

## **AGENDA**

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

Tuesday, April 24, 2018  
2:00 p.m.

- I. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE**
- III. APPROVAL OF AGENDA**
- IV. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- V. CONSENT AGENDA**
  - A. Approval of Direct Deposit and ePayments Dated April 17, 2018
  - B. Approval of Warrant Register Dated April 24, 2018
  - C. Approval of Regular Commission Business Meeting Minutes April 10, 2018
- VI. NEW BUSINESS**
  - A. Award of Bid: Columbia Gardens Loop Road Project; Resolution 2018-05 (**LARRY**)
  - B. Three Year Building Lease with ESD112; Resolution 2018-06 (**AMBER**)
  - C. Oak Street Land Sale to Three Rivers Acquisitions LLC; Resolution 2018-07 (**AMBER**)
- VII. OLD BUSINESS**
  - A. Bruker AXS Handheld 60 Day Lease Extension; Resolution 2018-08 (**LUCY/AMBER**)
- VIII. REPORTS, COMMENTS AND DISCUSSION ITEMS**
  - A. Land Sales Procedure (**TIM**)
  - B. Vista Field Update (**LARRY/TIM**)
    - 1. Pop Up Retail & Programming (**TIM**)
  - C. West Richland Review of Directives (**TIM**)
  - D. Tri-Cities Hispanic Chamber of Commerce - Outstanding Business of the Year award (**TANA**)
  - E. Cancellation of May 8, 2018 Commission Meeting (**BRIDGETTE**)
  - F. Commissioner Meetings (formal and informal meetings with groups or individuals)
  - G. Non-Scheduled Items
- IX. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- X. ADJOURNMENT**

***PLEASE SILENCE CELL PHONES***



# PORT OF KENNEWICK REGULAR COMMISSION MEETING

**DRAFT**

**APRIL 10, 2018 MINUTES**

## **CALL TO ORDER**

Commission President Thomas Moak 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:** Thomas Moak, President  
Don Barnes, Vice-President  
Skip Novakovich, 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 and Development  
Lisa Schumacher, Special Projects Coordinator  
Bridgette Scott, Executive Assistant  
Lucinda Luke, Port Counsel

## **PLEDGE OF ALLEGIANCE**

Commissioner Moak led the Pledge of Allegiance.

## **APPROVAL OF THE REVISED AGENDA**

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

## **PUBLIC COMMENT**

No comments were made.

## **CONSENT AGENDA**

**A. *Approval of Direct Deposit and E-Payments Dated April 3, 2018***

Direct Deposit and E-Payments totaling \$119,475.55

**B. *Approval of Warrant Registers Dated April 10, 2018***

Expense Fund Voucher Number 100001 through 100037 for a grand total of \$128,332.75

**C. *Approval of Regular Commission Business Meeting Minutes March 27, 2018***

**MOTION:** *Commissioner Novakovich moved for approval of Consent Agenda as presented; Commissioner Barnes seconded. With no further discussion, motion carried unanimously. All in favor 3:0.*

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## REPORTS, COMMENTS AND DISCUSSION ITEMS

### A. *Vista Field Update*

#### 1. *DPZ Memo*

Mr. Peterson reported at the March 27, 2018 Regular Commission Meeting, DPZ identified seven items that should be incorporated into the Vista Field development:

- Pop-up-retail;
- Pedestrian Bridge Details;
- Public Park (Phase 2);
- Street Names;
- Landscaping Details;
- Street/Pathways Details;
- Central Area Revision to Accommodate Vista Arts Center evolution.

Mr. Peterson outlined details from Ms. Plater-Zyberk's April 5, 2018 memo from the New Orleans work session (Exhibit A).

Mr. Arntzen suggested the Commission discuss each item from Ms. Plater-Zyberk's memo and let staff know your thoughts. Then, staff can work through each item once we have Commission direction and report back at a later date. Mr. Arntzen stated it is his objective to keep the project moving forward for bid and construction beginning this fall.

#### *Pop-up Retail;*

Mr. Peterson stated Phase 1A will include basic infrastructure, such as power and water clean-up for food trucks and other vendors, which will be beneficial for future construction. DPZ suggested that the pop-up retail should be placed next to the hangars for approximately 3-5 years. The temporary pop-up retail will generate vibrancy in Phase 1A and once Phase 1A is built out, the pop-up retail will move to Phase 2 and the former site becomes a building. The pop-up retail becomes a portable catalyst to create vibrancy for each phase.

Commissioner Novakovich believes including pop-up retail is a great idea and will be a reason for the community to come to Vista Field and is what will bring them back.

Commissioner Barnes supports the recommendation by DPZ to include pop-up retail.

Commissioner Moak inquired how staff will need to research pop-up retail and inquired what that means.

Mr. Peterson stated staff needs to research the programming of space and find someone who can create the vibrancy and activity for the development. Additionally, staff will need to see if the area has enough pop-up retail vendors, not just food trucks, to fill the space.

Commissioner Moak stated it is important to have a variety of vendors, not just food-trucks, to appeal to the community. Commissioner Moak agrees that it is important for the Port to

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find someone who can assist in programming and can utilize social media to drive people to the development.

*Pedestrian Bridge/Drivable Woonerf and Public Park (Phase 2);*

Mr. Peterson stated DPZ suggested reusing the metal decking from the runway for the pedestrian bridge. Additionally, the crossing over the Woonerf should have a surface treatment that emulates wood grain to make it look less like a culvert. Lastly, DPZ moved the main water feature (initially centered off intersection), which is now centered between the two intersections and the Vista Arts Center.

Commissioner Novakovich likes the idea of reusing the metal decking on the pedestrian bridge and stated it stands out and ties back to the history of Vista Field.

Commissioner Barnes agrees with reusing the metal decking for the pedestrian bridge and likes the realignment of the water feature. However, Commissioner Barnes expressed his concern for the potential for creating a habitat for water fowl with the water feature. Commissioner Barnes suggested that the pedestrian bridge should be reviewed for potential artistic design/elements.

Commissioner Moak likes that the water feature has been re-centered and is now a focal point. Commissioner Moak inquired how much decking the Port has available and how much will be utilized throughout the development.

Mr. Peterson estimated that the Port has about 27,000 square feet (1/2 acre) of metal decking and about 200 square feet would be used for the pedestrian bridge.

Commissioner Moak prefers not to use an airfield theme for Vista Field and believes the Port should continue to look to the future, not the past.

Commissioner Barnes inquired if there will be artwork placed at Vista Field.

Mr. Arntzen believes an additional, smaller water feature will be placed in the plaza area, near the pop-up retail; however, staff is working diligently on the budget for the basic infrastructure for Phase 1A, and once the roads are in, he will work with Ms. Carter on a large art object.

Commissioner Moak referred to the Port's Art Policy and stated once the Port sells properties, we will have the budget for art.

Mr. Arntzen stated the Art Policy stipulates funding from land sales; however, once the bid for infrastructure is in, if there are funds remaining, those could go to artwork, prior to land sales.

Commissioner Moak inquired if there is a location set aside for a large piece of artwork.

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Mr. Arntzen will work with Ms. Bader Inglima and Ms. Carter in regards to potential locations, funding, and timing for artwork; however, he has instructed staff to focus on infrastructure for Phase 1A.

Mr. Peterson stated there are four locations in Phase 1A for future artwork sites that have power, and are not irrigated.

Mr. Arntzen requested to address *Street names and Logo* at a later date.

## *Landscaping Details/Street/Pathway Details/Woonerf to the East:*

Mr. Peterson briefed the Commission on suggested roadway landscapes, colors and treatments.

Commissioner Moak inquired if the renderings that will be shown at the April 19, 2018 Special Meeting will show more detail.

Mr. Peterson stated the conceptual renderings will show several areas at different perspectives and scales. Mr. Peterson stated some of the landscaping is removed, so that one can see the architectural detail.

Commissioner Moak likes the direction of landscaping details, streets and pathway details and the woonerf to the East.

Commissioner Barnes likes the shift in parking and new placement for the woonerf.

Mr. Arntzen stated the Commission will have an opportunity to view the conceptual renderings on April 19, 2018 that we have discussed today. Mr. Arntzen informed the Commission that staff has addressed #9, *Additional activities in the area* when we addressed pop-up retail and sighted Mark Blotz from the Clover Island Inn as an example of a person who curates activities.

## *Small Cottages:*

The group toured Ocean Springs, Mississippi as an example of potential residential development for Vista Field.

Commissioner Moak stated there is a demand in the market for smaller residences in a vibrant area.

Mr. Peterson stated Vista Field is very unique because of the Urban Mixed Use zoning and technically the area is considered a commercial district that does not require a large frontage areas.

## *Detailing:*

Mr. Peterson stated Ms. Plater-Zyberk suggested the Port be cost conscious and not require builders to add details that do not relate to our regional market.

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Commissioner Moak stated the Collaborative Design Process will allow staff to work with the developers and compromise on certain elements.

Mr. Arntzen stated the challenge will be finding a happy medium with the developers/builders, the homeowners and the architects. Mr. Arntzen indicated that Mr. Mehaffy is working on a report that the Port can distribute to builders which define the details and elements for Vista Field.

Mr. Peterson stated the report is a shortened version of the Master Plan and the key elements will be broken down and expectations will be clearly defined.

Mr. Arntzen appreciates the Commission discussion and has enough direction to continue moving forward. Logo and street names will be placed on a future agenda for Commission discussion.

## **2. *Consideration of a Project Labor Agreement***

Mr. Arntzen reported that he was recently contacted by a local union representative who asked if the Port would consider entering into a Project Labor Agreement (PLA) for the Vista Field construction. The current Port policy and practice is to follow the Washington State Prevailing Wage Act. A PLA is an agreement entered into by the municipality and the union, which states the municipality would bid a project according to union rules. Mr. Arntzen outlined the pros and cons of a PLA in a memo which is attached as *Exhibit B*.

Ms. Luke stated Mr. Arntzen's memo and comments were very balanced and on point. Ms. Luke reported that she has experience negotiating Collective Bargaining Agreements (CBA), which are similar to PLA's, but with a defined project.

Commissioner Novakovich inquired if the Port were to enter into a PLA, what would the delay cost the Port.

Mr. Kooiker stated it is hard to quantify; however, at this time the Port is currently paying Parametrix approximately \$15,000 a month in construction design fees and would request halting the design until the PLA is negotiated.

Mr. Arntzen stated the Port would need to halt the design work, because we would ultimately be backtracking and there could be potential changes to the plan.

Commissioner Barnes stated if the Port were to elect to enter into a PLA, he inquired how long the negotiation process, and draft and review of the PLA would take.

Ms. Luke stated in her experience with CBA's, negotiations can vary substantially depending on the parties and how easily they come together. CBA's can take anywhere from 3 to 6 months to 3 years.

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And while Commissioner Moak stated this is a PLA, not a CBA, Ms. Luke stated some of the components are the same.

Commissioner Moak opened the floor for public comment and asked the public to alternate between pro and con views when speaking about the Port entering into a PLA with the union for construction at Vista Field.

## **PUBLIC COMMENT**

Cal Coie, 705 South Oklahoma Street, Kennewick. Mr. Coie worked in the construction industry for 50 years, both union and non-union. The Port already pays the prevailing wage and when you enter into a union negotiation, you will cut out a lot of contractors in the Tri-Cities. Mr. Coie believes the project will cost more money in the long run if you enter into a PLA and when a municipality pays prevailing wage, the contractor pays the sub-contractors and signs the Affidavit of Wages Paid. Mr. Coie believes it is foolish for the Port to consider entering into a PLA.

Steven Wiley, 3172 Willow Point Drive, Richland. Mr. Wiley, representative for the Art Center Task Force (ACTF), stated they have been carefully estimating the cost to construct the Vista Arts Center (VAC). Unlike a lot of public projects, the funds for the VAC will be raised from the private support system. The ACTF has been working with LMN Architecture on each line item, including labor. It was concluded that if the ACTF utilized union labor for the construction of the VAC, the project would cost beyond what could be raised and essentially kill the project. Mr. Wiley is sympathetic to union wages, but the ACTF is building something for the public and will not make a profit or receive funding from taxes. Most of the people on the ACTF are volunteers and to make the VAC viable, we will utilize volunteer labor, and to impose this kind of requirement on our project would effectively kill the project. Mr. Wiley strongly urges the Commission not to impose such a requirement on projects built within the Vista Field development.

John Swope, 1201 South Roosevelt Street, Kennewick. Mr. Swope has managed several major industrial projects since 2000, both union and non-union and has had excellent and poor results from both. Mr. Swope stated the Commission needs to set aside the question of union and non-union and put the emphasis on the evaluation of the contractor.

Boyce Burdick, 414 Snyder Street, Richland. Mr. Burdick questions the timing of this and stated the Port needs more time to consider a PLA and it would be more practical at later phases, not Phase 1, especially if it will set bidding and construction back. Mr. Burdick believes it is crucial for the public to see construction at Vista Field and the project moving forward.

David Robison, 3601 North 20<sup>th</sup> Avenue, Pasco. Mr. Robison has worked over 35 years in construction in California and Washington and has had experience with PLA's. Mr. Robison does not believe this is a pro or con conversation, but a conversation about what is right for Vista Field. Mr. Robison stated a PLA is not the place Vista Field, which has been engineered to the public's specific requirements. The "Save the Date" flyer for the April 19, 2018 Special Commission Meeting depicts what the Port envisions for Vista Field; the structures, the residences and the businesses that the public asked for. Vista Field is a place where the community can gather, walk, work, and live, and nothing about the community is complex. Mr. Robison stated PLA's represent complex projects and engage multiple agencies, and are generally



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related to bridges and highways. The community, the Commission, and staff did not engineer a project specific to a PLA. To integrate a PLA at Vista Field would encumber the entitlement of this project and preclude the very community their abilities to develop the very project you promised them. A PLA would not enhance your outcome of Vista Field in accordance to the vision of this community. Additionally, the Commission would need to integrate the PLA into the current documents and specifications, which would mean the Commission would not go out for bid in the next few months. To integrate a PLA into the construction documents would require legal counsel and the expertise of architecture/engineering firms who have the ability to avoid conflict between the documents. The delay could take anywhere from 6-12 months and that kind of integration would be at the expense of the public. Mr. Robison does not see the benefit of implementing a PLA for Vista Field, because it was not engineered to consider a PLA.

No Further Comments.

Commissioner Novakovich is concerned about the timing of this request and stated the Port has been transparent throughout this process. In the five years the Commission has been discussing the redevelopment at Vista Field, the union has never brought up a PLA. Mr. Novakovich believes a PLA would create exclusivity, eliminate bidders, and increase the cost of redevelopment.

**Motion:** *Commissioner Novakovich moved to adopt the current, long standing, Port of Kennewick policy of Customs and Practice in bidding all Port-bid Vista Field area development construction contracts, including, but not limited to, infrastructure and buildings, according to Washington State Prevailing Wage Law; Commissioner Barnes seconded.*

**Discussion:**

*Commissioner Barnes stated the Port has a policy in place which states that our projects are designed, specified, bid and constructed, under the Prevailing Wage Law. If the Commission does not take any action on the PLA, the Port policy remains in place.*

*Commissioner Novakovich stated that is correct; however, if this topic were to come up again, the motion puts an end to any PLA discussion. Commissioner Novakovich would like to have a motion that states the Port will maintain the policy for Vista Field.*

*Commissioner Moak wishes the proponents of the PLA were here today, to express their views and respond to comments and concerns of staff and the public. Commissioner Moak stated there are concerns but he does not agree with some of the objections that were raised. Commissioner Moak would like to understand PLA's a little better and believes there could be some benefits to a PLA. Commissioner Moak stated the union is not here to voice the benefits and he is not an expert and cannot speak to the public's concern. Commissioner Moak stated there is legitimate concern and a variety of different items that could delay Vista Field. Commissioner Moak cannot support moving ahead with a PLA when a union representative is not present to speak on the topic and how the union would advance the Port's vision. Commissioner Moak cannot advance the PLA; however, he cannot support the motion and does not agree with the position, and agrees with Commissioner Barnes, the Port already has a policy in place and no action is necessary.*



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*Commissioner Novakovich believes the motion is essential, so that a PLA does not come up again and encumber the public with additional costs, whether those costs are for the design team, staff time or additional attorney costs. Commissioner Novakovich believes it is important to put the topic to rest.*

*Commissioner Barnes stated with respect to Commissioner Novakovich's comments, it only takes a new Commissioner for the motion to be rescinded, and cited the history of the Executive Office of the President of the U.S. Commissioner Barnes stated there are many debatable categories surrounding a PLA, but he does not believe a PLA is right for Vista Field, which has been used for complex projects, such as the Port of Pasco Airport remodel. The Port has had a long history of successful projects, designed and constructed under the Prevailing Wage Act/Policy. Additionally, the Port has been working on Vista Field for five years and the union has not come forward until now. Commissioner Barnes could not support a PLA for Vista Field and does not believe it is the right project for a PLA.*

***With no further discussion, motion does not pass. All in favor 1:2 (Novakovich; Barnes & Moak).***

Mr. Arntzen asked for a point of clarification and stated going forward, he will approach Vista Field as a prevailing wage project and when negotiating with the ACTF for the VAC, there will not be a deed stipulation. Furthermore, the prevailing wage policy will apply to all residential and commercial land sales.

Commissioner Moak stated nothing has changed, the prevailing wage policy stands.

Commissioner Barnes stated all Port projects are subject to prevailing wage.

Mr. Arntzen stated the union may request a PLA again and he wanted to verify with the Commission that any project related to Vista Field will fall under the Port's prevailing wage policy, with no stipulations on deed transfers of property.

Commissioner Barnes stated that is correct. Commissioner Barnes verified with Ms. Luke that the policy states the Port follows the Washington State Prevailing Wage Law.

Ms. Luke stated that is correct.

Commissioner Barnes stated to deviate from our policy the Port would need to take action on an existing policy. Commissioner Barnes confirmed that Mr. Arntzen does not have authority to negotiate an agreement, because it would be inconsistent with Port policy.

Ms. Luke stated that is correct; however, if Mr. Arntzen is approached by the union again, it would be incumbent upon him to inform the Commission.

Commissioner Barnes would like the opportunity to further research and discuss at a later date.

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## RECESS

*Commissioner Moak recessed the meeting at 3:56 p.m. for nine minutes and will reconvene at approximately 4:05 p.m.*

*Commissioner Moak Reconvened the meeting at 4:05 p.m.*

## REPORTS, COMMENTS AND DISCUSSION ITEMS (continued)

### A. *Oak Street Land Sale Proposal*

Ms. Hanchette stated the Port has received an offer on property in the Oak Street Industrial Park which has been in the Port's portfolio since 1972. The vacant property is 12 acres, within the City of Kennewick limits, and is subject to City codes and zoned for light industrial. Ms. Hanchette stated the asking price is \$400,000, which is based on the appraisal that was completed in 2017. Ms. Hanchette does not believe there have been any offers on the property; however, last year there was an interested business, but they found a more suitable Port property. Ms. Hanchette stated there are many challenges with the property, such as: it sits on a flood plain, was previously leased to a local contractor who dumped construction debris on the site, and there is no road leading to the 12 acres. Ms. Hanchette stated the offer came through a local real estate firm, on behalf of a small entrepreneurial firm with two principals. The proposal is to develop the 12 acres into an industrial business park and install infrastructure and extend utilities, prior to developing the property. Ms. Hanchette reported that the firm has interested parties and at full build out, the park may create up to \$15,000,000 in annual sales and approximately 66 jobs created. The Port's Standard Purchase and Sale Agreement allows for the following: a 90 day feasibility period, a repurchase option if the buyer does not start construction within 18 months, 5% refundable earnest money deposit, and a \$500 non-refundable administration fee. The firm is asking for a 12 month feasibility period because of the challenges to the property and further marketing purposes. Ms. Hanchette stated the Port needs to dispose of some Russian Olive trees, but the property is being sold "as is."

Commissioner Barnes confirmed that the offer is requesting a 12 month feasibility period versus the Port's standard 90 day feasibility period.

Ms. Hanchette stated that is correct; however, the Port has extended the feasibility period previously.

Commissioner Novakovich confirmed the appraised price is \$400,000.

Commissioner Moak does not see an issue with allowing a 12 month feasibility period.

Commissioner Barnes inquired what the cost is for the Port to hold this property.

Mr. Kooiker stated the cost of irrigation is about \$5,000 per year.

Ms. Hanchette stated the Port worked with the City to remove the trees because of a homeless encampment, which created extra costs in 2017.

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Commissioner Barnes confirmed that this offer would be addressed in Executive Session.

Ms. Hanchette stated that is correct.

## ***B. City of West Richland***

Mr. Arntzen reported that Ms. Bader Inglima is currently working on an article regarding the City of West Richland for the Port's newsletter, which addresses the past, present, and future projects. Additionally, Mr. Arntzen met with Mayor Gerry regarding a joint meeting between the Port Commission and City Council. Mr. Arntzen stated Mayor Gerry believes it would be more productive to continue working administrator to administrator. Mr. Arntzen is currently completing a memo regarding the recent input from Mayor Gerry about funding the infrastructure to the boundary of the racetrack.

## ***C. Opportunity Fund***

### ***a. List of Potential Projects***

Mr. Arntzen stated the Port allocates an opportunity fund in the budget for projects that may be significant, but arise after the work plan and budget. Currently, the Port has \$100,000 allocated for the 2017-2018 Budget and here are a few items for consideration:

- Duffy's Pond: Environmental Proposal; \$25,000;
- JF Engineering Contract: \$12,000 for research on all community bids to narrow down construction costs for Vista Field;
- Makers Architecture; \$7,000 for the Clover Island Master Plan Refresh;
- ECONorthwest: \$9,000 for an Economic Feasibility Report for Clover Island with the 1135 investment.

Commissioner Novakovich inquired if the Duffy's Pond was for planning only.

Mr. Arntzen stated the proposal will include a report and course of action for Duffy's Pond, but not the actual clean-up work.

Commissioner Novakovich stated all of the suggestions are beneficial to the Port and should be completed.

Commissioner Moak asked how the JF Engineering contract will add value.

Mr. Arntzen stated previously the Port has utilized an engineering estimate software to run the numbers for a construction project and found the estimate to be too low. Mr. Arntzen believes Mr. Fetterolf will be able to meticulously vet the numbers for Vista Field.

Mr. Peterson stated the contract includes gathering data from all local municipalities on projects over the last 3 years that pay prevailing wage and deal with unit pricing, in an effort to break down the actual costs versus using the estimating software.

## ***D. Commissioner Meetings (formal and informal meetings with groups or individuals)***

Commissioners reported on their respective committee meetings.

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## ***E. Non Scheduled Items***

1. Commissioner Novakovich gave a Washington Public Ports Association Legislative update:
  - The basic CERB program was increased to \$13,000,000 and the CERB broadband program was increased to \$10,000,000;
  - Port Broadband Authority (HB2664) advanced through the legislative process and was sent to the Governor's office for signature;
  - Tourism Promotion (SB5251) was signed by the Governor and creates and funds a state tourism program by establishing a tourism board, and directing 0.2% of the sales tax on lodging, rental cars, and restaurants. The state funding portion is limited to \$2,500,000 per year;
  - Campaign Contribution Limits (HB 2647) died on the Senate floor calendar and will be addressed next session;
  - Public Works Contracting Authority (SB 6329) clarifies the port's authority to use unit-price contracting as well as establishes a bid limit so ports are no longer required to get multiple bids for public works projects less than \$40,000.
2. Ms. Bader Inglima reminded the audience of the Special Commission Meeting on April 19, 2018; Vista Field, Infrastructure Unveiling of Phase 1 Plan and Renderings. The meeting will take place at the Bechtel Boardroom at the Tri-Cities Business and Visitor Center at 6:00 p.m.. Ms. Bader Inglima asked that the Commission arrive close to the starting time, so as not to engage with the public.

The Latino Heritage Mural Celebration will take place at Columbia Gardens on May 23, 2018 at 2:00 p.m..

## ***F. Columbia Drive***

### ***a. Columbia Gardens Way- Bid Update***

Mr. Peterson reported that construction plans for Columbia Gardens Phase 2A are complete and were advertised on April 1, and 8, 2018 and bid results are due on April 19, 2018 at 2:00 p.m. Mr. Peterson stated the bid package includes: the loop road (Date Street and Cedar Street Extensions and Columbia Gardens Way), trail access, landscaping and wall along Columbia Drive, the gateway approach, 30 parking spaces, 6 food truck spaces and plaza, and utilities and one alternative is included for a 300 foot screening wall adjacent to the mobile home park.

## **PUBLIC COMMENTS**

Boyce Burdick, 414 Snyder Street, Richland. Mr. Burdick stated the new location for parking near the UPS facility for the Vista Arts Center is perfect for the performers and believes the parking plan is a step in the right direction.

No further comments were made.

## **PRESENTATION**

### ***A. Anti-Harassment Training; (Exhibit C)***

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## COMMISSIONER COMMENTS

No comments were made.

Commissioner Moak anticipates the Executive Session will last approximately 10 minutes, Minimum Price, per RCW 42.30.110(1)(c) with action anticipated. Commissioner Moak asked the public to notify Port staff if they will return after the executive session so staff can advise if the session concludes early.

Commissioner Moak recessed the Regular Commission Meeting at 5:03 p.m.

## EXECUTIVE SESSION

### *A. Minimum Price, per RCW 42.30.110(1)(c)*

Commissioner Moak convened the meeting into Executive Session at 5:03 p.m. for approximately 10 minutes.

Commissioner Moak adjourned the Executive Session at 5:10 p.m. with anticipated action.

Commissioner Moak reconvened the Regular Commission Meeting at 5:11 p.m.

***Motion:*** *Commissioner Novakovich moved to set a minimum price on the Oak Street property of \$375,000, and instruct staff to establish a Purchase and Sale Agreement for Commission approval; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.*

## ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 5:12 p.m.

**APPROVED:**

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

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*Thomas Moak, President*

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*Don Barnes, Vice President*

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*Skip Novakovich, Secretary*



## AGENDA REPORT

**TO:** Port Commission

**FROM:** Larry Peterson, Director of Planning & Development

**MEETING DATE:** April 24, 2018

**AGENDA ITEM:** Resolution No. 2018-05; Construction Contract with Big D's Construction of Tri-Cities, Inc.

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- I. REFERENCE(S):** Resolution 2016-05; Bid Tabulation; Engineer's Letter of Recommendation
- II. FISCAL IMPACT:** \$723,098.60, plus applicable tax
- III. DISCUSSION:** The Port's commitment to the revitalization of Columbia Drive was officially established by the 2013 Port & City Interlocal Agreement and reaffirmed by the 2015 Interlocal Agreement. Completion of the Columbia Gardens Wine Village buildings in fall 2017 signified conclusion of the initial Port and City actions.

The Port completed design of a loop roadway, parking lot, food truck area and plaza to both support the Phase #1 buildings but to also up the remaining site for private sector investment and Port planned Phase 2 building construction. Hall Engineers & Associates prepared plans and specifications and then the Port properly advertised this project for bid and received five (5) bids before the 2:00 p.m. April 19, 2018 deadline. Big D's Construction of Tri-Cities, Inc. base bid of \$673,218.60 was the lowest of five [5] bids received for this project and has been deemed as a responsive bid. Big D's Construction of Tri-Cities, Inc. provided a bid price of \$49,880.00 for Alternative #1 (6-ft. masonry).

Bid documents specified the Port would award to the contractor with the lowest responsive base bid which was submitted by Big D's Construction of Tri-Cities, Inc. Inclusion and/or of alternates would be determined based on the remaining available budget. Accepting the bid for of the Base Bid work and Alternative 1 along with the applicable sales tax would be within the allocated budget.

Review and acceptance of this bid by the Commission is required prior to proceeding with this project. The motion included in this report and the attached resolution would effectively authorize this project.

- IV. ACTION REQUESTED OF COMMISSION:**
- Motion:** I move approval of Resolution 2018-05, authorizing the Port's Chief Executive Officer to execute the contract with Big D's Construction of Tri-Cities, Inc. for construction of the Columbia Gardens Loop Roadway project on Columbia Drive including Alternative 1, for the sum of \$723,098.60, plus applicable tax.



***PORT OF KENNEWICK***  
***Resolution No. 2018-05***

***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK  
ACCEPTING AND AWARDING THE CONSTRUCTION CONTRACT FOR THE COLUMBIA  
GARDENS LOOP ROADWAY PROJECT ON COLUMBIA DRIVE***

**WHEREAS**, a request for bids for the Columbia Gardens Loop Roadway Project was properly advertised with the approved plans and specifications being made available to prospective bidders; and

**WHEREAS**, construction bids have been received and staff and the project engineer have certified that the bids received are in compliance with the plans and specifications; and

**WHEREAS**, the staff and the project engineer have certified that the low bidder for the project is Big D's Construction of Tri-Cities, Inc. in the amount of \$673,218.60, plus applicable tax, for the base bid work which includes the installation Columbia Garden Way roadway and vehicle parking areas for 30+ vehicles on Columbia Drive, and that such bid is in compliance with the plans and specifications; and

**WHEREAS**, the staff and the project engineer have certified that the low bidder also provided a bid in the amount of \$49,880.00, plus applicable tax, for Bid Alternative #1 work which includes the construction of a 6' masonry wall adjacent northwest portion of site, and that such bid is in compliance with the plans and specifications; and

**NOW THEREFORE, BE IT RESOLVED** that the Port of Kennewick Commission does hereby accept the base bid of Big D's Construction of Tri-Cities, Inc. for the Columbia Gardens Loop Roadway project on Columbia Drive as the low bidder in the amount of \$673,218.60, and hereby awards the construction contract to said low bidder.

**BE IT HEREBY FURTHER RESOLVED** that the Port of Kennewick Commission does hereby accept the Bid Alternative #1 of Big D's Construction of Tri-Cities, Inc. for the construction of a 6' masonry wall adjacent northwest portion of site in the amount of \$49,880.00 plus applicable tax, and hereby increases the construction with said low bidder to include this work.

**BE IT HEREBY FURTHER RESOLVED** that the Chief Executive Officer is authorized to enter into a contract between the Port of Kennewick and Big D's Construction of Tri-Cities, Inc. for a contract total of \$723,098.60 plus applicable tax, and that the Chief Executive Officer is further authorized to proceed with all necessary procedures required to complete construction of the project.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 24th day of April 2018.

***PORT of KENNEWICK***  
***BOARD of COMMISSIONERS***

By: \_\_\_\_\_  
THOMAS MOAK, President

By: \_\_\_\_\_  
DON BARNES, Vice President

By: \_\_\_\_\_  
SKIP NOVAKOVICH, Secretary

# FINAL BID TAB

## Port of Kennewick - Columbia Gardens Loop Road

Bid Opening 2:00pm Thursday April 19, 2018 at 350 Clover Island Drive, Suite 200

Port Commission must approve contract of this scale

April 20, 2018 @ 1:00pm

Contact: Larry Peterson (509) 586-1188

[lpeterson@portofkennewick](mailto:lpeterson@portofkennewick)

GENERAL CONTRACTOR	CITY	STATE	Base Bid (Schedule A Tax-Exempt)	Base Bid (Schedule B Taxable)	TOTAL BASE BID Schedules A & B	Alternative #1	TOTAL BASE BID Schedules A & B and Alternative #1
Big D's Construction OF Tri-Cities	Pasco	WA	\$324,192.10	\$349,026.50	\$673,218.60	\$49,880.00	\$723,098.60
Inland Ashalt Company	Richland	WA	\$408,093.25	\$335,366.13	\$743,459.38	\$52,000.00	\$795,459.38
Goodman & Mehlenbacher	Kennewick	WA	\$368,703.52	\$376,569.88	\$745,273.40	\$91,754.00	\$837,027.40
2F Enterprises	Kennewick	WA	\$377,439.15	\$379,508.85	\$756,948.00	\$53,500.00	\$810,448.00
Moreno & Nelson Construction	Walla Walla	WA	\$421,968.00	\$410,281.42	\$832,249.42	\$175,000.00	\$1,007,249.42

**From:** Gary Hall [mailto:halleng@owt.com]

**Sent:** Friday, April 20, 2018 2:10 PM

**To:** Larry Peterson <LPeterson@portofkennewick.org>

**Subject:** RE: Columbia Gardens Loop Roadway-Bids, Bid Tab spreadsheet & Final Bid Tab  
(Recommendation letter Sought)

Larry –

I have checked the math on the bids, and if the bids were closer, this would be a complicated award, requiring several bidders to acknowledge and accept corrections to their bids according to the contract documents.

Fortunately Big D's is the lowest responsive bidder and has no errors.

I recommend award of the bid/contract for Columbia Gardens Loop Road (Phase 2.A) to Big D's Construction of Tri-Cities.

Thank you,  
Gary Hall, PE  
**Hall Engineering Associates**  
10 South Auburn St  
Kennewick WA 99336  
(509) 582-2200  
[halleng@owt.com](mailto:halleng@owt.com)



## AGENDA REPORT

**TO:** Port Commission

**FROM:** Amber Hanchette, Director of Operations & Real Estate

**MEETING DATE:** April 24, 2018

**AGENDA ITEM:** Resolution 2018-06; to approve a 3-Year Lease at 104 Clover Island Drive – ESD112 Construction Services Group

---

- I. REFERENCE(S):** Resolution 2018-06 and Lease Agreement
- II. FISCAL IMPACT:** Operational income of \$217,525.10 for a thirty-six month lease period (less 2 weeks) including leasehold tax.
- III. DISCUSSION:** Construction Services Group (CSG) is a program of the Washington State Educational Services District 112. The Educational Services District was created in 1969 by the Washington State Legislature to support districts in a variety of program areas. The leased area will be used as administrative offices. CSG will occupy the entire 2<sup>nd</sup> floor at 104 Clover Island Drive, Kennewick.

Parameters of the negotiated lease are:

- Lease 5,270 square feet for office space on 2<sup>nd</sup> floor at 104 Clover Island Drive the West Marina Professional Building;
- Three (3) year lease effective May 15, 2018;
- Subject to first right of refusal to lease space by the Clover Island Yacht Club;
- Lessee is responsible for separately metered utilities including electricity; excluding water, common area landscape, garbage and parking;
- Year 1 monthly rent for the premises is \$5,270.00 plus leasehold tax;
- 3% per year rent escalation;
- According to Port of Kennewick Policies and Procedures, POK-ED-001, 3.1.2(b). Leases in which the monthly rental amount exceeds \$5,000 per month shall be submitted to the Commission for approval.

- IV. STAFF RECOMMENDATION:**  
Approve the three (3) year lease as negotiated, effective May 15, 2018.

**V. ACTION REQUESTED OF COMMISSION:**

*Motion: I move approval of Resolution 2018-06 approving a three (3) year lease with ESD1 12 Construction Services Group and authorizing the Chief Executive Officer to execute the contract.*

# **PORT OF KENNEWICK**

## **Resolution No. 2018-06**

### ***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK APPROVING A THREE YEAR LEASE AGREEMENT WITH ESD112 CONSTRUCTION SERVICES GROUP***

**WHEREAS**, the Port of Kennewick (Port) is authorized to enter into certain leases upon such terms as the Port Commission deems proper; and

**WHEREAS**, a three (3) year lease with ESD112 Construction Services Group effective May 15, 2018 has been negotiated by Port staff subject to first right of refusal lease with the Clover Island Yacht Club; and

**WHEREAS**, the Port Commission has called a regularly scheduled public meeting with notice of such meeting given as provided by law and such public meeting was held at such time and on said date; and

**WHEREAS**, Port staff and the Port attorney have reviewed the proposed Lease Agreement and find it is in proper form and it is in the Port's best interest; and

**WHEREAS**, after consideration of the attached lease agreement, the Port Commission has determined that the lease is proper.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby approve a three (3) year lease with ESD112 Construction Services Group as presented and authorizes the Port's Chief Executive Officer to execute all documents and agreements on behalf of the Port to complete the transaction as specified above.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 24th day of April, 2018.

***PORT of KENNEWICK  
BOARD of COMMISSIONERS***

By:

\_\_\_\_\_  
THOMAS MOAK, *President*

By:

\_\_\_\_\_  
DON BARNES, *Vice President*

By:

\_\_\_\_\_  
SKIP NOVAKOVICH, *Secretary*



# **COMMERCIAL PROPERTY LEASE AGREEMENT**

**BETWEEN  
PORT OF KENNEWICK,  
LANDLORD**

**AND**

**ESD-112 CONSTRUCTION SERVICES GROUP,  
TENANT**

**CLOVER ISLAND WEST MARINA PROFESSIONAL BUILDING**

**2<sup>ND</sup> FLOOR – SUITE 201 & SUITE 202**

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- J. Annual Price Adjustment: 3% annual price per square foot increase effective May 1<sup>st</sup> each year starting 5/1/2019.
- K. Total Square Feet Leased: 5,270 sf
- L. Base Monthly Rent (not including LET):
- |        |            |         |
|--------|------------|---------|
| YEAR 1 | \$1.00 PSF | \$5,270 |
| YEAR 2 | \$1.03 PSF | \$5,428 |
| YEAR 3 | \$1.06 PSF | \$5,586 |
- M. Leasehold Tax (LET): Current Washington State Leasehold Tax shall be added to Base Rent. Current effective rate is 12.84%.
- N. **Total Monthly Rent (includes LET):**
- |               |                   |
|---------------|-------------------|
| <b>YEAR 1</b> | <b>\$5,946.67</b> |
| <b>YEAR 2</b> | <b>\$6,124.96</b> |
| <b>YEAR 3</b> | <b>\$6,303.24</b> |
- O. Monthly Utilities: See Article 7 of Lease.
- P. Rent Due Date: The Lease Commencement Date and the first day of each month thereafter.
- Q. Financial Security: Check all that apply:
- ☒ \$ 11,893.34 deposit;
- ☐ Corporate surety bond;
- ☐ Personal Guaranty as set forth in Exhibit B;
- ☐ Other financial security: (Describe) \_\_\_\_\_
- R. Landlord's Address for Notices and Rent Payments:
- Port of Kennewick  
350 Clover Island Drive, Suite 200  
Kennewick, WA 99336
- S. Tenant's Address for Notices:
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- S. Exhibits: Exhibit "A" Legal Description of Premises
- Exhibit "B" Personal Guaranty Form

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## ARTICLE 1 PREMISES

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord the Premises, which Premises are more particularly described in the Basic Lease provisions above.

## ARTICLE 2 USE OF PREMISES

Tenant shall occupy and use the Premises for such uses as described in the Basic Lease provisions above. Tenant may not use the Premises for any other business purpose except as may be authorized in writing by Landlord at Landlord's sole discretion. No smoking shall be allowed within any portion of the Premises and within twenty-five (25) feet of all entryways.

## ARTICLE 3 TERM

The Term hereof shall commence on the Lease Commencement Date defined in the Basic Lease Provisions and shall terminate on the Expiration Date defined in the Basic Lease Provisions, unless earlier terminated.

## ARTICLE 4 RENT

On or before the first day of each month of this Lease, Tenant shall pay to Landlord the Total Monthly Rent and all other assessment, charges, and fees as provided in this Article 4 and as otherwise set forth in this Lease, at the Landlord's address set forth in the Basic Lease Provisions.

(a) Late Fee.

If any sums payable by Tenant to Landlord under this Lease are not received by the fifteenth (15<sup>th</sup>) day of the month in which they are due, Tenant shall pay Landlord an additional amount for the cost of collecting and handling such late payment as a late fee in an amount equal to the greater of (i) Fifty Dollars (\$50.00), or (ii) five percent (5%) of the overdue amount.

(b) Interest.

In addition to any applicable late fees, 12% APR interest (1% per month), shall be applied to the total unpaid balances calculated from the original due date to the date of payment.

(c) Non-Sufficient Funds (NSF).



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If a Tenant check is returned by the bank for any reason, Tenant shall pay a NSF fee of Fifty Dollars (\$50) for administrative costs related to collecting and handling such returned check. The Tenant shall also pay any associated bank fees charged to the Port related to the returned check. Landlord may require, at Landlord's sole discretion that Tenant's future payments be made by cash, cashier's check or money order.

Landlord and Tenant hereby agree that these charges represent a fair and reasonable estimate of what the Landlord might incur by reason of Tenant's late or NSF payment. These fees are due and payable with the current rent payment. Landlord's acceptance of any late charge, interest or NSF fee shall not be deemed an extension of the date rent is due or prevent Landlord from exercising any other rights or remedies under this Lease.

The Landlord reserves the right to revise its policy regarding late payment, interest and NSF check charges without notice to Tenant.

## **ARTICLE 5 FINANCIAL SECURITY**

In compliance with the requirements of the state law, Tenant agrees that it will secure the performance of the rental portion of this Lease by providing one or more of the following: 1) a deposit in the amount set forth in the Basic Lease Provisions, or 2) procuring and maintaining, during the term of this Lease, a corporate surety bond ("Bond"), or 3) by providing other financial security satisfactory to Landlord.

The Bond shall be in a form and issued by a surety company acceptable to Landlord and shall comply with the requirements of Washington law. Tenant shall obtain such Bond and forward evidence thereof to Landlord within fourteen (14) days of execution of this Lease, but in no event later than the Lease Commencement Date. Failure to comply with this requirement shall be grounds for immediate termination of this Lease without notice by Landlord. Such Bond shall be kept in effect during the term of this Lease; failure to comply with this requirement shall render Tenant in default. The Bond shall be increased to reflect any increases in Rent.

Upon any default by Tenant of its obligations under this Lease, Landlord may collect on the Bond to offset the Tenant's liability to Landlord. Collection on the Bond shall not relieve Tenant of liability, shall not limit any of Landlord's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

## **ARTICLE 6 TAXES & ASSESSMENTS**

### **6.1     Property Taxes.**

Landlord will pay property tax on Premise's real property and any building or structure that is permanently attached to the real property.

### **6.2     Personal Property Taxes**

Tenant shall pay when due all license fees, public charges, taxes and assessments on the Tenant-owned trade fixtures, furniture, other fixtures, equipment, inventory and all other personal property of or being used by Tenant in the Premises, whether or not owned by Tenant.

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6.3 Additional Taxes/Assessments; Leasehold Excise Tax (LET)

Tenant shall also pay: (a) all special taxes and assessments (including irrigation assessments) or license fees now or hereafter levied, assessed or imposed by law or ordinance, by reason of Tenant's use of the Premises; (b) all business and occupation tax and any tax, assessment, levy or charge assessed on the Rent paid under this Lease; (c) the statutory leasehold excise tax imposed in connection with the Rent due hereunder or otherwise due as a consequence of this Lease; and (d) any excise, transaction, sales, privilege, or other tax (other than net income and/or estate taxes) now or in the future imposed by the city, county, state or any other government or governmental agency upon Landlord and attributable to or measured by the Rent or other charges or prorations payable by Tenant pursuant to this Lease.

**ARTICLE 7  
UTILITIES**

Tenant shall be solely responsible to Landlord for the payment of all assessments, charges and/or fees pertaining to the Premises, including but not limited to, water assessments, charges for public utilities, license and permit fees which may, during the Lease Term, be assessed, levied, charged, confirmed or imposed i) on the Premises or any part thereof, ii) on improvements now or hereafter comprising a part thereof, and iii) on the use or occupancy of the Premises. Tenant shall pay all such assessments, charges and/or fees to Landlord when due.

Tenant acknowledges that Landlord shall have no obligation to provide any utilities or services to the Premises. Tenant shall be solely responsible for the payment of all assessments, charges and/or fees pertaining to the Premises, including, but not limited to, water assessments, charges for public utilities, license and permit fees which may, during the Lease Term, be assessed, levied, charged, confirmed or imposed i) on the Premises or any part thereof, ii) on improvements now or hereafter comprising a part thereof, and iii) on the use or occupancy of the Premises. Tenant shall pay all such assessments, charges and/or fees when due.

Electricity Meters Assigned to Tenant: \_\_\_\_\_

Water Meters Assigned to Tenant: \_\_\_\_\_

Interruptions: There shall be no abatement of rent and Landlord shall not be liable for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Landlord's reasonable control or in cooperation with governmental request or directions.

**ARTICLE 8  
INSURANCE**

8.1 Insurance

Tenant, at its own expense, shall provide and keep in force all insurance deemed appropriate for the purposes that the Premises are to be used and with companies reasonably acceptable to Landlord, including but not limited to the following:

- (a) Commercial General Liability Insurance

Commercial General Liability (CGL) insurance for the benefit of Landlord and Tenant jointly against liability for bodily injury and property damage for a combined single limit of not less than One Million Dollars (\$1,000,000) for any one occurrence for this location, including coverage for contractual liability and personal injury, with a \$2,000,000 aggregate limit;. Landlord reserves the right to require higher liability limits and/or to change insurance requirements at any time during the term of the lease with thirty (30) days' notice to Tenant.

(b) Statutory Workers' Compensation

Statutory Workers' Compensation, including at least \$250,000 Employer's Contingent Liability (Stop Gap) coverage in Tenant's commercial general liability insurance;

(c) Automobile Liability Insurance

Automobile Liability Insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000, including all owned, non-owned and hired vehicles and covering claims for damages because of bodily injury or death of any person or property damage arising out of ownership, maintenance or use of any motor vehicle; and

(d) Property Insurance

Property insurance covering all leasehold improvements to the Premises, furniture, fixtures, equipment, inventory and other personal property located on the Premises (and, at Landlord's election, on all buildings and other improvements now or hereafter existing at the Premises) in an amount of not less than one hundred percent (100%) insurable replacement value minimum co-insurance of 80%, "Special Form—Causes of Loss", with Flood Insurance if Landlord reasonably deems such insurance to be necessary or desirable, and replacement cost coverage to protect against loss of owned or rented equipment and tools brought onto or used at the Property by Tenant.

## 8.2 Requirements

The foregoing insurance requirements shall be placed with an insurance company or companies admitted to do business in the State of Washington and shall have an A.M. Best's rating of A- or better. Tenant shall furnish Landlord with a copy of the certificate of such policies before the Commencement Date of this Lease and, upon request by Landlord, shall provide proof satisfactory to Landlord that all such policies are in full force and effect. Tenant's liability insurance policies shall list Landlord as an additional insured and Tenant's property insurance policies shall reflect Landlord as a loss-payee as its interests may appear, and all of Tenant's insurance policies shall be primary and non-contributing with any insurance carried by Landlord. Such policies shall not be cancelable or materially altered without forty-five (45) days' prior written notice to Landlord. In addition, the policies shall provide for ten (10) days' written notice to Landlord in the event of cancellation for non-payment of premium. Tenant's failure to deliver the policies or certificates to Landlord as required above shall constitute an event of default pursuant to Article 24 hereof.

## 8.3 Mutual Waiver of Subrogation

Each party hereby waives, and each party shall cause their respective property insurance policy or policies to include a waiver of such carrier's entire right of recovery (i.e., subrogation) against the other party, and the officers, directors, agents, representatives, employees, successors and assigns of the other

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party, for all claims which are covered or would be covered by the property insurance required to be carried hereunder or which is actually carried by the waiving party.

#### 8.4 Destruction or Condemnation.

8.4.1 Damage and Repair. If the Premises are partially damaged but not rendered untenantable, by fire or other insured casualty, then Landlord shall diligently restore the Premises and this Lease shall not terminate. The Premises shall not be deemed untenantable if less than twenty-five percent (25%) of the Premises are damaged. Landlord shall have no obligation to restore the Premises if insurance proceeds are not available to pay the entire cost of such restoration. If insurance proceeds are available to Landlord but are not sufficient to pay the entire cost of restoring the Premises, then Landlord may elect to terminate this Lease and keep the insurance proceeds, by notifying Tenant within sixty (60) days of the date of such casualty.

If the Premises are entirely destroyed, or partially damaged and rendered untenantable, by fire or other casualty, Landlord may, at its option: (a) terminate this Lease as provided herein, or (b) restore the Premises to their previous condition. If, within 60 days after receipt by Landlord from Tenant of written notice that Tenant deems the Premises untenantable, Landlord fails to notify Tenant of its election to restore the Premises, or if Landlord is unable to restore the Premises within six (6) months of the date of the casualty event, then Tenant may elect to terminate the Lease.

If Landlord restores the Premises under this Article 8.4.1, Landlord shall proceed with reasonable diligence to complete the work, and the base monthly rent shall be abated in the same proportion as the untenantable portion of the Premises bears to the whole Premises, provided that there shall be a rent abatement only if the damage or destruction of the Premises did not result from, or was not contributed to directly or indirectly by the act, fault or neglect of Tenant, or Tenant's officers, contractors, licensees, subtenants, agents, servants, employees, guests, invitees or visitors. Provided, Landlord complies with its obligations under this Article, no damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance directly, incidentally or consequentially arising from any repair or restoration of any portion of the Premises. Landlord will not carry insurance of any kind for the protection of Tenant or any improvements paid for by Tenant or on Tenant's furniture or on any fixtures, equipment, improvements or appurtenances of Tenant under this Lease, and Landlord shall not be obligated to repair any damage thereto or replace the same unless the damage is caused by Landlord's negligence or willful misconduct.

8.4.2 If the Premises are made untenantable by eminent domain, or conveyed under a threat of condemnation, this Lease shall automatically terminate as of the earlier of the date title vests in the condemning authority or the condemning authority first has possession of the Premises and all Rents and other payments shall be paid to that date. In case of taking of a part of the Premises that does not render the Premises untenantable, then this Lease shall continue in full force and effect and the base monthly rental shall be equitably reduced based on the proportion by which the floor area of any structures is reduced, such reduction in Rent to be effective as of the earlier of the date the condemning authority first has possession of such portion or title vests in the condemning authority. Landlord shall be entitled to the entire award from the condemning authority attributable to the value of the Premises and Tenant shall make no claim for the value of its leasehold. Tenant shall be permitted to make a separate claim against the condemning authority for moving expenses or damages resulting from interruption in its business, provided that in no event shall Tenant's claim reduce Landlord's award.



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## **ARTICLE 9 ACCEPTANCE AND CARE OF PREMISES**

Tenant has inspected the Premises and accepts the Premises "AS IS" in its present condition and acknowledges that Landlord is not responsible to provide, and has made no representations or warranties that it will provide, any improvements to the Premises whatsoever, except as set forth in Article 10, Alterations and Improvements, below. Tenant shall, at its sole cost, keep the Premises in as good working order, cleanliness, repair, and condition, as that which existed at the Lease Commencement Date. In the event that Tenant fails to comply with the obligations set forth in this Article 9, Landlord may, but shall not be obligated to, perform any such obligation on behalf of, and for the account of Tenant, and Tenant shall reimburse Landlord for all costs and expenses paid or incurred on behalf of Tenant in connection with performing the obligations set forth herein. Tenant expressly waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

## **ARTICLE 10 ALTERATIONS AND IMPROVEMENTS**

Tenant shall not make any alterations, additions, renovations or improvements to the Premises without first obtaining the written consent of Landlord. All alterations, additions, renovations and improvements made shall be at the sole cost and expense of Tenant and shall become a part of the real property and belong to Landlord and shall remain in and be surrendered with the Premises as a part thereof at the termination of this Lease. Tenant further agrees to indemnify, defend, and hold Landlord harmless from, and against, any and all damages, injuries, losses, liens, costs or expenses (including attorneys' fees) incurred, claimed or arising out of said work.

## **ARTICLE 11 ACCIDENTS AND INDEMNIFICATION**

Tenant shall indemnify Landlord and hold it harmless from and against, and shall defend with counsel acceptable to Landlord, any and all suits, actions, damages, claims, liability, and expense in connection with loss of life, bodily or personal injury, or property damage arising from or out of any occurrence in, upon, at or from the Premises, or the occupancy or use by Tenant of the Premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, invitees, licensees, or concessionaires; provided that Tenant shall not be liable to Landlord to the extent such damages, liability, claims or expenses are caused by or result from the negligence or intentional misconduct of Landlord.

Tenant hereby expressly waives claims against Landlord, and Landlord shall not be responsible or liable at any time, for any loss or damage to Tenant's personal property or to Tenant's business, including any loss or damage to either the person or property of Tenant that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting, or adjoining property, unless and only to the extent due to Landlord's gross negligence or intentional misconduct, and in no event shall Landlord be liable for Tenant's consequential damages. Tenant shall use and enjoy the Premises and improvements at its own risk, and hereby releases Landlord, to the full extent permitted by law and except as expressly provided above, from all claims of every kind resulting in loss of life, personal or bodily injury, or property damage.

Solely for the purpose of effectuating the indemnification obligations under this Lease, and not for the benefit of any third parties (including but not limited to employees of Tenant), Tenant specifically and expressly waives any immunity that may be granted it under the Washington State Industrial

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Insurance Act, Title 51 RCW. Furthermore, the indemnification obligations under this Lease shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under Worker Compensation Acts, Disability Benefit Acts or other employee benefit acts. Tenant shall cause Contractors and their subcontractors and material suppliers to execute similar waivers of industrial insurance immunity. The parties, by their execution hereof, acknowledge that the foregoing provisions of this Article 11 have been specifically and mutually negotiated between the parties.

## **ARTICLE 12 COMPLIANCE WITH LAWS**

Tenant shall comply fully at its sole expense with all federal and state laws and local or city ordinances (including all applicable zoning ordinances) now or hereafter in force with respect to the Premises and Tenant's activities therein. Tenant warrants and represents to Landlord that Tenant shall use the Premises only for lawful purposes.

## **ARTICLE 13 MAINTENANCE**

Tenant shall keep the premises in a neat, clean, and sanitary condition at all times. Tenant shall keep all improvements to the Premises in good condition.

13.1 Janitorial: Tenant will provide janitorial service inside the Premises, restrooms and window washing on inside of windows. Landlord will provide maintenance service for common area parking and exterior window washing.

13.2 Landscaping and Common Area Sweeping: Landlord, at its cost, will provide landscaping care and common area repairs, maintenance, and sweeping outside the building.

13.3 Other Maintenance and Repairs: Landlord will maintain exterior of building, roof, foundation, and electrical, heating and plumbing, in a good state of repair. Tenant shall pay the reasonable cost of repairs of all damage caused by Tenant, its agents, servants, employees, or invitees within Ten (10) days of receipt of an invoice stating the repairs performed and the cost thereof.

13.4 HVAC: HVAC and all mechanical systems shall be in satisfactory operating condition and will be maintained by Landlord during the term of the Lease.

## **ARTICLE 14 LANDLORD'S ACCESS**

Landlord shall have the right to inspect the Premises at all reasonable times and enter the same for purposes of cleaning, repairing, inspecting, altering, exhibiting, or improving the Premises, but nothing contained in this Lease shall be construed so as to impose any obligation on Landlord to make any repairs, alterations or improvements not otherwise expressly set forth elsewhere herein.

The Landlord reserves the right to grant easements and other land uses on the Premises to others when the easement or other land uses will not unduly interfere with the use of the Premises by Tenant.



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## **ARTICLE 15 SIGNS AND ADVERTISING**

Tenant shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster or any advertising matter whatsoever anywhere in or about the Premises, without first obtaining Landlord's written consent thereto.

## **ARTICLE 16 WASTE AND UNLAWFUL USE**

Tenant shall not commit or suffer any waste upon the Premises, or make or suffer any nuisance, undue or unseemly noise, or otherwise, and will not do or permit to be done in or about the Premises anything which is illegal, unlawful, or dangerous, or which will increase Landlord's insurance rates upon the Premises.

## **ARTICLE 17 SUCCESSORS**

All the covenants, agreements, terms and conditions contained in this Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors, marital communities and assigns. Any assignment or subletting of the Premises or any interest in this Lease shall not relieve Tenant of primary responsibility for the performance of the terms and payment of the sums to be paid by Tenant hereunder.

## **ARTICLE 18 HAZARDOUS MATERIALS**

Tenant shall not dispose of or otherwise allow the release of any hazardous waste or materials in, on, or under the Premises, or any adjacent property. Tenant represents and warrants to Landlord that Tenant's intended use of the Premises does not involve the use, production, or disposal of any hazardous waste or materials. As used herein, "**hazardous waste or materials**" includes any substance, waste or material defined or designated as hazardous, toxic or dangerous (or any similar term) by any federal, state, or local statute, regulation, rule or ordinance now or hereafter in effect. In the event Tenant brings or uses hazardous waste or materials on the Premises in violation of this **Article 18**, Tenant shall, at its sole cost, properly dispose of all such hazardous waste or materials. Tenant shall be responsible for complying with all federal, state and local laws and regulations in regard to the handling of and disposing of hazardous waste or materials, and agrees to indemnify, defend, and hold Landlord harmless from and against all losses, costs, and expenses (including but not limited to site cleanup, investigation, and remediation costs and attorneys fees and costs related thereto) arising from a breach by Tenant of its obligations under this **Article 18**.

## **ARTICLE 19 ASSIGNMENT AND SUBLETTING**

Tenant shall not transfer, dispose, assign, mortgage, or hypothecate this Lease, in whole or in part, or permit the use of the Premises by any person or persons other than Tenant, or sublet the Premises, or any part thereof (any of which, a "**Transfer**") without the prior written consent of Landlord in each instance, which may be given, withheld, or conditioned in Landlord's sole discretion. In no event shall

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Tenant be released or relieved of any liability hereunder due to any Transfer whether or not consented to by Landlord.

Landlord shall have the right to transfer, dispose, assign, mortgage, or hypothecate this Lease, in whole or in part without the prior written consent of the Tenant. See also Landlord rights to terminate this Lease as set forth in **Article 23** below.

## **ARTICLE 20 SURRENDER OF POSSESSION**

### **20.1    Surrender**

At the expiration of the tenancy created hereunder, whether by lapse of time or otherwise, Tenant shall surrender the Premises in substantially the as good condition or better as they were at the Lease Commencement Date, and shall remove all of its personal property, furniture, non-permanent fixtures installed by or for Tenant, Tenant's equipment, and all cabling and wiring installed by or for Tenant. Tenant's obligations shall include the repair of any damage occasioned by the installation, maintenance or removal of Tenant's personal property, furniture, non-permanent fixtures installed by or for Tenant, and Tenant's equipment.

### **20.2    Removal of Property**

In the event of any entry in, or taking possession of, the Premises or upon the termination of this Lease, Landlord shall have the right, but not the obligation, to remove from the Premises all personal property remaining on the Premises, and may store the same in any place selected by Landlord, including but not limited to a public warehouse, at the expense and risk of the Tenant thereof, with the right to sell such stored property, as per applicable statutory requirements. The proceeds of such sale shall be applied first to the cost of such sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from Tenant to Landlord under any of the terms hereof, with the balance, if any, to be paid to Tenant.

### **20.3    Holding Over**

If Tenant fails to surrender the Premises at the expiration or earlier termination of this Lease, occupancy of the Premises after the termination or expiration shall be that of a tenancy at sufferance. Tenant's occupancy of the Premises during the holdover shall be subject to all the terms and provisions of this Lease and Tenant shall pay an amount due on the first of each month of the holdover period, without reduction for partial months during the holdover, equal to 150% of the greater of: (1) the monthly Total Monthly Rent (including Leasehold Tax), and any other charge due, for the monthly period immediately preceding the holdover; or (2) the fair market value for gross monthly rental for the Premises as reasonably determined by Landlord. No holdover by Tenant or payment by Tenant after the expiration or early termination of this Lease shall be construed to extend the Term or prevent Landlord from immediate recovery of possession of the Premises by summary proceedings or otherwise. In addition to the payment of the amounts provided above, if Landlord is unable to deliver possession of the Premises to a new tenant, or to perform improvements for a new tenant, as a result of Tenant's holdover, Tenant shall be liable to Landlord for all damages, including, without limitation, consequential damages, that Landlord suffers from Tenant's holdover. Nothing herein shall be construed as Landlord's consent to such holding over. During the holdover Tenant shall remain responsible for payment of all utilities, taxes, and other assessments, charges and/or fees due under this Lease.

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## ARTICLE 21 NOTICES

All notices, requests and demands to be made hereunder shall be in writing at the address set forth in the Basic Lease Provisions, as applicable, by any of the following means: (a) personal service (including service by recognized overnight delivery/courier service, such as UPS or FEDEX); or (b) registered or certified first class mail, return receipt requested. Such addresses may be changed by written notice to the other party given in the same manner provided above. Any notice, request, or demand sent pursuant to clause (a) of this Article 21 shall be deemed received upon such personal delivery or service (or the date of refusal, if personal service or delivery is refused), and if sent pursuant to clause (b), shall be deemed received three (3) days following deposit in the mails.

## ARTICLE 22 LIENS AND ENCUMBRANCES

Tenant shall keep the Premises free and clear of any liens and encumbrances arising out of the use and occupancy of the Premises by Tenant. Should Tenant fail to discharge any lien of the nature described in this Article 22 Landlord may, at Landlord's election, pay such claim or post a bond or otherwise provide security to eliminate the lien as a claim against title and the cost thereof shall be immediately due from Tenant as rent under this Lease.

## ARTICLE 23 LANDLORD'S TERMINATION RIGHT

Notwithstanding anything to the contrary elsewhere in the Lease, in the event that Landlord elects to use the Land and/or Premises for industrial development or other public or port-related purposes, Landlord shall have the right to terminate this Lease by providing sixty (60) days' written notice. If Landlord elects to terminate the Lease early as provided herein, the early termination date chosen by Landlord shall operate as if that date is the Expiration Date set forth in the Basic Lease Provisions. The parties recognize that the foregoing early termination right is important to Landlord and that any delay caused by the failure of Tenant to vacate the Premises pursuant to this Article 23 when required can cause irreparable harm to the Landlord and future tenants. Therefore, Landlord and Tenant agree that time is of the essence of this Article 23 and that if any dispute arises between Landlord and Tenant with respect to the provisions of this Article 23, any other provisions of this Lease notwithstanding, Tenant will vacate the Premises on or before the early termination date selected by Landlord, and Tenant shall be deemed to have waived any rights in law or equity to possession of the Premises.

In the event of the insolvency or bankruptcy of the Tenant, Landlord may, at Landlord's option, immediately take full possession of the premises to the exclusion of all persons. Exercising such option shall not alleviate Tenant's obligations under this Lease and Landlord shall have the right to seek all remedies set forth in this Lease.

## ARTICLE 24 DEFAULT AND REMEDIES

### 24.1 Default

The occurrence of any one or more of the following events shall constitute a material breach and default of this Lease (each, an "**Event of Default**");

- (a) Any failure by Tenant to pay Rent and Leasehold Tax when due, or any other assessment, charge and/or fee when due;
- (b) Any failure by Tenant to obtain and keep in full force and affect the insurance coverage(s) required hereunder to be carried by Tenant;
- (c) Any failure to immediately remedy an emergency condition that poses a significant risk of injury or damage;
- (d) Any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease; or
- (e) Tenant bankruptcy

24.2 Remedies.

(a) Re-entry and Termination

Upon and during the continuance of an Event of Default, Landlord, in addition to any other remedies available to Landlord at law or in equity, at Landlord's option, may without further notice or demand of any kind to Tenant or any other person:

1. Declare the Lease Term ended and reenter the Premises and take possession thereof and remove all persons therefrom, and Tenant shall have no further claim to the Premises; or
2. Without declaring this Lease ended, reenter the Premises and occupy the whole or any part thereof for and on account of Tenant and collect any unpaid Rent, Leasehold Tax, and other charges, which have become payable, or which may thereafter become payable; or
3. Even though Landlord may have reentered the Premises, thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises.

(b) Express Termination Required

If Landlord re-enters the Premises under the provisions of this Article, Landlord shall not be deemed to have terminated this Lease, or the liability of Tenant to pay any Rent, Leasehold Tax, or other assessments, charges and/or fees thereafter accruing, or to have terminated Tenant's liability for damages under any of the provisions of this Lease, by any such re-entry or by any action, in unlawful detainer or otherwise, to obtain possession of the Premises, unless Landlord shall have notified Tenant in writing that Landlord had elected to terminate this Lease. Tenant further covenants that the service by Landlord of any notice pursuant to the unlawful detainer statutes of Washington State and surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of or at any time subsequent to the serving of such notices and such election is evidenced by a written notice to Tenant) be deemed to be a termination of this Lease.

(c) Damages

If Landlord elects to terminate this Lease pursuant to the provisions of this Article, Landlord may recover from Tenant as damages, the following:

1. The worth at the time of award of any unpaid Rent, Leasehold Tax, and other assessments, charges and/or fees which had been earned at the time of such termination; plus
2. The worth at the time of award of the amount by which the unpaid Rent, Leasehold Tax, and other charges which would have been earned after termination until the time of award exceeds the amount of such loss Tenant proves could have been reasonably avoided; plus
3. The worth at the time of award of the amount by which the unpaid Rent, Leasehold Tax, and other assessments, charges and/or fees due for the balance of the Lease Term after the time of award exceeds the amount of such loss that Tenant proves could be reasonably avoided; plus
4. Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to any costs or expenses incurred by Landlord in (i) retaking possession of the Premises, including reasonable attorneys' fees, (ii) maintaining or preserving the Premises after the occurrence of an Event of Default, (iii) preparing the Premises for reletting to a new tenant, including repairs or alterations to the Premises for such reletting, (iv) leasing commissions, and (v) any other costs necessary or appropriate to relet the Premises; plus
5. At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted by the laws of Washington State.

(d) Definitions

As used in **Paragraphs 24.2(c)1** and **24.2(c)2** above, the "worth at the time of award" is computed by allowing interest at the rate of twelve percent (12%) per annum compounded monthly. As used in **Paragraph 24.2(c)3** above, the "**worth at the time of award**" is computed by discounting such amount at the discount rate of the Federal Reserve Bank situated nearest to the location of the Property at the time of award plus one (1) percentage point.

(e) No Waiver

The waiver by Landlord of any breach of any term, covenant or condition herein contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach of the same or any other term, covenant or condition of this Lease. The subsequent acceptance of Rent, Leasehold Tax, and other charges due hereunder shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular amount so accepted regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such amount. No covenant, term, or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver shall be in writing and signed by Landlord.

24.3 Interest



Any sum accruing to Landlord under the terms and provisions of this Lease which shall not be paid when due shall bear interest at the interest rate provided herein from the date the same becomes due and payable by the terms and provisions of this Lease until paid, unless otherwise specifically provided in this Lease. The interest rate which shall apply shall be the lesser of (i) twelve percent (12%) per annum (1% per month), or (ii) the highest rate allowed by applicable law.

## ARTICLE 25 ATTORNEYS' FEES AND COSTS

If the Tenant requests an amendment to this Lease Agreement or other revision to the Landlord's standardized terms or forms, Tenant agrees that it shall pay the Landlord for all costs and legal fees incurred by the Landlord as the result of request.

If either party hereto shall file any action or bring any proceeding against the other party arising out of this Lease or for the declaration of any rights hereunder, the prevailing party therein shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party as determined by the court. If either party ("**secondary party**") without its fault is made a party to litigation instituted by or against the other party (the "**primary party**"), the primary party shall pay to the secondary party all costs and expenses, including reasonable attorneys' fees, incurred by the secondary party in connection therewith.

## ARTICLE 26 MISCELLANEOUS

### 26.1 Miscellaneous Provisions

The following miscellaneous provisions shall apply to this Lease:

- (a) Time is of the essence hereof.
- (b) If any portion of this Lease shall be deemed void, illegal or unenforceable, the balance of this Lease shall not be affected thereby.
- (c) This Lease shall be interpreted according to the laws of the State of Washington. The parties agree that the Superior Court of the State of Washington for Benton County shall have sole jurisdiction over any question, claim, loss or injury arising hereunder.
- (d) Tenant acknowledges that, except as expressly set forth in this Lease, that neither Landlord nor any other person has made any representation or warranty with respect to the Premises.
- (e) This Lease shall be binding upon the heirs, executors, administrators, successors, and assigns of both parties hereto, except as otherwise provided for herein;
- (f) Landlord does not by this Lease, in any way or for any purpose, become a partner or joint venturer of Tenant in the conduct of its business or otherwise.
- (g) The paragraph and section headings hereof are for convenience only and shall not be used to expand or interpret the meaning of any part of this Lease.
- (h) Landlord shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond Landlord's control,

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including labor disputes, civil commotion, war, governmental regulations or controls, fire or other casualty, inability to obtain any material or service, or acts of God.

(i) This Lease and the Exhibits, Riders, and/or Addenda, if any, attached hereto, constitute the entire agreement between the parties. This Lease covers in full each and every agreement of every kind or nature whatsoever between the parties hereto concerning this Lease and all preliminary negotiations, inducements, representations, and agreements of whatsoever kind or nature are merged herein, and there are not oral agreements or implied covenants. Both parties represent they have had the opportunity to seek legal counsel prior to signing this Lease. All Exhibits, Riders, or Addenda mentioned in this Lease are incorporated herein by reference. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by both parties. The captions and section numbers appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe, or describe the scope or intent of any section.

Tenant and Landlord hereby represent and warrant that they have not employed any broker with regard to this Lease and that they have no knowledge of any broker being instrumental in bringing about this Lease transaction. Each party shall indemnify the other against any expense as a result of any claim for brokerage or other commissions made by any broker, finder, or agent, whether or not meritorious, employed by them or claiming by, through or under them. Tenant acknowledges that Landlord shall not be liable for any representations of Landlord's leasing agent or other agents of Landlord regarding this Lease transaction except for the representations and covenants of Landlord expressly set forth in this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

**PORT OF KENNEWICK**

**ESD112 CONSTRUCTION SERVICES GROUP**

**By:** \_\_\_\_\_  
**Tim Arntzen, Chief Executive**

**Title:** \_\_\_\_\_  
**Officer**

**Reviewed:**

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

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

**Approved as to form:**

**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Nick Kooiker, Port CFO**

**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Lucinda Luke, Port Legal Counsel**

STATE OF WASHINGTON

ss.

COUNTY OF \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of ESD 112 Construction Services Group, a Washington municipal corporation, to be the free and voluntary act of such municipal corporation for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington, residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

STATE OF WASHINGTON

ss.

COUNTY OF BENTON

I certify that I know or have satisfactory evidence that Tim Arntzen is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Chief Executive Officer of Port of Kennewick, a municipal corporation, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington, residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_



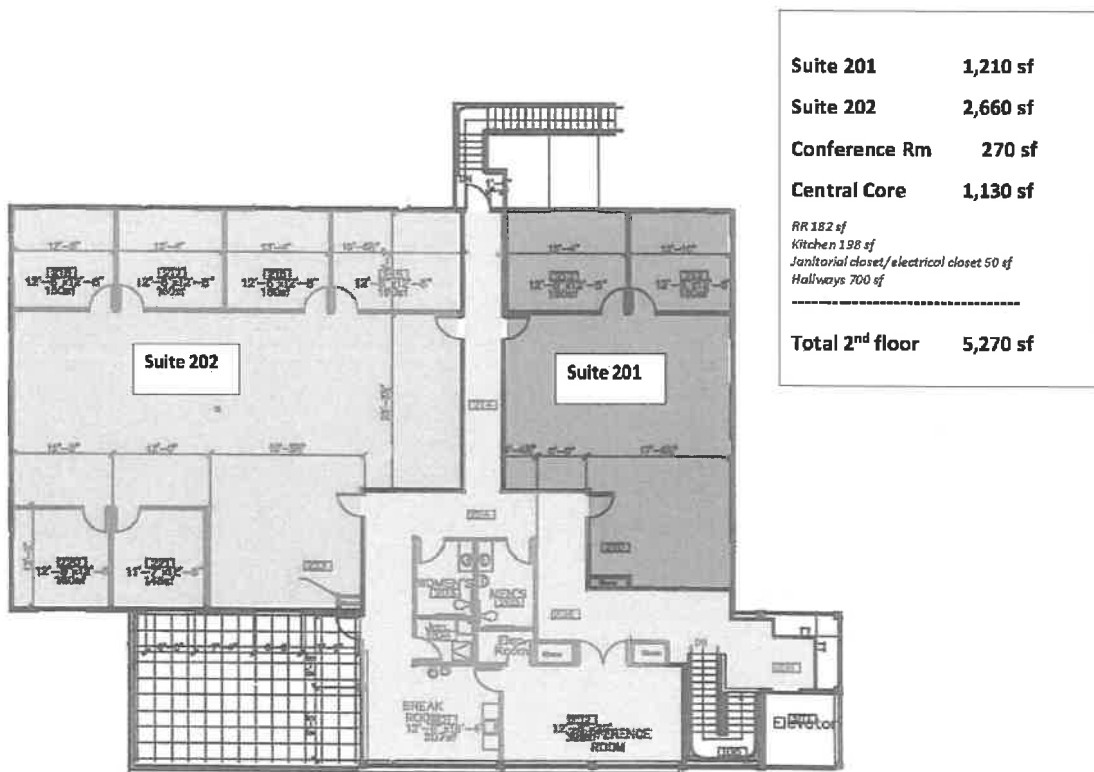
## EXHIBIT "A"

### LEGAL DESCRIPTION

BEGINNING AT THE SOUTHEAST CORNER OF LOT 14, PLAT OF CLOVER ISLAND THENCE SOUTH  
84°18'00" EAST A DISTANCE OF 18.6 FEET MORE OR LESS, THENCE SOUTH 05°42'00"  
WEST A DISTANCE OF 23.4 FEET MORE OR LESS TO

### COMMONLY KNOWN AS

104 Clover Island Drive, 2<sup>nd</sup> Floor, Suite 201 & Suite 202, Kennewick





## AGENDA REPORT

**TO:** Port Commission

**FROM:** Amber Hanchette, Director of Real Estate & Operations

**MEETING DATE:** April 24, 2018

**AGENDA ITEM:** Oak Street Industrial Park Land Sale – Three Rivers Acquisitions

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**I. REFERENCE(S):** Resolution 2018-07 and Site Map; attached.

**II. FISCAL IMPACT:** \$375,000 revenue to the Port.

**II. DISCUSSION:** An offer to purchase approximately 12.33 acres (\$30,414 per acre) of port-owned vacant land in the Oak Street Industrial Park (Kennewick) has been submitted by Three Rivers Acquisitions LLC.

- Property has been in the Port's real estate portfolio since 1972 generating little to no revenue.
- The property is located at Oak Street and 7<sup>th</sup> Avenue with no improvements on the property.
- Property is located in a flood plain and near the City of Kennewick's sewer treatment plant.
- Property has been used over the years as a construction debris stockpile.
- Zoned Light Industrial

Terms:

- Purchaser takes property in "As Is" condition
- Purchaser requests 12 month feasibility period
- 30 day close after feasibility expiration
- 5% earnest month deposit

The Purchaser intends to create an industrial business park for warehousing, manufacturing, logistics/delivery and construction-related trades. The Purchaser projects annual business park sales in excess of \$15 million at full build out with over 60 family wage jobs created. Principal owners have background in construction, development and finance.

**VI. ACTION REQUESTED OF COMMISSION:**

***Motion:** I move approval of Resolution 2018-07 authorizing the Port's Chief Executive Officer to execute all necessary documentation associated with the land sale to Three Rivers Acquisitions and to take all other action necessary to close this transaction.*

***PORT OF KENNEWICK***

**RESOLUTION No. 2018-07**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF  
KENNEWICK AUTHORIZING A PURCHASE AND SALE AGREEMENT WITH  
THREE RIVERS ACQUISITIONS LLC***

***WHEREAS***, Three Rivers Acquisitions LLC (Purchaser), has offered to purchase approximately 12.33 acres of the area graphically depicted on “*Exhibit A*” at the Port of Kennewick’s Oak Street Industrial Park, in Kennewick, Washington from the Port of Kennewick (Seller) for \$375,000 or approximately \$30,414 per acre; and

***WHEREAS***, Port staff and the Port attorney have reviewed the proposed Purchase and Sale Agreement and find it is in proper form and is in the Port’s best interest; and

***WHEREAS***, the Port Commission finds that said property is surplus to the Port’s needs and the proposed sale is consistent with all previous Port policies, including its Comprehensive Scheme of Development.

***NOW, THEREFORE; BE IT HEREBY RESOLVED*** that the Board of Commissioners of the Port of Kennewick hereby authorizes the Port’s Chief Executive Officer to execute a Purchase and Sale Agreement with Three Rivers Acquisitions LLC and hereby authorizes the Port’s Chief Executive Officer to execute all documents and agreements on behalf of the Port to complete the transaction as specified above.

***BE IT FURTHER RESOLVED*** that the Port Commission declares that said property is surplus to the Port’s needs and the proposed sale as referenced above is consistent with all previous Port policies, including its Comprehensive Scheme of Development.

***ADOPTED*** by the Board of Commissioners of the Port of Kennewick on the 24th day of April, 2018.

***PORT of KENNEWICK  
BOARD of COMMISSIONERS***

By: \_\_\_\_\_  
THOMAS MOAK, President

By: \_\_\_\_\_  
DON BARNES, Vice President

By: \_\_\_\_\_  
SKIP NOVAKOVICH, Secretary

## EXHIBIT "A"



# **PORT OF KENNEWICK**

## **Resolution No. 2018-08**

### ***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO EXECUTE AN AMENDMENT TO THE COMMERCIAL LEASE AGREEMENT WITH BRUKER AXS HANDHELD INC.***

**WHEREAS**, the Port of Kennewick (Port) is authorized to enter into certain leases upon such terms as the Port Commission deems proper; and

**WHEREAS**, the current lease dated January 1, 2013 with Bruker AXS Handheld Inc. expires December 31, 2017; and

**WHEREAS**, the Commission approved Resolution 2017-33 granting a sixty day (60) lease extension expiring on March 1, 2018 and approved Resolution 2018-03 granting an additional sixty day (60) extension expiring April 30, 2018; and

**WHEREAS**, port staff requests Commission approval for an additional sixty day (60) lease extension expiring on June 30, 2018 to complete lease renewal negotiations with Bruker AXS Handheld Inc.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby approves a sixty day (60) lease extension and authorizes the Chief Executive Officer to execute an amendment to the Commercial Lease Agreement with Bruker AXS Handheld Inc.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 24th day of April 2018.

***PORT of KENNEWICK  
BOARD of COMMISSIONERS***

By:

\_\_\_\_\_  
THOMAS MOAK, *President*

By:

\_\_\_\_\_  
DON BARNES, *Vice President*

By:

\_\_\_\_\_  
SKIP NOVAKOVICH, *Secretary*

## MEMORANDUM

To: Port Commission

From: Tim Arntzen, Executive Director

Date: 04/24/2018

Re: Review of West Richland Directives

Occasionally representatives from West Richland (Mayor, Council, staff) have asked what the port intends to do with the racetrack site. My response is that the Port of Kennewick's economic development efforts over the last decade, whether directed toward the racetrack site, or to other sites within the city, have been substantial. Therefore, in order to respond to the question related to the port's past contributions (and potential future contributions), I suggest the port assemble a brief list of accomplishments that could be used to compose an article for the upcoming spring port newsletter. This article might be a good refresher of our past accomplishments and future vision. Related to future port actions in West Richland, commission directives (contained in the master plan and comp scheme, the "Guiding Documents") instruct me to:

1. Continue to solve "entitlement" issues at the racetrack site (i.e. UGA, inundation clause, utility right-of-way and others which prevent full and efficient site development); and
2. Remain focused on appropriate racetrack site development as guided by the master plan and the comprehensive scheme. This focus is essentially broken down into two components:
  - a. A longer-term development strategy (i.e. 4 - 7 years). This strategy would assume: (a) the construction (by the municipality) of municipal services to the site; and (b) the construction of backbone infrastructure, including utilities and streets on site (constructed by the port). Development of the site would be with an eye toward creating parcels ranging in size from five to 10 acres, which the port could sell for uses consistent with the master plan (i.e. light industrial and wine related). The establishment of the four to seven year time frame by the commission was with recognition of the complex and expensive task of developing a 90+ acre parcel. Additionally, the port commission realized that the development timeframe would be viewed in light of then-current economic and other conditions, including but not limited to, availability of budgeted port funding for on-site infrastructure and progress by the state toward funding and construction of the Red Mountain Interchange. The commission also likely recognized the challenge of balancing racetrack development simultaneously with Vista Field development.
  - b. As noted in the master plan and comp scheme, a shorter-term development strategy (i.e. 1 - 3 years) could be pursued while conditions precedent to the longer term strategy are maturing. A shorter-term strategy was identified as "banking" budgeted funding over a multiple year period to partner with the city to finance construction of city utilities to the property line (1/3 port, 2/3 City).

In conclusion, the strategy related to West Richland should follow that identified in the "Guiding Documents". These strategies were good when formulated and are good guidance now as well. Staff should resist the urge to "renegotiate" development strategies. One possible deviation from the "Guiding Documents" could be an update of the uses contemplated in the master plan as time for possible on-site development nears.

I hope I accurately understand the directives related to West Richland. Please offer any comments or clarification you may have.