

KITTITAS COUNTY
DEPARTMENT OF PUBLIC WORKS

AGENDA STAFF REPORT

AGENDA DATE: November 16, 2010

ACTION REQUESTED: Requesting the Board of County Commissioners Approve the Resolution to Award the bids for County Owned Airport Property for Agricultural Purposes.

BACKGROUND: There are currently seven (7) tracts, approximately 800 acres of agricultural airport property under lease. The current lease terms are ending November 30, 2010. The lease process is a sealed bid process and the lessee's are bidding on a ten year lease.
On August 25, 2010, twelve bids were received and opened in the Public Works Department. Based upon the bids received Public Works Recommends the following bids be awarded with the approval of the Agricultural Lease documents:

Dennis Aberle/Jay Aberle – Tract #1	\$1,181.00
Blazing Tree Cattle Co. – Tract #2	\$11,127.00
Blazing Tree Cattle Co. - Tract #3	\$4,710.00
Victor Strand – Tract #4	\$1,050.75
Victor Strand - Tract #5 & #6	\$18,808.25
Victor Strand - Tract #7	\$1,608.00

INTERACTION: Public Works; Neil Caulkins

RECOMMENDATION: Move to Approve the Resolution to Award the bids for County Owned Airport Property for Agricultural Purposes and Approve & Sign Agricultural Lease documents.

HANDLING: Return one original to Public Works

ATTACHMENTS: Resolution; Bid Tab; Aberle Lease; Blazing Tree Cattle Co. Lease; Victor Strand Lease

LEAD STAFF: Kelly Carlson
Airport Manager

AGRICULTURAL L E A S E

THIS LEASE is made and dated this 1st day of December, 2010, by and between KITTITAS COUNTY, a municipal corporation in the State of Washington, hereinafter referred to as the LESSOR, and BLAZING TREE CATTLE CO., hereinafter referred to as the LESSEE.

The LESSOR herewith agrees to let unto the LESSEE, and the LESSEE herewith agrees to lease from the LESSOR, the following described real property situated at the Kittitas County Airport (Bowers Field), Kittitas County, Washington, to-wit:

TRACT 2 – 270 ACRES
TRACT 3 – 92 ACRES

- 1) **TERM**: That the term of this lease shall be for TEN (10) years, but will require re negotiation at the end of five (5) years, and will commence on the 1st day of December, 2010, and shall terminate on the 30th day of November, 2020.
- 2) **RENT**: That as rental for said premises the LESSOR shall receive and the LESSEE shall pay for each lease year plus all applicable taxes, assessments and utilities, payable as follows:

TRACT 2 -

\$ 11,127.00, is due on the execution of this lease.

\$ 11,270.00 is due on or before the 1st day of December each year.

TRACT 3 –

\$ 4,710.00 is due on the execution of this lease

\$ 4,710.00 is due on or before the 1st day of December each year.

- 3) **ADJUSTMENT OF RENTAL**: Pursuant to RCW 36.34.180 after the fifth year, the Lessor shall have the right to readjust the rent on or before November 30th of the fifth year of this lease; provided, however that any increase shall NOT EXCEED THE CUMULATIVE EFFECT OF THE CPI INDEX OVER THE PREVIOUS FIVE YEARS.

If the Lessee does not agree with the proposed rental rates for the subsequent five-year term, the Lessee may request arbitration. If the Lessee elects to arbitrate, the Lessee shall select one arbitrator and the Lessor shall select one arbitrator and the two so chosen shall select a third arbitrator. The arbitrators shall have the authority to increase the rent or continue the previous rental rate, and both parties shall be bound by the decision of the arbitrators. The cost of arbitration shall be borne by the Lessee.

It is understood by Tenant that this lease is not for commercial purposes and that the lease rate is for a ground lease for Grazing and/or Agricultural production only.

- 4) **LEASE TERMINATION:** It is understood and agreed that the real property, which is the subject matter of this lease, is presently zoned Agricultural – "Ag-20" – under the Kittitas County Zoning Code. It is also understood that Kittitas County is presently evaluating use of the subject land whether within the present or any revised zoning code and that such evaluation may determine a higher and better use for subject real property.

In recognition of these facts, LESSEE and LESSOR agree that LESSOR may, at LESSOR'S sole option, modify the terms of this lease, in whole or in part, including but not limited to modifying the area of land covered by this lease, the rental due, the term of duration of this lease and/or any other term or condition of this lease, including canceling the unexpired portion of this lease and re-letting the property to another tenant, all as LESSOR shall in LESSOR'S sole discretion deem to be in the best interest of Kittitas County.

In the event the LESSOR shall elect to modify or terminate this lease, the LESSOR shall do so only upon ninety (90) days written notice, notifying LESSEE, and Lessee's address of record, that the lease to which this applied is being so modified or terminated.

Upon receipt of such notification, and in the event that the notification specified modification of lease short of termination, LESSEE shall have thirty (30) days in which to notify Kittitas County of LESSEE'S intention to continue the lease as modified or of LESSEE'S intention to treat the lease as terminated.

In the event that LESSEE elected to treat the lease as terminated, all rents shall be pro-rated to the date LESSEE shall have restored the premises to the LESSOR in accordance with the terms of the lease agreement governing LESSEE'S duties to restore the premises to LESSOR upon expiration of the lease term.

It is further agreed that either such modification or termination of this lease nor any subsequent re-letting of the premises, in whole or in part, shall give rise to any cause of action for damages or any other form or relief by LESSEE against LESSOR or any successor lessee.

In the event of such modification or termination, LESSEE understands that other than a refund of any unearned rent pro-rated based on years of lease to the date LESSEE has restored the premises to LESSOR, LESSEE shall have no claim for compensation as occasioned by said modification or termination.

- 5) **UTILITIES:** The LESSEE shall pay all utility services supplied to the premises.

- 6) **KRD WATER ASSESSMENTS:** The LESSEE shall pay all KRD water assessments for said premises. The LESSEE agrees that all KRD water that is designated to the airport will stay assigned to airport property. The LESSOR will submit BI-yearly billings to be included with the rent for KRD assessments. Copies of assessments for said premises will be included with billing.
- 7) **USE OF PREMISES:** It is understood that the LESSEE shall utilize the premises for the following purposes, to-wit:
 "Grazing and/or Agricultural Production Only". The premises shall be used for no other purpose without written consent of the LESSOR.
- 8) **LEASEHOLD IMPROVEMENTS:** All existing improvements currently on the lease premises belong to Kittitas County and are not to be removed. No improvements shall be placed on the leased premises without the prior consent of the County. **If written authorization is received from the LESSOR, the LESSEE shall submit a written estimated cost of improvement, and upon completion of improvement all costs/receipts of said improvements to the County for record. The depreciation life of the improvement will be established at this time.**
- In the event of termination of lease or early termination of lease, all improvements placed on the premises by the LESSEE shall belong to the County, **EXCEPT for those authorized by written consent from the County.**
- In the event the improvements have been authorized in writing by the County, and the LESSEE is not issued a new lease at expiration, or the LESSOR chooses to terminate said lease, the LESSOR will determine a depreciated value of authorized improvements and purchase said authorized improvements from the LESSEE.
- 9) **SUBLEASE ASSIGNMENT:** The LESSEE herein shall not assign this lease nor any portion thereof without the written consent of the LESSOR.
- 10) **HUNTING:** Hunting or discharging of any firearms will not be permitted on the leased premises.
- 11) **WASTE:** The LESSEE shall not commit waste of the leased property.
- 12) **AIRPORT TRAFFIC:** It is understood and agreed that the LESSEE'S use of the leased premises shall not in any manner interfere or restrict the use of aircraft landings, take-offs, or storage of aircraft as the airport is presently constructed. LESSEE shall comply with all rules and

regulations of the Federal Aviation Administration and the Minimum Standards for Aeronautical Activities of Kittitas County.

- 13) **WAIVER:** No assent, express or implied, by LESSOR to any breach of any of LESSEE'S covenants, agreements, conditions or terms hereof shall be deemed or taken to be a waiver of any succeeding breach of any covenant, agreement, condition or term hereof.
- 14) **INSPECTION:** At all times during the term of this lease, LESSOR shall have the right to enter into and upon the demised premises during reasonable business hours for the purpose of examining and inspecting the same and determining whether LESSEE shall have complied with all of its obligations hereunder in respect to the care and maintenance of the premises and all other terms and conditions hereof.
- 15) **FENCES AND IRRIGATION DITCHES:** Irrigation ditches shall not flow into the aeronautical area and useable taxiways, or be rerouted without prior written approval from the Department of Public Works.
It shall be the LESSEE'S responsibility to inspect and make any necessary repairs to the existing fences prior to allowing livestock to graze within the above-described tract. Fencing must be maintained to the extent that it will prohibit livestock from entering the aeronautical area.
- 16) **ACCESS TO AIRPORT PROPERTY:** Access to the tracts shall be at designated locations only. All access gates shall remain closed and locked at all times during the term of this lease. The LESSEE shall affix his/her own lock next to that of the LESSOR'S.
- 17) **WEED CONTROL:** LESSEE shall comply with all the regulations of the weed district within which said leased property is included and shall use all reasonable effort to eradicate and prevent the growth of noxious weeds.
LESSEE shall control weeds on tilled lands by cultivation, clipping, spraying or burning as recommended by the Kittitas County Agricultural Extension Agent. LESSEE shall control noxious weeds on the premises as directed by the Kittitas County Noxious Weed Board and/or Department of Public Works and shall be responsible for reimbursement to said authority and/or Department of Public Works in the event that they undertake noxious weed control measures.
- 18) **INSURANCE:** The LESSEE shall provide proof of coverage thereof naming Kittitas County as co-insured (K.C.C. 19.04.190 (E)) as follows:

NOT LESS THAN:

\$1,000,000.00 General Liability Coverage

- 19) **PROPERTY DAMAGE AND BODILY INJURY:** The LESSEE hereby indemnifies and agrees to hold Kittitas County harmless from any and all claims or demands of whatsoever nature arising out of loss, damage or injury to persons or property resulting from LESSEE'S use or occupancy of the leased premises and areas adjacent thereto, or caused by the acts or neglect of the LESSEE, its agents or representatives.
- 20) **PRESERVATION OF MARKERS:** Any legal land subdivision survey corners, reference points of monuments are to be preserved. If such are destroyed or disturbed, the LESSEE shall be required to re-establish the destroyed or disturbed monuments by a licensed land surveyor in accordance with the U.S. General Land Office standards at his own expense. Corners and/or reference points or monuments which are disturbed or destroyed in the process of carrying out the operation allowed by this lease must be adequately referenced and/or replaced in accordance with RCW 58.24.040. Such references must be approved by the State prior to removal of corners, reference points, or monuments.
- 21) **MILITARY EXERCISES:** From time to time the military conducts exercises at the Kittitas County Airport. The LESSEE will be requested to enter into a sublease agreement to authorize the use of the tracts for military purposes only. Reimbursement for temporary use will be negotiated between the U.S. Government, Kittitas County, and the LESSEE.
- 22) **BANKRUPTCY:** It is further agreed and understood that in case of the insolvency or bankruptcy of the LESSEE or any assignment for the benefit of creditors or the appointment of a receiver for the LESSEE, this lease shall be immediately forfeited and shall be of no further force and effect, and that the Trustee in Bankruptcy, Receiver or Assignee for the benefit of creditors shall not have any rights whatsoever in the demised premises.
- 23) **RIGHTS OF U.S. GOVERNMENT:** It is understood and agreed that this lease shall be subject to all prior covenants and agreements, which grant to the United States Government rights and privileges in the event of war or national emergency.
- 24) **DEFAULT.** In the event that the Lessee shall violate this lease, or any of its conditions or terms as herein stated, the Lessor may terminate this lease by giving thirty (30) days written notice of the conditions or terms being violated and if said violations are not corrected within the thirty-day period, the lease may be canceled, and the County shall be entitled to peaceably retake

possession of the premises, provided the Lessee shall have the right to remove improvements as herein provided.

NOTICES: Any notice given by one party to the other in connection with this agreement shall be in writing and shall be sent by certified or registered mail, return receipt requested, as follows:

1. If to Lessor, addressed to: Kittitas County Department of Public Works, 411 N. Ruby, Suite #1, Ellensburg, WA 98926, Attention: Airport Manager.
2. If to Lessee, addressed to: Blazing Tree Cattle Co., P.O. Box 1359, Ellensburg, WA 98926.

Notice shall be deemed to have been received three days after having been sent as above-described whether actually received or not.

- 25) **JURISDICTION & VENUE:** Avenue for any action to enforce lawsuit will be held in either Kittitas County or Yakima County.

IN WITNESS WHEREOF, LESSOR AND LESSEE have signed their names and affixed their seals the day and year first above written.

LESSEE:

Blazing Tree Cattle Co., Lessee

LESSOR:

BOARD OF COUNTY COMMISSIONERS

Mark McClain, Chair

Paul Jewell, Vice Chair

Alan Crankovich, Commissioner

ATTEST:

Clerk of the Board

Approved as to Form:

Neil Caulkins, Deputy Prosecutor
WSBA# _____

AGRICULTURAL L E A S E

THIS LEASE is made and dated this 1st day of December, 2010, by and between KITTITAS COUNTY, a municipal corporation in the State of Washington, hereinafter referred to as the LESSOR, and VICTOR STRAND, hereinafter referred to as the LESSEE.

The LESSOR herewith agrees to let unto the LESSEE, and the LESSEE herewith agrees to lease from the LESSOR, the following described real property situated at the Kittitas County Airport (Bowers Field), Kittitas County, Washington, to-wit:

TRACT #4 – 24 ACRES
TRACT #5 & #6 – 342 ACRES
TRACT #7 – 39 ACRES

- 1) **TERM**: That the term of this lease shall be for TEN (10) years, but will require re negotiation at the end of five (5) years, and will commence on the 1st day of December, 2010, and shall terminate on the 30th day of November, 2020.
- 2) **RENT**: That as rental for said premises the LESSOR shall receive and the LESSEE shall pay for each lease year plus all applicable taxes, assessments and utilities, payable as follows:

TRACT 4

\$1,050.75 due on the execution of this lease.

\$1,050.75 due on or before the 1st day of December each year.

TRACT 5 & 6:

\$18,808.25 due on the execution of this lease

\$18,808.25 due on or before the 1st day of December each year.

TRACT 7:

\$1,608.00 due on the execution of this lease.

\$1,608.00 due on or before the 1st day of December each year.

- 3) **ADJUSTMENT OF RENTAL**: Pursuant to RCW 36.34.180 after the fifth year, the Lessor shall have the right to readjust the rent on or before November 30th of the fifth year of this lease; provided, however that any increase shall NOT EXCEED THE CUMULATIVE EFFECT OF THE CPI INDEX OVER THE PREVIOUS FIVE YEARS.

If the Lessee does not agree with the proposed rental rates for the subsequent five-year term, the Lessee may request arbitration. If the Lessee elects to arbitrate, the Lessee shall select one arbitrator and the Lessor shall select one arbitrator and the two so chosen shall select a third arbitrator. The arbitrators shall have the authority to increase the rent or continue the previous rental

rate, and both parties shall be bound by the decision of the arbitrators. The cost of arbitration shall be borne by the Lessee.

It is understood by Tenant that this lease is not for commercial purposes and that the lease rate is for a ground lease for Grazing and/or Agricultural production only.

- 4) **LEASE TERMINATION:** It is understood and agreed that the real property, which is the subject matter of this lease, is presently zoned Agricultural – “Ag-20” – under the Kittitas County Zoning Code. It is also understood that Kittitas County is presently evaluating use of the subject land whether within the present or any revised zoning code and that such evaluation may determine a higher and better use for subject real property.

In recognition of these facts, LESSEE and LESSOR agree that LESSOR may, at LESSOR'S sole option, modify the terms of this lease, in whole or in part, including but not limited to modifying the area of land covered by this lease, the rental due, the term of duration of this lease and/or any other term or condition of this lease, including canceling the unexpired portion of this lease and re-letting the property to another tenant, all as LESSOR shall in LESSOR'S sole discretion deem to be in the best interest of Kittitas County.

In the event the LESSOR shall elect to modify or terminate this lease, the LESSOR shall do so only upon ninety (90) days written notice, notifying LESSEE, and Lessee's address of record, that the lease to which this applied is being so modified or terminated.

Upon receipt of such notification, and in the event that the notification specified modification of lease short of termination, LESSEE shall have thirty (30) days in which to notify Kittitas County of LESSEE'S intention to continue the lease as modified or of LESSEE'S intention to treat the lease as terminated.

In the event that LESSEE elected to treat the lease as terminated, all rents shall be pro-rated to the date LESSEE shall have restored the premises to the LESSOR in accordance with the terms of the lease agreement governing LESSEE'S duties to restore the premises to LESSOR upon expiration of the lease term.

It is further agreed that either such modification or termination of this lease nor any subsequent re-letting of the premises, in whole or in part, shall give rise to any cause of action for damages or any other form or relief by LESSEE against LESSOR or any successor lessee.

In the event of such modification or termination, LESSEE understands that other than a refund of any unearned rent pro-rated based on years of lease to the date LESSEE has restored the

premises to LESSOR, LESSEE shall have no claim for compensation as occasioned by said modification or termination.

- 5) **UTILITIES:** The LESSEE shall pay all utility services supplied to the premises.
- 6) **KRD WATER ASSESSMENTS:** The LESSEE shall pay all KRD water assessments for said premises. The LESSEE agrees that all KRD water that is designated to the airport will stay assigned to airport property. The LESSOR will submit BI-yearly billings to be included with the rent for KRD assessments. Copies of assessments for said premises will be included with billing.
- 7) **USE OF PREMISES:** It is understood that the LESSEE shall utilize the premises for the following purposes, to-wit:

"Grazing and/or Agricultural Production Only". The premises shall be used for no other purpose without written consent of the LESSOR.
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In the event of termination of lease or early termination of lease, all improvements placed on the premises by the LESSEE shall belong to the County, **EXCEPT for those authorized by written consent from the County.**

In the event the improvements have been authorized in writing by the County, and the LESSEE is not issued a new lease at expiration, or the LESSOR chooses to terminate said lease, the LESSOR will determine a depreciated value of authorized improvements and purchase said authorized improvements from the LESSEE.
- 9) **SUBLEASE ASSIGNMENT:** The LESSEE herein shall not assign this lease nor any portion thereof without the written consent of the LESSOR.
- 10) **HUNTING:** Hunting or discharging of any firearms will not be permitted on the leased premises.
- 11) **WASTE:** The LESSEE shall not commit waste of the leased property.

- 12) **AIRPORT TRAFFIC:** It is understood and agreed that the LESSEE'S use of the leased premises shall not in any manner interfere or restrict the use of aircraft landings, take-offs, or storage of aircraft as the airport is presently constructed. LESSEE shall comply with all rules and regulations of the Federal Aviation Administration and the Minimum Standards for Aeronautical Activities of Kittitas County.
- 13) **WAIVER:** No assent, express or implied, by LESSOR to any breach of any of LESSEE'S covenants, agreements, conditions or terms hereof shall be deemed or taken to be a waiver of any succeeding breach of any covenant, agreement, condition or term hereof.
- 14) **INSPECTION:** At all times during the term of this lease, LESSOR shall have the right to enter into and upon the demised premises during reasonable business hours for the purpose of examining and inspecting the same and determining whether LESSEE shall have complied with all of its obligations hereunder in respect to the care and maintenance of the premises and all other terms and conditions hereof.
- 15) **FENCES AND IRRIGATION DITCHES:** Irrigation ditches shall not flow into the aeronautical area and useable taxiways, or be rerouted without prior written approval from the Department of Public Works.
It shall be the LESSEE'S responsibility to inspect and make any necessary repairs to the existing fences prior to allowing livestock to graze within the above-described tract. Fencing must be maintained to the extent that it will prohibit livestock from entering the aeronautical area.
- 16) **ACCESS TO AIRPORT PROPERTY:** Access to the tracts shall be at designated locations only. All access gates shall remain closed and locked at all times during the term of this lease. The LESSEE shall affix his/her own lock next to that of the LESSOR'S.
- 17) **WEED CONTROL:** LESSEE shall comply with all the regulations of the weed district within which said leased property is included and shall use all reasonable effort to eradicate and prevent the growth of noxious weeds.
LESSEE shall control weeds on tilled lands by cultivation, clipping, spraying or burning as recommended by the Kittitas County Agricultural Extension Agent. LESSEE shall control noxious weeds on the premises as directed by the Kittitas County Noxious Weed Board and/or Department of Public Works and shall be responsible for reimbursement to said authority and/or Department of Public Works in the event that they undertake noxious weed control measures.

- 18) **INSURANCE:** The LESSEE shall provide proof of coverage thereof naming Kittitas County as co-insured (K.C.C. 19.04.190 (E)) as follows:

NOT LESS THAN:

\$1,000,000.00 General Liability Coverage

- 19) **PROPERTY DAMAGE AND BODILY INJURY:** The LESSEE hereby indemnifies and agrees to hold Kittitas County harmless from any and all claims or demands of whatsoever nature arising out of loss, damage or injury to persons or property resulting from LESSEE'S use or occupancy of the leased premises and areas adjacent thereto, or caused by the acts or neglect of the LESSEE, its agents or representatives.
- 20) **PRESERVATION OF MARKERS:** Any legal land subdivision survey corners, reference points of monuments are to be preserved. If such are destroyed or disturbed, the LESSEE shall be required to re-establish the destroyed or disturbed monuments by a licensed land surveyor in accordance with the U.S. General Land Office standards at his own expense. Corners and/or reference points or monuments which are disturbed or destroyed in the process of carrying out the operation allowed by this lease must be adequately referenced and/or replaced in accordance with RCW 58.24.040. Such references must be approved by the State prior to removal of corners, reference points, or monuments.
- 21) **MILITARY EXERCISES:** From time to time the military conducts exercises at the Kittitas County Airport. The LESSEE will be requested to enter into a sublease agreement to authorize the use of the tracts for military purposes only. Reimbursement for temporary use will be negotiated between the U.S. Government, Kittitas County, and the LESSEE.
- 22) **BANKRUPTCY:** It is further agreed and understood that in case of the insolvency or bankruptcy of the LESSEE or any assignment for the benefit of creditors of the appointment of a receiver for the LESSEE, this lease shall be immediately forfeited and shall be of no further force and effect, and that the Trustee in Bankruptcy, Receiver or Assignee for the benefit of creditors shall not have any rights whatsoever in the demised premises.
- 23) **RIGHTS OF U.S. GOVERNMENT:** It is understood and agreed that this lease shall be subject to all prior covenants and agreements, which grant to the United States Government rights and privileges in the event of war or national emergency.

- 24) **DEFAULT.** In the event that the Lessee shall violate this lease, or any of its conditions or terms as herein stated, the Lessor may terminate this lease by giving thirty (30) days written notice of the conditions or terms being violated and if said violations are not corrected within the thirty-day period, the lease may be canceled, and the County shall be entitled to peaceably retake possession of the premises, provided the Lessee shall have the right to remove improvements as herein provided.

NOTICES: Any notice given by one party to the other in connection with this agreement shall be in writing and shall be sent by certified or registered mail, return receipt requested, as follows:

1. If to Lessor, addressed to: Kittitas County Department of Public Works, 411 N. Ruby, Suite #1, Ellensburg, WA 98926, Attention: Airport Manager.
2. If to Lessee, addressed to: Victor Strand, 4140 Manastash Road, Ellensburg, WA 98926

Notice shall be deemed to have been received three days after having been sent as above-described whether actually received or not.

- 25) **JURISDICTION & VENUE:** Avenue for any action to enforce lawsuit will be held in either Kittitas County or Yakima County.

IN WITNESS WHEREOF, LESSOR AND LESSEE have signed their names and affixed their seals the day and year first above written.

LESSEE:



Victor Strand, Lessee

LESSOR:

BOARD OF COUNTY COMMISSIONERS

Mark McClain, Chair

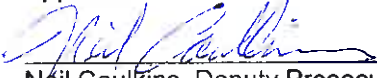
Paul Jewell, Vice-Chair

Alan Crankovich, Commissioner

ATTEST:

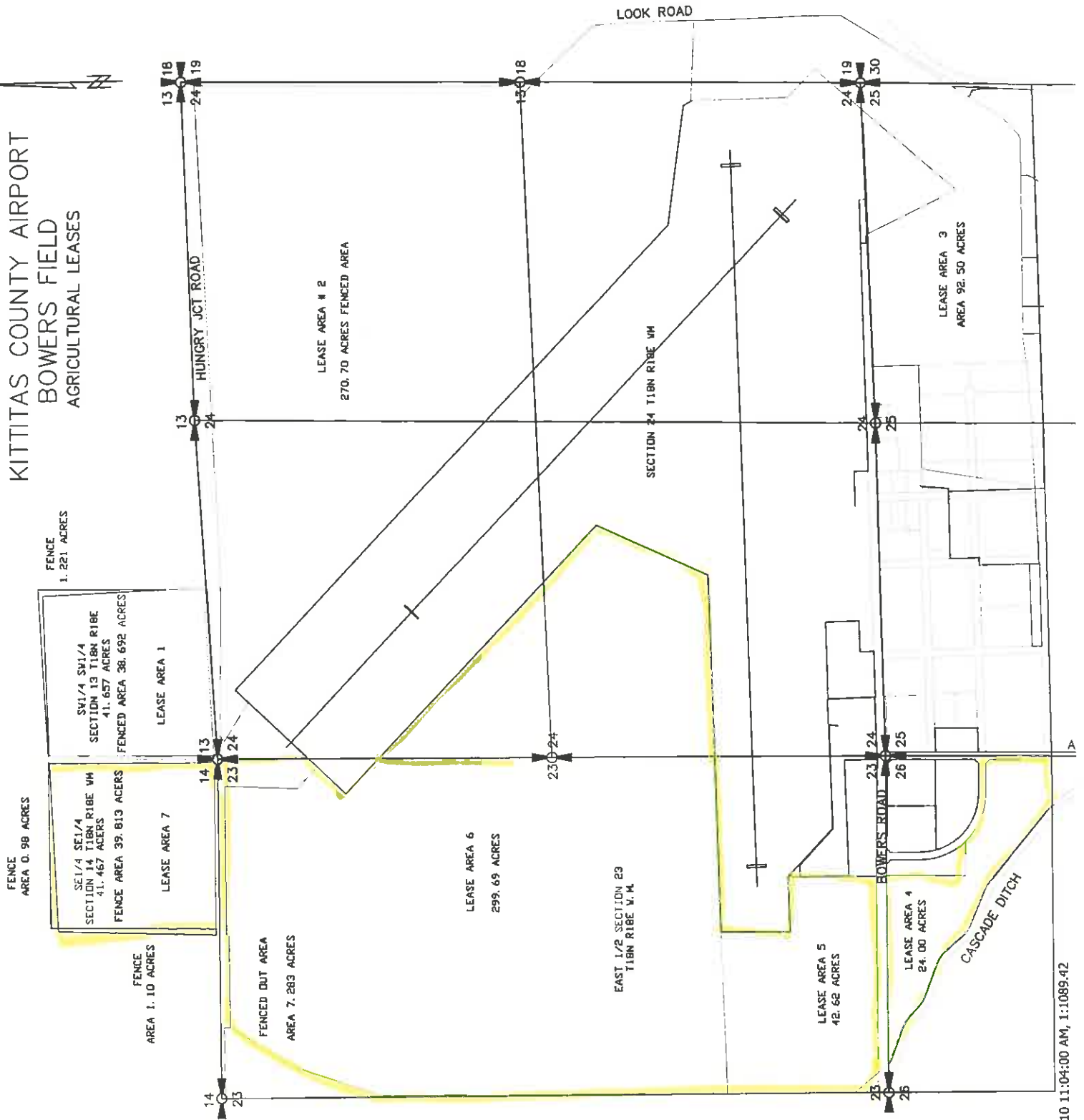
Clerk of the Board

Approved as to Form:



Neil Caulkins, Deputy Prosecutor
WSBA# 31759

KITTITAS COUNTY AIRPORT BOWERS FIELD AGRICULTURAL LEASES



AGRICULTURAL L E A S E

THIS LEASE is made and dated this 1st day of December, 2010, by and between KITITITAS COUNTY, a municipal corporation in the State of Washington, hereinafter referred to as the LESSOR, and DENNIS ABERLE/JAY ABERLE, hereinafter referred to as the LESSEE.

The LESSOR herewith agrees to let unto the LESSEE, and the LESSEE herewith agrees to lease from the LESSOR, the following described real property situated at the Kittitas County Airport (Bowers Field), Kittitas County, Washington, to-wit:

TRACT 1 – 38 ACRES

- 1) **TERM:** That the term of this lease shall be for TEN (10) years, but will require re negotiation at the end of five (5) years, and will commence on the 1st day of December, 2010, and shall terminate on the 30th day of November, 2020.
- 2) **RENT:** That as rental for said premises the LESSOR shall receive and the LESSEE shall pay for each lease year plus all applicable taxes, assessments and utilities, payable as follows:

TRACT – 1

\$1,181.00, due on the execution of this lease.

\$ 1,181.00, due on or before the 1st day of December each year.

- 3) **ADJUSTMENT OF RENTAL:** Pursuant to RCW 36.34.180 after the fifth year, the Lessor shall have the right to readjust the rent on or before November 30th of the fifth year of this lease; provided, however that any increase shall NOT EXCEED THE CUMULATIVE EFFECT OF THE CPI INDEX OVER THE PREVIOUS FIVE YEARS.

If the Lessee does not agree with the proposed rental rates for the subsequent five-year term, the Lessee may request arbitration. If the Lessee elects to arbitrate, the Lessee shall select one arbitrator and the Lessor shall select one arbitrator and the two so chosen shall select a third arbitrator. The arbitrators shall have the authority to increase the rent or continue the previous rental rate, and both parties shall be bound by the decision of the arbitrators. The cost of arbitration shall be borne by the Lessee.

It is understood by Tenant that this lease is not for commercial purposes and that the lease rate is for a ground lease for Grazing and/or Agricultural production only.

- 4) **LEASE TERMINATION:** It is understood and agreed that the real property, which is the subject matter of this lease, is presently zoned Agricultural – "Ag-20" – under the Kittitas County Zoning Code. It is also understood that Kittitas County is presently evaluating use of the subject land whether within the present or any revised zoning code and that such evaluation may determine a higher and better use for subject real property.

In recognition of these facts, LESSEE and LESSOR agree that LESSOR may, at LESSOR'S sole option, modify the terms of this lease, in whole or in part, including but not limited to modifying the area of land covered by this lease, the rental due, the term of duration of this lease and/or any other term or condition of this lease, including canceling the unexpired portion of this lease and re-letting the property to another tenant, all as LESSOR shall in LESSOR'S sole discretion deem to be in the best interest of Kittitas County.

In the event the LESSOR shall elect to modify or terminate this lease, the LESSOR shall do so only upon ninety (90) days written notice, notifying LESSEE, and Lessee's address of record, that the lease to which this applied is being so modified or terminated.

Upon receipt of such notification, and in the event that the notification specified modification of lease short of termination, LESSEE shall have thirty (30) days in which to notify Kittitas County of LESSEE'S intention to continue the lease as modified or of LESSEE'S intention to treat the lease as terminated.

In the event that LESSEE elected to treat the lease as terminated, all rents shall be pro-rated to the date LESSEE shall have restored the premises to the LESSOR in accordance with the terms of the lease agreement governing LESSEE'S duties to restore the premises to LESSOR upon expiration of the lease term.

It is further agreed that either such modification or termination of this lease nor any subsequent re-letting of the premises, in whole or in part, shall give rise to any cause of action for damages or any other form or relief by LESSEE against LESSOR or any successor lessee.

In the event of such modification or termination, LESSEE understands that other than a refund of any unearned rent pro-rated based on years of lease to the date LESSEE has restored the premises to LESSOR, LESSEE shall have no claim for compensation as occasioned by said modification or termination.

- 5) **UTILITIES:** The LESSEE shall pay all utility services supplied to the premises.
- 6) **KRD WATER ASSESSMENTS:** The LESSEE shall pay all KRD water assessments for said premises. The LESSEE agrees that all KRD water that is designated to the airport will stay assigned to airport property. The LESSOR will submit BI-yearly billings to be included with the rent for KRD assessments. Copies of assessments for said premises will be included with billing.

- 7) **USE OF PREMISES:** It is understood that the LESSEE shall utilize the premises for the following purposes, to-wit:

"Grazing and/or Agricultural Production Only". The premises shall be used for no other purpose without written consent of the LESSOR.

- 8) **LEASEHOLD IMPROVEMENTS:** All existing improvements currently on the lease premises belong to Kittitas County and are not to be removed. No improvements shall be placed on the leased premises without the prior consent of the County. **If written authorization is received from the LESSOR, the LESSEE shall submit a written estimated cost of improvement, and upon completion of improvement all costs/receipts of said improvements to the County for record. The depreciation life of the improvement will be established at this time.**

In the event of termination of lease or early termination of lease, all improvements placed on the premises by the LESSEE shall belong to the County, **EXCEPT for those authorized by written consent from the County.**

In the event the improvements have been authorized in writing by the County, and the LESSEE is not issued a new lease at expiration, or the LESSOR chooses to terminate said lease, the LESSOR will determine a depreciated value of authorized improvements and purchase said authorized improvements from the LESSEE.

- 9) **SUBLEASE ASSIGNMENT:** The LESSEE herein shall not assign this lease nor any portion thereof without the written consent of the LESSOR.
- 10) **HUNTING:** Hunting or discharging of any firearms will not be permitted on the leased premises.
- 11) **WASTE:** The LESSEE shall not commit waste of the leased property.
- 12) **AIRPORT TRAFFIC:** It is understood and agreed that the LESSEE'S use of the leased premises shall not in any manner interfere or restrict the use of aircraft landings, take-offs, or storage of aircraft as the airport is presently constructed. LESSEE shall comply with all rules and regulations of the Federal Aviation Administration and the Minimum Standards for Aeronautical Activities of Kittitas County.
- 13) **WAIVER:** No assent, express or implied, by LESSOR to any breach of any of LESSEE'S covenants, agreements, conditions or terms hereof shall be deemed or taken to be a waiver of any succeeding breach of any covenant, agreement, condition or term hereof.

- 14) **INSPECTION**: At all times during the term of this lease, LESSOR shall have the right to enter into and upon the demised premises during reasonable business hours for the purpose of examining and inspecting the same and determining whether LESSEE shall have complied with all of its obligations hereunder in respect to the care and maintenance of the premises and all other terms and conditions hereof.
- 15) **FENCES AND IRRIGATION DITCHES**: Irrigation ditches shall not flow into the aeronautical area and useable taxiways, or be rerouted without prior written approval from the Department of Public Works.
It shall be the LESSEE'S responsibility to inspect and make any necessary repairs to the existing fences prior to allowing livestock to graze within the above-described tract. Fencing must be maintained to the extent that it will prohibit livestock from entering the aeronautical area.
- 16) **ACCESS TO AIRPORT PROPERTY**: Access to the tracts shall be at designated locations only. All access gates shall remain closed and locked at all times during the term of this lease. The LESSEE shall affix his/her own lock next to that of the LESSOR'S.
- 17) **WEED CONTROL**: LESSEE shall comply with all the regulations of the weed district within which said leased property is included and shall use all reasonable effort to eradicate and prevent the growth of noxious weeds.
LESSEE shall control weeds on tilled lands by cultivation, clipping, spraying or burning as recommended by the Kittitas County Agricultural Extension Agent. LESSEE shall control noxious weeds on the premises as directed by the Kittitas County Noxious Weed Board and/or Department of Public Works and shall be responsible for reimbursement to said authority and/or Department of Public Works in the event that they undertake noxious weed control measures.
- 18) **INSURANCE**: The LESSEE shall provide proof of coverage thereof naming Kittitas County as co-insured (K.C.C. 19.04.190 (E)) as follows:

NOT LESS THAN:
\$1,000,000.00 General Liability Coverage
- 19) **PROPERTY DAMAGE AND BODILY INJURY**: The LESSEE hereby indemnifies and agrees to hold Kittitas County harmless from any and all claims or demands of whatsoever nature arising out of loss, damage or injury to persons or property resulting from LESSEE'S use or occupancy

of the leased premises and areas adjacent thereto, or caused by the acts or neglect of the LESSEE, its agents or representatives.

- 20) **PRESERVATION OF MARKERS:** Any legal land subdivision survey corners, reference points of monuments are to be preserved. If such are destroyed or disturbed, the LESSEE shall be required to re-establish the destroyed or disturbed monuments by a licensed land surveyor in accordance with the U.S. General Land Office standards at his own expense. Corners and/or reference points or monuments which are disturbed or destroyed in the process of carrying out the operation allowed by this lease must be adequately referenced and/or replaced in accordance with RCW 58.24.040. Such references must be approved by the State prior to removal of corners, reference points, or monuments.
- 21) **MILITARY EXERCISES:** From time to time the military conducts exercises at the Kittitas County Airport. The LESSEE will be requested to enter into a sublease agreement to authorize the use of the tracts for military purposes only. Reimbursement for temporary use will be negotiated between the U.S. Government, Kittitas County, and the LESSEE.
- 22) **BANKRUPTCY:** It is further agreed and understood that in case of the insolvency or bankruptcy of the LESSEE or any assignment for the benefit of creditors or the appointment of a receiver for the LESSEE, this lease shall be immediately forfeited and shall be of no further force and effect, and that the Trustee in Bankruptcy, Receiver or Assignee for the benefit of creditors shall not have any rights whatsoever in the demised premises.
- 23) **RIGHTS OF U.S. GOVERNMENT:** It is understood and agreed that this lease shall be subject to all prior covenants and agreements, which grant to the United States Government rights and privileges in the event of war or national emergency.
- 24) **DEFAULT.** In the event that the Lessee shall violate this lease, or any of its conditions or terms as herein stated, the Lessor may terminate this lease by giving thirty (30) days written notice of the conditions or terms being violated and if said violations are not corrected within the thirty-day period, the lease may be canceled, and the County shall be entitled to peaceably retake possession of the premises, provided the Lessee shall have the right to remove improvements as herein provided.

NOTICES: Any notice given by one party to the other in connection with this agreement shall be in writing and shall be sent by certified or registered mail, return receipt requested, as follows:

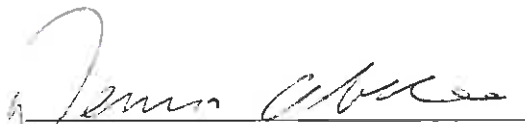
1. If to Lessor, addressed to: Kittitas County Department of Public Works, 411 N. Ruby, Suite #1, Ellensburg, WA 98926, Attention: Airport Manager.
2. If to Lessee, addressed to: Dennis Aberle/Jay Aberle 209 E. 18th Ave. #0-21, Ellensburg, WA 98926

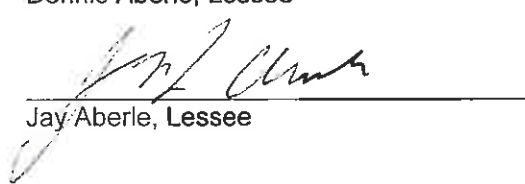
Notice shall be deemed to have been received three days after having been sent as above-described whether actually received or not.

- 25) **JURISDICTION & VENUE:** Avenue for any action to enforce lawsuit will be held in either Kittitas County or Yakima County.

IN WITNESS WHEREOF, LESSOR AND LESSEE have signed their names and affixed their seals the day and year first above written.

LESSEE:


Dennis Aberle, Lessee


Jay Aberle, Lessee

LESSOR:

BOARD OF COUNTY COMMISSIONERS

Mark McClain, Chair


Paul Jewell, Vice-Chair

Alan Crankovich, Commissioner

ATTEST:

Clerk of the Board

Approved as to Form:


Neil Caulkins, Deputy Prosecutor
WSBA# 31759

KITTITAS COUNTY AIRPORT BOWERS FIELD AGRICULTURAL LEASES

