

The Governor's Proclamation 20-28 regarding the Open Public Meetings Act and Public Records Act temporarily prohibits in-person public attendance at meetings subject to the OPMA.

A GoToMeeting has been arranged to enable the public to listen and make public comments remotely. To participate remotely, please use the following call-in information: 1-866-899-4679, Access Code 767-717-061

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

Tuesday, September 8, 2020  
2:00 p.m.

**I. CALL TO ORDER**

**II. ANNOUNCEMENTS AND ROLL CALL**

**III. PLEDGE OF ALLEGIANCE**

**IV. APPROVAL OF AGENDA**

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

**VI. CONSENT AGENDA**

- A. Approval of Direct Deposit and ePayments Dated September 2, 2020
- B. Approval of Warrant Register Dated September 8, 2020
- C. Approval of Regular Commission Meeting Minutes August 25, 2020

**VII. PRESENTATION**

- A. Historic Waterfront District Master Plan Update, MAKERs architecture & urban design (**LARRY**)

**VIII. EMERGENCY DELEGATION UPDATE**

- A. Approval of Continued Remote Meetings; Resolution 2020-17 (**BRIDGETTE/LUCINDA**)
- B. Amendment for Express Personnel Contract; Resolution 2020-18 (**AMBER**)

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

- A. 2021-2022 Work Plan/Budget Elements Discussion (**TIM/ NICK/AMBER/LARRY**)
- B. Vista Field
  - 1. Construction Status Update (**LARRY**)
  - 2. Owners Association Update, Ben Floyd (**LARRY**)
  - 3. Hangar Memo (**TIM**)
- C. Clover Island/Columbia Drive
  - 1. 1135 Project Status Update (**TANA**)
- D. Buyback Clause Policy; Resolution 2020-19 (**AMBER**)
- E. Regional Water Issues Working Group (**TIM**)
- F. Communications with Public (**TANA**)
- G. Director Reports (**TANA/NICK/LARRY/AMBER/LUCINDA/TIM**)
- H. Commissioner Meetings (formal and informal meetings with groups or individuals)
- I. Non-Scheduled Items

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

**XI. ADJOURNMENT**

***PLEASE SILENCE ALL NOISE MAKING DEVICES***





# PORT OF KENNEWICK REGULAR COMMISSION MEETING

**DRAFT**

**AUGUST 25, 2020 MINUTES**

Commission Meeting recordings, with agenda items linked to corresponding audio, can be found on the Port's website at: <https://www.portofkennewick.org/commission-meetings-audio/>

Commission President Commissioner Don Barnes called the Regular Commission Meeting to order at 2:00 p.m. via GoToMeeting Teleconference.

## **ANNOUNCEMENTS AND ROLL CALL**

**The following were present:**

**Board Members:** Commissioner Don Barnes, President (via telephone)  
Skip Novakovich, Vice-President (via telephone)  
Thomas Moak, Secretary (via telephone)

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

## **PLEDGE OF ALLEGIANCE**

Commissioner Moak led the Pledge of Allegiance.

## **APPROVAL OF THE AGENDA**

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

## **PUBLIC COMMENT**

Boyce Burdick, 414 Snyder Street, Richland. Mr. Burdick stated All Aboard Washington (AAWA) is an effort to restore rail service from Spokane to Pasco, Yakima and the Seattle area; however, he stated there are opportunities to take short trips, for example, Pasco to Zillah. Mr. Burdick inquired if the Port of Kennewick would consider hosting an AAWA presentation. Mr. Burdick understands that the Port is busy over the next few months with the Work Plan and Budget, but perhaps when the schedule opens up, the Port would consider.

Mr. Arntzen and staff will follow up with Mr. Burdick.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

AUGUST 25, 2020 MINUTES

**DRAFT**

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Mr. Arntzen received an email from Brent Gerry, Mayor of the City of West Richland. Mayor Gerry asked Mr. Arntzen to read his email into the record:

Brent Gerry, 3100 Belmont Blvd., West Richland.

*"I wanted to once again thank you and the Port Commissioners for your continued support and partnerships with the City of West Richland. The October 15, 2019 transfer agreement between the City of West Richland and Port of Kennewick allowed the City to purchase the Port's 92+ acre racetrack property for the City's new \$12.5m Police Facility and future economic development opportunities. As part of the transfer agreement, the City assigned \$1.3m of the City's portion of the Benton County Rural County Capital Funds (RCCF) to the Port for economic development projects including but not limited to Vista Field redevelopment projects. Specifically discussed during the negotiations of this agreement was the use of these funds for the Port's proposed Vista Field Hanger Project. This agreement, partnership between the City and Port, and the Vista Field Hanger Project was previously viewed favorably by the Benton County Commissioners as the project was expected to result in a substantial number of permanent jobs and positively impact sales, B&O, and property tax revenue for jurisdictions within the Port district. As we continue to work together to address the numerous challenges our communities face due to the COVID-19 pandemic, I would respectfully request that the Port move forward with the Vista Field Hanger Project and other associated economic development projects. These projects represent an opportunity to help mitigate a portion of the negative impacts on jurisdictions due to the loss of sales tax revenue and jobs within the Port District. Respectfully, Brent."*

No further comments were made.

## CONSENT AGENDA

**A. Approval of Direct Deposit and E-Payments Dated August 18, 2020**

Direct Deposit and E-Payments totaling \$73,056.89

**B. Approval of Warrant Register Dated August 25, 2020**

Expense Fund Voucher Number 102310 through 102343 for a grand total of \$410,542.70

**C. Approval of Regular Commission Meeting Minutes August 11, 2020**

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

## PRESENTATIONS

**A. Duffy's Pond Report**

Ms. Bader Inglima gave a brief history of the Port's involvement at Duffy's Pond, which includes working with the US Army Corps of Engineers (USACE), the City of Kennewick, Fish and Wildlife Services, Department of Ecology and Department of Natural Resources. Port and City staff recently met with Commander Childers and USACE staff to discuss the 1135 Habitat Restoration Project and Duffy's Pond. Commander Childers seemed very supportive of an algae treatment in the Pond and asked his staff to assist us advancing our ideas.

Ms. Hanchette presented the Duffy's Pond Plan remediation and Columbia Gardens upland

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

AUGUST 25, 2020 MINUTES

**DRAFT**

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improvements report (EXHIBIT A). Recently, USACE and other federal agencies were able to come up with an aquatic pest management list of approved ingredients that could be used in these types of ponds. The next phase of Duffy's Pond remediation includes addressing the pungent aromas from the algae blooms and decaying plant matter that hampers the shoreline experience. In partnership with the City of Kennewick and USACE, efforts are underway for an aquatic herbicidal treatment of the Pond in early spring of 2021. The City will be submitting the applications to the Department of Ecology and USACE to secure the necessary permits and approvals while the Port will work on the treatment plan and fund the treatment.

Ms. Hanchette stated the Port plans to install a cargo container public restroom at Columbia Gardens in early spring of 2021 and installing fence panels near the food truck plaza to encourage the public to use the stairs between the plaza and the trail. Ms. Hanchette outlined potential projects for Columbia Gardens for 2021-2022:

- Screening: additional screening along the northwest edge of Columbia Gardens;
- Shade Coverings: add shade coverings to the outdoor spaces of the four wineries;
- Install a vineyard or victory garden near Monarcha Winery.

Ms. Hanchette introduced Bart Fawbush of Bartholomew Winery, who will be discussing the potential upland improvements.

Mr. Fawbush stated due to COVID-19, revenues are down, so shade options on the patios will be very helpful to make the outdoor space more comfortable. Mr. Fawbush believes momentum is starting to build with the food trucks and once we can get back to the new normal, we should be able to take what the Commission started and take it to the next level. But for now, having those additional improvements improves the functionality of the space.

Commission and staff discussion ensued regarding the Duffy's Pond remediation and Columbia Gardens upland improvements.

## **PUBLIC COMMENT**

No comments were made.

***MOTION:*** Commissioner Novakovich moved to approve Resolution 2020-16, accepting the Duffy's Pond Remediation and Upland Improvements report by Port staff, and approving goal #4 of the CEO's goals and objectives and further moves that all action by Port officers and employees in furtherance hereof is ratified and approved; and further that the Port Chief Executive Officer is authorized to take all action and to pay all expenses necessary in furtherance hereof; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

### ***B. Quarterly Financial Update***

Mr. Kooiker presented the second quarter budget update and financial highlights (EXHIBIT B). Mr. Kooiker stated, as always, the numbers are subject to change. Mr. Kooiker outlined the 2021-2022 Budget and Work Plan schedule:

- September 8, 2020: Work Plan/Budget Elements Discussion
- September 22, 2020: Work Plan Workshop



# PORT OF KENNEWICK REGULAR COMMISSION MEETING

AUGUST 25, 2020 MINUTES

**DRAFT**

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- October 13, 2020: Work Plan Adoption
- October 27, 2020: Budget Presentation Workshop
- November 10, 2020: Budget Adoption

## EMERGENCY DELEGATION UPDATE

Ms. Hanchette stated Ice Harbor at the Marina has requested additional outside patio space near the fountain. Port staff is working with Mike Hall on that request.

## RECESS

*Commissioner Barnes called for a recess for at 3:03 p.m. for five minutes.*

*Commissioner Barnes reconvened the meeting at 3:08 p.m.*

## REPORTS, COMMENTS AND DISCUSSION ITEMS

### A. Vista Field

#### 1. Construction and Task Status Update

Mr. Peterson met with City staff this morning to conduct the substantial completion walk through. The City will provide a list of items to the Port and Total Site Services that need to be addressed prior to the City accepting the project. Mr. Peterson stated Ben Floyd, Doris Goldstein, and Foster Garvey continue to work on the Vista Field Property Owner's Association and DPZ Partners continues to work on the list of questions posed earlier this year.

#### 2. Hangar Memo

Mr. Arntzen stated before the Commission is a memo regarding the Vista Field Hangars (EXHIBIT C) which discusses options for moving forward. Mr. Arntzen believes the Commission may consider adding a substantial line item for Vista Field capital projects to the 2021-2022 Budget and Work Plan without specifically addressing the Hangars and identify projects at a later date. Mr. Arntzen outlined several options that the Commission may consider for further options for the Hangars.

Commissioner Barnes does not advocate selling the Hangars and releasing 100% control but envisions more of a public/private partnership where the Port owns the land and the private sector leases the land and owns the building and improvements, much like the arrangement we have with Cedars.

Commissioner Novakovich believes three things the Commission should consider before moving forward:

- Should the Port maintain control of hangars;
- Budget for Vista Field improvements, but not specifically allocating the funds to certain projects;
- The Commission should pause until we see what effects COVID-19 will have on the economy and the demand for property at Vista Field.

Commissioner Moak stated the Port can maintain control of the hangars in a variety of ways, including the collaborative design process. Commissioner Moak is not opposed to selling the

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

AUGUST 25, 2020 MINUTES

**DRAFT**

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hangars, as long as we work through the collaborative design process with the potential buyer. Commissioner Moak stated the hangars were meant to create vibrancy at Vista Field; however, it might be a good idea for the Port to tear them down and start over. Additionally, he believes there needs to be an anchor to the southern boundary and thinks the hangars may require more work than the Commission may want to invest. Commissioner Moak likes the Cedars analogy, but does not know how that would work with the Opportunity Zone (OZ) rules.

Commissioner Barnes stated in response to Commissioner Novakovich's comments, the Port should absolutely maintain control of the hangars. Additionally, Commissioner Barnes believes we should allocate money to Vista Field, but he cannot see spending \$8,000,000 to \$11,000,000 on the hangars. Furthermore, he does not know if we need to pause on moving forward with Vista Field because of the virus, but he would welcome and encourage staff to engage with members of the private sector to see if there is any interest in purchasing the improvements. Commissioner Barnes suggested the Port maintain ownership on one of the hangars and complete the renovations as Mr. Robison suggested and then sell the two others with land lease options.

Mr. Arntzen stated if the Commission directed staff to look at several options, that could take several months to research, which may be enough time to see what the effects of COVID-19 are. Additionally, Mr. Arntzen believes the Mayor of West Richland would like the Port to utilize the \$1,300,000 as quickly as possible so that the City does not have to carry on the books.

Commissioner Moak thinks if we tore down the hangars, the Port would not need to build \$11,000,000 in improvements, but rather look at what the Port could do to create vibrancy in the areas, such as install container buildings for lease. Commissioner Moak is in favor of exploring a land lease option, further investigation into containers, and discussions with local art groups.

Commissioner Barnes would like staff to explore a potential ground lease option, furthermore, he is open to remodeling one of the hangars as a model, to create vibrancy in the development.

Mr. Peterson stated DPZ believes the structures should be maintained to frame the development. Additionally, the intention of his question of, does the Port want to maintain property or buildings like on Clover Island or Columbia Gardens, or sell all of the property to the private sector, as we did at Spaulding Business Park.

Mr. Arntzen reiterated the agreed upon Commission comments and would like to draft a memo regarding today's discussions, with a narrowed down focus. Mr. Arntzen envisions putting a small team together to address the scope of work defined by the Commission.

Commissioner Barnes reiterated his idea of a public/private partnership, much like the Cedars ground lease and does not support spending staff time and resources looking into something outside or beyond that.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

AUGUST 25, 2020 MINUTES

**DRAFT**

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## ***B. Clover Island/Columbia Drive***

### ***1. Kennewick Waterfront Master Plan Update***

Mr. Peterson stated Makers architecture and urban design recently completed the first online public input process for the Kennewick Waterfront. The process resulted in over 7,500 visits to the website, 1,700 unique visitors, 100+ comments, and 66 survey responses.

## ***C. Communications with Public***

Ms. Bader Inglima worked with Makers on the Kennewick Waterfront District Master Plan survey, which generated over 400,000 impressions and 850 click throughs. Ms. Bader Inglima reported that the Port recently began running four TV spots that promote Clover Island and Columbia Gardens.

Mr. Arntzen applauded Mr. Peterson and Ms. Bader Inglima's work with Makers on the Kennewick Waterfront survey. Additionally, when Mr. Arntzen and staff met with the USACE regarding the 1135 project, he heard a number higher than what we initially heard and budgeted.

## ***D. Director Reports***

Ms. Bader Inglima reported that the Marina is busier than it has ever been and Ms. Yates has been managing the restrictions expertly. Ms. Bader Inglima received a note from Vijay Patel about how helpful Ms. Yates was when he was obtaining a slip.

Ms. Luke reported on the recent teleconference with Judge Kallas and counsel on Thursday, August 13, 2020 to discuss the hearing schedule for the complaint appeal process and whether witness names would be used during the briefing and hearing. Ms. Luke stated the hearing date has been postponed until November 20, 2020 in the hopes to have an in-person hearing, which will be conducted as a Special Commission Meeting. However, if the Port is still not having in-person meetings, we will conduct the hearing remotely. Judge Kallas also granted Commissioner Barnes' request to utilize the witness names during the briefing and hearing. Furthermore, Judge Kallas reiterated the scope of the hearing, which is going to be based on the records developed in the investigative file by Ms. Parker.

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

Commissioners reported on their respective committee meetings.

## ***F. Non-Scheduled Items***

No comments were made.

## **PUBLIC COMMENTS**

No comments were made.

## **COMMISSION COMMENTS**

No comments were made.



# PORT OF KENNEWICK REGULAR COMMISSION MEETING

AUGUST 25, 2020 MINUTES

**DRAFT**

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## ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 4:59 p.m.

**APPROVED:**

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

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*Don Barnes, President*

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*Skip Novakovich, Vice President*

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*Thomas Moak, Secretary*

# PORT OF KENNEWICK

## HISTORIC WATERFRONT DISTRICT MASTER PLAN



**Phase 1 Outreach Summary & Alternative Concepts**  
September 2020 Commissioner Briefing

# PHASE 1 - OUTREACH SUMMARY

## TARGETED DISCUSSIONS

- 12 individual interviews
- 6 group interviews
- 4 discussion groups

TOTAL: 56 stakeholders

## OPEN HOUSE

- 1,695 unique visitors
- 80+ people provided feedback
- 105 total comments

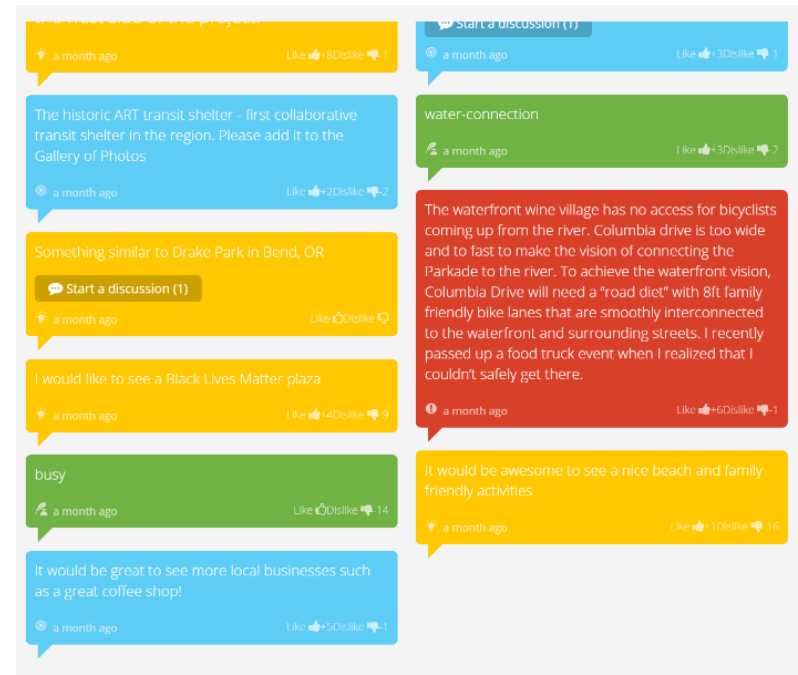


# OPEN HOUSE



## MAP ACTIVITY

- 31% - other (culture, retail, housing, recreation)
- 28% - water activities
- 23% - access & transportation
- 18% - food & entertainment



## IDEAS WALL

- 42% - other (food, housing, recreation)
- 25% - access & transportation
- 17% - water activities
- 16% - arts, culture, & local retail

# OUTREACH TAKEAWAYS

- Clover Island's views, lighthouse, and proximity to the river are main attractions
- Pedestrians and cyclists would benefit from completed trails and safety improvements
- The new wine village and food truck area attracts visitors, more amenities desired
- Blight and nighttime safety concerns can be deterrents to visitors and developers
- The variety of unique local businesses is *great* and there is appetite for more
- Island gets a lot of boat traffic and parking is limited during peak use periods





# PHASE 2 – DRAFT ALTERNATIVE CONCEPTS

- Concepts are intended to illustrate a range of ideas and spur a discussion of trade-offs
- Though some ideas could be implemented by the Port, many would be achieved in partnership with the City, property owners, and business community
- Components of each can be “mixed and matched” into draft plan recommendations
- These ideas will be developed and presented for Port, community, and stakeholder feedback over the next few months

# DRAFT CONCEPTS

## ACTIVITY DESTINATION

Activity-rich district drawing local community and tourists



## RESIDENTIAL HUB

Vibrant neighborhood welcoming all ages and abilities



# ACTIVITY DESTINATION

## LODGING

Focused on tourism or vacation rentals



Boutique hotel near lighthouse

## AMENITIES

Variety of local retail, food, and entertainment with nighttime activation



Local brewery and food

## RECREATION

Equipment rentals and recreation space



Peddle boat rentals for Duffy's Pond or other activity draws



# RESIDENTIAL HUB

## LODGING

Variety of residential options



Mixed use residential at the Willows

## AMENITIES

Local grocery market, coffee shop, boutique shops, and other amenities



Farmer's or art market

## RECREATION

Kids playground, small park area



Playground and park for residents

# COMMON ELEMENTS

- Complete Duffy's Pond and Clover Island trails
- Support improved safety and connections along Duffy's Pond trail; add screening and other amenities
- Formalize some boat trailer parking near ramp
- Support improvements to Washington St and Columbia Dr for pedestrian/bicycle safety and to inspire district exploration
- Encourage improvements to public-facing aesthetics of existing businesses
- Partner to increase wayfinding around district







## ***AGENDA REPORT***

**TO:** Port Commission

**FROM:** Lucinda J. Luke, Port Counsel  
Bridgette Scott, Executive Assistant

**MEETING DATE:** September 8, 2020

**AGENDA ITEM NO.:** *Resolution 2020-17, extending remote meeting procedures and attendance established under Governor Inslee's Proclamation 20-28 for meetings subject to RCW 42.30, the Open Public Meetings Act*

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**I. REFERENCE(S):** Resolution 2020-17; attached.

**II. FISCAL IMPACT:** None.

**II. DISCUSSION:**

On March 24, 2020, Governor Inslee issued Proclamation 20-28, which, in part, prohibited public agencies subject to RCW 42.30 from conducting any meeting subject to RCW 42.30 unless the meeting (i) was not conducted in-person and instead provided an option(s) for the public to attend the proceedings through at minimum, telephonic access, and may also include other electronic, internet or other means of remote access, and (ii) provided the ability for all persons attending the meeting to hear each other at the same time.

In response to Proclamation 20-28, the Port of Kennewick implemented a procedure for its Board of Commission meetings whereby the meetings have been conducted with all Port Commissioners and senior staff present remotely utilizing a teleconference link provided by GoToMeeting and/or a phone call-in number with an access code. The public has been encouraged to attend remotely. Notice of these remote procedures is posted on the Port Commission meeting agendas and on the Port of Kennewick's website, and is provided to the media.

On May 4, 2020, Governor Inslee issued Proclamation 20-25.3, which amended earlier Proclamations, including Proclamation 20-25, and established a four-phased approach to reopening Washington State. This approach is called "Safe Start Washington" (the "Plan"). Under Phase I of the Plan, no gatherings are allowed. Under Phase II of the Plan, gatherings of no more than five people outside of one's household are allowed. Under Phase III of the Plan, gatherings with no more than fifty people are allowed. Under Phase IV of the Plan, gatherings with more than fifty people are allowed. Each phase is to last for a minimum of three weeks.

Counsel and staff are concerned that when Proclamation 20-28.9 expires on October 1, 2020, Benton County will likely be in a modified Phase I.5 under the Plan, in which no more than five people will be allowed to gather, meaning the three members of the Board of Commissioners in addition to staff would exceed the limitation.

Counsel and staff propose extending the remote meeting procedures it has established until the seventh day after Benton County enters Phase III of the Plan, or as otherwise amended or rescinded by action of the Commission.

**IV. COUNSEL RECOMMENDATION:** Adopt Resolution 2020-17.

**V. ACTION REQUESTED OF COMMISSION:**

*Motion: I move approval of Resolution 2020-17 extending the remote meeting procedures it has established under Proclamation 20-28 regarding remote attendance for meetings subject to RCW 42.30, the Open Public Meetings Act.*

# **PORT OF KENNEWICK**

## **Resolution No. 2020-17**

### ***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK EXTENDING THE PROHIBITION ON IN- PERSON MEETINGS SUBJECT TO RCW 42.30 AND PROVIDING AN OPTION FOR THE PROCEEDINGS TO CONTINUE REMOTELY BASED UPON A DECLARATION OF PUBLIC EMERGENCY DUE TO THE OUTBREAK OF COVID-19***

**WHEREAS**, COVID-19, a respiratory disease that can result in serious illness or death to vulnerable or at-risk populations, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person-to-person; and

**WHEREAS**, the United States Centers for Disease Control and Prevention ("CDC") identifies the potential public health threat posed by COVID-19 both globally and in the United States as "high", and has advised that person-to-person spread of COVID-19 will continue to occur globally, including within the United States; and

**WHEREAS**, on January 31, 2020, the United States Department of Health and Human Services Secretary declared a public health emergency for COVID-19, beginning on January 27, 2020; and

**WHEREAS**, on February 29, 2020, Governor Jay Inslee proclaimed a state of emergency within the State of Washington due to COVID-19; and

**WHEREAS**, on March 24, 2020, the Port of Kennewick Board of Commissioners declared a public health emergency on COVID-19; and

**WHEREAS**, on March 13, 2020, the President of the United States declared a National Emergency concerning the COVID-19 outbreak; and

**WHEREAS**, on March 24, 2020, the Board of Commissioners of the Port of Kennewick adopted Resolution No. 2020-06, which provided, in part, that pursuant to RCW 42.30.070, and during the state of emergency, all meetings of the Port Commission would be held in a manner consistent with Governor Inslee's Proclamation 20-28;

**WHEREAS**, on March 24, 2020, Governor Inslee issued Proclamation 20-28, which, in part, prohibited public agencies subject to RCW 42.30 from conducting any meeting subject to RCW 42.30 unless the meeting (i) was not conducted in-person and instead provided an option(s) for the public to attend the proceedings through at minimum, telephonic access, and may also include other electronic, internet or other means of remote access, and (ii) provided the ability for all persons attending the meeting to hear each other at the same time. Proclamation 20-28 also prohibited public agencies from taking "action" as defined in RCW 42.30.020 unless the matters were either (i) necessary and routine, or (ii) necessary to respond to the COVID-19 outbreak (collectively, "Meeting Substance Restrictions"); and

**WHEREAS**, in response to Proclamation 20-28, the Port of Kennewick implemented a procedure for its Board of Commission meetings whereby the meetings have been conducted with all Port Commissioners and senior staff present remotely utilizing a teleconference link provided by GoToMeeting and/or a phone call-in number with an access code. The public has been encouraged to attend remotely. Notice of these remote procedures is posted on the Port Commission meeting agendas and on the Port of Kennewick's website, and has been provided to the media; and

**WHEREAS**, RCW 42.30.077 requires that public agencies make the agenda of each regular meeting of its governing body available online no later than twenty-four hours in advance of the published start time of the meeting. As a matter of internal policy, the Port of Kennewick finalizes its agenda for meetings one day prior to each regular Board of Commissioners meeting. The contents of these agendas form the basis for the Port of Kennewick meeting notices; and

**WHEREAS**, Governor Inslee has amended and extended Proclamation 20-28 a number of times, most recently on September 2, 2020, by way of Proclamation 20-28.9. Proclamation 20-28.9 provides that language from specific statutory provisions found in RCW 42.30 are waived and suspended as provided therein until further Proclamation; and

**WHEREAS**, on March 23, 2020, Governor Inslee issued Proclamation 20-25 "Stay Home-Stay Healthy." This Proclamation generally required that all people in Washington State immediately cease leaving their home except to conduct or participate in essential activities or for employment in essential business services. It further required that all people in Washington State immediately cease participating in all public and private gatherings and multi-person activities, regardless of the number of people involved; and

**WHEREAS**, on May 4, 2020, Governor Inslee issued Proclamation 20-25.3, which amended earlier Proclamations, including Proclamation 20-25, and established a four-phased approach to reopening Washington State. This approach is called "Safe Start Washington" (the "Plan"). Under Phase I of the Plan, no gatherings are allowed. Under Phase II of the Plan, gatherings of no more than five people outside of one's household are allowed. Under Phase III of the Plan, gatherings with no more than fifty people are allowed. Under Phase IV of the Plan, gatherings with more than fifty people are allowed. Each phase is to last for a minimum of three weeks; and

**WHEREAS**, on May 29, 2020, Governor Inslee issued Proclamation 20-25.4 "Transition from 'Stay Home - Stay Healthy' to 'Safe Start - Stay Healthy' County-By-County Phase Reopening." This Proclamation provides that beginning on June 1, 2020, the Plan will be applied on a county-by-county basis. It further provides that a county that has been in Phase I or II for three weeks may apply to the Secretary of Health to move to the next phase; and

**WHEREAS**, on July 3, 2020, the State of Washington approved Benton County's application to move into a modified Phase I under the Plan; and

**WHEREAS**, based upon the increased COVID-19 infection rates across the state, Proclamation 20-25, was amended and placed a freeze on all counties moving forward to a subsequent phase, and that freeze remains in place; and,

**WHEREAS**, Benton County will remain in its modified Phase I indefinitely; and,

**WHEREAS**, the Plan provides that under all phases, individuals should engage in physical distancing of at least six feet away from other people and wear cloth face coverings in public places. Although not required, Benton-Franklin Public Health District has recommended that all people wear fabric masks in public. Moreover, the Port is developing a reopening plan and policies that will include elements regarding personal protective equipment; and

**WHEREAS**, RCW 42.30.040 provides that a member of the public shall not be required, as a condition of attendance at a meeting of a governing body, to register his or her name and other information, or otherwise to fulfill any condition precedent to his or her attendance; and

**WHEREAS**, pursuant to Proclamations 20-25 and 20-28 and their amendments, the Port of Kennewick has established remote meeting procedures and arranged for remote attendance by the public at those meetings. The Port of Kennewick's remote meetings and remote meeting procedures have become generally accepted and routine; and

**WHEREAS**, while Proclamation 20-28 and its amendments have been in effect, the Port of Kennewick has experienced standard, and on occasion, increased public engagement at its meetings that are subject to RCW 42.30 that have been held remotely in conformance with Proclamation 20-28, as amended; and

**WHEREAS**, the Port of Kennewick is concerned that when Proclamation 20-28.9 expires on October 1, 2020, Benton County will likely be in a modified Phase I.5 under the Plan, in which no more than five people will be allowed to gather, meaning the three members of the Board of Commissioners in addition to staff would exceed the limitation; and

**WHEREAS**, the Port of Kennewick desires to continue conducting meetings that are subject to RCW 42.30 during the COVID-19 outbreak in a manner that allows for public participation with the fewest restrictions.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby extend the prohibition on in-person meetings subject to RCW 42.30 and will provide an option for the proceedings to continue remotely based upon a declaration of public emergency due to the outbreak of COVID-19.

**BE IT FURTHER RESOLVED** by the Board of Commissioners of the Port of Kennewick, State of Washington, that:

The Port of Kennewick restates and further ratifies the portion of Resolution No. 2020-06 described herein.

The Port of Kennewick hereby extends the remote meeting procedures it has established under Proclamation 20-28 regarding remote attendance for meetings subject to RCW 42.30, the Open Public Meetings Act.



**BE IT FURTHER RESOLVED** that:

Recitals. The foregoing Recitals are expressly adopted herein.

Consistency. The Port Commission intends for this Resolution and Resolution No. 2020-06 to be read consistently; however, if there is any inconsistency or conflict between the two Resolutions, this Resolution shall control.

Duration. This Resolution shall be in effect from September 8, 2020 until the seventh day after Benton County enters Phase III of the Plan, or as otherwise amended or rescinded by action of the Commission. The seven intervening days after Benton County enters Phase III of the Plan will allow the Port of Kennewick to finalize its agenda and provide proper notice to the public of its meeting procedure.

**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 8th day of September, 2020.

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

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

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

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



## AGENDA REPORT

**TO:** Port Commission

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

**MEETING DATE:** 9/8/2020

**AGENDA ITEM:** Temporary Workers

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**I. REFERENCE(S):** Exhibit A – Services Proposal  
Resolution 2020-18

**II. FISCAL IMPACT:** \$20,000.00

**III. DISCUSSION:**

In mid-March 2020, the coronavirus pandemic forced the Washington State Department of Corrections to recall all local offsite work crews back to the Coyote Ridge facility in Connell, Washington. Closures that were expected to only last two weeks are still in effect today.

For many years, the port has contracted with the Washington State Department of Corrections to provide two supervised work crews of 6-8 inmates as supplemental labor to port maintenance and operations. Some of their tasks have included pulling weeds, mowing, picking up garbage, painting, fence building, cleaning off graffiti, cleaning docks, digging, sweeping and various small projects as assigned. The absence of these work crew services created a significant labor deficit in port operations.

At the end of May, CEO Tim Arntzen authorized port operations to contract with Express Employment Professionals in order to provide temporary labor for tasks that would typically be performed by the work crews. Up to this point, the focus has been on controlling weeds, garbage and rough mowing on Clover Island, Columbia Drive, Willows, Cable Greens and Vista Field phase I.

Initially, two temporary workers were hired to work four hours per day, five days per week under a \$10,000 contract. Additional workers were added along with a \$4,000 change order. Presented to commission today is a \$20,000 contract (Exhibit A) with Express Employment Professionals that will be used for 3-4 temporary laborers working 4-8 hours per day, five days per week on general maintenance and project tasks.

**IV. ACTION REQUESTED OF COMMISSION:**

**Discussion and consideration of Resolution 2020-18**

*Motion: I move approval of Resolution 2020-18 authorizing the Port's Chief Executive Officer to execute all documentation necessary to contract with Express Employment Professionals in order to assist port operations with temporary workers; and further ratifies and approves all action by port officers and employees in furtherance hereof.*

***PORT OF KENNEWICK***

**RESOLUTION No. 2020-18**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK AUTHORIZING  
A CONTRACT WITH EXPRESS EMPLOYMENT PROFESSIONALS***

***WHEREAS***, in mid-March 2020 the coronavirus pandemic forced the Washington State Department of Corrections to recall all local offsite work crews back to the Coyote Ridge facility in Connell, Washington leaving a significant deficit in labor within port operations;

***WHEREAS***, Express Employment Professionals has been a reliable source for temporary workers to perform maintenance duties at various port properties.

***NOW, THEREFORE; BE IT HEREBY RESOLVED*** that the Board of Commissioners of the Port of Kennewick hereby authorize the Port's Chief Executive Officer to execute a service agreement with Express Employment Professionals for \$20,000.

***ADOPTED*** by the Board of Commissioners of the Port of Kennewick on the 8<sup>th</sup> day of September 2020.

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

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

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

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

## MEMORANDUM

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<b>To:</b>	Tim Arntzen, Port of Kennewick	<b>Date:</b>	September 3, 2020
<b>From:</b>	Ben Floyd, White Bluffs Consulting	<b>Project:</b>	5
<b>Cc:</b>	Larry Peterson and Amber Hanchette, Port of Kennewick		
<b>Re:</b>	Vista Field Governance Structure and Declarations		

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The Port of Kennewick (Port) hired White Bluffs Consulting (WBC) to coordinate the Port's professional services team in establishing a governance structure and legal documents that establish Vista Field Declaration of Covenants, Conditions and Restrictions. These documents propose a structure directed by the Port that over time would shift ongoing operating cost of Vista Field common areas to the development partners and businesses expected to invest in Vista Field. This latest work has been conducted over the past several months and the team is ready to begin sharing the draft documents with the Port Commission for their review, deliberations, and action in the next two months.

To this end, I am proposing the following schedule for upcoming Port Commission meetings.

Date	Presentation	Handout(s)
September 8	Provide a 10-minute update on the work status, the proposed schedule for Port Commission review (as described in this memo) and an overview of the work that has been ongoing.	Vista Field Organizations Structure summary
September 22	Provide a 20-minute overview of the Vista Field and Village Center (commercial) declaration documents, and what has changed/been updated since the last versions shared with the Port. Share Port Commission homework assignment to review declaration documents in detail and come ready with questions and comments at the October 13 meeting.	<ul style="list-style-type: none"><li>• Vista Field Governance Structure Executive Summary</li><li>• Draft declaration documents</li></ul>
October 13	Presentation on and discussion of draft declaration documents, address Port Commission questions and comments (45 – 60 minutes)	Draft declaration documents
October 27	Port Commission acts to approve declaration documents, establishing the governance structure.	Final declaration documents



## Vista Field Proposed Organizational Structure, Page 1: Formation

	<b>Port Authority/Developer</b>	<b>City</b>	<b>Vista Field Association</b>	<b>Commercial Property Association</b>
<b>Role and how established</b>	The Port is the owner of the property and the declarant under the Declaration of Covenants and Restrictions (the Declaration). The Declaration establishes the rights of the Port in developing Vista Field, subject to limitations in the Washington Uniform Common Interest Ownership Act (the “Act”).	N/A	The Declaration creates a mixed-use association, the Vista Field Association (the Association) under the Act. As provided in the Declaration, all owners of property within Vista Field, including commercial property, are members of the Association and pay mandatory assessments. The Association is regulated by both the Declaration and the Act.	A separate instrument, the Declaration of Covenants, Conditions and Restrictions for Village Center (“Commercial Declaration”), establishes the commercial property owners’ association (the “Commercial Property Association”). Only commercial property owners would be members and pay assessments. Residential property within the Village Center would be excluded from the effects of the Commercial Declaration.
<b>Personnel responsible for carrying out development and operation of Vista Field</b>	The Port will designate a project manager whose responsibilities could include supervision of construction, advice concerning implementation of master plan, marketing strategy and sales, including sales to builders with take-down agreements.	N/A	The Association board will designate a Community Association Manager, either an existing Port employee or management company, or an individual hired specifically for this position with an on-site office. A Community Association Manager is expected to have knowledge of the Act as it affects association operation. At the direction of the board, the Community Association Manager will manage the financial accounts of the Association, oversee any employees such as maintenance and landscape personnel, negotiate contracts for outside service providers and oversee work. As the project develops, the Community Association Manager will conduct voting for the board of directors, help prepare the budget (to be approved by the board) and collect assessments.	In addition to a General Manager to oversee maintenance and management of the shared facilities serving commercial property, such as plazas, public parking, drinking fountains, public restrooms, street furniture, the budget for commercial operation should include hiring a Marketing Director to oversee events, promotions, holiday decorations and other activities. This may be one or more people and may be contracted services, or full or part time staff, and could include the same staff working for the Vista Field Association.
<b>Evolution of Port control during buildout</b>	The Declaration provides protection for the Port to complete development work, including design review, even after control of the board of the Association is turned over to owners.	N/A	The Port as master developer can select a majority of the board until 75% of build-out of the entire 103-acre project. Board members selected by the Port have a duty to the Association to act reasonably and in the best interests of the Association. The Act requires transition from the developer to owners at 75%. There is no time limit on when this transition occurs, which may take many years.	It is expected that the Port would be the major commercial property owner in the Village Center for an extended period of time. Because the Commercial Property Association is not subject to the Act, there is no limit to how long the Port could control the Commercial Property Association.

## Vista Field Proposed Organizational Structure, Page 2: Responsibilities

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

## ***MEMORANDUM***

To: Port Commission

From: Tim Arntzen, CEO

Date: September 8, 2020

Re: Vista Hangars, Further Discussion

### **Background**

The Commission has had substantial discussion related to formulating a development strategy with respect to the Vista Hangars. This memo builds on the consensus and momentum resulting from discussion which occurred during the August 25, 2020 commission meeting.

### **Discussion**

Staff has listened to comments offered by the Commission. Based on that, and as a potential path forward, the port CEO will direct the port CFO and Director of Planning & Development to:

1. Proceed with the budget and work plan, presenting draft and final documents to the Commission on the following schedule:

September 8, 2020	Work Plan/Budget Elements Discussion
September 22, 2020	Work Plan Workshop
October 13, 2020	Work Plan Adoption
October 27, 2020	Budget Presentation Workshop
November 10, 2020	Budget Adoption

The budget and work plan can move forward while the Commission takes the time necessary to strategically consider what to do with the hangars as major assets at Vista Field.

2. Pursuant to Commission direction, establish funding for “capital projects at Vista Field” which could include projects yet to be determined (which may or may not include the hangars). More detail can be fleshed out as the draft work plan progresses.

The CEO would like authorization from the Commission to contract with a firm to research other viable options for the hangars. Research would include the issues the Commission identified in the August 25, 2020 meeting, which are set out in Exhibit “A” to this memo. I anticipate developing a detailed scope of work and a plan for the selection of the consulting team, which will be shared with the Commission. I anticipate that these tasks could be accomplished this fall. Work in earnest on the hangar analysis “plan” could commence in January, with a draft report expected within 120 days (+/-). As the Commission can see from the diversity of issues to be addressed (Exhibit “A”), several disciplines will need to be part of the team, including

planners, real estate professionals and others. It would be my intent to treat this as a “modest” project with respect to funding and timing, yet treat it as the important task that it is. Thus, I would strive to keep the budget in check and have a useful product developed in a timely manner. Because of the magnitude of this inquiry, I suggest the Commission adopt this as a CEO goal, enabling me the ability to marshal the necessary assets to successfully complete the task.

In addition, I recommend that the Commission authorize me to contract with an economist to provide a skilled review and guidance related to Coronavirus impacts on the local, state and national economic picture. Most focus would be on how the virus has changed the local playing field and what we might expect in the future (i.e. which industries are failing, what our financial impact might be, etc.). Not only would this information assist the Commission in deciding what uses the hangars might have, but it would also help us assess our overall actions moving forward. I anticipate a project such as this to be of modest cost, with a time frame of 120 days from its “start”. TRIDEC has expressed some level of interest in assisting with this analysis. I would also ask the Commission to establish the economic report as a CEO goal as this information will be valuable to our overall lines of work, and will be instrumental in properly addressing the hangar issue.

## **Conclusion**

Staff will undertake the following actions:

1. The CFO and Planner & Development Director will proceed with the preparing and presenting a draft budget and work plan on the schedule described above.
2. The CFO will insert a “placeholder” in the budget for capital project(s) at Vista Field, which may or may not end up being used for the hangars.
3. The CEO will request that the Commission to authorize him to contract with a firm capable of providing:
  - a. The deeper analysis with respect to the future of the hangars, with the general scope of the analysis as set forth in Exhibit “A”; and
  - b. The Coronavirus economic component described in the body of this memo and Exhibit “B”.

## **Impact on Pending RFP**

Port staff are working to bring crucial decision points to the Commission for final determinations in advance of a winter/spring 2021 Request For Proposal (RFP) process for the Vista Field properties. Ideally the hangar path (renovation or land lease) would be identified before the RFP is issued and the vision shared with prospective investors of adjacent properties or the lease opportunities included with the adjacent sales offerings. It should be noted that as proposed the hangar analyses timeframes would parallel the RFP process and obtaining the desired sequencing [decide hangar path and share with RFP respondents] would require either acceleration of the analyses (unrealistic) or delay of the RFP issue (undesirable).

## EXHIBIT “A”

### Potential Issues for Hangar Review

**Retaining Control of the Project.** The Commission has reached consensus that the master developer (Port) will retain control of all elements of the project deemed necessary to the overall success of the project (in this case the ultimate end use of the hangars). This concept might need to be further refined throughout this or another process (perhaps the process we already have underway with DPZ). Also as identified below, one option currently under consideration is selling the hangars and ground leasing the land. That option will be explored under the assumption that it is consistent with the port “retaining control of the project”. However, an outright sale of the land and hangar buildings with no strings attached is beyond scope of a proposed hangar study.

**Lean Renovation Options.** There may be other options available rather than just a full buildout. The report will provide two examples of what a “lean” redevelopment might encompass with sketches or photos and with a basic cost to construct analysis. One example might be the “Box Park” type development in Savannah, GA; Miami, FL, and Las Vegas, NV; each of which use cargo containers as lean, vibrancy-building techniques.

- a. **Financial Partnerships.** The report will address whether port partners would contribute to a hangar remodel. This could be an option under the “Lean” option as well as the “Ground Lease” option.
- b. **Rural County Capital Funding (RCCF) Eligible Projects.** As part of the review process, staff will keep the availability of RCCF in mind. The hangers initially appeared to be a strong candidate for RCCF funding, and a remodel could likely meet statutory and county requirements for funding.

**“Cedars Style” Ground Lease.** The report will assess the viability of the port offering the hangar buildings for sale on a ground lease. The purchaser would own the building and make port-approved modifications and establish businesses which meet zoning and port approved uses. The port would continue to own the land under the building and would ground lease at fair market value to the building owner, i.e. as is the case with Cedars and the Clover Island Inn.

## **EXHIBIT “B”**

### **Potential Issues for Hangar Review**

**Coronavirus Impacts.** Based on pre-Covid contract and scoping, the Vista Hangar report identified potential uses which are currently struggling. The port may decide to steer away from improving the hangars for industries which are foundering under pandemic restrictions. The time needed to assess the best use of the hangars could also provide the time necessary for the port to obtain professional data and advice with respect to potential economic and business impacts from the Covid-19 Pandemic. This information would likely be beneficial before making any decision which may significantly impact the southern entrance to Vista Field or other properties within the Port’s portfolio.

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**PATH #1 - Lean Renovation Options.** There may be other options available rather than just a full buildout. The report will provide two examples of what a “lean” redevelopment might encompass with sketches or photos and with a basic cost to construct analysis. One example might be the “Box Park” type development in Savannah, GA; Miami, FL, and Las Vegas, NV; each of which use cargo containers as lean, vibrancy-building techniques.

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**PATH #2 - “Cedars Style” Ground Lease.** The report will assess the viability of the port offering the hangar buildings for sale on a ground lease. The purchaser would own the building and make port-approved modifications and establish businesses which meet zoning and port approved uses. The port would continue to own the land under the building and would ground lease at fair market value to the building owner, i.e. as is the case with Cedars and the Clover Island Inn.

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## AGENDA REPORT

**TO:** Port Commission

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

**MEETING DATE:** 9/8/2020

**AGENDA ITEM:** Purchase & Sale Agreement – Repurchase Option  
(Buyback Clause) Language Update

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**I. REFERENCE(S):** CEO memo to commission dated 8/11/2020  
Resolution 2020-19

### **II. DISCUSSION:**

According to port policy: CEO Delegation of Authority, Real or Personal Property Purchases and Sales, Resolution 2015-29;

1.1. Not for Speculation: Port-owned real property will only be sold for identifiable, immediate development and not for speculative purposes. To serve this goal, most sales will include a repurchase option in favor of the Port in the event identified development does not occur in a timely manner.

### **CURRENT buyback language used in port purchase and sale agreements:**

#### **10. REPURCHASE OPTION.**

10.1 Obligation to Construct [ ]. The parties agree that the Purchaser's use of the Property shall be to construct a [ ]. The [ ] will be built in accordance with the following conditions:

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

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

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

10.2 Failure to Construct and Right to Repurchase. Subject to force majeure, the parties agree that in the event construction of [ ] or some other mutually agreed upon utilization of the Property has not begun (evidenced as set forth in 10.1.2 above) Seller

shall have the right to repurchase the Property **at the same agreed upon price per square foot** paid by Purchaser with all closing costs and real estate taxes paid by Purchaser, payable in cash at closing. **Seller must give Purchaser written notice of its intent to repurchase the property within sixty (60) months of the date deed is recorded transferring the Seller's title to this land.** In the event this repurchase provision is invoked, payment for improvements made to the site by the Purchaser which benefit the future development of the Property shall be made by Seller. Value of improvements which benefit the Property shall be established, unless otherwise agreed by the parties, from the average of two appraisals (one obtained by Seller and one obtained by Purchaser) performed to determine the residual value of site improvements made by the Purchaser.

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

**PROPOSED buyback language to be used in port purchase and sale agreements:**

10. REPURCHASE OPTION.

10.1 Obligation to Construct [\_\_\_\_\_]. The parties agree that the Purchaser's use of the Property shall be to construct \_\_\_\_\_. The \_\_\_\_\_ will be built in accordance with the following conditions:

10.1.1 Construction is to commence no later than **twelve (12) months from the date the deed is recorded** transferring the Seller's title to this land to Purchaser;

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

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

10.2 Failure to Construct and Right to Repurchase. Subject to force majeure, the parties agree that in the event construction of the \_\_\_\_\_ or some other mutually agreed upon utilization of the Property has not begun (evidenced as set forth in 10.1.2 above) Seller shall have the right to repurchase the Property **at the same agreed upon purchase price (\$\_\_\_\_\_)** paid by Purchaser, with all closing costs and real estate taxes paid by Purchaser, payable in cash at closing. **Seller must give Purchaser written notice of its intent to repurchase the property within thirty (30) months of the date deed is recorded transferring the Seller's title to this land.** In the event this repurchase provision is invoked, payment will be made by Seller to Purchaser for improvements made to the Property by the Purchaser which, in Seller's determination and sole discretion, benefit the future development of the Property. Value of improvements which benefit the Property shall be established, unless otherwise agreed by the parties, from the average of two appraisals (one obtained by Seller and one obtained

by Purchaser) performed to determine the residual value of improvements made by the Purchaser.

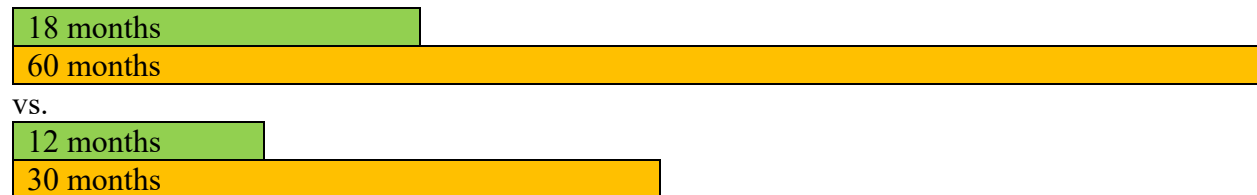
Closing for the repurchase of the Property shall occur in accordance with the terms of paragraph 9 above, except that Purchaser shall bear all closing costs unless otherwise agreed between the parties, and closing shall occur no later than \_\_\_\_\_ (\_\_\_\_) days after delivery of the Seller's written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

### **Summary:**

Language is consistent between current and proposed buyback clauses with the following exceptions:

	<u>Current</u>	vs.	<u>Proposed</u>
Buyers Obligation to Construct*	18 months		12 months
Sellers Right to Repurchase*	60 months		30 months
Repurchase Price	Varies		Original purchase price

(\*from date deed is recorded)



### **Buyback Reserve Fund Discussion:**

Previous commission discussion included reserving land sale proceeds in order to execute a buyback clause for potential repurchase of property. Budget impacts are a consideration. Therefore, staff requests additional discussion for a future commission decision.

### **III. ACTION REQUESTED OF COMMISSION:**

Item #1: Discussion - buyback clause language for port purchase and sale agreements and potential resolution.

Item #2: Buyback reserve fund discussion.



***Motion to Approve:*** *I move approval of Resolution 2020-19 authorizing the Port's Chief Executive Officer to execute all necessary documentation in order to update repurchase option language in port purchase and sale agreements; and further ratifies and approves all action by port officers and employees in furtherance hereof.*

## **MEMORANDUM**

To: Port Commission

From: Tim Arntzen, CEO

Date: 8/11/20

Re: Buyback Clauses

The commission has asked the port CEO to prepare a brief report related to the port's use of buyback clauses. As part of this review, the CEO will report on those properties the port has sold in the recent past which had buyback clauses and which are developed pursuant to terms of the sale agreement (i.e. those properties whereby the seller has fully complied with the terms of the buyback clause).

The CEO will also report on those properties which have sold in the recent past and the development has not yet occurred (i.e. which are still subject to port repurchase). For these properties, the commission may wish to determine whether it desires to repurchase the property, or to formally waive the buyback provision.

Finally, the CEO will present thoughts from staff and legal counsel related to the current buyback clause language the port inserts into sales agreements; and proposed changes which the commission may wish to consider. Also a discussion related to the commission's philosophy will be encouraged.

### Background

A buyback clause is a provision in a land sales contract that allows the seller of property the right or opportunity to repurchase the property under stated conditions. The port has substantial history of inserting buyback clauses in its real estate sales agreements. Because the port usually sells property in furtherance of economic development, part of the port's rationale for selling property is based on the beneficial use of the property by the proposed purchaser. This is usually demonstrated by the significance of the development, the contribution of the development to the local, state or national economy, usually evidenced by the number of jobs created or services offered (or other similar positive economic benefits to be derived by the port selling the property). And the port generally does not sell property for speculative purposes. In short, the port sells the land only if it is of more benefit to the community to have a party other than the port own the land.

As part of most land sales, the port sells for a stated purpose, i.e. a restaurant. The port commission realizes the restaurant use will benefit the quality of life in the community, will create taxable revenue and will create jobs and vibrancy. The port welcomes these perceived benefits and has an expectation that the purchaser will be diligent in developing the project. And the port desires to avoid a purchaser "sitting" on the purchased property rather than immediately developing it. Thus, the necessity of buyback clauses.

However, in a few cases the port has not wanted to repurchase property it sold. One instance included selling land, knowing the party would need to hold it to allow land value to increase over time (Southridge). In this case the port needed the revenue from the sale to fund construction of vital infrastructure at Vista Field. Hence, the commission determined that a buyback clause was not necessary or desirable. In at least one other case, the port commission sold land that no longer fit its mission (Verizon/MS Shemali). Thus land was sold for a positive economic use, but no buyback clause was utilized in that case as the port simply did not want the land back (i.e. the port wanted the revenues for other development projects which would benefit the community and the land being sold was not an important part of the port's portfolio).

#### Philosophy

The commission likely will want to discuss when to use buyback clauses. As has been the custom in the past, the commission may be judicious in its use of buyback clauses. Perhaps the commission would choose to limit their use to land sales where development according to the sales document is critical. A great example would be in the case of a bare land sale at Vista Field where the developer promises to build a certain type of project, utilizing New Urbanism principles, promising to build according to the design guidelines, etc. and to build in a timely manner. Because of the critical nature of Vista Field, a project that languishes or promises to be inconsistent could be terminated via the port's exercise of a buyback clause, thus protecting community values. Staff would suggest the use of buyback clauses in all Vista Field land sales.

Columbia Drive might be another area for the use of the provisions.

#### Potential Buyback Clause Provisions

Buyback Clauses should be straightforward so that both the seller and the buyer know exactly what each is required to do. The term for performance should be reasonable. Currently the port provides for 18 months in which to complete a project. The port has, in the past, provided extensions for good cause shown.

It might appear to the commission that a 12 month provision, with a 6 month extension for good cause is supportable. The port should also have a defined time frame in which to exercise its right to repurchase, say 12 months from the

expiration of the time of performance (Exhibit A). In addition, commission may wish to retain proceeds from land sales subject to buyback clauses in order to have funds available should the commission desire to exercise a repurchase.

#### Recent Port Use of Buyback Clauses

Summary found in attached Real Estate agenda report.

#### Action

Staff wishes to present this topic to the commission for consideration, direction and possible action. It would be appropriate for this matter to be finalized by this fall in order to prepare for upcoming Vista Field land sales in 2021.

## **EXHIBIT A**

### **PROPOSED LANGUAGE FOR VISTA FIELD BUYBACK CLAUSE:**

#### **10. REPURCHASE OPTION.**

10.1 Obligation to Construct [\_\_\_\_\_]. The parties agree that the Purchaser's use of the Property shall be to construct \_\_\_\_\_. The \_\_\_\_\_ will be built in accordance with the following conditions:

10.1.1 Construction is to commence no later than twelve (12) months from the date the deed is recorded transferring the Seller's title to this land to Purchaser;

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

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

10.2 Failure to Construct and Right to Repurchase. Subject to force majeure, the parties agree that in the event construction of the \_\_\_\_\_ or some other mutually agreed upon utilization of the Property, has not begun (evidenced as set forth in 10.1.2 above) Seller shall have the right to repurchase the Property at the same agreed upon purchase price (\$\_\_\_\_\_) paid by Purchaser, with all closing costs and real estate taxes paid by Purchaser, payable in cash at closing. Seller must give Purchaser written notice of its intent to repurchase the property within thirty (30) months of the date deed is recorded transferring the Seller's title to this land. In the event this repurchase provision is invoked, payment will be made by Seller to Purchaser for improvements made to the Property by the Purchaser which, in Seller's determination and sole discretion, benefit the future development of the Property. Value of improvements which benefit the Property shall be established, unless otherwise agreed by the parties, from the average of two appraisals (one obtained by Seller and one obtained by Purchaser) performed to determine the residual value of improvements made by the Purchaser.

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

***PORT OF KENNEWICK***

**RESOLUTION No. 2020-19**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK AUTHORIZING  
AN UPDATE TO PURCHASE AND SALE AGREEMENT  
REPURCHASE OPTION (BUYBACK) LANGUAGE***

***WHEREAS***, a condition in each purchase and sale agreement allows the Port of Kennewick an option to repurchase the property should the Purchaser not develop the property within a designated time; and

***WHEREAS***, the Port Commission finds that current repurchase option language related to performance deadlines should be updated (Exhibit A).

***NOW, THEREFORE; BE IT HEREBY RESOLVED*** that the Board of Commissioners of the Port of Kennewick hereby authorize the Port's Chief Executive Officer to execute all documents and agreements on behalf of the Port to complete the update of repurchase option (buyback clause) language in port purchase and sale agreements as specified above.

***ADOPTED*** by the Board of Commissioners of the Port of Kennewick on the 8<sup>th</sup> day of September 2020.

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

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

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

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



## EXHIBIT A

### 10. REPURCHASE OPTION.

10.1 Obligation to Construct [\_\_\_\_\_]. The parties agree that the Purchaser's use of the Property shall be to construct \_\_\_\_\_. The \_\_\_\_\_ will be built in accordance with the following conditions:

10.1.1 Construction is to commence no later than **twelve (12) months from the date the deed is recorded** transferring the Seller's title to this land to Purchaser;

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

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

10.2 Failure to Construct and Right to Repurchase. Subject to force majeure, the parties agree that in the event construction of the \_\_\_\_\_ or some other mutually agreed upon utilization of the Property has not begun (evidenced as set forth in 10.1.2 above) Seller shall have the right to repurchase the Property **at the same agreed upon purchase price (\$\_\_\_\_\_)** paid by Purchaser, with all closing costs and real estate taxes paid by Purchaser, payable in cash at closing. **Seller must give Purchaser written notice of its intent to repurchase the property within thirty (30) months of the date deed is recorded transferring the Seller's title to this land.** In the event this repurchase provision is invoked, payment will be made by Seller to Purchaser for improvements made to the Property by the Purchaser which, in Seller's determination and sole discretion, benefit the future development of the Property. Value of improvements which benefit the Property shall be established, unless otherwise agreed by the parties, from the average of two appraisals (one obtained by Seller and one obtained by Purchaser) performed to determine the residual value of improvements made by the Purchaser.

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