ASHLAND GUN CLUB LEASE AGREEMENT

THIS AGREEMENT is entered into between the CITY OF ASHLAND, OREGON, by and through the City Council, hereinafter referred to as Lessor, and the ASHLAND GUN CLUB, INC., hereinafter referred to as Lessee.

Whereas, Lessor is the owner of certain real property located in Jackson County, Oregon; and

Whereas, the Lessor has formally leased the Property to Lessee since 1968 so that the Lessee could use the property as a shooting range and Ashland Gun Club facility; and

Whereas, the current lease dates back to 1996 and will expire March 31, 2009; and

Whereas, the Lessee would like to be eligible for grants from the State of Oregon and Federal agencies that provide funds for Hunter/Shooter Safety training, range improvements, lead abatement and other programs; and

Whereas, many grant programs require applicants to have remaining lease periods of ten years or more; and

Whereas, the Lessor wishes to enter into a new lease that will further the public interest by meeting grant requirements and establishing conditions and restrictions on the use of the Property that will address the concerns of abutting property owners and the City.

NOW THEREFORE, LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

ARTICLE 1. DEFINITIONS.

The following definitions shall apply to this document:
(1) Agreement: this document, entitled Ashland Gun Club Lease Agreement, and any exhibits incorporated herein.
(2) Alterations: include the addition or removal of any buildings, sheds, structures, or the installation of any utilities, pipes, wiring, cables, and conduit on the Property.
(3) Automatic Weapons: a firearm that reloads itself and continues to fire until the trigger is released.
(4) Bodily Injury: any damage to a person's physical condition including pain or illness, including but not limited to, an injury resulting in death.
(5) Effective Date: July 1, 2008, the date this Agreement will take effect.
(6) Emergency: any human caused or natural event or circumstances causing or threatening loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, spills or releases of oil or hazardous material, contamination, disease, blight, infestation, civil disturbance or riot.
(7) Environmental Law: any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety, or the environment.
ARTICLE 2. LEASE OF PROPERTY AND TERM OF LEASE.

Section 2.1. Agreement to Lease. In consideration of the rent to be paid and covenants to be performed by Lessee under this Agreement, Lessor hereby agrees to lease the Property to Lessee, and Lessee agrees to lease the Property from Lessor on the terms and conditions set forth in this Agreement.

Section 2.2. Original Term. The term of this lease shall be for a period of twenty years, commencing on the Effective Date and the lease may be extended after 10 years in accordance with Section 2.3, unless terminated earlier as provided in this Agreement.

Section 2.3. Extension Option. If the Agreement is not in default after the first ten years of the lease term has elapsed, the lease shall operate as follows:

(1) Method of Extension; Lease Term. After the initial ten years of the lease has elapsed on June 30, 2018, the lease must be extended each year for the remainder of the lease term by giving written notice to Lessor at least 90 (ninety) days before June 30th starting in the year 2019. Each of the extension terms shall commence on July 1st (the day following expiration of the preceding year) and shall continue for ten years. (See Table next page). Giving such notice shall be sufficient to make the Agreement binding for a renewal term of ten years unless the Lessor objects to the renewal request.

(2) Rejection of Extension Request. The Lessor may reject Lessee’s request to extend and renew the lease by providing written notice to the Lessee that the extension request will not be accepted within forty-five (45) days of receipt of the extension request from the Lessee. Failure to respond within 45 days of receipt of the extension request indicates that the Lessor accepts the renewal of the lease.

(3) Adjustment of Rent Provision. The Lessor shall have the opportunity to adjust the rent established by this Agreement in Article 3 once every three (3) years, starting in 2019. (See Table next page.) All other terms of this Agreement shall remain the same.
Deadline to Renew Lease by Letter | Beginning of Lease term if Accepted by the Lessor | End of Lease Term
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March 30, 2019* | July 1, 2019 | June 30, 2029
March 30, 2020 | July 1, 2020 | June 30, 2030
March 30, 2021 | July 1, 2021 | June 30, 2031
March 30, 2022* | July 1, 2022 | June 30, 2032
March 30, 2023 | July 1, 2023 | June 30, 2033
March 30, 2024 | July 1, 2024 | June 30, 2034
March 30, 2025* | July 1, 2025 | June 30, 2035
March 30, 2026 | July 1, 2026 | June 30, 2036
March 30, 2027 | July 1, 2027 | June 30, 2037
March 30, 2028* | July 1, 2028 | June 30, 2038

* = years the rent terms may be reviewed.

Section 2.4. Emergency Termination. In the case of an Emergency the Lessor may immediately terminate the lease and take possession of the Premises. If the Lessor exercises this right, the Lessor assumes all obligations of any grants that Lessee has obtained due to this lease. In addition, Lessee will not be required to return the Premises to its original condition if the Lessor exercises this right.

ARTICLE 3. RENT AND OTHER CONSIDERATION.

Section 3.1. Rent. All taxes, insurance costs, utility charges, and other costs that Lessee is required to pay by this Agreement, and any other sums that Lessee is required to pay to Lessor or third parties shall be considered rent.

Section 3.2. Required Community Events.

1) Sighting-In Weekend. The Lessee shall provide access to its shooting ranges, during normal operating hours, free of charge for one weekend prior to the regular deer and elk hunting seasons as published in the Oregon Big Game Regulations by the Oregon Department of Fish and Wildlife. Lessee shall also provide Range Officers and other assistance as necessary.

2) Community Open House Weekend. The Lessee shall provide access to the Premises during normal operating hours for all neighbors and community members at least one weekend per year to explain the programs and opportunities provided by the Lessee. Lessee may provide the opportunity for visitors to fire weapons on the range under strict control of the Lessee’s Range Officers.

3) Historic Day. Lessee shall provide access to the Property for all neighbors and community members during normal operating hours for at least one day per year in which the shooting ranges will be closed to shooting. During the event activities will be focused on the historic importance of the site.

ARTICLE 4. USE OF PREMISES.

Section 4.1. Permitted Use. The Premises shall be used as a firearms training facility that provides indoor and/or outdoor facilities that allow the use of rifles, pistols, shotguns, and archery equipment. A number of facilities are already present on the
facility and Lessee shall have the rights to such facilities. The Lessee shall have the right to construct such facilities as are normally associated with such use, including, but not limited to, ranges, berms, targets, target sheds, club buildings and parking lots, with the approval of Lessor and Jackson County.

Section 4.2. Restrictions on Use.

(1) Hours of Operation. Lessee shall post the hours of operation for the shooting ranges with a phone number where a responsible party can be reached. The hours of operation for the shooting ranges shall be: Monday through Friday from 8AM to 8PM or Sunset, whichever is earlier, and Saturday and Sunday from 9AM to 8PM to Sunset, whichever is earlier.

(a) EXCEPTION. The Ashland Police Department may utilize the shooting ranges outside of the standard hours of operation for specialized training by having the Ashland Gun Club provide notice of specialized training sessions in its newsletter and to the Lessor in accordance with Section 13.3 at least thirty (30) days before the training session. If a training session is scheduled after the monthly newsletter is published, or so that the newsletter will not be received in time to give nearby property owners adequate notice, the Lessee must notify nearby property owners of the event by other means at least two weeks before the event.

(2) Holiday Closures. The Lessee shall close the Premises completely for four holidays each calendar year. The four dates for which the Premises will be closed to all shooting activity will be listed in the first Gun Club Newsletter of each calendar year.

(3) Areas not Subject to Permitted Use. Lessee shall not be permitted to use the pipes and access points for Lithia water, the remnants of historic buildings or structures, or the remnants of Pompadour Springs. The Lessor retains all rights to use and maintain areas of historic significance on the Property without interfering with scheduled events and uses of Lessee.

(4) Firearm Restrictions. The following firearms shall not be used on the shooting ranges:

(a) Firearms that exceed 6000 foot-pounds of muzzle energy; and
(b) Automatic Weapons, unless the weapon is being fired in a standard or semi-automatic mode.

(5) Overnight Events. Lessee shall only be permitted to have one (1) overnight event per calendar year in which participants stay overnight for a multiple day event on the Premises. The hours of operation for the shooting ranges must be strictly complied with during the course of the event.

(6) Removal of Minerals and Gravel. Lessee shall not relocate or remove any minerals, rock, gravel or soil on or from the premises without the permission of the Lessor.

Section 4.3. Hazardous Substances. Lessee may use or otherwise handle only those Hazardous Substances typically used or handled in the prudent and safe operation of the use specified in Section 4.1. Lessee shall refrain from causing Hazardous Substances, other than lead, to be spilled, leaked, disposed of, or otherwise released on or under the Property. Lessee may store such Hazardous Substances on the Property only in quantities necessary to satisfy Lessee’s reasonably anticipated needs. Lessee shall comply with all Environmental Laws and exercise the highest
degree of care in the use, handling, and storage of Hazardous Substances and shall
take all practicable measures to minimize the quantity and toxicity of Hazardous
Substances used, handled, or stored on the Property.

Lessee shall comply with the Environmental Protection Agency's most current
version of the Best Management Practices for Lead at Outdoor Shooting Ranges
(EPA's Best Practices) to minimize and manage lead contamination of the Premises.
Lessee shall begin an initial lead removal operation on the Premises within the first
eighteen (18) months of lease signing. Lessee shall comply with the terms and
timelines of the management plans developed as a result of the environmental
assessment in Section 4.5 and consistent with the EPA's Best Practices as approved by
Council. On the expiration or termination of this Agreement, Lessee shall remove all
lead from the Property that exceeds permissible levels at its own expense.

Beginning in 2019, Lessor shall have the right to require Lessee to post financial
security for environmental clean-up of the site related to the Gun Club's use as a
condition of an extension under Section 2.3. Each year an extension is granted
Grantee may be required to post at least a proportion of the total amount deemed
necessary to perform lead removal on the site. The amount and the form of the
financial security must be approved by the Director of Public Works and City Attorney.
It is the intention of the Lessor and Lessee that grants and other environmental
remediation programs during the term of the Agreement will make posting financial
security unnecessary.

Section 4.4. Compliance with Laws. Lessee shall, at Lessee's own cost and
expense, comply with all federal, state, and local statutes, ordinances, regulations, rules
and requirements, relating to Lessee's use and occupancy of the Property. This Lease
does not authorize any use of the Property in violation of applicable land use laws and
regulations.

Section 4.5. Environmental Assessment / Riparian Corridor. The Lessor and the
Lessee agree to have an environmental assessment and field investigation performed
by an environmental professional to evaluate and test for contaminants on the Property,
including specifically in the riparian zones marked in Exhibit D, by July 1, 2009. At a
minimum the environmental assessment shall include the following: 1) classification and
delineation of the detected materials in accordance with federal, state, and local
statutes, codes, rules, and regulations for disposal, 2) determining the volume of
impacted soil and/or groundwater, 3) notifying Lessor and the appropriate regulatory
body as required, and 4) developing feasible remediation options that include time
frames, costs, and ongoing monitoring and removal for the entire Property. The
management plan must be approved by Council. If lead is discovered in the riparian
zones, then a plan will be developed to be approved by the Community Development
Department Director that will address lead removal, disposal, and restoration of the
riparian zones. The costs associated with an environmental assessment of the Property
and development of any necessary management plan for the Property, including the
riparian zones, shall be paid for jointly by the Lessor and Lessee; each party will be
responsible for half the cost of the environmental assessment and development of the
management plan. The Lessee shall also abide by the Water Resources Protection
Chapter of the Ashland Municipal Code, including all prohibitions against alterations in
the riparian corridor.
ARTICLE 5. MAINTENANCE, REPAIRS AND RESTORATION.

Section 5.1. Lessor’s Obligations. Lessor shall be under no obligation to make or perform any repairs, maintenance, replacements, alterations, or improvements on the Property except for repairs and maintenance of the Lithia Springs Water facilities and other historic areas on the Property, including any existing lines or new lines that need to be installed to maintain Lessor’s access to Lithia water, and maintenance of the riparian zones marked on Exhibit D. Lessor retains the right to adopt and institute a historical resource management plan for the benefit of historic areas marked on Exhibit C. Lessor will assume responsibility for any environmental clean-up that is required if the environmental assessment shows that there is contamination that is not the result of Lessee’s activities.

Section 5.2. Lessee’s Obligations. Lessee shall be responsible for:

1. Repairs and maintenance of the boundary fence of the Property and Lessor’s adjacent property described in Exhibit B.
2. Any repairs necessitated by the negligence of Lessee, its agents, employees, and invitees.
3. Any repairs or alterations required under Lessee’s obligation to comply with laws and regulations as set forth in Section 4.4.
4. Any relocation or reorientation of Lessee’s facilities that is required to allow future construction, protection, and safe use of the Bear Creek Greenway.
5. The removal of lead and lead contamination from the Property that exceeds permissible levels, and payment for such removal.

Section 5.3. Lessor’s Interference with Lessee. In performing any repairs, replacements, alterations, or other work performed on or around the Property, Lessor shall not cause unreasonable interference with use of the Premises by Lessee. Lessee shall have no right to an abatement of rent nor any claim against Lessor for any inconvenience or disturbance resulting from Lessor’s activities performed in conformance with the requirement of this provision.

Section 5.4. Lessee’s Duty to Restore Premises. If at any time during the term of this Agreement, any improvements now or hereafter on the Premises are destroyed in whole or in part by fire, theft, the elements, or any other cause not the fault of Lessor, this Agreement shall continue in full force and effect. In such event, Lessee shall have the option of either causing the damaged or destroyed improvements to be removed from the Premises or, alternatively, Lessee may repair and restore the damaged improvements. In the event that Lessee causes the damaged or destroyed improvements to be removed from the Premises, Lessee may, at Lessee’s discretion, cause replacement structures to be erected on the Premises.

ARTICLE 6. OWNERSHIP OF ALTERATIONS.

Section 6.1. Alterations Prohibited. Lessee shall not make Alterations or improvements on the Premises without first obtaining Lessor’s written consent. All Alterations shall be made in a good and workmanlike manner, and in compliance with all laws and building codes.
Section 6.2. Ownership and Removal of Alterations. Title to all Alterations or improvements, existing or hereafter constructed on the Premises by Lessee shall be and remain the property of Lessee and may be removed by Lessee at expiration of this Agreement. In the event that Lessee fails to remove any Alteration located on the Premises at the expiration of this Agreement, then such Alteration shall be and become the property of Lessor. However, Lessor may elect to remove such Alterations and charge the expense of such removal, and the physical damage resulting from the removal, to Lessee. In the event Lessor elects to remove the Alterations, Lessor shall make its election within 60 days after expiration or termination of this Agreement and shall notify Lessee of any such election.

ARTICLE 7. INSURANCE; INDEMNIFICATION; LIENS

Section 7.1. Liability Insurance. Lessee, at its sole cost and expense, commencing on the Effective Date, and continuing during the lease term, shall procure, pay for and keep in full force and effect comprehensive commercial general liability policy (occurrence version) in a responsible company with coverage for Bodily Injury and property damage liability, personal and advertising injury liability, blanket contractual liability, contractual liability for obligations assumed under this Agreement, and medical payments with a general aggregate limit of not less than $2,000,000 per occurrence for combined single limit bodily injury and property damage claims, or $500,000 per occurrence for bodily injury and $250,000 per occurrence for property damage. Such insurance shall cover all risks arising directly or indirectly out of Lessee’s activities on the Property or any condition of the Property. Such insurance shall name Lessor as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring 10 days written notice to Lessor before any change or cancellation of the policy shall be furnished to Lessor before Lessee’s occupancy of the property.

Section 7.2. Indemnification. To the fullest extent permitted by law, Lessee shall indemnify, defend, and hold Lessor harmless from, and reimburse Lessor for, any cost, claim, loss, Bodily Injury (including injury resulting in death), or liability that is suffered directly or from a third-party claim arising out of, or related to: 1) any activity of Lessee, or any agent, contractor, servant, invitee, licensee or employee of Lessee on the Property, 2) any condition of the Property in the possession or under the control of Lessee, 3) an act or omission of Lessee or any agent, contractor, servant, invitee, licensee or employee of Lessee, or 4) any failure by Lessee to perform all of its obligations under environmental laws, including any failure to perform during Lessee’s previous occupation of the Property, or 5) any breach by Lessee under this Agreement. Lessor shall have no liability to Lessee for any injury, loss, or damage caused by third parties, or by any condition of the Property.

This obligation to indemnify shall survive termination of the lease and include reasonable attorneys’ fees, including attorneys’ fees on appeal, and investigation costs and all other reasonable costs, expenses and liabilities incurred by Lessor or its attorney from the first notice that any claim or demand is to be made or may be made. In case that an action or proceeding is brought against Lessor because of such claim, Lessee, upon notice from Lessor, agrees to defend such action or proceeding by hiring counsel reasonably satisfactory to Lessor.

Section 7.3. Liens.
(1) Except with respect to activities for which Lessor is responsible, Lessee shall pay as due all claims for work done, services rendered, or materials furnished to the Property, and shall keep the Property free from any liens. If Lessee fails to pay any such claims or to discharge any lien, Lessor may do so and collect the cost as additional rent. Such action by Lessor shall not constitute a waiver of any right or remedy which Lessor may have on account of Lessee’s default.

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

ARTICLE 8. TAXES; UTILITIES.

Section 8.1. Payment of Taxes. Lessee shall pay all real property taxes and special assessments levied upon the leased Property during the term of the Agreement. Lessee shall not cause any liens or encumbrances to be imposed upon the leased Property and if any lien or encumbrance is imposed upon such Property, Lessee shall proceed to remove the lien or encumbrance immediately.

Section 8.2. Proration of Taxes. Lessee’s share of real property taxes and assessments for the years in which this Agreement commences or terminates shall be prorated based on the portion of the tax year that this Agreement is in effect.

Section 8.3. Utilities. Lessee agrees to pay or cause to be paid all utilities utilized in connection with the Property during the term of this Agreement.

ARTICLE 9. REPRESENTATIONS.

Section 9.1. Lessor’s Warranty. Lessor warrants that it is the owner of the Property and has the right to lease it free of all encumbrances. Lessor will defend Lessee’s right to quiet enjoyment of the Property from the lawful claims of all persons during the lease term.

Section 9.2. Lessee’s Warranty. Lessee warrants that it has the power to enter into this Agreement and that Lessee will abide by all of the terms and conditions of this Agreement.

ARTICLE 10. ASSIGNMENT AND SUBLEASING.

No part of the Property 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 Lessor. This provision shall apply to all transfers by operation of law. No consent in one instance shall prevent this provision from applying to a subsequent instance. Lessor may withhold or condition such consent in its sole and arbitrary discretion.
ARTICLE 11. DEFAULT.

Section 11.1. Default in Other Covenants. If Lessee fails to comply with any term or condition or fulfill any obligation of this Agreement within 20 days after written notice from Lessor specifying the nature of the default with reasonable particularity, the Lessee shall be held to have breached the terms of this Agreement. If the default is of such a nature that it cannot be completely remedied within the 20-day period, then Lessee will not be found in default as long as Lessee 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.

Section 11.2. Abandonment. Failure of Lessee to occupy the Premises for 90 days or more shall result in default unless the Lessor consents to the absence in writing.

ARTICLE 12. REMEDIES ON DEFAULT.

Section 12.1. Termination. In the event of a default, the Agreement may be terminated at the option of Lessor by written notice to Lessee. Whether or not the Agreement is terminated by the election of Lessor or otherwise, Lessor shall be entitled to recover damages from Lessee for the default, and Lessor may reenter, take possession of the Property. Lessor may remove any persons or property by legal action or by self-help with the use of reasonable force, without liability for damages, and without having accepted a surrender.

Section 12.2. Damages. In the event of termination or retaking of possession following default, Lessor shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

1. The loss of rent from the date of default until a new Lessee is, or with the exercise of reasonable efforts could have been, secured for the Property.
2. The reasonable costs of reentry and re-letting including without limitation the cost of any cleanup, refurbishing, removal of Lessee’s property and fixtures, costs incurred, or any other expense occasioned by Lessee’s default including but not limited to, costs of environmental studies, assessments, and clean-up associated with the remediation of lead on the Property, any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.

Section 12.3. Condition of Property.

1. On expiration of the lease term, or earlier termination on account of default, Lessee shall deliver all keys to Lessor and surrender the Property free from all lead and lead contamination in excess of permissible levels at its own expense. Alterations constructed by Lessee with permission from Lessor shall not be removed or restored to the original condition unless the terms of permission for the Alteration so allow. Depreciation and wear from ordinary use for the purpose for which the Property is leased shall be excepted, but repairs for which Lessee is responsible shall be completed to the latest practical date before such surrender.
(2) All Alterations, improvements and fixtures placed on the Premises during the lease term, other than Lessee’s trade fixtures, shall be removed in accordance with Section 6.2. If Lessee fails to remove such fixtures, Lessor may do so and charge the cost to Lessee with interest at the legal rate from the date of expenditure.

(3) Before expiration or other termination of the lease term, Lessee shall remove all furnishings, furniture, and trade fixtures that remain its property. If Lessee fails to do so, this failure shall be an abandonment of the property, and Lessor may retain the property and all rights of Lessee with respect to it shall cease or, by giving written notice to Lessee within 20 days after removal was required, Lessor may elect to hold Lessee to its obligation of removal. If Lessor elects to require Lessee to remove, Lessor may effect a removal and place the property in public storage for Lessee’s account. Lessee shall be liable to Lessor for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Lessor.

Section 12.4. Remedies Cumulative. The rights and remedies of Lessor under this Agreement upon a breach thereof by Lessee are not exclusive and Lessor shall have all rights and remedies allowed under applicable law in addition to the rights and remedies contained in this Agreement.

ARTICLE 13. MISCELLANEOUS PROVISIONS.

Section 13.1. Non-waiver. Waiver by either party of strict performance of any provision of this Agreement shall not waive or prejudice the party’s right to require strict performance of the same provision or any other provision in the future. Lessor’s acceptance of Lessee’s failure to perform an obligation required annually under this Agreement, such as payment of taxes or hosting of the community events in Article 3, shall not affect Lessor’s remedies for failure to perform such other obligations.

Section 13.2. Attorneys’ Fees. If any litigation is commenced between the parties to this Agreement concerning the Property, this Agreement, or the rights and duties of either party, the prevailing party in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to a reasonable sum for that party's attorneys' fees, including attorneys' fees on appeal. The amount of the fees shall be determined by the court in that litigation or in a separate action brought for that purpose.

Section 13.3. Notices. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to a party of this Agreement shall be in writing and shall be deemed duly served and given when personally delivered to the party, any managing employee of the party, or, in lieu of personal service, when deposited in the United States mail, first class postage prepaid, addressed to the appropriate party as follows:

**LESSOR**
City of Ashland
20 E. Main St.
Ashland, OR 97520

**LESSEE**
Ashland Gun Club
P.O. Box 953
Ashland, OR 97520
Section 13.4. Governing Law. This Agreement, and all matters relating to this Agreement, shall be governed by the laws of the State of Oregon in force at the time any need for interpretation of this Agreement or any decision or holding concerning this Agreement arises.

Section 13.5. Binding on Successors. This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

Section 13.6. Entry for Inspection. Lessor shall have the right to enter on the Property at any time to determine Lessee’s compliance with this Agreement or to make necessary repairs to the Property. Whether or not such inspection is made, the duty of Lessor to make repairs shall not mature until a reasonable time after Lessor has received written notice from Lessee of the repairs that are required. In addition, Lessor shall have the right, at any time during the last twelve months of the term of this Agreement, to place and maintain on the Property notices for leasing or selling of the Property.

Section 13.7. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect unimpaired by the holding.

Section 13.8. Entire Agreement. This Agreement and its attachments constitute the sole and only agreement between Lessor and Lessee respecting the leasing of the Property to Lessee. Any agreements or representations respecting the Property, their leasing to Lessee by Lessor, or any other matter discussed in this Agreement not expressly set forth or incorporated into this Agreement are null and void.

Section 13.9. Recording of Agreement. Lessor and Lessee may execute a memorandum of this Agreement, which shall be recorded in Jackson County, Oregon. The Memorandum of Lease shall describe the parties, set forth a description of the Property, specify the term of the Agreement and incorporate this Agreement by reference.

Section 13.10. Holdover by Lessee. If the Lessee does not vacate the Property at the time required, the Lessor shall have the option to treat the Lessee as a Lessee from month to month, subject to all provisions of this lease except the provision for term.

Section 13.11. No Partnership or Joint Venture. Nothing in this Agreement shall be construed to render the Lessor in any way or for any purpose a partner, joint venturer, or associate in any relationship with Lessee other than that of Lessor and Lessee, nor shall this Agreement be construed to authorize either party to act as agent for the other.

Section 13.12. Extraterritorial Regulation. Nothing in this Lease shall interfere with the legislative authority of Lessor under ORS 226.010 or any other provision of state law.
INTENDING TO BE BOUND, the parties have executed this Agreement as of the date written below.

LESSEE:

President, Ashland Gun Club, Inc. Date

ORDER

Pursuant to ORS 271.360 the governing body hereby approves and authorizes the terms of this lease as set forth above.

LESSOR:

Mayor, City of Ashland Date
Memorandum

To: City Council  
From: Megan Thornton, Assistant City Attorney  
Date: July 15, 2008  
Re: Gun Club Lease

Background

The City received comments from councilors and legal counsel on Monday, July 14, 2008, and Tuesday, July 15, 2008. The legal department has reviewed those recommendations and would like to suggest changes based on the comments received.

Suggested Modifications to Draft Lease

Staff suggests the following changes be made to the lease:

1. Who is responsible for the cost of the environmental clean-up and what are the timelines associated with the clean-up?
   - Recommendation: amend 4.3 as follows:
     Section 4.3. Hazardous Substances. Lessee may use or otherwise handle only those Hazardous Substances typically used or handled in the prudent and safe operation of the use specified in Section 4.1. Lessee shall refrain from causing Hazardous Substances, other than lead, to be spilled, leaked, disposed of, or otherwise released on or under the Property. Lessee may store such Hazardous Substances on the Property only in quantities necessary to satisfy Lessee’s reasonably anticipated needs. Lessee shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Property.
     Lessee shall comply with the Environmental Protection Agency’s current version of the Best Management Practices for Lead at Outdoor Shooting Ranges (EPA’s Best Practices) to minimize and manage lead contamination of the Premises. Lessee shall begin an initial lead removal operation on the Premises within the first eighteen (18) months of lease signing. Lessee shall comply with the terms and timelines of any management plan developed as a result of the environmental assessment in Section 4.5 and consistent with the EPA’s Best Practices. On the expiration or termination of this Agreement, Lessee shall remove all lead from the Property that exceeds permissible levels at its own expense.
     Beginning in 2019, Lessor shall have the right to require Lessee to post financial security for environmental clean-up of the site related to the Gun Club’s use as a condition of an extension under Section 2.3. Each year an extension is granted Grantee may be required to post at least a proportion of the total amount deemed necessary to perform lead removal on the site. The amount and the form of the financial security must be approved by the Director of Public Works and City Attorney. It is the intention of the Lessor and Lessee that grants and other environmental remediation programs during the term of the Agreement will make posting financial security unnecessary.
2. The requirements for the environmental assessment should be more clearly defined, and it should be clear that the parties are splitting the costs of the environmental assessment 50/50.
   - Recommendation: amend 4.5 as follows:
   **Section 4.5. Environmental Assessment / Riparian Corridor.** The Lessor and the Lessee agree to have an environmental assessment and field investigation performed by an environmental professional to evaluate and test for contaminants on the Property, including specifically in the riparian zones marked in Exhibit D, by July 1, 2009. **At a minimum the environmental assessment shall include the following:**
     1) classification and delineation of the detected materials in accordance with federal, state, and local statutes, codes, rules, and regulations for disposal, 2) determining the volume of impacted soil and/or groundwater, 3) notifying Lessor and the appropriate regulatory body as required, and 4) developing feasible remediation options that include time frames, costs, and ongoing monitoring and removal for the entire Property. If lead is discovered in the riparian zones, then a plan will be developed to be approved by the planning department that will address lead removal, disposal, and restoration of the riparian zones. The costs associated with an environmental assessment of the Property and development of any necessary management plan for the Property, including the riparian zones shall be paid for jointly by the Lessor and Lessee; each party will be responsible for half the cost of the environmental assessment and development of the management plan. The Lessee shall also abide by the Water Resources Protection Chapter of the Ashland Municipal Code, including all prohibitions against alterations in the riparian corridor.

3. The lease needs to clarify who is responsible for clean-up and the cost of clean-up.
   - Recommendation: amend 5.1 and 5.2 as follows:
   **Section 5.1. Lessor’s Obligations.** Lessor shall be under no obligation to make or perform any repairs, maintenance, replacements, alterations, or improvements on the Property except for repairs and maintenance of the Lithia Springs Water facilities and other historic areas on the Property, including any existing lines or new lines that need to be installed to maintain Lessor’s access to Lithia water, and maintenance of the riparian zones marked on Exhibit D. Lessor retains the right to adopt and institute a historical resource management plan for the benefit of historic areas marked on Exhibit C. **Lessor will assume responsibility for any environmental clean-up that is required if the environmental assessment shows that there is contamination that is not the result of Lessee’s activities.**

   **Section 5.2. Lessee’s Obligations.** Lessee shall be responsible for:
   1) Repairs and maintenance of the boundary fence of the Property and Lessor’s adjacent property described in Exhibit B.
   2) Any repairs necessitated by the negligence of Lessee, its agents, employees, and invitees.
   3) Any repairs or alterations required under Lessee’s obligation to comply with laws and regulations as set forth in Section 4.4.
   4) Any relocation or reorientation of Lessee’s facilities that is required to allow future construction of the Greenway.
   5) **The removal of lead and lead contamination from the Property that exceeds permissible levels, and payment for such removal.**

4. The insurance requirements should be increased.
   - Recommendation: amend 7.1 as follows:
   **Section 7.1. Liability Insurance.** Lessee, at its sole cost and expense, commencing on the Effective Date, and continuing during the lease term, shall procure, pay for and keep in full force and effect comprehensive commercial general liability policy (occurrence version) in a responsible company with coverage for Bodily Injury and property damage liability, personal and advertising injury liability, blanket contractual liability, contractual liability for obligations assumed under this Agreement, and medical payments with a general aggregate limit of not less than $1,000,000 $2,000,000 per occurrence for combined single limit bodily injury and property damage claims, or $500,000 per occurrence for bodily injury
and $250,000 per occurrence for property damage. Such insurance shall cover all risks arising directly or indirectly out of Lessee’s activities on the Property or any condition of the Property. Such insurance shall name Lessor as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring 10 days written notice to Lessor before any change or cancellation of the policy shall be furnished to Lessor before Lessee’s occupancy of the property.

5. Indemnification should survive termination of the lease.

- Recommendation: amend 7.2 as follows

  Section 7.2. Indemnification. To the fullest extent permitted by law, Lessee shall indemnify, defend, and hold Lessor harmless from, and reimburse Lessor for, any cost, claim, loss, Bodily Injury (including injury resulting in death), or liability that is suffered directly or from a third-party claim arising out of, or related to: 1) any activity of Lessee, or any agent, contractor, servant, invitee, licensee or employee of Lessee on the Property, 2) any condition of the Property in the possession or under the control of Lessee, 3) an act or omission of Lessee or any agent, contractor, servant, invitee, licensee or employee of Lessee, or 4) any failure by Lessee to perform all of its obligations under environmental laws, including any failure to perform during Lessee’s previous occupation of the Property, or 5) any breach by Lessee under this Agreement. Lessor shall have no liability to Lessee for any injury, loss, or damage caused by third parties, or by any condition of the Property.

  This obligation to indemnify shall survive termination of the lease and include reasonable attorneys’ fees, including attorneys’ fees on appeal, and investigation costs and all other reasonable costs, expenses and liabilities incurred by Lessor or its attorney from the first notice that any claim or demand is to be made or may be made. In case that an action or proceeding is brought against Lessor because of such claim, Lessee, upon notice from Lessor, agrees to defend such action or proceeding by hiring counsel reasonably satisfactory to Lessor.

6. The City should be able to receive damages for clean-up costs if the lease is terminated.

- Recommendation: amend 12.2 as follows:

  Section 12.2. Damages. In the event of termination or retaking of possession following default, Lessor shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

  1) The loss of rent from the date of default until a new Lessee is, or with the exercise of reasonable efforts could have been, secured for the Property.

  2) The reasonable costs of reentry and re-letting including without limitation the cost of any cleanup, refurbishing, removal of Lessee’s property and fixtures, costs incurred, or any other expense occasioned by Lessee’s default including but not limited to, costs of environmental studies, assessments, and clean-up associated with the remediation of lead on the Property, any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.

7. The Property should be returned to the City free of all environmental contaminants.

- Recommendation: amend 12.3 as follows:

  Section 12.3. Condition of Property.

  1) On expiration of the lease term, or earlier termination on account of default, Lessee shall deliver all keys to Lessor and surrender the Property free from all lead and lead contamination in excess of permissible levels at its own expense, surrender the Property free from lead or lead contamination in as good of condition as when received on the Effective Date. Alterations constructed by Lessee with permission from Lessor shall not be removed or restored to the original condition unless the terms of permission for the Alteration so allow. Depreciation and wear from ordinary use for the purpose for which the Property is leased shall be excepted, but repairs for which Lessee is responsible shall be completed to the latest practical date before such surrender.

  2) All Alterations, improvements and fixtures placed on the Premises during the lease term, other than Lessee’s trade fixtures, shall be removed in accordance with Section 6.2. If Lessee fails to remove such fixtures, Lessor may do so and charge the cost to Lessee with interest at the legal rate from the date of expenditure.
(3) Before expiration or other termination of the lease term, Lessee shall remove all furnishings, furniture, and trade fixtures that remain its property. If Lessee fails to do so, this failure shall be an abandonment of the property, and Lessor may retain the property and all rights of Lessee with respect to it shall cease or, by giving written notice to Lessee within 20 days after removal was required, Lessor may elect to hold Lessee to its obligation of removal. If Lessor elects to require Lessee to remove, Lessor may effect a removal and place the property in public storage for Lessee’s account. Lessee shall be liable to Lessor for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Lessor.

8. The City should specify that attorneys’ fees on appeal are recoverable.
   ▪ Recommendation: amend 13.2 as follows:
     Section 13.2. Attorneys’ Fees. If any litigation is commenced between the parties to this Agreement concerning the Property, this Agreement, or the rights and duties of either party, the prevailing party in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to a reasonable sum for that party’s attorneys’ fees, including attorneys’ fees on appeal. The amount of the fees shall be determined by the court in that litigation or in a separate action brought for that purpose.

9. The City should increase the number of months in which it can place notices to lease or sell the Property.
   ▪ Recommendation: amend 13.6 as follows:
     Section 13.6. Entry for Inspection. Lessor shall have the right to enter on the Property at any time to determine Lessee’s compliance with this Agreement or to make necessary repairs to the Property. Whether or not such inspection is made, the duty of Lessor to make repairs shall not mature until a reasonable time after Lessor has received written notice from Lessee of the repairs that are required. In addition, Lessor shall have the right, at any time during the last twelve months of the term of this Agreement, to place and maintain on the Property notices for leasing or selling of the Property.

Recommendation

Staff recommends that the Council adopt the proposed lease with the recommended changes listed above.
LAND DESCRIPTION
City of Ashland, c/o Parks and Recreation Commission

THENCE South 89 degrees 57 minutes 38 seconds East along the Southerly boundary line of Donation Land Claim No. 51, said Township and Range for a distance of 594.40 feet to a 30 inch long by 1 inch diameter galvanized iron pipe with 3 inch diameter bronze cap situated at the Southeast corner thereof;

THENCE continuing South 89 degrees 57 minutes 38 seconds East along the Southerly boundary line of Donation Land Claim No. 38, Township 39 South, Range 2 East of the Willamette Base and Meridian, Jackson County, Oregon for a distance of 680.35 feet to a 30 inch long by 1 inch diameter galvanized iron pipe with a 3 inch diameter bronze disk situated at the Southeast corner of said Donation Land Claim No. 38;

THENCE North 00 degrees 11 minutes 51 seconds East along the boundary line common to Donation Land Claim No. 38 and Government Lot 5 for a distance of 73.37 feet to a 30 inch long by 1 inch diameter galvanized iron pipe with a 3 inch diameter bronze disk situated at the Northwest corner of Government Lot 5, Township 39 South, Range 2 East of the Willamette Base and Meridian, Jackson County, Oregon;

THENCE South 89 degrees 47 minutes 06 seconds East along the Northerly boundary line of said Government Lot 5 for a distance of 306.00 feet to a 5/8 x 30 inch iron rod with aluminum cap marked: City of Ashland, Prop.Corr., 1992, LS 759;

THENCE leaving said government lot line, South 42 degrees 17 minutes 06 seconds East for a distance of 130.70 feet to a 5/8 x 30 inch iron rod with aluminum cap marked: City of Ashland, Prop.Corr., LS 759;

THENCE South 63 degrees 07 minutes 06 seconds East for a distance of 347.00 feet to a 5/8 x 30 inch iron rod with aluminum cap marked: City of Ashland, Prop. Cor. 1992, LS 759;

THENCE South 10 degrees 37 minutes 06 seconds East for a distance of 185.50 feet to a point;

THENCE North 89 degrees 57 minutes 38 seconds West for a distance of 942.11 feet to a point;

THENCE South 60 degrees 30 minutes 00 seconds West for a distance of 200.00 feet to a point;

THENCE North 90 degrees 00 minutes 00 seconds West for a distance of 303.02 feet to the point of beginning.

Together with and subject to covenants, easements, and restrictions of record and those apparent on the land.

LESSOR: City of Ashland
        c/o Parks and Recreation Commission
        340 S. Pioneer Street
        Ashland, Oregon 97520

March 11, 1996

LESSEE: Ashland Gun Club, Inc.

ref: C92T17RR.leg

Exhibit 'A'
Council Communication

Renewal of Ashland Gun Club Lease

| Meeting Date: | July 15, 2008 | Primary Staff Contact: | Megan Thornton |
| Department: | Legal | E-Mail: | thorntm@ashland.or.us |
| Secondary Dept.: | Administration | Secondary Contact: | Don Robertson |
| Approval: | Martha Bennett | Estimated Time: | 30 minutes |

Question:
Does the Council wish to approve an order authorizing a lease of real property to the Ashland Gun Club?

Staff Recommendation:
Staff recommends approval of an order and execution of the lease.

Background:
On June 16, 2008, the gun club lease was discussed at a Council Study Session. Study Session documents are attached as background information. At the conclusion of the Study Session, the Council directed staff to gather additional information and make modifications to the lease before presenting the lease to Council for approval.

Modifications to Draft Lease:
Staff has modified the draft lease. The modifications attempt to incorporate feedback from the council, gun club members, and neighboring property owners received at the study session. The following modifications were made to address comments from the study session:

1. Gun Club’s evening hour of operations – definition of “sunset.”
   - Response: Section 4.2(1) was modified to limit the evening hours to 8PM or sunset, whichever comes earlier. “Sunset” was defined in Article 1, section 13. Oregon law would allow shooting from 7AM to 10PM or shooting at any time for law enforcement training purposes. ORS 467.131(3). Thus, the proposed hours are more restrictive than what Oregon law allows.

2. Holiday Closures
   - Response: Section 4.2(2) was added to require the Gun Club to be closed for four holidays each year. The dates of the closures will be provided in the Gun club’s January newsletter of each year.

3. Night Training
   - Response: Section 4.2(1)(a) was modified to specifically allow only the Ashland Police Department to use the property for special night training (such training usually occurs about once per year). However, to use the property for training after hours, nearby property owners must be given notice at least two weeks in advance.

4. Language or clause in the lease that the property could revert back to the city in case it is needed in the future
   - Response: Section 2.4 was added to allow the City to reclaim the property in case of an emergency. Article 1 subsection 6 was added defining “emergency.” If the City
chooses to reclaim the property due to an emergency the City will assume the terms of any grants that have been received, and the Gun Club will be exempt from returning the property to its original state.

5. Provision allowing for future Greenway construction
   • Response: Section 5.2(4) was added to require the Gun Club to relocate or re-orient facilities to allow future construction of the Greenway.

6. Historic value – management of historic areas
   • Response: Section 5.1 was modified to include that the City reserves the right to adopt and institute a management plan for the benefit of historic areas marked on Exhibit C. Section 4.2(3) also excludes historic areas from use and retains the City’s right to use and maintain areas of historic significance. In addition, the definition of “premises” in Article 1, section 11 excludes all historical areas from the premises leased to the Gun Club.

7. Environmental Assessments and Riparian Zone Management
   • Response: Section 4.5 was added to require the City and Gun Club to jointly conduct an environmental assessment and field investigation of the Property, including specifically the riparian corridor, to test for contaminants. If lead is discovered in the riparian area a plan will be developed for the removal and disposal of the lead, as well as restoration of the riparian corridor. This section also prohibits the Gun Club from making any alterations in the riparian corridor. In addition, Section 5.1 was modified to make it clear that it is the City’s responsibility to maintain the riparian zones on the property.

8. Stricter deadlines on clean-up dates for the property.
   • Response: Section 4.5 requires the Environmental Assessment for the entire property to be completed by July 1, 2009, and section 4.3 requires the initial clean-up of the site to begin within 18 months of the lease signing.

Related City Policies:
None

Council Options:
1) Approve an order authorizing the proposed lease of real property.
2) Provide direction to staff for further revisions to the lease agreement.
3) Decline to renew the lease agreement.

Potential Motions:
1) Move to approve an Order of the City Council authorizing the lease of real property to the Ashland Gun Club.
2) Move to continue the matter to [date certain].

Attachments:
- Revised Lease Agreement with attachments
- Existing Lease Agreement – June 1, 1994 to June 1, 2009
- Study session Council Communication for June 16, 2008 – attachments available online
- Letter dated July 2, 2008 from Leon Pyle and Cathy DeForest
- Letter from Ashland Historic Commission
Council Communication

Discussion on Ashland Gun Club Lease

<table>
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<tr>
<th>Meeting Date:</th>
<th>June 16, 2008</th>
<th>Primary Staff Contact:</th>
<th>Don Robertson</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department:</td>
<td>Parks</td>
<td>E-Mail:</td>
<td><a href="mailto:robertsond@ashland.or.us">robertsond@ashland.or.us</a></td>
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<tr>
<td>Secondary Dept.:</td>
<td>Administration</td>
<td>Secondary Contact:</td>
<td>Martha Bennett</td>
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<tr>
<td>Approval:</td>
<td>Martha Bennett</td>
<td>Estimated Time:</td>
<td>45 minutes</td>
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Question:
Does the Council wish to extend the lease to the Ashland Gun Club? If the lease is extended, under what conditions and for how long will it last? If it is not extended, how will the property be used?

Staff Recommendation:
This is a study session item for discussion purpose only.

Background:
The Ashland Gun Club has been leasing property from the City to use as its gun club facility since at least 1968. The current Ashland Gun Club Lease will expire at the end of June 2009. Members of the club first requested a lease extension in February 2004. On July 20, 2005 the Council and Parks Commission had a joint study session to discuss a possible lease extension. At that time, input was provided by the Ashland Gun Club membership, but community members did not get an opportunity to speak. The specific issues for consideration at that meeting were:

- Does the City have an interest in extending the lease for the Ashland Gun Club?
- Does the Parks Commission have an interest in continuing the management agreement?

At the conclusion of the City Council study session, staff was directed to develop a draft Lease for City Council to consider, which would extend the years of operation by the Ashland Gun Club. Ashland Gun Club members prepared and presented a proposed lease to the City in June of 2007 but review of their draft was put on hold during the time while the City was hiring a City Attorney. Ashland Gun Club members and supporters have sent dozens of letters to the City requesting renewal of the lease.

City legal staff developed a draft lease in March of this year. This draft attempted to address the issues raised about the Ashland Gun Club’s relationship to their neighbors. This draft was circulated to the Ashland Gun Club and to many of the neighbors of the property. The draft agreement is attached.

After they received a copy of the draft lease, several of the neighbors contacted City and Parks and Recreation staff to discuss their concerns. Before raising particular concerns about Ashland Gun Club operations (addressed on page 5), one of the neighbors asked whether the City Council had already decided to extend the lease. These neighbors asked to address the City Council to make their case both about whether a gun club is an appropriate use of this property and about the particular conditions that should be placed on the operation if the City signs a new lease with the Ashland Gun Club.
Discussion:

Should the property be used as a shooting range/gun club?

The Ashland Gun Club property, along with all other City lands, is being studied for potential other uses as part of the facilities master plan. For the purpose of preparing for this study session, staff considered all of the options that the City Council has for use of this property. In all of the options, we assume that the City will retain some form of ownership (whether it’s direct ownership or an easement of some kind) over the portion of the property that contains the Lithia Water wellhead and other related historic structures. Some of the options we considered are:

1. Allow the Ashland Gun Club Lease to expire, retain City ownership of the property, and convert the property to another use, as allowed by County zoning (addressed on page 4).
2. Allow the Ashland Gun Club Lease to expire, retain an easement or ownership of the Lithia Water wellhead, declare the remainder of the property surplus, and sell this remaining portion. As a variation on this option, the City could declare a portion of the property surplus and seek to exchange it for another piece of land, such as Clay Street.
3. Offer a new lease to the Ashland Gun Club which includes terms that limit the liability of the City for potential lead contamination and for all security issues and that address at least some of the “good neighbor” issues. The lease would also allow some limited use of the property for Public Works purposes.
4. The City could declare a portion of the property surplus (again, not the portion with the Lithia Water) and offer to sell it directly to the Ashland Gun Club. The City would address the good neighbor issues through deed restrictions, which could be enforced in court. Staff has not thoroughly explored this option, so if Council is interested in it, we’d want to do further work.

The City does use the property not only for Lithia Water but for disposal of some of the spoils from public works projects and the street sweeper. The sweeper spoils were moved to this property after the City received numerous and repeated complaints from the neighbors of the “B” street yard.

What Issues Need to be Addressed if the Ashland Gun Club Lease is Renewed?

If the determination is to extend use by the Ashland Gun Club, the following issues will need to be addressed:

- Good Neighbor Issues. Many of the concerns raised by the neighbors related to how early and often the Ashland Gun Club is used. Neighbors also are concerned about particular types of noise, such as that from repeating weapons or from weapons that have a great deal of power.
  - Hours of Operation. Should the use be restricted on weekends? Should there be one weekend day of no use or a later start time on weekend mornings? Should evenings, particularly summer evenings, be more restricted?
  - Limitations on the types of weapons that are fired (automatic, semi-automatic, and weapons that have a high degree of force and are therefore noisy)
  - Noticing to neighbors of unusual/special use
  - Traffic
  - Security
  - Use for National Guard Training.

- Term of the Lease. A major component of improvements on the site is funding via grants from ODFW, DSL and other entities, most of which require a minimum of 10 year lease.
• Environmental clean up issues. One of the key issues for this property will be to ensure that the Ashland Gun Club can comply with the Best Management Practices for Lead at Outdoor Shooting Ranges as defined by the EPA. The City may want to require regular lead removal every three to five years. Federal and state grants are one of the means of obtaining funding for lead abatement.

**What Issues Need to be Addressed if the Ashland Gun Club Lease is Allowed to Expire?**

If the determination is not to renew the lease, Council will need to discuss these issues prior to deciding whether to retain the property for an alternative use or to declare the property surplus (and sell or trade it).

- Land Use regulations that affect the uses of the property (see page 4 and attachment)
- Lithia Water Access and Historic Resource Preservation
- Environmental Cleanup Needs and Costs
- Public Infrastructure issues, including the condition of the road and the lack of available electric, telecommunications, water and wastewater utilities
- Bear Creek Greenway Extension (the original plan calls for the Greenway to link Bear Creek with Emigrant Creek on the north side of the property and eventually link to Emigrant Lake)

**Facilities Master Plan**

In January 2008, the City Council initiated a Facilities Master Plan. The Council appointed a Committee to make recommendations for future improvements, uses, and dispositions of all City buildings and properties The Committee has identified the need to combine the city yards, currently located on B Street and 90 North Mountain and East Nevada, and has determined ten acres are needed. The Committee has considered the gun club property as a possible future site for the city yard.

**Pros:**

- Land is sufficient in size to meet the needs of City yards and equipment
- Reduces conflicts with the existing neighbors of the B Street and North Mountain Neighborhoods.

**Cons:**

- Property is outside city limits and outside UGB
- Road is sub standard, is failing rapidly and will not support heavy equipment traffic
- Property is low lying and parts of it are in the flood plain
- No city utilities (water/sewer, electricity)
- Several different well heads that produce Lithia water are on the property – if another well is needed city will need the flexibility to drill
- Surrounding residential neighbors could be impacted by traffic and noise
- Property location poses operational challenges:
  - Approximately 70 employees would add 7.3 miles to their driving time to work.
  - Staff estimates additional drive distance (from Hwy 66 to property) would result in approximately 330 additional gallons of fuel per week for city vehicles.
City vehicles represent approximately 1250 round trips per week in and out of current city yard.

- Property topography is hilly and not conducive to storage and access needs of a city yard.
- Possible environmental concerns regarding installing fuel pumps, storage and equipment.

The committee has not yet reached a decision on the best use of this property.

**Land Use Issues Affecting the Property**

**Background and Site Characteristics**

The Ashland Gun Club is part of three city-owned properties (400, 700 & 800) totaling approximately 66-acres. Access to the property is from Emigrant Creek Road, a county road that passes through the northwest corner of the property. The topography of the area is varied, consisting of an expansive, relatively flat area along the property’s northerly boundary, with the south and southeast portions of the property having slopes ranging between 10 and 30 percent. Additionally, Emigrant Creek, and its associated 100-year floodplain, traverses the north easterly corner of the property.

**Jackson County Zoning Designation**

The zoning is primarily Open Space Reserve (OSR), which is a Forest Resource Zone. A very small, insignificant corner of the property, lying just south of Emigrant Creek Road, is zoned EFU, Exclusive Farm Use. According to Jackson County Planning Department records, the Ashland Gun Club is a conforming use, permitted under the OSR zoning designation with a valid Jackson County land use approval in place (File 00-35-DAR).

The purpose of a Forest Resource (FR) zoning Districts is to conserve forest lands. Various zoning districts, including Open Space Reserve (OSR), are applied to areas identified as forest land by Jackson County’s Comprehensive Plan. A variety of permitted uses are described under the County’s zoning code, including:

- Farm and Forest Uses
- Natural Resource Uses
- Residential Uses
- Commercial Uses
- Mineral, Aggregate, Oil and Gas Uses
- Transportation Uses
- Utility/Solid Waste Disposal Facilities
- Parks/Public/Quasi-Public Uses
- Outdoor GatheringUses

City or public yards are *not* listed as an allowable use in the OSR Zone, and county planning staff did not feel, at least preliminarily, that it would fit under any of the permitted or conditional uses listed for the property. Additionally, only large-tract residential use is permitted, consisting of a minimum lot size of 160-acres; thus, the gun club property is too small to allow this use.
On-site Contamination
Staff from the Department of Environmental Quality (DEQ) indicated that shooting ranges are required to go through an environmental assessment process for almost any change in use. Any activity that would involve grading or removal of soil also requires an assessment. There are various clean-up options that can come out of the assessment process and some similar gun club sites are currently undergoing cleanup at this time.

Draft Lease:
Staff has prepared a draft lease for council review and consideration. The draft lease agreement is an attempt to incorporate feedback from a number of meetings and conversations with gun club members and neighboring property owners. The provisions of the draft lease can be changed to address additional concerns. The draft was reviewed by two neighbors who met with staff to share their concerns. It should in no way be construed that the opinions of the two neighbors is representative of the entire neighborhood. Nor should this list be considered the definitive list of concerns of other neighbors. However they do present a thoughtful list of concerns that are believed to be shared by many of the neighbors. The concerns from the two neighbors that provided comments after the draft lease was completed include:

1. Grants should not dictate City Policy: This is in reference to the need to extend the lease beyond 10 years.
   • Response: There are federal and state grants for a number of activities. For example, the FAA awards grants for airport development, the Oregon State Marine Board provides funding for docks on public property, and the Oregon Department of Transportation supplies monies for transportation improvements. The terms associated with grant monies must be considered in all of these situations if the City wishes to receive the funding. Grant money is available for lead abatement, but the terms require a ten-year lease. It is in the City’s best interest to take steps to make sure that lead abatement continues on the property, and grant funding is one means of ensuring that the City will not have to finance a clean-up in the future.

2. Automatic weapons/semi-automatic weapons – should they be there?
   • Response: Section 4.2(3) of the draft lease agreement prohibits the use of automatic weapons and weapons that exceed 6000 foot-pounds of muzzle energy.

3. National Guard or Paramilitary organizations (except APD) – should they be there?
   • Response: The National Guard utilizes the Gun Club facility for training approximately 4 times a year during normal facility hours. Generally the National Guard’s use of the facilities consists of individual soldiers in the community using the facility to meet requirements. Section 4.2(1)(a) of the draft lease agreement allows use by law enforcement agencies and military units outside of the normal hours of operation by giving notice to nearby property owners at least two weeks in advance. It is the police force that may be utilizing this night time exception for special training.

4. How do we determine true noise context and restrict decibels?
   • Response: Section 4.2(3) of the draft lease agreement, which prohibits automatic weapons and weapons with a muzzle energy that exceeds 6,000 foot-pounds, is a means of restricting noise. The muzzle energy of the weapon is what determines how loud the weapon is when it is fired.

5. Reasonable hours – 10 am – 6 pm, closed either Saturday or Sunday, restrictions on Holidays
• Response: Section 4.2(1) of the draft lease agreement restricts the hours of operation during the week from 8AM to sunset, and on the weekends from 9AM to sunset. These hours were a compromise that came out of a number of discussions with the gun club and the neighbors since 2005. The ORS would allow shooting from 7AM to 10PM or any shooting conducted for law enforcement training purposes. ORS 467.131(3). Thus, the proposed hours are more restrictive than what Oregon law allows.

6. Paper Targets only, no metal targets
   • Response: The draft lease agreement does not currently address the types of targets that can be used, but the lease can be modified to restrict the use of metal targets. Currently the gun club requires the use of official paper or metal targets only.

7. No overnight or only once per year
   • Response: Section 4.2(4) of the draft lease agreement limits overnight events to one per calendar year; however, during the event the shooting range hours must be strictly complied with.

8. Require permission from City Council for any improvements
   • Response: Section 6.1 of the draft lease agreement requires the Gun Club to obtain the City’s written consent before making any alterations or improvements. In addition, the Gun Club must comply with all laws, including zoning regulations, and building codes.

   • Response: Section 4.3 of the draft lease agreement requires the Gun Club to comply with all Environmental Laws and specifically with the Environmental Protection Agency’s Best Management Practices for Lead at Outdoor Shooting Ranges. Section 4.4 states that the Gun Club shall comply with all federal, state, and local laws at its own cost and expense.

10. Comply with DEQ noise regulations
    • Response: Oregon law exempts shooting ranges from civil liability for noise pollutions between the hours of 7AM and 10AM, or during law enforcement training; thus, the Gun Club is not subject to any noise restrictions. ORS 467.131. In addition, the Oregon legislature has pre-empted the City’s ability to regulate the Gun Club property and declare shooting activities as a nuisance or a trespass. ORS 467.136.

11. Insurance coverage is too low
    • Response: Section 7.1 of the draft lease agreement requires the Gun Club to maintain a comprehensive commercial general liability policy of $1,000,000. The City’s general policy is to require $1,000,000 worth of insurance; however, the Gun Club currently has $2,000,000 in coverage. The lease could be modified to require more insurance.

12. Indemnification (who is the Gun Club organization? Bond?)
    • Response: Section 7.2 of the lease requires the Gun Club to indemnify the City to the fullest extent permitted by law, including reasonable attorneys’ fees, investigation costs, and all other costs and expenses.

13. Default – who is responsible
    • Response: Section 11.1 of the draft lease agreement states that a default in any of the lease covenants must be remedied by the Gun Club. If the default is not remedied (generally within a 20 day period) the lease may be terminated and the City may collect damages.
14. Lease rate
   - Response: Article 3 of the draft lease agreement addresses the lease rate. The Gun Club is required to pay all taxes and insurance costs and provide at least three community events during each calendar year.

Related City Policies:
None

Council Options:
Provide direction to staff. No decision is needed at this time.

Potential Motions:
None

Attachments:
   - Draft Agreement
   - Property Maps
   - Jackson County Land Use Code Chapter 4.3
   - Lithia Springs Property Historic Significance

The Council packet and minutes of the July 20, 2005 meeting are available on-line. Hard copies can be made available on request.
Alice Hardesty Requests for Changes in the Gun Club Lease
7-30-08

Timing

I will again state that I am not opposed to shooting ranges nor am I opposed to renewing the Gun Club’s lease. I realize that it is an accepted sport and form of recreation, that hunters need to sight their guns before they go out hunting, and that the APD needs a place to practice. The recommendations I’m making are to safeguard the City’s welfare and to assess the need for cleaning up that site, which probably should have been done a long time ago.

I believe it makes the most sense to do the assessment right away and renew the lease after that. Until the assessment is performed, the City won’t know how serious (or how benign) the pollution problem is, how much it will cost, and how it’s going to be paid for. It’s clear that the ODFW grant that the Gun Club refers to is for things like new construction and amenities, not for clean-up. Perhaps there are other grants but they haven’t been brought to my attention. The assessment shouldn’t take long at all and there is still a year remaining in the current lease. After the assessment, the City and the Gun Club can work together to develop a solution. That way, such issues as the costs associated with the implementation of the management plan, which “shall be paid for jointly by the Lessor and Lessee” (section 4.5) won’t have to be the subject of a fight and possible lawsuit.

The new language recommended by Legal for sections 5.1 and 5.2 makes this somewhat clearer, but still could be the subject of disagreement and it would be good to have it worked out ahead. Also, there should be a reference to which “permissible” levels we’re referring to. This leads to another question. If there is a lot of lead in the area but not above “permissible” levels, should it be removed? It appears that the EPA would recommend removal, but the extent of this removal should be made clear, and all of us should be in agreement before the new lease is signed.

Main Comments on the Lease

If Council should decide to go ahead with the lease at this time I would recommend certain major changes:

- The City should have the right to terminate the lease for reasons other than “emergencies.” Because of the uncertain future that lies ahead, we may need the property for something else. Perhaps the words “reasonable cause” could be substituted, or better yet, just have a termination clause without need of justification so long as we give the Gun Club plenty of notice, like a year or more.

- Lead should be removed from all areas, not just the riparian areas. The National Rifle Association, in EPA’s Best Practice manual, suggests lead removal every 1
to 5 years, even on ranges with minimal use. This should be a requirement, not just a suggestion.

- There should be a schedule for lead clean-up specifically in the lease, not just a requirement to begin within the first eighteen months of lease signing. Some beginnings can go on indefinitely. If such a schedule is implemented and complied with, there will be less reason for the posting of a bond for the final clean-up.

- It should be clear in the lease that the City will select the environmental professional to evaluate and test for contaminants on the property. We need to make sure that the evaluation is sufficiently thorough. After all, we are the owners and we bear the ultimate responsibility if the tenant vacates or cannot pay.

Specific Comments on the Lease

P. 1. I would recommend eliminating “Whereas, many grant programs require applicants to have remaining lease periods of ten years or more…” because this implies that a 10-year lease is necessary for clean-up, which is not the case. Also, I know of only one granting organization that makes such a requirement and have been presented with no others.

1.5 The effective date is already past. Shouldn’t it be the date the agreement is signed?

1.6 Emergency – Delete, as recommended above.

2.2 Term of the lease. Shouldn’t this be 10 years with optional extension?

2.3.1 Line 2, the word “must” should be changed to “may” to be consistent with the City’s right to object to an extension. Also, the language in this section is confusing because it looks like it “shall continue for ten years” even though it’s going to be approved year-by-year after the first 10 years.

2.4 Delete “Emergency” as recommended above.

4.2.3 Last sentence, delete “without interfering with scheduled events and uses of Lessee” because the City needs to use the road at all times to get to its yard area.

4.3 (p.5) Instead of “Beginning in 2019” it should read, “After the initial assessment” unless the lease requires definite periodic clean-up as recommended above. In this case, posting a bond might not be necessary.

4.5 This section should be changed as recommended above. At least it should say something like, “In accordance with the results of the assessment, the Gun Club shall pay the costs of lead clean-up and the City will be responsible for necessary clean-up not caused by lead.”
9.1 The second sentence is confusing. Does this mean that the City will defend the Gun Club if a neighbor sues for noise problems?

13.6 The City should have the right to enter the property at any time (and will need to do so), not just to determine Lessee's compliance with this agreement or to make repairs.
Questions for Staff about the Gun Club Lease
Alice Hardesty
7-23-08

General Questions:

1. We need an accurate map of where the Gun Club (GC) actually uses the property and what happens there.
   • RESPONSE: Staff has prepared an aerial photograph with the lease boundary transposed over the photograph so that the areas being used by the Gun Club can be located.

2. We need more information on clean-up grants:
   Which grants for clean-up require a 10-year lease? Have they requested clean-up grants? Do they have any letters to that effect from potential grantors?
   • RESPONSE: The Gun Club has been pursuing grants from the Oregon Department of Fish and Wildlife (ODFW), which is an agency that requires a remaining 10 years on the lease. Staff’s understanding is that the Gun Club has requested grants, but that it could not meet the grant criteria because there was less than 10 years remaining on the Gun Club’s lease at the time. Staff has not researched grant terms thoroughly; thus, staff is not sure what other clean-up grants may require as far as a lease term is concerned. Staff does not have in its possession letters from potential grantors regarding the Gun Club’s requests for grants.

3. What is the City’s role in the grant process? Since part of the mess is probably from the City’s activities in former years, it would seem appropriate that the City should participate in the clean-up. But how will we know how much the City should shoulder and how much the GC should until the assessment is completed and a plan formulated?
   • RESPONSE: As the lessor of the property the City has a passive role in the grant process. The City’s role may include things like verifying that there is a lease to the requesting lessor, but the grant money would go to the Gun Club. The City will be responsible for any contamination that is not due to the Gun Club’s activities. The Gun Club will be responsible for all clean-up of lead and lead contaminants. See Section 5.1, last sentence, and Section 5.2(5).

4. How can we be sure that the GC will pay for their share of the clean-up specific to lead?
   • RESPONSE: Section 4.3 requires the Gun Club to post financial security starting in 2019 in order to get a lease extension if it has not been obtaining grants and performing the environmental remediation that is required.

5. Why was regular removal of lead every 3-5 years as suggested in the 6-16-08 Council Communication not included in the lease? I don’t remember any discussion about this by Council. The NRA recommends regular lead clean-up every 1-5 years, even on ranges with minimal use. (p. III-16, EPA Best Practices document.)
   • RESPONSE: Section 4.3, paragraph 2, requires that the management plans developed from the environmental assessment are consistent with the EPA’s Best Practices.
Therefore, by referencing the Best Practices, which gives the suggested intervals for lead remediation the lease is requiring by requiring a management plan that coincides with those intervals.

6. What indication is there that we must specify lease termination only for emergencies? What is to prevent us from a clause allowing termination for other reasons, such as financial responsibilities, so long as we give the GC reasonable notice (like 6 mo.)?
   • RESPONSE: The City could add a termination for convenience clause; however, if the City can too easily reclaim the property then the question becomes whether the City is even leasing the property at all.

7. Is $2 million enough insurance to cover suits for wrongful death?
   • RESPONSE: The Gun Club’s insurance policy is sufficient for its purposes. Other gun clubs in the Rogue Valley are only insured for $1 million; thus, the Gun Club has twice the insurance coverage of other clubs.

8. Have we determined how a shooting range would be compatible with our Valdez Principles?
   • RESPONSE: The proposed lease is much more consistent with the Valdez principles than the existing lease. Specifically, the lease is more consistent with Principles #1, 5, 7, and 8 than the existing lease. The proposed lease requires an environmental assessment by both the City and the Gun Club, requires the Gun Club to comply with best management practices for shooting ranges (the EPA document), and requires the City to clean up its own pollution. Staff has not analyzed whether the Gun Club operation itself complies with the Valdez principles. If Council wants staff to perform that analysis, then staff requests Council direction on the specific issues that they would like addressed.

9. On rereading the existing lease, it doesn’t look very weak to me. I would like to know the extent to which any of the laws and regulations in Section 5.2 apply (or don’t apply) to lead contamination from shooting ranges. There are quite a few!
   • RESPONSE: First, many of the general sets of laws that are cited do not apply to shooting ranges because “firing ranges are exempt from the EPA’s new lead reporting requirements, and virtually every major pollution control law in the United States” including the Resources Conservation and Recovery Act and the Clean Water Act. “Lead Pollution at Outdoor Firing ranges,” Environmental Working Group 2. Second, two of the four cited statutes in the current lease document no longer exist because those sections were renumbered. However, even if all of the cited sections were valid those sections discuss strict liability for the property owner and the release and disposal of oil and hazardous waste. Hazardous waste is defined by ORS 466.005(7) and it does not include lead. Hazardous waste is generally limited to herbicides, pesticides, and other residues.

10. It seems to me that sections 5.2, 7., 9.3, and 12.2 pretty clearly put the responsibility for lead correction on the GC. I don’t understand what it is about this current lease that puts the City in an unfavorable position. Is it section 12.2 that says Lessee only has to begin correcting the default within 30 days? But it also says “proceeds with reasonable diligence and in good faith to
effect the remedy as soon as practicable.” That would seem to preclude “walking away,” so long as the City gives 30 days notice.

- **RESPONSE:** This issue was discussed previously in an executive session. If the Council would like to have another executive session to discuss this issue please notify the legal department.

11. Has the City looked into the possibility of requesting a change in the zoning of these 66 acres to make the property worth a lot more? If indeed it would be difficult to change the zoning, are all those large houses in the area situated on other categories of zoning? Did any of them get the zoning changed in order to build there?

- **RESPONSE:** Staff has not requested information about a possible zone change from the County, and we would request Council direction prior to doing so. Likely, the City would have to at least request a formal pre-application from the Council to get guidance on the likely outcome of an application for a zone change. City staff will request information from the County about the neighboring lots prior to the August 5 City Council meeting.

Questions about Ambiguities in the Proposed New Lease:

12. Section 4.5 requires lead removal only in the riparian zones. Certainly the City has not been dumping lead all over the property. What keeps us from requiring lead removal everywhere on the property?

- **RESPONSE:** Nothing stops us from requiring lead removal everywhere on the property. In fact, the lease requires the Gun Club to remove lead on the property, not just the riparian zones. Section 5.2(5) states that the Gun Club is responsible for “the removal of lead and lead contamination from the Property that exceeds permissible levels, and payment for such removal.” Property is defined as everything described in exhibit A, which is the lease area; so, the Gun Club is responsible for all lead, not just the riparian zones.

13. Exhibit D: I can’t tell from the black & white copy where the riparian zone is. If it’s the hatch-marked areas along the creek, this is a pretty small part of the property. Where are the riparian zones, especially in relation to the shooting areas? (And, as in question #1, where are the shooting areas?) According to Exhibit C, the shooting range doesn’t seem to be near the riparian areas.

- **RESPONSE:** The riparian zone is marked by the diagonal lines along the creek. The shooting ranges are mostly in the middle of the property, and the riparian zones are located in the north western and north eastern corners of the property. Thus, the shooting ranges are not near the riparian areas.

14. Section 4.3 as revised on 7-15-08 requires the GC to comply with EPA’s current version of the Best Practices Guide, begin an initial lead removal within 18 months of signing, comply with the terms and timelines of any management plan developed as a result of the environmental assessment referenced in Section 4.5 (which must be done by 7-1-09), and remove all lead that **exceeds permissible levels** on expiration or termination of the lease. There are many ambiguities and unanswered questions in Sections 4.3 and 4.5, such as:

Page 3 of 5
NOTE: Staff’s responses are bulleted below the question and titled “RESPONSE.”
• Who chooses the environmental professional to do the assessment? (It should be the City as owner.)  
  o RESPONSE: Section states that “[t]he Lessor and the Lessee agree to have an environmental assessment and field investigation performed by an environmental professional.” The City and the Gun Club will be choosing an environmental professional together and sharing the cost of the assessment.

• Who will develop the plan?  
  o RESPONSE: The environmental professional will be developing the plan from the information that is obtained during the environmental assessment.

• What does “paid for jointly by the Lessor and Lessee” mean? I would recommend that the City pays 60% and the GC pay 40% so it is clear that the City, as the property owner, controls this process.  
  o RESPONSE: Section 4.5 states that “[t]he costs associated with an environmental assessment of the Property and development of any necessary management plan for the Property, including the riparian zones, shall be paid for jointly by the Lessor and Lessee; each party will be responsible for half the cost of the environmental assessment and development of the management plan.” Thus, the City will be responsible for 50% of the cost.

• Where are the requirements for implementation of the plan?  
  o RESPONSE: Section 4.3 states that:  
    “Lessee shall begin an initial lead removal operation on the Premises within the first eighteen (18) months of lease signing. Lessee shall comply with the terms and timelines of the management plans developed as a result of the environmental assessment in Section 4.5 and consistent with the EPA’s Best Practices as approved by Council.”

• What permissible levels does Section 4.3 refer to? Shouldn’t at least the reference be cited in the lease?  
  o RESPONSE: The permissible levels will be determined by the environmental professional during the environmental assessment and incorporated into the management plan. It would not be prudent to give an exact cite because the citation could be amended in the future, which is what happened with the citations in Section 5.2 of the current lease.

• The current lease requires the Lessee to leave “the premises in as good order and condition as when received,” which should be interpreted to mean without lead contamination, especially if any of the regulations cited in 5.2 have not been complied with. The new proposed lease doesn’t specify removing all lead until the end of the lease, i.e. 2019 or beyond as the lease gets extended. Shouldn’t there be an interim timetable (as recommended by the NRA)?  
  o RESPONSE: If the Council would like to have another executive session to discuss this issue please notify the legal department.
• Section 4.3 gives the City the right to require the GC to post financial security for clean-up as a condition of extension, beginning in 2019. What happens if neither the City nor the GC are able to procure clean-up grants? Shouldn’t there be a contingency statement for an earlier time to start posting a bond?
  ○ RESPONSE: If the Gun Club is unable to comply with the timelines for clean-up that would cause a default under Section 11 of the lease. Then the City could terminate the lease and recover damages for “costs of environmental studies, assessments, and clean-up associated with the remediation of lead on the Property” under Section 12 of the lease.

15. Section 4.5 says both the assessment and implementation shall be paid for jointly. What does jointly mean? Shouldn’t the lease be clear that the GC pays for all lead clean-up and the City pays for the other stuff? It could actually be the same grant (or not).
  • RESPONSE: Section 4.5 states that “an environmental assessment of the Property and development of any necessary management plan for the Property” will be paid for jointly. Section 5.2(5) makes it clear that the Gun Club will pay for any lead clean-up that is necessary, and Section 5.1 states that the City “will assume responsibility for any environmental clean-up that is required if the environmental assessment shows that there is contamination that is not the result of Lessee’s activities.”

16. Damages: This section refers to damages from loss of rent, but the GC isn’t paying any rent. Section 12.2(2) refers to any clean-up, refurbishing, etc. but there is no mention of the words “lead,” “pollution,” or “contamination” etc. Aren’t those the key words that should appear in this kind of a “damages” clause?
  • Article 3 outlines the duties of the gun club in terms of rent and other consideration. Also, in Section 5.2(1) the Gun Club has agreed to repair and maintain the boundary fence of the Property and the City’s adjacent property. Any cost due to the Gun Club’s failure to comply with any of these terms would lead to a claim for damages. In addition, Section 12.2(2) specifically states that the City can recover damages for “costs of environmental studies, assessments, and clean-up associated with the remediation of lead on the Property.”

I’d be happy to meet with any staff member and I look forward to your responses. Thank you.
From: Martha Bennett
To: Diana Shiplet
Date: 7/31/2008 10:59:11 AM
Subject: Fwd: FW: Request for information

Please attach to Gun Club item

This email is official business of the City of Ashland, and it is subject to Oregon public records law for disclosure and retention. If you have received this message in error, please let me know.

Martha Bennett, City Administrator
(541) 552-2103

>>> "Cate Hartzell" <cate@mind.net> 7/26/2008 9:51 PM >>>

From: SHEWCZYK Susan
Sent: Wednesday, July 16, 2008 11:29 AM
To: cate@mind.net
Cc: DEQINFO; MCPHERSON Lee
Subject: RE: Request for information

Hi Cate; We do have a rifle range booklet available. Unfortunately I do not have it on my computer. I can have it copied and sent to you for best management practices at shooting ranges. This should help in all your questions. Please send me your mailing address and I will slip a booklet in the mail to you. Then, if you have further questions please call me at 503 378-5310. I am a hazardous waste inspector and have inspected some of the rifle ranges in Oregon.-----Original Message-----
From: MCPHERSON Lee On Behalf Of DEQINFO
Sent: Wednesday, July 16, 2008 8:48 AM
To: SHEWCZYK Susan
Subject: FW: Request for information

If this e-mail message doesn't pertain to you, please e-mail Lee McPherson back with suggestions of other staff who you think could respond. If you reply, please Cc:. Lee McPherson on your message. That way we can keep track of how well we're responding to inquiries. Thanks!

-----Original Message-----
From: Cate Hartzell
Sent: Wednesday, July 16, 2008 1:12 AM
To: DEQINFO
Subject: Request for information

Greetings,
I write in my capacity as a City Councilor in Ashland, Oregon with a question.

The City of Ashland has leased city property to a Gun Club to be used as a shooting range for 40 years. We are renegotiating the Lease and on the basis of research I have done, I am concerned that we might overlook cleanup issues. No environmental assessment has ever been done and we are making that a requirement in the lease, especially since city property adjacent to the shooting range has served as a dumping ground for city activities, as well. The city property also contains a natural mineral spring that has high concentrations of lithium. It is the headwaters of Bear Creek, a contributor to the Rogue River.

Can you direct me to literature that explains what we might expect, look for, and might miss in an assessment? Does EPA have any experts on the subject of shooting range cleanup that you can refer me to? Can you tell me what environmental law regulates lead pollution from ammunition?

I am sorry my question is so broad, but I didn't want to tax the person that my initial inquiry goes to.

Thanks you for your attention to this request.

Cate Hartzell

Ashland, Oregon
From: Martha Bennett  
To: Diana Shiplet  
Date: 7/31/2008 10:59:35 AM  
Subject: Fwd: FW: shooting ranges

Also for Gun Club item

This email is official business of the City of Ashland, and it is subject to Oregon public records law for disclosure and retention. If you have received this message in error, please let me know.

Martha Bennett, City Administrator  
(541) 552-2103

>>> "Cate Hartzell" <cate@mind.net> 7/26/2008 9:51 PM >>>

-----Original Message-----
From: Stifelman.Marc@epamail.epa.gov

Sent: Thursday, July 17, 2008 2:17 PM  
To: cate@mind.net  
Subject: shooting ranges

Dear Cate,

I'm not an expert in shooting ranges, but I can refer you to some EPA guidance on the subject. The U.S. maintains the following web site with information on lead risk assessment in general and brief guidance specific to shooting ranges:

http://www.epa.gov/superfund/lead/guidance.htm#smallarmshooting

Feel free to contact me if you have additional questions. Also, you can contact EPA HQ (I'm in the Seattle regional office) for assistance as well:

http://www.epa.gov/superfund/health/contaminants/lead/tech.htm

Regards,

-Marc (full contact info below)

**************************

Greetings,

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for city activities, as well. The city property also contains a natural mineral spring that has high concentrations of lithium. It is the headwaters of Bear Creek, a contributor to the Rogue River.

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I am sorry my question is so broad, but I didn't want to tax the person that my initial inquiry goes to.

Thanks you for your attention to this request.

Cate Hartzell
Ashland, Oregon

*******************************************************************************

"Everything is miraculous. It is a miracle that one does not melt in one's bath."

-- Picasso

Marc Stifelman, Toxicologist
U.S. Environmental Protection Agency, Region 10
Office of Environmental Assessment, Risk Evaluation Unit
1200 Sixth Avenue, Suite 900
Mail Stop: OEA-095
Seattle, Washington 98101-3140
Tele 206/553-6979
Facs 206/553-0119
stifelman.marc@epa.gov
From:        Martha Bennett  
To:          Diana Shipler  
Date:        7/31/2008 11:00:24 AM  
Subject:     Fwd: FW: Ashland City Councilor Inquiry: Shooting Range Contamination  

Diana - Last one for Council packet on Gun Club.

This email is official business of the City of Ashland, and it is subject to Oregon public records law for disclosure and retention. If you have received this message in error, please let me know.

Martha Bennett, City Administrator  
(541) 552-2103  

>>> "AITKEN Greg" <AITKEN.Greg@deo.state.or.us> 7/22/2008 1:38 PM >>>  
Ann, are you aware of these communications?

-----Original Message-----  
From:        MASTERSON Kevin  
Sent:        Tuesday, July 22, 2008 1:07 PM  
To:          ROSENBERG Max; AITKEN Greg  
Cc:          BOUDIN Jennifer; MASON Palmer; VOLPEL Rick; GASIK Jon; BLANCHARD John; MASTERSON Kevin  
Subject:     Ashland City Councilor Inquiry: Shooting Range Contamination  

Max and Greg,

I received this email (below) from Alice Hardesty, an Ashland City Councilor, regarding possible soil, groundwater contamination of city-owned property that is leased to a gun club and used as a shooting range. Apparently the property is near a riparian area, so surface water contamination is also a possible concern. She followed up with a phone call and I gave her with the rudimentary basics about the Voluntary Cleanup Program process, and then provided her with a link to a VCP fact sheet and the NW Environmental Business Council's web page for a list of consultants who can conduct site assessments (with the caveat that it's not a comprehensive list because some firms are not members of NEBC). However, I told her she should talk with one of you to get more specific information and guidance on the City's options. I said I would ask if you or someone in WR-Cleanup could contact her. Could someone in your section call her at (541) 488-8076?

Thanks very much!

Kevin
PS, I wasn't aware of any grant programs at EPA, or any other agency, for doing cleanup site assessment work, but perhaps you do.

-----Original Message-----
From: Alice Hardesty [mailto:ahardesty88@charter.net]
Sent: Monday, July 21, 2008 7:16 PM
To: MASTERSON Kevin
Subject: shooting range and lead

Hi Kevin,

Your name and e-mail was given to me by Lisa Arkin of Oregon Toxics Alliance. I'm a city councilor in Ashland and we're in the process of negotiating the renewal of a lease with the local gun club. They've been using the same piece of property for 40 years (and others before that) and it's never been assessed(!). They've built berms and seem to be taking decent care of the property, but we all know that we need to have an environmental assessment. I'd love to talk to you about it soon if you have a few minutes. These are the types of questions that I'd ask:

1. Although lead is relatively stable, do you know of gun ranges in OR where it has leached into water or wetlands?

2. Do you have any suggestions as to the best outfit to do the assessment? Does DEQ do that?

3. It's our understanding that there might be state or federal grants to help us and the gun club with the process. Do you know if they have any minimum period for which a municipality would lease to the gun club to get a clean-up grant? People are telling us that they can't get a grant to clean it up unless we give them a lease of at least 10 years. That sounds fishy to me because it would probably be a joint effort between the city and the gun club.

4. Any other advice?

I'd like to call you in the morning but I have to leave here at 10:00. Will be available later in the day, however. Sorry to be in a rush, but changes to the lease have to be in by Wednesday, COB I think, and I have the feeling there will be a lot of them.

Thanks in advance.
Alice Hardesty