



# PORT OF KENNEWICK

## REGULAR COMMISSION MEETING

MARCH 23, 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 Barnes led the Pledge of Allegiance.

### APPROVAL OF THE AGENDA

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

### PUBLIC COMMENT

Ron Swanby, 110 South McKinley Place, Kennewick. Mr. Swanby expressed his interest in purchasing parcel number 1319-030300-11003 at Columbia Gardens Urban Wine and Artisan Village. Mr. Swanby owns Swampy's BBQ Food Truck, which is currently located at the Wine Village. Mr. Swanby would like to purchase the parcel to build a commercial kitchen, which would allow Swampy's to extend their food truck operating hours and cater special events. Mr. Swanby closes his food truck when he is catering special events. Mr. Swanby has completed a feasibility plan review with City of Kennewick and discussed the idea with the Department of Health. Mr. Swanby envisions the space would include a small kitchen, his food truck and BBQ smoker. Additionally, the kitchen would be available to the current food trucks at the Wine Village. Mr. Swanby stated every food truck needs to have a commissary kitchen and, in the Tri-Cities, we have the Pasco Specialty Kitchen and the Red Mountain Kitchen. Mr. Swanby believes a commissary kitchen would add value to the Wine Village as an anchor tenant. Mr. Swanby thanked the Commission and looks forward to working with the Port on this project together.

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Boyce Burdick, 414 Snyder Street, Richland. Mr. Burdick thanked the Port and Ms. Bader Inglima for being an advertising partner for the Mid-Columbia Arts Foundation Fundraiser. This year, the Foundation held a streaming auction and raised nearly \$20,000 for each Art group. Mr. Burdick thanked the Port of Kennewick for their participation.

No further comments were made.

### CONSENT AGENDA

- A. *Approval of Direct Deposit and E-Payments Dated March 16, 2021***  
Direct Deposit and E-Payments totaling \$66,372.75
- B. *Approval of Warrant Register Dated March 9, 2021***  
Expense Fund Voucher Number 102779 through 102808 for a grand total of \$69,676.41
- C. *Approval of Special Commission Meeting Minutes March 4, 2021***
- D. *Approval of Regular Commission Meeting Minutes March 9, 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

Ms. Hanchette stated Governor Inslee moved the State to Phase 3.

### REPORTS, COMMENTS AND DISCUSSION ITEMS

#### **A. *Build Back Better Projects***

Ms. Bader Inglima confirmed that staff submitted the three applications for the Build Back Better (BBB) per the Commission's directive. Those projects were prioritized as follows:

- Priority #1: The Willows infrastructure and our application included a partnership letter from Lona Hammer with the Kennewick Housing Authority as requested by Commission.
- Priority #2: The J. Lieb Food campus renovation and our application indicated support from City of Kennewick and the Historic Downtown Kennewick Partnership.
- Priority #3: was the Electric Vehicle charging stations.

Ms. Bader Inglima received confirmation from Raquel Crowley, Senator Murray's Central Washington Representative, that the applications were received.

Commissioners Moak and Barnes thanked Ms. Bader Inglima and staff for their quick response to the BBB application process.

#### **B. *1135 Shoreline Project Status Update***

Ms. Bader Inglima reported that the Portland USACE Division Office approved the revised design and engineering cost estimate for the 1135 Shoreline project. The Port and the USACE Walla Walla office are now working on the amendment for the project agreement. The amended agreement will demonstrate to the State Recreation and Conservation Office (RCO) that our project is moving forward in anticipation of their extending our grant deadline to correspond to the USACE's new timeline. The amendment also allows the Port to demonstrate to the City and

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County that we are advancing this project which is also receiving Rural Capital County Funds. Ms. Bader Inglima stated our project is now back on the USACE list to receive federal 1135 funding. The next step is to determine when the USACE Washington DC headquarters will release those funds to Walla Walla so they can go out to bid.

Commissioner Barnes thanked Ms. Bader Inglima for her perseverance on this project.

### **C. *Real Estate Commission Policy***

Ms. Hanchette stated the Port established a Real Estate Policy in 2015 and as the Port's vision shifts from fewer industrial intensive projects to more waterfront and infill redevelopment, the timing is appropriate for the Commission to review the policy. Ms. Hanchette intends to discuss each item of the policy separately and then finalize the Commission's desires with a formal resolution.

Ms. Hanchette reported that the commission structure is divided into bare land versus property and then divided again into pricing levels (EXHIBIT A). Ms. Hanchette suggested simplifying the rate structure, which would be more in line with the private sector. Ms. Hanchette researched the Multiple Listing Service (MLS) and stated broker commissions range from:

- Commercial sale: 2-4.5%;
- Commercial land: 2-4%;
- Residential dwellings: 2-3%;
- Residential land: 2.5-3%.

Ms. Hanchette reiterated that these are commissions paid to the buyer's agent. Ms. Hanchette inquired if the Commission is interested in streamlining the commission structure and including an appropriate single rate commission.

Commissioner Novakovich is in favor of a 4% commission for the buyer's agent.

Commissioner Moak is in favor of streamlining the process; however, he feels a 3-4% commission is sufficient.

Commissioner Barnes is in favor of a 4% commission flat fee.

Ms. Hanchette confirmed that the Commission finds streamlining the commission process and going with a flat commission rate of 4% acceptable. Ms. Hanchette will bring back a resolution once each portion of the real estate policy has been addressed. Ms. Hanchette thanked the Commission for their comments and appreciates the conversation.

### **D. *Governance Audit Update***

Mr. Arntzen had an opportunity to review consultants for the scope of work for the Governance Audit and selected Jim Darling to assist the Port. Mr. Darling previously assisted the Port with the staff realignment and has been a frequent presenter at the Washington Public Ports Association conferences. Mr. Arntzen stated if the Commission approves of Mr. Darling, he will move forward with the contract paperwork.

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Commissioner Barnes inquired as to how soon we can start working on the scope of work.

Mr. Arntzen will work with Mr. Darling on the contract and anticipates the process will move quickly.

## ***E. 2019 State Auditor's Office Financial Statement Audit***

Mr. Kooiker stated the Port received the final approval from the Washington State Auditor's Office for the 2019 Clifton Allen Larson audit. Port staff and Commissioner Barnes had an exit conference in October 2020 to review the final 2019 audit.

Commissioner Barnes confirmed that the exit interview was with Clifton Allen Larson and not the State Auditor's Office. Commissioner Barnes stated he did not have any interaction with the State Auditor's Office.

Mr. Kooiker stated that is correct.

Commissioners Novakovich and Barnes thanked staff and Mr. Kooiker for another clean audit and another successful year.

## ***F. Sell and Convey Surplus Property***

Mr. Kooiker reported that the Port recently replaced HVAC Roof Top Units at the Oak Street Industrial Buildings and Resolution 2021-04 formally disposes of the old units per RCW 53.08.090.

## **PUBLIC COMMENT**

No comments were made.

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

## ***G. Citizen Complaint – Request for Reimbursement of Legal Fees***

Commissioner Barnes stated there was an anonymous citizen complaint generated in March 2019, which triggered an investigation, with the finding that he committed two infractions of the Rules of Policy and Procedure. Commissioner Barnes maintained his innocence and exercised the right to appeal those findings. A formal Public Hearing was held on December 4, 2020 and Judge Paris Kallis issued her ruling on December 31, 2020 and found the anonymous citizen complaint against him was unsubstantiated in its entirety. Commissioner Barnes has been represented by legal counsel since 2019 to assist with his defense and is respectfully requesting reimbursement for his legal expenses during the anonymous citizen complaint appeal process. (EXHIBIT B).

Steve DiJulio of Foster Garvey PC has been providing legal services to the Port of Kennewick, for several years, as special counsel. Mr. DiJulio stated Foster Garvey was not involved in this matter, except for procedural issues and assisting the Port with the public records act aspects of the

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investigation. Two weeks ago, Mr. DiJulio learned of the decision made by Judge Kallas and the request for attorney fees. Ms. Luke requested that Mr. DiJulio provide an independent analysis (EXHIBIT C) of Commissioner Barnes' request. Mr. DiJulio concluded, particularly Rule 18 and under State Statute RCW 4.96.040, Port Commissioners are entitled to be reimbursed for expenses incurred over the course and scope of their duties. This is a process under the statute RCW 4.96.041, that has been adopted by the Port in its Rules of Policy and Procedure, specifically Rule 18. From that analysis, he concluded that the request for attorney's fees was supported by State Statute and the Port's Rules and should be recognized. Mr. DiJulio did not comment or evaluate on the reasonableness of the fees, which should be a separate analysis, should the Board approve the application for the attorney's fees requested by Commissioner Barnes.

Commissioner Moak confirmed that the next step in Section 18, is that the Port CEO and legal Counsel prepare a recommendation to the Commission.

Mr. DiJulio stated that is correct, under the Port's rules, under Section 18.7, that is the process that is set up, with the Commission ultimately making the final determination for approval.

Commissioner Barnes believes his attorney Joel Comfort addressed this issue in his letter and argued that this decision is to be made by the Commission. "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..." Furthermore, the original complaint involved all three Commissioners, and the appeal involved two of the Commissioners and Mr. Comfort argues that "all of the Commissioners are entitle to vote on the decision. Given the fact that Judge Kallas has already ruled that Commissioner Barnes did not violate Port policy, the work by the Commission is essentially done."

Mr. DiJulio does not believe anything he said is inconsistent with Commissioner Barnes comments. It is the Commission's decision, and they make the final decision. What the Commission will need to do is decide, based upon the information it has been provided by the recommendation of general counsel and CEO, with respect to the reasonableness of fees; however, we do not currently have that information available. The Board can proceed to make a decision at this time based upon submitted information, but in our view, there is inadequate information to determine whether the approximate \$50,000 in fees that are requested are supportable, based on the record submitted. As noted in the analysis, the traditional approach when awarding fees, is to evaluate the actual services provided to determine whether or not they are reasonable in light of the circumstances. And determine whether or not those fees charged are reasonable at the hourly rates performed in the community. The Board could proceed to act or in our recommendation, the Board could proceed to approve the application and the amount is subject to further recommendation and review and approval by the Board in a subsequent meeting.

Commissioner Barnes stated the point is well taken and all the invoices that were submitted in support of this request were redacted. Commissioner Barnes understands and appreciates this point and is happy to work with Mr. Comfort to provide unredacted copies of the invoices to the Port. Commissioner Barnes hopes this can move forward and possibly approve today, subject to an audit of the hours and charges.

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Commissioner Moak appreciates what Commissioner Barnes has gone through over the past two years and stated it is unfortunate and it never should have gone this far, at this cost. However, Commissioner Moak believes Commissioner Barnes can wait two weeks, to allow staff to follow the Port Rules of Policy and Procedure and provide the Commission a resolution and recommendation. Commissioner Moak believes if Commissioner Barnes and Mr. Comfort can work with the Port's counsel in terms of providing unredacted invoices, then Port counsel should be able to have a recommendation for the Commission at the next Regular Meeting.

Commissioner Novakovich agrees with Mr. DiJulio's and Commissioner Moak's comments and would like to see more information regarding the invoices before moving forward.

Commissioner Moak inquired if that will be enough time for Ms. Luke to review the unredacted invoices from Mr. Comfort and provide a recommendation to the Commission.

Ms. Luke stated to move this process forward, the Port will need to receive the unredacted copies of the invoices from Mr. Comfort. Ms. Luke will be working with Mr. DiJulio to review the reasonableness of the request. Ms. Luke stated if she receives the statement within the next couple of days, she should be in position to have a recommendation for the Commission at the April 13, 2021 Commission Meeting.

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

Commissioners reported on their respective committee meetings.

## ***I. Non-Scheduled Items***

Ms. Bader Inglima stated the Historic Downtown Kennewick Partnership (HDKP) is working to have the greater downtown area formally designated as a Washington State "Creative District". The area they have identified for designation as a Creative District includes both Clover Island and our Columbia Drive properties as well as their traditional main street area. HDKP indicated that currently 52% of the businesses in the Historic Downtown center are considered creative industries. HDKP requested a letter from the Port, supporting this effort which help them promote tourism, allow for state highway signage, provide grant opportunities and training, and attract new investment and help redevelop historic assets. Their deadline for receipt of a letter is April 2nd. Ms. Bader Inglima inquired if the Commission would like her to prepare a letter of support.

*It is the Consensus of the Commission to prepare a letter of support for the HDKP.*

Commissioner Novakovich stated the *Tri-City Journal of Business* reported that the parking lot in front of Bella's Furniture may be developing a commissary for their food truck pods. Commissioner Novakovich stated the Commission heard earlier from Mr. Swanby about developing a commissary kitchen at Columbia Gardens and the Port may want to consider working with Mr. Swanby.

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## PUBLIC COMMENTS

Boyce Burdick, 414 Snyder Street, Richland. Mr. Burdick was a little despaired by the recent Commission discussion at last meeting regarding The Willows and the BBB application. Mr. Burdick stated housing prices have soared in the Tri-Cities and a starter home prices start at \$300,000. Mr. Burdick does not see where there is any room provided by the government or any other agencies to provide low- or moderate-income housing. Mr. Burdick stated the Commission previously discussed subsidized housing at Vista Field and he believes this is something the Port should investigate.

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 3:19 p.m.

**APPROVED:**

## PORT of KENNEWICK BOARD of COMMISSIONERS

DocuSigned by:

*Don Barnes*

7468DE9530724DC...

*Don Barnes, President*

DocuSigned by:

*Skip Novakovich*

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*Skip Novakovich, Vice President*

DocuSigned by:

**Thomas Moak**

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*Thomas Moak, Secretary*

***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 23<sup>rd</sup> 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

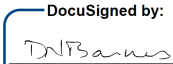
**WHEREAS**, prior to each such disposition of Port property, the Port Chief Executive Officer is directed to present to the Commission an itemized list of the property and to make written certification that the listed property is no longer needed for Port District purposes.

**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 23<sup>rd</sup> day of March 2021.


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

By:   
7468DE9530724DC...

DON BARNES, *President*

By:   
0E53A30E1C8E442...

SKIP NOVAKOVICH, *Vice President*

By:   
A35176A2D2CD413...

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

## EXHIBIT A



## 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

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### 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~~

LAW OFFICE



MILLER  
MERTENS  
& COMFORT  
PLLC

A Washington Professional Limited Liability Company

## EXHIBIT B

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

MEMBERS  
CHRISTOPHER J. MERTENS+  
JOEL R. COMFORT  
MICHAEL A. FROELICH  
JOHN A. RASCHKO+  
OF COUNSEL  
KENNETH A. MILLER+  
ASSOCIATES  
LEEANN M. HOLT\*  
TIMOTHY W. KOGLIN  
+ 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

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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

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

	RECAPITULATION			
<u>TIMEKEEPER</u>		<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
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		
	FXF	0.50	
		0.10	
	FOR CURRENT SERVICES RENDERED	0.60	180.00

RECAPITULATION			
TIMEKEEPER	HOURS	HOURLY RATE	TOTAL
Francois X. Forgette	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

BALANCE DUE \$180.00We 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 Forgette 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	[REDACTED]	0.50	150.00
	FXF	[REDACTED]	1.50	450.00
	FXF	[REDACTED]	1.00	300.00
08/13/2019	FXF	[REDACTED]	0.30	90.00
08/14/2019	FXF	[REDACTED]	0.30	n/c
		FOR CURRENT SERVICES RENDERED	3.30	990.00

RECAPITULATION

TIMEKEEPER	HOURS	HOURLY RATE	TOTAL
Francois X. Forgette	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

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Joel R. Comfort	4.80	\$275.00	\$1,320.00

Total Current Work	1,320.00
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Balance Due	<u>\$1,320.00</u>
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Please Remit	<u>\$1,320.00</u>
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**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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**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 &amp; CHRISTINE BARNES

September 30, 2019

Account No: J19304BARNESM  
Statement No: 148855

PORT OF KENNEWICK; OUR #J19304

			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				
<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>	
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	1.10
	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**  
**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  
 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 &amp; CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

October 31, 2019

Account No: J19304BARNESM  
Statement No: 149348

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

## Recapitulation

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

Total Current Work 3,932.50

Previous Balance Due \$4,291.10

Payments

10/09/2019 Payment received - Check #4433 - thank you -4,291.10

Balance Due \$3,932.50Please Remit \$3,932.50

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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		275.00	2.20	605.00
10/23/2019	JRC		275.00	1.00	275.00
10/24/2019	JRC		275.00	1.30	357.50
10/25/2019	JRC		275.00	0.50	137.50
10/28/2019	JRC		275.00	1.10	302.50
10/29/2019	JRC		275.00	0.20	55.00
10/30/2019	JRC		275.00	0.50	137.50
10/31/2019	JRC		275.00	0.60	165.00
11/01/2019	JRC				

DON &amp; CHRISTINE BARNES

November 27, 2019

Account No: J19304BARNESM

Statement No: 149835

PORT OF KENNEWICK; OUR #J19304

			Rate	Hours	
			275.00	0.70	192.50
11/06/2019	JRC		275.00	0.20	55.00
11/07/2019	JRC		275.00	0.10	27.50
11/08/2019	JRC		275.00	0.50	137.50
11/11/2019	JRC		275.00	0.50	137.50
	JRC		275.00	0.50	137.50
11/12/2019	JRC		275.00	0.40	110.00
11/13/2019	JRC		275.00	0.30	82.50
11/15/2019	JRC		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
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Balance Due	<u>\$3,685.00</u>
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Please Remit	<u>\$3,685.00</u>
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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

PORT 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	3,355.00

DON &amp; CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

December 24, 2019

Account No: J19304BARNESM  
Statement No: 150500

<u>Timekeeper</u>	Recapitulation	<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
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Previous Balance Due	\$3,685.00
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Payments

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

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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				6.60	1,815.00

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

DON &amp; CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

January 29, 2020

Account No: J19304BARNESM  
Statement No: 150972Expenses

10/14/2019	Photocopies [REDACTED]	42.75
	Total Expenses	42.75
	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.**

**MILLER MERTENS & COMFORT PLLC**  
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**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

Fees

			Rate	Hours	
01/21/2020	JRC	[REDACTED]	275.00	0.10	27.50
01/22/2020	JRC	[REDACTED]	275.00	0.10	27.50
01/24/2020	JRC	[REDACTED]	275.00	0.20	55.00
01/27/2020	JRC	[REDACTED]	275.00	3.60	990.00
01/28/2020	JRC	[REDACTED]	275.00	0.70	192.50
01/29/2020	JRC	[REDACTED]	275.00	1.00	275.00
01/30/2020	JRC	[REDACTED]	275.00	0.20	55.00
01/31/2020	JRC	[REDACTED]	275.00	1.40	385.00
02/05/2020	JRC	[REDACTED]	275.00	0.20	55.00
02/10/2020	JRC	[REDACTED]	275.00	1.90	522.50
	JRC	[REDACTED]	275.00	0.30	82.50
02/11/2020	JRC	[REDACTED]	275.00	0.80	220.00
02/19/2020	JRC	[REDACTED]	275.00	0.10	27.50



DON &amp; 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>
Joel R. Comfort		10.60	\$275.00
			\$2,915.00
Total Current Work			2,915.00
Previous Balance Due			\$1,857.75
<u>Payments</u>			
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.**

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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

Fees

			Rate	Hours	
02/21/2020	JRC	[REDACTED]	275.00	0.10	27.50
02/24/2020	JRC	[REDACTED]	275.00	0.70	192.50
02/26/2020	JRC	[REDACTED]	275.00	0.20	55.00
02/28/2020	JRC	[REDACTED]	275.00	1.80	495.00
	JRC	[REDACTED]	275.00	1.50	412.50
03/02/2020	JRC	[REDACTED]	275.00	0.40	110.00
03/04/2020	JRC	[REDACTED]	275.00	0.30	82.50
03/05/2020	JRC	[REDACTED]	275.00	0.60	165.00
03/06/2020	JRC	[REDACTED]	275.00	1.50	412.50
03/09/2020	JRC	[REDACTED]	275.00	0.20	55.00
03/20/2020	JRC	[REDACTED]	275.00	1.50	412.50
For Current Services Rendered				8.80	2,420.00

DON &amp; CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

March 23, 2020

Account No: J19304BARNESM  
Statement No: 151507

<u>Timekeeper</u>	Recapitulation	<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
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Previous Balance Due	\$2,915.00
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Payments

03/13/2020	Payment received - Check #4483 - thank you	-2,915.00
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Balance Due	<u>\$2,420.00</u>
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Please Remit	<u>\$2,420.00</u>
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**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  
 April 29, 2020  
 Account No: J19304BARNESM  
 Statement No: 152872

PORT OF KENNEWICK; OUR #J19304

Fees

			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 &amp; CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

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 \$1,870.00Please Remit \$1,870.00

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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**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  
 May 29, 2020  
 Account No: J19304BARNESM  
 Statement No: 153516

PORT OF KENNEWICK; OUR #J19304

			<u>Fees</u>		
			Rate	Hours	
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				7.00	1,925.00

DON &amp; CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

May 29, 2020

Account No: J19304BARNESM  
Statement No: 153516

<u>Timekeeper</u>	Recapitulation	<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
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Previous Balance Due	\$1,870.00
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Payments

05/11/2020	Payment received - Check #4496 - thank you	-1,870.00
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Balance Due	<u>\$1,925.00</u>
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Please Remit	<u>\$1,925.00</u>
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**TAX ID#91-1875775**

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

Page: 1  
 June 25, 2020  
 Account No: J19304BARNESM  
 Statement No: 154005

PORT OF KENNEWICK; OUR #J19304

Fees

			Rate	Hours	
05/26/2020	JRC	[REDACTED]	275.00	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	1,677.50

Recapitulation

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

Total Current Work 1,677.50

Previous Balance Due \$1,925.00



DON &amp; CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

June 25, 2020

Account No: J19304BARNESM  
Statement No: 154005Payments

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>

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

Page: 1  
 July 29, 2020  
 Account No: J19304BARNESM  
 Statement No: 154497

PORT OF KENNEWICK; OUR #J19304

		<u>Fees</u>			
			<u>Rate</u>	<u>Hours</u>	
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

<u>Timekeeper</u>	<u>Recapitulation</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

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

**MILLER MERTENS & COMFORT PLLC**  
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**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 28, 2020  
 Account No: J19304BARNESM  
 Statement No: 155005

PORT OF KENNEWICK; OUR #J19304

			<u>Fees</u>		
			Rate	Hours	
07/24/2020	JRC	[REDACTED]	275.00	0.10	27.50
08/04/2020	JRC	[REDACTED]	275.00	0.30	82.50
08/05/2020	JRC	[REDACTED]			
		[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]			
		[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	1,100.00

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

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

DON &amp; CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

August 28, 2020

Account No: J19304BARNESM  
Statement No: 155005Payments

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.**

**MILLER MERTENS & COMFORT PLLC**  
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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  
 September 30, 2020  
 Account No: J19304BARNESM  
 Statement No: 155497

PORT 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 \$632.50

Please Remit \$632.50

**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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DON & CHRISTINE BARNES  
 2616 S KELLOGG ST  
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Page: 1  
 October 29, 2020  
 Account No: J19304BARNESM  
 Statement No: 155955

PORT OF KENNEWICK; OUR #J19304

		<u>Fees</u>	Rate	Hours	
09/29/2020	JRC	[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

<u>Timekeeper</u>	<u>Recapitulation</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

		<u>Payments</u>	
10/14/2020	Payment received - Check #4529 - thank you		-632.50
	Balance Due		<u>\$935.00</u>
	Please Remit		<u>\$935.00</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  
 2616 S KELLOGG ST  
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Page: 1  
 December 03, 2020  
 Account No: J19304BARNESM  
 Statement No: 156405

PORT 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 &amp; CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

December 03, 2020

Account No: J19304BARNESM  
Statement No: 156405

			Rate	Hours	
			275.00		
11/16/2020	JRC		275.00	2.00	550.00
11/17/2020	JRC		275.00	2.80	770.00
11/18/2020	JRC		275.00	0.80	220.00
11/19/2020	JRC		275.00	5.00	1,375.00
11/20/2020	JRC		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

Previous Balance Due \$935.00

Payments

11/04/2020 Payment received - Check #5003 - thank you -935.00

Balance Due \$8,222.50Please Remit \$8,222.50

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.



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

Page: 1  
 December 23, 2020  
 Account No: J19304BARNESM  
 Statement No: 157124

PORT OF KENNEWICK; OUR #J19304

			<u>Fees</u>		
			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

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

DON &amp; CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

December 23, 2020

Account No: J19304BARNESM  
Statement No: 157124

Total Current Work	4,482.50
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Previous Balance Due	\$7,947.50
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Payments

12/10/2020	Payment received - Check #5017 - thank you	-7,947.50
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Balance Due	<u>\$4,482.50</u>
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Please Remit	<u>\$4,482.50</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  
 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

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
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 \$907.50

Please Remit \$907.50

DON & CHRISTINE BARNES

PORT OF KENNEWICK; OUR #J19304

Page: 2

January 28, 2021

Account No: J19304BARNESM

Statement No: 157993

**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  
 KENNEWICK WA 99338-1930

Page: 1  
 March 02, 2021  
 Account No: J19304BARNESM  
 Statement No: 158524

PORT OF KENNEWICK; OUR #J19304

			<u>Fees</u>		
			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				0.90	247.50

		<u>Recapitulation</u>			
<u>Timekeeper</u>		<u>Hours</u>	<u>Rate</u>	<u>Total</u>	
Joel R. Comfort		0.90	\$275.00	\$247.50	

Total Current Work	247.50
Previous Balance Due	\$907.50

<u>Payments</u>		
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.**

EXHIBIT C



1111 Third Avenue  
Suite 3000  
Seattle, WA 98101

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March 22, 2021

Lucinda Luke  
General Counsel  
Port of Kennewick  
350 Clover Island Drive  
Kennewick, WA 99336  
By email to: [luke@carneylaw.com](mailto: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 administrative 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.*

March 22, 2021

Page 2

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:

March 22, 2021

Page 3

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

A handwritten signature in blue ink, appearing to read "P. Stephen DiJulio".

P. Stephen DiJulio  
Principal