

## **AGENDA**

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

Tuesday, June 11, 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 June 4, 2019
  - B. Approval of Warrant Register Dated June 11, 2019
  - C. Approval of Regular Commission Business Meeting Minutes May 28, 2019
- VI. PRESENTATION**
  - A. Industrial Development Districts – Issuance of Revenue Bonds, Scott McJanet of K & L Gates (**LUCY**)
- VII. REPORTS, COMMENTS AND DISCUSSION ITEMS**
  - A. Columbia Drive Update (**LARRY**)
  - B. Vista Field Update (**LARRY/TIM**)
  - C. Duffy's Pond Update (**AMBER**)
  - D. Revision of Port Commission Rules of Policy and Procedure, Section Five; Resolution 2019-10 (**LUCY**)
  - E. Spaulding Business Park (Tri-Cities Chaplaincy) Property Update – Enforce/Release Buyback Clause; Resolution 2019-11 (**AMBER**)
  - F. Teambuilding Event Report (**TIM/AMBER/LARRY**)
  - G. Discuss Cancellation of July 23, 2019 Meeting due to WPPA Commissioner's Seminar (**BRIDGETTE**)
  - H. Commissioner Meetings (formal and informal meetings with groups or individuals)
  - I. 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**

**MAY 28, 2019 MINUTES**

Commission President Thomas Moak called the Regular Commission Meeting to order at 2:01 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  
Lisa Schumacher, Special Projects Coordinator  
Bridgette Scott, Executive Assistant  
Lucinda Luke, Port Counsel

## **PLEDGE OF ALLEGIANCE**

Commissioner Barnes 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.

Ms. Luke requested Item E, Revision of Port Commission Rules of Policy and Procedure, Section Five be moved up in the Agenda.

It is the Consensus of the Commission to move Item E to Item A under Reports, Comments and Discussion Items.

## **PUBLIC COMMENT**

No comments were made.

## **CONSENT AGENDA**

### ***A. Approval of Direct Deposit and E-Payments Dated May 17, 2019***

Direct Deposit and E-Payments totaling \$59,093.08

### ***B. Approval of Warrant Register Dated May 28, 2019***

Expense Fund Voucher Numbers 101110 through 101147 for a grand total of \$482,798.71

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 28, 2019 MINUTES

**DRAFT**

---

## *C. Approval of Regular Commission Business Meeting Minutes May 14, 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.*

## **PRESENTATION**

### **A. Vista Field Property Owners Association, Ben Floyd, Doris Goldstein, and Steve DiJulio**

Mr. Arntzen introduced Steve DiJulio, Doris Goldstein and Ben Floyd. The team has been working on the property owner's mechanism for Vista Field, which will yield enough financial returns to provide for upkeep of the property and an additional element for vibrancy. This is a complex process and the team has been working on this project for some time.

Ben Floyd of White Bluff's Consulting has been working on Vista Field since 2008 and stated Doris Goldstein has played a key role in formulating the documents and concepts for Vista Field. Because Ms. Goldstein is based out of Los Angeles, Steve DiJulio of Foster Pepper is acting as the official legal counsel, who is coordinating with Ms. Luke. Mr. Floyd stated along with Gary Ackerman of Foster Pepper, the team has been working to formulate documents and concepts for the Property Owners Association. Ms. Goldstein has worked very closely with DPZ for decades and she will share her background and how her experience has helped with the documents we are preparing. Additionally, we will be discussing the history, staffing, and the next steps for the Commission to consider.

Ms. Goldstein outlined several DPZ projects and the histories of the developments and how they were developed. New Urbanism features a compact, mixed-use development that is pedestrian friendly. Some of the characteristics of commercial and mixed-use areas feature:

- Open space is active: festivals, farmers markets, special events and outdoor cafes;
- Parking is usually on the street or behind buildings and is shared;
- Commercial space often has residential space above.

Additionally, commercial areas require separate governance for operation of common areas:

- Residential, commercial common areas need to be maintained differently;
- Developer may wish to control commercial areas indefinitely;
- Residential associations are subject to heavy statutory regulation;
- Commercial property needs to be protected from homeowner interference.

Mr. Floyd stated at the beginning, he believed that a Business Improvement District would be the way to address the common area maintenance and operations and promotion of Vista Field, with a separate Home Owners Association. Mr. Floyd and Mr. DiJulio continued working on the documents, but did not feel it was coming together as it should, and that was when Ms. Goldstein was brought in, at the recommendation of DPZ. While the team was working on the structure, the State passed the Common Owner's Interest Act, which lead to this proposal.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 28, 2019 MINUTES

**DRAFT**

---

Mr. DiJulio stated it is important to understand that we are proposing two structures for management: residential and commercial. It would have been more convenient to have one structure; however, it did not work properly.

Mr. Floyd stated the team has come up with two separate structures that are cleaner and simpler in terms of administration and implementation.

Ms. Goldstein outlined the two structures for Vista Field.

Governance Structure: recommendation:

- One overall Property Owners Association (POA) to maintain shared common areas;
- Commercial property pays assessments to POA but is not regulated by it; and
- Separate Operating Agreement for Village Center maintains and regulates commercial common space, provides marketing and special events.

Mr. Floyd stated the handouts (Exhibit A) explain how the associations are formed and outlined the responsibilities.

Staffing up for Implementation Recommendations:

- Hire project manager familiar with New Urbanism;
  - Understands and implements vision
  - Works with buyers, contractors, architects
  - Advises on business decisions
- Hire property manager;
  - Pro forma budget for common areas and management and operations costs
- Hire commercial operations manager (in the future).

Mr. Floyd stated the Port does not need to hire three full time employees at the onset to manage this project, but could consider hiring a consultant and/or property management firm.

Next steps:

- September 2019 - finalize declarations and commercial properties operating agreements;
- Port updates Vista Field budget;
- By end of 2019 - Port hires project manager and property manager;
- Governing documents recorded just prior to first property sale (estimated spring 2020).

Mr. Floyd suggesting having a project manager in place by end of the year to translate the Vista Field Master Plan to property owners and developers.

Mr. Arntzen stated the Port budgeted for a town architect, which could possibly function as a project manager.

Commissioner Barnes asked about the collaborative design process instilled by the Port, and if that process would remain with the Port.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 28, 2019 MINUTES

**DRAFT**

---

Mr. Floyd stated the collaborative design process would remain with the Port and the project manager could be involved in the design process.

Mr. Arntzen stated the collaborative design process would stay with the Commission; however, the project manager could be involved in that process and may offer recommendations to the Commission.

Commissioner Barnes believes a town architect is more focused on the design elements, whereas project manager is more diverse, someone who may be able to delve further into the opportunity zones designation at Vista Field. Commissioner Barnes thought there would be a level of participation by DPZ regarding architecture.

Mr. Arntzen stated staff anticipated utilizing DPZ as the town architect; however, today we learned we would hire a project manager, which is a bigger role. Ms. Goldstein mentioned earlier, she would be able to provide the Port with a list of firms or consultants that would be able to perform the duties of a project manager. Mr. Arntzen stated as we work through the complicated process, we get further into the details and the term town architect was language we garnered from DPZ.

Mr. Floyd offered to provide definitions of a project manager and a town architect in terms of roles and responsibilities as part of the updated recommendations. Mr. Floyd inquired if the Commission is comfortable with the general direction that has been recommended.

Commissioner Novakovich inquired if a job description is available for the project manager.

Ms. Goldstein will be attending the Congress of New Urbanism and will speak to some potential firms and get a job description.

Commissioner Novakovich asked what the salary range is for a project manager.

Mr. Floyd believes it would be in the range of an architect and the Port could go through the Request for Qualifications process.

Commissioner Moak confirmed that the Port needs to utilize the Washington Uniform Common Interest Ownership Act.

Ms. Goldstein stated that the Port is subject to that act for residential homes; however, we can go outside the act for the commercial sector, which provides flexibility. Ms. Goldstein stated Mr. Ackerman of Foster Pepper was on the State Bar Committee that helped adopt the Act to Washington State and he has been invaluable. First off, the act is rigid, and secondly, it is brand new, which means there is no history to how it will be interpreted.

Mr. DiJulio stated before the act was adopted in 2018, the State had existing condo laws that applied to residential and commercial property. The new act provides an opportunity to have a

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 28, 2019 MINUTES

**DRAFT**

---

system that provides for both residential and commercial properties. It is an advantage for the Port to use the act to provide for the main association of Vista Field.

Commissioner Moak inquired how the boards will be formed for these associations.

Ms. Goldstein stated the Port would select people to sit on the board and the Port can retain control of the board until 75% of buildout; however the Port can relinquish its majority on the association before 75% buildout if it so chooses. The document states that even if the Commission turns over its position on the board it does not lose the development rights.

Mr. Floyd stated a lot of this will be outlined in the bylaws, which will be developed once the Commission moves forward.

Ms. Goldstein stated the Port will need to run the association as formal board. The commercial board will differ, as it is not subject to the act. It is important for the Port to retain control of the commercial board while developing the town center.

Commissioner Moak inquired if the two boards would fall under open public meetings act (OPMA).

Mr. DiJulio stated at this point, we are proceeding with the assumption that the public records act and OPMA applies to much of the development of Vista Field, until the Commission gives up control of board.

Commissioner Moak inquired if the team could estimate how long the deficit would last and how much the deficit would be.

Ms. Goldstein stated we need to look at the budget at build out and number of units. Whatever that number is, that is where you start the assessments to determine how much per year the assessments will be. The Commission would draw up a budget and figure out how much is generated by assessments with the available number of units. The deficit is the difference between budget required and the assessments generated. It is a manageable number because you know the budget.

Mr. Floyd stated the Commission also has flexibility with the deficit because you control the budget.

Ms. Goldstein stated there is always deficit funding with every project for the first couple of years.

Mr. Arntzen and Mr. Kooiker are mulling over the information that was received this morning; however, we will work as quickly as we can. Mr. Floyd will draft a budget for the Port, but it is our obligation to get this done as quickly as possible so that the Port can start selling property. This is a large process and the Commission has stated that Vista Field is the primary project and staff may have to readdress other Port projects, due to the complexities of work.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 28, 2019 MINUTES

**DRAFT**

---

Commissioner Novakovich confirmed that the budget is the most critical element.

Mr. Floyd believes it is three things: having the documents solidified, and at the same time, open up conversations with a property management firm to determine costs and then formulate budget; and lastly, work on the project manager position. It is important to concurrently work on all three through the end of the year.

Commissioner Moak appreciates the executive summary and agrees with Mr. Arntzen's comments, this is a very complicated and complex work and there is no straight forward answer. Commissioner Moak stated we want to make sure we get this right and in the end, we may need to reallocate some monies.

Mr. Arntzen appreciates the discussion and thanked Mr. Floyd, Ms. Goldstein and Mr. DiJulio and expressed his gratitude for the team.

## REPORTS, COMMENTS AND DISCUSSION ITEMS

### **A. *Revision of Port Commission Rules of Policy and Procedure, Section Five***

Ms. Luke stated the Commission originally adopted the Port Commission Rules of Policy and Procedure in 2011 and revised it in 2016. Ms. Luke presented a red lined and clean version of Section 5 for revision. Ms. Luke stated the inconsistencies in Section 5 came to light when the Port received a citizen complaint and realized that it does not fully address the processing of the complaint. Ms. Luke revisited the procedures and updated Section 5 to cover the proper processing of a complaint, and incorporated a recommendation in a case where one or more Commissioners have a complaint pending against them. In the case where there are two Commissioners named in a complaint, it is recommended that the hearing and decision process be sent to a neutral party for processing, rather than having the Commission consider. Ms. Luke received a suggested revision, which has been incorporated into Section 5.7, and states in the case where a complaint is made by a Commissioner against another Commissioner, that the complaint be processed by a neutral party as well. This removes the complainant and respondent are removed from the processing of the complaint. Ms. Luke inquired if the Commission had any questions or concerns regarding the revision of Section 5.

Commissioner Barnes inquired if he can have more time to process the revision since we had a three day weekend. Commissioner Barnes inquired if Ms. Luke reached out to Washington Public Ports Association (WPPA) general counsel.

Ms. Luke contacted other ports and public entities to for guidance regarding Section 5. The use of a neutral or hearing panel is a fairly common structure used in cases where there is a conflict of interest when the majority of the Commission is involved.

Commissioner Novakovich inquired if the neutral is a panel or person.



# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 28, 2019 MINUTES

**DRAFT**

---

Ms. Luke recommends the selection of one neutral, which is less expensive and easier to manage. Ms. Luke uses a neutral for arbitration and negotiations and finds managing a panel is more time intensive. In the case that the Commission cannot agree upon a third party neutral, the Commission has the option to go to a local presiding judge (Benton County Superior Court) to select a neutral.

Commissioner Moak confirmed that this process is similar to other types of mediation and dispute resolution cases.

Ms. Luke stated that is correct and she tried to build the policy so that it is similar to other dispute resolution processes, and mandated that the neutral determine the open hearing process. The neutral is usually a retired judge, who follows federal or local rules and let them guide the process, knowing that we are dealing with a public entity.

Commissioner Barnes inquired how a complaint would be handled if the Port did not have this policy in place.

Ms. Luke stated the Commission would need to come to an agreement about how the complaint would be processed.

Commissioner Barnes inquired if there are any specific RCW's regarding complaints.

Ms. Luke stated there is not a specific RCW that addresses processing a complaint.

## **PUBLIC COMMENT**

No comments were made.

***MOTION: Commissioner Novakovich moved to approve Resolution 2019-10, revising Section 5 of the Commission Rules of Policy and Procedure consistent with the attached revised Section 5. Commissioner Moak seconded.***

### ***Discussion:***

*Commissioner Barnes would like additional time to review the Section 5 revisions.*

***MOTION: Commissioner Barnes moved to table approving Resolution 2019-10, revising Section 5 of the Commission Rules of Policy and Procedure until the next Regular Commission Meeting. Commissioner Moak seconded. With no further discussion, the original motion will be discussed at the next Commission Meeting. All in favor 2:1 (Commissioner Novakovich)***

### ***B. Columbia Drive Update***

Mr. Peterson reviewed the construction progress of the new tasting room. Recently, a drywell was discovered during excavation and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) and the State Department of Archeological and Preservation confirmed



# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 28, 2019 MINUTES

**DRAFT**

---

that it was not of historical value and could be demolished. Mr. Peterson described future potential lots for development.

Commissioner Barnes asked what the standard protocol is when you discover something in the field.

Mr. Peterson stated the Port has a monitor from the CTUIR Cultural Resource Protection on-site whenever there is excavation near the water. When the tank was unearthed, excavation is halted and the CTUIR monitor received further direction from Pendleton. Banlin moved to another area and continued excavation; the construction schedule was impacted by a week.

Commissioner Barnes inquired if it posed any environmental concern.

Mr. Peterson stated it was not an environmental concern.

Thomas Kastner of Meier Architecture stated the CTUIR determined that it was not significant within 48 hours; however, the State took a week to determine that it was not significant. Mr. Kastner stated it has been great working with Banlin Construction and once the framing goes up, the building will take shape.

## ***C. Vista Field Update***

Mr. Peterson reviewed the progress of Vista Field Phase 1A construction and stated excavation continues for the roadways, stream, sewer, and water.

Mr. Peterson stated there are three street closures with this project; the first has already occurred and no businesses were impacted negatively during the closure. Total Site Services (TSS) has been doing a great job with dust control, as we have not been contacted by EPA.

Commissioner Novakovich asked how many people are working at the site and how many are new.

Shannon Torranzano of TSS stated there are 20 or more people at Vista Field and we brought in at least six people to supplement our crew.

Commissioner Moak stated it is good to see people working at Vista Field to build the community the Port envisions.

## ***D. Clover Island Master Plan Scoping***

Mr. Arntzen reviewed the draft scope of work with Makers Architecture and plans to speak with Julie Bassuk later this week to discuss the draft scope and fees. Mr. Arntzen would like to revise the scope of work and make sure Ms. Bassuk is comfortable with the contract amount for her to hold interviews with local stakeholders. Once Ms. Bassuk holds the interviews, she would then formulate a larger scope of work for Clover Island. Mr. Arntzen anticipates moving forward with this project this summer and hopefully later this fall, Makers will provide a more thorough scope for Clover Island.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 28, 2019 MINUTES

**DRAFT**

---

Commissioner Moak feels this is good news and would like to proceed.

## ***E. Opportunity Fund***

Mr. Kooiker stated this is a follow up from the May 14, 2019 Commission Meeting, where the Commission asked staff to provide information in writing. Mr. Kooiker presented the opportunity fund information and Resolution for the Commission's consideration to approve the Columbia Drive traffic calming project utilizing the Opportunity Fund.

## **PUBLIC COMMENT**

No comments were made.

***MOTION: Commissioner Novakovich moved to approve Resolution 2019-09, authorizing the Port's Chief Executive Officer to execute Amendment #1 with Parametrix, Inc. for a traffic calming study on Columbia Drive; utilizing \$7,800 from the 2019/2020 opportunity fund budget to fund the project. Commissioner Barnes seconded.***

## ***Discussion:***

*Commissioner Novakovich inquired how much time did staff spend preparing materials, since this small amount falls under the CEO's Delegation of Authority and could have been handled internally.*

*Commissioner Barnes was looking for a broader review of budget, which he has requested several times. While Commissioner Barnes appreciates Commissioner Novakovich's comment on staff time, the Budget is the Commission's main priority. The Commission approved two major projects and have not had an update on the budget. Commissioner Barnes accepts responsibility and criticism for asking for the information in writing and thanked Mr. Kooiker for providing the numbers.*

*Commissioner Moak stated the Commission requested the information and this is typical information provided with Resolutions and he does not have issue with it.*

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

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

Commissioners reported on their respective committee meetings.

## ***G. Non-Scheduled Items***

1. Commissioner Moak appreciates Ms. Luke's work related to Industrial Development Districts (IDD) and is pleased that she was able to arrange a presentation. Commissioner Moak has been interested in IDD's for some time and it is unknown whether the Port may or may not pursue it.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 28, 2019 MINUTES

**DRAFT**

---

Opportunity Zones were also discussed at the WPPA Spring Meeting and the Port is fortunate to have two properties that fall under that category.

Commissioner Moak stated ten years ago, Steve Young was new to the City Council and believed that Vista Field should be closed. Closing Vista Field was not on the other Council Members radar; however, it became a priority for Mr. Young and the City. A lot has happened with Vista Field over the last ten years and now TSS is building a lasting memory for Mr. Young and others that pursued this. If Mr. Young did not speak up and lead the way, things may have turned out differently.

Commissioner Moak reported that Kathy White passed away last week and reported that she always wanted to make sure the history of Vista Field was protected.

2. Ms. Luke attended a roundtable presented by K&L Gates at the WPPA Spring Conference regarding Industrial Development Districts (IDD). Scott McJanet and Cynthia Weed of K&L Gates offered to come to the Port and present on IDD's. Ms. Luke scheduled K&L Gates to present at June 11, 2019 Commission Meeting at no charge.

Furthermore, Ms. Luke took her husband to Food Truck Plaza and he was very impressed and they had a lovely meal.

## **PUBLIC COMMENTS**

Boyce Burdick, 414 Snyder Street, Richland. Mr. Burdick stated on Saturday, June 1, 2019 at the Richland High Auditorium, the Mid-Columbia Symphony will close the season with feature works from Shostakovich's Symphony No. 7. Also, on May 31, 2019 at 3:00 p.m. there will be a presentation about M.T. Anderson's Symphony for the City of Dead: Dmitri Shostakovich and the Siege of Leningrad at the Mid-Columbia Library on Union Street.

No further were made comments.

## **COMMISSION COMMENTS**

No comments were made.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 28, 2019 MINUTES

**DRAFT**

---

## ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 4:02 p.m.

**APPROVED:**

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

---

*Thomas Moak, President*

---

*Don Barnes, Vice President*

---

*Skip Novakovich, Secretary*



## 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.

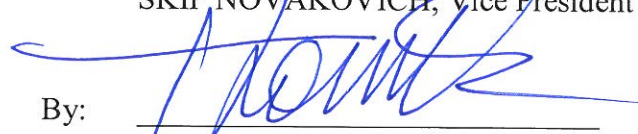
**NOW, THEREFORE; BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby adopts the revised Port Commission Rules of Policy and Procedure, which shall remain in effect until further revised.

**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**



## TABLE OF CONTENTS

	<u>Page</u>
1. Introduction and Purpose .....	1
1.1 Port of Kennewick .....	1
1.2 Other Governing Law .....	1
1.3 Port Managing Official .....	1
1.4 Purpose.....	1
1.5 Reserved Rights .....	1
2. Commission and Commissioners.....	1
2.1 Purpose.....	1
2.2 Governance .....	1
2.3 Actions .....	2
2.4 Port Financial Goals.....	2
3. Commission Code of Conduct.....	2
3.1 Purpose.....	2
3.2 Conflict Avoidance .....	3
3.3 Policy Acknowledged .....	3
3.4 Disclosure .....	3
3.5 Statement of Financial Affairs .....	3
3.6 Conduct as Commissioner .....	3
3.7 Commissioner Knowledge of Policies.....	3
3.8 Representation of Positions.....	3
3.9 Shared Information and Advocacy .....	3
3.10 Representation of Port Position .....	4
3.11 Special Privileges Prohibited .....	4
3.12 Commission-Staff Relations .....	4
3.13 Open Meetings.....	4
3.14 Commission Disclosure of Economic Associations .....	5
4. Full Transparency in Port Actions .....	6
5. Reporting Misconduct.....	6
5.1 General.....	6
5.2 Complaint.....	7
5.3 Initial Determination .....	7
5.4 Investigation.....	7
5.5 Determination and Recommendation .....	7
5.6 Notification of Determination.....	7
5.7 Reconsideration.....	7
5.8 Sanctions .....	8
5.9 Public Notification.....	8
5.10 Other Remedies Reserved.....	8

	<u>Page</u>
6. Commission Meetings .....	8
6.1 Officers .....	8
6.2 Presiding Officer .....	8
6.3 Presiding Officer Duties .....	8
6.4 Regular Meeting.....	9
6.5 Special Commission Meetings.....	9
6.6 Quorum .....	9
6.7 Recording Proceedings .....	9
6.8 Call to Order .....	9
6.9 Participation by Telephone .....	9
6.10 Commissioner Attendance at Meetings .....	9
6.11 Commission Meeting Staffing .....	10
6.12 General Conduct of Business.....	10
6.13 Public Comment.....	10
6.14 Executive Sessions.....	11
6.15 Commission Discussion.....	11
6.16 Media Representation at Commission Meetings .....	11
7. Agenda Planning .....	11
7.1 Placing Item on the Agenda.....	11
7.2 Agenda Preparation.....	11
7.3 Agenda Materials .....	11
7.4 Adding an Item to a Published Agenda .....	12
7.5 Agenda Item Order .....	12
7.6 Consent Agenda.....	12
8. Role of the Commission President.....	12
9. Role of the Commission Vice-President.....	12
10. Role of the Commission Secretary .....	13
11. Commission Committees .....	13
11.1 General.....	13
11.2 Committee Roles and Responsibilities .....	13
12. Commission and Port Action .....	13
13. Port Commission & Staff Roles and Responsibilities .....	14
13.1 General Roles.....	14
13.2 Commissioner's Role.....	14
13.3 Executive Director's Role.....	15
13.4 Staff Role .....	15
13.5 Summary .....	15

	<u>Page</u>
14. Budget and Procurement Authority .....	16
14.1 General.....	16
14.2 Financial Policies .....	16
14.3 Budgetary Authority .....	16
14.4 Procurement Authority.....	16
15. Evaluating the Executive Director’s Performance.....	17
15.1 General.....	17
15.2 Process .....	17
16. Commission-Auditor Relationship .....	17
16.1 General.....	17
16.2 Hiring and Reporting .....	17
17. Commission-Port Attorney Relationship.....	17
17.1 Port Attorney Role .....	17
17.2 Port Attorney Responsibilities .....	18
18. Indemnification and Defense Policy .....	18
18.1 Policy Stated .....	18
18.2 Definitions.....	18
18.3 Legal Representation .....	19
18.4 Exclusions .....	20
18.5 Reserved Rights .....	20
18.6 Policy Secondary to Insurance.....	20
18.7 Determination of Exclusion .....	20
18.8 Representation and Payment of Claims – Conditions.....	21
18.9 Effect of Compliance With Conditions.....	21
18.10 Failure to Comply With Conditions.....	22
18.11 Reimbursement of Incurred Expenses .....	22
18.12 Conflict With Provisions of Insurance Policies .....	22
18.13 Pending Claims .....	22
18.14 Modification of Chapter.....	23
18.15 Bargaining Unit Contracts .....	23
18.16 Punitive Damages .....	23
18.17 Application to Recall Proceedings.....	23
19. General Complaint Resolution.....	24
19.1 Administrative Complaints Made Directly to Individual Commissioners .....	24
19.2 Administrative Complaints – “Best Practice” .....	24
Attachment: Ten Commandments for Staying Out of Trouble as a Port Commissioner .....	25

## 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~~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/~~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 ~~C~~eomplainant, 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.

5.5 Determination and Recommendation. Port counsel shall evaluate the complaint and issue a de~~terminationeision~~ 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 de~~terminationeision~~ and a recommended action; otherwise, the complaint shall be dismissed.

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



5.65.7 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 a party to the complaint shall promptly hear, consider and vote upon the recommended action. If the complaint received is made by one or more of the Commissioners against one or more 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. The complainant and Respondent shall be notified of the action in writing and shall have the right to be heard before the Commission.

5.75.8 Reconsideration. A decision (whether by Commission vote or issued by a neutral) is subject to reconsideration upon written request by Complainant or Respondent(s) ~~a respondent~~. ~~But~~ the sole ground for reconsideration shall be that the party seeking reconsideration ~~Respondent~~ has new, relevant information which was not considered by Port counsel. A ~~party~~ ~~respondent~~ having new information to submit to the Commissioners or neutral, shall have may, within fifteen (15) days of receipt of the written notice of decision ~~termination to, 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 party or parties ~~respondent~~, 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 ~~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 required by the final decision any action by the Commission shall be implemented immediately.~~

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

5.95.10 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.

5.105.11 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.

## 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.

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.

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.

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

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 a party to the complaint shall promptly hear, consider and vote upon the recommended action. If the complaint received is made by one or more of the Commissioners against one or more 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.

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.

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.

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.

# **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 11th day of June, 2019.

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

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


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

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



## AGENDA REPORT

**TO:** Port Commission

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

**MEETING DATE:** June 11, 2019

**AGENDA ITEM:** Repurchase Option Deadline – Tri-Cities Chaplaincy

---

### I. REFERENCE(S):

Resolution 2017-06  
Purchase and Sale Agreement dated March 28, 2017  
Amendment to Real Estate Purchase and Sale Agreement dated July 26, 2017  
Amendment #2 to Real Estate Purchase and Sale Agreement dated October 24, 2017  
Resolution 2017-30  
Meeting Minutes November 28, 2017  
Amendment #3 to Real Estate Purchase and Sale Agreement dated December 4, 2017  
Statutory Warranty Deed Recorded December 8, 2017  
Photos taken of property dated June 3, 2019

### II. DISCUSSION:

- Through resolution 2017-06, port commission authorized the sale of .53 acres of vacant land to Tri-Cities Chaplaincy on March 28, 2017.
- Statutory Warranty Deed recorded December 8, 2017.
- Purchase Price - \$137,508.00
- PSA section 10.1 – Obligation to Construct Professional Office Building.\*
  - *Construction of building is to commence no later than eighteen (18) months from the date the deed is recorded transferring the Seller's title to this land to Purchase. Deadline June 8, 2019.*
  - *\*Obligation to Construct changed to parking lot via Amendment dated July 26, 2017.*
- PSA section 10.2 – Failure to Construct and Right to Repurchase.
  - *....Seller shall have the right to repurchase the Property at the same agreed upon price per square foot (\$6.00 per square foot) with all closing costs and real estate taxes paid by Purchaser, payable in cash at closing. Seller must give Purchaser written notice of its intent to repurchase the property within twenty-four (24) months of the date deed is recorded transferring the Seller's title to this land.....Deadline: December 8, 2019.*
- Staff conversation 6/3/2019 with Gary Castillo, Executive Director, Tri-Cities Chaplaincy – Chaplaincy representatives have met with Meier Architecture's civil

engineer and instructed Meier's team to move forward on the parking lot design. Over the last eighteen months, Chaplaincy staff have been focused on site selection for a new Chaplaincy facility and have successfully located a site. Construction of the lot will be subject to the current construction climate. Chaplaincy's intent is to construct as soon as possible.

**III. ACTION REQUESTED OF COMMISSION:**

*Decision to exercise or relinquish repurchase option for .53 acres at the Spaulding Business Park sold to Tri-Cities Chaplaincy via purchase and sale agreement dated March 28, 2017 and Statutory Warranty Deed recorded December 8, 2017.*

**PORT OF KENNEWICK**

**RESOLUTION No. 2017-06**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF  
KENNEWICK AUTHORIZING A PURCHASE AND SALE AGREEMENT WITH  
TRI-CITIES CHAPLAINCY***

**WHEREAS**, Tri-Cities Chaplaincy (Purchaser), has offered to purchase approximately 0.53 acres of the area graphically depicted on "*Exhibit A*" at the Spaulding Business Park, in Richland, Washington from the Port of Kennewick (Seller) for \$6.00 per square foot or approximately \$137,508.00; and

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

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

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

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

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 28th day of March, 2017.

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

By:

  
SKIP NOVAKOVICH, President

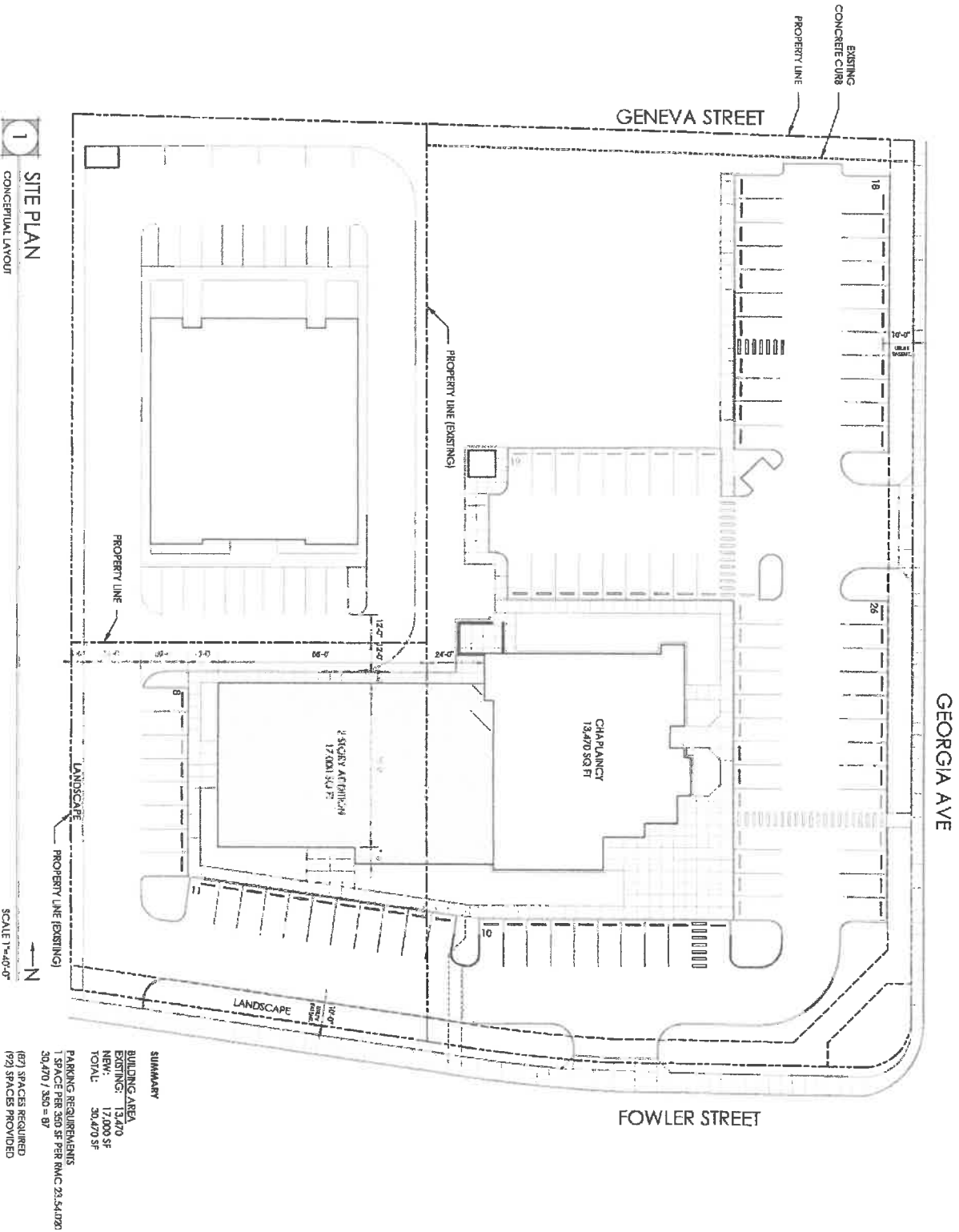
By:

  
THOMAS MOAK, Vice President

By:

  
DON BARNES, Secretary

# Exhibit A



## Chaplaincy Site Study

1480 Fowler Street  
Richland, WA

Architect: **Reid & L. Wilson**  
Phone: 509-925-0177  
Email: [reid@reidwilson.com](mailto:reid@reidwilson.com)

Prepared by:  
Site Plan

A100

01.23.17



# COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT

1. **PARTIES.** THIS AGREEMENT is made and effective on the 28<sup>th</sup> day of March, 2017, by and between the

**Port of Kennewick  
A Washington Municipal Corporation  
350 Clover Island Drive, Suite 200  
Kennewick, Washington 99336**

hereinafter "Seller", and

**Tri-Cities Chaplaincy  
c/o Gayle Stack, CCIM, CPM  
EverStar Realty  
1920 N. Pittsburg Street, Suite A  
Kennewick, Washington 99336**

COPY

hereinafter "Purchaser".

2. **PROPERTY.** The Seller agrees to sell, and the Purchaser agrees to purchase, upon the terms and conditions herein specified, that certain real property legally described as a portion of Government Lot 3, Section 30, Township 9 North, Range 29 East, Willamette Meridian, City of Richland, Benton County, Washington being a portion of Block 2 of that property, designated New Parcel 2, as shown on **Exhibit "A"** hereinafter "Property." **Tax Parcel No.: 130994BP3898008 (+/- 0.53 acres)**

3. **PURCHASE PRICE.** The total purchase price is as follows:

The Agreed Price per Square Foot is:	\$6.00 per square foot
The Estimated Square Footage is:	22,918 square feet / +/- 0.53 acres
The Estimated Total Purchase Price is:	<b>\$ 137,508.00</b>

The Purchase Price, inclusive of any applicable earnest money deposits, shall be paid all in cash at Closing.

4. **EARNEST MONEY.** Receipt is hereby acknowledged of Ten Thousand and No/100 Dollars (\$10,000.00) delivered as earnest money. Earnest money shall be applied to the Purchase Price at Closing. Earnest money and this Agreement shall be promptly delivered by Seller to the Closing Agent hereinafter designated for the benefit of the parties. Earnest money shall be non-refundable at the end of the feasibility period provided at Paragraph 6.1.2 below unless otherwise specifically provided herein.

5. **TITLE INSURANCE.** The Seller shall provide Purchaser with a standard form owner's policy of title insurance in the amount of the purchase price. The title policy to be issued shall contain no exceptions other than those provided in said standard form plus encumbrances or defects approved by Purchaser as provided below. As soon as reasonably possible after escrow is opened Purchaser shall be furnished with a preliminary commitment therefore issued by

**Benton Franklin Title Company.** Said preliminary commitment shall include legible copies of all documents forming the basis for any special exception set forth.

## **6. CONTINGENCIES.**

**6.1 Purchaser's Contingencies.** Purchaser's obligation to purchase the Property shall be contingent upon the following:

**6.1.1 Condition of Title.** Title is to be free of all encumbrances or defects except those approved by Purchaser. The Purchaser shall be considered to have accepted the condition of title unless the Purchaser provides notice of specific written objections within ten (10) business days after Purchaser's receipt of a preliminary commitment as provided for above. If the Seller is not able to provide title in accordance with the Purchaser's written objections prior to closing, this Agreement shall terminate and earnest money shall be refunded.

**6.1.2 Feasibility Determination/Environmental Due Diligence.** For a period of one hundred twenty (120) days from the date of this Agreement, Purchaser may engage consultants or engineers of the Purchaser's choosing to conduct surveys, site studies and tests of the Property as the Purchaser deems necessary. The Purchaser or its agents shall have the right to enter the Property at reasonable times to make such tests, inspections, studies and other investigations as the Purchaser may require, at the Purchaser's expense and risk. During its investigation of the Property, Purchaser shall also have the right to determine if the Property is suitable for Purchaser's contemplated use, that it is properly zoned and that development is feasible. See Section 7 below. Purchaser and its agents shall have full access to the Property for the purpose of conducting Purchaser's inspections and evaluation. Purchaser's feasibility study shall include environmental due diligence. The Purchaser shall indemnify and hold the Seller harmless from any loss, damage or claim arising out of the Purchaser's access to the Property for purposes of making tests, inspections, studies and other investigations. This contingency shall be deemed waived or satisfied unless Purchaser provides written notice to the contrary within said one hundred twenty (120) days, in which case this Agreement shall terminate, and earnest money shall be refunded. If this transaction fails to close due to a default by Purchaser, Purchaser shall immediately deliver to Seller copies of any studies or inspections, appraisals or surveys and any and all information which either the Purchaser or Purchaser's consultants have obtained in connection with the feasibility study.

Seller hereby grants Purchaser and its/his agents to go upon the property for purposes of inspection and Purchaser hereby agrees to defend, indemnify and hold Seller harmless from any injury to person or property while performing such inspections.

**6.1.3 Survey.** Please see copy of Binding Site Plan attached hereto and incorporated herein by reference as **Exhibit "C"**.

**6.1.4 Environmental Site Assessment.** If an environmental assessment is performed, Seller will provide copies of the assessment to Purchaser within five (5) business days of receipt of the assessment. If no environmental assessment is performed by Seller, Purchaser, at its sole expense, may incur cost and services to have said assessment performed on the property. A copy of the report obtained by the Purchaser shall be provided to Seller within (5) days of receipt.

**7. CONDITION OF PROPERTY/"AS IS" SALE.** Except as otherwise expressly set forth in

this Agreement, Seller makes no representations or warranties and shall not in any way be liable for any representations or warranties, including, without limitation, representations and warranties concerning (a) the physical condition of the Property (including, without limitation, the environmental condition, condition of the soils and groundwater conditions); (b) the Property's suitability for Purchaser's intended use; (c) any applicable building, zoning or fire laws or regulations or compliance therewith or any required permits of any governmental entities or agencies or compliance therewith; (d) the availability or existence of any water, sewer or other utilities (public or private). Purchaser acknowledges that Purchaser is relying on its own examination and inspection of the physical condition of the Property and all matters relating thereto. Seller shall have no obligation to make any repairs to the Property, and Purchaser shall accept the property in its "as is" condition at closing. Purchaser shall assume, as of closing, the responsibility for and risk of all defects and conditions of the Property, including any defects and conditions that cannot be observed by casual inspection. The Parties specifically agree that at closing the Purchaser assumes all environmental liability relating to the Property including without limitation the Washington Model Toxics Control Act ("MTCA"), the Toxic Substances Control Act, the Comprehensive Environmental Response, compensation and Liability Act ("CERCLA"), and the Resource Conservation and Recovery Act ("RCRA"), including without limitation, personal injury to or death of persons whosoever including employees, agents or contractors of the Seller, the Purchaser, or any third party, and damage to property of the Seller, the Purchaser, or any third party.

#### **7.1 Common Access Drive Isle, Landscape Conduit, and Sewer/Utility Stubs**

Purchaser understands that there has been constructed and/or installed on the Property for the benefit of the Property and the adjacent New Parcel 1, a) a common access drive isle, b) a 2" schedule 40 landscape conduit to the Property under the access/drive isle to the Property, and c) sewer and other necessary utility stubs as identified by the Seller and placed extending 10' beyond edge of pavement onto the Property. Further, the Purchaser understands that the owner of Parcel 1 has granted an Access and Utility Easement for the benefit of the Property. Purchaser further understands that Purchaser agrees to grant and enter into an Access and Utility Easement for the benefit of the Property and the adjacent New Parcel 1. Please see copy of Binding Site Plan for New Parcel 1, attached hereto and incorporated herein by reference as Exhibit "C".

#### **7.2 Utility Easement**

Purchaser acknowledges that there is a recently recorded utility easement between the Seller and the City of Richland (a copy of which is attached hereto and incorporated herein by reference as **Exhibit "D"**). Purchaser understands that it shall be responsible to determine the feasibility of moving the utility easement for purpose of construction of the expansion of its Administrative Building on the Property that is the subject of this Agreement.

**8. RISK OF LOSS.** Risk of loss or damage to the Property or any part thereof prior to closing shall be assumed by the Seller. If such loss or damage occurs prior to closing this Agreement shall terminate and the earnest money shall be returned to the Purchaser.

## 9. CLOSING.

**9.1 Closing Agent.** This transaction shall be closed by Benton Franklin Title Company ("Closing Agent").

**9.2 Closing Costs.** Closing costs shall be allocated as follows:

<b>Seller</b>	<b>Purchaser</b>
Excise Tax	Recording Fees
Title Insurance Premium	One-Half Closing Fee Costs
One-Half Closing Fee Costs	

Other incidental closing costs shall be paid and/or allocated in accordance with local practice.

**9.3 Items to be Prorated.** Taxes and assessments for the current year, water and other utilities constituting liens shall be prorated as of date of closing.

**9.4 Closing Date - Possession.** This transaction shall be closed when all contingencies have been satisfied and waived but in any event no later than **one hundred fifty (150) days** from effective date of this Agreement. "Closing" shall be the date on which all documents are recorded and funds are available for disbursement.

**9.5 Conveyance.** At Closing Seller shall deliver to Purchaser a Statutory Warranty Deed, free of any encumbrance or defect except those set forth in the preliminary commitment as set forth above.

**9.6 Assignment.** Neither this Agreement nor the rights hereunder shall be assigned without the prior written consent of Seller, which consent shall not be unreasonably withheld.

## 10. REPURCHASE OPTION.

**10.1 Obligation to Construct Professional Office Building(s).** The parties agree that the Purchaser's use of the Property shall be to construct an expansion of its Administrative Building. The expanded Administrative Building will be approximately 17,000 square feet and built in accordance with the following conditions:

10.1.1 Construction of building is to commence no later than eighteen (18) months from the date the deed is recorded transferring the Seller's title to this land to Purchaser;

10.1.2 Commencement of construction will be evidenced by issuance of all required building/construction permits and approvals together with actual commencement of on-site construction;

10.1.3 All construction shall be in accordance with the covenants for Spaulding Business Park attached hereto as **Exhibit "B"**;

10.1.4 Seller shall have the right to approve all aspects of building design, which approval shall not be unreasonably withheld or delayed.

**10.2 Failure to Construct and Right to Repurchase.** Subject to force majeure, the parties agree that in the event construction of the building, or some other mutually agreed upon utilization of the Property, has not begun (evidenced as set forth in 10.1.2 above) Seller shall have the right to repurchase the Property at the same agreed upon price per square foot (\$6.00 per square foot) with all closing costs and real estate taxes paid by Purchaser, payable in cash at closing. Seller must give Purchaser written notice of its intent to repurchase the property within twenty-four (24) months of the date deed is recorded transferring the Seller's title to this land. In the event this repurchase provision is invoked, payment for improvements made to the site by the Purchaser which benefit the future development of the Property shall be made by Seller. Value of improvements which benefit the Property shall be established, unless otherwise agreed by the parties, from the average of two appraisals (one obtained by Seller and one obtained by Purchaser) performed to determine the residual value of site improvements made by the Purchaser.

Closing for the repurchase of the Property shall occur in accordance with the terms of paragraph 9 above, except that Purchaser shall bear all closing costs unless otherwise agreed between the parties, and closing shall occur no later than fifteen (15) days after delivery of the Seller's written notice. Upon closing, Purchaser shall immediately vacate and redeliver possession of the Property to the Seller. At closing, the Purchaser will execute a statutory warranty deed re-conveying the Property to Seller and this Agreement shall be void and of no further force or effect.

**10.3 No Assignment or Encumbrances.** Purchaser shall not assign, encumber or transfer any right or interest in the Property during the first eighteen (18) months after deeds are recorded transferring the Seller's title to this land without the Seller's written approval, which approval shall not be unreasonably withheld.

**10.4 Hold Harmless.** Further and in consideration of the terms hereof, in the event the Seller repurchases the Property, Purchaser shall release and hold Seller harmless and shall indemnify and defend Seller from any and all claims, demands, liens, or encumbrances arising out of or connected with this Agreement and the Property.

**11. Notices.** All notices required by this Agreement shall be considered properly delivered when (1) personally delivered, (2) when transmitted by email showing date and time of transmittal, or (3) delivered by regular overnight courier, or 4) delivered or mailed by U.S. registered or certified mail, return receipt requested, and if mailed, shall be considered delivered three (3) business days after deposit in such mail. The addresses to be used in connection with such correspondence and notices are the following, or such other address as a party shall from time to time direct:

**Purchaser:** Tri-Cities Chaplaincy  
c/o Gayle Stack, CCIM, CPM  
EverStar Realty  
1920 N. Pittsburg Street, Suite A  
Kennewick, Washington 99336  
Phone No.: 509-735-4042  
Email: Gayle@everstarrealty.com

**Seller:** **Port of Kennewick**  
**350 Clover Island Drive, Suite 200**  
**Kennewick, Washington 99336**

Attn: Tim Arntzen, Chief Executive Officer  
Phone No.: (509)586-1186  
Email: bscott@portofkennewick.org

**With copy to:** **Carney Badley Spellman, P.S.**  
**701 Fifth Avenue, Suite 3600**  
**Seattle WA 98104**  
Attn: Lucinda J. Luke, Port Counsel  
Phone No.: (206)607-4111  
Email: luke@carneylaw.com

## **12. MISCELLANEOUS.**

**12.1 Confidentiality.** Both parties agree that this transaction shall remain completely confidential and shall not be disclosed to any other third party without the express written consent of the Purchaser and/or Seller, except as may be required by law. Purchaser acknowledges that Seller is subject to Washington State's Public Records Act.

**12.2 Default Remedies.** If either party defaults under this Agreement, the non-defaulting party may seek specific performance of this Agreement, damages or any other remedy available at law or equity.

**12.3 Dispute Resolution/Attorney's Fees.** In the event of any claim or dispute arising under this Agreement, the parties agree to submit the same to binding arbitration at a location to be mutually agreed upon in Benton County, Washington. In the event the parties are unable to promptly agree upon an arbitrator, the same shall be selected by the presiding judge for the Benton County Superior Court at the request of, and upon seven (7) days' notice from, any party. The arbitrator so appointed shall be a retired superior court judge or an attorney having at least ten years' experience in matters similar to the subject of the claim or dispute. The court may establish the ground rules by which the initial arbitrator fees are to be paid. The mandatory arbitration rules, as implemented in Benton County Superior Court, shall be binding as to procedure. The arbitrator shall determine an award of reasonable attorney's fees and costs and expenses to the substantially prevailing party. If any suit or other proceeding is instituted by either party that is alleged not to come within the foregoing agreement for arbitration, the substantially prevailing party as determined by the court or in the proceeding shall be entitled to recover its reasonable attorney's fees and all costs and expenses incurred.

**12.4 Time of Essence.** Time is of the essence of this Agreement.

**12.5 Calculation of Time Periods.** Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to

be included, unless such last day is a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m., Pacific [Daylight] Time.

**12.6 Governing Law and Venue.** This Agreement shall be governed by and construed according to the laws of the State of Washington. Venue for any dispute arising out of or related to this Agreement shall be exclusively in Benton County, Washington.

**12.7 Authority to Execute Agreement.** Each of the undersigned represents and warrants that, if not signing on his own behalf, he has the authority to bind the entity for which he/she is executing this Agreement.

**12.8 Entire Agreement.** There are no verbal or other agreements which modify or affect this Agreement, and Purchaser and Seller acknowledge that this Agreement constitutes the full and complete understanding between Purchaser and Seller.

**12.9 Amendments.** This Real Estate Purchase and Sale Agreement may be amended or modified only by a written instrument executed by Seller and Purchaser.

**12.10 Broker Compensation.** Both Purchaser and Seller warrant to the other that it has incurred a brokerage commission for which the other party would be responsible. Gayle Stack of EverStar Realty shall be paid a commission by Seller pursuant to compensation rates specified in the Port of Kennewick Resolution No. 2015-29 adopted December 8, 2015.

Except as specifically disclosed herein, neither party has had any contact or dealings regarding said property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee as a procuring cause of the purchase and sale contemplating this Agreement. If any broker or finder perfects a claim for a commission or finder's fee based upon any other contract, dealings or communication, the party through whom the broker or finder makes his or her claim will be responsible for that commission or fee and shall indemnify, defend and hold harmless the other party from and against any liability, cost or damages, including attorney's fees and costs, arising out of that claim.

**12.11 Obligations to Survive Closing.** The obligations contained herein shall survive closing.

**12.12 Termination.** Unless otherwise agreed between the parties, this Agreement shall terminate unless signed by Purchaser and returned to Seller before 5:00 p.m. the third business day following the Port of Kennewick's next scheduled Commission meeting.

**13.0 Exhibits.** The following exhibits are attached hereto and made a part of this Agreement by reference:

- Exhibit A - Legal Description
- Exhibit B - Port of Kennewick Covenants – Spaulding Business Park
- Exhibit C - Binding Site Plan – New Parcel 1
- Exhibit D - Easement

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first below written.

**SELLER:**

**Port of Kennewick**

A Washington Municipal Corporation  
By Authority of its Board of Commissioners

Dated: 3/28/17

By:   
Tim Arntzen, Chief Executive Officer

Approved:

  
Nick Kooiker, Port Auditor  
Date: 3/28/17


Approved as to form:

  
Lucinda J. Luke, Port Counsel  
Date: 3/28/17

**PURCHASER:**

**Tri-Cities Chaplaincy**

Dated: 3/23/17

By:   
Gary Castillo, Executive Director

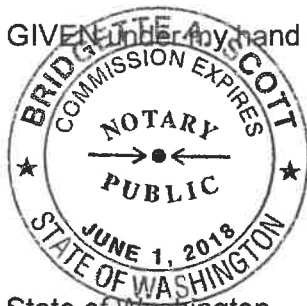


## ACKNOWLEDGEMENTS

State of Washington )  
 )ss  
County of Benton )

On this day personally appeared before me Tim Arntzen to me known to be the **Chief Executive Officer** of the **Port of Kennewick**, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

GIVEN under my hand and official seal this 28<sup>th</sup> day of March, 2017.



Bridgette A. Scott  
Notary Public in and for the State of Washington  
Residing at: Richland  
My Commission Expires: 06-01-2018

State of Washington )  
 )ss  
County of Benton )

On this day personally appeared before me Gary Castillo to me known to be the **Executive Director** of the **Tri-Cities Chaplaincy**, the non-profit organization that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said organization for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

GIVEN under my hand and official seal this 23 day of March, 2017.



Pam Ledbetter  
Notary Public in and for the State of Washington  
Residing at: Pasco, WA  
My Commission Expires: Aug 25, 2019

## **EXHIBIT A**

### **Spaulding Business Park**

**Tax Parcel No.: 130994BP3898008 (+/- 0.53 acres)**

**(Legal Description)**

**EXHIBIT B**  
**PORT OF KENNEWICK COVENANTS**  
**Spaulding Business Park**

## **EXHIBIT C**

### **Binding Site Plan**

**EXHIBIT D**  
**Utility Easement**

## AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made on the 26th day of July, 2017, by and between the Port of Kennewick, a Washington municipal corporation, Seller, and Tri-Cities Chaplaincy, Purchaser, (collectively the "Parties"), of that certain Commercial Purchase and Sale Agreement dated March 28, 2017, a copy of which is attached hereto and incorporated herein by reference;

THE PARTIES hereby agree to amend the Commercial Purchase and Sale Agreement as follows:

A. The original one hundred twenty (120) day feasibility period set forth in Paragraph 6.1.2 shall be extended ninety (90) days resulting in a total feasibility period of two hundred ten (210) days.

B. The original closing date set forth in Paragraph 9.4 shall be extended ninety (90) days resulting in a closing dates no later than two hundred forty (240) days from March 28, 2017.

C. Paragraph 10.1 shall be amended to provide as follows:

**10.1 Obligation to Complete Parking Area.** The Parties agree that the Purchaser's use of the Property shall be to construct a parking area ancillary to the Purchaser's adjacent facilities. The parking area shall be built in accordance with the following conditions:

D. Paragraphs 10.1.1 through 10.1.4 shall remain unchanged.

E. Paragraph 10.1.5 shall be added and provide as follows:

10.1.5 The Parties acknowledge that the Purchaser is requesting the change in use from expansion of its Administrative Building to Parking Area to accommodate expansion on the adjacent parcel it currently owns for a new 12-bed Hospice Care Center. The Parties further acknowledge that the proposed Hospice Care Center is not a currently accepted use under the covenants for Spaulding Business Park. Therefore, the Parties agree that prior to the end of the feasibility period, Purchaser shall provide to Seller evidence satisfactory to Seller, at Seller's sole discretion, that current Spaulding Business Park property owners are in agreement and supportive of allowing a variance to the covenants for the purpose of Purchaser building a 12-bed Hospice Care Center. If such evidence is not provided to Seller prior to the end of the feasibility period, this Agreement shall immediately terminate and the Purchaser's earnest money shall be refunded.

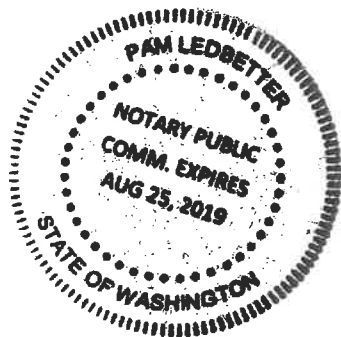
All other terms and conditions of the subject purchase and sale agreement dated March 28, 2017, shall remain the same.



County of Benton )ss  
)

On this day personally appeared before me Gary Castillo to me known to be the Executive Director of the Tri-Cities Chaplaincy, the non-profit organization that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said organization for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

GIVEN under my hand and official seal this 27 day of July, 2017.



Pam Ledbetter  
Notary Public in and for the State of Washington  
Residing at: Pasco, WA 99301  
My Commission Expires: Aug 25, 2019



## AMENDMENT #2 TO REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made on the 24th day of October, 2017, by and between the Port of Kennewick, a Washington municipal corporation, Seller, and Tri-Cities Chaplaincy, Purchaser, (collectively the "Parties"), of that certain Commercial Purchase and Sale Agreement dated March 28, 2017, a copy of which is attached hereto and incorporated herein by reference;

THE PARTIES hereby agree to amend the Commercial Purchase and Sale Agreement as follows:

A. The original one hundred twenty (120) day feasibility period set forth in Paragraph 6.1.2 shall be extended one hundred five (105) days resulting in a total feasibility period of two hundred twenty-five (225) days.

B. The original closing date set forth in Paragraph 9.4 shall be extended one hundred five (105) days resulting in a closing dates no later than two hundred fifty-five (255) days from March 28, 2017.

All other terms and conditions of the subject purchase and sale agreement dated March 28, 2017, shall remain the same.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first below written.

### SELLER:

Port of Kennewick  
A Washington Municipal Corporation  
By Authority of its Board of Commissioners

Dated: 11/20/17

By: [Signature]  
Tim Arntzen, Chief Executive Officer

Approved:

[Signature]  
Nick Kooiker, Port Auditor  
Date: 11/1/17

Approved as to form:

[Signature]  
Lucinda J. Luke, Port Counsel  
Date: 11-16-17

### PURCHASER:

Tri-Cities Chaplaincy

Dated: 10/30/17

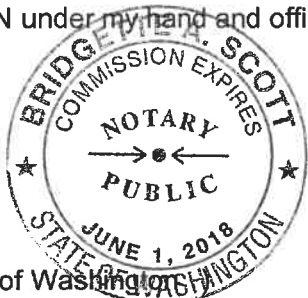
By: [Signature]  
Gary Castillo, Executive Director

## ACKNOWLEDGEMENTS

State of Washington )  
 )ss  
County of Benton )

On this day personally appeared before me Tim Arntzen to me known to be the **Chief Executive Officer** of the Port of Kennewick, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

GIVEN under my hand and official seal this 20<sup>th</sup> day of November, 2017.



Bridgett A. Scott  
Notary Public in and for the State of Washington  
Residing at: Richland  
My Commission Expires: 06-01-2018

State of Washington )  
 )ss  
County of Benton )

On this day personally appeared before me Gary Castillo to me known to be the **Executive Director** of the Tri-Cities Chaplaincy, the non-profit organization that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said organization for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

GIVEN under my hand and official seal this 30 day of October, 2017.



Gayle E. Stack  
Notary Public in and for the State of Washington  
Residing at: Kennewick  
My Commission Expires: 6-9-2019

**PORT OF KENNEWICK**

**RESOLUTION No. 2017-30**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF  
KENNEWICK AUTHORIZING A VARIANCE TO THE PROTECTIVE COVENANTS AND  
RESTRICTIONS WITHIN SPAULDING BUSINESS PARK FOR  
TRI-CITIES CHAPLAINCY***

**WHEREAS**, Tri-Cities Chaplaincy is the owner of real property within the Spaulding Business Park in Richland, Washington and has requested a variance to the protective covenants and restrictions *Exhibit "A"* (Resolution Nos. 2003-03, 2004-03, 2004-14) to allow a Hospice House (City of Richland Land Use: Nursing/Rest Home) to be constructed and operated on Tri-Cities Chaplaincy-owned property; and

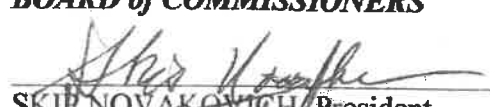
**WHEREAS**, Port staff and the Port attorney have reviewed the proposed Variance to the Spaulding Business Park Protective Covenants and Restrictions and find it is in proper form and is in the Port's best interest; and

**NOW, THEREFORE; BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby authorizes the Port's Chief Executive Officer to execute all documents and agreements on behalf of the Port to complete the Variance as specified above.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 28th day of November, 2017.

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

By:

  
SKIP NOVAKOVICH, President

By:

  
THOMAS MOAK, Vice President

By:

  
DON BARNES, Secretary

COLOR COPY

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

NOVEMBER 28, 2017 MINUTES

- Benton County PUD in progress;
- Benton County Planning Department – drawings and easement information has been submitted; and
- Army Corps of Engineers has been contacted regarding a barge slip.

Ms. Hanchette stated Resolution 2017-29 allows the Commission to accept the site improvements in lieu of stockpiling to satisfy Section 10.1 – Obligation to Stockpile Material found in the original purchase and sale agreement.

## PUBLIC COMMENTS

No comments were made.

***MOTION:*** *Commissioner Moak moved for approval of Resolution 2017-29 authorizing the Port's Chief Executive Officer to accept the site improvements in lieu of aggregate stockpiling, and to execute all necessary documentation and take all other action necessary to finalize the transaction with Rocking River LLC.; Commissioner Barnes seconded. With no further discussion, motion carried unanimously. All in favor 3:0.*

### ***D. Tri-Cities Chaplaincy<sup>2</sup> Variance to Protective Covenants and Restrictions within Spaulding Business Park; Resolution 2017-30***

Ms. Hanchette stated the Tri-Cities Chaplaincy owns 1.85 acres of real property in the Port of Kennewick's Spaulding Business Park at 1480 Fowler, Richland and is currently under contract to purchase an additional .53 acres adjacent to their property.

During their due diligence period as part of the recent land purchase, Tri-Cities Chaplaincy requested a one-time variance to the Spaulding Business Park Protective Covenants and Restrictions (CC&R) allowing potential construction of a Hospice House on Chaplaincy property.

Upon review of the request, the Port's Design Review Committee required a simple majority acceptance by the Spaulding Business Park property owners. Tri-Cities Chaplaincy was able to obtain the requested majority supporting a variance to the Protective Covenants and Restrictions. Tri-Cities Chaplaincy was also able to obtain a City of Richland code amendment allowing Nursing or Rest Home in the business and commerce (B-C) zoning classification.

Ms. Hanchette stated Resolution 2017-30 is a one-time variance to Tri-Cities Chaplaincy for potential construction of a Hospice House on Chaplaincy property in the Spaulding Business Park.

Mr. Barnes inquired if any businesses had any objections.

Ms. Hanchette stated that she had not heard of any objections.

Mr. Moak inquired if the CC&R's need to be broadened.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

NOVEMBER 28, 2017 MINUTES

Ms. Hanchette stated the CC&R's cover medical offices and hotels; whereas hospice is an end of life facility. Ms. Hanchette stated, and Ms. Luke concurred, that a one-time variance seemed like the appropriate approach.

## PUBLIC COMMENTS

No comments were made.

***MOTION:*** Commissioner Moak moved for approval of Resolution 2017-30 authorizing the Port's Chief Executive Officer to execute all necessary documentation associated with a one-time Protective Covenants and Restrictions variance issued to Tri-Cities Chaplaincy allowing construction of a Hospice House; Commissioner Barnes seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

### ***E. 2018/2019 Committee Assignments and Election of Officers Discussion***

Mr. Arntzen stated before the Commission is the 2018-2019 Committee Assignments for discussion, to determine if any committees need to be removed or if Commissioners would like to serve on specific committees. Additionally, the Commission can also discuss the Election of Officers for 2018-2019 and organization dues for 2018 and dispersed the current list.

Mr. Moak believes the Commission passed a Resolution revising the procedures for the Election of Officers in 2016.

Mr. Arntzen corrected himself and stated Mr. Moak is correct, the Commission passed Resolution 2016-01 addressing the Election of Officers.

Mr. Novakovich is satisfied with his current list of assignments.

Mr. Arntzen recently spoke with Brian Malley of Benton Franklin Council of Governments (BFCOG) who explained the Local Good Roads and Transportation Committee may disbanded. Mr. Arntzen does not believe the TRIOS Heath Joint Committee is active, as well as the West Richland Economic Development Committee.

Mr. Moak stated that he is the Port representative on the Local Good Roads and Transportation Committee and they are currently reorganizing. The group did seek out Mr. Malley regarding a partnership with BFCOG; however, BFCOG has specific restrictions placed on them as a governmental entity. Mr. Moak believes Good Roads has the ability to do more and is working on raising their game.

Mr. Novakovich is fine with removing TRIOS Joint Committee and the West Richland Economic Development Committee.

Mr. Moak and Mr. Barnes concur with removing TRIOS Joint Committee and the West Richland Economic Development Committee.

### AMENDMENT #3 TO REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made on the 4<sup>th</sup> day of December, 2017, by and between the Port of Kennewick, a Washington municipal corporation, Seller, and Tri-Cities Chaplaincy, Purchaser, (collectively the "Parties"), of that certain Commercial Purchase and Sale Agreement ("PSA") dated March 28, 2017, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A", and amended pursuant to Amendments to Real Estate Purchase and Sale Agreement ("Amendment") dated July 26<sup>th</sup>, 2017, and October 24<sup>th</sup>, 2017 copies of which are attached hereto and incorporated herein by reference as Exhibit "B" and Exhibit "C".

THE PARTIES hereby agree that the Purchaser has met the requirement set forth in Paragraph 10.1.5 of the Amendment by obtaining sufficient proof of current Spaulding Business Park property owners' agreement and support of the variance in accepted use. Additionally, Seller has confirmed its agreement to a variance in accepted use under the covenants for Spaulding Business Park it a resolution adopted by the Port Commission, a copy of which is attached hereto and incorporated herein by reference as Exhibit "D".

All other terms and conditions of the PSA and the Amendment shall remain the same.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first below written.

**SELLER:**

**Port of Kennewick**  
A Washington Municipal Corporation  
By Authority of its Board of Commissioners

By: [Signature]  
Tim Arntzen, Chief Executive Officer

Dated: 12-4-17

**Approved:**

[Signature]  
Nick Kooiker, Port Auditor  
Date: 12/7/17

**Approved as to form:**

[Signature]  
Lucinda J. Luke, Port Counsel  
Date: 12-7-17

**PURCHASER:**

**Tri-Cities Chaplaincy**

By: [Signature]

Gary Castillo, Executive Director

Dated: 12/4/17

**ACKNOWLEDGEMENTS**

State of Washington)

)ss

County of Benton )

On this day personally appeared before me Tim Arntzen to me known to be the **Chief Executive Officer** of the **Port of Kennewick**, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

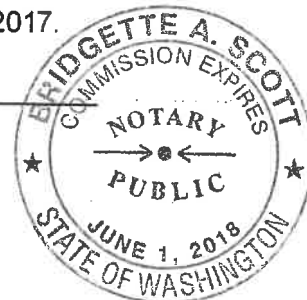
GIVEN under my hand and official seal this 7<sup>th</sup> day of December, 2017.

[Signature: Bridgette A. Scott]

Notary Public in and for the State of Washington

Residing at: Richland

My Commission Expires: 06-01-2018



State of Washington)

)ss

County of Benton )

On this day personally appeared before me Gary Castillo to me known to be the **Executive Director** of the **Tri-Cities Chaplaincy**, the non-profit organization that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said organization for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

GIVEN under my hand and official seal this 4<sup>th</sup> day of December, 2017.

[Signature: Gayle E. Stack]

Notary Public in and for the State of Washington

Residing at: Kennewick

My Commission Expires: 6-9-19



When recorded return to:

Tri-Cities Chaplaincy  
1480 Fowler Street  
Richland, WA 99362

131689 - \$10.00 - AAC - 12/08/2017 - Benton County

**BENTON FRANKLIN TITLE CO.**

**STATUTORY WARRANTY DEED**

BF4302

The Grantor, **Port of Kennewick, a Washington Municipal Corporation**

for and in consideration of **Ten Dollars and other valuable consideration**

in hand pays, conveys, and warrants to **Tri-Cities Chaplaincy, a Washington Non-Profit Corporation**

the following described real estate, situated in the County of Benton, State of Washington:

**SEE ATTACHED EXHIBIT "A"**

Abbreviated Legal: **PTN GVT LOT 3; 30-9-29**

Tax Parcel Numbers(s): **1-3099-4BP-3898-008**

**SUBJECT TO** covenants, conditions, restrictions, reservations, easements and agreement of record, if any.

**AND SUBJECT TO** the Restriction that the Purchaser shall not assign, encumber or transfer any right or interest in the Property during the first eighteen (18) months after this deed is recorded transferring the Sellers title to this land without the Seller's written approval, which approval shall not be unreasonably withheld.

Dated: **December 07, 2017**

**PORT OF KENNEWICK, a Washington Municipal Corporation**

**Tim Arntzen, Chief Executive Officer**

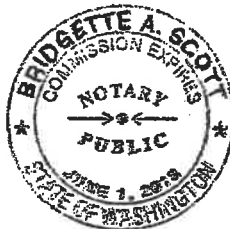
STATE OF **Washington**

} ss.

COUNTY OF **Benton**

I certify that I know or have satisfactory evidence that **Tim Arntzen** (is/are) the person(s) who appeared before me, and said person(s) acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledge it as the **Chief Executive Officer of Port of Kennewick** to be the free and voluntary act of such party(ies) for the uses and purposes mentioned in this instrument.

Dated: **12/7/2017**



**Bridgette A. Scott**  
Notary Printed Name: **Bridgette A. Scott**  
Notary Public in and for the State of Washington  
Residing at: **Richland WA**  
My appointment expires: **06/01/2019**



**EXHIBIT "A"**

THAT PORTION OF GOVERNMENT LOT 3, SECTION 30, TOWNSHIP 9 NORTH, RANGE 29 EAST, WILLAMETTE MERIDIAN, CITY OF RICHLAND, BENTON COUNTY, WASHINGTON, BEING A PORTION OF BLOCK 2 OF THAT PROPERTY SHOWN ON RECORD OF SURVEY RECORDED IN VOLUME 1 OF SURVEYS, PAGE 3221, RECORDS OF BENTON COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID GOVERNMENT LOT 3; THENCE NORTH 89°25'22" WEST, 30.01 FEET ALONG THE SOUTH LINE OF SAID GOVERNMENT LOT TO A POINT ON THE WEST LINE OF GEORGIA STREET; THENCE NORTH 01°04'08" WEST, 861.06 FEET ALONG SAID WEST LINE; THENCE NORTH 89°31'08" WEST, 204.68 FEET; THENCE SOUTH 01°04'08" EAST, 220.50 FEET TO THE TRUE POINT OF BEGINNING.;

THENCE SOUTH 01°04'08" EAST, 169.47 FEET TO A POINT ON THE NORTH LINE OF FOWLER STREET, SAID POINT BEING ON THE ARC OF A 670.00 FEET RADIUS CURVE (RADIUS POINT BEARS NORTH 07°17'53" EAST); THENCE WESTERLY, 124.50 FEET ALONG SAID NORTH LINE AND ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 10°38'47"; THENCE NORTH 72°03'20" WEST, 30.84 FEET ALONG SAID NORTH LINE; THENCE NORTH 01°04'08" WEST, 130.00 FEET; THENCE NORTH 88°55'52" EAST, 149.95 FEET TO THE TRUE POINT OF BEGINNING.

(ALSO KNOWN AS NEW PARCEL 2, SURVEY 4709)

Situated in the County of Benton, State of Washington.

End of Exhibit "A"



**PORT OF KENNEWICK**

**RESOLUTION No. 2019-11**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK AUTHORIZING  
THE PURCHASE OF VACANT LAND FROM  
TRI-CITIES CHAPLAINCY***

**WHEREAS**, Tri-Cities Chaplaincy (Purchaser), purchased 0.53 acres of vacant land from the Port of Kennewick on March 28, 2017 in Kennewick, Washington and graphically depicted on "Exhibit A"; and

**WHEREAS**, a restriction to the Statutory Warranty Deed recorded December 8, 2017 allows the Port of Kennewick the option to repurchase the property should the Purchaser not develop the property within eighteen months of closing; and

**WHEREAS**, the Port Commission desires to execute said repurchase option according to the terms outlined in the Statutory Warranty Deed;

**NOW, THEREFORE; BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby authorize the Port's Chief Executive Officer to enter into negotiations with representatives for Tri-Cities Chaplaincy on behalf of the Port.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 11th day of June 2019.

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

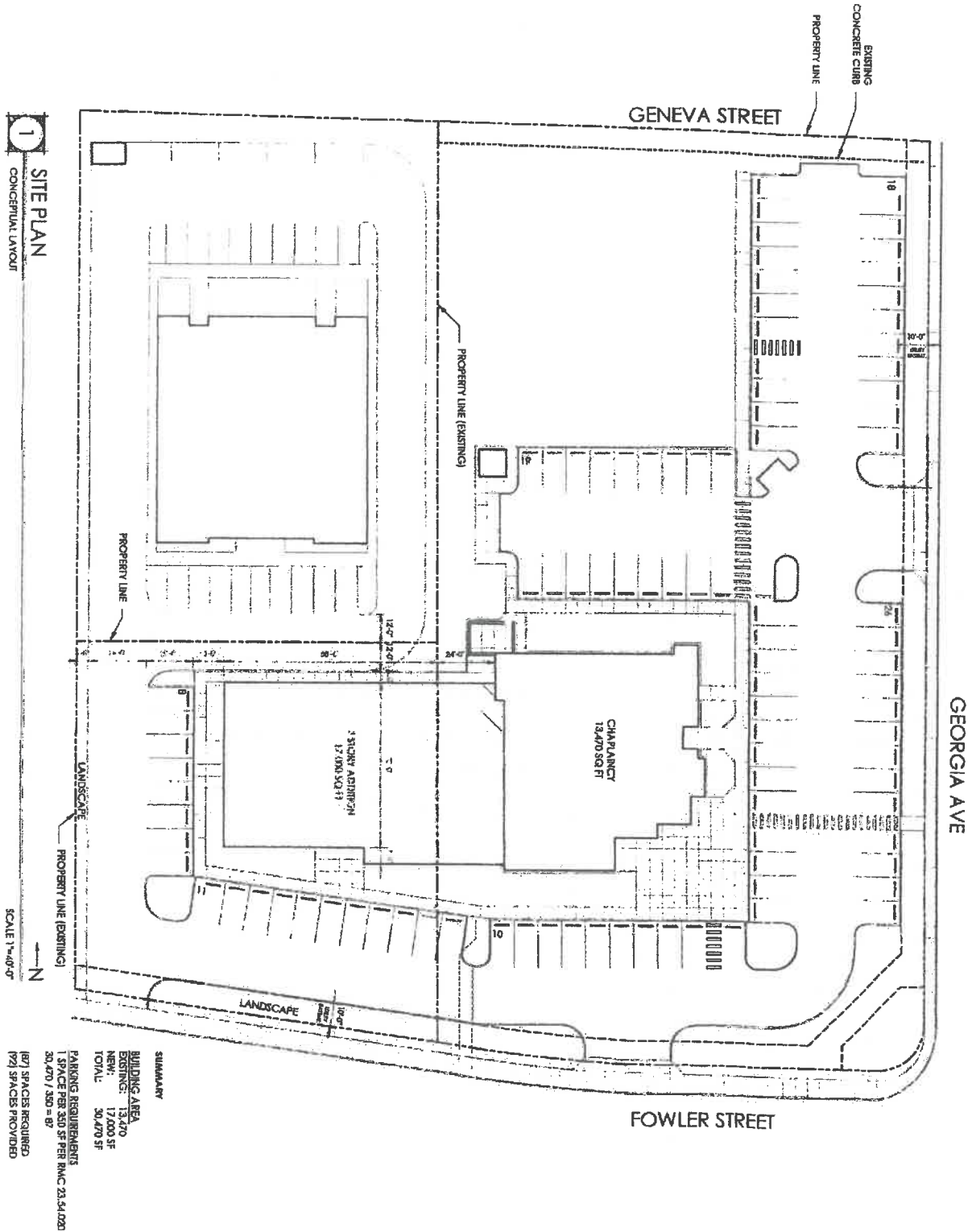
By: \_\_\_\_\_  
THOMAS MOAK, President

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

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

Repurchase

# Exhibit A



## Chaplaincy Site Study

1480 Fowler Street  
Richland, WA

ARCHITECT: JEFFREY A. LINDEN  
PROJECT: CHAPLAINCY  
DATE: 10/20/2010

Site Plan

A100

01/28/17

Release

**PORT OF KENNEWICK**

**RESOLUTION No. 2019-11**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK AUTHORIZING  
THE RELEASE OF BUYBACK CLAUSE FOR 2017 LAND SALE TO  
TRI-CITIES CHAPLAINCY***

**WHEREAS**, Tri-Cities Chaplaincy (Purchaser), purchased 0.53 acres of vacant land from the Port of Kennewick on March 28, 2017 in Kennewick, Washington and graphically depicted on "Exhibit A"; and

**WHEREAS**, a restriction to the Statutory Warranty Deed recorded December 8, 2017 allows the Port of Kennewick the option to repurchase the property should the Purchaser not develop the property within eighteen months of closing; and

**WHEREAS**, the Port Commission finds that said property is outside the scope of the Port's current Comprehensive Scheme of Development and releases such repurchase option from said property.

**NOW, THEREFORE; BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby authorize the Port's Chief Executive Officer to execute all documents and agreements on behalf of the Port to complete the release of the repurchase option as specified above.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 11<sup>th</sup> day of June, 2019.

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

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

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

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

PROPERTY LINE

(187) SPACES REQUIRED  
(192) SPACES PROVIDED

01.23.17

100%  
 Feasibility Study  
 Not For Construction  
 Site Plan

1480 Fowler Street  
Richland, WA

**Ausgabe:** Matheson, J. W. (1986).  
**Page:** 600-620-617  
**Erreil:** [rajmatheson@earthlink.net](mailto:rajmatheson@earthlink.net)