

AGENDA

*Port of Kennewick
Special Commission Business Meeting
Tri-Cities Business & Visitor Center
Bechtel Board Room
7130 W. Grandridge Boulevard
Kennewick, Washington
Tuesday, August 13, 2019
2:00 p.m.*

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. APPROVAL OF AGENDA

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

V. CONSENT AGENDA

- A. Approval of Direct Deposit and ePayments Dated August 2, 2019
- B. Approval of Warrant Register Dated August 13, 2019
- C. Approval of Regular Commission Business Meeting Minutes July 9, 2019
- D. Approval of Special Commission Business Meeting Minutes July 30, 2019

VI. REPORTS, COMMENTS AND DISCUSSION ITEMS

- A. Vista Field Update (**LARRY/TIM**)
 - 1. City of Kennewick Proposed Amendment to the Comprehensive Plan Comments (**LARRY**)
- B. Columbia Drive Update (**LARRY**)
- C. Southridge Update
 - 1. Auction Services Request for Proposals; Resolution 2019-15 (**AMBER**)
- D. City of West Richland Update (**AMBER**)
- E. Executive Training Update (**TIM**)
- F. Appointment of CEO Evaluation Committee Members; Resolution 2019-16 (**LUCY/NICK**)
- G. Commissioner Meetings (formal and informal meetings with groups or individuals)
- H. Non-Scheduled Items

VII. NEW BUSINESS

- A. Citizen Complaint (**LUCY**)

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

IX. ADJOURNMENT

PLEASE SILENCE CELL PHONES



PORT OF KENNEWICK REGULAR COMMISSION MEETING

DRAFT

JULY 9, 2019 MINUTES

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

The following were present:

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

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

PLEDGE OF ALLEGIANCE

Commissioner Moak led the Pledge of Allegiance.

APPROVAL OF THE AGENDA

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

PUBLIC COMMENT

No comments were made.

CONSENT AGENDA

A. *Approval of Direct Deposit and E-Payments Dated July 2, 2019*

Direct Deposit and E-Payments totaling \$78,668.53

B. *Approval of Warrant Register Dated July 9, 2019*

Expense Fund Voucher Number 101228 through 101251 for a grand total of \$402,495.78

C. *Approval of Regular Commission Business Meeting Minutes June 25, 2019*

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

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PRESENTATIONS

A. *Friends of Badger Mountain*

Ms. Bader Inglima introduced Friends of Badger Mountain, David Comstock and David Beach, who are here today to update the Commission on the future of Badger Mountain. In 2015, the Port, Benton County, and the City of Richland partnered to construct the Badger Mountain Trailhead parking off Queensgate Drive, which has increased activity on Badger Mountain and alleviated congestion in the neighborhood.

David Comstock is the project manager for Friends of Badger Mountain and is accompanied by David Beach, Vice President of the Friends of Badger Mountain Board (FOBM). Mr. Comstock presented the overall plan for the next decade plan for FOBM.

- Little Badger Mountain Regional Preserve Project:
 - Extend trail to the highest point in Richland;
 - City Master Plan/Design 2020;
 - Port Partnership 2021 - \$200,000.
- East End Little Badger Mountain, Falcon Crest Trailhead parking:
 - City Master Plan/Design 2022;
 - Port Partnership 2023 - \$150,000;
 - Canal Crossing and trailhead parking City Master Plan/Design 2024;
 - Port Partnership 2025 - \$150,000.
- Candy Mountain Preserve (partnership with City of West Richland and Benton County);
 - Agreement with Land Owners, 2023;
 - Application for Washington State RCO Matching grant, 2024;
 - Community fund raising for match and land acquisition, 2025-2026;
 - Master plan and trailhead parking design, 2026;
 - Build Candy Mountain North Trailhead Park Port partnership 2027 - \$150,000.

The FOBM continues with the Ridge Preservation campaign, which improves the quality of life preserves the habitat, and assists with economic growth in the area. In the next decade, FOBM would like to connect to the Amon Preserve, Candy Mountain Preserve and eventually extend the trail to Red Mountain.

Commissioner Novakovich inquired how hikers cross the major arterials.

Mr. Comstock stated at this time, people cross at a set intersection with crossing lights; however, in 2019, Benton County received a Department of Transportation grant to add a paved pedestrian path along Dallas Road, to officially connect the Badger Mountain Preserve to the Candy Mountain Preserve. In addition to the paved path, a flashing cross walk will also be installed in that location.

Commissioner Novakovich congratulated FOBM on working with multiple partners and confirmed that they are requesting \$500,000 in funds from the Port through 2025.

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Commissioner Moak appreciates the vision and the logistical organization of the plan; he was not aware of how much planning went into the system. Commissioner Moak stated the funds request would be over the course of several biennium budgets for the Port.

Commissioner Barnes looks forward to seeing the Port work with FOBM in the future and stated it is a mutually beneficial partnership.

Commissioner Moak confirmed that the first ask is for \$200,000 in 2021.

Ms. Bader Inglima stated Mr. Arntzen is working with the Ben Floyd of White Bluffs Consulting and the City of Richland on a next decade plan that identifies priority projects. Ms. Bader Inglima encouraged FOBM to be advocating for the partnerships with the City, where they might become part of the next decade plan with City.

Mr. Comstock stated the FOBM needs partners to complete the projects and gave the same presentation to the Richland City Council.

Mr. Arntzen and Mr. Floyd have met with the city manager and key staff to develop a next decade plan that outlines short, medium and long term projects. The objective is to work on a number of options to bring to the City Council and Commission for review. Mr. Arntzen would like Mr. Floyd to include FOBM project on the next agenda with the City. There are three options to consider:

- The project would need to be a priority with the Port and City to be included in the next decade plan;
- The Commission could review the current budget and partner with the FOBM; or
- Port staff could include the FOBM project in the 2021-2022 Work Plan and Budget.

Mr. Arntzen will work with Mr. Floyd and the City to see if the FOBM would fit within our next decade plan. Furthermore, the Port offered a route through the former racetrack property and that offer is still valid.

Commissioner Moak thanked FOBM for their very thorough presentation.

B. Arts Research, Barb Carter, Port's Art Liaison

Ms. Bader Inglima stated in April, Julian Chavez, a student artist/muralist made a presentation to the Commission on a public graffiti wall. Ms. Bader Inglima introduced Barb Carter, Port Art liaison, who is here today to discuss her research on public graffiti walls.

Ms. Carter stated this was a fascinating and challenging project and stated the graffiti wall at Wynwood is most commonly referenced by the Port and DPZ Partners; however, the wall is privately owned by Goldman properties. Artists who paint at Wynwood must submit a proposal, which needs to be approved by Goldman before the mural is installed. Additionally, most of the murals are on privately owned buildings. Ms. Carter stated a free wall is a wall space that is open to the public for artistic expression, most commonly with paint. Because they are open to anyone, art on "free walls" are often quickly covered with new graffiti which showcases

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frequently updated content. Ms. Carter was surprised to find that most “free walls” fail because the organization fails to establish rules of operations and the artists misuse the opportunity by painting on adjacent property, fail to dispose of materials, and lack of community support. Ms. Carter stated Portland Street Alliance commissioned a study on free walls and they agreed to share their findings with the Port. Ms. Carter provided a brief summary from the draft report;

- Designate an organization to provide oversight, laws too onerous for public entities to manage directly;
- Create a positive, safe and inclusive atmosphere that encourages artist use and public visitation;
- Develop standards to guide behavior and set expectations for artists and visitors;
- Establish a budget and secure ongoing funding for implementation and operation;
- Establish policies for access to the free wall in terms of hours of operations, registration and permitting; and
- Establish a waste management plan.

Ms. Carter stated although there aren't any local active arts groups interested in leading the efforts, Brooke Yount and Mike Berg, who own You and I Framing have offered to work with Julian Chavez on a pilot temporary graffiti wall. The Kennewick Arts Commission (KAC) is supportive of the legal wall concept and are considering how to assist. Furthermore, the Creative Arts District team is considering how to include mural projects in their application to ArtsWa. Ms. Young and Mr. Berg have allocated 20 feet of wall located behind their framing store and offered supplies to help Julian Chavez and his friends. The intent is for the mural to be changed approximately every 30 days to feature a new artist/mural. Ms. Yount and Mr. Chavez will work on rules of operation and if successful, there is additional wall space that can be added. Ms. Carter believes there is movement in the community for mural art and with the Port's investment in the Latino Heritage mural was an impetus to make that happen.

Commissioner Novakovich asked when Mr. Chavez will start the mural.

Ms. Carter stated once Ms. Yount approves his preliminary design. Ms. Carter stated Ms. Yount intends to write a press release at the start of work and at completion.

Commissioner Barnes stated 30 days seems like a short window for the mural process.

Ms. Carter stated Mr. Chavez thought 30 days would keep the wall fresh and updated. Also, Ms. Yount and Mr. Chavez may not prime the wall in between murals, so that previous work shows through.

Ms. Bader Inglima thanked the Commission for letting Mr. Chavez come in and present on the graffiti walls and challenging Ms. Carter to explore the free walls which stimulated conversation with KAC and Ms. Yount.

Commissioner Moak think it's excellent that You and I Framing want to be the organizer for this project and are offering their building.

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Ms. Carter stated they would like it to remain private so they have control of what goes on the building.

Commissioner Novakovich inquired if the Portland Street Alliance will share their final report with us.

Ms. Carter believes they will share the final report; however, there may be different laws because it is Oregon.

C. 2019 – 2020 Budget Update

Mr. Kooiker stated this is a follow up presentation to Commissioner Barnes' request for a budget update. Mr. Kooiker encouraged the Commission and/or public to contact him, if they would like to discuss the budget; he has an open door policy and would be happy to set aside time for questions.

Mr. Kooiker stated outside factors, such as unemployment and yield curve inversion affect the Port's budget. Additionally the Port follows Resolution 2018-27, which outlines the Port's Budget Philosophy. Currently, some considerations to factor into the budget are:

- Fund Balance: \$10,179,109 as of June 30, 2019
- Capital Project Cash Outlays: larger outlays began in April for the Tasting Room and Vista Field;
- The Port has not taken a draw on the \$5,000,000 Vista Field Loan;
- The Port is currently only 25% through the two-year budget cycle;
- The Port needs a contingency plan to cover any shortfall for the 1135 Project;
- Staffing and resources could be an issue for Vista Field;
- The Port has yet to pay \$250,000 to the City for upsizing the waterline at Vista Field;
- The Citizen Complaint has cost approximately \$30,000 to date.

The Port Commission established a Budget Philosophy, Resolution 2018-27, which guides staff:

- Acknowledge the Port's limited staff and financial resources;
- Incur debt only when:
 - It is fundamentally sustainable;
 - Meets cost and risk objectives;
 - Can withstand economic uncertainties;
 - Identify restrictions on use;
- Focus on long-term financial planning;
- Provide the public with high quality projects and services within a healthy work environment.

For the Operating Division, the Port has collected approximately \$771,000 or 33% of its revenue and expended \$1,036,408 or 20% of expenditures, and this does not include Vista Field or shoreline maintenance.

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For the Non-Operating Division, the Port has collected approximately \$4,967,778 or 29% of its revenues and expended \$409,746 or 13% of its expenditures, which does not include the vibrancy funds.

Mr. Kooiker outlined the 2019-2020 capital projects.

PROJECT	BUDGET	19/20 ACTUAL	REMAINING
Shoreline Restoration	\$ 1,500,000	\$ 730	\$ 1,499,270
Clover Island Master Plan	\$ 175,000	\$ -	\$ 175,000
Vista Field Redevelopment	\$ 7,834,314	\$ 923,728	\$ 6,910,586
Vista Field Traffic Impacts, Owners Association & Town Planner	\$ 335,000	\$ 2,961	\$ 332,039
Vista Field Loan Payments	\$ 500,000	\$ -	\$ 500,000
Columbia Drive	\$ 2,406,165	\$ 255,053	\$ 2,151,112
West Richland	\$ 100,000	\$ -	\$ 100,000
ROI Project	\$ 700,000	\$ -	\$ 700,000

Mr. Arntzen is drafting a Memorandum of Understanding (MOU) between the Port and City of Kennewick, which outlines the process we would propose for the hangar remodel. The Port would request \$1,500,000 of the City's allocation of Rural Capital County Funding (RCCF). Mr. Arntzen believes the Port's level of funding would be approximately \$700,000 and would apply for an additional \$700,000 in RCCF funds jointly. The remaining balance would come from the auction of the Southridge property. If the Port and City are successful in their joint RCCF applications, there would be approximately \$4,000,000 available for the hangar remodel. Mr. Arntzen stated the philosophy for hangar remodel is not reflected in the number; however, he wanted the Commission to have a chance to confirm that this is the direction the Board would like to take.

Mr. Kooiker stated the Port has accumulated \$1,918,552 of Benton County RCCF funds, and has been reimbursed \$481,353. The Port has committed \$500,000 for Columbia Basin College's Culinary Arts Institute and \$800,000 for the City of Richland improvements at Island View.

Mr. Arntzen stated staff is attempting to identify projects that would be worthy of the Port's RCCF allocation, because there is no guarantee to how long the funding will be available.

Commissioner Barnes stated Mr. Arntzen made a presentation to the Benton County Commissioners and received feedback from Commissioner Beaver regarding the RCCF fund and it is important to keep in mind that these are the County's funds before they officially approve any jurisdiction's application.

Mr. Arntzen stated later in the meeting, staff will discuss an MOU with Benton County that relates to the RCCF funding. As Commissioner Barnes referenced, Commissioner Beaver had strong feelings regarding RCCF funds and offered his thoughts that Benton County needed the

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funding as well, not just the jurisdictional partners. The County appreciates partners as well and the Port has the opportunity to reinvest some of our resources to Benton County. If the Port treats Benton County as true partner, our ability might be enhanced, both ways.

Mr. Arntzen extended individual invitations to the Commissioners that if they would like to discuss the budget at length to set up an appointment with Mr. Kooiker.

Commissioner Novakovich appreciates the budget update and thanked Mr. Kooiker.

Commissioner Barnes appreciates the budget update and thanked Mr. Kooiker for his work on the presentation. Mr. Kooiker mentioned that the Port has a pretty conservative budget and Commissioner Barnes emphasized that fact, and stated the budget for operating loss is almost \$3,000,000, and the Port is well ahead of that budget. The benchmark is about 25% and if things continue as they have been for the past six months, the loss for the two-year budget period will be approximately \$1,000,000, while we have budgeted \$3,000,000. The economy can have a tremendous impact on our finances; however, Commissioner Barnes emphasized that this is a very conservative budget approach and although the Port has been criticized in the past, the Commission is aware that it is very conservative and it is conservative for good reasons.

Commissioner Moak appreciates the understanding that the benchmark of the presentation is 25%; however, that is not necessarily how things will proceed and there are a lot of projects over the next 18 months. Commissioner Moak asked what contingencies have been set for the Columbia Gardens Tasting Room and Vista Field.

Mr. Peterson stated the Tasting Room has a 15% contingency fee and Vista Field has about a 17% contingency fee.

Commissioner Moak thanked Mr. Kooiker for the update. He would like to have another update in six months, to see if the Commission needs to make any decisions for second half of the biennium.

REPORTS, COMMENTS AND DISCUSSION ITEMS

A. Columbia Drive Update

Mr. Peterson reported that the slab for the tasting room has been poured and is curing. Over the next few weeks, the steel that houses the mechanical systems will be installed and then framing will begin in late July. The parking lot has been graded and the contractor anticipates paving the lot in late August.

B. Vista Field Update

Mr. Peterson stated over the past two months, water, sewer, and storm drainage has been installed and the City will inspect and approve each storm drainage system. In the upcoming weeks, Total Site Services (TSS) will be grading the site and installing the curbs. TSS is working with the City on the final scheduling to shut down West Deschutes Avenue for three weeks to modify the street into a three-way intersection and install the roadway through the corporate hangars.

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1. Commissioner Tours - August

Mr. Arntzen invited the Commissioners to tour Vista Field individually with Mr. Peterson in August. Please email Ms. Scott or Mr. Arntzen to schedule a tour.

C. Benton County Memorandum of Understanding

Mr. Arntzen has been working with County Administrator David Sparks on a draft MOU regarding the Benton County fairgrounds. The Port has 93 acres at the former raceway in West Richland and a large quantity of agricultural water rights pertinent to property. The Master Plan defined the property as light industrial to support the businesses on Red Mountain and the water rights may not be of value on that site as it develops. The State has the authority to take back the water rights if the Port does not use them, therefore the Port is working with Benton County to transfer some water rights to the fairground through a legal process. Benton County would like to use the water rights for the horse stables, dust control, etc. The Port has approximately 185 acre feet of water rights and Benton County is requesting up to 60 acre feet. Water rights are a valuable commodity and can run anywhere between \$3,000 and \$6,000 per acre foot. If the Port were to sell the water rights to Benton County, it could be between \$153,000 to \$300,000; however, the MOU proposes that the Port transfer the water rights at no cost, but the County will pay administrative costs associated with that transfer. Mr. Arntzen stated that Benton County has been very helpful to the Port and provided \$500,000 for Vista Field Phase 1 infrastructure from their own funds. Mr. Arntzen believes Benton County has been an excellent partner to the Port and this is a way that the Port can assist Benton County and benefit our Port district residents. Mr. Arntzen understands this is a large contribution to the County, but he believes it would be greatly appreciated; however, this is a policy question for the Commission and inquired if the Commission had any questions for staff.

Commissioner Barnes inquired where someone would find the market rate for water rates and surmised it was something consultants would know.

Mr. Arntzen stated the Port has been working with Ben Floyd of White Bluffs Consulting, who has been working with Darryl Olsen of the Benton County Water Conservancy Board, who is regarded as an expert in water rights transfers. If the Port were to transfer the water rights to the County, Mr. Arntzen believes it would be acceptable to request the water rights be valued at the higher range.

Commissioner Barnes inquired if the approximate value would be part of the MOU with the County.

Mr. Arntzen spoke to Mr. Sparks about using the higher rate; the County feels that valuing the water rights at \$6,000 would be fair and market driven.

Mr. Peterson stated the value is also determined by the water resource district, where the water is going, and what it is used for.

Commissioner Barnes confirmed that water from the former raceway is from a well and inquired if there are farming operations that use the water.

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Mr. Arntzen stated the water is from a well and the Port contracts with a farmer to use a majority of the water rights; however, the Department of Ecology has reviewed the transaction and there is an agreement that the Port preserves the bulk of the water for farming. The Port will need to negotiate with the farmer to back out some of the water rights. Should this transaction be approved by the Commission, the Port still has much of the 185 acre feet remaining. Through this process Mr. Peterson has been learning about the process and the Port could apply for water rights transfer to Vista Field. The former raceway's Master Plan calls for light industrial and the Port would reserve enough rights to meet those obligations. Mr. Arntzen reviewed the MOU and estimated the County's administrative costs to be \$10,000. Mr. Arntzen stated the County is appreciative of this partnership opportunity.

Commissioner Moak inquired if there are any uses, other than light industrial, that would require more water rights than what we have.

Mr. Peterson stated the well produces a good volume, but is high in nitrates. The water is for agriculture or landscape purposes only and it is not something that could be used for a wine production facility. The Port made a similar transaction for Spaulding Business Park and returned the water rights back to Columbia Irrigation District to maximize that development.

Commissioner Moak inquired if there is any sort of implied quid quo pro with the County.

Mr. Arntzen stated no, there is not.

Commissioner Moak mulled if the Port is giving away too much without getting anything in return. Commissioner Moak stated goodwill is one thing, but how much goodwill and what does that buy us. Commissioner Moak does not oppose transferring the water rights, but he would hope the gods would look favorably on us as we continue to try to complete our projects.

Commissioner Barnes stated that is a great point and mentioned Mr. Arntzen's previous experience with Benton County and Commissioner Beaver's remarks regarding the future of RCCF funds. If the Port goes this route, if we do this, without some quid quo pro as Commissioner Moak mentioned, then basically we are accepting of what has happened and willing to turn the other cheek and see the long term, big picture. Commissioner Barnes hopes there would be realization from their Commission, that this is a pretty generous offer that would help the County. Commissioner Barnes recently attended the arena dedication at the fairgrounds last month and there are some ripples in the Fair Board. A few people have been removed from the Fair Board that have been long time contributors there. This transfer is very generous, the fair is something our entire community enjoys, but there are some dark clouds over the fairground right now.

Commissioner Moak stated there has been for years between the county, the fair board, and the fair management. It is not something new and is still ongoing.

Commissioner Novakovich believes the transfer is an excellent idea and it shows our partners that a partnership is a two-way street. The Port does not need the all of the water rights and the

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value will be long term as Mr. Arntzen mentioned the RCCF funds. Commissioner Novakovich spoke with the Benton County Commissioners, and they appreciated this proposal and it will also benefit our Port constituents a great deal. The fair is a big deal to a lot of people and the fairgrounds is a worthy cause and to have a nice facility is a benefit; and then to have a nice facility because the Port is assisting goes a long way. Commissioner Novakovich believes this is a good thing to do and is in favor of the MOU.

Mr. Arntzen will present a final draft MOU for Commission review at a later date.

D. Executive Training

Mr. Arntzen stated one of his goals and objectives set by the Commission is to take an executive training course. Mr. Arntzen has identified classes at Gonzaga University and Boise State University and has spoken to Jim Darling from Maul Foster Alongi about conducting an executive training session for port directors. Mr. Arntzen will update the Commission on the training once he reviews Mr. Darling's proposal.

E. Commissioner Meetings

1. July 23, 2019 Cancellation

Ms. Scott stated the July 23, 2019 Regular Commission Meeting will be canceled and notices will be sent out.

2. July 30, 2019 Special Meeting

Ms. Luke determined that a July 30, 2019 Special Commission Meeting will work best for the Commission and inquired if the meeting should be held at 2:00 p.m. or different time. The primary purpose of this Special Meeting is for outside council to present her report/investigation on the citizen complaint.

The Consensus of the Commission is to hold the Special Commission Meeting at 2:00 p.m. on July 30, 2019.

Ms. Luke stated there is a possibility the report may not be finalized and could be discussed at the August 13, 2019 Commission Meeting instead. Ms. Luke will keep the Commission and staff apprised of the completed report.

3. August 13, 2019 Location Change

Ms. Scott and Mr. Kooiker have been working on a contract to renovate the AV equipment in the Commission Meeting Room. The renovation will begin on July 31, 2019 and the August 13, 2019 Commission Meeting will be moved to an off-site location to allow time to complete the project.

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

Commissioners reported on their respective committee meetings.

G. Non-Scheduled Items

1. Commissioner Novakovich stated Swampy's BBQ Sauce and Catering won the 2018 Chef's on Parade People's Choice Award.

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2. Commissioner Moak noticed new signs on Clover Island and inquired if there have been any issues.

Ms. Hanchette stated the existing signs were small and worn out and needed replacing. The new signs are larger and a reminder that the island is day use only.

3. Ms. Bader Inglima received an email from Ginger Wireman, who attended the Vista Field Charrette and is in support of New Urbanism. Ms. Wireman relayed that the Arts Center Task Force is considering a different location. Ms. Bader Inglima stated the Port still has space held and identified for the Art Center Task Force; however, the Task Force is likely going to need to try and find space that best fit their needs. Ms. Bader Inglima and Mr. Arntzen will continue to have open conversations with the Task Force. The Vista Arts Center has been identified as a catalyst facility for the community and it will fill a need for the region wherever they decide to build. Ms. Bader Inglima wanted to apprise the Commission in case they receive inquiries, and stated that she has not formally heard from the Task Force.

Mr. Arntzen stated the Task Force representatives have been upfront about some of their opportunities to look for other sights.

Ms. Bader Inglima stated the Task Force is beyond their letter of interest.

Commissioner Moak stated at the same time, if the Task Force is not interested in the property, the Port needs to look for other opportunities.

Mr. Arntzen recently met with Renee Adams, Executive Director and Steve Wiley, Chair of the Arts Center Task Force and the conversation focused on the Port installing infrastructure and if there was anything further to discuss then we could reconvene. Mr. Arntzen stated the Port is in a holding pattern and if the Task Force has concerns, Ms. Adams and Mr. Wiley would come in and discuss them. Mr. Arntzen stated it is important to place the Arts Center in a desirable location and believes that next spring there will be detailed conversations about funding. The location in Vista Field is reserved for the Arts Center and if it does not materialize, Mr. Arntzen believes the location would be attractive to a number of users. In addition, the Port has also offered land to the Culinary Institute, but they have the same challenge and need to raise \$20,000,000.

Commissioner Barnes stated the Commission recently discussed an Industrial Development District (IDD) and it was asked if an IDD could be used for a multi-jurisdictional project. An IDD cannot be used for a multi-jurisdictional project; however, the Port could enter into an Interlocal Agreement with jurisdictional partners to support the Vista Arts Center. It would be an ambitious undertaking to see if others would support the Arts Center Task Force at Vista Field, if the Port underpinned the project with an IDD.

Mr. Arntzen stated the Tri-Cities is a challenging community to raise large amounts of money, because we do not have major headquarters located in our area. Boise has the ability to bring

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in large donations because they are headquarters to Albertsons, Boise Cascade and other large corporations.

4. Mr. Arntzen stated James Thompson, acting director of the Washington Public Ports Association would like to assemble the Legislative Committee via conference call instead of traveling to Olympia.

Commissioner Novakovich stated that the conference call is on his calendar.

Mr. Arntzen was boating over the weekend and was pleased to see people using the island and the lighthouse plaza. He noticed that the lighthouse plaza has become a gathering place for teens and young adults.

5. Ms. Luke and Mr. Kooiker have been working on the CEO Evaluation Process and plan to present an update at the August 13, 2019 Commission Meeting. The process involves a committee with one appointed Commissioner, in which Commissioner Barnes has sat on the committee for the past two years. The Commission will need to appoint a new committee member for the 2019-2020 evaluation process.
6. Mr. Peterson stated the City of Kennewick is starting to plan Fire station #3, which will be located in Vista Field. The City is including taking the Port's Vista Field designs into consideration. It takes fourteen months to build a fire station and the City will begin building in February of 2020.

PUBLIC COMMENTS

Boyce Burdick, 414 Snyder Street, Richland. Mr. Burdick stated in January 2019, the City of Richland put out a Request for Qualifications (RFQ) for developers for the old City Hall Building. John Crook of Boost Builds put in proposal for the Arts Center and the request was denied by the City. The City denied the RFQ because they wanted to sell the land outright. Additionally, the City is looking to move the fire station next to the police station. Mr. Burdick stated this is the background of Ms. Bader Inglima's comments and Ms. Adams and Mr. Wiley have spoken with Mr. Arntzen about this.

No further were made comments.

COMMISSION COMMENTS

No comments were made.

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ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 4:29 p.m.

APPROVED:

**PORT of KENNEWICK
BOARD of COMMISSIONERS**

Thomas Moak, President

Don Barnes, Vice President

Skip Novakovich, Secretary



PORT OF KENNEWICK SPECIAL COMMISSION MEETING

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JULY 30, 2019 MINUTES

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

The following were present:

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

Staff Members: Tim Arntzen, Chief Executive Officer
Tana Bader Inglima, Deputy Chief Executive Officer
Amber Hanchette, Director of Real Estate and Operations
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Lisa Schumacher, Special Projects Coordinator
Bridgette Scott, Executive Assistant
Lucinda Luke, Port Counsel

PLEDGE OF ALLEGIANCE

Commissioner Novakovich led the Pledge of Allegiance.

APPROVAL OF THE AGENDA

Commissioner Novakovich inquired if we need to remove the Executive Session.

Ms. Luke requested that Item A under the Executive Session is stricken.

MOTION: Commissioner Novakovich moved to approve the Agenda as presented and striking Item A under the Executive Session; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

PUBLIC COMMENT

No comments were made.

CONSENT AGENDA

A. Approval of Direct Deposit and E-Payments Dated July 15, 2019

Direct Deposit and E-Payments totaling \$58,910.60

B. Approval of Warrant Register Dated July 23, 2019

Expense Fund Voucher Number 101252 through 101295 for a grand total of \$321,309.62

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

REPORTS, COMMENTS AND DISCUSSION ITEMS

A. *Vista Field Update*

Mr. Peterson reported that the below grade work, which includes storm sewer drainage is nearly 95% complete. The next task will be the grading of the site and installation of curbs and gutters, which will frame the project. From August 12-30, 2019, construction will take place on West Deschutes Avenue to modify the street into a three way intersection and install the roadway through the corporate hangars.

1. ***Benton PUD Developer's Agreement; Resolution 2019-14***

Mr. Peterson stated before the Commission is Resolution 2019-14, which allows the Public Utility District #1 of Benton County (BPUD) to install the electrical infrastructure, which will serve Vista Field. BPUD pays for the costs associated with the main feeder network to and through the site and as a public entity requires all those developing property to pay for the infrastructure serving the lots or parcels within the project. The BPUD crews will install segments of the network (conduits under street crossings); however the majority of the work is completed by a BPUD contractor following a bid process. The BPUD requires the developer (Port) to execute a BPUD Developer's Agreement before the BPUD puts the project to bid.

At present BPUD estimates the electrical infrastructure to serve the Port's lots/parcels to be \$270,307.61. Because this is an estimate and BPUD must bid the work and all parties seek certainty, the Developer's Agreement contains a not to exceed provision of 125% of the estimate which equals \$337,884.51. BPUD's estimates their cost for network enhancements and extensions to serve Vista Field Phase #1A at approximately \$675,000.

Timely execution of the BPUD Developer's Agreement will allow for the Vista Field Phase #1A project to proceed without delay. The estimated amount and 125% not to exceed amount are both within the working budget allocated to the Vista Field project through the Commission's approval of the construction contract with Total Site Services.

Commissioner Novakovich confirmed that the total cost of the electrical infrastructure project is over \$1,000,000 and the BPUD pays approximately two-thirds of the cost.

Mr. Peterson stated that is correct and indicated that some of their expense is because they are taking infrastructure outside of the site.

Commissioner Moak inquired if the installation will serve all phases or will the Port continue to incur costs as we develop additional phases.

Mr. Peterson stated the Port will incur costs with each phase; however, Phase 1 is significantly larger scale and the next phases will be smaller and cost less.

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Commissioner Moak inquired if the costs will be added to the sale of the property.

Mr. Peterson stated staff is tracking costs and believes the costs will be recouped during the land sales.

Commissioner Moak asked if this cost was part of the Vista Field budget.

Mr. Peterson stated yes, the funds were allocated when the Commission amended the budget in March 2019.

PUBLIC COMMENT

No comments were made.

MOTION: Commissioner Novakovich moved to approve Resolution 2019-14, authorizing the Port's Chief Executive Officer to execute a contract with Public Utility District #1 of Benton County for placement and installation of electrical infrastructure within the Vista Field Phase #1A project for the sum not to exceed \$337,884.51. Further, all action by port officers and employees in furtherance hereof is ratified and approved; and the Port Chief Executive Officer is authorized to take all action necessary in furtherance hereof; Commissioner Barnes seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

B. City of West Richland Update

Mr. Arntzen stated before the Commission is an offer on the former racetrack property located in the City of West Richland. Mr. Arntzen stated the Comprehensive Scheme of Harbor Improvements and the former racetrack Master Plan states that the Port will hold the property for four to seven years, and develop when the timing is right. Mr. Arntzen stated if the Commission likes the offer before them, the Comp Scheme would need to be amended. The City of West Richland has made an offer on the former raceway and if directed by the Commission, Ms. Hanchette and City staff would follow the standard Purchase and Sale Agreement (PSA) process. Mr. Arntzen outlined the important terms of the proposal and stated there are several moving parts in terms of price and payment terms, use of property, and timing. Mr. Arntzen asked for guidance from the Commission on the complicated offer. Mr. Arntzen introduced City of West Richland Mayor, Brent Gerry, who is here today to discuss the offer.

Mayor Gerry thanked the Commission for the opportunity to speak and gave an overview of the City's Proposal. In April 2019, the City of West Richland citizens passed a \$12,500,000 bond for a new police department. The City identified several Department of Natural Resources (DNR) properties that would best suit the new police station and held a town hall meeting to discuss the potential locations; however, the citizens did not approve of any of the locations. Because of the timing with the bond, there is a sense of urgency to locate another property. City staff have had numerous discussions with local land owners, but have been unable to secure a location for the new police station. Mayor Gerry contacted Mr. Arntzen and Ms. Hanchette regarding the process of putting together a formal offer for the former racetrack property.

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As a financing source, the City is proposing a transfer of their share of Benton County's Rural Capital County Funds (RCCF) to the Port's RCCF account. Mayor Gerry met with Adam Fyall, Sustainable Development Manager for Benton County, to discuss the potential opportunity of transferring the City's RCCF funds to the Port. Mayor Gerry stated the \$1,250,000 offer price may seem low; however, the Port has the opportunity to leverage the RCCF funds with matching funds to either meet or exceed the market value of the property. The City is the anchor tenant at the Belmont Business district and has sold a number of properties and would emulate the same model at the former racetrack, becoming an anchor tenant with the new police facility and use the Port's Master Plan as a guideline for development. The City has received numerous inquiries about commercial properties for wine related businesses because of the growth of the community; however, there is no land available on Red Mountain Center. Mayor Gerry believes if the Port were to accept the City's offer, the Port would be fulfilling its mission of creating economic development and allow the City to grow. Furthermore, Mr. Gerry stated the Port's Comp Scheme says to hold the property until the I82 Interchange access was completed; however, the Federal Highway Commission (FHC) will not break access in the Interstate for economic development. Several agencies have done modeling which shows the benefit of Interchange, but unfortunately, the modeling was not satisfactory to the FHC. Mayor Gerry is hopeful that the Commission will entertain the offer on the former racetrack to the City of West Richland, who will be able to act as an anchor tenant and spur further economic development in that area.

Ms. Hanchette gave the Commission some statistical information on the former raceway:

- The racetrack is nearly 93 acres;
- 45 acres are currently being farmed and the lease expires December 31, 2019;
- The Port purchased the property in 2008 for \$1,750,000;
- The property was appraised in 2016 and came in at \$1,750,000 with racetrack removed.

Commissioner Novakovich inquired how much would it cost to remove the racetrack.

Ms. Hanchette stated that number was not provided with the appraisal and asked Mr. Peterson for an estimate.

Mr. Peterson believes the cost to remove the racetrack could be anywhere from \$150,000 - \$200,000; however, that does not include leveling the site, which could be quite significant. This is based upon the Port recently removing five acres of asphalt in Vista Field.

Ms. Hanchette stated in recent years, staff worked to get the property into the Urban Growth Area for the City. Additionally, the Port entered into an Interlocal Agreement with Kennewick Irrigation District for rubicon gates and canals for \$75,000 to remove the inundation clause. The offer mentions, in addition to the police station, adding some recreation fields and marketing property for economic development. The Port's Master Plan for the former racetrack calls for an industrial component to support the Red Mountain wine industry. The offer stipulates that the City would transfer 100% of their RCCF funds to the Port. Furthermore, the offer contains a few contingencies related to water rights; however the Port is currently having an assessment done on the water rights to determine the uses and quantity of water rights that exist on the property. Ms. Hanchette stated

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the property's assets include the water rights and land. Ms. Hanchette inquired if the Commission had additional questions related to the property.

Commissioner Barnes asked staff to estimate the holding cost per year for the Port to retain the property.

Mr. Kooiker stated the cost is approximately \$2,000/per year, which includes assessments and utilities.

Commissioner Barnes asked what the Port receives from the agriculture lease.

Ms. Hanchette stated the Port receives approximately \$6,900 from the agriculture lease; with clean-up costs, it is an estimated \$5,000/per year to hold the property.

Commissioner Barnes asked how much was the contract with Oneza for the Master Plan.

Mr. Peterson believes the economic analysis, Master Plan and engineer's report cost approximately \$125,000.

Commissioner Moak asked what is the cost for the right-of-way and utility easements.

Ms. Luke cannot provide an estimate because the Port has not spoken with Mr. Alexander.

Mr. Arntzen believes it is a fairly modest number and the price would need to be negotiated with Mr. Alexander. The Commission could ask the City to negotiate that cost, because of the good deal on the property.

Commissioner Moak stated if the buyer is receiving an excellent deal, then they should be the ones to handle that.

Mr. Arntzen stated the Port reviewed the lease previously and it most likely needs to be finished; however it can be a negotiating point.

Commissioner Moak inquired if Ms. Hanchette has discussed the 1% arts policy.

Ms. Hanchette has not discussed the art policy with Mayor Gerry and would need to refer back to the policy. Ms. Hanchette believes it is at the Commission's discretion if it is included in the PSA.

Commissioner Moak asked Mayor Gerry if Mr. Fyall believes this is something that the Benton County Commission would approve.

Mayor Gerry stated the City and Port would need to submit an RCCF joint application to Benton County. Mayor Gerry believes that Mr. Fyall felt that two entities working together to better each other would be a positive aspect for the Benton County Commission.

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Commissioner Novakovich believes this is a wonderful opportunity for the Port and the City. The City needs the ability to have some tax dollars infused into the City and he believes this would give the City land to develop. Commissioner Novakovich stated it would give the Port money to do other projects and he would like to see some of the funds invested into West Richland. Commissioner Novakovich proposed that staff negotiate a few items in question and ensure that Benton County is willing to allow the RCCF transfer and will continue to fund the RCCF program. If the County were to discontinue the program, where would that leave the Port? Additionally, the right-of-way and water rights need to be addressed as well. Commissioner Novakovich understands that the City is on a compressed timeline and he would like to see this done sooner rather than later.

Mr. Arntzen believes there are a few items to consider if the Commission were to move forward with a PSA with the City of West Richland. Mr. Arntzen stated firstly, the Comp Scheme has the Port holding the property for a period of 4-7 years; he would need to consult with staff regarding the timing of amending the Comp Scheme. Secondly, the timing of the agreement is a concern, and although staff could work as quickly as possible there is the issue of the timing of the transfer of water rights. Staff has been working on the application transfer water rights to Benton County and recently learned that it takes 90 days from submittal of the application to the Department of Ecology to review the water rights transfer. Mr. Arntzen stated many real estate transactions take time and he is not comfortable guaranteeing the City a time frame to complete the PSA. A third potential issue is the security for the purchase price. Mr. Arntzen stated the City would like to transfer their credits for RCCF to the Port. Mr. Arntzen believes many of those issues could be worked through; however, in the scenario where the Port applies for RCCF funding from Benton County, using the credits from the City, what would happen if Benton County does not approve the projects the Port submitted. Mr. Arntzen believes there needs to be some form of security in case the Port cannot get a project approved, then the Port would need to renegotiate for the value of the property. Mr. Arntzen suggested if the Port applied for \$400,000 of RCCF funds and the project was approved by Benton County, then the Port would transfer \$400,000 worth of property to the City. Additionally, the Port entered into a non-compete clause with City of Kennewick several years ago which states the Port would not do anything with the former racetrack property that competes with Columbia Gardens. Lastly, Mr. Arntzen stated Commissioner Barnes asked very good questions related to the value of the property and he inquired what the Commission's philosophy of this transaction would be. If the transaction will be a commercial transaction, the Port would seek a new appraisal of property and get better estimates on removal of the racetrack and what the value of the water rights are. But if the Commission's philosophy is a partnership or a political transaction, the Port could sell property for less than a commercial property to another jurisdiction. Mr. Arntzen would like some time to review the purchase price and asked the Commission for direction regarding the philosophy of the transaction and other items.

Commissioner Moak believed in the concept of the Master Plan and that this property would eventually support Red Mountain and the wine industry. Furthermore, Commissioner Moak believed that the Port would develop the property within the timeline outlined in the Comp Plan. Commissioner Moak believes the City would build something of value, but it is not what he envisioned for that property. As Mayor Gerry alluded, there is an issue with the I82 interchange and the Federal Highway Commission and Commissioner Moak does not believe they are any

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closer to approving the interchange. Commissioner Moak stated selling the property would be disappointing; however, from the Port's standpoint, he does not think this would be a commercial transaction. Last year, the Commission approved a PSA with Benton County Fire District #4 for a new fire station, which benefited the community of West Richland and believes there are the same kind of community benefits with this proposal. Commissioner Moak understands the cost of this property is considerable, especially when you consider all of the time staff has spent on it over the years. Commissioner Moak stated there are a lot of reasons not to sell it, but maybe it's time to move on the property. Commissioner Moak does not think the Port is going to develop the property any time soon and if West Richland thinks they can develop the property in a shorter period that will benefit the community, then the Commission should do what is best for Port district. Commissioner Moak is in support of the City's proposal.

Commissioner Barnes expressed his concerns about this transaction and stated recently, Jim Darling spoke at the Washington Public Ports Association (WPPA) Spring Conference about Return on Investment (ROI). Mr. Darling stated that ROI is not always measured in dollars and cents and a monetary ROI can be used to promote economic development; however, if you are not realizing much of a monetary ROI, then you look at public benefit. If the public benefit is significant in a transaction, then the transaction can be justified if public benefit is there. Commissioner Barnes stated there is a lot of uncertainty in the method of payment, because even if the funds are transferred from the City, the Port still needs approval of a project from Benton County. Additionally, Commissioner Barnes stated the proposal states maybe two jobs will be created, and he does not believe it meets the non-monetary ROI term. The Port purchased the property for \$1,750,000 and then invested additional funds in the Master Planning process, the removal of the inundation clause, and staff time. To hold this property for \$5,000 per year is a small amount in the big picture. Commissioner Barnes stated the City needs five acres to build a police station, maybe the Port and City should be discussing a five acre transaction. The Master Plan for the former racetrack will have a significant impact on economic development for the City and the Comp Scheme says to hold the property. Commissioner Barnes believes it would be better for both parties to discuss a five acre sale in short order and better payment terms. Commissioner Barnes cannot support the City's proposal to purchase the former racetrack.

Commissioner Novakovich believes this transaction is a partnership between the Port and the City, not a commercial property sale. Commissioner Novakovich stated the City has an opportunity to invest tax dollars and create economic development, which the Port is not in the position to do at this time. Although there is support for the Red Mountain Interchange it may never happen because of the Federal Highway Commission. The City has the opportunity to not only build a new police station, but create economic development within the Port district. Commissioner Novakovich believes it is time to do it, granted the price is less than what the Port has invested, but our mission is to go in and help our partners or private entities, to create jobs and create economic development. Commissioner Novakovich is concerned, like Commissioner Barnes, about the RCCF funds. Commissioner Novakovich liked Mr. Arntzen's suggestion of releasing the property as the Port receives the funds. Commissioner Novakovich would like to see this done as quickly as we can, considering everything staff needs to do, but also recognizing that there is a deadline. Commissioner Novakovich stated there are several items to review; however, he thinks it is important to take a look at the proposal, which will benefit both the Port District and the City.

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Mayor Gerry thanked the Commission for the discussion and appreciates the input and comments. Regarding Commissioner Barnes's concerns, West Richland City Council was very adamant about purchasing the entire property if the City was going to invest \$1,000,000 in infrastructure to get utilities to the property. Mayor Gerry believes the City Council would not invest \$1,000,000 for five acres of property. Mayor Gerry assumed if the Port wanted to partner in that investment the Council would be willing to partner; however he does not believe the Port's priorities today are in investing in infrastructure. Mayor Gerry stated the City is growing rapidly and there is a need to bring in commercial businesses to support the housing growth. The City has that interest and would like the opportunity to develop the property in same manner that the Port has done with Columbia Gardens and Vista Field.

Commissioner Moak stated there are several issues that need to be addressed, such as the RCCF financing, the worth of the property, and the issues that Mr. Arntzen spoke of. Commissioner Moak stated the compressed timeline that the City is working with may take additional resources and it may not all fall on Port staff to meet that timeline. If the Port needs to hire consultants for this proposal, then that should be factored into the price. It does not cost the Port much to hold the property, but if the City really wants the property, then they need to offer their resources to meet their timeline. Commissioner Moak agrees with Commissioner Novakovich and believes the Port should move forward with the City's proposal.

Mr. Arntzen reiterated the Commission's directive for staff to continue negotiations with the City and bring back a proposal of substance, with a reasonable and fair price and address the financial information and water rights. Mr. Arntzen stated some issues may be more complicated and may require more time, and he stressed that he does not want to be a guarantor of how fast staff can get this done. The City's \$12,500,000 project is riding on a timeline and Mr. Arntzen asked the record to reflect, and he believes the Commission should make it abundantly clear, that a compressed timeframe on someone else's part does not make an emergency on our part. Mr. Arntzen pledged to Mayor Gerry that staff will work as fast as they can; although he cannot guarantee meeting the compressed time frame.

Mayor Gerry appreciates and understands Mr. Arntzen's comments and offered City staff to help mitigate the burden Port staff may have in regards to the timeline. The City will do its due diligence and also has the monetary ability to pay for items in the contract. Mayor Gerry offered up City staff to assist the Port staff and stated the City has already assisted the Port on many items and made their own investment in the property.

Mr. Arntzen explained that he would re-prioritize other projects from the Work Plan that staff is pursuing to focus on this proposal. Mr. Arntzen thinks there is an opportunity to move the proposal forward, but again, he cannot guarantee time frame.

Commissioner Moak asked what projects would need to be re-prioritized.

Mr. Arntzen stated there was an emphasis on landing a ground lease or sale in the Kennewick Waterfront Area and we would need to move that priority down if the Commission agreed.

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Commissioner Moak inquired if that would damage the ability to move forward on those properties.

Mr. Arntzen stated it will impact the work, because of the limited resources. Projects will need to be re-prioritized to focus on West Richland.

Commissioner Moak asked if at some point, staff will be able to refocus on Columbia Gardens again.

Mr. Arntzen stated in regards to the Wine Village, it takes quite a bit of movement to get there and believes the project will be set back a number of months. If the Commission wanted staff to focus on West Richland, staff would do their best to move forward, but we could not guarantee the timeline.

Commissioner Novakovich likes what he is hearing and believes the partnership will benefit the entire Port district. Commissioner Novakovich emphasized that sometimes you need be flexible when opportunities arise and how you apply resources.

Mr. Arntzen stated another project that will be impacted is the Clover Island Master Plan.

Commissioner Barnes stated after hearing the additional comments regarding the impact to Port projects, he has less support for the City's proposal. The Port has a great jurisdictional partner with the City; however, who wouldn't want the property for 30 cents per square foot. Commissioner Barnes stated in addition to the bargain price, the Port has a fully committed staff, limited resources, and projects at Columbia Gardens and Vista Field. This property requires a minimal holding cost and this proposal is a difficult fit at best. Commissioner Barnes is concerned about spending Port time and resources on pursuing this when the price offered is very low and a questionable method of payment. Commissioner Barnes invited the City to rethink their offer and bring a revised offer for consideration. Commissioner Barnes reiterated that he cannot support this offer with this price, with this method of payment, given all of the current projects and limited resources. The Comp Scheme says to hold the property and the Commission is going against a lot of things to continue moving forward with this proposal. Commissioner Barnes stated the City has been a great partner, but we need a better fit, something that makes sense for the Port.

Commissioner Moak stated Commissioner Barnes's point is well taken, but the price can be negotiated. The Port has not countered the offer and the Commission has asked staff to investigate the City's use of the Benton County RCCF funds and report back. Some of Commissioner Barnes's concerns would be valid if the Port were doing this for the money. Commissioner Moak asked Mr. Arntzen if he has enough information from the Commission related to the City's proposal to move forward.

Mr. Arntzen has enough information to move forward with detailed negotiations. Mr. Arntzen believes this issue will be placed on future Agendas before an agreement can be met.

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Commissioner Moak confirmed that Mr. Arntzen has heard from all three Commissioners and their concerns and thoughts.

Mr. Arntzen stated the Commission comments are all valid and this is a difficult proposal that the Commission needs to address. Mr. Arntzen understands Commissioner Barnes' concerns and stated Benton County could decide not to approve any more RCCF projects and then where would the Port be. Mr. Arntzen has enough information and staff will work on a report to address the issues, which may take some time. Mr. Arntzen stated this is a very unconventional proposal and he appreciates the Commission discussion. Mr. Arntzen asked Mayor Gerry to work with Ms. Hanchette, Director of Real Estate and Operations on this proposal and additional details.

C. Non-Scheduled Items

1. Commissioner Moak attended the WPPA Spring Conference in May and the Association of Washington Cities (AWC) Conference in June and stated the level of quality of the AWC is vastly higher than the WPPA conference. Commissioner Moak presented information on Spokane's \$63,000,000 bond for Riverfront Park in Spokane. Additionally, Commissioner Moak attended "Running Effective Public Comment Sessions" with Ann G. Macfarlane at the AWC Conference.
2. Ms. Bader Inglima stated recently the *Tri-City Herald* featured a photo of the construction of the new tasting room at Columbia Gardens and followed up with an expanded story about the wineries and building.

Ms. Bader Inglima will be doing an interview with Visit Tri-Cities on the lighthouse because August 7 is National Lighthouse Day. Clover Island continues to do the commemorative passport stamp for the lighthouse and Ice Harbor offers a seasonal lager.

The US Army Corps of Engineers (USACE) and the Fish and Wildlife service are running tests on the notch, which is a separate project from the 1135 project. The USACE is doing some shallow water monitoring and testing. On August 15, the entire USACE 1135 team will be meeting at the office to walk the shoreline for the A & E design work.

3. Mr. Arntzen recently met with Lieutenant Colonel Christian Dietz, Commander of the Walla Walla District USACE to discuss Duffy's Pond. Mr. Arntzen requested that the Port and the USACE form an informal committee of executives to become champions to rehabilitate Duffy's Pond. The committee would include Mr. Arntzen, Lt. Col. Dietz, and Marie Mosley, City Manager. Additionally, Mr. Arntzen will reach out to the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) to see if they would like to have representation on the committee. Mr. Arntzen believes it would be a visioning committee to remind our capable staffs of the milestones, and the fact that we would like to accomplish this project. Mr. Arntzen has no question about Port staff; however, sometimes when working with a federal agency it is good to remind them that we have a finish line.

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Mr. Arntzen stated the Commission room will be undergoing a technology remodel and will not be available for up to two meetings. In addition to the upgrades in technology, a mini-split HVAC unit will be installed for better air circulation.

Mr. Kooiker stated in addition to the technology upgrade, the remodel includes: all chairs will be reupholstered, a rebrand of the back wall, and the room will be ADA compliant.

Ms. Hanchette reported that a contractor has been selected to install a ductless mini split, which will be an independent, stand-alone system for the Commission Chambers.

Mr. Kooiker stated the August 13, 2019 Regular Commission Business Meeting will be held at the Bechtel Boardroom, and he is optimistic that the project will be completed by August 23, 2019. However, if the remodel is not completed by then, the August 27, 2019 meeting will be at a different location as well.

4. Mr. Peterson received confirmation from Banlin Construction that the tasting room building tower will be placed tomorrow, July 31, 2019.
5. Ms. Hanchette reported that the Port is installing a trench drain to add additional drainage at the current Wine Village buildings. There is a two-week window to complete this project and it should be completed by August 9, 2019.

PUBLIC COMMENTS

Boyce Burdick, 414 Snyder Street, Richland. Mr. Burdick requested that “Running Effective Public Comment Sessions” with Ann G. Macfarlane PowerPoint presentation be made available on the Port website.

No further were made comments.

COMMISSION COMMENTS

No comments were made.

Commissioner Moak anticipates the Executive Session will last approximately 15 minutes for Potential Litigation, per RCW 42.30.110(1)(i) with no action anticipated. Commissioner Moak asked the public to notify Port staff if they will return after the executive session so staff can advise if the session concludes early.

Commissioner Moak recessed the Regular Commission Meeting at 3:36 p.m. until 3:40 p.m.

Commissioner Moak convened the meeting into Executive Session at 3:40. p.m. for approximately 15 minutes.

EXECUTIVE SESSION

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

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Commissioner Moak adjourned the Executive Session at 3:52 p.m.

ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 3:53 p.m.

APPROVED:

**PORT of KENNEWICK
BOARD of COMMISSIONERS**

Thomas Moak, President

Don Barnes, Vice President

Skip Novakovich, Secretary



AGENDA REPORT

TO: Port Commission

FROM: Amber Hanchette, Director of Real Estate & Operations

MEETING DATE: August 13, 2019

AGENDA ITEM: Southridge Land Parcels / 8.5 acres – Auction Services Request for Proposals

- I. REFERENCE(S):** Resolution 2019-15
Request for Proposals – Auction Services
Current marketing flyer
Proposal(s) Received

II. DISCUSSION:

A request for auction service proposals (RFP) was advertised on the port's website and several times in the Tri-City Herald (July 18, 21, 24, 28) with a response deadline of July 31, 2019.

Staff received interest from four auction service firms and a number of questions that were answered through addendum.

Two responses were received by the deadline. One response did not meet the criteria and has been disqualified.

Southridge Parcel Data:

- 8.5 acres
- 4 parcels
- Appraisals were commissioned in January 2017. Two approaches were used – one as a single larger sale (\$3.50 per square foot) and the other as individual lot sales (\$7.00 per square foot).

Marketing – The Southridge parcels have been consistently advertised for sale since March 2017 through a variety of marketing channels – print advertising, LOOPNET, Zoom Prospector, electronic and print direct mail to real estate brokers and land developers. Staff has follow-up on approximately 30 leads. List price - \$7.00 per square foot.

VI. ACTION REQUESTED OF COMMISSION:

Accept or reject proposal for auction services of port-owned land parcels in the Southridge Kennewick portion of port district.

Motion: I move approval of Resolution 2019-15 accepting the proposal for auction services of port owned land parcels in the Southridge Kennewick portion of the port district; and further ratify and approve all action by port officers and employees in furtherance hereof.

PORT OF KENNEWICK

RESOLUTION 2019-15

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK AUTHORIZING THE PORT CHIEF EXECUTIVE OFFICER TO EXECUTE A CONTRACT WITH MUSSEY BROS. AUCTION AND REAL ESTATE

WHEREAS, The Port Commission directed staff to publish a public request for auction service proposals (RFP) for the purpose of selling 8.5 unimproved acres of land owned by the Port in south Kennewick (Southridge) through the auction process; and

WHEREAS, two responses were received and have been presented to the Port commission; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Port of Kennewick authorizes the Chief Executive Officer to execute a contract with Mussey Bros. Auction and Real Estate firm for auction services as identified in the public request for proposals.

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

ADOPTED by the Board of Commissioners of the Port of Kennewick this 13th day of August, 2019.

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

By:

THOMAS MOAK, *President*

By:

DON BARNES, *Vice President*

By:

SKIP NOVAKOVICH, *Secretary*

PORT OF KENNEWICK

AUCTION SERVICES

INSTRUCTIONS TO SUBMITTERS

I. INTRODUCTION AND BACKGROUND

The Port of Kennewick is soliciting proposals (RFP) from qualified vendors for auction services that include the marketing and subsequent auction sale of land as listed in Exhibit A.

The Port desires a vendor having proven experience and resources to support the project. The Port will be the sole judge as to which proposal best suits the Port's requirements. The Port reserves the right to accept or reject in part or in entirety any or all proposals received as a result of this request. Any decision by the Port shall be final and conclusive. Vendors will not be reimbursed for any costs that they incur in preparing their RFP responses.

II. SCOPE OF SERVICES

A. Services – Generally

This RFP is for auction services for a Buyer's Premium Auction. Proposals for other types of auction services will NOT be considered. Additionally, only proposals that provide for auction bidders to have the ability to bid on individual parcels, parcel combinations or the property as a whole will be considered. The successful vendor will be required to:

1. Meet with representatives of the Port to discuss objectives of sale;
2. Develop plan to broadly advertise and market the subject property to inform and contact the highest potential pool of qualified bidders;
3. Advertise for the auction in local newspapers and such periodicals as the proposer and/or Port deems advantageous to maximizing exposure of the sale;
4. Inspect the subject properties prior to auction;
5. Post each parcel to be sold approximately thirty (30) days prior to the auction;
6. Recommend to the Port sequencing of parcel disposition;

7. Vendor shall not have earned any right to payment or reimbursement from Port until and unless the relevant auction sale is actually closed and the Port has received full payment from the purchaser on that sale.
8. Ensure all payments from purchasers at the auction are deposited in escrow accounts in the name of Port of Kennewick. These payments include the buyer's premium.
9. Supply the Port with a list of all registered bidders as well as a list of all second highest bidders for each parcel; and
10. Utilize a Port approved purchase and sale agreement.
11. Coordinate sale with Port approved escrow and title company for close of sale.

III. PROPOSAL REQUIREMENTS

Each proposal should include the following:

A. Cover Letter

All proposals must include a cover letter on vendor letterhead addressed to the attention of Amber Hanchette, Director of Real Estate, signed by a person legally authorized to bind the vendor to its proposal. The letter shall include a brief overview of how the vendor proposes to undertake providing the services.

B. Relevant and Past Experiences

All proposals should provide a description of the vendor's experience and expertise providing similar or related services to other public agencies.

The vendor should provide a list of its team's memberships in professional organizations, special training, licenses, and experience. The vendor team must include a professional auctioneer and a real estate broker (these may be the same team member or separate team members). The vendor team member who will provide auctioneer services must be a licensed auctioneer.

C. Project Team

Describe the proposed project team. Specify who will be the key contacts and leaders of the team and discuss who will interact with the Port. Please provide resumes of all key personnel who will conduct any work on the auction.

D. References

The vendor must provide a professional profile including a list of at least three references from firms and/or municipalities that the vendor has provided similar auction services.

E. Project Schedule

Timing is a critical component to this project. Vendor shall provide an overview of the vendor's typical auction timeline. A specific timeline for this project shall be provided to the Port once an auction date has been established.

IV. EVALUTION PROCESS

A. General

Evaluations will be performed to determine vendor's understanding of the work to be performed, vendor's overall approach to the project, vendor's ability to complete the work as specified in the Scope of Services, and the reasonableness of vendor's fees and costs. Award will be made to the vendor whose conformance to the RFP is considered most advantageous to the Port, considering the Evaluation Criteria in this section, and in the Port's sole determination as to which proposal best suits the Port's requirements.

B. Personnel Proposals, Project Organization and Experience

Proposals will be evaluated considering the vendor's qualifications and experience, organization and quality of the proposal, and the vendor team proposed to work on the auction process.

C. Relevant Past and Present Performance Criteria

Assessment of the vendor's past and present performance will be evaluated relative to the capability to meet the requirements contained herein. Additionally, quality of service, customer satisfaction, cost control and timeliness of past and present sales will be evaluated.

V. GENERAL INFORMATION

A. Selection Process

Additional information, interviews and or presentations may be required at the option of the Port. In no event shall the Port or its Board of Commissioners, Officers or employees be liable for any costs incurred for the preparation of and participation in the submission of responses to this request or subsequent interviews of persons or companies.

B. Compliance with Rules

Vendors responding to this RFP must follow its procedures and requirements. Failure to comply with any portion of this RFP may result with the rejection of the Proposal.

The selected vendor will be invited to enter into contract negotiations with the Port. Should the Port and selected vendor not reach a mutual agreement, the Port will terminate negotiations and, at the Port's option, the Port may move to the next highest ranked vendor and proceed with negotiations, undertake another RFP process, or end the RFP process.

C. Proposal Withdrawal

Any proposal may be withdrawn at any time before the "Proposal Due" date and time by providing written request for the withdrawal to the Port. A duly authorized representative of the submitting vendor shall make the request. Withdrawal of a Proposal will not preclude the vendor from filing a new proposal as long as it is submitted prior to the submittal deadline.

D. Appeals

Proposers who wish to appeal a disqualification of their proposal or the vendor selection may submit the appeal in writing to the Port within five (5) working days of the postmarked notice of disqualification or notice of vendor selection. Disagreement with the process, e.g., scoring by evaluators, or otherwise, is not subject to appeal.

E. Ownership of Documents

Any material submitted by a vendor shall become the property of the Port. Materials submitted after a contract is signed will be subject to the ownership provision of the executed contract.

F. Public Record

The Port is a public agency and as such is subject to the Public Records Act. Any information provided in response to this RFP may be subject to public disclosure if requested through a written public disclosure request.

G. Confidentiality of Information

All information and data furnished to the vendor by the Port and all other documents to which the vendor's employees have access during the preparation and submittal shall be treated as confidential to the Port. Any oral or written disclosure to unauthorized individuals is prohibited.

EXHIBIT A

3600 Southridge Blvd, Kennewick, WA 99336 (PTN#: 1-1689-301-3167-001)

3700 Southridge Blvd, Kennewick, WA 99336 (PTN#: 1-1689-301-3167-002)

5810 Ridgeline Drive, Kennewick, WA 99336 (PTN#: 1-1689-301-3167-003)

6706 Ridgeline Drive, Kennewick, WA 99336 (PTN#: 1-1689-301-3167-004)

July 25, 2019



ADDENDUM #1

REQUEST FOR PROPOSAL **Auction Services**

Attached please find **Addendum #1** for the Port of Kennewick **Request for Proposal – Auction Services**. The addendum provides for response to Requests for Information as of 7/24/2019.

Thank you for your willingness to work with the Port of Kennewick on this project.

Kind Regards,

Amber Hanchette
Director | Operations & Real Estate

**REQUEST FOR PROPOSALS
AUCTION SERVICES
Due Date: 5:00 p.m., Wednesday, July 31, 2019**

ADDENDUM #1

REQUESTS FOR INFORMATION

1. Does the Port have current third party appraisal reports for each property/parcel within the last 12 months?

Property appraisals were conducted for each parcel with an effective valuation date of January 5, 2017. Appraisals are available upon request due to large file size.

2. What is the total estimate of value for the four identified parcels?

	<u>Assessed Value 2019/2020</u>	<u>Appraised Value (1/5/2017)</u>
3600 Southridge Blvd, Kennewick	\$594,470	\$550,000
3700 Southridge Blvd, Kennewick	\$782,680	\$820,000
5810 Ridgeline Drive, Kennewick	\$396,820	\$408,000
5706 Ridgeline Drive, Kennewick	\$817,300	\$810,000

3. Does the Port have current third party professional reports for each property / parcel (e.g. survey, environmental site assessments, title reports)? **Available upon request.**

Survey dated – Short Plat 3167, 11/18/2008

Environmental Assessment dated – no record

Preliminary Title Report dated – 4/12/2019

4. What does the Port Charter guidelines reference as the values needed to achieve to sell a Port owned surplus property/parcel? **Subject to Port of Kennewick Land Sale Policy. Posted with RFP at www.PortofKennewick.org.**

5. Does the Port have any deed restrictions for the subject properties/parcels anticipated to be auctioned? If so, please provide an example. **No deed restrictions. See Title Report.**

6. Will local firms be given preference? **All proposals will be given equitable treatment.**

7. Will the Port reimburse us for our pre-budgeted and pre-approved out-of-pocket marketing and advertising costs for this auction? **Vendor shall be compensated for marketing expenses mutually agreed upon in writing between Vendor and Port.**

8. Will the Port sell these properties to the highest bidder regardless of price and if not, why not? **The Port commission reserves the right to accept or reject any bids.**

9. Has any auction firm assisted in the drafting of this RFP and if so, which firm(s)? **No**

10. Has the Port previously auctioned any real estate and if so, which firm(s) have done this work?
No

11. When does the Port want to have the auction? Within the next 12 months. **Date subject to commission approval.**

12. Is the Port soliciting for a live auction event or does it wish an online approach? Or perhaps the Port would like a live event that includes the remote bidding element of an online auction? **The Port shall entertain proposals that serve in the best interest of the district to achieve the highest results.**

ADDITIONAL INFORMATION:

ADDRESS CORRECTION – ~~6706~~ 5706 Ridgeline Drive, Kennewick

LAND FOR SALE

PRIME SOUTHRIDGE DEVELOPMENT OPPORTUNITY



- ⇒ Desirable South Kennewick Location (Benton County)
- ⇒ Lot Sizes—1.34 to 2.69 acres
- ⇒ Neighborhood Mix—Medical, Residential, Restaurants, Hotels, Sports Complex, Entertainment
- ⇒ Cross Streets—Ridgeline Drive, West 36th, Southridge Boulevard
- ⇒ Addresses: 3600 Southridge Blvd, 3700 Southridge Blvd, 5810 Ridgeline Drive, 6706 Ridgeline Drive
- ⇒ Zoning—Commercial Community
- ⇒ Utilities—Water, Sewer, Electric, Natural Gas

\$7.00 psf



Port of Kennewick
WWW.PORTOFKENNEWICK.ORG

Amber Hanchette

Director | Real Estate & Operations
(509) 586-1186
Amber@PortOfKennewick.org

350 Clover Island Drive Suite 200 Kennewick, WA 99336

www.PortOfKennewick.org

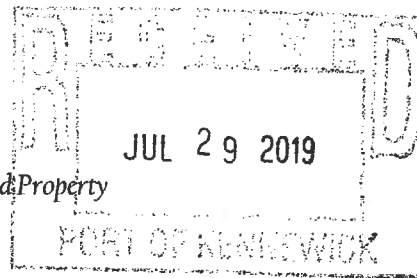
Port of Kennewick as Owner, asserts that information contained herein is submitted without representation or warranty. The information above has been obtained from sources believed reliable. All information is subject to error, omission, price change, changes in terms and conditions, prior sale and/or lease, withdrawal from the market without notice etc.

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

July 31, 2019

Re: Request for Proposals – Auction Services for Port Owned Property

Dear Director of Real Estate:

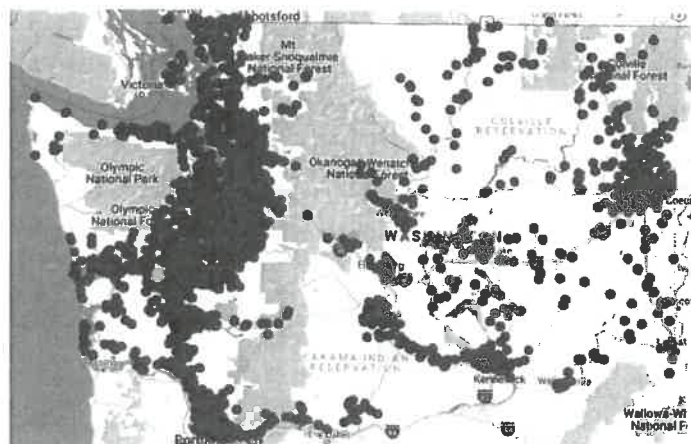


GovDeals received notice of the Port of Kennewick's Request for Proposal for Auction Services for Port Owned Property. Although we are not able to respond to this solicitation for the sale of parcels, please keep us in mind for the sale of surplus vehicles, computers, and specialty assets that you may have need of in the future.

GovDeals online auction platform was designed specifically to meet the transparency and accountability needs of government entities endeavoring to auction their surplus. Your auction results can be easily accessed by the general public and perpetual audit trail and robust reporting features meet even the most stringent auditors' requirements. We currently work with over 12,000 government entities, many of whom utilize our services for the following reasons:

- By utilizing an online auction platform, you don't have to wait to sell your assets. Selling your assets as soon as they are removed from service typically helps those assets retain higher values, while also reducing storage space and holding lot needs.
- A major part of GovDeals' service and success for our clients is providing robust targeted marketing services at no additional cost, including online and print advertising for individual assets. Last year, our Marketing Department placed more than 42,000 online and print advertisements for our clients' assets to be auctioned, and none of our clients were charged a fee for this value-added service.
- GovDeals' commitment to best-in-class service enables municipalities throughout the Northwest and across the country to obtain the highest net auction sale prices for surplus assets in hundreds of categories – from vehicles to outdated technology. Numerous government agencies have regularly experienced higher returns of 20% to 40% by shifting some or all of their surplus auctions to our online marketplace.
- GovDeals can expose your items to over 760,000 qualified and interested bidders, and hundreds of new bidders join our marketplace each and every day. More than 10,000 active bidders call the state of Washington home.

Over 10,000 Active Bidders in the State of Washington



There are a huge number of aspects to determine what makes a superior auction services provider, but it doesn't have to all fall on your shoulders. GovDeals has been repeatedly vetted and awarded nationwide contracts by the largest national procurement groups, Sourcewell (formerly NJPA)

and NASPO ValuePoint – so you can rest assured you made the right choice when shifting your surplus program to GovDeals. Several nearby agencies, including the City of Mission, Harlingen Police Department, and San Benito Consolidated ISD, can vouch for GovDeals' commitment to service and success for our clients' surplus disposition programs.

After 18 years in the government-exclusive online auction business, the staff at GovDeals knows from experience that the vital elements of a thriving surplus disposition program include transparency, efficiency, and reliability. Should your agency decide it would be advantageous to auction assets directly from your location, GovDeals' Washington-based Client Account Manager is available to help facilitate these auctions.

Very respectfully submitted,



Steve Kranzusch, Vice President and General Manager
skranzusch@govdeals.com | Cell: 334-462-3962 | Office: 1-800-613-0156 Ext. 4455

#2



3125 Rickenbacker Drive • Pasco, WA 99301 • 509.416.6060

July 30, 2019

Amber Hanchette
Director of Real Estate
Port of Kennewick
350 N. Clover Island Drive, Suite 200
Kennewick, WA 99336

Re: Auction Services Proposal

Dear Amber:

Pursuant to your Request for Proposals for Real Estate Auction Marketing Service, please find enclosed, three copies of our proposal.

We are excited to begin working with the Port to maximize your sales results on the Southridge properties.

If we have left any question unanswered, please feel free to reach out to me.

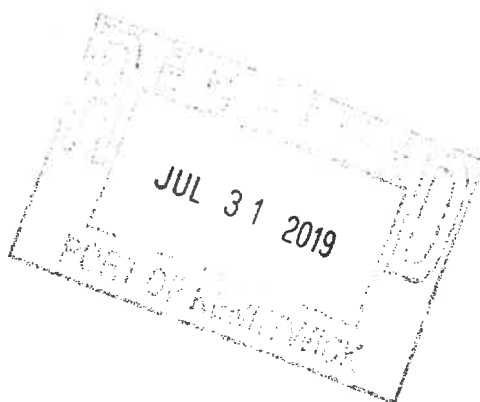
Warmest regards,

Musser Bros. Auctioneers

A handwritten signature in black ink, appearing to be "Scott Musser", written over a horizontal line.

Scott Musser
Managing Partner

SSM:dc
Enclosures



EXECUTIVE SUMMARY

Project Scope

The Port of Kennewick is the owner and steward of (4) commercial development parcels situated in South Kennewick, adjacent to the Southridge area. The Port is desirous of marketing these properties at public auction, in a way that will maximize the financial return to the Port and contribute to the long-term viability of the subject properties and adjacent properties.

Marketing

Musser Bros. will design and implement a fully customized marketing plan that will expose the properties to the broadest market possible. Marketing will consist of print, direct mail, signage, social media and broad internet marketing. Musser Bros. utilizes the most awarded graphic designer in the auction industry to produce materials that are not only attractive, but effective in reaching our target audience.

Implementation

90% of a successful auction happens prior to auction day. However, execution on auction day is vital to the overall success of any auction marketing project. Our team of Auctioneers and Bid Assistants has over 140 years of combined experience in working live and online auctions of real property. We will utilize either live auction, live auction with online simulcast or online only auction to conduct your auction, utilizing our proprietary Power Parcels™ multi-par sales process. The Power Parcels™ process is an extremely robust system that enables all bidders to bid on any parcel or combination of parcels at any time. Maximum participation generates maximum results!

HIRING A SPECIALIST

Expert knowledge of your product and expert knowledge of the sales process is vital to the successful outcome of an auction. Members of our firm have written white papers and are asked to speak as authorities on a wide variety of subjects at industry conventions. The depth of knowledge in our staff serves our sellers and buyers well. We understand what we sell, and how best to offer it, and that allows us to attract the right buyers.

Many auction companies are generalists and sell "everything." While this approach can work for many situations, it does not fit complicated and complex projects that demand complex and sophisticated sales processes. It is for the same reasons that doctors specialize in specific areas. You don't go to a general practitioner for cardiac surgery!

For over fifteen years we have focused on creating marketing solutions for real estate, agricultural business and construction equipment. This focus has paid off for our firm and for our clients. Our year over year growth of real estate auction volume has seen double-digit growth. We continue to refine our processes and strategies, all in our quest to create the most dynamic and effective marketplace available.

GETTING TO KNOW US

Since its inception in 1956, Musser Bros. has been engaged in the marketing and sale of real and personal property at public auction throughout the western United States. During this period, the firm has conducted thousands of auctions for private individuals, corporations, museums, financial institutions and government agencies.

Robert & Lillian Musser founded the company in 1956. From those humble beginnings in Wyoming, the firm has grown to have offices in four northwestern states and regularly conducts auctions throughout the western United States.

Today, Musser Bros. and its' principals are nationally recognized leaders in our industry. We are often called on to present seminars at the national level, and have won numerous state and national awards for outstanding marketing and promotion in the auction industry.

Musser Bros. and its principals have conducted auctions in the following states and countries:

Washington, Oregon, Idaho, Montana, Wyoming, California, Nevada, Utah, New Mexico, Colorado, Arizona, Nebraska, Oklahoma, Illinois and Georgia.

England, Ireland, Germany, Australia, Spain and Canada

PROJECT TEAM

Scott Musser, CAI, AMM

Project Leader - Lead Auctioneer

Past President - National Auctioneers Association
2001 International Auctioneer Champion
2002 World All Around Auctioneer Champion
Life Member of National Auctioneers Association
Member - Certified Auctioneers Institute
Auction Marketing Management Designee
Licensed Washington State Auctioneer
Licensed Washington State Real Estate Broker
Licensed Oregon Real Estate Broker
Professional Auctioneer since 1982

Debbie Cupples

Controller

MBA Pacific Lutheran University
Member in Good Standing Association of Fraud
Examiners
7 years experience in Mergers and Acquisitions
35 years of progressive leadership

Harold Musser, CAI, AARE

Auctioneer & Bid Assistant

Past Director - National Auctioneers Association
Life Member of National Auctioneers Association
Member - Certified Auctioneers Institute
Accredited Auctioneer Real Estate Designee
Licensed Wyoming Real Estate Broker
Professional Auctioneer since 1974

Jake Musser

Auctioneer & Bid Assistant

Director - Washington Auctioneers Association
Professional Auctioneer since 2005

Juston Stelzor

Professional Bidder Assistant

Professional Bid Assistant since 2000

CASE STUDIES

DNR - Pasco 16 Project

230 Acre Residential Development Property - Pasco

Offered in five parcels using the Power Parcels system.

Purchased by three bidders

Round one bidding total was \$6,175,000

Final Selling Price: \$10,316,250

Michelle Burbidge: 360.999.6273

KID - Red Mountain Project

640 Acres - Vineyard Property - West Richland

Offered in thirty-one parcels using the Power Parcels system.

Purchased by one bidder

Round one bidding total was \$5,100,000

Final Selling Price: \$8,756,500

Chuck Freeman: 509.586.6012

Windy Ridge Vineyard

694 Acres - Vineyard

Offered in four parcels using the Power Parcels system.

Purchased by one bidder

Round one bidding total was \$6,890,000

Final Selling Price: \$6,890,000

Shelley Crocker: 206.621.5821

Franklin County Surplus

(3) Commercial Development Parcels - Pasco

Offered in three parcels using the Power Parcels system

Purchased by one bidder

Round one bidding total was \$750,000

Final Selling Price: \$1,015,875

Commissioner Peck: 509.727.2808

C & J Land Holdings

99 Acre Residential Development - Richland

Offered in one parcel

Purchased by one bidder

Final Selling Price: \$4,876,000

Bill Wilson: 509.430.4788

Shaw Estate

17 Acre Residential Development - Richland

Offered in one parcel

Purchased by one bidder

Final Selling Price: \$1,979,500

Ed Shaw: 509.554.9655

PRELIMINARY TIMELINE

This timeline is representative of what will take place throughout the auction process. Please note that this timeline is preliminary and should not be considered complete.

60 Days

Auction contract signed
Identify all the land by tax parcel
Photograph and identify improvements
Arrange to fly the property
Auctions listed on websites

50-55 Days

Prepare brochure
Select auction location
Assemble aerial maps, soil maps and photographs
Determine mailing lists and target marketing
Report to seller
Order preliminary title reports
Design and order signage

45-50 Days

Prepare Purchase and Sale Agreement(s)
Get seller acceptance of purchase documents
Determine divisions of property
Place website advertising

40-45 Days

Design media ads
Set dates for informational meetings and property tours
Place property signs

35-40 Days

Assemble property information packages
Mail auction brochures
Select caterer
Finalize ad plan and review with seller

25-30 Days

Place media ads
Press releases sent out
Update call to seller

20-25 Days

Informational meeting/Property tours
Media ads begin
Finalize Purchase & Sale Agreement
Update call to seller

15-20 Days

Media ads continue
Update call to seller
Press releases run

10-15 Days

Informational meeting/Property tours
Update call to seller
Media ads continue

Last 10 Days

Informational meeting/Property tours
Meet with seller to discuss auction events
Follow up to caterer
Prepare auction day list
Meet with auction day staff
Last check for additions to property information packages

COMPARISON CHECKLIST

We want you to choose the most competent auction company for your project. Use this sheet to help you compare and analyze.

- | | |
|--|-----------------------------------|
| ✓ Local Print Advertising | ✓ Custom Signage |
| ✓ Regional Print Advertising | ✓ High Traffic Website |
| ✓ Power Parcels Multi-Par Selling Method | ✓ In House Marketing & Graphics |
| ✓ Ability to offer parcels onsite AND online | ✓ Email Mailing Lists |
| ✓ Ability to offer parcels online only | ✓ Property Subdivision Experience |
| ✓ Full Time, Professional & Licensed Staff | ✓ Full Color Pictorial Brochures |
| ✓ Open Houses & Showings | ✓ Local Representation |
| ✓ All Information Accessible Online | ✓ Regional Representation |
| ✓ Dedicated Custom Website | ✓ National Representation |
| ✓ Award Winning, Proven Marketing | ✓ Auction Preparation Services |
| ✓ Buyer Seminar | ✓ Seller Activity Reports |
| ✓ Closing Coordinator | ✓ Nationally Recognized Staff |
| | ✓ Multiple "key" persons |

POWER PARCELS™

We recommend utilizing the Power Parcels, multi-parcel combination method to maximize the results of your auction. Using our proprietary Power Parcels system, we will offer parcels individually and in combination, until we have allowed all bidders to place their bid(s) on the parcel or parcels they desire. Our Power Parcels system allows all bidders to bid on any parcel or combination of parcels at any time, effectively allowing them to bid at any time during the auction.

This means that individual parcel buyers can and will compete with multiple parcel buyers. We have a state of the art computer system that keeps track of all bids and makes the auction run smoothly. Bidders are kept abreast of their status by color coded parcel maps that are updated in real-time on large screen displays.

The most effective part of our Power Parcels system is our team of expert bid assistants. Our bid assistants completely understand the processes and are actively engaged with the bidders, assisting them in putting combinations together to defend their bids. Their ability to work with the bidders makes the Power Parcels system extremely effective.

Many companies try to sell the multi-parcel method, but few have mastered it. There are many less effective derivatives including bidding on parcels one at a time, putting parcels on a board and allowing raises, but without competing combinations. The simple fact is, there is only one way to allow a small single parcel bidder to compete against a larger multiple parcel bidder — that is the Power Parcels system.

YOUR AUCTION

There is only one chance for a successful auction. A successful auction demands perfection in execution and implementation of all steps. Outlined below is a recap of the many steps involved in bringing about the successful completion of your auction.

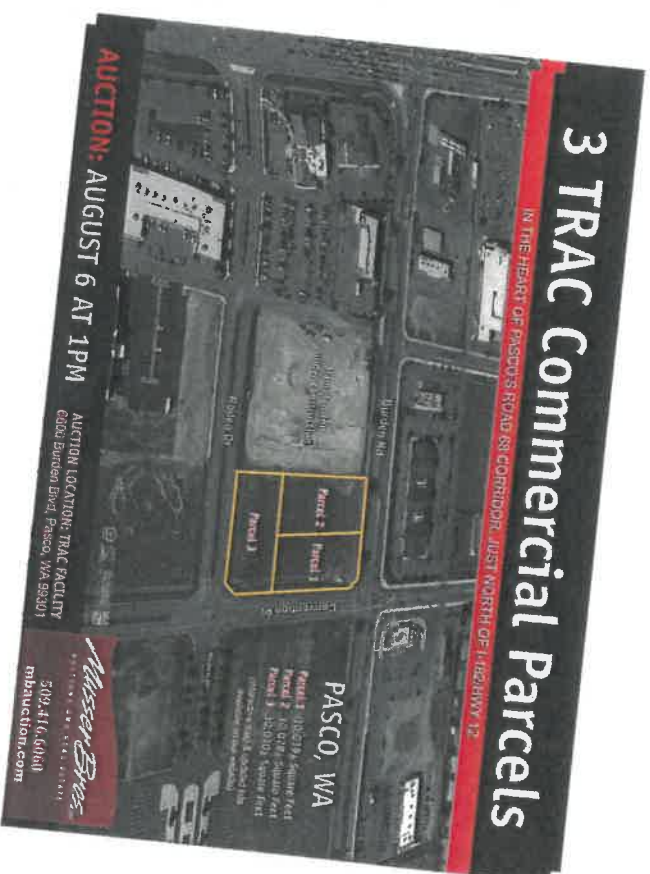
Auction Brochure

One of the highlights of the auction marketing campaign is the auction brochure. We utilize our award winning designers to create a dynamic full color auction brochure that will highlight the auction property and the terms of the auction.

The brochure will include aerial and ground photography, parcel maps showing the divisions and parcels, location maps, and primary information about the property auction and the salient terms of the auction. It will highlight the distinctive features of the property with attractive photographs and will serve two major functions:

1. The brochure will be direct mailed to in-house lists, purchased lists, area property owners, land buyers and recent attendees.

2. The brochure will be forwarded to all interested parties who request information due to our print and online media outreach campaign. There will also be brochures available right on the property in our sign boxes.



YOUR AUCTION

Print Media

Our approach to traditional print advertising will include placements in local, regional and national newspapers, regional trade publications, regional agricultural publications and local business journals. A Marketing Brief is included in this proposal. To control our message, we provide camera-ready copy for all of our print media placements. All print media will have call outs to visit our website, the auction website or call for further information.

Internet

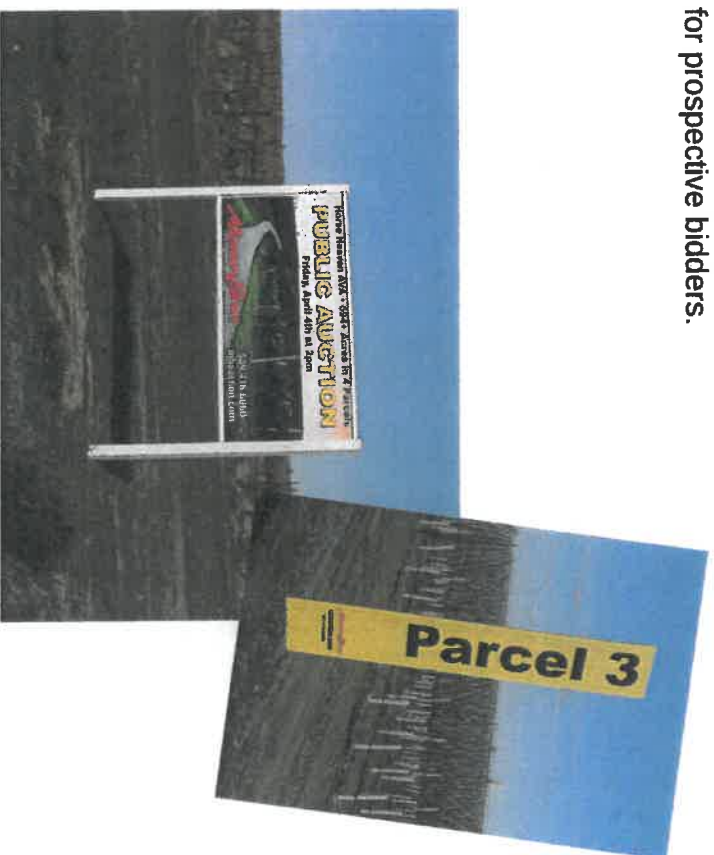
Our internet strategy has been presented earlier within this proposal. It is essential to have a strong web presence. Today's buyers expect full information available 24 hours a day, seven days a week.

The website will include all of the information available in the brochure and additional detailed information and photos. We will also offer our complete Property Information Package as a downloadable file. Buyers can gather this information and be prepared to present it to their lenders for financing.

The websites will be promoted in all print advertising and on all signage.

Signage

According to a recent study by the National Association of Realtors, sign are the second most popular way that buyers find property. We will construct large 4' x 8' road signs, as well as smaller parcel signs. Each parcel will be marked with a sign. We will use directional signage where needed to guide bidders to the parcels. All property signs will be fitted with outdoor brochure boxes that will hold brochures for prospective bidders.



YOUR AUCTION

Personal Contact

In addition to the marketing campaign, Musser Bros. representative will be in the field canvassing the area surrounding the property and will be onsite during property tours. No other contact with buyers is as effective as the personal contact. We will also provide brochures to local professionals such as attorneys, accountants and lenders to promote interest in the property.

Public Relations

Musser Bros. will develop and distribute press releases that talk about the auction and the property. It is our goal to have the auction written about in numerous publications, prior to the auction.

Property Information Packet

We will prepare a detailed packet of information to distribute to prospective bidders who call requesting further details about the property. This packet will contain copies of documents and property details that are not included in the brochure or media advertisements, such as title reports, contracts, water information, utility information, surveys and all necessary disclosures. This will be prepared for each property and will be available for download from our website as well.

Property Tours

General inspection dates will be scheduled during the promotional period. This will allow prospective bidders to view the properties and gather detailed information and have the opportunity to visit with auction staff. It will be beneficial to schedule these during concise time-frames and have multiple bidders onsite at the same time. To further assist access, we will show the property by appointment in addition to the scheduled property tours.



YOUR AUCTION

Preparation and Auction Day Staffing

We have on a full time and part-time basis, one of the most effective and experienced teams of auction professionals in the industry including:

- Auctioneers
- Bid Assistants
- Registration Attendants
- Power Parcel Computer Specialists
- Administrative/Support Assistants
- Marketing Coordinator
- Technology Specialists
- ...and many more!

Auction Site and Concessions

Musser Bros. will select a suitable location to hold the auction and will arrange for catering for our auction attendees.

Post Auction Activities

The Sellers, the title company and the Purchasers will be aided by Musser Bros. throughout the closing process. We will identify problems and find solutions to aid in expedient closings. Within one week of the auction, each successful bidder will receive a congratulatory letter outlining exactly what they must do, when they must do it and the names and contacts of the persons involved in the closings.

We will insure that the closings proceed as scheduled and follow contract guidelines. The purchaser and closing agent will be contacted for updates and progress reports.



REFERENCES

December 20, 2013



To Whom It May Concern

Re: Musser Bros Auction

The decision regarding how to sell KID's surplus property which included very high carrying costs was carefully weighed to ensure that the District's customers' interests were protected and these assets would be sold in a way calculated to achieve the highest price the market would bear. The Kennecott Irrigation District selected Musser Bros Auction for our Red Mountain Project where KID owned 670 acres after soliciting competitive proposals for auction services.

Immediately upon award of the contract for their services, Musser Bros developed a marketing plan, presented it to my Board of Directors within the first few weeks of our contractual relationship.

Once the marketing was underway, Musser Bros communicated with me weekly with an activity report and to review drafts of the brochure. In addition, Musser Bros gave my Board monthly updates in person on the activity and how things were progressing in the run up to auction day.

KID still owns over 1,100 acres, and if possible, plans to utilize Musser Bros for additional marketing and auction services. Their staff is polite, professional and they know their business. The print advertisements, web site, and the brochure were professional and effective and were distributed broadly within the target market. They know how to conduct a successful auction. KID's experience with the multi-par Parcel Process was very positive where the price was nearly doubled from the initial round to the final sale price.

If you have any questions, or you have information to the contrary, please do not hesitate to contact me.

Regards,

Charles Freeman
District Manager

12 W. Kennecott Ave., Kennecott, WA 99336 (509) 586-9111, fax (509) 586-7683 www.kid.org

May 24, 2018

To Whom It May Concern:

This letter is to recommend without reservation Musser Bros. Auctions and Real Estate, based on my experience this year successfully selling at auction 17 acres in Richland, WA for residential development.

This property was an estate sale and therefore our goal was to maximize the sale price for the benefit of several heirs. After interviewing various brokers and Scott Musser we determined our best opportunity to expose the property to the maximum qualified developer market was to take our chances with an auction.

This decision was based on our knowledge of excellent results achieved by Scott on other sales we were very familiar with, and not least for Scott's reputation for integrity.

Scott was very helpful in dealing with problems involving zoning and encumbrances issues, and handling pre-auction offers we received. At a well advertised auction we ultimately sold the property for substantially more than we had previously been offered.

Feel free to contact me if you wish to discuss this recommendation further.

Sincerely

Edward T. Shaw

PO Box 309, Benton City WA 99320

(509) 588-4534

esthawvds@msn.com

REFERENCES



DEPARTMENT OF
NATURAL RESOURCES
Conservation, Recreation &
Transaction Division
1111 Washington Street SE
Olympia, WA 98504
360-495-4373
dnr@dnr.wa.gov
www.dnr.wa.gov

04/24/2017

To whom it may concern,

The Washington State Department of Natural Resources was faced with the challenging prospect of selling 230 acres of residential development property in Pasco, WA. While the DNR is accustomed to managing state owned lands, and even regularly acquiring and selling lands, selling development property in an urban setting is not something DNR does very often.

After meeting with Scott and attending one of his auctions, I was convinced that by using the Power Parcel method, he and his team would generate the greatest prices for our property.

The WA DNR has strict constitutional and legislative laws that it must adhere to when selling land, and Musser Bros. adapted well to the unique and challenging constraints that exist when working with a governmental agency.

Scott and his staff accompanied me to several meetings with staff from the City of Pasco. This ensured an understanding of the city's development requirements and how that would impact potential buyers. Having this information up front was critical for success.

Musser Bros. was able to generate prices at auction that far exceeded our expectations and the Washington DNR would strongly consider working with them again in the future.

If you have any questions, please do not hesitate to contact me.

Best Regards,

Michelle Burdige

Michelle Burdige
Project Manager
WA DNR / Conservation, Recreation & Transaction Division



LAWYER NURSERY INC.

6625 MT Highway 200
Plains, Montana
59609-9219 USA

TEL: (408) 898-3961
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WEB: www.lawyernursery.com

April 20, 2019

Musser Brothers Auctions and Real Estate
1131 13th Street
Cody, WY 82414

Dear Harold, Scott, Shelley, and Mark,

I can't begin to thank you enough for auctioning our farm and nursery equipment as well as the real estate in Plains, Montana and Olympia, Washington. Your competence and advice made these auctions successful. Everyone worked together as a team to catalog equipment, gather the complex and many legal documents for selling the land, and to extensively advertise the auctions. I greatly appreciate that you were always available to answer my questions and able to direct me to attorneys with the expertise I needed. Due to your attention to our auction and your guidance, I gained a comfort level that I didn't know was possible.

Again, thank you for making this experience a success. I will be a return customer.

Best Regards,

Terry Peterson

Terry Peterson
Managing Director
Lawyer Nursery, Inc.

REFERENCES

4/30/2014

To Whom it May Concern:

I had the pleasure of working with Scott Musser and Musser Bros. Auctions and Real Estate Co. recently, and I write now to recommend their services without reservation. Over the years, in my work in the turnaround field, I have been involved in many auctions, and Scott's company provided the best auction services I have seen.

From the outset, the relationship with Scott was marked by the utmost professionalism. I am the court appointed receiver over two vineyards in Klickitat County, in an exceptionally complicated proceeding. We were under pressure to bring the property to auction quickly, and our activities were closely scrutinized by a bank and by the court. Scott was accommodating and helpful in crafting a plan and an auction agreement that met my requirements, and in assisting me in obtaining the necessary approvals.

More importantly, Scott acted as a trusted advisor to me as I navigated a complex landscape. He conducted a thorough marketing effort, reaching hundreds of potential buyers, and he did so professionally and with multiple inquiries. The website he set up was easy to navigate and showed off the property well, and he assisted me in obtaining the appropriate documents for the website. He went above and beyond what I expected in seeking out and conveying information about the property to potential buyers, in a case where I had limited information. And when the bank needed frequent updates about the progress of the auction, he was always responsive.

Prior to the auction, we received an offer for the property. Scott's advice and counsel were invaluable to me, and he helped to determine whether the offer should be accepted or we should go ahead and hold the auction. Throughout this process, I never had any doubt that Scott's only interest was in providing me with the best possible outcome. I also felt confident every step of the way that his representation made me look good - he was always courteous, calm and businesslike in his dealings with me, my potential buyers, and a myriad of other professionals involved in this deal.

Finally, the day of auction itself was a marvel. Scott is an artist. He has an eye for every detail. We conducted our auction at his facility, and it was attractively staged for the day. From the evening open house and wine tasting the night before, to the abundant food and live music at the auction itself, bidders were treated lavishly. He began the auction with the sale of a quilt for charity - a brilliant and kind way to engage bidders in the process. His team was prepared and professional, and they worked together like a well-oiled machine. The auction was completed and all the paperwork orchestrated by the team that very day, and Scott has continued to assist through closing. The whole process was truly extraordinary.

Shelly Crocker
4616 23rd Ave NE #401
Seattle, WA 98105
206-521-5821
shelly@shellycrocker.com



At the end of the day, we all want to know that we got the best price we could get, and I am entirely confident that Musser Bros. Auction Co. obtained that for me in this sale. Scott provided solid, trustworthy advice about how to market and position the property for sale, and he conducted a flawless auction. His efforts were responsible for bringing the right potential buyers to the table, and then he brought home the deal I am satisfied that we obtained the best possible price, and I am delighted to give him my highest possible recommendation.

If you have any questions, or if I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

Shelly Crocker
Receiver,
Alder Creek Vineyards and Windy Ridge Vineyard

Shelly Crocker - 2

OUR OFFER

Musser Bros. Inc. is pleased to propose the following terms for providing auction services per the Request for Proposals.

Musser Bros. will create and place all marketing, conduct previews and open houses, conduct the auction and follow up during the closing periods. We recommend utilizing a Buyer's Fee of 6.0%. The Buyer's Fee of 6.0% will be added to the high bid to determine the total purchase price of each parcel. The 6.0% Buyer's Fee will be retained by Musser Bros. as their fee upon successful closing.

Additional Costs: The Port of Kennewick will be responsible for closing costs and all marketing and promotion costs, as determined by the Advertising Budget to be created by Musser Bros. in concert with the Port.

Musser Bros.
A U C T I O N S A N D R E A L E S T A T E

3125 Rickenbacker Drive • Pasco, WA 99301 • 509.416.6060 • www.mbauction.com





AGENDA REPORT

TO: Port Commission

FROM: Lucinda Luke, Port Counsel

MEETING DATE: August 13, 2019

AGENDA ITEM: CEO Evaluation Committee – Commissioner Appointment

- I. REFERENCE(S):** Resolution 2019-16, Port Commission Rule 15, and CEO Evaluation Policy; attached.
- II. FISCAL IMPACT:** Revenue neutral to the Port.
- III. DISCUSSION:** The CEO performance evaluation process was updated in 2017 to be more efficient and effective, and consistent with current trends. The updated CEO performance evaluation process provides for the formation of a CEO Evaluation Committee comprised of the Port's Chief Financial Officer, Port Attorney, and one Port Commissioner. Commissioner Barnes was appointed to the Committee by the Commission in 2017. Pursuant to the Port Commission Rule 15.1.1, the Commission is due to appoint another Commissioner to the CEO Evaluation Committee.
- IV. RECOMMENDATION:** After careful review of various matters pending before the Port Commission and the potential liability issues that could arise from the recently completed citizen complaint investigation, it is my recommendation that Commissioner Skip Novakovich be appointed to the CEO Evaluation Committee for the next two years of CEO evaluations.
- V. ACTION REQUESTED OF COMMISSION:**
Motion: I move approval of Resolution 2019-16 appointing Commissioner Skip Novakovich for a two-year term to the CEO Evaluation Committee commencing immediately; and further ratify and approve all action by port officers and employees in furtherance hereof.

PORT OF KENNEWICK

Resolution No. 2019-16

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK APPOINTING PORT COMMISSIONER TO CEO EVALUATION COMMITTEE

WHEREAS, the Port Commission adopted Resolution No. 2017-16 updating the CEO annual evaluation policy and procedure; and

WHEREAS, the updated evaluation policy and procedure provides for a CEO Evaluation Committee comprised of the Port's Chief Financial Officer, Port Attorney, and one Commissioner appointed by the Board of Commissioners; and

WHEREAS, the term of Commissioner Barnes on the CEO Evaluation Committee has been completed and the Board of Commissioners is to appoint another member of the Board to the CEO Evaluation Committee.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of Commissioners of the Port of Kennewick appoints _____ to serve a two-year term on the CEO Evaluation Committee effective immediately.

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

ADOPTED by the Board of Commissioners of the Port of Kennewick on the 13th day of August, 2019.

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

By: _____
THOMAS MOAK, *President*

By: _____
DON BARNES, *Vice President*

By: _____
SKIP NOVAKOVICH, *Secretary*

MEMORANDUM

DATE: August 6, 2019
TO: Lucinda Luke, Port of Kennewick Counsel
FROM: Tara L. Parker
RE: Independent Investigation into Misconduct Allegations Against Port of Kennewick Commissioners Don Barnes and Thomas Moak

I. SUMMARY OF THE INVESTIGATION PROCESS

This Report addresses allegations that were made on March 25, 2019 against Port of Kennewick (Port) Commissioners Don Barnes and Thomas Moak.¹ On April 12, 2019, I was hired to perform an independent investigation regarding the complaint. My report regarding the March 25, 2019 allegations was submitted to Port counsel on June 18, 2019. On June 26, 2019, Port counsel reported an additional issue for investigation. The latter issue was investigated and is addressed herein.

The complaint and witness statements raise four questions:

1. Did Commissioners Barnes and Moak violate the Washington Open Public Meetings Act, RCW 42.30, by privately discussing Port business?
2. Did Commissioner Barnes and/or Commissioner Moak violate Port rules and policies in their directives and communications?
3. Did Commissioner Barnes create a hostile work environment for the Port CEO in violation of Port policies and/or Washington law?
4. Did Commissioner Moak breach his obligation to perform his duties as Commission President to enforce the Commission's policies and procedures?

Over the course of the investigation, I interviewed the Complainant, the Respondents, and six witnesses, all of whom are Port employees. Numerous documents were reviewed in the course of this investigation, including the March 25, 2019 complaint; the applicable Port Commission Rules of Policy and Procedure; emails from witnesses related to the complaint; Port Commission meeting minutes and audio recordings; and other documents related to relevant Port matters.

This Report contains only facts that were relevant and necessary to the determination of the allegations. In accordance with the Port policy contained in Section 5.4 regarding investigations,

¹ A redacted copy of the complaint is attached as Exhibit 1.

the Respondents were presumed to have acted ethically and findings herein are based on a substantial evidence standard.²

Pursuant to Section 5.2 of the Port Commission's Rules of Policy and Procedure, the identities of the Complainant and the witnesses are kept confidential. The witnesses who were interviewed and the documents that were reviewed each conveyed an account of, and a perspective on, one or more of the events recounted below. On various points, some of these accounts were incomplete or conflicting. The following description of events represents a reconciliation of competing versions and, where necessary, the descriptions are informed by an assessment regarding witness's credibility in view of all the facts and circumstances on a more probable than not basis.

In weighing the credibility of the Complainant, Respondents and witnesses, I considered the factors provided in the Equal Employment Opportunity Commission's Guidance on Credibility: (1) the inherent plausibility of the witness's statements; (2) the witness's motive to give false statements; (3) whether the Respondent had a history of similar behavior to that which was alleged (4) whether the witness's testimony is corroborated by documents, or by others who saw or heard about the alleged incidents around the same time they occurred; and (5) the witness's demeanor during questioning. As the EEOC notes, "none of the above factors are determinative as to credibility." For the sake of brevity, the details of how each of these factors affected each credibility determination are not all included in this Report.

All of the information the witnesses provided regarding the allegations was considered in drafting this Report and was taken into account in the analysis and the conclusion even if it is not specifically referenced in this Report. This Report recounts some of the information obtained in the investigation to illustrate the process, analysis, and conclusions, but it does not contain all the information obtained due to its volume. This Report also combines and summarizes information as opposed to recounting it verbatim.

² Workplace misconduct investigations typically involve the "preponderance of evidence" standard, which means findings are based upon that which is supported by more than 50% of the evidence. See, e.g., Washington Pattern Jury Instructions 21.01 Meaning of Burden of Proof—Preponderance of the Evidence, 6 Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 21.01 (6th ed.) However, the "substantial evidence" standard employed here is somewhat lower. As one court explained, "[s]ubstantial evidence is defined as 'more than a scintilla but less than preponderance,' and consists of 'such relevant evidence as a reasonable person would accept as adequate to support a conclusion.'" *Mareno v. Apfel*, 1999 U.S. Dist. LEXIS 8575 (S.D. Ala. Apr. 8, 1999). However, because the Policy instructs the investigator to presume the Respondents' conduct was proper, any finding to the contrary must also be sufficient to overcome that presumption.

II. APPLICABLE STANDARDS

This investigation was undertaken pursuant to the Port Commission Rules of Policy and Procedure (Port Rules) adopted February 22, 2011.³ In accordance with Port Rules Section 1.1, the Port “is a Washington port district, with authority to act under law, including but not limited to Titles 14 and 53 RCW. The powers of a port district are exercised through a port commission. The Port Commission of the Port of Kennewick consists of three Port Commissioners.”

Port Rules Section 1.2 specifies that the Port is subject to Washington State laws, including the Open Public Meetings Act (OPMA), chapter 42.30 RCW. The OPMA requires that all “meetings” of the Commissioners be open to the public and that all “actions” taken by Commissioners be done at meetings that are open to the public. Under the OPMA, “‘Meeting’ means meetings at which action is taken.”⁴ And “action” is defined as,

[T]he transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. “Final action” means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.⁵

Because a governing body can transact business when a quorum (majority) of its members are present, it is conducting a meeting subject to the OPMA whenever a majority discusses a matter having to do with the agency’s business, whether in person, by telephone or e-mail.⁶

The Complainant alleges that the Respondents violated several Port Rules and Policies, which are specifically identified and addressed in the Allegations and Analyses section of this Report.

The Complainant and the Port CEO also alleged that the CEO was subjected to a hostile work environment and retaliation. In addition to Port Rules relevant to those claims, the Washington Law Against Discrimination (WLAD), RCW 49.60 applies.

Under RCW 49.60.180(3), it is an unfair practice for employers to “discriminate against any person in compensation or in other terms or conditions of employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged

³ The Commission Rules of Policy and Procedure are attached as Exhibit 2. During this investigation, the Commission adopted a resolution amending Section 5 regarding investigations. The revised language is attached as Exhibit 3.

⁴ RCW 42.30.020(4).

⁵ RCW 42.30.020(3).

⁶ See MRSC “The Open Public Meetings Act,” at 6 (citations omitted), <http://mrsc.org/getmedia/275e74fc-9d43-4868-8987-a626ad2cea9f/open-public-meetings-act.pdf.aspx?ext=.pdf>.

veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability[.]”

The Equal Employment Opportunity Commission (EEOC) explains the elements necessary to establish a hostile work environment claim under both federal and Washington State law:

Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

The test for retaliation for protected activity under the WLAD is as follows:⁷

[The] employee must show that (1) he or she engaged in statutorily protected activity; (2) an adverse employment action was taken; and (3) there was a causal link between the employee's activity and the employer's adverse action.

III. ALLEGATIONS AND ANALYSES

A. Alleged Violations of the Washington Open Public Meetings Act, RCW 42.30

The Complainant alleges that there were two occasions where the Respondents were in close agreement about subjects of Port business, such that it was likely that they had discussed those matters privately in violation of the OPMA. Those occasions are addressed separately below.

1. The Ivy Land Sale Release of Option to Repurchase

At the January 22, 2019 Regular Commission Meeting, Port staff presented Resolution 2019-02, by which the Commission would authorize the release of a restriction on private property that the Port sold to Jerry Ivy in 2004. The purchase and sale agreement contained a “buyback clause” that provided that the Port could repurchase the property at an agreed appraised price if the purchaser did not develop the property within eighteen months of closing, i.e., by May 18, 2004.

⁷ *Estevez v. Faculty Club of Univ. of Wash.*, 129 Wn. App. 774, 120 P.3d 579, 589-590 (2005) (citations omitted).

Mr. Ivy did not develop the property and, over the following fifteen years, the Port did not seek to exercise its buyback rights.

At the January 22, 2019 meeting, the staff informed the Commission that Mr. Ivy requested that the Port release its right to repurchase the property so he could move forward with a pending sale. Staff informed the Commission that the value of the property is currently in excess of \$1,000,000. Staff also stated that there was no strategic basis for the Port to repurchase the Ivy property. The Commission was not given any information about the Ivy transaction purchaser on January 22.

The Ivy property is a parcel adjacent to Vista Field, which is a large development project that the Port has been working on since 2013. After engaging in extensive talks with community members and strategic municipal partners, the Commission decided to keep its planning “inside the fence,” which meant that the project’s geographical boundaries would consist only of property that the Port already owned.

Commissioner Novakovich stated that he was in favor of approving the Resolution to release the buyback clause to allow Mr. Ivy’s pending transaction to move forward.

Commissioner Barnes stated that he was disappointed in the amount of information provided by the staff on this matter. He further stated that he thought the property held strategic value for the Port given its proximity to the Vista Field project. He stated that the Port had an obligation to look into potential options to buy back the property, or to seek design considerations from the parties in exchange for releasing the title restriction. He concluded that he did not have enough information to approve the Resolution.

Commissioner Moak also stated that the Port had an interest in determining whether the pending Ivy transaction may have impacts on the Vista Field development and related design concerns. He concluded that he needed more information before he could decide whether it was in the Port’s interest to relinquish its rights without more consideration.

Port Counsel informed the Commission that Mr. Ivy could seek a court declaration that the Port’s buyback rights were no longer enforceable because they were not timely exercised. Counsel also stated that Mr. Ivy could seek damages against the Port if its actions interfered with the transaction; although any award of damages would be up to the court.

Ultimately, the Resolution was tabled, and the CEO agreed to provide the Commission with additional information.

a. Information from Complainant and Witnesses

The Complainant and several witnesses stated that the Respondents’ initial opposition to releasing the Ivy property buyback clause made no sense to them. They articulated five reasons why they thought it was not viable for the Port to repurchase the property and should therefore allow the Ivy transaction to proceed without delay: (1) The Vista Field Master Plan did not include or provide for purchasing additional property; (2) the Port budget did not have funds sufficient

to purchase the Ivy property; (3) the Port faced potential litigation if it refused to release the buyback clause; (4) there could be backlash from community members who support the proposed purchaser, the Yakima Valley Farm Workers Clinic; and (5) various jurisdictional partners would likely view such an expenditure to be contrary to prior Port plans and commitments.

From the perspectives of the Complainant and the staff member witnesses, the Resolution to release the buyback clause was a “no-brainer,” and they were very surprised by the Respondents’ objections to it. For those reasons, the Complainant and some witnesses speculated that the Respondents had discussed the matter privately in violation of the OPMA.⁸

b. Information from Commissioner Barnes

Commissioner Barnes denied having any communication with Commissioner Moak about the Ivy property prior to the January 22, 2019 Commission meeting.

Commissioner Barnes stated that he was surprised to see a proposal from staff that would release the Port’s interest in the Ivy property because it is, in his opinion, of strategic value to the Vista Field project. He was dissatisfied with the amount of information that staff presented about this matter at the January 22 Commission meeting. He did not think it was in the interest of the Port or the public to simply “rubber stamp” the buyback release without seeing whether the Port could identify some more advantageous option. One possibility he noted was that the Port may be able to negotiate some design-related agreements from the parties in exchange for the release.

Commissioner Barnes appeared to be most bothered by the fact that staff did not inform the Commission, when they were engaged in the initial Vista Field planning in 2013, that the Ivy property was potentially available for purchase and inclusion in the development plan. Furthermore, Commissioner Barnes expressed a lot of frustration toward the CEO for what he considered to be a “defiant” response to the Commissioners’ questions.⁹

Although Commissioner Barnes later conceded that the neither the Port budget nor the Vista Field Master Plan is amenable to purchasing the Ivy property, he was not prepared to release the Port’s rights on the basis of the information provided by staff on January 22.

c. Information from Commissioner Moak

Commissioner Moak denied having any communication with Commissioner Barnes about the Ivy property prior to the January 22, 2019 Commission meeting.

⁸ The Complaint also suggests that the Respondents may have been motivated by racial animus. The Respondents vehemently denied any such motivations and took great offense to that claim. The information obtained in this investigation provided no support for the claim that the Respondents were motivated by racial animus.

⁹ Audio recordings of the Commission meetings at issue were listened to as part of this investigation. Nothing in the recordings clearly conveyed vocal tones or language that was less than professional on the part of any party in this matter.

Commissioner Moak stated that, after hearing Commissioner Barnes' concerns in the January 22 meeting, he agreed that the Commission did not have enough information to determine whether the Resolution was in the Port's interest. He wanted more information to determine whether the Port might be able to leverage its position to obtain some agreement from the prospective purchaser that would ensure that the Port's design goals were met.

d. Analysis

The information obtained in this investigation suggesting that the Respondents may have communicated privately about Resolution 2019-02 prior to the January 22, 2019 Commission meeting in violation of the OPMA is not sufficient to overcome the presumption that they did not do so. The Respondents each denied having any such communications. Moreover, each Respondent provided cognizable explanations for their request for more information about the matter on January 22, 2019.

2. Proposal for Mediation Between Commissioner Barnes and the Port CEO

The Complainant alleges that on March 22, 2019, Commissioner Moak suggested to the Port CEO that he and Commissioner Barnes engage in a mediation to resolve their conflicts. According to the Complainant, "a very short time later [the CEO] received a phone call from Port legal counsel saying that Commissioner Barnes called her asking her to schedule mediation between himself and [the Port CEO]." The Complainant had no first-hand knowledge of these events. He states that the timing of these events demonstrates that the Respondents must have discussed such a mediation in violation of the OPMA.

a. Information from Port CEO

The Port CEO stated that, on or around March 22, 2019, he told Commissioner Moak that he felt harassed and aggrieved by several things Commissioner Barnes had done. In response, Commissioner Moak suggested that the two engage in some sort of mediation process to resolve their differences. The CEO rejected the proposal, stating that Commissioner Barnes was entirely at fault in these matters. The CEO stated that then, "maybe the same day, Port legal counsel called or emailed saying that Commissioner Barnes raised the idea of a mediation with her."

b. Information from the Respondents

Commissioners Moak and Barnes denied having any communications with each other regarding a mediation between the CEO and Commissioner Barnes. Each described thinking about the idea, independently, in response to the conflicts at that time.

c. Analysis

The Respondents are presumed to have behaved ethically. The timing in which the Respondents each raised the idea of a mediation is questionable. However, all parties with knowledge of these events were aware of significant conflicts that needed to be addressed and mediation is a common tool for addressing conflict in professional settings. Accordingly, it is plausible that the

Respondents were thinking about the situation in the same way within a short timeframe. Therefore, the information obtained in this investigation does not constitute substantial evidence of wrongdoing sufficient to overcome the presumption that the Respondents complied with the OPMA.

B. Alleged Violations of Port Rules¹⁰

The Complainant and several witnesses alleged that Commissioners Barnes and Moak violated Port Rules and Policies in their directives and communications to staff and third parties that are related to Port business.

The specific Port Rules at issue are as follows:¹¹

3. COMMISSION CODE OF CONDUCT

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

3.6 Conduct as Commissioner. Commissioners shall adhere to these Rules of Policy and Procedure as adopted by the Commission, and shall conduct themselves with civility and respect at all times with one another, with staff, and with members of the public. [...]

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

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

¹⁰ The Complainant and the Port CEO claimed that Commissioner Moak violated Rule 3.6, which states that "Commissioners shall conduct themselves with civility and respect at all times," when he allegedly "dressed down" a Public Works Director. They said they found the event "embarrassing" and harmful to the Port's relationship with a municipal partner. This allegation was only considered in relation to other allegations of uncivil conduct due to witness assertions that pursuing the matter in this investigation would not serve the Port's interests.

¹¹ The Complainant cites additional Port Rules that are substantively identical to those specifically included in this Report. Redundant and/or irrelevant portions of the Rules are therefore omitted. Although some sections of the Port Rules have been updated, the Rules that were referenced in the Complaint remain unchanged.

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

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

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

1. Directing Staff Work and/or Micro-Managing Staff

a. Information from Complainant and Witnesses

The Complainant and witnesses stated that Commissioners Barnes and Moak's directives to staff to continue gathering and reporting information related to the Ivy property, for approximately six weeks following the January 22, 2019 Commission meeting, was a waste of public resources and improperly interjected in staff roles. The witnesses also spoke at length about how the "Ivy episode" caused a severe deterioration in staff morale. Some staff reported that they now feel fearful for their jobs and are uncomfortable with one or both of the Respondents.

Witnesses specifically complained about Commissioner Barnes "micro-managing" the Port's real estate and finance staff by directly questioning their work and requesting specific answers from

them.¹² Those staff members stated that felt consistently undermined and disrespected by Commissioner Barnes.

b. Statements from Respondents

The Respondents stated that they thought it was in the Port's interest to (a) determine whether the Port had a viable option to derive some benefit from the Port's interest in the Ivy property before waiving any Port interest; and (b) determining whether there was some process-level error that led to the staff not alerting the Commission to the Port's interest in the Ivy property at a time when it may have been more advantageous. The Respondents stated that they believed they had duties to the Port and the public to get such information and they did not ever intend to convey a lack of respect for the staff members and their work.

Commissioner Barnes specifically denied "micro-managing" staff. He acknowledged that he sometimes took a strong interest in Port matters where he has some experience and expertise, and may have overstepped his bounds in speaking with staff directly. He acknowledged that in doing that he may have sometimes made staff feel disrespected, which he regrets.

c. Analysis

The witnesses provided consistent and credible statements related to their general feelings of frustration about the significant amount of time they spent gathering and reporting on the Ivy property matter. They unanimously attested that it was a waste of time and resources. Moreover, staff conveyed that they felt undermined, disrespected, and uncomfortable at work. The witnesses provided substantial evidence of significant organizational problems stemming from these matters.

Nonetheless, the information obtained in this investigation is not sufficient to overcome the presumption that the Respondents had good faith bases for their actions. As noted above, Port Rule 12.3 provides that Commissioners may communicate directly with Port employees or contractors for the limited purpose of inquiries. And the information obtained in this investigation does not show that the Respondents specifically directed staff to perform work related to the Ivy transaction that was outside the Commissioners' purview of authorized Commission actions. Accordingly, I do not find that the Respondents' conduct related to directing staff work constituted a violation of the Port Rules and Policies.

2. Commissioner Barnes' Phone Calls to Consultant DPZ and the Washington State Auditor's Office

a. Commissioner Barnes' call to DPZ

¹² The Complainant and CEO stated that Commissioner Barnes once instructed the Port Chief Financial Officer to alter numbers in a report. However, the CFO stated in his interview that Commissioner Barnes did not request any material alteration from him.

On February 18, 2019, a Port staff member received a call from two members of DPZ, the Vista Field planning consultant. The individuals from DPZ stated that Commissioner Barnes had called them to get their views related to the Ivy property matter. The consultants conveyed that they were troubled by the call because it is generally considered a breach of protocol for a Commissioner to directly contact a contractor. The Port staff member reported the call to the CEO. The CEO then called Commissioner Barnes to address the issue.

At the Commission meeting on February 19, 2019, Commissioner Barnes asked whether anyone had called DPZ. He then stated that he had done so and apologized for it. He did not share the substance of that conversation.

b. Information from Complainant and Witnesses

The CEO stated that he was very concerned about Commissioner Barnes' breach of protocol because it undermined him and could impair the Port's relationship with DPZ. The CEO and the Complainant pointed to provisions of the Port Rules, specifically in Section 13 regarding "Port Commission & Staff Roles and Responsibilities," arguing that individual Commissioners are prohibited from contacting consultants and other third parties for information related to Port business.

First, they cite Rule 13.2, which states, *"Commissioner requests for information shall be made to the Executive Director. Commissioners needing staff assistance shall work through the Executive Director"* They also cite Rule 13.3.2: *"The information requested will be copied to all members of [the] Commission so that each member may be equally informed."*

Witnesses stated that, prior to Commissioner Barnes' call to DPZ, Port Commissioners uniformly directed all inquiries regarding matters concerning Port business and operations with outside entities to the CEO, consistent with the rules above. The witnesses said these protocols were well understood and respected because compliance with them was necessary for the efficient and proper operation of the Port.

Witnesses noted that Port Commissioners did occasionally make inquiries to staff and third parties regarding trivial matters, such as a meeting times and locations. They said that was allowed for under Rule 12.3 which states, *"Commissioners individually may communicate directly with Port employees or contractors for the purpose of inquiry only. Commissioners shall, on business matters, deal with staff through the Executive Director."*

Witnesses and the Complainant contended that Commissioner Barnes' call to DPZ regarding the potential implications of exercising the buyback clause on the Ivy property was a "business matter," and therefore prohibited under Port Rules. They further stated that Commissioner Barnes' call to DPZ could damage the Port's relationship with the consultant. Finally, they stated that, by making that inquiry, Commissioner Barnes obtained information that was not uniformly and appropriately shared with the CEO and the full Commission.

c. Commissioner Barnes' Call to the State Auditor's Office

On June 24, 2019, Commissioner Barnes called Port counsel, Ms. Luke, and stated that he had called the Washington State Auditor's Office (SAO) regarding the Ivy buyback clause to inquire about accounting practices related to requirements for buyback clauses. Commissioner Barnes asked Ms. Luke whether the action violated any Port Rules, and whether he needed to disclose it at the next Commission meeting. Ms. Luke advised him that the action was likely prohibited and that he was required to disclose it at the next meeting, which was the following day.

At the June 25, 2019 Commission meeting, Commissioner Barnes read from a written statement, which was recorded in the official minutes as follows:

Commissioner Barnes disclosed that earlier this month, that he initiated an individual communication with the State Auditors for the purposes of inquiring about municipal accounting practices for real estate transactions with buy-back clauses.

Scott Hylton returned Commissioner Barnes's call last Friday, June 21, 2019, to say there are no accounting practices for tracking buy-back clauses. Commissioner Barnes stated this is simply an individual inquiry that he felt he could make under provision 12.3 of our Rules of Policy and Procedure. Commissioner Barnes's intention was to make the inquiry looking forward to the future, and the many real estate transactions anticipated at the Port, especially at Vista Field. Commissioner Barnes made the inquiry to try avoid the problems of the past and not make any new problems going forward.

Commissioner Moak did not make any statements related to Commissioner Barnes' disclosure.

After that meeting, Port staff reported serious concerns regarding Commissioner Barnes' call to the SAO. First, they said that it violated the protocols proscribed in the Port Rules above. Second, they said it could potentially raise a "red flag" causing the SAO to exert additional, undue scrutiny on the Port. Third, they said that they felt like Commissioner Barnes may have taken that action to raise such suspicion, thereby potentially causing Port staff to perform additional work in response to increased SAO scrutiny. And fourth, they felt that Commissioner Barnes' decision not to direct his inquiry to the CEO, who would then direct it to the Port's CFO, seriously undermined staff morale.

Additionally, witnesses stated that Commissioner Moak failed in his duties as Port Commission President by not stating that Commissioner Barnes violated Port Rules and asking him why he had done so.

d. Information from Commissioner Barnes

When he was first interviewed for this investigation, on May 29, 2019, Commissioner Barnes said that he apologized to the CEO for his call to DPZ. He conceded that he should not have called DPZ directly. In the Commission meeting on February 19th, he admitted his error and apologized for it. He stated in his interview for this investigation that he had been “overzealous” in his effort to explore whether the Port might benefit from buying back the Ivy property. He stated that, to the best of his recollection, the DPZ consultants gave him “neutral” feedback.

On July 17, 2019, Commissioner Barnes was asked about his call to the SAO. He stated that the facts were exactly as he provided them in the June 25, 2019 Commission meeting. He said he placed the call at least one week prior to June 21, 2019, but he was not certain of the date.

Commissioner Barnes said that his calls to the SAO and DPZ were proper under Rule 12.3 because he was merely making an “inquiry.”

c. Analysis

Commissioner Barnes initially conceded that he violated Port Rules when he called DPZ. That, and the totality of his actions, indicates that he did not make the calls with the belief that they were allowed under Rule 12.3.

Moreover, the plain language of Rule 12.3 can only be reasonably understood – in conjunction with the Port Commission and staff roles and responsibilities that are clearly laid out in Section 13 – to prohibit individual Commissioners from directing inquiries regarding Port business to third parties such as consultants and government agencies. A preponderance of the evidence gathered in this investigation supports the staff witness explanations regarding the important operational bases for such restrictions.

Accordingly, for all of the reasons above, the information obtained in this investigation substantially supports the conclusion that Commissioner Barnes violated Rule 12.3 when he called DPZ regarding a business matter; as well as Rule 3.1 and 3.9 by failing to be candid and transparent about the communication. The information obtained in this investigation also substantially supports the conclusion that Commissioner Barnes violated Rule 12.3 when he called the SAO regarding Port accounting practices, a business matter.

3. Commissioner Barnes’ Alleged Statements Regarding When He Learned the Ivy Property Purchaser’s Identity

On or about March 13, 2019, the Tri-City Herald reported that Commissioner Barnes said he did not know the identity of the Ivy property purchaser. The Commission was not informed of the buyer’s identity at the January 22, 2019 Commission meeting. However, the Commission was provided that information at least as early as February 6, 2019, when Port Counsel provided them with a memorandum on that topic.

a. Statements from Witnesses

Complainant and some witnesses alleged that Commissioner Barnes was untruthful to the Tri-City Herald. Witnesses also contend that Commissioner Barnes conveyed to the public in the March 12, 2019 Commission meeting that he was not previously aware of the buyer's identity. The witnesses contend that these alleged actions constitute violations of the Commissioner's obligations to be truthful and transparent and that it had the effect of undermining the standards of conduct throughout the Port workplace.

b. Statements from Commissioner Barnes

Commissioner Barnes stated that he did not speak to the Tri-City Herald for the aforementioned report. He acknowledged that he knew the Ivy property purchaser's identity at least as early as February 6, 2019, and claims that any impression he may have given otherwise was inadvertent.

c. Analysis

The information obtained in this investigation is insufficient to overcome the presumption that Commissioner Barnes did not knowingly or purposely mislead anyone regarding when he knew the identity of the Ivy property purchaser. It is plausible that the Tri-City Herald reported solely on the basis of what was stated in the March 12 Commission meeting. It is also plausible that Commissioner Barnes did not intentionally convey untruthful information to the public.

C. Allegations that Respondents Harassed and/or Threatened the Port CEO

The Complainant and the CEO allege that Commissioners Moak and Barnes subjected the CEO to harassment and a hostile work environment. Some of these allegations were also framed as "retaliation."¹³ In the interest of brevity, his claims are summarized here.

1. Information Regarding Hostile Treatment from Commissioner Barnes

a. Information from Witnesses

On February 21, 2019 Commissioner Barnes called the CEO. The CEO claims that Commissioner Barnes accused him of fraud and intentionally withholding information regarding the Ivy property transaction from the Port. According to the CEO, Commissioner Barnes instructed him to tell the Commission that he knew about the buyback clause but "forgot" to tell them about it. He said this was conveyed as an instruction to "fall on his sword." The CEO said he refused, as that would be false. The CEO described Commissioner Barnes' tone and language as extremely threatening.

The CEO also claims that Commissioner Barnes has (1) suggested the Commission might stop indemnifying the CEO in a legal matter; (2) stopped meeting with him; (3) behaved in a generally hostile way since the Complaint was filed, including "ambushing" him in an executive session and

¹³ The CEO claimed that the conduct complained of in this section also constitute a "reprimand" contrary to the provisions of his employment contract. The CEO's rights under his employment contract are not within the scope of this investigation and those claims are not considered in this report.

a public meeting with questions regarding the Ivy property after the Commission approved the resolution to release its buyback rights.

Multiple witnesses stated that, concerning the claims where they were not direct witnesses, the CEO conveyed the related events to them in highly consistent terms. Multiple witnesses said they also witnessed Commissioner Barnes exhibiting a hostile demeanor toward the CEO and that they perceived the CEO to be seriously negatively impacted by what they viewed as Commissioner Barnes' mistreatment.

b. Information from Commissioner Barnes

Commissioner Barnes denied all allegations of hostile treatment. He acknowledged that his "level of agitation went through the roof" in regard to the Ivy property matter. And he expressed deep, personal offense toward what he perceived as the CEO's "defiance." With respect to the February 21 phone call, Commissioner Barnes denied that he was threatening. He also denied instructing the CEO to make a false public statement. He said that he was only trying to give an example of what type of statement the CEO could make that would convey that he took responsibility for an error. Commissioner Barnes also claimed that the phone call got "really animated" on both sides and that the CEO used some aggressive language. Finally, with respect to his alleged hostile treatment following the filing of the Complaint, Commissioner Barnes said he was just trying to keep some distance and avoid tensions while the investigation was ongoing.

c. Analysis

First, the information obtained in this investigation does not support a finding that Commissioner Barnes subjected the CEO to hostile treatment on the basis of a protected status, as is required to make a prima facie claim under the WLAD, RCW 49.60.180.¹⁴

Nonetheless, when viewed in its totality, the information obtained in this investigation does support a finding that there is substantial evidence showing that Commissioner Barnes exhibited repeated, significant hostility – in public and private – against the CEO. Such conduct was contrary to Port Rules 3.6 and 3.12.

2. Information Regarding Hostile Treatment from Commissioner Moak

a. Information from Witnesses

The Port CEO alleges that Commissioner Moak yelled at him on February 19, 2019 in an executive session of the Port Commission meeting. Specifically, he claims that Commissioner Moak yelled, "I blame you" in reference to the Ivy property matter. The CEO described this as a very upsetting event that was disrespectful, uncivil and unwarranted.

¹⁴ The CEO's claims of retaliation were not clearly based upon the CEO's involvement in this investigation, which could constitute a protected status if Commissioner Barnes had some knowledge or belief about the CEO's involvement. However, those questions were beyond the scope of this investigation.

The Port CEO also stated that Commissioner Moak has threatened to fire him in public meetings. He acknowledged that Commissioner Moak may have considered the statements jokes. However, the CEO said the events were deeply embarrassing, disrespectful, and made him feel his job may be at risk.

Other witnesses confirmed that the CEO told them about being yelled at in the executive session, and one witness stated that he saw it first-hand, consistent with the CEO's account. Several witnesses said they witnessed Commissioner Moak "joking" about firing the CEO.

b. Information from Commissioner Moak

Commissioner Moak denied ever yelling at the CEO. He acknowledged that he was agitated in that meeting and that he may, at times, come across in an aggressive way even though that is not his intention. He expressed significant regret for having unintentionally creating discomfort. He also denied saying anything about firing the CEO in a manner that could be taken seriously. He expressed great respect for the CEO and said that he agreed with him almost all of the time.

c. Analysis

The allegations against Commissioner Moak in this section relate to the Port Commission Code of Conduct, Rule 3.6, which states that Commissioners "shall conduct themselves with civility and respect at all times with one another, with staff, and with member's of the public[.] The CEO and a witness consistently and credibly described Commissioner Moak's conduct during the February 19, 2019 executive session to be uncivil and disrespectful. Accordingly, the information obtained in this investigation is sufficiently substantial to overcome the presumption that Commissioner Moak conducted himself properly during the February 19, 2019 executive session. However, the information obtained in this investigation does not constitute substantial evidence sufficient to overcome the presumption that Commissioner Moak conducted himself within the bounds of the Port Rules on the occasions he made comments about firing the CEO.

D. Allegations that Commissioner Moak Breached his Obligation to Perform his Duties as Commission President to Enforce the Commission's Policies and Procedures

The Complaint and witnesses alleged that Commissioner Moak failed to properly perform his duties as Commission President. The overarching Port Rule that is applicable is 8.1, which states that the, "President of the Commission shall [...] ensure that the Commission jointly and consistently adheres to its own rules and policies, and those imposed upon it by the laws of the State of Washington."

1. Information from Complainant and Witnesses

First, the Complainant and the CEO state that Commissioner Moak failed in his obligation to enforce the Port's standards of decorum and civility by stopping the alleged incidents of incivility by Commissioner Barnes. Second, they allege that Commissioner Moak failed in his duty to publicly note that Commissioner Barnes violated Port Rules when he called DPZ and the SAO. They also

allege that Commissioner Moak failed to maintain or follow parliamentary procedure when he allowed an improper executive session on March 12, 2019. And fourth, they allege that Commissioner Moak failed in his duties to properly address the CEO's complaints against Commissioner Barnes.

2. Information from Commissioner Moak

Commissioner Moak acknowledged that Commissioner Barnes got agitated in some Commission meetings regarding the Ivy Property. However, he explained that Commissioners and others do get agitated in meetings at times when highly contested matters are discussed. He described his approach, as Commission President, as trying to ensure that everybody gets a full opportunity to have their views expressed, while trying to maintain order as necessary.

With respect to the March 12, 2019 executive session, Commissioner Moak explained that the meeting was immediately shut down and they returned to a public meeting once it was clear that business Commissioner Barnes sought to discuss involved a matter that was not allowable in executive session. The meeting minutes and additional witness statements confirm his account.

With respect to his lack of public response to Commissioner Barnes' arguable violations of Port Rules, Commissioner Moak noted that Commissioner Novakovich was equally capable of saying something about such matters. Moreover, Commissioner Barnes stated that he had made mistakes, which is allowed, as the Port Rules do not impose a standard of perfection on any of the Commissioners.

Finally, Commissioner Moak explained in his interview for this investigation that he did not perceive the CEO to be making a formal complaint to him regarding Commissioner Barnes. He further discussed, with some exasperation, that the Port does not have a Human Resources department and nothing in the Port Rules gave him guidance regarding how to handle personnel matters.

3. Analysis

The information obtained in this investigation does not support a finding that Commissioner Moak breached his duties as Commission President. Commissioner Moak's accounts of, and explanations for his conduct related to these allegations were credible. Moreover, Commissioner Moak's accounts were supported by the relevant meeting minutes and Port Rules.

IV. CONCLUSION

For the reasons set forth above, based on the information obtained in this investigation, substantial evidence supports the conclusions that (1) Commissioners Barnes and Moak did not violate the Washington Open Public Meetings Act, RCW 42.30, by privately discussing Port business; (2) Commissioners Barnes and Moak did not violate Port rules and policies in their directives to staff related to Resolution 2019-02; (3) Commissioner Barnes did violate Port Rules and Policies when he called DPZ and the SAO regarding business matters; (4) Commissioner

Barnes did create a hostile work environment for Port CEO in violation of Port policies; (5) Commissioner Moak violated the Port Rule requiring civil and respectful treatment of others on one occasion; and (6) Commissioner Moak did not breach his obligation to perform his duties as Commission President.

EXHIBIT 1

TO: Mr. Tim Arntzen, CEO, Port of Kennewick, and Mrs. Lucinda Luke, Legal Counsel, for the Port of Kennewick

FROM:

RE: Formal Complaint against Commissioner Thomas Moak, Port Commission President and Commissioner Don Barnes, Port Commission Vice President

For violation of several of the Rules of Policy and Procedure document adopted by the Port Commission on February 22, 2011 and various violations of RCW 42. In addition I find their behavior to be a cause of misappropriation of public funds and for undermining the mission, goals and vision of the Port of Kennewick

Hand Delivered 8:30AM, Monday, March 25, 2019

I am filing this complaint under protection of Paragraph 5.2 of the Port of Kennewick Commission Rules of Policy and Procedure document. And further request my name be held in strict confidence only to be revealed by written permission granted by me.

I have been very discouraged and upset by what I have observed happening at the Port of Kennewick over the past several years since Commissioner Moak was elected. Things that I have heard, seen, and watched, especially in the past few months, have made me very concerned about the Port of Kennewick's ability to develop Vista Field, Columbia Gardens, The Willows, The West Richland Race Track and so many other projects pledged to constituents and the entire Mid-Columbia region.

I have witnessed the Port of Kennewick (POK) under the skilled leadership of CEO Tim Arntzen and his assembly of a highly qualified, professional, motivated and loyal staff accomplishing great things for this region and promised more to come. The POK has developed a sterling reputation for the highest degree of integrity, open and transparent conduct of business, and an ability to develop and nurture mutually beneficial strategic partnerships through trusting relationships. This has allowed the establishment of many very successful quality of life and economically beneficial projects that are equal to or greater than those anyone else has done anywhere. AND this has been accomplished with very limited resources and without burdening with an increase in taxes. However, I now see Commissioners jeopardizing future successes by beginning to act as experts violating adopted rules of policy and procedure.

I now feel as though the Ports, integrity, and promises are coming into question and unmatched sterling reputation, being tarnished if not crushed. I believe the behavior and actions of Commissioner Moak as President and Commissioner Barnes will have negative effects on the relationships the POK has establish with other local jurisdictions who have invested heavily in POK projects with their own funds.

I now see a CEO worn down, tired, and rendered ineffective by being ridiculed in public meetings particularly by Commissioner Moak but also by Commissioner Barnes and being instructed to work on frivolous if not libelous matters rather than continuing to focus his efforts on the already planned good work of the POK as set forth in Commission approved documents. I see a once bright, energetic staff now fearful, discouraged, some ready to seek employment elsewhere in order to escape the continued abuse and criticism of Commissioners Moak and Barnes. I see the actions of Commissioner Moak and Barnes tearing apart a once effective, award winning, loyal team and frankly this breaks my heart.

the Staff members and the Commissioners could have been likened to a family with separate, well-defined levels of responsibilities and duties. The Commission would establish the vision based on input from the constituency and then delegate the implementation of that vision to the CEO to use the limited resources of staff and finances, without raising taxes to carry out the vision to not only completion for the benefit of the public but to a level that is unrepresented. I have seen Mr Arntzen and his staff continually lower the level rate assessed POK District constituents while increasing the equity of those same constituents well over 300%.

Why would Commissioners Moak and Barnes even think they knew better and begin to micro manage and criticize the work of Mr. Arntzen and his staff who have more than proven their worth and effectiveness? And why do they have to revert to ignoring and violating policies and procedures that the Commission itself approved? Why would Commissioner Barnes in a recent Commission meeting say he has been asking for the Policy and Procedures document even though it was one of the very first documents he received when sworn in as a Commissioner?

should Commissioners Moak and Barnes continue to block the sale of the Ivy property for I can only assume was a dislike for the Hispanic culture of the buyer. An obvious example of discrimination. Why would Commissioner Barnes say in a Tri-City Herald article on March 14, 2019 he didn't know the buyer of the Ivy property was the Yakima Farm Workers Clinic when revealed the buyer Why does Commissioner Barnes continue to lie and why does Commissioner Moak refuse to perform his responsibilities as President.

My complaint involves the actions of Commissioners Moak and Barnes tearing down the Port of Kennewick as described above and their violation of many of the Port Commission Rules of Policy and Procedures as well as RCW 42 as outlined below.

I believe Commissioners Moak and Barnes have violated at a minimum the following:

Paragraph 2.2.6 states "Full transparency to the public" Commissioner Barnes has lied on several occasions.

Paragraph 3.1 states: "Commissioners shall conduct themselves in accordance with all laws and applicable policies"....

Paragraph 3.6 states "Commissioners shall conduct themselves with civility and respect at all times with one another, with staff, and with members of the public." As written above their treatment of staff in public meetings is appalling and certainly not within the categories of respect and civility. Commissioner Moak very uncalled for criticized the City of Richland's Public Works Director in a public meeting. The Richland's Public Works Director later complained that Commissioner's Moak's brow beating was the worst he ever experienced in a public meeting.

Paragraph 3.9 "Commissioners shall make available to fellow Commissioners all information related to Port activities." – Commissioner Barnes, without following proper procedures, called Port Consultants DPZ and did not relate this to all Commissioners.

Paragraph 3.11.1 "Commissioners must conduct themselves at all times in a manner that leaves no grounds for belief, or even appearance that information they have gathered on the job has been used for personal gain or gain of any individual or special interest group, whether such gain is financial or otherwise." What will an investigation reveal as to the motives behind Commissioners Barnes and Moak's attempt to derail the sale of the Ivy property.

Paragraph 3.12 "Commissioners may not attempt to exercise individual authority over the Port or staff, except as explicitly set forth and authorized in Commission policies, including the Delegation Policy referenced in Section 1.3" Examples – Moak going to staff ordering web site overall etc. Barnes asking the CFO to change numbers in financial statements and records; calling the Executive Director and telling him to change his already made statements regarding a Commission issue being discussed and possibly many more violations of this policy will be uncovered in a thorough investigation.

Paragraph 3.13.3 and RCW 42 – "Any exchange of communication between any two Commissioners may constitute an official meeting of the Commission and be in violation of the Act." On several occasions it has been obvious that Commissioners Moak & Barnes have discussed Agenda items prior to the Commission meeting. However a prime example of a violation of this policy and RCW 42 occurred when Commissioner Moak told CEO Tim Arntzen he needed to enter into mediation with Commissioner Barnes to resolve their differences then a very short time later Mr. Arntzen received a phone call saying Commissioner Barnes called to schedule mediation between himself and Mr. Arntzen. This leaves no doubt the two of them have been discussing this as they have many other Port related issues.

Mr. Arntzen has done no wrong whereas Commissioner Moak and Barnes have berated Mr. Arntzen in public and have lied on several occasions.

Paragraph 6.2 "Presiding Officer Duties. The Presiding Officer shall: 6.2.1 Preserve order and decorum in the Commission Chambers; 6.2.2 Observe and enforce all rules adopted by the Commission;" - Commissioner Moak in his role as President/Presiding Officer has grossly violated these rules in depth on many occasions. And has proven his incompetence to fulfill the role of President of the Port of Kennewick Commission.

Paragraph 6.13 "Executive Session" At the March 12, 2019 Commission Meeting Commissioner Barnes asked for an Executive Session to be added to the Agenda. Commission President Moak agreed without following proper Parliamentary procedure which was later corrected. Commissioner Barnes was asked the purpose for the Executive Session which he did not reveal.

Paragraph 8.1 Referring to the President of the Commission "Ensure that the Commission jointly and consistently adheres to its own rules and policies, and those imposed upon it by the laws of the State of Washington". Commissioner Moak has been in direct violation of this policy many times in addition to what is written above.

Paragraph 8.7 Referring to the President of the Commission. "Have no authority to supervise or administratively direct the Executive Director or Port staff, apart from authority expressly granted by the Commission. Commissioner Moak on many occasions has been in violation of this policy in addition to what is written above.

Paragraph 12.2 and Paragraph 12.3 "In the case of Commissioners requesting information or assistance without Commission authorization...." "Commissioners shall, on business matters, deal with staff through the Executive Director. However, the Commission as a body and the Commissioners individually do not give direction to persons who report directly or indirectly to the Executive Director." Commissioners Moak and Barnes have violated this policy on a regular and consistent basis.

Paragraph 13.2 "Individual Commissioners may not intervene in staff decision-making, scheduling of work, and executing department." Commissioners Moak and Barnes continue to violate this rule. And Commissioners Moak and Barnes violate further "No Commissioner shall direct the Executive Director to

initiate any action, prepare any report, or initiate any project or study without the authorization of a majority of the Commission."

Paragraph 13.3.2 "Requests for information from Commissioners are to be directed to the Executive Director..." Commissioners Moak and Barnes have violated this rule. Barnes called DPZ on his own and did not disclosed doing so and even asked in a Commission meeting if anyone spoke with DPZ even though he had already done so. Again a violation of the rules and out right lying.

Commissioners Moak and Barnes have further violated several of the Ten Commandments for staying out of trouble as a Port Commissioner a list prepared and distributed by the Washington Public Ports Association and made a part of the Port of Kennewick's Port Commission rules of Policy and Procedures document particularly Number 3 "Thou shall not require the Port staff to do more work than necessary to inform (please) you when they could be occupied in improving the business of the Port." And Number 7. "Thou shall not argue with, grill, or embarrass Port staffers in public."

Commissioners Moak and Barnes have:

- 1.) Seriously violate many of the Port Commission rules of policy and procedures and RCW 42
- 2.) Created a very hostile work environment that had not existed previously
- 3.) Place the Port of Kennewick in a position to be sued by not respecting legal counsel's opinion regarding the Ivy property
- 4.) Wasted taxpayer money by individually and collectively directing staff to work on projects not contained in any approved plan of work
- 5.) Constantly micro manage, asserting their knowledge is superior to that of professional staff

I respectfully request in regard to Port Commission Rules of Policy and Procedure:

- 1.) The Executive Director investigate the merits of this complaint per Paragraph 5.2
- 2.) The Executive Director delegate a formal and thorough investigation per Paragraph 5.4
- 3.) Upon determination of violations, sanctions be imposed on Commissioners Barnes and Moak
- 4.) Public notification of wrong doing be made public per Paragraph 5.9
- 5.) Commissioners Moak and Barnes be asked to resign their Commission seats and be declared ineligible to ever hold any elected seat

EXHIBIT 2

PORT OF KENNEWICK, WASHINGTON

PORT COMMISSION

**RULES
OF
POLICY AND PROCEDURE**

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

FEBRUARY 22, 2011

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1. INTRODUCTION AND PURPOSE

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

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

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

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

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

2. COMMISSION AND COMMISSIONERS

2.1 Purpose. The purpose of the Commission is to:

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

2.1.2 Make certain decisions as are designated by law; and

2.1.3 Hire, evaluate, and terminate the Executive Director.

2.2 Governance. Commission governance addresses:

2.2.1 Strategic leadership more than administrative detail;

2.2.2 Encouragement of diversity in viewpoints;

2.2.3 Collaborative rather than individual decisions;

2.2.4 Future, rather than past or present, direction;

2.2.5 Proactive, rather than reactive, conduct; and

2.2.6 Full transparency to the public.

2.3 Actions. The Commission will:

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

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

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

2.3.4 Adopt the Port's annual budget;

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

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

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

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

2.4 Port Financial Goals.

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

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

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

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

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

3. COMMISSION CODE OF CONDUCT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. FULL TRANSPARENCY IN PORT ACTIONS

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

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

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

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

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

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

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

5. REPORTING MISCONDUCT

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

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

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

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

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

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

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

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

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

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

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

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

6. COMMISSION MEETINGS

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

6.2 Presiding Officer Duties. The Presiding Officer shall:

6.2.1 Preserve order and decorum in the Commission chambers;

6.2.2 Observe and enforce all rules adopted by the Commission;

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

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

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

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

6.4 Special Commission Meetings. A special public meeting of the Commission may be called by the President or by any two Commissioners. Any request and subsequent special

meeting notices shall state the subjects (e.g., agenda items) to be considered at such special meeting and no other subject shall be acted upon.

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

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

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

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

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

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

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

6.11 General Conduct of Business.

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

6.11.2 Port staff will briefly discuss the issue.

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

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

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

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

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

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

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

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

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

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

6.12.8 Applause or other disturbances are discouraged;

6.12.9 All remarks should be directed to the President; and

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

6.13 Executive Sessions. Executive Sessions shall be held in accordance with the provisions of the Washington State Open Public Meetings Act. An Executive Session is a Commission meeting that is closed except to the Commission, Executive Director and others that may be authorized. The public is restricted from attendance. Executive Sessions may be held during Regular or Special Commission meetings and will be announced by the President. Before

convening an Executive Session, the President shall announce the purpose of the meeting and the anticipated time when the session will be concluded. Should the session require more time, a public announcement shall be made that the executive session is being extended.

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

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

7. AGENDA PLANNING

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

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

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

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

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

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

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

8. ROLE OF THE COMMISSION PRESIDENT

The President of the Commission shall:

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

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

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

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

8.5 Establish ad hoc advisory and standing committees.

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

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

9. ROLE OF THE COMMISSION VICE-PRESIDENT

The Vice-President of the Commission shall:

9.1 Perform such duties as are assigned by the President.

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

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

10. ROLE OF THE COMMISSION SECRETARY

The Secretary of the Commission shall:

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

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

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

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

11. COMMISSION COMMITTEES

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

11.2 Committee Roles and Responsibilities.

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

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

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

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

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

12. COMMISSION AND PORT ACTION

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

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

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

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

13. PORT COMMISSION & STAFF ROLES AND RESPONSIBILITIES

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

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

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

13.3 Executive Director's Role.

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

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

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

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

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

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

Port Commission

Governs:

Guides

Directs

Decides what

Requests information

Considers issues

Creates, reviews and adopts policy

Reviews and monitors plans

Monitors progress

Contracts with personnel

Approves evaluation criteria, procedures

Reviews and approves budget

Represents public interest

Executive Director

Administers:

Operates

Manages

Decides how

Seeks and provides information

Provides recommendations

Recommends and carries out policy

Implements plans

Reports progress

Supervises hiring process, practices

Supervises and evaluates personnel

Formulates budget

Acts in the public's interest

14. BUDGET AND PROCUREMENT AUTHORITY

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

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

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

14.2.2 Provide for adequate coverage to meet debt covenants;

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

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

14.2.5 Establish budgetary and procurement controls over expenditures.

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

14.4 Procurement Authority.

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

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

14.4.3 It is Port policy that due diligence and prudent judgment be exercised in the making of procurement decisions, including conducting a risk assessment. If the Executive Director reasonably determines that a procurement activity presents, regardless of the size of the financial commitment, either: (1) a unique and significant operational risk to the Port; or (2) a significant impact to customers, the Executive Director shall inform the Commission.

15. EVALUATING THE EXECUTIVE DIRECTOR'S PERFORMANCE

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

15.2 Process.

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

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

16. COMMISSION-AUDITOR RELATIONSHIP

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

16.2 Hiring and Reporting.

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

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

17. COMMISSION-PORT ATTORNEY RELATIONSHIP

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

17.2 Port Attorney Responsibilities.

The general legal responsibilities of the Port Attorney are to:

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

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

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

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

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

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

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

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

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

17.2.10 Other matters as designated by the Executive Director.

18. INDEMNIFICATION AND DEFENSE POLICY

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

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

18.2.1 "Employee" means any person who is or has been employed by the Port, including volunteers and appointed members of advisory boards and commissions. "Employee" does not include independent contractors. "Employee" also includes an employee's spouse when an employee's marital community is named in any action subject to this policy.

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

18.3 Legal Representation.

18.3.1 The Port shall provide to an official or employee, subject to the conditions and requirements of this chapter, and notwithstanding the fact that such official or employee may have concluded service or employment with the Port, such legal representation as may be reasonably necessary to defend a claim or lawsuit filed against such official or employee resulting from any conduct, act or omission of such official or employee performed or omitted on behalf of the Port in his/her capacity as a Port official or employee, which act or omission is within the scope of his/her service or employment with the Port. The provisions of this chapter

shall not operate to provide legal representation to defend a claim or lawsuit for any conduct, act, or omission resulting in the termination for cause of any official or employee.

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

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

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

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

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

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

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

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

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

18.5 Reserved Rights. Nothing herein shall be construed to waive or impair the right of the Port to institute suit or counterclaim against any official or employee nor to limit its ability to discipline or terminate an employee.

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

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

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

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

18.8.2 Upon receipt, the official or employee shall as soon as practicable deliver any claim, demand, notice or summons or other process relating to any such incident or conduct to the Port legal counsel and shall cooperate with the Port legal counsel, or if the Executive Director authorizes or designates another legal counsel to handle the matter, shall cooperate with that legal counsel, and, upon request, shall assist in making settlement of any suit and enforcing any claim for any right of subrogation against any persons or organizations that may be liable to the Port because of any damage or claim of loss arising from said incident or course of conduct,

including, but not limited to, rights of recovery for costs and legal counsel's fees arising out of state or federal statute upon a determination that the lawsuit brought was frivolous in nature. Failure to timely deliver any claim, demand, notice or summons to the Port legal counsel, and in which an adverse decision against the official, the employee or Port results from such failure, shall operate to negate all indemnification and opportunity for defense under this chapter and the Port shall have no obligation to offer a defense to the named official or employee.

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

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

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

18.9 Effect of Compliance With Conditions. If legal representation of an official or employee is undertaken by the Port, whether by the Port legal counsel or by legal counsel obtained by the Port or through its insurance coverage, and all of the conditions of representation are met, and a judgment is entered against the official or employee or a settlement is made, the Port shall pay such judgment or settlement according to the provisions herein; provided, that the Port may at its discretion appeal as necessary any such judgment. In no event shall this Section be interpreted to provide for payment of an award of punitive damages. The process for payment of punitive damages is discretionary under this chapter, and is set forth in Section 18.16. The decision to appeal an award of damages will be made by the Commission upon the recommendation of the Executive Director and the Port legal counsel and/or outside legal counsel.

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

18.11 Reimbursement of Incurred Expenses.

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

judgment is not covered by the Port's insurance provisions or by the official's or employee's insurance. The Port shall pay any costs and reasonable legal counsel's fees incurred by the employee or official in obtaining the determination that such claim is covered by the provisions of this chapter; provided, that if a court of competent jurisdiction determines that such claim does not come within the provisions of this chapter, then the official or employee shall pay the Port's costs and reasonable legal counsel's fees incurred in obtaining the determination that such claim is not covered under the provisions of this chapter.

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

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

18.13 Pending Claims. The provisions of this chapter shall apply retroactively to any pending claims or lawsuits against any official or employee at the time of adoption of this ordinance and to any such claims or lawsuits hereinafter filed within an applicable statute of limitations, irrespective of the date of the events or circumstances which are the basis of such claim or lawsuit.

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

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

18.16 Punitive Damages. When an employee or official of the Port has been represented in a claim and/or litigation by the Port pursuant to this chapter and any judgment is rendered against such employee or official for punitive damages, the employee or official may make a request to the Commission that the Port pay the award of punitive damages on behalf of

the official or employee. Upon receiving a request made by or on behalf of a Port employee or official to pay punitive damages, the Commission shall receive a report and recommendation from the Executive Director and the Port legal counsel. If the official or employee is the Executive Director or a Commission member, the Commission may request a report and recommendation from the Port legal counsel or may retain the services of another person or agency to provide a recommendation. Following receipt of the report and any recommendation, the Commission shall determine whether the best interests of the Port and justice will be served by payment by the Port of the award for punitive damages. There shall be no appeal from such determination. The Executive Director shall communicate the council's determination with respect to the employee's or official's request for payment of punitive damages to said employee or official. Thereafter, the finance director shall prepare the payment of punitive damages if the council authorized such payment.

18.17 Application to Recall Proceedings.

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

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

19. GENERAL COMPLAINT RESOLUTION

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

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

Ten Commandments for Staying out of Trouble as a Port Commissioner

[as presented in the WPPA Commissioner Resource Guide]

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

EXHIBIT 3

5. REPORTING MISCONDUCT

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

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

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

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

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

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

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

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

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

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

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

Memo

TO: Port of Kennewick Board of Commissioners and Chief Executive Officer

FROM: Lucinda J. Luke, Port Counsel

DATE: August 6, 2019

RE: Recommended Action

I. OVERVIEW

Incorporated herein by reference is the Report of Independent Investigation dated August 6, 2019 conducted by independent legal counsel, Tara L. Parker (the "Report"). As set forth in the Report, Ms. Parker investigated misconduct allegations against Port of Kennewick Commissioner Don Barnes and Commissioner Thomas Moak. The misconduct allegations were received in a complaint submitted on March 25, 2019 (the "Complaint"). The Report sets forth Ms. Parker's determination and the basis for her determination. This memo sets forth the recommended action resulting from the substantiated misconduct.

At pages 17 and 18 of the Report, Ms. Parker sets forth her determination that certain of the allegations of misconduct reported in the Complaint were substantiated, as follows:

1. Commissioner Barnes did violate the Port Rules and Policies when he called DPZ and the SAO regarding business matters.
2. Commissioner Barnes did create a hostile work environment for Port CEO in violation of Port policies.
3. Commissioner Moak violated the Port Rule requiring civil and respectful treatment of others on one occasion.

II. SANCTIONS AVAILABLE UNDER PORT COMMISSION RULES

Section 5.5 of the Commission Rules of Policy and Procedure (see Exhibit 3 of the Report for reference to the revised Section 5 adopted by the Commission on June 11, 2019) states that if Port counsel finds misconduct and the complaint substantiated, a report to Executive Director and the Commission shall set forth the basis for the determination and a recommended action.

The following Port Rules set forth the sanctions that may be levied as the result of a substantiated complaint of misconduct:

Section 5.9 of the Port Rules states:

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

Section 5.10 of the Port Rules states:

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

Section 5.11 of the Port Rules states:

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

III. RECOMMENDED ACTION

As referenced above, Ms. Parker has substantiated certain allegations of misconduct by Commissioner Barnes and Commissioner Moak. Pursuant to the Port Rules, the following is the recommended action for each of the substantiated allegations:

1. Commissioner Barnes did violate the Port Rules and Policies when he called DPZ and the SAO regarding business matters.

The recommended actions for this violation by Commissioner Barnes is:

- A. Formal public censure by resolution adopted by the Commission.
- B. Satisfactory completion of training identified by Port Counsel covering topics including
 - roles and responsibilities of a Port Commissioner
 - Port of Kennewick Commission Rules and Policies

Commissioner Barnes shall be personally responsible for any cost or fee associated with the training.

- C. Publication of the above sanctions in the Tri-City Herald.

2. Commissioner Barnes did create a hostile work environment for Port CEO in violation of Port policies.

Because of its serious nature and broad impact, there are several recommended actions resulting from this substantiated allegation of misconduct, as follows:

- A. Formal public censure in the form of a resolution adopted by the Commission.
- B. Satisfactory completion by Commissioner Barnes of training identified by Port Counsel covering the following topics:
- understanding, correcting, and preventing hostile work environment behaviors
 - professional communication skills
 - roles and responsibilities of a Port Commissioner
 - Port of Kennewick Commission Rules and Policies

Costs and fees for all such training shall be paid by Commissioner Barnes.

- C. Cooperative participation in team building activities and trainings with Port CEO and staff. Such activities shall be identified by Port Counsel with the assistance of outside consultants, Port CEO and staff.

- D. Publication of the above sanctions in the Tri-City Herald.

3. Commissioner Moak violated the Port Rule requiring civil and respectful treatment of others on one occasion.

The recommended action for this violation is:

- A. Verbal reprimand reported in Commission meeting minutes.
- B. Satisfactory completion by Commissioner Moak of training identified by Port Counsel covering the following topics:
- professional communication skills
 - Port Commission Rules and Policies

Costs and fees for all such training shall be paid by Commissioner Moak.

C. Cooperative participation in team building activities and trainings with Port CEO and staff. Such activities shall be identified by Port Counsel with the assistance of consultants, Port CEO and staff.

D. Publication of the above sanctions in the Tri-City Herald.

Memo

TO: Port of Kennewick Board of Commissioners and Chief Executive Officer

FROM: Lucinda J. Luke, Port Counsel

DATE: August 7, 2019

RE: Receipt and Processing of Report and Recommended Action

The investigation of the March 25, 2019 citizen complaint (the "Complaint") has been completed and independent legal counsel issued her findings in her August 6, 2019 Report ("Report"). The recommended actions have been set forth in a memorandum dated August 6, 2019 ("Memorandum"). Pursuant to Port Rules 5.5 and 5.6, the Report and Memorandum have been submitted to the Commissioners (Complainant and Respondents) and to the Chief Executive Officer.

Attached for ease of reference is the revised Section 5 of the Port Commission Rules of Policy and Procedure adopted by the Commission under Resolution 19-10 on June 11, 2019.

The following provides an outline of the next steps in the processing of the Complaint pursuant to Section 5 of the Port Rules:

5.7 Hearing and Decision upon Recommended Action

- The Complainant and Respondent(s) shall have the right to be heard before a neutral.
- If a hearing is requested, the determination and recommended action of Port counsel shall be submitted to a mutually agreeable neutral selected from the panel of neutrals available at the Seattle office of Judicial Arbitration and Mediation Services ("JAMS") or Judicial Dispute Resolution ("JDR"), or other similarly qualified third party neutral as agreed upon by the Complainant and the Respondents.

- The neutral selected shall promptly hear, consider and issue a decision regarding the recommended action.
- If the parties cannot agree upon the selection of a neutral, the presiding judge for Benton County Superior Court shall select a neutral from the panel available at the Seattle office of JAMS or JDR.
- The neutral shall determine the hearing process and shall issue a decision within 30 days of the hearing.

5.8 Reconsideration.

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

5.10 Public Notification.

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

If a hearing is not requested, the recommended action of Port counsel will be implemented by the Commission.

5. REPORTING MISCONDUCT

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

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

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

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

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

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

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

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

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

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

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