

AGENDA

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

Tuesday, April 24, 2012
2:00 p.m.

- I. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE**
- III. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- IV. CONSENT AGENDA**
 - A. Approval of Direct Deposit and Warrants Dated April 13, 2012
 - B. Approval of Warrant Registers Dated April 25, 2012
 - C. Approval of Staffing Agreements; Resolution 2012-20
 - D. Approval of a (3) Year Lease Renewal with Derek Alexander Farms Inc.; Resolution 2012-18
 - E. Approval of a (3) Year Lease Renewal with One World Telecommunications, Inc.; Resolution 2012-19
- V. PRESENTATION**
One Hour Presentation on Financial Accounting Standards Board (FASB), Governmental Accounting Standards Board (GASB), Generally Accepted Accounting Principles (GAAP), and Other Comprehensive Basis of Accounting (OCBOA) by Tammy Fine, CPA, CFE
- VI. NEW BUSINESS**
 - A. KEPR News – Port of Kennewick Cost Savings Article and News Clip
- VII. REPORTS, COMMENTS AND DISCUSSION ITEMS**
 - A. Commissioner Meetings (formal and informal meetings with groups or individuals)
 - B. Non-Scheduled Items
- VIII. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- IX. ADJOURNMENT**

PLEASE SILENCE CELL PHONES

PORT OF KENNEWICK

Resolution No. 2012-20

**A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE PORT OF KENNEWICK RELATED TO STAFFING AGREEMENTS**

WHEREAS, since 2006 the Port of Kennewick has had a staffing agreement with its Executive Director; and

WHEREAS, the Commission desires to update the agreement and to add a basic agreement for the Auditor; and

WHEREAS, adoption of the updated agreement(s) do not establish a new or different salary for either employee; and

WHEREAS, the updates contain the following provisions:

- Staffing duties are clarified;
- The Executive Director is subject to unpaid leave of up to 30 days provided the absence does not cause disruption with the Employer and with notice provided to the Employer;
- Added a new requirement for arbitration as a mechanism for dispute resolution;
- Establishes two-year phased retirement requirement for the Executive Director, whereby the Executive Director assists with effective succession process.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Port of Kennewick Board of Commissioners hereby approve the staff agreements.

ADOPTED by the Board of Commissioners of Port of Kennewick on the 24th day of April, 2012.

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

SKIP NOVAKOVICH, President

Position Currently Vacant
Vice President

GENE WAGNER, Secretary

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is entered into on this date by and between the PORT OF KENNEWICK, a Washington municipal corporation, by its Board of Commissioners (the "Employer", the "Port" or "Board"), and TIM ARNTZEN (the "Employee" or "Executive Director"), collectively referred to as the "Parties".

1. **Employment.** Employer hereby employs Employee and Employee hereby accepts employment as Executive Director of the Port of Kennewick upon the terms and conditions set forth herein.

2. **Effective Date.** This Agreement shall be effective April 24, 2012.

3. **Duties.** The Employee is employed as Executive Director of the Port of Kennewick under the direction of the Board of Commissioners. As Executive Director of the Port, Employee shall be responsible for and perform all acts and duties incident thereto, including, but not limited to the following:

3.1 The Employee shall serve as the chief administrative officer and the chief executive officer of the Port of Kennewick; and

3.2 The Employee shall perform for the Board all duties and responsibilities of an executive director of a public port generally imposed by or implied from the laws of the State of Washington, including, but not limited to, Chapter 53 of the Revised Code of Washington, the written policies, rules and regulations of the Board, the applicable portions of the Washington Administrative Code, and other customs and practices which may be applicable to public ports; and

3.3 Employee shall perform all duties and responsibilities of the Executive Director of the Port as set forth in the job description for the position as now or hereafter adopted by the Commission; and

3.4 The Employee shall perform such other duties and responsibilities as may from time to time be assigned or delegated to the Employee by the Board; and

3.5 Subject to Board policy and applicable law, the Employee is hereby authorized to organize, reorganize, hire, discipline, terminate and arrange the interests and employees of the Port in the manner that in his judgment best serves the interests of the Port; and

3.6 Employee's employment is full-time exempt service, and Employee shall devote full attention and best efforts to performing the duties of the Executive Director.

3.6.1 Except as set forth herein, the Parties acknowledge that providing the services of the Executive Director, as needed by the Employer, is of

Employment Agreement 2012
Executive Director

Initials _____ / _____

primary importance and that the actual amount of time spent by Employee to provide such services is not limited to the hours or days upon which the business office of the Port is open for business and may include participation in or presence at Port and community activities and matters relating to the best interests of the Port beyond the normal business day, including emergency situations. In like manner, less than a normal eight (8) hour day may, at times, be sufficient. The Executive Director shall organize his time and perform his duties in light of this subparagraph.

3.6.2 The Employee may undertake other personal consulting or private business activities so long as they do not detract from or conflict with his responsibilities as the public spokesperson for and Executive Director of the Port. Prior to engaging in any such activities, the Employee shall receive the consent of the Employer, which shall be liberally granted.

4. **Compensation and Benefits.** The Employee will receive the following salary and benefits:

4.1 A base annual salary of the Employee shall be \$128,200 for the 2011 calendar year, which base amount shall be subject to annual adjustment as follows:

4.1.1 Provided Employee's performance is deemed "satisfactory" by the Employer as provided in Section 6 of this Agreement, then, effective each January 1 following the date of the performance review, Employee shall be entitled to a cost of living increase in an amount equal to 2% of his then current salary and a step increase in an amount equal to 2% of his then current salary directed at the Employee's discretion to be paid out as salary or allocated to the Employee's Deferred Compensation account. If Employee directs the 2% step increase to be allocated to the Employee's Deferred Compensation account, it is subject to the IRS cap limits. If the IRS cap amount is reached, the Employee may use the 2% step increase to supplement the Employee's matching portion requirement by the Port's Policies and Procedures Handbook approved by the Commission. Any percentage over the IRS cap amount is subject to payment via salary.

4.1.2 The Employee may, at the sole discretion of the Employer, be considered for merit pay for accomplishments that provide a substantial benefit to the Employer, beyond normal day-to-day operational matters.

4.1.3 The annual salary shall be paid in equal monthly installments in accordance with the rules of the Board governing payment to other employees of the Port.

Employment Agreement 2012
Executive Director

Initials _____ / _____

- 4.1.4 The salary adjustment provisions of Section 4.1.1 above, shall be subject to available budget, recognizing that staff salaries shall be a priority budget item.
- 4.2 The same medical, dental, life insurances, PTO and all other benefits provided to employees of the Port with premiums paid at the same rate as such employees; provided, the Employee shall be entitled to life insurance in the amount of two times the Employee's annual salary. The Employee may select the carrier to provide said coverage (currently NY Life, Richland, Washington).
- 4.3 Paid holidays recognized by the State of Washington and the Board.
- 4.4 Longevity compensation as set forth in the "Longevity Compensation Agreement," **Exhibit "A"** to this agreement.
- 4.5 Employee shall receive an automobile insurance allowance of \$80 per month.
- 4.6 Phased retirement as set forth in the "Phased Retirement Plan," **Exhibit "B"** to this agreement.
- 4.7 Leave without pay: The Employee may utilize up to 30 days of annual leave without pay for either personal or professional reasons, so long as the Employee's absence does not cause undue disruption with the Employer. At least one-half of the Employee's annual paid leave (PTO) must be exhausted before leave without pay may be exercised. Leave without pay must be charged in minimum increments of one day. The Employer shall encourage top level employees to utilize unpaid leave as a means of budgetary constraint. The Employee shall discuss any proposed leave without pay with the Employer prior to utilizing any such leave.
5. **Washington State Department of Retirement or Approved Policy Retirement:** If the employee's performance is deemed "satisfactory" by the Employer as provided in Section 6 of this Agreement, then, effective each January 1 following the date of the performance review; Employer shall make an additional annual 1% contribution into Employee's Deferred Compensation account. "Additional" shall mean an amount in addition to the normal Employer contribution provided by the Port's Policies and Procedures Handbook approved by the Commission.
6. **Evaluation.** The Employer shall provide Employee with a written performance review based on the evaluation form attached hereto as **Exhibit "C"**, no later than November 15th of each year.
7. **Employer Responsibility.** To the maximum extent permitted by law, Employer shall defend, indemnify, and hold Employee harmless from and against any and all claims, demands, suits, action or proceedings of any kind of nature arising out of the performance

Employment Agreement 2012
Executive Director

Initials _____ / _____

by Employee of the Employee's duties and responsibilities as Executive Director of the Employer.

8. **Termination.** The purpose of this Section is to provide a prompt and equitable procedure for all disciplinary action, which may include reprimand, suspension and termination actions. Notwithstanding any other provision of this Agreement, disciplinary action of whatever nature shall not be arbitrary, unreasonable or retaliatory.

8.1 The burden of proof shall be on the Employer to demonstrate a clear basis for any disciplinary action.

8.2 No Employee activity or action outside the defined scope of employment shall provide a basis for disciplinary action.

8.3 Disciplinary action shall be fully documented in writing and shall follow the policy of progressive discipline, pursuant to the Port Policy and Procedures Manual.

During the period of this Employment Agreement, the Port shall have the right to terminate the Employee only as follows:

8.4 **For Cause.** Termination of the Executive Director's employment for cause shall become effective fourteen (14) days after a written notice of intent to terminate is received by the Executive Director, which notice shall specify the reason or reasons for termination. Employer may, at the time of giving such notice, suspend or direct the Executive Director to immediately cease performing all or any part of the Executive Director's duties. Such suspension shall be with pay pending final resolution of any termination for cause. Cause shall be defined as and strictly limited to:

8.4.1 The continued or repeated intentional failure of the Executive Director to substantially perform his duties and obligations to the Port, which failure continues after written notice to the Executive Director; or

8.4.2 Theft, fraud, harassment, dishonesty toward or involving the Port (other than the failure resulting from illness, sickness or physical or mental incapacity)

8.4.3 Conviction of any crime, misdemeanor or felony.

8.4.4 A finding or decision of any court or government agency of a willful and intentional violation of any court order or order or directive of a governmental agency relating to the Executive Director's duties or responsibilities as the Port's Executive Director, or when such violation is contrary to any directive by the Port Commission or no reasonable basis can be inferred from which the Executive Director believed he was

Employment Agreement 2012
Executive Director

Initials_____ / _____

directed or authorized by the Board of Commissioners to perform such acts constituting the violation.

8.5 Performance-Based Cause. The Employer shall have the right to terminate Employee's employment if the Employee's performance, as measured in annual performance evaluations, consistently fails to meet the fundamental evaluation criteria as established in the written performance evaluation form attached hereto as **Exhibit "C."**

8.5.1 Termination of the Executive Director's employment for Performance-Based Cause shall be effective fourteen (14) days after receipt by the Executive Director of written notice of termination stating that such termination is for Performance-Based Cause.

8.5.2 Employer may, at the time of giving such notice, suspend or direct the Executive Director to immediately cease performing all or any part of the Executive Director's duties.

9. **Severance Pay.**

9.1 If Employer terminates Employee for cause as defined above there shall be no severance pay. Employee shall receive all other earned or accrued benefits through the effective date of termination.

9.2 If Employer terminates Employee for performance based cause as defined above, Employer shall make a severance payment computed as follows:

9.2.1 Pay Employee his salary in a lump sum amount equal to twelve (12) month's salary following the date of termination, together with any earned benefits at time of termination; and

9.2.2 Reimburse Employee for the cost of acquiring health benefits for Employee and his family through COBRA for a period of one (1) year from the date of termination unless Employee becomes employed during said one-year period and receives comparable insurances benefits.

9.3 The payment of severance pay is subject to applicable law.

10. Corrective Action. Prior to the imposition of disciplinary action, the Employee shall have the opportunity to undertake corrective action, which shall be reasonable under the circumstances, and which may include, but is not limited to, monetary restitution, compliance with a commitment not to repeat any misconduct or to correct the matters set forth in the notice of discipline. The Employer shall designate a reasonable time period for compliance with the terms of the corrective action. Any subsequent failure to perform the required act or otherwise

comply with the corrective action shall immediately subject the Employee to the implementation of the underlying discipline without additional opportunity for corrective action.

11. **Attorneys' Fees and Costs.** In the event it is necessary for either Party to utilize the services of an attorney to enforce any of the terms of this Agreement, the Party which shall substantially prevail shall be entitled to compensation for its reasonable attorneys' fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing Party shall be entitled, in addition to other relief, to such reasonable attorneys' fees and costs as determined by the court.

12. **Dispute Resolution.** In the event of any claims or disputes arising out of this agreement, including whether any termination is properly for cause, or whether any performance review was accurate, the parties hereby agree to submit the same to binding arbitration pursuant to RCW Chapter 7.04A, as supplemented herein, at a location to be mutually agreed upon in Benton County, Washington. In the event the parties are unable to promptly agree upon an arbitrator, the same shall be selected by the presiding judge for the Benton County Superior Court at the request of either party, after seven (7) days written notice to all other effected parties. The mandatory arbitration rules (MAR) as implemented in Benton County Superior Court, shall be binding as to procedure. The substantially prevailing party in any such dispute shall be entitled to recover a reasonable attorney fee. The foregoing notwithstanding, the parties agree that mediation should precede arbitration, and, if the arbitrator selected believes that good faith mediation has not occurred, the arbitrator, in the arbitrator's sole discretion can adjourn the arbitrator proceedings until such time as mediation has been contemplated. Cost of mediation may be assessed by the arbitrator. If any claim or dispute arises related to whether any disciplinary action is proper, the Employee may waive dispute resolution and file a claim in a court of competent jurisdiction.

A finding to support discipline must be based only on the evidence presented at the arbitration hearing. If the arbitrator does not find that the disciplinary action was based on proper cause, the discipline imposed shall be annulled and, if appropriate, damages may be awarded to the Employee. If the arbitrator concludes that proper cause for a disciplinary action has been established but that a different penalty than that proposed would be more appropriate, the arbitrator shall determine a different penalty, which may be more or less severe, with supporting reasons. The decision of the arbitrator shall be binding upon the parties, provided that either party may appeal to an appropriate court of law.

13. **Resignation.** If Employee resigns his employment other than for Good Reason (as defined below), the Employer shall have no liability to Employee except to pay Employee's base compensation and any accrued benefits through his last day worked, and Employee shall not be entitled to receive severance or other benefits. If Employee resigns his employment for Good Reason, he shall be entitled to receive all accrued but unpaid salary and benefits through the date of termination plus severance (as defined above). Resignation for "Good Reason" shall mean a resignation based upon a material diminution of base salary; a material diminution in the Employee's authority, duties or responsibilities; an elimination of the Employee's position; a requirement that the Employee report to an officer or employee instead of directly to the board of

Employment Agreement 2012
Executive Director

Initials_____ / _____

commissioners; a material diminution in the budget over which the Employee retains authority; a material change in geographic location at which the employee must perform his services; or any other action or inaction which constitutes a material breach of the terms of this Agreement. The Employee must provide notice to the Employer of the occurrence of "Good Reason" for resignation within 90 days of the initial existence of such reason, and the Employer must be given 30 days to remedy the situation. [New]

14. **Succession**. The conditions, covenants and agreements of this Agreement shall be binding upon the heirs, legal representatives, successors and assigns of all Parties hereto.

15. **Conflict**. This Agreement is intended to operate as a supplement to the provisions of the Employer's Personnel Manual. However, If there is an irreconcilable conflict between any of the provisions of this Employment Agreement and:

15.1 Employer's policies as adopted by the Board; or

15.2 The Longevity Compensation Agreement,

the provisions of this Agreement shall prevail.

16. **Severability**. In the event of any of the provisions of the Agreement should violate any law, regulation or regulatory order, consent directive or similar restrictions or agreement, such provision shall be deemed void and of no effect. In such case, the remainder of the provisions of this Agreement shall not be affected. Each term or provision of this Agreement shall be valid and enforceable only to the fullest extent permitted by law. In the event a provision of this Agreement is void and of no effect, as set out herein, neither Party shall have any rights against the other as a result of such determination.

17. **Entire Agreement.** This Agreement contains the entire agreement of the Parties hereto, and except for any agreements stated in writing to survive the execution and delivery of this contract, supersedes all of their previous understandings and agreements written and oral, with respect to the Employer's employment of Employee.

DATED this 24th day of April, 2012.

EMPLOYER:

EMPLOYEE:

PORT OF KENNEWICK
A Washington Municipal Corporation

By: _____
Skip Novakovich, President

By: _____
Tim Arntzen

By: _____
Vice President (Currently Vacant)

By: _____
Gene Wagner, Secretary

Employment Agreement 2012
Executive Director

Initials _____ / _____

EXHIBIT "A" TO EMPLOYMENT AGREEMENT

LONGEVITY COMPENSATION AGREEMENT

A. **Investment of Longevity Compensation.** The Employer shall deposit \$8,500 (subject to adjustment beginning January 1, 2012 as set forth below) each calendar year for five consecutive years commencing January 1, 2011; and thereafter on the first business day of each thereafter through January 2015, into an approved interest bearing tax exempt trust account for the benefit of the Employee to be accounted for in an individual manner. Said yearly Longevity Compensation investments, plus the earning on those investments while in an approved trust account, shall constitute the entirety of the "Longevity Compensation" under this Agreement. Each annual contribution, commencing with the contribution of January 1, 2012, shall be increased by 3% annually. The Longevity Compensation shall be deposited into a fund of Employer's choice, as permitted by law, or as a salary payout, when earned, as permitted by law. Investment management decisions for the funds deposited into the trust are directed by the trustee or Employer. Employee can express their opinion on investments, but cannot direct the investment. The Employer will receive all statements and deal directly with investment broker or financial institution.

B. **Vesting, Election, and Distribution on Service Date.** Provided that the Employee remains employed by the Employer until December 31, 2015 (hereinafter the "Service Date") all of the Longevity Compensation shall thereupon become fully vested to the Employee and shall be paid to the Employee on or before the 90th day immediately following separation from service at the discretion of the Employer in a single lump sum adjusted for required tax payments under Section E herein, if such be due at that time. Both Employee and Employer elect to defer current and all subsequent years compensation stated in section "A" above until the distribution date which is defined within this agreement.

Distribution of the Longevity Compensation cannot be distributed any earlier than the above stated date; however, IRS allows exceptions for the Longevity Compensation distribution. Distributed of the following events cannot be any earlier than on or before the 90th day immediately following the triggering event for the following allowable IRS exceptions:

1. The date the employee becomes disabled;
2. The employees death;
3. To the extent allowed by the IRS if a change in the ownership or effective control of the organization;
4. When an unforeseeable emergency occurs. An unforeseeable emergency is a severe financial hardship to the employee resulting from an illness or accident of the employee or the employee's spouse, beneficiary, or dependent; loss of employee's property due to casualty; or other similar extraordinary and unforeseeable

Employment Agreement 2012
Executive Director

Initials _____ / _____

circumstances arising from events beyond the employee's control. Unforeseeable emergencies are subject to IRS guidelines and are determined based on the relevant facts and circumstances of each case. The amounts distributed for the emergency must not exceed the amounts reasonably necessary to satisfy the emergency plus amounts to pay taxes reasonably anticipated as a result of the distribution.

Other IRS requirements may apply.

C. Termination of Employment Prior To Service Date. If, prior to the Service Date, the Employee should voluntarily terminate his employment with the Employer, or be terminated by the Employer for cause as defined in the parties Employment Agreement, the entire Longevity Compensation may be forfeited to the Employer, and the Employer shall then have no further obligation under this Agreement. If the Employer terminates the Employee for reasons other than for cause, a ratable portion of the Longevity Compensation shall become immediately vested and shall be distributed to the Employee in a single lump sum as soon as practicable after such termination. The ratable portion due the Employee shall be the full amount invested by the Port at the time of termination of employment from the inception date specified in paragraph A of this Agreement to the month of the Employee's separation of employment plus the inclusion of all account earnings to the date of separation. However, if employee terminates employment on January 1st, he shall not receive the current year annual amount allocation as described in section A above.

D. Death. In the event that the Employee dies while employed by Employer prior to the Service Date of this Agreement, the entirety of the agreed Longevity Compensation amount, plus earnings to date of death, shall become fully vested and shall be paid in a single lump sum either to the estate or to the designated beneficiary of the Employee on or before the 90th day immediately following the Employee's death at the discretion of the Employer in a single lump sum adjusted for required tax payments under Section E herein, if such be due at that time. It is the employee's responsibility to inform the Port of the designated beneficiary and/or estate. If designated beneficiary and/or estate are not named, the Port will retain funds in trust account until notification under Washington State Laws.

E. Taxes. If applicable, the Employer shall withhold income and payroll taxes from the final Longevity Compensation payment to the extent required by State or Federal law at the time of the disbursement. The Employer's and Employee share of FICA or other employment taxes with respect to the Longevity Compensation due shall be paid by the Employer out of the Employer's separate funds, and shall not reduce the amount of Longevity Compensation payable to the Employee under this Agreement.

F. Meaning of Terms. For purposes of this Agreement:

- (1) The Employee's employment shall be deemed to have been "terminated" when the Employee ceases to be classified as an active employee under the Employer's normal employment practices, and the Employee does not continue to perform substantial ongoing services for the Employer in the capacity of an independent contractor; or

Employment Agreement 2012
Executive Director

Initials_____ / _____

(2) The Employee shall be deemed to have "voluntarily" terminated employment (as opposed to having been terminated by the Employer) if the Employee resigns, quits, or otherwise terminates employment without the Employer having taken any action to request an end to the Employment Agreement; or

G. Supplement to Normal Compensation. The Longevity Compensation provided under this Agreement shall be considered as an income supplement to the normal salary, wages, or other benefits of the Employee, and this Agreement shall not limit the amount of salary, wages, or other benefits that could or would be paid to the Employee in the absence of this Agreement. Whether the vesting or payment of the Longevity Compensation under this Agreement causes the Employee to accrue or receive additional benefits or contributions under any pension, or other plan, shall be determined solely in accordance with the terms of such other plan.

H. No Employment Contract. Nothing contained in this Agreement shall be deemed to constitute an employment contract between Employee and Employer, or to give the Employee any special right to be retained in the employment of Employer, or to enlarge or diminish the Employer's right to terminate Employee's employment

I. General Assets of the Employer. Prior to the payment of Longevity Compensation to the Employee, the amounts invested by the Employer in the approved trust account, or otherwise set aside, or segregated to satisfy the Employer's obligations under this Agreement, shall remain the sole property of the Employer, and the Employee shall have no claim against the Employer for the funds except as a general creditor under this Agreement. Notwithstanding the foregoing, the Employer's obligation to pay the Longevity Compensation within the scope of this Agreement shall be limited to the total amount of the five (5) yearly principal contributions, plus any earnings on those investments, and the Employer shall not be liable for any losses or shrinkage in the value of the Longevity Compensation reserve account resulting from investment losses over the term of the Agreement, should such occur.

J. No transferability. The Employee shall have no right to commute, sell, transfer, pledge, or otherwise convey or encumber the right to receive deferred compensation, other than allowed under Section "D" herein, or to a designated beneficiary upon the death of Employee. The Longevity Compensation shall not be subject to attachment, garnishment or execution, or be transferable in any event until fully earned, or as otherwise required by law.

K. Applicable Law. This agreement shall be governed by and construed in accordance with the laws of the state of Washington.

L. Binding Effect. This Agreement shall be binding on and shall inure to the benefit of any successor of the Employer and to the personal representatives of the Employee.

Employment Agreement 2012
Executive Director

Initials_____ / _____

M. Entire Agreement. This Agreement shall constitute the entire Agreement between the parties involved and any understanding or representation relating to the Longevity Compensation package shall not be binding upon either party except to the extent incorporated in this Agreement.

N. Renewal. If Employee is employed by the Employer at the termination of this Longevity Agreement, the Employee shall have the option to enter into a new Longevity Agreement for an additional five year term. The terms of the new Longevity Agreement shall be identical to the terms of the current agreement, except that the term shall extend from January 1, 2016 through December 31, 2020; and the initial Employer deposit shall be \$10,000.

EXHIBIT "B" TO EMPLOYMENT AGREEMENT

PHASED RETIREMENT

At any time while this Agreement is in effect, and upon 90 days advance, written notice to the Employer, Employee may elect to participate in Phased Retirement as described below. The chief advantages of continued association between the Employer and the Employee, on a reduced participation level include the following:

For the Employer:

- retention of trained and qualified personnel, especially for positions that are difficult to fill, such as Executive Director
- continued benefit from the Employee's accumulated experience and skills
- benefit of the Employee's willingness to serve as a mentor
- assistance with effective succession process
- reduced costs achieved through lower salary and benefits expenses, made possible by employees shifting from full-time to part-time status

For the Employee:

- Allow a gradual phase-in to full retirement
- Provide an opportunity for continued association with the Employer

Phased Retirement Status

Phased Retirement Status shall be provided to the Employee if:

1. The Employee has been employed by the Employer for 15 or more years; and
2. The Employee may enter into a two-year Phased Retirement status as follows:
 - a) Year 1: 75% FTE Employee; and
 - b) Year 2: 50% FTE Employee.
3. For the first year of Phased Retirement, the Employee shall be employed as Executive Director, at 75% FTE and shall perform the duties of the Executive Director as set forth in this Employment Agreement. Additionally, the Employee shall assist the Employer in performing a job search to assist the Employer in selecting a successor for the job of Executive Director.
4. For the second and final year of Phased Retirement, the Employee shall be employed as Director of Special Projects, at 50% FTE and shall perform the following duties:
 - a. Assist the then current Executive Director in learning his or her role and acting as a mentor; and
 - b. Shall perform other assignments as assigned by the then current Executive Director.
5. During each year of Phased Retirement, the Employee shall:

Employment Agreement 2012
Executive Director

Initials _____ / _____

a) Be paid the appropriate pro-rata portion of his total compensation that he was entitled to receive for full-time employment at the time of resignation for each year of Phased Retirement;

b) Be eligible to receive proportionate salary and merit pay increases;

c) Continue to be subject to performance reviews and annual evaluations;

d) Receive full medical insurance, state and Employer-sponsored employee benefit and voluntary retirement programs and all other benefits, allowances and compensation that he was entitled to receive for full-time employment at the time of resignation,

e) Continue to accrue longevity pay, if otherwise applicable; and

f) Receive a pro-rata share of contributions to deferred compensation.

6. Upon successful completion of the first and second years of Phased Retirement, the Employee may, by mutual agreement of the parties, transition to the position of Port Ambassador in accordance with the terms and conditions of the Ambassador Program, attached hereto as **Exhibit "D"**.

a) In the event that the foregoing option is exercised, the parties shall enter into an "Ambassador Agreement" that shall set forth the compensation, reimbursement, insurance and other benefits agreed upon by the parties.

b) As Port Ambassador, the Employee shall no longer be an employee of the Port and shall become an independent contractor.

c) Such appointment shall be irrevocable for a two year period, except in the event that the Employee engages in conduct set forth in Section 7 hereof, at which time the appointment may be terminated as provided therein.

EXHIBIT "C" PERFORMANCE EVALUATION

INDIVIDUAL COMMISSIONER EVALUATION OF EXECUTIVE DIRECTOR

IMPORTANT DUTIES/EXPECTATIONS	PERFORMANCE APPRAISAL		APPRAISER'S COMMENTS
<ul style="list-style-type: none"> ➤ Attach extra papers as necessary ➤ Factors should be reviewed in terms of quality, quantity and timeliness 	Met	Not met	
<p>I. <u>Vision and Purpose</u></p> <p>Collaborates with the Commission to advance the Port's vision and purpose. Leads senior staff to develop a concise vision. Advocates the vision by strategic resource allocation toward attainment.</p>			
<p>II. <u>Strategic Agility</u></p> <p>Is proactive; anticipates future trends, benefits and consequences; has broad knowledge and perspective; can objectively state possibilities and probabilities.</p>			
<p>III. <u>Operating Plans</u></p> <p>A. Develops, maintains and implements strategic plans and operational goals that effectively brings the Port's vision to fruition.</p> <p>B. Critical performance elements are monitored to help assure effective and efficient operations and to identify opportunities for policies and procedures improvement.</p>			
<p>IV. <u>Integrity</u></p> <p>Sets the tone for the Port by exemplifying consistent values and high ethical awareness, honesty and fairness.</p>			

Employment Agreement 2012
Executive Director

Initials _____ / _____

	Met	Not met	
<p>V. <u>Financial Stewardship</u></p> <p>A. Maximizes the Port's ability to serve and expand the public purpose while maintaining taxation stability.</p> <p>B. Administers the Port's financial affairs consistent with state law and adopted policies, budget and financial guidelines.</p>			
<p>VI. <u>Political and Institutional Sensitivity</u></p> <p>A. Maneuvers through complex political and institutional situations effectively; anticipates potentially negative reactions, recommends and plans a course of action accordingly; views politics as a necessary part of organizational and public sector life and works to be effective within that reality. Unless otherwise not practical, obtains commission concurrence prior to publicly stating position.</p> <p>B. Develops solutions to complex issues that challenge the Port's ability to recognize its vision and purpose. Demonstrates sensitivity to resource availability when developing solutions.</p>			
<p>VII. <u>Stakeholder Relations</u></p> <p>A. Leads the Port in building effective relationships with tenants, customers and community.</p> <p>B. Effective relations are maintained with other governmental officials, community leaders, citizens, news media, etc., to resolve problems and complaints; to coordinate functions, to gain and provide information and to assemble outside assistance for Port activities.</p>			

Employment Agreement 2012
Executive Director

Initials _____ / _____

	Met	Not met	
<p>VIII. <u>Priority Setting</u></p> <p>Spends time and the time of others on what is important; can quickly sense what will help or hinder accomplishing a goal; eliminates obstacles; creates focus.</p>			
<p>IX. <u>Knowledge</u></p> <p>A. Knows how successful public ports work; knowledgeable in current and possible future practices, trends and information affecting port management, the port industry and our Port; knows the competition; is aware of how strategies and tactics work in the marketplace.</p> <p>B. Maintains a favorable presence within the region, state and industry that results in an increased knowledge of initiatives, trends, practices and legislation that may affect the Port.</p>			
<p>X. <u>Decision Quality</u></p> <p>Makes good decisions based on analysis, wisdom, experience and judgment; most solutions and suggestions turn out to be correct when judged over time.</p>			
<p>XI. <u>Entrepreneurial</u></p> <p>A. Demonstrates an entrepreneurial spirit by identifying ways to generate revenue, investment capital and maximizes the financial potential of existing port assets.</p> <p>B. Brings recommended opportunities to the Commission's attention. Recommendations include financial projections, as well as potential public opinion concerns (risk/reward analysis).</p>			

Employment Agreement 2012
Executive Director

Initials _____ / _____

	Met	Not met	
<p>XII. <u>Leadership/Management</u></p> <p>A. Rallies support behind the vision and strategic plan; makes the vision sharable by everyone; can inspire and motivate staff and community.</p> <p>B. Creates an environment where employees at all levels contribute their knowledge, skills, abilities and ideas in a way that maximizes their potential. Employee potential is not limited by divisional walls or job title. Appropriately delegates to others. Is a good judge of talent; hires the best people available inside or outside the organization.</p> <p>C. Creates a climate in which people want to do and can do their best; can motivate team or project members; empowers others; invites input and shares ownership and visibility. Makes each person feel his/her work is important.</p> <p>D. Assists the Commission in defining its shared vision. Communicates that direction to the organization. Advises the Commission on challenges and threats to the Port's ability to be successful.</p> <p>E. Effectively manages staff relations consistent with port policies.</p> <p>F. Manages the administration and operations of the Port consistent with the delegation of authority as adopted and/or modified by the Board of Commissioners.</p>			
<p>XIII. <u>Initiative</u></p> <p>Self-starting ability. Promptly takes hold and follows through with minimum direction.</p>			

Employment Agreement 2012
Executive Director

Initials_____ / _____

	Met	Not met	
<p>XIV. <u>Courage</u></p> <p>Willingness to state opinions and reasons without concern about the popularity of the views. Forthrightness in dealing with customers, suppliers, and others in the organization.</p>			
<p>XV. <u>Persuasiveness</u></p> <p>Ability to sell a sound course of action. Persuasive ability in oral and written presentations.</p>			
<p>XVI. <u>Adaptability</u></p> <p>Ability to adjust to changing conditions or unusual assignments. Flexibility in undertaking a variety of assignments, acceptance of decisions which go counter to own opinion.</p>			
<p>XVII. <u>Stamina</u></p> <p>Physical vigor. Ability to stand up under heavy requirements including foreign or domestic travel.</p>			
<p>XVIII. <u>Ambition</u></p> <p>Desire to get ahead and willingness to make sacrifices necessary for progress.</p>			
<p>XIX. <u>Loyalty</u></p> <p>Understanding and acceptance of goals and policies of the organization. Willingness to support organization and management.</p>			
<p>XX. <u>Communications</u></p> <p>Intent and effectiveness in exchanging significant information to all levels in the organization, to clients, vendors, and the public.</p>			

Employment Agreement 2012
Executive Director

Initials_____ / _____

	Met	Not met	
XXI. <u>Listening</u> Interest and ability to receive and process information accurately. Able to overcome personal biases or defensiveness in so doing.			

Commissioner Comments:

EXHIBIT "D"

Resolution 2011-34

PORT OF KENNEWICK

COMMUNITY AMBASSADOR POLICY

General

The Port of Kennewick recognizes and encourages the ongoing support from the greater-Kennewick community. Certain community members have demonstrated particular efforts on behalf of the Port. It is the purpose of this policy to recognize as a Community Ambassador ("Ambassador") certain of those residents who have provided services in the past and will provide future volunteer services to the Port. Appointment as a Port Ambassador is in recognition of the benefits to the Port from a continuing relationship with active, distinguished persons who assist the Port as a volunteer with community, trade and/or economic development activities.

Eligibility and Appointment

Any resident of the Port, upon recommendation or nomination from a minimum of three (3) Port electors, may be considered by the Commission for volunteer recognition and appointment as an Ambassador under this Policy. For purposes of this policy, each elector must be from a different household. An Ambassador appointment shall be limited to a former Port Commissioner who has served the Port in good standing for ten (10) or more years; or a Port staff member who has served the Port in good standing for fifteen (15) or more years.

Following Commission consideration of the appointment of an Ambassador, there shall be official recognition by a Port of Kennewick Community Ambassador Appointment and Recognition of Volunteer Service ("Appointment"), substantially in the form attached to this Policy. The Appointment shall implement the terms of this Policy. Service as an Ambassador is strictly a volunteer activity and based on the donated service of the Ambassador. An Ambassador appointment may be terminated at any time by the Port or an Ambassador.

Employment Agreement 2012
Executive Director

Initials _____ / _____

Ambassador Service to the Port

An Ambassador from the Port of Kennewick is to identify the Port relationship in any activity that pertains to service on behalf of the Port or use of Port resources. An Ambassador may be available for service and for participation in activities as set forth below. The Ambassador will adhere to the highest civic and ethical standards required of a public officer in the State of Washington, including compliance with Port policies and the avoidance of conflicts of interest. The Ambassador understands that there is no compensation or other related benefits (e.g., retirement, vacation and holidays) related to an Appointment. An Ambassador does not have authority to enter into commitments for the Port or to otherwise bind the Port, or to make public comments which are not expressive of the majority viewpoint of the Port Commission, except as specifically authorized by the Executive Director.

Recognition And Privileges

An Ambassador may be recognized through eligibility:

- for official retirement ceremony and dinner, provided by the Port either before or after Ambassador service;
- for listing in all official Port publications;
- for issuance of printed business cards which designate Ambassador status;
- to participate with the Port planning director in the formulation of the draft annual Port work plan;
- for invited participation in all appropriate Port functions and celebrations;
- to receive Port mailings normally provided to commissioners and staff;
- to attend the annual Spring Port conference, or to attend the annual staff retreat;
- to be recognized at all Port groundbreaking and ribbon-cutting ceremonies;
- to make presentations to service organizations, civic and other groups;
- to receive reimbursement for reasonable and actual expenses incurred in the performance of Port-related activities, upon approval by the Port Executive Director and on terms set forth by the Port auditor and in full compliance with Port policies;

In the case of a retired Port commissioner who attains Ambassador status, additional recognition including (with approval of the Port Commission president):

- to serve as Port representative on one local board or committee, where membership is not conditioned on the attendee being a current elected official;
- to serve as chair of the Port's citizens advisory committee (during periods such committee is maintained);
- to attend weekly internal staff meetings;
- to receive a briefing from Port executive and Port auditor on a semi-annual basis;
- to write an annual article in the Port newsletter (with final approval of the article by the Port president); and
- to serve as a Port liaison to the city councils of Kennewick, Richland, West Richland and Benton City.

Employment Agreement 2012
Executive Director

Initials _____ / _____

Reimbursed Expenses and Stipend for Ambassador Service

An Ambassador shall be entitled to reimbursement for expenses incurred in volunteer service to the Port, consistent with this Policy. An Ambassador may also be granted a stipend as set forth in an Appointment. A stipend may include, but is not limited to Port payment of continuation coverage for health insurance premiums following a period of service as a Port officer or employee. In no event shall any stipend exceed reimbursement for expenses, reasonable benefits or a nominal fee.

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is entered into on this date by and between the PORT OF KENNEWICK, a Washington municipal corporation, by its Board of Commissioners (the "Employer", the "Port" or "Board"), and TAMMY FINE (the "Employee" or "Director of Finance/Auditor"), collectively referred to as the "Parties".

1. **Employment.** Employer hereby employs Employee and Employee hereby accepts employment as Director of Finance/Auditor of the Port of Kennewick upon the terms and conditions set forth herein.

2. **Effective Date.** This Agreement shall be effective April 24, 2012.

3. **Duties.** The Employee is employed as Director of Finance/Auditor of the Port of Kennewick under the direction of the Board of Commissioners and the Executive Director. As Director of Finance/Auditor of the Port, Employee shall be responsible for and perform all acts and duties incident thereto, including, but not limited to the following:

3.1 The Employee shall serve as the chief financial officer and the auditor of the Port of Kennewick; and

3.2 The Employee shall perform for the Board and the Executive Director all duties and responsibilities of a director of finance/auditor of a public port generally imposed by or implied from the laws of the State of Washington, including, but not limited to, Chapter 53 of the Revised Code of Washington, the written policies, rules and regulations of the Board, the applicable portions of the Washington Administrative Code, and other customs and practices which may be applicable to public ports; and

3.3 Employee shall perform all duties and responsibilities of the Director of Finance/Auditor of the Port as set forth in the job description for the position as now or hereafter adopted by the Executive Director or Commission; and

3.4 The Employee shall perform such other duties and responsibilities as may from time to time be assigned or delegated to the Employee by the Executive Director or the Board; and

3.5 Employee's employment is full-time exempt service, and Employee shall devote full attention and best efforts to performing the duties of the Director of Finance/Auditor.

3.5.1 The Parties acknowledge that providing the services of the Director of Finance/Auditor, as needed by the Employer, is of primary importance and that the actual amount of time spent by Employee to provide such services is not limited to the hours or days upon which the business office of the

**SIGN
HERE**

Employment Agreement 2012
Director of Finance/Auditor

Initials _____ / _____

Port is open for business and may include participation in or presence at Port and community activities and matters relating to the best interests of the Port beyond the normal business day, including emergency situations. In like manner, less than a normal eight (8) hour day may, at times, be sufficient. The Director of Finance/Auditor shall organize her time and perform her duties in light of this subparagraph.

3.5.2 The Employee may undertake other personal consulting or private business activities so long as they do not detract from or conflict with her responsibilities to the Port. Prior to engaging in any such activities, the Employee shall receive the consent of the Employer, which shall be liberally granted.

4. **Compensation and Benefits.** The Employee will receive the following salary and benefits:

4.1 A base annual salary of the Employee shall be \$90,000 for the 2011 calendar year, which base amount shall be subject to annual adjustment at the discretion of the Executive Director, based on the Employee's performance as set forth in Paragraph 5 hereof.

4.2 The Employee may, at the sole discretion of the Employer, be considered for merit pay for accomplishments that provide a substantial benefit to the Employer, beyond normal day-to-day operational matters.

4.2.1 The annual salary shall be paid in equal monthly installments in accordance with the rules of the Board governing payment to other employees of the Port.

4.3 The same medical, dental, life insurances, PTO and all other benefits provided to employees of the Port with premiums paid at the same rate as such employees.

4.4 Paid holidays recognized by the State of Washington and the Board.

4.4 The Port shall pay for Employee's professional licenses and for costs related to attending professional education courses, trainings and conferences that benefit the Port including, but not limited to, continued education through Western CPE, Washington State Society of CPA, and the American Institute of Public Accountants.

4.5 Longevity compensation as set forth in the "Longevity Compensation Agreement," **Exhibit "A"** to this agreement.

5. **Evaluation.** The Executive Director, with input from the Commission, shall provide Employee with a written performance review no later than November 15th of each year.

Employment Agreement 2012
Director of Finance/Auditor

Initials _____ / _____

6. **Employer Responsibility.** To the maximum extent permitted by law, Employer shall defend, indemnify, and hold Employee harmless from and against any and all claims, demands, suits, action or proceedings of any kind of nature arising out of the performance by Employee of the Employee's duties and responsibilities as Director of Finance/Auditor of the Employer.

7. **Termination.** The purpose of this Section is to provide a prompt and equitable procedure for all disciplinary action, which may include reprimand, suspension and termination actions. Notwithstanding any other provision of this Agreement, disciplinary action of whatever nature shall not be arbitrary, unreasonable or retaliatory.

7.1 The burden of proof shall be on the Employer to demonstrate a clear basis for any disciplinary action.

7.2 No Employee activity or action outside the defined scope of employment shall provide a basis for disciplinary action.

7.3 Disciplinary action shall be fully documented in writing and shall follow the policy of progressive discipline, pursuant to the port Policy and Procedures Manual.

During the period of this Employment Agreement, the Port shall have the right to terminate the Employee only as follows:

7.4 **For Cause.** Termination of the Director of Finance/Auditor's employment for cause shall become effective fourteen (14) days after a written notice of intent to terminate is received by the Director of Finance/Auditor, which notice shall specify the reason or reasons for termination. Employer may, at the time of giving such notice, suspend or direct the Director of Finance/Auditor to immediately cease performing all or any part of the Director of Finance/Auditor's duties. Such suspension shall be with pay pending final resolution of any termination for cause. Cause shall be defined as and strictly limited to:

7.4.1 The continued or repeated intentional failure of the Director of Finance/Auditor to substantially perform her duties and obligations to the Port, which failure continues after written notice to the Director of Finance/Auditor; or

7.4.2 Theft, fraud, harassment, dishonesty toward or involving the Port (other than the failure resulting from illness, sickness or physical or mental incapacity)

7.4.3 Conviction of any crime, misdemeanor or felony.

7.4.4 A finding or decision of any court or government agency of a willful and intentional violation of any court order or order or directive of a governmental agency relating to the Director of Finance/Auditor's duties

Employment Agreement 2012
Director of Finance/Auditor

Initials _____ / _____

or responsibilities as the Port's Director of Finance/Auditor, or when such violation is contrary to any directive by the Port Commission or no reasonable basis can be inferred from which the Director of Finance/Auditor believed he was directed or authorized by the Board of Commissioners to perform such acts constituting the violation.

7.5 Performance-Based Cause. The Employer shall have the right to terminate Employee's employment if the Employee's performance, as measured in annual performance evaluations, consistently fails to meet the fundamental evaluation criteria as established in the written performance evaluation form attached hereto as **Exhibit "B."**

7.5.1 Termination of the Director of Finance/Auditor's employment for Performance-Based Cause shall be effective fourteen (14) days after receipt by the Director of Finance/Auditor of written notice of termination stating that such termination is for Performance-Based Cause.

7.5.2 Employer may, at the time of giving such notice, suspend or direct the Director of Finance/Auditor to immediately cease performing all or any part of the Director of Finance/Auditor's duties.

8. **Severance Pay.**

8.1 If Employer terminates Employee for cause as defined above there shall be no severance pay. Employee shall receive all other earned or accrued benefits through the effective date of termination.

8.2 If Employer terminates Employee for performance based cause as defined above, Employer shall make a severance payment computed as follows:

8.2.1 Pay Employee her salary in a lump sum amount equal to nine (9) month's salary following the date of termination, together with any earned benefits at time of termination; and

8.2.2 Reimburse Employee for the cost of acquiring health benefits for Employee and her family through COBRA for a period of one (1) year from the date of termination unless Employee becomes employed during said one-year period and receives comparable insurances benefits.

8.3 The payment of severance pay is subject to applicable law.

9. **Corrective Action.** Prior to the imposition of disciplinary action, the Employee shall have the opportunity to undertake corrective action, which shall be reasonable under the circumstances, and which may include, but is not limited to, monetary restitution, compliance with a commitment not to repeat any misconduct or to correct the matters set forth in the notice

Employment Agreement 2012
Director of Finance/Auditor

Initials _____ / _____

of discipline. The Employer shall designate a reasonable time period for compliance with the terms of the corrective action. Any subsequent failure to perform the required act or otherwise comply with the corrective action shall immediately subject the Employee to the implementation of the underlying discipline without additional opportunity for corrective action.

10. **Attorneys' Fees and Costs.** In the event it is necessary for either Party to utilize the services of an attorney to enforce any of the terms of this Agreement, the Party which shall substantially prevail shall be entitled to compensation for its reasonable attorneys' fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing Party shall be entitled, in addition to other relief, to such reasonable attorneys' fees and costs as determined by the court.

11. **Dispute Resolution.** In the event of any claims or disputes arising out of this agreement, including whether any termination is properly for cause, or whether any performance review was accurate, the parties hereby agree to submit the same to binding arbitration pursuant to RCW Chapter 7.04A, as supplemented herein, at a location to be mutually agreed upon in Benton County, Washington. In the event the parties are unable to promptly agree upon an arbitrator, the same shall be selected by the presiding judge for the Benton County Superior Court at the request of either party, after seven (7) days written notice to all other effected parties. The mandatory arbitration rules (MAR) as implemented in Benton County Superior Court, shall be binding as to procedure. The substantially prevailing party in any such dispute shall be entitled to recover a reasonable attorney fee. The foregoing notwithstanding, the parties agree that mediation should precede arbitration, and, if the arbitrator selected believes that good faith mediation has not occurred, the arbitrator, in the arbitrator's sole discretion can adjourn the arbitrator proceedings until such time as mediation has been contemplated. Cost of mediation may be assessed by the arbitrator. If any claim or dispute arises related to whether any disciplinary action is proper, the Employee may waive dispute resolution and file a claim in a court of competent jurisdiction.

A finding to support discipline must be based only on the evidence presented at the arbitration hearing. If the arbitrator does not find that the disciplinary action was based on proper cause, the discipline imposed shall be annulled and, if appropriate, damages may be awarded to the Employee. If the arbitrator concludes that proper cause for a disciplinary action has been established but that a different penalty than that proposed would be more appropriate, the arbitrator shall determine a different penalty, which may be more or less severe, with supporting reasons. The decision of the arbitrator shall be binding upon the parties, provided that either party may appeal to an appropriate court of law.

12. **Resignation.** If Employee resigns her employment other than for Good Reason (as defined below), the Employer shall have no liability to Employee except to pay Employee's base compensation and any accrued benefits through her last day worked, and Employee shall not be entitled to receive severance or other benefits. If Employee resigns her employment for Good Reason, he shall be entitled to receive all accrued but unpaid salary and benefits through the date of termination plus severance (as defined above). Resignation for "Good Reason" shall mean a resignation based upon a material diminution of base salary; a material diminution in the

Employment Agreement 2012
Director of Finance/Auditor

Initials _____ / _____

Employee's authority, duties or responsibilities; an elimination of the Employee's position; a requirement that the Employee report to an officer or employee instead of directly to the board of commissioners; a material diminution in the budget over which the Employee retains authority; a material change in geographic location at which the employee must perform her services; or any other action or inaction which constitutes a material breach of the terms of this Agreement. The Employee must provide notice to the Employer of the occurrence of "Good Reason" for resignation within 90 days of the initial existence of such reason, and the Employer must be given 30 days to remedy the situation.

13. **Succession**. The conditions, covenants and agreements of this Agreement shall be binding upon the heirs, legal representatives, successors and assigns of all Parties hereto.

14. **Conflict**. This Agreement is intended to operate as a supplement to the provisions of the Employer's Personnel Manual. However, if there is an irreconcilable conflict between any of the provisions of this Employment Agreement and Employer's policies as adopted by the Board, then the provisions of this Agreement shall prevail.

15. **Severability**. In the event of any of the provisions of the Agreement should violate any law, regulation or regulatory order, consent directive or similar restrictions or agreement, such provision shall be deemed void and of no effect. In such case, the remainder of the provisions of this Agreement shall not be affected. Each term or provision of this Agreement shall be valid and enforceable only to the fullest extent permitted by law. In the event a provision of this Agreement is void and of no effect, as set out herein, neither Party shall have any rights against the other as a result of such determination.

16. **Entire Agreement.** This Agreement contains the entire agreement of the Parties hereto, and except for any agreements stated in writing to survive the execution and delivery of this contract, supersedes all of their previous understandings and agreements written and oral, with respect to the Employer's employment of Employee.

DATED this 24th day of April, 2012.

EMPLOYER:

EMPLOYEE:

PORT OF KENNEWICK
A Washington Municipal Corporation

By: _____
Skip Novakovich , President

By: _____
Tammy Fine

By: _____
Vice President (Currently Vacant)

By: _____
Gene Wagner, Secretary

EXHIBIT "A" TO EMPLOYMENT AGREEMENT

LONGEVITY COMPENSATION AGREEMENT

A. **Investment of Longevity Compensation.** The Employer shall deposit \$4,250 (subject to adjustment beginning January 1, 2012 as set forth below) each calendar year for five consecutive years commencing January 1, 2012; and thereafter on the first business day of each thereafter through January 2016, into an approved interest bearing tax exempt trust account for the benefit of the Employee to be accounted for in an individual manner. Said yearly Longevity Compensation investments, plus the earning on those investments while in an approved trust account, shall constitute the entirety of the "Longevity Compensation" under this Agreement. Each annual contribution, commencing with the contribution of January 1, 2013, shall be increased by 3% annually. The Longevity Compensation shall be deposited into a fund of Employer's choice, as permitted by law, or as a salary payout, when earned, as permitted by law. Investment management decisions for the funds deposited into the trust are directed by the trustee or Employer. Employee can express their opinion on investments, but cannot direct the investment. The Employer will receive all statements and deal directly with investment broker or financial institution.

B. **Vesting, Election, and Distribution on Service Date.** Provided that the Employee remains employed by the Employer until December 31, 2016 (hereinafter the "Service Date") all of the Longevity Compensation shall thereupon become fully vested to the Employee and shall be paid to the Employee on or before the 90th day immediately following separation from service at the discretion of the Employer in a single lump sum adjusted for required tax payments under Section E herein, if such be due at that time. Both Employee and Employer elect to defer current and all subsequent years compensation stated in section "A" above until the distribution date which is defined within this agreement.

Distribution of the Longevity Compensation cannot be distributed any earlier than the above stated date; however, IRS allows exceptions for the Longevity Compensation distribution. Distributed of the following events cannot be any earlier than on or before the 90th day immediately following the triggering event for the following allowable IRS exceptions:

1. The date the employee becomes disabled;
2. The employees death;
3. To the extent allowed by the IRS if a change in the ownership or effective control of the organization;
4. When an unforeseeable emergency occurs. An unforeseeable emergency is a severe financial hardship to the employee resulting from an illness or accident of the employee or the employee's spouse, beneficiary, or dependent; loss of employee's property due to casualty; or other similar extraordinary and unforeseeable

Employment Agreement 2012
Director of Finance/Auditor

Initials _____ / _____

circumstances arising from events beyond the employee's control. Unforeseeable emergencies are subject to IRS guidelines and are determined based on the relevant facts and circumstances of each case. The amounts distributed for the emergency must not exceed the amounts reasonably necessary to satisfy the emergency plus amounts to pay taxes reasonably anticipated as a result of the distribution.

Other IRS requirements may apply.

C. Termination of Employment Prior To Service Date. If, prior to the Service Date, the Employee should voluntarily terminate his employment with the Employer, or be terminated by the Employer for cause as defined in the parties Employment Agreement, the entire Longevity Compensation may be forfeited to the Employer, and the Employer shall then have no further obligation under this Agreement. If the Employer terminates the Employee for reasons other than for cause, a ratable portion of the Longevity Compensation shall become immediately vested and shall be distributed to the Employee in a single lump sum as soon as practicable after such termination. The ratable portion due the Employee shall be the full amount invested by the Port at the time of termination of employment from the inception date specified in paragraph A of this Agreement to the month of the Employee's separation of employment plus the inclusion of all account earnings to the date of separation. However, if employee terminates employment on January 1st, he shall not receive the current year annual amount allocation as described in section A above.

D. Death. In the event that the Employee dies while employed by Employer prior to the Service Date of this Agreement, the entirety of the agreed Longevity Compensation amount, plus earnings to date of death, shall become fully vested and shall be paid in a single lump sum either to the estate or to the designated beneficiary of the Employee on or before the 90th day immediately following the Employee's death at the discretion of the Employer in a single lump sum adjusted for required tax payments under Section E herein, if such be due at that time. It is the employee's responsibility to inform the Port of the designated beneficiary and/or estate. If designated beneficiary and/or estate are not named, the Port will retain funds in trust account until notification under Washington State Laws.

E. Taxes. If applicable, the Employer shall withhold income and payroll taxes from the final Longevity Compensation payment to the extent required by State or Federal law at the time of the disbursement. The Employer's and Employee share of FICA or other employment taxes with respect to the Longevity Compensation due shall be paid by the Employer out of the Employer's separate funds, and shall not reduce the amount of Longevity Compensation payable to the Employee under this Agreement.

F. Meaning of Terms. For purposes of this Agreement:

(1) The Employee's employment shall be deemed to have been "terminated" when the Employee ceases to be classified as an active employee under the Employer's normal employment practices, and the Employee does not continue to perform substantial ongoing services for the Employer in the capacity of an independent contractor; or

Employment Agreement 2012
Director of Finance/Auditor

Initials _____ / _____

(2) The Employee shall be deemed to have "voluntarily" terminated employment (as opposed to having been terminated by the Employer) if the Employee resigns, quits, or otherwise terminates employment without the Employer having taken any action to request an end to the Employment Agreement; or

G. Supplement to Normal Compensation. The Longevity Compensation provided under this Agreement shall be considered as an income supplement to the normal salary, wages, or other benefits of the Employee, and this Agreement shall not limit the amount of salary, wages, or other benefits that could or would be paid to the Employee in the absence of this Agreement. Whether the vesting or payment of the Longevity Compensation under this Agreement causes the Employee to accrue or receive additional benefits or contributions under any pension, or other plan, shall be determined solely in accordance with the terms of such other plan.

H. No Employment Contract. Nothing contained in this Agreement shall be deemed to constitute an employment contract between Employee and Employer, or to give the Employee any special right to be retained in the employment of Employer, or to enlarge or diminish the Employer's right to terminate Employee's employment

I. General Assets of the Employer. Prior to the payment of Longevity Compensation to the Employee, the amounts invested by the Employer in the approved trust account, or otherwise set aside, or segregated to satisfy the Employer's obligations under this Agreement, shall remain the sole property of the Employer, and the Employee shall have no claim against the Employer for the funds except as a general creditor under this Agreement. Notwithstanding the foregoing, the Employer's obligation to pay the Longevity Compensation within the scope of this Agreement shall be limited to the total amount of the five (5) yearly principal contributions, plus any earnings on those investments, and the Employer shall not be liable for any losses or shrinkage in the value of the Longevity Compensation reserve account resulting from investment losses over the term of the Agreement, should such occur.

J. No transferability. The Employee shall have no right to commute, sell, transfer, pledge, or otherwise convey or encumber the right to receive deferred compensation, other than allowed under Section "D" herein, or to a designated beneficiary upon the death of Employee. The Longevity Compensation shall not be subject to attachment, garnishment or execution, or be transferable in any event until fully earned, or as otherwise required by law.

K. Applicable Law. This agreement shall be governed by and construed in accordance with the laws of the state of Washington.

K. Binding Effect. This Agreement shall be binding on and shall inure to the benefit of any successor of the Employer and to the personal representatives of the Employee.

Employment Agreement 2012
Director of Finance/Auditor

Initials _____ / _____

L. **Entire Agreement.** This Agreement shall constitute the entire Agreement between the parties involved and any understanding or representation relating to the Longevity Compensation package shall not be binding upon either party except to the extent incorporated in this Agreement.

N. **Renewal.** If Employee is employed by the Employer at the termination of this Longevity Agreement, the Employee shall have the option to enter into a new Longevity Agreement for an additional five year term. The terms of the new Longevity Agreement shall be identical to the terms of the current agreement, except that the term shall extend from January 1, 2017 through December 31, 2021; and the initial Employer deposit shall be \$5,000.

EXHIBIT "B" PERFORMANCE EVALUATION

EXECUTIVE DIRECTOR EVALUATION OF DIRECTOR OF FINANCE

IMPORTANT DUTIES/EXPECTATIONS	PERFORMANCE APPRAISAL		APPRAISER'S COMMENTS
<ul style="list-style-type: none"> ➤ Attach extra papers as necessary ➤ Factors should be reviewed in terms of quality, quantity and timeliness 	Met	Not met	
<p>I. <u>Vision and Purpose</u></p> <p>Helps assist the Commission and Executive Director to advance the Port's vision and purpose. Helps leads staff to develop a concise vision. Advocates the vision by strategic resource allocation toward attainment.</p>			
<p>II. <u>Strategic Agility</u></p> <p>Is proactive; anticipates future trends, benefits and consequences; has broad knowledge and perspective; can objectively state possibilities and probabilities.</p>			
<p>III. <u>Operating Plans</u></p> <p>A. Helps develops, maintains and implements strategic and financial plans that effectively brings the Port's vision to fruition.</p> <p>B. Critical performance elements are monitored to help assure effective and efficient operations and to identify opportunities for policies and procedures improvement.</p>			
<p>IV. <u>Integrity</u></p> <p>Helps the Commissioners and Executive Director set the tone for the Port by exemplifying consistent values and high ethical awareness, honesty and fairness.</p>			

Employment Agreement 2012
Director of Finance/Auditor

Initials _____ / _____

	Met	Not met	
<p>V. <u>Financial Stewardship</u></p> <p>A. Helps maximizes the Port's ability to serve and expand the public purpose while maintaining taxation stability.</p> <p>B. Helps administers the Port's financial affairs consistent with state law and adopted policies, budget and financial guidelines.</p>			
<p>VI. <u>Priority Setting</u></p> <p>Spends time and the time of others on what is important; can quickly sense what will help or hinder accomplishing a goal; eliminates obstacles; creates focus.</p>			
<p>VII. <u>Knowledge</u></p> <p>A. Knows how successful public ports work financially; knowledgeable in current and possible future financial/accounting/auditing practices, trends and information affecting port management, the port industry and our Port.</p> <p>B. Maintains a favorable presence within the region, state and industry that results in an increased knowledge of financial/accounting/auditing initiatives, trends, practices and legislation that may affect the Port.</p>			
<p>VIII. <u>Decision Quality</u></p> <p>Makes good decisions based on analysis, wisdom, experience and judgment; most solutions and suggestions turn out to be correct when judged over time.</p>			

	Met	Not met	
<p>IX. <u>Entrepreneurial</u></p> <p>A. Demonstrates an entrepreneurial spirit by identifying ways to generate revenue, investment capital and maximizes the financial potential of existing port assets.</p> <p>B. Brings recommended opportunities to the Commission's and Executive Director's attention. Recommendations include financial projections, policies and procedures, auditing issues and other financial and accounting opportunities.</p>			
<p>X. <u>Leadership/Management</u></p> <p>A. Rallies support behind the vision and strategic plan; makes the vision sharable by everyone; helps to inspire and motivate staff.</p> <p>B. Creates an environment where employees at all levels contribute their knowledge, skills, abilities and ideas in a way that maximizes their potential. Employee potential is not limited by divisional walls or job title. Appropriately delegates to others.</p> <p>C. Creates a climate in which people want to do and can do their best; can motivate team or project members; empowers others; invites input and shares ownership and visibility. Makes each person feel his/her work is important.</p> <p>D. Assists the Commission in defining its shared vision. Communicates that direction to the organization. Advises the Commission on challenges and threats to the Port's ability to be successful from a financial, accounting and auditing perspective.</p>			

Employment Agreement 2012
Director of Finance/Auditor

Initials _____ / _____

	Met	Not met	
XI. <u>Initiative</u> Self-starting ability. Promptly takes hold and follows through with minimum direction.			
XII. <u>Courage</u> Willingness to state opinions and reasons without concern about the popularity of the views. Forthrightness in dealing with customers, suppliers, and others in the organization.			
XIII. <u>Persuasiveness</u> Ability to sell a sound course of action. Persuasive ability in oral and written presentations.			
XIV. <u>Adaptability</u> Ability to adjust to changing conditions or unusual assignments. Flexibility in undertaking a variety of assignments, acceptance of decisions which go counter to own opinion.			
XV. <u>Stamina</u> Physical vigor. Ability to stand up under heavy requirements including foreign or domestic travel.			
XVI. <u>Ambition</u> Desire to get ahead and willingness to make sacrifices necessary for progress.			
XVII. <u>Loyalty</u> Understanding and acceptance of goals and policies of the organization. Willingness to support organization and management.			

Employment Agreement 2012
Director of Finance/Auditor

Initials _____ / _____

	Met	Not met	
XVIII. <u>Communications</u> Intent and effectiveness in exchanging significant information to all levels in the organization, to clients, vendors, and the public.			
XIX. <u>Listening</u> Interest and ability to receive and process information accurately. Able to overcome personal biases or defensiveness in so doing.			

Commissioner Comments:

PORT OF KENNEWICK

Resolution No. 2012-18

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK APPROVING A LEASE AGREEMENT WITH DEREK ALEXANDER FARMS, INC.

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

WHEREAS, a three (3) year farm lease with Derek Alexander Farms, Inc. effective January 1, 2012, for farming operations and water right perfection for Port-owned premises formerly known as Raceway Property, has been negotiated by Port staff; and

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

WHEREAS, Port staff and the Port attorney have reviewed the proposed Lease Agreement and find it is in proper form and is in the Port's best interest.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of Commissioners of the Port of Kennewick hereby approves a new three (3) year lease with Derek Alexander Farms, Inc. as presented and authorizes the Port's Executive Director to execute all documents and agreements on behalf of the Port to complete the transaction as specified above.

ADOPTED by the Board of Commissioners of the Port of Kennewick on the 24th day of April, 2012.

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

SKIP NOVAKOVICH, President

Position Currently Vacant
Vice President

GENE WAGNER, Secretary

PORT OF KENNEWICK

Resolution No. 2012-19

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK APPROVING A LEASE AGREEMENT WITH ONE WORLD TELECOMMUNICATIONS.

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

WHEREAS, a new three (3) year lease with One World Telecommunications, Inc. effective January 1, 2012, has been negotiated by Port staff; and

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

WHEREAS, Port staff and the Port attorney have reviewed the proposed Lease Agreement and find it is in proper form and is in the Port's best interest; and

WHEREAS, after consideration of the attached lease agreement, the Port Commission has determined that the lease is proper.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of Commissioners of the Port of Kennewick hereby approves a new three (3) year lease with One World Telecommunications, Inc. as presented and authorizes the Port's Executive Director to execute all documents and agreements on behalf of the Port to complete the transaction as specified above.

ADOPTED by the Board of Commissioners of the Port of Kennewick on the 24th day of April, 2012.

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

SKIP NOVAKOVICH, President

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