



PORT OF KENNEWICK REGULAR COMMISSION MEETING

JULY 26, 2022 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 Skip Novakovich 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: Skip Novakovich, President (via telephone)
Kenneth Hohenberg, Vice President (via telephone)
Thomas Moak, Secretary (via telephone)

Staff Members: Tim Arntzen, 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 (via telephone)
Bridgette Scott, Executive Assistant
Carolyn Lake, Port Counsel (via telephone)

PLEDGE OF ALLEGIANCE

Ms. Scott led the Pledge of Allegiance.

APPROVAL OF THE AGENDA

MOTION: Commissioner Hohenberg 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.

CONSENT AGENDA

- A. Approval of Direct Deposit and E-Payments Dated July 15, 2022**
Direct Deposit and E-Payments totaling \$70,529.86
- B. Approval of Warrant Register Dated July 26, 2022**
Expense Fund Voucher Number 103982 through 104027 for a grand total of \$671,795.35
- C. Approval of Regular Commission Meeting Minutes July 12, 2022**

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

PORT OF KENNEWICK

REGULAR COMMISSION MEETING

JULY 26, 2022 MINUTES

PRESENTATION

A. *CEO Employment Agreement Third Amendment and CEO Performance Review Process*

Mr. Arntzen stated Resolution 2022-19 offers administrative clarification of the indemnity clause and provisions in the CEO Employment Agreement and a request to return to the Committee process for the CEO Performance Review. Mr. Arntzen worked with Ann Allen, Port Human Resources Counsel and Carolyn Lake, Port General Counsel to present the revisions to the Commission for review. Mr. Arntzen stated Ms. Allen and Ms. Lake represent the Port as an entity, not him as an individual.

Ms. Allen outlined the items for revision in the CEO Employment Agreement and the CEO Performance Review Process:

- A clause is proposed to be added to ensure that amendments of the Employment Agreement do not result in diminution of the CEO's benefit level;
 - Section 4.9 states that the Employee shall not receive a reduction to benefits provided pursuant to his employment agreement due to the adoption of any subsequent amendment or modification of this agreement:
- RCW 4.96.041 states that whenever an action or proceeding for damages is brought against any officer or employee arising from his actions while performing duties in good faith, that officer or employee may request that the Port authorize the defense of the action or proceeding at the expense of the Port.
 - Section 7 states the Employer shall defend, indemnify, and hold Employee harmless from and against any and all claims, demands, suits, action or proceedings of any kind of nature arising out of the performance by Employee of the Employee's duties and responsibilities as CEO of the Employer.

Commissioner Novakovich stated in the Port Commission Rules of Policy and Procedure, it states "...in excess of the hourly rates established by the Port's contract with the Port legal counsel selected by the Port." Commissioner Novakovich inquired what the Port should do to be consistent.

Ms. Allen stated Ms. Lake provided a draft of Section 18 of the referenced policy and once that is updated, it will be commensurate with the rate.

Ms. Allen outlined the possible revisions to Section 15 of the CEO's Performance Review

- Re-instate the Committee CEO evaluation process previously used by the Commission;
- Revise the annual evaluation form to include definitions of the terms, formatting and now includes general comments for the Commissioner's and CEO.

Commissioner Novakovich states 15.1.3 states the evaluation committee has developed the procedure for evaluating; however, the evaluation committee has not been formed yet.

Ms. Lake stated the wording can be slightly modified to address Commissioner Novakovich's concerns and the language could be revised to say that the Commission directs the CEO Committee to use the following procedure for evaluating the CEO's performance.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

JULY 26, 2022 MINUTES

Commissioner Novakovich requested jurisdictional partners be added to political and institutional sensitivity. Lastly, Section 15 Exhibit A, 1.1.2 states the review should be completed annually and 1.1.3 states it should be completed by the first meeting in November. Commissioner Novakovich inquired if the meeting should be specified.

Ms. Allen stated that is a reasonable request and can modify Exhibit A.

Commissioner Hohenberg stated the revisions suggested by Commissioner Novakovich are acceptable.

Commissioner Moak has no comments at this time.

Ms. Lake will modify the documents and asked that the motion include “changes as directed.”

MOTION: Commissioner Hohenberg moved for approval of Resolution 2022-19 with the changes as discussed which appear in the CEO’s Third amendment, as well as in the attachment 2, section 15, 16.1.3 and evaluation chart; and rescinds Resolutions 2019-24, 2017-27 and 2017-16; and hereby ratify and approve all action by port officers and employees in furtherance hereof; Commissioner Novakovich seconded.

PUBLIC COMMENTS

No comments were made.

Discussion:

Commissioner Moak stated for the record, it is Mr. Arntzen’s right to ask for a contract revision, but he believes, no matter how good our attorneys are, they work for Mr. Arntzen, and he believes if contract negotiations are open, the Board should be represented by independent counsel, should be looking at these revisions from an independent look and he does not think we should be amending stuff on the fly, like we are trying to do today. Commissioner Moak thinks the Manager needs to do what he needs to do and he thinks the Board, rather than rubber stamping anything, should be reviewing, should be reviewing with independent counsel and looking to see if there are other areas of the contract that the Board would like to see changed. Commissioner Moak does not approve of the process like we are doing today, no matter how well intentioned it is.

Commissioner Novakovich stated Mr. Arntzen explained that the legal counsel that were presenting today were working for the Port Commission and not for Mr. Arntzen. Secondly, Commissioner Novakovich thinks the two legal counsels that presented today were doing exactly what Commissioner Moak asked for and were going through items and making any changes that we wanted to make to them and everyone had an opportunity to do so.

Commissioner Hohenberg stated for the record, he appreciates the process and he has the opportunity to, well in advance, to review and provide feedback. He does not feel like we are rubber stamping anything and at the end of the day, he will continue to do what is right and he thinks these items clear up a couple things that have been a challenge in past. Commissioner

PORT OF KENNEWICK REGULAR COMMISSION MEETING

JULY 26, 2022 MINUTES

Hohenberg has been rule bound for a long time and likes to follow rules and this will clear it up so that people know what the expectation is, and we continue to move forward. Once again, Commissioner Hohenberg appreciates the way it was presented.

With no further discussion, motion carried. All in favor, 2 Ayes (Commissioners Hohenberg and Novakovich): 1 Nay (Commissioner Moak).

B. Vista Field Hangars, CKJT Architects and Parametrix

Mr. Peterson introduced Melissa McCoy and Terrance Casey from CKJT Architects and Darren Sandeno, Dylan Bailey, and Palmer Sandeno from Parametrix. The team will be presenting renderings for the Vista Field Hangars (*Exhibit A*) which address three items: creating a vibrant and active space, within budget, and being aligned with Rural Capital County Funding (RCCF) goals.

Chantell Pratt Arnold of Pratt Construction is concerned about the wind and wondered if opening both buildings will negate year-round use.

Ms. McCoy stated the wind needs to be analyzed by a structural engineer, which has been preliminarily done. It is feasible and viable and we are using landscaping and the restrooms to provide protection from the south and southwest against wind and sun.

Ms. Pratt does not believe the partial shade structure offers enough coverage given the inclement weather.

Mr. Sandeno stated options have been discussed to provide an additional fabric cover for shade.

Commissioner Moak thanked the team and staff for their work on this and inquired if anyone talked to community art groups about the space needs.

Mr. Peterson stated we have not reached out to the art groups; however, the design was based upon examples seen in other communities that have utilized a cargo container that opens onto a concrete patio; and Clover Island Inn, which uses two truck trailers for a stage. We were looking to include the base elements for a performance space.

Commissioner Moak inquired if the Owner's Association would oversee programming the space.

Mr. Peterson stated the Port has two options: either it will be part of the commercial association's responsibility or the Port's, as the master developer, for the first five years.

Commissioner Hohenberg concurs with Commissioner Moak's comments and views this area as a natural gathering place by the way it is laid out. Commissioner Hohenberg thinks it's an excellent repurposing of the buildings and this project is moving along lot quicker than he envisioned.

Ms. Pratt Arnold inquired if a fence or enclosure could be added for over 21 events.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

JULY 26, 2022 MINUTES

Mr. Peterson stated the flexibility of this space is the intent, at this level of design and as use occurs, railings could be added to meet the Washington State Liquor Control Board requirements. Mr. Peterson stated a certain percentage of walls need to be removed for it to no longer be considered a building. Once we start adding heating or cooling, we are subject to the new energy codes.

Commissioner Novakovich inquired what the next step is.

Mr. Peterson inquired if the Commission likes what they see and would they support a future RCCF application for this project.

The Consensus of the Commission is to move forward with the design and bring back additional information on cost estimates and to apply for RCCF funds.

C. Conceptual Work Plan/Draft Budget Update 2023-2024

Mr. Arntzen presented the revised conceptual work plan and draft budget for 2023-2024 and based on Commission comments from the July 12, 2022 Commission Meeting, inquired if the Commission agrees to the following:

- Remove the Vista Field loan repayments;
- Auction all surplus land as approved by Commission resolution on a case-by-case basis;
- Remove West Richland Development Building for possible future funding;
- Remove South Kennewick Industrial Project for possible future funding;
- Add Vista Field Development Building Repair to proposed budget.

It is the Consensus of the Commission to remove the Vista Field loan repayments for the 2023-2024 Budget.

It is the Consensus of the Commission to auction surplus land as approved by Commission resolution on a case-by-case basis.

Mr. Kooiker stated, based upon the increased interest rates, he recommended revisiting the Vista Field loan repayment during the 2025-2026 budget cycle.

Mr. Arntzen confirmed the Commission consensus of the removal of the West Richland Development Building and the South Kennewick Industrial project from the 2023-2024 budget cycle.

Commissioner Hohenberg stated rather than naming a specific jurisdictional project, is there a way to allocate additional funding to the Opportunity Fund. Then our partners could apply for funding for the Commission to consider.

Mr. Kooiker stated the Opportunity Fund for this budget cycle was \$300,000.

Mr. Arntzen confirmed that the Port could add additional funding to the Opportunity Fund, and

PORT OF KENNEWICK REGULAR COMMISSION MEETING

JULY 26, 2022 MINUTES

then our partners could apply for funding for the Commission to consider. And, confirmed removing the West Richland and South Kennewick project from the 2023-2024 budget.

Commissioner Novakovich believes the City of West Richland is looking for a partnership in funding on artwork, but whether that is a line item or through the Opportunity Fund, he does not believe that makes a difference.

Commissioner Moak stated the Opportunity Fund gives an entity the opportunity to apply for funds, but that does not guarantee the project would be funded. Commissioner Moak would like to focus on Vista Field and the Historic Waterfront before the Commission considers other projects. Commissioner Moak believes it is appropriate to revisit the West Richland Development Building and South Kennewick Industrial project for the 2025-2026 budget.

Commissioner Hohenberg agrees with Commissioner Moak's comments and stated we need to move into the new budget cycle, see where we are headed and then determine if we have funding available for other opportunities.

Mr. Arntzen stated we added the Vista Field Building repair to the proposed budget, because there are existing repairs that need to be completed.

Commissioner Moak stated there is a current line item in the 2021-2022 budget and inquired if this is additional repairs or tenant enhancement.

Ms. Hanchette stated currently, we are finishing up the engineering and architecture portion; however, we will not utilize all of the funding by the end of the year, therefore, we are requesting the remaining allocation be placed in the 2023-2024 budget.

Commissioner Novakovich inquired if the Opportunity Budget could be increased to \$500,000 if there are remaining funds left over from this budget.

Mr. Kooiker stated the Port does not use rollover budgeting because it is hard to track and predict. Mr. Kooiker stated the Commission will need to reapprove the funding through the 2023-2024 budget.

Mr. Arntzen is meeting with an engineering firm and the Clover Island Inn to get some cost estimates to fix the parking lot and discuss the potential construction of a stage.

REPORTS, COMMENTS AND DISCUSSION ITEMS

A. *Vista Field*

1. *Development Tours*

Ms. Hanchette has been marketing Vista Field since the grand opening event and is now accepting official proposals. Ms. Hanchette and Mr. Peterson are giving site tours to small groups such as realtors, builders, title companies, and bankers and one on one tours. Ms. Hanchette encouraged following Vista Field on Facebook and Instagram for more information and announcements.

PORT OF KENNEWICK

REGULAR COMMISSION MEETING

JULY 26, 2022 MINUTES

Ms. Hanchette shared the submission process and the collaborative design process to give the builders and the Port a starting point for proposals. It is a learning process and will tell us what may need to be revised as we work through the first few proposals.

Commission and staff discussion ensued regarding the Vista Field tours.

B. Oak Street

1. Renewal By Anderson Lease

Ms. Hanchette stated Renewal By Andersen has been a good tenant of the Port since 2015 and increased their leased space every few years. A tenant recently vacated and Renewal By Andersen is taking that space and we are consolidating all of the space into one lease. The lease exceeds Mr. Arntzen's Delegation of Authority of \$5,000 a month and requires Commission approval. Therefore, before the Commission is Resolution 2022-20 approving the lease renewal for Renewal By Andersen.

MOTION: *Commissioner Moak moved for approval of Resolution 2022-20, approving a lease renewal with Renewal By Andersen, and further authorize the Chief Executive Officer to execute all documents and agreements and that all action by port officers and employees in furtherance hereof is ratified and approved; Commissioner Hohenberg seconded.*

PUBLIC COMMENTS

No comments were made.

Discussion:

Commissioner Hohenberg thanked Ms. Hanchette and stated Oak Street has been around forever and its nice to know it is still vibrant. It is nice to be able to consolidate the lease for a good tenant.

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

C. Redistricting Update

Mr. Peterson reported that the Port went through redistricting in 2011 and the three districts were even in population at 42,000; however, based upon the 2022 Census, there is an imbalance of 7,600 between Districts 2 and 3. The Port is working with JUB Engineering to come up with a variety of scenarios that follow the law and are easily definable. Mr. Peterson stated the district map will be presented at a Public Hearing, which needs to be held early fall, before final approval by the November deadline.

Ms. Lake stated Mr. Peterson is working to meet the 10-year refresh. The criteria of the redistricting is as follows:

- District has to be as balanced and compact as possible;
- District has to be geographically contiguous;
- The population data cannot be used to favor or disfavor racial group or political parties;
- Preserve existing communities related in mutual interest as possible;

PORT OF KENNEWICK REGULAR COMMISSION MEETING

JULY 26, 2022 MINUTES

Ms. Lake stated the statute stated the Port may publish the draft plan; however the Public Hearing needs to take place within 10 days of publishing the draft plan and no later than at least one week before adopting the plan.

Commissioner Moak inquired if the law allows the projections for growth in the community.

Ms. Lake stated the redistricting is tied to the 2020 Census and cannot look at potential growth.

Commissioner Novakovich asked Mr. Peterson to work with Ms. Scott on the Public Hearing date.

D. Maintenance Facility Progress Report

Ms. Hanchette presented the final draft of Maintenance Facility report prepared by Energy Northwest. The maintenance staff offered valuable input and the report looked at our current conditions. Energy Northwest provided information on what a new facility would cost, which was very expensive and Mr. Arntzen authorized staff to look at value engineering and other alternative options.

Mr. Arntzen stated the Port has several options to consider:

- Hold the course and make some improvements to the existing facilities;
- Build a new facility for \$2,700,000;
- Potentially purchase an existing facility, which meets the needs of the Port district and is in the budget.

Mr. Arntzen requested the Commission receive the report, which demonstrated the need for a new facility. In the interim, the Port team will continue to research the matter and bring back for further consideration.

Commissioner Moak stated at some point, we must move forward, especially if the staff is working in substandard quarters. Commissioner Moak inquired if the Port were to vacate the space at Oak Street, would the space be leasable to a new tenant.

Ms. Hanchette stated two of the spaces in DB-D would be leasable; however, she is not sure the shop is leasable. It would require a lot of work before that could happen.

Commissioner Moak inquired if staff is actively looking at potential properties that might meet our needs.

Ms. Hanchette stated yes and continues to monitor the MLS for a space that would meet our needs.

The Commission is in support of the need for a maintenance facility and exploring options and will look for staff's guidance and recommendations.

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

Commissioners reported on their respective committee meetings.

PORT OF KENNEWICK

REGULAR COMMISSION MEETING

JULY 26, 2022 MINUTES

F. Non-Scheduled Items

Ms. Scott reported that the Phase 2 Wine Village celebration event has been postponed due to extreme weather.

Ms. Hanchette reported that mud swallows have built nests around the lighthouse and it is illegal to remove them until baby birds fly away. Ms. Hanchette stated staff and a contractor are working on cleaning the plaza and she has reached out to the Department of Fish and Wildlife to see when the nests can be removed. Ms. Hanchette is aware of the situation; however, she cannot do anything at this time.

Ms. Lake stated earlier this year, the Commission authorized Mr. Arntzen to oversee an update to the Commission Rules of Policy and Procedures. The update is intended to be a brush up and refresh of policies that were initially adopted in 2011 and updated in 2016. Ms. Lake stated it is appropriate to review the policies; and as you may recall, Commissioners and key staff were given the opportunity to provide input. Ms. Lake has been reviewing the input and synthesizing it to create a draft for Commission review. Ms. Lake stated the only other category that is required is to incorporate changes in the law, particularly in Open Public Meetings and Public Records. Ms. Lake is happy to receive any clarification or answer questions.

Mr. Arntzen read a statement into the record by Chantell Pratt Arnold, who offered comments related to the hangars:

“Just wanted to comment, I really enjoy seeing movement/progress at Vista Field. I have seen more movement in the last few months, than the previous five years. I am excited to see a plan to reuse the hangars, to create something new for the community. Thank you for all you do for the community.”

Mr. Arntzen was able to attend one of Ms. Hanchette’s tours and he said it was palpable to see the excitement and wonderful ideas being tossed around. Earlier, Commissioner Hohenberg asked a question regarding the collaborative design process, and Mr. Arntzen stated the documents are meant to be living documents and revisable, based on new information. The collaborative design process states that the Commission anticipates changing the document, based on new information and referenced that there would be a prototype process. Mr. Arntzen is working with Ms. Hanchette to be as much like the private sector with recognition of special laws and statutes as a government agency.

Commissioner Novakovich clarified that Chantell Pratt Arnold has taken over Pratt Construction after her uncle’s passing.

Commissioner Hohenberg thanked Mr. Arntzen for the follow up and clarification about the process. He is excited about the progress the Port has made and appreciates Ms. Arnold’s comments back to the Commission. Commissioner Hohenberg hopes the Port continues to move rapidly on this project.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

JULY 26, 2022 MINUTES

PUBLIC COMMENTS

No comments were made.

COMMISSION COMMENTS

No comments were made.

ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 4:12 p.m.

APPROVED:

PORT of KENNEWICK

BOARD of COMMISSIONERS

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Skip Novakovich

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Skip Novakovich, President

DocuSigned by:

Kenneth Hohenberg

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Kenneth Hohenberg, Vice President

Absent

Thomas Moak, Secretary

PORT OF KENNEWICK

RESOLUTION No. 2022-19

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK REVISING THE CHIEF EXECUTIVE OFFICER (CEO) EMPLOYMENT AGREEMENT AND PERFORMANCE EVALUATION PROCESS

WHEREAS, the Chief Executive Officer's (CEO) current Employment Agreement (CEO Agreement) is in need of amendment to clarify the effect of subsequent benefit amendments; to more clearly delineate terms of indemnification; and to update the current individualized method used to review CEO's performance; and

WHEREAS, revising and amending the CEO Agreement in these areas will provide for greater clarity; and

WHEREAS, re-instituting the former CEO committee performance evaluation process consisting of one Commissioner serving a two-year term, the Chief Financial Officer (CFO), and Port Attorney will promote a more efficient and less complicated review process, and

WHEREAS, returning to the Committee Evaluation Process for CEO performance evaluations is accomplished by revising the Commission Rules of Policy and Procedure, Section 15, which in turn also adopts Exhibit A - the Committee Evaluation Process and Exhibit B, the CEO Annual Evaluation Form; and

WHEREAS, the Port CFO has reviewed the proposed documents and finds them in order.

NOW, THEREFORE, BE IT RESOLVED that the Port of Kennewick Board of Commissioners take the following actions:


1. The Port of Kennewick Board of Commissioners hereby approve and adopt the Third Amendment to the CEO Employment Agreement to (a) add a new Section 4.9 to clarify the effect of future amendments, (b) modify Section 7 to address indemnification, and (c) to acknowledge the change in title from "Executive Director" to the current title of "Chief Executive Officer", all as set as set forth in **Attachment 1** – Third Amendment to Employment Agreement.
2. The Port of Kennewick Board of Commissioners hereby revise Commission Rules of Policy and Procedure at Section 15 to reinstate the Committee CEO Evaluation Process, all as set as set forth in **Attachment 2** which incorporates **Exhibit A**- CEO Evaluation Committee Process and **Exhibit B** – CEO Annual Evaluation Form.
3. The Port of Kennewick Board of Commissioners hereby rescind Resolutions 2019-24, 2017-27 and 2017-16 upon adoption of this Resolution; and
4. The Port of Kennewick Board of Commissioners hereby ratify and approve all action by port officers and employees in furtherance hereof.


RESOLUTION No. 2022-19

Page 2

ADOPTED by the Board of Commissioners of Port of Kennewick on the 26th day of July 2022.

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

By: 
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SKIP NOVAKOVICH, President

By: 
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KENNETH HOHENBERG, Vice President

By: Disapprove

THOMAS MOAK, Secretary

Resolution 2022-19
Attachment 1

THIRD AMENDMENT TO EMPLOYMENT AGREEMENT

This Third Amendment dated July 26, 2022 amends that certain Employment Agreement entered into on November 15, 2013 by and between the PORT OF KENNEWICK, a Washington public port district, (the "Employer" or the "Port"), and TIM ARNTZEN (the "Employee" or "Chief Executive Officer"), as amended March 24, 2017 by the CEO's extension of the Longevity Agreement through December 31, 2020 (via memo); as amended by the First Amendment dated December 12, 2017 as referenced in Resolution 2017-27; as amended by Second Amendment dated November 26, 2019 (without Resolution); as amended by Resolution 2019-24 dated September 24, 2019; and as amended by Resolution 2020-30 dated December 8, 2020 which further extended the Longevity Agreement through December 31, 2025, ("CEO Agreement").

The Port and Chief Executive Officer wish to update and further amend the CEO Agreement as follows:

1. A new Section 4.9 is added to the CEO Agreement as follows:

4.9 It is understood that the Employee shall not receive a reduction to benefits provided pursuant to his employment agreement due to the adoption of any subsequent amendment or modification of this agreement. It is recognized that there may be a reduction in benefits provided pursuant to this Agreement should such reduction be mandated by law.

2. Section 7 of the CEO Agreement is amended to add the additional language underlined below as follows:

Employer Responsibility:

To the maximum extent permitted by law, Employer shall defend, indemnify, and hold Employee harmless from and against any and all claims, demands, suits, action or proceedings of any kind of nature arising out of the performance-by Employee of the Employee's duties and responsibilities as Chief Executive Officer of the Employer.

In addition, whenever an action or proceeding for damages is brought against the Employee, the Employer shall defend, indemnify, and hold the Employee harmless to the maximum extent permitted by the law for any liability incurred by the Employee in his capacity as an officer or employee of the Port acting in good faith. If the Employee personally incurs direct or indirect costs in order to respond to any such action, suit, proceeding, or claim, the Employer shall promptly reimburse the Employee upon written demand setting out such costs, provided indemnification of attorney's fees shall not exceed the hourly rate of the Port's General Legal Counsel as reflected in that General Legal Counsel's contract with the Port. Further, any amounts paid by

Resolution 2022-19
Attachment 1

the Employee in settlement or as a result of a judgement shall be reimbursed by the Employer unless the Employer shall establish that the Employee did not act in good faith and in the best interests of the Port in carrying out his duties.

To the extent of any conflict between this agreement and any other policy or procedure of the Port, this Agreement shall prevail. The obligations of the Employer to indemnify and hold the Employee harmless shall survive the termination of this Agreement or expiration of the employment relationship. Therefore, the obligation to indemnify the Employee applies whether the individual is currently or was previously employed by the Port of Kennewick at the time facts giving rise to such a matter arose.

3. The CEO Agreement is revised throughout to replace all references to “Executive Director” with the updated title of “Chief Executive Officer”.
4. The following previous amendments to the CEO Agreement are rescinded: (a) First Amendment dated December 12, 2017 as referenced in Resolution 2017-27; (b) Creation of Committee Evaluation Process approved by Resolution 2017-16, Second Amendment dated November 26, 2019, as referenced in Resolution 2019-24; and (c) Reversion of the Committee Evaluation Process approved by Resolution 2019-24.
5. All other provisions except those previous amendments expressly referenced herein and not rescinded and as amended herein remain in full force and effect.

EMPLOYER:

EMPLOYEE:

PORT OF KENNEWICK

A Washington state public port district

DocuSigned by:
Skip Novakovich
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Skip Novakovich, Commission President

DocuSigned by:
Tim Arntzen
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Tim Arntzen, Chief Executive Officer

Resolution 2022-19
Attachment 2

	PORT OF KENNEWICK	
	Port Commission Rules of Policy and Procedure	
	CHIEF EXECUTIVE OFFICER (CEO) EVALUATION	Section 15.0
	Adopted by the Commission on July 26, 2022 Resolution 2022-19	Replaces Section 15, adopted February 22, 2011 and as amended by Resolution 2016-01, adopted January 12, 2016 and Replaces Resolution 2017-16, adopted October 10, 2017 Replaces Resolution 2017-27, adopted December 12, 2017

15. CEO EVALUATION

15.1 CEO Evaluation Committee

- 15.1.1 The Port Commission shall appoint a CEO Evaluation Committee made up of the Port's Chief Financial Officer, Port Attorney, and one Commissioner to serve a 2-year term. Each member shall be unbiased.
- 15.1.2 The CEO Evaluation Committee will develop the CEO's goals and objectives for Port Commission review and approval. The goals and objectives developed by the Committee shall be specific, measurable, attainable, realistic, timely and in alignment with the Port's mission, budget, work plan, and comprehensive scheme of development.
- 15.1.3 The Commission accepts the following procedure for the CEO Evaluation Committee to evaluate the CEO's performance, which is attached hereto as **Exhibit "A"**, and the CEO Evaluation Committee has created the Chief Executive Officer Performance Evaluation Form Revised 2022, which is attached hereto as **Exhibit "B"**.
- 15.1.4 On an annual basis, the CEO Evaluation Committee will conduct CEO's performance evaluation.

- 15.1.5 On an annual basis, the CEO Evaluation Committee will present the results of its evaluation of the CEO's performance to the Port Commission for review and approval. Such results may include, among other things, recommendation for salary adjustment in accordance with CEO's employment agreement.
- 15.1.5 The CEO Evaluation Committee may use assistance from other staff members or consultants as necessary and appropriate.
- 15.1.6 The Port Commission shall address CEO performance issues as they arise by timely referring them to the CEO Evaluation Committee. The CEO Evaluation Committee will develop a procedure for handling performance issues that may arise between annual evaluations. As part of that procedure, any performance related item must be communicated to the CEO in writing within 14 business days following the date any such alleged action or inaction occurred. If the CEO Evaluation Committee fails to notify the CEO of a matter of which the Commission members are aware, the performance related item shall not be relied upon or addressed in a performance review. Prior to issuing such a written notice, the CEO Evaluation Committee shall undertake an appropriate inquiry, which generally will include discussion with the CEO, in accordance with applicable laws, policies and contracts. Once notified, the CEO shall be provided a reasonable period of time to cure the concern or deficiency.

RESOLUTION 2022-19
EXHIBIT “A” TO SECTION 15,
COMMISSION RULES OF PROCEDURES

1. CEO EVALUATION PROCESS

1.1 CEO Evaluation Committee

- 1.1.1 *COMMITTEE AUTHORITY:* Resolution 2022-19 authorized the creation of the CEO Evaluation Committee (Committee). Furthermore, it established the members of the Committee are: Port’s Chief Financial Officer; Port Attorney; and one Commissioner to be appointed by the Commission.
- 1.1.2 *COMMISSION DIRECTION:* The Commission direction for the Committee is as follows:
- Develop a process for evaluating CEO’s performance.
 - Perform the CEO evaluation using the Chief Executive Officer Performance Evaluation Form revised 2022.
 - Develop the CEO’s goals and objectives for Commission review and approval.
 - Present the CEO evaluation to the Commission for review and approval annually. This will include a recommendation for salary adjustment in accordance with CEO’s employment agreement.
 - Use assistance from other staff members or consultants as necessary and appropriate.
 - Develop a process for handling performance issues as they arise between annual evaluations if performance issues are brought forth by the Port Commission.
- 1.1.3 *COMMITTEE MEETINGS:* The Committee will meet at least annually, conducting its first meeting for CEO’s performance review no later than September 15th. The Commission typically will need to approve the CEO’s evaluation at their first meeting in November, so the ideal time to present to Commission is at the second meeting in October. The deadline for final Commission approval is November 15th.
- 1.1.4 *CHANGES TO THIS PROCESS:* Changes to this process must be approved by the majority of the Committee members, and with the consent of the CEO, which consent shall not be unreasonably withheld.

1.2 CEO Annual Evaluation Process

- 1.2.1 The Committee will evaluate the goals & objectives set by the Commission as part of the evaluation process.
- 1.2.2 The Committee will also consider additional work either directed or performed for the Port's benefit that was not included in the initial goals and objectives approved by Commission.
- 1.2.3 The Committee will also consider the overall operational success at the Port (including but not limited to: marina and building occupancy, land sales, property maintenance, contract management, financial oversight, strategic alliances/partnerships, communications, positive publicity, brand reputation, and strategic leadership including personnel management and development).
- 1.2.4 The Committee will include resolved or unresolved performance issues addressed by the Commission in the CEO's evaluation.
- 1.2.5 The Committee will present the CEO evaluation to the CEO and allow the CEO to draft a formal response before the evaluation is presented to the Commission.
- 1.2.6 The Committee will present the evaluation to the Commission as allowed by law.
- 1.2.7 The Committee will provide the Commission a CEO performance recommendation of "unsatisfactory," "satisfactory," "above satisfactory," or "exceptional" in accordance with the CEO Employment Agreement.

Performance Appraisal Ratings:

- Exceptional – The individual is making a significant contribution to the organization. This person constantly accepts responsibilities beyond those of the job held and continuously exceeds expectations regarding completion of work assignments. There are few areas regarding performance of job responsibilities in which he/she could improve.
- Above Satisfactory – The individual is a steady and consistent performer and carries out duties in a fully responsible and effective manner. Meets and occasionally exceeds expectations regarding job responsibilities and completion of work assignments. Even though present performance is acceptable, there may be areas regarding performance of job responsibilities in which the person should improve.

- Satisfactory – The individual generally meets standards or expectations. It is expected that with the appropriate improvement plan, performance will reach a fully satisfactory level within a specified time period.
- Unsatisfactory – The individual generally does not meet standards or expectations. It is expected that with the appropriate improvement plan, performance will reach a satisfactory level within a reasonable specified time period in keeping with part 10 of the CEO's employment agreement and prior to the imposition of any disciplinary action.

1.2.8 The Committee shall maintain confidentiality around its deliberations and evaluation results.

1.3 CEO Goals and Objectives

- 1.3.1 In order to promote creativity & collaboration, the CEO can recommend goals and objectives for the Committee's consideration.
- 1.3.2 The Committee will review the CEO's recommended goals and objectives in order to determine if the goals are specific, measurable, attainable, realistic, timely and in alignment with the Port's mission, budget, work plan, and comprehensive scheme of development.
- 1.3.3 The Committee will involve the CEO during the goal setting process in order to allow feedback. In addition, this ensures the goals are specific, measurable, attainable, realistic, timely and in alignment with the Port's mission, budget, work plan, and comprehensive scheme of development.
- 1.3.4 The Committee will also consider one goal that is open to allow flexibility (example: Identify and present additional mutually beneficial or ROI partnering opportunities to Commissioners).
- 1.3.5 The CEO and committee will work to the best of their abilities to reach agreement on goals and objectives before presenting to the Commission for approval.
- 1.3.6 The Committee will present the final goals and objectives to the Commission for approval.
- 1.3.7 The Committee, with CEO feedback, may also present to the Commission recommendations on amending the goals and objectives (example: Commission directive change, or goal may be modified due to budget changes).

- 1.3.8 The Committee will perform review of the CEO goals and objectives and present this update to the Commission at least annually for the evaluation process.

1.4 Performance Issues Process

- 1.4.1 The Port Attorney will perform legal review of the performance related item and gather information or documents. Port Attorney may use assistance from other staff members or consultants as deemed appropriate and within the approved budget.
- 1.4.2 The Port Attorney will present to the Committee the performance related items and findings.
- 1.4.3 If the Committee determines the performance related item is a finding that needs Commission discussion, the Committee will add the performance item to the agenda for the Commission to discuss as allowed in executive session, upon consent from the CEO.
- 1.4.4 Performance evaluations shall be made a part of the CEO's personnel file. The CEO has the right to review this file and to make a written request that information and documentation be removed that the CEO believes is inaccurate, incredible, unsubstantiated, or unwarranted. Upon review, the Employer shall remove all information identified by the CEO which is found to be inaccurate, not credible, or unsubstantiated, or where any discipline was not warranted.

RESOLUTION 2022-19
EXHIBIT “B” TO SECTION 15,
COMMISSION RULES OF PROCEDURES

ANNUAL PERFORMANCE EVALUATION

CEO Evaluation Committee Evaluations of the CEO’s Performance

IMPORTANT DUTIES & EXPECTATIONS	PERFORMANCE APPRAISAL		COMMENTS/EXAMPLES:
	Met	Not met	Attach pages/documentation as needed
I. Vision and Purpose: A. Assists the Commission in defining its shared vision. Communicates that direction to the organization. B. Collaborates with the Commission to advance the Port’s vision and purpose. C. Advocates the vision by strategic resource allocation toward attainment.			Click or tap here to enter text.
II. Strategic Agility: Is proactive; anticipates future trends, benefits, and consequences; has broad knowledge and perspective; can objectively state possibilities and probabilities.			
III. Operating Plans/Financial Plans: A. Develops, maintains, and implements strategic plans and operational goals that effectively brings the Port’s vision to fruition. B. Administers the Port’s financial affairs consistent with state law and adopted policies, budget, and financial guidelines.			

IV. Integrity: Sets the tone for the Port by exemplifying consistent values and high ethical awareness, honesty, and fairness.			
V. Political and Institutional Sensitivity: A. Maneuvers through complex political and institutional situations effectively; anticipates potentially negative reactions, recommends, and plans a course of action; views politics as a necessary part of organizational and public sector life and works to be effective within that reality. Unless otherwise not practical, obtains Commission concurrence prior to publicly stating position. B. Develops solutions to complex issues that challenge the Port's ability to recognize its vision and purpose. Demonstrates sensitivity to resource availability when developing solutions. C. Leads the Port in building effective relationships with tenants, customers, jurisdictional partners, and community.			
VI. Knowledge/Decision Quality: A. Knows how successful public ports work; knowledgeable in current and possible future practices, trends, and information affecting port management, the port industry, and our Port; knows the competition; is aware of how strategies and tactics			

<p>work in the marketplace.</p> <p>B. Makes good decisions based on analysis, wisdom, experience, and judgment; most solutions and suggestions turn out to be correct when judged over time.</p>			
<p>VII. Leadership/Management:</p> <p>A. Demonstrates an entrepreneurial spirit by identifying ways to generate revenue, investment capital and maximizes the financial potential of existing port assets.</p> <p>B. Rallies support behind the vision and strategic plan; can inspire and motivate staff and community.</p> <p>C. Creates an environment where employees at all levels contribute their knowledge, skills, abilities, and ideas in a way that maximizes their potential. Employee potential is not limited by divisional walls or job title. Appropriately delegates to others. Is a good judge of talent; hires the best people available inside or outside the organization.</p> <p>D. Creates a climate in which people want to do and can do their best; can motivate team or project members; empowers others; invites input and shares ownership and visibility. Makes each person feel his/her work is important.</p>			

VIII. Initiative/ Courage/ Adaptability: A. Self-starting ability. Promptly takes hold and follows through with minimum direction. B. Willingness to state opinions and reasons without concern about the popularity of the views. Forthrightness in dealing with Commission, customers, suppliers, and others in the organization. C. Ability to adjust to changing conditions or unusual assignments. Flexibility in undertaking a variety of assignments, acceptance of decisions which go counter to own opinion.			
IX. Loyalty: Understanding and accepting of goals and policies of the organization. Willingness to support organization and management.			
X. Communications: Effectiveness of exchanging significant information throughout all levels of the organization; with clients, vendors, and the public.			

PERFORMANCE APPRAISAL OVERALL RATING				
The CEO's performance for the year 2022 is found to be:	Exceptional	Above Satisfactory	Satisfactory	Unsatisfactory

Additional Evaluator Comments:

Tim Arntzen
Date

PORT OF KENNEWICK

Resolution No. 2022-20

***A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE PORT OF KENNEWICK APPROVING
A LEASE AGREEMENT WITH RENEWAL BY ANDERSEN***

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

WHEREAS, a three year lease one year lease for 12,740 square feet of office and industrial warehouse space has been negotiated by Port staff with Renewal By Andersen at the Oak Street Industrial Development Park; and

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

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


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


NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Port of Kennewick approves a 42-month lease with Renewal By Andersen as presented and authorizes the Port's Chief Executive Officer to execute all documents and agreements on behalf of the Port to complete the transaction as specified above.


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

ADOPTED by the Board of Commissioners of the Port of Kennewick this 26th day of July, 2022.

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

By: 
SKIP NOVAKOVICH, President

By: 
KENNETH HOHENBERG, Vice President

By: 
THOMAS MOAK, Secretary

COMMERCIAL PROPERTY LEASE AGREEMENT

**BETWEEN
PORT OF KENNEWICK,
LANDLORD**

AND

**Renewal by Andersen,
TENANT**

OAK STREET INDUSTRIAL PARK

**1426 E. 3rd Ave, A110, Kennewick
1426 E. 3rd Ave C101, Kennewick
1426 E. 3rd Ave C102, Kennewick
1328 E. 3rd Ave, Bay 5, Kennewick**

TABLE OF CONTENTS

	<u>Page</u>
Article 1 Premises	7
Article 2 Use of Premises	7
Article 3 Term	7
Article 4 Rent	7
Article 5 Financial Security	8
Article 6 Taxes & Assessments	8
6.1 Personal Property Taxes	8
6.2 Additional Taxes/Assessments; Leasehold Excise Tax (LET)	9
Article 7 Utilities	9
Article 8 Insurance	10
8.1 Insurance	10
8.2 Requirements	11
8.3 Waiver of Subrogation	11
8.4 Destruction or Condemnation	11
Article 9 Acceptance and Care of Premises	12
Article 10 Alterations and Improvements	12
Article 11 Accidents and Indemnification	13
Article 12 Compliance with Laws	13
Article 13 Landlord's Access	14
Article 14 Signs and Advertising	14
Article 15 Waste and Unlawful Use	14
Article 16 Successors	14
Article 17 Hazardous Materials	15
Article 18 Assignment and Subletting	15
Article 19 Surrender of Possession	15
19.1 Surrender	15
19.2 Removal of Property	15

19.3 Holding Over 16

Article 20 Notices 16

Article 21 Liens and Encumbrances 16

Article 22 Landlord’s Termination Right 17

Article 23 Default 17

 23.1 Default 17

 23.2 Remedies..... 17

 23.3 Interest 19

Article 24 Attorneys’ Fees And Costs 19

Article 25 Miscellaneous 19

**PORT OF KENNEWICK LEASE AGREEMENT
(Commercial Property)**

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

BASIC LEASE PROVISIONS

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

- A. Lease Date: July 1, 2022
- B. Landlord: Port of Kennewick,
a Washington municipal corporation
- C. Tenant: RENEWAL BY ANDERSEN
- D. Premises: The Premises shall mean the real property located at:

1426 E. 3rd Ave C101, Kennewick, WA 99336 (DB-C)
1426 E. 3rd Ave C102, Kennewick, WA 99336 (DB-C)
1426 E. 3rd Ave A110, Kennewick, WA 99336 (DB-A)
1328 E. 3rd Ave Bay 5, Kennewick, WA 99336 (DB-D)

as described on Exhibit "A" attached hereto and incorporated
herein by reference, and any improvements located thereon.
- E. Permitted Use: Check all that apply:

 Light manufacturing;
 X Wholesale receiving/shipping;
 X Administrative offices
 X Other: (Describe)
Remodel Contractor
- F. Term: Commencing on the Lease Commencement Date and terminating
on the Expiration Date.
- G. Lease Commencement Date: The date which is the earlier of (a) July 1, 2022, and (b) the date
Tenant begins using the Premises for any reason.
- H. Expiration Date: December 31, 2025

I. Base Monthly Rent Calculation:**Year 1 (July 1, 2022 – December 31, 2022):**

C101 – warehouse & office	.46 psf	2,950 sf
C102 – warehouse & office	.46 psf	2,915 sf
A110 – warehouse & office	.46 psf	5,675 sf
DB-D Bay 5 – warehouse	.46 psf	1200 sf

Year 2 (January 1, 2023 – December 31, 2023):

C101 – warehouse & office	.47 psf	2,950 sf
C102 – warehouse & office	.47 psf	2,915 sf
A110 – warehouse & office	.47 psf	5,675 sf
DB-D Bay 5 – warehouse	.47 psf	1,200 sf

Year 3 (January 1, 2024 – December 31, 2024):

C101 – warehouse & office	.48 psf	2,950 sf
C102 – warehouse & office	.48 psf	2,915 sf
A110 – warehouse & office	.48 psf	5,675 sf
DB-D Bay 5 – warehouse	.48 psf	1,200 sf

J. Base Monthly Rent (not including LET):**Year 1: (July 1, 2022 – December 31, 2022):**

C101 – warehouse & office	\$1,357.00
C102 – warehouse & office	\$1,340.90
A110 – warehouse & office	\$2,610.50
DB-D Bay 5 – warehouse	<u>\$ 552.00</u>
	\$5,860.40

Year 2: (January 1, 2023 – December 31, 2023):

C101 – warehouse & office	\$1,386.50
C102 – warehouse & office	\$1,370.05
A110 – warehouse & office	\$2,667.25
DB-D Bay 5 – warehouse	<u>\$ 564.00</u>
	\$5,987.80

Year 3 (January 1, 2024 – December 31, 2024):

C101 – warehouse & office	\$1,416.00
C102 – warehouse & office	\$1,399.20
A110 – warehouse & office	\$2,724.00
DB-D Bay 5 – warehouse	<u>\$ 576.00</u>
	\$6,115.20

Utilities Paid Directly to Utility Provider**K. Leasehold Tax (LET):**

Current Washington State Leasehold Tax shall be added to Base Rent. Current effective rate is 12.84%.

L. Total Monthly Rent (includes LET):

Year 1: \$6,612.87

Year 2: \$6,756.63
Year 3: \$6,900.39

- N. Monthly Utilities: See Article 7 of Lease.
- M. Rent Due Date: The Lease Commencement Date and the first day of each month thereafter.
- N. Financial Security: Check all that apply:
- ☒ **increase deposit on file to \$13,800.78;**
- ☐ Corporate surety bond;
- ☒ Personal Guaranty as set forth in Exhibit B;
- ☐ Other financial security: (Describe) _____
- O. Landlord's Address for Notices and Rent Payments:
Port of Kennewick
350 Clover Island Drive, Suite 200
Kennewick, WA 99336
- P. Tenant's Address for Notices:
Renewal by Andersen
7433 5th Ave S.
Seattle, WA 98108
(206) 777-0137
Alex Gonzalez
Alex@RBAWA.com
- S. Exhibits: Exhibit "A" Legal Description of Premises
Exhibit "B" Personal Guaranty Form

ARTICLE 1

PREMISES

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

ARTICLE 2

USE OF PREMISES

Tenant shall occupy and use the Premises for such uses as described in the Basic Lease provisions above. Tenant may not use the Premises for any other business purpose except as may be authorized in writing by Landlord at Landlord's sole discretion. No smoking shall be allowed within any portion of the Premises and within twenty-five (25) feet of all entryways.

ARTICLE 3

TERM

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

If Tenant timely exercises this option, then the Lease shall continue in effect on the same terms and conditions, except that rent shall be adjusted in the manner provided in Article 4 below and there shall be no further renewal options. Tenant's right to the renewal term shall be contingent upon Tenant not being in default hereunder at the time of notice of intent is given or at any time thereafter prior to the beginning of the renewal term.

ARTICLE 4

RENT

On or before the first day of each month of this Lease, Tenant shall pay to Landlord the Total Monthly Rent and all other assessment, charges, and fees as provided in this Article 4 and as otherwise set forth in this Lease, at the Landlord's address set forth in the Basic Lease Provisions.

(a) Late Fee.

If any sums payable by Tenant to Landlord under this Lease are not received by the fifteenth (15th) day of the month in which they are due, Tenant shall pay Landlord an additional amount for the cost of collecting and handling such late payment as a late fee in an amount equal to the greater of (i) Fifty Dollars (\$50.00), or (ii) five percent (5%) of the overdue amount.

(b) Interest.

In addition to any applicable late fees, 12% APR interest (1% per month), shall be applied to the total unpaid balances calculated from the original due date to the date of payment.

(c) Non-Sufficient Funds (NSF).

If a Tenant check is returned by the bank for any reason, Tenant shall pay a NSF fee of Fifty Dollars (\$50) for administrative costs related to collecting and handling such returned check. The Tenant shall also pay any associated bank fees charged to the Port related to the returned check. Landlord may require, at Landlord's sole discretion that Tenant's future payments be made by cash, cashier's check or money order.

Landlord and Tenant hereby agree that these charges represent a fair and reasonable estimate of what the Landlord might incur by reason of Tenant's late or NSF payment. These fees are due and payable with the current rent payment. Landlord's acceptance of any late charge, interest or NSF fee shall not be deemed an extension of the date rent is due or prevent Landlord from exercising any other rights or remedies under this Lease.

The Landlord reserves the right to revise its policy regarding late payment, interest and NSF check charges without notice to Tenant.

ARTICLE 5
FINANCIAL SECURITY

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

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

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

ARTICLE 6
TAXES & ASSESSMENTS

6.1 Property Taxes.

Landlord will pay property tax on Premise's real property and any building or structure that is permanently attached to the real property.

6.2 Personal Property Taxes

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

6.3 Additional Taxes/Assessments: Leasehold Excise Tax (LET)

Tenant shall also pay: (a) all special taxes and assessments (including irrigation assessments) or license fees now or hereafter levied, assessed or imposed by law or ordinance, by reason of Tenant's use of the Premises; (b) all business and occupation tax and any tax, assessment, levy or charge assessed on the Rent paid under this Lease; (c) the statutory leasehold excise tax imposed in connection with the Rent due hereunder or otherwise due as a consequence of this Lease; and (d) any excise, transaction, sales, privilege, or other tax (other than net income and/or estate taxes) now or in the future imposed by the city, county, state or any other government or governmental agency upon Landlord and attributable to or measured by the Rent or other charges or prorations payable by Tenant pursuant to this Lease.

ARTICLE 7

UTILITIES

Landlord shall pay all assessments, charges and/or fees for sewer and common area maintenance. Landlord shall pay water assessments if water is not separately metered to the Premises. Tenant shall be solely responsible for payment of all separately metered electrical and water assessments charged to the Premises. Tenant shall pay all such charges directly to utility provider when due. Tenant shall be solely responsible for all separately metered electrical and water assessments which may, during the Lease Term, be assessed, levied, charged, confirmed or imposed i) on the Premises or any part thereof, ii) on improvements now or hereafter comprising a part thereof, and iii) on the use or occupancy of the Premises. Tenant shall pay all such assessments, charges and/or fees when due.

DB-A Suite A110: Electricity Meters Assigned to Tenant:	<u>250802</u>
DB-A Suite A110: Water Meters Assigned to Tenant:	<u>74521135</u>
DB-C Suite C101: Electricity Meters Assigned to Tenant:	<u>250754</u>
DB-C Suite C102: Electricity Meters Assigned to Tenant:	<u>231725</u>
DB-C Suite C101 Water Meters Assigned to Tenant:	<u>75131776</u>
DB-C Suite C102 Water Meters Assigned to Tenant:	<u>32240148</u>
DB-D Bay 5 Electricity Meter Assigned to Tenant:	<u>159412</u>

At Tenant's own expense, tenant may have a maximum of one (1) 30 yard waste disposal container placed in a designated area as allowed by Landlord. Tenant must keep container closed and secured at all times. Debris (including broken glass) shall not be allowed around container or as a result of tenant operations.

Tenant shall be solely responsible to Landlord for the payment of all assessments, charges and/or fees pertaining to the Premises, including but not limited to, water assessments, charges for public utilities, license and permit fees which may, during the Lease Term, be assessed, levied, charged, confirmed or imposed i) on the Premises or any part thereof, ii) on improvements now or hereafter

comprising a part thereof, and iii) on the use or occupancy of the Premises. Tenant shall pay all such assessments, charges and/or fees to Landlord when due.

Interruptions: There shall be no abatement of rent and Landlord shall not be liable for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Landlord's reasonable control or in cooperation with governmental request or directions.

ARTICLE 8 **INSURANCE**

8.1 Insurance

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

(a) Commercial General Liability Insurance

Commercial General Liability (CGL) insurance for the benefit of Landlord and Tenant jointly against liability for bodily injury and property damage for a combined single limit of not less than One Million Dollars (\$1,000,000) for any one occurrence for this location, including coverage for contractual liability and personal injury, with a \$2,000,000 aggregate limit;. Landlord reserves the right to require higher liability limits and/or to change insurance requirements at any time during the term of the lease with thirty (30) days' notice to Tenant.

(b) Statutory Workers' Compensation

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

(c) Automobile Liability Insurance

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

(d) Property Insurance

Property insurance covering all leasehold improvements to the Premises, furniture, fixtures, equipment, inventory and other personal property located on the Premises (and, at Landlord's election, on all buildings and other improvements now or hereafter existing at the Premises) in an amount of not less than one hundred percent (100%) insurable replacement value minimum co-insurance of 80%, "Special Form—Causes of Loss", with Flood Insurance if Landlord reasonably deems such insurance to be necessary or desirable, and replacement cost coverage to protect against loss of owned or rented equipment and tools brought onto or used at the Property by Tenant.

8.2 Requirements

The foregoing insurance requirements shall be placed with an insurance company or companies admitted to do business in the State of Washington and shall have an A.M. Best's rating of A-/ or better. Tenant shall furnish Landlord with a copy of the certificate of such policies before the Commencement Date of this Lease and, upon request by Landlord, shall provide proof satisfactory to Landlord that all such policies are in full force and effect. Tenant's liability insurance policies shall list Landlord as an additional insured and Tenant's property insurance policies shall reflect Landlord as a loss-payee as its interests may appear, and all of Tenant's insurance policies shall be primary and non-contributing with any insurance carried by Landlord. Such policies shall not be cancelable or materially altered without forty-five (45) days' prior written notice to Landlord. In addition, the policies shall provide for ten (10) days' written notice to Landlord in the event of cancellation for non-payment of premium. Tenant's failure to deliver the policies or certificates to Landlord as required above shall constitute an event of default pursuant to Article 24 hereof.

8.3 Mutual Waiver of Subrogation

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

8.4 Destruction or Condemnation.

8.4.1 Damage and Repair. If the Premises are partially damaged but not rendered untenantable, by fire or other insured casualty, then Landlord shall diligently restore the Premises and this Lease shall not terminate. The Premises shall not be deemed untenantable if less than twenty-five percent (25%) of the Premises are damaged. Landlord shall have no obligation to restore the Premises if insurance proceeds are not available to pay the entire cost of such restoration. If insurance proceeds are available to Landlord but are not sufficient to pay the entire cost of restoring the Premises, then Landlord may elect to terminate this Lease and keep the insurance proceeds, by notifying Tenant within sixty (60) days of the date of such casualty.

If the Premises are entirely destroyed, or partially damaged and rendered untenantable, by fire or other casualty, Landlord may, at its option: (a) terminate this Lease as provided herein, or (b) restore the Premises to their previous condition. If, within 60 days after receipt by Landlord from Tenant of written notice that Tenant deems the Premises untenantable, Landlord fails to notify Tenant of its election to restore the Premises, or if Landlord is unable to restore the Premises within six (6) months of the date of the casualty event, then Tenant may elect to terminate the Lease.

If Landlord restores the Premises under this Article 8.4.1, Landlord shall proceed with reasonable diligence to complete the work, and the base monthly rent shall be abated in the same proportion as the untenantable portion of the Premises bears to the whole Premises, provided that there shall be a rent abatement only if the damage or destruction of the Premises did not result from, or was not contributed to directly or indirectly by the act, fault or neglect of Tenant, or Tenant's officers, contractors, licensees, subtenants, agents, servants, employees, guests, invitees or visitors. Provided, Landlord complies with its obligations under this Article, no damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance directly, incidentally or consequentially arising from any repair or restoration of any portion of the Premises. Landlord will not carry insurance of any kind for the protection of Tenant or any improvements paid for by Tenant or on Tenant's furniture or

on any fixtures, equipment, improvements or appurtenances of Tenant under this Lease, and Landlord shall not be obligated to repair any damage thereto or replace the same unless the damage is caused by Landlord's negligence or willful misconduct.

8.4.2 If the Premises are made untenable by eminent domain, or conveyed under a threat of condemnation, this Lease shall automatically terminate as of the earlier of the date title vests in the condemning authority or the condemning authority first has possession of the Premises and all Rents and other payments shall be paid to that date. In case of taking of a part of the Premises that does not render the Premises untenable, then this Lease shall continue in full force and effect and the base monthly rental shall be equitably reduced based on the proportion by which the floor area of any structures is reduced, such reduction in Rent to be effective as of the earlier of the date the condemning authority first has possession of such portion or title vests in the condemning authority. Landlord shall be entitled to the entire award from the condemning authority attributable to the value of the Premises and Tenant shall make no claim for the value of its leasehold. Tenant shall be permitted to make a separate claim against the condemning authority for moving expenses or damages resulting from interruption in its business, provided that in no event shall Tenant's claim reduce Landlord's award.

ARTICLE 9

ACCEPTANCE AND CARE OF PREMISES

Tenant has inspected the Premises and accepts the Premises "AS IS" in its present condition and acknowledges that Landlord is not responsible to provide, and has made no representations or warranties that it will provide, any improvements to the Premises whatsoever, except as set forth in Article 10, Alterations and Improvements, below. Tenant shall, at its sole cost, keep the Premises in as good working order, cleanliness, repair, and condition, as that which existed at the Lease Commencement Date. In the event that Tenant fails to comply with the obligations set forth in this **Article 9**, Landlord may, but shall not be obligated to, perform any such obligation on behalf of, and for the account of Tenant, and Tenant shall reimburse Landlord for all costs and expenses paid or incurred on behalf of Tenant in connection with performing the obligations set forth herein. Tenant expressly waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

ARTICLE 10

ALTERATIONS AND IMPROVEMENTS

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

Upon lease termination notice for C101 or C102, by either party, Tenant shall employ at its own expense a Washington State licensed, bonded and insured contractor to obtain all required permits and to reconstruct all walls where wall penetrations have been constructed by Tenant between warehouses and/or offices. All such work shall be completed within 30 days. Tenant shall be required to return the premises to the same condition as when entered into lease including but not limited to wall construction, paint, materials, and meeting all applicable building and fire codes.

ARTICLE 11

ACCIDENTS AND INDEMNIFICATION

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

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

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

ARTICLE 12

COMPLIANCE WITH LAWS

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

ARTICLE 13

MAINTENANCE

Tenant shall keep the premises in a neat, clean, and sanitary condition at all times. Tenant shall keep all improvements to the Premises in good condition.

13.1 Janitorial: Tenant will provide janitorial service inside the Premises, restrooms and window washing on inside of windows.

13.2 Landscaping and Common Area Sweeping: Landlord, at its cost, will provide

landscaping care and common area repairs, maintenance, and sweeping outside the building.

13.3 **Other Maintenance and Repairs:** Landlord will maintain exterior of building (except for overhead and/or sliding doors, if any), roof, foundation, and electrical (except for lightbulbs and light fixture ballasts), heating and plumbing, in a good state of repair. Tenant shall pay the reasonable cost of repairs of all damage caused by Tenant, its agents, servants, employees, or invitees within ten (10) days of receipt of an invoice stating the repairs performed and the cost thereof. Tenant shall be responsible for all minor plumbing repairs and maintenance including but not limited to plumbing line blockages and minor leaks. Tenant shall be responsible to replace all light bulbs and light fixture ballasts located in Tenant's leased space. Tenant shall be responsible for the maintenance and repair of all overhead and/or sliding doors located in Tenant's Premises. Landlord shall be responsible for maintenance of lighting in Tenant's shared Premises. Landlord shall be responsible for testing and maintaining interior fire sprinkler systems, smoke detectors, fire extinguishers and alarm systems.

13.4 **HVAC:** HVAC and all mechanical systems shall be in satisfactory operating condition and will be maintained by Landlord during the term of the Lease.

ARTICLE 14

LANDLORD'S ACCESS

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

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

ARTICLE 15

SIGNS AND ADVERTISING

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

ARTICLE 16

WASTE AND UNLAWFUL USE

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

ARTICLE 17

SUCCESSORS

All the covenants, agreements, terms and conditions contained in this Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors, marital communities and assigns. Any assignment or subletting of the Premises or any interest in this

Lease shall not relieve Tenant of primary responsibility for the performance of the terms and payment of the sums to be paid by Tenant hereunder.

ARTICLE 18

HAZARDOUS MATERIALS

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

ARTICLE 19

ASSIGNMENT AND SUBLETTING

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

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

ARTICLE 20

SURRENDER OF POSSESSION

20.1 Surrender

At the expiration of the tenancy created hereunder, whether by lapse of time or otherwise, Tenant shall surrender the Premises in substantially the as good condition or better as they were at the Lease Commencement Date, and shall remove all of its personal property, furniture, non-permanent fixtures installed by or for Tenant, Tenant's equipment, and all cabling and wiring installed by or for Tenant. Tenant's obligations shall include the repair of any damage occasioned by the installation, maintenance or removal of Tenant's personal property, furniture, non-permanent fixtures installed by or for Tenant, and Tenant's equipment.

20.2 Removal of Property

In the event of any entry in, or taking possession of, the Premises or upon the termination of this Lease, Landlord shall have the right, but not the obligation, to remove from the Premises all personal property remaining on the Premises, and may store the same in any place selected by Landlord, including but not limited to a public warehouse, at the expense and risk of the Tenant thereof, with the right to sell such stored property, as per applicable statutory requirements. The proceeds of such sale shall be applied first to the cost of such sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from Tenant to Landlord under any of the terms hereof, with the balance, if any, to be paid to Tenant.

20.3 Holding Over

If Tenant fails to surrender the Premises at the expiration or earlier termination of this Lease, occupancy of the Premises after the termination or expiration shall be that of a tenancy at sufferance. Tenant's occupancy of the Premises during the holdover shall be subject to all the terms and provisions of this Lease and Tenant shall pay an amount due on the first of each month of the holdover period, without reduction for partial months during the holdover, equal to 150% of the greater of: (1) the monthly Total Monthly Rent (including Leasehold Tax), and any other charge due, for the monthly period immediately preceding the holdover; or (2) the fair market value for gross monthly rental for the Premises as reasonably determined by Landlord. No holdover by Tenant or payment by Tenant after the expiration or early termination of this Lease shall be construed to extend the Term or prevent Landlord from immediate recovery of possession of the Premises by summary proceedings or otherwise. In addition to the payment of the amounts provided above, if Landlord is unable to deliver possession of the Premises to a new tenant, or to perform improvements for a new tenant, as a result of Tenant's holdover, Tenant shall be liable to Landlord for all damages, including, without limitation, consequential damages, that Landlord suffers from Tenant's holdover. Nothing herein shall be construed as Landlord's consent to such holding over. During the holdover Tenant shall remain responsible for payment of all utilities, taxes, and other assessments, charges and/or fees due under this Lease.

ARTICLE 21 **NOTICES**

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

ARTICLE 22 **LIENS AND ENCUMBRANCES**

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

ARTICLE 23

LANDLORD'S TERMINATION RIGHT

Notwithstanding anything to the contrary elsewhere in the Lease, in the event that Landlord elects to use the Land and/or Premises for industrial development or other public or port-related purposes, Landlord shall have the right to terminate this Lease by providing sixty (60) days' written notice. If Landlord elects to terminate the Lease early as provided herein, the early termination date chosen by Landlord shall operate as if that date is the Expiration Date set forth in the Basic Lease Provisions. The parties recognize that the foregoing early termination right is important to Landlord and that any delay caused by the failure of Tenant to vacate the Premises pursuant to this **Article 23** when required can cause irreparable harm to the Landlord and future tenants. Therefore, Landlord and Tenant agree that time is of the essence of this **Article 23** and that if any dispute arises between Landlord and Tenant with respect to the provisions of this **Article 23**, any other provisions of this Lease notwithstanding, Tenant will vacate the Premises on or before the early termination date selected by Landlord, and Tenant shall be deemed to have waived any rights in law or equity to possession of the Premises.

In the event of the insolvency or bankruptcy of the Tenant, Landlord may, at Landlord's option, immediately take full possession of the premises to the exclusion of all persons. Exercising such option shall not alleviate Tenant's obligations under this Lease and Landlord shall have the right to seek all remedies set forth in this Lease.

ARTICLE 24

DEFAULT AND REMEDIES

24.1 Default

The occurrence of any one or more of the following events shall constitute a material breach and default of this Lease (each, an "Event of Default"):

- (a) Any failure by Tenant to pay Rent and Leasehold Tax when due, or any other assessment, charge and/or fee when due;
- (b) Any failure by Tenant to obtain and keep in full force and affect the insurance coverage(s) required hereunder to be carried by Tenant;
- (c) Any failure to immediately remedy an emergency condition that poses a significant risk of injury or damage;
- (d) Any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease; or
- (e) Tenant bankruptcy

24.2 Remedies.

(a) Re-entry and Termination

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

1. Declare the Lease Term ended and reenter the Premises and take possession thereof and remove all persons therefrom, and Tenant shall have no further claim to the Premises; or

2. Without declaring this Lease ended, reenter the Premises and occupy the whole or any part thereof for and on account of Tenant and collect any unpaid Rent, Leasehold Tax, and other charges, which have become payable, or which may thereafter become payable; or
3. Even though Landlord may have reentered the Premises, thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises.

(b) Express Termination Required

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

(c) Damages

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

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

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

(d) Definitions

As used in **Paragraphs 24.2(c)1** and **24.2(c)2** above, the "worth at the time of award" is computed by allowing interest at the rate of twelve percent (12%) per annum compounded monthly. As used in **Paragraph 24.2(c)3** above, the "**worth at the time of award**" is computed by discounting such amount at the discount rate of the Federal Reserve Bank situated nearest to the location of the Property at the time of award plus one (1) percentage point.

(e) No Waiver

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

24.3 [Interest](#)

Any sum accruing to Landlord under the terms and provisions of this Lease which shall not be paid when due shall bear interest at the interest rate provided herein from the date the same becomes due and payable by the terms and provisions of this Lease until paid, unless otherwise specifically provided in this Lease. The interest rate which shall apply shall be the lesser of (i) twelve percent (12%) per annum (1% per month), or (ii) the highest rate allowed by applicable law.

ARTICLE 25
ATTORNEYS' FEES AND COSTS

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

ARTICLE 26
MISCELLANEOUS

26.1 [Miscellaneous Provisions](#)

The following miscellaneous provisions shall apply to this Lease:

- (a) Time is of the essence hereof.

(b) If any portion of this Lease shall be deemed void, illegal or unenforceable, the balance of this Lease shall not be affected thereby.

(c) This Lease shall be interpreted according to the laws of the State of Washington. The parties agree that the Superior Court of the State of Washington for Benton County shall have sole jurisdiction over any question, claim, loss or injury arising hereunder.

(d) Tenant acknowledges that, except as expressly set forth in this Lease, that neither Landlord nor any other person has made any representation or warranty with respect to the Premises.

(e) This Lease shall be binding upon the heirs, executors, administrators, successors, and assigns of both parties hereto, except as otherwise provided for herein;

(f) Landlord does not by this Lease, in any way or for any purpose, become a partner or joint venturer of Tenant in the conduct of its business or otherwise.

(g) The paragraph and section headings hereof are for convenience only and shall not be used to expand or interpret the meaning of any part of this Lease.

(h) Landlord shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond Landlord's control, including labor disputes, civil commotion, war, governmental regulations or controls, fire or other casualty, inability to obtain any material or service, or acts of God.

(i) This Lease and the Exhibits, Riders, and/or Addenda, if any, attached hereto, constitute the entire agreement between the parties. This Lease covers in full each and every agreement of every kind or nature whatsoever between the parties hereto concerning this Lease and all preliminary negotiations, inducements, representations, and agreements of whatsoever kind or nature are merged herein, and there are not oral agreements or implied covenants. Both parties represent they have had the opportunity to seek legal counsel prior to signing this Lease. All Exhibits, Riders, or Addenda mentioned in this Lease are incorporated herein by reference. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by both parties. The captions and section numbers appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe, or describe the scope or intent of any section.

Tenant and Landlord hereby represent and warrant that they have not employed any broker with regard to this Lease and that they have no knowledge of any broker being instrumental in bringing about this Lease transaction. Each party shall indemnify the other against any expense as a result of any claim for brokerage or other commissions made by any broker, finder, or agent, whether or not meritorious, employed by them or claiming by, through or under them. Tenant acknowledges that Landlord shall not be liable for any representations of Landlord's leasing agent or other agents of Landlord regarding this Lease transaction except for the representations and covenants of Landlord expressly set forth in this Lease.

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


PORT OF KENNEWICK

By: _____
Title: Tim Arntzen, Chief Executive Officer

Reviewed:

By: _____
Title: Nick Kooiker, Port CFO

RENEWAL BY ANDERSEN OF TRI-CITIES

By: 
 Kathryn Marriott (Jul 5, 2022 08:35 PDT)
Title: KATHRYN MARRIOTT
Its: PRESIDENT

Approved as to form:

By: _____
Title: Taudd Hume, Port Legal Counsel

**WAIVED DUE TO COVID19
OFFICE CLOSURE**

STATE OF WASHINGTON

COUNTY OF _____

ss.

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

Dated this _____ day of _____, 201__.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

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

My appointment expires _____

STATE OF WASHINGTON

COUNTY OF BENTON

ss.

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

Dated this _____ day of _____, 201__.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

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

My appointment expires _____

EXHIBIT "A"
LEGAL DESCRIPTION

PTN: 1006804000002001

Section 6 Township 8 Range 30 Quarter SE; THAT PORTION OF THE NORTHEAST
QUARTER OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 30
EAST,
W. M., BENTON COUNTY, WASHINGTON, LYING NORTH

COMMONLY KNOWN AS
1426 E. 3rd Ave Suite A110 (Development Building A)
1426 E. 3rd Ave Suite C101 & C102 (Development Building C)
1328 E. 3rd Ave Bay 5 (Development Building D)
Kennewick, WA 99336

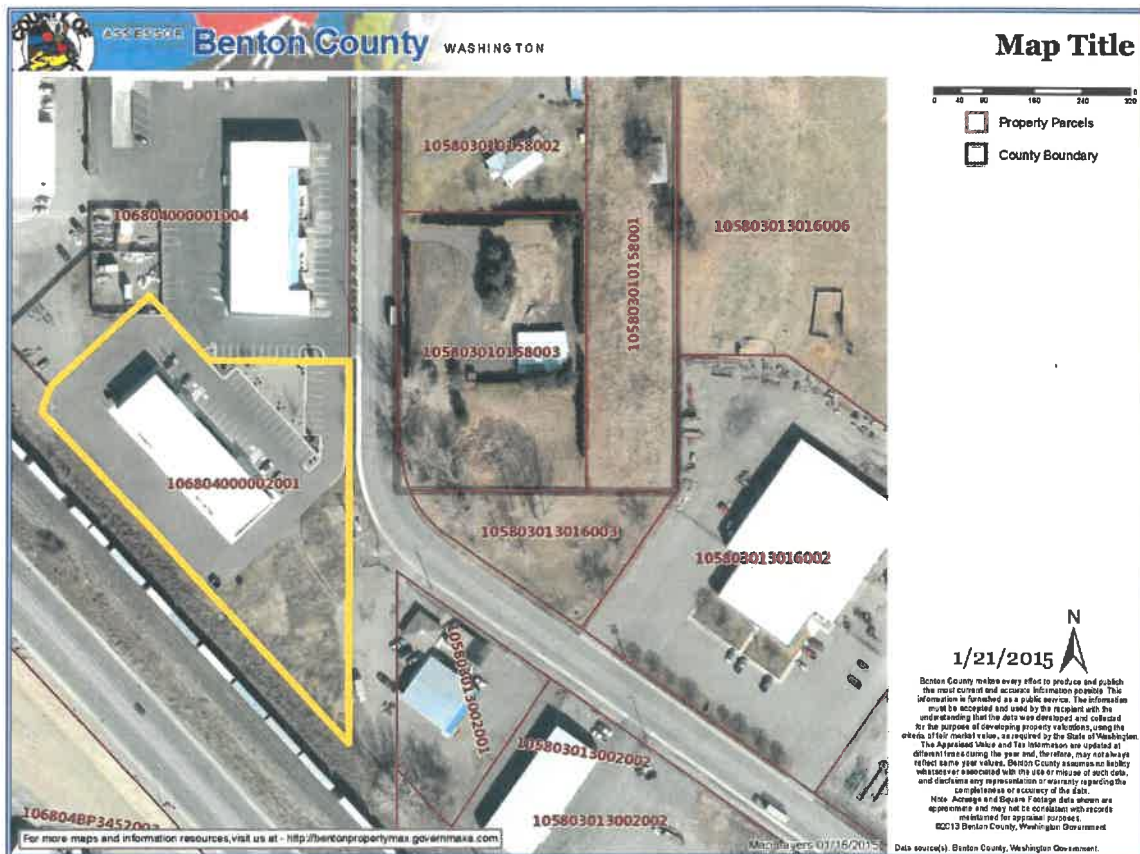


EXHIBIT "B"

PERSONAL GUARANTY TO THE PORT OF KENNEWICK

TO GUARANTEE PERFORMANCE OF LEASE

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, as personal guarantor, is firmly bound unto the Port of Kennewick, a municipal corporation, in the sum of all monthly rent, plus leasehold tax, and any other assessments, charges and/or fees due as per Lease Agreement dated July 1, 2022.

The conditions of this obligation are as follows:

WHEREAS, Kathryn Marriott entered into a lease with the PORT OF KENNEWICK for land as described in Exhibit "A", located in Benton County, Washington, which Lease provides for the payment of monthly rent, leasehold tax, and other assessments, charges and/or fees; and

WHEREAS, the laws of the State of Washington require a bond to the Port District in accordance with the terms of RCW 53.08.085, for a minimum of one year's rent; and

WHEREAS, this guaranty incorporates the Lease hereinabove referred to;

NOW THEREFORE, the undersigned agrees that in place of such bond called for under RCW 53.08.085, he/she/they agree to be personally liable and guarantee the payment of all sums due from him/her/them to the Port of Kennewick.

DATED this 5th day of July, 2022.

GUARANTORS:


Kathryn Marriott (Jul 5, 2022 08:35 PDT)

Name: KATHRYN MARRIOTT

LEASE CANCELLATION AND TERMINATION AGREEMENT

This LEASE CANCELLATION AND TERMINATION AGREEMENT (this “Agreement”) is entered into this _1st__ day of July, 2022 (the “Effective Date”) by and between THE PORT OF KENNEWICK (as “Landlord”), a Washington municipal corporation, and RENEWAL BY ANDERSEN, a Washington corporation (as “Tenant”), who are collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, on or about January 1, 2021, the Parties entered into a 2-year lease (the “Lease”) concerning the use of real property and improvements located at 1426 E. 3rd Ave, C101 & C102, Kennewick, WA 99336 (Development Building C Suite C101 & C102), and further amended the Lease on or about November 1, 2021 to include real property and improvements located at 1328 E. 3rd Ave, Bay 5, Kennewick (Development Building D) (collectively, the “Property”); and

WHEREAS, the Tenant is now desiring to lease additional space from Landlord, and the Parties desire to terminate the Lease, and its amendments, and place the Property and other premise leased by Tenant under one lease agreement, which shall be facilitated by using a separate and subsequent lease agreement; and

NOW THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Recitals Incorporated. The foregoing recitals are incorporated herein by reference into this Agreement as though set forth at length.
2. Lease Termination. The term of the Lease is modified hereby and shall expire upon the execution by the Parties, and the commencement of, a subsequent lease which incorporates and includes the Property (the “Termination Date”). Upon the execution and commencement of such a lease, the Parties agree that the terms and provisions of this Lease shall terminate.
3. Compliance with Obligations. Tenant shall be responsible for all obligations of Tenant under the Lease through and including the Termination Date, including, without limitation, Tenant’s obligation to pay monthly rent, any applicable additional rent, utility charges and all other amounts and charges owing under the Lease.
4. Mutual Release. By this Agreement, effective on the Termination Date and so long as neither party shall be in default under its obligations hereunder, each party hereto releases the other party hereto from all claims, demands, damages, rights, liabilities, and causes of action of any nature whatsoever, whether at law or equity, known or unknown, suspected or unsuspected, which are related

or in any manner incidental to the Lease or the Premises and which first arise out of transactions and occurrences from and after the Termination Date. Each party waives and relinquishes any right or benefit which it has or may have under applicable law regarding waiver of unknown claims to the full extent that it may lawfully waive such rights and benefits. This Agreement shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any additional or different facts. Notwithstanding the foregoing to the contrary, this Mutual Release is not intended to release or offset actions by either party for claims arising as a result of (i) a breach of the Lease and occurring on or before the Termination Date, (ii) a breach of this Agreement, or (iii) transactions and occurrences on or before the Termination Date.

5. Consultation With Counsel. In executing this Agreement, each party hereto acknowledges that they have consulted with and received the advice of counsel and that the Parties have executed this Agreement after independent investigation and without fraud, duress, or undue influence.

7. Authority of Tenant. Tenant represents and warrants that (i) it is the owner and holder of the Tenant's interest in the Lease and that it has the power, right and authority to execute this Agreement and to carry out the intent hereof, (ii) the execution and delivery of this Agreement shall not violate any agreement, contract, security agreement, lease or indenture to which Tenant is a party or by which it is bound or requires the consent of any party to any of the foregoing and (iii) the Premises, including all improvements and betterments thereto, are unencumbered, free of any security interests, liens, chattel mortgages, leases, lease purchase agreements or any other security or financing devices and, all such installations have been fully paid for.

8. Attorney Fees. If any party initiates legal proceedings to enforce its rights under this Agreement, the substantially prevailing party shall be entitled to reimbursement of its reasonable attorney fees, costs, expenses and disbursements from the other party.

9. Final and Complete Expression. This Agreement is the final and complete expression of the Parties. This Agreement may not be modified, interpreted, amended, waived or revoked orally, but only by a writing signed by the Parties hereto.

10. Severability. If any provision in this Agreement is deemed invalid, then the remaining provisions thereof will continue in full force and effect and will be construed as if the invalid provision had not been a part of this Agreement.

11. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same document.


[Remainder of page left intentionally blank. Signature page to follow.]

Dated as of the Effective Date first written above.

PORT OF KENNEWICK

RENEWAL BY ANDERSEN OF WASHINGTON

By: _____
Tim Arntzen, Port CEO

By: _____
Kathryn Marriott (Jul 5, 2022 08:35 PDT)
Kathryn Marriott, President

Reviewed:

By: _____
Nice Kooiker, Port CFO

Approved as to form:

By: _____
Taud Hume, Port Legal Counsel

WAIVED DUE TO COVID

STATE OF WASHINGTON

ss.

COUNTY OF _____

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

Dated this _____ day of _____, 2022.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

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

My appointment expires _____

STATE OF WASHINGTON

ss.

COUNTY OF BENTON

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

Dated this _____ day of _____, 2022.

(Signature of Notary)

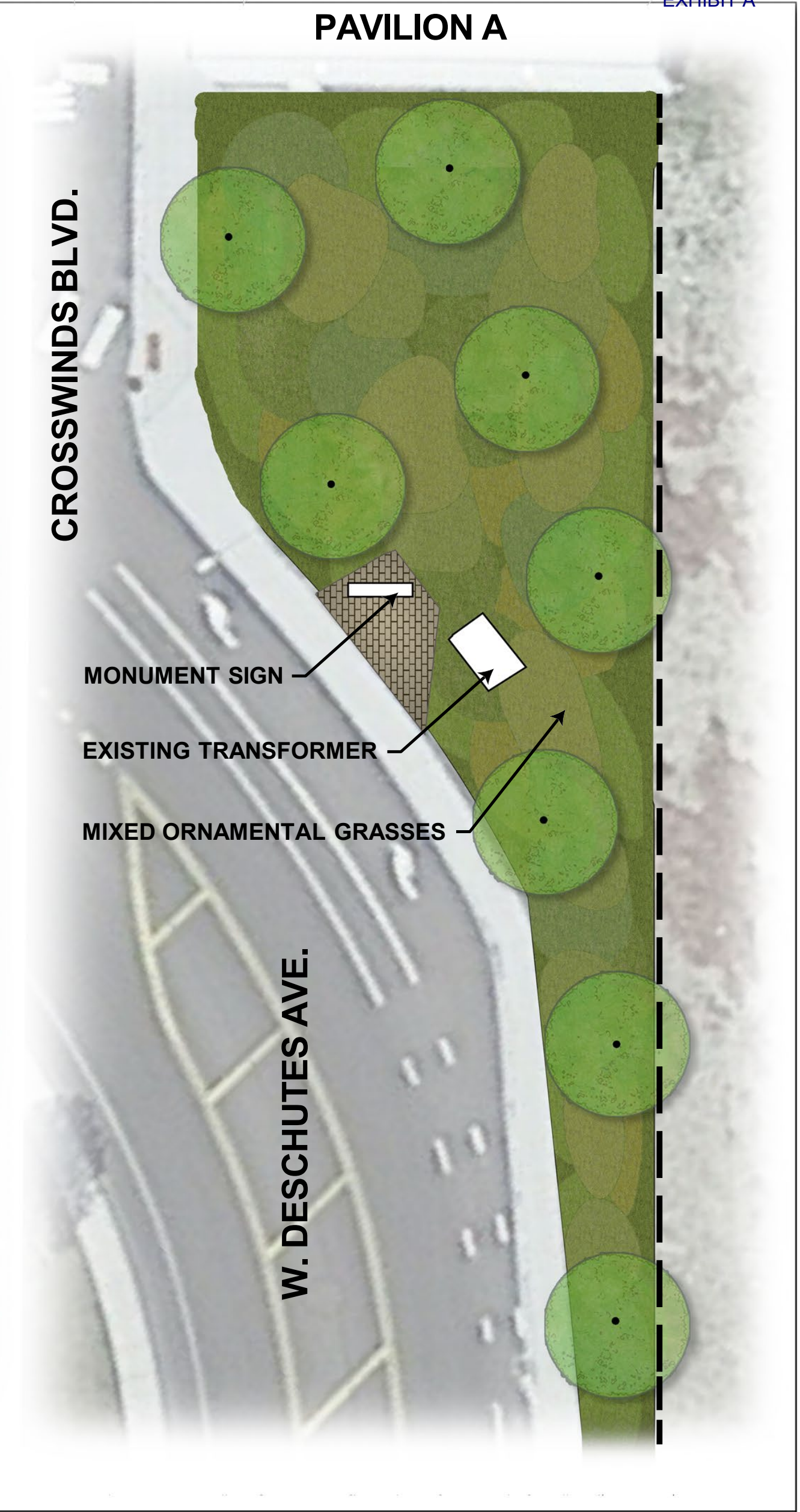
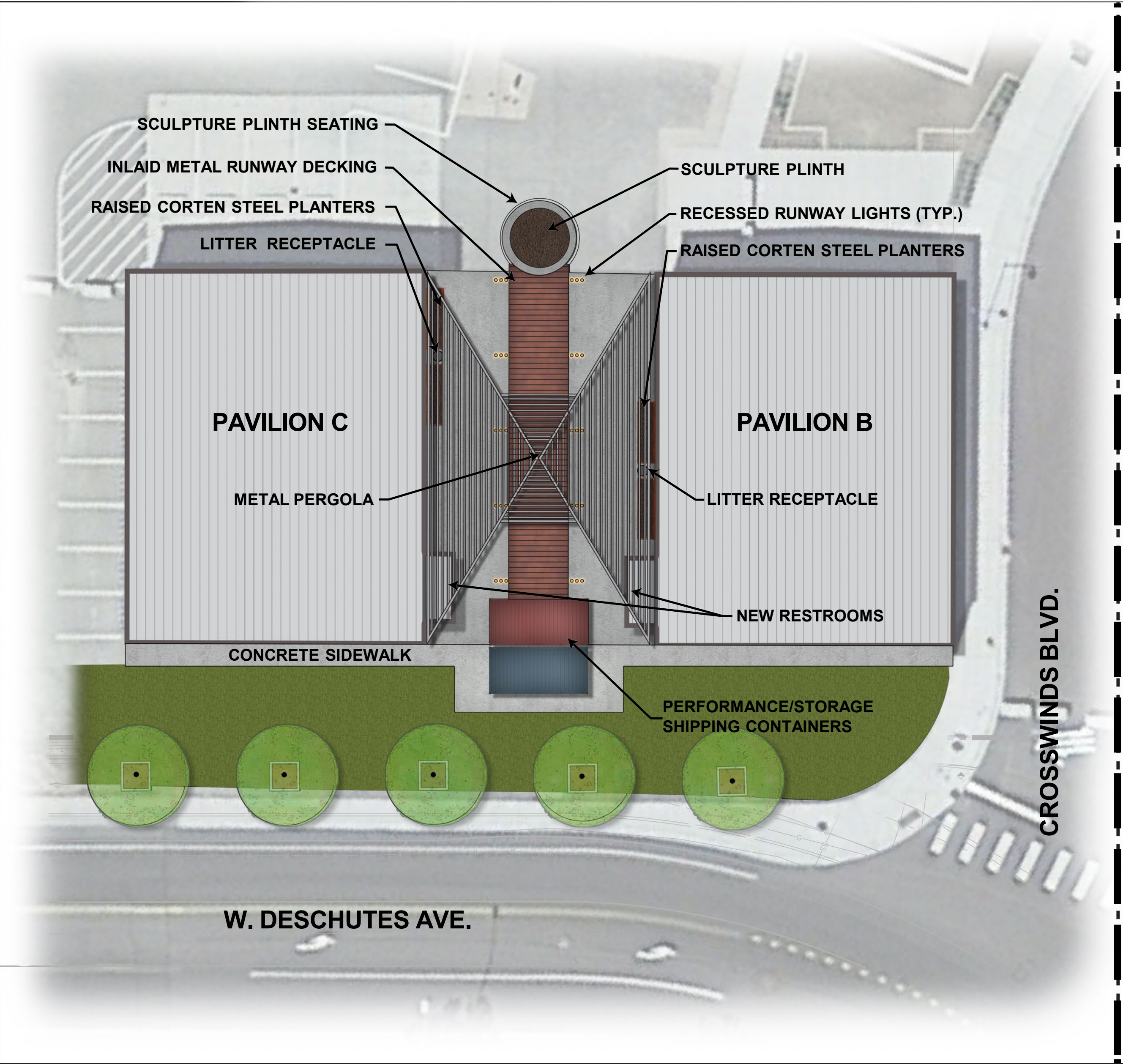
(Legibly Print or Stamp Name of Notary)

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

My appointment expires _____

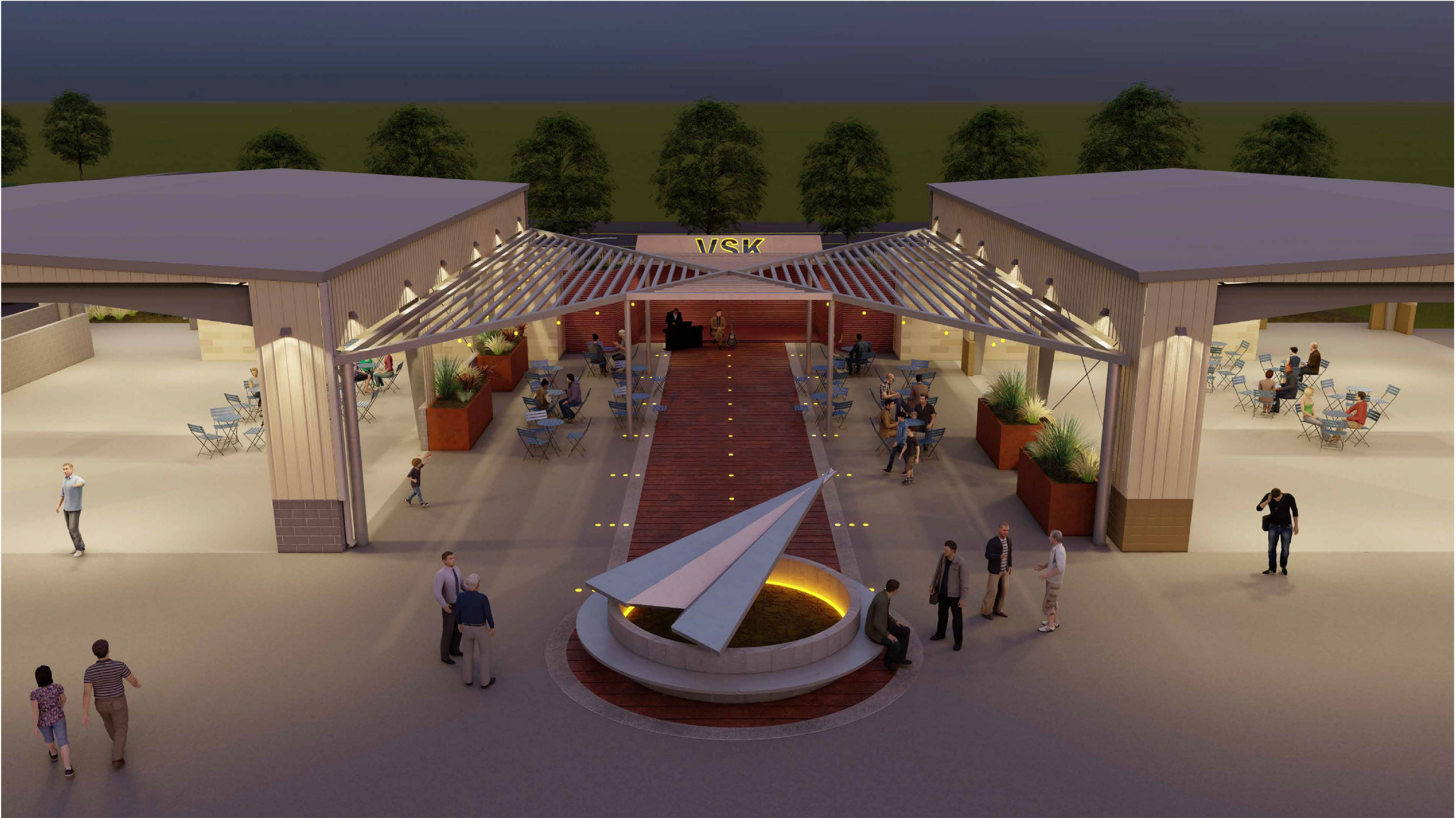












ckjt architects, pllc
128 Vista Way Kennewick WA (509) 783-5444

Parametrix
ENGINEERING. PLANNING. ENVIRONMENTAL SCIENCES



Conceptual Work Plan/Draft Budget 2023- 2024

Start of Process ~ flying at
40,000-feet **30,000 feet**



“Generally speaking, remain on the course charted years ago which focuses nearly all energy on the *Vista Field* and *Kennewick Waterfront redevelopment* projects. The next two years will be spent managing and maintaining those projects to assure they get off the ground.”

CONCEPTUAL WORK PLAN/BUDGET

Initial Thoughts:

- Recognize the amount and magnitude of ongoing work
- Prioritize exemplary finishes to projects in progress
- Recognize projects of district-wide benefit
- Be Transparent, Thoughtful & Judicious in new project selection
- Acknowledge success dependent upon forgoing some projects

Process for Evaluating Future Investment Opportunities

Overview

Consistent with the Port Mission and Goals described above, including the referenced resolution (No. 2014-31) describing Port objectives for budget and financing goals for future Port projects, the Port Commission adopts the following additional policy as part of the 2016 Comprehensive Scheme update. The Port intends to use this process to identify, evaluate, prioritize, and implement its most important future capital projects. The Port Commission recognizes the numerous opportunities regularly proposed for Port consideration must be balanced against available resources, including availability of staff and availability of financial resources. The main components of the Port's Capital Project Prioritization Policy are:

- *Project Identification – Projects will be identified through various sources, including:*
 - The adopted Comprehensive Scheme of Harbor Improvements
 - The adopted biennial budget and work plans
 - Discussions with jurisdictional partners and staff, and the public

- *Project Evaluation* – With the assistance of staff, the Port Commission will prioritize projects based on cost estimate evaluation, cost/benefit analysis, and public demand and other, less easily quantified factors, including jurisdiction priorities, emerging needs and opportunities, supplemental funding for projects partially funded, and public input received.

Organizational Considerations

Review will be conducted to evaluate if the project is consistent with the Port's mission and priorities established in the Comprehensive Scheme and associated documents adopted by reference. Additional considerations would also include:

- Does the project meet an identified need?
- Does the project support Port, community, and/or private-sector economic development objectives?
- Does the project serve multiple user groups?
- Does the project foster or enhance a public/private or public/public partnership?

Fiscal Considerations

Fiscal considerations will also be reviewed as part of determining whether the Port will invest in future opportunities:

- What are the costs of the project, including initial costs, maintenance costs, and lifecycle costs?
 - How were costs calculated and by whom (finance director, Certified Public Accountant, Certified Financial Planner, economic planner, or others)?
- Does the Port have the financial and organizational capacity to undertake and manage the project?
- Can the project leverage public or private resources with other partners and funds to maximize benefits?
- Does the project have a positive ROI?
- Would the project increase the tax base, increase revenues to the Port, contribute to the vitality of the community, and help attract regional and national tourism?

Social/Environmental/Legal Considerations

Social, environmental, and legal considerations will also be reviewed:

- Is the community involved and supportive of this project?
- If the project is not implemented, will a strategic opportunity be lost?
- Is the project appropriate for the proposed site's natural systems, topography, and/or neighboring land uses?
- Are there potential adverse impacts associated with the project?
- Does the project comply with all federal, state, or local government laws or regulations?

Project Design, Planning, and Readiness

Design, planning, and project readiness considerations will also be reviewed:

- Does the site or project require extraordinary or unique purchase cost, architectural/engineering, or other efforts or commitments of financial or staffing resources?
- Is the project ready (e.g., design completed and permits in hand)?
- Is there a reasonably foreseeable user for the project (i.e. "bird in hand")?

Project Evaluation

Initial project screening shall begin with staff providing a brief description of each project. The Port Commission shall then review, evaluate, and rank each project based on the above criteria. High-priority projects shall be incorporated into the draft work plan.

PROPOSED WORK PLAN/BUDGET The Five Pillars

I. CURATE, IMPLEMENT, OPERATE

a) ~~Vista Field Loan Repayments~~

b) Vista Field

c) Wine Village

d) Clover Island

e) Owner's Associations (Vista Field & Columbia Gardens)

PROPOSED WORK PLAN/BUDGET The Five Pillars

II. STREAMLINED SUPPORT & SHARPENING FOCUS

- a) Richland -- \$ for Richland priority project (City designs, permits, bids & builds)
- b) West Richland -- \$ for West Richland priority project (City designs, permits, bids & builds)
- c) Auction ALL surplus land **as approved by Commission resolution**

PROPOSED WORK PLAN/BUDGET The Five Pillars

III. PREPARATION FOR NEXT PHASE IMPROVEMENTS (A/E Work)

- a) Vista Field Infrastructure, Phase II
- b) Vista Field Corporate Hangars Revitalization
- c) Clover Island Stage
- d) Port Maintenance Facility

PROPOSED WORK PLAN/BUDGET The Five Pillars

IV. FUND AND CONSTRUCT

- a) Vista Field Joint-Use Parking Areas (contractual requirement of land sale)
- b) Vista Field Corporate Hangars Revitalization (lean)
- c) Vista Field Landscaping (Deschutes Gateway & Daybreak Commons)
- d) Vista Field Infrastructure, Phase II (creating additional saleable lots) provided City of Kennewick funding partnership
- e) Clover Island Stage/Parking Lot (pending USACE approval and any required stabilization)

PROPOSED WORK PLAN/BUDGET The Five Pillars

V. POSSIBLE FUTURE FUNDING

- a) West Richland: ~~Development Building~~/Amenities
- b) ~~Kennewick: South of Southridge: Industrial Park~~
- c) Vista Field Parking Structure

CONCEPTUAL WORK PLAN/BUDGET

Proposed Budget:

- | | |
|--|----------------------|
| • VF Hangars, Landscaping, Surface Parking | \$4,000,000 RCCF |
| • Vista Field Infrastructure, Phase II | \$2,000,000 CoK RCCF |
| • Richland | \$ |
| • West Richland | \$ |
| • Owners’ Association(s) Seed Funding | \$ |
| • Port Maintenance Facility | \$ |
| • Clover Island Stage/Parking Lot | \$ |
| • VFDF Building Repair | \$ |

Questions:

1. Will City of Kennewick fund Vista Field Infrastructure?
2. Can a stage be built without further east end shoreline work?



Proposal Submission Checklist

Offers to purchase Port of Kennewick property will be submitted by the prospective purchaser to Port staff in writing and dated through a Letter of Intent (LOI). A valid offer must be signed upon submission and contain all information set forth below. Non-complying offers will be returned without processing¹.

Additional due diligence may be requested of potential buyer and/or builder. The Port of Kennewick Commission reserves the right to reject any and all proposals at its discretion.

What Should I Include in My Letter of Intent?

- ☐ Identify the full legal name of the offering party and be executed by the offering party or its authorized representative.
- ☐ Identify the party to use and occupy the property, if different from the offering party.
- ☐ Legally describe the property subject to the offer.
- ☐ Indicate the total offer price (not less than Port of Kennewick Commission-approved pricing).
- ☐ Indicate any terms for payment of purchase price.
- ☐ Identify any proposed contingencies.
- ☐ Identify a proposed closing date.
- ☐ Detail the proposed use of the property and timing for any construction or development.
- ☐ Identify the size and type of building to be erected, if applicable.
- ☐ Include rough sketches, design precedents and/or illustrations.
- ☐ Include schematic designs: Specific site design and layout, with setbacks at 1" = 20' scale, preliminary elevations at 1/8" = 1'0" scale, roof forms (building massing).



Buyer Background²

A buyer wishing to build in Vista Field shall provide background information and the proposed development concept for the parcel.

A buyer shall address the following:

- ☐ Financial capability, as evidenced by a letter of credit or other acceptable means, as confirmation of its ability to complete its proposed development, including a description of funding sources for property acquisition and construction of infrastructure and facilities.
- ☐ A list of the buyer's key personnel anticipated to participate in the development, including a summary of their relevant experience.
- ☐ A list of design team members, including the principal or builder, and a licensed architect.
- ☐ Relevant experience with similar development projects, including:
 - a. Project name, location, and description.
 - b. Color images or other graphics depicting the project.
 - c. Total project budget and budget per phase (if applicable).
 - d. Budget funding sources – equity partner, development lender, permanent lender, etc.
 - e. The total duration of project development and details regarding whether the project schedule was met.
 - f. Brief description of the development process.
 - g. Consultants and contractors utilized and the role of each.
 - h. Major tenants (if applicable).
- ☐ A list and a short description of all litigation and/or claims that the buyer (or any entity or individual named in the buyer's proposal) is currently or in the last 10 years was a named party (if any), including a description of how the litigation and/or claim was resolved.
- ☐ A list of past community, charitable and/or civic contributions.
- ☐ A minimum of three references, one of which shall be a financial institution.



Builder Experience²

A builder wishing to construct in Vista Field shall submit a Statement of Qualifications describing the builder's experience and the proposed development concept for the parcel.

In describing its ***experience***, the builder shall address the following:

- ☐ Demonstrated experience with municipal planning and permitting processes.
- ☐ Demonstrated experience with "New Urbanism," Smart Growth," "Green Building," or similar development principles (if any).
- ☐ Relevant experience with similar development projects, including:
 - a. Project name, location, and description.
 - b. Color images or other graphics depicting the project.
 - c. Total project budget and budget per phase (if applicable).
 - d. Budget funding sources – equity partner, development lender, permanent lender, etc.
 - e. Total duration of project development and details regarding whether the project schedule was met.
 - f. Brief description of the development process.
 - g. Consultants and contractors utilized and the role of each.
 - h. Major tenants (if applicable).
- ☐ A list and a short description of all litigation and/or claims that the builder (or any entity or individual named in the builder's proposal) is currently or in the last 10 years was a named party (if any), including a description of how the litigation and/or claim was resolved.
- ☐ A minimum of three references, one of which shall be a financial institution.