

**MEMORANDUM OF UNDERSTANDING
REGARDING
VISTA FIELD LANDSCAPE TREES AND MAINTENANCE**

I. PARTIES

This Memorandum of Understanding (MOU) is entered into this 15 day of February, 2019, between the PORT OF KENNEWICK, a Washington municipal corporation (“Port”), and the CITY OF KENNEWICK, a Washington municipal corporation, (“City”) referred to collectively as the “Parties”. The Parties agree as follows:

II. RECITALS

- 2.1 Economic Development Authority.** The Port and the City are authorized, including under Chapters 39.33 and 39.34 of the Revised Code of Washington, to contract with each other and other public agencies in order to effectively and efficiently operate, administer and carry out their programs and public projects.
- 2.2 Location of Facility in Project Area.** The Port owns approximately 103 acres of land in West Kennewick which it is developing into a New Urbanism mixed-use village (the “Project Area”).
- 2.3 Opportunity for Collaborative Development.** The Parties recognize that successful economic development of the Project Area benefits the economic and social welfare of the City and the surrounding area. The Parties seek to memorialize their understanding related to street trees which will be located in the public right of way in the first phase of development of the Project Area. The street trees shall be as set forth on Exhibit “A” hereof. The term “street trees” shall refer to trees, tree grates, tree lights and underground utilities supporting trees such as irrigation lines and electrical lines.

III. OBLIGATIONS OF THE PARTIES

- 3.1 Port Obligation.** The Port shall, at its expense, install all street trees as referenced in Exhibit “A” and shall perform all ordinary maintenance and repair thereof.
- 3.2 City Obligation.** The City shall grant the Port the right of ingress to and egress from the public right of way in order for the Port to perform its obligations under this MOU.

IV. ADMINISTRATION

- 4.1 Responsibilities.** This MOU shall be administered by the City Manager or her designee and the Port Chief Executive Officer or his designee. Working in partnership and on behalf of their respective agencies these individuals shall be responsible for:
- a. Establishing policies for implementing this MOU;
 - b. Providing periodic progress reports;

- c. Monitoring progress of the Parties and other agencies in the fulfillment of their respective responsibilities; and
 - d. Follow applicable City and Port bid and prevailing wage law policies and procedures when awarding bids for this project. This provision shall not apply in the event the Port's obligations are assigned to a non-governmental third party contractor or property owner's association.
- 4.2 **Document Review.** The Parties shall cooperate by sharing all relevant information, including planning, financial and environmental documents, to the extent allowed by law.
- 4.3 **Expenses and Financial Contingency.** Except as otherwise provided, the obligations of each Party shall be performed at the sole expense of said Party.

V. GENERAL

- 5.1 **Amendment.** This MOU shall not be altered or varied except in writing signed by each Party.
- 5.2 **Governing Law.** Each of the Parties has independent authority to contract; and, this MOU is pursuant to that authority and shall be governed by, construed and enforced in accordance with the substantive laws of the State of Washington.
- 5.3 **Venue.** The venue for any action arising out of this MOU shall be the Superior Court for Benton County.
- 5.4 **Non Waiver.** Nothing in this MOU and no actions taken pursuant to this MOU shall constitute a waiver or surrender of any rights, remedies, claims or causes of action a Party may have against the other Party or others under any provision of this MOU or any provision of law.
- 5.5 **MOU Term.** The term of MOU shall be perpetual.
- 5.6 **Inspection of Records and Filing.** The records and documents with respect to all matters covered by this MOU shall be subject to inspection by the Parties during the term of this MOU and for three years after its termination. This MOU shall be filed or listed pursuant to RCW 39.34.040.
- 5.7 **No Separate Legal Entity.** It is not the intention that a separate legal entity be established to conduct the cooperative undertaking nor is the joint acquisition, holding or disposing of real or personal property anticipated.
- 5.8 **Severability.** In the event any term or condition of this MOU or application thereof to any person, entity or circumstance is held invalid, such invalidity shall not affect any other terms, conditions or applications of this MOU which can be given effect without

the invalid term, condition, or application. To this end, the terms and conditions of this MOU are declared severable.

- 5.9 Defense Indemnity and Insurance.** The Port shall indemnify, defend, protect, hold harmless, and release the City, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs or expense (including attorneys' fees and witness costs) arising from or in connection with or caused by any act, omission, or negligence of the Port, its agents, employees, contractors, and any of their sub-contractors in connection with their performance under this agreement as describe in Section 3.1 and Exhibit A. The Port shall procure and maintain for the duration of this MOU, insurance against claims for injuries to persons or damage to property which may arise from or in connection with operations or activities performed by or on the Port's behalf with the issuance of this MOU. The Port shall obtain Commercial General Liability Insurance with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit. The Port shall obtain Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- 5.10 Breach.** In the event of a breach of this MOU, the non-breaching Party shall retain all legal and equitable remedies against the breaching Party.
- 5.11 Assignment.** The Port may assign its obligations under this MOU to third party contractors and/or property owners associations.

VI. EXECUTION AND APPROVAL


- 6.1 Warranty of Authority.** Each Party to this MOU warrants that it has the authority to enter into this MOU.
- 6.2 Execution.** The person executing for a respective Party has been duly authorized to and does execute the MOU on behalf of that respective Party.

PORT OF KENNEWICK

Date: 2-15-19

By: 
TIM ARNTZEN, Chief Executive Officer

Approved as to Form:


LUCINDA LUKE
Attorney for Port of Kennewick

CITY OF KENNEWICK

Date: 2-6-19

By: Marie E. Mosley
MARIE E. MOSLEY, City Manager

Approved as to Form:

Lisa Beaton
LISA BEATON, City Attorney