



# PORT OF KENNEWICK SPECIAL COMMISSION MEETING

SEPTEMBER 10, 2019 MINUTES

Commission President Thomas Moak called the Special Commission Meeting to order at 2:00 p.m. in the Bechtel Board Room located at 7130 West Grandridge Boulevard, 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  
Lucinda Luke, Port Counsel

## PLEDGE OF ALLEGIANCE

Commissioner Novakovich led the Pledge of Allegiance.

## APPROVAL OF THE AGENDA

***MOTION:*** Commissioner Barnes 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 attended the Immigrant Art Exhibit at Monarcha Winery, which is located at the Port's Wine Village. It was a well-attended event with very nice art and the beautiful facility. Mr. Burdick stated it would be nice if the Port, the City of Kennewick and the US Corps of Engineers could get together and do something about the still water in Duffy's Pond. Additionally, he believes the City of Kennewick had been a little duplicitous when they asked the Port to support the rezoning of the land across the street from Vista Field to the Urban Mixed Use Zoning.

No further comments were made.

## CONSENT AGENDA

- A. Approval of Direct Deposit and E-Payments Dated September 4, 2019***  
Direct Deposit and E-Payments totaling \$90,944.68
- B. Approval of Warrant Register Dated September 10, 2019***  
Expense Fund Voucher Number 101380 through 101427 for a grand total of \$360,915.38
- C. Approval of Special Commission Business Meeting Minutes August 27, 2019***

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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. Amendment of Goal 3 in CEO's 2019-2020 Goals and Objectives***

Ms. Luke stated before the Commission is an agenda report and proposed Resolution 2019-20 and an excerpt of the July 30, 2019 Special Commission Meeting Minutes. Ms. Luke stated the request today is for the Commission to consider a revision to the 2019/2020 goals for the CEO. The Commission approved the CEO goals on October 23, 2018; however, during the July 30, 2019 Special Commission Meeting the Commission directed Mr. Arntzen to negotiate a land sale with the City of West Richland in lieu of pursuing a ground lease or sale in the Columbia Drive area. There was discussion during the July 30, 2019 Commission Meeting regarding the time needed in order to undertake that new project, and understanding that the new project was not on the CEO's 2019/2020 goals. Therefore, Ms. Luke is proposing an update to the goals to include the new project and remove the current goal related to ground lease or sale on Columbia Drive.

Commissioner Moak supports the revision and the Commission agreed this was going to happen; however, he inquired if the Comprehensive Scheme should be amended prior to the goals being revised.

Ms. Luke stated the Comprehensive Scheme will need to be amended and staff is currently working on the details. Ms. Luke believes the Comp Scheme Amendment will come before the Commission within the next month.

**MOTION:** *Commissioner Novakovich moved for approval of Resolution 2019-20 amending Goal 3 of the CEO's 2019/2020 Goals and Objectives; and further ratify and approve all action by port officers and employees in furtherance hereof; Commissioner Moak seconded.*

### PUBLIC COMMENT

No comments were made.

#### ***Discussion:***

*Commissioner Barnes cannot support this, basically because he is on the record earlier saying that he cannot support this land transaction, the potential sale of 93 + acres in West Richland. Commissioner Barnes has difficulty finding how it makes good sense for Port of Kennewick and its tax payers. As a piece of property the Port acquired some years ago for about \$1,750,000, the Port has worked to master plan that property, removed some impediments to the development, including an irrigation inundation clause. So the Port has invested additional money besides the \$1,750,000 and the transaction as contemplated, as he understands it, is \$1,250,000 payable in Rural Capital County Funds (RCCF) credits that the City of West Richland would relinquish or cede or assign to the Port of Kennewick. Commissioner Barnes stated the dollar amount does not make sense to him. The Comp Scheme calls to for the Port to hold the former raceway property in the City of West Richland, the Work Plan calls to hold as a future revenue generating*

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*property. Commissioner Barnes thinks the revenue generation is going in the wrong direction and again payment of this sale, he does not see where it makes good sense for the Port of Kennewick. Commissioner Barnes thinks Commissioner Moak raised a great question, this seems to be premature to him, to change the goals for our CEO, when we still show in our Work Plan and our Comp Scheme that this property is to be held. If the Port is going to do this properly, we should address the Comp Scheme and Work Plan first and then, it might make better sense to address the goals for our CEO. This is a big amount of money that we are talking about here and the Port invested \$1,750,000 and additional funds on top of that, and we are talking about a sale that is in the range of \$1,250,000 that is not an immediate repayment of cash or immediate payment of cash. It's not clear when this payment would be received by the Port if it is in the form of RCCF funds that belong to Benton County that the City of West Richland may or may not be awarded in the future. This is a big dollar amount and Commissioner Barnes thinks the Port has been criticized in the media recently on dollar amounts that are much less than this, lower dollar amounts. And here, again we are talking about \$1,000,000 here and that is a big deal to Commissioner Barnes and he does not understand how this makes sense to the Port, so he cannot support the change in the CEO's goals and objectives and he cannot support this transaction.*

*Commissioner Novakovich stated the purchase price of RCCF is about \$500,000 less than what the Port paid for this property, but the Port is keeping the water rights, which are in excess of \$500,000. Commissioner Novakovich does not believe the Port is losing any money on this and furthermore, the Port of Kennewick, at this time, does not have the time or the money to go forward with any kind of investment in the property, where, the City of West Richland does and is making a commitment to develop it. Which will create jobs, put businesses on the tax rolls, which are desperately needed in West Richland. To Commissioner Novakovich, this makes perfect sense and as far as changing the goals of our CEO, we instructed him to go forward and pursue this, and he believes it is unfair to tell the CEO one thing at one time and then take away his goals at another time for whatever reason. Commissioner Novakovich is in full support of this and thinks it makes perfect sense and it is a good jurisdictional cross partnership. It makes sense for the entire region and our Port District.*

*Commissioner Moak stated the Commission agreed at the meeting that Ms. Luke mentioned, July 30, 2019, that we were going to go ahead and Mr. Arntzen indicated at that certain time things would have to be delayed in order to process the West Richland sale. Commissioner Moak thinks, irrespective of the policy issue, to him, this is ratifying a decision the Commission made, asking Mr. Arntzen to go ahead and do this, which was to prepare that. That will come before the Commission, and the Commission will make that decision, whether to go ahead with it, based upon all the facts at that time, when the sale is before us. Right now, what is before us, is ratifying a decision we made as a Board that Mr. Arntzen was going to work on this particular project and would have to delay some of the sales on Columbia Drive. Commissioner Moak thinks it's a ratification, and though he wished that as he reflected in his question, that we would have done the Comp Scheme amendment before this; however, nothing is damaged, in terms of our credibility, by approving that resolution today. Commissioner Moak will vote in favor of it.*

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*With no further discussion, motion carried. All in favor 2 (Commissioners Moak and Novakovich):1 Nay (Commissioner Barnes).*

### ***B. West Richland Offer Update***

Ms. Luke presented the draft Purchase and Sale Agreement (PSA) with the City of West Richland, which incorporates the proposal terms outlined by the City. Ms. Luke and Ms. Hanchette requested guidance from the Commission regarding those terms, in hopes to finalize the PSA, to bring back to the Commission for further consideration. As stated in last the meeting, Ms. Luke has communicated with Bronson Brown, counsel for the City. Mr. Brown is here today and Ms. Luke invited him to address the Commission if there is anything further he would like to say. Ms. Luke received one comment from Mr. Brown with regards to language in the agreement. Additionally, as stated by Commissioner Barnes, this is an unusual transaction, in that, there is no money exchanged at the front end and the City is using their portion of RCCF funds credit in exchange for the purchase price, which offers uncertainty related to the funding. Ms. Luke stated the property is pending appraisal, which has yet to be received.

Ms. Hanchette believes the appraisal will be completed early October.

Ms. Luke stated in addition to the pending appraisal, the water rights are undetermined. Staff is waiting determination to see if water rights are available, which is addressed in the draft PSA. Also the future use by the City may not be consistent with Port's Master Plan that was adopted in 2017.

***MOTION: Commissioner Barnes moved to table this issue until the Commission receives more information. Motion dies for lack of second.***

Ms. Luke stated the City offered \$1,250,000 via transfer of the City's RCCF funding to the Port. The City has offered to provide security in the form of a deed of trust and note. The backstop for that, if, for any reason the full purchase price is not received through the RCCF fund process, that the City will pay the balance and do so by April 2023. In a separate transaction, the City would consider the purchase of the excess water rights once the Department of Ecology confirms the amount available. Additionally, an Interlocal Agreement with Benton County with regards to RCCF will be required. The deed of trust will include a due on sale clause, which provides the Port preauthorization, should the City wish to sell, lease, or auction the property.

In addition to purchase price, the PSA includes language consistent with the Port art policy and the City will pay in cash at closing an additional amount identified by the Port, not to exceed 2% purchase price, in compliance of seller's art policy.

Ms. Luke stated on page 1, paragraph 4, the City is proposing that no money will be exchanged other than closing costs and funds for art. The City is not offering an earnest money deposit and Port Policy typically requires 5% earnest money on any land sale. Ms. Luke asked for Commission guidance and inquired if they would like to waive the earnest money deposit.

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Commissioner Moak inquired when the Port would be able to access the RCCF funds and the fund for art.

Ms. Luke stated the art fund would be available to the Port at closing. The RCCF transfer would need to be approved by Benton County prior to closing. After the closing process, the Port could apply for those funds with identified projects. Earnest money is typically a deposit made and held by the title company until closing and applied against the purchase price, thus reducing the amount of RCCF funds.

Commissioner Moak inquired if the specific details would be outlined in an Interlocal Agreement with Benton County, the City, and the Port.

Ms. Luke stated that is what is anticipated, although the Port will follow the County's specific requirements.

Commissioner Moak inquired if staff and counsel have spoken to the County about the details and asked if they are in agreement.

Ms. Luke stated staff has been in communication with the County and received guidance to the process. The County would require a resolution and a separate Interlocal Agreement with the City and Port.

Commissioner Moak asked if the documents would be finalized prior to the Commission making the final decision.

Ms. Luke stated the documents would need to be finalized prior to closing.

Commissioner Moak is satisfied with those kinds of mechanisms and agreements in place.

Ms. Luke asked for guidance regarding the 5% earnest money and inquired if the Commission would like to waive the requirement.

Commissioner Barnes is not in favor of that and does not understand why the Port should do any of this.

Commissioner Novakovich stated at this time we have gone this far with this we probably need to go forward with what we've got and waive the earnest money requirement for this particular deal. Not that we would do it on everything, but this is a deal between two government entities to improve the region and Commissioner Novakovich believes the Port needs to do what we can to make this happen. Commissioner Novakovich is in favor of waiving the earnest money requirement in this instance. As Commissioner Novakovich read further in the PSA, the City is putting up some money for other things,

Commissioner Moak inquired if Ms. Luke has enough direction on the earnest money requirement.

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Ms. Luke stated for now, however, the PSA may come back in a more final form that may require additional comments. In addition, the Port is including Seller's contingencies, items the Port will require prior to closing, such as amending the Comp Scheme. The Port would also like to receive adequate assurances, as determined by the Port, that the City's intended use of the property complies with the Port's obligations under its Interlocal Agreement with the City of Kennewick. Mr. Brown provided a comment to Ms. Luke via email and voice mail and the City's response related to that particular contingency is as follows: they are not understanding the necessity of including that language, that the Interlocal has language that states that the Port may participate in selling, or leasing land or constructing development buildings related to other areas of the Port. The City believes that language specifically authorizes the Port to sell other real estate outside that project area and not be impeded. Ms. Luke will work with Mr. Brown further on refining the agreement, as she is aware that it is important to the Port, based on previous conversations and Commission Meetings that we follow through with the Interlocal Agreement with the City of Kennewick and not have developments that might conflict with that in any way.

Commissioner Novakovich stated that is something we want to make sure we have assurances that the Port will not be in violation of any agreement we have with the City of Kennewick. The City of Kennewick has invested a lot of money in our projects and Commissioner Novakovich wants to make sure we stay true to the agreement we have with them. Commissioner Novakovich does not know what that means or how we do it, but...

Ms. Luke stated that was the intention of the draft language; however, there have been other statements made, and as Ms. Luke understands it, there has been a comment made by Mayor Gerry, that there is no present intention to place boutique wineries on the property. Ms. Luke may be incorporating some language in the agreement that addresses that. The last contingency will require no residential be placed on the property, per the Urban Growth Boundary requirements.

Commissioner Moak stated related to the Interlocal Agreement with City of Kennewick, the Port does not want to offend a partner who has spent a lot of money with the Port; however, he is not convinced, that once the Port no longer owns the property, is the Interlocal Agreement still in affect or is that a perception with the City of Kennewick that something has gone wrong. Commissioner Moak believes once the Port has divested ourselves of that property, he is not convinced that the City of West Richland should have to abide by someone else's decision. Commissioner Moak does not recall the details of the Interlocal Agreement and whether that is something to hold over the City of West Richland.

Ms. Luke stated Mr. Arntzen can speak to that and as far as certain type restrictions, they can be included as deed restrictions, and if the Port determines that is appropriate and agreeable with the City of West Richland, that might be away to address this.

Commissioner Moak inquired if the Agreement with the City was in perpetuity that the racetrack would ever be able to build or is there a specific number of years before that could happen.

Ms. Luke believes the Port had the approved Master Plan that did not anticipate that type of development, but rather industrial development.

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Mr. Arntzen stated a literal reading of the documents between the Port and the City of Kennewick would confirm the City of West Richland's opinion that there is no direct conflict. However, having negotiated these agreements with the City of Kennewick, Mr. Arntzen suggested to the Commission, potentially striking a deal, where everyone believes the new deal that has been struck is consistent with spirit of previous agreements. Mayor Gerry suggested a meeting consisting of Mr. Arntzen, Mayor Gerry and Marie Mosley, City of Kennewick City Manager, where there could be discussion surrounding what the Port and City believed in past and present agreements. Strictly reading the documents, West Richland has a good point in that there is no conflict. The way Mr. Arntzen read the document, the Port would not compete with City of Kennewick to fund an effluent facility. In the strict reading of the document, Mr. Arntzen believes there is any intention for this property to be used for a second treatment facility. Mr. Arntzen thinks the larger discussion back then, was related to boutique wineries and as we know sometimes you think you have agreed to something, but when you read the documents today, he does not know that that language specifically got in there. Mr. Arntzen thinks the best policy is for the three of us to meet and see if we can discuss path forward. A lot of that would rely on good faith and good intentions by the City of West Richland. The Mayor has made some statements about what he believes the vision would be for this property. Mr. Arntzen would like to meet with Ms. Mosley and Mayor Gerry to discuss an agreement; however, it will need to come back to the attorneys, to ensure it is enforceable going forward. Mr. Arntzen stated right now the PSA does not technically violate the Interlocal Agreement between the Port and the City of Kennewick; however the City of Kennewick has an expectation that the Port would neither directly or indirectly compete with the Urban Wine Village. The real question is how many Urban Wine Villages are too many to be in the Port district, which was not directly answered by the past documents.

Commissioner Moak thinks that meeting is a good suggestion and he would hope that three good people working together would come up with something that is equitable to all.

Mr. Arntzen believes we can and if there is an expectation that there would not be competition, he recalls discussion about once our Wine Village was deemed successful, then, it could probably withstand competition in another part of our district. The question to be discussed is what would be a reasonable time frame, three years, five years etc. Mr. Arntzen is optimistic that there can be some parameters put on what type of activity the former race track property could be put to, that would not upset the vision that the City of Kennewick had when they partnered with port. Mr. Arntzen stated it is a tough job the Commission has, because of the numerous jurisdictional partners, and sometimes a one off deal is easier, but this also concerns the City of Kennewick. Mr. Arntzen believes the three entities can work through this and come up with something for legal counsel to incorporate.

Ms. Luke state other terms include a 60 day closing period to occur by end of the year, which is a placeholder until there are better details. On page 4, paragraph 10.2, closing costs: the closing costs are split as typical, in addition, the purchaser is to pay seller at closing the amount of \$20,000 for legal fees and administrative costs incurred for this transaction.

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Ms. Luke stated the draft PSA does not include a repurchase option and inquired if the Commission had any comments regarding the removal of the repurchase option. Ms. Luke noted, it is standard practice that the Port includes a repurchase option.

Commissioner Moak does not have a problem in this instance, but in private transactions, such as others we have discussed in the past, he would like to see the repurchase option included, but that is just him and there are three commissioners up here. Commissioner Moak is confident that the City is going to build a police station and they have a reason why they would want to recoup some money on this. Commissioner Moak is concerned about other private sales that could be properties held rather than creating jobs. The Port has had several different ones where we have discussed that and so Commissioner Moak would not want to see that option taken out of private sales, but is willing to see it here.

Commissioner Novakovich agrees with that and the Commission is making a lot of concessions to make this happen because we think it is a good project, and a good thing to go forward, again, as he said, for the entire region. Commissioner Novakovich agrees with Commissioner Moak and would hate to see it removed from all PSA's, but in this instance, it is fine.

Commissioner Barnes has no further comment on this.

Ms. Luke hopes to bring a final draft PSA in the future; however, does the Port proceed before the appraisal is received and once the water rights have been determined.

Mr. Peterson stated the water rights are approximately 60-90 day time frame once the deal is executed with Benton County.

Ms. Luke stated the transaction will be delayed if the Port waits for the water rights to be confirmed. Ms. Luke has drafted the PSA around that issue and the City of West Richland has indicated they would proceed with the transaction even if the 18 acre feet of water rights are not available. Ms. Luke state the City may be interested in purchasing excess water rights in a separate transaction, if available.

Commissioner Moak asked Mr. Brown if he had any additional comments.

Mr. Brown stated Ms. Luke covered the City's one concern regarding the Port and City of Kennewick Interlocal Agreement. Mr. Brown thinks it is a great idea if the parties meet to make sure their understandings of the agreement is sound. Just because all three jurisdictions work together on other projects and they will in the future. West Richland passed a bond for a police station, so they have been looking for some property and identified that this property would be ideal for that and some other future development for the City. The City is anxious and excited to get moving and Mr. Brown encouraged this to keep moving along and move forward with the purchase because the City is on some time lines, since they passed the bond and have to move forward with getting land and starting construction on the police station.

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Commissioner Novakovich inquired if the December 2019 closing will satisfy the bond requirements.

Mr. Brown stated it will be close.

Jessica Platt, West Richland finance director stated there are timing issues in terms of bond. The City is trying to get the bond financing by the second week of December to get on the tax rolls for 2020. The City is also looking to save in terms of interest cost with the bond financing which is why the City is hoping to complete that by the end of the year to save tax payer money. Ms. Platt understands some of the comments in terms of the unconventional financing; however, the City believes this is a good community partnership between the Port and the City of West Richland that will benefit everyone. The City has an interest in terms of economic development and the City has spent the last several years focusing our efforts on economic development. The City is a residential community who relies heavily on property and utility tax revenues to fund our services, such as public safety. And those revenue sources come with their own challenges and restrictions. The City is looking to build up a sales tax base. The City is generally last in comparison of cities of our size, for example, the City of Connell typically collects more sales tax than West Richland. This project is definitely an interest of ours, not only will it provide land for a police facility, but it will also help in our economic development efforts to increase the retail tax base. This will benefit the Port as well, because the Port sees the property tax. Ms. Platt stated, in terms of financing, the City anticipates at the end of this month, having \$630,000 in RCCF credits, in addition to \$25,000 for the Port's Art Policy, up to \$20,000 for legal and administrative costs and half of the closing cost.

Commissioner Novakovich inquired what the payback is on the balance of the RCCF account.

Ms. Platt anticipates \$630,000 by the end of the month, and the City is seeing approximately \$40,000 a month going into the account. Ms. Platt estimated conservatively 18 months to reach the full \$1,250,000 balance.

Mr. Arntzen intends to bring to the Commission an update on the Memorandum of Understanding (MOU) that the Port will enter into with the City of Kennewick for the hangar remodel project at Vista Field. Should this deal close, the Port would have a new potential source of \$630,000 for the first installment of funding for the hangar project. Mr. Arntzen has discussed the MOU previously, stating the City of Kennewick would allocate some of their RCCF funding to assist the Port in this endeavor. Mr. Arntzen has asked staff to prepare an application for the project to Benton County using the West Richland RCCF credits. Mr. Arntzen stated, should this deal close, Port staff are ready to submit an application. Mr. Arntzen stated he was concerned with no money down; however, once the Port's RCCF application is approved by Benton County, it's as if West Richland put \$630,000 cash down on the deal.

Commissioner Moak thanked Mr. Brown and Ms. Platt for attending today. Commissioner Moak inquired if there are any other issues staff is working other than the water rights and the Interlocal Agreement issue between the cities of West Richland and Kennewick and the Port.

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Ms. Luke stated other than the outstanding appraisal, no.

Mr. Arntzen stated staff, Ms. Luke and City staff have put in a lot of time on this transaction and really moved it forward. Mr. Arntzen hopes to come back with document that is close to be ready for Commission review. Mr. Arntzen appreciates the cooperation from the City in addressing some of the issues that the Port raised. Mr. Arntzen stated Commissioner Barnes raised some valid points, this deal will be unlike any other deal submitted to the Commission. There are many moving parts to it with some risk involved. It will be up to the Commission to weigh whether that risk is outweighed by the potential benefit to a jurisdictional partner. Commissioner Barnes is correct in that it is a non-typical deal.

Commissioner Novakovich asked in a situation like this, involving two government entities, is an appraisal necessary or is this a safeguard.

Ms. Luke stated it would be best practices to receive an appraisal in any event, but it is not required.

### ***C. Southridge Auction Services***

Ms. Hanchette offered a brief recap of the property available for auction at Southridge, which is 8.5 acres and recently the Commission approved Resolution 2019-15 to enter into an agreement with Musser Bros. Auctions and Ms. Hanchette has been working with Scott Musser on the contract details. Ms. Hanchette stated another land owner that is looking to auction property at the same time and the Port may be able to share the marketing costs, which would help bring in a larger audience for the auction. Ms. Hanchette anticipates the auction will be in early November. Ms. Hanchette stated recently the Port received a letter of interest on one of the lots since the Resolution was approved. Ms. Hanchette inquired if the Commission would like her to invite the prospective buyer to participate in auction, possibly entertain the offer, and at what point does staff stop accepting letters of interest and invite prospective buyers to the auction.

Commissioner Moak stated the Commission agreed to the auction, so he would invite the prospective buyer to the auction.

Commissioner Barnes inquired if the Port has entered into a contractual agreement with Musser Bros.

Ms. Hanchette wanted to get Commission direction before signing the contract.

Commissioner Barnes is in favor of reviewing the offer since the Port has not made a commitment to Musser Bros. The Port has no control over the offer that came in.

Commissioner Novakovich agrees with that, but Ms. Hanchette should speak with Mr. Musser to see what it would do to the auction. Commissioner Novakovich thinks we should review the offer if there is no downside to it.

Mr. Arntzen understands this is a Commission decision and offered his thoughts. The Port made a decision to go down path A and to switch to path B could lead to a lot of confusion. The property

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could ultimately be tied up with a long feasibility period, or the prospective buyer could wait for auction and see that the purchase price came in lower than their offer and then rescind their original offer. There are several different scenarios which could lead to confusion. The Commission makes the final decision and Mr. Arntzen inquired what would happen if the Port received another offer, does staff bring it to the Commission, thus slowing the process down further. Commissioner Moak raised a valid point, the decision was made a long time ago.

Commissioner Novakovich stated Mr. Arntzen's comments make perfect sense and withdrew his comments. The Commission did make a decision and we need to go down that path.

Commissioner Moak stated there is consensus from two Commissioners to go ahead and pursue at the auction. Commissioner Moak believes if staff spoke with Mr. Musser, Mr. Musser would need the entire property and he does not think Mr. Musser would be an impartial observer. Everyone needs to look out for their interests and right now we need to move forward. Commissioner Moak thinks tying up staff time to negotiate a sale and bringing something back may not be the best use of staff time.

### ***D. Amendment of DDM Investments (Cedars) Ground Lease***

Ms. Hanchette stated at the August 27, 2019 Commission Meeting, the Commission asked staff to negotiate the Cedars Restaurant lease escalation. Before the Commission is Resolution 2019-19, which is a lease amendment that offers a fixed rate of 3.5% lease increase beginning March 1, 2021, rather than larger rent increase every five (5) years during the first two option periods as currently written in the lease.

Commissioner Moak stated the original lease was negotiated before Ms. Hanchette and inquired if there were any notes as to why there was a substantial increase in the rates.

Ms. Hanchette stated there were no notes in the file and the lease was a negotiation between the Port and previous tenant.

Commissioner Moak inquired if the fixed rate of 3.5% is consistent with other types of leases that the Port has.

Ms. Hanchette stated yes it is, it is a cost of living increase. Ms. Hanchette has been working with the Mitcham's representative, Carrie Lundgren, who indicated that a fixed rate is consistent in what she sees in her line of work, instead of a Consumer Price Index increase.

***MOTION: Commissioner Novakovich moved for approval of Resolution 2019-19, a ground lease amendment for DDM Investments allowing for a fixed annual rent escalation rate of 3.5% beginning March 1, 2021; Commissioner Barnes seconded.***

### **PUBLIC COMMENT**

No comments were made.

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## ***Discussion:***

*Commissioner Moak believes this a good thing and good for all parties concerned.*

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

### ***E. October 22, 2019 Commission Meeting***

Ms. Luke stated it came to our attention that the October 22, 2019 Regular Commission Business Meeting will conflict with the CEO's scheduled executive training, which has been previously discussed with the Commission. Mr. Arntzen's training is scheduled for October 22-23, 2019, prior to the Washington Public Ports Association (WPPA) Small Ports Conference. Ms. Luke is proposing that the October 22, 2019 Meeting is moved to October 29, 2019.

Commissioner Moak inquired if the Commission had any objections to moving the October 22, 2019 Meeting to October 29, 2019.

Commissioner Novakovich has no objections.

Commissioner Barnes has none that he is aware of.

Commissioner Moak has none that he is aware of either.

*It is the Consensus of Commission to move to the October 22, 2019 Regular Commission Business Meeting to October 29, 2019.*

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

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

1. Commissioner Novakovich is a member of the WPPA Trustees and on Monday, September 23, 2019 at 10:00 a.m. there will be a special Trustees meeting to discuss the new executive director of WPPA.
2. Mr. Kooiker stated the Commission Chamber remodel is complete and the next meeting will be held at the Port office, 350 Clover Island Drive, Suite 200.

## **OLD BUSINESS**

### ***A. Citizen Complaint***

#### ***1. Selection of Neutral***

Ms. Luke received a request from Commissioner Barnes's legal counsel requesting that this matter be tabled until the next meeting.

Commissioner Barnes stated yes please, his counsel is currently out of the country.

Commissioner Moak stated this item will be tabled until September 24, 2019 at the regular Commission Chambers.

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No comments were made.

Commissioner Moak anticipates the Executive Session will last approximately 40 minutes, Potential Litigation, per RCW 42.30.110(1)(i) and Real Estate, Minimum Price, per RCW 42.30.110(1)(c) 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 3:10 p.m.*

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

## EXECUTIVE SESSION

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

*B. Real Estate, Minimum Price per RCW 42.30.110(1)(c)*

*Ms. Bader Inglima exited and extended the executive session for ten minutes.*

*Commissioner Moak adjourned the Executive Session at 3:58 p.m.*

*Commissioner Moak reconvened Regular Commission Meeting at 3:58 p.m.*

*No action taken by the Commission.*

## COMMISSION COMMENTS

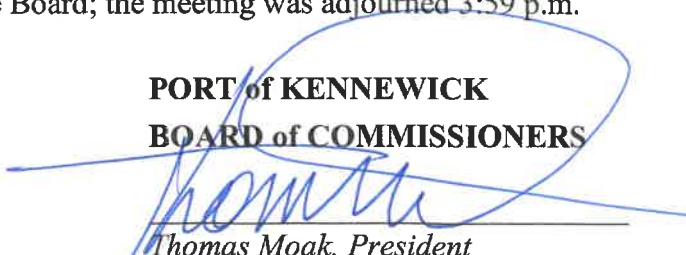
No comments were made.

## ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 3:59 p.m.

**APPROVED:**

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

  
Thomas Moak, President

  
Don Barnes, Vice President

  
Skip Novakovich, Secretary

# PORT OF KENNEWICK

## Resolution No. 2019-19

***A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK AUTHORIZING THE CHIEF EXECUTIVE OFFICER  
TO EXECUTE AN AMENDMENT TO THE COMMERCIAL GROUND LEASE AGREEMENT  
WITH DDM INVESTMENTS LLC (CEDARS)***

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

**WHEREAS**, DDM Investments LLC, commonly known as Cedars, has a long-term ground lease dated November 22, 2005, through assignment of lease from original tenant effective after January 2, 2006, on the Port's Clover Island property and an Amendment for two (2) additional ten (10) year lease renewal options received Commission approval on May 22, 2018; and

**WHEREAS**, an Amendment to modify rent escalation terms to 3.5% annually beginning March 1, 2021 has been negotiated with DDM Investments LLC by port staff; and

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

**WHEREAS**, Port staff and legal counsel have reviewed the proposed Lease Amendment and find it is in proper form and it is in the Port's best interest; and

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

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby approves a modification to rent escalation terms of 3.5% annually beginning March 1, 2021 with DDM Investments LLC as presented; and 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 10th day of September, 2019.

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

By:

  
THOMAS MOAK, *President*

By:

  
DON BARNES, *Vice President*

By:

  
SKIP NOVAKOVICH, *Secretary*

## AMENDMENT TO GROUND LEASE

THIS AMENDMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the Port of Kennewick, a Washington municipal corporation (hereinafter referred to as "Port"), and DDM Investments LLC, a Washington limited liability company (hereinafter referred to as "Tenant"),

### WITNESSETH

WHEREAS, on November 22, 2005, Port and Tenant's predecessor in interest entered into a Ground Lease (the "Ground Lease") for the lease of Lots 6, 7, 8 and 9, Clover Island Plat, Kennewick, Washington, such plat recorded under Auditor's File No. 317685, records of Benton County, Washington and as shown on Exhibit A of the Ground Lease (the "Property"). A true and correct copy of the Ground Lease is attached hereto and incorporated by reference herein as Exhibit "1". On December 30, 2005, effective from and after January 2, 2006, the Ground Lease was assigned from the original Tenant, Cedars Pier One, Inc. to DDM Investments LLC pursuant to an Assignment of Lease. A true and correct copy of the Assignment of Lease is attached hereto and incorporated by reference herein as Exhibit "2". On May 23, 2018, the Ground Lease was amended to extend Renewal Options to the Tenant. A true and correct copy of the Lease Amendment is attached hereto and incorporated by reference herein as Exhibit "3".

AND, WHEREAS, the Port and Tenant wish to set forth their agreement to provide Tenant with additional lease terms to address rent escalation rates.

Section III – RENT of the lease is hereby amended to read in full as follows:

### SECTION III RENT

**Base Rent:** Tenant shall pay rent monthly in advance as set forth below commencing on the first day of this Lease and continuing monthly thereafter on the first day of each succeeding month as follows: (Rates for years 16 through 55 apply only if renewal term option is validly exercised.)

YEAR 1	\$1,800
YEAR 2	\$2,000
YEAR 3	\$2,200
YEAR 4	\$2,500
YEARS 5 THROUGH 9	\$3,000
YEARS 10 THROUGH 15	\$3,500

YEARS 16 THROUGH 55 (3.5% increase each lease year; e.g., Year 16 rate will be \$3,622.50; Year 17 rate will be \$3,749.29, with 3.5% increase added in the same manner each year thereafter.)

**Leasehold Tax:** In addition to the rent provided for herein, Tenant shall pay the Leasehold tax as required by the Revised Code of Washington Chapter 82.29A, as the statute may be hereafter amended. The Leasehold tax shall be paid with each installment of rent. The current Leasehold tax rate is 12.84%.

**Place of Payment:** The rent payment shall be made payable to the Port of Kennewick and shall be paid at the Port offices at 350 Clover Island Drive, Kennewick, Washington 99336, or at such other address as the Port shall direct in writing.

**Late Fees:** If any sums payable by Tenant to Port under this Lease are not received by the fifteenth (15<sup>th</sup>) day of the month in which they are due, Tenant shall pay Port an additional amount for the cost of collecting and handling such late payment as a late fee in an amount equal to the greater of (i) Fifty Dollars (\$50.00), or (ii) five percent (5%) of the overdue amount.

**Interest:** Any rent payment not paid within thirty days of the date upon which the payment is due shall accrue interest on the unpaid rent at the rate of one percent (1%) per month.

**Insufficient Funds:** If a Tenant check is returned by the bank for any reason, Tenant shall pay a NSF fee of Fifty Dollars (\$50.00) for administrative costs related to collecting and handling such returned check. The Tenant shall also pay any associated bank fees charged to the Port related to the returned check. Landlord may require, at Landlord's sole discretion, that Tenant's future payments be made by cash, cashier's check or money order.

**Fees Reasonable; Effect of Acceptance:** Port and Tenant hereby agree that these charges represent a fair and reasonable estimate of what the Port might incur by reason of Tenant's late or NSF payment. These fees are due and payable with the current rent payment. Port's acceptance of any late charge, interest or NSF fee shall not be deemed an extension of the date rent is due or prevent Port from exercising any other rights or remedies under this Lease.

**Right to Revise Policy:** The Port reserves the right to revise its policy regarding late payment, interest and NSF check charges without notice to Tenant.

All remaining terms and conditions of the parties' Ground Lease Agreement and Assignment of Lease, May 2018 Amendment to Ground Lease (Exhibits 1, 2 and 3 attached), not inconsistent herewith, remain unchanged.

**PORT OF KENNEWICK**

**DDM INVESTMENTS LLC**

**By:** \_\_\_\_\_  
**Tim Arntzen, Chief Executive**

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

**Title:** **Officer**

**Name/Title:** \_\_\_\_\_

By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

**Reviewed:**

**Approved as to form:**

By: \_\_\_\_\_  
Title: Nick Kooiker, Port CFO

By: \_\_\_\_\_  
Title: Lucinda Luke, Port Legal Counsel

STATE OF WASHINGTON )  
 ) ss.  
County of Benton )

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

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

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

STATE OF WASHINGTON )  
 ) ss.  
County of Benton )

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

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

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

STATE OF WASHINGTON )  
 ) ss.  
County of Benton )

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

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

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

# PORT OF KENNEWICK

## Resolution No. 2019-20

### ***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK AMENDING A 2019/2020 GOAL FOR THE CHIEF EXECUTIVE OFFICER (CEO)***

**WHEREAS**, the Port Commission approved the 2019/2020 Goals and Objectives for the CEO on October 23, 2018; and

**WHEREAS**, during the July 30, 2019 Commission Meeting, the Commission directed the CEO to negotiate a land sale with the City of West Richland in lieu of the ground lease or sale in the Columbia Drive area; and

**WHEREAS**, to accommodate this new project, current projects need to be reprioritized as this negotiation requires a substantial amount of staff time; and

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby amends Goal 3 of the CEO's 2019/2020 Goals and Objectives to reflect the direction given by the Commission as follows:

**~~"Columbia Drive:~~**

- ~~3) Sell one parcel or obtain one ground lease.~~
  - ~~• Goal is awarded when presented for Commission acceptance (e.g. via resolution or other Commission approval methods)."~~

**"West Richland:**

- 3) Negotiate the land sale of the former Race Track property with the City of West Richland and present the Purchase Offer to the Commission.
  - Goal is awarded when presented for Commission acceptance (e.g. via resolution or other Commission approval methods)."

**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 10th day of September, 2019.

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

By: 

THOMAS MOAK, *President*

By: 

DON BARNES, *Vice President*

By: 

SKIP NOVAKOVICH, *Secretary*