

The Governor's proclamation 20-28 regarding the Open Public Meetings Act and Public Records Act temporarily prohibits in-person public attendance at meetings subject to the OPMA.

A GoToMeeting will be arranged to enable the public to listen and make public comments remotely.

## **DRAFT AGENDA**

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

April 13, 2021  
2:00 p.m.

- I. CALL TO ORDER**
- II. ANNOUNCEMENTS AND ROLL CALL**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF AGENDA**
- V. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- VI. CONSENT AGENDA**
  - A. Approval of Direct Deposit and ePayments Dated April 2, 2021
  - B. Approval of Warrant Register Dated April 13, 2021
  - C. Approval of Regular Commission Meeting Minutes March 23, 2021
- VII. EMERGENCY DELEGATION UPDATE (TIM/AMBER)**
- VIII. REPORTS, COMMENTS AND DISCUSSION ITEMS**
  - A. Community Project Direct Appropriations Funding (TANA)
  - B. Governance Audit Update (TIM)
  - C. Vista Field – Suggested Marketing Areas (LARRY)
  - D. Real Estate Policy - Art Policy (AMBER)
  - E. Kennewick Historic Waterfront District (LARRY)
    - 1. CTUIR Joint Meeting (TANA)
    - 2. Ron Swanby, Unsolicited Proposal at Columbia Gardens Wine Village (TIM/AMBER)
    - 3. Columbia Gardens Summit Debrief (AMBER/TIM)
  - F. 2021 Staff Project Overview (TIM)
  - G. Citizen Complaint – Request for Reimbursement of Legal Fees (LUCINDA)
  - H. Commission Meetings (formal and informal meetings with groups or individuals)
  - I. Non-Scheduled Items (LISA/BRIDGETTE/TANA/NICK/LARRY/AMBER/LUCINDA/TIM/TOM/SKIP/DON)
- IX. PUBLIC COMMENT** *(Please state your name and address for the public record, if not stated previously)*
- X. ADJOURNMENT**

***PLEASE SILENCE ALL NOISE MAKING DEVICES***





# PORT OF KENNEWICK REGULAR COMMISSION MEETING

**DRAFT**

**MARCH 23, 2021 MINUTES**

Commission Meeting recordings, with agenda items linked to corresponding audio, can be found on the Port's website at: <https://www.portofkennewick.org/commission-meetings-audio/>

Commission President Commissioner Don Barnes called the Regular Commission Meeting to order at 2:00 p.m. via GoToMeeting Teleconference.

## **ANNOUNCEMENTS AND ROLL CALL**

**The following were present:**

**Board Members:** Commissioner Don Barnes, President (via telephone)  
Skip Novakovich, Vice-President (via telephone)  
Thomas Moak, Secretary (via telephone)

**Staff Members:** Tim Arntzen, Chief Executive Officer (via telephone)  
Tana Bader Inglima, Deputy Chief Executive Officer (via telephone)  
Amber Hanchette, Director of Real Estate and Operations (via telephone)  
Nick Kooiker, Chief Finance Officer (via telephone)  
Larry Peterson, Director of Planning and Development (via telephone)  
Lisa Schumacher, Special Projects Coordinator  
Bridgette Scott, Executive Assistant (via telephone)  
Lucinda Luke, Port Counsel (via telephone)

## **PLEDGE OF ALLEGIANCE**

Commissioner Barnes led the Pledge of Allegiance.

## **APPROVAL OF THE AGENDA**

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

## **PUBLIC COMMENT**

Ron Swanby, 110 South McKinley Place, Kennewick. Mr. Swanby expressed his interest in purchasing parcel number 1319-030300-11003 at Columbia Gardens Urban Wine and Artisan Village. Mr. Swanby owns Swampy's BBQ Food Truck, which is currently located at the Wine Village. Mr. Swanby would like to purchase the parcel to build a commercial kitchen, which would allow Swampy's to extend their food truck operating hours and cater special events. Mr. Swanby closes his food truck when he is catering special events. Mr. Swanby has completed a feasibility plan review with City of Kennewick and discussed the idea with the Department of Health. Mr. Swanby envisions the space would include a small kitchen, his food truck and BBQ smoker. Additionally, the kitchen would be available to the current food trucks at the Wine Village. Mr. Swanby stated every food truck needs to have a commissary kitchen and, in the Tri-Cities, we have the Pasco Specialty Kitchen and the Red Mountain Kitchen. Mr. Swanby believes a commissary kitchen would add value to the Wine Village as an anchor tenant. Mr. Swanby thanked the Commission and looks forward to working with the Port on this project together.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MARCH 23, 2021 MINUTES

**DRAFT**

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Boyce Burdick, 414 Snyder Street, Richland. Mr. Burdick thanked the Port and Ms. Bader Inglima for being an advertising partner for the Mid-Columbia Arts Foundation Fundraiser. This year, the Foundation held a streaming auction and raised nearly \$20,000 for each Art group. Mr. Burdick thanked the Port of Kennewick for their participation.

No further comments were made.

## CONSENT AGENDA

- A. *Approval of Direct Deposit and E-Payments Dated March 16, 2021***  
Direct Deposit and E-Payments totaling \$66,372.75
- B. *Approval of Warrant Register Dated March 9, 2021***  
Expense Fund Voucher Number 102779 through 102808 for a grand total of \$69,676.41
- C. *Approval of Special Commission Meeting Minutes March 4, 2021***
- D. *Approval of Regular Commission Meeting Minutes March 9, 2021***

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

## EMERGENCY DELEGATION UPDATE

Ms. Hanchette stated Governor Inslee moved the State to Phase 3.

## REPORTS, COMMENTS AND DISCUSSION ITEMS

### **A. *Build Back Better Projects***

Ms. Bader Inglima confirmed that staff submitted the three applications for the Build Back Better (BBB) per the Commission's directive. Those projects were prioritized as follows:

- Priority #1: The Willows infrastructure and our application included a partnership letter from Lona Hammer with the Kennewick Housing Authority as requested by Commission.
- Priority #2: The J. Lieb Food campus renovation and our application indicated support from City of Kennewick and the Historic Downtown Kennewick Partnership.
- Priority #3: was the Electric Vehicle charging stations.

Ms. Bader Inglima received confirmation from Raquel Crowley, Senator Murray's Central Washington Representative, that the applications were received.

Commissioners Moak and Barnes thanked Ms. Bader Inglima and staff for their quick response to the BBB application process.

### **B. *1135 Shoreline Project Status Update***

Ms. Bader Inglima reported that the Portland USACE Division Office approved the revised design and engineering cost estimate for the 1135 Shoreline project. The Port and the USACE Walla Walla office are now working on the amendment for the project agreement. The amended agreement will demonstrate to the State Recreation and Conservation Office (RCO) that our project is moving forward in anticipation of their extending our grant deadline to correspond to the USACE's new timeline. The amendment also allows the Port to demonstrate to the City and



# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MARCH 23, 2021 MINUTES

**DRAFT**

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County that we are advancing this project which is also receiving Rural Capital County Funds. Ms. Bader Inglima stated our project is now back on the USACE list to receive federal 1135 funding. The next step is to determine when the USACE Washington DC headquarters will release those funds to Walla Walla so they can go out to bid.

Commissioner Barnes thanked Ms. Bader Inglima for her perseverance on this project.

## **C. *Real Estate Commission Policy***

Ms. Hanchette stated the Port established a Real Estate Policy in 2015 and as the Port's vision shifts from fewer industrial intensive projects to more waterfront and infill redevelopment, the timing is appropriate for the Commission to review the policy. Ms. Hanchette intends to discuss each item of the policy separately and then finalize the Commission's desires with a formal resolution.

Ms. Hanchette reported that the commission structure is divided into bare land versus property and then divided again into pricing levels (EXHIBIT A). Ms. Hanchette suggested simplifying the rate structure, which would be more in line with the private sector. Ms. Hanchette researched the Multiple Listing Service (MLS) and stated broker commissions range from:

- Commercial sale: 2-4.5%;
- Commercial land: 2-4%;
- Residential dwellings: 2-3%;
- Residential land: 2.5-3%.

Ms. Hanchette reiterated that these are commissions paid to the buyer's agent. Ms. Hanchette inquired if the Commission is interested in streamlining the commission structure and including an appropriate single rate commission.

Commissioner Novakovich is in favor of a 4% commission for the buyer's agent.

Commissioner Moak is in favor of streamlining the process; however, he feels a 3-4% commission is sufficient.

Commissioner Barnes is in favor of a 4% commission flat fee.

Ms. Hanchette confirmed that the Commission finds streamlining the commission process and going with a flat commission rate of 4% acceptable. Ms. Hanchette will bring back a resolution once each portion of the real estate policy has been addressed. Ms. Hanchette thanked the Commission for their comments and appreciates the conversation.

## **D. *Governance Audit Update***

Mr. Arntzen had an opportunity to review consultants for the scope of work for the Governance Audit and selected Jim Darling to assist the Port. Mr. Darling previously assisted the Port with the staff realignment and has been a frequent presenter at the Washington Public Ports Association conferences. Mr. Arntzen stated if the Commission approves of Mr. Darling, he will move forward with the contract paperwork.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MARCH 23, 2021 MINUTES

**DRAFT**

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Commissioner Barnes inquired as to how soon we can start working on the scope of work.

Mr. Arntzen will work with Mr. Darling on the contract and anticipates the process will move quickly.

## ***E. 2019 State Auditor's Office Financial Statement Audit***

Mr. Kooiker stated the Port received the final approval from the Washington State Auditor's Office for the 2019 Clifton Allen Larson audit. Port staff and Commissioner Barnes had an exit conference in October 2020 to review the final 2019 audit.

Commissioner Barnes confirmed that the exit interview was with Clifton Allen Larson and not the State Auditor's Office. Commissioner Barnes stated he did not have any interaction with the State Auditor's Office.

Mr. Kooiker stated that is correct.

Commissioners Novakovich and Barnes thanked staff and Mr. Kooiker for another clean audit and another successful year.

## ***F. Sell and Convey Surplus Property***

Mr. Kooiker reported that the Port recently replaced HVAC Roof Top Units at the Oak Street Industrial Buildings and Resolution 2021-04 formally disposes of the old units per RCW 53.08.090.

## **PUBLIC COMMENT**

No comments were made.

***MOTION:*** *Commissioner Novakovich moved to approve the Resolution 2021-04 authorizing the Port's CEO to surplus Port property as attached in "Exhibit A" and further ratifies and approves all action by port officers and employees in furtherance hereof. Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.*

## ***G. Citizen Complaint – Request for Reimbursement of Legal Fees***

Commissioner Barnes stated there was an anonymous citizen complaint generated in March 2019, which triggered an investigation, with the finding that he committed two infractions of the Rules of Policy and Procedure. Commissioner Barnes maintained his innocence and exercised the right to appeal those findings. A formal Public Hearing was held on December 4, 2020 and Judge Paris Kallis issued her ruling on December 31, 2020 and found the anonymous citizen complaint against him was unsubstantiated in its entirety. Commissioner Barnes has been represented by legal counsel since 2019 to assist with his defense and is respectfully requesting reimbursement for his legal expenses during the anonymous citizen complaint appeal process. (EXHIBIT B).

Steve DiJulio of Foster Garvey PC has been providing legal services to the Port of Kennewick, for several years, as special counsel. Mr. DiJulio stated Foster Garvey was not involved in this matter, except for procedural issues and assisting the Port with the public records act aspects of the

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MARCH 23, 2021 MINUTES

**DRAFT**

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investigation. Two weeks ago, Mr. DiJulio learned of the decision made by Judge Kallas and the request for attorney fees. Ms. Luke requested that Mr. DiJulio provide an independent analysis (EXHIBIT C) of Commissioner Barnes' request. Mr. DiJulio concluded, particularly Rule 18 and under State Statute RCW 4.96.040, Port Commissioners are entitled to be reimbursed for expenses incurred over the course and scope of their duties. This is a process under the statute RCW 4.96.041, that has been adopted by the Port in its Rules of Policy and Procedure, specifically Rule 18. From that analysis, he concluded that the request for attorney's fees was supported by State Statute and the Port's Rules and should be recognized. Mr. DiJulio did not comment or evaluate on the reasonableness of the fees, which should be a separate analysis, should the Board approve the application for the attorney's fees requested by Commissioner Barnes.

Commissioner Moak confirmed that the next step in Section 18, is that the Port CEO and legal Counsel prepare a recommendation to the Commission.

Mr. DiJulio stated that is correct, under the Port's rules, under Section 18.7, that is the process that is set up, with the Commission ultimately making the final determination for approval.

Commissioner Barnes believes his attorney Joel Comfort addressed this issue in his letter and argued that this decision is to be made by the Commission. "The Executive Director and Port legal counsel shall prepare a recommendation to the Commission. The decision of the Commission shall be final...and shall be based upon a finding that an official...meets or does not meet the criteria of this chapter..." Furthermore, the original complaint involved all three Commissioners, and the appeal involved two of the Commissioners and Mr. Comfort argues that "all of the Commissioners are entitle to vote on the decision. Given the fact that Judge Kallas has already ruled that Commissioner Barnes did not violate Port policy, the work by the Commission is essentially done."

Mr. DiJulio does not believe anything he said is inconsistent with Commissioner Barnes comments. It is the Commission's decision, and they make the final decision. What the Commission will need to do is decide, based upon the information it has been provided by the recommendation of general counsel and CEO, with respect to the reasonableness of fees; however, we do not currently have that information available. The Board can proceed to make a decision at this time based upon submitted information, but in our view, there is inadequate information to determine whether the approximate \$50,000 in fees that are requested are supportable, based on the record submitted. As noted in the analysis, the traditional approach when awarding fees, is to evaluate the actual services provided to determine whether or not they are reasonable in light of the circumstances. And determine whether or not those fees charged are reasonable at the hourly rates performed in the community. The Board could proceed to act or in our recommendation, the Board could proceed to approve the application and the amount is subject to further recommendation and review and approval by the Board in a subsequent meeting.

Commissioner Barnes stated the point is well taken and all the invoices that were submitted in support of this request were redacted. Commissioner Barnes understands and appreciates this point and is happy to work with Mr. Comfort to provide unredacted copies of the invoices to the Port. Commissioner Barnes hopes this can move forward and possibly approve today, subject to an audit of the hours and charges.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MARCH 23, 2021 MINUTES

**DRAFT**

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Commissioner Moak appreciates what Commissioner Barnes has gone through over the past two years and stated it is unfortunate and it never should have gone this far, at this cost. However, Commissioner Moak believes Commissioner Barnes can wait two weeks, to allow staff to follow the Port Rules of Policy and Procedure and provide the Commission a resolution and recommendation. Commissioner Moak believes if Commissioner Barnes and Mr. Comfort can work with the Port's counsel in terms of providing unredacted invoices, then Port counsel should be able to have a recommendation for the Commission at the next Regular Meeting.

Commissioner Novakovich agrees with Mr. DiJulio's and Commissioner Moak's comments and would like to see more information regarding the invoices before moving forward.

Commissioner Moak inquired if that will be enough time for Ms. Luke to review the unredacted invoices from Mr. Comfort and provide a recommendation to the Commission.

Ms. Luke stated to move this process forward, the Port will need to receive the unredacted copies of the invoices from Mr. Comfort. Ms. Luke will be working with Mr. DiJulio to review the reasonableness of the request. Ms. Luke stated if she receives the statement within the next couple of days, she should be in position to have a recommendation for the Commission at the April 13, 2021 Commission Meeting.

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

Commissioners reported on their respective committee meetings.

## ***I. Non-Scheduled Items***

Ms. Bader Inglima stated the Historic Downtown Kennewick Partnership (HDKP) is working to have the greater downtown area formally designated as a Washington State "Creative District". The area they have identified for designation as a Creative District includes both Clover Island and our Columbia Drive properties as well as their traditional main street area. HDKP indicated that currently 52% of the businesses in the Historic Downtown center are considered creative industries. HDKP requested a letter from the Port, supporting this effort which help them promote tourism, allow for state highway signage, provide grant opportunities and training, and attract new investment and help redevelop historic assets. Their deadline for receipt of a letter is April 2nd. Ms. Bader Inglima inquired if the Commission would like her to prepare a letter of support.

*It is the Consensus of the Commission to prepare a letter of support for the HDKP.*

Commissioner Novakovich stated the *Tri-City Journal of Business* reported that the parking lot in front of Bella's Furniture may be developing a commissary for their food truck pods. Commissioner Novakovich stated the Commission heard earlier from Mr. Swanby about developing a commissary kitchen at Columbia Gardens and the Port may want to consider working with Mr. Swanby.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MARCH 23, 2021 MINUTES

**DRAFT**

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## **PUBLIC COMMENTS**

Boyce Burdick, 414 Snyder Street, Richland. Mr. Burdick was a little despaired by the recent Commission discussion at last meeting regarding The Willows and the BBB application. Mr. Burdick stated housing prices have soared in the Tri-Cities and a starter home prices start at \$300,000. Mr. Burdick does not see where there is any room provided by the government or any other agencies to provide low- or moderate-income housing. Mr. Burdick stated the Commission previously discussed subsidized housing at Vista Field and he believes this is something the Port should investigate.

No further comments were made.

## **COMMISSION COMMENTS**

No comments were made.

## **ADJOURNMENT**

With no further business to bring before the Board; the meeting was adjourned 3:19 p.m.

***APPROVED:***

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

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*Don Barnes, President*

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*Skip Novakovich, Vice President*

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*Thomas Moak, Secretary*

***PORT OF KENNEWICK***

**RESOLUTION 2021-04**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE  
PORT OF KENNEWICK AUTHORIZING THE PORT CHIEF EXECUTIVE OFFICER  
TO SELL AND CONVEY SURPLUS PROPERTY***

**WHEREAS**, the Board of Commissioners of the Port of Kennewick met this 23<sup>rd</sup> day of March, 2021, a quorum of the Commissioners being present; and

**WHEREAS**, from time to time it is necessary to surplus items no longer needed for Port District purposes and the Port replaced four worn out HVAC units; and

**WHEREAS**, RCW 53.08.090 provides that the Port Commissioners may authorize the Port Chief Executive Officer to sell and convey property; and

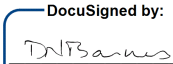
**WHEREAS**, prior to each such disposition of Port property, the Port Chief Executive Officer is directed to present to the Commission an itemized list of the property and to make written certification that the listed property is no longer needed for Port District purposes.

**NOW, THEREFORE, BE IT RESOLVED** the Port of Kennewick Commissioners authorize the Chief Executive Officer to surplus Port property no longer needed for Port purposes as attached in "Exhibit A".


**BE IT FURTHER RESOLVED** that all action by port officers and employees in furtherance hereof is ratified and approved; and further, the port Chief Executive Officer is authorized to take all action necessary in furtherance hereof.

**ADOPTED** by the Board of Commissioners of Port of Kennewick this 23<sup>rd</sup> day of March 2021.


***PORT OF KENNEWICK  
BOARD OF COMMISSIONERS***

By:   
7468DE9530724DC...

DON BARNES, *President*

By:   
0E53A30E1C8E442...

SKIP NOVAKOVICH, *Vice President*

By:   
A35176A2D2CD413...

THOMAS MOAK, *Secretary*

Exhibit A

SURPLUS ASSET LISTING				
Asset	Disposition	Property Description	Date in Service	Cost
634	Replaced	HVAC Unit - DBA	12/15/2000	\$ 10,406.88
767	Replaced	HVAC Unit - DBA	6/25/2004	\$ 7,445.63
768	Replaced	HVAC Unit - DBA	9/22/2004	\$ 2,978.25
884	Replaced	HVAC Unit - DBA	2/28/2006	\$ 7,868.00



## AGENDA REPORT

**TO:** Port Commission

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

**MEETING DATE:** 03/23/2021

**AGENDA ITEM:** Real Estate Policy Update – Commission Structure

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### BACKGROUND:

At the Port of Kennewick, purchase and/or sale real estate transactions are guided by the port's real estate policy established through Commission Resolution 2015-29 (see excerpt on page 2). As the port's vision shifts from fewer industrial intensive projects to more waterfront and infill redevelopment, the timing may be appropriate for a handful of minor adjustments to the real estate sales commission structure, offer process and art policy language.

### DISCUSSION:

In taking a four-step approach, the discussions could be held over multiple commission meetings to allow adequate time for Commission conversation:

#### Today

##### 1) Section 2: Commission Structure for Licensed Brokers

The current real estate commission structure is divided into bare land versus improved property then divided again by three different pricing levels.

A single rate real estate commission paid to a licensed real estate broker upon the sale of a port parcel would be more in line with generally accepted private sector practices. (Exhibit B-Redline version of real estate policy)

#### Future Commission Meetings

- 2) Section 1.8 - 1.10: Offer Submission Process – Potential update to reflect current conditions.
- 3) Art Policy - Potential update to art policy language. Discuss relationship between art policy and land sale.
- 4) Final Review - Incorporation of all commission comments for final review and resolution.



## **ACTION REQUESTED OF COMMISSION:**

Commission discussion regarding streamlining the real estate commission structure.

**Excerpt from Resolution 2015-29, Real or Personal Property Purchases and Sales, Part 2.0 follows:**

### **2. COMMISSION STRUCTURE FOR LICENSED BROKERS.**

Commissions will only be paid to licensed real estate brokers. The broker must submit a signed bona fide offer plus a signed appointment from the potential purchaser authorizing the broker to negotiate for the potential purchaser in order to claim the commission. The broker authorization must include the name of the proposed purchaser and the date of their first contact with said purchaser. Unless the provision is strictly complied with, the Port will not pay any claimed commission.

- 2.1.1. After final approval of the sale by the Port Commission and after receipt of all funds due at closing, the Port of Kennewick will pay to the licensed real estate broker negotiating any such sale a commission of four (4) percent based on the following schedule:

#### **~~A. SALES OF UNIMPROVED REAL PROPERTY (Bare Land)~~**

- ~~1. On the first \$500,000 of any sale ————— Seven (7) percent~~
- ~~2. On the next \$500,000 of any sale ————— Five (5) percent~~
- ~~3. On any amount over \$1,000,000 ————— Three (3) percent~~

#### **~~B. SALES OF IMPROVED REAL PROPERTY (With Structure)~~**

- ~~1. On the first \$500,000 of any sale ————— Five (5) percent~~
- ~~2. On the next \$500,000 of any sale ————— Five (5) percent~~
- ~~3. On any amount over \$1,000,000 ————— Three (3) percent~~



March 8, 2021

Ms. Lucinda Luke  
Carney Badley Spellman, P.S.  
701 Fifth Ave., Suite 3600  
Seattle, WA 98104-7010

***Re: Commissioner Don Barnes – Demand for Reimbursement***

Dear Ms. Luke:

As you are well aware, on December 31, 2020, Judge Kallas ruled in favor of Commissioner Barnes in his appeal of the allegations by Commissioner Novakovich that Commissioner Barnes committed misconduct in his duties as a Port Commissioner. Judge Kallas explicitly held that the Complaint against Commissioner Barnes was “unsubstantiated in its entirety” and that no sanctions would be applied to him. Based on Judge Kallas’ findings and ruling, Commissioner Barnes hereby demands reimbursement of the attorney fees and costs he has incurred defending himself against the Complaint, pursuant to Section 18 of the Port of Kennewick Rules of Policy and Procedure.

Under *Port Rule 5.11*, “the Port shall not indemnify or defend any Commissioner charged with misconduct, except as otherwise provided under Section 18.” Section 18 provides for the indemnification and defense of claims arising from acts or omissions of officials of the Port while performed in the scope of their official duties. *See, Port Rule 18.1*. The Port is required to provide officials such legal representation as may be reasonably necessary to defend a claim or lawsuit filed against the official resulting from any conduct, act or omission performed on behalf of the Port in his or her official capacity, and within the scope of his service with the Port. *Port Rule 18.3.1*.

The determination of whether the official was acting in good faith within the scope of his duties is outlined in *Port Rule 18.3.4*. Normally that determination is made by the Executive Director in consultation with legal counsel. The determination is made based on an investigation of the acts and circumstances surrounding the incident. Given that the various allegations that were made against Commissioner Barnes largely centered on his interactions with the Executive Director, and were based on

evidence provided by the Executive Director, we believe the Executive Director has a conflict of interest in making the determination under *Section 18.3*. Moreover, we believe that given the extensive review and analysis by Judge Kallas, and the substance of her “Decision on Recommended Action”, Commissioner Barnes actions have already been proven to have been made in good faith in the scope of his duties.

Notwithstanding the foregoing, *Section 18.4* lists five exclusions to providing an indemnification and defense, including “action[s] or omission[s] contrary to or not in furtherance of any adopted Port policy.” The process for determining whether these exclusions apply is set forth in *Section 18.7*:

The determination whether an official...shall be afforded a defense by the Port under the terms of this chapter shall be made after a determination pursuant to Section 18.3 as to whether the official or employee was acting within the scope of his...duties. The Executive Director and Port legal counsel shall prepare a recommendation to the Commission. The decision of the Commission shall be final...and shall be based upon a finding that an official...meets or does not meet the criteria of this chapter...The determination as to whether a defense is to be furnished...shall be made without the vote of the Commissioners named in the claim...unless the inclusion of such member or members is required for a quorum; provided, that if a claim or lawsuit affects a quorum or greater number of the members of the Commission, all such affected members shall retain their voting privileges under this Section.

In other words, this is a decision to be made by the Commission, and must be presented to the Commission. Moreover, since the original complaint involved all three commissioners, and the appeal involved two of the commissioners, all of the commissioners are entitled to vote on the decision. However, given the fact that Judge Kallas has *already ruled* that Commissioner Barnes *did not* violate port policy, their work is already done for them. At this point there’s nothing to be debated, and the Commissioners simply need to authorize the reimbursement.

Please note that should the Port refuse to authorize this request, Commissioner Barnes has the right under *Port Rule 18.11* to file suit against the Port in the Benton County Superior Court for these amounts, as well as any additional attorneys fees and costs incurred as a result. I hope this is not necessary. Given Judge Kallas’ ruling, I’m confident the Superior Court would agree that Commissioner Barnes is entitled to reimbursement under the Port rules. It is time for the Port of Kennewick to act in good faith, and in fairness. It is time to bring this matter to a close.

March 8, 2021

Page 3 of 3

I have enclosed herein redacted copies of the invoices to Commissioner Barnes, related to his defense in this matter. The total fees and costs he has incurred are \$50,729.85. On behalf of Commissioner Barnes, we hereby request that the Commission authorize reimbursement of that amount to him. Not only is this request contemplated and authorized by the Port Rules, the Commission should authorize the reimbursement as a matter of fundamental fairness, particularly in light of the fact that the Port squandered approximately \$400,000 in pursuing this fruitless claim when it could have, and should have been addressed informally years ago.

We look forward to this matter being brought before the Commission.

Sincerely,

MILLER, MERTENS & COMFORT, PLLC



Joel R. Comfort  
Attorney at Law

Barnes (Port of Kennewick) - Summary of Attorney Fees and Costs

<u>Law Firm</u>	<u>Month/Year</u>	<u>Amount</u>
ROF	May-19	\$ 1,816.00
ROF	Jun-19	\$ 180.00
ROF	Jul-19	\$ -
ROF	Aug-19	\$ 990.00
MMC	Aug-19	\$ 1,320.00
MMC	Sep-19	\$ 4,291.10
MMC	Oct-19	\$ 3,932.50
MMC	Nov-19	\$ 3,685.00
MMC	Dec-19	\$ 3,355.00
MMC	Jan-20	\$ 1,857.75
MMC	Feb-20	\$ 2,915.00
MMC	Mar-20	\$ 2,420.00
MMC	Apr-20	\$ 1,870.00
MMC	May-20	\$ 1,925.00
MMC	Jun-20	\$ 1,677.50
MMC	Jul-20	\$ 467.50
MMC	Aug-20	\$ 1,100.00
MMC	Sep-20	\$ 632.50
MMC	Oct-20	\$ 935.00
MMC	Nov-20	\$ 8,222.50
MMC	Dec-20	\$ 4,482.50
MMC	Jan-21	\$ 907.50
MMC	Feb-21	\$ 247.50
MMC	Work in Progress (Est.)	\$ 1,500.00
	TOTAL	\$ 50,729.85

# RETTIG FORGETTE ILLER BOWERS, LLP

6725 W. CLEARWATER AVE.  
KENNEWICK, WA 99336-1788

509-783-6154

Federal ID No. 91-0988012

ATTORNEYS

DIEHL R. RETTIG 1943-2010

FRANCOIS X. FORGETTE

BRIAN J. ILLER

G. CHARLEY BOWERS

Don Barnes

Statement Date: June 4, 2019  
Statement No. 1  
Account No. 4819.0000  
Page: 1

ACCOUNT - 30 DAYS OVERDUE SHALL BEAR INTEREST OF 1% PER MONTH ON THE UNPAID BALANCE

RE: Port of Kennewick / Vista Field

			HOURS	
05/07/2019	FXF	[REDACTED]	1.00	
05/21/2019	FXF	[REDACTED]	0.30	
05/22/2019	FXF	[REDACTED]	0.10	
05/28/2019	FXF	[REDACTED]	1.50	
05/29/2019	FXF	[REDACTED]	0.50	
	FXF	[REDACTED]	0.25	
	FXF	[REDACTED]	2.00	
05/30/2019	FXF	[REDACTED]	0.40	
		FOR CURRENT SERVICES RENDERED	6.05	1,815.00

TIMEKEEPER	RECAPITULATION	HOURS	HOURLY RATE	TOTAL
Francois X. Forgette		6.05	\$300.00	\$1,815.00

Photocopy charges	1.00
TOTAL EXPENSES THRU 05/31/2019	1.00
TOTAL CURRENT WORK	1,816.00
BALANCE DUE	<u>\$1,816.00</u>

Don Barnes  
Port of Kennewick / Vista Field

Statement Date:	06/04/2019
Statement No.	1
Account No.	4819.0000

We now accept *Visa, Mastercard, Discover and American Express*. Please call for additional information.

Credit card payments are not reflected until they clear our bank account.  
Payments received after 05/31/19 may appear on your next statement.  
**Please reference account number on checks to ensure proper credit.**

# RETTIG FORGETTE ILLER BOWERS, LLP

6725 W. CLEARWATER AVE.  
KENNEWICK, WA 99336-1788

509-783-6154

Federal ID No. 91-0988012

ATTORNEYS  
DIEHL R. RETTIG 1943-2010  
FRANCOIS X. FORGETTE  
BRIAN J. ILLER  
G. CHARLEY BOWERS

Don Barnes

Statement Date: July 3, 2019  
Statement No. 2  
Account No. 4819.0000  
Page: 1

ACCOUNT - 30 DAYS OVERDUE SHALL BEAR INTEREST OF 1% PER MONTH ON THE UNPAID BALANCE

RE: Port of Kennewick / Vista Field

		HOURS	
06/25/2019	FXF		
		0.50	
	FXF		
		0.10	
	FOR CURRENT SERVICES RENDERED	0.60	180.00

	RECAPITULATION			
		HOURS	HOURLY RATE	TOTAL
TIMEKEEPER				
Francois X. Forgette		0.60	\$300.00	\$180.00

PREVIOUS BALANCE \$1,816.00

TOTAL CURRENT WORK 180.00

06/12/2019 Payment on account. Thank you. -1,816.00

BALANCE DUE \$180.00

We now accept *Visa, Mastercard, Discover and American Express*. Please call for additional information.

Credit card payments are not reflected until they clear our bank account.  
Payments received after 6/30/19 may appear on your next statement.

**Please reference account number on checks to ensure proper credit.**



# RETTIG FORGETTE ILLER BOWERS, LLP

6725 W. CLEARWATER AVE.  
KENNEWICK, WA 99336-1788

509-783-6154

Federal ID No. 91-0988012

ATTORNEYS  
DIEHL R. RETTIG 1943-2010  
FRANCOIS X. FORGETTE  
BRIAN J. ILLER  
G. CHARLEY BOWERS

Don Barnes

Statement Date: September 5, 2019  
Statement No. 4  
Account No. 4819.0000  
Page: 1

ACCOUNT - 30 DAYS OVERDUE SHALL BEAR INTEREST OF 1% PER MONTH ON THE UNPAID BALANCE

RE: Port of Kennewick / Vista Field

**Effective approximately October 14, 2019, the Law Firm of Rettig Forgette Iller Bowers, LLP, will be moving to 8836 Gage Blvd., Ste #201A, Kennewick, Washington 99336.**

**Phones, email and office hours will be intermittent from October 1st through October 14th while everything is getting transferred over. Thank you for your patience.**

			HOURS	
08/12/2019	FXF		0.50	150.00
	FXF		1.50	450.00
	FXF		1.00	300.00
08/13/2019	FXF		0.30	90.00
08/14/2019	FXF		0.30	n/c
		FOR CURRENT SERVICES RENDERED	3.30	990.00

TIMEKEEPER	RECAPITULATION	HOURS	HOURLY RATE	TOTAL
Francois X. Forgette		3.30	\$300.00	\$990.00

TOTAL CURRENT WORK 990.00

BALANCE DUE \$990.00

Don Barnes  
Port of Kennewick / Vista Field

Statement Date:	09/05/2019
Statement No.	4
Account No.	4819.0000

**PLEASE SEE THE NOTE ABOVE REGARDING OUR UPCOMING MOVE!**

Credit card payments are not reflected until they clear our bank account.  
Payments received after 8/31/19 may appear on your next statement.  
**Please reference account number on checks to ensure proper credit.**

MILLER MERTENS & COMFORT PLLC  
1020 N CENTER PKWY STE B  
KENNEWICK WA 99336-7161  
PHONE (509) 374-4200 FAX (509) 374-4229  
TAX ID#91-1875775

DON & CHRISTINE BARNES  
2616 S KELLOGG ST  
KENNEWICK WA 99338-1930

Page: 1  
August 30, 2019  
Account No: J19304BARNESM  
Statement No: 147980

PORT OF KENNEWICK; OUR #J19304

Fees

			Rate	Hours	
08/16/2019	JRC		275.00	0.30	82.50
08/20/2019	JRC				
			275.00	4.50	1,237.50
		For Current Services Rendered		4.80	1,320.00

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	4.80	\$275.00	\$1,320.00

Total Current Work 1,320.00

Balance Due \$1,320.00

Please Remit \$1,320.00

**Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Payments received after the 20th are not reflected on this statement. We accept VISA, MasterCard, American Express and Discover.**

MILLER MERTENS & COMFORT PLLC  
1020 N CENTER PKWY STE B  
KENNEWICK WA 99336-7161  
PHONE (509) 374-4200 FAX (509) 374-4229  
TAX ID#91-1875775

DON & CHRISTINE BARNES  
2616 S KELLOGG ST  
KENNEWICK WA 99338-1930

Page: 1  
September 30, 2019  
Account No: J19304BARNESM  
Statement No: 148855

PORT OF KENNEWICK; OUR #J19304

			<u>Fees</u>		
			Rate	Hours	
08/22/2019	JRC	[REDACTED]	275.00	0.90	247.50
08/23/2019	JRC	[REDACTED]	275.00	2.50	687.50
08/24/2019	JRC	[REDACTED]	275.00	0.20	55.00
08/25/2019	JRC	[REDACTED]	275.00	0.20	55.00
08/26/2019	JRC	[REDACTED]	275.00	2.50	687.50
08/27/2019	JRC	[REDACTED]	275.00	2.40	660.00
08/28/2019	JRC	[REDACTED]	275.00	1.90	522.50
08/29/2019	JRC	[REDACTED]	275.00	0.80	220.00
08/30/2019	JRC	[REDACTED]	275.00	0.30	82.50
09/02/2019	JRC	[REDACTED]	275.00	0.40	110.00

PORT OF KENNEWICK; OUR #J19304

			Rate	Hours	
09/03/2019	JRC	[REDACTED]			
			275.00	1.10	302.50
09/04/2019	JRC	[REDACTED]			
			275.00	0.20	55.00
09/11/2019	JRC	[REDACTED]			
			275.00	1.10	302.50
09/12/2019	JRC	[REDACTED]			
			275.00	0.20	55.00
09/18/2019	JRC	[REDACTED]			
			275.00	0.40	110.00
09/20/2019	JRC	[REDACTED]			
			275.00	0.50	137.50
		For Current Services Rendered		15.60	4,290.00

Recapitulation				
<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>	
Joel R. Comfort	15.60	\$275.00	\$4,290.00	

Expenses

08/28/2019	Photocopies	0.60
08/28/2019	Postage	0.50
	Total Expenses	1.10
	Total Current Work	4,291.10
	Previous Balance Due	\$1,320.00

Payments

09/10/2019	Payment received - Check #4428 - thank you	-1,320.00
	Balance Due	<u>\$4,291.10</u>
	Please Remit	<u>\$4,291.10</u>

**Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Payments received after the 20th are not reflected on this statement. We accept VISA, MasterCard, American Express and Discover.**

MILLER MERTENS & COMFORT PLLC  
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KENNEWICK WA 99336-7161  
PHONE (509) 374-4200 FAX (509) 374-4229  
TAX ID#91-1875775

DON & CHRISTINE BARNES  
2616 S KELLOGG ST  
KENNEWICK WA 99338-1930

Page: 1  
October 31, 2019  
Account No: J19304BARNESM  
Statement No: 149348

PORT OF KENNEWICK; OUR #J19304

			<u>Fees</u>		
			Rate	Hours	
09/21/2019	JRC	[REDACTED]	275.00	0.40	110.00
09/23/2019	JRC	[REDACTED]	275.00	0.60	165.00
09/24/2019	JRC	[REDACTED]	275.00	0.10	27.50
09/26/2019	JRC	[REDACTED]	275.00	0.20	55.00
09/27/2019	JRC	[REDACTED]	275.00	0.20	55.00
10/02/2019	JRC	[REDACTED]	275.00	0.20	55.00
10/04/2019	JRC	[REDACTED]	275.00	1.10	302.50
10/08/2019	JRC	[REDACTED]	275.00	1.40	385.00
10/09/2019	JRC	[REDACTED]	275.00	2.60	715.00
10/10/2019	JRC	[REDACTED]	275.00	0.20	55.00
10/11/2019	JRC	[REDACTED]			

PORT OF KENNEWICK; OUR #J19304

			Rate	Hours	
			275.00	4.70	1,292.50
10/14/2019	JRC		275.00	1.20	330.00
10/17/2019	JRC		275.00	0.30	82.50
10/18/2019	JRC		275.00	1.10	302.50
		For Current Services Rendered		14.30	3,932.50

## Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	14.30	\$275.00	\$3,932.50

Total Current Work 3,932.50

Previous Balance Due \$4,291.10

Payments

10/09/2019 Payment received - Check #4433 - thank you -4,291.10

Balance Due \$3,932.50Please Remit \$3,932.50

**Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Payments received after the 20th are not reflected on this statement. We accept VISA, MasterCard, American Express and Discover.**

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1020 N CENTER PKWY STE B  
KENNEWICK WA 99336-7161  
PHONE (509) 374-4200 FAX (509) 374-4229  
TAX ID#91-1875775

DON & CHRISTINE BARNES  
2616 S KELLOGG ST  
KENNEWICK WA 99338-1930

Page: 1  
November 27, 2019  
Account No: J19304BARNESM  
Statement No: 149835

PORT OF KENNEWICK; OUR #J19304

		<u>Fees</u>	Rate	Hours	
10/21/2019	JRC		275.00	2.20	605.00
10/23/2019	JRC		275.00	1.00	275.00
10/24/2019	JRC		275.00	1.30	357.50
10/25/2019	JRC		275.00	0.50	137.50
10/28/2019	JRC		275.00	1.10	302.50
10/29/2019	JRC		275.00	0.20	55.00
10/30/2019	JRC		275.00	0.50	137.50
10/31/2019	JRC		275.00	0.60	165.00
11/01/2019	JRC				



PORT OF KENNEWICK; OUR #J19304

			Rate	Hours	
			275.00	0.70	192.50
11/06/2019	JRC		275.00	0.20	55.00
11/07/2019	JRC		275.00	0.10	27.50
11/08/2019	JRC		275.00	0.50	137.50
11/11/2019	JRC		275.00	0.50	137.50
	JRC		275.00	0.50	137.50
11/12/2019	JRC		275.00	0.40	110.00
11/13/2019	JRC		275.00	0.30	82.50
11/15/2019	JRC		275.00	2.80	770.00
		For Current Services Rendered		13.40	3,685.00

<u>Timekeeper</u>	Recapitulation	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		13.40	\$275.00	\$3,685.00

Total Current Work	3,685.00
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Previous Balance Due	\$3,932.50
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Payments

11/12/2019	Payment received - Check #4449 - thank you	-3,932.50
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Balance Due	<u>\$3,685.00</u>
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Please Remit	<u>\$3,685.00</u>
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**Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Payments received after the 20th are not reflected on this statement. We accept VISA, MasterCard, American Express and Discover.**

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**1020 N CENTER PKWY STE B**  
**KENNEWICK WA 99336-7161**  
**PHONE (509) 374-4200 FAX (509) 374-4229**  
**TAX ID#91-1875775**

DON & CHRISTINE BARNES  
 2616 S KELLOGG ST  
 KENNEWICK WA 99338-1930

Page: 1  
 December 24, 2019  
 Account No: J19304BARNESM  
 Statement No: 150500

PORT OF KENNEWICK; OUR #J19304

			<u>Fees</u>		
			Rate	Hours	
11/26/2019	JRC	[REDACTED]	275.00	1.00	275.00
12/02/2019	JRC	[REDACTED]	275.00	0.50	137.50
12/03/2019	JRC	[REDACTED]	275.00	2.50	687.50
12/04/2019	JRC	[REDACTED]	275.00	0.80	220.00
12/06/2019	JRC	[REDACTED]	275.00	0.20	55.00
12/09/2019	JRC	[REDACTED]	275.00	0.80	220.00
12/11/2019	JRC	[REDACTED]	275.00	0.50	137.50
12/12/2019	JRC	[REDACTED]	275.00	0.50	137.50
12/13/2019	JRC	[REDACTED]	275.00	0.20	55.00
	JRC	[REDACTED]	275.00	2.30	632.50
	JRC	[REDACTED]	275.00	0.40	110.00
12/20/2019	JRC	[REDACTED]	275.00	2.50	687.50
For Current Services Rendered				12.20	3,355.00

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

December 24, 2019

Account No: J19304BARNESM

Statement No: 150500

<u>Timekeeper</u>	Recapitulation	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		12.20	\$275.00	\$3,355.00

Total Current Work	3,355.00
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Previous Balance Due	\$3,685.00
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Payments

12/06/2019	Payment received - Check #4457 - thank you	-3,685.00
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Balance Due	<u>\$3,355.00</u>
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Please Remit	<u>\$3,355.00</u>
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**Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Payments received after the 20th are not reflected on this statement. We accept VISA, MasterCard, American Express and Discover.**

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 KENNEWICK WA 99336-7161  
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 TAX ID#91-1875775

DON & CHRISTINE BARNES  
 2616 S KELLOGG ST  
 KENNEWICK WA 99338-1930

Page: 1  
 January 29, 2020  
 Account No: J19304BARNESM  
 Statement No: 150972

PORT OF KENNEWICK; OUR #J19304

		<u>Fees</u>	Rate	Hours	
12/30/2019	JRC	<div><div></div><div></div></div>	275.00	0.30	82.50
01/07/2020	JRC	<div><div></div><div></div></div>	275.00	0.10	27.50
01/10/2020	JRC	<div><div></div><div></div></div>	275.00	1.50	412.50
01/13/2020	JRC	<div><div></div><div></div></div>	275.00	0.90	247.50
01/14/2020	JRC	<div><div></div><div></div></div>	275.00	0.40	110.00
01/15/2020	JRC	<div><div></div><div></div></div>	275.00	0.70	192.50
01/16/2020	JRC	<div><div></div><div></div></div>	275.00	2.10	577.50
01/17/2020	JRC	<div><div></div><div></div></div>	275.00	0.30	82.50
01/20/2020	JRC	<div><div></div><div></div></div>	275.00	0.30	82.50
For Current Services Rendered				6.60	1,815.00

<u>Timekeeper</u>	Recapitulation	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		6.60	\$275.00	\$1,815.00

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

January 29, 2020

Account No: J19304BARNESM  
Statement No: 150972

Expenses

10/14/2019	Photocopies [REDACTED]	42.75
	Total Expenses	42.75
	Total Current Work	1,857.75
	Previous Balance Due	\$3,355.00

Payments

12/30/2019	Payment received - Check #4467 - thank you	-3,355.00
	Balance Due	<u>\$1,857.75</u>
	Please Remit	<u>\$1,857.75</u>

**Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express and Discover.**

MILLER MERTENS & COMFORT PLLC  
1020 N CENTER PKWY STE B  
KENNEWICK WA 99336-7161  
PHONE (509) 374-4200 FAX (509) 374-4229  
TAX ID#91-1875775

DON & CHRISTINE BARNES  
2616 S KELLOGG ST  
KENNEWICK WA 99338-1930

Page: 1  
February 28, 2020  
Account No: J19304BARNESM  
Statement No: 151445

PORT OF KENNEWICK; OUR #J19304

			<u>Fees</u>		
			Rate	Hours	
01/21/2020	JRC	[REDACTED]	275.00	0.10	27.50
01/22/2020	JRC	[REDACTED]	275.00	0.10	27.50
01/24/2020	JRC	[REDACTED]	275.00	0.20	55.00
01/27/2020	JRC	[REDACTED]	275.00	3.60	990.00
01/28/2020	JRC	[REDACTED]	275.00	0.70	192.50
01/29/2020	JRC	[REDACTED]	275.00	1.00	275.00
01/30/2020	JRC	[REDACTED]	275.00	0.20	55.00
01/31/2020	JRC	[REDACTED]	275.00	1.40	385.00
02/05/2020	JRC	[REDACTED]	275.00	0.20	55.00
02/10/2020	JRC	[REDACTED]	275.00	1.90	522.50
	JRC	[REDACTED]	275.00	0.30	82.50
02/11/2020	JRC	[REDACTED]	275.00	0.80	220.00
02/19/2020	JRC	[REDACTED]	275.00	0.10	27.50

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

February 28, 2020

Account No: J19304BARNESM

Statement No: 151445

	Rate	Hours	
For Current Services Rendered		10.60	2,915.00
Recapitulation			
<u>Timekeeper</u>		<u>Hours</u>	<u>Rate</u>
Joel R. Comfort		10.60	\$275.00
			\$2,915.00
Total Current Work			2,915.00
Previous Balance Due			\$1,857.75
<u>Payments</u>			
02/06/2020	Payment received - Check #4478 - thank you		-1,815.00
02/12/2020	Payment received - Check #4479 - thank you		-42.75
	Total Payments		-1,857.75
	Balance Due		<u>\$2,915.00</u>
	Please Remit		<u>\$2,915.00</u>

**Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express and Discover.**

**MILLER MERTENS & COMFORT PLLC**  
**1020 N CENTER PKWY STE B**  
**KENNEWICK WA 99336-7161**  
**PHONE (509) 374-4200 FAX (509) 374-4229**  
**TAX ID#91-1875775**

DON & CHRISTINE BARNES  
 2616 S KELLOGG ST  
 KENNEWICK WA 99338-1930

Page: 1  
 March 23, 2020  
 Account No: J19304BARNESM  
 Statement No: 151507

PORT OF KENNEWICK; OUR #J19304

Interim Statement

Fees

			Rate	Hours	
02/21/2020	JRC	[REDACTED]	275.00	0.10	27.50
02/24/2020	JRC	[REDACTED]	275.00	0.70	192.50
02/26/2020	JRC	[REDACTED]	275.00	0.20	55.00
02/28/2020	JRC	[REDACTED]	275.00	1.80	495.00
	JRC	[REDACTED]	275.00	1.50	412.50
03/02/2020	JRC	[REDACTED]	275.00	0.40	110.00
03/04/2020	JRC	[REDACTED]	275.00	0.30	82.50
03/05/2020	JRC	[REDACTED]	275.00	0.60	165.00
03/06/2020	JRC	[REDACTED]	275.00	1.50	412.50
03/09/2020	JRC	[REDACTED]	275.00	0.20	55.00
03/20/2020	JRC	[REDACTED]	275.00	1.50	412.50
For Current Services Rendered				8.80	2,420.00



DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

March 23, 2020

Account No: J19304BARNESM  
Statement No: 151507

<u>Timekeeper</u>	Recapitulation	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		8.80	\$275.00	\$2,420.00

Total Current Work	2,420.00
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Previous Balance Due	\$2,915.00
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Payments

03/13/2020	Payment received - Check #4483 - thank you	-2,915.00
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Balance Due	<u>\$2,420.00</u>
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Please Remit	<u>\$2,420.00</u>
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**Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express and Discover.**

MILLER MERTENS & COMFORT PLLC  
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TAX ID#91-1875775

DON & CHRISTINE BARNES  
2616 S KELLOGG ST  
KENNEWICK WA 99338-1930

Page: 1  
April 29, 2020  
Account No: J19304BARNESM  
Statement No: 152872

PORT OF KENNEWICK; OUR #J19304

			<u>Fees</u>		
			Rate	Hours	
03/23/2020	JRC	[REDACTED]	275.00	0.20	55.00
03/24/2020	JRC	[REDACTED]	275.00	0.40	110.00
03/26/2020	JRC	[REDACTED]	275.00	0.60	165.00
	JRC	[REDACTED]	275.00	0.50	137.50
	JRC	[REDACTED]	275.00	0.10	27.50
03/27/2020	JRC	[REDACTED]	275.00	0.10	27.50
03/30/2020	JRC	[REDACTED]	275.00	0.80	220.00
03/31/2020	JRC	[REDACTED]	275.00	0.40	110.00
04/01/2020	JRC	[REDACTED]	275.00	0.20	55.00
04/02/2020	JRC	[REDACTED]	275.00	0.20	55.00
	JRC	[REDACTED]	275.00	0.50	137.50
04/03/2020	JRC	[REDACTED]	275.00	0.40	110.00
04/07/2020	JRC	[REDACTED]	275.00	0.40	110.00
04/13/2020	JRC	[REDACTED]	275.00	0.20	55.00
04/16/2020	JRC	[REDACTED]	275.00	0.10	27.50

DON &amp; CHRISTINE BARNES

Page: 2

April 29, 2020

Account No: J19304BARNESM  
Statement No: 152872

PORT OF KENNEWICK; OUR #J19304

			Rate	Hours	
04/17/2020	JRC	[REDACTED]	275.00	1.20	330.00
04/20/2020	JRC	[REDACTED]	275.00	0.50	137.50
		For Current Services Rendered		6.80	1,870.00

		Recapitulation			
<u>Timekeeper</u>		<u>Hours</u>	<u>Rate</u>	<u>Total</u>	
Joel R. Comfort		6.80	\$275.00	\$1,870.00	

Total Current Work 1,870.00

Previous Balance Due \$3,052.50

Payments

04/03/2020 Payment received - Check #4489 - thank you -3,052.50

Balance Due \$1,870.00Please Remit \$1,870.00

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PHONE (509) 374-4200 FAX (509) 374-4229  
TAX ID#91-1875775

DON & CHRISTINE BARNES  
2616 S KELLOGG ST  
KENNEWICK WA 99338-1930

Page: 1  
May 29, 2020  
Account No: J19304BARNESM  
Statement No: 153516

PORT OF KENNEWICK; OUR #J19304

			<u>Fees</u>		
			Rate	Hours	
04/24/2020	JRC	[REDACTED]	275.00	0.30	82.50
	JRC	[REDACTED]	275.00	0.80	220.00
05/05/2020	JRC	[REDACTED]	275.00	0.20	55.00
05/06/2020	JRC	[REDACTED]	275.00	0.30	82.50
05/07/2020	JRC	[REDACTED]	275.00	1.00	275.00
05/11/2020	JRC	[REDACTED]	275.00	2.20	605.00
05/12/2020	JRC	[REDACTED]	275.00	0.30	82.50
05/14/2020	JRC	[REDACTED]	275.00	1.20	330.00
05/15/2020	JRC	[REDACTED]	275.00	0.40	110.00
05/19/2020	JRC	[REDACTED]	275.00	0.10	27.50
05/20/2020	JRC	[REDACTED]	275.00	0.20	55.00
For Current Services Rendered				7.00	1,925.00

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

May 29, 2020

Account No: J19304BARNESM  
Statement No: 153516

<u>Timekeeper</u>	Recapitulation	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		7.00	\$275.00	\$1,925.00

Total Current Work	1,925.00
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Previous Balance Due	\$1,870.00
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Payments

05/11/2020	Payment received - Check #4496 - thank you	-1,870.00
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Balance Due	<u>\$1,925.00</u>
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Please Remit	<u>\$1,925.00</u>
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DON & CHRISTINE BARNES  
 2616 S KELLOGG ST  
 KENNEWICK WA 99338-1930

Page: 1  
 June 25, 2020  
 Account No: J19304BARNESM  
 Statement No: 154005

PORT OF KENNEWICK; OUR #J19304

<u>Fees</u>				
			Rate	Hours
05/26/2020	JRC		275.00	0.20
	JRC		275.00	0.10
05/27/2020	JRC		275.00	0.60
05/28/2020	JRC		275.00	0.10
05/29/2020	JRC		275.00	0.70
06/01/2020	JRC		275.00	0.30
06/05/2020	JRC		275.00	3.20
06/11/2020	JRC		275.00	0.20
06/18/2020	JRC		275.00	0.20
06/19/2020	JRC		275.00	0.50
For Current Services Rendered				6.10
				1,677.50

<u>Timekeeper</u>	<u>Recapitulation</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		6.10	\$275.00	\$1,677.50

Total Current Work	1,677.50
Previous Balance Due	\$1,925.00

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

June 25, 2020

Account No: J19304BARNESM  
Statement No: 154005

Payments

06/08/2020	Payment received - Check #4503 - thank you	-1,925.00
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Balance Due	<u>\$1,677.50</u>
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Please Remit	<u>\$1,677.50</u>
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DON & CHRISTINE BARNES  
 2616 S KELLOGG ST  
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Page: 1  
 July 29, 2020  
 Account No: J19304BARNESM  
 Statement No: 154497

PORT OF KENNEWICK; OUR #J19304

		<u>Fees</u>			
			<u>Rate</u>	<u>Hours</u>	
06/24/2020	JRC	[REDACTED]	275.00	0.10	27.50
06/25/2020	JRC	[REDACTED]			
			275.00	0.50	137.50
07/09/2020	JRC	[REDACTED]	275.00	0.20	55.00
07/16/2020	JRC	[REDACTED]	275.00	0.90	247.50
		For Current Services Rendered		1.70	467.50

<u>Timekeeper</u>	<u>Recapitulation</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		1.70	\$275.00	\$467.50

Total Current Work 467.50

Previous Balance Due \$1,677.50

		<u>Payments</u>	
07/06/2020	Payment received - Check #4510 - thank you		-1,677.50
	Balance Due		<u>\$467.50</u>
	Please Remit		<u>\$467.50</u>

**Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express or Discover.**



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DON & CHRISTINE BARNES  
 2616 S KELLOGG ST  
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Page: 1  
 August 28, 2020  
 Account No: J19304BARNESM  
 Statement No: 155005

PORT OF KENNEWICK; OUR #J19304

<u>Fees</u>				
			Rate	Hours
07/24/2020	JRC		275.00	0.10
08/04/2020	JRC		275.00	0.30
08/05/2020	JRC		275.00	0.70
08/11/2020	JRC		275.00	0.10
08/13/2020	JRC		275.00	0.80
08/14/2020	JRC		275.00	1.00
08/17/2020	JRC		275.00	0.40
08/19/2020	JRC		275.00	0.60
For Current Services Rendered				4.00
				1,100.00

<u>Timekeeper</u>	<u>Recapitulation</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		4.00	\$275.00	\$1,100.00

Total Current Work	1,100.00
Previous Balance Due	\$467.50

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

August 28, 2020

Account No: J19304BARNESM  
Statement No: 155005

Payments

08/17/2020	Payment received - Check #4519 - thank you	-467.50
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Balance Due	<u>\$1,100.00</u>
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Please Remit	<u>\$1,100.00</u>
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**Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express or Discover.**

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DON & CHRISTINE BARNES  
 2616 S KELLOGG ST  
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Page: 1  
 September 30, 2020  
 Account No: J19304BARNESM  
 Statement No: 155497

PORT OF KENNEWICK; OUR #J19304

<u>Fees</u>					
			Rate	Hours	
08/21/2020	JRC		275.00	0.20	55.00
08/25/2020	JRC		275.00	0.20	55.00
08/28/2020	JRC		275.00	0.20	55.00
09/01/2020	JRC		275.00	0.20	55.00
09/03/2020	JRC		275.00	1.50	412.50
For Current Services Rendered				2.30	632.50

<u>Timekeeper</u>	<u>Recapitulation</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		2.30	\$275.00	\$632.50

Total Current Work 632.50

Previous Balance Due \$1,100.00

<u>Payments</u>			
09/03/2020	Payment received - Check #4522 - thank you		-1,100.00
	Balance Due		<u>\$632.50</u>
	Please Remit		<u>\$632.50</u>

**Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express or Discover.**

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DON & CHRISTINE BARNES  
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Page: 1  
 October 29, 2020  
 Account No: J19304BARNESM  
 Statement No: 155955

PORT OF KENNEWICK; OUR #J19304

		<u>Fees</u>	Rate	Hours	
09/29/2020	JRC	[REDACTED]			
			275.00	2.50	687.50
10/02/2020	JRC	[REDACTED]	275.00	0.30	82.50
10/13/2020	JRC	[REDACTED]	275.00	0.40	110.00
10/16/2020	JRC	[REDACTED]	275.00	0.20	55.00
		For Current Services Rendered		3.40	935.00

<u>Timekeeper</u>	<u>Recapitulation</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		3.40	\$275.00	\$935.00

Total Current Work 935.00

Previous Balance Due \$632.50

Payments

10/14/2020 Payment received - Check #4529 - thank you -632.50

Balance Due \$935.00

Please Remit \$935.00

**Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express or Discover.**

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TAX ID#91-1875775

DON & CHRISTINE BARNES  
2616 S KELLOGG ST  
KENNEWICK WA 99338-1930

Page: 1  
December 03, 2020  
Account No: J19304BARNESM  
Statement No: 156405

PORT OF KENNEWICK; OUR #J19304

Interim Statement

			<u>Fees</u>		
			Rate	Hours	
10/27/2020	JRC	[REDACTED]	275.00	0.30	82.50
10/28/2020	JRC	[REDACTED]	275.00	0.70	192.50
11/02/2020	JRC	[REDACTED]	275.00	0.20	55.00
11/03/2020	JRC	[REDACTED]	275.00	2.50	687.50
11/04/2020	JRC	[REDACTED]	275.00	0.10	27.50
11/05/2020	JRC	[REDACTED]	275.00	6.50	1,787.50
11/06/2020	JRC	[REDACTED]	275.00	1.50	412.50
11/08/2020	JRC	[REDACTED]	275.00		
11/09/2020	JRC	[REDACTED]	275.00		
11/10/2020	JRC	[REDACTED]	275.00		
11/11/2020	JRC	[REDACTED]	275.00	0.50	137.50
	JRC	[REDACTED]	275.00		
11/12/2020	JRC	[REDACTED]			

PORT OF KENNEWICK; OUR #J19304

			Rate	Hours	
			275.00		
11/16/2020	JRC		275.00	2.00	550.00
11/17/2020	JRC		275.00	2.80	770.00
11/18/2020	JRC		275.00	0.80	220.00
11/19/2020	JRC		275.00	5.00	1,375.00
11/20/2020	JRC		275.00	7.00	1,925.00
		For Current Services Rendered		29.90	8,222.50

<u>Timekeeper</u>	<u>Recapitulation</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		29.90	\$275.00	\$8,222.50

Total Current Work	8,222.50
Previous Balance Due	\$935.00

Payments

11/04/2020	Payment received - Check #5003 - thank you	-935.00
	Balance Due	<u>\$8,222.50</u>
	Please Remit	<u>\$8,222.50</u>

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express or Discover.



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DON & CHRISTINE BARNES  
 2616 S KELLOGG ST  
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Page: 1  
 December 23, 2020  
 Account No: J19304BARNESM  
 Statement No: 157124

PORT OF KENNEWICK; OUR #J19304

			<u>Fees</u>		
			Rate	Hours	
11/23/2020	JRC	[REDACTED]	275.00	1.00	275.00
11/30/2020	JRC	[REDACTED]	275.00	0.20	55.00
12/01/2020	JRC	[REDACTED]	275.00	0.50	137.50
12/03/2020	JRC	[REDACTED]			
			275.00	8.50	2,337.50
12/04/2020	JRC	[REDACTED]	275.00	5.30	1,457.50
12/07/2020	JRC	[REDACTED]	275.00	0.50	137.50
12/09/2020	JRC	[REDACTED]	275.00	0.30	82.50
For Current Services Rendered				16.30	4,482.50

<u>Timekeeper</u>	Recapitulation	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		16.30	\$275.00	\$4,482.50

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2  
December 23, 2020  
Account No: J19304BARNESM  
Statement No: 157124

Total Current Work	4,482.50
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Previous Balance Due	\$7,947.50
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Payments

12/10/2020	Payment received - Check #5017 - thank you	-7,947.50
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Balance Due	<u>\$4,482.50</u>
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Please Remit	<u>\$4,482.50</u>
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**Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express or Discover.**



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DON & CHRISTINE BARNES  
 2616 S KELLOGG ST  
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Page: 1  
 January 28, 2021  
 Account No: J19304BARNESM  
 Statement No: 157993

PORT OF KENNEWICK; OUR #J19304

<u>Fees</u>				
			Rate	Hours
12/22/2020	JRC		275.00	0.20
12/24/2020	JRC		275.00	0.30
12/31/2020	JRC		275.00	1.40
01/05/2021	JRC		275.00	0.70
01/06/2021	JRC		275.00	0.30
01/12/2021	JRC		275.00	0.40
For Current Services Rendered				3.30
				907.50

<u>Timekeeper</u>	<u>Recapitulation</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		3.30	\$275.00	\$907.50

Total Current Work	907.50
Previous Balance Due	\$4,482.50

<u>Payments</u>		
12/31/2020	Payment received - Check #5021 - thank you	-4,482.50
	Balance Due	<u>\$907.50</u>
	Please Remit	<u>\$907.50</u>

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

January 28, 2021

Account No: J19304BARNESM

Statement No: 157993

**Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express or Discover.**

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DON & CHRISTINE BARNES  
 2616 S KELLOGG ST  
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Page: 1  
 March 02, 2021  
 Account No: J19304BARNESM  
 Statement No: 158524

PORT OF KENNEWICK; OUR #J19304

<u>Fees</u>				
			Rate	Hours
02/03/2021	JRC	[REDACTED]	275.00	0.20
02/09/2021	JRC	[REDACTED]	275.00	0.30
02/10/2021	JRC	[REDACTED]	275.00	0.40
				<u>0.90</u>
		For Current Services Rendered		110.00
				247.50

<u>Timekeeper</u>	Recapitulation	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort		0.90	\$275.00	\$247.50

Total Current Work	247.50
Previous Balance Due	\$907.50

<u>Payments</u>		
02/03/2021	Payment received - Check #5053 - thank you	-907.50
	Balance Due	<u>\$247.50</u>
	Please Remit	<u>\$247.50</u>

**Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express or Discover.**



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[steve.dijulio@foster.com](mailto:steve.dijulio@foster.com)

March 22, 2021

Lucinda Luke  
General Counsel  
Port of Kennewick  
350 Clover Island Drive  
Kennewick, WA 99336  
By email to: [luke@carneylaw.com](mailto:luke@carneylaw.com)

Re: Defense of Board Members in Investigative Proceedings

Dear Ms. Luke:

The Port of Kennewick ("Port") requested our analysis and comment on the Port's rights and responsibilities with respect to providing legal defense to a Port Commissioner, and the payment of attendant attorney fees. We address these issues in greater detail as follows.

## Background

The Port operates under Washington law, including Title 53 RCW. The Port is a municipal corporation with only those powers expressly granted by the legislature; those necessarily or fairly implied in or incident to the powers granted; and, those essential to the declared objects and purposes of a Washington port district. *1959-60 AGO No. 51*. The Board of Port Commissioners ("Board") is the Port's legislative authority. In addition to other authority, the Board may employ and delegate authority to a managing official. Under RCW 53.12.270

The commission may delegate to the managing official of a port district such administrative powers and duties of the commission as it may deem proper for the efficient and proper management of port district operations. Any such delegation shall be authorized by appropriate resolution of the commission, which resolution must also establish guidelines and procedures for the managing official to follow.

Consistent with this statutory authority, the Board adopted resolutions delegating powers and duties to the position of Port Executive Director. *See, e.g., Resolution 2018-26.*

Additionally, among the implied powers of Washington port districts is the authority to employ attorneys, whether as employees or outside counsel. That authority includes the expenditure of funds for necessary attorneys' fees. *1959-60 AGO No. 51* (1951).

### **Legal Defense of Port Officials**

State law requires municipalities, including ports, to provide legal counsel at public expense to defend officials in suits arising from the performance of their official duties. RCW 4.96.041 (1). And, in some circumstances, that obligation is mandatory. RCW 4.96.041 (2) states:

If the legislative authority of the local governmental entity, or the local governmental entity using a procedure created by ordinance or resolution, finds that the acts or omissions of the officer, employee, or volunteer were, or in good faith purported to be, within the scope of his or her official duties, the request shall be granted. If the request is granted, the necessary expenses of defending the action or proceeding shall be paid by the local governmental entity. Any monetary judgment against the officer, employee, or volunteer shall be paid on approval of the legislative authority of the local governmental entity or by a procedure for approval created by ordinance or resolution.

The Port carries forward these directives through provisions of the Port Commission Rules of Policy and Procedure (“Rules”), at Section 18.

We understand that a Port commissioner filed a complaint against other commissioners under Port Rules at Section 5. We did not consult with the Port on these issues at the time. And, we have not consulted on the substance of the complaint or subsequent investigation (conducted by other legal counsel) and hearings. We subsequently provide separate counsel to the Port with respect to procedural aspects of the complaint and subsequent investigation, including Public Records Act issues and the Port’s production of records relating to the process.

Following a determination of commissioner wrongdoing (a violation of the Port’s Rules) by an independent investigator, one commissioner challenged that determination. Under the Port’s Rules, a hearing officer (a retired judge) was appointed, and a hearing conducted. The hearing officer concluded that the evidence did not show the commissioner committed sanctionable misconduct. That commissioner has now sought payment of his attorney fees incurred in the investigation and hearing process arising out of the complaint. The Board has not yet approved the payment of those fees. In the following we discuss the Port’s obligations and risks associated with these present issues.

### **Analysis**

In our evaluation of these issues, it appears the commissioner may have been subject to an “action or proceeding” as that phrase is used in RCW 4.96.041 (1). However, Rule 5.11 creates an ambiguity by stating:

The Port shall not indemnify or defend any commissioner charged with misconduct except as provided under Section 18.

The Port's Rules otherwise recognize the defense of claims against a Port officer or employee. The Rules at Section 18 state:

As authorized by RCW 4.96.041, there is hereby created a procedure to provide for indemnification and defense of claims of liability arising from acts or omissions of officials and employees of the Port.

Rules at Section 18.1.

We do not see an exception to the obligation to reimburse the commissioner's attorney fees (at the rate that would have been authorized by the Port's General Counsel under Rule 18). Note that an investigation of a complaint regarding a commissioner's conduct may arise internally or externally. There is no basis for a distinction arising because this matter arose internally at the Port.

As a result, the Port's Rules state that approval of defense services requires Board review and approval:

The determination whether an official or employee shall be afforded a defense by the Port under the terms of this chapter shall be made after a determination pursuant to **Section 18** as to whether the official or employee was acting within the scope of his or her duties. The CEO [Executive Director] and Port legal counsel shall prepare a recommendation to the Commission. The decision of the Commission shall be final as a legislative determination and shall be based upon a finding that an official or employee meets or does not meet the criteria of this chapter.

Rules, at Section 18.7. We are not aware of any suggestion that the conduct giving rise to the investigation did not relate to Port activities. The Hearing Officer stated: "substantial evidence does not overcome the presumption that Commissioner Barnes acted ethically and in the Port's best interests when he contacted both DPZ and the State Auditor's Office." As a result, it appears that Rules Section 18 applies and the commissioner's attorney fees may be recoverable upon approval by the Board.

## **Conclusion**

The Port's policies may be seen as ambiguous regarding the application of responsibility for assignment of legal counsel to officers and employees and for the payment of attorney fees. However, upon a finding by the Board of the commissioner acting in good faith and within the scope of his duties, the attorney fee claim may be recognized.

We have not considered and do not comment in this analysis on the reasonableness of the requested fees. We do note that the amount of fees sought, and the lack of detail provided, does not

March 22, 2021

Page 4

provide the foundation that courts employ in approving attorney fee awards. For example, the actual narrative of work performed to support the fee claim is considered by courts in attorney fee applications.

Here, that would be a separate analysis (audit) that should be undertaken by the Port if the request for fees be approved by the Board.

We trust the foregoing is responsive to the Port's inquiry. Please advise if we may be of further assistance in this regard.

Sincerely,

FOSTER GARVEY PC

A handwritten signature in blue ink, reading "P. Stephen DiJulio". The signature is written in a cursive, flowing style.

P. Stephen DiJulio  
Principal





## Memorandum

To: Tim Arntzen  
From: Larry Peterson  
Date: April 2, 2021  
Re: Vista Field Phase #1A: Initial Marketing Area

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### **OVERVIEW**

Port funded horizontal infrastructure improvements (roads, utilities & water feature) to open the core of the redevelopment site for vertical improvements (buildings) have been completed. The recently completed infrastructure improvements are “front end loaded” with major cross site roadways & utilities, a significant amenity of the 850ft water feature and reservations for future public spaces. Phase #1 encompasses a total of 18.3 acres gross with improved City streets, sidewalks, woonerfs, alleys and parking area utilizing 4.9 acres and 2.5 acres for the water feature and future Daybreak Commons. Retaining 2.6 acres for future common parking areas and 1.0 acre for the three (3) corporate hangars yields 7.3 acres of land for vertical improvements.

### **FOCUS ON VERTICAL IMPROVEMENT POTENTIAL**

DPZ recommends placing emphasis on what could be located on those 7 acres rather than “only having 7 acres to sell.” Basic building and land allocations with a presumption of one (1) and two (2) story buildings results in nearly 300,000sf of buildings within Phase #1, which would be more building area than in the entire 30+ acre Spaulding Business Park!

Working with DPZ to refine suggestions about what should be encouraged where, and possibly more importantly, when; has resulted in a recommendation to focus the initial private sector development around the Azure Drive woonerf area. New Urbanism is based upon several principles, a primary principle being the goal of creating a vibrant area through concentrating vertical improvements in a cluster or compact development.

The first attachment is the well-known Vista Field rendering shaded to highlight the Azure Drive node extending from the hangars along Deschutes Avenue to Vista Field Boulevard. Concentrating the marketing, parcel availability and private sector efforts to the central node has the potential to yield over 125,000sf of building improvements, seven (7) live/work units and four (4) single family detached units. **Wouldn't such a nucleus be considered a “great” start for the Vista Field project?** Conversely wouldn't spreading these first projects over the entire site resulting in a more typical scattered/sprawling pattern be considered a lost opportunity?

Also attached is a four-page document consisting of a map and spreadsheet of both the DPZ recommended “Round 1” area and the overall Round 1 & Round 2/all Phase #1 area.

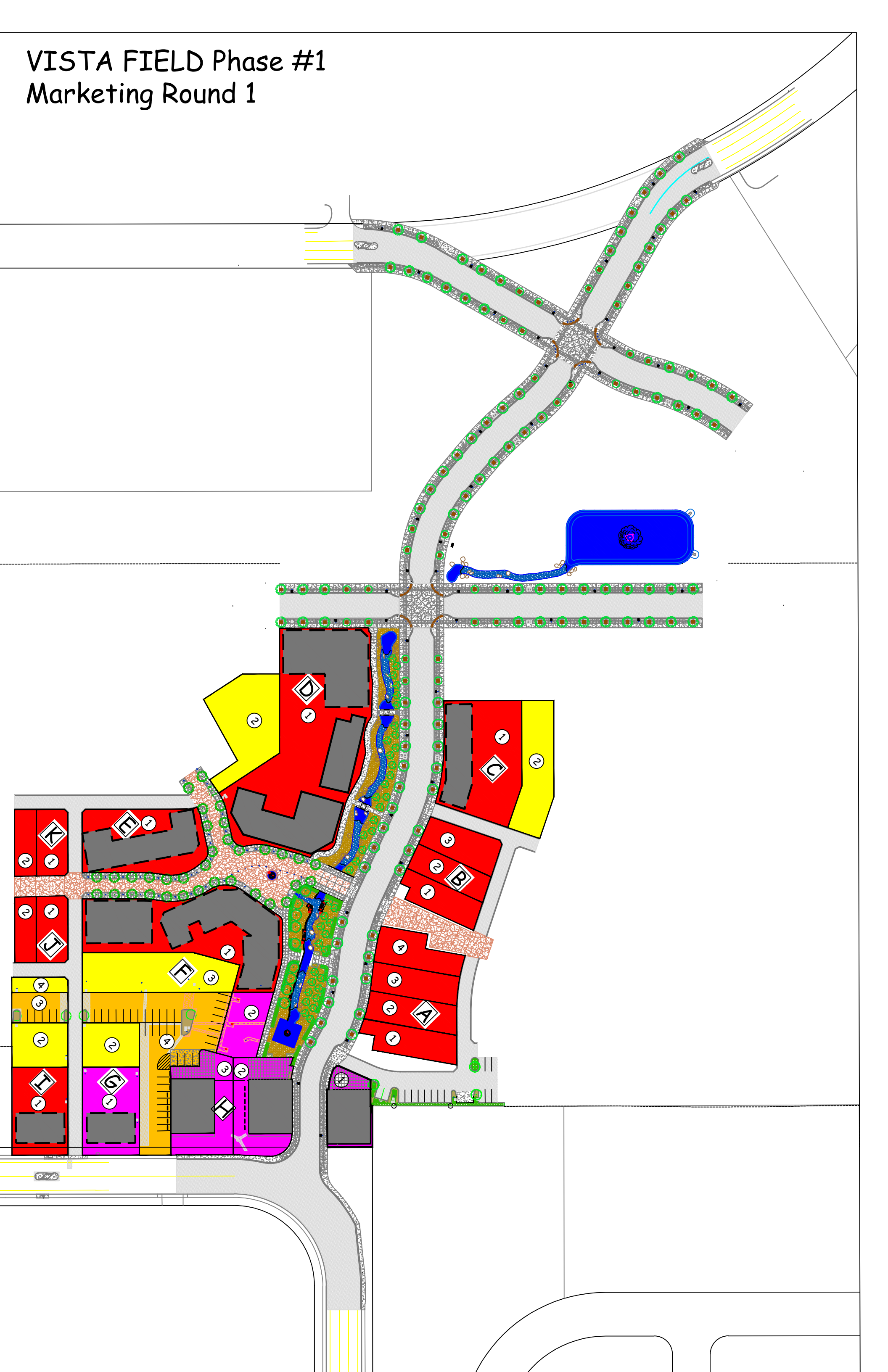
Possibly this information is shared with the Commission at their next meeting and discussion about the DPZ recommended “Round 1” area occurs, without an expectation or ask for a decision.





# VISTA FIELD Phase #1

## Marketing Round 1



February 24, 2021

**VISTA FIELD PHASE #1 - LAND OFFERED Round 1**

Block	ID	Street	Use Type	Specifics
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A	1	Crosswind Blvd.	Live Work	Lot 1 (southern)
A	2	Crosswind Blvd.	Live Work	Lot 2 (south central)
A	3	Crosswind Blvd.	Live Work	Lot 3 (north central)
A	4	Crosswind Blvd.	Live Work	Lot 4 (northern)
B	1	Crosswind Blvd.	Live Work	Lot 1 (southern)
B	2	Crosswind Blvd.	Live Work	Lot 2 (central)
B	3	Crosswind Blvd.	Live Work	Lot 3 (northern)
C	1	Crosswind Blvd.	Mixed Use	Crosswind Blvd. Frontage
C	2	Crosswind Blvd.	Parking Lot	PORT Retained Future-Parking Area
D	1	Constellation Way.	Special Use	West of Stream Sidewalk
D	2	Constellation Way.	Parking Lot	PORT Retained Future-Parking Area
E	1	Azure Dr.	Special Use	Whole Block
F	1	Azure Dr.	Special Use	Southside
F	2	Crosswind Blvd.	Pop-Up Retail	PORT Retained Future-Building Pad
F	3	Azure Dr.	Parking Lot	PORT Retained Future-Parking Area
F	4	Azure Dr./Deschutes Alley	Parking Lot	PORT Retained EXISTING Parking Area
G	1	Deschutes Alley	Mixed Use	PORT Retained for Hangar Remodel Project
G	2	Deschutes Alley	Parking Lot	PORT Retained Future-Parking Area
H	1	Crosswind Blvd.	TBD	Shannon Hangar east of Crosswind Blvd.
H	2	Crosswind Blvd.	TBD	Musser Hangar B west of Crosswind Blvd.
H	3	Deschutes Ave.	TBD	Gaunt Hangar C fronting Deschutes
I	1	Deschutes Alley	Mixed Use	Westside of Alley of Alley
I	2	Deschutes Alley	Parking Lot	PORT Retained Future- Parking Area
I	3	Deschutes Alley	Parking Lot	PORT Retained EXISTING Parking Area
I	4	Deschutes Alley	Parking Lot	PORT Retained Future-Parking Area
J	1	Azure Dr.	SFDU	Southside Lot 1 (eastern)
J	2	Azure Dr.	SFDU	Southside Lot 2 (western)
K	1	Azure Dr.	SFDU	Northside Lot 1 (eastern)
K	2	Azure Dr.	SFDU	Northside Lot 2 (western)

**NOTES:****TOTAL (Square Feet)**

Square Footage		
TOTAL	OFFER	RETAIN

5,000	5,000	
4,971	4,971	
4,792	4,792	
4,948	4,948	
4,400	4,400	
4,142	4,142	
4,922	4,922	
17,127	17,127	
8,315		8,315
41,544	41,544	
10,910		10,910
14,489	14,489	
24,317	24,317	
5,010		5,010
11,136		11,136
19,662		19,662
9,463		9,463
4,753		4,753
6,194		6,194
10,743		10,743
11,276		11,276
9,264	9,264	
4,679		4,679
3,210		3,210
1,617		1,617
3,931	3,931	
2,676	2,676	
3,915	3,915	
2,745	2,745	

TOTAL	OFFER	RETAIN
260,151	153,183	106,968
6.0	3.5	2.5

**BUILDING SIZE**

Square Footage		Square Footage	
FOOTPRINT	X STORIES	=	AREA

5,000	2		10,000
22,000	2		44,000
6,950	2		13,900
15,500	2		31,000
4,800	2		9,600
2,750	1		2,750
4,500	1		4,500
4,500	1		4,500
4,500	1		4,500
2,750	1		2,750

Building Sq Ft	127,500
(excludes Live/Work & SFDU)	

**PARKING**

Square Footage		
AREA	÷ per Stall	= Spaces

10,800	300	36
8,400	300	28
12,500	300	42
8,750	350	25
4,000	300	13
1,800	300	6
0	300	0
11,100	300	37
19,662	500	39
4,500	300	15
4,500	300	15
0	300	0
0	300	0
0	300	0
4,500	300	15
4,500	300	15
3,150	525	6
1,500	250	6

On-Site Stalls	298
On-Street & Alley B	120
TOTAL Parking Stalls	418



# VISTA FIELD Phase #1 Marketing Round 1 & 2

March 26, 2021

## VISTA FIELD PHASE #1 - LAND USE ALLOCATIONS

Block	ID	Street	Use Type	Specifics	Square Footage			Square Footage			Square Footage				
					TOTAL	OFFER	RETAIN	FOOTPRINT	X	STORIES =	AREA	AREA	÷	per Stall =	Spaces
A	1	Crosswind Blvd.	Live Work	Lot 1 (southern)	5,000	5,000									
A	2	Crosswind Blvd.	Live Work	Lot 2 (south central)	4,971	4,971									
A	3	Crosswind Blvd.	Live Work	Lot 3 (north central)	4,792	4,792									
A	4	Crosswind Blvd.	Live Work	Lot 4 (northern)	4,948	4,948									
B	1	Crosswind Blvd.	Live Work	Lot 1 (southern)	4,400	4,400									
B	2	Crosswind Blvd.	Live Work	Lot 2 (central)	4,142	4,142									
B	3	Crosswind Blvd.	Live Work	Lot 3 (northern)	4,922	4,922									
C	1	Crosswind Blvd.	Mixed Use	Crosswind Blvd. Frontage	17,127	17,127		5,000	2	10,000	10,800	300	36		
C	2	Crosswind Blvd.	Parking Lot	PORT Retained Future-Parking Area	8,315		8,315				8,400	300	28		
C	3	Vista Field Blvd.	Mixed Use	SE corner VF Blvd. & Crosswind Blvd.	15,092	15,092		7,700	2	15,400	4,800	300	16		
C	4	Crosswind Blvd.	Mixed Use	Center/Core parcel	40,160	40,160		23,300	2	46,600	15,000	300	50		
C	5	Vista Field Blvd.	Parking Lot	PORT Retained Future-Parking Area	25,221		25,221				25,200	300	84		
D	1	Constellation Way.	Special Use	West of Stream Sidewalk	41,544	41,544		22,000	2	44,000	12,500	300	42		
D	2	Constellation Way.	Parking Lot	PORT Retained Future-Parking Area	10,910		10,910				8,750	350	25		
E	1	Azure Dr.	Special Use	Whole Block	14,489	14,489		6,950	2	13,900	4,000	300	13		
F	1	Azure Dr.	Special Use	Southside	24,317	24,317		15,500	2	31,000	1,800	300	6		
F	2	Crosswind Blvd.	Pop-Up Retail	PORT Retained Future-Building Pad	5,010		5,010	4,800	2	9,600	0	300	0		
F	3	Azure Dr.	Parking Lot	PORT Retained Future-Parking Area	11,136		11,136				11,100	300	37		
F	4	Azure Dr./Deschutes Alley	Parking Lot	PORT Retained EXISTING Parking Area	19,662		19,662				19,662	500	39		
G	1	Deschutes Alley	Mixed Use	PORT Retained for Hangar Remodel Project	9,463		9,463	2,750	1	2,750	4,500	300	15		
G	2	Deschutes Alley	Parking Lot	PORT Retained Future-Parking Area	4,753		4,753				4,500	300	15		
H	1	Crosswind Blvd.	TBD	Shannon Hangar east of Crosswind Blvd.	6,194		6,194	4,500	1	4,500	0	300	0		
H	2	Crosswind Blvd.	TBD	Musser Hangar B west of Crosswind Blvd.	10,743		10,743	4,500	1	4,500	0	300	0		
H	3	Deschutes Ave.	TBD	Gaunt Hangar C fronting Deschutes	11,276		11,276	4,500	1	4,500	0	300	0		
I	1	Deschutes Alley	Mixed Use	Westside of Alley of Alley	9,264	9,264		2,750	1	2,750	4,500	300	15		
I	2	Deschutes Alley	Parking Lot	PORT Retained Future- Parking Area	4,679		4,679				4,500	300	15		
I	3	Deschutes Alley	Parking Lot	PORT Retained EXISTING Parking Area	3,210		3,210				3,150	525	6		
I	4	Deschutes Alley	Parking Lot	PORT Retained Future-Parking Area	1,617		1,617				1,500	250	6		
J	1	Azure Dr.	SFDU	Southside Lot 1 (eastern)	3,931	3,931									
J	2	Azure Dr.	SFDU	Southside Lot 2 (western)	2,676	2,676									
K	1	Azure Dr.	SFDU	Northside Lot 1 (eastern)	3,915	3,915									
K	2	Azure Dr.	SFDU	Northside Lot 2 (western)	2,745	2,745									
R	1	Vista Field Blvd.	Mixed Use	NW corner VF Blvd. & Crosswind Blvd.	21,101	21,101		8,950	2	17,900	7,200	300	24		
R	2	Crosswind Blvd.	Mixed Use	SW corner Crosswind Blvd & Grandridge Blvd.	39,546	39,546		17,650	2	35,300	0	300	0		
R	4	Crosswind Blvd.	Parking Lot	PORT Retained Future-Parking Area	6,389		6,389				6,300	300	21		
S	1	Crosswind Blvd.	Mixed Use	Whole Block	16,507	16,507		5,800	2	11,600	6,000	300	20		
T	1	Crosswind Blvd.	Mixed Use	NW corner Crosswind Blvd. & Grandridge Blvd.	36,655	36,655		15,450	2	30,900	9,600	300	32		
T	2	Crosswind Blvd.	Parking Lot	PORT Retained Future-Parking Area	17,085		17,085				11,400	300	38		
U	1	Azure Dr.	Future Pad-Site	PORT Retained FUTURE Pad-Site	9,580		9,580	5,000	1	5,000					
U	2	Crosswind Blvd.	Daybreak Commo	PORT Retained FUTURE Park	66,649		66,649								
NOTES:					TOTAL (Square Feet)	554,136	322,244	231,892	Building Sq Ft		290,200	On-Site Stalls		583	
					TOTAL (Acres)	12.7	7.4	5.3	(excludes Live/Work & SFDU)			On-Street & Alley B		120	
												TOTAL Parking Stalls		703	
City Rights-of-Way					Transportation	Crosswind, Vista Field & Grandridge Blvds.		143,057	3.3 acres						
Woonerfs					Transportation	Azure Dr. & Constellation Way		30,490	0.7 acres						
Alleys & Parking					Transportation	Alleys & Attached Parking		38,214	0.9 acres						
Water Feature					Amenity	Stream - Fountian to Vista Field Blvd.		30,993	0.7 acres						
TOTAL Phase #1 Transportation Corridors & Common Areas (Square Feet & Acres)						242,754	5.6								
TOTAL PHASE #1 Allocation of ALL Land (Square Feet & Acres)						796,890	18.3								





## AGENDA REPORT

**TO:** Port Commission

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

**MEETING DATE:** 4/13/2021

**AGENDA ITEM:** Art Policy Update

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**REFERENCE:** Memo to commissioners dated 3/25/2021-Real Estate Policy Update  
Resolution 2016-29 – Art Policy

### BACKGROUND:

The Port of Kennewick Board of Commissioners established an Art Policy in 2016. A portion of the 2016-29 resolution reads *“this policy is intended to foster the artistic interests of the community, including the expression of ideas and viewpoints, by providing a showcase for artwork created by community and regional artists;”*

Successful installations of artwork on Clover Island and within Columbia Gardens are testaments to this commitment.

In December 2019, commission considered a potential land sale and gave extensive discussion to the method of collection for the art policy on a real estate transaction. Should the art policy fee be charged to the buyer in addition to the purchase price or included in the purchase price? Two commissioners agreed that approximately 2% of the purchase price would be set aside for art. A third commissioner felt that the art policy should be charged on top of the purchase price.

### DISCUSSION:

Commission discussion regarding simplification of the art policy fee structure.

Should the language “unimproved” be removed?

Should the art policy fee become a fixed percentage vs the current IF/THEN structure?

If so, is the fixed percentage in addition to the purchase price or included in the purchase price?



**SENARIO #1:** Hypothetical example of transaction if 2% art policy included in purchase price:

Price of parcel	\$500,000
Less: Real Estate Commission (4%)	\$ 20,000
Less: Art Policy set aside (2%)	<u>\$ 10,000</u>
Balance (not including closing costs)	\$470,000

**SCENARIO #2:** Hypothetical example of transaction if 2% art policy is in addition to purchase price:

Price of parcel	\$500,000
Less: Real Estate Commission (4%)	\$ 20,000
Add: Art Policy set aside (2%)	<u>\$ 10,000</u>
Balance (not including closing costs)	\$490,000

There are pros and cons to each scenario. Scenario #1 allows for a real estate commission to be paid on the art policy fee but may be easier for the buyer to obtain financing. Scenario #2 allows for a greater financial benefit to the seller but requires the buyer to pay the art policy fee out of pocket if they are not able to include it in their financing.



## AGENDA REPORT

**TO:** Port Commission

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

**MEETING DATE:** 03/23/2021

**AGENDA ITEM:** Real Estate Policy Update – Commission Structure

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### BACKGROUND:

At the Port of Kennewick, purchase and/or sale real estate transactions are guided by the port's real estate policy established through Commission Resolution 2015-29 (see excerpt on page 2). As the port's vision shifts from fewer industrial intensive projects to more waterfront and infill redevelopment, the timing may be appropriate for a handful of minor adjustments to the real estate sales commission structure, offer process and art policy language.

### DISCUSSION:

In taking a four-step approach, the discussions could be held over multiple commission meetings to allow adequate time for Commission conversation:

#### Today

##### 1) Section 2: Commission Structure for Licensed Brokers

The current real estate commission structure is divided into bare land versus improved property then divided again by three different pricing levels.

A single rate real estate commission paid to a licensed real estate broker upon the sale of a port parcel would be more in line with generally accepted private sector practices. (Exhibit B-Redline version of real estate policy)

#### Future Commission Meetings

- 2) Section 1.8 - 1.10: Offer Submission Process – Potential update to reflect current conditions.
- 3) Art Policy - Potential update to art policy language. Discuss relationship between art policy and land sale.
- 4) Final Review - Incorporation of all commission comments for final review and resolution.

## **ACTION REQUESTED OF COMMISSION:**

Commission discussion regarding streamlining the real estate commission structure.

**Excerpt from Resolution 2015-29, Real or Personal Property Purchases and Sales, Part 2.0 follows:**

### **2. COMMISSION STRUCTURE FOR LICENSED BROKERS.**

Commissions will only be paid to licensed real estate brokers. The broker must submit a signed bona fide offer plus a signed appointment from the potential purchaser authorizing the broker to negotiate for the potential purchaser in order to claim the commission. The broker authorization must include the name of the proposed purchaser and the date of their first contact with said purchaser. Unless the provision is strictly complied with, the Port will not pay any claimed commission.

- 2.1.1. After final approval of the sale by the Port Commission and after receipt of all funds due at closing, the Port of Kennewick will pay to the licensed real estate broker negotiating any such sale a commission of four (4) percent based on the following schedule:

#### **~~A. SALES OF UNIMPROVED REAL PROPERTY (Bare Land)~~**

- ~~1. On the first \$500,000 of any sale ————— Seven (7) percent~~
- ~~2. On the next \$500,000 of any sale ————— Five (5) percent~~
- ~~3. On any amount over \$1,000,000 ————— Three (3) percent~~

#### **~~B. SALES OF IMPROVED REAL PROPERTY (With Structure)~~**

- ~~1. On the first \$500,000 of any sale ————— Five (5) percent~~
- ~~2. On the next \$500,000 of any sale ————— Five (5) percent~~
- ~~3. On any amount over \$1,000,000 ————— Three (3) percent~~

# ***PORT OF KENNEWICK***

## **RESOLUTION 2016-29**

### **A RESOLUTION OF THE BOARD OF COMMISSISONERS OF PORT OF KENNEWICK ADOPTING AN ART POLICY**

**WHEREAS**, this policy is intended to foster the artistic interests of the community, including the expression of ideas and viewpoints, by providing a showcase for artwork created by community and regional artists; and

**WHEREAS**, this policy provides the guidelines and mechanisms to be used for artwork commissioned, purchased by, or gifted to the Port; and

**WHEREAS**, the Commission shall evaluate the effectiveness of this policy over time and reserves the right to expand, amend or rescind this policy as appropriate; and

**WHEREAS**, the policy has been discussed in several commission meetings and amendments have been offered and incorporated into the final edit, which is presented herewith.

**NOW, THEREFORE BE IT RESOLVED**, that the Board of Commissioners of the Port of Kennewick hereby approves and adopts the Artwork Policy as attached in Exhibit A, and directs the Chief Executive Officer (CEO) to take all action necessary to implement this policy.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick this 25<sup>th</sup> day of October, 2016.

#### ***PORT OF KENNEWICK BOARD OF COMMISSIONERS***

By:   
SKIP NOVAKOVICH, *President*

By:   
THOMAS MOAK, *Vice President*

By:   
DON BARNES, *Secretary*

## **Port of Kennewick Artwork Policy**

It is the policy of the Port of Kennewick to foster the artistic interests of the community, including the expression of ideas and viewpoints, by providing a showcase for artwork created by community and regional artists. In furtherance hereof, the Port establishes the following policy related to artwork.

### **Section 1. General Provisions.**

- A. The term "artwork" means all forms of the visual arts conceived in any medium, material or combination thereof, commissioned, purchased by, or gifted to the Port.
- B. The term "artwork budget" shall include cost of artwork, design fees, engineering costs, installation and similar costs, together with consulting fees and costs related to administering this policy.
- C. The Port Commission shall determine whether artwork shall be installed when the Port designs, engineers and constructs new capital projects of its own undertaking and when the Port sells undeveloped land.

### **Section 2. Artwork in Port Capital Projects.**

If the Port Commission decides to include artwork in a capital project of the Port's undertaking, the Port shall establish an artwork budget of 1% of the total capital cost of the construction project. For infrastructure only projects, i.e.: those where the Port does not construct a building, the Commission may elect to refrain from including artwork.

### **Section 3. Artwork required as part of Port Land Sales.**

- A. When the Port sells unimproved real property, at the discretion of the Port Commission, the Port may require that a sum (as determined below) be paid by the purchaser and deposited with the Port to purchase artwork to be installed in a public area within the Port of Kennewick district boundaries. The selection of the site for artwork shall be at the discretion of the Port Commission.
  - 1. For the first \$500,000, of sales price, a sum equivalent to 3% shall be assessed for artwork; and
  - 2. For sales in excess of \$500,000, a sum equivalent to 2% shall be assessed for artwork.
- B. Funds collected under this section shall be used for selection, acquisition, and installation or display of artwork; repairs and maintenance of artwork; and other project-specific expenses of selection and acquisition of public art.
- C. Any unexpended funds shall be carried forward from year to year until expended for the purposes set forth in this section, unless otherwise directed by the Port Commission.

#### **Section 4. Artwork Selection Process.**

- A. When selecting artwork, whether for a capital project of the Port's own undertaking, or when the Port sells unimproved real property, the Port may seek the advice of the arts commission in the jurisdiction where the artwork will be installed. The Port Commission shall request advice from the arts commission in extending calls to artists for submission of artwork and in the evaluation and selection of artwork.
- B. Artists responding to calls for submissions shall provide a detailed sample or rendering of artwork proposed for consideration.
- C. Because potential artwork display areas will be open to all segments of the community and all age groups, artwork shall not include material, which in the sole discretion of the Port Commission is defaming, obscene, or otherwise inappropriate.
- D. Artwork submissions shall be original artwork as opposed to mass-produced, of standard design or limited editions.
- E. The Port Commission may review, evaluate, select or reject any artwork submission in its sole discretion.



## Memorandum

To: Tim Arntzen, Executive Director  
From: Larry Peterson  
Date: April 13, 2021  
Re: Kennewick Historic Waterfront District Master Plan – Commission Consideration Process

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After one year of public outreach involving three cycles of presentation and refinement, in early March MAKERS forwarded the draft Kennewick Historic Waterfront District (KHWD) Master Plan for staff review. The draft plan is in essence the citizens plan as public input was the predominate driver in compiling a vision for the Port's waterfront holdings. Staff has reviewed the document for content, grammar and major policy decisions embedded within the draft plan. Although not yet ready for 'public consumption' the draft document has been shared with our CTUIR partners for their review and comment.

The plan recommends a series of actions based upon that citizen input; and soon the Commission's policy role of balancing the citizens desires with the budget limitations and adherence with overarching Port philosophies will begin. A proposed three step sequence is suggested for Commission consideration and hopefully final approval. Obviously, this sequence can be altered at the Commission's direction as Commission, citizen and CTUIR input is received.

### **Proposed Timelines**

**April 6, 2021:** Draft comments from Port staff returned to MAKERS *(occurred)*;

**April 6, 2021:** Draft KHWD Master Plan forwarded to CTUIR *(occurred)*;

*Staff and MAKERS team work to address Port staff comments*

**May 3, 2011:** MAKERS returns updated draft KHWD Master Plan to staff;

**May 7, 2021:** Draft KHWD Master Plan included in Commission agenda packet;

**May 11, 2021:** MAKERS walk the Commission through the draft document and CTUIR comments received to date are shared with the Commission. Approximately 40 minutes allocated for presentation and 20+ minutes for direct Commission discussion with MAKERS team;

*Staff and MAKERS team work to address initial Commission comments*

**May 21, 2021:** Revised draft KHWD Master Plan included in Commission agenda packet;

**May 25, 2021:** Commission discusses draft document and directs to "queue up" next meeting for formal consideration and adoption;

**May 26, 2021:** Revised draft KHWD Master Plan posted on the Port's website and public outreach/advertisements process begins to encourage citizens to review the document and comment via email and/or at the next Commission Meeting;

**June 4, 2021:** Agenda report, resolution and revised draft KHWD Master Plan included in Commission agenda packet;

**June 8, 2021:** Commission conducts Public Hearing to receive input on the draft master plan and resolution prepared for formal action.





## SWAMPY'S BBQ SAUCE AND EATERY

325 EAST COLUMBIA DRIVE  
KENNEWICK, WA 99336  
(509) 205-9958

Tim Arntzen  
Port of Kennewick  
350 Clover Island Drive, Suite 200  
Kennewick, WA 99336

Dear Mr. Arntzen,

I would like to follow up to my Public Comments made at last weeks' Commission meeting with some questions, thoughts and concerns. First some questions I would like to have someone answer for me, please:

- 1.) Does the Port need to wait for the Master Plan to be completed before having discussions with me regarding the sale of the land parcel I specified? If so why, I am ready now?
- 2.) If there are any zoning issues impacting what Swampy's BBQ has proposed, when could the port planner be prepared to discuss these with the commission to resolve these so I can move forward with my plans?
- 3.) I can't understand why a price cannot be established for the lot I want to buy from the Port. This is not that hard of an appraisal that it requires months to establish the price. Why can't your staff work on this for me? The property mentioned is roughly 1950sf that Swampy's would be able to build on. Do you think that waiting months for an appraisal is acceptable when there is a willing, established party looking to embrace and invest in the vision of the Wine Village? Why is this taking so long?
- 4.) What is the difficulty in establishing an Owner's Association at the Wine Village? If it is being held up by the Vista Field project, does that really compare with the Wine Village and why is Vista Field taking so long? Is it really reasonable to compare the two different locations?

Now for my thoughts and concerns: The Wine Village has a great core of businesses and a great start to an amazing and much needed vision for East Kennewick. I believe that this momentum needs to continue in its growth and would like to move on my proposal as soon as possible. Swampy's proposal will benefit all parties involved, and trickle down to the surrounding businesses. Our business is at the point where it is imperative for us to grow in a timely manner and now is the time.

I am respectfully asking that addressing my proposal can become a priority for the Port. Our actions and proposal strongly support.

The mission of the Port and Columbia Gardens Wine Village. I know the Port's mission is to support and foster economic growth and development. My proposal will accomplish this as well.

SINCERELY,

RON SWANBY, OWNER

SWAMPY'S BBQ SAUCE AND EATERY



## *Memorandum*

To: Port Commission

From: Tim Arntzen, CEO

Date: April 13, 2021

Re: 2021

With this memo I hope to brief the commission on what your CEO and his staff believe their focus will be this year. It will be interesting to see how accurate my predictions will be. As usual, I anticipate unforeseen circumstances and changing conditions along the way.

### **2020 RECAP**

#### COVID-19:

2020 was one of the most unusual years I have experienced both personally and professionally. Most of the uncertainty was related to COVID-19. I am confident its effects will continue to impact us throughout 2021 in some fashion. For those of us who did not endure the Great Depression or WWII, perhaps COVID-19 is our major lifetime event. We have experienced lockdowns, rent relief requests, business closures, community illness, loss of cost-effective labor, increased fear and anxiety, a tremendous uptick in recreation and demand for quality public spaces; and a host of other unforeseen impacts resulting from the pandemic and state and federal mandates.

We currently live in a time where the future is very uncertain. Having said this, given our traditionally conservative approach to budgeting, the port has so far navigated the COVID-19 pandemic well. Staff is healthy, and port finances are sound. And we have responded as best we could to the situation. Most of our port tenants are still with us. We are in a position, as a port, to move forward in a constructive manner in 2021 to accomplish many of the things the public has asked us to do. However, it is good to remember that while functioning through the COVID-19 pandemic, operational challenges did substantially impact progress. Meetings, sometimes with multiple agencies, needed to occur remotely in a somewhat disconnected world rather than collectively around the table where all involved would feel a sense of ownership. And project scheduling and coordination was also impacted by illness and/or lack of material availability, and local, state, and federal requirements.

#### Cyber Event:

In addition to dealing with a global pandemic, the port experienced a cyber-incident which limited access to port computer files for over a month. Both before and after our incident, we learned that similar nefarious cyber-attacks had also targeted and affected schools, hospitals, businesses, media, cities, and state agencies. Indeed, the US government and its agency branches were also hit with significant cyber-attacks. The Port's November 2020 cyber security incident further complicated productivity due to both losing electronic access for a period and then needing to rebuild the computer network. However, having to reestablish the network

while operating was quite challenging, as even the simple task of connecting to a printer had to start from scratch. Although seemingly turned off with the “flick of a switch” the computer network was, of necessity, brought “back to life” in a carefully sequenced manner that rightfully prioritized the finance department first. Thus, planning and development activities basically lost six weeks from mid-November thru December 2020; and the backlog this incident created is still having a ripple effect on activities previously planned to occur January thru March of 2021. The entire impact has yet to be assessed but this ‘incident’ was far greater than a simple inconvenience. Thankfully, we were successful in retrieving nearly all the files and data. What a year!

## 2021 Look Ahead

Looking forward here is what I see:

### KENNEWICK WATERFRONT

#### Waterfront Master Plan:

The Waterfront Master Plan will be finished in early 2021. It will be interesting to see what emerges from that process. Many elements of the master plan will likely be unfunded, so the commission would need to review the plan’s objectives while keeping budget and funding considerations in mind. Outside of the master plan, the port may look forward to the culmination of more than a decade of administrative and planning work as the 1135 project may be ready to bid, with construction planned for late 2021 and into the winter of 2022. As we have witnessed, however, patience and caution with respect to this project will serve us well.

#### Traffic Calming:

Included in the master plan is review of Columbia Drive and SR-397 intersection along with Columbia Drive traffic calming concepts, and evolving plans for City of Kennewick Washington Street enhancements. Traffic calming will have a major positive impact on the wine village, making both sides of the street more pedestrian friendly, and creating additional parking and connectivity across Columbia Drive. These are important elements articulated by Professor Gary Black in the Pattern Language document that was developed via an extensive public process.

#### Wine Village:

Work slated for the wine village is likely to include installation of amenities that benefit our tenants and their guests, such as pond improvements to reduce algae buildup, additional restroom facilities, and shade structures for the wineries. Subject to available staff time, I also anticipate working with the Kiwanis Club and perhaps others to begin planning for the proposed playground area, with anticipated construction (provided feasibility is established and partnering is in place) in 2022.

#### Sales/Leasing Lead Follow Up:

Staff is receiving some interest in acquiring land for development in the wine village area. However, current port policy directs that staff wait for completion of the Waterfront Master Plan and the establishment of land values prior to moving forward. However, decisions will soon need to be made so that staff can address inquiries related to a potential tenant expansion, and

both a new business and a service group proposal.

Washington Street:

I anticipate the port working with the city on planning and implementation of the Washington Street improvements. As Professor Black noted, the connection of Clover Island to downtown is critical and finally linking the two improvement areas will be a major accomplishment. This connection was first identified in the Bridge to Bridge plan many years ago.

Clover Island Marina:

Staff will continue to provide regular maintenance work and respond as needed to the Clover Island Marina. Staff is already working to install rub rails for the fuel dock and guest moorage areas, and to prepare the marina for a busy recreational boating season. And the marina is nearly full—several months sooner than previous years—which is likely a continued result of the COVID-19 pandemic which prompted the highest volume of people visiting, biking, boating, and recreating on Clover Island in the port's history.

## **VISTA FIELD**

Implementation Team:

Now that the port's New Urbanism town center site has basic infrastructure, with parcels soon ready to be sold, I am implementing the team for Vista Field administration (the Team). The Team will respond to nearly all Vista Field related issues, including fielding all inquiries related to the site; property purchases; information requests; property tours; media information; processing of development proposals for commission consideration; additional planning and site revisions, etc. Some of the tasks in support of creation of the Team, including our internal staff reorganizations and associations with contractors, identified below, have been implemented. Some have not. The Team approach and composition is familiar to the commission, so not a lot of information needs to be added here. It will be significant, however as the Team moves from theoretical to action, getting the team in place and ready will permit the commission to move toward the milestone first land sale at the site. As discussed before, the team will be assembled as follows:

Project Manager. The project needs a "Point Person" to meet with realtors, builders and others expressing interest in the project. As of fall 2020, Amber Hanchette is serving as the point of contact related to Vista Field inquiries. This addition to her duties now requires her to spend more time on Vista Field matters. It also limits the time she can spend pursuing her existing duties which include all phases of port operations and maintenance. Thus, this change in Ms. Hanchette's duties created a need for "backfilling" to cover duties transferred to other qualified individuals within the organization. Specifically, Ms. Hanchette has transferred some of her duties to current Maintenance Supervisor Mike Boehnke. This phased transfer began in fall 2020 and is now nearly complete. In administering her Vista Field related tasks, Ms. Hanchette will utilize the services of other staff and contractors as necessary (planning, marketing, administrative services, etc.) and would not be viewed a stand-alone asset assigned solely to Vista Field. Rather she would be a part of a team as described below.

Maintenance Supervisor. Current Maintenance Supervisor, Michael Boehnke has assumed tasks from Ms. Hanchette, effective mid-February 2021.

Maintenance Technician(s): New Hire or Temporary Workers. Because of the overall increase in the number of port-owned/maintained properties (including Vista Field), and further compounded by the loss of the Coyote Ridge labor crews, I have identified a need to hire an additional entry-level maintenance technician or part-time workers. Even though the port will eventually contract out much of the Vista Field maintenance to a private management firm, utilizing funding from the Property Owners Association (POA), staff will still be needed to provide oversight (i.e., ensuring contract compliance) and perform emergency and priority maintenance matters on site, which is in addition to the generally increasing overall maintenance demands from other port development properties.

Project Planner/Coordinator. Larry Peterson, port Director of Planning and Development would serve as the project planner/coordinator for engagement with the port's long-standing architectural advisors, DPZ, as well as Town Architects and Town Engineers (referenced below) related to the development of Vista Field.

Architectural Advisory Team/Town Architect. Lizz Plater-Zyberk (DPZ Founder) and DPZ partner Senen Antonio are currently under contract to fulfill the role of the advisory team. Vista Field will be one of the few projects worldwide which continues to have a DPZ founder as active team members. The port has been unusually successful in keeping these two highly qualified individuals on the Vista Field team; and the benefit of continuing this partnership through at least buildout of Phase I, and continued counsel from these two leaders is priceless. DPZ will also assist with the Request for Proposals (RFP) process for identification of project interest and evaluation of proposals via the collaborative design process.

Property Owner's Association Managers. The port is currently in a contractual relationship with Ben Floyd (planner) and Doris Goldstein (New Urbanism attorney) to provide for set-up of the property owner's association. This is anticipated to be a multi-year task with initial set up and continued monitoring and implementation advice and assistance (through a portion of Phase I).

Project Manager Assistant. Ms. Hanchette will need part time administrative support. There is potential for these duties to be supported internally by the port office assistant/marina manager, likely two days per week.

Office Support. Additional office support will be needed, and this could be accomplished by internal realignment or an outside part-time person.

Town Engineer(s): Gary Hall, Hall Engineering; Sam Nielson, Parametrix. Gary and Sam will provide engineering support for review of private sector projects and integration into established and planned infrastructure. They will bill on an hourly basis.

Construction Management. I will contract with on-call construction management services on an as-needed basis to assist the port in review of construction proposals and to assist with review of construction progress.

Town Architect Protégé. It has been noted by several outside sources that the port seems to rely too heavily on out-of-town contractors. To offset this, I will consider contracting with a local architect who has the ability and desire to learn “New Urbanism”. This person could sit in as the port progresses through the collaborative design process and obtain some on-the-job training as they assist the Team in processing Vista Field development proposals. In a few years, this person could play a more extensive role as needed and as situations warrant. This person would work as an independent contractor, billing on an hourly basis for time expended on each task assigned.

Vista Field Policy Decisions & Operational Mechanics: Prior to the first land sale, the Port Commission needs to set land pricing; revise the port’s realtor commission policy for land sales; establish concise development guidelines for builders; and put in place a rudimentary administrative structure for the owner’s association. These and other related tasks will be time consuming.

Vista Field Corporate Hangars:

This project consists of identifying potential uses, opportunities, cost impacts and funding avenues. This process will include DPZ participation as well as participation of local architects and engineers. It would also dovetail with the COVID-19 Related Economic Impacts Analysis the commission authorized. Staff have been tasked with considering current and near-future COVID-19 economic impacts to Vista Field as well as analyzing what types of uses, if any, the hangars could facilitate, as well as viability/potential for selling or ground leasing as appropriate. And of course, the funding for any hangar-related project, should the commission choose to move towards implementation, would likely require Rural County Capital Funding (RCCF) and working closely with the county as a funding partner. Other funding partners would also be explored/invited to discussions.

It should be noted that the consulting team will focus on “lean” alternatives for the hangars; including uses that would complement the early stages of Vista Field project vibrancy, and which uses might be viable under current COVID-19 conditions. It is anticipated that future potential uses for the hangars will be identified in 2021, with funding and potential implementation taking place in 2022.

The hangar evaluation was recently placed in the hands of a consultant and it is anticipated that a draft report would be circulated in August. The final report could be presented to the port commission (with remote attendance by the consultant) by fall.

Vista Field Construction Closeout/Right of Way Dedication:

Staff is working to close out the \$5,000,000+ contract with Total Site Services which involves dedication and formal acceptance of most roadways to the City of Kennewick and project acceptance by the Commission. This work is underway.



#### Perimeter Fencing/Site Clean-Up:

When the question is asked, “when will the streets be opened for public use?” part of the answer is that the port needs time and staffing to perform some critical housekeeping matters related to a Vista Field “unveiling”. Those matters include cleaning weeds and debris from the site and restricting public access to other portions of the site. This means building fences and installing ecology-blocks to keep the public from driving onto areas that are not yet meant for automobile access. In the past, the Coyote Ridge work crews were ideal candidates for such projects – many fences were built by the work crews in The Willows, Cable Greens, the Wine Village and other places. However, because labor crews are restricted due to COVID-19, the port has lost that 16-person-strong maintenance team. As a result, we are extremely short handed when it comes to providing our previous and expected level of property maintenance activities. To offset this, we have hired several temporary, part time workers; and the port will surely benefit from the return of our Coyote Ridge workforce whenever that becomes possible.

In addition to maximize publicity and interest in the site, care should be taken to open the site to traffic in alignment with the RFP process; because having an extended time between the opening and RFPs risks casting a pall on the site that could create negative impressions and raise questions regarding the site’s potential as a vibrant, exciting development opportunity.

#### A/E, Bid and Construction Management VFDF Building Remodel:

As set forth in the bi-annual budget and work plan, Ms. Hanchette and the maintenance team will be making major repairs and upgrades to the light industrial buildings adjacent to Vista Field.

### **WEST RICHLAND**

#### Racetrack Site:

Because the racetrack property was sold to the City of West Richland, little to no port-led development activity was planned to take place in West Richland during the upcoming year. However, the West Richland mayor has requested that the port provide irrigation water to Alexander Farms for the farm to continue working the land. However, the port is no longer in a landlord/tenant relationship with the farmer. Once the port sold the land to the city, the prerogative to lease to the farmer rested with the city rather than the port. In discussions at the time of the land sale to the city, the port offered additional water rights to the city, however the city only purchased a limited amount of water to assist with the 12 acres for the police station. Therefore, port staff is now reviewing the water rights issue and will brief the commission when more information is available. Port staff could suggest a one-year lease of water rights to the city for the farmer’s use while the larger issue is determined.

### **OAK STREET**

#### Verbena Tenant Matters, Land Auction:

Port Director of Operations and legal counsel have spent countless hours to get the unauthorized holdovers at the Verbena property to vacate the premises. While it appears that the holdovers have no legal right to the property, the Governor’s office has issued directives that protect the holdovers and require additional actions on the part of the port to acquire the property in a condition to sell via the auction process. Thus, this part of the equation has taken

substantially longer than anticipated. Once the land is free from holdovers, it is the intent of the port, by commission directive, to sell the three associated parcels via the auction process. It is anticipated that the property could be ready to auction by late spring, barring additional unforeseen difficulties.

## **RICHLAND**

### Center Parkway Follow-Up:

The commission recently committed to paying the city \$400,000 to assist with the multi-jurisdictional issue related to extending Center Parkway to create passage over the railroad tracks. The port's involvement will be focused on establishing the MOU, offering planning advice, updating commissioners, and reviewing and processing payment requests.

### Columbia Park Trail Follow-Up:

Several years ago, the commission committed to paying the city \$800,000 to assist with the redevelopment of utilities and roadway in the Island View area. That city-led project is now under construction; and the port's involvement will be focused on offering planning advice, updating commissioners, and reviewing and processing payment requests.

## **GENERAL MATTERS**

### COVID-19 Related Economic Impacts Analysis:

I have reviewed the credentials of several economists and have selected a PhD level economist with substantial experience in state, local and regional economies. The consultant is also an esteemed professor at Eastern Washington University.

I anticipate that I will have significant involvement in working this issue with the professor and anticipate it will be a major issue for the port CFO as well. This project consists of the consultant providing a report detailing the past, present and near-term future economic impacts related to the COVID-19 Pandemic. It is understood that no one can accurately predict what the future holds. However, the port CEO hopes that the consultant can offer facts and insights which might provide some realistic prediction related to future actions which may be prudent for this port district to consider as it continues its mission of economic development activities. In short, some analysis related to national, state and regional impacts experienced due to COVID-19 would be appropriate, especially if impacts upon the Port of Kennewick are addressed.

The consulting team may consider the following questions:

- The immediate effects of the virus on local economic activity
- What sectors have been hardest hit, and which are the ones that are thriving?
- State and local government reaction; will income and sales tax revenues plummet? Will demand for rent relief and other programs increase? Will governments cut spending—mostly by cutting employment—or raise taxes?
- Businesses—bankruptcies and lower investment
- Household economic viability
- Ability and willingness to spend

- Vulnerable jobs by sector
- Work from Home (anywhere) Policies and their impact and effectiveness
- What a recovery might look like
- What will determine the shape of the recovery?
- What industries are poised to make the biggest comeback following coronavirus?
- Which industries appear COVID-19 resistant?
- What strategies will help local economies recover more quickly from the COVID-19 pandemic?

For this project, the port CEO has asked the consultant to focus on suggested courses of action the port may undertake to position itself appropriately as it continues its economic development mission.

Together with the economic impact analysis, the port is contracting with a planning firm to offer suggestions for viable reuse/redevelopment/sale/lease of old aircraft hangars at the port's Vista Field town center site. The consultant will familiarize itself with the Vista Hangar Reuse Project and overall Vista Field master plan, to better understand the port's economic development intentions.

The CEO would like to assign the project to the consultant in early spring and it is anticipated that a draft report would be provided by summer 2021, with a final report presented to the port commission (with remote attendance by the consultant) by fall 2021.

#### Governance Audit:

The commission has directed the CEO to prepare a governance audit, which has been formalized as a goal. The process would be divided into two main parts. First, the creation of a quality scope of work (SOW). Second, formulation of an RFQ/RFP; solicitation and production of the work. A third party (consultant) would provide a SOW which would form the basis of an RFQ/RFP. The RFQ/RFP process is where the firm providing the actual project work is selected.

As part of the SOW, the consultant would interview each commissioner, which would allow each commissioner's objectives to be identified and folded into the SOW. Staff could also be interviewed. Once the SOW is formalized, staff will work up an acceptable RFQ/RFP to publicly solicit consultant firms interested in that work. From there, the commission would review qualifications and select the firm best suited to perform the work described in the SOW. While the commission has directed that I fast-track this process, I believe the port should not go so fast that other important projects suffer, and not so fast that transparency and impartiality are jeopardized.

#### IT Analysis; Path Forward:

In the wake of the cyber incident, I have directed our IT consultant to conduct a post event review with other cyber security experts to provide the port with critical information we can use to strengthen security into the future. Port staff and our IT contractors have already enacted additional protocols and security redundancies; and this review will further advise us with respect to emerging technologies and constantly-evolving best practices.

#### COVID-19 Reopening Plan:

I am working with port HR consultant, Ann Allen of Spokane to research and address this issue. Ms. Allen is an attorney and is an adjunct professor at the Gonzaga University School of Law. Ms. Allen will review all past and current port directives as well as the directives of the Governor and health agencies to formulate a best-practice, “Return to Work” reopening plan for the port, with consideration given to both limited and full-return.

#### Water Rights Analysis:

I have contracted with one of the most respected water rights attorneys in the state who, with the assistance of consultant Ben Floyd and port legal counsel Lucinda Luke, will review the status of port water rights. As Mr. Floyd discussed with commissioners last fall, there is still some uncertainty with respect to port water rights associated with the racetrack. Clarification of this issue will benefit the port’s assessment of its water rights inventory, not only at the Racetrack site, but also at the Verbena site in East Kennewick.

#### Finance Department Analysis:

The finance department needs additional assistance and Ms. Allen (referenced above) is assisting in evaluating this matter. It is anticipated that her assessment would be completed by mid-summer and implementation, as needed, would follow according to port policy.

#### Public Records/Information Management/Administrative Systems:

Executive Assistant Ms. Scott is planning to update the 10-year-old public records and information management policy with the assistance of port legal counsel Lucinda Luke for commission consideration. In particular, the process would include revising the process for how requests are received and updating the fee schedule to include fees for electronic documents and media, in accordance with the provisions of RCW 42.56.070 and RCW 42.56.120.

Last year, Lisa Schumacher processed and removed 100 boxes from offsite storage. In 2021, staff will continue working to manage our records inventory to comply with state laws regarding retention and destruction; and begin converting physical files into electronic files in Laserfiche. In addition, Ms. Scott, Ms. Yates, and Ms. Schumacher will work to create Laserfiche workflows and streamline procedures for contract routing, small works & professional rosters, marina and guest moorage forms and applications, expense reports, credit card statements, and facilities work orders.

#### Marketing Strategies:

Marketing activities will include designing and placing property-specific advertising related to selling parcels at Vista Field as that site is readied; and for other land sales, including auctions, as deemed appropriate by commission. Marketing will also involve refreshing the port website; implementing property-specific signage and wayfinding as appropriate; promoting community engagement for Kennewick’s Historic Waterfront; and collaborating on shared endeavors such as the “shop small”, and “shop downtown” campaigns in partnership with the City of Kennewick and the Historic Downtown Kennewick Partnership. Also planned is a five-year update to the port’s history report (the port history/timeline was last compiled for the 100<sup>th</sup> anniversary in 2015).

State Auditor's Office (SAO) Outside Audit Review:

The finance department will be preparing for the upcoming SAO audit, which requires many hours of staff time (and commission involvement).

Quarterly Budget Reports to Commission:

Since 2020, a new task for the finance department has been the preparation of quarterly budget reports for presentation to the commission. This task takes approximately 32 hours of the CFO's time (8 hours each report x 4 reports). As stated above, the finance department requires additional staff resources to continue meeting state and federal legal requirements, and GASB and FASB guidance; and to ensure appropriate oversight for the expanded complexity of the growing number of port projects/properties and the additional contracting, leasing, and land sales activities that will be undertaken at Vista Field. There is no implication that quarterly reporting is responsible for the additional staffing need, but recognition is warranted of the continued and growing burden being placed upon the Finance Department as they strive to ensure clean audits.