

Port of Kennewick Commission Chambers will be open to the public during Commission Meetings.  
However, the Port will continue to use GoToMeeting to provide remote access,  
and Commissioners and the Port team will attend remotely.

To participate and make public comments remotely, please call in at: 1-866-899-4679, Access Code: 696-690-213

Or, join on-line at the following link: <https://meet.goto.com/696690213>

## **AGENDA**

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

April 25, 2023  
2:00 p.m.

- I. CALL TO ORDER**
- II. ANNOUNCEMENTS AND ROLL CALL**
- III. PLEDGE OF ALLEGIANCE**
- IV. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- V. CONSENT AGENDA**
  - A. Approval of Direct Deposit and ePayments April 18, 2023
  - B. Approval of Warrant Register Dated April 25, 2023
  - C. Approval of Regular Commission Meeting Minutes April 11, 2023
  - D. Approval of Carbitex Lease Amendment; Resolution 2023-05
  - E. Approval of Energy Northwest IT Services Contract Amendment; Resolution 2023-06
- VI. PRESENTATION**
  - A. City of Benton City SubArea Master Plan, Mayor Linda Lehman and Michael Mehaffy (**TIM**)
- VII. NEW BUSINESS**
  - A. Columbia Gardens Wayfinding Signage Contract Amendment; Resolution 2023-07 (**AMBER**)
- VIII. REPORTS, COMMENTS AND DISCUSSION ITEMS**
  - A. Hybrid Work Plan; Resolution 2023-08 (**TIM**)
  - B. TRIDEC Dues (**TIM/NICK**)
  - C. Project Update (**TIM**)
  - D. Legislative Update (**SKIP**)
  - E. Commission Meetings (formal and informal meetings with groups or individuals)
  - F. Non-Scheduled Items  
(**LISA/BRIDGETTE/TANA/NICK/AMBER/MICHAEL/CAROLYN/TIM/KEN/TOM/SKIP**)
- IX. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- X. ADJOURNMENT**

***PLEASE SILENCE ALL NOISE MAKING DEVICES***





# PORT OF KENNEWICK REGULAR COMMISSION MEETING

**DRAFT**

**APRIL 11, 2023 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)  
Larry Peterson, Director of Planning (via telephone)  
Amber Hanchette, Director of Real Estate (via telephone)  
Nick Kooiker, Chief Finance Officer (via telephone)  
Lisa Schumacher, Special Project Coordinator  
Bridgette Scott, Executive Assistant (via telephone)  
Carolyn Lake, Port Counsel (via telephone)

## **PLEDGE OF ALLEGIANCE**

Commissioner Novakovich led the Pledge of Allegiance.

## **PUBLIC COMMENT**

No comments were made.

## **CONSENT AGENDA**

***A. Approval of Direct Deposit and E-Payments Dated April 3, 2023***

Direct Deposit and E-Payments totaling \$102,945.08

***B. Approval of Warrant Register Dated April 11, 2023***

Expense Fund Voucher Number 104685 through 104705 for a grand total of \$27,848.50

***C. Approval of Regular Commission Meeting Minutes March 28, 2023***

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

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

APRIL 11, 2023 MINUTES

**DRAFT**

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## REPORTS, COMMENTS AND DISCUSSION ITEMS

### ***A. Vista Field Intersection Update***

Mr. Peterson stated in 2017, the Port, through the Vista Field Development Agreement, made a commitment to the City of Kennewick regarding transportation impacts to key intersections. The Development Agreement outlined several intersections that will need to be improved. Mr. Peterson reported that the City will be making improvements to the intersection of Columbia Center Boulevard and Deschutes Avenue and the Port is responsible for 25% of the improvement cost. The City received a \$1,280,000 grant to make the improvements to the intersection and will use the funds to bring down the City and Port's costs. The City is handling the project and the Port will reimburse the City 25% once the project is completed.

Mr. Kooiker stated the project is not part of 2023-2024 Budget and would like to revisit the project in June, once the bids are open. Once Mr. Kooiker receives the bid amount, he would be able to make recommendations for funding.

Mr. Arntzen stated because this is an unanticipated project, this may mean some projects might be affected in the 2023-2024 Budget.

Commissioner Novakovich asked when Mr. Kooiker comes back with recommendations, to also have a list of projects that may be affected by this project, if any.

### ***B. Columbia Gardens Container Restroom/Wayfinding Signage Update***

Ms. Hanchette briefed the Commission on the wayfinding signage project along Columbia Gardens and Clover Island and stated the contractor is waiting for the concrete to cure. Additionally, the container restroom has been placed on site, which includes two unisex restrooms and a storage room. The electrical, plumbing, and interior work can now be completed. Ms. Bader Inglima will present potential wrap ideas for the container at a future meeting. Ms. Bader Inglima is working with PS Media and a photographer to discuss what kind of collage to put on the wrap to see what would fit best on the container restroom and educate people on the diversified wildlife of the area.

Commissioner Hohenberg confirmed that the restrooms will open during business hours and locked after hours.

Ms. Hanchette stated they will be open during the food truck hours of operation and locked after hours.

Commissioner Moak stated food truck hours vary and inquired if there will be signage posting the open hours.

Ms. Hanchette stated that is correct; however, the lock is on a timed system, and we can set it to the operating hours for food truck employees and customer access.

Further Commission and staff discussion regarding signage of restroom hours continued.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

APRIL 11, 2023 MINUTES

**DRAFT**

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## ***C. Marketing Update***

Ms. Bader Inglima gave a brief update on the current marketing plan, including: the Department of Transportation signage on State Route 240, the Work Plan Summary document, and the spring newsletter. Ms. Bader Inglima stated the invitation for the Clover Island Shoreline Celebration on May 12, 2023 will go out on Wednesday, April 12, 2023.

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

Commissioners reported on their respective committee meetings.

## ***E. Non-Scheduled Items***

Ms. Hanchette reported there was a fire at the Oak Street Industrial Park, 1328 East 3<sup>rd</sup> Avenue, Development Building 3 today. The Kennewick Fire Department (KFD) responded quickly and contained the fire to two spaces. Mr. Boehnke is on site and securing the building and Ms. Hanchette reported there were no injuries, but there was some property damage.

Mr. Arntzen thanked the Commission for working efficiently and effectively through the Agendas. The last few meetings have been shorter and Mr. Arntzen attributes that to the Commission appreciating a more direct Agenda.

Mr. Arntzen commented on the Intersection project and stated it is a big deal with the City and Mr. Peterson and Mr. Roe took care of the details. Mr. Arntzen thanked the Kennewick Fire Department and Chief Michael for their great partnership and their quick response on the fire today and the Yacht Club fire in December. Additionally, Chief Michael has been very helpful with the Vista Field Development. Furthermore, Mr. Arntzen thanked the City Public Works Department, Carey Roe, and the leadership at the City for their partnership.

Mr. Arntzen stated a lot of staff worked on the 1135 project; however, Ms. Bader Inglima has been working on the project for 15 years, which shows her tenacity and thoroughness in completing a project.

Commissioner Hohenberg echoed Mr. Arntzen comments and expressed his gratitude and appreciation for all the work that continues to be done.

Commissioner Novakovich mentioned the shorter Agendas and Meetings and believes it is attributed to this Commission putting their trust in the staff and realizing the Port staff is fantastic and knows what they are doing. Commissioner Novakovich stated staff brings items forward when it is time to verify, but for the most part, they move forward and do a good job for our constituents.

Commissioner Novakovich has heard about potential investors at Vista Field and appreciates the flexibility of staff to accommodate these people.

## **PUBLIC COMMENTS**

No comments were made.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

APRIL 11, 2023 MINUTES

**DRAFT**

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## COMMISSION COMMENTS

No comments were made.

## ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 2:53 p.m.

***APPROVED:***

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

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*Skip Novakovich, President*

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*Kenneth Hohenberg, Vice President*

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*Thomas Moak, Secretary*



## AGENDA REPORT

**TO:** Port of Kennewick Commission  
**FROM:** Amber Hanchette, Director Real Estate  
**MEETING DATE:** April 25, 2023  
**AGENDA ITEM:** Carbitex LLC – Lease Amendment #1 & #2

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**REFERENCE:** Commercial Lease Agreement

**BACKGROUND:**

Carbitex LLC has been a continuous Oak Street Industrial Park tenant since 2013.

In January 2022, Carbitex signed a one-year lease for 16,600 square feet of office and industrial space at 1426 E. 3<sup>rd</sup> Ave Development Building B.

In early November 2022, Carbitex gave the port notice to vacate development building B through a six month step-down approach. In their initial plan, Carbitex would vacate B110 on 12/31/2022, B120 on 3/31/2023 and B130 on 6/30/2023. Amendment #1 captures this exit plan.

In late March 2023, a Carbitex representative requested that the B120 lease continue until 6/30/2023 and terminate at the same time as B130. Lease Amendment #2 reflects this request.

The port has supported and fostered Carbitex's growth over the years as a start-up manufacturing business that began in the Port of Kennewick's Oak Street Industrial Park.

According to Port of Kennewick Policies and Procedures, POK-CEO-DOA, 1.2.2, adopted by Resolution 2015-29; *Leases in which the total monthly rental amount exceeds \$5,000.00 per month (excluding LET, utilities, and other ancillary items) are outside the executive director's delegation of authority.*

#####

*Motion: I move approval of Resolution 2023-05 approving a step down lease plan for Carbitex LLC through lease Amendments and further authorize the Chief Executive Officer to execute all documents and agreements and that all action by port officers and employees in furtherance hereof is ratified and approved.*

# **PORT OF KENNEWICK**

## **Resolution No. 2023-05**

### ***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK APPROVING LEASE AMENDMENTS WITH CARBITEX LLC***

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

**WHEREAS**, Carbitex LLC entered into a one year lease dated January 1, 2022 for 16,600 square feet of office and industrial warehouse space at 1426 E. 3<sup>rd</sup> Ave, Development Building B with the Port of Kennewick; and

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

**WHEREAS**, Port staff and the Port attorney have reviewed the proposed Lease Amendments and find them to be in proper form and in the Port's best interest; and

**WHEREAS**, after consideration of the attached lease Amendments, the Port Commission has determined that the step down exit pland is proper.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Commissioners of the Port of Kennewick approves lease Amendments #1 & #2 with Carbitex LLC as presented and authorizes the Port's Chief Executive Officer to execute all documents and agreements on behalf of the Port to complete the transaction as specified above.

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

**ADOPTED** by the Board of Commissioners of the Port of Kennewick this 25<sup>th</sup> day of April, 2023.

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

By: \_\_\_\_\_  
SKIP NOVAKOVICH, President

By: \_\_\_\_\_  
KEN HOHENBERG, Vice President

By: \_\_\_\_\_  
THOMAS MOAK, Secretary

## FIRST AMENDMENT OF COMMERCIAL PROPERTY LEASE AGREEMENT

This FIRST AMENDMENT OF COMMERCIAL PROPERTY LEASE AGREEMENT (this "First Amendment") is entered into this 31<sup>st</sup> day of December, 2022 (the "Effective Date") by and between the PORT OF KENNEWICK, a Washington municipal corporation (as "Landlord") and CARBITEX, LLC, a Washington limited liability company (as "Tenant"), who are hereinafter referred to individually as a "Party" and collectively as the "Parties."

### RECITALS

WHEREAS, the Parties previously entered into a Commercial Property Lease Agreement, dated January 1, 2022, related to real property commonly known as 1426 E. 3<sup>rd</sup> Ave., Suite B110, B120 & B130, Kennewick, Benton County, Washington 99337 (the "Agreement" or "Lease"); and

WHEREAS, the Parties wish to amend the Agreement as it relates to the Term of the Agreement, as well as address certain alterations and improvements as described herein; and

NOW, THEREFORE, based on the foregoing Recitals, the Parties agree as follows:

### AGREEMENT

1. Recitals. The Recitals set forth above are hereby incorporated into this First Amendment by this reference.
2. Commercial Property Lease Agreement. The Agreement described in the Recitals above is incorporated by reference into this First Amendment as though written in full and shall, except as otherwise specifically modified herein, remain in full force and effect.
3. Amendments.

Basic Lease Provisions. The Basic Lease Provisions are amended as follows:

- (I) Expiration Date. ~~December 31, 2022.~~ The Expiration Date is extended to June 30, 2023, subject to the phasing described in Section 3.2 of the Agreement.
- (J) Base Rent Calculation. \$0.45 psf ~~16,600 square feet leasable space~~
  - (i) From the Effective date until December 31, 2022 the monthly rent shall be \$8,429.15 (based upon a per square footage lease rate of \$0.45, leasehold tax of 12.84% and a leasable square feet space of 16,600 square feet).
  - (ii) From January 1, 2023 until March 31, 2023 the monthly rent shall be \$5,806.46 (based upon a per square footage lease rate of \$0.45, leasehold tax of 12.84% and a leasable square feet space of 11,435 square feet).

- (iii) From April 1, 2023 until June 30, 2023 the monthly rent shall be \$2,533.82 (based upon a per square footage lease rate of \$0.45, leasehold tax of 12.84% and a leasable square feet space of 4,990 square feet).
- (iv) The base monthly rent described above anticipates that Tenant has completely, and to the sole satisfaction of Landlord, moved out of each previous phase, as those phases are described in Section 3.2. To the extent that Tenant has not successfully moved out of a previous phase, then Tenant shall pay the amounts described in Sections 3.2 and 20.3 until Landlord is satisfied, in its sole and absolute discretion, that Tenant has complied with all the terms and conditions of this Agreement.

Section 3.2. The following Section 3.2 is hereby added to the Agreement in its entirety.

- 3.2 Phasing Out of Agreement. Tenant shall utilize an incremental move out of the various leased office spaces. Tenant shall: (i) move out of Suite B110 by December 31, 2022; (ii) move out of Suite B120 by March 31, 2023; and (iii) Suite B130 by the Expiration Date. Any such move out shall be completed by 5:00 p.m. (PST). Should Tenant fail to move out of the aforementioned areas of the Premises, Tenant shall be deemed to have failed to surrender the Premises under Section 20.3. In addition to the payment of base monthly rent, as described in the Basic Lease Provisions (Section J), Tenant is also responsible for maintaining any and all insurance on the aforementioned areas of the Premises until such time as they are phased out in accordance with the timeline in this Section 3.2. Tenant shall also maintain its current insurance as provided in Section 8.

Article 10. Article 10 is hereby amended as follows:

Tenant shall not make any alterations, additions, renovations or improvements to the Premises without first obtaining the written consent of Landlord. All alterations, additions, renovations and improvements made shall be at the sole cost and expense of Tenant and shall become a part of the real property and belong to Landlord and shall remain in and be surrendered with the Premises as a part thereof at the termination of this Lease, or be removed from the Premises at Tenant's sole cost at the sole discretion of Landlord by written notice given by Landlord ~~not later than thirty (30) days after expiration or earlier~~ no later than the termination of this Lease, or, in the instance of the suites named in Section 3.2, no later than the corresponding phase out dates in Section 3.2. Tenant further agrees to indemnify, defend, and hold Landlord and the Premises free and harmless from, and against, any and all damages, injuries, losses, liens, costs or expenses (including attorneys' fees) incurred, claimed or arising out of said work.

Upon the phase out dates in Section 3.2 or lease termination notice for B110, B120 or B130, by either party, Tenant shall employ at its own expense a Washington State licensed, bonded and insured contractor to obtain all required permits and to

reconstruct all walls where wall penetrations have been constructed by Tenant between warehouses and/or offices and exterior surfaces from sign penetrations. All such work shall be completed within 30 days of prior to the corresponding phase out date listed in Section 3.2. a lease termination notice. Tenant shall be required to return the premises to the same condition as initial occupation of the building by the Tenant ~~on January 1, 2014,~~ including but not limited to wall construction, paint, materials, and meeting all applicable building and fire codes. Specifically, and without limiting the foregoing, Tenant is solely responsible for the return of the Premises' HVAC system to the same condition as initial occupation by the Tenant. Any and all reversions to the original condition must be completed no later than June 30, 2023, unless otherwise agreed to in writing by Landlord.

4. Further Acts and Documents. The Parties shall execute any and all further documents, instruments, and other conveyances and agreements, and shall do all acts, which may be necessary or appropriate to fully implement the provisions of this First Amendment.
5. Construction.
  - (a) In the event of any conflict, inconsistency or ambiguity between the terms of the Agreement and this First Amendment; the terms of this First Amendment shall govern and control.
  - (b) Any terms that are capitalized in this First Amendment but not defined in this First Amendment that are capitalized and defined in the Agreement shall have the same meaning for purposes of this First Amendment as they have for purposes of the Agreement.
  - (c) The descriptive headings in this First Amendment are for convenience only and will not control or affect the meaning or construction of any provision of this First Amendment.
6. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and shall constitute one and the same instrument.
7. Authority to Sign. Each of the persons signing below on behalf of any party hereby represents and warrants that he or she or it is signing with full and complete authority to bind the party on whose behalf of whom he or she or it is signing, to each and every term of this Agreement.

*[Remainder of page left intentionally blank. Signature and notary pages follow.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth above.

**LANDLORD:**

**PORT OF KENNEWICK, a Washington  
Municipal corporation, by authority of its Commissioners**

DocuSigned by:  
By: Tim Amutzen  
Tim Amutzen, Chief Executive Officer

Approved:

Approved as to Form:

DocuSigned by:  
Nick Koobler  
Nick Koobler, Chief Financial Officer

DocuSigned by:  
Taud Hume  
Taud Hume, Port Counsel

**TENANT:**

**CARBITEX, LLC  
a Washington limited liability company**

By: Junus Khan  
Junus Khan, Chief Executive Officer

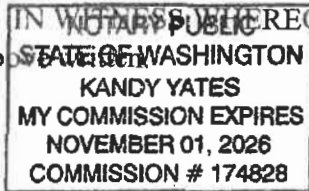
STATE OF WASHINGTON )

: ss.

County of Benton )

I hereby certify that I know or have satisfactory evidence that, on this \_\_\_\_ day of December, 2022, **Tim Arntzen** signed this instrument, on oath stated that (she/he) is authorized to execute the instrument as the **Chief Executive Officer** of the **PORT OF KENNEWICK**, and acknowledged it to be (her/his) free and voluntary act of such party for uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Notary Public in and for the State of

Washington, residing at KennewickMy commission expires: 11/1/2026

STATE OF WASHINGTON )

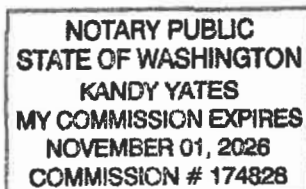
: ss.

County of Benton )

I hereby certify that I know or have satisfactory evidence that, on this \_\_\_\_ day of December, 2022, **Junus Khan** signed this instrument, on oath stated that (she/he) is authorized to execute the instrument as the **Chief Executive Officer** of **CARBITEX, LLC**, a Washington limited liability company, and acknowledged it to be (her/his) free and voluntary act of such party for uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Notary Public in and for the State of

Washington, residing at KennewickMy commission expires: 11/1/2026

## SECOND AMENDMENT OF COMMERCIAL PROPERTY LEASE AGREEMENT

This SECOND AMENDMENT OF COMMERCIAL PROPERTY LEASE AGREEMENT (this "Second Amendment") is entered into this \_\_\_\_\_ day of March, 2023 (the "Effective Date") by and between the PORT OF KENNEWICK, a Washington municipal corporation (as "Landlord") and CARBITEX, LLC, a Washington limited liability company (as "Tenant"), who are hereinafter referred to individually as a "Party" and collectively as the "Parties."

### RECITALS

WHEREAS, the Parties previously entered into a Commercial Property Lease Agreement, dated January 1, 2022, and subsequently entered into an Amendment to Commercial Lease Agreement dated December 31, 2022 related to real property commonly known as 1426 E. 3<sup>rd</sup> Ave., Suite B110, B120 & B130, Kennewick, Benton County, Washington 99337 (collectively, the "Lease Agreement"); and

WHEREAS, the Parties wish to amend the Lease Agreement as it relates to the Term of the Lease Agreement, as well as address certain alterations and improvements as described herein; and

NOW, THEREFORE, based on the foregoing Recitals, the Parties agree as follows:

### AGREEMENT

1. Recitals. The Recitals set forth above are hereby incorporated into this Second Amendment by this reference.
2. Commercial Property Lease Agreement. The Lease Agreement described in the Recitals above is incorporated by reference into this Second Amendment as though written in full and shall, except as otherwise specifically modified herein, remain in full force and effect.
3. Amendments.  
Basic Lease Agreement Provisions. The Basic Lease Agreement Provisions are amended as follows:
  - (J) Base Rent Calculation. \$0.45 psf
    - (ii) From January 1, 2023 until June 30, 2023 the monthly rent shall be \$5,806.46 (based upon a per square footage lease rate of \$0.45, leasehold tax of 12.84% and a leasable square feet space of 11,435 square feet) for Suite B120 and B130.
4. Further Acts and Documents. The Parties shall execute any and all further documents, instruments, and other conveyances and agreements, and shall do all acts, which may be necessary or appropriate to fully implement the provisions of this Second Amendment.
5. Construction.

- (a) In the event of any conflict, inconsistency or ambiguity between the terms of the Agreement and this Second Amendment; the terms of this Second Amendment shall govern and control.
  - (b) Any terms that are capitalized in this Second Amendment but not defined in this Second Amendment that are capitalized and defined in the Agreement shall have the same meaning for purposes of this Second Amendment as they have for purposes of the Agreement.
  - (c) The descriptive headings in this Second Amendment are for convenience only and will not control or affect the meaning or construction of any provision of this Second Amendment.
6. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and shall constitute one and the same instrument.
7. Authority to Sign. Each of the persons signing below on behalf of any party hereby represents and warrants that he or she or it is signing with full and complete authority to bind the party on whose behalf of whom he or she or it is signing, to each and every term of this Agreement.

*[Remainder of page left intentionally blank. Signature and notary pages follow.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth above.

**LANDLORD:**

**PORT OF KENNEWICK, a Washington  
Municipal corporation, by authority of its Commissioners**

By: \_\_\_\_\_  
Tim Arntzen, Chief Executive Officer

Approved:

Approved as to Form:

\_\_\_\_\_  
Nick Kooiker, Chief Financial Officer

\_\_\_\_\_  
Taud Hume, Port Counsel

**TENANT:**

**CARBITEX, LLC  
a Washington limited liability company**

By: \_\_\_\_\_  
Junus Khan, Chief Executive Office

# **COMMERCIAL PROPERTY LEASE AGREEMENT**

**BETWEEN  
PORT OF KENNEWICK,  
LANDLORD**

**AND**

**CARBITEX, LLC,  
TENANT**

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

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

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

**BASIC LEASE PROVISIONS**

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

- A. Lease Date: January 1, 2022.
- B. Landlord: Port of Kennewick,  
a Washington municipal corporation
- C. Tenant: CARBITEX, LLC
- D. Land: The real property located at 1426 E. 3<sup>rd</sup> Ave, Suite B110, B120 & B130, Kennewick, WA 99337, (Development Building B), as more particularly described on Exhibit A attached hereto.
- E. Premises: The Premises shall mean the Land, as defined above, and any improvements located thereon.
- F. Permitted Use: Light manufacturing and administrative offices and for such other lawful activities as may be approved by the Port of Kennewick.
- G. Term: Commencing on the Lease Commencement Date and terminating on the Expiration Date.
- H. Lease Commencement Date: January 1, 2022
- I. Expiration Date: December 31, 2022.
- J. Base Rent Calculation: \$0.45 psf      16,600 square feet leasable space
- K. Monthly Base Rent (not including LET): \$7,470
- L. Leasehold Tax (LET): Current Washington State Leasehold Tax shall be added to Base Rent. Current effective rate is 12.84%.
- M. Total Monthly Rent (includes LET): \$ 8,429.15
- N. Rent Due Date: First day of every month
- O. Financial Security: \$ 8,241.83 deposit (ON FILE); (additional deposit required \$187.32)
- P. Landlord's Address for Notices and Rent Payments:

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

Q. Tenant's Address for Notices:

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

R. Exhibits:

Exhibit "A" Legal Description of Premises

~~Exhibit "B" Personal Guaranty~~

## **ARTICLE 1**

### **PREMISES**

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

## **ARTICLE 2**

### **USE OF PREMISES**

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

## **ARTICLE 3**

### **TERM**

#### 3.1 Duration

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

## **ARTICLE 4**

### **RENT**

#### 4.1 Rent

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

##### (a) Late Fee

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

##### (b) Interest.

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

(c) Non-Sufficient Funds (NSF).

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

## **ARTICLE 5** **FINANCIAL SECURITY**

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

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

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

## **ARTICLE 6** **TAXES & ASSESSMENTS**

### **6.1**     Personal Property Taxes

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

### **6.2**     Additional Taxes/Assessments: Leasehold Excise Tax (LET)

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

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

## **ARTICLE 7** **UTILITIES**

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

### Suite B110

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

Water Meters Assigned to Tenant: 74521087

### Suite B120

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

Water Meters Assigned to Tenant: 74521088

### Suite B130

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

Water Meters Assigned to Tenant: 74521119

## **ARTICLE 8** **INSURANCE**

### 8.1 Insurance

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

(a) Commercial General Liability Insurance

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

(b) Statutory Workers' Compensation

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

(c) Automobile Liability Insurance

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

(d) Property Insurance

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

8.2 Requirements

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

8.3 Waiver of Subrogation

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

## **ARTICLE 9**

### **ACCEPTANCE AND CARE OF PREMISES**

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

## **ARTICLE 10**

### **ALTERATIONS AND IMPROVEMENTS**

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

**Upon lease termination notice for B110, B120 or B130, by either party, Tenant shall employ at its own expense a Washington State licensed, bonded and insured contractor to obtain all required permits and to reconstruct all walls where wall penetrations have been constructed by Tenant between warehouses and/or offices and exterior surfaces from sign penetrations. All such work shall be completed within 30 days of lease termination notice. Tenant shall be required to return the premises to the same condition as initial occupation of the building by the Tenant on January 1, 2014 including but not limited to wall construction, paint, materials, and meeting all applicable building and fire codes.**

  
Initials

## **ARTICLE 11**

### **ACCIDENTS AND INDEMNIFICATION**

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

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

Solely for the purpose of effectuating the indemnification obligations under this Lease, and not for the benefit of any third parties (including but not limited to employees of Tenant), Tenant specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Furthermore, the indemnification obligations under this Lease shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under Worker Compensation Acts, Disability Benefit Acts or other employee

benefit acts. Tenant shall cause Contractors and their subcontractors and material suppliers to execute similar waivers of industrial insurance immunity. The parties, by their execution hereof, acknowledge that the foregoing provisions of this Article 11 have been specifically and mutually negotiated between the parties.

## **ARTICLE 12** **COMPLIANCE WITH LAWS**

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

## **ARTICLE 13** **MAINTENANCE**

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

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

cause beyond Landlord's reasonable control or in cooperation with governmental request or directions.

#### **ARTICLE 14**

##### **LANDLORD'S ACCESS**

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

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

#### **ARTICLE 15**

##### **SIGNS AND ADVERTISING**

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

#### **ARTICLE 16**

##### **WASTE AND UNLAWFUL USE**

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

#### **ARTICLE 17**

##### **SUCCESSORS**

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

#### **ARTICLE 18**

##### **HAZARDOUS MATERIALS**

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

## **ARTICLE 19**

### **ASSIGNMENT AND SUBLETTING**

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

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

## **ARTICLE 20**

### **SURRENDER OF POSSESSION**

#### **20.1     Surrender**

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

#### **20.2     Removal of Property**

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

#### **20.3     Holding Over**

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

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

## **ARTICLE 21**

### **NOTICES**

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

## **ARTICLE 22**

### **LIENS AND ENCUMBRANCES**

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

## **ARTICLE 23**

### **DEFAULT**

#### **23.1 Default**

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

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

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

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

#### **23.2 Remedies.**

- (a) Re-entry and Termination

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

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

(b) Express Termination Required

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

(c) Damages

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

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

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

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

(d) Definitions

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

(e) No Waiver

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

23.3 Interest

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

**ARTICLE 24**  
**ATTORNEYS' FEES AND COSTS**

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

## **ARTICLE 25**

### **MISCELLANEOUS**

#### **25.1 Miscellaneous Provisions**

The following miscellaneous provisions shall apply to this Lease:

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

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

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

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

**PORT OF KENNEWICK**

**CARBITEX LLC**

**By:** \_\_\_\_\_

**Tim Arntzen, Chief**

**Title:** **Executive Officer**

**By:** Rob Langstaff

**Title:** Chief Executive Officer

**Reviewed:**

**Approved as to form:**

**By:** \_\_\_\_\_

**Nick Kooiker, Port CFO**

**Title:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Lucinda Luke, Port Legal**

**Title:** **Counsel**

STATE OF WASHINGTON

ss.

COUNTY OF BENTON \_\_\_\_\_

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

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

My appointment expires \_\_\_\_\_

STATE OF WASHINGTON

ss.

COUNTY OF BENTON \_\_\_\_\_

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

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

My appointment expires \_\_\_\_\_



**EXHIBIT "B"**

PERSONAL GUARANTY TO THE PORT OF KENNEWICK

TO GUARANTEE PERFORMANCE OF LEASE

~~KNOW ALL MEN BY THESE PRESENTS, that the undersigned, as personal guarantor, is firmly bound unto the Port of Kennewick, a municipal corporation, in the sum of all monthly rent, plus leasehold tax, and any other charges due as per Lease Agreement dated January 1, 2018.~~

~~The conditions of this obligation are as follows:~~

~~WHEREAS, CARBITEX LLC entered into a lease with the PORT OF KENNEWICK for commercial tenancy as described in Exhibit "A", located in 1426 E. 3<sup>rd</sup> Avenue, Suite B120 & B130, Kennewick, WA 99336, Development Building B, Oak Street Industrial Complex, Benton County, Washington, which lease provides for the payment of monthly rent, leasehold tax, and other charges; and~~

~~WHEREAS, this guaranty incorporates the lease hereinabove referred to;~~

~~NOW THEREFORE, the undersigned agrees that in place of such bond called for under RCW 53.08.085, he/she/they agree to be personally liable and guarantee the payment of all sums due up to one year's rent as per the basic lease provision from him/her/them to the Port of Kennewick.~~

DATED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

GUARANTORS:

\_\_\_\_\_  
Name: Junus Khan



## AGENDA REPORT

**TO:** Port Commission

**FROM:** Bridgette Scott, Executive Assistant

**MEETING DATE:** April 25, 2023

**AGENDA ITEM:** IT Services

---

**I. REFERENCE(S):** Work Release Order (WRO) No. 03  
Resolution 2023-06

**II. FISCAL IMPACT:** \$111,800

**III. DISCUSSION:**

The Port of Kennewick Commission approved an Interlocal Agreement (ILA) on September 15, 2021 with Energy Northwest to provide services on a variety of projects.

Under this ILA, the Port entered into a contract with Energy Northwest to provide IT services on March 1, 2022 in the amount of \$5,000 per month.

Energy Northwest informed the Port that the cost to provide services exceeds \$5,000 per month and requested an amendment of the original 2022 contract, increasing the monthly amount to \$8,700. Energy Northwest will continue to assist the Port in maintaining IT services at the desired levels and constant changes in security, software updates and technology upgrades.

The Chief Executive Officer's Delegation of Authority requires amendments and change orders over 50% of the approved amount to be brought to the Commission for approval.

**STAFF RECOMMENDATION:** Approve Resolution 2023-06, authorizing the Chief Executive Officer to execute Amendment 1 to Work Release Order (WRO) No. 03 with Energy Northwest to provide IT services.

**IV. ACTION REQUESTED OF COMMISSION:**

***Motion: I move approval of Resolution 2023-06, authorizing the Chief Executive Officer to execute Amendment 1 to Work Release Order (WRO) No. 03 with Energy Northwest.***

***PORT OF KENNEWICK***

**RESOLUTION No. 2023-06**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK AUTHORIZING  
AN AMENDMENT TO THE CONTRACT WITH  
ENERGY NORTHWEST***

***WHEREAS***, the Port of Kennewick Commission approved an Interlocal Agreement (ILA) on September 15, 2021 with Energy Northwest to provide services on a variety of projects; and

***WHEREAS***, under this ILA, the Port of Kennewick authorized Work Release Order #3 with Energy Northwest on March 1, 2022 in the amount of \$5,000 a month for IT services; and

***WHEREAS***, the Port needs to amend the contract to add additional funding to maintain IT services at the desired levels.

***NOW, THEREFORE, BE IT HEREBY RESOLVED*** that the Board of Commissioners of the Port of Kennewick hereby authorize the Port's Chief Executive Officer to execute an amendment to the Work Release Order #3 agreement with Energy Northwest for a monthly fixed rate of \$8,700 and a one-time administrative fee of \$7,400.

***ADOPTED*** by the Board of Commissioners of the Port of Kennewick on the 25<sup>th</sup> day of April 2023.

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

By: \_\_\_\_\_

SKIP NOVAKOVICH, *President*

By: \_\_\_\_\_

KENNETH HOHENBERG, *Vice President*

By: \_\_\_\_\_

THOMAS MOAK, *Secretary*



## AMENDMENT DOCUMENT

**Contractor: Port of Kennewick**  
350 N. Clover Island Drive #200  
Kennewick, WA 99336

Contract No. X-40717, WRO 3  
Amendment No. 01  
Amendment Date: April 13, 2023

### DESCRIPTION OF AMENDMENT

- A. DESCRIPTION OF CHANGES: Update the Work Release Order (WRO) No. 03 scope of work and monthly rate effective May 1, 2023.
- B. CONSIDERATION. The monthly fixed rate shall be changed to \$8,700.00 per month for IS support and those cyber subscriptions listed in Paragraph D.1 herein. Special service requests including subscriptions or software not listed in Paragraph D.1 herein below or not otherwise identified in WRO No. 03 will be agreed to by both parties and are costs in addition to the monthly fixed rate. A one-time administrative fee of \$7,400.00 shall apply to the first month of services and will be included on the invoice for May 2023.
- C. ENERGY NORTHWEST ADMINISTRATION. Contacts shall be changed to:
- Lead Procurement Specialist; Cassy Otto, (509) 377-8778, [csotto@energy-northwest.com](mailto:csotto@energy-northwest.com)
- Technical Representative; Jessica Braun, (509) 377-8764, [jbraun@energy-northwest.com](mailto:jbraun@energy-northwest.com)
1. Business Hours are changed to Monday through Thursday, 7:00 a.m. – 4:30 p.m.
  2. After hours support number is the EN IS Duty Officer, (509) 372-5656.
  3. All correspondence shall be via the IS Solution Center contact number or email address.

4. The Project Team shall be changed to:

EN Project Team

Brian Cunnington - Energy and Professional Services Manager

Dean Kovacs - IS Director / Chief Information Officer

Jessica Braun - Assistant IS Manager for IT Enterprise Solutions

Daniele Pardini - Energy Services Specialist II

D. SCOPE OF WORK.

1. Software included in the monthly fixed rate: Auvik and Barracuda (which includes but is not limited to Email Archiver, Spam Filter and Cloud Backup).

EN will provide OptiTune software for remote access to the Port's network at EN's cost for March, April, and May 2023. The Port shall purchase the OptiTune software at its cost and EN installs it, at the Port's cost. EN will provide a link to the software to be purchased and will coordinate installation prior to May 31, 2023.

E. EXECUTION

All other terms, covenants, and conditions of the above referenced Contract, except as duly modified by this Amendment, remain in full force and effect.

**PORT OF KENNEWICK**

**ENERGY NORTHWEST**

Accepted By: \_\_\_\_\_

Tim Arntzen  
Chief Executive Officer

Accepted By: \_\_\_\_\_

Cassandra Otto  
Lead Procurement Specialist

Date: \_\_\_\_\_

Date: \_\_\_\_\_





## AGENDA REPORT

**TO:** Port Commission

**FROM:** Amber Hanchette; Director Real Estate

**MEETING DATE:** April 25, 2023

**AGENDA ITEM:** Resolution 2023-07; Contract Amendment Columbia Gardens Signage

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**I. REFERENCE(S):** Resolution 2022-45

**II. DISCUSSION:**

On December 13, 2022, port commission awarded a construction contract to Poland & Sons for construction and installation of wayfinding signage within Columbia Gardens and along the Willows trailhead path (Resolution 2022-45).

Bid specifications included compliance with City of Kennewick codes through the permit and inspection process. For the Columbia Gardens entry sign at the corner of Columbia Drive and Cedar Street (Exhibit A) special inspections for compaction, steel and concrete were included by the port to augment city requirements.

Poland and Sons has constructed similar wayfinding signage for the City of Pasco and City of Kennewick.

While the contractor passed their city required inspection for footings, they inadvertently missed calling the port's designated vendor for special inspections related to compaction and concrete.

Jill Shuttleworth is the structural architect of record on this project for Meier Architecture. Ms. Shuttleworth reviewed all photos provided by the contractor, concrete truck mix tickets, and City of Kennewick inspection documents.

Ms. Shuttleworth has drafted a letter to the City of Kennewick with her assessment and recommendation for monitoring and remediation if needed.

####

***Motion:*** I move approval of Resolution 2023-07 approving a contract amendment with Poland and Sons Inc. to accept an extended warranty related to post construction settling of the Columbia Gardens wayfinding sign located adjacent to Columbia Drive in Columbia Gardens and further authorize the Chief Executive Officer to execute all documents and agreements; and that all action by port officers and employees in furtherance hereof is ratified and approved.

***PORT OF KENNEWICK  
Resolution No. 2022-45***

***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF  
KENNEWICK ACCEPTING AND AWARDING A CONSTRUCTION CONTRACT FOR A  
MONUMENT AND WAYFINDING SIGNAGE IN THE COLUMBIA GARDENS WINE &  
ARTISAN VILLAGE AND WILLOWS***

**WHEREAS**, a request for bids to construct a monument sign and interior wayfinding signs in the Columbia Gardens Wine & Artisan Village on Columbia Drive and along the trail in the Willows was properly advertised with approved plans and specifications being made available to five (5) contractors on the Port's small works roster; and

**WHEREAS**, the staff and the project architect have certified that the low bidder for the project is Ray Poland and Sons Inc. in the amount of \$307,875.00, plus applicable tax;


**NOW THEREFORE, BE IT RESOLVED** that the Port of Kennewick Commission does hereby accept the bid from Ray Poland and Sons Inc. for the construction and installation of a monument sign and interior wayfinding signs in the Columbia Gardens Wine & Artisan Village and the Willows as the low bidder in the amount of \$307,875.00, plus applicable tax, and hereby awards the construction contract to said low bidder.

**BE IT HEREBY FURTHER RESOLVED** that the Chief Executive Officer (CEO) is authorized to enter into a contract between the Port of Kennewick and Ray Poland and Sons Inc. for \$307,875.00 plus applicable tax for the construction and installation of a monument sign and interior wayfinding signs in the Columbia Gardens Wine & Artisan Village and the Willows and that the CEO is further authorized to proceed with all necessary procedures required to complete construction of the project.


**BE IT FURTHER RESOLVED** that the Port of Kennewick Board of Commissioners hereby ratify and approve all action by port officers and employees in furtherance hereof; and authorize the Port Chief Executive Officer to take all action necessary in furtherance hereof.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 13th day of December, 2022.

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

By:   
0E53A30E1C8E442...  
SKIP NOVAKOVICH, President

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

By:   
A35176A2D2CD413...  
THOMAS MOAK, Secretary

***PORT OF KENNEWICK***  
***Resolution No. 2023-07***

***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF  
KENNEWICK APPROVING A CONTRACT AMENDMENT WITH POLAND AND SONS  
FOR MONUMENT AND WAYFINDING SIGNAGE IN THE COLUMBIA GARDENS  
WINE & ARTISAN VILLAGE AND WILLOWS***

**WHEREAS**, a contract was awarded to Poland and Sons Inc. for construction and installation of wayfinding signage in Columbia Gardens and along the Willows trail on December 13, 2022; and

**WHEREAS**, a contract amendment between the Port and Poland and Sons Inc. identifies details of an extended warranty given to the Port by Poland and Sons Inc. for settling that may occur within the first twenty-four months after formal acceptance by the Port Commission of the work performed.

**NOW THEREFORE, BE IT RESOLVED** that the Port of Kennewick Commission does hereby approve a contract amendment between the Port and Poland and Sons.

**BE IT HEREBY FURTHER RESOLVED** that the Chief Executive Officer (CEO) is authorized to enter a contract amendment between the Port of Kennewick and Ray Poland and Sons Inc. for extended warranty provisions given to Port by Poland and Sons.

**BE IT FURTHER RESOLVED** that the Port of Kennewick Board of Commissioners hereby ratify and approve all action by port officers and employees in furtherance hereof; and authorize the Port Chief Executive Officer to take all action necessary in furtherance hereof.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 25th day of April, 2023.

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

By: \_\_\_\_\_

SKIP NOVAKOVICH, President

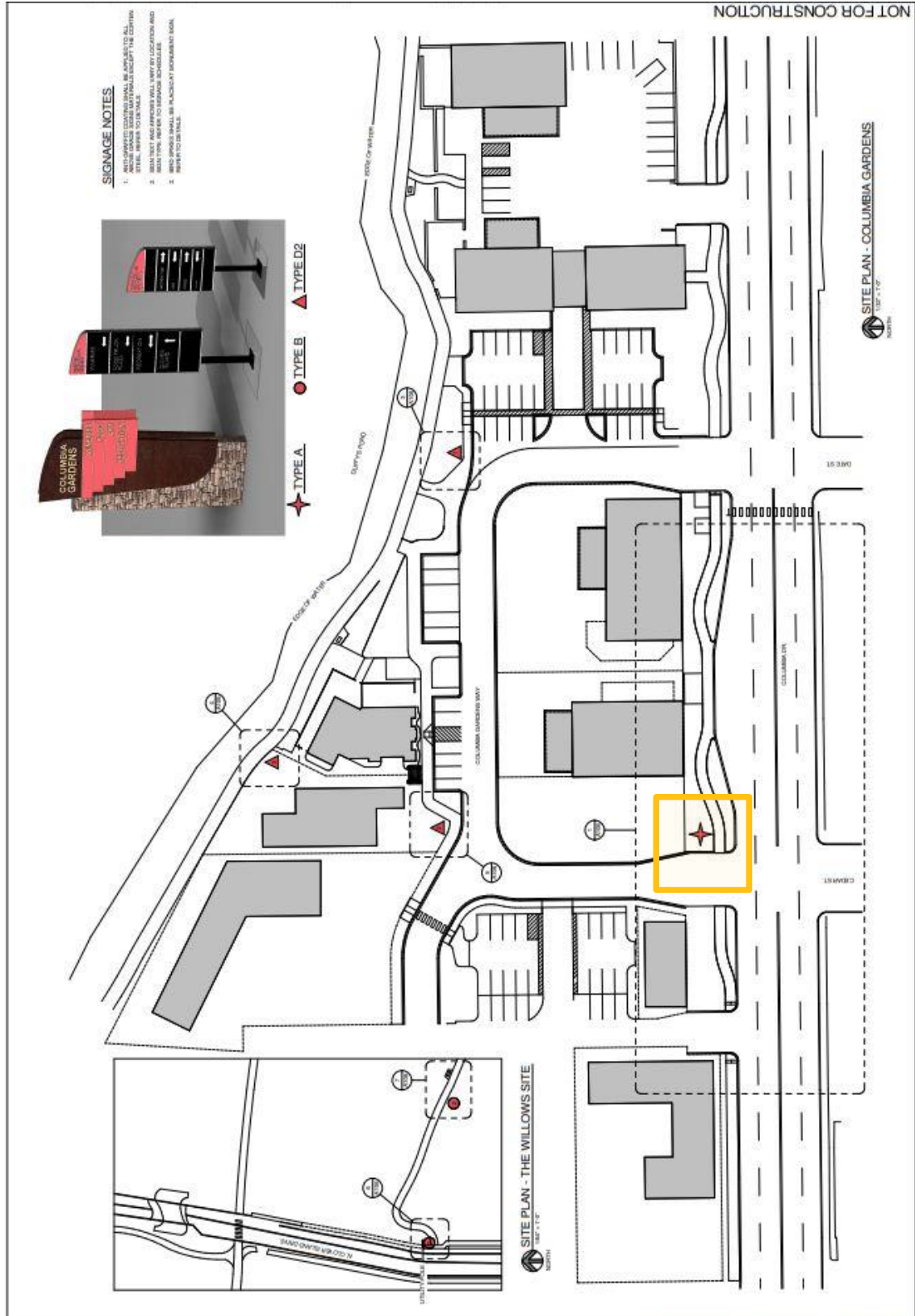
By: \_\_\_\_\_

KENNETH HOHENBERG, Vice President

By: \_\_\_\_\_

THOMAS MOAK, Secretary

# EXHIBIT A





# AGENDA REPORT

**TO:** Port Commission

**FROM:** Tim Arntzen, CEO

**CC:** Port General Legal Counsel Carolyn Lake

**MEETING DATE:** April 25, 2023

**AGENDA ITEM:** Hybrid Work Plan

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**I. REFERENCE(S):** Resolution 2020-06, adopted March 24, 2020.  
Resolution 2022-38, adopted November 8, 2022  
Resolution 2022-40, adopted November 22, 2022.

**II. FISCAL IMPACT:** None.

**III. UPDATE:**

This Agenda Report Update is in furtherance of Resolution 2022-38 adopted November 8, 2022, in which the Port of Kennewick Commission stated its intention to review the status of the Port's Local Emergency Declaration in February, 2023 to coincide with then-expected expiration date of the presidential emergency declaration (March 2023).

**IV. BACKGROUND:**

The Port Commission previously adopted Resolution 2020-06 which documented impacts of COVID 19 world-wide, nationwide and locally. Resolution 2020-06 was a declaration of a local emergency.

Resolution 2020-06 also delegated to the Port Chief Executive Officer, among other things, the authority to "exercise such emergency powers as may be lawful under applicable laws, regulations, ordinances, or the District's policies, and necessary, including by way of example and not limitation: general port powers under Title 53, RCW, RCW 53.12.270 (Delegation of powers to managing official), RCW 39.04.280(3) for emergency procurement, and Chapter 39.28 RCW (Emergency Public Works)".

On October 31, 2021, Washington state's declaration of emergency lifted. However, local governments retained the ability to rely on their own declared state of emergency or a federal emergency declaration to hold a fully remote meeting if they state their reasoning why the local or federal emergency prevents them from meeting in person.

On November 8, 2022, the Commission adopted Resolution 2022-38, which refreshed the Port's Declaration of Local Emergency in recognition that coronavirus remains a workplace hazard and employers must take precautions to prevent the spread of the virus.

Under that authority, the CEO has continued to manage local conditions and Port Commission meetings have been held under the hybrid attendance model. A physical location is provided for the public attendance, at their option, and Commission and staff attendance is via remote means.

When Resolution 2022-38 was adopted, the CEO forecasted this status would remain in place through the fall and winter of 2022-23 and be revisited with the Commission in February, 2023 to coincide with the then - current expiration date of the existing presidential emergency (March 2023).

The Biden Administration announced its intent to end the national emergency and public health emergency declarations on May 11, 2023, related to the COVID-19 pandemic; and subsequently signed a bill April 10, 2023 ending the National COVID emergency.

The CEO gathered background information and data and presented the draft option for Hybrid Meetings and Work Protocols for Commission discussion at the March 28, 2023 Regular Commission Meeting. The data included outreach to staff by a neutral party and included one-on-one Commission conversations and Commission comments from the March 28, 2023 Meeting. This CEO action is also in furtherance the CEO 2023 Goal #8, as established by Commission Resolution 2022-40.<sup>1</sup>

Resolution 2023-08 outlines the Port of Kennewick Hybrid work plan and summarizes the following directives at the CEO's discretion:

- Return to in-person and/or hybrid small group employee meetings;
- Implement limited open office hours;
- Institute fully hybrid Commission Meetings;
- Provide for in-person employee attendance at select meetings and functions;
- Provide for staff work-related travel;

The federal emergency mandate ended Monday, April 10, 2023. Following Commission action, the Hybrid Work Plan would be in effect after and in place of the Local Emergency Proclamation.

## **V. ACTION REQUESTED OF COMMISSION: APPROVE RESOLUTION**

***Motion:*** I move approval of Resolution 2023-08 approving the Port of Kennewick's Hybrid Work Plan and further authorize the Chief Executive Officer to implement Hybrid Work Plan procedures; and that all action by port officers and employees in furtherance hereof is ratified and approved.

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<sup>1</sup> 8. Present Options for Hybrid Meeting and Work Protocols that promote continued Staff and Port productivity.

**PORT OF KENNEWICK**  
**Resolution No. 2020-06**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK DECLARING LOCAL EMERGENCY  
AND  
DELEGATION OF AUTHORITY**

**RECITALS:**

**WHEREAS**, novel Coronavirus COVID-19, a respiratory disease that can result in serious illness or death, is caused by a new strain of coronavirus that had not been previously identified in humans and has proven it can easily spread from person to person; and,

**WHEREAS**, the U.S. Center for Disease Control and Prevention (CDC) has identified a potential public health threat posed by COVID-19 both globally and within the United States, including within Washington State; and,

**WHEREAS**, there are documented cases of COVID-19, including deaths caused thereby, within Washington State; and,

**WHEREAS**, the Washington State Department of Health has confirmed the person-to-person spread of COVID-19 and is finding an increasing risk of exposure and infection to the general public due to its potential to spread quickly; and,

**WHEREAS**, the U.S. Department of Health and Human Services declared a public health emergency for COVID-19 on January 31, 2020; and,

**WHEREAS**, Washington State Governor Jay Inslee proclaimed a public health emergency for COVID-19 on February 29, 2020; and,

**WHEREAS**, the World Health Organization declared COVID-19 a global pandemic on March 11, 2020; and,

**WHEREAS**, the President of the United States declared public national emergency relating to COVID-19 on March 13, 2020; and,

**WHEREAS**, Benton County Commissioners declared a public health emergency regarding COVID-19 on March 17, 2020; and,

**WHEREAS**, the Regular Meeting of the Port Commission on March 24, 2020 at 2:00 p.m. being conducted using CDC recommended social distancing protocols for COVID-19 with Commissioners meeting in-person pursuant to Port Rules of Policy and Procedure Section 6.9 CEO, public attendees attending in-person or remotely, and Port staff members participating remotely via speakerphone, and said meeting was noticed as required by RCW 42.30, and specifically RCW 42.30.070; and

**WHEREAS**, there is an emergency present which necessitates this Resolution.

**NOW, THEREFORE, BE IT DECLARED BY THE COMMISSION OF THE PORT OF KENNEWICK:**

**1. Proclamation.** The Commission of the Port of Kennewick ("District") hereby and expressly finds and declares, based upon the Recitals above, which are expressly adopted herein, that COVID-19 is a civil public health emergency that:

A. Demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken neighborhood overtaken by such occurrences; and

B. Could, if unattended, seriously affect the safety, health, or welfare of a substantial number of citizens of the Port's district, or preclude the operation or use of essential public services and facilities with such magnitude or severity as to necessitate seeking state, county, or other supplementation of local efforts or resources exerted or utilized in alleviating the danger, damage, suffering or hardship faced.

**2. Authority.** This Resolution Declaring a Local Emergency and Delegating Authority ("Resolution") authorizes the Chief Executive Officer to exercise such emergency powers as may be lawful under applicable laws, regulations, ordinances, or the District's policies, and necessary, including by way of example and not limitation: general port powers under Title 53, RCW, RCW 53.12.270 (Delegation of powers to managing official), RCW 39.04.280(3) for emergency procurement, and Chapter 39.28 RCW (Emergency Public Works). Effective upon signature hereto and as further detailed in Section 3 below, the Chief Executive Officer is authorized to exercise such lawful authority through the use and direction of District personnel, services, equipment and such additional acts as the Chief Executive Officer may find necessary in his sole discretion to properly and safely manage this emergency.

**3. Powers.** In order to properly delegate and authorize the Chief Executive Officer to prepare for, address, manage, prevent, respond to, and remediate this emergency situation, the Chief Executive Officer shall have all necessary powers to do the following, which is provided for example and not limitation: Make necessary rules and regulations reasonably related to the emergency, to obtain supplies, equipment, personal property, professional, procured or technical services, etc. (including selecting and awarding such contracts as necessary), such public works as defined by

RCW 39.04.010, to authorize overtime and/or extended leave for personnel, to requisition personnel and material, obtain emergency funding and permitting through federal, state and local agencies, and take such other lawful acts as may be necessary and reasonably related to the emergency situation declared hereunder.

3.1 The foregoing powers and authorities are to be read consistent with the District's existing Delegation of Authority Resolution No. 2018-26; however, if there is a conflict between the Delegation of Authority Resolution No. 2018-26 and this Resolution, this Resolution shall control.

3.2 If the Chief Executive Officer exercises any powers or authorities delegated under this Resolution, the Chief Executive Officer shall report such exercise to the Commission at the next regular Commission meeting with explanation as to why it was necessary to take such action under this Resolution to meet the emergency situation articulated herein. If required by law, the Commission shall take such action in an open session to ratify the Chief Executive Officer's action(s) hereunder.

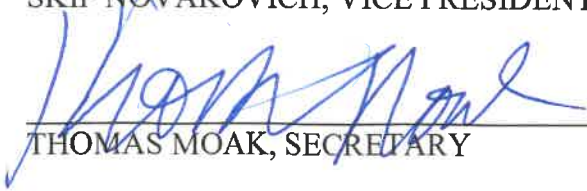
4. **Termination.** This Resolution shall continue in full force and effect until terminated by law or by further Resolution and shall be reviewed as a regular agenda item on the Commission's agenda until such time as this Resolution is terminated.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 24th day of March, 2020.

**PORT OF KENNEWICK  
BOARD OF COMMISSIONERS**

BY:   
DON BARNES, PRESIDENT

BY:   
SKIP NOVAKOVICH, VICE PRESIDENT

BY:   
THOMAS MOAK, SECRETARY

## ***PORT OF KENNEWICK***

### ***Resolution No. 2022-38***

#### **A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK EXTENDING THE LOCAL EMERGENCY DECLARATION & RELATED DELEGATION OF AUTHORITY & SETTING A REVIEW DATE**

**WHEREAS**, The Washington State mandate for remote public meetings and restrictions on holding in-person public meetings expired June 1, 2022. Upon expiration of the proclamation, the newly revised Open Public Meetings Act (“OPMA”) law applied.

**WHEREAS**, pursuant to the current OPMA, RCW 42.30.230, open public meetings must be held at a physical location where the public can attend, unless a local, state, or federal emergency has been declared and the public agency determines it cannot hold an in-person meeting with reasonable safety. While state law encourages agencies to offer a remote attendance option along with its in-person option (see RCW 42.30.030), they are no longer required to do so.

**WHEREAS**, on October 31, 2022, Washington state’s declaration of emergency lifted. However, local governments can still rely on their own declared state of emergency or a federal emergency declaration (such as the president’s emergency declaration) to hold a fully remote meeting if they state their reasoning why the local or federal emergency prevents them from meeting in person.

Another option for the Port of Kennewick is to refresh the Declaration of Local Emergency, which the Commission first declared in 2020, and to continue to conduct Port Commission meetings under the hybrid model by which the Port currently operates. A physical location is provided for the public attendance, at their option, and Commission and staff attendance is via remote means.

**WHEREAS**, the Port Commission previously adopted Resolution 2020-06 which documented impacts of COVID 19 world-wide, nationwide and locally. Resolution 2020-06 was a declaration of a local emergency. The current Resolution 2020-06 continues in force until terminated by law or by further Resolution.

**WHEREAS**, Resolution 2020-06 also delegated to the Port Chief Executive Officer, among other things, the authority to “exercise such emergency powers as may be lawful under applicable laws, regulations, ordinances, or the District’s policies, and necessary, including by way of example and not limitation: general port powers under Title 53, RCW, RCW 53.12.270 (Delegation of powers to managing official), RCW 39.04.280(3) for emergency procurement, and Chapter 39.28 RCW (Emergency Public Works)”.

**WHEREAS**, although the Washington state Governor’s emergency orders ended October 31, 2022, coronavirus remains a workplace hazard and employers must take precautions to prevent the spread of the virus. Though the Washington state emergency orders are ending, the Benton-Franklin Health District reminds us that throughout the Counties, coronavirus remains a workplace hazard and employers must take precautions to prevent the spread of the virus.

**WHEREAS**, the Benton-Franklin Health District makes available the rates per 100,000 Population of Cases, Hospitalizations and Deaths due to COVID, and updates this information regularly. For Benton County the present 7-day case rate is 34.5; the 14-day case rate is 70; the 7-Day Hospitalization rate is 6.3 and the 7-Day Death Rate is 0.5.

**WHEREAS**, the Port has fared well under the current policies. The CEO is aware of no areas where Port business has suffered; and is aware of no citizen complaints due to the current policy. Port efficiency remains high, and in some cases, efficiency has increased pursuant to the remote work policy.

**WHEREAS**, what does not end on October 31, 2022 are the state Health Emergency Labor Standards Act (HELSA) requirements that remain in effect as long as there is a public health emergency declared by the President of the United States.<sup>1</sup>


**WHEREAS**, the current national presidential emergency declaration remains in effect through March 1, 2023.


**WHEREAS**, the federal emergency proclamation remains in effect and local emergency factors continue to necessitate this Resolution.


**NOW, THEREFORE, BE IT HEREBY RESOLVED AS FOLLOWS:**

1. Proclamation of Emergency. Based on the above factors, the Port of Kennewick Commission reaffirms its Declaration of Local Emergency.
2. Current Delegation CEO Remains Unchanged. The Port of Kennewick Commission leaves in place the CEO's current delegation of authority as contains in Resolution 2020-06. Under that authority, the CEO would continue to manage local conditions and it is anticipated that Port Commission meetings would also continue to be held under the hybrid model by which the Port currently operates. A physical location is provided for the public attendance, at their option, and Commission and staff attendance may be via remote means.
3. Commission Review in February 2023. The Port of Kennewick Commission will review the status of this Local Declaration in February 2023 to coincide with the current expiration date of the existing presidential emergency declaration (March 2023).

**ADOPTED** by the Board of Commissioners of Port of Kennewick on the 8<sup>th</sup> day of November, 2022.

By:   
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 SKIP NOVAKOVICH, *President*

By:   
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 KENNETH HOHENBERG, *Vice President*

By:   
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 THOMAS MOAK, *Secretary*

<sup>1</sup> HELSA requirements include, among other things: Non-health care employers must notify staff and others at the workplace of a potential exposure to COVID-19 within one business day, and Employers are prohibited from discriminating against high-risk employees for seeking accommodations for COVID-19.

# ***PORT OF KENNEWICK***

## **RESOLUTION No. 2023-08**

### ***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK APPROVING A HYBRID WORK PLAN***

**WHEREAS**, the port commission has operated under various resolutions that direct the conduct of port business activities during the Covid pandemic; and

**WHEREAS**, during formulation of the port's budget and work plan for the years 2023 and 2024, the port commission directed the port Chief Executive Officer (CEO) to formulate a Hybrid Work Plan in order to establish procedures related to port commission meetings, port office hours and the direction of port staff efforts during and following the Covid pandemic; and

**WHEREAS**, the port CEO, with assistance of legal counsel and port staff, has prepared a "Hybrid Work Plan", with explanatory memo (as amended), both of which are attached hereto as Exhibit "A"; and

**WHEREAS**, the commission recognizes and affirms the authority previously delegated by it to the CEO to direct the efforts of staff and to establish procedures for overall administration of the port, including, but not limited to the establishment of employee work hours and office hours.

**NOW, THEREFORE, BE IT RESOLVED** that the Port of Kennewick Board of Commissioners hereby ratifies and approves the "Hybrid Work Plan" as follows:

#### **PORT OF KENNEWICK HYBRID WORK PLAN**

The Port CEO, at his discretion, shall:

**1. Return to In-Person and or Hybrid Small Group Employee Meetings.**

Re-institute in-person employee conferences with hybrid option for mix of remote and in-person attendance, at CEO's determination. Employee meetings would take place on days and at times designated by the CEO.

**2. Implement Limited Open Office Hours.**

Re-institute "open office" hours at the port office. Office hours shall take place on days and at times designated by the CEO.

**3. Institute Fully Hybrid Commission Meetings.**

Implement a "hybrid commission meeting schedule" consisting of one commission meeting per month being conducted remotely, and the other conducted in-person. Commission attendance at in-person meetings would be on a voluntary basis. In-person commission meetings will occur under the following conditions:

- a. Employee attendance shall be at the discretion of the CEO and shall likely consist of one employee being present to operate audio/visual equipment, with the presence of one other employee, likely the CEO or his delegate;
- b. Public participation shall, at the discretion of members of the public, be either in-person or remote;
- c. With the exception of 3a (above) all employees required to participate in the meeting shall attend remotely (audio and visual); and
- d. The above plan shall be implemented as soon as practicable, dependent upon making necessary audio-visual adjustments within commission chambers and addressing other technical logistics.

**4. Provide for In-Person Employee Attendance at Select Meetings and Functions.**

Provide for in-person employee attendance at meetings and functions on a case-by-case basis.

**5. Provide for Staff Work-Related Travel.**

Provide for in-person travel to meetings, conferences and events on a case-by-case basis.

**6. Publish Plan Upon Adoption.**

Ensure significant publication and promotion of the above procedures to ensure general knowledge of port open office hours, staff availability, and transparency in operations. This shall include website, newsletters, media releases, posting notice on front door, outgoing voice message, and direct notice via established mailing lists, etc.

**BE IT HEREBY RESOLVED** the Board of Commissioners of the Port of Kennewick hereby accepts the Hybrid Work Plan, Goal #8 of the CEO's 2023/24 Goals and Objectives, as complete.

**BE IT FURTHER RESOLVED** that by adoption of this Resolution 2023-08, the Port of Kennewick Board of Commissioners hereby rescinds and sunsets the Declaration of Local Emergency as contained in Resolution 2020-06 and Resolution 2022-38.

**BE IT FURTHER RESOLVED** that the Port of Kennewick Board of Commissioners ratify and approve all action by port officers and employees in furtherance hereof; and authorize the Port Chief Executive Officer to take all action necessary in furtherance hereof.

**ADOPTED** by the Board of Commissioners of Port of Kennewick on the 25th day of April, 2023.

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

By: \_\_\_\_\_

SKIP NOVAKOVICH, President

By: \_\_\_\_\_

KENNETH HOHENBERG, Vice President

By: \_\_\_\_\_

THOMAS MOAK, Secretary

## **Resolution 2023-08 EXHIBIT A**

### **Memorandum (Amended)**

To: Port Commission  
From: Tim Arntzen, POK CEO  
Date: April 11, 2023  
Re: Transitioning to a Hybrid Work Plan

Under various resolutions which have come before the commission, and in furtherance of a goal and objective the commission assigned to me, I have prepared the following DRAFT post-covid Hybrid Work Plan. A plan that I feel is focused on managing performance outcomes, intentional collaboration, and flexibility.

My thoughts set forth in this memo have been aided by robust discussion with port employees and legal counsel and a great deal of study regarding the evolving future of the workplace. I am deeply indebted to the port team and legal counsel for their assistance, and for the myriad white papers, articles, and current research focused on the evolving workplace and benefits of offering a human-centric work environment.

In fact, while researching the potential benefits and concerns of a work from home arrangement it became apparent that, beyond meeting necessary “life/health/safety” measures, a flexible work arrangement has notable benefits to both the organization and its employees, including allowing companies to attract and retain top talent more readily. And for those organizations with proactive and robust communications standards, working from home can foster a highly engaged workforce which performs better than those within a traditional office-only environment.

It was traditionally thought if a manager could see their employees in the office that meant they had productive employees; but *seeing people at their desk is just witness to their presence, not their productivity*. When managers are focused on goals and outcomes, employees can often be more productive working remotely. And when employees have fewer distractions (telephones, drop-in visitors, co-workers) they perform at a higher level.

Research has also indicated that employees will take fewer sick days if they are allowed to work from home: colds and food poisoning make going into an office miserable, but those who are mildly sick can still get work done most of the time if it means not having to go into the office. And those employees won't spread their illness with others if they stay home!

In preparing this plan, it became apparent that this should not be considered a “post-Covid” work plan as much as it is a “new way of doing business” plan. Yes, Covid forced the remote work environment. However, during the past three years, we discovered numerous efficiencies, and we engaged new technologies that have allowed us to successfully conduct the public's business and effectively run the port.

I am proud of the way the port responded to the Covid pandemic. As the port's legal counsel has advised the commission in past resolutions, I, as port CEO, have a legal duty to protect employee health and welfare at all times, not just during a pandemic. And we did just that. In fact, during staff discussions, several employees indicated they directly benefitted from not being required to be physically present.

Our current remote work plan was focused on keeping our employees and the public safe. And we supported personal liberty by not requiring employees to submit to vaccinations as a requirement of employment—a position that offered flexibility and understanding, and ensured employees could sustain their own convictions in making personal healthcare decisions. It is important to note that there is now mounting medical evidence indicating significant negative effects related to Covid vaccinations in some people—which strongly supports the wisdom of allowing personal liberty related to personal health decisions. Again, this type of information must be considered when making decisions and formulating an evolving workplace policy.

The port has a camera in the commission chambers and full remote commission meeting accessibility. As observed by several staff members, “while the public can now attend commission meetings live, usually no one shows up.” People seem to enjoy the ability to “Zoom” in, and the ability to attend remotely has increased public participation in meetings. Given that people have embraced technology and the systems are already in place; and, given the commission’s desire for continued transparency, I believe there is an expectation that we will continue offering the ability to engage online. And I believe our employees feel a hybrid work environment will continue to benefit both them and the port.

In fact, some think we are more accessible now. As one employee shared, when he is on vacation, but needs to be “present” for an important topic, he can do that. Previously that participation wasn’t possible without the transition to remote work and the investment in technological improvements that have already been made.

Another person noted that the pandemic proved how dynamic the port is; staff had a week or two to figure out how to get everyone remote and we did that remarkably well. The port was, and still is, ahead of most agencies in its response to Covid. And because the port has learned much about doing business remotely, the question was posed, “Since we have the tools in place and we’ve been successful, why would we go back to the way it was before?”

Another observation was that the port received its greatest level of public participation—during Covid—for the Waterfront Master Plan—using technology to remotely engage the public via surveys and Zoom meetings. More than 2,000 comments were offered online versus the previous high-water mark of 200 in-person attendees for Vista Field master planning (which in itself was a record!)

Other team members shared, “Sometimes, it seemed we used to attend meetings for the sake of meetings, and now we don’t have as many random meetings.”

In addition, the commission will undoubtedly recognize that the employees' comments cited in the Appendix to this memo are a testament to the enhanced feeling of personal medical safety under our current protocols.

On the downside of working remotely, there were some who missed in-person engagement, and some who missed small group in-person opportunities, and others who expressed concern about sustaining morale and our corporate culture remotely.

### **Conclusion:**

Covid came upon us rapidly and unannounced. Our port was among the first nationally to recognize the potential severity of the approaching pandemic, and one of the very first organizations locally to cancel events and transition employees to a remote work environment. Our port instituted early and robust Covid compliance and social distancing procedures. These procedures were and continue to be designed to protect the commission, the staff, and the public at large. And truthfully, the port endured some early community criticism for taking such swift and proactive action. Ironically, those who initially criticized the port eventually instituted similar measures to protect public health. They just did it later.

In the three years since the onset of Covid, and under our remote work plan, it has been demonstrated and accepted that Port of Kennewick has been as effective as ever. And there is staff consensus that, in fact, the port is more efficient now than it was prior to Covid. Technological advances employed by the port, together with increased employee productivity have created a "New Work Paradigm." Instead of our port's productivity suffering, it increased.

Our port has always been a leader in our community, whether it comes to its visionary public projects—or its visionary response to a global pandemic. Put bluntly, our port has been a leader, not a follower. And personally, I hope that our port will continue to be an innovator, and I hope that we recognize there are new ways of doing business. Surely there will be some who criticize. There always is.

Nevertheless, I believe that our formulation of a Hybrid Work Plan should consider our new knowledge. Therefore, in moving forward, a new paradigm Hybrid Work Plan could be something like this:

### **1. Return to In-Person Small Group Employee Meetings**

Re-institute in-person employee conferences in the commission chambers. In-person meetings will be on a voluntary basis with each employee, in consultation with their manager or the CEO, having discretion to determine whether the person desires to meet in person (based on personal medical conditions). These employee meetings would take place on days that the port office is open to the public.

### **2. Implement Limited Open Office Hours.**

While it has been undisputed that the port has remained effective and responsive to the public's needs under the remote work plan, I suggest that the port establish some "open office" hours. Office hours could be designated as Tuesdays and Thursdays from 9 am to 4 pm. These days have been selected because Tuesday would be consistent with commission meeting days, and Thursdays would allow additional public access and an

opportunity to prepare for expanded use of and activity at port facilities during weekends. Thursdays typically require the highest level of engagement with marina tenants, especially during spring, summer, and early fall.

For safety concerns I would require at least two port employees to be in the office during open office hours for safety and security reasons. And, to provide for continued safety of employees when a minimal workforce is on site, the port may choose to implement additional security protocols such as an interactive front door camera and bell.

### **3. Institute Fully Hybrid Commission Meetings.**

A modified hybrid system could be employed, consisting of one commission meeting per month being conducted remotely, and the other conducted in-person. Commission attendance at in-person meetings would be on a voluntary basis. In-person commission meetings could occur under the following conditions:

- a. Each attending commissioner would be seated six feet apart from others.
- b. Employee attendance would be limited to one person to operate the equipment and one other employee, likely the CEO or his delegate.
- c. Public participation would continue to be either in-person or remote. For in-person attendance, seating would be limited as appropriate and consistent with Washington state Labor and Industries guidance<sup>1</sup>, with each seat six feet apart from other seats.
- d. With the exception of 3a (above) all employees necessary for the meeting would attend remotely (audio and visual); and
- e. The above plan could be implemented beginning June 1, 2023, and would be re-evaluated on October 1, 2023, or as necessary.
- f. To ensure full transparency for the public in conducting such in-chambers meetings, and to accommodate the above requirements, the “start date” would be dependent upon making necessary audio-visual adjustments within commission chambers and addressing other technical logistics.

### **4. Provide for In-Person Employee Attendance at Select Meetings and Functions**

Allow for in-person attendance at meetings and functions as approved by the CEO or his delegate on a case-by-case basis (willing participant).

### **5. Provide for Staff Work-Related Travel**

Allow in-person travel to meetings, conferences and events as approved by the CEO or his delegate on a case-by-case basis (willing participant).

### **6. Publish Plan Upon Adoption**

The port will ensure significant publication and promotion of the plan upon adoption to ensure general knowledge of port open office hours, staff availability, and transparency in operations. This would include website, newsletters, media release, posting notice on the front door, outgoing voice message, and direct notice via established mailing lists, etc.

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<sup>1</sup> Washington State’s public health emergency proclamations for COVID-19 ended on October 31, 2022; however, COVID-19 is still a recognized workplace hazard that employers must address pursuant to Washington state Labor and Industries. <https://www.lni.wa.gov/safety-health/safety-topics/topics/coronavirus#requirements-and-policies>.

## **Appendix (Amended)**

### **Work Models Listening Sessions Summary**

#### **Remote/Hybrid/Return to Office**

**Captured by Rochelle Olson & Tim Arntzen, CEO February through April 2023**

#### **Port Effectiveness During COVID/Remote Work Conditions**

“The pandemic proved how dynamic the port is. We had a week or two to figure out how to get everyone remote. We were ahead of most agencies, thankfully. And the cyber event made us even more robust and prepared.”

“Just because COVID emergencies are over, did we not learn some lessons from this? How can we be most productive? Can we keep working online and not have a bunch of bodies in the building just because that is the way it’s always been done? Do we use the tools we now have or go back the way it was?”

“I think we’ve been extremely effective. Once everything was set up in remote offices, I spent all my day on the computer/phone and was as productive or more productive. There were missed opportunities like Chamber functions, etc., where we had past visibility.”

“I get up very early and start working. So now I don’t have to wait until 9 a.m. to begin work. As a team, we’ve found ways to adapt. The new phone system seemed like the final step we needed to fully enable remote work.”

“Facilities are 100% occupied. That shows that we’re still maintaining operations. I’ve been remote for 7 ½ years, it does increase productivity for me, and I’m not distracted.”

#### **Accessibility To the Public/Tenants**

“We now have cameras in our Commission room and other ways to engage with the public using the tools and lessons we learned over the past few years.”

“We found ways for bill payments and other functions. Everyone learned to do things differently. People can come to commission meetings live – but no one shows up. People still want to Zoom in, and the attendance is higher.”

“I think we are more accessible. I could attend a Commission meeting while I was on vacation to present on an important topic – that wouldn’t have been possible without the transition to remote work.”

“We had hardly anyone attend in person at 2 p.m. on a Tuesday afternoon. We have far more participation online by people who want to hear or speak on a matter for 3 minutes. We now have more public engagement, so why wouldn’t we keep the ability for people to join online?”

“With the front-door camera operating, we can speak with people who stop by the office.”

“With the new phone system, we’re able to answer and transfer calls and do all our normal business. We make appointments to meet people in person when needed.”

“Remote work is effective depending on the department. Tenants were still working in their offices. We could provide a lot of support over the phone, which worked out fine. Not many tenants needed to meet in person – lease renewals were done over the phone.”

“Ninety percent of foot traffic business could be done remotely. We set up mechanisms that allow business to be conducted remotely versus coming into the office.”

“Thursdays are currently busier for customer engagement than Fridays as everything is done electronically now. We’ve been managing the marina electronically for three years and everything that guests or tenants need is available at guest moorage locations and available online, as well as the kiosk with a QR Code for information. We do not accept electronic payments, so payments can be dropped off in the drop box. If assistance is needed, we are available via phone or appointments if required. Besides, Friday’s require bank deposits and monthly billings and stocking and preparing facilities for weekend use, Thursday hours would offer opportunities for better customer interface on a day they are most likely to seek assistance”.

“More people engaged with and commented on the Kennewick Historic Waterfront District Master Plan because it was done online/differently during COVID.”

“We received the greatest response electronically and through surveys and Zoom meetings for the Kennewick Historic Waterfront District Master Plan – over 2,000 comments from people. The high watermark previously was 200 people who attended night meetings. But by asking for feedback online, we had unprecedented participation.”

### **Ways The Port Has Become More Effective/Productive Working Remotely**

“We do DocuSign now, GoToMeeting, Zoom and WebEx/VOIP. So, a big increase in productivity. And soon, we’ll move to Laserfiche, which will make us more productive. We can better track signatures too.”

“Sometimes, we used to have meetings for the sake of meetings, and now we don’t have as many random meetings. And there are fewer community meetings to attend.”

“Consultants aren’t flying in anymore. We’re meeting with companies remotely. Remote meetings are easier to attend and give the public more access to the port. Remote meetings are also easier as employees to attend.”

“I would never have been able to reduce our records management inventory by half if it wasn’t for working from home.”

“Few people could predict COVID or how impactful it would be worldwide. Big businesses, and small businesses, all around the world are facing the same issues we are. Many technologies we use today didn’t exist four years ago. These worldwide tech advancements are due to an emergent need. We’ve invented procedures, processes, technologies that you can’t take away.”

“One change is the old-school management of people. I used to arrive at a certain time to be seen so the manager knew I was there. Now, we’re relying on the other employees to be out there and doing the work without micromanaging them. It’s a new culture. People can show up early and have more flexibility. At first, I had a hard time not having people know what I was doing – and no one checking in with me.”

"We are more green (environmentally responsible). We aren't traveling as much, so with lower carbon emissions, we've reduced our carbon footprint. We could look at bills to see if they are cost savings for the port since we're not there daily."

"I can get and keep the best team possible by being as flexible as possible. We are far more competitive in attracting and keeping talent with these policies, but it's also smart. People can go anywhere to make money. But it's a competitive advantage for the port to let employees work and stay at home."

### **Negative Aspects You've Experienced Related To Port Operations/Effectiveness Working Remotely**

"After COVID, I realized I like people more than I thought I did. But I think the days talking around the water cooler about kids are behind us, and there just isn't as much time consumed talking because we're remote."

"The fading of connection with my coworkers as individuals. We can still talk about tasks or ask for updates, but there is something to seeing smiling faces and hearing about families. Having a little bit of a personal connection with co-workers is beneficial."

"We've lost some of the ability to be in a room and share ideas. There are about 10% of meetings where being in the same room versus taking the screen share back and forth would be good."

"The political pressure is a negative. As an elected official, you need to be aware of what the community is saying. Some ask why the port team isn't back in the office full-time. The question that must be asked: Who will decide if we will open fully or have a hybrid arrangement? Will the decisionmaker be the Commissioners or the CEO?"

"I experienced pushback at a local city council meeting. A city employee said, 'I heard you guys really locked yourself down.' So, there is some pressure."

"We're morphing from the old culture of managing desk time versus productivity. Tim has done a great job building a good corporate culture and a team that works well together. I worry about new people coming on board and if that will change with us all working remotely."

### **Return To Office Concerns And Effect On Some Port Employees And/or Family Members More Susceptible To The Negative Impacts Of COVID**

"Limited office space for new hires is a real issue if we're all in the office. And remodeling or adding new offices is expensive, which is a real problem as we slowly grow over time."

"Unfortunately, many of us have had to become caregivers. It's one hell of a commitment on the part of the employee. If we can make it easier on everyone, it benefits the port. People can be better – we can be better ports – if we loosen the reins and trust the employees."

"Returning to the office would make it very difficult to take care of my sick parents right now. I would have likely retired if I didn't have this flexibility to take care of family."

"I will be out of the office for six weeks, and I'm grateful to be able to work remotely."

"I appreciated Tim's conservative approach for the last few years. I had a parent with dementia in a facility that you couldn't go in if you had any sickness. I also have a 91-year-old mother-in-law who I want to keep seeing. It's been a blessing not to get sick. For the last few years, I

haven't even caught a cold, let alone COVID. I appreciate your approach, Tim."

"I like knowing that the people I work with aren't negatively impacting their family members' health."

"Not being in the office and catching every bug reduces medical expenses for every employee. It's nice to be able to stay home and not get sick – because I'm a caregiver to ill relatives. Not getting sick during the last few years was a big benefit and blessing. And I can still work remotely while caring for relatives, so I don't have to miss work."

"I can't share your personal information with Commissioners. So, what is prudent under the circumstances? If we can create a uniform policy, that will benefit all employees. Based on what I know, I need to safeguard the work environment. I'm privy to some facts that tell me I need to take those obligations seriously."

### **Ideas For A "Covid Plan" Or "Next 24-Months" Work Plan**

"To me, it's not a COVID plan. We use the word "reopening," but there is far more involved than COVID. To me, the plan must have flexibility. We've put all these technologies and efficiencies in place, and it would be a waste not to keep taking advantage of them."

"I don't view it as flipping a light switch on and off because it doesn't need to be where we return to exactly as we were before COVID. I don't envision it being a hard onsite/offsite decision but more of a hybrid. I save 45 minutes of drive time that I don't have to do, so I have more productive hours."

"I don't think we should call it a COVID plan. Over the next 24-month period, I'd like to keep working how we are now. If I need to come in, I do."

"Let's talk about productivity as an organization and forget about that there is COVID or the seasonal flu/cold. Take the pandemic away and are we going to revert to the less effective model?"

"What we are doing now seems to be working well. I won't mind if we designate coming in for staff meetings because there are some teambuilding benefits to having people together on occasion. So, we should think about how to build in teambuilding and comradery, or we will lose that. Also, those times together would help our new team members and future hires transition into our culture."

"At most, limited office hours are open for our Marina tenants. Maybe Friday afternoons or whenever new Marina tenants are coming down to sign up for new slips. Retain a work-from-home practice generally, allowing people to come to the building if they feel safe."

"I'm hesitant to have doors unlocked due to safety issues."

"There are an increasing number of active shooter issues, and I'm hesitant to have the doors unlocked with unfettered access with just one employee here. Maybe a buddy system. We have a heightened duty to protect employees irrespective of COVID. Maybe we keep the office locked?"

"When I go to Richland's City Hall or my children's elementary schools, you can't just wander around."

"Only meet quarterly in the Commission room – but keep all Commission meetings online. And

encourage our staff meetings to be in person every two weeks in conjunction with our commission meetings.”

“I like the hybrid work approach we have now. I like that we can have everyone in person on occasion for meetings. And we have options. If you’re not feeling well, you stay home. No questions asked. Before COVID, I wouldn’t stay home.”

“I agree that Tuesday and Thursday hours make sense. Fridays are typically the slowest days regarding marina, phone calls, and meetings. And hopefully, this year, when we start automating the entire marina process, it will make things even easier. Open hours on Tuesdays and Thursdays would also relieve any scheduling conflicts with vacations, which are usually Mondays/Fridays.”

“I’d still come in if I weren’t feeling well, but not really sick yet. And we’d pass sicknesses around. Remote work has allowed us to be healthier and more productive, and we’re not taking as much PTO off seasonally.”

“Whatever our plan looks like going forward, considerations should include the following:

1. What is reasonable medically?
2. What have we learned business-wise and from employees?
3. What is feasible politically.”

### **Thoughts On Making A Policy Too Restrictive Or Loose**

“You can always ease up on restrictions. If we start a bit tighter/more controlled, we can ease into it. It’s better to be cautious to start so everyone doesn’t get sick; err on the side of caution.”

“Let’s ease up on prohibitions about not being able to attend meetings/presentations. Those concerned about their health don’t need to do that. We can make accommodations. Those who want to give presentations or go to City Council meetings can. Maybe not 1,000 people at the convention center but go to City Council meetings of other partners.”

“We must change with the times. If we require people to sit at desks for 8 hours a day, we’ll lose people. Now I can walk Badger at lunch. I have flexibility, so I am more productive and can take care of my children in the morning.”