KITTITAS COUNTY
DEPARTMENT OF PUBLIC WORKS

AGENDA STAFF REPORT

AGENDA DATE:	**December 21, 2010**
ACTION REQUESTED:	Requesting the Board of County Commissioners Approve an Amendment to Lease with Blazing Tree Cattle Co. for Agricultural property located on the Kittitas County Airport.
BACKGROUND:	On December 7, 2010, the Blazing Tree Cattle Co. entered into a ten year lease with Kittitas County for approximately 360 acres of Ag property. Blazing Tree Cattle Co. requested the payment schedule be amended to a bi-yearly payment. This is not an issue for Kittitas County so Public Works is recommending the amendment be approved.
INTERACTION:	Public Works
RECOMMENDATION:	Move to Approve an Amendment to Lease with Blazing Tree Cattle Co. for Agricultural property located on the Kittitas County Airport.
HANDLING:	Return one original to Public Works
ATTACHMENTS:	Amendment to Lease; Lease
LEAD STAFF:	Kelly Carlson Airport Manager

AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE is made and dated this 7th 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 COMPANY** hereinafter referred to as the **LESSEE.**

W I T N E S S E T H:

WHEREAS, LESSOR and LESSEE entered into a Lease on December 1, 2010, a copy of which is attached hereto and by this reference incorporated herein; and

WHEREAS, the LESSEE is currently leasing Tract #2 – 270 acres, and Tract #3 – 92 acres of agricultural property at Bowers Field. The LESSEE has requested to pay his lease rental bi-yearly. This will not provide a hindrance to Kittitas County and therefore has no issue with this request; and

WHEREAS: LESSOR and LESSEE agree to modify the LESSEE'S rental payment schedule to bi-year as shown below. This will modify the lease payment schedule as follows:

New Rental Rate Schedule:

"TRACT 2"

$ 5,563.50, on or before 1st day of December

$ 5,563.50, on or before 1st day of June

"TRACT 3"

$ 2,355.00, on or before 1st day of December

$ 2,355.00, on or before 1st day of June

NOW, THEREFORE, IT IS HEREBY AGREED by and between the parties that a new Lease payment schedule is established; and

That all other terms and conditions of the aforementioned lease shall remain the same IN WITNESS WHEREOF, the Lessor and Lessee have signed their names and affixed their seals the day and year first above written.

LESSOR:

_____

Mark McClain, Chair

ATTEST:

Clerk of the Board

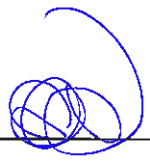
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Paul Jewell, Vice-Chair

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Alan Crankovich, Commissioner

LESSEE:



_____

Steve Willard, Lessee

Blazing Tree Cattle Co.

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 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: 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

COUNTY COMMISSIONERS SEAL KITTITAS COUNTY WASHINGTON

ATTEST:

Clerk of the Board

LESSOR:

BOARD OF COUNTY COMMISSIONERS

ABSENT

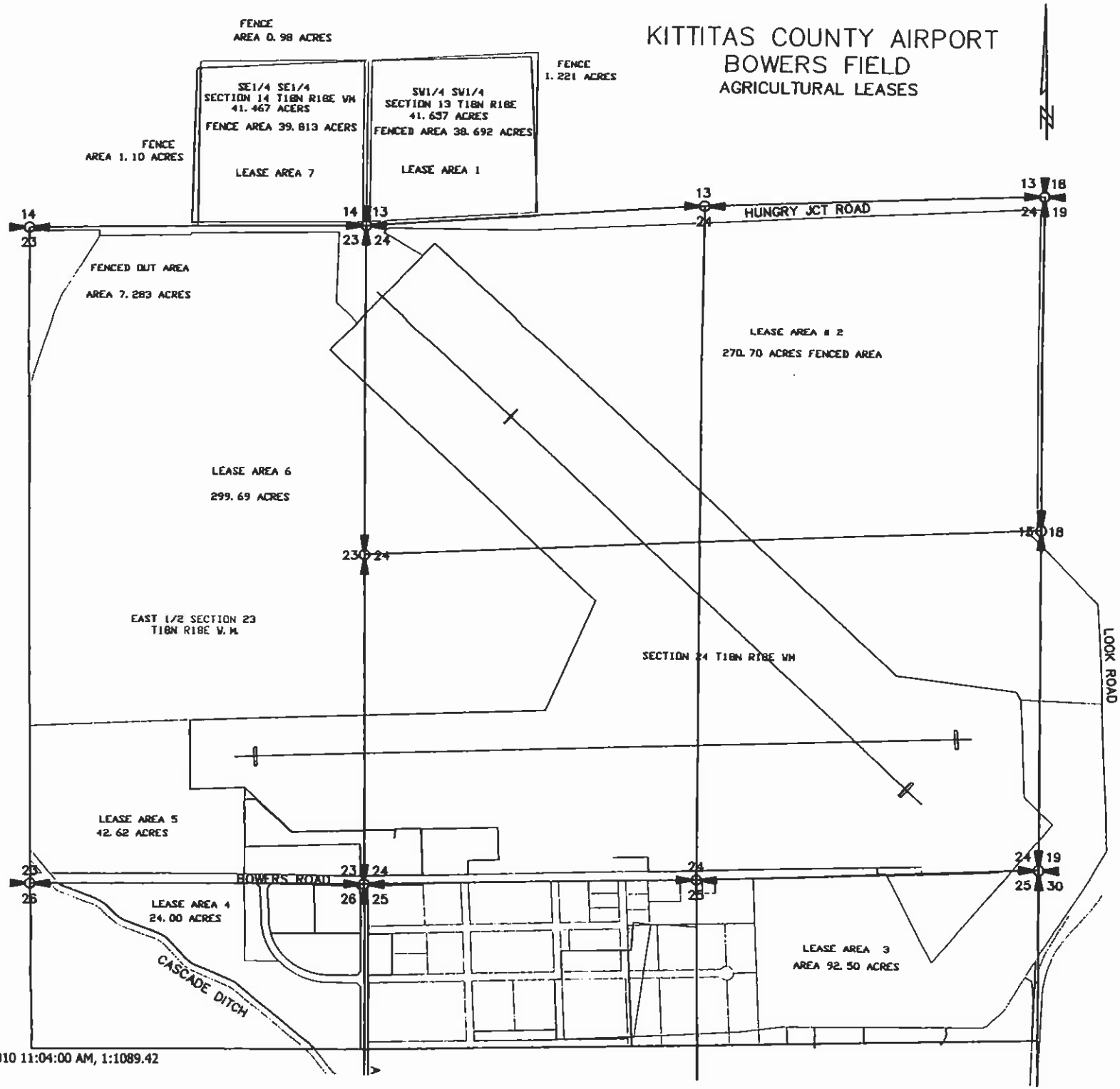
Mark McClain, Chair

Paul Jewell, Vice-Chair

Alan Crankovich, Commissioner

Approved as to Form:

Neil Caulkins, Deputy Prosecutor
WSBA# _____


KITTITAS COUNTY AIRPORT
BOWERS FIELD
AGRICULTURAL LEASES
FENCE
AREA 0. 98 ACRES
FENCE
1. 221 ACRES
SE1/4 SE1/4
SECTION 14 T18N R18E WM
41. 467 ACERS
FENCE AREA 39. 813 ACERS
LEASE AREA 7
SW1/4 SW1/4
SECTION 13 T18N R18E
41. 657 ACRES
FENCED AREA 38. 692 ACRES
LEASE AREA 1
FENCE
AREA 1. 10 ACRES
HUNGRY JCT ROAD
FENCED OUT AREA
AREA 7. 283 ACRES
LEASE AREA # 2
270. 70 ACRES FENCED AREA
LEASE AREA 6
299. 69 ACRES
EAST 1/2 SECTION 23
T18N R18E W. M.
SECTION 24 T18N R18E WM
LOOK ROAD
LEASE AREA 5
42. 62 ACRES
BOWERS ROAD
LEASE AREA 4
24. 00 ACRES
CASCADE DITCH
LEASE AREA 3
AREA 92. 50 ACRES
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