

IMPORTANT NOTICE

The March 8 Chehalis City Council will be held in-person with some restrictions.

On February 1, Lewis County moved to Phase 2 of the Governor’s Healthy Washington – Roadmap to Recovery Plan, which means cities may hold limited, in-person meetings in addition to virtual options. The capacity of these meetings is limited to 25% of the posted room capacity or 200 individuals – whichever is fewer (excludes staff). The posted room capacity for the Chehalis Council Chambers is 49, which means 12 members of the public may be in attendance.

Cities must continue to provide the public virtual access to meetings. Options for attending remotely remain the same:

1. Live-Stream

View and listen through live streaming by using the following link –
<https://www.ci.chehalis.wa.us/citycouncil/live-streaming-and-demand-viewing-city-council-meetings>

or

2. Telephone

Dial: 1-253-215-8782

Meeting ID: 822 5811 8879

Passcode: 674890

Citizens wishing to provide public comments in general and on agenda items should submit comments by 4:00 pm on the day of the meeting. All comments received will be acknowledged by the Mayor under the Citizens Business portion of the meeting agenda. Please use the following form to submit comments – <https://www.ci.chehalis.wa.us/contact>. If you do not have computer access or would prefer to submit a comment verbally, please contact City Clerk Caryn Foley at 360-345-1042 or at cfoley@ci.chehalis.wa.us. Citizens Business comments will be limited to five (5) minutes.

If you have any questions about live streaming the meeting or submitting a comment, please contact City Clerk Caryn Foley at cfoley@ci.chehalis.wa.us or 360-345-1042.

**The City truly appreciates the community’s cooperation
and patience during this challenging time.**

CHEHALIS CITY COUNCIL AGENDA

CITY HALL
350 N MARKET BLVD | CHEHALIS, WA 98532

Jerry Lord, District 1 Daryl J. Lund, District 2, Mayor Pro Tem Dr. Isaac S. Pope, District 4	Dennis L. Dawes, Position at Large Mayor	Anthony E. Ketchum Sr., District 3 Robert J. Spahr, Position at Large Michael Bannan, Position at Large
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Regular Meeting of Monday, March 8, 2021 5:00 pm

- | |
|---|
| 1. <u>Call to Order.</u> (Mayor)

2. <u>Pledge of Allegiance.</u> (Mayor) |
|---|

ITEM	ADMINISTRATION RECOMMENDATION	PAGE
SPECIAL BUSINESS		
3. <u>Swearing-in of New Council Member – Michael Bannan.</u> (Mayor Dawes)	SWEAR IN NEW COUNCIL MEMBER	
4. <u>City Council Committee Assignments.</u> (Mayor)	REVIEW	1

CITIZENS BUSINESS
Citizens wishing to provide public comments in general and on agenda items should submit comments by 4:00 pm on the day of the meeting. All comments received will be acknowledged by the Mayor under Citizens Business of this meeting agenda. Please use the following form to submit comments – https://www.ci.chehalis.wa.us/contact . If you do not have computer access or would prefer to submit a comment verbally, please contact City Clerk Caryn Foley at 360-345-1042 or at cfoley@ci.chehalis.wa.us . Citizens Business comments will be limited to five (5) minutes.

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6. <u>Minutes of the Special City Council Meeting of March 1, 2021.</u> (City Clerk)	APPROVE	7
7. <u>Vouchers and Transfers – Accounts Payable in the Amount of \$229,982.58 Dated February 26, 2021.</u> (City Manager, Finance Director)	APPROVE	9
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9. <u>12th and William Rechannelization Project – Change Order No. 1 in the Amount of \$19,538.82.</u> (City Manager, Public Works Director)	APPROVE	12
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UNFINISHED BUSINESS		
11. <u>Ordinance No. 1017-B, Second and Final Reading – Establishing 2020 Year-End Fund Balance Commitments.</u> (City Manager, Finance Director)	PASS	59

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ADMINISTRATION AND CITY COUNCIL REPORTS		
12. <u>Administration Reports.</u> a. City Manager Update. (City Manager)	INFORMATION ONLY	- - -
13. <u>Councilor Reports/Committee Updates.</u> (City Council)	INFORMATION ONLY	- - -

EXECUTIVE SESSION

14. Pursuant to RCW:
- a. 42.30.110(1)(c) – Sale/Lease of Real Estate
 - b. 42.30.110(1)(i) – Litigation/Potential Litigation

THE CITY COUNCIL MAY ADD AND TAKE ACTION ON OTHER ITEMS NOT LISTED ON THIS AGENDA.
NEXT REGULAR CITY COUNCIL MEETING IS MONDAY, MARCH 22, 2021.

**CHEHALIS CITY COUNCIL MEETING
AGENDA REPORT**

TO: The Honorable Mayor and City Council

FROM: Jill Anderson, City Manager

BY: Caryn Foley, City Clerk

MEETING OF: March 8, 2021

SUBJECT: City Council Committee Assignments

ISSUE

Due to the resignation of Chad Taylor from the City Council, various council committee assignments previously covered by the former City Councilor will need to be reassigned to other City Councilors, including recently appointed City Councilor, Michael Bannan.

DISCUSSION

During the February 22, 2021 City Council meeting, two of the committee assignments were delegated. Councilor Ketchum volunteered to represent the city on the Twin Transit Board and Councilor Lord volunteered to serve on the Lodging Tax Advisory Committee.

The committee assignments that now need to be reassigned are listed below. The complete list of committee assignments is attached to this report to provide meeting information details.

- 911 Dispatch Committee
- Beautification Committee
- CARES COVID-19 Community Program
- Centralia-Chehalis Transportation Cooperative
- Lewis County Transportation Strategy Council
- SWW Regional Transportation Planning Organization

FISCAL IMPACT

There is no fiscal impact related to this agenda item.

RECOMMENDATION

It is requested that the City Council review the list of vacant committee assignments and that assignments are made as deemed appropriate by the City Council.

SUGGESTED MOTION

There is no suggested motion.

Council Committee/Board Assignments

Approved 2/10/2020

Updated 9/14/2020

Updated 2/8/2021

Updated 2/22/2021

Board/Committee	Council	Staff	Meeting Info
911 Dispatch Committee	Dawes Pope Taylor	City Mgr Police Chief Fire Chief	TBD
Beautification Committee	Pope Spahr Taylor	Planning & Building Mgr Police Chief	TBD
CARES COVID-19 Community Program	Lund Pope Taylor	City Mgr	As needed
Centralia-Chehalis Transportation Cooperative	Ketchum Spahr Taylor	City Mgr Public Works Dir	Does not currently meet
Chehalis Basin Flood Authority		Public Works Dir	3rd Thurs of each month 9:00 AM
Chehalis Community Renaissance Team	Ketchum Lord Pope	City Mgr City Mgr's Admin Asst	2nd Fri of each month 8:30 AM City Hall
Chehalis Foundation	Pope		3rd Tues of each month 11:30 AM City Hall
Chehalis-Napavine-LCSD No. 4 Sewer Operations	Pope Spahr		As needed
Chehalis Parks Subcommittee	Lord Lund Pope	City Mgr Recreation Mgr	As needed

Board/Committee	Council	Staff	Meeting Info
Chehalis River Basin Partnership	City Rep: Terry Harris	Wastwater Supt Water Supt	4th Fri of each month 9:30 AM Lucky Eagle Casino, Rochester
Council Budget Committee	Dawes Lord Spahr	City Mgr Finance Dir	Quarterly
Council GMA Committee	Pope (Chair) Dawes Ketchum		As needed
Council Parking Committee	Lord Lund Spahr		As needed
Council Voucher Committee	Dawes Pope Spahr		Twice per month to review and sign vouchers Finance Department
Fire Consolidation Subcommittee	Dawes Lund Spahr	City Mgr Fire Chief	As needed 6:00 PM Lewis County Fire District 6 Station
Lewis County Historical Museum Board	Ketchum		3rd Tues of each month 5:00 PM Historical Museum
Lewis County LEOFF Disability Board	TBD		3rd Fri of each month 3:00 PM Lewis County Commissioner' Office
Lewis County Planned Growth (GMA) Committee	Spahr	City Mgr Planning & Building Mgr	Annually
Lewis County Public Transportation Benefit Area Authority (Twin Transit)	Ketchum Dawes - alt.		3rd Tues of each month 8:00 AM TransAlta Commons (Centralia College)

Board/Committee	Council	Staff	Meeting Info
Lewis County Solid Waste Advisory Committee	Lord		1st Wed of each month 1:30 PM Lewis County Public Services
Lewis County Solid Waste Disposal District Executive Committee	Lord		Once per year to approve budget
Lewis County Transportation Strategy Council	Taylor Ketchum - alt.	City Mgr	3rd Mon of each month 2:00 PM Lewis County Public Services
Lewis EDC Board	Spahr		2nd Thurs of Jan, Mar, May, Jul, Sept, Nov 7:00 AM Holiday Inn Express
Lodging Tax Advisory Committee	Lord	City Mgr's Admin Asst	Annually or as needed City Hall
Pt. 09 Committee	Mayor		2nd Fri of Mar, Jun, Sept, Nov 8:30 AM Lewis EDC
Sister City Committee	Ketchum	City Mgr's Admin Asst	Currently suspended
SWW Economic Development Commission	Spahr	City Mgr	Twice per year in Jan, Jun
SWW Regional Transportation Planning Organization Board	Taylor		2nd Wed of Feb, May, Sept, Nov Various member locations

The Chehalis city council met in regular session on Monday, February 22, 2021. Mayor Dennis Dawes called the meeting to order at 5:00 pm with the following council members present: Tony Ketchum, Jerry Lord, Dr. Isaac Pope, and Bob Spahr. Councilor Daryl Lund participated via Zoom. Staff present included: Jill Anderson, City Manager; Tammy Baraconi, Planning & Building Manager; Caryn Foley, City Clerk; Kiley Franz, City Manager's Administrative Assistant; Erin Hillier, City Attorney; Randy Kaut, Interim Police Chief (Zoom); Trent Loughheed, Public Works Director; Brandon Rakes, Airport Operations Coordinator; and Chun Saul, Finance Director. Celene Fitzgerald of *The Chronicle* attended the meeting via Zoom. Due to orders from the Governor's office relating to COVID-19, members of the public and the press were able to view the meeting via live streaming or Zoom. The public was also provided a process for submitting comments prior to the meeting.

Please note: Due to technical issues, video recording of the meeting was lost. Minutes have been created as action minutes due to this loss.

1. **Selection of New Mayor Pro Tem.** Councilor Ketchum nominated Councilor Lund for the position of Mayor Pro Tem. The motion was seconded by Councilor Pope and carried unanimously.

2. **City Council Committee Assignments.** Mayor Dawes informed the council of the committee positions available due to former Councilor Taylor's resignation. It was agreed that Councilor Lord would take the position on the Lodging Tax Advisory Committee, and Councilor Ketchum would take the position on the Lewis County Transportation Benefit Area Authority (Twin Transit). All council members agreed unanimously to these appointments. All other open positions will be assigned once a new council member is appointed.

3. **Consent Calendar.** Councilor Spahr moved to approve the consent calendar comprised of the following:

- a. Minutes of the regular city council meeting of February 8, 2021; and
- b. February 12, 2021 Claim Vouchers No. 131114 – 131222 and Electronic Funds Transfer Check Nos. 1136 – 1155, 120210, and 120211 in the amount of \$777,594.14;

The motion was seconded by Councilor Pope and carried unanimously.

4. **Ordinance No. 1016-B, Second and Final Reading – Amending CMC 17.09 Permit Processing.** Councilor Spahr moved to adopt Ordinance No. 1016-B on second and final reading. The motion was seconded by Councilor Lord and carried unanimously.

5. **Council Member Vacancy Process.** City Manager Anderson informed the council that six applications had been received for the vacant council position; one applicant did not reside within city limits and was excluded from consideration. A special meeting will take place on Monday, March 1, 2021 to interview candidates.

6. **Request from Lewis County to Consider Opposing Acquisition of TransAlta Land by Washington State Department of Fish and Wildlife.** After discussion regarding the potential impacts to development, it was unanimously agreed by the council to send a letter of opposition to the Department of Fish and Wildlife.

7. **Consider Submitting Letter of Opposition to HB 1388 Relating to Motor Vehicle Sales – Zero Emission Vehicles.** After discussion regarding the potential community impacts HB 1388 would cause, the council unanimously agreed to send a letter of opposition to the legislature.

8. **Ordinance No. 1017-B, First Reading – Establishing 2020 Year-End Fund Balance Commitments.** Chun Saul provided an overview of the 2020 year-end fund balance commitments. A motion to approve Ordinance No. 1017-B on first reading was moved and seconded. The motion carried unanimously.

9. **Resolution No. 3-2021, First and Final Reading – Adopting the Public Participation Plan for the Update to the Shoreline Master Plan.** Tammy Baraconi explained that the Public Participation Plan was following the minimum guidelines set forth by the state. Councilor Spahr made a motion to approve Resolution No. 3-2021 on first and final reading. The motion was seconded by Councilor Lord and carried unanimously.

10. Administration Reports.

a. **City Manager Update.** City Manager Anderson informed the City Council and the public that sandbags were available for flood prevention. She also reminded the City Council that a special meeting would take place on Monday, March 1 at 5:00 pm to review candidates for the City Council vacancy.

11. Councilor Reports/Committee Updates.

a. Council members provided brief updates on their respective committees and activities.

12. **Executive Session.** Mayor Dawes announced the council would take a short recess and then be in executive session pursuant to RCW 42.30.110(1)(i) – Litigation/Potential Litigation and RCW 42.30.110(1)(c) – Sale/Lease of Real Estate, not to exceed 7:00 pm and there would be no action following conclusion of the executive session. Mayor Dawes closed the regular meeting at 6:16 pm. The executive session began at 6:19 pm. Following conclusion of the executive session, the regular meeting was reopened at 6:58 pm and immediately adjourned.

Dennis L. Dawes, Mayor

Caryn Foley, City Clerk

Approved:

Initials: _____

The Chehalis city council met in special session on Monday, March 1, 2021. Mayor Dennis Dawes called the meeting to order at 5:03 pm with the following council members present: Tony Ketchum, Jerry Lord, Daryl Lund (Zoom), Dr. Isaac Pope, and Bob Spahr. Staff present included: Jill Anderson, City Manager; Caryn Foley, City Clerk; Kiley Franz, City Manager's Administrative Assistant; and Erin Hillier, City Attorney (Zoom). Members of the news media present included Celene Fitzgerald of *The Chronicle* (Zoom).

1. **Interview Candidates for City Council Member At-Large No. 2 Vacant Position.** Mayor Dawes explained the purpose of the special meeting was to interview five individuals for the vacancy on the council. He thanked the candidates for their willingness to apply for the position. The order of interviews was drawn by random selection. Each candidate was asked the same question by each council member. The candidates were interviewed in the following order:

1. Eric Carlson
2. Kate McDougall
3. Mike Bannan
4. Terry Harris
5. Lindsey Senter

Mayor Dawes stated the appointment would be until the next election was certified. He explained the process for filing for those who were interested in running for office.

2. **Executive Session.** Mayor Dawes announced the council would be in executive session pursuant to RCW 42.30.110(1)(h) – Evaluate Qualifications of a Candidate for Appointment to Elective Office not to exceed 6:30 pm and there would be action following conclusion of the executive session. Mayor Dawes closed the regular meeting at 5:58 pm. At 6:28 pm, Mayor Dawes announced additional time was needed in executive session not to exceed 6:45 pm. Following conclusion of the executive session, the special meeting was reopened at 6:36 pm.

3. **Appoint Candidate to Fill City Council Member At-Large No. 2 Vacant Position.** Mayor Dawes explained the process for nominating candidates to fill the vacancy. A vote would then be called on each nomination in the order they were nominated and the first candidate to receive four votes would be appointed to the vacant position. Mayor Dawes asked for nominations.

Councilor Lund nominated Mike Bannan.

Councilor Pope nominated Terry Harris.

There being no further nominations, Mayor Dawes closed the nominations.

Mayor Dawes called for a vote on Mike Bannan. Councilors Ketchum, Lord, and Lund voted in favor of Mr. Bannan.

Mayor Dawes called for a vote on Terry Harris. Councilors Pope and Spahr and Mayor Dawes voted in favor of Mr. Harris.

City Attorney Hillier stated a majority of the council was needed to make an appointment. She stated the council could take a revote, end the meeting and set another special meeting date, recess to a later time, or go back into executive session to further discuss.

Mayor Dawes announced the council would return into executive session pursuant to RCW 42.30.110(1)(h) – Evaluate Qualifications of a Candidate for Appointment to Elective Office not to exceed 6:55 pm and there would be action following conclusion of the executive session. Mayor Dawes closed the regular meeting at 6:45 pm. Following conclusion of the executive session, the special meeting was reopened at 6:55 pm.

Mayor Dawes called for a vote on Mike Bannan. Councilors Ketchum, Lord, Lund, and Mayor Dawes voted in favor of Mr. Bannan.

Mayor Dawes called for a vote on Terry Harris. Councilors Pope and Spahr voted in favor of Mr. Harris.

Mayor Dawes stated that Mr. Bannan would be sworn in during the council's regular meeting of March 8. There being no further business, the meeting was adjourned at 6:59 pm.

Mayor

Attest:

City Clerk

Approved:

Initials:

**CHEHALIS CITY COUNCIL MEETING
AGENDA REPORT**

TO: The Honorable Mayor and City Council

FROM: Jill Anderson, City Manager

BY: Chun Saul, Finance Director
Michelle White, Accounting Tech II

MEETING OF: March 8, 2021

SUBJECT: Vouchers and Transfers – Accounts Payable in the Amount of \$229,982.58

ISSUE

City Council approval is requested for Vouchers and Transfers dated February 26, 2021.

DISCUSSION

The February 26, 2021 claim vouchers have been reviewed by a committee of three councilors prior to the release of payments. The administration is requesting City Council approval for Claim Vouchers No. 131223 – 131298 and Electronic Funds Transfer Check Nos. 1156 – 1181, 120212 and 120213 in the amount of \$230,464.78 dated February 26, 2021 and voided Check No. 131190 in the amount of \$482.20 for the net total of \$229,982.58 as follows:

- \$ 58,239.57 from the General Fund
 - \$ 2,376.68 from the Dedicated Street Fund – 4% Sales Tax
 - \$ 24,959.94 from the Transportation Benefit District Fund
 - \$ 2,488.91 from the LEOFF 1 OPEB Reserve Fund
 - \$ 40,201.71 from the Public Facilities Reserve Fund
 - \$ 72,751.57 from the Wastewater Fund
 - \$ 20,153.89 from the Water Fund
 - \$ 1,239.52 from the Storm & Surface Water Utility Fund
 - \$ 7,569.45 from the Airport Fund
 - \$ 429.54 from the Firemen’s Pension Fund
 - \$ 54.00 from the Custodial Other Agency Fund
- \$ 230,464.78 Total Vouchers for February 26, 2021
\$ <482.20> Voided check for February 12, 2021
\$ 229,982.58 Net Total Transfers

RECOMMENDATION

It is recommended that the City Council approve the February 26, 2021 Claim Vouchers No. 131223 – 131298 and Electronic Funds Transfer Check Nos. 1156 – 1181, 120212 and 120213 in the amount of \$230,464.78 and voided Check No. 131190 in the amount of \$482.20 for the net total transfer of \$229,982.58.

SUGGESTED MOTION

I move that the City Council approve the February 26, 2021 Claim Vouchers No. 131223 – 131298 and Electronic Funds Transfer Check Nos. 1156 – 1181, 120212 and 120213 in the amount of \$230,464.78 and voided Check No. 131190 in the amount of \$482.20 for the net total transfer of \$229,982.58.

**CHEHALIS CITY COUNCIL MEETING
AGENDA REPORT**

TO: The Honorable Mayor and City Council

FROM: Jill Anderson, City Manager

BY: Chun Saul, Finance Director
Betty Brooks, Payroll Accountant

MEETING OF: March 8, 2021

SUBJECT: Vouchers and Transfers – Payroll in the Amount of \$770,705.24

ISSUE

City Council approval is requested for Payroll Vouchers and Transfers dated February 26, 2021.

DISCUSSION

The administration requests City Council approval for Payroll Vouchers No. 41576-41603, Direct Deposit Payroll Vouchers No. 13114-13217, Electronic Federal Tax and DRS Pension/Deferred Comp Payments No. 331-334 dated February 26, 2021 in the amount of \$770,705.24, which include the transfer of:

- \$495,570.39 from the General Fund
- \$4,370.02 from the Arterial Street Fund
- \$5,197.50 from the LEOFF1 OPEB Reserve Fund
- \$119,311.50 from the Wastewater Fund
- \$97,827.20 from the Water Fund
- \$16,268.99 from the Storm & Surface Water Utility Fund
- \$32,159.64 from the Airport Fund

RECOMMENDATION

It is recommended that the City Council approve the February 26, 2021 Payroll Vouchers No. 41576-41603, Direct Deposit Payroll Vouchers No. 13114-13217, Electronic Federal Tax and DRS Pension/Deferred Comp Payments No. 331-334 in the amount of \$770,705.24.

SUGGESTED MOTION

I move that the City Council approve the February 26, 2021, Payroll Vouchers No. 41576-41603, Direct Deposit Payroll Vouchers No. 13114-13217, Electronic Federal Tax and DRS Pension/Deferred Comp Payments No. 331-334 in the amount of \$770,705.24.

**CHEHALIS CITY COUNCIL MEETING
AGENDA REPORT**

TO: The Honorable Mayor and City Council

FROM: Jill Anderson, City Manager

BY: Trent Lougheed, Public Works Director

MEETING OF: March 8, 2021

SUBJECT: 12th & William Rechannelization Project - Change Order No. 1 in the Amount of \$19,538.82

ISSUE

City Council approval is being requested for Change Order No. 1 for the 12th & William Rechannelization Project.

BACKGROUND

On October 26th, 2020, Council awarded the 12th & William Rechannelization Project to KBH Construction in the amount of \$134,698.00 and included a ten percent contingency of \$13,470.00, which authorized the City Manager to execute change orders not to exceed the total project budget of \$148,168.00. Since award of the bid, three change order items have been identified that require Council approval as the total cost of the change order items exceeded the existing authority by \$6,068.82.

DISCUSSION

The three change order items for the project are as follows:

Change Order Item No. 1: Additional Asphalt Removal – \$16,390.4294: During the demolition phase, it was discovered that the existing roadway pavement thickness was 12"-15" thick, where a standard roadway section is expected to be 3"-4". This required much more asphalt removal than anticipated, which required more crushed rock to be installed in order to achieve the necessary grades. This work included removal of additional asphalt from work area, haul and dispose of an additional 308 tons of asphalt concrete, and installation and compaction of an additional 300 tons of Crushed Surfacing Base Course to meet design grades.





Change Order Item No. 2: Additional Irrigation – \$1,850.00: Irrigation was not identified on the improvement plans, and staff determined it would be beneficial to extend irrigation into the planter strips in order to eliminate the need for hand watering during periods of dry weather. This work included extension of irrigation lines from park irrigation system to new planter strip locations, including installation of 1” lateral PVC piping, installation of rotor heads, pop-up heads, and quick connect valves, installation of control wiring, splices, and terminations at the circuited power source, and pressure and performance testing.

Change Order Item No. 3: Additional Parking Lot Striping – \$1,298.40: The small parking lot adjacent to this new parking lot has very faded paint, and staff determined it would be beneficial to have the contractor re-stripe this parking lot when they stripe the new parking lot identified in the project. This work includes re-stripping the existing parking lot adjacent to the new parking lot in compliance with project specifications.

FISCAL IMPACT

The total amount of Change Order No. 1 is \$19,538.82. However, approval of the Change Order will only increase the total authorized budget amount by \$6,068.82 as Council had previously authorized a contingency budget of \$13,470.00.

Items #1 and #2 will be paid by the Transportation Benefit District Fund for a total of \$18,240.42 (sales tax exempt).

Item #3 will be paid by the Parks and Facilities Fund for a total of \$1,298.40 (including sales tax), which is anticipated to be reimbursed by donated funds.

RECOMMENDATION

It is recommended that the City Council approve Change Order No. 1 in the amount of \$19,538.82 to complete the 12th & William Rechannelization Project, increasing the total project budget to \$154,236.82.

SUGGESTED MOTION

I move that the City Council approve Change Order No. 1 in the amount of \$19,538.82 to complete the 12th & William Rechannelization Project, increasing the total project budget to \$154,236.82.

CITY OF CHEHALIS

1321 S Market Boulevard
Chehalis, Washington 98532
(360) 748-0271 / Fax (360) 748-6993
www.cityofchehalis.com



**CITY OF CHEHALIS
PUBLIC WORKS DEPARTMENT
12TH & WILLIAMS RECHANNELIZATION PROJECT**

**KBH CONSTRUCTION
4805 101st Lane SW
Olympia, Washington 98512**

CHANGE ORDER NO. 1

Additional Asphalt Removal and Base Rock Installation, Additional Irrigation, and Additional Parking Lot Striping

PART 1 – Change Initiation

The Contractor encountered a much thicker roadway pavement section than anticipated during demolition for the project improvements. The City desires to have irrigation extended to the planter strips to eliminate the need of hand watering, and the existing parking lot next to the new parking lot needs re-striping.

PART 2 – Evaluation of Cause and Justification

During the demolition phase, it was discovered that the existing roadway pavement thickness was 12"-15" thick, where a standard roadway section is expected to be 3"-4". This required much more asphalt removal than anticipated, which required more crushed rock to be installed in order to achieve the necessary grades.

Irrigation was not identified on the improvement plans, and staff determined it would be beneficial to extend irrigation into the planter strips in order to eliminate the need for hand watering during periods of dry weather.

The small parking lot adjacent to this new parking lot has very faded paint, and staff determined it would be beneficial to have the Contractor re-stripe this parking lot when they stripe the new parking lot identified in the project.

PART 3 – Scope of Work

ADDITIONAL ASPHALT REMOVAL

- Remove additional asphalt from work area
- Haul and dispose of an additional 308 tons of asphalt concrete
- Install and compact an additional 300 tons of Crushed Surfacing Base Course to meet design grades

ADDITIONAL LANDSCAPE IRRIGATION

- Extend irrigation lines from park irrigation system to new planter strip locations, including installation of 1” lateral PVC piping, installation of rotor heads, pop-up heads, quick connect valves
- Install control wiring, splices, and terminations at the circuited power source
- Include all pressure and performance testing

ADDITIONAL PARKING LOT STRIPING

- Re-stripe existing parking lot adjacent to new parking lot in compliance with project specifications

PART 4 – Contractor Proposal

The Contractor’s Lump Sum costs for the above change order items are as follows:

- Additional Asphalt Removal and CSBC Installation = \$16,390.42 (tax exempt)
- Additional Irrigation = \$1,850.00 (tax exempt)
- Additional Parking Lot Striping = \$1,298.40 (tax included)

PART 5 – Negotiation Record

The work completed was necessary to achieve the improvements that were designed. The advantage of having a fully mobilized contractor to complete the additional parking lot striping with work-ready construction equipment and labor resources on site substantially minimizes costs compared to contracting separately for the work. We find the site preparatory works and underground infrastructure elements contemplated in the original budget estimate compare closely to the Contractor’s proposal, which calculated unit prices are comparable to original contract pricing.

PART 6 – Supplemental Information

KBH Construction Lump Sum Proposal

Based on the foregoing, we recommend the approval of Change Order #1 in the amount of \$19,538.82, including sales tax on applicable item(s).

No additional time will be added as a result of this Change Order.

Submitted by:

Trent Lougheed, P.E.
Public Works Director

Approved by:

Jill Anderson, City Manager
City of Chehalis

**CHEHALIS CITY COUNCIL MEETING
AGENDA REPORT**

TO: The Honorable Mayor and City Council

FROM: Jill Anderson, City Manager

BY: Trent Lougheed, Public Works Director
Brandon Rakes, Airport Operations Coordinator

DATE: March 8, 2021

SUBJECT: Agreement to Lease Tract 9 at 1850 NW Louisiana Avenue to O'Brien Auto Team, an Illinois Corporation

ISSUE

The Chehalis-Centralia Airport has prepared an agreement to lease Tract 9 to the O'Brien Auto Team, an Illinois corporation, to construct an automobile dealership. This parcel is located on the Airport's property at 1850 NW Louisiana Avenue between I-5 Toyota and Dutch Bros Coffee.

INTRODUCTION

Attorney John Elias has been in negotiations with the Chehalis-Centralia Airport on behalf of his client, the O'Brien Auto Team, to lease a site for an automobile dealership. The proposed site, Tract 9, is approximately four gross acres of land.

The O'Brien Auto Team has extensive dealership experience. They have interests in several locations around the United States, representing multiple vehicle brands.

This transaction's structure is slightly different from the City's models used in the past for lease agreements. The proposed transaction includes two parts. The purpose of this revision is to provide more structure throughout the transaction.

- 1) **Agreement to Lease:** First, there is an Agreement to Lease that lays out the proposal's terms and provides an initial engagement during which due diligence may occur. There is earnest money during this part of the transaction, and it is very similar in nature to the inspection period when purchasing a residential home. This document provides more structure and clarity than a formal Letter of Intent.
- 2) **Ground Lease:** Second, there is the Ground Lease. Upon Closing the Agreement to Lease, which will occur no later than four months from the effective date of the Agreement to Lease, unless the Agreement to Lease is terminated, the Ground Lease will become effective. The Ground Lease establishes additional indemnity clauses and other legal provisions for the term of the Ground Lease. No further action would be required by the City Council to transition from the Agreement to Lease to the Ground Lease.

TERMS OF THE PROPOSAL

The Chehalis-Centralia Airport ordered a Determination of Market Rent in October of 2020. This information was used to negotiate the Agreement to Lease and Ground Lease submitted for consideration

at this time. O'Brien Auto Team has agreed to the following provisions in the Agreement to Lease which are summarized below.

Agreement to Lease

- **Effective Date (Effectiveness):** The Agreement to Lease commences when all parties have signed the Agreement to Lease. Part 4 of the Agreement to Lease establishes a closing date. The closing date shall occur on the 30th day after the end of the Inspection Period or on such earlier date upon five days written notice by Tenant to Landlord. This period will not exceed four months.
- **Earnest Money and Escrow:** The City will receive the amount of \$40,000, which shall be credited towards payment of rent described in Section 1.3 of the proposed Agreement to Lease.
- **Inspection:** Ninety (90 days) following the Agreement to Lease commencement as stated in Section 3.3 of the Agreement to Lease.
- **Rent:** Rent is addressed in terms of the Ground Lease that will be in effect after the Closing Date defined in Section 4.1 of the Agreement to Lease.
- **Term:** The term of the Agreement to Lease concludes at Closing which is defined in Section 4.1 of the Agreement to Lease as occurring on the 30th day after the end of the Inspection Period or on such earlier date upon five days written notice by Tenant to Landlord.

The Lease also includes indemnity clauses and other legal provisions that set forth both parties' rights during the course of the lease term. The executed Ground Lease will guide both parties in the process of developing the property.

The O'Brien Team has agreed to the following provisions included in the Ground Lease which are summarized below.

Ground Lease

- **Effective Date (Effectiveness):** The closing date of the Agreement to Lease will be the Ground Lease's Effective Date.
- **Deposit:** The City will receive the amount of \$40,000, which shall be credited towards payment of rent described in Section 4.1a of the proposed Ground Lease. As stated in Section 8.2 of the Lease, if the Tenant terminates the Lease after the 90 day inspection period, the deposit shall not be refunded.
- **Inspection:** Ninety (90 days) following the Effective Date of the Ground Lease for Tenant to complete due diligence work described in Section 8.2 of the proposed Lease.
- **Rent:** Amount of rent and rent commencement date as described in Section 4 of the proposed Ground Lease. Rent will begin when the Tenant is issued a certificate of occupancy for its new car dealership, but **no later than 18 months** following the Effective Date of the Ground Lease.
- **Term:** Length of the lease term is 20 years with five additional and consecutive 10-year terms; with additional extension clauses described in Section 3.1 of the proposed Ground Lease.

The City Attorney has carefully reviewed the agreement and made modifications as needed to protect the rights of the City.

FISCAL IMPACT

If the proposed Lease is accepted, the City will receive an initial lease revenue of \$92,347.20 annually restricted for the operation of the Chehalis-Centralia Airport. This initial revenue is subject to a schedule

of upward rent adjustments to maintain fair market value over the term of the Lease. Sales tax revenue from any retail activity would be considered General Fund revenue that is used to fund the City's general operations, including the provision of police and fire services.

RECOMMENDATION

It is recommended that the City Council approve the Agreement to Lease and the Ground Lease with the O'Brien Auto Team for Tract 9 at 1850 NW Louisiana Avenue and authorize the City Manager to execute the documents.

SUGGESTED MOTION

I move that the City Council approve the Agreement to Lease and the Ground Lease with the O'Brien Auto Team for Tract 9 at 1850 NW Louisiana Avenue and authorize the City Manager to execute the documents.

AGREEMENT FOR GROUND LEASE

THIS AGREEMENT FOR GROUND LEASE (the "Agreement") is entered into as of March __, 2021, by and between the City of Chehalis, Washington, a Washington municipal corporation, operator of the Chehalis-Centralia Airport, ("Landlord"), and O'Brien Auto Team, an Illinois corporation, or its assignee pursuant to Section 7 hereof ("Tenant").

RECITALS

WHEREAS, Landlord desires to ground lease to Tenant and Tenant desires to ground lease from Landlord the property described in Section 1 below, for the purpose of Tenant and its affiliates developing, constructing and operating a Honda automobile dealership thereon; and

WHEREAS, in connection therewith, Landlord and Tenant desire to enter into this Agreement to set forth certain terms and conditions of such ground lease;

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Ground Lease Agreement and Form of Ground Lease; Earnest Money.

1.1 Ground Lease Agreement. Landlord hereby agrees to lease to Tenant and Tenant hereby agrees to lease from Landlord, subject to all of the terms and conditions of this Agreement, the unimproved real estate, identified as Parcel Number 005605-082-009 located at 1850 NW Louisiana Avenue, Chehalis, Washington, together with all privileges, rights, easements, hereditaments and appurtenances thereto belonging, which real estate, subject to Section 9.10 hereof, is described on Exhibit A attached hereto and incorporated herein, (the "Property").

1.2 Form of Ground Lease. The lease shall be in the form of the Ground Lease attached hereto and made a part hereof as Exhibit B (the "Ground Lease").

1.3 Earnest Money and Escrow. Purchaser shall deposit Forty Thousand Dollars (\$40,000) in cash as earnest money in an interest bearing account with the Title Insurer, or other escrowee acceptable to Landlord and Tenant ("Escrowee"). The Escrowee shall hold and disburse such earnest money, together with interest thereon, in accordance with the terms and conditions of this Agreement. Such earnest money, together with interest thereon, is hereinafter referred to as the "Earnest Money". Provided the transaction hereunder closes, the Earnest Money (including all interest thereon) shall be paid to, and credited against the Rent due to Landlord by Tenant under the Ground Lease.

2. Tenant's Early Work.

It is understood that Tenant is required by law to submit to Landlord a filling and grading plan for the Property, along with Tenant's written request for Landlord's approval of same, for the required filling and grading of the existing hole in the Property. Subject to Landlord's approval, the parties agree that Tenant's filling and grading under this Section 2 may be

performed at Tenant's sole expense and at Tenant's sole election, prior to the Closing hereunder pursuant to an early work agreement reasonably acceptable to Landlord and Tenant ("Early Work Agreement"). Tenant's out of pocket filling and grading costs pursuant to this Section 2 ("Filling and Grading Costs") shall be non-refundable to Tenant, except in the case of Landlord's breach of this Agreement or the Early Work Agreement. The Early Work Agreement shall provide that Tenant will indemnify, defend and hold Landlord harmless from and against any and all actions, claims, damages, liens, liability, costs and expenses arising out of Tenant's activities on the Property prior to Closing pursuant to the Early Work Agreement.

3. Tenant's Conditions Precedent. Tenant's obligations under this Agreement shall be subject to the following conditions precedent being satisfied to the satisfaction of Tenant (or waived by Tenant in writing):

3.1 Title Commitment and Policy. Landlord, at Landlord's sole cost and expense, shall have thirty (30) days from the date hereof to provide Tenant with a title commitment ("Title Commitment") for an ALTA Title Insurance Policy with a leasehold endorsement ("Title Policy"), including extended coverage, issued by Lewis County Title Insurance Company ("Title Insurer"), covering the leasehold to the Property in the amount of One Million Nine Hundred Seven Thousand Seven Hundred Dollars (\$1,907,700.00) showing merchantable record title to the Property to be in Landlord. At Closing, Landlord shall cause the Title Insurer to issue the Title Policy to Tenant (in accordance with the Title Commitment provided for in this Section 3.1), with all general exceptions deleted or endorsed over, subject only to the exceptions accepted by Tenant pursuant to Section 3.1.1 below (the "Permitted Exceptions") and other matters approved or waived in writing by the Tenant.

3.1.1. Objections to Title of Record. Within sixty (60) days after the later of (i) the date of this Agreement, (ii) the date of Tenant's receipt of the Title Commitment and copies of all title exceptions, and (iii) the receipt of the Survey, Tenant shall notify Landlord in writing of any objections to or defects in title of record set forth in the Title Commitment or the Survey. If Tenant fails to give said notice within said thirty (30) day period, Tenant shall be deemed to have accepted all matters then affecting title to the Property set forth in the Title Commitment and Survey, as the case may be. If Tenant does give said notice, Tenant shall be deemed to have accepted all matters set forth in the Title Commitment and Survey, as the case may be, not set forth in the notice (provided Tenant shall not be deemed to have waived any General Exceptions. After receipt of said notice, Landlord shall have the right, at its election, to endeavor to cure such objections to or defects in title set forth therein and shall notify Tenant of such election within five (5) days. If Landlord does elect to endeavor to cure such objections to or defects in title, it shall promptly commence and diligently pursue efforts to cure such objections.

3.1.2. Failure to Cure Objections. In the event Landlord fails to cure Tenant's objections to or defects in title within twenty (20) days of receiving notice of such objections to or defects in title, or if Landlord shall determine that

its efforts to cure will not be successful, Tenant, as its sole remedy, may either (i) waive such title objections to or defects in title and proceed with closing hereunder or (ii) terminate this Agreement and obtain an immediate return of the Earnest Money. In the event of termination, the parties shall have no further rights or liabilities under this Agreement.

3.2 Survey. Within 30 days after the date hereof, Tenant, at Tenant's sole cost and expense, shall provide Landlord with a current ALTA survey of the Property, certified by a professional surveyor licensed by the State of Washington and certified to Landlord, Tenant and the Title Insurer (and other parties designated by Tenant) prepared in accordance with the standard for Land Title Surveys and the American Congress of Surveying and Mapping Class A survey, setting forth the legal description and street address of the Property and showing thereon all buildings and other improvements (including fences, the number of stories in such buildings, easements (visible or recorded), building lines, curb cuts, party walls (if any), parking, sewage, water, electricity, gas and other utility facilities (together with recording information concerning way and means of physical and record ingress and egress to and from the Property by public roads (including the dimension of abutting streets) and the net (after deduction of land dedicated or used or subject to easements for roads, highways, fire lanes, utilities, storm drains or any other public purpose) and gross area of the land included in the Property, and spotting improvements on adjoining property which are within five (5) feet of the property lines of the Property.

3.3. Inspection. During the ninety (90) day period commencing on the date of this Agreement (the "Inspection Period"), with prior notice to Landlord, Tenant, its employees, agents, representatives and independent contractors shall have the right to enter upon the Property at any reasonable time during normal business hours and make any tests or inspections of the Property including, without limitation, soils tests and inspections of any improvements located on the Property, that they desire to make at Tenant's sole cost and expense. Within ten (10) days from the date hereof, Landlord shall deliver to Tenant originals or copies of all plans, surveys, site plans, environmental reports, and similar documentation regarding the condition of the Property in its possession. If Tenant determines that the Property is not acceptable to Tenant in Tenant's sole discretion, Tenant shall have the right to terminate this Agreement by written notice to Landlord within five (5) business days after the end of the Inspection Period. In the event of such termination, the Earnest Money shall be returned to Tenant and the parties shall have no further rights or liabilities under this Agreement.

Tenant hereby indemnifies and holds Landlord harmless from all claims, liabilities, damages, losses, costs, expenses (including, without limitation, reasonable attorneys' fees) actions, and causes of action arising out of the inspection performed by Tenant, its agents, independent contractors, and/or employees. Tenant further waives and releases any claims, demands, damages, actions, causes of action or other remedies of any kind whatsoever against Landlord for property damages or bodily and/or personal injuries to Tenant, its agents, independent contractors, servants and/or employees arising

out of the inspection of the Property. Such indemnification shall survive closing of the transaction contemplated hereunder or termination of this Agreement.

3.4 Environmental Audit. During the Inspection Period, Tenant shall be permitted to conduct an environmental audit of the Property. Tenant or its engineer or other agents shall be permitted to enter the Property in accordance with the provisions of Section 3.3 hereof to conduct such samplings and tests of the surface, subsurface and improvements as Tenant, in its discretion, determines to be necessary. If the result of such audit is not satisfactory to Tenant in Tenant's sole discretion, Tenant shall have the right to terminate this Agreement upon written notice to Landlord within five (5) business days after the end of the Inspection Period. In the event of such termination, the Earnest Money shall be returned to Tenant and the parties shall have no further rights or liabilities under this Agreement.

3.5 Zoning. Tenant being satisfied, in its sole judgment, that zoning of the Property is suitable for Tenant's intended use of the Property as a new car automobile dealership and all ancillary uses, without the need of any additional permits or approvals (including so-called special use permits).

3.6 Utilities. Tenant being satisfied, in its sole judgment, that all utility service necessary for Tenant's proposed use of the Property is available at the property boundary of the Property.

3.7 Representations. The representations, covenants and warranties made by Landlord under Section 5 hereof shall be true and correct as of the Closing Date.

3.8 Landlord Approval of Tenant Preliminary Site Plan. Landlord approves Tenant's preliminary site plan for the Honda dealership facility to be constructed on the Property ("Preliminary Site Plan"). It is agreed and understood that such Preliminary Site Plan may be revised from time to time by Tenant (at the request of Honda or otherwise) provided that such site plan as revised substantially complies with the legal requirements of other applicable governmental authorities.

If the conditions set forth in this Section 3 are not satisfied (or waived by Tenant) on or before the Closing, Tenant may terminate this Agreement by written notice to Landlord at any time prior to Closing. In this event, the Earnest Money shall be returned to Tenant and the parties shall have no further rights or obligations under this Agreement.

4. Closing. In the event that this Agreement is not terminated as provided in Section 3 above, the closing on the lease of the Property shall be consummated as follows:

4.1 Closing Date. The closing (the "Closing") shall occur on the 30th day after the end of the Inspection Period or on such earlier date upon five (5) days written notice by Tenant to Landlord ("Closing Date").

4.2 Landlord's Deliveries. At Closing, Landlord shall deliver to Tenant the following:

4.2.1 Title Policy. The Title Policy provided for in Section 3.1 hereof.

4.2.2 ALTA Statement. An executed ALTA Statement in the form required by the Title Insurer.

4.2.3 An Affidavit of Title in the form attached hereto as Exhibit C.

4.2.4 Other Documents. Such other documents, instruments, certifications and confirmations as may be reasonably required by Tenant to fully effect and consummate the transactions contemplated hereby.

4.2.5 Evidence of Authorization. Evidence satisfactory to Tenant and the Title Insurer that Landlord is authorized to execute this Agreement and proceed with the transactions provided for herein.

4.2.7 Non-Disturbance Agreement. A Non-Disturbance Agreement in favor of Tenant with respect to the Ground Lease in form and content reasonably acceptable to Tenant ("ND&A"), executed by any and all mortgagee(s) of Landlord with respect to the Premises.

4.3 Tenant's Deliveries. At Closing, Tenant shall deliver to Landlord the following:

4.3.1 ALTA Statement. An ALTA Statement of Tenant in the form required by the Title Insurer.

4.3.2 Other Documents. Such other documents, instruments, certifications and confirmations as may reasonably be required by Landlord to fully effect and consummate the transactions contemplated hereby.

4.3.3 Evidence of Authorization. Evidence satisfactory to Landlord and the Title Insurer that Tenant is authorized to execute the Dealership Facility Lease and proceed with the transactions provided for herein.

4.3.4 Non-Disturbance Agreement. The ND&A from each mortgagee of Landlord, executed by Tenant.

4.4 Joint Deliveries. At Closing, Landlord and Tenant shall jointly deliver to each other the following:

4.4.1 Ground Lease. The Ground Lease, executed by both Landlord and Tenant.

4.4.2 Memorandum of Ground Lease. A fully executed memorandum of Ground Lease, in form suitable for recording with the Lewis County, Washington Recorder (the "Memorandum of Lease").

4.5 Possession. Sole and exclusive possession of the Property shall be delivered to Tenant on the Closing Date.

4.6 Closing Costs. Landlord shall pay the following costs: Landlord's attorneys fees, Boundary Line Adjustment Survey costs, the insurance premium for the title policy issued pursuant to the commitment for title insurance required by Section 3.1 hereof and all applicable state, county or local transfer taxes. Tenant shall pay the following costs: Tenant's attorneys' fees, closing fees, ALTA Survey costs, and recording fees for recording the Memorandum of Lease.

4.7 Brokerage/Transaction Coordination Fees. Landlord represents to Tenant that no transaction coordinator or real estate broker has been engaged by Landlord with regard to this transaction. Tenant represents to Landlord that no transaction coordinator or real estate broker has been engaged by Tenant with regard to this transaction. Each party (the "Indemnifying Party") agrees to indemnify and hold the other harmless against any fees due to any transaction coordinator, real estate broker or similar person or entity claiming to have been engaged by the Indemnifying Party with regard to this transaction.

4.8 Utility Expenses. All utility expenses will be adjusted as of the Closing Date and Landlord will pay any such expenses incurred or accrued with respect to the Property prior to the Closing Date.

4.9 Prorations. Real estate taxes and assessments shall be prorated pursuant to the terms of the Ground Lease.

5. Landlord's Representations, Warranties and Covenants. In addition to all other representations, covenants and warranties by Landlord herein, Landlord hereby represents, covenants and warrants, as of the date hereof and as of the Closing Date, as follows:

5.1 Ownership. Landlord is the sole owner of and has good and merchantable fee simple title to the Property.

5.2 Liens and Liabilities. Landlord shall be responsible for all debts, claims, contracts and liabilities in any way connected with the conduct of its operations on the Property prior to the effective date of the Ground Lease or for any liabilities, known, unknown, contingent or otherwise, of Landlord.

5.3 Notice of Litigation or Violation. Landlord has received no notice, nor has Landlord any knowledge, of any actions or claims filed or threatened by anyone against the Property or Landlord in connection with any injury or damage sustained incidental to the use or occupancy of the Property. Landlord shall promptly notify Tenant of any such notice received between the date hereof and the Closing Date.

Landlord knows of no violation of any federal, state, county or municipal law, ordinance, order, rule or regulation affecting the Property, and Landlord has received no notice of any such violation issued by any governmental authority.

5.4 Leases and Other Rights in Property. There are no leases (oral or written), options or purchase contracts written or oral, whereunder or whereby any party could claim or assert any right, title or interest in the Property.

5.5 Hazardous Substances. Landlord makes the following representations and warranties regarding the environmental condition of the Property: (i) Landlord has not conducted or authorized the storage, treatment, or disposal on the Property of any hazardous substances, other than hazardous substances purchased, used, consumed, or sold in the usual and ordinary course of the operation of a full service automobile dealership with a body repair facility, including waste oil used as fuel for building heat provided by waste oil burners, (ii) there are no pending or threatened litigation or proceedings before any court or any administrative agency in which any person or entity alleges the release or threat of release, on or in the Property of any hazardous substance, (iii) no governmental or quasi-governmental authority or agency (federal, state or local) or any employee or agent thereof has determined, or has threatened to determine, that there is a release or threat of release on or in the Property of any hazardous substance, and (iv) there are no underground storage tanks located on the Property. For purposes of this Agreement, "hazardous substance" shall mean any matter giving rise to liability under the Resource, Conservation, Recovery Act, 42 U.S.C. Section 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*, any state or local law regulating hazardous or toxic waste, asbestos, environmental protection, spill compensation, clean air and water, or under any common law theory based on nuisance or strict liability.

5.6 Casualty Insurance. Until Closing, Landlord shall, at its expense, keep the Property and the improvements thereon constantly insured against loss by fire and other casualties with extended coverage in the same amounts as currently carried by Landlord as of the date hereof.

5.7 Mechanics Liens. Landlord has fully paid all bills, claims and obligations for labor performed and materials furnished in and about the improvement of the Property, and no such bills, claims or obligations are outstanding or unpaid.

5.8 Encroachments. To the knowledge of Landlord, no improvements upon the Property encroach upon adjoining real estate, nor do any improvements upon adjoining real estate encroach upon the Property.

5.9 Special Assessments. There are no special assessments against the Property and there are no proceedings for special assessments against the Property.

5.10 Due Organization and Authority.

5.10.1 Landlord is duly formed and validly existing as a municipal corporation under the laws of the State of Washington and is in good standing and qualified to do business in Washington.

5.10.2 Landlord has all requisite power and authority and is fully authorized (pursuant to all necessary action) to enter into this Agreement and perform its obligations under this Agreement and to carry out the transactions contemplated hereby. Neither the execution or delivery of this Agreement nor the consummation of the transactions provided for herein or the fulfillment of the terms and conditions hereof shall result in a breach of any terms, conditions or provisions or constitute a default under, with or without giving notice or lapse of time or both, or conflict with any provision of law or of Landlord's organizational documents or of any other agreement, indenture or instrument to which Landlord is a party or by which it is bound.

6. Default. If Landlord wrongfully refuses to close on the lease of the Property to Tenant hereunder or is unable to close on the lease of the Property under the terms of this Agreement, the same shall constitute a breach of this Agreement and Tenant shall be entitled as its sole and exclusive remedy to either (i) terminate this Agreement and receive a return of the Earnest Money or (ii) specific performance (without bond), in lieu of any and all other remedies at law or in equity. If Tenant wrongfully refuses to close on the lease of the Property from Landlord hereunder or is unable to close on the lease of the Property under the terms of this Agreement, the same shall constitute a breach of this Agreement and Landlord shall be entitled to terminate this Agreement and retain the Earnest Money as liquidated damages and as its sole and exclusive remedy hereunder in lieu of any and all other remedies at law or in equity.

7. Assignment. Tenant may assign all of its rights and obligations as Tenant under this Agreement and the Lease to any assignee entity that is controlled by Joseph D. O'Brien, Jr. and/or one or more of the owners of the entity that will operate the Honda automobile dealership at the Property (which assignee must assume all of the Tenant's obligations hereunder and under the Lease) in which event, the current Tenant shall be released from all liability hereunder and under the Lease. Subject to the foregoing, neither party may assign its rights under this Agreement and the Lease without the prior written consent of the other party, which consent may not be unreasonably withheld, delayed or conditioned.

8. Condemnation. If any portion or portions of the Property shall be taken by condemnation or any other proceeding in the nature of eminent domain from and after the date hereof, Tenant, within fifteen (15) days after Tenant receives notice of such taking, shall be entitled to terminate this Agreement upon fifteen (15) days' written notice to Landlord. In the event of termination, the parties shall have no further rights or liabilities under this Agreement. If Tenant has not notified Landlord of its election to terminate within the aforesaid time period, this Agreement shall continue in full force and effect. Landlord shall be relieved, however, of the duty to lease the portion or portions of the Property so taken; provided that the rent shall be

equitably reduced to reflect the portion taken. All awards from any condemnation shall be paid as provided in the Dealership Facility Lease.

9. Miscellaneous. It is further understood and agreed as follows:

9.1 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and such counterparts together shall constitute one and the same instrument.

9.2 Survival. The representations, warranties, covenants and agreements contained in this Agreement shall survive the Closing and the execution of the Lease without limitation.

9.3 Severability. If any provision of this Agreement shall be held to be void or unenforceable for any reason, the remaining terms and provisions hereof shall not be affected thereby.

9.4 Time. Time is of the essence of this Agreement.

9.5 Binding Effect. The provisions of this Agreement shall inure to the benefit of and bind the successors and assigns of the parties hereto.

9.6 Amendment and Waiver. This Agreement may be amended at any time in any respect only by an instrument in writing executed by Landlord and Tenant. Either party may waive any requirement to be performed by the other hereunder, provided that said waiver shall be in writing and executed by the party waiving the requirement.

9.7 Integrated Agreement. This Agreement constitutes the entire agreement between Tenant and Landlord relating to the lease of the Property, and there are no agreements, understandings, restrictions, warranties or representations between Tenant and Landlord other than those set forth herein.

9.8 Choice of Law. It is the intention of Landlord and Tenant that the laws of Washington shall govern the validity of this Agreement, the construction of its terms and interpretation of the rights and duties of Tenant and Landlord.

9.9 Notices. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing (including telex and telegraphic communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, telecommunicated, or mailed (airmail if international) by registered or certified mail (postage prepaid), return receipt requested, addressed to:

If to the Landlord:

City of Chehalis
Chehalis-Centralia Airport
PO Box 1344
Chehalis, Washington 98532
Facsimile: _____

With a copy to:

Erin L. Hillier
Hillier, Scheibmeir, Kelly & Satterfield, P.S.
P.O. Box 939
299 NW Center Street
Chehalis, Washington 98532
Facsimile: 360-748-3387

If to the Tenant:

O'Brien Auto Team, Inc.
720 Mt. Eden Road
Shelbyville, KY 40065
Attn: Joseph D. O'Brien, Jr

With a copy to:

John S. Elias
Elias, Meginness & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, Illinois 61602
Facsimile: 309-637-8514

or to such other address as any party may designate by notice complying with the terms of this paragraph. Each such notice shall be deemed delivered (a) on the date delivered if by personal delivery; (b) on the date of transmission with confirmation if by telex, telefax or other telegraphic method; and (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

9.10 Discrepancy in Description. If the description of the Property set forth herein or supplied by the Title Insurer does not correctly describe the Property to be leased hereunder as described legally in the survey provided for hereunder, the description of the Property for purposes of this Agreement and the Ground Lease shall be modified to correctly describe the same in accordance with the legal description set forth in the survey.

Exhibits

Exhibit A-- Property

Exhibit B-- Ground Lease

Exhibit C – Affidavit of Landlord

[Signature Page to Follow]

820-0648.4T

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed, as of the day and year first above written.

LANDLORD:

TENANT:

CITY OF CHEHALIS

O'BRIEN AUTO TEAM, INC.

BY: _____

BY: _____

PRINT NAME: JILL ANDERSON

PRINT NAME: JOSEPH D. O'BRIEN, JR.

TITLE: CITY MANAGER

TITLE: PRESIDENT



[Agreement for Ground Lease]

EXHIBIT A

PROPERTY

Tract 9 of City of Chehalis Twin City Town Center 5th Amended Binding Site Plan recorded on December 7, 2020, under Lewis County Auditor's File No. 3538510.

Parcel Number: 005605-082-009
1850 NW Louisiana Avenue, Chehalis, Washington

EXHIBIT B
GROUND LEASE
See Attached

**GROUND LEASE
(Chehalis, Washington)**

THIS GROUND LEASE ("Lease") is made and entered into as of _____, 2021 (the "Effective Date") by and between **CITY OF CHEHALIS, operator of the Chehalis-Centralia Airport ("Landlord")**, and _____, LLC, a Washington limited liability company, ("**Tenant**"). Landlord and Tenant are sometimes hereinafter each singularly referred to as a "**Party**" and collectively referred to as the "**Parties.**"

SECTION 1 - FUNDAMENTAL LEASE TERMS

For convenience, this Section I summarizes certain fundamental economic and business terms of this Lease. If these fundamental terms conflict with the balance of the Lease, the latter shall control.

- Effective Date:** As defined above
- Landlord:** City of Chehalis
Chehalis-Centralia Airport
P.O. Box 1344
Chehalis, Washington 98532
- Tenant:** _____, LLC
720 Mount Eden Rd
Suite 200
Shelbyville, KY 40065
- Lease Term:** Twenty (20) years ,commencing on the Effective Date, with five (5) ten (10) year option periods, all as stated in Section 3.1.
- Monthly Rent:** \$7,695.60 per month, commencing on the Rent Commencement Date, adjusted from time to time, all as stated in Section 4.
- Deposit:** \$40,000.00 upon the Effective Date

SECTION 2 - DEMISE OF PROPERTY

2.1 Property. For and in consideration of Tenant's covenant to pay the rental and other sums for which provision is made in this Lease, and the performance of the other obligations of Tenant hereunder Landlord leases to Tenant, and Tenant leases from Landlord, that certain real property located at 1850 NW Louisiana Avenue, Chehalis, Washington (Parcel Number: **005605-082-009**), consisting of 174,240 square feet more or less, which real property is more particularly described in Exhibit "A" attached hereto and incorporated herein together with all privileges, rights, easements, hereditaments, and appurtenances thereto belonging,(hereinafter referred to as the "Property"). A preliminary site plan of the Property depicting Tenant's proposed development of a Honda automobile dealership thereon has been submitted to and approved by Landlord ("Preliminary Site Plan"). It is agreed and understood that such Preliminary Site Plan may be revised from time to time by Tenant (at the request of Honda Motors or otherwise) provided

that such site plan as revised substantially complies with the requirements of applicable governmental authorities.

2.2 Removed

2.3 Development. Tenant is authorized to fill the Property and to construct one or more structures (herein, "Improvements") on the Property, provided that (a) any such improvements are within the Building Areas of the Site Plan, (b) each improvement is constructed in compliance with all applicable codes, and (b) Landlord has approved in writing all plans and schematic drawings for the Improvements, and all filling and grading plans, 100 year Flood Plain mitigation plans; drainage plans, location of utilities, access and traffic circulation routes, such approvals not to be unreasonably withheld, delayed or conditioned. Tenant shall also obtain Landlord's consent, which consent shall not be unreasonably withheld, delayed or conditioned, prior to any utilities or fill being installed or placed on the Property by the Tenant. In the event of Tenant's failure to submit said plans to Landlord for its written approval shall constitute breach of this lease. Landlord may require Tenant to discontinue all Tenant's work under this Lease until Tenant has provided plans for Landlord's review and written approval. Tenant shall not meet the obligations of this subsection by submitting plans to other governmental agencies but shall separately submit said plans to Landlord prior to submitting to such other governmental agencies. Tenant shall have no claim against Landlord for any such work stoppage that occurs due to Tenant not submitting the plans required herein.

2.4 Tenant's Work and Timeline. Tenant shall plan, design and perform its development work in accordance with civil engineering standards established and required by the City of Chehalis for each development action including but not limited to filling and grading plans, 100 year flood mitigation plans, plans for streets, utilities, building and other improvements and shall obtain all required governmental permits, inspections and approvals. Tenant shall pay all costs associated with said development action. This Lease contemplates diligent work on behalf of the Tenant to develop the Property to be occupied by a new car automobile dealership and ancillary uses. Work necessary to achieve occupancy, including but not limited to site plan approval, fill, and construction, must be complete within thirty (30) months following the Effective Date, unless otherwise extended by written agreement of the parties.

2.5 Landlord's Work. None

SECTION 3 - LEASE TERM

3.1 Term and Extensions. The initial term of this Lease shall commence on the Effective Date and shall terminate on the last day of the twentieth (20th) Lease Year thereafter. Tenant shall have the right to extend the term of this Lease for five (5) additional and consecutive ten (10) year terms by giving Landlord written notice of extension not more than one (1) year prior to the end of the initial term or then-existing extended term, and not less than ten (10) days prior to the end of the initial term or then-existing extended term. The initial term and all timely noticed extended terms are collectively referred to herein as the "Term") For purposes of this Lease, the term "Lease Year" shall mean each twelve (12)-month period commencing on the Effective Date and on each anniversary thereof during the Term.

SECTION 4 – RENT

4.1a Tenant Deposit. On the Effective Date of this Lease, Tenant shall pay Landlord a deposit (by payment to the Chehalis-Centralia Airport) of a Forty Thousand Dollars (\$40,000.00), which deposit shall be allocated towards payment of rent and any applicable taxes as described in Section 4.2. The Tenant deposit balance is refundable if this Lease is terminated as a result of breach by the Landlord or if this Lease is mutually terminated. The Tenant deposit balance shall not be refunded if the Lease is terminated as a result of breach by the Tenant. This provision shall not be construed as a liquidated damages clause, but shall be considered cumulatively with all other relief and remedies available to the parties as discussed in Section 16.3 below.

4.1b Rent. For each Lease Year, on the monthly basis described herein, Tenant shall pay to

Landlord at P. O. Box 1344, Chehalis, Washington, 98532, or such other place as Landlord shall designate in writing, in United States dollars, the rent ("Rent"), as described in Sections 4.2, 4.3 and 4.4 hereof.

4.2 Payment of Rent; Rent Commencement Date. Tenant shall begin payment of monthly rent described in this Section 4.2 below ("Monthly Rent") commencing on the date Tenant is issued a certificate of occupancy for its new car dealership on the Property, but no later than eighteen (18) months after the Effective Date (the "Rent Commencement Date")., Subject to the foregoing, Tenant shall pay on the first day of each calendar month the Monthly Rent, subject to Reappraisal and Escalation of Rent after Appraisal as set forth in subsections 4.3 and 4.4 of this Lease. If payment of the Monthly Rent is not received by the tenth day of the month for which that rent is due, a late fee of ten percent (10%) will be assessed to the balance owing. The deposit set forth in Section 4.1a shall be applied each month to the payment of the Monthly Rent until depleted, with Tenant paying the Monthly Rent only after such deposit is depleted.

The initial Annual Rent and Monthly Rent hereunder are as follows:

Annual Rent**: \$ 92,347.20 per Lease Year, plus Leasehold Excise Tax of 12.84%

Monthly Rent: \$ 7,695.60 per calendar month, plus Leasehold Excise Tax of 12.84%

**Annual Rent is set at \$0.53 per square foot (174,240 square feet)

4.3 Reappraisal. On each twentieth anniversary of the Effective Date of this Lease the Rent will be adjusted to fair market rental value, which annual Rent is deemed to be a sum equal to Ten Percent (10%) of the fair market value of the Property, as determined by appraisal. It is understood and agreed by both parties that the appraisal will be based upon the fair market value for vacant unimproved land exclusive of all improvements made to the Property (including fill) after March 1, 2021. Landlord shall engage an independent appraiser (MAI) to appraise the Property. If Tenant disagrees with the value of Landlord's appraiser, Tenant may, at its expense, obtain a separate independent appraisal (MAI) for Landlord's consideration. If Landlord and Tenant cannot agree on the fair market value of the Property, the appraisers shall select a third independent appraiser (MAI) to review the two appraisals and set the fair market value for the Property, to set the new annual rental for this Lease, which shall be binding upon both parties to this Lease, provided that the rent so determined shall not be less than the rent payable prior to an Appraisal Date. The cost of a third appraiser shall be borne equally by the two parties.

4.4 Escalation of Rent After Appraisal. The Rent shall, commencing on the tenth (10th) anniversary of the Effective Date hereof, and again on the fifteenth (15th) anniversary of the Effective Date hereof, be increased by seven and a half percent (7.5%) of the Rent then in effect. Then, after the Rent is determined by appraisal pursuant to the procedures set forth in Section 4.3 above, on the twentieth (20th) anniversary of the Effective Date hereof, and on the twenty fifth (25th) anniversary of the Effective Date hereof, and on the thirtieth (30th) anniversary of the Effective Date hereof, and on the thirty fifth (35th) anniversary of the Effective Date hereof, be increased by ten percent (10%) of the Rent then in effect. Then, after the Rent is determined by appraisal pursuant to the procedures set forth in Section 4.3 above on the fortieth (40th) anniversary of the Effective Date, on the on the forty fifth (45th) anniversary of the Effective Date hereof, and on the fiftieth (50th) anniversary of the Effective Date hereof, and again on the fifty fifth (55) anniversary of the Effective Date hereof, be increased by ten percent (10%) of the Rent then in effect. Then, after the Rent is determined by appraisal pursuant to the procedures set forth in Section 4.3 above on the sixtieth (60th) anniversary of the Effective Date, on the on the sixty fifth (65th) anniversary of the Effective Date hereof be increased ten percent (10%) of the Rent then in effect.

SECTION 5 - TAXES

5.1 Leasehold Taxes. During the Term of this Lease commencing on the Rent Commencement Date, Tenant shall pay to Landlord, at the time Rent payments are made hereunder, the Leasehold Tax established and defined in Chapter 82.29A, Revised Code of Washington. Any delinquent taxes shall be a debt to Landlord, and in the event any penalties or interest are due because of the failure of Tenant to timely pay the Leasehold Tax, such penalties and/or interest shall be payable by Tenant to Landlord.

5.2 Taxes and Assessments.

(a) The term "Taxes" as used herein shall mean all taxes and other governmental charges, general and special, ordinary and extraordinary, of any kind whatsoever, applicable or attributable to the Property and Tenant's use and enjoyment thereof, including Assessments as defined below. Tenant shall pay when due its prorated share of all Taxes commencing with the Rent Commencement Date and continuing throughout the Term. Nothing in this Lease shall prevent Tenant from protesting, contesting, seeking modification, or adjudicating the imposition of any "Taxes" as defined herein.

(b) On or prior to the Rent Commencement Date, Landlord shall pay all then-outstanding all Taxes and Assessments levied or imposed against the Property. The term "Assessments" as used herein shall mean all assessments for public improvements or benefits which heretofore or shall during the Term be assessed, levied, imposed upon, or become due and payable, or a lien upon the Property, any improvements constructed thereon, the leasehold estate created hereby, or any part thereof. Neither Party shall cause nor suffer the imposition of any Assessment upon the Property without the prior written consent of the other. In the event any Assessment is proposed which affects the Property, Tenant shall promptly notify Landlord of such proposal after Tenant has knowledge or receives notice thereof. Tenant shall pay its prorated portion of the total amount of all Assessments levied with respect to the Property and the leasehold estate created hereby. In no event shall Landlord be obligated to pay any Assessment, or any portion thereof levied or created during the Term, irrespective of whether such Assessment or any portion thereof was specifically allocated to the Property or Landlord's reversionary interest therein. Assessments may be paid in installments as permitted by the terms of the Assessments.

5.3 Payment Date and Proof. All payments to Landlord by Tenant (except Leasehold Tax which shall be paid at the time each rental payment is made hereunder) for Taxes and/or Assessments shall be made by Tenant on or before five (5) days before the last day on which such payments or any installments thereof permitted hereunder may be made without penalty or interest. Tenant shall furnish to Landlord receipts or other appropriate evidence establishing the payment of such amounts. Tenant may comply with this requirement by retaining a tax service to notify Landlord when the Taxes have been paid.

5.4 Failure to Pay. In the event Tenant fails to pay any of the expenses or amounts specific in this Section 5, Landlord may, but shall not be obligated to do so, pay any such amount, and the amounts so paid shall immediately be due and payable by Tenant to Landlord and shall thereafter bear interest at the maximum rate allowed by law. Landlord shall provide Tenant with not less than ten (10) days notice of Landlord's intent to pay unpaid amounts as authorized by this Section prior to making any such payment. Any failure to pay any expense or amount specified or any other amount to be paid by Tenant under the terms of this Lease shall be a material default hereunder by Tenant, and such default (subject to the notice provisions hereof and all cure rights hereunder) shall entitle Landlord to pursue all remedies specified in this Lease.

5.5 Personal Property Taxes. Tenant shall pay all personal property taxes assessed on Tenant's personal property on the Property. If Landlord has paid any such tax as required by the applicable taxing authority, Tenant shall reimburse Landlord upon Tenant's receipt of paid invoices for such taxes, provided Landlord shall use reasonable efforts to give Tenant notice of any such tax prior to paying same.

5.6 Proration of Taxes.

(a) Tenant shall reimburse Landlord within thirty (30) days after Tenant receives from Landlord an

invoice for the amount of all Real Estate Tax payments made by Landlord for which Tenant is liable pursuant to Section 5.0 hereof. Each invoice shall be accompanied by a computation of the amount payable.

(b) If the Term shall expire on any date other than the last day of a tax fiscal year, the amount payable by Tenant during the tax fiscal year in which such termination occurs shall be prorated on the basis which the number of days from the commencement of said tax fiscal year to and including said termination date bears to 365. A similar proration shall be made for the tax fiscal year in which the Term commences.

SECTION 6 - SUBLEASES

6.1 Subleases. Tenant may sublease all or any portion of the Property without the consent of Landlord; provided however that all subleases shall be subject to the terms and conditions of this Lease.

SECTION 7 - UTILITIES

7.1 Utility Usage. Tenant shall pay the applicable utility companies or governmental agencies directly for all utilities consumed on the Property by Tenant. Landlord shall not take, or permit any person claiming under Landlord or any such occupant to take, any action which shall interrupt or interfere with any electric, water, sewage, or telephone service to the Property and hold Landlord harmless therefrom.

SECTION 8 - POSSESSION AND USE

8.1 Possession. Tenant shall have sole and exclusive possession of the Property upon the Effective Date.

8.2 Inspection. Tenant will commence inspection of the Property on or prior to the Effective Date, in order to determine form and nature of fill to be required and allowed, whether pilings and related improvements will be needed before fill and constructing the remaining Improvements. Tenant has ninety (90) days during which to complete that inspection (the last day of that inspection period defined herein to be the "Inspection Completion Date"). In the event that Tenant shall determine within its sole discretion prior to the Inspection Completion Date that Tenant's Improvements and Tenant's plans for the Property are for any reason not feasible, then Tenant shall give such notice to Landlord and this Lease shall terminate, and the Tenant deposit described in Section 4.1(a) shall be returned to Tenant. This period for Inspection shall not be extended unless upon written agreement and addendum to this Lease by both parties.

8.3 Permitted Use. The Property may be used for a new car automobile dealership and all related and ancillary uses as well as for any other lawful use, subject to any restriction of record as of the date hereof.

SECTION 9 - ASSIGNMENT

Tenant may assign this Lease in whole or in part with the prior written consent of Landlord, which consent may not be unreasonably withheld, delayed or conditioned. In connection with any such assignment, Tenant shall be relieved of liability hereunder only with the written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned.

Notwithstanding the foregoing, Landlord hereby approves the assignment of the Lease and the release of Tenant from all further liability hereunder from and after the date of such assignment in connection with a sale of the automobile dealership to be operated on the Premises to a buyer who has been approved by the automobile manufacturer whose new vehicles are being sold at the Premises (currently Honda Motors) and provided such buyer (and/or its affiliates) assume all liability as Tenant under this Lease from and after the date of such assignment.

SECTION 10 - IMPROVEMENTS CONSTRUCTED BY TENANT

10.1 Construction. Tenant intends during the Term of this Lease, and, subject to the approvals

stated in Section 2.2 above, is authorized by Landlord, to construct and renovate Improvements on the Property consisting of a new car automobile dealership and related and ancillary uses. The entirety of the Improvements to be constructed by Tenant is referred to herein as the "Project". At any time and from time to time during the Term, Tenant may make, at its sole cost and expense, changes and alterations to the Project or any part thereof, so long as such changes and alterations are in compliance with the then-applicable building and design codes. In addition, such initial construction of the Project shall further be subject to the following:

a. The plans or specifications including amendments of such plans or specifications, shall be submitted to Landlord for its approval, which approval shall not be unreasonably withheld, delayed or conditioned, if the plans and specifications are in compliance with the then-effective building and design code.

b. Tenant, at Tenant's expense, must contract with appropriate civil engineering firms for construction monitoring inspections of filling and grading activities, utility installation, and pavement. All engineering visits must be logged and provided monthly in report format with findings to the Landlord.

c. If required by applicable law,(but not by Landlord), Tenant shall provide Landlord, at Tenant's expense, with a performance and payment bond, pursuant to Section 10.3 below, in an amount not less than the projected cost of such construction. No construction shall be undertaken until Tenant shall have procured and paid for all required permits, licenses, and authorizations. All construction shall be made in a good and workmanlike manner and in compliance with all applicable building and zoning codes and other legal requirements. Tenant shall furnish to Landlord a complete set of "as built" plans for the Project upon completion of construction.

10.2 Fixtures and Equipment.

a. Project. In constructing the Project upon the Property, Tenant may place or install in the Project such personal property, trade fixtures, business equipment and furnishings (the "Business Equipment") as Tenant shall deem desirable for the conduct of business therein. The Business Equipment used in the conduct of business by Tenant (as distinguished from fixtures and equipment used in connection with the operation and maintenance of the Property, including plumbing fixtures, electrical fixtures, lighting, cabling, flooring, the foregoing the "Building Fixtures") placed by Tenant on or in the Project shall not become part of the real property, even if nailed, screwed, or otherwise fastened to the Improvements or buildings of the Project, but shall retain their status as personal property and may be removed by the Tenant at any time. Notwithstanding Subsection 10.7 below, the Building Fixtures constructed or installed upon the Property shall be deemed to become part of the real property and, upon the Termination Date shall become the sole and exclusive property of Landlord, free of any and all claims of Tenant or any person or entity claiming by or through the Tenant. In the event Tenant does not remove its personal property and the Business Equipment which it is permitted by this Subsection 10.2 to remove from the Property within ninety (90) days following the Termination Date, the Landlord may treat said Business Equipment as abandoned and (i) retain the Business Equipment and treat the trade fixtures as part of the Property, or (ii) have the Business Equipment and trade fixtures removed and stored at Tenant's expense.

b. Tenant's Work. Tenant may perform such work as necessary, subject to the terms of this Lease to develop the Property as Tenant deems appropriate.

c. Signage. Tenant may install signage on the Property and on any pylon, in a form acceptable to Tenant, subject to restriction of record and Federal Aviation Administration (FAA) requirements.

10.3 Mechanics and Labor Liens. Tenant agrees that it will not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Property for work or materials furnished to Tenant in connection with any construction, improvements, maintenance, or repair thereof made by Tenant or its agents upon the Property. Tenant shall cause any such claim or lien to be fully discharged within thirty (30) days after the date of filing thereof; unless Tenant, in good faith, disputes the validity or amount of any such claim of lien. Tenant shall not be deemed to be in breach of this Subsection

10.3, so long as Tenant is diligently pursuing a resolution of such dispute. Upon entry of final judgment resolving the dispute if litigation or arbitration results therefrom, Tenant shall discharge said lien within the time limits specified above.

10.4 Development Rights. Tenant shall not undertake any initial development of the Property other than to construct the Project as approved by Landlord in accordance with Subsection 10.1 above. Tenant shall not represent to any person, governmental body, or other entity that Tenant is the owner of the Property, nor shall Tenant execute any petition, application, permit, plat, or other document on behalf of Landlord as the "owner" of the Property without Landlord's express written consent, which consent shall not be unreasonably withheld. Landlord shall join in and/or execute any petition, application, permit, plat, and other land use document requested by Tenant and which is reasonably necessary for the development of the Property. Tenant shall notify the Landlord in writing of any proposed or pending governmental action of which Tenant becomes aware which affects the Property, its zoning, or the right to develop the Property for any future use, unless such governmental action is initiated by Landlord. Tenant's project shall conform with the requirements of this Lease and shall cooperate with Landlord on any coordinated development effort such as, but not be limited to, infrastructure development, security requirements, access, surface water runoff, and access to all facilities. No development of Tenant shall conflict with FAA requirements for setback and height restrictions in addition to FAA requirements described in Exhibit "D", by this reference incorporated herein.

10.5 Hold Harmless. Tenant shall indemnify, protect, and hold harmless Landlord, its agent, contractor, representative and the Property from and against all claims and liabilities arising by virtue of or relating to construction of the Project or repairs made at any time to the Project (including repairs, restoration, and rebuilding).

10.6 Permits and Compliance with Codes. All building and other permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Project and any subsequent improvements, repairs, replacements or renewals to the Property or Project shall be acquired as required by applicable laws, ordinances or regulations by and at the sole cost and expense of Tenant. Tenant shall cause all work on the Property during the Term to be performed in accordance with all applicable laws, directions and regulations of all governmental agencies and representatives of such agencies having jurisdiction.

10.7 Ownership of Improvements. During the Term of this Lease, all improvements on the Property, including, without limitation, the Project and all additions, alterations, and improvements thereto or replacements thereof and all appurtenant fixtures, shall be the sole property of Tenant. At the expiration or earlier termination of this Lease, the Project and all improvements, additions, alterations, and improvements thereon and thereto or replacements thereof, and all appurtenant fixtures, shall then become the property of Landlord.

10.8 Control and Indemnification. During the Term of this Lease, Tenant shall have exclusive control and possession of the Property, and Landlord shall have no liabilities, obligations or responsibilities whatsoever with respect thereto or with respect to any plans or specifications submitted to Landlord pursuant to this Lease. Landlord's approval of any such plans and specifications shall not render Landlord liable therefore, and Tenant hereby covenants and agrees to indemnify, defend, and hold the Landlord harmless from and against any and all claims arising out of or from the use of such plans and specifications.

10.9 Landlord's Reservation to Withhold Additional Leases from Tenant. Landlord reserves the right to withhold the negotiation of any additional leases with Tenant if Tenant is not in compliance with all the terms and conditions of this Lease or in compliance with the codes of governmental authorities as provided in paragraph 10.6 above. Landlord shall not unreasonably withhold the negotiation of or the entering into additional leases with Tenant but shall not be obligated to commit any other property for development to Tenant if, at its sole discretion, determines Tenant is not in compliance to Landlord's reasonable interpretation of the requirements of this Lease or governmental requirements.

SECTION 11 – MAINTENANCE AND REPAIRS

11.1 Maintenance. Tenant shall maintain the Property and Improvements thereon, during the Term of this Lease at its sole cost and expense. Tenant may, by sublease or other agreement with subtenants, assign or otherwise transfer this responsibility, or may contract with reputable firms for maintenance, but in the event subtenants or contractors do not meet this obligation Tenant shall remain responsible for such maintenance.

SECTION 12 - TENANT'S INDEMNITY; INSURANCE

12.1 Indemnity. Landlord shall have no responsibility or control with respect to any aspect of the Property or any activity conducted thereon from and after the Effective Date. Tenant shall indemnify and hold harmless Landlord from any and all liability, damage, expense, cause of action, suits, claims, or judgments by any reason whatsoever caused, arising out of the use, occupation, and control of the Property by Tenant, its invitees, agents, employees, licensees, or permittees, except as may arise solely out of the willful or grossly negligent act of Landlord or Landlord's agents or employees.

12.2 Liability Insurance. Lessee agrees to provide and keep in force commercial general liability insurance in the amount of One Million and no/100 Dollars (\$1,000,000.00) each occurrence, and Two Million and no/100 Dollars (\$2,000,000.00) aggregate, covering claims with respect to injuries or damages to persons or property sustained in, on, or about the Property.

12.3 Other Required Insurance. Tenant shall also procure and maintain the following:

(a) **Builder's Risk Insurance.** During initial construction of the Project, builder's risk insurance in an amount reasonably determined by Tenant. Tenant may elect to provide the Builder's Risk Insurance described in this Section 12.3(a) or such coverage may be provided by the Tenant's contractor, at the Tenant's option.

(b) **Workmen's Compensation Insurance.** Workmen's compensation and employer's liability insurance with respect to any work by employees of Tenant on or about the Property.

12.4 Terms of Liability Insurance. The policy required under Section 12.2 shall name Landlord as additional insured and Tenant shall provide to Landlord a certificate of insurance, and well as copies of policies obtained by Tenant upon the request of Landlord. Further, all policies of insurance described in Section 12.2 shall:

(a) Be written as primary policies not contributing with and not in excess of coverage that Landlord may carry.

(b) Contain an endorsement providing that such insurance may not be materially changed, amended, or canceled with respect to Landlord, except after thirty (30) days' prior written notice from insurance company to Landlord.

(c) Contain an endorsement of express waiver of any right of subrogation by the insurance company against Landlord and Landlord's elected or appointed officials, agents, contractor, representative, and employees.

SECTION 13 - DAMAGE OR DESTRUCTION

13.1 Damage or Destruction. Should Tenant's improvements be damaged in any amount exceeding Five Hundred Thousand Dollars (\$500,000.00) by fire, the elements, or other casualty during the last ten (10) years of the original term of this Lease or during an option term, then Tenant may at its option terminate this Lease by written notice to Landlord within sixty (60) days after said casualty, such

termination to be effective on the date specified in such notice, which date shall be no sooner than 60 nor later than 180 days after the date of such notice. Tenant shall have no obligation to restore any improvements after a fire or other casualty.

SECTION 14 - CONDEMNATION

If the whole of the Property shall be taken or condemned by any competent authority for any public use or purpose under any statute or by right of eminent domain, or by a private purchase in lieu thereof under threat of such eminent domain proceedings, then in either of such events, this Lease shall expire on the date when the Property shall be so taken and the rent shall be prorated as of that date. In the event that part of the Property shall be taken or condemned and the part so taken shall include any portion of a building(s) on the Property or the part so taken shall remove ten percent (10%) or more of the front footage of the Property or the part so taken shall remove or separate twenty percent (20%) of the total parking area constructed on the Property or such partial taking shall result in cutting off or severely impairing direct access from the Property to any adjoining street or highway, then, and in any such event, Tenant, at its sole option, may elect to terminate this Lease as of the date possession shall be taken by such authority. Such notice of election to terminate shall be given in writing to Landlord within ninety (90) days after official notice to Tenant of the portion to be taken. Condemnation awards shall be paid in the following priority: first, to Tenant for the value of Tenant's leasehold interest; second, to Tenant for the unamortized value of its improvements on the Premises, determined in accordance with Tenant's customary accounting practice; and third, to Landlord for the value of Landlord's fee interest. In the event Tenant shall not execute such option to terminate this Lease, or if part of the Property shall be taken or condemned under circumstances whereby Tenant does not have such option, then, and in either of such events, Tenant shall be entitled to the condemnation award and the rental for the balance of the term of this Lease shall be abated and adjusted in an equitable manner.

SECTION 15 - SELF HELP

15.1 Self Help. If either Party defaults in the performance of any obligation (including obligations to reimburse or pay money hereunder) imposed on it by this Lease and does not cure such default within twenty (20) days after written notice from the other Party specifying the default (or if such Party does not within said period commence and diligently proceed to cure such default other than an obligation to pay money), the other Party, without waiver of or prejudice to any other right or remedy it may have, shall have the right, at any time thereafter, to cure such default for the account of the defaulting Party, if applicable, and the defaulting Party shall reimburse the other party upon invoice for any amount paid and any expense or contractual liability so incurred (which, in the case of a monetary default, shall be the amount of money owed by the defaulting Party). If Landlord is the defaulting Party and fails to reimburse Tenant within ten (10) days after invoice Tenant shall have the right to offset the amount due thereunder, together with Default Interest, against Rent and other charges due from Tenant to Landlord under this Lease until Tenant has been completely reimbursed for its expenses.

In emergencies, or where necessary to prevent injury to persons or damage to property, either Party may cure a default by the other before the expiration of the prescribed notice period, but after giving such written or oral notice to the other Party as is practical under the circumstances.

If Tenant exercises its right of set-off as set forth in this Lease, and a court of competent jurisdiction issues a final, non-appealable order pursuant to which Landlord is found not to have been in default hereunder, then Tenant shall not be in default hereunder, but shall have sixty (60) days from the date of such final, non-appealable order in which to pay to Landlord those funds determined by the court to have been inappropriately set-off.

SECTION 16 – DEFAULT

16.1 Tenant Default. If any one or more of the following events shall have occurred and shall not have been remedied as herein provided:

(a) Tenant's failure to pay any installment of rent and the continuance of the same for a period of sixty (60) days after written notice and demand therefore in writing have been made by Landlord to Tenant; and

(b) Tenant's failure to comply with any other agreement herein contained and the continuance of such failure for a period of ninety (90) days after receipt by Tenant from Landlord of notice in writing specifying in detail the nature of such failure, then, Landlord may give to Lessee a notice of its election to end the term of this Lease upon a date (at least thirty (30) days hence) specified in such notice and upon such date this Lease shall terminate and no further rental shall be due hereunder. Without limitation of the foregoing, Landlord acknowledges and agrees that it shall have no right to cause any rental obligation hereunder to be accelerated, and Landlord hereby waives the benefit of any statutory or common law which would have provided such right. Landlord hereby waives all claims to punitive, indirect or consequential damages. Landlord agrees to use diligent efforts to mitigate damages resulting from Tenant's default hereunder. Landlord shall send a copy of any notice of default to any person to whom Tenant has requested such notice be sent and performance by any such person of any default hereunder within the time allowed shall cure such default. Notwithstanding anything to the contrary, if Landlord gives notice of any default which under the circumstances cannot reasonably be cured within the period specified in this clause (b), then such period shall be extended for so long as Tenant is proceeding to cure such default as soon as reasonably possible under the circumstances.

16.2 Remedies Upon Landlord's Default. In the event Landlord shall at any time be in default in the observance or performance of any of the covenants and agreements required to be performed and observed by Landlord hereunder and any such default shall continue for a period of thirty (30) days after written notice to Landlord, or if such default is incapable of being cured in a reasonable manner within thirty (30) days, if Landlord has not commenced to cure the same within said thirty (30)-day period or does not thereafter diligently prosecute the same to completion, Tenant shall be entitled, at its election, to exercise, concurrently or successively, any one or more of the following rights, in addition to all remedies otherwise provided in this Lease and otherwise available at law or in equity under the laws of the United States or the state of Washington:

(a) To bring suit for the collection of any amounts for which Landlord may be in default, or for the performance of any other covenant or agreement devolving upon Landlord, without terminating this Lease; and/or

(b) To terminate this Lease upon thirty (30) days' written notice to Landlord, without waiving Tenant's rights to damages for Landlord's failure to perform its obligations hereunder. In the event Tenant elects to terminate this Lease as aforesaid, all rights and obligations of Tenant, and of any successors or assigns, shall cease and terminate, except that Tenant shall have and retain full right to sue for and collect all amounts for the payment of which Landlord shall then be in default and all damages to Tenant by reason of any such breach.

In the event that either Landlord or Tenant commences any suit for the collection of any amounts for which the other may be in default or for the performance of any other covenant or agreement hereunder, the prevailing party shall be entitled to recover, all costs and expenses including attorneys' fees incurred in enforcing such obligations and/or collecting such amounts. All remedies of Tenant herein created or remedies otherwise existing at law or in equity are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as Tenant shall deem necessary.

16.3 Remedies Cumulative. All remedies of Landlord or Tenant herein created or remedies otherwise existing at law or in equity are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other, provided that in no event shall Landlord have the right to (a) be awarded consequential damages for Tenant's default or (b) accelerate rental reserved hereunder without offsetting against such amount the present value of the fair market rental value of the Property for the balance of the Term. Except as limited herein above, all rights and remedies may be exercised and enforced concurrently and whenever and as often as Landlord or Tenant shall deem necessary.

SECTION 17 - QUIET ENJOYMENT

17.1 Quiet Enjoyment. Landlord covenants that it has full right, power, and authority to make this Lease. Landlord covenants that Tenant, so long as Tenant is not in default hereunder and subject to the provisions of this Lease, shall have quiet and peaceful enjoyment of the Property during the entire Term of this Lease.

SECTION 18 - SUBORDINATION

18.1 Landlord's Right to Mortgage. Landlord may mortgage its interest in the Property, provided such mortgage expressly provides that the rights and interests of the mortgagee thereunder are subject and subordinate to the rights and interests of Tenant hereunder and to the rights of any Leasehold Mortgagee under any Leasehold Mortgage then or thereafter existing. Should Landlord sell, convey, or transfer its interest in the Property, or should any mortgagee of Landlord succeed to Landlord's interest through foreclosure or deed in lieu thereof, Tenant shall attorn to such succeeding party as its landlord under this Lease promptly upon any such succession, provided such succeeding party assumes all of Landlord's duties and obligations under this Lease, including without limitation the covenant of quiet enjoyment. Such succeeding party shall not be liable for any of Landlord's obligations and duties hereunder prior to its assumption of Landlord's duties and obligations hereunder, except that Tenant shall be entitled to any offsets or defense which may have arisen prior to such succeeding party's assumption, which such offsets or defenses are specifically provided herein or are otherwise permitted by law.

SECTION 19 - RESERVED

SECTION 20 - LEASEHOLD MORTGAGES

20.1 Leasehold Mortgages Authorized. Landlord, subject to the provisions of this Lease, consents to Tenant encumbering Tenant's leasehold estate to a Leasehold Mortgagee (as hereinafter defined) under one or more Leasehold Mortgages (as hereinafter defined). This Lease may be assigned by Tenant as security for under one or more Leasehold Mortgage(s) from time to time pursuant to this Section 20. Except as specifically authorized in this Section 20 with respect to such Leasehold Mortgage(s), Tenant shall not have the right to collaterally assign, hypothecate, mortgage, or otherwise pledge the leasehold estate created hereby without Landlord's express written consent, which consent may be withheld by Landlord in the exercise of its reasonable business judgment.

20.2 Notice to Landlord.

(a) If Tenant shall mortgage Tenant's leasehold estate to a Leasehold Mortgagee under this Section 20 for a term not beyond the Termination Date and if the holder of such Leasehold Mortgage shall provide Landlord with notice of such Leasehold Mortgage, together with a true copy of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee, Landlord and Tenant agree that, following receipt of such notice to Landlord, the provisions of this Section 20 shall apply in respect to each such Leasehold Mortgage. In addition to the foregoing requirements, any Leasehold Mortgage shall contain a statement which disclaims any interest or lien against Landlord's fee interest in the Property and which states that Landlord shall have no personal liability whatsoever in connection with said mortgage or

the instruments and obligations secured thereby.

(b) In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of a Leasehold Mortgagee or of an assignment of such mortgage, notice of the new name and address shall be provided to Landlord; provided, however, any such assignee shall be an Institutional Investor as defined herein.

(c) Landlord shall promptly, upon receipt of a communication purporting to constitute the notice provided for by Section 20.2(a) above, acknowledge by an instrument in recordable form receipt of such communication as constituting the notice provided by Section 20.2(a) above, or, in the alternative, notify Tenant and the Leasehold Mortgagee of the rejection of such communication as not conforming with the provisions of Section 20.2(a), and specify the specific basis of such rejection.

(d) After Landlord has received the notice provided for by Section 20.2(a) above, Tenant shall, with reasonable promptness, provide Landlord with copies of the note or other obligation secured by such Leasehold Mortgage and any other documents pertinent to the Leasehold Mortgage as specified by Landlord. Tenant shall thereafter, in a like manner, also provide Landlord from time to time with a copy of each amendment or other modification or supplement to such instruments. All recorded documents shall be accompanied by the appropriate certification of the appropriate official of the recording office as to their authenticity as true and correct copies of official records, and all nonrecorded documents shall be accompanied by a certification by Tenant that such documents are true and correct copies of the originals. From time to time upon being requested to do so by Landlord, Tenant shall also notify Landlord of the date and place of recording and other pertinent recording data with respect to such instruments as have been recorded.

20.3 Definitions.

(a) The term "Leasehold Mortgage" as used in this Section 20 shall include a mortgage, a deed of trust, a deed to secure debt, or other security instrument by which Tenant's leasehold estate is mortgaged, conveyed, assigned, or otherwise transferred, to secure a debt or other obligation which is held by an Institutional Investor.

(b) The term "Leasehold Mortgagee" as used in this Section 20 refers to the holder of a Leasehold Mortgage in respect to which the notice provided for by Section 20.2(a) has been given and received and as to which the provisions of this Section 20 are applicable.

20.4 Consent of Leasehold Mortgagee Required. No cancellation, surrender, or modification of this Lease shall be effective as to any Leasehold Mortgage unless consented to in writing by such Leasehold Mortgagee; provided, however, that nothing in this Section 20.4 shall limit or derogate from Landlord's rights to terminate this Lease in accordance with the provisions of this Section 20.

20.5 Default Notice. Landlord, upon providing Tenant any notice of: (i) default under this Lease, or (ii) a termination of this Lease, or (iii) demand to remedy a claimed default, shall contemporaneously provide a copy of such notice to every Leasehold Mortgagee. From and after such notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period, after the giving of such notice upon it, for remedying any default or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus in each instance the additional periods of time specific in Sections 20.6 and 20.7 to remedy, commence remedying, or cause to be remedied the defaults specified in any such notice. Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option, and does hereby authorize entry upon the Property by the Leasehold Mortgagee for such purpose.

20.6 Notice to Leasehold Mortgagee.

(a) Anything contained in this Lease to the contrary, notwithstanding if any default shall occur

which entitled Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease unless Landlord shall notify every Leasehold Mortgagee of Landlord's intent to so terminate at least forty-five (45) days in advance of the proposed effective date of such termination if such default is capable of being cured by the payment of money, and at least sixty (60) days in advance of the proposed effective date of such termination if such default is not capable of being cured by the payment of money. The provisions hereof shall apply if, during such 45-day or 60-day Termination Notice Period, any Leasehold Mortgagee shall:

- (1) Notify Landlord of such Leasehold Mortgagee's desire to nullify such notice; and
- (2) Pay or cause to be paid all rent, additional rent, and other payments then due and in arrears as specified in the Termination Notice to such Leasehold Mortgagee and which may become due during such 45-day or 60-day period; and
- (3) Comply with all nonmonetary requirements of this Lease then in default and reasonably susceptible of being complied with by such Leasehold Mortgagee; provided, however, that such Leasehold Mortgagee shall not be required during such 60-day period to cure or commence to cure any default consisting of Tenant's failure to satisfy and discharge any lien, charge, or encumbrance against Tenant's interest in this Lease or the Property junior in priority to the lien of the mortgage held by such Leasehold Mortgagee.

(b) Any notice to be given by Landlord to a Leasehold Mortgagee pursuant to any provision of this Section 20 shall be deemed properly addressed if sent to the Leasehold Mortgagee who served the notice referred to in Section 20.2(a) unless notice of change or mortgage ownership has been given to Landlord pursuant to Section 20.2(b).

20.7 Procedure on Default.

(a) If Landlord shall elect to terminate this Lease by reason of any default of Tenant, and a Leasehold Mortgagee shall have proceeded in the manner provided for by Section 20.6, the specified date for the termination of this Lease as fixed by Landlord in its Termination Notice shall be extended for a period of six (6) months, provided that such Leasehold Mortgagee shall, during such six-month period:

- (1) Pay or cause to be paid the minimum rent, percentage rent, and other monetary obligations of Tenant under this Lease as the same become due, and continue to perform all of Tenant's other obligations under this Lease, excepting (i) obligations of Tenant to satisfy or otherwise discharge any lien, charge, or encumbrance against Tenant's interest in this Lease or the Project junior in priority to the lien of the mortgage held by such Leasehold Mortgagee, and (ii) past nonmonetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee; and
- (2) If not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with due diligence. If such Leasehold Mortgagee is enjoined or stayed from taking such steps, the Leasehold Mortgagee shall use its best efforts to seek relief from such injunction or stay.

(b) If at the end of such six-month period such Leasehold Mortgagee is complying with Section 20.7(a), this Lease shall not then terminate, and the time for completion by such Leasehold Mortgagee of its proceedings shall continue so long as such Leasehold Mortgagee continues to comply with the provisions of Section 20.7(a) above, and is enjoined or stayed and thereafter for so long as such Leasehold Mortgagee proceeds to complete steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgagee or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 20.7(b), however, shall be construed to extend this Lease beyond the original Term, nor to require a Leasehold Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings,

this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(c) If a Leasehold Mortgagee is complying with Section 20.7(a) upon (i) the acquisition of Tenant's estate herein by such Leasehold Mortgagee or any other purchasers at a foreclosure sale or otherwise, and (ii) the discharge of any lien, charge, or encumbrance against Tenant's interest in this Lease or the Property which is junior in priority to the lien of the Leasehold Mortgagee held by such Leasehold Mortgagee and which Tenant is obligated to satisfy and discharge by reason of the terms of this Lease, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease; provided, however, that such Leasehold Mortgagee or its designee or any other such party acquiring Tenant's leasehold estate created hereby shall agree in writing to assume all obligations of Tenant hereunder, subject to the provisions of this Section 20.

(d) For the purposes of this Section 20, the making of a Leasehold Mortgage shall not be deemed to constitute a complete assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created. The Leasehold Mortgagee prior to foreclosure of the Leasehold Mortgage or other entry into possession of the leasehold estate shall not be obligated to assume the performance of any of the terms, covenants, or conditions on the part of Tenant to be performed hereunder. The purchaser (including any Leasehold Mortgagee) at any sale of this Lease and the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgagee, or the assignee or transferee (including the Leasehold Mortgagee) of this Lease and the leasehold estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage shall be deemed to be an assignee or transferee within the meaning of this Section 20, and shall be deemed to have agreed to perform all of the terms, covenants, and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment.

(e) Any Leasehold Mortgagee of the leasehold estate of Tenant pursuant to foreclosure, assignment in lieu of foreclosure, or other proceedings may, upon acquiring Tenant's leasehold estate, without further consent of Landlord, sell and assign the leasehold estate on such terms and to such persons and organizations as are acceptable to such Mortgagee; provided, that such assignee has delivered to Landlord its written agreement to be bound by all of the provisions of this Lease and the assignee has previously been approved in writing by Landlord, which approval shall not be unreasonably withheld.

(f) Notwithstanding any other provisions of this Lease, any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or transfer of this Lease and of the leasehold estate hereby created in lieu of the foreclosure of any Leasehold Mortgage, shall be deemed to be a permitted sale, transfer, or assignment of this Lease and of the leasehold estate hereby created.

(g) Tenant shall not transfer, sell, or assign any redemption right from any foreclosure sale to any person which is not approved by the Landlord in accordance with the provisions of Section 9 above. Upon any sale or transfer, after the transfer is completed, Tenant is relieved from any and all obligations.

20.8 New Lease. In the event of the Termination of this Lease as a result of Tenant's default, Landlord shall, if such Leasehold Mortgagee shall have waived in writing its rights under Sections 20.6 and 20.7 within thirty (30) days after such Leasehold Mortgagee's receipt of notice required by Section 20.6, provide each Leasehold Mortgagee with written notice that this Lease has been terminated, together with a statement of all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, then known to Landlord. Landlord agrees to enter into a new lease ("New Lease") of the Property with such Leasehold Mortgagee for the remainder of the Term of this Lease, effective as of the date of Termination, at the rent and upon the terms, covenants, and conditions (including all escalations of rent, but excluding requirements which are not applicable or which have already been fulfilled) of this Lease, provided:

(a) Such Leasehold Mortgagee shall make written request upon Landlord for such New Lease within sixty (60) days after the date such Leasehold Mortgagee receives Landlord's Notice of Termination

of this Lease given pursuant to this Section 20.8.

(b) Such Leasehold Mortgagee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such Termination, and, in addition thereto, all reasonable expenses which Landlord shall have incurred by reason of such Termination and the execution and delivery of the New Lease, and which have not otherwise been received by Landlord from Tenant or other party-in-interest under Tenant. Upon the execution of such New Lease, Landlord shall allow to the Tenant named therein as an offset against the sums otherwise due under this Section 20.8 or under the New Lease an amount equal to the net income derived by Landlord from the Property during the period from the date of Termination of this Lease to the date of the beginning of the Lease Term of such New Lease. In the event of a controversy as to the amount to be paid to Landlord pursuant to this Section 20.8, the payment obligation shall be satisfied if Landlord shall be paid the amount not in controversy, and the Leasehold Mortgagee or its designee shall agree to pay any additional sum ultimately determined to be due plus interest as allowed by law, and such obligation shall be adequately secured.

(c) Such Leasehold Mortgagee or its designee shall agree to remedy any of Tenant's defaults of which said Leasehold Mortgagee was notified by Landlord's Notice of Termination and which are reasonably susceptible of being so cured by Leasehold Mortgagee or its designee.

20.9 New Lease Priorities. If more than one Leasehold Mortgagee shall request a New Lease pursuant to Section 20.8, Landlord shall enter into such New Lease with the Leasehold Mortgagee whose mortgage is prior in lien, or with the designee of such Leasehold Mortgagee. Landlord, without liability to Tenant or any Leasehold Mortgagee with an adverse claim may rely upon a mortgagee's title insurance policy or preliminary commitment therefore, issued by a reasonable title insurance company doing business within the state of Washington as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such New Lease.

20.10 Leasehold Mortgagee Need Not Cure Specified Default. Nothing herein contained shall require any Leasehold Mortgagee or its designee as a condition to its exercise of right hereunder to cure any default of Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee, including but not limited to the default referred to in Section 16 hereof, in order to comply with the provisions of Sections 20.6 or 20.7 or as a condition of entering into a New Lease provided for by Section 20.8 above.

20.11 Eminent Domain. Tenant's share, as provided in this Lease, of the proceeds arising from an exercise of the power of eminent domain shall, subject to the provisions this Lease, be disposed of as provided for by any Leasehold Mortgagee.

20.12 Casualty Loss. A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Lease and the Leasehold Mortgagee shall so provide; except that the Leasehold Mortgagee may provide a manner for the disposition of such proceeds, if any, otherwise payable directly to Tenant pursuant to the provisions of this Lease.

20.13 Arbitration/Legal Proceedings. Landlord shall give each Leasehold Mortgagee prompt notice of any arbitration or legal proceedings between Landlord and Tenant involving obligations under this Lease. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the Parties hereto do hereby consent to such intervention. In the event any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Landlord shall give the Leasehold Mortgagee notice of, and a copy of, any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of notice of arbitration. In the event Tenant shall fail to appoint an arbitrator after notice from Landlord as provided in Section 20 hereof, a Leasehold Mortgagee (in order of seniority if there be more than one) shall have an additional period of thirty (30) days after notice by Landlord that Tenant has failed to appoint such arbitrator to make such appointment, and the arbitrator so appointed shall thereupon be recognized in all respects

as if he had been appointed by Tenant. In the event a Leasehold Mortgagee commences any judicial or nonjudicial action to foreclose its Leasehold Mortgage or otherwise realize upon its security granted therein, written notice of such proceeding shall be provided to Landlord at the same time notice thereof is given to Tenant.

20.14 No Merger. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Property and the leasehold estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Landlord, by Tenant, or by a third party, by purchase or otherwise.

20.15 Estoppel Certificate. Landlord shall, without charge, any time and from time to time hereafter, but not more frequently than twice in any one-year period (or more frequently if such request is made in connection with any sale or mortgaging of Tenant's leasehold interest or permitted subletting by Tenant), within fifteen (15) days after written request of Tenant to do so, certify by written instrument duly executed and acknowledged to any Leasehold Mortgagee or proposed Leasehold Mortgagee, or any other person, firm, or corporation specified in such request: (i) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (ii) as to whether the Lease remains in full force and effect; (iii) as to the existence of any default hereunder; (iv) as to the existence of any offsets, counterclaims, or defenses hereto on the part of Tenant; and (v) as to the commencement and expiration dates of the Occupancy Period of this Lease. Any Leasehold Mortgagee and any other holder of any indebtedness secured by Tenant's leasehold estate shall provide Landlord, upon Landlord's written request, a statement as to (i) the current amount secured by the Leasehold Mortgage held by such Leasehold Mortgagee, (ii) whether any default exists under said Leasehold Mortgage, and (iii) whether there exist any offsets, claims, or disputes with respect to said Leasehold Mortgage and the instruments secured thereby.

20.16 Notices. Notices from Landlord to the Leasehold Mortgagee shall be mailed to the address furnished Landlord pursuant to Section 20.2, and those from the Leasehold Mortgagee to Landlord shall be mailed to the address designated pursuant to the provisions of Section 21 hereof. Such notices, demands, and requests shall be given in the manner described in Section 20 and Section 21 and shall in all respects be governed by the provisions of those Sections.

20.17 Erroneous Payments. No payment made to Landlord by a Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and a Leasehold Mortgagee having made any payment to Landlord pursuant to Landlord's wrongful, improper, or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof, provided it shall have made demand therefore not later than one (1) year after the date of its payment.

SECTION 21 – MISCELLANEOUS

21.1 Holding Over. In the event of Tenant's continued occupancy of the Property after the expiration of the Term, or any earlier termination provided or permitted by this Lease, such tenancy shall be deemed a month-to-month tenancy at the same monthly Rent as during the last month of the Term which ended just prior to such holding over, subject to periodic rent adjustments or reappraisals as identified herein. All other covenants, provisions, obligations, and conditions of this Lease shall remain in full force and effect during such month-to-month tenancy.

21.2 Non-Waiver of Default. No acquiescence by either Party to any default by the other Party shall operate as a waiver of its rights with respect to the same or any other breach or default, whether of the same or any other covenant or condition. No waiver shall be effective unless it is in writing and signed by the Party giving the waiver.

21.3 Recording. This Lease shall not be recorded. The parties shall execute, acknowledge, and deliver to each other duplicate originals of a short form or memorandum of this Lease ("Memorandum of Lease") in substantially in a form agreed to by Landlord and Tenant, describing the Property and setting

forth the Term of this Lease. The Memorandum of Lease shall be recorded at Landlord's expense.

21.4 Notice. Any notice, request, offer, approval, consent, or other communication required or permitted to be given by or on behalf of either Party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (e.g., Federal Express or UPS), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other Party as follows:

If to Tenant: _____, LLC
Attn. Manager
720 Mount Eden Rd
Suite 200
Shelbyville, KY 40065

Copy to: Elias, Meginnes & Seghetti ,P.C
416 Main St., Ste 1400
Peoria, Illinois 61602
Attn: John S. Elias

If to Landlord: Chehalis-Centralia Airport
P.O. Box 1344
Chehalis, Washington 98532

Copy to: Hillier, Scheibmeir, Kelly & Satterfield, P.S.
P.O. Box 939
Chehalis, Washington 98532
Attention: Erin L. Hillier

or at such other address as may be specified from time to time in writing by either Party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

21.5 Successors and Assigns. All covenants, promises, conditions, representations, and agreements herein contained shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors (including subtenants), and assigns.

21.6 Partial Invalidity. If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be held invalid, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

21.7 Interpretation. In interpreting this Lease in its entirety, any additions written or typed thereon shall be given equal weight, and there shall be no inference, by operation of law or otherwise, that any provision of this Lease shall be construed against either Party hereto. This Lease shall be construed without regard to any presumption or other rule requiring construction against the drafting Party. This Lease, along with all documents referenced herein, shall constitute the entire agreement between the parties and any amendments must be in writing signed by both parties.

21.8 Headings, Captions, and References. The section captions contained in this Lease are for convenience only and do not in any way limit or amplify any term or provision hereof. The use of the terms "hereof", "hereunder", and "herein" shall refer to this Lease as a whole, inclusive of the Exhibits, except when noted otherwise. The terms "Include", "Includes", and "Including" incorporate the concept that such inclusion is "without limitation". The use of the masculine or neuter genders herein shall include the masculine, feminine, and neuter genders, and the singular form shall include the plural when the context

so requires.

21.9 Brokerage Commissions. Each Party shall indemnify the other with respect to compensation, commissions, fees, or other sums claimed to be due or owing with respect to the representations made by Landlord or Tenant, respectively.

21.10 Insolvency. If (i) a receiver or trustee is appointed to take possession of all or substantially all of the assets of Tenant, or if (ii) any action is taken or suffered by Tenant pursuant to an insolvency, bankruptcy, or reorganization act, or if (iii) Tenant makes a general assignment for the benefit of its creditors, and if such appointment or assignment continues for a period of thirty (30) days, it shall, at Landlord's option, constitute a default by Tenant and Landlord shall be entitled to the remedies set forth herein, which may be exercised by Landlord without prior notice or demand upon Tenant.

21.11 Governing Law. This Lease shall be construed under the laws of the state of Washington. Venue for any dispute shall be in the Superior Court of Lewis County, Washington.

21.12 (Blank)

21.13 Execution of Documents. Landlord and Tenant shall each cooperate with the other and execute such documents as the other party may reasonably require or request so as to enable it to conduct its operations, so long as the requested conduct or execution of documents does not derogate from or alter the powers, rights, duties, and responsibilities of the respective parties.

21.15 Hazardous, Toxic, or Harmful Substances. Tenant shall not cause or permit any hazardous material (as hereinafter defined) to be brought upon, kept, or used in or about the Property by Tenant, its agents, employees, contractors, or invitees, without the prior written consent of Landlord, except such materials that are normally used or sold in the course of Tenant's business. Tenant agrees that handling and storage of such materials and substances shall occur safely and in compliance with all applicable federal, state, and local laws and regulations. If Tenant breaches the obligations stated in the preceding sentence, or if the presence of hazardous material on the Property caused or permitted by Tenant results in contamination of the Property then Tenant shall indemnify, defend, and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses resulting therefrom. As used herein, the term "hazardous material" means any hazardous or toxic substance, material or waste which is or becomes regulated by local governmental authority, the state of Washington or the United States government. The provisions of this Section shall survive the expiration or earlier Termination of this Lease and Tenant's surrender of the Property to Landlord.

21.16 Force Majeure. Whenever a party is required to perform an act under this Lease by a certain time, said time shall be deemed extended (unless specifically provided elsewhere in this Lease) so as to take into account events of "Force Majeure." "Force Majeure" is any of the following events that prevents, delays, retards or hinders a Party's performance of its duties hereunder: Act of God; fire; earthquake; flood; war; explosion; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; transportation failure; strikes; lockouts; condemnation; requisition; acts of governmental, civil, military or naval authorities or any other cause, whether similar or dissimilar to the foregoing, not within such Party's control. Notwithstanding, anything in this Lease to the contrary. Force Majeure shall not include a Party's lack of, or inability to procure, moneys to fulfill its commitments and obligations under this Lease.

21.17 Estoppel Certificate. Each party agrees from time to time to execute and deliver to the other party and their designees an estoppel certificate in the form attached as Exhibit C, together with any additional reasonable content requested by the other party or its design, within 30 days after the date of such request.

21.18 Approval. Any approval required from Landlord hereunder shall not be unreasonably withheld, or conditioned, and shall be timely delivered. Any request by Tenant for approval shall be hand delivered or sent by certified mail, return receipt requested and shall be deemed approved unless Landlord

within thirty (30) days after receipt provides written notice to Tenant of the disapproval of the request, together with the reasons therefore.

21.19 (Blank)

21.20 Right of First Refusal. In the event of any offer acceptable to Landlord at any time or times during the original or extended term hereof, for the sale of the Property the Landlord, prior to acceptance thereof, shall give the Tenant, with respect to each such offer, written notice thereof and a copy of said offer including the name and address of the proposed purchaser ;and Tenant shall have the option and right of first refusal for sixty (60) days after receipt of such notice within which to elect to purchase the Property, on the terms of said offer. If Tenant shall elect to purchase the Property pursuant to this option and first refusal herein granted, it shall give written notice of such election to Landlord within such sixty (60) day period. Tenant's failure at any time to exercise its option under this paragraph shall not affect this lease and the continuance of Tenant's rights and options under this and any other paragraph herein.

21.20 First Right of Refusal for Ground Lease on Adjacent Lot. In the event Landlord shall receive a bona fide offer for the lease of Tract 8 (defined below) adjacent to the Property leased hereunder, Landlord shall immediately send Tenant written notice setting forth the terms and conditions of said bona fide offer to Tenant. Tenant shall then have a period of thirty (30) days from and after the date of receipt of said written notice to elect in writing to lease said Tract 8 pursuant to the same terms and conditions as contained in said notice. In the event Tenant does not so elect to lease the real property, Landlord shall be free to lease the described real property to the party making the bona fide offer in accordance with the terms and conditions set forth in said notice within 90 days after the date of said notice. In the event Landlord does not lease the described real property to the party making the bona fide offer in accordance with the terms and conditions set forth in said notice within such 90 day period, then Tenant's right of first refusal hereunder shall revive with respect to the real property. "Tract 8" means Tract 8 of City of Chehalis Twin City Town Center 4th Amended Binding Site Plan recorded on December 7, 2020, under Lewis County Auditor's File No. 3538510.

[Signature Page to Follow]

IN WITNESS WHEREOF, this Lease shall be effective as of the Effective Date.

LANDLORD:

CITY OF CHEHALIS

By: _____

Print Name: Jill Anderson

Title: City Manager

Date: _____

TENANT:

_____, LLC

By: _____

Print Name: Joseph D. O'Brien, Jr.

Title: Manager

Date: _____

[Ground Lease]

820-0729.5T

Acknowledgments

State of _____)

) ss.

County of _____)

On _____, 20__ before me _____, a Notary Public in and for said State, personally appeared _____ [] personally known to me, or [] proved to me on the basis of satisfactory evidence, to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

My Commission Expires: _____

State of _____)

) ss.

County of _____)

On _____, 20__ before me _____, a Notary Public in and for said State, personally appeared _____ [] personally known to me, or [] proved to me on the basis of satisfactory evidence, to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

My Commission Expires: _____

LIST OF EXHIBITS

Exhibit A	Legal Description of Property
Exhibit B	Estoppel Certificate
Exhibit C	Compliance with Federal Aviation Administration (FAA) Requirements

EXHIBIT "A"
Legal Description

Tract 9 of City of Chehalis Twin City Town Center 5th Amended Binding Site Plan recorded on December 7, 2020, under Lewis County Auditor's File No. 3538510.

Parcel Number: 005605-082-009
1850 NW Louisiana Avenue, Chehalis, Washington

EXHIBIT "B"

Date: _____

TO: _____

CHEHALIS-CENTRALIA AIRPORT GOVERNING BOARD ("Landlord"), and _____ LLC and/or assigns. ("Tenant") are parties to that certain Ground Lease dated _____, 20____, ("Lease") for certain real property consisting of land and Improvements ("Property") located in the city of Chehalis, county of Lewis, state of Washington, and more fully described on Exhibit "A" attached hereto.

The undersigned _____ of _____ certifies that to the best of his or her actual knowledge, the following statements are true and correct as of the date hereof.

Tenant occupies the Property described in the Lease;

The Lease is in full force and effect and has not been assigned, modified, supplemented, or amended in any way, except as follows:

The Rent Commencement Date under the Lease is _____, 20____;

The initial Lease Term shall expire on _____, 20____; provided, however, that Tenant has the following options to extend the Lease:

Current Annual Rent is _____;

All conditions precedent of Tenant's obligations as set forth in the Lease have been satisfied or waived;

The undersigned has not received notice of, and has no actual knowledge of the existence of, any defaults under the Lease by either Landlord or Tenant;

No rents have been paid in advance of (1) month except _____;

Tenant has not assigned or mortgaged its interest in the Lease, in whole or in part, or sublet all or part of the Property except _____; and

There have been no amendments or modifications to the Lease except _____.

EXECUTED as of the date first written above.

By _____
Name: _____
Title: _____

EXHIBIT "C"

COMPLIANCE WITH FEDERAL AVIATION ADMINISTRATION REQUIREMENTS

The Tenant, for itself, its successors-in-interest and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; and (2) that in the construction of any Improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of , or otherwise be subjected to discrimination.

9. Neither the Landlord nor Landlord's agent has received any written notice from any city, village, or other governmental authority of any violation of any applicable dwelling or building code, or any other law or regulation.

12. To the knowledge of the Landlord, the current use of the Property is permitted under the existing zoning laws.

13. There are no unpaid assessments levied by any homeowners', condominium or similar association with jurisdiction over the Property.

Dated this _____ day of _____, 20__

[_____]

By: _____
Its: _____

Subscribed and sworn to
before me this _____ day
of _____, 20__

Notary Public

**CHEHALIS CITY COUNCIL MEETING
AGENDA REPORT**

TO: The Honorable Mayor and City Council

FROM: Jill Anderson, City Manager

BY: Chun Saul, Finance Director

MEETING OF: March 8, 2021

SUBJECT: Ordinance No. 1017-B, Second and Final Reading – Establishing 2020 Year-End Fund Balance Commitments

ISSUE

Ordinance No. 1017-B was presented for first reading on February 22, 2021. During the presentation, typing errors for amounts relating to debt service were noticed. The Agenda report and the Ordinance No. 1017-B have been updated to reflect the correct amount.

NEW FUND BALANCE CLASSIFICATIONS

Starting in the 2020 reporting year, the Washington State Auditor’s BARS Manual requires beginning and ending cash and investments (fund balances) be classified in five fund balance categories as follows: nonspendable, restricted, committed, assigned, or unassigned. The Committed fund balance classification requires most binding formal action (Ordinance) by the City Council.

The chart below summarizes the fund balance classifications and specific requirements.

New Classification	Authority	Purpose	Old Classification
<i>Nonspendable</i>	Inherent	Nonfinancial resources (i.e., endowment fund)	Reserved
<i>Restricted</i>	External restrictions	Restrictions on the purpose or use of resources imposed by law through constitutional provisions or enabling legislation, or contracts (i.e., creditors, grantors, bond covenants, donors, or other governments).	Reserved
<i>Committed</i>	Internal commitments	Specific (not generic) limitations that the government imposes upon itself by the governing body through the most binding formal action (i.e., resolution, ordinance, etc.) and that remains binding unless removed in the same manner.	Reserved
<i>Assigned</i>	Intended use	Amounts intended to be used by the government for specific purposes that are neither restricted nor committed. Can be done in an informal way such as a motion or other form of directive. The creation of a fund outside of the general fund is considered at least assigned since the creation of a fund automatically sets aside the monies for a purpose.	Unreserved
<i>Unassigned</i>	Any allowable use & purpose of that fund.	All other funds that are not reported in other categories.	Unreserved

These classifications indicate “the extent to which the government is bound to honor constraints on the *specific purposes for which amounts in the fund can be spent.*” The classifications reflect these limitations and inform management and financial statement users how much of the government’s resources are reserved for a specific purpose or use and how much is freely available for spending for any allowable purpose of that fund.

Budget documents approved by resolution or ordinance do not meet criteria for classifying balances as committed because the budget only represents the government’s authorized spending during the period, rather than a constraint on remaining balances at year end. In other words, a budget deals with plans for anticipated revenues and expenditures – resources not yet collected, and expenditures not yet incurred – whereas an internal commitment imposes a permanent constraint on **currently existing** financial resources.

Merely creating “reserve” funds through resolution or ordinance to set money aside for a different purpose or circumstance (i.e., emergency fund or rainy-day fund) does not automatically classify the entire fund balance as committed.

The government may establish a policy for its intended order of use of classification balances when an expenditure is incurred in which restricted, committed, and assigned cash and investment balances can be used to pay the expenditure. In absence of an approved policy, it is assumed that the government will use the most restricted cash and investment balance first.

PROPOSED COMMITMENTS FOR 2020 YEAR END FUND BALANCE

General Fund: The preliminary ending cash and investment (fund balance) of the City’s General Fund as of 12/31/2020 is \$2,240,826, which is about 22% of the 2020 general fund actual revenues.

\$119,536 of the total fund balance is restricted which includes the drug seizure fund, municipal court bail deposit, and unspent donations received for parks and recreation programs. The remaining \$2,137,228 can be classified as committed, assigned, or unassigned.

On February 2, 2021, the City Manager and Finance Director met with the City Council Budget Committee members and discussed whether a portion of the General Fund’s ending fund balance as of 12/31/2020 should be committed for specific purposes. The Council Budget Committee recommended a total of \$465,000 of the General Fund ending fund balance to be Committed for the following purposes:

- \$200,000 for payments for accrued leave cash outs for future general fund retirees
- \$100,000 for vehicle replacements
- \$100,000 for City’s financial software upgrade
- \$ 65,000 for police evidence garage

The Committee recommended that the remaining \$1,656,290 be classified as unassigned. This will allow replenishing the \$444,680 reserves used to balance the 2021 budget, maintain the Council goal of 10% operating reserves, and provide about \$182,246 cushion for any unexpected revenue shortfall or additional expenditures during 2021.

Reserve Funds: In addition to the General Fund, the City maintains the following general revenue funded reserve funds. These funds are managerial funds in nature and are rolled-up into the general fund for financial reporting purposes. The total ending fund balances of these funds are classified as assigned by default except any portion that is designated as Committed by the City Council. It is recommended that

the following fund balances as of 12/31/2020 be designated as Committed for the following specific purposes:

- \$ 28,520 is committed for debt service (Dedicated Street)
- \$198,020 is committed for future retiree leave cash outs (Compensated Absences)
- \$101,107 is committed for LEOFF 1 retiree medical and long-term care benefits (LEOFF 1 OPEB)
- \$108,178 is committed for vehicle replacement (Automotive/Equipment Reserve)

Restricted Governmental Funds: The ending cash and investments (fund balances) in the Arterial Street Fund, TBD Fund, Lodging Tax Fund, CDBG Fund, HUD Block Grant Fund, and REET Funds are reported as restricted as the revenue sources have statutory limitations on how they can be used, except for the following amounts that are committed for specific purposes:

- \$ 71,563 is committed for 2019 LTGO (Recreation Park) debt service (Lodging Tax Fund)
- \$130,196 is committed for 2020 LTGO (Temporary Fire Station) debt service (1Q REET Fund)
- \$ 75,131 is committed for 2011 LTGO (City Hall) debt service (2Q REET Fund)

Public Facilities Reserve Fund: The ending fund balance consists of \$431,326 bond proceeds remaining for temporary fire station project and \$257,582 unspent donations received for the Recreation Park Renovation project. These amounts will be reported as restricted. The remaining fund balance of about \$269,500 will be reported as assigned for general and park facilities repairs/replacements/acquisitions approved by the City Council.

Enterprise Funds: Fund balances in enterprise funds will include restricted amounts for refundable customer deposits and minimum debt service reserve required by debt covenants and assigned balances for everything else that can be spent for that enterprise fund activity.

SUMMARY

In summary, the following portions of the City's December 31, 2020 governmental fund balances are designated as Committed:

- \$398,020 is committed for accrued leave cash out payments for retiring employees
- \$208,178 is committed for vehicle replacement
- \$100,000 is committed for financial software/system upgrade
- \$ 65,000 is committed for police evidence garage
- \$ 28,520 is committed for debt service (Dedicated Street)
- \$101,107 is committed for LEOFF 1 retiree medical and long-term care benefits (LEOFF 1 OPEB)
- \$ 71,563 is committed for 2019 LTGO (Recreation Park) debt service (Lodging Tax)
- \$130,196 is committed for 2020 LTGO (Temporary Fire Station) debt service (1Q REET)
- \$ 75,131 is committed for 2011 LTGO (City Hall) debt service (2Q REET)

RECOMMENDATION

It is recommended that the City Council authorize a total of \$1,177,715 of the City's governmental fund balances as of 12/31/2020, including \$465,000 from the General Fund, to be Committed for the amounts and specific purposes and uses as provided above, authorize the City Manager to designate other fund balances as Assigned in order to carry out the intent of the City Council, and pass Ordinance No. 1017-B on second and final reading.

SUGGESTED MOTION

I move that the City Council pass Ordinance No. 1017-B on second and final reading.

ORDINANCE NO. 1017-B

**AN ORDINANCE OF THE CITY OF CHEHALIS, WASHINGTON,
ESTABLISHING FUND BALANCE DESIGNATION AS PROVIDED BY
WASHINGTON STATE AUDITOR'S BARS MANUAL FOR CASH BASIS
ENTITY FOR YEAR END 2020.**

WHEREAS, the Washington State Auditor's Office Cash Basis BARS Manual established a new classification system in 2020 requiring the beginning and ending cash and investments (fund balances) to be classified as "nonspendable," "restricted," "committed," "assigned," or "unassigned"; and

WHEREAS, these classifications indicate "the extent to which the government is bound to honor constraints on the specific purposes for which amounts in the fund can be spent"; and

WHEREAS, the Committed fund balance classification identifies internal fund commitments with limitations that the City imposes upon itself through formal binding action by the City Council; and

WHEREAS, the Assigned fund balance classification identifies funds intended to be used for specific purposes that are neither restricted, nor committed, and do not require formal binding action by City Council; and

WHEREAS, the City Council finds it beneficial to designate certain fund balances as Committed for specific purposes or projects and for the City Manager to designate certain other fund balances as Assigned in order to carry out the intent of the City Council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHEHALIS, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. The fund balances of the City of Chehalis designated in this Ordinance are Committed for the specific purposes indicated. Amendments or modifications of the Committed fund balances set forth herein shall require formal action by the City Council.

Section 2. The City Council authorizes the City Manager to categorize other fund balances as Assigned in order to carry out the intent of the City Council.

Section 3. The following portions of the City's December 31, 2020 fund balances are designated as Committed:

\$398,020 is committed for Accrued Leave Cash Out Payments for Retiring Employees
\$208,178 is committed for Vehicle Replacement

\$100,000 is committed for Financial Software/System Upgrade
\$ 65,000 is committed for Police Evidence Garage
\$ ~~285~~,520 is committed for Debt Service (Dedicated Street)
\$101,107 is committed for LEOFF 1 Retiree Medical and Long-Term Care Benefits (LEOFF 1 OPEB)
\$ 71,563 is committed for 2019 LTGO (Recreation Park) Debt Service (Lodging Tax)
\$130,196 is committed for 2020 LTGO (Temporary Fire Station) Debt Service (1Q REET)
\$ 75,1~~3153~~ is committed for 2011 LTGO (City Hall) Debt Service (2Q REET)

PASSED by the City Council of the City of Chehalis, Washington, and **APPROVED** by its Mayor at a regularly scheduled open public meeting thereof this ____ day of _____, 2021.

Mayor

Attest:

City Clerk

Approved as to form and content:

City Attorney