

AGENDA

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

Tuesday, January 12, 2016
2:00 p.m.

- I. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE**
- III. OATH OF OFFICE (BRIDGETTE/DON)**
- IV. OLD BUSINESS**
 - A. Port Commission Rules of Policy and Procedure; Resolution No. 2016-01 (LUCY/TIM)
- V. 2016 ELECTION OF OFFICERS**
- VI. PUBLIC COMMENT** (*Please state your name and address for the public record*)
- VII. CONSENT AGENDA**
 - A. Approval of Direct Deposit and ePayments Dated December 17, 2015
 - B. Approval of Warrant Register Dated December 22, 2015
 - C. Approval of Direct Deposit and ePayments Dated December 31, 2015
 - D. Approval of Warrant Registers Dated December 31, 2015
 - E. Approval of Warrant Registers Dated January 12, 2016
 - F. Approval of Regular Commission Business Meeting December 8, 2015
 - G. Approval of Emergency Repair “C” Dock Sprinkler System; Resolution No. 2016-02
- VIII. REPORTS, COMMENTS AND DISCUSSION ITEMS**
 - A. Tri-Cities Legislative Council Trip, January 28-29, 2016 (TIM)
 - B. Columbia Drive Update (LARRY)
 - C. Vista Field (LARRY)
 - 1. Arts Center Task Force (TIM)
 - 2. Expression of Interest (EOI) (TIM)
 - 3. 2016 Path Forward (Master Plan/Developer’s Agreement; Financing Plan; Phase 1 Infrastructure Plan) (TIM)
 - D. Commissioner Meetings (formal and informal meetings with groups or individuals)
 - E. Non-Scheduled Items
- IX. PUBLIC COMMENT** (*Please state your name and address for the public record*)
- X. EXECUTIVE SESSION, if necessary** (*Ask public if they are staying, and if not, where they can be located if the Executive Session ends early.*)
 - A. Real Estate, per RCW 42.30.110(1)(b) – Site Selection
 - B. Real Estate, per RCW 42.30.110(1)(c) – Minimum Price
- XI. ADJOURNMENT**

PLEASE SILENCE CELL PHONES



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CALL TO ORDER

Commission President Don Barnes called the Regular Commission meeting to order at 2:02 p.m. in the Port of Kennewick Commission Chambers located at 350 Clover Island Drive, Suite 200, Kennewick, Washington 99336.

The following were present:

Board Members: Don Barnes, President
Skip Novakovich, Vice-President
Thomas Moak, Secretary

Staff Members: Tim Arntzen, Chief Executive Officer
Tana Bader Inglima, Deputy CEO
Tammy Fine, CFO/Auditor
Amber Hanchette, Director of Real Estate and Operations
Nick Kooiker, CFO/Auditor
Larry Peterson, Director of Planning and Development
Lisa Schumacher, Special Projects Coordinator
Bridgette Scott, Executive Assistant
Lucinda Luke, Port Counsel

PLEDGE OF ALLEGIANCE

Mr. Ed Frost led the Pledge of Allegiance.

PUBLIC COMMENT

Dan Smith, 445 North River Road, Prosser. Mr. Smith, the new executive director of the Historic Downtown Kennewick Partnership, stated he previously worked as the executive director for the Historic Downtown Prosser Association. Mr. Smith is committed to reinvigorating Downtown Kennewick by listening to the members, and increasing and rebuilding partnerships. Mr. Smith outlined several goals:

1. Beautify and clean-up downtown:
2. Increase membership benefits:
3. Increase the volunteer base:
4. Increase social media exposure.

Mr. Smith expressed his excitement for the Port's plans for the Bridge to Bridge area on Columbia Drive and sees it as a gateway to Historic Downtown Kennewick.

Mr. Barnes welcomed Mr. Smith and stated the Port looks forward to partnering with the Historic Downtown Kennewick Partnership.

No further comments were made.



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CONSENT AGENDA

Consent agenda consisted of the following:

- A. Approval of Direct Deposit and E-Payments Dated November 17, 2015**
Direct Deposit and E-Payments totaling \$44,425.56
- B. Approval of Warrant Registers Dated November 24, 2015**
Expense Fund Voucher Numbers 373384 through 37419 and 37421 through 37429 for a grand total of \$147,249.53
- C. Approval of Warrant Registers Dated November 24, 2015 (PS Media)**
Expense Fund Voucher Number 37420 for a grand total of \$11,221.59
- D. Approval of Direct Deposit and E-Payments Dated December 2, 2015**
Direct Deposit and E-Payments totaling \$57,887.80
- E. Approval of Warrant Registers Dated December 8, 2015**
Expense Fund Voucher Numbers 37430 through 37454 for a grand total of \$118,316.88
- F. Approval of Commission Meeting Minutes Dated November 10, 2015**
- G. Approval of Emergency Bid: Repair Hose Bib at 415 N. Quay, Building A, Kennewick; Resolution 2015-29**

Mr. Barnes stated Consent Agenda items are a number of items taken collectively in one motion to be approved or disapproved. He further stated the Commission has the option to remove items from the Consent Agenda and inquired if any items need to be removed.

Mr. Novakovich would like to remove Item C and have the item approved separately because on April 12, 2011, he disclosed that Esprit, the company he and his wife owns, has a contract with PS Media to print the Port's newsletter. Esprit does not get paid directly from the Port; they get paid from PS Media. Item C is the payment to PS Media and in the interest of any kind of perception that there could be a conflict, he would like to recuse himself from any action on this item.

MOTION: Commissioner Novakovich moved for removal of Consent Agenda Item C of the Consent Agenda, for separate consideration; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

MOTION: Commissioner Novakovich moved for approval of the Consent Agenda, with exception of Item C; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

MOTION: Commissioner Moak moved for approval of Item C, payment to PS Media; Commissioner Barnes seconded. With no further discussion, motion carried. All in favor 2:0, (Commissioners Moak and Barnes) 1 abstained (Commissioner Novakovich).

PRESENTATION

A. 2015 Friends of the Port

Mr. Arntzen stated in 2008 the Port implemented the Friend of the Port Award and stated the only requisite is that the recipient has made the Port a better place by giving of themselves. This year, the Port has two recipients for the Friend of the Port award.



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The first recipient of the award supported the Port by leading the Vista Vision Task Force (V. V. T. F.). Mr. Cummins, President of Columbia Basin College Basin College, did a tremendous job leading the V. V. T. F., by encouraging participation from everyone who attended the meetings. Furthermore, he was able to take multiple views and ideas from the V. V. T. F. and deliver a set of recommendations to the Port Commission for the redevelopment of Vista Field.

The second recipients of the award are John and Dara Foster, who live in downtown Kennewick neighborhood and walk the island regularly. The Foster's donated three basalt rock benches, which were placed at the scenic outlook at the newly constructed Clover Island Boat Ramp area. The basalt benches are of special importance and will benefit the public for generations to come.

Mr. Barnes thanked Mr. Cummins and Mr. and Mrs. Foster for their support and contributions to the Port of Kennewick.

B. West Richland Public Shoreline Access/Facilities, Mayor Brent Gerry and Aaron Lambert, City of West Richland

Mr. Arntzen introduced City of West Richland Mayor, Brent Gerry and Aaron Lambert, Community Development Director and stated they will be updating the Commission on the Belmont and Yakima Gateway projects.

Mr. Lambert stated the City of West Richland is estimated to reach a population of 14,000 by 2016, however, the City is planning for a population of 21,000 by 2035. The City of West Richland is unique because 7,800 acres are owned by one entity, which makes it difficult to plan for growth.

Mr. Gerry stated the City, along with the Port, worked with Hillary Franz of Futurewise to further the Urban Growth Application (UGA) process, which will benefit both the City and the Port.

Mr. Lambert stated the focus now is the planned I-82 interchange, which just received funding earlier this year. Furthermore, Mr. Lambert reported that on December 15, 2015, the West Richland City Council will vote to adopt the UGA ordinance which will bring the Port's racetrack property into the City limits.

Mr. Lambert stated the Belmont District is slated for the following improvements:

- Shelby Super Car is moving forward with construction on their building:
- Richland School District purchased 32 acres for future site for a middle school:
- City of West Richland is slated to construct a municipal services building:
- Remaining area is zoned for commercial use and retail pads.

Mr. Lambert stated for the past several years, the City has been working to redevelop the Van Giesen corridor. The Yakima River Gateway project will cost \$2,100,000, and was funded in part by an RCO Grant, a HAEIFAC Grant, the Port and the City.

The Yakima Gateway project will include the following upgrades:



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- Environmental restoration of the shoreline:
- Public amenities, restroom facilities and parking:
- Additional trails and pathway connections:
- ADA public access:
- Improved public access to the Yakima River.

Mr. Novakovich asked what the timeline is for the gateway project.

Mr. Lambert stated they hope to break ground in spring of 2016 with completion in the fall of 2016.

Mr. Novakovich stated it is great that the City is utilizing the waterfront, and thanked Mr. Gerry and Mr. Lambert for the update.

C. 1135 Project Update, Rebecca Kalamasz, USACE

Ms. Bader Inglema introduced Rebecca Kalamasz, who is taking over for Karen Zelk, as project manager for the Clover Island 1135 U.S. Army Corps of Engineers (USACE) project. Ms. Kalamasz is here to update the Commission on the status of phase one and what is expected for phase two.

Ms. Kalamasz thanked Ms. Bader Inglema and stated the project is authorized under section 1135 of the Water Resources Development Act, and the primary purpose of the 1135 project, is to restore the degraded environment as a result of the McNary Dam construction. The Corps have determined there is substantial benefit to repair the environment for the fish and riparian species located around the Clover Island shoreline. The Corps partitioned the island into five zones, where each zone was evaluated for the biggest benefit for the dollar invested. The Corps conducted an incremental benefit analysis and found the biggest benefit would be to improve the riparian habitat along the shoreline. Ms. Kalamasz stated the aquatic habitat is pretty good shape around the island however, in some areas, costs exceed the benefit. As a result, the Corps preliminary recommendations are to restore riparian species in areas 1 (Northwest corner), 2 (Notch), 3 (Notch to Cedars) and 5 (East end of the Island), however, zone 4 (Cedars to hotel), will remain as is.

Ms. Kalamasz stated the tentative schedule is as follows:

Feasibility Study/Integrated NEPA- Phase

- Internal Review Phase – on going:
- Public Review – Spring 2016:
- Report Approval – Late summer 2016.

Next Step – Design and Construction Phase

- Project Partnership Agreement – Spring 2017:
- Initiate Design:
- Anticipated Construction – Winter 2017 thru Spring 2018.



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Ms. Kalamasz stated the Federal Government pays 75% of the cost, and can initiate work prior to the signing of the agreement to move the project forward.

Mr. Moak inquired if there will be any impact to existing businesses and operations on the island.

Ms. Kalamasz stated construction will be similar to the west causeway and believes there should be little impact to businesses on the island.

Mr. Barnes asked if there will be provisions for foot traffic around the new vegetation for people to reach the water.

Ms. Kalamasz stated the Corps can incorporate paths into the preliminary design plan to accommodate for foot traffic.

Ms. Bader Inglima stated given the scheduling and need to plan for the Northwest Overlook on the corner parcel, the Corps would like to see the foundation for the overlook in place prior to the 1135 design work. Based on the Corps schedule, it is likely the Port will need to place the foundation for the NW Overlook sometime in 2016, if the Commission would like to move forward with the improvements to the corner parcel. Ms. Bader Inglima stated the entire Corps team has been outstanding to work with and it is an incredible partnership opportunity for the Port. Furthermore, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) has been very supportive of the project. Ms. Bader Inglima stated, in addition, 10% of the 1135 budget can be used for recreation. There has been discussion with the Corps about extending the trail and adding lighting, as we have done along the West Causeway.

Mr. Barnes appreciates the improvements made on the west causeway by the shoreline enhancements and is looking forward to advancing the project along the remaining shoreline and working with the Corps.

Mr. Moak hopes the Corps will see the rehabilitation of the Clover Island shoreline as a great project for the Port and the community and thanked Ms. Kalamasz for the update.

Ms. Kalamasz stated the Port has been one of the best sponsors the Corps has have ever had.

Mr. Arntzen appreciates the Corps process and commended them for the cost savings/benefit analysis and a judicious use of taxpayer dollars.

Mr. Arntzen stated previously, the Commission discussed several additional improvements to Clover Island and the consensus was to utilize \$150,000 to remove the old port office and install the concrete foundation for the NW Overlook. As Ms. Bader Inglima stated, it is imperative to complete the foundation work prior to the Corps design phase, so it can be included in the design. Mr. Arntzen requested approval by the Commission to proceed with the removal of the building and installation of the concrete foundation, which is an estimated expenditure of \$150,000. Mr. Arntzen stated, with the emphasis on Vista Field and the limited budget, staff will look for partners to complete the NW Overlook, such as, grants, partnerships or private sector funding.



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Mr. Moak recalls the Commission has previously discussed and voted funding the NW Overlook foundation and demolition of the old Port building.

Mr. Novakovich concurs with Mr. Moak and believes the Commission has approved the funding during a previous meeting.

Clerk's note:

**NW Overlook Pier foundation and demolition of old Port Building discussed and voted on during the August 25, 2015. The motion approved funding \$150,000 for the demolition and installation of the concrete foundation prior to the 1135 project.*

D. Delegation of Authority; Resolution 2015-29

Ms. Fine stated staff completed a massive overhaul of the CEO's Delegation of Authority to achieve the following goals:

- Comply with laws and regulations and have flexibility when allowed:
- Ensure internal controls remain in place:
- Remove repetitive and inconsistent items:
- Have all policies in one document and in one place:
- Allow the Commission to focus on more meaningful projects.

The massive overhaul included an understanding of policies versus procedures. Policies are more permanent (like laws), while procedures should be updated more often to reflect change in culture, ability to properly manage, and to set processes for staff to follow, ensuring compliance with policies and laws in our daily actions. Furthermore, staff combined all prior individual resolutions that authorized the CEO to take certain direction into one policy. This allows for policies or procedures to be located in one document.

The changes made to the CEO's Delegation of Authority are outlined in **Exhibit A**.

Ms. Fine stated the Port has numerous internal controls in place for almost every function that is performed at the Port, furthermore, Ms. Fine analyzed each policy for risk potential and audit compliance and found the risk very low. The changes in the CEO's Delegation of Authority will allow the Commission freedom to focus on the larger projects. Ms. Fine stated Mr. Moak, Mr. Kooiker, Ms. Luke, staff, and Mr. DeJulio assessed and reviewed the policy changes.

Mr. Barnes reiterated that Ms. Fine and staff assessed and evaluated the CEO's Delegation of Authority policies and updated as deemed necessary and placed in one working document. Ms. Fine worked with Mr. Moak, Ms. Luke, and staff to ensure complete compliance.

PUBLIC COMMENT

Ed Frost, 609 West Albany Street, Kennewick. Mr. Frost stated Mr. Arntzen is an honest and good CEO, nevertheless, he believes the Commission should be cautious of extending the CEO's approval limit to \$200,000. Mr. Frost stated if there is a mistake with the allocation of Port funds, the Commission would be held accountable, not Mr. Arntzen. Mr. Frost believes \$50,000 may be too low, but \$200,000 is too high and stated the Commission could utilize the Consent Agenda for approval for larger items.



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No further comments were made.

MOTION: *Commissioner Novakovich moved for approval of Resolution 2015-29, amending the Chief Executive Officer's Delegation of Authority, with one modification, decreasing the \$200,000 approval limit to \$100,000 and removing and replacing all previous Port policies which were adopted, that addressed the items identified in the new policy; Commissioner Barnes seconded.*

Discussion:

Mr. Moak stated the work completed by Ms. Fine and Ms. Luke was thoroughly vetted and Mr. Moak had the opportunity to review the policy changes and make any comments, which were then incorporated into the document. A lot of the changes are mainly cleaning up policy language and making policies clearer, however the policy also allows the Port CEO to run the Port. Mr. Moak respects Mr. Frost's comments, however, he believes a lot of things need to be responsibility of the CEO, who the Commission has chosen to run the Port. Mr. Moak stated, when you have a Port CEO with the tenure of Mr. Arntzen, there should be a broader Delegation of Authority versus someone who is new to the position. Mr. Moak reiterated that the Port has internal controls in place and it is the practice of Mr. Arntzen to bring items to the Commission even when they are within his Delegation of Authority to approve, based on their weight or concern. It is the Commission's job to provide the CEO with the authority to run the Port and he does not believe the increased amount is a key issue. Mr. Moak stated there is great communication between Mr. Arntzen and each member of the Board and does not fear any of the changes in the Delegation of Authority. Mr. Moak asked that when the CEO establishes additional procedures as stated in the Delegation of Authority, he update the Commission with the changes.

Mr. Barnes asked Ms. Fine to address the issue.

Ms. Fine deemed the approval authority as low risk, because of the significant discussions about the two year Work Plan and Budget. Ms. Fine analyzed all Port projects which would fall under the \$200,000 threshold stated capital projects are above the threshold. Ms. Fine stated, for example, Mr. Arntzen would have the ability to hire an A&E firm to jumpstart a project, rather than waiting for Commission approval, which would allow for more flexibility. Furthermore, if the item isn't in the budget, the Commission would need to amend the Work Plan and Mr. Arntzen is only authorized to do what is approved in the budget. Mr. Arntzen is a proven CEO who follows his goals and objectives, as outlined by the Commission. The Delegation of Authority leaves in place all of the same strong internal controls. Ms. Fine addressed Mr. Moak's concern about CEO procedures and stated Ms. Luke is close to completing her review and it will not be effective until it is completed and approved by Mr. Arntzen. Ms. Fine is hoping to roll the procedures out by January 1, 2016.

Mr. Novakovich stated he is not concerned about Mr. Arntzen and the approval amount, however, there have been issues in Franklin County and he believes there would be a negative public perception. Mr. Novakovich stated he lowered the threshold amount for Mr. Arntzen's and staff's protection.



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Mr. Barnes stated Mr. Novakovich's comments are well taken, however, the Commission has a staff recommendation, which is supported by counsel, Mr. DeJulio, and Mr. Moak, that the approval will make the Port run more efficiently. As reported by Ms. Fine, safeguards are in place and if, at any time the Commission would like to reevaluate the CEO's Delegation of Authority, they may revisit and amend the threshold.

Mr. Novakovich asked Mr. Arntzen if he is comfortable with the \$200,000 threshold and the public's perception.

Mr. Arntzen stated he is comfortable with whatever framework is established by the Commission. Mr. Arntzen understands both sides and stated the \$50,000 is rather low and because of that, many items are brought before the Commission for repeated approval. Mr. Arntzen believes there should be an increase, due to inflation, and will gladly work within the parameters set by the Commission.

Mr. Moak stated Mr. Arntzen does not sign checks and what happened at Franklin County were fraudulent activities, where internal controls were not in place. The internal controls which were established by the Chief Financial Officer (CFO)/Auditor are what protects the Port and prohibits fraud from happening.

Mr. Arntzen stated he is impressed with level of internal controls that have been established and commended Ms. Fine, Ms. Luke and Mr. Moak on their work on the policies. Mr. Arntzen has reviewed the Delegation of Authority and stated he can comply with it, and can work with any dollar amount established by the Commission.

Ms. Fine stated in 2010, legislation for personal service laws requires ports to have board approval on amounts over \$200,000. In addition, there are other laws regarding bidding requirements for amounts under \$200,000. The legislation appears to be comfortable allowing ports flexibility for amounts under \$200,000 due to the additional requirements.

Mr. Novakovich withdrew his motion and asked Commission Barnes to withdraw his second.

Mr. Barnes withdrew his second.

MOTION: *Commissioner Novakovich moved for approval of Resolution 2015-29, amending the Chief Executive Officer's Delegation of Authority, and removing and replacing all previous Port policies which were adopted, that addressed the items identified in the new policy; Commissioner Moak seconded.*

Discussion:

Mr. Moak thanked Ms. Fine for addressing this issue and updating important information and removing duplications. Mr. Moak stated the Delegation of Authority can be changed at any time, furthermore, this allows the Commission to focus on the upcoming major projects.



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Mr. Novakovich stated Mr. Arntzen has done an excellent job as CEO of the Port and is comfortable with the Delegation of Authority.

Mr. Barnes thanked Mr. Moak and staff for working on improving the Port policies and stated it was no small undertaking. The updated Delegation of Authority puts the Port in a better position going forward to focus on the upcoming projects. Mr. Barnes stated it was important to address the public's concerns, because the Port is a public entity, and it is our job to protect and safeguard public funds.

With no further discussion, all in favor, 3:0. Motion carried unanimously.

Mr. Barnes recessed the meeting at 3:42 p.m. for a break and will reconvene at approximately 3:55 p.m.

Mr. Barnes reconvened the meeting at 3:56 p.m.

NEW BUSINESS

A. Bid Award: Boat Launch In-Water Work; Resolution 2015-30

Mr. Peterson stated for the Commission's consideration is Resolution 2015-30, which establishes a one-time authorization for the Executive Director, to approve a small works contract, up to \$300,000. Due to the limited work window, December 15, 2015-February 29, 2016, imposed by State and Federal agencies, the need to complete these improvements is imperative to move forward. Waiting to consider the bids received at the next Port Commission meeting jeopardizes the ability to complete the work within the work window. The resolution would grant a one-time authorization for the Chief Executive Officer to execute a contract with the lowest responsive bidder for the boat ramp repair and reconstruction project for an amount not to exceed \$300,000.

Mr. Moak inquired if there is an alternative, such as a Special Commission Meeting, in order to approve the contract.

Mr. Peterson stated it could be an alternative, however, scheduling the meeting could be difficult. Mr. Peterson conveyed every day is crucial because of the limited time frame.

PUBLIC COMMENT

No comments were made.

MOTION: Commissioner Novakovich moved for approval of Resolution 2015-30, authorizing the Port's Chief Executive Officer to execute a small works construction contract with the responsive low bidder for the removal of the existing boat launch ramp panels, grading and installations of new concrete panels and support framing at the Clover Island boat ramps in sum not to exceed \$300,000.00, including applicable sales tax; Commissioner Moak seconded.

Discussion:

Mr. Moak stated this is a one-time circumstance for a specific purpose and specific time frame that needs to adhered to and supports the motion.



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With no further discussion, all in favor, 3:0. Motion carried unanimously.

REPORTS, COMMENTS AND DISCUSSION ITEMS

A. Rural County Capital Funds

Mr. Arntzen stated in 1998, Benton County qualified for the Rural County Development Sales Tax, which was to be used for economic development. Benton County used the funding to construct the jails, however, the legislature later clarified the tax and stipulated the money could not be used for corrections facilities. Benton County then took out a bond to construct the jail and used the accumulation of the Rural County Capital funds to service the debt on the current jail. The current projection states the bond should be paid off by the end of 2015, but the Rural County Capital funding will be available for another seven years. The Mayor of Prosser researched the Rural County Capital Funding and has held one meeting with local jurisdictions to discuss the benefits of the Rural County Capital Funds. Mr. Arntzen stated it is very important for the local jurisdictions to have continued dialogue with the County Commission, who have been approached. Mr. Arntzen stated he attended the meeting and there is a potential availability of capital funds, however, these are County funds. Benton County has a procedure to allocate the funds, which is based up on meritorious application from the jurisdiction, which looks at job creation or provision of infrastructure that would be beneficial to the community.

Mr. Novakovich inquired how much the Port could potentially receive.

Mr. Arntzen stated there were a number of scenarios proposed by the group, but not by the County. Mr. Arntzen stated if the Port is a recipient of these funds, it would be good for the Commission to discuss where those funds would be allocated. Furthermore, the County would have the final say on the merit of a project.

Mr. Novakovich asked if the project could be anywhere in the County or within the jurisdiction.

Mr. Arntzen believes it could be within one of the jurisdictions, but part of incorporated or unincorporated Benton County. Mr. Arntzen stated, if for example the funds were utilized for the Vista Field Infrastructure, the County could look at that as an ROI project because of the increased tax base.

Mr. Moak asked if this is something that the County has to give for economic development or could the funds be allocated elsewhere.

Mr. Arntzen stated he is not well versed in the County's process, but the County's past practice has been not to return the funds to the community. Recently, the City of Richland City Council discussed the topic and an article appeared in the *Tri-City Herald* (December 4, 2015). Mr. Arntzen stated he will gather additional information for the Commission and update them at the next meeting.

Mr. Moak would like staff to work behind the scenes, in case there is an opportunity for the Port to pursue.



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Mr. Arntzen stated according to the 1999 stipulations, there was an acknowledgement to engage in a joint partnership, which would score higher in the County ranking.

Mr. Barnes stated if the original intent for the funds was economic development, he is confident the Port could find some large projects that would benefit Benton County.

Mr. Arntzen stated, for example, Vista Field is a high priority project for the Port, and we are already working with the City of Kennewick. The Benton County Campus is in Vista Field, and it would be a natural collaboration if the three entities entered into a partnership.

B. Columbia Drive

Mr. Peterson stated plans for the three winery buildings were submitted to the City of Kennewick in November, and the legal ad was published. Mr. Peterson stated plans will be available Tuesday, December 15, 2015, with a bid opening on Thursday, January 21, 2016. Mr. Peterson anticipates construction will begin February 2016 and completed by November 2016. Mr. Peterson reported that Benton PUD is looking at a cost share agreement with the Port for the undergrounding of utilities, which is estimated to cost \$100,000.

C. Vista Field

Mr. Peterson reported staff met with the City Public Works staff regarding zoning regulations that will apply to both Vista Field and Columbia Drive. The Port will be using zoning that is currently on the books, but combining in a way that allows for flexibility. On January 12, 2016, the Traffic System Impact Analysis (TSIA) is tentatively scheduled to be discussed at the Kennewick City Council meeting.

Mr. Arntzen commended Mr. Peterson for spearheading this Vista Field team. Mr. Arntzen is pleased with the pace of the project and stated if the Port can get a Master Plan that identifies key elements by June of 2016, he will be happy. Mr. Arntzen stated Vista Field will most likely be the largest project the Port will ever accomplish.

Mr. Moak inquired if the zoning design work includes the old Amera Cosmetics building.

Mr. Peterson stated, at present, the Master Plan focuses on Port property only.

Mr. Barnes inquired what the timeline is for the completed Master Plan.

Mr. Peterson stated, DPZ is putting the various elements of the Master Plan together, with the presumption that the TSIA will be well received by the City Public Works Department and City Council. Mr. Peterson hopes the final Master Plan will be before the Commission and City Council by spring of 2016.

D. Expression of Interest

Mr. Arntzen stated, included in the Agenda Packet is the draft document for the Port's Expression of Interest, which is an attempt to apply a new strategy for receiving Requests for Proposals (RFP) from developers on Vista Field and other Port projects. Mr. Arntzen stated the



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draft document is for Commission review and discussion. Mr. Arntzen stated Ms. Luke and Michael Mehaffy of DPZ helped draft an Expression of Interest and the document outlines the following:

- a. Part One: Preliminary Qualifications;
- b. Part Two: Collaborative Design Process; and
- c. Part Three: Recommendation, Commission Evaluation, Contract, Negotiation, and Formal Planning Process.

Mr. Barnes stated Vista Field is a blank canvas and it is important for the Port to structure work procedures that are transparent and help acquire the best, most qualified partner. This document is a great start and should be discussed and vetted thoroughly.

Mr. Moak asked Ms. Luke if the document should address partiality and transparency throughout the RFP process.

Ms. Luke stated the Expression of Interest is an innovative document and in this type of process, you need to be highly aware of the potential for conflicts of interest and the perception, which can be damaging. To have a document that outlines Port processes and expectations will be very helpful in dispelling those concerns. Ms. Luke stated the document allows for a level playing field and believes it will be a document that will continue to evolve.

Mr. Novakovich stated “innovative” is the best way to describe the Expression of Interest. He is very proud of staff for coming up with this and believes other entities will want it once they see the Port’s success. Mr. Novakovich would like to move forward implementing the document.

Mr. Arntzen asked the Commission to review the document and email him with any comments. Mr. Arntzen will bring back the Expression of Interest for second opportunity for the Commission to discuss and review early next year. Because Vista Field is such a large undertaking the stakes are bigger and there is potential for disagreement but the correct path for the Port is transparency. Mr. Arntzen hopes this process will produce the best developer for Vista Field.

E. West Richland Policy

Mr. Arntzen requested Commission guidance regarding the West Richland racetrack property, and asked if the Port or our development partner should look at pursuing grants or other funding opportunities. Currently, staff is working on a list of entitlement issues, which were approved in the 2015-2016 Work Plan. Mr. Arntzen stated the entitlement issues need to be solved before the Port can move forward. Mr. Arntzen believes it is premature for the Port to look for grant funding or ask any legislator for a budget line item when the entitlements are not clear. However, if the Commission would like staff to pursue funding, there is a legislator who is willing to run the project for the Port.

Mr. Novakovich stated he has spoken with the legislator and explained that until the entitlement issues are resolved, it would not be wise to invest funding at this time, however, he conveyed to the legislator that the Port may come back at a later date for racetrack infrastructure funding.



REGULAR COMMISSION MEETING

PORT OF KENNEWICK

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DECEMBER 8, 2015 MINUTES

Mr. Novakovich believes an investment right now would not be useful and any major investment should be tied to completion of the I-82 interchange project.

Mr. Moak agrees with Mr. Novakovich's comments and stated the proper sequencing for the project needs to happen, thus the Port needs to clear up the entitlement issues prior to a request for funding.

Mr. Barnes agrees with Mr. Novakovich and Mr. Moak and believes the legislator should focus on the I-82 interchange, which would ultimately do more for the racetrack property and West Richland. Mr. Barnes believes staff should continue to work on entitlement issues and ready the property for development and it would be premature to request funding prior to the entitlement issues. Mr. Barnes stated sequencing is very important and for the Port to be a reliable partner, we should request grants and funds when the project is ready to go.

Mr. Moak believes the I-82 interchange project still needs Federal Highway Approval before the Washington State Department of Transportation can move forward with the transportation package.

F. Art Policy

Postponed until January 2016.

G. Community Economic Development Strategy (CEDS) Project; Resolution 2015-31

Mr. Bader Inglima stated the Benton Franklin Council of Governments (BFCG) notified the Port that they are opening their Community Economic Development Strategy (CEDS) process for local economic development project submittals. The BFCG identifies and ranks the projects in an effort to elevate the project in pursuit of future Economic Development Application (EDA) funding, when funding is available. In the previous years, the Port repeatedly submitted applications for a Wine Village Development Building for Columbia Drive. The past few years, our project has ranked extremely high on the local CEDS priority list; however, the EDA has not had sufficient funding. Ms. Bader Inglima stated the CEDS application and formal resolution is due on December 16, 2015, however, with factors such as the budget, and an incomplete scope for Vista Field, she does not believe the Port is ready to submit a CEDS application. Furthermore, if the Port pursues and is awarded EDA funding, we are unable to re-approach for additional grant funding for five years. Ms. Bader Inglima inquired if the Commission would like to postpone submitting a CEDS project this year and actively engage with the EDA and other grant processes once the Vista Field Master Plan is finalized and adopted.

Mr. Novakovich concurs with Ms. Bader Inglima and stated it would not be prudent to submit an application this year.

Mr. Moak agrees with Mr. Novakovich and stated it would not benefit the Port to submit an application.

Mr. Barnes stated Resolution 2015-31 has been withdrawn.



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H. Tri-Cities Legislative Trip to Olympia

Ms. Bader Inglima informed the Commission that the Tri-Cities Legislative Council Trip is scheduled for January 28-29, 2016. Ms. Bader Inglima stated if the Commission is interested in attending, please email Ms. Scott. In previous years, a Commissioner and a member of staff have attended.

Mr. Moak stated he is unable to attend.

I. Strategic Retreat

Postponed until January 2016.

J. Commission Policy – Election of Officers

Ms. Luke stated at the December 8, 2015 Commission meeting, the Commission asked counsel to draft language for an Elections of Officers policy. Today, Ms. Luke submitted for the Commission's consideration proposed policy language, which includes:

- Officer Positions: President, Vice President and Secretary;
- Term of Office: Two year term or until his/her successor is elected;
- Timing of Election: Officers shall be elected at first regularly scheduled meeting in January;
- Special Elections: By affirmative vote of 2/3 of the officers, a special election of officers may be held at any regularly scheduled meeting.

Ms. Luke proposed if the Commission is satisfied with the draft language, staff will bring back a revised set of the Port Commission Policies and Procedures for adoption at the next regularly scheduled meeting.

Mr. Moak is satisfied with the draft policy language.

Mr. Novakovich agrees with the draft policy language.

Mr. Barnes concurs with the draft policy language.

Mr. Arntzen stated a special election can be held at any time or reason by a 2/3rds vote to remove an officer, however, if the Commission wants to limit the conditions, they may want to consider adding just cause.

Mr. Moak prefers the original draft policy language.

Mr. Novakovich likes the idea of adding just cause.

Ms. Luke stated the way the draft policy is written allows for flexibility should other issues arise.

Mr. Barnes likes the flexibility of the draft language and adding just cause may not allow for flexibility.



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DECEMBER 8, 2015 MINUTES

Ms. Luke stated the policy can be altered at any time.

Mr. Novakovich stated the policy is fine as is.

Mr. Arntzen commended the Commission for taking initiative to set an election policy.

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

Commissioners reported on their respective committee meetings.

L. Non Scheduled Items

Mr. Peterson stated plans for the remodel of Vista Field Development Building A (Bruker) and the Winery Village on Columbia Drive will be available on December 15, 2015. The bid opening for the remodel will be on Wednesday, January 20, 2016 and the bid opening for the Winery Village will be Thursday 21, 2016 and both will be brought to the Commission for consideration on January 26, 2015

PUBLIC COMMENTS

Boyce Burdick, 414 Snyder Street, Richland. Mr. Burdick stated in Item D, Expression of Interest, and the document utilizes the word public but then morphs into developer. Mr. Burdick inquired where is the ability for private individuals to respond.

Ed Frost, 609 West Albany Street, Kennewick. Mr. Frost stated several months ago, there was discussion regarding a letter of understanding with the Arts Center Task Force for the proposed Vista Arts Center. Mr. Frost believes the letter was going to be completed by December and inquired if the letter has been finished. Also, Mr. Frost thanked Mr. Barnes for emphasizing the need for the Corps to include access to the river in their design. It would be a very nice addition for those who like to walk down by the river and if it is incorporated into the planning it would be far less complicated.

No further comments were made.

Mr. Arntzen encouraged anyone who would like to comment on the Expression of Interest to please contact him. Mr. Arntzen informed Mr. Frost that the Arts Center letter of understanding is almost complete and hopes it to have it finished by January.

COMMISSIONER COMMENTS

No comments were made.

Mr. Barnes anticipates the Executive Session will last approximately 20 minutes, for Real Estate (Site Selection), per RCW 42.30.110(1)(b) and Real Estate (Minimum Price) per RCW 42.30.110(1)(c) with no action anticipated. Mr. Barnes asked the public to notify Port staff if they will return after the executive session.

Mr. Barnes recessed the Regular Commission Meeting at 5:06 p.m.



REGULAR COMMISSION MEETING

PORT OF KENNEWICK

DRAFT

DECEMBER 8, 2015 MINUTES

EXECUTIVE SESSION

- A. *Real Estate (Site Selection), per RCW 42.30.110(1)(b)*
- B. *Real Estate (Minimum Price), per RCW 42.30.110(1)(c)*

Mr. Barnes convened the meeting into Executive Session at 5:08 p.m. for approximately 20 minutes.

Mr. Barnes adjourned the Executive Session at 5:29 p.m.

Mr. Barnes reconvened Regular Commission Meeting at 5:29 p.m.

ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned at 5:29 p.m.

APPROVED:

**PORT of KENNEWICK
BOARD of COMMISSIONERS**

Don Barnes, President

Skip Novakovich, Vice President

Thomas Moak, Secretary

PORT OF KENNEWICK

Resolution No. 2016-01

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

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

WHEREAS, staff has worked with Lucinda Luke, Port Counsel, to revise Section 6.1 “Officers”, of the Port Commission Rules of Policy and Procedure document to define the terms of office and the process for election of officers.

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

ADOPTED by the Board of Commissioners of the Port of Kennewick on the 12th day of January, 2016.

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

By: _____
DON BARNES, President

By: _____
SKIP NOVAKOVICH, Vice President

By: _____
THOMAS MOAK, Secretary

PORT OF KENNEWICK, WASHINGTON

PORT COMMISSION

**RULES
OF
POLICY AND PROCEDURE**

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

FEBRUARY 22, 2011

Section 6 Revised and Adopted January 12, 2016

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1. INTRODUCTION AND PURPOSE

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

1.2 Other Governing Law. In addition to enabling legislation, the Port is subject to Washington State laws, including the open Public Meetings Act, chapter 42.30 RCW; the Public Records Act, chapter 42.56 RCW; and, the Code of Ethics for Municipal Officers, chapter 42.23 RCW.

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

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

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

2. COMMISSION AND COMMISSIONERS

2.1 Purpose. The purpose of the Commission is to:

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

2.1.2 Make certain decisions as are designated by law; and

2.1.3 Hire, evaluate, and terminate the Executive Director.

2.2 Governance. Commission governance addresses:

2.2.1 Strategic leadership more than administrative detail;

2.2.2 Encouragement of diversity in viewpoints;

2.2.3 Collaborative rather than individual decisions;

2.2.4 Future, rather than past or present, direction;

2.2.5 Proactive, rather than reactive, conduct; and

2.2.6 Full transparency to the public.

2.3 Actions. The Commission will:

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

2.3.2 Regularly monitor, and evaluate the Executive Director's performance;

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

2.3.4 Adopt the Port's annual budget;

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

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

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

2.3.8 Take such other actions as may be required by law.

2.4 Port Financial Goals.

As specified in Port Resolution 2010-41, as may from time to time be amended, the Port Commission reiterates the following budgetary goals and acknowledges the importance thereof:

2.4.1 The Port shall work toward funding all operating expenses from revenues from Port operations;

2.4.2 The Port shall fund projects with available resources, not with bonds or loan financing unless otherwise in the best interest of the Port and the communities' long term interest;

2.4.3 The Port shall pursue fewer projects while selecting projects with the greatest return to the Port and to taxpayers; and

2.4.4 The Port shall pursue projects with development partners who demonstrate support (e.g. matching funds, political/citizen/taxpayer support, leveraged investment, enthusiasm/goodwill).

3. COMMISSION CODE OF CONDUCT

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

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

3.3 Policy Acknowledged. On an annual basis and in a public forum, each Commissioner shall acknowledge the obligation to disclose any conflicts of interest under chapter 42.23 RCW.

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

3.5 Statement of Financial Affairs. On or before April 15 of each year, or within (14) days of taking oath of office, each Port Commissioner shall file with the Port a copy of a Statement of Financial Affairs prepared in satisfaction of the requirements of RCW 42.17.240 - .241, which shall be available for public inspection at the first regular Commission meeting after the above-referenced dates.

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

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

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

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

candid about any philosophical or political preferences; and, recognize and make clear the limits of expertise.

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

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

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

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

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

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

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

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

3.13.3 Understand that the requirements of the Washington Open Public Meetings Act apply to communications via telephone, e-mail, instant messaging or other forms of electronic communications. Any exchange of communication between any two Commissioners may constitute an official meeting of the Commission and be in violation of the Act. Commissioners may send information to other members of the Commission on an informational basis; however, replies and/or exchanges of communications regarding Port business must not occur outside of an official public meeting of the Commission. Any such e-mail sent for informational purposes as described above, by any member of the Commission,

shall be sent individually, not as group e-mail. Commissioners will not “reply” to any e-mail received by another member of the Commission.

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

3.14 Commission Disclosure of Economic Associations. RCW 42.23.070 states in part that “[n]o municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein.” Port contracts made in violation of the law are void; and any Port officer violating the law is liable to the Port for a “penalty in the amount of five hundred dollars, in addition to such other civil or criminal liability or penalty.” RCW 42.23.050. The law also prohibits a Commissioner from employment or engaging in any professional activity that may require disclosure of Port information to non-Port interests. RCW 42.23.070. These statutory prohibitions are based on the principle that a Port official may not have divided loyalties. The line between proper and improper conduct may not always be clear, and even unintentional conduct may expose the Port and Port officers and employees to liability. See *City of Raymond v. Runyon*, 93 Wn. App. 127 (1998) (“In spite of well-intentioned attempts to avoid a prohibited conflict of interest,” city commissioner found in violation of law). These Rules attempt to address a Commissioner’s responsibility under law and duty of loyalty to the Port, with other interests. See also, Section 3.2.

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

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

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

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

4. FULL TRANSPARENCY IN PORT ACTIONS

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

4.2 With respect to any quasi-judicial matter before the Commission, or reasonably expected to come before the Commission, it is the policy of the Port Commission that no Commissioner shall:

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

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

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

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

4.5 All information any person or entity would like distributed to Commissioners should be first provided to Port staff; staff will then consistently distribute the information to all Commissioners and file the information as appropriate.

5. REPORTING MISCONDUCT

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

the Port Policies and Procedures manual. Complaints against Commissioners shall be resolved as set forth below.

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

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

5.4 Investigation. If an investigation is warranted, the Executive Director shall recuse himself from the process and delegate all further steps to Port counsel, and/or an investigator retained for such purpose by Port counsel. Port counsel shall inform the party subject of the complaint (Respondent) in writing that a complaint has been filed and that an investigation will take place. Port counsel shall provide a copy of the complaint to the Respondent and the Respondent shall have a reasonable time to prepare and submit a response in writing. Port counsel may seek additional information regarding the matter from the complainant, the Respondent and/or relevant third parties. In conducting the investigation and evaluating all evidence, the Port's counsel shall presume that the Respondent acted ethically and shall determine that an act of professional misconduct has occurred only upon a finding of substantial evidence of such misconduct.

5.5 Determination and Recommendation. Port counsel shall evaluate the complaint and issue a decision within thirty (30) days of receiving all relevant evidence, that the complaint is substantiated or unsubstantiated. If Port counsel finds misconduct and the complaint substantiated, a report to Executive Director and the Commission shall set forth the basis for the decision and a recommended action; otherwise, the complaint shall be dismissed.

5.6 Notification of Determination. Following receipt of the decision and recommendation of Port counsel, the Commissioners shall promptly hear, consider and vote upon the recommended action. The complainant and Respondent shall be notified of the action in writing and shall have the right to be heard before the Commission.

5.7 Reconsideration. A decision is subject to reconsideration upon written request by a respondent. But the sole ground for reconsideration shall be that the Respondent has new, relevant information which was not considered by Port counsel. A respondent having new information to submit to the Commissioners may, within fifteen (15) days of receipt of the written notice of determination, file with the Commission a written request for reconsideration stating the reason and including the new information not considered by the Port counsel. Following review of the entire investigative file, the decision and recommendation of the Port

counsel and the new information submitted by a respondent, the Commission shall, within fifteen (15) days of receipt of such new information, hear, consider or render a final decision which may not be further appealed. If the complaint is dismissed, the complainant and the Respondent shall be notified of same in writing. If reconsideration is denied, the Respondent, but not the complainant, shall be notified of same in writing, and any action by the Commission shall be implemented immediately.

5.8 Sanctions. Censure and/or reprimand may be invoked with respect to Commissioner misconduct, in addition to reassignment of committee assignments and other actions.

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

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

6. COMMISSION MEETINGS

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

6.1.1 Terms. The terms of office for each officer shall be two years or until his/her successor is elected.

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

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

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

6.3 Presiding Officer Duties. The Presiding Officer shall:

6.3.1 Preserve order and decorum in the Commission chambers;

6.3.2 Observe and enforce all rules adopted by the Commission;

6.3.3 Decide all questions on order, in accordance with these rules, subject to appeal by a Commissioner;

6.3.4 Recognize Commissioners in the order in which they request the floor. Except as otherwise set forth herein, the Presiding Officer, as a Commissioner, shall have only those rights, and shall be governed in all matters and issues by the same rules and restrictions as other Commissioners; and

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

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

6.5 Special Commission Meetings. A special public meeting of the Commission may be called by the President or by any two Commissioners. Any request and subsequent special meeting notices shall state the subjects (e.g., agenda items) to be considered at such special meeting and no other subject shall be acted upon.

The Port Administrative Assistant shall provide notice of special Commission meetings pursuant to applicable law.

6.6 Quorum. At all meetings of the Commission, a majority of the Commission (two members) constitutes a quorum for the transaction of business, but a lesser number may adjourn from day to day or until the time of the next regular meeting.

6.7 Recording Proceedings. The Port Administrative Assistant shall maintain an account of all proceedings of the Commission in accordance with statutory requirements. Port meeting minutes can be corrected but shall not be revised without a majority affirmative vote of the Commission at a regularly scheduled Commission meeting.

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

6.9 Participation by Telephone. The Commission strongly believes that a Commissioner's first priority shall be to the District's constituents as a whole and that this obligation is best fulfilled by direct, face-to-face participation in public meetings rather than via telephone or other medium. Such policy provides access by the public to the Commission, provides for better understanding by the public of the deliberative process, minimizes miscommunication, ensures that each Commissioner sees all applicable documents and sees all in attendance. Therefore, the Commission, in furtherance of its long-standing policy of transparency in governance, hereby prohibits the use of attendance at Commission meetings via telephone or other media.

6.10 Commissioner Attendance at Meetings. Commissioners shall inform the President or Executive Director if they are unable to attend any Commission meeting, or if they will be late to any meeting. A majority vote is required to excuse any Commissioner's absence. Unless excused, pursuant to RCW 53.12.140 a Commissioner forfeits office by nonattendance at meetings of the Commission for a period of sixty (60) days. The Executive Director shall

maintain a record of Commissioner attendance at Commission, and other meetings, to which a Commissioner is assigned or scheduled to attend.

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

6.12 General Conduct of Business.

6.12.1 The President of the Port Commission will introduce the issue, stating whether action will be taken on the issue, whether the issue is introduced for discussion only or whether other results are anticipated.

6.12.2 Port staff will briefly discuss the issue.

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

6.12.4 At the conclusion of the technical report, staff will return the issue to the President of the Commission for action. The Commissioners may ask staff, any consultants or the public to briefly clarify any matter presented.

6.13 Public Comment. Public comment shall be permitted at Commission meetings only in accordance with these established procedures. Comments shall be received at the beginning of each meeting, and at the end of each meeting, as identified on the agenda. Either the President or staff may read the following guidelines into the record.

6.13.1 Speakers shall move to the lectern and shall comment only after being recognized by the President;

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

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

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

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

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

6.13.7 The President may overrule impertinent, redundant or disruptive comments;

6.13.8 Applause or other disturbances are discouraged;

6.13.9 All remarks should be directed to the President; and

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

6.14 Executive Sessions. Executive Sessions shall be held in accordance with the provisions of the Washington State Open Public Meetings Act. An Executive Session is a Commission meeting that is closed except to the Commission, Executive Director and others that may be authorized. The public is restricted from attendance. Executive Sessions may be held during Regular or Special Commission meetings and will be announced by the President. Before convening an Executive Session, the President shall announce the purpose of the meeting and the anticipated time when the session will be concluded. Should the session require more time, a public announcement shall be made that the executive session is being extended.

6.15 Commission Discussion. All Commission discussion shall be guided by Robert's Rules of Order, Newly Revised. The Port Attorney shall assume the additional duty of Parliamentarian.

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

7. AGENDA PLANNING

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

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

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

7.3 Agenda Materials. Agenda materials will be available on the Friday prior to the Commission meeting. Agenda materials will be delivered to Commissioners.

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

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

7.6 Consent Agenda. Items placed on the consent agenda may be moved to the business agenda upon a motion passed by the Commission during a Commission Meeting and prior to the vote to approve the consent agenda. The moved item will be placed on the business agenda for further discussion.

8. ROLE OF THE COMMISSION PRESIDENT

The President of the Commission shall:

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

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

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

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

8.5 Establish ad hoc advisory and standing committees.

8.6 Schedule and coordinate the annual process of evaluating the Executive Director.

8.7 Have no authority to supervise or administratively direct the Executive Director or Port staff, apart from authority expressly granted by the Commission.

9. ROLE OF THE COMMISSION VICE-PRESIDENT

The Vice-President of the Commission shall:

9.1 Perform such duties as are assigned by the President.

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

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

10. ROLE OF THE COMMISSION SECRETARY

The Secretary of the Commission shall:

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

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

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

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

11. COMMISSION COMMITTEES

11.1 General. The Commission President may establish ad hoc advisory and standing committees. All committees should include designation of members, chair and a charter describing the committee's purpose. The Commission President will review each committee at least annually to determine whether the committee should continue.

11.2 Committee Roles and Responsibilities.

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

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

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

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

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

12. COMMISSION AND PORT ACTION

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

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

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

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

13. PORT COMMISSION & STAFF ROLES AND RESPONSIBILITIES

13.1 General Roles. The Commission is the Port's governing authority and policy maker. The Executive Director and Port staff implement and administer the Commission's policies. The Port of Kennewick has a Commission-Executive Director form of governance. With this structure, the Port Commission's role is to establish port policies and priorities. The Commission hires an Executive Director to implement those policies and undertake the administration of the organization. The Executive Director is hired by the Port Commission to enforce its directives, to direct the daily operations of Port governance, to prepare and monitor the budget, and to implement the policies and programs initiated by the Port Commission. The Executive Director is responsible to the Port Commission, rather than to individual Commissioners, and directs and coordinates all other employees. The Port Commission authorizes positions through the budget process; based upon that authorization, the Executive Director is responsible for hiring all personnel.

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

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

13.3 Executive Director's Role.

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

13.3.2 The Executive Director is the administrator and manager of all Port activities and staff; and the information liaison between Commission and Port staff. Requests for information from Commissioners are to be directed to the Executive Director and will be responded to promptly. The information requested will be copied to all members of Commission so that each member may be equally informed. The Executive Director will provide staff support for Commissioners as appropriate in their official roles.

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

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

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

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

Port Commission

Governs:
 Guides
 Directs
Decides what
Requests information
Considers issues
Creates, reviews and adopts policy

Executive Director

Administers:
 Operates
 Manages
Decides how
Seeks and provides information
Provides recommendations
Recommends and carries out policy

Reviews and monitors plans
Monitors progress
Contracts with personnel
Approves evaluation criteria, procedures
Reviews and approves budget
Represents public interest

Implements plans
Reports progress
Supervises hiring process, practices
Supervises and evaluates personnel
Formulates budget
Acts in the public's interest

14. BUDGET AND PROCUREMENT AUTHORITY

14.1 General. By resolution, the Commission shall set forth the authority of the Executive Director to manage and expend Port funds in accordance with financial policies and budgetary limits. Procurement of goods and services shall take place in accordance with applicable legal requirements in a fair, competitive and inclusive manner to maximize the benefit to the Port's taxpayers/customers.

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

14.2.1 Provide for sufficient liquidity relative to the Port's risk profile;

14.2.2 Provide for adequate coverage to meet debt covenants;

14.2.3 Establish criteria for debt and rate – financed capital expenditures;

14.2.4 Require that budgets be developed based on conservative and prudent assumptions consistent with standard industry practice; and

14.2.5 Establish budgetary and procurement controls over expenditures.

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

14.4 Procurement Authority.

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

14.4.2 It is Port policy that procurement decisions shall be made free from actual or perceived conflicts of interest consistent with these Rules of Policy and Procedure.

14.4.3 It is Port policy that due diligence and prudent judgment be exercised in the making of procurement decisions, including conducting a risk assessment. If the Executive Director reasonably determines that a procurement activity presents, regardless of the size of the

financial commitment, either: (1) a unique and significant operational risk to the Port; or (2) a significant impact to customers, the Executive Director shall inform the Commission.

15. EVALUATING THE EXECUTIVE DIRECTOR'S PERFORMANCE

15.1 General. The Executive Director's job performance shall be evaluated by comparing the organization's operations and results and the Executive Director's performance to the policies established by the Commission.

15.2 Process.

15.2.1 The Commission shall evaluate the Executive Director's performance on an annual basis.

15.2.2 The evaluation will be based on an evaluation of the organization's performance and the Executive Director's personal performance against the evaluation criteria previously established by the Commission and the Executive Director.

16. COMMISSION-AUDITOR RELATIONSHIP

16.1 General. The Port Auditor (Auditor) serves the Port to assist in the Port's compliance with the Local Government Accounting Act, RCW 43.09.200 – 43.09.2855.

16.2 Hiring and Reporting.

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

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

17. COMMISSION-PORT ATTORNEY RELATIONSHIP

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

17.2 Port Attorney Responsibilities.

The general legal responsibilities of the Port Attorney are to:

17.2.1 Provide legal assistance necessary for formulation and implementation of legislative policies and projects.

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

17.2.3 Prepare or approve as to form resolutions, contracts, and other legal documents to best reflect and implement the purposes of the Port.

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

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

17.2.6 Give advice or opinion when required by the Commission or Executive Director.

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

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

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

17.2.10 Other matters as designated by the Executive Director.

18. INDEMNIFICATION AND DEFENSE POLICY

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

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

18.2.1 "Employee" means any person who is or has been employed by the Port, including volunteers and appointed members of advisory boards and commissions. "Employee"

does not include independent contractors. “Employee” also includes an employee’s spouse when an employee’s marital community is named in any action subject to this policy.

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

18.3 Legal Representation.

18.3.1 The Port shall provide to an official or employee, subject to the conditions and requirements of this chapter, and notwithstanding the fact that such official or employee may have concluded service or employment with the Port, such legal representation as may be reasonably necessary to defend a claim or lawsuit filed against such official or employee resulting from any conduct, act or omission of such official or employee performed or omitted on behalf of the Port in his/her capacity as a Port official or employee, which act or omission is within the scope of his/her service or employment with the Port. The provisions of this chapter shall not operate to provide legal representation to defend a claim or lawsuit for any conduct, act, or omission resulting in the termination for cause of any official or employee.

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

18.3.3 In the event that outside counsel is retained under Section 18.3.2, the Port shall indemnify the employee or official from the reasonable costs of defense; provided, that in no event shall the official or employee be indemnified for legal counsel’s fees in excess of the hourly rates established by the Port’s contract with legal counsel selected by the Port. The official or employee shall be liable for all hourly rates charged in excess of said rate.

18.3.4 The determination whether the official or employee was acting in good faith within the scope of his or her official duties shall be made by the Executive Director in consultation with the Port legal counsel and/or outside legal counsel. This determination shall be based on an investigation of the facts and circumstances surrounding the incident and shall be made as early in the proceedings as is reasonably possible. Once the determination is made, the official or employee involved shall be notified by the Executive Director in writing. If the employee or official involved is the Executive Director, the determination shall be made by the Commission in consultation with the Port legal counsel and/or outside legal counsel based on an investigation of the facts and circumstances surrounding the incident and shall be made as early in the proceedings as is reasonably possible. Once the determination is made, the Executive Director shall be notified by the Port legal counsel, in writing. In any claim involving an allegation of criminal conduct, no investigation by the Port will occur prior to a determination of guilt, or prior to a dismissal of the criminal charge with prejudice, so as not to compromise the official’s or employee’s Fifth Amendment right against self-incrimination. Any determination made under this Section shall not be subject to appeal.

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

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

18.4.2 Any act or course of conduct of an official or employee which is not performed on behalf of the Port;

18.4.3 Any act or course of conduct which is outside the scope of an official's or employee's service or employment with the Port; and/or,

18.4.4 Any lawsuit brought against an official or employee by or on behalf of the Port;

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

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

18.6 Policy Secondary to Insurance. The provisions of this chapter shall have no force or effect with respect to any accident, occurrence or circumstance for the which the Port or the official or employee is insured from whatever source against loss or damage; provided that the provisions of this chapter shall apply in the event the loss or damages fall within the deductible or exclusion(s) of the Port's applicable insurance policy. The provisions of this chapter are intended to be secondary to any contract or policy of insurance whether owned by or otherwise applicable to any official or employee. The Port shall have the right to require an employee to fully utilize any such policy protection prior to requesting the protection afforded by this Chapter.

18.7 Determination of Exclusion. The determination whether an official or employee shall be afforded a defense by the Port under the terms of this chapter shall be made after a determination pursuant to Section 18.3 as to whether the official or employee was acting within the scope of his or her duties. The Executive Director and Port legal counsel shall prepare a recommendation to the Commission. The decision of the Commission shall be final as a legislative determination and shall be based upon a finding that an official or employee meets or does not meet the criteria of this chapter. Nothing herein shall preclude the Port from undertaking an official's or employee's defense under a reservation of rights. The determination as to whether a defense is to be furnished as provided under this chapter to a member or to members of the Commission shall be made without the vote of the Commissioners named in the claim or lawsuit unless the inclusion of such member or members is required for a quorum; provided, that if a claim or lawsuit affects a quorum or greater number of the members of the Commission, all such affected members shall retain their voting privileges under this Section.

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

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

18.8.2 Upon receipt, the official or employee shall as soon as practicable deliver any claim, demand, notice or summons or other process relating to any such incident or conduct to the Port legal counsel and shall cooperate with the Port legal counsel, or if the Executive Director authorizes or designates another legal counsel to handle the matter, shall cooperate with that legal counsel, and, upon request, shall assist in making settlement of any suit and enforcing any claim for any right of subrogation against any persons or organizations that may be liable to the Port because of any damage or claim of loss arising from said incident or course of conduct, including, but not limited to, rights of recovery for costs and legal counsel's fees arising out of state or federal statute upon a determination that the lawsuit brought was frivolous in nature. Failure to timely deliver any claim, demand, notice or summons to the Port legal counsel, and in which an adverse decision against the official, the employee or Port results from such failure, shall operate to negate all indemnification and opportunity for defense under this chapter and the Port shall have no obligation to offer a defense to the named official or employee.

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

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

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

18.9 Effect of Compliance With Conditions. If legal representation of an official or employee is undertaken by the Port, whether by the Port legal counsel or by legal counsel obtained by the Port or through its insurance coverage, and all of the conditions of representation are met, and a judgment is entered against the official or employee or a settlement is made, the Port shall pay such judgment or settlement according to the provisions herein; provided, that the Port may at its discretion appeal as necessary any such judgment. In no event shall this Section

be interpreted to provide for payment of an award of punitive damages. The process for payment of punitive damages is discretionary under this chapter, and is set forth in Section 18.16. The decision to appeal an award of damages will be made by the Commission upon the recommendation of the Executive Director and the Port legal counsel and/or outside legal counsel.

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

18.11 Reimbursement of Incurred Expenses.

18.11.1 If the Port's investigation under Section 18.3 determines that an official or employee does not come within the provisions of this chapter and a court of competent jurisdiction later determines that such claim does come within the provisions of this chapter, then the Port shall pay any judgment, excepting punitive damages, rendered against the official or employee and reasonable legal counsel's fees incurred in defending against the claim if said judgment is not covered by the Port's insurance provisions or by the official's or employee's insurance. The Port shall pay any costs and reasonable legal counsel's fees incurred by the employee or official in obtaining the determination that such claim is covered by the provisions of this chapter; provided, that if a court of competent jurisdiction determines that such claim does not come within the provisions of this chapter, then the official or employee shall pay the Port's costs and reasonable legal counsel's fees incurred in obtaining the determination that such claim is not covered under the provisions of this chapter.

18.11.2 If the Port determines that a claim against a Port official or employee does come within the provisions of this chapter and a court of competent jurisdiction later finds that such claim does not come within the provisions of this chapter, then the Commission shall have the option of requiring reimbursement by the official or employee for costs or expenses incurred in obtaining the determination that such claim is not covered by the provisions of this chapter.

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

18.13 Pending Claims. The provisions of this chapter shall apply retroactively to any pending claims or lawsuits against any official or employee at the time of adoption of this ordinance and to any such claims or lawsuits hereinafter filed within an applicable statute of

limitations, irrespective of the date of the events or circumstances which are the basis of such claim or lawsuit.

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

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

18.16 Punitive Damages. When an employee or official of the Port has been represented in a claim and/or litigation by the Port pursuant to this chapter and any judgment is rendered against such employee or official for punitive damages, the employee or official may make a request to the Commission that the Port pay the award of punitive damages on behalf of the official or employee. Upon receiving a request made by or on behalf of a Port employee or official to pay punitive damages, the Commission shall receive a report and recommendation from the Executive Director and the Port legal counsel. If the official or employee is the Executive Director or a Commission member, the Commission may request a report and recommendation from the Port legal counsel or may retain the services of another person or agency to provide a recommendation. Following receipt of the report and any recommendation, the Commission shall determine whether the best interests of the Port and justice will be served by payment by the Port of the award for punitive damages. There shall be no appeal from such determination. The Executive Director shall communicate the council's determination with respect to the employee's or official's request for payment of punitive damages to said employee or official. Thereafter, the finance director shall prepare the payment of punitive damages if the council authorized such payment.

18.17 Application to Recall Proceedings.

18.17.1 Consistent with RCW 4.96.041(3), the necessary expenses of defending a Port Commissioner in a judicial hearing to determine the sufficiency of a recall charge as provided in RCW 29.82.023 shall be paid by the Port if the Commissioner requests such defense and approval is granted by both the Commission and the Port's legal counsel or attorney appointed by the Executive Director to review the request. The expenses paid by the Port may include costs associated with an appeal of the decision rendered by the superior court concerning the sufficiency of the recall charge.

18.17.2 As authorized by the Supreme Court in the case of *In Recall of Olsen*, 154 Wn.2d 606 (2005), the Port's decision to indemnify and pay the costs of a recall defense does not constitute a contract under RCW 42.23.030, and, as a result, a Commissioner requesting payment of such expenses may vote on the Commission's consideration of the request.

19. GENERAL COMPLAINT RESOLUTION

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

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

Ten Commandments for Staying out of Trouble as a Port Commissioner

[as presented in the WPPA Commissioner Resource Guide]

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

PORT OF KENNEWICK

Resolution No. 2016-02

***A RESOLUTION OF THE PORT OF KENNEWICK
BOARD OF COMMISSIONERS DESIGNATING THE EMERGENCY REPAIR OF
“C” DOCK SPRINKLER SYSTEM AT CLOVER ISLAND MARINA,
350 CLOVER ISLAND DRIVE KENNEWICK AS EXEMPT FROM PUBLIC
WORKS COMPETITIVE BIDDING REQUIREMENTS***

WHEREAS, in accordance with RCW 39.04.280, the Port of Kennewick (Port) is authorized to designate certain public works contracts as emergencies and, therefore, exempt from competitive bidding requirements; and

WHEREAS, the Port of Kennewick’s Clover Island Marina sprinkler system for C dock experienced a broken ball valve from freezing temperatures and threatened to result in material damage to property; and

WHEREAS, under his delegation of authority, the Chief Executive Officer authorized emergency repairs with Cascade Fire Protection and each Commissioner was notified individually.

NOW, THEREFORE, BE IT RESOLVED that the Port of Kennewick Board of Commissioners designates the repairs to the Clover Island marina sprinkler system for C Dock at 350 Clover Island Drive as an emergency public works project within the guidelines of RCW 39.04.280, and therefore exempt from competitive bidding requirements.

ADOPTED by the Board of Commissioners of the Port of Kennewick on the 12th day of January, 2016.

***PORT OF KENNEWICK
BOARD OF COMMISSIONERS***

DON BARNES, President

SKIP NOVAKOVICH, Vice President

THOMAS MOAK, Secretary