

KITTITAS COUNTY
DEPARTMENT OF PUBLIC WORKS

AGENDA STAFF REPORT

AGENDA DATE: May 2, 2017

ACTION REQUESTED: Request to Approve a Lease for Lot C-38 of the Kittitas County Airport Amended Binding Site Plan along with buildings upon said Lot with Ellensburg Pallets, LLC.

BACKGROUND: In December of 2015, Kittitas County Public Works terminated its lease with the previous Lessee, Cascade Pallet. During this time Cascade Pallet directed the owner of Ellensburg Pallets, LLC to take over the business including the lease for Lot C-38. The owner of Ellensburg Pallets, LLC, Valente Arellano contacted Public Works with a request to lease Lot C-38. Due to the nature of the complexity of the termination of the lease with Cascade Pallet and removing the ownership from the Treasurer and Assessor's records and staff turnover we are now in the position to finalize a new lease with Ellensburg Pallets, LLC. The terms of the lease with Ellensburg Pallets, LLC is dated as of their occupancy of the site. The lease payment is also consistent with the date of occupancy. Mr. Arellano is aware of this and arrangements have been made to bring the account current.

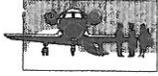
INTERACTION: Public Works; Ellensburg Pallets, LLC

RECOMMENDATION: Approve and sign the Lease for Lot C-38, along with said buildings of the Kittitas County Airport Amended Binding Site Plan with Ellensburg Pallets, LLC.

HANDLING: Return one (1) original to Public Works

ATTACHMENTS: Lease

LEAD STAFF: Mark Cook, Director of Public Works



L E A S E

THIS LEASE made and entered into this 1st day of January, 2015 by and between **Kittitas County**, a municipal corporation in the State of Washington, hereinafter referred to as the **LESSOR**, and **Ellensburg Pallets LLC**, a Washington Corporation with a Washington Secretary of State UBI number of 603402078, hereinafter referred to as the **LESSEE**.

WITNESSETH:

The Lessor hereby agrees to lease to the Lessee, and the Lessee hereby agrees to lease from the Lessor, the following described real property (hereinafter the "Property"):

See Exhibit 'A' attached hereto, also described as:

Lot C-38, as shown on Kittitas County Amended Binding Site Plan BS-10-00001, as recorded June 28, 2010, in Book 11, pages 249-255, County of Kittitas, State of Washington.

Containing 172,497.6 sq. ft. or 3.96 acres more or less.

AND

Three (3) buildings upon Lot C-38 of the Kittitas County Amended Binding Site Plan described as (1) 800 square foot Quonset; (1) 1500 square foot Pole Building; and (1) 168 square foot Cider Block Building.

This lease is made in accordance with Chapter 2.81 KCC. This lease is subject to the provisions of Chapter 59.12 RCW as currently existing of hereafter amended.

1. **TERM:** The term of this lease shall be 5 years and will commence on the 1st day of January, 2015.
2. **RENT:** Rent shall be paid in advance on an annual basis, with the first payment due on or before the 1st day of January of each year and continuing thereafter until termination of this lease. The rental for each year shall be as follows:

Term	Rental Rate (Ground Lease) (\$.063 per Sq. Ft) Not Including Leasehold Tax*
<u>01/01/15 – 12/31/15</u>	\$ 10,867.35
<u>01/01/16 – 12/31/16</u>	\$ 10,867.35
<u>01/01/17 – 12/31/17</u>	\$ 10,867.35
<u>01/01/18 – 12/31/18</u>	\$ 10,867.35
<u>01/01/19 – 12/31/19</u>	\$ 10,867.35
<u>01/01/20</u>	Renegotiate

**The current Leasehold Excise Tax Rate is 12.84%, as determined by the State of Washington and is subject to change.*

Term	Rental Rate for Building(s) (\$1.225 per Sq. Ft) <u>Not Including Leasehold Tax*</u>
<u>01/01/15 – 12/31/15</u>	\$3,627.96
<u>01/01/16 – 12/31/16</u>	\$3,627.96
<u>01/01/17 – 12/31/17</u>	\$3,627.96
<u>01/01/18 – 12/31/18</u>	\$3,627.96
<u>01/01/19 – 12/31/19</u>	\$3,627.96
<u>01/01/20</u>	Renegotiate

*The current Leasehold Excise Tax Rate is 12.84%, as determined by the State of Washington and is subject to change.

LEASE CREDIT: Lease Credit in the amount of \$14,495.31 is given to Lessee for site clean-up and disposal. Said credit is for one (1) year which is from January 1, 2015 to December 31, 2015. The Lessee is responsible for leasehold tax for this period.

3. **ADJUSTMENT OF RENTAL:** The rental for every five year period thereafter, or part thereof, at the commencement of such period, shall be readjusted and fixed by the Board of County Commissioners;

(a) After the fifth year, the Lessor shall have the right to readjust the rent on or before February 1st of the fifth year of this lease for the remaining five year period; and the increase shall BE THE CUMULATIVE EFFECT OF THE CPI INDEX OVER THE PREVIOUS FIVE YEARS. The rent increase is at the sole discretion of the Lessor, and Lessor may elect to maintain the rent at the previous rate. It is agreed between LESSOR and LESSEE that the following CPI Index will be used for future rental increases:

“CPI – All Cities-All Items Size Class D Under 50,000.”

4. **LEASEHOLD TAX:** In addition to any rental herein provided, the Lessee shall pay to the Lessor the leasehold tax as set forth by the State of Washington in Chapter 61, Laws of 1976, Second Executive Session (R.C.W. 82.29A) or as amended. The tax shall be due and payable at the same time the rental charged herein is due and payable.
5. **FIRE PROTECTION ASSESSMENT** In addition to any rental herein provided, the Lessee shall pay a fee *which shall be in lieu of taxes for fire protection services*. The annual rate shall be based upon the annual fire assessment determined by the Kittitas County Assessor and Kittitas Valley Fire & Rescue to be calculated on January 1st of the current year. The assessment shall be pro-rated monthly, due and payable concurrently with the monthly lease payment.
6. **UTILITIES:** The Lessee shall pay for extension of and all utility services supplied to the premises. Any such extensions shall be subject to the advance review of the Lessor.

7. **PURPOSE:** It is understood by Lessee that only construction and repair of wooden, plastic, or metal commercial pallets may be conducted on the premises. In the event that the Lessee conducts any other business or operations other than pallet construction and pallet repair, the Lessor may terminate this lease by giving ninety (90) days written notice to Lessee, notwithstanding the notice provisions of Section 22 herein. In the event of termination by Lessor pursuant to this section, all rents shall be pro-rated to the date Lessee shall have restored the premises to the Lessor in accordance with the terms of the lease agreement governing Lessee's duties to restore the premises to Lessor upon expiration of the lease term.
8. **RULES AND REGULATIONS:** The Lessee agrees to comply with all pertinent rules and regulations of the federal, state and local governments, as well as the rules, regulations, ordinances, and minimum standards of the Kittitas County Airport (Bowers Field), as are presently in effect and may in the future be adopted. The rules, regulations, ordinances and minimum standards of the Kittitas County Airport (Bowers Field) are made a part of this Agreement and shall have the same effect as though written herein. A copy of the Kittitas County Airport Standards is on file in the office of the Kittitas County Department of Public Works.
9. **IMPROVEMENTS:** Upon termination of this lease, for whatever reason and under whatever circumstances, all improvements remaining upon the leased premises become the property of Lessor, free and clear, without any liability of Lessor to Lessee. Should Lessor desire the removal of Lessee's improvements upon the date of lease termination, Lessor shall give Lessee written notice to remove all improvements and return the premises to its state as before the lease at least thirty (30) days prior to the termination date for the lease. Upon removal, the premises shall be left in a neat and orderly condition, without debris and shall be graded level. Should the premises not be left in such condition, after Lessee received such notice, Lessor may remove improvements and repair the premises and seek reimbursement from Lessee in any manner allowed by law.

No construction may be made without prior obtaining of appropriate permits, the responsibility for which is that of Lessee.

10. **REPAIRS:** The maintenance and repair of the structures including, but not limited to, repair of roof, foundation and exterior walls and other improvements shall be the responsibility of the Lessee, including utilities within the leased area.

The Lessee further agrees that it will not commit waste and that it will keep said premises in a safe, sanitary, neat, presentable, and otherwise good condition, and in general shall comply with all the applicable governmental rules, ordinances and regulations as may be required or imposed by such authorities on said premises and shall comply with any direction pursuant to law of any public officer or officers who shall be empowered to enforce local, state and federal rules, regulations and ordinances upon the Lessee with respect to the said premises or the use, occupancy, or control thereof and shall not suffer any improper or offensive use of said premises.

11. **AREA MAINTENANCE:** Lessee shall, during the term of this lease, maintain the area between the building and boundary line of said lease to the satisfaction of the Lessor. The area shall be kept free of all debris, weeds and brush for the term of this lease. Lessee shall reimburse the Kittitas County Weed Board or Kittitas County Department of Public Works for any costs

incurred in the event that the County Weed Board or Kittitas County Department of Public Works undertakes noxious weed or vegetation control measures.

12. INSURANCE: The Lessee shall obtain and maintain in force during the term of this agreement a liability insurance policy, which provides protection for bodily injury (including death) and property damage. Said insurance shall provide coverage by the Lessee to any employees or permittees of the Lessee, and shall name the Lessor as coinsured.
 - (a) Liability insurance policy shall have the following provisions, at a minimum:
 - (i) Premises and leased area liability coverage in an amount not less than \$1,000,000 - each occurrence.
 - (ii) Provide for not less than thirty (30) days in advance a written notice to Kittitas County regarding any material change or termination of the policy.
 - (b) Lessee hereby releases Lessor of and from every and all right, claim and demand that Lessee may hereafter have against Lessor, its successors or assigns, arising out of or in connection with any loss or losses occasioned by fire and such items as are included under the normal extended coverage clauses of insurance policies, and does hereby waive all rights of subrogation in favor of insurance carriers against Lessor arising out of any losses occasioned by fire and such items as are included under the normal extended coverage clauses of fire insurance policies, and sustained by Lessee in or to the said premises and leased area.
 - (c) The Lessee shall provide the Lessor with a copy of said insurance policy prior to the commencement date of this lease.
13. AIRPORT TRAFFIC: It is understood and agreed that the Lessee's use of said premises and leased area shall not in any manner interfere or restrict the use of aircraft landings, take-offs, storage of aircraft, taxiing, and movement of ground vehicles. Lessee shall comply with all rules and regulations of the Federal Aviation Administration, Washington State Department of Transportation Aeronautics Division, and the Kittitas County Airport Standards.
14. HUNTING: Hunting or discharging of firearms will not be permitted on or from said premises or leased area.

15. NOTICES: Any notice given by one party to the other in connection with this agreement shall be in writing and shall be sent by certified or registered mail, return receipt requested as follows:

(a) If to Lessor, addressed to:

Kittitas County Department of Public Works
411 N. Ruby, Suite #1
Ellensburg, Washington 98926

(b) If to Lessee, addressed to:

Valente Arellano
Ellensburg Pallets LLC
900 Falcon Road
Ellensburg, WA 98926

Notice shall be deemed to have been received on the third day after the date of mailing.

16. ATTORNEY FEES: In case Lessor shall bring suit to recover any rent due hereunder, or for breach of any provision of this lease, or to recover possession of the leased premises, or if Lessee shall bring any action for any relief against Lessor, declaratory or otherwise, arising out of this lease, the prevailing party shall recover reasonable attorney fees which shall be determined and taxed by the court as part of the costs of such action.
17. RIGHTS OF THE U.S. GOVERNMENT: The Lessor holds title to the Property herein leased, partially by virtue of a deed from the United States Government. A copy of said deed is available for inspection at the office of the Kittitas County Department of Public Works, hereto and made a part of this instrument as though fully set forth herein. Lessee agrees that it will do nothing which will cause the Lessor to be in violation of the terms of said deed. Lessee furthermore agrees that it has had ample opportunity to review said deed and is aware of all of the terms and conditions therein.
18. ASSIGNMENT: The Lessee shall not assign this lease nor sublet any portion thereof without first obtaining the written consent of the Lessor.
19. HOLD HARMLESS: The Lessee hereby agrees to defend, indemnify and hold harmless the Lesser from any and all claims or demands whatsoever arising out of any loss, damage, or injury to persons or property resulting from the Lessee's use or occupancy of said premises and leased area, or caused by the acts or neglect of the Lessee, his agents or employees.
20. BANKRUPTCY: It is further agreed and understood that in case of the insolvency or bankruptcy of the Lessee, or any assignment for the benefit of creditors or the appointment of a receiver for the Lessee, this lease shall be immediately forfeited and shall be of no further force and effect, and that the Trustee in Bankruptcy, Receiver, or Assignee for the benefit of creditors shall not have any rights whatsoever in the demised premises.
21. DEFAULT: In the event the Lessee shall fail to comply with any of Lessee's commitments, duties or responsibilities under this lease, or any of its conditions or terms as herein stated, the Lessor may terminate this lease by giving ten (10) days written notice of the conditions or terms

being violated. If said failures are not corrected within the ten (10) day period, this lease may be terminated and the Lessor shall be entitled to peaceably retake possession of the premises.

22. MODIFICATION OR TERMINATION: Lessee and Lessor agree that Lessor may, at Lessor's sole discretion, modify the terms of this lease in whole or in part, including but not limited to any term or condition of this lease, including cancelling the unexpired portion of this lease and re-letting the property to another tenant, in the event that any regulation governing airports or county property is amended in a way that impacts the Lessor's ability to lease, use, control, protect, or maintain the Property. For the purposes of this section, "regulation" is defined to include, but is not limited to: case law interpreting any rule or regulation; any federal rules and regulations, including Federal Aviation Administration rules and regulations; state rules and regulations; and local rules, regulations and ordinances.

In the event that Lessor shall elect to modify or terminate this lease, Lessor shall do so only upon one hundred twenty (120) days written notice, notifying Lessee, at Lessee's address of record, that the lease to which this applied is being so modified or terminated.

Upon receipt of such notification, and in the event the notification specified modification of the lease short of termination, Lessee shall have sixty (60) days in which to notify Kittitas County of Lessee's intention to continue the lease as modified or of Lessee's intention to treat the lease as terminated.

In the event that Lessee elects to treat the lease as terminated, all rents shall be pro-rated to the date Lessee shall have restored the premises to the Lessor in accordance with the terms of the lease agreement governing Lessee's duties to restore the premises to Lessor upon expiration of the lease term.

It is further agreed that neither such modification or termination of this lease nor any subsequent re-letting of the premises, in whole or in part, shall give rise to any cause of action for damages or any other form of relief by Lessee against Lessor or any successor lessee.

In the event of such modification or termination, Lessee understands that other than a refund of any unearned rent prorated to the date Lessee has restored the premises to Lessor, Lessee shall have no claim for compensation as occasioned by said modification or termination.

23. WAIVER: No assent, express or implied, by the Lessor to any breach of any of Lessee's covenants, agreements, conditions or terms hereof shall be deemed or taken to be a waiver of any succeeding breach of any covenant, agreement, condition or term hereof.
24. VENUE. In the event of any litigation between Lessor and Lessee arising out of this lease, the venue for such action shall lie in Kittitas County, notwithstanding any contrary provision of the Revised Code of Washington.
25. APPLICABILITY: The covenants, agreements, terms and conditions contained in this lease shall apply to and be binding upon Lessor and Lessee and their respective heirs, executors, administrators, successor and assigns.
26. INTEGRATION: Exhibits and Recitals are incorporated herein by this reference. This Lease embodies the entire agreement between the parties with respect to the subject matter herein

contained. No amendments or modifications hereof shall be enforceable unless in writing, signed by the party to be charged.

IN WITNESS WHEREOF, the Lessor and Lessee have signed their names and affixed their seals the day and year first above written.

LESSOR:

BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON

Paul Jewell, Chairman

Laura Osiadacz, Vice-Chairman

Obie O'Brien, Commissioner

Attest:

Clerk of the Board- Julie Kjorsvik

Deputy Clerk of the Board- Mandy Buchholz

LESSEE:

ELLENSBURG PALLETS LLC

Valente Arellano
Valente Arellano

Address:
900 Falcon Road
Ellensburg, WA 98926

Exhibit A:**Legal Description of Property**

Lot C-38, as shown on Kittitas County Amended Binding Site Plan BS-10-00001, as recorded June 28, 2010, in Book 11, pages 249-255, County of Kittitas, State of Washington.

Containing 172,497.6 sq. ft. or 3.96 acres more or less.

AND

Three (3) buildings upon Lot C-38 of the Kittitas County Amended Binding Site Plan described as (1) 800 square foot Quonset; (1) 1500 square foot Pole Building; and (1) 168 square foot Cider Block Building.

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Ellensburg, WA 98926