

**City of Deer Park
City Council Agenda
November 07, 2018
7:00 p.m.**

This preliminary agenda is subject to change in order to conduct business in a timely manner.

1. Call to Order

Roll Call: Mayor Tim Verzal
Councilmember's: Dee Cragun, Mary Babb, Richie Schut,
Don Stevens and Joe Polowski
Clerk/Treasurer: Deby Cragun

2. Invocation

3. Pledge of Allegiance & Welcome

4. Approval of Agenda

5. Approval of October 17, 2018 regular council meeting minutes and October 30, 2018 special council meeting minutes.

6. Public Hearings

- A. Ad Valorem Taxes for 2019~ Ordinance 2018-978
- B. 2019 Revenue Sources

7. New Business

- A. Surplus Equipment Bid Award ~Jeremy DeForge in the amount of 12,750.00.
- B. Public Works Board Pre-Construction Loan Award Acceptance
- C. Approval to Submit Grant to the Department of Commerce ~ City of Deer Park Solar and Roofing Project.

8. Resolutions

- A.

9. Ordinances (First Readings)

- A. Ordinance 2018-978 ~ 2019 Ad Valorem Taxes
- B. Ordinance 2018-979 ~ Banning the Sale and Use of Fireworks
- C. Ordinance 2018-980 ~ Regulating the Sale and Use of Fireworks

10. Consent Agenda

- A. Approval of Voucher Claim Check Nos. 37103 through 37147 in the amount of \$289,152.45 for the Last Half of October 2018.
- B. Approval of Payroll Check Nos. 13128 through 13158 including 941 Taxes in the amount of \$106,383.71 for the month of October 2018.
- C. Deer Park Municipal Airport Use Agreement ~ Spokane County
- D. Deer Park Municipal Airport Lease Agreement ~ Eldredge Holdings LLC Lot 1
- E. Deer Park Municipal Airport Lease Agreement ~ Eldredge Holdings LLC Lot 106

11. Interested Citizens: Oral Communications, Requests, Comments from Audience

Americans with Disabilities Act (ADA) accommodations provided upon request

12. Report of Officers

13. Executive Session

14. Adjournment

**City of Deer Park
City Council Minutes
October 17, 2018**

Mayor Verzal called the meeting to order at 7:00 p.m.

1. ROLL CALL

Mayor Verzal called roll and the following were:

Present:	Councilmember's: Dee Cragun, Mary Babb, Richie Schut, Don Stevens and Joe Polowski
Staff:	Roger Krieger
Airport Manager:	Darold Schultz, Schultz's Aviation, L.L.C.
Clerk/Treasurer:	Deby Cragun
City Attorney:	Chuck Zimmerman
Audience:	9

2. Invocation

Associate Pastor Caleb Stapp from the First Baptist Church gave the invocation.

3. Pledge of Allegiance & Welcome

4. Approval of Agenda

IT WAS MOVED BY CRAGUN, SECONDED BY POLOWSKI; MOTION CARRIED (5-0) TO APPROVE THE AGENDA AS PRESENTED.

5. Approval of October 03, 2018 regular council meeting minutes.

IT WAS MOVED BY CRAGUN, SECONDED BY BABB; MOTION CARRIED (5-0) TO APPROVE THE OCTOBER 03, 2018 REGULAR COUNCIL MEETING MINUTES AS PRESENTED.

6. New Business

A. Fireworks Discussion

Mayor Verzal opened the Fireworks discussion with the Council.

Council discussed fireworks usage, ordinance provisions and enforcement actions.

Following initial discussion,

IT WAS MOVED BY CRAGUN, SECONDED BY STEVENS, TO:

REMOVE THE FIREWORKS ISSUE FROM THE TABLE AND IT WAS FURTHER MOVED THAT THE SALE AND USE OF PERSONAL FIREWORKS BE BANNED IN THE CITY OF DEER PARK AT THE EARLIEST POSSIBLE DATE.

MOTION CARRIED 3-2 (POLOWSKI, SCHUT)

Following additional discussion concerning a possible reduction in times of sale and use as a compromise,

IT WAS MOVED BY CRAGUN, SECONDED BY POLOWSKI, TO:

DIRECT THE CITY ATTORNEY TO PREPARE TWO ORDINANCES FOR COUNCIL CONSIDERATION, ONE BANNING THE SALE AND USE OF FIREWORKS AND THE OTHER RESTRICTING SALES TO JULY 3 AND 4 FROM NOON UNTIL 8:00 PM EACH DAY AND RESTRICTING USE FROM 5:00 PM TO MIDNIGHT ON JULY 4 AND FROM 8:00 PM DECEMBER 31 UNTIL 12:30 AM ON JANUARY 1.

MOTION CARRIED 5-0

7. Resolutions

A. There were no Resolutions

8. Ordinances

A. There were no Ordinances

9. Consent Agenda

Items listed below were distributed to Council Members in advance for study and were enacted with one motion.

IT WAS MOVED BY CRAGUN, SECONDED BY POLOWSKI; MOTION CARRIED (5-0) TO APPROVE THE CONSENT AGENDA.

- A. Approval of Voucher Claim Check Nos. 37070 through 37102 including EFT Debits in the amount of \$561,282.86 for the First Half of October 2018.
- B. Deer Park Lease Agreement ~ Philip Melton.
- C. Hope Meadows Phase 3 Plat Approval ~ File LP 2010-1
- D. Memorandum of Understanding between the City and School District for the School Resource Deputy for the 2018-2019 School Year.

10. Interested Citizens: Oral Communications, Requests, Comments from Audience

Samantha Shively asked Mayor Verzal for a status update on the Sheriff's Contract. Mayor Verzal stated the current contract doesn't expire until 12/31/2019 and negotiations are still on going.

11. Report of Departments

Roger Krieger updated the Mayor and Council on the new subdivision up by Bob Mart. Roger stated the Lagoon Liner Project is finally completed and we are now waiting on the Amortization Schedule to come here with the final numbers. Darold Schultz stated the Fly In was a limited success due to wind issues. He stated the new Airport Project is coming along.

12. Report of Officers

Councilmember Babb asked if the City's water and sewer systems were adequate to handle all the new development.

Roger Krieger stated on the water side yes the City is in good shape. On the sewer side we will have to have a bigger spray field.

Councilmember Schut thought the Fly In was a great success, his kids loved it.

Councilmember Polowski stated Pumpkin Lane is a week from Saturday.

Mayor Verzal stated the City's Clean Green Event is scheduled for this Friday and Saturday, October 19 and 20, 2018 from 8:00 a.m. to 4:00 p.m.

13. Executive Session

There was no executive session

14. Adjournment

There being no further business before the Council, Mayor Verzal adjourned the meeting at 8:06 P.M.

Mayor Tim Verzal

Deby Cragun, City Clerk/Treasurer

**City of Deer Park
Special City Council Minutes
Budget Planning Workshop
October 30, 2018**

1. Call to Order

Mayor Verzal called the meeting to order at 4:00 p.m.

ROLL CALL

Mayor Verzal called roll and the following were:

Present:	Councilmember's: Dee Cragun, Mary Babb, Richie Schut, Don Stevens and Joe Polowski
Clerk/Treasurer:	Deby Cragun
Staff:	Roger Krieger and Brian Ramsden
Airport Manager:	Darold Schultz, Schultz's Aviation, LLC
Audience:	1

2. 2019 Budget Workshop Discussion

Mayor Verzal opened the meeting by explaining his ideas for the 2019 Budget.

Deby Cragun and Roger Krieger reviewed the Ad Valorem Tax Memo that was handed out to the Mayor and Council. Following discussion, Mayor Verzal asked for concurrence on the proposed increase in the amount of approximately \$175,000.00 to \$450,000.00. Further, that amount will be provided for at the upcoming Ad Valorem Public Hearing.

Staff presented their various expense and revenue portions to the 2019 Budget.

Darold Schultz addressed questions of Council on current fuel costs/sales and marketing for 2019.

Mayor Verzal asked the Council if there were any changes they would like to see concerning the 2019 Budget as presented.

Councilmember Cragun requested to add an expenditure for a GMA Park Element Update under Parks in the General Fund. She stated this is necessary when it comes time to apply for a grant to install a Splash Pad at Swinyard Park.

3. Adjournment

Budget Planning Workshop ended at 5:13 p.m.

Mayor Timothy Verzal

Deby Cragun, City Clerk/Treasurer

Memorandum

To: Mayor and City Council
From: Brian Ramsden, Maintenance Superintendent
Date: November 1, 2018
Re: **Surplus Equipment Bids**

Bids were opened for the below listed equipment as reauthorized by Council action at the October 3, 2018, meeting. Two bids were received for the vehicle and are listed below.

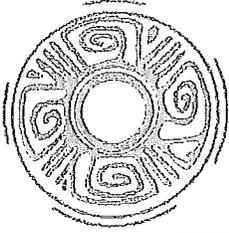
Listed following were the vehicles listed for surplus.

1. 2008 Ford F-250 Super Duty, Regular CAB 4WD, VIN# 1FTNF21588EA70483. Minimum Bid recommended \$11,000. Method of Disposal: Sealed Bid.

Bid #1 – Kevin Fogg, Sagle, Idaho, bid \$11,010.00

Bid #2 – Jeremy DeForge, Spokane, WA, bid \$12,750.00

Staff recommendation is to accept the bid of Jeremy DeForge of \$12,750.00, and to authorize the City Clerk to complete the transaction for the disposal.



Washington State
Public Works Board

Post Office Box 42525
Olympia, Washington 98504-2525

August 27, 2018

Timothy Verzal, Mayor
City of Deer Park
PO Box F
316 E. Crawford Avenue
Deer Park, WA 99006

Dear Honorable Mayor Verzal,

Thank you for submitting a Public Works Board Pre-Construction Loan application for consideration by the Public Works Board (Board). Congratulations, your Sixth St. Drinking Water Reservoir Replacement project has been awarded \$325,000.

The Board approved your pre-construction application at their August 3, 2018 board meeting. The approval date is also the loan award date. Any eligible costs incurred from this date forward are reimbursable with the Pre-Construction loan fund. Our office just completed the underwriting for this project and the loan interest rate is 0.84% with a loan term of 5 years.

Pre-Construction Clients may request to convert from a 5-year to a 20-year term. To qualify this loan term conversion, a loan recipient must secure at the minimum 30% funding for the construction of this project. The secured funding must be confirmed prior to the first principal payment (June 2020). This conversion option will be ineligible once the first principal payment is made. Please let us know if your project meets this criterion and we will be able to extend the term of the loan.

If for any reason, your governing body decides not to accept this loan award, please let us know on or before Monday, September 25th. This will allow the Public Works Board to reallocate any unused money to other local governments applying at the next loan cycle.

Once again, thank you for applying to the Public Works Board. Please feel free to contact your Project Manager, Arlene Escobar (360) 725-3015, or email by at arlene.escobar@commerce.wa.gov if you have any questions.

Sincerely,

Connie Rivera
PWB Program Manager

cc: Application File

CONTRACT FACE SHEET

Contract Number: PR18-96103-060

**PUBLIC WORKS BOARD
PRE-CONSTRUCTION LOAN CONTRACT**

1. Contractor City of Deer Park PO Box F Deer Park, WA 99006		2. Contractor Doing Business As (optional) N/A	
3. Contractor Representative N/A		4. Public Works Board Representative N/A	
5. Contract Amount \$325,000	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Contract Start Date Contract Execution Date	8. Contract End Date June 1, 2024
9. Federal Funds (as applicable) N/A	Federal Agency N/A	CFDA Number N/A	
10. Tax ID #	11. SWV # 0000306-00	12. UBI # 322-000-046	13. DUNS #
14. Contract Purpose Fund a project of a local government for Pre-Construction activities that include but are not limited to design engineering, bid-document preparation, environmental studies, right-of-way acquisition, value planning, permits, cultural and historic resources, and public notification. .			
The Board, defined as the Washington State Public Works Board and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year last written below. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contract Terms and Conditions including Declarations Page; and Attachment I: Attorney's Certification.			
FOR THE CONTRACTOR		FOR PUBLIC WORKS BOARD	
_____ Signature		_____ Scott Hutsell, Public Works Board Chair	
_____ Print Name		_____ Date	
_____ Title		APPROVED AS TO FORM ONLY	
_____ Date		_____ June 15, 2018	
		_____ Signature on File Sandra Adix Assistant Attorney General	

DECLARATIONS

CLIENT INFORMATION

Legal Name: City of Deer Park
Loan Number: PR18-96103-060

PROJECT INFORMATION

Project Title: Sixth St Drinking Water Reservoir Replacement
Project City: Deer Park
Project State: **Washington**
Project Zip Code: 99006

LOAN INFORMATION

Loan Amount: **\$325,000.00**
Total Estimated Cost: **\$325,000.00**
Total Estimated Funding: **\$325,000.00**
Loan Forgiveness % (if applicable): **0%**
Loan Term: **5**
Interest Rate: **0.84%**
Payment Month: June 1st
Loan Reimbursement Start Date: **8/3/2018**
Time of Performance: 24 months from Execution Date of this Contract to Project Completion.

SPECIAL TERMS AND CONDITIONS GOVERNING THIS LOAN AGREEMENT

LOAN SECURITY CONDITION GOVERNING THIS LOAN AGREEMENT

This loan is a revenue obligation of the CONTRACTOR payable solely from the net revenue of the Water system. Payments shall be made from the net revenue of the utility after the payment of the principal and interest on any revenue bonds, notes, warrants or other obligations of the utility having a lien on that net revenue. As used here, "net revenue" means gross revenue minus expenses of maintenance and operations. The BOARD grants the CONTRACTOR the right to issue future bonds and notes that constitute a lien and charge on net revenue superior to the lien and charge of this loan agreement.

SCOPE OF WORK

Pre-Construction activities are for the construction of a 600,000 gallon elevated tank.

The project costs may include but are not limited to engineering, cultural and historical resources, environmental documentation, review, permits, public involvement, easements, and bid documents. The project needs to meet all applicable Local, State, and/or Federal standards.

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CONTRACT TERMS AND CONDITIONS

PUBLIC WORKS BOARD PRE-CONSTRUCTION LOAN PROGRAM

Part 1. SPECIAL TERMS AND CONDITIONS

1.1 Definitions

As used throughout this Pre-Construction Loan Contract the following terms shall have the meaning set forth below:

- A. "Contract" shall mean this Pre-Construction Loan Contract.
- B. "Contractor" shall mean the local government identified on the Contract Face Sheet performing service(s) under this Contract and who is a Party to the Contract, and shall include all employees and agents of the Contractor.
- C. "The Board" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and who is a Party to the Contract.
- D. "Declarations " and "Declared" shall refer to the project information, loan terms and conditions as stated on the Declarations Page of this Loan Contract, displayed within the contract in **THIS STYLE** for easier identification.

1.2 Authority

Acting under the authority of Chapter 43.155 RCW, the Board has awarded the Contractor a Public Works Board pre-construction loan for an approved public works project.

1.3 Purpose

The Board and the Contractor have entered into this Contract to undertake a local public works project that furthers the goals and objectives of the Washington State Public Works Program. The project will be undertaken by the Contractor and will include the activities described in the **SCOPE OF WORK** shown on the Declarations page. The project must be undertaken in accordance with the loan terms and conditions, and all applicable federal, state and local laws and ordinances, which by this reference are incorporated into this Contract as though set forth fully herein.

1.4 Order of Precedence

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable federal and state of Washington statutes and regulations.
- B. Special Terms and Conditions including attachments.
- C. General Terms and Conditions.

1.5 Competitive Bidding Requirements

The Contractor shall comply with the provisions of RCW 43.155.060 regarding competitive bidding requirements for projects assisted in whole or in part with money from the Public Works Program.

1.6 Default in Repayment

Loan repayments shall be made on the loan in accordance with Section 1.18 of this Contract. A payment not received within thirty (30) days of the due date shall be declared delinquent. Delinquent payments shall be assessed a monthly penalty beginning on the first (1st) day past the due date. The penalty will be assessed on the entire payment amount. The penalty will be one percent (1%) per month or twelve percent (12%) per annum. The same penalty terms shall apply at project completion if the repayment of loan funds in excess of eligible costs are not repaid at the time the Project Completion Amendment is submitted, as provided for in Section 1.13.

The Contractor acknowledges and agrees to the Board's right, upon delinquency in the payment of any annual installment, to notify any other entity, creditors, or potential creditors of the Contractor of such delinquency.

The Contractor shall be responsible for all legal fees incurred by the Board in any action undertaken to enforce its rights under this section.

1.7 Sub-Contractor Data Collection

Contractor will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Contract performed by sub-contractors and the portion of the Contract funds expended for work performed by sub-contractors, including but not necessarily limited to minority-owned, women-owned, and veteran-owned business sub-contractors. "Sub-Contractors" shall mean sub-contractors of any tier.

1.8 Eligible Project Costs

The Eligible project costs must consist of expenditures eligible under Washington Administrative Code (WAC) 399-30-030 and be related only to project activities described in declared **SCOPE OF WORK**. Eligible costs for reimbursement shall be construed to mean expenditures incurred and paid, or incurred and payable within thirty (30) days of the reimbursement request. Only costs that have been incurred on or after **LOAN REIMBURSEMENT START DATE** shown in the Declarations are eligible for reimbursement under this Contract.

The Contractor assures compliance with WAC 399-30-030, which identifies eligible costs for projects assisted with Public Works Board loans.

These terms supersede the terms in Section 2.2. Allowable Costs.

1.9 Historical and Cultural Resources

Prior to commencing construction, Contractor shall complete the requirements of Governor's Executive Order 05-05, or, as an alternative to completion of Governor's Executive Order 05-05, Contractor shall complete Section 106 of the National Historic Preservation Act, as applicable. Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless the Board and the State of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Contractor shall, in accordance with Governor's Executive Order 05-05, coordinate with the Washington State Department of Archaeology and Historic Preservation (DAHP), including any recommended consultation with any affected tribe(s), during project design and prior to construction to determine the existence of any tribal cultural resources affected by the proposed project funded by this Contract. Contractor agrees to avoid, minimize, or mitigate impacts to cultural resources as a continuing pre-requisite to receipt of funds under this Contract.

The Contractor agrees that, unless the Contractor is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural resources are discovered during construction, the Contractor shall immediately stop work and notify the local historical preservation officer and the state's historic preservation officer at DAHP. If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The Contractor shall require this provision to be contained in all sub-contracts for work or services related to the declared **SCOPE OF WORK**.

In addition to the requirements set forth in this Contract, Contractor agrees to comply with RCW 27.44.040 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and, WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 05-05.

In the event that the Contractor finds it necessary to amend **SCOPE OF WORK**, the Contractor may be required to re-comply with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act.

1.10 Project Completion Amendment and Certified Project Completion Report

The Contractor shall complete a Certified Project Completion Report when all activities identified in the **SCOPE OF WORK** are complete. The Board will supply the Contractor with the Certified Project Completion Report form, which shall include:

- A. A certified statement that the project, as described in the declared **SCOPE OF WORK**, is complete and, if applicable, meets required standards.
- B. A certified statement of the actual dollar amounts spent, from all funding sources, in completing the project as described in the **SCOPE OF WORK**.
- C. Certification that all costs associated with the project have been incurred and have been accounted for. Costs are incurred when goods and services are received and/or contract work is performed.
- D. A final voucher for the remaining eligible funds.

The Contractor will submit the Certified Project Completion Report together with the last Invoice Voucher for a sum not to exceed the balance of the loan amount. The final Invoice Voucher payment shall not occur prior to the completion of all project activities identified in the **SCOPE OF WORK** and the Board's receipt and acceptance of the Certified Project Completion Report.

The Project Completion Amendment shall serve as an amendment to this Contract determining the final loan amount, local share, term, and interest rate.

1.11 Rate, Loan Forgiveness and Term of Loan

The Board shall loan the Contractor a sum not to exceed the LOAN AMOUNT shown on the Contract Face Sheet and declared on the Contract Declarations Page. The interest rate shall be the declared INTEREST RATE per annum on the outstanding principal balance. The amount of loan forgiveness (if applicable) shall be as stated on the attached Declarations Page, and identified therein as LOAN FORGIVENESS %. The length of the loan shall not exceed the declared LOAN TERM in years, with the final payment due by the CONTRACT END DATE as shown on the Contract Face Sheet.

The loan forgiveness shall be applied at project completion and shall apply to the lesser of the loan amount or the actual eligible costs and that declared percent on any accrued interest. The percent of loan forgiveness and interest rate shall not be changed, regardless of the actual cost of the project and the Affordability Index at project completion.

The BOARD may extend the term limit of the Pre-Construction project to twenty years when the jurisdiction demonstrates that 30% of the funding necessary for construction of the project has been secured. The BORROWER must provide written documentation of construction funding commitment before the first principal payment is due.

1.12 Recapture

The right of recapture Section 2.32. Recapture, shall exist for a period not to exceed six (6) years following contract termination. In the event that the Board is required to institute legal proceedings to enforce the recapture provision, the Board shall be entitled to its costs thereof, including attorney's fees.

1.13 Reimbursement Procedures and Payment

If funding or appropriation is not available at the time the invoice is submitted, or when this contract is executed, the issuance of warrants will be delayed or suspended until such time as funds or appropriation become available. Therefore, subject to the availability of funds, warrants shall be issued to the Contractor for reimbursement of allowable expenses incurred by the Contractor while undertaking and administering approved project activities in accordance with the declared SCOPE OF WORK.

The Board shall reimburse the Contractor for eligible project expenditures up to the maximum loan amount under this contract, as identified in Section 1.10. When requesting reimbursement for costs incurred, the Contractor shall submit a signed and completed Invoice Voucher (Form A19), referencing the SCOPE OF WORK project activity performed, and any appropriate documentation such as bills, invoices, and receipts. The Invoice Voucher must be certified by an official of the Contractor with authority to bind the Contractor.

The Contractor shall submit all Invoice Vouchers and all required documentation to:

Public Works Board
Attn: (Program Specialist)
PO Box 42525
Olympia, WA 98504-2525

The Board will pay the Contractor upon acceptance of the work performed and receipt of properly completed invoices. Invoices shall be submitted to the Board not more often than monthly.

Payment shall be considered timely if made by the Board within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

The Board may, at its sole discretion, terminate the contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the Board.

Duplication of Billed Costs. If the Contractor is entitled to payment or has been or will be paid by another source for an eligible project cost, then the Contractor shall not be reimbursed by the Board for that cost.

Disallowed Costs. The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

In no event shall the total Public Works loan exceed 100% of the eligible actual project costs. At the time of project completion, the Contractor shall submit to the Board a Project Completion Amendment certifying the total actual project costs and local share. The final Public Works loan disbursement shall bring the total loan to the lesser of 100% of the eligible project costs or the total declared **LOAN AMOUNT**. The Project Completion Amendment shall serve as an amendment to this Contract determining the final loan amount, local share, and interest rate.

In the event that the final costs identified in the Project Completion Amendment indicate that the Contractor has received Public Works Board monies in excess of 100.00% of eligible costs, all funds in excess of 100.00% shall be repaid to the Public Works Board by payment to the Department of Commerce, or its successor, together with the submission of the Project Completion Amendment.

1.14 Repayment

Loan repayment installments are due on the day and month identified under the term: **PAYMENT MONTH** on the Declarations Page. Payments are due each year during the term of the loan beginning one year from the date of contract execution. Interest only will be charged for this payment if a warrant is issued prior to this date. All subsequent payments shall consist of principal and accrued interest due on the specified **PAYMENT MONTH** date of each year during the remaining term of the loan.

Repayment of the loan under this Contract shall include the declared **INTEREST RATE** per annum based on a three hundred and sixty (360) day year of twelve (12) thirty (30) day months. Interest will begin to accrue from the date each warrant is issued to the Contractor. The final payment shall be on or before the **CONTRACT END DATE** shown on the Declarations page, of an amount sufficient to bring the loan balance to zero.

The Contractor will repay the loan in accordance with the preceding conditions through the use of a check, money order, or equivalent means made payable to the Washington State Department of Commerce, or its successor.

1.15 Reports

The Contractor shall furnish the Board with:

- A. Project Status Reports with each Invoice Voucher;
- B. Project Quarterly Reports (if no funds have been reimbursed in the quarter) and/or Quarterly Expenditures Report;
- C. Certified Project Completion Report at project completion (as described in Section 1.13); and
- D. Other reports as the Board may require.

1.16 Termination for Cause

If the Contractor fails to comply with the terms of this Contract, or fails to use the loan proceeds only for those activities identified in the SCOPE OF WORK, the Board may terminate the Contract in whole or in part at any time. The Board shall notify the Contractor in writing of its determination to terminate, the reason for such termination, and the effective date of the termination. Nothing in this section shall affect the Contractor's obligation to repay the unpaid balance of the loan.

These terms supersede the terms in Section 2.41 Termination for Cause/Suspension.

1.17 Termination for Convenience

The Board may terminate this contract in the event that state funds are no longer available to the Board, or are not appropriated for the purpose of meeting the Board's obligations under this contract. Termination will be effective when the Board sends written notice of termination to the Contractor. Nothing in this section shall affect the Contractor's obligation to repay the unpaid balance of the loan.

These terms supersede the terms in Section 2.42 Termination for Convenience.

1.18 Time of Performance

No later than twenty-four (24) months after the date of contract execution the Contractor must reach project completion.

Failure to meet Time of Performance shall constitute default of this contract. In the event of extenuating circumstances, the Contractor may request, in writing, that the Board extend the deadline for project completion. The Board may extend the deadline.

The term of this contract shall be for the entire term of the loan, regardless of actual project completion, unless terminated sooner as provided herein.

1.19 Contract Suspension

In the event that the Washington State Legislature fails to pass and the Governor does not authorize a Capital Budget by June 30 of each biennium, the Washington State Constitution Article 8 and RCW 43.88.130 and RCW 43.88.290 prohibit expenditures or commitments of state funds in the absence of appropriation.

In such event, all work will be suspended effective July 1. The Contractor shall immediately suspend work and take all reasonable steps necessary to minimize the cost of performance directly attributable to such suspension until the suspension is cancelled.

THE BOARD shall notify the Contractor immediately upon lifting of the contract suspension.

1.20 Special Conditions

If SPECIAL CONDITIONS are listed on the Contract Declarations Page then these conditions are herein incorporated as part of the terms and requirements of this contract.

1.21 Loan Security

Loan Security payments shall be made as stated on the attached Declarations Page, and identified therein as LOAN SECURITY.

Part 2. GENERAL TERMS AND CONDITIONS

2.1 DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Public Works Board Chair and/or the designee authorized in writing to act on the Chair's behalf.
- B. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- C. "BOARD" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and which is a Party to the Contract
- D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- E. "State" shall mean the state of Washington.
- F. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2.2 ALLOWABLE COSTS

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

2.3 ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

2.4 AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

2.5 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

2.6 APPROVAL

This contract shall be subject to the written approval of the Board's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

2.7 ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the Board.

2.8 ATTORNEYS' FEES

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorney's fees and costs.

2.9 AUDIT

A. General Requirements

Contractors are to procure audit services based on the following guidelines.

The Contractor shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subcontractors also maintain auditable records.

The Contractor is responsible for any audit exceptions incurred by its own organization or that of its Subcontractors.

The Board reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to the Board's requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. State Funds Requirements

In the event an audit is required, if the Contractor is a local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor.

The Contractor shall include the above audit requirements in any subcontracts.

In any case, the Contractor's financial records must be available for review by the Board.

C. Documentation Requirements

The Contractor must send a copy of any required audit no later than nine (9) months after the end of the Contractor's fiscal year(s) to:

Department of Commerce
ATTN: Audit Review and Resolution Office
PO Box 42525
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by the Board.
- Copy of the Management Letter.

If the Contractor is required to obtain a Single Audit in accordance with 2 CFR Part 200, a copy must be provided to Commerce; no other report is required.

2.10 CODE REQUIREMENTS

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building Department.

2.11 CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

1. All material provided to the Contractor by the Board that is designated as "confidential" by the Board;
2. All material produced by the Contractor that is designated as "confidential" by the Board; and
3. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the Board or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the Board with its policies and procedures on confidentiality. The Board may require changes to such policies and procedures as they apply to this Contract whenever the Board reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by the Board. Upon request, the Contractor shall immediately return to the Board any Confidential Information that the Board reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Contractor shall notify the Board within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

2.12 CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

2.13 COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Board. The Board shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to the Board effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to the Board a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Board.

The Contractor shall exert all reasonable effort to advise the Board, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide the Board with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. The Board shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

2.14 DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

2.15 DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Chair of the Board, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and
- be mailed to the Chair and the other party's (respondent's) Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Chair or the Chair's designee and the requestor within five (5) working days.

The Chair or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Chair or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

2.16 DUPLICATE PAYMENT

The Contractor certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

2.17 ETHICS/CONFLICTS OF INTEREST

In performing under this Contract, the Contractor shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

2.18 GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

2.19 INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, the Board, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the Contractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any Subcontractor or its agents, employees, or representatives.

The Contractor's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.

Subcontracts shall include a comprehensive indemnification clause holding harmless the Contractor, the Board, the state of Washington, its officers, employees and authorized agents.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

2.20 INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the state of Washington or the Board. The Contractor will not hold itself out as or claim to be an officer or employee of the Board or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

2.21 INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the Board may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. The Board may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Board under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

2.22 LAWS

The Contractor shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended including, but not limited to:

Washington State Laws and Regulations

- A. Affirmative Action, RCW 41.06.020 (11).
- B. Boards of Directors or Officers of Non-profit Corporations – Liability - Limitations, RCW 4.24.264.
- C. Disclosure-Campaign Finances-Lobbying, Chapter 42.17 RCW.
- D. Discrimination-Human Rights Commission, Chapter 49.60 RCW.
- E. Ethics in Public Service, Chapter 42.52 RCW.
- F. Housing Assistance Program, Chapter 43.185 RCW.

- G. Interlocal Cooperation Act, Chapter 39.34 RCW.
- H. Noise Control, Chapter 70.107 RCW.
- I. Office of Minority and Women's Business Enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- J. Open Public Meetings Act, Chapter 42.30 RCW.
- K. Prevailing Wages on Public Works, Chapter 39.12 RCW.
- L. Public Records Act, Chapter 42.56 RCW.
- M. Relocation Assistance - Real Property Acquisition Policy, Chapter 8.26 RCW.
- N. Shoreline Management Act of 1971, Chapter 90.58 RCW.
- O. State Budgeting, Accounting, and Reporting System, Chapter 43.88 RCW.
- P. State Building Code, Chapter 19.27 RCW and Energy-related building standards, Chapter 19.27A RCW, and Provisions in buildings for aged and handicapped persons, Chapter 70.92 RCW.
- Q. State Coastal Zone Management Program, Publication 01-06-003, Shorelands and Environmental Assistance Program, Washington State Department of Ecology.
- R. State Environmental Policy, Chapter 43.21C RCW.
- S. State Executive Order 05-05 Archeological and Cultural Resources.

2.23 LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

2.24 LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

2.25 LOCAL PUBLIC TRANSPORTATION COORDINATION

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

2.26 NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Board. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

2.27 PAY EQUITY

The Contractor agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- A. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar

working conditions. Job titles alone are not determinative of whether employees are similarly employed;

B. Contractor may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:

1. A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
2. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
3. A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Contract may be terminated by the BOARD, if the Department of Commerce or the Department of Enterprise Services determines that the Contractor is not in compliance with this provision.

2.28 POLITICAL ACTIVITIES

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

2.29 PREVAILING WAGE LAW

The Contractor certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for the Board's review upon request.

2.30 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

2.31 PUBLICITY

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or the Board's name is mentioned, or language used from which the connection with the state of Washington's or the Board's name may reasonably be inferred or implied, without the prior written consent of the Board.

2.32 RECAPTURE

In the event that the Contractor fails to perform this contract in accordance with state laws, federal laws, and/or the provisions of this contract, the Board reserves the right to recapture funds in an amount to compensate the Board for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the Board. In the alternative, the Board may recapture such funds from payments due under this contract.

2.33 RECORDS MAINTENANCE

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

2.34 REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

2.35 RIGHT OF INSPECTION

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by the Board, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

2.36 SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, the Board may terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

2.37 SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Contract and to this end the provisions of this Contract are declared to be severable.

2.38 SUBCONTRACTING

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of the Board.

If the Board approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the Board in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to the Board if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal

conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the Board for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that the Board and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

2.39 SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

2.40 TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

2.41 TERMINATION FOR CAUSE / SUSPENSION

In event the Board determines that the Contractor failed to comply with any term or condition of this Contract, the Board may terminate the Contract in whole or in part upon written notice to the Contractor. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, the Board upon written notice may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, the Board may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Contract. Failure by the Contractor to take timely corrective action shall allow the Board to terminate the Contract upon written notice to the Contractor.

"Termination for Cause" shall be deemed a "Termination for Convenience" when the Board determines that the Contractor did not fail to comply with the terms of the Contract or when the Board determines the failure was not caused by the Contractor's actions or negligence.

If the Contract is terminated for cause, the Contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original contract and the replacement contract, as well as all costs associated with entering into the replacement contract (i.e., competitive bidding, mailing, advertising, and staff time).

2.42 TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract the Board may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, the Board shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

2.43 TERMINATION PROCEDURES

After receipt of a notice of termination, except as otherwise directed by the Board, the Contractor shall:

- A. Stop work under the Contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities related to the Contract;
- C. Assign to the State all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Board has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Contractor to settle such claims must have the prior written approval of the Board; and

D. Preserve and transfer any materials, contract deliverables and/or the Board property in the Contractor's possession as directed by the Board.

Upon termination of the Contract, the Board shall pay the Contractor for any service provided by the Contractor under the Contract prior to the date of termination. The Board may withhold any amount due as the Board reasonably determines is necessary to protect the Board against potential loss or liability resulting from the termination. The Board shall pay any withheld amount to the Contractor if the Board later determines that loss or liability will not occur.

The rights and remedies of the Board under this section are in addition to any other rights and remedies provided under this Contract or otherwise provided under law.

2.44 WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of the Board.

ATTACHMENT I: ATTORNEY'S CERTIFICATION

PUBLIC WORKS BOARD PRE-CONSTRUCTION LOAN PROGRAM

City of Deer Park
PR18-96103-060

I, _____, hereby certify:

I am an attorney at law admitted to practice in the State of Washington and the duly appointed attorney of the City of Deer Park (the Contractor); and

I have also examined any and all documents and records which are pertinent to the Contract, including the application requesting this financial assistance.

Based on the foregoing, it is my opinion that:

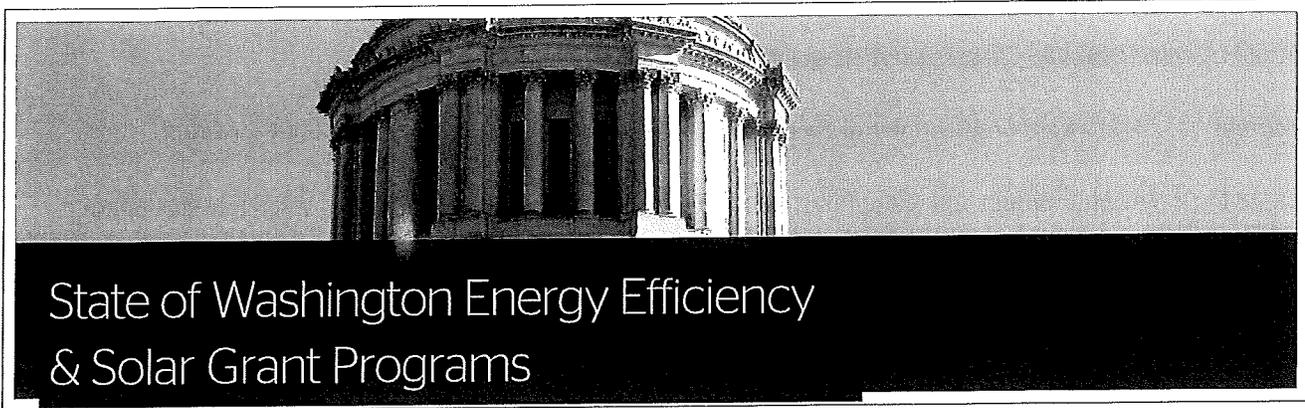
1. The Contractor is a public body, properly constituted and operating under the laws of the State of Washington, empowered to receive and expend federal, state and local funds, to contract with the State of Washington, and to receive and expend the funds involved to accomplish the objectives set forth in their application.
2. The Contractor is empowered to accept the Public Works Board financial assistance and to provide for repayment of the loan as set forth in the Contract.
3. There is currently no litigation in existence seeking to enjoin the commencement or completion of the above-described public facilities project or to enjoin the Contractor from repaying the loan extended by the Public Works Board with respect to such project. The Contractor is not a party to litigation which will materially affect its ability to repay such loan on the terms contained in the Contract.
4. Assumption of this obligation would not exceed statutory and administrative rule debt limitations applicable to the Contractor.

Signature of Attorney

Date

Name

Address



City of Deer Park City Hall
McKinstry ESCO Project

Washington State Energy Efficiency | Solar Grant Program Funding

Since 2009, the Department of Commerce and the Office of the Superintendent of Public Instruction have awarded more than \$265 million in competitive grants directed at energy and water cost saving projects. These funds are available to help public institutions across the state relieve operating budget pressure, use less energy, and improve the health and safety of our public buildings. Municipal governments, schools, state agencies, public hospitals, special districts, and colleges continue to see benefits at a local level with better performing buildings that cost less to operate.

2017-19 Energy Efficiency and Solar Grant Program Funding:

The Legislature has allocated a total of \$11 million for the biennium for grants:

- Energy Efficiency Grants: \$7,129,500 available
- Solar Grants: \$1,697,500. Available
- Remainder of funds other categories

Energy Efficiency Projects that have a simple payback of 35 years or less are generally eligible; Solar projects with 100 payback are generally eligible. The maximum grant amount per applicant per biennium is \$500,000 for energy efficiency projects and \$350,000 for solar projects. As in previous years, the capital grant-funding opportunities are intended to leverage additional local funding sources and can ultimately help fund broader projects which cover critical facility needs and result in deeper energy savings.

City of Deer Park Facility Improvement Measures For ESCO projects (FIMs): HVAC, Envelope Sealing; Solar; Roofing.

FIMs:	Project Cost:	Annual Estimated Utility Savings (90% guaranteed)	Energy Savings kWh – Electricity (90% guaranteed)	Energy Savings Therms – Gas (90% guaranteed)	*Annual Net Metering Cost	Net City of Deer Park Cost	Dept of Commerce Grant	Simple Payback \ Years
HVAC & Envelope Sealing	176,791	\$3,228.	3,998	3,640	N/A	\$176,791.	N/A	54.8
**Solar & Roofing	\$253,786.	\$2,860.	32,153	N/A	(\$102)	\$84,595.	\$169,191	30.7

*Annual Net Metering Cost is the Avista Utilities fee for a net meter at \$8.50/month.

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**Department of Commerce Grant – City of Deer Park Solar and Roofing Grant Project Overview:

Due: December 31, 2018; award notification March 1, 2019. Requires Council Approval to submit for Grant.

FIMS included in Grant Application: Solar & Roofing: 28.1 kW array | 78 Itek 360 W HE panels (Made in Washington Panels and Inverters)

Potential DOC grant: Maximum grant \$350,000. Minimum Match requirement is 1:2 or 33% of the total project cost.

- Project Cost: \$253,78
- Grant Request: \$169,191
- City of Deer Park Match Required: \$84,595

Local governments may use the following funds as leverage:

- Local Option Capital Asset Lending (LOCAL) program through the Office of the State Treasurer
<http://www.tre.wa.gov/LOCAL/index.shtml>
- Private lenders
- Utility incentives
- Local and federal funds - not awarded through the Washington State Government.
- Non-state appropriated funds

Grant Notes:

Small cities and towns with populations of 5,000 or less will be scored in their own category. Once 20% of funding has been awarded to this classification, the remaining applications will be added to the primary application review for scoring.

Solar Production Incentives:

We have just been notified that the current program for production incentives appears to have been fully utilized. Therefore, we have not added those into the calculations for payback above. Should the State once again budget for these production incentives, we will work with The City of Deer Park to apply and get those on this project. We will not know until the next biennium budget is approved next Spring/Summer 2019 if the legislature will renew this production incentive. Had it been in place we had estimated that the City of Deer Park would see an additional \$2,858/year for 8 years for that production incentive.

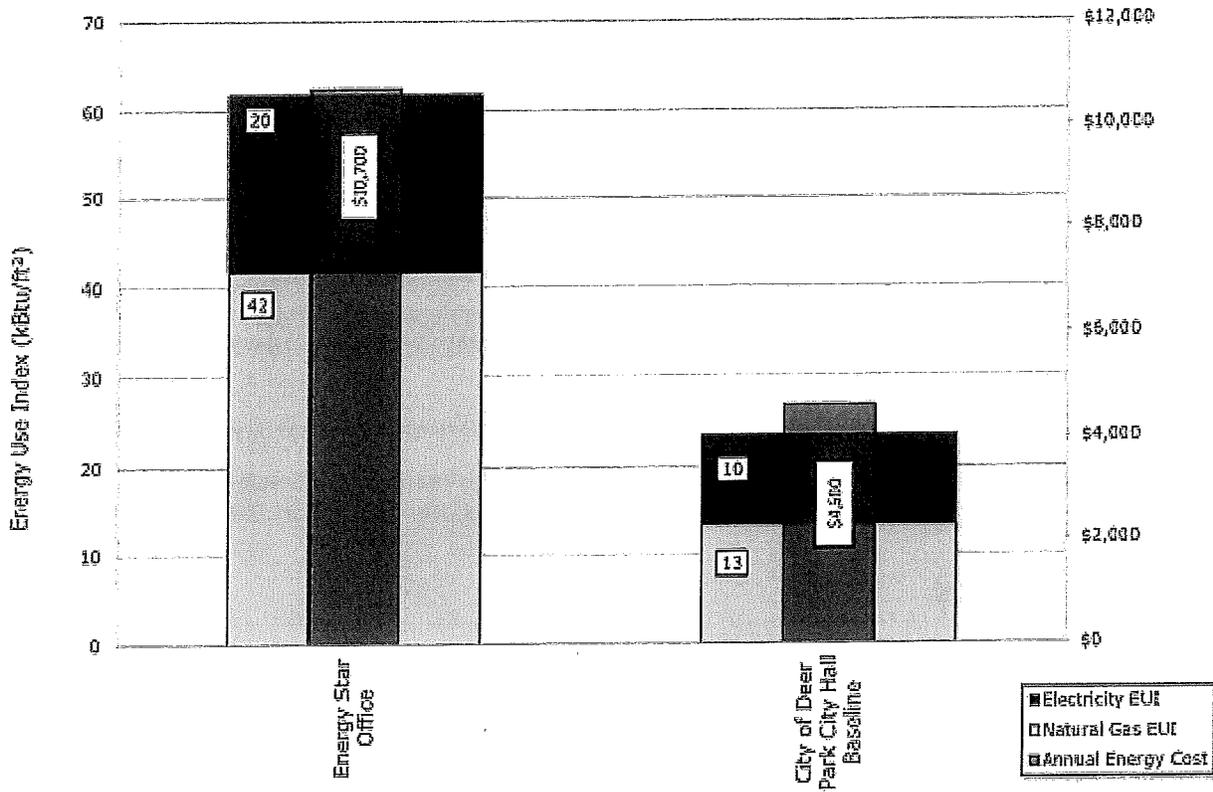
Program Success:

McKinstry has helped our clients achieve success in attracting Department of Commerce Grants to support energy efficiency and solar projects. During the last grant cycle – Spring 2016 – McKinstry's client applications were successful 95% of the time – stated another way, 18 of 19 McKinstry client grants submitted were awarded DOC grant funding.



City of Deer Park Energy Upgrades

Annual Energy Use per ft²



Scope of Work

Attachment A | City of Deer Park City Hall - PV Solar and Roof Membrane System

FIM # 03.01| CITY OF DEER PARK – CITY HALL: SOLAR PV INSTALLATION AND ROOFING UPGRADE

General Purpose

The existing roof is 20 years old and is at the end of its useful life. City of Deer Park needs to continually patch the roof as new leaks occur every year. While the roof is being replaced, the City of Deer Park has an opportunity to install PV solar and take advantage of Washington State production incentives and solar energy generation.

This scope will install a 28.1 kW Solar PV System on the roof of the City of Deer Park City Hall Building.

McKinstry proposes to install insulation board and install a layer of 60 mil TPO roof membrane mechanically fastened over the recovery board. The new white membrane comes with a 20-year manufacturer's warranty.

SCOPE OF WORK INCLUDES

PV Solar Scope

1. Supply and install a 28.1 kW rated WA made solar array, maximizing the available roof footprint, consisting of:
 - o (78) Itek 360W HE panels (WA made solar panels)
 - o (2) PVI- 14kW Solectria 208V 3-phase inverters (WA made)
 - o Ironridge Fixed Tilt Racking System
 - o Permanent Anchors for PV system
2. Exterior mounted conduit from rooftop panel (homerun for pV system) on rear of building, to main distribution panel (homerun for PV system) on rear of building, to main distribution panel (brick penetration) near existing Electric Meter
3. Coordination with engineering.
4. Electrical Permitting, Plan Review, and inspection.
5. Utility Interconnection requirements
6. Commissioning
7. Rebate paperwork
8. 1 year labor warranty, 10-year system warranty

Roofing Scope

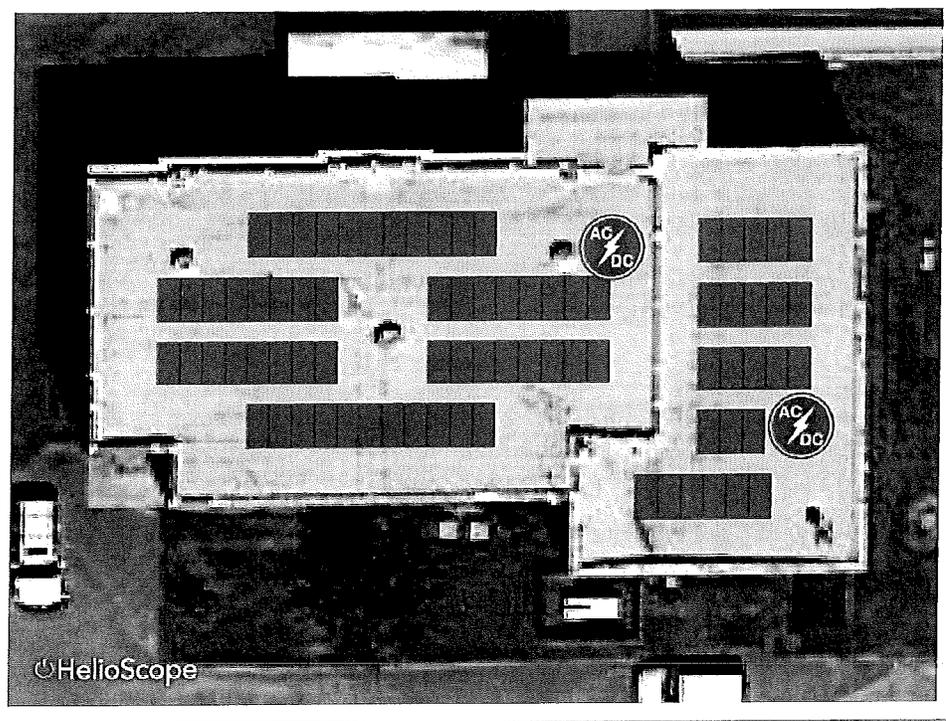
- A. Provide and install new ½" insulation board over the existing roof surface.
- B. Furnish and install mechanically attached 60 mil TPO roof membrane over the existing roof assembly and new recovery board.
- C. Provide and install associated membrane flashing to mechanical curbs and walls.
- D. Furnish and install new coping from pre-finished flat stock in standard color.
- E. Provide new 20-year manufacturer's labor and materials warranty upon completion.



Scope of Work

EXCLUSIONS AND CLARIFICATIONS

1. IT design, interface and troubleshooting are excluded.
2. Existing infrastructure may be used at the discretion of McKinstry.
3. Replacement of any equipment or system except those components specified above. Assumed existing equipment to remain is functioning per latest as-builts drawings and manufacturer specifications.
4. Shift work. The work will be performed during normal working hours.
5. Hazardous material abatement. Good Faith Survey to be completed and provided by City per City staff.
6. Excludes building code upgrades for equipment not directly replaced or repaired.



Scope of Work

Attachment A | City of Deer Park City Hall - GMAX Scope of Work

FIM 03.01 | CITY OF DEER PARK – CITY HALL: CONDENSING UNIT AND DIRECT EXPANSION COOLING COIL REPLACEMENT, FURNACE REPLACEMENT, NEW MINI SPLIT SYSTEM, AND NEW THERMOSTATS.

General Purpose

Problem Statement:

The Deer Park City Hall building is currently served by four (4) single zone furnaces with an A/C outdoor condensing unit and duct mounted DX coil serving each respective furnace. Of the four furnaces, three have been recently updated, with one original furnace remaining that needs replaced.

The existing four direct expansion (DX) cooling coils and their respective outdoor condensing units have reached the end of their serviceable life, and are therefore unreliable. Additionally, the basement furnace serving the police department offices is 38 years old, has reached the end of its serviceable life, and runs inefficiently, generating concerns of energy usage with the owner. Component age, condition and efficiency are the main factors for replacing the units.

Additionally, the single office in the northeast corner of the building has issues with heating and cooling in the current configuration. The furnace serving the second floor, east side of the building serves the entire chamber of commerce side as a large single zone on one thermostat and must heat/cool the entire zone in order to provide conditioning to the office. In situations where the office is the only occupied portion of the chamber of commerce area, the need to heat the entire zone simply to bring the office to the desired temperature is wasting energy. It is desired to install a single zone mini split system in this office.

In addition, the current thermostats do not provide the desired control and accessibility over the current heating and cooling systems. The building owners and occupants have requested new thermostats.

Proposed Solution(s):

McKinstry proposes to replace the four (4) DX coils and condensing with new units of similar capacity and higher efficiencies. Additionally, the new cooling system will utilize a more modern refrigerant that is more environmentally friendly, more readily available and more cost effective to service.

McKinstry proposes to replace the remaining original furnace with similar, yet more efficient gas-fired two-stage furnace. The new two stage option will enable cost-savings over the long term, and offer demand-control turn-down, thereby enabling a more energy conscious building control strategy.

McKinstry proposes to install a mini split heat pump system in the chamber of commerce office. The office mini split will enable the main chamber of commerce area to be kept at a more cost-effective temperature, while providing heating and cooling to the occupied office separately from the main furnace system.

McKinstry proposes to meet the need for new thermostats by installing four (4) new hard-wired, wifi-enabled thermostats at each zone location. Thermostat locations shall match the existing thermostat locations.

SCOPE OF WORK INCLUDES

A. Demolition

1. Demolition and disposal of the four (4) existing A/C condensing units, associated piping, and their indoor duct-mounted dx coil and drip pan.



Scope of Work

- i. Reclaim and properly dispose of existing R-22 refrigerant and crank case oil. City of Deer Park shall be given the first right of refusal regarding retention of the reclaimed R-22 refrigerant.
 - ii. Condensing unit sub-structure to remain for re-use. Condition of structure for re-use to be assessed by the contractor.
 - iii. Selective demolition of the respective furnace ductwork to accommodate coil removal. Duct to remain for reuse if condition allows.
 - iv. Demolish respective coil drain pans.
 - v. Demolish piping line sets between DX coils and condensing units.
 2. Demolition and disposal of the existing furnace serving the first level, east side of the building, located in the basement mechanical space.
 - i. Selective demolition of the respective furnace ductwork to accommodate removal.
 - ii. Selective demolition of the gas piping to the furnace to accommodate removal.
 - iii. Furnace housekeeping pad to remain for re-use. Condition of pad for re-use to be assessed by the contractor.
 3. Selective demolition of existing thermostats. Existing 24VDC control wiring to remain in place for re-use. Contractor to verify condition of wiring prior to re-use.
- B. New Furnace Installation
 1. Provide new sheet metal as required to facilitate installation and housing of new dx cooling coil and duct/mixing box connections for new furnace.
 2. Install new piping as required. Refer to plans for piping specifications.
 3. Install new controls wiring and power wiring as required.
- C. New Condensing Units and DX coils, Typical of four (4) units.
 1. Provide replacement A/C condensing units.
 - i. Re-use existing sub-structures if feasible, otherwise extend or modify the sub-structures as required to accommodate.
 - ii. Provide unit with disconnect and base mounts.
 - iii. Provide replacement DX cooling coils in furnace supply updraft ductwork. Provide new drain pans.
 - iv. Reconstruct or repair the furnace unit ductwork as necessary. Seal and inspect furnace ductwork for leaks.
 - v. Provide new refrigerant piping between new A/C condensing units and DX coils. Install per all manufacturer requirements. Insulate piping per 2015 Washington State Energy Code.
 - vi. Where possible, re-use existing penetration openings left from the demolition of original refrigerant piping. Seal and weatherproof all openings.
 - vii. Provide condensate piping to the new drain pans associate with the new A/C DX coils.
- D. New mini split heat pump for office at northeast corner of building.
 - i. Provide heat pump unit outdoors per manufacturer's specifications.
 - ii. Provide new wall-mounted indoor unit in the office space.
 - iii. Provide new piping line sets for office mini split system in accordance with manufacturer requirements. Insulate piping per 2015 Washington State Energy Code. Piping installation shall include all fire stopping and weatherproofing of openings associated with the refrigerant piping.
 - iv. Install new thermostat and wire as required for system.
- E. New thermostats
 1. Provide new thermostats for each furnace (typical of 4).
 - i. Each thermostat shall be hard-wired to the furnace.
 - ii. Coordinate with owner for final programming.

Scope of Work

- F. Commissioning
 - 1. McKinstry Commissioning Engineer will fully commission the proposed mechanical system.
- G. Electrical
 - 1. Electrically safe-off the existing condensing units and furnace to facilitate demolition.
 - 2. Demolition and removal of existing wiring and electrical components from the units to be demolished up to and including the disconnects. As applicable, retain existing feeders for extension to new units.
 - 3. Provide electrical components necessary to power the replacement mechanical systems.

EXCLUSIONS

- 1. Replacement or modification of any equipment or system except those components specified above. Assumed existing equipment to remain is functioning per latest as-builts drawings and manufacturer specifications.
- 2. Shift work. The work will be performed during normal working hours. Building access shall be provided as needed.
- 3. Hazardous material abatement. Good Faith Survey to be completed and provided by City per City staff.
- 4. Excludes building code upgrades for equipment not directly replaced or repaired.
- 5. Temporary heating / cooling. Assumed that the air handling unit can be taken out of operation to accommodate the mechanical modifications.
- 6. Total building envelope and load calculations. Building owner has not reported that the current heating and cooling systems have capacity issues except those specified above. Units specified above shall be replaced and updated with new units of similar capacity.
- 7. Owner shall be responsible for removal and replacement of bird screening.

Scope of Work

Attachment A | City of Deer Park City Hall - GMAX Detailed Scope of Work

FIM # 13.01 | CITY OF DEER PARK – CITY HALL: BUILDING ENVELOPE UPGRADE

General Purpose

Issue: The purpose of the building envelope improvement measures is to reduce infiltration and energy losses associated with poor insulation, cracks, leaks and poor seals around doors, windows, foundations, and roof lines. The scope of work varies by building.

Solution: McKinstry proposes to seal up the building envelope via caulking, weather-stripping, and other air-infiltration reducing measures.

SCOPE OF WORK INCLUDES

- A. Envelope Contractor:
- a. Weather-strip and seal exterior doors.
 - b. Window System(s) to be sealed
 - c. Roof hatch(s) to be sealed
 - d. Old Louver vents to be sealed.
 - e. Misc. holes in side wall to be sealed with foam and/or caulk
 - f. Interior door(s) to be weather-stripped and sealed for isolation

EXCLUSIONS

1. Replacement of any equipment or system except those components specified above. Assumed existing equipment to remain is functioning per latest as-builts drawings and manufacturer specifications.
2. Shift work. The work will be performed during normal working hours.
3. Hazardous material abatement. Good Faith survey to be completed by City per City Staff.
4. Excludes building code upgrades for equipment not directly replaced or repaired.
5. This proposal does not include costing for providing any "seed" stock or extra materials.
6. This proposal does not include asbestos and lead removal and/or abatement. It is assumed that the Council will bear any costs associated with hazardous material identification and abatement.
7. Should an authority having jurisdiction call upon McKinstry to repair or rectify real or potential code violations beyond those included in the scope above, Owner contingency funds will be used to cover the cost of repair. McKinstry has reviewed the proposed work areas for potential code violations and none were apparent.



ORDINANCE 2018-978

**AN ORDINANCE OF THE CITY OF DEER PARK,
WASHINGTON, COUNTY OF SPOKANE, TO SET THE
AMOUNT TO BE RAISED BY AD VALOREM TAXES IN THE
YEAR 2019.**

WHEREAS, the City of Deer Park (“City”) approved the following for 2018:

Amount levied in year 2018- \$295,000

Current Budget certification - \$480,000; and

WHEREAS, the City has met and considered its budget for the calendar year of 2019; and

WHEREAS, the population of the City is under 10,000; and

WHEREAS, the City after hearing and after duly considering all relevant evidence and testimony presented, determined that the City requires a regular levy in the amount of \$480,000, which includes an increase in property tax revenue from the previous year, and amounts resulting from the addition of new construction and improvements to property and any increase in the value of state-assessed property, and amounts authorized by law as a result of any annexations that have occurred and after refunds are made, in order to discharge the expected expenses and obligations of the City; now, therefore,

**THE CITY COUNCIL OF THE CITY OF DEER PARK, WASHINGTON
DO ORDAIN AS FOLLOWS:**

Section 1: Recitals. The Recitals are made a part of this Ordinance as if set forth in full.

Section 2: Tax Levy. The City Council has determined it is now necessary to collect all of the City's banked regular tax levy capacity, therefore the City hereby levies an increase over the 2018 regular tax levy for the 2019 tax levy the amount of \$174,392.79 which is a percentage increase of 63.4036769% from the previous year.

This increase is in addition to any additional revenue to be paid over to the City as a result of the addition of new construction and improvements to property, any increase in the value of state assessed property, any additional amounts resulting from any annexations that have occurred, and the amount of any refunds made.

Section 3: Banking. Pursuant to the action of the City in Section 1 of this Ordinance, the City no longer has any banked tax levy capacity.

Section 4: Notice to Spokane County. Pursuant to RCW 84.52.020, the City Clerk/Treasurer shall certify to the County Legislative Authority a true and correct copy of this Ordinance, as well as, the budget estimates adopted by the City Council in order to provide for and direct that the taxes levied herein shall be collected and paid to the City Clerk/Treasurer of the City of Deer Park at the time and in the manner provided by the laws of the State of Washington.

Section 5: Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 6: Effective Date. This Ordinance shall take effect and be in full force five (5) days after this Ordinance or a summary thereof consisting of the title is published.

Section 7: Three Reading Waiver. The Council hereby waives the three reading process due to time being of the essence for the passing of this ordinance.

APPROVED:

MAYOR TIMOTHY VERZAL

ATTEST/AUTHENTICATED:

DEBY CRAGUN, CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

BY: _____
CHARLES D. ZIMMERMAN

FILED WITH THE CITY CLERK :	<u>11/01/2018</u>
PASSED BY THE CITY COUNCIL :	<u>11//2018</u>
PUBLISHED :	<u>11//2018</u>
EFFECTIVE DATE :	<u>11//2018</u>
ORDINANCE NO. :	<u>2018-978</u>

SUMMARY OF ORDINANCE NO.2018-978

of the City of Deer Park, Washington

On the _____ day of November 2018, the City Council of the City of Deer Park, passed Ordinance No. 2018-978. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF DEER PARK, WASHINGTON,
COUNTY OF SPOKANE, TO SET THE AMOUNT TO BE RAISED
BY AD VALOREM TAXES IN THE YEAR 2019.

The full text of this Ordinance will be mailed upon request.

DATED this _____ day of November, 2018

DEBY CRAGUN, CITY CLERK

ORDINANCE NO. 2018-979

AN ORDINANCE OF THE CITY OF DEER PARK, WASHINGTON, AMENDING CHAPTER 8.34 OF THE DEER PARK MUNICIPAL CODE; BANNING THE SALE AND USE OF FIREWORKS WITHIN THE CITY; AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City Council has determined that the sale and use of fireworks in the city should be banned at the earliest possible date; and

WHEREAS, the City Council has determined that the provisions in this Ordinance are in the best interests of the public health, safety and welfare of the citizens of the City of Deer Park; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF DEER PARK, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Chapter 8.34 of the Deer Park Municipal Code is hereby amended to read as follows:

**Chapter 8.34
FIREWORKS REGULATIONS**

Sections:

8.34.010 Fireworks banned.

8.34.020 Violation – civil infraction.

8.34.030 Public Display of Fireworks.

8.34.040 State Law Adopted.

8.34.010 Fireworks banned.

The sale and use of fireworks in the City is prohibited at all times.

8.34.020 Violation – civil infraction.

Any person who violates DPMC 8.34.010 shall be guilty of a civil infraction punishable as set forth in DPMC 1.16.020.

8.34.030 Public Display of Fireworks.

Nothing in this Chapter shall prevent the City Council from authorizing a public display of fireworks.

8.34.040 State law adopted.

Except as otherwise specifically provided in this Chapter, the provisions of Chapter 70.77 RCW are adopted, including the definitions set forth therein, all as the same now exist or may hereafter be amended.

Section 2. If any section, sentence, clause, or phrase of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

Section 3. The City Clerk is hereby directed to publish a summary of this Ordinance consisting of its title in a newspaper of general circulation in the City.

Section 4. This Ordinance shall be in full force and effect one year following its approval by the City Council.

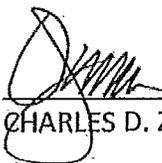
APPROVED:

MAYOR TIMOTHY VERZAL

ATTEST/AUTHENTICATED:

DEBY CRAGUN CITY CLERK-TREASURER

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

BY: 

CHARLES D. ZIMMERMAN

FILED WITH THE CITY CLERK : 11/1/18
PASSED BY THE CITY COUNCIL : _____
PUBLISHED : _____
EFFECTIVE DATE : _____
ORDINANCE NO. : 2018-979

SUMMARY OF ORDINANCE NO. 2018-979

of the City of Deer Park, Washington

On the _____ day of _____, 2018, the City Council of the City of Deer Park, Washington, passed Ordinance No. 2018-979. A summary of the content of said ordinance, consisting of the title, provides as follows:

**AN ORDINANCE OF THE CITY OF DEER PARK, WASHINGTON,
AMENDING CHAPTER 8.34 OF THE DEER PARK MUNICIPAL CODE;
BANNING THE SALE AND USE OF FIREWORKS WITHIN THE CITY;
AND SETTING AN EFFECTIVE DATE.**

The full text of this Ordinance will be mailed upon request.

DATED this _____ day of _____, 2018.

CITY CLERK-TREASURER, DEBY CRAGUN

ORDINANCE NO. 2018-980

AN ORDINANCE OF THE CITY OF DEER PARK, WASHINGTON, AMENDING CHAPTER 8.34 OF THE DEER PARK MUNICIPAL CODE LIMITING THE SALE OF FIREWORKS TO JULY 3 AND JULY 4 AT CERTAIN TIMES; LIMITING THE USE OF FIREWORKS TO JULY 4 AND DECEMBER 31 AT CERTAIN TIMES; AMENDING OTHER FIREWORKS RULES AND REGULATIONS; AMENDING THE PENALTY FOR VIOLATIONS TO INCLUDE CIVIL PENALTIES; CONTAINING A SEVERABILITY PROVISION; AND SETTING AN EFFECTIVE DATE.

WHEREAS, the Mayor, the City Council, and members of the community have considered and discussed fireworks regulations several times since July 4, 2018; and

WHEREAS, the City Council has determined that amendment should be made to the city fireworks rules and regulations as set forth in this ordinance; and

WHEREAS, the City Council has determined that the provisions in this Ordinance are in the best interests of the public health, safety and welfare of the citizens of the City of Deer Park; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF DEER PARK, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Chapter 8.34 of the Deer Park Municipal Code is hereby amended to read as follows:

**Chapter 8.34
FIREWORKS REGULATIONS**

Sections:

8.34.010 Purpose.

8.34.020 Definitions.

8.34.030 Sales and discharge schedule.

8.34.040 Rules and regulations.

8.34.050 Violation – civil infraction.

8.34.060 State law adopted.

8.34.010 Purpose.

It is declared the public policy of the city to secure and maintain such levels of fireworks regulations as to protect human health and safety, and to the greatest degree practicable prevent injury to property and physical safety of individuals. To this end, it is the purpose of this chapter to provide reasonable regulations that balance the freedom to enjoy historical traditions and the protection of the public health and safety.

8.34.020 Definitions.

“Consumer fireworks” means those fireworks as defined in RCW 70.77.136.

“Display fireworks” means those fireworks as defined in RCW 70.77.131.

“Public display of fireworks” means an entertainment feature where the public is admitted or permitted to view the display or discharge of display fireworks.

“Light off” means to ignite the fuse or other device or by other means cause the firework to combust or to begin the process of combustion. The term “discharge” shall have the same meaning as “light off” for purposes of this Chapter.

8.34.030 Sales and discharge schedule.

- A. It is legal to sell consumer fireworks within the city only from noon to 8:00 p.m. on July 3 and 4.
- B. The discharge of consumer fireworks in the City is permitted only on July 4 from 5:00 p.m. to midnight and on December 31 from 8:00 p.m. to 12:30 a.m. on January 1.
- C. The public display of fireworks in the City may be authorized by the City Council and if authorized shall be provided in compliance with all applicable state laws and any other conditions imposed by the City Council.
- D. The City Council may, at any time by resolution, ban fireworks sales and/or discharge if a public threat of fire emergency is determined to exist in the city.

8.34.040 Rules and regulations.

- A. It is unlawful to light off any fireworks on public property, including but not limited to all city right of ways, city parks, public school property, and public play fields. Public displays of fireworks approved by the City Council are exempt from this regulation.
- B. It is unlawful to light off fireworks on property zoned diversified commercial, central commercial, cemetery zone, light industrial business park, or public/quasi-public, except on property used for residential purposes with the consent of the property owner. Public displays of fireworks approved by the City Council are exempt from this regulation.
- C. It is unlawful to light off any fireworks at times not permitted under DPMC 8.34.030.
- D. It is unlawful to at any time light off fireworks that are not consumer fireworks as defined in DPMC 8.34.020.
- E. It is unlawful to light off fireworks in a manner that is hazardous or dangerous to persons or property.

8.34.050 Violation – civil infraction.

Any person who violates any of the provisions of DPMC 8.34.040 shall be guilty of a civil infraction punishable as set forth in DPMC 1.16.020.

8.34.060 State law adopted.

Except as otherwise specifically provided in this Chapter, the provisions of Chapter 70.77 RCW shall apply within the city. All references in this Chapter to the provisions of Chapter 70.77 RCW shall include and be considered references to any future amendments to the provisions of said Chapter.

Section 2. If any section, sentence, clause, or phrase of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

Section 3. The City Clerk is hereby directed to publish a summary of this Ordinance consisting of its title in a newspaper of general circulation in the City.

Section 4. This Ordinance shall be in full force and effect one year following its approval by the City Council.

APPROVED:

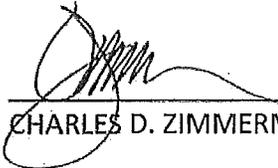
MAYOR TIMOTHY VERZAL

ATTEST/AUTHENTICATED:

DEBY CRAGUN CITY CLERK-TREASURER

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

BY:



CHARLES D. ZIMMERMAN

FILED WITH THE CITY CLERK	:	<u>11/1/18</u>
PASSED BY THE CITY COUNCIL	:	_____
PUBLISHED	:	_____
EFFECTIVE DATE	:	_____
ORDINANCE NO.	:	<u>2018- 980</u>

SUMMARY OF ORDINANCE NO. 2018-980

of the City of Deer Park, Washington

On the _____ day of _____, 2018, the City Council of the City of Deer Park, Washington, passed Ordinance No. 2018-980. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF DEER PARK, WASHINGTON, AMENDING CHAPTER 8.34 OF THE DEER PARK MUNICIPAL CODE LIMITING THE SALE OF FIREWORKS TO JULY 3 AND JULY 4 AT CERTAIN TIMES; LIMITING THE USE OF FIREWORKS TO JULY 4 AND DECEMBER 31 AT CERTAIN TIMES; AMENDING OTHER FIREWORKS RULES AND REGULATIONS; AMENDING THE PENALTY FOR VIOLATIONS TO INCLUDE CIVIL PENALTIES; CONTAINING A SEVERABILITY PROVISION; AND SETTING AN EFFECTIVE DATE.

The full text of this Ordinance will be mailed upon request.

DATED this _____ day of _____, 2018.

CITY CLERK-TREASURER, DEBY CRAGUN

CITY OF DEER PARK
CLAIMS CERTIFICATION AND APPROVAL

Auditing Officer's Certification

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed as described herein and that the Claim is a just, due and unpaid obligation against the *City of Deer Park*, and that I am authorized to authenticate and certify said Claims Checks numbered **37103 through 37147 in the amount of \$289,152.45.**

City Clerk/Treasurer

Council Approval

We, the undersigned Council Members of the *City of Deer Park* approve the payment of Claims Checks **37103 through 37147 in the amount of \$289,152.45 this 7th day of November 2018.**

Vouchers 2nd Half Oct 2018

Number	Vendor Name	Account Description	Amount
37103	Avista #2	Professional Services	\$200.00
37104	Airside Solutions, Inc.	Airport Supplies	\$70.51
37105	American Linen	Central Services Supplies/R & M All BLDGS	\$332.01
		Park Supplies	\$91.14
		Check Total:	\$423.15
37106	Anatek Labs	Water/Wastewater Testing	\$1,162.00
37107	Avista Utilities	Professional Services	\$6,055.00
37108	Bi-Mart Corporation	Shop Supplies	\$25.90
37109	Canon Financial Services, INC	Airport Graphics Equipment	\$56.97
37110	Centurylink	Communications	\$1,781.63
37111	City of Deer Park	Full Service Fuel Surcharge	\$350.93
37112	City Service Valcon, LLC	Fuel	\$2,783.98
		Professional Services	\$16.00
		Check Total:	\$2,799.98
37113	Concrete Cutters, Inc	R & M Structures Wastewater	\$270.25
37114	Consolidated Electrical Distributors Inc.	R & M Structures Wastewater	\$147.51
		Park Supplies	\$12.55
		Check Total:	\$160.06
37115	Costco Membership	Professional Services	\$240.00
37116	Deer Park Paving	R & M Structures 1st & Vernon	\$1,920.00
		Repair & Maintenance 6th & Country Club	\$535.00
		Check Total:	\$2,455.00
37117	Deer Park Printing LLC	Alert Spokane Insert	\$374.03
37118	Drury, Clint	Travel/training Sensus	\$83.00
37119	Evergreen Truss	Streets Supplies	\$41.59
37120	Fastenal	Water Supplies	\$19.45
37121	Ferguson Waterworks	Items Purchased For Resale	\$4,855.03
37122	G S I Auto Glass	Golf Course Door replacement	\$5,545.53
37123	Gibson, Travis	Boot Allowance	\$151.33
37124	Inland Empire Utility	Locating Services	\$129.50
37125	Journal of Business	Professional Services	\$945.00
37126	Jub Engineers, Inc.	Airport/cedar RD Engineering	\$3,459.02
		Dept of Ecology License	\$2,517.55
		FAA AIP #23 - Pavement	\$3,735.66
		FAA AIP Grant #24	\$36,123.32
		Professional Services	\$1,753.15
		Spokane CO Bldg/plan Checks	\$1,605.24
		Subdivision Haven Heights Insp	\$4,418.60

			Check Total:	\$53,612.54
37127	Kajun Electric	R & M Structures Wastewater /Water		\$513.48
37128	Krieger, Roger	Travel/training Sensus		\$83.00
37129	North Central Labs of Wisconsin, Inc	Wastewater Supplies		\$63.99
37130	Ogden/Murphy/Wallace PLLC	Legal Services Rendered		\$3,243.87
		Airport /Water contracts		\$479.59
		Golf Course Litigation		\$1,136.78
			Check Total:	\$4,860.24
37131	Palms Tree Service & Landscaping	R & M Structures Tree removal		\$648.60
37132	Reliance Janitorial	City Hall Janitorial Services		\$515.00
37133	Ricoh USA, Inc	City Hall graphics		\$208.62
		Supplies		\$265.65
			Check Total:	\$474.27
37134	Schultz's Aviation, LLC	Full Service Fuel Surcharge		\$350.93
		Airport Management Contract		\$9,166.67
			Check Total:	\$9,517.60
37135	Skyline Builders	Golf Course Cart Storage Addition		\$26,090.00
37136	Soiltest Farm Consultants, Inc	R & M Cenex Spray		\$745.00
37137	Spokane County District Court	Professional Services		\$1,967.92
37138	Spokane County Treasurer	Spokane CO Jail Services		\$2,076.72
37139	Spokane County Treasurer	Alcoholism/substance Abuse		\$264.78
37140	Spokane County Treasurer/ Prosecutor	City Prosecutor		\$4,192.48
37141	Spokane County Treasurer/SCRAPS	Spokane County Regional Animal Control		\$866.35
37142	Spokane County Treasurer's Office	Spok CO Law Enforc Contract		\$38,539.00
37143	Terry's Truck Center, Inc.	Airport Fuel Truck		\$41,926.08
37144	Toner's Excavating	Sand & Gravel		\$2,162.00
37145	US BANK ST. PAUL	LTGO Bond Interest		\$20,400.00
		LTGO Bond Principal		\$50,000.00
			Check Total:	\$70,400.00
37146	Washington State Auditor	State Auditor Fees		\$1,430.05
37147	Waste Management	Professional Services		\$7.51
	Grand Total			\$289,152.45
	Total Accounts Payable for Checks #37104 Through #37147			

CITY OF DEER PARK
PAYROLL CERTIFICATION AND APPROVAL

Auditing Officer's Certification

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services and/or the labor has been performed as described herein and is a just, due and unpaid obligation against the *City of Deer Park*, and that I am authorized to authenticate and certify said Payroll Checks numbered 13128 through 13158 including 941 Taxes in the amount of \$106,383.71.

City Clerk/Treasurer

Council Approval

We, the undersigned Council Members of the *City of Deer Park* approve the payment of Payroll Checks numbered 13128 through 13158 including 941 Taxes in the amount of \$106,383.71 this 7th day of November 2018.

Deer Park Municipal Airport

USE AGREEMENT

The City of Deer Park, Washington (hereinafter the "City") and Spokane County, Washington (hereinafter "SPOKANE COUNTY" or "Lessee"), sometimes hereinafter individually referred to as a "party" or collectively referred to as "parties", effective as of the 15th day of October, 2018 agree as follows:

1. **PREMISES.**

A. **Premises.** The City shall allow access to SPOKANE COUNTY the following premises (the "Premises"):

Eastern one-half of Airport Storage Building located at 712 N. Cedar Road, Deer Park, WA.

B. **Use of Premises.** The Premises shall only be used for storage of the SKID CAR and TRAILER, and for no other purpose without the prior written approval of the City.

C. **Rules and Regulations.** SPOKANE COUNTY shall comply with all reasonable rules and regulations regarding the use and care of the Premises and City's DEER PARK MUNICIPAL AIRPORT as adopted or amended from time to time. SPOKANE COUNTY agrees it will not disturb the City by making or permitting any unreasonable disturbance or unusual noise, vibration, emission, sense of order, discharge, traffic or road obstruction, general nuisance or other condition in, on or adjoining the Premises inconsistent with the contemplated use specified herein.

2. **TERM.** The term of this Use Agreement is for six (6) month's beginning on October 15, 2018 and terminating May 15, 2019.

3. **RENTAL.** SPOKANE COUNTY shall pay to the City rental as follows:

One Hundred fifty dollars (\$150.00) per month use.

Rent shall be due and payable within thirty (30) days of receipt of invoice from the City of Deer Park. Unless other arrangements have been agreed upon, the City shall invoice the County at the end December 2018, and May 15, 2019, or upon earlier vacation of the space. If SPOKANE COUNTY does not pay the rent by the due date, the City may add a late charge of up to ten percent (10%) of the rent for each month rent is delinquent. If rent is not paid, SPOKANE COUNTY shall be deemed to be in default of this Use Agreement. See paragraph 13 for default terms.

4. **MAINTENANCE AND REPAIR.** SPOKANE COUNTY has viewed the Premises, and accepts them in their present "AS-IS" condition, with all faults and defects. The City makes no representations about the condition or fitness for purpose of the Premises.

5. **ALTERATIONS AND IMPROVEMENTS.** SPOKANE COUNTY shall make no alterations or improvements to the Premises without first having obtained the written consent of the City. Upon termination, the City has the option to require SPOKANE COUNTY to remove such improvements at SPOKANE COUNTY's sole expense. If not removed, improvements shall become the property of the Deer Park Municipal Airport.

6. **COMPLIANCE WITH LAWS.** SPOKANE COUNTY shall comply with all state, federal and local laws and regulations and the rules of the City, as amended from time to time. SPOKANE COUNTY

shall indemnify, defend, and hold the City harmless from all expense directly or indirectly related to the noncompliance by SPOKANE COUNTY of governing law, regulations and/or rules of the City.

SPOKANE COUNTY expressly represents that all of SPOKANE COUNTY's operations on the Premises shall be in strict compliance with governing environmental, land use, regulations and ordinances, and that SPOKANE COUNTY specifically shall not use, store, keep or maintain in, on or about the Premises any hazardous substances and/or wastes, toxic materials, or solid wastes within Deer Park Municipal Airport and immediate properties bordering the City's properties.

8. **SITE SPECIFIC REQUIREMENTS.** SPOKANE COUNTY shall limit access to the SKID CAR and TRAILER to SPOKANE COUNTY, its officials, employees, and volunteers. All participants and visitors shall remain clear of active runways and taxiways. No participant shall cross any active runway to access the training site. Access shall be via Cedar Road only. Participants and visitors shall not consume or expose themselves to water from the irrigation sprinklers. This water is treated municipal waste water. Sprinklers shall not be tampered with or disabled.

9. **SAFETY RULES, TIME OF USE.** SPOKANE COUNTY shall be solely responsible for the safety and security of all participants and visitors. The City of Deer Park and Deer Park Municipal Airport assume no responsibility for the safety of participants or visitors.

10. **INDEMNIFICATION, LIABILITY INSURANCE.** The City and its employees/agents shall not be liable for any injury to any persons or for damage to any property, including , but not limited to, damage by rain, flood or bursting water pipes, abnormal temperature, mechanical or electrical failure, sewage/septic system failure, fire, smoke, water from sprinklers, earthquake, environmental damage, aircraft accident, or any infestation, or otherwise, regardless of how such injury or damage may be caused, as a result of the condition which in any way is related to the use of the Premises or the operations of the SPOKANE COUNTY in, on or about the Premises by SPOKANE COUNTY, its employees, agents, volunteers and invitees. SPOKANE COUNTY agrees to indemnify, defend and hold harmless the City from and against all liability, claims, to include liability, claims and actions brought by SPOKANE COUNTY its employees, agents, volunteers and invitees based upon or arising out of injuries, death, damages to person or property, caused by or resulting from the negligence of SPOKANE COUNTY's employees, agents, volunteers and invitees while engaging in or arising from SPOKANE COUNTY'S use of the Airport pursuant to the terms of this Use Agreement.

In addition Spokane COUNTY certifies that it is a member of the Washington Counties Risk Pool (WCRP), as provided by RCW 48.62.031. SPOKANE COUNTY is covered by the WCRP's Joint Memorandum of Liability Coverage Document.

As evidence of the coverage required by this Use Agreement, SPOKANE COUNTY shall furnish an acceptable Memorandum of Liability Coverage (MLC) as proof of membership in the Washington Counties Risk Pool to the CITY within fourteen (14) days of approval of this Use Agreement by SPOKANE COUNTY.

There shall be no cancellation, material change, reduction of limits or intent not to renew the liability coverage(s) without thirty (30) days written notice from SPOKANE COUNTY or the WCRP to the CITY.

11. **ASSIGNMENT OR SUBLEASE.** SPOKANE COUNTY shall not assign, transfer or sublet the Premises.

12. **TERMINATION-HOLDING OVER.** Upon termination, SPOKANE COUNTY shall return the Premises and adjoining areas used by SPOKANE COUNTY to the City in clean condition, and in a condition acceptable to the City. If SPOKANE COUNTY shall, without the consent of the City, hold over

after the expiration or termination of the tenancy, SPOKANE COUNTY shall pay to the City the rate of one and one-half (1 ½) times the then current rent, and SPOKANE COUNTY shall be bound by all of the provisions of this Use Agreement.

The City reserves the right to terminate said Use Agreement upon ten (10) days written notice to the SPOKANE COUNTY without cause.

13. **DEFAULTS.** Time is of the essence, and if SPOKANE COUNTY is in default under this Use Agreement the City may immediately terminate this tenancy after having given SPOKANE COUNTY three (3) days' notice in writing in the event of nonpayment of rent, or ten (10) days notice in writing for other defaults and giving SPOKANE COUNTY an opportunity to cure such defaults. If not so cured within the specified time, then the City may immediately terminate this tenancy and repossess the Premises and store any personal property found thereon, and later sell such property to reimburse the City for part of its damages. In the event of such default, SPOKANE COUNTY shall be fully liable for any and all direct or indirect damages suffered by the City.

14. **ATTORNEY'S FEES.** Should a dispute arise between the parties hereto as to the effect of any provision hereof and refer said dispute to an attorney, the losing party shall pay the prevailing party's reasonable attorney's fees and costs of court, including such fees and costs on any appeal.

15. **WAIVER.** The acceptance of rent by the City after default by SPOKANE COUNTY shall not be deemed a waiver of such default. No waiver by the City of any default by SPOKANE COUNTY shall be construed to be a waiver of any subsequent default by SPOKANE COUNTY.

16. **BINDER.** This Use Agreement is binding upon the parties hereto, their heirs, personal representative, successors in interest and assigns.

17. **MISCELLANEOUS.**

A. **Inspection.** The City reserves the right to enter and inspect the Premises at any reasonable time without prior notification or authorization.

B. **Rules and Regulations.** SPOKANE COUNTY agrees to comply with all applicable rules, regulations and covenants of the City pertaining to the Premises for the general safety and convenience of the City, SPOKANE COUNTY, invitees, licensees and the general public, including but not limited to vehicle posted speed, litter enforcement, SPOKANE COUNTY signs, excessive noise, annoying lights, irritating odors, or discarding of any type of liquids or solids to either the City's property or adjoining property.

C. **Environmental and Premises Cleanup Costs.** SPOKANE COUNTY shall be fully and completely liable to the City for any and all cleanup costs and any and all other charges, fees and penalties imposed by any governmental authority with respect to dangerous or waste substances, or discharges to the water, ground water or air, in or about the Premises, common areas or City facilities by SPOKANE COUNTY. SPOKANE COUNTY shall indemnify, defend and save the City harmless from any and all of the costs, fees, penalties and charges assessed against or imposed upon the City, as well as the City's attorneys' and engineers' fees and costs, as a result of SPOKANE COUNTY's use, disposal, transportation, generation and/or sale of hazardous, dangerous or waste substances, or discharges to the water, ground water or air on the Premises.

18. **NOTICES**

All notices required herein shall be deemed to be properly served if hand delivered, or if sent by mail, postage prepaid, to the last address previously furnished by the parties hereto. SPOKANE COUNTY is

obligated to notify the City of current address and phone numbers. Until hereafter changed by the parties in writing, notices shall be addressed as follows:

City of Deer Park	Lessee
E 316 Crawford Ave.	Spokane County Office:
PO Box F	Stephen R. Bartel, Director
Deer Park WA 99006	Spokane County Risk Management
(509)276-8802	1033 W. Gardner
	Spokane, WA. 99260
	(509)477-6101

Date of service of such notice shall be the date of postmark by the U.S. Post Office Service.

The parties hereto have executed this Use Agreement as of the day and year first above written.

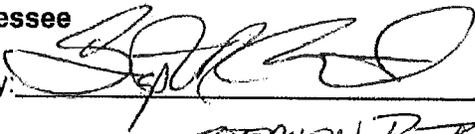
CITY OF DEER PARK

ATTEST:

By: _____
Robert Whisman, Mayor

By: _____
Deby Cragun, City Clerk/Treasurer

Lessee

By:  _____

Printed Name: STEPHEN R. BARTEL

DEER PARK AIRPORT LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter sometimes referred to as "Lease" or "Agreement") is made and entered into by and between the City of Deer Park, State of Washington, hereinafter referred to as "City" and Eldredge Holdings LLC (Kevin Eldredge), hereinafter referred to as "Lessee."

WITNESS THAT

WHEREAS, THE CITY OF DEER PARK is the owner of certain described real estate, more fully described below; and

WHEREAS, THE LESSEE desires to lease the certain described property for the purpose described herein;

NOW, THEREFORE, for and in consideration of the premises provided herein and the mutual covenants and agreements hereinafter contained and other valuable consideration, the parties hereto agree, for themselves, their successors and assigns, as follows:

I. PREMISES

The City of Deer Park hereby leases to Lessee the parcel of land located at 714 N. Cedar Rd. and described as **Lot 1** as located on Deer Park Municipal Airport Lease Plan (revision 5), Spokane County, Washington (hereinafter the "Premises" or "Leased Premises").

The City covenants and agrees that it is in lawful possession of the property, and has good and lawful authority to execute this Lease. The Lessee hereby warrants that it has inspected the Premises and City has not made any promises, warranties, or statements other than as contained herein. Lessee accepts the Premises as is.

The City 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 Lessee, and without interference or hindrance.

The City reserves the right but shall not be obligated to the Lessee, 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 Lessee in this regard.

The City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent the Lessee from erecting, or permitting to be erected, any building or other structure on or adjacent to the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.

The City shall have the right to temporarily close the Airport or any of the facilities thereon for maintenance, improvement, or for the safety of the public.

It is understood and agreed to by Lessee that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right forbidden by the Airport

Development Act, 49 U.S.C. 47101. et.seq. and Section 308 of the Federal Aviation Act of 1958 as the same exist now or may hereafter be amended.

During the time of war or national emergency, the City shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use and, if such Lease is executed, the provisions of this instrument insofar as they are inconsistent with the provisions of the lease to the government, shall be modified to be consistent with the provisions of the lease to the government and may be fully suspended at the option of the City.

This Lease shall be subordinate to the provisions of any existing or future agreement between the City and the United States relative to the operation or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for development of the Airport, by the provisions of the Airport Improvement Program, and as the program may be amended, or any other federal act, deed, grant agreement, or program affecting the operation or maintenance of the Airport now or in the future; provided however, that the City shall, to the extent permitted by law, use its best efforts to cause any such agreements to include provisions protecting and preserving the rights of Lessee in and to the Premises and improvements thereon. Failure of the Lessee or any occupant to comply with the requirements of any existing or future agreement between the City and the United States, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of Lessee's rights hereunder.

II. TERM

A. The Term of this Lease shall be for a period of 20 years commencing from the 1st day of November, 2018 and ending the 31st day of October 2038, unless otherwise terminated or canceled as provided in this document.

B. At the end of the term of this Lease, Lessee shall have the option to apply for a new lease at the then current terms for new leases. The Lessee shall be eligible for a new lease agreement on the Leased Premises provided Lessee is in compliance with all terms, covenants, and conditions of this Lease and any amendments thereto.

III. HOLDING OVER

If Lessee, without the written consent of the City, shall hold over after the termination date or earlier termination of this Lease, Lessee shall be deemed to be occupying the Premises as a month-to-month tenant whose tenancy may be terminated as provided by the laws of the State of Washington. During any such tenancy, Lessee agrees to be bound by all of the terms, covenants, and conditions of this Lease, as far as they are applicable to a month-to-month tenancy and to pay monthly rent in the amounts designated by the City.

IV. USE OF PREMISES

A. Lessee agrees that the use of the Premises shall be limited to those airport-related activities authorized by the Federal Aviation Administration, City of Deer Park Zoning Regulations, Airport Minimum Business Standards and Airport Rules and Regulations as are

presently in effect and may in the future be adopted, or as may otherwise be agreed to by the parties.

B. Lessee shall provide proof of aircraft registration (or intent to register) with the State of Washington in accordance with RCW 47.68.250, as the same exists now or may hereafter be amended. The City is obligated by law to report to the Washington State Department of Transportation, Aviation Division the aircraft "N" number and owner name and address of those not yet registered.

C. It is clearly understood by the Lessee that no right or privilege has been granted which would prevent any person, firm, corporation, or entity operating aircraft on the airport from performing any service on its own aircraft with its own employees (including, but not limited to, maintenance and repair) that it may choose to perform.

V. FINANCIAL OBLIGATION

A. Commencing on the effective date of this Lease, Lessee agrees to pay rent to the City as calculated below:

Rent Rate	Sq. Ft.	Rent	Leasehold Tax	Total Due Semi Annual
\$ 0.22	5270	\$ 1,159.40	\$ 148.87	\$ 1,308.27
				\$ 664.13

The rental payment amount for any partial calendar months included in the Lease term shall be prorated on a daily basis. Annual payments, in advance, are preferred. Semi-annual payments shall be assessed an administrative fee of \$10 per payment. Rent not paid by the 10th of the month due shall be deemed delinquent, and a penalty of 10% of the amount due at that time shall be assessed against each delinquent installment.

B. No demand for rent need at any time be given, but it shall be the duty of the Lessee to pay rentals, fees, charges, and billings as required under the provisions of this Lease.

C. Lease rates for the Leased Premises shall be adjusted annually. Adjustment shall be based upon the most immediate complete full previous year Consumer Price Index, Pacific Cities, West-B/C (Dec. 1996=100 for All Urban Consumers (CPI-U). City shall issue notice of intent to adjust the rental rates at least (30) days prior to the initiation of a rate increase. In the event this Consumer Price Index is no longer produced, then the next most geographically similar All Urban Consumers Index (CPI-U) shall be selected and applied by the City.

D. Lessee shall keep all rental payments free from all claims, demands, or set-offs, of any nature, or by any person, corporation, or entity.

E. Installation, hook-up, and payment for utilities shall be the responsibility of the Lessee. Utilities are to be installed to the City's specifications and those of the utility service provider.

VI. FAILURE TO COMPLY WITH FINANCIAL OBLIGATION

Failure to pay amounts due or comply with any other of the financial obligations to the City under this Agreement shall entitle the City to re-enter and take possession of the Premises upon giving Lessee ninety (90) days advance notice of intent to do so, if said monetary default has not been remedied within the ninety (90) day period after notice is sent.

VII. DISPOSITION OF BUILDINGS AND IMPROVEMENTS UPON LEASE EXPIRATION

At least one hundred eighty (180) days prior to the expiration of this Lease, Lessee shall notify the City regarding Lessee's intent with respect to lease renewal or disposition of buildings and improvements on the Leased Premises. Upon termination for reasons other than default, the City and Lessee shall agree upon one of the following three courses of action with respect to the disposition of Lessee's buildings and improvements located at the Premises:

1. In the event that the Lessee desires to continue occupying the Leased Premises, the Lessee may request that the City grant a new lease agreement. If the City desires to continue to lease the Leased Premises with the existing improvements, the City may concur with this request. Any such request concurred with by the City must be accompanied by the lease renewal application fee then in effect. In the event the City concurs with the Lessee's request to lease the Leased Premises, then the Lessee shall be eligible for a new lease agreement for the Leased Premises provided the following conditions are met by the Lessee:

- **Good Repair:** The Leased Premises and all improvements are in a state of good repair, including, without limitation, exterior paint, walls, roofs, doors, and any other items including those which are structural and/or aesthetic in nature.

- Lessee is in compliance with all terms, covenants, and conditions of this Lease. The terms of the new lease agreement are subject to negotiation between the City and Lessee. OR

2. At the end of the term of this Lease, the Lessee may peacefully surrender the Leased Premises in a fully restored condition, including the removal of all improvements. Restoration of Leased Premises shall also include fine grading to allow for proper drainage into the appropriate drainage system. All components of the improvement removed from the Leased Premises shall be completely removed from the site and disposed of off airport at the sole cost of Lessee. Removal of improvements and restoration of the Leased Premises shall be complete no later than thirty (30) calendar days after the expiration date of this Lease, unless the City agrees to an extension. OR

3. The City may agree to purchase the improvements from Lessee at a price to be determined by the City and Lessee. The City and Lessee may agree to have an appraisal of the improvements completed to aid the City and Lessee in their efforts to agree upon a purchase price. In the event the City and Lessee are unable to agree upon a purchase price, the City may require Lessee to comply with Option 2 above.

If the City and Lessee are unable to agree upon any of the above three options, then option 2 shall, by default, apply upon termination of the Lease term.

Personal property left on the Leased Premises shall, at the option of the City, become exclusive property of the City, without liability for payment, if said personal property remains on the Leased Premises thirty (30) days after the termination of the Lease for any reason.

City, at its discretion, may extend the time period for resolution of these options. Lessee shall be deemed to be occupying the Premises as a month-to-month tenant during any such extended period as per Article III of this Lease.

VIII. INDEMNIFICATION AND INSURANCE BY LESSEE

The Lessee shall indemnify the City, its employees, the Airport Manager and its employees, and City elected and appointed officers from and against any and all claims, demands, cause of actions, suits or judgments, including attorney's fees, costs and expenses incurred in connection therewith and in enforcing the indemnity, for deaths or injuries to persons or for loss of or damage to property arising out of or in connection with the condition, use occupancy or Lessee's maintenance of the Leased Premises or common areas or any improvements thereon; or by Lessee's non-observance or non-performance of any law, ordinance or regulation applicable to the Leased Premises; or incurred in obtaining possession of the Leased Premises after a default by the Lessee, or after the Lessee's default in surrendering possession upon expiration or earlier termination of the Term of the Lease, or enforcement of any covenants in this Lease. This includes, without limitation, any liability for injury to the person or property of Lessee, its agents, officers, employees, or invitees. **The Lessee specifically waives any immunity provided by Washington's Industrial Insurance Act. This indemnification covers claims by Lessee's own employees.** This provision and waiver was specifically negotiated.

City shall indemnify Lessee, its members, employees, and agents from and against any and all claims, demands, causes of action, suites or judgments, including attorney fees, costs and expenses incurred in connection therewith and in enforcing the indemnity, for death or injury to persons or for loss of or damage to property caused by the City's breach of any term of this Lease or the negligence of the City.

In the event of any claims made to, or suits filed against City, for which the above indemnity applies, City shall give Lessee prompt written notice thereof and Lessee shall defend or settle the same.

Lessee, as a material part of the consideration to be tendered to City, waives all claims against City for damages to goods, wares, merchandise and loss of business, in upon or about the Leased Premises and for injury to Lessee, its agents, employees, or invitees in or about the Leased Premises from any cause arising at any time, other than for City's sole negligence or willful misconduct.

From and after the commencement date of the initial term of this Lease and continuing for the initial term and any extension of this Lease, Lessee shall insure the Leased Premises, at its sole cost and expense, against claims for bodily injury and property damage under a policy of general liability insurance, with aggregate limits of \$1,000,000 for bodily injury and property damage. Such policy shall name City as an additional insured. Before taking possession of the Leased Premises, the Lessee shall furnish the City with a certificate evidencing the aforesaid insurance coverage.

The aforementioned minimum limits of policies shall in no event limit the liability of Lessee hereunder. No policy of Lessee's insurance shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days prior written notice to City by the insurer. Lessee shall, at least thirty (30) days prior to the expiration of the policies, furnish City with renewals or binders.

The insurance required shall be issued by carriers acceptable to the City, and City's approval shall not be unreasonably withheld.

The Lessee agrees that if Lessee does not purchase and maintain such insurance, City may, but shall not be required to, procure such insurance on Lessee's behalf and charge Lessee the premiums together with a five percent (5%) administrative charge, payable upon demand.

In the event a fire or other casualty loss results in destruction of the building to the extent that Lessee determines not to use insurance proceeds to repair or rebuild the hangar building, the proceeds of any insurance payment available to Lessee shall first be used to restore the Premises to the condition they were in prior to construction of a building on the Leased Premises and the remaining insurance proceeds shall be the property of Lessee.

Lessee's construction contractor shall provide at least \$1,000,000 general liability insurance naming the City of Deer Park as an additional insured.

IX. DAMAGE OR DESTRUCTION

If the improvements on the Premises are partially or totally damaged by fire or other casualty, the Lessee will repair or replace the damaged improvements (or similar) to meet existing building code at its sole expense within a reasonable period of time (not to exceed ninety (90) days from casualty or as weather and the permit process allow). All such construction shall be subject to the covenants, restrictions, and approval procedures as defined in the Airport Site Development Guidelines and City of Deer Park Building Department.

In the event Lessee decides not to rebuild within a reasonable time, Lessee shall restore the Leased Premises to a good and usable condition in conformity with the then current usage within ninety (90) days from the date that written notice to restore is received from the City.

City may, at its discretion, extend the period for rebuilding. Lessee shall remain responsible for payment of rent and leasehold tax and shall comply with all terms and conditions of this Lease during this extended period.

If the Lessee opts not to rebuild, upon payment of the remainder of the rent due under the Lease and removal of all improvements and restoration of the Leased Premises to the condition the Leased Premises were in at the time of commencement of this Lease, the City will agree to terminate the Lease.

X. UTILITIES AND MAINTENANCE OF PREMISES

Lessee shall pay all charges for utility services furnished to the Premises, including, but not limited to, electricity, gas, telephone, water, sewage, garbage disposal, and janitorial services throughout the term of this Lease.

Lessee shall, at its sole expense, keep and maintain the Premises in good repair and tidy condition. While not all inclusive, particular attention shall be focused on foundations, structural components, roofs, wall systems, doors, and electrical and water systems. Roofs and walls should be maintained to be free from leaks and damage and should be painted as necessary to maintain a tidy appearance.

In addition, Lessee shall:

- (a) Not allow trash, garbage, rubbish or refuse to collect on the exterior of any building on the Premises;
- (b) Mow vegetation on Premises;
- (c) Keep Premises around building free from inoperable and junk equipment;
- (d) Not use Premises around hangar as long-term parking for vehicles or parking of equipment not then being used for the operation of aircraft or maintenance of Premises.

XI. ADVERTISING, LIGHTING, AND TRANSMISSIONS

A. The Lessee shall submit plans and obtain approval of the City before erecting, installing, or operating signs or other advertisements upon any portion of the Premises herein demised.

B. The installation or use on the Premises of any floodlights, neon lights, colored lights, or other means of lighting shall be subject to the express written approval of the Airport Manager. Any use of lighting or signage that may potentially impair a pilot's ability to distinguish between airport lights and other light, or that creates glare or distraction affecting pilot vision is prohibited. All lighting shall be shielded downward.

C. Any use that creates or causes interference with the operations of radio or electronic facilities at the airport or with radio or electronic communications shall be prohibited.

XII. CITY'S RIGHT OF CANCELLATION

In addition to any conditions as specified herein and all other remedies available to the "City," this agreement shall be subject to cancellation by the City should any one or more of the following occur:

A. If Lessee shall file a voluntary petition in bankruptcy or proceedings in bankruptcy instituted against the Lessee are thereafter adjudicated, a bankruptcy pursuant to such proceedings, or a court shall take jurisdiction of the Lessee's property and its assets pursuant to proceedings brought under the provision of the Federal Reorganization or Bankruptcy Act, or a receiver for the Lessee's assets is appointed, or the Lessee is divested of its rights, powers, and privileges under this Lease by other operation of law.

B. If Lessee shall default, fail to perform, or breach any covenants, terms, or conditions of this Lease, the Lessee shall be given written notice to correct or cure such default, failure to perform, or breach. If, within ninety days (90) from the date of such notice, the default, breach, or complaint shall not have been corrected in a manner satisfactory to the City, the City shall have the right to immediately declare this Lease terminated and to proceed to evict Lessee and may require Lessee to remove all improvements to the Leased Premises or at the City's option keep or dispose of the improvements.

XIII. LESSEE'S RIGHT OF CANCELLATION

In addition to all other remedies available to the Lessee, this Lease shall be subject to cancellation by Lessee should any one or more of the following occur:

A. The permanent abandonment or discontinuance in use of the Airport as an airport.

B. The issuance of any order, rule or regulation by the Federal Aviation Administration or any other federal agency or by any court of competent jurisdiction of an injunction, materially restricting for a period of at least ninety (90) days, the use of the Airport for air transportation by Lessee.

C. The breach by the City of any covenants, terms, or conditions of this Lease to be kept, performed and observed by the City and the failure to remedy such breach for a period of ninety (90) days after written notice from Lessee of the existence of such breach.

D. The assumption of the United States Government, or any authorized agent of the same, of the operation, control or use of the Airport and its facilities in such manner as to substantially restrict the Lessee from conducting its business or activity, if such restriction be continued for a period of (90) continuous days or more.

E. The occurrence of any event or events beyond the reasonable control of the Lessee, including, but not limited to, any act of God or other supervening event which precludes the Lessee from the use of the property for the purposes enumerated herein, or from the use of the airport facilities.

XIV. ASSIGNMENT & SUBLETTING

A. ASSIGNMENT: Except in the event of the death, disability, or incompetency adjudication of Lessee (including both husband and wife, if Lessee is a marital community), there shall be no right to assign this Lease. Any assignment of this Lease permitted by this provision shall contain a provision acknowledging that Lessee or Lessees' estate shall remain liable to the City for compliance with all of the terms and conditions of this Lease for the Term of this Lease.

B. SUBLETTING: Lessee shall have the right to sublease the subject Premises, with prior approval of the City as to proposed sublessee and proposed use, which approval shall not be unreasonably withheld. Lessee shall submit a copy of sublease agreement to the City. Any such sublease agreement shall not conflict with the terms and provisions of this Lease and Lessee shall provide to the City notice of any intent to sublease at least thirty days

prior to such sublease. Any sublease shall not relieve the Lessee of any responsibility to perform any provisions of this Lease in the event Lessee's sub lessee fails to perform said provisions.

XV. NON-DISCRIMINATION

During the term of this Lease, Lessee, for itself, its personal representatives, and successors in interest, as a part of the consideration hereof, do hereby covenant and agree as follows:

A. No person, on the grounds of race, color, religion, sex, age, marital status, handicap, or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination by Lessee in the Lessee's occupation, use, or construction upon the Leased Premises.

B. Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Environmental Protection Agency, 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.

XVI. PAYMENT OF TAXES AND FEES

Lessee shall pay all license, excise fees, permits, and taxes covering the business conducted on the Premises, and any taxes on the leasehold interest created by this Lease. Lessee shall also be responsible for payment of any other statutory tax or other fiscal obligations imposed by applicable local, state, or federal law with respect to the Lessee's agents, employees, property, or activities on the Premises.

XVII. RIGHT TO ENTER PREMISES

The City reserves the right to inspect the Premises and any improvements at any reasonable time for the purpose of ensuring compliance with rules and regulations governing the use of the Premises. The City shall make reasonable attempts to contact Lessee first by telephone, and if no answer, by certified mail (according to the current information provided by the Lessee) to arrange a convenient time for inspection. When immediate entry is deemed necessary for emergency purposes, if Lessee is not present to permit such entry, the City, its agents and employees shall be permitted to enter the Premises and any improvements. The City's agents or employees shall not be liable for any civil or criminal claim or cause of action for damages because of entering the Premises or improvements at reasonable times and in a reasonable manner.

XVIII. LEGAL CLAIMS

Lessee shall promptly report to the City any claim or suit against Lessee arising out of or in connection with the operation of Lessee's business or activities at the airport. Lessee is an independent contractor in every respect and not an agent of the "City."

XIX. LIENS AND ENCUMBRANCES

Lessee agrees that it shall pay, or cause to be paid, all costs and expenses for work done and materials delivered to the Premises and improvements, during the Term, for improvement to the Premises. Lessee shall keep the Premises free and clear of all liens. Lessee agrees to and shall indemnify, defend, and hold the City harmless from any liability, loss, damage, cost, attorney's fees, and all other expenses on account of claims of lien of laborers or material men, or others, for work performed or materials or supplies furnished to Lessee for use on the Premises.

XX. LAWS, REGULATIONS, AND PERMITS

Lessee agrees that the use of the Premises, including construction thereon, shall conform at all times to any applicable federal, state, county, municipal laws, statutes, ordinances, or regulations, which may affect said property or the use thereof.

XXI. HAZARDOUS SUBSTANCES

A. Presence and Use of Hazardous Substances

Lessee shall identify and manage all hazardous substances and/or wastes according to The Washington State Department of Ecology Hazardous Wastes and Toxics Reduction Program (See Exhibit B). With respect to any such Hazardous Substances, Lessee shall:

1. Comply promptly, timely, and completely with all governmental requirements for reporting, keeping, and submitting manifests, and obtaining and keeping current identification numbers;
2. Submit to the City true and correct copies of all reports, manifests, and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities;
3. Within five (5) days of the City's request, submit written reports to the City regarding Lessee use, storage, treatment, transportation, generation, disposal, or sale of Hazardous Substances and provide evidence satisfactory to the City of Lessee compliance with the applicable government regulations;
4. Allow the City or the City's agent or representative to come on the Premises, pursuant to Article, XVII to check Lessee compliance with all applicable governmental regulations regarding Hazardous Substances;
5. Comply with minimum levels, standards, or other performance standards or requirements which may be set forth or established for certain Hazardous Substances (if minimum standards or levels are applicable to Hazardous Substances present on the Premises, such levels or standards shall be established by an on-site inspection by the appropriate governmental authorities and shall be set forth in an addendum to this Lease); and
6. Comply with all applicable governmental rules, regulations, and requirements regarding the proper and lawful use, sale, transportation, generation, treatment, and disposal of Hazardous Substances.

Any and all costs incurred by the City and associated with the City's inspection of Lessee Premises and the City's monitoring of Lessee compliance with this Article, including the City's attorneys' fees and costs, shall be additional rent and shall be due and payable to the City immediately upon demand by the City.

B. Cleanup Costs, Default, and Indemnification

1. Lessee shall be fully and completely liable to the City and/or other regulatory agencies for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to Lessee use, disposal, transportation, generation, and/or sale of Hazardous Substances, in or about the Premises.

2. Lessee shall indemnify, defend, and hold the City harmless from any and all of the costs, fees, penalties, and charges assessed against, imposed upon, or incurred by the City (including but not limited to the City's actual attorneys' fees and costs) as a result of Lessee use, disposal, transportation, generation, and/or sale of Hazardous Substances.

3. Upon Lessee's default under this Article, in addition to the rights and remedies set forth elsewhere in this Lease, the City shall be entitled to the following rights and remedies:

a. At the City's option, to terminate this Lease immediately;
and/or

b. To recover any and all damages associated with the default, including, but not limited to, cleanup costs and charges, civil and criminal penalties and fees, loss of business and sales by the City and tenants of the airport, any and all damages claims asserted by third parties and the City's actual attorneys' fees and costs.

XXII. SEVERABILITY

Nothing in this Lease shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions of this Lease and any statute, law, public regulation or ordinance, the latter shall prevail, but in such event, the provisions of this Lease affected shall be curtailed and limited only to the extent necessary to bring it within legal requirements.

XXIII. SUCCESSORS

This Lease is binding upon and benefits the heirs and successors of the Lessee.

XXIV. TIME IS OF THE ESSENCE

It is mutually agreed that time is of the essence in this Lease.

XXV. CONFLICT RESOLUTION

All claims, disputes and other matters in controversy (herein called "dispute") arising directly or indirectly out of or related to this Lease, or the breach thereof, whether contractual or non-contractual, and whether during the term of or after the termination of this Lease, shall be resolved exclusively according to the procedures set forth in this Article XXV.

Mediation.

Neither party shall commence an arbitration proceeding pursuant to the provisions of this Article XXV unless such party shall first give a written notice (a "Dispute Notice") to the other party in the same manner otherwise provided for notice in this Lease, setting forth with reasonable specificity the nature of the dispute. The Dispute Notice shall constitute a notice and demand for mediation. The parties shall attempt in good faith to resolve the dispute by non-binding mediation. If the parties cannot agree on the selection of a mediator within fifteen (15) days after delivery of the Dispute Notice, the Seattle, Washington office of JAMS shall select the mediator. If the dispute has not been resolved by mediation within sixty (60) days after delivery of the Dispute Notice, then the dispute shall be determined by arbitration in accordance with the provisions of this Article XXV below.

Arbitration.

Any dispute that is not settled by mediation as provided in Section 8.1 shall be resolved by arbitration in the City of Spokane, State of Washington in accordance with the JAMS Arbitration Rules in effect on the date of the Dispute Notice, by an arbitrator appointed by the Seattle, Washington office of JAMS. The judgment on the arbitration shall be entered in Spokane County Superior Court.

The arbitrator shall issue an award in writing specifying its findings of fact and conclusions of law. Each party shall pay one-half of the fees and costs of the arbitrator.

Upon the application by either party to Spokane County Superior Court for an order confirming, modifying or vacating the award, the court shall have the power to review whether, as a matter of law based on the findings of fact determined by the arbitrator, the award should be confirmed, or should be modified or vacated in order to correct any errors of the law that may have been made by the arbitrator. In order to effectuate such judicial review limited to issues of law, the parties agree (and shall stipulate to the court) that the findings of fact made by the arbitrator shall be final and binding on the parties and shall serve as the facts to be submitted to and relied on by the court in determining the extent to which the award should be confirmed, modified or vacated.

Costs and Attorneys' Fees.

Except as otherwise specifically provided in this Lease, each party shall pay its own costs and attorneys fees incurred in any mediation, arbitration or any Spokane County Superior court hearing or further appeal or other litigation relating to or arising out of the existence of this Lease.

JAMS.

References in this Lease to the Seattle, Washington office of JAMS shall be considered references to the Spokane office of JAMS in the event a Spokane office is available on the date

of the Dispute Notice. In the event there is no Seattle or Spokane office of JAMS on the date of the Dispute Notice, the Spokane County Superior Court shall appoint the mediator referred to in the Mediation provisions of this Article XXV and the arbitration provisions shall be interpreted as eliminated and stricken from this Lease and either party may only resolve disputes through commencement of litigation in Spokane County Superior Court.

XXVI. VENUE

It is hereby agreed and understood by both parties that the venue for any legal or equitable action arising out of the existence of this Lease shall be in the Superior Court of Spokane County, State of Washington.

XXVII. ENTIRE AGREEMENT

This Lease constitutes the entire agreement of the parties, including Exhibits "A and B" (and any addendum). No other written or oral statements shall be a part of this Lease. This Lease may only be modified by an agreement in writing signed by both parties.

XXVIII. NOTICES

All notices required herein shall be deemed to be properly served if hand delivered, or if sent by U.S. mail, postage prepaid, to the last address previously furnished by the parties hereto. Lessee is obligated to notify the City of current address and phone numbers. Until hereafter changed by the parties in writing, notices shall be addressed as follows:

City: City of Deer Park
Attn: Airport Manager
E. 316 Crawford, PO Box F
Deer Park, WA 99006
(509)276-8802

Lessee: Eldredge Holdings LLC
Kevin Eldredge
1109 N. Cedar Rd.
Deer Park, WA.
(541) 668-0492

Date of service of such notice shall be the date of postmark by the U. S. Post Office service.

XXIX. ENCUMBRANCE OF LESSEE'S INTEREST

The Lessee may encumber, by Mortgage, Deed of Trust, or other proper instrument, its leasehold interest and estate in the Leased Premises, together with all improvements placed thereon by Lessee, as security for any indebtedness of Lessee.

The City will cooperate in a timely manner with any reasonable requests of Lessee involving an attempt by the Lessee to encumber Lessee's leasehold interest and/or estate in the Leased Premises.

The execution of any such Mortgage, Deed of Trust, or other instrument, or the foreclosure or other proceedings there under, shall not relieve the Lessee from its liability and obligations under this Lease.

Any holder of Lessee's interest herein acquired through foreclosure or other proceedings shall acquire and possess only the rights and interests of Lessee herein and shall be subject and subordinate to the rights and interest of City herein.

XXX. INTERPRETATION

This Lease has been submitted to the scrutiny of all parties and their counsel, if desired, and it shall be given a fair and reasonable interpretation in accordance with its words, without consideration to or weight given to its being drafted by any party or its counsel. Paragraph and Section headings are for convenience only and shall not be considered when interpreting this Lease. All words used in the singular shall include the plural; the present tense shall include the future tense; and the masculine gender shall include the feminine and neuter genders.

XXXI. NON-WAIVER OF COVENANTS

Either party's failure to insist upon the strict performance of any provision of this Lease shall not be construed as depriving either party the right to insist on strict performance of such provision in the future. The subsequent payment of rent by the Lessee or acceptance of rent by the City, whether full or partial payment, shall not be deemed a waiver of any preceding breach by either party of any term, covenant, or condition of this Lease, other than the failure of the Lessee to pay the particular part of the rent accepted, regardless of either party's knowledge of the preceding breach at the time of the acceptance of that part of the rent.

XXXII. COUNTERPARTS

This Lease may be signed in counterparts, each of which shall be an original but all of which shall constitute one and the same document. Signatures transmitted by facsimile or electronically shall be deemed valid execution of this Lease, binding on the parties.

The parties hereto by their respective authorized signatures below approve and enter into this Lease effective the _____ day of _____, 20__.

City of Deer Park

Timothy Verzal, Mayor

Attest:

By: _____
Deby Cragun, City Clerk/Treasurer

LESSEE:

By: [Signature]
Eldredge Holdings LLC

STATE OF Washington,
County of Spokane) ss
)

I certify that I know or have satisfactory evidence that Kevin Eldredge is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it as the Lessee or authorized signatory for the Lessee identified in this instrument, to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated 10/29/18

Notary Public
State of Washington
Ashley Naffziger
Commission Expires 11-15-2020

(SIGNATURE) [Signature]
(TYPED OR PRINTED NAME)
Notary Public in and for the State of
WA, residing in Spokane
My Commission Expires: 11-15-2020

DEER PARK AIRPORT LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter sometimes referred to as "Lease" or "Agreement") is made and entered into by and between the City of Deer Park, State of Washington, hereinafter referred to as "City" and Eldredge Holdings LLC (Kevin Eldredge), hereinafter referred to as "Lessee."

WITNESS THAT

WHEREAS, THE CITY OF DEER PARK is the owner of certain described real estate, more fully described below; and

WHEREAS, THE LESSEE desires to lease the certain described property for the purpose described herein;

NOW, THEREFORE, for and in consideration of the premises provided herein and the mutual covenants and agreements hereinafter contained and other valuable consideration, the parties hereto agree, for themselves, their successors and assigns, as follows:

I. PREMISES

The City of Deer Park hereby leases to Lessee the parcel of land located at 1522 N. Cedar Rd. and described as **Lot 106** as located on Deer Park Municipal Airport Lease Plan (revision 5), Spokane County, Washington (hereinafter the "Premises" or "Leased Premises").

The City covenants and agrees that it is in lawful possession of the property, and has good and lawful authority to execute this Lease. The Lessee hereby warrants that it has inspected the Premises and City has not made any promises, warranties, or statements other than as contained herein. Lessee accepts the Premises as is.

The City 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 Lessee, and without interference or hindrance.

The City reserves the right but shall not be obligated to the Lessee, 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 Lessee in this regard.

The City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent the Lessee from erecting, or permitting to be erected, any building or other structure on or adjacent to the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.

The City shall have the right to temporarily close the Airport or any of the facilities thereon for maintenance, improvement, or for the safety of the public.

It is understood and agreed to by Lessee that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right forbidden by the Airport

Development Act, 49 U.S.C. 47101. et seq. and Section 308 of the Federal Aviation Act of 1958 as the same exist now or may hereafter be amended.

During the time of war or national emergency, the City shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use and, if such Lease is executed, the provisions of this instrument insofar as they are inconsistent with the provisions of the lease to the government, shall be modified to be consistent with the provisions of the lease to the government and may be fully suspended at the option of the City.

This Lease shall be subordinate to the provisions of any existing or future agreement between the City and the United States relative to the operation or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for development of the Airport, by the provisions of the Airport Improvement Program, and as the program may be amended, or any other federal act, deed, grant agreement, or program affecting the operation or maintenance of the Airport now or in the future; provided however, that the City shall, to the extent permitted by law, use its best efforts to cause any such agreements to include provisions protecting and preserving the rights of Lessee in and to the Premises and improvements thereon. Failure of the Lessee or any occupant to comply with the requirements of any existing or future agreement between the City and the United States, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of Lessee's rights hereunder.

II. TERM

A. The Term of this Lease shall be for a period of 20 years commencing from the 1st day of November, 2018 and ending the 31st day of October 2038, unless otherwise terminated or canceled as provided in this document.

B. At the end of the term of this Lease, Lessee shall have the option to apply for a new lease at the then current terms for new leases. The Lessee shall be eligible for a new lease agreement on the Leased Premises provided Lessee is in compliance with all terms, covenants, and conditions of this Lease and any amendments thereto.

III. HOLDING OVER

If Lessee, without the written consent of the City, shall hold over after the termination date or earlier termination of this Lease, Lessee shall be deemed to be occupying the Premises as a month-to-month tenant whose tenancy may be terminated as provided by the laws of the State of Washington. During any such tenancy, Lessee agrees to be bound by all of the terms, covenants, and conditions of this Lease, as far as they are applicable to a month-to-month tenancy and to pay monthly rent in the amounts designated by the City.

IV. USE OF PREMISES

A. Lessee agrees that the use of the Premises shall be limited to those airport-related activities authorized by the Federal Aviation Administration, City of Deer Park Zoning Regulations, Airport Minimum Business Standards and Airport Rules and Regulations as are

presently in effect and may in the future be adopted, or as may otherwise be agreed to by the parties.

B. Lessee shall provide proof of aircraft registration (or intent to register) with the State of Washington in accordance with RCW 47.68.250, as the same exists now or may hereafter be amended. The City is obligated by law to report to the Washington State Department of Transportation, Aviation Division the aircraft "N" number and owner name and address of those not yet registered.

C. It is clearly understood by the Lessee that no right or privilege has been granted which would prevent any person, firm, corporation, or entity operating aircraft on the airport from performing any service on its own aircraft with its own employees (including, but not limited to, maintenance and repair) that it may choose to perform.

V. FINANCIAL OBLIGATION

A. Commencing on the effective date of this Lease, Lessee agrees to pay rent to the City as calculated below:

Rent Rate	Sq. Ft.	Rent	Leasehold Tax	Total Due Semi Annual
\$ 0.17	6000	\$ 1,020.00	\$ 130.97	\$ 1,150.97
				\$ 585.48

The rental payment amount for any partial calendar months included in the Lease term shall be prorated on a daily basis. Annual payments, in advance, are preferred. Semi-annual payments shall be assessed an administrative fee of \$10 per payment. Rent not paid by the 10th of the month due shall be deemed delinquent, and a penalty of 10% of the amount due at that time shall be assessed against each delinquent installment.

B. No demand for rent need at any time be given, but it shall be the duty of the Lessee to pay rentals, fees, charges, and billings as required under the provisions of this Lease.

C. Lease rates for the Leased Premises shall be adjusted annually. Adjustment shall be based upon the most immediate complete full previous year Consumer Price Index, Pacific Cities, West-B/C (Dec. 1996=100 for All Urban Consumers (CPI-U). City shall issue notice of intent to adjust the rental rates at least (30) days prior to the initiation of a rate increase. In the event this Consumer Price Index is no longer produced, then the next most geographically similar All Urban Consumers Index (CPI-U) shall be selected and applied by the City.

D. Lessee shall keep all rental payments free from all claims, demands, or set-offs, of any nature, or by any person, corporation, or entity.

E. Installation, hook-up, and payment for utilities shall be the responsibility of the Lessee. Utilities are to be installed to the City's specifications and those of the utility service provider.

VI. FAILURE TO COMPLY WITH FINANCIAL OBLIGATION

Failure to pay amounts due or comply with any other of the financial obligations to the City under this Agreement shall entitle the City to re-enter and take possession of the Premises upon giving Lessee ninety (90) days advance notice of intent to do so, if said monetary default has not been remedied within the ninety (90) day period after notice is sent.

VII. DISPOSITION OF BUILDINGS AND IMPROVEMENTS UPON LEASE EXPIRATION

At least one hundred eighty (180) days prior to the expiration of this Lease, Lessee shall notify the City regarding Lessee's intent with respect to lease renewal or disposition of buildings and improvements on the Leased Premises. Upon termination for reasons other than default, the City and Lessee shall agree upon one of the following three courses of action with respect to the disposition of Lessee's buildings and improvements located at the Premises:

1. In the event that the Lessee desires to continue occupying the Leased Premises, the Lessee may request that the City grant a new lease agreement. If the City desires to continue to lease the Leased Premises with the existing improvements, the City may concur with this request. Any such request concurred with by the City must be accompanied by the lease renewal application fee then in effect. In the event the City concurs with the Lessee's request to lease the Leased Premises, then the Lessee shall be eligible for a new lease agreement for the Leased Premises provided the following conditions are met by the Lessee:

- **Good Repair:** The Leased Premises and all improvements are in a state of good repair, including, without limitation, exterior paint, walls, roofs, doors, and any other items including those which are structural and/or aesthetic in nature.

- Lessee is in compliance with all terms, covenants, and conditions of this Lease. The terms of the new lease agreement are subject to negotiation between the City and Lessee. OR

2. At the end of the term of this Lease, the Lessee may peacefully surrender the Leased Premises in a fully restored condition, including the removal of all improvements. Restoration of Leased Premises shall also include fine grading to allow for proper drainage into the appropriate drainage system. All components of the improvement removed from the Leased Premises shall be completely removed from the site and disposed of off airport at the sole cost of Lessee. Removal of improvements and restoration of the Leased Premises shall be complete no later than thirty (30) calendar days after the expiration date of this Lease, unless the City agrees to an extension. OR

3. The City may agree to purchase the improvements from Lessee at a price to be determined by the City and Lessee. The City and Lessee may agree to have an appraisal of the improvements completed to aid the City and Lessee in their efforts to agree upon a purchase price. In the event the City and Lessee are unable to agree upon a purchase price, the City may require Lessee to comply with Option 2 above.

If the City and Lessee are unable to agree upon any of the above three options, then option 2 shall, by default, apply upon termination of the Lease term.

Personal property left on the Leased Premises shall, at the option of the City, become exclusive property of the City, without liability for payment, if said personal property remains on the Leased Premises thirty (30) days after the termination of the Lease for any reason.

City, at its discretion, may extend the time period for resolution of these options. Lessee shall be deemed to be occupying the Premises as a month-to-month tenant during any such extended period as per Article III of this Lease.

VIII. INDEMNIFICATION AND INSURANCE BY LESSEE

The Lessee shall indemnify the City, its employees, the Airport Manager and its employees, and City elected and appointed officers from and against any and all claims, demands, cause of actions, suits or judgments, including attorney's fees, costs and expenses incurred in connection therewith and in enforcing the indemnity, for deaths or injuries to persons or for loss of or damage to property arising out of or in connection with the condition, use occupancy or Lessee's maintenance of the Leased Premises or common areas or any improvements thereon; or by Lessee's non-observance or non-performance of any law, ordinance or regulation applicable to the Leased Premises; or incurred in obtaining possession of the Leased Premises after a default by the Lessee, or after the Lessee's default in surrendering possession upon expiration or earlier termination of the Term of the Lease, or enforcement of any covenants in this Lease. This includes, without limitation, any liability for injury to the person or property of Lessee, its agents, officers, employees, or invitees. **The Lessee specifically waives any immunity provided by Washington's Industrial Insurance Act. This indemnification covers claims by Lessee's own employees.** This provision and waiver was specifically negotiated.

City shall indemnify Lessee, its members, employees, and agents from and against any and all claims, demands, causes of action, suites or judgments, including attorney fees, costs and expenses incurred in connection therewith and in enforcing the indemnity, for death or injury to persons or for loss of or damage to property caused by the City's breach of any term of this Lease or the negligence of the City.

In the event of any claims made to, or suits filed against City, for which the above indemnity applies, City shall give Lessee prompt written notice thereof and Lessee shall defend or settle the same.

Lessee, as a material part of the consideration to be tendered to City, waives all claims against City for damages to goods, wares, merchandise and loss of business, in upon or about the Leased Premises and for injury to Lessee, its agents, employees, or invitees in or about the Leased Premises from any cause arising at any time, other than for City's sole negligence or willful misconduct.

From and after the commencement date of the initial term of this Lease and continuing for the initial term and any extension of this Lease, Lessee shall insure the Leased Premises, at its sole cost and expense, against claims for bodily injury and property damage under a policy of general liability insurance, with aggregate limits of \$1,000,000 for bodily injury and property damage. Such policy shall name City as an additional insured. Before taking possession of the Leased Premises, the Lessee shall furnish the City with a certificate evidencing the aforesaid insurance coverage.

The aforementioned minimum limits of policies shall in no event limit the liability of Lessee hereunder. No policy of Lessee's insurance shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days prior written notice to City by the insurer. Lessee shall, at least thirty (30) days prior to the expiration of the policies, furnish City with renewals or binders.

The insurance required shall be issued by carriers acceptable to the City, and City's approval shall not be unreasonably withheld.

The Lessee agrees that if Lessee does not purchase and maintain such insurance, City may, but shall not be required to, procure such insurance on Lessee's behalf and charge Lessee the premiums together with a five percent (5%) administrative charge, payable upon demand.

In the event a fire or other casualty loss results in destruction of the building to the extent that Lessee determines not to use insurance proceeds to repair or rebuild the hangar building, the proceeds of any insurance payment available to Lessee shall first be used to restore the Premises to the condition they were in prior to construction of a building on the Leased Premises and the remaining insurance proceeds shall be the property of Lessee.

Lessee's construction contractor shall provide at least \$1,000,000 general liability insurance naming the City of Deer Park as an additional insured.

IX. DAMAGE OR DESTRUCTION

If the improvements on the Premises are partially or totally damaged by fire or other casualty, the Lessee will repair or replace the damaged improvements (or similar) to meet existing building code at its sole expense within a reasonable period of time (not to exceed ninety (90) days from casualty or as weather and the permit process allow). All such construction shall be subject to the covenants, restrictions, and approval procedures as defined in the Airport Site Development Guidelines and City of Deer Park Building Department.

In the event Lessee decides not to rebuild within a reasonable time, Lessee shall restore the Leased Premises to a good and usable condition in conformity with the then current usage within ninety (90) days from the date that written notice to restore is received from the City.

City may, at its discretion, extend the period for rebuilding. Lessee shall remain responsible for payment of rent and leasehold tax and shall comply with all terms and conditions of this Lease during this extended period.

If the Lessee opts not to rebuild, upon payment of the remainder of the rent due under the Lease and removal of all improvements and restoration of the Leased Premises to the condition the Leased Premises were in at the time of commencement of this Lease, the City will agree to terminate the Lease.

X. UTILITIES AND MAINTENANCE OF PREMISES

Lessee shall pay all charges for utility services furnished to the Premises, including, but not limited to, electricity, gas, telephone, water, sewage, garbage disposal, and janitorial services throughout the term of this Lease.

Lessee shall, at its sole expense, keep and maintain the Premises in good repair and tidy condition. While not all inclusive, particular attention shall be focused on foundations, structural components, roofs, wall systems, doors, and electrical and water systems. Roofs and walls should be maintained to be free from leaks and damage and should be painted as necessary to maintain a tidy appearance.

In addition, Lessee shall:

- (a) Not allow trash, garbage, rubbish or refuse to collect on the exterior of any building on the Premises;
- (b) Mow vegetation on Premises;
- (c) Keep Premises around building free from inoperable and junk equipment;
- (d) Not use Premises around hangar as long-term parking for vehicles or parking of equipment not then being used for the operation of aircraft or maintenance of Premises.

XI. ADVERTISING, LIGHTING, AND TRANSMISSIONS

A. The Lessee shall submit plans and obtain approval of the City before erecting, installing, or operating signs or other advertisements upon any portion of the Premises herein demised.

B. The installation or use on the Premises of any floodlights, neon lights, colored lights, or other means of lighting shall be subject to the express written approval of the Airport Manager. Any use of lighting or signage that may potentially impair a pilot's ability to distinguish between airport lights and other light, or that creates glare or distraction affecting pilot vision is prohibited. All lighting shall be shielded downward.

C. Any use that creates or causes interference with the operations of radio or electronic facilities at the airport or with radio or electronic communications shall be prohibited.

XII. CITY'S RIGHT OF CANCELLATION

In addition to any conditions as specified herein and all other remedies available to the "City," this agreement shall be subject to cancellation by the City should any one or more of the following occur:

A. If Lessee shall file a voluntary petition in bankruptcy or proceedings in bankruptcy instituted against the Lessee are thereafter adjudicated, a bankruptcy pursuant to such proceedings, or a court shall take jurisdiction of the Lessee's property and its assets pursuant to proceedings brought under the provision of the Federal Reorganization or Bankruptcy Act, or a receiver for the Lessee's assets is appointed, or the Lessee is divested of its rights, powers, and privileges under this Lease by other operation of law.

B. If Lessee shall default, fail to perform, or breach any covenants, terms, or conditions of this Lease, the Lessee shall be given written notice to correct or cure such default, failure to perform, or breach. If, within ninety days (90) from the date of such notice, the default, breach, or complaint shall not have been corrected in a manner satisfactory to the City, the City shall have the right to immediately declare this Lease terminated and to proceed to evict Lessee and may require Lessee to remove all improvements to the Leased Premises or at the City's option keep or dispose of the improvements.

XIII. LESSEE'S RIGHT OF CANCELLATION

In addition to all other remedies available to the Lessee, this Lease shall be subject to cancellation by Lessee should any one or more of the following occur:

A. The permanent abandonment or discontinuance in use of the Airport as an airport.

B. The issuance of any order, rule or regulation by the Federal Aviation Administration or any other federal agency or by any court of competent jurisdiction of an injunction, materially restricting for a period of at least ninety (90) days, the use of the Airport for air transportation by Lessee.

C. The breach by the City of any covenants, terms, or conditions of this Lease to be kept, performed and observed by the City and the failure to remedy such breach for a period of ninety (90) days after written notice from Lessee of the existence of such breach.

D. The assumption of the United States Government, or any authorized agent of the same, of the operation, control or use of the Airport and its facilities in such manner as to substantially restrict the Lessee from conducting its business or activity, if such restriction be continued for a period of (90) continuous days or more.

E. The occurrence of any event or events beyond the reasonable control of the Lessee, including, but not limited to, any act of God or other supervening event which precludes the Lessee from the use of the property for the purposes enumerated herein, or from the use of the airport facilities.

XIV. ASSIGNMENT & SUBLETTING

A. ASSIGNMENT: Except in the event of the death, disability, or incompetency adjudication of Lessee (including both husband and wife, if Lessee is a marital community), there shall be no right to assign this Lease. Any assignment of this Lease permitted by this provision shall contain a provision acknowledging that Lessee or Lessees' estate shall remain liable to the City for compliance with all of the terms and conditions of this Lease for the Term of this Lease.

B. SUBLETTING: Lessee shall have the right to sublease the subject Premises, with prior approval of the City as to proposed sublessee and proposed use, which approval shall not be unreasonably withheld. Lessee shall submit a copy of sublease agreement to the City. Any such sublease agreement shall not conflict with the terms and provisions of this Lease and Lessee shall provide to the City notice of any intent to sublease at least thirty days

prior to such sublease. Any sublease shall not relieve the Lessee of any responsibility to perform any provisions of this Lease in the event Lessee's sub lessee fails to perform said provisions.

XV. NON-DISCRIMINATION

During the term of this Lease, Lessee, for itself, its personal representatives, and successors in interest, as a part of the consideration hereof, do hereby covenant and agree as follows:

A. No person, on the grounds of race, color, religion, sex, age, marital status, handicap, or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination by Lessee in the Lessee's occupation, use, or construction upon the Leased Premises.

B. Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Environmental Protection Agency, 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.

XVI. PAYMENT OF TAXES AND FEES

Lessee shall pay all license, excise fees, permits, and taxes covering the business conducted on the Premises, and any taxes on the leasehold interest created by this Lease. Lessee shall also be responsible for payment of any other statutory tax or other fiscal obligations imposed by applicable local, state, or federal law with respect to the Lessee's agents, employees, property, or activities on the Premises.

XVII. RIGHT TO ENTER PREMISES

The City reserves the right to inspect the Premises and any improvements at any reasonable time for the purpose of ensuring compliance with rules and regulations governing the use of the Premises. The City shall make reasonable attempts to contact Lessee first by telephone, and if no answer, by certified mail (according to the current information provided by the Lessee) to arrange a convenient time for inspection. When immediate entry is deemed necessary for emergency purposes, if Lessee is not present to permit such entry, the City, its agents and employees shall be permitted to enter the Premises and any improvements. The City's agents or employees shall not be liable for any civil or criminal claim or cause of action for damages because of entering the Premises or improvements at reasonable times and in a reasonable manner.

XVIII. LEGAL CLAIMS

Lessee shall promptly report to the City any claim or suit against Lessee arising out of or in connection with the operation of Lessee's business or activities at the airport. Lessee is an independent contractor in every respect and not an agent of the "City."

XIX. LIENS AND ENCUMBRANCES

Lessee agrees that it shall pay, or cause to be paid, all costs and expenses for work done and materials delivered to the Premises and improvements, during the Term, for improvement to the Premises. Lessee shall keep the Premises free and clear of all liens. Lessee agrees to and shall indemnify, defend, and hold the City harmless from any liability, loss, damage, cost, attorney's fees, and all other expenses on account of claims of lien of laborers or material men, or others, for work performed or materials or supplies furnished to Lessee for use on the Premises.

XX. LAWS, REGULATIONS, AND PERMITS

Lessee agrees that the use of the Premises, including construction thereon, shall conform at all times to any applicable federal, state, county, municipal laws, statutes, ordinances, or regulations, which may affect said property or the use thereof.

XXI. HAZARDOUS SUBSTANCES

A. Presence and Use of Hazardous Substances

Lessee shall identify and manage all hazardous substances and/or wastes according to The Washington State Department of Ecology Hazardous Wastes and Toxics Reduction Program (See Exhibit B). With respect to any such Hazardous Substances, Lessee shall:

1. Comply promptly, timely, and completely with all governmental requirements for reporting, keeping, and submitting manifests, and obtaining and keeping current identification numbers;
2. Submit to the City true and correct copies of all reports, manifests, and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities;
3. Within five (5) days of the City's request, submit written reports to the City regarding Lessee use, storage, treatment, transportation, generation, disposal, or sale of Hazardous Substances and provide evidence satisfactory to the City of Lessee compliance with the applicable government regulations;
4. Allow the City or the City's agent or representative to come on the Premises, pursuant to Article, XVII to check Lessee compliance with all applicable governmental regulations regarding Hazardous Substances;
5. Comply with minimum levels, standards, or other performance standards or requirements which may be set forth or established for certain Hazardous Substances (if minimum standards or levels are applicable to Hazardous Substances present on the Premises, such levels or standards shall be established by an on-site inspection by the appropriate governmental authorities and shall be set forth in an addendum to this Lease); and
6. Comply with all applicable governmental rules, regulations, and requirements regarding the proper and lawful use, sale, transportation, generation, treatment, and disposal of Hazardous Substances.

Any and all costs incurred by the City and associated with the City's inspection of Lessee Premises and the City's monitoring of Lessee compliance with this Article, including the City's attorneys' fees and costs, shall be additional rent and shall be due and payable to the City immediately upon demand by the City.

B. Cleanup Costs, Default, and Indemnification

1. Lessee shall be fully and completely liable to the City and/or other regulatory agencies for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to Lessee use, disposal, transportation, generation, and/or sale of Hazardous Substances, in or about the Premises.

2. Lessee shall indemnify, defend, and hold the City harmless from any and all of the costs, fees, penalties, and charges assessed against, imposed upon, or incurred by the City (including but not limited to the City's actual attorneys' fees and costs) as a result of Lessee use, disposal, transportation, generation, and/or sale of Hazardous Substances.

3. Upon Lessee's default under this Article, in addition to the rights and remedies set forth elsewhere in this Lease, the City shall be entitled to the following rights and remedies:

a. At the City's option, to terminate this Lease immediately; and/or

b. To recover any and all damages associated with the default, including, but not limited to, cleanup costs and charges, civil and criminal penalties and fees, loss of business and sales by the City and tenants of the airport, any and all damages claims asserted by third parties and the City's actual attorneys' fees and costs.

XXII. SEVERABILITY

Nothing in this Lease shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions of this Lease and any statute, law, public regulation or ordinance, the latter shall prevail, but in such event, the provisions of this Lease affected shall be curtailed and limited only to the extent necessary to bring it within legal requirements.

XXIII. SUCCESSORS

This Lease is binding upon and benefits the heirs and successors of the Lessee.

XXIV. TIME IS OF THE ESSENCE

It is mutually agreed that time is of the essence in this Lease.

XXV. CONFLICT RESOLUTION

All claims, disputes and other matters in controversy (herein called "dispute") arising directly or indirectly out of or related to this Lease, or the breach thereof, whether contractual or non-contractual, and whether during the term of or after the termination of this Lease, shall be resolved exclusively according to the procedures set forth in this Article XXV.

Mediation.

Neither party shall commence an arbitration proceeding pursuant to the provisions of this Article XXV unless such party shall first give a written notice (a "Dispute Notice") to the other party in the same manner otherwise provided for notice in this Lease, setting forth with reasonable specificity the nature of the dispute. The Dispute Notice shall constitute a notice and demand for mediation. The parties shall attempt in good faith to resolve the dispute by non-binding mediation. If the parties cannot agree on the selection of a mediator within fifteen (15) days after delivery of the Dispute Notice, the Seattle, Washington office of JAMS shall select the mediator. If the dispute has not been resolved by mediation within sixty (60) days after delivery of the Dispute Notice, then the dispute shall be determined by arbitration in accordance with the provisions of this Article XXV below.

Arbitration.

Any dispute that is not settled by mediation as provided in Section 8.1 shall be resolved by arbitration in the City of Spokane, State of Washington in accordance with the JAMS Arbitration Rules in effect on the date of the Dispute Notice, by an arbitrator appointed by the Seattle, Washington office of JAMS. The judgment on the arbitration shall be entered in Spokane County Superior Court.

The arbitrator shall issue an award in writing specifying its findings of fact and conclusions of law. Each party shall pay one-half of the fees and costs of the arbitrator.

Upon the application by either party to Spokane County Superior Court for an order confirming, modifying or vacating the award, the court shall have the power to review whether, as a matter of law based on the findings of fact determined by the arbitrator, the award should be confirmed, or should be modified or vacated in order to correct any errors of the law that may have been made by the arbitrator. In order to effectuate such judicial review limited to issues of law, the parties agree (and shall stipulate to the court) that the findings of fact made by the arbitrator shall be final and binding on the parties and shall serve as the facts to be submitted to and relied on by the court in determining the extent to which the award should be confirmed, modified or vacated.

Costs and Attorneys' Fees.

Except as otherwise specifically provided in this Lease, each party shall pay its own costs and attorneys fees incurred in any mediation, arbitration or any Spokane County Superior court hearing or further appeal or other litigation relating to or arising out of the existence of this Lease.

JAMS.

References in this Lease to the Seattle, Washington office of JAMS shall be considered references to the Spokane office of JAMS in the event a Spokane office is available on the date

of the Dispute Notice. In the event there is no Seattle or Spokane office of JAMS on the date of the Dispute Notice, the Spokane County Superior Court shall appoint the mediator referred to in the Mediation provisions of this Article XXV and the arbitration provisions shall be interpreted as eliminated and stricken from this Lease and either party may only resolve disputes through commencement of litigation in Spokane County Superior Court.

XXVI. VENUE

It is hereby agreed and understood by both parties that the venue for any legal or equitable action arising out of the existence of this Lease shall be in the Superior Court of Spokane County, State of Washington.

XXVII. ENTIRE AGREEMENT

This Lease constitutes the entire agreement of the parties, including Exhibits "A and B" (and any addendum). No other written or oral statements shall be a part of this Lease. This Lease may only be modified by an agreement in writing signed by both parties.

XXVIII. NOTICES

All notices required herein shall be deemed to be properly served if hand delivered, or if sent by U.S. mail, postage prepaid, to the last address previously furnished by the parties hereto. Lessee is obligated to notify the City of current address and phone numbers. Until hereafter changed by the parties in writing, notices shall be addressed as follows:

City: City of Deer Park
Attn: Airport Manager
E. 316 Crawford, PO Box F
Deer Park, WA 99006
(509)276-8802

Lessee: Eldredge Holdings LLC
Kevin Eldredge
1109 N. Cedar Rd.
Deer Park, WA.
(541) 668-0492

Date of service of such notice shall be the date of postmark by the U. S. Post Office service.

XXIX. ENCUMBRANCE OF LESSEE'S INTEREST

The Lessee may encumber, by Mortgage, Deed of Trust, or other proper instrument, its leasehold interest and estate in the Leased Premises, together with all improvements placed thereon by Lessee, as security for any indebtedness of Lessee.

The City will cooperate in a timely manner with any reasonable requests of Lessee involving an attempt by the Lessee to encumber Lessee's leasehold interest and/or estate in the Leased Premises.

The execution of any such Mortgage, Deed of Trust, or other instrument, or the foreclosure or other proceedings there under, shall not relieve the Lessee from its liability and obligations under this Lease.

Any holder of Lessee's interest herein acquired through foreclosure or other proceedings shall acquire and possess only the rights and interests of Lessee herein and shall be subject and subordinate to the rights and interest of City herein.

XXX. INTERPRETATION

This Lease has been submitted to the scrutiny of all parties and their counsel, if desired, and it shall be given a fair and reasonable interpretation in accordance with its words, without consideration to or weight given to its being drafted by any party or its counsel. Paragraph and Section headings are for convenience only and shall not be considered when interpreting this Lease. All words used in the singular shall include the plural; the present tense shall include the future tense; and the masculine gender shall include the feminine and neuter genders.

XXXI. NON-WAIVER OF COVENANTS

Either party's failure to insist upon the strict performance of any provision of this Lease shall not be construed as depriving either party the right to insist on strict performance of such provision in the future. The subsequent payment of rent by the Lessee or acceptance of rent by the City, whether full or partial payment, shall not be deemed a waiver of any preceding breach by either party of any term, covenant, or condition of this Lease, other than the failure of the Lessee to pay the particular part of the rent accepted, regardless of either party's knowledge of the preceding breach at the time of the acceptance of that part of the rent.

XXXII. COUNTERPARTS

This Lease may be signed in counterparts, each of which shall be an original but all of which shall constitute one and the same document. Signatures transmitted by facsimile or electronically shall be deemed valid execution of this Lease, binding on the parties.

The parties hereto by their respective authorized signatures below approve and enter into this Lease effective the _____ day of _____, 20__.

City of Deer Park

Timothy Verzal, Mayor

Attest:

By: _____
Deby Cragun, City Clerk/Treasurer

LESSEE:

By:


Eldredge Holdings LLC

STATE OF Washington,
County of Spokane) ss
)

I certify that I know or have satisfactory evidence that Kevin Eldredge is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it as the Lessee or authorized signatory for the Lessee identified in this instrument, to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated 10/29/18

Notary Public
State of Washington
Ashley Naffziger
Commission Expires 11-15-2020


(SIGNATURE) Ashley Naffziger
(TYPED OR PRINTED NAME)
Notary Public in and for the State of WA, residing in Spokane
My Commission Expires: 11-15-2020

