

SUPPLEMENTAL AGENDA

REGULAR CITY COUNCIL MEETING

September 27, 2010

5:30 p.m.

CITY HALL COUNCIL CHAMBER
313 COURT STREET
THE DALLES, OREGON

**Items to be Added to the September 27, 2010
City Council Meeting are Listed Below**

10. CONSENT AGENDA

- A. Authorization for City Clerk to Endorse OLCC Change in Ownership Application for Wong's Chinese Restaurant

12. ACTION ITEMS

- D. Approval of a Guarantee to Complete Environmental Impact Statement for East Portion of Airport Property
- E. Approval of Ground Lease for construction of a Hangar at the Airport
- F. Resolution No. 10-022 Supporting Skamania County Board of Commissioners Concerns Regarding Testimony for Whistling Ridge Wind Energy Project

14. EXECUTIVE SESSION

- A. Recess to Executive Session in Accordance With ORS 192.660 (2) (e) to Conduct Deliberations With Persons Designated by the Governing Body to Negotiate Real Property Transactions
- B. Reconvene to Open Session

15. DECISIONS FOLLOWING EXECUTIVE SESSION


Julie Krueger, MMC, City Clerk



AGENDA STAFF REPORT

CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
September 27, 2010	Consent Agenda 10, A	N/A

TO: Honorable Mayor and City Council

FROM: Julie Krueger, MMC, City Clerk

THRU: Nolan K. Young, City Manager

DATE: September 22, 2010

ISSUE: Approving items on the Consent Agenda and authorizing City staff to sign contract documents.

- A. **ITEM:** Authorization for City Clerk to Endorse OLCC Change in Ownership Application for Wong's Chinese Restaurant.

BUDGET IMPLICATIONS: If approved, the City will collect a \$75 fee, which will be credited to the General Fund.

SYNOPSIS: The Police Department has investigate the application for an OLCC change in ownership application for Wong's Chinese Restaurant and recommends it be approved.

RECOMMENDATION: That City Council authorize the City Clerk to endorse an OLCC Change in Ownership application for Wong's Chinese Restaurant.

**CITY of THE DALLES**

313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481

**AGENDA STAFF REPORT
CITY OF THE DALLES**

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
September 27, 2010	Action Items 12, D	

TO: Honorable Mayor and City Council

FROM: Airport Managers

THRU: Nolan K. Young, City Manager *ny*

DATE: September 20, 2010

ISSUE: EIS for East Portion of Airport Property

BACKGROUND: The EIS that is being prepared for the Sundoon development that is to be located on the east portion of the airport property and on private property adjacent to the airport is nearing completion. The EIS is the responsibility of the developer. When published, the EIS will become a public document. The developer has spent approximately \$190,000 to date on the EIS. Kennedy/Jenks, the engineering firm preparing the EIS, will not issue a draft of the report until they are paid in full. The developer wants to see a draft of the report before making the final payment. The engineering firm has estimated that the amount to complete the EIS is \$60,900. The airport board determined that timely completion of the EIS is important for the planned development at the airport. The airport board passed a motion recommending that the City of The Dalles and Klickitat County approve the guarantee of \$60,900 for the EIS completion.

BUDGET IMPLICATIONS: The airport budget is adequate for this expenditure.

ALTERNATIVES:

- A. **Staff Recommendation:** *Move to approve the guarantee of payment of an amount up to \$60,900 to Kennedy/Jenks Engineering upon publication of the EIS.*

**CITY of THE DALLES**

313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481

**AGENDA STAFF REPORT
CITY OF THE DALLES**

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
September 27, 2010	Action Items 12, E	

TO: Honorable Mayor and City Council

FROM: Airport Managers

THRU: Nolan K. Young, City Manager

DATE: September 21, 2010

ISSUE: Approval of a Ground Lease for Construction of a Hangar at the Airport.

BACKGROUND: The Airport Board has been asked to lease ground for the construction of a new hangar. This lease is similar to prior leases for hangar complexes. A copy is attached for review by City Council. The Airport Board recommends that the lease be approved.

BUDGET IMPLICATIONS: Increase rental income.

ALTERNATIVES:

- A. Staff Recommendation: *Move to approve a ground lease with William K. Bottomley for construction of a hangar at the Airport.*

GROUND LEASE

between
CITY OF THE DALLES & KLINKITAT COUNTY
and
WILLIAM K. BOTTOMLEY

WHEREAS, the City of The Dalles, a municipal corporation of the State of Oregon, and Klickitat County, a municipal corporation of the State of Washington, hereinafter jointly referred to as Landlord, are the joint owners and operators of the Columbia Gorge Regional Airport located in Dallesport, Washington; and

WHEREAS, WILLIAM K. BOTTOMLEY hereinafter referred to as Tenant, desires to enter into an agreement with Landlord for the lease of property located at the Columbia Gorge Regional Airport, upon which Tenant proposes to construct an aircraft hangar at the Tenant's sole cost and expense; and

WHEREAS, under the proposed Ground Lease, during construction of the hangar and upon completion of construction, ownership of the hangar shall belong to the Tenant; and

WHEREAS, Landlord shall not be a party to any sublease of the hangar entered into between the Tenant and Tenant's subtenants;

NOW, THEREFORE, in consideration of the provisions set forth herein, it is mutually agreed as follows:

SECTION 1. LEASED PREMISES. For and in consideration of the rent and faithful performance by Tenant of the terms and conditions and the mutual covenants hereof, Landlord does hereby lease to Tenant, and Tenant hereby leases from Landlord, subject to all easements and encumbrances of record, that parcel of real property described in Exhibit "A" of approximately 7,200 square feet leased space. Tenant has inspected the property described in Exhibit "A" and accepts the

property as-is, finding it suitable for Tenant's intended use - constructing and maintaining an aircraft hangar.

SECTION 2. TERM. This lease shall be for a term of twenty (20) years, and shall commence September 1, 2010, and shall end at midnight on December 30, 2030, unless sooner terminated as provided in this Lease, or unless the term is renewed as provided in this Lease. This Lease may be renewed by the Tenant for two (2) additional terms of ten (10) years each, provided Tenant gives notice of its desire to renew in writing to Landlord by the later of the following dates: by no later than three hundred sixty-five days (365) days prior to the expiration of the initial twenty (20) year term, or by no later than one hundred twenty (120) days after the Landlord has given written notice to Tenant that the Lease will expire unless it has been renewed for an additional ten (10) year term; and by no later than three hundred sixty-five (365) days prior to the expiration of the first additional ten (10) year term, or by no later than one hundred twenty (120) days after the Landlord has given written notice to Tenant that the Lease will expire unless it has been renewed for a second additional ten (10) year term; and provided further that Tenant is not in default at the time any notice is given under this Section. All of the provisions in the Lease for the initial twenty (20) year term shall apply to the additional ten (10) year renewal terms, including the provision for rental increases as set forth in Section 3.2. September 1, 2010, shall hereinafter be referred to as the "Commencement Date" of this Lease.

SECTION 3. RENT. Tenant shall pay Landlord rent for use of the Leased Premises during the term of this Lease in accordance with the following provisions.

- 3.1 Base Rent. For the first five (5) years of the Lease, for the period from the 1st day of September, 2010, until the 1st day of December, 2015, the Tenant shall pay rent at the rate of \$0.25 per square foot of real property. The property is composed of 7,200 square feet. Therefore, the base rent shall be \$1,800 per year. The rent shall be paid in one (1) FIVE YEAR INSTALLMENT of \$9,000.00 with the first payment due on

September 1, 2010. Each subsequent rental period shall be based upon a single installment payment covering a period of FIVE YEARS due at the beginning of said period as stipulated in section 3.2

- 3.2 Future Rental Periods. On every five (5) year anniversary of the date of this Lease, the amount of rent to be paid for the following successive five (5) year period shall be increased in the amount of increase of the Consumer Price Index for the Portland Vancouver metropolitan area for each year of the previous five (5) year rental period, with the provision that the annual base rental paid during any five (5) year period shall not be increased more than fifteen percent (15%) of the annual base rental paid during the preceding five (5) year period. For example, the annual BASE rental for the period from the 1st day of September, 2015, until the 1st day of September, 2020, shall not exceed the sum of \$2,070. Landlord shall provide advance notice of not less than ninety (90) days to Tenant of any intended increase in the BASE rental amount; provided, that failure by Landlord to provide such notice shall not constitute a waiver of the right to increase the rental amount for any particular five (5) year period during which the rental amount is subject to an increase.

SECTION 4. USE OF THE PREMISES.

- 4.1 Permitted Use. Tenant may use the Leased Premises for the purpose of constructing and maintaining an aircraft hangar, which will allow for storage of aircraft and related parts and equipment, and office space (which space dedicated to office use shall not exceed 1,000 square feet) related to storage of aircraft and related parts and equipment.
- 4.2 The Hangar shall be constructed in such a manner that additional hangars, that may be built in the future by Landlord or others, can connect directly with the Lessee's hangar so that there will be no space between the adjoining hangars.

- 4.3 Restrictions on Use. The hangar shall be constructed on the Leased Premises shall comply with the provisions of the Landlord's Uniform Hangar Lease for the Airport, a copy of which is attached hereto as Exhibit "B", and as those provisions are amended in the future. Any lease of the hangar to be constructed on the Leased Premises ("Subleases") shall comply with the provisions of the Landlord's Uniform Hangar Lease for the Airport, a copy of which is attached hereto as Exhibit "B", and as those provisions are amended in the future, including rental rates that are consistent with Landlord's Uniform Rate Structure. A copy of this Lease shall be attached to each of the Subleases. Every Sublease shall include a provision that allows Tenant or Landlord to terminate the Sublease, in the event this Lease has been terminated by Landlord, upon providing thirty (30) days written notice.

SECTION 5. REPAIRS, MAINTENANCE, INSPECTION AND IMPROVEMENTS.

- 5.1 Repairs. Tenant shall have the total responsibility for all repairs and maintenance required to keep the Leased Premises, including, but not limited to, the hangar and paving to be constructed thereon, in good repair.
- 5.2 Inspection of Premises. Landlord shall have the right to inspect the Leased Premises at any reasonable time or times to determine the necessity of repair.
- 5.3 Improvements. Tenant shall construct at Tenant's sole expense a steel aircraft hangar and asphalt paving, as generally shown on Exhibit "C" (the "Hangar"). Prior to construction of the Hangar, Tenant shall submit the plans and specifications to the Columbia Gorge Regional Airport Board (the "Board"), seeking the Board's approval. The Board shall review the plans and specifications submitted by Tenant for the purposes of overseeing Tenant's compliance with the terms of this Lease and the airport rules adopted by the Board, including installation at Tenant's expense of paving for taxiways and the like on the Leased Premises. Tenant shall comply with

and obtain all approvals required under Klickitat County's land use regulations prior to submitting the plans and specifications to the Board. Within seven (7) days of submittal, the Board shall notify Tenant of its approval or disapproval. If disapproved, the Board shall also provide Tenant with the reason for such disapproval. Once approved by the Board, the plans and specifications shall either be attached to this Lease as Exhibit "D" or identified in such exhibit by date and name of the architect or engineer who prepared them. Construction shall be completed within twelve (12) months from the date of this lease.

SECTION 6. ALTERATIONS AND ADDITIONS.

6.1 Tenant shall not make any material external alterations to, or erect any additional structures or make any material improvements on the Leased Premises without prior written consent of the Landlord, which consent shall not be unreasonably withheld. Any external alteration or addition approved by Landlord shall be constructed at the sole expense of Tenant. Upon approval by Landlord of any such alteration or addition, Landlord shall notify Tenant whether such alterations made shall remain on the Leased Premises and be acquired by Landlord or be removed from the Leased Premises by Tenant at its sole cost and expense upon expiration or earlier termination of this Lease. If Landlord elects to require Tenant to remove any alterations, Tenant at its sole cost, shall remove such alterations and restore the Leased Premises to the conditions existing immediately prior to the addition of such alteration (reasonable wear and tear excepted) on or before the last day of the term of this Lease. If acquired by Landlord, such alterations, additions and/or improvements shall be taken into account in determining the fair market value of the Hangar and paid by Landlord on or before the last day of the term of this Lease, pursuant to Sections 12 and 13 of this Lease.

SECTION 7. INSURANCE.

- 7.1 Tenant shall keep the Leased Premises and all improvements thereon insured at Tenant's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Insurance shall be on a replacement cost basis to the full insurable value of the improvement. Neither party shall be liable to the other for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended endorsement if such insurance was obtainable at the time of such loss or damage.
- 7.2 Liability Insurance. Before going into possession of the Leased Premises, Tenant shall procure and shall continue during the term of this Lease, to carry public liability and property damage insurance which shall cover all risks arising directly or indirectly out of its activities on or any condition of the Leased Premises whether or not related to an occurrence caused or contributed to by Landlord's negligence. The policy limits shall not be less than \$1,000,000 on a combined single limit basis. Landlord and the Columbia Gorge Regional Airport Board shall be named as additional insureds on said policy. Certificates evidencing such insurance and bearing endorsements requiring thirty (30) days written notice to Landlord prior to any change or cancellation shall be furnished to Landlord prior to Tenant's occupancy of the property. Failure of Tenant to maintain an approved insurance policy shall constitute a default under this Lease.
- 7.3 Every five (5) years on the anniversary date of the Commencement Date, during which the term of the Lease remains in effect, including the two (2) additional terms of ten (10) years each if the Lease is renewed, Landlord and Tenant shall review the amount of coverage for public liability and property damage insurance to be maintained by Tenant, to ensure the amount of coverage is equivalent in value to

\$1,000,000 measured in 2010 dollars. At any time during any of these five (5) year review periods, if Tenant fails to provide proof of increased coverage in an amount which Landlord and Tenant have mutually agreed is necessary, Landlord may terminate this Lease under the provisions of Section 12.

- 7.4 Any subleases of the Leased Premises entered into by Tenant with a subtenant shall provide that liability insurance policies obtained by the subtenants shall name the Landlord and the Columbia Gorge Regional Airport Board as additional insureds under the policies.

SECTION 8. TAXES; UTILITIES.

- 8.1 Taxes. Tenant shall pay as due all taxes, personal and property, assessments, license fees, and other charges which are levied and assessed upon Tenant's interests in the Leased Premises, by any legally authorized governmental authority. Tenant is responsible for real property taxes imposed by Klickitat County upon the Leased Premises which reflect the property's pro-rata share of the real property taxes imposed by Klickitat County upon the Airport property.
- 8.2 Utility Charges. Tenant shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation and maintenance of the Leased Premises, including, but not limited to, water, gas, electricity, sewage disposal and power.
- 8.3 Installation of Utilities. Tenant acknowledges that the Leased Premises are currently vacant and unimproved, and that Tenant shall be responsible for the costs of connecting all necessary utilities from the location to which the utilities are currently stubbed, to provide services to the Hangar which Tenant shall construct. Tenant shall also be responsible for the costs of any required relocation of the utilities during the term of this Lease.

SECTION 9. INDEMNIFICATION. Tenant shall indemnify, defend, save, protect, and hold harmless the Landlord, its officers, agents and employees from any claim, loss or liability, including reasonable attorneys' fees, arising out of or related to any activity of Tenant on the Leased Premises or any condition of the Leased Premises in the possession or under the control of Tenant. Landlord shall have no liability to Tenant for any injury to Tenant for any injury, loss, or damage caused by third parties or by any condition of the Leased Premises, except to the extent caused by Landlord's negligence or breach of duty under this Lease.

SECTION 10. ASSIGNMENT. Tenant shall not assign, sell or transfer its interest in this Lease without having first obtained the express written consent of the Landlord, which consent shall not be unreasonably withheld by Landlord; provided, however, that as conditions to any consent to any assignment, sale or transfer (collectively "transfer"), Landlord may require the following: (i) financial statements, credit reports, or other such information about an assignee as Landlord may deem reasonably necessary to ascertain transferee's ability to satisfy its financial and other obligations under this Lease; (ii) that Tenant and transferee enter into Landlord's then current form of ground lease or an amendment of this Lease; (iii) an environmental assessment of the Leased Premises, at Tenant's expense; and/or (iv) that any agreement between Tenant and the transferee does not include any payment or compensation to Tenant other than transferee's agreement to pay the then current rental rate due and perform all obligations of Tenant required under this Lease. Landlord's consent to an assignment of this Lease shall not be construed to release or discharge Tenant of its obligations and liabilities under this Lease. In the event Tenant shall attempt to assign, sell or transfer its interest in this Lease or any part hereof, without having first obtained the express written consent of Landlord, this Lease shall be null and void and Landlord shall have an immediate right of entry.

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

- 11.1 Default in Rent. Failure of Tenant to pay any rent or other charge within ten (10) days after it is due.
- 11.2 Default in Other Covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within twenty (20) days after written notice by Landlord.
- 11.3 Insolvency of Tenant; assignment by Tenant for the benefit of creditors; filing by Tenant of a voluntary petition in bankruptcy; adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; failure of Tenant to secure dismissal of an involuntary petition of bankruptcy within thirty (30) days after filing; and attachment of or levying of execution on the leasehold interest of Tenant.

SECTION 12. REMEDIES ON DEFAULT.

- 12.1 Termination. In the event of a default the Lease may be terminated by Landlord upon written notice to Tenant. Whether or not the Lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default. Landlord may reenter, take possession of the Leased Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.
- 12.2 Disposition of Hangar. At the time of termination of the Lease under this Section, Landlord may elect and shall notify Tenant of Landlord's election to either acquire the Hangar or require Tenant to remove the Hangar. If the Landlord determines that it desires to acquire ownership of the Hangar, Landlord shall pay the fair market value for the Hangar, including any alterations, additions and/or improvements made by Tenant during the term of this Lease, less any damages due Landlord pursuant to Section 12.

In the event the Landlord determines that the Hangar must be removed, Tenant shall terminate the Subleases and remove the Hangar within the time period specified in the notice for removal provided by the Landlord to Tenant.

12.3 Reletting. Following reentry or abandonment, Landlord may relet the Leased Premises and in that connection may make any suitable alterations or refurbish the Leased Premises, or both. Landlord may relet the Leased Premises for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concessions.

12.4 Damages. In the event of termination or retaking of possession following default, Landlord 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 damages:

12.4.1 The loss of rental from the date of default until a new tenant is, or with the exercise of reasonable efforts could have been, secured and paying out.

12.4.2 The reasonable costs of reentry and reletting including without limitation, the cost of any cleanup, refurbishing, removal of Tenant's property and fixtures, remodeling or repairs costs, attorney's fees, court costs, recording costs, broker commission and advertising costs.

12.5 Late Fee. In the event Landlord fails to receive rent, or any other payment required by this Lease, within ten (10) days after the due date, Tenant shall pay to Landlord a late charge of five percent (5%) of the payment amount. Tenant shall pay the late charge upon demand by Landlord. Landlord may levy and collect a late charge in addition to all other remedies available for Tenant's default, and collection of a late charge shall not waive the breach caused by the late payment.

12.5 Remedies Cumulative. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

SECTION 13. SURRENDER AT EXPIRATION. At the time of expiration, cancellation, or earlier termination of this Lease, Landlord may elect and shall notify Tenant of Landlord's election to either acquire the Hangar or require Tenant to remove the Hangar. If the Landlord determines that it desires to acquire the Hangar, Landlord shall pay the fair market value for the Hangar, including any alterations, additions and/or improvements made by Tenant during the term of this Lease, less any costs and expenses incurred by Landlord as result of Tenant's breach of this Section. In the event Landlord determines that the Hangar must be removed, Tenant shall terminate the Subleases and remove the Hangar within the time period specified in the notice for removal provided by the Landlord to Tenant.

13.1 Tenant's Personal Property. Title to personal property belonging to Tenant shall at all times during the term of this Lease, or any extension thereof, remain in Tenant, and Tenant shall have the right at any time to remove any or all personal property of every kind and nature whatsoever which Tenant may have placed, affixed, or installed upon the Leased Premises, provided that upon Tenant's removal of such personal property, Tenant restores the Leased Premises to its original condition. Tenant shall have the right to remove same provided that upon any such removal, Tenant shall repair, at its own expense, any damages resulting therefrom and leave the Leased Premises in a clean and neat condition, with all other improvements in place.

13.2 Holdover. In the event Tenant shall remain in possession of the Leased Premises herein leased after the expiration, cancellation or earlier termination of this Lease, such holding over shall not be deemed to operate as renewal or extension of this Lease, but shall only create a tenancy from month to month which may be terminated

at any time by Landlord on thirty (30) days written notice. The amount of monthly rent paid during any holdover tenancy shall be increased by ten percent (10%) over the monthly amount Tenant was paying prior to creation of the holdover tenancy.

SECTION 14. MISCELLANEOUS.

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

14.2 Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.

14.3 Notices. All notices or other communications required or permitted under this Lease shall be in writing and shall be (a) personally delivered (including by means of professional messenger service), which notices and communications shall be deemed received on receipt at the office of the addressee; (b) sent by registered or certified mail, postage prepaid, return receipt requested, which notices and communications shall be deemed received three (3) days after deposit in the United States mail; or, (c) sent by fax, which notices and communications shall be deemed received on the delivering party's receipt of a transmission confirmation.

14.4 Interest on Rent and Other Charges. Any rent or other payments required of Tenant by this Lease shall, if not paid within ten (10) days after it is due, bear interest at the rate of twelve percent (12%) per annum (but not in any event at a rate greater than the

maximum rate of interest permitted by law) from the due date until paid. This is in addition to the five percent (5%) "late fee."

- 14.5 Time of Essence. Time is of the essence of the performance of each of Tenant's obligations under this Lease.
- 14.6 Damage or Destruction by Fire or Other Casualty. If the Hangar is damaged or destroyed and Tenant elects to repair the Hangar, then Tenant shall promptly do whatever is necessary to repair, rebuild or restore the Hangar to the condition allowed under this Lease. Any insurance proceeds must be used to restore the Leased Premises, including any improvements, at Landlord's election. If the Leased Premises are not repaired then Tenant shall promptly remove whatever is left of the Hangar and other improvements and all debris and shall restore the Leased Premises to Landlord's satisfaction.
- 14.7 Aircraft Use and Development. Landlord reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires of Tenant and without interference. Landlord reserves the right, but shall not be obligated to Tenant to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Tenant in this regard. This Lease shall be subordinate to the provisions and requirements of any existing or future Lease between the Landlord and the United States, relative to the development, operation, and maintenance of the Airport. There is hereby reserved to the Landlord, and its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off

from, or operation on the Airport. Any physical taking of the Leased Premises for use by the Landlord, other than as provided herein, shall be considered a taking pursuant to the governmental power of eminent domain.

Tenant agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulation in the event future construction of a building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure located upon the Leased Premises. Tenant agrees that it will not erect or permit the erection of any structure or object, nor permit the growth of any tree on the Leased Premises to exceed the established height contours. In the event of a breach of the foregoing covenants, Landlord reserves the right to enter upon the Leased Premises and remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Tenant. Tenant agrees it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport, or otherwise constitute a hazard. In the event of a breach of the foregoing covenant, Landlord reserves the right to enter on the Leased Premises and cause the abatement of such interference at the Tenant's expense. It is understood and agreed that nothing contained herein shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349a). This Lease and all provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation, and taking over of the Airport by the United States during the time of war or national emergency.

- 14.8 Mechanic's and Materialman's Liens. Neither Landlord or Tenant shall permit any mechanic's, materialman's, or other lien against the Leased Premises or the property

of which the Leased Premises forms a part in connection with any labor, materials, or services furnished or claimed to have been furnished. If any such lien shall be filed against the Leased Premises or property of which the Leased Premises forms a part, the party charged with causing the lien will cause the same to be discharged; provided, however, that either party may contest any such lien, so long as the enforcement thereof is stayed.

14.9 Savings Clause. In the event that any part of this Lease or application thereof shall be determined to be invalid by a court of competent jurisdiction, such findings shall have no effect on the remaining portions of this Lease.

14.10 Written Lease. Neither party has relied upon any promise or representation not contained in this Lease. All previous conversations, negotiations, and understandings are of no further force or effect. This Lease may be modified only in writing signed by both parties.

14.11 Parties Bound. The covenants herein contained shall, subject to the provisions as to assignment and transfer, apply to and bind the heirs, successors, executors, administrators, and assigns of all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

14.12 Section Captions. The captions appearing under the section number designations of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

SECTION 15. NON-DISCRIMINATION.

The Tenant for itself, its heirs, successors and assigns, as part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the Leased Premises for a purpose for which a United States Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision

of similar services or benefits, the Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Sub-title A, Office of the Secretary, Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

The Tenant, for itself, its heirs, successors and assigns, as part of the consideration hereof, does covenant and agree that: 1) no person on the grounds of race, color, sex, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to, discrimination in the use of said facilities, 2) that in the construction of any improvements on, over, or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, color, sex or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and 3) that the Tenant shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, DOT, Sub-Title A, Office of the Secretary, Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of a breach of any of the above non-discrimination covenants, Landlord shall have the right to terminate this Lease and re-enter and repossess said Leased Premises and the facilities thereon, and hold the same as if said Lease had never been made. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed, including expiration of appeal rights.

SECTION 16. GOVERNING LAW.

This Lease shall be construed in accordance with the laws of the State of Washington, and any litigation arising from the Lease shall be filed in Klickitat County Superior Court; provided that laws applicable to governmental entities under Oregon law, including but not limited to the Oregon

Tort Claims Act and Article IX, Sections 5, 7, and 10 of the Oregon Constitution, shall apply to the City. Further, Tenant shall comply with all federal, state, and local laws applicable to the Columbia Gorge Regional Airport, and to the Tenant's use and occupancy of the Leased Premises, including rules adopted by the Columbia Gorge Regional Airport Board and Klickitat County's land use regulations.

SECTION 17. PAYMENTS. Please make payment checks to the City of The Dalles and mail Lease payments to the below:

City of The Dalles
Finance Department
313 Court Street
The Dalles, Oregon 97058

SECTION 18. NOTICES AND COMMUNICATIONS. All notices and communications may be served by enclosing the notice in a sealed envelope and deposited in the United States Post Office as certified mail and received by the authorized party below:

Landlord: City of The Dalles
City Manager
313 Court Street
The Dalles, Oregon 97058

Klickitat County
127 West Court Street, MS-CH-26
Goldendale, Washington 98620

Tenant: WILLAM E. BOTTOMLEY
45 AIRPORT WAY
P.O. BOX 592
DALLESPORT, WA 98617

EXECUTED this ____ day of _____, 2010.

LANDLORD:

TENANT:

CITY OF THE DALLES, a municipal
corporation of State of Oregon

WILLIAM BOTTOMLEY

By _____
Nolan K. Young, City Manager

By _____
William Bottomley

ATTEST:

By _____
Julie Krueger, City Clerk, MMC

Approved as to form:

By _____
Gene Parker, City Attorney

**Klickitat County Board of
Commissioners**

Chairman

Commissioners

Commissioner

ATTEST:

Clerk of the Board

Approved as to form:

Prosecuting Attorney



AGENDA STAFF REPORT

CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
September 27, 2010	Action Items 12, F	

TO: Honorable Mayor and City Council

FROM: Nolan K. Young, City Manager

DATE: September 22, 2010

ISSUE: Resolution No. 10-022 Supporting Skamania County Board of Commissioners Concerns Regarding Testimony for Whistling Ridge Wind Energy Project.

BACKGROUND: Councilor Spatz has been following an issue in Skamania County in which Federal agencies have offered testimony in opposition of the Whistling Ridge Wind Energy Project. The testimony refers to key viewing area and visual impacts within the Columbia Gorge National Scenic Area, though the project is not located within the boundaries of the Scenic Area.

Skamania County Commissioners have adopted a resolution demanding a retraction of the testimony on the environmental impact statement for the project and asked for an explanation of actions in commenting without authority or jurisdiction.

Resolution No. 10-022 has been drafted for Council's consideration in support of Skamania County, and to be on record as being opposed to actions which could occur if a similar application were to be filed with the City, including Port industrial lands and property owned jointly with Klickitat County at the Airport, which could discourage development within urban areas of the National Scenic Area.

BUDGET IMPLICATIONS: None.

COUNCIL ALTERNATIVES:

- A. **Staff recommendation** *Move to adopt Resolution No. 10-022 supporting the Skamania County Board of Commissioners concerns regarding testimony for Whistling Ridge Wind Energy Project.*
- B. Make amendments to the proposed resolution.
- C. Choose not to adopt the Resolution.

RESOLUTION NO. 10-022

A RESOLUTION SUPPORTING SKAMANIA COUNTY BOARD OF COMMISSIONERS CONCERNS REGARDING TESTIMONY FOR WHISTLING RIDGE WIND ENERGY PROJECT

WHEREAS, the United States Congress and President Ronald Reagan established the Columbia River Gorge National Scenic Area (CGNSA) in 1986 to protect the natural environment AND to enhance appropriate economic development within the Columbia River Gorge, and

WHEREAS, the Washington State Energy Facility Site Evaluation Council is reviewing a proposed wind farm to be located at Whistling Ridge in eastern Skamania County, and

WHEREAS, the Whistling Ridge project site is physically located outside the boundaries of the CGNSA, and

WHEREAS, the Whistling Ridge project will be visible from within certain portions of the CGNSA, and

WHEREAS, the scenic area legislation specifically states in the Savings Clause of the Act that no protective measures or buffer zones should be established around the National Scenic Area, to wit: (a) *“Nothing in sections 544 to 544p of this title shall ... (10) establish protective perimeters or buffer zones around the scenic area or each special management area. The fact that activities or uses inconsistent with the management directives for the scenic area or special management areas can be seen or heard from these areas shall not, of itself, preclude such activities or uses up to the boundaries of the scenic area or special management areas,”* and

WHEREAS, the United States Forest Service has, in written testimony to the Washington State Energy Facilities Siting Council and in oral testimony delivered May 6, 2010, both regarding the Whistling Ridge proposal, recommended alterations to the Whistling Ridge project design, specifically that “the applicant eliminate turbine locations found to be visible from Scenic Area KVAs ...” and

WHEREAS, the United States Department of Interior (National Park Service), in a letter to the Bonneville Power Administration dated May 18, 2009, in reference to the Environmental Impact Statement for the Whistling Ridge project, improperly referenced Key Viewing Areas and recreational attributes of the National Scenic Area, stating in part that “visual impacts to the CGNSA and the national heritage trails will degrade the core scenic and historic landscape values of these resources ...” and

WHEREAS, the United States Department of Interior, in a letter dated July 19, 2010, from the Office of the Secretary, inappropriately linked certain of its comments regarding the Whistling Ridge project to purported visual impacts within the CGNSA and associated recreational attributes, and

WHEREAS, the United States Environmental Protection Agency, in its review of the Whistling Ridge project, specifically did not link the project to the CGNSA, instead properly limiting its comments to areas within its appropriate jurisdiction, and assigning a rating of “LO” (Lack of Objections) to the project’s Draft Environmental Impact Statement, and

WHEREAS, wind farms have already been established in Klickitat and Sherman counties that are visible from within the CGNSA but which are physically located outside the CGNSA boundaries, and

WHEREAS, other forms of economic development have also been established in urban exempt areas subsequent to passage of the scenic area legislation, as well as outside the CGNSA boundaries, yet are visible from within the CGNSA, and

WHEREAS, the Skamania County Board of Commissioners on August 3, 2010, adopted a resolution stating, in part, that the board “reacting to this clear abuse of authority without jurisdiction, hereby demand[s], in the strongest possible terms, that Interior’s comments be immediately retracted and removed from the public record on this matter ...” and

WHEREAS, The Dalles City Council takes no official position on the Whistling Ridge wind farm proposal itself, and

WHEREAS, The Dalles City Council finds reason for concern in that certain federal agencies (to wit, the U.S. Forest Service and U.S. Department of the Interior/National Park Service) have chosen to link certain of their objections to the Whistling Ridge project based upon its visual impact from within the National Scenic Area, when in fact the Savings Clause of the scenic area legislation specifically precludes such objections from being raised, and

WHEREAS, The Dalles City Council sees the potential to establish a troubling precedent through the extension of inappropriate and unwarranted federal authority for projects located outside the national scenic area boundary, and

WHEREAS, such precedent could result in future federal objections to projects located within the jurisdiction of the City of The Dalles, including industrial lands in the Port of The Dalles or elsewhere within urban exempt areas of the CGNSA, or outside the boundaries of the CGNSA in Wasco County, or on lands jointly managed by the City of The Dalles and Klickitat County in the Dallesport urban exempt area of Washington State, such as the Columbia Gorge Regional Airport and associated industrial lands, and

WHEREAS, such precedent would conflict with the second purpose of the scenic area legislation by discouraging economic development within urban exempt areas of the CGNSA, and

WHEREAS, such precedent would also discourage appropriate economic development outside the boundaries of the CGNSA,

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS
FOLLOWS:**

Section 1. The Dalles City Council hereby expresses its support to the Skamania County Board of Commissioners' request that inappropriate federal agencies comments described in this resolution be retracted from the public record, and further expresses the City Council's solidarity with the Skamania County Board of Commissioners in this matter.

Section 2. The Dalles City Council hereby requests and demands that the United States Forest Service and United States Department of Interior / National Park Service retract the inappropriate comments referenced in the resolution from the public record.

Section 3. Effective Date. This Resolution shall be effective upon adoption, September 27, 2010.

PASSED AND ADOPTED THIS 27TH DAY OF SEPTEMBER, 2010

Voting Yes, Councilors: _____
Voting No, Councilors: _____
Absent, Councilors: _____
Abstaining, Councilors: _____

AND APPROVED BY THE MAYOR THIS 27TH DAY OF SEPTEMBER, 2010

SIGNED: _____
James L. Wilcox, Mayor

ATTEST: _____
Julie Krueger, MMC, City Clerk