

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

A GoToMeeting has been arranged to enable the public to listen and make public comments remotely.
To participate remotely, please use the following call-in information:

Via GoToMeeting: 1-866-899-4679, Access Code: 989-355-645

AGENDA

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

March 23, 2021
2:00 p.m.

I. CALL TO ORDER

II. ANNOUNCEMENTS AND ROLL CALL

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF AGENDA

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

- A. Ron Swanby

VI. CONSENT AGENDA

- A. Approval of Direct Deposit and ePayments Dated March 16, 2021
- B. Approval of Warrant Register Dated March 23, 2021
- C. Approval of Special Commission Meeting Minutes March 4, 2021
- D. Approval of Regular Commission Meeting Minutes March 9, 2021

VII. EMERGENCY DELEGATION UPDATE (TIM/AMBER)

VIII. REPORTS, COMMENTS AND DISCUSSION ITEMS

- A. Build Back Better Projects (TANA)
- B. 1135 Shoreline Project Status Update (TANA)
- C. Real Estate Commission Policy (AMBER)
- D. Governance Audit Update (TIM)
- E. 2019 State Auditor's Office Financial Statement Audit (NICK)
- F. Sell and Convey Surplus Property; Resolution 2021-04 (NICK)
- G. Citizen Complaint – Request for Reimbursement of Legal Fees (DON/STEPHEN DIJULIO)
- H. Commission Meetings (formal and informal meetings with groups or individuals)
- I. Non-Scheduled Items (LISA/BRIDGETTE/TANA/NICK/LARRY/AMBER/LUCINDA/TIM/TOM/SKIP/DON)

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

X. ADJOURNMENT

PLEASE SILENCE ALL NOISE MAKING DEVICES



PORT OF KENNEWICK SPECIAL COMMISSION MEETING

DRAFT

MARCH 4, 2021 MINUTES

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

Commission President, Commissioner Don Barnes called the Special Commission Meeting to order at 2:02 p.m. via GoToMeeting Teleconference.

ANNOUNCEMENTS AND ROLL CALL

The following were present:

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

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

PLEDGE OF ALLEGIANCE

Commissioner Barnes led the Pledge of Allegiance.

APPROVAL OF THE AGENDA

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

PUBLIC COMMENT

No comments were made.

REPORTS, COMMENTS AND DISCUSSION ITEMS

A. *Potential Federal Infrastructure/Stimulus Package Project Requests*

Ms. Bader Inglima stated the Port was notified by TRIDEC and the Benton Franklin Council of Governments (BFCOG) that large infrastructure/stimulus packages will be available from President Biden's "Build Back Better" infrastructure plan. While specific details from the plan are still being developed, TRIDEC and BFCOG have requested a list from all jurisdictions regarding any infrastructure related projects they could advocate for at the Senate and House. Senator Murray's office has developed an appropriation request application for significant transportation or infrastructure projects for planning, design, and construction. Ms. Bader Inglima indicated that

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the language in the “Build Back Better” plan focuses on sustainability, clean energy, creation of well-paying jobs, equity and access. Ms. Bader Inglima stated staff pulled together a list of projects for Commission consideration; however, the Commission may pass on the request altogether or suggest another project.

Mr. Arntzen understands this is short notice; however, to meet the deadline of March 15, 2021, staff wanted to get the information to the Commission as soon as possible. Port policies require Commission approval for submission of grants or appropriation matters. Therefore, to allow enough time for the application process, staff requested a Special Meeting for the Commission to discuss the “Build Back Better” plan.

Ms. Bader Inglima stated that including the appropriation application process, Senator Murray’s office would like to discuss the projects to make sure they understand them and are able to move the projects forward.

Mr. Peterson outlined five potential projects that align with the 2021-2022 Work Plan or previous Port projects: (EXHIBIT A)

- Electrical Vehicle Charging Stations: \$240,960
- The Willows infrastructure to expand housing: \$2,416,000
- Columbia Gardens winery production buildings: \$8,960,000
- Vista Field mixed use building: \$10,320,000
- Purchase & remodel J. Lieb Foods Complex: \$47,360,000

Mr. Peterson stated each project meets the criteria outlined in the “Build Back Better” concept.

Commissioner Barnes stated the hangar remodel has been discussed at length and inquired as to why it was left off the list.

Mr. Arntzen stated the Commission directed staff to look at lean uses for the hangars and currently, DPZ is working with a local architectural firm on that project. However, if the Commission would like to consider the hangar remodel as a project for the “Build Back Better” plan, staff will add it to the list.

Commissioner Moak appreciates staff compiling the list for the Commission and inquired if staff has had any conversations with the City of Kennewick regarding the potential projects.

Mr. Peterson spoke with the City Economic Development Coordinator regarding the potential projects and it seems the City is focusing on traditional road infrastructure.

Commissioner Moak inquired if staff is requesting one or multiple projects from the Commission and if there is time for staff to work up the application(s) by the March 15, 2021 deadline.

Mr. Arntzen stated staff has a full workload; however, we recognize the need to be flexible and if a new opportunity presents itself, staff can delay a project or two for a period of time to pursue a worthwhile opportunity. Mr. Arntzen stated it is a policy decision for the Commission to move

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forward on this opportunity with the understanding that it may delay other projects. Mr. Arntzen stated the Commission could prioritize the projects but recognizes there are limitations on staff resources.

Commission and staff discussion ensued regarding the potential “Build Back Better” projects proposed by staff.

PUBLIC COMMENTS

Stephanie Button, 9 North Mayfield Street, Kennewick. Ms. Button is the Executive Director of the Historic Downtown Kennewick Partnership (HDKP) and is thrilled to hear consideration of these projects, in particular the J. Lieb complex. The HDKP has discussed the J. Lieb complex at length and echoes the Commission sentiment that it is a life-time opportunity which would have a tremendous impact on East Kennewick and the Downtown. HDKP has identified that property as an ideal corridor to better connect the historic core of Downtown to the Waterfront. While HDKP is a small non-profit, we are tenacious and would support the Port in exploring what J. Lieb could do for our community under the “Build Back Better” plan. Additionally, the HDKP has been exploring the Electrical Vehicle charging stations for Downtown Kennewick.

Ken Hohenberg, 3900 South Green Street, Kennewick. Mr. Hohenberg thanked the Commission for the discussion and echoed their comments. Mr. Hohenberg complimented the Port staff for pulling together last minute, potential projects which fall under the “Build Back Better” plan. He believes this is a testament to the leadership, flexibility, and commitment of the Port staff to capitalize on opportunities, not only for the constituents in the Port district, but also for the visitors. Mr. Hohenberg stated these are not small projects but are projects that will pay back big dividends to the area.

Mr. Arntzen stated if the Commission decides to put one or all five projects forward for an application, he will move staff resources to make sure the application is completed to the highest of Port standards. Mr. Arntzen cautioned the Commission that some projects will be paused until the applications are completed.

Commissioner Moak would like to see the following projects move forward for application:

- The Willows Infrastructure;
- The Electronic Vehicle Charging Stations;
- The J. Lieb Complex

Commissioner Barnes concurs with Commissioner Moak’s comments and supports the three projects outlined by Commissioner Moak.

Commissioner Novakovich agrees with his fellow Commissioners and stated with the caveat that staff is not penalized for not meeting other requirements laid out by the Commission.

Commissioner Barnes stated the Commission is giving clear direction to staff to pursue the three projects with the understanding that this may affect current staff workload going forward.

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MARCH 4, 2021 MINUTES

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It is the consensus of the Commission to move the following projects forward for the “Build Back Better” plan:

- *The Willows Infrastructure;*
- *The Electronic Vehicle Charging Stations;*
- *The J. Lieb Complex.*

Ms. Bader Inglima stated Senator Murray’s office would like the Port to prioritize the projects if multiple projects are being considered.

Commissioner Barnes inquired if that decision needs to be made today or if staff can reach out to our partners and Senator Murray’s office before the March 9, 2021 Commission Meeting and report back at that time.

Mr. Arntzen believes a few extra days to converse with our partners is not an issue.

B. Non-Scheduled Items

Ms. Bader Inglima stated TRIDEC will be hosting Coffee with Karl focusing on the Ports, which will be held on Tuesday, March 9, 2021 at 9:00 a.m. Mr. Arntzen will be representing the Port of Kennewick, and representatives from the ports of Benton and Pasco will be also be in attendance.

Mr. Arntzen reported that he has been working on a 2021 staff project memo and believes he will be able to share it with the Commission in April.

Commissioner Novakovich stated Chief Hohenberg will be retiring this year after 40 years of service from the Kennewick Police Department. Chief Hohenberg has been a great supporter of the Port of Kennewick’s efforts to redevelopment of Columbia Drive and Clover Island. This region has become an economically feasible and highly desirable destination because of the Chief’s partnership with the Port. Chief Hohenberg’s association with the Port goes way back from his exercise regime on the island to being named Friend of the Port.

MOTION: *Commissioner Novakovich moved to have staff prepare a Resolution for the March 9, 2021 Commission Meeting for approval, honoring Ken Hohenberg for all he has done for the Port of Kennewick, letting him know we appreciate him, hope he never relinquishes the friendship between us and further encouraging other entities to honor him in a similar manner; Commissioner Barnes seconded.*

Discussion:

Commissioner Moak stated *Mr. Hohenberg is not retiring for another year and thinks it is premature. Commissioner Moak would like to wait until he retires and hold him accountable for the next year.*

Commissioner Barnes stated that is a good point and he appreciates Commissioner Moak’s comments.

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Commissioner Moak agrees with Commissioner Novakovich's statement; however, he believes we ought to wait until the Chief actually retires, rather than act on his promises to retire.

With no further discussion, the vote ensued. All in favor 1 Aye (Commissioner Novakovich), 1 Nay (Commissioner Barnes), 1 Abstain (Commissioner Moak) 1:1:1

Commissioner Barnes noted for the record that there was overall support for a Resolution but on a technicality, reserve a formal Resolution for when Chief Hohenberg retires.

PUBLIC COMMENTS

Ken Hohenberg, 3900 South Green Street, Kennewick. Mr. Hohenberg thanked the Commission for the kind words and stated this year will fly by. Thank you for the kind words.

Commissioner Barnes thanked Mr. Hohenberg for his work and service to the community and for his attendance and comments today.

No further comments were made.

COMMISSION COMMENTS

No comments were made.

ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 3:45 p.m.

APPROVED:

**PORT of KENNEWICK
BOARD of COMMISSIONERS**

Don Barnes, President

Skip Novakovich, Vice President

Thomas Moak, Secretary

Biden's "Build Back Better" Infrastructure Plan:

According to the "Build Back Better" Plan, President Biden aims to overhaul the nation's infrastructure in order to make it more sustainable, equitable, and efficient. Additionally, Biden has signed an executive order to ensure the nation is investing in infrastructure, manufacturing, and innovation that is 'Made in America'. In his detailed campaign infrastructure plan, Biden lays out the following issues as urgent priorities:

- Modern infrastructure
 - Schools
 - o Improve indoor air quality and ventilation, access to clean water
 - o Climate-resilient campuses
 - o Green space, clean air, energy-efficient labs and buildings
 - o Upgrade childcare facilities to eliminate lead and mold toxins
 - Weatherized and energy-efficient homes and buildings
 - o Weatherizing 2 million homes over 4 years
 - o Upgrade 4 million offices, warehouses, public buildings
 - Housing development
 - o Invest in low-income areas
 - o Incentivize smart regional planning to connect housing, transit and jobs
 - o Mitigate climate impact of urban sprawl
 - o Common sense zoning and building codes
 - Public transportation
 - o Airports
 - o Ferries
 - o Ports
 - o Roads and bridges
 - In coastal and wetland areas to withstand extreme weather and being washed out
 - Smart roads

- Rails
 - Will use existing federal grant and loan programs from DOT, improve and streamline loan process
 - Work with Amtrak and private freight rail companies to electrify the rail system
 - Passenger rail
 - Start with Northeast Corridor on higher speed rail + build Hudson River Tunnel
 - California High Speed Rail
 - Expand Northeast Corridor to the Southeast
 - End-to-end high speed rail system to connect the coasts through the Midwest and Great West
 - Freight rail:
 - Bridge that connects Oregon and Washington State
 - Complete CREATE project in Chicago
 - Others like these^^
- Maritime transport
 - Jones Act (included in the Executive Order for Made in America)
- Municipal transit
 - All Americans in municipalities of >100,000 people will have quality public transport by 2030
 - Use federal investment to install light rail networks and improve existing bus systems
 - Improve infrastructure for pedestrians, cyclists, micro-mobility vehicles
- Auto infrastructure
 - 500,000 electric vehicle charging stations by 2030
 - High quality workforce training ↗ Electric Vehicle Infrastructure Training Program (EVITP)
- Water systems

- Repair of water pipelines and sewer systems, replacement of lead service pipes
 - Upgrade treatment plants
 - Integration of efficiency and water quality monitoring technology
 - Protecting watersheds and clean water infrastructure
 - Establish systems to monitor and eliminate lead and other contaminants in drinking water supply
 - Hold polluters accountable
- Conservation
 - Invest in research and technology regarding: fire-resistant forests, restoring wetlands, repairing irrigation systems, planting millions of trees, protecting coastal ecosystems, building hiking and biking trails, protecting biodiversity
- Clean energy
 - Battery storage and transmission infrastructure to reduce bottlenecks
 - Plugging abandoned oil and natural gas wells and reclaiming abandoned coal, hardrock and uranium mines
- Energy grids
 - Must be equitable
 - Smart grids that are more resilient to cyber attacks
- Universal broadband
 - Wireless broadband via 5G to every American
 - Focus on equity and access
 - POC, rural areas
- Creation of Advanced Research Projects Agency on Climate – goals:
 - Grid-scale storage at 1/10 the cost of lithium-ion batteries
 - Nuclear reactors that are smaller, safer and ½ cost at current
 - Clean refrigeration and air conditioning
 - Zero net energy buildings at zero cost

- Using renewables to produce carbon free hydrogen at a lower cost than hydrogen from shale gas
 - Technologies such as next gen. electrolyzers
- Carbon-neutral construction materials
- Decarbonizing food and agriculture sectors through soil management and agricultural techniques
- Capturing carbon dioxide in the air and sequestering it deep underground or recycling it into things like cement
- Climate resiliency in defense
 - Climate-related events caused \$8 billion to DOD in 2019
 - Work with Secretaries of Defense and Energy to inventory specific vulnerabilities in infrastructure and mitigate them

*Aside from the topics listed above, I noticed in the language a consistent focus on sustainability and clean energy, the creation of well-paying jobs with the option to unionize, equity and access, and ensuring ‘Made in America’ laws. Nearly every aspect of the plan could be brought back to these four central focuses.

*Other sources not already linked above:

<https://joebiden.com/climate-plan/>

<https://joebiden.com/made-in-america/>

<https://subscriber.politicopro.com/article/2021/01/bidens-narrow-path-to-an-infrastructure-dream-2027816>

"BUILD BACK BETTER" Infrastructure Bill - Conceptual Proposal

Electric Vehicle Charging Stations - Waterfront District & Vista Field

{Design, Construction & Admin}

WHAT: Electric Vehicle (EV) charging stations at various locations with the Historic Water Front District and Vista Field Redevelopment as follows:
 Columbia Gardens, (2) EV stations in the Cedar Street parking lot, (2) EV stations within the 421 Winey building complex;
 Clover Island (2) EV stations in Port admin/ Ice Harbor parking lot, (2) EV stations in Gathering Place parking lot;
 Vista Field (2) EV stations within the Hangar taxi-lane parking lot;

WHY: Provision of EV stations on Port properties allows and encourages the usage of electric vehicles within the community. Providing this infrastructure also enhances the utilization/visitation of businesses in proximity to the EV stations as many EV owners seek and support sites/business which provide this service.

BBB Elements: Ten (10) Electric Vehicle Charging Stations

Complements multi-jurisdictional efforts to improve the Downtown/Historic Waterfront District AND Vista Field
 Enhances opportunities within a federally-designated Opportunity Zone

Building & Site: Historic Waterfront District (Clover Island & Columbia Gardens) and Vista Field Redevelopment

Estimate (10) Stations x \$15,000 per station (charging EQ approx. \$4,000 with remainder dependent upon electrical availability and pavement restoration)

	CONSTRUCTION	SOFT COSTS	EQUIPMENT	SUB-TOTAL	ADMIN	CONTINGENCY	TOTAL
	(percent of Sub-Total)						
<i>per Station</i>		25.00%			3.00%	25.00%	
10 EV x \$10,000 =	\$100,000 +	\$25,000 +	\$32,000 =	\$157,000 +	\$4,710 +	\$39,250 =	\$200,960
10 EV x \$12,500 =	\$125,000 +	\$31,250 +	\$32,000 =	\$188,250 +	\$5,648 +	\$47,063 =	\$240,960
10 EV x \$15,000 =	\$150,000 +	\$37,500 +	\$32,000 =	\$219,500 +	\$6,585 +	\$54,875 =	\$280,960
10 EV x \$20,000 =	\$200,000 +	\$50,000 +	\$32,000 =	\$282,000 +	\$8,460 +	\$70,500 =	\$360,960



"BUILD BACK BETTER" Infrastructure Bill - Conceptual Proposal

The Willows - Infrastructure to expand Housing in Distressed Area

{Design, Construction & Admin}

WHAT: The Willows Infrastructure project will create shovel-ready parcels for expanded housing and business/employment opportunities within a distressed area that has been designated as a federal Opportunity Zone in east Kennewick. The project will construct water, sewer, storm drainage, roads, parking, lights, landscaping and appurtenances to create shovel ready lots in The Willows—a 6.7-acre site owned by the Port of Kennewick and zoned as Urban Mixed Use by City of Kennewick. The project will implement smart regional planning to incorporate transit connections, as well as bike and pedestrian pathways to connect The Willows site with the greater Bi-County region.

WHY: The Willows Infrastructure Project builds upon previous collaborative multi-jurisdictional (port & city, and community-driven master-planning) endeavors to increase the economic resiliency of the surrounding low-income, distressed neighborhood. The Willows is also an in-fill project which takes advantage of the existing surrounding roads, utilities, and other urban services; protects and improves urban waters and the physical environment; protects farmland; and mitigates climate impact from urban sprawl.

BBB Elements: Provides for housing options and investment in a distressed area

Incentivizes smart regional planning to connect housing, transit and job

Mitigates climate impact of urban sprawl

Common sense zoning and building codes—all new urban mixed-use created for this area!

Four (4) Electric Vehicle Charging Stations

Complements multi-jurisdictional efforts to improve the Downtown/Historic Waterfront District

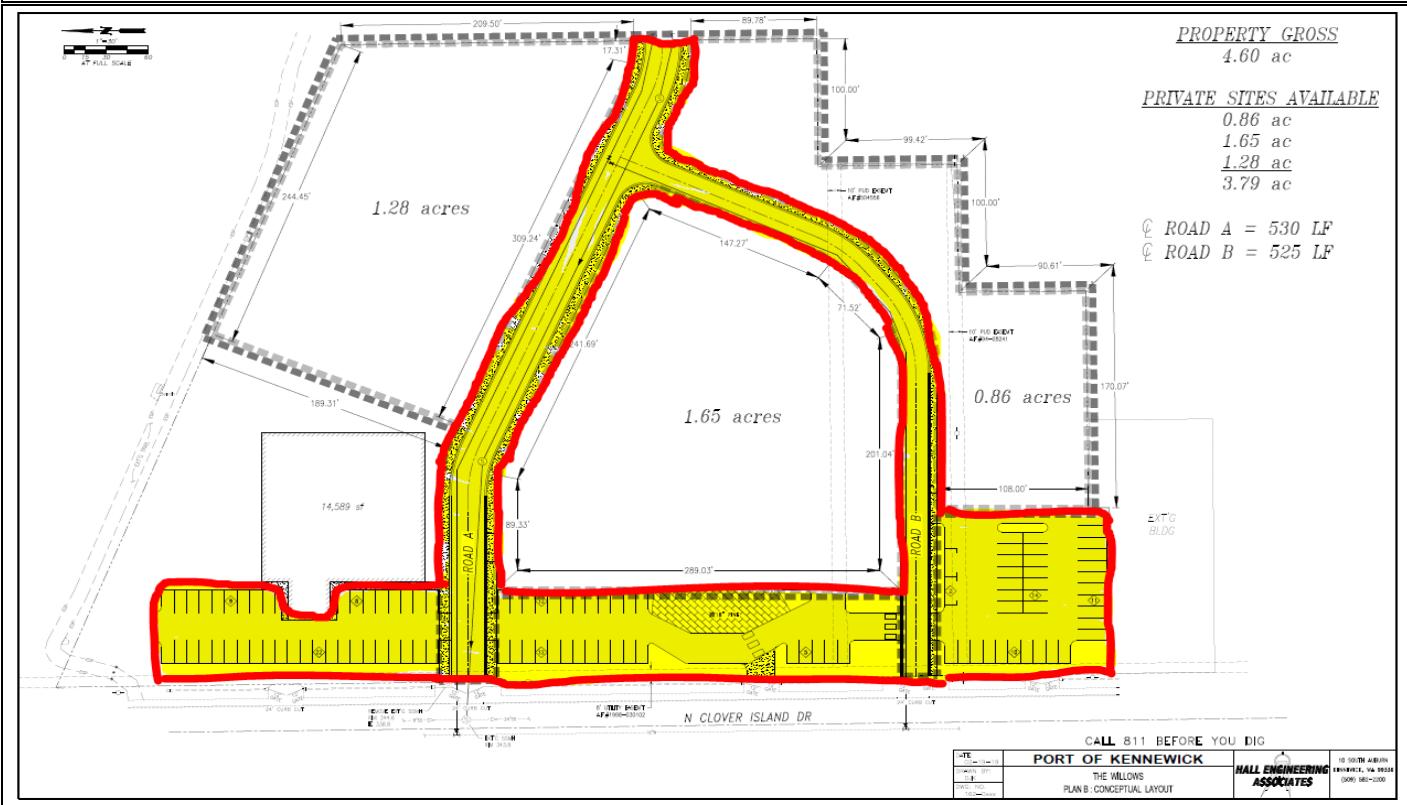
Business and jobs within a federally-designated Opportunity Zone

Provides opportunities for women, minority and businesses of color

Building & Site: 1,050LF roadway, sidewalks & utilities and 105 parking spaces

Construction estimate based upon \$500LF roadway [(1,050 x \$800LF = \$840,000) + (105 spaces x \$ 6,000 per space = \$630,000) = \$1,470,000]

CONSTRUCTION	SOFT COSTS	EQUIPMENT	SUB-TOTAL	ADMIN	CONTINGENCY	TOTAL
(percent of Sub-Total)						
		25.00%		3.00%	25.00%	
1 Lump Sum = \$1,250,000 +	\$312,500 +	\$50,000 =	\$1,612,500 +	\$48,375 +	\$403,125 =	\$2,064,000
1 Lump Sum = \$1,350,000 +	\$337,500 +	\$50,000 =	\$1,737,500 +	\$52,125 +	\$434,375 =	\$2,224,000
1 Lump Sum = \$1,470,000 +	\$367,500 +	\$50,000 =	\$1,887,500 +	\$56,625 +	\$471,875 =	\$2,416,000
1 Lump Sum = \$1,500,000 +	\$375,000 +	\$50,000 =	\$1,925,000 +	\$57,750 +	\$481,250 =	\$2,464,000



"BUILD BACK BETTER" Infrastructure Bill - Conceptual Proposal

Columbia Gardens - Winery Production Buildings

{Design, Construction, Admin & Equipment}

WHAT:

Construction of two wine production buildings with tasting rooms at 320 E. Columbia Gardens within the Columbia Gardens Wine & Artisan Village. Buildings sizes to be 4,500SF \pm and 5,500SF \pm with 66%-75% allocated to production and 25%-33% for tasting room and retail space.

WHY: Value-added agriculture manufacturing activities yielding wine support the local growers, suppliers and results in enhanced economic activity and vibrancy within an Opportunity Zone. Providing buildings and equipment would allow multiple opportunities for small and ethnically diverse businesses to startup and operate in a "cluster" format which is proven to generate synergy.

BBB Elements: Building design utilizing thermal mass wall and roof concept resulting in superior shelf qualities that significantly reduce energy inputs
Construction to utilize energy efficient windows and doors systems

Construction to utilize energy efficient HVAC and lighting systems equipment with energy efficient systems

Utilization of Bio-Filter systems to pre-treat wine effluent prior to discharging to municipal industrial sewer system

Inclusion of 2 electric vehicle charging stations

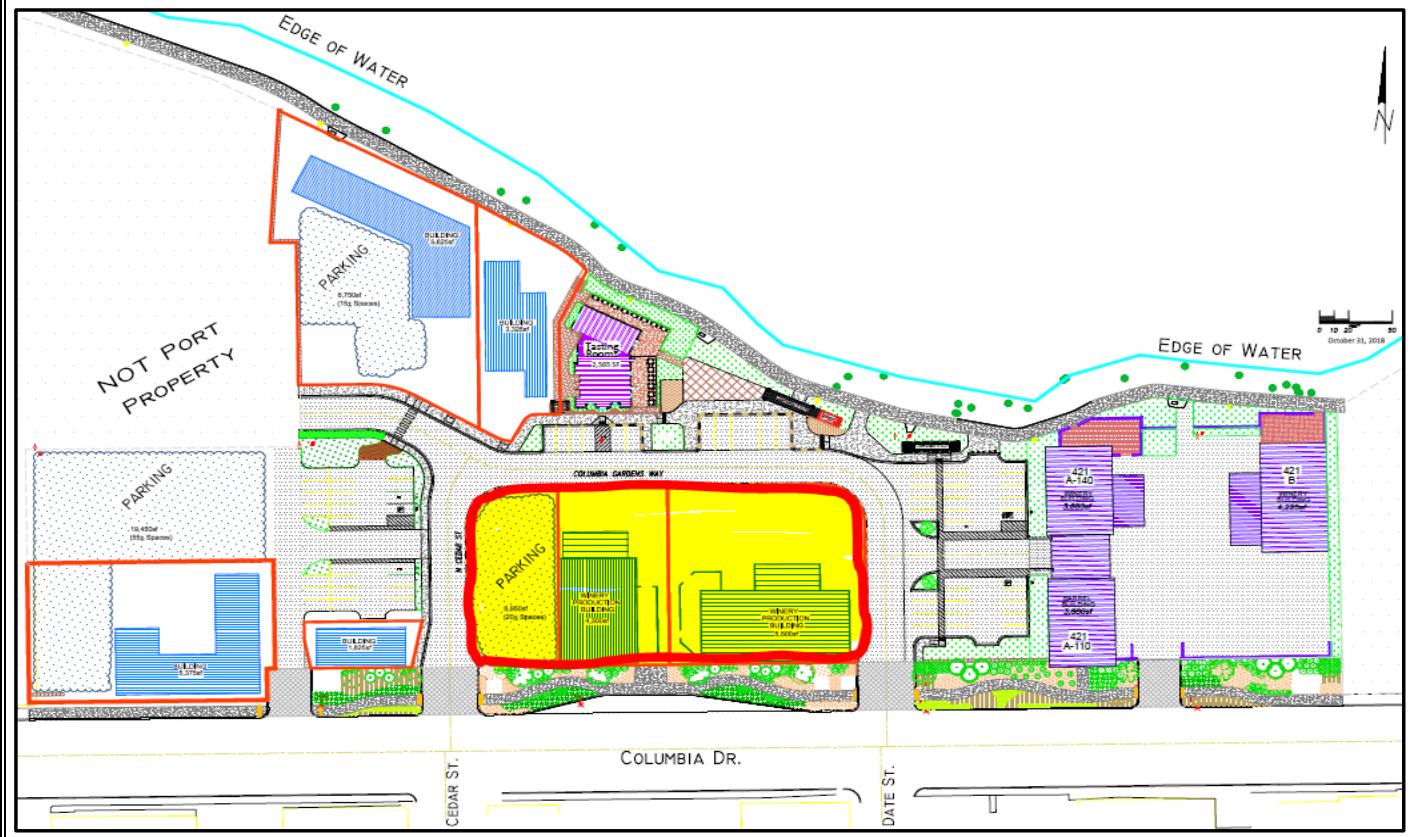
Business and jobs within a federally-designated Opportunity Zone

Complements City and HDKP efforts to enhance Downtown and connect with the Historic Water Front District

Provides opportunities for women, minority and businesses of color

Building & Site: 10,000SF \pm in two buildings with 20 parking spaces on .85 Acres

BUILDING	CONSTRUCTION	SOFT COSTS	EQUIPMENT	SUB-TOTAL	ADMIN	CONTINGENCY	TOTAL
	per SF	25.00%				(percent of Sub-Total)	
10,000 sf x	\$400 =	\$4,000,000 +	\$1,000,000 +	\$5,750,000 +	\$172,500 +	\$1,437,500 =	\$7,360,000
10,000 sf x	\$450 =	\$4,500,000 +	\$1,125,000 +	\$6,375,000 +	\$191,250 +	\$1,593,750 =	\$8,160,000
10,000 sf x	\$500 =	\$5,000,000 +	\$1,250,000 +	\$7,000,000 +	\$210,000 +	\$1,750,000 =	\$8,960,000
10,000 sf x	\$550 =	\$5,500,000 +	\$1,375,000 +	\$7,625,000 +	\$228,750 +	\$1,906,250 =	\$9,760,000



"BUILD BACK BETTER" Infrastructure Bill - Conceptual Proposal

Vista Field Redevelopment - Mixed Use Building

{Design, Construction, Admin & Equipment}

WHAT: Construction of a two-story mixed use building at the NE corner of Azure Drive & Constellation Way within the heart of the Vista Field Redevelopment project. Main floor configured/demised 7,500SF \pm to support small business and start up retail and service businesses. Second floor 5,000SF \pm arraigned to provide administrative support space from ground floor activities.

WHY: Mixed use infill development at the Vista Field site results in space from small and startup businesses that are otherwise precluded from forming due to the significant cost and challenges of construction their own space. Vista Field redevelopment is an in-fill project based upon the principles of New Urbanism, which provides an option to the typical urban sprawl found in the Tri-Cities and Eastern Washington.

BBB Elements: Building design to incorporate passive solar heating and insulation levels to reduce energy inputs

Construction to utilize energy efficient windows and doors systems

Construction to utilize energy efficient HVAC and lighting systems equipment with energy efficient systems

Inclusion of 2 electric vehicle charging stations

Business and jobs within a federally-designated Opportunity Zone

Complements Port, City and Benton County efforts to created a pedestrian friendly, inclusive community within the heart of the city

Provides opportunities for women, minority and businesses of color

Building & Site: 12,500SF \pm on two levels with 25 parking spaces on .65 Acres

BUILDING	CONSTRUCTION	SOFT COSTS	EQUIPMENT	SUB-TOTAL	ADMIN	CONTIGENCY (percent of Sub-Total)	TOTAL
	per SF	25.00%			3.00%	25.00%	
12,500 sf x \$400 =	\$5,000,000 +	\$1,250,000 +	\$250,000 =	\$6,500,000 +	\$195,000 +	\$1,625,000 =	\$8,320,000
12,500 sf x \$450 =	\$5,625,000 +	\$1,406,250 +	\$250,000 =	\$7,281,250 +	\$218,438 +	\$1,820,313 =	\$9,320,000
12,500 sf x \$500 =	\$6,250,000 +	\$1,562,500 +	\$250,000 =	\$8,062,500 +	\$241,875 +	\$2,015,625 =	\$10,320,000
12,500 sf x \$550 =	\$6,875,000 +	\$1,718,750 +	\$250,000 =	\$8,843,750 +	\$265,313 +	\$2,210,938 =	\$11,320,000



"BUILD BACK BETTER" Infrastructure Bill - Conceptual Proposal

J. Lieb Foods Complex - Food & Beverage Manufacturing Cluster

{Acquisition, Design, Remodel, Admin & Operational Startup}

WHAT: Acquisition and Remodel of the former j Lieb Foods "complex" at 10 East Bruneau Street into a specialty food and beverage small business manufacturing cluster. Potential Uses include Breweries, Distilleries, Wineries, Cheese {caseiculture}, Salsas & Spices, Vinegar & Oils, Bakery, Butcher as well as retail sales of specialty foods including a cluster of ethnic grocery stores. Remodel a majority of the building complex, demolish a portion and construct parking lots and outdoor gathering spaces to serve the food & beverage business cluster.

WHY: Manufacturing activities at the ceased in March 2019 when J. Lieb Foods closed the plant and eliminate 40 manufacturing jobs. Prior to J. Lieb Welch's operated the facility with 165 employees until 2006. The loss of the these manufacturing jobs has created a "hole" in the downtown taking both economic activity and vibrancy from the area. Reuse as proposed would allow multiple opportunities for small and ethnically diverse businesses to startup and operate in a "cluster" format which is proven to generate synergy.

BBB Elements:

- Replacement of all HVAC equipment with energy efficient systems
- Replacement of all lighting components with energy efficient systems
- Replacement of all windows and enhance insulation to reduce energy consumption
- Pretreat all Waster Water prior to discharge to the municipal sewer system
- Inclusion of 4 electric vehicle charging stations

Business and jobs within a federally-designated Opportunity Zone
 Complements City and HDKP efforts to enhance Downtown and connect with the Historic Water Front District
 Provides opportunities for women, minority and businesses of color

Building & Site: 209,000SF+ (of which 56,000SF is refrigerated) on 7.73 Acres, built in the 1950's

Prior Users:
 Welch's, 165 employees until 2006
 J. Lieb Food, 40 employees, 2007-March 2019

BUILDING	REMODEL COST	SOFT COSTS	PURCHASE	SUB-TOTAL	ADMIN	CONTINGENCY	TOTAL
	per SF	25.00%			(percent of Sub-Total)		
120,000 sf x \$100 =	\$12,000,000 +	\$3,000,000 +	\$3,250,000 =	\$18,250,000 +	\$547,500 +	\$4,562,500 =	\$23,360,000
120,000 sf x \$200 =	\$24,000,000 +	\$6,000,000 +	\$3,250,000 =	\$33,250,000 +	\$997,500 +	\$8,312,500 =	\$42,560,000
120,000 sf x \$225 =	\$27,000,000 +	\$6,750,000 +	\$3,250,000 =	\$37,000,000 +	\$1,110,000 +	\$9,250,000 =	\$47,360,000
120,000 sf x \$250 =	\$30,000,000 +	\$7,500,000 +	\$3,250,000 =	\$40,750,000 +	\$1,222,500 +	\$10,187,500 =	\$52,160,000

23544
10 E BRUNEAU AVE

REFRESCO BEVERAGES US INC
C/O INDUSTRIAL VALUATION SERVICES, PO BOX
92108
AUSTIN, TX 78709

No Photo Available




Total Market Value
\$2,542,030

1 of 2

Overview Buildings Land Sales More ▾ My Community Auditor Documents More ▾

23528
UNDETERMINED

REFRESCO BEVERAGES US INC
C/O INDUSTRIAL VALUATION SERVICES, PO BOX
92108
AUSTIN, TX 78709

No Photo Available




Total Market Value
\$267,120

Overview Buildings Land Sales More ▾ My Community Auditor Documents More ▾

Key Information			Assessment Details		
Parcel # / Geo ID	10680203000102	Use Code	21 Manufacturing - Food	Improvement Homesite Value	\$0
Township	08	Section	06	Improvement Non-Homesite Value	\$2,405,750
Range	30	Legal Acres	2	Land Homesite Value	\$0
Neighborhood	620100	Subdivision / Section	973	Land Non-Homesite Value	\$136,280
Land Size Acres	1.7943	Land Size Sq Foot	78120.00	Market Value	\$2,542,030

Key Information			Assessment Details		
Parcel # / Geo ID	106802020000800	Use Code	21 Manufacturing - Food	Improvement Homesite Value	\$0
Township	08	Section	06	Improvement Non-Homesite Value	\$0
Range	30	Legal Acres	5	Land Homesite Value	\$0
Neighborhood	620100	Subdivision / Section	874	Land Non-Homestead Value	\$267,120
Land Size Acres	5.4900	Land Size Sq Foot	239144.00	Market Value	\$267,120



PORT OF KENNEWICK REGULAR COMMISSION MEETING

DRAFT

MARCH 9, 2021 MINUTES

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

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

ANNOUNCEMENTS AND ROLL CALL

The following were present:

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

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

PLEDGE OF ALLEGIANCE

Commissioner Moak led the Pledge of Allegiance.

APPROVAL OF THE AGENDA

Commissioner Novakovich stated the following into the record:

MOTION: *Commissioner Novakovich moved to amend something previously adopted by adding the following wording to the end of the second paragraph of Agenda item D of the February 9, 2021 meeting minutes: Total costs: \$399,000; • Investigation approximate cost: \$60,000; • Appeal approximate cost: \$180,000; • Public Records Request approximate cost: \$159,000.*

Commissioner Novakovich made the motion because at the February 23, 2021 Commission Meeting, Commissioner Don Barnes moved, and Commissioner Tom Moak seconded a Motion to have this language removed from the February 9, 2021 Commission Meeting minutes. Both Commissioners Barnes and Moak voted in favor of this Motion. Commissioner Novakovich voted against this Motion.

The language removed had been transcribed directly from a presentation given and Commissioner discussion at the February 9, 2021 Commission Meeting. This language was included in the draft Minutes that had been previously distributed and were already public record.

PORT OF KENNEWICK

REGULAR COMMISSION MEETING

MARCH 9, 2021 MINUTES

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Commissioner Novakovich could not approve of the action of Commissioners Barnes and Moak to remove this language nor could Commissioner Novakovich approve the Amended Minutes with the language extracted. Commissioner Novakovich did not believe this action provided the complete transparency we had promised to the public and the action appeared to be an attempt to hide factual information.

After this action was taken Commissioner Novakovich contacted the National Association of Parliamentarians who referred him to a Professional Registered Parliamentarian. A professional Registered Parliamentarian is the highest designation a Parliamentarian may be granted. Commissioner Novakovich quoted word for word from the opinion he received from this professional regarding Commissioner's Barnes and Moak's removal of language "it might not be too ethical, as indeed it looks like they are trying to hide something."

Since Commissioner Novakovich had just attained status as a Registered Parliamentarian, he was invited to be a guest at a meeting of a Parliamentary Law Unit on Saturday, February 27, 2021. In attendance were several Professional Registered Parliamentarians, as well as the Secretary of the Washington State Association of Parliamentarians, and the Secretary of the National Association of Parliamentarians.

During the "Educational" portion of the meeting, Commissioner Novakovich was asked to present his concern regarding the removal of language from the February 9, 2021 Minutes for the consideration of these professionals. After discussion by the Parliamentary Law Unit, the National Association of Parliamentarians secretary strongly recommended that Commissioner Novakovich move to Amend something previously adopted to have the language added back to the Minutes of the February 9th Commission Meeting. Members of this Parliamentary Law Unit also expressed concern whether Commissioners Barnes and Moak may have violated the Open Public Meetings Act since Commissioner Barnes tried to Call for the Vote with no discussion and Commissioner Moak made no comment regarding removal of the language.

Those at this meeting felt Commissioners Barnes and Moak would not support the Motion Commissioner Novakovich made but assured him that because his Motion was a Main Motion, it would be required to be a permanent part of the Minutes of today's Meeting Minutes. They not only highly recommended Commissioner Novakovich make the Motion but also agreed with the reasoning for the Motion stated by the Professional Registered Parliamentarian's opinion and again Commissioner Novakovich stated word for word "so people would at least be aware that they might be trying to conceal something."

Commissioner Novakovich does not expect a second to his Motion attempting to have this Commission provide complete transparency to the public. But Commissioner Novakovich does want to go on record for the public to know that personally, this Commissioner not only speaks of providing complete transparency to the public but works to deliver on his word. Thank you.

Motion Dies for lack of second.

Commissioner Barnes tried to state that Commissioner Novakovich was Out of Order because the Motion and discussion was under Approval of the Agenda. Commissioner Barnes stated, for the record, Commissioner Novakovich failed to yield the microphone and was Out of Order and continued on with his statements. Rather

PORT OF KENNEWICK

REGULAR COMMISSION MEETING

MARCH 9, 2021 MINUTES

DRAFT

than make an issue of it, Commissioner Barnes allowed Commissioner Novakovich to finish his comments.

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

PUBLIC COMMENT

Ken Hohenberg, 3900 South Green Street, Kennewick. Mr. Hohenberg has had the opportunity to get to know all three Commissioners over the last number of years and even prior to their serving on the Commission. Mr. Hohenberg believes in his heart that all three Commissioners want to do the right thing, but he is concerned with spirited discussions at times, where it is not healthy for the Port of Kennewick, it is not healthy for individual Commissioner's health, and certainly not healthy for the constituents that end up being the people that pay the taxes. Mr. Hohenberg believes in people being professional and standing up for what they believe in, but at the same token, he asked the Commission to stay focused on what is important, and that really is to do great things within the Port district.

No further comments were made.

CONSENT AGENDA

A. Approval of Direct Deposit and E-Payments Dated February 26, 2021

Direct Deposit and E-Payments totaling \$124,508.70

B. Approval of Warrant Register Dated March 9, 2021

Expense Fund Voucher Number 102742 through 102778 for a grand total of \$91,779.16

C. Approval of Regular Commission Meeting Minutes February 23, 2021

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

EMERGENCY DELEGATION UPDATE

Mr. Arntzen and Ms. Hanchette have nothing to report currently regarding the Emergency Delegation.

PRESENTATION

A. Accounting Department Review

Mr. Kooiker provided an update to the Commission regarding the accounting department and the projects they are working on.

REPORTS, COMMENTS AND DISCUSSION ITEMS

A. Build Back Better Projects

Mr. Arntzen stated the Commission came to a consensus at the March 4th Special Commission Meeting to submit three projects for the Build Back Better (BBB) program for federal funding:

- Electrical Vehicle Charging stations at Columbia Gardens and Vista Field;
- The Willows infrastructure;
- J. Lieb Building purchase and rehabilitation.

PORT OF KENNEWICK

REGULAR COMMISSION MEETING

MARCH 9, 2021 MINUTES

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Mr. Arntzen spoke with City of Kennewick City Manager Marie Moseley regarding Port and City BBB projects. Mr. Arntzen stated the City is strictly pursuing infrastructure projects and the Port would not be overstepping if we were to pursue the J. Lieb project. Mr. Arntzen stated Port staff has been working on the BBB projects diligently.

Ms. Bader Inglima and Mr. Peterson spoke with Raquel Crowley from Senator Patty Murray's office and shared the Port's three projects. Ms. Crowley indicated that Senator Murray's office is gathering a project list as a "needs" assessment for the region. They are looking for two items: shovel ready projects that need funding now and a list of potential projects we could complete if we had enough funding. Some of the Senator's priorities are workforce, economic opportunities, empowering communities that have been marginalized, how the development would impact climate change, the environment, social justice including marginalized communities and transitioning families out of poverty.

Ms. Crowley indicated that the Electrical Vehicle Charging stations was a good project and would be considered low hanging fruit because of the cost of the project. Ms. Crowley was very excited about The Willows road and utility infrastructure because there is a significant need for housing in our region. Ms. Crowley suggested the Port work with Lona Hammer, executive director of the Kennewick Housing Authority, as she is well-versed in regional housing needs and accommodating families. Additionally, Senator Murray's office identified the need for veteran's housing and suggested the Port contact the Columbia Basin Veterans Coalition and the Blue Mountain Action Council to strengthen the application. Ms. Crowley was very enthusiastic about the J. Lieb project and felt it could be a transformative project to help build the community back after the pandemic.

Commissioner Moak credited staff for proposing the J. Lieb project, knowing that we are very busy with a variety of projects and knowing that it would take the most time. Commissioner Moak found it very helpful to hear the feedback from the senator's office.

Commissioner Barnes inquired if staff had a recommendation regarding the ranking.

Ms. Bader Inglima stated Senator Murray's office process will be to conduct a needs assessment for the region, appropriation time, and project earmarks. Ms. Crowley suggested the Port consider ranking the projects as follows: 1-The Willows Infrastructure, 2-The J. Lieb Project, 3-Electrical Vehicle Charging stations. Ms. Bader Inglima asked for Commission feedback regarding the rankings.

Commissioner Moak believes the Port should follow the ranking suggested by Senator Murray's office.

Commissioner Barnes concurs with Commissioner Moak.

Commissioner Novakovich cannot support The Willows infrastructure because the public envisioned a different kind of development on Kennewick Waterfront, not low-income housing.

PORT OF KENNEWICK

REGULAR COMMISSION MEETING

MARCH 9, 2021 MINUTES

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Further discussion ensued between the Commission and staff regarding The Willows infrastructure and specific housing within the development.

After much discussion regarding The Willows, the Commission came to a consensus regarding the BBB ranking as follows:

1. The Willows Infrastructure appropriations request and any partner involvement would be consistent with the parameters of the draft Kennewick Waterfront Master Plan which calls for an “urban mixed use” development to include commercial and residential investments that include both a variety of types and income levels for housing. Port staff are directed to contact Lona Hammer of the Kennewick Housing Authority regarding regional housing needs and to request their involvement as a partner in the port’s Build Back Better infrastructure proposal for The Willows; with consideration also given to discussions with the Columbia Veterans Coalition and Blue Mountain Action Council
2. J. Lieb building purchase and remodel
3. Electrical Vehicle Charging Stations on Columbia Drive and at Vista Field

Mr. Arntzen stated staff will move forward and use our best efforts in submitting the application.

Commissioner Moak would prefer staff reach out to our partners before submitting the application.

Commissioner Novakovich stated there has been significant discussion and believes Mr. Arntzen and staff captured the Commission comment and trusts staff to move forward and complete the application.

Commissioner Moak believes Mr. Arntzen has accurately addressed this and staff needs to move forward.

B. Vista Field

Mr. Peterson has been working on the BBB submission and intends to bring Vista Field marketing graphics to the Commission at a future Meeting. Mr. Peterson and Ms. Hanchette had a meaningful conversation with Ms. Plater-Zyberk regarding the Commission comments from the December 11, 2020 Special Meeting for the Vista Field building/design criteria.

C. Kennewick’s Historic Waterfront

Mr. Peterson stated Makers submitted the draft Kennewick Waterfront Master Plan for staff review, which is anticipated to take approximately three weeks. Mr. Peterson stated the Master Plan prepared by Makers identifies a mix of housing styles but does not specifically address a suggested mix of income ranges or unit types or sizes.

PORT OF KENNEWICK

REGULAR COMMISSION MEETING

MARCH 9, 2021 MINUTES

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D. Approval of 2021/22 CEO Goal #10 Governance Audit

Mr. Kooiker presented Resolution 2021-03, which adds the Governance Audit as Goal #10 to the CEO's 2021/22 Goals for Commission consideration.

PUBLIC COMMENT

No comments were made.

MOTION: Commissioner Novakovich moved to approve the Resolution 2021-03 authorizing the addition of Goal #10 “Governance Audit” to the CEO’s 2021/22 Goals and Objectives; Commissioner Moak seconded.

Discussion:

MOTION: Commissioner Barnes moved to amend Exhibit A, Goal #10 Governance Audit, which states “considered complete when presented to the Commission” to “considered complete when accepted by the Commission;” Commissioner Novakovich seconded the amendment.

Mr. Arntzen stated previously, a goal was considered complete when the item is presented to the Commission as Mr. Arntzen can only control if the project is presented, not if the Commission accepts the goal.

Commissioner Novakovich stated Mr. Arntzen is correct and withdrew his support of the amendment.

Commissioner Moak stated it would be up to the Commission to determine if the CEO did not do a good job presenting the report and the Commission would deal with that in a separate way. This allows the CEO to present the report to the Commission and allows the Commission to move forward.

Amendment dies for lack of second.

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

E. Governance Audit

Mr. Arntzen stated staff has been working on the BBB plan and he has not made as much progress on the Scope of Work Consultant review for the Governance Audit as he had anticipated. Mr. Arntzen estimated that he is 95% done and believes he will have the consultant section by the March 23, 2021 Commission Meeting.

F. Washington State House Bill 1410

Mr. Kooiker recently received an email from Ken Spencer, Benton County Treasurer, requesting support against House Bill (HB) 1410 regarding tax collection. The proposed bill seeks to reduce penalties and interest on late taxes to 9% a year. Benton County is requesting support from all special districts.

PORT OF KENNEWICK

REGULAR COMMISSION MEETING

MARCH 9, 2021 MINUTES

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Commissioner Moak inquired if Washington Public Ports Association (WPPA) has a position on HB 1410. Commissioner Moak does not believe the Port should get involved.

Commissioner Novakovich attended the WPPA Legislative Committee and HB 1410 was not discussed; however, the Bill may have already died if it did not pass committee.

Mr. Kooiker stated the Port budgets conservatively, so the impact would be very minimal to the Port if the Bill passed.

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

Commissioners reported on their respective committee meetings.

H. *Non-Scheduled Items*

Ms. Hanchette stated staff has been setting up ecology blocks and boulders in Vista Field to control phase 1 vehicle traffic patterns. The operations team has been prepping the land for marketing and working on vegetation management.

Mr. Arntzen visits Vista Field frequently and expressed his appreciation for the work of Ms. Hanchette and her team: Mr. Boehnke, Mr. Melia, and Mr. Eleshio. With the assistance of some part time labor, the operations teams have done an amazing job on the site.

Commissioner Moak recently drove by Spaulding and inquired if the Bylaws for the Owners Association had been completed.

Ms. Luke stated the Bylaws were put aside over the past year; however, she has been working on the draft documents necessary to transfer those responsibilities to the Owners Association and anticipates presenting the documents to the Commission later this year.

Commissioner Moak noticed that the old Port logo was on the Spaulding sign and stated the Port never adopted the new logo and inquired if there was any plan to remove the old logo and adopt and use the new logo or continue using the new logo by attrition.

Mr. Arntzen does not recall addressing adopting the new logo in the Work Plan. Mr. Arntzen would like to discuss with staff and report back at a future meeting.

Commissioner Novakovich stated HB 1189 Tax Increment Financing (TIF) Bill passed off the floor of the House and was sent to the Senate.

Commissioner Barnes informed the Port that through his attorney, he submitted a letter to the Port of Kennewick, requesting reimbursement for the legal fees that he incurred during the anonymous citizen complaint process and requested that an item for that be added to the Agenda.

PUBLIC COMMENTS

No comments were made.

**PORT OF KENNEWICK
REGULAR COMMISSION MEETING**

MARCH 9, 2021 MINUTES

DRAFT

COMMISSION COMMENTS

No comments were made.

ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 4:28 p.m.

APPROVED:

**PORT of KENNEWICK
BOARD of COMMISSIONERS**

Don Barnes, President

Skip Novakovich, Vice President

Thomas Moak, Secretary

PORT OF KENNEWICK
Resolution No. 2021-03

***A RESOLUTION OF THE PORT OF KENNEWICK
BOARD OF COMMISSIONERS REVISING THE
CEO'S 2021/22 GOALS AND OBJECTIVES***

WHEREAS, the Port of Kennewick Commission approved Resolution 2020-28 on November 10th, 2020, approving the CEO's 2021/22 Goals and Objectives; and

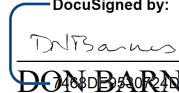
WHEREAS, the Commission desires to include a Governance Audit as part of the CEO's 2021/22 Goals as Objective #10; and

WHEREAS, the Commission deems the Governance Audit as top priority related to the CEO's 2021/22 Goals and Objectives.

NOW, THEREFORE, BE IT HEREBY RESOLVED the Board of Commissioners of the Port of Kennewick hereby adds Goal #10 Governance Audit to the CEO's 2021/22 Goals and Objectives (EXHIBIT A).

ADOPTED by the Board of Commissioners of the Port of Kennewick this 9th day of March, 2021.

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

By:  DocuSigned by:
DON BARNES, President

By:  DocuSigned by:
SKIP NOVAKOVICH, Vice President

By:  DocuSigned by:
THOMAS MOAK, Secretary



AGENDA REPORT

TO: Port Commission
FROM: Amber Hanchette, Director Real Estate & Operations
MEETING DATE: 03/23/2021
AGENDA ITEM: Real Estate Policy Update – Commission Structure

BACKGROUND:

At the Port of Kennewick, purchase and/or sale real estate transactions are guided by the port's real estate policy established through Commission Resolution 2015-29 (see excerpt on page 2). As the port's vision shifts from fewer industrial intensive projects to more waterfront and infill redevelopment, the timing may be appropriate for a handful of minor adjustments to the real estate sales commission structure, offer process and art policy language.

DISCUSSION:

In taking a four-step approach, the discussions could be held over multiple commission meetings to allow adequate time for Commission conversation:

Today

1) Section 2: Commission Structure for Licensed Brokers

The current real estate commission structure is divided into bare land versus improved property then divided again by three different pricing levels.

A single rate real estate commission paid to a licensed real estate broker upon the sale of a port parcel would be more in line with generally accepted private sector practices.
(Exhibit B-Redline version of real estate policy)

Future Commission Meetings

- 2) Section 1.8 - 1.10: Offer Submission Process – Potential update to reflect current conditions.
- 3) Art Policy - Potential update to art policy language. Discuss relationship between art policy and land sale.
- 4) Final Review - Incorporation of all commission comments for final review and resolution.

ACTION REQUESTED OF COMMISSION:

Commission discussion regarding streamlining the real estate commission structure.

Excerpt from Resolution 2015-29, Real or Personal Property Purchases and Sales, Part 2.0 follows:

2. COMMISSION STRUCTURE FOR LICENSED BROKERS.

Commissions will only be paid to licensed real estate brokers. The broker must submit a signed bona fide offer plus a signed appointment from the potential purchaser authorizing the broker to negotiate for the potential purchaser in order to claim the commission. The broker authorization must include the name of the proposed purchaser and the date of their first contact with said purchaser. Unless the provision is strictly complied with, the Port will not pay any claimed commission.

- 2.1.1. After final approval of the sale by the Port Commission and after receipt of all funds due at closing, the Port of Kennewick will pay to the licensed real estate broker negotiating any such sale a commission of four (4) percent based on the following schedule:

A. ~~SALES OF UNIMPROVED REAL PROPERTY (Bare Land)~~

- | | |
|---------------------------------------|-------------------|
| 1. On the first \$500,000 of any sale | Seven (7) percent |
| 2. On the next \$500,000 of any sale | Five (5) percent |
| 3. On any amount over \$1,000,000 | Three (3) percent |

B. ~~SALES OF IMPROVED REAL PROPERTY (With Structure)~~

- | | |
|---------------------------------------|-------------------|
| 1. On the first \$500,000 of any sale | Five (5) percent |
| 2. On the next \$500,000 of any sale | Five (5) percent |
| 3. On any amount over \$1,000,000 | Three (3) percent |



Office of the Washington State Auditor
Pat McCarthy

March 19, 2021

Mr. Nick Kooiker, Chief Financial Officer
Port of Kennewick
350 Clover Island Dr., Ste. 200
Kennewick, WA 99336

Dear Mr. Kooiker:

The Office of the Washington State Auditor (SAO) takes seriously our constitutional mandate as the independent auditor of public accounts and our role in promoting accountability and openness in government. The Port of Kennewick contracted with a certified public accounting (CPA) firm for the audit of its financial statements as of and for the fiscal year ended December 31, 2019, in lieu of an SAO audit.

This letter is for your files and communicates the results of our review of the CPA firm's audit report and documentation. Our review was conducted to assess whether the CPA firm's audit was sufficient for SAO to rely on to meet the Port's audit requirement under state law. It does not constitute an audit of the Port.

Based on our review, we had no concerns with the audit documentation and related reports. Therefore, we accept this audit as meeting the Port's audit requirement under state law.

The CPA firm's completed audit report is considered a public document and will be published with the Port's financial statements and related information on our external website.

If you have any questions regarding this report, please contact us.

Sincerely,

A handwritten signature in black ink that reads "Scott Woelfle, CPA".

Scott Woelfle, CPA
Director for Quality Assurance and Innovation

Cc: Stacy Short, CliftonLarsonAllen, LLP



AGENDA REPORT

TO: Port Commission

FROM: Nick Kooiker, CFO

MEETING DATE: March 23, 2021

AGENDA ITEM: Surplus Property

I. REFERENCE(S): Resolution 2021-04
Exhibit A - List of Surplus Assets

II. FISCAL IMPACT: Approximately \$28,700

III. DISCUSSION: The Port replaced HVAC Roof Top Units at Oak Street Industrial Building that were originally installed between 2000-2006. RCW 53.08.090 provides that the Port Commissioners may authorize the Port Chief Executive Officer to sell and convey property.

IV. RECOMMENDATION: Approve Resolution 2021-04 to surplus assets.

V. ACTION REQUESTED OF COMMISSION:

Motion: I move approval of Resolution 2021-04, authorizing the Port's CEO to surplus Port property as attached in "Exhibit A" and further ratifies and approves all action by port officers and employees in furtherance hereof.

PORT OF KENNEWICK

RESOLUTION 2021-04

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

WHEREAS, the Board of Commissioners of the Port of Kennewick met this 23rd day of March, 2021, a quorum of the Commissioners being present; and

WHEREAS, from time to time it is necessary to surplus items no longer needed for Port District purposes and the Port replaced four worn out HVAC units; and

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

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

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

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

ADOPTED by the Board of Commissioners of Port of Kennewick this 23rd day of March 2021.

PORT OF KENNEWICK BOARD OF COMMISSIONERS

By: _____

DON BARNES, *President*

By: _____

SKIP NOVAKOVICH, *Vice President*

By: _____

THOMAS MOAK, *Secretary*

Exhibit A

SURPLUS ASSET LISTING				
Asset	Disposition	Property Description	Date in Service	Cost
634	Replaced	HVAC Unit - DBA	12/15/2000	\$ 10,406.88
767	Replaced	HVAC Unit - DBA	6/25/2004	\$ 7,445.63
768	Replaced	HVAC Unit - DBA	9/22/2004	\$ 2,978.25
884	Replaced	HVAC Unit - DBA	2/28/2006	\$ 7,868.00



JOEL R. COMFORT, ESQ.
jcomfort@mmclegal.net

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+ LICENSED IN WA & OR
* LICENSED IN WA & ID

March 8, 2021

Ms. Lucinda Luke
Carney Badley Spellman, P.S.
701 Fifth Ave., Suite 3600
Seattle, WA 98104-7010

Re: Commissioner Don Barnes – Demand for Reimbursement

Dear Ms. Luke:

As you are well aware, on December 31, 2020, Judge Kallas ruled in favor of Commissioner Barnes in his appeal of the allegations by Commissioner Novakovich that Commissioner Barnes committed misconduct in his duties as a Port Commissioner. Judge Kallas explicitly held that the Complaint against Commissioner Barnes was “unsubstantiated in its entirety” and that no sanctions would be applied to him. Based on Judge Kallas’ findings and ruling, Commissioner Barnes hereby demands reimbursement of the attorney fees and costs he has incurred defending himself against the Complaint, pursuant to Section 18 of the Port of Kennewick Rules of Policy and Procedure.

Under *Port Rule 5.11*, “the Port shall not indemnify or defend any Commissioner charged with misconduct, except as otherwise provided under Section 18.” Section 18 provides for the indemnification and defense of claims arising from acts or omissions of officials of the Port while performed in the scope of their official duties. *See, Port Rule 18.1.* The Port is required to provide officials such legal representation as may be reasonably necessary to defend a claim or lawsuit filed against the official resulting from any conduct, act or omission performed on behalf of the Port in his or her official capacity, and within the scope of his service with the Port. *Port Rule 18.3.1.*

The determination of whether the official was acting in good faith within the scope of his duties is outlined in *Port Rule 18.3.4.* Normally that determination is made by the Executive Director in consultation with legal counsel. The determination is made based on an investigation of the acts and circumstances surrounding the incident. Given that the various allegations that were made against Commissioner Barnes largely centered on his interactions with the Executive Director, and were based on

March 8, 2021

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evidence provided by the Executive Director, we believe the Executive Director has a conflict of interest in making the determination under *Section 18.3*. Moreover, we believe that given the extensive review and analysis by Judge Kallas, and the substance of her “Decision on Recommended Action”, Commissioner Barnes actions have already been proven to have been made in good faith in the scope of his duties.

Notwithstanding the foregoing, *Section 18.4* lists five exclusions to providing an indemnification and defense, including “action[s] or omission[s] contrary to or not in furtherance of any adopted Port policy.” The process for determining whether these exclusions apply is set forth in *Section 18.7*:

The determination whether an official...shall be afforded a defense by the Port under the terms of this chapter shall be made after a determination pursuant to Section 18.3 as to whether the official or employee was acting within the scope of his...duties. The Executive Director and Port legal counsel shall prepare a recommendation to the Commission. The decision of the Commission shall be final...and shall be based upon a finding that an official...meets or does not meet the criteria of this chapter...The determination as to whether a defense is to be furnished...shall be made without the vote of the Commissioners named in the claim...unless the inclusion of such member or members is required for a quorum; provided, that if a claim or lawsuit affects a quorum or greater number of the members of the Commission, all such affected members shall retain their voting privileges under this Section.

In other words, this is a decision to be made by the Commission, and must be presented to the Commission. Moreover, since the original complaint involved all three commissioners, and the appeal involved two of the commissioners, all of the commissioners are entitled to vote on the decision. However, given the fact that Judge Kallas has *already ruled* that Commissioner Barnes *did not* violate port policy, their work is already done for them. At this point there's nothing to be debated, and the Commissioners simply need to authorize the reimbursement.

Please note that should the Port refuse to authorize this request, Commissioner Barnes has the right under *Port Rule 18.11* to file suit against the Port in the Benton County Superior Court for these amounts, as well as any additional attorneys fees and costs incurred as a result. I hope this is not necessary. Given Judge Kallas' ruling, I'm confident the Superior Court would agree that Commissioner Barnes is entitled to reimbursement under the Port rules. It is time for the Port of Kennewick to act in good faith, and in fairness. It is time to bring this matter to a close.

March 8, 2021
Page 3 of 3

I have enclosed herein redacted copies of the invoices to Commissioner Barnes, related to his defense in this matter. The total fees and costs he has incurred are \$50,729.85. On behalf of Commissioner Barnes, we hereby request that the Commission authorize reimbursement of that amount to him. Not only is this request contemplated and authorized by the Port Rules, the Commission should authorize the reimbursement as a matter of fundamental fairness, particularly in light of the fact that the Port squandered approximately \$400,000 in pursuing this fruitless claim when it could have, and should have been addressed informally years ago.

We look forward to this matter being brought before the Commission.

Sincerely,

MILLER MERTENS & COMFORT, PLLC



Joel R. Comfort
Attorney at Law

Barnes (Port of Kennewick) - Summary of Attorney Fees and Costs

<u>Law Firm</u>	<u>Month/Year</u>	<u>Amount</u>
ROF	May-19	\$ 1,816.00
ROF	Jun-19	\$ 180.00
ROF	Jul-19	\$ -
ROF	Aug-19	\$ 990.00
MMC	Aug-19	\$ 1,320.00
MMC	Sep-19	\$ 4,291.10
MMC	Oct-19	\$ 3,932.50
MMC	Nov-19	\$ 3,685.00
MMC	Dec-19	\$ 3,355.00
MMC	Jan-20	\$ 1,857.75
MMC	Feb-20	\$ 2,915.00
MMC	Mar-20	\$ 2,420.00
MMC	Apr-20	\$ 1,870.00
MMC	May-20	\$ 1,925.00
MMC	Jun-20	\$ 1,677.50
MMC	Jul-20	\$ 467.50
MMC	Aug-20	\$ 1,100.00
MMC	Sep-20	\$ 632.50
MMC	Oct-20	\$ 935.00
MMC	Nov-20	\$ 8,222.50
MMC	Dec-20	\$ 4,482.50
MMC	Jan-21	\$ 907.50
MMC	Feb-21	\$ 247.50
MMC	Work in Progress (Est.)	\$ 1,500.00
TOTAL		\$ 50,729.85

RETTIG FORGETTE ILLER BOWERS, LLP

6725 W. CLEARWATER AVE.
KENNEWICK, WA 99336-1788

509-783-6154

Federal ID No. 91-0988012

ATTORNEYS

DIEHL R. RETTIG 1943-2010
FRANCOIS X. FORGETTE
BRIAN J. ILLER
G. CHARLEY BOWERS

Don Barnes

Statement Date: June 4, 2019
Statement No. 1
Account No. 4819.0000
Page: 1

ACCOUNT - 30 DAYS OVERDUE SHALL BEAR INTEREST OF 1% PER MONTH ON THE UNPAID BALANCE

RE: Port of Kennewick / Vista Field

		HOURS	
05/07/2019	FXF [REDACTED]	1.00	
05/21/2019	FXF [REDACTED]	0.30	
05/22/2019	FXF [REDACTED]	0.10	
05/28/2019	FXF [REDACTED]	1.50	
05/29/2019	FXF [REDACTED]	0.50	
	FXF [REDACTED]	0.25	
	FXF [REDACTED]	2.00	
05/30/2019	FXF [REDACTED]	0.40	
	FOR CURRENT SERVICES RENDERED	6.05	1,815.00

RECAPITULATION

TIMEKEEPER	HOURS	HOURLY RATE	TOTAL
Francois X. Forgette	6.05	\$300.00	\$1,815.00

Photocopy charges	1.00
TOTAL EXPENSES THRU 05/31/2019	1.00
TOTAL CURRENT WORK	1,816.00
BALANCE DUE	<u>\$1,816.00</u>

Don Barnes
Port of Kennewick / Vista Field

Statement Date: 06/04/2019
Statement No. 1
Account No. 4819.0000

We now accept *Visa, Mastercard, Discover and American Express*. Please call for additional information.

Credit card payments are not reflected until they clear our bank account.
Payments received after 05/31/19 may appear on your next statement.
Please reference account number on checks to ensure proper credit.

RETTIG FORGETTE ILLER BOWERS, LLP

6725 W. CLEARWATER AVE.
KENNEWICK, WA 99336-1788

509-783-6154
Federal ID No. 91-0988012

ATTORNEYS
DIEHL R. RETTIG 1943-2010
FRANCOIS X. FORGETTE
BRIAN J. ILLER
G. CHARLEY BOWERS

Don Barnes

Statement Date: July 3, 2019
Statement No. 2
Account No. 4819.0000
Page: 1

ACCOUNT - 30 DAYS OVERDUE SHALL BEAR INTEREST OF 1% PER MONTH ON THE UNPAID BALANCE

RE: Port of Kennewick / Vista Field

		HOURS
06/25/2019	FXF [REDACTED]	
	[REDACTED]	0.50
	FXF [REDACTED]	0.10
	FOR CURRENT SERVICES RENDERED	0.60
		180.00

TIMEKEEPER	RECAPITULATION		TOTAL
Francois X. Forgette	HOURS	HOURLY RATE	
	0.60	\$300.00	\$180.00

PREVIOUS BALANCE	\$1,816.00
TOTAL CURRENT WORK	180.00

06/12/2019	Payment on account. Thank you.	-1,816.00
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BALANCE DUE	<u>\$180.00</u>
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We now accept *Visa, Mastercard, Discover and American Express*. Please call for additional information.

Credit card payments are not reflected until they clear our bank account.
Payments received after 6/30/19 may appear on your next statement.
Please reference account number on checks to ensure proper credit.

RETTIG FORGETTE ILLER BOWERS, LLP

6725 W. CLEARWATER AVE.
KENNEWICK, WA 99336-1788

509-783-6154

Federal ID No. 91-0988012

ATTORNEYS

DIEHL R. RETTIG 1943-2010
FRANCOIS X. FORGETTE
BRIAN J. ILLER
G. CHARLEY BOWERS

Don Barnes

Statement Date: September 5, 2019
Statement No. 4
Account No. 4819.0000
Page: 1

ACCOUNT - 30 DAYS OVERDUE SHALL BEAR INTEREST OF 1% PER MONTH ON THE UNPAID BALANCE

RE: Port of Kennewick / Vista Field

Effective approximately October 14, 2019, the Law Firm of Rettig Forlette
Iller Bowers, LLP, will be moving to 8836 Gage Blvd., Ste #201A, Kennewick,
Washington 99336.

Phones, email and office hours will be intermittent from October 1st through
October 14th while everything is getting transferred over. Thank you for
your patience.

		HOURS	
08/12/2019	FXF	0.50	150.00
	FXF	1.50	450.00
	FXF	1.00	300.00
08/13/2019	FXF	0.30	90.00
08/14/2019	FXF	0.30	n/c
	FOR CURRENT SERVICES RENDERED	3.30	990.00

RECAPITULATION

TIMEKEEPER	HOURS	HOURLY RATE	TOTAL
Francois X. Forlette	3.30	\$300.00	\$990.00

TOTAL CURRENT WORK 990.00

BALANCE DUE \$990.00

Don Barnes
Port of Kennewick / Vista Field

Statement Date: 09/05/2019
Statement No. 4
Account No. 4819.0000

PLEASE SEE THE NOTE ABOVE REGARDING OUR UPCOMING MOVE!

Credit card payments are not reflected until they clear our bank account.
Payments received after 8/31/19 may appear on your next statement.
Please reference account number on checks to ensure proper credit.

MILLER MERTENS & COMFORT PLLC
1020 N CENTER PKWY STE B
KENNEWICK WA 99336-7161
PHONE (509) 374-4200 FAX (509) 374-4229
TAX ID#91-1875775

DON & CHRISTINE BARNES
2616 S KELLOGG ST
KENNEWICK WA 99338-1930

Page: 1
August 30, 2019
Account No: J19304BARNESM
Statement No: 147980

PORT OF KENNEWICK; OUR #J19304

Fees

			Rate	Hours	
08/16/2019	JRC	[REDACTED]	275.00	0.30	82.50
08/20/2019	JRC	[REDACTED]	275.00	4.50	1,237.50
		For Current Services Rendered		4.80	1,320.00

Recapitulation

Timekeeper	Hours	Rate	Total
Joel R. Comfort	4.80	\$275.00	\$1,320.00

Total Current Work 1,320.00

Balance Due \$1,320.00

Please Remit \$1,320.00

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Payments received after the 20th are not reflected on this statement. We accept VISA, MasterCard, American Express and Discover.

**MILLER MERTENS & COMFORT PLLC
1020 N CENTER PKWY STE B
KENNEWICK WA 99336-7161
PHONE (509) 374-4200 FAX (509) 374-4229
TAX ID#91-1875775**

DON & CHRISTINE BARNES
2616 S KELLOGG ST
KENNEWICK WA 99338-1930

Page: 1
September 30, 2019
Account No: J19304BARNESM
Statement No: 148855

PORT OF KENNEWICK; OUR #J19304

			<u>Fees</u>		
			Rate	Hours	
08/22/2019	JRC	[REDACTED]	275.00	0.90	247.50
08/23/2019	JRC	[REDACTED]	275.00	2.50	687.50
08/24/2019	JRC	[REDACTED]	275.00	0.20	55.00
08/25/2019	JRC	[REDACTED]	275.00	0.20	55.00
08/26/2019	JRC	[REDACTED]	275.00	2.50	687.50
08/27/2019	JRC	[REDACTED]	275.00	2.40	660.00
08/28/2019	JRC	[REDACTED]	275.00	1.90	522.50
08/29/2019	JRC	[REDACTED]	275.00	0.80	220.00
08/30/2019	JRC	[REDACTED]	275.00	0.30	82.50
09/02/2019	JRC	[REDACTED]	275.00	0.40	110.00

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2
September 30, 2019
Account No: J19304BARNESM
Statement No: 148855

			Rate	Hours	
09/03/2019	JRC	[REDACTED]	275.00	1.10	302.50
09/04/2019	JRC	[REDACTED]	275.00	0.20	55.00
09/11/2019	JRC	[REDACTED]	275.00	1.10	302.50
09/12/2019	JRC	[REDACTED]	275.00	0.20	55.00
09/18/2019	JRC	[REDACTED]	275.00	0.40	110.00
09/20/2019	JRC	[REDACTED]	275.00	0.50	137.50
For Current Services Rendered				15.60	4,290.00

Recapitulation				
Timekeeper		Hours	Rate	Total
Joel R. Comfort		15.60	\$275.00	\$4,290.00

Expenses

08/28/2019	Photocopies	0.60
08/28/2019	Postage	0.50
	Total Expenses	<u>1.10</u>
	Total Current Work	4,291.10
	Previous Balance Due	\$1,320.00

Payments

09/10/2019	Payment received - Check #4428 - thank you	-1,320.00
	Balance Due	<u>\$4,291.10</u>
	Please Remit	<u>\$4,291.10</u>

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Payments received after the 20th are not reflected on this statement. We accept VISA, MasterCard, American Express and Discover.

**MILLER MERTENS & COMFORT PLLC
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DON & CHRISTINE BARNES
2616 S KELLOGG ST
KENNEWICK WA 99338-1930

Page: 1
October 31, 2019
Account No: J19304BARNESM
Statement No: 149348

PORT OF KENNEWICK; OUR #J19304

			<u>Fees</u>		
			Rate	Hours	
09/21/2019	JRC	[REDACTED]	275.00	0.40	110.00
09/23/2019	JRC	[REDACTED]	275.00	0.60	165.00
09/24/2019	JRC	[REDACTED]	275.00	0.10	27.50
09/26/2019	JRC	[REDACTED]	275.00	0.20	55.00
09/27/2019	JRC	[REDACTED]	275.00	0.20	55.00
10/02/2019	JRC	[REDACTED]	275.00	0.20	55.00
10/04/2019	JRC	[REDACTED]	275.00	1.10	302.50
10/08/2019	JRC	[REDACTED]	275.00	1.40	385.00
10/09/2019	JRC	[REDACTED]	275.00	2.60	715.00
10/10/2019	JRC	[REDACTED]	275.00	0.20	55.00
10/11/2019	JRC	[REDACTED]			

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2
 October 31, 2019
 Account No: J19304BARNESM
 Statement No: 149348

			Rate	Hours	
10/14/2019	JRC		275.00	4.70	1,292.50
10/17/2019	JRC		275.00	1.20	330.00
10/18/2019	JRC		275.00	0.30	82.50
		For Current Services Rendered	275.00	<u>1.10</u>	<u>302.50</u>
				<u>14.30</u>	<u>3,932.50</u>

Recapitulation

<u>Timekeeper</u>				
Joel R. Comfort		Hours	Rate	Total
		14.30	\$275.00	\$3,932.50

Total Current Work	3,932.50
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Previous Balance Due	\$4,291.10
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Payments

10/09/2019	Payment received - Check #4433 - thank you	-4,291.10
	Balance Due	<u>\$3,932.50</u>
	Please Remit	<u>\$3,932.50</u>

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DON & CHRISTINE BARNES
2616 S KELLOGG ST
KENNEWICK WA 99338-1930

Page: 1
November 27, 2019
Account No: J19304BARNESM
Statement No: 149835

PORT OF KENNEWICK; OUR #J19304

			<u>Fees</u>	Rate	Hours	
10/21/2019	JRC	[REDACTED]		275.00	2.20	605.00
10/23/2019	JRC	[REDACTED]		275.00	1.00	275.00
10/24/2019	JRC	[REDACTED]		275.00	1.30	357.50
10/25/2019	JRC	[REDACTED]		275.00	0.50	137.50
10/28/2019	JRC	[REDACTED]		275.00	1.10	302.50
10/29/2019	JRC	[REDACTED]		275.00	0.20	55.00
10/30/2019	JRC	[REDACTED]		275.00	0.50	137.50
10/31/2019	JRC	[REDACTED]		275.00	0.60	165.00
11/01/2019	JRC	[REDACTED]				

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2
 November 27, 2019
 Account No: J19304BARNESM
 Statement No: 149835

			Rate	Hours	
		[REDACTED]	275.00	0.70	192.50
11/06/2019	JRC	[REDACTED]	275.00	0.20	55.00
11/07/2019	JRC	[REDACTED]	275.00	0.10	27.50
11/08/2019	JRC	[REDACTED]	275.00	0.50	137.50
11/11/2019	JRC	[REDACTED]	275.00	0.50	137.50
	JRC	[REDACTED]	275.00	0.50	137.50
11/12/2019	JRC	[REDACTED]	275.00	0.40	110.00
11/13/2019	JRC	[REDACTED]	275.00	0.30	82.50
11/15/2019	JRC	[REDACTED]	275.00	2.80	770.00
For Current Services Rendered				13.40	3,685.00

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	13.40	\$275.00	\$3,685.00

Total Current Work	3,685.00
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Previous Balance Due	\$3,932.50
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Payments

11/12/2019	Payment received - Check #4449 - thank you	-3,932.50
	Balance Due	\$3,685.00
	Please Remit	\$3,685.00

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Payments received after the 20th are not reflected on this statement. We accept VISA, MasterCard, American Express and Discover.

MILLER MERTENS & COMFORT PLLC
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DON & CHRISTINE BARNES
2616 S KELLOGG ST
KENNEWICK WA 99338-1930

Page: 1
December 24, 2019
Account No: J19304BARNESM
Statement No: 150500

POR OF KENNEWICK; OUR #J19304

<u>Fees</u>			
		Rate	Hours
11/26/2019	JRC	[REDACTED]	275.00 1.00 275.00
12/02/2019	JRC	[REDACTED]	275.00 0.50 137.50
12/03/2019	JRC	[REDACTED]	275.00 2.50 687.50
12/04/2019	JRC	[REDACTED]	275.00 0.80 220.00
12/06/2019	JRC	[REDACTED]	275.00 0.20 55.00
12/09/2019	JRC	[REDACTED]	275.00 0.80 220.00
12/11/2019	JRC	[REDACTED]	275.00 0.50 137.50
12/12/2019	JRC	[REDACTED]	275.00 0.50 137.50
12/13/2019	JRC	[REDACTED]	275.00 0.20 55.00
	JRC	[REDACTED]	275.00 2.30 632.50
	JRC	[REDACTED]	275.00 0.40 110.00
12/20/2019	JRC	[REDACTED]	275.00 2.50 687.50
For Current Services Rendered			
			12.20
			<u>3,355.00</u>

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

December 24, 2019

Account No: J19304BARNESM

Statement No: 150500

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	12.20	\$275.00	\$3,355.00

Total Current Work 3,355.00

Previous Balance Due \$3,685.00

Payments

12/06/2019	Payment received - Check #4457 - thank you	-3,685.00
	Balance Due	<u>\$3,355.00</u>
	Please Remit	<u>\$3,355.00</u>

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TAX ID#91-1875775

DON & CHRISTINE BARNES
2616 S KELLOGG ST
KENNEWICK WA 99338-1930

Page: 1
January 29, 2020
Account No: J19304BARNESM
Statement No: 150972

PORT OF KENNEWICK; OUR #J19304

Fees

			Rate	Hours	
12/30/2019	JRC	[REDACTED]	275.00	0.30	82.50
01/07/2020	JRC	[REDACTED]	275.00	0.10	27.50
01/10/2020	JRC	[REDACTED]	275.00	1.50	412.50
01/13/2020	JRC	[REDACTED]	275.00	0.90	247.50
01/14/2020	JRC	[REDACTED]	275.00	0.40	110.00
01/15/2020	JRC	[REDACTED]	275.00	0.70	192.50
01/16/2020	JRC	[REDACTED]	275.00	2.10	577.50
01/17/2020	JRC	[REDACTED]	275.00	0.30	82.50
01/20/2020	JRC	[REDACTED]	275.00	0.30	82.50
For Current Services Rendered					
				<u>6.60</u>	<u>1,815.00</u>

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	6.60	\$275.00	\$1,815.00

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

January 29, 2020

Account No: J19304BARNESM

Statement No: 150972

Expenses

10/14/2019	Photocopies [REDACTED]	42.75
	Total Expenses	<u>42.75</u>
	Total Current Work	1,857.75
	Previous Balance Due	\$3,355.00

Payments

12/30/2019	Payment received - Check #4467 - thank you	-3,355.00
	Balance Due	<u>\$1,857.75</u>
	Please Remit	<u>\$1,857.75</u>

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express and Discover.

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1020 N CENTER PKWY STE B
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PHONE (509) 374-4200 FAX (509) 374-4229
TAX ID#91-1875775**

DON & CHRISTINE BARNES
2616 S KELLOGG ST
KENNEWICK WA 99338-1930

Page: 1
February 28, 2020
Account No: J19304BARNESM
Statement No: 151445

PORT OF KENNEWICK; OUR #J19304

<u>Fees</u>			
		Rate	Hours
01/21/2020	JRC [REDACTED]	275.00	0.10
01/22/2020	JRC [REDACTED]	275.00	0.10
01/24/2020	JRC [REDACTED]	275.00	0.20
01/27/2020	JRC [REDACTED]	275.00	3.60
01/28/2020	JRC [REDACTED]	275.00	0.70
01/29/2020	JRC [REDACTED]	275.00	1.00
01/30/2020	JRC [REDACTED]	275.00	0.20
01/31/2020	JRC [REDACTED]	275.00	1.40
02/05/2020	JRC [REDACTED]	275.00	0.20
02/10/2020	JRC [REDACTED]	275.00	1.90
	JRC [REDACTED]	275.00	0.30
02/11/2020	JRC [REDACTED]	275.00	0.80
02/19/2020	JRC [REDACTED]	275.00	0.10

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

February 28, 2020

Account No: J19304BARNESM

Statement No: 151445

	Rate	Hours	
For Current Services Rendered		10.60	2,915.00

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	10.60	\$275.00	\$2,915.00

Total Current Work	2,915.00
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Previous Balance Due	\$1,857.75
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Payments

02/06/2020	Payment received - Check #4478 - thank you	-1,815.00
02/12/2020	Payment received - Check #4479 - thank you	-42.75
	Total Payments	-1,857.75
	Balance Due	<u>\$2,915.00</u>
	Please Remit	<u>\$2,915.00</u>

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express and Discover.

**MILLER MERTENS & COMFORT PLLC
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DON & CHRISTINE BARNES
2616 S KELLOGG ST
KENNEWICK WA 99338-1930

Page: 1
March 23, 2020
Account No: J19304BARNESM
Statement No: 151507

PORT OF KENNEWICK; OUR #J19304

Interim Statement

<u>Fees</u>			
Date	Attorney	Rate	Hours
02/21/2020	JRC	275.00	0.10
02/24/2020	JRC	275.00	0.70
02/26/2020	JRC	275.00	0.20
02/28/2020	JRC	275.00	1.80
	JRC	275.00	1.50
	JRC	275.00	0.40
03/02/2020	JRC	275.00	0.30
03/04/2020	JRC	275.00	0.60
03/05/2020	JRC	275.00	1.50
03/06/2020	JRC	275.00	0.20
03/09/2020	JRC	275.00	1.50
03/20/2020	JRC	275.00	8.80
For Current Services Rendered			

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

March 23, 2020

Account No: J19304BARNESM

Statement No: 151507

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	8.80	\$275.00	\$2,420.00
Total Current Work			2,420.00

Previous Balance Due \$2,915.00

Payments

03/13/2020	Payment received - Check #4483 - thank you	-2,915.00
	Balance Due	<u>\$2,420.00</u>
	Please Remit	<u>\$2,420.00</u>

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express and Discover.

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TAX ID#91-1875775**

DON & CHRISTINE BARNES
2616 S KELLOGG ST
KENNEWICK WA 99338-1930

Page: 1
April 29, 2020
Account No: J19304BARNESM
Statement No: 152872

PORT OF KENNEWICK; OUR #J19304

		<u>Fees</u>	Rate	Hours	
03/23/2020	JRC [REDACTED]		275.00	0.20	55.00
03/24/2020	JRC [REDACTED]		275.00	0.40	110.00
03/26/2020	JRC [REDACTED]		275.00	0.60	165.00
	JRC [REDACTED]		275.00	0.50	137.50
	JRC [REDACTED]		275.00	0.10	27.50
03/27/2020	JRC [REDACTED]		275.00	0.10	27.50
03/30/2020	JRC [REDACTED]		275.00	0.80	220.00
03/31/2020	JRC [REDACTED]		275.00	0.40	110.00
04/01/2020	JRC [REDACTED]		275.00	0.20	55.00
04/02/2020	JRC [REDACTED]		275.00	0.20	55.00
	JRC [REDACTED]		275.00	0.50	137.50
04/03/2020	JRC [REDACTED]		275.00	0.40	110.00
04/07/2020	JRC [REDACTED]		275.00	0.40	110.00
04/13/2020	JRC [REDACTED]		275.00	0.20	55.00
04/16/2020	JRC [REDACTED]		275.00	0.10	27.50

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

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April 29, 2020

Account No: J19304BARNESM

Statement No: 152872

			Rate	Hours	
04/17/2020	JRC	[REDACTED]	275.00	1.20	330.00
04/20/2020	JRC	[REDACTED]	275.00	0.50	137.50
		For Current Services Rendered		6.80	1,870.00

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	6.80	\$275.00	\$1,870.00

Total Current Work 1,870.00

Previous Balance Due \$3,052.50

Payments

04/03/2020	Payment received - Check #4489 - thank you	-3,052.50
	Balance Due	<u>\$1,870.00</u>
	Please Remit	<u>\$1,870.00</u>

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express and Discover.

MILLER MERTENS & COMFORT PLLC
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TAX ID#91-1875775

DON & CHRISTINE BARNES
2616 S KELLOGG ST
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Page: 1
May 29, 2020
Account No: J19304BARNESM
Statement No: 153516

POR OF KENNEWICK; OUR #J19304

		<u>Fees</u>	Rate	Hours	Amount
04/24/2020	JRC	[REDACTED]	275.00	0.30	82.50
	JRC	[REDACTED]	275.00	0.80	220.00
05/05/2020	JRC	[REDACTED]	275.00	0.20	55.00
05/06/2020	JRC	[REDACTED]	275.00	0.30	82.50
05/07/2020	JRC	[REDACTED]	275.00	1.00	275.00
05/11/2020	JRC	[REDACTED]	275.00	2.20	605.00
05/12/2020	JRC	[REDACTED]	275.00	0.30	82.50
05/14/2020	JRC	[REDACTED]	275.00	1.20	330.00
05/15/2020	JRC	[REDACTED]	275.00	0.40	110.00
05/19/2020	JRC	[REDACTED]	275.00	0.10	27.50
05/20/2020	JRC	[REDACTED]	275.00	0.20	55.00
		For Current Services Rendered		<u>7.00</u>	<u>1,925.00</u>

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

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May 29, 2020

Account No: J19304BARNESM

Statement No: 153516

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	7.00	\$275.00	\$1,925.00
Total Current Work			1,925.00
Previous Balance Due			\$1,870.00
<u>Payments</u>			
05/11/2020	Payment received - Check #4496 - thank you		
			-1,870.00
Balance Due			<u>\$1,925.00</u>
Please Remit			<u>\$1,925.00</u>

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DON & CHRISTINE BARNES
2616 S KELLOGG ST
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Page: 1
June 25, 2020
Account No: J19304BARNESM
Statement No: 154005

POR OF KENNEWICK; OUR #J19304

<u>Fees</u>			
05/26/2020	JRC	[REDACTED]	Rate 275.00 Hours 0.20 55.00
	JRC	[REDACTED]	275.00 0.10 27.50
05/27/2020	JRC	[REDACTED]	275.00 0.60 165.00
05/28/2020	JRC	[REDACTED]	275.00 0.10 27.50
05/29/2020	JRC	[REDACTED]	275.00 0.70 192.50
06/01/2020	JRC	[REDACTED]	275.00 0.30 82.50
06/05/2020	JRC	[REDACTED]	275.00 3.20 880.00
06/11/2020	JRC	[REDACTED]	275.00 0.20 55.00
06/18/2020	JRC	[REDACTED]	275.00 0.20 55.00
06/19/2020	JRC	[REDACTED]	275.00 0.50 137.50
For Current Services Rendered			6.10 <u>1,677.50</u>

	Recapitulation	
<u>Timekeeper</u> Joel R. Comfort	Hours 6.10	Rate \$275.00
		<u>Total</u> \$1,677.50

Total Current Work	1,677.50
Previous Balance Due	\$1,925.00

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

June 25, 2020

Account No: J19304BARNESM

Statement No: 154005

Payments

06/08/2020	Payment received - Check #4503 - thank you	-1,925.00
	Balance Due	<u>\$1,677.50</u>
	Please Remit	<u>\$1,677.50</u>

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DON & CHRISTINE BARNES
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July 29, 2020
Account No: J19304BARNESM
Statement No: 154497

POR OF KENNEWICK; OUR #J19304

Fees

			Rate	Hours	
06/24/2020	JRC	[REDACTED]	275.00	0.10	27.50
06/25/2020	JRC	[REDACTED]	275.00	0.50	137.50
07/09/2020	JRC	[REDACTED]	275.00	0.20	55.00
07/16/2020	JRC	[REDACTED]	275.00	0.90	247.50
		For Current Services Rendered		1.70	467.50

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	1.70	\$275.00	\$467.50

Total Current Work 467.50

Previous Balance Due \$1,677.50

Payments

07/06/2020	Payment received - Check #4510 - thank you	-1,677.50
	Balance Due	<u>\$467.50</u>
	Please Remit	<u>\$467.50</u>

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DON & CHRISTINE BARNES
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August 28, 2020
Account No: J19304BARNESM
Statement No: 155005

POR OF KENNEWICK; OUR #J19304

<u>Fees</u>			
07/24/2020	JRC	[REDACTED]	Rate 275.00 Hours 0.10 27.50
08/04/2020	JRC	[REDACTED]	275.00 0.30 82.50
08/05/2020	JRC	[REDACTED]	275.00 0.70 192.50
08/11/2020	JRC	[REDACTED]	275.00 0.10 27.50
08/13/2020	JRC	[REDACTED]	275.00 0.80 220.00
08/14/2020	JRC	[REDACTED]	275.00 1.00 275.00
08/17/2020	JRC	[REDACTED]	275.00 0.40 110.00
08/19/2020	JRC	[REDACTED]	275.00 0.60 165.00
For Current Services Rendered			4.00 <u>1,100.00</u>

Timekeeper	Recapitulation		
Joel R. Comfort	Hours	Rate	Total
	4.00	\$275.00	<u>\$1,100.00</u>

Total Current Work	1,100.00
Previous Balance Due	\$467.50

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

August 28, 2020

Account No: J19304BARNESM

Statement No: 155005

Payments

08/17/2020	Payment received - Check #4519 - thank you	-467.50
	Balance Due	<u>\$1,100.00</u>
	Please Remit	<u>\$1,100.00</u>

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express or Discover.

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DON & CHRISTINE BARNES
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September 30, 2020
Account No: J19304BARNESM
Statement No: 155497

POR OF KENNEWICK; OUR #J19304

Fees

			Rate	Hours	
08/21/2020	JRC	[REDACTED]	275.00	0.20	55.00
08/25/2020	JRC	[REDACTED]	275.00	0.20	55.00
08/28/2020	JRC	[REDACTED]	275.00	0.20	55.00
09/01/2020	JRC	[REDACTED]	275.00	0.20	55.00
09/03/2020	JRC	[REDACTED]	275.00	1.50	412.50
		For Current Services Rendered		2.30	632.50

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	2.30	\$275.00	\$632.50

Total Current Work 632.50

Previous Balance Due \$1,100.00

Payments

09/03/2020	Payment received - Check #4522 - thank you	-1,100.00
	Balance Due	<u>\$632.50</u>
	Please Remit	<u>\$632.50</u>

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express or Discover.

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DON & CHRISTINE BARNES
2616 S KELLOGG ST
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October 29, 2020
Account No: J19304BARNESM
Statement No: 155955

POR OF KENNEWICK; OUR #J19304

Fees

			Rate	Hours	
09/29/2020	JRC	[REDACTED]			
		[REDACTED]	275.00	2.50	687.50
10/02/2020	JRC	[REDACTED]	275.00	0.30	82.50
10/13/2020	JRC	[REDACTED]	275.00	0.40	110.00
10/16/2020	JRC	[REDACTED]	275.00	0.20	55.00
		For Current Services Rendered		3.40	935.00

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	3.40	\$275.00	\$935.00

Total Current Work \$935.00

Previous Balance Due \$632.50

Payments

10/14/2020	Payment received - Check #4529 - thank you	-632.50
	Balance Due	<u>\$935.00</u>
	Please Remit	<u>\$935.00</u>

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DON & CHRISTINE BARNES
2616 S KELLOGG ST
KENNEWICK WA 99338-1930

Page: 1
December 03, 2020
Account No: J19304BARNESM
Statement No: 156405

POR OF KENNEWICK; OUR #J19304

Interim Statement

<u>Fees</u>				
		Rate	Hours	
10/27/2020	JRC [REDACTED]	275.00	0.30	82.50
10/28/2020	JRC [REDACTED]	275.00	0.70	192.50
11/02/2020	JRC [REDACTED]	275.00	0.20	55.00
11/03/2020	JRC [REDACTED]	275.00	2.50	687.50
11/04/2020	JRC [REDACTED]	275.00	0.10	27.50
11/05/2020	JRC [REDACTED]	275.00	6.50	1,787.50
11/06/2020	JRC [REDACTED]	275.00	1.50	412.50
11/08/2020	JRC [REDACTED]	275.00		
11/09/2020	JRC [REDACTED]	275.00		
11/10/2020	JRC [REDACTED]	275.00		
11/11/2020	JRC [REDACTED]	275.00	0.50	137.50
	JRC [REDACTED]	275.00		
11/12/2020	JRC [REDACTED]			

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2
 December 03, 2020
 Account No: J19304BARNESM
 Statement No: 156405

			Rate	Hours	
		[REDACTED]	275.00		
11/16/2020	JRC	[REDACTED]	275.00	2.00	550.00
11/17/2020	JRC	[REDACTED]	275.00	2.80	770.00
11/18/2020	JRC	[REDACTED]	275.00	0.80	220.00
11/19/2020	JRC	[REDACTED]	275.00	5.00	1,375.00
11/20/2020	JRC	[REDACTED]	275.00	7.00	1,925.00
For Current Services Rendered				29.90	8,222.50

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	29.90	\$275.00	\$8,222.50

Total Current Work	8,222.50
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Previous Balance Due	\$935.00
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Payments

11/04/2020	Payment received - Check #5003 - thank you	-935.00
	Balance Due	<u>\$8,222.50</u>
	Please Remit	<u>\$8,222.50</u>

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express or Discover.

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DON & CHRISTINE BARNES
2616 S KELLOGG ST
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Page: 1
December 23, 2020
Account No: J19304BARNESM
Statement No: 157124

PORT OF KENNEWICK; OUR #J19304

Fees

			Rate	Hours	
11/23/2020	JRC	[REDACTED]	275.00	1.00	275.00
11/30/2020	JRC	[REDACTED]	275.00	0.20	55.00
12/01/2020	JRC	[REDACTED]	275.00	0.50	137.50
12/03/2020	JRC	[REDACTED]	275.00	8.50	2,337.50
12/04/2020	JRC	[REDACTED]	275.00	5.30	1,457.50
12/07/2020	JRC	[REDACTED]	275.00	0.50	137.50
12/09/2020	JRC	[REDACTED]	275.00	0.30	82.50
		For Current Services Rendered		16.30	4,482.50

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	16.30	\$275.00	\$4,482.50

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2
December 23, 2020
Account No: J19304BARNESM
Statement No: 157124

Total Current Work 4,482.50

Previous Balance Due \$7,947.50

Payments

12/10/2020 Payment received - Check #5017 - thank you -7,947.50

Balance Due \$4,482.50

Please Remit \$4,482.50

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express or Discover.

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Page: 1
January 28, 2021
Account No: J19304BARNESM
Statement No: 157993

PORT OF KENNEWICK; OUR #J19304

Fees

			Rate	Hours	
12/22/2020	JRC	[REDACTED]	275.00	0.20	55.00
12/24/2020	JRC	[REDACTED]	275.00	0.30	82.50
12/31/2020	JRC	[REDACTED]	275.00	1.40	385.00
01/05/2021	JRC	[REDACTED]	275.00	0.70	192.50
01/06/2021	JRC	[REDACTED]	275.00	0.30	82.50
01/12/2021	JRC	[REDACTED]	275.00	0.40	110.00
		For Current Services Rendered		3.30	907.50

Recapitulation

Timekeeper	Hours	Rate	Total
Joel R. Comfort	3.30	\$275.00	\$907.50

Total Current Work \$907.50

Previous Balance Due \$4,482.50

Payments

12/31/2020	Payment received - Check #5021 - thank you	-4,482.50
	Balance Due	<u>\$907.50</u>
	Please Remit	<u>\$907.50</u>

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

January 28, 2021

Account No: J19304BARNESM

Statement No: 157993

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DON & CHRISTINE BARNES
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Page: 1
March 02, 2021
Account No: J19304BARNESM
Statement No: 158524

PORT OF KENNEWICK; OUR #J19304

Fees

			Rate	Hours	
02/03/2021	JRC	[REDACTED]	275.00	0.20	55.00
02/09/2021	JRC	[REDACTED]	275.00	0.30	82.50
02/10/2021	JRC	[REDACTED]	275.00	0.40	110.00
For Current Services Rendered					247.50

Recapitulation

Timekeeper	Hours	Rate	Total
Joel R. Comfort	0.90	\$275.00	\$247.50

Total Current Work 247.50

Previous Balance Due \$907.50

Payments

02/03/2021	Payment received - Check #5053 - thank you	-907.50
	Balance Due	<u>\$247.50</u>
	Please Remit	<u>\$247.50</u>

Due and payable upon receipt. Balances over 30 days past due are subject to a finance charge of 1.0% per month. Please call (509) 374-4200 to pay by VISA, MasterCard, American Express or Discover.

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steve.dijulio@foster.com

March 22, 2021

Lucinda Luke
General Counsel
Port of Kennewick
350 Clover Island Drive
Kennewick, WA 99336
By email to: luke@carneylaw.com

Re: Defense of Board Members in Investigative Proceedings

Dear Ms. Luke:

The Port of Kennewick (“Port”) requested our analysis and comment on the Port’s rights and responsibilities with respect to providing legal defense to a Port Commissioner, and the payment of attendant attorney fees. We address these issues in greater detail as follows.

Background

The Port operates under Washington law, including Title 53 RCW. The Port is a municipal corporation with only those powers expressly granted by the legislature; those necessarily or fairly implied in or incident to the powers granted; and, those essential to the declared objects and purposes of a Washington port district. *1959-60 AGO No. 51*. The Board of Port Commissioners (“Board”) is the Port’s legislative authority. In addition to other authority, the Board may employ and delegate authority to a managing official. Under RCW 53.12.270

The commission may delegate to the managing official of a port district such ministerial powers and duties of the commission as it may deem proper for the efficient and proper management of port district operations. Any such delegation shall be authorized by appropriate resolution of the commission, which resolution must also establish guidelines and procedures for the managing official to follow.

Consistent with this statutory authority, the Board adopted resolutions delegating powers and duties to the position of Port Executive Director. *See, e.g.*, Resolution 2018-26.

Additionally, among the implied powers of Washington port districts is the authority to employ attorneys, whether as employees or outside counsel. That authority includes the expenditure of funds for necessary attorneys' fees. *1959-60 AGO No. 51* (1951).

Legal Defense of Port Officials

State law requires municipalities, including ports, to provide legal counsel at public expense to defend officials in suits arising from the performance of their official duties. RCW 4.96.041 (1). And, in some circumstances, that obligation is mandatory. RCW 4.96.041 (2) states:

If the legislative authority of the local governmental entity, or the local governmental entity using a procedure created by ordinance or resolution, finds that the acts or omissions of the officer, employee, or volunteer were, or in good faith purported to be, within the scope of his or her official duties, the request shall be granted. If the request is granted, the necessary expenses of defending the action or proceeding shall be paid by the local governmental entity. Any monetary judgment against the officer, employee, or volunteer shall be paid on approval of the legislative authority of the local governmental entity or by a procedure for approval created by ordinance or resolution.

The Port carries forward these directives through provisions of the Port Commission Rules of Policy and Procedure (“Rules”), at Section 18.

We understand that a Port commissioner filed a complaint against other commissioners under Port Rules at Section 5. We did not consult with the Port on these issues at the time. And, we have not consulted on the substance of the complaint or subsequent investigation (conducted by other legal counsel) and hearings. We subsequently provide separate counsel to the Port with respect to procedural aspects of the complaint and subsequent investigation, including Public Records Act issues and the Port’s production of records relating to the process.

Following a determination of commissioner wrongdoing (a violation of the Port’s Rules) by an independent investigator, one commissioner challenged that determination. Under the Port’s Rules, a hearing officer (a retired judge) was appointed, and a hearing conducted. The hearing officer concluded that the evidence did not show the commissioner committed sanctionable misconduct. That commissioner has now sought payment of his attorney fees incurred in the investigation and hearing process arising out of the complaint. The Board has not yet approved the payment of those fees. In the following we discuss the Port’s obligations and risks associated with these present issues.

Analysis

In our evaluation of these issues, it appears the commissioner may have been subject to an “action or proceeding” as that phrase is used in RCW 4.96.041 (1). However, Rule 5.11 creates an ambiguity by stating:

The Port shall not indemnify or defend any commissioner charged with misconduct except as provided under Section 18.

The Port's Rules otherwise recognize the defense of claims against a Port officer or employee. The Rules at Section 18 state:

As authorized by RCW 4.96.041, there is hereby created a procedure to provide for indemnification and defense of claims of liability arising from acts or omissions of officials and employees of the Port.

Rules at Section 18.1.

We do not see an exception to the obligation to reimburse the commissioner's attorney fees (at the rate that would have been authorized by the Port's General Counsel under Rule 18). Note that an investigation of a complaint regarding a commissioner's conduct may arise internally or externally. There is no basis for a distinction arising because this matter arose internally at the Port.

As a result, the Port's Rules state that approval of defense services requires Board review and approval:

The determination whether an official or employee shall be afforded a defense by the Port under the terms of this chapter shall be made after a determination pursuant to **Section 18** as to whether the official or employee was acting within the scope of his or her duties. The CEO [Executive Director] and Port legal counsel shall prepare a recommendation to the Commission. The decision of the Commission shall be final as a legislative determination and shall be based upon a finding that an official or employee meets or does not meet the criteria of this chapter.

Rules, at Section 18.7. We are not aware of any suggestion that the conduct giving rise to the investigation did not relate to Port activities. The Hearing Officer stated: "substantial evidence does not overcome the presumption that Commissioner Barnes acted ethically and in the Port's best interests when he contacted both DPZ and the State Auditor's Office." As a result, it appears that Rules Section 18 applies and the commissioner's attorney fees may be recoverable upon approval by the Board.

Conclusion

The Port's policies may be seen as ambiguous regarding the application of responsibility for assignment of legal counsel to officers and employees and for the payment of attorney fees. However, upon a finding by the Board of the commissioner acting in good faith and within the scope of his duties, the attorney fee claim may be recognized.

We have not considered and do not comment in this analysis on the reasonableness of the requested fees. We do note that the amount of fees sought, and the lack of detail provided, does not

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provide the foundation that courts employ in approving attorney fee awards. For example, the actual narrative of work performed to support the fee claim is considered by courts in attorney fee applications.

Here, that would be a separate analysis (audit) that should be undertaken by the Port if the request for fees be approved by the Board.

We trust the foregoing is responsive to the Port's inquiry. Please advise if we may be of further assistance in this regard.

Sincerely,

FOSTER GARVEY PC



P. Stephen DiJulio
Principal