

KITTITAS COUNTY  
DEPARTMENT OF PUBLIC WORKS

**AGENDA STAFF REPORT**

**SESSION DATE:** August 1, 2017

**ACTION REQUESTED:** Conduct a Public Hearing to Consider Leasing Lot C-7 of the Kittitas County Airport Binding Site Plan to Valley Fence, Inc.

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**BACKGROUND:** Public Works is requesting the Board conduct a public hearing to consider a lease within the Airport Binding Site Plan specifically Lot C-7 (1.86 Acres – 81,021.6 Sq. Ft) to Valley Fence, Inc.

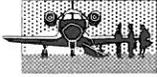
**INTERACTION:** Public Works; Valley Fence, Inc.

**RECOMMENDATION:** Move to Approve the Lease for Lot C-7 of the Kittitas County Airport Binding Site Plan with Valley Fence, Inc.

**HANDLING:** Return one copy to Public Works

**ATTACHMENTS:** Lease

**LEAD STAFF:** Mark Cook  
Public Works Director



KITTITAS COUNTY AIRPORT  
DEPARTMENT OF PUBLIC WORKS

## LEASE

THIS LEASE made and dated this \_\_\_\_ day of \_\_\_\_\_, 2017, is by and between the **COUNTY OF KITTITAS**, Washington, the Lessor hereinafter referred to as the "**County**", and **VALLEY FENCE INC.**, the Lessee, hereinafter referred to as the "**Lessee**".

The County herewith agrees to let unto Lessee and Lessee herewith agrees to lease from the County the following described real property, situated in Kittitas County, Washington, to-wit:

**LOT C-7 OF THE KITTITAS COUNTY AIRPORT BINDING SITE PLAN  
1.86 ACRES – 81,021.6 SQ. FT.**

This lease is made in accordance with the provisions of Chapter 36.34RCW. This lease is subject to the provisions of Chapter 59.12 RCW as currently existing or hereafter amended.

1) **TERM:**

The term of this lease shall be for fifty (50) years and will commence on the 1st day of August, 2017, and shall terminate on the last day of July, 2067.

2) **RENT:**

Rent shall be paid in advance for each year at a rate determined by the Lessor, plus leasehold tax, and fire protection. Lessee may pay half the rent every six months on June 1 and December 1, and shall be as follows:

<b><u>08/01/2017 – 07/31/2022 Term</u></b>	<b>Annual Rental Rate (\$ .063 per Sq. Ft) Not Including Leasehold Tax*</b>
08/01/17 – 07/31/18	\$5,104.36
08/01/18 – 07/31/19	\$5,104.36
08/01/19 – 07/31/20	\$5,104.36
08/01/20 – 07/31/21	\$5,104.36
08/01/21 – 07/31/22	\$5,104.36
08/01/22	Renegotiate

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

3) **RENTAL RATE ADJUSTMENT:**

Pursuant to RCW 36.34.180 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 August 1<sup>st</sup> of the **fifth** year of this lease for each following five year period; and the increase shall BE THE CUMULATIVE EFFECT OF THE CPI INDEX OVER THE PREVIOUS FIVE YEARS. 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.”**

- (b) If there is a mathematical dispute and the Lessee does not agree that the CPI index, above listed, yields the rental rates for one of the subsequent five year terms, the Lessee may request arbitration. If the Lessee elects to arbitrate, the Lessee shall select one arbitrator and the Lessor shall select one arbitrator and the two so chosen shall select a third arbitrator. The arbitrators shall have the authority to calculate the rental rate for the next five years based upon the above-listed CPI index, and both parties shall be bound by the decision of the arbitrators. The cost of arbitration shall be borne by the Lessee.

4) **LEASEHOLD TAX:**

Unless exempt from the requirement to pay leasehold taxes, the Lessee shall pay to the County, the leasehold tax as set forth by the State of Washington, in Chapter 61, Laws of 1976, Second Executive Session (RCW 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 1<sup>st</sup> of the current year. The assessment shall be due and payable concurrently with the annual lease payment.

6) **MAINTENANCE:**

The Lessee covenants, promises, and agrees that it will perform all routine maintenance on said premises hereby demised so as to keep the same in as good as condition as the same now exists. Damage by fire, acts of God and reasonable wear, tear, and usage are excepted.

The Lessee further agrees that it will not commit waste, and that it will keep said premises and grounds, including those owned by the Lessee in a safe, sanitary and orderly 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 hereby demised, and shall comply with any direction pursuant to law of any public officer or officers who shall be empowered to enforce all local, state, and federal rules, regulations and ordinances upon the Lessee with respect to the demised premises or the use, occupancy, or control thereof, or the conduct of any business therein, and shall not suffer any improper or offensive use of said premises.

The Lessee shall at all times comply with the rules and regulations relative to noxious weeds of the Weed District in which said leased premises is located. Lessee shall maintain the grounds in a neat and clean condition. This shall include mowing or spraying of grass and weeds. All herbicides or other materials used for the control or nurturing of grass and weeds shall be used in strict accordance with all federal, state and local statutes, rules and regulations.

The Lessee shall have the right to install or place signs or posters anywhere on or about the leased premises which are not in violation of law, rules or regulation and which do not produce a hazard for the County or other Lessees or persons at the airport. All such installations shall be approved by the Airport Manager and shall be at the expense of the Lessee and shall be within the public liability coverage.

The Lessee shall not construct any buildings nor alter any existing facilities without first having the written consent of the County herein, which consent shall not be unreasonably withheld.

7) **PURPOSE:**

Lessee may use the premises for the following permitted uses:

- a. Light Industrial Use, specifically a Fencing Business;
- b. General Office Space;
- c. Any other use for which there is express prior written consent by the County.

8) **RULES AND REGULATIONS:**

The Lessee agrees to comply with all the pertinent rules and regulations of the federal, state and local governments, as well as the rules, regulations, ordinances and the Minimum Standards for Aeronautical Activities at the Kittitas County Airport (Bowers Field) (including, but not limited to, the regulations of the D.O.E, F.A.A., and E.P.A., relating to agricultural aerial spray operations and hazardous waste disposal) as are presently in effect and may in the future be adopted. The Lessee acknowledges receipt of the Minimum Standards for Aeronautical Activities approved by the Board of County Commissioners.

9) **ENVIRONMENTAL PROTECTION AND INDEMNIFICATION:**

Lessee covenants to comply with all requirements of any law, regulation, order, or any judgment or decree regarding the environment or land use applicable to the Premises or Lessee's operation during the Term of this Lease. Lessee covenants to defend (with legal counsel reasonably acceptable to the County), indemnify, and hold the County harmless for any damage, loss, cost or expense suffered by the County and for any imposition or attempted imposition by any person upon the County of any liability, obligation, or cost of whatever form arising from or related to the environmental condition of the Premises or from a violation, or alleged violation by the Lessee, or from a failure, or alleged failure of the Lessee, to satisfy a requirement of any environmental or land use law or regulation (other than environmental losses that arise from the negligence or willful misconduct of the County). The County acknowledges and agrees that the Lessee shall have no liability whatsoever arising out of pre-existing contamination, to which the Lessee's indemnification set forth herein shall not apply, except to the extent of any release or exacerbation of pre-existing contamination caused by the activities of the Lessee or anyone acting by, through, or under the Lessee that results in a violation of or liability under applicable environmental law.

10) **INSPECTION:**

Lessee agrees that the County and its employees, and agents from the Department of Ecology, Environmental Protection Agency, and any other governmental agency involved in environmental protection, have the right to make inspections any time during normal operating hours, without notice. If it is determined that Lessee has violated federal or state environmental control laws or regulations, upon ten (10) days written notice, Lessee must immediately commence and diligently pursue a permanent solution to the satisfaction of federal, state or local agencies, or vacate the premises (as specifically provided for in the Default Section herein). All costs required to remedy the problem shall be at the expense of the Lessee.

11) **UTILITIES:**

The Lessee shall pay for all utility services supplied or available to the premises.

12) **LEASEHOLD 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 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.

13) **COUNTY'S LIABILITY:**

The County shall not be liable for any damage occasioned by failure to keep said premises in good repair and shall not be liable for any damage done or occasioned by plumbing, water, or sewage, or the breaking, leaking or running of any cistern, tank, water closet, water faucets, or waste pipes in or above or on or about said buildings or premises, nor for damage occasioned by water, snow or ice being upon or coming through the roof, skylight, trapdoor, or otherwise, nor for any damage arising from the accident or neglect of the Lessee or any of its members or any Lessees or occupants of adjacent or continuous property.

14) **ASSIGNMENT:**

The Lessee shall not assign this lease nor any portion thereof nor sublet the premises nor any portion thereof, without the written consent of the County; however, the County shall not unreasonably withhold such consent.

15) **HOLD HARMLESS:**

The Lessee shall indemnify and save the County, its officers and employees harmless from all loss, damage, liability, or expense (including expense of litigation) arising out of or resulting from the actual injury to, or death of, any person, or from any actual loss of or damage to property belonging to any person upon or incident to the leased premises.

16) **INSURANCE:**

The Lessee shall carry and maintain for the mutual benefit of the County and the Lessee, general public liability insurance against claims for bodily injury, death, or property damage occurring on, in or about the premises hereinabove described.

The limits of liability of said premises liability coverage shall be in an amount not less than \$1,000,000 – (each occurrence), throughout the term of this lease. The County reserves the right to increase the amount of coverage stated in order to facilitate future economic growth. The County shall also be named as additional insured. The Lessee shall provide the County a certificate of insurance as evidence of proper insurance coverage at the time of the execution of this lease, and upon each anniversary date of any insurance coverage. The County shall be notified not less than thirty (30) days in advance by a written notice of cancellation, or any change in the insurance policy.

17) **DESTRUCTION BY FIRE:**

In the event that the demised premises shall be damaged by fire or other casualty to such an extent that the same are untenable, then this lease shall, at the option of either the County or the Lessee, be immediately terminated and shall be of no further force and effect; provided, however, that the rental shall be prorated for the portion of the time that the Lessee is able to occupy the premises and all unused rent paid in advance shall be returned. To the extent of any proceeds from fire insurance provided on the demised premises by Lessee, the same shall belong to Lessor to make use of as it sees fit.

18) **INSPECTION:**

At all times during the term of this lease or any extension thereof, the County shall have the right to enter into and upon the demised premises during reasonable business hours for the purpose of examining and inspecting the same and determining whether the Lessee shall have complied with all of its obligations hereunder in respect to the care and maintenance of the premises and all other terms and conditions thereof.

19) **RIGHT OF U.S. GOVERNMENT:**

The County 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, and is hereto 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 further with agrees that it has had ample opportunity to review said deed and is aware of all of the terms and conditions therein.

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) **AFFIRMATIVE ACTION:**

The Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E., to insure that no person shall, on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Lessee assures that it will require that its covered sub-organizations provide assurance to the County that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR 152, Subpart E., to the same effect.

22) **DEFAULT:**

In the event that the Lessee shall violate 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 and if said violations are not corrected within the ten-day period, the lease may be canceled, and the County shall be entitled to peaceably retake possession of the premises, provided the Lessee shall have the right to remove improvements as herein provided.

23) **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:

1. If to Lessor, addressed to:

Attention: Airport Manager  
Kittitas County Department of Public Works  
411 N. Ruby, Ste. #1  
Ellensburg, WA 98926

2. If to Lessee, addressed to:

Valley Fence, Inc.  
PO Box 898  
Ellensburg, WA 98926

Notice shall be deemed to have been received on the date of receipt as shown on the return receipt.

24) **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's fees which shall be determined and taxed by the court as part of the costs of such action. All 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, successors and assigns.

25) **VENUE:**

In the event there is 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.

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**

Approved as to form:

\_\_\_\_\_  
Prosecuting Attorney  
WSBA # \_\_\_\_\_

  
\_\_\_\_\_  
Valley Fence, Inc.

Address:  
PO Box 898  
Ellensburg, WA 98926

Federal I.D: 81-3136952