



**Special Board of Directors Meeting Agenda**  
**Fort Worden Lifelong Learning Center Public Development Authority (FWPDA)**  
**Wednesday, June 30, 2021 | 9 a.m.**  
**Via Zoom (Remote Meeting Per Governor Inslee’s Proclamation 20-28.14)**

**To join the webinar by computer/web:**

<https://zoom.us/j/96808701909?pwd=bVhHVFNrbmtjZWWhIUWpCRHZSYVhFQT09>

**Phone only dial:**

1+253-215-8782

Meeting ID: 968 0870 1909

[No Participant ID – #]

Passcode if needed: 602095

*\*9 to raise hand to speak*

---

**Public Meeting Agenda**

- I. Call to Order
- II. Roll Call/Introductions
- III. Public Comment -- Special Meeting Topics only
- IV. Consent Agenda (*packet*)
  - A. Review and approval of the May 26<sup>th</sup> and June 2<sup>nd</sup> 2021 board meeting minutes  
**Action:** Motion to approve the May 26<sup>th</sup> and June 2<sup>nd</sup> 2021 board meeting minutes
  - B. Review and approval of June Accounts Payables  
**Action:** Motion to approve the June Accounts Payables
- V. Bond & Financing Resolutions 21-04 and 21-05 (*packet*)
  - A. Staff Reports & Board Discussion

**Action:** Motion to approve **Resolution 21-04** providing for the issuance of (1) a not to exceed \$1,700,000 principal amount Revenue Refunding Bond, 2021A (Taxable) to refund the Authority’s Revenue Bond, 2018, (2) a not to exceed \$2,095,000 principal amount Revenue Refunding Bond, 2021B (Taxable) to refund the Authority’s Revenue Bond, 2019, and (3) a not to exceed \$1,950,000 principal amount Revenue Bond, 2021C (Taxable) to finance various expenditures; extending the term of the Authority’s Revenue Bond, 2019A; fixing or setting parameters with respect to certain terms and covenants of the bonds; delegating authority to the Authority’s designated representative to set final terms of the sale and issuance of the bonds; and providing for other matters properly related thereto.

**Action:** Motion to approve **Resolution 21-05** establishing two lines of credit and providing for the issuance and sale of two revenue anticipation notes of the Authority, in the aggregate

principal amounts of not to exceed \$250,000 and \$400,000, to evidence the lines of credit; fixing or setting parameters with respect to certain terms and covenants of the notes; delegating authority to the Authority's designated representative to set final terms of the sale and issuance of the notes; and providing for other matters properly related thereto.

VI. Fort Worden Foundation Agreements

A. Staff Reports & Board Discussion

- Office Space Agreement Update
- Makers Square Landlord and Master Tenant Lease Status Report
- Memorandum of Agreement (*packet*)

**Action:** Motion to authorize the Executive Director to execute the Memorandum of Agreement with Fort Worden Foundation, Makers Square Master Tenant, LLC, Makers Square Landlord, LLC, and Makers Square Manager, LLC substantially in the form presented to the Board at a special meeting on June 30, 2021, which confirms a rent schedule paid by the Foundation to the FWPDA and incorporates terms to be included in a lease between Makers Square Master Tenant LLC and Fort Worden Foundation, and to make non-substantive changes that do not materially alter the Memorandum.

VII. Fort Worden Hospitality Contractor Agreement (*packet*)

A. Staff Reports & Board Discussion

**Action:** Motion to amend **Resolution 21-03** (approved June 2, 2021) to conform to the Resolution presented to the Board at its June 30, 2021 meeting, authorizing the Executive Director to execute a Contractor Agreement with Fort Worden Hospitality in substantially the form of agreement presented to the Board on June 30, 2021, which is substantially similar to the terms presented to the Board on May 26 and June 2, 2021, including changes recommended by State Parks, and authorizing the Executive Director to make non-substantive changes that do not materially alter the agreement, and further to negotiate and assist in the implementation of benchmarks with Hospitality allowing Hospitality to exit the agreement if the benchmarks are not met by January 1, 2022.

VIII. Administrative Update

A. Staff Reports & Board Discussion

- Interagency Data Sharing Agreement (FWPDA and SAO) (*packet*)
- Infrastructure Project Funding Update
  - Re-appropriated LCP Funding for Makers Square Site Improvements
  - Public Infrastructure Fund Re-appropriation for Building 203

IX. Finance Reports

A. Staff Reports & Board Discussion

- Hospitality Business on the Books Update (*packet*)
- 2021 Profit & Loss and Cash Flow Statements (*packet*)
- 2020 Update and Restated 2015-2019 Financial Statements
- Makers Square Financial Reconciliation Update

X. Audit Update

- Co-Chairs & Treasurer Report

XI. Public Comment -- Special Meeting Topics only

XII. FWPDA Board Transition

A. Board Report & Discussion

- Resolution 21-06 Regarding Board Transition Objectives (*packet*)
- Board Members Closing Thoughts

**Action:** Motion to approve Resolution **21-06** confirming material completion of the FWPDA board's transition objectives

XIII. Next Regular Board Meeting: Wednesday, July 28, 2021

XIV. Adjourn



**DRAFT Meeting Minutes**  
**Board of Directors Meeting**  
**Fort Worden Lifelong Learning Center Public Development Authority (FWPDA)**  
**Wednesday, May 26th, 2021 | 9 a.m.**  
**Via Zoom (Remote Meeting Per Governor Inslee's Proclamation 20-28.14)**

---

*The meeting recording and agenda materials are available on the public documents page of the FWPDA website: [www.fortworden.org/category/pda-documents/](http://www.fortworden.org/category/pda-documents/)*

- ❖ **Action:** Motion to approve the April 28th, 2021 board meeting minutes. **Unanimously approved**
- ❖ **Action:** Motion to approve the May Accounts Payables. **Unanimously approved**
- ❖ **Action:** Motion to approve Resolution 21-03 authorizing the Interim Executive Director to execute a Concession Agreement with Fort Worden Hospitality in substantially the form of agreement presented and to make non-substantive changes that do not materially alter the agreement presented to the Board on May 26, 2021. **Moved by Hilton, seconded by Heckscher**
- ❖ **Action:** Motion to postpone final review and approval of Resolution 21-03 to a special board meeting on June 2nd at 9 a.m. **Unanimously approved**
- ❖ **Action:** Motion to approve the amended and extended Interim Executive Director contract with David Timmons and to adjust the title to Executive Director. **Unanimously approved**
- ❖ **Action:** Motion to endorse the FWPDA Public Records Act Administrative Policy as presented. **Unanimously approved**

### **Regular Board Meeting**

- I. **Call to Order:** 9:00 a.m.  
The May 26th board meeting was a remote Internet- and phone-based meeting in accordance with the “Stay Home” emergency proclamation issued by Governor Jay Inslee on March 23, 2020 and subsequently extended. Access information to the meeting was published on the Fort Worden PDA website, in a meeting notice to the media, and via email to the campus partner mailing list and other stakeholders.
- II. **Roll Call/Introductions of Board Members and Staff**  
Fort Worden PDA Board Members: Norm Tonina, Todd Hutton, Cindy Finnie, Jane Kilburn, Jeff Jackson, Lela Hilton, Terry Umbreit, Gee Heckscher, Herb Cook  
Staff: David Timmons, Aislinn Diamanti, David Opp-Beckman, Natalie Maitland, Becky Wagner, Joan Rutkowski, and John Watts (legal counsel)
- III. **Changes to Agenda**  
Board co-chair Norm Tonina moved the Fort Worden Hospitality update and resolution to follow the Consent Agenda.
- IV. **Public Comment**

Staff member Joan Rutkowski read into the record public comments received by:

- Paul Eisenhardt, asking the board to further review the proposed restructuring and hold public work sessions on key topics.
- Valerie Stewart, calling for more time for the reorganization process and more information about finances and deferred maintenance needs.
- Mark Blatter, asking the board to delay its decision to assign the Fort’s hospitality operations to a nonprofit and allowing more time for the public to understand the plan and explore alternatives.

Full comments are available on the FWPDA public documents webpage.

[Board member Herb Cook joined the meeting.] Peter McCracken spoke during public comment. McCracken thanked the board for its work during the difficult time and its commitment to transparency. He asked about Dave Robison, the former executive director of the FWPDA, wondering whether Robison is still involved in the Fort Worden Foundation and in what capacity. Tonina responded to say that he does not have that information and the question should be directed to Herb Cook, the president of the Fort Worden Foundation. Later in the meeting, Cook welcomed people to reach out to him about Foundation matters.

## V. Consent Agenda

- A. Review and approval of the April 28th, 2021 board meeting minutes

**Action:** Motion to approve the April 28th, 2021 board meeting minutes

**Unanimously approved**

- B. Review and approval of May accounts payables

**Action:** Motion to approve the May Accounts Payables

**Unanimously approved**

## VI. Fort Worden Hospitality Update and Resolution 21-03 re Fort Worden Hospitality Concession Agreement

### Staff Reports and Board Discussion

Interim Executive Director David Timmons reviewed the list of changes made since the draft concession agreement was last presented. Changes include correcting references to the appropriate party (FWPDA instead of Washington State Parks) and specifying actions that must align with the FWPDA’s master lease requirements with State Parks. Timmons noted the inclusion of a 12-month review period from the effective date for modification of the agreement to allow for additional processes that would be needed. Interim Operations Director Aislinn Diamanti reviewed the business plan for details that will inform exhibits A and B of the agreement and to respond to concerns expressed in public comments. (The business plan PowerPoint is available on the public records webpage.) In response to a concern, Diamanti clarified that Fort Worden Hospitality is a noncharitable nonprofit. She summarized the benefits of the reorganization plan, stating that public development authorities help ensure local control, but they aren’t designed to operate services such as hospitality and often contract with other organizations to run their businesses. Diamanti cited the Vancouver Downtown Redevelopment Authority, which contracts with Hilton Corporation to operate its hotel and convention center. The proposed FWPDA reorganization provides for local control while establishing an entity focused on the business aspects of running a hospitality operation, Diamanti said. Ideas people may have for the campus have to be allowed for by the FWPDA’s master lease with State Parks, which governs what can happen on campus.

Diamanti and Timmons talked about funding needs and timing. To help hospitality overcome the losses from the shutdown during the pandemic and transition to the new operations model, a \$1 million investment from a bank is needed, Diamanti said. Timmons added that the reorganization process has not been rushed from his perspective, but progress must be maintained because hospitality business is coming back and the FWPDA is not in position to meet that demand. Timmons said the reorganization plan blends the benefits of the nonprofit and public entity models that were explored prior to the PDA's development. Diamanti also reviewed the operational needs that will be addressed with expected hospitality revenue over the first few years, as well as plans to build reserves for operations, debt, and capital improvements. Board Treasurer Jeff Jackson added that industry-wide in hospitality, the ownership and management of the underlying real estate and the hospitality operations are almost always separate. Among the benefits of the structure is that the separation will appeal to lenders, investors, and government funders, he said. Board co-chair Todd Hutton said the revenue overview reinforces the point that revenue is not going away from the FWPDA and shows that a percentage of gross hospitality revenue (three percent) is, for the first time, guaranteed to the FWPDA.

Timmons said State Parks has asked for a week to resolve questions about areas of coverage and consistency with the master lease. He said a 25-year lease would require Parks Commission approval, so he is proposing a 20-year term with an additional five years subject to Commission approval. The term is needed to satisfy requirements for a bank loan, he said. In a change from an earlier draft, Timmons said the glamping debt would stay with the FWPDA, to be serviced by Fort Worden Hospitality through a side agreement. Timmons said he recommends that the board move the resolution but not vote, and make another motion to postpone final action until State Parks has had a chance to respond. Timmons noted that the packet includes the nonprofit's bylaws and information about the initial board and three PDA board members who are serving as transition advisors. He said potential investments by Jackson and Tonina are no longer part of start-up plans, and so there is no longer a conflict of interest that would cause them to recuse themselves from hospitality votes.

Board member Cindy Finnie commended the presentation and hospitality staff for their work. Tonina recognized the public comments regarding the concession agreement and offered a few points:

- He reminded the public that the FWPDA has been working on organizational challenges since October. The need for the restructuring plan was the result of not receiving a commitment to guarantee necessary debt financing from the PDA's chartering agency, Tonina said. The plan was introduced in November 2020 and has been the subject of frequent public meetings since then.
- He reiterated Diamanti's comment that the nonprofit hospitality organization is a non-charitable nonprofit and is not looking for gifts. He said there isn't a profit motive for the nonprofit, and it allows profit to stay within Port Townsend.
- Tonina stated that the FWPDA has taken public comment at each of its meetings and taken all comments seriously. He noted that the City requested a seven-day read period for the concession agreement, which has been exceeded.
- Hospitality has a sizable amount of business on the books that needs to be met, Tonina said. For hospitality staff hiring to begin, the concession agreement needs to be approved so that the hospitality organization can secure start-up financing and meet its business commitments.

Mayor Michelle Sandoval provided public comment that she wasn't able to provide earlier. She

asked about the possibility of longer-term housing and artist-in-residency housing on campus in the reorganization plan; she said she would like to see a mechanism that would allow this opportunity to be considered in the near future. Diamanti said there is an opportunity to change the buildings that are involved in the agreement, including during the one-year review period, and hospitality leaders are interested in long-term housing. John Watts, the FWPDA's legal counsel, said time is needed to research the matter before anything definitive can be said. Timmons agreed that more research is needed, noting that the master lease may need to be amended to allow for long-term residencies and the Parks property also is subject to federal guidelines on use for recreational purposes. Hutton said the interest in developing transitional workforce housing on the campus is an important consideration as well. Tonina said the one-year period to revisit the agreement is helpful for flexibility on these matters.

**Action:** Motion to approve Resolution 21-03 authorizing the Interim Executive Director to execute a Concession Agreement with Fort Worden Hospitality in substantially the form of agreement presented and to make non-substantive changes that do not materially alter the agreement presented to the Board on May 26, 2021. **Moved by Hilton, seconded by Heckscher**

**Action:** Motion to postpone final review and approval of Resolution 21-03 to a special board meeting on June 2nd at 9 a.m. **Unanimously approved**

## **VII. Interim Executive Director Contract Update**

### **Staff Report and Board Discussion**

Tonina said Timmons' contract is due to expire on June 30th. He added that he and Hutton continue to talk to Timmons quarterly about whether his workload requires a full-time commitment, and all agree that the need remains full time. Tonina said the purpose of the contract amendment is to move away from an end date to a 90-day notice that could be given by either party. Finnie said that since Timmons has been in place for a long time, she wondered if 'interim' should be removed from the title. Jackson agreed.

**Action:** Motion to approve the amended and extended Interim Executive Director contract with David Timmons and to adjust the title to Executive Director. **Unanimously approved**

## **VIII. Interim Executive Director Administrative Update- *Staff Report and Board Discussion***

**Insurance Renewal.** Timmons said the FWPDA's insurance will renew in September. The FWPDA is insured through Enduris, a self-insurance risk pool for governmental entities and special purpose districts. He said that because of the significant reduction of the FWPDA's employee count when hospitality separates from the FWPDA, the premium will drop by almost \$100,000 to approximately \$20,000 while the coverage will remain the same. Timmons provided an overview of the insurance coverage. (Coverage information is in the board packet). He noted that the FWPDA and 12 entities have filed claims for business interruption due to the pandemic, but the claims are being questioned by the underwriter. Timmons suggested that the current bond coverage for theft be looked at because he considers it to be too low. The cyber liability coverage also needs to be reviewed, he said. Hutton recommended that the new board review the insurance annually.

**Audit Update.** Timmons provided an update on the audit process, which involves a fraud investigation, an accountability audit, and a financial statement audit. He said the audit team is deferring the financial statement audit until the fall to allow more time for the FWPDA to correct financial statements from 2016 to 2020 that reflect a shift from accrual basis to cash basis

accounting. Timmons said he has heard that the state audit team hopes to release the accountability audit in June. He said the fraud investigation is separate and in process, and auditors have not given any indication of alarm or that information will be inconsistent with what the FWPDA has already reported.

**FWPDA's Public Records Act Policy.** Timmons introduced an administrative policy that provides guidance for the submission and fulfillment of public records requests in accordance with the Public Records Act (policy in board packet). Staff modeled the policy on policies from a few other public entities that have been recommended by the Municipal Research and Services Center. Board members and staff talked about how the policy addresses the challenge of honoring public record requests while also protecting against excessive interference with other essential functions due to the time it can take to fulfill requests. Rather than set a max number of hours across the board per month, the policy describes the factors that can influence the public records officer's installment timing estimates and how much time is devoted to particular requests. The policy also allows the executive director to set a maximum number of hours per month for staff to respond to public records requests; Timmons said he has suggested that staff devote a certain number of hours per week on a case-by-case basis. Timmons said it can help if requestors consult with staff and share what they are ultimately interested in so that staff don't spend so much time on a broad scope of documents to get to the point. Board member Herb Cook, who was involved in requests for records in his previous career as a publisher, said he thinks the policy is a reasonable way to deal with the increased volume of requests received by the FWPDA.

**Action:** Motion to endorse the FWPDA Public Records Act Administrative Policy as presented.  
**Unanimously approved**

## **IX. Financial Reports - Staff Report and Board Discussion**

**FWPDA Profit & Loss and Cash Flow Statements.** Contract CPA Becky Wagner reviewed the financial reports and restatement process for the audit. She said all of the Makers Square revenue and expenses are being moved from the FWPDA's books to the Makers Square Landlord LLC (which rolls up to the Fort Worden Foundation) before the conversion from accrual to cash basis accounting. Wagner is working with another CPA who has experience with the conversation to cash basis. Timmons said this shifts the bookkeeping into compliance with the required historic tax credit structure. Wagner reviewed the current statements (in the board packet). She said the cash flow statement shows that the net income is continuing to pay down the payables.

**Financing Request Update.** Timmons summarized financing packages that he is negotiating. One is for a \$1 million start-up loan for Fort Worden Hospitality that would be on that nonprofit's books. The PDA's energy efficiency project loan is termed out and suspended due to the pandemic, and it will soon resume. As for the line of credit for Makers Square, the Master Tenant LLC should be able to fully pay that at the close of the project with a \$1 million advance from First Federal. That advance will pay amounts due to Makers Square contractors, which will trigger the release of historic tax credit payments that will pay off the First Federal loan. He said the FWPDA will assume the glamping project debt and has asked for a \$2 million line of credit that will be termed out over 22 years (principal payments begin after two years). He said the FWPDA will seek an agreement with Fort Worden Hospitality to service the debt. Regarding the restoration of \$1,334,000 in capital funds that were diverted to operations, Timmons said he is negotiating terms with the bank on that. Tonina noted that the overall debt is down from an expected \$5.3 million to \$3.3 million. He said the terms are favorable and having agreements in place will help secure the bank's interest.



**Hospitality Business on the Books Update.** Senior Sales and Marketing Manager Natalie Maitland reviewed the report in the packet. She said bookings and recent business are exceeding projections. New group and some resumed partner activities will be happening this summer, she said. [Jeff Jackson left the meeting at 10:55 a.m.] Maitland said the growing business has helped with bringing back some staff members who had been furloughed during the pandemic and more hiring is needed. Canteen is opening for the season on the Friday of Memorial Day weekend. She said the opening of Taps is on hold largely due to staffing needs, and the hope is to have it open by July. There is room for growth in all business on the books projections, though July and August weekends are largely sold out. The occupancy rate is based on available inventory (and not offline). Buildings that have been offline for projects have been coming back online. Finnie noted the importance of the debt reduction and commended Timmons for his work to help the FWPDA get to this place of returning business. She said that when there are millions in debt, a business has to move quickly and make good decisions that preserve the viability of the business and the responsibilities to State Parks.

**Makers Square Status.** Staff member David Opp-Beckman provided an overview of the Makers Square project. Opp-Beckman said the certificate of occupancy was received over a month ago, and space (building 305) is available for use by KPTZ though some work remains there and elsewhere. A sticking point is remaining exterior painting work which has been held up by the inability to meet temperature requirements, he said. When completed, exterior photos needed for the historic tax credit audit of artifacts can be taken. The delivery of products has held up the completion of work by Clark Construction, he said. Opp-Beckman expressed thanks for Clark Construction and Signal Architecture and the subcontractors for their work on the project. Timmons added that he is working with Watts on a memorandum of understanding between the FWPDA and Fort Worden Foundation's Master Tenant and Landlord LLCs regarding the flow of historic tax credit money at Makers Square

**Infrastructure Project Funding.** Timmons said there hasn't been any update on the draft proposal by State Parks for federal stimulus funding for rehabilitating and maintaining several buildings and infrastructure systems at Fort Worden. News reports indicate that it is tied up in a discussion at the federal level on how to move forward on an infrastructure package. State Parks is in the planning phase for phases three and four of its water main project, Beckman said.

**X. Public Comment**

No comments were shared or submitted in writing for the public comment period.

**XI. Adjourn**

The board adjourned its meeting at 11:07 a.m.



**DRAFT Meeting Minutes**  
**Special Board of Directors Meeting**  
**Fort Worden Lifelong Learning Center Public Development Authority (FWPDA)**  
**Wednesday, June 2, 2021 | 9 a.m.**  
**Via Zoom (Remote Meeting Per Governor Inslee's Proclamation 20-28)**

---

*The meeting recording and agenda materials are available on the public documents page of the FWPDA website: [www.fortworden.org/category/pda-documents/](http://www.fortworden.org/category/pda-documents/)*

- ❖ **Action:** Motion to approve Resolution 21-03 authorizing the Executive Director to execute a Concession Agreement with Fort Worden Hospitality in substantially the form of agreement presented and to make non-substantive changes that do not materially alter the agreement presented to the Board on May 26, 2021, including changes in the form of agreement presented at the June 2, 2021 special meeting.  
**Unanimously approved**

**Regular Board Meeting**

- I. **Call to Order:** 9:03 a.m.  
The June 2, 2021 special board meeting was a remote Internet- and phone-based meeting in accordance with the “Stay Home” emergency proclamation issued by Governor Jay Inslee on March 23, 2020 and subsequently extended. Access information to the meeting was published on the Fort Worden PDA website, in a meeting notice to the media, and via email to the campus partner mailing list and other stakeholders.
- II. **Roll Call/Introductions of Board Members and Staff**  
Fort Worden PDA Board Members: Norm Tonina, Todd Hutton, Jane Kilburn, Jeff Jackson, Herb Cook, Lela Hilton, Terry Umbreit, Gee Heckscher  
Staff: David Timmons, Aislinn Diamanti, Natalie Maitland, Joan Rutkowski, and John Watts (legal counsel)  
Guest: Matt Gurney, Fort Worden Hospitality Board President (present until approximately 9:35 a.m.)
- III. **Fort Worden Hospitality and Resolution 21-03 re Fort Worden Hospitality Concession Agreement**

**Staff Report and Board Discussion**

Timmons walked through the updated draft hospitality agreement, noting proposed changes and feedback from Washington State Parks and responses from the FWPDA shown in colored text and tracked comments (see board packet). He said there were few material changes, and the most significant was to the term. The proposed term is now 20 years, with a five-year extension that would be subject to Parks Commission approval. This allows the agreement to move forward

without Commission approval at the outset, he said. Language was added to state that Fort Worden Hospitality must conform at all times to the terms and conditions of the master lease, and if a conflict exists within the agreement, the terms and conditions of the master lease will prevail. Jackson and Timmons talked about the appropriate place for language that allows for compliance with privacy standards by third-party vendors who provide software for activities such as reservations. Timmons also noted an increase in the proposed concession fee from 3 percent to 3.5 percent, which State Parks asked for to help the FWPDA address its revenue sharing requirement with State Parks that is currently deferred until 2023. Timmons described how an alternative plan for revenue sharing may be developed. Non-material changes included moving most insurance details into Exhibit C and addressing formatting issues.

Interim Operations Director Aislinn Diamanti summarized the updated exhibits. She said the only item not governed by the master lease is that Fort Worden Hospitality will be developing educational and job training programs related to hospitality services. Board Secretary Jane Kilburn asked how events such as THING or the 4th of July celebration would be managed. Diamanti confirmed that partnerships will be explored for future events. She noted that there is a conversation in process with Port Townsend School of Woodworking about changes to the use of Building 304. Timmons added that Fort Worden Hospitality will have primary oversight management of the venues, and there will be a joint management process with partners for use of event venues so that one organization isn't in control of the calendar. Kilburn asked who will manage that process, and Timmons said the structure for that needs to be created.

Matt Gurney, the board president of Fort Worden Hospitality was introduced during the staff report. Gurney lives in Port Townsend and works for FareStart, a Seattle nonprofit that provides job training for individuals with barriers to employment in the food service industry and also runs catering, restaurants, and emergency food assistance.

Tonina asked if there were any public comments, and no comments were shared. Board member Terry Umbreit asked about previous agreements with partners on such matters as pricing and meals. Senior Sales & Marketing Manager Natalie Maitland said Fort Worden Hospitality plans to maintain the partner pricing tier for rentals and looks forward to additional discussions with partners about how to meet business needs and partner needs. The FWPDA employee meal pricing also is being looked at, she said. Jackson said the mission statement makes it clear that Fort Worden Hospitality intends to be supportive of campus partners, which includes discount pricing. He said transparency also is needed about the profit Fort Worden Hospitality is able to generate with the assets it has to work with, noting the challenge of maintaining old buildings and old equipment.

**Action:** Motion to approve Resolution 21-03 authorizing the Executive Director to execute a Concession Agreement with Fort Worden Hospitality in substantially the form of agreement presented and to make non-substantive changes that do not materially alter the agreement presented to the Board on May 26, 2021, including changes in the form of agreement presented at the June 2, 2021 special meeting. **Unanimously approved**

#### **IV. Fort Worden Foundation Memorandum of Agreement**

##### **Staff Report and Board Discussion**

Timmons said he talked with attorney John Watts about the need for a document that describes the flow of funds among Makers Square LLCs, Fort Worden Foundation, and the FWPDA. He said Makers Square expenses have been transferred to the LLC to correct how it was set up originally.

The proposed MOA lays out a general understanding of the relationships between the parties. Watts said some changes will be made to the draft, which hasn't been reviewed yet by the Foundation board of directors. FWPDA board member Herb Cook, who also is president of the Foundation, said he only recently saw the draft agreement. Cook said the Foundation board and legal counsel need to review the agreement, and he noted some changes he anticipates proposing. If the proposed motion authorizing Timmons to make non-material changes and execute the MOA is approved, the FWPDA board and its counsel would need to determine if the Foundation's desired changes are substantive enough to require bringing the agreement back before the FWPDA board, Cook said. Cook stated that he is clearly in a conflict of interest in this situation, and so he would recuse himself from the vote. He said FWPDA board member Cindy Finnie, who also serves on the Foundation board, wanted him to share that she also would recuse herself from the vote if she were present today. Kilburn said the agreement seems to need more time and is not ready for a vote; Hilton agreed. Timmons said the additional time wouldn't impede progress. Tonina said the matter would be revisited at the next board meeting.

Timmons announced the latest proposed timeline for the ongoing state audit, which involves a fraud investigation, an accountability audit, and a financial statement audit. He described recent progress. It was noted that the board has a meeting scheduled for June 23rd and it also may meet on June 30th.

**V. Adjourn**

The board adjourned its meeting at 9:58 a.m.

1:29 PM

06/28/21

**FORT WORDEN PDA**  
**A/P Aging Summary**  
As of June 28, 2021

---

	<u>Current</u>	<u>1 - 30</u>	<u>31 - 60</u>	<u>61 - 90</u>	<u>&gt; 90</u>	<u>TOTAL</u>
Allied Fire & Security, Inc.	0.00	9,013.64	0.00	0.00	0.00	9,013.64
American Express	0.00	1,004.15	1,296.00	1,443.46	27,514.54	31,258.15
Bank of America	0.00	0.00	0.00	0.00	409.08	409.08
City of Port Townsend - Water & Sewer	0.00	8,552.79	0.00	0.00	0.00	8,552.79
NoaNet, Inc.	0.00	7,135.70	0.00	0.00	0.00	7,135.70
PUD #1 of Jefferson County	0.00	14,769.51	14,329.35	20,276.14	-239.50	49,135.50
State Auditor's Office	1,680.40	4,169.00	7,094.30	0.00	0.00	12,943.70
<b>TOTAL</b>	<b><u>1,680.40</u></b>	<b><u>44,644.79</u></b>	<b><u>22,719.65</u></b>	<b><u>21,719.60</u></b>	<b><u>27,684.12</u></b>	<b><u>118,448.56</u></b>

**FORT WORDEN PDA**  
**Capital Fund A/P Aging Summary**  
**All Transactions**

---

	<u>Current</u>	<u>1 - 30</u>	<u>31 - 60</u>	<u>61 - 90</u>	<u>&gt; 90</u>	<u>TOTAL</u>
Clark Construction	0.00	6,258.05	12,670.61	28,858.50	456,081.09	503,868.25
Signal Architecture & Research, PLLC	3,075.00	2,635.70	6,628.78	18,787.32	87,376.92	118,503.72
<b>TOTAL</b>	<b><u>3,075.00</u></b>	<b><u>8,893.75</u></b>	<b><u>19,299.39</u></b>	<b><u>47,645.82</u></b>	<b><u>543,458.01</u></b>	<b><u>622,371.97</u></b>

FORT WORDEN LIFELONG LEARNING CENTER  
PUBLIC DEVELOPMENT AUTHORITY, WASHINGTON

RESOLUTION NO. 21-04

A Resolution of the Board of Directors of the Fort Worden Lifelong Learning Center Public Development Authority providing for the issuance of (1) a not to exceed \$1,870,000 principal amount Revenue Refunding Bond, 2021A (Taxable) to refund the Authority's Revenue Bond, 2018, (2) a not to exceed \$2,320,000 principal amount Revenue Refunding Bond, 2021B (Taxable) to refund the Authority's Revenue Bond, 2019, and (3) a not to exceed \$2,130,000 principal amount Revenue Bond, 2021C (Taxable) to finance various expenditures; extending the term of the Authority's Revenue Bond, 2019A; fixing or setting parameters with respect to certain terms and covenants of the bonds; delegating authority to the Authority's designated representative to set final terms of the sale and issuance of the bonds; and providing for other matters properly related thereto.

WHEREAS, Fort Worden Lifelong Learning Center Public Development Authority, Washington (the "Authority") was created by the City of Port Townsend to manage, promote, develop, secure funds, and enhance the Fort Worden State Park, including implementing a Lifelong Learning Center at the Park; and

WHEREAS, the Authority by its Resolution No 18-03 issued its not to exceed \$1,600,000 principal amount Revenue Bond, 2018 ("2018 Bond") to finance energy efficiency improvements; and

WHEREAS, the Authority by its Resolution No. 19-12 issued its not to exceed \$2,000,000 principal amount Revenue Bond, 2019 ("2019 Bond") to pay a portion of the cost of the Authority's glamping project; and

WHEREAS, the Authority by its Resolution No. 19-16, as amended by Resolution Nos. 20-22 and 21-01, issued its not to exceed \$1,500,000 principal amount Revenue Bond, 2019A ("2019A Bond") to finance the Makers' Square Project; and

WHEREAS, capital funds of the Authority that were designated for purposes of completing the energy efficiency project and glamping project were diverted to pay for Operation and Maintenance Expenses; and

WHEREAS, it is in the interest of the Authority to restore such capital funds and finance various expenditures by issuing a Revenue Bond, 2021C (Taxable); and

WHEREAS, it is in the interest of the Authority to refinance its 2018 Bond and 2019 Bond; and

WHEREAS, Kitsap Bank is willing to purchase the bonds authorized by this resolution and to extend the term of the 2019A Bond;

BE IT RESOLVED by the Board of Directors of the Fort Worden Lifelong Learning Center Public Development Authority as follows:

Section 1. Definitions. As used in this resolution the following words shall have the following meanings:

“*Authority*” means the Fort Worden Lifelong Learning Center Public Development Authority established by the City pursuant to chapter 35.21 RCW.

“*Bank*” means Kitsap Bank, or its successors or assigns.

“*Bond Account*” means the special account of the Authority known as the Debt Service Account for the payment of principal of, and interest on, the Bonds, the 2019A Bond, and any Future Parity Bonds.

“*Bond Register*” means the books or records maintained by the Bond Registrar for the purpose of identifying ownership of the Bonds.

“*Bond Registrar*” initially means the Authority’s Executive Director. At any time following the issuance of the Bonds, however, the Executive Director may determine to appoint a different Bond Registrar, including, but not limited to the fiscal agent of the State of Washington. The term “Bond Registrar” also shall include any successor Bond Registrar appointed by the Executive Director as permitted by law.

“*Bonds*” means the 2021A Bond, 2021B Bond and 2021C Bond.

“*City*” means the City of Port Townsend, Washington.

“*Coverage Requirement*” means an amount of Coverage Revenue equal to 1.20 times the annual debt service due in a year for purposes of Section 10 and 1.20 times the average annual debt service due on the outstanding Bonds, the 2019A Bond, and Future Parity Bonds for purposes of Section 9. For calculating the Coverage Requirement for Future Parity Bonds that bear interest at a variable rate, such Future Parity Bonds shall be assumed to bear interest at a fixed rate equal to the rate published by the Bond Buyer as the index for municipal revenue bonds within the 30-day period prior to the date of calculation. If such index is no longer published, another nationally recognized index for municipal revenue bonds maturing in approximately 20 years shall be used.

“*Coverage Revenue*” means the sum of Revenue, Hospitality Management Fees, Glamping Management Contract Fees and Makers’ Square lease payments received for the applicable period.

“*Designated Representative*” means the officer of the Authority appointed in Section 12 of this resolution to serve as the Authority’s designated representative in accordance with RCW 39.46.040(2).



*“Future Parity Bonds”* means any bonds, notes or other debt of the Authority issued pursuant to Section 9 with a lien on Revenue equal to the lien on Revenue pledged to the Bonds and the 2019A Bond.

*“Glamping Management Contract”* means the glamping management contract executed between Fort Worden Hospitality and the Authority.

*“Glamping Management Contract Fees”* means those fees paid by Fort Worden Hospitality to the Authority pursuant to the Glamping Management Contract.

*“Hospitality Management Agreement”* means that 25-year management agreement executed by and between Fort Worden Hospitality and the Authority.

*“Hospitality Management Fees”* means those fees paid by Fort Worden Hospitality to the Authority pursuant to the Hospitality Management Agreement.

*“Operation and Maintenance Expenses”* means all reasonable and necessary expenses incurred by the Authority in causing its facilities to be operated and maintained in good repair, working order and condition, administration expenses, insurance premiums, audit fees, taxes, professional-service fees, and other expenses incident to the operation of the Authority’s facilities, but excluding depreciation and other non-cash items and expenses subject to reimbursement by tenants.

*“Refunded Bonds”* means the outstanding 2018 Bond and 2019 Bond to be refunded with proceeds of the 2021A Bond and 2021B Bond, respectively.

*“Reserve Account”* means the special account of the Authority established pursuant to this resolution.

*“Reserve Account Requirement”* means for the Bonds, an amount equal to at least \$500,000.

*“Revenue”* means all revenues received by the Authority, donations to the Authority from private parties (unless restricted to a particular use) and advanced deposits from tenants and other users of the Authority’s facilities, but excluding Hospitality Management Fees, Glamping Management Contract Fees and Makers’ Square lease payments, and state and federal grants that are not authorized by the grantee to be used to pay debt service on the Bonds, the 2019A Bond and Future Parity Bonds.

*“Revenue Fund”* means the operating account into which account the Authority pledges and binds itself to pay all of the Revenue as collected.

*“State”* means the State of Washington.

*“2021A Bond”* means the Fort Worden Lifelong Learning Center Public Development Authority Revenue Refunding Bond, 2021A (Taxable) issued pursuant to and for the purposes provided in this resolution.

“*2021B Bond*” means the Fort Worden Lifelong Learning Center Public Development Authority Revenue Refunding Bond, 2021B (Taxable) issued pursuant to and for the purposes provided in this resolution.

“*2021C Bond*” means the Fort Worden Lifelong Learning Center Public Development Authority Revenue Bond, 2021C (Taxable) issued pursuant to and for the purposes provided in this resolution.

“*2019A Bond*” means the Authority’s Revenue Bond, 2019A, issued in the aggregate principal amount of not to exceed \$1,500,000 pursuant to Resolution No. 19-16, as amended by Resolution Nos. 20-22 and 21-01.

“*2019 Bond*” means the Authority’s Revenue Bond, 2019A, issued in the aggregate principal amount of not to exceed \$2,000,000 pursuant to Resolution No. 19-12.

“*2018 Bond*” means the Authority’s Revenue Bond, 2018, issued in the aggregate principal amount of not to exceed \$1,600,000 pursuant to Resolution No. 18-03.

Section 2. Authorization of the Bonds.

A. 2021A Bond. For the purpose of providing funds necessary to refund the 2018 Bond and to pay the costs of issuance and sale of the 2021A Bond, the Authority authorizes the issuance of its revenue refunding bond in the principal amount of not to exceed \$1,870,000 to be designated as the “Fort Worden Lifelong Learning Center Public Development Authority, Washington Revenue Refunding Bond, 2021A (Taxable).” The 2021A Bond shall be dated as of the date of delivery thereof to the Bank, and shall mature no more than 25 years from its dated date.

B. 2021B Bond. For the purpose of providing funds necessary to refund the 2019 Bond and to pay the costs of issuance and sale of the 2021B Bond, the Authority authorizes the issuance of its revenue refunding bond in the principal amount of not to exceed \$2,320,000 to be designated as the “Fort Worden Lifelong Learning Center Public Development Authority, Washington Revenue Refunding Bond, 2021B (Taxable).” The 2021B Bond shall be dated as of the date of delivery thereof to the Bank, and shall mature no more than 25 years from its dated date.

C. 2021C Bond. For the purpose of providing funds necessary to restore the capital funds needed to complete the energy efficiency project and the glamping project, for other expenditures, and to pay the costs of issuance and sale of the 2021C Bond, the Authority authorizes the issuance of its revenue bond in the principal amount of not to exceed \$2,130,000 to be designated as the “Fort Worden Lifelong Learning Center Public Development Authority, Washington Revenue Bond, 2021C (Taxable).” The 2021C Bond shall be dated as of the date of delivery thereof to the Bank, and shall mature no more than 25 years from its dated date.

Section 3. Interest, Payment, Registration and Transfer.

The Bonds shall bear interest at a fixed rate of not to exceed 5.5% per annum from the dated date of each Bond until the earlier of maturity of the Bonds or interest reset date. Any

Bond with an interest reset date prior to maturity shall bear interest at a rate comprised of a commercially available index plus a spread, which rate will not exceed 5.5% as of the date of the Bond. The Bank shall provide notice to the Authority of such rate no less than 30 days prior to the interest reset date of each Bond. Interest shall be calculated on a basis of a 360-day year of 12 30-day months. Interest and principal of each Bond shall be payable on each June 1 and December 1, beginning no later than December 1, 2023.

The Bonds shall be issued in fully registered form. Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America. The Executive Director is appointed to act as Bond Registrar for the Bonds. The Bonds shall be purchased only in registered form as to both principal and interest and shall be recorded on books or records maintained by the Bond Registrar (the "Bond Register"). The Bond Register shall contain the name and mailing address of the Bank. The Bonds may be assigned or transferred by the Bank only in whole and only if endorsed in the manner provided thereon and surrendered to the Bond Registrar. The Bonds may only be assigned by the Bank to another qualified investor satisfying the requirements set forth in the certificate to be signed by the Bank on the date a Bond is issued and that signs a certificate substantially in the form of the certificate signed by the Bank. With an approving opinion of bond counsel to the Authority, a Bond may be transferred to more than one qualified investor in a minimum denomination of \$250,000 each. The Bonds are not subject to acceleration. When a Bond has been paid in full, both principal and interest, it shall be surrendered by the Bank to the Bond Registrar, who shall cancel such Bond.

The Bond Registrar shall keep, or cause to be kept, sufficient books for the registration of the Bonds. The Bond Registrar is authorized, on behalf of the Authority, to authenticate and deliver the Bonds in accordance with the provisions of the Bonds and this resolution, to serve as the Authority's paying agent for the Bonds and to carry out all of the Bond Registrar's powers and duties under this resolution. The Bond Registrar shall be responsible for the representations contained in the Bond Registrar's Certificate of Authentication on the Bonds.

Section 4. Prepayment. The Authority reserves the right and option to prepay all or a portion of the outstanding principal on a Bond on any date. Interest on the principal portion of the Bonds so prepaid shall cease to accrue on the date fixed for such prepayment. The Authority shall provide the Bank not less than 15 business days' notice of its intent to prepay all or a portion of a Bond. If a Bond is repaid before the 10<sup>th</sup> anniversary of such Bond from proceeds of a borrowing, the Authority shall pay the Bank a yield maintenance fee as calculated below:

(a) The prepayment fee will be equal to the present value of the difference, if positive, between (i) the sum of the interest payments that would have accrued during the period from the date of the prepayment to and including the 10<sup>th</sup> anniversary payment of a Bond on each prepaid installment of principal at a fixed interest rate for such installment equal to the Original Funding Rate, as if the prepayment had not been made, less (ii) the sum of the interest payments that would have accrued during such period on each prepaid installment of principal at a fixed interest rate for such installment equal to the Reinvestment Rate, as if the prepayment had not been made. No prepayment fee will be required for any prepayments made on or after the 10<sup>th</sup> anniversary payment of a Bond.

(b) The following definitions will apply to the calculation of the prepayment fee: (i) “Original Funding Rate” means with respect to any prepaid installment of principal, the Swap Rate on the date of issuance of a Bond for a term of 10 years, (ii) “Reinvestment Rate” means with respect to any prepaid installment of principal, the Swap Rate on the date the prepayment fee is calculated by the Bank for a term, interpolated, if necessary, corresponding to the period of time remaining until such principal installment was scheduled to be made, and (iii) “Swap Rate” means, as of any date, the offered fixed rate for a U.S. Dollar interest rate swap with a floating rate equal to the one-month LIBOR index, as determined by the Bank on such date by reference to the Bloomberg service or such other similar data source then used by the Bank for determining such rate; provided, that in the event that the one-month LIBOR index cannot be determined at the required time of determination, then the Swap Rate shall mean the offered fixed rate for a U.S. Dollar interest rate swap with a floating rate based on an index and any adjustment to reflect a different credit spread designated by the Bank as being the most economically comparable to the one-month LIBOR index prior to such event.

Section 5. Bond Account and Reserve Account. A special account of the Authority known as the “Fort Worden Lifelong Learning Center Public Development Authority Debt Service Account” (the “Bond Account”) has been created and shall be drawn upon for the sole purpose of paying and securing the payment of the Bonds, the 2019A Bond, and any Future Parity Bonds. Subaccounts may be created for each Bond. The Authority hereby covenants and agrees to deposit in the Bond Account, Revenue sufficient to pay principal and interest on the Bonds, 2019 Bond and any Future Parity Bonds as such payments are due. The Bonds shall be obligations only of the Bond Account of the Authority.

A special account of the Authority known as the Bond Reserve Account (the “Reserve Account”) shall be created. The Authority shall deposit into the Reserve Account from Revenue an amount equal to the Reserve Account Requirement no later than December 31, 2025. In the event that the amount in the Bond Account is insufficient to pay the debt service due on any payment date, the Authority shall draw on the Reserve Account to make such payment, subject to approval from the Bank. Within 12 months of any withdrawal from the Reserve Account the Authority shall replenish the Reserve Account to the Reserve Account Requirement. The Authority may transfer any amount in excess of the Reserve Account Requirement to the Revenue Fund. If the Authority issues Future Parity Bonds, the Authority may determine that the Future Parity Bonds will not be secured by a reserve account or will be secured by another reserve account.

Section 6. Security for the Bonds; Revenue Fund. The Bonds are special revenue obligations of the Authority and shall be payable solely from the following sources:

- (a) Revenue in the Revenue Fund;
- (b) The Bond Account and Reserve Account;
- (c) The Hospitality Management Fees;
- (d) The Glamping Management Contract Fees; and
- (e) As to the 2021C Bond only, the Makers’ Square lease payments.

The Makers’ Square lease payments shall be deposited directly into the subaccount in the Bond Account for the 2021C Bond.

The Bonds shall not be deemed to constitute general obligations or pledges of the faith and credit of the Authority or debt of the State or the City or any other governmental entity other than the Authority. As stated in the Authority's charter: "All debts, obligations and liabilities incurred by the Authority shall be satisfied exclusively from the assets and properties of the Authority and no creditor or other person shall have any right of action against the City on account of debts, obligations or liabilities of the Authority."

The Revenue deposited into the Revenue Fund shall be used for the following purposes in the following order of priority:

First, to pay Operation and Maintenance Expenses.

Second, to make the required deposits into the Bond Account to pay interest due on the Bonds, the 2019A Bond, and any Future Parity Bonds.

Third, to make the required deposits into the Bond Account to pay principal of and any sinking fund redemptions for the Bonds, the 2019A Bond, and any Future Parity Bonds.

Fourth, to replenish the Reserve Account and any other reserve account securing Future Parity Bonds.

Fifth, to pay any debt with a lien on revenue junior to the Bonds and the 2019A Bond, including the two notes being authorized to be issued on the same date as this resolution, and for other lawful purposes of the Authority.

Section 7. Form, Execution and Authentication of the Bonds. The Bonds shall be prepared in a form consistent with the provisions of this resolution and State law. The Bonds shall be signed on behalf of the Authority by the manual or facsimile signature of a Co-Chair of the Board and attested by the manual or facsimile signature of the Secretary of the Board.

Only the Bonds as shall bear thereon a Certificate of Authentication in the following form, manually executed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this resolution: "This is the Fort Worden Lifelong Learning Center Public Development Authority, Washington Revenue [Refunding] Bond, [2021A/2021B/2021C] (Taxable), dated \_\_\_\_\_, 2021, described in the Bond Resolution." Such Certificate of Authentication shall be conclusive evidence that a Bond so authenticated has been duly executed, authenticated and delivered hereunder and is entitled to the benefits of this resolution.

In case either of the officers who shall have executed the Bonds shall cease to be an officer or officers of the Authority before the Bond so signed shall been authenticated or delivered by the Bond Registrar, or issued by the Authority, such Bond may nevertheless be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the Authority as though those who signed the same had continued to be such officers of the Authority. The Bonds may also be signed and attested on behalf of the Authority by such persons as at the actual date of execution of such Bond shall be the proper officers of the Authority although at the original date of such Bond any such person shall not have been such officer of the Authority.

Section 8. Proceeds from the 2021C Bond. Proceeds from the 2021C Bond shall be deposited as follows:

- (1) The amount necessary to replenish the 2018 Bond proceeds that were used for Operation and Maintenance Expenses shall be deposited into the capital account for the energy efficiency project and used solely for expenditures on the energy efficiency project.
- (2) The amount necessary to replenish the 2019 Bond proceeds that were used for Operation and Maintenance Expenses shall be deposited into the capital account for the glamping project and used solely for expenditures on the glamping project.
- (3) The remaining proceeds shall be deposited into an account that the Executive Director establishes at the Bank and used for the energy efficiency project and glamping project and to pay costs of issuing the 2021C Bond.

The Authority must demonstrate to the Bank that requests to draw on the proceeds will only be used for original project purposes.

Section 9. Additional Bonds. The Authority reserves the right to issue Future Parity Bonds on a parity of lien with the Revenue pledged to the payment of the Bonds and the 2019A Bond if the following conditions are met at the time of the issuance of those Future Parity Bonds:

(1) All payments then required by this resolution have been made into the Bond Account and Reserve Account and no deficiency exists therein.

(2) The total principal amount of Future Parity Bonds issued by June 2031 does not exceed \$5,000,000. For any Future Parity Bonds in excess of \$5,000,000 or issued later than April 2031, there shall be on file from an Authority representative or a third party consultant with experience with revenues collected from public facilities a certificate showing that in his or her professional opinion the Coverage Revenue for any 12 consecutive calendar months out of the immediately preceding 24 calendar months shall be at least equal to the Coverage Requirement for each year thereafter for the outstanding Bonds, 2019A Bond, Future Parity Bonds and the proposed bonds. The consultant may adjust Revenue to reflect increased rates and charges approved by the Board but that were not applicable for the full 12-consecutive-month period.

(3) If Future Parity Bonds proposed to be issued are for the sole purpose of refunding outstanding Parity Bonds, such certificate shall not be required if the amount required for the payment of the principal and interest in each year for the refunding bonds is not increased more than \$5,000 over the amount for that same year required for the bonds to be refunded.

(4) Nothing in this resolution shall prevent the Authority from issuing revenue bonds or like obligations which are a charge upon the Revenue junior or inferior to the charge thereon of the Bonds and the 2019A Bond.

Section 10. General Covenants. For as long as any of the Bonds are outstanding, the Authority hereby covenants as follows:

(1) It will establish, maintain and collect Revenue sufficient to repay the Bonds, the 2019A Bond, and any Future Parity Bonds. Revenue in each fiscal year shall be sufficient to meet the Coverage Requirement beginning with the fiscal year ending December 31, 2023. In calculating Coverage Revenue in a fiscal year, the Authority may deduct Revenue deposited into a rate stabilization account within the Revenue Fund and count as Revenue amounts withdrawn from the rate stabilization account.

(2) It will keep books and accounts showing Revenue and Operation and Maintenance Expenses and have such books audited annually.

(3) As long as the Bank is a qualified depository authorized to hold funds of municipal entities under Washington law, the Authority shall maintain its accounts at the Bank.

(4) It will process merchant services (credit and debit cards) through the Bank by December 31, 2021.

(5) It will have its capital expenditures schedules approved by the Bank.

(6) The Authority will maintain a contingent liquidity line of credit of \$500,000 with expenditures permitted only by approval from the Bank until deposits on account in the Reserve Account satisfy the Reserve Account Requirement. Such line of credit will be replenished within 12 months.

Section 11. Refunding of the 2018 Bond and 2019 Bond. The Authority will deposit a portion of the proceeds of the 2021A Bond into the bond fund for the 2018 Bond to repay the 2018 Bond in full. The Authority will deposit a portion of the proceeds of the 2021B Bond into the bond fund for the 2019 Bond to repay the 2018 Bond in full. The remaining proceeds of the 2021A Bond and 2021B Bond shall be used to pay costs of issuing such bonds.

Section 12. Sale of the Bonds. The Executive Director is appointed as the Designated Representative and is authorized and directed to finalize the terms of the Bonds in the manner and upon the terms deemed most advantageous to the Authority consistent with this resolution.

In determining the final terms of the Bonds, the Designated Representative in consultation with other Authority officials and advisors, shall take into account those factors that, in his or her judgment, will result in the best interest of the Authority, including, but not limited to current financial market conditions and current interest rates for obligations comparable to the Bonds.

Section 13. Reporting Requirements. While any of the Bonds are outstanding, the Authority will provide the Bank:

(1) a copy of its audited financial statements within 30 days after it is received from the State Auditor or independent auditor,

- (2) a copy of audited financial statements of any entities related to the Authority, after such statements are received from the State Auditor,
- (3) a copy of annual reconciliation of Hospitality Management Fees to the Authority's audited financials within 120 days after the end of the fiscal year,
- (4) a monthly balance sheet, profit and loss statement, comparison to budget, and rolling monthly projected 12 month cash flow forecast, and
- (5) other documents that the Bank may reasonably request.

Section 14. Extension of Term of 2019A Bond. The maturity of the 2019A Bond shall be extended to October 1, 2021. All other terms of the 2019A Bond shall be as provided in Resolution No. 19-16, as amended by Resolution Nos. 20-22 and 21-01.

Section 15. Authorization to Officials and Agents. The proper Authority officials are hereby authorized and directed to do everything necessary and proper for the execution and delivery of the Bonds in conformance with the provisions of this resolution and for the proper use and application of the proceeds of the sale thereof as provided in this resolution.

Section 16. Severability. If any one or more of the covenants or agreements provided in this resolution to be performed on the part of the Authority shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements shall be null and void and shall be deemed separable from the remaining covenants and agreements of this resolution and shall in no way affect the validity of the other provisions of this resolution or of the Bonds.



PASSED by the Board of Directors of the Fort Worden Lifelong Learning Center Public Development Authority, Washington, at an open public meeting thereof, this 30th day of June, 2021.

FORT WORDEN LIFELONG LEARNING  
CENTER PUBLIC DEVELOPMENT  
AUTHORITY, WASHINGTON

By \_\_\_\_\_  
Co-Chair

By \_\_\_\_\_  
Co-Chair

ATTEST:

\_\_\_\_\_  
Secretary

## CERTIFICATION

I, the undersigned, Secretary of the Board of Directors (the “Board”) of Fort Worden Lifelong Learning Center Public Development Authority, Washington (the “Authority”), hereby certify as follows:

1. That the attached is a true and correct copy of Resolution No. 21-04 (the “Resolution”) of the Board, duly passed at a special meeting thereof held on the 30<sup>th</sup> day of June, 2021.

2. That said meeting was duly convened and held in all respects in accordance with law (including Proclamation 20-28 made by the Governor of the State of Washington on March 24, 2020, as extended, and acts of the legislative leadership of the State of Washington), and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Commission voted in the proper manner for the passage of said Resolution; that all other requirements and proceedings incident to the proper passage of said Resolution have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 30<sup>th</sup> day of June, 2021.

FORT WORDEN LIFELONG LEARNING  
CENTER PUBLIC DEVELOPMENT  
AUTHORITY, WASHINGTON

\_\_\_\_\_  
Secretary

FORT WORDEN LIFELONG LEARNING CENTER  
PUBLIC DEVELOPMENT AUTHORITY, WASHINGTON

RESOLUTION NO. 21-05

A Resolution of the Board of Directors of the Fort Worden Lifelong Learning Center Public Development Authority, Washington, establishing two lines of credit and providing for the issuance and sale of two revenue anticipation notes of the Authority, in the aggregate principal amounts of not to exceed \$250,000 and \$500,000, to evidence the lines of credit; fixing or setting parameters with respect to certain terms and covenants of the notes; delegating authority to the Authority's designated representative to set final terms of the sale and issuance of the notes; and providing for other matters properly related thereto.

WHEREAS, Fort Worden Lifelong Learning Center Public Development Authority, Washington (the "Authority") was created by the City of Port Townsend to manage, promote, develop, secure funds, and enhance the Fort Worden State Park, including implementing a Lifelong Learning Center at the Park; and

WHEREAS, pursuant to Resolution No. 21-04, the Authority is authorizing the issuance of new money and refunding bonds; and

WHEREAS, the Authority has received loan proposals from Kitsap Bank regarding such bonds; and

WHEREAS, Kitsap Bank's offer is contingent on the Authority establishing two lines of credit; and

WHEREAS, the Authority desires to accept Kitsap Bank's offer to provide such lines of credit;

BE IT RESOLVED by the Board of Directors of the Fort Worden Lifelong Learning Center Public Development Authority, Washington as follows:

Section 1. Definitions. As used in this resolution the following words shall have the following meanings:

"*Authority*" means the Fort Worden Lifelong Learning Center Public Development Authority established by the City of Port Townsend pursuant to chapter 35.21 RCW.

"*Bank*" means Kitsap Bank, or its successors or assigns.

"*Board*" means the Board of Directors of the Fort Worden Lifelong Learning Center Public Development Authority, Washington.

“City” means the City of Port Townsend, Washington, a municipal corporation duly organized and existing under the laws of the State.

“*Designated Representative*” means the officer of the Authority appointed in Section 7 of this resolution to serve as the Authority’s designated representative in accordance with RCW 39.46.040(2).

“*Future Parity Bonds*” means any bonds, notes or other debt of the Authority issued with a lien on Revenue equal to the lien on Revenue pledged to outstanding Parity Bonds.

“*Hospitality Management Agreement*” means that 25-year management agreement executed by and between Fort Worden Hospitality and the Authority.

“*Interest Rate*” means an interest rate mutually acceptable to the Authority and the Bank, not to exceed 5.00% for the 2021A Note and not to exceed 5.00% for the 2021B Note.

“*Maturity Date*” means a date determined by the Designated Representative, no later than December 31, 2025.

“*Note Register*” means the books or records maintained by the Note Registrar for the purpose of identifying ownership of the Notes.

“*Note Registrar*” initially means the Authority’s Executive Director. At any time following the issuance of the Notes, however, the Executive Director may determine to appoint a different Note Registrar, including, but not limited to the fiscal agent of the State of Washington. The term “Note Registrar” also shall include any successor Note Registrar appointed by the Executive Director as permitted by law.

“*Notes*” means the 2021A Note and the 2021B Note.

“*Operation and Maintenance Expenses*” means all reasonable and necessary expenses incurred by the Authority in causing its facilities to be operated and maintained in good repair, working order and condition, administration expenses, insurance premiums, audit fees, taxes, professional-service fees, and other expenses incident to the operation of the Authority’s facilities, but excluding depreciation and other non-cash items and expenses subject to reimbursement by tenants.

“*Parity Bonds*” means the 2021A Bond, the 2021B Bond, the 2021C Bond, the 2019A Bond and any Future Parity Bonds.

“*Registered Owner*” means initially, the Bank.

“*Request for Draw*” means a written request by an authorized officer for a draw on the revolving line of credit authorized to be established by this resolution.

“*Revenue*” means all revenues received by the Authority, donations to the Authority from private parties (unless restricted to a particular use) and advanced deposits from tenants and other users of the Authority’s facilities, but excluding Hospitality Management Fees, Glamping

Management Contract Fees, and Makers' Square lease payments, and state and federal grants that are not authorized by the grantee to be used to pay debt service on the Bonds, the 2019A Bond and Future Parity Bonds.

“*Revenue Fund*” means the operating account into which account the Authority pledges and binds itself to pay all of the Revenue as collected.

“*State*” means the State of Washington.

“*2021A Bond*” means the Authority’s Revenue Refunding Bond, 2021A (Taxable) issued pursuant to and for the purposes provided in Resolution No. 21-04.

“*2021B Bond*” means the Authority’s Revenue Refunding Bond, 2021B (Taxable) issued pursuant to and for the purposes provided in Resolution No. 21-04.

“*2021C Bond*” means the Authority’s Revenue Bond, 2021C (Taxable) issued pursuant to and for the purposes provided in Resolution No. 21-04.

“*2021A Note*” means the Revenue Anticipation Note, 2021A (Taxable) authorized to be issued by this resolution.

“*2021B Note*” means the Revenue Anticipation Note, 2021B (Taxable) authorized to be issued by this resolution.

“*2019A Bond*” means the Authority’s Revenue Bond, 2019A, issued in the aggregate principal amount of not to exceed \$1,500,000 pursuant to Resolution No. 19-16, as amended by Resolutions No. 20-22 and 21-01.

Section 2. Authorization of the Notes; Payment, Registration and Transfer.

A. 2021A Note. For the purpose of providing, on a contingency basis, funds exclusively to pay for Operations and Maintenance Expenses required by the terms of the master lease between the Authority and the State, and paying the costs of issuing the 2021A Note, the Authority hereby establishes a revolving line of credit and to evidence such line, authorizes the issuance of its 2021A Note. The aggregate principal amount of all draws under the 2021A Note shall at no time exceed \$250,000. The 2021A Note shall be designated as the “Fort Worden Lifelong Learning Center Public Development Authority, Washington Revenue Anticipation Note, 2021A (Taxable).” The 2021A Note shall be dated as of the date of its initial delivery to the Bank; shall be numbered AR-1; shall bear interest at the Interest Rate; and shall mature on the Maturity Date.

B. 2021B Note. For the purpose of providing, on a contingency basis, funds exclusively to service debt for any outstanding Parity Bonds, and paying the costs of issuing the 2021B Note, the Authority hereby establishes a revolving line of credit and to evidence such line, authorizes the issuance of its 2021B Note. The aggregate principal amount of all draws under the 2021B Note shall at no time exceed \$500,000. The 2021B Note shall be designated as the “Fort Worden Lifelong Learning Center Public Development Authority, Washington Revenue Anticipation Note, 2021B (Taxable).” The 2021B Note shall be dated as of the date of

its initial delivery to the Bank; shall be numbered BR-1; shall bear interest at the Interest Rate; and shall mature on the Maturity Date.

The Designated Representative is authorized to make Requests for Draws, consistent with this resolution. A Request for Draw shall be made in writing or by email to the Bank and may be made on any business day. Each Request for Draw made by 11:00 a.m. on a business day will be funded on that business day. Each draw shall be recorded in such form as the Authority and the Bank may agree. Each Request for Draw shall be accompanied by a written plan to repay the Note within 12 months of the date of the draw.

Interest on each draw during the Draw Period will bear interest as provided in this resolution. Interest on each Note shall be payable quarterly on each January 1, April 1, July 1 and October 1, beginning on the first of those dates following the first draw on a Note, and on the Maturity Date or upon early prepayment of the Outstanding Principal Balance of the Notes. Principal equal to an amount drawn on a Note shall be paid no later than 12 months, on a basis of actual days in a 360-day year, after the date of that same draw. Draws on the Notes are subject to the written approval of the Bank.

The Notes shall be issued in fully registered form. Both principal of and interest on the Notes shall be payable in lawful money of the United States of America. The Executive Director is appointed to act as Note Registrar for the Notes. The Notes shall be purchased only in registered form as to both principal and interest and shall be recorded on books or records maintained by the Note Registrar (the "Note Register"). The Note Register shall contain the name and mailing address of the Registered Owner. A Note may be assigned or transferred by the Bank only in whole and only if endorsed in the manner provided thereon and surrendered to the Note Registrar. A Note may only be assigned by the Bank to another qualified investor satisfying the requirements set forth in the certificate to be signed by the Bank on the date a Note is issued and that signs a certificate substantially in the form of the certificate signed by the Bank. The Notes are not subject to acceleration. When a Note has been paid in full, both principal and interest, it shall be surrendered by the Bank to the Note Registrar, who shall cancel such Note, provided that as to the 2021B Note, the Note will be cancelled only if the Authority has funded a one-year debt service reserve of at least \$500,000 as required by Resolution No. 21-04.

The Note Registrar shall keep, or cause to be kept, sufficient books for the registration of the Notes. The Note Registrar is authorized, on behalf of the Authority, to authenticate and deliver the Notes in accordance with the provisions of the Notes and this resolution, to serve as the Authority's paying agent for the Note and to carry out all of the Note Registrar's powers and duties under this resolution. The Note Registrar shall be responsible for the representations contained in a Note Registrar's Certificate of Authentication on a Note.

Section 3. Prepayment. The Authority reserves the right and option to prepay all or a portion of the outstanding principal on the Notes on any date. Interest on the principal portion of the Notes so prepaid shall cease to accrue on the date fixed for such prepayment.

Section 4. Payment of the Notes; Security.

(a) Each Note is a special obligation of the Authority payable out of a special fund of the Authority hereby established at the Bank and designated the “Revenue Anticipation Note Fund” (the “Note Fund”). Amounts on deposit in the Note Fund shall be drawn upon only for the purpose of paying the principal of and interest on the Notes.

(b) The Authority hereby covenants that on or before an installment of principal of or interest on the Notes is due, it will deposit in the Note Fund amounts out of the Revenue Fund as shall be necessary, when added to other amounts paid into the Note Fund, to pay the principal of and interest due on the Notes as the same becomes due. The Notes shall have a lien on Revenue junior to the payment of Operation and Maintenance Expenses, and the outstanding Parity Bonds and any Future Parity Bonds. The Notes shall not be deemed to constitute general obligations or pledges of the faith and credit of the Authority or debt of the State or the City or any other governmental entity other than the Authority. As stated in the Authority’s charter: “All debts, obligations and liabilities incurred by the Authority shall be satisfied exclusively from the assets and properties of the Authority and no creditor or other person shall have any right of action against the City on account of debts, obligations or liabilities of the Authority.”

(c) The Authority, and its Designated Representative, hereby reserves the right to negotiate with the City a future agreement whereby the City will covenant to secure one or both of the Notes, subject to the mutual acceptance and approval of the Authority, the City, and the Bank.

Section 5. Form, Execution and Authentication of the Notes. The Notes shall be prepared in forms consistent with the provisions of this resolution and State law. The Notes shall be signed on behalf of the Authority by the manual or facsimile signature of a Co-Chair of the Board and attested by the manual or facsimile signature of the Secretary of the Board.

Only the Notes as shall bear thereon Certificates of Authentication in the following form, manually executed by the Note Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this resolution: “This is the Fort Worden Lifelong Learning Center Public Development Authority, Washington Revenue Anticipation Note, 2021[A/B] (Taxable), described in the Note Resolution.” Such Certificates of Authentication shall be conclusive evidence that the Notes so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this resolution.

In case either of the officers who shall have executed the Notes shall cease to be an officer or officers of the Authority before the Notes so signed shall been authenticated or delivered by the Note Registrar, or issued by the Authority, such Notes may nevertheless be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the Authority as though those who signed the same had continued to be such officers of the Authority. The Notes may also be signed and attested on behalf of the Authority by such persons as at the actual date of execution of such Notes shall be the proper officers of the Authority although at the original date of such Notes any such person shall not have been such officer of the Authority.

Section 6. Additional Debt. The Authority reserves the right to issue Future Parity Bonds upon satisfying the conditions set forth in the resolutions authorizing such bonds.

The Authority reserves the right to issue debt on a parity of lien on the Revenue with the Notes with the consent of the Bank.

Nothing in this resolution shall prevent the Authority from issuing revenue bonds or like obligations which are a charge upon the Revenue junior or inferior to the charge thereon of the Notes.

Section 7. Sale of the Notes. The Executive Director is appointed as the Designated Representative and is authorized and directed to finalize the terms of the Notes in the manner and upon the terms deemed most advantageous to the Authority consistent with this resolution.

In determining the final terms of the Notes, the Designated Representative in consultation with other Authority officials and advisors, shall take into account those factors that, in his or her judgment, will result in the best interest of the Authority, including, but not limited to current financial market conditions and current interest rates for obligations comparable to the Notes.

Section 8. Reporting Requirements. While the Notes are outstanding, the Authority will provide the Bank:

(i) a copy of its audited financial statements within 30 days after it is received from the State Auditor,

(ii) a copy of audited financial statements of any entities related to the Authority after such statements are received from the State Auditor or independent auditor,

(iii) a monthly balance sheet, profit and loss statement, comparison to budget, and rolling monthly projected 12 month cash flow forecast and other documents that the Bank may reasonably request.

Section 9. Authorization to Officials and Agents. The proper Authority officials are hereby authorized and directed to do everything necessary and proper for the execution and delivery of the Notes in conformance with the provisions of this resolution and for the proper use and application of the proceeds of the sale thereof as provided in this resolution.

Section 10. Severability. If any one or more of the covenants or agreements provided in this resolution to be performed on the part of the Authority shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements shall be null and void and shall be deemed separable from the remaining covenants and agreements of this resolution and shall in no way affect the validity of the other provisions of this resolution or of the Notes.



PASSED by the Board of Directors of the Fort Worden Lifelong Learning Center Public Development Authority, Washington, at an open public meeting thereof, this 30<sup>th</sup> day of June, 2021.

FORT WORDEN LIFELONG LEARNING  
CENTER PUBLIC DEVELOPMENT  
AUTHORITY, WASHINGTON

By \_\_\_\_\_  
Co-Chair

By \_\_\_\_\_  
Co-Chair

ATTEST:

\_\_\_\_\_  
Secretary

**CERTIFICATION**

I, the undersigned, Secretary of the Board of Directors (the “Board”) of Fort Worden Lifelong Learning Center Public Development Authority, Washington (the “Authority”), hereby certify as follows:

1. That the attached is a true and correct copy of Resolution No. 21-05 (the “Resolution”) of the Board, duly passed at a special meeting thereof held on the 30<sup>th</sup> day of June, 2021.

2. That said meeting was duly convened and held in all respects in accordance with law (including Proclamation 20-28 made by the Governor of the State of Washington on March 24, 2020, as extended, and acts of the legislative leadership of the State of Washington), and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Commission voted in the proper manner for the passage of said Resolution; that all other requirements and proceedings incident to the proper passage of said Resolution have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 30<sup>th</sup> day of June, 2021.

FORT WORDEN LIFELONG LEARNING  
CENTER PUBLIC DEVELOPMENT  
AUTHORITY, WASHINGTON

\_\_\_\_\_  
Secretary

MEMORANDUM OF AGREEMENT

PARTIES:

1. Fort Worden Public Development Authority (FWPDA).
2. Fort Worden Foundation (Foundation)
3. Makers Square Landlord, LLC (Landlord) (The managing member is Makers Square Manager LLC.)
4. Makers Square Master Tenant, LLC (Master Tenant) (The managing member is Makers Square Manager LLC.)
5. Makers Square Manager, LLC (The managing member is Foundation.)

RECITALS:

- A. By this Memorandum of Agreement (MOA or Memorandum), the parties desire to set forth, confirm, and acknowledge certain understandings, principles and agreements in regard to their collaboration on the Makers Square Project (“Project”) at Fort Worden.
- B. FWPDA is a public development authority organized under the laws of the State of Washington, and has leased portions of Fort Worden State Park pursuant to a Master Lease with the State.
- C. Foundation is a Washington nonprofit corporation that was formed as a supporting organization under federal tax laws to support the mission of FWPDA. In 2021 Foundation amended its Articles of Incorporation and Bylaws to change its status from a supporting organization of the PDA to an independent public charity with 501(c)(3) tax status under section 509(a)(1) or 501(a)(2) of the Internal Revenue Code.

- D. FWPDA undertook planning for the Makers Square Project to rehabilitate certain buildings at Fort Worden, retained architects, developed designs and projections for uses, and developed a project budget, and following FWPDA Board approval, undertook the project.
- E. In developing a project budget, FWPDA identified funding sources that included grants and federal historic tax credits (HTCs). Approval of the HTCs and certain grant funding required FWPDA and Foundation to collaborate. Specifically, the process for securing HTCs required new entities (the LLCs) to be created that would be controlled by a non-governmental entity, Foundation. These entities are Makers Square Landlord LLC, Makers Square Master Tenant LLC, and Makers Square Manager LLC. FWPDA, with the approval of Foundation, initiated formation of the LLCs.
- F. The HTC structure (again, for the purpose of placing control over the property subject to HTCs in a non-governmental entity) required leases for Project buildings from FWPDA to Master Landlord, and from Master Landlord to Master Tenant.
- G. FWPDA and Foundation agreed that there would be a lease from Master Tenant to Foundation to allow Foundation to manage the Project area and facilities. (Separately, the parties agreed that Master Tenant would lease a portion of the Project to KPTZ Radio.)
- H. The HTC structure allowed private investment to be secured for the Project in return for the HTC investor receiving tax credits. The HTC process resulted in significant funding for the Project.
- I. FWPDA and Foundation agree that, upon the private investor's full realization of the tax credits (likely in 2026), the LLCs will terminate, and the leases created between FWPDA and Master Landlord, and between

Master Landlord and Master Tenant, and between Master Tenant and Foundation will terminate, so that FWPDA will assume the position of lessor of Makers Square, while Foundation and KPTZ will remain in their positions as lessees. The parties agree to cooperate in terminating the HTC structure once the investor notifies the parties it has fully realized HTC tax credits. The parties further agree that any subleases or use agreements entered into by Foundation for Makers Square will survive termination of the LLCs, so long as the sublease or use agreement is consistent with the Master Lease, and does not extend beyond the term of the FWPDA to Foundation lease or allows FWPDA to terminate the lease or use agreement at the expiration of the FWPDA to Foundation lease.

- J. FWPDA and Foundation understand and agree, as part of their common interests and enterprise, that FWPDA anticipated receiving, and relied on receiving, receipts from tax credits and grants obtained by Foundation or its LLCs, and income from leases entered into by Foundation, and KPTZ as lessees of facilities developed by the Project. FWPDA and Foundation further agreed that HTC receipts and capital grants obtained by Foundation or its LLCs for Makers Square would be transferred to FWPDA (less any required reserves and a reasonable allowance for LLC or Foundation expenses). FWPDA and Foundation further agree that lease payments made by Foundation and KPTZ to Master Tenant LLC will be transferred to FWPDA (less any required reserves and a reasonable allowance for LLC or Foundation expenses.)
- K. This Memorandum sets forth the understanding and agreement that receipts from the Project realized by Master Tenant will flow through to FWPDA in amounts set forth in and subject to the terms of this Memorandum.

- L. Without these understandings and agreements set forth in this Memorandum, FWPDA would be left with obligations associated with development of the Makers Square Project, while Master Tenant (managed by Makers Square Manager LLC, which is managed by Foundation) would receive income from Makers Square free of those obligations. But for the understandings and agreements in this Memorandum, FWPDA would not have incurred obligations related to the Makers Square Project and/or incurred other expenses.
- M. In recognition of Foundation's fundraising efforts on behalf of Makers Square and its important role in securing the HTCs, the parties agree that from proceeds of the sale of HTCs to a private investor, Foundation shall be entitled to retain 1.5%. In addition, Foundation shall be entitled to deduct 1.5% from amounts it agrees to pay FWPDA that are set forth in the terms of this Memorandum (and specifically the Rent Schedule). This MOA shall not be deemed to dictate the terms of any lease subsequently negotiated between Foundation, as lessee of Makers Square, and Master Tenant LLC, as lessor of Makers Square; or of any lease subsequently negotiated between Foundation, as sublessor of Makers Square, and another entity or entities as sublessees or contractual occupants of Makers Square, as long as any lease or contract complies with the terms of the Master Lease and this MOA. This MOA shall not be deemed to require Foundation to "pass through" to Master Tenant or FWPDA rental or other income from sublessees or contractual occupants of Makers Square, as long as Foundation complies with the terms of its lease with Master Tenant.
- N. Specifically, and in consideration of their understandings and mutual promises and reliance by the parties in the common interests and enterprise set forth in this Memorandum, the parties agree they are legally bound by

the terms set forth in a Term Sheet attached hereto as Exhibit 1 (including Exhibits to the Term Sheet). These terms, which the parties to this Memorandum agree benefit all the parties, will be incorporated into a lease agreement between Master Tenant and Foundation.

O. These Recitals are a material part of this Memorandum, and are intended as effective and binding between the parties.

### AGREEMENT

Now therefore, based on mutual consideration and benefits, the parties agree to adhere and be bound by the understandings and agreements set forth in this Memorandum of Agreement.

### **SIGNATURE BLOCKS**

1. Fort Worden Public Development Authority (FWPDA)
2. Fort Worden Foundation (Foundation)
3. Makers Square Landlord, LLC (Master Landlord) (The managing member is Makers Square Manager LLC.)
4. Makers Square Master Tenant, LLC (Master Tenant) (The managing member is Makers Square Manager LLC.)
5. Makers Square Manager, LLC (The managing member is Foundation.)

## Makers Square Lease Term Sheet

### Buildings 305 (Main and Upper floors), 308, and 324

**Recitals**

FWPDA entered into lease with Makers Square Landlord LLC (“Landlord”) (December 2017).

Landlord LLC will enter into a lease with Master Tenant LLC (“Master Tenant”) at HTC closing (projected to be no later than 22 Feb 2021).

Master Tenant will enter into a sub-lease with Fort Worden Foundation (“Foundation”) on or before August 1, 2021.

FWPDA, Landlord, Master Tenant, Foundation and Makers Square Manager, LLC (the managing member of Landlord and Master Tenant, and whose managing member is Foundation) have agreed to terms set forth in a Memorandum of Agreement (MOA).

The MOA sets forth the parties understandings and agreements on various matters, including, their agreement that the terms in this Term Sheet will be incorporated into a lease agreement between Master Tenant and Foundation.

**Building Premises:**

<i>Building</i>	<i>Program Sq. Ft.</i>	<i>Common Area Sq Ft.</i>
305*	6,411	5,783
308	2,050	395^
324	2,195	807^

\*Excludes basement space leased to KPTZ

^ If one tenant leases entire building, Common Area Sq Ft will be added to Program Sq Ft

**Estimated Building Square Footage:**

10,656 square feet with 6,985 square feet in Common Area spaces (excluding KPTZ space in the basement of building 305)

**Land:**

The legal description of the Makers Square land is detailed in Exhibit A. The Foundation will manage the exterior deck attached to building 305 in addition to the Makers Square quad separate from the buildings along with any designated parking.

**Term:**

25 years total, inclusive of the Master Tenant LLC lease, which will hold the lease for the initial term (first 5 years) with options for two 5-year renewals. At the expiration of the 25-year term, the



parties agree to negotiate in good faith for mutually agreeable terms for one 10-year extension.

<b>Commencement:</b>	August 1, 2021, unless otherwise agreed by the parties. FWPDA and Foundation agree that the lease will not commence before both parties agree that the premises are ready for occupancy.
<b>Foundation Capital Improvement Offsets (CIO):</b>	<p>Capital improvements to Leased Premises in amount and application to rent payment is set forth in the attached "Rent Spreadsheet" marked Exhibit B.</p> <p>The Foundation raised \$6.2 million in private gifts to fund the rehabilitation and development of the stated Makers Square buildings. The Foundation will receive a CIO totaling 35% of these gifts, equaling \$2,170,000 over the 25-year term of this lease. Should the Foundation decide to assign their lease for any or all of the Makers Square buildings, the CIO will not transfer but remain with the Foundation for the 25-year term of this lease.</p>
<b>Alterations:</b>	Any alterations during the term of the lease must be consistent with the sub-lease between Makers Square Master Tenant LLC and the Fort Worden Foundation, as tenant.
<b>Rent Commencement Date</b>	Rent commencement date is August 1, 2021, unless otherwise agreed by the parties. As of the Rent Commencement date, the rental amount is set forth in the attached "Rent Schedule" marked Exhibit B.
<b>Fixed Rent:</b>	The rental amount is set forth in the attached "Rent Schedule" marked Exhibit B.
<b>State Leasehold Tax Rate:</b>	A monthly leasehold tax rate of 12.84% will be added to the rent (required by state of Washington), unless the Foundation is exempt from this payment. Documentation of exemption must be provided by the Foundation to FWPDA.
<b>Schedule of Rent:</b>	Rent shall be due on the first day of the month. Any rent payment not made by Foundation within sixty days of the due date shall bear interest at the rate of 12 percent per annum from the date originally due until the date paid.
<b>Assignment / Sublease</b>	Foundation can assign or sublease the Premises to sub-tenant(s) without prior written consent of FWPDA as long as subtenant offers lifelong learning programming in the areas of arts, education, or culture. Should the Foundation sublease any or all of

the Makers Square buildings, the CIO will not transfer but remain with the Foundation for the 25-year term of this lease.

**Rent Adjustment:** Rent adjustments are set forth in attached “Rent Spreadsheet” marked Exhibit B.

**Annual Rent Increase:** On the first anniversary of the lease commencement date, and on each anniversary, thereafter, rent payable under this Lease Agreement shall be increased 2.5 percent.

**Sub-recipient Requirements** Foundation will be required to adhere to and comply with all sub-recipient requirements, as outlined in Exhibit C.

<b>Gifts</b>	<b>Grants</b>	<b>Contracts</b>
Sage Foundation	(F)BFA- B1804	KPTZ
Chandler #1	(PDA)LCP-117	Slate Roof (WSP)
Chandler #2	(PDA)LCP	
Anonymous Donor	(F)SAT	
Individual Donor	(PDA)HCP - 19-11	
	Murdock	
	First Federal Community Foundation	
	Norcliffe	

**Value Exchange** FWPDA may negotiate value exchanges with the Foundation for the attraction of and addition of new program areas along with new artisan and education organizations.

**Deposit:** FWPDA policies require a two-month advance lease deposit. The Executive Director shall waive this deposit in recognition of the Foundation’s fundraising efforts to rehabilitate the Makers Square buildings.

**Utilities:** All Makers Square buildings have been separately metered. If the Foundation sub-leases an entire building to a tenant, the tenant will be required to create an account with and pay all utilities for operation of their assigned premises—water, electric and fuel oil. For buildings housing multiple tenants or users, the Foundation will bill utilities to tenants based on relative square footage by tenant.

FWPDA anticipates having better utility cost information in 2023 and will reserve the right to adjust costs based on actual expenses

per square foot, which shall impact the Common Area Maintenance fee described below.

**Campus Maintenance Fee**

Beginning in 2022, all lessees within the Fort Worden Campus may be charged an annual common area maintenance fee to offset costs incurred by FWPDA in maintaining external grounds and parking areas not included in tenant leases. Foundation agrees to pay its share of the maintenance fee.

**Makers Square Common Area Maintenance Fee**

Foundation is responsible for Makers Square Common Area Maintenance expenses and may establish a fee based on relative sublessee square footage to allocate this expense.

**Internet, Phone, and Technology:**

FWPDA will provide access to high speed internet and Wi-fi for Foundation use. Foundation agrees to pay the cost for “100 Mbps service connect” bandwidth and any price increases of the then Vendor during the Term. Any bandwidth requirements above existing service connection will result in a corresponding increased monthly internet service cost.

The PDA will provide VoIP phone service to the premises. VoIP phone lines require high speed internet access only and will be run through FWPDA-contracted services. The initial Internet and Wi-fi connection fee shall be paid by the Foundation to FWPDA as a one-time service charge.

**Fixtures and Equipment:**

Personal property, trade fixtures and equipment placed by Foundation in the premises shall not become part of FWPDA real property.

All other fixtures, equipment and improvements (e.g., lights, carpet, tile, etc.) constructed ~~that~~ or installed in the building are deemed part of the real property and shall become part of the real property of FWPDA.

**Insurance:**

Foundation shall provide liability insurance of not less than one million dollars combined single limit per occurrence with a general aggregate limit of not less than two million dollars during the full lease term.

Foundation shall provide industrial insurance coverage as required by L&I for itself and its employees and clients.

Foundation will provide a hold harmless agreement consistent with those provided by other FWPDA tenants to defend and to hold and

save the PDA harmless from all liability or expense of litigation in connection with allegation of injury or damage.

Standard Indemnification provisions typical for FWPDA shall apply.

**Use of Premises:** The Foundation Premises shall be used only for the for various artistic, cultural, and educational uses and event purposes by Tenant or other lawful uses, and for incidental uses related thereto, and for no other use or purpose (the “*Permitted Use*”).

**Parking:** Parking for employees and clients will be immediately adjacent to the east side of Building 305 and other designated areas. These parking spaces are not exclusive to the use of Foundation’s employees, clients, users and tenants.

**Signage:** Any exterior signage proposed by the Foundation must be approved by the FWPDA Executive Director or designee.

**Premises “As-Is”** Standard FWPDA lease terms provide that Foundation, in accepting the premises, accepts the premises in their present condition, “as in, where is, with all faults”. Foundation shall employ best effort to attract sub-tenants that will be compatible with the operation of the KPTZ radio station in the basement of building 305.

**Additional Terms:** Good Neighbor Policy: Compliance with FWPDA’s Good Neighbor Policy is required regarding any special events by Foundation at Fort Worden.

Other FWPDA Leases and Concession Agreements: From the Commencement Date of this Lease Agreement, in the event that FWPDA negotiates any long-term lease or concession agreement (defined as a lease or concession agreement which is effectively longer than 10 years (for example, if a shorter term plus any extension, renewal or the like extends the total term beyond 10 years), including any option or renewal periods) for another lessee or concessionaire at Fort Worden, then to the extent that the agreement provides rental rate or concession terms to the lessee or concessionaire that are more favorable to the lessee or concessionaire in any material respect than the rights and benefits of Foundation in this Lease Agreement, then the same terms shall be offered to Foundation commencing on the date of the lease or concession agreement with another lessee. For example, if FWPDA negotiates a capital investment offset to another lessee at

40% or a concession rate agreement that would be more favorable to the Foundation than this lease agreement , then from the date of that lease or concession agreement, (1) the capital investment offset provided Foundation at 35% in the Rent Spreadsheet (Exhibit C) would be amended to 40% for the remaining term of the Lease Agreement, or; (2) the Foundation shall have the opportunity to convert to a concession agreement with similar terms. If the parties disagree on whether a term is more favorable, they agree to negotiate the issue in good faith.

## EXHIBIT A

### LEGAL DESCRIPTION - LAND

A portion of the following described real property lying within Section 35, Township 31 North, Range 1 West, W.M., Jefferson County, State of Washington:

Commencing at a point on the meander line of the Strait of Juan de Fuca in Section 26, Township 31 North, Range 1 West, W.M., said point being the Northwest corner of Fowler's Donation Land Claim; Thence South 92.98 feet to the Jefferson County Monument No. 40; Thence South 1,786.00 feet; Thence North 89°54'00" East, 208.5 feet to a 6"X6" monument, the True Point of Beginning; Thence North 89°54' East 649.92 feet; Thence South 67°23'30" East, 692.01 feet; Thence South 79°26'30" East, 357.46 feet; Thence South 83°39'30" East, 322.42 feet; Thence North 78°03'30" East, 884.62 feet; Thence South 4°22'30" East, 775.04 feet; Thence South 78°09' East, 368.82 feet to the West edge of Front Street (vacated); Thence South 82°40' East, 54.88 feet to the Inner Harbor line; Thence South 8°23' West, 728.87 feet along the Inner Harbor line; Thence South 23°05' East, 728 feet along the Inner Harbor line; Thence North 79°30' West, 3,059.11 feet along the North line of 17th Street, Pettygrove's 2nd Addition to Port Townsend, as recorded in Volume 2 of Plats, page 17, records of Jefferson County, Washington, to the Southeast corner of the Military Cemetery; Thence North 10°40' East, 222 feet to the Northeast corner of the Military Cemetery; Thence North 79°30' West, 230.03 feet to the Northwest corner of the Military Cemetery; Thence North 10°40' East, 134.95 feet; Thence North 38°45' West, 128.4 feet; Thence North 0°05' West, 544.0 feet; Thence South 89°52' West, 232.3 feet; Thence North 0°07' East, 835.5 feet to the True Point of Beginning;

EXCEPTING that certain parcel of land containing the shorelands, tidelands and a portion of the uplands facing the Strait of Juan de Fuca, East of a line commencing at a point on the North line of 17th Street, Pettygrove's Second Addition to Port Townsend, as recorded in Volume 2 of Plats, page 17, 8' East of Roadway No.2, (which roadway runs generally North and South on the bluff overlooking the Strait of Juan de Fuca); Thence generally in a Northerly direction parallel to said Roadway No.2 along the Easterly side of the concrete and brick gate post nearest the Strait of Juan de Fuca at the Southeast gate;

Thence running parallel to said Roadway No. 2 to its intersection with Roadway No. 1, Thence running parallel to said Roadway No. 1, 8' from its Easterly edge to the North boundary line of the former Fort Worden Military Reservation;

EXCEPTING ALSO, any portion lying within Spruce Street, Admiralty Avenue and W Street.

## **EXHIBIT A (CONT'D)**

The Real Property consists of a portion of PARCEL F: (portion of tax parcel 101 351 001) as legally described in the Master Lease dated November 8, 2013, between the State of Washington State Parks and Recreation Commission, as landlord, and Fort Worden Foundation Lifelong Learning Center Public Development Authority, as tenant. The buildings (305, 308, and 324) are located on that portion of the Real Property depicted on the map annexed hereto.

Makers Square Lease Term Sheet  
Buildings 305 (Main and Upper floors), 308, and 324

EXHIBIT B  
RENT SCHEDULE

Building	Square feet	Common Area
305	6,691	5,783
308	2,050	395
324	2,195	807
	<b>10,936</b>	<b>6,985</b>

<b>2021 Market Rate</b>	<b>\$ 1.00</b>
<b>Annual Escalation</b>	2.5%
<b>Square Feet</b>	10,936

<b>Foundation gifts</b>	\$ 6,200,000
<b>Capital Investment</b>	
<b>Offset maximum (35%)</b>	\$ 2,170,000
<b>Historic Tax Credits</b>	\$ 1,400,000
<b>35% Offset Max</b>	\$ 490,000

Year	Target Market Rate	Annual Lease Payment	Capital Investment Offset (CIO)	Lease Payment before HTC	HTC Offset (35%)	Final Lease Payment	Final Effective Lease Rate	Cumulative Revenue
0	\$ -			\$ -				\$ -
1	\$ 1.00	\$ 131,232	\$ 82,231	\$ 49,001	\$ 49,000	\$ 1	\$ 0.00	\$ 1
2	\$ 1.03	\$ 134,513	\$ 85,512	\$ 49,001	\$ 49,000	\$ 1	\$ 0.00	\$ 2
3	\$ 1.05	\$ 137,876	\$ 48,256	\$ 89,619	\$ 49,000	\$ 40,619	\$ 0.31	\$ 40,621
4	\$ 1.08	\$ 141,323	\$ 49,463	\$ 91,860	\$ 49,000	\$ 42,860	\$ 0.33	\$ 83,481
5	\$ 1.10	\$ 144,856	\$ 50,699	\$ 94,156	\$ 49,000	\$ 45,156	\$ 0.34	\$ 128,637
6	\$ 1.13	\$ 148,477	\$ 51,967	\$ 96,510	\$ 49,000	\$ 47,510	\$ 0.36	\$ 176,147
7	\$ 1.16	\$ 152,189	\$ 53,266	\$ 98,923	\$ 49,000	\$ 49,923	\$ 0.38	\$ 226,070
8	\$ 1.19	\$ 155,994	\$ 54,598	\$ 101,396	\$ 49,000	\$ 52,396	\$ 0.40	\$ 278,466
9	\$ 1.22	\$ 159,893	\$ 55,963	\$ 103,931	\$ 49,000	\$ 54,931	\$ 0.42	\$ 333,396
10	\$ 1.25	\$ 163,891	\$ 57,362	\$ 106,529	\$ 49,000	\$ 57,529	\$ 0.44	\$ 390,925
11	\$ 1.28	\$ 167,988	\$ 58,796	\$ 109,192		\$ 109,192	\$ 0.83	\$ 500,118
12	\$ 1.31	\$ 172,188	\$ 60,266	\$ 111,922		\$ 111,922	\$ 0.85	\$ 612,040
13	\$ 1.34	\$ 176,492	\$ 61,772	\$ 114,720		\$ 114,720	\$ 0.87	\$ 726,760
14	\$ 1.38	\$ 180,905	\$ 63,317	\$ 117,588		\$ 117,588	\$ 0.90	\$ 844,348
15	\$ 1.41	\$ 185,427	\$ 64,900	\$ 120,528		\$ 120,528	\$ 0.92	\$ 964,876
16	\$ 1.45	\$ 190,063	\$ 66,522	\$ 123,541		\$ 123,541	\$ 0.94	\$ 1,088,417
17	\$ 1.48	\$ 194,815	\$ 68,185	\$ 126,630		\$ 126,630	\$ 0.96	\$ 1,215,046
18	\$ 1.52	\$ 199,685	\$ 69,890	\$ 129,795		\$ 129,795	\$ 0.99	\$ 1,344,841
19	\$ 1.56	\$ 204,677	\$ 71,637	\$ 133,040		\$ 133,040	\$ 1.01	\$ 1,477,881
20	\$ 1.60	\$ 209,794	\$ 73,428	\$ 136,366		\$ 136,366	\$ 1.04	\$ 1,614,248
21	\$ 1.64	\$ 215,039	\$ 75,264	\$ 139,775		\$ 139,775	\$ 1.07	\$ 1,754,023
22	\$ 1.68	\$ 220,415	\$ 77,145	\$ 143,270		\$ 143,270	\$ 1.09	\$ 1,897,293
23	\$ 1.72	\$ 225,925	\$ 79,074	\$ 146,851		\$ 146,851	\$ 1.12	\$ 2,044,144
24	\$ 1.76	\$ 231,573	\$ 81,051	\$ 150,523		\$ 150,523	\$ 1.15	\$ 2,194,667
25	\$ 1.81	\$ 237,363	\$ 83,077	\$ 154,286		\$ 154,286	\$ 1.18	\$ 2,348,952
<b>Totals</b>		<b>\$ 4,482,592</b>	<b>\$ 1,643,639</b>		<b>\$ 490,000</b>			



**EXHIBIT C: SUBRECIPIENT REQUIREMENTS**

Grant	Date	\$ Amount	Description	Pertinent terms
Building for the Arts – 18-96601-004	19 Jan '18	\$1,231,900	Capital expenditures related to the rehabilitation of 305 - Sage Arts and Education Building	<ul style="list-style-type: none"> <li>- Grantee must use property for the purpose stated in the contract for 10 years from final payment</li> <li>- “Taxpayers of the State of Washington” must be identified in any publication, communication, or donor recognition identifying the financial participants in the project</li> <li>- When renovations are complete, the facility will be used as an arts, culture, and education space.</li> <li>- Grantee certifies it will participate in Leadership in Energy and Environmental Design (LEED) certification</li> </ul>
Heritage Capital Project – 19-11	27 Feb '20		Rehabilitate buildings 308 and 324	<ul style="list-style-type: none"> <li>- Maintain ownership or lease on the property for 13 years from date of contract completion</li> <li>- Agency maintains right of entry for 13 years to ensure contract compliance</li> <li>- Announce in publicity materials and on a permanent marker that the State of Washington is a source and that the Washington State Historical Society the administrator of these funds</li> <li>- Develop a comprehensive interpretive displays that highlight how B308 and 324 evolved from military admin uses to support artistic and educational programming</li> <li>- Enable public access to history through preservation activities such as caring for the buildings and artifacts and conducting history interpretation activities such as tours, exhibits, and other history programs.</li> </ul>
Local and Community Projects – 20-96627-117	1 July '19	\$661,500	Capital expenditures related to the rehabilitation of 308 and 324	<ul style="list-style-type: none"> <li>- Deed of Trust shall remain in full force and effect for a period of 10 years following the final payment of state funds to the Grantee</li> <li>- “Taxpayers of the State of Washington” must be identified in any publication, communication, or donor recognition identifying the financial participants in the project</li> <li>- Grantee certifies it will participate in Leadership in Energy and Environmental Design (LEED) certification</li> </ul>
Local and Community Projects – 21-96633-048	1 July '20	\$543,200	Capital expenditures related to the rehabilitation of 305 - Sage Arts and Education Building	<ul style="list-style-type: none"> <li>- Deed of Trust shall remain in full force and effect for a period of 10 years following the final payment of state funds to the Grantee</li> <li>- “Taxpayers of the State of Washington” must be identified in any publication, communication, or donor recognition identifying the financial participants in the project</li> <li>- Grantee certifies it will participate in Leadership in Energy and Environmental Design (LEED) certification</li> </ul>
M. J. Murdock Charitable Trust	5 Dec '19	\$500,000	Rehabilitation of Building 305	<ul style="list-style-type: none"> <li>- A top-off grant, contingent on completing the project as proposed and obtaining the balance of funds required to complete funding by January 1, 2022</li> <li>- Press releases, publications, public addresses, and social media announcements resulting from a grant should include acknowledgement of the M. J. Murdock Charitable Trust, with copies shared with the Trust</li> </ul>

Save America's Treasures	16 Sep '19	\$500,000	Rehabilitation of Fort Worden building 305	<ul style="list-style-type: none"> <li>- Work funded under this grant will not overlap with project costs used for Historic Tax Credits</li> <li>- All information submitted for publication or other public releases of information regarding this project shall carry the following disclaimer. "The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Government. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government."</li> </ul>
--------------------------	------------	-----------	--	---

**RESOLUTION NO. 21-03 [Amended June 30, 2021]**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE FORT WORDEN  
LIFELONG LEARNING CENTER PUBLIC DEVELOPMENT AUTHORITY  
AUTHORIZING AND DIRECTING THE ~~INTERIM~~ EXECUTIVE DIRECTOR TO  
EXECUTE AN AGREEMENT WITH FORT WORDEN HOSPITALITY TO MANAGE  
AND OPERATE HOSPITALITY SERVICES AND FACILITIES AT THE FORT  
WORDEN CAMPUS**

**RECITALS:**

- A. This Resolution of the Board of Directors of the Fort Worden Lifelong Learning Center Public Development Authority (Fort Worden Public Development Authority, or FWPDA) authorizes the ~~Interim~~ Executive Director to execute an ~~concession~~ agreement with Fort Worden Hospitality, a WA nonprofit corporation, to manage and operate hospitality services and facilities within the Fort Worden campus.
- B. The FWPDA's charter, adopted in September 2011, specifically directs the FWPDA to undertake, assist with, and facilitate the implementation of a Lifelong Learning Center at Fort Worden State Park consistent with the 2008 Fort Worden Long Range Plan, and to develop the necessary agreements and partnerships for the use, operation, management, and development of State-owned facilities and properties within the Park.
- C. The FWPDA's master lease with Washington State Parks establishes that the FWPDA, as tenant, shall use the campus for "purposes consistent with a Lifelong Learning Center" as articulated in Parks planning documents, and that "such uses may evolve and change over time while remaining focused on uses consistent with a Lifelong Learning Center concept." The lease further states that the tenant "shall promote the use of the Campus facilities for nonprofit, government and corporate events, meetings, workshops, seminars, and conferences even if such promotion and use is not the highest and best market use and may reduce the overall net revenues (due to discounted lease or conference rates); provided, however, Tenant shall also actively promote, market, and make available the facilities for independent travelers, family retreats, and other users."
- D. Beginning in the spring of 2020, COVID-19 and resulting emergency public health measures directed by the State caused the closure of hospitality and accommodation services at the Fort for approximately 4 months. Facing cash deficit conditions as a result of COVID-19 impacts on business and the use of capital monies for operations, the FWPDA's Interim Executive Director and Board of Directors began reviewing the long-term sustainability of the current operating model, which was not producing revenue sufficient to address capital and maintenance needs on campus.
- E. At the November 25, 2020 FWPDA board meeting, the Interim Executive Director presented a draft reorganization concept that included the creation of an entity that would operate as an enterprise service provider for all food/beverage/hospitality services under a long-term agreement with the FWPDA. The presentation proposed that structural changes would address challenges with the FWPDA's current role as a public entity

running a hospitality business. He stated that the current model is unsustainable with projected ongoing budget deficits.

- F. At the December 9, 2020 FWPDA board meeting, the Interim Executive Director presented the “FWPDA Recovery and Reorganization Plan” and recommended that the FWPDA reorganize to develop new opportunities to restore and acquire revenues to support expenditures and continue hospitality services. The presentation stated that for the continuity of campus services, the FWPDA needs to pivot to a new model to be prepared for the post-COVID environment. The plan built on the presentation at the Board’s November 25, 2020 meeting for the formation of a new entity to operate hospitality services under a long-term franchise agreement. The new entity would allow a board composed of hospitality experts to focus on hospitality, limit constraints on customary hospitality practices stemming from being operated by a government entity, separate routine maintenance needs from capital needs, and help create long-term sustainability for campus services.
- G. The Interim Executive Director advised at the meeting that the plan represents in his opinion the only way forward for the FWPDA to ensure long-term viability of hospitality operations and lifelong learning opportunities, and the viability of the Fort as a whole for the benefit of its partners, the community at large, and the state. Separating hospitality services from asset management services allows a hospitality entity to focus on hospitality services, and work with partners on those issues to the benefit of the partners and community, and better fulfill that portion of FWPDA responsibilities under the master lease. At the same time, the FWPDA can focus on asset management to more effectively find the constituents, tax benefits, and investment to enhance and rehabilitate those assets, and therefore be in a better position to fulfill that portion of FWPDA responsibilities under the master lease.
- H. On December 9, 2020, the FWPDA Board adopted Resolution 20-21 approving the reorganization concept outlined in the “FWPDA Recovery and Reorganization Plan,” subject to Board approval of implementing measures and actions presented in the future by the Interim Executive Director, and directing the Interim Executive Director to take initial steps to implement the reorganization as outlined in the plan.
- I. On December 16, 2020, the FWPDA Board, on recommendation of the Interim Executive Director and legal counsel, amended Resolution 20-21 to replace references to a “not-for-profit limited liability corporation (LLC)” with a “nonprofit corporation” as the best legal structure for the new hospitality service model, citing that Washington State RCWs offer more and better guidance for nonprofits.
- J. Authorized reorganization steps include 1) filing for the creation of a nonprofit corporation that, once formed and organized with a new board, would enter into negotiations with the FWPDA for a long-term agreement to operate hospitality services at the Fort, and 2) if appropriate, transferring on a short-term basis (not to exceed one year) hospitality services operations to the new nonprofit corporation, pending long-term agreements that would be subject to future Board approval.

- K. The Interim Executive Director filed articles of incorporation for Fort Worden Hospitality as a Washington Nonprofit Corporation with the Secretary of State, effective December 22, 2020, with the mission stated as: “Fort Worden Hospitality welcomes visitors to a treasured state asset -- Fort Worden State Park and Lifelong Learning Center. We connect people to the park’s resources: the lifelong learning center campus; the cultural, educational, artistic, environmental, and recreational programs offered by the park’s partner organizations; and the trails, beaches, and historic batteries. We also provide hospitality packages; meeting and event spaces; food services; and lifelong learning programming.”
- L. At the January 27, 2021 board meeting, the Interim Executive Director and FWPDA hospitality staff presented a 2021 budget outlook. The Interim Executive Director stated he would be working with FWPDA staff and an informal hospitality advisory team to review budget projections and operational issues. The outlook presented an overview of a Hospitality board with extensive hospitality and/or financial management experience, and anticipated operational changes and forecasting for leisure, group, and restaurant activity and proposed that Fort Worden Hospitality formally separate from the FWPDA on July 1, 2021.
- M. At the meeting, the Interim Executive Director stated he had reviewed the concept for a separate entity operating hospitality services with Gerry Johnson (Pacifica, Seattle), an attorney with expertise in public development authorities, who advises there was no legal issue with the concept.
- N. At the meeting, the Interim Executive Director also stated he had reviewed the concept and projections with representative of the State Auditor’s Office, and they had no audit or legal issues with the concept.
- O. At the February 24, 2021 board meeting, the Interim Executive Director and FWPDA hospitality staff presented for discussion 1) a draft ~~concession contract~~ term sheet that outlined hospitality services to be provided and 2) a Fort Worden Hospitality Business Plan for 2021-2022 that included a five-year pro forma. The ~~B~~board voted to authorize the ~~B~~board co-chairs and Interim Executive Director to negotiate the terms of a Hospitality ~~C~~oncession ~~C~~ontract and bring a formal proposal to the ~~B~~board in March.
- P. At the March 24, 2021 board meeting, the Interim Executive Director and FWPDA hospitality staff presented an updated draft term sheet and draft ~~concessionaire~~ agreement between the FWPDA and Fort Worden Hospitality to commence July 1, 2021 for 25 years. The draft agreement was modeled on a WA State Parks concession agreement template. The draft terms noted that Fort Worden Hospitality would fulfill all terms of public benefit in the FWPDA’s master lease with State Parks and provide public reports for operational transparency.
- Q. At the March 24 meeting, the Interim Executive Director reported to the board that the hospitality advisory team has been analyzing history, trends, and projections and has concluded that Fort Worden Hospitality’s business model is viable and sustainable.

- R. At the March 24, meeting FWPDA board member and treasurer Jeff Jackson, with extensive background in hospitality businesses, and who has been reviewing hospitality projections and providing advice to the Interim Executive Director, concurred with the Interim Executive Director’s recommended approach because it best meets the goals of sustainability in both hospitality and asset management areas.
- S. At the March 24, 2021 meeting, the FWPDA board authorized the Board Co-Chairs, Interim Executive Director, and FWPDA attorney to incorporate the draft terms as presented into a Fort Worden Hospitality ~~concessionaire~~-agreement and provide a final draft with a minimum 7-day public notice of a special board meeting to consider final adoption by the FWPDA ~~B~~board.
- T. At its April 28, 2021 meeting, the FWPDA ~~B~~board accepted the Fort Worden Hospitality draft ~~concession~~ documents as substantially consistent with the draft terms previously presented to the Board, and approved a first reading of the ~~concession~~-contract with final consideration and action to occur at a future meeting.
- U. The ~~concession~~-agreement does not affect Makers Square, which is separately managed by Makers Square Master Tenant, LLC (whose managing partner is the Fort Worden Foundation).

~~V.~~ — At its May 26, 2021 meeting, the FWPDA ~~B~~board moved to approve Resolution 21-03, and then approved a motion to postpone final action until a special meeting on June 2, 2021 to allow for additional input and board consideration.

V.

W. At the June 2, 2021 special meeting, the Board approved Resolution 21-03, authoring the Executive Director to execute an agreement with Fort Worden Hospitality in substantially the form of agreement presented to the Board on May 26, 2021 (including changes presented June 2, 2021).

X. The Board now desires to amend Resolution 21-03 to incorporate comments and suggestions from State Parks, and to re-authorize the Executive Director to execute the agreement as set forth in this Resolution.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Fort Worden Lifelong Learning Center Public Development Authority:

1. The Board amends Resolution 21-03 (passed June 2, 2021) as follows: Resolution 21-03 now reads as adopted by the Board on June 30, 2021 (and replaces the form of Resolution passed June 2, 2021).
2. The Board authorizes the ~~Interim~~-Executive Director to execute an ~~an~~-Concession ~~a~~Agreement with Fort Worden Hospitality to manage and operate hospitality services at Fort Worden in substantially the form of agreement presented to the Board at its special meeting on June 30, 2021 (which is substantially similar to the form of agreement presented to the Board at its regular meeting on May 26, 2021,

Formatted: Indent: Left: 0.5", Right: 0", No bullets or numbering

Formatted: Indent: Left: 0.5", Right: 0", No bullets or numbering

Formatted: Indent: Left: 0.5", Right: 0", No bullets or numbering

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

Formatted: Indent: Left: 1"

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

including changes in the form of agreement presented at the June 2, 2021 special meeting), and includes changes recommended by State Parks since June 2, 2021, and

3. The Board authorizes~~ing~~ the Executive Director to negotiate and assist in the implementation of benchmarks with Hospitality allowing Hospitality to exit the agreement if the benchmarks are not met by January 1, 2022; The ~~Interim~~ Executive Director is authorized to make non-substantive changes to the agreement that do not materially alter the agreement presented to the Board.

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

**ADOPTED** by the Board of Directors of the Fort Worden Lifelong Learning Center Public Development Authority at a special meeting thereof, held the 2nd day of June, 2021, and amended on the 30th day of June, 2021,

By: \_\_\_\_\_  
Norm Tonina, Co-Chair

ATTEST:

By: \_\_\_\_\_  
Jane Kilburn, Secretary

By: \_\_\_\_\_  
Todd Hutton, Co-Chair

**RESOLUTION NO. 21-03 [Amended June 30, 2021]**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE FORT WORDEN  
LIFELONG LEARNING CENTER PUBLIC DEVELOPMENT AUTHORITY  
AUTHORIZING AND DIRECTING THE EXECUTIVE DIRECTOR TO EXECUTE AN  
AGREEMENT WITH FORT WORDEN HOSPITALITY TO MANAGE AND OPERATE  
HOSPITALITY SERVICES AND FACILITIES AT THE FORT WORDEN CAMPUS**

**RECITALS:**

- A. This Resolution of the Board of Directors of the Fort Worden Lifelong Learning Center Public Development Authority (Fort Worden Public Development Authority, or FWPDA) authorizes the Executive Director to execute an agreement with Fort Worden Hospitality, a WA nonprofit corporation, to manage and operate hospitality services and facilities within the Fort Worden campus.
- B. The FWPDA's charter, adopted in September 2011, specifically directs the FWPDA to undertake, assist with, and facilitate the implementation of a Lifelong Learning Center at Fort Worden State Park consistent with the 2008 Fort Worden Long Range Plan, and to develop the necessary agreements and partnerships for the use, operation, management, and development of State-owned facilities and properties within the Park.
- C. The FWPDA's master lease with Washington State Parks establishes that the FWPDA, as tenant, shall use the campus for "purposes consistent with a Lifelong Learning Center" as articulated in Parks planning documents, and that "such uses may evolve and change over time while remaining focused on uses consistent with a Lifelong Learning Center concept." The lease further states that the tenant "shall promote the use of the Campus facilities for nonprofit, government and corporate events, meetings, workshops, seminars, and conferences even if such promotion and use is not the highest and best market use and may reduce the overall net revenues (due to discounted lease or conference rates); provided, however, Tenant shall also actively promote, market, and make available the facilities for independent travelers, family retreats, and other users."
- D. Beginning in the spring of 2020, COVID-19 and resulting emergency public health measures directed by the State caused the closure of hospitality and accommodation services at the Fort for approximately 4 months. Facing cash deficit conditions as a result of COVID-19 impacts on business and the use of capital monies for operations, the FWPDA's Interim Executive Director and Board of Directors began reviewing the long-term sustainability of the current operating model, which was not producing revenue sufficient to address capital and maintenance needs on campus.
- E. At the November 25, 2020 FWPDA board meeting, the Interim Executive Director presented a draft reorganization concept that included the creation of an entity that would operate as an enterprise service provider for all food/beverage/hospitality services under a long-term agreement with the FWPDA. The presentation proposed that structural changes would address challenges with the FWPDA's current role as a public entity



running a hospitality business. He stated that the current model is unsustainable with projected ongoing budget deficits.

- F. At the December 9, 2020 FWPDA board meeting, the Interim Executive Director presented the “FWPDA Recovery and Reorganization Plan” and recommended that the FWPDA reorganize to develop new opportunities to restore and acquire revenues to support expenditures and continue hospitality services. The presentation stated that for the continuity of campus services, the FWPDA needs to pivot to a new model to be prepared for the post-COVID environment. The plan built on the presentation at the Board’s November 25, 2020 meeting for the formation of a new entity to operate hospitality services under a long-term franchise agreement. The new entity would allow a board composed of hospitality experts to focus on hospitality, limit constraints on customary hospitality practices stemming from being operated by a government entity, separate routine maintenance needs from capital needs, and help create long-term sustainability for campus services.
- G. The Interim Executive Director advised at the meeting that the plan represents in his opinion the only way forward for the FWPDA to ensure long-term viability of hospitality operations and lifelong learning opportunities, and the viability of the Fort as a whole for the benefit of its partners, the community at large, and the state. Separating hospitality services from asset management services allows a hospitality entity to focus on hospitality services, and work with partners on those issues to the benefit of the partners and community, and better fulfill that portion of FWPDA responsibilities under the master lease. At the same time, the FWPDA can focus on asset management to more effectively find the constituents, tax benefits, and investment to enhance and rehabilitate those assets, and therefore be in a better position to fulfill that portion of FWPDA responsibilities under the master lease.
- H. On December 9, 2020, the FWPDA Board adopted Resolution 20-21 approving the reorganization concept outlined in the “FWPDA Recovery and Reorganization Plan,” subject to Board approval of implementing measures and actions presented in the future by the Interim Executive Director, and directing the Interim Executive Director to take initial steps to implement the reorganization as outlined in the plan.
- I. On December 16, 2020, the FWPDA Board, on recommendation of the Interim Executive Director and legal counsel, amended Resolution 20-21 to replace references to a “not-for-profit limited liability corporation (LLC)” with a “nonprofit corporation” as the best legal structure for the new hospitality service model, citing that Washington State RCWs offer more and better guidance for nonprofits.
- J. Authorized reorganization steps include 1) filing for the creation of a nonprofit corporation that, once formed and organized with a new board, would enter into negotiations with the FWPDA for a long-term agreement to operate hospitality services at the Fort, and 2) if appropriate, transferring on a short-term basis (not to exceed one year) hospitality services operations to the new nonprofit corporation, pending long-term agreements that would be subject to future Board approval.

- K. The Interim Executive Director filed articles of incorporation for Fort Worden Hospitality as a Washington Nonprofit Corporation with the Secretary of State, effective December 22, 2020, with the mission stated as: “Fort Worden Hospitality welcomes visitors to a treasured state asset -- Fort Worden State Park and Lifelong Learning Center. We connect people to the park's resources: the lifelong learning center campus; the cultural, educational, artistic, environmental, and recreational programs offered by the park's partner organizations; and the trails, beaches, and historic batteries. We also provide hospitality packages; meeting and event spaces; food services; and lifelong learning programming.”
- L. At the January 27, 2021 board meeting, the Interim Executive Director and FWPDA hospitality staff presented a 2021 budget outlook. The Interim Executive Director stated he would be working with FWPDA staff and an informal hospitality advisory team to review budget projections and operational issues. The outlook presented an overview of a Hospitality board with extensive hospitality and/or financial management experience, and anticipated operational changes and forecasting for leisure, group, and restaurant activity and proposed that Fort Worden Hospitality formally separate from the FWPDA on July 1, 2021.
- M. At the meeting, the Interim Executive Director stated he had reviewed the concept for a separate entity operating hospitality services with Gerry Johnson (Pacifica, Seattle), an attorney with expertise in public development authorities, who advises there was no legal issue with the concept.
- N. At the meeting, the Interim Executive Director also stated he had reviewed the concept and projections with representative of the State Auditor’s Office, and they had no audit or legal issues with the concept.
- O. At the February 24, 2021 board meeting, the Interim Executive Director and FWPDA hospitality staff presented for discussion 1) a draft term sheet that outlined hospitality services to be provided and 2) a Fort Worden Hospitality Business Plan for 2021-2022 that included a five-year pro forma. The Board voted to authorize the Board co-chairs and Interim Executive Director to negotiate the terms of a Hospitality contract and bring a formal proposal to the Board in March.
- P. At the March 24, 2021 board meeting, the Interim Executive Director and FWPDA hospitality staff presented an updated draft term sheet and draft agreement between the FWPDA and Fort Worden Hospitality to commence July 1, 2021 for 25 years. The draft agreement was modeled on a WA State Parks concession agreement template. The draft terms noted that Fort Worden Hospitality would fulfill all terms of public benefit in the FWPDA’s master lease with State Parks and provide public reports for operational transparency.
- Q. At the March 24 meeting, the Interim Executive Director reported to the board that the hospitality advisory team has been analyzing history, trends, and projections and has concluded that Fort Worden Hospitality’s business model is viable and sustainable.

- R. At the March 24, meeting FWPDA board member and treasurer Jeff Jackson, with extensive background in hospitality businesses, and who has been reviewing hospitality projections and providing advice to the Interim Executive Director, concurred with the Interim Executive Director's recommended approach because it best meets the goals of sustainability in both hospitality and asset management areas.
- S. At the March 24, 2021 meeting, the FWPDA board authorized the Board Co-Chairs, Interim Executive Director, and FWPDA attorney to incorporate the draft terms as presented into a Fort Worden Hospitality agreement and provide a final draft with a minimum 7-day public notice of a special board meeting to consider final adoption by the FWPDA Board.
- T. At its April 28, 2021 meeting, the FWPDA board accepted the Fort Worden Hospitality draft documents as substantially consistent with the draft terms previously presented to the Board, and approved a first reading of the contract with final consideration and action to occur at a future meeting.
- U. The agreement does not affect Makers Square, which is separately managed by Makers Square Master Tenant, LLC (whose managing partner is the Fort Worden Foundation).
- V. At its May 26, 2021 meeting, the FWPDA Board moved to approve Resolution 21-03, and then approved a motion to postpone final action until a special meeting on June 2, 2021 to allow for additional input and board consideration.
- W. At the June 2, 2021 special meeting, the Board approved Resolution 21-03, authoring the Executive Director to execute an agreement with Fort Worden Hospitality in substantially the form of agreement presented to the Board on May 26, 2021 (including changes presented June 2, 2021).
- X. The Board now desires to amend Resolution 21-03 to incorporate comments and suggestions from State Parks, and to re-authorize the Executive Director to execute the agreement as set forth in this Resolution.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Fort Worden Lifelong Learning Center Public Development Authority:

1. The Board amends Resolution 21-03 (passed June 2, 2021) as follows:  
Resolution 21-03 now reads as adopted by the Board on June 30, 2021 (and replaces the form of Resolution passed June 2, 2021).
2. The Board authorizes the Executive Director to execute an agreement with Fort Worden Hospitality to manage and operate hospitality services at Fort Worden in substantially the form of agreement presented to the Board at its special meeting on June 30, 2021 (which is substantially similar to the form of agreement presented to the Board at its regular meeting on May 26, 2021, including changes in the form of agreement presented at the June 2, 2021 special meeting), and includes changes recommended by State Parks since June 2, 2021, and

3. The Board authorizes the Executive Director to negotiate and assist in the implementation of benchmarks with Hospitality allowing Hospitality to exit the agreement if the benchmarks are not met by January 1, 2022. The Executive Director is authorized to make non-substantive changes to the agreement that do not materially alter the agreement presented to the Board.

**ADOPTED** by the Board of Directors of the Fort Worden Lifelong Learning Center Public Development Authority at a special meeting thereof, held the 30th day of June, 2021

By: \_\_\_\_\_  
Norm Tonina, Co-Chair

ATTEST:

By: \_\_\_\_\_  
Jane Kilburn, Secretary

By: \_\_\_\_\_  
Todd Hutton, Co-Chair

**Fort Worden Lifelong Learning Center Public Development Authority  
Fort Worden Hospitality  
~~CONCESSION CONTRACTOR~~ AGREEMENT (DRAFTV4 June 30th)**

**Commented [JR1]:** ANDY WOO/ATG: Maybe change to "Contractor" and "Contractor Agreement"

This ~~CONCESSION CONTRACTOR~~ AGREEMENT ("Agreement"), by and between the FORT WORDEN LIFELONG LEARNING CENTER PUBLIC DEVELOPMENT AUTHORITY ("FWPDA") and FORT WORDEN HOSPITALITY ("~~CONTRACTOR~~ Concessionaire"), grants non-exclusive (except where otherwise stated) concession rights on the Fort Worden State Park campus in Jefferson County, Washington, SUBJECT TO the terms and conditions contained in this Agreement, including exhibits to this Agreement, which are incorporated into and made a part of this Agreement by reference.

#### RECITALS

- A. Whereas, pursuant to the Master Lease dated August 2, 2013 by and between State of Washington, acting through the Washington State Parks and Recreation Commission (State Parks), as Landlord and Fort Worden Lifelong Learning Center Public Development Authority, a Washington public authority chartered by the City of Port Townsend under authority of Washington law and City ordinance (the "FWPDA"), as tenant, FWPDA assumed primary responsibility for management of the Fort Worden campus and its 72 historic buildings and additional revitalized buildings;
- B. ~~The State Parks~~, as assignor, and FWPDA have entered into that certain Assignment and Assumption Agreement, dated as of July 16, 2014, as amended by letter agreement dated August 8, 2014, wherein ~~the State Parks~~ has assigned, and the PDA has assumed, the right, title, and interest of the lessor in and under the 2013 Lease;
- C. On December 29, 2017, FWPDA as lessor and Makers Square Master Landlord, LLC ("Master Landlord, LLC") as lessee entered into a lease of Buildings 305, 308 and 324 in connection with a transaction known as Makers Square to secure Historic Tax Credits (HTCs) for rehabilitation of these buildings. Separately, Master Landlord LLC leased the buildings to Master Tenant LLC, which in turn has or intends to lease the buildings to Fort Worden Foundation. In addition, FWPDA has leased or will lease the grounds in and around the buildings to Foundation to manage with the buildings as part of its lease of the buildings. This Agreement does not pertain to or affect those buildings or grounds known as Makers Square.
- D. The FWPDA enters into this Agreement to grant to ~~Contractor Concessionaire~~ certain rights to operate certain services within and at certain facilities as described in this Agreement and more particularly in Exhibit A ("Business"), within and at facilities shown on Exhibit B ("Concession Facilities"). The purpose of this Agreement is to provide enhanced and expanded visitor experiences with the Lifelong Learning Center.

#### DEFINITIONS

**Contractor:** A person or company that undertakes a contract and/or is under contractual

obligation to provide materials or labor to perform a service or do a job.

~~Concessionaire Contractor~~: A Contractor that the FWPDA has authorized to use/~~possess~~ a structure or location under lease to FWPDA ~~with FWPDA~~ as lessee under the Master Lease with ~~the State Parks~~. Note: ~~A Concessionaire is always a Contractor and for purposes of this agreement the terms may be used interchangeably. For the purposes of this agreement, notwithstanding any provision herein to the contrary, the Contractor does not constitute a lessee or tenant, or sub-lessee/sub-tenant, of FWPDA.~~

## 1. TERM

**1.1. Term.** This Agreement shall commence on Date of Execution (date of last signature) and shall expire coterminous with and in accordance with Section 1.2 ~~Contractor's Concessionaire's~~ Performance

**1.2. ~~Concessionaire Contractor~~ Performance.** This ~~Contractor Concessionaire~~ shall commence performance on ~~July 1, 2021~~, or on the date signed by the FWPDA, whichever is later ("Commencement Date"), and expire on ~~July 1, 2041~~, unless terminated earlier under another provision of this Agreement (the period from the Commencement Date to the date of expiration or termination is the "Agreement Term") The parties agree ~~Contractor Concessionaire~~ is entitled to extend the Agreement for one five-year term on the same terms as conditions, so long as ~~Contractor Concessionaire~~ is current on all obligations under the Agreement. ~~Contractor Concessionaire~~ shall give notice in writing to FWPDA one year in advance of ~~July 1, 2041~~ of its intent to extend the Agreement.

**Commented [HP(2)]:** (PETER HERZOG June 2<sup>nd</sup> mtg. comment) We need to verify we have the authority to approve what essentially a 25-year term.

## 2. OPERATION

**2.1. ~~Contractor's Concessionaire's~~ Operation of the Business.** ~~Contractor Concessionaire~~ shall operate the Business as described in Exhibit A and shall perform all work, provide all labor, and provide all, equipment, furnishings, and supplies sufficient for the operation of the Business, except that equipment, furnishings, and supplies identified in Exhibit A as being provided by the FWPDA. At all times during the Agreement Term, ~~Contractor Concessionaire~~ shall use reasonable efforts in operating the Business. Nothing prevents ~~Contractor Concessionaire~~ from entering into such agreement or agreements as it deems appropriate to carry out the Business, PROVIDED, that ~~Contractor Concessionaire~~ ensures that any sub-~~Contractor concessionaire~~ or service provider comply with all terms of this Agreement that apply to the operation of the Business, and that ~~Contractor Concessionaire~~ retains the right to terminate any sub-~~contractor concessionaire~~ or service provider agreement for failure to do so.

**2.2. Additional Services.** The FWPDA may, at its ~~sole discretion~~, authorize ~~Contractor Concessionaire~~ to provide other directly related concession services, all subject to space, availability and approval in writing by the FWPDA. Any such expansion of concession services shall be documented in an amendment to the description of the Business contained in Exhibit A.

**Commented [HP(3)]:** (PETER HERZOG June 2<sup>nd</sup> mtg. comment) I believe State Parks would want to approve major additions to the scope of services requiring amendment to this agreement.

**2.3. Qualifications of ~~Contractor Concessionaire~~ and Concession Personnel.** ~~Contractor Concessionaire~~ and ~~Contractor's Concessionaire's~~ employees and agents shall be qualified to operate the Business, including, but not limited to, operating and maintaining any necessary equipment. ~~Contractor Concessionaire~~ and ~~Contractor's Concessionaire's~~ employees and agents shall perform in a businesslike and courteous manner and strive to provide quality service to campus visitors. As required by state or local law, ~~Contractor Concessionaire~~ and employees must be in possession of all health or food and/or alcohol handling permits. If directed to do so by the FWPDA Executive Director, ~~Contractor Concessionaire~~ or ~~Contractor's Concessionaire's~~ employees must at all times when on duty wear a name tag and clothing approved by the FWPDA in order to be recognized as an employee of ~~Contractor Concessionaire~~ and any limitations or disapprovals will be communicated to ~~Contractor Concessionaire~~ in writing, which may include email.

**2.4. Public Benefit, ~~and Mission, and Consistency with FWPDA's Master Lease.~~** All terms of Public Benefit, as described in Section 3.2 of the FWPDA Master Lease with Parks, remain in place and ~~Contractor Concessionaire~~ agrees to fulfill those terms on behalf of the FWPDA. Public Benefits generally include, but are not limited to, the following: operation of the Campus as a Lifelong Learning Center open and accessible to the public; provision of services and programs consistent with such use; provision of facilities conducive to public enjoyment of the Campus as a Lifelong Learning Center; and provision of ancillary benefits to the Port Townsend community resulting from such operation of the Campus. The scope and nature of Public Benefits may change as the Lifelong Learning Center matures. A Public Benefits Report shall be included as a part of the Annual Report from the FWPDA to the Commission, and the ~~Contractor Concessionaire~~ agrees to full participation in the creation of that Annual Report.

While operating within this Agreement, the ~~Contractor's Concessionaire's~~ mission statement must include reference to the Lifelong Learning Center. Furthermore, to the extent any provision in this agreement conflicts with any terms or conditions contained in the Master Lease, the terms or conditions contained in the Master Lease prevail, and must conform at all times to the terms and conditions of the Master list. If a conflict is found to exist with this agreement and the Master Lease the terms and conditions of the Master Lease will prevail over this agreement.

**2.5. Background Checks.** A criminal background check shall be performed on each and every person working on behalf of ~~Contractor Concessionaire~~ under this Agreement, including, but not limited to, each employee, agent, and volunteer of ~~Contractor Concessionaire~~, and ~~Contractor Concessionaire~~ him- or herself (if a natural person), except that a person who neither interacts with campus visitors nor enters Park/campus lands is not subject to a background check. Background checks required under this section shall be performed at ~~Contractor's Concessionaire's~~ expense or at the expense of the person subject to the background check. Background checks required under this section shall be completed prior to the person initially commencing work on behalf of ~~Contractor Concessionaire~~ and prior to resuming work on behalf of ~~Contractor~~

~~Concessionaire~~ in each subsequent season, or a background check shall be performed at least annually for persons working year-round on behalf of ~~Contractor~~~~Concessionaire~~. ~~Contractor~~ ~~Concessionaire~~ may not allow any person for whom a background check is required under this section to work on ~~Contractor's~~ ~~Concessionaire's~~ behalf if the person's background check reveals information suggesting that the person poses a danger to the person or property of any campus visitor or campus staff or volunteers, or a danger to the FWPDA's property. At the FWPDA's request, ~~Contractor~~ ~~Concessionaire~~ shall provide the FWPDA with copies of any and all background checks conducted under this section.

**2.6. Compliance with Laws, Rules, and Regulations.** ~~Contractor~~ ~~Concessionaire~~ shall comply with all laws, ordinances, and rules relating to the use and occupancy of the Concession Facilities and conduct of the Business. ~~Contractor~~ ~~Concessionaire~~ will not permit any objectionable action which would constitute a nuisance or commit any waste upon the Concession Facilities.

**2.7. Permits and Licenses.** ~~Contractor~~ ~~Concessionaire~~ shall obtain and keep in force all permits, licenses, permissions, consents, and approvals required by governmental agencies or third parties in connection with ~~Contractor's~~ ~~Concessionaire's~~ operation of the Business and occupation of the Concession Facilities. Application for permits shall be at the sole risk, cost, and expense of ~~Contractor~~~~Concessionaire~~. A copy of UBI licensing must be submitted to the FWPDA prior to commencing operation of the Business, and copies of all other permits shall be supplied to the FWPDA upon request. ~~Contractor~~ ~~Concessionaire~~ shall pay on a timely basis all taxes as may be lawfully imposed and will comply with all applicable local, state, and federal licensing requirements and standards necessary in the performance of this Agreement.

**2.8. Watercraft Rental.** If renting watercraft, ~~Contractor~~ ~~Concessionaire~~ shall provide Coast Guard approved personal flotation devices and a whistle to all watercraft rental customers and shall require in rental agreements, and in practice, their use by all persons in or on the watercraft as a condition of rental. The sale, rental, or provision of flotation devices not approved by the U.S. Coast Guard is prohibited. Rentals shall only be offered during daylight hours and must be returned by sundown. No rentals shall be taken out during inclement weather (such as high winds or chance of lightening).

**2.9. Independent Contractor.** ~~Contractor~~ ~~Concessionaire~~ operates the Business as an independent contractor of FWPDA. Operation of the Business is not in any way a partnership, agency, franchise, or joint venture between the FWPDA and ~~Contractor~~~~Concessionaire~~. Except as expressly provided in this Agreement, neither party shall be bound, with respect to third parties, by any representation made by the other party. The FWPDA has no obligation with respect to ~~Contractor's~~ ~~Concessionaire's~~ debts or other liabilities. ~~Contractor~~ ~~Concessionaire~~ has the sole and exclusive right to hire, transfer, suspend, lay off, recall, promote, discipline, and discharge its employees and contractors and ~~Contractor~~ ~~Concessionaire~~ has the sole and exclusive control over its labor and employee relations policies and its policies related to wages, hours, and working conditions of its employees and contractors. In performing



under this Agreement, neither ~~Contractor Concessionaire~~ nor ~~Contractor's Concessionaire's~~ employees or contractors are employees of the FWPDA.

### 3. FINANCIAL RECORD KEEPING AND REPORTING

**3.1. Reporting and Cash Handling.** ~~Contractor Concessionaire~~ shall develop and submit to the FWPDA for approval a comprehensive finance policy, including a written cash handling procedure. ~~Contractor Concessionaire~~ will adhere to written cash handling procedures and maintain a \$1,000,000.00 crime and fidelity coverage insurance policy. Such cash handling procedures shall be commercially reasonable given the nature of the Business and sufficient to ensure safe and accurate accounting of all monies received by ~~Contractor Concessionaire~~ through operation of the Business. ~~Contractor Concessionaire~~ shall also include within its financial policy standards for compliance with SOC2 and PII insuring protection of private customer data.

Commented [HP(4)]: PETER HERZOG June 2 MTG: Where are these? Can we add to Exhibits?

**3.2. Credit and Debit Cards.** ~~Contractor's Concessionaire's~~ payment and record-keeping systems must be fully compliant with all Payment Card Industry Data Security Standards (PCI DSS) issued by the official Payment Card Industry Security Standards Council. ~~Contractor Concessionaire~~ acknowledges that it is responsible for the security of cardholder data that it possesses, or otherwise stores, processes, or transmits on behalf of the customer.

**3.3. Financial Sustainability.** A 120-day operating reserve is required and must be fully funded by year six of ~~Contractor's Concessionaire's~~ operations. The ~~Contractor Concessionaire~~ must establish a Strategic Plan, updated yearly, in addition to their Annual Budget, that includes a Financial Sustainability element. The ~~Contractor's Concessionaire's~~ Annual Budget must include provisions for funding and then maintaining the operating reserve. At such time as reserve funds may be needed they may only be accessed by vote of the ~~Contractor's Concessionaire's~~ board for budgeted uses.

**3.4. Review and Audit.** ~~Contractor Concessionaire~~ shall maintain a true account of all receipts and disbursements and other commercially reasonable financial and accounting records related to operation of the Business. ~~Contractor Concessionaire~~ shall make available to a contracted independent auditor any and all financial and accounting records related to operation of the Business, including, but not limited to, individual transaction receipts, daily records of gross sales, annual financial statements (balance sheet and income statement), and Excise Tax Returns submitted to the Washington State Department of Revenue. In addition to full participation in the FWPDA's Annual Report on Public Benefit, ~~Contractor Concessionaire~~ agrees to the following reporting requirements and provisions for operational transparency: Reporting Annual Audit, due by May 1st of the following year; Twice yearly public meetings, one on future strategy and one on financial results; Quarterly Financial Reports (closed within 45 days); Any kind of pending default must be reported within 15 days; Disclosure of material adverse events/legal proceedings; Annual marketing and advertising plan submitted; ~~Contractor Concessionaire~~ will participate in the Operations Work Group as defined in the FWPDA

Master Lease; ~~Contractor Concessionaire~~ may present to FWPDA board meetings as invited.

#### 4. REQUIRED PAYMENTS

**4.1. Concession Fee.** ~~Contractor Concessionaire~~ agrees to pay a Concession fee in lieu of rent, set at 3.5% of gross operating income. Non-operating revenues will not be included in calculation of concession fee. Concession fees will be paid quarterly within 45 days of the close of the quarter, and fees will be reviewed by a publicly certified accountant (?) and reconciled with the audited yearly financials.

**Commented [JR5]:** KIMBERLY MARSHALL/PARKS: Who will perform the review? Perhaps this is covered under audit procedures.

**4.2. Subcontracting Fees Apply.** If the ~~Contractor Concessionaire~~ further contracts for services outlined in the Agreement, then the gross revenue shall be calculated to include sub-~~concessionaire's contractor's~~ revenue as if ~~Contractor Concessionaire~~ performed the work, for purposes of calculating the concession fee.

**4.3. Master Lease Revenue Sharing.** ~~Contractor Concessionaire~~ acknowledges Section 7.9 of the FWPDA Master Lease with State Parks requires the FWPDA to share 3.5% of gross revenues with State Parks, including gross revenues earned by the Contractor Concessionaire. Commencement of this obligation has been delayed by Commission action until May 1, 2023 but may be reinstated by the Commission depending on the financial performance of the FWPDA and Contractor Concessionaire. (Commission action Item E-7: Fort Worden Public Development Authority – Lease Amendment – Requested Action, July 30, 2020). that The FWPDA is currently negotiating with State Parks an amendment wishes to negotiate with State Parks to eliminate the this obligation; however, the FWPDA and Contractor Concessionaire shall assume commencement of the revenue sharing obligation on May 1, 2023 in their respective operating budgets, in Section 7.9 of the Master Lease that commences as of the 7th annual anniversary of the Date of Possession (as defined in the Master Lease). Pursuant to that negotiation, Prior to May 1, 2023 and at such point as the ~~Contractor Concessionaire~~ generates income in excess of funding operations, operating reserves, improving product offerings, and improving operating spaces, then excess funds will be directed to a restricted account for campus maintenance and improvements outside of ~~Contractor's Concessionaire's~~ operating spaces, as directed by FWPDA.

#### 4.4. Uses and Maintenance Fees for Common Areas and Campus Areas

Common areas and campus areas are defined as areas leased to FWPDA by State Parks and under FWPDA's control (unless exclusively leased to another entity.)

- a) Use of the Common Areas and Campus Areas shall be governed by FWPDA's policies and applicable rules as may be amended from time to time.
- b) FWPDA shall at all times have exclusive control, ~~and~~ management, and maintenance of the Common Areas, ~~and~~ Campus Areas and grounds (subject to the terms of its Master Lease with State Parks) and no diminution thereof shall be deemed a constructive or actual eviction or entitle ~~Contractor Concessionaire~~ to compensation or a reduction or abatement of fees.

- c) Beginning in 2022, (a) Contractor Concessionaire may be charged an annual Common Area maintenance (“CAM”) fee and (b) an annual Campus Area maintenance fee (fees to be determined by FWPDA in consultation with Contractor Concessionaire, and existing tenants or subtenants based on historical operational and maintenance cost data provided by FWPDA) for the Fort Worden Campus area and projected operational and maintenance costs for the common areas. Contractor Concessionaire shall pay to FWPDA (or its designee), a Common Area maintenance fee which will be a pro rata share of operational and maintenance costs related to any shared elevator within the building where the leased premises are located, shared performance space, gallery space, restrooms, and other maintenance.
- d) FWPDA (or designee) reserves the right, in its sole determination, to require additional, future, common area user or maintenance fees (in addition to facility charges) for the maintenance, repair and upgrades to campus-wide facilities that serve Contractor Concessionaire and other tenants and users of the campus area. The common area user or maintenance fees would be based on fees or projected fees for the maintenance, repair and upgrades to campus-wide facilities that are related to Contractor’s Concessionaire’s use. For example, if FWPDA determined that parking areas that serve Contractor Concessionaire and other users needed maintenance (or would need maintenance in the near future), user fees would be charged to cover Contractor’s Concessionaire’s share of the costs based on Contractor’s Concessionaire’s parking use.
- e) Operating costs are based on actual costs and normal maintenance and repair (but not capital projects as defined by Office of Financial Management of ~~the State of Washington Parks~~), including utilities, alarm response service, police, fire and EMT service contracts, janitorial, HVAC and elevator inspections, attributable to or incurred in connection with the operation of facilities.

**4.5. Utilities and Other Expenses.** During the term of this Agreement, Contractor Concessionaire shall pay all expenses incurred by Contractor Concessionaire in the use of the Concession Facilities and operation of the Business, including, but not limited to, all utility charges, including all charges for electricity, water, gas, telecommunications, and all costs of maintaining and repairing the Concession Facilities and all improvements thereon whether now existing or hereafter installed. Contractor Concessionaire is so obligated whether or not such expenses are billed to Contractor Concessionaire, to the FWPDA, or to any other party. Contractor Concessionaire shall indemnify, defend, and hold the FWPDA harmless against and from any loss, liability, or expense resulting from any failure of Contractor Concessionaire to pay all such charges when due. All service lines of such utilities shall be installed and connected to existing public utilities at no cost to the FWPDA.

**4.6. Taxes and Assessments.** Contractor Concessionaire shall pay all taxes and assessments and other governmental charges of any kind applicable or attributable to the operation of the Business or use and occupation of the Concession Facilities, including, without limitation, any leasehold tax payable to the FWPDA pursuant to RCW 82.29A.

**4.7. Manner of Payment.** All payments, including fee payments and payments for other sums owed, shall be made by check or money order payable to the FWPDA and mailed to the address listed in section 12.1 (Notices and Submittals), or to any other payee as directed by the FWPDA in writing, or mailed to any other address which the FWPDA, or any successors-in-interest to the FWPDA, may designate to Contractor Concessionaire in writing. Notwithstanding ~~that payments~~ those payments may be made by mail, payments shall in any event be received by the FWPDA on or before the date due as specified in this Agreement. Payments may also be made to the FWPDA by electronic funds transfer, per arrangement through the FWPDA's Financial Services Office.

**4.8. Charges for Late Payments and NSF Checks.** Notwithstanding the FWPDA's right to terminate this Agreement for nonpayment of fees, Contractor Concessionaire shall pay interest at the rate of one percent (1%) per month on delinquent sums owing under the terms of this Agreement, commencing with the date originally due. Payment of fees and other sums when due is required under this Agreement and this section does not constitute or imply the extension of credit by the FWPDA. There shall be a thirty-dollar (\$30.00) handling fee for any check returned by the bank as uncollectible for any reason. The parties agree that such charges represent a fair and reasonable estimate of costs incurred by the FWPDA by reason of late payments and uncollectible checks.

**Commented [JR6]:** OWEN ROWE/PARKS: 1% per month or 12% per annum as in 4.10? They are two different things assuming the 1% per month compounds interest.

**4.9. No Counterclaim, Setoff, or Abatement of Rent or Other Sums Owed.** Rent, additional Rent, if any, and all other sums for which Contractor Concessionaire is obligated to pay the FWPDA under this Agreement shall be paid without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, and the obligations and liabilities of Contractor Concessionaire shall in no way be released, discharged, or otherwise affected (except as expressly provided in this Agreement) by reason of:

- a) Any damage to or destruction of or any taking of the Concession Facilities or any part thereof;
- b) Any restriction of or prevention of or interference with any use of the Concession Facilities or any part thereof;
- c) Any title defect or encumbrance or any eviction from the Concession Facilities or any part thereof by title paramount or otherwise;
- d) Any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to the FWPDA, or any action taken with respect to this Agreement by any trustee or receiver of the FWPDA, or by any court, in any such proceeding;
- e) Any claim which Contractor Concessionaire has or might have against the FWPDA;
- f) Any failure on the part of the FWPDA to perform or comply with any of the terms of this Agreement or of any other agreement with Contractor Concessionaire; or
- g) Any other occurrence whatsoever, whether similar or dissimilar to the remedy consequent upon a breach thereof, and no submission by Contractor Concessionaire or acceptance by the FWPDA of full or partial Rent during the

continuance of any such breach, shall constitute a waiver for any such breach or of any such term.

No waiver of any breach shall affect or alter this Agreement, which shall continue in full force and effect, or the respective rights of the FWPDA and Contractor Concessionaire with respect to any other then-existing or subsequent breach.

**4.10. Failure to Pay.** In the event Contractor Concessionaire fails to pay any expense or amount due under this Agreement, the FWPDA may, but shall not be obligated to, pay any such amount, and the amounts so paid shall immediately be due and payable by Contractor Concessionaire to the FWPDA and shall thereafter bear interest at the rate of 12% per annum.

**4.11. Late Charge for Failure to Pay.** In the event Contractor Concessionaire fails to make any payment due under this Agreement upon the date due, including, but not limited to, payment of Rent, the FWPDA shall be entitled to collect from Contractor Concessionaire a late charge equal to one percent (1%) of the amount of the delinquent payment.

**4.12. Application of Payments.** Payments made under this Agreement will be applied in the following order: (1) interest, (2) Rent, (3) leasehold tax (if any), and (4) other charges.

**Commented [JR7]:** KIMBERLY MARSHALL/PARKS: is the intent that there will or will not be the 12% interest noted above charged to this 1% late fee?

## 5. INDEMNITY AND INSURANCE

**5.1. Indemnity.** Contractor Concessionaire shall release, indemnify, defend (with counsel acceptable to the FWPDA), and hold harmless the FWPDA and Washington State Parks and Recreation Commission, their ~~its~~ employees, officers, and agents from and against any and all claims arising out of Contractor's Concessionaire's operation of the Business and the use, occupation, or control of the Concession Facilities by Contractor Concessionaire, Contractor's Concessionaire's sublessees, invitees, agents, employees, licensees, or permittees, or caused by the operation or failure to operate any equipment, improvements, or other property or fixtures on the Concession Facilities, except as may arise solely out of the willful and grossly negligent acts of the FWPDA or the FWPDA's officials, employees, or agents. "Claim" as used in this section means any claim of any nature whatsoever for penalties, financial loss, damages (including, but not limited to, bodily injury, sickness, disease, or death, or injury to or destruction of property, land, and other natural resources, including the loss of use thereof), costs or expenses (including, but not limited to, attorneys' fees), whether or not resulting in a suit or action or reduced to judgment. This release and the obligation to indemnify shall not be eliminated or reduced by the concurrent negligence of the FWPDA, its officials, employees, or agents, except as provided in this section. To the extent that RCW 4.24.115 is applicable to any indemnification provision of this Agreement, the FWPDA and Contractor Concessionaire agree that provision shall not require Contractor Concessionaire to indemnify, defend, and hold the FWPDA harmless from the FWPDA's sole or concurrent negligence, if any. Contractor Concessionaire waives its immunity under RCW Title 51 to the extent it is required to indemnify the FWPDA. This subsection is in addition to and does not in any way limit or diminish

~~Contractor's~~~~Concessionaire's~~ liability or indemnity obligations otherwise provided for in this Agreement. If a ~~Contractor~~ ~~Concessionaire~~ requires any person to execute a personal release of liability related to use of goods or services provided through the Business, ~~Contractor~~ ~~Concessionaire~~ shall include within the release an express release of the FWPDA in addition to any other persons or entities released.

**5.2. Insurance.** At all times during the Agreement Term, ~~Contractor~~ ~~Concessionaire~~ shall keep in full force insurance coverage, acceptable to the FWPDA, insuring ~~Contractor~~ ~~Concessionaire~~ and providing coverage as outlined in Exhibit C. ~~Any policy shall name both FWPDA and the Washington State Parks and Recreation Commission as additional insured.~~ A certificate evidencing such coverage referencing this Agreement shall be provided to the FWPDA ~~and Commission~~ at ~~their~~ ~~its~~ address of record provided in this Agreement. All policies shall specify that any legal expenses incurred by any claim against the insured shall be covered over and above said liability limit, such that said liability limit represents a “net” liability limit. In the event insurance containing such specifications cannot be acquired, then ~~Contractor~~ ~~Concessionaire~~ shall purchase insurance with liability limits which are fifty percent (50%) higher than set forth above.

**5.3. Cancellation.** The Certificate(s) of Insurance must provide a minimum of 30 days’ written notice to the FWPDA by the insurer before cancellation, non-renewal, or any material change of any insurance coverage included therein. No reduction in the amount of coverage shall be made without the prior written approval of the FWPDA.

**5.4. Industrial Insurance Coverage.** ~~Contractor~~ ~~Concessionaire~~ shall obtain and maintain at all times during the Agreement Term industrial insurance coverage as required by the Department of Labor & Industries for itself and its employees prior to commencing operation of the Business under this Agreement. The FWPDA will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for ~~Contractor~~ ~~Concessionaire~~, or any subcontractor or employee of ~~Contractor~~ ~~Concessionaire~~, which might arise under the industrial insurance laws during ~~Contractor~~ ~~Concessionaire's~~ operation of the Business under this Agreement.

**5.5. ~~Fire Insurance.~~** ~~Unless expressly waived, Concessionaire shall obtain and maintain at all times during the Agreement Term insurance for fire and casualty. Such insurance shall be a fire legal liability policy in the amount of full replacement value or fifty thousand dollars (\$50,000), whichever is higher, naming the FWPDA as the beneficiary. The amount of insurance required may hereafter be increased or decreased at the option of the FWPDA. All policies shall carry a minimum 30 days’ notification of cancellation clause.~~

Commented [JR8]: Edit already shown at June 2<sup>nd</sup> meeting.

**5.6-5.5. Other Insurance.** In addition to that insurance specifically required by this Agreement, ~~Contractor~~ ~~Concessionaire~~ shall obtain and maintain at all times during the Agreement Term such other insurance as is typically or customarily maintained for the Business.

**5.7.5.6. Evidence of Insurance.** ~~Contractor Concessionaire~~ must furnish evidence of all insurance required under this Agreement in the form of a Certificate of Insurance satisfactory to the FWPDA (such as ISO form CG 00 01 or equivalent), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein, and shall be sent marked "Concession Program" to the FWPDA's address shown herein.

**5.8.5.7. Independent Contractors.** ~~Contractor Concessionaire~~ shall require any independent contractors, if any, to obtain and maintain the same insurance coverage required of ~~Contractor Concessionaire~~, at all times such independent contractor is performing work at the Concession Facilities on behalf of ~~Contractor Concessionaire~~ during the Agreement Term.

## 6. FACILITIES

**6.1. Use of Facilities.** The FWPDA authorizes ~~Contractor Concessionaire~~ to use the Concession Facilities as described in Exhibit B for purposes of operation of the Business. The Concession Facilities shall be used only for the operation of the Business as authorized in this Agreement. Other commercial or non-commercial activities, or use and occupancy by other parties of the Concession Facilities not directly related to ~~Contractor's Concessionaire's~~ operation of the Business are prohibited unless approved in advance and in writing by the FWPDA.

**6.2. Condition of Concession Facilities.** ~~Contractor Concessionaire~~ accepts the Concession Facilities in its present condition, after renovation work by the FWPDA and removal of trade fixtures and other personal property of the FWPDA's predecessor ~~Contractor Concessionaire~~, if any, as set forth in Exhibit B. The condition of the Concession Facilities shall be verified by the ~~Contractor's Concessionaire's~~ inspection of the Concession Facilities prior to the commencement of this Agreement.

**6.3. Access to Concession Facilities.** ~~Contractor Concessionaire~~ shall have access to the Concession Facilities as necessary to operate the Business over established Park/campus roads and driveways. ~~Contractor Concessionaire~~ may park vehicles and equipment only in those areas designated by FWPDA. ~~Contractor's Concessionaire's~~ access rights shall not be exercised in such manner and to such extent as to: (i) impede or interfere with the operation of the Park/campus or business conducted other ~~contractors concessionaires~~ or authorized occupants; or (ii) violate any lease or agreement entered into between the FWPDA and a third party. FWPDA cannot and does not guarantee access in the event of an emergency or other factor beyond FWPDA's control, including, for example, infrastructure failure for which FWPDA does not in its determination have budget to address.

**6.4. Parking.** ~~Contractor Concessionaire~~ shall have non-exclusive use of parking areas managed by FWPDA. ~~Contractor Concessionaire~~ does not have exclusive parking areas unless the same are specifically identified in Exhibit B (Facilities).



**6.5. Management.** ~~Contractor~~ ~~Concessionaire~~ shall manage and maintain the Concession Facilities and all improvements thereon in accordance with the customary standards of the industry.

**6.6. Maintenance and Repair.** ~~Contractor~~ ~~Concessionaire~~ shall perform all minor maintenance and repairs to keep the Concession Facilities in a safe, inviting, sanitary, and usable condition. Minor maintenance and repairs shall include, but is not limited to, routine maintenance; cleaning; removal of debris, litter, and obstructions; painting the inside of buildings; replacing light bulbs; and performing other minor interior maintenance, including minor electrical and plumbing repairs. ~~Contractor~~ ~~Concessionaire~~ shall immediately notify the FWPDA Executive Director in writing of any ~~major~~ maintenance or repair needs in the Concession Facilities that exceeds minor maintenance. ~~Major~~ ~~m~~ Maintenance and repair necessitated by the failure of ~~Contractor~~ ~~Concessionaire~~ to perform minor maintenance and repair shall be the responsibility of ~~Contractor~~ ~~Concessionaire~~.

**6.7. No Obligation to Maintain or Repair** ~~Contractor's~~ ~~Concessionaire's~~ leased premises. Neither FWPDA nor its designees are obligated to maintain or make any repairs, additions, or improvements or replace any items or defects, in or to the leased premises including any building or infrastructures serving the leased premises, which are provided in "As-Is" condition. FWPDA is not in a financial position to warranty the condition of the premises and repair defects. Therefore, it is incumbent on ~~Contractor~~ ~~Concessionaire~~ to inspect the premises under ~~Contractor's~~ ~~Concessionaire's~~ control (including, during the course of any construction, if applicable, relating to the premises where such construction is occurring, and bring any construction issues to the attention of the project manager). It is also incumbent on ~~Contractor~~ ~~Concessionaire~~ to review its needs for a reserve fund to manage the condition of the premises and future repairs and maintenance. FWPDA and ~~Contractor~~ ~~Concessionaire~~ agree and acknowledge that FWPDA has only outdated facilities assessments for some buildings which it manages which may not include the building of which the premises is a part.

**6.8. Damage.** ~~Contractor~~ ~~Concessionaire~~ shall, at its own expense, repair to the FWPDA's satisfaction any damage to the FWPDA's property resulting from actions or omissions by ~~Contractor~~ ~~Concessionaire~~ or its agents or employees, beyond normal wear and tear.

**6.9. Signs and Advertisements.** All signs of Contractor, of Concessionaire, whether affixed to the Concession Facilities, or placed upon or adjacent to the Concession Facilities, or used in any manner by Contractor ~~Concessionaire~~, must fit conform with Master Lease requirements and require approval by State Parks, into the aesthetics of the Park/campus and agency sign policy.

**6.10. Sanitation.** ~~Contractor~~ ~~Concessionaire~~ is responsible for the cleanliness of the Concession Facilities, including all equipment, appliances, storage areas, and grounds used by ~~Contractor~~ ~~Concessionaire~~. ~~Contractor~~ ~~Concessionaire~~ is responsible for removal and disposal of all garbage and refuse generated in the operation of the Business and shall participate in the FWPDA's recycling programs. As may be specified in



Exhibit A, ~~Contractor Concessionaire~~ is responsible for disposal of all garbage and refuse in the area adjacent to the Concession Facilities as designated by the FWPDA Executive Director. If serving food is part of the Business, ~~Contractor Concessionaire~~ shall use recyclable food and beverage containers as practicable. ~~Contractor Concessionaire~~ shall promptly provide to the FWPDA Executive Director a copy of any and all health department inspection reports conducted by or on behalf of any governmental authority.

**6.11. Hazardous Substances Prohibited.** Except as expressly allowed in writing by the FWPDA in Exhibit A as essential to the operation of the Business, ~~Contractor Concessionaire~~ shall not bring or keep in, on, or about the Concession Facilities, any hazardous substances. For purposes of this Agreement, hazardous substances include any that have been designated as hazardous, toxic, dangerous, or harmful, or which are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state, or local law, regulation, statute, or ordinance. ~~Contractor Concessionaire~~ is liable for all cleanup costs and damages associated with the use, disposal, transportation, or generation of hazardous substances by ~~Contractor Concessionaire~~ or its employees, agents, assigns, contractors, subcontractors, licensees, or invitees. This provision shall survive the expiration or termination of the Agreement.

**6.12. Personal Property.** The FWPDA ~~and State Parks and Recreation Commission are~~ not be liable in any manner for or on account of any loss of damage sustained to any property in or about the Concession Facilities, except for such claims or losses which may be caused by the FWPDA or its authorized agents or employees.

**6.13. Condition at End of Agreement Term.** ~~Contractor Concessionaire~~ shall, at its sole expense, clean and repair the Concession Facilities and restore it to the condition it was in upon delivery of the Concession Facilities to ~~Contractor Concessionaire~~ at the Commencement Date, reasonable wear and tear excepted.

**6.14. Non-Applicability of Relocation Assistance.** ~~Contractor Concessionaire~~ acknowledges that this Agreement does not at any time entitle ~~Contractor Concessionaire~~ to assistance under the Uniform Relocation and Real Property Acquisition Policy (RCW 8.26).

## **7. ~~CONCESSIONAIRE-CONTRACTOR~~ EQUIPMENT, FURNISHINGS, AND SUPPLIES**

**7.1. Equipment, Furnishings, and Supplies.** As set forth in Exhibit A, ~~Contractor Concessionaire~~ shall, at its own expense, provide all equipment, furnishings, and supplies necessary for operating the Business beyond any equipment, furnishings, or supplies provided by the FWPDA at its sole discretion. The FWPDA shall have no responsibility to provide any equipment, furnishings, or supplies, except as identified in Exhibit A. ~~Contractor Concessionaire~~ accepts any equipment, furnishings, or supplies provided by the FWPDA in its present condition, as-is-where-is. ~~Contractor Concessionaire~~ may attach or fasten (such as by screwing, nailing, welding, gluing, etc.) equipment in or on the Concession Facilities without the prior written approval of the

FWPDA provided that premises are returned to FWPDA at end of term in same condition as at start of agreement, less reasonable wear and tear.

**7.2. Maintenance Equipment, Furnishings, and Supplies.** ~~Contractor Concessionaire~~ shall, at its own expense, maintain, in good working order and in a safe and sanitary condition, all equipment, furnishings, and supplies necessary for operating the Business, including that equipment provided by the FWPDA (if any). The FWPDA shall have no responsibility to maintain any equipment, furnishings, or supplies or for the loss or damage to ~~Contractor's Concessionaire's~~ equipment, furnishings, or supplies. To mitigate the potential for damage or loss through theft or malicious mischief, ~~Contractor Concessionaire~~ shall store equipment and supplies as provided in Exhibit A when not in use.

**7.3. Equipment Replacement.** ~~Contractor Concessionaire~~ shall maintain that equipment provided by the FWPDA (if any) in good working order and shall, at its own expense, replace any equipment provided by the FWPDA that is not in good working order or that may otherwise pose a hazard. ~~Contractor Concessionaire~~ shall maintain any ~~Contractor Concessionaire~~-owned equipment and shall replace, at its own expense, any of its own equipment that is not in good working order or that may otherwise pose a hazard. Equipment purchased by ~~Contractor Concessionaire~~, including equipment purchased by ~~Contractor Concessionaire~~ to replace equipment provided by the FWPDA, shall remain the property of ~~Contractor Concessionaire~~. Except as expressly agreed to in writing by the FWPDA, the cost of equipment replacement or repair shall in no way reduce or offset fees or other payments due to the FWPDA under this Agreement.

**7.4. Ownership of Equipment and Supplies at Agreement Expiration or Termination.** Any personal property owned by ~~Contractor Concessionaire~~ used in the conduct of business by ~~Contractor Concessionaire~~ and placed by ~~Contractor Concessionaire~~ in or on the Concession Facilities shall not become part of the real property, even if attached or fastened to the Concession Facilities. Such personal property may be removed by ~~Contractor Concessionaire~~ at any time during the term of this Agreement, or within 30 days of the expiration or termination of this Agreement, provided ~~Contractor Concessionaire~~ is not in default under this Agreement, and provided any damage to the Concession Facilities occasioned by such removal is immediately repaired to the satisfaction of the FWPDA. All other fixtures, equipment, and improvements constructed or installed in or upon the Concession Facilities shall be deemed to become part of the real property and, upon completion, shall become the sole and exclusive property of the FWPDA, free of any and all claims of ~~Contractor Concessionaire~~ or any person or entity claiming by or through ~~Contractor Concessionaire~~. In the event ~~Contractor Concessionaire~~ does not remove its personal property from the Concession Facilities within 30 days of the expiration or termination of this Agreement, the FWPDA may at its sole election:

- a) Require ~~Contractor Concessionaire~~ to remove such property at ~~Contractor's Concessionaire's~~ sole expense, and ~~Contractor Concessionaire~~ shall be liable for any damage to the Concession Facilities;

- b) Treat said personal property as abandoned, retaining the property as part of the Concession Facilities; or
- c) Have the personal property removed and stored or disposed of at Contractor's Concessionaire's sole expense.

Contractor Concessionaire shall promptly reimburse the FWPDA for damage caused to the Concession Facilities by the removal of any of Contractor's Concessionaire's personal property from the Concession Facilities, whether removal is by Contractor Concessionaire or the FWPDA.

## 8. IMPROVEMENTS

**8.1. Authorized Improvements.** Contractor Concessionaire may, at no cost to the FWPDA and with the FWPDA's and State Parks prior approval, make improvements, including additions and modifications to Contractor Concession Facilities provided by the FWPDA to enable provision of the services as set forth in the Agreement. Any alteration must conform to Master Lease Requirements and require written approval by State Parks. In making any improvements, Contractor Concessionaire shall obtain all licenses and permits, including any necessary approval from State Parks, and comply with all applicable codes, regulations, and statutes. Contractor Concessionaire shall supply such plans, drawings, and specifications as needed by the FWPDA to evaluate the acceptability of any improvements prior to commencing work. The FWPDA may condition, limit, or deny approval of proposed improvements at its sole discretion, which approval shall be provided only in writing. Improvements become the property of the FWPDA upon completion unless otherwise agreed upon by the FWPDA in writing in advance.

**8.2. Development Plan.** Prior to any development or the construction of any and all improvements on or to the Concession Facilities used by Contractor, Contractor Concessionaire may be required to submit a complete development plan to the FWPDA and State Parks for ~~its~~ written approval. The plan shall include, but is not limited to, the following:

- a) Map showing areas to be developed, location of improvements, and location of utility and other easements;
- b) Land clearing, leveling, and erosion control plans;
- c) List of proposed improvements and detailed plans for the improvements;
- d) Estimated itemized cost of proposed improvements; and
- e) Schedule of completion dates for proposed improvements.

Any alteration must conform to Master Lease Requirements. After completion of construction, Contractor Concessionaire shall provide to the FWPDA "as-built" drawings showing the exact location of all improvements. In case of incomplete improvements or development, Contractor Concessionaire shall restore the land to its original condition unless otherwise directed in writing by the FWPDA.

**8.3. Unauthorized Improvements.** Any improvements not included in the original or amended development plan as approved by the FWPDA, or as provided for by Letters of Authorization issued by the FWPDA, made on or to the site, without the written consent of the FWPDA, shall immediately become the property of the FWPDA or at the FWPDA's option, must be removed by ~~Contractor~~ ~~Concessionaire~~ at ~~Contractor's~~ ~~Concessionaire's~~ sole cost. Said removal shall occur within 30 days unless sooner required by FWPDA Executive Director for reasons of safety.

**8.4. ~~Contractor~~ ~~Concessionaire~~ Liens.** ~~Contractor~~ ~~Concessionaire~~ must not suffer or permit any lien to be filed against the FWPDA's interest in the ~~Concession~~ ~~Facilities~~ used by the contractor, or improvements thereon by reason of work, labor, or services performed thereon or materials supplied to, by, or through ~~Contractor~~ ~~Concessionaire~~. ~~Contractor~~ ~~Concessionaire~~ agrees to pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the ~~Concession~~ ~~Facilities~~ used by Contractor. ~~Contractor~~ ~~Concessionaire~~ must indemnify the FWPDA for any costs, damages, or expenses (including attorneys' fees and court costs) incurred in defending any liens or in obtaining their discharge or as a result of such other asserted claims against the right, title, and interest of the FWPDA in the ~~Concession~~ ~~Facilities~~ used by the Contractor or under the terms of this Agreement, whether such costs, damages, or expenses were incurred prior or subsequent to expiration or termination or cancellation of this Agreement.

## 9. RESERVATIONS BY THE FWPDA

**9.1. The FWPDA's Reserved Rights.** The FWPDA reserves the right to merchandise, through vending machines or other means, at any location within the ~~Park~~ Master Lease area, other than the ~~Concession~~ ~~Facilities~~ used by the Contractor, certain items including, but not limited to, snacks, beverages, and educational, recreational, and interpretive materials, as well as official FWPDA memorabilia. The FWPDA further reserves the right to grant privileges on occasion to certain non-profit groups to sell materials and provide food and beverage for fund-raising purposes.

**9.2. Compliance.** The FWPDA shall have access to the ~~Concession~~ ~~Facilities~~ used by the Contractor at all times to secure compliance with this Agreement.

**9.3. Park Closure.** ~~Contractor~~ ~~Concessionaire~~ acknowledges that the Park may be closed, or access to the Park may be limited, from time-to-time. ~~Contractor~~ ~~Concessionaire~~ hereby waives any claim against the FWPDA and Stae Parks for any losses suffered or allegedly suffered due to change of fees, park-operating periods or conditions, or closure of the Park for any reason.

**9.4. Easements.** The FWPDA reserves the right to grant easements, permits, and other rights ("Easements") over and across the ~~Concession~~ ~~Facilities~~ used by the Contractor and the right for Easement holders to enter upon the Concession Facilities to maintain, repair, and enhance existing facilities and install new facilities. Such rights shall be exercised in such a manner so as to minimize any disruption to ~~Contractor~~ ~~Concessionaire~~.

**9.5. The FWPDA Modification/Improvement of the Park or ~~Concession~~ Facilities Used by the Contractor.** The FWPDA may at any time, at its discretion and expense, make improvements to, or repairs, maintenance, and/or modifications of the ~~Park Master Lease area~~ or the ~~Concession~~ Facilities used by the Contractor. ~~Contractor Concessionaire~~ hereby waives any claim against the FWPDA for any loss of income suffered or allegedly suffered by ~~Contractor Concessionaire~~ from the FWPDA's improvement to, or repairs, maintenance, and/or modifications of the ~~Concession~~ Facilities used by the Contractor.

## 10. ASSIGNMENT

**10.1. Assignment/Transfer.** The rights granted under this Agreement may not be transferred to any other person or entity by act of ~~Contractor Concessionaire~~, operation of law, or other means without the expressed prior written approval of the FWPDA at its sole discretion. Assignment or transfer may require ~~Washington State Parks~~ approval under its Master Lease with the FWPDA. ~~Contractor Concessionaire~~ shall not mortgage, assign, encumber, transfer, ~~sublease~~ sub-contract, or otherwise alienate this Agreement without the prior written approval of the FWPDA. ~~Contractor Concessionaire~~ shall not grant any interest therein or engage in any other transaction that has the effect of transferring or affecting the right of enjoyment of the ~~Concession~~ Facilities used by the Contractor without the prior written approval of the FWPDA, at its sole discretion. Notwithstanding the forgoing, nothing prevents ~~Contractor Concessionaire~~ from entering into such agreement or agreements as it deems appropriate to carry out the Business without prior approval by FWPDA, PROVIDED, that ~~Contractor Concessionaire~~ ensures that any sub-~~concessionaire~~ contractor or service provider comply with all terms of this Agreement that apply to the operation of the Business, and that ~~Contractor Concessionaire~~ retains the right to terminate any sub-~~contractor~~ concessionaire or service provider agreement for failure to do.

**10.2. Non-Waiver.** Consent of the FWPDA to an assignment will not waive its right to approve or deny subsequent assignments. The acceptance by the FWPDA of payment or performance following an assignment shall not constitute consent to any other assignment, and the FWPDA's consent shall be evidenced only in writing.

**10.3. Assignee Obligations.** Each permitted assignee of ~~Contractor Concessionaire~~ shall assume and be deemed to have assumed all obligations of ~~Contractor Concessionaire~~ under this Agreement. Notwithstanding any such assignment, ~~Contractor Concessionaire~~ shall be and remain jointly and severally liable with the assignee for all obligations under this Agreement, unless released in writing by the FWPDA. ~~Contractor's Concessionaire's~~ obligations shall continue in full force and effect as to include any additional obligations created by any renewal, amendment, modification, extension, or assignment of the Agreement, whether or not ~~Contractor Concessionaire~~ shall have received notice of or consented to the same. ~~Contractor Concessionaire~~ waives all surety defenses and waives notice of any breach by a subsequent assignee.

**10.4. Corporations, Limited Liability Corporations, General Partnerships, Limited**

**Partnerships.** If ~~Contractor Concessionaire~~ is a corporation, any merger, consolidation, liquidation, or any change in ownership, control, or the power to vote the majority of its outstanding voting stock, shall constitute an assignment, whether the result of a single transaction or a series of transactions. If ~~Contractor Concessionaire~~ is a limited liability company, the death, withdrawal, or expulsion of a member or members owning, or transfer of interests representing, in the aggregate, more than fifty percent (50%) of the company profits or capital shall constitute an assignment, whether the result of a single transaction or a series of transactions. If ~~Contractor Concessionaire~~ is a general partnership, the death, withdrawal or expulsion of a partner or partners owning, or transfer of interests representing, in the aggregate more than fifty percent (50%) of the partnership profits or capital shall constitute an assignment, whether the result of a single transaction or a series of transactions. If ~~Contractor Concessionaire~~ is a limited partnership, the death, withdrawal or expulsion of any general partner shall constitute an assignment.

**11. TERMINATION**

**11.1. Breach and Default.** In the event of any breach of any provision of this Agreement by ~~Contractor Concessionaire~~, the breach shall be deemed a default entitling the FWPDA to the remedies set forth in this Agreement or otherwise available at law after the FWPDA has delivered to ~~Contractor Concessionaire~~ notice of the alleged breach and a demand that the breach be remedied as required by this Agreement (“Breach Notice”). If the breach pertains to a matter other than the payment of Rent, ~~Contractor Concessionaire~~ shall not be in default after receipt of the Breach Notice if ~~Contractor Concessionaire~~ promptly commences to cure the breach and cures the breach within 30 days after receipt of the Breach Notice. If the breach pertains to the payment of Rent, ~~Contractor Concessionaire~~ shall not be in default after receipt of the Breach Notice if ~~Contractor Concessionaire~~ cures the breach by paying all outstanding Rent to the FWPDA within 15 days after receipt of the Breach Notice. If the breach is non-monetary in nature, and as determined by the FWPDA, is not reasonably susceptible of being cured within 30 days from the date the Breach Notice (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), ~~Contractor Concessionaire~~ shall commence to cure such breach within the 30-day period and diligently pursue cure with continuity to completion. If a breach has been cured within the grace periods permitted by this section, it shall not constitute a default. In the event the FWPDA deems the breach to constitute a threat to safety, life, or property, it may elect to intervene immediately, without notice, to remedy the breach, and ~~Contractor Concessionaire~~ hereby agrees to repay the FWPDA for any and all costs in remedying the breach upon demand, together with interest thereon from the date of expenditure at the rate set forth in this Agreement. Alternatively, the FWPDA may require ~~Contractor Concessionaire~~ to act immediately to remedy the breach should the FWPDA deem it a threat to safety, life, or property.

**11.2. Multiple Default.** If ~~Contractor Concessionaire~~ breaches any provision of this Agreement three times within any 12-month period, whether the same provision or not,

the third breach will be deemed “non-curable” and a default entitling the FWPDA to the remedies set forth in this Agreement or otherwise available at law.

**11.3. Remedies.** Upon the occurrence of any default, the FWPDA shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

- a) Terminate this Agreement, in which event ~~Contractor Concessionaire~~ must immediately surrender the ~~Concession Facilities used by the Contractor~~ to the FWPDA, and if ~~Contractor Concessionaire~~ fails so to do, the FWPDA may, without prejudice to any other remedy which it may have for possession or arrearages in Rent, enter upon and take possession of the ~~Concession Facilities used by the Contractor~~ and expel or remove ~~Contractor Concessionaire~~ and any other person who may be occupying the ~~Concession Facilities used by the Contractor~~ or any part thereof, without being liable for prosecution or any claim of damages therefore, and ~~Contractor Concessionaire~~ agrees to pay the FWPDA on demand the amount of all loss and damage which the FWPDA may suffer by reason of such termination, whether through inability to re-~~contract lease~~ the ~~Concession Facilities used by the Contractor~~ on satisfactory terms or otherwise.
- b) Enter upon the ~~Concession facilities used by the Contractor~~ Facilities, without being liable for prosecution or any claim for damages therefore and do whatever ~~Contractor Concessionaire~~ is obligated to do under this Agreement; and ~~Contractor Concessionaire~~ agrees to reimburse the FWPDA on demand for any expenses the FWPDA incurs in performing ~~Contractor's Concessionaire's~~ obligations under this Agreement.
- c) Obtain damages from ~~Contractor Concessionaire~~, including, but not limited to: all rentals lost, all legal expenses, and other related costs incurred by the FWPDA in restoring the ~~Concession Facilities used by the Contractor~~ to good order and condition, or in remodeling, renovating, or otherwise preparing the ~~Concession Facilities~~ for re-~~contracting leasing~~, all costs (including, but not limited to, any brokerage commissions and the value of the FWPDA's time) incurred by the FWPDA, plus interest thereon from the date of expenditure until fully repaid at the rate of 12% per annum.

Pursuit of any of the foregoing remedies will not preclude immediate pursuit of any of the other remedies under this Agreement or any other remedies provided by law, such remedies being cumulative and non-exclusive. No waiver by the FWPDA of any violation or breach of any of the terms, provisions, and covenants of this Agreement will be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants of this Agreement. If, on account of any breach or default by ~~Contractor Concessionaire~~ in ~~Contractor's Concessionaire's~~ obligations under the terms and conditions of this Agreement, it becomes necessary or appropriate for the FWPDA to employ or consult with an attorney concerning or to enforce or defend any of the FWPDA's rights or remedies hereunder, ~~Contractor Concessionaire~~ agrees to pay any reasonable attorneys' fees so incurred.



**11.4. The FWPDA's Entry.** In the event of any default by ~~Contractor~~~~Concessionaire~~, the FWPDA shall have the right, with or without canceling this Agreement, to secure and/or enter the ~~Concession~~ ~~F~~Facilities used by the Contractor and to remove all persons and property from the ~~Concession~~ ~~F~~Facilities used by the Contractor and take whatever actions may be necessary or advisable to re-~~contract~~~~lease~~, protect, or preserve the ~~Concession~~ ~~F~~Facilities. Any property so removed may be stored in a public warehouse or other suitable place or otherwise disposed of in the FWPDA's discretion at the expense and for the account of ~~Contractor~~~~Concessionaire~~. The FWPDA shall not be responsible for any damages or losses suffered by ~~Contractor~~ ~~Concessionaire~~ as a result of such the FWPDA entry, removal, storage, or other disposition, and no such action shall be construed as an election to terminate this Agreement unless a written notice of termination is given to ~~Contractor~~~~Concessionaire~~.

**11.5. Termination of Agreements.** Whether or not the FWPDA elects to terminate this Agreement based on any default by ~~Contractor~~ ~~Concessionaire~~ and subject to any non-disturbance and attornment agreements, if any, the FWPDA shall have a right to terminate any and all sub-~~contracts~~~~leases~~, licenses, concessions, or other arrangements for possession affecting the ~~Concession~~ ~~F~~Facilities used by the Contractor. Alternatively, the FWPDA, in its sole discretion, may succeed to ~~Contractor's~~ ~~Concessionaire's~~ interest in such ~~sublease~~ ~~sub-contract~~, license, concession, or arrangement, and ~~Contractor~~ ~~Concessionaire~~ shall have no further right to or interest in the ~~lease~~ ~~contract~~ or other consideration receivable thereunder.

**11.6. Termination Due to Exchange, Transfer, or Sale.** Either the FWPDA or ~~Contractor~~ ~~Concessionaire~~ may terminate this Agreement upon 90 days' written notice in the event the FWPDA includes the Concession Facilities in a land exchange, transfer, and sale or if the Park is closed due to budgetary conditions.

**11.7. Vacation of Premises.** ~~Contractor~~ ~~Concessionaire~~ must give written notice to the FWPDA at least 90 days prior to vacating the Concession Facilities and must arrange to meet with the FWPDA for a joint inspection of the Concession Facilities prior to vacating. Failure to inspect or enforce compliance with ~~Contractor's~~ ~~Concessionaire's~~ obligations under this Agreement with respect to the condition of the Concession Facilities at the end of the Agreement term will not be construed as a waiver of the FWPDA's right to declare a breach, or relieve ~~Contractor~~ ~~Concessionaire~~ of any liability to the FWPDA for any breach of the terms, conditions, or requirements of this Agreement. In the event ~~Contractor~~ ~~Concessionaire~~ fails to vacate the Concession Facilities on the date of expiration or termination of this Agreement, ~~Contractor~~ ~~Concessionaire~~ will be liable for any and all costs to the FWPDA arising from such failure.

## 12. MISCELLANEOUS



**12.1. Notices and Submittals.** Any notice or submittal given under this Agreement shall be deemed as received when delivered by hand or five (5) days after deposit in the United States mail with first-class postage affixed, addressed as provided in this section. Changes of address may be given in accordance with this section. Any notice or submittal given under this Lease shall be:

**To FWPDA:**  
Fort Worden PDA  
Building 200  
200 Battery Way  
Port Townsend, WA 98368

**To CONTRACTOR:**  
Fort Worden Hospitality  
Building [XXX]  
200 Battery Way  
Port Townsend, WA 98368

**12.2. Entire Agreement.** This Agreement, including the attached Exhibits, is the entire agreement of the parties and no other agreement, statement, or promise made by any party, or by any employee, officer, or agent of any party, will be binding or valid.

**12.3. Modification.** The parties agree to a modification period of 12 months from the date the agreement takes effect. Modifications may be made by mutual written agreement of the parties, executed by party agents and reported to boards monthly, and are expected as a regular course of business during the modification period. The modification period will conclude with a set of changes voted for adoption by the boards of the parties. Following the modification period, modifications must be filed as addendums to the agreement and require individual votes. Except where this Agreement expressly provides that specific provisions of this Agreement may be modified by the FWPDA, this Agreement may not be modified except by mutual written agreement of the parties. Washington State Parks and Recreation Commission at its sole discretion reserves the right to review and approve any modifications prior to adoption by the parties. Notice shall be provided to the Commission at least thirty days (30) for review and comment before any modification to this agreement is executed. If the Commission does not respond within the thirty days then the parties may assume there is no objection to the proposed modification.

**12.4. Venue.** Venue for any litigation arising out of this Agreement will be brought in the Superior Court of Jefferson County, Washington. Any litigation wrongly filed in any other county shall be transferred by court order to the Superior Court of Jefferson County with the plaintiff to pay all related attorneys' fees and court costs.

**12.5. Governance.** This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws. In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a) Applicable state and federal statutes and rules;
- b) The Special Terms and Conditions;

- c) The General Terms and Conditions;
- d) Any other provisions of this Agreement, including materials incorporated herein by reference.

**12.6. Severability.** If any provision of this Agreement shall be deemed void or otherwise invalid for any reason, the remainder of the Agreement shall be interpreted in a manner as to be effective and valid to the fullest extent possible. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

**12.7. Interpretation.** This Agreement has been submitted to the scrutiny of all parties hereto and their counsel, if desired, and will be given a fair and reasonable interpretation in accordance with the words of the Agreement, without consideration or weight being given to its having been drafted by any party hereto or its counsel.

**12.8. Disputes.** Whenever ~~Contractor Concessionaire~~ and a successor, or ~~Contractor Concessionaire~~ and the FWPDA, cannot agree, the matter at issue shall be submitted to arbitration and such arbitration shall be binding. Each party to the dispute will appoint one arbitrator who together will choose a third arbitrator. The arbitration shall be governed by the State Arbitration Act, contained in RCW 7.04.

**12.9. Attorneys' Fees.** If either party brings suit or submits to an alternative dispute process to interpret or enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, paralegal fees, accountant, and other expert witness fees, and all other fees, costs, and expenses actually incurred in connection therewith, including those incurred on appeal, in addition to all other amounts provided by law, regardless of whether the matter proceeds to judgment or is resolved by the defaulting party curing the default.

**CONCESSIONAIRE CONTRACTOR**

By: \_\_\_\_\_  
Date

**FORT WORDEN LIFELONG LEARNING CENTER PUBLIC DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
David Timmons, Executive Director Date

AGREED ONLY FOR THE PURPOSES OF LIMITATION OF LIABILITY, WAIVER OF CLAIMS, INDEMNIFICATION, INSURANCE REQUIREMENTS, AND ANY RIGHT OF REVIEW OR APPROVAL:

**CONCESSIONAIRE CONTRACTOR**

By: \_\_\_\_\_  
Date

**WASHINGTON STATE PARKS AND RECREATION COMMISSION**

By: \_\_\_\_\_  
Date

**APPROVED AS TO FORM ONLY:**

**Fort Worden Hospitality**  
Rodger Kohn, Legal Counsel

**Fort Worden Lifelong Learning Center Public Development Authority**  
John Watts, Legal Counsel

**ATTACHMENTS:**

- Exhibit A Description of Business
- Exhibit B Description of Concession Facilities and Equipment, Furnishings, and Supplies
- Exhibit C Insurance

## Exhibit A: Description of Business

### 1. Description.

As referenced in Section 4.1 of the Master Lease, the PDA shall promote the use of the Campus facilities for nonprofit, government and corporate events, meetings, workshops, seminars, and conferences even if such promotion and use is not the highest and best market use and may reduce the overall net revenues (due to discounted lease or conference rates); provided, however, PDA shall also actively promote, market, and make available the facilities for independent travelers, family retreats, and other users. The Concessionaire shall be responsible for these same duties on behalf of the PDA.

- a. Section 7.1 of the Master Lease sets forth a list of operational duties required of the PDA, some of which will be performed by the ~~Contractor Concessionaire~~ on the PDA's behalf. The services to be provided by ~~Contractor Concessionaire~~ shall include, but not be limited to, the following services at Fort Worden:
  - i. (Master Lease Section 7.1.1) Overseeing daily management and operation of the conference meeting facilities, accommodations, and hospitality services within the Campus;
  - ii. Accommodation sales and management for housing units;
  - iii. Group rental coordination for dorm buildings;
  - iv. Venue sales and management for indoor and outdoor venues, including audio visual equipment rental and services which may be subcontracted;
  - v. (Master Lease Section 7.1.2) Marketing the Center to fulfill the purposes of the Lifelong Learning Center;
  - vi. Manage branding, marketing and online presence for all hospitality offerings; work in cooperation for co-marketing opportunities across the Fort Worden Lifelong Learning Center where applicable; develop product enhancements in line with business needs;
  - vii. Develop and sell sponsorships, partnerships or marketing opportunities for products, services and events;
  - viii. (Master Least Section 7.1.3) Keeping the Campus in good, safe, and clean working order by providing the Maintenance described in other parts of the agreement;
  - ix. Provide building and equipment maintenance, janitorial and sanitation, garbage and grounds maintenance within service area;
  - x. (Master Least Section 7.1.4) Providing customer service to visitors of the Campus, such as food services, housing, meeting rooms, technology needs, and any other hospitality provisions necessary for their health, safety, and comfort;
  - xi. Operate three existing plus any future outlets food and beverage outlets in accordance with industry standard health regulations;
  - xii. Operate event catering as the exclusive caterer for campus, retaining right of refusal and right to recommend outside caterers and/or develop a preferred vendor list for catering;
  - xiii. Support the campus Lifelong Learning Center mission in the vendor services that support campus partner organizations;

- xiv. Provide event management services for private and public events, including vendor coordination;
  - xv. Manage guest on-site experience and wayfinding in conjunction with partner agencies; and
  - xvi. (Master Least Section 7.1.8) Keeping the Campus open for general public access and use as a Lifelong Learning Center, three hundred and sixty-five (365) days per year, except for emergency closures.
- b. ~~Contractor Concessionaire~~ will develop educational programs in service of hospitality workforce needs for Fort Worden Hospitality Corp. and the broader community.
2. **Season and Hours of Operation of Business.** The period of operation of the Business shall be from January through December of each year during the Agreement Term. The Business is open seven days a week, hours vary seasonably.
3. **Equipment, Furnishings, and Supplies.** Equipment, furnishings, and supplies, as purchased for use in carrying out business that will now be performed by ~~Contractor Concessionaire~~, are conveyed for use in same activities. See Attached.
4. **Marketing, Advertising, and Signage.** ~~Contractor Concessionaire~~ enjoys use of all marketing and advertising assets, including the domain [www.fortworden.org](http://www.fortworden.org), for the duration of this contract. All temporary signage assets are conveyed to ~~Contractor Concessionaire~~ for use, and future signage used by ~~Contractor Concessionaire~~ must meet site signage requirements of FWPDA. Permanent signage requirements have not changed and will continue to be administered by Washington State Parks via the FWPDA.
5. **Pricing List (attached).** On each subsequent anniversary of this contract, the Business shall submit an updated price list to the FWPDA Executive Director. The FWPDA has no responsibility over or approval of pricing.
6. **Point of Contact.**  
Executive Director or Designee
7. **Grounds Maintenance.**  
Grounds Maintenance equipment remains the property of the FWPDA. ~~Contractor Concessionaire~~ will operate equipment and maintain grounds on behalf of the FWPDA until such time as those duties are taken back by the FWPDA, with a minimum 30-days' notice prior to such change of duties.
8. **Utilities.**  
Utilities will be maintained by the FWPDA, and ~~Contractor Concessionaire~~ will pay their portion as billed monthly by FWPDA.

**Exhibit B: Facilities**

**1. Description of Facilities**

<b>Bldg No.</b>	<b>Gross Sq. Ft.</b>	<b>Date Built</b>	<b>Historical Use</b>	<b>Current Use</b>	<b>FWH Use</b>	<b>NOTES</b>
4	10,314	1904	Double Officer's Quarters	Vacation Housing	10314	
5	5907	1904	Double Officer's Quarters	Vacation Housing	5907	
6	5907	1904	Double Officer's Quarters	Vacation Housing	5907	
7	5907	1904	Double Officer's Quarters	Vacation Housing	5907	
9	6464	1905	Double Officer's Quarters	Vacation Housing	6464	
10	6464	1905	Double Officer's Quarters	Vacation Housing	6464	
11	10,314	1905	Double Officer's Quarters	Vacation Housing	10314	
15	5979	1905	Double Officer's Quarters	Vacation Housing	5979	
16	14,719	1915	Bachelor Officer's Quarters	Vacation Housing	14719	
24	3286	1941	Regimental Chapel	Event Venue	3286	
25	4918	1932	Theater	Theater	4918	
26	19,035	1921/91	Balloon Hangar	Event Venue	19035	
200	10,688	1908	Post Headquarters	PDA Offices, Park Offices, FFW Gift Shop	TBD	Server & record access
203	19,344	1904	Company Barracks	Dormitory	19344	
204	19,344	1905	Company Barracks	Event Venue	19344	
221	1040	1941	Company Storehouse and Administration	Laundry, Housekeeping Office	1040	
225	39,200	1908	2 Company Barracks	Dormitory	39200	
229	1454	c 1890	Alexander's Castle	Vacation Housing	1454	
245	1030	1898	NCO Quarters	Vacation Housing	1030	
246	4100	1941	Regimental Recreation Hall	JFK Event Venue	4100	
262	1040	1917	NCO Quarters	Vacation Housing	1040	
270	1665	1904	Hospital Stewards Quarters	Vacation Housing	1665	
272	4780	1941	4 Family Officer's Quarters	Vacation Housing	4780	
277	4780	1941	4 Family Officer's	Vacation Housing	4780	

			Quarters			
296	2821	1941	Regimental Storehouse	Lawn Mower Shop	2821	
298	20,608	1904/ 1910	Post Hospital	PDA Offices, Goddard, Event Venue	TBD	Exclude Goddard- leased spaces
300	3668	1904	Guard House	Taps at the Guardhouse Bar & Restaurant (PDA)	3668	
304	9240	1941	Storehouse	Storage/Wood Shop	TBD	Potential changes in works
309	210	1920	Post Exchange Gas Station	Unoccupied		TBD
325	1216	1905	Double NCO Quarters	ADA Vacation Housing	1216	
326	5395	1941	Service Club (USO)	Conf./Event Venue	5395	
331	4505	1909	Double NCO Quarters	Vacation Housing	4505	
332	4505	1905	Double NCO Quarters	Vacation Housing	4505	
333	4505	1904	Double NCO Quarters	Vacation Housing	4505	
334	4505	1904	Double NCO Quarters	Vacation Housing	4505	
335	4505	1909	Double NCO Quarters	Vacation Housing	4505	
336	2101	1909	Fireman's Quarters	Vacation Housing	2101	
352	4505	1915	Double NCO Quarters	Vacation Housing	4505	
353	4505	1915	Double NCO Quarters	Vacation Housing	4505	
372	7872	1910	Wagon Shed & Quarters	PDA Storage	7872	
501	2000	1910	Cable Storehouse	Cablehouse Canteen	2000	
210	19,679	2003	None	Fort Worden Commons	19679	
235	861	1917	NCO Quarters	Vacation Housing (Bliss Vista)	861	
297	972	1960	None	Seminar - Event Venue	972	
364	662	1917	Motor Pool Carpenter Shop	Grounds	662	
604	36	UNK	None	Ticket Booth	36	



**2. Site Access**

Site access that has been granted to the FWPDA is hereby conferred also to the Concessionaire, subordinate to all provisions of the Master Lease.

**3. Fixtures**

Fixtures are included for the use of ~~Contractor~~ Concessionaire in the course of business. Fixture repair and replacement will be the responsibility of ~~Contractor~~ Concessionaire except by mutual agreement.



### Exhibit C: Insurance

1. **INSURANCE.** ~~Concessionaire-Contractor~~ shall, at its sole cost and expense, maintain in full force and effect the following minimum limits of insurance against claims for injuries to persons or damage to property which may arise from or in connection with ~~Contractor's Concessionaire's~~ operations and adhere to terms and conditions of its liability insurance during the term of this Lease Agreement. ~~Contractor Concessionaire~~ shall maintain:
  - a) Comprehensive General Liability Insurance against claims for injury or death to persons or damage to property with minimum limits of liability of \$1,000,000.00 combined single limit for each occurrence, with a general aggregate limit of not less than \$2,000,000. Such insurance shall include but not be limited to bodily injury liability, personal injury liability, property damage liability, broad form property damage liability, contractual liability, and products/completed operations liability, if applicable. General liability insurance may be written on an occurrence form at least as broad as ISO CG 00 01.
  - b) Workers Compensation Insurance as will protect ~~Contractor's Concessionaire's~~ employees from claims under Washington Workers Compensation Act and as will secure ~~Contractor's Concessionaire's~~ liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington.
  - c) Automobile Liability insurance at least as broad as ISO CA 00 01 including coverage for owned, non-owned (if ~~Contractor Concessionaire~~ owns vehicles), leased or hired vehicles as applicable, with a minimum limit of \$1,000,000 each accident for bodily injury and property damage.
  - d) Property insurance against all risk of loss to any tenant improvements or betterments and tenant's personal property at full replacement cost with no coinsurance penalty provision.
  - e) Other Insurance Provisions.
    - i. **Additional Insureds.** All such insurance shall name ["WASHINGTON STATE PARKS and RECREATION COMMISSION and the "FORT WORDEN PUBLIC DEVELOPMENT AUTHORITY,"](#) its officers, directors, employees, and volunteers as additional insureds, and shall be with insurance companies acceptable to the FWPDA. The ~~Contractor Concessionaire~~ agrees to supply the FWPDA with appropriate evidence to establish that its insurance obligations have been met, and that the insurance policy or policies are not subject to cancellation without at least thirty (30) days advance written notice to the FWPDA.
    - ii. **Verification of Coverage.** ~~Contractor Concessionaire~~ shall furnish to the FWPDA for verification of coverage, Certificates of Insurance, including all amendatory endorsements at least as broad as ISO GC 20-24, and a copy of the Declarations Endorsements page to ~~Contractor's Concessionaire's~~ General Comprehensive Liability policy, the conditions set forth in subparagraphs A, B, C, D, and E of Section XIII shall be met prior to occupancy.

- iii. **Primary Coverage.** ~~Contractor's Concessionaire's~~ insurance coverage shall be primary insurance as respects the FWPDA and shall be at least as broad as ISO CG 20 01 04 13. And insurance, self-insurance, or insurance pool coverage maintained by the FWPDA shall be excess of the ~~Contractor's Concessionaire's~~ insurance and shall not contribute to it. ~~Contractor Concessionaire~~ is solely responsible to insure its personal property or property of its guests, customers, or students against loss or casualty of any kind, and the FWPDA has no responsibility for the loss or damage to equipment and property of ~~Contractor Concessionaire~~ or its users.
- iv. **ISO Amendments.** All references to ISO include any amendments thereto, and if the document is replaced, then the replacement document(s) applies.
- v. **No Limitation.** ~~Contractor's Concessionaire's~~ maintenance of insurance as required by this Lease Agreement shall not be construed to limit the liability of ~~Contractor Concessionaire~~ to the coverage provided by such insurance, or otherwise limit the FWPDA's recourse to any remedy available at law or equity.
- vi. **Self-Insured Retention.** Self-insured retention must be declared and approved in writing by the FWPDA.
- vii. **Special Risks or Circumstances.** The FWPDA reserves the right to modify these requirements at any time, including limits, based on the FWPDA'S assessment of nature of risk, prior experience, insurer, coverage, or other special circumstances.
- viii. **Waiver of Subrogation.** ~~Contractor Concessionaire~~ hereby releases the FWPDA from liability and waives all right of recovery against the FWPDA for any loss from perils insured against under its insurance contracts, including any extended coverage endorsements thereto. Notwithstanding the foregoing, this paragraph shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of ~~Contractor's Concessionaire's~~.

2. **INCREASE IN COST OF INSURANCE:** ~~Contractor Concessionaire~~ shall not use the demised premises in such a manner as to increase the existing rates of insurance applicable to the buildings or structures of which the premises are a part. If it nevertheless does so, then, at the option of the FWPDA, the full amount of any resulting increase in premiums paid by the FWPDA with respect to the buildings or structures of which the premises are a part, and to the extent allocable to the term of this Agreement, may be added to the amount of facility charge specified and shall be paid by ~~Contractor Concessionaire~~ to the FWPDA upon the rental due date or monthly facility charge day, as applicable, next thereafter occurring.

INTERAGENCY DATA SHARING AGREEMENT

Between

Fort Worden Public Development Authority

And the Office of the Washington State Auditor

This Interagency Data Sharing Agreement (DSA) is entered into by and between Fort Worden Public Development Authority hereinafter referred to as “Agency”, and the Office of the Washington State Auditor, hereinafter referred to as “SAO”, pursuant to the authority granted by Chapter 39.34 RCW and 43.09 RCW.

AGENCY PROVIDING DATA: Agency

Agency Name: Fort Worden Public Development Authority  
 Contact Name: David Timmons  
 Title: \_\_\_\_\_  
 Address: 200 Battery Way  
Port Townsend, WA 98368  
 Phone: \_\_\_\_\_  
 E-mail: dtimmons@fortworden.org

AGENCY RECEIVING DATA: SAO

Agency Name: Office of the Washington State Auditor  
 Contact Name: Carol Ehlinger  
 Title: Program Manager  
 Address: 451 Sedgwick Rd Suite 200  
Port Orchard, WA 98367  
 Phone: (360) 895-6133  
 E-mail: ehlingerc@sao.wa.gov

1. PURPOSE OF THE DSA

The purpose of the DSA is to provide the requirements and authorization for the Agency to exchange confidential information with SAO. This agreement is entered into between Agency and SAO to ensure compliance with legal requirements and Executive Directives (Executive Order 16-01, RCW 42.56, and OCIO policy 141.10) in the handling of information considered confidential.

2. DEFINITIONS

“Agreement” means this Interagency Data Sharing Agreement, including all documents attached or incorporated by reference.

DSA Agreement between Agency and SAO  
Agency DSA: 21-01

“Data Access” refers to rights granted to SAO employees to directly connect to Agency systems, networks and/ or applications combined with required information needed to implement these rights.

“Data Transmission” refers to the methods and technologies to be used to move a copy of the data between systems, networks and/ or employee workstations.

“Data Storage” refers to the place data is in when at rest. Data can be stored on removable or portable media devices such as a USB drive or SAO managed systems or OCIO/ State approved services.

“Data Encryption” refers to enciphering data with a NIST-approved algorithm or cryptographic module using a NIST-approved key length. Encryption must be applied in such a way that it renders data unusable to anyone but the authorized users.

“Personal Information” means information defined in RCW 42.56.590(10).

3. PERIOD OF AGREEMENT

This agreement shall begin on May 24, 2021, or date of execution, whichever is later, and end on May 23, 2024, unless terminated sooner or extended as provided herein.

4. JUSTIFICATION FOR DATA SHARING

SAO is the auditor of all public accounts in Washington State. SAO’s authority is broad and includes both explicit and implicit powers to review records, including confidential records, during the course of an audit or investigation.

5. DESCRIPTION OF DATA TO BE SHARED

The data to be shared includes information and data related to financial activity, operation and compliance with contractual, state and federal programs, security of computer systems, performance and accountability for agency programs as applicable to the audit(s) performed. Specific data requests will be limited to information needed for SAO audits, investigations and related statutory authorities as identified through auditor requests.

6. DATA ACCESS

If desired, with the Agency’s permission, the Agency can provide direct, read-only access into its system. SAO will limit access to the system to employees who need access in support of the audit(s). SAO agrees to notify the agency when access is no longer needed.

7. DATA TRANSMISSION

Transmission of data between Agency and SAO will use a secure method that is commensurate to the sensitivity of the data being transmitted.

8. DATA STORAGE AND HANDLING REQUIREMENTS

Agency will notify SAO if they are providing confidential data. All confidential data provided by Agency will be stored with access limited to the least number of SAO staff needed to complete the purpose of the DSA.

9. INTENDED USE OF DATA

The Office of the Washington State Auditor will utilize this data in support of their audits, investigations, and related statutory responsibilities as described in RCW 43.09.

10. CONSTRAINTS ON USE OF DATA

The Office of the Washington State Auditor agrees to strictly limit use of information obtained under this Agreement to the purpose of carrying out our audits, investigations and related statutory responsibilities as described in RCW 43.09.

11. SECURITY OF DATA

SAO shall take due care and take reasonable precautions to protect Agency's data from unauthorized physical and electronic access. SAO complies with the requirements of the OCIO 141.10 policies and standards for data security and access controls to ensure the confidentiality, and integrity of all data shared.

12. NON-DISCLOSURE OF DATA

SAO staff shall not disclose, in whole or in part, the data provided by Agency to any individual or agency, unless this Agreement specifically authorizes the disclosure. Data may be disclosed only to persons and entities that have the need to use the data to achieve the stated purposes of this Agreement. In the event of a public disclosure request for the Agency's data, SAO will notify the Agency

- a. SAO shall not access or use the data for any commercial or personal purpose.
- b. Any exceptions to these limitations must be approved in writing by Agency.
- c. The SAO shall ensure that all staff with access to the data described in this Agreement are aware of the use and disclosure requirements of this Agreement and will advise new staff of the provisions of this Agreement.

13. OVERSIGHT

The SAO agrees that Agency will have the right, at any time, to monitor, audit, and review activities and methods in implementing this Agreement in order to assure compliance.

14. TERMINATION

Either party may terminate this Agreement with 30 days written notice to the other party's Agreement Administrator named on Page 1. However, once data is accessed by the SAO, this Agreement is binding as to the confidentiality, use of the data, and disposition of all data received as a result of access, unless otherwise amended by the mutual agreement of both parties.

15. DISPUTE RESOLUTION

In the event that a dispute arises under this Agreement, a Dispute Board shall determine resolution in the following manner. Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review facts, contract terms, and applicable statutes and rules and make a determination of the dispute.

16. GOVERNANCE

- a. The provisions of this Interagency Data Sharing Agreement are severable. If any provision of this Agreement is held invalid by any court that invalidity shall not affect the other provisions of this Interagency Data Sharing Agreement and the invalid provision shall be considered modified to conform to the existing law.
- b. In the event of a lawsuit involving this Interagency Data Sharing Agreement, venue shall be proper only in Thurston County, Washington.

17. SIGNATURES

The signatures below indicate agreement between the parties.

Agency

Office of the Washington State Auditor

\_\_\_\_\_

\_\_\_\_\_

Signature

Date

Signature

Date

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Projected BOB for 2021**

<b>2021 BOB</b>	<b>January</b>	<b>February</b>	<b>March</b>	<b>April</b>	<b>May</b>	<b>June</b>	<b>July</b>	<b>August</b>	<b>September</b>	<b>October</b>	<b>November</b>	<b>December</b>	<b>Total</b>
<b>Leisure</b>													
Room	35,597	43,593	68,963	86,125	127,986	208,468	320,233	303,457	187,595	69,119	59,793	40,180	\$ 1,551,109
Catering	-	-	-	-	-	-	-	-	-	-	-	-	\$ -
Venue	-	-	-	-	-	-	-	-	-	-	-	-	\$ -
Projected Total Revenue	35,597	43,593	68,963	86,125	127,986	208,468	320,233	303,457	187,595	69,119	59,793	40,180	\$ 1,551,109
Actualized Revenue	35,597	43,593	68,963	86,125	127,986	-	-	-	-	-	-	-	\$ 362,264
<b>Group</b>													
Room	-	-	7,200	-	11,148	64,840	31,676	81,940	67,362	2,530	39,296	5,916	\$ 311,908
Catering	-	-	5,452	-	16,756	28,809	19,850	37,792	44,550	16,880	15,850	2,500	\$ 188,438
Venue	-	-	4,989	-	9,198	15,252	17,637	17,748	19,421	6,185	4,764	1,705	\$ 96,899
Projected Total Revenue	-	-	17,641	-	37,102	108,901	69,163	137,480	131,333	25,595	59,910	10,121	\$ 597,246
Actualized Revenue	-	-	17,641	-	37,102	-	-	-	-	-	-	-	\$ 54,743
<b>Totals</b>													
Room	35,597	43,593	76,163	86,125	139,134	273,308	351,909	385,397	254,957	71,649	99,089	46,096	\$ 1,863,017
Catering	-	-	5,452	-	16,756	28,809	19,850	37,792	44,550	16,880	15,850	2,500	\$ 188,438
Venue	-	-	4,989	-	9,198	15,252	17,637	17,748	19,421	6,185	4,764	1,705	\$ 96,899
Total Bookings	35,597	43,593	86,603	86,125	165,088	317,369	389,396	440,937	318,928	94,714	119,703	50,301	\$ 2,148,355
Actualized Bookings	35,597	43,593	86,603	86,125	165,088	-	-	-	-	-	-	-	\$ 417,007
Actualized Restaurant Revenue	2,386	5,366	10,814	10,672	17,549								\$ 46,786
Total FWH Sales	37,983	48,959	97,417	96,797	182,637								\$ 463,793

**FORT WORDEN PDA**  
**FWPDA Comparative P&L**  
**January through May 2021**  
(unaudited)

	Jan - May 21	Jan - May 20	\$ Change	% Change
<b>Ordinary Income/Expense</b>				
<b>Income</b>				
<b>4000 Accomodations</b>	380,337	232,823	147,514	63%
<b>4400 Food Sales Revenue</b>	61,296	239,118	(177,822)	(74%)
<b>4600 Other Revenues</b>	97,758	134,680	(36,922)	(27%)
<b>4900 PDA Grants/Donations</b>	711,464	2,020,562	(1,309,098)	(65%)
<b>Total Income</b>	1,250,855	2,627,183	(1,376,328)	(52%)
<b>Cost of Goods Sold</b>	21,392	128,252	(106,860)	(83%)
<b>Gross Profit</b>	1,229,463	2,498,931	(1,269,468)	(51%)
<b>Expense</b>				
<b>6010 Personnel Costs</b>	429,660	1,315,087	(885,427)	(67%)
<b>7000 Repairs &amp; Maintenance</b>	10,711	48,253	(37,542)	(78%)
<b>7100 Utilities</b>	172,457	182,665	(10,208)	(6%)
<b>8000 Contracts</b>	593,197	1,492,246	(899,049)	(60%)
<b>8500 Operating Expense</b>	106,019	228,163	(122,144)	(54%)
<b>Total Expense</b>	1,312,044	3,266,414	(1,954,370)	(60%)
<b>Net Ordinary Income</b>	(82,581)	(767,483)	684,902	89%
<b>Other Income/Expense</b>				
<b>Other Expense</b>				
<b>9500 Capital Purchase/Equipment</b>	0	54,668	(54,668)	(100%)
<b>9600 Leasehold Improvements</b>	738	212,728	(211,990)	(100%)
<b>Total Other Expense</b>	738	267,396	(266,658)	(100%)
<b>Net Other Income</b>	(738)	(267,396)	266,658	100%
<b>Net Income</b>	<b>(83,319)</b>	<b>(1,034,879)</b>	<b>951,560</b>	<b>92%</b>



**FORT WORDEN PDA**  
**FWPDA Hospitality Comparative P&L**  
**January through May 2021**  
(unaudited)

	Jan - May 21	Jan - May 20	\$ Change	% Change
<b>Ordinary Income/Expense</b>				
<b>Income</b>				
<b>4000 Accomodations</b>	380,337	232,823	147,514	63%
<b>4400 Food Sales Revenue</b>	61,296	239,118	(177,822)	(74%)
<b>4600 Other Revenues</b>	87,330	131,560	(44,230)	(34%)
<b>4900 PDA Grants/Donations</b>	43,909	74,400	(30,491)	(41%)
<b>Total Income</b>	572,872	677,901	(105,029)	(15%)
<b>Cost of Goods Sold</b>				
<b>Cost of Goods</b>	21,392	128,252	(106,860)	(83%)
<b>Total COGS</b>	21,392	128,252	(106,860)	(83%)
<b>Gross Profit</b>	551,480	549,649	1,831	0%
<b>Expense</b>				
<b>6010 Personnel Costs</b>	407,140	1,112,748	(705,608)	(63%)
<b>7000 Repairs &amp; Maintenance</b>	10,573	20,348	(9,775)	(48%)
<b>7100 Utilities</b>	172,457	182,665	(10,208)	(6%)
<b>8000 Contracts</b>	55,768	51,294	4,474	9%
<b>8500 Operating Expense</b>	101,444	212,766	(111,322)	(52%)
<b>Total Expense</b>	747,382	1,579,821	(832,439)	(53%)
<b>Net Ordinary Income</b>	(195,902)	(1,030,172)	834,270	81%
<b>Other Income/Expense</b>				
<b>9500 Capital Purchase/Equipment</b>	0	46,296	(46,296)	(100%)
<b>Net Other Income</b>	0	(46,296)	46,296	100%
<b>Net Income</b>	<b>(195,902)</b>	<b>(1,076,468)</b>	<b>880,566</b>	<b>82%</b>

**FORT WORDEN PDA**  
**FWPDA Capital Comparative P&L**  
January through May 2021  
(unaudited)

	Jan - May 21	Jan - May 20	\$ Change	% Change
<b>Ordinary Income/Expense</b>				
<b>Income</b>				
4600 Other Revenues	10,428	3,120	7,308	234%
4900 PDA Grants/Donations	667,555	1,946,162	(1,278,607)	(66%)
<b>Total Income</b>	<b>677,983</b>	<b>1,949,282</b>	<b>(1,271,299)</b>	<b>(65%)</b>
<b>Gross Profit</b>	<b>677,983</b>	<b>1,949,282</b>	<b>(1,271,299)</b>	<b>(65%)</b>
<b>Expense</b>				
6010 Personnel Costs	22,520	202,339	(179,819)	(89%)
7000 Repairs & Maintenance	138	27,906	(27,768)	(100%)
8000 Contracts	537,429	1,440,951	(903,522)	(63%)
8500 Operating Expense	4,575	15,397	(10,822)	(70%)
<b>Total Expense</b>	<b>564,662</b>	<b>1,686,593</b>	<b>(1,121,931)</b>	<b>(67%)</b>
<b>Net Ordinary Income</b>	<b>113,321</b>	<b>262,689</b>	<b>(149,368)</b>	<b>(57%)</b>
<b>Other Income/Expense</b>				
<b>Other Expense</b>				
9500 Capital Purchase/Equipment	0	8,373	(8,373)	(100%)
9600 Leasehold Improvements	738	212,728	(211,990)	(100%)
<b>Total Other Expense</b>	<b>738</b>	<b>221,101</b>	<b>(220,363)</b>	<b>(100%)</b>
<b>Net Other Income</b>	<b>(738)</b>	<b>(221,101)</b>	<b>220,363</b>	<b>100%</b>
<b>Net Income</b>	<b>112,583</b>	<b>41,588</b>	<b>70,995</b>	<b>171%</b>

**FORT WORDEN PDA**  
**Statement of Cash Flows**  
January through May 2021

	<b>Jan - May 21</b>
<b>OPERATING ACTIVITIES</b>	
Net Income	\$ (83,319)
Adjustments to reconcile Net Income	
net cash provided (used) by operations:	
AR	\$ 20,514
Grants	\$ 885,046
Inventories	\$ (4,630)
Prepaid Expenses	\$ (72,039)
Hospitality A/P	\$ (109,946)
Capital Fund A/P	\$ (384,048)
Current Liabilities	\$ 14,005
Public Works Retainage	\$ 22,146
Advance Deposits	\$ 398,724
Net cash provided by Operating Activities	\$ 686,453
net cash provided (used) by Financing Activities	
Fort Worden Foundation Loan	\$ (350,000)
Kitsap Bank Bridge Loan	\$ (214,000)
Net cash used by Financing Activities	\$ (564,000)
 Net cash increase for period	 \$ 122,453
 Cash at beginning of period	 \$ 162,226
 Cash at end of period	 \$ 284,679

**Fort Worden Public Development Authority  
Fund Resources and Uses Arising from Cash Transactions  
Enterprise Operating Fund  
For the Years Ended December 31:**

	<u>2019</u>	<u>2018</u>	<u>2017</u>	<u>2016</u>	<u>2015</u>
<b>Beginning Cash and Investments</b>					
30810 Reserved	1,206,691	152,082	724,313	1,508,179	475,844
30880 Unreserved	82,486	388,008	134,109	63,928	178,638
<b>Total Beginning Cash and Investments</b>	<b>1,289,177</b>	<b>540,090</b>	<b>858,422</b>	<b>1,572,107</b>	<b>654,482</b>
<b>Revenues</b>					
330 Intergovernmental Revenues	1,342,492	25,189	60,500	83,709	1,140,706
340 Charges for Goods and Services	6,499,510	6,229,413	5,430,151	4,146,642	3,267,303
360 Miscellaneous Revenues	28,603	586	126	5,014	3,395
<b>Total Revenues</b>	<b>7,870,605</b>	<b>6,255,189</b>	<b>5,490,777</b>	<b>4,235,365</b>	<b>4,411,404</b>
<b>Expenditures</b>					
570 Culture and Recreation	9,729,989	6,653,135	5,305,796	4,592,233	3,077,932
<b>Total Expenditures</b>	<b>9,729,989</b>	<b>6,653,135</b>	<b>5,305,796</b>	<b>4,592,233</b>	<b>3,077,932</b>
<b>Excess (Deficiency) Revenues over Expenditures</b>	<b>(1,859,385)</b>	<b>(397,946)</b>	<b>184,981</b>	<b>(356,868)</b>	<b>1,333,472</b>
<b>Other Increases in Fund Resources</b>					
391-393 Debt Proceeds	2,200,000	1,190,000	-	158,724	-
386/389 Custodial Activities	985,925	765,183	670,753	589,289	374,452
<b>Total Other Increases in Fund Resources</b>	<b>3,185,925</b>	<b>1,955,183</b>	<b>670,753</b>	<b>748,013</b>	<b>374,452</b>
<b>Other Decreases in Fund Resources</b>					
594-595 Capital Expenditures	1,051,028	34,980	285,985	534,126	202,832
591-593 Debt Service	206,418	15,493	208,066	3,005	73,243
586/589 Custodial Activities	756,593	757,678	680,016	567,700	514,224
<b>Total Other Decreases in Fund Resources</b>	<b>2,014,038</b>	<b>808,150</b>	<b>1,174,067</b>	<b>1,104,830</b>	<b>790,299</b>
<b>Increase (Decrease) in Cash and Investments</b>	<b>(687,498)</b>	<b>749,087</b>	<b>(318,332)</b>	<b>(713,685)</b>	<b>917,625</b>
<b>Ending Cash and Investments</b>					
5081000 Reserved	403,554	1,206,691	152,082	724,313	1,508,179
5088000 Unreserved	198,124	82,486	388,008	134,109	63,928
<b>Total Ending Cash and Investments</b>	<b>601,678</b>	<b>1,289,177</b>	<b>540,090</b>	<b>858,422</b>	<b>1,572,107</b>

**Fort Worden Public Development Authority  
Fiduciary Fund Resources and Uses Arising From Cash Transactions  
Fort Warden Foundation  
For the Years Ended December 31:**

	<u>2019</u>	<u>2018</u>	<u>2017</u>	<u>2016</u>	<u>2015</u>
<b>Beginning Cash and Investments</b>					
<b>308 Beginning Cash and Investments</b>	<b>1,844,261</b>	<b>1,808,925</b>	<b>1,117,899</b>	-	-
<b>Additions</b>					
310-390 Additions	2,976,439	855,728	1,400,485	1,548,318	-
<b>Deductions</b>					
510-590 Deductions	4,720,666	820,392	709,459	430,419	-
<b>Increase (Decrease) in Cash and Investments</b>	<b>(1,744,227)</b>	<b>35,336</b>	<b>691,026</b>	<b>1,117,899</b>	-
<b>Ending Cash and Investments</b>					
<b>508 Ending Cash and Investments</b>	<b>100,034</b>	<b>1,844,261</b>	<b>1,808,925</b>	<b>1,117,899</b>	-

## RESOLUTION NO. 21-06

### A RESOLUTION OF THE BOARD OF DIRECTORS OF THE FORT WORDEN LIFELONG LEARNING CENTER PUBLIC DEVELOPMENT AUTHORITY CONFIRMING MATERIAL COMPLETION OF BOARD'S TRANSITION OBJECTIVES

#### RECITALS

- A. This Resolution declares that the Board has materially completed objectives for the transition of the FWPDA Board of Directors approved by the Board on January 27, 2021.
- B. The Purpose of establishing the objectives was declared by the Board on January 27, 2021:

**Purpose:** The purpose of the transition is to enable the implementation of the reorganization of the Fort Worden governance and management structure as announced at the October 2020 FWPDA board meeting. The current board of directors will transition responsibilities to a new, smaller board with more focused capabilities upon the completion of FWPDA reorganization.

- C. The recommended objectives for the transition of the FWPDA Board of Directors were approved by the Board as follows:

#### **Objectives to be completed prior to transition:**

1. Review and respond to the Accountability Audit conducted by the Washington State Auditor's Office (SAO). Ensure that SAO recommendations are evaluated and implemented.
2. Oversee the completion of the Makers Square project, including receipt of the certificate of occupancy and the purchase of Historic Tax Credits, and negotiate lease terms with Makers Square Landlord LLC and Fort Worden Foundation.
3. Approve the concession agreement with FW Hospitality Corporation, advise the PDA executive director, who currently serves as the registered agent for the Hospitality Corporation, and provide counsel about the transfer of services and management functions from the PDA to the Hospitality Corporation.
4. Approve adjustment of the interest rate and maturity date of the PDA's Revenue Bond (2019A) and authorize other loan agreements and revisions as necessary for recovery process (e.g., Glamping, Capital funds, and Advanced Deposits).
5. Advise the PDA executive director on establishment of an asset strategy to effect more sustainable methods to address long-term deferred maintenance, manage capital assets, and steward the historic properties of the Fort.
6. Advise the executive director on the public process for investigating more efficacious business practices and diversified revenue streams beyond the emergency reorganization now underway.
7. Advise the executive director, city manager, and mayor on recommended attributes for a new PDA Board of Directors consistent with executive director's PDA Trust recommended objectives. Complete a full transition to a new board by no later than June 1, 2021. Possible attributes and qualifications may include property management skills, financial and legal expertise, as well as programming experience.

D. The Board informed and presented these transition objectives to the Port Townsend City Council on February 1<sup>st</sup> 2021.

**BE IT RESOLVED** that the Board of Directors of the Fort Worden Lifelong Learning Center Public Development Authority has successfully delivered on the transition objectives noted above other than:

- Transition Objective 1 – Accountability Audit: This Board is prepared to comment on and close out the Accountability Audit with the State Auditors upon receipt of the report from the State Auditor.
- Transition Objective 5 – Asset Management Strategy: advising the executive director on the establishment of an asset management strategy. Due to the time-sensitive nature of the other transition objectives, this objective has been delayed until the seating of the next PDA Board of Directors.

**ADOPTED AND APPROVED** by the Board of Directors at a special meeting thereof, held the 30<sup>th</sup> day of June, 2021.

By: \_\_\_\_\_

Norm Tonina, Co-Chairperson

By: \_\_\_\_\_

Todd Hutton, Co-Chairperson

**ATTEST:**

By: \_\_\_\_\_

Jane Kilburn, Secretary