

AGENDA

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

Tuesday, September 24, 2019
2:00 p.m.

- I. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE**
- III. APPROVAL OF AGENDA**
- IV. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- V. CONSENT AGENDA**
 - A. Approval of Direct Deposit and ePayments Dated September 17, 2019
 - B. Approval of Warrant Register Dated September 24, 2019
 - C. Approval of Special Commission Business Meeting Minutes September 10, 2019
- VI. PRESENTATION**
 - A. Vista Field Element Naming, Rusty George, Senen Antonio & Rochelle Olson (**TANA**)
- VII. NEW BUSINESS**
 - A. Approval to Sell & Convey Surplus Property; Resolution 2019-21 (**NICK**)
- VIII. OLD BUSINESS**
 - A. Southridge Real Estate Auction Services Update (**AMBER**)
 - B. West Richland Purchase & Sale Agreement; Resolution 2019-22 (**AMBER/TIM/LUCY**)
 - C. Benton County Water Rights Purchase & Sale Agreement; Resolution 2019-23 (**TIM**)
 - D. Chief Executive Officer Evaluation Process; Resolution 2019-24 (**LUCY**)
 - E. Citizen Complaint
 - 1. Selection of Neutral (**LUCY**)
- IX. REPORTS, COMMENTS AND DISCUSSION ITEMS**
 - A. Commissioner Meetings (formal and informal meetings with groups or individuals)
 - B. Non-Scheduled Items
- X. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- XI. ADJOURNMENT**

PLEASE SILENCE CELL PHONES



PORT OF KENNEWICK SPECIAL COMMISSION MEETING

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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 have 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.

PORT OF KENNEWICK SPECIAL COMMISSION MEETING

SEPTEMBER 10, 2019 MINUTES

DRAFT

PUBLIC COMMENTS

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
SPECIAL COMMISSION MEETING**

SEPTEMBER 10, 2019 MINUTES

DRAFT



AGENDA REPORT

TO: Port Commission

FROM: Nick Kooiker, CFO

MEETING DATE: September 24, 2019

AGENDA ITEM: Surplus Property

I. REFERENCE(S): Resolution 2019-21
Exhibit A - List of Surplus Assets

II. FISCAL IMPACT: None

III. DISCUSSION: From time to time it is necessary to surplus items no longer needed for Port District purposes. RCW 53.08.090 provides that the Port Commissioners may authorize the Port Chief Executive Officer to sell and convey property. Prior to each such disposition of Port property, the Port Chief Executive Officer is directed to present to the Commission an itemized list of the property and to make written certification that the listed property is no longer needed for Port District purposes.

IV. RECOMMENDATION: Approve Resolution 2019-21 to surplus assets.

V. ACTION REQUESTED OF COMMISSION:

Motion: *I move approval of Resolution 2019-21, authorizing the Port's CEO to surplus Port property no longer needed for Port purposes as attached in "Exhibit A" and further ratifies and approves all action by port officers and employees in furtherance hereof.*

PORT OF KENNEWICK

RESOLUTION 2019-21

***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE
PORT OF KENNEWICK AUTHORIZING THE PORT CHIEF EXECUTIVE OFFICER
TO SELL AND CONVEY SURPLUS PROPERTY***

WHEREAS, the Board of Commissioners of the Port of Kennewick met this 24th day of September, 2019, a quorum of the Commissioners being present; and

WHEREAS, from time to time it is necessary to surplus items no longer needed for Port District purposes; and

WHEREAS, RCW 53.08.090 provides that the Port Commissioners may authorize the Port Chief Executive Officer to sell and convey property; and

WHEREAS, prior to each such disposition of Port property, the Port Chief Executive Officer is directed to present to the Commission an itemized list of the property and to make written certification that the listed property is no longer needed for Port District purposes.

NOW, THEREFORE, BE IT RESOLVED the Port of Kennewick Commissioners authorize the Chief Executive Officer to surplus Port property no longer needed for Port purposes as attached in "Exhibit A".

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 Port of Kennewick this 24th day of September 2019.

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

By: _____
THOMAS MOAK, *President*

By: _____
DON BARNES, *Vice President*

By: _____
SKIP NOVAKOVICH, *Secretary*

RESOLUTION 2019-21
"Exhibit A"

Attractive Assets				
Asset	Disposition	Property Description	Date In Service	Cost
146	Broken	Keuring Coffee Machine	4/30/2013	\$ 288.06
149	Broken	HP 7525 Photosmart Printer	5/15/2013	\$ 222.12
212	Broken	Keurig K525C Coffee Machine	4/11/2016	\$ 110.74
93	Broken	DeWalt Cordless Drill	1/13/2009	\$ 223.21
136	Broken	Dremel Tool For Truck	6/26/2012	\$ 97.46
155	Broken	Werner Extension Ladder 28'	6/17/2013	\$ 253.42
191	Broken	Dewalt Pressure Washer 3000 PSI	1/29/2014	\$ 540.42
Capital Assets				
Asset	Disposition	Property Description	Date In Service	Cost
1032	Obsolete	Lumens XGA Projector	2/4/2009	\$3,371.05
1055	Obsolete	ProCurve Switch 2810-24G	3/17/2010	\$1,791.25
1097	Broken	HP 8200 Elite Destop	9/30/2011	\$1,295.58
1099	Broken	HP 8200 Elite Destop	9/30/2011	\$1,295.58
1100	Broken	HP Elite Book 8460p 14" Laptop	9/30/2011	\$1,295.61
1103	Broken	Ipad Apple	12/31/2011	\$ 823.05
1127	Broken	Ipad Apple	6/30/2012	\$1,156.63
1148	Broken	Dell Optiplex 710	12/31/2012	\$1,199.00
1155	Broken	Dell Notebook - paperless computer	4/30/2013	\$2,458.58
1172	Broken	Dell Optiplex 7010 MiniTower	8/31/2013	\$1,167.92
1181	Broken	Ipad Apple - Mike B	11/30/2013	\$ 712.86
1190	Broken	Dell Optiplex 9020 Mini Tower	6/25/2014	\$1,395.02
1227	Broken	2 Dell Optiplex 9020 Computers	11/1/2015	\$1,850.20
1244	Broken	Dell Optiplex 7050 Computer	7/14/2017	\$1,861.32

CFO/Auditor Certification: _____
 Nick Kooiker Date



AGENDA REPORT

TO: Port Commission

FROM: Amber Hanchette, Director Real Estate & Operations

MEETING DATE: September 24, 2019

AGENDA ITEM: West Richland Industrial Park – City of West Richland
Purchase and Sale Agreement

I. REFERENCE(S): Purchase and Sale Agreement
Exhibit A – Vicinity Map
Deed of Trust
Promissory Note
Resolution 2019-22
City of West Richland Letter of Interest

II. DISCUSSION: The City of West Richland represented by Mayor Brent Gerry submitted an offer to purchase approximately 92.61 acres of land and improvements at 47615 E. SR 224 Hwy (former Tri-City Raceway) from the Port for \$1,250,000.

Source of funds: The transfer of Rural County Capital Funds allocation from City of West Richland to Port of Kennewick in the amount of purchase price subject to approval by Benton County Commission.

Key Details:

- Art policy requirement-2% of purchase price paid by Purchaser in cash at closing.
- Up to \$20,000 cash at closing paid by Buyer for Seller's actual legal and administrative costs.
- No Seller repurchase option.
- No site plan or land use detail (beyond general location of police station) provided by Purchaser.
- No earnest money provided by Purchaser.
- Current appraisal in process – outcome pending as of 9/20/2019.

(continued page 2)

Seller's Contingencies:

- Amendment of Port's Comprehensive Scheme of Harbor Improvements
- Limited time agreement to honor existing terms contained in Interlocal Agreement between Port of Kennewick and City of Kennewick. *Removed from document at Purchaser's request.*
- Agreement to continue existing commitments (no residential) made within the West Richland Urban Growth Area application. *Removed from document at Purchaser's request.*
- Agreement to continue development consistent with the Port's existing master plan in place for property. *Removed from document at Purchaser's request.*

Deed of Trust:

- Section #9 – Due on sale clause. *Removed from document at Purchaser's request.*

Water Rights

- Purchase includes 18 acre-feet subject to outcome of water rights transfer application by the port to Washington State Department of Ecology. Balance of water rights will be retained by the Port.

III. ACTION REQUESTED OF COMMISSION: To approve or deny Real Estate Purchase and Sale Agreement between the Port of Kennewick and the City of West Richland.

***Motion:** I move approval of Resolution 2019-22 authorizing the Port's Chief Executive Officer to execute all necessary documentation associated with the land sale of 92.61 acres to the City of West Richland and to take all other action necessary to close this transaction; and further ratifies and approves all action by port officers and employees in furtherance hereof.*

VICINITY MAP



REAL ESTATE PURCHASE AND SALE AGREEMENT

1. **PARTIES.** THIS AGREEMENT is made and effective on the _____ day _____, 2019, by and between the

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

hereinafter "Seller", and

**City of West Richland
a Washington Municipal Corporation
3100 Belmont Blvd., Suite 100
West Richland, WA 99353**

hereinafter "Purchaser".

Collectively referred to as the "Parties".

2. **PROPERTY.** The Seller agrees to sell, and the Purchaser agrees to purchase, upon the terms and conditions herein specified, that certain real property located in Benton County, State of Washington, legally described in Exhibit "A" attached hereto and incorporated hereby reference (hereinafter referred to as the "Property"). The Property includes 18 acre-feet of water rights. The Parties acknowledge that the water rights allocated to the Property are currently under review and confirmation of the availability of such rights is pending. If the 18 acre-feet of water rights are not available for transfer with the Property, Purchaser agrees that the purchase shall proceed without inclusion of water rights.

Tax Parcel Nos.: See Exhibit "A" attached.

3. **PURCHASE PRICE.** The total purchase price is one million two hundred and fifty thousand dollars (\$ 1,250,000). The Purchase Price, shall be paid by a Promissory Note and secured by a Deed of Trust of even date in forms mutually acceptable to the Parties. Additionally, the Parties shall enter into an interlocal agreement of even date with Benton County, Washington confirming the Purchaser's transfer of Rural County Capital Funds ("RCCF") allocated to Purchaser equal to the full Purchase Price. Such interlocal agreement shall be in a mutually acceptable form between the Parties and Benton County. In addition to the Purchase Price, Purchaser agrees to pay Seller in cash at closing an additional amount identified by Seller not to exceed 2% of the Purchase Price in compliance with the Seller's Art Policy.

4. **EARNEST MONEY.** Purchaser shall make no earnest money deposit.

5. **TITLE INSURANCE.** The Seller shall provide Purchaser with a standard form owner's policy of title insurance in the amount of the purchase price. The title policy to be issued shall contain no exceptions other than those provided in said standard form plus encumbrances or defects approved by Purchaser as provided below.

As soon as reasonably possible after escrow is opened Purchaser shall be furnished with a preliminary commitment therefore issued by Benton Franklin Title Company. Said preliminary commitment shall include legible copies of all documents forming the basis for any special exception set forth.

6. **SELLER'S CONTINGENCIES.**

6.1 Seller's amendment of its Comprehensive Scheme of Harbor Improvements allowing for the sale of the Property.

~~6.2—It is the intention of the Parties that this restriction will help minimize duplication of efforts with the Port's Columbia Gardens Wine Village being developed with assistance of the City of Kennewick. Additionally, the pursuit of larger-scale wineries may assist the Red Mountain AVA by allowing valuable vineyard land there to be preserved for grape growing while the Racetrack Site would offer Red Mountain vintners the ability to utilize the Project Area for supportive ancillary activities such as processing, treatment, barrel-making and repair, barrel and case goods storage and other activities which may not be desirable for location within the AVA. Finally, siting larger-scale wineries within the Project Area will assist the City in amortizing the capital and operational costs of its winery effluent treatment system much more efficiently than if the Project Area were to be built out by smaller, boutique wineries with substantially smaller effluent outputs.~~

Therefore, the statutory warranty deed transferring the property to the City shall include the following restriction:-

Limitation on Property Use. For a period of five years from Closing, the City shall:

- ~~(1) Only sell or lease the site or portions thereof consistent with the uses set forth in the Master Plan referenced herein; and~~
- ~~(2) Refrain from leasing or selling the site or portions thereof for winery uses with an initial stated production goal of less than 10,000 cases annually.~~

~~6.3—Receipt by Seller from Purchaser confirmation that Purchaser's use of the Property will be consistent with the use (i.e. not for residential development) specified in Purchaser's application for inclusion of the Property in its Urban Growth Area ("UGA").~~

6.4 The City shall assume all current leases and rental agreements at Closing, as follows.

- a. Derek Alexander Farms, Inc. lease dated January 1, 2017.
- b. Sand and Sage Sports Car Club rental agreement dated January 1, 2009.

7. PURCHASER'S CONTINGENCIES. Purchaser's obligation to purchase the Property shall be contingent upon the following:

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

7.2 Approval of Seller's Disclosure Statements. Purchaser shall have ten (10) business days to review Seller's Disclosure Statements. This contingency shall be deemed waived or satisfied unless Purchaser provides written notice to the contrary within said ten (10) business days. If Purchaser provides such notice, this Agreement shall terminate and the earnest money shall be refunded.

7.3 Feasibility Determination/Environmental Due Diligence. For a period of 45 days from the date of this Agreement, Purchaser may engage consultants or engineers of the Purchaser's choosing to conduct surveys, site studies and tests of the Property, as the Purchaser deems necessary. The Purchaser or its agents shall have the right to enter the Property at reasonable times to make such tests, inspections, studies and other investigations as the Purchaser may require, at the Purchaser's expense and risk. During its investigation of the Property, Purchaser shall also have the right to determine if the Property is suitable for Purchaser's contemplated use. Purchaser and its agents shall have full access to the Property for the purpose of conducting Purchaser's inspections and evaluation. Purchaser's feasibility study shall include environmental due diligence. The Purchaser shall indemnify and hold the Seller harmless from any loss, damage or claim arising out of the Purchaser's access to the Property for purposes of making tests, inspections, studies and other investigations. This contingency shall be deemed waived or satisfied unless Purchaser provides written notice to the contrary within said 45 days, in which case this Agreement shall terminate, and earnest money shall be refunded. If this transaction fails to close due to a default by Purchaser, Purchaser shall immediately deliver to Seller copies of any studies or inspections, appraisals or surveys and any and all information which either the Purchaser or Purchaser's consultants have obtained in connection with the feasibility study.

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

7.4 Survey. A survey has been conducted on the Property and a copy of all survey documents and data will be ~~has been~~ provided to the Purchaser. This contingency shall be deemed waived or satisfied unless Purchaser provides written notice to the contrary within ten (10) business days after Purchaser's receipt of all survey documents and data ~~from the date of this Agreement~~.

8. CONDITION OF PROPERTY/"AS IS" SALE. Except as otherwise expressly set forth in this Agreement, Seller makes no representations or warranties and shall not in any way be liable for any representations or warranties, including, without limitation, representations and warranties concerning (a) the physical condition of the Property (including, without limitation, the environmental condition, condition of the soils and groundwater conditions); (b) the Property's suitability for Purchaser's intended use; (c) any applicable building, zoning or fire laws or regulations or compliance therewith or any required permits of any governmental entities or agencies or compliance therewith; (d) the availability or existence of any water, sewer or other utilities (public or private). Purchaser acknowledges that Purchaser is relying on its own examination and inspection of the physical condition of the Property and all matters relating thereto. Seller shall have no obligation to make any repairs to the Property, and Purchaser shall accept the property in its "as is" condition at closing. Purchaser shall assume, as of closing, the responsibility for and risk of all defects and conditions of the Property, including any defects and conditions that cannot be observed by casual inspection.

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

10. CLOSING.

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

10.2 Closing Costs. Closing costs shall be allocated as follows:

Seller	Purchaser
Excise Tax	Recording Fees
Title Insurance Premium	½ Closing Fee Costs
½ Closing Fee Costs	

Purchaser shall pay Seller at Closing ~~the an~~ amount up to of Twenty Thousand Dollars (\$20,000.00) as reimbursement for Seller's actual legal fees and administrative costs incurred for this transaction.

As noted above in Paragraph 3, Purchaser shall also pay Seller at Closing an amount not to exceed two percent (2%) of the Purchase Price per Seller's Art Policy.

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

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

10.4 Closing Date - Possession. This transaction shall be closed when all contingencies have been satisfied but in any event no later than December 6, 2019. "Closing" shall be the date on which all documents are recorded and funds are available for disbursement.

10.5 Conveyance. At Closing Seller shall deliver to Purchaser i) a Statutory Warranty Deed ~~that includes the deed restriction set forth in Paragraph 6.2 above, but otherwise~~ free of any encumbrance or defect except as permitted herein, or otherwise accepted by Purchaser, and ii) Assignment of Lease for each of the leases identified in Paragraph 6.4.

10.6 Assignment. Neither this Agreement nor the rights hereunder shall be assigned without the prior written consent of Seller.

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

Purchaser: City of West Richland

**3100 Belmont Blvd., Suite 100
West Richland, WA 99353
Phone No.:(509)967-3431
Fax No.:(509)967-5706**

Seller: Port of Kennewick, a Municipal Corporation
350 Clover Island Drive, Suite 200
Kennewick, WA 99336
Attn: Tim Arntzen, Chief Executive Officer
Phone No.: (509) 586-1186

Fax No.: (509) 582-7678

With copy to:

Lucinda J. Luke
Carney Badley Spellman, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104-7010
Phone No.: (206) 607-4111
Fax No.: (206) 467-8215
Email: luke@carneylaw.com

12. MISCELLANEOUS.

~~**12.1 Confidentiality.** Both parties agree that this transaction shall remain completely confidential and shall not be disclosed to any other third party without the express written consent of the Purchaser and/or Seller, except as may be required by law. Note that the Seller and the Purchaser are public entities subject to the Public Records Act and may be required to the disclosure of records related to this transaction.~~

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

~~**12.3 Dispute Resolution/Attorney's Fees.** In the event of any claim or dispute arising under this Agreement, the parties agree to submit the same to arbitration at a location to be mutually agreed upon in Benton County, Washington. In the event the parties are unable to promptly agree upon an arbitrator, the same shall be selected by the presiding judge for the Benton County Superior Court at the request of, and upon seven (7) days' notice from either party.~~

~~The arbitrator so appointed shall be a retired superior court judge or an attorney having at least ten years' experience in matters similar to the subject of the claim or dispute.~~

~~The court may establish the ground rules by which the initial arbitrator fees are to be paid. The mandatory arbitration rules, as implemented in Benton County Superior Court, shall be binding as to procedure. The arbitrator shall determine an award of reasonable attorneys' fees to the substantially prevailing party. If any suit or other proceeding is instituted by either party that is alleged not to come within the foregoing agreement for arbitration, the substantially prevailing party as determined by the court or in the proceeding shall be entitled to recover its reasonable attorneys' fees and all costs and expenses incurred.~~

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

12.5 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the

designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m., Pacific [Daylight] Time.

12.6 Governing Law and Venue. This Agreement shall be governed by and construed according to the laws of the State of Washington. Jurisdiction and venue of any suit arising out of or related to this Agreement shall be exclusively in Benton County Superior Court, Benton County, State of Washington.

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

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

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

12.10 Broker Compensation. Both Purchaser and Seller warrant to the other that it has not incurred a brokerage commission for which the other party would be responsible.

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

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

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

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

By: _____
Tim Arntzen, Chief Executive Officer

City of West Richland,
a Washington Municipal Corporation
By Authority of its City Council

By: _____

Printed Name& Title: _____

ACKNOWLEDGEMENTS

State of Washington)
)ss:
County of Benton)

On this day personally appeared before me **Tim Arntzen** to me known to be the **Chief Executive Officer** of the **Port of Kennewick**, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said 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 City of West Richland, the municipal corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company for the use and purpose 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: _____

EXHIBIT A
(Legal Description & Survey)
1-1197-101-2751-002

REAL ESTATE PURCHASE AND SALE AGREEMENT

1. **PARTIES.** THIS AGREEMENT is made and effective on the _____ day _____, 2019, by and between the

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

hereinafter "Seller", and

**City of West Richland
a Washington Municipal Corporation
3100 Belmont Blvd., Suite 100
West Richland, WA 99353**

hereinafter "Purchaser".

Collectively referred to as the "Parties".

2. **PROPERTY.** The Seller agrees to sell, and the Purchaser agrees to purchase, upon the terms and conditions herein specified, that certain real property located in Benton County, State of Washington, legally described in Exhibit "A" attached hereto and incorporated hereby reference (hereinafter referred to as the "Property"). The Property includes 18 acre-feet of water rights. The Parties acknowledge that the water rights allocated to the Property are currently under review and confirmation of the availability of such rights is pending. If the 18 acre-feet of water rights are not available for transfer with the Property, Purchaser agrees that the purchase shall proceed without inclusion of water rights.

Tax Parcel Nos.: See Exhibit "A" attached.

3. **PURCHASE PRICE.** The total purchase price is one million two hundred and fifty thousand dollars (\$1,250,000). The Purchase Price, shall be paid by a Promissory Note and secured by a Deed of Trust of even date in forms mutually acceptable to the Parties. Additionally, the Parties shall enter into an interlocal agreement of even date with Benton County, Washington confirming the Purchaser's transfer of Rural County Capital Funds ("RCCF") allocated to Purchaser equal to the full Purchase Price. Such interlocal agreement shall be in a mutually acceptable form between the Parties and Benton County. In addition to the Purchase Price, Purchaser agrees to pay Seller in cash at closing an additional amount identified by Seller not to exceed 2% of the Purchase Price in compliance with the Seller's Art Policy.

4. EARNEST MONEY. Purchaser shall make no earnest money deposit.

5. TITLE INSURANCE. The Seller shall provide Purchaser with a standard form owner's policy of title insurance in the amount of the purchase price. The title policy to be issued shall contain no exceptions other than those provided in said standard form plus encumbrances or defects approved by Purchaser as provided below.

As soon as reasonably possible after escrow is opened Purchaser shall be furnished with a preliminary commitment therefore issued by Benton Franklin Title Company. Said preliminary commitment shall include legible copies of all documents forming the basis for any special exception set forth.

6. SELLER'S CONTINGENCIES.

6.1 Seller's amendment of its Comprehensive Scheme of Harbor Improvements allowing for the sale of the Property.

6.2 The City shall assume all current leases and rental agreements at Closing, as follows.

- a. Derek Alexander Farms, Inc. lease dated January 1, 2017.
- b. Sand and Sage Sports Car Club rental agreement dated January 1, 2009.

7. PURCHASER'S CONTINGENCIES. Purchaser's obligation to purchase the Property shall be contingent upon the following:

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

7.2 Approval of Seller's Disclosure Statements. Purchaser shall have ten (10) business days to review Seller's Disclosure Statements. This contingency shall be deemed waived or satisfied unless Purchaser provides written notice to the contrary within said ten (10) business days. If Purchaser provides such notice, this Agreement shall terminate and the earnest money shall be refunded.

7.3 Feasibility Determination/Environmental Due Diligence. For a period of 45 days from the date of this Agreement, Purchaser may engage consultants or engineers of the Purchaser's choosing to conduct surveys, site studies and tests of the Property, as the Purchaser deems necessary. The Purchaser or its agents shall have the right to enter

the Property at reasonable times to make such tests, inspections, studies and other investigations as the Purchaser may require, at the Purchaser's expense and risk. During its investigation of the Property, Purchaser shall also have the right to determine if the Property is suitable for Purchaser's contemplated use. Purchaser and its agents shall have full access to the Property for the purpose of conducting Purchaser's inspections and evaluation. Purchaser's feasibility study shall include environmental due diligence. The Purchaser shall indemnify and hold the Seller harmless from any loss, damage or claim arising out of the Purchaser's access to the Property for purposes of making tests, inspections, studies and other investigations. This contingency shall be deemed waived or satisfied unless Purchaser provides written notice to the contrary within said 45 days, in which case this Agreement shall terminate, and earnest money shall be refunded. If this transaction fails to close due to a default by Purchaser, Purchaser shall immediately deliver to Seller copies of any studies or inspections, appraisals or surveys and any and all information which either the Purchaser or Purchaser's consultants have obtained in connection with the feasibility study.

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

7.4 Survey. A survey has been conducted on the Property and a copy of all survey documents and data will be provided to the Purchaser. This contingency shall be deemed waived or satisfied unless Purchaser provides written notice to the contrary within ten (10) business days after Purchaser's receipt of all survey documents and data..

8. CONDITION OF PROPERTY/"AS IS" SALE. Except as otherwise expressly set forth in this Agreement, Seller makes no representations or warranties and shall not in any way be liable for any representations or warranties, including, without limitation, representations and warranties concerning (a) the physical condition of the Property (including, without limitation, the environmental condition, condition of the soils and groundwater conditions); (b) the Property's suitability for Purchaser's intended use; (c) any applicable building, zoning or fire laws or regulations or compliance therewith or any required permits of any governmental entities or agencies or compliance therewith; (d) the availability or existence of any water, sewer or other utilities (public or private). Purchaser acknowledges that Purchaser is relying on its own examination and inspection of the physical condition of the Property and all matters relating thereto. Seller shall have no obligation to make any repairs to the Property, and Purchaser shall accept the property in its "as is" condition at closing. Purchaser shall assume, as of closing, the responsibility for and risk of all defects and conditions of the Property, including any defects and conditions that cannot be observed by casual inspection.

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

10. CLOSING.

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

10.2 Closing Costs. Closing costs shall be allocated as follows:

Seller	Purchaser
Excise Tax	Recording Fees
Title Insurance Premium	½ Closing Fee Costs
½ Closing Fee Costs	

Purchaser shall pay Seller at Closing an amount up to Twenty Thousand Dollars (\$20,000.00) as reimbursement for Seller's actual legal fees and administrative costs incurred for this transaction.

As noted above in Paragraph 3, Purchaser shall also pay Seller at Closing an amount not to exceed two percent (2%) of the Purchase Price per Seller's Art Policy.

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

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

10.4 Closing Date - Possession. This transaction shall be closed when all contingencies have been satisfied but in any event no later than December 6, 2019. "Closing" shall be the date on which all documents are recorded and funds are available for disbursement.

10.5 Conveyance. At Closing Seller shall deliver to Purchaser i) a Statutory Warranty Deed free of any encumbrance or defect except as permitted herein, or otherwise accepted by Purchaser, and ii) Assignment of Lease for each of the leases identified in Paragraph 6.4.

10.6 Assignment. Neither this Agreement nor the rights hereunder shall be assigned without the prior written consent of Seller.

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

3100 Belmont Blvd., Suite 100
West Richland, WA 99353
Phone No.:(509)967-3431
Fax No.:(509)967-5706

Seller: Port of Kennewick, a Municipal Corporation
350 Clover Island Drive, Suite 200
Kennewick, WA 99336
Attn: Tim Arntzen, Chief Executive Officer
Phone No.: (509) 586-1186
Fax No.: (509) 582-7678

With copy to: Lucinda J. Luke
Carney Badley Spellman, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104-7010
Phone No.: (206) 607-4111
Fax No.: (206)467-8215
Email: luke@carneylaw.com

12. MISCELLANEOUS.

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

12.2 Time of Essence. Time is of the essence of this Agreement.

12.3 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m., Pacific [Daylight] Time.

12.4 Governing Law and Venue. This Agreement shall be governed by and construed according to the laws of the State of Washington. Jurisdiction and venue of any suit arising out of or related to this Agreement shall be exclusively in Benton County Superior Court, Benton County, State of Washington.

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

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

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

12.8 Broker Compensation. Both Purchaser and Seller warrant to the other that it has not incurred a brokerage commission for which the other party would be responsible.

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

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

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

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

By: _____
Tim Arntzen, Chief Executive Officer

City of West Richland,
a Washington Municipal Corporation
By Authority of its City Council

By: _____

Printed Name& Title: _____

ACKNOWLEDGEMENTS

State of Washington)
)ss:
County of Benton)

On this day personally appeared before me Tim Arntzen to me known to be the **Chief Executive Officer** of the **Port of Kennewick**, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said 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 City of West Richland, the municipal corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company for the use and purpose 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: _____

EXHIBIT A
(Legal Description & Survey)
1-1197-101-2751-002

WHEN RECORDED RETURN TO:

Lucinda J. Luke
CARNEY BADLEY SPELLMAN, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104

DEED OF TRUST

THIS DEED OF TRUST, made this ____ day of September, 2019, between City of West Richland, Washington, GRANTOR, whose address is 3100 Belmont Blvd., Suite 100, West Richland, Washington 99353, Benton Franklin Title Insurance Company, TRUSTEE, whose address is 510 N. Colorado Street, Suite B, Kennewick, Washington 99336, and Port of Kennewick, Washington, BENEFICIARY, whose address is 350 Clover Island Drive, Suite 200, Kennewick, Washington 99336.

WITNESSETH:

Grantor hereby bargains, sells and conveys to Trustee in Trust, with power of sale, the following described real property in Benton County, Washington:

Tax Parcel No. See Exhibit "A" attached hereto and incorporated herein by reference

which real property is not used principally for agricultural or farming purposes, together with all the tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in any wise appertaining, and the rents, issues and profits thereof.

This deed is for the purpose of securing performance of each agreement of Grantor herein contained, and payment of the sum of _____ and 00/100 Dollars (\$_____) without interest, in accordance with the terms of a promissory note of even date herewith, payable to Beneficiary or order, and made by Grantor, and all renewals, modifications and extensions thereof, and also such further sums as may be advanced or loaned by Beneficiary to Grantor, or any of their successors or assigns, together with interest thereon at such rate as shall be agreed upon.

To protect the security of this Deed of Trust, Grantor covenants and agrees:

1. To keep the property in good condition and repair; to permit no waste thereof; to complete any building, structure or improvement being built or about to be built thereon; to restore promptly any building, structure or improvement thereon which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property.

2. To pay before delinquent all lawful taxes and assessments upon the property; to keep the property free and clear of all other charges, liens or encumbrances impairing the security of this Deed of Trust.

3. To keep all buildings now or hereafter erected on the property described herein continuously insured against loss by fire or other hazards in an amount not less than the total debt secured by this Deed of Trust. All policies shall be held by the Beneficiary, and be in such companies as the Beneficiary may approve and have loss payable first to the Beneficiary, as its interest may appear, and then to the Grantor. The amount collected under any insurance policy may be applied upon any indebtedness hereby secured in such order as the Beneficiary shall determine. Such application by the Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all rights of the Grantor in insurance policies then in force shall pass to the purchaser at the foreclosure sale.

4. To defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of title search and attorney's fees in a reasonable amount, in any such action or proceeding, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

5. To pay all costs, fees and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligation secured hereby and Trustee's and attorney's fees actually incurred, as provided by statute.

6. Should Grantor fail to pay when due any taxes, assessments, insurance premiums, liens, encumbrances or other charges against the property hereinabove described, Beneficiary may pay the same, and the amount so paid, with interest at the rate set forth in the note secured hereby, shall be added to and become a part of the debt secured by this Deed of Trust.

IT IS MUTUALLY AGREED THAT:

1. In the event any portion of the property is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion as may be necessary to fully satisfy the obligation secured hereby, shall be paid to Beneficiary to be applied to said obligation.

2. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

3. The Trustee shall reconvey all or any part of the property covered by this Deed of Trust to the person entitled thereto, on written request of the Grantor and the Beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the Beneficiary or the person entitled thereto.

4. Upon default by Grantor in the payment of any indebtedness secured hereby or in the performance of any agreement contained herein, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In such event and upon written request of the Beneficiary, Trustee shall sell the trust property, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of the sale, including a reasonable Trustee's fee and attorney's fee; (2) to the obligation secured by this Deed of Trust; (3) the surplus, if any, shall be distributed to the persons entitled thereto.

5. Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the property which Grantor had or had the power to convey at the time of his execution of this Deed of Trust, and such as he may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchaser and encumbrancers for value.

6. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy; Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.

7. In the event of the death, incapacity, disability or resignation of Trustee, Beneficiary may appoint in writing a successor trustee, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original trustee. The Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Trustee or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

8. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on their assigns. The term Beneficiary shall mean the holder and owner of the note secured hereby, whether or not named as Beneficiary herein.

~~9. If Grantor, without written consent of Beneficiary, (a) conveys, (b) sells, (c) leases, (d) assigns, (e) contracts to convey, sell, lease or assign, (f) grants an option to buy the property, (g) permits a forfeiture or foreclosure or trustee or sheriff's sale of any of the Grantor's interest in the property or this deed of trust, Beneficiary may at any time thereafter either institute an interest rate on the balance of the purchase price or declare the entire balance of the purchase price due and payable.~~

~~All amounts secured by this Deed of Trust shall become immediately due and owing upon sale of the premises described herein.~~

City of West Richland,
a Washington Municipal Corporation
By Authority of its City Council

By: _____

Printed Name& Title:_____

State of Washington)
)ss:
County of Benton)

On this day personally appeared before me _____, to me known to be the _____ of City of West Richland, the municipal corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company for the use and purpose 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: _____

WHEN RECORDED RETURN TO:

Lucinda J. Luke
CARNEY BADLEY SPELLMAN, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104

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WITNESSETH:

Grantor hereby bargains, sells and conveys to Trustee in Trust, with power of sale, the following described real property in Benton County, Washington:

Tax Parcel No. See Exhibit "A" attached hereto and incorporated herein by reference

which real property is not used principally for agricultural or farming purposes, together with all the tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in any wise appertaining, and the rents, issues and profits thereof.

This deed is for the purpose of securing performance of each agreement of Grantor herein contained, and payment of the sum of _____ and 00/100 Dollars (\$_____) without interest, in accordance with the terms of a promissory note of even date herewith, payable to Beneficiary or order, and made by Grantor, and all renewals, modifications and extensions thereof, and also such further sums as may be advanced or loaned by Beneficiary to Grantor, or any of their successors or assigns, together with interest thereon at such rate as shall be agreed upon.

To protect the security of this Deed of Trust, Grantor covenants and agrees:

1. To keep the property in good condition and repair; to permit no waste thereof; to complete any building, structure or improvement being built or about to be built thereon; to restore promptly any building, structure or improvement thereon which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property.

2. To pay before delinquent all lawful taxes and assessments upon the property; to keep the property free and clear of all other charges, liens or encumbrances impairing the security of this Deed of Trust.

3. To keep all buildings now or hereafter erected on the property described herein continuously insured against loss by fire or other hazards in an amount not less than the total debt secured by this Deed of Trust. All policies shall be held by the Beneficiary, and be in such companies as the Beneficiary may approve and have loss payable first to the Beneficiary, as its interest may appear, and then to the Grantor. The amount collected under any insurance policy may be applied upon any indebtedness hereby secured in such order as the Beneficiary shall determine. Such application by the Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all rights of the Grantor in insurance policies then in force shall pass to the purchaser at the foreclosure sale.

4. To defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of title search and attorney's fees in a reasonable amount, in any such action or proceeding, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

5. To pay all costs, fees and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligation secured hereby and Trustee's and attorney's fees actually incurred, as provided by statute.

6. Should Grantor fail to pay when due any taxes, assessments, insurance premiums, liens, encumbrances or other charges against the property hereinabove described, Beneficiary may pay the same, and the amount so paid, with interest at the rate set forth in the note secured hereby, shall be added to and become a part of the debt secured by this Deed of Trust.

IT IS MUTUALLY AGREED THAT:

1. In the event any portion of the property is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion as may be necessary to fully satisfy the obligation secured hereby, shall be paid to Beneficiary to be applied to said obligation.

2. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

3. The Trustee shall reconvey all or any part of the property covered by this Deed of Trust to the person entitled thereto, on written request of the Grantor and the Beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the Beneficiary or the person entitled thereto.

4. Upon default by Grantor in the payment of any indebtedness secured hereby or in the performance of any agreement contained herein, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In such event and upon written request of the Beneficiary, Trustee shall sell the trust property, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of the sale, including a reasonable Trustee's fee and attorney's fee; (2) to the obligation secured by this Deed of Trust; (3) the surplus, if any, shall be distributed to the persons entitled thereto.

5. Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the property which Grantor had or had the power to convey at the time of his execution of this Deed of Trust, and such as he may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchaser and encumbrancers for value.

6. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy; Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.

7. In the event of the death, incapacity, disability or resignation of Trustee, Beneficiary may appoint in writing a successor trustee, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original trustee. The Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Trustee or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

8. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on their assigns. The term Beneficiary shall mean the holder and owner of the note secured hereby, whether or not named as Beneficiary herein.

City of West Richland,
a Washington Municipal Corporation
By Authority of its City Council

By: _____

Printed Name& Title:_____

State of Washington)
)ss:
County of Benton)

On this day personally appeared before me _____, to me known to be the _____ of City of West Richland, the municipal corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company for the use and purpose 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: _____

PROMISSORY NOTE

\$ _____

[DATE]

FOR VALUE RECEIVED, without grace, the undersigned does hereby promise to pay to the Port of Kennewick, or order, the principal sum of _____ and 00/100 Dollars (\$ _____), without interest at or before the date of maturity which date shall be April 15, 2023.

Said principal is to be paid pursuant to an Interlocal Agreement between the Port of Kennewick, City of West Richland, and Benton County. However, if any balance remains unpaid at April 15, 2023 such remaining balance shall become immediately due and owing and shall be paid by the City of West Richland to the Port of Kennewick in one cash lump sum on or before such date.

If default be made in the payment of this note, or any part thereof, then the principal sum shall at once become due and collectible without notice, time being of the essence of this contract. After maturity this note shall bear interest at the highest rate permitted by law.

In the event this note is referred to an attorney for collection the undersigned shall pay all costs and attorney fees necessitated thereby.

This note is secured by a deed of trust of even date hereof, executed and delivered by the undersigned to the said Payee, covering certain real estate described therein, situated in the County of Benton, State of Washington.

This contract is to be construed in all respects and enforced according to the laws of the State of Washington.

The undersigned has signed this note as a maker and not as a surety.

City of West Richland,
a Washington Municipal Corporation
By Authority of its City Council

By: _____

Printed Name& Title:_____

PORT OF KENNEWICK

RESOLUTION No. 2019-22

***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF
KENNEWICK AUTHORIZING A PURCHASE AND SALE AGREEMENT WITH
CITY OF WEST RICHLAND***

WHEREAS, City of West Richland (Purchaser), has offered to purchase approximately 92.61 acres of the area graphically depicted on “*Exhibit A*” at the Port of Kennewick’s West Richland Industrial Site in West Richland, Washington from the Port of Kennewick (Seller) for \$1,250,000.00; and

WHEREAS, this transaction between two governmental agencies shall benefit the public and nearby port properties with enhanced public safety protection through the construction of a new police station and may further economic development efforts within West Richland’s geographic boundaries; and

WHEREAS, the Port Commission agrees to accept no earnest money deposit in lieu of the 5% earnest money deposit requirement per Resolution 2015-29 (Chief Executive Officer Delegation of Authority for Real or Personal Property Purchases and Sales, 1.8.b); and

WHEREAS, Port staff and the Port attorney have reviewed the proposed Purchase and Sale Agreement and find it is in proper form.

BE IT RESOLVED that the Port Commission declares that said property is surplus to the Port’s needs.

BE IT FURTHER RESOLVED that the Comprehensive Scheme of Development will be amended to reflect this decision.

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 24th day of September, 2019.

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

By: _____
THOMAS MOAK, President

By: _____
DON BARNES, Vice President

By: _____
SKIP NOVAKOVICH, Secretary

Submission of Offer to Purchase by Offeror to Port Staff

- a. Identify the full legal name of the purchasing party and be executed by an authorized party;
City of West Richland, executed by Mayor Brent Gerry
- d. Identify the party to use and occupy the property, if different from the offering party;
Same
- e. Legally describe the property subject of the offer:
Benton County Parcel #1-1197-101-2751-002
Section 11 Township 9 Range 27 Quarter NE; SHORT PLAT #2751 LOT 2,
9/23/2003, AF#03-046136. RECORDED IN VOLUME 1 OF SHORT PLATS AT
PAGE 2751, RECORDS OF BENTON COUNTY, WASHINGTON.
- f. Indicate the total offer price;
\$1,250,000
- g. Indicate any terms for payment of purchase price;
Transfer of \$1,250,000 from West Richland's Benton County Rural County Capital Fund (RCCF) account to Port of Kennewick's RCCF account.
- h. Identify any proposed contingencies:
 - 1) Benton County's approval of transfer of RCCF from West Richland's account to Port of Kennewick's account.
 - 2) Port acquiring road right-of-way and utility easements from the Alexander family to provide access to Keene Road.
 - 3) Transfer of a portion of water rights G4-28319 and or G4-26382 to the City of West Richland to meet Ordinance 10-17 that adopted the City's Water System Plan and associated service area policies. Specifically section 1.6 that requires the agricultural irrigation systems and associated water rights to be converted to an urban irrigation system as part of development to mitigate irrigation demand on the City's potable water system.
 - 4) 60 day due diligence period.

Provide following documents, if available, for City review during the 60 day due diligence period.

- 1) Current Title report
- 2) Documentation that the KID inundation clause has been relinquished.
- 3) Documentation of WSDOT approval of intersection plans and or access points to SR 224 associated with Port's raceway property.
- 4) Documentation of BPA permit for proposed roadway and utility crossings.
- 5) Topographic survey data and map.
- 6) Copies of plans, as-build drawings, etc. for existing facilities and infrastructure.

- 7) Well logs of two existing groundwater wells on property.
- 8) Copies of any geotechnical and hydrogeological reports.
- 9) Copies of any phase 1 environmental assessments.

i. Identify a proposed closing date;

After 60 day due diligence period has ended

j. Detail the proposed use of the property and timing for construction and development;
Proposed use would be for construction of a new police facility. The projected timeline would be as follows:

September 2019 – Selection of project management firm.

Sept. – Dec. 2019 – Selection of contractor, design and architect firms and approval obtained through the state board.

December 2019 – June 2020 – Design phase

September/October 2020 – Begin construction

Fall 2021 – Completion of construction phase

December 2021/January 2022 – Close out phase

Initially market the property implementing the Port's original master plan, as amended by City Council to attract economic development opportunities and accommodate multi-purpose recreational fields for various youth sports.

k. Identify size and type of building to be erected, if applicable;

22,500 square foot single story police facility. Proposed facility would include public lobby and meeting room, Department of Correction offices, police administrative offices, patrol and investigation work areas, indoor/outdoor kennels, secured and unsecured parking and garage facilities. 5 acres of property would be required to allow for appropriate setback.

l. Identify anticipated number of employees with approximate wage levels; Twenty-five (25) total employees. Twenty (20) commissioned positions with wage levels from \$65,000.00 to \$144,000.00 yearly dependent on rank and position. Four (4) civilian staff with wage levels from \$35,000.00 to \$60,000.00 yearly. One (1) Department of Correction's officer with a wage level of \$85,000.00 yearly. Staffing levels may be increased by two (2) additional commissioned positions by the time of construction completion.

m. Indicate whether or not any new positions shall be created as a result of the real property purchase, and if so, indicate number of new employees with approximate wage levels;

One FTE for building/property maintenance with approximate wage level of \$30,000.00 yearly. One additional Department of Correction's officer with approximate wage level of \$75,000.00 yearly.



AGENDA REPORT

TO: Port Commission

FROM: Tim Arntzen, CEO

MEETING DATE: 09/24/2019

AGENDA ITEM: Water Rights Purchase and Sale Agreement

I. REFERENCE(S): Resolution 2019-23; attached.

II. FISCAL IMPACT: \$10,000 revenue to the Port.

III. DISCUSSION: The Port purchased the West Richland racetrack site in 2008 and has master planned the site. The Port has excess water rights at the site and if the Port does not use all water rights on site, could eventually lose the rights. The Port has determined the amount of water rights needed for the racetrack site and those rights will be reserved for development on site consistent with the master plan.

Benton County has approached the Port with a request to purchase water rights for continued use and enjoyment of the fairgrounds. Port staff and Benton County staff have negotiated an agreement which would provide for the sale of some of the excess water rights to the County.

IV. RECOMMENDATION: Approve Resolution 2019-23, authorizing the Port's CEO to execute the water rights Purchase and Sale Agreement.

V. ACTION REQUESTED OF COMMISSION:

Motion: *I move approval of Resolution 2019-23, authorizing the Port's CEO to execute the water rights Purchase and Sale Agreement and further ratifies and approves all action by port officers and employees in furtherance hereof.*

PORT OF KENNEWICK

RESOLUTION 2019-23

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK AUTHORIZING THE PORT CHIEF EXECUTIVE OFFICER TO EXECUTE A PURCHASE AND SALE AGREEMENT WITH BENTON COUNTY

WHEREAS, the Port has determined that it has surplus water rights on its West Richland property; and

WHEREAS, the Port's development partner Benton County has a need for additional water rights to enhance the Benton-Franklin County Fairgrounds site in East Kennewick; and

WHEREAS, the parties have negotiated a purchase and sale agreement on favorable terms.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Port of Kennewick authorizes the Chief Executive Officer to execute the Purchase and Sale Agreement.

BE IT FURTHER RESOLVED 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 necessary in furtherance hereof.

ADOPTED by the Board of Commissioners of the Port of Kennewick this 24th day of September 2019.

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

By:

THOMAS MOAK, *President*

By:

DON BARNES, *Vice President*

By:

SKIP NOVAKOVICH, *Secretary*

PURCHASE AND SALE AGREEMENT – WATER RIGHTS

THIS PURCHASE AND SALE AGREEMENT – WATER RIGHTS (“Agreement”) is entered into and made effective this ____ day of _____, 2019 (“Effective Date”), between the SELLER, Port of Kennewick, a Washington municipal corporation; and the BUYER, Benton County, a municipal corporation established under the laws and constitution of the State of Washington (collectively referred to hereinafter as the “Parties”).

RECITALS

A. SELLER owns approximately 93 acres of undeveloped land in West Richland and intends to develop it under the principles established in a master plan for the property that is dated March 28, 2017. The property is included in West Richland’s urban growth boundary, and SELLER intends to utilize city water for the property.

B. SELLER is owner of a legally established water right appurtenant to the above described property, previously designated as “Water Right G4-28319C” (“SELLER’S Water Right”), but SELLER does not need the full extent of such water right for its proposed development of the property.

C. BUYER is in need of additional water rights to complete future development it has planned for the Benton County fairgrounds, and SELLER has enjoyed a long and constructive relationship with BUYER, focusing on economic development opportunities benefitting the citizens of both BUYER and SELLER.

D. While the Parties agrees that the value of the SELLER’S water right is \$6,000 per acre-foot of water, because providing irrigation water to the fairgrounds is a mutually beneficial project, SELLER is amenable to transferring 46.03 acre-feet of SELLER’S Water Right to BUYER in return for \$10,000 to offset administrative and consulting costs related to the water rights transfer.

E. On these terms, SELLER desires to sell and BUYER desires to purchase a portion of the SELLER’S Water Right G4-28319C under the terms and conditions as set forth in this Agreement.

AGREEMENT

IN CONSIDERATION of the mutual terms and conditions stated herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SELLER and BUYER agree as follows:

1. DESCRIPTION OF WATER RIGHT. Subject to the terms and conditions of this Agreement, SELLER agrees to sell and convey to BUYER, and BUYER agrees to purchase from SELLER the quantity of Forty Six and Three One Hundredths (46.03) acre-feet per year (AF/y) consumptive water volume, and up to 505 gallons per minute (gpm) instantaneous rate of Water Right G4-28319C. The portion of the water right that is the subject of this Agreement is referred to herein as the “Conveyed Water Right.”

2. WATER RIGHT CHANGE APPLICATION. In order to satisfy the contingencies set forth in paragraph 3 herein and close the sale, certain attributes of SELLER’S Water Right will need to be changed, with the

changes subject to Ecology approval. The responsibilities for processing and paying for the change application is set forth in paragraph 3.B below.

3. CONTINGENCIES: The closing of the sale of the Conveyed Water Right is contingent upon the timely completion of the following events, obligations and conditions hereinafter referred to as "Contingencies":

A) BUYER'S REVIEW OF TITLE TO SELLER'S WATER RIGHT. Within ten (10) business days following mutual execution of this Agreement, SELLER will provide to BUYER such information SELLER believes is sufficient to confirm SELLER'S ownership of SELLER'S Water Right. BUYER'S obligation to purchase the Conveyed Water Right on the terms and conditions herein is specifically contingent on BUYER'S determination, in BUYER'S sole discretion, of the condition of title for SELLER'S Water Right and such other information as may be reasonably necessary to confirm SELLER'S ownership of the Water Right, which determination and approval shall be made or waived by BUYER within twenty-one (21) days of the receipt of information from SELLER by notice to SELLER. SELLER agrees to provide BUYER with any supplemental information requested by BUYER related to the diversion and use of SELLER'S Water Right.

B) Water Right Transfer Process. SELLER'S obligation to buy the Conveyed Water Right on the terms and conditions set forth herein is also specifically contingent on the following approvals set forth below:

(1). Approval by Ecology of the transfer of not less than 46.03 AF/y consumptive use of water associated with SELLER'S Water Right to BUYER for BUYER'S intended purposes. SELLER shall be responsible for processing this change application with the Conservancy Board or with Ecology and pay for the costs of these change applications. Within twenty-one (21) days of mutual execution of this Agreement, SELLER will prepare and deliver to BUYER one or more counterpart applications (collectively, "the Change Application"), in the form prescribed by Ecology, for the transfer of the Conveyed Water Right to BUYER for BUYER'S intended purposes.

(1.1). Within ten (10) days of receipt of the Change Application, BUYER shall duly sign all counterparts of the Change Application and deliver to SELLER original signed counterparts of the Change Application. SELLER will file the Change Application with the Conservancy Board or Ecology.

(1.2). BUYER and SELLER agree to provide to each other, when requested, any and all documents, records, or other information that each may need to facilitate and accomplish the transfer when requested by the other party.

(1.3). SELLER agrees to sign any and all applications or other documents that are necessary to accomplish the transfer process.

(2). Approval by Ecology shall be deemed given when all appeal periods applicable to Ecology's decision have expired without an appeal of Ecology's approval of the transfer of the Conveyed Water Right to BUYER for BUYER'S intended purposes. In the event there is an appeal of Ecology's decision by any party, including SELLER, then in that event, Ecology's decision shall not be final until a complete resolution of all appeals. Provided, however, that:

(2.1). In the event Ecology denies the transfer of the Conveyed Water Right to BUYER for BUYER'S intended purposes, then this Agreement will become null and void and BUYER shall be entitled to a complete refund of the Earnest Money paid by BUYER.

(2.2). In the event Ecology approves the transfer of the Conveyed Water Right and Ecology attaches terms and conditions to the transfer of the water which are not acceptable to BUYER, including but not limited to determining that less than 46.03 AF/y of consumptive use of SELLER'S Water Right can be transferred to BUYER for BUYER'S intended purposes, then, in that event, BUYER has the option, to be exercised in the BUYER'S sole and absolute discretion by notice to SELLER, to cancel this sale and BUYER shall receive a full refund of the Earnest Money. BUYER must elect to cancel this sale within fifteen (15) days of Ecology's decision becoming final pursuant to paragraph 3.B(2).

- C) No Material Changes. Between the date of mutual execution of this Agreement and the Closing, there will have been no material adverse changes to SELLER'S Water Right, including, without limitation, the following: (i) adverse changes in legal or equitable title to SELLER'S Water Right; (ii) defaults, breaches, violations of actions filed or taken under any mortgages, deeds of trust, or any other document or agreement ; and (iii) the creation of occurrence of additional, or any adverse changes to, legal restrictions or other circumstances related to SELLER'S Water Right.
- D) Waiver of Contingencies. BUYER may waive, in whole or in part, any condition precedent to the BUYER'S performance under this Agreement. SELLER may likewise waive, in whole or in part, any condition precedent to its performance under this Agreement. All Contingencies or conditions precedent described herein will be deemed waived once both the SELLER and the BUYER have delivered all items that each is required to deliver for Closing pursuant to this Agreement.

4. PAYMENT: Subject to the terms and conditions of this Agreement, BUYER shall pay to SELLER the purchase price for the Conveyed Water Right of TEN THOUSAND DOLLARS (\$10,000.00) for 46.03 acre-foot of consumptive annual volume and a proportionate consumptive instantaneous quantity associated with Water Right G4-28319C.

- a. BUYER'S payment of the purchase price will be due (and the transaction described in this Agreement shall close) at Closing, as provided in Section 6, below.
- b. Within ten (10) days of the Effective Date of this Agreement, BUYER shall pay SELLER Earnest Money in the amount of TWO THOUSAND DOLLARS (\$2,000.00), which shall apply to the purchase price at Closing. Earnest Money shall be deposited with SELLER.
- c. Interest on the Earnest Money shall be for the benefit of whichever party is entitled to the Earnest Money at Closing or other termination of this Agreement. The Earnest Money shall be retained by SELLER upon Closing or refunded to BUYER as set forth in this Agreement.

5. REMEDIES:

- A) SELLER'S Remedies: In the event of a material breach of this Agreement by BUYER (including a breach of any representation, warranty, covenant or failure to close), the amounts previously deposited or paid as Earnest Money, together with interest, shall be forfeited by BUYER and retained by SELLER as liquidated damages.
- B) BUYER'S Remedies: In the event the transaction fails to close because of SELLER's material breach, the Earnest Money, together with interest, shall be returned to BUYER and BUYER shall be entitled to such remedies for breach of contract as may be available under this Agreement or applicable law, including, without limitation, the remedy of specific performance.

6. CLOSING: The closing hereunder shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of the parties' agreed Closing Agent: [insert name, address, and tele. no.] . The "Closing" or "date of closing" shall be construed as the date upon which all appropriate documents are recorded and proceeds of this sale are available for disbursement to SELLER. Notwithstanding the foregoing, the parties may agree, in writing, to extend the date of Closing; provided, the delay in Closing is not the fault of either party and both parties exercise their best efforts to minimize the term of any agreed extension of Closing. Closing shall occur with twenty-one (21) days after BUYER'S acknowledgment in writing to the Closing Agent of the satisfaction of the Contingencies and shall be in any event not later than October 31, 2020, which shall be the Termination Date of this Agreement, unless the parties agree to an extension of time in writing. If Closing does not occur by the Termination Date, SELLER shall refund Earnest Money, with interest, to BUYER.

a. BUYER's Deliveries at Closing:

- i. The BUYER shall pay the purchase price in immediately available funds, less the value of the Earnest Money;
- ii. The BUYER shall pay the Excise Tax payable on the sale of the Conveyed Water Right;
- iii. The BUYER shall pay escrow fees, if any, the closing fees charged by the Closing Agent, document preparation fees of Closing Agent, recording fees and any other charges normally borne by a BUYER in a real estate transaction not allocated to SELLER in this Agreement.
- iv. The BUYER shall execute the Real Estate Excise Tax Affidavit, as well as any other instruments reasonably necessary to close the transaction contemplated by this Agreement, such as a closing statement and agreed closing and escrow instructions.

b. SELLER's Deliveries at Closing:

- i. SELLER shall deliver or cause to be delivered to BUYER through escrow a Statutory Warranty Deed conveying fee simple title to the Conveyed Water Right, free and clear of all liens, encumbrances or other defects, duly executed and acknowledged by SELLER in recordable form, and ready for recordation, together with the executed Real Estate Excise Tax Affidavit; and
- ii. SELLER shall deliver a Real Estate Excise Tax Affidavit prepared for signature by the Parties, as well as any other instruments reasonably necessary to close the transaction contemplated by this Agreement, such as a closing statement and agreed closing and escrow instructions.

7. WARRANTIES: SELLER represents and warrants that as of the date of this Agreement, there are no liens, exceptions or other encumbrances encumbering the title to the Conveyed Water Right and that it retains unencumbered title interest in sufficient quantities of water to satisfy its obligation to sell the convey the Conveyed Water Right to BUYER under this Agreement.

8. GENERAL PROVISIONS: This Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors, and assigns. BUYER will not, prior to Closing, assign, subcontract or otherwise transfer any interest (voluntarily, involuntarily, by operation of law or otherwise) without the prior written consent of SELLER. Any documented, purported transfer by BUYER without such consent will be null and void and of no effect, whatsoever, and shall constitute a material breach by BUYER under this Agreement. Time is of the essence as to each and every provision of this Agreement.

9. NOTICES under this Agreement shall be in writing and may be delivered (1) personally; (2) by U.S. mail, certified or registered; or (3) by a nationally recognized overnight courier service. Mailed notices shall be deemed effective on the third day after deposited as registered or certified mail, postage prepaid, directed to the other party at the address shown below. Couriered notices shall be deemed delivered when the courier's records indicate that delivery has occurred. Facsimile or email notices shall be effective when actually transmitted to the facsimile number or email address provided by the party receiving notice. Notices shall be provided:

If to SELLER:

Port of Kennewick

c/o _____

_____, WA 99_____

Tel. () .

If to BUYER:

Benton County

c/o Matt Rasmussen. County Engineer

P.O. Box 1001

Prosser, WA 99350

Tel. (509) 786-5611

Either party may change its' address for notices by written notice to the other.

10. WAIVER AND SEVERABILITY: Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Agreement. If any term of this Agreement is held invalid by any court, the remainder of the Agreement remains valid and in full force and effect.

11. ATTORNEY'S FEES: In the event of any dispute arising out of or relating to the enforcement or interpretation of this Agreement, whether suit or other proceeding is commenced or not, and whether in mediation, arbitration, at trial, on appeal, in administrative proceedings or in bankruptcy (including without limitation any adversary proceeding or contested matter in any bankruptcy case), each party shall be responsible for its own costs and expenses incurred, including reasonable attorneys' fees.

12. PRIOR AGREEMENTS: This Agreement supersedes and replaces all written and oral agreements previously made or existing between the Parties concerning the Conveyed Water Right hereunder including, without limitation, all previous letters of intent and addenda thereto and all verbal agreements and understandings.

13. APPLICABLE LAW AND VENUE: This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Washington. Venue shall be in Benton County, Washington.

14. CHANGES IN WRITING: This Agreement and any of its terms may only be changed or waived by a written instrument signed by the party against whom enforcement of the change or waiver is sought.

15. COUNTERPARTS/FACSIMILE: This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the Closing Agent, the Parties will confirm facsimile transmitted signatures by signing an original document.

16. TITLE: Title to the Conveyed Water Right shall be conveyed by Statutory Warranty Deed.

[Remainder of page left blank]

17. CERTIFICATION: The undersigned certify by their signatures below that they are authorized to bind, represent and sign for the indicated party.

SELLER:

PORT OF KENNEWICK

Tim Arntzen, Chief Executive Officer

STATE OF WASHINGTON)
) ss.
County of Benton)

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 2019.

Notary Public in and for the state of Washington,
residing in _____.
My Commission Expires: _____.

BUYER:

BOARD OF BENTON COUNTY COMMISSIONERS

James Beaver, Commissioner

Shon Small, Commissioner

Jerome Delvin, Commissioner

Attest:

Cami McKenzie, Clerk of the Board

STATE OF WASHINGTON)
) ss.
County of Benton)

On this day personally appeared before me James Beaver, known to me to be a Commissioner of Benton County, a Washington municipal corporation, who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 2019.

Notary Public in and for the state of Washington,
residing in _____.
My Commission Expires: _____.

STATE OF WASHINGTON)
) ss.
County of Benton)

On this day personally appeared before me Shon Small, known to me to be a Commissioner of Benton County, a Washington municipal corporation, who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 2019.

Notary Public in and for the state of Washington,
residing in _____.
My Commission Expires: _____.

STATE OF WASHINGTON)
) ss.
County of Benton)

On this day personally appeared before me Jerome Delvin, known to me to be a Commissioner of Benton County, a Washington municipal corporation, who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 2019.

Notary Public in and for the state of Washington,
residing in _____.
My Commission Expires: _____.

PORT OF KENNEWICK

Resolution No. 2019-24

**A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE PORT OF KENNEWICK AMENDING RESOLUTION 2017-27 AND
UPDATING THE EVALUATION PROCESS SET FORTH IN THE CEO'S
EMPLOYMENT AGREEMENT**

WHEREAS, since 2006 the Port of Kennewick has had an employment agreement with its Chief Executive Officer (CEO) and several updates have been made over the years; and

WHEREAS, on October 10, 2017, Resolution 2017-16 approved revision of Section 15.0 of the Port Commission Rules of Policy and Procedure for the CEO Evaluation Process, including the formation of the CEO Evaluation Committee; and

WHEREAS, on November 28, 2017, Resolution 2017-27 was approved revising Paragraph 6 and Paragraph 8.5 of the November 15, 2013 Employment Agreement; and

WHEREAS, on August 13, 2019, Resolution 2019-16 was presented to the Board of Commissioners to appoint a new committee member to the CEO Evaluation Committee, and said resolution was not approved; and

WHEREAS, in lieu of Resolution 2019-16, Commissioner Barnes made a motion that the CEO Annual Evaluation Process revert to the original paragraph 6 language and use of the Exhibit D format that existed prior to Resolution 2017-27, and Commissioner Moak seconded; and

WHEREAS, after discussion the Commission voted 2-1 for approval of Commissioner Barnes' motion, with Commissioner Novakovich voting against the motion.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Port of Kennewick Board of Commissioners hereby approves reversion to the November 15, 2013 Employment Agreement paragraph 6 language and to use the Exhibit D format that existed prior to Resolution 2017-27.

ADOPTED by the Board of Commissioners of Port of Kennewick on the 24th day of September, 2019.

By: _____
THOMAS MOAK, *President*

By: _____
DON BARNES, *Vice President*

By: _____
SKIP NOVAKOVICH, *Secretary*