

DISBURSEMENT AGREEMENT FOR USE OF RURAL COUNTY CAPITAL FUNDS

This Agreement, among and between Benton County (hereinafter "County"), the City of Kennewick (hereinafter "City"), and the Port of Kennewick (hereinafter "Port"), shall be effective upon execution by all parties.

WHEREAS, the County has previously agreed to distribute certain funds received from the State of Washington that it has deposited in its Rural County Capital Fund (hereinafter "Fund") after April 1, 2016 for the financing of certain "public facilities [projects] serving economic development purposes" as contemplated by State statute (RCW 82.14.370) and in conformance with County policy (Resolution 2017-103, adopted January 31, 2017); and

WHEREAS, 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; and

WHEREAS, the Port owns property in the City that it desires to develop for economic development purposes; and the City agrees to the use by the Port of a portion of the Fund that would otherwise be available for a City project for construction related to the development of the Port property in return for the expected business, tourism, and job creation that will be stimulated by the project and its benefits to the City; and

WHEREAS, the Port's economic development project referenced above is known as "Columbia Gardens", and consists of the Port's construction of public infrastructure in the form of the extension of water, sewer, electrical and effluent utilities, and the construction of roads, storm drainage, lighting, landscaping, and parking areas (the "Project") to support the Port's construction of two buildings on a six-acre site to provide space for restaurants, wine tasting rooms, and other related businesses; and

WHEREAS, the Project will develop underused land near downtown Kennewick for use by new businesses and is expected to result in over 100 permanent jobs and positively impact sales, B&O, and property tax revenues; and

WHEREAS, the Port has requested \$550,000.00 from its allocation of the Fund for the Project, and the City has agreed to assign \$550,000.00 from its allocation of the Fund to the Port for this Project, for a combined amount of up to \$1,100,000.00 to be reimbursed to the Port by the County for the expenses of this Project; and

NOW THEREFORE, in consideration of the mutual covenants, conditions, and terms contained herein, the County, the City, and the Port mutually agree to the following:

1. The City agrees to assign up to \$550,000.00 of its allocation from the Fund to the Port so that the Port may be reimbursed for additional expenses the Port incurs for expenses related to the Project, with such reimbursement from these Funds to be made concurrently with equal reimbursement to the Port from the Port's allocation from the Fund.

2. Based on the above assignment and the Port's request for reimbursement from its allocation, the County agrees to reimburse the Port for up to \$1,100,000.00 of qualified direct costs incurred by the Port for the Project *after* the execution of this Agreement; contingent upon funds being available in the Port's and City's allocations and that each reimbursement is consistent with the County's Rural County Capital Fund Disbursement Policy.
3. The Port and City represent that the use of said Fund for the Project is consistent with RCW 82.14.370.
4. The Port agrees to use all funds allocated by this Agreement solely for the purpose of financing the Project and warrants that all expenditures by the Port for which it seeks reimbursement will comply with RCW 82.14.370.
5. The Project schedule and a disbursement schedule are attached hereto as Exhibit A. The parties agree that funds will be disbursed only as reimbursement for actual, direct costs incurred by the Port in connection with the Project. The Port will keep the County informed of changes to the schedule as the Project progresses.
6. The Port shall invoice the County at the end of each calendar month for all Project costs incurred by the Port in the prior month that are eligible for and for which reimbursement is sought. All invoices shall be mailed to the County at the following address:

Benton County Commissioners Office
ATTN: Sustainable Development Manager
7122 West Okanogan Place
Kennewick, Washington 99336
7. All approved reimbursement payments will be made via check mailed directly to the Port at 350 Clover Island Drive, Suite 200, Kennewick, Washington 99336.
8. The Port and the City shall not hold the County liable for any delay in disbursements, but the County agrees to use its best efforts to make appropriate disbursement payments to the Port in a reasonably timely fashion.
9. The Port shall be responsible for establishing policies for implementing this Agreement, monitoring progress of the Project, and monitoring the fulfillment of the Parties' responsibilities under the Agreement. In addition to other responsibilities set forth in this Agreement, the Port and the City are responsible for following applicable bid and prevailing wage law policies and procedures when awarding bids for the Project contemplated by this Agreement.
10. The Port agrees to provide the County and the City with a monthly report along with each invoice outlining the status of the Project, including a spreadsheet detailing all costs being reimbursed by the County.
11. If Rural County Capital Funds are applied toward non-eligible expenditures, the County may cease all disbursements until the Port has repaid to the Fund all monies inappropriately expended.

12. The records and documents with respect to all matters covered by this Agreement shall be subject to inspection by the Parties during the term of this Agreement and for three years after its termination. This Agreement shall be filed by the Port with the Benton County Auditor.
13. It is not the intention that a separate legal entity be established with respect to the Project, nor is the joint acquisition, holding, or disposing of real or personal property anticipated.
14. The Port and City agree to indemnify the County from and against any claims, actions, losses, costs, penalties, damages, attorneys' fees, and all other liabilities and costs of defense of any nature arising out of the County's agreement to disburse Funds under this Agreement.
15. The Port shall not have the right to assign the rights under this Agreement nor to terminate its obligations hereunder without first securing the written consent of the County and the City.
16. This Agreement shall terminate and the County's obligation to disburse funds under this Agreement shall cease at any time that any aspect of the Project falls thirty-six (36) months or more behind the schedule set forth in Exhibit A. In such case, the County's rights under this Agreement shall continue, but the County may use the funds previously allocated under this Agreement for any purpose allowable under state law. The County will make a good faith effort to notify the Port whenever it believes any aspect of the Project is thirty (30) months or more behind schedule and that the Agreement will terminate in six months' time thereafter under this provision; provided that maintaining the Project on schedule is the Port's responsibility and the Port shall have no recourse against the County if such notice is not provided.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date signed below.

BENTON COUNTY



 Jim Beaver, Chairman
 Board of Commissioners

Date: 5-9-2017

PORT OF KENNEWICK



 Tim Arntzen, Chief Executive Officer


Date: 4-25-2017

ATTEST:

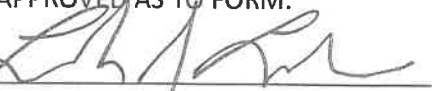

 Clerk to the Board

ATTEST:


 Chief Financial Officer & Auditor

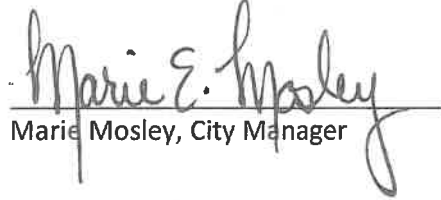
APPROVED AS TO FORM:


 Chief Deputy Prosecuting Attorney

APPROVED AS TO FORM:


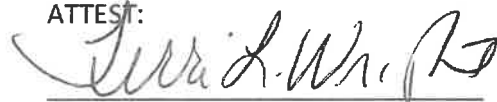
 Lucinda J. Luke, Port Counsel

CITY OF KENNEWICK


Marie Mosley, City Manager

Date: 5-3-17

ATTEST:


Terri L. Wright, City Clerk

APPROVED AS TO FORM:


Lisa Beaton, City Attorney

COLUMBIA GARDENS CONSTRUCTION & DISBURSEMENT SCHEDULE
Port of Kennewick & City of Kennewick Combined Allocations
Columbia Gardens Urban Wine & Artisan Village Phase 2

TASK	DATES		ESTIMATED COSTS	7/1/2017	8/1/2017	9/1/2017	10/1/2017	11/1/2017	12/1/2017	1/1/2018	2/1/2018	3/1/2018	4/1/2018	5/1/2018	6/1/2018	
	Start	Complete														
Complete Design Work (Roadway & Utilities)	5/1/2017	6/15/2017	\$10,000													\$10,000
Permit Fees (Roadway & Utilities)	6/16/2017	7/15/2017	\$30,000	\$30,000												\$30,000
Bidding Process & Award (Roadway & Utilities)	7/16/2017	8/31/2017	\$5,000		\$5,000											\$5,000
Construction (Roadway & Utilities)	9/1/2017	4/1/2018	\$750,000					\$100,000	\$100,000	\$100,000	\$100,000	\$150,000	\$150,000		\$50,000	\$750,000
Construction Management (Roadway & Utilities)	9/1/2017	5/31/2018	\$40,000					\$10,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000		\$40,000
Gateway Feature (Design)	9/1/2017	11/30/2017	\$10,000					\$2,500	\$2,500							\$10,000
Food Court Pavilion Design	9/1/2017	11/30/2017	\$25,000					\$5,000	\$5,000	\$5,000	\$5,000					\$25,000
Bus Shelter (Fabrication)	9/1/2017	12/31/2017	\$50,000					\$25,000	\$15,000							\$50,000
Food Court Pavilion Permit Fees	12/1/2017	12/31/2017	\$5,000													\$5,000
Gateway Feature (Fabrication & Installation)	1/1/2018	4/30/2018	\$50,000													\$50,000
Food Court Pavilion Construction	1/1/2018	4/30/2018	\$110,000									\$35,000	\$25,000	\$25,000	\$25,000	\$110,000
Bus Shelter (Contractor Install)	2/15/2018	4/30/2018	\$15,000										\$15,000	\$20,000	\$15,000	\$50,000
TOTAL PROJECT COSTS			\$1,100,000	\$10,000	\$30,000	\$5,000	\$0	\$142,500	\$135,000	\$112,500	\$125,000	\$190,000	\$195,000	\$50,000	\$15,000	\$1,100,000

Port of Kennewick 2017-03-03

EXHIBIT A

ESTIMATED PROJECT COMPLETION AND FUND DISBURSEMENT SCHEDULE