

REVISED AGENDA

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

Tuesday, May 12, 2015
2:00 p.m.

- I. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE**
- III. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- IV. CONSENT AGENDA – A**
 - A. Approval of Warrant Register Dated May 8, 2015
- V. CONSENT AGENDA - B**
 - A. Approval of Direct Deposit and ePayments Dated May 4, 2015
 - B. Approval of Warrant Register Dated May 8, 2015
 - C. Approval of Special Joint Commission Minutes dated April 7, 2015
 - D. Approval of Special Commission Minutes dated April 14, 2015
 - E. Approval of Regular Commission Minutes dated April 28, 2015
 - F. Approval of Soulek Inc., Commercial Lease Renewal; Resolution 2015-10
- VI. PRESENTATION**
 - A. Village at Island Harbor, Chris A. Herath (**TIM/LARRY**)
- VII. NEW BUSINESS**
 - A. Bid Award: Clover Island Marina Gates; Resolution 2015-11 (**AMBER**)
 - B. Kennewick UGB Study Group (**TIM**)
 - C. One Year Lease with Solar Mobility LLC; Resolution 2015-12 (**AMBER**)
- VIII. REPORTS, COMMENTS AND DISCUSSION ITEMS**
 - A. Comprehensive Scheme Update (**TOM/LARRY**)
 - B. Vista Field Update (**LARRY**)
 - C. Commissioner Meetings (formal and informal meetings with groups or individuals)
 - D. Non-Scheduled Items
- IX. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- X. EXECUTIVE SESSION, if necessary** *(Ask public if they are staying, and if not, where they can be located if the Executive Session ends early.)*
 - A. Real Estate, per RCW 42.30.110(1)(b) Site Selection
 - B. Real Estate, per RCW 42.30.110(1)(c) Minimum price
 - C. Potential Litigation, per RCW 42.30.110(1)(i) Potential Litigation
- XI. ADJOURNMENT**

PLEASE SILENCE CELL PHONES



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CALL TO ORDER

Commission President Don Barnes and Mayor Steve Young called the Port of Kennewick, City of Kennewick and Kennewick Public Facilities District Special Joint meeting to order at 6:05 p.m. at the Three Rivers Convention Center, 7016 West Grandridge Boulevard, Kennewick, Washington.

The following were present:

Board Members: Don Barnes, President (Co-chaired the meeting)
Skip Novakovich, Vice-President
Thomas Moak, Secretary

Staff Members: Tim Arntzen, Executive Director
Tana Bader Inglima, Director of Governmental Relations & Marketing
Tammy Fine, Director of Finance/Auditor
Amber Hanchette, Director of Real Estate & Operations
Larry Peterson, Director of Planning & Development
Lisa Schumacher, Special Projects Coordinator
Bridgette Scott, Executive Assistant
Kandy Yates, Receptionist

City of Kennewick: Steve Young, Mayor (Co-chaired the meeting)
Don Britain, Mayor Pro Tem
Greg Jones, Councilman
Bob Olsen, Councilman
Paul Parish, Councilman
Bob Parks, Councilman
John Trumbo, Councilman
Marie Mosley, City Manager

Kennewick Public Facilities District: Barbara Johnson, President
John Givens, Treasurer
Kathy Blasdel, Secretary
Calvin Dudney, Board Member
John Neil, Board Member
Corey Pearson, Executive Director, Three Rivers Convention Center

WELCOME

Mr. Barnes stated the Port of Kennewick is pleased to be meeting with our jurisdictional partners tonight and is looking forward to collaborating with our partners on many upcoming community projects.

Mr. Young stated it is exciting when we can come together and focus on planning for the future. Each representative tonight serves the same community, but every partner brings different aspects. While not every feature or aspect will come to fruition, it will be through our collaborative efforts and partnership that much can be implemented over time, with right path forward. At this time, what we have is an overarching vision



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for a vibrant, unique gathering place with mixed use development. We also have a shared passion with our community for the numerous opportunities that exist. Most importantly, we have a shared goal, in wanting to provide direction that will facilitate the development of the entertainment district and Vista Field. Tonight, we take next steps in providing such direction and as Henry Ford stated, “if everyone is moving forward together, then success takes care of itself”.

PLEDGE OF ALLEGIANCE

Ms. Kris Watkins led the Pledge of Allegiance.

PUBLIC COMMENT

No comments were made.

COLUMBIA DRIVE REVITALIZATION PROJECT

A. Introduction: Steve Young, City of Kennewick, and Don Barnes, Port of Kennewick

Mr. Young stated the Columbia Gardens project has been one of the best partnerships the City has ever had. The Port, City and many local businesses have stepped up to create a whole new place for the City of Kennewick. Once completed, the revitalized area will be seen as a great asset, that draws our local community and tourists to the region.

Mr. Barnes stated the Port identified the area as a focal point and acquired 16 acres for redevelopment. In October, 2013, the Port and City entered into Interlocal Agreement (ILA), which created an excellent foundation for a partnership. Mr. Barnes stated the land is for ready for construction to begin and the stage is set for the collaborative partners to see this project come to fruition.

B. General Concepts: Marie Mosley, City of Kennewick, and Tim Arntzen, Port of Kennewick

Ms. Mosely reported the City and Port have been working on Columbia Gardens for several years. Ms. Mosely and Mr. Arntzen updated the audience on the past, current and future of what to expect on Columbia Drive.

Mr. Arntzen stated the Port began acquiring property on Columbia Drive a number of years ago, and over time, the community started to see the vision. Redevelopment takes time and patience and is not an easy task, but the redevelopment will revitalize the area for our community. Mr. Arntzen is proud that we have been able to partner with the City and work with the private sector to create a showcase in our area. To create the vision, the Port purchased the property and removed old buildings, and the City will begin working on a wine effluent pre-treatment waste facility, which is a critical element to the redevelopment.

Ms. Mosely stated on March 17, 2015, the City Council awarded the contract to complete the trail around Duffy's Pond, and the Port Commission signed a new ILA, partnering with the City to light the trail. Ms. Mosely stated the trail is slated for completion in June.

Furthermore, the City has committed to improving the streetscape on Columbia Drive, and Ms. Mosely stated the design is approximately ninety percent complete. The City anticipates going out for bid in June, with construction to begin in August, and the project completed by the end of 2015. Mr. Arntzen stated the design calls for two wine boutique buildings and a joint barrel storage facility,



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and currently, we have eighty five percent of the design completed.

Ms. Mosely stated Port and City staff have been to various venues marketing Columbia Gardens and have received tremendous interest. At this time, the City Public Works department is completing a site report, which will indicate whether the City should construct a wine effluent treatment or a smaller facility that includes dry wells, and hopes to have a decision in May. Once the cost per bottle for treatment is established, the design work can be completed on the preferred option. Ms. Mosely hopes to award a bid for construction in September and complete construction by the end of year, in conjunction with the construction of the Port buildings and the streetscape.

Mr. Arntzen stated the redevelopment on Columbia Drive is a balancing act, however, it takes time to get things right. The City is doing their due diligence by researching two options for the wine effluent treatment facility. The Port and the City have been exploring cost saving options, which has caused a slight delay, but will save tax payer dollars in the long term.

Mr. Novakovich thanked the panel and audience members who have been involved in the revitalization of Columbia Drive since the Urban Design Assistance Team came to the area in 2002. Mr. Novakovich stated, sometimes projects take time, but the time has been worth it and our dreams and visions are now coming to fruition because of the partners at this table.

Mr. Young thanked Mr. Novakovich for being the first leader to have the vision for Columbia Drive and stated we would not be here today without Mr. Novakovich's leadership many years ago.

Mr. Trumbo asked Mr. Arntzen where he envisioned additional wineries being located.

Mr. Arntzen stated the Port is currently working on phase one, which includes the two small wineries and the storage facility. Mr. Arntzen and Ms. Mosely have had discussions regarding phase two; however, both entities are focused on phase one planning and implementation.

Mr. Barnes inquired if there were any old buildings remaining on Columbia Drive Port property.

Mr. Arntzen stated the 211 building has been preserved due to the interesting architectural details inside. Mr. Arntzen hopes the building can be refurbished and be used as a support building.

VISTA FIELD REDEVELOPMENT PROJECT

A. Introduction: Steve Young, City of Kennewick, and Don Barnes, Port of Kennewick, and Barbara Johnson, Kennewick Public Facilities District

Mr. Barnes stated the Vista Field airport started in the 1940's and for the past seventy years, our community and infrastructure has grown around Vista Field. The Port Commission voted to close Vista Field on December 31, 2013 and prepare the area for redevelopment. Mr. Barnes stated the Port has done the following: hired Duany, Plater-Zyberk (DPZ) to design a new town center, engaged the public in the planning process, and created strong collaborative partnerships with the City of Kennewick, the Kennewick Public Facilities District (KPF) and other jurisdictional partners. The Port can succeed in creating the community's vision for Vista Field with the help from our jurisdictional partners, the private sector and developers. Mr. Barnes is looking forward to working



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with the City and the KPFD to create a new town center.

Mr. Young briefed the audience on the history of the Kennewick Public Facilities District and the construction of the Three Rivers Convention Center. The Convention Center now has an attached hotel, which is slated to open this spring, and the KPFD is looking to expand, however, the KPFD cannot go out for new debt without the City's permission. The City, Port and the KPFD have a lot of influence on how the area will be developed and we all want to go down the same path.

Ms. Johnson welcomed everyone to the Three Rivers Convention Center and stated, if you are a citizen of Kennewick, this is your building. The KPFD Board is made up of five volunteers who are appointed by the City Council. The Three Rivers Convention Center is a perfect example of tourism driven economic development, where meeting attendees spend money at local hotels and restaurants and other establishments. This provides money for local businesses in the form of visitor spending, and provides money to each of the cities, in the form of sales, lodging, and admission taxes. The benefit to local tax payers is that visitor spending keeps our taxes lower and provides clean, safe and beautiful communities that we live in. Ms. Johnson stated, it has been reported that the KPFD and City's master plan fundamentally differs from the vista vision, which Ms. Johnson does not believe to be true, but in fact, our visions are in alignment. For the vista vision to be successful, an expansion of the Convention Center is vital to help support new restaurants and retail that will want to become part of the vision. For the Convention Center, we need the success of the vista vision, in order to continue attracting large conventions, bigger Broadway shows, and to help our community create a vibrant entertainment district. We would like to create a better Broadway experience for our performing arts patrons and ask that you not let us lose sight, as we work through this collective community vision, as we work through implementation details. Ms. Johnson stated many of the KPFD Board members participated in the November Charrette and heard that connectivity would be vital to the success of Vista Field. The KPFD architects from ALSC, have collectively met with DPZ and collaborated on ways to address the connectivity and Ms. Johnson believes that meaningful solutions will be presented this evening.

B. General Concepts: Marie Mosley, City of Kennewick, and Tim Arntzen, Port of Kennewick, and Corey Pearson, Kennewick Public Facilities District

Mr. Arntzen stated DPZ will give the audience a brief report from the November Charrette, where the community voiced their opinion on the general concept for the area. Mr. Arntzen offered his viewpoint and stated that there are differences between the Vista Field Draft plan and the KPFD plan, which include the idea of connectivity and incorporating numerous slow moving streets that are auto and pedestrian friendly, which bring vitality to the area. Mr. Arntzen stated the recent focus of discussion has been the small lane that lies between the Convention Center and the Toyota Center. Mr. Arntzen believes there has been some misconceptions regarding the small lane, which was meant to be a slow moving lane that would create access to the new town center from the entertainment district. Mr. Arntzen stated, it has never been the position of the Port that the community had to choose between a small lane and the expansion of the Convention Center, they can both exist. Mr. Arntzen introduced Mr. Mehaffy of DPZ, to present the community's plan from the Charrette.

Mr. Mehaffy thanked Mr. Arntzen and echoed Ms. Johnson's comments, stating there has been collaboration between the entities, beginning with the Charrette. Mr. Mehaffy stated it will take a lot of heavy lifting on everyone's part to make Vista Field a great plan and join it up with the Convention



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Center and the community.

Mr. Mehaffy reported the outcome from the Charrette was that the community desired a walkable, mixed community, something special that provides an amenity that the area does not currently have. DPZ feels very privileged and excited to be a part of the redevelopment and it is a very rare opportunity to find a blank canvas in the middle of a bustling area. Mr. Mehaffy is delighted this meeting is taking place and DPZ is looking forward to the ongoing collaboration with the Port's jurisdictional partners. The Port stated DPZ's mission for the redevelopment was to think outside the box and be innovative and creative, but the design should be feasible and achievable. Mr. Mehaffy stated some ideas may not come to fruition, including the small lane behind the Convention Center, ultimately, it will be up to the community to decide what is built.

Mr. Peterson stated the Port is currently working on a land exchange which is crucial and will connect the entire corridor. Mr. Peterson explained DPZ was tasked to work with surrounding properties and most of the area surrounding Vista Field is government owned. Although DPZ was working on Port property, the citizens emphasized that there should be some consideration and communication with the surrounding properties owners, to tie the area together. The Draft Charrette Report contains "what if" ideas generated from the community, it is not the final plan adopted by the Port, but a report that identifies an opportunity.

Mr. Mehaffy stated DPZ's role is to propose ideas to our partners and see if we can collaboratively resolve any issues. Mr. Mehaffy explained the Vista Field area is larger in comparison to the small walkable blocks of Portland and downtown Seattle Waterfront.

Mr. Mehaffy stated there are possibilities to create connectivity from the Convention Center to Vista Field, which would benefit surrounding properties. Mr. Mehaffy presented examples of the small lane running between the Convention Center and the Toyota Center, connecting Vista Field to the entertainment district. Mr. Mehaffy offered the MODA Center in Portland as an example of an area that is empty whenever there aren't events being held, and to bring vitality to the area, one might consider bringing in a fine grade mix of elements such as pedestrian and slow moving vehicle traffic. Seattle and Spokane have created a walkable downtown area, which allows for both cars and pedestrians, to keep people in the area. Mr. Mehaffy emphasized these are only possibilities, not an adopted plan.

Mr. Qamar reiterated Mr. Mehaffy's comments, the focus on the small lane is an example of how connectivity is important, both at a local level and the larger scale of the entire district. Downtown Seattle and Portland are similar in scale to Vista Field, however, Portland's block size is much smaller, and is a very walkable, bike-able and drivable community. The vision for Vista Field is to create small, intimate streets by opening the gateways and allowing the connectivity.

Mr. Pearson reported in 2009, the KPFD enlisted Sage Johnson to analyze the Convention Center after hearing from patrons that the Convention Center needed to expand. Sage Johnson examined what we have and what we need and concluded the Convention Center needed a hotel and more space. The Springhill Suites construction is nearly complete and the hotel will open this spring. In 2013, the KPFD brought forth a ballot measure to expand the Convention Center, which did not pass. The



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KPFD reevaluated the expansion with the City and looked at issues that could be solved. Mr. Pearson stated the Convention Center and Toyota Center draw a very diverse group of people, approximately 600,000 visitors a year visit the campus. The KPFD contracted with ALSC to solve the issues with the expansion and create a viable campus. Architect Rustin Hall came up with a theater concept in the exhibit hall, to house the Windermere Theater. Mr. Pearson stated the KPFD looked at many different options, but ultimately, the Convention Center needs to maintain its flexibility and keep the Toyota Center viable for the next ten years. Mr. Pearson stated as the KPFD looks at the next phase, Mr. Hall, through some collaboration, has plans for short and long term plans that meet the needs of the Convention Center and the Toyota Center.

Mr. Hall thanked Mr. Mehaffy and Mr. Qamar and appreciates their expertise and applauds DPZ for involving the community in the redevelopment. Mr. Rustin has enjoyed meeting with Mr. Mehaffy and Mr. Qamar and discussing options for the Convention Center and Vista Field. Mr. Hall stated his mission is to determine how to maximize the expansion and practical use of the Convention Center and extend the life of Toyota Center, and he is looking to the future and making sure the KPFD master plan dovetails nicely with the Port's master plan. Mr. Rustin presented the plans for the KPFD plan for the Convention Center expansion and Toyota Center food court. Mr. Rustin stated, when looking at the at Convention Center environment, it was important to make it economically viable and create certain fundamental space. Mr. Rustin stated, the expanded lobby, ballroom and shared space will be a way of optimizing the space and experience. Eventually, the Toyota Center will relocate, which will allow for the connectivity identical to the Port's plan. Mr. Rustin stated in looking at the goals of the DPZ plan, we are looking at how we can make create an area that is more pedestrian friendly and create a link that will take us into the building, through the building, and out the other side to connect to Vista Field. Mr. Rustin stated the opportunity allows for additional access to the Toyota Center that does not currently exist and will improve some issues in the interim for the existing arena. Mr. Rustin feels the suggested slow lane will inhibit, from a functional standpoint, a continual indoor space which is more viable and create a grander business plan, for short and long term business operation. Mr. Rustin stated, we have been looking at an open air thoroughfare in lieu of the slow moving lane, which will create a connection and additional uses. Mr. Rustin believes the long term vision is the same and when the Convention Center expands, and the arena is relocated, we will then have the desired connectivity. It will be critical to have the space, activity and progress, which is an important first step to developing the area. Mr. Rustin stated these are ideas, not solutions, and hopes we can continue to collaborate.

Mr. Arntzen does not believe the two plans are an identical match, as DPZ's plan shows a slow moving lane, whereas ALSC's plan is an open lobby. And although at some point the Toyota Center will be relocated, he does not anticipate it will be anytime soon. Mr. Arntzen appreciates Mr. Hall's comments.

Mr. Young confirmed there was not a replacement for the Toyota Center in Mr. Hall's design plan. Mr. Hall stated in the original master plan which was completed over a year ago, determined a new location for the Toyota Center which is located further north.



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JOINT ELECTED DISCUSSIONS

Mr. Novakovich inquired of Mr. Hall when the expansion plans were drawn.

Mr. Hall stated the plans were started in 2011, once the KPFD received the economic report. The report stated there was a tremendous economic advantage in expanding the facility. There were a few initial studies, and the KPFD asked ALSC to look at expanding the entertainment district/campus, in context of the campus.

Mr. Novakovich stated at that time, Vista Field was an operating airport, and inquired if Mr. Hall were to look at the area today, if he would do anything different.

Mr. Hall stated, the Convention Center was built from a 1990's master plan, which was more introverted. When ALSC took the new master plan into consideration, they realized things have changed and determined the front door needed to move. The initial long term plan includes three entrance points, one that would face the new development and obscure the loading dock.

Mr. Novakovich believes both projects need to fly in a productive manner to benefit the community long term. Mr. Novakovich is in favor of both projects and now the task at hand is determining how we get there.

Mr. Jones appreciates all the presentations and believes we can all work together. Mr. Jones stated the key word he heard was connectivity and embracing Vista Field. However, we cannot forget affordability and developer interest, a project people want to develop. If the City builds the infrastructure, and the City and the Port work together with the KPFD on ideas, but ultimately, a developer needs to buy in on the ideas and project. Mr. Jones is concerned about the amount of focus on the small lane in front of the facility. Although it was stated that these are just ideas, Mr. Jones would like to see what is actually happening on Vista Field. He believes the plans can work together and hopes that the architects can continue meeting and come up with a plan that coincides with the expansion of the Convention Center. Mr. Jones is concerned about the conflicted cross hatch area and asked the architects to further explain the necessity.

Mr. Mehaffy stated ultimately, we were trying to spark discussion and feedback regarding the lane, however, the broader question is what the lane represents in terms of planning and how we approach it. The bigger issue is connectivity, the walkability of the area and vibrancy the development brings. The ultimate goal is the economic competitiveness for the area and what it can offer and contribute to the area. The economics of the development is fundamental and needs to be affordable and attractive to the market and developers. Mr. Mehaffy hopes this will be the start of a longer conversation and longer collaboration and has enjoyed working with Mr. Hall and Ms. Johnson.

Mr. Hall stated every time we meet, we generate more ideas and we are getting closer to an end result.

Mr. Qamar added we understand what the elected officials are asking for and what the established economic parameters are. Mr. Qamar further stated as we continue to meet, we will be able to come up with some great solutions.

Mr. Barnes stated, it is my understanding that when creating a master plan, the street layout comes first, and then the streetscape and finally the design. Mr. Barnes believes we should solidify the street layout and



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then move forward with the other amenities. Mr. Barnes agrees that feasibility is key and Mr. Jones comments are spot on. The Port has stressed the need for collaborative partnerships with our jurisdictional partners and then embrace partnerships with the private sector for the redevelopment. We would be remiss if we did not discuss the feasibility of the expansion of Convention Center and look at the economics of the addition. Ultimately, the public will decide if the expansion is feasible and that should be considered.

Mr. Moak stated one of the things that this area lacks as compared to our competition is connectivity. The Yakima Convention Center is located on the main thoroughfare, the same is true for the Wenatchee Convention Center and the Spokane Convention Center. Our Convention Center is not located on the main street and connectivity is problematic, as there isn't an easy access to the facility. The vision for Vista Field is to create small blocks, which will stimulate the economy and the desirability on the part of private sector. Mr. Moak would like to create additional opportunities to connect the projects and facilities and make this area a large community asset, and we should look at tying the projects together in a better way. Mr. Moak is concerned about linking the Toyota Center to the Convention Center at this time, because eventually the Toyota Center will be relocated. Mr. Moak stated as a region, maybe we should consider a replacement for the Toyota Center in a new location. Mr. Moak believes there are similarities between Mr. Hall's and Mr. Mehaffy's renderings but there is a need for more vehicular transportation. Mr. Moak is unsure if massing the buildings together is the best way of connecting the developments together and believes the ability to pass through in a variety of ways is important. Mr. Moak hopes we can bridge the gaps and come together on an idea and move forward.

Mr. Britain stated as elected officials, both entities have a financial responsibility to tax payers to make the best use of our funds and the Convention Center is a financial driver for region and expansion is essential. Mr. Britain is frustrated that we keep discussing this small lane, which could potentially sidetrack the expansion. The discussion surrounding the small lane could ultimately affect development of over 100 acres. Mr. Britain is glad we are meeting today and discussing both plans in public because he believes there is a misconception that the City is not willing to alter parts of the KPFD master plan. Mr. Britain stated there is a compromise, as we have seen tonight, and further discussion is warranted and he believes the City is not turning their back on Vista Field. Mr. Britain expressed his appreciation for the public's attendance and stated there is cooperation between all the entities.

Mr. Parish believes the elected officials and the architects will be able to come up with a plan that will work for the entities and the public. Mr. Parish stated putting in the infrastructure for the area is key to bringing in developers. Senator Sharon Brown is working to get an LRF program formed, which the City utilized to develop the Southridge area. The new amenities will generate tax revenue and the State will return funds which help pay the debt service on the infrastructure. Mr. Parish stated the area infrastructure needs to be completed to bring in developers. Mr. Parish believes the entities need to work with Senator Brown to get the LRF program through legislation, so we can begin the project.

Mr. Novakovich stated both projects are essential to long term economic development for the Tri-Cities and he wants to see them succeed. Mr. Novakovich believes partnerships are essential and since this is a Special Joint Meeting for the Port of Kennewick, he would like to entertain a motion.

Motion: Commissioner Novakovich moved to authorize the Executive Director to remove the small street which passes between the Convention Center and the Toyota Center from the Draft Master Plan;



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Commissioner Barnes seconded.

Discussion:

Mr. Moak would not be favor of the motion until we have heard the public's opinion. The Port plan is a community driven plan, and although I understand where Mr. Novakovich is coming from, I am reluctant to move forward until we hear from the public.

Mr. Barnes requested to table the motion until after the Public Comment section and revisit the motion once the public comment period has ended.

Mr. Novakovich is in favor of table-ling the motion and voting after the public comment section of tonight's meeting.

The Port of Kennewick Commission is in consensus of table-ling the motion until after the completion of the public comment section.

Mr. Dudney thanked the Port Commission and City Council for meeting and talking openly about ideas and plans. Mr. Dudney stated the projects are work in progress and will require more partners in the private sector to make the plans work. Mr. Dudney believes we should be celebrating what we are doing and this is a really exciting time. We have a great map to move forward to create a really cool area for the Tri-Cities. Mr. Dudney is excited to be a part of the redevelopment and has full confidence that we will be able to create a stellar plan, which the community will embrace, bring economic development to the area and establish a true entertainment district. Mr. Dudney is excited for the future and commended for the audience coming out and listening to the presentations tonight.

Mr. Givens requested a joint meeting with the elected officials and decision makers, who are involved in the expansion and redevelopment process and stated, he is pleased tonight's meeting happened. Mr. Givens is excited about the opportunities that will come forward through partnerships and stated he has seen some real leadership tonight by our elected officials and appreciates it.

Ms. Johnson thanked the City and Port for allowing this meeting to take place and believes there has been a lot of misinformation reported and hopes this meeting has helped clear up any misconceptions. Ms. Johnson stated Willamette Boulevard, which is considered a small lane, runs behind the mall and connects Columbia Center Boulevard to Gage Road. This small lane is heavily used and for public safety, speed bumps were installed to slow drivers down. Ms. Johnson stated it is our intention to work to create a public connection and is in our best interest as well to create the connection. Ms. Johnson stated for Convention Center goes to have an opportunity to go to restaurants and enjoy the community is of vital interest to the KPF, the City and the Port. Ms. Johnson thanked everyone for their consideration in terms of how we move forward with this process.

RECESS

Mr. Young called for a recess at 8:19 p.m. for approximately eight minutes.

Mr. Young reconvened the meeting at 8:26 p.m.



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Mr. Young stated the rules for public comment.

PUBLIC COMMENT

Jim Wade, 1813 South Rainier Place, Kennewick. Mr. Wade inquired why the Vista Field Master Plan was not presented and asked who the partners were on the redevelopment. Mr. Wade further inquired if there were any commitments from wineries or developers for Columbia Gardens or Vista Field.

Mr. Young stated Mr. Peterson presented a slide illustrating which government entities own property around Vista Field. If Mr. Wade is interested in the photo, he should contact Mr. Peterson.

Mr. Arntzen stated the Port has received a few letters of interest from wineries for Columbia Gardens, and some informal interest as well. Regarding Vista Field, it is too early in the redevelopment process.

Justin Raffa, 1214 Gowan Avenue, Richland. Mr. Raffa participated in the Port's Charrette process in November and was thrilled with the openness and transparency that ensued. The process was widely advertised and open to the public, who themselves took the lead in generating ideas. The public attendees challenged the Port and their contractors, DPZ, to think beyond boundaries and focus on a vision of what could be, not just on Port owned land, but the entire surrounding area. This led to a number of exciting and unexpected outcomes, including a walkable town center, that is not dominated by cars, but does not exclude them at the same time. As well as a stage one Performing Arts Center (PAC), that could potentially utilize some existing materials. Many elements from the Draft Charrette Report seemed to have been well received while some items need further attention, like the road alignment that has been discussed tonight and overhead power. This seems to be an appropriate time to discuss those elements before a master plan is adopted. The Arts Center Task Force, a 501(c) 3b non-profit organization, of which Mr. Raffa is a member of, is working to refine the vision for a stage one facility in Vista Field. Exploratory conversations have already begun between Port staff and KPFD staff. We the public, are looking to you as appointed leaders and elected officials to work together to ensure that Vista Field's redevelopment, future expansion of the Convention Center and Toyota Center and that the entire entertainment district become one unified and complimentary vision. Whatever is decided, please make sure that the key principal of urbanism remains part of the vision. Smaller streets with numerous interconnections, mixed use, something different other than Clearwater Avenue or Queensgate Drive or Road 68 or most anywhere else in the Tri-Cities. This is such an exciting time for the future of our community and we look to you to help guide this process, especially why we are simultaneously we are working to rebrand our Tri-Cities.

Gary Chamberlin, 3413 Eastlake Drive, West Richland. Mr. Chamberlin stated after listening to the presentations tonight, it seems that we would benefit if we had some kind of access or connectivity to the area. We need the passageway so people can visualize the opportunities that are available and what will come. When you arrive at Vista Field, most of your time is spent trying to find your way out, as with most blocks and it was only when the Port got involved, did we become serious with the plan. Mr. Chamberlin, a real estate appraiser and developer, stated the Northwest Passage and entrance should be created first, and then buildings and layouts should be addressed afterwards.

C. Mark Smith, 1433 Chardonnay Drive, Richland. Mr. Smith has spent forty years as an economic developer at the state and federal level and looks at these projects as economic developer. The jobs and tax



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base that will come from Vista Field and expanded tax base that will come with the expansion of the Convention Center is tremendous. Mr. Smith stated, he came here tonight to reprimand you for arguing about a small road, which as far as I am concerned is fine. Mr. Smith stated this issue is only the first of many other issues over the next twenty years, and advised the panel to become accustomed with issues such as this. Mr. Smith stated what should be discussed tonight is all parties talking about entering into a formal Memorandum of Understanding (MOU), which binds all the parties to work cooperatively to implement this project. That MOU should then lead to a more formal Interlocal Agreement (ILA) and then to the creation of implementing authority, like a public development authority, that is charged with coordinating the efforts of all the cooperating partners to implement this project. Mr. Smith stated there is only one chance to get Vista Field right, and if you succeed, everybody wins. But if you walk out of here tonight without agreeing to take future action, in terms of moving this project forward, rather than taking things off the table, there will be consequences. The public and the media will lose confidence in the project, investors will lose confidence, bond issues will fail, current political, potential major tenants will seek other solutions and some elected officials will lose their jobs.

Kirk Williamson, 527 North Reed, Kennewick. Mr. Williamson votes and pay taxes or fees in each of the eight different public entities that hold land around Vista Field. Mr. Williamson congratulated each entity for being here, but ultimately, all eight of the public entities need to engage in some kind of formal process to move forward together. Mr. Williamson offered the opinion that if Mr. Hall and Mr. Mehaffy were seated next to each other tonight, the issue would have been resolved by now.

Derrick Stricker, 3709 West Yelm, Kennewick. Mr. Stricker would like to mirror the previous comments, on behalf of the young professionals. Vista Field is a platform for the next generation for all of Tri-Cities, not just Kennewick. The fact that we are all here tonight, speaking publically about the Convention Center and Vista Field, where a lot of focus has been on the alley, is only the first of many issues that we will come up against. The redevelopment will take a long time and many issues will arise, but the perception of what the City, the community and the young professionals see, is what can be true and what can be, for the future of Tri-Cities. How it is handled, whatever the outcome, will show the community that there is hope, optimism, and we can all work together to give us something better than we started with.

Kris Watkins, 218 Hillview Drive, Richland. Ms. Watkins started out her career as a project manager, working on developing 600 acres in Canyon Lakes, so she understands the dynamics of a master plan. As CEO for Visit Tri-Cities, she has sold an enormous amount of conventions and it is critical and important to meet the needs of the meeting planner. Although the building is public, if you build it right, people will come and the current configuration shows the need for the road to be eliminated. In order to have everything under one roof and have the connectivity, it is crucial to move forward. Ms. Watkins believes the architects have the ability to come up with a solution. A convention center needs to be designed for the meeting planner, who is making the decision of where the convention is held. Successful convention centers throughout the nation have everything located one building, which is crucial. Ms. Watkins stated, to walk across the street to a convention does not work. Ms. Watkins commends everyone for coming together, and stated if you build the right convention center, we will be able to sell it, and it will only help Vista Field and the entire Tri-Cities region.

Heather Breyemer, 5607 Taft Drive, Pasco. Ms. Breyemer, Director of Sales for the Convention Center, spoke on behalf of her clients regarding the Convention Center expansion. Ms. Breyemeyer shared comments



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from Ms. Vicky Scharlau, Executive Director of the Washington Association of Wine Grape Growers, who hold their annual trade show at the Convention Center with approximately 2000 attendees. They would like to grow the trade show, however; our vendors are very unhappy with being on the Toyota Center floor, which is referred to as the “icy outback”. The vendors pay a substantial amount of money to be part of the convention and travel from around the country to attend the trade show. The vendors want an equal opportunity to network with the attendees with one seamless attached building. It is the only solution to this problem. They are thrilled with the hotel addition, but now need an exhibit hall and a connection to the Toyota Center. They would like to continue holding their future current trade shows in the Tri-Cities, but other facilities across the state are courting them, and can fit their needs. Ms. Breymeyer stated these comments are heard on a daily basis and the expansion is imperative to the Convention Center’s success.

Ginger Wireman, 2435 Michael Avenue, Richland. Ms. Wireman was pleased to see the DPZ drawings for the small lane, which had not been shown before. Ms. Wireman stated for those that have missed anything on the Vista Field Charrette or the Vista Vision Task Force meetings, all the documents are available on the Port of Kennewick’s website. Ms. Wireman presented slides of concert venues and conventions centers around the Northwest. Ms. Wireman stated the convention center parking lot is very dangerous and is hard to maneuver and believes if designed correctly, a small lane would be great. Ms. Wireman disagrees that walking 400 yards is a long walk, the convention goer wants more breaks and the ability to go more directions.

Matt Boehnke, 6004 West 6th Avenue, Kennewick. Thank you Mayor Young and council members, the Port of Kennewick Commissioners and Staff, and Madam Chairman and members of the Facilities Board, for giving me this opportunity to speak as a concerned citizen on what has been called a “once-in-a lifetime” opportunity. Mr. Boehnke is in favor of supporting the voice of the public. Mr. Boehnke feels we all want an overall concept to stimulate business and diversity. One that works to integrate public transportation, efficiencies of renewable energy, and allows for citizens of all ages to support and enjoy this area. Mr. Boehnke supports the mixed-use areas of the charrette plan that allows for diversity within this limited area, while supporting new startup and long established businesses. Mr. Boehnke also supports an idea of redevelopment and improvements to update the Toyota Center and create a Performing Arts Center opportunity for supporting our increasingly vast growing arts community. We need this type of diverse plan that works with a central vision to galvanize this development, and we have one working with the Tri-City Development Council and the Young Professionals Tri-Cities. We need to continue to support a Vista Field development plan that empowers businesses, energizes its people, and engages all aspects of these ideas to connect this piece of land to allow us to grow bigger and better than anyone of us can realize.

Chris Barnes, 2616 South Kellogg Street. Ms. Barnes is a lifelong resident of the Tri-Cities and stated Tri-Citians are accustomed to disappointment, and settling for less than best. Ms. Barnes learned about DPZ during the November Charrette and stated, they have planned over 350 urban centers. Ms. Barnes stated DPZ can create an area that has the cool factor, which will keep our kids here, and create a place where people will want to hang out. Vista Field is what the young millennials will want to be around, the nightlife that will go beyond 8:00 p.m., it is a place where the older generation, who should not be driving their cars, will be able to walk to local amenities. Ms. Barnes agrees that every place needs a convention center, but feels convention centers are single purpose, a tourist based economic development, which is fine for the convention goers, but Ms. Barnes would like to see something for those that live here and pay taxes here, and is tired of settling for second best.



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Christine Weitz, 11184 Dodd Road, Burbank. Ms. Weitz is a realtor in the Tri-Cities and took part in the Charrette process with DPZ. Ms. Weitz stated when Mr. Mehaffy presented the options for the small lane, she was excited, because it would bring something new and cool to the Tri-Cities and provide something to do in the area, versus driving to Portland or Seattle. Ms. Weitz stated, in regards to the small lane that runs through Columbia Mall, when the theater was open, traffic was not an issue, however, nothing has been constructed in that area, which allows for more traffic issues. To create an environment that has activity would allow for the coolness factor and when the enclosed space for the Convention Center was presented, it was reminiscent of the TRAC in Pasco, even with open feel. Ms. Weitz believes it is important to have the flow and moving components that will maximize the Tri Cities weather. Ms. Weitz inquired where the money for the expansion will be coming from.

Kathy Moore, 3517 Hanstead Street, Richland. Ms. Moore is the new general manager of the Spring Hill Suites Hotel next door. Ms. Moore stated, when building something new, things change, there are always issues and Ms. Moore appreciates Mr. Novakovich's motion earlier. Ms. Moore stated the options look nice, but the idea of street running by the entrance of the hotel and the Convention Center is not a very good idea, and she is not in favor of the small lane. Ms. Moore appreciates the idea of table-ing the small lane, and working on a plan that would better suit everyone.

No further comments were made.

Mr. Barnes restated the tabled motion:

Motion: Commissioner Novakovich moved to authorize the Executive Director to remove the small street which passes between the Convention Center and the Toyota Center from the Draft Master Plan; Commissioner Barnes seconded.

Discussion:

Mr. Moak appreciates the comments and will vote in favor of the motion. There is so much more to do, where the City, the Port and the KFPD need to be working together to try to get the development up. If this small lane is driving a wedge between us, then Mr. Moak believes we should withdraw that wedge. The redevelopment is so much bigger than any of us and it is important for the Port that the Convention Center expands. To bring people to this area is tremendously important and if withdrawing the lane is what it takes for the City and the KFPD to put together a plan, then Mr. Moak believes the Port should withdraw the lane and concentrate on creating a cool area at Vista Field. Furthermore, we need to work with our partners: KID, KSD, the City, KFPD, and everyone else in the private sector, to make this development happen. Mr. Moak is happy to have the public comment and believes it is important to get the public view and appreciates deferring the motion.

Mr. Novakovich appreciates Mr. Moak's comments.

Mr. Barnes is in favor of removing the small lane with the understanding that Grandridge Boulevard will remain open.

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



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CONCLUDING REMARKS

Ms. Johnson thanked everyone for coming out this evening, and thanked the Port Commission and the City Council for working through the process. We have a long term vision and to have a community that comes out and tells us what they want to see for the future of the Tri-Cities is great. Ms. Johnson believes the entities can come together to create the wow factor the public is looking for. Ms. Johnson appreciates hearing from everyone, and believes the KPFD will continue to work and support the vista vision, and it is in our best interest to do so and will do everything we can to make that happen.

Mr. Young appreciates everyone coming out tonight and stated, over the past few weeks the City Council has heard and read there was a lack of communication and cooperation. Mr. Young has met with Ms. Mosely and Mr. Arntzen and was unaware there was an issue. Mr. Young stated, this is not a complex problem that can't be fixed. As Mr. Smith stated, this is just one issue we need to work through and with two architect firms working on it, he believes the problem is easily solved. Mr. Young stated he has heard there is a need for an MOU for Vista Field, believes it is a great idea. Mr. Young thanked the KPFD and the Port Commission for their contribution and stated he is excited for the future of Columbia Drive, Duffy's Pond, and Vista Field. These projects will be a great opportunity for future generations to enjoy with their families.

Mr. Barnes thanked the City Council, KPFD Board and the members of the public who sat through the meeting and provided comments. The Port's expectations and standards are very high and we hope to achieve something truly special at Vista Field that is long lasting, for years to come. The Port values the work that can be achieved through collaboration and understand this project will take time and persistence. As Mr. Stricker stated, there will be some discomfort along the way, but as long as there is open, honest, communication and collaboration, and keeping the community's best interest in mind, we will succeed in creating the vision.

ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned at 9:07 p.m.

APPROVED:

PORT of KENNEWICK BOARD of COMMISSIONERS

Don Barnes, President

Skip Novakovich, Vice President

Thomas Moak, Secretary



SPECIAL COMMISSION MEETING

PORT OF KENNEWICK

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APRIL 14, 2015 MINUTES

CALL TO ORDER

Commission President Don Barnes called the Special Commission meeting to order at 4:00 p.m. at the Tri-Cities Visitor and Convention Bureau, 7130 West Grandridge Boulevard, Kennewick, Washington.

The following were present:

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

Staff Members: Tim Arntzen, Executive Director
Tana Bader Inglima, Director of Governmental Relations & Marketing
Mike Boehnke, Facilities Director
Tammy Fine, Director of Finance/Auditor
Amber Hanchette, Director of Real Estate & Operations
Nick Kooiker, Assistant Auditor
Mike Melia, Maintenance Technician
Larry Peterson, Director of Planning & Development
Jennifer Roach, Accounting Administrative Assistant
Lisa Schumacher, Special Projects Coordinator
Bridgette Scott, Executive Assistant
Kandy Yates, Receptionist
Lucinda Luke, Port Counsel

WELCOME, ACKNOWLEDGEMENTS, REMARKS

Don Barnes, Port President

REMARKS

Gary Burke, Board of Trustees Chairman Confederated Tribes of the Umatilla Indian Reservation

JURISDICTIONAL COMMENTS

- Mayor Steve Young, City of Kennewick
- Mayor Dave Rose, City of Richland
- Mayor Brent Gerry, City of West Richland
- Mayor Lloyd Carnahan, City of Benton City
- Commission Chairman, Jerome Delvin, Benton County

PROJECTS, PARTNERS, PEOPLE

Tim Arntzen, Port Executive Director



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REMARKS

The Honorable Jay Inslee, Governor

REMARKS AND TOAST

Carl Adrian, on behalf of TRIDEC, Visit Tri-Cities, and Tri-Cities Regional Chamber of Commerce

ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned at 6:00 p.m.

APPROVED:

**PORT of KENNEWICK
BOARD of COMMISSIONERS**

Don Barnes, President

Skip Novakovich, Vice President

Thomas Moak, Secretary



REGULAR COMMISSION MEETING

PORT OF KENNEWICK

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CALL TO ORDER

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

The following were present:

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

Staff Members: Tim Arntzen, Executive Director
Tana Bader Inglima, Director of Governmental Relations & Marketing
Tammy Fine, Director of Finance/Auditor
Amber Hanchette, Director of Real Estate and Operations
Nick Kooiker, Assistant Auditor
Larry Peterson, Director of Planning and Development
Lisa Schumacher, Special Projects Coordinator
Bridgette Scott, Executive Assistant
Lucinda Luke, Port Counsel

PLEDGE OF ALLEGIANCE

Mr. Matt Boehnke led the Pledge of Allegiance.

PUBLIC COMMENT

No comments were made.

CONSENT AGENDA - A

The consent agenda A consisted of the following:

A. Approval of Warrant Registers Dated April 14, 2015

Expense Fund Voucher Number 36765 for a grand total of \$9,111.64

MOTION: *Commissioner Moak moved for approval of Consent Agenda - A, as presented;*

Mr. Novakovich stated on April 12, 2011, he disclosed that Esprit, the company he and his wife owns, has a contract with PS Media to print the Port's newsletter. Esprit does not get paid directly from the Port; they get paid from PS Media. Consent Agenda A is a payment to PS Media and in the interest of any kind of perception that there could be a conflict, he would like to recuse himself from any action on this item.

Commissioner Barnes seconded. With no further discussion, All in favor 2:0, 1 Recuse. Motion carried.



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CONSENT AGENDA - B

The consent agenda consisted of the following:

- A. *Approval of Direct Deposit and E-Payments Dated April 2, 2015***
Direct Deposit totaling \$55,734.88
- B. *Approval of Warrant Registers Dated April 14, 2015***
Expense Fund Voucher Numbers 36730 through 36764 and 36766 through 36780 for a grand total of \$180,914.30
- C. *Approval of Direct Deposit and E-Payments Dated April 17, 2015***
Direct Deposit totaling \$45,217.73
- D. *Approval of Warrant Registers Dated April 14, 2015***
Expense Fund Voucher Numbers 36781 through 36830 for a grand total of \$265,579.32
- E. *Approval of Regular Commission Meeting Minutes dated March 24, 2015***
- F. *Approval of Special Joint Commission Meeting Minutes dated March 27, 2015***

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

PRESENTATIONS

A. *Audit Presentation FYE 2013, Stacy Short and Ralph Conner, CliftonLarsonAllen*

Ms. Fine introduced Stacy Short and Ralph Conner from CliftonLarsonAllen and stated Ms. Short and Mr. Conner, along with Chuck St. Mary, worked on the 2013 Annual Financial Report and Ms. Short will be presenting the report. Ms. Fine stated there is a lot of work that goes into the compilation process for the Annual Financial Report, but there is also a tremendous amount of work that goes into the auditing section as well. Ms. Fine explained CliftonLarsonAllen is required to complete a financial analysis of the Port's Financial Report to see if there are any unusual trends. The auditors go through a very detailed internal control questionnaire process and look for internal control weaknesses, which they are required to report on. They auditors request information such as; check history, invoices, vouchers, payments, policies and procedures, and detailed warrants, and look for items that are not disclosed and potential litigation. Ms. Fine stated the auditors gather the information and drill it down to the detail level and verify the facts. Ms. Fine indicated CliftonLarsonAllen did a very thorough job and were easy to work with.

Ms. Short reviewed the Audit Process:

- Plan the audit using a risk based approach;
- Gain an understanding of the business and current environment;
- Receive input from management and others, including the Commission regarding the business environment and risks;
- Perform walk through procedures of internal controls;
- Perform substantive procedures.

Ms. Short stated the 2013 Audit results included is issuance of two opinions:

1. Financial Statements: Unmodified Opinion;
2. Independent Auditors' Report on Internal Control over Financial Reporting and Compliance: Unmodified Opinion.



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The Auditors indicated several communication requirements to the Commission included;

1. Accounting policies;
2. Significant estimates (useful lives of assets);
3. Financial Statement Disclosures;
4. Corrected or uncorrected misstatements;
5. Management representation;
6. No disagreements with management.

Ms. Short stated there was a short delay regarding the cash flow statement process, due to the new cost allocation plan, and one-time special item for Vista Field closure, which was implemented in 2013. Ms. Short expressed her pleasure working with Ms. Fine and stated the team worked well together.

Ms. Fine indicated the decrease in net assets is \$1.4 million, which is due to the closure of Vista Field and disposal of operation, as seen on page eight of the report. The Port decommissioned the airport and removed \$1.8 million of capital assets and expensed as a special item. The Benton County Assessor assessed the fair market value at \$15 million for the property, which is not reflected in this report. Ms. Fine stated it will be accounted over time in the gain and sale of assets when the property is developed or land is sold, if that is the direction the Commission wishes to take. Ms. Fine further stated, general accepted accounting principles requires the asset to be capitalized at cost, which is why there is a decrease in assets. Furthermore, the overall decrease in cash of just under \$1.8 million due to planned construction projects. The Port allowed for \$3.5 million in capital assets for construction or purchases. As a government entity, Ms. Fine indicated we have a negative cash flow of just over \$600 thousand from operations, however, we are stimulating the economy and it is not uncommon for ports to have a negative cash flow and stated the Ports of Pasco just under \$4 million, Benton \$3 million, and Walla Walla \$3.4 million all have a negative cash flow. Ms. Fine further stated, out of thirty-one ports she reviewed, only four showed a profit: Ports of Kalama (Marine Terminal), Tacoma, Kingston and Klickitat.

Mr. Barnes confirmed the decrease in cash was due to planned capital construction projects and operating losses are typical for governments, as a profit would indicate competing with the private sector.

Ms. Fine stated 2013 was the first year implementing the cost allocation method, which more accurately reported the Port's financial picture, by taking land sale costs and other non-operating costs and identifying them better. Ms. Fine further stated, the 2014 total operating and non-operating expenses totaled approximately \$2.8 million, whereas the Commission budgeted \$3.2 million so we were under budget by \$360 thousand which is a very good indication of our finances.

Ms. Short stated the report did not have comparable data from 2012 due to the new accounting practices and reported that for the 2014 audit, a complete report will be prepared earlier and show comparisons against 2013.



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Mr. Novakovich appreciated the detail and explanations, and stated the report is available to the public and represents the Port's financial ability to manage the public asset. Mr. Novakovich congratulated Ms. Fine on 19 years of clean audits and thanked CliftonLarsonAllen.

Mr. Barnes inquired if annual operating revenues include land sales.

Ms. Short stated land sales are not included in the annual operating revenues; gains and losses on disposition of assets is a non-operating activity.

Mr. Barnes stated the land that the Port holds on the books, such as; Columbia Drive, West Richland Raceway and Vista Field is earmarked for possible future sale to the private sector as part of the redevelopment effort. Mr. Barnes said the public may raise concerns that the Port is operating at an annual loss, however, the reported figure does not take into consideration the proceeds for future land sales is designated for redevelopment, which will likely to be marketed to the private sector. Mr. Barnes stated the Port will receive the proceeds for many years.

Mr. Barnes commended Ms. Fine and staff for 19 years clean audits. This displays the Port's stewardship of public resources is taken very seriously.

B. Clover Island 1135 Project Update, Karen Zelch, United States Army Corps of Engineers (USACE)

Ms. Bader Inglima stated the United States Army Corps of Engineers (USACE) is working through the process of the 1135 program, to improve the shoreline, from the main stem, to the north side, from the lighthouse to far corner closest to the Cable Bridge. Ms. Bader Inglima reported that she, Mr. Arntzen, and Mr. Peterson met with the Corps project team in Walla Walla recently, to narrow down the best environmental options for Clover Island. Ms. Bader Inglima is pleased with the enthusiasm shown for the project and stated the team has been great to work with. Ms. Bader Inglima introduced Ms. Karen Zelch from the United States Army Corps of Engineers (USACE) to present an update on the 1135 project.

Ms. Zelch thanked Ms. Bader Inglima and stated the project is authorized under section 1135 of the Water Resources Development Act, and the primary purpose of the 1135 projects, is to restore the degraded environment as a result of the McNary Dam construction. The Corps have determined there is substantial benefit to repair the environment for the fish and riparian species located around the Clover Island shoreline. We are currently in phase one, project feasibility, where the team reviews the environmental issues and find alternatives to improve the environment. Ms. Zelch stated once the detailed project report is approved, the Port is eligible for money for phase two, design and construction fees.

Ms. Zelch stated the Corps and Port signed a feasibility cost share agreement in March 2015, where the federal government has spent \$100,000 and is now in the 50/50 cost share phase (\$350,000). The Port has contributed \$108,000 in cash and \$41,000 in kind, for participation in the project. The team is reviewing alternatives for the project and the next step will be to determine the highest environmental benefits for the lowest cost. Ms. Zelch hopes to have a tentative final projection by this summer.



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Ms. Zelch anticipates phase one to be completed by May of 2016, and for phase two, the Corps and Port would sign new feasibility cost share agreement, to continue with the project. The split is 75% federal dollars and a 25% Port contribution. At this time the Port is currently in queue for phase two, construction funding.

Ms. Zelch stated the Corps has determined five different areas that are in need of repair, and each area is significantly different and will be treated differently. The next step is to evaluate the alternatives and make recommendations for the project. Ms. Zelch stated the next Commission update will include the tentative detailed project.

Ms. Bader Inglima stated, in addition, 10% of the 1135 budget can be used for recreation. There has been discussion with the Corps about extending the trail and adding lighting, as we have done along the West Causeway, where allowed, to accommodate the habitat restoration. Ms. Bader Inglima stated the public will be able to see the environmental benefits around the shoreline and have better access to river. As Ms. Zelch stated, phase two of the project will focus on design and construction, and the Corps does not believe the cost assessment will reach \$5 million. Ms. Bader Inglima is pleased with the costing efforts and believes the Port can do what needs to be done on a majority of the island. This is a tremendous project for the island and will have significant benefits for the public and the environment. The result of the improvements on Clover Island in conjunction with the improved shoreline, will open up additional development opportunities.

Mr. Barnes stated the update is very encouraging and thanked Ms. Zelch.

Mr. Novakovich thanked Ms. Zelch and Ms. Bader Inglima and stated it is nice to see partnerships at work and is very supportive of continuing with phase two.

Mr. Moak asked how the alternatives for the cost and treatment are determined.

Ms. Zelch stated under the National Environmental Policy Act there needs to be a range of alternatives, which is based on what the restoration will look like in 50 years. There are three options the Corps can take: do nothing, do everything and a variation based on the area. The alternatives are determined by cost and the benefit for habitat. Ms. Zelch stated the Corps will have four or five alternatives to choose from.

Mr. Moak inquired if the Corps or the Port makes the final determination.

Ms. Zelch stated the Corps is required to choose the alternative with highest benefit for the least cost, which is the preferred alternative. If the Port would like to choose a different area to fix, the Port can take on an additional sponsor preferred selection, which may end up taking extra time, because the Corps are required to get approval at headquarter (Washington D.C.) level. The process is lengthy, and could take up to six to eight months.

Mr. Moak asked if the Port wanted to choose a more expensive alternative, if it would it be at our expense.



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Ms. Zelch stated if the alternative was approved, the Port may or may not have to cover the costs; however, if the alternative was outside the scope, the Port would bear the financial responsibility.

Mr. Arntzen has been participating in the review process and is impressed with the efficiency of the Corps and their ability to keep the cost low.

Ms. Bader Inglima has had conversations with the Recreation Conservation Office which offers state grants for benches and kiosks and other items that are not funded through 1135. Ms. Bader Inglima is looking to leverage the Port's resources for the local community by utilizing both state and federal dollars.

REPORTS, COMMENTS AND DISCUSSION ITEMS

A. *Time Capsule Update*

Ms. Schumacher reported during the 100th reception, the Port invited the public to contribute a small item for a time capsule. The deadline to submit items for the time capsule will be June 30, 2015, as it takes eight weeks for shipping and fabrication. The time capsule be secured inside the Clover Island Lighthouse during a ceremony in the fall, where the Port will be dedicating the following island improvements: new boat launch, Village at Island Harbor, the shoreline, and the heritage artwork. Ms. Schumacher gave a brief presentation on the items the Port has received to date for the time capsule.

Ms. Bader Inglima was delighted by the creativity and variety of contributions. She spoke with several people who will be donating items and if the Commission has ideas, please let staff know.

Mr. Novakovich inquired if Congressman Dan Newhouse's comments celebrating the Port's 100th anniversary would be included in the time capsule.

Ms. Bader Inglima will contact his office for an official transcription.

B. *Vista Field Update*

Mr. Peterson reported the Vista Vision Task Force (V. V. T. F.) will be concluding their business on May 18, 2015 and make a formal recommendation to the Commission regarding various elements from the Draft Charrette Report and suggestions for what should be included in the Final Master Plan. The V. V. T. F. indicated they will include the rationale behind the recommendations, exclusions, and modifications. The V. V. T. F. hopes to focus on policy items for Vista Field, and staff will be crafting a series of questions for the V. V. T. F. to consider to assist the Commission in their decisions.

Mr. Peterson presented a memo for review which includes of a variety of tasks necessary to complete and implement the master plan, for the site to be shovel ready.

Mr. Peterson stated the first issue that needs to be addressed is closing the comment period on the Draft Charrette Report and suggests May 31, 2015 as the deadline. Once the comment period is over, DPZ will then take the comments received by the public and our partners, and direction from the Commission, along with technical input, to create a Draft Master Plan.



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Mr. Peterson stated other items that need to be addressed are the following:

- Master Plan- design and development details: many design and/or development issues briefly touched on during the Charrette process require further refinement prior to issuance of a Draft Master Plan;
- Development Mechanics: consideration regarding implementation, marketing, operations and long term maintenance must occur to help assure the redevelopment process flows and the identified vision becomes a reality;
- Items involving off-site coordination: off-site connectivity matters must be resolved prior to forwarding the master plan for Commission consideration. Resolution could range from formal agreements to pursuing various connections to excluding all off-site elements. Knowing the likelihood whether off-site connections will or won't occur will help direct the final version of the plan. Understanding how vehicles and people will reach the boundary of Vista Field is crucial in determining how they will move through and across the redevelopment site;
- Entitlement issues: the New Urbanism theme of the master plan would require substantial deviations from the City's current suburban oriented development standards. Road Standards and the philosophical understanding of the function and purpose of public right-of-ways must be changed at City regulatory level.

Mr. Peterson stated the Draft Master Plan should look similar to Draft Charrette Report, based on the public comments we have received to date. The Draft Master Plan should be completed by September, and then the Port will open the report up for public comment from the community, local agencies and organizations, and our partners. The Port will conduct several public hearings and formally adopt the Vista Field Master Plan. It is Mr. Peterson's hope that the inclusion of the Vista Field Master Plan will be incorporated into the Comprehensive Plan, which is slated for completion in December of 2015. The final step will be to present the Master Plan to the City of Kennewick and request the City adopt the plan as a Comp Plan Sub-Area Plan.

Mr. Moak inquired if staff is still receiving comments for the Draft Charrette Report.

Mr. Peterson stated we have received two comments in the last month. If the Commission finds May 31, 2015, acceptable to close the comment period, we will make a final request for comments.

Mr. Novakovich believes it is imperative to the timeline to move forward and agrees with the May 31, 2015 date.

Mr. Moak inquired how staff evaluates the public comments regarding the Draft Charrette Report.

Mr. Peterson stated when the public comment period closes, he will provide any received comments since August 2014, for Commission review. Most of the comments received to date focus on creating an urban core, however, we have received a few conflicting comments, such as creating a drag strip, those will be acknowledged and set aside. There are comments regarding issues like the underground versus overhead power and finding a site for a Performing Arts



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Center. Staff will look for a trend in the comments and make a judgment call if it is a design features. Once the comment period closes, they will be posted on the website.

Mr. Moak asked if a water feature of some sort may be considered, since the Draft Charrette Report did not address the idea.

Mr. Peterson stated a water feature will be factored in at the close of the comment period. The concept of water is one of the items staff will be looking to the Commission for direction. Mr. Peterson stated some of the public comments asked for the inclusion of water. Lean development and initial development is a substantial cost and what we have learned from our research, grand features are expensive and they either have trouble or fail. If the Commission feels strongly about an item that was not discussed during the Charrette, they can add it to the Draft Master Plan.

Mr. Arntzen has previously asked the Commission to allow DPZ, staff, and V. V. T. F. to work through the details, but now is the time for the Commission to step in. Mr. Arntzen asked the Commission to review the Draft Charrette Report and look for items that may have been missed or items you think should be included in the redevelopment. Mr. Arntzen stated water was addressed in the Pattern Language Document (Access to Water, no. 6) and indicated the Commission would need to consider what kind water feature they would like to incorporate.

Mr. Moak asked Mr. Peterson if all of the items listed on the memo will be addressed before the end of 2015.

Mr. Peterson stated most of the items will be addressed, but not all items will be resolved. There are several items that will need to be addressed prior to completing the Draft Master Plan, such as design theme, performing arts center, phasing of development and financing. Mr. Peterson further stated, off site connectivity needs to be resolved in the next two months; key connections like Northwest Boulevard need to be addressed, as the area is controlled by other public entities. DPZ may have to modify the internal road network if Northwest Boulevard does not come to fruition. Mr. Peterson explained all entitlement issues need to be resolved now.

Mr. Novakovich expressed his appreciation for Mr. Peterson's memo and stated it is well thought out and a concise plan to move forward.

Mr. Arntzen stated he is anticipating the question of when Vista Field will be ready, and those comments may be positive or negative. Vista Field redevelopment is a very large project, and with that, comes questions, but the process needs to be managed properly, or there will be a perception that Vista Field has died before it even started. Mr. Arntzen cautioned the Commission to keep in mind a start date for construction, because the deliverables to the public is important. As Mr. Peterson emphasized, there is a lot to take care of before we are shovel ready and if the Port pursues other meaningful projects, there could be a delay to the redevelopment. Mr. Arntzen stated we should remember to do a thorough job, but not prolong the process, so public does not forget what we are trying to accomplish.



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Mr. Barnes stated the list clearly illustrates the magnitude and effort for the redevelopment. The decisions that need to be made and finalized will build the foundation for redevelopment and prepare us for construction. Mr. Barnes commended Mr. Peterson for his effort and work and stated the magnitude of this redevelopment is a grand undertaking. Mr. Barnes asked if it is the Commission's desire to close the public comment on the Draft Charrette Report on May 31, 2015.

The Commission is in consensus to close the public comment period on the Draft Charrette Report on May 31, 2015.

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

Commissioners reported on their respective committee meetings.

Mr. Moak gave a brief update on the Comprehensive Scheme meetings that were held at various locations throughout the community over the past eight weeks.

D. Non-Scheduled Items

1. Mr. Barnes submitted a Memo to Ms. Scott stating he has no conflict of interest with the Port and filed the F1 and C1 statements with the Public Disclosure Committee.

Mr. Barnes thanked staff for their hard work on the 100th Anniversary Reception. He was thoroughly impressed with the effort and organization that went into the event and stated it is hard to convey how appreciative he is of the outstanding effort.

2. Mr. Novakovich stated the Port has a small staff with huge projects to undertake and the Commission should be very cognizant of not creating any unnecessary work that may deter them from the major projects. It is important to focus on the good things the Port is doing to benefit our community and move forward.

Mr. Novakovich stated, at the Joint Meeting with the CTUIR, there was discussion about a sculpture of Sacajawea that was available for sale. Ms. Conner, Director of the Tamastlikt Cultural Institute has viewed the sculpture and is supportive of the artwork. Mr. Novakovich presented a smaller scale version of the Sacajawea sculpture for the Commission to view. Mr. Novakovich would like to see how the Port can move forward to acquire the artwork.

3. Ms. Scott reported each Commissioner has turned in their required F1 Statements and their conflict statements; a copy of the the documents are on record at the Port office.

Ms. Scott advised the Commission that the Annual State of the Ports luncheon is scheduled for September 23, 2015.

Ms. Scott presented a thank you note from Washington State Senator, Sharon Brown, congratulating the Port on their 100th Anniversary for the time capsule.

4. Ms. Bader Inglima thanked the Commission for the comments regarding the 100th Anniversary reception and stated it was a true staff effort in which everyone was involved.



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5. Mr. Arntzen thanked Ms. Fine and her staff for the tremendous work on the audit and stated the Port has had 19 years of clean audits and it is because of the hard work of our CFO and staff.

Mr. Arntzen thanked Ms. Bader Inglima for her work on the 100th anniversary, and stated everyone on the team is standout and he appreciates the staff.

Mr. Arntzen stated he visited Seabrook, Washington, which is the development Laurence Qamar is overseeing. Seabrook is located on the Pacific Coast beach and is reminiscent of Rosemary Beach in Florida. Seabrook is a nice community that touts New Urbanism, with the narrow paths and streets, is pedestrian friendly, and has a Pacific Northwest flair. The community is very successful and was named 2013's Idea Town in *Sunset Magazine*. Mr. Arntzen stated New Urbanism can be done in Northwest and for Grey's Harbor, a depressed county, it was easy for the County Commissioners to approve because of the economic development.

6. Ms. Luke commended to staff for a job well done on the 100th Anniversary Reception. Ms. Luke congratulated Ms. Fine on her 19 years of clean audits, it is a great accomplishment and many large ports never see a clean audit.
7. Mr. Peterson stated the fact that the Port has had a clean history and transparency has helped substantially with Vista Field. The community has expressed the Port is an organization with a history of developing Clover Island and does not have financial issues, which speaks to our credibility. Two decades of clean audits while undertaking a variety of large projects has built our credibility.

Mr. Peterson stated in 2015, the Port has four major projects slated for construction: the Village at Island Harbor, the interior remodel of 415 North Quay (Bruker), the reconstruction of the boat ramp and the Columbia Drive redevelopment, while finishing up the Vista Field Master Plan and completing the draft master plan for the Tri-City Raceway property.

8. Ms. Fine thanked the entire staff for helping with financials and stated everyone aids in the financial report whether it is submitting expense reimbursements or allocating time properly through Insuperity. Ms. Fine has a budget to actual finance highlight available and stated keep in mind, we budget the previous October;
 - Operating expenses are over budget by 2%; however, the Port is over by 2% due to annual expenses such as insurance and dues that have been paid for the 2015 year;
 - Total expenditures are under budget by \$359,000;
 - Current Revenues have exceeded budget by \$146,000.

Ms. Fine stated the Washington State Auditor's office reported the following:

- 2013: 253 findings, one port received a financial and federal finding;
- 2014: 289 findings, seven of which were ports, with four financial and federal findings;
- 2015: 52 findings to date, twenty-nine have received financial and federal findings.



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PUBLIC COMMENTS

Chuck Eaton, 2309 Davison Avenue, Richland. Mr. Eaton expressed his delight with the Port's 100th Anniversary celebration and stated, he and his wife had a wonderful time. Mr. Eaton stated the Port will be receiving many more comments regarding the Vista Field Draft Charrette Report. A local organization has been researching and meeting throughout the community, in order to ensure that the communities comments are supported by the facts and the people involved. To make comment as an individual is straightforward, to make comments as an organization takes time. Mr. Eaton believes the May 31, 2015 deadline is reasonable and these organizations will make deadline. Mr. Eaton stated there Zelchgood deal of information on its way.

No further comments were made.

COMMISSIONER COMMENTS

No comments were made.

Mr. Barnes anticipates the Executive Session will last approximately 35 minutes, for Potential Litigation, per RCW 42.30.110(1)(i) and Real Estate (minimum price), per RCW 42.30.110(1)(c) with no action anticipated. Mr. Barnes asked the public to notify Port staff if they will return after the executive session.

Mr. Barnes recessed the Regular Commission Meeting at 3:51 p.m. for approximately 10 minutes.

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

- A. Potential Litigation, per RCW 42.30.110(1)(i)**
- B. Real Estate, (minimum price) per RCW 42.30.110(1)(c)**

Mr. Barnes convened the meeting into Executive Session at 4:01 p.m. for approximately 35 minutes.

Mr. Arntzen exited chambers at 4:36 p.m. and extended session for 15 minutes.

Mr. Barnes adjourned the Executive Session at 4:48 p.m.

Mr. Barnes reconvened the meeting into General Session at 4:48 p.m.

ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned at 4:49 p.m.



REGULAR COMMISSION MEETING

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APPROVED:

**PORT of KENNEWICK
BOARD of COMMISSIONERS**

Don Barnes, President

Skip Novakovich, Vice President

Thomas Moak, Secretary



AGENDA REPORT

TO: Port Commission

FROM: Amber Hanchette, Director of Operations & Real Estate

MEETING DATE: May 12, 2015

AGENDA ITEM: Resolution 2015-10; to approve a month to month lease renewal at Oak Street Industrial Park

I. REFERENCE(S): Resolution 2015-10 and Lease Agreement

II. FISCAL IMPACT: Additional operational income of \$30,278.40 for first twelve months.

III. DISCUSSION: Soulek Inc. (doing business as Washington Surplus) is locally owned and operated by Adam Soulek. Soulek Inc. has been a port tenant for 2 years starting in development building C at the Oak Street Industrial Park. They quickly outgrew the space and then moved to development building A, Suite A130 in 2014. Lessee has 2 FTE employees. Parameters of the negotiated lease are:

- Lease 5,475 square feet consisting of one space in Development Building A for office, warehouse and distribution services;
- Month to month lease, commencing May 1, 2015.
- Lessee responsible for all separately metered utilities plus garbage service; excluding common area lighting, landscape and parking.
- Monthly rent for the premises is \$2,190.00 plus leasehold tax effective May 1, 2015.
- Monthly rent for bullpen space is \$300.00 plus leasehold tax effective May 1, 2015
- According to Port of Kennewick Policies and Procedures, POK-ED-001, 3.1.2(b). Leases in which the monthly rental amount exceeds \$2,000 per month shall be submitted to the Commission for approval.

IV. STAFF RECOMMENDATION:

Approve the month to month lease renewal as negotiated, effective May 1, 2015.

V. ACTION REQUESTED OF COMMISSION:

***Motion:** I move approval of Resolution 2015-10 approving a month to month lease renewal with Adam Soulek and Soulek Inc (DBA: Washington Surplus) and authorizing the Executive Director to execute the contract.*

PORT OF KENNEWICK

Resolution No. 2015-10

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK APPROVING A LEASE RENEWAL AGREEMENT WITH SOULEK INC.

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

WHEREAS, a month to month lease renewal with Soulek Inc. (known as Washington Surplus) effective May 1, 2015, has been negotiated by Port staff; and

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

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

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

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of Commissioners of the Port of Kennewick hereby approve a month to month lease renewal with Soulek Inc. (known as Washington Surplus) as presented and authorizes the Port's Executive Director to execute all documents and agreements on behalf of the Port to complete the transaction as specified above.

ADOPTED by the Board of Commissioners of the Port of Kennewick on the 12th day of May, 2015.

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

By:

DON BARNES, *President*

By:

SKIP NOVAKOVICH, *Vice President*

By:

THOMAS MOAK, *Secretary*

COMMERCIAL PROPERTY LEASE AGREEMENT

**BETWEEN
PORT OF KENNEWICK,
LANDLORD**

AND

**SOULEK, INC.,
TENANT**

**OAK STREET INDUSTRIAL PARK
DEVELOPMENT BUILDING A**

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Landlord hereby leases to Tenant and Tenant hereby leases and accepts from Landlord the premises hereinafter described on the terms and conditions set forth in this Lease Agreement, hereinafter called "this **Lease**".

The following Basic Lease Provisions are hereby incorporated herewith as part of this Lease:

- 4 -

K. Base Monthly Rent Calculation: Suite A130 \$.40/sq. ft. 5,475 sq. ft. \$2,190.00
Bullpen #7 \$.05/sq. ft. 6,000 sq. ft. \$ 300.00

L. Base Monthly Rent (not including LET): **\$ 2,490.00**

M. Leasehold Tax (LET): Current Washington State Leasehold Tax shall be added to Base Rent. Current effective rate is 12.84%.

N. **Total Monthly Rent** (includes LET): **\$ 2,809.72**

O. Monthly Utilities: See Article 7 of Lease.

P. Rent Due Date: The Lease Commencement Date and the first day of each month thereafter.

Q. Financial Security: Check all that apply:

 X \$ 3,259.72 deposit (ON FILE);

 Corporate surety bond;

 X Personal Guaranty as set forth in Exhibit B;

 Other financial security: (Describe) _____

R. Landlord's Address for Notices and Rent Payments:

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

S. Tenant's Address for Notices:

SOULEK, INC
P.O. Box 3276
Pasco, WA 99301

S. Exhibits: Exhibit "A" Legal Description of Premises

Exhibit "B" Personal Guaranty Form

ARTICLE 1

PREMISES

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

ARTICLE 2

USE OF PREMISES

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

Landlord shall give Tenant and its authorized representatives, the nonexclusive and reasonable right to use the Common Areas in Tenant's ordinary course of business, provided however, that such use is consistent with the purposes of the Common Areas. The term "Common Areas" means areas and facilities outside the Premises that are provided for the general use and convenience of Tenant and of other Tenants and their respective authorized representatives, guests, and invitees. Common Areas include, without limitation, landscaped areas, public lobbies and hallways, sidewalks, loading areas, parking areas, service corridors and restrooms. Tenant shall not store any items or objects in Common Areas except as authorized in writing by Landlord.

ARTICLE 3

TERM

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

This Lease shall be on a month-to-month tenancy. Either party may terminate this Lease by giving the other party a minimum of twenty (20) days written notice prior to the end of the month.

ARTICLE 4

RENT

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

(a) Late Fee.

If any sums payable by Tenant to Landlord under this Lease are not received by the fifteenth (15th) day of the month in which they are due, Tenant shall pay Landlord an additional amount for the cost of collecting and handling such late payment as a late fee

in an amount equal to the greater of (i) Fifty Dollars (\$50.00), or (ii) five percent (5%) of the overdue amount.

(b) Interest.

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

(c) Non-Sufficient Funds (NSF).

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

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

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

ARTICLE 5 **FINANCIAL SECURITY**

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

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

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

ARTICLE 6

TAXES & ASSESSMENTS

6.1 Property Taxes.

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

6.2 Personal Property Taxes

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

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

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

ARTICLE 7

UTILITIES

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

Electricity Meters Assigned to Tenant: **250752 (Benton PUD)**

Water Meters Assigned to Tenant: **74521089 (City of Kennewick)**

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

ARTICLE 8

INSURANCE

8.1 Insurance

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

(a) Commercial General Liability Insurance

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

(b) Statutory Workers' Compensation

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

(c) Automobile Liability Insurance

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

(d) Property Insurance

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

8.2 Requirements

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

8.3 Mutual Waiver of Subrogation

Each party hereby waives, and each party shall cause their respective property insurance policy or policies to include a waiver of such carrier's entire right of recovery (i.e., subrogation) against the other party, and the officers, directors, agents, representatives, employees, successors and assigns of the other party, for all claims which are covered or would be covered by the property insurance required to be carried hereunder or which is actually carried by the waiving party.

8.4 Destruction or Condemnation.

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

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

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

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

claim against the condemning authority for moving expenses or damages resulting from interruption in its business, provided that in no event shall Tenant's claim reduce Landlord's award.

ARTICLE 9

ACCEPTANCE AND CARE OF PREMISES

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

ARTICLE 10

ALTERATIONS AND IMPROVEMENTS

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

ARTICLE 11

ACCIDENTS AND INDEMNIFICATION

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

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

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

ARTICLE 12 **COMPLIANCE WITH LAWS**

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

ARTICLE 13 **MAINTENANCE**

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

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

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

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

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

ARTICLE 14 **LANDLORD'S ACCESS**

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

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

ARTICLE 15
SIGNS AND ADVERTISING

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

ARTICLE 16
WASTE AND UNLAWFUL USE

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

ARTICLE 17
SUCCESSORS

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

ARTICLE 18
HAZARDOUS MATERIALS

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

ARTICLE 19
ASSIGNMENT AND SUBLETTING

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

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

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

ARTICLE 20

SURRENDER OF POSSESSION

20.1 Surrender

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

20.2 Removal of Property

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

20.3 Holding Over

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

ARTICLE 21

NOTICES

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

ARTICLE 22

LIENS AND ENCUMBRANCES

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

ARTICLE 23

LANDLORD'S TERMINATION RIGHT

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

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

ARTICLE 24

DEFAULT AND REMEDIES

24.1 Default

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

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

24.2 Remedies.

(a) Re-entry and Termination

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

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

(b) Express Termination Required

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

(c) Damages

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

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

(d) Definitions

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

(e) No Waiver

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

24.3 Interest

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

ARTICLE 25

ATTORNEYS' FEES AND COSTS

If the Tenant requests an amendment to this Lease Agreement or other revision to the Landlord's standardized terms or forms, Tenant agrees that it shall pay the Landlord for all costs and legal fees incurred by the Landlord as the result of request. If either party hereto shall file any action or bring any proceeding against the other party arising out of this Lease or for the declaration of any rights hereunder, the prevailing party therein shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party as determined by the court. If either party ("**secondary party**") without its fault is made a party to litigation instituted by or against the other party (the "**primary party**"), the primary party shall pay to the secondary party all costs and expenses, including reasonable attorneys' fees, incurred by the secondary party in connection therewith.

ARTICLE 26

MISCELLANEOUS

26.1 Miscellaneous Provisions

The following miscellaneous provisions shall apply to this Lease:

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

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

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

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

LANDLORD:

PORT OF KENNEWICK,
a Washington municipal corporation

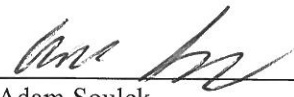
By: _____
Name: Tim Arntzen
Its: Executive Director

Approved as to form:

By: _____
Name: Lucinda J. Luke
Its: Legal Counsel, Port of Kennewick/Date

TENANT:

SOULEK, INC.

By:  _____
Name: Adam Soulek
Its: President

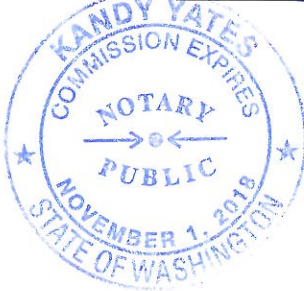
STATE OF WASHINGTON

ss.

COUNTY OF BENTON

I certify that I know or have satisfactory evidence that ADAM SOULEK is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the President of Soulek Inc, a Washington corporation, to be the free and voluntary act of such municipal corporation for the uses and purposes mentioned in the instrument.

Dated this 5 day of May, 2015.



Kandy Yates

(Signature of Notary)

Kandy Yates

(Legibly Print or Stamp Name of Notary)

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

My appointment expires November 1, 2018

STATE OF WASHINGTON

ss.

COUNTY OF BENTON

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

Dated this _____ day of _____, 201 .

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State/Commonwealth of _____, residing at _____

My appointment expires _____

EXHIBIT "A"

LEGAL DESCRIPTION

PTN: 106804000001004

Section 6 Township 8 Range 30 Quarter SE; THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 30 EAST, W.M., BENTON COUNTY, WASHINGTON, LYING NORTH

COMMONLY KNOWN AS

Also known as, Oak Street Industrial Development Park, Development Building A
1426 E. 3rd Avenue, Suite A130, Kennewick, WA 99336

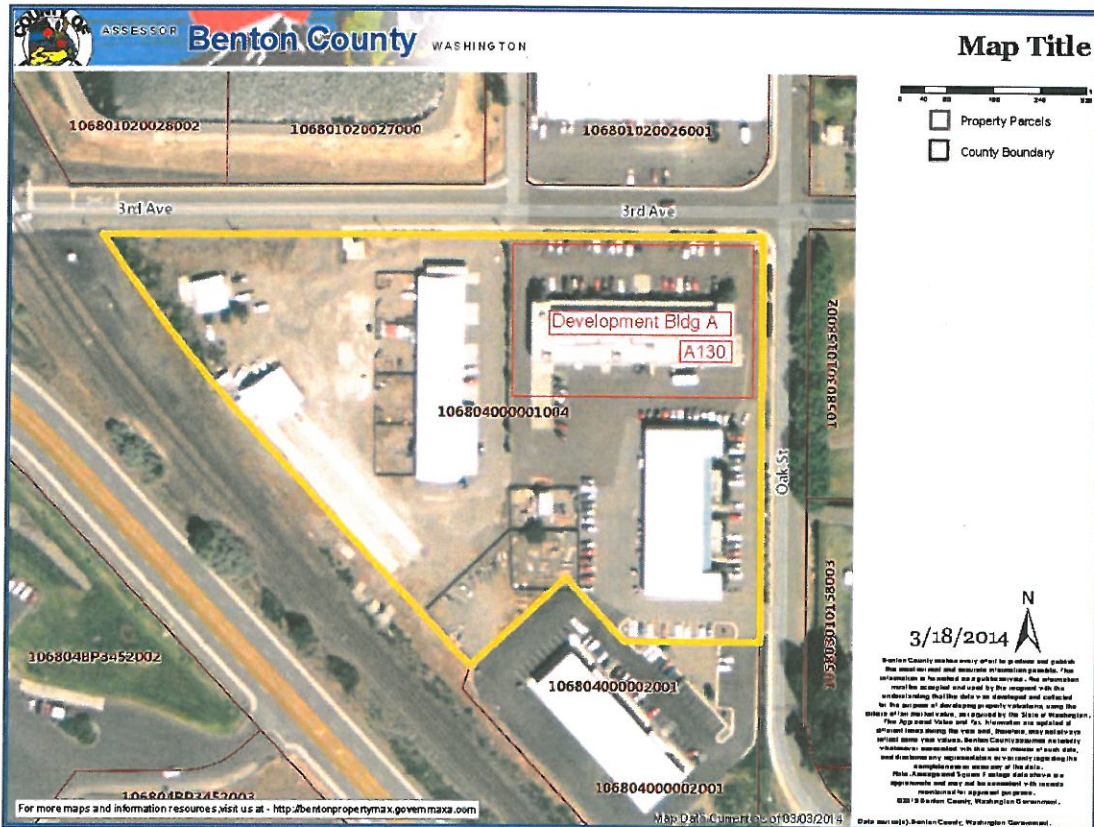


EXHIBIT "B"

PERSONAL GUARANTY TO THE PORT OF KENNEWICK

TO GUARANTEE PERFORMANCE OF LEASE

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, as personal guarantor, is firmly bound unto the Port of Kennewick, a municipal corporation, in the sum of all monthly rent, plus leasehold tax, and any other assessments, charges and/or fees due as per Lease Agreement dated MAY 1, 2015.

The conditions of this obligation are as follows:

WHEREAS, ADAM SOULEK entered into a lease with the PORT OF KENNEWICK for land as described in Exhibit "A", located in Benton County, Washington, which Lease provides for the payment of monthly rent, leasehold tax, and other assessments, charges and/or fees; and


WHEREAS, the laws of the State of Washington require a bond to the Port District in accordance with the terms of RCW 53.08.085, for a minimum of one year's rent; and

WHEREAS, this guaranty incorporates the Lease hereinabove referred to;

NOW THEREFORE, the undersigned agrees that in place of such bond called for under RCW 53.08.085, he/she/they agree to be personally liable and guarantee the payment of all sums due from him/her/them to the Port of Kennewick.

DATED this 5th day of MAY, 2015.

GUARANTORS:


Name: ADAM SOULEK

Name: _____



AGENDA REPORT

TO: Port Commission

FROM: Amber Hanchette, Director of Operations & Real Estate

MEETING DATE: May 12, 2015

AGENDA ITEM: Resolution 2015-11; Clover Island Marina Gates Upgrade Contract Award to Ray Poland & Sons, Inc.

I. REFERENCE(S): Resolution 2015-11; Bid Tabulation

II. FISCAL IMPACT: \$61,200.00 plus applicable tax

III. DISCUSSION: In an effort to offer marina tenants' enhanced security measures on A, B and C docks at Clover Island Marina, the three existing security gates will be removed and replaced with lighter weight gates and panel structures to be installed at a new location farther back on each dock. This project will include the addition of lighting to the gate structure and extension of electrical for existing gate access card readers. In accordance with port policies and procedures, invitations to bid along with plans and specifications were sent to five contractors on the port's small works roster. The bid submittal deadline was 5:00pm, May 1, 2015.

- Ray Poland and Sons, Inc. base bid of \$61,200.00 plus Washington State sales tax was the lowest of three [3] bids received for this project and has been deemed as a responsive bid.

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

V. ACTION REQUESTED OF COMMISSION:

Motion: I move approval of Resolution 2015-11, authorizing the Port's Executive Director to execute the general construction contract with Ray Poland & Sons, Inc. for the removal of existing marina gates, and installation of new gates with necessary electrical for the Clover Island Marina in sum of \$66,463.20, including applicable sales tax.

PORT OF KENNEWICK
Resolution No. 2015-11

**A RESOLUTION OF THE PORT OF KENNEWICK BOARD OF COMMISSIONERS
ACCEPTING AND AWARDING A GENERAL CONSTRUCTION CONTRACT FOR UPGRADED
SECURITY GATES AT CLOVER ISLAND MARINA, KENNEWICK**

WHEREAS, an invitation to bid for the removal of existing marina gates and fabrication plus installation of three new security gates with lighting at the Clover Island Marina was properly issued to five (5) contractors on the port's small works roster with approved plans and specifications being made available to prospective bidders, and

WHEREAS, construction bids have been received and staff and the port legal counsel have certified that the bids received are in compliance with the bid form requirements; and

WHEREAS, the staff and the port legal counsel have certified that the low bidder for the project is Ray Poland & Sons, Inc. in the amount of \$66,463.20 including applicable sales tax for the base bid work which includes removal of existing marina gates and fabrication plus installation of three new security gates with lighting at the Clover Island Marina; and

NOW THEREFORE, BE IT RESOLVED that the Port of Kennewick Commission does hereby accept the bid by Ray Poland and Sons, Inc. for removal of existing gates and fabrication with installation of three new security gates with lighting at the Clover Island Marina, as the low bidder in the amount of \$66,463.20, including applicable tax and hereby awards the construction contract to said low bidder.

BE IT HEREBY FURTHER RESOLVED that the Executive Director is authorized to enter into a contract between the Port of Kennewick and Ray Poland and Sons, Inc. for the construction and installation of three new security gates with lighting at the Clover Island Marina. The Executive Director is further authorized to proceed with all necessary procedures required to complete work of the project.

ADOPTED by the Board of Commissioners of Port of Kennewick on the 12th day of May 2015.

**PORT OF KENNEWICK
BOARD OF COMMISSIONERS**

By: _____
DON BARNES, *President*

By: _____
SKIP NOVAKOVICH, *Vice President*

By: _____
THOMAS MOAK, *Secretary*

Port of Kennewick
100% Design Engineers Estimate - Clover Island Marina - Security Gate Relocation
March 4, 2015

Description	Units	Unit Cost	Quantity	Current Amount
Mobilization & Demobilization				
Mobilization	LS	\$ 3,900.00	1	\$ 3,900.00
Demolition & Debris Removal				
Removal and disposal of existing security gate.	LS	\$ 1,000	3	\$ 3,000.00
Structures				
Fabrication of new security gate.	EA	\$ 10,000	3	\$ 30,000.00
Installation of new security gate.	EA	\$ 1,000	3	\$ 3,000.00
Electrical				
Electrical	LS	\$ 3,000	1	\$ 3,000.00
Project Subtotal	-	-	-	\$ 42,900
Contingency @ 20%	-	-	-	\$ 8,580
Sales Tax @ 8.6%	-	-	-	\$ 4,427
PROJECT TOTAL				\$ 55,907

*Note: Planning, permitting, engineering, survey, materials testing, construction oversight, and other "soft" costs NOT included.

Tammy-

This engineers estimate is prior to addition of LED lights on each ^{gate} archway + a little more electrical. My ^(guesstimate) Estimate is \$60,000. PND to send an update engineers estimate.

[illegible]

Prior positive history with port, general contractors, fabrication experience.

MEMO

DATE: 5/4/2015
TO: Finance Dept.
FROM: Amber Hanchette, Director Operations & Real Estate
RE: Clover Island Marina Gate Project – Bids vs. Budget

Three bids were received for marina gate project by the deadline of 5:00 p.m. May 1, 2015. Ray Poland & Sons Inc. was low bid at \$66,463.20. Summary of projected expenses vs. budget:

2015-2016 Marina Gate & Camera Budget	\$80,000.00
PND Engineers – A & E bid	\$ 23,730.00
Ray Poland & Sons, Inc. – Contractor bid	\$ 66,463.20
Over budget	\$10,193.20
Other expenses: Staff time	\$??

Submission to commission for approval – 5/12/2015

####

Preliminary Bid Tabulation

Port of Kennewick

Project: Clover Island Marina Gates

Bids Due: May 1, 2015 (5:00 p.m.)

(Port commission must approve contract of this scale)

Company	Date/Time Bid Rcv'd	Bid Form signed	Addenda Confirmed?	Base Bid	Washington State Sales Tax	Base Bid with Sales Tax
Apollo Mechanical						No Bid
Banlin Construction	5/1/2015 ; 3:24 p.m.	x	x	\$ 76,537.00	\$ 6,582.00	\$83,119.00
Christensen Construction						No Bid
MH Construction	5/1/2015; 4:47 p.m.	x	x	\$ 64,908.00	\$ 5,582.00	\$70,490.00
Ray Poland & Sons	5/1/2015; 3:46 p.m.	x	x	\$ 61,200.00	\$ 5,263.20	\$66,463.20

Bid Opening: 5/4/2015 - 8:05 a.m.

**AGREEMENT BETWEEN
THE PORT OF KENNEWICK AND CONTRACTOR**

THIS AGREEMENT is made on the _____ day of _____, **2015** between the **Port of Kennewick** (herein the "Port") and **Ray Poland & Sons Inc.**, (hereinafter "the Contractor"), who in consideration of the mutual promises contained herein, agree as follows:

ARTICLE 1: The Work

1.1 The Contractor shall perform all the work required by the contract documents identified in Article 5 and by this reference incorporated herein, for the project entitled:

SECURITY GATES – CLOVER ISLAND MARINA - KENNEWICK

1.2 Scope:

1. Remove three (3) existing marina gates and framework from Dock A, B and C (see attached drawings).
2. Extend existing gate access system and electrical to new location then reinstall to operating status. Gate access security to be down no more than 24 hours.
3. Fabricate and install three (3) new marina gates and framework for Dock A, B and C (see attached drawings).
4. Follow general notes and specific details on all drawings.
5. Project Location: Clover Island Marina – 350 Clover Island Drive, Kennewick, WA 99336

Drawings:

1. Title Sheet and Drawing Index
2. General Notes
3. Project Site Plan
4. Enlarged Plans & Elevations
5. Detailed New Security Gate Elevation
6. Attachment Details and Electrical Diagram

ARTICLE 2: Time of Commencement and Completion

2.1 Work shall be completed no later than 5:00 p.m. Friday, July 31, 2015. Completion of work is defined as all gates are installed to specification in scope and drawings, gate access system is operational and area clean (hereinafter referred to as the "completion date").

ARTICLE 3: Contract Sum

3.1 The Port will pay the Contractor, for the satisfactory performance of the work, a contract sum of \$66,463.20 which includes applicable Washington State sales tax.

ARTICLE 4: Payment

- 4.1** Upon final acceptance of the work by the Port, the Contractor shall submit a final invoice in the amount of 100% of the contract sum, plus 100% of the applicable Washington State sales tax.
- 4.2** The Port may withhold any payment otherwise due the Contractor on account of:
 - A. Defective work not remedied;
 - B. Claims filed;

- C. Failure of the Contractor to make payment properly to subcontractors or for labor, materials or equipment;
 - D. Damages to another Contractor; or
 - E. Unsatisfactory performance of the work by the Contractor.
- 4.3 The acceptance of the final payment by the Contractor shall constitute a waiver of all claims, of whatever sort or nature, by the Contractor against the Port.
- 4.4 Unless withheld pursuant to paragraph 4.2, final payment to the Contractor shall be made upon occurrence of the following:
- A. The expiration of 45 days following the final acceptance of the project, and
 - B. Satisfaction of the Port that the claims of material, men, and laborers incurred in filing and processing such claims have been paid or provided for, and
 - C. All requirements of RCW 39.12 relating to Prevailing Wage have been met.

4.5 Performance and Payment Bond:

The Contractor shall furnish to the Port a Performance Bond and Payment Bond in the amount equal to 100% of the contract sum as security for the performance by the Contractor of this contract, within fourteen (14) calendar days of notice of award.

Upon final acceptance of the work by the Port, the Contractor shall submit a final invoice in the amount of 100% of the contract sum, plus 100% of the applicable Washington State sales tax.

The Port may withhold any payment otherwise due the Contractor on account of:

- F. Defective work not remedied;
 - G. Claims filed;
 - H. Failure of the Contractor to make payment properly to subcontractors or for labor, materials or equipment;
 - I. Damages to another Contractor; or
 - J. Unsatisfactory performance of the work by the Contractor.
- The acceptance of the final payment by the Contractor shall constitute a waiver of all claims, of whatever sort or nature, by the Contractor against the Port.
- Unless withheld pursuant to paragraph above, final payment to the Contractor shall be made upon occurrence of the following:
- D. The expiration of 45 days following the final acceptance of the project, and
 - E. Satisfaction of the Port that the claims of material, men, and laborers incurred in filing and processing such claims have been paid or provided for, and
 - F. All requirements of RCW 39.12 relating to Prevailing Wage have been met.
 - G. Retainage of 5% will be administered in accordance with R.C.W. 60.28.011.

ARTICLE 5: The Contract Documents

- 5.1 The contract documents, which by this reference are incorporated herein, consist of those documents listed below specifically:
- A. This Agreement, fully executed.
 - B. Invitation to Bid, dated April 17, 2015 including specifications and insurance & bond requirements contained therein.
 - C. Bid Form, dated 5/1/2015 under the signature of Jack Lynch.

D. Benton County Prevailing Wage Schedules, Journeymen and Apprentices, effective May 1, 2015.

- 5.2 The contract documents set forth above form the entire and integrated agreement between the Parties hereto, and supersede all prior negotiations, representation, or agreements, either written or oral, including the bidding documents. The contract may be amended or modified only by a written amendment to the contract signed by both parties or by a change order.
- 5.3 By his execution of the contract, the Contractor represents that he has visited the site of the work and familiarized himself with all conditions under which the work is to be performed.
- 5.4 The Contractor shall comply with all applicable Federal/State laws, City/County ordinances, and rules and regulations of all authorities having jurisdiction of project construction. Said laws will be deemed to be included the same as though written out in full.

ARTICLE 6: Owner

- 6.1 The Port, as owner, shall issue all instructions to the Contractor through an authorized representative. The Port shall at all times have access to the work wherever it is in preparation or progress.

ARTICLE 7: The Contract

- 7.1 The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for performing, scheduling and coordinating all portions of the work under the contract in a proper fashion and in strict compliance with all applicable codes, rules, regulations and laws.
- 7.2 The Contractor shall defend, indemnify, and save harmless the Port, its agents, employees and tenants from and against any attorney's fees, arising out of or any such claim, damage, loss or expense which is caused, or alleged to be caused, in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable regardless of whether or not such claim, damage, loss or expense was caused in part by a party indemnified hereunder.
- 7.3 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor and materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for the proper execution and completion of the work.
- 7.4 The Contractor shall pay all sales, consumer, use, and other similar taxes required by law, and shall secure all permits, fees, and licenses necessary for execution of the work.
- 7.5 The Contractor will warrant to the Port that all materials and equipment furnished under the contract will be new unless otherwise specified, and that all work will be of good

quality, free from faults and defects and in conformance with the specifications. All work not so conforming to these standards may be considered defective. This warranty shall be in addition to, and not in limitation of any other warranty or remedy afforded by law.

ARTICLE 8: Prevailing Wage

- 8.1 The hourly wages paid by Contractor and its Subcontractors to laborers, workmen or mechanics shall not be less than the prevailing rate of wage, R.C.W. 39.12.020. No worker may be paid less than the specified hourly rate. Contractor will submit Intent to Pay Prevailing Wages, Affidavit of Wages Paid, and Request for Release to the Department of Labor and Industries at appropriate times.
- 8.2 A copy of the Washington State Prevailing Wage Rates for Public Works Contracts, Benton County is located at <http://www.lni.wa.gov/tradeslicensing/prevwage/wagerates/> and becomes a part of, this Agreement.

ARTICLE 9: Insurance

- 9.1 The Contractor shall purchase and maintain such insurance as will protect it from claims arising out of Contractor's operations under the contract, whether such operations be by itself or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable (per Title 48 of the R.C.W.). Said insurance shall include provisions applying to:
- A. Claims under workman's compensation, disability benefit and other similar employee benefit acts;
 - B. Claims for damages because of bodily injury, occupational sickness or disease, or death of its employees, and claims insured by usual personal injury liability coverage;
 - C. Claims for damages because of bodily injury, sickness or disease, or death of person other than its employees, and claims insured by usual personal injury liability coverage; and
 - D. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting there from.
- The insurance required by this paragraph shall be written for not less than \$1,000,000.00 per occurrence/\$2,000,000 aggregate.
- 9.2 Proof of insurance, naming the Port as additional insured, shall be filed with the Port prior to commencement of the work, and shall contain a provision that coverage afforded under the policy will not be cancelled until at least thirty days prior written notice. Contractor's insurance shall be considered primary and the Port's insurance shall be non-contributory. The insurance company and its Agent shall be licensed with the Washington State Insurance Commissioner per Title 48 of the R.C.W.

ARTICLE 10: Separate Contracts

- 10.1 The Port reserves the right to award other contracts in connection with other portions of the project.

ARTICLE 11: Time

- 11.1 All time limits stated in the contract documents are of the essence of the contract.

ARTICLE 12: Protection of Persons/Contractor's Liability

12.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work.

ARTICLE 13: Miscellaneous Provisions

13.1 This agreement is executed on the day first above written.

13.2 The address, of record for both parties shall be:

PORT OF KENNEWICK
350 Clover Island Drive Suite 200
Kennewick, WA 99336

RAY POLAND & SONS, INC
P.O. Box 6772
Kennewick, WA 99336

ARTICLE 14: Arbitration

14.1 The parties agree that any claims or disputes that may arise between the parties concerning this agreement shall be settled by arbitration with each party selecting an arbitrator within a reasonable time after written notice of such claim or dispute. The two selected arbitrators shall agree on a neutral third party arbitrator and the matter shall proceed to arbitration hearing as expeditiously as possible, but not later than thirty (30) days after receipt of the notice or claim or dispute. The fees, costs and expenses incurred as a result of the arbitration shall be paid by the non-prevailing party. An award rendered by a majority of the arbitrators shall be final and binding on all parties to the proceeding and judgment on such award may be entered by either party in a court having jurisdiction. The venue for arbitration proceedings will be Benton County.

PORT OF KENNEWICK:

RAY POLAND & SONS INC

By: _____
Name: Tim Arntzen
Its: Executive Director

By: _____
Name: _____
Its: _____

Washington State License No: RAYPOS*243je

Approved as to form:

Reviewed and Approved:

By: _____
Name: Lucinda J. Luke
Its: Legal Counsel, Port of Kennewick

By: Tammy Fine
Name: Tammy Fine
Its: Chief Financial Officer, Port of Kennewick

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Search Business Licenses

License Information:

Entity Name: RAY POLAND AND SONS, INC.
Business Name: RAY POLAND AND SONS, INC.
License Type: Washington State Business
Entity Type: Profit Corporation
UBI: 600186248 Business ID:001 Location ID:0001
Status: To check the status of this company, go to [Secretary of State](#) and [Department of Revenue](#).

Location Address:

503 W COLUMBIA DR
KENNEWICK, WA, 99336-3651

Mailing Address:

PO BOX 6772
KENNEWICK, WA, 99336-0640

Licenses Held at this location

[Connell General Business](#)
[Richland Services Business](#)
[Scale - Large](#)
[West Richland General Business](#)

Status	Expires	First Issue
Active	03/31/2016	07/15/2013
Active	03/31/2016	06/10/1982
Active	03/31/2016	09/10/2002
Active	03/31/2016	02/25/2010

Governing People:

CANDY THORNHILL
 DENNIS POLAND
 DENNIS W POLAND
 MELISSA POLAND-KNAPIK

Information Current as of 05/04/2015 6:48AM Pacific Time

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AGENDA REPORT

TO: Port Commission

FROM: Amber Hanchette, Director of Operations & Real Estate

MEETING DATE: May 12, 2015

AGENDA ITEM: Resolution 2015-12; to approve a 1-Year Lease at Oak Street Industrial Park – SOLAR MOBILITY LLC

- I. REFERENCE(S):** Resolution 2015-12 and Lease Agreement
- II. FISCAL IMPACT:** Operational income of \$24,792.00 for a twelve month lease period.
- III. DISCUSSION:** Solar Mobility LLC is a durable medical equipment company based in Washington State. This location will be the corporate offices along with research, development and product assembly. Solar Mobility is a small start-up expecting to grow to 20 employees by the end of its first year. Parameters of the negotiated lease are:
- Lease 5,165 square feet for office and warehouse at the Oak Street Industrial Park Development Building B (DB-2);
 - One (1) year lease effective May 15, 2015
 - Lessee responsible for separately metered electricity, water/sewer and garbage; excluding common area landscape and parking.
 - Monthly rent for the premises is \$2,066.00 plus leasehold tax.
 - According to Port of Kennewick Policies and Procedures, POK-ED-001, 3.1.2(b). Leases in which the monthly rental amount exceeds \$2,000 per month shall be submitted to the Commission for approval.
- IV. STAFF RECOMMENDATION:**
Approve the one (1) year lease as negotiated, effective May 15, 2015.
- V. ACTION REQUESTED OF COMMISSION:**

Motion: I move approval of Resolution 2015-12 approving a one (1) year lease with Solar Mobility, Inc. and authorizing the Executive Director to execute the contract.

PORT OF KENNEWICK

Resolution No. 2015-12

***A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE PORT OF KENNEWICK APPROVING
A ONE YEAR LEASE AGREEMENT WITH SOLAR MOBILITY LLC***

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

WHEREAS, a one (1) year lease with Solar Mobility, LLC effective May 15, 2015, has been negotiated by Port staff; and

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

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

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

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of Commissioners of the Port of Kennewick hereby approve a one (1) year lease with Solar Mobility LLC as presented and authorizes the Port's Executive Director to execute all documents and agreements on behalf of the Port to complete the transaction as specified above.

ADOPTED by the Board of Commissioners of the Port of Kennewick on the 12th day of May, 2015.

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

By:

DON BARNES, *President*

By:

SKIP NOVAKOVICH, *Vice President*

By:

THOMAS MOAK, *Secretary*

COMMERCIAL PROPERTY LEASE AGREEMENT

**BETWEEN
PORT OF KENNEWICK,
LANDLORD**

AND

**SOLAR MOBILITY LLC,
TENANT**

**DEVELOPMENT BUILDING B
OAK STREET INDUSTRIAL PARK**

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**PORT OF KENNEWICK LEASE AGREEMENT
(Commercial Property)**

Landlord hereby leases to Tenant and Tenant hereby leases and accepts from Landlord the premises hereinafter described on the terms and conditions set forth in this Lease Agreement, hereinafter called "this Lease".

BASIC LEASE PROVISIONS

The following Basic Lease Provisions are hereby incorporated herewith as part of this Lease:

- A. Lease Date: May 15, 2015.
- B. Landlord: Port of Kennewick,
a Washington municipal corporation
- C. Tenant: SOLAR MOBILITY LLC.
- D. Premises: The Premises shall mean the real property located at 1426 E. 3rd
Ave Suite B110, Development Building B, Kennewick, WA
99336, as described on Exhibit "A" attached hereto and
incorporated herein by reference, and any improvements located
thereon.
- E. Permitted Use: Check all that apply:
- F. X Light manufacturing;
 Wholesale receiving/shipping;
 X Administrative offices
 Other: (Describe) _____

- G. Term: Commencing on the Lease Commencement Date and terminating
on the Expiration Date.
- H. Lease Commencement Date: The date which is the earlier of (a) May 15, 2015, and (b) the date
Tenant begins using the Premises for any reason.
- I. Expiration Date: April 30, 2016.
- J. Annual Price Per Square Foot: \$4.80 psf
- J. Total Square Feet Leased: 5,165 square feet
- K. Base Monthly Rent Calculation: YEAR 1 \$.40 PSF 5,165 SF \$ 2,066.00

- L. Base Monthly Rent (not including LET): \$ 2,066.00
- M. Leasehold Tax (LET): Current Washington State Leasehold Tax shall be added to Base Rent. Current effective rate is 12.84%.
- N. **Total Monthly Rent (includes LET): \$ 2,331.27**
- O. **Amount Collected:** **\$ 1,278.46 May Rent prorated (17 days @ \$75.20/day)**
\$ 2,331.27 June 2015 Rent
\$ 2,331.27 Deposit
\$ 5,941.00 Amount due upon lease signing
- P. Monthly Utilities: See Article 7 of Lease.
- Q. Rent Due Date: The Lease Commencement Date and the first day of each month thereafter.
- R. Financial Security: Check all that apply:
☒ \$ 2,331.27 deposit;
☐ Corporate surety bond;
☒ Personal Guaranty as set forth in Exhibit B;
☐ Other financial security: (Describe) _____

- S. Landlord's Address for Notices and Rent Payments:

Port of Kennewick
350 Clover Island Drive, Suite 200
Kennewick, WA 99336
- T. Tenant's Address for Notices:

Solar Mobility LLC
949 S. Keller St
Kennewick, WA 99336
- S. Exhibits: Exhibit "A" Legal Description of Premises
Exhibit "B" Personal Guaranty Form

ARTICLE 1

PREMISES

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

ARTICLE 2

USE OF PREMISES

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

Landlord shall give Tenant and its authorized representatives, the nonexclusive and reasonable right to use the Common Areas in Tenant's ordinary course of business, provided however, that such use is consistent with the purposes of the Common Areas. The term "Common Areas" means areas and facilities outside the Premises that are provided for the general use and convenience of Tenant and of other Tenants and their respective authorized representatives, guests, and invitees. Common Areas include, without limitation, landscaped areas, public lobbies and hallways, sidewalks, loading areas, parking areas, service corridors and restrooms. Tenant shall not store any items or objects in Common Areas except as authorized in writing by Landlord.

ARTICLE 3

TERM

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

ARTICLE 4

RENT

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

(a) Late Fee.

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

(b) Interest.

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

(c) Non-Sufficient Funds (NSF).

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

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

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

ARTICLE 5 **FINANCIAL SECURITY**

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

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

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

ARTICLE 6 **TAXES & ASSESSMENTS**

6.1 Property Taxes.

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

6.2 Personal Property Taxes

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

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

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

ARTICLE 7
UTILITIES

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

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

Electricity Meters Assigned to Tenant: 250800, 231554

Water Meters Assigned to Tenant: 74521087

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

ARTICLE 8 **INSURANCE**

8.1 Insurance

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

(a) Commercial General Liability Insurance

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

(b) Statutory Workers' Compensation

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

(c) Automobile Liability Insurance

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

(d) Property Insurance

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

8.2 Requirements

The foregoing insurance requirements shall be placed with an insurance company or companies admitted to do business in the State of Washington and shall have an A.M. Best's rating of A-/ or better. Tenant shall furnish Landlord with a copy of the certificate of such policies before the Commencement Date of this Lease and, upon request by Landlord, shall provide proof satisfactory to Landlord that all such policies are in full force and effect. Tenant's liability insurance policies shall list Landlord as an additional insured and Tenant's property insurance policies shall reflect Landlord as a loss-payee as its interests may appear, and all of Tenant's insurance policies shall be primary and non-contributing with

any insurance carried by Landlord. Such policies shall not be cancelable or materially altered without forty-five (45) days' prior written notice to Landlord. In addition, the policies shall provide for ten (10) days' written notice to Landlord in the event of cancellation for non-payment of premium. Tenant's failure to deliver the policies or certificates to Landlord as required above shall constitute an event of default pursuant to **Article 24** hereof.

8.3 Mutual Waiver of Subrogation

Each party hereby waives, and each party shall cause their respective property insurance policy or policies to include a waiver of such carrier's entire right of recovery (i.e., subrogation) against the other party, and the officers, directors, agents, representatives, employees, successors and assigns of the other party, for all claims which are covered or would be covered by the property insurance required to be carried hereunder or which is actually carried by the waiving party.

8.4 Destruction or Condemnation.

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

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

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

8.4.2 If the Premises are made untenantable by eminent domain, or conveyed under a threat of condemnation, this Lease shall automatically terminate as of the earlier of the date title vests in the condemning authority or the condemning authority first has possession of the Premises and all Rents and other payments shall be paid to that date. In case of taking of a part of the Premises that does not render the Premises untenantable, then this Lease shall continue in full force and effect and the base

monthly rental shall be equitably reduced based on the proportion by which the floor area of any structures is reduced, such reduction in Rent to be effective as of the earlier of the date the condemning authority first has possession of such portion or title vests in the condemning authority. Landlord shall be entitled to the entire award from the condemning authority attributable to the value of the Premises and Tenant shall make no claim for the value of its leasehold. Tenant shall be permitted to make a separate claim against the condemning authority for moving expenses or damages resulting from interruption in its business, provided that in no event shall Tenant's claim reduce Landlord's award.

ARTICLE 9

ACCEPTANCE AND CARE OF PREMISES

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

ARTICLE 10

ALTERATIONS AND IMPROVEMENTS

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

ARTICLE 11

ACCIDENTS AND INDEMNIFICATION

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

Tenant hereby expressly waives claims against Landlord, and Landlord shall not be responsible or liable at any time, for any loss or damage to Tenant's personal property or to Tenant's business, including any loss or damage to either the person or property of Tenant that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting, or adjoining property, unless and only to the extent due to Landlord's gross negligence or intentional misconduct, and in no event shall Landlord be liable for Tenant's consequential damages. Tenant shall use and enjoy the Premises and improvements at

its own risk, and hereby releases Landlord, to the full extent permitted by law and except as expressly provided above, from all claims of every kind resulting in loss of life, personal or bodily injury, or property damage.

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

ARTICLE 12 **COMPLIANCE WITH LAWS**

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

ARTICLE 13 **MAINTENANCE**

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

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

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

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

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

ARTICLE 14 **LANDLORD'S ACCESS**

Landlord shall have the right to inspect the Premises at all reasonable times and enter the same for purposes of cleaning, repairing, inspecting, altering, exhibiting, or improving the Premises, but

nothing contained in this Lease shall be construed so as to impose any obligation on Landlord to make any repairs, alterations or improvements not otherwise expressly set forth elsewhere herein.

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

ARTICLE 15 **SIGNS AND ADVERTISING**

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

ARTICLE 16 **WASTE AND UNLAWFUL USE**

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

ARTICLE 17 **SUCCESSORS**

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

ARTICLE 18 **HAZARDOUS MATERIALS**

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

ARTICLE 19 ASSIGNMENT AND SUBLETTING

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

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

ARTICLE 20 SURRENDER OF POSSESSION

20.1 Surrender

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

20.2 Removal of Property

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

20.3 Holding Over

If Tenant fails to surrender the Premises at the expiration or earlier termination of this Lease, occupancy of the Premises after the termination or expiration shall be that of a tenancy at sufferance. Tenant’s occupancy of the Premises during the holdover shall be subject to all the terms and provisions of this Lease and Tenant shall pay an amount due on the first of each month of the holdover period, without reduction for partial months during the holdover, equal to 150% of the greater of: (1) the monthly Total Monthly Rent (including Leasehold Tax), and any other charge due, for the monthly period immediately preceding the holdover; or (2) the fair market value for gross monthly rental for the Premises as reasonably determined by Landlord. No holdover by Tenant or payment by Tenant after the expiration or early termination of this Lease shall be construed to extend the Term or prevent Landlord from immediate recovery of possession of the Premises by summary proceedings or otherwise. In addition to the payment of the amounts provided above, if Landlord is unable to deliver possession of the

Premises to a new tenant, or to perform improvements for a new tenant, as a result of Tenant's holdover, Tenant shall be liable to Landlord for all damages, including, without limitation, consequential damages, that Landlord suffers from Tenant's holdover. Nothing herein shall be construed as Landlord's consent to such holding over. During the holdover Tenant shall remain responsible for payment of all utilities, taxes, and other assessments, charges and/or fees due under this Lease.

ARTICLE 21

NOTICES

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

ARTICLE 22

LIENS AND ENCUMBRANCES

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

ARTICLE 23

LANDLORD'S TERMINATION RIGHT

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

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

ARTICLE 24 DEFAULT AND REMEDIES

24.1 Default

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

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

24.2 Remedies.

(a) Re-entry and Termination

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

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

(b) Express Termination Required

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

(c) Damages

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

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

(d) Definitions

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

(e) No Waiver

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

covenant, term, or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver shall be in writing and signed by Landlord.

24.3 Interest

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

ARTICLE 25
ATTORNEYS' FEES AND COSTS

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

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

ARTICLE 26
MISCELLANEOUS

26.1 Miscellaneous Provisions

The following miscellaneous provisions shall apply to this Lease:

- (a) Time is of the essence hereof.
- (b) If any portion of this Lease shall be deemed void, illegal or unenforceable, the balance of this Lease shall not be affected thereby.
- (c) This Lease shall be interpreted according to the laws of the State of Washington. The parties agree that the Superior Court of the State of Washington for Benton County shall have sole jurisdiction over any question, claim, loss or injury arising hereunder.
- (d) Tenant acknowledges that, except as expressly set forth in this Lease, that neither Landlord nor any other person has made any representation or warranty with respect to the Premises.
- (e) This Lease shall be binding upon the heirs, executors, administrators, successors, and assigns of both parties hereto, except as otherwise provided for herein;
- (f) Landlord does not by this Lease, in any way or for any purpose, become a partner or joint venturer of Tenant in the conduct of its business or otherwise.

(g) The paragraph and section headings hereof are for convenience only and shall not be used to expand or interpret the meaning of any part of this Lease.

(h) Landlord shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond Landlord's control, including labor disputes, civil commotion, war, governmental regulations or controls, fire or other casualty, inability to obtain any material or service, or acts of God.

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

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

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

LANDLORD:

PORT OF KENNEWICK,
a Washington municipal corporation

By: _____
Name: Tim Arntzen
Its: Executive Director

Approved as to form:

By: _____
Name: Lucinda J. Luke
Its: Legal Counsel, Port of Kennewick/Date

TENANT:

SOLAR MOBILITY LLC

By: David Kurt Schneider
Name: David Kurt Schneider
Its: CEO

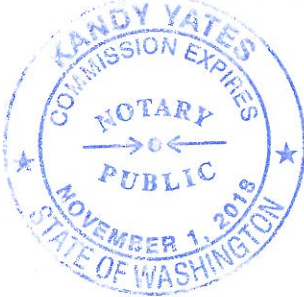
STATE OF WASHINGTON

SS.

COUNTY OF BENTON

I certify that I know or have satisfactory evidence that DAVID KURT SCHNEIDER is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Chief Executive Officer of Solar Mobility LLC, a Washington limited liability corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this 5 day of May, 2015.



Kandy Yates
(Signature of Notary)

Kandy Yates
(Legibly Print or Stamp Name of Notary)

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

My appointment expires November 1, 2018

STATE OF WASHINGTON

SS.

COUNTY OF BENTON

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

Dated this _____ day of _____, 201__.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State/Commonwealth of _____, residing at _____

My appointment expires _____

EXHIBIT "A"

LEGAL DESCRIPTION

PTN:

Section 6 Township 8 Range 30 Quarter SE; THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 30 EAST, W.M., BENTON COUNTY, WASHINGTON, LYING NORTH

COMMONLY KNOWN AS:

1426 E. 3RD Ave. Suite B110, Kennewick, WA 99336
Development Building B

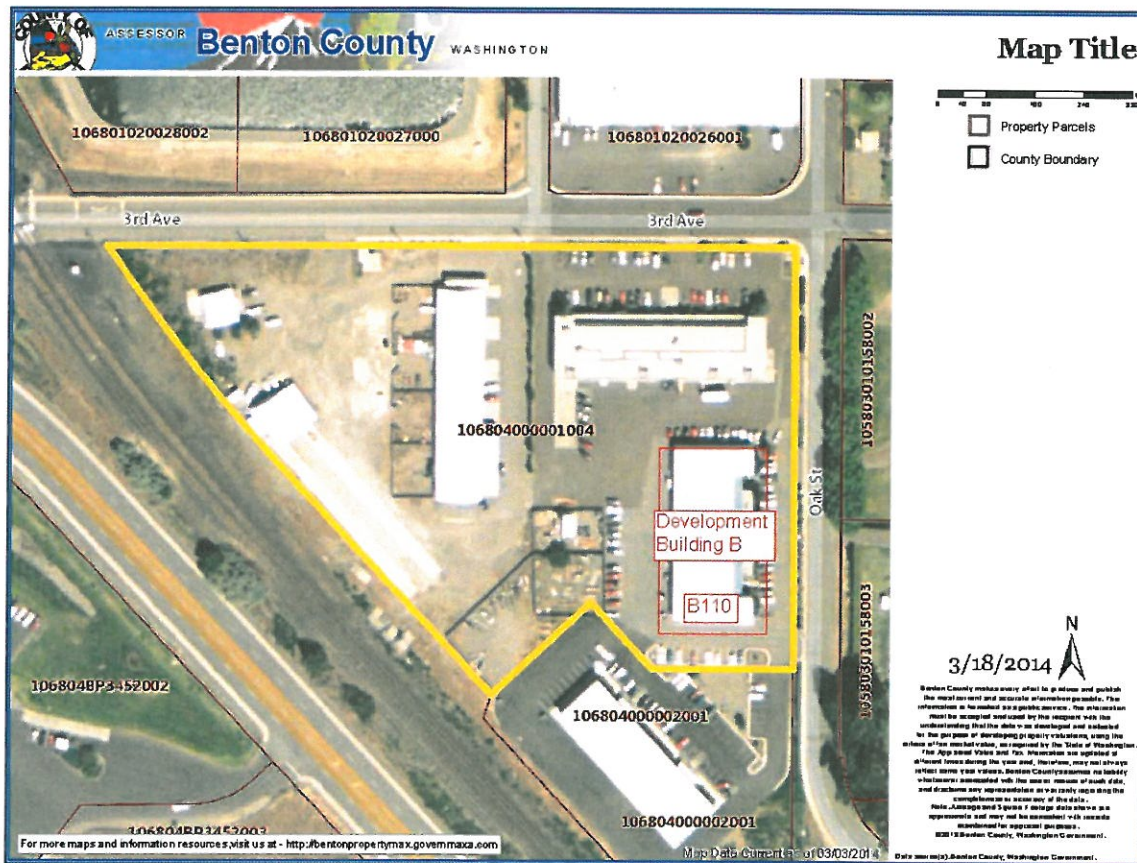


EXHIBIT "B"

PERSONAL GUARANTY TO THE PORT OF KENNEWICK

TO GUARANTEE PERFORMANCE OF LEASE

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, as personal guarantor, is firmly bound unto the Port of Kennewick, a municipal corporation, in the sum of all monthly rent, plus leasehold tax, and any other assessments, charges and/or fees due as per Lease Agreement dated MAY 15, 2015.

The conditions of this obligation are as follows:

WHEREAS, DAVID KURT SCHNEIDER entered into a lease with the PORT OF KENNEWICK for land as described in Exhibit "A", located in Benton County, Washington, which Lease provides for the payment of monthly rent, leasehold tax, and other assessments, charges and/or fees; and


WHEREAS, the laws of the State of Washington require a bond to the Port District in accordance with the terms of RCW 53.08.085, for a minimum of one year's rent; and

WHEREAS, this guaranty incorporates the Lease hereinabove referred to;

NOW THEREFORE, the undersigned agrees that in place of such bond called for under RCW 53.08.085, he/she/they agree to be personally liable and guarantee the payment of all sums due from him/her/them to the Port of Kennewick.

DATED this ____ day of _____, 201__.

GUARANTORS:



Name: DAVID KURT SCHNEIDER

Name: _____