#### **AGENDA**

## REGULAR CITY COUNCIL MEETING FEBRUARY 27, 2023 5:30 p.m.

### <u>CITY HALL COUNCIL CHAMBER</u> <u>313 COURT STREET</u>

And VIA ZOOM

https://us06web.zoom.us/j/88147760127?pwd=bzF6UVBBS0EvaDIxTEVyRngrbExmQT09

Meeting ID: 881 4776 0127 Passcode: 007612

- 1. CALL TO ORDER
- 2. ROLL CALL OF COUNCIL
- 3. PLEDGE OF ALLEGIANCE
- 4. APPROVAL OF AGENDA
- 5. PRESENTATIONS/PROCLAMATIONS
  - A. Cascade Renewable Transmission Project
- 6. AUDIENCE PARTICIPATION

During this portion of the meeting, anyone may speak on any subject which does not later appear on the agenda. Up to five minutes per person will be allowed. Citizens are encouraged to ask questions with the understanding that the City can either answer the question tonight or refer that question to the appropriate staff member who will get back to you within a reasonable amount of time. If a response by the City is requested, the speaker will be referred to the City Manager for further action. The issue may appear on a future meeting agenda for City Council consideration.

- 7. CITY MANAGER REPORT
- 8. CITY COUNCIL REPORTS
- 9. CONSENT AGENDA

Items of a routine and non-controversial nature are placed on the Consent Agenda to allow the City Council to spend its time and energy on the important items and issues. Any Councilor may request an item be "pulled" from the Consent Agenda and be considered separately. Items pulled from the Consent Agenda will be placed on the Agenda at the end of the "Action Items" section.

A. Approval of the February 13, 2023 Regular City Council Meeting Minutes

#### CITY OF THE DALLES

"By working together, we will provide services that enhance the vitality of The Dalles."

B. Recycle Bizhub C220 Copier

#### 10. ACTION ITEMS

- A. Tac Aero Contract Renewal
- B. AMS Contract Extension

#### 11. EXECUTIVE SESSION

In accordance with ORS 192.660(2)(d) to conduct deliberations with persons designated to carry on labor negotiations.

- A. Recess Open Session
- B. Reconvene Open Session
- C. Decision, if any

#### 12. ADJOURNMENT

This meeting conducted VIA Zoom

Prepared by/ Izetta Grossman, CMC City Clerk

#### CITY OF THE DALLES

## Cascade Renewable Transmission Project

Project Introduction ~ The Dalles

February 2023



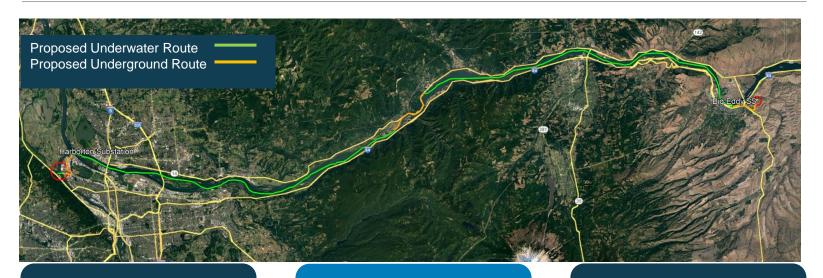
## **Executive Summary**

- Cascade Renewable Transmission, LLC, led by PowerBridge, is developing the Cascade Renewable Transmission System, a 1,100 MW HVDC transmission line running ~100 miles between The Dalles and greater Portland, Oregon ("Cascade Project")
- Cascade Project offers numerous benefits for the Pacific Northwest, including:
  - A secure new pathway for delivering cost-effective renewable energy generation from east of the Cascades to the I-5 load corridor to meet growing demand and public policy decarbonization requirements
  - New jobs for project construction, plus the potential for hundreds of additional jobs and increased economic activity to build and operate new renewable generation facilities east of the Cascades
  - Proven state-of-the-art HVDC technology that enhances the stability and reliability of the transmission system and improves grid resilience to the risks of severe weather events and fires in addition to increasing transmission capacity
- Energy GPS prepared an economic study of the Project that shows a 3:1 benefit-to-cost ratio and \$ billions in production cost savings compared with "status quo" scenario of no additional east-west transmission
- The Project will be installed entirely underground and underwater using proven non-invasive techniques; the
  project design and installation schedule will avoid impacting sensitive natural and cultural resources in the Columbia
  River
- Partnering with the Community Renewable Energy Association (CREA) to apply for several hundred million dollars
  in US DOE Grant funding to defray a significant portion of the Project cost for the benefit of Oregon ratepayers
- Experienced development team with success building and operating two similar transmission facilities -- Neptune and Hudson -- in New York (https://powerbridge.us/our-projects/)



# Project Overview and Rationale

## Route Summary



## Western Interconnection (Harborton)

- Converter Station with direct connection to PGE's Harborton Substation on the west side of Portland
- Deliver renewable energy located east of the Cascades into Portland and up the I-5 corridor to Seattle

#### Overview

- 1,100 MW line rating
- VSC HVDC System
- ~100 Miles underwater and underground
- Bridge the Cascade Mountains while minimizing environmental impact

## Eastern Interconnection (Big Eddy)

- Converter Station with direct connection to BPA's Big Eddy Substation near The Dalles
- Source abundant renewable energy in the heart of BPA's transmission network

## **Transmission Need Drivers**

Transmission capacity across the Cascades is insufficient to address key regional drivers:

Public Policy: Washington's CETA & Oregon's HB 2021

2 Existing Cross Cascade transmission capacity is fully subscribed

Planned or required West of Cascade fossil power plant retirements

West of Cascade industrial, commercial, and residential load growth

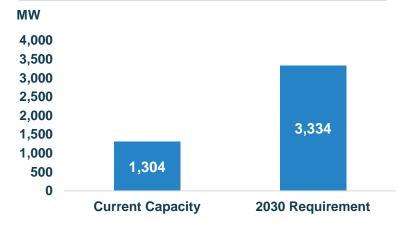
Cascade Project can help the PNW meet climate policies while maintaining system reliability and avoiding the environmental impacts associated with building overhead transmission lines

## Renewable Energy Need

#### Washington

- Washington utilities need to procure significant quantities of new renewable energy to meet Clean Energy Transformation Act ("CETA") targets in 2030
- PSE has estimated a renewable energy need of over 2GW of nameplate capacity by 2030 <sup>(1)</sup>
- While distributed energy resources and demand side management will play an important role, new, properly sited, utility scale renewable projects will be almost solely located east of the Cascades

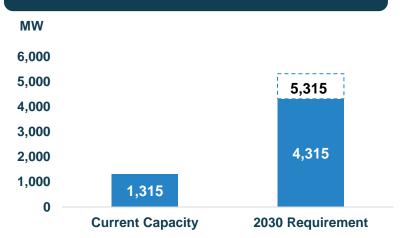
#### PSE Renewable Portfolio (1)



#### Oregon

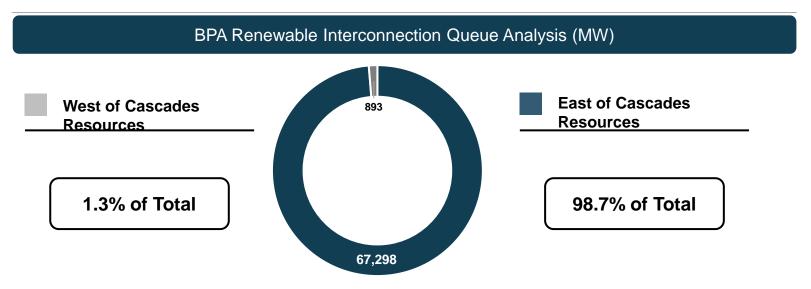
- HB 2021 requires PGE and PacifiCorp to reduce GHG emissions associated with energy sales 80% by 2030 and 100% by 2040, necessitating a significant ramp up in renewable procurement to meet Oregon Public Policy
- Load growth driven by electrification and renewable interest of large corporate customers could result in additional near-term renewable energy procurement needs as well

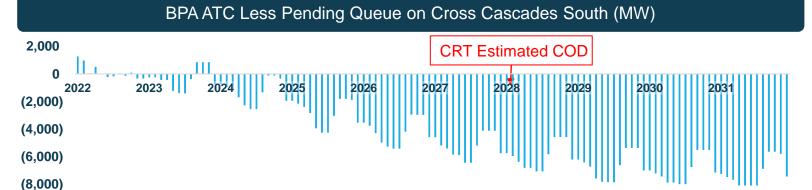
#### PGE Renewable Portfolio (2)



PSE 2021 IRP, Figure 7-17 (Existing Wind plus Skookumchuck, Lund Hill, Golden Hills) and Annual Resource Addition Preferred Portfolio.
PGE 2021 ESG Report, Total Renewable Energy Resource, Page 68. PGE Roundtable 22-9 September 28<sup>th</sup>, 2022.

## Cross Cascades Constraint





New Transmission is needed to deliver east of Cascades renewables to west of Cascades load centers

Source: BPA ATC Less Pending Queue as of 8/29/2022, BPA Active Generator Interconnection Queue as of 8/29/2022. Includes interconnection requests Received, In Study, and Completed Study. Does not include Withdrawn or Energized projects or any proposed stand-alone Battery Energy Storage projects.

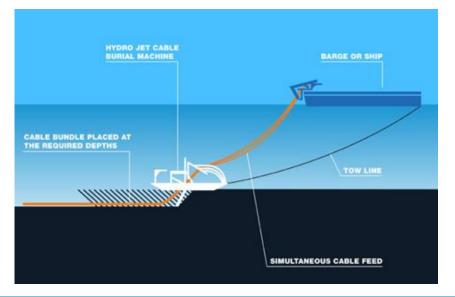
## **HVDC Submarine Cable**



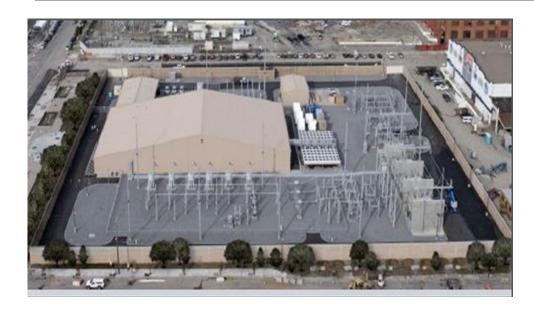
The main power cable is less than 6 inches in diameter; two cables are bundled with a fiber optic cable for burial in the riverbed.

The "jet plow" is towed by a barge or ship. Water jets in the plow blade create an 18-inchwide trench by fluidizing the sediment while the cable is simultaneously laid into the trench, and the sediment settles back down over the cable.





## Project Converter Station



TransBay Converter
Station, San Francisco,
completed in 2010.
Proposed Cascade
Project would be similar
in appearance and
technology, occupying
approximately 5 acres.

Converter station components are modular, so that site requirements are somewhat flexible in terms of dimensions. Height of main building is approximately 55 feet. Site can be screened with walls and vegetation, and building can be given architectural treatment for aesthetic purposes.

Estimated 220 jobs, locally sourced, over 2-year construction period; minimal (8-10) positions in operation.

# Project Needs in The Dalles

### Potential Cable Route in The Dalles



The Project Converter Station would be sited on approximately 6-acres adjacent to the existing Big Eddy substation. The underground cable would be buried along Columbia View Drive heading south to Route 197 (see next slide for additional route information).

## Proposed Cable Route (Close-Up)



From Route 197, the cable would briefly run alongside Route 30 west and for a short distance on Second Avenue before crossing over a privately owned parcel to enter the Union Pacific Railroad complex. The cable would cross to the western end of the railroad property along Tie Plant Road. Using HDD technology, the cable would be routed underneath I-84 and property owned by the Port of Dalles and Wasco County Park to enter the River and proceed to the west.

# Appendix



#### **Project Description**

- 65-Mile-Long, 660-MW HVDC cable linking PJM electricity market with Long Island Power Authority ("LIPA")
- 51 miles of cable buried undersea, 14 miles underground; two converter stations
- Completed June 2007 under budget and ahead of schedule
- \$650M total cost, financed in the private capital markets, with investment grade rating
- Financing based on a 20-year Firm Transmission Capacity Agreement with LIPA
- Learn more by visiting project website here

#### Route & DC Converter Station





## HUDSON

#### **Project Description**

- 7-mile underground and underwater power cable linking PJM and NY power grids between Ridgefield, New Jersey and West 49th St. Substation in NYC
- Single back-to-back converter station (AC-DC-AC) located in Ridgefield, New Jersey
- Completed ahead of schedule and under budget May 2013
- Approx. \$850 million total cost, financed in the private capital markets with investmentgrade rating
- Financing based on a 20-year Firm
   Transmission Capacity Purchase Agreement
   for 87.5% of the capacity with the New York
   Power Authority (NYPA)
- Learn more by visiting project website <u>here</u>

#### **Project Route**



## Challenges Successfully Met

- Overlapping regulatory and permitting regimes (US Army Corps of Engineers, NY State Public Service Commission, NY and NJ environmental agencies, NY State Dept. of Transportation, local planning and zoning requirements; requirements needed to be mutually compatible and major permits in place pre-financing
- Key documents (e.g., Utility Agreement, EPC contract, Management Services Agreement) needed to have compatible provisions for financing
- Tight 24-month time schedules requiring simultaneous work at upland sites, upland cable trenching and installation, and in-water installation
- In-water construction "work windows" restricting time periods available for cable installation for environmental reasons, primarily fish migration and spawning
- Underwater utility crossings
- Management of cable installation in significant public areas, e.g., Hudson River in Manhattan, Jones Beach State Park on Long Island



#### CITY of THE DALLES



313 COURT STREET THE DALLES, OREGON 97058

> (541) 296-5481 FAX (541) 296-6906

#### AGENDA STAFF REPORT

**AGENDA LOCATION:** Item #9 A-B

**MEETING DATE:** February 27, 2023

**TO:** Honorable Mayor and City Council

**FROM:** Izetta Grossman, CMC, City Clerk

**ISSUE:** Approving items on the Consent Agenda and authorizing City staff

to sign contract documents.

A. <u>ITEM</u>: Approval of the February 13, 2023 Regular City Council meeting minutes.

#### **BUDGET IMPLICATIONS**: None.

**SYNOPSIS**: The minutes of the February 13, 2023 Regular City Council meeting have been prepared and are submitted for review and approval.

**RECOMMENDATION**: That City Council review and approve the minutes of the February 13, 2023 Regular City Council meeting minutes.

B. <u>ITEM</u>: Community Development Department requests surplus of Bizhub C220 Copier.

#### **BUDGET IMPLICATIONS**: None.

**SYNOPSIS**: The copier is no longer supported for service or repairs.

**RECOMMENDATION**: That City Council approve surplus of the Bizhub copier to be recycled through Bohn's Printing, Inc., the original provider.

Consent Agenda Page 1 of 1

#### **MINUTES**

## CITY COUNCIL MEETNG COUNCIL CHAMBER, CITY HALL FEBRUARY 13, 2023 5:30 p.m.

#### VIA ZOOM/ IN PERSON

**PRESIDING:** Mayor Richard Mays

**COUNCIL PRESENT:** Tim McGlothlin, Rod Runyon, Scott Randall, Dan Richardson

**COUNCIL ABSENT**: Darcy Long (arrived later via Zoom)

**STAFF PRESENT:** City Manager Matthew Klebes, City Attorney Jonathan Kara, City

Clerk Izetta Grossman, Police Chief Tom Worthy, Public Works Director Dave Anderson, Community Development Director Joshua Chandler, Human Resources Manager Daniel Hunter

#### CALL TO ORDER

The meeting was called to order by Mayor Mays at 5:30 p.m.

#### **ROLL CALL OF COUNCIL**

Roll Call was conducted by City Clerk Grossman. Councilors McGlothlin, Runyon, Randall, Richardson present; Long absent.

#### PLEDGE OF ALLEGIANCE

Mayor Mays asked Councilor McGlothlin to lead the Pledge of Allegiance.

Councilor McGlothlin invited the audience to join in the Pledge of Allegiance.

#### **APPROVAL OF AGENDA**

Mayor Mays noted the Executive Session was removed from the agenda; and Item #9C a resolution concurring with the Mayor's appointment of Addie Case to the Planning Commission.

It was moved by Richardson and seconded by Randall to approve the agenda as amended. The motion carried 4 to 0; Long absent; Richardson, Randall, McGlothlin, Runyon voting in favor; none opposed.

#### **PRESENTATIONS PROCLAMATIONS**

Wastewater Treatment Plant Annual Report – Jacobs

Public Works Director Anderson introduced Jacobs Manager, Taylor Poynter.

Taylor reviewed the report.

In response to questions Taylor said:

- o Methane gas use project is still being worked on
- o Dewatering program for biosolids is being discussed

<u>Project Turnkey 2.0, Conversion of the Oregon Motor Motel to Transitional Shelter/Housing – Kenny LaPoint</u>

Mid-Columbia Community Action Council Executive Director Kenny LaPointe reviewed the report.

LaPointe's major points were:

- Hotel being renovated with funds specifically designed for renovation of hotels into transitional housing
  - o New roof
  - o Pool removal
  - o Parking lot clearly marked
  - New heat/air conditioning
  - o Paint
  - Water heaters
  - o Railing, decking, posts replacements
  - o Laundry facility for residents only
- Two onsite managers
  - o Living in apartments
  - 0 24/7
  - Security at night
  - o Issues addressed immediately
- Families, Veterans, Seniors, underserved cultures
  - Set aside for veterans
- Must sign good neighbor agreement

#### Long arrived 6:00 p.m.

He said emergency housing was a 12 hour period; transitional housing (such as the Turnkey project) was a six month stay, during which time residents worked on a program with a case manager. He said the goal was to provide resources to help residents find permanent housing, a job, doctor care, etc.

He said on third of the clients at the pallet shelters were senior citizens. He said pallet shelter aren't ideal for transitional housing, they are designed for emergency housing.

In response to questions LaPointe said:

- MCCAC works with landlords, providing cash incentives for them rent to clients
- Some property managers are sympathetic to the issues

#### Projects upcoming:

- Two multifamily housing units at the Westgate Grocery site
- Project Turnkey/Navigation Center
- Navigation Center annex in Hood River

Chief Tom Worthy said he was less concerned about "issues" at Project Turnkey now that he has seen the plans in place for the facility.

Councilor Runyon said he was concerned about the "look" of the west entrance to the city. LaPointe said there are plans in place to keep garbage picked up, and the significant rehabilitation will contribute to a better look.

Mayor Mays called for 2 minute break

No Smoking/Vaping at Lewis and Clark Park – Neita Cecil, North Central Public Health Department

Neita Cecil, North Central Public Health reviewed the report and letters of support.

She said she was asking the Council to support no smoking/no vaping at the Lewis and Clark Park. She ask Council to adopt an ordinance.

Cecil said North Central Public Health could contribute:

- Signage for the park
- Smoking cessation products
- Advertise the new ordinance

• Assist with creating the ordinance

City Manger Matthew Klebes said if the Council was interested staff would work on an ordinance/policy to bring back to the Council for action.

It was the consensus of the Council for staff to bring back a recommendation.

#### **AUDIENCE PARTICIPATION**

Karen Greb, tenant of Ruth Postema at 817 Floral Court said she was speaking for her landlord, who was in the audience.

She read a letter from Ruth Postema (attached). She said they needed to know who to contact to contest the abatement. She said the family was working on the property and felt there was not adequate communication.

City Attorney Kara said he had emailed Rebecca, Ms. Postema's daughter informing her of the lien going to Council and giving her information to attend the meeting. He said no one appeared at the meeting to object and the resolution was passed.

Kara suggested that Ms. Postema should hire an attorney and have the attorney contact him.

Eugene Simara, 2035 Ridge Road said he had done some clean up for Ms. Postema and there was no noxious vegetation on the property. He said it wasn't constitutional to take things of value off the property, such as the truck and junk metal.

The following people spoke in favor of Project Turn Key 2.0

- Al Baron, Executive Director Center for Living
- Derrick, representing One Community Health
- Janet Hamada, The Next Door, Inc
- Karen Long, Housing Authority
- Colleen Ballinger shares the concerns, but need transitional housing
- Bev Eagy, 218 West 4<sup>th</sup> very concerned until heard the plans, now is hopeful

Lindsay Giamae, 116 East 2<sup>nd</sup> Street hopeful for the project. Downtown workers don't feel safe walking to their cars at night.

#### **CITY MANAGER REPORT**

City Manager Matthew Klebes reported: Hunting for Facilities Manager and Economic Development Officer Staffing Wicks New IT manager hired

He said he talks at KODL monthly and was working on a schedule with Radio Tierra.

He said he wouldn't be going on the Community Outreach Team trip to Washington DC this spring. He said he was planning on attending "Gorge "US" night out in Salem.

#### **CITY COUNCIL REPORTS**

#### Councilor Randall reported:

- Historic Landmarks Commission
- OLife
- Meeting with City Manager and Mayor

#### Councilor Runyon reported:

- QLife
- Columbia Gorge Veterans Museum
- Mid-Columbia Memorial Committee

#### Councilor Richardson reported:

- Meeting with City Manager and Mayor
- Climate Resiliency Committee
- Traffic Safety Committee

#### Councilor Long reported:

- Urban Renewal Agency meeting cancelled, next meeting next Tuesday
- Meeting with City Manager and Mayor
- Various Project Turnkey 2.0 conversations
- Representing City in Washington D.C. with the Community Outreach Team

#### **CONSENT AGENDA**

It was moved by McGlothlin and seconded by Randall to approve the Consent Agenda as amended. The motion carried 5 to 0, McGlothlin, Randall, Richardson, Runyon, Long voting in favor; none opposed.

Items approved on the consent agenda were: 1) The minutes of the January 17, 2023 Special City Council Meeting minutes; 2) The minutes of the January 23, 2023 Regular City Council Meeting; 3) Resolution No. 23-008 Concurring with Mayor's appointment to the Planning Commission.

#### **PUBLIC HEARING**

Resolution No. 23-007 Adopting a Supplemental Budget for Fiscal Year 2022-23, Making
Appropriations and Authorizing Expenditures from and within Various Funds of the City of The
Dalles Adopted Budget

Mayor Mays read the process for the Public Hearing.

Finance Director Angie Wilson reviewed the staff report.

Mayor Mays asked for testimony from the audience. Hearing none he closed the hearing.

Councilor Runyon asked where the funds came from.

Public Works Director Anderson said the funds came from projects not completed or started during the last fiscal year that needed to be rolled over to the current year.

It was moved by McGlothlin and seconded by Richardson to adopt Resolution No. 23-007 Adopting a Supplemental Budget for Fiscal Year 2022/2023, Making Appropriations and Authorizing Expenditures within Various Funds of The Dalles Adopted Budget. The motion carried 5 to 0; McGlothlin, Richardson, Long, Runyon, Randall voting in favor; none opposed.

Close-out of Community Development Block Grant (CDBG) Project No. HA2101, providing Covid-19 Emergency Rental and Mortgage Assistance

Mayor Mays read the process for the Public Hearing.

Community Development Director Joshua Chandler introduced Karen Long from the Housing Authority, and Mayra Ledezma, translator. Chandler reviewed the staff report.

Mayor Mays asked if anyone in the audience wished to comment. Hearing none he closed the hearing.

#### CONTRACT REVIEW BOARD

Contract No. 2023-003 Annual ADA Sidewalk Upgrades Project

Public Works Director Anderson reviewed the staff report.

In response to a question he said there were approximately 800 ADA improvements needed with walks and another 800 with no sidewalk.

He said if a project with a 50/50 grant included a needed ADA upgrade the City paid for the upgrade in full.

It was moved by Richardson and seconded by McGlothlin to authorize the City Manager to enter into contract with Van Nevel Concrete and Curb for the 2023 ADA Improvement Project, Contract No. 2023-003, in an amount not to exceed \$309,859.04. The motion carried 5 to 0; Richardson, McGlothlin, Long, Randall, Runyon voting in favor; none opposed.

Contract No. 23-004 1st Street Project contract with KPFF Engineering Consultants

Community Development Director Joshua Chandler reviewed the staff report.

Chandler said the project was scheduled for 24 months, giving a bit of a buffer to work with the Railroad regarding right of way.

He said he was hoping for construction in the Spring of 2025.

It was moved by Long and seconded by Randall to award Contract No. 23-004 to KPFF Consulting Engineers and authorize the City Manager to execute the Engineering Services Agreement in an amount not to exceed \$495,162.16, as presented. The motion carried 5 to 0; Long, Randall, Runyon, McGlothlin, Richardson voting in favor; none opposed.

#### **ACTION ITEMS**

Long lost connection at 7:45 p.m.

#### Local Contract Review Board Rules – Update

City Attorney Jonathan Kara reviewed the staff report.

After some discussion on City Manager having no spending limit or process for contracting during "extreme necessity" it was the desire of Council to amend the Resolution to include a review of the rules in one year and to add something like "and time does not reasonably permit council contact".

It was moved by Richardson and seconded by Randall to adopt Resolution No. 23-006 Updating the City of The Dalles Local Contract Review Board Rules, as amended. The motions carried 4 to 0; Long disconnected; Richardson, Randall, McGlothlin, Runyon voting in favor; none opposed.

#### **DISCUSSION ITEMS**

#### Drone Policy Review

Police Chief Tom Worthy reviewed the staff report. He introduced Office Kanyon Reams, Captain Jamie Carrico, and Mike Davis, Drone Expert from Columbia Gorge Community College.

#### Long rejoined the meeting about 8:05 p.m.

Officer Reams said the drones were regulated by the FAA and couldn't fly higher than 400 feet, unless going over something, such as a light pole.

In response to a question Chief Worthy said the drones would be used for search and rescue, tactical awareness, missing persons, injured person or animal. He said the night vision was excellent.

Reams added that after incident reconstruction of a scene would also be a use of the drone.

It was the consensus of the Council for staff to proceed with community involvement and return with a final policy for Council approval.

#### **ADJOURNMENT**

Being no further business, the meeting adjourned at 8:13 p.m.	
Submitted by/ Izetta Grossman, CMC City Clerk	
SIGN	NED: Richard A. Mays, Mayor
ATT	EST:  Izetta Grossman, CMC City Clerk

Hi. My name is Ruth Postema. I am here in person to be heard about an abatement matter regarding 817 Fioral Court. The Dalles. OR 97058 because other methods of communication seem to be ineffective

All communication ceased between the city and our framily. In the lack of communication, the property was abated. We are requesting that the lines of communication be reopened to get discovery on what led up to abatement

We were under the impression that satisfactory progress was beind made because 90% of property was cleaned up prior to abatement. What was left was metal and a truck that was going to be scrapped in Portiand. However, the winter prevented a trip to Portiand due to gangerous travel conditions.

Who is the person to talk to about challenging the apatement and what is the process of challenging the patement?

Thank YOU

Rebekah 541-780-8488 rpostema 83@gmail.com

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#### CITY of THE DALLES



313 COURT STREET THE DALLES, OREGON 97058

> (541) 296-5481 FAX (541) 296-6906

#### AGENDA STAFF REPORT

**AGENDA LOCATION:** Action Item #10A

**MEETING DATE:** February 27, 2023

**TO:** Honorable Mayor and City Council

**FROM:** Jeff Renard, Airport Manager

**ISSUE**: TacAero FBO Contract Renewal

**BACKGROUND:** The 5 year term of the Hood Tech Corp Aero Inc. dba TacAero FBO contract has reached its term and is now eligible for a 5 year extension per the contract terms and conditions. The existing contract expired on January 22, 2023 and has had an extension of the renewal date approved by both the City of The Dalles and Klickitat County. The contract has been negotiated and reviewed by all parties and finds it presentable to the City Council and Klickitat County Board. We will be increasing the contract rate by the CPI rate used for the other airport leases. (2.6%) as well as increasing the fuel flowage fee from a tiered structure of .05-.07 cents per gallon to a flat rate of .10 cents per gallon. In this lease renewal Hood Tech Corp Aero Inc. will be re-branding the FBO as Hood Aero.

The current contract and the proposed contract are attached.

**<u>BUDGET IMPLICATIONS:</u>** 2.6% CPI annual increase of contract rate and the additional .03 cents per gallon of fuel flowage fee.

#### **COUNCIL ALTERNATIVES:**

- 1. <u>Staff recommendation:</u> Move to authorize Staff to renew contract between Hood Tech Corp. Aero Inc. dba Hood Aero and the City of the Dalles and Klickitat County.
- 2. Move to direct Staff to make requested changes for further review.
- 3. Move to take no action.

ASR FBO Contract Renewal Page 1 of 1

#### LEASE AGREEMENT

# BETWEEN CITY OF THE DALLES, KLICKITAT COUNTY AND HOOD TECH CORP. AERO INC. DBA HOOD AERO FOR THE USE OF THE UNDERGROUND FUEL FARM TERMINAL AND HANGAR AT THE COLUMBIA GORGE REGIONAL AIRPORT

#### 1. **PARTIES**

This Lease Agreement (**Agreement**) is entered this \_\_\_\_ day of \_\_\_\_\_, 2023 (**Effective Date**), between the City of The Dalles, a municipal corporation of the State of Oregon, and Klickitat County, a municipal corporation of the State of Washington, on one hand (acting solely in their joint and proprietary capacity as the Lessor and not in any governmental capacity unless so stated, **Landlord**), and Hood Tech Corp. Aero Inc. dba *Hood Aero*, an Oregon corporation (**Tenant**), on the other. The Parties hereby mutually agree and promise as follows:

#### 2. **PURPOSE**

The purpose of this Agreement is to provide for the lease of those parcels of real property located at the Columbia Gorge Regional Airport (**Airport**), described in paragraph 3 of this Agreement, upon which Tenant intends to maintain and operate the underground fuel farm, terminal building, and the Maintenance Hangar identified as such on the diagram attached to and made part of this Agreement as Exhibit "**A**". The Airport is jointly owned and operated by City of The Dalles and Klickitat County.

#### 3. **LEASED PREMISES**

For and in consideration of the rent and faithful performance by Tenant of the terms and conditions and the mutual covenants described in this Agreement, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, subject to all easements and encumbrances of record, the following described property (**Premises**):

- The terminal building (including the restaurant area, restrooms, the ground floor, and the upper floor of the building) with the understanding a portion of the ground floor will be provided for meeting space for the Regional Airport Board and the upper floor will allow access for the storage and maintenance of equipment used to provide FAA and weather service functions and to provide office space for the Airport Manager;
- The areas adjacent to the terminal building (including the landscaping and the automobile parking area);
- The fuel island, fuel pumps, dispensers, tanks, and related equipment;
- The office/work space and parking areas and ground surrounding the Maintenance Hangar;
- All tie-down parking space areas;
- The area where pilots/visitors park their vehicles, which is described as the unpaved area east of the terminal building: and
- The Maintenance Hangar.

#### 4. **TERM AND TERMINATION**

This Agreement's term (**Term**) commences on the Effective Date and expires on February \_\_\_\_, 2028 (**Expiry**). This Agreement shall be subject to termination under any of the following circumstances: (1) Landlord's termination due to Tenant's default pursuant to Sections 22 and 23; (2) Tenant's termination pursuant to Sections 24, 26, 28(B)(2), and 30; (3) Tenant's failure to provide the mechanic services required in Section 9 (*Use of Premises*) for a period of

more than sixty (60) days will require Landlord and Tenant to immediately commence negotiations for a new Agreement, and in the event the Parties cannot mutually agree upon the terms of a new Agreement, this Agreement be terminated effective the 90<sup>th</sup> day of Tenant's failure to provide the mechanic services. Any extension of the initial five (5) year term of this Agreement shall be subject to the Parties' mutual agreement.

#### 5. **RENT & COMPENSATION**

Tenant shall pay no rent for the use of the terminal building.

For rental of all other areas of the Premises, Tenant shall pay rent in the sum of five hundred dollars (\$500/month) per month (**Base Rent**), with the first payment to be made on the Effective Date and with a like payment to be made on the tenth (10<sup>th</sup>) day of each month thereafter during the Term; provided, however, Tenant's rent shall be adjusted by, at least, an annual increase of two and three-fifths (2.6%) percent each July 1 during the Term and Landlord reserves the right and privilege to further adjust Tenant's rent effective July 1, 2026, in amount not to exceed ten (10%) percent of the Base Rent.

Tenant shall pay a flowage fee (**Flowage Fee**) to Landlord at the flat flowage rate of ten (\$0.10) cents per gallon sold as provided by this Section 5. By the tenth (10<sup>th</sup>) day of each month, Tenant shall both provide Landlord fuel records from the previous month itemizing gallonage and retail price charged for all fuel sold, used, or provided by Tenant or any agent of Tenant (including copies of bills of lading with attached fuel tank meter reports, both before and after filling, from the fuel supplier showing the gallonage provided and the prices charged) and pay Landlord the corresponding Flowage Fee. By January 10 of each year of the Term, Tenant shall report the previous year's total gallons sold and shall reconcile with the Landlord any additional Flowage Fee owed pursuant to this Section 5.

Tenant shall also receive the revenue from tie downs and parking fees collected by Tenant.

#### 6. **ADDITIONAL PAYMENT PROVISIONS**

A. <u>Late Payments</u>. In the event Tenant fails to pay to Landlord any amount payable under this Agreement within thirty (30) days after such amount falls due, Tenant shall pay to Landlord interest on all unpaid amounts at a rate of one and one-half (1.5%/month) percent per month from the date said payment was due and payable until paid in full.

B. <u>Place of Payment</u>. All rents and fees shall be made payable to the CITY OF THE DALLES and shall be mailed by first class mail with postage prepaid or personally delivered to the City's Finance Department located in its City Hall addressed 313 Court Street in The Dalles, Oregon, 97058.

#### 7. **ALTERATIONS AND ADDITIONS**

Tenant shall not make any material external alterations to, erect any additional structures on, or make any material improvements upon the 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 and be surrendered with the Premises upon Expiry or earlier termination of this Agreement or shall be removed from the Premises by Tenant at its sole cost and expense. If Landlord elects to require Tenant to remove any alterations, Tenant (at its sole cost) shall remove such alterations and restore the Premises to the

conditions existing immediately prior to the addition of such alteration (reasonable wear and tear excepted) on or before Expiry or the earlier termination of this Agreement.

#### 8. MAINTENANCE, REPAIR AND STORAGE

- A. Tenant shall (at its sole cost and expense throughout the Term of this Agreement) maintain the interior walls of the Premises in the condition at least equivalent to the condition it was in on the Effective Date. All painted interior surfaces and surfaces requiring treatment of any kind shall be maintained in at least as good of condition as they existed on the Effective Date and shall be repainted or treated as often as reasonably required at Tenant's discretion. All maintenance, repairs, and replacements shall be of a quality substantially equal to the original materials and workmanship. Tenant shall perform the maintenance required by this Agreement upon Landlord's written notice. If said maintenance is not undertaken and diligently pursued by Tenant within thirty (30) days after it receives Landlord's written notice, Landlord shall have the right to enter upon the Premises and perform such necessary maintenance, the cost of which shall be reimbursed by Tenant to Landlord as additional rent, without offset, upon Tenant's receipt of Landlord's request for said reimbursement.
- B. Except for the Tenant's responsibilities set out in Section 8(A), Landlord shall be responsible for the maintenance and repair of the Premises. Tenant shall be responsible for establishing procedures to ensure the fueling service equipment (including hoses, filters, nozzles, and pumps) function in an efficient and proper manner: expenses for repair of these items which result from ordinary wear and tear shall be Landlord's responsibility. Repair expenses to these items and other portions of the Premises resulting from acts of negligence or abuse committed by Tenant or Tenant's employees or agents shall be Tenant's responsibility. All repairs to the Premises related to the structure, foundation, roof, exterior walls, electrical system, plumbing and sewer systems, and heating and air conditioning existing on the Premises as of the Effective Date shall be Landlord's responsibility.

#### 9. **USE OF PREMISES**

Except as otherwise provided by this Agreement, Tenant shall use the Premises for the non-commercial and commercial use of aircraft and related services and materials related to the use, sale, storage, maintenance, and repair of such aircraft, including but not necessarily limited to, maintaining a full time certified inspection authorized mechanic providing services in the maintenance hangar, flight planning, flight training and study, and other mechanical and clerical functions associated with the use, storage, maintaining, owning, flying, leasing, and using its best efforts to offer a service of maintaining the currency of aircraft based at the Airport and pilots using aircraft based at the Airport; operation of the installed fuel farm including the following required minimum services: full service Jet A and 100LL seven days per week, jet fuel truck, catering services, courtesy crew car, rental car services, pilot supplies, snacks and coffee, flight instruction, aircraft rental for flight school, airport advisories over the Unicom radio, start cart, and generator. Tenant may, but is not required to, use the Premises for activities related to leasing, renting, sales, chartering airplanes and trips, and all other uses related in any manner to those activities reasonably related to providing services to the aviation community and surrounding geographic area. In the event of an incident or accident which occurs on the Airport Premises in the absence of the Airport Manager, Tenant shall use its best efforts to notify the Airport Manager of the incident or accident as soon as possible.

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#### 10. UNLAWFUL USE

No building, structure, or improvements of any kind shall be erected, placed upon, operated, or maintained on the Premises, nor shall any business or operation be conducted or carried on in violation of any applicable ordinance, law, statute, by-law, order, or rule of any governmental agency.

#### 11. UTILITIES

Tenant shall pay, on Tenant's own account, for all utilities used or consumed on the Premises, including but not limited to electricity, garbage disposal, sanitary storm, janitorial services, and internet and telephone services.

#### 12. WASTE, QUIET CONDUCT, HAZARDOUS SUBSTANCES, AND PROPERTY INSPECTION

Tenant shall not commit, or suffer to be committed, any waste upon the Premises. Tenant shall at all times comply with all applicable laws, rules and regulations of federal, state, or local governmental agencies. Tenant shall not permit any activity on the Premises which directly or indirectly produces unlawful amounts or levels of air pollution (gases, particulate matter, or smoke), water pollution, noise, glare, heat emissions, radioactivity, electronic or radio interference with navigational and communication facilities for the operation of the Airport and its use by aircraft, or trash or refuse accumulation which is hazardous or dangerous by reason or risk of explosion or fire.

A. <u>Condition of the Premises</u>. Except as otherwise expressly stated in this Agreement, the Premises is conveyed in an "as-is" physical condition with no warranty, express or implied, on the part of Landlord as to the condition of the existing improvements and the condition or geology of the soil or groundwater, if any.

#### 13. **STORMWATER DISCHARGE**

Tenant shall assure no pollution or hazardous material of any type will be discharged by Tenant into the stormwater system at the Airport, and shall be held responsible for any such discharge either by Tenant or by any of Tenant's subtenants, agents, or employees, during the entire term of this Agreement. Any fine or cost of remedial action required of the Landlord as a result of Tenant's activities, by any agency or agencies having jurisdiction or ownership thereover, as a result of actions on or discharges from the Premises, will be charged to Tenant and Tenant shall reimburse Landlord for these costs upon its written demand. In addition, any discharge of pollutants or hazardous materials on or from the Premises shall be considered a default of this Agreement and shall be grounds for its termination. Tenant shall have no liability for any pollution or hazardous material and/or equipment present on the Premises, including but not limited to the fuel farm, as of the Effective Date. Landlord shall reimburse Tenant for all costs Tenant incurs related to any pollution or hazardous materials or equipment located on, in, or under the Premises as a result of the actions and/or omissions of anyone other than Tenant; provided, however, in no event shall Landlord reimburse Tenant for Tenant's sole negligence.

#### 14. RULES AND REGULATIONS

Tenant agrees to observe and obey all policies, rules, and regulations promulgated and enforced by Landlord and any other appropriate authority having jurisdiction over the Airport and the Premises described in this Agreement during the Term.

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#### 15. **SECURITY**

If additional security requirements are imposed on the Airport by the FAA or any other agency having jurisdiction over or ownership of the Airport during the Term, Tenant agrees to comply with said security requirements upon Landlord's written notice. If the cost of such security requirements exceeds five hundred (\$500.00) dollars, the Landlord shall be responsible for the total of such excess. If Landlord is fined by FAA for a security violation caused by Tenant's (or any of Tenant's subtenants', agents', or employees') intentional conduct or negligence, Tenant shall reimburse Landlord upon its written demand.

#### 16. **HOLD HARMLESS AND INDEMNIFICATION**

Tenant shall indemnify, defend, save, protect, and hold harmless the Landlord, its officers, agents and employees from any and all claims, costs, and liability, including reasonable attorneys' fees, for any damage, injury, or death, including without limitation all consequential damages from any cause whatsoever, to persons or property arising directly or indirectly from, or connected with, Tenant's performance of its operations, the acts, errors, or omissions of Tenant, its agents, contractors, guests, or employees, or the use and possession of the Premises by Tenant, its agents, contractors, guests, or employees, save and except claims or litigation arising through (and only to the extent of) the sole negligence or willful misconduct/omission of the Landlord, its officers or employees, and, if required by the Landlord, will defend any such actions at the sole cost and expense of the Tenant.

#### 17. **INSURANCE**

Tenant shall at all times carry and maintain liability insurance in a company or companies rated in the current edition of Best's General Ratings as at least **A** (*Excellent*) or better and Financial Size category of not less than **Class X** or better, or in such other company or companies not so rated which may be acceptable to Landlord, insuring Tenant against all claims for damages for personal injury, including death, and against all claims for damage and destruction of property, which may arise by the acts of negligence of the Tenant, its agents, employees, or servants, in accordance with the coverage limits set forth below. The Landlord, the Regional Airport Board, and Airport Manager shall be named in all such policies as an additional insured. The policies shall provide the policies cannot be canceled or reduced without the company first giving Landlord at least thirty (30) days' written notice.

Coverage shall be provided with the following limits:

Airport Premises Liability\* \$2,000,000 combined single limits

\*Coverage must include entire Airport Premises and not be limited to Leased Premises

Hangar keeper's Liability \$100,000 per aircraft per occurrence

\*Coverage must include entire Airport Premises

<u>Fire Legal or Tenant Legal Coverage</u> \$50,000

On-Airport Premises Automobile Liability \$2,000,000 combined single limits

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#### Products/Completed Operations Coverage

\$2,000,000 combined single limits

#### Contractual Liability\*

\*Coverage must be listed by endorsement on policy and included on certificate of insurance

**\$2,000,000** combined single limits covering the Lease Agreement

#### Workers' Compensation\*

\*Coverage needs to provide a waiver of subrogation in favor of the City, County, Regional Airport Board, and Airport Manager

#### **Statutory Coverage**

#### 18. **TAXES**

Tenant agrees to pay before delinquency all personal taxes, assessments, license fees, and other charges which are levied and assessed upon Tenant's personal property installed or located in or on the Premises by Airport or any other legally authorized governmental authority. Landlord shall pay all real property or other taxes related to the Premises imposed by Klickitat County or any other governmental authority upon the Premises.

#### 19. **INSPECTION, ACCESS AND NOTICE**

Landlord and any of its agents shall at any time upon reasonable notice to Tenant have the right to go upon and inspect the Premises and Improvements, erected or constructed or in the course of being erected or constructed, repaired, added to, rebuilt, or restored thereon. Landlord shall have the right to serve or to post, and to keep posted on the Premises, or on any part thereof, any notice permitted by law or by this Agreement and any other notice or notices that may at any time be required or permitted by law or by this Agreement. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, or other damages arising out of Landlord's entry on the Premises as provided in this Section 19.

#### 20. ASSIGNMENT, SUBLETTING, SALE, AND ENCUMBRANCE

Tenant shall not sublease, sell, voluntarily assign, or encumber its interest in this Agreement, in the Premises, or allow any other person or entity (except Tenant's authorized representatives) to occupy any portion of the Premises without first obtaining Landlord's written consent (which Landlord shall not unreasonably withhold). Any such assignment, encumbrance, sale, or sublease by Tenant without Landlord's prior written consent shall be voidable and, at Landlord's election, shall constitute a default of this Agreement. No consent to any assignment, encumbrance, sale, or sublease shall constitute a further waiver of the provisions of this Section 20 or of the Agreement. Irrespective of the foregoing: Tenant may, without any further prior consent of Landlord, sublease portions of the Terminal Building for the use of restaurant or aviation activities and the specific portions of the Maintenance Hangar not being used for aircraft maintenance for aviation-related purposes to other sublessees at Tenant's discretion, provided Tenant provides advance notice of any subleases to Landlord.

#### 21. SURRENDER OF POSSESSION

Title to all improvements permanently constructed by Tenant upon the Premises, and all alterations or additions thereto required by Landlord to remain, shall transfer to Landlord upon Expiry, cancellation, or other earlier termination of this Agreement.

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Title to personal property belonging to Tenant shall at all times during the Term, 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 Premises; provided, however, Tenant restores the Premises to its original condition upon Tenant's removal of such personal property. Tenant shall repair, at its own expense, any damages resulting therefrom and leave the Premises in a clean and neat condition with all other improvements in place.

If Tenant elects to remove improvements, Tenant's removal shall occur prior to Expiry or the sooner termination of this Agreement. Tenant shall surrender the Premises to Landlord upon Expiry or the sooner termination of this Agreement; all personal property remaining upon the Premises thereafter shall be Landlord's.

#### 22. **DEFAULT**

The occurrence of any of the following shall constitute a default by Tenant:

- A. Failure to pay rent when due, if the failure continues for thirty (30) days after Landlord provides written notice to Tenant.
- B. Abandonment and vacation of the Premises, which occurs when Tenant fails to occupy and/or operate the Premises for thirty (30) consecutive days during any period.
- C. Failure to undertake maintenance required of Tenant under the terms of this Agreement, if the failure continues for thirty (30) days after Landlord provides written notice to Tenant, unless a serious safety matter exists (as determined by Landlord), in which case Tenant shall have ten (10) days from receipt of such written notice to commence repairs. However, Tenant shall be deemed to have complied with the terms of this requirement if it commences repairs within the time stated in the notice and proceeds to diligently complete the repairs.
- D. Insolvency and adjudication of Tenant as bankrupt, or the loss of possession of the Premises, or any portion thereof, by virtue of any attachment, execution or receivership, if the bankruptcy proceedings are not terminated in Tenant's favor within, or the insolvency of the loss of possession continues for, sixty (60) days thereafter.
- E. Assignment for the benefit of creditors.
- F. Failure to comply with any of the provision of Section 28(A) (Non-Discrimination).
- G. Commission of any unlawful act by Tenant, its employees, officers, or agents, including but not limited to fraud or theft, which constitute grounds for immediate termination of this Agreement.

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- H. Failure to perform any other provision of this Agreement if the failure to perform is not cured within thirty (30) days after Landlord provides written notice to Tenant and Tenant has failed to make measurable efforts diligently and in good faith to cure the default.
- In any case in which a default cannot reasonably be cured within the period provided for such herein, Tenant shall not be in default of this Agreement if Tenant commences to cure the default within the period in which Tenant may cure such default and diligently and in good faith continues to cure the default. Tenant shall commence and diligently and in good faith prosecute the cure of any safety hazard immediately upon Tenant's acquisition of actual knowledge of the existence of such safety hazard.

Written notices given under this Section shall specify the alleged default and the applicable Agreement provisions, and shall demand Tenant perform the provisions of this Agreement, or pay the rent that is in arrears (as the case may be) within the applicable period of time, or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this Agreement unless Landlord so elects in the notice.

#### 23. LANDLORD'S REMEDIES

Landlord shall have the following remedies if Tenant commits a default. These remedies are not exclusive; they are cumulative and in addition to any remedies now or later allowed by law or equity.

- A. Landlord can terminate this Agreement and Tenant's right to possession of the Premises in the event Tenant commits an act of default. No act by Landlord, other than giving written notice to Tenant, shall terminate this Agreement. Acts of maintenance, efforts to re-let the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Agreement shall not constitute a termination of Tenant's right to possession.
- B. Landlord, at any time after Tenant commits a default, can cure the default at Tenant's cost. If Landlord, at any time, by reason of Tenant's default, pays any sum or does any act requiring the payment of any sum, the sum paid by Landlord shall be due from Tenant to Landlord immediately from the time the sum is paid upon written notice given by Landlord to Tenant, and (if paid by Tenant at a later date) shall bear interest at a rate of twelve (12%/year) percent per annum from the date the sum is paid by Landlord until Landlord is completely reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.
- C. Upon termination by default by Tenant, Landlord has the right to recover from Tenant any amount and court cost necessary to compensate Landlord for all actual costs incurred by Landlord caused by Tenant's improper termination of Agreement.

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D. Landlord shall have the right to terminate this Agreement at the Landlord's convenience upon providing Tenant one hundred twenty (120) days' advance written notice of said termination.

#### 24. **TENANT'S REMEDIES**

Tenant shall have the remedies available by law or equity for Landlord's failure to perform any of its obligations under this Agreement. These remedies shall not apply in the event the Landlord relocates the Hangar pursuant to Section 26 (Relocation of Hangar), or the U.S. Government exercises rights pursuant to Section 28(C)(5) (Non-Discrimination, Development of Premises). Tenant shall also have the right to terminate this Agreement for convenience upon providing Landlord one hundred twenty (120) days' written notice of said termination.

#### 25. **VENUE**

This Agreement shall be enforceable solely in Wasco County, Oregon or Klickitat County, Washington if legal action is necessary by any Party with respect to the enforcement of any or all of the terms or conditions of this Agreement.

#### 26. **RELOCATION OF TERMINAL BUILDING**

If at any time during the Term Landlord requires the Terminal Building be relocated to another portion of the Airport, all costs of relocation will be paid for by Landlord. If at any time during the Term any FBO-style or terminal-style building is constructed on the Airport, the Tenant shall have the first right to lease such building(s). In the event Landlord and Tenant mutually agree upon a lease for a new FBO-style or terminal-style building, any Party shall have the right to terminate this Agreement by providing one hundred twenty (120) days' written notice from the effective date of the new lease for the FBO-style or terminal-style building to the other Party.

#### 27. **DESTRUCTION**

If a substantial portion of the improvements on the Premises are damaged or destroyed in the amount of at least twenty-five (25%) percent of the replacement cost of construction, Tenant shall have the option to either terminate this Agreement or replace and rebuild the improvements and structures so they are in substantially the same condition as they were in immediately before damage or destruction. Tenant shall give written notice of such election to Landlord within forty-five (45) days of the date of the loss or destruction of the improvements and structures. If Tenant elects to terminate this Agreement under this Section 27, this Agreement shall terminate. If Tenant elects to rebuild, rent will be abated in an amount proportional to the damage for a period not to exceed three (3) months from date of such written notice.

#### 28. **NON-DISCRIMINATION**

#### A. Non-discrimination

(1) Tenant for itself, its heirs, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the Premises described in this Lease Agreement for a purpose for which a 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

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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.

- (2) Tenant for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (a) 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; (b) in the construction of any improvements on, over, or under the 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 be otherwise subjected to discrimination; and (c) Tenant shall use the 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.
- (3) In the event of breach of any of the above non-discrimination covenants, Landlord shall have the right to terminate this Agreement and to re-enter and repossess said Premises and the facilities thereon, and hold the same as if said Agreement has never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed, including expiration of appeal rights.
- (4) Noncompliance with Subsection 28(A) above shall constitute a material breach thereof and, in the event of such noncompliance, Landlord shall have the right to terminate this Agreement and the estate hereby created without liability therefor, or at the election of the City or County or the United States, either or both said Governments shall have the right to judicially enforce the provisions of said Subsection 28(A).

#### B. Airport Use and Development

- (1) Landlord reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of the Tenant and without interference or hindrance.
- (2) 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 the Tenant in this regard. If the landing area of the Airport becomes unusable by aircraft for any reason, Tenant shall have the right to terminate this Agreement at no cost or further liability to Tenant.

- (3) This Agreement shall be subordinate to the provisions and requirements of any existing or future Agreement between Landlord and the United States, relative to the development, operation, and maintenance of the Airport.
- (4) There is hereby reserved to Landlord, 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 Premises herein leased. 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.
- (5) Any physical taking of the subject Premises for use by Landlord, other than as provided herein, shall be considered a taking pursuant to the governmental power of eminent domain. This Agreement shall be terminated upon the effective date of any final order or judgment in the eminent domain proceeding.

#### C. <u>Development of Premises</u>

- (1) 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 Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises.
- (2) Tenant agrees it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Premises to exceed the established height contours. In the event the aforesaid covenants are breached, Landlord reserves the right to enter upon the Premises hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at Tenant's expense.
- (3) Tenant, by accepting this Agreement, agrees it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, Landlord reserves the right to enter upon the Premises hereby leased and cause the abatement of such interference at Tenant's expense.
- (4) It is understood and agreed nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).
- (5) This Agreement and all the provisions hereof shall be subject to whatever right of 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 the war or national emergency.

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#### 29. OPERATION OF AIRPORT

- A. <u>Aviation Hazards</u>. Landlord reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Tenant from erecting, or permitting to be erected, any building or other structure on the Premises which, in the opinion of Landlord or the FAA, would limit the usefulness of the Airport or constitute a hazard to aircraft.
- B. <u>Navigational Aids</u>. Landlord reserves the right during the term of this Agreement or any renewal and/or extension thereof to install air navigational aids including lighting in, on, over, under, and across the Premises in the exercise of any of the rights hereof. Landlord agrees to give Tenant no less than ninety (90) days' written notice of its intention to install such air navigational aids.

# 30. **USE OF AIRPORT FACILITIES**

- A. Tenant shall have the rights of access to and use of all areas and facilities of the Airport which are intended for the common use of all Tenants and occupants of the Airport, including, but not limited to, the take-off and landing areas, taxi areas, reasonable access thereto from the Premises, and air control facilities (**Airport Facilities**).
- B. For the purposes of this Subsection, the following definitions shall apply:
  - (1) **Airplanes or Aircraft** shall mean airplanes and/or aircraft of any type, including but not limited to fixed-wing aircraft, helicopters, uncrewed aerial vehicles, and blimps which use the runways at the Airport and can take off and land at the Airport as of the Effective Date and which use the Premises.
  - (2) **Use** shall mean any use consistent with the use as described in Section 9 (Use of Premises).
  - (3) **Wholly Unusable** shall mean there is no reasonable access for airplanes from the Premises to the runways at the Airport or all runways at the Airport are reasonably unusable by airplanes.
  - (4) **Partially Unusable** shall mean the runways and related facilities and landing areas are restricted to the extent neither Tenant nor Tenant's subtenants can make reasonable use of the Premises for the stated purposes of this Agreement.

If the Airport becomes Wholly or Partially Unusable by Tenant for a period of at least sixty (60) days for any reasons (but excluding weather), the provisions of this Subsection shall govern:

Tenant shall be permitted to fully abate rent otherwise payable under this Agreement upon written notice given by Tenant to Landlord. If the Airport shall be Wholly Unusable for a period of six (6) months or more, Tenant may terminate this Agreement upon written notice to Landlord. In such event, Landlord shall not be responsible for the reimbursement of the value of Tenant's personal property or improvements to Tenant. In the event the Premises becomes

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Partially Unusable for six (6) months or more, Tenant shall be entitled to a prorated reduction in rent based on the percentage of Tenant's loss of income in relation to the rent payable under this Agreement for the period of time during which the runways and related facilities and landing areas are Partially Unusable.

#### 31. **NOTICES**

Any and all notices contemplated by or given under this Agreement or otherwise may be served by enclosing same in a sealed envelope addressed to the Party intended to receive it at and deposited in the United States Post Office as certified mail with postage prepaid. When so given, such notice shall be effective forty-eight (48) hours from the date of its mailing and when addressed:

To Landlord:

City Manager City of The Dalles 313 Court Street The Dalles, OR 97058

To Tenant:

Hood Tech Corp. Aero, Inc. dba *Hood Aero* 3608 Airport Road Hood River, OR 97031

## 32. **INVALID PROVISIONS**

The Parties expressly understand and agree: in the event any covenant, condition, or provision contained in this Agreement is held to be invalid by a court of competent jurisdiction, such invalidity shall not invalidate any other covenant, condition, or provision of this Agreement; provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either Landlord or Tenant in their respective rights and obligations contained in the valid covenants, conditions, and provisions of this Agreement.

#### 33. **PROVISIONS**

All provisions, whether covenants or conditions, on the part of Tenant and/or Landlord shall be deemed to be both covenants and conditions.

#### 34. MECHANIC'S AND MATERIALMAN'S LIENS

Neither Tenant nor Landlord shall permit any mechanic's, materialman's, or other lien against the Premises or the property of which the 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 Premises or property of which the Premises forms a part, the Party charged with causing the lien will cause the same to be discharged; provided, however, either Party may contest any such lien, so long as the enforcement thereof is stayed.

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#### 35. WAIVER

The waiver by Landlord of performance by Tenant of any covenant, term, or condition of this Agreement shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

#### 36. **LEASE COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed a duplicate original, but all of which together shall constitute one and the same instrument.

# 37. WRITTEN AGREEMENT

Neither Party has relied on any promise or representation not contained in this Agreement. All previous conversations, negotiations, and understandings are of no further force or effect. This Agreement may be modified only in writing signed by both Parties. The headings of the paragraphs are for convenience only and are not a part of this Agreement nor shall they be considered in construing the intent of this Agreement.

#### 38. FURTHER ASSURANCES

Whenever and so often as requested to do so by the other party, Landlord and Tenant will promptly execute and deliver, or cause to be executed and delivered, all such further assurances, documents, or instruments and will promptly do, or cause to be done, all such other and further things as may be necessary or reasonably required in order to carry out, give effect to, and comply with the terms and intent of this Agreement.

#### 39. **CONSENTS**

Whenever consent is required, it shall not be unreasonably withheld.

#### 40. **TIME**

Time is of the essence of each and every provision of this Agreement.

#### 41. BINDING ON SUCCESSORS

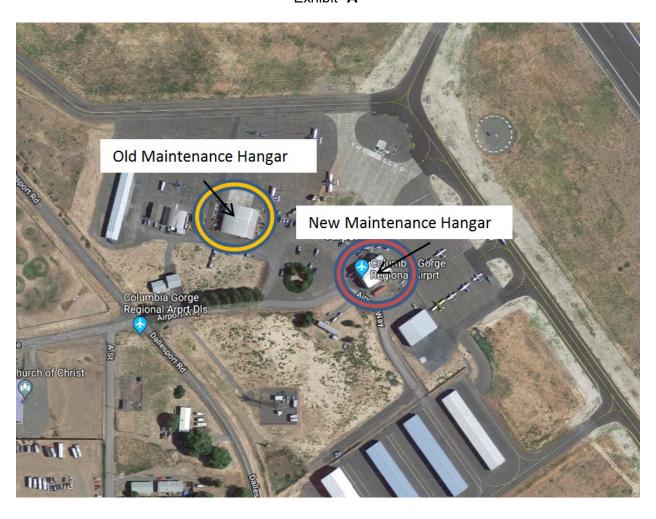
The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind their heirs, successors, executors, administrators, and assigns of all the Parties.

Signature page follows.

CITY OF THE DALLES, an Oregon municipal corporation corporation	BOARD OF COUNTY COMMISSIONERS Klickitat County, a Washington municipal
Matthew B. Klebes, City Manager	Chair
	Commissioner
	Commissioner
ATTEST:	ATTEST:
Izetta Grossman, CMC, City Clerk	Lee Snell, Clerk of the Board
Approved as to form:	Approved as to form:
Jonathan Kara, City Attorney	David Quesnel, Prosecuting Attorney
Date	Date
HOOD TECH CORP. AERO DBA HOOD	AERO
Brian Prange, Vice President	Date

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Exhibit "A"



Lease Agreement Hood Tech Corp. Aero dba *Hood Aero* Page 16

# **LEASE**

# BETWEEN City of The Dalles, Klickitat County AND

# Hood Tech Corp. Aero Inc dba TacAero

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## **LEASE**

# BETWEEN CITY OF THE DALLES, KLICKITAT COUNTY AND HOOD TECH CORP., AERO INC. DBA TACAERO FOR THE USE OF THE UNDERGROUND FUEL FARM TERMINAL AND HANGAR AT THE COLUMBIA GORGE REGIONAL AIRPORT

### 1. PARTIES

Effective on January 22, 2018, the City of The Dalles, a municipal corporation of the State of Oregon, and Klickitat County, a municipal corporation of the State of Washington, acting solely in their proprietary capacity as the Lessor, and not in any governmental capacity unless so stated, hereinafter referred to as "Landlord," and Hood Tech Corp. Aero Inc. dba TacAero, an Oregon corporation, hereinafter referred to as "Tenant," hereby mutually agree and promise as follows:

# 2. PURPOSE

The purpose of this Lease is to provide for the Lease of those parcels of real property located at the Columbia Gorge Regional Airport, described in paragraph 3 of this Agreement, upon which Tenant intends to maintain and operate the underground fuel farm, terminal building and the New Maintenance Hangar identified as such on Exhibit A. The Airport is owned by City of The Dalles and Klickitat County.

# 3. **LEASED PREMISES**

A. 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, the following described property: The terminal building, (including the restaurant area and the restrooms) including the ground floor and the upper floor of the building, with the understanding a portion of the ground floor will be provided for meeting space for the Regional Airport Board, and the upper floor will allow access for the storage and maintenance of equipment used to provide FAA and weather service functions and to provide office space for the Airport Manager; the areas adjacent to the terminal building, including the landscaping and the automobile parking area; the fuel island, fuel pumps, dispensers, tanks and related equipment; the office/work space and parking areas and ground surrounding the New Maintenance Hangar; all tie-down parking space areas; and the area where pilots/visitors park their vehicles, which is described as the unpaved area east of the terminal building; and the New Maintenance Hangar. The Leased Premises shall hereinafter be referred to as the "Premises".

B. Landlord agrees to use revenue from Lease of Old Maintenance Hangar identified as such on Exhibit A to pay the debt on the New Maintenance Hangar. The New Maintenance Hangar will be available to the Tenant as long as the full time aircraft maintenance as required in Section 10 is provided.

# 4. TERM

This Lease shall be for a term of five (5) years with a review of the Lease terms to be conducted on the second anniversary of the commencement date, and shall commence on January 22, 2018, which date shall hereinafter be referred to as the "Commencement Date" of this Lease and shall be considered to be day one of the original Lease Year. The purpose of this review is for Landlord and Tenant to determine if the Lease term shall continue and identify any terms to be modified during the remaining three (3) year period of the initial term of this Lease. This Lease shall be subject to termination under any of the following circumstances: (1) If by April 30, 2020, Landlord and Tenant have not mutually agreed upon the provisions necessary to allow this Lease to be amended to continue the Lease in effect for the remainder of the initial five (5) year term, then this Lease shall be terminated as of April 30, 2020. (2) A termination by Landlord due to Tenant's default as set forth in Sections 22 and 23. (3) A termination by Tenant as provided for in Sections 24, 26, 28(B)(2), and 30. (4) Failure by Tenant to provide the mechanic services required in Section 9 (Use of Premises) for a period of more than sixty (60) days will result in a requirement that Landlord and Tenant immediately commence negotiations for a new Lease Agreement, and in the event the parties cannot mutually agree upon the terms of a new Lease Agreement this Lease Agreement will terminate. Any extension of the initial five (5) year term of this Lease shall be subject to mutual agreement of the Landlord and Tenant.

# 5. **RENT**

Tenant shall pay no rent for the use of the terminal building. For rental of all other areas included in the Leased Premises and the New Maintenance Hangar identified as such on Exhibit A, Tenant shall pay the sum of \$500, with the first payment to be made on January 22, 2018, with a like payment to be made on the 10th day of each month thereafter. Tenant shall pay a flowage fee to Landlord in accordance with the following schedule:

Fuel sales up to 99,999 gallons annually \$0.05 cents per gallon Fuel sales between 100,000 to 149,999 gallons annually \$0.06 cents per gallon Fuel sales between 150,000 to 199,999 gallons annually \$0.07 cents per gallon For Fuel sales of 200,000 gallons or more annually, for each incremental increase of 50,000 gallons, the flowage fee shall be increased by one cent per gallon to a maximum of 10 cents per gallon.

By the 10<sup>th</sup> of each month following the end of the previous month, Tenant shall provide Landlord fuel records itemizing gallonage and retail price charged for all fuel sold, used or provided by Tenant or any agent of Tenant including copies of bills of lading, with attached fuel tank meter reports, both before and after filling, from the fuel supplier showing the gallonage provided and the prices charged. By the 10 of each month following the previous month the Tenant shall pay a minimum \$0.05 flowage fee on gallons sold. By January 10 of the following year, the Tenant shall report the yearly total of gallons sold and shall reconcile with the Landlord any additional flowage fee owed according to the above schedule. Tenant shall also receive the revenue from tie downs and parking fees collected by Tenant.

# 6. <u>ADDITIONAL PAYMENT PROVISIONS</u>

- A. <u>Late Payments</u>. In the event Tenant fails to pay to Landlord any amount payable under this Lease within thirty (30) days after such amount falls due, Tenant shall pay to Landlord interest on all unpaid amounts at a rate of one and one-half percent (1½%) per month from the date said payment was due and payable until paid in full.
- B. <u>Place of Payment</u>. All rents and fees shall be made payable to the CITY OF THE DALLES, and shall be mailed by first class mail, postage prepaid, or personally delivered to City Hall, 313 Court Street, The Dalles, Oregon, 97058, or other address as may be designated in writing.

# 7. <u>ALTERATIONS AND ADDITIONS</u>

Tenant shall not make any material external alterations to, or erect any additional structures or make any material improvements on the 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, and be surrendered with, the Premises on expiration or termination of the term, or shall be removed from the Premises by Tenant at its sole cost and expense. If Landlord elects to require Tenant to remove any alterations, Tenant at its sole cost, shall remove such alterations and restore the 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.

# 8. MAINTENANCE, REPAIR AND STORAGE

- A. Tenant shall, at its sole cost and expense throughout the term of this Lease, maintain the interior walls of the Premises in the condition at least equivalent to the condition it was in on the Commencement date of this Lease. All painted interior surfaces and surfaces requiring treatment of any kind shall be maintained in at least as good of condition as they exist at the beginning of this Lease and shall be repainted or treated as often as reasonably required in the sole discretion of Tenant. All maintenance, repairs, and replacements shall be of a quality substantially equal to the original materials and workmanship. If the Tenant fails to comply with the terms of this Lease, then upon written notice by Landlord, Tenant shall perform the maintenance required by this Lease. If said maintenance is not undertaken and diligently pursued by Tenant within thirty (30) days after receipt of written notice, Landlord shall have the right to enter upon the Premises and perform such necessary maintenance, the cost of which shall be reimbursed by Tenant to Landlord as additional rent, without offset, upon Tenant's receipt of Landlord's request for said reimbursement.
- B. Except for the Tenant's responsibilities set out in paragraph 8(A) above, Landlord shall be responsible for the maintenance and repair of the Leased Premises. Tenant shall be responsible for establishing procedures to ensure the fueling service equipment including hoses, filters, nozzles, and pumps function in an efficient and proper manner. Expense for repair of these items which result from ordinary wear and tear shall be the responsibility of Landlord. Repair expenses to these items and other portions of the Premises resulting from acts of negligence

or abuse committed by Tenant or Tenant's employees or agents shall be the responsibility of Tenant. All repairs to the Premises related to the structure, foundation, roof, exterior walls, electrical system, plumbing and sewer systems, heating and air conditioning that exist on the Premises at the start of the Lease shall be the sole responsibility of the Landlord.

# 9. <u>USE OF PREMISES</u>

Except as otherwise provided herein, Tenant shall use the Premises for the non-commercial and commercial use of aircraft and related services and materials related to the use, sale, storage, maintenance and repair of such aircraft, including but not necessarily limited to, maintaining a full time certified inspection authorized mechanic providing services in the maintenance hangar, flight planning, flight training and study, and other mechanical and clerical functions associated with the use, storage, maintaining, owning, flying, leasing and using its best efforts to offer a service of maintaining the currency of aircraft based at the Airport and pilots using aircraft based at the Airport; operation of the installed fuel farm including the following required minimum services: full service Jet A and 100LL seven days per week, jet fuel truck, catering services, courtesy crew car, rental car services, pilot supplies, snacks and coffee, flight instruction, aircraft rental for flight school, airport advisories over the Unicom radio, start cart, and generator. Tenant may, but is not required to, use the Premises for activities related to leasing, renting, sales, chartering airplanes and trips and all other uses related in any manner to those activities reasonably related to providing services to the aviation community and surrounding geographic area. In the event of an incident or accident which occurs on the Airport Premises in the absence of the Airport Manager, Tenant shall use its best efforts to notify the Airport Manager of the incident or accident as soon as possible.

# 10. <u>UNLAWFUL USE</u>

No building, structure, or improvements of any kind shall be erected, placed upon, operated, or maintained on the Premises, nor shall any business or operation be conducted or carried on in violation of any applicable ordinance, law, statute, by-law, order, or rule of any governmental agency.

# 11. UTILITIES

Tenant shall pay, on Tenant's own account, for all utilities used or consumed on the Premises, including but not limited to, electricity, garbage disposal, sanitary storm, janitorial services, and telephone services.

# 12. <u>WASTE, QUIET CONDUCT, HAZARDOUS SUBSTANCES AND PROPERTY INSPECTION</u>

Tenant shall not commit, or suffer to be committed, any waste upon the Premises. Tenant shall at all times comply with all applicable laws, rules and regulations of federal, state or local governmental agencies. Tenant shall not permit any activity on the Premises which directly or indirectly produces unlawful amounts or levels of air pollution (gases, particulate matter, or smoke), water pollution, noise, glare, heat emissions, radioactivity, electronic or radio interference with navigational and communication facilities for the operation of the Airport and its use by

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aircraft, trash or refuse accumulation which is hazardous or dangerous by reason or risk of explosion or fire.

A. <u>Condition of the Premises</u>. Except as otherwise expressly stated in this Lease, the Premises is conveyed in an "as is" physical condition with no warranty, express or implied, on the part of Landlord as to the condition of the existing improvements, the condition of the soil or the geology of the soil.

# 13. STORMWATER DISCHARGE

Tenant shall assure that no pollution or hazardous material, as defined in Section 13. Waste, Hazardous Substances, of any type will be discharged by Tenant into the stormwater system at the Columbia Gorge Regional Airport, and shall be held responsible for any such discharge either by Tenant or by any of Tenant's subtenants, agents, or employees, during the entire term of this Lease. Any fine or cost of remedial action required of the Landlord as a result of Tenant's activities, by any agency or agencies having jurisdiction thereover, as a result of actions on or discharges from the Premises, will be charged to Tenant, and Tenant shall reimburse Landlord for these costs upon demand. In addition, any discharge of pollutants or hazardous materials, as defined herein, on or from the Premises shall be considered a default of this Lease and shall be grounds for its termination. Tenant shall have no liability for any pollution or hazardous material and/or equipment present, including, but not limited to, the fuel farm, on the Premises at the Commencement Date of this Lease, or its discharge from the Premises at any time; and Landlord shall reimburse Tenant for all costs Tenant incurs related to any pollution or hazardous materials or equipment located on, in or under the Premises as a result of the actions and/or omissions of anyone other than Tenant.

# 14. RULES AND REGULATIONS

Tenant agrees to observe and obey all policies, rules, and regulations promulgated and enforced by Landlord and any other appropriate authority having jurisdiction over the Columbia Gorge Regional Airport and the Premises described in this Lease, during the term of this Lease.

## 15. **SECURITY**

If at any time during the term of this Lease, additional security requirements are imposed on the Airport by the FAA or any other agency having jurisdiction over Airport, Tenant agrees to comply with said security requirements upon being notified of such requirements in writing by Landlord. If the cost of such security requirements exceeds \$500.00 the Landlord shall be responsible for the total of such costs. If Landlord is fined by FAA for a security violation caused by intentional negligence of Tenant, or any of Tenant's sub-tenants, Tenant shall reimburse Landlord upon demand.

# 16. HOLD HARMLESS AND INDEMNIFICATION

Tenant shall indemnify, defend, save, protect, and hold harmless the Landlord, its officers, agents and employees from any and all claims, costs, and liability, including reasonable attorneys' fees, for any damage, injury, or death, including without limitation all consequential damages from any cause whatsoever, to persons or property arising directly or indirectly from, or connected with, Tenant's performance of its operations, the acts, errors or omissions of Tenant, its agents,

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contractors, guests, or employees, or the use and possession of the Premises, by Tenant, its agents, contractors, guests, or employees, save and except claims or litigation arising through (and only to the extent of) the sole negligence or willful misconduct/omission of the Landlord, its officers or employees, and, if required by the Landlord, will defend any such actions at the sole cost and expense of the Tenant.

# 17. **INSURANCE**

Tenant shall at all times carry and maintain liability insurance in a company or companies rated in the current edition of Best's General Ratings as at least A (Excellent) or better, and Financial Size category of not less than Class X, or better, or in such other company or companies not so rated which may be acceptable to Landlord, insuring Tenant against all claims for damages for personal injury, including death, and against all claims for damage and destruction of property, which may arise by the acts of negligence of the Tenant, its agents, employees, or servants, in accordance with the coverage limits set forth below. The Landlord, the Regional Airport Board, and Airport Manager shall be named in all such policies as an additional insured. The policies shall provide that the policies cannot be canceled without the company first giving Landlord at least thirty (30) days written notice.

Coverage shall be provided with the following limits:

Airport Premises Liability\*

\*Coverage must include entire Airport Premises and not be limited to Leased Premises

\$2,000,000 combined single limits

Hangarkeeper's Liability\*
\*Coverage must include entire Airport Premises

\$100,000 per aircraft per occurrence

Fire legal or Tenant Legal coverage

\$50,000

On-Airport Premises Automobile Liability

\$2,000,000 combined single limits

Products/Completed Operations

\$2,000,000 combined single limits

Contractual Liability\*

\*Coverage must be listed by endorsement on policy and included on certificate of insurance

\$2,000,000 combined single limits covering the Lease Agreement

Worker's Compensation\*

\*Coverage needs to provide a waiver of subrogation in favor of the City, County, Regional Airport Board, and Airport Manager

Statutory Coverage

## 18. TAXES

Tenant agrees to pay before delinquency all personal taxes, assessments, license fees, and other charges which are levied and assessed upon Tenant's personal property installed or located in or on the Premises by Airport, or other legally authorized governmental authority, and pay all applicable State of Washington taxes, including but not limited to aircraft fuel taxes, business and occupation taxes, and retail sales taxes. Landlord shall pay all real property or other taxes related to the Premises imposed by Klickitat County or any other governmental authority upon the Premises.

# 19. INSPECTION, ACCESS AND NOTICE

Landlord and any of its agents shall at any time upon reasonable notice to Tenant have the right to go upon and inspect the Premises and Improvements, erected or constructed, or in the course of being erected or constructed, repaired, added to, rebuilt or restored thereon. Landlord shall have the right to serve or to post, and to keep posted on the Premises, or on any part thereof, any notice permitted by law or by this Lease, any other notice or notices that may at any time be required or permitted by law or by this Lease. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, or other damages arising out of Landlord's entry on the Premises as provided in this Section.

# 20. ASSIGNMENT, SUBLETTING, SALE, AND ENCUMBRANCE

Tenant shall not sublease, sell, voluntarily assign, or encumber its interest in this Lease, in the Leased Premises, or allow any other person or entity (except Tenant's authorized representatives) to occupy all of the Premises, without first obtaining Landlord's written consent, which consent shall not be unreasonably withheld. Any such assignment, encumbrance, sale, or sub-lease by Tenant without Landlord's prior written consent shall be voidable and, at Landlord's election, shall constitute a default of this Lease. No consent to any assignment, encumbrance, sale, or sub-lease shall constitute a further waiver of the provisions of this Section or of the Lease. Irrespective of the foregoing, it is agreed that Tenant may, without any further prior consent of Landlord, sublease portions of the Terminal Building for the use of restaurant or aviation activities, and the Tenant may sublease portions of the New Maintenance Hangar not being used for aircraft maintenance to other sub-lessees at Tenant's discretion, provided such subleases are for aviation-related purposes and Tenant provides advance notice of such subleases to Landlord.

# 21. SURRENDER OF POSSESSION

Title to all Improvements permanently constructed by Tenant upon the Premises, and all alterations or additions thereto required by Landlord to remain, shall transfer to Landlord upon the expiration, cancellation, or other earlier termination of this Lease.

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 Premises, provided that upon Tenant's removal of such personal property, Tenant restores the 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 Premises in a clean and neat condition, with all other improvements in place.

If Tenant elects to remove improvements, this must be done prior to the effective date of any termination of this Lease. Tenant shall surrender the Premises to Landlord as of the effective date of any termination of this Lease.

# 22. **DEFAULT**

The occurrence of any of the following shall constitute a default by Tenant:

- A. Failure to pay rent when due, if the failure continues for thirty (30) days after written notice has been given to Tenant.
- B. Abandonment and vacation of the Premises. Failure to occupy and operate the Premises for thirty (30) consecutive days during any period shall be deemed an abandonment and vacation of the Premises.
- C. Failure to undertake maintenance required of Tenant under the terms of this Lease, if the failure continues for thirty (30) days after written notice has been given to Tenant, unless a serious safety matter exists, in which case Tenant shall have ten (10) days from receipt of such written notice to commence repairs. However, Tenant shall be deemed to have complied with the terms of this requirement if it commences repairs within the stated time and proceeds to complete the repairs in due diligence.
- D. Insolvency, and adjudication of Tenant as bankrupt, or the loss of possession of the Premises, or any portion thereof, by virtue of any attachment, execution or receivership, if the bankruptcy proceedings are not terminated in Tenant's favor within, or the insolvency of the loss of possession continues for, sixty (60) days thereafter.
- E. Assignment for the benefit of creditors.
- F. Failure to comply with any of the provision of Section 28.A. Non-Discrimination.
- G. Commission of any unlawful act by Tenant, its employees, officers, or agents, including but not limited to fraud or theft, which shall be grounds for immediate termination of this Lease.
- H. Failure to perform any other provision of this Lease if the failure to perform is not cured within thirty (30) days after written notice has been given to Tenant and Tenant has failed to make measureable efforts in good faith to cure the default.
- I. In any case in which a default cannot reasonably be cured within the period provided for such herein, Tenant shall not be in default of this Lease if Tenant

commences to cure the default within the period in which Tenant may cure such default and diligently and in good faith continues to cure the default. Tenant shall commence and diligently and in good faith prosecute the cure of any safety hazard immediately upon Tenant's acquisition of actual knowledge of the existence of such safety hazard.

Written notices given under this Section shall specify the alleged default and the applicable Lease provisions, and shall demand that Tenant perform the provisions of this Lease, or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this Lease unless Landlord so elects in the notice.

# 23. LANDLORD'S REMEDIES

Landlord shall have the following remedies if Tenant commits a default. These remedies are not exclusive; they are cumulative and in addition to any remedies now or later allowed by law or equity.

- A. Landlord can terminate this Lease and Tenant's right to possession of the Premises in the event Tenant commits an act of default. No act by Landlord, other than giving written notice to Tenant, shall terminate this Lease. Acts of maintenance, efforts to re-let the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession.
- B. Landlord, at any time after Tenant commits a default, can cure the default at Tenant's cost. If Landlord, at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due from Tenant to Landlord immediately from the time the sum is paid upon notice given by Landlord to Tenant, and if paid by Tenant at a later date, shall bear interest at a rate of twelve percent (12%) per annum from the date the sum is paid by Landlord until Landlord is completely reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.
- C. Upon termination by default by Tenant, Landlord has the right to recover from Tenant any amount and court cost necessary to compensate Landlord for all actual costs incurred by Landlord caused by Tenant's improper termination of Lease.
- D. Landlord shall have the right to terminate this Lease at the Landlord's convenience upon providing Tenant one hundred twenty (120) days advance written notice of said termination.

#### 24. TENANT'S REMEDIES

Tenant shall have the remedies available by law or equity for Landlord's failure to perform any of its obligations under this Lease. These remedies shall not apply in the event the Landlord

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relocates the Hangar pursuant to Section 26. <u>Relocation of Hangar</u>, or the U.S. Government exercises rights pursuant to Section 28.C.5. <u>Non-Discrimination</u>, <u>Development of Premises</u>. Tenant shall also have the right to terminate this Lease for convenience upon providing Landlord one hundred twenty (120) days written notice of said termination.

# 25. **VENUE**

This Lease shall be enforceable solely in Wasco County Oregon or Klickitat County Washington if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein.

# 26. RELOCATION OF TERMINAL BUILDING

If at any time during the term of this Lease, the Landlord requires that the Terminal Building be relocated to another portion of the Airport, all costs of relocation will be paid for by the Landlord. If at any time during the term of this Lease any FBO style or terminal style building is constructed on the Airport, the Tenant shall have the first right to lease such building(s). In the event Landlord and Tenant mutually agree upon a Lease for the new FBO style or terminal style building, either party shall have the right to terminate this Lease by providing one hundred twenty (120) days written notice from the effective date of the new Lease for the FBO style or terminal style building to the other party.

# 27. **DESTRUCTION**

If a substantial portion of the Improvements on the Premises are damaged or destroyed in the amount of at least twenty-five percent (25%) of the replacement cost of construction, Tenant shall have the option to either terminate this Lease, or replace and rebuild the Improvements and structures so they are in substantially the same condition as they were in immediately before damage or destruction. Tenant shall give written notice of such election to Landlord within forty-five (45) days of the date of the loss or destruction of the Improvements and structures. If Tenant elects to terminate this Lease under this Section, this Lease shall terminate. If Tenant elects to rebuild, rent will be abated in an amount proportional to the damage for a period not to exceed three (3) months from date of such written notice.

# 28. **NON-DISCRIMINATION**

#### A. Non-discrimination

(1) The Tenant for itself, its heirs, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the Premises described in this Lease Agreement for a purpose for which a 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.

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- (2) The Tenant for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: a) 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, b) that in the construction of any improvements on, over, or under the 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 be otherwise subjected to discrimination, and c) that the Tenant shall use the 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.
- (3) In the event of breach of any of the above non-discrimination covenants, Landlord shall have the right to terminate this Lease Agreement and to re-enter and repossess said Premises and the facilities thereon, and hold the same as if said Lease Agreement has never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed, including expiration of appeal rights.
- (4) Noncompliance with Subsection 28.A above shall constitute a material breach thereof and, in the event of such noncompliance, Landlord shall have the right to terminate this Lease and the estate hereby created without liability therefor, or at the election of the City or County or the United States, either or both said Governments shall have the right to judicially enforce the provisions of said Subsection 28.A.

# B. Airport Use and Development

- (1) The Landlord reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of the Tenant and without interference or hindrance.
- (2) The Landlord reserves the right, but shall not be obligated to the 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 the Tenant in this regard. If the landing area of the Airport becomes unusable by aircraft for any reason, Tenant shall have the right to terminate this Lease at no cost or further liability to Tenant.
- (3) This Lease shall be subordinate to the provisions and requirements of any existing or future Agreement between the Landlord and the United States, relative to the development, operation, and maintenance of the Airport.

- (4) There is hereby reserved to the Landlord, 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 Premises herein leased. 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 Columbia Gorge Regional Airport.
- (5) Any physical taking of the subject Premises for use by the Landlord, other than as provided herein, shall be considered a taking pursuant to the governmental power of eminent domain. This Lease shall be terminated upon the effective date of any final order or judgment in the eminent domain proceeding.

# C. <u>Development of Premises</u>

- (1) 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 situated on the Leased Premises.
- (2) Tenant agrees that it will not erect nor 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 the aforesaid covenants are breached, the Landlord reserves the right to enter upon the Leased Premises hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Tenant.
- (3) Tenant, by accepting this Lease, agrees that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from Columbia Gorge Regional Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, Landlord reserves the right to enter upon the Premises hereby leased and cause the abatement of such interference at the expense of Tenant.
- (4) It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).
- (5) This Lease and all the provisions hereof shall be subject to whatever right of the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation, and taking over of the Columbia Gorge Regional Airport by the United States during the time of the war or national emergency.

## 29. **OPERATION OF AIRPORT**

- A. <u>Aviation Hazards</u>. Landlord reserves the right to take any action it considers necessary to protect the aerial approaches of the Columbia Gorge Regional Airport against obstructions, together with the right to prevent Tenant from erecting, or permitting to be erected, any building or other structure on the Premises which, in the opinion of Landlord or the Federal Aviation Administration, would limit the usefulness of the Airport or constitute a hazard to aircraft.
- B. <u>Navigational Aids</u>. Landlord reserves the right during the term of this Lease or any renewal and/or extension thereof to install air navigational aids including lighting in, on, over, under, and across the Premises in the exercise of any of the rights hereof. Landlord agrees to give Tenant no less than ninety (90) days' written notice of its intention to install such air navigational aids.

## 30. USE OF AIRPORT FACILITIES

- A. Tenant shall have the rights of access to and use of all areas and facilities of the Columbia Gorge Regional Airport which are intended for the common use of all Tenants and occupants of the Airport, including, but not limited to, the take-off and landing areas, taxi areas, reasonable access thereto from the Premises, and air control facilities. Such areas and facilities are hereinafter referred to collectively as the "Airport Facilities".
- B. For the purposes of this Subsection, the following definitions shall apply:
  - (1) "Airplanes or Aircraft" shall mean airplanes and/or aircraft of any type, including, but not limited to, fixed wing, helicopters, unmanned aerial vehicles and blimps which use the runways at the Airport and can take off and land at the Airport as of the commencement date of this Lease and which use the Premises.
  - (2) "Use" shall mean any use consistent with the use as described in Section 9. Use of Premises, of this Lease.
  - (3) "Wholly unusable" shall mean that there is no reasonable access for airplanes from the Premises to the runways at the Airport or that all runways at the Airport are reasonably unusable by airplanes.
  - (4) "Partially Unusable" shall mean the runways and related facilities and landing areas are restricted to the extent that neither Tenant nor Tenant's sub-tenants can make reasonable use of the Premises for the stated purposes of the Lease for a period of at least sixty (60) days.

If the Airport becomes Wholly or Partially Unusable by Tenant for any reasons, including, but not limited to, Casualty as set out in Section 27, but excluding weather, the provisions of this Subsection shall govern.

After sixty (60) days during which the Airport becomes Wholly Unusable, Tenant shall be permitted to fully abate rent otherwise payable under this Lease upon written notice given by Tenant to Landlord. If the Airport shall be Wholly Unusable for a period of six (6) months or more, Tenant may terminate this Lease on written notice to Landlord. In such event, Landlord shall not be responsible for the reimbursement of the value of Tenant's personal property or improvements to Tenant. In the event the Premises becomes Partially Unusable, Tenant shall be entitled to a prorate reduction in rent based on the percentage of Tenant's loss of income in relation to the rent payable under this Lease for the period of time during which the runways and related facilities and landing areas are Partially Unusable.

## 31. NOTICES

Any and all notices given under this Lease, or otherwise, may be served by enclosing same in a sealed envelope addressed to the party intended to receive same, at its address, and deposited in the United States Post Office as certified mail with postage prepaid. When so given, such notice shall be effective forty-eight (48) hours from the date of the mailing of the same. For the purposes thereof, unless otherwise provided in writing by the parties hereto, the address of Landlord, and the proper party to receive any such notices on its behalf is:

City Manager 313 Court Street The Dalles, OR 97058

and the address of Tenant is:

Hood Tech Corp., Aero, Inc. 1750 Country Club Road Hood River, OR 97031

# 32. **INVALID PROVISIONS**

It is expressly understood and agreed by and between the parties hereto that in the event any covenant, condition, or provision contained herein is held to be invalid by a court of competent jurisdiction, such invalidity shall not invalidate any other covenant, condition, or provision of this Lease, provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either Landlord or Tenant in their respective rights and obligations contained in the valid covenants, conditions, and provisions of this Lease.

# 33. **PROVISIONS**

All provisions, whether covenants or conditions, on the part of Tenant and/or Landlord shall be deemed to be both covenants and conditions.

# 34. MECHANIC'S AND MATERIALMAN'S LIENS

Neither Tenant nor Landlord shall permit any mechanic's, materialman's, or other lien against the Premises or the property of which the Premises forms a part in connection with any

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labor, materials, or services furnished or claimed to have been furnished. If any such lien shall be filed against the Premises or property of which the 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.

# 35. WAIVER

The waiver by Landlord of performance by Tenant of any covenant, term, or condition of this Lease shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

# 36. MEMORANDUM OF LEASE

A Memorandum of Lease shall be prepared by Landlord and shall be executed and recorded by the parties hereto. This will be in lieu of recording the entire instrument.

# 37. **LEASE COUNTERPARTS**

This Lease may be executed in one or more counterparts, each of which shall be deemed a duplicate original, but all of which together shall constitute one and the same instrument.

# 38. WRITTEN AGREEMENT

Neither party has relied on 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. The headings of the paragraphs are for convenience only and are not a part of this Lease; nor shall they be considered in construing the intent of this Lease.

# 39. **FURTHER ASSURANCES**

Whenever and so often as requested to do so by the other party, Landlord and Tenant will promptly execute and deliver, or cause to be executed and delivered, all such further assurances, documents, or instruments and will promptly do, or cause to be done, all such other and further things as may be necessary or reasonably required in order to carry out, give effect to, and comply with the terms and intent of this Lease.

# 40. CONSENTS

Whenever consent is required, it shall not be unreasonably withheld.

# 41. **TIME**

Time is of the essence of each and every provision of this Lease.

# 42. BINDING ON SUCCESSORS

The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind their heirs, successors, executors, administrators, and assigns of all

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the parties hereto.

# **SIGNATURES**

CITY OF THE DALLES

Steplen E. Lawrence, Mayor

ATTEST

Izetta Grossman, City Clerk, GMC/AAE

APPROVED AS TO FORM

Gene Parker, City Attorney

BOARD OF COUNTY COMMISSIONERS

Chairmán

Attest

HOOD TECH CORP. AERO INC.

By

APPROVED AS TO FORM

By

David Quesne, Klickitat County

Prosecuting Attorney

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Exhibit A



#### CITY of THE DALLES



313 COURT STREET THE DALLES, OREGON 97058

> (541) 296-5481 FAX (541) 296-6906

# **AGENDA STAFF REPORT**

**AGENDA LOCATION:** Action Item #10B

**MEETING DATE:** February 27, 2023

**TO:** Honorable Mayor and City Council

**FROM:** Matthew Klebes, City Manager

**ISSUE:** Authorizing the City Manager to execute the Third Amendment to

Airport Management Agreement with Aviation Management

Services, LLC

**BACKGROUND:** On January 9, 2018, the City and Klickitat County entered the Aviation Management Agreement (**AMA**) with Aviation Management Services, LLC (**AMS**) for the management of the day-to-day operations of the Columbia Gorge Regional Airport (**Airport**).

On January 17, 2023, the Parties entered the Second Amendment to AMA which clarified its original language to confirm its term expires April 30, 2023; however, the AMA offers the Parties the ability to extend the AMA for an additional three-year term if the Parties mutually agree on new contract terms. The Second Amendment to AMA's recitals indicated the Parties intended to enter a future amendment to memorialize that extension and those new terms.

In consultation with Klickitat County, the Airport Board Chair and I negotiated the new contract terms with AMS then delivered them to the City Attorney to draft the Third Amendment to AMA, attached to and made part of this Staff Report. The Third Amendment to AMA operates to completely revise the form of the AMA but largely retains its substance—the City Attorney ensured legal sufficiency by removing some outdated references and formatting ambiguities, but the agreement of the Parties is nearly completely intact. The new form of the AMA is attached to and made part of the Third Amendment as its Exhibit "B". The substantive changes proposed here include:

- extending the contract to April 30, 2026;
- changing the City's and Klickitat County's payment obligation to \$150,000 per

year (plus an annual increase of 2.6% each anniversary during the term); and minor modifications to the scope of services.

The Airport Board will consider this Third Amendment at its February 21, 2023 regular meeting and provide a recommendation. The Klickitat County Commission will consider the Third Amendment at its February 28, 2023 regular meeting.

Staff recommends Council approve entering this Third Amendment to ensure AMS continues to provide outstanding management of the City's aviation asset. The changes proposed by this Third Amendment reflect legal housekeeping, a more modern understanding of the Airport's needs, and an increase in compensation commensurate with AMS's actual provision of management services to the Airport.

**<u>BUDGET IMPLICATIONS:</u>** This contract is valued at \$150,000 per year (plus an annual increase of 2.6% each anniversary during its term). The City and Klickitat County each contribute 50% of the total cost consistent with the 2001 Joint Operating Agreement between them.

#### **COUNCIL ALTERNATIVES:**

- 1. <u>Staff recommendation</u>: Move to authorize the City Manager to execute the Third Amendment to Airport Management Agreement with Aviation Management Services, LLC, and its Exhibit "B", as presented contingent upon approval from the Klickitat County Commission.
- 2. Move to authorize the City Manager to execute the Third Amendment to Airport Management Agreement with Aviation Management Services, LLC, and its Exhibit "B", as modified.
- 3. Decline formal action and provide Staff additional direction.

# THIRD AMENDMENT TO AIRPORT MANAGEMENT AGREEMENT

This THIRD AMENDMENT TO AIRPORT MANAGEMENT AGREEMENT (**Third Amendment**) is entered by the City of The Dalles, an Oregon municipal corporation (**City**), Klickitat County, a Washington municipal corporation (**County**), and Aviation Management Services, LLC, an Oregon corporation licensed in Washington (**Contractor**).

**WHEREAS**, on January 9, 2018, the City, County, and Contractor entered that certain Airport Management Agreement (**2018 Agreement**) for Contractor's provision of management services for the Columbia Gorge Regional Airport (**Airport**), a copy of which is attached to and made part of this Third Amendment as Exhibit "**A**":

**WHEREAS**, on July 15, 2021, the Parties entered that certain First Amendment to 2018 Agreement (**First Amendment**) to reflect Contractor's change in ownership, only;

**WHEREAS**, on January 17, 2023, the Parties entered that certain Second Amendment to 2018 Agreement (**Second Amendment**) to clarify the 2018 Agreement's term, which allows for an extension of the 2018 Agreement's term to April 30, 2026, upon the Parties' mutual agreement on the extension terms; and

**WHEREAS**, the Parties now intend this Third Amendment to reflect the Parties' mutual agreement on the extension terms for the 2018 Agreement to April 30, 2026, by means of a more concise form of contract wholly replacing the 2018 Agreement's provisions.

**NOW, THEREFORE**, in consideration of the terms and provisions set forth in this Third Amendment, the Parties agree:

- 1. The text of the January 9, 2018, Airport Management Agreement shall be deleted in its entirety and shall be replaced with the 2023 Airport Manager Agreement, an unexecuted copy of which is attached to and made part of this Third Amendment as Exhibit "**B**".
- 2. The Parties shall duly execute a copy of the 2023 Airport Manager Agreement upon this Third Amendment's approval by the City's Council and County's Board of County Commissioners.
- 3. Except as modified by the First Amendment, Second Amendment, and this Third Amendment, the terms and conditions of the 2018 Agreement shall remain in full force and effect.
- 4. This Third Amendment becomes effective upon its approval by the City's Council and County's Board of County Commissioners, regardless of when it is signed.

Signature page follows.

CITY OF THE DALLES, an Oregon municipal corporation	BOARD OF COUNTY COMMISSIONERS Klickitat County, a Washington municipal corporation	
Matthew B. Klebes, City Manager	Chairman	
	Commissioner	
	Commissioner	
ATTEST:	ATTEST:	
Izetta Grossman, CMC, City Clerk	Lee Snell, Clerk of the Board	
Approved as to form:	Approved as to form:	
Jonathan Kara, City Attorney	David Quesnel, Prosecuting Attorney	
Date	Date	
AVIATION MANAGEMENT SERVICES, LLC		
Jeff Renard, Owner		
Date		

#### AIRPORT MANAGEMENT AGREEMENT

This AGREEMENT is made and entered into by and between the CITY OF THE DALLES, an Oregon municipal corporation, hereinafter referred to as "CITY," and KLICKITAT COUNTY, a municipal corporation of the State of Washington, hereinafter referred to as "COUNTY," and, AVIATION MANAGEMENT SERVICES, LLC, an Oregon corporation licensed in Washington, hereinafter referred to as "CONTRACTOR," for the provision of services by CONTRACTOR to CITY and COUNTY for performing the duties of airport management of the Columbia Gorge Regional Airport located in Dallesport, Washington.

IN CONSIDERATION of the mutual covenants and promises between the parties hereto, it is hereby agreed that the CONTRACTOR shall furnish management services for the Columbia Gorge Regional Airport (CGRA) and the CITY and COUNTY shall make payment for the same, all in accordance with the terms and conditions set forth in this Agreement, including all attachments and addenda which are appended hereto by mutual agreement of the parties.

CITY and COUNTY and CONTRACTOR agree as follows:

#### 1. CONTRACTOR'S DUTIES

- 1.1 The CONTRACTOR agrees to perform the following management services in support of the CGRA Board in its obligation to operate the Airport on behalf of the CITY and COUNTY consistent with the Joint Operating Agreement between the City of The Dalles and Klickitat County dated November 1, 2002, a copy of which is attached as Exhibit B. It is understood that CONTRACTOR shall perform approximately 2,000 hours per year in the performance of the duties required under this Agreement.
- 1.2 Within the time of 2,000 hours per year, the CONTRACTOR shall work to perform the functions and duties listed on Exhibit "A", which is attached hereto and included by

reference. Such duties may be modified or changed during the term of this Agreement upon the prior written consent of the CITY and COUNTY with input from the CONTRACTOR.

#### 2. CITY AND COUNTY DUTIES

- 2.1 In accordance with the terms and conditions of this Agreement, the CITY and COUNTY shall, as part of the operational cost of CGRA, compensate the CONTRACTOR for its management services outlined in Exhibit "A" herein as follows:
- 2.1.1 The CITY and COUNTY shall pay to CONTRACTOR the sum of \$ 9,500.00 per month ("monthly fee"), effective January 22, 2018.
  - 2.1.2 CITY and COUNTY will provide and pay for as allowed by budget constraints, office space, office equipment, including but not limited to a desk, work table, conference table and chairs, sufficient locking file cabinets, fax machines, telephone with digital voice mail, internet connection and copy machine all to be located at the airport, aviation radios and other reasonable office supplies to allow Contractor to perform the management services set forth in this Agreement. In addition, CITY and COUNTY, with CONTRACTOR'S input, will establish a budget as allowed under Exhibit B and pay for reasonable expenses incurred by CONTRACTOR in traveling to activities directly related to the performance of CONTRACTOR'S duties under this contract.
  - 2.1.3 Beginning on July 1, 2018, the monthly fee as specified in Section 2.1.1 above shall increase each July 1 of each successive year by the amount of increase in the Consumer Price Index CPI during the previous 12 months as measured by the United States Department of Labor as measured for all Urban Consumers.

#### 3. GENERAL PROVISIONS

3.1 All work performed pursuant to this Agreement shall be performed according to the terms and conditions of this Agreement. Nothing in this Agreement shall be interpreted in a manner that prevents CONTRACTOR from performing other work or from receiving additional

compensation for work performed for the City of The Dalles and/or Klickitat County, or other parties related to CGRA; provided that the performance of such other work does not interfere with CONTRACTOR'S performance of its duties and responsibilities under this Agreement.

- Agreement between the CITY, COUNTY, and the CONTRACTOR and supersede all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended by written instrument signed by the CITY, COUNTY, and the CONTRACTOR.

  Amendments shall automatically become part of the Supporting Documents, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.
- 3.3 This Agreement shall be governed by the laws of the State of Washington and Oregon. Any proceeding to enforce the provisions of this Agreement shall be filed in a court of competent jurisdiction in Klickitat County, Washington or Wasco County, Oregon.
- 3.4 Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.
- 3.5 In the event any provision of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
- 3.6 No oral order, objection, claim, or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing signed by the CITY,

COUNTY, and the CONTRACTOR. No evidence of modification or waiver other than evidence of any such written notice, waiver, or modification shall be introduced in any proceeding.

3.7 In the performance of the work, duties, and obligations required of CONTRACTOR under this Agreement, it is mutually understood and agreed that CONTRACTOR is at all times acting and performing as an independent CONTRACTOR. No relationship of employer/employee is created by this Agreement. CITY and COUNTY shall neither have nor exercise any control over the methods by which the CONTRACTOR shall perform its work and functions. The sole interest and responsibility of the CITY and COUNTY is to assure that the services covered by this Agreement shall be performed and rendered in a competent, efficient and satisfactory manner. The CONTRACTOR shall not have claims under this Agreement or otherwise against the CITY and COUNTY for vacation pay, sick leave, retirement benefits, Social Security benefits, Workmen's Compensation benefits, unemployment or other employee benefits of any kind.

#### 4. SPECIAL PROVISIONS

The CITY, COUNTY, and CONTRACTOR agree that:

- 4.1 The initial term of this Agreement shall be for five years and shall commence on January 22, 2018 and continue until January 22, 2023, unless terminated as provided herein. This Agreement may be extended for an additional term of three years provided the parties are able to mutually agree upon all terms for an extension of this Agreement. In the event the parties are not able to mutually agree upon the terms of an extension, this Agreement shall expire as of April 30, 2023, unless the Agreement is terminated sooner pursuant to the provisions of this Agreement.
  - 4.2. Notices relating to this Agreement shall be given:

A. To the CITY:

City Manager 313 Court Street The Dalles, Oregon 97058 B. To the COUNTY:

Chairman

Klickitat County

Board of County Commissioners

205 S. Columbus Avenue Room 103, MS-CH-04 Goldendale, WA 98620

C. To the CONTRACTOR:

Chuck Covert

Aviation Management Services, LLC

The Dalles, OR 97058

#### 4.3 DEFAULT

The occurrence of any of the following shall constitute a default by CONTRACTOR:

- a. Failure to perform any of the functions or duties described in Exhibit "A", or any other function or duty assigned by the CITY and COUNTY, after written notice has been provided to CONTRACTOR to perform such function or duty.
- b. Insolvency and adjudication of CONTRACTOR as bankrupt, or initiation of receivership proceedings, if the bankruptcy or receivership proceedings are not terminated in favor of CONTRACTOR, or the insolvency continues for sixty (60) days thereafter.
  - c. Assignment for the benefit of creditors.
- d. Failure to comply with any internal control policy of the CITY or COUNTY, including but not limited to, allowing occupancy of Airport premises without prior execution of a signed lease agreement (excepting overnight stays), and provision of lease agreements to the CITY and COUNTY within thirty days of execution of said lease agreement.
- e. Commission of any unlawful act by CONTRACTOR, its employees, officers, or agents, including but not limited to fraud or theft, which shall be grounds for immediate termination of this Agreement.
- f. Failure to perform any other provision of this Agreement if the failure to perform is not cured within thirty (30) days after written notice has been given to CONTRACTOR and CONTRACTOR has failed to make measurable efforts in good faith to cure the default.

  Page 5 of 9 Airport Management Agreement

  (airported 78 67) 119

#### 4.4 NOTICE OF DEFAULT

If the COUNTY or CITY believes that CONTRACTOR has failed to properly perform any of the CONTRACTOR'S obligations under this Agreement, and CONTRACTOR is in default of this Agreement, CITY or COUNTY shall provide 30 days' written notice to CONTRACTOR specifying the nature of the default with reasonable particularity. If CONTRACTOR is in default, and the default is of such a nature that it cannot be completely remedied within the 30-day period, CONTRACTOR shall be deemed to have remedied the default if CONTRACTOR begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

#### 4.5 INDEMNIFICATION AND INSURANCE

4.5.1 CONTRACTOR shall defend, indemnify and hold harmless the CITY, COUNTY, their officers employees, and volunteers, from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of, or in connection with, the performance of this Agreement, except for injuries caused by the sole negligence of the COUNTY or the CITY. Damages caused by the CONTRACTOR in the performance of this Agreement due to CONTRACTOR'S sole negligence or gross negligence are the sole responsibility of the CONTRACTOR who will indemnify, defend and hold harmless the CITY and COUNTY for such damages, costs and defense costs.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115 or comparative negligence as determined by a court, that in the event of liability for damages arising out of bodily injury to person or damages to property causing or resulting from concurrent negligence of the CONTRACTOR and the CITY or the COUNTY, or their officers, officials, employees, and volunteers, the CONTRACTOR'S liability hereunder shall be only to the extent of the CONTRACTOR'S negligence. It is further specifically and expressly

understood that the indemnification provided herein constitute the CONTRACTOR'S waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration of the termination of this Agreement.

4.5.2 CITY and COUNTY agree to defend, indemnify and hold harmless the CONTRACTOR, its agents, officers and employees against all suits or claims that may be based on any injury to persons or property that is the result of a negligent act or an act of willful conduct of the CITY or COUNTY, or their agents, officers or employees. CITY and COUNTY agree to defend, indemnify and hold harmless the CONTRACTOR, its agents, officers and employees against a suit or claim arising from or related to an action or decision of the CONTRACTOR which has been approved or ratified by the Board, the CITY, or the COUNTY.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115 or comparative negligence as determined by a court, that in the event of liability for damages arising out of bodily injury to person or damages to property causing or resulting from concurrent negligence of the CONTRACTOR and the CITY or the COUNTY, or their officers, officials, employees, and volunteers, the CONTRACTOR'S liability hereunder shall be only to the extent of the CONTRACTOR'S negligence. It is further specifically and expressly understood that the indemnification provided herein constitute the CONTRACTOR'S waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration of the termination of this Agreement.

4.5.3 CITY and COUNTY agree to include the CONTRACTOR as an additional named insured under the insurance policy providing liability coverage for the airport operations.

#### 4.6 ASSIGNMENT CLAUSE

The CONTRACTOR cannot assign or sub-contract the services covered by this Agreement unless approved by the CITY and COUNTY. The members of the CONTRACTOR will not change unless consented to by the CITY and COUNTY, which consent shall not be unreasonably withheld.

#### 4.7 TERMINATION OF CONTRACT

- 4.7.1 This Agreement may be terminated by the CITY and COUNTY for cause for CONTRACTOR'S failure to cure a default under Section 4.4 upon thirty (30) days written notice to CONTRACTOR. This Agreement may be terminated by the CITY and COUNTY for the CITY and COUNTY'S convenience upon three (3) months advance written notice to CONTRACTOR.
- 4.7.2 The CONTRACTOR may terminate this Agreement for its convenience upon giving three (3) months advance written notice to the CITY and COUNTY. CITY and COUNTY reserve the right to allow CONTRACTOR to terminate this Agreement upon less than three (3) months advance written notice.
- 4.7.3 After receiving notice of termination under the provisions of Section 4.7.1 and except as otherwise directed by the CITY and COUNTY, the CONTRACTOR shall: (a) Stop work under the Agreement on the date and to the extent specified in the notice; (b) place no further orders or subcontracts for materials, services, or facilities except as necessary to complete such portion of the work not terminated; (c) assign to the CITY and COUNTY to the extent directed by the CITY and COUNTY all rights, titles, and interest of the CONTRACTOR which arise from this Agreement, amendments and subcontracts, and the CITY and COUNTY shall have the right to settle or pay any and all claims arising under these contract amendments and subcontracts; (d) settle all outstanding liabilities and claims arising out of any orders or subcontracts with the approval or ratification of the CITY and COUNTY to the extent the CITY

and COUNTY may require approval or ratification of which shall be final; (e) transfer to the CITY and COUNTY and deliver as directed by the CITY and COUNTY any property which if the Agreement had been completed would have been required to be furnished to the CITY and COUNTY; (f) complete performance of such part of the work which has not been terminated by the CITY and COUNTY; and (g) take such action as may be necessary or as the CITY and COUNTY may direct for the protection and preservation of property relating to the Agreement which is in the possession of CONTRACTOR and in which the CITY and COUNTY has or may acquire an interest.

IN WITNESS WHEREOF the parties have caused this Agreement to be signed by their duly authorized representatives as of this day of January, 2018. CITY OF THE DALLES BOARD OF COUNTY COMMISSIONERS KLICKITAT COUNTY, WASHINGTON nen E. Lawrence, Mayor Attest: Izetta Grossman, City Clerk Commissioner Approved as to form: Gene E. Parker, City Attorney Commissioner AVIATION MANAGEMENT SERVICES, LLC Approved as to form: By:

# Scope of Work

January 22, 2017

Title:

Aviation Management Services, LLC

**Employer:** 

City of The Dalles and Klickitat County

### **Duties and Responsibilities:**

(Airport and CGRA refers to Columbia Gorge Regional Airport)
(Board refers to the seven-member Columbia Gorge Regional Airport Board)
(Contractor refers to Aviation Management Services, LLC.)
(City Representative refers to The Dalles City Manager or Manager's Designee)
(County Representative refers to the Klickitat County Commissioner on the Board or their Designee)

#### Section 1: Administrative Structure and Responsibilities

The Contractor works under the general direction of the CGRA Board. The Contractor also works in coordination with the City and County representatives who have general contract oversight of the Airport's Intergovernmental Agreement, Airport Management Agreement, and FBO Contract.

### **Section 2:** Airport Operations

- A) The Contractor will make itself available as is reasonable, for contact by the public either by phone or in person at the airport office. The Manager's presence at the airport will be significant enough to avail the Contractor opportunities to assess the condition of the airport and to conduct airport business. It is assumed that there will be some presence on site most business days.
- B) The Contractor will monitor airport operation and activities, which includes but is not limited to, NOTAMS, weather information systems, bird control, animal incursions, and other safety issues.

#### Section 3: Budget

A) The Contractor will assist in the preparation of the Airport budget and be responsible for monitoring revenues, expenditures, and obligations. The Contractor will also adhere to the Purchasing Policy Document and Internal Controls as provided by the City of The Dalles.

#### Section 4: Regulatory Agencies

- A) The Contractor will use the FAA, Oregon Aeronautics, and Washington Aeronautics as a resource to ensure activities at the Airport are in compliance with regulations. These resources will be used, if available, for development, maintenance, and any projects that will enhance Airport operations.
- B) The Contractor will monitor State and Federal legislative activity pertaining to the Airport and become involved as directed by the Board.

#### **Section 5:** Maintenance and Construction

- A) The Contractor will be the project manager on all construction projects at the Airport unless otherwise directed by the Board. This will include bid preparation and subsequent compliance by the contractor.
- B) The Contractor will be responsible for maintaining Airport property under its control which may include, but is not limited to fences, gates, airport lighting, structures, fueling systems, signs, painted markings, weather information systems, vegetation including noxious vegetation, snow removal, and wind direction indicators, subject to the Airport budget.
- C) The Contractor will be responsible for conducting inspections of runways, taxiways, drainage systems, signs, markings, and airport lighting for evidence of deterioration, functionality, and safety issues.

#### Section 6: Leases

A) The Contractor will negotiate and administer Airport leases and review them for compliance. The Contractor will be the primary contact between the Airport and the Fixed Base Operator (FBO), which may include but not limited to receiving the FBO's fuel sales receipts and other reports and incorporating it into the Contractor's monthly report to the Board.

#### Section 7: Marketing and Development

A) The Contractor will assist in the development and implementation of a marketing plan when it is adopted by the Board and will promote growth at the Airport through marketing and development strategies as directed by the Board. In such work the Contractor will cooperate with, and use, the resources of Klickitat County Economic Development Office, the City of The Dalles City Manager's office, the Port of The Dalles, the Klickitat County Port, and the Mid-Columbia Economic Development District to achieve the desired goal of airport growth.

- B) The Contractor will also review and implement the Airport Master Plan/Airport Layout Plan and assist with any update of the master plan as directed by the Airport Board.
- C) The Contractor will pursue grant opportunities, prepare grant applications, and provide grant management.
- D) The Contractor will work to broaden political, technical, and financial support for the Airport.

#### **Section 8:** Administration

- A) The Contractor shall be responsible for having minutes taken at all Board Meetings and maintaining record of all Board activities, including but not limited to Agendas, notice of meetings, minutes, and correspondence.
- B) The Contractor will be responsible for maintaining Airport records, filing systems, and all other administrative functions pertaining to the Airport Manager's office.
- C) The Contractor will work with the City of The Dalles Finance Director on financial issues and transactions.
- D) The Contractor will attend Board meetings and provide a monthly report to the Board on Airport activities.
- E) The Contractor in consultation with the Board Chair, the City and County representatives will be responsible for preparing the Agenda for the Airport Board meeting and will provide a report on action and discussion items as required.
- F) The Contractor will attend meetings and conferences pertaining to management and operation of Airport and be reimbursed for reasonable expenses incurred in such travel.

#### **Section 9:** Emergencies

- A) The Contractor will inform the CGRA Board, Klickitat County, and City of The Dalles of all accidents on Airport property, and keep appropriate records.
- B) The Contractor will notify the CRGA Board, Klickitat County and the City of The Dalles of incidents involving acts of nature or any other damage to airport property and make appropriate decisions or recommendations as to the continued safe use of the Airport, and report action taken to the CGRA Board, Klickitat County, and City of The Dalles.

#### Exhibit "A"

C) In the case of accidents involving serious injury or fatalities, the Contractor will notify the CGRA Board, Klickitat County, and the City of The Dalles and respond if necessary to provide assistance to emergency agencies, as well as obtain preliminary information.

#### Section 10: Work Schedule

A) The Contractor will work a schedule that best meets the needs of the Airport as approved by the Board.

#### Section 11: Special Assignments

A) The Contractor from time to time may be assigned additional tasks or responsibilities that can be accomplished within the time allotted under the contract.

# COLUMBIA GORGE REGIONAL/THE DALLES AIRPORT

## JOINT OPERATING AGREEMENT

## BETWEEN

# THE CITY OF THE DALLES, OREGON

AND

KLICKITAT COUNTY, WASHINGTON

**NOVEMBER 1, 2002** 

## EXHIBIT "B" - Page 2 of 30

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# COLUMBIA GORGE REGIONAL/THE DALLES AIRPORT JOINT OPERATING AGREEMENT

This Columbia Gorge Regional/The Dalles Airport Joint Operating Agreement

("Agreement") is effective the 1st day of November, 2002 ("Effective Date") by and between the

City of The Dalles, a municipal corporation of the State of Oregon, ("City"), and Klickitat

County, a municipal corporation of the State of Washington ("County"). The City and County

are collectively referred to as the "Parties," The Parties agree as follows:

#### 1. RECITALS.

- 1.1 The City currently owns the Columbia Gorge Regional/The Dalles Airport ("Airport") located in Klickitat County, Washington.
- 1.2 The City operated the Airport until the City and the County entered into that certain Intergovernmental Agreement for Cooperative Action to Establish a Regional Management Authority For Columbia Gorge Regional/The Dalles Airport, dated June 21, 1999 ("Interim Joint Operating Agreement").
- The Interim Joint Operating Agreement established a board for the operation of the Airport, which includes City and County representatives. The Interim Joint Operating Agreement provided that the Board would operate the Airport, for 18 months on a trial basis.
- 1.4 The Parties have determined that it is in the best interests of the public to continue to provide for the operation of the Airport through a regional board and to provide for joint ownership of the Airport, consistent with this Agreement.

- 1.5 The purpose of the Agreement is to help ensure that the Airport becomes a self-sufficient catalyst for economic growth in the near term.
- 1.6 The Parties intend to share equally in the costs and benefits of the Airport, consistent with this Agreement.
- 2. <u>AIRPORT</u>. The Airport presently consists of the real property, described on Exhibit A to this Agreement, as well as the personal property and property rights used in connection with or associated with such real property. The Airport does not include that portion of the original airport land that is being proposed for a golf course, as described in Exhibit B to this Agreement, subject to the terms of this Agreement.
- 3. OWNERSHIP. The City currently owns the Airport, but the Parties have agreed that they should jointly own in equal shares all real and personal Airport property. Thus, the County and the City shall each own a one-half undivided interest in all real and personal property comprising the Airport (including without limitation facilities and privileges related to the Airport and any real or personal property acquired during the Term). In addition, the Parties shall each have a one-half interest in the revenue received by or derived from the Airport. Within thirty (30) days after the Effective Date, the City shall initiate the process to, and begin preparation of, the documents necessary to transfer the City's interest in the property to Klickitat County, for no additional consideration. Such property shall be transferred to County, consistent with this Agreement, within 90 days of the Effective Date. Following the transfer, the County and City shall each be liable for one-half of all current liabilities associated with the operation, maintenance or improvement of the Airport, and the County and City shall each be liable for one-half of future costs related to operating, maintaining, or improving the Airport for the Agreement Term.

#### 4. <u>UTILITIES</u>.

The Parties shall share equally in expenses for Airport utilities.

- 5. <u>INTERIM JOINT OPERATING AGREEMENT</u>. This Agreement replaces and supercedes the Interim Joint Operating Agreement.
- 6. <u>REGIONAL BOARD</u>. The Regional Board ("Board") created under the Interim Joint Operating Agreement shall continue to operate the Airport on behalf of the City and County, consistent with this Agreement.
- The Board shall consist of seven (7) members. The City and the County each have the authority to appoint the Board members for three positions on the Board. One of the City's appointees shall be a member of the City Council, and one of the County's appointees shall be a member of the Klickitat County Board of Commissioners. The other members of the Board shall appoint the seventh Board member ("Board-appointed member"). The first Board-appointment member shall be appointed within sixty (60) days of the Effective Date, for a term expiring December 31, 2003; subsequent appointments of the Board-appointed member shall be for a two-year term. Members of the Board shall serve without compensation. Board members may receive, from Airport funds, reimbursement for reasonable and actual expenses incurred in the course of official business, including necessary travel, consistent with applicable law and procedures approved by the City and County.
- 8. <u>BOARD VACANCIES AND QUALIFICATIONS</u>. The applicable appointing authority, (i.e., the City, the County, or the Board) shall fill vacancies on the Board. The City and County may establish their own procedures for making appointments to the Board, including provisions for removal of appointees to the Board, and provisions for the length of the terms to be served by the appointees. Notwithstanding the foregoing, Board positions terminate upon the termination

or expiration of this Agreement. In the event of a vacancy, a new appointee shall serve only the unexpired term of the previous Board member. All Board members shall be residents of the City or the County; provided, however, that the terms of the Board member who is a member of the City Council or the Board of County Commissioners shall immediately terminate if such member no longer holds a position on the City Council or the Board of County Commissioners, as applicable. Board members may serve more than one term. In making appointments, the City and the County shall each endeavor to ensure that its appointees are qualified by reason of education and/or experience in matters pertaining to aviation and industrial development.

- 9. <u>EXISTING REGULATIONS</u>. Except as otherwise expressly provided herein, all existing rules, regulations, contracts, offices, and actions previously adopted or approved by the City and County, or the Parties acting jointly and not in conflict with this Agreement, are unaffected and shall remain in full force and effect unless and until superceded or amended in writing consistent with this Agreement.
- applicable laws and regulations, including without limitation, Federal Aviation Administration ("FAA") regulations, the Board shall have all of the powers granted under chapter 14.08 RCW, as it may be amended from time to time, to manage, improve, maintain, equip and operate the Airport and its facilities. Notwithstanding the foregoing, the Board's authority is at all times subject to such restrictions and requirements as the City and County may mutually determine from time to time, as well as the limitations set forth herein.

#### 11. <u>LIMITATIONS' ON BOARD AUTHORITY</u>.

11.1 The Board shall not have the authority to divest any real property without prior written approval of the Parties.

- Any agreements with a duration of two (2) years or more proposed by the Board shall require approval by the Parties before those agreements can take effect.
- 11.3 The Board shall not have authority with respect to Airport properties subject to prior agreements between the City and Wasco County, Oregon.
- 11.4 The Board cannot independently exercise the power of eminent domain; the City and County must exercise eminent domain power jointly.
- 11.5 Joint City and County ordinances must adopt police regulations governing conduct and use of the Airport to be enforced through judicial proceedings. The Airport Board may adopt reasonable rules and regulations for the control and management of the Airport not requiring judicial enforcement.
- 11.6 Contracts for public works and other procurement must satisfy the legal and procedural requirements of the County and City.
- 11.7 The employment, terms of employment, and termination of the Airport Director and other executive-level personnel must be jointly approved by the City and County.
- 11.8 Capital improvements of Airport property, for aeronautical, commercial, and industrial purposes, shall be in accordance with an Airport Master Plan jointly adopted by the Board, City, and County, and approved by the FAA.
- 11.9 The Board may not acquire real or personal property with a value of more than\$10,000 without prior approval of the City and County.
- 12. RESPONSIBILITIES OF THE BOARD. The Board shall:
  - 12.1 Establish and maintain schedule of regular monthly public meetings which will be held in accordance with open public meeting laws of the State of Washington.

- 12.2 Adopt such procedural rules, including selection of officers, as are necessary to carry out the business of the Board.
- 12.3 Establish procedures to ensure that all disbursements from the Enterprise Fund will be made by order of the Board in accordance with rules and regulations prescribed by the City and the County.
- 12.4 Develop and maintain an Airport Master Plan addressing capital and other improvements to the Airport.
- 12.5 Establish and present to the City and County for approval a five-year Capital Plan for preserving and improving the Airport.
- 12.6 Prepare and recommend to the County and City, for approval, an annual operating budget for the Airport in accordance with this Agreement.
- 12.7 Develop a long-term marketing plan for the Airport, and aggressively pursue creation of sources of revenue capable of making the Airport self-sufficient.
- 12.8 Pursue sources of funding for implementing marketing plan proposals, including infrastructure improvements.
- 12.9 Develop land and facility lease policies.
- 12.10 Expend all funds in strict compliance with the approved annual Budget and applicable law.
- 13. <u>QUARTERLY REPORTS</u>. The Board shall prepare a full and complete report of the activities, income, and disbursements related to the Airport, and such other information as the City or County may request, which reports shall be submitted to the City and County on a quarterly basis. The report shall also include information indicating income received and

disbursements made, the amounts contributed by the City and the County, and reflect any profit or loss for the Airport operation.

#### 14. <u>ENTERPRISE FUND AND FINANCES</u>.

14.1 An Enterprise Fund ("Enterprise Fund") has been established under the authority of the City for the purpose of advancing funding necessary to carry out the provisions of this Agreement. The County and City will deposit all budgeted money related to maintenance, operation, and capital improvements at the Airport into the Enterprise Fund. Deposits will be made in two equal quarterly payments by July 15th and January 15th of each year. In addition, all revenue received from the ownership, control, and operation of the Airport and the Golf Course (described in Section 25), shall be deposited into the Enterprise Fund. The City Finance Director shall be, ex officio, the Treasurer for the Board and the Airport through December 31, 2005. Consistent with RCW 14.08.200(11), the Parties shall obtain a bond to protect the finances of the Airport and the Enterprise Fund. After that time, by joint agreement, either party may serve as Treasurer for four year terms; if the Parties cannot agree, the City Finance Director shall remain the Treasurer of the Board and the Airport. The Treasurer's term expires upon the termination or expiration of this Agreement.

14.2

14.2.1 As specified in the annual budget, and except as required by law or other contract, Airport revenues and other money in the Enterprise Fund shall be applied to the following purposes, in the order listed.

- (a) Maintenance and operation expenses, including salaries and other personnel costs;
- (b) Debt service;
- (c) Jointly agreed upon capital improvements to the airport facility;
- (d) Accumulation of reserve funds;
- (e) Early redemption of revenue bonds or other Airport indebtedness. In the event that reserve funds exceed two years projected operating costs and the projected costs of the adopted five year Capital Improvement Plan at the time of budget adoption, the City and County may by joint resolution provide for the repayment to each of them of one-half of the excess proceeds, up to the total unreimbursed amount the particular party has paid into the Enterprise Fund to date (not including Airport or Golf Course revenues).
- 14.2.2 Real property taxes assessed against the Airport property described in Exhibit A shall qualify as maintenance and operation expenses under Section 14.2.1. Real property taxes assessed against the Golf Course Property described in Exhibit B shall not qualify as maintenance and operation expenses, and these taxes shall be paid to Klickitat County directly.
- 15. <u>FISCAL YEAR</u>. The Board's fiscal year shall correspond with the fiscal year of the party acting as Treasurer.

16. <u>BUDGET</u>. Annually, the City and County shall determine the maximum total amount to be expended by the Board in the following calendar year (the "expenditure limit"). The Parties shall submit the expenditure limit to the Board on or before February 1 (September 1, if County is Treasurer) each year. If the City and County do not provide expenditure limit to the Board by February 1 (September 1, if County is Treasurer) in any year, the maximum total amount that the Board may spend in the following year shall be the authorized total budget amount for the current year, minus any complete grant programs and projects and complete capital improvement projects. The Board shall submit a proposed budget to the City and County for their joint approval by March 1 (October 1, if County is Treasurer) of each year, and the County and the City shall jointly approve the budget (with or without modifications) by June 15 (December 15, if County is Treasurer) of each year. If the County and City have not jointly approved the Airport budget by June 15 (December 15, if County is Treasurer) in any year, the budget submitted by the Board is deemed approved, up to the total maximum amount that the Board is authorized to expend in the budget year.

#### 17. BONDS - INDEBTEDNESS.

- 17.1 The Board does not have independent authority to issue bonds. In addition, the Board shall not incur any liability in excess of \$10,000 or with a date of maturity of more than one year from the date of the obligation without prior written approval of the City and County.
- 17.2 The City and County may, by mutual legislation, and consistent with applicable law authorize the issuance and sale of revenue bonds or other obligations (collectively, "bonds") payable from Airport revenues, the proceeds of which are to be used exclusively for Airport purposes. After the adoption of necessary

legislation by both the City and the County, the bonds shall be authorized by and issued in the name of the County or the City, as determined pursuant to a separate agreement to be entered into in connection with each bond issue to provide funds for the Airport. The Parties shall specify in that agreement, among other things, responsibility for repayment of the particular bonds.

- 17.3 Either of the Parties may also issue general obligation debt for Airport purposes, for projects authorized by law. If general obligation debt is proposed to be issued, the Parties shall adopt a joint resolution evidencing the intent to incur such debt. Each party shall separately authorize its portion of the total debt in the manner required by law for each party, respectively. All Airport funds shall be administered and accounted for in accordance with the rules, regulations, and principles established and approved by the applicable state budget law and audit requirements, subject only to controlling federal audit requirements.
- 18. TAXES. Lessees and tenants leasing property at the Airport, and entities or individuals operating a business at the Airport, shall be responsible for paying any applicable leasehold excise, business and occupation, real or personal property taxes, or other taxes imposed by the State of Washington, Klickitat County, or other government entity with jurisdiction which the lessee or tenant is obligated to pay by law or pursuant to a lease agreement. The City shall pay to Klickitat County the portion of real property taxes allocated to the Airport property, due to the City's one half interest in the Airport property. The County shall apply those funds, consistent with applicable law. The City and County shall each pay one-half of the amount of any other taxes or governmental assessments due, consistent with applicable law.

- 19. <u>TERM.</u> This Agreement shall take effect on the Effective Date and, unless earlier terminated as provided herein, shall continue for automatically renewing terms of one year each.
- 20. <u>TERMINATION</u>. The Parties may terminate this Agreement by mutual agreement on such terms as they determine are appropriate. If required by federal law, the party terminating shall also provide notice to the FAA, consistent with applicable law. The Agreement shall terminate at the end of the calendar year for which proper termination notice was provided.

#### 20.1 <u>Mutual Termination</u>.

- 20.1.1 If a mutual termination occurs prior to 2018, during a time when grant assurances may require the repayment of FAA or other grant funds received by the City for grants obtained prior to the Effective Date, the City has agreed to sell its entire one-half interest in the Airport assets, and apply the proceeds from the sale for any required repayment of the grant funds. If revenue obtained from the City of the City's share of the Airport assets is not sufficient to repay the amount of funds owing, the County agrees to sell its one-half interest in the Airport assets and apply the proceeds from that sale toward the required repayment of grant funds. If after the sale of assets by both the City and County, there is still an obligation owed for repayment of grant funds, the City shall be solely responsible for paying the balance of that liability.
- 20.1.2 For liabilities other than the potential repayment of existing FAA or other grant funds, the parties shall commence negotiations to distribute assets and assumption of those liabilities, with the goal of dividing the assets and liabilities of the Airport on an equitable basis. If it becomes necessary to

engage independent appraisal or arbitration services to determine the amount and nature of payments between the Parties, the Parties shall share such costs on an equal basis.

20.1.3 If the Parties are unable to agree upon a distribution of Airport assets and the assumption or payoff of Airport liabilities, consistent with this Agreement, within ninety (90) days after the date the Parties agree to termination, or at any subsequent time with respect to other distributions, either party may petition the Klickitat County Superior Court to allocate and distribute the assets and liabilities, consistent with this Agreement. In such case, each party shall bear its own costs, attorney fees, expert witness fees, and other costs. The order of the Superior Court may be appealed by either party to the appropriate court. This procedure will also apply to a mutual termination which may occur after the year 2018, when the obligation to repay the FAA grant funds has expired.

#### 20.2 Termination by One Party.

- 20.2.1 Either party may terminate this Agreement by giving the other party at least ninety (90) days' written notice prior to the end of any calendar year.

  If required by federal law, the party terminating shall also provide notice to the FAA, consistent with applicable law.
- 20.2.2 In the event one party provides notice of termination, and the nonterminating party elects to continue the operation of the Airport, the
  terminating party shall convey to the non-terminating party, by appropriate
  instrument without consideration, all of the terminating party's interest in

the real and personal property related to the Airport. The non-terminating party shall also assume Airport liabilities of the terminating party, incurred pursuant to this Agreement.

- 20.2.3 In the event the non-terminating party elects to discontinue the operation of the Airport at any time within a five-year period after the date the terminating party conveyed all of its interest in the real and personal property at the Airport to the non-terminating party and the non-terminating party assumed liabilities as described in the previous sentence, this Agreement shall be considered to have been terminated jointly, and the Parties shall then commence negotiations to equally distribute the then-existing assets and liabilities of the Airport, with the understanding that a) if the decision of the non-terminating party to discontinue operation of the Airport occurs prior to 2018 when the existing FAA or other grant assurance obligation is still in effect, the Parties agree that the assets of the Airport shall be sold and the revenue be applied to repay the grant funds owed; and, b) that in the event the sale of the Airport assets is not sufficient to repay the grant funds, the City shall be solely responsible for the balance of the grant funds owed.
- 20.2.4 In the event the Parties are unable to agree upon a division of assets and liabilities within ninety (90) days after the date of delivery of the termination notice, or any subsequent time with respect to other distributions, then either party shall have the right to petition the Klickitat County Superior Court to allocate and distribute the assets and liabilities,

consistent with this Agreement. In such case, each party shall bear its own costs, attorney fees, expert witness fees, and other costs. The order of the Superior Court may be appealed by either party to the appropriate court. This procedure will also apply to a termination which may occur under 20.2.3.

- 21. <u>VENUE AND GOVERNING LAW</u>. This Agreement shall be governed and construed in accordance with the laws of the State of Washington; venue shall be in Klickitat County Superior Court.
- 22. <u>NO THIRD PARTY BENEFICIARIES</u>. This Agreement is not intended and shall not be construed to create any rights in third Parties.
- 23. <u>APPROVALS</u>. In any circumstance in which Board actions require the approval of the City and County, the Board shall make a written request for such approval to the representative of each party designated by such party. The City and County shall each duly act on the request within twenty-one (21) days and shall each respond to the Board in writing.
- 24. <u>AMENDMENT</u>. This Agreement constitutes the entire understanding between the Parties with respect to its subject matter and may only be amended with a writing executed by both Parties.

#### 25. GOLF COURSE PROPERTY.

- 25.1 Subject to the terms of this Agreement, the City shall own property previously designated for a golf course as described in Exhibit B ("Golf Course Property").
- 25.2 If construction of the golf course is not started within five years of the Bffective
  Date of this Agreement or is not completed within eight years after the Effective
  Date of this Agreement, the City shall convey a one-half, undivided interest in the

# ( , ) EXHIBIT "B" - Page 17 of 30

Golf Course Property to the County, and the Golf Course Property shall be deemed to be part of Airport property owned jointly by the Parties, in addition to the property described in Exhibit A.

- 25.3 All revenue derived by the City from the golf course in excess of the City's reasonable expenses related to the golf course shall be considered operating revenue of the Airport and shall be deposited into the Enterprise Fund.
- 25.4 Within ninety (90) days of the Effective Date of this agreement, the City shall subdivide the Airport Property into the parcels as described in Exhibit "A" and Exhibit "B".

CITY OF THE DALLES

BOARD OF COUNTY COMMISSIONERS Klickitat County, Washington

ATTEST:

Clerk

Approved as to form:

ATTEST:

Approved as to form:

Prosecuting Attorney

Order No. W-31484

Policy No.:

#### EXHIBIT "A" - LEGAL DESCRIPTION

#### IN COUNTY OF KLICKITAT, STATE OF WASHINGTON

Lots 1, 14, 15 and 16, NORTH DALLES FRUIT AND GARDEN TRACTS, according to the recorded plat thereof:

The South Half of the South Half of The Southwest Quarter of Section 26; AND the Southeast Quarter of the Southeast Quarter of Section 27, Township 2 North, Range 13 East, W.M.

EXCEPT the Northeast Quarter of the Southeast Quarter of the Southeast Quarter;

The Southwest Quarter of the Southwest Quarter;
The Southeast Quarter of the Southwest Quarter; and
The South Half of the Southwest Quarter of the Southwest Quarter of Section 27,
Township 2 North, Range 13 East, W.M.:

The West Half of the West Half of the Northeast Quarter;

The West Half of the Northwest Quarter of the Southeast Quarter;

The North Half of the Northwest Quarter;

The Southeast Quarter of the Northwest Quarter;

The Northeast Quarter of the Southwest Quarter:

Portions of the Southwest Quarter of the Northwest Quarter, the Northwest Quarter of the Southwest Quarter and Government Lots 2, 3 and 4 described as follows:

Beginning at the interesction of the South line of the Northwest Quarter of the Northwest Quarter with the Northerly extension of the East line of County Road No. 30, which point is 980 feet, more or less, East of the Southwest corner of the Northwest Quarter of the Northwest Quarter.

Running thence South 0°7' West a distance of 2550 feet, more or less, to a point in the East line of County Road No. 30, which point is opposite and 30 feet distant from station 25193.85 of survey of said county road;

Thence South 0°07' West 680.6 feet to point indicated on U.S. Engineer's "Boundary Survey of Dalles Airport" as "Southwest corner equals Angle Point No. 1";

Thence tracing the line of the top of the bluff North of Columbia River South 85°46' East 973 feet to "Angle Point No. 2":

Thence North 85"35' East 1361 feet to "Angle Point No. 3":

Thence South 72°49' East to a point midway between the East and West lines of Government Lot 2:

Thence North on a line midway between said East and West lines to the North line of said Government Lot 2;

Thence West along said North line to the Northwest corner of said Government Lot 2;

Thence West along the North line of Government Lot 3, 1331.1 feet to the Northwest corner of said Government Lot 3;

Thence North along the West line of the Northeast Quarter of the Southwest Quarter to the Northwest corner of said Northeast Quarter of the Southwest Quarter;

Thence North along the West line of the Southeast Quarter of the Northwest Quarter 1321.3 feet to the Northwest corner of said Southeast Quarter of the Northwest Quarter;

Thence West along the North line of the Southwest Quarter of the Northwest Quarter 351 feet, more or less, to the point of beginning; ALL in Section 34, Township 2 North, Range 13 East, W.M.,

Page 9

#### **EXCEPTING** therefrom the following:

- (a) That portion of the Southwest Quarter of the Northwest Quarter of said Section 34 lying South of the North line of Harrison Street as shown on Plat of Grand Dalles (now vacated) and West of original road leading from Rockland Ferry Landing (known also as Old Dalles-Goldendale Road);
- (b) Tract conveyed to William Seufart by deeds recorded in Volume 60 of Deeds, page 243, and Volume 60 of Deeds, page 343, records of said county, described as follows:

A Tract of land near the center of said Section 34, 200 feet from North to South and 200 feet from East to West; there is a well that has been drilled in the center of said tract of land and the said tract of land is 100 feet in all directions measuring from the center of said well; also the well and the water thereof:

(c) County Roads.

The East Half of the East Half; and The East Half of the West Half of the East Half of Section 34, Township 2 North, Range 13 East, W.M., lying North of the North line of the right of way of the Spokage, Portland & Seattle Railway;

The West Half of Section 35, Township 2 North, Range 13 East, W.M., lying North of the North line of the right of way of the Spokene, Portland & Seattle Railway.

#### **EXCEPT** the following:

A triangular tract lying in the East Half of the Southwest Quarter of the Southeast Quarter of said Section 34, which tract is bounded on the South by the North line of the right of way of the Spokene, Portland & Seattle Railway, on the West by the West line of the East Half of the Southwest Quarter of the Southeast Quarter of said Section 34, and on the North by a line running North 72°49' West from a point in the North line of the right of way of the Spokane, Portland & Seattle Railway, which point is opposite and 90 feet distant from Station 488+71.7 of the survey of said Spokane, Portland & Seattle Railway;

#### **EXCEPTING** from all parcels:

- I. Any County Road.
- Any portion lying Southerly of the Northerly line of the Spokane, Portland & Seattle Railway.
- Any portion lying Easterly of the Westerly line of Highway 197.
- Any portion lying Westerly of the Easterly line of County Road No. 92191 known as Dallesport Road,

Novamber 14, 2002

#### SCHEDULE A

Order No.: W-31484

Elfactive Date of Commitment October 23, 2002 at 8:00 a.m.

Prepared For:

Сару То;

City of The Dalles 308 Union Street The Dalles, OR 97058 Attention: Gene Parker

1. Policy or Policies to be issued:

**Amount** 

Premium

ือx

(a) ALTA Owners Policy Form B Standard

To follow .

Later

Proposed Insured:

Kilckitat County

- 2. The setate or interest in the land described or related to in this Commitment and covered herein is a Fee Simple.
- 3. Title to said estate or interest in said land is at the effective date vested in:

City of The Dalles, also shown of record as, Dalles City, Oregon, a municipal corporation

4. The land referred to in this Commitment is described as follows:

SEE EXHIBIT ONE, ATTACHED.

PACIFIC NORTHWEST TITLE Insurance Company, Inc.

Page 2

# PACIFIC NORTHWEST TITLE Insurance Company, Inc.

Order No.: W-31484

#### ALTA COMMITMENT

#### SCHEDULE B

- i. The following are the requirements to be compiled with:
  - A. Instruments necessary to create the estate or interest to be insured must be properly executed and duly filed for record.
  - B. Payment to or for the account of the grantors or mortgagers of the full consideration for the estate or interest to be insured.
- ii. Softedule B of the Polloy or Polloles to be Issued (as set forth in Softedule A) will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:
  - A. Defects, liens, enoumbrances, adverse claims or other matters, if any created, first appearing in the public records or attaching subsequent to the effective date interest but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.

#### B GENERAL EXCEPTIONS:

- 1. Highte or claims of parties in possession not shown by the public records,
- 2. Public or private exsements, or claims of easements, not shown by the public records,
- 3. Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accourate survey or inspection of the premises.
- 4. Any lien, or right to a lien, for services, latter or material heretofore
- or hereafter furnished imposed by law and not shown by the public repords,
- or Lien under the Workmen's Compensation Act not shown by the public records.
- 5. Rights of use, control or regulation by the United States of America, in the exercise of powers over navigation; any prohibition or limitation on the use, occupancy or improvement of the land resulting from the rights of the public or ripadan owners to use any water which may cover the land.
- 6.(a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.
- 7. Any service, installation, connection, maintenance or construction charges for sewer, water, electricity or garbage removal.
- 8. General texas not now payable or malters relating to special sassesments and special levies, if any, preceding the same becoming a fign.
- Indian tribal codes or regulations, Indian treaty of aboriginal rights, including, but not limited to, easements or equitable serviceds.

#### C. SPECIAL EXCEPTIONS:

SEE FOLLOWING PAGE(S)

# PACIFIC NORTHWEST TITLE Insurance Company, Inc.

Order No.: W-31484

1. General taxes for the second half 2002, which will become definquent October 31, 2002, as follows:

Amount

\$9,119.30

Parcel no.

: 02-13-3400-0008/00

NOTE: The first half 2002 taxes paid.

2. Easement affecting the portion of said premises and for the purposes herein stated, and any incidental purposes.

For

: A well, and rights related thereto

Recorded

: January 30, 1940

Auditor's no.

: 5648

Affects

: as set forth in said instrument

- 3. Assessments, if any, for the North Dalles Irrigation District.
- 4. Easement affecting the portion of said premises and for the purposes herein stated, and any incidental purposes.

For

: Road purposes

Recorded

: Juno 15, 1941

Auditor's no.

: 13162

5. Any matters set forth on the U.S. Engineer's "Boundary Survey of the Dalles Airport" as disclosed in a deed

Recorded

: August 23, 1941

Auditor's no.

: 14196

6. Easement affecting the portion of said premises and for the purposes herein stated, and any incidental purposes.

**For** 

: Power lines and appurtenant rights

Recorded

: April 5, 1943

Auditor's no.

: 21344

In favor of

! The Pacific Power & Light Co, which deed recites:

reserving however the right to cross a corner of such land (Shown in said deed) with the power line of the Pacific Power & Light Co. and the right to maintain

tow poles thereon.

#### PACIFIC NORTHWEST TITLE Insurance Company, Inc.

Order No.: W-31484

7. Easement affecting the portion of said premises and for the purposes herein stated, and any incidental purposes.

For

: Power lines and poles and rights appurtenant thereto

Recorded

: June 5, 1944

Auditor's no.

: 25225

In favor of

: Pacific Telephone and Telegraph Company, a California corporation

Affects

: Reference is made to the record for particulars

8. A lease with certain terms, covenants, conditions and provisions set forth therein.

Lessor

: Dalles City, Oregon, a municipal corporation

Lessee

: The United States of America

Recorded

: May 5, 1945

Auditor's no.

: 27799

9. Easement affecting the portion of said premises and for the purposes herein stated, and any incidental purposes.

For:

: Public road and related rights

Recorded

: May 20, 1955

Auditor's no.

: 70323 and amended by Auditor's no. 72405

In favor of ·

: Klickitat County

Affects

: Reference is made to the record for particulars

10. Easement and right of way for electric transmission line or system, together with appurtenances and related rights in favor of Public Utility District No. 1, Klickitat County

Recorded

: September 4, 1973

Auditor's no.

: 146603

Affects

: Tract 14, 15 and 16 of the North Dalles Fruit and Garden Tracts, in Sections 27 and 28, Township 2 North, Range

13 East, W.M.

: The Southeast Quarter of the Southwest Quarter of the Southwest Quarter of the Southeast Quarter AND the Northwest Quarter of the Southeast Quarter of the Southeast Quarter of Section 27, Township 2 North, Range 13 East, W.M.

: An easement within the confines of the existing 60 foot county roadway along the North side of the property and extending to the East boundary of said property.

#### PACIFIC NORTHWEST TITLE Insurance Company, Inc.

Order No.: W-31484

11. Basement affecting the portion of said premises and for the purposes herein stated, and any incidental purposes,

For-

: Navigation easements as described in said instrument

Recorded

: March 15, 1978

Auditor's no.

: 165019

Recorded

: April 10, 1978

Auditor's no.

: 165392

Recorded

: April 17, 1978

Auditor's no.

: 165500

Recorded Auditor's no. : May 3, 1978 : 165753

Affects

: reference is made to the record for particulars.

- 12. The right to restrict or prohibit certain structures, trees, or other objects or uses as more fully set out in the instruments described in Item 13 above. Reference is made to the record for particulars.
- 13. An agreement dated May 23, 1979 between Public Utility District No. 1 of Klickitat County and The City of The Dalles, wherein PUD No. 1 agrees to subordinate certain of its easements to the City's flight path easements as described in the agreement

Recorded

: June 5, 1979

Auditor's no.

: 172108

14. Easement affecting the portion of said premises and for the purposes herein stated, and any incidental purposes.

For

: An electric distribution line to serve the Runway End

Identification Light system at the City of The Dalles

Municipal Airport

Recorded.

: October 1, 1979

Auditor's no.

: 174031

In favor of

: Public Utility District No. 1 of Klickitat County, a

municipal corporation

15. Easement affecting the portion of said premises and for the purposes herein stated, and any incidental purposes.

For

: Power lines and related rights

Recorded

1 May 26, 1982

Auditor's no.

: 186146

In favor of

: Public Utility District No. 1 of Klickitat County, a

Municipal corporation

Affects

Said easement to be 20 feet in width, 10 feet on each side of centerline as shown on the sketch attached to

said deed

Page 6

#### PACIFIC NORTHWEST TITLE Insurance Company, Inc.

Order No.: W-31484

A lease with certain terms, covenants, conditions and provisions set forth therein.

: City of The Dalles, a municipal corporation

Lessee

: Fliteline Systems, a general partnership : February 1, 1995

Recorded

Auditor's no.

: 245448

17. Matters set forth on Binding Site Plan No. 94-05

Recorded

: May 16, 1995

Auditor's no.

: 247103

- 18, Various Instruments and matters related to The Dalles Airport Condominiums.
- 19. Easement affecting the portion of said premises and for the purposes herein stated, and any incidental purposes.

~For

: Public utility easoment

Recorded

: August 8, 2002

Auditor's no.

: 1025105

In favor of

Affects

: 1025105
: Klickitat County, a municipal corporation
: A strip of land 30 feet in width, lying 15 feet on
: either side of the following described line:
: Commencing at the West 1/4 corner of Section 34;
: Township 2 North, Range 13 East, W.M.
: Thence North 30°54′52″ East 1,239.51 feet to the true Point of Beginning, said True Point of Beginning lies : on the northeasterly right-of-way line of Dalleport

County Road;
Thence North 77°10'56" East 340.53 feet;
Thence South 75°01'11" East 321.53 feet, and there
terminating, said point bears South 38°26'06" East ; 2,019,93 feet from the Northwest corner of said

.: Section 34.

20. Basement affecting the portion of said premises and for the purposes herein stated, and any incidental purposes.

For

: utility easement and related rights

Recorded

: October 25, 2001

Auditor's no.

: 1026471

In fayor of

: United Telephone Company of the Northwest, an Oregon

: corporation, d.b.ainsprintents successors and assigns Affects

: A ten fo

21. Any unrecorded leases, agreements, interest or other matters which may be disclosed by an inspection of said land or the records of the City of The Dalles in relation to the Airport Page 7

### PACIFIC NORTHWEST TITLE Insurance Company, Inc.

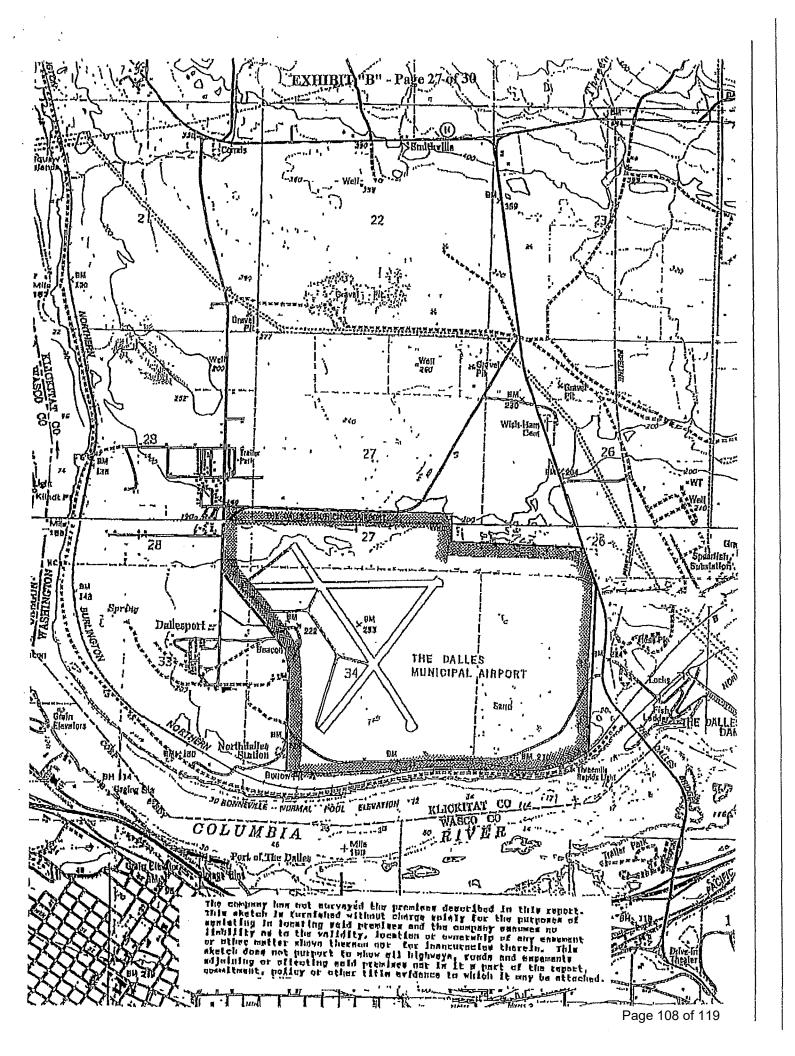
Order No.: W-31484

and its facilities.

NOTE 1: Investigation should be made to determine if there are any service, installation, maintenance or construction charges for sewer, water, garbage or electricity.

NOTE 2: In the event the transaction fails to close and this commitment is cancelled, a fee will be charged (minimum \$100.00) to comply with the state insurance code and the filed schedule of this company.

... END SCHEDULE B ...



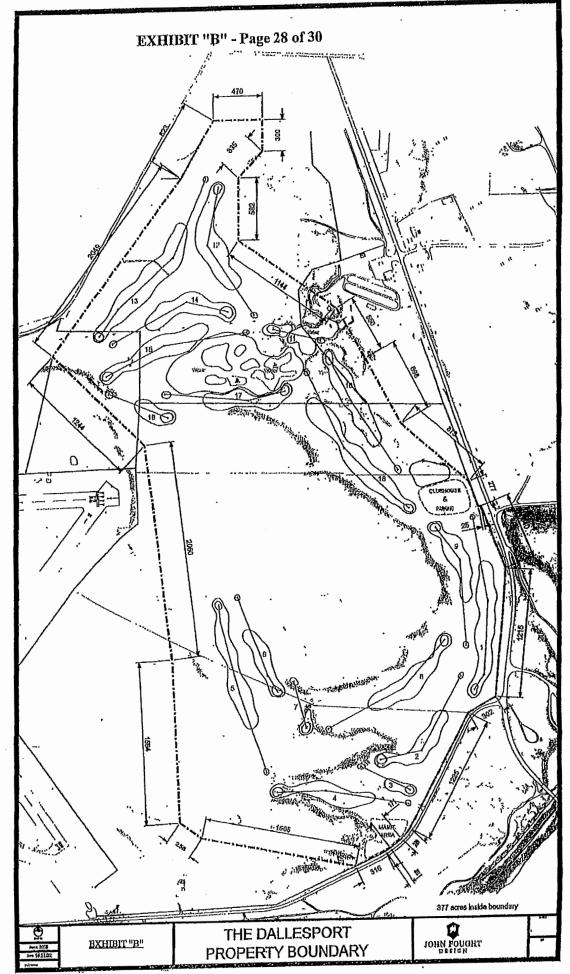


EXHIBIT "B" - Page 29 of 30

# FIRST AMENDMENT TO JOINT OPERATING AGREEMENT FOR THE COLUMBIA GORGE REGIONAL AIRPORT

WHEREAS, the City of The Dalles, a municipal corporation of the State of Oregon, hereinafter referred to as "CITY", and Klickitat County, a municipal corporation of the State of Washington, hereinafter referred to as "COUNTY", entered into a Joint Operating Agreement for the Columbia Gorge Regional Airport in Dallesport, Washington, with an effective date of November 1, 2002, hereinafter referred to as "Joint Operating Agreement"; and

WHEREAS, the Regional Airport Board has submitted a request to the CITY and

COUNTY to consider an amendment to Paragraph 8 of the Joint Operating Agreement which sets

forth the provisions concerning vacancies and qualifications for the members of the Regional

Airport Board; and

WHEREAS, the CITY and COUNTY have considered the amendment requested by the Regional Airport Board, and have voted to approve the requested amendment;

NOW, THEREFORE, in consideration of the terms and conditions set forth in this First Amendment, it is mutually agreed as follows:

Section 1. Paragraph 8 of the Joint Operating Agreement shall be revised to read as follows:

8. <u>BOARD VACANCIES AND QUALIFICATIONS</u>. The applicable appointing authority, (i.e., the City, the County, or the Board) shall fill vacancies on the Board. The City and County may establish their own procedures for making appointments to the Board, including provisions for removal of appointees to the Board, and provisions for the length of the terms to be served by the appointees. Notwithstanding the foregoing, Board positions terminate upon the termination or expiration of this Agreement. In the event of a vacancy, a new appointee shall serve only the unexpired term of the previous

Page 1 of 2 - Joint Operating Agreement, 1st Amendment

(111303 JOAIstAmd)

#### EXHIBIT "B" - Page 30 of 30

Board member. All Board members shall be residents of the City or the County, except that one of the City's appointees may reside outside the City limits in Wasco County, and the 7th member of the Board may reside in either Wasco or Klickitat County; provided, however, that the terms of any Board member who is a member of the City Council or the Board of County Commissioners shall be subject to the rules of the governing body and any term shall immediately terminate if such member no longer holds a position on the City Council or the Board of County Commissioners, as applicable. Board members may serve more than one term. In making appointments, the City and the County shall endeavor to ensure that its appointees are qualified by reason of education and/or experience in matters pertaining to aviation and industrial development.

Section 2. Except as modified by this First Amendment, the terms and conditions of the

Joint Operating Agreement shall remain in full force and effect,

•	
Dated this 15 th day of December	2003.
CITY OF THE DALLES	BOARD OF COUNTY COMMISSIONERS Klickitat County, Washington
Rolan K God.	Chairman Shayer
Nolan K. Young, City Manager	Commissioner
	Commissioner drey
ATTEST:  Julie Krueger, CMC/AAE, City Clerk	ATTEST:  By Jaurence & Jouley  Clerk of the Board
Approved as to Form:  Some Parker, City Attorney	Approved as to Form:  Prosecuting Attorney

Page 2 of 2 - Joint Operating Agreement, 1st Amendment

(111303 JOAIstAmd)

#### 2023 AIRPORT MANAGEMENT AGREEMENT

Contractor	Aviation Management Services, LLC
Consideration	\$ <u>150,000.00 per year</u>
Effective Date	[DATE]
<b>Completion Date</b>	April 30, 2026
Project/Services	Management of Columbia Gorge Regional Airport

This 2023 AIRPORT MANAGEMENT AGREEMENT (**Agreement**) is entered by the City of The Dalles, an Oregon municipal corporation (**City**) and Klickitat County, a Washington municipal corporation (**County**) (collectively, **Owners**), on one hand, and Aviation Management Services, LLC, an Oregon corporation licensed in Washington (**Contractor**), on the other, for Contractor's provision of management services to the Owners for the Columbia Gorge Regional Airport (**Airport**) located in Dallesport, Washington.

**WHEREAS**, the Parties entered that certain January 9, 2018, Airport Management Agreement (**2018 Agreement**), which contemplates the opportunity to renegotiate new terms upon the Parties' election to extend the contractual arrangement to April 30, 2026; and

**WHEREAS**, the Parties have negotiated new terms for Contractor's continued provision of management services to the Owners for the Airport pursuant to the compensation and conditions set forth herein.

**NOW, THEREFORE**, in consideration of both the provisions set forth herein and other good and valuable consideration, the receipt and sufficiency of which is here acknowledged, the Parties agree:

#### A. Contractor's Duties

1. Scope of Services. Contractor agrees, at its expense, to furnish all labor, equipment, materials, expertise, tools, supplies, insurance, licenses, reference and background data and information, including subconsultants approved under this Agreement, and provide any equipment necessary to perform all tasks described in Contractor's scope of services, attached to and made part of this Agreement as Exhibit "A" (Work), unless specifically provided otherwise by this Agreement. The Parties agree the Work shall be interpreted broadly to the Owners' benefit: Contractor agrees to perform all subordinate tasks not explicitly referenced in Exhibit "A" but necessary to fully and effectively perform those specifically listed tasks. The Parties agree Contractor's provision of the Work supports the Airport Board in its obligation to operate the Airport on behalf of the Owners consistent with the Joint Operating Agreement between the City and County, a copy of which is attached to and made part of this Agreement as Exhibit "B".

#### 2. Contractor's Insurance and Indemnity.

 a. Contractor agrees, at its expense, to carry and maintain in effect throughout the Contract Term, at least, statutory Workers' Compensation coverage,
 Comprehensive General Liability insurance in the amount of \$1,000,000 (per occurrence) and \$2,000,000 (in aggregate), and Commercial Automobile **Liability** insurance (including coverage for all owned, hired, and non-owned vehicles) with a combined single limit per occurrence of \$1,000,000.

- b. Contractor agrees to provide the Owners with certificates of insurance naming the *City of The Dalles* and *Klickitat County* as an additional insured prior to commencement of the Work performed under this Agreement and to further provide the Owner's 30 days' notice before cancelling or reducing any insurance policy contemplated by this Agreement.
- c. Contractor agrees it is solely responsible for maintaining proper and adequate Workers' Compensation coverage. If Contractor's insurance does not cover each and every subconsultant, certificates of insurance issued on policies covering each and every subconsultant shall be filed with the Owners prior to commencement of the Work, including any subcontract operations. Contractor shall provide the Owners with evidence it is either a self-insured employer or a carrier-insured employer for Workers' Compensation pursuant to ORS Chapter 656 prior to commencing any Work.
- d. Contractor agrees to indemnify, defend, and hold harmless the Owners, its officers, agents, and employees against all liability, loss, and costs arising from actions, suits, claims, or demands, including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries caused by the Owners' sole negligence. Contractor agrees damages arising from Contractor's (including Contractor's officers, agents, employees, and subconsultants) acts or omissions in the performance of this Agreement (including Contractor's sole or gross negligence) are Contractor's sole responsibility and Contractor agrees to indemnify, defend, and hold harmless the Owners for such damages, costs, and defense costs.
- e. If a court of competent jurisdiction determines this Agreement is subject to RCW 4.24.115 or comparative negligence, and in the event of liability for damages arising out of bodily injury to person or damages to property causing or resulting from Contractor's and the Owners' (or their officers', officials', employees', or volunteers') concurrent negligence, the Parties agree Contractor's liability under this Agreement shall be limited to the extent of Contractor's negligence; Contractor specifically and expressly understands and agrees that indemnification constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of that indemnification. The Parties agree they mutually negotiated Contractor's waiver. The Parties agree the provisions of this subsection shall survive the expiration or termination of this Agreement.

#### 3. Payments.

a. Contractor agrees to promptly pay as due all persons supplying labor or materials for the prosecution of services or Work arising from this Agreement: if Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor (including subconsultants), the Owners may pay such a claim and charge the amount of its payment against funds actually or expectedly due from Contractor. The Parties agree payment of any

- claim in this manner shall not relieve Contractor or its surety from any obligations with respect to any unpaid claims.
- b. Contractor agrees to pay all employees at least time and half pay for all overtime worked in excess of 40 hours in any one work week, except for excluded individuals pursuant to ORS 653.010 to 653.261 or 29 U.S.C. 201 to 209.
- c. Contractor agrees to promptly pay as due all persons, co-partnerships, associations, or corporations furnishing medical, surgical, hospital care, or other needed care and attention incident to sickness or injury to Contractor's employees, or all sums which Contractor agrees to pay for such services, and all moneys and sums which Contractor collected or deducted from the wages of its employees pursuant to any law or contract for the purpose of providing or paying for such service.
- d. Contractor shall not permit any lien or claim to be filed or prosecuted against the Owners on account of any Work (including labor or materials) furnished under this Agreement.
- e. Contractor agrees to pay to the Oregon Department of Revenue all sums withheld from its employees pursuant to ORS 316.167.

#### 4. Default.

- a. The Parties agree any of the following constitute Contractor's default of the terms and provisions of this Agreement:
  - Contractor's failure to perform any of the functions or duties described in or by the Work or any other function or duty assigned by the City or County in writing and delivered to Contractor;
  - ii. Contractor's insolvency and adjudication as bankrupt or initiation of receivership proceedings if the bankruptcy or proceedings are not terminated in Contractor's favor or the insolvency continues for sixty (60) days thereafter:
  - iii. Contractor's assignment for the benefit of creditors;
  - iv. Contractor's failure to comply with any of the City's or County's internal control policies, including but not limited to allowing occupancy of Airport premises without prior execution of a signed lease agreement (excepting overnight stays) and provision of lease agreements to the City and County within thirty (30) days of their execution;
  - v. Contractor's (including its employees', officers', or agents') commission of any unlawful act, including but not limited to fraud or theft, which shall be grounds for immediate termination of this Agreement; and
  - vi. Contractor's failure to perform any other provision of this Agreement if the failure to perform is not cured within thirty (30) days after written notice of

- non-performance has been given to Contractor and it fails to make measurable efforts in good faith to cure the default.
- b. If the Owners believe Contractor has failed to properly perform any of the Contractor's obligations under this Agreement, and Contractor is in default, the Owners shall provide Contractor thirty (30) days' written notice of default specifying the nature of the default with reasonable particularity. If Contractor's default is of such a nature it cannot be completely remedied within the 30-day period, the Parties agree Contractor shall be deemed to have remedied the default if Contractor begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

#### B. Owners' Duties

#### 1. Compensation.

- a. The Owners agree, as part of the Airport's operational costs, to yearly compensate Contractor for the Work in an amount not to exceed *one hundred fifty thousand dollars and no cents* (\$150,000.00) at the rate of \$12,500.00 per month; provided, however, the Owners agree to increase Contractor's compensation by a flat *two and three-fifths* (2.6%) *percent* upon each anniversary of the Effective Date during the term to reflect a rolling average of annual changes to the Consumer Price Index as measured by the United States Department of Labor.
- b. The Owners agrees to make payment upon Contractor's completion of the Work and delivery of an invoice detailing the Work, subject to the Owners' approval and no more frequently than monthly. Payment shall be made only for Work actually completed as of the invoice date.
- c. Contractor agrees the Owners' payment of an invoice releases the Owners from any further obligation to compensate Contractor for the Work (including expenses) incurred as of the invoice date. The Parties agree payment shall not be considered acceptance or approval of the Work or waiver of any defects therein.
- d. The Owners certify sufficient funds are available and authorized for expenditure to finance the costs of this Agreement during the current fiscal year. The Parties agree appropriations for future fiscal years are subject to budget approval by the City's Council and the County's Board of County Commissioners.
- 2. <u>Supplies</u>. The Owners agree to provide and pay for, as allowed by budget constraints, sufficient office space and office equipment, including but not limited to a desk, work table, conference table and chairs, locking file cabinets, fax machines, telephone with digital voicemail, internet connection, copy machine, aviation radios, and other reasonably similar office supplies (all of which shall be located on the Airport) to facilitate Contractor's performance of the Work. The Owners agree to establish a budget with Contractor's input to pay for reasonable expenses incurred

by Contractor in traveling to activities directly related to Contractor's performance of the Work and this Agreement.

#### 3. Owners' Insurance and Indemnity.

- a. The Owners agree to include Contractor as an additional named insured under the insurance policy providing liability coverage for the Airport operations.
- b. In accordance with the Oregon Tort Claims Act, Oregon Constitution, and applicable Washington law, the Owners agree to indemnify, defend, and hold harmless Contractor (including its agents, officers, and employees) against: (a) all suits or claims based on any injury to persons or property resulting from the Owners' (including their agents', officers', and employees') negligent acts or willful conduct; and (b) suits or claims arising from or related to Contractor's action or decision duly approved or ratified by the Airport Board, City, or County.
- c. If a court of competent jurisdiction determines this Agreement is subject to RCW 4.24.115 or comparative negligence, and in the event of liability for damages arising out of bodily injury to person or damages to property causing or resulting from Contractor's and the Owners' (or their officers', officials', employees', or volunteers') concurrent negligence, the Parties agree Contractor's liability under this Agreement shall be limited to the extent of Contractor's negligence; Contractor specifically and expressly understands and agrees that indemnification constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of that indemnification. The Parties agree they mutually negotiated Contractor's waiver. The Parties agree the provisions of this subsection shall survive the expiration or termination of this Agreement.

#### C. General Conditions

1. <u>Time</u>. The Parties agree time is of the essence to this Agreement's performance: Contractor's prosecution of the Work shall begin without undue delay on the Effective Date and shall be completed on the Completion Date.

#### 2. Term and Termination.

- a. This Agreement's term expires on the Completion Date unless sooner terminated or modified pursuant to this Agreement.
- b. The Parties agree the Owners may terminate this Agreement for cause for Contractor's failure to cure a default upon thirty (30) days' written notice of default. The Parties agree the Owners may terminate this Agreement with ninety (90) days' written notice of termination and Contractor may terminate this Agreement with ninety (90) days' written notice of termination, both without penalty. The Owners reserve the right to allow Contractor to terminate this Agreement upon less than ninety (90) days' written notice. The Owners agree to compensate Contractor for all approved services rendered prorated to the date the City notices its intent to terminate.

- c. After receiving notice of termination, and except as otherwise directed by the Owners, Contractor agrees to:
  - i. stop all prosecution of the Work on the date and to the extent specified in the notice of termination:
  - ii. place no further orders or subcontracts for materials, services, or facilities except as necessary to complete such portion of the Work not terminated;
  - iii. assign to the City and County (to the extent directed by the Owners) all of Contractor's rights, titles, and interest arising from this Agreement (including its amendments and subcontracts) and the Owners shall have the right to settle or pay any and all claims arising from the same;
  - iv. settle all outstanding liabilities and claims arising from any orders or subcontracts approved or ratified by the Owners to the extent the Owners may require approval or ratification;
  - v. transfer to and deliver as directed by the Owners any property which, if the Agreement had been completed, would have been required to be furnished to the Owners:
  - vi. complete performance of such part of the Work which has not been terminated by the Owners; and
  - vii. take such action as may be necessary or as the Owners may direct for the protection and preservation of property relating to the Agreement and in Contractor's possession and in which the Owners have or may acquire an interest.
- d. <u>Full Integration/Modification</u>. This Agreement contains the Parties' entire understanding and intent and supersedes all prior negotiations, representations, or other written or oral agreements on this matter, including the January 9, 2018, Airport Management Agreement. The Parties agree this Agreement may only be modified by a written instrument duly executed by the Parties.
- e. <a href="Independent Contractor">Independent Contractor</a>. Independent Contractor</a>. The Parties agree Contractor is an *independent contractor* as defined by ORS 670.600(2) and as interpreted by regulations promulgated by the Oregon Bureau of Labor and Industries. Neither the terms of this Agreement nor the course of its performance by the Parties shall be construed as implicating an employer-employee relationship. Contractor expressly warrants its exclusive agency free from the Owner's direction and control over the means and manner of completing the Work. The Parties agree the Owner's sole interest and responsibility in this Agreement is to assure the Work is performed and rendered in a competent, efficient, and satisfactory manner. Contractor agrees it has no and will not have claims under this Agreement or otherwise against the City or County for vacation pay, sick leave, retirement benefits, Social Security benefits, Workers' Compensation benefits, or unemployment or other employee benefits of any kind. The Parties agree nothing in this Agreement is intended to prevent

Contractor from performing other work or from receiving additional compensation for work performed for the City, the County, or any other party relating to the Airport; provided, however, Contractor's performance of such other work does not interfere with Contractor's performance of the Work or its obligations under this Agreement.

- f. <u>Assignment/Delegation</u>. The Parties agree no Party shall assign or transfer an interest or duty under this Agreement without the other Party's written consent and any attempted assignment or delegation without written consent shall be invalid. The Parties agree Contractor's membership will not change unless consented to by the Owners, which consent shall not be unreasonably withheld.
- g. <u>Subconsultants</u>. Contractor agrees to provide the Owners with a list of proposed subconsultants before awarding any subcontract connected with the Work or this Agreement and shall not retain any subconsultant the Owners reasonably object to as incompetent or unfit. Contractor agrees it is as fully responsible to the Owners for its subconsultants' and employees' (whether directly or indirectly employed) negligent acts and omissions as it is for its employees' negligent acts and omissions. The Parties agree nothing in this Agreement is intended to or shall create any contractual privity between the Owners and any subconsultant.
- h. <u>Enforceability</u>. The Parties agree all disputes connected with this Agreement or its performance shall be filed and heard in a court of competent jurisdiction in either Wasco County, Oregon, or Klickitat County, Washington, and any resolutions shall be construed respectively under the laws of the State of Oregon or the State of Washington. If any provision of this Agreement is held invalid and unenforceable, the remaining provisions shall be valid and binding upon the Parties.
- i. <u>Waiver</u>. The Parties agree a Party's failure to insist upon strict adherence to a provision of this Agreement on any occasion shall not be considered a waiver of the Party's rights or deprive the Party of the right to thereafter insist upon strict adherence to the provision or any other provision of this Agreement.
- j. <u>Notices</u>. All notices required or permitted to be given under this Agreement shall be deemed given and received two (2) days after deposit in the United States Mail, certified or registered form, postage prepaid, return receipt requested, and addressed:

To the City: City Manager

City of The Dalles 313 Court Street The Dalles, OR 97058

To the County: Chairman

Klickitat County

**Board of County Commissioners** 

115 W. Court Street

Mail Stop 201

Goldendale, WA 98620

*To Contractor*: Jeff Renard

Aviation Management Services, LLC

## P.O. Box 1503 The Dalles, OR 97058

AGREEMENT this day of	2023.	
CITY OF THE DALLES, an Oregon municipal corporation corporation	BOARD OF COUNTY COMMISSIONERS Klickitat County, a Washington municipal	
Matthew B. Klebes, City Manager	Chairman	
	Commissioner	
	Commissioner	
ATTEST:	ATTEST:	
Izetta Grossman, CMC, City Clerk	Lee Snell, Clerk of the Board	
Approved as to form:	Approved as to form:	
Jonathan Kara, City Attorney	David Quesnel, Prosecuting Attorney	
Date	Date	
AVIATION MANAGEMENT SERVICES	S, LLC	
 Jeff Renard, Owner	Date	