rent for the Premises shall be \$1.00 per year. Receipt of rent from LESSEE for the entire lease term (\$15.00) is hereby acknowledged.

SECTION 4. USE OF PREMISES/OWNERSHIP OF IMPROVEMENTS

4.1 LESSEE shall use the Premises for the provision of affordable residential housing for the citizens of Lane County. For the purposes of this agreement, affordable housing shall be defined as housing provided to families/individuals whose income does not exceed 80% of the median income for the area as determined annually by the Department of Housing and Urban Development (HUD) or similar Federal agency if HUD no longer exists or no longer produces said income data.

4.2 OWNERSHIP OF IMPROVEMENTS: Subject to other provisions of this agreement, LESSOR hereby relinquishes to LESSEE LESSOR's ownership of the improvements on the Premises and LESSEE accepts said ownership. Said improvements consist of the houses currently residing on the Premises, garages/parking structures, improvements made to said houses by LESSEE and any other structures constructed on the Premises by LESSEE during the lease term. LESSOR shall retain title and ownership of the land.

4.3 ADJOINING PROPERTY: LESSOR owns the property adjoining and South of the Premises (Assessor's map # 17-03-31-31-13100). Said adjoining property is not part of this agreement. LESSEE and/or its tenants shall not use said adjoining property, construct improvements thereon or otherwise encroach upon it without written permission of LESSOR. LESSOR may require LESSEE to construct a fence between the properties.

4.4 AMAZON CHANNEL: LESSOR reserves the right to enter the Premises at 1396 for the purpose of maintaining, repairing, improving or otherwise conducting work on the Amazon channel bordering the Premises. LESSOR shall give LESSEE and its Tenants not less than 24 hours notice before entering the Premises (emergencies excepted). LESSOR shall make good faith efforts to minimize disruption to LESSEE and its Tenants when entering the property and performing any work.

SECTION 5. TAXES AND ASSESSMENTS; UTILITIES

5.1 Payment by LESSEE. LESSEE shall pay before delinquency all real and personal property taxes, general and special assessment, and other charges of every description levied on or assessed against the Premises including the land. LESSEE shall pay for all improvements located on the Premises or personal property or fixtures located on the Premises or in the improvements during the lease term. LESSEE shall make all such payments directly to the taxing authority. If any such tax, assessment or charge may be paid in installments, LESSEE may elect to do so as long as each installment together with interest is paid before it becomes delinquent.

5.1.1 LESSEE shall notify the county Tax Assessor that LESSEE will be responsible for payment of property taxes and provide the Assessor with an address for mailing of property tax statements.

5.1.2 LESSEE shall be responsible for filing an application with the Assessor for an exemption of property taxes.

5.2 Right to Contest. LESSEE may contest in good faith the validity or amount of any tax, assessment or charge in accordance with the procedures established by statute or administrative rule for such contest so long as the Premises are not subjected to any lien as a result of the contest. LESSEE may prosecute such contest in the name of LESSOR as LESSOR'S attorney in fact. All tax contests shall be at the sole expense of LESSEE. Any return or rebate from any taxing authority on account of any tax or assessment which was originally paid by LESSEE shall be the sole property of LESSEE.

5.3 Substitute Taxes. For purposes of paragraph 5.1 "real property taxes" include any tax levy or assessment enacted after the date of this lease in substitution for all or part of ad valorem real property taxes LESSEE would have been obligated to pay under paragraph 5.1, the purpose of which is more closely related to that of an ad valorem or use tax than to an income tax on LESSOR'S income, or any other tax, levy, assessment, imposition or charge measured by or based upon the Premises and imposed upon LESSOR. All such taxes shall be paid by LESSEE as provided above.

5.4 Proof of Compliance. LESSEE shall furnish to LESSOR receipts or other proof of payment of taxes and assessments within 30 days of making payment.

5.5 Utilities. LESSEE shall pay when due all charges for electricity, natural gas, water, sewage, telephone, refuse collection and all other services or utilities used on or in connection with the Premises.

SECTION 6 MAINTENANCE; ALTERATIONS; RECONSTRUCTION

6.1 Maintenance. LESSEE shall maintain the Premises and all improvements in first class condition and repair throughout the term of this lease, ordinary wear and tear excepted, and in accordance with all applicable laws, rules, regulations and ordinances of federal, state, county, municipal or other governmental agencies having or claiming jurisdiction. Said maintenance includes water, sewerage and drainage lines serving the Premises.

6.2 Alterations/Construction. LESSEE shall be responsible for all alterations, remodeling, construction and improvements made to the Premises during the lease term. All such work shall be done in a good and skillful manner in compliance with all applicable

building and zoning laws and all other laws, ordinances, orders and requirements of all authorities having or claiming jurisdiction

6.3 Reconstruction After Damage. If any building or other improvement on the Premises is damaged or destroyed by fire or any other cause at any time during the lease term, with the cost to repair said damage being 50% or greater of the improvement's value, it shall be at the option of the LESSEE whether or not to repair said damage. Damage which is less than 50% of the value of the improvements shall be repaired by LESSEE. If said damage occurs within 36 months of the lease expiration date, LESSEE shall have the option not to repair/reconstruct if the cost to repair the damage exceeds 25% of the improvement's value.

6.3.1 No Reconstruction. If LESSEE chooses not to reconstruct the premises after damage, LESSOR may require LESSEE to remove all improvements from the premises. If LESSOR requires removal of improvements, LESSEE shall do so within 120 days of written notice from LESSOR requesting said removal.

6.3.2 For the purposes of Section 6, the improvements at 1308 and 1396 shall be treated independently with respect to percentage of damage to them, cost to repair and decision to reconstruct or not and other provisions of Section 6.

6.3.3 LESSEE shall notify LESSOR in writing within sixty (60) days of damage to the Premises whether LESSEE will commence reconstruction or not. If LESSEE chooses not to reconstruct after damage this lease agreement shall be terminated as of the date notice not to reconstruct was received by LESSOR.

6.3.2 Insurance Proceeds From Damage. If LESSEE chooses not to reconstruct after damage, any insurance proceeds shall be disbursed pursuant to Section 9.

SECTION 7. OWNERSHIP OF THE IMPROVEMENTS

7.1 All improvements on the Premises shall be deemed as owned by LESSEE until expiration or sooner termination of this lease. All improvements located on the Premises at the expiration or sooner termination of this lease shall become the property of LESSOR, free and clear of all claims of LESSEE or anyone claiming under LESSEE, and LESSEE shall indemnify and defend LESSOR, its Commissioners, officers, employees and agents, against all liability and loss arising from such claims. Nothing in this paragraph 7 shall alter other provisions of this lease, including without limitation restrictions on removal or alteration of structures on the Premises.

7.2 LESSEE shall have the option of removing the improvements from the Premises upon expiration or sooner termination of this lease. If LESSEE chooses to remove the improvements from the Premises it shall notify LESSOR in writing not less than ninety (90)

days prior to expiration of the lease. If this lease is terminated prior to its expiration, LESSEE shall notify LESSOR in writing within sixty (60) days of said termination whether it wishes to remove the improvements from the Premises. LESSEE shall remove all improvements from the premises within 90 days of the lease's expiration or termination if it has chosen to remove the improvements.

SECTION 8. ASSIGNMENT; SUBLETTING

8.1 Assignment

8.1.1 LESSEE shall not assign or otherwise transfer LESSEE'S interest in this lease or the estate created by this lease without the prior written consent of LESSOR which shall not be unreasonably withheld. No consent in one instance shall remove the requirement for consent in any subsequent instance.

8.1.2 For purposes of this section 8.1, the sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of LESSEE, or of the interest of any general or joint venture partner or syndicate member or co-tenant if LESSEE is a corporation, partnership, joint venture, syndicate or co-tenancy, which shall result in changing the control of LESSEE shall be construed to be an assignment of this lease.

8.1.3 The terms of any assignment, whether or not the assignment requires the consent of LESSOR, shall include a covenant by the assignee that it assumes and agrees to pay and perform all of LESSEE'S obligations under this lease. No assignment shall release LESSEE of its obligations under this lease unless LESSOR so agrees in writing.

8.2 Right to Sublet. LESSEE shall not sublease any or all of the Premises or any improvements thereon except for the purpose of providing affordable residential housing.

SECTION 9. INSURANCE; INDEMNIFICATION; LIENS

9.1 Fire and Hazard Insurance. LESSEE shall throughout the lease term keep the construction and all buildings on the Premises insured against loss by fire and other hazards covered by a standard form of fire insurance policy with extended coverage endorsement including vandalism and malicious mischief. The amount of the insurance shall not be less than the replacement cost of the insured improvements and shall also be sufficient to prevent LESSEE from becoming a co-insurer under the provisions of the policies. LESSOR shall not carry any insurance that would result in a reduction of the protection of payment to LESSEE under any insurance described above.

9.2 Proceeds of Fire and Hazard Insurance

9.2.1 The proceeds of the policies described above shall be used to repair, restore and replace any damaged or destroyed improvements as provided in paragraph 6.3. LESSOR shall cooperate fully with LESSEE to obtain the largest possible recovery but LESSOR shall have no expense or cost in that connection.

9.2.2 If LESSEE chooses not to repair, restore, replace or reconstruct any damaged or destroyed improvements as provided for in paragraph 6.3, the insurance proceeds shall be used as follows:

- A. First to repay any loans, mortgages or other debts incurred by LESSEE for which the funds were used to remodel or repair the Premises at the leases inception in order to make the Premises useable for affordable residential housing.
- B. Second, to raze and/or otherwise remove the improvements from the Premises.
- C. Any insurance funds remaining after A & B above shall be divided equally between LESSEE and LESSOR.

9.2.3 All policies of insurance required by paragraph 9.1 shall provide that the proceeds shall be paid to LESSEE and the proceeds shall be deemed to be held in trust by LESSEE for the uses and purposes required by this lease.

9.3 Public Liability Insurance. LESSEE shall procure and continuously maintain during the term of this lease public liability and property damage insurance with limits of \$1 million per occurrence. The insurance shall specifically provide coverage from risks from underground hazards for the period during which Construction is being performed. The insurance shall be in a form sufficient to protect LESSOR and LESSEE against claims of third persons for personal injury, death or property damage arising from the use, occupancy or condition of the Premises or improvements on the Premises. Lane County, its commissioners, officers, agents, and employees shall be named as additional insureds.

9.4 General Insurance
required by this lease

9.4.1 Provi
that any loss shall be p

*Don, please review
needs to be in
Admin today.
Jeff*

All policies of insurance which LESSEE is

right of subrogation against LESSOR and
negligence or affirmative act of LESSOR.

9.4.2 Be issued by a responsible insurance company which is licensed to practice in the State of Oregon.

9.4.3 Be primary policies

9.4.4 Be evidenced by certificates furnished to LESSOR bearing endorsement requiring ten (10) days' written notice to LESSOR prior to any change or cancellation of the policies.

9.5 Indemnification. LESSEE shall indemnify, hold harmless and defend LESSOR, its commissioners, officers, employees and agents from any and all claims, losses, damages, expenses and liability arising out of or related to any activity of LESSEE'S, its tenants, contractors, agents or invitees, use of the Premises or LESSEE'S failure to perform the terms of this lease.

9.6 Liens. LESSEE 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 LESSEE fails to pay any such claims or to discharge any lien, LESSOR may do so and collect the cost as additional rent or a separate charge to LESSEE. Any such payment by LESSOR shall bear interest at the rate of 12% per annum from the date expended by LESSOR and shall be payable on demand. Such action by LESSOR shall not constitute a waiver of any right or remedy which LESSOR may have on account of LESSEE'S default.

9.6.1 LESSEE may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as LESSOR'S property interests are not jeopardized. If a lien is filed as a result of nonpayment, LESSEE shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with LESSOR cash or sufficient corporate surety bond or other surety satisfactory to LESSOR 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 of sale under the lien.

SECTION 10. CONDEMNATION

10.1 If a condemning authority takes title by eminent domain or by agreement in lieu thereof to the entire Premises or a portion sufficient to render the Premises unsuitable for Lessee's use, then either party may elect to terminate this lease effective on the date that possession is taken by the condemning authority. All condemnation proceeds attributable to the land resulting from either a partial or total taking shall belong to Lessor, and Lessee shall have no claim against Lessor or the condemnation award because of the taking. All condemnation proceeds attributable to the improvements shall first be applied to repay any loans, mortgages or other debts incurred by LESSEE used to remodel/restore the Premises at the inception of the lease in order to make the Premises suitable for affordable housing with remaining proceeds divided equally between

LESSOR AND LESSEE. Either party receiving any notice of intended taking, any service of legal process relating to condemnation or any other notification in connection with any taking, condemnation or purchase, sale or transfer in lieu of condemnation shall promptly give the other party notice of such receipt.

SECTION 11. DEFAULT

Each of the following events shall be a default by LESSEE and a breach of this lease:

11.1 Performance Failures. Failure of LESSEE to perform any other term, condition or covenant of this lease within twenty (20) days after written notice from LESSOR specifying the nature of the failure with reasonable particularity. If the failure is of such a nature that it cannot be completely remedied within the twenty (20) day period, the failure shall not be a default if LESSEE begins correction of the failure within the twenty (20) day period and thereafter proceeds with reasonable diligence and in good faith to correct the failure as soon as practicable.

11.2 Attachment. Attachment, execution, levy or other seizure by legal process of any right or interest of LESSEE under this lease if not released within thirty (30) days.

11.3 Bankruptcy. An assignment by LESSEE for the benefit of creditors, the filing by LESSEE of a voluntary petition in bankruptcy, the filing of an involuntary petition in bankruptcy and failure of LESSEE to secure a dismissal of the petition within thirty (30) days after filing, the appointment of a receiver to take possession of the Premises or improvements or the leasehold estate or of LESSEE'S operations on the Premises for any reason. For purposes of this paragraph the term "bankruptcy" includes all arrangements and chapters in the Bankruptcy Code.

11.4 Failure of LESSEE to use the Premises for the provision of affordable housing for twelve (12) consecutive months except if said failure is due to repair and/or reconstruction pursuant to Section 6.

SECTION 12. REMEDIES ON DEFAULT

12.1 In case of default as described in section 11, LESSOR shall have the right to the following remedies which are intended to be cumulative and in addition to any other remedies provided under applicable law.

12.1.1 LESSOR may terminate the lease and retake possession of the Premises. All of LESSEE'S rights in the Premises and in all improvements on the Premises shall terminate as of the date of termination. Promptly after such notice LESSEE shall surrender and vacate the

Premises and all improvements broom clean and in good condition. LESSOR may reenter and take possession of the Premises and of all improvements and eject some or all parties in possession. Termination under this paragraph shall not relieve LESSEE from the payment of any sum then due to LESSOR or from any claim for damages previously accrued or then accruing against LESSEE.

12.1.2 LESSOR may recover damages caused by LESEE'S default which shall include an amount equal to rentals lost because of the default, lease commissions paid for this lease, and the unamortized cost of any LESSEE improvements installed by LESSOR to meet LESSEE'S special requirements. LESSOR may sue periodically to recover damages as they occur throughout the lease term, and no action for accrued damages shall bar a later action for damages subsequently occurring. LESSOR may elect in any one action to recover accrued damages plus damages attributable to the remaining term of the lease. Such damages shall be measured by the difference between the rent under this lease and the reasonable rental value of the Premises for the remainder of the term, discounted to the time of judgment at the prevailing interest rate on judgments.

12.1.3 LESSOR may make any payment or perform any obligation which LESSEE has failed to perform, in which case LESSOR shall be entitled to recover from LESSEE upon demand all amounts so expended, plus interest from the date of the expenditure at the rate of one-and-one-half percent per month. Any such payment or performance by LESSOR shall not waive LESSEE'S default.

12.2 In the event of a termination LESSOR shall be entitled to damages for the reasonable cost of: re-entry and re-letting, including the cost of any cleanup, broker's or finder's fees and attorney fees.

SECTION 13 . SURRENDER ON TERMINATION

13.1 Surrender. Upon expiration of the lease term or renewal term LESSEE shall surrender possession of the Premises to LESSOR, including all improvements then located on the Premises, free of occupants and broom clean, all in good condition except for reasonable wear and tear since the last necessary restoration, repair or reconstruction made by LESSEE pursuant to this lease. All property that LESSEE is required to surrender shall become LESSOR'S property at the date of expiration of this lease. All property that LESSEE is not required to surrender, but that LESSEE does abandon shall, at LESSOR'S election, become LESSOR'S property on the date of expiration or termination of this lease.

13.2 Holdover. Failure by LESSEE to vacate the Premises at the time specified in this lease shall not constitute a renewal or extension or give LESSEE any rights in or to the Premises or any improvements. Upon such a holdover, LESSEE shall defend and indemnify LESSOR from all liability and expense resulting from the failure or delay of LESSEE to timely surrender the Premises including, without limitation, claims made by any succeeding tenant founded on or resulting from LESSEE'S failure to so surrender.

SECTION 14. MISCELLANEOUS

14.1 Nonwaiver. Waiver by either party of strict performance of any provision or term of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision or any other provision.

14.2 Notices. All notices under this lease shall be effective on the earlier of actual receipt or two (2) days after deposit as registered or certified mail, return receipt requested, postage prepaid and addressed to LESSOR or LESSEE at the addresses stated below, or to such other address as either party may specify by notice to the other party:

LESSOR: LANE COUNTY
Property Management Division
125 E. 8th Avenue
Eugene, OR 97401

LESSEE: ST. VINCENT DE PAUL SOCIETY OF EUGENE
c/o Anne Williams
705 S. Seneca
Eugene, OR 97402

14.3 Severability. The invalidity or illegality of any provision of this lease shall not affect the remainder of the lease.

14.4 Governing Law. This lease and the party's rights under it shall be construed and regulated by the laws of the State of Oregon.

14.5 This lease agreement or memorandum thereof shall be recorded in the Deed Records of Lane County. LESSEE and LESSOR shall each pay one half of the recording fees.

EXHIBIT A

Property Description

Parcel 1, 1308 Jefferson St., Eugene, OR

Map No. 17.03.31.31

Tax Lot No.: 13000

Lot 7, Block 2, WALNUT PARK, as platted and recorded in Book 3, Page 16, Lane County Oregon Plat Records, Lane County, Oregon.

Parcel 2, 1396 Jefferson St., Eugene, OR

Map No. 17.03.31.31

Tax Lot No.: 13600

Lot 1, Block 2, WALNUT PARK, as platted and recorded in Book 3, Page 16, Lane County Oregon Plat Records, Lane County, Oregon.

LESSOR: LANE COUNTY

By: _____

Title: County Administrator

Date: _____

LESSEE: ST. VINCENT DE PAUL SOCIETY OF EUGENE

By: _____

Title:

Date: _____