

AGENDA

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

Tuesday, May 28, 2019
2:00 p.m.

- I. **CALL TO ORDER**
- II. **PLEDGE OF ALLEGIANCE**
- III. **APPROVAL OF AGENDA**
- IV. **PUBLIC COMMENT** (*Please state your name and address for the public record*)
- V. **CONSENT AGENDA**
 - A. Approval of Direct Deposit and ePayments Dated May 16, 2019
 - B. Approval of Warrant Register Dated May 28, 2019
 - C. Approval of Regular Commission Business Meeting Minutes May 14, 2019
- VI. **PRESENTATION**
 - A. Vista Field Property Owners Association, Ben Floyd, Doris Goldstein and Steve DiJulio (**LARRY/TIM**)
- VII. **REPORTS, COMMENTS AND DISCUSSION ITEMS**
 - A. Columbia Drive Update (**LARRY/TIM**)
 - B. Vista Field Update (**LARRY/TIM**)
 - C. Clover Island Master Plan Scoping (**TIM**)
 - D. Opportunity Fund; Resolution 2019-09 (**NICK**)
 - E. Revision of Port Commission Rules of Policy and Procedure, Section Five; Resolution 2019-10 (**LUCY**)
 - F. Commissioner Meetings (formal and informal meetings with groups or individuals)
 - G. Non-Scheduled Items
- VIII. **PUBLIC COMMENT** (*Please state your name and address for the public record*)
- IX. **ADJOURNMENT**

PLEASE SILENCE CELL PHONES



PORT OF KENNEWICK REGULAR COMMISSION MEETING

DRAFT

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

The following were present:

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

Staff Members: Tim Arntzen, Chief Executive Officer
Tana Bader Inglima, Deputy Chief Executive Officer
Amber Hanchette, Director of Real Estate and Operations
Nick Kooiker, Chief Financial Officer
Larry Peterson, Director of Planning and Development
Kandy Yates, Office Assistant/Marina Manager
Lucinda Luke, Port Counsel

PLEDGE OF ALLEGIANCE

Commissioner Novakovich led the Pledge of Allegiance.

APPROVAL OF THE AGENDA

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

PUBLIC COMMENT

No comments were made.

CONSENT AGENDA

- A. *Approval of Direct Deposit and E-Payments Dated May 1, 2019***
Direct Deposit and E-Payments totaling \$97,243.81
- B. *Approval of Warrant Register Dated May 14, 2019***
Expense Fund Voucher Numbers 101054 through 101109 for a grand total of \$159,717.50
- C. *Approval of Regular Commission Business Meeting Minutes April 23, 2019***

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

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REPORTS, COMMENTS AND DISCUSSION ITEMS

A. *Columbia Drive*

1. *Construction Update*

Mr. Peterson updated the Commission on Phase 2B construction at Columbia Gardens.

2. *Food Truck Update*

Ms. Hanchette reported the Port currently has four vendor tenants at the Food Truck Plaza: Swampy's American BBQ, Rollin Ice Cream Truck, Frost Me Sweet Mobile, and the Ciao Wagon. Rollin Ice Cream Truck is now a tenant and will be splitting her time between Columbia Gardens and Clover Island. Frost Me Sweet Mobile was recently featured on Diners, Drive-ins and Dives. Swampy's BBQ has been selling out regularly and has now added breakfast to his menu. Ms. Hanchette stated the food trucks are family oriented, small businesses, and the Port is offering a place for these businesses to thrive. The current tenants have a strong social media presence, which will allow for a greater chance of success in the long run. Ms. Hanchette stated the goal is to get more vendors into the plaza, with the potential for a rotating space for different vendors.

Commissioner Novakovich reported Ron Swamby of Swampy's BBQ is elated and has established quite a following.

Commissioner Moak inquired if the food truck vendor information is available on the Port website.

Ms. Hanchette stated Ms. Bader Inglima has updated the website to include the food truck vendors, their logos, and links to their online page, which include their location, hours, and menus.

Commissioner Barnes inquired if there are food vendors at the site on a daily basis.

Ms. Hanchette stated Swampy's BBQ is open Wednesday through Sunday, whereas the other vendors are open at varied times during the week. Ms. Hanchette is working on a vendor calendar trying to create a consistent presence. Additionally, Ms. Hanchette is working with another vendor to potentially come in this summer. Ms. Hanchette stated each vendor is an independent mobile business with scheduled events, such as community or private events and she will continue to work with each business to try to fill the calendar. Ms. Hanchette stated the vendors have been posting their schedules and menus on their Facebook pages.

3. *Vibrancy Policy*

Mr. Arntzen stated the City and Port created a vibrancy marketing program to support advertising and promotion of events put on by the tenants of Columbia Gardens Wine Village. The Port is contributing advertising dollars for the program and the City will run the administration, as well as advertise events on the City website. The program funds up to \$1,000 per event as a reimbursement, after the event has been held and can be used for the advertising and promotion of Columbia Gardens Wine Artisan Village. Tenants may

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apply together for single events up to the advertising maximum. The hope is to have the tenants work together on events to create the vibrancy within the Village. The Port is moving slowly but methodically towards creating consistent vibrancy. The vibrancy program was modeled after the Port's successful partnership with the Clover Island Inn Summer Concert Series. Last year, the Port staff met with DPZ Partners to discuss Phase 1 Infrastructure at Vista Field, but we were also reminded how important vibrancy was for Vista Field. The vibrancy program will be utilized at the Wine Village and once Vista Field is ready, we hope to clone the program to create initial vibrancy at Vista Field.

Commissioner Moak commented that Mr. Arntzen was slow at coming to believe in the importance of vibrancy, but, as Mr. Arntzen mentioned, more than once, that the meeting with DPZ Partners was important to the Port and one of the things that Mr. Arntzen picked up strongly during that meeting. Commissioner Moak stated the Commission and staff keep discussing elements from that meeting and how important they are. Commissioner Moak appreciates the work and the partnership with the City and the tenants in trying to come up with a successful program. Commissioner Moak hopes the program is successful at the Wine Village and can be utilized at Vista Field and thanked Mr. Arntzen for his efforts. And said he was pleased about the tenants' interest in doing things and how they envision what they are doing and how to be successful, and the Port also wants to be successful and we are trying to do something to replicate some successes that we have had on Clover Island, down at the Wine Village and at Vista Field, which benefits everybody.

Mr. Arntzen stated staff researched private event planning businesses; however, the budgets were approximately \$100,000, with \$50,000 going to the management of the program. The Port is able to fund the vibrancy for \$25,000 with the assistance of the City and allows the tenants to advertise the Wine Village as part of their own events. The City has the application available on the website and has already reached out to the tenants about the program.

Ms. Hanchette stated that the Port and City staff had a meeting with the Wine Village tenants to discuss the process. One of the benefits of the City administering the program is that the City keeps an event calendar for the entire City, including Downtown Kennewick and Southridge, allowing tenants to avoid scheduling against competing events or to find complementary events to leverage.

Commissioner Barnes inquired if the Port will be running television advertisements to support Columbia Gardens.

Ms. Bader Inglima has been working with the media to support the Food Truck Plaza tenants and indicated that there are links on the Port's website to the news articles. Ms. Bader Inglima stated there is not a planned campaign as of yet.

4. Opportunity Fund

Mr. Peterson stated the Commission recently approved utilizing \$13,600 from the opportunity fund for a contract with Parametix for a traffic calming analysis for Columbia

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Drive. John Perlic spoke with Cary Roe, City of Kennewick Public Works Director and Justin Sorin, City Transportation Manager regarding the traffic calming analysis. The City is onboard with the Port's initial feasibility study; however, Mr. Roe has requested additional items to be included in the traffic analysis. Mr. Peterson stated the additional cost to the contract is \$7,800, which brings the total contract to \$21,400 out of the opportunity fund.

Commissioner Moak inquired if Mr. Roe's request is reasonable and would the additional information add to the study.

Mr. Peterson stated Mr. Roe has specific concerns and is looking for a more thorough report into the analysis and cost.

Commissioner Moak inquired if the analysis went forward, how would the Port implement the plan.

Mr. Peterson stated Benton Franklin Council of Governments (BFCOG) has specific state level funding for traffic calming, pedestrian safety enhancement, and other programs that are being addressed with this study. Mr. Peterson believes the project would be a very good candidate for state or federal assistance.

Commissioner Moak believes if the Port is going to move forward with this project, then the Port should utilize the opportunity fund for the additional work.

Mr. Arntzen stated there have not been any sources identified to further the study to implement the plan; however, he believes there is an opportunity for partnership with the City. Mr. Arntzen stated it may take some time, but believes it is necessary for the growth of the Wine Village. Mr. Arntzen offered that when the Port moves forward on the Kennewick Waterfront Master Plan, the traffic calming could be folded in to that.

Commissioner Novakovich stated the traffic calming has been an issue since the 1990's and was even incorporated into the Bridge to Bridge Plan. Recently, Commissioner Novakovich attended a BFCOG call for projects meeting and believes this kind of project is what they are looking for and would receive funding.

Commissioner Barnes stated \$7,800 seems like a small amount in the grand scheme of things for better access to the development. The Port has this great development, but if people are having difficult gaining access to the area, for want of \$7,800 then he believes the Port would have failed somewhere. Commissioner Barnes asked staff for additional information related to this project and the opportunity fund.

B. Clover Island 1135 Update

Ms. Bader Inglima reported that the Port and the U.S. Army Corps of Engineers (USACE) have signed the cost share agreement for the 1135 Habitat Restoration project on Clover Island. The total project cost for the design and implementation is estimated at \$5,000,000. The Port is

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responsible for around 25% of the total project cost with the Federal Government picking up the remainder. Recently, the Port secured the matching funds by submitting a joint application with the City of Kennewick to the Benton County Rural Capital County Fund (RCCF). The Port is receiving the following funds for the 1135 project: \$500,000 from an RCO grant and \$1,000,000 from the RCCF fund. The USACE is spending \$3,500,000 and will begin work on the design portion now and construction would bid around August 2020 for winter 2020-2021 in-water work.

Commissioner Barnes inquired if we could amend the 1135 project to include Duffy's Pond.

Ms. Bader Inglima stated when the USACE performed the initial habitat analysis, we asked about that and were told that Duffy's Pond is a drainage canal and it does not fit the requirements for the 1135 habitat restoration program. Port and City staff are working with the USACE to come up with a plan for the Duffy's Pond area. However, it is complicated because it involves multiple jurisdictional partners, including the City of Kennewick and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR).

Commissioner Novakovich thanked Ms. Bader Inglima for her continuous work on the 1135 project and for securing \$5,000,000 of outside funding to invest on Clover Island.

C. Vista Field Update

Mr. Peterson updated the Commission on the current construction underway at Vista Field.

D. Partnering Opportunity with Benton Rural Electric Association (REA)

Mr. Arntzen stated one of the goals established for the CEO was to create additional partnering opportunities in the community. Mr. Arntzen recently spoke with City of West Richland Mayor Brent Gerry, who indicated that Benton REA was looking for opportunities to partner on an economic development project. Mr. Arntzen met with Troy Berglund, Community Relations and Members Services Manager and Shannon Olsen, Assistant Community Development and Services Manager at Benton REA to discuss partnership opportunities. Mr. Arntzen inquired if the Commission would like staff to continue pursuing a potential partnership with Benton REA, which services a good portion of the Port's district. Benton REA staff indicated that they would appreciate an opportunity to speak to the Commission at a future meeting.

Commissioner Moak believes partnering with Benton REA could be a good opportunity and asked, for the record, if Mr. Arntzen could identify his relationship with Ms. Olsen.

Mr. Arntzen stated that Ms. Olsen is his ex-wife.

Commissioner Moak inquired if there is any conflict of interest related to Ms. Olsen.

Mr. Arntzen stated that there is no conflict.

Commissioner Barnes welcomes the opportunity to pursue a partnership with Benton REA, but it is important to be mindful of our current jurisdictional partners.

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It is the Commission consensus for staff to continue discussing potential projects with Benton REA.

E. Port of Vancouver Fossil Fuel Policy

Mr. Arntzen recently spoke with the economic director for the Port of Vancouver, who is requesting assistance from the Port of Kennewick and other ports, on a policy matter that the Port of Vancouver Commission is considering. The Port of Vancouver is considering a policy that removes the Port from any businesses related to fossil fuels and would not renew any current leases once expired, for example, fueling facilities. Port of Vancouver staff asked if the Port could offer opinions as to what affect this would have on the Port of Kennewick. Mr. Arntzen inquired how the Commission would like staff to move forward on this request.

Commissioner Barnes would like additional information prior to making any commitments because it could have an impact on the rail in the Tri-Cities.

Mr. Arntzen is unaware of any impacts to rail traffic and how that would affect the Tri-Cities and will follow up with Port of Vancouver staff for additional information and timeline; however he believes their request indicated time was of the essence.

Commissioner Moak thought their Commission already voted on this policy.

Mr. Arntzen received the phone call last week and believes their Commission tabled the topic to hear from other ports.

Commissioner Moak believes their Commission needs to make a decision and probably does not relish being told what to do, whether we agree with it or not.

Commissioner Novakovich believes the Port of Kennewick should not respond either way.

Mr. Arntzen indicated from this discussion, he understands that the Port of Kennewick would not take a position regarding the Port of Vancouver fossil fuel policy.

Commissioner Moak stated the topic may come up at the Washington Public Ports Association conference and other ports may have been approached.

Mr. Arntzen stated that the Randy Hayden of the Port of Pasco took this to the Commission last week and believes they will be passing a resolution.

Commissioner Moak stated the Port of Pasco is more directly involved in this than the Port of Kennewick.

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

Commissioners reported on their respective committee meetings.

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E. Non-Scheduled Items

1. Commissioner Moak reported that the West Richland Library was recently remodeled and the architects were Bernardo Wills, who designed the current Port office. They indicated to him that they would like to be a part of Vista Field redevelopment.
2. Ms. Bader Inglima stated Benton County Sheriff's Office is going to submit a grant application seeking funding for a new security boat vessel and requested a letter of support from the Port of Kennewick and the Port of Benton. Ms. Bader Inglima inquired if the Commission would like to support that endeavor.

It is the consensus of the Commission for staff to offer support for the Benton County Sheriff's Office grant.

3. Mr. Arntzen and Ms. Bader Inglima will be attending the City of Kennewick Council workshop and giving a brief presentation related to the partnering opportunities between the Port and City, primarily focusing on the Kennewick waterfront and Vista Field.

Commissioner Moak inquired if the presentation is on projects we have completed, are currently working on or potential projects.

Mr. Arntzen stated it will feature joint projects that we have completed and those we are currently jointly working on; however, Ms. Mosley asked Port staff to discuss the Vista Field Hangars as well.

4. Mr. Peterson sat in as a judge on the Governor's Smart Opportunities selection committee, which the Port and City received in 2017 for Columbia Gardens and in 2018 for Vista Field. Mr. Peterson felt very honored to be asked to be a part of the judging from the Department of Commerce.
5. Mr. Kooiker reported that the Port filed the 2018 financial reports with the State Auditor's Office.

PUBLIC COMMENTS

Boyce Burdick, 414 Snyder Street, Richland. Mr. Burdick stated on May 24 and May 25, 2019, there will be a performance of Carmina Burana by the Mid-Columbia Mastersingers and Mid-Columbia Ballet at the REACH Museum's outdoor amphitheater. Saturday, June 1, 2019 at the Richland High Auditorium, the Mid-Columbia Symphony will feature works from Shostakovich's Symphony No. 7.

No further were made comments.

COMMISSION COMMENTS

No comments were made.

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ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 3:45 p.m.

APPROVED:

**PORT of KENNEWICK
BOARD of COMMISSIONERS**

Thomas Moak, President

Don Barnes, Vice President

Skip Novakovich, Secretary

Vista Field Governance Structure Executive Summary for the Port of Kennewick By Doris S. Goldstein

The Declaration of Covenants, Conditions and Restrictions for Vista Field (the “Declaration”) is a flexible document that grows with the community. The Declaration creates a simple structure for the early stages of development while permitting additional governance structures to be created as necessary.

In addition to its fundamental purpose of establishing the community association’s management and maintenance obligations, the document explains the concepts behind this mixed-use community, the way it will be expanded in phases and how the Master Plan, which lays out the general structure of the community, will be modified as development progresses. In doing so, it serves as both a guide for the Port (the “Founder” under the Declaration) and a disclosure to property owners.

Washington Uniform Common Interest Ownership Act. The Declaration is written to comply with the Washington Uniform Common Interest Ownership Act (the “Act”). As the Act is new (enacted in 2018) and complex, some uncertainty exists as to how certain provisions will be interpreted by Washington attorneys and judges. Attorney Gary Ackerman, who was a member of the committee that adapted the uniform act for its enactment in Washington, serves as Washington counsel for the creation of the Vista Field documents.

Vista Field Association. Because the Master Plan for Vista Field seamlessly melds commercial and residential property, and because the community shares much of its infrastructure, the Declaration creates a single property owners’ association, the Vista Field Association. The Vista Field Association, which maintains all of the common elements, is formed as a community association under the Act, which regulates its operation.

Members of the Vista Field Association include all property owners within Vista Field, both residential and commercial. Commercial property owners pay assessments for the maintenance of common elements that serve the entire community. However, the Declaration specifically protects operation of businesses and the village center from homeowner interference. A separate Shared Use and Operating Agreement, described in a separate Executive Summary on Village Center Operation and Management, governs the operation of the Village Center.

Articles of Incorporation and Bylaws will be created by Washington counsel. They are not required to be attached to the Declaration.

Master Plan. Vista Field is a mixed-use project with a potentially long build-out. The Master Plan will be refined as individual phases are readied for development and the project evolves in response to market demand. The Founder has the ability to modify the Master Plan.

The Declaration describes a “Master Plan Area,” the 103-acres used to create the Master Plan. The Declaration itself creates no restrictions on the use of the Master Plan Area; the Founder has the ability to add to the Master Plan Area or remove property from it if the Master Plan is changed.

Phasing. The community is created with the recording of the Declaration and submission of the first phase. The Founder may add any part of the Master Plan Area to the Declaration, in any order. Once land is added to the Declaration, it is subject to its terms, including assessments.

Plats and phases can be made in small increments, allowing adjustment of design details. As each phase is created, a supplemental declaration creating the phase will be recorded, adding the phase to the land subject to the Declaration. The supplemental declaration will establish the allocated

interests, common elements and limited common elements and any special cost-sharing arrangements for that phase.

Association Control. The Act permits the Founder to select a majority of the board until 75% of all of the Parcels that will ultimately be part of the community have been sold. (RCW 64.90.415) During this early period, the board members appointed by the Founder will be able to control the operations of the Association. However, board members have a duty to the Association to act reasonably and in the best interests of the Association.

As long as the project is proceeding with sales of units or addition of units every two years, there is no time limit to this period of developer control, which may last for many years in a project with a long build-out.

Maintenance Zones. Maintenance Zones are smaller areas within Vista Field that share limited common elements or that require other specialized shared maintenance. Maintenance Zones, which are created as phases are added, are a flexible tool to tailor services and cost allocation to particular areas within the community.

Maintenance Zones are managed by an advisory committee of owners within that Zone, working within the community association structure. Additional costs relating to properties within each zone are assessed to the benefited owners.

Allocated Interests. The Act requires that general assessments and voting be in the proportions established by the Allocated Interest assigned to each parcel, which may be stated in the form of a formula. (RCW 64.90.235) The concept of tying Allocated Interests to assessed value was discussed but rejected on the advice of Washington counsel as not permitted under the Act. The Allocated Interests must be determined for each phase at the time that phase is added by supplemental declaration.

Although other formulas are possible, the following formula for Allocated Interests is under consideration and is believed to be in compliance with the Act:

- Most single-family residences, including detached homes and townhouses, will be assigned One Allocated Interest. The draft allows smaller units to be assessed at 0.75 Allocated Interests and very large homes to be assessed at 1.50 Allocated Interests, although this is open to discussion. A separately leasable garage apartment or other accessory building may add to the Allocated Interest for the parcel.
- Condominiums and apartments will be assessed in the same way as single-family residences, although large projects that have significant recreational facilities and that pay a single assessment for all units may be assessed on a special reduced basis.
- Commercial space is assigned one Allocated Interest per one thousand (1,000) square feet of net usable commercial square footage for the purposes of Association assessments. The Shared Use and Operating Agreement for the Village Center has separate formulas for its expenses.
- Special Use Parcels are unique Parcels that do not fit in the customary categories. The Supplemental Declaration adding the property that includes the Special Use Parcel shall designate the Parcel as a Special Use Parcel and assign a reasonable Allocated Interest for the Parcel, based on the anticipated use.

Budget and Assessments. The Association will need to create a budget for maintenance of common elements and limited common elements and for its other management functions.

In practice, the Founder will need to subsidize the cost of the Association in the early stages. The project will need to be well maintained to be marketable, and with few owners to contribute to assessments, the cost to each owner would be prohibitive. It is customary for the developer to

guarantee assessments in the beginning, which means that owners pay a fixed amount and the Founder pays any budgetary deficit. The fixed amount should be based on a good-faith estimate of what assessments are likely to be once the project is well underway.

The guarantee occurs only during the early years of the project, when the Port selects a majority of the board of the Association, and does not need to be stated in the Declaration. Instead, the sales documents may guarantee that the Port as developer will hold assessments at a certain level, which may include a small annual percentage increase, until a certain date. On an annual basis, the developer-controlled Association board would determine the annual budget and compute the revenue generated by assessments at the guaranteed level. The Port would then contribute the deficit to the Association.

Design Review. Design Review is reserved to the Founder during the entire period of time defined as the Development Period. The Development Period extends beyond the 75% buildout point at which the Founder is required to relinquish its majority on the Association board. This allows the Founder to complete design of the project without Association interference.

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Vista Field Village Center Operation and Management Executive Summary for the Port of Kennewick

By Doris S. Goldstein

The Master Plan contemplates several distinct commercial districts. The Village Center is the largest of the primarily commercial areas and the first to be developed. It is centrally located within Vista Field and is intended to include a performing arts center as well as businesses and residences.

Commercial properties in the Village Center and elsewhere within Vista Field are subject to the Declaration of Covenants, Conditions and Restrictions for Vista Field (the “Declaration”), and are members of the Association, for the purpose of contributing to the cost of common elements that serve the entire community.

However, the commercial portions of Vista Field require specialized service to maintain, regulate and promote the commercially-oriented common areas. There are significant disadvantages to providing these services under the Declaration. Instead, it is recommended that for these specialized services that the commercial properties be subject to a separate, additional agreement, the Village Center Shared Use and Operating Agreement (“Operating Agreement”).

As the smaller commercial districts on the east side and the west side of the Master Plan are developed, they can either be added to the Operating Agreement (with or without specialized provisions) or a separate agreement for these areas may be created in the future.

Reasons for Separate Governance Structure. Creation of a separate governance structure for commercial property is recommended for the following reasons:

- In developing a mixed-use community, it is critically important to protect commercial properties from potential homeowner interference. Creation of a separate commercial association is the single best way to provide such protection.
- The Washington Uniform Common Interest Ownership Act (the “Act”) is inflexible in many regards, including the formulas for assessments, voting requirements and association operation. While compliance with the Act is mandatory for the residential portions of the community, it is not required for an association consisting entirely of commercial property owners. Removing commercial property from the Act gives the Port much greater flexibility in the operation of the Village Center.
- Financial records of the Association are subject to inspection by homeowners under the Act; formation of a commercial association keeps Village Center records separate from Association records, which are subject to inspection by homeowners. (However, the information may be available under the Washington Public Records Act .)
- The Association is required to be turned over to homeowners at 75% build-out. There is no time limit for developer control of the Commercial Association. The Port can maintain control of the Commercial Association as long as it deems necessary to do so.
- If the Port ever chooses to make a bulk sale of a significant part of the Village Center properties, being able to assign its management rights will increase the value of the property.

Creation of the Commercial Property Association. The Declaration and the Operating Agreement have separate purposes and are intended to co-exist without conflict.

The Operating Agreement would be recorded in the public records before the Port sells the first commercial property. It would describe a geographical area—the Village Center—but would specifically exclude residential property from its effect.

The Operating Agreement would establish the Commercial Property Association. All commercial property owners within the boundaries would be members of the Commercial Property Association and pay assessments based on the formulas provided in the Operating Agreement.

Because it is not subject to the Act, the Articles and Bylaws of the Commercial Property Association can be written to give significant control to the Port. However, the Commercial Property Association must be operated as a separate entity, with separate financial accounts. The Port would be expected to operate and control the Commercial Property Association for an extended period of time.

Purposes. The Operating Agreement has three primary purposes, with assessments allocated differently for each of these functions:

- *Maintenance:* For maintenance of the commercial common areas, such as plazas, landscaping and street furniture, assessments will generally be based on Allocated Interests. Because the Operating Agreement would not be subject to the Act, Allocated Interests could be based on any formula desired, including assessed value.
- *Management:* The Commercial Association will oversee and regulate businesses' use of Common Elements within the boundaries of the Village Center, and the use of Village Center's Limited Common Elements. The cost of management would be assessed in accordance with Allocated Interests.
- *Promotion:* The Commercial Association will promote Vista Field for the mutual benefit of all businesses, including advertising, special event programming, seasonal decoration and other promotional activities. If promotional activity is a significant part of the Commercial Association budget, it may be desirable to assess this portion of the budget to those commercial owners who are benefited by the increased traffic, such as shops and restaurants rather than offices. This can be done as a percentage of sales tax paid by the business or by another formula, which may be based on a combination of square footage, location and/or type of business.

Services. The Commercial Association may provide certain services, such as shared dumpsters, the cost of which could be based on actual usage or a reasonable estimate of such usage. The Commercial Association can manage parking garages that it owns, leases or manages under other use agreements.

Retained Ownership of Certain Village Center Property. The Port may retain ownership of certain shared spaces, rather than contribute them to the Association as common elements or limited common elements. For instance, the Port may decide that certain plazas or other areas within the Village Center lend themselves to use as a food court or an area with kiosks or other small sales spaces, in which case the Port may retain these areas and act in a "mall manager" function.

Any property that can generate income or has long-term development potential should be retained by the Port, as the Association is not an appropriate vehicle for managing or developing such areas. The Port should strongly consider retaining parking lots and garages, as these areas could be redeveloped if the future contains many fewer private vehicles than the current reality. Long-term use agreements to guarantee parking rights can be provided if required by local government or lenders.

Phasing and Implementation. Although the Operating Agreement would be recorded at the beginning of the development of the Village Center, its operation in the early years would be

relatively simple. As with the Declaration, property will be added in phases, with the supplemental agreements defining the areas subject to the Operating Agreement and commercial common areas to be maintained by the Village Center Association.

Any residential parcel within the phased area will be automatically excluded and does not need to be identified; if the use of the parcel is later changed to commercial, it may move into the Village Center Association as uses change. The reverse is also true. For mixed-use parcels, only the commercial portion will be assessed.

It is expected that the Port would subsidize costs in the beginning. Because the Village Center Association is not subject to the Act, it could charge a negotiated amount for assessments in the early years before the Village Center becomes fully operational.

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Vista Field Proposed Organizational Structure, Page 1: Formation

	Port Authority/Developer	City	Vista Field Association	Commercial Property Association
Role and how established	The Port is the owner of the property and the declarant under the Declaration of Covenants and Restrictions (the Declaration). The Declaration establishes the rights of the Port in developing Vista Field, subject to limitations in the Washington Uniform Common Interest Ownership Act (the "Act").	N/A	The Declaration creates a mixed-use association, the Vista Field Association (the Association) under the Act. As provided in the Declaration, all owners of property within Vista Field, including commercial property, are members of the Association and pay mandatory assessments. The Association is regulated by both the Declaration and the Act.	A separate instrument, the Village Center Shared Use and Operating Agreement ("Operating Agreement"), establishes the commercial property owners' association (the "Commercial Property Association"). Only commercial property owners would be members and pay assessments. Residential property within the Village Center would be excluded from the effects of the Operating Agreement.
Personnel responsible for carrying out development and operation of Vista Field	The Port will hire a project manager familiar with development of New Urban communities, whose responsibilities could include supervision of construction, advice concerning implementation of master plan, marketing strategy and sales, including sales to builders with take-down agreements.	N/A	The board will hire a community association manager, either an existing community association management company or an individual hired specifically for this position with an on-site office. A community association manager is expected to have knowledge of the Act as it affects association operation. At the direction of the board, the manager will manage the financial accounts of the Association, oversee any employees such as maintenance personnel, negotiate contracts for outside service providers and oversee work. As the project developed, the manager will conduct voting for the board of directors, help prepare the budget (to be approved by the board) and collect assessments.	In addition to a manager to oversee maintenance and management of the shared facilities, the budget for commercial operation should include hiring a manager to oversee events, promotions, holiday decorations and other activities. This may be one or more people and may be contracted services, or full or part time staff, and could include the same staff working for the Vista Field Association.
Evolution of Port control during buildout	The Declaration provides protection for the Port to complete development work, including design review, even after control of the board of the Association is turned over to owners.	N/A	The Port as master developer can select a majority of the board until 75% of build-out of the entire project. Board members selected by the Port have a duty to the Association to act reasonably and in the best interests of the Association. The Act requires transition from the developer to owners at 75%. There is no time limit on when this transition occurs, which may take many years.	It is expected that the Port would be the major commercial property owner in the Village Center for an extended period of time. Because the Commercial Property Association is not subject to the Act, there is no limit to how long the Port could control the Commercial Property Association.

Vista Field Proposed Organizational Structure, Page 2: Responsibilities

	Port Authority/Developer	City	Vista Field Association	Commercial Property Association
Maintenance	Port’s job will be oriented toward development—for instance, planting of new landscaping, rather than trimming and other maintenance. However, Port may subsidize Association’s cost of maintenance in early years through guaranteed assessments and deficit funding.	<ul style="list-style-type: none"> • All through streets and sidewalks • Basic care for street trees and strips 	<ul style="list-style-type: none"> •Woonerfs •Alleys (may be assessed to adjacent owners) • Parks and landscaping • Water features • Supplemental care for street trees and strips •Lighting •Recreational facilities (if any) 	<ul style="list-style-type: none"> • Maintenance of shared facilities serving commercial property, such as plazas, parking, water fountains, restrooms, street furniture • Additional level of care as required for parks and other Vista Field Association Common Elements that are used for events and commercial activities
Services	No direct delivery of services unless Port decides to get into businesses such as landscape maintenance.	<ul style="list-style-type: none"> •Utilities •Snow removal for streets maintained by the City •Police/fire emergency 	<ul style="list-style-type: none"> • Snow removal for streets maintained by Association • May provide landscape and maintenance services to private properties and assess to benefited owners 	<ul style="list-style-type: none"> • May manage parking and/or dumpsters • Marketing/promotion of businesses •Events and programming of open space within Village Center, both Common Elements and Limited Common Elements •Holiday and other decorations
Source of Income	<p>Sale of parcels</p> <p>Rental income from commercial property retained by Port</p> <p>Possible broker income from dedicated on-site real estate sales office, particularly for resales.</p>	<p>Sales tax</p> <p>Property tax</p> <p>Utilities taxes</p>	Mandatory assessments from all parcel owners. In accordance with the Act, mandatory assessments are based on “Allocated Interests.” Allocated Interests must be based on a formula and established when property is added to the Declaration. The Declaration provides formulas for residential and commercial property.	Commercial property will be assessed under the Operating Agreement for maintenance and services described above. The cost will be divided among commercial properties in accordance with a formula, which may be based on assessed value. Costs related to events and other business development activities may be assessed based on revenue as reported for sales tax or other formula so that the cost is assumed by those benefited.
Design Review	The Port retains control of all design review throughout the Development Period, which is defined in the Declaration and extends beyond the turnover of the Association board. The Port would hire DPZ to prepare any necessary code and perform the review process during the development stage.	The City issues building permits based on its own rules. It may require Vista Field design approval first.	At the end of the Development Period, the review rights would be assigned to the Association other than for the Village Center.	The Commercial Property Association will assume design review at the end of the Development Period.



AGENDA REPORT

TO: Port Commission

FROM: Nick Kooiker, CFO/Auditor

MEETING DATE: May 28, 2019

AGENDA ITEM: Resolution 2019-09; Authorizing CEO to execute amendment with Parametrix and use opportunity fund

- I. REFERENCE(S):** Exhibit “A”
- II. FISCAL IMPACT:** \$7,800 out of 2019-2020 budget.
- III. DISCUSSION:** The Port Commission authorized use of the opportunity fund for a contract with Parametrix in the amount of \$13,000 for a traffic calming study on Columbia Drive. After execution of the contract, the City of Kennewick public works department identified some additional requirements which required an increase in the scope of work. This amendment was presented to the Commission during the May 14, 2019 meeting. The consensus of the board was a request for numbers in writing, not verbally as they had been expressed in the past for the opportunity fund. So this resolution formalizes the numbers in writing, and authorizes the port CEO to execute an amendment to the contract.

STAFF RECOMMENDATION:

Approve the resolution authorizing CEO to sign Amendment #1 with Parametrix.

IV. ACTION REQUESTED OF COMMISSION:

***Motion:** I move approval of Resolution 2019-09, authorizing the Port’s Chief Executive Officer to execute Amendment #1 with Parametrix for a traffic calming study on Columbia Drive; utilizing \$7,800 from the 2019/20 opportunity fund budget to fund the project.*

PORT OF KENNEWICK

RESOLUTION 2019-09

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE
PORT OF KENNEWICK AUTHORIZING THE PORT CHIEF EXECUTIVE
OFFICER TO EXECUTE AMENDMENT WITH PARAMETRIX**

WHEREAS, the Port has determined that it would be beneficial to analyze the possibility of calming traffic on Columbia Drive between SR-397 and Washington Street; and

WHEREAS, the Port Commission authorized use of the opportunity fund for the original contract with Parametrix on March 26, 2019 in the amount of \$13,000; and

WHEREAS, following commencement of the work, the City of Kennewick public works department identified additional requirements revising the scope of work.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Port of Kennewick authorizes the Chief Executive Officer to execute amendment #1 with Parametrix for work related to traffic calming on Columbia Drive.

BE IT FURTHER RESOLVED that the Board of Commissioners of the Port of Kennewick authorizes use of the "Opportunity Fund" fund in the 2019/20 budget, leaving a remainder of \$78,600 in the fund (attached as Exhibit "A")

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

ADOPTED by the Board of Commissioners of the Port of Kennewick this 28th day of May, 2019.

**PORT OF KENNEWICK
BOARD OF COMMISSIONERS**

By:

THOMAS MOAK, *President*

By:

DON BARNES, *Vice President*

By:

SKIP NOVAKOVICH, *Secretary*

Opportunity Fund

EXHIBIT "A"

	19/20 Budget:	\$ 100,000.00
Project	Vendor	Encumbrance
Traffic Calming (Columbia Drive)	Parametrix	\$ 13,600.00
Traffic Calming (Amendment #1)	Parametrix	\$ 7,800.00
		\$ -
		\$ -
		\$ -
		\$ -
	TOTAL	\$ 21,400.00
	Remaining Budget	\$ 78,600.00



AGENDA REPORT

TO: Port Commission

FROM: Lucinda J. Luke, Port counsel

MEETING DATE: May 28, 2019

AGENDA ITEM NO.: Resolution 2019-10, Revision of Port Commission Rules, Section 5

I. REFERENCE(S): Port Commission Rules of Policy and Procedure adopted January 12, 2016 (revising the Rules adopted February 22, 2011), redline and clean versions of proposed revised Section 5, and Resolution 2019-10; attached.

II. FISCAL IMPACT: None.

III. DISCUSSION: In 2011 the Port adopted Resolution 2011-05, which adopted Commission Rules of Policy and Procedure. On January 12, 2016, the Commission adopted Resolution 2016-01 which adopted the revised Port Commission Rules of Policy and Procedure (revising Section 6.1 “Officers”).

As the result of a recent citizen complaint, deficiencies in the Rules procedures set forth in Section 5 have been identified and require revision for the processing of the citizen complaint. Therefore, it is the opinion of port counsel that the proposed revision to Section 5 be adopted.

IV. COUNSEL RECOMMENDATION: Adopt Resolution 2019-10.

V. ACTION REQUESTED OF COMMISSION:

Motion: I move approval of Resolution 2019-10 revising Section 5 of the Commission Rules of Policy and Procedure consistent with the attached revised Section 5.

PORT OF KENNEWICK

Resolution No. 2016-01

**A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE PORT OF KENNEWICK ADOPTING THE
PORT COMMISSION RULES OF POLICY AND PROCEDURE**

WHEREAS, the Port of Kennewick Commission adopted Resolution 2011-05 on February 22, 2011 establishing a formal policy and procedures document to address the specific roles, expectations of conduct, knowledge, disclosures, prohibitions, legal requirements, and accountability of the elected officials who are responsible for the current operation and future direction of the Port of Kennewick; and

WHEREAS, staff has worked with Lucinda Luke, Port Counsel, to revise Section 6.1 "Officers", of the Port Commission Rules of Policy and Procedure document to define the terms of office and the process for election of officers.

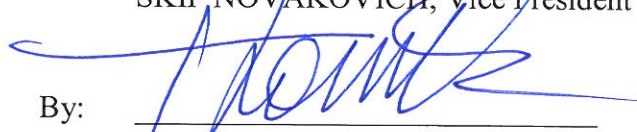
NOW, THEREFORE; BE IT HEREBY RESOLVED that the Board of Commissioners of the Port of Kennewick hereby adopts the revised Port Commission Rules of Policy and Procedure, which shall remain in effect until further revised.

ADOPTED by the Board of Commissioners of the Port of Kennewick on the 12th day of January, 2016.

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

By: 
DON BARNES, President

By: 
SKIP NOVAKOVICH, Vice President

By: 
THOMAS MOAK, Secretary

PORT OF KENNEWICK, WASHINGTON

PORT COMMISSION

**RULES
OF
POLICY AND PROCEDURE**

**ADOPTED AT A REGULAR, OPEN
MEETING OF THE PORT COMMISSION**

FEBRUARY 22, 2011

Section 6 Revised and Adopted January 12, 2016

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1. INTRODUCTION AND PURPOSE

1.1 Port of Kennewick. The Port of Kennewick (“Port”) is a Washington port district, with authority to act under law, including but not limited to Titles 14 and 53 RCW. The powers of a port district are exercised through a port commission. The Port Commission of the Port of Kennewick consists of three Port Commissioners.

1.2 Other Governing Law. In addition to enabling legislation, the Port is subject to Washington State laws, including the open Public Meetings Act, chapter 42.30 RCW; the Public Records Act, chapter 42.56 RCW; and, the Code of Ethics for Municipal Officers, chapter 42.23 RCW.

1.3 Port Managing Official. Consistent with its authority under RCW 53.12.270, the Port Commission has delegated to the office of Executive Director such administrative powers and duties as deemed proper for the efficient and proper management of the Port’s operations. See “Delegation of Authority to Executive Director,” Port Resolution 2009-06 (February 10, 2009 – the “Delegation Policy.”)

1.4 Purpose. It is the purpose of these Rules of Policy and Procedures to provide a framework and guide for governance, management and operation of the Port.

1.5 Reserved Rights. The adoption and maintenance of these Rules of Policy and Procedure (“Rules”) create no vested rights or entitlements. These Rules may be revised, suspended, amended or repealed by majority vote of the Port Commission when acting pursuant to and in compliance with law.

2. COMMISSION AND COMMISSIONERS

2.1 Purpose. The purpose of the Commission is to:

2.1.1 Identify and define the purpose, values and vision of the Port, along with the results the Port is to achieve, and to communicate those items in the form of policy;

2.1.2 Make certain decisions as are designated by law; and

2.1.3 Hire, evaluate, and terminate the Executive Director.

2.2 Governance. Commission governance addresses:

2.2.1 Strategic leadership more than administrative detail;

2.2.2 Encouragement of diversity in viewpoints;

2.2.3 Collaborative rather than individual decisions;

2.2.4 Future, rather than past or present, direction;

2.2.5 Proactive, rather than reactive, conduct; and

2.2.6 Full transparency to the public.

2.3 Actions. The Commission will:

2.3.1 Produce and maintain written policies that ensure a high quality of governance and clear roles in decision-making between Commission and staff;

2.3.2 Regularly monitor, and evaluate the Executive Director's performance;

2.3.3 Adopt, and annually review, the Port's Strategic Work Plan;

2.3.4 Adopt the Port's annual budget;

2.3.5 Adopt, regularly review, and modify as necessary the Delegation of Authority to the Executive Director;

2.3.6 Set the rates, rules and regulations for services provided by the Port;

2.3.7 Purchase or dispose of real estate or other property to the benefit of Port District taxpayers/citizens; and

2.3.8 Take such other actions as may be required by law.

2.4 Port Financial Goals.

As specified in Port Resolution 2010-41, as may from time to time be amended, the Port Commission reiterates the following budgetary goals and acknowledges the importance thereof:

2.4.1 The Port shall work toward funding all operating expenses from revenues from Port operations;

2.4.2 The Port shall fund projects with available resources, not with bonds or loan financing unless otherwise in the best interest of the Port and the communities' long term interest;

2.4.3 The Port shall pursue fewer projects while selecting projects with the greatest return to the Port and to taxpayers; and

2.4.4 The Port shall pursue projects with development partners who demonstrate support (e.g. matching funds, political/citizen/taxpayer support, leveraged investment, enthusiasm/goodwill).

3. COMMISSION CODE OF CONDUCT

3.1 Purpose. The purpose of these Port of Kennewick Rules is to foster public transparency and public accountability concerning the transaction of Port business and to protect, and promote the efficiency of, the Port by prohibiting incidents and areas of conflict. Commissioners shall conduct themselves in accordance with all laws and applicable policies and further shall comply with the following.

3.2 Conflict Avoidance. Commissioners are strictly prohibited by law from entering into or engaging in any activity identified in chapter 42.23 RCW as a conflict of interest with their official duties as a Port of Kennewick Commissioner and shall further avoid conduct that may present an appearance of a conflict of interest.

3.3 Policy Acknowledged. On an annual basis and in a public forum, each Commissioner shall acknowledge the obligation to disclose any conflicts of interest under chapter 42.23 RCW.

3.4 Disclosure. On a case by case basis, each Commissioner will disclose to the other Commissioners in a public forum, any remote conflicts of interest under chapter 42.23 RCW. Disclosure will be noted in the Port's official minutes which are public record. As required by RCW 42.23.040, a Commissioner with such remote interest will not participate in any discussion and/or debate concerning such interest, will not vote on the matter, and will do nothing to influence any other Commissioner concerning their decision on the matter. The foregoing shall also apply to any business owned by a Commissioner's spouse, in the absence of a separate property agreement.

3.5 Statement of Financial Affairs. On or before April 15 of each year, or within (14) days of taking oath of office, each Port Commissioner shall file with the Port a copy of a Statement of Financial Affairs prepared in satisfaction of the requirements of RCW 42.17.240 - .241, which shall be available for public inspection at the first regular Commission meeting after the above-referenced dates.

3.6 Conduct as Commissioner. Commissioners shall adhere to these Rules of Policy and Procedure as adopted by the Commission, and shall conduct themselves with civility and respect at all times with one another, with staff, and with members of the public. As fiduciaries of the Port, Commissioners shall make decisions on the basis of public policy and shall demonstrate undivided loyalty to the interests of Port and its taxpayers. This loyalty shall supersede any conflicting loyalty to advocacy or special interest groups.

3.7 Commissioner Knowledge of Policies. Commissioners will become familiar with their individual and joint obligations pertaining to the Port's directive on reporting alleged improper governmental action, including actions required of the Commission regarding complaints by Port employees and/or the public of alleged improper governmental actions and/or employee claims of retaliation for reporting alleged improper governmental actions.

3.8 Representation of Positions. Unless authorized by the Commission at an open meeting or as set forth in Port policy or plan (e.g., an approved plan), an individual Commissioner may not represent a position as being the position of the Port, either in private communications or in a public forum.

3.9 Shared Information and Advocacy. Recognizing that differences may exist among the Commissioners and that a collegial approach to issue resolution is preferred, Commissioner shall make available to fellow Commissioners all information related to Port activities. A Commissioner should make clear the foundation upon which an opinion stands; be

candid about any philosophical or political preferences; and, recognize and make clear the limits of expertise.

3.10 Representation of Port Position. No Commissioner is authorized, without Commission authorization, to represent the Port with special interest groups, Port tenants, suppliers, vendors, consultants, contractors or others that are or seek to do business with the Port. Unless otherwise authorized by the Commission, a Commissioner shall disclose that the Commissioner's position is not that of the Port or of the Commission when participating in discussions, debates, and forums where the sponsoring group(s) or other participants are identified with a particular perspective on an issue and the Commissioner's participation might put into question both the Commissioner's and the Commission's impartiality. Nothing in this Policy prevents an individual Commissioner from stating a position as that of the individual Commissioner, but not that of the Port or of the Commission.

3.11 Special Privileges Prohibited. RCW 42.23.070 prohibits, in part, Commissioners from using public office to secure special privileges or exemptions for a Commissioner or others.

3.11.1 Commissioners must conduct themselves at all times in a manner that leaves no grounds for belief, or even the appearance that information they have gathered on the job has been used for personal gain or for gain of any individual or special interest group, whether such gain is financial or otherwise.

3.11.2 Commissioners shall avoid any association with individuals or groups organized with an attempt to influence Port policy that will benefit themselves or their cause at the exclusion of the Port at large.

3.12 Commission-Staff Relations. Commissioners may not attempt to exercise individual authority over the Port or staff, except as explicitly set forth and authorized in Commission policies, including the Delegation Policy referenced in Section 1.3.

3.13 Open Meetings. In accordance with Washington's Open Public Meetings Act, Commissioners shall:

3.13.1 Not meet as a quorum outside of Commission-called public meetings to hold discussions or make decisions, as defined under chapter 42.30 RCW, regarding the business of the Port.

3.13.2 Not meet as a quorum with staff outside of a Commission-called public meeting for the purpose of gathering information.

3.13.3 Understand that the requirements of the Washington Open Public Meetings Act apply to communications via telephone, e-mail, instant messaging or other forms of electronic communications. Any exchange of communication between any two Commissioners may constitute an official meeting of the Commission and be in violation of the Act. Commissioners may send information to other members of the Commission on an informational basis; however, replies and/or exchanges of communications regarding Port business must not occur outside of an official public meeting of the Commission. Any such e-mail sent for informational purposes as described above, by any member of the Commission,

shall be sent individually, not as group e-mail. Commissioners will not “reply” to any e-mail received by another member of the Commission.

3.13.4 Respect the confidentiality appropriate to issues, including personnel, real estate transactions, proprietary matters, and attorney-client privileged communications, including those requirements listed under RCW 42.30.110, Executive Sessions, and including any other confidential information gained by reason of the Commissioner’s position. See also RCW 42.23.070(4) prohibiting disclosure of confidential Port information.

3.14 Commission Disclosure of Economic Associations. RCW 42.23.070 states in part that “[n]o municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein.” Port contracts made in violation of the law are void; and any Port officer violating the law is liable to the Port for a “penalty in the amount of five hundred dollars, in addition to such other civil or criminal liability or penalty.” RCW 42.23.050. The law also prohibits a Commissioner from employment or engaging in any professional activity that may require disclosure of Port information to non-Port interests. RCW 42.23.070. These statutory prohibitions are based on the principle that a Port official may not have divided loyalties. The line between proper and improper conduct may not always be clear, and even unintentional conduct may expose the Port and Port officers and employees to liability. See *City of Raymond v. Runyon*, 93 Wn. App. 127 (1998) (“In spite of well-intentioned attempts to avoid a prohibited conflict of interest,” city commissioner found in violation of law). These Rules attempt to address a Commissioner’s responsibility under law and duty of loyalty to the Port, with other interests. See also, Section 3.2.

3.14.1 Under chapter 42.23 RCW, no Commissioner may have an economic association (affiliation, involvement, or interest), directly or indirectly, that may conflict with the Commissioner’s official duties as a Port Commissioner. However, Commissioners may engage in other employment or activity only so long as it does not interfere or conflict with their duties as a Commissioner.

3.14.2 In order to avoid inadvertent violation of law, and consistent with the Port’s policy for its officers and employees, on or before April 15 of each year, or within fourteen (14) days of taking office, each Port Commissioner, shall file with the Port a written statement identifying any current or prospective economic relationship, whether direct or indirect, which could be a conflict of interest, a remote interest or give rise to an appearance of a conflict of interest with the Port. In addition, each Port Commissioner shall in the written statement disclose other employment and/or business relationships in order that the Port may confirm that there are no Commissioner conflicts or potential conflicts of interest with current or prospective Port activities. The statement shall include the name of the employing or business, the nature of services rendered, the time commitments, the location of the performance of such services and the amount of compensation (and expense reimbursement) received for such services. This Section 3.14.2 shall also apply to any employment or business of a Commissioner’s spouse, in the absence of a separate property agreement.

3.14.3 The Commissioner shall declare his or her intention to refrain from deliberations and voting on issues related to the person or entity in such relationship. This requirement may be extended by Commission action to any individual or entity that, in the judgment of the Commission, could represent the potential for or the appearance of a conflict of interest. Even with disclosure, chapter 42.23 RCW may prohibit the Commission from acting in the face of a conflict of interest.

3.14.4 A Commissioner shall not receive reimbursement for expenses, per diem, or other Port payment for activities (e.g., travel, meals and other costs) when the Commissioner is engaged in or participating for both the Port and another Entity.

4. FULL TRANSPARENCY IN PORT ACTIONS

4.1 This policy shall ensure full, fair, and open discussion of matters of public importance, with opportunity for public participation and media coverage.

4.2 With respect to any quasi-judicial matter before the Commission, or reasonably expected to come before the Commission, it is the policy of the Port Commission that no Commissioner shall:

4.2.1 Have contact with any person, either oral, written, electronic or otherwise communicated, except in a Commission meeting; and

4.2.2 Receive any information or evidence except as a part of the public record at a Commission meeting.

4.3 If a Commissioner is not able to avoid contact with parties outside of an open Commission meeting or receipt of information from parties outside of an open Commission meeting, the Commissioner shall disclose at the next public meeting, the full content of the contact made or information received.

4.4 Avoidance of communications described above is preferred over relying on the public disclosure remedy because an incomplete or inaccurate conveyance of the contact, even if inadvertent, may bias the outcome and subject the Commission action to challenge.

4.5 All information any person or entity would like distributed to Commissioners should be first provided to Port staff; staff will then consistently distribute the information to all Commissioners and file the information as appropriate.

5. REPORTING MISCONDUCT

5.1 General. The Port is committed to lawful and ethical behavior in all of its activities and requires its staff and Commissioners to conduct themselves in a manner that complies with all applicable laws, regulations and this policy. Complaints against staff (other than the Executive Director) shall be resolved by the Executive Director, according to law and the Port Policies and Procedures manual. Complaints against the Executive Director shall be resolved by the Port Commission according to applicable contract, Delegation of Authority and

the Port Policies and Procedures manual. Complaints against Commissioners shall be resolved as set forth below.

5.2 Complaint. If any person believes that a Commissioner has engaged in misconduct, the Executive Director shall investigate consistent with Section 5.3 and report to the Commission. No employee will be discharged, threatened, or discriminated against in any manner for following up on any complaint or for reporting what they perceive to be misconduct. All complaints must include a description of the alleged misconduct. The proceedings shall be treated confidentially, including the name of the complainant, except to the extent required to complete any investigation and in the event that an action is taken.

5.3 Initial Determination. Based upon the complaint, and only following investigation and with the advice and counsel of Port general or special legal counsel (“Port counsel”), the Executive Director shall determine whether sufficient evidence exists to proceed with an investigation. If the Executive Director determines that insufficient evidence exists, the complaint shall be dismissed. Otherwise, the Executive Director shall proceed as follows.

5.4 Investigation. If an investigation is warranted, the Executive Director shall recuse himself from the process and delegate all further steps to Port counsel, and/or an investigator retained for such purpose by Port counsel. Port counsel shall inform the party subject of the complaint (Respondent) in writing that a complaint has been filed and that an investigation will take place. Port counsel shall provide a copy of the complaint to the Respondent and the Respondent shall have a reasonable time to prepare and submit a response in writing. Port counsel may seek additional information regarding the matter from the complainant, the Respondent and/or relevant third parties. In conducting the investigation and evaluating all evidence, the Port’s counsel shall presume that the Respondent acted ethically and shall determine that an act of professional misconduct has occurred only upon a finding of substantial evidence of such misconduct.

5.5 Determination and Recommendation. Port counsel shall evaluate the complaint and issue a decision within thirty (30) days of receiving all relevant evidence, that the complaint is substantiated or unsubstantiated. If Port counsel finds misconduct and the complaint substantiated, a report to Executive Director and the Commission shall set forth the basis for the decision and a recommended action; otherwise, the complaint shall be dismissed.

5.6 Notification of Determination. Following receipt of the decision and recommendation of Port counsel, the Commissioners shall promptly hear, consider and vote upon the recommended action. The complainant and Respondent shall be notified of the action in writing and shall have the right to be heard before the Commission.

5.7 Reconsideration. A decision is subject to reconsideration upon written request by a respondent. But the sole ground for reconsideration shall be that the Respondent has new, relevant information which was not considered by Port counsel. A respondent having new information to submit to the Commissioners may, within fifteen (15) days of receipt of the written notice of determination, file with the Commission a written request for reconsideration stating the reason and including the new information not considered by the Port counsel. Following review of the entire investigative file, the decision and recommendation of the Port

counsel and the new information submitted by a respondent, the Commission shall, within fifteen (15) days of receipt of such new information, hear, consider or render a final decision which may not be further appealed. If the complaint is dismissed, the complainant and the Respondent shall be notified of same in writing. If reconsideration is denied, the Respondent, but not the complainant, shall be notified of same in writing, and any action by the Commission shall be implemented immediately.

5.8 Sanctions. Censure and/or reprimand may be invoked with respect to Commissioner misconduct, in addition to reassignment of committee assignments and other actions.

5.9 Public Notification. Unless otherwise determined by the Commission in a particular matter, it shall be standard procedure to publish, in a manner deemed appropriate by the Commission, the fact of any sanction.

5.10 Other Remedies Reserved. Any action taken by the Commission shall not prevent other legal action that may be available under law. The Port shall not indemnify or defend any Commissioner charged with misconduct, except as otherwise provided under Section 18.

6. COMMISSION MEETINGS

6.1 Officers. There shall be three Commission officers: a president, a vice president and a secretary.

6.1.1 Terms. The terms of office for each officer shall be two years or until his/her successor is elected.

6.1.2 Election. The officers shall be elected at the first regularly scheduled Port Commission meeting in January in even years. Newly elected officers shall take office effective the next regularly scheduled meeting following the election, unless otherwise agreed by the Commission.

6.1.3 Special Elections. By affirmative vote of 2/3 of the officers, a special election of officers may be held at any regularly scheduled Port Commission meeting.

6.2 Presiding Officer. The Presiding Officer at all meetings of the Commission is the President, and in the absence of the President, the Vice President will act in that capacity.

6.3 Presiding Officer Duties. The Presiding Officer shall:

6.3.1 Preserve order and decorum in the Commission chambers;

6.3.2 Observe and enforce all rules adopted by the Commission;

6.3.3 Decide all questions on order, in accordance with these rules, subject to appeal by a Commissioner;

6.3.4 Recognize Commissioners in the order in which they request the floor. Except as otherwise set forth herein, the Presiding Officer, as a Commissioner, shall have only those rights, and shall be governed in all matters and issues by the same rules and restrictions as other Commissioners; and

6.3.5 Have the authority to appoint Commissioners or the public to serve on ad hoc committees, task forces and any advisory boards, with input from fellow Commissioners.

6.4 Regular Meeting. Port meetings are held on the second and fourth Tuesdays of each month in the Commission Chambers, 350 Clover Island Drive, Suite 200, Kennewick, Washington at 2:00 p.m.

6.5 Special Commission Meetings. A special public meeting of the Commission may be called by the President or by any two Commissioners. Any request and subsequent special meeting notices shall state the subjects (e.g., agenda items) to be considered at such special meeting and no other subject shall be acted upon.

The Port Administrative Assistant shall provide notice of special Commission meetings pursuant to applicable law.

6.6 Quorum. At all meetings of the Commission, a majority of the Commission (two members) constitutes a quorum for the transaction of business, but a lesser number may adjourn from day to day or until the time of the next regular meeting.

6.7 Recording Proceedings. The Port Administrative Assistant shall maintain an account of all proceedings of the Commission in accordance with statutory requirements. Port meeting minutes can be corrected but shall not be revised without a majority affirmative vote of the Commission at a regularly scheduled Commission meeting.

6.8 Call to Order. The Presiding Officer shall call each meeting to order. The Presiding Officer will announce the attendance of Commissioners and indicate any Commissioner who is not in attendance.

6.9 Participation by Telephone. The Commission strongly believes that a Commissioner's first priority shall be to the District's constituents as a whole and that this obligation is best fulfilled by direct, face-to-face participation in public meetings rather than via telephone or other medium. Such policy provides access by the public to the Commission, provides for better understanding by the public of the deliberative process, minimizes miscommunication, ensures that each Commissioner sees all applicable documents and sees all in attendance. Therefore, the Commission, in furtherance of its long-standing policy of transparency in governance, hereby prohibits the use of attendance at Commission meetings via telephone or other media.

6.10 Commissioner Attendance at Meetings. Commissioners shall inform the President or Executive Director if they are unable to attend any Commission meeting, or if they will be late to any meeting. A majority vote is required to excuse any Commissioner's absence. Unless excused, pursuant to RCW 53.12.140 a Commissioner forfeits office by nonattendance at meetings of the Commission for a period of sixty (60) days. The Executive Director shall

maintain a record of Commissioner attendance at Commission, and other meetings, to which a Commissioner is assigned or scheduled to attend.

6.11 Commission Meeting Staffing. The Executive Director shall attend all meetings of the Commission, unless excused. At the discretion of the Executive Director, other staff members shall attend. The Executive Director may make recommendations to the Commission and shall have the right to take part in the discussions of the Commission, but shall have no vote.

6.12 General Conduct of Business.

6.12.1 The President of the Port Commission will introduce the issue, stating whether action will be taken on the issue, whether the issue is introduced for discussion only or whether other results are anticipated.

6.12.2 Port staff will briefly discuss the issue.

6.12.3 If a technical report by a consultant or other is to be presented, the presenter will provide a summary of the technical report, generally not to exceed 15 minutes.

6.12.4 At the conclusion of the technical report, staff will return the issue to the President of the Commission for action. The Commissioners may ask staff, any consultants or the public to briefly clarify any matter presented.

6.13 Public Comment. Public comment shall be permitted at Commission meetings only in accordance with these established procedures. Comments shall be received at the beginning of each meeting, and at the end of each meeting, as identified on the agenda. Either the President or staff may read the following guidelines into the record.

6.13.1 Speakers shall move to the lectern and shall comment only after being recognized by the President;

6.13.2 Speakers shall state their names and addresses prior to addressing the Commission;

6.13.3 The President may allocate available time among individuals wishing to comment. Generally, the time shall be 3 minutes for each speaker;

6.13.4 Groups are encouraged to express their views through a single spokesperson rather than individually;

6.13.5 Speakers shall limit themselves to matters regarding the issue of concern;

6.13.6 Speakers shall not repeat remarks or points of view made by prior speakers;

6.13.7 The President may overrule impertinent, redundant or disruptive comments;

6.13.8 Applause or other disturbances are discouraged;

6.13.9 All remarks should be directed to the President; and

6.13.10 Individuals should not expect the Commission, staff, consultants, other speakers or any other person, to respond to their comments. Instead, the Commission may direct the matter to staff for comment at a future meeting or for Commission consideration at a future meeting.

6.14 Executive Sessions. Executive Sessions shall be held in accordance with the provisions of the Washington State Open Public Meetings Act. An Executive Session is a Commission meeting that is closed except to the Commission, Executive Director and others that may be authorized. The public is restricted from attendance. Executive Sessions may be held during Regular or Special Commission meetings and will be announced by the President. Before convening an Executive Session, the President shall announce the purpose of the meeting and the anticipated time when the session will be concluded. Should the session require more time, a public announcement shall be made that the executive session is being extended.

6.15 Commission Discussion. All Commission discussion shall be guided by Robert's Rules of Order, Newly Revised. The Port Attorney shall assume the additional duty of Parliamentarian.

6.16 Media Representation at Commission Meetings. All public meetings of the Port shall be open to the media, freely subject to recording by radio, television, electronic, and photographic services at any time, provided that such arrangements do not interfere with the orderly conduct of the meeting.

7. AGENDA PLANNING

The work of the Commission is accomplished in public meetings and all proceedings of the Commission shall be by motion or resolution, recorded in its minute books, which shall be public records. The agenda of the public meeting identifies in general terms the topics to be considered by the Commission.

7.1 Placing Item on the Agenda. Items may be placed on either the business agenda or on the consent agenda. An item may be placed on the preliminary Commission meeting agenda by any Commissioner or by the Executive Director.

7.2 Agenda Preparation. The Executive Director shall prepare a preliminary agenda for each Commission meeting. The preliminary agenda shall set forth a brief general description of each item to be considered by the Commission. The Executive Director shall promptly forward the preliminary agenda to the Presiding Officer for review. The Presiding Officer shall have the option to delete any item from the preliminary agenda. The Presiding Officer shall, at the next commission meeting, report any deleted item to the full Commission and the full Commission shall determine whether the item shall be placed on a subsequent agenda.

7.3 Agenda Materials. Agenda materials will be available on the Friday prior to the Commission meeting. Agenda materials will be delivered to Commissioners.

7.4 Adding an Item to a Published Agenda. An item may be placed on a regular Commission meeting agenda after the agenda is closed and the notice published, if the Commissioner or Executive Director explains the necessity and receives a majority vote of the Commission at a public meeting.

7.5 Agenda Item Order. The Presiding Officer may, with the concurrence of the Commission, address agenda items out of order.

7.6 Consent Agenda. Items placed on the consent agenda may be moved to the business agenda upon a motion passed by the Commission during a Commission Meeting and prior to the vote to approve the consent agenda. The moved item will be placed on the business agenda for further discussion.

8. ROLE OF THE COMMISSION PRESIDENT

The President of the Commission shall:

8.1 Ensure that the Commission jointly and consistently adheres to its own rules and policies, and those imposed upon it by the laws of the State of Washington.

8.2 Ensure that deliberation is fair, open and thorough, but also timely, orderly and stays on topic. The President of the Commission shall preside over and facilitate all Commission Meetings in accordance with these governance principles and Roberts Rules of Order, as needed.

8.3 Assume responsibility of the Commission that is not specifically assigned to another Commissioner.

8.4 Call Special Meetings of the Commission in the event of a business need as provided for by applicable law.

8.5 Establish ad hoc advisory and standing committees.

8.6 Schedule and coordinate the annual process of evaluating the Executive Director.

8.7 Have no authority to supervise or administratively direct the Executive Director or Port staff, apart from authority expressly granted by the Commission.

9. ROLE OF THE COMMISSION VICE-PRESIDENT

The Vice-President of the Commission shall:

9.1 Perform such duties as are assigned by the President.

9.2 Have all the power and duties of the President in the absence or inability of the President to act.

9.3 Have all the powers and duties of the Secretary in the absence or inability of the Secretary to act, when not acting as the President.

10. ROLE OF THE COMMISSION SECRETARY

The Secretary of the Commission shall:

10.1 Attest all contracts, bonds, deeds, leases and other instruments and documents duly authorized by the Commission unless otherwise delegated by the Commission.

10.2 Perform all duties incident to the office of Secretary as may from time to time be required by law or assigned to such office by motion, rule or resolution of the Commission.

10.3 Have all of the powers and duties of the President in the absence or inability of both the President and the Vice President to act.

10.4 Have the option of delegating the obligations and duties of Secretary to the appropriate Port staff member for implementation.

11. COMMISSION COMMITTEES

11.1 General. The Commission President may establish ad hoc advisory and standing committees. All committees should include designation of members, chair and a charter describing the committee's purpose. The Commission President will review each committee at least annually to determine whether the committee should continue.

11.2 Committee Roles and Responsibilities.

11.2.1 Committees will assist the Commission by gaining education, considering alternatives and implications, and preparing policy alternatives.

11.2.2 Commission committees or any individual Commissioner may not speak or act for the Commission, except when formally given such authority for specific and time-limited purposes.

11.2.3 Commission committees cannot exercise authority over staff or interfere with the delegation from the Commission to the Executive Director.

11.2.4 Participation in committee meetings shall be in compliance with the provisions of the Open Public Meetings Act, when two or more Commissioners are present, or the committee is acting for the Commission. In such event, the committee meeting must be properly noticed as a public meeting.

11.2.5 These policies apply to any group which is formed by action of the Commission President, whether or not it is called a committee.

12. COMMISSION AND PORT ACTION

12.1 Only decisions of the Commission acting as a body are binding upon the Port and Port staff.

12.2 In the case of Commissioners requesting information or assistance without Commission authorization, the Executive Director and staff *must* refuse such requests that require, upon evaluation by the Executive Director, a material amount of staff time or funds, are disruptive to the Port, or which may involve a conflict of interest between the Port and the Commissioner requesting the information or assistance.

12.3 Commissioners individually may communicate directly with Port employees or contractors for the purpose of inquiry only. Commissioners shall, on business matters, deal with staff through the Executive Director. However, the Commission as a body and the Commissioners individually do not give direction to persons who report directly or indirectly to the Executive Director. If an individual Commissioner is dissatisfied with the response from the Executive Director or staff, the Commissioner may seek resolution through the Commission as a body.

12.4 The Commission as a body and the Commissioners individually will refrain from evaluating, either formally or informally, the job performance of any Port employee, other than the Executive Director, except when approving compensation and benefits in the course of budget or employment contract considerations.

13. PORT COMMISSION & STAFF ROLES AND RESPONSIBILITIES

13.1 General Roles. The Commission is the Port's governing authority and policy maker. The Executive Director and Port staff implement and administer the Commission's policies. The Port of Kennewick has a Commission-Executive Director form of governance. With this structure, the Port Commission's role is to establish port policies and priorities. The Commission hires an Executive Director to implement those policies and undertake the administration of the organization. The Executive Director is hired by the Port Commission to enforce its directives, to direct the daily operations of Port governance, to prepare and monitor the budget, and to implement the policies and programs initiated by the Port Commission. The Executive Director is responsible to the Port Commission, rather than to individual Commissioners, and directs and coordinates all other employees. The Port Commission authorizes positions through the budget process; based upon that authorization, the Executive Director is responsible for hiring all personnel.

13.2 Commissioner's Role. [See also, Section 2.] The Executive Director is authorized to make recommendations on policy matters to the Commission and the Commission retains the authority to accept, reject, or amend the recommendations. Individual Commissioners may not intervene in staff decision-making, scheduling of work, and executing department priorities. This is necessary to allow staff to execute priorities given by the Executive Director. All Commissioners with concerns affecting the Port of Kennewick should address those concerns with the full Commission or with the Executive Director.

No Commissioner shall direct the Executive Director to initiate any action, prepare any report, or initiate any project or study without the authorization of a majority of the Commission. Commissioner requests for information shall be made to the Executive Director, unless otherwise determined by the Executive Director. Commissioners needing staff assistance shall work through the Executive Director.

13.3 Executive Director's Role.

13.3.1 The Executive Director is the chief administrative officer of the Port. The Executive Director is directly accountable to the Port Commission for the execution of the Port Commission's policy directives as set forth in the Delegation Policy and for the administration and management of all Port activities and staff.

13.3.2 The Executive Director is the administrator and manager of all Port activities and staff; and the information liaison between Commission and Port staff. Requests for information from Commissioners are to be directed to the Executive Director and will be responded to promptly. The information requested will be copied to all members of Commission so that each member may be equally informed. The Executive Director will provide staff support for Commissioners as appropriate in their official roles.

13.3.3 In addition to regular, comprehensive memoranda written by the Executive Director directly to the Port Commission concerning aspects of Port operations (exclusive of confidential personnel issues), all Commissioners shall receive copies of correspondence received by the Executive Director that will assist them in their policy-making role. The Executive Director also provides other documents to the Commission on a regular basis, such as status reports, executive summaries, and minutes of meetings.

13.3.4 The Executive Director shall have an open-door policy which allows individual Commissioners and the public to meet with the Executive Director on an impromptu, one-on-one basis. Such meetings are highly encouraged. No Commissioner, person or special interest group shall abuse the open-door policy.

13.4 Staff Role. The Commission recognizes the primary functions of staff as 1) executing the policies and actions taken by the Commission as a whole, and 2) keeping the Commission informed. Staff is obligated to take guidance and direction from the Executive Director or appropriate supervisor. This direction follows the policy guidance from the Port Commission to the Executive Director through the Delegation Policy. Port staff will, acting through the Executive Director, make every effort to respond in a timely and professional manner to all individual Commissioner's requests for information or assistance; providing, in the judgment of the Executive Director, the request is not of such magnitude (in terms of workload, resources, or policy) that it should instead be assigned to the Executive Director through the direction of the full Port Commission.

13.5 Summary. The following is a brief summary from the Washington Public Port Association ("WPPA") Commissioner Resource Guide, and identifies parallel leadership roles and responsibilities.

Port Commission

Governs:
 Guides
 Directs
Decides what
Requests information
Considers issues
Creates, reviews and adopts policy

Executive Director

Administers:
 Operates
 Manages
Decides how
Seeks and provides information
Provides recommendations
Recommends and carries out policy

Reviews and monitors plans
Monitors progress
Contracts with personnel
Approves evaluation criteria, procedures
Reviews and approves budget
Represents public interest

Implements plans
Reports progress
Supervises hiring process, practices
Supervises and evaluates personnel
Formulates budget
Acts in the public's interest

14. BUDGET AND PROCUREMENT AUTHORITY

14.1 General. By resolution, the Commission shall set forth the authority of the Executive Director to manage and expend Port funds in accordance with financial policies and budgetary limits. Procurement of goods and services shall take place in accordance with applicable legal requirements in a fair, competitive and inclusive manner to maximize the benefit to the Port's taxpayers/customers.

14.2 Financial Policies. The Commission, by resolution, shall adopt financial policies that provide guidance to the Executive Director in managing the finances of the Port and in developing budgets, financial plans and rates. At a minimum, these policies shall:

14.2.1 Provide for sufficient liquidity relative to the Port's risk profile;

14.2.2 Provide for adequate coverage to meet debt covenants;

14.2.3 Establish criteria for debt and rate – financed capital expenditures;

14.2.4 Require that budgets be developed based on conservative and prudent assumptions consistent with standard industry practice; and

14.2.5 Establish budgetary and procurement controls over expenditures.

14.3 Budgetary Authority. As required by and consistent with law, the Commission, by resolution, shall approve the Port's budget prior to the start of each calendar year. The Executive Director shall manage the Port's operations within the approved budget levels consistent with authority levels set forth in the financial policies.

14.4 Procurement Authority.

14.4.1 The Commission, by resolution, shall establish procurement authorities and guidelines for the Executive Director consistent with state laws and regulations. The Executive Director shall establish procurement controls that provide reasonable assurance that the procurement of goods and services are made for a valid business purpose and within authorized budget levels.

14.4.2 It is Port policy that procurement decisions shall be made free from actual or perceived conflicts of interest consistent with these Rules of Policy and Procedure.

14.4.3 It is Port policy that due diligence and prudent judgment be exercised in the making of procurement decisions, including conducting a risk assessment. If the Executive Director reasonably determines that a procurement activity presents, regardless of the size of the

financial commitment, either: (1) a unique and significant operational risk to the Port; or (2) a significant impact to customers, the Executive Director shall inform the Commission.

15. EVALUATING THE EXECUTIVE DIRECTOR'S PERFORMANCE

15.1 General. The Executive Director's job performance shall be evaluated by comparing the organization's operations and results and the Executive Director's performance to the policies established by the Commission.

15.2 Process.

15.2.1 The Commission shall evaluate the Executive Director's performance on an annual basis.

15.2.2 The evaluation will be based on an evaluation of the organization's performance and the Executive Director's personal performance against the evaluation criteria previously established by the Commission and the Executive Director.

16. COMMISSION-AUDITOR RELATIONSHIP

16.1 General. The Port Auditor (Auditor) serves the Port to assist in the Port's compliance with the Local Government Accounting Act, RCW 43.09.200 – 43.09.2855.

16.2 Hiring and Reporting.

16.2.1 The Executive Director shall hire the Auditor. The Auditor shall perform those duties specified in RCW 43.09.240, Port Policy or job description and shall be granted direct access to the Commission as necessary in the performance of these duties.

16.2.2 The Auditor shall report through the Executive Director or designee for all administrative matters, including hiring, performance evaluations, salary administration, employee benefits, and terminations. The Executive Director may assign additional duties to the Auditor as long as these duties do not interfere with the Auditor's duties as specified by law.

17. COMMISSION-PORT ATTORNEY RELATIONSHIP

17.1 Port Attorney Role. The Executive Director is responsible for hiring and terminating the Port Attorney. The Executive Director shall make provision for and appoint legal counsel for the Port by any reasonable contractual arrangement for such professional services. The Port Attorney is the legal advisor to the Port, the Commission, its committees, commissions and boards, the Executive Director, and all Port officers and employees with respect to any legal question involving an official duty or any legal matter pertaining to the affairs of the Port. It is important to note that the Port Attorney does not represent individual members of Commission, but rather the Port Commission as a whole. The Port Attorney reports to the Executive Director. The Executive Director is responsible for evaluating the Port Attorney's performance.

17.2 Port Attorney Responsibilities.

The general legal responsibilities of the Port Attorney are to:

17.2.1 Provide legal assistance necessary for formulation and implementation of legislative policies and projects.

17.2.2 Represent the Port's interest, as determined by the Executive Director, in litigation, administrative hearings, negotiations, and similar proceedings.

17.2.3 Prepare or approve as to form resolutions, contracts, and other legal documents to best reflect and implement the purposes of the Port.

17.2.4 Keep the Port Commission and staff apprised of court rulings and legislation affecting the legal interest of the port.

17.2.5 Shall advise the Commissioners regarding potential conflict of interest issues or ethical matters. Port Attorney shall provide assistance to individual Commissioners in complying with applicable statutes and laws only when such advice does not conflict with the Port Attorney's obligations to the Port or to specific direction of the Commission.

17.2.6 Give advice or opinion when required by the Commission or Executive Director.

17.2.7 Inform the Commission of material legal issues impacting the Port or the Commission.

17.2.8 Assist the Commissioners and staff in complying with applicable statutes and laws.

17.2.9 Serve as the parliamentarian at all commission meetings and other port-related meetings as requested by the Executive Director.

17.2.10 Other matters as designated by the Executive Director.

18. INDEMNIFICATION AND DEFENSE POLICY

18.1 Policy Stated. As authorized by RCW 4.96.041, there is hereby created a procedure to provide for indemnification and defense of claims of liability arising from acts or omissions of officials and employees of the Port, including volunteers, while performed or in good faith purported to have been performed in the scope of their official duties.

18.2 Definitions. Unless the context indicates otherwise, the words and phrases used in this chapter shall have the following meaning:

18.2.1 "Employee" means any person who is or has been employed by the Port, including volunteers and appointed members of advisory boards and commissions. "Employee"

does not include independent contractors. “Employee” also includes an employee’s spouse when an employee’s marital community is named in any action subject to this policy.

18.2.2 “Official” means any person who is serving or has served as an elected Port Commissioner, and any person who is serving or who has served as an appointed officer of the Port as defined by RCW 42.23.020(2), as written or hereafter amended. “Official” does not include independent contractors performing the duties of appointed positions.

18.3 Legal Representation.

18.3.1 The Port shall provide to an official or employee, subject to the conditions and requirements of this chapter, and notwithstanding the fact that such official or employee may have concluded service or employment with the Port, such legal representation as may be reasonably necessary to defend a claim or lawsuit filed against such official or employee resulting from any conduct, act or omission of such official or employee performed or omitted on behalf of the Port in his/her capacity as a Port official or employee, which act or omission is within the scope of his/her service or employment with the Port. The provisions of this chapter shall not operate to provide legal representation to defend a claim or lawsuit for any conduct, act, or omission resulting in the termination for cause of any official or employee.

18.3.2 The legal representation shall be provided by the office of the Port legal counsel and may include the Executive Director engaging the services of outside legal counsel. If any provision of an applicable policy of insurance provides legal counsel for the employee or official, the Port legal counsel will work with the policy holder for purposes of obtaining legal representation under the existing insurance policy.

18.3.3 In the event that outside counsel is retained under Section 18.3.2, the Port shall indemnify the employee or official from the reasonable costs of defense; provided, that in no event shall the official or employee be indemnified for legal counsel’s fees in excess of the hourly rates established by the Port’s contract with legal counsel selected by the Port. The official or employee shall be liable for all hourly rates charged in excess of said rate.

18.3.4 The determination whether the official or employee was acting in good faith within the scope of his or her official duties shall be made by the Executive Director in consultation with the Port legal counsel and/or outside legal counsel. This determination shall be based on an investigation of the facts and circumstances surrounding the incident and shall be made as early in the proceedings as is reasonably possible. Once the determination is made, the official or employee involved shall be notified by the Executive Director in writing. If the employee or official involved is the Executive Director, the determination shall be made by the Commission in consultation with the Port legal counsel and/or outside legal counsel based on an investigation of the facts and circumstances surrounding the incident and shall be made as early in the proceedings as is reasonably possible. Once the determination is made, the Executive Director shall be notified by the Port legal counsel, in writing. In any claim involving an allegation of criminal conduct, no investigation by the Port will occur prior to a determination of guilt, or prior to a dismissal of the criminal charge with prejudice, so as not to compromise the official’s or employee’s Fifth Amendment right against self-incrimination. Any determination made under this Section shall not be subject to appeal.

18.4 Exclusions. Except as otherwise determined pursuant to Section 18.3, in no event shall protection be offered under this chapter by the Port to:

18.4.1 Any dishonest, fraudulent, criminal, willful, intentional or malicious act or course of conduct of an official or an employee;

18.4.2 Any act or course of conduct of an official or employee which is not performed on behalf of the Port;

18.4.3 Any act or course of conduct which is outside the scope of an official's or employee's service or employment with the Port; and/or,

18.4.4 Any lawsuit brought against an official or employee by or on behalf of the Port;

18.4.5 Any action or omission contrary to or not in furtherance of any adopted Port policy.

18.5 Reserved Rights. Nothing herein shall be construed to waive or impair the right of the Port neither to institute suit or counterclaim against any official or employee nor to limit its ability to discipline or terminate an employee.

18.6 Policy Secondary to Insurance. The provisions of this chapter shall have no force or effect with respect to any accident, occurrence or circumstance for the which the Port or the official or employee is insured from whatever source against loss or damage; provided that the provisions of this chapter shall apply in the event the loss or damages fall within the deductible or exclusion(s) of the Port's applicable insurance policy. The provisions of this chapter are intended to be secondary to any contract or policy of insurance whether owned by or otherwise applicable to any official or employee. The Port shall have the right to require an employee to fully utilize any such policy protection prior to requesting the protection afforded by this Chapter.

18.7 Determination of Exclusion. The determination whether an official or employee shall be afforded a defense by the Port under the terms of this chapter shall be made after a determination pursuant to Section 18.3 as to whether the official or employee was acting within the scope of his or her duties. The Executive Director and Port legal counsel shall prepare a recommendation to the Commission. The decision of the Commission shall be final as a legislative determination and shall be based upon a finding that an official or employee meets or does not meet the criteria of this chapter. Nothing herein shall preclude the Port from undertaking an official's or employee's defense under a reservation of rights. The determination as to whether a defense is to be furnished as provided under this chapter to a member or to members of the Commission shall be made without the vote of the Commissioners named in the claim or lawsuit unless the inclusion of such member or members is required for a quorum; provided, that if a claim or lawsuit affects a quorum or greater number of the members of the Commission, all such affected members shall retain their voting privileges under this Section.

18.8 Representation and Payment of Claims – Conditions. The provisions of this chapter shall apply only when all the following conditions are met:

18.8.1 In the event of any incident or course of conduct potentially giving rise to a claim for damages, or for the commencement of a lawsuit, the official or employee involved shall, as soon as practicable, give the employee's department director and, if applicable, the Port legal counsel and the Executive Director written notice thereof. The notice shall identify the official or employee involved, all information known to the official or employee involved with respect to the date, time, place and circumstances surrounding the incident or conduct giving rise to the potential claim or lawsuit, as well as the names and addresses of all persons allegedly injured or otherwise damaged thereby, and the names and addresses of all witnesses.

18.8.2 Upon receipt, the official or employee shall as soon as practicable deliver any claim, demand, notice or summons or other process relating to any such incident or conduct to the Port legal counsel and shall cooperate with the Port legal counsel, or if the Executive Director authorizes or designates another legal counsel to handle the matter, shall cooperate with that legal counsel, and, upon request, shall assist in making settlement of any suit and enforcing any claim for any right of subrogation against any persons or organizations that may be liable to the Port because of any damage or claim of loss arising from said incident or course of conduct, including, but not limited to, rights of recovery for costs and legal counsel's fees arising out of state or federal statute upon a determination that the lawsuit brought was frivolous in nature. Failure to timely deliver any claim, demand, notice or summons to the Port legal counsel, and in which an adverse decision against the official, the employee or Port results from such failure, shall operate to negate all indemnification and opportunity for defense under this chapter and the Port shall have no obligation to offer a defense to the named official or employee.

18.8.3 Such official or employee shall attend interviews, depositions, hearings and trials and shall assist in securing and giving evidence and obtaining assistance of witnesses all without any additional compensation to the official or employee, and, in the event that an employee has left the employ of the Port, no fee or compensation shall be provided.

18.8.4 Such official or employee shall not accept nor voluntarily make any payment, assume any obligation, or incur any expense related to said claim or lawsuit, other than for first aid to others at the time of any incident or course of conduct giving rise to any such claim, loss or damage. Nothing herein shall be deemed to preclude any official or employee from retaining legal counsel to represent his/her interests relating to such claim or lawsuit; however, all costs and expenses incurred thereby shall be paid by the official or the employee.

18.8.5 Nothing herein shall modify existing procedures or requirements of law for processing and payment of claims against the Port.

18.9 Effect of Compliance With Conditions. If legal representation of an official or employee is undertaken by the Port, whether by the Port legal counsel or by legal counsel obtained by the Port or through its insurance coverage, and all of the conditions of representation are met, and a judgment is entered against the official or employee or a settlement is made, the Port shall pay such judgment or settlement according to the provisions herein; provided, that the Port may at its discretion appeal as necessary any such judgment. In no event shall this Section

be interpreted to provide for payment of an award of punitive damages. The process for payment of punitive damages is discretionary under this chapter, and is set forth in Section 18.16. The decision to appeal an award of damages will be made by the Commission upon the recommendation of the Executive Director and the Port legal counsel and/or outside legal counsel.

18.10 Failure to Comply With Conditions. In the event that any official or employee fails or refuses to comply with any of the conditions set forth in Section 18.8, or elects to provide his/her own representation with respect to any such claim or litigation, then all of the provisions of this chapter shall be inapplicable and shall have no force or effect with respect to any such claim or litigation.

18.11 Reimbursement of Incurred Expenses.

18.11.1 If the Port's investigation under Section 18.3 determines that an official or employee does not come within the provisions of this chapter and a court of competent jurisdiction later determines that such claim does come within the provisions of this chapter, then the Port shall pay any judgment, excepting punitive damages, rendered against the official or employee and reasonable legal counsel's fees incurred in defending against the claim if said judgment is not covered by the Port's insurance provisions or by the official's or employee's insurance. The Port shall pay any costs and reasonable legal counsel's fees incurred by the employee or official in obtaining the determination that such claim is covered by the provisions of this chapter; provided, that if a court of competent jurisdiction determines that such claim does not come within the provisions of this chapter, then the official or employee shall pay the Port's costs and reasonable legal counsel's fees incurred in obtaining the determination that such claim is not covered under the provisions of this chapter.

18.11.2 If the Port determines that a claim against a Port official or employee does come within the provisions of this chapter and a court of competent jurisdiction later finds that such claim does not come within the provisions of this chapter, then the Commission shall have the option of requiring reimbursement by the official or employee for costs or expenses incurred in obtaining the determination that such claim is not covered by the provisions of this chapter.

18.12 Conflict With Provisions of Insurance Policies. The indemnification provisions of this chapter do not constitute a policy of insurance and nothing contained in this chapter shall be construed to modify or amend any provisions of any policy of insurance where the Port or any of its current or former officials or employees thereof is the named insured. In the event of any conflict between this chapter and the provisions of any such policy of insurance, the policy provisions shall be controlling; provided, however, that nothing contained in this chapter shall be deemed to limit or restrict any employee's or official's right to full coverage pursuant to this chapter, it being the intent of this chapter to provide the coverage detailed in this chapter only above and beyond insurance policies which may be in effect while not compromising the terms and conditions of such policies by any conflicting provisions contained in this chapter.

18.13 Pending Claims. The provisions of this chapter shall apply retroactively to any pending claims or lawsuits against any official or employee at the time of adoption of this ordinance and to any such claims or lawsuits hereinafter filed within an applicable statute of

limitations, irrespective of the date of the events or circumstances which are the basis of such claim or lawsuit.

18.14 Modification of Chapter. The provisions of this chapter shall be subject to amendment, modification and repeal, at the sole discretion of the Commission, provided that unless explicitly set forth, any such amendment, modification or repeal shall apply prospectively only and shall have no effect on the obligation of the Port to indemnify and/or defend against any claim which is based, in whole or in part, upon any action or omission of an employee or official occurring prior to the effective date of the amendment, modification or repeal.

18.15 Bargaining Unit Contracts. If a union contract under chapter 41.56 RCW covers any of the provisions of this chapter, all employees under such contract shall be governed by the provisions thereof, rather than by the provisions of this chapter, and where any conflict exists between the provisions of any such contract and this chapter, such contract shall control.

18.16 Punitive Damages. When an employee or official of the Port has been represented in a claim and/or litigation by the Port pursuant to this chapter and any judgment is rendered against such employee or official for punitive damages, the employee or official may make a request to the Commission that the Port pay the award of punitive damages on behalf of the official or employee. Upon receiving a request made by or on behalf of a Port employee or official to pay punitive damages, the Commission shall receive a report and recommendation from the Executive Director and the Port legal counsel. If the official or employee is the Executive Director or a Commission member, the Commission may request a report and recommendation from the Port legal counsel or may retain the services of another person or agency to provide a recommendation. Following receipt of the report and any recommendation, the Commission shall determine whether the best interests of the Port and justice will be served by payment by the Port of the award for punitive damages. There shall be no appeal from such determination. The Executive Director shall communicate the council's determination with respect to the employee's or official's request for payment of punitive damages to said employee or official. Thereafter, the finance director shall prepare the payment of punitive damages if the council authorized such payment.

18.17 Application to Recall Proceedings.

18.17.1 Consistent with RCW 4.96.041(3), the necessary expenses of defending a Port Commissioner in a judicial hearing to determine the sufficiency of a recall charge as provided in RCW 29.82.023 shall be paid by the Port if the Commissioner requests such defense and approval is granted by both the Commission and the Port's legal counsel or attorney appointed by the Executive Director to review the request. The expenses paid by the Port may include costs associated with an appeal of the decision rendered by the superior court concerning the sufficiency of the recall charge.

18.17.2 As authorized by the Supreme Court in the case of *In Recall of Olsen*, 154 Wn.2d 606 (2005), the Port's decision to indemnify and pay the costs of a recall defense does not constitute a contract under RCW 42.23.030, and, as a result, a Commissioner requesting payment of such expenses may vote on the Commission's consideration of the request.

19. GENERAL COMPLAINT RESOLUTION

19.1 Administrative Complaints Made Directly to Individual Commissioners. When administrative policy or administrative performance complaints are made directly to individual Commissioners, the Commissioner shall then refer the matter directly to the Executive Director for review and/or action. The individual Commissioner may request to be informed of the action or response made to the complaint.

19.2 Administrative Complaints – “Best Practice”. Although citizen’s direct access to elected officials is to be encouraged, Port Commissioners should be cautious in making statements or taking actions that may delay a timely customer service response. The best policy is to put the citizen into direct contact with the Executive Director.

Ten Commandments for Staying out of Trouble as a Port Commissioner

[as presented in the WPPA Commissioner Resource Guide]

1. Thou shalt never spend the public's money in secret.
2. Thou shalt not accept personally more money or benefits than any other fellow commissioner.
3. Thou shalt not require the port staff to do more work than necessary to inform (please) you when they could be occupied in improving the business of the port.
4. Thou shalt not speak as the official spokesperson of the port without knowing officially that you have been so designated by the commission majority.
5. Thou shalt not use the press against your fellow commissioners.
6. Thou shalt not use port property for unofficial business, not even a paper clip. Paper clips are cheap, buy your own. Use your own car too.
7. Thou shalt not argue with, grill, or embarrass port staffers in public. They'll hate you for it and get back at you in a thousand ways without your ever knowing it or leaving a scrap of evidence.
8. Thou shalt not depend on news media to keep the public informed of the activities and purposes of the port. Have your own PR program and carry it out.
9. Thou shalt not align yourself closely with a certain group of port tenants or users. Your motives will always be aligned with that group regardless of the issues. And the group will turn on you if you don't support them every single time.
10. Thou shalt not become involved in hiring anyone but the port manager and the port auditor.

5. REPORTING MISCONDUCT

5.1 General. The Port is committed to lawful and ethical behavior in all of its activities and requires its staff and Commissioners to conduct themselves in a manner that complies with all applicable laws, regulations and this policy. Complaints against staff (other than the Executive Director) shall be resolved by the Executive Director, according to law and the Port Policies and Procedures manual. Complaints against the Executive Director shall be resolved by the Port Commission according to applicable contract, Delegation of Authority and the Port Policies and Procedures manual. Complaints against Commissioners shall be resolved as set forth below.

5.2 Complaint. If any person believes that a Commissioner or Commissioners have, engaged in misconduct, the Executive Director shall investigate consistent with Section 5.3 and report to the Commission. No employee will be discharged, threatened, or discriminated against in any manner for following up on any complaint or for reporting what they perceive to be misconduct. All complaints must include a description of the alleged misconduct. The proceedings shall be treated confidentially, including the name of the complainant, except to the extent required to complete any investigation and in the event that an action is taken.

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5.3 Initial Determination. Based upon the complaint, and only following investigation and with the advice and counsel of Port general or special legal counsel (“Port counsel”), the Executive Director shall determine whether sufficient evidence exists to proceed with an investigation. If the Executive Director determines that insufficient evidence exists, the complaint shall be dismissed. Otherwise, the Executive Director shall proceed as follows.

5.4 Investigation. If an investigation is warranted, the Executive Director shall recuse himself from the process and delegate all further steps to Port counsel, and/or an investigator retained for such purpose by Port counsel. Port counsel shall inform the party/ies subject of the complaint (Respondent(s)) in writing that a complaint has been filed and that an investigation will take place. Port counsel shall provide a copy of the complaint to the Respondent(s) and the Respondent(s) shall have a reasonable time to prepare and submit a response in writing. Port counsel may seek additional information regarding the matter from the Complainant, the Respondent(s) and/or relevant third parties. In conducting the investigation and evaluating all evidence, the Port’s counsel shall presume that the Respondent(s) acted ethically and shall determine that an act of professional misconduct has occurred only upon a finding of substantial evidence of such misconduct.

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5.5 Determination and Recommendation. Port counsel shall evaluate the complaint and issue a determination within thirty (30) days of receiving all relevant evidence, that the complaint is substantiated or unsubstantiated. If Port counsel finds misconduct and the complaint substantiated, a report to Executive Director and the Commission shall set forth the basis for the determination and a recommended action; otherwise, the complaint shall be dismissed.

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5.6 Notification. The Complainant and Respondent(s) shall be notified in writing of the determination and recommended action; or, of the dismissal.

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5.7 Hearing and Decision upon Recommended Action. The Complainant and Respondent(s) shall have the right to be heard before the Commission or, if pending before a neutral as discussed below, to be heard before the neutral. If the complaint received is against one Commissioner, following receipt of the determination and recommended action from Port counsel, the Commissioners who are not the subject of the complaint shall promptly hear, consider and vote upon the recommended action. If the complaint received is against more than one Commissioner, the determination and recommended action of Port counsel shall be submitted to a mutually agreeable neutral selected from the panel of neutrals available at the Seattle office of Judicial Arbitration and Mediation Services (“JAMS”) or Judicial Dispute Resolution (“JDR”), or other similarly qualified third party neutral as agreed upon by the Complainant and the Respondents. The neutral selected shall promptly hear, consider and issue a decision regarding the recommended action. If the parties cannot agree upon the selection of a neutral, the presiding judge for Benton County Superior Court shall select a neutral from the panel available at the Seattle office of JAMS or JDR. The neutral shall determine the hearing process and shall issue a decision within 30 days of the hearing.

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5.8 Reconsideration. A decision (whether by Commission vote or issued by a neutral) is subject to reconsideration upon written request by Complainant or Respondent(s). The sole ground for reconsideration shall be that the party seeking reconsideration has new, relevant information which was not considered by Port counsel. A party having new information to submit to the Commissioners or neutral, shall have fifteen (15) days of receipt of the written notice of decision to file a written request for reconsideration stating the reason and including the new information not considered by the Port counsel. Following review of the entire investigative file, the decision and recommendation of the Port counsel and the new information submitted by a party or parties, the Commission or, if applicable, the neutral, shall, within fifteen (15) days of receipt of such new information, hear, consider and render a final decision which may not be further appealed. The parties shall be notified of the final decision, and any action required by the final decision shall be implemented immediately.

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5.9 Sanctions. Censure and/or reprimand may be invoked with respect to Commissioner misconduct, in addition to reassignment of committee assignments and other actions.

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5.10 Public Notification. Unless otherwise determined by the Commission or neutral in a particular matter, it shall be standard procedure to publish, in a manner deemed appropriate by the Commission or neutral, the fact of any sanction.

5.11 Other Remedies Reserved. Any action taken by the Commission or neutral shall not prevent other legal action that may be available under law. The Port shall not indemnify or defend any Commissioner charged with misconduct, except as otherwise provided under Section 18.

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PORT OF KENNEWICK

Resolution No. 2019-10

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK ADOPTING REVISED SECTION 5 OF THE PORT COMMISSION RULES OF POLICY AND PROCEDURE

WHEREAS, the Port of Kennewick Commission adopted Resolution 2011-05 on February 22, 2011 establishing a formal policy and procedures document to address the specific roles, expectations of conduct, knowledge, disclosures, prohibitions, legal requirements, and accountability of the elected officials who are responsible for the current operation and future direction of the Port of Kennewick; and

WHEREAS, the Port of Kennewick Commission adopted Resolution 2016-01 adopting revised Port Commission Rules of Policy and Procedure (Section 6.1 "Officers"); and

WHEREAS, Port Counsel has identified necessary revisions to Section 5 of the Port Commission Rules of Policy and Procedure that may be required to be implemented to complete the processing the currently pending citizen complaint.

NOW, THEREFORE; BE IT HEREBY RESOLVED that the Board of Commissioners of the Port of Kennewick hereby adopts the attached revised Section 5 of the Port Commission Rules of Policy and Procedure.

ADOPTED by the Board of Commissioners of the Port of Kennewick on the 28th day of May, 2019.

PORT OF KENNEWICK BOARD OF COMMISSIONERS

By: _____
THOMAS MOAK, President

By: _____
DON BARNES, Vice President

By: _____
SKIP NOVAKOVICH, Secretary