



MARION COUNTY BOARD OF COMMISSIONERS

## Board Session Agenda Review Form

Meeting date: July 21, 2021

Department: Business Services Agenda Planning Date: July 15, 2021 Time required: 10

☐ Audio/Visual aids

Contact: Phone: 503-373-4426

Department Head Signature:

**TITLE**

Consider approval of the 2755 Pence Loop Lease for Health and Human Services Administrative Services

**Issue, Description & Background**

Program growth at Health Building and the delay of new building at Center St. creates an urgent need for additional space. Moving Admin & two Public Health programs to new building will provide needed space until the new building is ready.

**Financial Impacts:**

Total cost 649,563.59 for a two-year lease. Cost includes a 3% escalation after the first year, and annual operating costs that shall not exceed 3.5 percent without tenant's approval.

**Impacts to Department & External Agencies**

Other impacts will include the Information Technology (IT) Department for the installation of the data, phone and security cameras. Health and Human Services will coordinate the movers and purchase and installation of furniture.

**Options for Consideration:**

- 1) Approve the 2755 Pence Loop Lease
- 2) Withhold approval at this time for the 2755 Pence Loop Lease

**Recommendation:**

Business Services and Health and Human Services recommends the approval of the 2755 Pence Loop Lease.

**List of attachments:**

2755 Partner's LLC Lease Agreement

**Presenter:**

Colleen Coons-Chaffins and Ryan Mathews

*Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)*

**Copies to:**

Tina Toney Sr, Contracts Specialist, Business Services



**Marion County**  
OREGON  
FINANCE DEPARTMENT

# Contract Review Sheet

Contract #: **HE-4124-21**

Person Sending: **Tina Toney**

Department: **Business Services**

Contact Phone #: **373-4388**

Date Sent: **Friday, July 9, 2021**

☒ Contract ☐ Amendment# ☐ Lease ☐ IGA ☐ MOU ☐ Grant (attach approved grant award transmittal form)

Title: **Health and Human Services Administration Services Building Lease**

Contractor's Name: **2755 Partners, LLC**

Term - Date From: **August 1, 2021**

Expires: **July 31, 2023**

Contract Total: **\$649,563.59**

Amendment Amount: \_\_\_\_\_

New Contract Total: \_\_\_\_\_

Source Selection Method: Exemption (identify rule/statute)

# **50-0600**

## Additional Considerations (check all that apply)

☐ Board Order# \_\_\_\_\_

☐ Feasibility Determination (attach approved form)

☐ Incoming Funds

☐ Federal Funds (attach sub-recipient / contractor analysis)

☐ Independent Contractor (LECS) approval date: \_\_\_\_\_

☐ Reinstatement (attach written justification)

☐ Insurance Waiver (attach)

☐ Retroactive (attach written justification)

☐ CIP# \_\_\_\_\_ (required for all goods /software greater than \$5,000)

## Description of Services or Grant Award:

**Building Lease for Health and Human Services Administrative Services. Property is a free-standing professional office building with mixed of private offices, conference rooms located at 2755 Pence Loop SE, Salem Oregon. The building is 18,162 SF, lease rate \$1.00 SF/month, plus the cost of annual operating expense as described in Attachment 1 of the lease.**

### FOR FINANCE USE

Date Finance Received: \_\_\_\_\_

BOC Planning Date: \_\_\_\_\_

Date Legal Received: \_\_\_\_\_

Comments: \_\_\_\_\_

## REQUIRED APPROVALS:

Finance - Contracts

Date

Risk Manager

Date

Legal Counsel

Date

Chief Administrative Officer

Date

Date \_\_\_\_\_ ☐ To be filed ☐ Added to Finance Table

☐ Date \_\_\_\_\_ Returned to department for signature

**LEASE AGREEMENT**  
**HE-4124-21**

**THIS AGREEMENT IS** entered this \_\_\_\_\_ day of August 2021, between **2755 Partners, LLC** herein referred to as "Landlord", and **MARION COUNTY**, a political subdivision of the State of Oregon, by and through the Health and Human Services Department, hereinafter referred to as "Tenant".

**RECITAL:**

Landlord owns an office building consisting of approximately 18,162 square feet of space located at 2755 Pence Loop SE, Salem, Marion County, Oregon. Landlord wishes to Lease this property to Tenant and Tenant wishes to Lease this property from Landlord upon the terms and conditions contained in this Lease.

**AGREEMENT:**

Landlord Leases to Tenant and Tenant Leases from Landlord the property described in subsection 1 as the "Premises". The Building is located on certain real property in Salem, Oregon, which real property is more particularly described as the "Land".

**1. Premises.** The Premises is described as follows:

That certain office space, consisting of approximately 18,162 square feet, situated in the office building located at 2755 Pence Loop SE, Salem, Marion County, Oregon.

Tenant and its invitees shall also have the non-exclusive right to use sidewalks, entryways, driveways, passageways, parking areas and other common areas serving the improvements in which the Premises are located.

**2. Term:** The term of this Lease shall commence August 1, 2021, and continue through July 31, 2023.

**a. Early Termination.** Tenant may terminate the Lease within a minimum 180 days' notice to Landlord prior to expiration due to lack of appropriations should the Marion County Board for Commissioners determine that any revenue sources are reduced, changed, modified, or otherwise eliminated, thereby requiring the Tenant to curtail services and reduce staff and office space.

**3. Option to Extend.** Tenant shall have and is hereby given the option to extend this Lease for additional periods of one (1) year each the "Option" on the same terms, covenants, and conditions of this Lease. Tenant shall provide Landlord with not less than ninety 180 days' notice prior to the termination date, if Tenant desires to exercise this option to extend.

**4. Possession.** Tenant's right to possession and obligations under the Lease shall continue beginning August 1, 2021. Tenant may conduct necessary work on the Premises, on a not-to interfere basis, to ensure data and phone lines are in place prior to possession date.

**5. Rent.** The term "Rent" as used in this Lease includes Base Rents, Additional Rents as defined in section 6, and all other sums due under the Lease. Base Rent shall be payable by the Tenant in advance on the first day of each month commencing on the Rent Commencement Date. Rent for any partial calendar month will be prorated based on a 30-day month for the

number of days during the partial month the Premises are occupied by Tenant. During the term of this Lease and any extension or renewal period, tenant shall pay to Landlord as rent the following amounts. The rent payment shall be prorated for any partial month of actual occupancy.

- a. **Base Rent:** The sum of \$1.00/sq. ft. or \$18,162.00 per month.
  - b. **Additional Rent:** For Operating Expenses (including janitorial), calendar year 2021 Operating Expenses based on square foot for the year 2021 is estimated at \$0.46 monthly or \$8,430.20.
  - c. **Escalation.** Each year, Base Rent shall be increased by an amount equal to 2% of the Base Rent in effect during the prior year.
6. **Additional Rent.** The term "Additional Rent" means amounts set forth under this section 6 and any other sums payable by Tenant to Landlord under this Lease.
- a. **Operating Expenses.** For purposes of this Lease, the term "Operating Expenses" means all expenses paid or incurred by Landlord (or on Landlord's behalf) as reasonably determined by Landlord as necessary or appropriate for the operations, maintenance, and repair of, and to insure the Premises. Notwithstanding the foregoing, the items listed on **Attachment 1** hereto shall be identified as Operating Expenses. Operating Expenses for the Base Year shall be calculated as if one hundred percent (100%) of the rentable area of the Building shall have been occupied by tenants during such year.
- Notwithstanding the foregoing, the items listed on **Schedule A** hereto shall be excluded from Operating Expenses.
7. **Deposit.** The security deposit requirement is hereby waived by Landlord.
8. **Prepaid Rent:** Prepaid Rent is hereby waived by Landlord.
9. **Condition of Premises and Permitted Use:** The Premises shall be used for performing executive and administrative health services, operation of a business and other related or ancillary activities to Tenant's operations. Tenant will at all times keep and maintain the Premises in a good state of repair, order, and condition, as that existing at the commencement of the term, reasonable wear and tear from ordinary use thereof and damage by fire or the elements alone excepted. Tenant is aware that no smoking is on the Premises.
- a. **Parking:** During the term of this Lease, Landlord will make available not less than 67 parking spaces for use of Tenant and Tenant's invitees and agents.
10. **Broker(s):** Landlord's Agent: Alex Rhoten, Coldwell Banker Commercial.
11. **Taxes.** Tenant will apply for exemption from ad valorem property taxes for Leased Premises under ORS 307.112, and will file claim for such exemption in a timely manner, as prescribed by ORS 307.112.
12. **Operating Year.** The term "Operating Year" means each calendar year of the Term. If the Lease Commencement Date or the Expiration Date occurs on any date other than the first day

of the calendar year, the calculations, costs, and payments referred to herein will be prorated for that calendar year.

- 13. Tenant's Payment of Operating Expense.** During the Term, Tenant will pay, as Additional Rent, the increase in Operating Expenses, if any, over the Base Year. The Base Year for determining Operating Expense increases is set forth in Section 16. There will be no reduction in Base Rent, nor credit against future Rent, as a result of the Operating Expenses for any Operating Year being less than the Base Year Operating Expenses.

All Operating Expenses shall reflect a fully occupied and fully assessed building pursuant to generally accepted accounting principles (GAAP) consistently applied.

- a. Written Statement of Estimate. Before the Lease Commencement Date, Landlord will furnish Tenant with a written statement setting forth Tenant's Share of the Operating Expenses for the Base Year.
- b. Tenant will pay to Landlord as Additional Rent commencing on January 1 of the next Operating Year, and thereafter on the first day of each calendar month, an amount equal to 1/12 of the amount of Tenant's Share of the reasonably estimated increase in Operating Expenses as shown in Landlord's written statement.
- c. Thereafter, before the commencement of each Operating Year after the Base Year or as soon thereafter as reasonably possible, Landlord will furnish Tenant with a written statement setting forth Tenant's Share of the reasonably estimated increase in Operating Expenses for the next Operating Year.

- 14. Final Written Statement.** Within 120 days after the close of each Operating Year during the Term, Landlord will deliver to Tenant a written statement the "Operating Statement" setting forth Tenant's Share of the actual increase in Operating Expenses for the preceding Operating Year over the Base Year for each such item.

If Tenant's Share of the actual increase in Operating Expenses is greater than the amount paid by Tenant for the Operating Expenses, Tenant will pay the amount due to Landlord as Additional Rent within 30 days after receipt by Tenant of the statement.

If Tenant's Share of the actual increase in Operating Expenses is less than the amount paid by Tenant for the Operating Expenses and Taxes, then Landlord will elect to either (a) pay the amount of Tenant's overpayment to Tenant within 30 days following the date of the statement, or (b) apply the overpayment to Tenant's next Rent payment, reimbursing only the excess over the next Rent payment, if any. Any unpaid overpayment as of the expiration of the Term shall be paid to Tenant within 30 days thereafter.

- 15. Late Charge; Interest.** Rent not paid within ten (10) days after will bear interest until paid at the lesser of (a) the rate of 1 1/2 percent per month, or (b) the maximum rate of interest then permitted by law. Landlord may impose a late charge of the greater of (i) five percent of Rent then due or (ii) \$50 for each payment of Rent made more than 10 days late the "Late Charge". Tenant agrees that late payment by Tenant to Landlord of any Rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, that the exact amount of such costs are extremely difficult and impracticable to ascertain, and that the Late Charge is not a penalty but represents a fair and reasonable estimate of the costs that Landlord will incur by reason of any such late payment.

Grace Period. This Lease has a five (5) day grace period. The month of July, rent shall be paid no later than the 15<sup>th</sup> with no late charges as the department establishes the new fiscal year July 1 and June 30 payment schedule.

Tenant agrees that late payment by Tenant to Landlord of any Rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, that the exact amount of such costs are extremely difficult and impracticable to ascertain, and that the Late Charge is not a penalty but represents a fair and reasonable estimate of the costs that Landlord will incur by reason of any such late payment.

- 16. Cap on Operating Expense Increase.** For purposes of determining the amount of Tenant's obligation to pay Operating Expenses and Landlord's estimate thereof, Controllable Operating Expenses (defined below) for any Operating Year will be deemed not to increase by more than 3% per year (on a non-cumulative, non-compounding basis) over the amount of Controllable Operating Expenses during the preceding Operating Year.

The term "Controllable Operating Expenses" means all operating expenses except costs and expenses for the following "Non-Controllable Operating Expenses": taxes, insurance, and utilities, costs to Landlord resulting from uninsured casualty, repair or replacement (for greater certainty, casualty, repair or replacement which would be covered by insurance required to be maintained by landlord are not to be included in Operating Expenses); costs of security for the Center; costs of snow removal, trash removal; and any increases in costs resulting from government-mandated wage increases. Non-Controllable Operating Expenses that in aggregate or cumulatively, exceeds 3%, Landlord shall notify Tenant of increase.

If Tenant believes that any Operating Statement includes charges that are not permitted pursuant to this Lease or contains an error, in calculation or otherwise, then within one hundred eighty (180) days after receipt of such statement, Tenant may provide Landlord with a written statement requesting to audit Landlord's books and records with respect to Operating Expenses.

**17. Use of Premises**

- a. **Permitted Use.** Tenant may use the Premises for Tenant's Permitted Use, and for no other purpose without Landlord's written consent. Tenant will not use the Premises in a manner that obstructs, annoys, or interferes with the rights of other occupants of the Building. Tenant will not cause any nuisance nor permit any objectionable fumes, electromagnetic waves, vibration, noise, light, or radiation to be emitted from the Premises.
- b. **Equipment.** Tenant will install only such equipment in the Premises as is customary for the Permitted Use and will not overload the floors or electrical circuits of the Premises or Building or change the wiring or plumbing of the Building or Premises, except as consented to by Landlord, which consent shall not be unreasonably withheld. Any equipment, cables, wiring, conduit, additional dedicated circuits, and any additional air conditioning required because of any such equipment installed by Tenant will be installed, maintained, and operated at Tenant's sole expense and in accordance with Landlord's reasonable requirements.
- c. **Compliance with Laws.** Landlord warrants that to the best of its knowledge, as of the Lease Commencement Date, the Premises and the Building comply with all applicable

laws, statutes, ordinances, rules, and regulations of any public authority, the "Laws". As of the Lease Commencement Date that, in respect of the Premises impose any violation, order, or duty on Landlord or Tenant, caused by (a) Tenant's specific manner of use of the Premises (as opposed to general office use); (b) any cause or condition created by or at the instance of Tenant and not Landlord and not otherwise permitted in this Lease; or (c) breach of any of Tenant's obligations hereunder. Notwithstanding the foregoing, Tenant shall not be required to perform any structural work in order to comply with applicable Laws.

- d. **Environmental Law Compliance.** For purposes of this section 17.d, the term "Hazardous Substances" means and includes all hazardous and toxic substances, waste, or materials; and any pollutants or contaminant, including, without limitation, Polychlorinated biphenyls (PCB's), asbestos, asbestos-containing material, and raw materials that are included under or regulated by any Environmental Laws. Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may store such hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonable anticipated needs.

Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling and storage for Hazardous Substances and shall take all practicable measure to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Tenant shall remove all Hazardous Substances from the Premises. The term Environmental Law means and includes all federal, state, and local statutes, ordinances, regulations, and rules presently in force or hereafter enacted relating to environmental quality, contamination, and clean-up of Hazardous Substances. References in this Lease to "Laws" are deemed to include Environmental Laws. Landlord represents that to the respecting Hazardous Substances, and that Landlord has received no notice of any pending or threatened lien, action, or proceeding respecting any alleged violation of Environmental Laws affecting the Building.

**18. American with Disabilities Act (ADA).**

- a. **Compliance.** Tenant shall be responsible for compliance with the ADA for all issues that arise with the respect to Tenant's trade fixtures, equipment, and freestanding space dividers and any other fixtures or equipment install or used on the Premises by Tenant. Landlord shall be response for compliance with ADA with respect to all issues that arise due to structural features of the Premises, to include ramps and other ADA access to the building interior and restroom compliance. With respect to each party's area of responsibility, each party shall take all steps necessary to comply with the ADA, shall pay all costs of compliance, promptly when due, and shall pay all penalties, fines, judgements, including attorney fees and court costs, levied or assessed because of failure to comply with ADA.
- b. **Termination.** In the event Landlord is required to make changes in the Lease space to comply with the ADA at a cost exceeding \$30,000.00, Landlord and Tenant shall have the right, upon giving the other party 60-day's prior notice, to terminate this Lease. If either party opts to terminate the Lease, all rights and obligations of the parties shall cease as of date of termination. If Landlord does not elect to terminate the Lease, Landlord shall

proceed with such alternations as are necessary to comply with the ADA. Rent shall be abated during the period of such alterations to the extent the work interferes with Tenant's occupancy.

**19. Inspections and other Entries.** Landlord shall have the right to inspect the Premises at any reasonable time with prior notification and with a Marion County escort proficient in HIPAA regulations and compliance to determine the necessity of repair and for any other purpose. Whether or not such inspection is made, the duty of Landlord to make repairs shall not mature until a reasonable time after Landlord has received from Tenant written notice of the repairs that are required. Landlord shall have the right to enter upon the Premises at any reasonable time with an escort with prior notification to determine Tenant's compliance with this Lease, or make necessary repairs to the building. Landlord shall have the right to enter the Premises, with an escort to show the Premises to any prospective tenant or purchaser, at any time during the last two months of the term of this Lease, to place and maintain upon Premises notice for leasing or selling of the Premises.

Landlord, Tenant, Marion County Risk Management and Facilities must complete a building evaluation and inspection before Tenant take possession of the Premises and at time of renewal.

**20. Restriction of Use.** In connection with the use of the Premises, Tenant shall:

- a. Conform to all applicable laws and regulation of any public authority affecting the Premises and the use of the Premises. Tenant, at Tenant's own expense shall correct any noncompliance under this section which is created by reason of Tenant's specific use of the property or by Tenant's other actions or failure to act which result in the failure to comply. However, Tenant shall not be required to make any structural changes to the Premises, which are necessary for compliance, unless the changes are required as a result of Tenant's specific use of Premises.
- b. Refrain from any activity that would make it impossible to insure the Premises against casualty, could increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Oregon insurance Rating Bureau, or its successor, unless Tenant pays the additional cost of insurance.
- c. Refrain from unreasonable loading the electrical system or floors to create an unsafe condition.
- d. Refrain from making any marks on or attaching any sign, insignia, advertisement, notices, antenna, aerial, or other devices to the exterior or interior walls, windows, or roof of the Premises, which would be visible from any public street without written consent of Landlord.

**21. Indemnification.** Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, Tenant agrees to indemnify, defend and hold harmless the Landlord against any and all liability, loss, and cost arising from actions, suits, claims, or demands attributable solely and exclusively to acts or omissions of Tenant, and Tenant's officers, agents and employees under this Lease agreement.

During the term of the Lease the Landlord shall defend, indemnify and hold Tenant harmless against any claim of liability of loss from personal injury or property damage caused by the



negligence or willful misconduct of the Landlord, its employees or agents except to the extent that such claims or damages may be due to or caused by the acts or omissions of the Tenant, its employees or agents.

**23. Assignment or Subletting.** No part of the Premises may be assign, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conferred on any third person by any other means, without the prior written consent of Landlord. This provision shall apply to all transfers by operation of law. This provision shall apply to any transfer of a majority voting interest in stock or partnership interest of Tenant. No consent in one instance shall prevent this provision from applying to a subsequent instance. Landlord may withhold or condition such consent in its sole and arbitrary discretion.

**24. Maintenance and Repairs.** Landlord shall at its own cost and expense during the term of this Lease keep and maintain the Leased Premises, including all building improvements situated therein, in good condition and state or repair.

**a. The following shall be the responsibility of Landlord:**

- (1) Landlord will repair, maintain, and replace, when necessary, the roof, foundation, exterior walls, interior structural walls, all structural components of the Premises and all systems such as mechanical, electrical, HVAC, and plumbing of or in the Building in conformance with standards applicable to first-class office buildings in Salem, Oregon of comparable quality to the Building.
- (2) Landlord to resolve reported repair emergencies within 24 hours, and non-emergency repair issues within 48 hours. An emergency contact list with current phone numbers, including identification of a primary point of contact, shall be provided to the Tenant.
- (3) HVAC systems will be maintained to provide current ASHRAE and International Building Code requirements for airflow, air exchange rate and air quality.

**b. The following shall be the responsibility of Tenant:**

- (1) Tenant maintain all portions of the Premises and fixtures situated within the Premises in good order and repair; maintain, repair, and replace, if reasonably necessary.
- (2) All special equipment and decorative treatments installed by or at Tenant's request and that serve the Premises only; make all necessary repairs and replacements to all portions of the Premises and pay Landlord for the repairs or replacements to the Premises if any such repairs or replacements are needed because of Tenant's misuse or negligence; and not commit waste to the Premises.
- (3) Re-keying of locks. If after commencement of the term of the Lease, Tenant requires that the door locks be re-keyed, Tenant may rekey the Premises at any time of their choosing with any licensed, qualified locksmith of their choice. All rekeying and management of the key system will be Tenant's responsibility and expense. Tenant acknowledges that a key system outside the master key system for the office

complex may cause delays in Landlord response to emergencies, which require Landlord access, although Landlord will make every effort to minimize these delays.

- (5) Fire extinguisher(s) if required by the City of Salem Fire Code, Tenant shall supply and maintain their own fire extinguisher.
- (6) Phone & Data. Tenant shall be responsible for the installation, maintenance and repair of all phone and data services from the point of demarcation forward into the Premises.

**25. Alterations or Improvements.** Tenant shall make no improvements or alternation on the Premises of any kind without first obtaining Landlord's written consent. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes. As used herein, "alterations" includes but is not limited to, the installation of computer and telecommunications wiring, cables, and conduit. All improvements and alterations performed on the Premises by either Landlord or Tenant shall be the property of Landlord when installed unless the applicable Landlord's consent specifically provides otherwise. Improvements and alternations installed by Tenant shall, at Landlord's option, be removed by Tenant and the Premises restored unless the applicable Landlord's consent specifically provides otherwise.

- a. Tenant Improvements. None
- b. Exterior sign installed by Tenant, shall conform to the Sign Policy for the Pence Loop site location as described in **Section 27** made a part of this Lease by this reference.

**26. Utilities and Services.** Landlord will furnish the Premises with (a) electricity for lighting and the operation of Tenant's equipment (electrical service furnished will be 110 volts), not less than six watts per rentable square foot of electrical power, excluding electricity for HVAC systems in the Premises;

Landlord will furnish potable hot and cold water and electricity to the Premises at all times and will furnish heat, ventilation, and air conditioning in accordance with the specifications set forth on **Schedule B and C** hereto during "normal business hours".

The term "normal business hours" means Mondays through Fridays, excluding federal or State of Oregon holidays, 6:00 a.m. to 6:00 p.m., Pacific Standard Time. If Tenant shall require heat or air conditioning at times other than normal business hours, Landlord shall provide same at Landlord's actual cost.

- a. Landlord shall maintain a regularly scheduled maintenance and service contract for the HVAC System with an HVAC maintenance company that regularly provides such contracts to similar properties, and shall otherwise maintain and repair the HVAC System as frequently as necessary or appropriate to keep the HVAC system in first-class operating condition and providing the level of service described on **Schedule B**.
- b. Janitorial and cleaning service will be provided in accordance with the specifications set forth on **Schedule C** with reasonable frequency, including the parking lots and landscaped areas.

All services provided by Landlord shall be in conformance with standards applicable to first-class office buildings in Salem, Oregon.

Notwithstanding the foregoing or anything to the contrary in this Lease, if the Premises shall become inaccessible or untenable or Tenant is unable to use all or a material part of the Premises or if Tenant's data center shall not be usable by Tenant in connection with the conduct of Tenant's business because of Landlord's failure to provide any service required to be provided by Landlord hereunder (other than interruptions of service that are not caused by Landlord's negligence or willful acts), or due to Landlord's failure to make repairs or replacements that are its obligations hereunder, or due to repairs or replacements or other improvements being made by Landlord, in each case for a period of five (5) business days following Landlord's receipt from Tenant of a written notice regarding such unavailability, inaccessibility, or untenability, then Tenant shall be entitled to a proportionate abatement of Rent and Additional Rent for each consecutive day (after such 5 business day period) that Tenant is so prevented from using or accessing all or a material part of the Premises based upon the portion of the Premises so affected. In the event that such condition continues for more than 30 days following Landlord's receipt from Tenant of the written notice, Tenant, shall have the right to elect to terminate this Lease by delivering written notice to Landlord of its election thereof.

27. **Signage and other Installation.** All signs attached to the Building or placed on the Premises by Tenant shall comply with all applicable local codes and ordinances. Tenant, will remove all signs, and sign hardware at Tenant's sole cost and expense, upon termination of this Lease, with the sign location restored to its former state unless Landlord elects to retain all or any portion thereof. Tenant shall have the right to install and place signs anywhere in or on the Premises or the Building without Landlord's consent, except that all exterior signage must be approved in writing by Landlord in advance.

28. **Fire Insurance.** Landlord shall at the Landlord's expense maintain at all times property insurance and general liability insurance covering the Premises. Tenant pursuant to applicable provision of ORS 30.260 to 30.300, shall maintain a self-insurance program, which provides property damage and personal injury coverage. Tenant will meet the requirements for maintaining comprehensive general liability coverage during the term of the Lease and any renewals thereof through its self-insurance program and provide Landlord a self-insurance letter upon request.

Both parties agree to waive all recovery rights against the other or against the officers, agents, and employees for loss or damage from any cause covered by any property insurance required to be carried under this agreement or any other insurance coverage carried by the parties. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such waiver will not affect coverage under this policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

29. **Default.** The following shall be events of default.

- a. **Default of Rent.** Failure of Tenant to pay any rent or other charges within 15 days after it is due;

- b. **Default in Other Covenants.** Failure of Tenant to perform any obligation of the Lease (other than the payment of rent or other charges) within 20 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 20-day period, this provision shall be complied with if Tenant begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.
- c. **Abandonment.** Failure of Tenant for 20 days or more to occupy the Premises for one or more of the purposes permitted under this Lease, unless such failure is excused by other provisions of this Lease, unless such failure is excused by other provisions of this Lease.
- d. **Default by Landlord.** Landlord will be in default of this Lease if Landlord fails to perform obligations within twenty days after written notice from Tenant to Landlord describing the default; provided however that if the nature of Landlord's obligation is such that more than twenty days are required for performance, then Landlord shall not be in default if Landlord commences performance with the twenty day period and thereafter diligently prosecutes the same to completion.

### 30. Remedies on Default.

The following shall be remedies in the event of default.

- a. **Landlord Remedies.** In the event of default by Tenant, and such violation is not cured within the time allowed under **Section 29**, the Lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not the Lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default, and Landlord may reenter, take possession of the Premises, and remove any persons or property by legal action.
- b. **Reletting.** Following reentry or abandonment, Landlord may relet the Premises and in that connection may make any suitable alternations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use or purposes other than that specified in the this Lease or which Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent free occupancy or other rent concession.
- c. **Tenant's Remedies.** If the Landlord shall violate or default in the performance of any Landlord's obligations within this Lease Agreement, and such violation is not cured within the time allowed under **Section 29**, the Tenant may terminate this Lease at the option of Tenant by providing written notice, and may recover damages and costs incurred by Tenant. If Landlord fails to commence repairs of the Premises as required in **Section 29** within twenty days after written notice from Tenant, Tenant may terminate this Lease by giving notice to the Landlord, or Tenant may perform any such repairs and deduct the cost thereof from the monthly rent next falling due; provided, if such repair has the effect that Tenant cannot reasonably use the Premises in the manner set forth in **Section 9** , then the monthly rent shall be abated until the Premises can be reasonable

operated for such use. Notwithstanding the preceding, Landlord shall use best efforts to avoid materially or unreasonably affecting or interrupting Tenant's use of the Premises.

**31. Surrender; Hold Over at Expiration.**

- a. Condition 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 Premises in good condition and broom clean including removal of all rubbish and debris, clean, walls, clean carpets, clean bathroom items, clean plumbing fixtures and window coverings, normal wear and tear excepted. Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for the alteration so required. Tenant's obligation under this section shall be subordinate to the provision relating to destruction.
- b. Fixtures
  - (1) Tenant will remove all of its personal property, and any other property, alterations, fixtures or equipment that Tenant desires to remove and will repair all damage to the Premises and the Building resulting from that removal.
  - (2) Prior to expiration or other termination of the Lease term, Tenant shall remove all furnishing, furniture, and trade fixtures that remain Tenant's property. If Tenant fails to do so, this shall be an abandonment of property, and the Landlord may retain the property and all right of Tenant with respect to it shall cease or, by notice in writing given to Tenant within 20 days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, and storage, with interest at the rate of 10% on all such expense from the date of expenditure by Landlord.
- c. Holding Over. If the Tenant holds over after the term of the Lease, or any renewal thereof, with the consent of the Landlord, express or implied, the Tenant shall remain bound by all the covenants of this Lease, except that the holding over shall be construed to create a tenancy from month-to-month not to exceed 50% of base Lease.

- 32. Damage or Destruction.** If the premises are destroyed or damaged to the extent of 40% of the Premises, Landlord may elect to terminate the Lease as of the date of the damage or destruction by notice given to Tenant in writing not more than 45 days following the date of damage. In such event, all rights and obligation of the parties shall cease as of the date of termination, and Tenant shall be entitled to the reimbursement of any prepaid amount paid by Tenant and attributable to the anticipated term. If less than 40% of the Premises are damaged or destroyed or Landlord elects not to terminate, Landlord 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. Rent shall be abated during the repair of any damage to the extent the Premises are untenantable, except that there shall be no rent abatement where the damage occurred as the result of the fault of Tenant.

**33. Eminent Domain**

a. Partial Taking. If a portion of the Premises is condemned and paragraph 33.b below does not apply, the Lease shall continue on the following terms:

- (1) Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.
- (2) Landlord, at Landlord's election, may proceed as soon as reasonably possible to make repairs and alternations to the Premises that are necessary to restore the remaining Premises to a condition as comparable as reasonable practicable to that existing at the time of the condemnation.
- (3) After the date on which title vests in the condemning authority or an earlier date on which alternations or repairs are commenced by Landlord to restore the balance of the Premises in anticipation of taking, the rent shall be reduced in proportion to the reduction in value of the Premises as an economic unit on account of the partial taking. If the parties are unable to agree on the amount of the reduction of rent, the amount shall be determined by an independent appraiser selected by Landlord and Tenant.
- (4) If a portion of Landlord's property not included in the Premises is taken, and severance damages are awarded on account of the Premises, or an award is made for detriment to the Premises as a result of activity by a public body not involving a physical taking of any portion of the Premises, this shall be regarded as a partial condemnation to which this paragraph 33.a. applies, and the rent shall be reduced to the extent of reduction in rental value of the Premises as though a portion had been physically take.

b. Total Taking. If a condemning, authority takes all of the Premises or a portion sufficient to render the remaining Premises reasonable unsuitable for the use that the Tenant was then making of the Premises, the Lease shall terminate as of the date the title vests in the condemning authorities. Upon termination, Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

c. Sale in Lieu of Condemnation. Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this section as a taking by condemnation.

**34. Liens.** Except with respect to activities, for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for the services rendered or materials furnished to the Premises, and shall keep the Premises free from any liens. If following 10 days prior written notice from Landlord, Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of 10% per annum from the date expended by Landlord and shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have because of Tenant's default.

**35. Brokers.** Each party represents that except for the broker(s) identified in **Section 1.10**, it has

not had any dealings with any real estate broker, finder, or other person with respect to this Lease. Landlord will pay a leasing commission to the party(s) identified in section 1.10 in accordance with a separate agreement by and between Landlord and the specified broker(s). Each party agrees to indemnify and hold the other party harmless from and against any and all costs, expenses, or liability for commissions or other compensation or charges claimed by or awarded to any broker or agent resulting from a breach of the representations from Landlord's failure to pay a leasing commission to the party(s) identified in Section 10 in accordance with a separate agreement by and between Landlord and the specified broker(s).

**36. Governing Law.** This Lease will be construed and interpreted and the rights of the parties determined in accordance with the laws of the state of Oregon (without reference to the choice-of-law provisions of Oregon law). Regarding matters of law concerning the internal corporate affairs of any corporate entity that is a party to or the subject of this Lease, the law of the jurisdiction under which the entity derives its powers will govern.

**37. Miscellaneous.**

- a. Nonwaiver. 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.
- b. Notices. Any notice required or permitted under this Lease shall be given when actually delivered or 72 hours after deposited in United States mail as certified mail addressed to the address as may be specified below or as may be changed from time to time by either of the parties in writing.

LANDLORD: 2755 PARTNERS, L.L.C  
P.O. Box 967  
Salem, OR 97308

TENANT: MARION COUNTY HEALTH & HUMAN SERVICES  
Attn: Sr. Administrative Services Manager  
P.O. Box 1455  
Salem, OR 97309  
Phone (503) 364-6552

- c. Successions. Subject to the above-stated limitation on transfer of Tenant's interest, this Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.
- d. Recordation. This Lease shall not be recorded without the written consent of Landlord.
- e. Proration of Rent. In the event of commencement or termination of this Lease at a time other than the beginning or end of one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Tenant or paid on its account.
- f. Time of Essence. Time is of the essence of the performance of each of Tenant's and Landlord's obligations under this Lease.

- g. Parking. Tenant shall have exclusive use of the parking stalls adjacent to the Leased Premises. Additional, Landlord shall provide Tenant, its customers and employees, parking in common with the other tenants, their customers and employees.
- h. Real Estate Taxes. The base rent stipulated in section x above has been adjusted to reflect any exemption from real property taxation under ORS 307.112 because Tenant is qualified for an exemption under ORS 307.130.
- i. Health Insurance Portability and accountability Act (HIPAA). Landlord and Tenant are “covered entities” and/or “business associates” for the purposes of the provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended. The parties agree to take such action as is necessary to amend this Lease from time to time as needed for compliance with the requirements of the Security and Privacy Rules and other provisions of the HIPAA. Each agency agrees to comply with state and federal laws regarding the confidentiality of drug and alcohol treatment and assessment records as specified in 42 CFR Part 2 and ORS 179.505.
- j. Civil Rights. Landlord agrees to comply with the Civil Rights Act of 1964 and 1991, and Section 504 of the Rehabilitation Act of 1973 as implemented by 45 CFR 84.4 which state in part, “No qualified person shall on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which received or benefits from federal financial assistance.”
- k. Termination. This Lease may be terminated by mutual consent of both parties if set forth in writing.
- l. Attachments & Schedules:
  - Attachment 1: 2021 Operational Expenses
  - Schedule A: Operating Expense Exclusions
  - Schedule B: HVAC Specifications
  - Schedule C: Janitorial Specifications

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first set forth above

**LANDLORD:**  
**2755 PARTNERS, LLC**

Authorized Signature: \_\_\_\_\_  
Date

Title \_\_\_\_\_

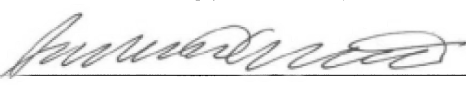
**[This section intentionally left blank]**



**TENANT:**

**MARION COUNTY HEALTH & HUMAN SERVICES**

Authorized Signature:  7/15/2021  
Health & Human Svc. Administrator Date

Reviewed by Signature:  7/15/2021  
Sr. Administrative Svc. Manager Date

**MARION COUNTY  
BOARD OF COMMISSIONERS:**

\_\_\_\_\_  
Chair Date

\_\_\_\_\_  
Commissioner Date

\_\_\_\_\_  
Commissioner Date

Authorized Signature: \_\_\_\_\_  
Chief Administrative Officer Date

Reviewed by Signature:  7/15/21  
Facilities Program Manager Date

Reviewed by Signature: \_\_\_\_\_  
Marion County Legal Counsel Date

Reviewed by Signature: \_\_\_\_\_  
Marion County Contracts & Procurement Date

**SCHEDULE A**  
**OPERATING EXPENSE EXCLUSIONS**

- Capital cost and expense
- Ground rent
- Salaries, benefits, wages, fees, etc. for employees above the grade of building manager or for officers or partners of Landlord
- Non-cash items such as depreciation and amortization.
- Cost and expense which would otherwise be included but which are in excess of the competitive costs and expense in the area in which the building is located.
- To the extent that Landlord's employees are not employed exclusively at the building, the cost and expense with respect to such employees should be pro-rated
- Insurance premiums and other related charges other than to the excess profit taxes, franchise or any taxes imposed or measured on or by the income or revenue of Landlord from the operations of the building or imposed in connection with any change of ownership of the building or the land (it being understood that this exclusion shall not be deemed to modify or affect Tenant's obligation with respect to increase in taxes.)
- Federal, state, county or municipal taxes, death taxes, excess profit taxes, franchise or any taxes imposed or measured on or by the income or revenue of Landlord from the operation of the building or imposed in connection with any change of ownership of the building or the land (it being understood this exclusion shall not be deemed to modify or affect Tenant's obligation under Section 11 with respect to increase in Taxes.
- Operating expenses for the building should be "net" only and for the purpose should be deemed reduced by the amounts of any insurance reimbursement or recovery, other reimbursement, recoupment, payment, discount credit, reduction, allowance or the like received by Landlord in connection with such operating expenses.
- The cost of repairs, replacement or other work occasioned by fire, windstorm, or other casualty, except to the extent of any increase in the amount of the deductible over the provided in the base with such operating expenses.
- The cost of repairs, replacement, or other work occasioned by the exercise of eminent domain.
- Leasing commission, attorney's fees, cost disbursement and other expenses incurred in connection with solicitations of negotiation for Leases with tenants, other occupants or prospective tenants or other occupants of the building, or similar costs incurred in connection with disputes with tenants, other occupants, or prospective tenants or other occupants of the building.
- All "tenant allowances", "tenant concessions" and other costs or expense incurred in completing, fixturing, furnishing, removing or otherwise improving, decoration or redecorating space for

tenants or other occupants of the building, or vacant lease space in the building including space planning fees.

- All cost of correcting defects, including any allowances for same, in the construction of the building ( including latent defects) or the building equipment (or the replacement of defective equipment) any associated parking garages or areas, any other improvements, or in the equipment use therein.
- All costs or expenses ( including fines, penalties, interest and legal fees) incurred due to the violation by Landlord, its employees, agents, contractors or assigns, or any tenant (other than Tenant) or other occupant of the building, of the terms and conditions of any Lease or other occupancy agreement pertaining to the building, or any valid, applicable building code, governmental rule, regulation or law including without limitation, the ADA.
- Payment of principal, finance charges, or interest on debt or amortization on any mortgage or other debt or any penalties assessed as a result of Landlord's late payment of such accounts.
- Any costs of Landlord's general overhead, including general and administrative expense, which costs would not be chargeable to operating expenses of the building, in accordance with generally accounting principles, consistently applied.
- Any compensation paid to clerks, attendants, or other persons in commercial concessions, if any, operated by Landlord or any subsidiary or affiliated of Landlord.
- Rentals and other related expense, if any, incurred in leasing capital items.
- Any costs or expense for sculpture, painting, or other works of art, including costs incurred with respect to the purchase, ownership, leasing, repair, and or maintenance of such works of art.
- Any otherwise includible costs of correcting defects in the building and or any associated garage facilities, and or equipment or replacing defective equipment to the extent such costs are covered by warranties of manufacturers, suppliers or contractors, or are otherwise borne by parties other than Landlord.
- Contributions to operating expense reserve.
- The initial cost of spare parts, tools, and equipment used in the operations, repair, and maintenance of the building.
- The cost to comply with environmental regulation, including, but not limited to, the cost of removal of chlorofluorocarbons (CFC) or adaption of building HVAC systems to use substances other than CFC.
- The cost of overtime or other expenses to Landlord in performing work expressly provided in this Lease to be borne at Landlord's expense.
- All expense directly resulting from the negligence or willful misconduct of Landlord, its agents, servants or other employees.
- All bad debt loss, rent loss, or reserve for bad debt or rent loss.

- All costs and expenses associated with the operations of the business of the entity which constitutes Landlord as the same are distinguished from the costs of operations of the Building, including accounting and legal matters, costs of defending any lawsuits with any mortgagee, cost of selling, syndicating, financing, mortgage or hypothecating any Landlord's interest in the Building, costs of any disputes between landlord and its employees (if any) not engaged in Building operations, disputes of Landlord with Building management, or fees or costs paid in connection with disputes where such employee provides services.
- If separate fees are charged for parking, all parking area maintenance and operating costs and real estate taxes shall be excluded from operating expense, provided that Tenants shall pay for additional parking as provided in Section 9.a. of the Lease.
- Any comprehensive general liability insurance coverage with minimum limits in excess of \$10 million.
- Management fees in excess of 3% of rents received from the Building.
- Replacement for any items or major component of any items and major repairs to such items in lieu of replacement shall each be considered a capital expenditure if the original item or a subsequent improvement to such items was, or could have been, capitalized.
- The cost of any judgement, settlement, or arbitration award resulting from any liability of Landlord, which is the result of contract liability, negligence, willful misconduct, or fraud of Landlord, and all expenses incurred in connection therewith.
- Costs paid or incurred in connection with the removal, replacement, enclosure, encapsulation, or other treatment of any Hazardous Substances in the building or on the property existing in the building prior to the Lease commencement, date or that has not been released by Tenant's acts or omissions.
- Charitable or political contributions
- Any other cost or expense, which under generally accepted accounting principles consistently applied, would not be considered to be operating expense of the building.

**SCHEDULE B**  
**HVAC SPECIFICATION**

Landlord shall ensure that the HVAC System provides comfortable conditions with respect to cooling, heating, and fresh air in the Premises and the Building, which conditions are defined as follows:

Outside of Normal Business Hours (Mondays through Fridays, excluding federal or State of Oregon Holidays, 6:00 a.m. to 6:00 p.m., PST) temperature ranges in the Premises shall be between 55 and 85 degrees.

Server Room: The server room(s) on the Premises (any such server rooms together the "Server Room" contains temperature-sensitive electronic equipment. Notwithstanding Landlord's other obligations regarding the HVAC System as set forth above, the temperature in the Server Room shall at all times ( whether during or outside normal business hours) be maintained at a temperature between 60 degrees and 75 degrees.

## SCHEDULE C JANITORIAL SPECIFICATION

### Daily

#### Office

- Empty waste baskets – insert liners where required (replace as needed)
- Dust furniture including desks, chairs, tables
- Dust exposed filing cabinets, book cases and shelves,
- Dust telephones
- Clean and sanitize drinking fountains
- Spot clean reception lobby glass including entrance door to office and any other partition or door glass.
- Dust mop resilient and hard floors or vacuum-carpeted floors.
- Spot clean spills and stains on carpeted and resilient floors
- Remove fingerprints, smudges, etc. from glass surfaces
- Clean coffee stations.

#### Restrooms

- Clean, sanitize and polish fixtures, including toilet bowls, urinals and hand basins.
- Clean glass and mirrors
- Empty containers and disposals, insert new liners as required
- Spot clean and sanitize container
- Spot clean walls, doors, and partitions.
- Refill tissue and towel dispensers to normal limits
- Refill soap dispensers to normal limits
- Sweep, damp mop and sanitize hard floors.

#### Weekly

- Clean and sanitize telephones
- Low and high dust all horizontal surfaces, sills, ledges, moldings, shelves, picture frames, ducts, radiators, etc.
- Spot clean desktops
- Total vacuuming of carpeted floors
- Clean the exterior of microwaves and refrigerators other than in the kitchen area.

### Monthly

- Dust vertical. Venetian blinds
- Remove dust and cobwebs from ceiling area (including are vents)
- Wipe, clean and polish all wood treatments
- Low and high dusting of horizontal surfaces.

### Miscellaneous

- Strip and re wax or spray buff resilient and hard floors as necessary, not less than once quarterly
- Clean light fixtures and diffusers not less than once quarterly.

# ATTACHMENT 1 - 2021 CAM EXPENSE ESTIMATE

2755 Pence Loop, SE, Salem, OR

## 2021 Expense Estimates

	2021 Estimate
<u>CAM</u>	18,162
Janitorial	\$36,600.00
Window Cleaning	1,010.00
Carpet Cleaning	400.00
Trash Removal	4,200.00
Electrical R & M	480.00
HVAC R & M	3,350.00
Plumbing R & M	1,050.00
Supplies/Materials	120.00
Pest Control	600.00
Interior Repairs	1,000.00
Exterior Repairs	600.00
Roof R & M	300.00
Other Building R & M	600.00
Electricity	16,800.00
Gas	5,430.00
Water/Sewer	5,400.00
Sweeping	0.00
Snow Removal	1,400.00
Landscape	4,000.00
Exterior Lighting	200.00
Parking Lot R & M	400.00
Fire/Life Safety	367.00
Management Fees	12,228.00
Insurance	2,766.66
Total CAM	\$99,301.66
R.E. Tax	\$57,032.80
Total Expenses	\$156,334.46

Total CAM Expenses

\$99,301.66
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SF Cost **\$5.47**