



PORT OF KENNEWICK REGULAR COMMISSION MEETING

OCTOBER 8, 2019 MINUTES

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

The following were present:

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

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

PLEDGE OF ALLEGIANCE

Commissioner Moak led the Pledge of Allegiance.

APPROVAL OF THE AGENDA

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

PUBLIC COMMENT

No comments were made.

CONSENT AGENDA

- A. Approval of Direct Deposit and E-Payments Dated October 2, 2019***
Direct Deposit and E-Payments totaling \$85,777.84
- B. Approval of Warrant Register Dated October 1, 2019***
Expense Fund Voucher Number 101463 for a grand total of \$148,283.38.
- C. Approval of Warrant Register Dated October 8, 2019***
Expense Fund Voucher Number 101464 through 101504 for a grand total of \$824,800.05
- D. Approval of Special Commission Business Meeting Minutes September 24, 2019***
- E. Approval of West Richland Purchase & Sale Agreement; Resolution 2019-22 (Ratifying decision from September 24, 2019 Commission Meeting)***

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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.*

OLD BUSINESS

A. West Richland Purchase & Sale Agreement; Resolution 2019-25

Ms. Hanchette stated before the Commission is a Purchase and Sale Agreement (PSA) for the Port and the City of West Richland for the purchase of the former Tri-City Racetrack. Ms. Hanchette reported on the history of events that began with the July 25, 2019 letter of interest from the City. At a Special Commission meeting on July 30, 2019 the offer was presented to the Commission and after considerable discussion, staff was given direction to move forward with land sale negotiations and research several issues including financing and worth of the property. An appraisal was requested on August 8, 2019 and the subsequent weeks were filled with ongoing negotiations between the Port and City staff, discussions between legal counsel for both entities regarding purchase and sale agreement terms, and regular staff updates at Commission Meetings.

Port staff received a restricted appraisal report of the property on September 30, 2019.

- Hypothetical Conditions Assumed: (1) that all improvements related to the former use as the Tri-City Raceway have removed; (2) that all improvements related to the current use for production of alfalfa have been removed; and (3) only 18 certificated feet of water rights inure to the benefit of the site.
- Concluded Value: \$3,000,000 [\$32,394 per acre / \$0.74 per square foot]
- Sales Comparison Approach
- Industrial Use

On October 4, 2019, City of West Richland representative, Mayor Brent Gerry informed Port staff that a special City of West Richland council meeting will be held on Monday, October 7, 2019 at 5:30 p.m. to discuss the appraisal and a potential revised offer.

Ms. Luke stated before the Commission is the redline version of the PSA that was presented at the September 24, 2019 Commission Meeting. Several revisions as proposed by the City were agreed upon and on page one of PSA, the price proposed is now the assessed value of the property, \$1,816,000 further, the City will pay \$500,000 in cash at closing and the balance of the purchase price will be handled, as previously proposed, through a promissory note and deed of trust and through the transfer of Rural County Capital Fund (RCCF) credits. The only revision to the PSA are the inclusion of the new offer price and closing costs. Ms. Luke inquired if the Commission had any questions regarding the redline PSA.

Commissioner Novakovich confirmed that the only thing the Commission is approving or disapproving is price.

Ms. Luke stated that is correct and the \$500,000 paid at closing, which was not a term proposed by the City previously.

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Commissioner Novakovich inquired if the 2% art fund remains in the PSA.

Ms. Luke stated that is correct, no other terms have changed. The 2% of the purchase price is proposed to be paid at closing and up to \$20,000 for administrative and legal fees incurred by the Port.

Commissioner Novakovich confirmed the art fund has been increased to \$11,320.

Ms. Luke would need to confirm the number. Ms. Luke asked the Commission to review the deed of trust and stated there was some concern expressed by the City regarding the due on sale clause. On page 3, paragraph 9, the new, highlighted language was proposed and the City accepted. The language excludes the building of the police station from the due on sale clause; the City can proceed without any further engagement with the Port as that has been the intended use by the City throughout the negotiations. Ms. Luke stated that is the only change to the deed of trust and there were no changes made to the promissory note. Ms. Luke inquired if the Commission had any questions.

Commissioner Moak asked Mr. Arntzen if he has anything to add.

Mr. Arntzen stated he does not have anything else to add.

Commissioner Moak stated the appraisal came in significantly higher than 2016 appraisal and asked Ms. Hanchette if she could explain why there was such a large discrepancy from the same appraiser for the same property. Commissioner Moak inquired what factors could change the valuation of the property.

Ms. Hanchette stated the appraiser did a very comprehensive job on the appraisal and the document can stand on its own. Additionally, the appraiser had a peer review performed. There are not a lot of comparables with the same size of property, but we have had a very active market, not only in residential, but in industrial in the greater tri-city over the last three years.

PUBLIC COMMENT

Mayor Brent Gerry, 5401 Kalakaua Court, West Richland. Mayor Gerry thanked the Commission and Port and City staff for their hard work on this proposal, in such a short period of time. Mayor Gerry stated it has not been easy and most of us were quite shocked at price from three years ago, from \$1,750,000 to \$3,000,000 and as Ms. Hanchette alluded to, comparables were probably a big challenge. The City does not have a lot of comparables in regards to property such as that and imagines an appraiser would have to rely on more competitive markets outside of West Richland. The City determined the proposed purchase price by utilizing the Benton County assessed value. Additionally, the City felt that it was important to the Commission to offer cash at closing and added another \$500,000 to the offer, in addition to the approximately \$600,000 in RCCF credits available, the Port will have \$1,100,000 at closing to invest in Vista Field or Columbia Drive. Mayor Gerry thanked the Commission and staff and encouraged the Port to take the opportunity to invest in economic opportunities in West Richland. The City has done very well with the Belmont Business District and anticipates the same success at the former racetrack property.

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Mayor Gerry appreciates the consideration given to the City and he looks forward to partnering with the Port on that development and making the Port proud of their decision.

There were no further comments.

MOTION: Commissioner Novakovich moved for approval of Resolution 2019-25, amending Resolution 2019-22, establishing a purchase price of \$1,816,000 with payment terms of \$500,000 cash plus \$1,316,000 of Rural Capital County Funds, with approximately \$600,000 available at closing; and authorizing the Port's Chief Executive Officer to execute all necessary documents 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, considering that the draft document the Commission received today with the updated information be the document that is used; Commissioner Moak seconded.

Discussion:

Commissioner Novakovich stated the Commission has discussed this several times and there are a lot of things the Port can and should do for our constituents and one of them concerns public safety. Commissioner Novakovich believes this is an excellent opportunity to partner with the City of West Richland to provide public safety for the City. Commissioner Novakovich feels the appraised price is pretty high, granted it may be justifiable by some means; however, he has a hard time believing it could almost double in three years. Commissioner Novakovich believes the offer that has been put forth by the City is more than justifiable and as he stated previously, the Port has the option to transfer property to another jurisdiction for little or no payment. Commissioner Novakovich stated the Port is doing a great service for our constituents and jurisdictional partner and would like to see the PSA move forward.

Commissioner Barnes appreciates the increase in the price offered by City, but even with increase in price, he cannot support this. Commissioner Barnes appreciates Commissioner Novakovich's comments about how the Port can do things that are in the public interest for public safety; however, there are four major reasons that he cannot support the PSA. First, Commissioner Barnes believes the purchase price is too low, especially against the appraisal. Commissioner Barnes has seen industrial property values increase significantly over the past two or three years. Commissioner Barnes suggested calling Nicki Lynn Morgan in the Franklin County Assessor's Office for specific examples that may involve his name. Secondly, Commissioner Barnes does not believe there is a sufficient Return on Investment (ROI) for this property, given the holding period and the Port's investment and what the Comprehensive Scheme of Harbor Improvements and our Work Plan. Commissioner Barnes believes this PSA favors District 3, over the other two Port Districts. Additionally, this is an indication of inconsistencies at the Port of Kennewick, where we are auctioning land in Southridge to try to cash in on that investment so that those proceeds could be diverted to other project area. An auction was not even considered for the former racetrack and not too long ago, there were fabulous auction results on Red Mountain. Commissioner Barnes stated the price increase is an improvement, but his position has not changed and he would like to

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see the offer closer to appraised value. Commissioner Barnes believes it is a fair appraisal and at less than 50 cents per square foot this would be an excellent investment opportunity.

Commissioner Moak stated that we have two different perspectives and believes it is healthy within an organization. Commissioner Moak thinks Commissioner Barnes' asked how much does it cost to hold the property and the answer was very minimal. It would not hurt the Port to hold on to this particular property and he agrees; but the question that wasn't asked and doesn't have an easy answer is, what opportunities are lost by not taking this money. We commissioned Mr. Arntzen to go out and find money for our various projects and we find it difficult to raise money. The Port has projects, whether at Vista Field or at any other place and money does not just grow on trees. Commissioner Moak has stated multiple times that the Port would have developed this property and believes in the vision, but it is not going to happen, and it won't happen by the Port of Kennewick. Commissioner Moak has adjusted his thinking to "what do we do." The Port has not received any offers on this property other than the City of West Richland. The Port could go through the auction process if dollars were the only thing we were looking for is money. When Commissioner Moak looks at this property and sees what it could mean to the City and to the Port of Kennewick, he thinks it is time to choose a different path. Nothing has changed in the past two weeks, but today, the City offered \$500,000 more, because it is worth that much more to them. Commissioner Moak did not create the appraisal and does not know what the property is worth. Right now, the Port is not planning to develop the property and we do not have a good plan to develop it, but the City of West Richland does. At least some of that development will benefit the tax payers, not just District 3, but benefit all the tax payers of the Port district. Commissioner Moak does not look at this benefiting only District 3 and reminded Commissioner Barnes that he has Vista Field. Commissioner Moak sees that the PSA benefits the Port district and it is our good fortune that Mr. Arntzen wanted an appraisal, even though we did not have to one and Commissioner Moak appreciates that and it means a lot to the Port. Commissioner Moak does not believe the Port is screwing West Richland and he does not think they are screwing us either. It is a deal that is a necessity to the City and an important one that moves this Port ahead. Commissioner Moak cannot say he is happy to vote for this because he still harbors the thought of "if only what could have happened otherwise." Commissioner Moak does it with a sense of this is important, it is important to the Chief and to the West Richland Police Department and the citizens. The Port was able to make a deal with Fire District No. 4 for two acres and public safety is important. Commissioner Moak will vote aye.

Commissioner Novakovich thinks the difference between Southridge and this property is that there have not been any offers on the Southridge property and asked Ms. Hanchette to confirm.

Ms. Hanchette stated the Port received an offer on the Southridge property after the Commission moved forward with the auction process, but prior to that, no.

Commissioner Novakovich stated there is an offer on West Richland and he wanted to clarify.

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

B. Citizen Complaint Update

1. Selection of Neutral

Ms. Luke is working with Commissioner Barnes' legal counsel and Port counsel with regards to obtaining information and determining which neutral will be available. We are trying to move that process forward and will bring the Commission an update at the next meeting.

REPORTS, COMMENTS AND DISCUSSION ITEMS

A. Commission Meeting Audio Recordings Posted on Website

Commissioner Barnes reached out to Mr. Arntzen and Ms. Scott to include audio recordings on this Agenda with him as the presenter. Commissioner Barnes stated this is something that he has touched upon briefly at the Commission level a few times in the past. It is Commissioner Barnes' understanding that the Port records the audio of each Commission Meeting and has been doing this for some time. It is his understanding that the Port can provide a copy of the audio recording when requested. Commissioner Barnes indicated that Mayor Gerry has requested audio regarding the racetrack. Commissioner Barnes believes that the Port would be taking a positive step in the transparency arena and making it easier for any constituent or citizen that wanted to sit and listen to audio of a Commission Meeting, to be able to go to the website and listen. Commissioner Barnes is not sure how difficult it would be to make the audio available on the Port website. Commissioner Barnes asked staff to do this and believes it would be good for our citizens and the Port of Kennewick and requested that we go back to January 2019. If this is something my fellow Commissioners would agree to or want to see happen, then staff could have a Resolution ready at the next meeting to formalize. Commissioner Barnes asked staff for comments and how difficult it would be. Commissioner Barnes stated if this is a monumental undertaking that is difficult, costly, and expensive, then he would like the opportunity to rethink his request. It is his understanding that it is a straight forward process with a nominal cost.

Commissioner Moak asked if staff has looked into the question of cost or bandwidth issues.

Mr. Arntzen stated to my understanding staff has not looked into this, even though it may sound easy, he would like a chance to review. Mr. Arntzen stated there is a lot of backlogged work in front of us and he would like to put this on the "to do" list and come back to the Commission early next year with information. Mr. Arntzen would like to have marketing and legal review in case there are any issues. Mr. Arntzen stated there are some things that have been backlogged due to a number of reasons; processing of the citizen complaint, the appeal process, and compressing the timeline on the West Richland PSA. There are several projects that have been previously assigned by the Commission that have been backlogged. With that being said, Mr. Arntzen asked if staff can work on the backlog and then provide a briefing to the Commission early next year.

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Commissioner Moak is comfortable with that concept and does not believe it takes precedence over other projects that we have had to delay.

Commissioner Barnes stated this topic does not rise to the top of the list given everything else that is going on at the Port. It has been mentioned at least twice to his knowledge in the past and stated it is easy to kick the can down the road. Commissioner Barnes does not believe this is a difficult thing according to everyone he has spoken to. Commissioner Barnes agrees with Commissioner Moak and stated there are some very important things under way, things that needs to be processed. Commissioner Barnes stated the time frame that Mr. Arntzen mentioned is fine.

Mr. Arntzen will sit down with Ms. Scott, Ms. Luke, and Ms. Bader Inglima to discuss adding audio to the website and if we find any issues, we will report back to the Commission. Staff will begin researching and update the Commission after the first of the year, if that is acceptable to the Commission.

B. Commission Meetings

1. October 22, 2019 rescheduled to October 29, 2019

The October 22, 2019 Commission Meeting has been rescheduled to accommodate the Washington Public Ports Association Small Ports Conference.

2. November 12, 2019 Commission Business Meeting

Regular Commission Meeting, as scheduled.

3. November 15, 2019 Special Commission Meeting at Musser Auction Facility at 11:00 a.m.

There will be a Special Commission Meeting on November 15, 2019 to discuss the outcome of the Southridge auction.

4. November 26, 2019 Possible Cancellation

5. December 24, 2019 Possible Cancellation

Consensus of Commission to cancel the following Commission Meetings: November 26 and December 24, 2019.

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

Commissioners reported on their respective committee meetings.

D. Non-Scheduled Items

1. Ms. Luke reminded the Commission that next Monday, October 21, 2019 is the due date for the Commission input evaluation forms for the CEO evaluation, so that she can compile them for the next Commission Meeting.

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PUBLIC COMMENTS

Lynn Rogers, 3702 Meadowview Drive, Pasco. Mr. Rogers is representing the Sand and Sage Sports Car Club and stated the Port purchased 92 acres with a racetrack on it 11 years ago and today is the end of a chapter for the Port. The Club has concerns with their future, but that is a conversation to be had with the City of West Richland. The Club knows it was not the vision of the Port to buy and maintain racetrack, and as part of the team that worked with staff to use the racetrack, it is fitting that he is the one to say thank you. Mr. Rogers gave a brief history of what the club has done over the past 11 years:

- Hosted 192 events;
- 10,684 participants at the events;
- Ten cancer charity events for the Cancer Center Foundation of Tri-Cities;
- Three teen traffic safety events;
- Six trainings for driving instructors;
- Police trainings.

The racetrack has seen more activity since the Port purchased it and it has been very active over the past 11 years and Mr. Rogers thanked the Port and expressed his gratitude for the time we had.

Commissioner Moak thanked Mr. Rogers for his words.

Boyce Burdick, 414 Snyder Street, Richland. Mr. Burdick stated the Mid-Columbia Symphony's second concert will be held on November 2, 2019 at the Hanford High Auditorium.

No further were made comments.

COMMISSION COMMENTS

No comments were made.

ADJOURNMENT


With no further business to bring before the Board; the meeting was adjourned 2:44 p.m.

APPROVED:

**PORT of KENNEWICK
BOARD of COMMISSIONERS**



Thomas Moak, President



Don Barnes, Vice President



Skip Novakovich, Secretary

PORT OF KENNEWICK

RESOLUTION No. 2019-22

**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); 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.

WHEREAS, during the September 24, 2019 Commission Meeting, the Port Commission approved the Purchase and Sale Agreement and all terms (EXHIBITS B, C & D), except for the price, and authorized the Port CEO 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.

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 at a future meeting 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 8th day of October, 2019.

**PORT of KENNEWICK
BOARD of COMMISSIONERS**

By: 

THOMAS MOAK, President

By: 

DON BARNES, Vice President

By: 

SKIP NOVAKOVICH, Secretary

RESOLUTION No. 2019-22

EXHIBIT A

**COMMONLY KNOWN AS: 47615 E. SR 224, WEST RICHLAND
(FORMER TRI-CITY RACEWAY)**



REAL ESTATE PURCHASE AND SALE AGREEMENT

1. **PARTIES.** THIS AGREEMENT is made and effective on the 15th day October, 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 Eight Hundred Sixteen Thousand and No/100 Dollars (\$1,816,000.00). Five Hundred Thousand and No/100 Dollars (\$500,000.00) of the Purchase Price shall be paid all in cash at Closing and the remaining balance of the Purchase Price (\$1,316,000.00) 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 remaining Purchase Price balance of One Million Three Hundred Sixteen Thousand and No/100 Dollars (\$1,316,000.00). 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:

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 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 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 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 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.

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

12.4 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.

12.5 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.

12.6 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.

12.7 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.

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

12.9 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.


12.10 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 Arnizen, Chief Executive Officer

Approved as to form:

 10/14/19
Port Counsel

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

By: 


Approved: Port CPO/Auditor

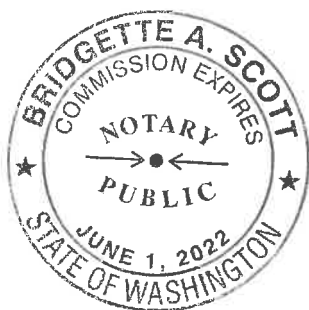
Printed Name & Title: Brent Gerry Mayor / CEO

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 15th day of October, 2019.



Bridgette A. Scott
Notary Public in and for the State of
Washington
Residing at: Richland
My Commission Expires: 06-01-2022

State of Washington)
)ss:
County of Benton)

On this day personally appeared before me Brent Gerry, to me known to be the Mayor 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 14 day of October, 2019.

Julie A. Richardson
Notary Public in and for the State of
Washington
Residing at: West Richland
My Commission Expires: 9.29.2022

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. Except for the building of Grantor's new police station on the property, 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: _____

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. 2019-25

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK
AMENDING RESOLUTION 2019-22 AND
AUTHORIZING A PURCHASE AND SALE AGREEMENT
WITH CITY OF WEST RICHLAND**

WHEREAS, on September 24, 2019, the Port Commission approved Resolution 2019-22 for the Purchase and Sale Agreement and all associated terms, with the exception of price, for the City of West Richland's offer 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; and

WHEREAS, the City of West Richland (Purchaser) held a Special Meeting on October 7, 2019 to consider amending their offer to revise terms, conditions and the price for the property; and

WHEREAS, the City of West Richland offers 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 \$ 1,816,000 of which \$ 500,000 cash to be paid at closing; 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

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

ADOPTED by the Board of Commissioners of the Port of Kennewick on the 8th day of October, 2019.

**PORT of KENNEWICK
BOARD of COMMISSIONERS**

By: 

THOMAS MOAK, President

By: 

DON BARNES, Vice President

By: 

SKIP NOVAKOVICH, Secretary

RESOLUTION No. 2019-25

EXHIBIT A

COMMONLY KNOWN AS: 47615 E. SR 224, WEST RICHLAND
(FORMER TRI-CITY RACEWAY)

