

AGENDA

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

Tuesday, November 13, 2018
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 November 1, 2018
 - B. Approval of Warrant Register Dated November 13, 2018
 - C. Approval of Regular Commission Business Meeting Minutes October 23, 2018
- VI. PRESENTATIONS**
 - A. Ozone Presentation, Robin Priddy, Benton Clean Air Agency
 - B. Tamastlikt Cultural Institute, Bobbie Conner and Skip Novakovich
 - C. Don Sampson Warbonnet Ceremony (**TIM**)
- VII. NEW BUSINESS**
 - A. Carbitex Lease; Resolution 2018-23 (**AMBER**)
- VIII. REPORTS, COMMENTS AND DISCUSSION ITEMS**
 - A. General Bidding Climate, David Robison, Construction Services Management (**LARRY**)
 - B. Columbia Drive (**LARRY**)
 - C. Vista Field (**LARRY/TIM**)
 - D. White Bluffs Consulting; Resolution 2018-24 (**TIM/LARRY**)
 - E. West Richland (**TIM**)
 - F. Drummers & Dancers at The REACH November 17, 2018 (**TIM**)
 - G. Hanford Reach National Monument – Public Access (**TIM**)
 - H. Commissioner Meetings (formal and informal meetings with groups or individuals)
 - I. Non-Scheduled Items
- IX. PUBLIC COMMENT** (*Please state your name and address for the public record*)
- X. EXECUTIVE SESSION** (*Ask public if they are staying, and if not, where they can be located if the Executive Session ends early.*)
 - A. Minimum Price, per RCW 42.30.110(1)(c)
- XI. ADJOURNMENT**

PLEASE SILENCE CELL PHONES



PORT OF KENNEWICK REGULAR COMMISSION MEETING

DRAFT

OCTOBER 23, 2018 MINUTES

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

The following were present:

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

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

PLEDGE OF ALLEGIANCE

Commissioner Novakovich led the Pledge of Allegiance.

APPROVAL OF THE AGENDA

MOTION: Commissioner Novakovich moved to approve the Agenda as presented; 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 17, 2018**
Direct Deposit and E-Payments totaling \$57,980.83
- B. Approval of Warrant Register a Dated October 23, 2018**
Expense Fund Voucher Numbers 100510 through 100554 for a grand total of \$226,733.87
- C. Approval of Regular Commission Business Meeting Minutes October 9, 2018**

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.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

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PUBLIC HEARINGS:

A. 2019-2020 Final Budget / Adoption

- 1. 2019-2020 Final Budget Hearing / Adoption; Resolution 2018-20**
- 2. 2019 Levy Certification: Resolution 2018-21**
- 3. 2019 Increase in Tax Capacity: Resolution 2018-22**

Mr. Kooiker presented the 2019-2020 Final Budget for Commission consideration. Each year the Commission has the opportunity to pass the Property Tax Levy which establishes how much the Port will collect in property taxes which is then forwarded to the Benton County Treasurer. Resolution 2018-21 is required by law and authorizes the Commission to take an increase in the tax levy of 1%, pursuant to RCW 84.55.120 and WAC 458-19-005. Mr. Kooiker stated the Port will receive approximately \$45,000 and this will not increase property taxes. Resolution 2018-22 sets the Port's levy limit at 101%.

Commissioner Novakovich clarified that the Port has taken the 1% increase annually.

Mr. Kooiker stated that is correct.

Mr. Arntzen was recently asked a question related to the Port's TRIDEC dues. Staff recommends a number for dues for various associations in the Draft Budget, commensurate of the services provided. Staff recommended that the Port allocate \$15,000 per year for the 2019-2020 Budget for TRIDEC dues. The Port has contracted with TRIDEC for a number of years and the dues have varied from \$15,000 to \$30,000.

Commissioner Moak believes that TRIDEC considers it to be a service contract, not dues.

Mr. Arntzen stated that is correct and the Port's contract payment would reflect the level of services provided.

Commissioner Novakovich inquired if part of the service contract provides for the Commission to receive an annual report.

Mr. Arntzen stated the level of periodic reporting to the Commission has been reduced over the years. Mr. Kooiker requested a contract that was tailored to the services the Port was actually receiving, to be in compliance with the State Auditor. Mr. Arntzen stated this is a policy decision.

Commissioner Barnes represents the Port on the TRIDEC Boards and inquired how much the contracts have been previously.

Mr. Kooiker stated the following:

- 2014: \$30,000;
- 2015: \$30,000;
- 2016: \$25,000;
- 2017: \$25,000; and
- 2018: \$20,000.

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Commissioner Moak confirmed that the Port requested a reduced level of service from TRIDEC.

Commissioner Barnes does not recall the Commission discussing the TRIDEC dues and if the Commission passes the 2019-2020 Budget, we are approving the \$15,000 per year for contract fees.

Mr. Arntzen stated correct, once the 2019-2020 Budget is approved, the Port will give notice to TRIDEC about the reduced fees.

Commissioner Barnes stated as a TRIDEC board member, TRIDEC serves as the economic development office for Benton and Franklin County, with a broad umbrella of economic development activities. Commissioner Barnes stated TRIDEC assisted the Port of Benton in receiving 1,600 acres of surplus land in the Hanford area and the Port of Pasco with the direct flight to Los Angeles. Commissioner Barnes is unaware of any specific actions by TRIDEC that have resulted in a direct benefit to the Port of Kennewick.

Commissioner Moak does not believe the Port of Kennewick has asked for assistance because our mission does not align with the industrial development like ports of Benton and Pasco. Commissioner Moak believes the \$15,000 supports regional economic development, rather than economic development that directly affects the Port of Kennewick. Commissioner Moak stated because the Port does not receive direct benefits; he believes \$15,000 is an appropriate number.

Commissioner Moak recessed the Regular Meeting and declared an Open Public Hearing for discussion regarding 2019-2020 Budget, 2019 Levy Certification and the 2019 increase in Tax Capacity at 2:15 p.m.

PUBLIC COMMENTS

Boyce Burdick, 414 Snyder Street, Richland. Mr. Burdick inquired what happens if the anticipated levy amount is larger than the total regular levy. Additionally, Mr. Burdick believes there is a grammatical error in the Certification of Tax Levy. The statement “if the above certification is more than the Assessor’s levy calculations, The Assessor’s Office is directed to reduce the Expense (General) Fund amount by the actual Assessor’s levy calculation.” Mr. Burdick believes it should read: “if the above certification is more than the Assessor’s levy calculations, The Assessor’s Office is directed to reduce the Expense (General) Fund amount to the actual Assessor’s levy calculation.”

Commissioner Moak asked Mr. Kooiker to address Mr. Burdick’s questions.

Mr. Kooiker stated the Port’s tax revenues are estimated to be \$4,200,000, however, the Port certifies higher than that amount in case new construction is higher. The amount that the Port sends to Benton County can be higher than anticipated, just not less, because then the Port would miss out on tax revenue.

Regarding the language in the Certification of Tax Levy, the form comes directly from Benton County and states the County has the ability to reduce the amount down to the actual tax levy and Mr. Kooiker does not advise altering the language in the form.

No further comments were made.

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Commissioner Moak closed the Public Hearing at 2:20 p.m. regarding the 2019-2020 Budget, Levy Certification and increase in Tax Capacity at 2:20 p.m. and reconvened the Regular Commission Meeting.

MOTION: *Commissioner Novakovich moved for approval of Resolution 2018-20, approving the 2019-2020 Final Budget as presented; Commission Barnes seconded.*

Discussion:

Commissioner Novakovich thanked Mr. Kooiker and staff for their work on the 2019-2020 Budget and stated it was very difficult to create a budget without knowing the bid numbers for the large projects. Furthermore, Commissioner Novakovich appreciates staff taking the time to go through items that may otherwise get missed.

Commissioner Barnes thanked Mr. Kooiker, Ms. Fine and staff for their work on the 2019-2020 Budget. In the past, the Port has been criticized for having a conservative budget; however, a conservative budget allows a high probability of achieving these numbers and he supports the budget.

Commissioner Moak stated the Port has always been conservative with the budget and believes it has been difficult for staff to create a budget when the numbers are not available for the bigger projects. Commissioner Moak stated the Commission may need to revisit the 2019-2020 Budget in order to award our bids if the numbers do not match up for Columbia Gardens and Vista Field. Commissioner Moak appreciates the work that Mr. Kooiker and staff do to ensure that the Commission is up to speed on the Budget.

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

MOTION: *Commissioner Barnes moved for approval of Resolution 2018-21, Levy Certification; Commissioner Novakovich seconded. With no further discussion, motion carried unanimously. All in favor 3:0.*

MOTION: *Commissioner Novakovich moved for approval of Resolution 2018-22, authorizing an increase in the Tax Capacity, authorizing the 1%; Commissioner Barnes seconded.*

Discussion:

Commissioner Barnes stated Resolution 2018-22 is the 1% increase allowable, which is approximately \$45,000. Commissioner Barnes stated this is a reasonable increase, given the Port's ambitious projects at Vista Field and Columbia Gardens.

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

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REPORTS, COMMENTS AND DISCUSSION ITEMS

A. *Vista Field Update*

1. *Infrastructure – Phase 1*

Mr. Peterson presented the civil plans to the Commission for approval to seek bids for Vista Field Phase 1A construction. Mr. Peterson continues to work through the City comments regarding the civil plans. The anticipated time frame for bid and construction of Phase 1A is as follows:

- December 4, 2018: Advertise Bid for 6 weeks;
- January 17, 2019: Open Bids;
- January 22, 2019: Bring Bid to Commission for possible approval;
- February 2019: Contract documents and notice to proceed submitted;
- October 2019: “Paved out.”

Mr. Peterson presented plans for the water feature and special elements within Phase 1A.

Commissioner Moak inquired when the City comments will be fully addressed.

Mr. Peterson anticipates resubmitting the plans the week of November 12-16. Then, staff has two weeks to route the plans to the utility companies for signature. Then, the Port will have a complete set of approved bid documents ready for advertisement.

Commissioner Moak inquired what will happen to the water feature if there is a drought or water shortage.

Mr. Peterson stated the water feature will run on recycled water; however, if there is a water shortage or drought, it will look like a dry stream bed running through the site. Mr. Peterson stated the water feature uses less than 40,000 gallons of water.

Commissioner Moak asked if Vista Field will ever have Kennewick Irrigation District (KID) service rather than City water.

Mr. Peterson is meeting with KID this week to discuss bringing irrigation to Vista Field.

Commissioner Moak inquired if the Port will pay an assessment to KID.

Mr. Peterson does not believe the Port will be assessed.

Commissioner Barnes inquired if the water feature will function in colder weather.

Mr. Peterson stated the designer indicated that moving the water will keep it from freezing.

PUBLIC COMMENT

No comments were made.

It is Consensus of the Commission for staff to move forward on the bids for Vista Field Phase 1A.

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B. Columbia Drive Update

Mr. Peterson reported that construction continues on Phase 2A and indicated that the site should have curbing and concrete within next week. Staff has submitted the construction documents for Columbia Gardens Phase 2B which features the tasting room building to the City for permit review and will begin advertising in November, with bids due on December 7, 2018. Mr. Peterson will present the bid to the Commission at the December 11, 2018 Meeting. Mr. Peterson continues to finalize plans for Phase 2C which consists of the bus shelter lighting and concrete slab, and the *Aspirations* artwork. Phase 2C will be a small works project and is expected to be completed by spring 2019. Additionally, the City is currently installing the HAWK rapid flashing beacon for pedestrian crossing on Columbia Drive and Date Street.

Commissioner Moak stated the Port, as part of an Interlocal Agreement (ILA) with the City, agreed to bid the tasting room project prior to bidding Vista Field.

Mr. Arntzen stated the Port and City have a great relationship and the fact that the Commission agreed to bid the tasting room prior to Vista Field emphasizes the commitment to revitalize this part of Kennewick. There has been significant participation and investment by both parties and in any great relationship, there is give and take.

C. Meeting with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR)

Mr. Arntzen recently had lunch with Erik Quaempts, interim executive director of CTUIR. Mr. Quaempts is an enrolled member of the Yakima Nation and worked as the Director of Natural Resources of the CTUIR when Don Sampson was the Executive Director. Mr. Arntzen believes the Port has a great friend in Mr. Quaempts.

Mr. Arntzen and Mr. Quaempts discussed the rivershore reconveyance and Mr. Quaempts thanked the Port for their support on the issue. There was a lot of respect in Mr. Quaempts assessment of the Port's approach, position, and actions as stewards of the Tribes regarding the reconveyance. Mr. Arntzen feels the CTUIR is very interested in being part of discussion of the discussion on the rivershore transfer and recently, Don Sampson spoke at a community meeting.

Furthermore, Mr. Arntzen discussed the Port's plans to remediate Duffy's Pond. Mr. Quaempts mentioned that their resource department has a strong relationship with the Port and suggested Mr. Peterson continue to work with Teara Farrow Ferman, Program Manager of the Department of Natural Resources. Mr. Quaempts believes that the current process Mr. Peterson has been using works.

Mr. Arntzen and Mr. Quaempts also discussed the Memorandum of Understanding, which states that the Port and CTUIR meet yearly; however, Mr. Arntzen left it to Mr. Quaempts' discretion, to have a joint meeting when appropriate.

Commissioner Moak thanked Mr. Arntzen for meeting with Mr. Quaempts and stated it is important to continue an open dialog at staff level.

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D. Columbia Basin College Culinary Institute Saturday Retreat

Mr. Arntzen was invited by Dr. Rebekah Woods to a Culinary Institute retreat at Columbia Basin College (CBC). Thirty participants met to assist CBC with ideas related to the Culinary Institute. CBC prepared a summary for discussion and groups of ten had a chance to individually discuss topics and share comments. Mr. Arntzen stated there was a lot of excitement about the Culinary Institute and the group was on point and enthusiastic.

The executive summary highlighted partnerships with Washington State University Tri-Cities, Tri-Tech and other educational institutions. The group believes the Culinary Institute should dove tail with the Washington wine industry, which is a significant force. Additionally, there was discussion regarding restaurant incubators and establishing a culinary arts district, which are similar businesses such as breweries, restaurants, and supply stores that would be grouped near the Culinary Institute.

Commissioner Moak believes there could be additional opportunities for a Culinary Arts District, given what the Port has developed and are developing and would like more information.

Mr. Arntzen suggested an informal lunch meeting with Ms. Mosely and Dr. Woods and will report back at a later date.

Commissioner Moak thanked Mr. Arntzen for attending the workshop and providing a summary of the afternoon.

E. Cultural Congress Presentation

Mr. Arntzen recently attended the Cultural Congress in Ellensburg and had an opportunity to present with Bellingham Allied Arts Representative and the Ellensburg Economic Development Director. Mr. Arntzen stated the panel discussed how artwork enhances tourism and economic development activities.

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

Commissioners reported on their respective committee meetings.

G. Non-Scheduled Items

1. Commissioner Barnes spoke Troy Stariha, Port of Kalama Commissioner and Washington Public Ports Association (WPPA) President at the WPPA Small Ports Conference. Commissioner Barnes voiced his concerns regarding the proposed inland rail proposal supported by the ports of Tacoma and Benton to Commissioner Stariha.
2. Commissioner Moak reported that the Columbia Basin Badger Club will be holding a community forum regarding the Columbia River Shoreline reconveyance. The event will be held on November 15, 2018 at 11:30 a.m. at the Shilo Inn in Richland. Don Sampson, former chairman of the CTUIR will be in attendance as part of a three panel discussion, along with Gary Peterson and Jim Wise.

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3. Ms. Bader Inglima reported that the Port recently went out for a Request for Proposal (RFP) to update the Port website. The Port received nine proposals and selected Artmil Design to redesign the website.

Ms. Bader Inglima thanked the Commission for their continued investment in art and shared recent photos of The Willow Fish Trap Baskets at The Gathering Place. Ms. Bader Inglima stated the continued investment is making Clover Island an attractive destination.

Ms. Bader Inglima stated Duffy's Pond is becoming an attractive location and shared a photo of a family photo shoot. Ms. Bader Inglima thanked Mr. Arntzen for his vision and the Port maintenance team and Coyote Work Crew for their continued work on the trail and pond.

Ms. Bader Inglima reported that the *Tri-City Journal's* business magazine *FOCUS* featured articles about Southridge, Downtown Kennewick, the Waterfront and the Port's continued investment in Columbia Gardens and Vista Field.

4. Mr. Peterson stated the Kennewick City Council recently considered a series of Comprehensive Land Use Amendments in the Comprehensive Plan. Two car dealerships on Columbia Drive requested the Urban Mixed Use (UMU) designation for future redevelopment of site. Additionally, the Planning Commission approved to establish 90 acres as UMU off the Bob Olsen Parkway; however, City Council unanimously denied the request and asked the applicant for more information and homework and referenced the Port's thorough process.
5. Ms. Hanchette recently met with an experienced developer who is interested in Port property that is part of an opportunity zone. Ms. Hanchette toured one of his developments and stated the development was quality construction with nice elements. The next step is for the staff to appraise the property for the Commission to establish price. Ms. Hanchette stated the developer is flexible and ready to prepare a proposal.

Mr. Arntzen stated Ms. Hanchette toured an apartment complex, which is needed for the area to become successful. The properties would be middle income level properties and would help support activities and amenities in the area.

Commissioner Novakovich inquired if the developer is willing to build something that will satisfy pattern language that was citizen driven.

Ms. Hanchette shared the design from Gary Black and Integrated Structures Inc. (ISI) and other elements from the pattern language, such as: the Christmas tree, a public space, a grand entrance, the trail system and commercial elements. The developer is willing to build for a need, is flexible and amenable to incorporating specific elements.

Mr. Arntzen stated staff will continue to perform due diligence; however, there are policy issues that will need to be addressed.

Commissioner Moak stated the developer can find ways to meld in the elements from the pattern language.

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Mr. Arntzen stated Ms. Luke can draft a detailed Letter of Intent (LOI) which addresses the elements the Commission would like to see.

Commissioner Barnes is interested in exploring the potential and believes a non-binding LOI will protect the Port.

Mr. Arntzen stated staff will continue to work with the developer and ask Mr. Black to review the developer's proposal.

Commissioner Barnes stated if the developer could provide an outline of project, Mr. Black can review and discuss what elements would work with the pattern language.

Commissioner Moak appreciates Ms. Hanchette meeting with the developer and her continued due diligence.

PUBLIC COMMENTS

Boyce Burdick, 414 Snyder Street, Richland. The second concert of the Mid-Columbia Symphony is on November 10, 2018 at Richland High School. The symphony titled "Rome, the Eternal City," will feature music *Tosca* and *La Dolce Vita*, with special guests, the Mid-Columbia Mastersingers Youth Choirs.

COMMISSIONER COMMENTS

No comments were made.

Commissioner Moak anticipates the Executive Session will last approximately 20 minutes, Personnel, per RCW 42.30.110(1)(g) with 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 4:41 p.m.

EXECUTIVE SESSION

A. Personnel, per RCW 42.30.110(1)(g)

Commissioner Moak convened the meeting into Executive Session at 4:41 p.m. for approximately 20 minutes.

Ms. Scott extended the Executive Session 15 minutes at 5:01 p.m.

Ms. Schumacher extended the Executive Session 5 minutes at 5:16 p.m.

Commissioner Moak adjourned the Executive Session at 5:21 p.m.

Commissioner Moak reconvened Regular Commission Meeting at 5:22 p.m.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

OCTOBER 23, 2018 MINUTES

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Commissioner Moak stated the Commission concluded discussion on Personnel, per RCW 42.30.110(1)(g), reviewing the CEO's goals for 2019-2020 and remaining goals from 2017-2018 and reviewed the CEO's performance evaluation.

MOTION: *Commissioner Barnes moved for approval of the Chief Executive Officer's (CEO) 2018 Performance Evaluation and in accordance with the CEO contract, deeming the CEO's performance to be exceptional; Commissioner Novakovich seconded.*

Discussion:

Commissioner Novakovich stated the CEO has done an amazing job for the Port, by accomplishing tasks set forth with limited resources and tackling issues as they arise.

Commissioner Barnes stated the Port has had an exceptional few years and the CEO has done an exceptional job building staff and creating an environment where staff can excel.

Commissioner Moak concurs with Commissioner Novakovich and Commissioner Barnes and stated the CEO has excelled in creating new partnerships and furthering established partnerships. All those partnerships took hard work on the CEO's part, and the personal investment and commitment surrounding those partnerships benefited the Port, staff, and the Commission. Thank you.

With no further discussion, all in favor, 3:0. Motion carried unanimously.

MOTION: *Commissioner Novakovich moved to approve the completed three goals for 2017-2018 in accordance with the CEO's Goals and Objectives Update dated October 23, 2018 (Exhibit A); Commissioner Barnes seconded. With no further discussion, all in favor, 3:0. Motion carried unanimously.*

MOTION: *Commissioner Barnes moved for approval the 2019-2020 goals and objectives in accordance with Exhibit B; Commissioner Novakovich seconded.*

Discussion:

Commissioner Moak hopes to see the CEO accomplish all of the goals, because they are great goals.

With no further discussion, all in favor, 3:0. Motion carried unanimously.

Commissioner Moak expressed his appreciation to the Performance Evaluation Committee, Mr. Kooiker, Ms. Luke, and Commissioner Barnes. Commissioner Moak thanked the Committee for their time and effort that went into the performance evaluation.

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Mr. Arntzen appreciates the evaluation process and thanked the Commission for their guidance. Mr. Arntzen stated that his team has helped the Port reach the level of success and he appreciates being part of the team.

ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 5:30 p.m.

APPROVED:

**PORT of KENNEWICK
BOARD of COMMISSIONERS**

Thomas Moak, President

Don Barnes, Vice President

Skip Novakovich, Secretary



AGENDA REPORT

TO: Port Commission

FROM: Amber Hanchette, Director of Operations & Real Estate

MEETING DATE: November 13, 2018

AGENDA ITEM: Resolution 2018-23; to approve a lease with Carbitex LLC

I. REFERENCE(S): Resolution 2018-23 and Lease Agreement

II. FISCAL IMPACT: \$104,708.76 (including LET)

III. DISCUSSION:

Carbitex LLC has been an Oak Street Industrial Park tenant with the Port of Kennewick since 2013. They started operations with 2,915 square feet of office and industrial space in development building C. January 1, 2014 Carbitex graduated to 6,445 square feet of office and industrial space in development building B and quickly added an additional 4,990 square feet of space in the same building at the end of 2014.

Carbitex leaders are requesting an additional 5,165 square feet of office and warehouse space in development building B to facilitate rapid business expansion including the addition of over \$1 million of new equipment.

Key parameters of the negotiated lease are:

- Lease 16,600 square feet of office and industrial space for flexible carbon fiber cloth manufacturing, research and development;
- Location – 1426 E. 3rd Ave. Development Building B;
- Lease rate - \$0.43 per square foot
- A continued lease commitment until December 31, 2019;
- Tenant responsible for separately metered electricity, water & sewer;
- According to Port of Kennewick Policies and Procedures, POK-CEO-DOA, 1.2.2, adopted by Resolution 2015-29; *Leases in which the total monthly rental amount exceeds \$5,000.00 per month (excluding LET, utilities, and other ancillary items).*

IV. STAFF RECOMMENDATION:

Approve a lease with Carbitex for 16,600 square feet of space in the Oak Street Industrial Park Development Building B as negotiated, effective November 15, 2018.

V. ACTION REQUESTED OF COMMISSION:

Motion: I move approval of Resolution 2018-23 approving a lease with Carbitex for Oak Street Industrial Park development building B and authorizing the Chief Executive Officer to execute the contract.

PORT OF KENNEWICK

Resolution No. 2018-23

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK APPROVING A LEASE AGREEMENT WITH CARBITEX LLC

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

WHEREAS, a 13 month lease for 16,600 square feet of office and industrial warehouse space has been negotiated by Port staff with Carbitex LLC; and

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

WHEREAS, Port staff and the Port attorney have reviewed the proposed Lease Agreement and find it is in proper form and it is in the Port's best interest; and

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

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of Commissioners of the Port of Kennewick hereby approves lease with Carbitex LLC as presented and authorizes the Port's Chief Executive Officer to execute all documents and agreements on behalf of the Port to complete the transaction as specified above.

ADOPTED by the Board of Commissioners of the Port of Kennewick on the 13th day of November 2018.

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

By: _____
THOMAS MOAK, President

By: _____
DON BARNES, Vice President

By: _____
SKIP NOVAKOVICH, Secretary

COMMERCIAL PROPERTY LEASE AGREEMENT

**BETWEEN
PORT OF KENNEWICK,
LANDLORD**

AND

**CARBITEX, LLC,
TENANT**

**OAK STREET INDUSTRIAL PARK
DEVELOPMENT BUILDING B
SUITES B110, B120 & B130**

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PORT OF KENNEWICK LEASE AGREEMENT
(Commercial Property)

Landlord hereby leases to Tenant and Tenant hereby leases and accepts from Landlord the premises hereinafter described on the terms and conditions set forth in this Lease Agreement, hereinafter called "this Lease".

BASIC LEASE PROVISIONS

The following Basic Lease Provisions are hereby incorporated herewith as part of this Lease:

- A. Lease Date: November 15, 2018.
- B. Landlord: Port of Kennewick,
a Washington municipal corporation
- C. Tenant: CARBITEX, LLC
- D. Land: The real property located at 1426 E. 3rd Ave, Suite B110, B120 & B130, Kennewick, WA 99336, (Development Building B), as more particularly described on Exhibit A attached hereto.
- E. Premises: The Premises shall mean the Land, as defined above, and any improvements located thereon.
- F. Permitted Use: Light manufacturing and administrative offices and for such other lawful activities as may be approved by the Port of Kennewick.
- G. Term: Commencing on the Lease Commencement Date and terminating on the Expiration Date.
- H. Lease Commencement Date: November 15, 2018
- I. Expiration Date: December 31, 2019.
- J. Base Rent Calculation: \$0.43 psf 16,600 square feet leasable space
- K. Monthly Base Rent (not including LET): \$7,138.00
- L. Leasehold Tax (LET): Current Washington State Leasehold Tax shall be added to Base Rent. Current effective rate is 12.84%.
- M. Total Monthly Rent (includes LET): \$ 8,054.52
- Tenant to take possession of Suite B110 on November 15, 2018. B110 rent proration for November 2018 (5,165 sf @ .43 psf) = \$1,184.51 plus 12.84% leasehold tax = \$1,336.60. Total rent due for November 2018-\$6,885.00**
- N. Rent Due Date: First day of every month

O. Financial Security: \$ 5,611.31 deposit (ON FILE); (**additional deposit required \$2,443.21**)

P. Landlord's Address for Notices and Rent Payments:

**Port of Kennewick
350 Clover Island Drive
Kennewick, WA 99336**

Q. Tenant's Address for Notices:

**CARBITEX LLC
2839 W. Kennewick Ave Suite 530
Kennewick, WA 99336**

R. Exhibits: Exhibit "A" Legal Description of Premises

ARTICLE 1 PREMISES

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord the Premises, which Premises are more particularly described in the Basic Lease provisions.

ARTICLE 2 USE OF PREMISES

Tenant shall occupy and use the premises for light manufacturing of flexible carbon fiber fabric and administrative offices and for such other lawful activities as may be approved by the Landlord during the lease term and for no other business purpose without the written consent of landlord, which landlord may give or withhold in landlord's sole discretion. Residential use is strictly prohibited. No smoking shall be allowed within any portion of the premises or within twenty-five (25) feet of all entryways.

ARTICLE 3 TERM

3.1 Duration

The Term hereof shall commence on the Lease Commencement Date defined in the Basic Lease Provisions and shall terminate on the Expiration Date defined in the Basic Lease Provisions, unless earlier terminated.

ARTICLE 4 RENT

4.1 Rent

Tenant shall pay to Landlord without prior demand, abatement, deduction, set-off, counter claim or offset, for all periods during the Lease Term, all sums provided in this Article 4 and all other additional sums as provided in this Lease, at the address set forth in the Basic Lease Provisions, payable in lawful money of the United States of America on or before the first (1st) day of each month.

(a) Late Fee

If Tenant shall fail to pay when due any installment of Rent or any other sums due under this Lease on or before the fifteenth (15th) day of any month, a late charge equal to the greater of (i) \$50, or (ii) five percent (5%) of the overdue amount shall be payable by Tenant to reimburse Landlord for costs relating to collecting and accounting for said late payment(s).

(b) Interest.

In addition to any applicable late fees, 12% APR interest, compounded monthly shall be applied to the total unpaid balances beginning the sixteenth (16th) day of any month.

(c) Non-Sufficient Funds (NSF).

If a Tenant check is returned by the bank for any reason, Tenant shall pay a fifty (\$50) dollar fee for costs administrative costs related to collecting and any associated bank fees. Future payments may be required to be made by cash or money order. Landlord and Tenant hereby agree that these charges represent a fair and reasonable estimate of what the Landlord might incur by reason of Tenants late or NSF payment. These fees are due and payable with the current rent payment. Landlord's acceptance of any late charge, interest or NSF fee shall not be deemed an extension of the date rent is due or prevent Landlord from exercising any other rights or remedies under this agreement. The Landlord reserves the right to revise its policy regarding late payment and NSF check charges without notice.

ARTICLE 5 FINANCIAL SECURITY

In compliance with the requirements of the state law, Tenant agrees that it will secure the performance of the rental portion of this Lease by 1) providing a deposit in the amount set forth in the Basic Lease Provisions ~~and a Personal Guaranty in the form as set forth in Exhibit "B"~~, or 2) procuring and maintaining, during the term of this Lease, a corporate surety bond, or 3) by providing other financial security satisfactory to Landlord.

The Bond option shall be in a form and issued by a surety company acceptable to Landlord and shall comply with the requirements of Washington law. Tenant shall obtain such Bond and forward evidence thereof to Landlord within fourteen (14) days of execution of this Lease, but in no event later than the Commencement Date of this Lease. Failure to comply with this requirement shall be grounds for termination of this Lease without notice by Landlord. Such Bond shall be kept always in effect during the term of this Lease; failure to comply with this requirement shall render Tenant in default. The Bond shall be increased annually to reflect any adjustments in annual Rent.

Upon any default by Tenant of its obligations under this Lease, Landlord may retain any Financial Security provided by Tenant and/or collect on the Bond to offset the Tenant's liability to Landlord. Collection on the Bond shall not relieve Tenant of liability, shall not limit any of Landlord's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

ARTICLE 6 TAXES & ASSESSMENTS

6.1 Personal Property Taxes

Tenant shall pay before delinquency all license fees, public charges, taxes and assessments on the furniture, fixtures, equipment, inventory and other personal property of or being used by Tenant in the Premises, whether or not owned by Tenant.

6.2 Additional Taxes/Assessments; Leasehold Excise Tax (LET)

Tenant shall also pay: (a) all special taxes and assessments (including irrigation assessments) or license fees now or hereafter levied, assessed or imposed by law or ordinance, by reason of Tenant's use of the Premises; (b) all business and occupation tax and any tax, assessment, levy or charge assessed on the Rent paid under this Lease; (c) the statutory leasehold excise tax imposed

in connection with the Rent due hereunder or otherwise due as a consequence of this Lease; and (d) any excise, transaction, sales, privilege, or other tax (other than net income and/or estate taxes) now or in the future imposed by the city, county, state or any other government or governmental agency upon Landlord and attributable to or measured by the Rent or other charges or prorations payable by Tenant pursuant to this Lease.

ARTICLE 7 UTILITIES

Tenant acknowledges that Landlord shall have no obligation to provide any utilities or services to the Premises. Tenant shall be solely responsible for the payment of all assessments, charges and/or fees pertaining to the Premises, including, but not limited to, water assessments, charges for public utilities, license and permit fees which may, during the Lease Term, be assessed, levied, charged, confirmed or imposed i) on the Premises or any part thereof, ii) on improvements now or hereafter comprising a part thereof, and iii) on the use or occupancy of the Premises. Tenant shall pay all such assessments, charges and/or fees when due.

Suite B110

Electricity Meters Assigned to Tenant: 250800 (Panel 9), 231554 (Panel 9A)

Water Meters Assigned to Tenant: 74521087

Suite B120

Electricity Meters Assigned to Tenant: 231702 (Panel 8), 231555 (Panel 8A)

Water Meters Assigned to Tenant: 74521088

Suite B130

Electricity Meters Assigned to Tenant: 231702 (Panel 7), 231556 (Panel 7A)

Water Meters Assigned to Tenant: 74521119

ARTICLE 8 INSURANCE

8.1 Insurance

Tenant, at its own expense, shall provide and keep in force all insurance deemed appropriate for the farming and general agricultural purposes that the Premises are to be used and with companies reasonably acceptable to Landlord, including but not limited to the following:

(a) Commercial General Liability Insurance

Commercial general liability (CGL) insurance for the benefit of Landlord and Tenant jointly against liability for bodily injury and property damage for a combined single limit of not less than One Million Dollars (\$1,000,000) for any one occurrence for this location, including coverage for contractual liability and personal injury, with a \$2,000,000 aggregate limit and One Hundred Thousand Dollars (\$100,000) for property damage;

(b) Statutory Workers' Compensation

Statutory Workers' Compensation, including at least \$250,000 Employer's Contingent Liability (Stop Gap) coverage in Tenant's commercial general liability insurance;

(c) Automobile Liability Insurance

Automobile Liability Insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000, including all owned, non-owned and hired vehicles and covering claims for damages because of bodily injury or death of any person or property damage arising out of ownership, maintenance or use of any motor vehicle; and

(d) Property Insurance

Property insurance covering its leasehold improvements to the Premises, furniture, fixtures, equipment, inventory and other personal property located on the Premises (and, at Landlord's election, on all buildings and other improvements now or hereafter existing at the Premises) in an amount of not less than one hundred percent (100%) insurable replacement value with no coinsurance penalty, "Special Form—Causes of Loss", with Flood Insurance if Landlord reasonably deems such insurance to be necessary or desirable, with an Ordinance or Law endorsement and replacement cost coverage to protect against loss of owned or rented equipment and tools brought onto or used at the Property by Tenant.

8.2 Requirements

The foregoing insurance requirements shall be placed with an insurance company or companies admitted to do business in the State of Washington and shall have an A.M. Best's rating of A-/VIII or better. Tenant shall furnish Landlord with a copy or certificate of such policies before the Commencement Date of this Lease and whenever required shall satisfy Landlord that such policies are in full force and effect. Tenant's liability insurance policies shall list Landlord as an additional insured and Tenant's property insurance policies shall reflect Landlord as a loss-payee as its interests may appear, and all of Tenant's insurance policies shall be primary and non-contributing with any insurance carried by Landlord. Such policies shall not be cancelable or materially altered without forty-five (45) days' prior written notice to Landlord. In addition, the policies shall provide for ten (10) days' written notice to Landlord in the event of cancellation for non-payment of premium. Tenant's failure to deliver the policies or certificates to Landlord as required above shall constitute an event of default pursuant to Article 23 hereof.

8.3 Waiver of Subrogation

Each party hereby waives, and each party shall cause their respective property insurance policy or policies to include a waiver of such carrier's, entire right of recovery (i.e., subrogation) against the other party, and the officers, directors, agents, representatives, employees, successors and assigns of the other party, for all claims which are covered or would be covered by the property insurance required to be carried hereunder or which is actually carried by the waiving party.

ARTICLE 9
ACCEPTANCE AND CARE OF PREMISES

Tenant has inspected the Premises and accepts the Premises "AS IS" in its present condition and acknowledges that Landlord is not responsible to provide, and has made no representations or warranties that it will provide, any improvements to the Premises whatsoever. Tenant shall, at its sole cost, keep the Premises in as good working order, cleanliness, repair, and condition, as that which existed when Tenant initially began operating at the Premises. In the event that Tenant fails to comply with the obligations set forth in this Article 9, Landlord may, but shall not be obligated to, perform any such obligation on behalf of, and for the account of Tenant, and Tenant shall reimburse Landlord for all costs and expenses paid or incurred on behalf of Tenant in connection with performing the obligations set forth herein. Tenant expressly waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

ARTICLE 10

ALTERATIONS AND IMPROVEMENTS

Tenant shall not make any alterations, additions, renovations or improvements to the Premises without first obtaining the written consent of Landlord. All alterations, additions, renovations and improvements made shall be at the sole cost and expense of Tenant and shall become a part of the real property and belong to Landlord and shall remain in and be surrendered with the Premises as a part thereof at the termination of this Lease, or be removed from the Premises at Tenant's sole cost at the sole discretion of Landlord by written notice given by Landlord not later than thirty (30) days after expiration or earlier termination of this Lease. Tenant further agrees to indemnify, defend, and hold Landlord and the Premises free and harmless from, and against, any and all damages, injuries, losses, liens, costs or expenses (including attorneys' fees) incurred, claimed or arising out of said work.

Upon lease termination notice for B110, B120 or B130, by either party, Tenant shall employ at own expense a Washington State licensed, bonded and insured contractor to reconstruct all wall penetrations between warehouses and/or offices within 30 days to the same condition as when entered into lease including but not limited to wall construction, paint, materials, building and fire codes.

ARTICLE 11

ACCIDENTS AND INDEMNIFICATION

Tenant shall indemnify Landlord and save it harmless from and against, and shall defend with counsel acceptable to Landlord, any and all suits, actions, damages, claims, liability, and expense in connection with loss of life, bodily or personal injury, or property damage arising from or out of any occurrence in, upon, at or from the Premises, or the occupancy or use by Tenant of the Premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, invitees, licensees, or concessionaires; provided that Tenant shall not be liable to Landlord to the extent such damages, liability, claims or expenses are caused by or result from the negligence or intentional misconduct of Landlord.

Tenant hereby expressly waives claims against Landlord, and Landlord shall not be responsible or liable at any time, for any loss or damage to Tenant's personal property or to Tenant's business, including any loss or damage to either the person or property of Tenant that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting, or adjoining property, unless and only to the extent due to Landlord's gross negligence or intentional misconduct, and in no event shall Landlord be liable for Tenant's consequential damages. Tenant shall store its property in and shall use and enjoy the Premises and improvements at its own risk, and hereby releases Landlord, to the full extent permitted by law and except as expressly provided above, from all claims of every kind resulting in loss of life, personal or bodily injury, or property damage.

Solely for the purpose of effectuating the indemnification obligations under this Lease, and not for the benefit of any third parties (including but not limited to employees of Tenant), Tenant specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Furthermore, the indemnification obligations under this Lease shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under Worker Compensation Acts, Disability Benefit Acts or other employee benefit acts. Tenant shall cause Contractors and their subcontractors and material suppliers to execute similar waivers of industrial insurance immunity. The parties, by their execution hereof, acknowledge that the foregoing provisions of this Article 11 have been specifically and mutually negotiated between the parties.

ARTICLE 12

COMPLIANCE WITH LAWS

Tenant shall comply fully at its sole expense with all federal and state statutes and local or city ordinances (including any zoning ordinances) now or hereafter in force in respect to the Premises and Tenant's activities therein. Tenant warrants and represents to Landlord that Tenant shall use the Premises only for lawful purposes.

ARTICLE 13

MAINTENANCE

Tenant shall keep the premises in a neat, clean, and sanitary condition at all times. Tenant shall make necessary improvements to the existing facilities in order to provide safe conditions, build any new improvements agreed upon and keep all improvements in good condition.

- a) Other Utilities: Tenant shall be responsible for telephone, network connections and interior maintenance.
- b) Property Tax: Landlord will pay property tax on the land and building. But not on Tenant-owned Trade Fixtures, furnishings, equipment and all personal property of Tenant contained in the Premises.
- c) Janitorial: Tenant will provide janitorial service inside the Premises, restrooms and window washing on inside of windows.
- d) Landscaping and Common Area Sweeping: Landlord, at its cost, will provide landscaping care and common area repairs, maintenance, and sweeping outside the building.
- e) Other Maintenance and Repairs: Landlord will maintain exterior of building (except for overhead and/or sliding doors, if any), roof, foundation, and electrical (except for lightbulbs and light fixture ballasts), heating and plumbing, in a good state of repair. Tenant shall pay the reasonable cost of repairs of all damage caused by Tenant, its agents, servants, employees, or invitees within ten (10) days of receipt of an invoice stating the repairs performed and the cost thereof. Tenant shall be responsible for all minor plumbing repairs and maintenance including but not limited to plumbing line blockages and minor leaks. Tenant shall be responsible to replace all light bulbs and light fixture ballasts located in Tenant's leased space. Tenant shall be responsible for the maintenance and repair of all overhead and/or sliding doors located in Tenant's Premises. Landlord shall be responsible for maintenance of lighting in Tenant's shared Premises. Landlord shall be responsible for testing and maintaining interior fire sprinkler systems, smoke detectors, fire extinguishers and alarm systems.
- f) HVAC: HVAC and all mechanical systems shall be in satisfactory operating condition and will be maintained by Landlord during the term of the Lease.
- g) Interruptions: There shall be no abatement of rent and Landlord shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Landlord's reasonable control or in cooperation with governmental request or directions.

ARTICLE 14
LANDLORD'S ACCESS

Landlord shall have the right to inspect the Premises at all reasonable times and enter the same for purposes of cleaning, repairing, inspecting, altering, exhibiting, or improving the Premises, but nothing contained in this Lease shall be construed so as to impose any obligation on Landlord to make any repairs, alterations or improvements not otherwise expressly set forth elsewhere herein.

The Landlord reserves the right to grant easements and other land uses on the Premises to others when the easement or other land uses will not unduly interfere with the use of the Premises by Tenant.

ARTICLE 15
SIGNS AND ADVERTISING

Tenant will not inscribe, post, place, or in any manner display any sign, notice, picture, poster or any advertising matter whatsoever anywhere in or about the Premises, without first obtaining Landlord's written consent thereto.

ARTICLE 16
WASTE AND UNLAWFUL USE

Tenant will not commit or suffer any waste upon the Premises, or make or suffer any nuisance, undue or unseemly noise, or otherwise, and will not do or permit to be done in or about the Premises anything which is illegal or unlawful, or which will be dangerous to life or limb, or which will increase any insurance rate upon the Premises.

ARTICLE 17
SUCCESSORS

All the covenants, agreements, terms and conditions contained in this Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors, marital communities and assigns. Any assignment or subletting of the Premises or any interest in this Lease shall not relieve Tenant of primary responsibility for the performance of the terms and payment of the sums to be performed or paid by Tenant hereunder.

ARTICLE 18
HAZARDOUS MATERIALS

Tenant shall not dispose of or otherwise allow the release of any hazardous waste or materials in, on, or under the Premises, or any adjacent property. Tenant represents and warrants to Landlord that Tenant's intended use of the Premises does not involve the use, production, or disposal of any hazardous waste or materials. As used herein, "**hazardous waste or materials**" includes any substance, waste or material defined or designated as hazardous, toxic or dangerous (or any similar term) by any federal, state, or local statute, regulation, rule or ordinance now or hereafter in effect; In the event Tenant brings or uses hazardous waste or materials on the Premises, Tenant shall, at its sole cost, properly dispose of all such hazardous waste or materials. Tenant shall be responsible for complying with all federal, state and local laws and regulations in regard to the handling of and disposing of hazardous waste or materials, and agrees to indemnify, defend, and hold Landlord harmless from and against all losses, costs, and expenses (including but not limited to site cleanup, investigation, and remediation costs and attorneys fees and costs related thereto) arising from a breach by Tenant of its obligations under this Article 18.

ARTICLE 19

ASSIGNMENT AND SUBLETTING

Tenant shall not transfer, dispose, assign, mortgage, or hypothecate this Lease, in whole or in part, or permit the use of the Premises by any person or persons other than Tenant, or sublet the Premises, or any part thereof (any of which, a “**Transfer**”) without the prior written consent of Landlord in each instance, which may be given, withheld, or conditioned in Landlord’s sole discretion. In no event shall Tenant be released or relieved of any liability hereunder due to any Transfer whether or not consented to by Landlord.

Landlord shall have the right to transfer, dispose, assign, mortgage, or hypothecate this Lease, in whole or in part without the prior written consent of the Tenant. See also Landlord rights to terminate this Lease as set forth in Article 23 below.

ARTICLE 20

SURRENDER OF POSSESSION

20.1 Surrender

At the expiration of the tenancy created hereunder, whether by lapse of time or otherwise, Tenant shall surrender the Premises in substantially the same condition as when tenant first took possession and in good condition and repair, and shall remove all of its personal property, furniture, fixtures, and equipment, and all cabling and wiring installed by or for Tenant. Tenant’s obligations shall include the repair of any damage occasioned by the installation, maintenance or removal of Tenant’s personal property, furniture, fixtures, equipment, and the removal of any generators or storage tanks installed by or for Tenant (whether or not the installation was consented to by Landlord), and the removal, replacement, or remediation of any soil, material or ground water contaminated by Tenant, its agents, contractors, employees, servants, invitees, licensees, or concessionaires, all as may then be required by applicable Laws.

20.2 Removal of Property

In the event of any entry in, or taking possession of, the Premises or upon the termination of this Lease, Landlord shall have the right, but not the obligation, to remove from the Premises all personal property located therein, and may store the same in any place selected by Landlord, including but not limited to a public warehouse, at the expense and risk of the owners thereof, with the right to sell such stored property, upon ten (10) days notice to Tenant, after it has been stored for a period of thirty (30) days or more. The proceeds of such sale shall be applied first to the cost of such sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from Tenant to Landlord under any of the terms hereof, with the balance, if any, to be paid to Tenant.

20.3 Holding Over

If Tenant fails to surrender the Premises at the expiration or earlier termination of this Lease, occupancy of the Premises after the termination or expiration shall be that of a tenancy at sufferance. Tenant’s occupancy of the Premises during the holdover shall be subject to all the terms and provisions of this Lease and Tenant shall pay an amount due on the first of each month of the holdover period, without reduction for partial months during the holdover, equal to 150% of the greater of: (1) the monthly Rent, Leasehold Tax, and any other charge due, for the monthly period immediately preceding the holdover; or (2) the fair market value for gross monthly rental for the Premises as reasonably determined by Landlord. No holdover by Tenant or payment by Tenant after the expiration or early termination of this Lease shall be construed to extend the Term or prevent Landlord from immediate recovery of possession of the Premises by

summary proceedings or otherwise. In addition to the payment of the amounts provided above, if Landlord is unable to deliver possession of the Premises to a new tenant, or to perform improvements for a new tenant, as a result of Tenant's holdover, Tenant shall be liable to Landlord for all damages, including, without limitation, consequential damages, that Landlord suffers from the holdover. Nothing herein shall be construed as Landlord's consent to such holding over.

ARTICLE 21 NOTICES

All notices, requests and demands to be made hereunder shall be in writing at the address set forth in the Basic Lease Provisions, as applicable, by any of the following means: (a) personal service (including service by recognized overnight delivery/courier service, such as UPS or FEDEX); or (b) registered or certified first class mail, return receipt requested. Such addresses may be changed by written notice to the other party given in the same manner provided above. Any notice, request, or demand sent pursuant to clause (a) of this Article 21 shall be deemed received upon such personal delivery or service (or the date of refusal, if personal service or delivery is refused), and if sent pursuant to clause (b), shall be deemed received three (3) days following deposit in the mails.

ARTICLE 22 LIENS AND ENCUMBRANCES

Tenant shall keep the Premises free and clear of any liens and encumbrances arising out of the use and occupancy of the Premises by Tenant. Should Tenant fail to discharge any lien of the nature described in this Article 22 Landlord may, at Landlord's election, pay such claim or post a bond or otherwise provide security to eliminate the lien as a claim against title and the cost thereof shall be immediately due from Tenant as rent under this Lease.

ARTICLE 23 DEFAULT

23.1 Default

The failure to cure, upon 30 days written notice, any one or more of the following events shall constitute a material breach and default of this Lease (each, an "**Event of Default**");

- (a) Any failure by Tenant to pay Rent and Leasehold Tax on the 1st of the month when due, or any other charge when due;
- (b) Any failure by Tenant to observe or perform any other provision, covenant or condition of this.

The failure to cure, upon 15 days written notice, any one or more of the following events shall constitute a material breach and default of this Lease (each, an "**Event of Default**");

- (c) Any failure by Tenant to obtain and keep in full force and effect the insurance coverage(s) required hereunder to be carried by Tenant;
- (d) Any failure to immediately remedy an emergency condition that poses a significant risk of injury or damage;

23.2 Remedies.

- (a) Re-entry and Termination

Upon and during the continuance of an Event of Default, Landlord, in addition to any other remedies available to Landlord at law or in equity, at Landlord's option, may without further notice or demand of any kind to Tenant or any other person:

1. Declare the Lease Term ended and reenter the Premises and take possession thereof and remove all persons therefrom, and Tenant shall have no further claim to the Premises; or
2. Without declaring this Lease ended, reenter the Premises and occupy the whole or any part thereof for and on account of Tenant and collect any unpaid Rent, Leasehold Tax, and other charges, which have become payable, or which may thereafter become payable; or
3. Even though Landlord may have reentered the Premises, thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises.
4. In the event of the insolvency or bankruptcy of the Tenant, Landlord may, at Landlord's option, immediately take full possession of the premises to the exclusion of all persons. Exercising such option shall not alleviate Tenant's obligations under this Lease and Landlord shall have the right to seek all remedies set forth in this Lease.

(b) Express Termination Required

If Landlord reenters the Premises under the provisions of this Article, Landlord shall not be deemed to have terminated this Lease, or the liability of Tenant to pay any Rent, Leasehold Tax, or other charges thereafter accruing, or to have terminated Tenant's liability for damages under any of the provisions of this Lease, by any such reentry or by any action, in unlawful detainer or otherwise, to obtain possession of the Premises, unless Landlord shall have notified Tenant in writing that Landlord had elected to terminate this Lease. Tenant further covenants that the service by Landlord of any notice pursuant to the unlawful detainer statutes of Washington state and surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of or at any time subsequent to the serving of such notices and such election is evidenced by a written notice to Tenant) be deemed to be a termination of this Lease.

(c) Damages

If Landlord elects to terminate this Lease pursuant to the provisions of this Article, Landlord may recover from Tenant as damages, the following:

1. The worth at the time of award of any unpaid Rent, Leasehold Tax, and other charges which had been earned at the time of such termination; plus
2. The worth at the time of award of the amount by which the unpaid Rent, Leasehold Tax, and other charges which would have been earned after termination until the time of award exceeds the amount of such loss Tenant proves could have been reasonably avoided; plus
3. The worth at the time of award of the amount by which the unpaid Rent, Leasehold Tax, and other charges for the balance of the Lease Term after the time of award exceeds the amount of such loss that Tenant proves could be reasonably avoided; plus
4. Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to any costs or expenses incurred by Landlord in (i) retaking possession of the Premises, including reasonable attorneys' fees, (ii) maintaining or preserving the Premises after the occurrence of an Event of Default, (iii) preparing the Premises for reletting to a new tenant, including repairs or unauthorized alterations to

the Premises for such reletting, (iv) leasing commissions, and (v) any other costs necessary or appropriate to relet the Premises; plus

5. At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of Washington State.

(d) Definitions

As used in Paragraphs 23.2(c)1) and 23.2(c)2) above, the "worth at the time of award" is computed by allowing interest at the rate of twelve percent (12%) per annum compounded monthly. As used in Paragraph 23.2(c)3) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank situated nearest to the location of the Property at the time of award plus one (1) percentage point.

(e) No Waiver

The waiver by Landlord of any breach of any term, covenant or condition herein contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach of the same or any other term, covenant or condition of this Lease. The subsequent acceptance of Rent, Leasehold Tax, and other charges due hereunder shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular amount so accepted regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such amount. No covenant, term, or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver shall be in writing and signed by Landlord.

23.3 Interest

Any sum accruing to Landlord under the terms and provisions of this Lease which shall not be paid when due shall bear interest at the interest rate provided herein from the date the same becomes due and payable by the terms and provisions of this Lease until paid, unless otherwise specifically provided in this Lease. The interest rate which shall apply shall be the lesser of (i) twelve percent (12%) per annum, compounded monthly or (ii) the highest rate allowed by applicable law.

ARTICLE 24
ATTORNEYS' FEES AND COSTS

If either party hereto shall file any action or bring any proceeding against the other party arising out of this Lease or for the declaration of any rights hereunder, the prevailing party therein shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party as determined by the court. If either party ("**secondary party**") without its fault is made a party to litigation instituted by or against the other party (the "**primary party**"), the primary party shall pay to the secondary party all costs and expenses, including reasonable attorneys' fees, incurred by the secondary party in connection therewith.

ARTICLE 25 MISCELLANEOUS

25.1 Miscellaneous Provisions

The following miscellaneous provisions shall apply to this Lease:

- (a) Time is of the essence hereof.
- (b) If any portion of this Lease shall be deemed void, illegal or unenforceable, the balance of this Lease shall not be affected thereby.
- (c) This Lease shall be interpreted according to the laws of the State of Washington. The parties agree that the Superior Court of the State of Washington for Benton County shall have sole jurisdiction over any question, claim, loss or injury arising hereunder.
- (d) Tenant acknowledges that, except as expressly set forth in this Lease, neither Landlord nor any other person has made any representation or warranty with respect to the Premises.
- (e) This Lease shall be binding upon the heirs, executors, administrators, successors, and assigns of both parties hereto, except as otherwise provided for herein;
- (f) Landlord does not by this Lease, in any way or for any purpose, become a partner or joint venturer of Tenant in the conduct of its business or otherwise.
- (g) The paragraph and section headings hereof are for convenience only and shall not be used to expand or interpret the meaning of any part of this Lease.
- (h) Landlord shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond Landlord's control, including labor disputes, civil commotion, war, governmental regulations or controls, fire or other casualty, inability to obtain any material or service, or acts of God.
- (i) This Lease and the Exhibits, Riders, and/or Addenda, if any, attached hereto, constitute the entire agreement between the parties. This Lease covers in full each and every agreement of every kind or nature whatsoever between the parties hereto concerning this Lease and all preliminary negotiations, inducements, representations, and agreements of whatsoever kind or nature are merged herein, and there are not oral agreements or implied covenants. Both parties represent they have had the opportunity to seek legal counsel prior to signing this Lease. All Exhibits, Riders, or Addenda mentioned in this Lease are incorporated herein by reference. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed. The captions and section numbers appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe, or describe the scope or intent of any section.

Tenant shall comply with all applicable federal, state and local requirements prohibiting discrimination based on age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability. Tenant and Landlord hereby represent and warrant that they have not employed any broker with regard to this Lease and that they have no knowledge of any broker being instrumental in bringing about this Lease transaction. Each party shall indemnify the other against any expense as a result of any claim for brokerage or other commissions made by any broker, finder, or agent, whether or not meritorious, employed by them or claiming by, through or under them. Tenant acknowledges that Landlord shall not

be liable for any representations of Landlord's leasing agent or other agents of Landlord regarding this Lease transaction except for the representations and covenants of Landlord expressly set forth in this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

PORT OF KENNEWICK

CARBITEX LLC

By:

**Tim Arntzen, Chief Executive
Officer**

Title:

By:

Ron Boninger, President

Title:

Reviewed:

Approved as to form:

By:

Nick Kooiker, Port CFO

Title:

By:

Lucinda Luke, Port Legal Counsel

Title:

STATE OF WASHINGTON

COUNTY OF BENTON_____

ss.

I certify that I know or have satisfactory evidence that Ron Boninger is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the President of Carbitex LLC, a Washington limited liability company, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 201__.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington, residing at _____

My appointment expires _____

STATE OF WASHINGTON

COUNTY OF BENTON_____

ss.

I certify that I know or have satisfactory evidence that Tim Arntzen is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Chief Executive Officer of Port of Kennewick, a municipal corporation, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 201__.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington, residing at _____

My appointment expires _____

PORT OF KENNEWICK
Resolution No. 2018-24

***A RESOLUTION OF THE PORT OF KENNEWICK BOARD OF COMMISSIONERS
APPROVING A CONTRACT AMENDMENT WITH WHITE BLUFFS CONSULTING TO
PREPARE DOCUMENTS AND COORDINATE WITH FOSTER PEPPER PLLC TO SET
UP THE BUSINESS IMPROVEMENT DISTRICT OR EQUIVALENT FOR VISTA FIELD***

WHEREAS, on June 27, 2017 the Port contracted with White Bluffs Consulting for \$44,938 to assist in creating the Business Improvement District for the Port's Vista Field redevelopment; and

WHEREAS, additional supporting documents and legal review are required; and

WHEREAS, White Bluffs Consulting requested an additional \$25,000 to perform these services; and

WHEREAS, Washington State statute requires contract amendments for personal services in excess of 50% of the original contract amount to be approved by the Commission.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Port of Kennewick does hereby authorize the CEO to execute the contract amendment for White Bluffs Consulting to provide additional supporting documents and legal review for the Business Improvement District or equivalent for the Port's Vista Field Redevelopment, in an amount not to exceed \$25,000.

ADOPTED by the Board of Commissioners of the Port of Kennewick on the 13th day of November 2018.

PORT of KENNEWICK
BOARD of COMMISSIONERS

By: _____
THOMAS MOAK, President

By: _____
DON BARNES, Vice President

By: _____
SKIP NOVAKOVICH, Secretary

Bridgette Scott

Subject: Drummers & Dancers at the REACH November 17th

From: Rosanna Sharpe [<mailto:RosannaS@visitthereach.org>]

Sent: Wednesday, November 07, 2018 12:50 PM

To: Tim Arntzen <TA@portofkennewick.org>

Cc: Sara Carswell <sarac@visitthereach.org>

Subject: Drummers & Dancers at the REACH November 17th

Importance: High

Hi Tim,

I hope your year is winding down smoothly. Hard to believe the holidays are on our heels!

I wanted to bring an event to your attention that is coming this month. See description below:

Drummers & Dancers is back!

Drummers and dancers representing the Confederated Tribes of the Umatilla Indian Reservation, including the Nixyáawii Community School Dance Group will perform a variety of social dances in the REACH Entry Hall on Saturday, November 17.

The first performance will begin at 11am and the second performance at 1pm.

One of the unique benefits of the Nixyáawii Community School, is the opportunity to share and promote Tribal Heritage, Culture & Tribal Languages with younger generations. Our Tribal languages are required as second language credits, and the Tribal Drum & Dance History class are offered as an elective.

Mr. Fred Hill Sr. teaches the Tribal Drum & Dance History class and shares his drum and song knowledge in addition to the role and importance of the Big Drum within the tribal community. Mr. Hill shares that, to sit at the Big Drum, is a privileged place to be at. In early times, only knowledgeable men had the privilege to be seated at the big drums to sing for Warriors and Honorable Veterans. Today, that same respect and responsibility is shared, as the young singers have learned to sing the proper Honor Songs.

Last Spring in June, several of Mr. Hill's students, along with a grandson were initiated onto the big drum and now understand the responsibility of caring for the drum, sticks, and drum stand. It's a Right of Passage they have earned and they will carry it into the Next Generation. We hope you enjoy the Songs & Dancers of the Nixyáawii Golden Eagle Wings.

Admission

Adults: \$10

Students/Seniors/Military: \$6

Children 5 and under: Free

REACH Members: Free

If you would like to share with your constituents please do so. If you or your staff need any further information, please have them reach out to Sara who is copied herein. She is our social media guru ☺

Thank you.

Rosanna Sharpe, Executive Director

The REACH

1943 Columbia Park Trail

Richland, WA 99352

www.VisittheREACH.org

p 509-943-4100 x 101

f 509-221-1520

ORANGE TO BLACK

A Community Campaign to support the REACH.

November XX, 2018

Mr. Trevor Fox
Project Leader, Central Washington National Wildlife Refuge Complex
U.S. Fish and Wildlife Service
64 Maple Street
Burbank, WA 99323

Dear Mr. Fox,

The Tri-City community has long been interested in increased public access to the top of Rattlesnake Mountain. As the highest point in our region, Rattlesnake Mountain offers unsurpassed views of the entire 586-square mile Hanford Site, the Tri-City community, the confluences of the Yakima and Snake Rivers with the Columbia River, along with views of Mt. Rainier, Mt. Adams and Mt. Hood in the distance. Rattlesnake Mountain is a tremendously underutilized asset to our community, and we encourage the U.S. Fish and Wildlife Service (USFWS) to provide as much responsible public access as possible.

After careful consideration of the three Alternatives included in the Rattlesnake Unit Draft Supplemental Environmental Impact Statement for Public Access (DSEIS), we agree with the USFWS determination that Alternative B should be the preferred alternative *for now*. We would, however, like for the final plan to require the USFWS to examine further increasing public access similar to Alternative C within five years of plan implementation. In this examination, we request that USFWS work in consultation with regional stakeholders, including the community, and also continue the horseback and personal auto tours provided for in Alternative B. Additionally, we recognize the unique cultural significance of Rattlesnake Mountain to the region's tribes and encourage as much tribal access as reasonably achievable.

We thank the USFWS for your continued efforts to engage with a wide variety of stakeholders and interests to provide public access to Rattlesnake Mountain as required in the FY2015 National Defense Authorization Act. Thank you for your consideration of our input, and we look forward to working with the USFWS on this important effort in the future.

Sincerely,