



PORT OF KENNEWICK REGULAR COMMISSION MEETING

SEPTEMBER 24, 2019 MINUTES

Commission President Thomas Moak called the Regular Commission Meeting to order at 2:01 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: Thomas Moak, President
Don Barnes, Vice-President
Skip Novakovich, Secretary

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

PLEDGE OF ALLEGIANCE

Commissioner Barnes led the Pledge of Allegiance.

APPROVAL OF THE AGENDA

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

PUBLIC COMMENT

No comments were made.

CONSENT AGENDA

- A. Approval of Direct Deposit and E-Payments Dated September 17, 2019***
Direct Deposit and E-Payments totaling \$57,359.66
- B. Approval of Warrant Register Dated September 24, 2019***
Expense Fund Voucher Number 101428 through 101462 for a grand total of \$165,314.24
- C. Approval of Special Commission Business Meeting Minutes September 10, 2019***

MOTION: Commissioner Novakovich moved for approval of the Consent Agenda as presented; Commissioner Barnes seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

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PRESENTATIONS

A. Vista Field Element Naming, Rusty George, Senen Antonio & Rochelle Olsen

Ms. Bader Inglima introduced the consultant team for the Vista Field Element Naming: Senen Antonio via teleconference, of DPZ Partners, Rochelle Olsen of Prominence Public Relations, and Rusty George and Kitura George of Rusty George Creative. Ms. Bader Inglima expressed her appreciation to the Commission for giving the team time to be thoughtful and strategic in coming up with names, which reflect the Vista Field brand and supported the Master Plan. The Commission identified Cross Wind Boulevard as a major arterial and asked staff to consider that the naming theme set should focus on air or wind. Rusty George Creative collaborated with DPZ Partners to name the elements: the park, streets, and plaza. There were a number of constraints on the process, in that the names had to make sense for the theme and region, be cohesive, and have a positive connotation. Ms. Bader Inglima stated in spite of the constraints, the team did a great job and she is very pleased with the names.

Rusty George thanked the team for their patience and tenacity to go through this process. The names that will be presented are the consensus of the team. The team focused on atmospheric elements and colors and were inspired by the Vista Field logo. The names are not obvious, but there is a subtle appreciation to the energy and vibrancy that the logo promotes.

Inspired by Nature & Elements

- Vista Field Boulevard;
- Vista Field Place;
- Crosswind Boulevard (wind direction);
- Azure Drive (cloudless blue sky);
- Orion Drive (prominent constellation);
- Constellation Way (a group of stars);
- Daybreak Commons (sunrise; first light);
- Helio Plaza (relating to the Sun).

Mr. Antonio stated the team felt the brand mark was strong and unique and that attitude and thinking outside the box guided the naming exercise. The team challenged themselves to be progressive in developing the brand mark and extended that to the naming exercise. The team came up with a cohesive brand, not only visually, but verbally, which represents a unified and integrated brand for Vista Field.

Ms. Bader Inglima stated Vista Field Boulevard is one of the main roads and reinforces the brand mark from a marketing perspective.

Mr. Antonio stated the brand mark represents a young and fresh, optimistic attitude and the team matched the names that were equally optimistic and unique. The team looked at spelling, wayfinding, and if the names related well with existing street names. The addresses should carry a special meaning for place making and DPZ suggested for further exploration, if the name Vista Field could be included on the street addresses as a distinguisher, for example, the Miami Design District.

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Mr. George believes the names have staying power and will be timeless.

Commissioner Moak asked Mr. Antonio if adding Vista Field as a distinguisher is done through the postal service or City or is it just a common expression and therefore optional.

Mr. Antonio stated he is not sure of the process, but offered to research the topic and report back at a later date.

Ms. Bader Inglima stated staff has been working closely with City staff; however, Port staff wanted direction from the Commission on the elements before moving forward with the City. Mr. Peterson has been working with Miles Thomas, City of Kennewick Economic Development Manager and GIS staff, who will present a Resolution to Kennewick City Council to adopt and approve the Vista Field street names. Ms. Bader Inglima stated adding Vista Field District is part of that process, whether it is a second line in the postal address or putting a boarder around the Vista Field district to control use of the names. Ms. Bader Inglima stated staff could explore the Vista Field District name with the City if the Commission is interested in adding the distinguisher.

Commissioner Moak called for public comment regarding the presented names or concepts for Vista Field.

PUBLIC COMMENT

Boyce Burdick, 414 Snyder Street, Richland. Mr. Burdick asked if staff could review the names for the “scissors” area.

No further comments were made.

Ms. Bader Inglima explained the names and locations and the City GPS staff has been very open to our suggestions and sees this as an opportunity to fix some other naming issues.

Commissioner Novakovich likes the names and believes they will be recognizable to Vista Field and thanked the team for tying the elements together.

Commissioner Barnes is also pleased with the proposed names for Vista Field and how they tie into logo. Commissioner Barnes appreciates the subtle acknowledgement to the aviation history without being overly focused on aviation. Commissioner Barnes inquired if the City has approved Crosswind Boulevard

Ms. Bader Inglima stated staff will present the names to the City as a package.

Commissioner Barnes likes Crosswind Boulevard and hopes the City approves of the proposed changes. Commissioner Barnes thanked the team for their work and believes it will serve the community well going forward.

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Commissioner Moak stated when the team presented the names, he was very taken by them and believes they are unique and memorable and will have a positive meaning outside of Vista Field. Commissioner Moak resisted using "Field," however, he has come around to using Field and thinks the names resonate and tie nicely to Vista Field. Commissioner Moak is appreciative of what the team has come up with and likes the idea of using Vista Field District. Commissioner Moak understands that the Port is obligated by the City to continue some streets, such as Taft or Lincoln, and he would like to see Vista Field District added to those within the development. Commissioner Moak hopes the names are met positively by the City and inquired if the streets are public and private.

Mr. Peterson stated yes, Vista Field Boulevard, and Crosswind Boulevard will be City streets; however, several streets are private, which offers the Port flexibility in naming.

Mr. George stated this was an exciting project and wished the Port luck on the Vista Field development.

Mr. Antonio is very grateful for the continued opportunity and trust, on behalf of Lizz Plater-Zyberk and design team, that the Port continues to go down this route of real place making. DPZ could not be more pleased with the way Vista Field is heading and cannot wait to see people living, working, and enjoying Vista Field as a real place.

Commissioner Moak thanked the team for their efforts.

Ms. Bader Inglima inquired if the Commission approves the names.

It is the consensus of the Commission for staff to move forward with the presented names to the City of Kennewick for approval and adoption.

NEW BUSINESS

A. Approval to Sell & Convey Surplus Property

Mr. Kooiker stated for Commission consideration is Resolution 2019-21, which authorizes staff to surplus items that are obsolete, broken and/or no longer needed for Port purposes.

MOTION: *Commissioner Novakovich moved for approval of Resolution 2019-21, authorizing the Port's CEO to surplus Port property no longer needed for Port purposes as attached in "Exhibit A" and further ratifies and approves all action by port officers and employees in furtherance hereof; Commissioner Barnes seconded.*

PUBLIC COMMENT

No comments were made

With no further discussion, motion carried unanimously. All in favor 3:0.

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OLD BUSINESS

A. Southridge Real Estate Auction Services Update

Ms. Hanchette stated Musser Brothers (Bros.) Auctions will be auctioning the Southridge property on November 15, 2019 at 11:00 a.m. at Musser Auctions in Pasco. Ms. Hanchette stated Musser Bros. is moving forward on an aggressive marketing plan and advertising in the *Tri-City Journal of Business*, direct mailings and their website. Ms. Hanchette proposed a Special Commission Meeting on November 15, 2019 at the auction site to approve bids at the time of the auction. Ms. Hanchette stated Kennewick Irrigation District (KID) did something similar when auctioning the land on Red Mountain. The KID Commission convened into executive session to discuss the price and then reconvened the meeting and the prices increased and then they made a decision. Ms. Hanchette inquired if the Commission could check their calendars to see if they are available on November 15, 2019. If the Commission is free on November 15, Ms. Hanchette will solidify date with Mr. Musser.

Commissioner Moak inquired if there were any legal impediments to taking action outside the Port jurisdiction.

Ms. Luke stated there are no impediments and RCW does not prohibit it.

Commissioner Moak inquired if Ms. Hanchette knew how the procedure would work.

Ms. Hanchette will work with Mr. Musser and Ms. Scott on the details and stated the Special Commission Meeting would be the only item on the agenda.

Commissioner Moak inquired if the auction would be in conjunction with another property.

Ms. Hanchette is not sure if there will be another property up for auction at the same time; however, they have a very large auction schedule for November 14, 2019.

Ms. Luke stated Musser Bros. does have a room available for executive session to discuss price.

Commissioner Moak asked the Commissioners to email Ms. Scott regarding their availability on November 15, 2019.

B. West Richland Purchase & Sale Agreement

Ms. Luke stated before the Commission is an updated version of the Purchase Sale Agreement (PSA) related to the proposal from West Richland. The packet includes the PSA with a redline, a clean version of the PSA, and a deed of trust and promissory note. Ms. Luke recently received additional input from Mayor Brent Gerry regarding additional revisions to the documents and staff has been working through those revisions. Ms. Luke reviewed the terms of the revised PSA (EXHIBIT A).

Ms. Luke asked for Commission direction regarding the PSA and moving forward to finalization and potential approval at the next Commission Meeting.

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Commissioner Novakovich stated page 1, section 6.2 Limitation on Property Use, the Port is leaving in the statement “Refrain from leasing or selling the site or portions thereof for winery uses with an initial stated production goal of less than 10,000 cases annually.”

Ms. Luke stated that is correct, the City has indicated that clause may stay in.

Commissioner Moak stated 6.2 states “It is the intention of the Parties that this restriction will help minimize duplication of efforts” and inquired which restriction it is referring to.

Ms. Luke stated “it is the intention of the parties that this restriction” refers to the restriction described in the following paragraph.

Commissioner Novakovich confirmed that the purpose of 6.2 was to assure that the Port abides with the Memorandum of Understanding (MOU) with the City of Kennewick.

Ms. Luke stated that is correct, the Port has an agreement with City of Kennewick and the proposed language fulfills our obligations with the City of Kennewick.

Commissioner Moak stated it was previously discussed that Mr. Arntzen was going to meet with Marie Mosley, City of Kennewick City Manager regarding the MOU and inquired if the City is satisfied with the language.

Mr. Arntzen stated the City is satisfied with the language.

Commissioner Novakovich stated the Commission received a staff report and requested action requested; however, he confirmed that staff would like to bring the PSA back October 8, 2019.

Ms. Luke stated that is correct, as she received some of the input today and has not had time to thoroughly work through the details and have the Commission’s input approving the details and price. Staff will bring back the final draft on October 8, 2019.

Commissioner Novakovich asked if postponing the decision will affect City of West Richland’s timeline.

Ms. Luke stated the closing that is set forth in the PSA complies with their timeline.

Commissioner Moak stated item 6.3, current leases states the current leases will be assumed by the City and inquired if the tenants are they aware of this pending transaction.

Ms. Luke has not communicated with the current tenants and stated the Port’s lease allows for assignment of lease.

Mr. Arntzen stated this has been a pretty fluid process with a living document and as Ms. Luke pointed out, we would like to move the process as far as we can get. Mr. Arntzen

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invited the City to speak, to ensure that we are all on the same page. Mr. Arntzen asked the Commission to consider approving the terms in the PSA, excluding or including the price today. Staff would like to further the process along to meet the City's deadline and for staff to present a complete package at the October 8, 2019 meeting for Commission approval. Mr. Arntzen stated, with all due respect, he requested that the Commission vote one way or another at the next meeting.

Commissioner Moak invited Mayor Gerry of the City of West Richland to speak.

Mayor Gerry thanked the Commission for the opportunity to speak and stated the offer price is \$1,250,000 which takes into consideration the value of the Port's water rights on the property. The property has approximately 182 acre feet of water rights and the Port's Master Plan for the former raceway identified approximately 18 acre feet to implement the Master Plan. That leaves 164 acre feet remaining at approximately \$6,000 per acre foot, which totals \$984,000 for the Port. When you consider the \$1,250,000 offer and the value of the water rights, the value of the property is now \$2,340,000. Mayor Gerry does not believe the offer of \$1,250,000 is very far off when you consider the water rights. The Port paid \$1,750,000 for the property, which sat vacant for 11 years and degraded to a point where there isn't any consideration to demo in the Master Plan. One of the Port's obligations is to entertain economic development opportunities within communities. Mayor Gerry consented to the Port's partnership with the City of Kennewick and is willing to put that partnership agreement in the PSA that excludes the City of West Richland from doing things. Mayor Gerry's priority is to secure property, build police station and bring economic development to our community through an anchor tenant and bring approximately \$1,000,000 in infrastructure to the site and use that same philosophy that we used at Belmont Business District when we built City Hall. We turned dirt with no utilities into a prosperous economic driver for our City and he intends to do the same thing with the former racetrack. At the closing of the sale, the Port would have approximately \$600,000 of Rural Capital County Funds (RCCF) available in the bank transfer at the Port's disposal. Additionally, the Port would have a total payoff of RCCF funds within 18 months. Lastly, the Port's Master Plan revolves around the I-82 interchange; however, the I-82 interchange is dead. The City has agreed to pay the 2% art fee and up to \$20,000 for attorney fees and staff time, which was not included in original request. Mayor Gerry believes the City is making a personal investment in this endeavor and believes the Commission should give the City the same respect and consideration as a partner in their jurisdiction that they give the City of Kennewick.

Mayor Gerry requested that the Commission hold a Special Meeting on October 1, 2019 to address the sale to assist meeting the City's timeline. Mayor Gerry has given back 95% of the requests of the original document and asked the Commission to respect his sentiment of trust in the Commission to do the right thing.

Jessica Platt, West Richland finance director believes this is a great community partnership between the Port and the City and stated there is a tight timeframe to go out for the bond proceeds. The City is trying the save tax payers money by taking advantage of the great interest rates for borrowing, as opposed to waiting until next year. The City cannot move

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forward until we have secured the property. Once the property is secured, it takes approximately ten weeks to go through the bond process to draft official statements and work with the rating agency review.

Commissioner Moak asked what is the difference between October 1 and 8 in terms of the City's ability to proceed with the bond.

Ms. Platt stated the bond underwriter is looking for the City to bring them the paperwork by the second week in October. The City is proposing a Special Meeting on October 1, 2019 to meet that tight timeframe and move the process along with the bond underwriter and attorney.

Ms. Hanchette stated the City has offered \$1,250,000 for the former raceway, which is approximately 92.61 acres. Ms. Hanchette has been in contact with the appraiser, who is diligently working on the final report and wants to provide a quality product. Ms. Hanchette stated the previous 2016 appraisal assessed the property at \$1,750,000; however, this appraisal will come in in excess of that. Ms. Hanchette stated some factors of the appraisal are that it is a dry land appraisal and does not take the water rights into consideration or factor in removing the racetrack and improvements.

Commissioner Barnes asked how much does it cost the Port to hold the property.

Ms. Hanchette stated approximately \$5,000 per year.

Commissioner Moak stated the estimated value of the water rights is \$6,000 and inquired if that number is accurate.

Ms. Hanchette stated the \$6,000 per acre foot is what staff has been hearing in the real estate community as a typical valuation of water rights.

Commissioner Moak confirmed that the Port is able to sell, redistribute, or convey the excess water rights once this transaction closes.

Ms. Hanchette stated that is correct, staff is working through a report on the net water rights for the former racetrack. Ms. Hanchette stated if the Port has the water rights, then we would convey 18 acre feet with the PSA and retain the balance.

Commissioner Moak stated it is anticipated that the Commission will take action on this proposal and inquired if anybody wishes to comment on the sale of the former Tri-City Raceway.

PUBLIC COMMENT

There were no comments.

Commissioner Novakovich stated the Commission has discussed this at length and as far as the purchase price, it is more than justified if you include the water rights and the fact that

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the race track needs to be demolished. Considering the timeline, Commissioner Novakovich believes it is in the best interest to move ahead with the PSA.

MOTION: Commissioner Novakovich moved for approval of Resolution 2019-22, authorizing the Port's CEO to execute all necessary documentation associated with the land sale of 92.61 acres to the City of West Richland and to take all other action necessary to close this transaction; and further ratifies and approves all action by port officers and employees in furtherance hereof, considering that the draft document the Commission received today with the updated information be the document that is used; Commissioner Moak seconded.

Discussion:

Commissioner Barnes stated again that he cannot support this transaction. Commissioner Barnes is looking through the eyes of the Port of Kennewick and the constituents of the Port of Kennewick and understands how this makes abundant sense to the City of West Richland, with a purchase price is approximately 34 cents per square foot. Nor is the payment in cash, and though a payment would be made promptly, cash would be more prompt. It has been Commissioner Barnes' experience that land held goes up in value over time and we have seen a recent example of that right here at the Port of Kennewick. We saw what happened to five acres off the end of the runway at Vista Field and that was held over a period of time and more than tripled in value. We are talking about a similar holding period here, though not quite the same duration as the example Commissioner Barnes sighted. The point is well taken by the Mayor regarding the Red Mountain Interchange, but the cost to the Port to hold this land, for a Return on Investment (ROI), which is what the Port's Work Plan says, what our Comprehensive Scheme of Harbor Developments says, this is an ROI and to hold and that is why the Port invested in the property. Commissioner Barnes does not think the return is here in this example, it is not here in monetary terms, and he does not think it is here at a sufficient non-monetary term. Commissioner Barnes thinks there would be a way to help the City of West Richland, by providing land for the police station, we are talking about 5 acres of land. Commissioner Barnes thinks we could talk about a transaction that is 5 acres, it could be done quickly and for a fair and reasonable price. Then we could have a cooling period and discuss the other 80 + acres as we go forward. Commissioner Barnes has stated why he does not support this and is looking through the eyes of the constituents of the Port of Kennewick and does not think there is enough here to justify the transaction. Commissioner Barnes cannot support this.

Commissioner Novakovich stated the Port of Kennewick or any port's mission is to promote economic development. At this time the Port of Kennewick has a number of large projects currently that we are undertaking with a small staff and small financial resources. And we do not have the resources to develop this property and West Richland has immediate need and the ability to do so. Commissioner Novakovich stated by selling this property to West Richland, at what he thinks is a reasonable price considering the Port has the right to retain the water rights, will promote economic development, will increase tax dollars in the Port district, and he thinks it is a great economic development partnership with the City. Commissioner Novakovich does not believe the Port needs an appraisal to do this and

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believes the Port can actually transfer the property at no cost to the City of West Richland for economic development purposes. Commissioner Novakovich thinks this is a very good partnership for the Port to undertake and thinks it is very wise and the constituents of the Port of Kennewick will benefit because of the additional tax dollars and the Port does not have to do anything, West Richland will shoulder all of the responsibilities that the Port would have to do at some point in the future.

Commissioner Moak is not sure if he is prepared to vote on this or not today and has questions related to that for staff. Commissioner Moak would like to speak to the substance of this. The Port has held this property, we saw it as a long term purchase 15 years ago, and held it, and did some work with it. The Port was looking at the Interchange as being a key factor in the development of this property, which is not happening. The Mayor has said that and we have heard that from Commissioner Novakovich and his work with the Governmental Conference. The Port said we were going to hold it, but Commissioner Moak sees in another five years, the Port will still be holding it. Commissioner Moak really does not see, to do the plan that we envision, and he believes it was a good plan or the thought behind it, to support Red Mountain. Commissioner Moak has not seen over the last five years, any interest by Red Mountain in working with us on that property, and they are doing their own thing. Commissioner Moak thinks we could hold this another five years and he is not sure that we would be in any better shape to move forward on this and how long do we hold? Holding and doing nothing for twenty years is not promoting economic development and Commissioner Moak is not sure that it is going to do any better in another five years or that it is going to be worth more to us, than the money that we will get in the next eighteen months. Where we have current identifiable needs throughout the district that will benefit the entire district. The City of West Richland wants to do something on the property and they are prepared to move forward on that property where we are not. Commissioner Moak wishes that the Port were working on that plan, but timing has not been right for that and he does not see it being right for us to move forward on that. Commissioner Moak stated if it is a different way of doing economic development on those 93 acres than what we envisioned, is that bad? Only time will tell and Commissioner Moak is prepared to believe that West Richland will do something to benefit not only the City of West Richland, but hopefully benefit others. And Commissioner Moak hopes that we do with the proceeds of this sale, something that will benefit West Richland and others too. Commissioner Moak appreciates some of the language that was put back into the PSA related to the no compete clause and that respects jurisdictional parity and at some point, that after five years, some things can change. Commissioner Moak thinks we are all in competition at some point and you cannot keep from refraining from competition forever. Commissioner Moak does appreciate some of the changes that are here today than what we saw over the weekend. Commissioner Moak would like to see the appraisal since we commissioned it and asked when the appraisal be done.

Ms. Hanchette believes the appraisal will be completed within the next few days. The appraiser has been working on it; however, she is out of town teaching a seminar.

Commissioner Moak stated the City has proposed that the Port have a Special Meeting on October 1, 2019 to make a final decision. Commissioner Moak inquired if the appraisal will

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be ready at that time and is that something we should consider, in order to finish the transaction on October 1, 2019.

Commissioner Novakovich asked if the appraisal comes in at some other number, what affect is that going to have on this transaction.

Commissioner Moak does not know and thinks if we commissioned an appraisal and we spent money on an appraisal, you would like to think that you are going to look at it or we wouldn't have done it in the first place. Commissioner Moak's feels that commissioned the work so we should see it.

Mr. Arntzen stated when the question is asked if we should wait for an appraisal, the obvious answer is yes, if we take the belt and suspender approach. When it is asked that way, on the record, Mr. Arntzen has no other answer but to say yes, you should. Mr. Arntzen thinks Commissioner Novakovich is correct, the Commission could sell the property for \$1.00 if they wanted to, but if the question is, we ordered an appraisal, should we wait for that, again, that begs the answer, yes you should, if that is the level of confirmation you need on the numbers.

Commissioner Novakovich asked if the appraisal comes at something other or higher than the \$1,250,000, what is going to happen to this deal. Is the City of West Richland willing to pay a higher price or does this deal just disappear?

Commissioner Moak stated the Commission has not made a decision on what we would do if it came in at a higher price and he does not believe the City would be making a decision based upon conjecture any more than he would be making a decision based upon conjecture. Commissioner Moak does not know what that number is going to be, if there was an appraisal that was out there, he would want to look at that and ask for the best advice from our staff as to what they think. We have heard from the Mayor, who has given a reason of why \$1,250,000 is a good number. Commissioner Moak would like to hear, once the appraisal has come in, he would like to hear from staff to either confirm or not confirm a direction of where to go on this. Commissioner Moak thinks we have commissioned the appraisal and we have a due diligence to our community to look at it if we paid for it.

Commissioner Novakovich agrees that if we have an appraisal we should probably take a look at it, but he is wondering if the appraisal comes in at higher price, what is that going to do with this. If we go back to the table to negotiate, we are violating their timeline and this number of \$1,250,000 has been discussed for a long time. Commissioner Novakovich is concerned that we may have to go back and negotiate this deal all over again and West Richland is going to lose their opportunity to do what they have to do with the funds they have.

Commissioner Moak thinks there are two votes who say that we are not trying to hinder their ability to go and meet their needs and he does not see that we are. Ms. Hanchette believes

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we should have an appraisal by October 1, and Commissioner Moak does not see a problem with waiting and looking at that.

Commissioner Novakovich stated but then if the appraisal comes in at a higher price than the \$1,250,000, what is this Commission going to do?

Commissioner Moak stated that is what we would decide on October 1, 2019, or whatever the date was, that we were choosing to meet. We would have to make a decision and that would be the three of us making a decision and it would take two votes to move the decision on and that's the way it always works.

Commissioner Novakovich thinks a decision could be made today, are we going to stick with the \$1,250,000 or are we going to stick with the higher number of appraisal.

Commissioner Moak does not know and without seeing that, as Ms. Hanchette indicated, the number is higher, but we don't know how much higher: is it a dimminimus or is it a significant number. Commissioner Moak does not know the number and has said he is in favor of a deal with the City of West Richland and he is.

Commissioner Novakovich thinks it might be fair to ask West Richland right now, if the appraisal came in at a higher number and this Commission would want to look at that appraisal at a higher number, what would West Richland do?

Commissioner Moak stated that is a hypothetical question, and if the mayor wants to answer that, then...

Mayor Gerry thanked the Commission for the motion and second for discussion. The \$1,250,000 offer was considered with what the value of water rights are and he has shared that with you. The Port's value on that property is \$2,200,000. Regardless of what the appraisal comes in at, Mayor Gerry has seen the Port invest \$200,000 in infrastructure to develop two acres of property and sell for \$10,000. Mayor Gerry does not think there is anything different here than what occurred with Benton County Fire District Four or other jurisdictions. Everything that is planned, time factor wise is going to be difficult for the City. If the City has to put this off until mid-October, we missed our deadline. The City has to collect funds in 2020 to build this police station, otherwise everything we promised to the voters is not going to be delivered. Mayor Gerry asked Ms. Hanchette to share what the previous appraised price was and what year it was appraised.

Ms. Hanchette stated the appraised price was \$1,750,000 in August of 2016 and that it was a dry land appraisal only.

Mayor Gerry stated the appraisal was completed in August 2016 and was dry land only. The City intends to bring another \$1,000,000 in infrastructure to the property and the Port would have to do all of that and make that investment themselves if they intended to develop the property. Those costs are going to escalate as time goes on. So the longer you wait, if you

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sit on the property, then you will be investing millions more to get any type of infrastructure in there. Mayor Gerry understands the Commission's discussion and appreciates it, but we have delivered everything we can possibly deliver to what the Commission's requests been. It has been \$1,250,000 through the entire conversation. With that, Mayor Gerry would like to hear the Commission take a vote on that this afternoon, if they could please.

Commissioner Novakovich asked Mayor Gerry if the appraisal comes in higher, which we suspect it will, and this Commission decides to go somewhere over the \$1,250,000, either at the appraised price or somewhere in the middle, what would West Richland's response be.

Mayor Gerry stated his Council has authorized him to offer \$1,250,000 purchase, taking into consideration the expenditures the City would have to put in to the property to make it a viable property. That is not counting the infrastructure the City would need to install: utilities, roads, curb, gutters, and sewer. Basically what the Port has is dry dirt, so the investment the City would need to put into it would be astronomical and anything higher than the \$1,250,000 doesn't get us anywhere.

Commissioner Barnes asked Ms. Hanchette to expand on the dry land term in the appraisal.

Ms. Hanchette stated the appraisal is for dry land only with no water rights, with the race track and improvements removed.

Commissioner Moak asked if the current appraisal will have the same conditions attached to that, as the previous 2016 appraisal.

Ms. Hanchette stated that is her understanding from speaking with the appraiser yesterday, that she would use the same conditions, but different comparables.

Commissioner Moak asked staff if the Commission were to meet on October 1, 2019, would that be a possibility to entertain this item or some other time prior to October 8, 2019 for that purpose.

Mr. Arntzen stated the reason why we are doing this in open session is because of a Supreme Court case from Vancouver, Washington that said all negotiations related to real estate have to be done in open session, except price, which can be addressed in Executive Session. Prior to that case, this would be done behind closed doors and we are following the law by discussing this in open session. With that said, Mr. Arntzen inquired if the Commission agrees with everything in the PSA except the price. He then proposed if staff can start working on the PSA and West Richland City Council reviews, staff can come back to the Commission, whether it is the first or eighth of October, we can confidently say that all of the language has been agreed to both sides. We would like to give our partners every opportunity to review the PSA. Mr. Arntzen asked if the Port Commission agrees on everything but the price. Staff will work as diligently as possible to get the appraisal; however, he has seen appraisals, he has seen appraisers work, he is married to an appraiser, and appraisers work on their own schedule and it can be the most important deal in the world

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and its done when it's are done. Mr. Arntzen appreciates Ms. Hanchette trying to get the appraisal earlier; however, he would not want to set a meeting for October 1, 2019 and not have an appraisal. We can discuss a meeting on October 1, 2019 and let the media know it is our intent, but if we cannot get the appraisal within that time frame and have a chance to analyze the appraisal, then it might be best not to schedule a Special Meeting. Mr. Arntzen would like to get all of the language agreed to today and staff will work on getting the numbers for the appraisal, and then the Commission could see what property is worth, and at that point, decide how much are the Commission is comfortable discounting the property. That will also require staff working with the City of West Richland to see what their number might be. Theoretically, the Commission could approve something on the first or the eighth with the price in it and then the City may say that is a price that is workable. Mr. Arntzen stated at least we will have gone through this process, touched all the bases here and we will have numbers out there that we can see, and see how comfortable we are discounting it. Mr. Arntzen inquired if this sounds like a fair way to move forward.

Commissioner Moak stated it does to him and he supports the rest of the agreement here. Commissioner Moak believes what is here is better than what he saw earlier and he believes it reflects motion on both sides, trying to get something that is acceptable to both parties. From Commissioner Moak's standpoint, the non-monetary part is very good and he would accept the idea of a Special Meeting.

MOTION: *Commissioner Novakovich amended his motion to approve everything in the Purchase and Sale Agreement except the price, which will be considered at the next possible meeting that we can have, when the appraisal is available, but certainly no later than October 1, 2019; Commissioner Moak seconded.*

Discussion:

Commissioner Moak stated he is not sure that the appraisal will be available by October 1, 2019 according to Mr. Arntzen.

Mr. Arntzen stated staff will try and we will provide notice, if the Commission can be flexible and if West Richland can be flexible, we will try to get it on the first and we will work to get the all the notices out there. Mr. Arntzen asked for Ms. Luke's input.

Ms. Luke believes Mr. Arntzen's comments are fine and staff will do their best. It is the appraisal that will be determining this and we do not know yet if that will be coming in on time.

Commissioner Moak stated if the appraisal came in by the end of the week or Monday, would there be enough time for analysis by staff? How much time do you think it would take for the analysis by staff?

Ms. Hanchette does not believe the analysis will take very long and texted the appraiser about the conversation in the meeting and asked if she could have it completed by the first of October. The appraiser responded that she is trying very hard and is actually out of the state

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for a few days and has a previous annual event scheduled for this weekend. Ms. Hanchette reiterated that the appraiser is working on the appraisal very diligently. Ms. Hanchette does not believe we can meet the October 1 date.

Commissioner Moak inquired if there are dates between October 1-4 that would work. It sounds like West Richland would prefer it not be the eighth. Which would mean October 1-4, if that would be helpful to the City and Commissioner Moak is interested in being helpful to the City to that extent, but it needs to have everybody on board to do that.

Mr. Arntzen would like to ask for Ms. Scott and Ms. Luke's input on a Special Meeting. Mr. Arntzen stated once we receive the appraisal, it should not take staff too long to analyze the information. Once staff has the number, we can forward it on to the Commission and continue the debate in a Meeting. Staff does not need a lot of time to analyze the information, but procedurally, we need to be able to provide the proper notices for a Special Meeting.

Ms. Scott stated the Tri-City Herald would like to receive the Public Hearing Notice three business days before it needs to be published; however, legally, the Port needs to publish the notice 24 hours prior to the meeting.

Commissioner Moak asked Ms. Scott if the Tri-City Herald needs or wants three days notice.

Ms. Scott stated they have always said they need three days before the advertisement is to be published. Ms. Scott tries to work within their limits, but can call to see if they would make an exception.

Mr. Arntzen sees that we are down to a matter of days and it may just be easier to wait until October 8, because there are too many moving parts. Mr. Arntzen apologized to Mayor Gerry; however, he does not want to get caught up in a procedural snafu. Mr. Arntzen thinks it would be best to discuss on October 8, which gives us time to get the appraisal in. Although Mr. Arntzen is not supposed to comment on process, he believes the Commission has been as responsive as possible to this request and staff and City staff have put a lot of time into this. Sometimes dates on the calendar have to be moved back and Mr. Arntzen appreciates the fact that we have moved as quickly as can on this; however, he feels uncomfortable of picking a date on the calendar if we haven't given time for the meetings. Mr. Arntzen recommends further discussion on October 8, which leaves time for the appraisal to come in and for staff to analyze. In the meantime Mr. Arntzen will speak with Mayor Gerry regarding any contingencies in the PSA.

Commissioner Moak stated there is an amendment on the floor.

Commissioner Novakovich asked to strike the comment no later than the first and add as soon as possible after the appraisal is received. Commissioner Novakovich would ask the appraiser to get this into us as absolutely as soon as possible because there is a lot of money riding on this and let them know it is very important.

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Commissioner Moak asked if the entire statement is part of amendment.

Commissioner Novakovich stated it can be, the amendment would be to strike no later than the October first and add the words as soon as possible after the appraisal is received.

MOTION: *Commissioner Novakovich amended his motion to approve everything in the Purchase and Sale Agreement except the price, which will be considered at the next possible meeting that we can have, when the appraisal is available, as soon as possible after the appraisal is received; Commissioner Moak seconded.*

Discussion:

Commissioner Barnes asked for the amended motion to be restated in its entirety.

Ms. Scott restated the Amended Motion:

MOTION: *Commissioner Novakovich amended his motion to approve everything in the Purchase and Sale Agreement except the price, as soon as possible after the appraisal is received; Commissioner Moak seconded.*

Commissioner Moak asked if there is any possibility that the Commission would call a Special Meeting if the appraisal came in sooner rather than later or is it the belief of staff that it will be October 8. The amendment presumes as soon as possible might be sooner than the eighth. Commissioner Moak assumes that when the appraisal is received, staff will notify the Commission.

Mr. Arntzen stated that is correct, staff will notify the Commission when the appraisal is received and of the price. Then staff would set the Commission meeting at the earliest opportunity to do so, meeting the Public Notice requirements. Then we could discuss the price because all of the other terms have been negotiated and agreed to.

Commissioner Moak called for further discussion on the amendment.

Commissioner Barnes stated this has been fast moving and as Ms. Luke noted, a fluid document where changes were being received today. The Commission is being asked to look at all of this beginning Friday evening and then fold in changes received today, on the spot, during the meeting. Commissioner Barnes would feel more comfortable if he had more time to review the documents and concentrate on them.

Commissioner Moak stated the Commission has two weeks to review the documents and other than the price, nothing else will change.

Mr. Arntzen stated that is his understanding.

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With no further discussion, motion carried. All in favor 2 (Commissioner Moak and Commissioner Novakovich); 1 Nay (Commissioner Barnes).

Mr. Arntzen stated for the public, he has heard some discussion and questions regarding the price. Mr. Arntzen stated a port district is a unique creature and we try to act like a private entity when possible and it is good for the overall district. In that case you try to get top dollar for some of your assets and then take the proceeds and invest into another project and continue rolling over the public equity in the investments we make. Sometimes the Port buys property, for example the trailer park, and pays too much for it and spends too much cleaning up. Which results in a bare piece of property that you might have \$8.00 per square foot into and can hopefully sell it for \$3.50 per square foot. Sometimes ports' do things that do not make a lot of economic sense at first sight. Mr. Arntzen believes the West Richland transaction has a little bit of both sides, good points of letting property the go for too cheap, and he understands that. But on the other side, studies have shown, it would take \$5,000,000 in infrastructure to get the property ready to go. Mr. Arntzen has been on both sides of the transactions and at the end of the day, you get a big sense that the Port is the loser because we subsidized a piece of property. The Port invested a lot of money into the Spaulding Business Park; however, the property is now on the tax rolls and over 400 jobs were created. Mr. Arntzen appreciates everyone's viewpoints and believes there is no right or wrong with this transaction.

Commissioner Novakovich called for point of order and stated the Commission voted on amendment but not on the motion as amended.

Commissioner Moak asked Ms. Scott to state the motion as amended.

Ms. Scott stated:

MOTION: *Commissioner Novakovich moved for approval of Resolution 2019-22, authorizing the Port's CEO to execute all necessary documentation associated with the land sale of 92.61 acres to the City of West Richland and to take all other action necessary to close this transaction; and further ratifies and approves all action by port officers and employees in furtherance hereof, with the amendment to approve the Purchase and Sale Agreement except the price, as soon as possible after the appraisal is received;*

With no further discussion, motion carried. All in favor 2 (Commissioner Moak and Commissioner Novakovich); 1 Nay (Commissioner Barnes).

C. Benton County Water Rights Purchase & Sale Agreement

Mr. Arntzen stated before the Commission is the proposed PSA with Benton County, related to the former racetrack's surplus water rights. The PSA authorizes the Commission to sell 46 acre feet of water from the former racetrack property to Benton County, to be used at the Benton Franklin Fairgrounds. Benton County continues to expand the green space at the fair and this transaction would provide a low cost transfer to assist them in their expansion. The Benton Franklin Fair is a vital event in our community and this transaction enhances the

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quality of life and allows the Port Commission to assist our jurisdictional partner. As a partner, Benton County assisted the Port by investing \$500,000 into Vista Field Phase 1 infrastructure and Mr. Arntzen believes this transaction would return the favor. The PSA outlines a low cost transaction where the water rights would be transferred to Benton County for use at the Benton Franklin fairgrounds at the value of \$6,000 per acre foot.

Commissioner Novakovich stated the total value of the water rights at the former racetrack is \$6,000 per acre foot equals \$276,000. Commissioner Novakovich stated this is another situation where the Port does things that maybe aren't financially appealing to the Port district, based on face value, but there is a lot more involved to it, for example our continued partnership with Benton County. Commissioner Novakovich fully supports the PSA.

PUBLIC COMMENT

No comments were made

MOTION: Commissioner Novakovich moved for approval of Resolution 2019-23, authorizing the Port's CEO to execute the water rights Purchase and Sale Agreement and further ratifies and approves all action by port officers and employees in furtherance hereof as presented; Commissioner Barnes

Discussion:

Commissioner Moak thinks this is a good partnership and there has been discussion about the fairgrounds needs and the importance of that particular piece of property to our community and it is located in the east part of our district. Commissioner Moak supports Resolution 2019-23.

With no further discussion, motion carried unanimously. All in favor 3:0.

D. Chief Executive Officer Evaluation Process

Ms. Luke stated on August 13, 2019 Special Commission Meeting the Commission made a motion:

**** MOTION:*** Commissioner Barnes moved that the CEO Annual Evaluation Process revert to the original paragraph 6 language and use of the Exhibit D format that existed prior to Resolution 2017-27; Commissioner Moak seconded. With no further discussion, motion carried. All in favor 2 (Commissioners Barnes and Moak):1 Nay (Commissioner Novakovich).

**** Clerk's Note***

Before the Commission is Resolution 2019-24, which returns the evaluation process for the CEO to the paragraph 6 language. This Resolution documents, for ratification purposes, the action made at the August 13, 2019 Special Commission Meeting.* Ms. Luke alerted the Commission to the time line and stated staff is working on putting together the packet for review that the Commission receives prior to conducting the evaluation process. Ms. Luke requested that the completed evaluation form materials back by around October 11, 2019, to compile the documents for the Special Meeting on October 29, 2019. This is in order for

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the Commission to meet the November 15, 2019 deadline for completion of the evaluation process.

PUBLIC COMMENT

No comments were made

Ms. Luke stated the Commission have already moved, this is a matter of formalizing this by signing Resolution 2019-24. That motion was made on August 13, 2019 Special Commission meeting to revert to paragraph 6 language for the evaluation.

MOTION: Commissioner Barnes moved to ratify the earlier decision by approving and signing Resolution 2019-24; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 2 (Commissioners Barnes and Moak):1 Nay (Commissioner Novakovich).

E. Citizen Complaint

1. Selection of Neutral

Ms. Luke updated the Commission on the ongoing process associated to the hearing requested by Commissioner Barnes related to the citizen complaint outcome and we are in the process of selecting a neutral. Ms. Luke reached out to Commissioner Barnes' council on whether they had names of any neutrals they wish to propose. Ms. Luke did not receive a response; however, she believed Commissioner Barnes was out of town and may not have had an opportunity to speak to his council. Ms. Luke inquired if Commissioner Barnes had any names of neutrals he wishes to propose today.

Commissioner Barnes proposed Paris Kallas or Thomas McPhee.

Ms. Luke thanked Commissioner Barnes and will work on that and report back to the Commission once she knows the availability.

Commissioner Barnes stated the complainant is present and he understands that the decision could be made now.

Commissioner Novakovich stated he would need time to research the names.

Commissioner Barnes stated the names are from the provided list of candidates that would be acceptable.

Ms. Luke stated that is correct, Commissioner Barnes has selected persons on the list that was proposed.

Commissioner Novakovich stated if they are on the list then he is fine with it.

Ms. Luke will look at their availability and get back to the Commission regarding scheduling.

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Commissioner Barnes stated that he prefers Ms. Kallas as his first selection and Mr. McPhee as an alternate.

Commissioner Novakovich is fine with that.

REPORTS, COMMENTS AND DISCUSSION ITEMS

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

Commissioners reported on their respective committee meetings.

B. Non-Scheduled Items

1. Commissioner Barnes came across an article in the *Tri-City Herald*, where local jurisdictions are posting live broadcasts of their meetings and he would like to see the Port of Kennewick follow suit. The Port already records the audio and Commissioner Barnes would like to see that topic placed on a future Agenda for discussion. Commissioner Barnes thinks it would be in the best interest of Port citizens to have at least the audio of the Commission meetings posted on the website.
2. Commissioner Moak does not know if with the new equipment in the Commission Meeting room would make it more feasible. Commissioner Moak agrees with Commissioner Barnes and was surprised at the low cost that the City is employing with their audio. Commissioner Moak believes it is a rather reasonable cost for the City and he would like to see some discussion of that, as to whether we have the capabilities, when staff has a chance to look into that.

PUBLIC COMMENTS

Mayor Brent Gerry, 5401 Kalakaua Court, West Richland. Mayor Gerry thanked the Commission again for their conversation regarding the PSA for the former racetrack. Mayor Gerry stated this may not be the appropriate time, but he had one question. As the CEO stated, he is married to an appraiser and understands that they work on their own schedule, Mayor Gerry is concerned that if the Commission does not receive the appraisal by by October 8, 2019, would they be ready to take action on October 8, 2019.

Commissioner Moak stated that it is not appropriate to answer those type of questions, but he intends to vote on the transaction on October 8, 2019 and expect to have the appraisal. Commissioner Moak is prepared to vote on that item and does not intend to delay it; however, he would like to see that appraisal.

Mr. Arntzen stated for the record, he is married to an appraiser, but not the specific appraiser who is working on the appraisal for the former racetrack.

No further were made comments.

COMMISSION COMMENTS

No comments were made.

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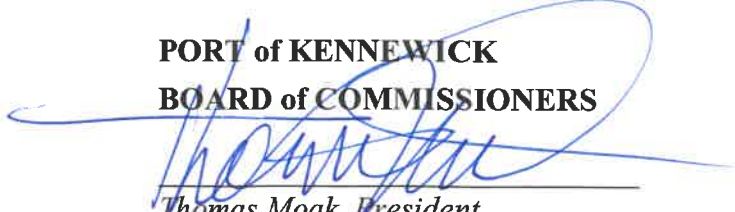
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ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 4:09 p.m.

APPROVED:

**PORT of KENNEWICK
BOARD of COMMISSIONERS**



Thomas Moak, President



Don Barnes, Vice President



Skip Novakovich, Secretary

PORT OF KENNEWICK

RESOLUTION 2019-21

***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE
PORT OF KENNEWICK AUTHORIZING THE PORT CHIEF EXECUTIVE OFFICER
TO SELL AND CONVEY SURPLUS PROPERTY***

WHEREAS, the Board of Commissioners of the Port of Kennewick met this 24th day of September, 2019, a quorum of the Commissioners being present; and

WHEREAS, from time to time it is necessary to surplus items no longer needed for Port District purposes; and

WHEREAS, RCW 53.08.090 provides that the Port Commissioners may authorize the Port Chief Executive Officer to sell and convey property; and

WHEREAS, prior to each such disposition of Port property, the Port Chief Executive Officer is directed to present to the Commission an itemized list of the property and to make written certification that the listed property is no longer needed for Port District purposes.

NOW, THEREFORE, BE IT RESOLVED the Port of Kennewick Commissioners authorize the Chief Executive Officer to surplus Port property no longer needed for Port purposes as attached in "Exhibit A".

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

ADOPTED by the Board of Commissioners of Port of Kennewick this 24th day of September 2019.

**PORT OF KENNEWICK
BOARD OF COMMISSIONERS**

By: _____

THOMAS MOAK, *President*

By: _____

DON BARNES, *Vice President*

By: _____

SKIP NOVAKOVICH, *Secretary*

RESOLUTION 2019-21
"Exhibit A"

Attractive Assets				
Asset	Disposition	Property Description	Date In Service	Cost
146	Broken	Keuring Coffee Machine	4/30/2013	\$ 288.06
149	Broken	HP 7525 Photosmart Printer	5/15/2013	\$ 222.12
212	Broken	Keurig K525C Coffee Machine	4/11/2016	\$ 110.74
93	Broken	DeWalt Cordless Drill	1/13/2009	\$ 223.21
136	Broken	Dremel Tool For Truck	6/26/2012	\$ 97.46
155	Broken	Werner Extension Ladder 28'	6/17/2013	\$ 253.42
191	Broken	Dewalt Pressure Washer 3000 PSI	1/29/2014	\$ 540.42
Capital Assets				
Asset	Disposition	Property Description	Date In Service	Cost
1032	Obsolete	Lumens XGA Projector	2/4/2009	\$3,371.05
1055	Obsolete	ProCurve Switch 2810-24G	3/17/2010	\$1,791.25
1097	Broken	HP 8200 Elite Destop	9/30/2011	\$1,295.58
1099	Broken	HP 8200 Elite Destop	9/30/2011	\$1,295.58
1100	Broken	HP Elite Book 8460p 14" Laptop	9/30/2011	\$1,295.61
1103	Broken	Ipad Apple	12/31/2011	\$ 823.05
1127	Broken	Ipad Apple	6/30/2012	\$1,156.63
1148	Broken	Dell Optiplex 710	12/31/2012	\$1,199.00
1155	Broken	Dell Notebook - paperless computer	4/30/2013	\$2,458.58
1172	Broken	Dell Optiplex 7010 MiniTower	8/31/2013	\$1,167.92
1181	Broken	Ipad Apple - Mike B	11/30/2013	\$ 712.86
1190	Broken	Dell Optiplex 9020 Mini Tower	6/25/2014	\$1,395.02
1227	Broken	2 Dell Optiplex 9020 Computers	11/1/2015	\$1,850.20
1244	Broken	Dell Optiplex 7050 Computer	7/14/2017	\$1,861.32

CFO/Auditor Certification:


Nick Kooiker


Date

PORT OF KENNEWICK

RESOLUTION 2019-23

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK AUTHORIZING THE PORT CHIEF EXECUTIVE OFFICER TO EXECUTE A PURCHASE AND SALE AGREEMENT WITH BENTON COUNTY

WHEREAS, the Port has determined that it has surplus water rights on its West Richland property; and

WHEREAS, the Port's development partner Benton County has a need for additional water rights to enhance the Benton-Franklin County Fairgrounds site in East Kennewick; and

WHEREAS, the parties have negotiated a purchase and sale agreement on favorable terms.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Port of Kennewick authorizes the Chief Executive Officer to execute the Purchase and Sale Agreement.

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

ADOPTED by the Board of Commissioners of the Port of Kennewick this 24th day of September 2019.

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

By: 

THOMAS MOAK, *President*

By: 

DON BARNES, *Vice President*

By: 

SKIP NOVAKOVICH, *Secretary*

PURCHASE AND SALE AGREEMENT – WATER RIGHTS

THIS PURCHASE AND SALE AGREEMENT – WATER RIGHTS (“Agreement”) is entered into and made effective this ____ day of _____, 2019 (“Effective Date”), between the SELLER, Port of Kennewick, a Washington municipal corporation; and the BUYER, Benton County, a municipal corporation established under the laws and constitution of the State of Washington (collectively referred to hereinafter as the “Parties”).

RECITALS

A. SELLER owns approximately 93 acres of undeveloped land in West Richland and intends to develop it under the principles established in a master plan for the property that is dated March 28, 2017. The property is included in West Richland’s urban growth boundary, and SELLER intends to utilize city water for the property.

B. SELLER is owner of a legally established water right appurtenant to the above described property, previously designated as “Water Right G4-28319C” (“SELLER’S Water Right”), but SELLER does not need the full extent of such water right for its proposed development of the property.

C. BUYER is in need of additional water rights to complete future development it has planned for the Benton County fairgrounds, and SELLER has enjoyed a long and constructive relationship with BUYER, focusing on economic development opportunities benefitting the citizens of both BUYER and SELLER.

D. While the Parties agrees that the value of the SELLER’S water right is \$6,000 per acre-foot of water, because providing irrigation water to the fairgrounds is a mutually beneficial project, SELLER is amenable to transferring 46.03 acre-feet of SELLER’S Water Right to BUYER in return for \$10,000 to offset administrative and consulting costs related to the water rights transfer.

E. On these terms, SELLER desires to sell and BUYER desires to purchase a portion of the SELLER’S Water Right G4-28319C under the terms and conditions as set forth in this Agreement.

AGREEMENT

IN CONSIDERATION of the mutual terms and conditions stated herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SELLER and BUYER agree as follows:

1. DESCRIPTION OF WATER RIGHT. Subject to the terms and conditions of this Agreement, SELLER agrees to sell and convey to BUYER, and BUYER agrees to purchase from SELLER the quantity of Forty Six and Three One Hundredths (46.03) acre-feet per year (AF/y) consumptive water volume, and up to 505 gallons per minute (gpm) instantaneous rate of Water Right G4-28319C. The portion of the water right that is the subject of this Agreement is referred to herein as the “Conveyed Water Right.”

2. WATER RIGHT CHANGE APPLICATION. In order to satisfy the contingencies set forth in paragraph 3 herein and close the sale, certain attributes of SELLER’S Water Right will need to be changed, with the

changes subject to Ecology approval. The responsibilities for processing and paying for the change application is set forth in paragraph 3.B below.

3. CONTINGENCIES: The closing of the sale of the Conveyed Water Right is contingent upon the timely completion of the following events, obligations and conditions hereinafter referred to as "Contingencies":

A) BUYER'S REVIEW OF TITLE TO SELLER'S WATER RIGHT. Within ten (10) business days following mutual execution of this Agreement, SELLER will provide to BUYER such information SELLER believes is sufficient to confirm SELLER'S ownership of SELLER'S Water Right. BUYER'S obligation to purchase the Conveyed Water Right on the terms and conditions herein is specifically contingent on BUYER'S determination, in BUYER'S sole discretion, of the condition of title for SELLER'S Water Right and such other information as may be reasonably necessary to confirm SELLER'S ownership of the Water Right, which determination and approval shall be made or waived by BUYER within twenty-one (21) days of the receipt of information from SELLER by notice to SELLER. SELLER agrees to provide BUYER with any supplemental information requested by BUYER related to the diversion and use of SELLER'S Water Right.

B) Water Right Transfer Process. SELLER'S obligation to buy the Conveyed Water Right on the terms and conditions set forth herein is also specifically contingent on the following approvals set forth below:

(1). Approval by Ecology of the transfer of not less than 46.03 AF/y consumptive use of water associated with SELLER'S Water Right to BUYER for BUYER'S intended purposes. SELLER shall be responsible for processing this change application with the Conservancy Board or with Ecology and pay for the costs of these change applications. Within twenty-one (21) days of mutual execution of this Agreement, SELLER will prepare and deliver to BUYER one or more counterpart applications (collectively, "the Change Application"), in the form prescribed by Ecology, for the transfer of the Conveyed Water Right to BUYER for BUYER'S intended purposes.

(1.1). Within ten (10) days of receipt of the Change Application, BUYER shall duly sign all counterparts of the Change Application and deliver to SELLER original signed counterparts of the Change Application. SELLER will file the Change Application with the Conservancy Board or Ecology.

(1.2). BUYER and SELLER agree to provide to each other, when requested, any and all documents, records, or other information that each may need to facilitate and accomplish the transfer when requested by the other party.

(1.3). SELLER agrees to sign any and all applications or other documents that are necessary to accomplish the transfer process.

(2). Approval by Ecology shall be deemed given when all appeal periods applicable to Ecology's decision have expired without an appeal of Ecology's approval of the transfer of the Conveyed Water Right to BUYER for BUYER'S intended purposes. In the event there is an appeal of Ecology's decision by any party, including SELLER, then in that event, Ecology's decision shall not be final until a complete resolution of all appeals. Provided, however, that:

(2.1). In the event Ecology denies the transfer of the Conveyed Water Right to BUYER for BUYER'S intended purposes, then this Agreement will become null and void and BUYER shall be entitled to a complete refund of the Earnest Money paid by BUYER.

(2.2). In the event Ecology approves the transfer of the Conveyed Water Right and Ecology attaches terms and conditions to the transfer of the water which are not acceptable to BUYER, including but not limited to determining that less than 46.03 AF/y of consumptive use of SELLER'S Water Right can be transferred to BUYER for BUYER'S intended purposes, then, in that event, BUYER has the option, to be exercised in the BUYER'S sole and absolute discretion by notice to SELLER, to cancel this sale and BUYER shall receive a full refund of the Earnest Money. BUYER must elect to cancel this sale within fifteen (15) days of Ecology's decision becoming final pursuant to paragraph 3.B(2).

- C) No Material Changes. Between the date of mutual execution of this Agreement and the Closing, there will have been no material adverse changes to SELLER'S Water Right, including, without limitation, the following: (i) adverse changes in legal or equitable title to SELLER'S Water Right; (ii) defaults, breaches, violations of actions filed or taken under any mortgages, deeds of trust, or any other document or agreement ; and (iii) the creation of occurrence of additional, or any adverse changes to, legal restrictions or other circumstances related to SELLER'S Water Right.
- D) Waiver of Contingencies. BUYER may waive, in whole or in part, any condition precedent to the BUYER'S performance under this Agreement. SELLER may likewise waive, in whole or in part, any condition precedent to its performance under this Agreement. All Contingencies or conditions precedent described herein will be deemed waived once both the SELLER and the BUYER have delivered all items that each is required to deliver for Closing pursuant to this Agreement.

4. PAYMENT: Subject to the terms and conditions of this Agreement, BUYER shall pay to SELLER the purchase price for the Conveyed Water Right of TEN THOUSAND DOLLARS (\$10,000.00) for 46.03 acre-foot of consumptive annual volume and a proportionate consumptive instantaneous quantity associated with Water Right G4-28319C.

- a. BUYER'S payment of the purchase price will be due (and the transaction described in this Agreement shall close) at Closing, as provided in Section 6, below.
- b. Within ten (10) days of the Effective Date of this Agreement, BUYER shall pay SELLER Earnest Money in the amount of TWO THOUSAND DOLLARS (\$2,000.00), which shall apply to the purchase price at Closing. Earnest Money shall be deposited with SELLER.
- c. Interest on the Earnest Money shall be for the benefit of whichever party is entitled to the Earnest Money at Closing or other termination of this Agreement. The Earnest Money shall be retained by SELLER upon Closing or refunded to BUYER as set forth in this Agreement.

5. REMEDIES:

- A) SELLER'S Remedies: In the event of a material breach of this Agreement by BUYER (including a breach of any representation, warranty, covenant or failure to close), the amounts previously deposited or paid as Earnest Money, together with interest, shall be forfeited by BUYER and retained by SELLER as liquidated damages.
- B) BUYER'S Remedies: In the event the transaction fails to close because of SELLER's material breach, the Earnest Money, together with interest, shall be returned to BUYER and BUYER shall be entitled to such remedies for breach of contract as may be available under this Agreement or applicable law, including, without limitation, the remedy of specific performance.

6. CLOSING: The closing hereunder shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of the parties' agreed Closing Agent: [insert name, address, and tele. no.] . The "Closing" or "date of closing" shall be construed as the date upon which all appropriate documents are recorded and proceeds of this sale are available for disbursement to SELLER. Notwithstanding the foregoing, the parties may agree, in writing, to extend the date of Closing; provided, the delay in Closing is not the fault of either party and both parties exercise their best efforts to minimize the term of any agreed extension of Closing. Closing shall occur with twenty-one (21) days after BUYER'S acknowledgment in writing to the Closing Agent of the satisfaction of the Contingencies and shall be in any even not later than October 31, 2020, which shall be the Termination Date of this Agreement, unless the parties agree to an extension of time in writing. If Closing does not occur by the Termination Date, SELLER shall refund Earnest Money, with interest, to BUYER.

a. BUYER's Deliveries at Closing:

- i. The BUYER shall pay the purchase price in immediately available funds, less the value of the Earnest Money;
- ii. The BUYER shall pay the Excise Tax payable on the sale of the Conveyed Water Right;
- iii. The BUYER shall pay escrow fees, if any, the closing fees charged by the Closing Agent, document preparation fees of Closing Agent, recording fees and any other charges normally borne by a BUYER in a real estate transaction not allocated to SELLER in this Agreement.
- iv. The BUYER shall execute the Real Estate Excise Tax Affidavit, as well as any other instruments reasonably necessary to close the transaction contemplated by this Agreement, such as a closing statement and agreed closing and escrow instructions.

b. SELLER's Deliveries at Closing:

- i. SELLER shall deliver or cause to be delivered to BUYER through escrow a Statutory Warranty Deed conveying fee simple title to the Conveyed Water Right, free and clear of all liens, encumbrances or other defects, duly executed and acknowledged by SELLER in recordable form, and ready for recordation, together with the executed Real Estate Excise Tax Affidavit; and
- ii. SELLER shall deliver a Real Estate Excise Tax Affidavit prepared for signature by the Parties, as well as any other instruments reasonably necessary to close the transaction contemplated by this Agreement, such as a closing statement and agreed closing and escrow instructions.

7. WARRANTIES: SELLER represents and warrants that as of the date of this Agreement, there are no liens, exceptions or other encumbrances encumbering the title to the Conveyed Water Right and that it retains unencumbered title interest in sufficient quantities of water to satisfy its obligation to sell the convey the Conveyed Water Right to BUYER under this Agreement.

8. GENERAL PROVISIONS: This Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors, and assigns. BUYER will not, prior to Closing, assign, subcontract or otherwise transfer any interest (voluntarily, involuntarily, by operation of law or otherwise) without the prior written consent of SELLER. Any documented, purported transfer by BUYER without such consent will be null and void and of no effect, whatsoever, and shall constitute a material breach by BUYER under this Agreement. Time is of the essence as to each and every provision of this Agreement.

9. NOTICES under this Agreement shall be in writing and may be delivered (1) personally; (2) by U.S. mail, certified or registered; or (3) by a nationally recognized overnight courier service. Mailed notices shall be deemed effective on the third day after deposited as registered or certified mail, postage prepaid, directed to the other party at the address shown below. Couriered notices shall be deemed delivered when the courier's records indicate that delivery has occurred. Facsimile or email notices shall be effective when actually transmitted to the facsimile number or email address provided by the party receiving notice. Notices shall be provided:

If to SELLER:

Port of Kennewick

c/o _____

_____, WA 99_____

Tel. () .

If to BUYER:

Benton County

c/o Matt Rasmussen. County Engineer

P.O. Box 1001

Prosser, WA 99350

Tel. (509) 786-5611

Either party may change its' address for notices by written notice to the other.

10. WAIVER AND SEVERABILITY: Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Agreement. If any term of this Agreement is held invalid by any court, the remainder of the Agreement remains valid and in full force and effect.

11. ATTORNEY'S FEES: In the event of any dispute arising out of or relating to the enforcement or interpretation of this Agreement, whether suit or other proceeding is commenced or not, and whether in mediation, arbitration, at trial, on appeal, in administrative proceedings or in bankruptcy (including without limitation any adversary proceeding or contested matter in any bankruptcy case), each party shall be responsible for its own costs and expenses incurred, including reasonable attorneys' fees.

12. PRIOR AGREEMENTS: This Agreement supersedes and replaces all written and oral agreements previously made or existing between the Parties concerning the Conveyed Water Right hereunder including, without limitation, all previous letters of intent and addenda thereto and all verbal agreements and understandings.

13. APPLICABLE LAW AND VENUE: This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Washington. Venue shall be in Benton County, Washington.

14. CHANGES IN WRITING: This Agreement and any of its terms may only be changed or waived by a written instrument signed by the party against whom enforcement of the change or waiver is sought.

15. COUNTERPARTS/FACSIMILE: This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the Closing Agent, the Parties will confirm facsimile transmitted signatures by signing an original document.

16. TITLE: Title to the Conveyed Water Right shall be conveyed by Statutory Warranty Deed.

[Remainder of page left blank]

17. CERTIFICATION: The undersigned certify by their signatures below that they are authorized to bind, represent and sign for the indicated party.

SELLER:

PORT OF KENNEWICK

Tim Arntzen, Chief Executive Officer

STATE OF WASHINGTON)
) ss.
County of Benton)

On this day personally appeared before me Tim Arntzen, known to me to be Chief Executive Officer of the Port of Kennewick, a Washington municipal corporation, who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 2019.

Notary Public in and for the state of Washington,
residing in _____.
My Commission Expires: _____.

BUYER:

BOARD OF BENTON COUNTY COMMISSIONERS

James Beaver, Commissioner

Shon Small, Commissioner

Jerome Delvin, Commissioner

Attest:

Cami McKenzie, Clerk of the Board

STATE OF WASHINGTON)
) ss.
County of Benton)

On this day personally appeared before me James Beaver, known to me to be a Commissioner of Benton County, a Washington municipal corporation, who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 2019.

Notary Public in and for the state of Washington,
residing in _____.
My Commission Expires: _____.

STATE OF WASHINGTON)
) ss.
County of Benton)

On this day personally appeared before me Shon Small, known to me to be a Commissioner of Benton County, a Washington municipal corporation, who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 2019.

Notary Public in and for the state of Washington,
residing in _____.
My Commission Expires: _____.

STATE OF WASHINGTON)
) ss.
County of Benton)

On this day personally appeared before me Jerome Delvin, known to me to be a Commissioner of Benton County, a Washington municipal corporation, who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 2019.

Notary Public in and for the state of Washington,
residing in _____.
My Commission Expires: _____.

PORT OF KENNEWICK

Resolution No. 2019-24

**A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE PORT OF KENNEWICK AMENDING RESOLUTION 2017-27 AND
UPDATING THE EVALUATION PROCESS SET FORTH IN THE CEO'S
EMPLOYMENT AGREEMENT**

WHEREAS, since 2006 the Port of Kennewick has had an employment agreement with its Chief Executive Officer (CEO) and several updates have been made over the years; and

WHEREAS, on October 10, 2017, Resolution 2017-16 approved revision of Section 15.0 of the Port Commission Rules of Policy and Procedure for the CEO Evaluation Process, including the formation of the CEO Evaluation Committee; and

WHEREAS, on November 28, 2017, Resolution 2017-27 was approved revising Paragraph 6 and Paragraph 8.5 of the November 15, 2013 Employment Agreement; and

WHEREAS, on August 13, 2019, Resolution 2019-16 was presented to the Board of Commissioners to appoint a new committee member to the CEO Evaluation Committee, and said resolution was not approved; and

WHEREAS, in lieu of Resolution 2019-16, Commissioner Barnes made a motion that the CEO Annual Evaluation Process revert to the original paragraph 6 language and use of the Exhibit D format that existed prior to Resolution 2017-27, and Commissioner Moak seconded; and

WHEREAS, after discussion the Commission voted 2-1 for approval of Commissioner Barnes' motion, with Commissioner Novakovich voting against the motion.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Port of Kennewick Board of Commissioners hereby approves reversion to the November 15, 2013 Employment Agreement paragraph 6 language and to use the Exhibit D format that existed prior to Resolution 2017-27.

ADOPTED by the Board of Commissioners of Port of Kennewick on the 24th day of September, 2019.

By:


THOMAS MOAK, *President*

By:


DON BARNES, *Vice President*

By:


SKIP NOVAKOVICH, *Secretary*