

AGENDA

Port of Kennewick
Regular Commission Business Meeting
Port of Kennewick Commission Chambers
350 Clover Island Drive, Suite 200, Kennewick, Washington

Tuesday, January 10, 2017
2:00 p.m.

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. PUBLIC COMMENT *(Please state your name and address for the public record)*

IV. CONSENT AGENDA

- A. Approval of Direct Deposit and ePayments Dated December 19, 2016
- B. Approval of Warrant Register Dated December 30, 2016
- C. Approval of Direct Deposit and ePayments Dated December 30, 2016
- D. Approval of Warrant Registers Dated January 10, 2016
- E. Approval of Regular Commission Business Meeting Minutes December 8, 2016
- F. Approval of Interlocal Agreement with Washington State Health Care Authority, Public Employee Benefits Board (PEBB); and authorize the Chief Executive Officer (CEO) to sign the Agreement

V. PRESENTATION

- A. Friend of the Port (**TIM**)
- B. Wine Industry Update, Ken Robertson (**TANA**)
- C. Vista Field Update (**TIM/LARRY**)

VI. REPORTS, COMMENTS AND DISCUSSION ITEMS

- A. Clover Island Update (**LARRY**)
- B. Cancellation of January 24, 2017 Commission Meeting (**BRIDGETTE**)
- C. Columbia Drive Update (**LARRY**)
- D. Commissioner Meetings (formal and informal meetings with groups or individuals)
- E. Non-Scheduled Items

VII. PUBLIC COMMENT *(Please state your name and address for the public record)*

VIII. EXECUTIVE SESSION *(Ask public if they are staying, and if not, where they can be located if the Executive Session ends early.)*

- A. Real Estate, per RCW 42.30.110(1)(b) – Site Selection
- B. Real Estate, per RCW 42.30.110(1)(c) – Minimum Price

IX. ADJOURNMENT

PLEASE SILENCE CELL PHONES



PORT OF KENNEWICK REGULAR COMMISSION MEETING

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DECEMBER 13, 2016 MINUTES

CALL TO ORDER

Commission President Skip Novakovich called the Regular Commission Meeting to order at 2:00 p.m. in the Port of Kennewick Commission Chambers located at 350 Clover Island Drive, Suite 200, Kennewick, Washington 99336.

The following were present:

Board Members: Skip Novakovich, President
Thomas Moak, Vice-President
Don Barnes, Secretary

Staff Members: Tim Arntzen, Chief Executive Officer
Tana Bader Inglima, Deputy Chief Executive Officer
Amber Hanchette, Director of Real Estate and Operations
Nick Kooiker, Chief Financial Officer/Auditor
Larry Peterson, Director of Planning & Development
Lisa Schumacher, Special Projects Coordinator
Bridgette Scott, Executive Assistant
Lucinda Luke, Port Counsel

PLEDGE OF ALLEGIANCE

Terry Walsh led the Pledge of Allegiance.

APPROVAL OF THE AGENDA

MOTION: Commissioner Barnes moved to approve the Agenda, as published; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

PUBLIC COMMENT

No comments were made.

CONSENT AGENDA

Consent agenda consisted of the following:

- A. Approval of Direct Deposit and E-Payments Dated November 17, 2016**
Direct Deposit and E-Payments totaling \$46,657.75
- B. Approval of Warrant Registers Dated November 18, 2016**
Expense Fund Voucher Numbers 38450 through 38496 for a grand total of \$161,634.66
- C. Approval of Direct Deposit and E-Payments Dated December 2, 2016**
Direct Deposit and E-Payments totaling \$61,299.00
- D. Approval of Warrant Registers Dated December 13, 2016 (PS Media)**
Expense Fund Voucher Number 38531 for a grand total of \$11,386.04

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E. Approval of Warrant Registers Dated December 13, 2016

Expense Fund Voucher Numbers 38497 through 38530 and 38532 through 38559 for a grand total of \$823,167.60

F. Approval of Commission Business Meeting Minutes October 25, 2016

G. Approval of Commission Business Meeting Minutes November 8, 2016

Mr. Novakovich stated Consent Agenda items are a number of items taken collectively in one motion to be approved or disapproved. He further stated the Commission has the option to remove items from the Consent Agenda and inquired if any items need to be removed.

Commissioner Novakovich would like remove Item D and have the item approved separately because on April 12, 2011, he disclosed that Esprit, the company he and his wife owns, has a contract with PS Media to produce the Port's newsletter. Esprit does not get paid directly from the Port; they get paid from PS Media. Item D is the payment to PS Media and in the interest of any kind of perception that there could be a conflict, he would like to recuse himself from any action on this item.

It is the consensus of the Commission to remove Item D from the Consent Agenda for separate approval.

MOTION: *Commissioner Barnes moved for approval of the Consent Agenda, with the exception of Item D; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.*

MOTION: *Commissioner Barnes moved for approval of Item D; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 2:0, (Commissioners Moak and Barnes) 1 abstained (Commissioner Novakovich).*

PRESENTATIONS

A. Arts Foundation of the Mid-Columbia (AFMC)

Mr. Arntzen reported he has been meeting with Pam Bykonen and Chuck Eaton of the Arts Foundation of the Mid-Columbia (AFMC) over the past year, regarding potential reuse of the former fixed base operator (FBO) building. Together, the Port and the AFMC had been working on an agreement where the Commission would consider transferring the FBO building to the AFMC for an arts incubator and maker space. The Port and AFMC were working towards a draft letter of intent, which outlines the stipulations of potentially transferring the FBO building to the AFMC for a nominal sum who would then enter into a ground lease with the Port.

Ms. Bykonen, the president of the AFMC thanked the Commission and stated last January the AFMC submitted a proposal to repurpose the former FBO building, which would be used as an arts collaborative. Ms. Bykonen believes significant progress has been made on preparing the letter of intent and stated the purpose of using the FBO as an arts collaborative would be to support our local arts organizations. The AFMC would also be able to provide low cost meeting spaces and office space, be used as a place to gather and hold events and be an art hub for the community.

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Mr. Eaton, vice president of the AFMC stated in order to assess the needed improvements of the FBO building, the AFMC hired Meier Engineering to determine any code required modifications necessary for the intended use and to suggest improvements to increase the functionality of the FBO. Meier will assess the existing HVAC unit and perform a preliminary assessment of the electrical service. Furthermore, the AFMC will be meeting with local collaborating artists and organizations which will be facilitated by the Dispute Resolution of the Tri-Cities, who have been helpful to the AFMC in facilitating strategic planning and evaluating progress towards goals and objectives. Mr. Eaton stated the meeting will envision and structure the collaboration, and develop the program and plan the support for the facility and become a permanent resource for the arts community. By developing a collaborative art centric art place, which the AFMC will bring students, participants and families to Vista Field. And as soon it is feasible, the AFMC will begin branding Vista Field as a place for the arts, in conjunction with Phase I infrastructure planning and implementation. There will be an ongoing marketing program, which prepares for the Vista Arts Center and other institutions and organizations to join them all at Vista Field. Mr. Eaton hopes the letter of intent is closely followed by a signed agreement to lease the FBO building at Vista Field.

Mr. Moak inquired if the Commission were to move forward with the proposal, if the AFMC has a timeline which outlines the details and a timeframe of the project.

Mr. Eaton believes the AFMC could be ready for a dedication as early as spring, once a signed lease agreement has been approved.

Mr. Novakovich inquired if the AFMC has an idea of what it will cost to rehab the building.

Mr. Eaton stated the AFMC contracted with Meier Engineering to estimate those costs, however, Meier cannot begin the process until the letter of intent is signed. However, without the estimated costs, nothing is certain, but we are ready to move forward.

Mr. Moak inquired if any specific groups and/or organizations have formally agreed to be a part of this art collaboration at Vista Field.

Mr. Eaton stated the AFMC would like to have an understanding with the Port before they ask other groups to make a commitment. Once the understanding is in place, then a letter of agreement stipulating the terms can be drafted by legal. Mr. Eaton stated then Meier can assess the building and AFMC can share this information with the other art groups. Mr. Eaton believes these tasks can be easily accomplished once an understanding is met.

Mr. Arntzen stated he would like to see a demonstration of support from other groups for this endeavor and does not want to place the AFMC in a position where the support is less than anticipated.

Mr. Novakovich confirmed that Mr. Eaton is requesting a letter of intent by the end of the year.

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Mr. Arntzen is afraid if a letter of intent is signed and the project fell through, it would be heartbreaking to rescind the offer. Mr. Arntzen has offered to meet with the supporting arts groups in an effort to garner informal support for the project, and then the legal team can complete the remaining details of the letter of intent.

Mr. Moak supports the AFMC and Port working together to make this project come to fruition, as identified by Mr. Eaton.

Mr. Barnes would like to explore in greater detail why the AFMC would like to eventually purchase the FBO building. The FBO building is close to the end of its useful life and Mr. Barnes would not be surprised if there were significant expenses associated in rehabilitating the building for the intended proposed use. Mr. Barnes inquired why the AFMC would want to acquire a building, which is near the end of its useful life.

Mr. Eaton stated this has been a part of the discussion from the very beginning and the AFMC and the Port have been discussing having the AFMC lease the former FBO building for up to three years at a reduced rent. During that period of time, the AFMC could make substantial investments in the building and once the requirements were met, the AFMC would purchase the building. Mr. Eaton stated Meier Engineering has been through the building once, however, Meier cannot make a determination without ready access to the building. Mr. Eaton does not believe this can happen until the letter of intent is signed by the Port, which allows AFMC to show the building and work with an architect. Mr. Eaton reiterated their preference for a letter of intent and stated the AFMC could lease the former FBO building for a period up to 3 years. The AFMC's performance in the building could be evaluated on the following: activity, how many organizations are involved; what is the impact of the community and are they an effective marketing tool for Vista Field. If the AFMC meets the goals during that period of time, then they would enter into a purchase sale agreement for the building and property. Mr. Eaton reiterated that the AFMC has not been able to have concrete conversations with potential partners because the letter of intent has not been completed.

Mr. Novakovich asked Ms. Hanchette if the AFMC and Meier Engineering could evaluate the building prior to the letter of intent being signed.

Ms. Hanchette stated, as she has readily done before, she is happy to work with Mr. Eaton and Meier Engineering to provide access to the former FBO building.

Mr. Eaton stated Meier would need to enter the building multiple times over a period of several weeks and does not believe it would be feasible to arrange with Port staff. Mr. Eaton stated after the letter of intent, the AFMC would have rights to the former FBO building whereby the building would be off the market and the AFMC could shoulder the responsibility of working with Meier and potential partners.

Mr. Novakovich reiterated that the Commission will not be meeting again until January 10, 2017 and therefore does not believe the letter of intent will be signed before then.

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Mr. Eaton believes there does not need to be action by the Commission, but an agreement on the terms between Port staff and the AFMC of what the letter of intent would state, to move forward. At this time, we do not have a shared understating in place, other than a series of productive meetings taking place. Mr. Eaton stated the AFMC's lawyer believes the draft is fine.

Mr. Novakovich stated the Commission is in favor of the lease, however, the letter of intent formality is holding things up and as Mr. Arntzen stated, it is harder to reverse, if the project falls through.

Mr. Eaton stated the AFMC is not looking for the formal agreement, but an agreement on the terms of the proposed letter of intent.

Mr. Barnes is in favor of a low cost use of the building, but has reservations regarding the purchase of the land and building because of the unforeseen costs of the building.

Mr. Arntzen stated staff has been working on a letter of intent and are very close except for a few minor details. Mr. Arntzen stated staff negotiates approximately 75% of the contract, with the contingency that the Commission has the final say. Mr. Arntzen stated this is a large project and he had asked Mr. Eaton to demonstrate that there are multiple arts groups supportive and participating financially in this project. Mr. Arntzen is concerned that Mr. Eaton could be left doing this all on his own and had asked Mr. Eaton to have other groups either attend today's meeting or to meet with Mr. Arntzen to demonstrate the strength of the AFMC support. Mr. Arntzen will make himself available over the holidays to Mr. Eaton and welcomes the opportunity to meet with other arts organizations. Mr. Arntzen believes the terms of the agreement could be solidified shortly and presented to the Commission after the first of the year. Mr. Arntzen reiterated the magnitude of the project and the Port has already stated that they do not wish to invest any more money into the building. Mr. Arntzen stated at some point the Commission will be asked to either give the former FBO building to the AFMC or demolish it. Mr. Arntzen asked the Commission for additional time, to ensure staff are comfortable with any proposal, before bringing a letter of intent to the Commission.

Mr. Novakovich asked Mr. Eaton if he can complete the homework without the letter of intent.

Mr. Eaton stated the homework is essentially done, except for the requirement of setting up meetings. This is the busy season for the performing arts groups and the Dispute Resolution Center already has commitments for January and February, which they are working around.

Mr. Novakovich asked Mr. Eaton to complete the tasks outlined by Mr. Arntzen. Furthermore, Mr. Novakovich is concerned that AFMC is not aware of what the cost to rehab the building will be.

Mr. Eaton understands what Mr. Novakovich is saying and believes it can be done quickly.

Mr. Arntzen stated he could work with Ms. Luke and Ms. Hanchette to get the AFMC and Meier into the building as many times as necessary. Mr. Arntzen stated the Commission does not need

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to provide a final answer today, as this was more of an update and he will continue working with Mr. Eaton and Ms. Bykonen to assist them in assembling the information that the Commission will need. Furthermore, Mr. Arntzen believes it is imperative to have a good understanding of which groups will be part of this effort.

Mr. Eaton stated he cannot meet with the arts groups without a signed letter of intent.

Mr. Barnes reiterated his concern regarding selling or conveying the building to the AFMC.

Mr. Barnes confirmed with Ms. Luke that the Commission can discuss the lease dollar amount during Executive Session.

Ms. Luke stated that is correct.

B. Columbia Gardens Wine Village Tenant Recommendations

Ms. Hanchette stated earlier this year, the Commission approved by consensus, a winery tenancy policy, for the Columbia Gardens Wine Village, which is currently under construction. Furthermore, the Commission appointed a selection committee, which includes Ms. Hanchette, Terry Walsh from the City of Kennewick and Ken Robertson, the Port's Wine Consultant to proceed with a specific set of guidelines. Through aggressive marketing efforts concentrated on wineries in the Pacific Northwest, quality inquiries for tenancy were received from Walla Walla, Tri-Cities, Prosser, Woodinville and Seattle. A mixed marketing strategy included digital advertising, direct marketing, press releases, advertisement on the Port of Kennewick's website, display ads in the Tri-City Herald and regional business journals. In addition, articles were written in the Tri-City Herald and news stories were reported on broadcast media announcing the wine village and tenant application opportunities. Applications for tenancy were accepted through August 10, 2016 and three applications were received. The selection committee met individually with each winery at their place of business to view their facility and operations and interviewed each applicant to see if they met the tenancy requirements. After careful consideration and much deliberation, the committee is confident that all three applicants would be an asset to the Columbia Gardens Wine and Artisan Village. All have quality products, a strong consumer following and strong commercial potential for future business growth. However, two of the three applicants demonstrated strong need for the production facilities, and the use of the effluent treatment system, which is being installed by the City of Kennewick. Therefore, the committee recommends Palencia Wine Company of Richland, and Bartholomew Winery currently based in Seattle, Washington as the first two wine production tenants in the Columbia Gardens Wine and Artisan Village. The third applicant understands the decision and is still very interested in a presence at the Wine Village and the committee recommends continued negotiation with the third applicant for placement opportunities in Phase 2 of Columbia Gardens Wine and Artisan Village. Ms. Hanchette stated Ms. Walsh and Mr. Robertson are here today and available to answer any questions the Commission may have. Ms. Hanchette inquired what course of action the Commission would like her to take, whether it is to proceed with negotiations with Palencia Wine and Bartholomew Winery, reopen the application process and/or continue negotiations with the third applicant for Phase 2 of Columbia Gardens.

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Mr. Novakovich would like Ms. Hanchette to begin lease negotiations with Palencia and Bartholomew and continue negotiating with the third winery for Phase 2. Mr. Novakovich thanked the committee for their hard work and stated they have done an excellent job and the wineries that have been recommended will be a real asset to the entire project.

Mr. Moak inquired why Bartholomew is interested in relocating to the Tri-Cities.

Ms. Hanchette stated Bartholomew Winery currently has three locations: a tasting room in the old Rainier building in West Seattle, a case good storage and production facilities. By locating to Columbia Gardens Wine Village, they would be able to consolidate their case good and production facilities and they plan on maintaining their tasting room in Seattle because of their large customer base. They see eastern Washington as an opportunity to grow that side of business and bring new customers to their label. Bartholomew is very interested in the effluent piece and their grapes are grown in eastern Washington, furthermore, they would like to relocate to the area to raise their family. They see this as an opportunity for their business to grow, to be close to their grapes, and expand their business. They are very appreciative of any opportunity they can get to produce and consolidate their business.

Mr. Novakovich asked Mr. Robertson and Ms. Walsh what their feelings are and how they arrived at these recommendations.

Mr. Robertson stated all three applicants were superb, however, two of the wineries wanted to produce wine here. Since the City and the Port are investing a substantial amount of time and money, it seems it would be better to have an applicant that utilizes all the services. The Port can serve the third applicant with another opportunity in Phase 2. Mr. Palencia and Mr. Fawbush (owner of Bartholomew Winery) have a proven track record and are very impressive. Mr. Fawbush is highly recommended by the *Seattle Times* wine writer and is a known wine maker, with a very solid wine club which is enough to support his current production and augment if necessary. Furthermore, Mr. Fawbush is invested enough in Columbia Gardens to come to the ground breaking earlier this year.

Ms. Walsh thanked the Port for being able to be part of the committee and agrees with Mr. Robertson. Ms. Walsh stated the Fawbush's are very excited about moving to a community with a good quality of life. Furthermore, financially, the winery is very solid and impressive and they have a solid business plan in place. Ms. Walsh stated the third winery is well established and would be better suited for Phase 2. Ms. Walsh is very comfortable with the recommendations and is pleased with the business the wineries will bring.

Mr. Barnes stated there was a very detailed and wide ranging marketing effort and thanked Mr. Robertson and Ms. Walsh for their contributions. Mr. Barnes is comfortable with the committee's strong recommendation.

Mr. Novakovich stated the committee did a remarkable job and believes the Commission should move forward with the committee's recommendations.

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It is the consensus of the Commission for Ms. Hanchette to move forward with lease negotiations for Palencia Wine Company of Richland, and Bartholomew Winery and for the Chief Executive Officer to send a letter of intent which outlines the details and rates.

C. Former Tri-City Raceway Redevelopment Property Master Plan

Mr. Peterson stated at the previous Commission Meeting the Former Tri-City Raceway Redevelopment Property Draft Master Plan was presented. The Commission submitted key questions which included staff outreach efforts, the history, and additional details regarding the four to seven year timeframe.

Mr. Peterson stated the Draft Master Plan represents the last four years of effort, which included getting the property added into the Urban Growth Boundary. The property was added into the City limits and staff continued to work on the entitlement issues which included:

- Kennewick Irrigation Clause;
- Bonneville Power Administration;
- Washington State Department of Transportation Approval.

Mr. Peterson stated Roscoe Slade, City of West Richland Public Works Director assisted with several of the entitlement issues. Mr. Peterson also worked with Aaron Lambert, Community Development Director on the road network and utility layouts and generated a cost estimate for infrastructure and development on the site. The Draft Master Plan follows the Amended Comprehensive Scheme, slating the project as a priority in year's four to seven. The time frame allows for the City to establish their wine effluent treatment facility with the private sector and for certain triggers to be met, prior to the Port investing additional funds. Recently, the Port and City Joint Economic Development Committee met and looked at partnering on infrastructure and extending utilities to the site. The Draft Master Plan follows the same model as Columbia Gardens and the City of Kennewick Interlocal, where entities that benefit directly from the project must commit some funding to the development. Mr. Peterson inquired if the Commission has any additional comments regarding the Draft Master Plan.

Mr. Moak thanked Mr. Peterson for addressing his questions and concerns and mulled if investing in the Former Tri-City Raceway Redevelopment Property will be the right thing to do in four to seven years due to potential changes in the industry and/or environment. Mr. Moak expressed his concern that the way the Draft Master Plan reads, and looks as though the Interlocal Agreement has already been signed by the Port and the City, as opposed to what has been discussed at the joint economic development committee, when in fact an Interlocal Agreement is not in place at this time. Mr. Moak believes the general concept of the Draft Master Plan needs to happen regardless of what happens on the property. Mr. Moak appreciates all of the work Mr. Peterson has completed over the past two years to ready the property for redevelopment. Mr. Moak believes the Draft Master Plan should be adopted, to position the Port for redevelopment during the intended time frame.

Mr. Barnes thanked Mr. Peterson for the work he has completed on the Former Tri-City Raceway Redevelopment Property and stated the Draft Master Plan still affords the Port some flexibility going forward.

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Mr. Peterson stated the Draft Master Plan does not include items such as the design standards, but focuses on the constants, such as the road network and access points. Currently the Draft Master Plan has five acre lots, however, those can be reduced if needed.

Mr. Barnes is in favor of adopting the Draft Master Plan and by adopting the plan, the Port is memorializing where the Port is with respect to the property and what the plans and intentions are for the benefit of the private sector. The plan also allows for flexibility if the market were to change.

Mr. Novakovich agrees with Mr. Barnes comments and stated this will give the City of West Richland a view of our future plans for the property.

Aaron Lambert, City of West Richland Community Development Director stated staff and City Council have not had a chance to review it thoroughly. Mr. Lambert asked the Commission if he could present the Draft Master Plan to the City Council for comments and report back at a later date. Mr. Lambert stated the joint economic development committee met October 17, 2016 to discuss a potential plan for funding, however, the City did not commit any funds to extend the utilities in the 2017-2018 Budget. Furthermore, conditions have changed dramatically in that area of town with the addition of the new high school and the City's wine effluent treatment facility.

Mr. Novakovich would like to see the Commission move forward with the Draft Master Plan and the Commission can take comments and amend the document if necessary.

Mr. Moak would rather have the City Council's comments prior to adopting the Master Plan.

Mr. Arntzen stated staff is not requesting adoption of the Draft Master Plan today. The Commission has one meeting scheduled in January and Mr. Arntzen believes the Commission can accommodate Mr. Lambert's request. Furthermore, Mr. Arntzen would like to sit down with Mr. Peterson and Mr. Lambert regarding the long term and short term strategies. As Mr. Moak pointed out, the Port and City have not reached an agreement about the funding mechanism. Mr. Arntzen stated staff will reach out to the City to wrap up any outlying details and bring back early next year for adoption. Mr. Arntzen inquired if the Commission could state their vision for funding sources and the City could mull over. Thus, the Commission could adopt the Master Plan with the provision of how the Port envisions funding the project.

Mr. Lambert stated the Council meets tonight and then again in January. Mr. Lambert will make a commitment to get the Draft Master Plan to the Council in early January.

Mr. Novakovich stated the Draft Master Plan will need to be placed on the Agenda in February, allowing the City of West Richland time for review and comment.

RECESS

Mr. Novakovich recessed the meeting 3:21 p.m. for a break and will reconvene at approximately 3:30 p.m.

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REPORTS, COMMENTS AND DISCUSSION ITEMS

A. *Columbia Gardens Phase II Interlocal Agreement; Resolution 2016-34*

Mr. Arntzen presented an Interlocal Agreement with the City of Kennewick for Phase II of Columbia Gardens. Mr. Arntzen stated the City has reviewed the Interlocal Agreement and is comfortable with agreement, with some minor language revisions, but this will not affect the agreement. Mr. Arntzen stated the Port, the City and Columbia Basin College (CBC) have announced plans to embark on a process of developing a second phase of the wine village along with Columbia Drive, which would feature parcels of land for sale to wineries and other compatible uses; and having agreed upon a concept for developing the Willows site into a culinary college. The attached Interlocal Agreement discusses the process by which the projects would proceed, including the proposed funding mechanism. The City and Port will be collaborating to develop the Phase II site with infrastructure to entice wineries and other ancillary uses. The funding of the design and construction would be through the use of the Rural County Capital Funds (RCCF) provided courtesy of Benton County. The Willows site would use the RCCF and federal Economic Development Agency (EDA) funding and the College would use fundraising efforts to build and operate the culinary college. There is a lot of money and effort on the part of the City to assist with the infrastructure and Mr. Arntzen is very thankful to partner with the City on a project of this magnitude.

Terry Walsh, Executive Director of Community Outreach for the City of Kennewick stated Mr. Arntzen explained it thoroughly and the City is excited to start Phase II. Ms. Walsh stated the City has reviewed the Interlocal Agreement and would like to make a few minor revisions, however, it will not alter the intent of the agreement.

Mr. Novakovich is comfortable with the Interlocal Agreement and stated this is a fantastic opportunity for the Port, City and CBC. Mr. Novakovich is comfortable with Mr. Arntzen making minor revisions to the agreement to get the application process moving.

Mr. Moak stated this is an opportunity to negotiate with the third winery who was looking to establish a presence at Columbia Gardens. Mr. Moak stated it is important to move forward and maintain our partnership with the City and complete Phase I and begin Phase II with the assistance of the RCCF. Mr. Moak is comfortable with Mr. Arntzen fine-tuning the Interlocal Agreement and believes it is the right thing to do for this project.

Mr. Barnes agrees with the Commission comments and stated this is a great opportunity to capture an opportunity and work with CBC and utilize the RCCF. It will bring something meaningful to this part of town and thanked the City and Port staff for their diligent work.

Ms. Scott interjected and stated the Resolution states the Commission is adopting the Interlocal Agreement, however, the Commission discussed allowing Mr. Arntzen the authorization to make some minor revisions. Does the Commission wish to adopt the Draft or adjust the wording of the resolution?

Mr. Arntzen requested authority to sign the Interlocal Agreement.

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Ms. Scott will make the corrections to the Resolution for the Commission's signature.

PUBLIC COMMENTS

No comments were made.

MOTION: *Commissioner Barnes moved for the approval giving Mr. Arntzen the authority to sign the Interlocal Agreement; Commissioner Moak seconded.*

Discussion:

Mr. Moak stated with the understanding that there will be minor modifications to the document.

Mr. Novakovich thanked Port and City Staff for their fantastic partnership efforts.

With no further discussion, motion carried unanimously. All in favor 3:0.

Mr. Arntzen requested authority to start working on the RCCF application, consistent with the Interlocal Agreement. Mr. Arntzen and Ms. Bader Inglima will work on the application language and may be able to bring to the Commission in January.

It is the consensus of the Commission for staff to begin working on the Benton County Rural Capital County Funds application, consistent with the Interlocal Agreement between the Port and the City of Kennewick for Phase II of the Columbia Gardens Winery and Artisan Village.

B. Kennewick Irrigation District Inundation Clause

Mr. Arntzen recently received an update from Chuck Freeman, manager of the Kennewick Irrigation District (KID) stating the final inundation clause documents will be presented to Kennewick Irrigation District Board. The inundation clause documents will be the official agreement between the Port and KID, which rescinds the inundation clause on the former Tri-City Raceway Redevelopment Property. The Port has committed funds for the purchase of two Rubicon gates for the KID canal system, totaling \$75,000. The new gates will create a reservoir system thereby removing the necessity of flooding the property. Mr. Arntzen anticipates the Port will receive the final KID agreement in January.

C. Ice Harbor Brewing Company 5-Year Lease Renewal; Resolution 2016-35

Ms. Hanchette presented a lease renewal for Ice Harbor Brewing Company, who has been a Port tenant for ten years. The lease is up for renewal on December 31, 2016. Because this is a five year lease proposal with an option, it is coming before the Commission for consideration today. The parameters of the lease space are the same terms of location and Ms. Hanchette stated in the nine years that Ice Harbor has been open, they have become an attraction to the island. Ice Harbor serves our boaters and are a true asset to the island as well as an economic driver, creating a few dozen jobs. The terms of the lease include a rent escalation over the term of their lease and a one time, five year option as negotiated.

PUBLIC COMMENTS

No comments were made.

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MOTION: Commissioner Barnes moved for approval of Resolution 2016-35, approving a five year lease with one five year option to Ice Harbor Brewing and authorizing the Chief Executive Officer to execute the contract; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

D. Vista Field Update

Mr. Peterson presented slides of Vista Field illustrating the creation of a vibrant place that the community wants to see.

To create a complete place, the Port must do the following:

- Create connections with Main streets and narrow streets;
- Create a vibrancy with hospitality businesses: hangar remodeling (activity and revenue);
- Create Public Places: install a significant water feature, public plaza and pavilions and plenty of landscaping.

The next steps for Vista Field involve:

- Adopting the Master Plan;
 - Development agreement approval;
- Phase #1 design and cost estimates to 66% stage;
- Present 66% stage documents to Commission: DPZ Cascadia and Elizabeth Plater-Zyberk present;
- Present 100% documents to Commission;
- Proceed to bidding stage;
- Construction;
- Create a Business Improvement District to manage maintenance of property.

Mr. Peterson reported staff met with Laurence Qamar and Michael Mehaffy in Skamania and estimated that the Port will be able to construct a complete place with a budget of \$5,000,000.

Mr. Arntzen stated there was a great creative burst of energy during the Skamania trip. The Phase I plan is very simple, but incorporates all the elements the Commission would like to see; a start-up space for commercial businesses, a water feature, plenty of shade trees, and a plaza surrounding a water feature. Mr. Arntzen stated the team created a small but inviting place that he hopes will be within the \$5,000,000 budget.

Mr. Novakovich thanked staff for the update and stated it seems as though a lot was accomplished in Skamania.

E. Columbia Drive Update

Mr. Peterson stated due to the recent weather conditions, Banlin Construction has had to delay construction at the Wine Village.

F. 2017 Eastern Washington Planners' Forum

Ms. Bader Inglima stated Dee Caputo of the Washington State Department of Commerce reached out to Mr. Novakovich and Mr. Peterson and requested they make a presentation similar to that of the one they had previously done for the Eastern Washington Planners Forum earlier this year. As

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the Port has done in the past, if a particular Commissioner or staff has been requested, we make arrangements, if the Commission is agreeable. The forum will be held spring of 2017 at Big Bend Community College in Moses Lake. Furthermore, if a Commissioner is up for election in that year, then staff does not recruit presentations for them. The Public Disclosure Committee (PDC) makes allowances for elected officials that are contacted or requested, then it is appropriate for the elected official to make that presentation. Ms. Bader Inglima inquired if the Commission finds it acceptable for Mr. Novakovich and Mr. Peterson to make the presentation at the Eastern Washington Planners Forum.

It is the consensus of the Commission to support Mr. Novakovich and Mr. Peterson's presentation at the Eastern Washington Planners Forum

G. Commissioner Meetings (formal and informal meetings with groups or individuals)

Commissioners reported on their respective committee meetings.

H. Non Scheduled Items

1. Mr. Moak stated one item that came out of Washington Public Ports Association (WPPA) Annual Meeting was the discussion based around inter-government cooperation and the good and bad examples of Port's working together with other entities. Mr. Moak highlighted the Port's good relationship with the City of Kennewick and the joint projects we were working on. Mr. Moak believes it would be a good opportunity for Mr. Arntzen and Ms. Mosely to put together a presentation together for WPPA and the Association of Washington Cities about cooperation and how our relationship has blossomed and the deliberate work on both parties.
2. Mr. Barnes stated this is the last meeting for 2016 and thanked staff for all of their hard work and effort. Mr. Barnes stated the Port made a lot of positive progress on our projects and we have tremendous opportunities ahead of us and we could not do it without you.
3. Ms. Bader Inglima stated there was a tremendous amount of public support for the Latino Mural open house, as well as media support for the artist. Ms. Bader Inglima stated approximately 30 people attended the open house at Tierra Vida and the artist was able to engage with individuals and learn local stories. Ms. Bader Inglima stated the Latino organizations are very appreciative of the Commission's investment in recognizing, honoring, and celebrating their contributions. Ms. Bader Inglima believes the Port will have several ambassadors and champions for the continued development of Columbia Gardens.

Ms. Bader Inglima reported that the U.S. Corps of Engineers recently removed their lay down yard from Clover Island after eight years of requests from the Port, the City, the Department of Fish and Wildlife and the CTUIR. Ms. Bader Inglima stated this is a big win, and has improved the visibility from the waterfront. Ms. Bader Inglima will continue discussions with the Corps of Engineers to remove the remaining chain link fence.

Ms. Bader Inglima stated the WPPA recently visited with Mr. Arntzen. WPPA will be highlighting Vista Field and the redevelopment in the next WPPA newsletter.

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4. Mr. Peterson stated the Gathering Place project is underway. Big D's Construction is currently working on removal of asbestos in the old Port office. When there is a break in the colder weather the demolition of the building and old pump house will take place.

PUBLIC COMMENTS

Cal Coie 705 South Oklahoma, Kennewick. Mr. Coie reported that the Clover Island Yacht Club (CIYC) had a successful Christmas boat parade, however, we are always looking for more boats. He asked staff to communicate to their tenants that we welcome any boater who would like to participate. This year, 18 boats participated, however, in previous years, we have had as many as 32 boats in the parade. Mr. Coie stated the boat parade is held the first week in December and it may not be easy to see and it's cold, but it is still a good time. Dave Mitchum of Cedars and Mark Blotz of Clover Island Inn have been very supportive, and this year, Mr. Blotz facilitated the judging from the Crow's Nest. Mr. Coie introduced Dorothy Hansen, who is on the building and grounds committee for the CIYC and will be the liaison for the CICY and the Port.

Boyce Burdick 415 Snyder Street, Richland. Mr. Burdick inquired if there would be a street in front of the performing arts center for Phase I and if the scissors would be a part of the placed infrastructure. Mr. Burdick inquired if the Port has given any more thought to including a fiber optics network in Phase I.

Mr. Peterson stated as part of Phase I, there will be a street running in front of the performing arts center as well as the scissors intersection, as previously discussed. Additionally, fiber optics conduit will be included in the development.

No further comments were made.

COMMISSIONER COMMENTS

No comments were made.

Mr. Novakovich anticipates the Executive Session will last approximately 45 minutes, Site Selection per RCW 42.30.110(1)(b) and Real Estate Minimum Price per RCW 42.30.110(1)(c) with no action anticipated. Mr. Novakovich asked the public to notify Port staff if they will return after the executive session.

Mr. Novakovich recessed the Regular Commission Meeting at 4:30 p.m. for approximately two minutes.

EXECUTIVE SESSION

- A. Real Estate, per RCW 42.30.110(1)(b) – Site Selection*
- B. Real Estate, per RCW 42.30.110(1)(c) – Minimum Price*

Mr. Novakovich convened the meeting into Executive Session at 4:33 p.m. for approximately forty-five minutes.

Ms. Hanchette exited the meeting at 5:18 p.m. and extended Executive Session for 5 minutes.

Ms. Hanchette exited the meeting at 5:23 p.m. and extended Executive Session for 5 minutes.

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Mr. Novakovich adjourned the Executive Session at 5:27 p.m.

Mr. Novakovich reconvened Regular Commission Meeting at 5:27 p.m.

ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 5:28 p.m.


APPROVED:

**PORT of KENNEWICK
BOARD of COMMISSIONERS**

Skip Novakovich, President

Thomas Moak, Vice President

Don Barnes, Secretary

		PEBB EMPLOYER GROUP INTERLOCAL AGREEMENT		HCA Contract Number: K2031 Employer Group Agency Number: 955	
<p>Washington State Health Care Authority is the single state agency that administers the medical, dental, life, and disability insurance coverage for the Employees of the State of Washington and for contracted employer groups, as set forth in Title 41 RCW.</p> <p>THIS Interlocal Agreement made by and between Washington State Health Care Authority, hereinafter referred to as "HCA," and Port of Kennewick, hereinafter referred to as the "Contractor."</p>					
EMPLOYER NAME Port of Kennewick			EMPLOYER doing business as (DBA)		
EMPLOYER GROUP ADDRESS 350 Clover Island Drive Kennewick, WA 99336			FEDERAL TAX ID #: <i>91-6009781</i>		WA STATE UBI #: <i>601-644-713</i>
EMPLOYER BARGAINING GROUP: All employees					
EMPLOYER CONTACT Nick Kooiker		EMPLOYER TELEPHONE (509) 586-1186		EMPLOYER E-MAIL ADDRESS <u>nick@portofkennewick.org</u>	
HCA PROGRAM PEB Outreach and Training		HCA DIVISION/SECTION PEB Division		HCA CONTRACT CODE	
HCA CONTACT NAME AND TITLE Amy Corrigan Management Analyst			HCA CONTACT ADDRESS Post Office Box 45530 Olympia, WA 98504-5330		
HCA CONTACT TELEPHONE (360) 725-0826			HCA CONTACT E-MAIL ADDRESS <u>amy.corrigan@hca.wa.gov</u>		
EFFECTIVE DATE OF BENEFITS: January 1, 2017		CONTRACT START DATE: January 1, 2017		CONTRACT END DATE: No End	
PURPOSE OF CONTRACT: To provide insurance benefits from the Public Employees Benefits Board (PEBB) Program through HCA for the eligible members of the group(s) of Employees identified in this Agreement and their dependents.					
The terms and conditions of this Agreement are an integration and representation of the final, entire and exclusive understanding between the parties superseding and merging all previous agreements, writings, and communications, oral or otherwise, regarding the subject matter of this Agreement. The parties signing below warrant that they have read and understand this Agreement, and have authority to execute this Agreement. This Agreement is binding on the parties only upon signature by an authorized representative of each.					
EMPLOYER SIGNATURE		PRINTED NAME AND TITLE <i>Tim Arntzen, CEO</i>		DATE SIGNED <i>1/10/17</i>	
HCA SIGNATURE		PRINTED NAME AND TITLE		DATE SIGNED	

Approved as to Form
By Attorney General
Date: _____

1. PURPOSE

The purpose of this Agreement is to establish the terms and conditions under which HCA will provide certain benefits to Contractor and certain of its Employees and their Dependents. The scope and coverage of the benefits of PEBB Insurance Coverage will be those PEBB Insurance Coverage benefit plans approved by the Public Employees Benefits Board (PEBB). Contractor understands and agrees that these PEBB Insurance Coverage benefits may be changed from time to time by HCA in its sole discretion. Contractor's continued participation in PEBB Insurance Coverage under this Agreement will indicate Contractor's acceptance of such changes in PEBB Insurance Coverage.

2. DEFINITIONS

Capitalized terms in this Agreement and not otherwise defined herein shall have the same definitions as those stated in Title 182 WAC.

Whenever used in this Agreement, the following terms will have these meanings:

"Business Day" means all days except Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"Confidential Information" means information that may be exempt from disclosure to the public or unauthorized persons under chapter 42.56 RCW or chapter 70.02 RCW or state or federal statutes. Confidential Information includes, but is not limited to, any information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and any other identifying numbers, law enforcement records, HCA source code or object code, or HCA or State security information.

"Contract Manager" means the authorized agent who administers this Agreement on behalf of a party, ensures compliance with the terms of this Agreement, and acts as the point of contact when one party contacts the other with questions regarding the terms of this Agreement.

"Coverage Period" means the period during a Plan Year when Enrollees are enrolled in PEBB Insurance Coverage.

"Dependent" shall have the meaning set forth in WAC 182-12-109.

"Employee" means individuals employed by Contractor who fall within the meaning of "Employee" set forth in WAC 182-12-109.

"Employer Group Rate Surcharge" means the rate surcharge described in RCW 41.05.050(2).

“Enrollee” shall have the meaning set forth in WAC 182-12-109.

“ERISA” means the federal Employee Retirement Income Security Act of 1974.

“HIPAA Rules” means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, as now in effect and as modified from time to time. In part 164 of title 45 CFR, the “Security Rule” is subpart C (beginning with §164.302), the “Breach Notification Rule” is subpart D (beginning with § 164.400), and the “Privacy Rule” is subpart E (beginning with § 164.500).

“Key” or **“Keying”** means the process by which Contractor or HCA enters the data of Enrollees directly into a computer system of HCA’s choice.

“PEBB” means the Public Employees Benefits Board.

“PEBB Insurance Coverage” or **“Insurance Coverage”** shall have the meaning set forth in WAC 182-12-109.

“PEBB Program” shall have the meaning set forth in WAC 182-12-109.

“PEBB Rules” means all applicable statutory and regulatory eligibility, enrollment, and appeals requirements in Chapter 41.05 RCW, and Chapters 182-08, 182-12, and 182-16 WAC.

“PEBB Wellness Incentive Program” shall mean the wellness program described and governed by WAC 182-12-300.

“Plan Year” means the calendar year, beginning January 1st and ending December 31st.

“Premium Surcharge” shall have the meaning set forth in WAC 182-12-109.

“Protected Health Information” or **“PHI”** has the same meaning as in the HIPAA Rules except that in this Contract the term includes only information created by Contractor, or received from or on behalf of HCA, and relating to Employees or their Dependents.

“Rate Book” means the then current PEBB rate tables showing contributions rates, surcharges, and premiums for all eligible persons covered by PEBB (for instance, State Actives, Retirees, and COBRA).

“RCW” means the Revised Code of Washington. Any references to specific titles, chapters, or sections of the RCW includes any substitute, successor, or replacement title, chapter, or section.

“WAC” means the Washington Administrative Code. Any references to specific titles, chapters, or sections of the WAC includes any substitute, successor or replacement title, chapter, or section.

3. WARRANTY

Contractor represents and warrants it has authority to purchase benefits on behalf of its Employees, and it meets the criteria for purchasing benefits on behalf of its Employees as provided by Chapter 41.05 RCW, RCW 41.04.205, Chapter 182-08 WAC, and Chapter 182-12 WAC.

4. PERIOD OF PERFORMANCE

The terms of this Agreement begins on the latest date of execution by a party ("Effective Date") and will remain in effect until the parties enter into a new agreement or terminate this Agreement pursuant to Section 31.

5. OBLIGATIONS OF CONTRACTOR

A. Responsibility For Enrollment and Enrollment Data

- i. Contractor must determine the eligibility of its Employees and their Dependents for PEBB Insurance Coverage in accordance with Appendix A, Eligibility Rules for Contractor.
- ii. Contractor must review any collective bargaining agreement, employment agreement, or other agreement affecting the rights of, or granting rights to, its Employees to ensure that enrolling in PEBB Insurance Coverage conforms to the terms and conditions of such agreement(s).
- iii. Contractor will provide HCA all required information to ensure the accurate Keying in of benefits in accordance with the terms of Section 10 of this Agreement, and for HCA to issue accurate invoices.
- iv. Upon HCA's request, Contractor will furnish HCA with enrollment forms and supporting documentation no later than fifteen (15) Business Days after HCA sends the request.
- v. Contractor will promptly cooperate with any reasonable HCA requests to verify the accuracy of enrollment information.
- vi. Contractor will supplement and update enrollment information within five (5) Business Days after any changes occur. If Contractor submits enrollment information showing a change in an Enrollee's enrollment status after the 20th of the month, that change may not be reflected in HCA's enrollment data and monthly invoice until the subsequent month.
- vii. Contractor understands that the terms of this Agreement will continue to apply if Contractor enters into a new collective bargaining agreement, employment

agreement, or other agreement affecting the rights of, or granting rights to, its Employees. Contractor shall therefore consider the benefits, rights, obligations, requirements, restrictions, and limitations set forth herein, in PEBB Insurance Coverage, and in applicable laws, rules, and regulations when entering into such new agreement. HCA is and shall be under no obligation to grant exceptions to PEBB Rules requested due to the terms or conditions of such new or existing agreement.

- viii. Contractor is responsible for notice and reporting requirements under Internal Revenue Code ("IRC") §6056 and reporting on behalf of an employer sponsored self-funded plan under IRC §6055.
- ix. Contractor must have and implement a cafeteria plan per IRC §125, and its implementing regulations, to ensure correct tax treatment of monies deposited into a health savings account. Contractor agrees such cafeteria plan will be in effect by the first Effective Date of PEBB Benefits for Employees.

B. PEBB Insurance Coverage Information

- i. Contractor agrees it will provide either (a) the then current Employee Enrollment Guide, or (b) a link to the electronic version of the Employee Enrollment Guide maintained on HCA's website, within five (5) Business Days of (c) the start date of newly hired Employees, or (d) a change in an Employee's work pattern such that the Employee's eligibility status changes.
- ii. Contractor agrees it will provide eligibility information for PEBB Insurance Coverage to Employees within five (5) Business Days of (a) start date of newly hired employees, or (b) a change in an Employee's work pattern such that the Employee's eligibility status changes. Such notice will include a description of Contractor's eligibility appeal process required under Section 5.H.
- iii. Contractor may produce its own additional materials on PEBB Insurance Coverage for its Employees. Any such materials must first receive written approval from HCA before being provided to Employees. In addition, Contractor must annually submit all material, including any previously approved materials, by September 15.
- iv. As set forth in WAC 182-12-116, Employees are not eligible to participate in the benefits provided under the Salary Reduction Plan as authorized under Chapter 41.05 RCW.

C. Remittance

- i. Contractor shall remit the monthly Premium, Premium Rate Owed When an Employee Waives Medical, Employer Group Rate Surcharge, and the full amount of any Premium Surcharges (*see*, Section 7), within twenty (20) days of the end of each month of the Coverage Period. Partial payment by Contractor will be deemed nonpayment.

- ii. Contractor shall be solely responsible for collecting from Employees (a) any applicable Premium Surcharge, and (b) any Employee share of the Premium.
- iii. Contractor shall be solely responsible for refunding any charge paid by the Employee to Contractor and not remitted to HCA.
- iv. Any and all deductions made by Contractor from an Enrollee's salary for the payment of premiums for (a) Life insurance, (b) Long Term Care, and/or (c) Long Term Disability, must be made on a post-tax basis.

D. Resolving Discrepancies

- i. If Contractor determines that an invoiced amount does not match the amount to be paid by Contractor for a Coverage Period, Contractor must submit a Payment Discrepancy Reporting Form to HCA to correct Contractor's account. The form may be obtained at HCA's Perspay website forms page.
- ii. When an Enrollee's enrollment in PEBB Insurance Coverage is terminated, or the Employee's salary changes, Contractor agrees to submit an Insurance Eligibility System Adjustment Form to HCA. The form may be obtained at HCA's Perspay website forms page.
- iii. Contractor is solely responsible for the completeness and accuracy of all forms it sends to HCA.

E. Benefits Limitations

- i. For any PEBB Insurance Coverage in which an Employee can enroll, Contractor will ensure that such benefits are the only Contractor-sponsored benefits available to its PEBB Insurance Coverage eligible Employees. Contractor may purchase benefits from third parties only if (a) such benefits are not included in the PEBB Insurance Coverage, or (b) are not otherwise offered or available under this Agreement.
- ii. Contractor shall not transfer Employees to other similar or competing benefits while this Agreement is in effect. HCA will only consider transfers for all of Contractor's Enrollees, and will not approve any proposed transfer of individual Employees and their Dependents.
- iii. Contractor shall not pay premiums related to optional Long Term Disability (LTD) or optional Life insurance benefits purchased from PEBB-contracted LTD and Life insurance vendors.

- iv. Contractor shall not pay any Premium Surcharges on behalf of its Employees. Employees are solely responsible for the timely payment of any applicable Premium Surcharges.

F. Certification of Eligibility

- i. Contractor represents and warrants all Enrollees meet PEBB Rules throughout the enrollment term.
- ii. Contractor represents and warrants that it has reviewed the PEBB Rules and determined that enrolling in the PEBB Insurance Coverage does not violate or conflict with any collective bargaining agreement, employment agreement, or other agreement affecting the rights of, or granting rights to, its Employees.

G. Employer Group Scope

The following group(s) of Employees and their Dependents will be provided Insurance Coverage pursuant to this Agreement:

Port of Kennewick – All employees

Contractor may not extend eligibility for Insurance Coverage to any person outside of the defined group(s) of Employees and their Dependents without the express, written consent of HCA.

H. Appeal Rights

- i. Contractor agrees it will establish an appeal system for its Enrollees who are denied by Contractor all or part of benefits under the PEBB Insurance Coverage. Contractor agrees it will provide Enrollees notice of the opportunity to appeal at the time of such denial. Within five (5) Business Days of a request by HCA, Contractor will provide HCA a description of its appeal process and a copy of the form or template used by Contractor to provide such notices.
- ii. In accordance with WAC 182-16-025(2), Contractor is responsible for adjudicating appeals for its Employees on decisions made by the Contractor with regard to PEBB eligibility, enrollment, or a premium surcharge.
 - (a) Contractor must provide information to Enrollees to direct to HCA appeals arising from aggrieved decisions regarding life insurance, LTD insurance, eligibility to participate in the PEBB wellness incentive program, or eligibility to receive PEBB wellness incentive.
 - (b) When Enrollees want to appeal an aggrieved decision regarding the administration of a PEBB Insurance Coverage, Contractor must direct the Enrollee to the appeal provisions of the plan.

- iii. Enrollee appeals arising from alleged errors in LTD benefits, Life benefits, eligibility to participate in the PEBB Wellness Incentive Program, or eligibility to receive a PEBB Wellness Incentive will be referred to HCA in accordance with WAC 182-16-025.
- iv. Enrollee appeals arising from alleged errors in completion of PEBB Wellness Incentive Program requests, or a request for a reasonable alternative to a PEBB Wellness Incentive requirement, will be referred to the third party under contract with HCA to administer the PEBB Wellness Incentive Program.
- v. Contractor agrees to furnish any information and documentation related to individual appeals to HCA upon HCA's request. Such information and documents will be provided at no cost.
- vi. Contractor will implement any determination made by HCA following an appeal to HCA.

6. OBLIGATIONS OF HCA

A. Provision of Benefits

HCA agrees to provide the following PEBB Insurance Coverage benefits indicated below to Contractor's PEBB enrollees:

- ☐ PEBB Medical benefits (including the PEBB Wellness Incentive Program) only.
- ☒ PEBB Medical (including the PEBB Wellness Incentive Program), Dental, Life, LTD, property and casualty insurance, and LTC (not currently accepting new enrollment) benefits.

B. Provision of Rate Book; Notice of Changes

HCA shall either (i) publish the Rate Book on its Internet site; or (ii) provide Contractor the Rate Book (a) prior to the enrollment start date indicated in Section 8.B. and (b) at least fifteen (15) calendar days prior to the effective date of any changes to the fees and charges listed in Section 7.

C. Invoicing

HCA will issue invoices on a monthly basis to Contractor. The invoice amount will be based on the enrollment information provided by Contractor.

7. HCA CHARGES

A. Start-Up Fee

Contractor shall pay a one-time start-up fee as authorized by WAC 182-08-245(1)(a) and set forth in the Rate Book ("Start-Up Fee"). The Start-Up Fee shall be due and payable on the Effective Date.

B. Employer Group Rate Surcharge

Pursuant to RCW 41.05.050(2), HCA has developed an Employer Group Rate Surcharge to be paid by participating counties, municipalities, other political subdivisions, and tribal governments, including Contractor. The Employer Group Rate Surcharge to be paid by Contractor will be calculated as set forth in the Rate Book then in effect for the Plan Year.

C. Premium Surcharge

HCA collects Premium Surcharges in accordance with the requirements of WAC 182-08-185. The amount of the Premium Surcharge shall be set in the Rate Book.

D. Premium Rates Owed When an Employee Waives Medical

For Employees who waive the PEBB Medical benefit, HCA requires Contractor to pay a Premium Rate Owed When an Employee Waives Medical. The amount of the Premium Rate Owed When an Employee Waives Medical shall be set in the Rate Book.

8. INITIAL EFFECTIVE DATE OF BENEFITS

A. Contractor agrees that before Employees and Dependents may be enrolled in Insurance Coverage, it will:

- i. Remit to HCA the required Start-up Fee,
- ii. Sign this Agreement,
- iii. Determine Employee and Dependent eligibility and terms of enrollment for Insurance Coverage in accordance with the criteria outlined in this Agreement,
- iv. Determine eligibility in order to ensure the Insurance Coverage's continued status as a "governmental plan" under Section 3(32) of ERISA (as amended),
- v. Comply with the benefits limitations in Section 5.E. of this Agreement, and
- vi. Determine that enrolling in the Insurance Coverage does not violate or conflict with any collective bargaining agreement, employment agreement, or other agreement affecting the rights of, or granting rights to, its Employees.

B. The start date of enrollment for Contractor's initial Enrollees is **January 1, 2017**, provided all contractual and regulatory requirements are completed on or before that date.

9. CONTRACT MANAGEMENT

The following individuals will be the Contract Managers responsible for communicating with the other party regarding this Agreement and its performance. The named Contract Manager for Contractor must have authority to act on behalf of Contractor for purposes of participation in the Insurance Coverages and must have access to information regarding Enrollees.

The Contract Manager for HCA is:

Name: Amy Corrigan
Title: Outreach & Training Manager
Address: PO Box 45530
 Olympia, WA 98504-5530
Phone: 1-800-700-1555
Email: amy.corrigan@hca.wa.gov

The Contract Manager for Contractor is:

Name: Nick Kooiker
Title: CFO Auditor
Address: 350 Clover Island Drive
 Kennewick, WA 99336
Phone: 509-586-1186
Email: nick@portofkennewick.org

Each party must provide written notice of any changes to its designated Contract Manager, or in the Contract Manager's contact information, no later than thirty (30) days after such change occurs.

10. KEYING IN DATA

- A. HCA agrees to Key in Contractor's data if the initial number of Employees is less than seventy-five (75), and will continue to do so as long as the number of Employees remains less than seventy-five (75). If the number of Employees equals or exceeds that number, Contractor agrees to assume responsibility for Keying in data. HCA agrees to provide ongoing training and support to Contractor's designated Employees on Keying in data.
- B. If HCA is Keying in data pursuant to the terms of this section, Contractor agrees to provide HCA with all information requested by HCA for the accurate Keying in of data.
- C. Contractor must (i) Key in all requests to waive enrollment in Insurance Coverage; or (ii) if HCA is Keying in data, provide HCA with all information requested by HCA.
- D. If the initial number of Employees is equal to or greater than seventy-five (75), then Contractor shall Key in data for the term of this Agreement. At HCA's sole discretion, it may perform the initial Keying of Enrollee information prior to the initial effective date of Insurance Coverage as set forth in Section 8.B. If the number of Employees is subsequently reduced to less than seventy-five (75), Contractor shall continue Keying in data unless the parties otherwise agree in writing.

- E. Contractor may not subcontract or assign its Keying in tasks to a third party without the express, written consent of HCA.
- F. Regardless of which party is Keying in data pursuant to the terms of this section, Contractor will be responsible for errors made Keying in any and all applicable Enrollee data, including additional charges under this Agreement, payment of any amounts to Employees or Enrollees, and any other claim, judgment, penalty, fee, or fine arising out of such error. Upon discovery of any such error, or upon receiving notice of such error from HCA, Contractor has five (5) Business Days to (i) if Contractor is Keying in data, correct the erroneous data, or (ii) if HCA is Keying in the data, to provide HCA with corrected information in writing.
- G. Contractor may not Key in retroactive changes to an Enrollee's Insurance Coverage benefits. If Contractor determines that an Enrollee's benefits must be retroactively changed, such as after an appeal, within thirty (30) days of determining a need for such change, Contractor will provide HCA with a written request (i) stating the retroactive change sought, (ii) enumerating the grounds for such change, and (iii) including any other documentation supporting the change.

11. AMENDMENTS

This Agreement may be amended by written mutual agreement of the parties. Such amendments will not be binding, and no payments will be made under an amendment's terms, unless the amendment is signed by authorized agents of HCA and Contractor.

12. ASSIGNMENT

- A. Contractor cannot assign its responsibilities under this Agreement to a third party without the prior written consent of HCA. HCA's written consent, which shall not be unreasonably withheld, can condition an assignment on proof that the assignee's qualifications and ability to perform is at least equal to those of Contractor. Such assignment shall not operate to relieve Contractor of the performance of any of its duties and obligations hereunder, and such assignment shall not affect any remedies available to HCA that may arise from any breach of any provision in this Agreement.
- B. HCA may assign all or any part of this Agreement to any public agency, commission, board, or the like, within the political boundaries of the State of Washington, provided that such assignment shall not operate to relieve HCA of any of its duties and obligations hereunder.

13. ATTORNEY'S FEES

In the event of litigation or other action brought to enforce the terms of this Agreement, each party shall bear its own costs and attorney's fees.

14. CHANGE IN PERSONNEL

As soon as reasonably possible, but no later than thirty (30) days, Contractor shall provide HCA notice of any changes to Contractor's key personnel, including, but not limited to, key personnel in human resources, payroll, and Contractor's Contract Manager.

15. CONFIDENTIAL INFORMATION AND PROTECTED HEALTH INFORMATION

Contractor is required to comply with the terms of the Business Associate Agreement incorporated into this Agreement as Exhibit A, and other applicable federal and state laws and administrative regulations governing use of Confidential Information and Protected Health Information. Contractor agrees to limit access to Confidential Information and Protected Health Information to the minimum amount of information necessary, to the fewest number of people, and for the least amount of time required to perform its duties under this Agreement. The obligations set forth in this Section shall survive the termination or expiration of this Agreement.

16. CONFORMANCE

If any provision of this Agreement conflicts with any applicable state or federal law or regulation, the Agreement language is amended to conform to the minimum requirements of the conflicting law or regulation. A provision of this Agreement that is stricter than such laws or regulations will not be deemed a conflict.

17. DISPUTES

- A. The parties shall use good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Agreement. Both parties will continue, without delay, to carry out their respective responsibilities under this Agreement while attempting to resolve any dispute.
- B. The respective Contract Managers for each party will first attempt to resolve the dispute. Either Contract Manager will provide notice of a request to meet to resolve the matter in dispute. Such notice will include a brief summary of the disputed issue, each parties' position, and a proposed resolution.
- C. If the Contract Managers cannot resolve the dispute within ten (10) Business Days after the initial request for a meeting, then either party may submit a request for a dispute resolution to the HCA Contract Administrator. The contact information for the HCA Contract Administrator is as follows:

HCA Contract Administrator
Address: Post Office Box 42702
Olympia, WA 98504-2702
Phone: (360) 725-1271
E-mail: contracts@hca.wa.gov

D. A party's request for a dispute resolution must be in writing and must clearly state all of the following:

- i. The disputed issue(s);
- ii. Any additional facts necessary to explain completely and accurately the nature of the dispute; and
- iii. A description of the remedies sought.

E. The HCA Contract Administrator shall oversee the following Dispute Resolution Process:

Within thirty (30) days after the submission of a request for dispute resolution,

- i. HCA shall appoint a representative to a Dispute Board;
- ii. Contractor shall appoint a representative to the Dispute Board;
- iii. HCA's and Contractor's representatives shall mutually agree on a third person to chair the Dispute Board.

The Dispute Board shall thereafter decide the dispute within thirty (30) days of the date the Dispute Board was created, with the majority prevailing.

F. The Dispute Board will review the facts, the terms of the Agreement, and applicable statutes and rules, and make a determination resolving the dispute within the authority of applicable statutes, rules, administrative policies, and written guidance provided by PEBB Program.

G. The dispute resolution process set forth in this Section is in addition to and not in replacement of any other rights, duties, and obligations set forth in this Agreement. The time frame for a party to cure any breach of the terms of the Agreement or comply with any corrective action plan shall not be tolled by the pendency of any dispute resolution procedures.

18. ENTIRE AGREEMENT

This Agreement, together with all of its Schedules, Exhibits and Attachments, constitutes the final, complete and exclusive statement of the agreement of the parties relative to the subject matter hereof, and supersedes all previous or contemporaneous oral and written proposals, negotiations, representations or understandings, including any preceding Interlocal Agreements, amendments, or other agreements between HCA and Contractor in connection with enrollment in the PEBB Insurance Coverage.

19. FORCE MAJEURE

A. Neither party will be liable for failure to perform under this Agreement if such failure arises out of events beyond the control of, and without the fault or negligence of, the non-performing party. Such causes may include, but are not limited to: fires, floods,

earthquakes, landslides, riots, strikes or labor disputes, major epidemics, acts of God, war, terrorist acts, embargoes, or any other similar event.

- B.** This provision will become effective only if the party failing to perform notifies the other of the extent and nature of the problem no later than seventy-two (72) hours after discovery of the event, and takes reasonable steps to limit any delay in performance of this Agreement caused by the event. The notifying party is only excused from the requirements of this Section when the failure to notify is beyond the control and without the fault or negligence of the notifying party.
- C.** Nothing in this Section shall be construed to prevent HCA from terminating this Agreement for reasons other than for default during the period of the events set forth above, or for default, if such default occurred prior to such event.

20. GOVERNING LAW AND VENUE

This Agreement will be governed by, and be construed and interpreted in accordance with, the laws of the State of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the State of Washington and the venue of any action brought under this Agreement will be the Superior Court for Thurston County in the State of Washington.

21. INCORPORATION BY REFERENCE

The parties agree the following materials are incorporated in this Agreement by reference:

- A.** Business Associate Agreement (Exhibit A)

This list is an exclusive list of the documents the parties agree are incorporated by reference as of the execution date of this Agreement. The parties may not incorporate any additional documents or materials into this Agreement unless they follow the procedures for modifying this Agreement under Section 11.

22. INDEMNIFICATION AND HOLD HARMLESS

Contractor shall defend, indemnify, and hold HCA harmless from and against all claims, including reasonable attorneys' fees resulting from such claims, for any or all injuries to persons or damage to property arising from intentional, willful or negligent acts or omissions of Contractor, its officers, employees, or agents, in the performance of this Contract. Contractor's obligation to defend, indemnify, and hold HCA harmless shall not be eliminated or reduced by any alleged concurrent HCA negligence.

23. INDEPENDENT CAPACITY

Contractor and his or her employees or agents performing under this Agreement are not employees or agents of HCA or the State of Washington. Neither Contractor nor any of its

employees or agents performing under this Agreement will hold themselves out as, or claim to be, officers or employees of HCA or the State of Washington by reason of this Agreement. Contractor, its employees, and its agents will not make any claim of right, privilege, or benefit that would accrue to employees of the State of Washington or HCA under law. Contractor acknowledges and certifies that neither HCA nor the State of Washington is a guarantor of any obligations or debts of Contractor.

24. ORDER OF PRECEDENCE

In the event of an inconsistency between the terms of this Agreement, the incorporated Exhibits, or any applicable statute or regulation, the inconsistency will be resolved by giving precedence in the following order:

- A. Applicable federal statutes and regulations;
- B. Applicable Washington statutes and regulations;
- C. Any term or condition in this Agreement;
- D. Any Exhibit(s) or Appendix(-ices) to this Agreement in alphabetical order; and
- E. Any other provision, term, or material incorporated herein by reference or otherwise incorporated.

25. NOTICES

- A. Whenever one party is required to give notice to the other under this Agreement, notice shall be deemed given if mailed by United States Postal Service, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

- i. In the case of notice to Contractor, notice will be sent to:

Attention: Nick Kooiker
 Port of Kennewick
 350 Clover Island Drive
 Kennewick, WA 99336

- ii. In the case of notice to HCA, the notice must be sent to the Contract Manager at the mailing address included in Section 9 of this Agreement.
- B. Notices shall be effective on the date delivered, as evidenced by the return receipt or the date returned to the sender for non-delivery other than for insufficient postage.
- C. Either party may change its address for notification purposes at any time by mailing a notice in accordance with this Section. Changes made pursuant to this subsection will be effective on the tenth (10th) Business Day following receipt of the notice unless a later date is specified in the notice.

26. RECORDS MAINTENANCE AND OWNERSHIP

- A. The parties will each maintain books, records, documents, and other materials that sufficiently reflect all direct and indirect costs expended by either party in the performance of the service(s) described in this Agreement. When either party requests, these records will be presented in a timely manner for inspection, review, or audit by personnel of both parties and other personnel duly authorized by state or federal law.
- B. All books, records, documents, and other material relevant to this Agreement will be retained for six (6) years after the expiration of this Agreement. At no additional cost to HCA or the State of Washington during this period, the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties will have full access to and the right to examine any of the retained books, records, documents, and other materials.
- C. If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained for one (1) year after all litigation, claims, or audit findings involving the records have been resolved.
- D. Unless otherwise agreed, records and other documents, in any medium, furnished by one party to the other will remain the property of the furnishing party. The receiving party will not disclose or make available this material to any third parties without first giving the furnishing party timely notice and a reasonable opportunity to respond.
- E. Each party will utilize reasonable security procedures and protections to ensure that records and documents are not erroneously disclosed to third parties as required under Exhibit A as well as any applicable state and federal laws.

27. PUBLIC RECORDS ACT

Both parties acknowledge that this Agreement is subject to the applicable provisions of the Washington State Public Records Act (Chapter 42.56 RCW) and its exceptions, and is a “public record” as defined in RCW 42.56.010. An unredacted copy of this Agreement will be released if HCA or a court of competent jurisdiction determines releasing such a copy is responsive to a public records request under the Public Records Act.

28. PRIVACY LAWS

Contractor will comply with all applicable privacy laws, including but not limited to the Health Insurance Portability and Accountability Act and its implementing regulations, the Washington State Uniform Health Care Information Act (Chapter 70.02 RCW), and the Washington State Patient Bill of Rights (RCW 48.43.500).

29. SEVERABILITY

If a court of appropriate jurisdiction invalidates any provision of this Agreement or any provision of any document incorporated by reference, such invalidation will not affect the other provisions of this Agreement still operational under applicable law without the invalid provision.

30. SURVIVAL

Any terms of this Agreement that would, by their nature or through the express terms of the Agreement, survive the expiration or termination of the Agreement shall so survive, including the terms of the Business Associate Agreement and Sections 3, 13, 15, 22, 26, and 28.

31. TERMINATION

A. Termination For Convenience

- i. Beginning one year after the Effective Date, Contractor may terminate this Agreement for its convenience, but only if the effective date of such termination is (a) December 31st, or (b) another date agreed to in writing by HCA. Contractor must give HCA written notice of its intent to terminate no later than sixty (60) Days prior to the effective date of termination. The written notice must include documentation from the board of directors or the legislative body governing Contractor indicating the authority to terminate the Agreement.
- ii. At any time, HCA, at its sole discretion, may terminate this Agreement in whole or in part by providing twenty-eight (28) Days written notice to Contractor.

B. Termination for Nonpayment

- i. If payment of an undisputed amount invoiced by HCA or an HCA contracted vendor is more than sixty (60) Days delinquent, Contractor will receive a written notice. If HCA or such vendor does not receive the entirety of the overdue amount from Contractor within thirty (30) Days of receipt of such notice, Contractor and each Enrollee may be disenrolled from PEBB Medical (including the PEBB Wellness Incentive Program), Dental, Life, and LTD insurance effective the last day of the last month for which full payment is received.
- ii. Upon disenrollment, HCA will send notification to both Contractor and each affected Enrollee. Any partial payment made by Contractor for the month of termination will be refunded by HCA to Contractor. Claims incurred by Enrollees after disenrollment will not be covered.
- iii. HCA reserves the right to recover from Contractor any expenses incurred by HCA as a result of Contractor's nonpayment of the monthly amount invoiced by HCA.

C. Termination for Cause

- i. In the event Contractor violates any material term or condition of this Agreement, including Exhibit A, fails to fulfill in a timely and proper manner its material obligations under this Agreement, HCA has the right to suspend or terminate this Agreement, in whole or in part.
- ii. HCA has the right to suspend or terminate this Agreement, in whole or in part, upon learning that Contractor provided false or incomplete information during the employer group application process.
- iii. If Contractor fails to apply the PEBB Rules, HCA shall give Contractor written notice of such failure. Upon receipt of such notice, HCA and Contractor will work together to develop a corrective action plan to cure such failure. The parties will have ten (10) Business Days to finalize such a plan, and HCA will have sole discretion to extend this period. If no agreed upon plan is developed in such period, HCA may terminate this Contract by written notice.
- iv. After a corrective action plan is approved, Contractor will have thirty (30) Days to implement such plan and apply the PEBB Rules as required under this Agreement. If Contractor's failure or violation is not so corrected, HCA may terminate this Agreement by written notice.

D. Parties' Responsibilities after Termination of Agreement

- i. Upon termination of this Agreement for any reason, Contractor will assume all responsibilities for maintaining benefits for its Employees, their dependents, and retirees as may be required by legal or contractual obligations Contractor may have to such Employees, dependents, or retirees.
- ii. Upon termination of this Agreement for any reason, Enrollees, or retirees included in the transfer unit when this Agreement took effect, cease to be eligible for Insurance Coverage as of the date the Agreement ends. Such Enrollees and retirees may not continue their enrollment in Insurance Coverage beyond the last day of the month in which the Agreement terminated.
- iii. If Contractor later decides it wants to again enroll Employees and their Dependents in Insurance Coverage, Contractor must re-apply and meet HCA's then existing employer group participation criteria.

32. IMMUNITY

Nothing in this Agreement shall be construed as a waiver (A) by HCA of the State of Washington's immunity under the 11th Amendment to the United States Constitution, or (B) by any Indian Nation of its sovereign immunity.

33. WAIVER

A failure by any party to enforce its rights under this Agreement will not be deemed a waiver by that party as to subsequent enforcement of rights. A waiver must be in writing, signed by an authorized representative for the waiving party, and identify which right(s) the party is waiving. Any waiver shall not be construed to be a modification of the terms and conditions of this Agreement.

**APPENDIX A
ELIGIBILITY RULES FOR CONTRACTOR**

The PEBB Rules that Contractor must use in determining the eligibility of Employees and Dependents for the PEBB Insurance Coverage are as follows:

- 1) Title 182 WAC, and
- 2) Any additional policies, procedures, or written guidance issued by the PEBB Program.

EXHIBIT A BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT is made between **Port of Kennewick** (Business Associate) and the Washington State Health Care Authority (HCA). This Agreement does not expire or automatically terminate except as stated in Section 5, Term and Termination. This Agreement relates to all business relationships between the Business Associate and HCA, unless otherwise agreed. Business Associate is, or may be, a "Business Associate" of HCA as defined in the HIPAA Rules. If there is a conflict between the provisions of this Agreement and provisions of other contracts, this Agreement controls; otherwise, the provisions in this Agreement do not replace any provisions of any other contracts. If the other Contract is terminated, this Agreement nonetheless continues in effect. This Business Associate Agreement supersedes any existing Business Associate Agreement the Business Associate may have with HCA. It also supersedes any "business associate" section in an underlying Contract.

1 DEFINITIONS

1.1 *Access Attempts*

Information systems are the frequent target of probes, scans, "pings," and other activities that may or may not indicate threats, whose sources may be difficult or impossible to identify, and whose motives are unknown, and which do not result in access or risk to any information system or Protected Health Information (PHI). Those activities are "Access Attempts."

1.2 *Day*

"Day" means business days observed by Washington State government.

1.3 *Catch-All Definitions*

The following terms used in this Agreement have the same meaning as those terms in the HIPAA Rules: Breach, Business Associate, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured PHI, and Use.

1.4 *Clients or Individuals*

"Clients" or "Individuals" are people who have health or other coverage or benefits from or through HCA. They include Medicaid clients, Public Employees Benefits Board subscribers and enrollees, and others.

1.5 *Contract or Underlying Contract*

"Contract" or "Underlying Contract" means all agreements between Business Associate and HCA under which Business Associate is a "business associate" as defined in the

Security or Privacy Rules. The terms apply whether there is one such agreement or more than one, and if there is more than one the terms include them all even though a singular form is used except as otherwise specified. The terms include agreements now in effect and agreements that become effective after the effective date of this Agreement.

1.6 *Effective Date*

"Effective Date" means the date of the signature with the latest date affixed to the Agreement.

1.7 *HIPAA Rules; Security, Breach Notification, and Privacy Rules*

"HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, as now in effect and as modified from time to time. In part 164 of title 45 CFR, the "Security Rule" is subpart C (beginning with §164.302), the "Breach Notification Rule" is subpart D (beginning with § 164.400), and the "Privacy Rule" is subpart E (beginning with § 164.500).

1.8 *Protected Health Information or PHI*

"Protected Health Information" has the same meaning as in the HIPAA Rules except that in this Agreement the term includes only information created by Business Associate or any of its contractors, or received from or on behalf of HCA, and relating to Clients. "PHI" means Protected Health Information.

2 OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

2.1 *Continued Performance*

Business Associate's Benefits Office will continue to perform its usual and customary assistance to HCA in administering employee benefits, including health coverage, for the agencies' employees. Throughout performance, Business Associate will act in accordance with the HIPAA Privacy Rules.

2.2 *Limits*

Business Associate will not use or disclose PHI other than as permitted or required by the Contract or this Agreement or as required by law. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or as necessary for, purposes of the underlying Contract, if such use or disclosure of PHI would not violate the Privacy Rule if done by a Covered Entity and is the minimum necessary.

2.3 *Safeguards*

Business Associate will use appropriate safeguards, and will comply with the Security Rule with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Contract or this Agreement. Business Associate will store and transfer PHI in encrypted form.

2.4 Reporting Security Incidents

2.4.1 Business Associate will report security incidents that materially interfere with an information system used in connection with PHI. Business Associate will report those security incidents to HCA within five (5) Days of their discovery by Business Associate. If such an incident is also a Breach or may be a Breach, subsection 2.4 applies instead of this provision.

2.4.2 Access Attempts shall be recorded in Business Associate's system logs. Access Attempts are not categorically considered unauthorized Use or Disclosure, but Access Attempts do fall under the definition of Security Incident and Business Associate is required to report them to HCA.

Since Business Associate's reporting and HCA's review of all records of Access Attempts would be materially burdensome to both parties without necessarily reducing risks to information systems or PHI, the parties agree that Business Associate will review logs and other records of Access Attempts, will investigate events where it is not clear whether or not an apparent Access Attempt was successful, and determine whether an Access Attempt:

- a. Was in fact a "successful" unauthorized Access to, or unauthorized Use, Disclosure, modification, or destruction of PHI subject to this Agreement, or
- b. Resulted in material interference with Business Associate's information system used with respect to PHI subject to this Agreement, or
- c. Caused an unauthorized Use or Disclosure.

2.4.3 Subject to Business Associate's performance as described in subsection 2.3.2., this provision shall serve as Business Associate's notice to HCA that Access Attempts will occur and are anticipated to continue occurring with respect to Business Associate's information systems. HCA acknowledges this notification, and Business Associate is not required to provide further notification of Access Attempts unless they are successful as described in subsection 2.3.2. above, in which case Business Associate will report them in accordance with subsection 2.3.1 or Section 2.4.

2.5 Breach Notification

2.5.1 "Breach" is defined in the Breach Notification Rule. The time when a Breach is considered to have been discovered is explained in that Rule. HCA, or its designee, is responsible for determining whether an unauthorized Use or Disclosure constitutes a Breach under the Breach Notification Rule, and for any notification under the Breach Notification Rule.

2.5.2 Business Associate will notify HCA of any unauthorized use or disclosure and any other possible Breach within five (5) Days of discovery. If Business Associate does not have full details at that time, it will report what information it has, and provide full details within fifteen (15) Days after discovery. The initial report may be oral. Business Associate will give a written report to HCA,

however, as soon as possible. To the extent possible, these reports must include the following:

- a. The identification of each individual whose PHI has been or may have been accessed, acquired, or disclosed;
- b. The nature of the unauthorized Use or Disclosure, including a brief description of what happened, the date of the event(s), and the date of discovery;
- c. A description of the types of PHI involved;
- d. The investigative and remedial actions the Business Associate or its subcontractor took or will take to prevent and mitigate harmful effects, and protect against recurrence;
- e. Any details necessary for a determination of the potential harm to Individuals whose PHI is believed to have been Used or Disclosed and the steps such Individuals should take to protect themselves; and
- f. Such other information as HCA may reasonably request.

2.5.3 If Business Associate determines that it has or may have an independent notification obligation under any state breach notification laws, Business Associate will promptly notify HCA. In any event, Business Associate will notify HCA of its intent to give any notification under a state breach notification law no fewer than ten (10) business Days before giving such notification.

2.5.4 If Business Associate or any subcontractor or agent of Business Associate actually makes or causes, or fails to prevent, a use or disclosure constituting a Breach within the meaning of the Breach Notification Rule, and if notification of that use or disclosure must (in the judgment of HCA) be made under the Breach Notification Rule, or RCW 42.56.590 or RCW 19.254.010, or other law or rule, then:

- a. HCA may choose to make any notifications to the individuals, to the Secretary, and to the media, or direct Business Associate to make them or any of them.
- b. In any case, Business Associate will pay the reasonable costs of notification to individuals, media, and governmental agencies and of other actions HCA reasonably considers appropriate to protect clients (such as paying for regular credit watches in some cases), and
- c. Business Associate will compensate HCA clients for harms caused to them by the Breach or possible Breach described above.

2.5.5 Business Associate's obligations regarding breach notification survive the termination of this Agreement and continue for as long as Business Associate maintains the PHI and for any breach or possible breach at any time.

2.6 Subcontractors

Business Associate will ensure that any subcontractors or agents that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to protective restrictions, conditions, and requirements at least as strict as those that apply to the Business Associate with respect to that information. Upon request by HCA, Business Associate will identify to HCA all its subcontractors and provide copies of its agreements (including business associate agreements or contracts) with them. The fact that Business Associate subcontracted or otherwise delegated any responsibility to a subcontractor or anyone else does not relieve Business Associate of its responsibilities.

2.7 Access

Business Associate will make available PHI in a designated record set to the HCA as necessary to satisfy HCA's obligations under 45 CFR § 164.524. Business Associate will give the information to HCA within five (5) Days of the request from the individual or HCA, whichever is earlier. If HCA requests, Business Associate will make that information available directly to the individual. If Business Associate receives a request for access directly from the individual, Business Associate will inform HCA of the request within three (3) Days, and if requested by HCA it will provide the access in accordance with the HIPAA Rules.

2.8 Amending PHI

Business Associate will make any amendments to PHI in a designated record set as directed or agreed to by the HCA pursuant to 45 CFR § 164.526, or take other measures requested by HCA to satisfy HCA's obligations under that provision. If Business Associate receives a request for amendment directly from an individual, Business Associate will both acknowledge it and inform HCA within three (3) Days, and if HCA so requests act on it within ten (10) Days and inform HCA of its actions.

2.9 Accounting

Business Associate will maintain and make available to HCA the information required to provide an accounting of disclosures as necessary to satisfy HCA's obligations under 45 CFR § 164.528. If Business Associate receives an individual's request for an accounting, it will either provide the accounting as required by the Privacy Rule or, at its option, pass the request on to HCA within ten (10) Days after receiving it.

2.10 Obligations

To the extent the Business Associate is to carry out one or more of HCA's obligations under the Privacy Rule, it will comply with the requirements of that rule that apply to HCA in the performance of such obligations.

2.11 Books, etc.

Business Associate will make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

2.12 Mitigation

Business Associate will mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate or any of its agents or subcontractors in violation of the requirements of any of the HIPAA Rules, this Agreement, or the Contract.

2.13 Indemnification

To the fullest extent permitted by law, Business Associate will indemnify, defend, and hold harmless the State of Washington, HCA, and all officials, agents and employees of the State from and against all claims of any kind arising out of or resulting from the performance of this Agreement, including Breach or violation of HIPAA Rules.

3 PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**3.1 Limited Use and Disclosure**

Except as provided in this Section 3, Business Associate may use or disclose PHI only as necessary to perform the services set forth in the Contract.

3.2 General Limitation

Business Associate will not use or disclose PHI in a manner that would violate the Privacy Rule if done by HCA.

3.3 Required by Law

Business Associate may use or disclose PHI as Required by Law.

3.4 De-Identifying

Business Associate may de-identified PHI in accordance with 45 CFR § 164.514(a)-(c).

3.5 Minimum Necessary

Business Associate will make uses and disclosures of only the minimum necessary PHI, and will request only the minimum necessary PHI.

3.6 Disclosure for Management and Administration of Business Associate

3.6.1 Subject to subsection 3.6.2, Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate.

3.6.2 The disclosures mentioned in subsection 3.6.1 above are permitted only if either:

- a. The disclosures are required by law, or
- b. Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and

used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and that the person will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

3.7 Aggregation

Business Associate may use PHI to provide data aggregation services relating to the health care operations of the HCA, if those services are part of the Contract.

4 ACTIVITIES OF HCA

4.1 Notice of Privacy Practices

HCA will provide a copy of its current notice of privacy practices under the Privacy Rule to Business Associate upon request. HCA will also provide any revised versions of that notice by posting on its website, and will send it upon request.

4.2 Changes in Permissions

HCA will notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

4.3 Restrictions

HCA will notify Business Associate of any restriction on the use or disclosure of PHI that HCA has agreed to or is required to abide by under 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI. Business Associate will comply with any such restriction.

5 TERM AND TERMINATION

5.1 Term

5.1.1 This Agreement is effective as of the earliest of:

- a. The first date on which Business Associate receives or creates PHI subject to this Agreement, or
- b. The effective date of the Contract, or if there is more than one Contract then the effective date of the first one to be signed by both parties.

5.1.2 This Agreement continues in effect until the earlier of:

- a. Termination of the provision of Services under the Contract or, if there is more than one Contract, under the last of the Contracts under which services are terminated,
- b. The termination of this Agreement as provided below, or

- c. The written agreement of the parties.

5.2 Termination for Cause

HCA may terminate this Agreement and the Contract (or either of them), if HCA determines Business Associate has violated a material term of the Agreement. The termination will be effective as of the date stated in the notice of termination.

5.3 Obligations of Business Associate upon Termination

The obligations of the Business Associate under this subsection 5.3 survive the termination of the Agreement. Upon termination of this Agreement for any reason, Business Associate will:

- 5.3.1 Retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
- 5.3.2 Return to HCA or, if agreed to by HCA, destroy the PHI that the Business Associate and any subcontractor of Business Associate still has in any form (for purposes of this subsection 5.3, to destroy PHI is to render it unusable, unreadable, or indecipherable to the extent necessary to establish it is not Unsecured PHI, and Business Associate will provide HCA with appropriate evidence of destruction within ten (10) Days of the destruction);
- 5.3.3 Continue to use appropriate safeguards and comply with the Security Rule with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Agreement, for as long as Business Associate retains any of the PHI (for purposes of this subsection 5.3, If the PHI is destroyed it shall be rendered unusable, unreadable or indecipherable to the extent necessary to establish it is not Unsecured PHI. Business Associate will provide HCA with appropriate evidence of destruction);
- 5.3.4 Not use or disclose any PHI retained by Business Associate other than for the purposes for which the PHI was retained and subject to the same conditions that applied before termination;
- 5.3.5 Return to HCA, or, if agreed to by HCA, destroy, the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities; and
- 5.3.6 Business Associate's obligations relating to providing information to the Secretary and other government survive the termination of this Agreement for any reason.

5.4 Successor

Nothing in this Agreement limits the obligations of Business Associate under the Contract regarding giving data to HCA or to a successor Business Associate after termination of the Contract.

6 MISCELLANEOUS

6.1 Amendment

The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

6.2 Interpretation

Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

6.3 HCA Contact for Reporting and Notification Requirements

Business Associate will address all reporting and notification communications required in this Agreement to:

HCA Privacy Officer
Washington State Health Care Authority
626 8th Avenue SE
PO Box 42700
Olympia, WA 98504-2700
Telephone: 360-725-1116
E-mail: PrivacyOfficer@hca.wa.gov