

SUPPLEMENTAL AGENDA

REGULAR CITY COUNCIL MEETING

December 11, 2017

5:30 p.m.

CITY HALL COUNCIL CHAMBER

313 COURT STREET

THE DALLES, OREGON

Item to be Added to Agenda

12. ACTION ITEMS

- E. Approval of Lease with Washington Department of Natural Resources for Premises Located at the Columbia Gorge Regional Airport

Izetta Grossman, City Clerk



AGENDA STAFF REPORT (Amended from November 27 Meeting)

AGENDA LOCATION: Action Item #12-E

MEETING DATE: December 11, 2017

TO: Honorable Mayor and City Council

FROM: Gene Parker, City Attorney

ISSUE: Approval of Lease with Washington Department of Natural Resources for Premises Located at the Columbia Gorge Regional Airport

BACKGROUND: This item was originally scheduled for the Council meeting on November 27, 2017, but was removed from that agenda to allow time for the Regional Airport Board to review the proposed Lease and provide any comments. On December 4, 2017, the Regional Airport Board met and reviewed the proposed Lease. The Board adopted a motion to recommend revising the Lease to increase the rent from \$500 to \$550 per month, and to have the Department of Natural Resources pay for garbage collection service. The Washington Department of Natural Resources has agreed to the recommended changes proposed by the Airport Board.

Enclosed with this staff report is a proposed Lease which has been approved by the Washington Department of Natural Resources, the Washington State Attorney General's Office, the Klickitat County Prosecuting Attorney's office, and the Regional Airport Board. Under the Lease, the Department will be leasing approximately 1,200 square feet of office space, shop common space, and a restroom located inside a hangar building on the airport, which Leased area is shown on Exhibits A and B of the Lease Agreement. The proposed term of the Lease is for five (5) years from July 1, 2017 to June 30, 2022, subject to the termination provisions in the Agreement. The Lease allows for a termination by either party with ninety days' written notice, and a termination for default upon thirty days' notice if the default has not been cured within the period of time started in the Notice of Default.

The Lease has a provision for an additional extension of two years subject to the parties mutually agreeing upon the rent for the additional term. The proposed rent is \$550 per

month which will be retroactive to July 1, 2017. The City and Klickitat County will be responsible for paying for property taxes and other utilities (with the exception of garbage collection) outlined in paragraph 5. Under paragraph 6, the City and Klickitat County will also be responsible for maintenance of such items as plumbing, electrical, and ventilation and air-condition systems in the building, and for structural maintenance of the hangar building. These provisions are similar to other lease agreements which the City and the County have for lease of hangar space at the Airport.

BUDGET IMPLICATIONS: The City and Klickitat County will receive monthly rental income of \$550 for the Lease of the hangar space to the Washington Department of Natural Resources. Costs of maintenance and other utility expenses for the Lease of the hangar space will be included as part of the overall Airport budget.

COUNCIL ALTERNATIVES:

1. **Staff recommendation:** *Move to A) approve the Lease with Washington Department of Natural Resources for Premises Located at the Columbia Gorge Regional Airport; and (B) authorize the execution of the proposed Lease with Klickitat County and the Washington Department of Natural Resources, subject to approval of the proposed Lease by the Klickitat County Board of Commissioners.*

2. If there are any provisions which the Council desires to modify for the proposed Lease, identify those provisions and direct staff to present a revised version of the Lease to Klickitat County and the Washington Department of Revenue for their review.

AFTER RECORDING RETURN TO:

WA STATE DNR
1111 Washington Street SE
MS 47030
Olympia, WA 98504-7030

Delegated Lease No. DEL 16-0050
(Dallesport)
Page 1 of 9

DELEGATED LEASE

This LEASE is made an entered into between the City of The Dalles, an Oregon municipal corporation, and Klickitat County, Washington, a Washington municipal corporation, who own the Columbia Gorge Regional Airport in Dallesport, WA, for their heirs, executors and assigns, hereinafter referred to as "Lessor", and the State of Washington, Department of Natural Resources, hereinafter referred to as "Lessee", acting under a Delegation of Authority from the Department of Enterprise Services, in accordance with RCWQ 43.82.010

WHEREAS, the Department of Enterprise Services is granted authority to lease property under RCW 43.82.010; and

WHEREAS, the Director of the Department of Enterprise Services is also granted authority to delegate the leasing function to agencies; and

WHEREAS, the Director has so delegated the authority for this Lease; and

WHEREAS, the Lessor and Lessee deem it to be in the best public interest to enter into this Lease;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, IT IS MUTUALLY AGREED AS FOLLOWS:

LEASED PREMISES

1. The Lessor hereby leases to the Lessee the following described premises:

Tax Parcel Number: 0213340000200

Common Street Address: 45 Airport Way, Dallesport, WA 98617

Legal Description: A portion of the Northwest Quarter of Section 34, Township 2 North, Range 13 East of the Willamette Meridian, Klickitat County. The premises include approximately 1,200 square feet of office space, shop common space, and a restroom located inside the hangar building, as shown on the maps attached as Exhibits "A" and "B".

USE

2. Lessee shall use the premises for the following purpose: Wildfire Forward Operating Base, to manage Wildfire Division aviation assets and personnel. The use of the office space includes associated office activities, such as meetings, trainings, and conferences.

TERM

3. This Lease shall commence on July 1, 2017, and continue through June 30, 2022, unless sooner terminated as provided in this Lease.

RENTAL RATE

4. The Lessee shall pay rent to the Lessor for the premises at the following rate: Five hundred dollars and zero cents, (\$550.00) per month. Payment shall be made at the end of each month upon submission of properly executed invoices.

Payment to:
City of The Dalles
Attn: Finance Director, City of The Dalles
313 Court Street
The Dalles, OR 98058

Mail invoices to:
WA STATE DNR
MS 47037
Olympia, WA 98504-7000

EXPENSES

5. During the term of this Lease, Lessor shall pay all real estate taxes, all property assessments, insurance, storm water, water, sewer, internet service, electricity and maintenance and repair as described below. Lessee shall pay for garbage collection service.

MAINTENANCE AND REPAIR

6. Except for repairs necessitated by the use of the Leased Premises by Lessee, its agents, employees, and/or invitees, Lessor shall maintain the Premises in a condition, which is equivalent or better than the condition which existed at the time of execution of this agreement. Lessor's maintenance and repair obligations shall include, but not be limited to, the mechanical, electrical, interior lighting (including replacement of ballasts, starters and fluorescent tubes as required), plumbing, heating, ventilating and air-conditioning systems (including replacement of filters as recommended in equipment service manual); inside and outside walls (including windows and entrance and exit doors); all structural portions of the building (including the roof and the watertight integrity of the same); sidewalks; exterior lighting; and parking lot. Lessee agrees to keep the Leased Premises in a neat, clean and proper condition at all times. Any repair to the Leased Premises, including repairs to major structural parts, which are required as a result of any act of the Lessee, its agents, employees or contractors, or any business visitor or invitee, shall be the responsibility of the Lessee.

6.1 Landlord, its agents, or local government authorities shall have the right to inspect the Premises for any reasonable purpose at any time. If the inspection reveals a condition or conditions, which Lessor has the responsibility to repair, the Lessor shall take immediate action to perform the repairs. For repairs not discovered during an inspection by Lessor, if the Lessor is notified by Lessee in writing of the necessity of maintenance or repairs, the duty of Lessor to make such repairs shall not mature until a reasonable time after Lessor has been in receipt such notice.

6.2 Lessor shall as part of its maintenance provide de-icing and snow removal for the parking area which serves the Leased Premises. Lessee shall be responsible for removal of snow and ice upon the sidewalks leading to the entrance of the building on the Leased Premises.

ASSIGNMENT/SUBLEASE

7. Except for a sublease for use by another State Agency for a use allowed under Section 2, the Lessee may not assign this Lease or sublease the premises without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. Lessor shall respond to, or approve or disapprove a request for consent to a sublease within thirty (30) days of receipt of the request. If such response is not received within thirty (30) days, it will be considered approved and the Lessee can proceed with the sublease. Lessee shall not permit the use of the premises by anyone other than the Lessee, such assignee or sublessee, and the employees, agents, and servants of the Lessee, its assignee or sublessee.

RENEWAL/CANCELLATION

8. The Lease, at the option of the Lessee, may be renegotiated for an additional two (2) year term, provided the Lessor and Lessee mutually agree upon the rental rate to be paid for the additional two (2) year term. In the event the parties are unable to mutually agree upon the rental rate for the additional two (2) year term, this Lease shall expire as of June 30, 2022.

8.1 It is mutually understood and agreed by and between the Lessor and Lessee that this Lease may be cancelled and terminated by either party, provided that written notice of such cancellation and termination shall have been given at least ninety (90) days prior to the effective date thereof, in which event rent shall be prorated to the date of termination.

COMPLIANCE WITH STATE/FEDERAL LAWS

9. Lessor is responsible for complying with all applicable provisions of the Americans with Disabilities Act of 1990 and all amendments and regulations thereto and the Washington State Law Against Discrimination, Chapter 49.60 RCW, as well as the regulations adopted thereunder, with respect to the Leased Premises.

FIXTURES, ALTERATIONS/IMPROVEMENTS

10. The Lessee shall have the right during the existence of this Lease with the written permission of Lessor (which permission shall not be unreasonably withheld) to make alterations, attach fixtures, and erect additions, structures or signs, in or upon the premises leased. Performance of any of the rights authorized by this section shall be conducted in compliance with all applicable governmental regulations, including any applicable prevailing wage requirements under the provisions of Chapter 39.12 RCW and the rules and regulations of the Department of Labor and Industries and the schedule of prevailing wage rates for the locality where this Lease will be performed as determined by the Industrial Statistician of the Department of Labor and Industries, which schedules are incorporated herein by this reference, and any building codes including required permits. Any fixtures, additions, or structures so placed in or upon or attached to the premises shall be and remain the property of the Lessee and may be removed therefrom by the Lessee upon the termination of this Lease. Any damage caused by the removal of any of the above items shall be repaired by the Lessee.

DISASTER

11. In the event the Leased Premises are destroyed or injured by fire, earthquake or other casualty so as to render the premises unfit for occupancy, and the Lessor determines not to repair the leased premises to their former condition, then the Lessee may terminate this Lease, and shall be reimbursed for any unearned rent that has been paid. In the event the premises are partially destroyed by any of the aforesaid means, the rent herein agreed to be paid shall be abated from the time of occurrence of such destruction or injury until the premises are again restored to their former condition, and any rent paid by the Lessee during the period of abatement shall be credited upon the next installment(s) of rent to be paid. It is understood that the terms "abated" and "abatement" mean a pro rata reduction of area unsuitable for occupancy due to casualty loss in relation to the total rented area.

NO GUARANTEES

12. It is understood that no guarantees, express or implied, representations, promises or statements have been made by the Lessee unless endorsed herein in writing. And it is further understood that the Lessee, a state agency, is acting in compliance with a delegated authority from the Department of Enterprise Services in accordance with 43.82.010. Any amendment or modification of this Lease must be in writing and signed by both parties.

REIMBURSEMENT FOR DAMAGE TO PREMISES

13. The Lessee hereby agrees to reimburse the Lessor for damages caused by the negligence of its employees, clients and agents, but in no event shall this section be construed as diminishing the Lessor's duty to make repairs as set forth in preceding paragraphs of this lease, or as making Lessee responsible for the repair of normal wear and tear.

HAZARDOUS SUBSTANCES

14. Lessor warrants to its knowledge that no hazardous substance, toxic waste, or other toxic substance has been produced, disposed of, or is or has been kept on the premises hereby leased which if found on the property would subject the owner or user to any damages, penalty, or liability under an applicable local, state or federal law or regulation. Lessor shall indemnify and hold harmless the Lessee with respect to any and all damages, costs, attorneys' fees, and penalties arising from the presence of any hazardous or toxic substances on the premises, except for such substances as may be placed on the premises by the Lessee.

BINDING AUTHORITY

15. It is further understood that this Lease shall not be binding upon the State of Washington, Department of Natural Resources, unless signed by the Lessee's Director, Commissioner, or his/her designee and approved as to form by the Office of the Attorney General.

DUTY TO CURE

16. Upon receiving notice of a condition requiring a cure, the party obligated to effect the cure shall initiate and complete cure or repair of such condition within a reasonable time. A condition requiring cure includes, without limitation: (1) a condition for which the Lease requires either party to undertake repair/ replacement and/or other maintenance of the Premises, (2) a condition where either has failed to maintain a service or utility account in good standing as required by the Lease, and (3) any other condition resulting from a party's failure to carry out any obligation under the Lease, including without limitation obligations for rent, charges, improvements, alterations, and/or deferred maintenance, and remediation of damages for which a party is responsible under the Lease. Premises include all fixtures and equipment provided within the Premises by the Lessor.

16.1 The term "reasonable time" as used within this paragraph of the Lease shall mean as soon as reasonably possible but no longer than thirty (30) days, unless either (1) an emergency condition exists requiring an immediate cure to promptly begin without delay, usually within hours and to be complete within 24 hours to the extent reasonably possible in light of the nature of the condition and circumstances, or (2) a non-emergency condition exists that is not reasonably possible to cure within 30 days with due diligence and the breaching party provides the level of cure or preparation for cure that is reasonably possible to do with due diligence within 30 days.

16.2 If an emergency or non-emergency condition exists that is not reasonably possible to completely cure within twenty four (24) hours or thirty (30) days, respectively, the party obligated to cure shall so notify the other party within twenty four (24) hours or thirty (30) days, respectively. Such notice shall explain why the cure is not reasonably possible with due diligence to complete within twenty four (24) hours (if an emergency) or thirty (30) days (if a non-emergency) and provide the earliest date that the work can be completed as soon as reasonably possible.

16.3 The term "emergency condition" shall mean a condition requiring a cure that (i) prevents or substantially disrupts the Lessee from using all or a substantial part of the premises, or (ii) causes or substantially threatens to cause injury to persons or damage to property or raises a substantial danger to the health or safety of any persons on or using the premises. Notice under this paragraph may be by the means allowed in the Notice paragraph,

but in addition includes actual notice/awareness that Lessor or Lessee has of a condition independent of any such notice.

SELF HELP

17. If the party obligated to effect the cure does not cure within the time required by this Lease, the other party may cure all or part of the default after providing notice to the party obligated to effect the cure of its intent to perform such cure, and, if applicable, recover the costs incurred in curing the default. If the nonbreaching party is the Lessee, the Lessee may deduct all reasonable costs incurred from rent or other charges owed to Lessor. If the nonbreaching party is the Lessor, Lessor will submit properly executed vouchers and proof of payment to Lessee and Lessee shall remit payment to Lessor within thirty (30) days or as soon as is practicable. A party's costs incurred to cure include, but are not limited to, all reasonable out-of-pocket expenses, payment of unpaid utility or service charges for which the other party is responsible, and all administrative costs the non-breaching party reasonably incurs and documents in performing or arranging for performance of the cure.

17.1 The nonbreaching party is under no obligation to cure some or all of the default of the breaching party. To the extent that the nonbreaching party does not cure the default, the nonbreaching party may pursue its legal and contractual remedies against the breaching party. The nonbreaching party's failure to cure the breaching party's default does not waive the nonbreaching party's rights to relief. Nothing herein removes or lessens either party's obligation to mitigate damages.

17.2 If the Lessee elects to cure using self-help in part or whole, the Lessor shall defend, save, and hold harmless the Lessee, its authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever arising out of or in connection with such cure, except where RCW 4.24.115 is applicable and injuries and/or damages are caused by the sole negligence of the Lessee, its agents, or employees. If RCW 4.24.115 is applicable and liability for damages arises out of bodily injury to persons or damages to property and is caused by or results from the concurrent negligence of the Lessee, its agents, or employees, Lessor's liability, including the duty and cost to defend, hereunder shall apply only to the extent of the negligence of Lessor, its agents, or employees.

DEFAULT LEADING TO TERMINATION

18. If either party fails to initiate and complete cure of a condition requiring cure within a reasonable time after receiving notice of such condition, the nonbreaching party may initiate a default leading to termination of the Lease by providing written notice to the breaching party of the continuing breach. If the breaching party does not complete the cure of the breach within thirty (30) days after receiving such written notice initiating default leading termination, the nonbreaching party may at such time, or at a later date if the cure has still not been completed, declare a termination by default by so notifying the breaching party. Cure of a condition after a valid notice of termination by default is provided, but before termination, shall void a valid notice of termination of the Lease.

18.1 If a termination by default is declared or a court so orders, the date of termination shall be determined based on the earliest reasonable date that the Lessee may move and relocate from premises or as agreed by the parties. The determination shall be made in light of available funding for the move, the date at which suitable replacement premises can be fully available, and the time reasonably needed to plan and complete the move.

WITHHOLDING OF RENT PAYMENTS

19. If the Lessor fails to maintain, repair and/or improve the premises as set forth herein, the Lessee may withhold ten percent (10%) of rent payments until such time as Lessor completes deficient maintenance, repair and/or improvements. Upon documentation of Lessor's noncompliance with maintenance, repair and/or improvement provisions the Lessee shall provide Lessor with a list of deficient maintenance, repair and/or improvement items and notify Lessor that Lessee will withhold rent payment until deficient maintenance, repair and/or improvements have been completed. Lessee shall place all withheld rent payments in an interest bearing account. Withheld rent payments plus accrued interest will be remitted to Lessor after the Lessee verifies that Lessor

has satisfactorily completed all maintenance, repair and/or improvements. Nothing in this provision shall limit other remedies which may be available to Lessee under this lease.

CONDEMNATION

20. If any of the premises or of the Building, as may be required for the reasonable use of the premises, are taken by eminent domain, this Lease shall automatically terminate as of the date Lessee is required to vacate the premises and all rentals shall be paid to that date. In case of a taking of a part of the premises, or a portion of the Building not required for the reasonable use of the premises, at Lessee's determination, then the Lease shall continue in full force and effect and the rental shall be equitably reduced based on the proportion by which the floor area of the premises is reduced, such rent reduction to be effective as of the date possession of such portion is delivered to the condemning authority. Lessor reserves all rights to damages and awards in connection therewith, except Lessee shall have the right to claim from the condemning authority the value of its leasehold interest and any relocation benefits.

MONTH TO MONTH TENANCY

21. If Lessee remains in possession of the premises after the expiration or termination of the Lease term, or any extension thereof, such possession by Lessee shall be deemed a month-to-month tenancy, which is terminable as provided by law. During such month-to-month tenancy, Lessee shall pay all rent provided in this Lease or such other rent as the parties mutually agree in writing and all provisions of this Lease shall apply to the month-to-month tenancy, except those pertaining to term and option to extend.

CAPTIONS

22. The captions and paragraph headings herein are inserted for convenience purposes only and shall not be deemed to limit or expand the meaning of any paragraph.

INTEGRATED DOCUMENT/SAVINGS CLAUSE

23. This Lease and the exhibits attached hereto constitute the entire agreement between the parties with respect to the lease of the premises and supersedes all prior and contemporaneous agreements and understandings between the parties relating to the subject matter hereof. In the event that any part of this agreement or application thereof shall be determined to be invalid by a court of competent jurisdiction, such findings shall have no effect on the remaining portions of this Lease.

APPLICABLE LAW

24. This Lease Agreement shall be governed by the laws of the State of Washington.

NOTICES

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

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

LESSEE: Department of Natural Resources
Attention: Facilities Senior Planner
1111 Washington Street SE
MS47030
Olympia, WA 98504-7030

AND Department of Enterprise Services
Real Estate Services
1500 Jefferson Street S.E., 2nd Floor
Post Office Box 41015
Olympia, Washington 98504-1015

DEL 16-0050

IN WITNESS WHEREOF, the parties subscribe their names.

LESSOR

LESSEE:

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

STATE OF WASHINGTON DEPARTMENT OF
NATURAL RESOURCES

Stephen E. Lawrence, Mayor

By: _____

Attest:

Printed Name: _____

Izetta Grossman, City Clerk

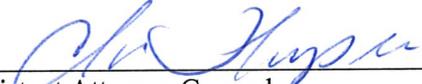
Approved as to form:

Title: _____

City Attorney

APPROVED AS FORM:

Date



Assistant Attorney General

Date: 10-27-17

BOARD OF COUNTY COMMISSIONERS
Klickitat County, Washington

Date: _____

Chairman

Commissioner

Commissioner

Attest:

Date:

Clerk of the Board

Approved as to form:

Prosecuting Attorney

Prosecuting Attorney

STATE OF OREGON)
) ss.
County of Wasco)

On this ___ day of _____, 2017, before me personally appeared Stephen E. Lawrence and Izetta Grossman, Mayor and City Clerk for the City of The Dalles, and acknowledged that they signed this instrument, and on oath stated they were authorized to execute the instrument and acknowledged it to be the free and voluntary act of such party for the uses and purposes stated in the instrument.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for the State of Oregon
My commission expires: _____

STATE OF WASHINGTON)
) ss.
County of _____)

On this ___ day of _____, 2017, before me personally appeared _____, _____, and _____, Commissioners for Klickitat County, Washington and acknowledged that they signed this instrument, and on oath stated they were authorized to execute the instrument and acknowledged it to be the free and voluntary act of such party for the uses and purposes stated in the instrument.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for the State of Washington
Residing at _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
 County of Thurston)

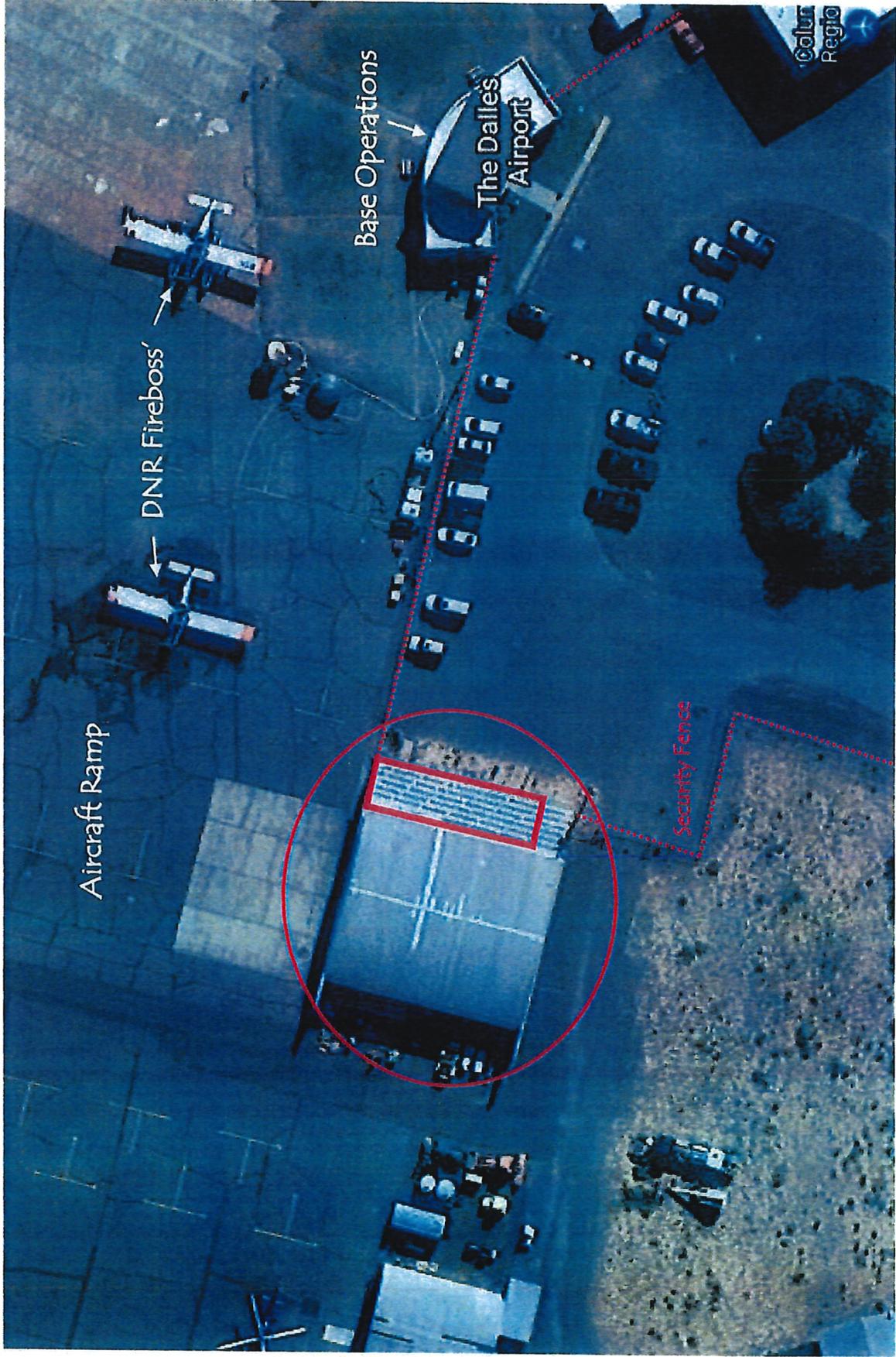
I, the undersigned, a Notary Public, do hereby certify that on this ____ day of _____, 2017, personally appeared before me _____(name/title) of the _____, State of Washington, to me known to be the individual described in and who executed the within instrument and acknowledged that he/she signed and sealed the same as the free and voluntary act and deed of the Department, for the purposes and uses therein mentioned, and on oath stated that he/she was duly authorized to execute said document.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

 Notary Public in and for the State of Washington
 Residing at _____
 My commission expires: _____

ATTACHMENT A

Columbia Gorge Regional Airport (KDLS)
City of Dallesport Office Space Lease to WA State DNR

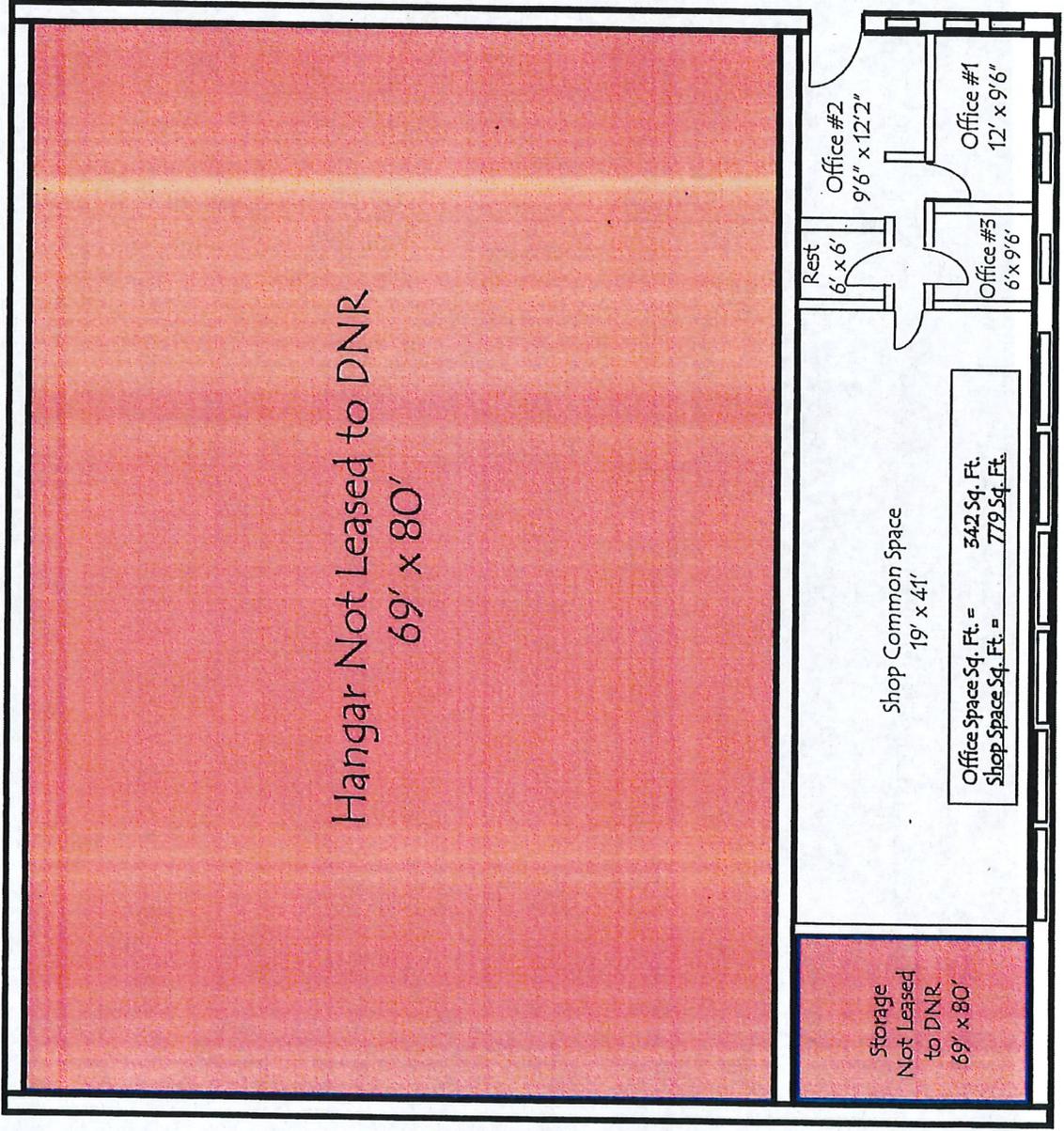


ATTACHMENT B

Columbia Gorge Regional Airport (KDLS)

City of Dallesport Office Space Lease to WA State DNR

Total DNR Lease Sq. Ft. = 1121 Sq. Ft.



Hangar Not Leased to DNR
69' x 80'

Storage
Not Leased
to DNR
69' x 80'

Shop Common Space
19' x 41'

Office Space Sq. Ft. = 342 Sq. Ft.
Shop Space Sq. Ft. = 779 Sq. Ft.

Rest
6' x 6'

Office #2
9'6" x 12'2"

Office #3
6' x 9'6"

Office #1
12' x 9'6"

Security Fence

Staff Parking

Security Fence

Aircraft
Ramp