

PORT OF PORT TOWNSEND AGENDA COVER SHEET

MEETING DATE	December 9, 2020
AGENDA ITEM	<input type="checkbox"/> Consent <input type="checkbox"/> 1 st Reading <input type="checkbox"/> 2 nd Reading <input checked="" type="checkbox"/> Regular Business <input type="checkbox"/> Informational
AGENDA TITLE	VIII. F. Port Townsend Aero Museum – Lease Amendment
STAFF LEAD	Eric Toews, Deputy Director
REQUESTED	<input type="checkbox"/> Information <input checked="" type="checkbox"/> Motion/Action <input type="checkbox"/> Discussion
ATTACHMENTS	A. Info Memo B. Port Townsend Aero Museum Lease Amendment #2 & Exhibit ‘A’

PORT OF PORT TOWNSEND

INFORMATIONAL MEMO

DATE: 12/9/2020
TO: Port Commission
FROM: Sue Nelson, Lease & Contract
SUBJECT: Port Townsend Aero Museum Lease Amendment

ISSUE

The Port Commissioners received a letter dated November 22, 2019 from Mike Payne, Director of the Port Townsend Aero Museum requesting an expansion to their existing museum building. On January 3, 2020 a Letter of Intent (LOI) was executed between the Port and the PTAM, specifying an agreement should be executed by December 31, 2020. On August 26, 2020 expansion plans were approved by the Port Commission.

BACKGROUND

As a co-applicant with the PTAM on the permitting process, an authorized signature from the Port is required on the permit application. The contractor, Mark Grant of Grant Steel Buildings reported they are near the finish line with permit submittal to the Jefferson County Building Department. Upon permit approval by the County, the Lease Amendment will be ready for execution with the Aero Museum.

Amendment No. 2 combines the original ground lease terms for the museum building (12,600 sq. ft.), with Amendment No. 1, the additional 9,288 sq. ft. of ground for the maintenance facilities. Amendment No. 2 clarifies the location and extent of the leased premises; integrates and clarifies the basis upon how rent is calculated and adjusted throughout the lease term; and, modifies and updates provisions concerning rent security deposit.

RECOMMENDATION

Authorize the Executive Director to execute Port Townsend Aero Museum Lease Amendment No. 2, substantially in the form presented.

ATTACHMENTS

Port Townsend Aero Museum Lease Amendment No. 2 and Exhibit 'A'

PORT OF PORT TOWNSEND LAND LEASE AMENDMENT #2

THIS LEASE AMENDMENT made this ____ day of December 2020, by and between the PORT OF PORT TOWNSEND, a municipal corporation organized and existing under the laws of the State of Washington, Lessor, hereinafter referred to as "the Port," and the PORT TOWNSEND AERO MUSEUM, a Washington Non-profit Corporation, hereinafter referred to as "Lessee."

WITNESSETH:

1. On July 24, 2002, the parties entered into a Land Lease with Option Agreement concerning certain premises situated at the Port of Port Townsend's Jefferson County International Airport ("JCIA") facility, situated in Jefferson County, State of Washington, hereinafter referred to as the "Original Lease."
2. The Original Lease described the leased premises as being comprised of "12,600 square feet (plan and location to be determined)"¹ with rent to be charged at 50% of the prevailing rate established for comparable hangars at the JCIA at the time of signing. Further, the Original Lease specified that the use of the premises was to be for "construction and operation of a 12,600 Sq. Ft. Aero Museum that shall be configured as depicted in Attachment A."² No map exhibit exists within the Port's lease file depicting the location and extent of the premises, nor is there any indication that lease Attachment "A" was ever prepared.
3. On August 1, 2008, the parties entered into Lease Amendment #1, which added 9,288 square feet to the premises described in the Original Lease.³ Lease Amendment #1 states that the additional land is "described in Exhibit 'A' attached hereto,"⁴ however, no such exhibit exists within the Port's lease file.
4. Lease Amendment #1 specified that an amount certain be paid for the expansion area of the premises, to wit: \$371.52 upon the effective date of Amendment #1. The rent for the expansion area was apparently reflective of the prevailing rate charged for comparable hangars at the JCIA at the time of execution of Amendment #1.
5. The Original Lease and Lease Amendment #1 contain differing terms as to how adjustments to the rental amount will be determined:
 - a. The Original Lease states that the rental rate will be adjusted every three (3) years to 50% of the prevailing fair market rental rate then in effect for comparable hangar space at the JCIA;

¹ Paragraph #1 of Original Lease.

² Paragraph #5 of Original Lease.

³ The premises were expanded to accommodate the construction of two (2) additional aircraft maintenance buildings consisting of 2,688 square feet and 6,600 square feet respectively (i.e., 9,288 total).

⁴ Paragraph #1 of Lease Amendment #1 to the Original Lease

- b. Lease Amendment #1 states that the rental rate will be adjusted every three (3) years to the rate then prevailing for comparable airport property in the Western Washington area; further, it specifies an arbitration procedure to be followed in the event the parties cannot agree on the fair market adjustment.
6. On January 30, 2020, the parties entered into a Letter of Intent regarding a 5,400 square foot expansion to the original 12,600 square foot Aero Museum. The proposal would extend the southeast wing of the museum display building by 90' to the south.
 7. Neither the Original Lease nor Lease Amendment #1 specifically included adjoining parking areas, sidewalks and landscaping, or access ramp and apron areas surrounding the buildings that were developed and have been repaired and maintained by Lessee.
 8. The Original Lease sets forth rent security requirements that are inconsistent with currently adopted Port Commission policy, which requires minimum security equivalent to three (3) month's rent.
 9. The parties are now agreed that the terms and conditions specified in the Letter of Intent have been satisfied, and that the Original Lease should again be amended to:
 - a. Clarify the location and extent of the leased premises, to include all parking, sidewalks and landscaping, access ramp and apron areas surrounding the three buildings described in the Original Lease and Amendment #1 to the Original Lease;
 - b. Integrate and clarify the basis upon which rent shall be calculated and adjusted throughout the remaining term of the lease; and
 - c. Modify and update provisions concerning rent security to be consistent with, and implement, currently adopted Port Commission policy.

NOW, THEREFORE:

- A. Amendment No. 1 to the Original Lease, executed on September 1, 2008, is hereby repealed in its entirety, and replaced with the language set forth in Article B, below.
- B. Paragraphs 1, 3 and 4 of the Original Lease, executed on July 24, 2002, shall be amended as set forth below (note: deleted text shown in ~~strikeouts~~; new/amended language show with double underlining):
 1. **LEASED PREMISES:** The Port hereby leases to Lessee, and Lessee hereby hires and leases from the Port, the following described premises situated in Jefferson County, State of Washington:

A building site at Jefferson County International Airport equal to 12,600 square feet (plan and location to be determined) for the construction of an Aero Museum, Approximately 134,000 square feet of land located on the northeast portion of the Port's JCIA property, adjacent and to the south of the right-of-way of Airport Road, as

generally depicted on the site map attached hereto as Exhibit "A" and incorporated herein by this reference,

hereinafter called "the premises."

The leased premises include three (3) buildings constructed by Lessee as shown on Exhibit "A", as follows:

- a. Building "A", commonly known as the "Display Building" consisting of approximately 12,600 square feet, which is being expanded at the time of this Lease Amendment #2 to encompass approximately 18,000 square feet;
 - b. Building "B", commonly known as the "Restoration & Maintenance Building" consisting of approximately 6,600 square feet; and
 - c. Building "C", commonly known as the "Paint & Fabric Building" consisting of approximately 2,688 square feet.
3. **RENT:** Lessee agrees to pay as rental for the leased premises the sum equal to 50% of the prevailing rate charged for comparable hangars at JCIA at the time of signing. This rent represents 50% of the fair market value as adopted by the Port Commissioners at the time of signing. The rent for each month shall be paid to the Port in advance on or before the first day of each and every month of the lease term and shall be payable at such place as the Port may hereafter designate. The rental rate shall be adjusted every three (3) years, to 50% of the prevailing fair market rental rate then prevailing for comparable airplane hangar space at JCIA. Lessee agrees to pay as rent for the leased premises calculated as follows:

Building "A" (18,000 sf): i) 12,600 square feet of Building "A" will be calculated at 50% of the prevailing rate charged for comparable JCIA land leases as established by the Port Commission; 5,400 square feet of Building "A" (i.e., the expansion area) will be calculated at 100% of the prevailing rate charged for comparable JCIA land leases as established by the Port Commission;

Buildings "B" and "C" (9,288 sf, inclusive) will be calculated at 100% of the prevailing rate charged for comparable JCIA land leases as established by the Port Commission.

The rent for each month shall be paid to the Port in advance, on or before the first day of each and every month of the lease term and shall be payable at such place as the Port may hereafter designate. The rental rate shall be adjusted every three (3) years to the prevailing Port rate for airport land leases approved by the Port Commission for comparable Port property. In those years when no market rent adjustment is implemented as described above, the rental rate will be adjusted annually by a percentage equal to the accumulative amount found on the Consumer Price Index for all urban consumers (CPI-U) for Seattle-Tacoma-Bremerton, which is compiled by the Department of Labor, Bureau of Statistics.

In no event shall any rent adjustment result in a reduction in rent from the rate paid in the prior year.

4. **SECURITY DEPOSIT:** ~~Lessee shall, upon the execution of this lease and agreement, deposit with the Port two month's rent plus all applicable taxes. The lease is not effective until full deposit is made with the Port.~~ Lessee shall deposit and maintain with the Port throughout the term of this agreement security in an amount equivalent to three (3) month's rent in order to guarantee performance under this Lease. The deposit shall be returned to Lessee upon termination of this Lease, less any charges owing to the Port or expenses incurred by the Port in repairing damage caused by Lessee or restoring the leased premises to the condition required upon termination of this Lease. On the twentieth (20th) anniversary of the date of this Lease and on each fifth (5th) anniversary thereafter, the amount of such security deposit shall be increased in the same proportion as the annual rental is increased above the basic rent charged during the sixth (20th) year of the lease term.

Except as amended hereby, all other terms and conditions of the Original Lease dated July 24, 2002 shall remain unchanged and in effect.

APPROVED this ____ day of December 2020, by the Port of Port Townsend and duly authenticated by the signature of the Executive Director.

LESSEE:

PORT OF PORT TOWNSEND:

Michael Payne, President
Port Townsend Aero Museum

Eron Berg
Executive Director

APPROVED AS TO FORM:

Port Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF JEFFERSON)

On this day before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, MICHAEL PAYNE, PRESIDENT of PORT TOWNSEND AERO MUSEUM, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute the said instrument on behalf of the corporation.

GIVEN under my hand and official seal this ____ day of _____ 20 ____.

Signature

Printed Name

NOTARY PUBLIC in and for the State of Washington, residing at Port Townsend, Jefferson County

My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF JEFFERSON)

On this day before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, ERON BERG, to me known to be the EXECUTIVE DIRECTOR of the PORT OF PORT TOWNSEND and acknowledged the said instrument to be the free and voluntary act and deed of said port district, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute the said instrument on behalf of the port district.

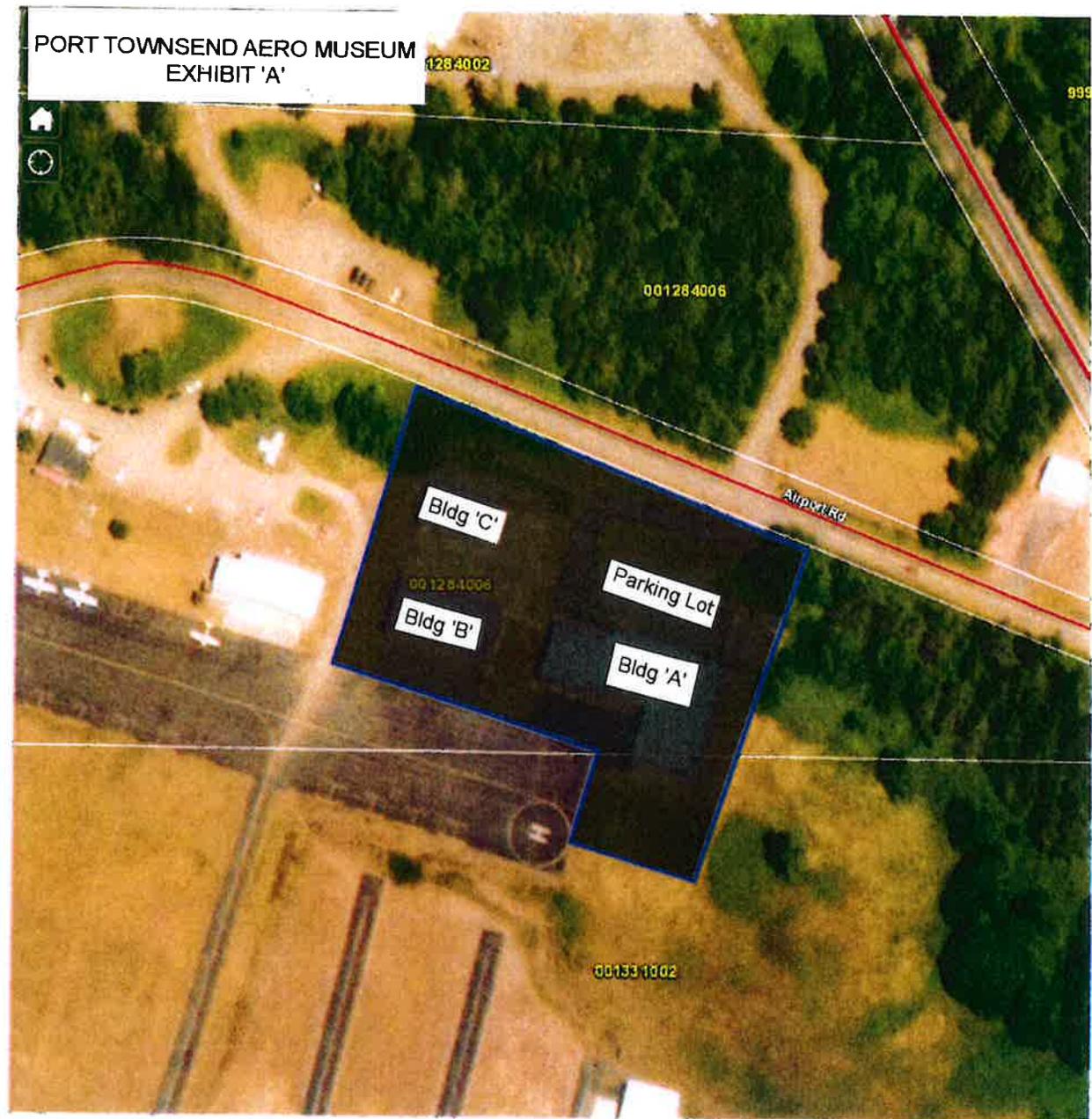
GIVEN under my hand and official seal this ____ day of _____ 20 ____.

Signature

Printed Name

NOTARY PUBLIC in and for the State of Washington, residing at Port Townsend, Jefferson County

My commission expires: _____



Bldg. 'A': Museum Building, expanded, 18,000 sq. ft.

Bldg. 'B': Restoration & Maintenance Building, 6,600 sq. ft.

Bldg. 'C': Paint & Fabric Building, 2,688 sq. ft.