

RESOLUTION 2021 - 12

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON, TO AUTHORIZE THE CITY MANAGER TO
EXECUTE A GROUND LEASE WITH THE PORT OF SUNNYSIDE
AT THE SUNNYSIDE MUNICIPAL AIRPORT**

WHEREAS, the City of Sunnyside (City) is responsible for the operation and maintenance of the Sunnyside Municipal Airport; and

WHEREAS, the Port of Sunnyside (Port) wishes to enter into a ground lease with the City to build a state grant-funded hangar facility at the Sunnyside Municipal Airport to attract new aviation-related commerce to the area; and

WHEREAS, the City and Port have negotiated mutually acceptable terms for a ground lease based on existing comparable leases, which fixes the lease rates, duration, and other terms and conditions to be satisfied by the parties; and

WHEREAS, the City Council finds and determines that this ground lease agreement with the Port of Sunnyside is in the best interest of the residents of the City of Sunnyside and will promote the general health, safety and welfare:

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF
THE CITY OF SUNNYSIDE, WASHINGTON, as follows:**

SECTION 1. That the City Council of the City of Sunnyside hereby authorizes the City Manager to execute a ground lease agreement with the Port of Sunnyside, attached hereto as Exhibits "A", and act on behalf of the City of Sunnyside and to take all actions reasonable and necessary to administer this ground lease agreement with full contractual authority.

SECTION 2. This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

PASSED this 12th day of April, 2021.



FRANCISCO GUERRERO, MAYOR

ATTEST:



JACQUELINE RENTERIA, CITY CLERK

EXHIBIT A

FILED FOR RECORD AT REQUEST OF:

City of Sunnyside, Washington

WHEN RECORDED RETURN TO:

City of Sunnyside, Washington
818 East Edison Avenue
Sunnyside WA 98944

CITY OF SUNNYSIDE LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this ____ day of _____, 20____, by and between the City of Sunnyside, Washington, a Municipal Corporation, hereinafter referred to as the "City", and the Port of Sunnyside, a Washington Municipal Corporation, hereinafter referred to as the "Port."

IN CONSIDERATION of the mutual covenants contained herein and other valuable consideration, it is agreed as follow:

1. **Premises.** The City does hereby lease to the Port upon the following terms and conditions that certain real property legally described on Exhibit "A" and shown on Exhibit "A-1" both of which are attached hereto and by this reference incorporated herein, and are hereinafter referred to as the "Premises", together with the right of ingress to and egress from the Premises and the public use areas/facilities used in connection therewith, over designated Sunnyside Airport property, taxi lanes, and roadways, subject to rules and regulations governing the use of the Sunnyside Airport and as the same may be promulgated by the City from time to time. The approximate location of the Premises is also shown on the Conceptual Site Plan, dated February 3, 2021, prepared by J-U-B Engineers, Inc. and attached as Exhibit "B" and by this reference incorporated herein (hereinafter referred to as the "J-U-B Site Plan").

2. **Term.** The initial term of this Lease shall be forty (40) years commencing on _____, 2021, and continuing until _____, 2061. Lessee may extend the Lease term for five (5) additional five (5) year terms, each to be exercised at Lessee's option for a maximum additional term of twenty-five (25) years. Any optional term shall be exercised by Lessee in writing at least one hundred eighty (180) days prior to the expiration of the then current term.

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3. **Rent.** The Port shall pay to the City a total annual rent of Six Hundred Dollars (\$600.00) per year due on or before March 15th of each year, until such time as the Port enters into a lease agreement with any subtenant(s) for its hangar facility, at which time the Port shall pay to the City rent of Nine Hundred Dollars (\$900.00) due on or before March 15th of each year.

Additionally, the Port shall be responsible to collect from its subtenant(s), and pay to the appropriate State agency, any and all applicable leasehold excise taxes as more particularly described in Section 4 below. All utilities serving the Premises shall be paid by the Port or its subtenant(s).

4. **Tax.** The Port shall be responsible to collect from its subtenant(s), and pay to the appropriate State agency, any and all applicable leasehold excise tax due pursuant to RCW 82.29A at such regular periods as may be required due to State reporting requirements. If the State of Washington changes the leasehold excise tax or an additional tax is imposed upon the Port's leasehold to subtenant(s), then the tax to be collected by the Port shall be correspondingly changed. The Port shall be responsible for any and all taxes assessed against the subject property and for collecting any such taxes related to the ownership or use from its subtenants as may be required by law. The City shall not be responsible to pay any property taxes assessed for the buildings and other improvements located on the Premises, if any.

5. **Utilities.** The Port, or its subtenant(s), shall be responsible for all utility services to the Premises, including but not limited to power, natural gas, water, sewer, and garbage. The City shall not be responsible to pay any such utility charges.

6. **Insurance.** As a condition to any sublease of the Premises, or a portion thereof, the Port shall require the subtenant(s) to obtain and maintain general commercial liability insurance coverage with \$2,000,000 minimum bodily injury and personal injury coverage; and \$1,000,000 minimum property damage coverage limits on a per-occurrence basis. Any and all subtenant(s) of the Premises shall provide the City and the Port with certificates of insurance coverage naming the City and the Port as additional insureds before the subtenant(s) take possession of the Premises, or a portion thereof.

Additionally, the Port shall require any general contractor who constructs the hangar to be located on the Premises to obtain and maintain general commercial liability insurance coverage with \$2,000,000 minimum bodily injury and personal injury coverage; and \$1,000,000 minimum property damage coverage limits on a per-occurrence basis. Any and all such general contractors shall provide the City and the Port with certificates of insurance coverage naming the City and the Port as additional insureds before the general contractor begins the construction project on the Premises, or a portion thereof.

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The City shall not be responsible for the loss, damage, or casualty to the Port's personal property, or the property of its subtenant(s), located on the Premises, regardless of cause. At the end of the initial 40-year term, effective for the 25-year optional period, these insurance requirements shall increase in dollar amount as mutually agreed by the parties.

The Port does not intend to use the hangar facility located on the Premises for any other purpose than to lease it to subtenant(s). The Port shall comply with the insurance requirements of this Section 6 by obtaining and maintaining general commercial liability insurance with \$2,000,000 minimum bodily injury and personal injury coverage; and \$1,000,000 minimum property damage coverage limits on a per-occurrence basis.

Indemnity and Hold Harmless. As a condition to any sublease of the Premises, or a portion thereof, the Port shall require the subtenant(s) to indemnify and hold the City harmless as provided herein to the maximum extent possible under the law. Any and all subtenant(s) of the Premises, for themselves and their successors and assigns, shall agree to defend, indemnify and hold harmless the City, its appointed and elected officials, and employees from and against liability for all claims, damages, suits, and judgment including the costs of defense thereof, for injury to person, death, property damage, environmental contamination, or other loss or liability which is caused by, arises out of, or is incident to the subtenant(s) use of the Premises. The Port shall also indemnify and hold the City harmless as provided herein to the maximum extent possible under the law, and shall agree to defend, indemnify and hold harmless the City, its appointed and elected officials, and employees from and against liability for all claims, damages, suits, and judgment including the costs of defense thereof, for injury to person, death, property damage, environmental contamination, or other loss or liability which is caused by, arises out of, or is incident to the Port's use of the Premises.

The provisions of this Section 6 shall survive the termination of this Lease and the termination of the subtenancy.

7. **Assignment or Sublet.** The City acknowledges that the Port's primary purpose for entering into this Lease Agreement is to construct an airplane hangar for the purposes mentioned in this Lease Agreement above, and to sublease the Premises with the airplane hangar to one or more third-party subtenants. Therefore, the Port may assign or sublet the Premises to one or more third-party subtenants provided that such subleases comply with the requirements of this Lease Agreement including but not limited to subtenant's obtaining all necessary licenses and permits for use of the Premises, the subtenant's obtaining and maintaining the necessary liability insurance, the subtenant

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indemnifying the City from any and all liabilities arising from the use of the Premises, and the subtenant(s) compliance with all applicable environmental laws.

8. Environmental Requirements. The Port represents, and shall require any subtenant to represent, warrant, and agree that it will conduct its activities on and off the Premises in compliance with all applicable environmental laws. Additionally, the Port shall indemnify, and require any subtenant to indemnify, the City against any and all violations of any applicable environmental laws. As used in this Lease Agreement, Environmental Laws means all Federal, State, and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et. seq., the Clean Air Act, 42 U.S.C. § 7401, et. seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et. seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 1101, et. seq., The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et. seq., The Oil Pollution Control Act, 33 U.S.C. § 2701, et seq., and Washington or any other comparable local, City, County or federal statute or ordinance pertaining to the environment or natural resources and all regulations pertaining thereto.

The Port shall require any subtenant to represent and warrant to the City that hazardous substances shall not be illegally generated, stored, or disposed of on the Premises nor shall they be illegally transported to or over the Premises. "Hazardous substances" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state, or local environmental law, regulation, or rule presently in effect or promulgated in the future. The Port shall require the subtenant to agree that it will be responsible for all damages and costs associated with release of any such substances upon the Premises occurring during the term of the subtenancy, including any cleanup costs.

The provisions of this Section 9 shall survive the termination of this Lease and the termination of the subtenancy.

9. Signs. The Port, or its subtenant(s), at their own expense may erect one or more signs of a type, number and location suitable to the City. No signs or other advertising mater or devices shall be used or displayed in or about the Premises or upon any portion thereof without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed.

10. Notices. Notices to the City of Sunnyside shall be sent to the following address:

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City of Sunnyside
818 East Edison Avenue
Sunnyside WA 98944

Notices to the Port of Sunnyside shall be sent to the following address:

Port of Sunnyside
P.O. Box 329
Sunnyside WA 98944

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U. S. mails, with proper postage and properly addressed.

11. Dispute Resolution. For the purposes of this Agreement, time is of the essence. In the event of a dispute regarding the enforcement, breach, default or interpretation of this Lease Agreement, the parties shall first meet in a good faith effort to resolve such dispute. In the event the dispute cannot be resolved by agreement of the Parties, said dispute shall be resolved by arbitration pursuant to RCW 7.04A, as amended, and the Mandatory Arbitration Rules (MAR), or in the event of substantial change in law according to the then existing commercial reasonable standards for conduct of arbitrations; venue shall be placed in Yakima County, Washington, the laws of the State of Washington shall apply; and the prevailing party shall be entitled to its reasonable attorney fees and costs. The City retains the right to seek an unlawful detainer action or other legal action as may be necessary to regain possession of the Premises.

12. Lien Waiver. The Port shall have the right to mortgage its buildings and/or other improvements located on the Premises subject to paragraph 16 concerning lease termination. In order to facilitate the Port's ability to mortgage its buildings and/or other improvements, the City will acknowledge it has no interest in the improvements and the City will waive its right to statutory liens or common law rights to distress with regard to any of the Port's improvements. The City agrees to execute a release and consent form as reasonably requested by the Port's lender.

13. Improvements. The Port may construct an airport hangar and other related improvements on the Premises, provided that such construction complies with the provisions of this Lease Agreement. The airport hangar and other related improvements, and any other future buildings or other improvements, shall be constructed so as to conform to all applicable rules, regulations and codes, including but not limited to all procurement requirements under RCW 53.08.120, and the Port shall procure all building and other permits therefore. All buildings and other improvements shall be constructed and installed on the Premises consistent with the plans and specifications submitted to

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and approved in writing by the City, which approval shall not be unreasonably withheld or delayed.

During the Port's construction of the airport hangar and related improvements, the City shall construct and install both (1) a hangar access road allowing access to and from E. Edison Road and the existing hangar access road to the Southern boundary of the Premises, as depicted on Exhibit "B" attached hereto; and (2) a taxilane access from the Northern boundary of the Premises to the airport runway, as depicted on Exhibit "B" attached hereto. Such improvements by the City are contingent upon it obtaining any necessary approvals from the Federal Aviation Administration, securing funding adequate to design, construct, and install the improvements, obtaining the necessary permits, and complying with all relevant laws. This agreement in no way guarantees such approvals will be granted by the City or other agencies.

14. **Maintenance.** The Port agrees that the Port, or its subtenant(s), shall be responsible to maintain all leased areas, buildings, and other improvements, existing and future, in an attractive and useable manner as determined by the City and consistent with other properties or hangars at the Airport. Maintenance shall include, but not be limited to, maintenance of the hangar, weed control, garbage and debris removal, painting, snow removal, and pavement maintenance.

15. **Damage or Destruction.**

a. **Tenant Improvements.** In the event the airport hangar or other improvements constructed and/or installed by the Port are partially or totally damaged by fire or other casualty and replacement cost insurance coverage is available, then the Port shall repair or replace the same with the proceeds from said replacement cost insurance coverage. The new improvements shall be at least the same size, design and quality as that which existed before any damage or destruction. Unless the Port elects to terminate this Lease Agreement, any insurance proceeds shall be first applied to the cost of repair or replacement of improvements.

The Port may elect not to repair or replace the airport hangar or other improvements by providing the City with written notice of its intent to terminate within sixty (60) days after the damage or destruction to the airport hangar or other improvements located on the Premises. If the Port elects not to repair or replace the airport hangar or other improvements located on the Premises, then this Lease agree shall be terminated sixty (60) days after the Port's written notice of termination is given to the City. In such event, the Port shall remove the improvements and restore the Premises to a condition satisfactory to the City. The insurance proceeds shall be used for such restoration and the balance shall belong to the Port.

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EXHIBIT A HANGAR LEASE AREA LEGAL DESCRIPTION

That portion of the Southwest quarter of the Northeast quarter of Section 29, Township 10 North, Range 23 East, W.M., Yakima County, Washington, being more particularly described as follows:

BEGINNING at a Concrete monument with an Aluminum cap marking the Southwest corner of the Northeast corner of said Section 29, from which a Concrete monument with an Aluminum cap marking the Southeast corner of the Northeast quarter of said Section 29 bears North 89°52'30" East, 2649.29 feet;

Thence North 00°19'38" East along the West line of the Northeast quarter of said Section 29 for a distance of 55.00 feet to the Northerly boundary of that certain 30-foot wide Drainage Improvement District No. 18 drainage ditch as described in Auditors File No. 43004, said point also being on the Easterly right-of-way line of a 30.00-foot-wide road right-of-way as shown in Short Plat 92-38, both being Records of Yakima County, Washington;

Thence leaving the Northerly boundary of said drainage ditch and continuing along the West line of the Northeast quarter of said Section 29 and the Easterly right-of-way line of said 30.00-foot-wide road right-of-way, North 00°19'38" East, 73.67 feet;

Thence leaving the West line of the Northeast quarter of said Section 29 and said Easterly right-of-way line, North 89°52'30" East, 18.00 feet to the **TRUE POINT OF BEGINNING** of the parcel to be described;

Thence continuing North 89°52'30" East, 146.00 feet;

Thence North 00°19'38" East, 100.00 feet;

Thence South 89°52'30" West, 146.00 feet;

Thence South 00°19'38" West, 100.00 feet to the **TRUE POINT OF BEGINNING** and the end of this legal description.

Containing 0.34 acres, more or less.

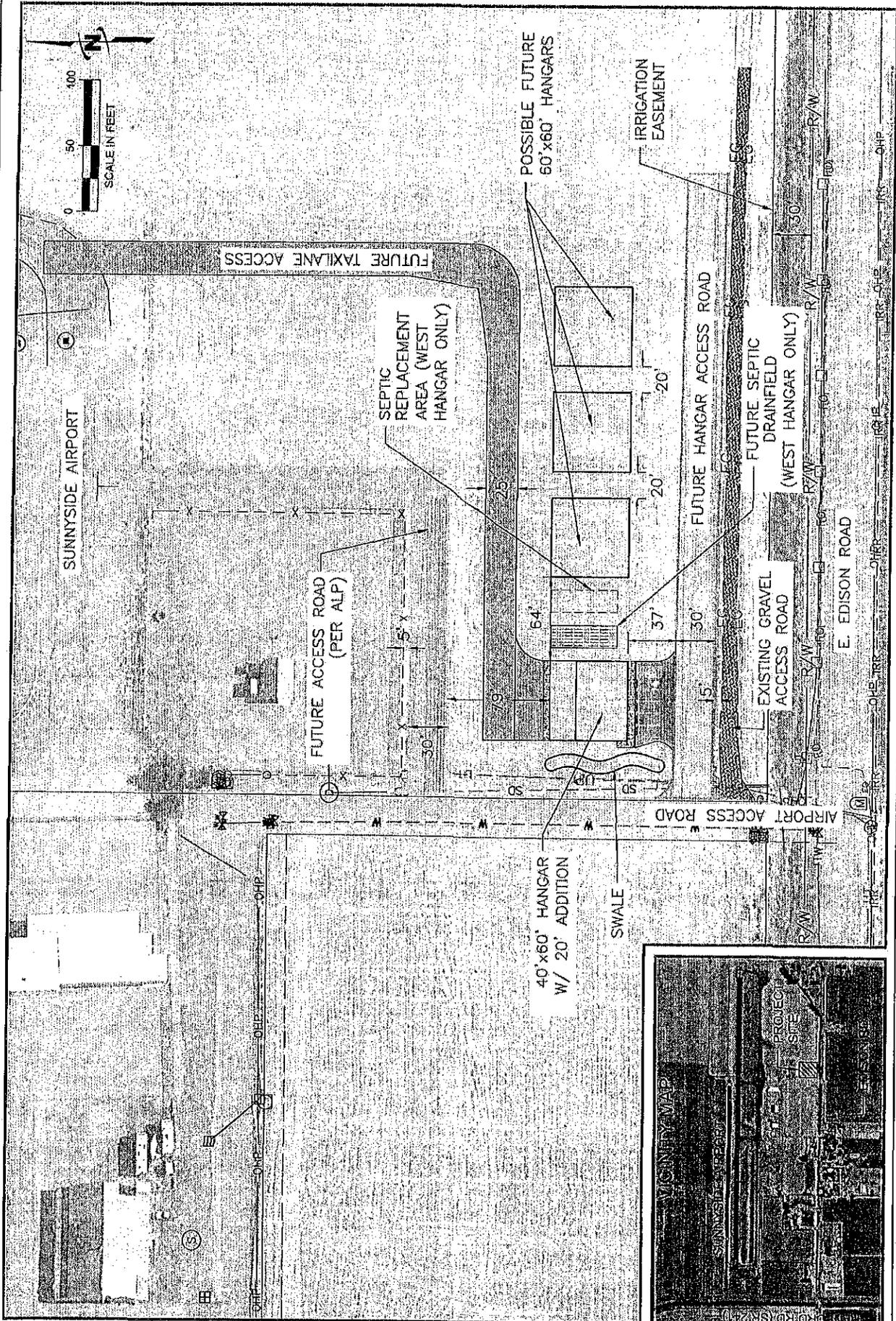
ALSO TOGETHER WITH and subject to easements, reservations, covenants and restrictions apparent or of record.

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SUNNYSIDE HANGAR
PORT OF SUNNYSIDE

FEBRUARY 3, 2021
CONCEPTUAL PLAN



LAST UPDATE: 02/02/21
PLOT DATE: 2/3/21
FILE: 202002 CONCEPT 021222