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05-1-3-11

## AGENDA COVER MEMORANDUM

**Agenda Date: January 5, 2005**

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**DATE:** December 22, 2004

**TO:** Board of County Commissioners

**DEPARTMENT:** Management Services

**PRESENTED BY:** Jeff Turk, Property Management Officer 2

**SUBJECT:** ORDER/IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A ONE YEAR LEASE AGREEMENT WITH THE HOUSING AUTHORITY AND COMMUNITY SERVICES AGENCY AS LESSOR AND LANE COUNTY AS LESSEE FOR THE LANE STABILIZATION AND REHABILITATION CENTER LOCATED AT 2222 COBURG ROAD, EUGENE WITH ANNUAL RENT OF \$89,256

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1. **PROPOSED MOTION:** THE BOARD OF COUNTY COMMISSIONERS MOVES TO AUTHORIZE THE COUNTY ADMINISTRATOR TO EXECUTE A ONE YEAR LEASE AGREEMENT WITH THE HOUSING AUTHORITY AND COMMUNITY SERVICES AGENCY AS LESSOR AND LANE COUNTY AS LESSEE FOR THE LANE STABILIZATION AND REHABILITATION CENTER LOCATED AT 2222 COBURG ROAD, EUGENE WITH ANNUAL RENT OF \$89,256
2. **ISSUE/PROBLEM:** The lease agreement for the Lane Stabilization and Rehabilitation Center (Heeran Center) located at 2222 Coburg expired June 30, 2004. A new agreement has been negotiated and is beyond the authority of the CAO to execute without Board approval.
3. **DISCUSSION:**

3.1 Background

The County, through the Mental Health Division of the Department of Health and Human Services, operates a residential treatment facility at the subject property. The Housing Authority purchased the property from Sacred Heart Hospital in March 1997 with the

understanding that the property would be leased to the county to operate the treatment program. Mental Health contracts with ShelterCare to provide services at the Heeran Center. County staff also occupies space in the Center to provide additional support services.

The proposed annual rent of \$89,256 (\$3,436 monthly) is a reduction from the previous year's rent paid by the county of \$129,972. ShelterCare will pay the balance directly to the Housing Authority.

Under the terms of the lease, the Housing Authority will be responsible for maintenance, utilities and taxes.

### 3.2 Analysis

The Department of Health and Human Services has funding to continue program operations for the facility.

### 3.4 Recommendation

It is recommended that the County Administrator be authorized to execute a lease agreement with the Housing Authority which is substantially similar to the attached agreement.

### 3.5 Timing

None.

4. IMPLEMENTATION/FOLLOW-UP: Upon approval by the Board of County Commissioners, the County Administrator will execute the lease agreement.
5. ATTACHMENTS:  
Board Order  
Lease Agreement

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A ONE YEAR LEASE AGREEMENT WITH THE HOUSING AUTHORITY AND COMMUNITY SERVICES AGENCY AS LESSOR AND LANE COUNTY AS LESSEE FOR THE LANE STABILIZATION AND REHABILITATION CENTER LOCATED AT 2222 COBURG ROAD, EUGENE WITH ANNUAL RENT OF \$89,256

WHEREAS this matter now coming before the Lane County Board of Commissioners and said Board deeming it in the best interest of Lane County (lessee) to enter into a lease agreement with the Housing Authority and Community Services Agency (lessor) for space to provide residential and supporting mental health services and

WHEREAS said agreement is beyond the authority of the County Administrator to execute without the Board's authorization

IT IS HEREBY ORDERED that the County Administrator be authorized to execute a lease renewal with the Housing Authority and Community Services Agency substantially similar to attached exhibit "A".

IT IS FURTHER ORDERED, that this Order shall be entered into the records of the Board of Commissioners of the County.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Chair, Lane County Board of Commissioners

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A ONE YEAR LEASE AGREEMENT WITH THE HOUSING AUTHORITY AND COMMUNITY SERVICES AGENCY AS LESSOR AND LANE COUNTY AS LESSEE FOR THE LANE STABILIZATION AND REHABILITATION CENTER LOCATED AT 2222 COBURG ROAD, EUGENE WITH ANNUAL RENT OF \$89,256

**EXHIBIT "A"**  
**HEERAN CENTER SUPPORT AREA**  
**LEASE AGREEMENT**

This lease is entered into by and between the Housing Authority and Community Services Agency (HACSA; "Lessor"), a public corporation in the State of Oregon, and Lane County, a political subdivision of the State of Oregon (Lane County; "Lessee").

**RECITALS**

WHEREAS, HACSA owns the land and improvements located at 2222 Coburg Road in Eugene, Oregon, which currently contains (1) the residential program for individuals with severe psychiatric disabilities ("Heeran Center") and (2) an office and reception area that can be used to provide services and other activities that assist and support the Heeran Center and other mental health programs ("Heeran Center Support Area").

WHEREAS, Lane County Mental Health has determined that the continued operation of the Heeran Center is important to the Lane County mental health system.

WHEREAS, by HACSA's leasing a portion of the premises to Lane County, mental health services that assist the Heeran Center and the community may continue.

NOW THEREFORE, the parties therefore agree as follows:

**1. Section Agreement to Lease**

HACSA hereby leases to Lane County and Lane County hereby leases from HACSA the "Heeran Center Support Area" located at 2222 Coburg Road, Eugene, Oregon on the terms of conditions set forth below.

**2. Section Term**

2.1 *Term.* The term of this lease shall begin on July 1, 2004 and shall continue to midnight on June 30, 2005, unless it is sooner terminated as provided in this lease.

2.2 *Renewal.* This lease may be renewed by written agreement of the parties for two additional periods of one year each. Any renewal is subject to all terms and conditions of this lease except as otherwise specifically provided. The renewal shall commence immediately upon expiration of the lease term.

**3. Section Rent**

The rent shall be \$ 89,256.00 annually (\$7,438 monthly).

Payment shall be made no later than the 5<sup>th</sup> of each month.

**4. Section Use of Premises**

Lane County shall cooperate with HACSA and its duly contracted Management Agent to fund and provide a support and other programs that assist the residents of the Heeran Center and other individuals with severe psychiatric disabilities.

## **EXHIBIT "A"**

### **5. Section Taxes and Assessments; Utilities**

5.1 *Taxes.* HACSA shall be responsible for payment before delinquency all real and personal property taxes, general and special assessments, and other charges levied on or assessed against the premises, improvements located on the premises or personal property or fixtures located on the premises or in the improvements during the lease term.

5.2 *Utilities.* HACSA 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.

### **6. Section Maintenance; Alterations; Reconstruction**

6.1 *Maintenance.* HACSA shall maintain the Premises and all improvements in good 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 jurisdictions, including any agencies having jurisdiction over a juvenile residential drug and alcohol treatment program.

6.2 *Alterations.* Lessee may not construct, improve, demolish, remove, replace, alter, reconstruct, remodel or add to any existing improvements in whole or in part ("alterations") without written permission of HACSA.

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, whether or not covered by insurance, HACSA shall promptly repair the damage and restore the improvement.

### **7. Section Ownership of the Improvements**

All improvements constructed on the premises shall be deemed as owned by HACSA, free and clear of all claims of Lessee or anyone claiming under Lessee, and Lessee shall indemnify and defend HACSA against all liability and loss arising from such claims subject to the provisions of Article XI, Section 10 of the Constitution of Oregon and the limitations of the Oregon Tort Claims Act. Nothing in this Section 7 shall alter other provisions of this lease, including without limitation restrictions on removal or alteration of the building on the premises.

### **8. Section Financing, Assignment; Subletting**

8.1 *No Lessee Rights to Mortgage the Leasehold.* Lessee has no rights to subject the leasehold estate and any or all improvements to any mortgages or other liens as security for a loan or loans or other obligations.

8.2 *Assignment.* 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 HACSA, which shall not be unreasonably withheld. No consent in one instance shall remove the requirement for consent in any subsequent instance.

The terms of any assignment 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 HACSA agrees in writing.

## EXHIBIT "A"

8.3 *Right to Sublet.* Lessee may sublease any or all of the portion of the premises established for provision of residential support services with HACSA's written permission.

### 9. Section Insurance

9.1 *Fire and Hazard Insurance.* HACSA shall throughout the lease term keep the buildings and improvements 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.

9.2 *Proceeds of Fire and Hazard Insurance.* The proceeds of the policies described above shall be used to repair, restore and replace any damaged or destroyed improvements as provided in Section 6.3.

### 10. Section Condemnation

10.1 *Total or Substantial Taking.* A taking or condemnation shall be considered to be total or substantial if it includes all of the Premises or so much of the premises that a reasonable amount of reconstruction would not make the land and improvements a practical development and reasonably suited for the uses and purposes for which the premises were used just prior to the condemnation.

In the event of a total or substantial taking, the lease shall terminate as of the date title or possession passes to the condemning authority. All rent, additional rent and other charges payable by Lessee under this lease shall be prorated as of the date of termination.

HACSA shall be entitled to receive, regardless of when the taking occurs, the full value of the award.

10.2 *Partial Taking.* This paragraph 10.2 shall apply to any taking or condemnation which is not subject to paragraph 10.1.

HACSA shall be entitled to receive, regardless of when the taking occurs, the full value of the award. HACSA shall promptly restore the building and all improvements on the premises as nearly as reasonably possible to the condition existing prior to the taking or condemnation.

10.3 *Participation and Proceedings.* 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. HACSA shall have the right to represent its interest in each such proceeding or negotiation and to make full proof of its claim. For purposes of this lease, taking or condemnation includes a sale to a purchaser with the power of eminent domain in the face of a threat or the probability of the exercise of the power.

### 11. Section 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 HACSA specifying the nature of the failure. If the failure is of such a nature that it cannot be completely remedied within the twenty (20) day period,

#### EXHIBIT "A"

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 leasehold estate or of Lessee's operations on the estate for any reason. For purposes of this paragraph the term "bankruptcy" includes all arrangements and chapters in the Bankruptcy Code.

#### 12. Section Remedies On Default

As a precondition to pursuing any remedy for a default by Lessee under this lease, HACSA shall notify Lessee of the default and that the notice was for the purpose of notice under this Section.

12.1 *Termination of Lease.* HACSA may by notice to Lessee terminate this lease as of the date of the notice. All of Lessee's rights in the premises and in all improvements on the premises shall terminate as of the date of the termination. Promptly after such notice Lessee shall surrender and vacate the Premises and all improvements clean and in good condition. 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 subject to the provisions of Article XI, Section 10 of the Constitution of Oregon and the limitations of the Oregon Tort Claims Act.

HACSA may elect to use all or any part of Lessee's personal property and trade fixtures remaining on the Premises without compensation to Lessee and without liability for use or damage; or HACSA may store all or any of Lessee's personal property and trade fixtures for the account of and at the cost of Lessee. The election of one remedy for any one item shall not preclude an election of any other remedy for another item or for the same item at a later time.

In the event of a termination, HACSA 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 subject to the provisions of Article XI, Section 10 of the Constitution of Oregon and the limitations of the Oregon Tort Claims Act.

#### 13. Section Surrender on Termination.

13.1 *Surrender.* Upon expiration of the lease term or renewal term, Lessee shall surrender possession of the Premises to HACSA, including all improvements then located on the Premises, clean and in good condition except for reasonable wear and tear since the last necessary restoration, repair or reconstruction made by HACSA pursuant to the lease. All property that Lessee is required to surrender shall become HACSA'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 HACSA's election, become HACSA'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.

**EXHIBIT "A"**

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.

**14. Section Miscellaneous**

14.1 *Non-waiver.* 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 HACSA or Lessee at the addresses stated below, or to such other address as either party may specify by notice to the other party:

Lessor:           Housing Authority and Community Services Agency (HACSA)  
                      Attn: James R. McCoy  
                      Development Director  
                      177 Day Island Road  
                      Eugene, Oregon 97401

Lessee:           Lane County  
                      Attn: Jeff Turk  
                      Public Service Building  
                      Eugene, Oregon 97401

14.3 *Attorney Fees.* If suit or action is instituted to collect rent, to enforce this lease, or in connection with any claim or controversy arising out of this lease, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action.

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

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

**Lessor: Housing Authority and Community Services Agency (HACSA)**

By: \_\_\_\_\_

Title: Executive Director

Date: \_\_\_\_\_

**Lessee: Lane County**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT "A"**

Date: \_\_\_\_\_