

# AGENDA

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

Tuesday, July 14, 2015  
2:00 p.m.

**I. CALL TO ORDER**

**II. PLEDGE OF ALLEGIANCE**

**III. PUBLIC COMMENT** *(Please state your name and address for the public record)*

**IV. CONSENT AGENDA**

- A. Approval of Direct Deposit and ePayments Dated July 2, 2015
- B. Approval of Warrant Registers Dated July 14, 2015
- C. Approval of Commission Meeting Minutes Dated June 23, 2015
- D. Approval for Commission President to Sign Letter Regarding the Tri-Cities Regional Airport, Small Community Air Service Development Grant
- E. GBW Railcar Services LLC Lease Addendum; Resolution 2015-18

**V. PRESENTATIONS**

- A. Columbia Gardens, Latino Artwork, Davin Diaz and Hispanic Community Leaders (**TIM**)
- B. Art Development Research Report, Port Art Liaison Barb Carter (**TIM**)

**VI. NEW BUSINESS**

- A. Columbia Gardens Wine Village Lease Rates; Resolution 2015-15 (**AMBER**)
- B. First Addendum to Columbia Gardens Interlocal Agreement; Resolution 2015-16 (**TIM**)
- C. Bid Award for Clover Island Boat Launch Facility Project; Resolution 2015-17 (**LARRY**)

**VII. REPORTS, COMMENTS AND DISCUSSION ITEMS**

- A. Vista Field Redevelopment (**LARRY**)
- B. Commissioner Meetings (formal and informal meetings with groups or individuals)
- C. Non-Scheduled Items

**VIII. PUBLIC COMMENT** *(Please state your name and address for the public record)*

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

- A. Potential Litigation, per RCW 42.30.110(1)(i)

**IX. ADJOURNMENT**

***PLEASE SILENCE CELL PHONES***



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## CALL TO ORDER

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

### The following were present:

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

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

## PLEDGE OF ALLEGIANCE

Mr. Cal Coie led the Pledge of Allegiance.

## PUBLIC COMMENT

No comments were made.

## CONSENT AGENDA

Consent agenda consisted of the following:

- A. *Approval of Direct Deposit and E-Payments Dated June 17, 2015***  
Direct Deposit and E-Payments totaling \$52,720.38
- B. *Approval of Warrant Registers Dated June 23, 2015***  
Expense Fund Voucher Numbers 36963 through 37001 for a grand total of \$57,328.37
- C. *Approval of Special Commission Meeting Minutes dated June 9, 2015***

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

## PRESENTATION

- A. *Tri-Cities 2015 Geo-Coin Challenge, Jen Davis, City of Richland***  
Ms. Bader Inglima introduced Jen Davis, a City of Richland Park Ranger. The City of Richland has been holding a Geocaching event in the community for several years and has expanded their location every year, which has included Clover Island in the past. The event has gained more interest and the attendance has increased significantly since 2010. Several locations will be



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utilized in this year's event, allowing the community to see the improvements to the island and other Port properties. Ms. Davis is here today to tell us about geocaching.

Ms. Davis thanked the Commission for having her today and stated, she has been employed with the City of Richland for seven years and is a fulltime Park Ranger. Geocaching is an outdoor recreational activity, in which participants use a GPS unit or smart phone to find containers called geocaches anywhere around the world. A participant uses the given coordinates from geocache.com to locate the site. Ms. Davis stated over 5,000,000 people worldwide participate and there are over 2,000,000 geocache sites world-wide, which hold items such as a log book/sheet, treasures, and coins or travel bugs, which can be traded for equal or greater value.

The City of Richland event began in 2010, with seventy participants; and in 2012, Kennewick and Pasco joined in and the event became the Tri-Cities Geocache Challenge with over 500 participants. This is the sixth year of the challenge and West Richland has joined the event. There are thirty-two total geocaches with seven located in each city. At this time, over 600 people have RSVP'd for the Hidden Treasures of the Mid-Columbia Geocache event. With our mega status, emails go out world-wide on a frequent basis, advertising the event, which creates a tourism opportunity and a positive economic impact on the community.

The activities begin Thursday evening at Sacajawea State Park, with the main event beginning Saturday Morning. The 2015 geocoin features the cities of Kennewick, Pasco, Richland, and West Richland, and the Visit Tri-Cities logo.

Ms. Bader Inglima thanked Ms. Davis for her enthusiasm and stated the event brings exposure to the improvements made to the island and Columbia Drive, as well as expose the entire region to people who have never visited the area. The event helps further leverage our brand, world-wide through eco-tourism. Ms. Bader Inglima reported the City of West Richland will be participating in the event and has purchased a geocoin, which they will be donating to the Port's time capsule.

Mr. Moak stated this is a great example of Tri-City branding, Ms. Davis has taken a small event and built it up and has helped make it a major event for our region. Mr. Moak applauds Ms. Davis' leadership and enthusiasm.

## NEW BUSINESS

### A. *Clover Island Boat Ramp Planks; Resolution 2015-14*

Mr. Peterson stated the Port's 2015 Work Plan and 2015-2016 Biennial Budget include funds for the repair/replacement of the Clover Island Boat Ramp, construction of the upland parking lot and bathroom improvements. Due to permitting complexities associated with in-water work and the ten-week lead time for the boat ramp concrete planks, the Port elected to bid procurement of the concrete planks in advance of the construction project. The Port's contracted engineer, JF Engineering, prepared detailed specifications for the thirty-eight concrete planks; five material suppliers were identified and bids were requested from those suppliers.



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The Oldcastle Precast bid of \$56,050.00 plus Washington State sales tax, was the lower of two bids received for this project; and has been deemed as a responsive bid. The bid required nineteen 20-foot x 4-foot and nineteen 18-foot x 4-foot concrete planks be delivered to the boat ramp site by August 10, 2015.

Mr. Peterson further stated the bidding process for the Clover Island boat launch bathroom, parking lot, landscaping and artwork installation started today and will close July 9, 2015 at 2:00 p.m.

## PUBLIC COMMENT

No comments were made.

***MOTION:*** *Commissioner Novakovich moved for approval of Resolution 2015-14, authorizing the Port's Executive Director to execute the contract with Oldcastle Precast for the provision of 38 precast planks for the Clover Island Boat Ramp replacement project, for the sum of \$56,050.00, plus applicable sales tax; Commissioner Moak seconded.*

### ***Discussion:***

*Mr. Moak inquired if our contract engineer had received a prior estimate for the planks.*

*Mr. Peterson stated the initial estimate was \$90,000 and was quite pleased at the cost savings.*

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

## REPORTS, COMMENTS AND DISCUSSION ITEMS

### **A. TREC – Land Conveyance**

Mr. Arntzen stated he became aware of a request the Tri-Cities Rivershore Enhancement Council (TREC) committee was considering. The request calls for the conveyance of waterfront property that is owned by the United States Army Corps of Engineers (USACE), to be returned to the local jurisdictions; Cities of Kennewick, Pasco, and Richland. The Port currently has a Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), which states the Port would confer with tribes on any significant tribal project, within distance of water. Mr. Arntzen stated the action TREC is considering requires additional thought, related to existing MOU with the CTUIR.

Mr. Barnes had an opportunity to review the draft letter at the meeting TREC yesterday and stated Kris Watkins did an excellent job providing the history of the waterfront redevelopment to date. The impact of the Native American Graves Protection and Repatriation Act (NAGPRA) is an agreement between the tribes and federal government, which states the rights and responsibilities of the act cannot be transferred from the federal government to lower government. If the waterfront were conveyed back to a local jurisdiction, then the jurisdiction would bear the responsibility of the NAGPRA.

Ms. Watkins shared that there is a current lease agreement in place, which is for recreational use of the land, which does not allow for economic development, nor does it generate much revenue





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to offset the operations cost. The cities are interested in trying to develop sources of revenue that will offset maintenance and operations costs of land along the river. Mr. Barnes and Ms. Bader Inglima pointed out to TREC that the Port of Kennewick has a concern about the request because of the Port's MOU with CTUIR. Also, the Port has an ongoing relationship with the USACE for the 1135 River shore Enhancement and would not want to do anything to jeopardize the project. Mr. Barnes indicated the Port would need time to review any letter with the CTUIR prior to agreeing to support through TREC.

Ms. Bader Inglima stated the Port was not the only entity concerned. Several people suggested starting a conversation with congressional representatives before a formal letter is sent on behalf of TREC. Ms. Bader Inglima reiterated to the TREC committee that if it was through TREC, the Port would need to engage with the CTUIR before moving forward with exploring the transfer of land. Ms. Bader Inglima reported that at this time, the proposed letter is not going to go forward, but the committee will likely have additional conversations regarding the conveyance and the direction the group would like to take. Brad Fisher composed the letter and is working with the City of Kennewick on their request, and was exploring the concept of a regional request through TREC.

Mr. Arntzen stated there are several places on the Columbia River that are ready for development, such as Clover Island, Columbia Point and Island View, where urbanization is perhaps more appropriate. Mr. Arntzen expressed his concern for the projects already slated for Clover Island and Columbia Drive and stated, those could be jeopardized by supporting a request for more property. Furthermore, to urbanize Columbia Park, a green space that has been utilized for recreation for many years may not be well supported by the community.

Mr. Barnes stated the TREC letter came about very quickly and believes our Port and others were caught off guard. Mr. Barnes appreciates Mr. Arntzen's points and stated the MOU serves the Port very well. The Port is focusing our resources on redevelopment of many properties and is trying to fulfill our mission for the community and working with the tribes to bring that development about.

Mr. Novakovich does not want to jeopardize the Port's relationship with the CTUIR and believes the best thing to do is protect the MOU with the CTUIR.

Mr. Moak stated, when he was with the City of Kennewick, they worked at trying to find ways to enhance the economic value of Columbia Park and remembers the public was not interested in altering the park. Mr. Moak is concerned by the issue of conveyance, because once it is reconveyed, we accept the responsibility for all liabilities and activities and are bound by USACE restrictions on the property. TREC has done a lot in our community, however, Mr. Moak believes this issue is one TREC should not be assuming, but is a jurisdictional issue. Mr. Moak would like to see a public dialogue, which includes the community to discuss the details of conveyance; and he is not in favor of the Port being associated with proposed letter or for TREC to undertake a conveyance request.

Mr. Barnes agrees with Mr. Moak's assessment.



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Ms. Bader Inglima clarified that if TREC pursues as a group, she understands from Commission discussion that our Port will not be part of the effort.

Mr. Barnes believes pursuing a commercial lease would be more viable than a conveyance of the land.

Mr. Moak would like to see TREC focus on rivershore enhancements which included wayfinding and gateways.

Mr. Novakovich inquired which entities make up TREC.

Ms. Bader Inglima reported that TREC is made up of the cities, counties and USACE and is coordinated by Visit Tri-Cities. Ms. Bader Inglima believes this particular issue is being pursued by the City of Kennewick, which was looking at particular area of conveyance and that a collective voice could be more impactful.

Mr. Arntzen stated the motivation of TREC has not been well defined. Mr. Moak raises interesting points, a great number of people have already stated they do not want to see redevelopment of Columbia Park. Mr. Arntzen stated, the question should be asked of the cities, what they will do with the land once it is conveyed.

Mr. Moak understands it is easier to accomplish a task when all jurisdictions come together and be successful, however, he does not appreciate TREC taking the lead.

Mr. Novakovich stated the community has already said no and believes the cities should address the community to see if their mindset has changed.

Mr. Arntzen asked the Commission how they would you like the Port to respond to the letter.

Mr. Moak asked what TREC is specifically asking of the Port.

Mr. Barnes stated TREC is asking for support of the effort and concept of conveyance. The Port Commission asked that a letter be sent to TREC respectfully declining to be involved in the conveyance process that is being pursued.

Mr. Arntzen will draft a brief letter expressing the Commission's view point and bring back for consideration at the July 14, 2015 meeting. Mr. Arntzen appreciates the Board's effort in discussing the letter and the ramifications it could pose for the Port.

## ***B. Rebranding***

Mr. Arntzen stated \$50,000 has been allocated to rebranding in the 2015-2016 Budget and he has been looking at ways to start the rebranding process. Mr. Arntzen stated, over the past few months, Mr. Peterson, Mr. Moak and Mr. Floyd of Anchor QEA have met with the public and our jurisdictional partners to determine what projects the Port should pursue. Mr. Arntzen reported Mr. Floyd has a wealth of information related to the Port since he has been working on



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updating the Comprehensive Scheme and suggested Mr. Floyd begin working on rebranding, with special attention to the brand side of the Port. By utilizing Mr. Floyd, we begin to work on the foundational elements of rebranding. Mr. Floyd is interested in defining the Port for rebranding and is ready to move forward. Mr. Arntzen believes this is a good start and will answer the question of who the Port is. Once we have determined our foundation, we can move forward and allocate funds during the next two year budget cycle. Mr. Arntzen asked the Board for their thoughts.

Ms. Bader Inglima stated the Port needs to define who we are now and what our product and business line is, and how we communicate that information to our constituents. Once that information is determined, we can then move forward with items like the Port logo and tagline.

Mr. Novakovich inquired about the cost and time frame.

Mr. Arntzen stated the work would not exceed \$10,000, well within the \$50,000 allocated amount.

Ms. Bader Inglima expects to see some information by fall, which coincides with the work on the Comp Scheme.

Mr. Novakovich stated if the rebranding funds will be utilized for rebranding then how will the Port address the requests from Visit Tri-Cities, Clover Island Inn and the Port of Pasco.

Mr. Arntzen is still working on those funding requests and suggested utilizing a larger budget item for those unfunded requests and backfill at the next biennial budget. Mr. Arntzen stated, the 1135 shoreline project has \$750,000 budgeted, and recommended reallocating \$50,000 and replenishing the funds during the next budget cycle.

Mr. Novakovich likes Mr. Arntzen's proposal and asked if there were available savings on any construction projects.

Mr. Arntzen stated the anticipated savings on construction projects will be needed because, as with any construction, you should anticipate change orders.

Mr. Barnes supports amending the current contract with Anchor QEA to add rebranding duties and believes it is an excellent use of Port resources. The Port has evolved and needs to focus on who we are now and gain a good, firm understanding of what and who we are.

Mr. Moak believes it is important to analyze who we are and stated this a good start.

## ***C. Affiliated Tribes of Northwest Indians (ATNI) Conference, September 2015***

Mr. Arntzen stated the Port was an advertising partner for the Affiliated Tribes of Northwest Indians (ATNI) Conference last September in Pendleton. Mr. Arntzen had the opportunity to make a presentation on how the Port of Kennewick works with the CTUIR, the conference host. Mr. Arntzen and Ms. Bader Inglima stated the presentation was very well received and



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encountered numerous questions and requests for the presentation. Our relationship with the CTUIR has created an opportunity to work jointly together and the benefits the Port receives are immeasurable.

This year, the 2015 ATNI Conference is being held at Northern Quest Casino in Spokane, where the Port will be an advertising partner. Mr. Arntzen inquired if the Commission would like to attend the conference. Furthermore, he would like to have key staff attend and spend a few days at the conference to attend presentations and interface with other tribes and discuss economic development projects.

Ms. Bader Inglima stated Dave Tovey, Executive Director of the CTUIR, is encouraging the Commission and staff attend, to gain a new perspective.

Mr. Arntzen stated there is a direct benefit to the Port as an economic development engine to have positive relationships with various tribes throughout the Northwest. The Port has been able to have a smooth development on Clover Island and Duffy's Pond, with the help of the tribes.

Mr. Peterson stated the relationship with the CTUIR has saved the Port time and money and has helped established credibility on Port projects. The shoreline enhancement on the West causeway was not only beneficial to state and federal agencies, but to the tribes. The credibility the tribes give to the Ports efforts, carries on when we move forward with future projects.

Ms. Bader Inglima stated the Port will have a booth at the event this year. The host for the 2015 conference is the Confederated Tribes of the Colville Reservation.

Mr. Moak stated part of our brand should be that we work with others; for example, other jurisdictions, tribes, Futurewise and the community, in ways that other entities do not. He stated Mr. Peterson is correct, the value in working with tribes is immensely beneficial and we should continue to find ways that we can further the partnership and share our value with others.

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

Commissioners reported on their respective committee meetings.

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

1. Mr. Moak met with a constituent who frequently walks along the waterfront and shared that she no longer walks the island because the restrooms are locked. Mr. Moak inquired if the new restroom facility will remain open to the public. Furthermore, Mr. Moak asked at what point can the Port do anything about vandalism and vagrancy so visitors to the island can utilize our facilities.

Mr. Moak recognized that Bob Hennig passed away over the weekend. Mr. Hennig was the first recipient of the Friend of the Port and was a very thoughtful and interesting gentleman.

2. Mr. Barnes noted that Vista Field was not an agenda item and would like to state the Port is embarking on a very important time as we proceed with the development of the Vista Field



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Master Plan. The Port has been commended for asking for community input during the Charrette and having joint meetings to discuss issues. Mr. Barnes is looking to staff to help identify crucial elements of the Master Plan that will allow us to create something visionary and unique, and will serve our community well for at least 100 years. It is an important step in the process to fight for something truly special and Vista Field will be a major undertaking. Mr. Barnes wants to make sure he is doing everything that he can as a Commissioner, to ensure that Vista Field is a successful endeavor with the end result being something special to the community. Mr. Barnes is looking forward to the Vista Field Workshop in July and would like to ensure the Port captures the elements in the Master Plan that will allow for a unique development for the community.

3. Ms. Scott reported earlier today, a small group of women were taking pictures with the “Call of the River” statue. Ms. Scott stated it is nice to see people enjoying artwork on the island.

Ms. Scott reported Mr. Arntzen received a Thank You Note from former *Tri-City Herald* staff writer Kristi Pihl:

*Dear Tim,*

*Thank you for making covering the Port a pleasure. I cannot tell you enough how much I appreciate your commitment to open government and the trust you placed in me. I'm endlessly grateful for the time you and your staff invested in helping me to understand the Port's issues and projects. It was such a relief to know that I did not have to worry about not getting the information I needed, no matter the story. Thanks for always answering my questions, no matter the issue. Your open door policy is more unique than one would expect. I wish you (and the Port) all the best. – Kristi Pihl*

Ms. Scott will place the note in Mr. Arntzen's personnel file.

Mr. Novakovich agrees with Ms. Scott and stated Ms. Pihl's note is indicative of who the Port is.

Ms. Scott reported the Vista Field Workshop will be held on July 28, 2015, at 6:00 p.m. at Country Gentleman. Ms. Scott stated the Port will advertise the workshop and post on the information on our website.

4. Ms. Bader Inglima appreciated the editorial in the *Tri-City Herald* and applauded the Commission for making the investments in the area that are already being seen as a catalyst that will help reshape the transformation of downtown. The City of Kennewick is hosting a meeting tomorrow morning to discuss how to connect the waterfront to downtown and the future development. The public input meeting is part of the next step for the ABC Frontier Grant and leveraging the next opportunity for the \$100,000. Ms. Bader Inglima will be attending the meeting.

Ms. Bader Inglima stated the CTUIR is holding the First Foods Festival, formally known as the Salmon Walk, on August 1, 2015 and the Port will have a display booth and be an advertising partner for the event.



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5. Mr. Arntzen met with Brent Gerry, Mayor of West Richland, to discuss the Racetrack Master Plan. Mr. Gerry has a few specific economic development requests that are better suited for the Economic Development Committee to address. Mr. Arntzen inquired if the Commission would like staff to set up a meeting with the Economic Development Committee.

Mr. Novakovich is in favor of scheduling a meeting.

Mr. Arntzen reported he will be traveling to Berkeley, California next week, to meet with Gary Black to discuss design standards for Columbia Drive. Mr. Black has been tasked with creating design standards for Columbia Gardens, Cable Greens and the Willows. Port staff is working with the City of Kennewick to ascertain the capacity for the effluent system for the Willows and the rezoning. Mr. Arntzen conveyed the importance of establishing design standards and how critical they are when selling property, because the buyer needs to honor the commitments to the development that are in place. Mr. Arntzen stated Marie Mosely, City Manager, would like to see the Port's detailed expectations of the property for the rezoning, with a potential for the standards to be incorporated in the rezoning.

Mr. Arntzen appreciates Mr. Barnes comments on his expectations on the Vista Field Master Plan. Mr. Arntzen stated it is his duty to implement what the Commission comes up with, as a unit. Mr. Arntzen is thankful for the high expectations and values the fact that Mr. Barnes wants to remain faithful to the public comments. Mr. Arntzen and Mr. Peterson will be able to voice those high expectations to DPZ and surmises Mr. Moak and Mr. Novakovich have similar viewpoints.

6. Mr. Peterson stated he saw Mr. Hennig on the island several weeks ago and informed him that the City had just completed the new extension of the trail. Mr. Peterson believes Mr. Hennig may have been the first to walk the Duffy's Pond trail, which is a nice thought, as he walked the island daily.

Mr. Peterson appreciated the Vista Field comments and stated staff is looking to create an A+ Master Plan for Vista Field. Although there are several engineering issues that we hope to incorporate, our focus will be on public realm, the space between the buildings and what the public wants to see. The design principals of new urbanism build the place, and include ideas of reflected views and terminated vistas, and a combination of elements. The other key to the Master Plan in creating a unique vision is the pattern language that will be integrated. The Project Pattern Language book is a guide that relays the public's desire for the development. Mr. Peterson stated the comments from DPZ and the input from the citizens and Commission will help guide us in creating the unique vision the Commission expects.

7. Ms. Hanchette appreciates the feedback regarding the restrooms on Clover Island. Ms. Hanchette stated the handles are programmable and can be adjusted to open earlier to accommodate early morning walkers. At this time, the restrooms are open from 7:00 a.m. to 10:00 p.m. and accessible 24 hours to marina tenants.





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## PUBLIC COMMENTS

Boyce Burdick, 414 Snyder Street, Richland. Mr. Burdick appreciated Mr. Barnes comments on Vista Field and creating a unique development. Mr. Burdick recently returned from his 55<sup>th</sup> college reunion and stated there were many presentations on retirement housing and found these alternatives very distasteful. Mr. Burdick is looking forward to the new urbanism alternative for Vista Field which will provide the opportunity to live in a multi-generational and mixed use neighborhood.

Barb Carter, 3121 West 30<sup>th</sup> Avenue, Kennewick. Ms. Carter stated her appreciation to the Commission for attending the ribbon cutting for the new roundabout at 45<sup>th</sup> and Union. The new roundabout features artwork created by Ivan McClean, who has two sculptures on the island, "Catch the Wind" and "Mother of Reinvention 2."

No further comments were made.

## COMMISSIONER COMMENTS

No comments were made.

## ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned at 4:03 p.m.

**APPROVED:**

**PORT of KENNEWICK**

**BOARD of COMMISSIONERS**

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*Don Barnes, President*

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*Skip Novakovich, Vice President*

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*Thomas Moak, Secretary*



# PORTofKENNEWICK

COMMISSIONERS | DON BARNES | THOMAS MOAK | SKIP NOVAKOVICH

July 14, 2015

The Honorable Anthony Foxx  
Secretary, U.S. Department of Transportation  
1200 New Jersey Ave SE  
Washington, D.C. 20590

RE: Tri-Cities Regional Airport – Small Community Air Service Development Grant

Dear Secretary Foxx:

I write today to express support for a \$750,000 funding request submitted to the USDOT by the Port of Pasco and the Tri-Cities Regional Airport. This funding request will be the key in helping our regional airport recruit critical air service. We are pleased to show our support for the grant request by committing up to \$10,000 of matching funds: \$5,000 in 2016 and, if needed, \$5,000 in 2017.

The Tri-Cities Airport is a major regional transportation asset for our Port district and the State of Washington serving more than one million residents living in communities in southeast Washington and northeast Oregon. This airport is the gateway to the Tri-Cities region, is a key contributor to our economic vitality, and provides direct air service for the region's residents and businesses without having to travel for four hours over mountain passes to reach larger airports.

While the Tri-Cities economy and population has been growing at dramatic rates, air service offerings have not kept pace with that growth and there is a critical need for access to new markets. In particular, there are more passengers between the Tri-Cities and Los Angeles every day than to any other city and yet the airport has no daily non-stop service to any airport in the LA Basin.

If successful, the new air service will benefit our residents and corporations alike with vital connections, improved business travel, more tourism opportunities, and a higher quality of life. I strongly urge the Department of Transportation to partner with the Tri-Cities community on this important economic development project.

Thank you in advance for your consideration. If you have any questions regarding our support for this project, please feel free to contact me.

Sincerely,

Don Barnes  
Commission President

# **PORT OF KENNEWICK**

## **Resolution No. 2015-18**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK APPROVING  
AN ADDENDUM TO LEASE CONFIRMING EXERCISE OF FIVE YEAR LEASE  
RENEWAL OPTION AND NEW RENTAL RATE WITH GBW RAILCAR SERVICES LLC***

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

**WHEREAS**, effective May 1, 2015, GBW Railcar Services LLC exercised the first of six five-year options to renew its September 9, 1994 Lease with the Port, and the Port staff has negotiated the new rental rate for the renewal period; and

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

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

**WHEREAS**, after consideration of the attached Addendum to Lease, the Port Commission has determined that the Addendum is proper.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby approve the Addendum to Lease confirming exercise of the first of six five (5) year lease renewal options and a new rental rate with GBW Railcar Services LLC as presented and authorizes the Port's Executive Director to execute all documents and agreements on behalf of the Port to complete the transaction as specified above.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 14<sup>th</sup> day of July, 2015.

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

By:

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

By:

\_\_\_\_\_  
SKIP NOVAKOVICH, *Vice President*

By:

\_\_\_\_\_  
THOMAS MOAK, *Secretary*

## ADDENDUM TO LEASE

THIS AGREEMENT is made on the \_\_\_\_ day of July, 2015, by and between the Port of Kennewick, a Washington municipal corporation ("Landlord"), and GBW Railcar Services, L.L.C., a Delaware limited liability company ("Tenant"), (collectively "the parties"), of that certain Lease dated September 9, 1994, a copy of which is attached hereto marked "Exhibit A" and incorporated herein by reference;

THE PARTIES hereby agree to amend the Lease as follows:

A. The Tenant has exercised its first of six five (5) year options to renew the Lease pursuant to Paragraph 16 of the Lease. The first renewal period commenced on May 1, 2015 and shall end on April 30, 2020.

B. Pursuant to Paragraph 16 of the Lease, the parties have negotiated a fair market rental rate for the renewal period as follows:

Price Per Acre:	\$125.00
Total Acreage Leased:	+/- 40 acres
Base Monthly Rent (not including LET):	\$5,000.00
Leasehold Tax (LET)(current rate 12.84%):	\$ 642.00

<b>Total Monthly Rent (inc. LET)</b>	<b>\$5,642.00</b>
--------------------------------------	-------------------

All other terms and conditions of the Lease, shall remain in full force and effect except for those terms and conditions as modified by the following listed agreements between the parties:

1. September 9, 1994 Addendum to Lease which modifies the Lease by: a) Tenant approves the bid accepted by Landlord; b) Tenant will supply all materials and labor to construct what has been identified in the plans and specification as the runaround track; c) the runaround track and turnouts are owned by the Landlord; and d) the Tenant will reimburse the Landlord for project costs exceeding the budgeted amount (a copy is attached hereto marked Exhibit "B" and incorporated herein by reference);

2. September 19, 1995 Memorandum and Agreement for Lease Modification which modifies Section 2 "RENT" of the Lease (a copy is attached hereto marked Exhibit "C" and incorporated herein by reference);

3. September 17, 1996 License Agreement, wherein Tenant, as Licensor, grants US Cellular Operating Company of Richland, as Licensee to construct and maintain a communications tower with easement and payment provisions (a copy is attached hereto marked Exhibit "D" and incorporated herein by reference);

4. February 28, 1998 Consent to Assignment of Lease and Addendum to Lease ("Consent 1"), which modifies the Lease by: a) Landlord consenting to the assignment of the Lease interest of the Tenant to Gunderson Northwest; b) Landlord consents to the assignment and Section 2 of the Consent replaced Section 15 "SECURITY FOR RENT" of the Lease; c) Section 23 "SECURITY FOR PORT" of the Lease is deleted, however, Tenant shall remain responsible for repayment of the loan of \$475,000; and d) Gunderson Northwest named as Licensor of the License Agreement shown in Section 3 above (a copy is attached hereto marked Exhibit "E" and incorporated herein by reference);

5. March 2, 1998 Assignment of License Agreement, which assigns the License Agreement, shown in Section 3 above, to Gunderson Northwest (a copy is attached hereto marked Exhibit "F" and incorporated herein by reference);

6. November 3, 2006 Consent to Assignment of Lease and Addendum to Lease ("Consent 2") which modifies the Lease by: a) the Landlord consenting to the assignment of the Lease interest of the Tenant to Gunderson Rail Services LLC ("Gunderson") ; b) guarantees Gunderson's payment of Rent; and c) Gunderson shall assume responsibility for repayment of the loan of \$475,000, which the Landlord is indebted to pay CERB (a copy is attached hereto marked Exhibit "G" and incorporated herein by reference);

7. September 28, 2009 Landlord Access Agreement, which establishes WL Ross & Co. LLC, as Administrative Agent under the Credit Agreement, dated as of June 10, 2009 (a copy is attached hereto marked Exhibit "H" and incorporated herein by reference);

8. July 18, 2014 Assignment and Assumption of Leases, which assigns all rights and responsibilities in the Lease to GBW Railcar Service, L.L.C. (a copy is attached hereto marked Exhibit "I" and incorporated herein by reference);

9. September 4, 2014 Consent to Assignment and Assumption of Lease ("Consent 3") which modifies the Lease by Landlord consenting to the assignment of the Lease interest of the Tenant to GBW Railcar Services, L.L.C. (a copy is attached hereto marked Exhibit "J" and incorporated herein by reference).

**TENANT:**

GBW RAILCAR SERVICES, L.L.C.

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

Printed Name:\_\_\_\_\_

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

Date:\_\_\_\_\_

Address: c/o The Greenbrier Companies, Inc.

One Centerpoint Drive, Suite 200  
Lake Oswego, OR 97035

**LANDLORD:**  
PORT OF KENNEWICK

By: \_\_\_\_\_  
Tim Arntzen, Executive Director

Date: \_\_\_\_\_

Accepted as to form:

\_\_\_\_\_  
Lucinda J. Luke, Port Counsel  
Date: \_\_\_\_\_



## ACKNOWLEDGEMENTS

State of Washington     )  
                                      )  
County of Benton        )

On this day personally appeared before me **Tim Arntzen** to me known to be the **Executive Director** 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 municipal 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 \_\_\_\_ day of \_\_\_\_\_ 2015.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

State of \_\_\_\_\_     )  
                                      )  
County of \_\_\_\_\_    )

On this day personally appeared before me \_\_\_\_\_ to me known to be the \_\_\_\_\_ of GBW Railcar Services, L.L.C., the Delaware limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated he/she is authorized to execute the said instrument.

GIVEN under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_ 2015.

\_\_\_\_\_  
Notary Public in and for the State of  
\_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

# **EXHIBIT A**

"EXHIBIT A"

L E A S E

THIS LEASE is made and entered into this 9th day of SEPTEMBER, 1993 by and between the PORT OF KENNEWICK, a municipal corporation organized under the laws of the State of Washington (PORT), and PACIFIC RAILCAR CORPORATION, a Washington corporation (COMPANY);

W I T N E S S E T H:

WHEREAS, the conditions of the Contract to Lease Real Estate and Facilities dated the 11th day of November, 1993 (hereinafter called the Contract) have been fulfilled to the mutual satisfaction of both parties;

The following are definitions which will apply hereafter:

"Property": The real property on which the rail spur will be constructed described in Exhibit B attached hereto.

"Improvement": The rail spur being constructed on the "Property" in accordance with the plans and specifications that have been adopted by the Port and approved by the Company.

"Leased Property": The "Property", the "Improvements" and all other buildings, structures, installations, landscaping and appurtenances built by the Port or hereafter on the "Property".

"Plant": The maintenance, manufacturing and repair facility constructed and owned by the Company.

NOW THEREFORE, the Port, acting under and by virtue of the authority granted to it under the laws of the State of Washington and particularly RCW 53.04.010 et seq., leases to the Company, and the Company hires and takes from the Port the Leased Property, for the term of 20 years commencing on the 1st day of MAY, 1995 and ending on the 30th day of APRIL, 2015 (the parties agree to fill in said dates to correspond with the occupancy as described in Section 2.a.) subject to the terms, covenants, conditions and provisions of this Lease.

Section 1. CONSTRUCTION OF IMPROVEMENT: The Port shall proceed diligently with the construction of the Improvement in accordance with the plans and specifications that have been adopted by the Port and approved by the Company pursuant to Section 1 of the Contract to Lease Real Estate and Facilities, and to which plans and specifications reference is hereby made and incorporated herein by this reference. The Port reserves the right to allow ingress and egress over the rail spur and land in areas as shown on the site plan identified as Exhibit C to this lease and incorporated by reference herein for other businesses which may locate near or adjacent to the rail spur. The Port and Company agree to work cooperatively to locate any rail spur so as not to interfere with any business activities.

Section 2. RENT: The Company shall pay as rental for the "Leased Property" as follows:

- a) The amortized amount for the Port's out-of-pocket expense for all expenses related thereto together with interest of eight percent (8%) per annum for a period of twenty (20) years on the principal balance shall be paid in installments of \$ 434.32 per month starting on the 1st day of May, 1995 and continuing on the same day of each and every month thereafter until principal and interest are paid in full at the end of the twenty (20) year term of this lease;
- b) \$475,000 with no interest shall be payable in fifteen (15) equal annual installments starting five years from the date of the loan from CERB to the Port and continuing on the same date of each and every year thereafter until the principal amount has been paid in full. Payment shall be made thirty (30) days prior to the date payment is due from the Port to CERB;
- c) Leasehold taxes or other taxes which may be levied by the State of Washington against this project;
- d) Rent shall be \$4,000 per month payable on the 1st day of each month for the forty (40) acre site of that certain 1,400' x 2,600' parcel of land lying contiguous to and south of Cochran Road in Benton County, Washington, known to Lessor and Lessee, starting at a point directly east of and adjacent to the tracks of the Burlington Northern Railroad, together with an access road of 75 feet in width from Cochran Road on the North. Said 75-foot access road to run directly south from Cochran Road on the North to the northeast corner of the property. A more complete legal description of the property shall be obtained and attached to this Agreement. Any costs or

expenses associated with subdividing the property or ascertaining its legal description, including, if necessary, a survey, shall included as out-of-pocket expenses as described in Section 2(a).

Section 3. MAINTENANCE AND UPKEEP: During the term of this Lease and all extensions and renewals hereof, the Company shall, at its own cost and expense, maintain the Leased Property and any alterations and improvements thereto in good operating condition and repair, and shall promptly make all repairs, alterations and changes in, to and about the Leased Property necessary to preserve it in good order and condition, which shall be in quality and class equal to the original work, and the Company shall promptly pay the expense of such repairs, suffer no waste or injury and, at the end of the term of this Lease, deliver up the premises in good and acceptable condition, fair wear and tear excepted. The Port shall have no obligation under this Lease to maintain or repair.

Company shall be responsible for maintaining the rail spur in good operating condition and repair. Company shall adhere to a schedule of maintenance set forth in Exhibit D to this lease and incorporated by reference herein. The Port shall have the right of inspection and approval of any maintenance or repair of the rail spur.

At such time as other companies are allowed by the Port to use the rail spur, an agreement for the prorata sharing of maintenance and upkeep will be negotiated between all parties.

In the event that a dispute arises between the Port and the Company on the sharing arrangement for maintenance, repairs, alterations or changes, such dispute shall be submitted to a board of arbitration consisting of three members, one of whom shall be selected by the Port, one by the Company and a third by the two members so selected. The board of arbitrators shall investigate the dispute submitted to it and shall make the findings of fact and decision in writing. The decision of the majority of arbitrators shall govern. If either party feels aggrieved by the decision of the board of arbitrators, the matter may be taken to a court of competent jurisdiction, the venue of which shall be in Benton County, Washington. The Port and the Company may agree to an alternative method of dispute resolution. Pending resolution of the dispute, either party may enter upon the Leased Property to perform work it deems necessary to prevent damage to the Leased Property and, if that party prevails with respect to work as a result of such resolution, that party shall be entitled to reimbursement for such work from the date of expenditure to the date of reimbursement.

Section 4. WASTE ON LEASED PROPERTY: The Company shall not permit or suffer any offensive use of or the commission of waste on the Leased Property, shall not remove sand, gravel or kindred substance from the ground and shall not in any manner

substantially change the contour or condition of the Leased Property unless approved in advance in writing by the Port. The Company shall keep the Leased Property in good order and in a clean, sanitary and safe condition and shall at all times maintain all buildings, structures and equipment in a condition satisfactory to the Port.

Section 5. INSURANCE: The Company agrees, during the term of this Lease and all extensions and renewals hereof, to keep all of the insurable property on the Leased Property insured against loss or damage under coverage not less than the standard ISO form or its future editions in an amount equal to not less than one hundred percent of the full replacement value thereof. All such policies of insurance shall provide that any loss thereunder shall be payable to the Port. In addition, the company shall at all times during the term of this Lease and all extensions and renewals hereof procure and maintain comprehensive general liability insurance, with contractual liability endorsement in the form of the current standard ISO liability policy (Commercial General Liability). The liability policy shall have a combined single limit in an amount not less than \$1,000,000. The Port shall be named as an additional named insured in the casualty and liability policy or policies of insurance, or certificates by the insurance companies issuing the same, evidencing that such insurance is in effect, and renewal policies or certificates evidencing the renewal thereof shall be delivered to the Port by the Company not less than twenty days prior to the expiration of such policy or policies. In case of failure by the Company at any time to obtain and maintain such insurance or to renew the same, the Port may obtain and maintain such insurance and shall be entitled to reimbursement from the Company of any premiums paid by the Port thereof on demand.

In addition and supplemental to the insurance provisions here and above stated, the Company shall indemnify and save harmless the Port against all loss, cost or damage, action, causes of action and the like on account of any injury to persons or property or death occurring or arising out of the Company's use and occupancy of the Leased Property and the conduct of its business thereon.

Section 6. ASSIGNMENT AND SUBLETTING: The Company shall neither transfer nor assign this Lease nor sublet the demised premises, or any part thereof; nor grant any interest, privilege or license whatsoever in connection with this Lease without the prior written permission of the Port; provided, however, that no such permission shall be arbitrarily withheld, and in the event of transfer, the Company shall remain responsible for all of the covenants and terms herein.

Section 7. EMINENT DOMAIN: In the event any portion of the Leased Property, or the whole thereof, shall be taken for a public use by the right of eminent domain, all alterations, improvements and additions to and placed on the Leased Property by the Company shall be and immediately become real property,



shall be the property of the Port, and shall be included in any and all condemnation action or actions concerning the Leased Property. In the event of such taking by right of eminent domain the Port will receive all compensation paid for the taking or damaging of the Leased Property, or any part thereof, and shall pay to the Company such amount of the award as is included by way of the value of the permanent alterations, improvements and additions made by the Company taken or damaged in such eminent domain action.

Section 8. ALTERATIONS, IMPROVEMENTS AND ADDITIONS: The Company may make necessary alterations, improvements and additions to the Leased Property at its own expense. Alterations, improvements and additions costing in excess of \$15,000.00 in any one instance may be made only with the prior written consent of the Port, which consent shall not be unreasonably withheld. Provided however, the Company shall obtain a surety bond or other securities satisfactory to the Port covering all liability and expense arising from any mechanics lien at any time filed against the Leased Property for any work, labor, services or materials claimed to have been performed at or furnished to the Leased Property for or on behalf of the Company, or any person holding the Leased Property through the Company. Improvements and additions made to the Leased Property by the Company, after the original construction of the Improvement, may be removed by the Company at the end of the term of this Lease as long as such removal does not damage the Leased Property except for structural improvements and additions to the Port's Improvement which shall become the property of the Port and may not be removed. If, in removing any improvements and additions, the Company renders the Leased Property unsuitable for the use for which it was designed and constructed originally, the Company shall, at its own expense, promptly restore the Leased Property to its original improved condition.

The provisions of this section shall not apply to any Company owned improvement.

Section 9. TAXES AND ASSESSMENTS: The Company shall pay, and hold the Port harmless from all state, federal and local taxes and assessments levied against the Leased Property, the improvements thereon, personal property or the leasehold interest.

Section 10. RIGHTS ON DEFAULT: Time is of the essence with respect to this Lease. In the event the Company fails to promptly make any payment provided for in this Lease at the time and in the manner stated, or to keep and perform any of the other covenants and agreements contained in this Lease, and such failure continues for thirty days after written notice thereof has been given by the Port to the Company in accordance with Section 15, the Port may, at its option, declare this Lease terminated and cancelled. On such termination and cancellation of this Lease all rent theretofore paid by the Company shall be forfeited to the Port, and in addition thereto the Company

shall be liable to the Port for any unpaid rent as herein agreed to be paid under the provisions of Section 2, provided that the Port shall exert its best efforts to locate a new tenant for the Leased Property and thereby mitigate rental damages.

Section 11. BANKRUPTCY: If the Company shall file a petition in bankruptcy, or be adjudicated a bankrupt, or make an assignment for the benefit of creditors, or take advantage of any insolvency act, the Port, apart from any other rights, privileges or actions available to it under this Lease, at law or in equity, may, at its election at any time thereafter, terminate and cancel this Lease by giving written notice of its intention to do so, and then and in that event, this Lease and the terms thereof shall expire and come to an end on the giving of that notice, as if the date was the date originally fixed in this Lease for the expiration hereof.

Section 12. GOVERNMENTAL REGULATIONS: The Company shall promptly execute and comply with all government regulations, ordinances and statutes applicable to or connected with the Leased Property and the Plant.

Section 13. WAIVER OF BREACH: The failure of either party to insist upon a strict performance of any of the terms, covenants and conditions of this Lease shall not be deemed a waiver of any rights or remedies of either such party, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, conditions and covenants contained in this Lease.

Section 14. NOTICES: In every case where, under any of the provisions of this Lease, or in the opinion of either the Port or the Company or otherwise, if it shall or may become necessary or desirable to make, give or serve any declaration, demand or notice of any kind or character or for any purpose whatsoever, the same shall be in writing, and it shall be sufficient to either (1) deliver the same or a copy thereof in person to the Manager of the Port of Kennewick, if given by the Company, or to the President or Secretary of the Company, if given by the Port; or (2) mail the same or a copy thereof by registered or certified mail, return receipt requested postage prepaid, addressed to the other party at such address as may have therefore been designated in writing by such party, by notice served in the manner herein provided, and until some other address shall have been so designated, the address of the Port for the purpose of mailing such notices shall be as follows: Port of Kennewick, One Clover Island, Kennewick, Washington 99336; and the address of the Company shall be Pacific Railcar Company, 6 West Arlington, Yakima, Washington 98902.

Section 15. SECURITY FOR RENT: The provisions of RCW 53.08.085 (a copy of which is attached hereto as Exhibit "E" and herewith incorporated in full by this reference) provides that the Port must have rental secured by rental insurance, bond or other security satisfactory to the Port, which security shall

be on file with the Commission at all times during the term of the Lease. The Port Commission has elected under the provisions of said statute for the Company to execute and deliver to the Port the following form of rental security: a surety bond for three (3) years rental executed by the Company as principal and Michael Curtis, et ux; Joshua Grundy, et ux; Duane Walker, et ux; Jake Shreves, et ux; Rick Thompson, et ux and Shane Thompson, et ux, as sureties individually and as marital communities. Like security shall be furnished by the Company and sureties for any extension or renewal of this Lease.

Section 16. RIGHT TO RENEW: As a part of the consideration for this Lease, the Port grants to the Company the right to renew this Lease for not more than six successive five-year periods, as the Company may wish, except that the total term of this Lease shall not, in any event, exceed fifty years. Notice of the Company's election to exercise the option to renew shall be given in writing to the Port not less than six months before the expiration of the initial term of this Lease, or the expiration of any five-year renewal period. The renewal of the Lease shall be on the same terms and conditions as herein set forth, except that the rent shall be renegotiated for the renewal term. The parties agree to negotiate a fair market rental in good faith and recognize the contributions of the company to the Port.

Section 17. HAZARDOUS SUBSTANCES: It is acknowledged that Company handles, uses, stores, and deals with hazardous substances in its business operations. The Port acknowledges such occurrences but is not responsible for any occurrences involving hazardous substances.

Hazardous substance shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar terms by any federal, state or local environmental law, regulation or rule presently in effect or hereafter enacted, and it shall be interpreted to include, but not be limited to, any substance which in being used, or after released into the environment may be a fire danger, or which upon exposure, ingestion, inhalation or assimilation, either directly from the environment or indirectly by ingestion through food chains or otherwise, will or may reasonably be anticipated to cause property damage, sickness, death, disease, behavior abnormalities, cancer or genetic abnormalities. Company shall hold harmless from and indemnify the Port against and from any damage, loss, expenses or liability resulting from any breach of this paragraph including all attorneys fees and costs incurred as a result thereof.

Company's entire operation, including painting and equipment, shall comply with all local, state and federal, environmental, fire protection and all other ordinances, rules and regulations.

Company shall not permit nor suffer any offensive use of Leased Property, nor the commission of waste thereon and shall not in any manner substantially change the premises unless approved in writing by the Port. Company shall keep the premises in good order and in a clean, sanitary and safe condition satisfactory to the Port. All materials, supplies, inventory or other items of any kind or nature stored on the outside of the building shall be maintained in a neat and orderly manner. In the event the Port is not satisfied that the Company is fulfilling the terms and conditions of this paragraph, the Port shall so notify the Company in writing. Thirty (30) days thereafter, if the conditions are not corrected by the Company, the Port may cause the corrections to be made and the Company shall pay the Port for the cost of any and all such corrections.

Company, its subsidiaries, grantees, assigns or successors in interest shall indemnify the Port and hold it harmless for any claim, demand, removal, clean-up, investigation, lab costs, fees of consultants, contractors, lawyers and charges for governmental personnel for any liability which may be incurred for any activity on the part of the Company, its subsidiaries, successors in interest or assigns for any federal, state, county, local or governmental requirement regarding any substances or waste or storage or disposal thereof upon the demised premises including, without limitation to, CERCLA, SARA, RCRA, Underground Storage Tank Facilities Act, Model Toxic Control Act or any additional enactments, regulations amendments or additions thereto.

Section 18. MUTUAL ASSISTANCE: The parties hereto agree to render all reasonable assistance to each other in establishing, maintaining and defending this Lease before any governmental regulatory body or in any civil and/or criminal proceedings.

Section 19. INSPECTION OF LEASED PROPERTY: The right is reserved to the Port, its officers, agents and employees, to enter upon the Leased Property at any time during regular business hours for inspection and for any purpose necessary or convenient in connection with the work of the Port. The use and occupation of the Leased Property shall be subject to such reasonable rules and regulations as prescribed by the Port from time to time.

Section 20. NECESSARY PORT OPERATIONS: The right is reserved to the Port, its officers, agents and employees, to construct or to permit the construction of utilities suitable for communication, electrical distribution or transmission, water supply, sewage disposal and similar purposes on the Leased Property.

Section 21. PROTECTION OF IMPROVEMENTS AND PROPERTY: The Company shall be responsible for any damage, destruction or waste that may be caused to any of the property of the Port, wherever located, by the activities of the Company under this

Lease, and shall exercise due diligence in the protection of all improvements and property of the Port that may be located on the Leased Property, or adjacent thereto, by fire or damage from any and all other causes. The Company solely shall be responsible for damages to any property or injuries to persons that may arise from or be incident to the use and occupation of the Leased Property, and for damages to the property of the Company, or for injuries to the person of the Company's officers, agents, servants or employees, or the person or property of others who may be on the Leased Property at their invitation or the invitation of any one of them, or in any way incident to the Company's business, and the Company shall hold the Port harmless from and indemnify the Port against and from any and all claims.

Section 22. OPTION TO PURCHASE: The Company shall have the option to purchase the Leased Property or the Improvement at any time during the term of this Lease and any extensions or renewals of this Lease for an amount equal to the fair market value of the Leased Property or the Improvement at the time of exercising such option to purchase, which fair market value shall be determined at the time by a qualified real estate appraiser appointed by the Port and agreed to by the Company. If the Port and the Company do not agree on the fair market value of the Leased Property or the Improvement established by the appointed qualified real estate appraiser, then the disagreement shall be submitted to a board of arbitration consisting of three qualified real estate appraisers, one of whom shall be selected by the Port, one by the Company, and a third by the two members so selected. The board of arbitrators shall investigate the disagreement submitted to it, including a review of the determination of the fair market value of the Leased Property made by the previously appointed qualified real estate appraiser, and shall make the findings of fact and decision in writing, within ninety days of the date on which the disagreement submitted to the board of arbitrators. In determining the fair market value of the Leased Property or the Improvement, the decision shall not be based on the Company's investment in or use of, if any, adjoining property, but the Leased Property or Improvement shall be valued in accordance with accepted real estate appraisal practices. The Port and the Company may agree to an alternative method to resolve the disagreement. Notwithstanding the above, the purchase price for the Leased Property or the Improvement shall not be less than the amount of the Port's total investment.

The Company shall exercise its option to purchase the Leased Property or Improvement by giving written notice to the Port sixty days prior to the date on which such option is to be exercised. The Company shall be under no obligation to exercise its option to purchase the Leased Property or Improvement.

In the event that the Port and the Company engage in a sale and purchase pursuant to the terms of this Lease, unless

otherwise specified, the sale and purchase shall occur in accordance with the following terms and conditions:

- (a) The purchase price shall be paid in cash at closing.
- (b) Closing shall occur on a date mutually agreed on by the parties following proper written notice from the Company of its intent to purchase the Leased Property or Improvement and subsequent proper processes by the Port as required by statute when selling property.
- (c) Closing shall occur at a location selected by the Port.
- (d) The Port shall pay for and provide the Company with an owner's standard coverage American Land Title Association ("ALTA") policy of title insurance containing such encumbrances and such other exceptions as are approved by the Company.
- (e) The Company shall pay for real estate excise tax, if any, deed stamps, if any, and closing escrow fee.
- (f) The deed shall contain an easement or other legal means to the Port or its' successors or assigns for ingress and egress over the rail spur to nearby and adjacent properties and which shall provide for the use of the rail spur by the Port or companies that may locate on said properties.

On the Company's purchase of the Leased Property and Improvement, this Lease shall terminate. If the Company elects to purchase the Improvement but not the Property, then this Lease shall continue except that the Lease shall pertain to the Property only and the rent shall be adjusted accordingly.

Notwithstanding any other provision to the contrary, the law governing the authority of the Port to sell and convey property which is applicable to the Leased Property shall control. By way of example, should the laws governing Port Districts at the time of the Company's exercise of the option to purchase the Leased Property or Improvement require that the Leased Property or Improvement be submitted to bid, then the Leased Property or Improvement shall be sold subject to this Lease and State law and further subject to the Company's being allowed to meet the highest bid.

Section 23. SECURITY FOR PORT: Company shall execute and deliver, and at all times keep current, all necessary security documents required by the Port, as set out in Section 1. D., E. and F. of the Contract to Lease Real Estate and Facilities and Section 15 of this Lease, to protect the Port's interest in land and improvements to provide adequate security for the Port's investment for real property purchase and

repayment of the loan of \$475,000 which the Port is indebted to pay to CERB.

Section 24. WAIVER OF NOTICE: Whenever in this Lease the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 25. HEADINGS AND RULES OF CONSTRUCTION: The headings or titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Lease. All references herein to sections and other subdivisions are to the corresponding sections or subdivisions of this Lease. The terms "hereby," "herein," "hereof," "hereto," "hereunder" and other terms of similar import refer to this Lease as a whole and not to any particular section or subdivision hereof. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa.

Section 26. NO ORAL CHANGES: Neither this Lease nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the parties.

Section 27. SEVERABILITY OF INVALID PROVISIONS: In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, and this Lease shall be construed as if such invalid or illegal or unenforceable provision had never been contained in this Lease. The parties to this Lease declare that they would have entered into this Lease and each and every section, paragraph, sentence, clause or phrase of this Lease irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases of this Lease may be held illegal, invalid or unenforceable.

Section 28. GOVERNING LAW: This Lease shall be construed and governed in accordance with the laws of the State of Washington and any action for enforcement hereof and the venue for any action for enforcement hereof by either party shall be in Benton County, Washington. In the event either party takes action or requires legal services or commences any suit or action to enforce any of the terms and conditions of this Lease, the prevailing party shall be entitled to reasonable attorneys' fees and costs incurred.

Section 29. EXECUTION IN COUNTERPARTS: This Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

IN WITNESS WHEREOF the parties have executed this  
Lease as of the date and year first above written.

PORT OF KENNEWICK  
BOARD OF COMMISSIONERS

By: George J. Jones  
George J. Jones, President Secretary *SD*

By: Paul L. Vick  
Paul L. Vick, Vice President

By: Gene L. Spaulding  
Gene L. Spaulding, Secretary Vice President

PACIFIC RAILCAR CORPORATION

By: Michael J. Chute  
President

By: Queller  
Secretary

STATE OF WASHINGTON )  
County of Benton ) : ss.

On this 9th day of September, 1994,  
personally appeared before me Paul L. Vick,  
Gene L. Spaulding and George J. Jones, to  
me known to be the President, Vice President and Secretary,  
respectively, 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 that they are authorized  
to execute the said instrument.

Witness my hand and official seal hereto affixed the  
day and year first above written.

Steve Duth  
NOTARY PUBLIC in and for the State of  
Washington, residing at Kennewick  
My Commission Expires: 7/5/96



STATE OF WASHINGTON       )  
                                      : ss.  
County of Benton        )

On this 12 day of September, 1994,  
personally appeared before me Michael A. Curtis and  
D.R. Walker, to me known to be the President  
and Secretary, respectively, of Pacific Railcar Corporation,  
the 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 that they are authorized  
to execute the said instrument.

Witness my hand and official seal hereto affixed the  
day and year first above written.

Connie Kile  
NOTARY PUBLIC in and for the State of  
Washington, residing at Kennewick  
My Commission Expires: 3-23-94

DESCRIPTION  
FOR THE  
PORT OF KENNEWICK

COCHRAN ROAD

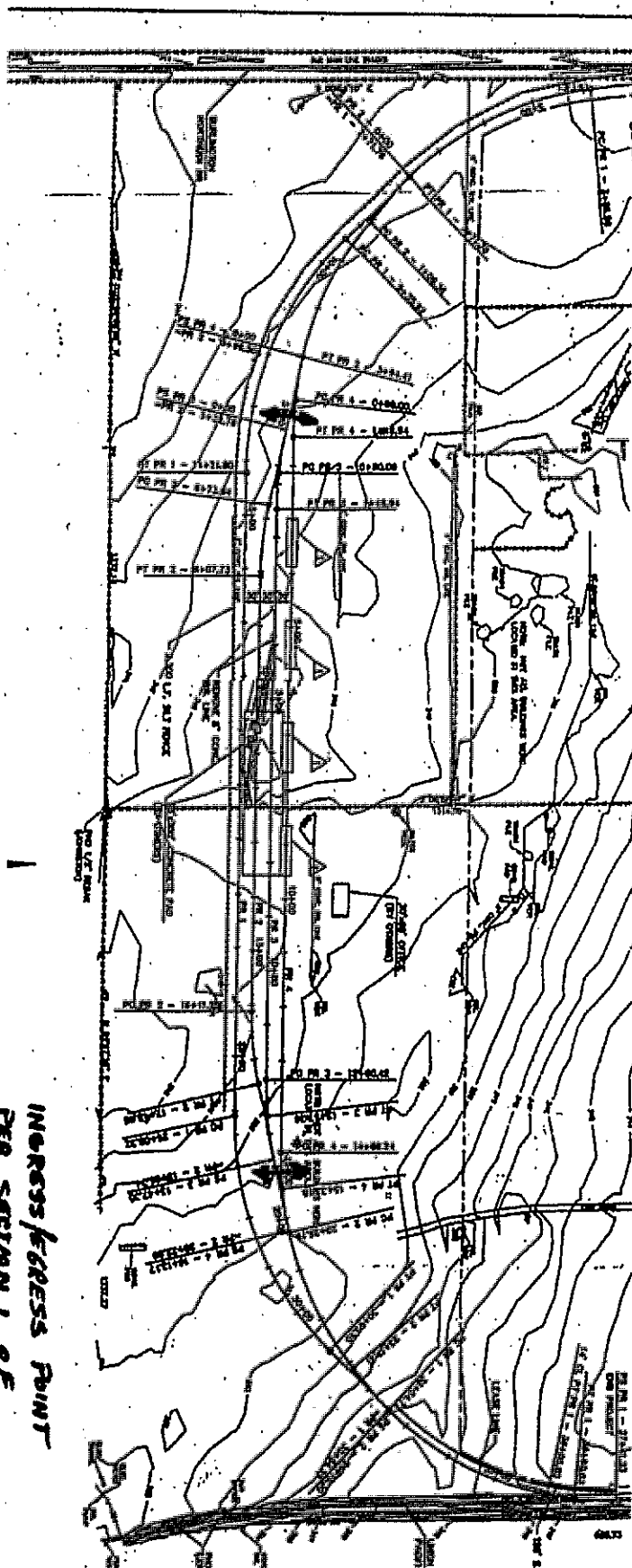
THE SOUTH 700 FEET OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTH 700 FEET OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER ALL IN SECTION 23, TOWNSHIP 8 NORTH, RANGE 30 EAST, W.M., BENTON COUNTY, WASHINGTON.

TOGETHER WITH A 60 FOOT WIDE ACCESS AND UTILITY EASEMENT, BEING THE WEST 60 FEET OF THE EAST 110 FEET OF THE SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER, LYING NORTHERLY OF THE SOUTH 700 FEET THEREOF AND SOUTHERLY OF THE NORTH 20 FEET THEREOF.

TOGETHER WITH AND SUBJECT TO EASEMENTS, RESERVATIONS, COVENANTS, AND RESTRICTIONS OF RECORD AND IN VIEW.



INCREASING POINT  
PER SECTION 1 OF  
LEASE AGREEMENT



## MAINTENANCE SCHEDULE

### I. Inspection per schedule FM-PRCF001:

- A. To be performed monthly.
- B. After any heavy rainfall.
- C. After snow removal.
- D. After any construction or excavation.

### II. Surface Track Lining and Leveling:

- A. After 5 years of business.
- B. After 10 years of business.
- C. After 13 years of business.
- D. After 15 years of business.
- E. After 18 years of business.
- F. After 20 years of business.

### III. Maintenance:

- A. Repairs are to be made on an on going basis.
- B. Track will be maintained to a FRA Class II or better standard.

**Track Inspection & Maintenance  
Schedule  
FM-PRCF001**

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_

Section	Item	Inspected	Repairs Needed	Completed
213.103	Ballast			
213.109	Crossties			
213.113	Defective Rails			
213.115	Rail End Mismatch			
213.121	Rail Joints			
213.123	Tie Plates			
213.127	Rail Fastenings			
213.133	Turnouts			
213.133	Track Crossings			
213.135	Switches			
213.137	Frogs			
213.139	Spring Rail Frogs			
213.141	Self-Guarded Frogs			
213.143	Frog Guard Rails			
213.143	Guard Faces			

Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EXHIBIT E

BOND TO THE PORT OF KENNEWICK  
TO GUARANTEE PERFORMANCE OF LEASE

KNOW ALL MEN BY THESE PRESENTS, that PACIFIC RAILCAR CORPORATION, as surety, is firmly bound unto the PORT OF KENNEWICK, a municipal corporation, in the full sum of ~~SIX HUNDRED SEVENTY EIGHT THOUSAND~~ ~~SEVEN HUNDRED SEVENTY TWO AND NINE CENTS~~ and (\$ 678,772.09 ) for which payment, well and truly to be made, is firmly bound by these presents.

The conditions of this obligation are as follows:

WHEREAS, PACIFIC RAILCAR CORPORATION entered into a lease with the PORT OF KENNEWICK for property on the Twin Tracks Industrial Site, the legal description of which appears as Exhibit B of the lease agreement attached hereto, which lease is dated the 9<sup>th</sup> day of SEPTEMBER, 1994 and provides for the payment of annual rental; and

WHEREAS, the law of the State of Washington requires a bond to the Port District so leasing property in accordance with the terms of RCW 53.08.085, which bond shall be renewed at the end of each year; and

WHEREAS, the bond does by reference incorporate the lease hereinabove referred to;

NOW THEREFORE, if the principal will pay all sums due as rental under the lease hereinabove referred to for the lease term period, then this obligation shall be void; otherwise, to remain in full force and effect, the same to be renewed in order to be operative after said one year period.

DATED this 1<sup>ST</sup> day of MAY, 1995.

SURETY:

PACIFIC RAILCAR CORPORATION

  
Michael A. Curtis, President

  
Dwayne (Mike) Walker, Secretary

\*Includes all 1) out of pocket expenses, 2) CERB Loan and 3) other rent due over life of the lease. 1) and 2) calculated at full cash amount. 3) calculated per statute at maximum three years rental amount.

53.08.085 Lease of property—Security for rent. Every lease of all lands, wharves, docks, and real and personal property of a port district for a term of more than one year shall have the rent secured by rental insurance, bond, or other security satisfactory to the port commission, in an amount equal to one-sixth the total rent, but in no case shall such security be less than an amount equal to one year's rent or more than an amount equal to three years' rent. Evidence of the existence of such insurance, bonds, or security shall be on file with the commission at all times during the term of the lease: *Provided*, That nothing in this section shall prevent the port commission from requiring additional security on leases or provisions thereof, or on other agreements to use port facilities: *Provided further*, That any security agreement may provide for termination on the anniversary date of such agreement on not less than one year's written notice to the port if said lease is not in default at the time of said notice: *Provided further*, That if the security as required herein is not maintained throughout the full term of the lease, said lease shall be considered in default: *Provided, however*, That the port commission may in its discretion waive the rent security requirement or lower the amount of such requirement on the lease of real and/or personal port property. [1981 c 125 § 1; 1977 c 41 § 1; 1973 c 87 § 2.]

# **EXHIBIT B**



ADDENDUM TO LEASE

I.

Pursuant to the provisions of the lease agreement entered into between the parties on the 9th day of September, 1994, and the Port of Kennewick having accepted a bid on the construction of approximately four thousand five hundred (4,500) lineal feet of rail spur to service the Plant, the parties further agree as follows:

1. Pacific Railcar Corporation approves the bid as conditionally accepted by the Port on September 6, 1994, for construction of the rail spur as per the plans and specifications;

2. Pacific Railcar Corporation will supply all material and labor necessary to construct what has been identified in the plans and specifications as the runaround track (PR-1) consisting of approximately two thousand (2,000) feet of lineal rail spur and two (2) turnouts. Pacific Railcar Corporation further agrees to use eighty-five (85) pound rail or better for the spur and turnouts. Construction of the runaround track and turnouts will commence upon Pacific Railcar Corporation's occupation of the Plant and shall be completed within six (6) months from the first day of occupation;

3. The parties agree the runaround track and turnouts will be the property of and owned by the Port of Kennewick;

4. Pacific Railcar Corporation agrees to reimburse the

Port of Kennewick for the balance of the project costs which exceed the budgeted amount of four hundred seventy-five thousand dollars (\$475,000) up to a maximum of eighty-five thousand dollars (\$85,000) with interest of eight percent (8%) per annum for a period of twenty (20) years in accordance with Section 2 a) of the Lease.

II.

All other terms, conditions and covenants contained in the Lease shall remain in full force and effect.

IN WITNESS WHEREOF the parties have executed this Addendum to Lease on the 9th day of September, 1994.

PORT OF KENNEWICK  
BOARD OF COMMISSIONERS

By: George J. Jones *AV*  
George J. Jones, President *SECRETARY*

By: Paul L. Vick *AV*  
Paul L. Vick, ~~Vice~~ President

By: Gene L. Spaulding *AV*  
Gene L. Spaulding, ~~Secretary~~ *VICE PRESIDENT*

PACIFIC RAILCAR CORPORATION

By: Michael A. Carter  
President

By: Chuck  
Secretary

STATE OF WASHINGTON )  
                                  : ss.  
County of Benton )

On this 9th day of September, 1994,  
personally appeared before me, George J. Jones, Paul L. Vick, and

HS AMENDED WITH INITIALS *SW*

*See Oath*

NOTARY PUBLIC in and for the State  
of Washington, residing at Kennewick  
My Commission Expires: 7/5/96

STATE OF WASHINGTON )  
 : ss.  
County of Benton )

On this 12 day of September, 1994, personally appeared before me, Michael A. Curtis and D.R. Walker, to me known to be the President and Secretary, respectively, of Pacific Railcar Corporation, the 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 that they are authorized to execute the said instrument.

Connie Kile

NOTARY PUBLIC in and for the State  
of Washington, residing at Kennel  
My Commission Expires: 3-23-96

# **EXHIBIT C**

(6)

**MEMORANDUM AND AGREEMENT FOR LEASE MODIFICATION**

COMES NOW the Port of Kennewick, a municipal corporation, hereinafter referred to as "Lessor" and Pacific Railcar Corporation, a Washington corporation, hereinafter referred to as "Lessee" and covenant, promise and agree as follows:

I.

Parties were and are Lessor and Lessee respectively of certain property in Benton County, State of Washington, pursuant to that certain lease agreement dated and executed the 9th day of September, 1994, and subsequent lease addendums entered into, all agreements incorporated herein by reference as if fully set forth.

II.

The parties agree to modify Section 2 of the lease agreement to read as follows:

RENT: The Company shall pay as rental for the leased property as follows:

- a) The amortized amount for the Port's out-of-pocket expense for all expenses related thereto together with interest of eight percent (8%) per annum for a period of twenty (20) years on the principal balance shall be paid in installments of \$434.32 per month starting on the 1st day of May, 1995, and continuing on the same day of each and every month thereafter until principal and interest are paid in full at the end of the twenty (20) year term of this lease;
- b) \$475,000 with no interest shall be payable in fifteen (15) equal annual installments starting five years from the date of the loan from CERB to the Port and continuing on the same date of each and every year thereafter until the principal amount has been paid in full. Payment shall be made thirty (30) days prior to the date payment is due from the Port to CERB;
- c) Leasehold taxes or other taxes which may be levied by the State of Washington against this project;

- d) Rent shall be \$4,000 per month payable on the 5th day of each month for the forty acre site of that certain 1,400' x 2,600' parcel of land lying contiguous to and south of Cochran Road in Benton County, Washington, known to Lessor and Lessee, starting at a point directly east of and adjacent to the tracks of the Burlington Northern Railroad, together with an access road of 75 feet in width from Cochran Road on the North. Said 75 foot access road to run directly south from Cochran Road on the North to the northeast corner of the property. A more complete legal description of the property shall be obtained and attached to this agreement. Any costs or expenses associated with subdividing the property or ascertaining its legal description, including, if necessary, a survey, shall be included as an out-of-pocket expense as described in Section 2(a).

The parties agree to the following schedule of payments from August 1, 1995 to July 31, 1999:

1. August 1, 1995 to July 31, 1996, rent is deferred;
2. August 1, 1996 to July 31, 1997, \$4,434.32 per month;
3. August 1, 1997 to July 31, 1998, \$6,651.48 per month;
4. August 1, 1998 to July 31, 1999, \$6,651.48 per month.

Upon completion of the four (4) year period from August 1, 1995 to July 31, 1999, rental payments shall be \$4,000 per month as set forth in the first paragraph of this subsection.

### III.

In all other respects except as modified herein, the parties confirm the terms, conditions, provisions, and covenants and promises contained in the heretofore referenced and incorporated original lease agreement and addendums thereto, and agree that they remain in full force and effect and agree to be bound by the same.

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September

# PORT OF KENNEWICK BOARD OF COMMISSIONERS

By: George J. Jones  
George J. Jones, President

By: Paul L. Vick  
Paul L. Vick, Vice President

By: Gene L. Spaulding, Secretary **PRESIDENT**

# PACIFIC RAILCAR CORPORATION

By: [Signature]  
President

By: W. M. L.  
Secretary

STATE OF WASHINGTON )  
 ) ss.  
County of Benton )

On this 19th day of September, 1995, personally appeared before me George J. Jones, Paul L. Vick and Gene L. Spaulding, to me known to be the Vice President, Secretary and Secretary, respectively, 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 that they are authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day  
and year first above written.

NOTARY PUBLIC in and for the State  
of Washington, residing at Kennewick  
My Commission Expires: 7/6/96

STATE OF WASHINGTON )

35.

County of Benton )

On this 29th day of September, 1995, personally appeared before me Michael A. Curtis and Joshua Friendly, to me known to be the President and Secretary, respectively, of Pacific Railcar Corporation, the 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 that they are authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the  
day and year first above written.

Connie Kille  
NOTARY PUBLIC in and for the State  
of Washington, residing at Kennewick  
My Commission Expires: March 23, 1998



# EXHIBIT D

5  
ORIGINAL

COPY

LICENSE AGREEMENT

This License Agreement ("License") is made and entered into this 17 day of September, 1996, by and between PACIFIC RAIL CAR, INC., a Washington corporation, Route 14, Box 2405, Finley, Washington 99337, (hereinafter "Licensor"), and UNITED STATES CELLULAR OPERATING COMPANY OF RICHLAND, a Washington corporation, Attention: Real Estate, 8410 West Bryn Mawr Avenue, Suite 700, Chicago, Illinois 60631 (hereinafter "Licensee").

WHEREAS, Licensor leases certain real property in Kennewick, Washington, from the Port of Kennewick pursuant to a lease agreement attached hereto as Exhibit A and by this reference incorporated herein;

WHEREAS, the Port of Kennewick will allow Licensor to provide Licensee with use of the property Licensor is currently leasing from the Port of Kennewick, and such consent is evidenced by the signature of the Port of Kennewick's duly authorized representative hereto; and

WHEREAS, Licensee desires to erect a communications tower on Licensor's above-described property for Licensee cellular mobile radio telephone operations.

NOW, THEREFORE, in consideration of the mutual promises, conditions and other good and valuable consideration of the parties hereto, it is covenanted and agreed as follows:

1. Grant of License. Licensor hereby grants and conveys to Licensee, and Licensee hereby receives and accepts from Licensor, a License to construct and maintain a communications antenna tower (including aviation hazard lights), an access road, one or more equipment buildings and a security fence, together with all necessary lines, anchors, connections, devices and equipment for the transmission, reception, encryption and translation of voice and data signals by means of radio frequency energy and landline carriage on the following described property:

See Exhibit B attached hereto and incorporated herein by this reference.

2. Grant of Easement Parcel(s). Unless the real property burdened by the License ("License Parcel") is served by existing rights-of-way for ingress, egress and utilities, Licensor hereby grants to Licensee the following described Easement Parcel(s) appurtenant to the License Parcel for ingress, egress and utilities:

See Exhibit C attached hereto and incorporated herein by this reference.

3. Grant of Easement Rights. To effect the purposes of this License, Licensors hereby grants to Licensee the following Easement Rights: (a) the right to clear vegetation, cut timber and move earthen materials upon the Easement Parcels; (b) the right to improve an access road within the Access Easement Parcel; (c) the right to place underground utility lines and related infrastructure within the Utilities Easement Parcel; (d) the right to enter and temporarily rest upon Licensors' adjacent lands for the purposes of installing, repairing, replacing and removing the Licensee's improvements ("Improvements") and any other personal property of Licensee upon the License Parcel and improving the Easement Parcels, including the right to bring in and use all necessary tools and machinery; and (e) the right of pedestrian and vehicular ingress and egress to and from the License Parcel at any time over and upon the Access Easement Parcel. The License Parcel, Easement Parcels and Easement Rights are collectively referred to herein as the "Premises."

This license shall be subservient to any terms and conditions of the underlying lease. No rights and liabilities are created beyond those contained in the underlying lease. This licensing agreement shall not survive the underlying lease in the event that said lease is terminated. The Port of Kennewick and the licensee may negotiate an agreement directly between themselves in the event the underlying lease is terminated.

4. Survey/Site Plan. Licensee may, at Licensee's expense, cause a survey, site plan and/or legal description of the Premises to be prepared, to further delineate and identify the real estate underlying the Premises. Licensors agrees to allow Licensee reasonable access to the Premises in order to complete this task.

5. Use of the Premises. Licensee shall be entitled to use the Premises to construct, operate and maintain thereupon a communications antenna tower (including aviation hazard lights), an access road, one or more equipment buildings, and a security fence, together with all necessary lines, anchors, connections, devices and equipment for the transmission, reception, encryption and translation of voice and data signals by means of radio frequency energy and landline carriage.

6. Term of License. This License shall commence on the first day of October, 1996, and shall expire on April 30, 2015.

7. Option to Renew. Licensee shall have the option to renew this License for six (6) additional terms of five (5) years each, upon a continuation of all of the same provisions hereof and in accordance with the provisions of the underlying lease, by giving written notice to Licensors and the Port of Kennewick of Licensee's exercise of this option at least sixty (60) days before the expiration of the term then present at the time of such notice.

8. Option to Terminate. Licensee shall have the unilateral right to terminate this License at any time by giving written notice to Licensor of Licensee's exercise of this option and paying Licensor the amount of One Thousand Dollars (\$1,000.00) as liquidated damages.

9. License Fee. Licensee shall pay a License Fee to Licensor in the amount of \$4,000 per year ("payment period"). On or before October 1, 1996, Licensee shall pay Twenty Thousand Dollars (\$20,000.00) in License fees to Licensor representing the total amount of License fees owing Licensor through September 30, 2001. Beginning on October 1, 2001, Licensee shall pay Licensor a yearly License fee in the amount of Four Thousand Eight Hundred Dollars (\$4,800.00) for the remainder of the term of the License and any renewal periods.

10. Adjusted Fees. Starting on October 1, 2002, and every year thereafter during the term hereof, as the same may be renewed and extended, the License Fee shall be adjusted in proportion to the cumulative change in the latest published Consumer Price Index compared to the same index as shown for the historical month of October, 2002, and Licensee shall pay the amount of License Fees as so adjusted. "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers, All Items, U.S. City Average, 1982-1984=100 (U.S. Department of Labor, Bureau of Labor Statistics). If the said Index ceases to be published, then a reasonably comparable index shall be used.

11. Possession of Premises. Licensee shall not be entitled to take possession of the Premises and commence work to construct the Improvements until Licensee makes the first License Fee payment. Licensee shall, however, be permitted to enter upon the Premises to cause engineering studies to be made with respect thereto, including surveys, site plan, tests, radio wave propagation and field strength tests, and other analyses and studies of the Premises as Licensee deems to be necessary or desirable without being deemed to have taken possession.

12. Utilities. Licensee shall be responsible for all costs of providing utility services to the Premises.

13. Taxes. Licensee shall pay all real and personal property taxes levied against the Premises and the Improvements. Licensor agrees to join in an application requesting the appropriate taxing authority to perform a tax parcel division and create a separate tax number for the License Parcel, if such a division is available. If such a division is not available and real estate taxes must continue to be paid on Licensor's undivided land in Licensor's own name, the Licensee shall contribute Licensee's proportionate share of such taxes, and Licensor shall deliver evidence satisfactory to Licensee of payment of such taxes at least ten days before they would otherwise become delinquent, and Licensee shall, after notification, reimburse Licensor for the taxes paid on behalf of the Licensee.

14. Repairs. Licensee shall be responsible for all repairs of the Improvements and may, at its own expense, alter or modify the Improvements to suit its needs consistent with the intended use of the Premises. Licensee shall keep the premises in a neat, clean, safe and sanitary condition.

15. Mutual Indemnification. Licensee shall indemnify and hold Licensors and the Port of Kennewick harmless from and against any loss, damage or injury caused by, or on behalf of, or through the fault of the Licensee, or resulting from the structural failure of Licensee's tower. Licensors shall indemnify and hold Licensee and the Port of Kennewick harmless from and against any loss, damage or injury caused by, or on behalf of, or through the fault of the Licensors. Nothing in this Article shall require a party to indemnify the other party against such other party's own willful or negligent misconduct.

16. Insurance. Licensee shall continuously maintain in full force and effect a policy of commercial general liability insurance with limits of not less than \$1 million covering Licensee's work and operations upon Licensors' lands. The Port of Kennewick shall be named as an additional insured in said policies and shall be provided a certificate of insurance by Licensee as to said premises. Each such certificate of insurance shall state therein that the insurance shall not be canceled without sixty (60) days' written notice to Licensors. Any such cancellation or failure to maintain insurance coverage by Licensee shall be deemed a default under this agreement.

17. Monetary Default. Licensee shall be in default of this License if Licensee fails to make a License Fee payment when due and such failure continues for fifteen (15) days after Licensors notifies Licensee in writing of such failure.

18. Opportunity to Cure Non-Monetary Defaults. If Licensors or Licensee fail to comply with any non-monetary provisions of this License which the other party claims to be a default hereof, the party making such claim shall serve written notice of such default upon the defaulting party, whereupon a grace period of thirty (30) days shall commence to run during which the defaulting party shall undertake and diligently pursue a cure of the default. Such grace period shall automatically be extended for an additional thirty (30) days, provided the defaulting party makes a good faith showing that efforts toward a cure are continuing.

19. Assignment of License by Licensee. This license and all of the rights and interests hereunder shall be assignable by the Licensee to any other party subject to approval of the Port of Kennewick. Such approval shall not be unreasonably withheld. Licensee's right to effect an outright transfer of the license rights, and the right of any collateral assignee to seize the Premises as defaulted security, are subject only to the limitation that the Premises shall be used for the purposes described in Article 5 hereof. Licensee shall notify Licensors and the Port of Kennewick in writing of the name and address of any potential

assignee or collateral assignee.

20. Execution of Other Instruments. Licensor agrees to execute, acknowledge and deliver to Licensee other instruments respecting the Premises, such as a Memorandum of License in recordable form, and such other instruments as Licensee or Licensee's lender may reasonably request from time to time, and to request and direct any mortgage of the underlying land to execute similar lienholder's consents, letters or memoranda. All instruments respecting the Premises shall be subservient to the terms and conditions of the underlying lease and subject to approval by the Port of Kennewick. Said approval shall not be unreasonably withheld.

21. Removal of Improvements. The Improvements are agreed to be Licensee's personal property and shall never be considered fixtures to the real estate. Licensee shall at all times be authorized to remove the improvements from the premises. Licensee shall remove all footings, foundations, and other improvements in the event this license or the underlying lease is terminated. Licensee agrees not to abandon said property. Licensee further agrees to return the property to its original state in the event of a termination of this lease or if it elects to remove the improvements.

22. Conditions Precedent. This License and Licensee's obligations hereunder, including the obligations to pay License Fees or liquidated damages, are expressly conditioned upon and subject to the following:

A. Licensee must receive all necessary local, state and federal governmental approvals relating to Licensee's intended use of the Premises;

B. Licensee's technical reports must establish to Licensee's exclusive satisfaction that the Premises are capable of being suitably engineered to accomplish Licensee's intended use of the Premises; and

C. Licensee's title insurer must determine that the Port of Kennewick owns good and clear marketable title to the land underlying the Premises and that such title is free from encumbrances and restrictions which would interfere with Licensee's intended use of the premises or would impair Licensee's ability to pledge the License interest as collateral to secure debt financing.

23. Abatement of License Fees. Licensee shall have no obligation to pay License Fees until all of the Conditions Precedent have been satisfied or waived, and License Fees which would otherwise be due for the intervening time pending satisfaction of the Conditions Precedent are hereby excused and forgiven.

24. Condition Subsequent. Licensor's obligations under this License shall expire on September, 1996, unless by

that date and no later Licensee begins paying License Fees. Upon such expiration without the first License Fee payment being made by Licensee, this License shall be null and void, and neither Licensor nor Licensee shall have any further obligations hereunder.

25. Quiet Enjoyment. Licensor covenants that Licensee shall have quiet and peaceable possession of the Premises throughout the term of this License as the same may be extended and that Licensor will not intentionally disturb Licensee's enjoyment thereof as long as Licensee is not in default of this License. Licensee acknowledges that said Premises are located in the middle of an industrial site owned by the Port of Kennewick. The industrial site will have further development. Licensee shall in no way oppose said development.

26. Environmental Warranty. Licensor hereby represents and warrants to Licensee that Licensor has never generated, stored, handled or disposed of any hazardous waste or hazardous substance upon the Premises and that Licensor has no knowledge of such uses historically having been made of the Premises or such substances historically having been introduced thereupon.

27. Attorney Fees. In any action on this License, at law or in equity, the prevailing party shall be entitled to recover reasonable costs and expenses, including reasonable attorney fees. Any action at law, suit in equity or other judicial proceeding for enforcement of this agreement or any provision thereof shall be instituted only in a court of competent jurisdiction in the County of Benton, State of Washington.

28. Subordination. Licensee agrees to subordinate this License to any mortgage or trust deed which may hereafter be placed on the Premises, provided such mortgagee or trustee thereunder shall ensure to Licensee the right to possession of the Premises and other rights granted to Licensee herein so long as Licensee is not in default beyond any applicable grace or cure period, such assurance to be in form reasonably satisfactory to Licensee. Further, Licensor agrees to promptly have any mortgagee or trustee which has a mortgage or trust deed currently placed on the Premises execute a nondisturbance agreement in form reasonably satisfactory to Licensee. Any mortgages or trust deeds or other security documents shall be subservient to the underlying lease. No rights or liabilities shall be created beyond the terms and conditions of the lease.

29. Binding Effect. All of the covenants, conditions and provisions of this License shall run with the land, inuring to the benefit of, and binding upon the parties hereto and their respective successors in interest. Any mortgages or trust deeds or other security documents shall be subservient to the underlying lease. No rights or liabilities shall be created beyond the terms and conditions of the lease.

30. Entire Agreement. This License constitutes the entire agreement between the parties and supersedes any prior

understandings or oral or written agreements between the parties respecting the within subject matter.

31. Modifications. This License may not be modified except in writing signed by the party against whom such modification is sought to be enforced. Any modification shall be subject to approval from the Port of Kennewick. Said approval shall not be unreasonably withheld.

32. Permitted Use. The Premises may be used by Licensee only for the permitted uses described in paragraph 5 herein.

33. Interference. Licensee shall not use the premises in any way which interferes with the use of the property of Licensor or adjacent property owners. Licensee shall use all appropriate means of restricting access to the antenna facility, including construction of a fence. Licensee shall keep and maintain the premises and all buildings and improvements now or hereinafter located thereon, in a commercially reasonable condition or state of repair during the term of the License.

34. Notices. Notices required to be in writing under this license shall be given as follows:


Licensor: Pacific Rail Car, Inc.  
Route 14 Box 2405  
Finley, WA 99337

Licensee: United States Cellular  
Operating Co. of Richland  
Attention: Real Estate  
8410 West Bryn Mawr Avenue  
Suite 700  
Chicago, IL 60631

Port: Port of Kennewick  
1 Clover Island  
Kennewick, WA 99336

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be signed by their duly authorized representatives and bind themselves to this License Agreement as of the day and year first above written.

Licensor: PACIFIC RAIL CAR, INC.

By:   
President



Licensee:

UNITED STATES CELLULAR OPERATION  
COMPANY OF RICHLAND

By:

Jeff Darischebourg  
Director of Network  
Operations West Region  
United States Cellular  
Mobile Telephone Network

Approved and  
Agreed to by:

PORT OF KENNEWICK  
BOARD OF COMMISSIONERS

By:

George J. Jones  
George Jones, President

By:

Paul Vick  
Paul Vick, Vice President

By:

Gene Spaulding  
Gene Spaulding, Secretary

STATE OF WASHINGTON )  
: ss.  
County of Benton )

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that George J. Jones, Paul Vick & Gene Spaulding known to me to be the same person whose name is subscribed to the foregoing License Agreement appeared before me this day in person and acknowledged that he signed the said License Agreement as his free and voluntary act for the uses and purposes therein stated.

Given under my hand and seal this 17 day of September, 1996.

Connie Kille  
NOTARY PUBLIC in and for the  
State of Washington  
Residing at Kennewick  
My Commission Expires 3/23/98

STATE OF Washington )  
County of Benton ) : ss.

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that Michael A. Curtis, known to me to be the same person whose name is subscribed to the foregoing License Agreement appeared before me this day in person and acknowledged that he signed the said License Agreement as his free and voluntary act for the uses and purposes therein stated.

Given under my hand and seal this 23rd day of September, 1996.

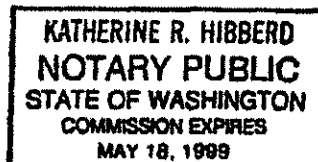
Connie Kild  
NOTARY PUBLIC in and for the State  
of Washington  
Residing at Kennelworth  
My Commission Expires 3/23/98

STATE OF Washington )  
County of Clark ) : ss.

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that Jeff Derischebourg, known to me to be the same person whose name is subscribed to the foregoing License Agreement appeared before me this day in person and acknowledged that he signed the said License Agreement as his free and voluntary act for the uses and purposes therein stated.

Given under my hand and seal this 2 day of October, 1996.

Katherine R. Hibberd  
NOTARY PUBLIC in and for the State  
of Washington  
Residing at Vancouver  
My Commission Expires 5/18/99



**PORT OF KENNEWICK/TI SPORT HEAT LOAD EVALUATION**

Prepared by:


G. Eric Rensink  
Brian Humann

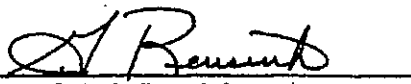
Vista Engineering Technologies, LLC  
8203 W. Quinault Ave, Bldg. C, Suite 200  
Kennewick, Washington 99336  
Telephone: (509) 737-1377  
Telefax: (509) 737-1383

Prepared for:

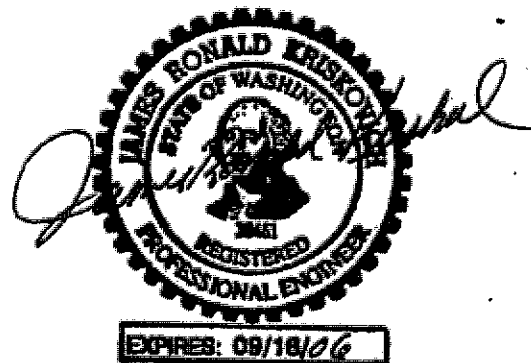
Port of Kennewick  
Kennewick, Washington  
Project No. & Title: VET-1263 Port of Kennewick Heat Load Analysis

May 23, 2005

Prepared:   
Brian Humann  
Mechanical Engineer

Checked:   
G. Eric Rensink  
Mechanical Engineer

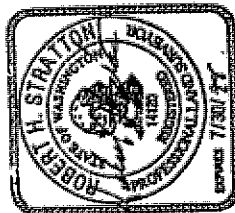
Approved:   
Jim Kriskovich, P.E.  
Vice President



**VISTA ENGINEERING  
TECHNOLOGIES, L.L.C.**

8203 W. Quinault, Bldg. C, Suite 200 • Kennewick, WA 99336 • Tel (509) 737-1377 / Fax (509) 737-1383

DRAWN BY: A.M.	JOB # 2223
----------------	------------



ROAD 83(1991)  
 LATITUDE 46°09'30.873" NORTH  
 LONGITUDE 119°01'10.385" WEST  
 UTM ZONE 29  
 ELEVATION 351.7 FEET

DRAWN BY: A.M.	JOB # 2223
----------------	------------

**STRATTON SURVEYING & MAPPING**  
1350 GRANDRIDGE BLVD SUITE 200  
KENNEWICK, WASHINGTON 98338  
(509) 735-7384

**SURVEY FOR  
UNITED STATES CELLULAR  
HEDGES SITE**

# **EXHIBIT E**

4

Dated: February ~~2~~<sup>5</sup>, 1998

## **CONSENT TO ASSIGNMENT OF LEASE AND ADDENDUM TO LEASE**

This Consent to Assignment of Lease and Addendum to Lease ("Consent") modifies that certain Lease made and entered into on the 9<sup>th</sup> day of September 1994 by and between the Port of Kennewick, a municipal corporation organized under the laws of the State of Washington ("Port") and Pacific Railcar Corporation, a Washington corporation ("Pacific") (the "Lease") as modified by the Addendum To Lease dated September 9, 1994 (the "Addendum") and the Memorandum And Agreement For Lease Modification dated September 13, 1995 (the "Modification"), for the lease of property described in Exhibit A (the "Leased Property"). The Lease, the Addendum, and the Modification are included in Exhibit B hereto.

### **RECITALS**

**WHEREAS** Pacific has entered into an Asset Purchase Agreement dated December 12, 1997 whereby Pacific will sell assets including its interest in the Lease and the Leased Property to Gunderson Northwest, Inc. an Oregon corporation ("Gunderson Northwest"); and

**WHEREAS** Gunderson Northwest intends to continues to operate the assets as a railcar repair facility; and

**WHEREAS** Section 5 of the Lease requires the Port's written permission prior to assignment or transfer of the Lease; and

**WHEREAS** Sections 15 and 23 of the Lease are unique to Pacific and not applicable or readily assignable to Gunderson Northwest and therefore require modification;

**NOW THEREFORE** the parties agree and the Port grants its permission as follows:

1. Except as enumerated herein, effective March 2, 1998 or such other time as Pacific transfers certain of its assets including its interest in the Lease and Leased Property to Gunderson Northwest (the "Assignment Date") Gunderson Northwest shall assume the rights and obligations of Pacific under the Lease, including, without limitation all of Pacific's rights and obligations with regard to its option to purchase the Leased Property as set forth in the Lease.

2. Pursuant to RCW 53.08.085, based upon the Port's review of Gunderson Northwest's financial statements and the audited financial statements of Gunderson, Inc., the Port agrees that effective on the Assignment Date Gunderson, Inc. shall, year to year, guarantee payment of one year of Rent under the Lease and this guarantee shall serve as rental security. This Section 2 to this Consent shall replace Section 15 of the Lease and Gunderson Northwest shall have no obligation thereunder.

3. Effective on the Assignment Date Section 23 of the Lease shall be deleted and Gunderson Northwest shall have no obligations thereunder. Notwithstanding this deletion Gunderson Northwest shall remain responsible for repayment of the loan of \$475,000 which the Port is indebted to pay CERB, as set forth in Section 2(d) of the Lease.

4. There are no defaults under the Lease, all payments provided for in the Lease have been made in the time and manner provided in the Lease and all other comments have been or are being performed. There are no existing conditions which, upon giving of notice or lapse of time, or both, would constitute a default under the Lease, and the Lease is in full force and effect and, as of the date hereof. There are no actions, whether voluntary or otherwise, pending or threatened against or being considered by any of the undersigned under the bankruptcy laws of the United States or any state thereof. The Lease, as modified on September 9, 1994 by instrument attached as Exhibit C hereto and on September 15, 1995 by instrument attached as Exhibit D hereto only, is the only Lease affecting the Leased Property.

5. All other terms, conditions and covenants contained in the Lease as modified shall remain in full force and effect.

6. Effective on the Assignment Date, Gunderson Northwest shall also become "Licensor" under that certain License Agreement dated September 17, 1996 by and between Pacific and United States Cellular Operating Company of Richland.

IN WITNESS WHEREOF, the parties have executed this Consent as of the date first above written.

**PORT OF KENNEWICK  
BOARD OF COMMISSIONERS**

By: *Carl F. Vail*

By: *[Signature]*

By: *S. John Frost*

**PACIFIC RAILCAR, INC.**

By: *[Signature]*

Its: *President*

**GUNDERSON NORTHWEST, INC.**

By: *Hawayel V. L. [Signature]*

Its: *Vice President*

and, for purposes of Section 2 hereof only,

**GUNDERSON, INC.**

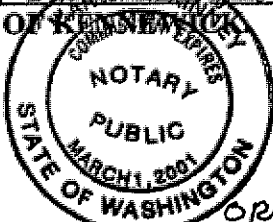
By: *Al Gallo*

Its: *Ex Vice President*

STATE OF WASHINGTON )

County of Benton ) ss.

The foregoing instrument was acknowledged before me this 24 day of FEBRUARY, 1998, by PAUL L. VICK, GUY L. SAWYER and SVP F. FROST the PRESIDENT, VICE PRESIDENT, and SECRETARY, respectively of PORT OF KENNESAW

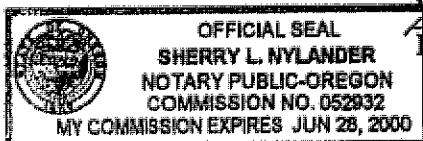


M. J. K. K. K.  
Notary Public for Washington

STATE OF WASHINGTON ) OREGON

County of Multnomah ) ss.

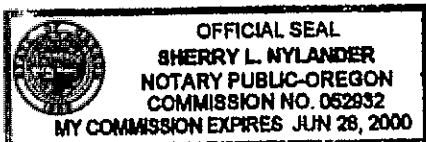
The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of MARCH, 1998 by M. A. CURTIS, the President of PACIFIC RAILCAR, INC.



STATE OF OREGON )  
County of Multnomah ) ss.

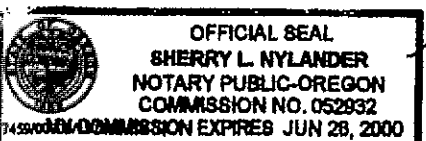
Sherry L. Nylander  
Notary Public for Washington OREGON

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of MARCH, 1998, by Howard D. Werth, the Vice President of GUNDERSON NORTHWEST, INC.



STATE OF OREGON )  
County of Multnomah ) ss.

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of MARCH, 1998, by S. L. Ball, the Ex. Vice President of GUNDERSON, INC.



Sherry L. Nylander  
Notary Public for Oregon



# **EXHIBIT F**

③


## ASSIGNMENT OF LICENSE AGREEMENT

In consideration of payments made and obligations assumed pursuant to that certain Asset Purchase Agreement (the "Agreement") dated December 12, 1997 with respect to a railcar repair facility in Finley, Washington, **PACIFIC RAILCAR, INC.** ("Assignor"), a Washington corporation, hereby sells, assigns, and transfers to **GUNDERSON NORTHWEST, INC.** ("Assignee"), an Oregon corporation all of its right, title and interest in and to that certain License Agreement dated September 17, 1996 by and between Assignor and United States Cellular Operating Company of Richland, a Washington corporation.

Dated: March 2, 1998


### ASSIGNOR:

**PACIFIC RAILCAR, INC.,**  
a Washington corporation

By:   
Its: President

### ASSIGNEE:

**GUNDERSON NORTHWEST, INC.,**  
an Oregon corporation

By:   
Its: Vice President

196080 v01

### **Pacific Railcar Lease Documents**

- |  |                   |
|--|-------------------|
| 1. Contract To Lease Real Estate And Facilities                              | November 16, 1993 |
| 2. Addendum To Contract To Lease Real Estate And Facilities                  | November 16, 1993 |
| 3. Exhibit A-Lease   | September 9, 1994 |
| 4. Exhibit B-Legal Description   |                   |
| 5. Exhibit C-Ingress & Egress Point  |                   |
| 6. Exhibit D-Track Maintenance Schedule                                      |                   |
| 7. Exhibit E-Bond To The Port Of Kennewick To Guarantee Performance Of Lease |                   |
| 8. Addendum To Lease   | September 9, 1994 |

### **Other Attachments**

- |   |                    |
|---|--------------------|
| A. Evidence of Life Insurance                         |                    |
| B. Security Agreement                                 | May 17, 1994       |
| C. Personal Guaranty                                  | May 17, 1994       |
| D. Amorization Schedule, Out Of Pocket Expenses       |                    |
| E. CERB Loan Repayment Schedule                       |                    |
| F. Deed Of Trust                                      | September 13, 1994 |
| G. Landlord's Consent To Lessee's Assignment Of Lease | October 18, 1994   |

# **EXHIBIT G**

(2)

Dated: November 3, 2006

**CONSENT TO ASSIGNMENT OF LEASE  
AND ADDENDUM TO LEASE**

This Consent to Assignment of Lease and Addendum to Lease ("Consent") modifies that certain Lease made and entered into on the 9<sup>th</sup> day of September 1994 by and between the Port of Kennewick, a municipal corporation organized under the laws of the State of Washington ("Port") and Pacific Railcar Corporation, a Washington Corporation, as modified by the Addendum to Lease dated September 9, 1994 ("Addendum No. 1"), by the Memorandum and Agreement For Lease Modification dated September 13, 1995 ("Modification"), by the Consent to Assignment of Lease and Addendum to Lease dated February 28, 1998 ("Addendum No. 2") wherein the lease was assigned to Gunderson Northwest, Inc., and by the Assignment of License Agreement dated March 2, 1998 ("Assignment"), for the lease of property described ("Leased Property") in the aforementioned Lease.

**Recitals**

**WHEREAS** Gunderson Northwest, Inc. has ceased as a corporate entity, has been succeeded by a limited liability company Gunderson Rail Services LLC;

**WHEREAS** Gunderson LLC (formerly known as Gunderson, Inc.) has ceased as a parent entity of Gunderson Rail Services LLC and wishes to transfer its interest in, and obligations under, the Lease and the Leased Property to Gunderson Rail Services LLC; and

**WHEREAS** Gunderson Rail Services LLC intends to continue to operate the assets as a railcar repair facility; and

**WHEREAS** Section 5 of the Lease requires the Port's written permission prior to assignment or transfer of the lease;

**NOW THEREFORE** the parties agree and the Port grants its permission as follows:

1. Effective the date first above written, Gunderson Northwest, Inc. and Gunderson LLC transfer their respective interests in and obligations under the Lease and Leased Property to Gunderson Rail Services LLC. Gunderson Rail Services LLC shall assume the rights and obligations of both Gunderson LLC and Gunderson Northwest, Inc. under the Lease.

2. Pursuant to RCW 53.08.085, Gunderson Rail Services LLC shall, year to year, guarantee payment of one year of Rent under the Lease and this guarantee shall serve as rental security.

3. Effective the date first above written, and notwithstanding any previous modifications to the Lease, Gunderson Rail Services LLC shall assume responsibility for repayment of the loan of \$475,000 which the Port is indebted to pay CERB, as set forth in Section 2(d) of the Lease.

4. There are no defaults under the Lease, all payments provided for in the Lease have been made in the time and manner provided in the Lease, and all other obligations have been or are being performed. There are no existing conditions which, upon giving notice or lapse of time, or both, would constitute default under the Lease, and the Lease is in full force and effect as of the date first above written. There are no actions, whether voluntary or otherwise, pending or threatened against or being considered by any of the undersigned under the bankruptcy laws of the United States or any state thereof. The Lease, as modified, is the only lease affecting the Leased Property.

5. Service by registered or certified mail, postage prepaid, to the Port or Gunderson LLC at the addresses listed below shall be sufficient for any notice or demand under this lease.

Port of Kennewick  
350 Clover Island Drive.  
Kennewick, WA 99336

Gunderson Rail Services LLC  
One Centerpointe Drive, Suite 200  
Lake Oswego, Oregon 97035

6. All other terms, conditions and covenants contained in the Lease as modified shall remain in full force and effect.

7. Effective the date first above written, Gunderson Rail Services LLC shall also become "Licensor" under that certain License Agreement dated September 17, 1996 by and between Pacific Railcar, Inc. and United States Cellular Company of Richland and modified by the Assignment to Gunderson Northwest, Inc. dated March 2, 1998.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first above written.

By Authority of the  
BOARD OF COMMISSIONERS  
PORT OF KENNEWICK

  
\_\_\_\_\_  
Tim Arntzen, Executive Director

GUNDERSON RAIL SERVICES LLC  
As Successor to  
GUNDERSON NORTHWEST, INC. and  
GUNDERSON LLC

  
\_\_\_\_\_  
Todd Abel, Vice President, Finance

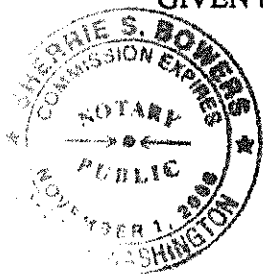
STATE OF WASHINGTON )

: ss.

County of Benton )

On this day personally appeared before me Tim Arntzen, to me known to be the Executive Director 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 they are authorized to execute the said instrument and that the seal affixed thereto is the corporate seal of said corporation.

GIVEN under my hand and official seal this 20<sup>th</sup> day of November, 2006.



Sherrie S. Bowers

NOTARY PUBLIC in and for the State of Washington,  
residing at Kennewick  
My Commission Expires: 11-01-08

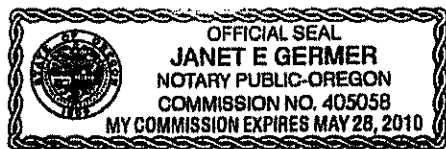
STATE OF OREGON )

: ss.

County of Clatsop  
Multnomah)

On this day personally appeared before me Todd Abel, to me known to be the Vice President, Finance of Gunderson Rail Services LLC, the limited liability 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/she is authorized to execute the said instrument and that the seal affixed thereto is the corporate seal of said corporation.

GIVEN under my hand and official seal this 3rd day of November, 2006.



Janet E. Germer

NOTARY PUBLIC in and for the State of Oregon,  
residing at Seaside, OR  
My Commission Expires: 5/28/2010

# **EXHIBIT H**



1

~~ORIGINAL~~

## LANDLORD ACCESS AGREEMENT

THIS LANDLORD ACCESS AGREEMENT (this "Agreement") is made and entered into as of September 28th, 2009, by and between Port of Kennewick, a municipal corporation organized under the laws of the State of Washington, having an office at 350 Clover Island Drive #350, Kennewick, Washington 99336 (the "Landlord") and WL Ross & Co. LLC, as Administrative Agent under the Credit Agreement (as hereinafter defined) (in such capacity, the "Administrative Agent").

### R E C I T A L S :

1. Landlord is the record title holder and owner of the real property described in Schedule A attached hereto (the "Real Property").
2. The Landlord has leased all or a portion of the Real Property (the "Leased Premises") to Gunderson Rail Services LLC (the "Lessee") pursuant to a certain lease agreement or agreements described in Schedule B attached hereto (collectively, and as amended, amended and restated, extended, supplemented or otherwise modified from time to time, the "Lease").
3. The Greenbrier Companies, Inc., an Oregon corporation (the "Borrower"), the Holders from time to time party thereto and the Administrative Agent have entered into a Credit Agreement, dated as of June 10, 2009, (as amended, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"; capitalized terms used and not otherwise defined herein that are defined in the Credit Agreement shall have the meanings assigned to such terms therein), pursuant to which the Administrative Agent has agreed to make certain loans to Borrower (collectively, the "Loans").
4. The Lessee is a Subsidiary of the Borrower.
5. The Lessee has, pursuant to the Credit Agreement, guaranteed the obligations of the Borrower under the Credit Agreement and the other Loan Documents.
6. As security for the payment and performance of the Lessee's Obligations under the Credit Agreement and the other Loan Documents, the Administrative Agent has or will acquire a security interest in and lien upon all of the Lessee's personal property, inventory, accounts, goods, machinery, equipment, furniture and fixtures (together with all additions, substitutions, replacements and improvements to, and proceeds of, the foregoing, collectively, the "Personal Property") for the benefit of the Holders.

### A G R E E M E N T :

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord hereby represents, warrants and agrees in favor of the Administrative Agent, as follows:

JAN 10 1990

1. The Landlord certifies that (i) the Landlord is the landlord under the Lease described in Schedule B attached hereto, (ii) the Lease is in full force and effect and has not been amended, modified or supplemented except as set forth in Schedule B hereto and (iii) the Landlord has sent no notice of default to the Lessee under the Lease respecting a default which has not been cured by the Lessee.

2. The Landlord agrees that it will provide the Administrative Agent (via overnight mail at the Lessee's cost and expense) with written notice of any default by the Lessee under the Lease resulting in termination of the Lease (a "Default Notice") at the same time as it sends such notice to the Lessee. The Administrative Agent shall have at least 30 days following receipt of such Default Notice to cure such default, but the Administrative Agent shall not be under any obligation to cure any default by the Lessee under the Lease. No action by the Administrative Agent pursuant to this Agreement shall be deemed to be an assumption by the Administrative Agent of any obligation under the Lease, and, except as expressly provided in Sections 3, 5 and 6 below, the Administrative Agent shall not have any obligation to the Landlord.

3. Subject to paragraph 8 of the Lease, the Landlord agrees that the Personal Property is and will remain personal property and not fixtures even though it may be affixed to or placed on the Leased Premises. The Landlord further agrees that the Administrative Agent has the right to remove the Personal Property from the Leased Premises at any time in accordance with the terms of the Loan Documents; *provided* that the Administrative Agent shall repair any damage arising from such removal. The Landlord further agrees that it will not hinder the Administrative Agent's actions in removing any of the Personal Property from the Leased Premises or the Administrative Agent's actions in otherwise enforcing its security interest in the Personal Property. The Administrative Agent shall not be liable for any diminution in value of the Leased Premises caused by the absence of Personal Property actually removed or by the need to replace the Personal Property after such removal. The Landlord acknowledges that the Administrative Agent shall have no obligation to remove the Personal Property from the Leased Premises.

4. The Landlord acknowledges and agrees that the Lessee's granting of a security interest in the Personal Property in favor of the Administrative Agent (for the benefit of the Holders) shall not constitute a default under the Lease nor permit the Landlord to terminate the Lease or re-enter or repossess the Leased Premises or otherwise be the basis for the exercise of any remedy by the Landlord and the Landlord hereby expressly consents to the granting of such security interest and agrees that such security interest shall be superior to any lien of the Landlord (statutory or otherwise) in the Personal Property.

5. Upon a termination of the Lease, the Landlord will permit the Administrative Agent and its representatives and invitees to occupy and remain on the Leased Premises; *provided* that (a) such period of occupation (the "Disposition Period") shall not exceed 180 days following receipt by the Administrative Agent of a Default Notice or, if the Lease has expired by its own terms (absent a default thereunder), up to 60 days following the Administrative Agent's receipt of written notice of such expiration, (b) for the actual period of occupancy by the Administrative Agent, the Administrative Agent will pay to the Landlord the basic rent due under the Lease pro rated on a per diem basis determined on a 30-day month, and shall provide

and retain liability and property insurance coverage, electricity and heat to the extent required by the Lease and (c) such amounts paid by the Administrative Agent to the Landlord shall exclude any rent adjustments, indemnity payments or similar amounts for which the Lessee remains liable under the Lease for default, holdover status or other similar charges. If any injunction or stay is issued that prohibits the Administrative Agent from removing the Personal Property, the commencement of the Disposition Period will be deferred until such injunction or stay is lifted or removed.

6. During any Disposition Period, (a) the Administrative Agent and its representatives and invitees may inspect, repossess, remove and otherwise deal with the Personal Property, and the Administrative Agent may advertise and conduct public auctions or private sales of the Personal Property at the Leased Premises, in each case without interference by the Landlord or liability of the Administrative Agent or any Holder to the Landlord and (b) the Administrative Agent shall make the Leased Premises available for inspection by the Landlord and prospective tenants and shall cooperate in Landlord's reasonable efforts to re-lease the Leased Premises. If the Administrative Agent conducts a public auction or private sale of the Personal Property at the Leased Premises, the Administrative Agent shall use reasonable efforts to notify the Landlord first and to hold such auction or sale in a manner which would not unduly disrupt the Landlord's or any other tenant's use of the Leased Premises.

7. The terms and provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Landlord (including, without limitation, any successor owner of the Real Property) and the Administrative Agent. The Landlord will disclose the terms and conditions of this Agreement to any purchaser or successor to the Landlord's interest in the Leased Premises.

8. All notices to any party hereto under this Agreement shall be in writing and sent to such party at its respective address set forth below (or at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 8) by certified mail, postage prepaid, return receipt requested or by overnight delivery service.

The Landlord's address for notices:	Port of Kennewick 350 Clover Island Drive, Suite 200 Kennewick, Washington 99336
The Administrative Agent's address for notices:	WL Ross & Co. LLC, as Administrative Agent 1166 Avenue of the Americas, 27th Floor New York, New York 10036

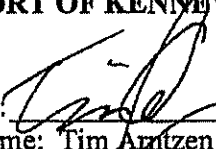
9. The provisions of this Agreement shall continue in effect until the Landlord shall have received the Administrative Agent's certification of the termination of the Obligations.

10. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF WASHINGTON, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION. Landlord and Administrative Agent hereby consent to the jurisdiction and venue of the Superior Court of Benton County, Washington or Federal District Courts of the Eastern District of Washington over any suit, action or proceeding arising out of or in connection with this Agreement. In the event of any suit, action or proceeding arising under or in connection with this Agreement, the prevailing party shall recover from the other party the prevailing party's reasonable attorney fees and costs as determined by the court in such action and in any appeal therefrom.

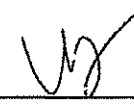
11. The Landlord agrees to execute, acknowledge and deliver such further instruments as the Administrative Agent may request to allow for the proper recording of this Agreement (including, without limitation, a revised landlord access agreement in form and substance sufficient for recording) or to otherwise accomplish the purposes of this Agreement.

IN WITNESS WHEREOF, Landlord and the Administrative Agent have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written.

**By Authority of the Board of Commissioners  
PORT OF KENNEBICK**

By:   
Name: Tim Arntzen  
Title: Executive Director

**WL Ross & Co. LLC, as Administrative Agent**

By:   
Name:  
Title:

**SCHEDULE A**

**DESCRIPTION OF REAL PROPERTY**

THE SOUTH 700 FEET OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTH 700 FEET OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER ALL IN SECTION 23, TOWNSHIP 8 NORTH, RANGE 30 EAST, W.M., BENTON COUNTY, WASHINGTON.

TOGETHER WITH A 60 FOOT WIDE ACCESS AND UTILITY EASEMENT, BEING THE WEST 60 FEET OF THE EAST 110 FEET OF THE SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER, LYING NORTHERLY OF THE SOUTH 700 FEET THEREOF AND SOUTHERLY OF THE NORTH 20 FEET THEREOF.

TOGETHER WITH AND SUBJECT TO EASEMENTS, RESERVATIONS, COVENANTS, AND RESTRICTIONS OF RECORD AND IN VIEW.

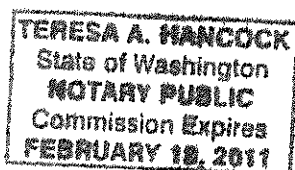
**SCHEDULE B**  
**DESCRIPTION OF LEASE**

Lease dated September 9, 1994 between Port of Kennewick and Pacific Railcar Corporation, as modified by Addendum dated September 9, 1994 between Port of Kennewick and Pacific Railcar Corporation, and Consent to Assignment of Lease (to Gunderson Northwest, predecessor in interest to Gunderson Rail Services LLC) dated February 28, 1998.

[illegible]

On this day personally appeared before me Tim Arntzen, to me known to be the Executive Director 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 they are authorized to execute the said instrument and that the seal affixed thereto is the corporate seal of said corporation.

GIVEN under my hand and official seal this 28th day of September, 2009.



William A. Hancock  
NOTARY PUBLIC in and for the State of Washington, residing  
at Spannwick  
My Commission Expires: 02/18/11

STATE OF \_\_\_\_\_ )  
 : ss.  
County of \_\_\_\_\_ )

On this day personally appeared before me \_\_\_\_\_, to me known to be the \_\_\_\_\_ of WL Ross & Co. LLC, as Administrative Agent the limited liability 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/she is authorized to execute the said instrument and that the seal affixed thereto is the corporate seal of said corporation.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

NOTARY PUBLIC in and for the State of \_\_\_\_\_  
residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

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TERESA A. HANCOCK  
State of Washington  
NOTARY PUBLIC  
Commission Expires  
FEBRUARY 18, 2011



# EXHIBIT I

EXECUTION VERSION

ASSIGNMENT AND ASSUMPTION OF LEASES

This Assignment and Assumption of Leases (this "Assignment") is hereby executed as of the 18th day July, 2014 (the "Effective Date"), by and between GUNDERSON RAIL SERVICES LLC, an Oregon limited liability company, whose address is One Centerpointe Drive, Suite 200, Lake Oswego, Oregon 97035 ("Assignor"), and GBW RAILCAR SERVICES, L.L.C., a Delaware limited liability company, whose address is One Centerpointe Drive, Suite 200, Lake Oswego, Oregon 97035 ("Assignee").

RECITALS:

- a. Assignor, or an affiliate of Assignor, is a member of Assignee.
- b. Assignor is the present lessee, licensee or tenant under those certain real property lease, license and other agreements set forth in Schedule 1 hereto, copies of which, together with all amendments thereto, modifications thereof and previous assignments thereof, are attached hereto as Exhibit A and made a part hereof (collectively, the "Leases").
- c. Assignor has agreed to assign, transfer and convey, and Assignee has agreed to acquire and accept, all right, title and interest of Assignor under the Leases, except that Assignor has agreed to retain certain of Assignor's obligations under the Leases, as provided hereinafter.

NOW THEREFORE, in consideration of the above premises, the mutual covenants and agreements stated herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment. As of the Effective Date, Assignor hereby transfers and assigns to Assignee all right, title and interest of Assignor as lessee, licensee or tenant in, to and under the Leases, including, without limitation, any option to purchase the leased premises contained therein, except that Assignor retains the following obligations of the lessee, licensee or tenant under the Lease (collectively, the "Retained Obligations"): (i) all obligations of Assignor, including actions, requirements, liabilities, costs and expenses, as established in the Leases, which arise from or are related to environmental conditions that occurred or existed prior to the Effective Date of this Assignment; provided, however, that obligations under the Leases which arise from or are related to environmental conditions caused by Assignee after the Effective Date of this Assignment shall be the responsibility of Assignee and shall not be Retained Obligations; and (ii) all obligations of Assignor arising or accruing prior to the Effective Date.
2. Assumption. As of the Effective Date, Assignee hereby accepts the foregoing assignment of Assignor's right, title and interest in, to and under the Leases and assumes and covenants to perform all of the obligations of Assignor under the Leases from and after the Effective Date, except with respect to the Retained Obligations.
3. Copies of Leases. Assignor represents and warrants to Assignee that Exhibit A contains full and complete copies of the Leases, which are in full force and effect on the Effective Date and have not been altered, amended, cancelled, extended, modified, superseded, supplemented or terminated, except as otherwise noted in Schedule 1.

4. Successors. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

5. Counterparts. This Assignment may be executed in multiple counterparts by any or all of the parties hereto, each of which shall be deemed to be an original and all of which when taken together shall constitute one and the same Assignment. Execution and delivery of this Assignment by delivery of a facsimile or portable document format ("PDF") copy bearing the facsimile or PDF signature of a party to this Assignment shall constitute a valid and binding execution and delivery of this Assignment by such party. Such facsimile and/or PDF copies shall constitute enforceable original documents.

6. Miscellaneous. Each person executing this Assignment warrants and represents that he/she is fully authorized to do so.

[Remainder of page intentionally left blank.]

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

ASSIGNOR:

GUNDERSON RAIL SERVICES LLC,  
an Oregon limited liability company

By: 

Name: Mark J. Rittenbaum

Title: Executive Vice President and  
Chief Financial Officer

ASSIGNEE:

GBW RAILCAR SERVICES, L.L.C.,  
a Delaware limited liability company

By: 

Name: James A. Cowan

Title: Chief Executive Officer

Schedule 1  
SCHEDULE OF LEASES

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1. **Golden:** Amended and Restated Lease, dated October 11, 2009, between Industrial Transportation Services, Inc. (Landlord) and Gunderson Rail Services LLC dba Greenbrier Rail Services (Tenant).
2. **Golden:** Amended and Restated Reciprocal Easement Agreement, dated October 11, 2009, between Industrial Transportation Services, Inc. (Landlord) and Gunderson Rail Services LLC dba Greenbrier Rail Services (Tenant).
3. **Modesto:** License Agreement, dated January 1, 2007, between Beard Land Improvement Company (Licensor) and Gunderson Rail Services, LLC (Licensee).
4. **Modesto:** Cleaning Track License, dated January 1, 2007, between Modesto & Empire Traction Company (M&ET) and Gunderson Rail Services, LLC (GRS).
5. **Modesto:** Repair Track License, dated January 1, 2007, between Modesto & Empire Traction Company (M&ET) and Gunderson Rail Services, LLC (GRS).
6. **San Antonio:** Ground Lease Agreement, dated November 1, 2013, between Port Authority of San Antonio (Landlord) and Gunderson Rail Services, LLC (Tenant).
7. **Springfield:** Commercial Lease Agreement, dated January 1, 2013, between City of Springfield (Landlord) and Gunderson Rail Services, LLC dba Greenbrier Rail Services – Springfield (Tenant).
8. **Springfield:** Track Lease Agreement, dated June 30, 1999, between Union Pacific Railroad Company and Gunderson Northwest, Inc. Amended October 10, 2008.
9. **Topeka:** Indefinite Term Lease Land, Improvements and Track, dated October 1, 2006, between BNSF Railway Company (Lessor) and Gunderson Rail Services (Lessee).
10. **Omaha:** Shop Lease Agreement, dated October 1, 2012, between Omaha Livestock Market, Inc. (Landlord) and Gunderson Rail Services LLC (Tenant).
11. **Finley:** Lease, dated September 9, 1994, between the Port of Kennewick (Port) and Pacific Railcar Corporation (Company), plus Addendum to Lease. Assigned to Gunderson Northwest, Inc., effective February 2, 1998.
12. **Osawatomie:** Lease of Track, dated October 27, 2008, between Union Pacific Railroad Company (Lessor) and Gunderson Rail Services LLC dba Greenbrier Rail Services (Lessee). Amended in 2009. Extended by letter agreement. Note: expired. No rent invoices have been

received from Lessor and no rent payments have been made since September of 2012, paid through 2013. Annual rent for use of track under the lease totals \$2,000 per year.

13. **Oswatomie:** Lease of Property, dated October 27, 2008, between Union Pacific Railroad Company (Lessor) and Gunderson Rail Services LLC dba Greenbrier Rail Services (Lessee). Amended with undated amendment.

14. **Woodland:** Commercial Lease, dated February 15, 2011, between Sierra Northern Railway (Lessor) and Gunderson Rail Services LLC, dba Greenbrier Rail Services (Lessee). Amended May 2014.

15. **Cleburne:** Lease of Land and Improvements, dated July 23, 1992, between The Atchison, Topeka and Santa Fe Railway Company (Lessor) and Gunderson Southwest, Inc. (Lessee). Amended September 26, 1994. Further amended March 15, 1999 with Burlington Northern and Santa Fe Railway Company (BNSF) (as successor to The Atchison, Topeka and Santa Fe Railway Company). Renewal option exercised and accepted by BNSF by letter dated October 31, 2007.

16. **Cleburne:** Lease of Land, dated November 29, 1995, between the Atchison, Topeka and Santa Fe Railway Company (Lessor) (now BNSF) and Gunderson Southwest, Inc. (Lessee).

Exhibit A  
LEASES

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[Attached]

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# **EXHIBIT J**



**CONSENT TO  
ASSIGNMENT AND ASSUMPTION OF LEASE**

This Consent to Assignment and Assumption of Lease is made as of the 4th day of September, 2014 by Port of Kennewick, a municipal corporation organized under the laws of the State of Washington, with an address of 350 N. Clover Island Dr., Kennewick, WA 99336 ("Landlord").

**WITNESSETH:**

WHEREAS, Landlord is the holder of the landlord's interest and Gunderson Rail Services, LLC, an Oregon limited liability company ("Tenant") is the holder of the tenant's interest under that certain Lease, dated September 9, 1994, as modified by the Addendum of Lease dated September 9, 1994 ("Addendum No. 1"), by the Memorandum and Agreement for Lease Modification dated September 19, 1995 ("Modification"), by the License Agreement dated September 17, 1996 ("License"), by the Consent to Assignment of Lease and Addendum to Lease dated February 28, 1998 ("Addendum No. 2") wherein the Lease was assigned to Gunderson Northwest, Inc., by the Assignment of License Agreement dated March 2, 1998 ("Assignment"), by the Consent to Assignment of Lease and Addendum to Lease dated November 3, 2006, and by the Landlord Access Agreement dated September 28, 2009 ("Access Agreement"), (collectively, the "Lease") for the Leased Property, as defined within the Lease, located within Benton County, Washington; and

WHEREAS Section 5 of the Lease requires the Landlord's written permission prior to assignment or transfer of the Lease; and

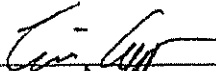
WHEREAS, Landlord is willing to consent to an assignment of the Lease by Tenant to GBW RAILCAR SERVICES, L.L.C., a Delaware limited liability company ("Assignee") upon the terms and conditions hereinafter set forth.

Landlord hereby consents to the assignment of the Lease by Tenant and assumption of Tenant's rights and obligations under the Lease by Assignee. Tenant or Assignee shall provide written notice of the effective date of any such assignment and assumption, together with a copy of the executed assignment and assumption agreement, within ten (10) days of the effective date. Landlord's consent to the assignment and assumption of Tenant's rights and obligations under the Lease hereunder shall not release or discharge Tenant under the Lease from any liability or obligations under the Lease. Landlord's consent hereunder is not, and shall not be construed as, consent by Landlord to any further assignment or subletting of the Lease by Assignee.

IN WITNESS WHEREOF, Landlord has duly executed this Consent as of the date first set forth above.

**LANDLORD:**

Port of Kennewick,  
a municipal corporation organized under the laws of the State of Washington

By:   
Its: Tim Arntzen, Executive Director

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## AGENDA REPORT

**TO:** Port Commission

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

**MEETING DATE:** July 14, 2015

**AGENDA ITEM:** Resolution 2015-15; Lease Rates for Columbia Garden Wine Development Buildings, Phase 1

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**I. REFERENCE(S):** Resolution 2015-15; Lease Rates Columbia Gardens Wine Development Buildings, Phase 1  
Coldwell Banker Commercial – Opinion of Value dated 6/24/2015  
Staff Analysis of Comparable and Market Factors  
Building Floor Plans by Terence L. Thornhill Architects dated 1/5/2015

**II. FISCAL IMPACT:** None at this time.

**III. DISCUSSION:** As the Columbia Gardens wine development buildings proceed to construction and effluent waste disposal decisions have been resolved, establishing lease rates for new tenants becomes the next important step in marketing the development to future businesses.

The Columbia Gardens Wine Village will be a one-of-a-kind waterfront destination in Kennewick where boutique wine producers will have the opportunity to access city sewer services for the disposal of wine effluent without incurring costly infrastructure expenses.

Phase I of the Columbia Gardens Wine Village will consist of three buildings:

- Building #1 NORTH includes:
  - 1,693 sf production area, 504 sf loft, 1,100 sf tasting room
- Building #1 SOUTH (case goods/barrel storage) includes:
  - 1,100 sf case goods, 1,270 barrel storage
  - Shared 50% each tenant.
- Building #2 EAST includes:
  - 2,286 sf production area, 504 sf loft, 1,100 sf tasting room

In analyzing the nearby industrial and commercial space for lease, there are few comparisons that can be made to a new and unique construction project such as the Columbia Gardens Wine Village. Commercial space on Columbia Drive and industrial space at the Oak Street Industrial Park, both port owned and privately owned properties, were included in the analysis.

The Port of Walla Walla Wine Incubator Program was evaluated for its similarities in fostering economic development for start-up wineries and corresponding entry level lease rates to encourage business growth.

Additionally, an expanded analysis included an opinion of value obtained by an experienced commercial real estate professional to look at broader community factors, potential location challenges and lease rate comparisons. The comprehensive review separated tasting room space from production/storage and offered a rental range for each (see attached). Staff then disseminated the separate rates to produce a single blended rate.

**IV. STAFF RECOMMENDATION:**

Aggressively market the Columbia Gardens wine development buildings through online and print advertising, personal contacts, industry tradeshows and networking at a blended lease rental rate range of \$.65 - \$.75 per square foot per month.

**V. ACTION REQUESTED OF COMMISSION:**

***Motion:** I move approval of Resolution 2015-15 approving initial lease rates for the Phase 1 Columbia Gardens development buildings at a blended lease rate range \$.65 - \$.75 per square foot per month, and instructs the Executive Director to aggressively market the Columbia Gardens wine development buildings.*

***PORT OF KENNEWICK***

**Resolution No. 2015-15**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK ESTABLISHING THE LEASE RATES FOR  
THE COLUMBIA GARDENS WINE DEVELOPMENT BUILDINGS, PHASE I***

**WHEREAS**, as the Columbia Gardens wine development buildings proceed to construction and effluent waste disposal decisions have been resolved, establishing lease rates for new tenants becomes the next important step in marketing the development to future businesses; and

**WHEREAS**, the Columbia Gardens Wine Village will be a one-of-a-kind waterfront destination in Kennewick where boutique wine producers will have the opportunity to access city sewer services for the disposal of wine effluent without incurring costly infrastructure expenses; and

**WHEREAS**, Phase I of the Columbia Gardens Wine Village will consist of three buildings; and

**WHEREAS**, an analysis was performed of the nearby industrial and commercial spaces for lease, including Commercial space on Columbia Drive, industrial space at the Oak Street Industrial Park and the Port of Walla Walla Wine Incubator buildings; and

**WHEREAS**, there are few comparisons that can be made to a new and unique construction project such as the Columbia Gardens Wine Village.

**NOW THEREFORE, BE IT RESOLVED** that the Port of Kennewick Commission does hereby establish initial lease rates for the Phase 1 Columbia Gardens development buildings at a blended lease rate range \$.65 - \$.75 per square foot per month, and instructs the Executive Director to aggressively market the Columbia Gardens wine development buildings.

**ADOPTED** by the Board of Commissioners of Port of Kennewick on the 14th day of July 2015.

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

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

By: \_\_\_\_\_  
SKIP NOVAKOVICH, *Vice President*

By: \_\_\_\_\_  
THOMAS MOAK, *Secretary*





**COLDWELL BANKER COMMERCIAL  
TOMLINSON ASSOCIATED BROKERS**

8836 GAGE BOULEVARD, SUITE 201-B  
KENNEWICK, WA 99336

BUS. (509) 783-1394  
FAX (509) 735-2478

June 24, 2015

Ms. Amber Hanchette  
Director of Real Estate Operations  
Port of Kennewick  
350 Clover Island Drive  
Kennewick, WA. 99336

RE: BROKER'S LETTER OPINION OF VALUE

Dear Ms. Hanchette:

Pursuant to my understanding of the nature of your request, following is a Broker's Letter Opinion of Value that outlines my analysis and conclusions regarding the probable rental value of the buildings to be constructed by the Port of Kennewick, and located at 421 East Columbia Drive in Kennewick, WA.

This Opinion is based on my extensive experience as a commercial real estate agent active in the Tri-City marketplace since 1991. This Opinion does not represent in any way an appraisal of the property as described under the Statutes of the Washington State of appraisal standards. This Opinion may be used for purposes of establishing value with regard to the property, however, under no circumstances should this report be referred to as an appraisal.

This is my professional opinion of the rental value of the property under an arms-length tenancy as of the date above. This Opinion is provided based on the limitations and assumptions noted herein, and the use of the Opinion must be based on its entirety, and not taken out of context.

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**Basic Property Information:**

The Subject Property will consist of three (3) individual free-standing buildings to be constructed at 421 East Columbia Drive. The buildings are being built for a special purpose: Wineries and or wine-tasting rooms. The buildings will be situated in close proximity to one another and will be somewhat of a "campus setting". Building One is 3,050 square feet in size, configured for a retail winery and tasting room. Building Two is 3,775 square feet in size, and configured for a retail winery and tasting room. Building Three (3,050 SF) is to be utilized jointly by the tenants in Buildings One and Two for barrel storage and case goods. The location is somewhat out of the 'mainstream' of retail trade and commercial office users, but is a unique location, with its own aesthetic appeal to those tenants who may have a more destination-oriented business model.

Detailed plans and specifications for the buildings were not available at the time of this evaluation, only simple sketches and artist's renderings (see Exhibit A). Without knowing the fit and finish of the space it is difficult to arrive at a specific rental value. Therefore, the final opinion of the market rental value for these buildings will be stated as a Gross Dollar Per Square Foot *range*.

### **Rent Considerations:**

Since the Landlord/Owner of the Subject Property is the Port of Kennewick, and pays no property taxes, tenants are charged a State Leasehold Tax equal to 12.84% of the rent amount. For example: If the Gross Rent is \$12 Dollars per square foot, the additional Leasehold Tax amount would be \$1.541 per square foot for a total Gross Rent of \$13.541 PSF. It is assumed that the Tenants would also pay for their own electrical usage, telephones, or other ancillary services needed by the Tenant (ie: internet service).

The maximum rent which may be achieved by a given property is determined by a Tenant's willingness to pay such rent, after having considered other space options available in a given marketplace. A number of factors come into play in that decision: location, size, quality, amenities, connectivity, access (for clients, customers, and employees), signage and visibility.

The Subject Property does well in all areas except for location. However, it is worthwhile to note that the buildings, as planned, are being built to 'kick-start the growth of the overall development into an "Urban Wine & Artisan Village". The plan is to create a new niche market and thus a demand for more new buildings. The businesses that will consider the initial space will be those for whom the development concept is new and exciting. Nonetheless, it is difficult to assess the rental value of such a unique location.

In my opinion, the Subject Property should be professionally marketed and advertised, with feedback from potential tenants being closely monitored over time. One would start with an initial asking rent commensurate with the quality of the space (in comparison to others of similar quality). If necessary, one could offer incentives to a prospective Tenant. Especially, since this is a new development concept. These could include a lower rate for the first year, with escalations thereafter to bring the rent up to market. Another alternative would be to offer some Free Rent.

### **Financial Considerations:**

The value of a given investment property is directly related to its ability to produce an income stream, or Rent. The quality, quantity, and duration of that income stream are each important factors in determining investment value.

Consequently, the value or cost to construct a particular investment property will typically dictate the minimum Net Rent required to achieve a particular percentage rate of return on the monies invested.

For example: If the Subject Property cost \$150 Dollars per square foot to construct (including land costs), and the investor/owner wanted to achieve a 10% capital rate of return on the investment, the Net Rent required to do so would be \$15.00 Dollars per square foot (eg:  $3,050\text{ SF} \times \$150 / 10\% = \$45,750\text{ yr.} / 3,050\text{ SF} = \$15.00\text{ Net or Base Rent}$ ). A tenant would also pay its pro-rata share of Operating Costs in addition to the Base rent. Assuming that those costs (Taxes, Insurance, and maintenance of the building and grounds) are \$4.50 per square foot annually, the Total Rent would be \$19.50 per square foot annually. In this scenario, the investor would receive a 10% before-tax return on his invested capital in the first year of the term.

It is understood that the Port of Kennewick (the 'Landlord') is a governmental entity charged with fostering and encouraging commercial and economic growth, and the jobs thereby created. Accordingly, the economic goals of the Landlord are quite different that that of a typical investor. At the same time, the Port of Kennewick makes its best efforts to good financial stewards of the tax revenues it is charged with managing.

**Rent Comparables (Leased Properties / November 2012 to Present date):**

1. 355 Chardonnay Avenue in Prosser. A 5,400 square foot retail strip building leased by Sunnyside Community Hospital at \$12.00 PSF Triple-net. Built in 2008. The Lease commenced August 1, 2014.
2. 1238 Columbia Park Trail in Richland. Two buildings totaling 17,428 square feet, with 2,014 SF of office space and the balance in warehouse and showroom space. Built in 1981. Leased for \$9.94 PSF (including triple-net costs), commencing March 1, 2012.
3. 1238 Columbia Park Trail in Richland. A 2,400 SF PORTION of a free-standing wood-frame building, comprised of office and retail showroom. Built in 1992. Leased July 31, 2012 at \$14.00 PSF on a Gross Lease basis.
4. 1600 Dale Avenue in Benton City. A 3,000 square foot warehouse on 1-acre, with 500 square feet of office space. Built in 2009, never occupied prior to lease. Leased on January 1, 2014 for \$7.60 per square foot, on a triple-net basis. *(This is the least comparable property of those noted herein.)*
5. 203 North Huntington in Kennewick. 1,600 square feet of office space leased for \$8.00 per square foot on a Gross Lease basis on October 30, 2013. Built in 1995.
6. 450 Quay Street in Kennewick. A 4,800 square foot building with 1,200 SF of warehouse and the balance in office and showroom. Built in 2010. Leased for 2-years at \$7.00 PSF on a Gross Lease basis, March 17, 2015.
7. 5510 W. Clearwater in Kennewick. A 1,650 square foot retail space fronting West Clearwater Avenue built in 1978. It leased April 1, 2015 at \$7.00 PSF on a Gross Lease basis, plus a modest CAM charge.



8. 5115 Brinkley Road in Kennewick. A 6,800 square foot warehouse with an attached 1,200 SF office space. Built in 1977. It leased on December 31, 2014 for \$6.00 PSF on a Gross Lease basis.
9. 504 East Columbia Drive in Kennewick. A 6,000 square foot retail building built in 1955, with many remodels during that time. It is comprised of 3,000 SF of retail showroom, 2,50 SF of warehouse space, and 500 SF of office space. The building leased on November 15, 2012 for \$6.40 per square foot, on a Gross Lease basis.

**Properties currently offered For Lease:**

1. Suite A101 - 8508 West Gage Blvd. in Kennewick. A 4,000 square foot stand-alone building offered for lease at \$9.00 PSF, on a triple-net basis. Built in 1978. Three offices, 2-bathrooms, showroom.
2. 6200 West Clearwater Avenue in Kennewick. A 3,920 square foot free-standing building, with 920 SF of warehouse, 600 SF offices and bathrooms, and the balance in showroom space. Offered at \$12.00 PSF, on a triple-net basis. Built in 1981.
3. Suite 'L' – 1220 Columbia Center Blvd. in Kennewick. A 4,180 SF space in an open-air center. Built in 1979. Offered at \$14.00 PSF on a triple-net basis (\$3.00).
4. 3180 W. Clearwater Avenue in Kennewick. A 2,537 SF and a 3,365 SF in-line spaces in an open-air center. Age unknown (1970's). Offered at \$9.60 PSF, on a Gross lease basis.
5. 627 North Kellogg in Kennewick. A 3,500 SF in-line space offered at \$15.50 PSF Triple-net (\$2.50). \$15 TI allowance from vanilla shell. Built in 2004.
6. 8903 West Gage Blvd. in Kennewick. A 2,986 SF in-line space offered for lease at \$17.00 PSF (including NNN). Built in 1999.
7. 1350 North Louisiana St. in Kennewick. A 5,656 SF in-line retail space across from Olive Garden Restaurant. Offered at \$17.50 Triple-net. Built in 2004.

**Opinion of Value:**

The Rental Range of the Leased properties noted hereinabove, range from a low of \$6.40 per square foot (on a Gross Lease basis) to a high of \$15.50 per square foot (including triple-net or operating costs). In addition, they are a widely varied group of properties based upon their zoning and their intended uses. They are utilized due to the fact that the Subject Property has three distinct types of space available (warehouse, production, and retail)

The Rental Range of the properties currently Offered For Lease, range from a low of \$9.60 PSF on a Gross Lease basis, to a high of \$17.50 PSF, on a Triple-net Lease basis. Other properties are available above \$17.50, as well, but not noted herein.

The Subject property (as proposed) is a combination of production space (wine-making), warehouse space (barrel and case goods storage), and retail space (tasting rooms and patios). Therefore, I have elected to value each type of space based upon its intended or highest and best use.

The Warehouse or storage space will generate the lowest rent PSF. Based upon the data above (Leased properties and Competing properties offered for lease), I value this space at \$5.50 to \$6.50 PSF annually, PLUS Leasehold taxes.

I value the Production space at \$6.50 to \$8.00 PSF, plus Leasehold Taxes.

And, I value the Tasting Room space at \$16.00 to \$17.00 PSF, PLUS Leasehold Taxes.

Obviously, there would be a resulting 'blended rate' for a tenant taking an entire building or combinations thereof.

The rates noted hereinabove are based on the assumption that the Tenant(s) will pay their own utilities, maintenance and Janitorial services.

Respectfully submitted,



E. A. 'Rusty' Morse, CCIM  
Managing Broker

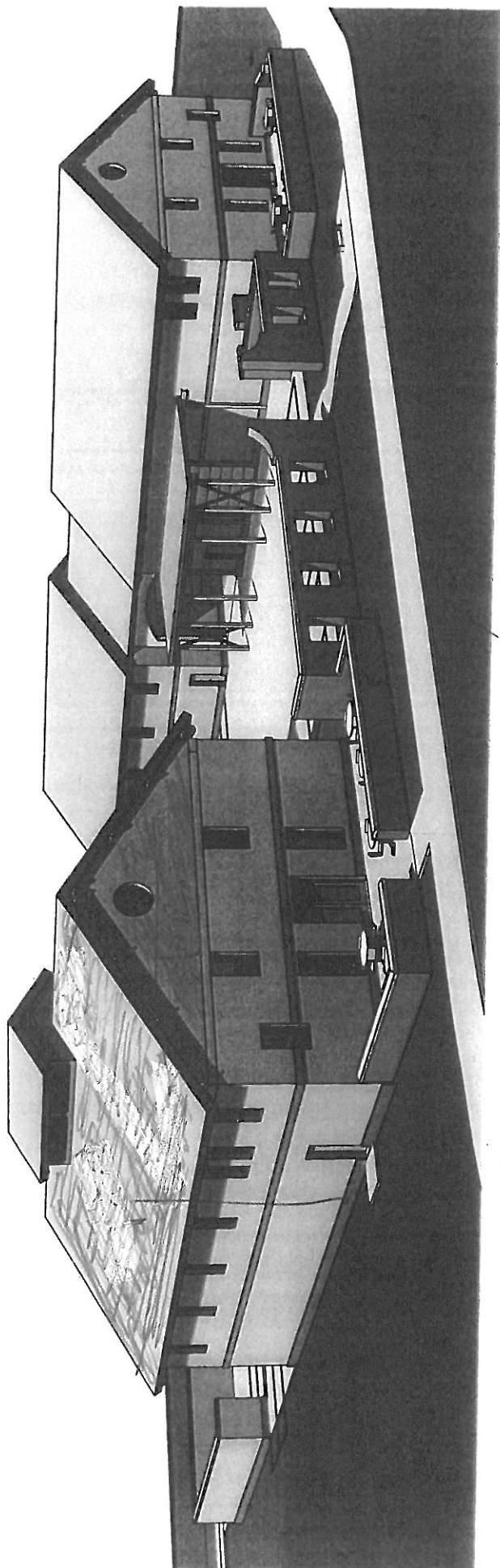
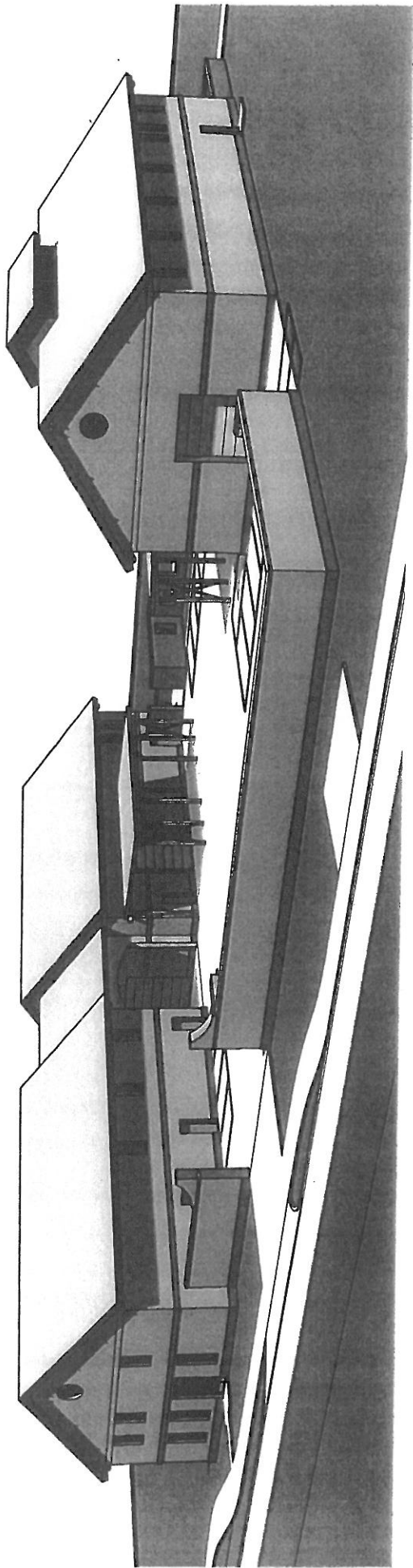


Exhibit A.

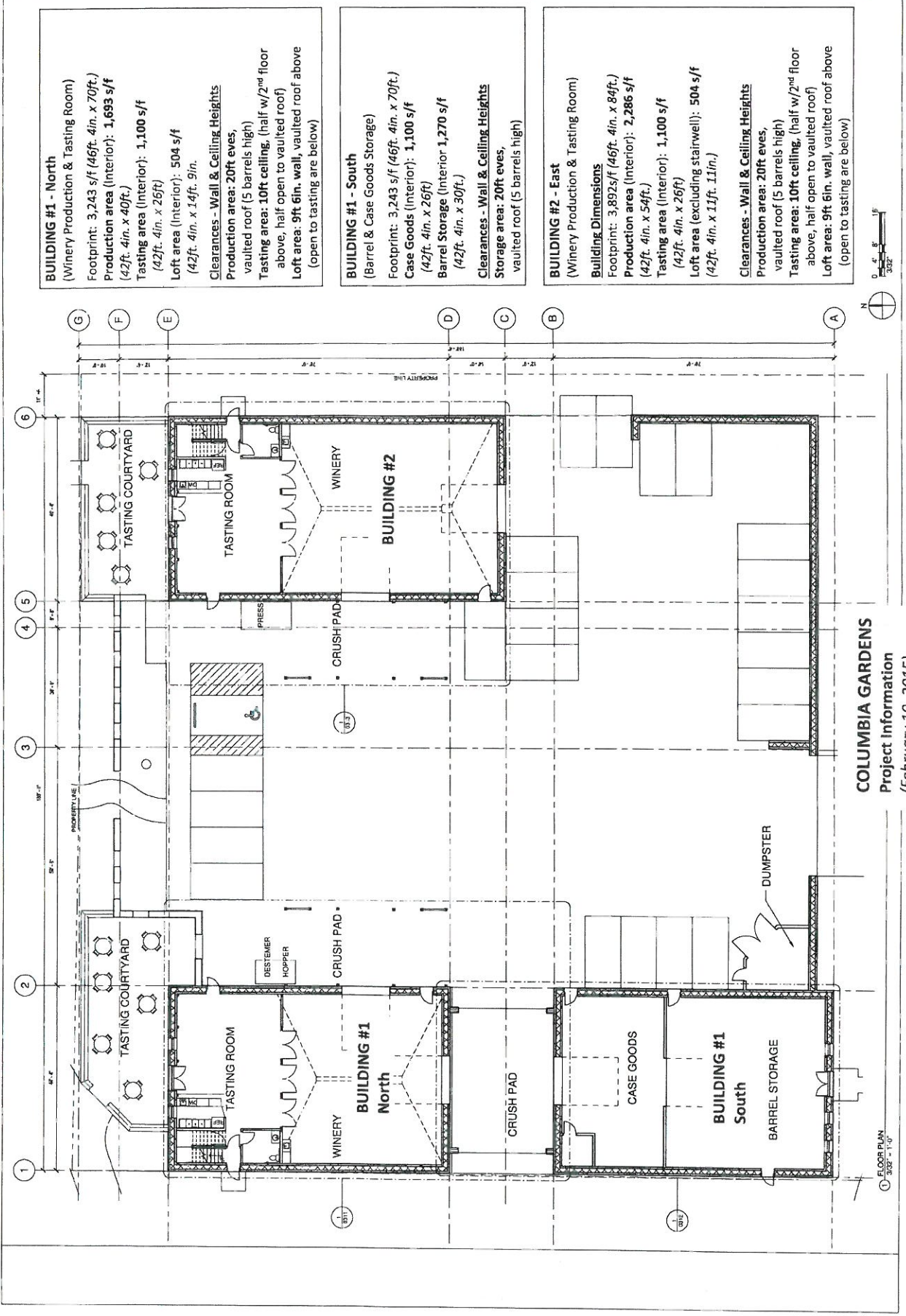
**Area Comparables - PoK Staff**

Date of Comp	Location	Square Footage	Monthly Rate
5/1/2015	Port of Walla Walla, Wine Incubator	1600	\$ 0.68
5/7/2015	1351 E. 3rd Ave Kennewick	2400	\$ 0.35
5/7/2015	1426 E. 3rd Ave Kennewick	2950	\$ 0.40
6/2/2015	504 E. Columbia Drive Kennewick	6000	\$ 0.53

**Opinion of Value - See attached**

		Square Footage	Monthly Rate	Annual Rate**	Annual Income
6/24/2015	Production Space, Loft, Storage*	7357	\$ 0.54	\$ 6.50	\$ 47,820.50
6/24/2015	Retail/Tasting Room	2200	\$ 1.33	\$ 16.00	\$ 35,200.00
	<b>TOTAL</b>	<b>9557</b>			<b>\$ 83,020.50</b>
	*shell only.				
	**lower end of range.				
<b>SUMMARY</b>					
	Annual Rate (83,020.50/9557)			\$ 8.69	
	Monthly Rate (8.69/12)		\$ 0.72		







## AGENDA REPORT

**TO:** Port Commission

**FROM:** Tim Arntzen, Executive Director

**MTG. DATE:** July 14, 2015

**AGENDA ITEM NO.:** Resolution 2015-16, First Addendum to the Interlocal Agreement with the City of Kennewick Related to the Columbia Gardens Wine Village, Phase 1

---

**I. REFERENCE(S):** Resolutions 2013-24 and 2015-16 attached.

**II. FISCAL IMPACT:** N/A.

**III. DISCUSSION:** The “Columbia Gardens” vision was codified in an Interlocal Agreement entered into between the Port and the City of Kennewick on November 5, 2013 (Resolution 2013-24). The vision is for the partners to jointly create a destination that includes a wine village featuring urban wineries, tasting rooms, shopping, and entertainment amenities which will draw residents and visitors to Kennewick’s historic waterfront. Over the past few years, port and city staff have been working cooperatively to implement the vision.

One of the key elements of the original Interlocal was for the city to construct an effluent treatment facility, which would be housed in a portion of the port’s building located at 211 East Columbia Drive. Since the adoption of the Interlocal, the parties have determined a more economical means of managing wastewater is available, which consists of in-ground tank(s) for storage and timed release of winery effluent. The effluent can then be discharged at appropriate times into the city sewer system for final treatment with other wastewater at the wastewater treatment plant. Another significant change since the Interlocal was adopted, is that the port has demolished the 421 building and is in the process of designing and constructing three new buildings on the former 421 site. Additionally, the port’s existing 211 building will not be necessary for housing the wastewater treatment system and can be repurposed for wine related activities.

The Addendum formalizes the new direction.

**IV. STAFF RECOMMENDATION:** Approve Resolution 2015-16, adopting the First Addendum to the Interlocal Agreement with the City of Kennewick Related to the Columbia Gardens Wine Village, Phase 1.

**V. ACTION REQUESTED OF COMMISSION:** *Motion: I move approval of Resolution 2015-16, adopting the First Addendum to the Interlocal Agreement with the City of Kennewick Related to the Columbia Gardens Wine Village, Phase 1.*

***PORT OF KENNEWICK***

**Resolution No. 2015-16**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK APPROVING THE FIRST ADDENDUM TO THE  
INTERLOCAL AGREEMENT WITH THE CITY OF KENNEWICK RELATED TO THE  
COLUMBIA GARDENS WINE VILLAGE, PHASE I***

**WHEREAS**, Resolution 2013-24 adopted an Interlocal Agreement between the Port and the City of Kennewick establishing a joint redevelopment strategy for the Columbia Gardens Wine Village, located in the City's the Bridge to Bridge redevelopment area; and

**WHEREAS**, the original Interlocal called for certain capital improvements to be made by each partner; and

**WHEREAS**, after discussion, planning and engineering between the parties, the parties have found better and more cost-effective methods of implementing the intent of the Interlocal Agreement; and

**WHEREAS**, the Port and the City recognize that incorporating design efficiencies into the joint vision through an Addendum to the Interlocal Agreement is in the best interests of the partners and the public.

**NOW THEREFORE, BE IT RESOLVED** that the Port of Kennewick Commission does hereby adopt the attached First Addendum to the Columbia Gardens Interlocal Agreement and instructs the Executive Director to take all action to implement the First Addendum.

**ADOPTED** by the Board of Commissioners of Port of Kennewick on the 14th day of July 2015.

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

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

By: \_\_\_\_\_  
SKIP NOVAKOVICH, *Vice President*

By: \_\_\_\_\_  
THOMAS MOAK, *Secretary*

**FIRST ADDENDUM TO  
CITY OF KENNEWICK AND PORT OF KENNEWICK  
INTERLOCAL AGREEMENT REGARDING  
COLUMBIA DRIVE ECONOMIC DEVELOPMENT  
COLUMBIA GARDENS-PHASE 1**

**1. AGREEMENT ADDENDUM.** This First Addendum (“1<sup>st</sup> Addendum”) to the Interlocal Agreement Regarding Columbia Drive Economic Development, Columbia Gardens - Phase 1 (“Agreement”) is between the Port of Kennewick (“Port”) and the City of Kennewick (“City”). The City and Port are Washington municipal corporations and each a “Party,” and collectively the “Parties,” to this 1<sup>st</sup> Addendum. The Parties agree as follows.

**2. RECITALS**

2.1 The Agreement became effective on November 5, 2013. Subsequently, the Parties have considered preliminary plans and designs for the Project Area, including the management of wastewater.

2.2 The Parties determined a more economical means of managing wastewater is available. The Port’s existing building at 211 Columbia Drive will not accommodate the installation of a City wastewater treatment system for the purpose of treating winery effluent. The Port has further determined that the building is not desirable for housing the wastewater treatment system and may be repurposed for other activities.

2.3 It is the purpose of this 1<sup>st</sup> Addendum to amend the Agreement to address wastewater management, extend the Agreement term, clarify the buildings to be constructed by the Port, and continue the City’s existing cap on investment under the Agreement.

2.4 Except as otherwise stated in this 1<sup>st</sup> Addendum, the Agreement remains in full force and effect.

**3. PORT BUILDINGS AND IMPROVEMENTS**

3.1 Section 3.1 Amended. Agreement Section 3.1 is amended to read as follows:

3.1 421 Building. The Port shall demolish the 421 Building.

3.2 Section 3.2 Amended. Agreement Section 3.2 is amended to read as follows:

3.2 New Buildings. The Port shall design, permit and construct three new buildings in proximity to and east of the former 421 Building. The total square footage of the new buildings shall be not less than 10,000 square feet. The new buildings shall be designed for wine-related activities, including wine production, storage, distribution and sales (including tasting room(s)). The Port shall commence construction of the buildings in coordination with the City’s construction of the Wine Effluent Treatment System. The



details of the three new buildings shall be outlined in a separate Memorandum of Understanding (MOU). The Port shall establish building rental rates as set forth on the rate sheet attached hereto as "Exhibit A". These rates shall remain in effect for five years from the date of this Agreement.

Section 3.3 Amended. Agreement Section 3.3 is amended to read as follows:

3.3 211 Building. The Port intends to make a future determination regarding the use of the 211 Building, following consultation with the City.

#### **4. WINERY EFFLUENT PROJECT**

4.1 Section 4.1 Amended. Agreement Section 4.1 is amended to read as follows:

4.1 Wastewater System Project. The original concept was to design and construct a facility to treat Total Suspended Solids (TSS), Biological Oxygen Demand (BOD), and pH chemicals on site. Upon further investigation and research, a determination was made that acidity treatment was the most critical treatment needed to prevent failure in the infrastructure, and if neutralized, the wastewater treatment plant is capable of managing the TSS and BOD effluent loadings. The City preferred approach, based upon treatment needs, was determined to be through use of in-ground tank(s) for storage and timed release of winery effluent that has only been treated for pH adjustment. The effluent can then be discharged at appropriate times into the City sewer system for final treatment with other wastewater at the wastewater treatment plant. The final determination of the method of wastewater treatment shall be at the discretion of the City.

4.2 Section 4.2 Amended. Agreement Section 4.2 is amended to read as follows:

4.2 City Local System. In cooperation with the Port, the City shall design, permit, install, own, operate and maintain winery effluent tank(s) with ancillary infrastructure for the local system sufficient to serve the Project Area. Ancillary infrastructure shall mean trunk lines leading from each tank(s) to the City sewer system. The local system shall have the capacity to treat wine production necessary for approximately 50,000 cases annually. Tank(s) shall be installed to provide sufficient capacity to the "Columbia Gardens" portion of the site (attached hereto as "Exhibit B") in coordination with the Port's construction of the three winery buildings. The details of the local system will be outlined in a separate MOU. The City shall establish a rate structure necessary to reasonably reimburse the City utility for capital costs, treatment costs of BOD & TSS, and maintenance and operation of the local system, on a reasonable and equitable basis consistent with RCW 35.67.020. The initial rate structure shall be as set forth in "Exhibit C" to this Agreement and will be indexed annually in January to reflect 100% of any change from the Consumer Price Index (U.S. Cities – Urban Wage Earners and Clerical Workers – CPI-W) for October, or other comparable index if not published to reflect the additional costs to maintain and operate the system. In no event shall the change in rates be less than zero percent nor more than four percent per year. The rate structure shall reflect a "general" discharge rate (which includes reimbursement for capital costs and maintenance and operations), and an

“incubator” discharge rate (which would reflect delaying the capital reimbursement portion). The incubator rate shall be available to any user purchasing or leasing property from the Port for a three-year period following said lease or sale. Upon the expiration of said three-year period, users shall pay the “general” rate established in “Exhibit C” and as increased based on Consumer Price Index (CPI) annually. These rates shall remain in effect for five years from the date of this Agreement. The Port will establish separate accounts for each winery to appropriately track usage for purposes of billing. Upon completion of the “Columbia Gardens” portion of the site, the City and Port will mutually evaluate the achievement of the desired outcomes and determine if any additional addendums would be appropriate to continue working in partnership to fulfill the vision and desired outcomes in the “Willows” and “Cable Greens” sites.

4.3 Section 4.3 Amended. Agreement Section 4.3 is amended to read as follows:

4.3 Financial Contingency. The City agrees to spend no more than \$800,000 for the completion of the effluent treatment vaults with ancillary infrastructure.

## **7. ADMINISTRATION**

7.1 Section 7.2 Amended. Agreement Section 7.2 is amended to read as follows:

7.2 Timeframes and Staffing for Processing and Review. In recognition of the importance of timely processing and review of permits, approvals and discretionary actions (“approvals”), the City agrees to work with the Port to establish time frames for processing and reviewing such further agreement(s) and approvals that may be necessary to further this Agreement. Furthermore, the City shall expedite all requests by the Port for approvals, if any. Unless this Agreement provides otherwise, improvements identified in Sections 3, 4 and 5 shall be completed by the respective parties no later than April 30, 2016. This date may be extended for time necessary to satisfy SEPA compliance or other unanticipated delays that are beyond the control of the Port or City.

7.3 Section 7.3 Amended. Agreement Section 7.3 is amended and adds a new subsection 7.3.2 to read as follows:

7.3 Cooperation And Implementation.

7.3.1 Upon satisfactory completion by Port of all required preliminary actions and payment of applicable processing fees, including the fee for processing this Agreement, the City shall commence and diligently process all required steps necessary for the implementation of this Agreement and development of the Project Area in accordance with the terms of this Agreement. Port shall, in a timely manner, provide the City with all documents, plans, fees and other information necessary for the City to carry out its processing obligations under this Agreement.

7.3.2 To further the objectives of the Columbia Drive Economic Development, the Port intends to sell all, or portions of, its property holdings in the Project Area (and

adjacent properties) to private entities. The Port may assign, transfer, sell or encumber all such property consistent with its statutory authority. Prior to any transfer, sell or assignment of property within the Project Area, the City and Port shall mutually enter into agreement regarding the successor or assignee rights and obligations under this Agreement.

## 8. GENERAL

8.8 Section 8.8 Amended. Agreement Section 8.8 is amended to read as follows:

8.8 Agreement Term. The term of the Agreement shall commence on its execution by both Parties and end December 31, 2025 ("Agreement Term").

*IN WITNESS WHEREOF*, the Parties have signed this 1<sup>st</sup> Addendum on the dates below shown.

### PORT OF KENNEWICK BOARD OF COMMISSIONERS

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

By: \_\_\_\_\_  
SKIP NOVAKOVICH, Vice President

By: \_\_\_\_\_  
THOMAS MOAK, Secretary

Date: \_\_\_\_\_

### CITY OF KENNEWICK

Attest:

\_\_\_\_\_  
STEVE YOUNG, Mayor

\_\_\_\_\_  
TERRI L. WRIGHT, City Clerk

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
LISA BEATON, City Attorney

## **EXHIBIT A**

### **COLUMBIA GARDENS WINE VILLAGE – PHASE I LEASE RATES**

Lease rates as approved by the Port of Kennewick Commission on Tuesday, July 14, 2015 for Phase I of the Columbia Gardens Wine Village shall be established at:

- An initial rate of \$0.65 - \$0.75 per square foot per month, plus applicable Washington State leasehold tax; and
- A not to exceed rate of \$1.00 per square foot per month plus applicable Washington State leasehold tax for a period of three years from execution of this Agreement.



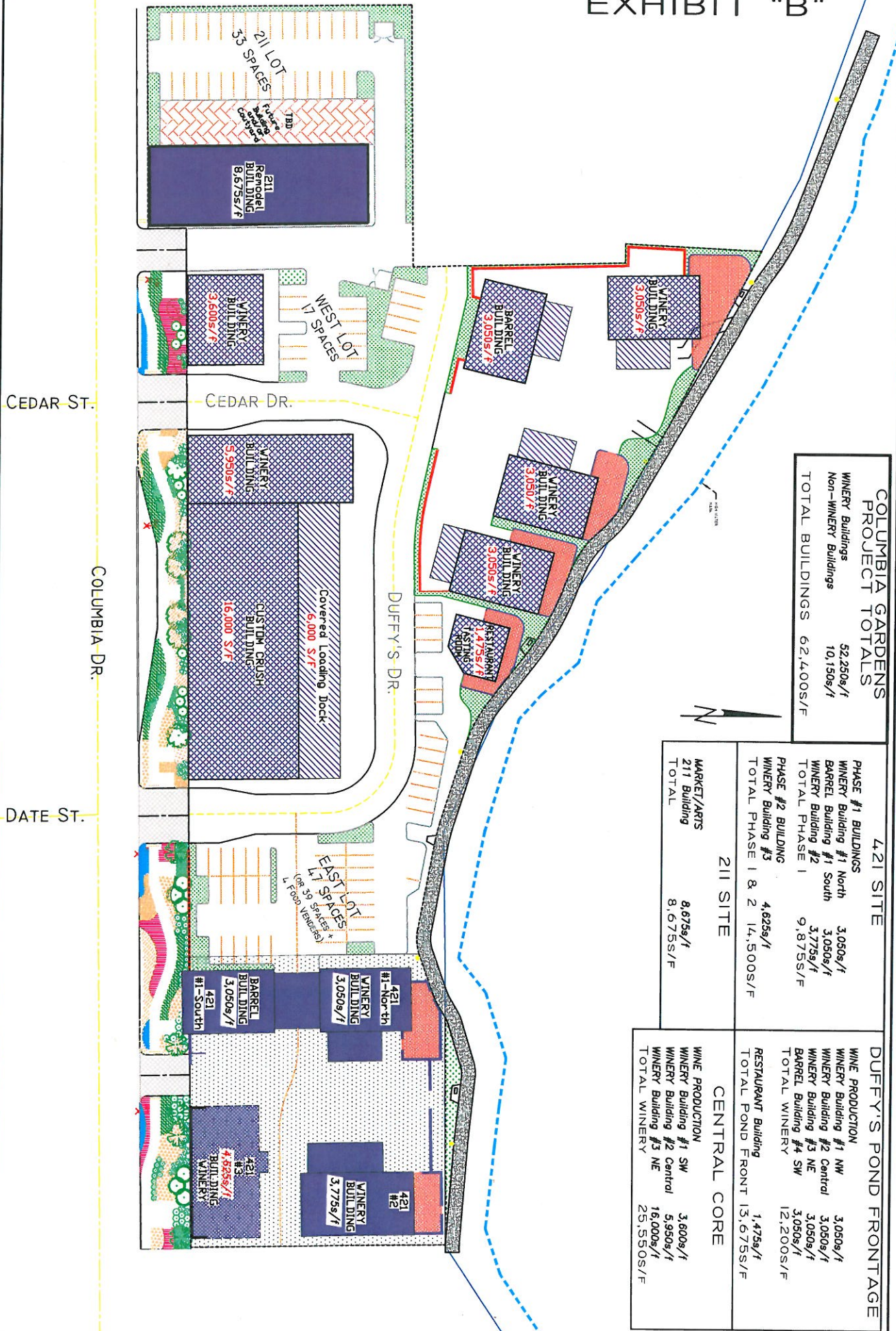
## EXHIBIT "B"

COLUMBIA GARDENS PROJECT TOTALS	52,250s/f
WINERY Buildings	10,150s/f
Non-WINERY Buildings	
TOTAL BUILDINGS	62,400s/f

4.21 SITE		DUFFY'S POND FRONTAGE	
<b>PHASE #1 BUILDINGS</b>		<b>WINE PRODUCTION</b>	
WINERY Building #1 North	3,050s/f	WINERY Building #1 NW	3,050s/f
BARREL Building #1 South	3,050s/f	WINERY Building #2 Central	3,050s/f
WINERY Building #2	3,775s/f	WINERY Building #3 NE	3,050s/f
TOTAL PHASE 1	9,875s/f	BARREL Building #4 SW	3,050s/f
<b>PHASE #2 BUILDING</b>		<b>TOTAL WINERY</b>	
WINERY Building #3	4,625s/f		12,200s/f
TOTAL PHASE 1 & 2	14,500s/f	<b>RESTAURANT Building</b>	1,475s/f
		TOTAL POND FRONT	13,675s/f

211 SITE	
MARKET/ARTS	8,675s/t
211 Building	
TOTAL	8,675S/F

CENTRAL CORE	
WINE PRODUCTION	
WINERY Building #1 SW	3,600s/f
WINERY Building #2 Central	5,350s/f
WINERY Building #3 NE	16,000s/f
TOTAL WINERY	25,550s/f



## Exhibit C – Pretreatment cost per bottle

### General Discharge Rate (following the first 3 years or property sold)

Cost per bottle including yearly M&O & capital recovery costs			
Surcharge per CES design calculations	\$1,613.00		\$0.02
M&O costs	\$9,158.54		\$0.05
Capital Recovery Costs	\$16,176.00		\$0.03
	\$/year	<b>\$26,947.54</b>	\$/bottle <b>\$0.10</b>

### Incubator Discharge Rate (for first 3 years of production)

Cost per bottle with subsidizing the capital recovery costs			
Surcharge per CES design calculations	\$1,613.00		\$0.02
M&O costs	\$9,158.54		\$0.05
	\$/year	<b>\$10,771.54</b>	\$/bottle <b>\$0.07</b>



# *PORT OF KENNEWICK*

## **Resolution No. 2013-24**

### **A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK APPROVING AN INTER-LOCAL AGREEMENT WITH THE CITY OF KENNEWICK RELATED TO THE COLUMBIA GARDENS WINE VILLAGE, PHASE I**

**WHEREAS**, on October 1, 2013, the Port of Kennewick Board of Commissioners and the City of Kennewick City Council met to discuss recommendations to advance progress related to the Columbia Gardens area of the Bridge-to-Bridge area located in the City of Kennewick; and

**WHEREAS**, there is public benefit in a comprehensive development strategy for Port property holdings located within the City, including properties in and around Port properties on Clover Island, adjacent to Columbia Drive. The properties are located in an area bordered by Clover Island on the north; North Washington Street/North Clover Island Drive to the west; Columbia Drive on the south; and North Elm Street (extended) to the east (the "Project Area"); and

**WHEREAS**, the Port's established development programs focus publicly-funded resources (including Port fiscal and staff resources) on Port real property holdings within the City limits. Those development programs require substantial public involvement to provide a foundation for further private and public investment to facilitate new development or redevelopment; and

**WHEREAS**, the Port and the City recognize that successful and timely redevelopment of the Project Area benefits the economic and social welfare of the City and the surrounding area, and represents an opportunity for the citizens of Kennewick. Collaboration and shared resources will best serve the public interest through leveraging the unique resources of each party. The Port and the City will work collaboratively in order to identify, evaluate and implement objectives in a timely and effective manner to assist redevelopment of the Project Area; and

**WHEREAS**, wineries have shown interest in facility development in the Project Area because of its central location, access and exposure.

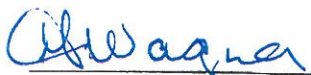
**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick adopts the attached Interlocal Agreement between the Port of Kennewick and City of Kennewick related to the Columbia Gardens Wine Village, Phase I, and instructs the Executive Director to take all action necessary to implement such Interlocal Agreement.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 22nd day of October, 2013.

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

By:   
SKIP NOVAKOVICH, President

By:   
DON BARNES, Vice President

By:   
GENE WAGNER, Secretary

**CITY OF KENNEWICK AND PORT OF KENNEWICK  
AGREEMENT REGARDING  
COLUMBIA DRIVE ECONOMIC DEVELOPMENT  
COLUMBIA GARDENS – PHASE 1**

1. **AGREEMENT.** This Agreement Regarding Columbia Drive Economic Development, Columbia Gardens – Phase 1 (“Agreement”) is between the Port of Kennewick (“Port”) and the City of Kennewick (“City”). The City and Port are Washington municipal corporations and each a “Party,” and collectively the “Parties,” to this Agreement. The Parties agree as follows.

2. **RECITALS**

2.1 Economic Development Authority. The City has express statutory authority to engage in economic development programs. RCW 35.21.703. And, the Legislature has specifically declared “the public purpose for all port districts to engage in economic development programs.” See RCW 53.08.245.

2.2 Project Area. There is public benefit in a comprehensive development strategy for certain Port real property holdings located within the City, including properties in and around Port properties on Clover Island, adjacent to Columbia Drive. The properties are located in an area bounded by Clover Island on the north; North Washington Street/North Clover Island Drive to the west; Columbia Drive on the south; and, North Elm Street (extended) to the east (the “Project Area”).

2.3 Development Programs and Opportunities. The Port’s established development programs focus publicly-funded resources (including Port fiscal and staff resources) on Port real property holdings within the City limits. Those development programs require substantial public involvement to provide a foundation for further private and public investment to facilitate new development or redevelopment.

2.4 Coordinated Resources. The Port and the City recognize that successful and timely redevelopment of the Project Area benefits the economic and social welfare of the City and the surrounding area and represents an opportunity for the citizens of Kennewick. Collaboration and shared resources will best serve the public interest through leveraging the unique resources of each Party. The Parties seek to work collaboratively in order to identify, evaluate and implement objectives in a timely and effective manner to assist redevelopment of the Port properties

2.5 Winery and Related Development. Wineries have shown interest in facility development in the Project Area because of its central location, access and exposure. The general depiction of the planned development and related improvements are set forth in Exhibit A, prepared for the Port by ISI Architecture (“Site Plan”).



2.6 Purpose and SEPA. The purpose of this Agreement is to provide a framework for the ongoing and integrated study and planning and development efforts of the Port and the City for redevelopment of the Port's properties and related economic development projects in the vicinity of the Project Area. The Port shall be the lead agency under the State Environmental Policy Act, Chapter 43.21C RCW ("SEPA") for any Port development projects in the Project Area. This Agreement shall not be construed as limiting actions or alternatives for development within the Project Area. The commitments in this Agreement are preliminary to and contingent upon SEPA compliance.

### **3. PORT BUILDINGS AND IMPROVEMENTS**

3.1 421 Building. The Port shall design, permit and construct improvements (renovation and retrofit) to the Port's existing building located in the Project Area at 421 Columbia Drive. The 421 Building improvements are to facilitate (if feasible), wine-related activities, including production, storage, distribution and sales (including tasting room), or other use compatible with development in the Project Area for wine-related commerce including but not limited to farmers' market and art-related business.

3.2 New Building. The Port shall design, permit and construct a new building in proximity to the 421 Building. The New Building shall be not less than 7,500 square feet. The New Building shall be designed for wine-related activities, including production, storage, distribution and sales (including tasting room).

3.3 211 Building. The Port, in coordination with the City, shall determine whether a portion of the Port's existing building at 211 Columbia Drive will accommodate the installation of a City wastewater treatment facility for the purpose of treating winery effluent. In any case the Port shall reserve an appropriate portion of the property for the City for installation of the treatment facility. Port intends to utilize the remaining portion of the building to house winery and/or farmers' market and art-related businesses.

3.4 Financial Contingency. The Port agrees to spend between \$1 and \$1.3 million on this Phase 1 of the Columbia Gardens project. If following Port improvements to the 421 Building and 211 Building, funding does not permit the construction of the new building described Section 3.2, the Port reserves the right to construct a smaller structure or to erect approximately 115 linear feet of wall along the frontage of 421 Columbia Drive to provide screening and security for the tenant of the 421 Building.

### **4. WINERY EFFLUENT PROJECT**

4.1 Bio-Treatment Project. Currently, the City wastewater treatment plant cannot accommodate untreated loadings from winery effluent. To remedy this situation, the City has contracted with ISI to determine what technology can be employed. ISI has concluded that one option for pre-treatment technology, known as a "Bio-Treatment" can pre-treat winery effluent, and after pre-treatment, the effluent could be discharged into the City sewer system for treatment

in common with other wastewater or other method. The final determination of the method of treatment shall be at the discretion of the City.

4.2 City Facility. The City shall design, permit and install a winery effluent treatment plant (the "Plant") with ancillary infrastructure sufficient to serve the project area. The Plant shall have capacity to treat wine production necessary for approximately 50,000 cases annually. The details of the effluent treatment plant and ancillary infrastructure will be outlined in a separate Memorandum of Understanding (MOU). The MOU will address the rate structure necessary to reimburse the City utility for capital costs and maintenance and operation of the facility.

4.3 Financial Contingency. The City agrees to spend no more than \$800,000 for the completion of the effluent treatment plant. The City's investment is contingent upon funding being available, if funding is not available the City reserves the right to construct a smaller capacity pre-treatment facility.

## **5. DEVELOPMENT ELEMENTS**

5.2 Extension of Nature Trail. The City shall extend the nature trail from its current start point in "cable greens" to the western border of the project Area abutting the "Isaacson's" parcel. The trail improvements are to include underground conduit crossings for future path lighting and decorative brick or pavers as determined by the City. Completion of the trail is contingent upon approval by the Corps of Engineers, and City securing appropriate easements.

5.3 Parking and Pads. The City shall pave approximately eighteen thousand (18,000) square feet of parking and driveway in an area that is agreed to between the City and Port and located on Port owned property. The details of the Parking shall be outlined in a separate MOU between the City and Port.

5.4 Monument Signage. The Port, with input from the City, shall design, construct, and maintain the monument signage features for the Project Area.

5.5 Street Scape. The City shall install high quality streetscape on the north side of East Columbia Drive. The starting point will be the eastern most boundary of Port-owned property at 421 East Columbia Drive and the terminus will be at the western-most boundary located at 211 East Columbia Drive. The details of the street scape section will be established in a separate MOU between the City and Port.

5.6 Financial Contingency. The City agrees to invest no more than \$500,000 for the completion of the development elements assigned to the City in Sections 5.2, 5.3 and 5.5 above. The City's investment is contingent upon funding being available, if funding is not available the City reserves the right to modify the scope of each development element.

5.7. The parties agree to work cooperatively to secure grant funding for projects identified within this interlocal.

## **6. LAND USE AND PLANNING**

6.1 Development Regulations. The City shall process such amendments to the City Code, including zoning and other development regulations for the Project Area to specifically allow the construction and operation of the Plant, and all wine-related business including, but not limited to, production, storage, sale and distribution, tasting and food service including use for farmers' market. Such amendments may include, but are not limited to text amendments, overlay zone or other changes.

### **6.2 Phased Development.**

The Parties recognize the substantial investment of resources by both Parties under this Agreement. It may be some time before the capacity of the Plant is reached. The Plant and supporting utility rates are best supported by full use of the Plant. As a result, the City and Port commit to concentrating their respective resources toward developing, promoting, marketing, and enhancing the Project Area for boutique wine production; and in order to foster a competitive advantage for this specific revitalization area, neither the City nor Port will fund construction of a wine effluent treatment system including but not limited to lift station, sewer lines, trunk lines, sewer connections, or utility infrastructure which competes directly with the Project Area until the Plant has reached capacity. This limitation shall not prevent the Port from participating in, selling, or leasing land and/or constructing development buildings related thereto in other areas of the Port district.

## **7. ADMINISTRATION**

7.1 General. Following SEPA review, the City shall promptly process all necessary zoning and building approvals for the development in the Project Area. The City shall expedite processing, review, and approval of all short plat, binding site plan, boundary line adjustment, building permit and all other land use, planning, and site reconfiguration applications relative to the Project Area. The Port and the City will explore options to create development predictability and incentives to further attract private investment within the Project Area.

7.2 Timeframes and Staffing for Processing and Review. In recognition of the importance of timely processing and review of permits, approvals and discretionary actions ("approvals"), the City agrees to work with the Port to establish time frames for processing and reviewing such further agreement(s) and approvals that may be necessary to further this Agreement. Furthermore, the City shall expedite all requests by the Port for approvals, if any. Improvements identified in Sections 3, 4 and 5 shall be completed by the respective parties no later than April 30, 2015. This date may be extended for time necessary to satisfy SEPA compliance or other unanticipated delays that are beyond the control of the Port or City.

7.3 Cooperation And Implementation. Upon satisfactory completion by Port of all required preliminary actions and payment of applicable processing fees, including the fee for processing this Agreement, the City shall commence and diligently process all required steps necessary for the implementation of this Agreement and development of the Project Area in accordance with the terms of this Agreement. Port shall, in a timely manner, provide the City with all documents, plans, fees and other information necessary for the City to carry out its processing obligations under this Agreement.

7.4 Cooperation In The Event Of Legal Challenge. In the event of any judicial or administrative action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties shall affirmatively cooperate in defending said action.

7.5 Operating Agreement. The provisions of this Agreement require a close degree of cooperation between the City and Port. During the Agreement Term, clarifications to this Agreement may be appropriate from time to time with respect to the details of performance of the City and Port. When necessary or appropriate, the Parties shall provide for such clarification through operating memoranda approved in writing by the City and Port. After execution by both Parties, each operating memoranda shall be attached hereto and become part of this Agreement and the same may be further clarified from time to time as necessary with future written approval by the City and Port. Operating memoranda are not intended to and cannot constitute an amendment to this Agreement or allow a subsequent Discretionary Action but are ministerial clarifications, therefore no additional process is contemplated. The City Manager and Port Executive Director shall be authorized to determine whether a requested clarification may be effectuated pursuant to this Section 7.5; or whether the requested clarification is of such character as to require an amendment to the Agreement. The authority to enter into such operating memoranda is hereby delegated to the City Manager and Port Executive Director, who are hereby authorized to execute any operating memoranda hereunder without further approval.

7.6 Staffing. To the extent necessary, the Port and the City will make the best efforts to provide staff and financial resources as necessary to accomplish the purposes of this Agreement. The Port and the City anticipate using existing staff, augmented by outside consultants, to accomplish the purposes of this Agreement.

7.7 Cooperation with Regulatory Agencies. The Port and the City will cooperate and support one another's efforts with regulatory agencies to accommodate the development and redevelopment efforts in the Project Area.

7.8 Document Review. The Parties shall further cooperate by sharing all relevant information, including planning, financial and environmental documents, to the extent allowed by law.

## **8. GENERAL**

8.1 Additional Acts. The Port and the City recognize and expect that additional acts will be required to achieve the intent of this Agreement. Therefore, to the extent authorized by law, the Port and the City commit to take whatever additional acts that may be reasonably required to achieve the purposes of this Agreement.

8.2 Neutral Authorship. Each provision of this Agreement has been reviewed and negotiated, and represents the combined work product of the Port and the City. No presumption or other rules of construction that would interpret the provisions of this Agreement in favor of or against the Port or the City shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

8.3 Amendment. This Agreement shall not be altered or varied except in writing signed by each Party.

8.4 No Third Party Interest. It is the intent of the parties that this Agreement is for the benefit of the Port of Kennewick and the City of Kennewick as public entities and that no third party interest is created hereby.

8.5 Governing Law. Each of the Parties have independent authority to contract; and, this Agreement is pursuant to that authority and not under Chapters 39.33 or 39.34 RCW. This Agreement shall be deemed to have been made in and shall be construed under the laws of the State of Washington.

8.6 Venue. The venue for any action arising out of this Agreement shall be the Superior Court for Benton County.

8.7 Non Waiver. Nothing in this Agreement and no actions taken pursuant to this Agreement shall constitute a waiver or surrender of any rights, remedies, claims or causes of action a Party may have against the other Party or others under any provision of this Agreement or any provision of law.

8.8 Agreement Term. The term of Agreement shall commence on its execution by both Parties and end December 31, 2015 ("Agreement Term").

8.9 Termination. Either Party may terminate this Agreement prior to the end of the Agreement Term, by giving written notice to the other Party at least six (6) months prior to the date of termination.

## **9. EXECUTION AND APPROVAL**

9.1 Warranty of Authority. Each Party to this Agreement warrants that it has the authority to enter into this Agreement.



*IN WITNESS WHEREOF*, the Board of Commissioners signed this Agreement this 22nd day of October, 2013.

By: Gene Wagner  
GENE WAGNER, Secretary

  
LISA BEATON, City Attorney

## **EXHIBIT A (Site Plan)**

Includes:

Map of Port-Owned Property on Columbia Drive  
Integrated Structures Incorporated (ISI) Schematics for:  
Willows Wine Village & Columbia Gardens



**Port of Kennewick  
Owned Properties**





THE WILLOWS WINE VILLAGE  
schematic plan



THE WILLOWS WINE VILLAGE  
perspective

### WILLOWS WINE VILLAGE legend



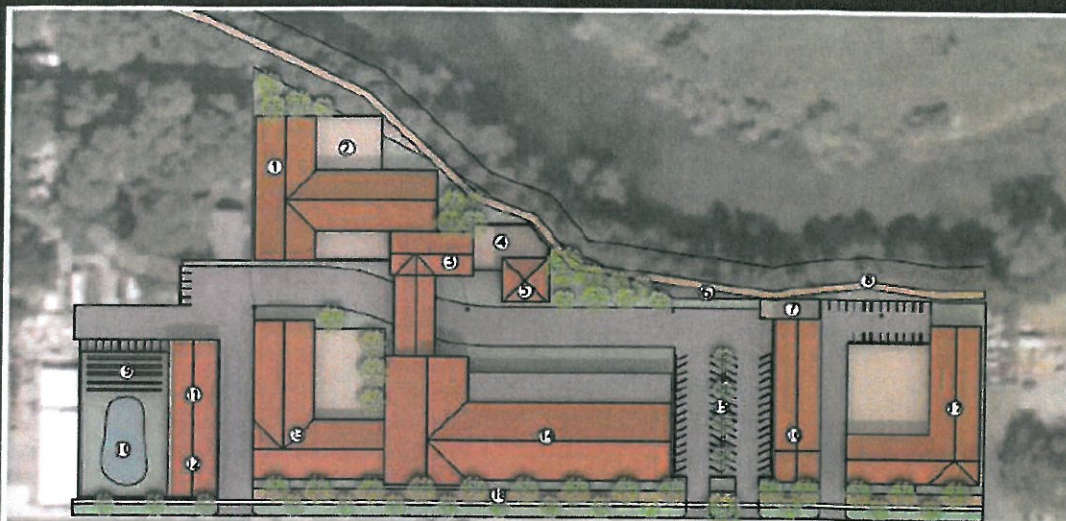
- 1 Heritage Trail Bike Shop & Cafe
- 2 Gated Resident Parking
- 3 Retail Anchor, Accessible Parking
- 4 Residential - Living Above Retail 35,600 sqft
- 5 Retail Anchor
- 6 Restaurant - Rooftop Terrace 2000 sqft
- 7 Main Retail Parking - 110 Spaces

- 8 Public Square
- 9 Ground Floor Retail 27,000 sqft
- 10 Food Court - Market of Many Shops
- 11 5 Wine Incubators, Offices, Tasting Rooms 10,000 sqft
- 12 Winery Incubator Parking - 60 Spaces
- 13 Winery Incubator Courtyards
- 14 Tasting Room Courtyards, Access to Offices

- 15 Restaurant & Trail Shop Parking - 25 Spaces
- 16 Accessible Green
- 17 Nature Trail







**Columbia Gardens**  
WINE BUSINESS PARK  
schematic plan



**Columbia Gardens**  
WINE BUSINESS PARK  
perspective

**WINE BUSINESS PARK  
LEGEND**

**Columbia Gardens**



- |  |   |  |
|--|---|--|
| 1 50,000 case / yr winery                            | 7 Tasting Courtyard                             | 13 50,000 case / year Winery   |
| 2 Tasting Courtyard                                  | 8 Nature Trail                                  | 14 WINE WORKS: Two 50,000 case / year<br>Variable Configuration Wineries |
| 3 Wine Professional<br>Offices                       | 9 Demonstration Vineyard                        | 15 Parking -- 65 cars  |
| 4 Tasting Courtyard                                  | 10 Constructed Wetland /<br>Winery Waste Polish | 16 Phase bldg / Adaptive Reuse Phase 1:<br>18,000 case / yr Winery       |
| 5 Cluster of Tasting Rooms /<br>Professional Offices | 11 Winery Waste Treatment                       | 17 Adaptive Reuse Phase 2:<br>32,000 case / yr Winery                    |
| 6 Nature Trail Access                                | 12 Education Center /<br>Open Leasable Space    | 18 36' Deep Greenway Along<br>Columbia Drive                             |







## AGENDA REPORT

**TO:** Port Commission

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

**MEETING DATE:** July 14, 2015

**AGENDA ITEM:** Resolution 2015-17 Clover Island Boat Launch Facility

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**I. REFERENCE(S):** Resolution 2015-17;  
Bid Tabulation from JF Engineering dated July 10, 2015.

**II. FISCAL IMPACT:** \$ \_\_\_\_\_ plus Washington State Sales Tax.

**III. DISCUSSION:** The Port's 2015 Work Plan and 2015-2016 Biennial Budget include funds for the repair/replacement of the Clover Island Boat Ramp and construction of upland parking lot and bathroom improvements. The project includes construction of bathroom facilities, paved trailer parking areas, a handicap parking space, landscaping, artwork and lighting improvements to the existing Clover Island Boat Launch facility. This project is funded in part with the assistance of a grant from the Washington State Recreation and Conservation Office. This project excludes planned in-water work to reconstruct the ramp.

The Port properly advertised this project for bid and received (3) three bids before the 2:00 p.m. July 9, 2015 deadline. Although the bids received exceed the engineers estimate by 17-20%, all three bids range 2% from low to high, which indicates the plans and specifications had sufficient detail to assure the Port the true and realistic cost of the project is reflected in the bids received.

Upon opening the bids, an informality with the apparent low bid received from Booth & Sons Construction relating to a letter of qualifications was discovered. The Port Attorney will explain and discuss the informality with the apparent low bid from Booth & Sons Construction, Inc. and the potential implications prior to Commission consideration.

Review and acceptance of this bid by the Commission is required prior to proceeding with this project. The motion included in this report and the attached resolution would effectively authorize this project and the specific firm and cost would be inserted in the document following discussion with Port Counsel and prior to the official Commission decision.

**IV. ACTION REQUESTED OF COMMISSION:**

**Motion:** I move approval of Resolution 2015-17 authorizing the Port's Executive Director to execute the contract with \_\_\_\_\_ for the construction of improvements to the Clover Island Boat Launch facility for the sum of \$ \_\_\_\_\_, plus applicable tax.

**PORT OF KENNEWICK**

**Resolution No. 2015-17**

**A RESOLUTION OF THE PORT OF KENNEWICK BOARD OF COMMISSIONERS  
ACCEPTING AND AWARDED A BUILDING CONSTRUCTION CONTRACT FOR  
THE CLOVER ISLAND BOAT RAMP LAUNCH FACILITY**

**WHEREAS**, a request for bids for the construction of improvements to the Clover Island Boat Launch Facility was properly advertised with the approved plans and specifications being made available to prospective bidders, and

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

**WHEREAS**, the staff and the project engineer have certified that the low responsive bidder for the project is \_\_\_\_\_ in the amount of \_\_\_\_\_, excluding applicable sales tax.

**NOW THEREFORE, BE IT RESOLVED** that the Port of Kennewick Commission does hereby accept the bid by \_\_\_\_\_ to construct improvements to the Clover Island Boat Launch Facility as the low bidder in the amount of \$\_\_\_\_\_, plus applicable tax, and hereby awards the construction contract to said low bidder.

**BE IT HEREBY FURTHER RESOLVED** that the Executive Director is authorized to enter into a contract between the Port of Kennewick and \_\_\_\_\_ for the construction of improvements to the Clover Island Boat Launch Facility. The Executive Director is further authorized to proceed with all necessary procedures required to complete work of the project.

**ADOPTED** by the Board of Commissioners of Port of Kennewick on the 14th day of July 2015.

**PORT OF KENNEWICK  
BOARD OF COMMISSIONERS**

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

By: \_\_\_\_\_  
SKIP NOVAKOVICH, *Vice President*

By: \_\_\_\_\_  
THOMAS MOAK, *Secretary*

## Tabulated Bid Results



Company	Qualifications of bidder	Add. Acknowledged?	Bid Security?	Anti-Collusion Form?	Anti-Descrip. Form?	Signed Bid Form?	Bid Total, not including tax	Result
Booth & Sons Construction Inc.	No	Yes	Yes	Yes	Yes	Yes	\$ 719,000.00	Apparent low
Banlin Construction, LLC	Yes	Yes	Yes	Yes	Yes	Yes	\$ 730,000.00	
Industrial Constructors, Inc	Yes	Yes	Yes	Yes	Yes	Yes	\$ 733,400.00	

Dated: 7/10/15 @ 9:45am