



PORT OF KENNEWICK REGULAR COMMISSION MEETING

AUGUST 23, 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)
Tana Bader Inglima, Deputy Chief Executive Officer (via telephone)
Amber Hanchette, Director of Real Estate and Operations (via telephone)
Nick Kooiker, Chief Finance Officer (via telephone)
Larry Peterson, Director of Planning and Development (via telephone)
Lisa Schumacher, Special Projects Coordinator (via telephone)
Bridgette Scott, Executive Assistant
Carolyn Lake, Port Counsel (via telephone)

PLEDGE OF ALLEGIANCE

Commissioner Novakovich 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 August 17, 2022***
Direct Deposit and E-Payments totaling \$70,075.91
- B. Approval of Warrant Register Dated August 23, 2022***
Expense Fund Voucher Number 104060 through 104104 for a grand total of \$130,294.92
- C. Approval of Regular Commission Meeting Minutes August 9, 2022***

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

RECESS FOR PUBLIC HEARING

Commissioner Novakovich recessed the Regular Commission Meeting at 2:04 p.m. and convened the Public Hearing at 2:04 p.m.

PUBLIC HEARING

For the record, today is August 23, 2022. The Port of Kennewick Commission is holding this Public Hearing regarding the proposed Resolution 2022-22, which the Port Commission will be considering the adoption of revised Commissioner district boundaries for purposes of elections. This hybrid Public Hearing meeting is being held at 2:05 p.m. during the Port's regularly scheduled meeting on this date and as prescribed by the new Open Public Meetings Act laws. Before opening this public hearing, Commissioner Novakovich made few preliminary remarks.

The primary focus of this Public Hearing is to provide an opportunity for members of the public to speak to Resolution 2022-22 regarding the revised Commissioner district boundaries. There is a three-minute time limit on individual comments and all comments must be confined to redistricting only.

The reason for this Public Hearing today is that the Port of Kennewick operates with three elected commissioners and organizes the election of commissioners into three separate districts of as close to equal population as possible. Upon the release of new census data, which occurs every ten years the Port Commission is required to review the population balance within each district pursuant to RCW 29A.76.010. Earlier this year, the 2020 census data was provided to the Port of Kennewick by the Washington State Redistricting Commission. Once the data was received the Port's legal counsel and Port planning staff reviewed the 2020 census data and the criteria provided in RCW 29A.76.010(4). Commissioner Novakovich stated that all three currently serving commissioners and the Port's CEO were not at all involved in this process.

Resolution 2022-22 which is the subject of this Hearing proposes that the Port Commission revise its existing district boundaries, in order for the boundaries to meet the criteria, as required by law. The law states that the boundaries are to be as nearly equal in population as possible; be as compact as possible; be geographically contiguous encompass substantially the same population; and to the extent feasible, each district boundaries should coincide with existing recognized natural boundaries and preserves existing communities of related and mutual interest. The appropriate public notice has been published as required by law and we are holding this public hearing as required by all applicable laws.

Before we begin to accept public comment, Mr. Peterson, Director of Planning and Development and Ms. Lake, Port legal counsel will present a staff report.

Mr. Peterson stated the Port worked with JUB Engineering with assistance from the GIS Specialist, focusing on population information provided by the 2020 Census. Mr. Peterson stated only headcount and total population were utilized for this process.

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Ms. Lake stated before the Commission is Resolution 2022-22 approving the new district map.

Commissioner Novakovich called for Public Comment.

PUBLIC COMMENTS

No comments were made.

MOTION: Commissioner Hohenberg moved for approval of Resolution 2022-22 adopting the revised Port District boundaries as depicted in the Map, attached as Exhibit A; and further authorize that all action by port officers and employees in furtherance hereof is ratified and approved; Commissioner Moak seconded.

Discussion:

Commissioner Hohenberg stated after reviewing the data provided on the Port website, JUB Engineering, Ms. Lake, and Mr. Peterson did a great job, and he appreciates the forth right way it was presented.

Commissioner Moak realizes the work that went into this process and appreciates seeing communities of interest within the same district boundaries, such as east Kennewick and Finley representing the rural areas. Furthermore, West Richland and south Richland have more in common than the previous district which encompassed Finley. District 3 encompassed a lot of territory to get to its 1/3 district by including a lot of rural area and with the growth seen in West Richland and south Richland, the district is more compact, and it makes sense that they are now part of the same district. Additionally, when looking at District 1, the citizens in Richland that are east of Leslie Road have more in common with west Kennewick, Vista Field and Columbia Center. Commissioner Moak likes the geographical areas and the utilization of key streets as divisors and districts and believes JUB Engineering did an exceptional job and the map is easy to understand and they should be commended. Commissioner Moak stated the map makes a lot of sense and is happy to support it.

Commissioner Novakovich inquired what the population of the Port district was ten years ago.

Mr. Peterson stated 10 years ago, the district was approximately 124,000 and we have seen a growth of 27,000 and it is now approximately 151,000. The Port district represents approximately 73% of the population in Benton County.

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

Commissioner Novakovich adjourned the Public Hearing at 2:15 p.m.

Commissioner Novakovich reconvened the Regular Commission Meeting at 2:15 p.m.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

AUGUST 23, 2022 MINUTES

REPORTS, COMMENTS AND DISCUSSION ITEMS

A. Port Commission Rules of Policy and Procedure Update; Resolution 2022-23

Ms. Lake presented Resolution 2022-23 for Commission consideration and outlined the recent revisions.

Commission and staff discussion commenced regarding the Rules of Policy and Procedures.

PUBLIC COMMENTS

No comments were made.

MOTION: *Commissioner Hohenberg moved for approval of Resolution 2022-23 approving modifications to the Commission Rules of Policy and Procedure; Commissioner Novakovich seconded.*

Discussion:

Commissioner Hohenberg appreciates the work on the update and the opportunity to provide feedback on the revisions. Staff and Ms. Lake have done an excellent job incorporating our thoughts and he fully supports Resolution 2022-23.

Commissioner Novakovich praised Ms. Lake and staff on their work on the update. We spent a great deal of time last year going through a different process which would have cost a lot of money and time. This process was accomplished in a shorter amount of time and cost the taxpayers a lot less. Commissioner Novakovich appreciates the work that went into the update.

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

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

Commissioners reported on their respective committee meetings.

C. Non-Scheduled Items

Ms. Bader Inglima stated the Port will be celebrating the Columbia Gardens Phase 2 Grand Opening on September 15, 2022, from 2:00 to 5:00 p.m.

Ms. Hanchette presented photos from the August Columbia Gardens Saturday Night Market and reported it was well attended and there were a variety of vendors present. Mr. Phongsa, the Port's mobile vendor coordinator has put in a lot of work into these events and there is one more Saturday Night Market planned for September.

Mr. Arntzen offered his congratulations to the Commission on the processing of the redistricting. Although it looks like a simple process, it has a lot of moving parts, and it is very important legislatively, to get this right.

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Commissioner Hohenberg appreciates Ms. Hanchette's comments and work being done down at Columbia Gardens. Commissioner Hohenberg met Mr. Arntzen at Vista Field Monday and offered kudos to the maintenance staff for keeping the Port developments pristine and beautiful.

Commissioner Novakovich thanked Ms. Scott and Ms. Yates for their help at the Benton Franklin Parade and finding cool cars to ride around in. Commissioner Novakovich thanked Mr. Peterson and Ms. Lake on the redistricting and for her work on the update to the Commission policies.

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 2:40 p.m.

APPROVED:

PORT of KENNEWICK BOARD of COMMISSIONERS

DocuSigned by:

Skip Novakovich

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Skip Novakovich, President

DocuSigned by:

Kenneth Hohenberg

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Kenneth Hohenberg, Vice President

DocuSigned by:

Thomas Moak

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Thomas Moak, Secretary

PORT OF KENNEWICK

RESOLUTION No. 2022-22

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK ADOPTING REVISED PORT COMMISSIONER DISTRICT BOUNDARIES PURSUANT TO RCW 53.16.015 AND RCW 29A.76.010

WHEREAS, the Port of Kennewick utilizes Commissioner Districts for the purpose of the election of Port District Commissioners; and

WHEREAS, pursuant to RCW 29A.76.010, the Board of Commissioners of the Port of Kennewick is required to review the population balance within each internal district of the Kennewick Port District upon the release of new census data; and

WHEREAS, new 2020 census data has been provided to the Port of Kennewick by the Washington State Redistricting Commission, and this information has been provided to the Port Commission; and

WHEREAS, based on Port Commission review of the 2020 census data and the criteria provided in RCW 29A.76.010(4), the Port Commission has determined to that revisions to its existing District Boundaries are required in order to comply with the following statutory guidelines, that the Boundaries are:

- (a) as nearly equal in population as possible to each and every other such Port Commissioner District,
- (b) as compact as possible,
- (c) geographically contiguous areas which encompass substantially the same population; and
- (d) to the extent feasible, the District Boundaries coincide with existing recognized natural boundaries and preserves existing communities of related and mutual interest; and

WHEREAS, the appropriate public notice has been published as required by law and a public hearing has been held as required by the laws of the State of Washington, at which all members of the public were given an opportunity to be heard on the Commission's proposed Plan to revise the current District Boundaries and adopt a new District boundary map as set forth in this Resolution.


NOW, THEREFORE BE IT RESOLVED BY THE COMMISSION OF THE PORT OF KENNEWICK AS FOLLOWS:

1. Pursuant to Revised Code of Washington Section 53.16.015 and RCW 29A.76.010, the Port Commission of the Port of Kennewick hereby adopts the revised Port District boundaries as depicted in the Map, attached as **Exhibit A**.
2. Notice of the new Commissioner Districts shall be provided to the Benton County Auditor.

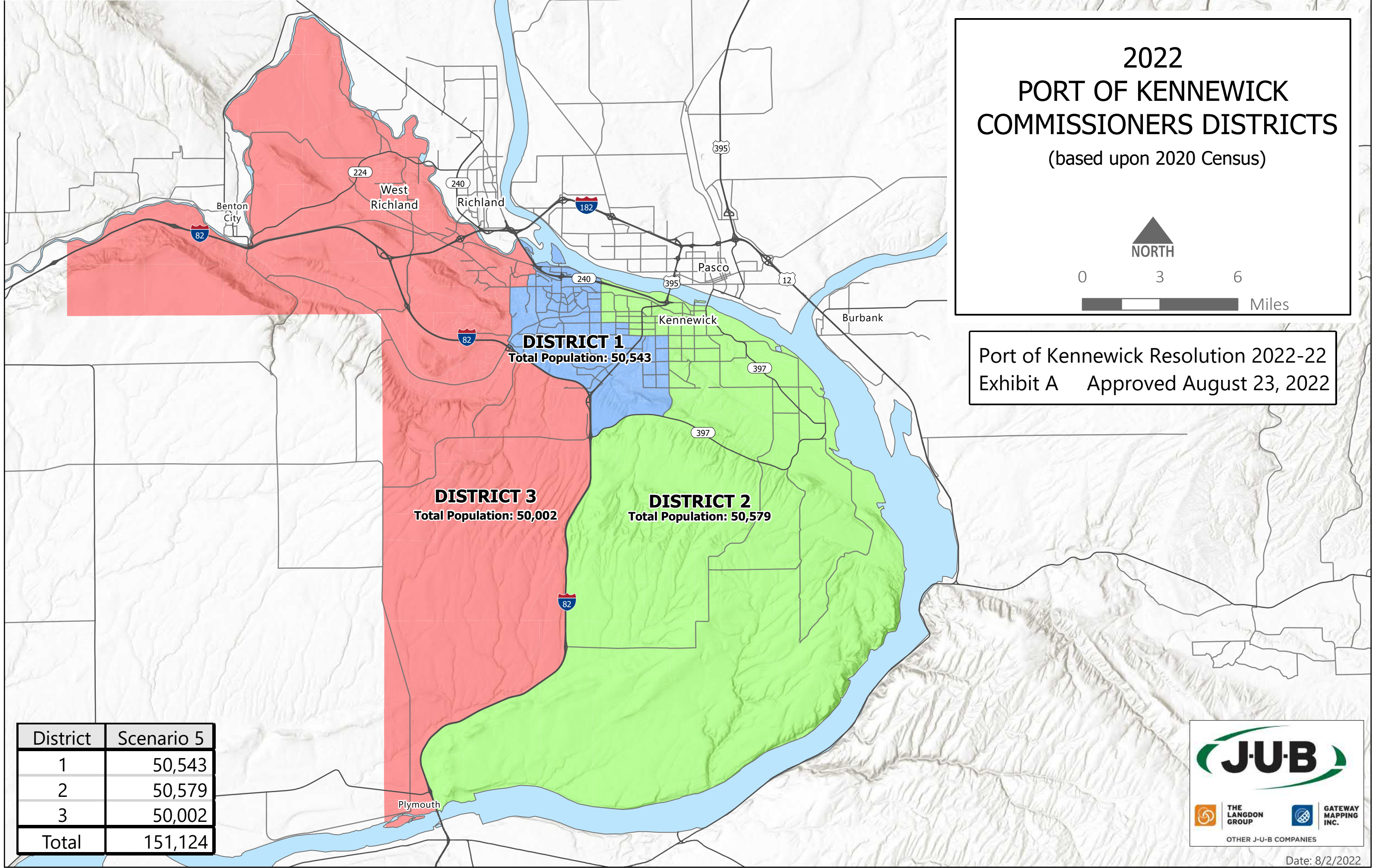
ADOPTED by the Board of Commissioners of Port of Kennewick on the 23rd day of August 2022.

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

By: 
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SKIP NOVAKOVICH, President

By: 
89F77EAC8921416...
KENNETH HOHENBERG, Vice President

By: 
A35176A2D2CD413...
THOMAS MOAK, Secretary



PORT OF KENNEWICK

Resolution No. 2022-23

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK ADOPTING UPDATED PORT COMMISSION RULES OF POLICY AND PROCEDURE

WHEREAS, the Port of Kennewick Commission adopted Resolution 2011-05 on February 22, 2011 establishing a formal policy and procedures document to address the specific roles, expectations of conduct, knowledge, disclosures, prohibitions, legal requirements, and accountability of the elected officials who are responsible for the current operation and future direction of the Port of Kennewick; and

WHEREAS, the Commission approved several updates to the Rules of Policy and Procedure via Resolution No. 2016-01, Resolution No. 2017-16, Resolution No. 2019-24, and Resolution No. 2022-19; and

WHEREAS, the Commission has determined that further updates to the Rules of Policy and Procedure are warranted based on changes to various state law provisions and the need for greater clarity.

NOW, THEREFORE; BE IT HEREBY RESOLVED that the Board of Commissioners of the Port of Kennewick hereby adopts the revised Port Commission Rules of Policy and Procedure as attached, which shall remain in effect until further revised, and supersedes prior resolutions.

ADOPTED by the Board of Commissioners of the Port of Kennewick on the 23rd day of August 2022.

PORT of KENNEWICK BOARD of COMMISSIONERS

By: DocuSigned by:
Skip Novakovich
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SKIP NOVAKOVICH, President

By: DocuSigned by:
Kenneth Hohenberg
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KENNETH HOHENBERG, Vice President

By: DocuSigned by:
Thomas Moak
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THOMAS MOAK, Secretary

PORT OF KENNEWICK, WASHINGTON

PORT COMMISSION

**RULES
OF
POLICY AND PROCEDURE**

**ADOPTED AT A REGULAR,
OPEN MEETING OF THE
PORT COMMISSION**

**AUGUST 23, 2022
Via Resolution 2022-23**

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1. INTRODUCTION AND PURPOSE

1.1 Port of Kennewick. The Port of Kennewick (“Port”) is a Washington port district, with authority to act under law, as they exist and or as they may be amended in the future including but not limited to Titles 14 and 53 RCW. The powers of a port district are exercised through a port commission. The Port Commission of the Port of Kennewick consists of three Port Commissioners.

1.2 Other Governing Law. In addition to enabling legislation, the Port is subject to Washington State laws, including but not limited to the Open Public Meetings Act, chapter 42.30 RCW; the Public Records Act, chapter 42.56 RCW; and, the Code of Ethics for Municipal Officers, chapter 42.23 RCW.

1.3 Port Managing Official. Consistent with its authority under RCW 53.12.270, the Port Commission has delegated to the office of Chief Executive Officer such administrative powers and duties as deemed proper for the efficient and proper management of the Port’s operations. See “Delegation of Authority to Executive Director,” Port Resolution 2009-06 (February 10, 2009 – the “Delegation Policy.”)

1.4 Purpose. It is the purpose of these Rules of Policy and Procedures to provide rules for governance, management and operation of the Port.

1.5 Reserved Rights. The adoption and maintenance of these Rules of Policy and Procedure (“Rules”) create no vested rights or entitlements. These Rules may be revised, suspended, amended or repealed by majority vote of the Port Commission when acting pursuant to and in compliance with applicable law and these Rules.

2. COMMISSION AND COMMISSIONERS

2.1 Purpose. The purpose of the Commission is to:

2.1.1 Identify and define the purpose, values and vision of the Port, along with the results the Port is to achieve, and to communicate those items in the form of policy;

2.1.2 Make certain decisions as are designated by law; and

2.1.3 Hire, evaluate, and terminate the Chief Executive Officer .

2.2 Governance. Commission governance addresses:

2.2.1 Strategic leadership more than administrative detail;

2.2.2 Encouragement of diversity in viewpoints;

2.2.3 Collaborative rather than individual decisions;

2.2.4 Future, rather than past or present, direction;

2.2.5 Proactive, rather than reactive, conduct; and

2.2.6 Full transparency to the public.

2.3 Actions. The Commission will:

2.3.1 Produce and maintain written policies that ensure a high quality of governance and clear roles in decision-making between Commission and staff;

2.3.2 Monitor, and not less than annually, evaluate the Chief Executive Officer's performance, based on the then-current adopted Commission policies and the Port's Work Plan, using the Evaluation Process and Procedures of Resolution 2022-19;

2.3.3 Adopt, and bi-annually review, the Port's Work Plan;

2.3.4 Adopt the Port's annual budget;

2.3.5 Adopt, regularly review, and modify as necessary the Delegation of Authority to the Chief Executive Officer; ;

2.3.6 Set the rates, rules and regulations for services provided by the Port;

2.3.7 Purchase or dispose of real estate or other property to the benefit of Port District taxpayers/citizens;

2.3.8 Establish Port positions on significant governmental legislation;

2.3.9 Reserve to the Chief Executive Officer management and direction of Port Staff, unless undertaken pursuant to the leadership of the Chief Executive Officer;

2.3.10 At all times maintain strict moral, ethical and honest conduct;

2.3.11 At all times treat the Chief Executive Officer, staff and public with respect;

2.3.12 Approve the annual budget of the Port and set the amount of the annual tax levy by December 1 of each calendar year, pursuant to RCW 53.35.045;

2.3.13 Reserve to itself if, how, and the degree to which the Port will use the governmental powers of taxation and eminent domain;

2.3.14 Establish financial policies, including capital formation and debt issuance;

2.3.15 On an bi-annual basis, affirm agreement to comply with these Rules and acknowledge and accept the consequences of failure to do so; and Take such other actions as may be required by law.

2.4 Port Financial Goals.

As specified in Port Resolution 2018-27, as may from time to time be amended, the Port Commission reiterates the following budgetary goals and acknowledges the importance thereof:

2.4.1 Work toward funding all operating expenses from revenues from Port operations;

2.4.2 Fund projects with available resources, not with bonds or loan financing

unless otherwise in the best interest of the Port and the communities' long term interest;

2.4.3 Pursue fewer projects while selecting projects with the greatest return to the Port and to taxpayers; and

2.4.5 2.4.4 Pursue projects with development partners who demonstrate support (e.g. matching funds, political/citizen/taxpayer support, leveraged investment, enthusiasm/goodwill). Produce and maintain a balanced budget.

2.4.6 Provide a fiscally sound approach to finances by ensuring that expenditures and debt repayments do not exceed available resources in current budget and future years impacted;

2.4.7 Promoting fiscal responsibility among departments.

2.4.8 Focusing on long-term financial planning.

2.4.9 Support intergovernmental cooperation by partnering with entities which demonstrate support; (e.g. matching funds; previous successes; political and taxpayer support; and enthusiasm).

2.4.10 Provide the public with high quality projects and services within a healthy work environment by encouraging efficiency, cooperation, honesty, integrity, and respect; and

2.4.11 Adhere to the additional Policies set forth in Chapter 14.2 herein below.

3. COMMISSION CODE OF CONDUCT

3.1 Purpose. The purpose of these Port of Kennewick Rules is to foster public transparency and public accountability concerning the transaction of Port business and to protect, and promote the efficiency of, the Port by prohibiting incidents and areas of conflict. Commissioners shall conduct themselves in accordance with all laws and applicable policies and further shall comply with the following:

3.2 Conflict Avoidance. Commissioners are strictly prohibited by law from entering into or engaging in any activity identified in chapter 42.23 RCW as a conflict of interest with their official duties as a Port of Kennewick Commissioner and shall further avoid conduct that may present an appearance of a conflict of interest.

3.3 Policy Acknowledged. On an annual basis at the first public meeting and in a public forum, each Commissioner shall acknowledge the obligation to disclose any conflicts of interest under chapter 42.23 RCW, and execute a written pledge to do so

3.4 Disclosure. On a case-by-case basis, each Commissioner will disclose to the other Commissioners in a public forum, any remote conflicts of interest under chapter 42.23 RCW. Disclosure will be noted in the Port's official minutes which are public record. As required by RCW 42.23.040, a Commissioner with such remote interest will not participate in any discussion and/or debate concerning such interest, will not vote on the matter, and will do nothing to influence any other Commissioner concerning their decision on the matter. The foregoing shall also apply to any business owned by a Commissioner's spouse, in the absence of a separate property

agreement.

3.5 Statement of Financial Affairs. On or before April 15 of each year, or within (14) days of taking oath of office, each Port Commissioner shall file with the Port the number of the Statement of Financial Affairs prepared in satisfaction of the requirements of RCW 42.17.240 -.241 and filed with the Public Disclosure Commission.

3.6 Conduct as Commissioner. Commissioners shall adhere to these Rules as adopted by the Commission and shall conduct themselves with civility and respect at all times with one another, with staff, and with members of the public. As fiduciaries of the Port, Commissioners shall make decisions on the basis of public policy and shall demonstrate undivided loyalty to the interests of Port and its taxpayers. This loyalty shall supersede any conflicting loyalty to advocacy or special interest groups.

3.7 Commissioner Knowledge of Policies. Commissioners will become familiar with their individual and joint obligations pertaining to the Port's directive on reporting alleged improper governmental action, including actions required of the Commission regarding complaints by Port employees and/or the public of alleged improper governmental actions and/or employee claims of retaliation for reporting alleged improper governmental actions.

3.8 Representation of Positions. Unless authorized by the Commission at an open meeting or as set forth in Port policy or plan (e.g., an approved plan), an individual Commissioner may not represent a position as being the position of the Port, either in private communications or in a public forum.

3.9 Shared Information and Advocacy. Recognizing that differences may exist among the Commissioners and that a collegial approach to issue resolution is preferred, Commissioner shall make available to fellow Commissioners all information related to Port activities. A Commissioner should make clear the foundation upon which an opinion stands; be candid about any philosophical or political preferences; and recognize and make clear the limits of expertise.

3.10 Representation of Port Position. No Commissioner is authorized, without Commission authorization, to represent the Port with special interest groups, Port tenants, suppliers, vendors, consultants, contractors or others that are or seek to do business with the Port. Unless otherwise authorized by the Commission, a Commissioner shall disclose that the Commissioner's position is not that of the Port or of the Commission when participating in discussions, debates, and forums where the sponsoring group(s) or other participants are identified with a particular perspective on an issue and the Commissioner's participation might put into question both the Commissioner's and the Commission's impartiality. Nothing in this Policy prevents an individual Commissioner from stating a position as that of the individual Commissioner, but not that of the Port or of the Commission.

3.11 Special Privileges Prohibited. RCW 42.23.070 prohibits, in part, Commissioners from using public office to secure special privileges or exemptions for a Commissioner or others.

3.11.1 Commissioners must conduct themselves at all times in a manner that leaves no grounds for belief, or even the appearance that information they have gathered on the job has been used for personal gain or for gain of any individual or special interest group, whether such gain is financial or otherwise.

3.11.2 Commissioners shall avoid any association with individuals or groups organized with an attempt to influence Port policy that will benefit themselves or their cause at the exclusion of the Port at large.

3.12 Commission-Staff Relations. Commissioners may not attempt to exercise individual authority over the Port or staff, except as explicitly set forth and authorized in Commission policies, including the Delegation Policy referenced in Section 1.3.

3.13 Open Meetings. In accordance with Chapter 43.20 RCW, Washington state's Open Public Meetings Act, Commissioners shall:

3.13.1 Not meet as a quorum outside of Commission-called public meetings to hold discussions or make decisions, as defined under Open Public Meetings Act, Chapter 42.30 RCW, regarding the business of the Port.

3.13.2 Not meet as a Commission quorum with staff outside of a Commission-called public meeting for the purpose of gathering information.

3.13.3 Understand that the requirements of the Washington Open Public Meetings Act apply to communications via telephone, e-mail, instant messaging or other forms of electronic communications. Any exchange of communication between any two Commissioners may constitute an official meeting of the Commission and be in violation of the Act. Commissioners may request that the Chief Executive Officer or his/her designee send information to other members of the Commission on an informational basis; however, replies and/or exchanges of Commissioner communications regarding Port business must not occur outside of an official public meeting of the Commission. Commissioners will not "reply" or "reply all" to any e-mail received by another member of the Commission.

3.13.4 Respect the confidentiality appropriate to issues, including personnel, real estate transactions, proprietary matters, and attorney-client privileged communications, including those requirements listed under RCW 42.30.110, Executive Sessions, and including any other confidential information gained by reason of the Commissioner's position. See also RCW 42.23.070(4) prohibiting disclosure of confidential Port information; and

3.13.5 Complete training on Open Public Meeting Act requirements no later than ninety days after taking office. Thereafter, each Commissioner shall maintain Open Public Meeting Act training at no less than every four years while a member of the Commission. Training may be completed remotely with technology including but not limited to internet-based training.

3.14 Commission Disclosure of Economic Associations. RCW 42.23.070 states in part that "[n]o municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein." Port contracts made in violation of the law are void; and any Port officer violating the law is liable to the Port for a "penalty in the amount of five hundred dollars, in addition to such other civil or criminal liability or penalty." RCW 42.23.050. The law also prohibits a Commissioner from employment or engaging in any professional activity that may require disclosure of confidential Port information to non-Port interests. RCW 42.23.070. These statutory prohibitions are based on the principle that a Port official may not have divided loyalties.

The line between proper and improper conduct may not always be clear, and even unintentional conduct may expose the Port and Port officers and employees to liability. See *City of Raymond v. Runyon*, 93 Wn. App. 127 (1998) (“In spite of well-intentioned attempts to avoid a prohibited conflict of interest,” city commissioner found in violation of law). These Rules address a Commissioner’s responsibility under law and duty of loyalty to the Port, with other interests. See also, Section 3.2 herein.

3.14.1 Under Chapter 42.23 RCW, no Commissioner may have an economic association (affiliation, involvement, or interest), directly or indirectly, that may conflict with the Commissioner’s official duties as a Port Commissioner. However, Commissioners may engage in other employment or activity only so long as it does not interfere or conflict with their duties as a Commissioner.

3.14.2 In order to avoid inadvertent violation of law, and consistent with the Port’s policy for its officers and employees, on or before April 15 of each year, or within fourteen (14) days of taking office, each Port Commissioner, shall file with the Port a written statement identifying any current or prospective economic relationship, whether direct or indirect, which could be a conflict of interest, a remote interest or give rise to an appearance of a conflict of interest with the Port. In addition, each Port Commissioner shall in the written statement disclose other employment and/or business relationships in order that the Port may confirm that there are no Commissioner conflicts or potential conflicts of interest with current or prospective Port activities. The statement shall include the name of the employer or business, the nature of services rendered, the time commitments, the location of the performance of such services and the amount of compensation (and expense reimbursement) received for such services. This Section 3.14.2 shall also apply to any employment or business of a Commissioner’s spouse, in the absence of a separate property agreement.

3.14.3 Each Commissioner shall declare his or her intention to refrain from deliberations and voting on issues related to the person or entity in such relationship. This requirement may be extended by Commission action to any individual or entity that, in the judgment of the Commission, could represent the potential for or the appearance of a conflict of interest. Even with disclosure, chapter 42.23 RCW may prohibit the Commission from acting where a conflict of interest exists.

3.14.4 A Commissioner shall not receive reimbursement for expenses, per diem, or other Port payment for activities (e.g., travel, meals and other costs) when the Commissioner is engaged in or participating for both the Port and another entity.

3.14.5 Commissioners acknowledge that the Washington State Public Records Act, chapter 42.56 RCW, applies to all records pertaining to the business of the Port. Commissioners shall comply with all mandatory requirements of that law.

4. FULL TRANSPARENCY IN PORT ACTIONS

4.1 Compliance with these Rules shall ensure full, fair, and open discussion of matters of public importance, with opportunity for public participation and media coverage.

4.2 With respect to any quasi-judicial matter before the Commission, or reasonably expected to come before the Commission, no Commissioner shall:

4.2.1 Have contact with any person, either oral, written, electronic or otherwise communicated, except in an open, public Commission meeting; and

4.2.2 Receive any information or evidence except as a part of the public record at a Commission meeting.

4.2.3 If a Commissioner is not able to avoid contact with parties outside of an open public Commission meeting or receipt of information from parties outside of an open public Commission meeting, the Commissioner shall disclose at the next public meeting, the full content of the contact made or information received.

4.2.4 Commissioner avoidance of communications described above is preferred over relying on the public disclosure remedy because an incomplete or inaccurate conveyance of the contact, even if inadvertent, may bias the outcome and subject the Commission action to challenge.

4.3 The Commission shall facilitate that all information sought to be distributed to Commissioners by the public should be first provided to Port staff; staff will then consistently distribute the information to all Commissioners and file the information as appropriate.

5. REPORTING MISCONDUCT

5.1 General. The Port is committed to lawful and ethical behavior in all of its activities and requires its staff and Commissioners to conduct themselves in a manner that complies with all applicable laws, regulations and these Rules. Complaints against staff (other than the Chief Executive Officer) shall be resolved by the Chief Executive Officer, according to applicable law and the Port's Policies and Procedures manual. Complaints against the Chief Executive Officer shall be resolved by the Port Commission according to applicable contract, Delegation of Authority and these Commission Rules of Policies and Procedures. Complaints against Commissioners shall be resolved as set forth below.

5.2 Complaint. If any person believes that a Commissioner has engaged in misconduct, the Chief Executive Officer shall investigate consistent with Section 5.3 herein and report to the Commission. No employee will be discharged, threatened, or discriminated against in any manner for following up on any complaint or for reporting what they perceive to be misconduct. All complaints must include a description of the alleged misconduct. The proceedings shall be treated confidentially, including the name of the complainant, except to the extent required to complete any investigation or as required pursuant to the Public Records Act, and in the event that an action is taken.

5.3 Initial Determination. Based upon the complaint, and only following investigation and with the advice, counsel and concurrence of Port General Legal Counsel or special legal counsel ("Port General Legal Counsel"), the Chief Executive Officer shall determine whether sufficient evidence exists to proceed with an investigation. If the Chief Executive Officer determines that insufficient evidence exists and Port General Legal Counsel concurs, the complaint shall be dismissed. Otherwise, the Chief Executive Officer shall proceed as follows.

5.4 Investigation. If an investigation is deemed warranted, the Chief Executive Officer shall recuse himself from the process and delegate all further steps to Port Counsel, and/or an investigator retained for such purpose by Port General Legal Counsel ("Investigator"). Port

Counsel shall inform the party subject of the complaint (“Respondent”) in writing that a complaint has been filed and that an investigation will take place. Port Counsel shall provide a copy of the complaint to the Respondent and the Respondent shall have a reasonable time to prepare and submit a response in writing. Port General Legal Counsel or Investigator may seek additional information regarding the matter from the complainant, the Respondent and/or relevant third parties. In conducting the investigation and evaluating all evidence, the Port’s General Legal Counsel and or Investigator shall presume that the Respondent acted ethically and shall determine that an act of professional misconduct has occurred only upon a finding of substantial evidence of such misconduct.

5.5 Determination and Recommendation. Port General Legal Counsel and or Investigator, if one is retained, shall evaluate the complaint and issue a decision within thirty (30) days of receiving all relevant evidence, that the complaint is substantiated or unsubstantiated. If Port General Legal Counsel finds the complaint substantiated, Port General Legal Counsel shall prepare a report to Chief Executive Officer and the Commission which shall set forth the basis for the decision and a recommended action; otherwise, the complaint shall be dismissed.

5.6 Notification of Determination. The Complainant and Respondent(s) shall be notified in writing of the determination and recommended action; or, of the dismissal.

5.7 Hearing and Decision upon Recommended Action. The Complainant and Respondent(s) shall have the right to be heard before the Commission or, if pending before a Neutral as that term is defined below, to be heard before the Neutral. If the complaint is against one Commissioner, following receipt of the Port General Legal Counsel’s determination and recommended action, the remaining Commissioners who are not a party to the complaint shall promptly hear, consider and vote upon the recommended action. If the complaint is made by one or more of the Commissioners against one or more Commissioner, the determination and recommended action of Port General Legal Counsel shall be submitted to a mutually agreeable neutral selected from the panel of neutrals available at the Seattle office of Judicial Arbitration and Mediation Services (“JAMS”) or Judicial Dispute Resolution (“JDR”) (“Neutral”), or other similarly qualified third party Neutral as agreed upon by the Complainant and the Respondents. If the parties cannot agree upon the selection, the Port Counsel shall select a Neutral from the panel available at the Seattle office of JAMS or JDR. The Neutral shall determine the hearing process. The Neutral shall promptly hear, consider and issue a decision regarding the recommended action within 30 days of the hearing.

5.8 Reconsideration. A decision (whether by Commission vote or issued by a Neutral) is subject to reconsideration upon written request by Complainant or Respondent(s). The sole ground for reconsideration shall be that the party seeking reconsideration has new, relevant information which was not available for consideration by Port counsel. A party seeking Reconsideration based on new information shall file a written Reconsideration request within fifteen (15) days of the date of the notice of decision. The reconsideration request shall state the reasons in support and include the new information not previously available for Port Counsel consideration and explain why the new information was not previously available. Following review of the entire investigative file, the decision and recommendation of the Port Counsel and the new information, the Commission or, if applicable, the Neutral, shall, within fifteen (15) days of receipt of such new information, hear, consider and render a final decision which may not be further appealed. The parties shall be notified of the final decision, and any action required by the final decision shall be implemented immediately.

5.9 Sanctions. If a Complaint is upheld, the Commission may invoke censure and/or reprimand of the Respondent, forfeiture of officer position on the Commission and or removal from committee assignments and other actions allowed pursuant to state law.

5.10 Public Notification. Unless otherwise determined by the Commission in a particular matter, it shall be standard procedure to publish, in a manner deemed appropriate by the Commission, the fact of any sanction.

5.11 Other Remedies Reserved. Any action taken by the Commission or Neutral shall not prevent other legal action that may be available under law. The Port shall not indemnify or defend any Commissioner found to have committed misconduct, except as otherwise provided under Section 18.

6. COMMISSION MEETINGS

6.1 Officers. There shall be three Commission officers: a president, a vice president and a secretary.

6.1.1 Terms. The terms of office for each officer shall be two years or until his/her successor is elected. Commissioners may serve consecutive two-year terms

6.1.2 Election. The officers shall be elected at the first regularly scheduled Port Commission meeting in January in even years. Newly elected officers shall take office effective the next regularly scheduled meeting following the election, unless otherwise agreed by the Commission.

6.1.3 Special Elections. By affirmative vote of 2/3 of the Commission , a special election of officers may be held at any regularly scheduled Port Commission meeting.

6.1.4 Removal from Commission Officer Position. By affirmative vote of 2/3 of the Commission, and upon a showing of just cause, a Commissioner may be divested of his or her Commission officer position. "Just Cause" includes but is not limited to a violation of these Commission Rules.

6.2 Presiding Officer. The Presiding Officer at all meetings of the Commission is the President, and in the absence of the President, the Vice President will act in that capacity.

6.3 Presiding Officer Duties. The Presiding Officer shall:

6.3.1 Preserve order and decorum for Commission meetings;

6.3.2 Observe and enforce all rules adopted by the Commission;

6.3.3 Decide all questions on order raised, in accordance with these Rules and the most current edition of Robert's Rules of Order, subject to appeal by a Commissioner;

6.3.4 Recognize Commissioners in the order in which they request the floor.

Except as otherwise set forth herein, the Presiding Officer, as a Commissioner, shall have only those rights, and shall be governed in all matters and issues by the same rules and restrictions as other Commissioners; and

6.3.5 Have the authority to appoint Commissioners or the public to serve on ad hoc committees, task forces and any advisory boards, with input from fellow Commissioners.

6.4 Regular Meeting. Port meetings are held on the second and fourth Tuesdays of each month in the Commission Chambers, 350 Clover Island Drive, Suite 200, Kennewick, Washington at 2:00 p.m.

6.5 Special Commission Meetings. A special public meeting of the Commission may be called by the President or by any two Commissioners. Any request and subsequent special meeting notices shall state all agenda items to be considered at such special meeting. Commissioners shall not discuss, consider or take final action on any subject not appearing on the special meeting agenda. .

The Port Administrative Assistant shall carry out the required published and posted notice required for special Commission meetings pursuant to applicable law.

6.6 Quorum. At all meetings of the Commission, a majority of the Commission (two members) constitutes a quorum for the transaction of business.

6.7 Proceedings in the Absence of a Quorum. The Commission or less than a quorum may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. If all Commission members are absent from any regular or adjourned regular meeting the Port Administrative Assistant may declare the meeting adjourned to a stated time and place. He or she shall cause a written notice of the adjournment to be given in the same manner as provided in RCW 42.30.080 for special meetings, unless such notice is waived as provided for special meetings. Except in the case of remote meetings without a physical location as allowed by law, whenever any meeting is adjourned a copy of the order or notice of adjournment shall be conspicuously posted immediately after the time of the adjournment on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

6.7.1 In the absence of a quorum any business transacted is null and void.

6.7.2 Even in the absence of a quorum, the Commission may move to 1) fix the time to adjourn 2) adjourn, 3) recess the meeting, and/or 4) take measures to obtain a quorum. A motion that absent members be contacted during a recess would represent a measure to obtain a quorum.

6.7.3 The prohibition against transacting business in the absence of a quorum can not be waived even by unanimous consent. If there is important business that should not be delayed until the next regular meeting, the Commission should fix the time for an adjourned meeting and then adjourn.

6.7.4 If there is no quorum at the beginning of the meeting, the President may

wait a reasonable amount of time for a quorum to assemble. If a quorum cannot be obtained, the president calls the meeting to order, announces the absence of a quorum, and may take action as described in Section 6.7.2 herein above.

6.7.5 If the President notices the absence of a quorum, it is the President's duty to declare the fact before taking any further action.

6.8 Recording Proceedings. The Port Administrative Assistant shall maintain a recorded account of all open public proceedings of the Commission in accordance with statutory requirements, and all such records shall be available for public inspection. If feasible, the recording of the meetings should be available online for a minimum of six months. Port meeting minutes can be corrected but shall not be revised without a majority affirmative vote of the Commission at a regularly scheduled Commission meeting.

6.9 Call to Order. The Presiding Officer shall call each meeting to order. The Presiding Officer will announce the attendance of Commissioners and indicate any Commissioner who is not in attendance.

6.10 Remote /Electronic Meetings. The Commission notes that it has successfully held remote meetings after March 1, 2020 and believes that remote meetings have value by increasing transparency and allowing broader public participation and attendance. As allowed by state law, the Commission authorizes continued use of remote meetings, conditioned upon compliance with the requirements of this section.

6.10.1 During a remote meeting, Commissioners, the Chief Executive Officer, staff, and the public may appear or attend by phone or by other electronic means that allows real-time verbal communication without being in the same physical location and includes proper accommodation for public participation.

6.10.2 Remote meetings may be conducted through the use of Internet or telephonic meeting services that support voting and audio and or visible displays identifying those participating, identifying those seeking recognition to speak, showing (or permitting the retrieval of) text of pending motions, and showing the results of votes. Participation by such means shall constitute presence in a meeting for purposes of establishing a quorum, voting, attendance and for all other purposes.

6.10.3. In addition, for a remote meeting, Port must provide an option for the public to listen to the proceedings telephonically or by using a readily available alternative in real-time that does not require any additional cost for participation. Free readily available options include, but are not limited to, broadcast by the Port on a locally available cable television station that is available throughout the Port district or other electronic, internet, or other means of remote access that do not require any additional cost for access to the meeting, or via other electronic means of remote access.

6.10.4. The names of those wishing to address the Commission by any means of voice only must be announced and their presence noted in the minutes of the meeting.

6.10.5 Telephonic and Electronic meeting participation shall be limited to instances where a member, alternate, or staff member is unable to participate in person due to

adverse weather conditions, illness, unavoidable conflicts, inability to travel to the meeting location, or other similar situations.

6.10.6 Commission and staff members who are unable to be present in person at any meeting shall have the right to participate by telephonic or other internet service, subject to any limitations established in these Rules to govern such participation.

6.10.7. These electronic meetings of the Commission shall be subject to all rules adopted by the Commission to govern them, which may include reasonable limitations on, and requirements for Commission members' participation. Any such rules adopted by the Commission shall supersede any conflicting rules in parliamentary authority but may not otherwise conflict with or alter any rule or decision of the Commission.

6.11 Commissioner Attendance at Meetings. Commissioners shall inform the President or Chief Executive Officer if they are unable to attend any Commission meeting, or if they will be late to any meeting. A majority vote is required to excuse any Commissioner's absence. Unless excused, pursuant to RCW 53.12.140 a Commissioner forfeits office by nonattendance at meetings of the Commission for a period of sixty (60) days. The Chief Executive Officer shall maintain a record of Commissioner attendance at Commission, and other meetings, to which a Commissioner is assigned or scheduled to attend. Commissioner participation by remote means shall constitute attendance.

6.12 Commission Meeting Staffing. The Chief Executive Officer shall attend all meetings of the Commission, unless excused. At the discretion of the Chief Executive Officer, other staff members shall attend. The Chief Executive Officer may make recommendations to the Commission and shall have the right to take part in the discussions of the Commission but shall have no vote.

6.13 General Conduct of Business.

6.13.1 The Commission meeting shall be conducted pursuant to an agenda, which shall indicate items requiring Commission action.

6.13.2 President as Presiding Officer will introduce each agenda item, stating whether action will be taken on the item, whether the item is introduced for discussion only or whether other results are anticipated.

6.13.3 Port staff will briefly discuss the agenda item.

6.13.4 If a technical report by a consultant or other is to be presented, the presenter will provide a summary of the technical report, generally not to exceed 15 minutes.

6.13.5 At the conclusion of the technical report, staff will return the issue to the Presiding Officer for action. Any Commissioner may ask staff, any consultants or the public to briefly clarify any matter presented.

6.14 Public Comment. Public comment shall be permitted at Commission meetings in accordance with these Rules and as required by RCW 42.30.240, as it now exists or as may be amended in the future.. Comments shall be received at the beginning of each meeting, and at the

end of each meeting, as identified on the agenda. Either the President or staff may read the following guidelines into the record. The public comment required under this section may be taken orally at a public meeting, or by providing an opportunity for written testimony to be submitted before or at the meeting. When the Port receives written testimony intended for and accepted by the Commission, this testimony must be distributed to the full Commission. The deadline for the submission of written testimony is not less than 24 hours prior to the meeting at which Commission action will be taken. Upon the request of any individual who will have difficulty attending a Commission meeting by reason of disability, limited mobility, or for any other reason that makes physical attendance at a meeting difficult, the Commission shall, when feasible, provide an opportunity for that individual to provide oral comment at the meeting remotely if oral comment from other members of the public will be accepted at the meeting.

6.14.1 Speakers attending in person shall move to the lectern and shall comment only after being recognized by the Presiding Officer. At the conclusion of in-person public comments, the Presiding Officer will request comments from members of the public participating remotely.

6.14.2 Speakers shall state their names and addresses prior to addressing the Commission;

6.14.3 The President may allocate available time among individuals wishing to comment. Generally, the time shall be 3 minutes for each speaker;

6.14.4 Groups are encouraged to express their views through a single spokesperson rather than individually;

6.14.5 Speakers shall limit themselves to matters regarding the issue of concern;

6.14.6 Speakers shall not repeat remarks or points of view made by prior speakers;

6.14.7 The Presiding Officer may overrule impertinent, redundant or disruptive comments; Applause or other interruptions are discouraged;

6.14.8 All remarks should be directed to the Presiding Officer; and

6.14.9 Individuals should not expect the Commission, staff, consultants, other speakers or any other person, to respond to their comments. Instead, the Commission may direct the matter to staff for comment at a future meeting or for Commission consideration at a future meeting.

6.15 Executive Sessions. Executive Sessions shall be held in accordance with the provisions of the Washington State Open Public Meetings Act. An Executive Session is a Commission meeting that is closed to the public and is attended by the Commission, Chief Executive Officer and others that may be authorized.. Executive Sessions may be held during Regular or Special Commission meetings and will be announced by the President. Before convening an Executive Session, the President shall announce the purpose of the session, the specific section of RCW 42.30.110(1) by which the session is authorized, the anticipated time when the session will be concluded, and whether action is expected after and as a result of the Executive session. Should the session require more time, the Presiding Officer or his or her designee shall

announce that the executive session is being extended to a time certain. The purpose for the Executive Session shall be noted in the meeting minutes.

6.16 Commission Discussion. All Commission discussion shall be guided by the most current version of Robert's Rules of Order to guide meeting procedures in the absence of a governing Commission Bylaw or state law. The Port General Legal Counsel shall assume the additional duty of Parliamentarian.

6.17 Media Representation at Commission Meetings. All public meetings of the Port shall be open to the media, freely subject to recording by radio, television, electronic, and photographic services at any time, provided that such arrangements do not interfere with the orderly conduct of the meeting, as determined by the Presiding Officer.

7. AGENDA PLANNING

The work of the Commission is accomplished in public meetings and all proceedings of the Commission shall be by motion or resolution, recorded in its minute books, which shall be public records. The agenda of the public meeting identifies in general terms the topics to be considered by the Commission.

7.1 Placing Item on the Agenda. Items may be placed on either the business agenda or on the consent agenda. An item may be placed on the preliminary Commission meeting agenda by any Commissioner or by the Chief Executive Officer .

7.2 Agenda Preparation. The Chief Executive Officer shall prepare a preliminary agenda for each Commission meeting. The preliminary agenda shall set forth a brief general description of each item to be considered by the Commission. The Chief Executive Officer shall promptly forward the preliminary agenda to the Presiding Officer for review. The Presiding Officer shall have the option to delete any item from the preliminary agenda. The Presiding Officer shall, at the next commission meeting, report any deleted item to the full Commission and the full Commission shall determine whether the item shall be placed on a subsequent agenda.

7.3 Agenda Materials. Agenda materials will be available on the Friday prior to the Commission meeting. Agenda materials will be delivered to Commissioners by delivery or electronic means as preferred by each Commissioner. The Chief Executive Officer and his or her staff shall strive to provide to the Commissioners all subjects to be considered at the Commission meeting, including contracts, call for bids, and other items no later than the Friday preceding the Tuesday meeting, if reasonably possible. Each item for which action is requested of the Commission shall have a written explanation and full briefing of all information necessary for the Commission's review, discussion, and action on said business item.

7.4 Adding an Item to a Published Agenda. An item may be placed on a regular Commission meeting agenda after the agenda is closed and the notice published, if the Commissioner or Chief Executive Officer explains the necessity and receives a majority vote of the Commission at a public meeting.

7.5 Agenda Item Order. The Presiding Officer may, with the concurrence of the Commission, address agenda items out of order.

7.6 Consent Agenda. All matters listed under Consent Items have been distributed to each member of the Commission for review, are considered routine, and will be enacted by the motion of the Commission with no separate discussion. If separate discussion is desired, that item may be removed from the Consent Items and placed under Action Items or tabled for consideration at a future meeting upon a motion passed by the Commission during a Commission Meeting and prior to the vote to approve the consent agenda.

8. ROLE OF THE COMMISSION PRESIDENT

The President of the Commission shall:

8.1 Ensure that the Commission jointly and consistently adheres to its own rules and policies, and those imposed upon it by the laws of the State of Washington.

8.2 Ensure that deliberation is fair, open and thorough, but also timely, orderly and stays on topic. The President of the Commission shall preside over and facilitate all Commission Meetings in accordance with these governance principles and the most current version of Robert's Rules of Order, as needed.

8.3 Assume responsibility of the Commission that is not specifically assigned to another Commissioner.

8.4 Call Special Meetings of the Commission in the event of a business need as provided for by applicable law.

8.5 Establish ad hoc advisory and standing committees, and appoint members to same.

8.6 Schedule and coordinate the annual evaluation of the Chief Executive Officer .

8.7 Limit supervision and direction of the Chief Executive Officer or Port staff, solely to the authority expressly granted by the Commission.

8.8 Be the spokesperson for the Commission in expressing a view held jointly by the Port Commission, unless another spokesperson is named by the full Commission. However, individual Commissioners shall have the right to voice personal opinions differing from decisions taken or under review by the Port Commission as a whole as long as they are stated as such.

9. ROLE OF THE COMMISSION VICE-PRESIDENT

The Vice-President of the Commission shall:

9.1 Perform such duties as are assigned by the President.

9.2 Have all the power and duties of the President in the absence or inability of the President to act.

9.3 Have all the powers and duties of the Secretary in the absence or inability of the Secretary to act, when not acting as the President.

10. ROLE OF THE COMMISSION SECRETARY The Secretary of the Commission shall:

10.1 Attest all contracts, bonds, deeds, leases and other instruments and documents duly authorized by the Commission unless otherwise delegated by the Commission.

10.2 Perform all duties incident to the office of Secretary as may from time to time be required by law or assigned to such office by motion, rule or resolution of the Commission.

10.3 Have all of the powers and duties of the President in the absence or inability of both the President and the Vice President to act.

10.4 Have the option of delegating the obligations and duties of Secretary to the appropriate Port staff member for implementation.

11. COMMISSION COMMITTEES

11.1 General. All Commission committees should include designation of members, chair and a charter describing the committee's purpose. All Commission Committees serve in an advisory capacity only. The Commission President will review each committee at least annually to determine whether the committee should continue.

11.2 Committee Roles and Responsibilities.

11.2.1 Committees will assist the Commission by gaining education, considering alternatives and implications, and preparing policy alternatives.

11.2.2 Commission committees or any individual Commissioner may not speak or act for the Commission, except when formally given such authority for specific and time- limited purposes.

11.2.3 Commission committees cannot exercise authority over staff or interfere with the delegation from the Commission to the Chief Executive Officer .

11.2.4 Participation in committee meetings shall be in compliance with the provisions of the Open Public Meetings Act, when two or more Commissioners are present, or the committee is acting for the Commission. In such event, the committee meeting must be properly noticed as a public meeting.

11.2.5 These policies apply to any group which is formed by action of the Commission President, whether or not it is called a committee.

12. COMMISSION AND PORT ACTION

12.1 Only decisions of the Commission acting as a body are binding upon the Port and Port staff.

12.2 In the case of Commissioners requesting information or assistance without Commission authorization, the Chief Executive Officer and staff must refuse such requests that require, upon evaluation by the Chief Executive Officer , a material amount of staff time or funds, are disruptive to the Port, or which may involve a conflict of interest between the Port and the Commissioner requesting the information or assistance.

12.3 Commissioners individually may communicate directly with Port employees or contractors for the purpose of inquiry only. Commissioners shall, on business matters, deal with staff through the Chief Executive Officer . However, the Commission as a body and the Commissioners individually do not give direction to persons who report directly or indirectly to the Chief Executive Officer . If an individual Commissioner is dissatisfied with the response from the Chief Executive Officer or staff, the Commissioner may seek resolution through the Commission as a body.

12.4 The Commission as a body and the Commissioners individually will refrain from evaluating, either formally or informally, the job performance of any Port employee, other than the Chief Executive Officer , except when approving compensation and benefits in the course of budget or employment contract considerations.

13. PORT COMMISSION & STAFF ROLES AND RESPONSIBILITIES

13.1 General Roles. The Commission is the Port's governing authority. All authority not expressly delegated to the Chief Executive Officer is reserved to the Commission. The Commission sets Port policies and priorities. . The Chief Executive Officer and Port staff execute and administer the Commission's policies. The Port of Kennewick has a Commission-Chief Executive Officer form of governance. The Chief Executive Officer is hired by the Port Commission to enforce its directives, to direct the daily operations of Port governance, to prepare and monitor the budget, and to implement the policies and programs initiated by the Port Commission. The Chief Executive Officer is responsible to the Port Commission as a board, rather than to individual Commissioners, and directs and coordinates all other employees. The Port Commission authorizes priorities and projects through the budget process; based upon that authorization, the Chief Executive Officer is responsible for hiring all personnel.

13.2 Commissioner's Role. [See also, Section 2.] The Chief Executive Officer is authorized to make recommendations on policy matters to the Commission and the Commission retains the authority to accept, reject, or amend the recommendations. Individual Commissioners may not intervene in staff decision-making, scheduling of work, and executing department priorities. This is necessary to allow staff to execute priorities given by the Executive Director. All Commissioners with concerns affecting the Port of Kennewick should address those concerns with the full Commission or with the Chief Executive Officer .

No Commissioner shall direct the Chief Executive Officer to initiate any action, prepare any report, or initiate any project or study without the authorization of a majority of the Commission. Commissioner requests for information shall be made to the Chief Executive Officer , unless otherwise determined by the Chief Executive Officer. Commissioners needing staff assistance shall work through the Chief Executive Officer.

13.3 Chief Executive Officer's Role.

13.3.1 The Chief Executive Officer is the chief administrative officer of the Port. The Chief Executive Officer is directly accountable to the Port Commission for the execution of the Port Commission's policy directives as set forth in the Delegation Policy and for the administration and management of all Port activities and staff.

13.3.2 The Chief Executive Officer is the information liaison between Commission

and Port staff. Requests for information from Commissioners are to be directed to the Chief Executive Officer and will be responded to promptly. The information requested will be copied to all members of Commission so that each member may be equally informed. The Chief Executive Officer will provide staff support for Commissioners as appropriate in their official roles.

13.3.3 In addition to regular, comprehensive memoranda written by the Chief Executive Officer directly to the Port Commission concerning aspects of Port operations (exclusive of confidential personnel issues), all Commissioners shall receive copies of correspondence received by the Chief Executive Officer that will assist them in their policy-making role. The Chief Executive Officer also provides other documents to the Commission on a regular basis, such as status reports, executive summaries, and minutes of meetings.

13.3.4 The Chief Executive Officer shall have an open-door policy which allows individual Commissioners and the public to meet with the Chief Executive Officer on an impromptu, one-on-one basis. Such meetings are highly encouraged. No Commissioner, person or special interest group shall abuse the open-door policy.

13.3.5 In addition to the above, the Chief Executive Officer's job description includes the following:

13.3.6 The Chief Executive Officer reports to the Commission, with duties including but not limited to the responsibilities and specific duties described below, together with such other powers and duties as the Commission may specify via adopted work plans and Delegation of Authority. The Chief Executive Officer shall provide the services hereunder in accordance with his independent and professional judgment and in accordance with his own means and mode of performance. There shall be a presumption that the Chief Executive Officer acted on an informed basis, in good faith, and within the scope of his or her employment. The list below is a codification of existing duties, custom and practice.

13.3.7 The Chief Executive Officer should:

- Work with the Commission to ensure that the mechanisms for effective governance are in place and that the Commission is alert to its obligations to the Port, employees and the public.
- Assist the Commission in fostering ethical, transparent and responsible decision making.
- Work with the Commission and senior management to monitor progress on strategic planning and commission policy implementation, and regularly report on progress to the Commission.
- Take all reasonable steps to ensure that Commission policy is executed as effectively as possible.
- Participate in the development and implementation of strategic initiatives and provide oversight on strategic orientation of the Port.
- Ensure the quality, quantity and timeliness of the information that goes to the Commission and ensure that all Commissioners receive the information required for the proper performance of their duties.
- Take reasonable steps in consultation with the Commission President to ensure that business set out in the agendas of Commission meetings is discussed and brought to resolution, as required, and that sufficient time is allowed during

Commission meetings to fully discuss agenda items.

- In coordination with the Commission, Port Human Resources personnel and Port Counsel, actively participate in the annual Chief Executive Officer performance evaluation which will include a performance discussion with candid input and feedback.
- Work to ensure that the Port promotes equality and fairness for its staff and contract personnel.
- Foster ongoing formal and informal communication with and among Commission members.
- Ensure that Port employees work as a team, efficiently and productively.
- Foster strong relationships between the Port and key stakeholders in the community.
- Assist the Commission in the development of the Commission’s knowledge and capabilities by playing a central role in orientation of new Commission members and providing continuing education opportunities for the entire Commission.
- Act as a spokesperson for the Port related to execution of established port policy.

13.4 Staff Role. The Commission recognizes the primary functions of staff as 1) executing the policies and actions taken by the Commission as a whole, and 2) keeping the Commission informed. Staff is obligated to take guidance and direction from the Chief Executive Officer or appropriate supervisor. This direction follows the policy guidance from the Port Commission to the Chief Executive Officer through the Delegation Policy. Port staff will, acting through the Chief Executive , make every effort to respond in a timely and professional manner to all individual Commissioner’s requests for information or assistance; providing, in the judgment of the Chief Executive Officer , the request is not of such magnitude (in terms of workload, resources, or policy) that it should instead be assigned to the Chief Executive Officer through the direction of the full Port Commission.

13.5 Summary. The following is a brief summary from the Washington Public Port Association (“WPPA”) Commissioner Resource Guide and identifies parallel leadership roles and responsibilities.

<i>Port Commission</i>	<i>Executive Director</i>
Governs:	Administers:
Guides	Operates
Directs	Manages
Decides what	Decides how
Requests information	Seeks and provides information
Considers issues	Provides recommendations
Creates, reviews and adopts policy	Recommends and carries out policy
Reviews and monitors plans	Implements plans
Monitors progress	Reports progress
Contracts with personnel	Supervises hiring process, practices
Approves evaluation criteria, procedures	Supervises and evaluates personnel
Reviews and approves budget	Formulates budget
Represents public interest	Acts in the public’s interest

14. BUDGET AND PROCUREMENT AUTHORITY

14.1 General. By resolution, the Commission shall set forth the authority of the Chief

Executive Officer to manage and expend Port funds in accordance with financial policies and budgetary limits. Procurement of goods and services shall take place in accordance with applicable legal requirements in a fair, competitive and inclusive manner to maximize the benefit to the Port's taxpayers/customers.

14.2 Financial Policies. The Commission, by resolution, shall adopt financial policies that provide guidance to the Chief Executive Officer in managing the finances of the Port and in developing budgets, financial plans and rates. At a minimum, these policies shall:

- 14.2.1 Provide for sufficient liquidity relative to the Port's risk profile;
- 14.2.2 Provide for adequate coverage to meet debt covenants;
- 14.2.3 Establish criteria for debt and rate – financed capital expenditures;
- 14.2.4 Require that budgets be developed based on conservative and prudent assumptions consistent with standard industry practice;
- 14.2.5 Establish budgetary and procurement controls over expenditures;
- 14.2.6 Produce and maintain a balanced budget;
- 14.2.7 • Provide a fiscally sound approach to finances by ensuring that expenditures and debt repayments do not exceed available resources in current budget and future years impacted;
- 14.2.8 • Provide for financial stability by:
 - Funding projects that provide a positive return on investment or which provide important identifiable non-economic benefits to the port district at large;
 - Eliminating or transferring to private sector, holdings which provide minimal economic or community benefit;
 - Reducing costs and enhancing revenues when feasible while maintaining acceptable service levels;
 - Ensure the Port's portfolio includes diversity of revenue streams to offset risk adverse projects;
 - Accurately forecasting funding sources;
 - Creating successful strategies for capital acquisitions;
 - Closely monitoring and accurately reporting all revenues and expenditures;
 - Leveraging funds by seeking grants and matching funds from the public and private sectors;
 - Accurately and honestly identifying potential financial issues and providing feasible potential solutions;
 - Identifying and recommending potential improvements; and
 - Learning and sharing ideas for improvement.
- 14.2.9 Promoting fiscal responsibility among departments;
- 14.2.10 Focusing on long-term financial planning;
- 14.2.11 Support intergovernmental cooperation by partnering with entities which demonstrate support; (e.g. matching funds; previous successes; political and taxpayer support; and

enthusiasm);

14.2.12 Provide the public with high quality projects and services within a healthy work environment by encouraging efficiency, cooperation, honesty, integrity, and respect;

14.2.13 Evaluate economic development opportunities based on results to be derived districtwide versus project-specific or jurisdiction-specific results;

14.2.14 Acknowledge the Port's limited staff and financial resources;

14.2.15 Establish a project ranking and selection process which focuses on producing a limited number of projects in order to ensure successful and timely implementation;

14.2.16 Encourage open competition and equal project consideration, fostering a reputation for fairness with the local business community;

14.2.17 Seek to fund projects with available resources;

14.2.18 Incur debt only when both the level and rate of growth of public debt is fundamentally sustainable, can be serviced under appropriate circumstances while meeting cost and risk objectives, can withstand economic uncertainties, while identifying in advance any legal or commission-directed restrictions on its use; and

14.2.19 Maintain reserves of \$2.5M in order to ensure financial stability and mitigate any potential financial hardships. If reserve funds are utilized, funds must be replenished during the current or next budget cycle. The reserve fund may be used for the following:

- Debt service;
- Environmental pollution claims against the Port;
- Unemployment Claims;
- Paid Family & Medical Leave Claims; and
- Any other uses deemed necessary by the Commission.

14.2.20 Identify and report the return on investment (ROI) on projects as appropriate; and

14.2.21 Share with the public port audited financial and operating data through print and online resources.

14.3 Budgetary Authority. As required by and consistent with law, the Commission, by resolution, shall approve the Port's budget prior to the start of each calendar year. The Chief Executive Officer shall manage the Port's operations within the approved budget levels consistent with authority levels set forth in the financial policies.

14.4 Procurement Authority.

14.4.1 The Commission, by resolution, shall establish procurement authorities and guidelines for the Chief Executive Officer consistent with state laws and regulations. The Chief Executive Officer shall establish procurement controls that provide reasonable assurance that the procurement of goods and services are made for a valid business purpose and within authorized budget levels.

14.4.2 It is Port policy that procurement decisions shall be made free from actual

or perceived conflicts of interest consistent with these Rules of Policy and Procedure.

14.4.3 It is Port policy that due diligence and prudent judgment be exercised in the making of procurement decisions, including conducting a risk assessment. If the Chief Executive Officer reasonably determines that a procurement activity presents, regardless of the size of the financial commitment, either: (1) a unique and significant operational risk to the Port; or (2) a significant impact to customers, the Chief Executive Officer shall inform the Commission.

15. EVALUATING THE CHIEF EXECUTIVE OFFICER'S PERFORMANCE

15.1 Chief Executive Officer Evaluation Committee

15.1.1 The Port Commission shall appoint a Chief Executive Officer Evaluation Committee made up of the Port's Chief Financial Officer, Port General Legal Counsel, and one Commissioner to serve a 2-year term. Each member shall be unbiased.

15.1.2 The Chief Executive Officer Evaluation Committee will develop the Chief Executive Officer'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 Chief Executive Officer Evaluation Committee to evaluate the Chief Executive Officer's performance, which is attached hereto as **Exhibit "A"**, and the Chief Executive Officer 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 Chief Executive Officer Evaluation Committee will conduct Chief Executive Officer's performance evaluation.

15.1.5 On an annual basis, the Chief Executive Officer Evaluation Committee will present the results of its evaluation of the Chief Executive Officer's performance to the Port Commission for review and approval. Such results may include, among other things, recommendation for salary adjustment in accordance with Chief Executive Officer's employment agreement.

15.1.5 The Chief Executive Officer Evaluation Committee may use assistance from other staff members or consultants as necessary and appropriate.

15.1.6 The Port Commission shall address Chief Executive Officer performance issues as they arise by timely referring them to the Chief Executive Officer Evaluation Committee. The Chief Executive Officer 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 Chief Executive Officer Evaluation Committee fails to notify the Chief Executive Officer 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 Chief Executive Officer Evaluation Committee shall undertake an appropriate inquiry, which generally will include discussion with the Chief Executive Officer, in accordance with applicable laws, policies and contracts. Once notified, the Chief Executive Officer shall be provided a reasonable period of time to cure the concern or deficiency._

16. COMMISSION-AUDITOR RELATIONSHIP

16.1 General. The Port Auditor (“Auditor”) serves the Port to assist in the Port’s compliance with the RCW 53.36.010, RCW 53.36.140, RCW 42.24.080 and the Local Government Accounting Act, RCW 43.09.200 – 43.09.2855.

16.2 Hiring and Reporting.

16.2.1 The Chief Executive Officer shall hire the Auditor. The Auditor shall perform those duties specified in RCW 53.36.010, RCW 53.36.140, RCW 42.24.080, RCW 43.09.240, Port Policy and job description and shall be granted direct access to the Commission as necessary in the performance of these duties.

16.2.2 The Auditor shall report to the Commission through the Chief Executive Officer or designee for all administrative matters, including hiring, performance evaluations, salary administration, employee benefits, and terminations. The Chief Executive Officer may assign additional duties to the Auditor as long as these duties do not interfere with the Auditor’s duties as specified by law.

17. COMMISSION-PORT GENERAL LEGAL COUNSEL RELATIONSHIP

17.1 Port General Legal Counsel Role. The Chief Executive Officer is responsible for hiring and terminating the Port’s General Legal Counsel. The Chief Executive Officer shall make provision for and appoint legal counsel for the Port by any reasonable contractual arrangement for such professional services. The Port General Legal Counsel is the legal advisor to the Port, the Commission, its committees, commissions and boards, the Chief Executive Officer, and all Port officers and employees with respect to any legal question involving an official duty or any legal matter pertaining to the affairs of the Port. It is important to note that the Port General Legal Counsel does not represent individual members of Commission, but rather the Port Commission as a whole. The Port General Legal Counsel reports to the Chief Executive Officer. The Chief Executive Officer is responsible for evaluating the Port’s General Legal Counsel’s performance.

17.2 Port General Legal Counsel’s Responsibilities.

The general legal responsibilities of the Port General Legal Counsel are to:

17.2.1 Provide legal assistance necessary for formulation and implementation of the Commission’s legislative policies and projects.

17.2.2 Represent the Port’s interest, as determined by the Chief Executive Officer, in litigation, administrative hearings, negotiations, and similar proceedings.

17.2.3 Prepare or approve as to form resolutions, contracts, and other legal

documents to best reflect and implement the purposes of the Port.

17.2.4 Keep the Port Commission and staff apprised of court rulings and legislation affecting the legal interest of the port.

17.2.5 Shall advise the Commissioners regarding potential conflict of interest issues or ethical matters. Port General Legal Counsel shall provide assistance to individual Commissioners in complying with applicable statutes and laws only when such advice does not conflict with the Port's General Legal Counsel's obligations to the Port or to specific direction of the Commission.

17.2.6 Give advice or opinion when required, and when requested by the Commission or Chief Executive Officer.

17.2.7 Inform the Commission of material legal issues impacting the Port or the Commission.

17.2.8 Assist the Commissioners and staff in complying with applicable statutes and laws.

17.2.9 Serve as the parliamentarian at all commission meetings and other port-related meetings as requested by the Chief Executive Officer.

17.2.10 Other matters as designated by the Chief Executive Officer .

18. INDEMNIFICATION AND DEFENSE POLICY

18.1 Policy Stated. As authorized by RCW 4.96.041, there is hereby created a procedure to provide for indemnification and defense of claims of liability arising from acts or omissions of officials and employees of the Port, including volunteers, while performed or in good faith purported to have been performed in the scope of their official duties.

18.2 Definitions. Unless the context indicates otherwise, the words and phrases used in this chapter shall have the following meaning:

18.2.1 "Employee" means any person who is or has been employed by the Port, including volunteers and appointed members of advisory boards and commissions. "Employee" does not include independent contractors. "Employee" also includes an employee's spouse when an employee's marital community is named in any action subject to this policy.

18.2.2 "Official" means any person who is serving or has served as an elected Port Commissioner, and any person who is serving or who has served as an appointed officer of the Port as defined by RCW 42.23.020(2), as written or hereafter amended. "Official" does not include independent contractors performing the duties of appointed positions.

18.3 Legal Representation.

18.3.1 Upon request by the Official or Employee, and upon a finding by the Commission that the acts or omissions of the Official or Employee were or in good faith purported to be within the scope of his or her official duties, the Port shall provide to an Official or Employee, subject to the conditions and requirements of this chapter, and notwithstanding the fact that such

Official or Employee may have concluded service or employment with the Port, such legal representation as may be reasonably necessary to defend a claim or lawsuit filed against such Official or Employee resulting from any conduct, act or omission of such Official or Employee performed or omitted were or in good faith purported to be within the scope of his or her service or employment as a Port Official or Employee. The provisions of this chapter shall not operate to provide legal representation to defend a claim or lawsuit for any conduct, act, or omission resulting in the termination for cause of any Official or Employee.

18.3.2 The legal representation shall be provided by the office of the Port's General Legal Counsel and may include the Chief Executive Officer engaging the services of outside legal counsel, with Port General Legal Counsel oversight. If any provision of an applicable policy of insurance provides legal counsel for the employee or official, the Port General Legal Counsel will work with the policy holder for purposes of obtaining legal representation under the existing insurance policy.

18.3.3 In the event that the Port retains outside counsel under Section 18.3.2, the Port shall pay the reasonable costs of defense; provided, that in no event shall payment exceed the hourly rates established by the Port's contract with general legal counsel selected by the Port.

18.3.4 The determination whether the Official or Employee was acting in or in good faith purported to be within the scope of his or her official duties shall be made by the Commission in consultation with the Port General Legal Counsel and/or outside legal counsel, if retained. This determination shall be based on an investigation of the facts and circumstances surrounding the incident and shall be made as early in the proceedings as is reasonably possible. In making the determination, the Commission shall presume that the Official or Employee acted in good faith within the scope of his or her official duties and shall determine that the Employee was not acting in good faith within the scope of his or her official duties only upon a finding or findings supported by substantial evidence. Once the determination is made, the Official or Employee involved shall be notified by the Chief Executive Officer in writing. If the Employee or Official involved is the Chief Executive Officer, the determination shall be made by the Commission in consultation with the Port General Legal Counsel and/or outside legal counsel based on an investigation of the facts and circumstances surrounding the incident and shall be made as early in the proceedings as is reasonably possible. Once the determination is made, the Chief Executive Officer shall be notified by the Port General Legal Counsel, in writing. In any claim involving an allegation of criminal conduct, no investigation by the Port will occur prior to a determination of guilt, or prior to a dismissal of the criminal charge with prejudice, so as not to compromise the Official's or Employee's Fifth Amendment right against self-incrimination. Any determination made under this Section shall not be subject to appeal or reconsideration.

18.4 Exclusions. Except as otherwise determined pursuant to Section 18.3, in no event shall protection be offered under this chapter by the Port to:

18.4.1 Any dishonest, fraudulent, criminal, willful, intentional or malicious act or course of conduct of an Official or an Employee;

18.4.2 Any act or course of conduct which is outside the scope of an Official's or Employee's service or employment with the Port; and/or,

18.4.3 Any lawsuit brought against an Official or Employee by or on behalf of the Port;

18.4.4 Any action or omission contrary to or not in furtherance of any adopted Port policy.

18.5 Reserved Rights. Nothing herein shall be construed to waive or impair the right of the Port neither to institute suit or counterclaim against any Official or Employee nor to limit its ability to discipline or terminate an employee.

18.6 Policy Secondary to Insurance. The Port's payment of defense fees and costs and any resulting non-punitive judgement are secondary to any insurance coverages from whatever source for defense, loss or damage; excluding deductible or exclusion(s) of the applicable insurance policy. The Port shall have the right to require an Employee to fully utilize insurance coverages prior to requesting payment under this Chapter.

18.7 Determination of Exclusion. Whether an Official or Employee was acting in or in good faith purported to be acting within the scope of an Official's or Employee's service or employment with the Port and thus eligible for Port payment of defense costs under this chapter shall be determined by the Commission The Chief Executive Officer and Port general legal counsel shall prepare a recommendation to the Commission. The Commission's decision shall be final as a legislative determination and shall be based upon a finding that an official or employee meets or does not meet the criteria of this chapter. Nothing herein shall preclude the Port from undertaking an Official's or Employee's defense under a reservation of rights. The determination as to whether a defense is to be furnished as provided under this chapter to Commissioner or Commissioners shall be made without the vote of the Commissioner(s) named in the claim or lawsuit unless the inclusion of such member or members is required for a quorum; provided, that if a claim or lawsuit affects a quorum or greater number of the members of the Commission, all such affected members shall retain their voting privileges under this Section.

18.8 Representation and Payment of Claims – Conditions. The payments authorized by this chapter shall apply only when all the following conditions are met:

18.8.1 In the event of any incident or course of conduct potentially giving rise to a claim for damages, or for the commencement of a lawsuit, the Official or Employee involved shall, as soon as practicable, give the Employee's department director and, if applicable, the Port General Legal Counsel and the Chief Executive Officer written notice thereof. The notice shall identify the Official or Employee involved, all information known to the Official or Employee involved with respect to the date, time, place and circumstances surrounding the incident or conduct giving rise to the potential claim or lawsuit, as well as the names and addresses of all persons allegedly injured or otherwise damaged thereby, and the names and addresses of all witnesses.

18.8.2 Upon receipt, the Official or Employee shall as soon as practicable deliver any claim, demand, notice or summons or other process relating to any such incident or conduct to the Port General Legal Counsel and shall cooperate with the Port General Legal Counsel, or if the Chief Executive Officer authorizes or designates another legal counsel to handle the matter, shall cooperate with that legal counsel, and, upon request, shall assist in making settlement of any suit and enforcing any claim for any right of subrogation against any persons or organizations that may be liable to the Port because of any damage or claim of loss arising from said incident or course of conduct, including, but not limited to, rights of recovery for costs and legal counsel's fees arising out of state or federal statute upon a determination that the lawsuit brought was frivolous in nature. Failure to timely deliver any claim, demand, notice or summons to the Port General Legal Counsel, and in which an adverse decision against the Official, the Employee or

Port results from such failure, shall operate to negate all indemnification and opportunity for defense under this chapter and the Port shall have no obligation to offer a defense to the named Official or Employee.

18.8.3 Such Official or Employee shall attend interviews, depositions, hearings and trials and shall assist in securing and giving evidence and obtaining assistance of witnesses all without any additional compensation to the Official or Employee, and, in the event that an Employee has left the employ of the Port, no fee or compensation shall be provided.

18.8.4 Such Official or Employee shall not accept nor voluntarily make any payment, assume any obligation, or incur any expense related to said claim or lawsuit, other than for first aid to others at the time of any incident or course of conduct giving rise to any such claim, loss or damage. Nothing herein shall be deemed to preclude any Official or Employee from retaining legal counsel to represent his/her interests relating to such claim or lawsuit; however, all costs and expenses incurred thereby shall be paid by the Official or the Employee.

18.8.5 Nothing herein shall modify existing procedures or requirements of law for processing and payment of claims against the Port.

18.9 Effect of Compliance With Conditions. If legal representation of an Official or Employee is undertaken by the Port, whether by the Port General Legal Counsel or by legal counsel obtained by the Port or through its insurance coverage, and all of the conditions of representation are met, and a judgment is entered against the Official or Employee or a settlement is made, the Port shall pay the nonpunitive damages portion of the judgment or settlement according to the provisions herein; provided, that the Port may at its discretion appeal as necessary any such judgment. The process for payment of punitive damages is discretionary and is set forth in Section 18.16. The decision to appeal an award of damages will be made by the Commission upon the recommendation of the Chief Executive Officer and the Port General Legal Counsel and/or outside legal counsel.

18.10 Failure to Comply With Conditions. In the event that any Official or Employee fails or refuses to comply with any of the conditions set forth in Section 18.8, or elects to provide his/her own representation with respect to any such claim or litigation, then all of the provisions of this chapter shall be inapplicable and shall have no force or effect with respect to any such claim or litigation.

18.11 Reimbursement of Incurred Expenses.

18.11.1 If the Commission determines pursuant to the Port's investigation under Section 18.3, that an Official or Employee was not acting in or in good faith purported to be within the scope of his or her official duties and thus is not eligible for Port payment of legal defense, and a court of competent jurisdiction later determines that such Officer or Employee was acting within the scope of his or her official duties, , then the Port shall pay any non-punitive judgment, and reasonable legal counsel's fees incurred in defending against the claim, less any applicable insurance coverages.

18.11.2 If the Port determines that a claim arose against a Port Official or Employee who was acting within or in good faith the scope of their employment and a court of competent jurisdiction later finds that such claim does not come within the provisions of this chapter, then the Commission shall have the option of requiring reimbursement by the Official or Employee for

defense fees, costs and expenses.

18.12 Conflict With Provisions of Insurance Policies. The indemnification provisions of this chapter do not constitute a policy of insurance and nothing contained in this chapter shall be construed to modify or amend any provisions of any policy of insurance where the Port or any of its current or former Officials or Employees thereof is the named insured. In the event of any conflict between this chapter and the provisions of any such policy of insurance, the policy provisions shall be controlling; provided, however, that nothing contained in this chapter shall be deemed to limit or restrict any Employee's or Official's right to full coverage pursuant to this chapter, it being the intent of this chapter to provide the coverage detailed in this chapter only above and beyond insurance policies which may be in effect while not compromising the terms and conditions of such policies by any conflicting provisions contained in this chapter.

18.13 Pending Claims. The provisions of this chapter shall apply retroactively to any pending claims or lawsuits against any Official or Employee at the time of adoption of this ordinance and to any such claims or lawsuits hereinafter filed within an applicable statute of limitations, irrespective of the date of the events or circumstances which are the basis of such claim or lawsuit.

18.14 Modification of Chapter. The provisions of this chapter shall be subject to amendment, modification and repeal, at the sole discretion of the Commission, provided that unless explicitly set forth, any such amendment, modification or repeal shall apply prospectively only and shall have no effect on the obligation of the Port to indemnify and/or defend against any claim which is based, in whole or in part, upon any action or omission of an Employee or Official occurring prior to the effective date of the amendment, modification or repeal.

18.15 Bargaining Unit Contracts. If a union contract under chapter 41.56 RCW covers any of the provisions of this chapter, all Employees under such contract shall be governed by the provisions thereof, rather than by the provisions of this chapter, and where any conflict exists between the provisions of any such contract and this chapter, such contract shall control.

18.16 Punitive Damages. When the Port has paid for claim defense fees costs and expense for an Employee or Official pursuant to this chapter and a punitive judgment is rendered, the Employee or Official may request the Commission that the Port pay the punitive damages. Upon such a request, the Commission shall receive a report and recommendation from the Chief Executive Officer and the Port General Legal Counsel shall transmit a report and recommendation for Commission consideration. If the requesting Official or Employee is the Chief Executive Officer or a Commission member, the Commission may in the alternative request a report and recommendation from outside legal counsel. . The Commission's decision on whether to pay the punitive damages award shall be based on the best interests of the Port and whether justice will be served The Commission's determination is final and not subject to reconsideration or appeal. . The Chief Executive Officer shall communicate the Commission's determination to said Employee or Official. Thereafter, the Port finance director shall prepare the payment of Commission-approved punitive damages.

18.17 Application to Recall Proceedings.

18.17.1 Consistent with RCW 4.96.041(3), the necessary expenses of defending a Port Commissioner in a judicial hearing to determine the sufficiency of a recall charge as provided in RCW 29.82.023 shall be paid by the Port if the Commissioner requests such defense and approval is granted by both the Commission and the Port's General Legal Counsel or attorney

appointed by the Chief Executive Officer. The expenses paid by the Port may include costs of an appeal of the superior court's ruling on the sufficiency of the recall charge.

18.17.2 Although in the case of *In Recall of Olsen*, 154 Wn.2d 606 (2005), the Supreme Court ruled that a Commission's decision to indemnify and pay the costs of a recall defense does not constitute a contract from which a conflict of interest may be found under RCW 42.23.030, and, as a result, a Commissioner may vote on that Commissioner's request for defense fees and costs, the Commissioner(s) subject of the recall shall refrain from participating in such deliberations and vote.

19. GENERAL COMPLAINT RESOLUTION

19.1 Administrative Complaints Made Directly to Individual Commissioners. When administrative policy or administrative performance complaints are made directly to individual Commissioners, the Commissioner shall then refer the matter directly to the Chief Executive Officer for review and/or action. The individual Commissioner may request to be informed of the action or response made to the complaint.

19.2 Administrative Complaints – "Best Practice". Although citizen's direct access to elected officials is to be encouraged, Port Commissioners should be cautious in making statements or taking actions that may delay a timely customer service response. The best policy is to put the citizen into direct contact with the Chief Executive Officer.

Ten Commandments for Staying out of Trouble as a Port Commissioner

[as presented in the WPPA Commissioner Resource Guide]

1. Thou shalt never spend the public's money in secret.
2. Thou shalt not accept personally more money or benefits than any other fellow commissioner.
3. Thou shalt not require the port staff to do more work than necessary to inform (please) you when they could be occupied in improving the business of the port.
4. Thou shalt not speak as the official spokesperson of the port without knowing officially that you have been so designated by the commission majority.
5. Thou shalt not use the press against your fellow commissioners.
6. Thou shalt not use port property for unofficial business, not even a paper clip. Paper clips are cheap, buy your own. Use your own car too.
7. Thou shalt not argue with, grill, or embarrass port staffers in public. They'll hate you for it and get back at you in a thousand ways without your ever knowing it or leaving a scrap of evidence.
8. Thou shalt not depend on news media to keep the public informed of the activities and purposes of the port. Have your own PR program and carry it out.
9. Thou shalt not align yourself closely with a certain group of port tenants or users. Your motives will always be aligned with that group regardless of the issues. And the group will turn on you if you don't support them every single time.
10. Thou shalt not become involved in hiring anyone but the port manager and the port auditor.

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