

STAFF REPORT

For Meeting of August 22, 2016

MAYOR AND MEMBERS OF THE CITY COUNCIL

Agenda Item #

NO. 2016-

SUBJECT:

Res. 2036

Safety Center Lease

Subject

Approve a lease agreement to allow Umatilla County Fire District #1 (UCFD1) to occupy a portion of the Robert Shannon Safety Center.

Summary and Background

The City of Hermiston's General Fund, which pays for the Police, Streets, Parks & Recreation, Library, Airport, etc. will lose approximately \$130,000 per year due to compression as a result of the newly formed UCFD1. This equates to approximately 2.6% of the General Fund's revenue from property taxes. Hermiston Fire & Emergency Services (HFES), during a presentation to the City Council in October, 2014 about the Fire District Consolidation, offered to help the city absorb this major loss from compression, which at that time was projected to be \$190,000 per year.

Voters in May, 2016 approved consolidating the Hermiston & Stanfield Fire Districts in to the new legal entity UCFD1. The City, which owns the Safety Center, has an existing lease with HFES, which doesn't allow HFES to transfer the agreement to another party without consent of the City Council. The proposed lease will take care of the transfer of HFES' lease to UCFD1 and serve as the mechanism to handle HFES' original offer to help offset compression loss.

The Lease is substantially similar to the previous lease, with the main changes being that UCFD1 will pay a graduated rent schedule for the first four years, and will be able to apply those payments toward any future purchase of the building. The lease makes it clear that the City has no intentions of ever selling the Safety Center. However, the lease simply provides that if the City ever did decide to relocate out of the Safety Center, then UCFD1 will be able to apply the total rent paid to whatever purchase price the City asks for at the time.

The UCFD1 Board unanimously approved this proposed Lease August 10th.

Financial Information

Although this lease will result in new payments from UCFD1 of \$75,000, \$50,000, \$50,000, and \$25,000 for the next four years, the net impact, when coupled with the Compression Loss & accounting for regular Property Tax growth means that the average growth in General Fund Tax revenues will slow. However, receiving this de-escalating payment schedule from UCFD1 will allow the City to more easily normalize service levels as property taxes catch up to the "new normal." The table below shows the impact on General Fund tax revenue with and without these graduated payments.

	Actual GF Property Tax Growth	Projected Net GF Property
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City of Hermiston

Fiscal Year						Tax Growth*			
	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
With UCFD1 Payments	1.99%	4.37%	0.50%	4.25%	2.46%	2.30%	1.86%	1.91%	1.51%
Without Payments	1.99%	4.37%	0.50%	4.25%	2.46%	0.81%	0.90%	0.98%	1.06%

*Assumes regular average growth in tax revenue of 3.39% minus Compression Loss of \$130,000/yr.

Alternatives and Recommendation

Alternatives

1. Motion to Approve the Safety Center Lease
2. Motion to Deny the Safety Center Lease
3. Motion to Amend the Safety Center Lease

Recommendation

Staff recommends approval of the Safety Center Lease

Requested Action/Motion

Motion to approve the Safety Center Lease



Department Head- Mark Morgan, Assistant City Manager



City Attorney- Gary Luisi, City Attorney



City Manager Approval- Byron Smith, City Manager

SAFETY CENTER LEASE

Effective Date: July 1, 2016

Between: City of Hermiston (“Landlord”)
Attn: City Manager
180 NE Second St
Hermiston OR 97838

And: Umatilla County Fire District #1 (“Tenant”)
Attn: Fire Chief
330 S First St
Hermiston OR 97838

Landlord leases to Tenant and Tenant leases from Landlord the following described property (the “Premises”) on the terms and conditions stated below:

That portion of the Robert Shannon Safety Center building at 330 South First Street, Hermiston, Oregon, north of the Hermiston Police Department offices as shown on the attached sketch, Exhibit A.

Section 1. Termination of Prior Lease. The January 1, 2007, lease of the Premises between the Landlord and the former tenant Hermiston Fire and Emergency Services district was terminated as of June 30, 2016, due to the fact that the former tenant was dissolved by law when the Stanfield Fire District and the Hermiston Fire and Emergency Services districts merged and became Umatilla County Fire District #1 on July 1, 2016.

Section 2. Term. The term of this lease is 99 years commencing July 1, 2016, and ending June 30, 2115, unless terminated as hereinafter provided.

Section 3. Rent. Tenant shall pay to Landlord as rent the following sums:

3.1 First year’s rent: \$75,000 payable on December 1, 2016;

3.2 Second year’s rent: \$50,000 payable on December 1, 2017;

3.3 Third year’s rent: \$50,000 payable on December 1, 2018;

3.4 Fourth year’s rent: \$25,000 payable on December 1, 2019; and

3.5 Succeeding annual rents: annual payments of \$1.00 payable in advance on December 1, 2020, and on each December 1st of successive years until this lease expires.

Section 4. Use of the Premises. The Premises can and will be used for any and all activities

related to fire suppression and prevention, safety, training, search and rescue, ambulance and emergency responses, and any other activity related thereto without limitation.

Section 5. Repairs, Maintenance and Improvements.

5.1 Condition. Tenant takes the Premises in its present condition AS-IS.

5.2 Tenant's Obligations. Tenant, at its expense, shall keep the Premises in first class repair, operating condition, working order, and appearance, including but not limited to:

1. Repairing or replacing the exterior, including painting the trim and repointing the masonry.
2. Repairing or replacing all doors, windows and other appliances and maintaining them in good and proper working order.
3. Repairing or replacing the roof on the Tenant's portion of the premises.
4. Repairing or replacing the sidewalks, driveways and parking areas that are specifically designated for the use of and adjacent to the Premises during other than emergency response.
5. Repairing or replacing electrical wiring, plumbing or other utilities beginning at the point of entry to the Premises. If such utilities are from a separate meter, then from the location of that meter forward to the Premises.
6. Renovating the Premises to meet seismic codes for public emergency buildings, if required by federal or state law.

Expenses for all repairs, replacements and improvements to the Premises shall be paid by the Tenant, unless the Landlord determines otherwise.

5.3 Coordination of Major Repairs. Major repairs to the Premises, including the brick walls, roof, sidewalk, driveway and parking areas shall be coordinated with Landlord. It shall be the goal of the Parties to make such repairs to maintain the building aesthetics and achieve economies of scale by doing joint repair where practical. Such coordination by Tenant shall not be required if immediate repair is necessary to avoid damage to the Premises or to avoid interference with Tenant's necessary activities.

Section 6. Insurance

6.1 Insurance Required. Landlord shall keep the entire Premises insured, at Landlord's expense, against fire and other risks. Tenant is to reimburse the Landlord for the portion of the premium related to the Premises as determined by the parties based on the square footage lease to tenant in relation to the total square footage of the building, including the addition built by the tenant. If there is a dispute regarding this allocation, it shall be resolved through Section 16 of this lease. If Tenant wants its property contents to be similarly insured against such risks, it must carry similar insurance at its own expense.

6.2 Waiver of Subrogation. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other.

Section 7. Payment of Utilities Charges. Tenant shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the Premises, including (but not limited to) charges for fuel, water, gas, electricity, sewage disposal, power, refrigeration, air conditioning, telephone, and janitorial services. If any utility services are provided by or through Landlord, charges to Tenant shall be comparable with prevailing rates for comparable services. If the charges are not separately metered or stated, Landlord shall apportion the charges on an equitable basis, and Tenant shall pay its apportioned share on demand.

Section 8. Parking. Tenant, its agents, members and customers, regularly shall have the exclusive right to park in all parking spaces marked on the diagram attached as Exhibit A; and in emergencies may park wherever possible.

Section 9. Damage and Destruction.

9.1 Partial Damage. If the Premises are partly damaged and Section 9.3 does not apply, the Premises shall be repaired by Landlord at Landlord's expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Landlord and shall be performed in accordance with the provisions of Section 9.2.

9.2 Casualty Damage. If the building is damaged or destroyed by fire or other casualties to such a degree that the Premises are unusable for the purpose leased, and if repairs cannot reasonably be made within 90 days, Tenant may elect to cancel this lease. Landlord shall, in all cases, promptly repair the damage or ascertain whether repairs can be made within 90 days, and shall promptly notify Tenant of the time required to complete necessary repairs or reconstruction. If Landlord's estimate for damage requires a total reconstruction then Landlord, at its sole option, may elect not to restore the premises. If the repairs will take longer than 90 days, Landlord will notify Tenant of that fact and Tenant may have 21 days after such notice in which to cancel or reaffirm this lease.

9.3 Tenant's Equity. If the Landlord determines not to restore the Premises under Section 9.2 or if the Tenant elects to cancel this lease under Section 9.2, then damages received from insurance shall be allocated to the parties according to the square footage of the building originally constructed by that party as follows:

A. Fire engine bays. Landlord shall receive all of the insurance proceeds since it paid

for all of the construction of the building south of the new addition, which currently includes the police department, municipal court and the fire engine bays.

B. Addition, including the operations center and offices, etc. Tenant constructed an addition on the north side of the safety center which cost 1.2 million dollars. Landlord contributed \$200,000 to the construction of the new addition built by Tenant. Accordingly, the portion of the insurance proceeds allocated to this fire station addition should be shared between Landlord and Tenant, with 83% of the proceeds to the Tenant and 17% to the Landlord. The fire station addition is set out in Exhibit A, attached hereto, for identification.

Section 10. Liability and Indemnity.

10.1 Liens

(1) Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If 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 9% 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 on account of Tenant's default.

(2) Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

10.2 Indemnification. Landlord and Tenant shall each indemnify and defend the other from any claim, loss or liability arising out of the activity of either party, its officers, contractors, employees or agents on the Premises or any condition of the Premises in the possession or under the control of the Tenant. Landlord shall have no liability to Tenant for any injury, loss or damage caused by third parties or by any condition of the premises in control of the Tenant.

10.3 Liability Insurance. Tenant shall obtain and keep in effect during the term of this lease, a comprehensive general liability policy or a commercial general liability policy for the leased premises, covering personal injury and property damage from an insurance company authorized to do business in the State of Oregon. Coverage limits shall be not less than the tort claim limits for injury or death as determined by the methodology in ORS 30.272 or any amendments or replacements thereof. The insurance policy must name the Landlord as an additional insured, as it is related to and limited by the Tenant's indemnification of the Landlord

contained above. As evidence of this insurance coverage, Tenant shall furnish to Landlord an original certificate of insurance naming Landlord as an additional insured and as certificate holder. Valid certificates of insurance shall be provided to the Landlord as changes occur or annually throughout the term of this lease.

Section 11. Quiet Enjoyment. Landlord warrants that it is the owner of the Premises and has the right to lease them. Landlord will defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

Section 12. Assignment and Subletting. No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the property 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. No consent in one instance shall prevent the provision from applying to a subsequent instance. Landlord shall consent to a transaction covered by this provision when withholding such consent would be unreasonable in the circumstances.

Section 13. Default. The following shall be events of default:

13.1 Default in Payment of Utility Charges or Insurance. Failure of Tenant to pay any utility charges or its portion of the insurance premium within ten days of its presentment.

13.2 Default in Other Covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of the Lease (other than 13.1 above) within twenty-one (21) days after written notice by Landlord specifying the nature of the default with reasonable particularity shall be deemed an event in default. If the default is of such a nature that it cannot be completely remedied within the twenty-one (21) day period, Tenant shall be in compliance with this provision if Tenant begins correction of the default within the twenty-one (21) day period and thereafter proceeds with reasonable diligence, and in good faith, to effect the remedy as soon as practicable.

13.3 Abandonment. Failure of Tenant for 120 days or more to occupy the Premises for one or more of the purposes permitted under this lease, unless such failure is excused under other provisions of this lease.

Section 14. Remedies on Default.

14.1 Termination. In the event of a default 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 only by legal action.

14.2 Damages. In the event of lease termination due to default or abandonment, Landlord shall be entitled to recover reasonable costs of reentry, including the costs of any cleanup, removal of tenant's property and fixtures, costs incurred under Section 13, any repairs that were Tenant's obligation under Section 5.2 of this lease, and any attorneys fees, although no legal action is filed.

14.3 Landlord's Right to Cure Defaults. If Tenant fails to perform any obligation under this lease, Landlord shall have the option to do so after 30 days' written notice to Tenant. All of Landlord's expenditures to correct the default shall be reimbursed by Tenant on demand with interest at the rate of 9% annum from the date of expenditure by Landlord. Such action by Landlord shall not waive any other remedies available to Landlord because of the default. If there is a dispute regarding whether or not the obligation was that of the Tenant, that dispute shall be resolved through Section 16 of this agreement.

Section 15. Surrender at Expiration

15.1 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 first-class condition and broom clean. 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 require. Tenant's obligations under this section shall be subordinate to the provisions of Section 9 relating to destruction.

15.2 Fixtures All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures, shall, at Landlord's option, become the property of Landlord. If Landlord so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure.

Section 16. Dispute Resolution.

16.1 Arbitration of Disputes. Except for provisional remedies, no litigation concerning any dispute arising under this Agreement shall be instituted before any court and all such disputes shall be submitted to binding arbitration pursuant to the Uniform Arbitration Act, ORS 36.600 et seq., as amended or renumbered.

16.2 Procedure for Arbitration. The arbitrator shall proceed according to the Oregon statutes governing arbitration, and the award of the arbitrators shall have the effect therein provided. The arbitration shall take place in the county where the leased premises are located. Costs of the arbitration shall be shared equally by the parties, but each party shall pay its own attorney fees incurred in connection with the arbitration.

Section 17. Miscellaneous

17.1 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.

17.2 Attorney Fees. Subject to section 16, in case suit or action is instituted to seek a provisional remedy relating to any provisions of this lease or to enforce the decision of an arbitrator under section 16, the prevailing party shall be entitled to recover in addition to costs such sum as the court or court annexed arbitrator may judge reasonable as attorney fees; if an appeal is taken the prevailing party shall be entitled to recover such sum as the appellate court may judge reasonable as attorney fees on appeal, together with costs and disbursements incurred in such court annexed arbitration, trial and or appeal.

17.3 Notices. Any notice required or permitted under this lease shall be given when actually delivered or 48 hours after deposited in United States mail addressed to the address first given in this lease or to such other address as may be specified from time to time by either of the parties in writing.

17.4 Succession. Subject to the above-stated limitations 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.

17.5 Recordation. This lease shall not be recorded without the written consent of Landlord.

17.6 Entry for Inspection. Landlord shall have the right to enter upon the Premises at any time to determine Tenant's compliance with this lease, to make necessary repairs to the building or to the Premises.

17.7 Time of Essence. Time is of the essence of the performance of each of Tenant's obligations under this lease.

17.8 Emergency Operations Center. Funding for the Emergency Operations Center portion of the new construction was provided by the Chemical Stockpile Emergency Preparedness Program to Tenant. The Parties agree that the portion of the Fire Station known as the Emergency Operations Center is a part of the Fire Station and subject to the provisions of this lease. Tenant agrees to make this area available for use by other emergency response organizations. The scheduling and use by other agencies will be through Tenant but the Landlord and Tenant will have priority for all scheduling purposes.

17.9 Preferential Right of Purchase. Tenant is interested in purchasing the premises if Landlord ever decides to sell the premises during the term of this lease. Currently, Landlord has

no desire or intention whatsoever of ever selling the premises. Nevertheless, Landlord grants to Tenant a 30-day preference period to purchase the premises at the asking price to be set by Landlord, in its sole discretion, when and if it ever decides to sell the premises during the term of this lease. Price and terms of sale will be determined by Landlord at that time, except rental payments paid by Tenant will be applied toward the purchase of the Premises if Landlord and Tenant can come to an agreement for purchase and sell of the Premises during the 30-day preference period.

WHEREFORE, the parties have executed this lease in duplicate original and it is effective the date first above written.

CITY OF HERMISTON

UMATILLA COUNTY FIRE DISTRICT #1

By: _____
Mayor Dr. David Drotzmann

By: _____
Chairperson

Attest:

Attest:

Deputy City Recorder

Clerk

Date: _____, 2016

Date: _____, 2016

RESOLUTION NO. 2036

The City of Hermiston resolves as follows:

That the form, terms and provisions of the Safety Center Lease, effective July 1, 2106, by and between the City of Hermiston and the Umatilla County Fire District #1, and the transactions contemplated thereby, providing for, among other things, lease of a portion of the Robert Shannon Safety Center building at 330 S. First St., Hermiston, Oregon, for 99 years commencing July 1, 2016, copies of which have been presented to and reviewed by the Common Council be, and it is, in all respects, hereby approved and adopted; and

That the Mayor and Deputy City Recorder of the City of Hermiston be, and each of them singly is, hereby authorized to execute and deliver the Safety Center Lease substantially in the form heretofore approved and adopted with such changes, additions, deletions and modifications as such executing officer or officers may approve, to the Umatilla County Fire District #1, such execution to be conclusive evidence of such approval and of the authorization thereof by the Common Council, and

That the Mayor or City Manager of the City of Hermiston be, and each of them singly is, hereby authorized and directed to prepare, execute, deliver, acknowledge and file such additional documents, agreements, certificates, forms, receipts and other instruments, in the name of and on behalf of the City of Hermiston and under its corporate seal, if so desired, and to take all such other actions as such officer or officers shall, in his or her or their sole discretion, approve in order to carry out the transactions heretofore approved and perform and discharge the City of Hermiston's obligations under or in connection with the Safety Center Lease, such actions and execution to be conclusive evidence of such approval and of the authorization thereof by the Common Council.

Effective Date. This resolution is effective immediately upon its passage as of the date and year set out below.

PASSED by the Common Council the 22nd day of August, 2016.
SIGNED by the Mayor the 22nd day of August, 2016.

MAYOR

ATTEST:

DEPUTY CITY RECORDER