

RESOLUTION NO. 1018

A RESOLUTION AUTHORIZING ADDENDUM TO INTERGOVERNMENTAL AGREEMENT OF DECEMBER 17, 1989 FOR LEASE OF ADDITIONAL SPACE AT CITY HALL ANNEX FROM TUALATIN VALLEY FIRE & RESCUE, A RURAL FIRE PROTECTION AGENCY.


WHEREAS, the City of Wilsonville and the Tualatin Valley Fire & Rescue, a rural Fire Protection District, entered into an Intergovernmental Agreement of December 17, 1989, to lease the Tualatin Station (now commonly referred to as the City Hall Annex), a copy of which is attached hereto as Exhibit "A", and incorporated herein; and

WHEREAS, the parties desire to enter into a lease of additional space at the Tualatin station (City Hall Annex) and terms and conditions therefore, and have memorialized same in a addendum, which is attached hereto as Exhibit "B" and incorporated herein.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

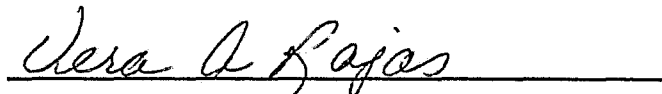
1. The Mayor is authorized on behalf of the City of Wilsonville, to enter into the Addendum to Intergovernmental Agreement of December 17, 1989, marked Exhibit "B", attached hereto and with Exhibit "A", incorporated herein, with the Tualatin Valley Fire & Rescue, a rural Fire Protection District.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 21st day of June, 1993, and filed with the Wilsonville City Recorder this date.



GERALD A. KRUMMEL, Mayor

ATTEST:



VERA A. ROJAS, CMC/AAE, City Recorder

SUMMARY of Votes:

Mayor Krummel	<u>AYE</u>
Councilor Van Eck	<u>ABSENT</u>
Councilor Carter	<u>AYE</u>
Councilor Hawkins	<u>AYE</u>
Councilor Lehan	<u>AYE</u>

Exhibit "A"

INTERGOVERNMENTAL AGREEMENT

FOR

LEASE OF PREMISES

This Agreement is entered into this 17 day of Dec., 1989 by and between Tualatin Valley Fire & Rescue, a rural Fire Protection District, hereinafter termed lessor, or landlord, and the City of Wilsonville, hereinafter termed lessee, or tenant.

WHEREAS lessor owns and has excess space in its Tualatin Station (formerly the Headquarters Station of Tualatin Rural Fire Protection District prior to merger) and the tenant has need for additional office and municipal space, and the parties desire to enter into this lease Agreement pursuant to the power to enter into Intergovernmental Agreements as authorized by Oregon Revised Statutes, Section 190.003 and following.

WHEREAS landlord and tenant are willing to enter into this Agreement based upon the following conditions, namely, that tenant agrees that a part of the consideration for the lease is the tenant's Agreement to continue as an integral part of the Fire District run and operated by landlord and not to seek to withdraw from the Fire District or start its own fire department during the term of this lease.

1. RECITALS. Landlord is the owner of that real property more particularly described as set forth on Exhibit "A" attached hereto.

2. PREMISES. Landlord desires to lease to tenant the following portions of landlord's building, namely:

2.1 All administrative offices, rest rooms and meeting rooms on the _____ floor of the building, excepting only space for two offices retained by landlord for a period of one year, all as shown on the attached Exhibit "B".

3. TERM. The term of this lease shall commence on the 17th day of Dec., 1989, and continue through a period of 10 years through the 17th day of Dec., 1999.

4. RENT. Tenant shall pay as rent the following:

4.1 MINIMUM MONTHLY RENT. Tenant shall pay to landlord the following amounts as minimum monthly rent without deduction, setoff, prior notice or demand:

A. There shall be no minimum basic rent, only the additional rent as hereinafter set forth.

4.2 ADDITIONAL RENT. As additional rent, tenant shall pay before delinquency:

A. All taxes, assessments, license fees and other charges levied or assessed against tenant's personal property installed or located in or on the premises and that become payable during the term.

B. All real property taxes and assessments, if any, levied against the premises in each year during the lease term.

C. All charges for utility costs and expenses furnished to the premises, including natural gas, electricity, water, sewer, sprinkler water, refuse removal, janitor service, parking lot sweeping and landscape maintenance.

D. Tenant shall pay all charges for garbage service for the entire building.

E. The premium for a policy of standard fire and extended coverage insurance with vandalism and malicious mischief endorsement to the extent of the full insurable value of the improvements now located on the premises. The policy shall be issued in the name of landlord and tenant as their interests appear and the proceeds collected on any insurance shall be used to replace or repair the improvements now located on the leased premises only as provided in Section 9 hereafter.

F. Tenant shall bear the expense of any casualty insurance insuring the property of tenant on the premises against fire or other casualty, but shall not be required to insure such property. The proceeds collected on any such insurance shall be tenant's property.

G. Tenant shall recarpet the leased area with carpet approved by landlord.

H. The City and the Fire Department will share equally the cost of maintaining the HVAC units for the entire building, except that unit that is located in the basement of the Communications Center. The City will be responsible for the HVAC maintenance services and ensuring that required preventative maintenance services are accomplished. The City will provide a qualified HVAC vendor with 24 hour repair capability.

5. USE OF THE PREMISES. Tenant shall use the premises for additional City Hall and office space and for no other use without landlord's consent.

5.1 APPLICABLE LAW. Tenant shall comply with all laws concerning the premises or tenant's use of the premises, including, without limitation, the obligation at tenant's cost to maintain the premises in conformance with applicable laws relating to the use or occupancy of the premises during the term. Tenant shall not be obligated to comply with any law that requires alterations, maintenance or restoration of the premises, unless such work is required as a result of tenant's particular specific use of the premises at the time.

5.2 PROHIBITION AGAINST WASTE. Tenant shall not use the premises in any manner that will constitute waste, nuisance or unreasonable annoyance to the owners or occupants of adjacent properties.

6. MAINTENANCE. The parties' responsibilities for maintenance of the leased premises are as follows:

6.1 LANDLORD'S MAINTENANCE. Landlord shall have no responsibility to maintain any portion of the premises.

6.2 TENANT'S MAINTENANCE. Tenant, at its cost, shall maintain in the condition existing at commencement of the lease term all portions of the premises including, without limitation, all tenant's personal property, signs, doors, plate glass and windows, roof and exterior walls and the paved parking areas and the heating, air conditioning, plumbing and electrical systems. In addition, tenant shall maintain the exterior landscaping in a healthy and neat condition at all times.

6.3 LANDLORD'S REMEDIES. Tenant shall be liable to landlord for any damage to the building resulting from acts or omissions of tenant. In the event tenant fails to carry out its maintenance responsibilities, landlord may perform the maintenance, in which event tenant shall reimburse landlord for all costs incurred in performing tenant's maintenance.

7. ALTERATIONS. The parties' responsibilities for building alterations are as follows:

7.1 LANDLORD'S RESPONSIBILITIES. Landlord shall have no responsibility for installing alterations or improvements to the premises.

7.2 TENANT'S ALTERATIONS. Tenant shall not make any alterations to the leased premises without landlord's

consent. Any alterations made shall remain on and be surrendered with the premises at the expiration or termination of the term, except that landlord can elect within 30 days before expiration of the term, or within five days after termination of the term to require tenant to remove any alterations that tenant has made to the premises. If landlord so elects, tenant, at its cost, shall restore the premises to the condition designated by landlord in its election before the last day of the term or within 30 days after notice of election is given, whichever is later.

7.3 QUALITY OF WORK. Alterations shall be approved by applicable public authority and permits and authorizations shall be obtained before commencement of the alterations. All alterations shall be completed with due diligence in a good and workmanlike manner. Tenant shall pay all costs for construction performed or ordered by it and shall keep the premises free and clear of all mechanic's liens resulting from construction done by or for tenant.

8. INDEMNITY AND EXCULPATION; INSURANCE.

8.1 EXCULPATION OF LANDLORD. Landlord shall not be liable to tenant for any damage to tenant or tenant's property from any cause. Tenant waives all claims against landlord for damage to person or property arising for any reason.

8.2 INDEMNITY. Tenant shall indemnify and defend landlord from any claim, loss or liability arising out of or related to any activity of tenant on or about the premises to the extent insurable.

8.3 LIABILITY INSURANCE. Tenant, at its cost, shall maintain public liability and property damage insurance with liability limits of not less than \$200,000 per person and \$5,000 per occurrence, and property damage limits of not less than \$50,000 per occurrence with an aggregate coverage of \$100,000 insuring against all liability of tenant and its authorized representatives arising out of and in connection with tenant's use or occupancy of the premises. In all events the liability shall not be less nor more than that allowed in the Municipal Tort Liability law in ORS 30.270.

All insurance shall insure performance by tenant of the indemnity provisions of this article and landlord shall be named as a co-insured.

8.4 OTHER INSURANCE MATTERS. All insurance required under this lease shall:

A. Be issued by insurance companies authorized to do business in the State of Oregon having a financial rating of at least A + AAA status in the most recent edition of Best's insurance reports.

B. Be issued as a primary policy.

C. Contain an endorsement requiring 30 days' written notice from the insurance company to both parties and any loss payee prior to cancellation or change in coverage.

Each policy, or a certificate of the policy, together with evidence of payment of premiums, shall be deposited with landlord at the commencement of the lease term, and upon renewal of the policy, not less than 20 days before expiration of the terms of the policy.

8.5 WAIVER OF SUBROGATION. The parties release each other and their respective authorized representatives from any claims for damage to any person or to the premises and to the fixtures, personal property, tenant improvements and alterations of either landlord or tenant in or on the premises that are caused by or result from risks insured against under the insurance policies required herein and in force at the time of such damage.

9. DAMAGE AND DESTRUCTION. If the building now located on the leased premises is damaged or destroyed, landlord shall have the option, but not the obligation, of restoring or replacing the building or constructing a similar facility on the premises. Landlord's obligation to restore or repair shall be limited to the amount of fire insurance proceeds paid as a result of the damage or destruction.

10. ASSIGNMENT. Tenant shall not voluntarily assign or encumber its interest in this lease or in the premises or sublease all or any part of the premises or allow any other person or entity to occupy or use all or any part of the premises without first obtaining landlord's consent. Any assignment, encumbrance or sublease without landlord's consent shall be voidable and, at landlord's election, shall constitute a default. No consent to any assignment, encumbrance or sublease shall constitute a further waiver of the provisions of this paragraph.

11. DEFAULT. The following shall be events of default:

11.1 DEFAULT IN RENT. Failure of tenant to pay any charge or sum called for by this Agreement within 10 days after it is due.

11.2 DEFAULT IN OTHER COVENANTS. Failure of tenant to comply with any term or condition or fulfill any obligation of this lease (other than the payment of charges) within 10 days after written notice by landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 10-day period, this provision shall be complied with if tenant begins correction of the default within the 10-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

11.3 ABANDONMENT. Failure of tenant for 15 days or more to occupy the property for one or more of the purposes permitted under this lease unless such failure is excused under other provisions of the lease.

11.4 BREACH OF CONDITIONS. Breach of any of the conditions of this lease set forth in the preamble of this Agreement.

12. REMEDIES ON DEFAULT. Landlord shall have the following remedies if tenant commits a default. These remedies are not exclusive; they are cumulative in addition to the remedies now or later allowed by law.

12.1 TENANT'S CONTINUED POSSESSION. Landlord can continue this lease in full force and effect and the lease will continue in effect as long as landlord does not terminate tenant's right to possession and landlord shall have the right to collect rent when due. During the period tenant is in default, landlord can enter the premises and relet them or any part of them to third parties for tenant's account. Tenant shall be liable immediately to landlord for all costs landlord incurs in reletting the premises including, without limitation, broker's commissions, expenses of remodeling the premises required under the reletting and like costs. Reletting can be for a period shorter or longer than the remaining term of this lease. Tenant shall pay to landlord the rent due under this lease on the date the rent is due, less the rent landlord receives from any reletting. No act by landlord allowed by this paragraph shall terminate this lease unless landlord does not terminate tenant's right to possession of the premises, if tenant obtains landlord's consent, tenant will have the right to assign or sublet his interest in the lease but tenant shall not be released from liability.

12.2 TERMINATION OF TENANT'S POSSESSIONS. In the event of a default, landlord can terminate tenant's right to possession of the premises at any time. No act by landlord, other than giving notice to tenant, shall terminate this lease.

12.3 LANDLORD'S RIGHT TO CURE TENANT'S DEFAULT. Landlord, at any time after tenant commits a default, can cure the default at tenant's cost. If the landlord, at any time, by reason of tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by landlord shall be due immediately from tenant to landlord at the time the sum is paid, and if paid at a later date, shall bear interest at the rate of 10% per annum from the date the sum is paid by landlord until landlord is reimbursed by tenant. This sum, together with interest, shall be additional rent. Rent, when not paid, shall bear interest at the rate of 10% per annum from the date due until paid.

13. LANDLORD'S RIGHT OF INSPECTION. Landlord and its authorized representatives shall have the right to enter the premises at all reasonable times to determine whether the premises are in good condition and whether the tenant is complying with its obligations under the lease and to make any necessary maintenance or restoration of the premises.

During the final 90 days of the term or during a period of tenant's default, landlord may post "for rent" or "for lease" signs and show the premises to prospective brokers, agents, buyers, tenants or persons interested in an exchange.

14. NOTICE. Any notice or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail addressed to the other party at the address set forth in the introductory paragraph of this lease. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing.

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

16. SALE OR TRANSFER OF PREMISES. If Landlord sells or transfers all or any portion of the premises, Landlord shall first give to Tenant 90 days prior notice of their intent to sell and thereafter Landlord may complete the transfer and, on consummation of the sale or transfer, shall be released from any liability thereafter accruing under this lease. However, prior to sale tenant shall have the first right of refusal to purchase the property prior to completion of a sale to a third party as follows:

(a) Offer of Election: If the Landlord desires to sell the premises during the original term or any renewal term and receives from a prospective purchaser a bona fide offer to

buy, Landlord shall first offer the premises for sale to Tenant as follows:

(1) Landlord shall give written notice to Tenant stating the name of the prospective purchaser and the price and terms of the proposed sale.

(2) Within 20 days after receipt of a notice of proposed sale, if the lease is then in good standing or is subject only to defaults which are corrected within the time provided in the lease so as to effect a reinstatement of good standing as of that time, Tenant may elect to purchase the property on terms equally or more favorable to landlord by so advising Landlord in writing. The price must equal the net return to the Landlord under the proposed sale after adjustment for the difference, if any, in real estate commission and cost of closing payable in the event of the proposed sale as opposed to sale to the Tenant.

(3) If Tenant elects to purchase, the sale shall be closed on the date specified by Tenant in the notice of election not less than 10 nor more than 30 days after the notice, or, at Landlord's election, on the date, if any, specified as a condition of the original sale and stated in the notice of proposed sale.

(b) Tenant's Failure to Elect: If Tenant does not elect to purchase, Landlord may at any time within 120 days thereafter sell to the named prospective purchaser at the price and on the terms stated in the notice of proposed sale. The purchaser shall take the property subject to all the terms of this lease, including Tenant's right of first refusal with respect to subsequent sales.

17. ATTORNEY FEES. If suit or action is instituted in connection with any 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, including attorney fees on appeal.

18. HOLDOVER. If tenant does not vacate the leased premises at the time required, landlord shall have the option to treat tenant as a tenant from month to month, subject to all of the provisions of this lease, except the provision for term and rent. Failure of tenant to remove fixtures, furniture, furnishings or trade fixtures which tenant is required to remove under this lease shall constitute a failure to vacate to which this paragraph shall apply if the property not removed will substantially interfere with occupancy of the premises by another tenant or with occupancy by the landlord for any purpose, including preparation for a new tenant.

If a month-to-month tenancy results from a holdover by tenant, the tenancy shall be terminable at the end of any monthly rental period on written notice from landlord given not less than 10 days prior to the termination date which shall be specified in the notice. Tenant waives any notice which would otherwise be provided by law with respect to a month-to-month tenancy.

19. SURRENDER OF PREMISES. Upon expiration of the lease term or earlier termination on account of default, tenant shall deliver all keys to landlord and surrender the leased premises and all of tenant's improvements and alterations in good condition (except for ordinary wear and tear occurring after the last necessary maintenance made by tenant and destruction of the premises covered by insurance), except for alterations that tenant has the right to remove or is obligated to remove. Tenant shall remove all of its property and perform all restoration made necessary by the removal within 10 days after expiration of the lease term.

Landlord can elect to retain or dispose of, in any manner, any alterations or tenant's property that tenant does not remove from the premises on expiration or termination of the term as allowed or required by this lease by giving at least 10 days notice to tenant. Title to any such alterations or tenant's personal property that landlord elects to retain or dispose of on expiration of the 10-day period shall vest in landlord. Tenant waives all claims against landlord for any damage to tenant resulting from landlord's retention or disposition of any such alterations or tenant's property. Tenant shall be liable to landlord for landlord's costs for storing, removing and disposing of any alterations or tenant's property.

If tenant fails to surrender the premises to landlord on expiration or 10 days after termination of the term, tenant shall hold landlord harmless from all damages resulting from tenant's failure to surrender the premises, including, without limitation, claims made by a succeeding tenant resulting from tenant's failure to surrender the premises.

20. OPTION TO RENEW. If the lease is not then in default, tenant shall have the option to renew this lease for one successive term of five years as follows:

20.1 The renewal term shall commence on the day following the date of termination of the preceding term.

20.2 The option may be exercised by written notice to landlord given not less than 180 days prior to the last day of the expiring term, provided that if tenant is in default on the date of giving the renewal notice, the notice shall be totally ineffective, or if tenant is in default on the date

the extended term is to commence, the extended term shall not commence and this lease shall expire at the end of the initial term.

20.3 The terms and conditions of the lease for the renewal term shall be identical with the original term except for rent. Rent for a renewal term shall be the greater of (1) the rent during the preceding term and (2) a reasonable rental for the ensuing term.

20.4 The parties shall have 45 days after landlord receives the renewal notice in which to agree on the minimum monthly rent during the extended term. If the parties agree on the minimum monthly rent for the extended term, during that period they shall immediately execute an amendment to this lease stating the minimum monthly rent.

20.5 If the parties do not agree on the rent, the rent shall be determined by a qualified independent real property manager in the Portland metropolitan area chosen by tenant from a list of not fewer than three such individuals submitted by landlord. Within 30 days after his appointment, the arbitrator shall return his decision which shall be final and binding upon both parties. The cost of arbitration shall be borne equally by both parties.

21. MISCELLANEOUS PROVISIONS.

21.1 TIME OF THE ESSENCE. Time is of the essence of each provision of this lease.

21.2 CONSENT OF PARTIES. Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

21.3 SUCCESSORS. This lease shall be binding on and inure to the benefit of the parties and their successors, subject, however, to the express provisions of the article captioned "assignment."

21.4 OREGON LAW. This lease shall be construed and interpreted in accordance with the laws of the state of Oregon.

21.5 CONTEXT. When required by the context of this lease, the neuter pronoun shall include the personal and the singular shall include the plural.

21.6 COOPERATION. Because of overlapping use of a portion of landlord's property, tenant agrees to fully cooperate with the tenant occupying landlord's adjoining property in matters of access, parking, utility costs and

other matters affecting the leased premises. In the event of a dispute between tenants, landlord's decision shall be final and binding on tenant.

21.7 SIGNS. Tenant, at its cost, shall have the right to place, construct and maintain an exterior sign on the premises in conformance with existing City ordinances. At the end of the lease term, tenant's sign shall be removed and damage to the premises caused by removal shall be repaired by tenant.

21.8 CONSENT TO ANNEXATION. Because the premises are located outside of the Wilsonville city limits and ORS 192.630 requires public meetings of the city to be held within the city limits, the lessor consents to annexation of the property to the City of Wilsonville. The tenant agrees to initiate, process, and assume all costs of the annexation application.

IN WITNESS WHEREOF, the parties hereto have executed this lease Agreement on the day and year first above written.

TUALATIN VALLEY FIRE & RESCUE,
a rural Fire Protection District

BY W. J. Bloom
"LANDLORD"

CITY OF WILSONVILLE

BY J. M. Shelton
"TENANT"

**ADDENDUM TO INTERGOVERNMENTAL
AGREEMENT OF DECEMBER 17, 1989**

This Addendum Agreement is entered into effective July 1, 1993, between the Tualatin Valley Fire & Rescue, a rural Fire Protection District, hereinafter termed "Lessor" or "Landlord", and the City of Wilsonville, a municipal corporation, hereinafter termed "Lessee" or "Tenant".

RECITAL

WHEREAS, the parties have reached agreement on further space rental of portions of the bottom level of the premises known as the Annex Building, 8445 S.W. Elligsen Road, Wilsonville, Oregon, and desire to amend by addendum that certain Intergovernmental Agreement for Lease of the Parties entered into the 17th day of December, 1989, pursuant to the authority to enter into intergovernmental agreements as authorized by Oregon Revised Statutes, Section 190.003, et seq., to provide for the further space rental of the bottom level of the premises.

AMENDMENT

1. Paragraph 2. Premises, is amended by adding the following subparagraph 2.2:

"2.2. Approximately 3,000 square feet as generally located on the diagram, marked Exhibit C, attached hereto and incorporated herein."

2. Amend subparagraph 4.1 Minimal Basic Rent, by adding 4.1.B as follows:

"4.1. * * *

"B. There shall be a minimum basic rent for the approximate 3,000 square feet described in paragraph 2.2 above at \$900 per month, and such additional rent as set forth in paragraph 4.2. I J & K below, with credit of \$5,020.40 for extra alterations beyond 4.2 I and J."

3. Amend subparagraph 4.2 Additional Rent by adding 4.2 I, J & K as follows:

"4.2. * * *

"I. The City shall re-carpet and paint the leased areas with materials as agreed upon by Lessor.

"J. The City shall provide an area agreed upon by Lessor for a designated exercise/weight room which will be accessible for use by both City and Fire Department employees. Lessor will provide aerobic and weight-lifting equipment for use in the room and will make accommodation for use of the existing shower facilities for Lessor and Lessee employees.

"K. The City's alterations to the leased space in the bottom level shall be subject to the approval consent of the Lessor."

IN WITNESS WHEREOF, the parties hereto have executed this Addendum to Intergovernmental Agreement of December 17, 1989, this 21st day of June, 1993.

LANDLORD: TUALATIN VALLEY FIRE & RESCUE,
a rural Fire Protection District

By _____

TENANT: CITY OF WILSONVILLE

By *Deborah A. Burnett*