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AGENDA

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

March 25, 2025
2:00 p.m.

- I. CALL TO ORDER**
- II. ANNOUNCEMENTS AND ROLL CALL**
- III. PLEDGE OF ALLEGIANCE**
- IV. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- V. CONSENT AGENDA**
 - A. Approval of Direct Deposit and ePayments March 18, 2025
 - B. Approval of Warrant Register Dated March 25, 2025
 - C. Approval of Regular Commission Meeting Minutes March 11, 2025
 - D. Approval of CEO Employment Contract; Resolution 2025-10
 - E. Approval and Acceptance of (VFDF) 415 N. Roosevelt A&B Façade Improvements Project; Resolution 2025-07
- VI. ACTION ITEM**
 - A. BlueChart LLC Contract Documents; Resolution 2025-08 (**AMBER**)
 - B. Office Review Study, David Robison; Resolution 2025-11 (**TIM/NICK**)
 - C. Daybreak Commons Plans, PLACE Architecture; Resolution 2025-09 (**LARRY**)
- VII. REPORTS, COMMENTS AND DISCUSSION ITEMS**
 - A. CEO Report (if needed)
 - B. Commission Meetings (formal and informal meetings with groups or individuals)
 - C. Non-Scheduled Items
(**LISA/BRIDGETTE/TANA/NICK/AMBER/LARRY/MICHAEL/CAROLYN/TIM/KEN/TOM/SKIP**)
- VIII. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- IX. ADJOURNMENT**

PLEASE SILENCE ALL NOISE MAKING DEVICES



PORT OF KENNEWICK REGULAR COMMISSION MEETING

DRAFT

MARCH 11, 2025 MINUTES

Commission Meeting recordings, with agenda items linked to corresponding audio, can be found on the Port's website at: <https://www.portofkennewick.org/commission-meetings-audio/>

Commission President Skip Novakovich called the Regular Commission Meeting to order at 2:00 p.m.

ANNOUNCEMENTS AND ROLL CALL

The following were present:

Board Members: Skip Novakovich, President
Kenneth Hohenberg, Vice President
Thomas Moak, Secretary

Staff Members: Tim Arntzen, Chief Executive Officer
Tana Bader Inglima, Deputy Chief Executive (via telephone)
Nick Kooiker, Deputy Chief Executive Officer/CFO (via telephone)
Larry Peterson, Director of Planning and Building
Amber Hanchette, Director of Real Estate (via telephone)
Michael Boehnke, Director of Operations (via telephone)
Bridgette Scott, Executive Assistant (via telephone)
Lisa Schumacher, Special Projects Coordinator (via telephone)
David Phongsa, Marketing/Capital Projects Coordinator
Carolyn Lake, Port Counsel (via telephone)

PLEDGE OF ALLEGIANCE

Kaden Andrews led the Pledge of Allegiance.

Mr. Phongsa introduced Kaden Andrews and Gabriel Ibarra, students from Delta High School, who are job shadowing today. Mr. Phongsa took them to Columbia Gardens, where they spoke with Bart Fawbush of Bartholomew Winery; the tasting room manager at Gordon Winery, and Ron Swanby from Swampy's BBQ, who gave them thoughtful insights on being a small business owner.

PUBLIC COMMENT

No comments were made.

CONSENT AGENDA

- A. *Approval of Direct Deposit and E-Payments Dated March 4, 2025***
Direct Deposit and E-Payments totaling \$158,152.46
- B. *Approval of Warrant Register Dated March 11, 2025***
Expense Fund Voucher Number 106734 through 106760 for a grand total of \$98,754.65
- C. *Approval of Regular Commission Meeting Minutes February 25, 2025***

**PORT OF KENNEWICK
REGULAR COMMISSION MEETING**

MARCH 11, 2025 MINUTES

DRAFT

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

Commissioner Novakovich recessed the Regular Meeting at 2:05 p.m. and declared an Open Public Hearing for discussion regarding Resolution 2025-06, amending the Port of Kennewick's Comprehensive Scheme.

PUBLIC HEARING

A. Comp Scheme Amendment

Mr. Peterson outlined the potential revisions to the 2016 Comp Scheme, which includes adding the Kennewick Historic Waterfront Plan, and other housekeeping items for Commission consideration (*Exhibit A*).

The Commission discussed the revisions and stated they are reflective of the 2025-2026 Work Plan.

PUBLIC COMMENTS

Kaden Andrews, Richland. Mr. Andrews stated all changes to the document would benefit the citizens of Kennewick and show how the Port continues to take action to improve the area. Mr. Andrews stated the photos presented demonstrate the changes that have been made, and how the Port continues to invest in the area.

No further comments were made.

MOTION: Commissioner Hohenberg moved to approve Resolution 2025-06 Amending the Comprehensive Scheme of Development; Commissioner Moak seconded.

PUBLIC COMMENTS

No comments were made.

Discussion:

Commissioner Moak expressed his appreciation to Mr. Peterson and others who worked on the revisions. Sometimes it is easy to forget what the Port has accomplished over the last nine years, especially at Vista Field. Commissioner Moak stated it is good to go back and look at what the Port has been able to accomplish and how those projects are important, especially for entities like Fire District #4.

Commissioner Hohenberg thanked Mr. Andrews for his public comments, and stated this plan is driven by the community, and we are taking action. The region and visitors that come from all over the state benefit from the Port's investment. Commissioner Hohenberg stated Mr. Andrews's comments were very profound, and he enjoyed hearing them.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

MARCH 11, 2025 MINUTES

DRAFT

Commissioner Novakovich enjoyed Mr. Andrews' comments and stated they were spot on, and we appreciate that. It is nice when people from the public can appreciate what the Port of Kennewick does and how we benefit this region and thanked him for recognizing that. Commissioner Novakovich thanked Mr. Peterson for the great presentation and his work on the document.

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

Commissioner Novakovich closed the Public Hearing at 2:42 p.m. regarding Resolution 2025-06, amending the Port of Kennewick's Comprehensive Scheme and reconvened the Regular Commission Meeting.

REPORTS, COMMENTS AND DISCUSSION ITEMS

A. Kennewick Waterfront

1. Marina Restroom Update

Mr. Boehnke stated the Port has two public restrooms on Clover Island: the boat launch restroom and the marina restroom, which has showers. The Port has been dealing with ongoing vandalism and vagrancy in the bathrooms and currently the marina restroom is closed due to damage. Because of the continual, costly damage to these restrooms, the marina restroom will be closed to the public and only available to marina tenants. The Port will be installing an external security camera and a key fob system, for marina tenants to access 24 hours a day. The public restroom at the boat ramp will remain open, and is currently on a timed lock and closed from midnight to 5:00 a.m., with continually monitoring.

The Commission stated it is unfortunate that vandalism keeps happening and appreciates the operations team continually working on the issue.

B. CEO Report

Mr. Arntzen had nothing to report.

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

Commissioners reported on their respective committee meetings.

D. Non-Scheduled Items

Mr. Peterson appreciated the Commission working through the revisions of the Comp Scheme and stated there has been a lot accomplished since 2016, and it was very awarding to see how far the Port has come.

Mr. Arntzen thanked Mr. Boehnke for his report and taking the time to walk the Commission through the unfortunate restroom issues that we continue to face.

Mr. Arntzen thanked Mr. Peterson for his very thorough presentation on the Comp Scheme revisions and stated a lot has changed. Additionally, Mr. Arntzen thanked the Commission approving the revisions.

**PORT OF KENNEWICK
REGULAR COMMISSION MEETING**

MARCH 11, 2025 MINUTES

DRAFT

Commissioner Hohenberg thanked Mr. Phongsa for bringing the two students from Delta High School to the Commission Meeting today, and for helping keep the Comp Scheme presentation moving forward.

Commission Moak stated he has no conflicts of interest.

PUBLIC COMMENTS

No comments were made.

COMMISSION COMMENTS

No comments were made.

ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned at 3:01 p.m.

APPROVED:

**PORT of KENNEWICK
BOARD of COMMISSIONERS**

Skip Novakovich, President

Kenneth Hohenberg, Vice President

Thomas Moak, Secretary

PORT OF KENNEWICK

RESOLUTION No. 2025-06

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK AMENDING ITS COMPREHENSIVE SCHEME OF DEVELOPMENT AND HARBOR IMPROVEMENTS & DECLARING PARCELS WITHIN THE VISTA FIELD REDEVELOPMENT MASTER PLAN SURPLUS TO THE PORT'S NEEDS

WHEREAS, RCW 53.20 requires port districts to adopt a Comprehensive Scheme of Development and Harbor Improvements which serves as the guide for future Port investment and actions;

WHEREAS, the Port adopted a Comprehensive Scheme of Development by Resolution 2016-33 on November 8, 2016;

WHEREAS, the Port of Kennewick has and will continue to play a role in accommodating economic growth by acquiring, developing, selling and leasing land; and

WHEREAS, input from the public and City of West Richland regarding the future redevelopment of the former Tri-City Raceway was obtained throughout the planning process;

WHEREAS, the Port of Kennewick adopted the former Tri-City Raceway Master Plan by Resolution 2017-07 on March 28, 2017;

WHEREAS, input from the public and the City of Kennewick regarding the redevelopment of Vista Field was obtained throughout the planning process; and

WHEREAS, the Port of Kennewick adopted the Vista Field Redevelopment Master Plan by Resolution 2017-17 on October 24, 2017;

WHEREAS, the Port of Kennewick amended its Comprehensive Scheme of Development to incorporate the Vista Field Redevelopment Master Plan and the Tri-City Raceway Master Plan as evidenced by adoption of Resolution 2017-19 on October 24, 2017;

WHEREAS, the Port of Kennewick amended the Comprehensive Scheme of Development to deem the Port's West Richland Industrial Site as surplus to the Port's needs as evidenced by adoption of Resolution 2019-22 on October 8, 2019;

WHEREAS, input from the public and the City of Kennewick regarding Kennewick's Historic Waterfront was obtained throughout the planning process;

WHEREAS, the Port of Kennewick adopted the Historic Waterfront District Master Plan by Resolution 2021-22 on June 21, 2021;

WHEREAS, the Port Staff has determined parcels within the adopted 2017 Vista Field Redevelopment Master Plan are no longer needed and are surplus to the Port's purposes, and that the Port's mission of economic development is best suited by negotiated sales of the parcels;

WHEREAS, pursuant to RCW 53.08.090, the Port's Chief Executive Officer has certified to the Port Commission that parcels within the adopted 2017 Vista Field Redevelopment Master Plan are no longer needed for Port district purposes, and that Port's mission of economic development is best suited by negotiated sales of the parcels;

WHEREAS, the estimated value of the parcels within the adopted 2017 Vista Field Redevelopment Master Plan which are proposed to be declared surplus and exchanged exceeds \$22,000 in value and therefore requires Commission approval prior to transfer of the property pursuant to RCW 53.08.090,

WHEREAS, on Tuesday, March 11, 2025, after public notice, as required by law, the Board of Commissioners conducted a public hearing, held in the Commission Chambers of the Port Offices located at 350 Clover Island Drive, Kennewick, WA to amend the Comp Scheme to include the Historic Waterfront District Master Plan and modify the document text to clarify the Port's intent to sell and/or lease lands consistent with the adopted 2017 Vista Field Redevelopment Master Plan and proactively establish that lands encompassed within approved sale and/or lease proposals are deemed surplus to the Port's needs, provided however, each discreet sale and lease of land will require Commission consideration and approval at a meeting open to the public, consistent with the Port's adopted Polies and Procedures;

WHEREAS, notice of the hearing on declaring the properties surplus and the Comprehensive Plan amendment was given as provided by law (copy of said notice attached hereto as "Exhibit 1") and such public hearing was held at such time and place and on said date; and

WHEREAS, after public comment, Commission and Staff discussion and Commission consideration of the proposed amendment to said Comprehensive Scheme, the Board of Commissioners determined that parcels within the adopted 2017 Vista Field Redevelopment Master Plan are surplus to the Port's need, that Port's mission of economic development is best suited by negotiated sales of the parcels; and that the Port's Comprehensive Scheme should be updated accordingly.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of Commissioners of the Port of Kennewick that after and pursuant to a public hearing held on the 11th day of March 2025, after notice thereof duly given in the manner required by law, and after public comment, the Board of Commissioners of the Port of Kennewick does hereby that lands encompassed within approved sale and/or lease proposals are deemed surplus to the Port's needs, provided however, each discreet sale and lease of land will require Commission consideration and approval at a meeting open to the public, consistent with the Port's adopted Polies and Procedures;

BE IT FURTHER RESOLVED that the Board of Commissioners of the Port of Kennewick adopt the Update to the Port's Comprehensive Scheme of Development as identified as "Exhibit 2";

BE IT FURTHER RESOLVED that previous versions of the Comprehensive Scheme and any resolutions amending the previous Comprehensive Schemes are superseded by this updated Comprehensive Scheme;

BE IT FURTHER RESOLVED that the Commissioners that the Commissioners hereby approve Goal #8 of the CEO's 2025/26 goals and objectives; and

BE IT FURTHER RESOLVED that the Port of Kennewick Board of Commissioners hereby ratify and approve all action by port officers and employees in furtherance hereof; and authorize the Port Chief Executive Officer to take all action necessary in furtherance hereof, provided however, each discreet sale and lease of land will require Commission consideration and approval at a meeting open to the public, consistent with the Port's adopted Polies and Procedures.

ADOPTED by the Board of Commissioners of Port of Kennewick on the 11th day of March 2025.

**PORT of KENNEWICK
BOARD OF COMMISSIONERS**

By: DocuSigned by:
Skip Novakovich
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SKIP NOVAKOVICH, President

By: DocuSigned by:
Kenneth Hohenberg
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KENNETH HOHENBERG, Vice President

By: DocuSigned by:
Thomas Moak
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THOMAS MOAK, Secretary

From: [The Legals Adportal](#)
To: [Accounts Payable Group](#)
Subject: Thank you for placing your order with us IPL0219284
Date: Monday, February 24, 2025 11:50:52 AM

THANK YOU for your ad submission!

This is your confirmation that your order has been submitted. Below are the details of your transaction. Please save this confirmation for your records. This transaction will show up on your credit card statement as McClatchy.

All orders include a 7% service fee. For any questions, please contact us directly by email: c3legals@mcclatchy.com.

Job Details	Schedule for ad number IPL02192840
<p>Order Number: IPL0219284 Classification: Legals & Public Notices Package: TRI - Legal Ads Order Cost: \$220.10</p>	<p>Sun Mar 2, 2025 Tri-City Herald <i>All Zones</i> Wed Mar 5, 2025 Tri-City Herald <i>All Zones</i> Sun Mar 9, 2025 Tri-City Herald <i>All Zones</i></p>
Account Details	<div style="border: 1px solid black; padding: 10px;"> <p style="text-align: center;">Port of Kennewick Public Hearing Notice</p> <p>The Port of Kennewick will hold a public hearing on Tuesday, March 11, 2025 at 2:00 pm, or as soon thereafter as possible, in the Commission Chambers located at Port of Kennewick, 350 Clover Island Drive, Suite 200, Kennewick, Washington, to receive statements for and against amending the Port's Comprehensive Scheme of Development and Harbor Improvements (commonly known as Comp Scheme). The public is welcome and encouraged to attend. Please direct questions to 509-586-1186.</p> <p>/s/ Skip Novakovich, President, Board of Commissioners, Port of Kennewick</p> <p>Noticed dated: February 24, 2025 IPL0219284 Mar 2,5,9 2025</p> </div>
<p>KENNEWICK PORT OF IP 350 N CLOVER ISLAND DR #200 KENNEWICK, WA ♦ 99336 509-586-1186 accountspayable@portofkennewick.org KENNEWICK PORT OF</p>	

Port of Kennewick Amended Comprehensive Scheme

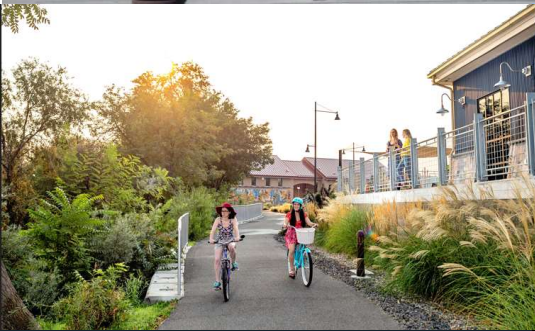


Table of Contents

TITLE	PAGE
Introduction	1
Port Urban Revitalization and Redevelopment Priorities	6
Revenues, Expenses, and Capital Improvement Plan	14
Future Comprehensive Scheme Revisions	19
References	20
Appendix A List of Abbreviations	
Appendix B Partner, Public Meeting and Port Commission Retreat Summaries	
Appendix C Port of Kennewick History Highlights	
Appendix D Regional Population and Economic Conditions Summary	
Appendix E Cash Flow Projection and Capital Improvements Plan	

INTRODUCTION

The Port of Kennewick (Port) has made limited updates its Comprehensive Scheme of Development (Comprehensive Scheme) consistent with Washington State requirements, and as approved by the Port Commission by Resolution 2017-19, approved October 24, 2017 and [Resolution 2025-25, approved March 11, 2025.](#)

Prior to this, the most recent update process was completed in 2016. It included public meetings and meetings with Port development partners, in addition to several meetings with Port staff and Commissioners. A Port Commission retreat was held in fall 2016 to confirm priorities and directions in the Comprehensive Scheme for the next several years. The Port Commission revisits and updates these priorities every few years, as appropriate. Every 2 years, the Port budgeting process includes a more detailed implementation plan for the priorities and projects identified in the Comprehensive Scheme.

In recent years, the Port has evolved into an agency focused on urban revitalization and redevelopment. Consistent with Port Commission direction, for the next several years, the Port expects to focus on projects for the Kennewick waterfront and Vista Field, Kennewick waterfront urban revitalization includes activities on Clover Island and along Columbia Drive. The Port will also continue to own, manage, and maintain its other holdings and properties.

Comprehensive Scheme Process

The Revised Code of Washington (RCW) 53.20.010 requires ports in Washington to adopt a comprehensive scheme of harbor improvements and identify existing and future capital improvements. The requirements for a comprehensive scheme differ from the Washington State Growth Management Act (GMA) planning efforts. Therefore, this document does not qualify as a master plan or other GMA plan.

The Port has flexibility in what to address in the Comprehensive Scheme. The RCW requires Ports to identify improvements in the Comprehensive Scheme, and provide opportunity for public input on these improvements before implementing actions. Although the RCW language is specific to harbor improvements, the Port is addressing all major improvements planned during the next several years within this document.

Stakeholder and Public Participation

Ports are required to involve the public in the planning process by making the draft Comprehensive Scheme available for public comment. In accordance with Washington State regulations, the Port has involved agency partners and the public in the scheme planning process. In 2015, the Port (and

members of the consultant team who are supporting the Comprehensive Scheme update) held meetings and conference calls, and conducted a qualitative survey with representatives from the Cities of Kennewick, Richland, West Richland, Benton City, Benton County, and the Ports of Benton and Pasco. At these meetings, agency representatives provided input on potential Port development goals, plans, and opportunities for the properties or opportunity areas within each jurisdiction. Appendix B includes a summary from these meetings (Appendix A include a list of abbreviations used in the document).

The Port held four public workshops in spring 2015 to receive public input on the focus and direction of the updated Comprehensive Scheme. Meetings were held in West Richland, Richland, and Kennewick. Additionally, the Port held a retreat in September 2016 focused on Comprehensive Scheme priorities, held workshops on updated plan elements, and conducted a public hearing in November 2016 to accept and consider additional public comment on the 2016 draft Comprehensive Scheme. The public meetings, retreat, workshops, and hearing were advertised extensively. Notes from the public meetings, retreat, workshops, and hearing are provided in Appendix B. This [2025](#) update includes the most recent information on applicable port approved master plans and priorities for Vista Field.

Port Mission and Goals

The Port's mission in recent years, and as reaffirmed in this Comprehensive Scheme, is to identify and implement sound urban revitalization and redevelopment opportunities that create jobs and/or improve the quality of life for citizens of the Port District. To carry out this mission, the Port plans to take the following actions:

- Undertake Vista Field redevelopment.
- Continue with Kennewick [Historic](#)-Waterfront urban revitalization projects.
- Pursue fewer projects while selecting projects with the greatest benefit to the community.
- Focus on waterfront development/redevelopment.
- Realize and support economic development opportunities with wine, culinary, and tourism industry.
- Continue to secure grant funding opportunities.
- Remain focused on containing operational expenses.
- Remain solidly focused on the Port's core redevelopment business lines and established priorities; not swayed by the oscillating influence of external entities.
- Maintain a strong focus on successfully running daily Port operations.

Consistent with Port Commission direction, for the next several years, the Port will focus on redevelopment projects for the Kennewick waterfront and Vista Field (PoK 2016). The Port will continue to own, manage, and maintain many of its other

holdings and properties and also encourage sustainable business and commercial development District-wide. Port budgets, staffing assignments, and other resources will be aligned with the redevelopment direction established by the Port Commission.

Through this Comprehensive Scheme, the Port Commission also reaffirms primary elements of resolution (No. 2014-31) with budget and financing goals for Port projects. This resolution included the following elements:

- Pursuing fewer projects and selecting projects with the greatest return to the Port and taxpayers
- Pursuing projects with development partners who demonstrate support (i.e., matching funds, political/citizen/taxpayer support, and enthusiasm)
- Working toward closing an existing operating gap between operational revenue coming in and expenses

The Port intends to apply these principles in Port financial decisions, capital expenditure, and management activities for Port operations and properties.

Port History

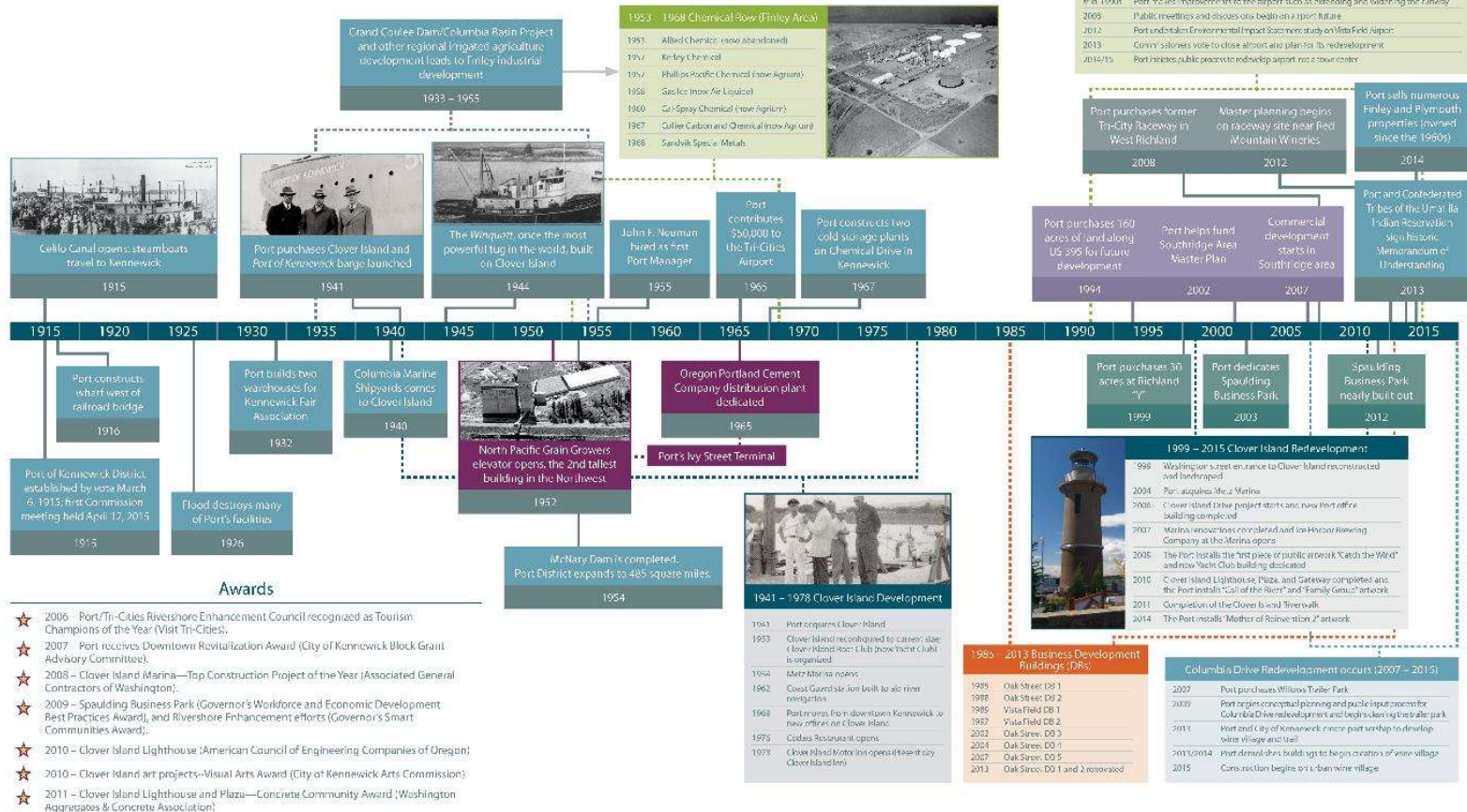
The Port was created in 1915. In 1916, the Port held a public hearing and adopted its first Comprehensive Scheme document, which needed voter approval before any funding could be expended. Included in the Comprehensive Scheme were modest proposed improvements to the Ivy Street Terminal, a suggested concept to close off the upstream end of the channel between the shoreline and Clover Island, and dredge to create a boat basin. The Port's budget was \$2,000 in 1916 and \$1,800 in 1917.

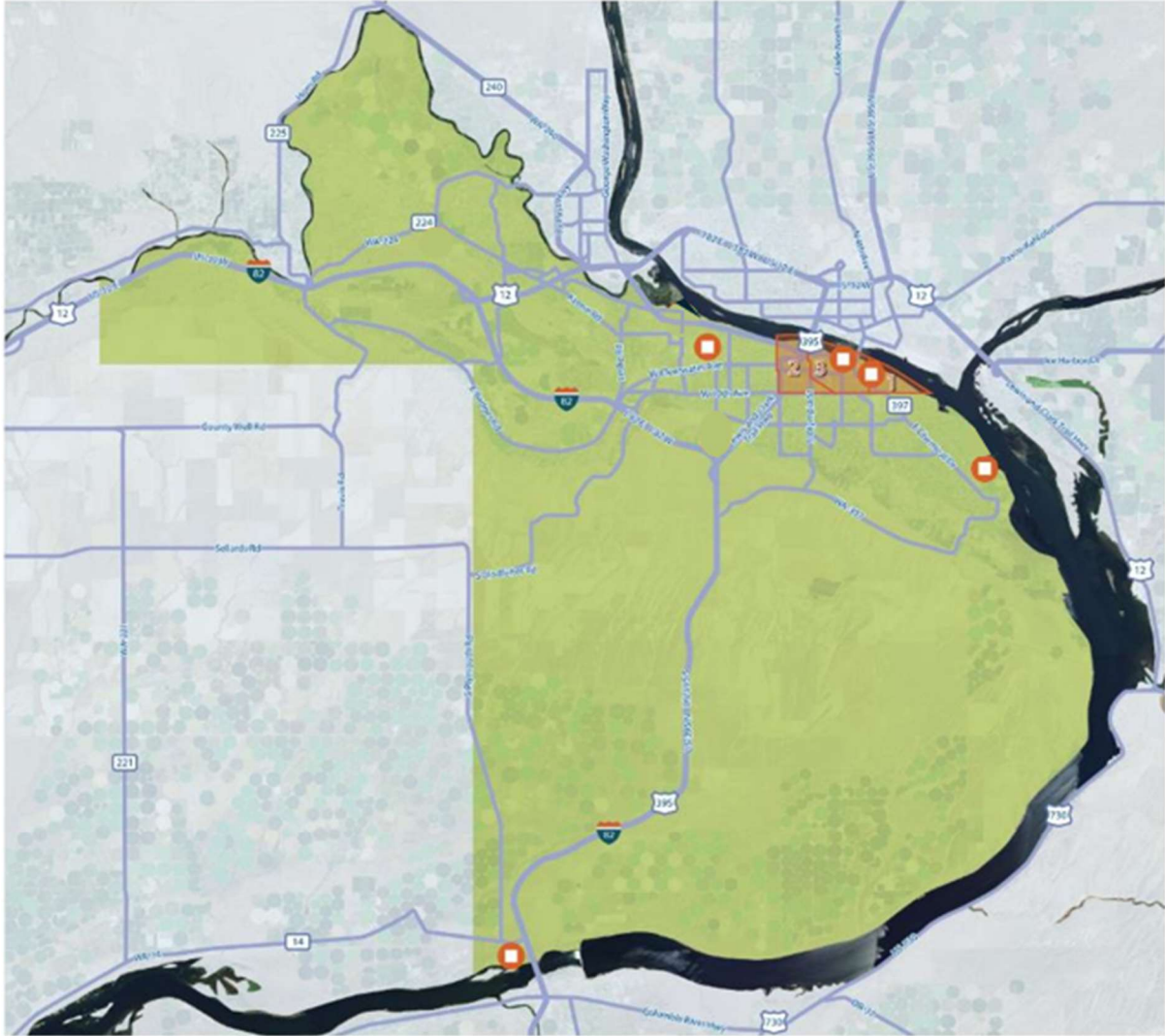
Since 1915, the Port's mission and services have evolved as the local economy has grown—what started out as a small Port District providing docking and terminal facilities for steamboats has grown to a large Port District with a mission focused on urban revitalization and redevelopment and serving the cities of Kennewick and West Richland, and portions of the City of Richland, Benton City, and Benton County. Highlights of this history are provided in the timeline in Figure 1.

The Port has achieved several notable successes during its 100-year history, including success in barging, warehousing, rail services, and industrial development. The Port has fostered the creation of thousands of jobs in the Port District boundaries, stimulating Clover Island and Spaulding Business Park redevelopment, and helping businesses such as TiLite, GBW Railcar Services, and Pacific Rim Estates grow. What started out as a modest Port beginning focused on just a few services has grown to a multi-faceted organization providing redevelopment services in the Port District and for the region. Appendix C includes a Port history throughout the last 100 years, highlighting in greater detail the many accomplishments achieved by the Port, as well as its development partners through the years. This action enlarged the Port District to the current boundaries identified in Figure 2.

Port of Kennebec Highlights (1915 – 2015)

2015 Board of Commissioners: Don Barnes, President; Skip Novakovich, Vice President; Thomas Moak, Secretary
 Executive Director: Tim Arntzen





○ Current Port Properties ■ Current Port Boundaries ■ 1915 Boundaries
FIGURE 2. SITE MAP

Recent Transition to Urban Revitalization and Redevelopment

In recent years, the Port has started to concentrate its efforts on urban revitalization and redevelopment. In the mid-2000s, redevelopment focus areas included the Spaulding Business Park in Richland and Clover Island. Other redevelopment opportunities have emerged in recent years with the Port Commission decision to close Vista Field Airport in 2013, expand redevelopment beyond Clover Island to include other areas of the Kennewick waterfront. Objectives for redevelopment include:

- Reconnect community areas to water, where possible.
- Concentrate investment in developed areas.
- Complement existing public and private investments.
- Encourage economic sustainability.

PORT URBAN REVITALIZATION AND REDEVELOPMENT PRIORITIES

This section is an overview of the Port's existing redevelopment priority properties as established by the Port Commission, including recent development initiatives and future plans for the properties. For the next several years, the Port will focus on redevelopment projects for Vista Field and the Kennewick waterfront. The Port will manage its other projects to support successful implementation of the redevelopment priorities. This would include, but not necessarily be limited to, continuing operations and maintenance of facilities but not making additional investments in other properties, selling, or otherwise divesting other properties (such as Plymouth, or Hedges properties) and other activities. The Port will also continue to monitor local and regional economic conditions and make adjustments accordingly. A summary of current economic conditions is provided in Appendix D.

Vista Field Redevelopment Area

The Vista Field Airport is in the heart of the Tri-Cities metropolitan area within the Kennewick city limits, between Grandridge Boulevard and Deschutes Avenue. It is adjacent to the Three Rivers Entertainment District (Toyota Center Coliseum, Three Rivers Convention Center, and Tri-Cities Business & Visitor Center).

In fall 2012, the Port Commissioners decided to conduct a comprehensive planning effort to obtain additional information to use in making a final decision. The planning effort included preparing a comprehensive economic analysis and Environmental Impact Statement. The Port initiated this additional planning effort, which included evaluating three alternatives for Vista Field: 1) further develop and enhance the airport for aviation and associated commercial development; 2) close and redevelop the airport properties; or 3) retain Vista Field as an operating airport with an annual subsidy. The planning effort provided significant opportunity for public input, and included environmental review for alternatives 1 and 2 through the preparation of an Environmental Impact Statement, with associated economic analysis.

On April 17, 2013, the Port Commissioners unanimously voted to close and redevelop the airport. The decision was based on the additional financial information and findings of the latest planning and analysis effort, which clearly showed Vista Field redevelopment was economically advantageous to the regional economy and the Port financial operations, compared to the limited revenue opportunities without Federal Aviation Administration funding and costs of maintaining airport operations or making additional airport investments. The Vista Field property is highly visible due to its central location in the City of Kennewick's entertainment district.



FIGURE 3. VISTA FIELD REDEVELOPMENT AREA

The property encompasses approximately 103 acres (Figure 3). The parcels are zoned [Urban Mixed Use \(UMU\)](#). Municipal services are available to the site. [The Port owns several former aviation-oriented buildings at Vista Field](#), including a corporate hanger (4,500 square feet); and two “T” hangers (21,000 square feet).

In 2014, a citizen committee chose the firms Integrated Structures Incorporated (ISI) and Duany Plater-Zyberk (DPZ) to help develop a master plan for Vista Field redevelopment, a process that includes actively seeking public input to plan and redevelop this site into a modern urban center that creates jobs, attracts businesses, and provides a central gathering place for

generations to come. A pattern-language and charrette process was used by DPZ, ISI, and Port staff, with nearly 300 people attending meetings and providing comments. The community showed an interest in small-scale city blocks with open spaces and transit-oriented, pedestrian-friendly neighborhoods with a mix of locally unique shops, restaurants, and workspaces as critical elements. Connectivity with existing public facilities and high-traffic intersections, as well as stakeholder participation, were deemed essential to realizing the site’s full potential.

DPZ refined the community’s input, and in February 2015, they presented the draft plan for additional public comment and that plan was refined and evaluated regarding cost, feasibility, and community support. A transportation system impact evaluation was prepared in November 2015. In October 2017, the Port Commission adopted the Vista Field Redevelopment Master Plan, which identifies the infrastructure and development plans, phasing, and administrative actions needed for successful implementation. Subsequently in December 2017 the City of Kennewick adopted the master plan as an update to the City’s Comprehensive Plan, and changed the land use designation to

Mixed Use for the redevelopment area. The Port and the City also worked together to establish a Development Agreement that identifies applicable code provisions and standards tailored to conditions at Vista Field, [applicable through at least December 2027. Phase 1 infrastructure improvements were completed in 2021 which opened approximately 20 acres in the core of the site for private sector development. The Vista Field Southern Gateway project which converted two 4,500 square foot corporate hangar building into public use pavilions was completed in spring 2025.](#)

[Private sector response is strong with numerous projects in various stages ranging from under design, within the permitting process and under construction.](#) Port continues redevelopment efforts at Vista Field by working diligently to implement the approved Master Plan. [The Port intends to sell and lease properties consistent with the adopted master plan.](#)

City of Kennewick **Historic Waterfront**

The Port currently has two urban revitalization [areas within the Kennewick’s Historic Waterfront District](#), including the Columbia Drive Urban Revitalization Area and Clover Island.

Columbia Drive

Columbia Drive is located adjacent to the Columbia River and Duffy's Pond in the City of Kennewick’s historic downtown. The property includes three areas, Willows, Columbia Gardens, and Cable Greens, which total 15.6 acres (Figure 4). Zoning is [Urban Mixed-Use \(UMU\)](#), and the properties have all municipal services, as well as wireless Internet coverage.

The Columbia Drive area faces development challenges, including



FIGURE 4. COLUMBIA DRIVE URBAN REVITALIZATION AREA SITE MAP

aged development and inconsistent city development standards; however, it also has many desirable qualities. Most prominent is proximity to the Columbia River and Duffy's Pond, which allow for tourism opportunities. The area is also near historic downtown Kennewick and easily accessible by several major Tri-Cities roads. It is within a few minutes of Columbia Center Boulevard, Richland, Pasco, and West Kennewick.

Redevelopment in the early phases will support creation of an urban wine and artisan village within the historic Columbia Gardens and Willows neighborhoods. The vision is to create a place where residents can stroll among wine, craft brew, and distillery tasting rooms, as well as galleries, restaurants, and boutique shops, and enjoy outdoor concerts, public art, and wildlife along a scenic nature trail.

Part of this effort has included purchasing mobile homes and assisting tenants with relocation, and demolishing vacant homes. The Port has improved its Columbia Drive properties by removing undesirable buildings, making limited infrastructure improvements, grading sites, and establishing development conditions and covenants.

The Port and the City of Kennewick signed an agreement to kick start development of the Columbia Gardens area and [made at least \\$5.5 million in improvements. In Phase 1, the City of Kennewick extended the public trail and added streetscaping to the site in 2015, with the Port constructing three buildings to accommodate boutique-production wineries, which were completed in 2017. Phase 2 involving constructing a loop road and joint-use parking was completed in 2018. The third phase completed in 2020 included a tasting room building and additional joint-use parking improvements.](#) As the phases are implemented, the Port will continue to explore potential and complementary private-sector partnerships, including property sales and leases.

Clover Island

Clover Island is in the City of Kennewick along the southern shore of the Columbia River at river mile 329, and is connected to the mainland by a causeway. The Port owns all but 1 acre of the approximately 18-acre property. The U.S. Coast Guard also owns approximately 1 acre on the southeast portion of the island.

Zoning is Commercial Marina (CM) and available utilities include water, sewer, electricity, and natural gas. Current Port-owned buildings at this site include the previous administrative office, administrative office/retail space, yacht club/office space, Clover Island Marina, and a lighthouse.

Clover Island is a mixed-use development area centered on waterfront access and amenities. The island is home to the Clover Island Marina, which was relocated and completely rebuilt in 2007 to 2008. The Port developed the marina into the premier boat moorage facility in the Tri-Cities as a portal for citizens and visitors to experience the Columbia and Snake rivers, as well as a place for Tri-Cities residents to fish and enjoy river views. In addition to the marina, Clover Island supports many businesses, including two restaurants (Cedars restaurant and Ice Harbor Brewing Company), a 150-

room hotel that includes a bar and grill (Clover Island Inn), and the Clover Island Yacht Club, which is located on the west side of the island.

Over the past 20 years, the Port has steadily made additional improvements on the island. These Port investments were guided by a 2005 Clover Island Master Plan (Makers 2005) and future investments will be guided by the Historic Waterfront District Master Plan (Makers 2021) associated updates are incorporated by reference for this comprehensive scheme document. In 2009, the former single-use Yacht Club site was completely redeveloped as a mixed-use facility. A parking lot was built just east of the Yacht Club, and an outdoor seating and railing area was added outside of Ice Harbor Brewing Company restaurant. The Port also constructed a lighthouse and gateway to the island, along with the Metz Family Plaza and placement of several public art displays. Paths and viewing locations, along with a statue and other improvements, provide public access and enhancements to the waterfront. In 2016, the Port constructed a boat launch parking lot and restrooms with grant and Port funding. The Port completed in 2017 the construction of the “Gathering Place” in partnership with the Confederated Tribes of the Umatilla Indian Reservation.

In 2021 Port partnered with USACE through their 1135 program to complete shoreline improvements that enhance nearshore habitat functions and shoreline aesthetics. The nearshore environment enhancement included improving substrate and refugia for salmonids in designated areas around the island. Riparian enhancement involved removing concrete along the shoreline and enhancing riparian vegetation through native plantings. These improvements are intended to reduce predatory impacts on species such as steelhead trout and Chinook salmon, and will provide additional rearing opportunities.

The Port intends to continue Clover Island enhancements to develop a mixed-use waterfront village, including retail, condominium housing, and restaurants. The Port will continue to foster tourism and economic development on Clover Island by implementing projects outlined in the Historic Waterfront District Master Plan (Makers 2021) and in this Comprehensive Scheme.

The Port will continue to market properties on Clover Island for development consistent with the Historic Waterfront District Master Plan. Per Port Commission Resolution 2022-05 adopted on January 25, 2022 the Port will not sell any land on Clover Island.

Other Port Properties

Oak Street

The Oak Street site is in northeast Kennewick off East Third Street and State Route 397. The site is approximately 29 acres and segregated into two pieces of land (Figure 5). Zoning is Heavy Industrial (IH) in the City of Kennewick for the four development buildings and the former Joe Schmidt building, and Industrial Light (IL) for the remainder of the site. The Port owns seven buildings, which cumulatively total 83,000 square feet. In 2013, two of the development buildings were renovated and [revisions to a fire damaged building were started in fall 2024 with completion scheduled for spring 2025.](#)

Throughout the past several years, the Port has averaged close to 100% occupancy in the development buildings. Oak Street businesses include manufacturing, specialty metals, warehousing, and construction, along with the Humane Society. This area's strengths include close proximity to rail service, city and transportation corridors, and State Route 397. Oak Street has flat topography although a Floodplain Designation "A," which exists due to infrequent pools of groundwater ranging from 2 to 4 inches in dept posed a development challenge. This challenge has been overcome through site design with building finished floors elevated 1 foot above the surrounding grade.

The Port intends to hold the improved Oak Street [buildings](#) for the foreseeable future and divest vacant and agriculture properties to support its redevelopment priorities.



Figure 5. OAK STREET SITE MAP

Vista Field Development Facilities

Near Vista Field, the Port owns 3.7 acres of industrial property, including Port-owned Vista Field Development Facilities (VFDF) A and B (Figure 6). VFDF rehabilitation and remodeling work was completed in [March 2025](#). This area is fully served by municipal services. The Port will continue to market the development buildings as space within them is available is available.



FIGURE 6. VISTA FIELD DEVELOPMENT FACILITIES SITE MAP

Finley Property (Twin Tracks and Hedges Lagoon)

In recent years, the Port has divested much of its Finley holdings. It currently owns two remaining properties—Twin Tracks and Hedges Lagoon—located close to the Columbia River in unincorporated Benton County about 8 miles southeast of Kennewick (Figure 7).

The Twin Tracks property is 110± acres and zoned IH. Available utilities include well, power, and natural gas. Potable water is available only through exempt wells, and sewer is provided only through on-site septic systems. Fire protection is provided by facility-specific fire-suppression systems consistent with requirements in the International Fire Code as adopted by Benton County (Benton County Code 3.18.035). Surrounding these properties are chemical manufacturing facilities, large- and small-acreage farms, residential development, and open-space recreational areas.

A portion of the Twin Tracks property (40 acres and 8,000 linear feet of rail line) is currently occupied by GBW Railcar, Inc., for rail car refurbishing, with other parcels leased for agriculture uses. The site is unique in that it is served by UP and BNSF rail, and is large enough to be able to accommodate a rail loop for unit freight train setup and loading.

The Hedges Lagoon property is 55 acres and zoned IH, with all but 3.65 acres below the ordinary high water mark. The Port could find a public agency such as the Washington State Department of Natural Resources or other resource management agency interested in owning or managing this property for recreation and/or habitat protection purposes. The Port would also want to ensure the arrangement that is proposed would be supported by the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) per the Port/CTUIR Memorandum of Understanding (MOU), if the property were to be transferred or sold to another agency.



FIGURE 7. FINLEY SITE MAP (TWIN TRACKS AND LAGOON PROPERTIES)

Plymouth Waterfront and Island

The Plymouth site is in southern Benton County near Interstate 82 and State Route 14 (Figure 8). The property totals 157.10 acres, and includes river frontage and island property, and has limited development opportunity, even though the northern parcel is zoned HI. The southern portion of the parcel is zoned Park District. Substantial electrical service is available in the immediate vicinity and natural gas is within 1,000 feet of the site. The property does not have municipal water service, sewer service, or interior roads. Water could potentially be available from the nearby Plymouth Water District. The Port has no plans for the Plymouth parcel and is open to divesting this property to an organization(s) acceptable to Native American tribes and consistent with the Port/CTUIR MOU for permanent protection of cultural and natural resources, and to provide for continued public recreation opportunities.

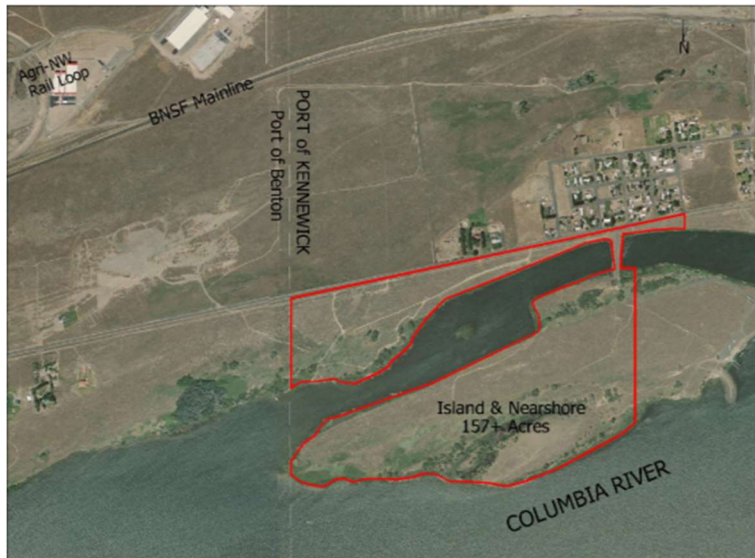


FIGURE 8. PLYMOUTH SITE MAP

REVENUES, EXPENSES, AND CAPITAL IMPROVEMENT PLAN

This section includes a summary of Port revenues, expenses, and Capital Improvement Plan for the next 10 years, along with a policy and process for evaluating future investment opportunities.

Current Revenues and Expenses

In 2015, the combined property tax revenue received from Port-owned properties in Kennewick, Richland, Benton County, West Richland, and Benton City amounted to \$3,669,499. The majority of that revenue (50.7%) came from property within the Port District in the City of Kennewick, followed by property owned in Richland (20.8%), Benton County (19.4%), West Richland (9%), and Benton City (0.044%).

Additional, ongoing Port revenues include operating income from industrial, building, and agricultural leases; operating income from marina leases; and interest income. The Port is also starting to receive funding from Benton County through the Rural County Capital Fund, which is a funding source of approximately \$3 million total, expected to be received by the Port as reimbursements for approved projects through 2023. Other revenues include land sales and grants, which vary year to year and by project. Average Port annual revenues in recent years have been around \$5 million.

Port expenses include general and administration expenses (e.g., salaries, benefits, and partner agency dues), general lease property operations and maintenance, building and equipment replacement, non-operational costs (Port funding provide to projects sponsored by Port partners), and marina operations and maintenance. Average annual Port expenses in recent years have been around \$3 million.

The difference between annual average revenues (\$5 million) and annual average expenses (\$3 million) is approximately \$2 million. This is the amount available on an average basis to support Port projects each year. As noted above, this amount can be supplemented by grants, property sales, and other funding sources.

The Port has developed cash-flow projections for the 2016 to 2026 period, as provided in Appendix E, Table E-1. This table projects beginning cash balances and reserves, less planned expenditures, including capital projects. The capital projects are summarized below and identified in Appendix E, Table E-2. The cash flow projection is based on current operations and current capital assets. A \$2.5 million reserve is also accounted for each year. This projection is reviewed regularly and updated, at least annually, by the Port. The Port develops a detailed 2-year operating budget. The current Port budget period will end December 31, 2016, and the next budget period is 2017 to 2018.

Capital Improvement Plan

The following capital improvements are planned at the various Port-owned properties, consistent with Port priorities, during the next 10 years:

- **Vista Field Redevelopment** – \$5.9 million in infrastructure and other improvements consistent with the master plan expected to be finalized in early 2017. Land sale revenues from Vista Field are being reinvested in Vista Field redevelopment.
- **Kennewick Waterfront Urban Revitalization** – \$2.9 million, including \$1.3 million to construct and maintain shoreline improvements at Clover Island, in partnership with USACE, and \$1.6 million to continue work at the Columbia Gardens site.
- **Return on Investment (ROI) Project** – \$6 million on one or more projects to bring in additional operating revenues for the Port.
- **Port Facilities Asset Replacement Program** – \$2.6 million (approximately \$250,000 per year) to support renewal and replacement of Port facilities, with specific projects identified in the Port 2-year operations budget.
- **Opportunity Fund** – \$500,000 (\$50,000 per year) for partnership opportunities. These will include funding requests for community programs or smaller community or Port projects emerging outside of the Port budgeting process. Once funding is allocated for a budgeting period, additional proposals will be considered during the next budgeting period.
- **Rural County Capital Funds Project** – \$1.2 million for an additional project to be funded through this source. This project will be identified in coordination with one or more development partners and selected consistent with the Process for Evaluating Future Investment Opportunities below.
- **Miscellaneous Capital** – \$570,000 for smaller capital expenditures, such as equipment, on Port properties that are expected to emerge during each 2-year budgeting period.

Total capital improvements for the 10-year period (2017 to 2026) add up to \$28.8 million. Table E-2 in Appendix E includes these capital projects on a 10-year timeline. The Capital Improvement Plan is expected to be reviewed annually and updated every 2 years by the Port. The latest version of the Port's Capital Improvement Plan is included by reference to the Comprehensive Scheme.

The extent of funding available for capital improvements varies substantially from year to year and depends on multiple sources of funds for implementation, as described in Port Revenues and Expenses above, and as outlined in the 2017 to 2026 One-time Revenues in Table E-2. The outside sources of revenue include grant funds from the state and federal government, local partnering agencies' contributions for economic development, and private contributions. The one-time revenues include expected land sales from Port properties. These outside revenues and property sales, when combined with the annual revenue available to the Port and less Port annual operating

expenses, provide the funds for capital improvements. As noted in Port Revenues and Expenses, the Port brings in approximately \$5 million annually, and has \$3 million in operating expenses, leaving approximately \$2 million per year, plus grants and funding from land sales and Rural County Capital Funding to fund capital improvements.

The Port will comprehensively evaluate capital improvements every 2 years in the budgeting process and review the plan annually, with adjustments made as necessary based on any changes in land sale or other assumptions, partner commitments, and other relevant information updates.

Capital Improvement Plan Assumptions

The Capital Improvement Plan serves as a long-term financial plan for the Port and is not a budget. A detailed 2-year budget is developed every 2 years.

The Port's Capital Improvement Plan is based on the following assumptions:

1. The Port obtains a bank loan in the amount of \$5 million in 2017 to help fund improvements for Vista Field redevelopment.
2. The projected land sales occur generally as assumed in timing and sales amount. Changes in land sales assumptions could substantially affect the project's implementation schedule.
3. The Port receives the full amount of Rural County Capital Funding (projected at \$2,950,000 through 2023) from Benton County.
4. The Port Commission adopts a policy on how to disburse funds from the "Opportunity Fund," which is a small funding amount set aside each year to support projects proposed by development partners.
5. The Port hires another maintenance technician and another staff person for Vista Field in 2018.
6. Operating revenues increase by at least 2% per year.
7. Operating expenses increase by no greater than 4% per year.
8. Non-operating expenses increase by no greater than 5% per year.
9. Property tax revenues increase by at least 4% per year.
10. The analysis does not factor in the acquisition of any additional properties by the Port. If the Port wanted to modify the Capital Improvement Plan by acquiring, for example, one or more additional properties, then other adjustments in the plan would need to be made to offset the impact. Similarly, as another example, delays in expenditures could also result in plan adjustments.

Process for Evaluating Future Investment Opportunities

Overview

Consistent with the Port Mission and Goals described above, including the referenced resolution (No. 2014-31) describing Port objectives for budget and financing goals for future Port projects, the Port Commission adopts the following additional policy as part of the 2016 Comprehensive Scheme update. The Port intends to use this process to identify, evaluate, prioritize, and implement its most

important future capital projects. The Port Commission recognizes the numerous opportunities regularly proposed for Port consideration must be balanced against available resources, including availability of staff and availability of financial resources. The main components of the Port's Capital Project Prioritization Policy are:

- *Project Identification* – Projects will be identified through various sources, including:
 - The adopted Comprehensive Scheme of Harbor Improvements
 - The adopted biennial budget and work plans
 - Discussions with jurisdictional partners and staff, and the public
- *Project Evaluation* – With the assistance of staff, the Port Commission will prioritize projects based on cost estimate evaluation, cost/benefit analysis, and public demand and other, less easily quantified factors, including jurisdiction priorities, emerging needs and opportunities, supplemental funding for projects partially funded, and public input received.

Organizational Considerations

Review will be conducted to evaluate if the project is consistent with the Port's mission and priorities established in the Comprehensive Scheme and associated documents adopted by reference.

Additional considerations would also include:

- Does the project meet an identified need?
- Does the project support Port, community, and/or private-sector economic development objectives?
- Does the project serve multiple user groups?
- Does the project foster or enhance a public/private or public/public partnership?

Fiscal Considerations

Fiscal considerations will also be reviewed as part of determining whether the Port will invest in future opportunities:

- What are the costs of the project, including initial costs, maintenance costs, and lifecycle costs?
 - How were costs calculated and by whom (finance director, Certified Public Accountant, Certified Financial Planner, economic planner, or others)?
- Does the Port have the financial and organizational capacity to undertake and manage the project?
- Can the project leverage public or private resources with other partners and funds to maximize benefits?
- Does the project have a positive ROI?
- Would the project increase the tax base, increase revenues to the Port, contribute to the vitality of the community, and help attract regional and national tourism?

Social/Environmental/Legal Considerations

Social, environmental, and legal considerations will also be reviewed:

- Is the community involved and supportive of this project?

- If the project is not implemented, will a strategic opportunity be lost?
- Is the project appropriate for the proposed site's natural systems, topography, and/or neighboring land uses?
- Are there potential adverse impacts associated with the project?
- Does the project comply with all federal, state, or local government laws or regulations?

Project Design, Planning, and Readiness

Design, planning, and project readiness considerations will also be reviewed:

- Does the site or project require extraordinary or unique purchase cost, architectural/engineering, or other efforts or commitments of financial or staffing resources?
- Is the project ready (e.g., design completed and permits in hand)?
- Is there a reasonably foreseeable user for the project (i.e. "bird in hand")?

Project Evaluation

Initial project screening shall begin with staff providing a brief description of each project. The Port Commission shall then review, evaluate, and rank each project based on the above criteria. High-priority projects shall be incorporated into the draft work plan.

FUTURE COMPREHENSIVE SCHEME REVISIONS

Future Comprehensive Scheme document review and update is planned every 5 years. The next comprehensive update is planned to begin in late [2027](#) and be finalized by the end of [2028](#).

Review and updates that result in more minor adjustments to certain elements of the Comprehensive Scheme are planned every 2 years, in parallel with the Port budgeting process, to incorporate new information and adjust strategy changes in redevelopment priorities and changes in policy that could occur. The updated budgets and Capital Improvement Plans will supersede the financial projections included in this 2016 Comprehensive Scheme, in effect amending the financial components of the Comprehensive Scheme every 2 years.

REFERENCES

PoK (Port of Kennewick), 2016. Port of Kennewick September 10, 2016 retreat meeting minutes.

Port of Kennewick Resolution No. 2017-19. A Resolution of the Board of Commissioners of the Port of Kennewick Amending its Comprehensive Scheme of Development and Harbor Improvements. Approved October 24, 2017.

City of Kennewick Ordinance No. 5731. An Ordinance Adopting the Vista Field Redevelopment Master Plan as a New Element of the Comprehensive Plan. Passed by the City of Kennewick City Council on December 12, 2017.

[Port of Kennewick Resolution No. 2019-27. A Resolution of the Board of Commissioners of the Port of Kennewick Amending its Comprehensive Scheme of Development and Harbor Improvements. Approved October 29 2019.](#)

[Makers \(Makers Architecture and Urban Design\), 2021. Historic Waterfront District Master Plan.](#)



AGENDA REPORT

TO: Port Commission

FROM: Carolyn Lake, Port Legal Counsel

MEETING DATE: March 25, 2025

AGENDA ITEM: Resolution 2025-10 Adopting Restated CEO Employment Agreement

- I. REFERENCE(S):** Prior Resolutions 2019-24, 2017-27, 2017-16, 2020-30. Proposed Resolution 2025-10; Restated CEO Employment Agreement and Exhibits A and B
- II. FISCAL IMPACT:** See Longevity Agreement terms.
- III. DISCUSSION:** The CEO’s employment agreement was first authored in 2006. It has been updated, edited and modified a number of times in the past (Resolutions 2019-24, 2017-27, 2017-16, and 2020-30). And, in its current form, the Contract has two “amendments” stapled onto the current “contract.” These amendments make the contract confusing.

This proposed Restated Agreement cleans up redundancies, incorporates all amendments into one “restated” Contract, and updates minor provisions of the Longevity provisions. Lastly, language is proposed that addresses the cyber-stalking matter and clarifies why defense of that should continue for the CEO and Port, to protect employees (and families) and commissioners (and families).

The edits are summarized below:

1. Section 2 indicates a new effective date of March 25, 2025.
2. Section 4.1 identifies the current salary plus current DCP contributions.
3. Section 4.1.4 shall be replaced with: “The annual salary shall be paid in equal semi-monthly installments, or in accordance with current Port payroll procedures”.
4. Section 4.1.6 shall be replaced with: “The employer shall establish annual CEO goals, in accordance with Resolution 2022-19 (CEO Evaluation Committee Process) and Evaluation Form is referred to and attached as “**Exhibit A**”.

5. Section 4.2 is replaced with: “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”.
6. Section 4.3 is replaced with: “Paid holidays in accordance with Port procedures”.
7. Section 4.5 identifies the current auto allowance, which hasn’t changed.
8. Sections 4.6 (and Exhibit “C”), 4.7 and 4.8 are deleted in their entirety. (Phased retirement, Leave without Pay, Professional Development Leave).
9. Section 6 is replaced with: “The Employer shall provide Employee with written performance review in accordance with Resolution 2022-19 (CEO Evaluation Committee Process)”.
10. Section 7 now includes the additional defense and indemnity language of the Third Amendment of the original Employment Agreement.
11. New language added to Section 7 which addresses the ongoing cyber-stalking matter. The Port and CEO have jointly participated in continuing to maintain anti-harassment orders to prevent the stalker from contacting or harassing Port employees and commissioners (and family members). The Port CEO is a named party (as is the port) and upon the CEO’s retirement, this matter should be maintained. It is believed that should a restraining order not remain in effect this individual will ramp matters up.
12. Section 8.4.3 deleted the word “crime”, as it is implied that a felony is a crime.
13. Former Exhibit “A” (goals) is deleted in its entirety, Exhibit “A” is now Evaluation Form, and Exhibit “B” is the updated Longevity Compensation Agreement.
14. Exhibit “B”, the Longevity Compensation Agreement at Section N is replaced with: “Renewal: So long as Employee is employed by the Employer, the Longevity Agreement shall renew year after year, with annual increases of 3% as referenced in Section A of this Longevity Agreement, herein above.”

IV. RECOMMENDATION: Adoption of Resolution 2025-10 approving the CEO’s Restated Employment Agreement, with its Exhibit A – Evaluation Form and Exhibit B Longevity Agreement.

V. ACTION REQUESTED OF COMMISSION:

Approve by adoption of the Consent Agenda, Resolution 2025-10 approving the CEO’s Restated Employment Agreement, and repealing all prior Resolutions in conflict therewith.

PORT OF KENNEWICK

Resolution No. 2025-10

***A RESOLUTION OF THE PORT OF KENNEWICK
BOARD OF COMMISSIONERS
APPROVING THE CEO'S RESTATED EMPLOYMENT AGREEMENT***

WHEREAS, the Chief Executive Officer's Employment Agreement has been amended several times with multiple amendments to the original Agreement; and

WHEREAS all Parties to the Agreement benefit from a Restated CEO Employment Agreement which cleans up redundancies, incorporates all amendments into one "restated" Agreement, updates minor provisions of the Longevity provisions, and addresses the cyber-stalking matter.

NOW, THEREFORE, BE IT HEREBY RESOLVED the Board of Commissioners of the Port of Kennewick hereby approves the CEO's Restated Employment Agreement and repeals all prior versions of the CEO Employment Agreement and prior Resolutions which conflict with this Restated CEO Employment Agreement.

ADOPTED by the Board of Commissioners of the Port of Kennewick this 25th day of March, 2025.

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

By: _____

SKIP NOVAKOVICH, President

By: _____

KENNETH HOHENBREG, Vice- President

By: _____

THOMAS MOAK, Secretary

RESTATED 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 "Chief Executive Officer," or "CEO"), collectively referred to as the "Parties" and replaces and supersedes the Parties' prior Employment Agreement and its various amendments.

1. **Employment.** Employer hereby continues the employment of Employee and Employee hereby accepts continuing employment as the CEO of the Port of Kennewick upon the terms and conditions set forth herein.

2. **Effective Date.** This Agreement shall be effective March 25, 2025.

3. **Duties.** The Employee is employed as CEO of the Port of Kennewick under the direction of the Board of Commissioners. As CEO 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 CEO 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 staff 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 CEO.

3.6.1 Except as set forth herein, the Parties acknowledge that providing the services of the CEO, 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

Restated Employment Agreement 2025
Chief Executive Officer

Initials _____/_____
Port Commission/ Tim Arntzen

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 CEO 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 CEO 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 As of current date, the base annual salary of the Employee is \$236,340 plus \$8,484 towards deferred compensation plan of Employee's choice, which 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 part of his salary 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 part of his salary to supplement the Employee's matching portion requirement by the Port's Policies and Procedures Handbook approved by the Commission or apply it toward another allowable deferred compensation plan.

4.1.2 Provided Employee's performance is deemed "above satisfactory" by the Employer, the Employee shall receive 14 PTO days in addition to 4.1.1 above. This PTO can be accrued in addition to Port approved policy, cashed out, taken or a combination of the three at Employee's discretion.

4.1.3 Provided Employee's performance is deemed "exceptional" by the Employer, Employee will receive an additional 7 PTO days in addition to 4.1.1 and 4.1.2. This PTO can be accrued in addition to Port approved policy, taken or a combination of the two at Employee's discretion.

4.1.4 The annual salary shall be paid in equal semi-monthly installments, or in accordance with current Port payroll procedures.

Restated Employment Agreement 2025
Chief Executive Officer

Initials _____/_____
Port Commission/ Tim Arntzen

- 4.1.5 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.
 - 4.1.6 The Employer shall establish annual CEO goals, in accordance with Resolution 2022-19 (CEO Evaluation Committee Process) and the Resolution's Evaluation Form, attached hereto as **Exhibit A**. The Employee may be considered for merit pay and other recognition at the Employer's discretion.
 - 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.
 - 4.3 Paid holidays in accordance with Port procedures.
 - 4.4 Longevity compensation as set forth in the "Longevity Compensation Agreement," **Exhibit "B"** to this Agreement.
 - 4.5 Employee shall receive an automobile insurance allowance of \$80 per month.
 - 4.6 Parties agree the Employee shall not receive a reduction to benefits provided pursuant to this Restated Employment Agreement due to the adoption of any subsequent amendment or modification of this Agreement. It is recognized that there may be a reduction in benefits provided pursuant to this Restated Employment Agreement should such reduction be mandated by law.
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 written performance review in accordance with Resolution 2022-19 (CEO Evaluation Committee Process) 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 by Employee of the Employee's duties and responsibilities as CEO of the Employer.

In addition, whenever an action or proceeding for damages is brought against the Employee, the Employer shall defend, indemnify, and hold the Employee harmless to the maximum extent permitted by the law for any liability incurred by the Employee in his capacity as an officer or employee of the Port acting in good faith. If the Employee personally incurs direct or indirect costs in order to respond to any such action, suit, proceeding, or claim, the Employer shall promptly

Restated Employment Agreement 2025
Chief Executive Officer

Initials _____/_____
Port Commission/ Tim Arntzen

reimburse the Employee upon written demand setting out such costs, provided indemnification of attorney's fees shall not exceed the hourly rate of the Port's General Legal Counsel as reflected in that General Legal Counsel's contract with the Port. Further, any amounts paid by the Employee in settlement or as a result of a judgement shall be reimbursed by the Employer unless the Employer shall establish that the Employee did not act in good faith and in the best interests of the Port in carrying out his duties.

To the extent of any conflict between this agreement and any other policy or procedure of the Port, this Agreement shall prevail. The obligations of the Employer to indemnify and hold the Employee harmless shall survive the termination of this Agreement or expiration of the employment relationship. Therefore, the obligation to indemnify the Employee applies whether Employee is currently or was previously employed by the Port of Kennewick at the time facts giving rise to such a matter arose.

Employer has participated in an Employee-initiated action to protect the Employee, his spouse, Employer's commissioners and employees from unwanted contact, harassment and cyber-stalking initiated by a third party ("Cyber-stalking"). The Parties acknowledge that the scope of the Cyber-stalking matter falls within the Port's interests and is a proper matter for Port expenses incurred to defend Employer, Employee and employees and the Commissioners', Employee's, and employees' spouses. The Parties agree to continue jointly prosecuting the cyber-stalking matter for so long as the Employee and /or the Employer is or will be subject to further cyber-stalking.

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 Notwithstanding any other provision of this Agreement, 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's 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 **Termination For Cause.** Termination of the CEO's employment for cause shall become effective fourteen (14) days after a written notice of intent to terminate is received by the CEO, which notice shall specify the reason or reasons for termination. Employer may, at the time of giving such notice, suspend or direct the CEO to immediately cease performing all or any part of the CEO's duties. Such suspension shall be with pay pending

Restated Employment Agreement 2025
Chief Executive Officer

Initials _____/_____
Port Commission/ Tim Arntzen

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 CEO to substantially perform his duties and obligations to the Port, which failure continues after written notice to the CEO; or
- 8.4.2 Theft, fraud, dishonesty provided that such activity is toward or involving the Port (other than the failure resulting from illness, sickness or physical or mental incapacity)
- 8.4.3 Conviction of any 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 CEO's duties or responsibilities as the Port's CEO, or when such violation is contrary to any directive by the Port Commission or no reasonable basis can be inferred from which the CEO believed he was directed or authorized by the Board of Commissioners to perform such acts constituting the violation.

8.5 Termination For 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 "A."** For the purpose of this Agreement the term "consistently" shall mean three (3) out of five (5) years performance reviews where the Employee's performance is deemed "unsatisfactory".

- 8.5.1 Termination of the CEO's employment for Performance-Based Cause shall be effective fourteen (14) days after receipt by the CEO 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 CEO to immediately cease performing all or any part of the CEO'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:

Restated Employment Agreement 2025
Chief Executive Officer

Initials _____/_____
Port Commission/ Tim Arntzen

- 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. The 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

Restated Employment Agreement 2025
Chief Executive Officer

Initials _____/_____
Port Commission/ Tim Arntzen

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 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.

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.

Restated Employment Agreement 2025
Chief Executive Officer

Initials _____/_____
Port Commission/ Tim Arntzen

18. **Survival.** Sections 7, 9, 11, 12, and 14 herein above shall survive and continue in full force in accordance with their terms notwithstanding the expiration or termination of the Employee's employment.

DATED this _____ day of _____, 2025.

EMPLOYER:

EMPLOYEE:

PORT OF KENNEWICK
A Washington Municipal Corporation

By: _____

By: _____

Skip Novakovich, President

Tim Arntzen

By: _____

Kenneth Hohenberg, Vice President

By: _____

Thomas Moak, Secretary

Restated Employment Agreement 2025
Chief Executive Officer

Initials _____/_____
Port Commission/ Tim Arntzen

EXHIBIT A -

**ANNUAL PERFORMANCE REVIEW
Individual Commissioner Evaluation of
CEO's Performance**

IMPORTANT DUTIES/EXPECTATIONS	PERFORMANCE APPRAISAL		COMMISSIONER 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>A. Assists the Commission in defining its shared vision. Communicates that direction to the organization.</p> <p>B. Collaborates with the Commission to advance the Port's vision and purpose.</p> <p>C. 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/Financial 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. Administers the Port's financial affairs consistent with state law and adopted policies, budget and financial guidelines.</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>			

EXHIBIT A -

<p>V. <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; 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>C. Leads the Port in building effective relationships with tenants, customers and community.</p>			
<p>VI. <u>Knowledge/ Decision Quality</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. Makes good decisions based on analysis, wisdom, experience and judgment; most solutions and suggestions turn out to be correct when judged over time.</p>			

EXHIBIT A -

<p>VII. <u>Leadership/Management</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. Rallies support behind the vision and strategic plan; can inspire and motivate staff and community.</p> <p>C. 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>D. 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>VIII. <u>Initiative/Courage/Adaptability</u></p> <p>A. Self-starting ability. Promptly takes hold and follows through with minimum direction.</p> <p>B. Willingness to state opinions and reasons without concern about the popularity of the views. Forthrightness in dealing with Commission, customers, suppliers, and others in the organization.</p>			

EXHIBIT A -

<p>C. 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>IX. <u>Loyalty</u></p> <p>Understanding and accepting of goals and policies of the organization. Willingness to support organization and management.</p>			
<p>X. <u>Communications</u></p> <p>A. Effectiveness of exchanging significant information throughout all levels of the organization; with clients, vendors, and the public.</p>			

Additional Commissioner Comments:

EXHIBIT "B" TO RESTATED 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 the 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; and
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 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

(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.

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.** So long as Employee is employed by the Employer, the Longevity Agreement shall renew year after year, with annual increases of 3% as referenced in Section A of this Longevity Agreement, herein above.

###



AGENDA REPORT

TO: Port Commission

FROM: Amber Hanchette, Director of Real Estate

MEETING DATE: March 25, 2025

AGENDA ITEM: Resolution 2025-07; Accepting completion for the 415 N. Roosevelt, Vista Field Development Facility Façade Improvement Project

I. REFERENCE(S):
Resolution #2025-07
Resolution #2022-43 Exhibit B

II. DISCUSSION:
G2 Construction has completed the repair and rehabilitation of facades at Vista Field Development Facilities A & B, 415 N. Roosevelt, Kennebec.

BEFORE (sample of damaged areas)



WORK IN PROGRESS



(Building A)



(Building B)

For building A, this project included:

- ✓ Removal of a west elevation beam
- ✓ Removal and repair of damaged stucco
- ✓ The addition of downspouts
- ✓ New trench drains
- ✓ New paint and architectural elements

For building B, this project included removal and replacement of stucco from all four elevations due to inadequate original construction methods discovered below the surface of the damaged stucco. Rain showers during construction yielded the discovery of prior damage to the entryway soffit and required repair of the associated roof section. The scope of work included new gutters on the east side of the building, new down spouts, and new exterior paint.

Addressing the deferred maintenance on these buildings increases the appeal to new tenants and the overall value of the buildings.

AFTER



(Building A – Southwest view)



(Building B)

Meier Architecture reviewed the project in person and found that the construction is consistent with the contracted drawings and specifications.

Final contract cost - \$ 593,154.70

Staff recommends that it is appropriate timing for the Port to accept the Vista Field Development Facility Façade Improvements as complete and begin the Notice of Completion process to state agencies.

III. ACTION REQUESTED OF COMMISSION:

I move approval of Resolution 2025-07 accepting the Vista Field Development Facility Façade Improvement project as complete and authorizing the Chief Executive Officer to finalize the terms of the contract. In addition, I move approval of goal #7 of the CEO's 2023/24 goals and objections and further ratify and approve all action by port officers and employees in furtherance hereof.

PORT OF KENNEWICK

Resolution No. 2025-07

**A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE PORT OF KENNEWICK ACCEPTING THE 415 N. ROOSEVELT,
VISTA FIELD DEVELOPMENT FACILITY FAÇADE IMPROVEMENT PROJECT**

WHEREAS, G2 Construction provided notification that the exterior renovation of Vista Field Development Buildings A & B located at 415 N. Roosevelt, Kennewick are complete in accordance with the plans and specifications; and

WHEREAS, Meier Architects and the Port of Kennewick staff have inspected the work and certified that it has been constructed in accordance with the plans and specifications; and

WHEREAS, that the Board of Commissioners of the Port of Kennewick hereby accepts the work of G2 Construction as being completed in accordance with the contract documents.

NOW THEREFORE BE IT RESOLVED, that upon completion of all required documentation for the project, the Chief Executive Officer is authorized to proceed with the necessary requirements to finalize the project account.

NOW THEREFORE BE IT FURTHER RESOLVED that the Commissioners hereby approves and accepts as complete Goal #7 of the CEO's 2023/24 goals and objectives.

ADOPTED by the Board of Commissioners of Port of Kennewick on the 25th day of March, 2025.

**PORT OF KENNEWICK
BOARD OF COMMISSIONERS**

By: _____

SKIP NOVAKOVICH, *President*

By: _____

KENNETH HOHENBERG, *Vice President*

By: _____

THOMAS MOAK, *Secretary*



AGENDA REPORT

TO: Port Commission

FROM: Amber Hanchette, Director of Real Estate

MEETING DATE: March 25, 2025

AGENDA ITEM: Vista Field Single Family Residential – BlueChart LLC

- I. REFERENCE(S):**
Letter of Intent dated April 10, 2024
Resolution 2025-08
- II. FINANCIAL IMPACT:** Varies by Phase
- III. DISCUSSION:**

In the Fall of 2023 staff received an inquiry from Levi Holmes of Chartwell Land Company regarding the port's Vista Field project. Mr. Holmes was specifically interested in the urban mixed-use concept intended in the Vista Field Master Plan and its similarities to other DPZ CoDesign projects. Along with his business partner, Ben Paulus of BlueFern Development, they proposed to construct multiple phases of single-family homes, attached and detached, meeting both the collaborative design criteria and design expectation outlined in the Vista Field Design Standards.



HOUSING DEVELOPERS: BLUECHART, LEVI HOLMES AND BEN PAULUS

HOUSING DESIGN: QAMAR AND ASSOCIATES INC. AND STRUCTURA NATURALIS INC.

The BlueChart project involves eight phases and upwards of 300 homes sprinkled throughout Vista Field. Building out from the existing core of mixed use and commercial development near the stream and Crosswind Boulevard the first phase will start west of the core (Exhibit A) with the second phase envisioned east of the nucleus.

The Vista Field Master Plan envisioned single family attached, detached, row houses, and townhomes. In addition, Accessory Dwelling Units (ADU's) are part of the Vista Field vision, offering a way to bring in attainable housing creating a greater sense of community by offering multi-generational options. And it's not just about affordability – ADU's can create a potential revenue stream for the property owner with a rental unit on site.

A letter of intent received on April 10, 2024, moved forward following CEO review, several meetings with the BlueChart team and a cursory assessment by the Vista Field Town Architect, Matt Lambert of DPZ CoDesign. At the June 11, 2024, commission meeting staff presented commissioners with the BlueChart proposal and Resolution 2024-10 as a starting point for negotiations.

Over the next several months, port staff and legal counsel along with representatives from BlueChart worked to develop contract documents encompassing the complexities of a potential multi-phase, multi-year relationship between the port and BlueChart.

The package before the commissioners is comprised of three documents – Builder Reservation and Take Down Agreement, Right of First Refusal and a form Purchase and Sale Agreement.

The Builder Reservation and Take Down Agreement is a guiding document for the overall project. Key highlights of the Builder Reservation and Take Down Agreement include:

- Purchase price formula for each phase.
 - Fixed pricing for phases I & II then a lot price determination formula for phases 3-8.
- Closing schedule
 - BlueChart to purchase four lots every two months upon delivery of infrastructure improvements by the port.
- Amenities
 - 15% of the purchase price for each phase to be reserved for amenities (open spaces for residents, visitors and the public).
- Design Library
 - BlueChart is required to propose a design library of no fewer than 12 home designs and 36 variations subject to Vista Field design standards and approval by the Vista Field Town Architect.

- Approved Development Plan
 - An approved development plan is agreed between the port and BlueChart within the first ninety days of each phase. This plan includes infrastructure, amenities, and home design approval by the Vista Field Town Architect.
- Phases I – V
 - The port agrees to pause marketing for single family attached and detached housing in Vista Field for the first five phases of home development with BlueChart allowing time for the builder to gain traction with a new compact development concept for the Tri-Cities market.

Beginning with Phase VI of home development, the port grants BlueChart a Right of First Refusal to continue home construction in Vista Field. Key highlights of the Right of First Refusal include:

- Subject to the terms of the Builders Agreement and Take Down Schedule
- Should BlueChart not execute their Right of First Refusal for Phase VI no other rights are given for Phase VII or VIII.

The third section includes a form, per-phase Purchase and Sale Agreement. This document is approved by commissioners at the same time as the Builders Agreement and Take Down Schedule and Right of First Refusal then executed by the Chief Executive Officer for each phase containing elements specific to each phase. Key highlights of the Purchase and Sale Agreement include:

- Details specific to each phase
- Lot pricing
- Take Down Closing Schedule
- A 90-day feasibility period where both parties must agree on an Approved Development plan for the phase.
- Purchase and Sale Agreement is subject to Vista Field Covenants, Conditions and Restrictions, Vista Field Design Standards, an Obligation to Construct and Repurchase Option.

A legal review of the Builders Reservation and Take Down Agreement, Right of First Refusal and Purchase and Sale Agreement has been conducted by port legal counsel.

Input from the port's planning department enhanced the document to include adequate timelines related to the port's obligations to deliver platted lots for each phase, common area amenities and contingencies for decisions made outside of the port's control.

IV. ACTION REQUESTED OF COMMISSION:

Motion:

I move approval of Resolution 2025-08 approving a Builder Reservation and Take Down Agreement, a Right of First Refusal and a form Purchase and Sale Agreement with BlueChart LLC for the development of single family homes in Vista Field; and 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.

April 10, 2024

To: Port of Kennewick

From: Benjamin Paulus
BlueChart Homes

Re: **Letter of Intent**
Vista Field

Dear Port of Kennewick Commissioners,

To facilitate the process of reviewing our offers, we have presented our offer below in the form of a Letter of Intent (LOI). This letter serves as notice on behalf of BlueChart Homes (“BlueChart”) of our interest in purchasing the below referenced property and conveys an outline of the business terms and conditions of the proposed purchase that provide the basis for a formal real estate purchase and sale agreement.

Recitals:

The property known as **Vista Field owned by the Port of Kennewick**, is located within the jurisdictional boundaries of the City of Kennewick, Benton County, WA. The Property is approximately **103** Acres in size and is currently zoned under the **Urban Mixed-Use District (UMU)** for a Traditional Neighborhood community which BlueChart believes allows for the development of residential dwelling units that they desire to build.

Bearing this in mind, BlueChart, LLC and/or Assigns (‘The Buyer’) is interested in entering into a Purchase and Sale Agreement (‘PSA’) with The Port of Kennewick (The ‘Seller’) as described below.

The following basic terms are proposed by BlueChart:

- 1. Property Address: Vista Field Kennewick, WA**
- 2. Parcel Numbers: TBD**

3. **Purchase Price:** The purchase price shall be as follows:
 - a. Phase I: \$80,000 per finished lot
 - b. Phase II: \$82,500 per finished lot
 - c. Phase III-VII: Lot prices shall be determined as follows:
 - i. Recent Sales Data. Based upon Washington State Department of Revenue Real Estate Excise Tax Affidavit forms provided by BlueChart, the port shall select the six highest home sale prices reported to date from the then-current phase.
 - ii. Average Price. After discarding the highest sales price, the Port shall average the gross sales price of the remaining five lots.
 - iii. Lot Price Determination. Unless otherwise agreed to by the parties, the price for a lot for the subsequent phase shall be set at twenty percent (20%) of the average gross sales price for the five selected lots. Additional factors may be considered: economic conditions and infrastructure development costs.
4. **Closing Date:**
 - a. Lots to be delivered to BlueChart by Port on a finished lot basis. Definition of the "Finished Lots" shall be agreed upon between BlueChart and The Port during the feasibility period.
 - b. Lots shall be fee simple.
 - c. BlueChart to purchase lots on a phased schedule as follows (see Exhibit 1)
 - i. **Phase I:** Within 30 days of the lots being finished, BlueChart shall close on 4 lots and continue to close on 4 lots every 2 months until all lots have been purchased. The total Purchase price for Phase 1 shall be based on a minimum of 24 lots. Phase I includes 4 existing finished lots.
 - ii. **Phase II:** Within 30 days of the Phase II lots being finished or closing on all lots within Phase I, whichever is later, BlueChart shall close on 4 lots and continue to close on 4 lots every 2 months until all lots have been purchased. The total Purchase price for Phase II shall be based on a minimum of 20 lots.
 - iii. **Phase III:** Within 30 days of the Phase III lots being finished or closing on all lots within Phase II, whichever is later, BlueChart shall close on 4 lots and continue to close on 4 lots every 2 months until all lots have been purchased. The total Purchase price for Phase III shall be based on a minimum of 39 lots.
 - iv. **Phase IV:** Within 30 days of the Phase IV lots being finished or closing on all lots within Phase III, whichever is

- later, BlueChart shall close on 4 lots and continue to close on 4 lots every 2 months until all lots have been purchased. The total Purchase price for Phase IV shall be based on a minimum of 29 lots.
- v. **Phase V:** Within 30 days of the Phase V lots being finished or closing on all lots within Phase IV, whichever is later, BlueChart shall close on 4 lots and continue to close on 4 lots every 2 months until all lots have been purchased. The total Purchase price for Phase V shall be based on a minimum of 36 lots.
 - vi. **Phase VI:** Within 30 days of the Phase VI lots being finished or closing on all lots within Phase V, whichever is later, BlueChart shall close on 4 lots and continue to close on 4 lots every 2 months until all lots have been purchased. The total Purchase price for Phase VI shall be based on a minimum of 40 lots.
 - vii. **Phase VII:** Within 30 days of the Phase VII lots being finished or closing on all lots within Phase VI, whichever is later, BlueChart shall close on 4 lots and continue to close on 4 lots every 2 months until all lots have been purchased. The total Purchase price for Phase VII shall be based on a minimum of 30 lots.
 - viii. BlueChart shall have the option to increase the minimum lots purchased with notice to The Port. The accelerated take down schedule shall be agreed to during the feasibility period.
- d. The Port shall identify amenities to support each phase. During the feasibility and mutual design process, the parties shall agree on the specifics of each amenity. Additionally, the Port shall allocate a portion of the Purchase Price of each Phase for Amenities. The parties shall mutually agree on how those funds are allocated.
 - e. The Port shall commit to activating undeveloped portions of Vista Field for temporary amenities (i.e. pickleball courts on the runway, trails, connection to offsite amenities such as Summer's Hub). The specifics of these temporary amenities shall be agreed to during the feasibility period.
 - f. It is fundamental to BlueChart's business model to not stop building once it has started. Therefore, it is critical that the Port continue to develop lots ahead of each current phase. The Port must deliver the next phase of lots within 12 months of delivery of the next phase deposit. If for any reason the Port is unable to deliver the lots on this schedule, then BlueChart shall have the option to either terminate the contract and receive a return of the earnest money or continue with the contract and receive a 20% discount on the purchase price for the lots in the delayed phase.

5. Collaborative Design Process:

- a. BlueChart will build a design library with a minimum of 12 home types and 36 variations across the project within the design criteria set forth for the project. These homes will be submitted to the Town Architect for approval.

6. Feasibility Period:

- a. **120 days** from mutual execution and delivery of the Purchase and Sale Agreement.

7. Earnest Money:

- a. **\$250,000 Note at Mutual Acceptance which shall be converted to non-refundable cash** within three business days of Feasibility Period Waiver. Said earnest money shall be fully applicable to the closing of Phase I
- b. Additional Earnest Money Deposits per Phase
 - i. 12 months prior to the last take down in a phase, BlueChart shall deposit an additional \$250,000 for the next phase. Upon receipt of said deposit, The Port shall begin developing the next phase and deliver the finished lots no later than 12 months after receipt.
 - ii. BlueChart may make the next phase deposit early. In the event of early deposit, the Port shall begin the improvements early and deliver the finished lots no later than 12 months after receipt.

8. Additional Terms:

- a. As long as BlueChart performs on its lot take down schedule, The Port agrees not to create, market, or sell any For-Sale single family residential lots until after BlueChart has closed on Phase V.
- b. BlueChart shall have a First Right of Refusal for any additional For-Sale single family residential lots in Vista Field

9. Title and Escrow: Benton Franklin Title Company

10. Real Estate Commissions: BlueChart is not using a real estate agent in this Purchase transaction and no commissions are expected

11. Assignment: Something we are very proud of is that BlueChart constructs its own projects in-house. With this in mind, any assignments would be limited to entities in which the Buyer retains a 50% or more interest.

BUYER:

BlueChart Homes, LLC

18300 Redmond Way Ste. 120

Redmond, Washington 98052

DocuSigned by:



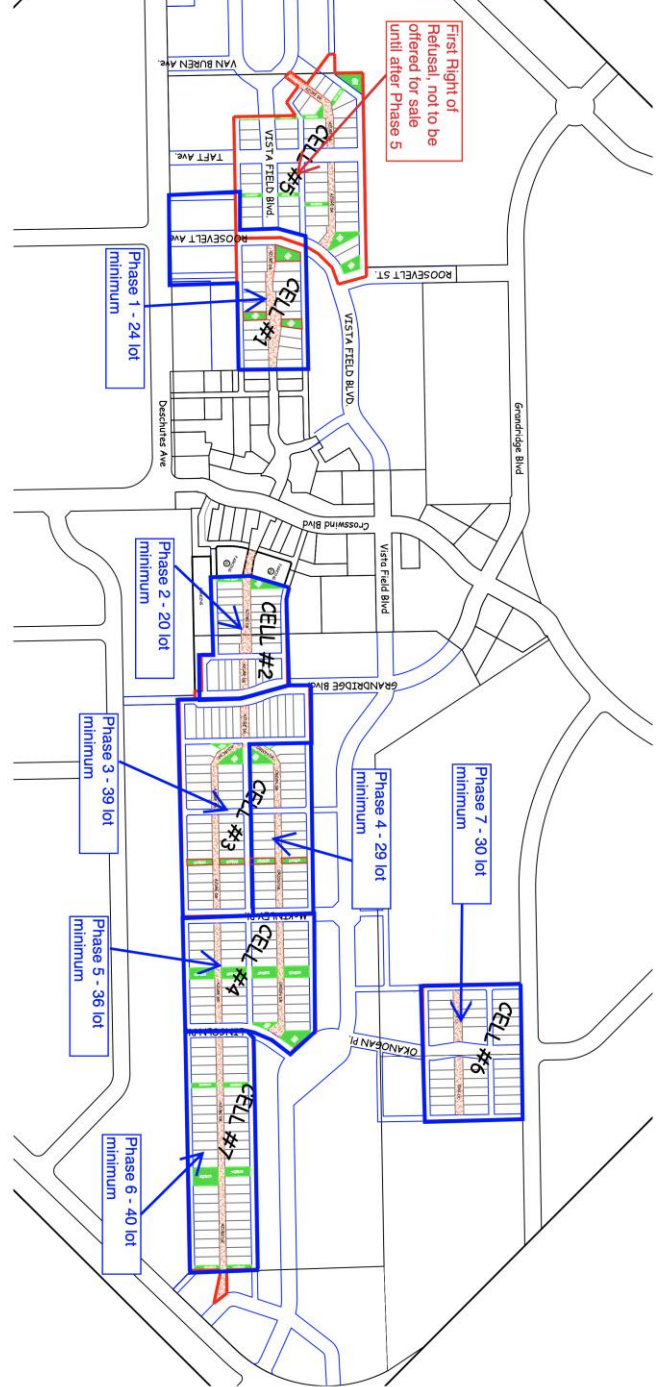
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Date of Execution: 6/3/2024

By: Benjamin Paulus

President

Exhibit I: Phasir





PORT OF KENNEWICK

RESOLUTION No. 2025-08

***A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE PORT OF KENNEWICK TO APPROVE THE BUILDER
RESERVATION & TAKEDOWN AGREEMENT, RIGHT OF FIRST
REFUSAL AND FORM PURCHASE AND SALE AGREEMENT WITH
BLUECHART, LLC***

WHEREAS, the Port of Kennewick (the “Port”) adopted the Vista Field Redevelopment Master Plan by Resolution 2017-17 on October 24, 2017; and

WHEREAS, the Port staff previously determined that the parcels within the adopted 2017 Vista Field Redevelopment Master Plan are no longer needed, are surplus to the Port’s purposes, and that the Port’s mission of economic development is best suited by negotiated sales of the parcels; and

WHEREAS, on March 11, 2025, after public notice, as required by law, the Board of Commissioners conducted a public hearing, held in the Commission Chambers of the Port Offices located at 350 Clover Island Drive, Kennewick, WA to declare the land subject to the adopted 2017 Vista Field Redevelopment Master Plan as surplus to the Port’s needs; and

WHEREAS, the Port Commission has authorized Port staff to market parcels for sale within the Vista Field redevelopment project; and

WHEREAS, Port staff received a proposal from Levi Holmes and Ben Paulus (“collectively, “BlueChart”) to construct single family attached and detached homes over multiple phases throughout the Port’s Vista Field redevelopment project; and

WHEREAS, BlueChart offers to purchase parcels on an agreed upon schedule and price as determined in the Builder Reservation and Takedown Agreement, which is attached hereto as **Exhibit A**; and

WHEREAS, the Port agrees to construct infrastructure and amenities to support each phase of development; and

WHEREAS, the Port staff and the Port attorney have reviewed the proposed Builder Reservation and Take Down Agreement, Right of First Refusal and form Purchase and Sale Agreement and find it is in proper structure and is in the Port’s best interest; and

WHEREAS, the form Purchase and Sale Agreement shall be executed by the Chief Executive Officer prior to closing the first lot in each phase and shall contain phase specific details.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of Commissioners of the Port of Kennewick hereby authorize the Port's Chief Executive Officer to execute a Builder Reservation and Takedown Agreement, Right of First Refusal and each applicable phase Purchase and Sale Agreement with BlueChart; and hereby further authorizes the Port's Chief Executive Officer to execute all documents and agreements on behalf of the Port to complete the transaction as specified above.

BE IT FURTHER RESOLVED that the Port Commission declares that said property is surplus to the Port's needs and the proposed sale as referenced above is consistent with all previous Port policies, including its Comprehensive Scheme of Development.

BE IT FURTHER RESOLVED that the Port of Kennewick Board of Commissioners hereby ratify and approve all action by port officers and employees in furtherance hereof; and authorize the Port Chief Executive Officer to take all action necessary in furtherance hereof.

ADOPTED by the Board of Commissioners of Port of Kennewick on the 25th day of March, 2025.

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

By: _____

SKIP NOVAKOVICH, President

By: _____

KENNETH HOHENBERG, Vice President

By: _____

THOMAS MOAK, Secretary

EXHIBIT A

(Builder Reservation and Takedown Agreement)

[Exhibit A is intentionally omitted from the March 25, 2025 board meeting packet to avoid duplication, but can be found elsewhere therein. Please attach the Builder Reservation and Takedown Agreement and all applicable exhibits hereto upon filing and posting.]

**VISTA FIELD
BUILDER RESERVATION AND
TAKE DOWN AGREEMENT**

THIS BUILDER RESERVATION AND TAKE DOWN AGREEMENT (this “Agreement”) is entered into this ___ day of _____, 2025 (the “Effective Date”) by and between the Port of Kennewick (the "Port"), a Washington State municipal corporation, and BlueChart, LLC (as “BlueChart”), a Washington limited liability company, who are collectively referred to herein as the “Parties.”

WHEREAS, the Port is a Washington municipal corporation; and

WHEREAS, the Port, acting under and by virtue of the power granted to it under the laws of the State of Washington, and particularly RCW 53.04.010 *et seq.*, is the owner of certain real property located within the City of Kennewick, Benton County, Washington which is legally described in **Exhibit A**.

(as “Vista Field”); and

WHEREAS, the Port is in the process of redeveloping Vista Field into a mixed use, pedestrian-friendly community using detailed guidelines (the “Vista Field Design Standards”) and specific performance standards essential for the creation of residential, commercial, outdoor and civic spaces, which are administered by the Vista Field Town Architect and related committee (the “Town Architect”). The Vista Field Town Architect is an appointee of the Port; and

WHEREAS, Vista Field is further subject to conditions, covenants and restrictions and has a mandatory owners’ association with assessment and lien powers (the “Vista Field CC&Rs”); and

WHEREAS, the Port desires that Vista Field offer a variety of lot types within a single community and further desires to work with BlueChart to provide the construction of single family housing in pursuit of this purpose; and

WHEREAS, BlueChart is a Washington limited liability company created by Blue Fern Development I and Chartwell Land Company and further desires to purchase lots from the Port in Vista Field to construct residential units thereon; and

WHEREAS, Vista Field is not currently platted with single-family residential lots; and

WHEREAS, pursuant to the terms and conditions outlined herein, the Parties intend for BlueChart to purchase lots within Vista Field in phases.

NOW, THEREFORE, be it understood that the Parties agree to undertake the following:

1. TERMS OF SALE

1.1 Purchase and Sale. The Port agrees to sell to BlueChart and BlueChart agrees to purchase from the Port, in phased take downs and otherwise on the terms and conditions contained in this Agreement, single-family residential lots which have been or are to be developed by the Port within the Vista Field Master Plan area more particularly described and depicted on **Exhibit A**, which is attached hereto and made a part of this Agreement. As used herein, the phrase “single family residential lot” means a legal lot on which a single family dwelling may be constructed pursuant to City of Kennewick Code 18.09.592, 18.09.594, 18.09.605, 18.09.610, 18.09.2085, or any other applicable code provision adopted in the future, and specifically includes, without limitation, lots on which attached or detached, zero lot line or conventional single family dwellings, townhouses and/or accessory dwelling units may be constructed.

1.2 Purchase Price. The purchase price, and/or formula to arrive at a purchase price, for each of the lots shall be as follows:

(a) Sales Report. No later than the tenth day of each month, BlueChart shall provide to the Port a report of home sales closed during the prior month. The report shall include the identification of each lot, the date of closing and the sales price of the lot as reported on the Washington State Department of Revenue Real Estate Excise Tax Affidavit form (RCW 82.45). Copies of all excise tax forms shall be attached to the report. All sales must be reported.

(b) Lot Pricing.

i. Phase 1 lots shall be sold at eighty thousand dollars (\$80,000.00) per lot.

ii. Phase 2 lots shall be sold at eighty-two thousand five hundred dollars (\$82,500.00) per lot.

iii. For each subsequent phase, and subject to the limitations of Section 1.5 below, lot prices shall be determined as follows:

Recent Sales Data. Based upon the reports provided above by BlueChart, the Port shall select the six highest home sale prices reported to date from the then-current phase.

Average Price. After discarding the highest sales price, the Port shall average the gross sales price of the remaining five home sales.

Lot Price Determination. Unless otherwise agreed to by the Parties, the price for a lot for the subsequent phase shall be set at twenty percent (20%) of the average gross sales price for the five selected home sales. Notwithstanding

the foregoing, the Port may refuse to sell any phase of lots where the price charged to BlueChart under the formula above will result in a sales price that is lower than 120% of the anticipated development costs to be incurred by the Port in support of that phase, which the Port shall assess its sole and absolute discretion (the "Floor Price"). If applicable, the Port shall notify BlueChart of the Floor Price in writing with copies of the Port's budget. Within fifteen (15) business days of receipt of such notice, BlueChart shall elect to either (i) acquire the lots in such phase based on the Floor Price, or (ii) waive such right, in which event this Agreement shall terminate and the Port shall be deemed to have granted BlueChart a right of first refusal to acquire single family residential lots constructed in such phase in the future on the terms attached hereto as **Exhibit B** (the "Right of First Refusal") if such lots are developed by the Port and offered for sale below the Floor Price within twenty-four (24) months of the termination of this Agreement.

1.3 Payments.

- (a) Right of First Refusal Consideration. In consideration for granting BlueChart the Right of First Refusal in Section 1.5 below, BlueChart shall execute and deliver to the Port a Promissory Note (the "ROFR Promissory Note") in the amount of Ten Thousand and 00/100 Dollars (\$10,000) in the form attached hereto as **Exhibit E** (the "ROFR Consideration") within three (3) business days of the Effective Date. The ROFR Consideration shall be deemed fully earned on the Effective Date of this Agreement, non-refundable, and not applicable to the Purchase Price.
- (b) Phase I Earnest Money Deposit. At mutual execution of a purchase and sale agreement substantially in the form attached hereto in **Exhibit C**. BlueChart shall deliver a Two Hundred and Fifty Thousand Dollar (\$250,000.00) Promissory Note to the Closing Agent as an earnest money deposit, which shall be held in escrow by the Closing Agent. The Promissory Note shall be in the form attached hereto as **Exhibit F**. If BlueChart elects to waive feasibility pursuant to the terms of the executed purchase and sale agreement, the Promissory Note shall be converted to cash by wire transfer of funds to the Closing Agent's escrow account and held by the Closing Agent in accordance with the terms of the Phase I purchase and sale agreement. Said earnest money shall be fully applicable to the staggered closings of Phase 1 and non-refundable except as otherwise provided in the Phase I purchase and sale agreement. Once deposited into escrow, such funds shall be referred to herein as the "Earnest Money Deposit". The Port shall not withdraw any of the Earnest Money Deposit until it has recorded final plat approval with Benton County and the lots created through the subdivision process have been legally created.
- (c) Additional Earnest Money Deposits for Phases 2 through 5. Within three (3) business days of the mutual execution of a purchase and sale agreement to acquire lots within Phases 2, 3, 4 or 5 of Vista Field, BlueChart shall deposit with the Port an additional Two Hundred and Fifty Thousand Dollars (\$250,000.00) cash by wire transfer of funds to the Closing Agent's escrow account for that phase. Upon receipt of said deposit, the Port shall begin developing the next phase and deliver finished

lots with all Infrastructure Improvements (as defined in Section 4.1(l) below) (“Finished Lots”) complete no later than 15 months after the date an Approved Development Plan is mutually approved by the Parties.

1.4 Take Down and Closing Schedule.

- (a) BlueChart shall purchase Finished Lots on a phased schedule (the “Take Down Closing Schedule”) as follows:
- i. Phase 1: Within 30 days of the Phase 1 lots being finished, BlueChart shall close on 4 lots and continue to close on 4 lots every 2 months until all lots in Phase 1 have been purchased in Phase 1. Phase 1 shall contain a minimum of 28 lots which may include 4 existing finished lots if those lots are platted before conveyance to BlueChart.
 - ii. Phase 2: Within 30 days of the Phase 2 lots being finished or closing on all lots within Phase I, whichever is later, BlueChart shall close on 4 lots and continue to close on 4 lots every 2 months until all lots have been purchased in Phase 2. Phase 2 shall contain a minimum of 20 lots.
 - iii. Phase 3-5: Within 30 days of each phase completion or closing on all lots within the prior phase, whichever is later, BlueChart shall close on 4 lots and continue to close on 4 lots every 2 months until all lots have been purchased in the phase. Each phase shall contain a minimum of 24 lots.
 - iv. Phase 6 – Phase 8: Lots in Phases 6, 7, and 8 may be purchased pursuant to the terms and conditions of Section 1.5 and the Right of First Refusal attached hereto as **Exhibit B**.
- (b) Accelerated Take Down Schedule. Notwithstanding anything contained in the Take Down Closing Schedule to the contrary, once a final plat is recorded for any given phase, BlueChart may in its sole discretion accelerate the schedule for acquiring Finished Lots within such phase. If BlueChart elects to accelerate the closing schedule, the Parties shall document such change in an amendment to the applicable phase purchase and sale agreement. Notwithstanding the foregoing, the Parties understand and agree that any acceleration in the schedule of lot take down by Buyer may affect Seller’s timing related to the construction and delivery of improvements of a subsequent phase. As such, nothing in this Section 1.4(b) shall obligate Seller to develop a subsequent phase for sale to Buyer on any other schedule than that which is currently anticipated herein.
- (c) BlueChart’s Failure to Close. If, without legal excuse (such as the Port’s failure to perform its obligations under this Agreement or the applicable purchase and sale agreement), BlueChart does not close within the required time period described in the applicable purchase and sale agreement, then BlueChart shall be in default of its obligations under this Agreement. The Port may then terminate this Agreement and sell lots not taken down to another builder, and retain BlueChart’s Earnest Money Deposit as agreed upon liquidated damages.

- (d) Lot Condition. Lots shall be delivered to BlueChart by the Port in the condition required in Section 4.1 (m) below.
- (e) Amenities. The Port shall identify temporary and permanent amenities (including non-asphalt roadways) to support each phase. During the collaborative design process for each phase, the Parties shall agree on the specifics of each amenity, and shall memorialize the inclusion of said amenities in the Approved Development Plan included as an addendum to the applicable purchase and sale agreement. Additionally, the Port shall allocate a portion of the purchase price of each phase for construction of amenities, and the Parties shall mutually agree on how those funds are allocated.
- (f) Options for Delays in Finished Lot Completion. If the Port is unable to deliver Finished Lots within 15 months of the execution date of the mutually accepted Approved Development Plan for such phase, then BlueChart shall have the option to: (i) exclude the unfinished lots from those acquired at the applicable closing and purchase the excluded lots after the deficiency or failure is corrected, (ii) extend the closing date to allow the Port to complete all required work, (iii) terminate the purchase and sale agreement for that phase and receive a return of the earnest money deposited for that phase, or (iv) continue with the purchase and sale agreement and receive a 5% per month discount up to a maximum of 20% (or 4 months) based on the purchase price of the first 24 lots delayed in the Phase, according to the Takedown and Closing Schedule (1.4). The Port shall have a 30-day grace period to deliver lots before discount takes effect.

Notwithstanding the foregoing, the options listed in the preceding paragraph shall not be applicable if the delay in the delivery of Finished Lots is the result of a pending appeal of any quasi-judicial decision of the City of Kennewick or related to the approval of any condition of final plat by the City of Kennewick or any other agency with jurisdiction. Should any pending appeal or delay last for longer than one hundred eighty (180) days, either the Port or BlueChart may, in their sole and independent discretion, terminate this Agreement by delivery of written notice to the other. Subsequent to such termination, the Port shall refund any applicable earnest money deposit and BlueChart shall have a right of first refusal to buy the delayed Finished Lots for a period of twelve (12) months from the date of such termination.

- (g) Sequencing of Lots Purchased. BlueChart understands and agrees that the orderly acquisition and development of lots in each phase is important to the Port. As such, the Port must agree, in its sole discretion, as to which specific lots will be purchased in each desired acquisition by BlueChart and include that order in the Approved Development Plan (as defined in Section 1.6 below).
- (h) BlueChart's Failure to Apply for a Building Permit. BlueChart's failure to apply for a building permit within forty-five (45) days of the date deed is recorded on such lot shall provide a basis, which shall be exercised within the Port's sole and absolute discretion, for the Port to refuse to enter into any subsequent lot sales with

BlueChart. Nothing herein is intended to alter, amend or effect the Port's rights to repurchase properties as provided in Section 5.1 herein and in Section 8 of the Purchase and Sale Agreement attached hereto as **Exhibit C**.

- 1.5 Right of First Refusal. The Port hereby grants to BlueChart a Right of First Refusal to purchase any single family residential lots in Phases 6 through 8 pursuant to the terms and conditions of the Right of First Refusal attached hereto as **Exhibit B**. At BlueChart's request, the Port shall record a memorandum of the fully executed Right of First Refusal. As long as this Agreement is in effect, the Port shall not develop, sell or offer for sale, any single family residential lots within Vista Field outside the eight phases referenced in this Agreement.
- 1.6 Collaborative Design Process. BlueChart will build a design library with a minimum of 12 home types and [36 variations] across the project within the design criteria set forth for the project. These designs will be submitted to the Town Architect for approval. The Parties shall work cooperatively to agree on a development plan for each phase (the "**Approved Development Plan**") which plan shall include, at a minimum, (i) the number, size, and configuration of lots for such phase, (ii) a description, budget, and scheduling of the amenities the Port will construct to support such phase (which amenities may be located within or outside such phase as the Parties agree), (iii) the order of acquisition for lots within such phase, and (iv) designation of a construction staging area available for the exclusive use of BlueChart during construction on lots within such phase. The Approved Development Plan for each phase shall be agreed to prior to BlueChart's waiver of its feasibility period for such phase and thereafter attached to the Purchase and Sale Agreement for such phase. If the Parties are unable to agree on an Approved Development Plan for any phase, any earnest money deposit paid for such phase shall be returned to BlueChart, neither party shall have any further obligations under this Agreement for that specific phase.
- 1.7 Closing Details Reserved for the Purchase and Sale Agreement. The Parties understand and agree that the definitive terms and conditions of the sale of lots in each phase shall be consummated by using a form purchase and sale agreement substantially similar to that attached hereto as **Exhibit C**. The Parties shall endeavor to include any relevant terms from this Agreement into the purchase and sale agreement, and in the event of a conflict between the terms and conditions of this Agreement and the purchase and sale agreement shall be resolved in favor of the purchase and sale agreement.

No later than fifteen (15) business days after the Port's receipt from BlueChart of a written notice to proceed with the acquisition of a phase of Vista Field, the Port and BlueChart shall execute a purchase and sale agreement substantially in the form attached hereto as **Exhibit C** to document the specific terms of the purchase and sale of that phase, as determined in accordance with this Agreement. The Parties agree that execution of a purchase and sale agreement for a phase shall be a ministerial act of the Port to document the terms applicable to the sale, as determined in accordance with this Agreement. By voting to approve this Agreement, the Port is affirmatively approving the execution of a purchase and sale agreement for each phase by the official delegated with such authority in a duly authorized resolution of the Port, provided the terms of such purchase and sale

agreement comply with this Agreement. Unless otherwise specifically provided in this Agreement, failure of either Party without legal excuse to execute a purchase and sale agreement with terms consistent with this Agreement within fifteen (15) business days of request, shall constitute a default. In such event, the non-defaulting party shall have the rights and remedies provided in Section 5.3 or Section 5.4, as applicable, of this Agreement.

- 1.8 Possession. Possession of each lot purchased shall be transferred to BlueChart at closing.
- 1.9 Limitation on Resale. BlueChart has been selected to participate as part of the Port's effort to develop the property in accordance with the Vista Field Master Plan and the Vista Field Design Standards. As part of the consideration for the lot, BlueChart has agreed to construct buildings and structures on the lot within a specified time and in accordance with approved plans. BlueChart is not permitted to resell the lot without a completed residence.
- 1.10 Assignment. Except for an assignment to a wholly owned subsidiary of BlueChart or a related entity in which BlueChart, Benjamin Paulus, and/or Levi Holmes hold a majority ownership interest, BlueChart shall not have the right to assign this Agreement or any of its rights or obligations hereunder to any persons, corporations or other entity without the written approval of Port, which approval may be arbitrarily withheld by Port, it being specifically understood and agreed that the Port has entered into the subject contract with BlueChart solely and only because it is familiar with, knowledgeable about and desirous of permitting only BlueChart's key principals, Benjamin Paulus and/or Levi Holmes, to construct dwelling units within the subdivision contemplated by this Agreement. The Port shall not have the right to assign any or all of its rights under the subject Agreement.
- 1.11 Approval by Board of Commissioners. BlueChart acknowledges and agrees that this Agreement is not binding on the Port or BlueChart until it is signed by the Port following approval of the Board of Commissioners. All other required approval processes for the sale of the Property to BlueChart pursuant to the terms of this Agreement, except as otherwise identified or limited herein, including, but not limited to the requirement to subdivide the Property and achieve final plat, have been satisfied in full. Execution of this Agreement by the Port constitutes the Port's representation and warranty to BlueChart that it has completed all actions required by law or internal policies to sell the Property to BlueChart on the terms described herein.

2. CONSTRUCTION APPROVALS, TIME LIMITS AND GOVERNMENTAL FEES

- 2.1 Adherence to Vista Field Design Standards.
 - (a) Review. BlueChart shall construct all improvements in accordance with final plans and specifications as approved for the lot by the Vista Field Town Architect in accordance with the CC&Rs. Any changes to the final plans and specifications must

be approved by the Vista Field Town Architect prior to construction permit approval.

- (b) Violations. Any construction in violation of, or inconsistent with, the approved plans and specifications may be stopped by the Vista Field Town Architect pursuant to the process provided in the CC&Rs and further work on the job will cease until the work has been corrected to the satisfaction of the Vista Field Town Architect. If BlueChart fails to correct the work or if BlueChart has previously violated this provision on any lot, the Port may terminate the contractor's privilege to build in Vista Field.
- (c) No Waiver. Variances to the Vista Field Design Standards or non-enforcement of violations that may have occurred in the past do not relieve BlueChart of the responsibility to comply with approved plans and specifications for current and future projects. The preceding is not intended in any way to waive the rights of the Vista Field Town Architect, the Vista Field Owners Association or the Port to enforce previous violations.

2.2 Governmental Approval.

- (a) Responsibility. BlueChart shall be responsible for procuring and paying for all building construction permits and shall follow state, county and city codes at all times. The Vista Field Town Architect is intended only to assure compliance with the aesthetic concerns of the Vista Field Design Standards and that the Vista Field Town Architect, the Vista Field Owners Association, and the Port are not liable for any design or construction defects affecting the safety or structural integrity of any building or structure, or for failure of the building or structure to comply with any applicable building codes.
- (b) Cooperation. BlueChart agrees to cooperate fully with the Port at all times during the term of this Agreement with reference to obtaining all necessary governmental permits, licenses and approvals required to affect the purposes of this Agreement and further agrees to timely execute any and all documents required to obtain such governmental permits, licenses and approvals.

2.3 Charges Levied By Authorities. All impact, tax, development and other charges assessed or levied by governmental bodies or authorities with reference to the construction of buildings or residences upon the lots which are the subject matter of this Agreement, including, but not limited to, such fees as building permits, utility connections and other hookups, water meters, and school, traffic and other mitigation, shall be the responsibility of and shall be borne solely by BlueChart.

2.4 Lot Improvements. BlueChart agrees that it will provide, at its sole expense, all on-lot landscaping and on-lot improvements as may be required by the governmental body having jurisdiction or as a result its obligations set forth in an Approved Development Plan. BlueChart shall conform to the landscape code applicable to the single-family residential lots sold within Vista Field.

- 2.5 Common Area Improvements; Association. All common area improvements and entry improvements, including structures, signage, decorative lighting, irrigation, landscaping, fencing, grassing and the like located outside lots subject to this Agreement, shall be constructed or installed by the Port and maintained and owned by the Vista Field Owner's Association (the "Association").

3. WORK SITE

- 3.1 No Trailers. No trailers or temporary buildings are permitted except within the construction staging area provided by the Port for that purpose.
- 3.2 Signage. BlueChart will not erect any signage of any type except as provided by the Vista Field Design Standards and specifically approved by the Vista Field Town Architect.
- 3.3 Clean Construction Site. BlueChart is responsible for maintaining a clean construction site at all times, in accordance with the following provisions.
- (a) Inventory Lots. BlueChart agrees to maintain all undeveloped home sites owned by the BlueChart. If construction has not begun, BlueChart shall keep its lots free from debris. Once begun, construction shall proceed to completion in an expeditious manner. No building shall be left in a partially completed state.
- (b) Building Material. Building material shall be kept within the property lines and shall be stored in a neat and orderly fashion. Building materials and equipment shall not be stored on driveways, or other lots without the prior consent of the Port. If construction is suspended for more than thirty (30) days, all building materials shall be stored within the construction staging area provided for that purpose until construction is resumed. All excess building materials shall be removed no later than ninety (90) days after construction completion.
- (c) Trash. All work shall be done in a neat and orderly manner with debris being removed regularly throughout the course of construction. BlueChart shall furnish trash containers and keep the premises free from accumulation of waste materials at all times and will properly and promptly remove any hazardous waste. Trash shall not be allowed outside of the designated trash and scrap area. All paper and debris will be picked up each day before leaving the site. Food garbage (lunch remains including cans) cannot be mixed with construction debris but must be kept in appropriate containers and removed at least weekly. At completion of the work, all remaining waste materials shall be disposed of legally, and tools, construction equipment, machinery and surplus material shall be removed from the site. No dumping or burning of trash, underbrush or any other material is permitted.
- 3.4 Erosion Control. BlueChart shall take all necessary precautions to protect existing vegetation and to comply with all erosion control methods established by the Vista Field

Town Architect or the Port from time to time. BlueChart understands that protection of existing trees is extremely important in Vista Field. BlueChart will use due care in removing trees permitted to be removed, and will build and maintain at all times an approved frame around any trees required by the Vista Field Town Architect or the Port to be preserved. BlueChart will not cut, remove, or willfully damage any tree unless approved by the Vista Field Town Architect. If BlueChart does not comply with this rule, in addition to the fines and other penalties provided in Section 5.2 of this Agreement, BlueChart may be required to plant a tree of the same species and comparable size.

3.5 Neighboring Property. BlueChart is responsible for making sure that work activity on the job site does not encroach onto adjacent property. BlueChart may not use a neighboring property for access or store materials on adjacent property except by written permission of the adjacent lot owner.

3.6 Insurance. BlueChart, its contractors, subcontractors, agents and assigns is responsible for carrying, and will keep in force at all times, insurance types and amounts typically required for construction activities on Port facilities and otherwise acceptable to the Port, acting reasonably.

3.7 Nuisances.

(a) Generally. BlueChart is expected to show respect for the Vista Field community, its residents and guests. BlueChart understands that BlueChart must take necessary precautions so as not to create undue noise and that radios etc. must be kept at reasonable sound levels so as not to disturb others outside the construction site. Noise levels shall be compliant at all times with the Kennewick Municipal Code and the standards of WAC 173-60. No profanity, cat calls or unnecessary noise will be tolerated. No animals are permitted on the construction site.

(b) Vehicles. All workers must abide by the traffic access plan designated by the Port from time to time. Vehicles and heavy equipment of BlueChart and the Port are prohibited from using woonerfs and specialty surfaces as long as alternative access to the lots is provided. All roadways must be kept open for the passage of through traffic. Where absolutely necessary, attended trucks may use the street while loading and unloading only. All other vehicles must be parked completely off the street on BlueChart's lot or in areas designated by the Port. No vehicle may be parked overnight except within the construction staging area provided for that purpose. Any vehicle in violation of this section may be towed.

4. OBLIGATIONS OF THE PORT

4.1 The Port covenants and agrees as follows:

- (a) Subdivision Improvements. Prior to conveying a lot within any phase to Blue Chart, but in any event no later than the date that is fifteen (15) months after the execution date of the mutually agreed upon Approved Development Plan for such Phase, the Port shall, at its sole cost, obtain final plat approval and complete the work more particularly described on attached **Exhibit D** for such phase (the “*Infrastructure Improvements*”). The lots shall be platted and the Plat shall contain building sites fronting on woonerfs, alleys; and paved streets with concrete curbs and sidewalks. The Port shall make all utilities (water, sewer, and conduit for electricity) available at the boundary of the lots, and shall otherwise satisfy all requirements imposed by the City of Kennewick as a condition of final plat approval.
- (b) Information Delivery. No later than five (5) business days after the Effective Date, the Port shall deliver to BlueChart copies of any surveys, engineering plans, binding site plans, soil studies, wetland reports, environmental studies, environmental site assessments and phase II reports, and all other third party consultant materials, which have been prepared by or at the direction of the Port for Vista Field together with copies of any leases, contracts, development agreements and other agreements binding on the Property and not otherwise disclosed on the Preliminary Commitment for Title Insurance delivered to BlueChart.
- (c) Collaborative Design Process/Approved Development Plan. The Port shall work cooperatively with BlueChart to agree on an Approved Development Plan for each phase. All applications and submissions by the Port to the City of Kennewick or other applicable governmental authorities shall be consistent with the Approved Development Plan.
- (d) Amenities. The Port shall allocate no less than fifteen percent (15%) of the aggregate purchase price for lots in each phase to construct and install the amenities described in the Approved Development Plan for such phase. The Port and BlueChart may agree to allocate some or all of those dollars to other phases or areas within the Vista Field community. At the sole discretion of the Port, any unused funds at the end of each phase may be used for a future phase, or returned to the Port’s general fund.
- (e) Liens. From and after the Effective Date, the Port shall refrain from creating, allowing, or incurring any mortgage, lien, pledge or other encumbrance on any Phase. Any liens that are created shall be removed before the encumbered by such lien is transferred to BlueChart. Nothing in this section shall prohibit the Port from disputing any cost or expense in good faith provided the dispute does not hinder, delay or otherwise adversely impact BlueChart’s use of or title coverage for any lot and the Port diligently pursues resolution of the disputed item and clears all such liens at least five (5) business days prior to closing.
- (f) Construction Activities. The Port will not, during the Port's development of Finished Lots, bury any stumps, boulders, pavement, concrete, asphalt, trash, refuse, or brush on any property that will become a Finished Lot. The Port shall not commit or allow any waste to occur on or to any lot subject to this Agreement.
- (g) Engineering Plan; Permit Submittals. The Port shall, at its sole cost and expense, diligently pursue and obtain prior to closing of any Finished Lot within each phase, final approval

from all applicable governmental authorities and utility companies of the engineering plans for such phase and all other applicable grading, drainage, landscape, utility and other plans for the phase, each with terms and in a form acceptable to BlueChart, acting reasonably and otherwise consistent with the Approved Development Plan for such phase.

- (h) Utilities. The Port shall, at its sole cost and expense, obtain all necessary easements and other use and connection rights and otherwise construct all required utility systems to service the lots including sanitary sewer, storm sewer, water, electric, natural gas, telephone, fiber and other communication lines.
- (i) Contracts. Prior to each closing, all leases, rental arrangements, occupancy agreements, service, and similar contracts affecting the lots in that closing shall be terminated.
- (j) Marketing, Sales, Transfers before Phase 5 Completion. The Port shall not market, sell, negotiate the sale of, or make, accept or pursue offers to sell any single-family residential lots created within Vista Field to any third party until BlueChart has either acquired all Finished Lots in Phases 1 through 5 of Vista Field or BlueChart's right to acquire Finished Lots within all such phases has been terminated in accordance with this Agreement.
- (k) Right of First Refusal. The Port shall not sell or accept any offers to purchase residential lots within Phases 6 through 8 before offering the residential lots to BlueChart on the terms set forth in the Right of First Refusal attached hereto as **Exhibit B**. As long as this Agreement is in effect, the Port shall not develop, sell or offer for sale, any single-family residential lots within Vista Field outside the eight Phases as referenced in this Agreement.
- (l) Punch-List. Upon receipt of written notice from the Port that the Infrastructure Improvements for any Phase is complete and the lots are finished, BlueChart and the Port shall, within five (5) business days of such notice, inspect the Phase and agree in writing on a punch-list describing any corrective or repair work to be completed by the Port. The Port shall promptly rectify punch list items to BlueChart's reasonable satisfaction. Notwithstanding the foregoing, the Port represents and warrants to correct all punch list items discovered after closing of any Finished Lot within sixty (60) days after receipt of notice. The provisions of this Section shall survive closing of any Finished Lot.
- (m) Development of Finished Lots. Prior to the closing of the sale of the first lot in each Phase, but in any event no later than the date provided in Section 4.1 (a) above, the Port shall, at its sole cost and expense, complete the work described on attached **Exhibit D** for such Phase (the "**Infrastructure Improvements**"). The Port has agreed to sell, and BlueChart has agreed to acquire lots within each Phase with all Infrastructure Improvements for such Phase complete. At such time as the Port has completed all Infrastructure Improvements for a particular Phase, the Port shall furnish BlueChart (i) a recorded Final Plat; (ii) a complete as-built set of engineering plans for the Lots approved by the applicable government authorities, and (iii) a letter from the Port's engineer describing all elements not identified in the approved Record drawings.

- 4.2 Governmental Approvals. The Port agrees to cooperate fully with BlueChart at all times during the term of this Agreement with reference to obtaining building permits, licenses and approvals, including but not limited to those required by the governmental bodies having jurisdiction and further agrees to execute any and all documents required to obtain necessary governmental approvals.

5. DEFAULT AND REMEDIES

5.1 Port's Right to Repurchase.

- (a) The Parties incorporate and restate, as if fully set forth herein, the terms and conditions found in Section 8 (entitled "Repurchase Option") of the Purchase and Sale Agreement attached hereto as **Exhibit C**.

5.2 Construction Site Violations.

- (a) Clean Construction Site. If BlueChart has violated the provisions of Section 3.3 and BlueChart's site is not cleaned within three (3) business days after written notice, the Port may clean the site at BlueChart's expense, in addition to any fines or other penalties provided in Section 5.2(c).
- (b) Nuisances. BlueChart shall respond to requests from the Port to correct behavior that disturbs others within Vista Field. For repeated violations of Section 3.7 and after at least two written warnings, BlueChart may be charged a fine of up to \$100 per day for violations. In cases of persistent and repeated disregard for the needs of others that is causing a serious disturbance to others within Vista Field, and after at least three fines for the same or similar nuisance, any future occurrences may be subject to additional charges as provided in the CC&Rs. Noise, dust, and common disturbances from normal residential construction activities shall not be considered a nuisance hereunder if BlueChart is otherwise in compliance with applicable law.
- (c) Other Construction Site Violations. The Port may enforce violations of any of the provisions of Part 3 of this agreement other than Section 3.7, as follows:
- First Offense - Written warning
 - Second Offense - \$500 fine
 - Five or more Offenses - up to \$1,000 fine

Offenses do not need to be of the same type or for the same lot to be cumulative.

- 5.3 Default by BlueChart. If BlueChart defaults by failing to purchase the lots at the required times, BlueChart's deposit shall be retained by the Port as liquidated damages and all further rights and obligations under this Agreement shall be automatically terminated. If BlueChart fails to comply with any other obligation under this Agreement (other than work

site or construction site violations under Sections 3 or 5.2 above) then the Port may terminate this Agreement as to any lots not yet conveyed. An action for punitive damages, lost profits or other consequential damages are prohibited and may not be claimed.

- 5.4 Default by Port. If the Port is in default under this Agreement, BlueChart may: (i) terminate this Agreement in which event the earnest money deposit then held by the Closing Agent shall be immediately returned to Blue Chart, or (ii) maintain an action for specific performance or other injunctive relief (and the Port stipulates that specific performance is an appropriate remedy hereunder and that the terms of this Agreement are certain enough to enforce such remedy); and/or (iii) in the event that specific performance is unavailable as a remedy, bring an action for actual damages (provided that punitive damages, lost profits or other consequential damages are prohibited and may not be claimed).
- 5.5 Force Majeure. If either Party is delayed or prevented from performing any of its respective obligations under this Agreement by reason of acts of God, governmental action, order, or requirement, epidemic, pandemic, fire, floods, strikes, cyber-attack, or due to any other cause beyond the reasonable control of such Party, then the time period for performance such obligations shall be extended for the period of such delay.
- 5.6 Notice and Opportunity to Cure. Unless this Agreement provides a different cure period, each Party shall be given a ten (10) business day notice and opportunity to cure any default hereunder and any failure to meet a deadline under this Agreement before the other Party may exercise any remedy in this Agreement. If a default exists on any performance date (including the closing date), such date shall be extended to provide the benefit of the above notice and opportunity to cure period.
- 5.7 Waiver of Consequential or Punitive Damages. The Parties expressly waive and agree that in no event shall either Party be liable for any lost profits or speculative, consequential, or punitive damages in the event of any default under this Agreement.

6. MISCELLANEOUS PROVISIONS

- 6.1 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws in the State of Washington, and venue shall lie in Benton County, Washington.
- 6.3 Survival. The terms, conditions and covenants contained in this Agreement shall survive the closing and the delivery of deeds.
- 6.4 No Waiver. The waiver by any party of a breach of any provision of this Agreement shall not be considered a waiver of any other breach of such provision or any other provisions of this Agreement.

- 6.5 No Broker. The Parties acknowledge that no realtor or broker represented the interest of either party, that no commissions are due to anyone as a result of the purchase and sale of the lots, and that the lots shall not be subject to any real estate listing agreement at the time of closing.
- 6.6 Entire Agreement. This Agreement contains the entire understanding between the Parties and may be amended only by instrument in writing and executed by the Parties.
- 6.7 Indemnification. To the full extent permitted by law, BlueChart agrees to defend, indemnify, and hold harmless the Port and its officers, employees, and agents, from any civil claim of liability directly resulting from or arising out of any violation of any law, rule or order and from any and all claims or liabilities, including reasonable attorney's fees, for loss, damage or injury to persons or property of whatever kind or nature caused by or resulting from or arising out of any negligent act or omissions or willful misconduct of BlueChart, its agents, invitees, and contractors related to its activities on the Property. Prior to the enforcement of any indemnity for property damage, the Port shall provide BlueChart with written notice of and the opportunity to cure such damage. Notwithstanding the foregoing, neither BlueChart nor its contractors or agents shall be liable for any claims to the extent arising (i) from the negligence, recklessness, willful misconduct or breach of contract or law by the Port or any of the Port's agents, representatives, employees, or elected officials, or (ii) as a consequence of strict liability imposed upon the Port or any of Port's agents, representatives, employees, or elected officials as a matter of law. The Parties understand and agree that the duty to defend arises immediately upon the threat or filing of a claim by a third party, and is not otherwise contingent upon a finding of fault or liability by a court of law or adjudicative body. This indemnification shall include but not be limited to the expenses (including judgments, court costs, settlements and attorneys' fees) actually and necessarily paid or incurred in connection with any suit or threatened suit. In no event shall either BlueChart or the Port be liable for any consequential, incidental, indirect, punitive or special damages in connection with this Agreement.
- 6.8 Notices. Any notice given under this Agreement must be in writing and shall be deemed given (i) when delivered in person; (ii) when deposited with a reputable overnight courier service, provided that any such notice shall not be deemed received until the next business day after deposit; (iii) when deposited in the U.S. mail, postage prepaid, certified or registered mail, return receipt requested, provided that any such notice shall not be deemed received until 3 business days after deposit; or (iv) when sent by electronic mail before 5:00 pm on a business day and the sender receives confirmation of transmission thereof (otherwise, any notice sent after 5:00 pm shall be deemed received on the next business day). All notices must be properly addressed to the Parties as follows:

BlueChart: Blue Chart, LLC
c/o Blue Fern Development I, LLC
18300 Redmond Way, Ste 120
Redmond, WA 98052-5183
Attn: Ben Paulus
Phone: (425) 629-3854
Email: ben@bluefern.com

c/o Chartwell Building Company LLC
307 Bayshore Dr NW, Suite 307,
Silverdale WA 98383
Phone No.: 360-265-8701
Email: levi@chartwellland.com

Port: Port of Kennewick
350 Clover Island Drive, Suite 200
Kennewick, Washington 99336
Attn: Tim Arntzen, Chief Executive Officer
Phone No.: (509)586-1186
Email: amber@portofkennewick.org

With copy to: Witherspoon Brajcich McPhee, PLLC
601 W. Main Ave, Suite 1400
Spokane, WA 99201
Attn: Taudd Hume, Port Counsel
Phone No.: (509) 455-9077
Email: thume@workwith.com

Either party may designate a different person or entity or place to which notices shall be given by delivering a written notice to that effect to the other party, which notice shall be effective after same is actually received by the other party.

- 6.9 Captions. All captions and headings are inserted for the convenience of the Parties and shall not be used in any way to modify, limit or otherwise affect this Agreement.
- 6.10 Counterparts. This Agreement may be executed simultaneously or in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 6.11 Severability. If any term, provision or condition of this Agreement is determined by a court or other judicial or administrative tribunal to be illegal, void or otherwise ineffective or not in accordance with public policy, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.
- 6.12 Interpretation. In the event of a dispute or disagreement arising under this Agreement, this Agreement shall be interpreted in accordance with its fair meaning and shall not be interpreted for or against any party on the ground that such party drafted or caused to be drafted this Agreement.
- 6.13 Recording Notice. Either party shall have the right to record a notice of this Agreement in the appropriate registry at its costs and expense.

6.14 Electronic Signatures. The Parties acknowledge and agree that execution of this Agreement, and amendment hereto, may be accomplished by electronic signature utilizing DocuSign or any other mutually acceptable similar online, electronic, or digital signature technology. The Parties agree that this Agreement may be transmitted by facsimile machine or by electronic scanning and email, and the Parties intend that faxed, scanned, and electronic signatures shall constitute original signatures. A facsimile or scanned copy or any counterpart or conformed copy of this Agreement, including use of Adobe PDF technology to merge pages and create a conformed copy of this Agreement, with the signature (original, faxed, or scanned signature or permitted electronic signature) of all the Parties shall be binding on the Parties.

6.15 Exhibits.

- (a) Exhibit A – Vista Field Legal Description and Master Plan Sketch
- (b) Exhibit B – Right of First Refusal
- (c) Exhibit C – Form Purchase and Sale Agreement
- (d) Exhibit D – Port Infrastructure Improvements
- (e) Exhibit E – Promissory Note (ROFR Consideration)
- (f) Exhibit F – Promissory Note (initial earnest money)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date first written above.

Port of Kennewick
A Washington Municipal Corporation
By Authority of its Board of Commissioners

By: _____
Tim Arntzen, Chief Executive Officer

Approved:

Approved as to form:

Nick Kooiker, Port Auditor/CFO

Taud Hume, Port Counsel

BlueChart, LLC

By: _____
Levi Holmes

Its: Member _____

By: _____
Ben Paulus

Its: Member _____

EXHIBIT A

(Vista Field Legal Description & Master Plan Area)

The Master Plan Area comprises the seven parcels described below and totals 102.38 acres, more or less.

The diagram following the legal description shows the approximate shape and location of the seven parcels. The diagram is not a survey and is provided for information purposes.

PARCEL 1: THAT PORTION OF "NEW PARCEL A" AND "NEW PARCEL B" AS SHOWN ON RECORD SURVEY 4155, ACCORDING TO THE SURVEY THEREOF RECORDED IN VOLUME 1 OF SURVEYS, PAGE 4155, RECORDS OF BENTON COUNTY, WASHINGTON, AND THAT PORTION OF TRACT "B" OF RECORD SURVEY 2339, ACCORDING TO THE SURVEY THEREOF RECORDED IN VOLUME 1 OF SURVEYS, PAGE 2339, RECORDS OF BENTON COUNTY, WASHINGTON, SITUATE IN SECTION 32 TOWNSHIP 9 NORTH, RANGE 29 EAST, WILLAMETTE MERIDIAN, CITY OF KENNEWICK, BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHERLY MOST CORNER OF SAID TRACT "B" OF RECORD SURVEY 2339; THENCE NORTH 45°58'32" WEST 306.97 FEET ALONG THE SOUTHWESTERLY BOUNDARY OF SAID "NEW PARCEL B" TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 1031.00 FEET, THENCE NORTHEASTERLY 513.87 FEET ALONG THE ARC OF SAID CURVE AND ALONG THE SOUTHEASTERLY RIGHT OF WAY MARGIN OF GRANDRIDGE BOULEVARD THROUGH A CENTRAL ANGLE OF 28°33'26" (THE LONG CHORD OF SAID CURVE BEARS NORTH 29°53'16" EAST 508.57 FEET); THENCE SOUTH 78°13'15" EAST 254.00 FEET ALONG THE NORTHERLY BOUNDARY OF SAID "NEW PARCEL B"; THENCE SOUTH 01°49'13" EAST 263.75 FEET; THENCE SOUTH 45°52'22" EAST 873.13 FEET TO THE SOUTHEASTERLY BOUNDARY OF SAID "NEW PARCEL A"; THENCE SOUTH 44°07'38" WEST 181.40 FEET ALONG THE SOUTHEASTERLY BOUNDARY OF SAID "NEW PARCEL A"; THENCE SOUTH 44°07'38" WEST 262.72 FEET ALONG THE SOUTHEASTERLY BOUNDARY OF SAID "NEW PARCEL A"; THENCE SOUTH 46°00'33" EAST 55.98 FEET ALONG THE SOUTHEASTERLY BOUNDARY OF SAID "NEW PARCEL A"; THENCE SOUTH 44°04'22" WEST 494.67 FEET ALONG THE SOUTHEASTERLY BOUNDARY OF SAID "NEW PARCEL A"; THENCE NORTH 46°00'02" WEST 139.19 FEET ALONG THE SOUTHEASTERLY BOUNDARY OF SAID "NEW PARCEL A"; THENCE NORTH 45°20'32" WEST 345.15 FEET; THENCE NORTH 44°03'14" EAST 237.11 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 15.00 FEET; THENCE NORTHEASTERLY 12.75 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 48°42'16" TO THE BEGINNING OF A NONTANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 100.33 FEET; THENCE NORTHWESTERLY 20.00 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 11°25'26" (THE LONG CHORD OF SAID CURVE BEARS NORTH 87°41'46" WEST 19.97 FEET); THENCE NORTH 08°59'09" EAST 49.28 FEET; THENCE SOUTH 81°00'51" EAST 20.00 FEET; THENCE NORTH 09°49'27" EAST 50.00 FEET; THENCE NORTH 82°56'05" WEST 100.12 FEET; THENCE NORTH 09°49'27" EAST 67.81 FEET; THENCE NORTH 44°01'28" EAST 41.18 FEET; THENCE NORTH 45°58'32" WEST 238.57 FEET TO THE NORTHWESTERLY BOUNDARY OF SAID TRACT "B"; THENCE NORTH 44°05'10" EAST 126.27 FEET ALONG THE NORTHWESTERLY BOUNDARY OF SAID "TRACT B" TO THE POINT OF BEGINNING. CONTAINS 20.06 ACRES, MORE OR LESS.

PARCEL 2: THAT PORTION OF "NEW PARCEL A" AND "NEW PARCEL B" OF RECORD SURVEY 4155, ACCORDING TO THE SURVEY THEREOF RECORDED IN VOLUME 1 OF SURVEYS, PAGE 4155,

RECORDS OF BENTON COUNTY, WASHINGTON, SITUATE IN SECTION 32 TOWNSHIP 9 NORTH, RANGE 29 EAST, WILLAMETTE MERIDIAN, CITY OF KENNEWICK, BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHERLY MOST CORNER OF LOT 2, SHORT PLAT 3336, ACCORDING TO THE SURVEY THEREOF RECORDED IN VOLUME 1 OF SHORT PLATS, PAGE 3336, RECORDS OF BENTON COUNTY; THENCE THE FOLLOWING SEVENTEEN COURSES ALONG THE BOUNDARY OF SAID "NEW PARCEL A"; THENCE NORTH 44°05'28" EAST 813.10 FEET; THENCE NORTH 44°07'01" EAST 140.72 FEET; THENCE NORTH 44°02'52" EAST 201.35 FEET; THENCE NORTH 44°06'30" EAST 187.72 FEET; THENCE SOUTH 45°56'15" EAST 699.87 FEET; THENCE SOUTH 44°05'43" WEST 250.87 FEET; THENCE SOUTH 44°04'53" WEST 609.48 FEET; THENCE SOUTH 44°03'31" WEST 399.94 FEET; THENCE SOUTH 44°00'44" WEST 99.99 FEET; THENCE SOUTH 44°05'20" WEST 217.89 FEET; THENCE SOUTH 44°09'54" WEST 134.60 FEET; THENCE SOUTH 44°03'28" WEST 220.33 FEET; THENCE SOUTH 44°06'27" WEST 109.73 FEET; THENCE SOUTH 45°56'46" EAST 199.99 FEET; THENCE SOUTH 43°42'32" WEST 30.22 FEET; THENCE NORTH 45°54'01" WEST 255.68 FEET; THENCE SOUTH 44°07'38" WEST 225.88 FEET; THENCE NORTH 45°52'22" WEST 873.13 FEET; THENCE NORTH 01°49'13" WEST 263.75 FEET TO THE NORTHEASTERLY BOUNDARY OF SAID "NEW PARCEL B"; THENCE SOUTH 78°13'15" EAST 496.55 FEET ALONG SAID NORTHEASTERLY BOUNDARY; THENCE NORTH 43°54'07" EAST 506.05 FEET ALONG THE NORTHWESTERLY BOUNDARY OF SAID "NEW PARCEL A" TO THE POINT OF BEGINNING. CONTAINS 39.41 ACRES, MORE OR LESS.

PARCEL 3: THAT PORTION OF "NEW PARCEL A" OF RECORD SURVEY 4155, ACCORDING TO THE SURVEY THEREOF RECORDED IN VOLUME 1 OF SURVEYS, PAGE 4155, RECORDS OF BENTON COUNTY, WASHINGTON, AND THAT PORTION OF "TRACT B" OF RECORD SURVEY 2339, ACCORDING TO THE SURVEY THEREOF RECORDED IN VOLUME 1 OF SURVEYS, PAGE 2339, RECORDS OF BENTON COUNTY, SITUATE IN SECTION 32 TOWNSHIP 9 NORTH, RANGE 29 EAST WILLAMETTE MERIDIAN, CITY OF KENNEWICK, BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHERLY MOST CORNER OF SAID "NEW PARCEL A"; THENCE THE FOLLOWING SEVEN COURSES ALONG THE BOUNDARY OF SAID "NEW PARCEL A": THENCE NORTH 45°57'21" WEST 700.23 FEET; THENCE NORTH 44°06'32" EAST 279.98 FEET; THENCE NORTH 44°03'59" EAST 235.14 FEET; THENCE NORTH 44°06'09" EAST 185.21 FEET; THENCE NORTH 45°54'03" WEST 508.18 FEET; THENCE NORTH 44°04'39" EAST 60.00 FEET; THENCE SOUTH 45°52'57" EAST 306.85 FEET TO THE WESTERLY MOST CORNER OF SAID "TRACT B"; THENCE NORTH 44°05'06" EAST 670.87 FEET ALONG THE NORTHWESTERLY BOUNDARY OF SAID "TRACT B"; THENCE SOUTH 45°58'32" EAST 238.57 FEET; THENCE SOUTH 44°01'28" WEST 41.18 FEET; THENCE SOUTH 09°49'27" WEST 67.81 FEET; THENCE SOUTH 82°56'05" EAST 100.12 FEET; THENCE SOUTH 09°49'27" WEST 50.00 FEET; THENCE NORTH 81°00'51" WEST 20.00 FEET; THENCE SOUTH 08°59'09" WEST 49.28 FEET; TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 100.33 FEET; THENCE SOUTHEASTERLY 20.00 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 11°25'26" (THE LONG CHORD OF SAID CURVE BEARS SOUTH 87°41'46" EAST 19.97 FEET) TO THE BEGINNING OF A NONTANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 15.00 FEET; THENCE SOUTHWESTERLY 12.75 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 48°42'16" (THE LONG CHORD OF SAID CURVE BEARS SOUTH 19°42'06" WEST 12.37 FEET); THENCE SOUTH 44°03'14" WEST 237.11 FEET; THENCE SOUTH 45°20'32" EAST 345.15 FEET TO THE SOUTHEASTERLY BOUNDARY OF SAID "NEW PARCEL A"; THENCE SOUTH 44°05'31" WEST 323.35 FEET ALONG THE SOUTHEASTERLY BOUNDARY OF SAID "NEW PARCEL A"; THENCE SOUTH 46°00'03" EAST 139.20 FEET ALONG THE SOUTHEASTERLY BOUNDARY OF SAID "NEW PARCEL A"; THENCE SOUTH 44°04'04" WEST 739.15 FEET ALONG THE SOUTHEASTERLY BOUNDARY OF SAID "NEW PARCEL A"

TO THE POINT OF BEGINNING. SUBJECT TO PUBLIC ROAD RIGHT OF WAY DEDICATED BY DEED RECORDED UNDER AUDITOR'S FILE NUMBER 2021-048860, RECORDS OF BENTON COUNTY, WASHINGTON. CONTAINS 21.11 ACRES (NET), MORE OR LESS.

PARCEL 4: LOT 2, SHORT PLAT 1333, ACCORDING TO THE SURVEY THEREOF RECORDED IN VOLUME 1 OF SHORT PLATS, PAGE 1333, RECORDS OF BENTON COUNTY, WASHINGTON. CONTAINS 5.58 ACRES, MORE OR LESS

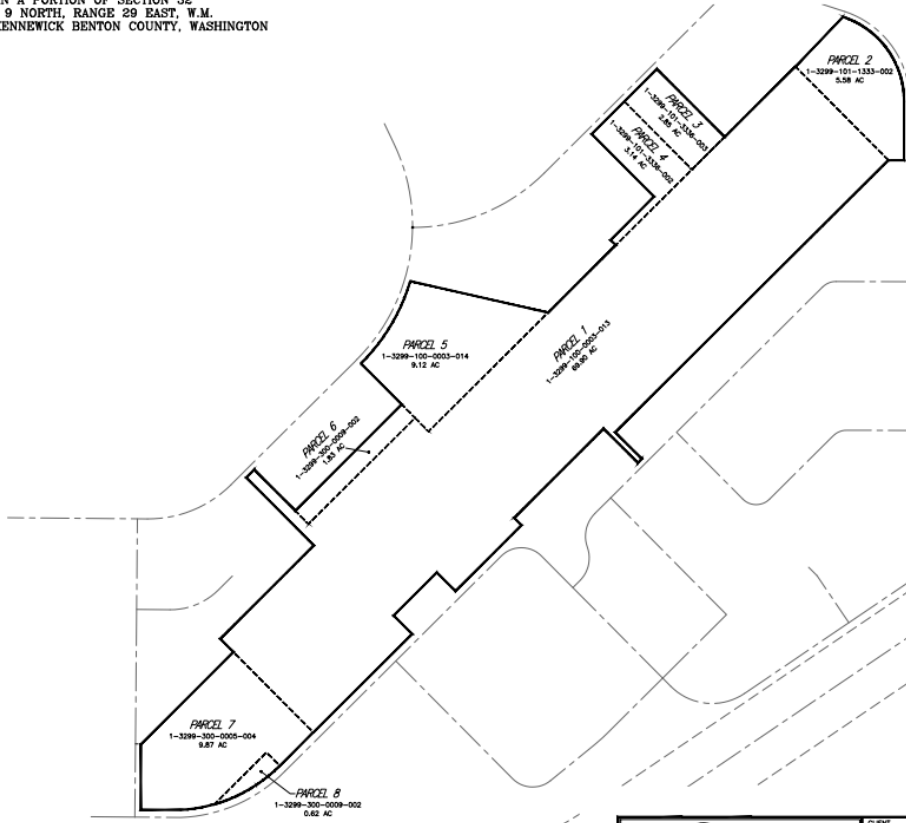
PARCEL 5: LOT 2, SHORT PLAT 3336, ACCORDING TO THE SURVEY THEREOF RECORDED IN VOLUME 1 OF SHORT PLATS, PAGE 3336, RECORDS OF BENTON COUNTY, WASHINGTON. CONTAINS 3.50 ACRES, MORE OR LESS

PARCEL 6: LOT 3, SHORT PLAT 3336, ACCORDING TO THE SURVEY THEREOF RECORDED IN VOLUME 1 OF SHORT PLATS, PAGE 3336, RECORDS OF BENTON COUNTY, WASHINGTON. CONTAINS 2.85 ACRES, MORE OR LESS

PARCEL 7: THAT PORTION OF PARCEL 7 OF RECORD SURVEY 1-522 DESCRIBED AS FOLLOWS: COMMENCING AT THE MONUMENTED INTERSECTION OF THE CITY STREETS KNOWN AS YOUNG STREET AND WEST DESCHUTES AVENUE, SAID POINT BEING THE SOUTHWEST CORNER OF SAID PARCEL 7, THENCE SOUTH 89°16'47" EAST 30 FEET THENCE NORTH 00°28'48" EAST 40 FEET TO THE INTERSECTION OF THE EASTERLY AND NORTHERLY RIGHTS OF WAY OF SAID STREETS RESPECTIVELY, AND THE TRUE POINT OF BEGINNING: THENCE CONTINUING NORTH 00°28'48" EAST ALONG SAID EASTERLY RIGHT OF WAY 347.50 FEET, THENCE NORTH 45°11' 04" EAST 690.98 FEET TO A POINT ON THE EASTERLY BOUNDARY OF SAID PARCEL 7, THENCE SOUTH 44°48'56" EAST ALONG SAID EASTERLY BOUNDARY 600 FEET TO A POINT ON SAID NORTHERLY RIGHT OF WAY DESCHUTES AVENUE, SAID POINT IS NORTH 44°48'56" WEST 40 FEET FROM THE SOUTHEAST CORNER OF SAID PARCEL 7, THENCE SOUTH 45°11' 04" WEST ALONG SAID NORTHERLY RIGHT OF WAY 250 FEET, THENCE NORTH 44°48'56" WEST 100 FEET, THENCE SOUTH 45°11'04" WEST 393.74 FEET TO A POINT ON SAID NORTHERLY RIGHT OF WAY, SAID POINT BEING ON A CURVE TO THE RIGHT, THE RADIUS POINT OF WHICH BEARS NORTH 15°29'00" WEST 780 FEET, THENCE WESTERLY ALONG SAID CURVE AND SAID NORTHERLY RIGHT OF WAY 220.59 FEET, THENCE NORTH 89°16'47" WEST ALONG SAID NORTHERLY RIGHT OF WAY 170.82 FEET TO THE TRUE POINT OF BEGINNING CONTAINS 9.87 ACRES, MORE OR LESS

EXHIBIT MAP

LOCATED IN A PORTION OF SECTION 32,
TOWNSHIP 9 NORTH, RANGE 29 EAST, W.M.
CITY OF KENNEWICK BENTON COUNTY, WASHINGTON



RSI ROGERS
SURVEYING INC., P.S.
1404 COLUMBIA PARK TRAIL
NICHOLAND, WA 98302
PHONE (509) 798-1141
FAX (509) 798-8994
www.rogerssurveying.com

CLIENT		PORT OF KENNEWICK		JOB
PROJECT		VISTA FIELD REDEVELOPMENT		27617
MASTER PLAN				
DRN. BY	DPB	SCALE	1" = 300'	F. & NO.
APPROVED	CPB	DATE	10-3-17	ACD VSR -2517
			FILE	27617.dwg
				SHEET 1
				OF 1

REV: 10-8-17

EXHIBIT B

RIGHT OF FIRST REFUSAL

This RIGHT OF FIRST REFUSAL (this “*Agreement*”) is made this ____ day of _____, 2025 (the “*Effective Date*”) by and between the Port of Kennewick (the “*Port*”), a Washington State municipal corporation, and BlueChart, LLC (as “*BlueChart*”), a Washington limited liability company, who are collectively referred to herein as the “*Parties*.” All capitalized terms used but not otherwise defined herein have the meanings given in the Take Down Agreement (as defined below).

WHEREAS, Port, acting under and by virtue of the power granted to it under the laws of the State of Washington, and particularly RCW 53.04.010 *et seq.*, is the owner of certain real property located within the City of Kennewick, Benton County, Washington commonly known as Phase 6, Phase 7 and Phase 8 at Vista Field (the “*ROFR Phases*”), and which is legally described on attached Appendix A (“*Vista Field*”); and

WHEREAS, Port desires that Vista Field offer a variety of lot types within a single community and further desires to work with BlueChart to provide the construction of single family housing in pursuit of this purpose; and

WHEREAS, BlueChart is a Washington limited liability company created by Chartwell Land Company and Blue Fern Development I, LLC and desires to purchase lots from the Port in Vista Field to construct residential units thereon.

WHEREAS, the Port and BlueChart have entered into a Builder Reservation and Take Down Agreement dated _____, 2025 (the “*Take Down Agreement*”) pursuant to which the Port has granted BlueChart a first right of refusal to purchase lots created within the ROFR Phases for the purpose of constructing and selling single family residential housing thereon; and

WHEREAS, the Port and BlueChart now desire to document their agreement regarding the process for exercising such right of first refusal.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency being acknowledged, the Parties agree as follows:

1. Grant. Port hereby grants to BlueChart a right of first refusal to acquire all single family residential lots (as such term is defined in the Take Down Agreement) created within the ROFR Phases depicted on and more particularly described on attached **Appendix A** in accordance with the terms below. As referenced herein, the term “*Right of First Refusal*” shall mean the rights granted to BlueChart hereunder.
2. Term. Subject to the Port’s obligations under Section 1.4(a)(iv) of the Take Down Agreement, if during a period commencing on the Effective Date and ending six (6) months after the recording of a final plat that creates lots in ROFR Phases, as applicable (the “*Term*”), the Port receives either a bona fide written offer by a willing third party to purchase all or some of the lots which the Port intends to accept, or a purchase agreement which Port intends to enter into (collectively, “*Offer*”), the Port shall give BlueChart the

right to purchase those lots at the price and on the terms of the Offer. For purposes of clarity, the Term for the right to buy lots in Phase 6 shall end six (6) months after the recording of a final plat of Phase 6, but in any event no sooner than six (6) months after BlueChart has acquired the last Finished Lot in Phase 5. The Term shall be similarly applied, and the rights granted hereunder similarly limited, in Phase 7 and Phase 8, unless otherwise terminated as described in this Section 2 and Section 5 below.

3. Notice of Offer. Upon receipt of any Offer, the Port shall deliver written notice of the Offer to BlueChart in the manner required under Section 6.8 of the Take Down Agreement together with a copy of such Offer. If BlueChart elects, in its sole discretion, to accept the Offer, it shall deliver written notice of such acceptance to the Port and sign a purchase and sale agreement documenting such Offer within thirty (30) days after the BlueChart's receipt of the notice. Notwithstanding the foregoing, if the Offer does not contain a due diligence period or otherwise allow BlueChart to conduct studies relative to the lot(s) prior to closing, the agreement between Port and BlueChart shall include a 60-day period (the "*due diligence period*"), during which BlueChart shall be free to conduct such studies as BlueChart deems necessary in order to satisfy itself that the lot(s) is/are (i) free from environmental contamination, and (ii) is/are suitable for the BlueChart's intended purposes. If, during the due diligence period, BlueChart determines in its sole discretion that the lot(s) is/are not suitable for its intended purposes, or contain environmental contamination, BlueChart shall have the right to terminate the purchase agreement, receive a full return of any earnest money promissory note or deposit made for such purchase, and BlueChart's Right of First Refusal with respect to such lots shall terminate.
4. Purchase and Sale Agreement. The Parties agree to consummate the sale transaction on terms (except purchase price and other economic terms) substantially similar to the one attached as Exhibit C to the Take Down Agreement. If the Port received an Offer involving consideration other than cash or satisfaction of a debt obligation to the Port ("*Non-Monetary Consideration*"), BlueChart shall have the right to meet the Offer through the payment at closing of the present cash fair market value of the Non-Monetary Consideration to be determined by appraisal if the parties are unable to mutually agree on such value. Each party shall be responsible for its own costs and attorneys' fees in the exercise of any Right of First Refusal rights.
5. Failure to Exercise Right. If BlueChart fails to exercise its Right of First Refusal within the time stated in Paragraph 3 above, this Agreement shall have no more force and effect and the Port shall be free to sell the property to the third party according to the terms of the Offer. For purposes of clarity, any failure by BlueChart to exercise the rights granted hereunder will result in a termination of this Agreement, and the BlueChart will have no further rights vis-à-vis any future ROFR Phases.
6. Consideration. BlueChart has previously delivered a Promissory Note in the amount of Ten Thousand and 00/100 Dollars (\$10,000) to the Port evidencing BlueChart's obligation to pay independent consideration for all Rights of First Refusal granted under the Take Down Agreement. The ROFR Consideration shall be deemed fully earned on the Effective Date of this Agreement, not refundable, and not applicable to the Purchase Price.

7. Notices. All notices required hereunder shall be delivered as required under Section 6.8 of the Take Down Agreement.
8. Miscellaneous.
 - 8.1 Entire Agreement. This Agreement is the entire Agreement among the Parties regarding the procedure for exercising the Right of First Refusal and, when executed by the Parties, supersedes all prior agreements, understandings and communications, either verbal or in writing, between the Parties with respect to the subject matter contained herein.
 - 8.2 Amendments. This Agreement may not be amended, modified or changed except by written instrument signed by all of the Parties.
 - 8.3 Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, legal representatives, successors and permitted assigns. This Right of First Refusal may not be assigned by BlueChart except as allowed under Section 1.10 of the Take Down Agreement.
 - 8.4 Captions. All captions and headings are inserted for the convenience of the Parties and shall not be used in any way to modify, limit or otherwise affect this Agreement.
 - 8.5 Counterparts. This Agreement may be executed simultaneously or in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
 - 8.6 Waiver. Any failure by a party to comply with any obligation, agreement or condition herein may be expressly waived in writing by the other party but such waiver or failure to insist upon strict compliance with such obligation, agreement or conditions shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.
 - 8.7 Governing Law. This Agreement shall be governed by, and construed in accordance with, the internal domestic laws of the State of Washington, without reference to choice of law principles.
 - 8.8 Severability. If any term, provision or condition of this Agreement is determined by a court or other judicial or administrative tribunal to be illegal, void or otherwise ineffective or not in accordance with public policy, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.
 - 8.9 Interpretation. In the event of a dispute or disagreement arising under this Agreement, this Agreement shall be interpreted in accordance with its fair meaning and shall not be interpreted for or against any party on the ground that such party drafted or caused to be drafted this Agreement.

- 8.10 Recording Notice. BlueChart shall have the right to record a notice of this Agreement in the official records of Benton County, Washington, at its cost and Port agrees to execute such notice, in recordable form, upon request.
- 8.11 Incorporation of Terms. Unless directly contradicted or specifically superseded by the terms and conditions of this Agreement or an Offer considered hereunder, the terms and conditions of the Take Down Agreement are restated and incorporated herein,.
- 8.12 Appendix. The following Appendix is attached hereto and made a part of this Right of First Refusal by this reference:

Appendix A: [Legal Description and Sketch of Vista Field]

IN WITNESS WHEREOF, this First Right of Refusal has been made as of the Effective Date first written above.

Port of Kennewick

A Washington Municipal Corporation
By Authority of its Board of Commissioners

By: _____
Tim Arntzen, Chief Executive Officer

Approved:

Approved as to form:

Nick Kooiker, Port Auditor/CFO

Taudd Hume, Port Counsel

BlueChart, LLC

By: _____
Levi Holmes

Its: Member _____

By: _____
Ben Paulus

Its: Member _____

APPENDIX A

(Sketch of Vista Field Master Plan Area)

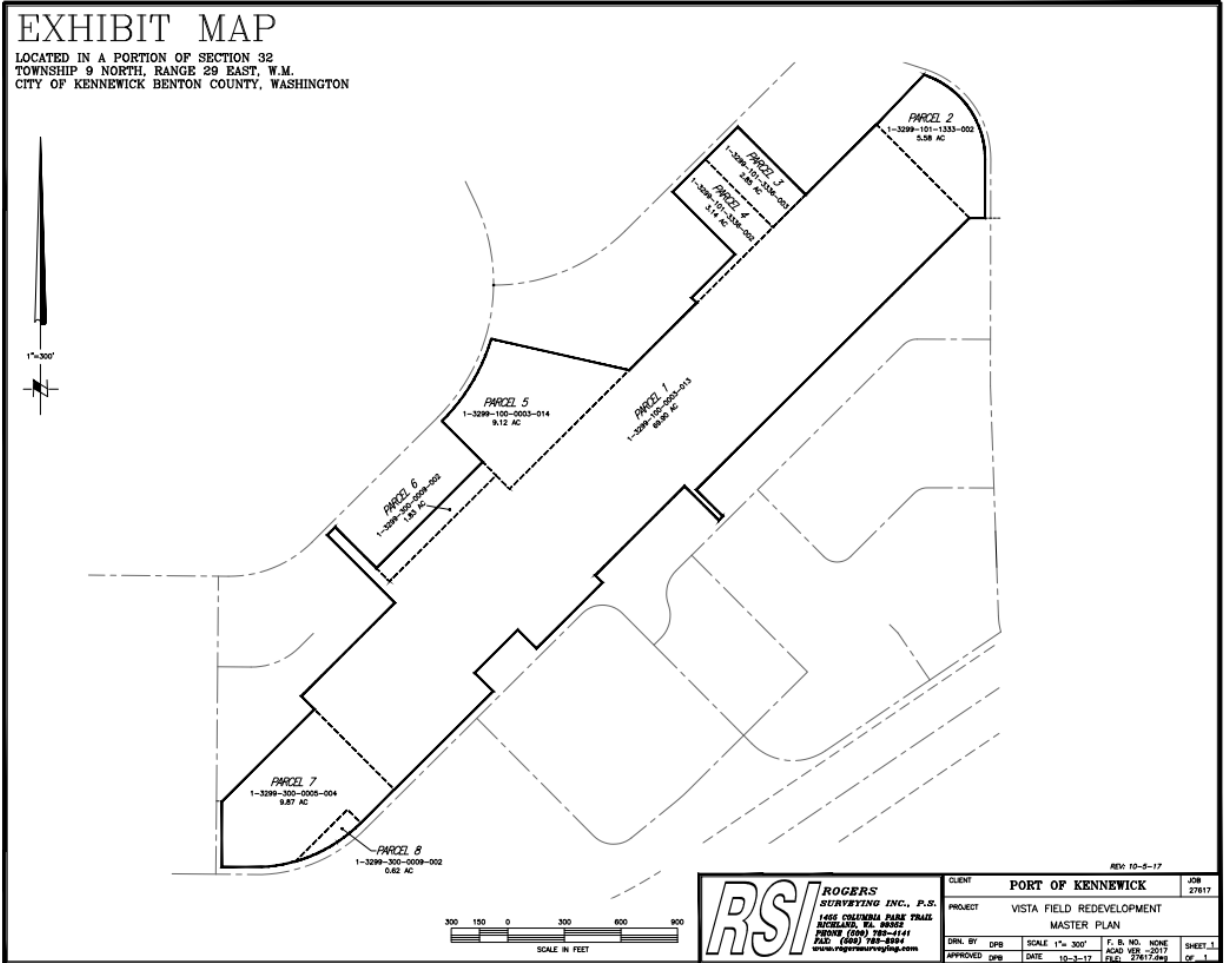


EXHIBIT C
REAL ESTATE
PURCHASE AND SALE AGREEMENT

(Vista Field Phase)

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this “*Agreement*”) is made as of this ____ day of _____, 2025 (the “*Effective Date*”), by and between the Port of Kennewick, a Washington municipal corporation (as “*Seller*”) and BlueChart, LLC, a Washington limited liability company (as “*Purchaser*”), who are hereinafter singularly referred to as a “*Party*” or collectively as the “*Parties*.”

1. **PROPERTY.** The Seller agrees to sell, and the Purchaser agrees to purchase, upon the terms and conditions herein specified, all Lots to be created in Phase of Vista Field, which is situated in the City of Kennewick, Benton County, Washington, and more particularly described on **Appendix A** attached hereto (the “*Property*”). Before Closing, the Closing Agent shall replace the legal description on attached Exhibit A with the legal description of all single-family residential lots created in the final plat of the Property. The Parties hereby authorize the Closing Agent to take such action upon recording of the final plat of the Property without further instruction. As used herein, the term “*Lot*” shall mean any single-family attached or detached residential building lot created within the Property upon recording of a final plat of the Property in compliance with the Approved Development Plan (as that term is defined in the Reservation and Take Down Agreement executed by the Parties on _____ (the “*Take Down Agreement*”)

2. **PURCHASE PRICE AND EARNEST MONEY.**

2.1 **Purchase Price.** Using the lot pricing methodology listed in Section 1.2 of the Take Down Agreement, the Purchase Price shall be _____ DOLLARS AND ZERO CENTS (\$ _____) PER LOT (“*Purchase Price*”). Purchaser shall pay the Purchase Price in cash or other immediately available funds in installments pursuant to the Closing Schedule (as that term is defined in Section 7.4 below), plus or minus adjustments and credits as provided in this Agreement.

2.2 **Earnest Money Deposit.** Using the earnest money formula listed in Section 1.3 of the Take Down Agreement, within three (3) business days of the Effective Date, Purchaser shall execute and deliver to the Closing Agent a Promissory Note in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$250,000.00) in the form attached to the Take Down Agreement as **Exhibit F** (the “*Earnest Money Note*”). Provided BlueChart timely delivers the Feasibility Waiver Notice required under Section 4.1 (a) below, BlueChart shall convert the Earnest Money Note to cash by wiring funds into the Closing Agent’s escrow account within three (3) business days of the delivery of such notice. Once converted, such funds shall be referred herein as a “*Deposit*”. Except as otherwise specifically provided in this Agreement, the Deposit shall be non-refundable when

paid and fully applicable to the Purchase Price on a prorated basis determined by the number of lots closed in each Closing. By way of example, if the Phase includes 50 lots, Five Thousand Dollars (\$5,000) of the deposit shall be applied at closing for each Lot included in the Closing ($\$250,000 \text{ deposit} \div 50 \text{ lots} = \$5,000 \text{ per lot}$).

3. TITLE TO PROPERTY.

- 3.1 Conveyance. At each Closing, Seller shall convey to Purchaser fee simple title to the Lots included in the Closing by a duly executed and acknowledged statutory warranty deed (the “*Deed*”), free and clear of all defects and encumbrances, subject to those exceptions that Purchaser approves pursuant to Section 3.2 below and as otherwise described herein (collectively the “*Permitted Exceptions*”).
- 3.2 Preliminary Commitment. Within five (5) business days following the Effective Date, Seller shall order a preliminary commitment (“*Preliminary Commitment*”) for an owner’s standard coverage policy of title insurance for the Property in the amount of the Purchase Price to be issued by the Benton Franklin Title Company (the “*Title Company*”) and accompanied by links to all documents referred to in the commitment (the “*Preliminary Commitment*”). Within fifteen (15) business days of Seller’s delivery of a copy of the Preliminary Commitment to Purchaser, Purchaser shall advise Seller by written notice of the exceptions to title, if any, that are disapproved by Purchaser (“*Disapproved Exceptions*”). Seller will then have ten (10) days after receipt of Purchaser’s notice to give Purchaser notice that (i) Seller will remove Disapproved Exceptions or (ii) Seller elects not to remove Disapproved Exceptions. Notwithstanding the foregoing, Seller shall to remove all monetary liens associated with any period prior to the Closing regardless of Purchaser’s designation of such lien as a Disapproved Exception. If Seller fails to give Purchaser notice before the expiration of the ten (10) day period, Seller will be deemed to have elected not to remove Disapproved Exceptions. In no event shall Seller have any obligation to spend any money to have non-monetary Disapproved Exceptions removed.

If Seller elects not to remove any Disapproved Exemptions, Purchaser will have until the expiration of the Feasibility Study Period (as defined in Section 4.1.1 below) to notify Seller of Purchaser’s election either to proceed with the purchase and take the Property subject to those exceptions, or to terminate this Agreement. If Seller gives notice that it will cause one or more exceptions to be removed but fails to remove any of them from title on or before the Closing Date, Purchaser will have the right to either (i) elect to terminate this Agreement by written notice to Seller in which event the Deposit shall be returned to Purchaser, or (ii) proceed with the purchase and to take the Property subject to those exceptions. Notwithstanding the foregoing, Purchaser shall have the right to sue for specific performance if the Seller fails to remove any monetary liens or encumbrances it is otherwise required to remove prior to Closing. If terminated, neither Party will have any further rights or obligations under this Agreement except as otherwise provided in this Agreement. If this Agreement is terminated through no fault of Seller, then Seller and Purchaser shall share equally any costs of terminating the escrow and any

cancellation fee for the Preliminary Commitment.

Any new title exceptions disclosed prior to any Closing shall be subject to the same review and approval process in the preceding paragraph provided Purchaser may not disapprove any exception recorded at the request of or with the prior written consent of Purchaser.

- 3.3 Title Policy. Seller shall cause Title Company to issue to Purchaser at each Closing a standard coverage owner's policy of title insurance (Form 2021) insuring Purchaser's title to the Lots included in that Closing in the full amount of the Purchase Price applicable to such Lots subject only to the Permitted Exceptions (the "***Title Policy***"). The Title Policy must be dated as of the applicable Closing Date. Notwithstanding anything contained herein to the contrary, Purchaser may, in its sole discretion and its sole cost, elect to acquire extended coverage title insurance at any Closing provided Purchaser pays the additional premium charged for such extended coverage and any required survey or other costs. [In such event, Seller shall execute and deliver to the Title Company the form owner's affidavit and indemnities required by the Title Company to issue extended coverage.]

4. **CONDITIONS TO CLOSING.**

- 4.1 Right to Inspect the Property.

- 4.1.1 Feasibility Study.

No later than three (3) business days after the Effective Date, Seller shall deliver the following information to Purchaser for the Property: surveys, engineering plans, binding site plans, soil studies, wetland reports, environmental studies, environmental site assessments, Phase II environmental reports, other third party consultant materials, leases, contracts, development agreements and other agreements binding on all or any portion of the Property. Notwithstanding the foregoing, the Seller shall have no obligation to deliver any information previously delivered to Purchaser pursuant to any purchase and sale agreement entered by the Parties.

During the period beginning at the Effective Date and ending ninety (90) days therefrom but in any event no earlier than the date an Approved Development Plan has been mutually approved by Purchaser and Seller and attached hereto as Appendix D (the "***Feasibility Study Period***"), Purchaser may conduct a review with respect to the Property and satisfy itself with respect to the condition of and other matters related to the Property and its suitability for Purchaser's intended use (the "***Feasibility Study***"). The Feasibility Study may include all inspections and studies Purchaser deems necessary or desirable, in Purchaser's sole discretion including without limitation soils testing, soils sampling and percolation analysis. If Purchaser elects to proceed with the purchase, Purchaser shall deliver

written notice of such determination to Seller on or before the final day of the Feasibility Study Period (“*Feasibility Waiver Notice*”). If Purchaser fails to timely deliver the Feasibility Waiver Notice, and such failure continues for 5 business days after delivery of written notice of such failure from Seller, then this Agreement shall automatically terminate, the Deposit shall be returned to Purchaser, and the Parties shall have no further rights or obligations under this Agreement, except as otherwise provided in this Agreement.

Purchaser and Purchaser’s agents, representatives, consultants, architects and engineers will have the right, from time to time, during the Feasibility Study Period to enter onto the Property and conduct any tests and studies that may be necessary or desirable to ascertain the condition and suitability of the Property for Purchaser’s intended use. Purchaser agrees to restore the property, indemnify the Seller, and cause all liens to be released in compliance with Section 4.1.3 below.

If this transaction fails to close due to a default by Purchaser and Seller is otherwise in compliance with its obligations hereunder, Purchaser shall upon written request from Seller deliver to Seller copies of any studies or inspections, appraisals or surveys and any and all information which either the Purchaser or Purchaser’s consultants have obtained in connection with the feasibility study. Notwithstanding the foregoing, Purchaser shall have no obligation to provide the Seller with any of the following: (1) any items containing confidential, proprietary, or privileged information, (2) any of Purchaser’s financial or marketing information, (3) any plans/drawings for Purchaser’s homes and related improvements, or (4) any item prohibiting assignment or re-production by its terms. The delivery of items hereunder shall be subject to the proprietary rights of the consultants who prepare them and all limitations on use imposed by them. The provisions of this Section shall survive termination of this Agreement.

- 4.1.2 Environmental Studies. At any time and from time to time during the Feasibility Study Period, Purchaser and Purchaser’s subcontractor’s, consultants, employees, agents, and other designees (collectively, “*Purchaser’s Designees*”) shall have the right to perform a complete environmental audit of the Property and soils tests, percolation tests, on any portion of any of the Property, and any other technical studies which may in Purchaser’s sole discretion be helpful in deciding whether to purchase the Property (collectively, the “*Environmental Studies*”). Seller’s environmental consultant may attend any test or investigation at the Property and shall be entitled, without cost, to duplicates of any samples taken by Purchaser or any of Purchaser’s Designees (or, if duplicates are not reasonably attainable, Purchaser may elect to deliver the actual samples after testing) and to copies of all written reports and data prepared by or on behalf of Purchaser or any of Purchaser’s Designees. Any invasive sampling or testing permitted by Seller shall be performed in compliance

with all Environmental Laws and other requirements of governmental authorities.

If any environmental assessment is performed by Purchaser, or any report created by Purchaser's consultants and agents related to the environmental condition of the Property, then Purchaser will provide copies of the same to Seller within five (5) business days of Seller's request.

4.1.3 Access and Conditions. To conduct the Feasibility Study and Environmental Studies, Seller authorizes Purchaser and Purchaser's Designees the right to access the Property during the term of this Agreement. This right of entry shall be subject to the following conditions:

- a. Compliance; No Interference. The Feasibility Study and all Environmental Studies shall be conducted in full compliance with all laws and restrictions applicable to the Property.
- b. Insurance. Prior to the first entry on the Property, Purchaser shall provide to Seller a certificate of insurance showing that Purchaser or Purchaser's Designees maintain in full force and effect a policy of comprehensive general liability insurance (i) covering the activities of Purchaser and/or Purchaser's Designees in connection with the Feasibility Study and Environmental Studies, (ii) in an amount of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence from a carrier reasonably acceptable to Seller, and (iii) requiring at least thirty (30) days written notice to Seller prior to cancellation or reduction in coverage, except for non-payment of premiums, for which ten (10) days' notice shall be required.
- c. Restoration. Promptly after any physical inspection of the Property by Purchaser or Purchaser's Designees, Purchaser at its sole cost shall restore the Property to substantially the condition that existed immediately prior to such inspection.
- d. No Liens. Purchaser shall not permit any mechanics' or other liens to be filed against any portion of the Property as a result of the activities of Purchaser or Purchaser's Designees, and Purchaser at its sole cost shall cause any liens so filed to be removed by bond or otherwise prior to the earlier of (i) thirty (30) days after the filing, and (ii) the time that any of the same may be enforced by any action of any kind against any part of the Property.
- e. Indemnity. Purchaser will defend, indemnify and hold Seller harmless from (a) all actual losses, damages, liabilities, claims, expenses, causes of action and judgments arising from claims by any third party (but not including Seller), and (b) any liens filed against

the Property, in either instance arising from the activities of Purchaser or any of Purchaser's Designees on the Property, except to the extent arising (i) from the gross negligence, recklessness, willful misconduct or breach of contract or law by Seller or any of Seller's consultants, agents, representatives, or employees, (collectively, "*Seller's Agents*"), (ii) as a consequence of strict liability imposed upon Seller or any of Seller's Agents as a matter of law, or (iii) from the discovery, disclosure or exacerbation of any Hazardous Substance or other substance in, under or about the Property (provided such exacerbation is not the result of the intentional misconduct of Purchaser or any of Purchaser's Designees). Purchaser's obligations under this Section 4.1(e) shall survive the Closing or the termination of this Agreement prior to the Closing.

- 4.2 Purchaser's Contingencies. Purchaser's obligation to purchase Lots within the Property is expressly contingent upon the following:
- 4.2.1 Feasibility Study. Purchaser's approval, prior to expiration of the Feasibility Study Period, of the suitability of the Property as evidenced by the delivery of the Feasibility Waiver Notice to Seller; and
 - 4.2.2 Environmental Condition. Purchaser's approval, prior to expiration of the Feasibility Study Period, of the environmental condition of the Property pursuant to Section 4.1.2; and
 - 4.2.3 Title Policy. Purchaser's receipt of Title Company's firm commitment to issue, upon Closing, the Title Policy as described in Section 3; and
 - 4.2.4 Infrastructure Improvements Complete. Seller's timely performance of all of its obligations under the Take Down Agreement and this Agreement including without limitation completion of all Infrastructure Improvements; provided, Seller will be given notice of any failure on its part to perform any such obligations and will have a period of time that is reasonable under the circumstance to cure its nonperformance; and
 - 4.2.5 Seller's Representations and Warranties. Seller's representations and warranties set forth in Section 5.1 below shall be true in all material respects at and as of each Closing; and
 - 4.2.6 No Moratorium. There shall be no moratorium or similar prohibition imposed by any governmental or private authority which would preclude or materially and substantially hinder issuance of building permits or certificates of occupancy for the Property, the availability of or connection to electric, gas, telephone, sanitary sewer or water line hookups, or which otherwise materially and adversely impact the ability of Purchaser to construct single-family residential dwellings on the Property. In the event

of such moratorium or prohibition, Purchaser may, in its sole discretion, terminate this Agreement by written notice thereof to Seller and the Deposit then held by the Closing Agent for the Property shall be promptly returned to Purchaser and neither party shall thereafter have any further obligation under this Agreement except as specifically provided herein; and

- 4.2.7 Approved Development Plan. The Parties shall have agreed to an Approved Development Plan for the Property which plan shall be attached hereto as Appendix D and all construction required under an Approved Development Plan agreed to for any prior Phase has either been completed by Seller or waived or amended with the prior written consent of Purchaser.
- 4.2.8 Construction License. Prior to the Closing of the first Lot within the Phase, Seller shall grant Purchaser a license to an area designated in the Approved Development Plan for the exclusive use of Purchaser and Purchaser's Designees for construction material, equipment, and vehicle staging, storage and use including without limitation placement of a construction trailer (the "**Construction License**"). Such use shall be subject to the requirements of Section 4.1.3 above. The receipt of such Construction License is material consideration for Purchaser's agreement to construct residential improvements on each Lot after Closing and shall be provided to BlueChart without cost or charge.

The foregoing conditions contained in this Section 4.2 are collectively referred to in this Agreement as "Purchaser's Contingencies." The Parties shall diligently attempt to timely satisfy all of the Purchaser's Contingencies. Purchaser's Contingencies are solely for the benefit of Purchaser. If any of Purchaser's Contingencies are not satisfied in connection with the Closing of any Lots, Purchaser will have the right to waive the contingency and close on the Lots included in such Closing or terminate the obligation to purchase Lots under this Agreement. If Purchaser elects to terminate this Agreement, the escrow will be terminated, the Deposit not previously applied to the Purchase Price shall be returned to Purchaser, all documents will be returned to the Party who deposited them, and neither Party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement, and except that each Party shall pay one-half (1/2) of the cost of terminating the escrow. If Purchaser waives Purchaser's Contingencies, the Parties shall proceed to Closing.

- 4.3 Seller's Contingencies. Seller's obligation to sell Lots within the Property is expressly contingent upon the following:

- 4.3.1 Seller's Board of Commissioners must affirmatively vote to approve this Purchase and Sale Agreement and otherwise undertake any and all actions required by law to dispose of the Property. By executing this Agreement, Seller confirms that all such actions have been taken and this contingency is satisfied. Purchaser acknowledges and agrees that this Agreement does not bind the Purchaser until it is signed by the Seller following approval by

Seller's Board; and

- 4.3.2 There shall be no pending appeals of any ministerial or quasi-judicial decision of the City of Kennewick related to the platting of the Property, nor any delay of approval related to any conditions of final plat thereof by the City of Kennewick or any other agency with jurisdiction. Should any pending appeal or delay last for longer than one hundred eighty (180) days, either the Seller or the Purchaser shall have the right to terminate this Agreement, in their sole and independent discretion. Subsequent to such termination, Seller shall refund any escrow deposit to Purchaser, and Purchaser shall have a right of first refusal related to the lots contemplated by this Agreement for a period of twelve (12) months from the date of such termination; and
- 4.3.3 Seller must record final plat approval with Benton County in order to create valid lots capable of being legally conveyed to Purchaser; and
- 4.3.4 All monies deposited into escrow and related to the creation and conveyance of future lots, must be held in escrow until final plat approval has been recorded with Benton County.

5. REPRESENTATIONS AND WARRANTIES.

- 5.1 Seller's Representations and Warranties. Except as otherwise expressly set forth in this Agreement, Seller makes no representations or warranties and shall not in any way be liable for any representations or warranties, including, without limitation, representations and warranties concerning (a) the physical condition of the Property (including, without limitation, the environmental condition, condition of the soils and groundwater conditions); (b) the Property's suitability for Purchaser's intended use; or (c) any applicable building, zoning or fire laws or regulations or compliance therewith or any required permits of any governmental entities or agencies or compliance therewith. Purchaser acknowledges that Purchaser is relying on its own examination and inspection of the physical condition of the Property and all matters relating thereto. Seller shall have no obligation to make any repairs to the Property, and Purchaser shall accept the Property in its "as is" condition at Closing. Except as otherwise provided in the Take Down Agreement, Purchaser shall assume, as of each Closing, the responsibility for and risk of all defects and conditions of the Lots included in such Closing, including any defects and conditions that cannot be observed by casual inspection. The Parties specifically agree that at Closing the Purchaser waives all claims for damages or relief at law or in equity against the Seller (except for fraud or bad faith) related to environmental liability for the Property including without limitation under the Washington Model Toxics Control Act ("MTCA"), the Toxic Substances Control Act, the Comprehensive Environmental Response, compensation and Liability Act ("CERCLA"), and the Resource Conservation and Recovery Act ("RCRA"), including without limitation, personal injury to or death of persons whosoever including employees, agents or contractors of the Seller, the Purchaser, or any third party, and damage to property

of the Seller, the Purchaser, or any third party.

Notwithstanding the foregoing, Seller makes the following affirmative representations and warranties as of the Effective Date of this Agreement and as of each Closing:

(a) Authority. The execution and delivery of this Agreement by the Seller and the consummation by the Seller of the transaction contemplated in this Agreement are within the Seller's capacity and all requisite action has been taken to make this Agreement valid and binding on the Seller in accordance with its terms. The individual signing this Agreement on behalf of the Seller is fully authorized and empowered to sign this Agreement on the Seller's behalf and, upon execution thereof, said Agreement shall be fully binding upon the Seller.

(b) No Legal Bar. The execution by the Seller of this Agreement and the consummation by the Seller of the transaction hereby contemplated does not, and as of Closing will not (a) result in a breach of or default under any indenture, agreement, instrument or obligation to which the Seller is a party and which affects all or any portion of the Property, or (b) to the Seller's knowledge, constitute a violation of any governmental requirement.

(c) No Default. The Seller is not in default under any indenture, mortgage, deed of trust, loan agreement, or other agreement to which the Seller is a party and which affects any portion of the Property.

(d) Title. The Seller is the owner of the Property in indefeasible fee simple title, free and clear of all liens, encumbrances and restrictions of any kind, except the Permitted Exceptions, encumbrances of record which will be discharged at Closing, and other matters which have been recorded at the request of or with the prior written consent of Purchaser.

(e) Litigation. There are no actions, suits, proceedings or investigations pending or, to the knowledge of the Seller, threatened against the any portion of the Property owned by Seller, including without limitation, condemnation or eminent domain claims, actions or proceedings.

(f) Hazardous Material. The Seller has not received any notice and has no knowledge that the Property, nor any portion thereof, has ever been used by previous owners and/or operators, or been a repository for, and the Seller has not used the Property to generate, manufacture, refine, transport, treat, store, handle or dispose of any "**Hazardous Substances**" as defined in 42, U.S.C. Section 9601 et seq., 40 C.F.R. 261.3 or any other law, rule or regulation of any governmental body relating to environmental matters in violation of applicable environmental laws or otherwise to bring the Property within the ambit of, any state, local or federal law, regulation, rule, policy or order relating to the protection of the environment, and the Seller has not received a summons, citation, directive, letter or other communication, written or oral, from any agency or department of the State of

Washington, the U.S. Government or any other governmental body concerning Hazardous Substances on the Property.

(g) Access. The Property currently has full, free and adequate vehicular and pedestrian access to and from a public right of way. At Closing, each Lots included in such Closing shall have full, free and adequate vehicular and pedestrian access to and from a public right of way.

(h) Parties in Possession. There are no parties in possession of any portion of the Property as lessees, tenants or trespasser. At Closing, there will be no parties in possession of any Lot included in such Closing.

(i) No Violations of Law. To the best of Seller's knowledge, there have not been, presently there are no, and at Closing there shall not be any violations of local, state or federal laws, ordinances, rules or regulations applicable to the Property.

(j) Site Conditions. The Seller has disclosed all matters known to the Seller such as sink holes, 100-year flood plain or floodway designation, underground water sources, wells or mine shafts, or percolation restrictions that would be material or interfere with Purchaser's intent to construct residential dwelling units on the Property.

(k) No Unrecorded Commitments. The Seller has made no commitments and, to the Seller's knowledge, the Property is subject to no commitments for contributions or assessments of money or land except as set forth in documents encumbering the Property and recorded in the official public records of Benton County, Washington.

(l) FIRPTA. The Seller is not a "foreign person", as defined in Section 1445 of the Internal Revenue Code and the regulations promulgated thereunder, and at or prior to each Closing contemplated under this Agreement, Seller agrees to provide Purchaser an affidavit to that effect.

(m) Historic Status. The Seller has received no notice that any Property contains archeological or historic artifacts that would subject the Property to governmental regulations pertaining to the same.

(n) Knowing Failure to Disclose. The Seller has not intentionally withheld any information in its possession or control that would prohibit or materially and adversely impair (through a material increase in construction costs or otherwise) the development of the Property with residential improvements.

5.2 Duty to Disclose. The Seller shall disclose to Purchaser in writing any conditions or events that arise or occur subsequent to the Effective Date of this Agreement that become known to the Seller and which contradict or modify any representation of the Seller set forth herein or otherwise have a material effect upon the Property, in which case, Purchaser may, at its sole discretion and subject to the Seller's opportunity to cure in Section 5.5 below, elect to waive such discrepancy or

terminate this Agreement in which case any unapplied Deposit shall be paid to Purchaser as its sole remedy (except in the case of bad faith or fraud by Seller).

- 5.3 Survival. The Seller's representations and warranties for the Property shall survive twelve (12) months after Closing of the last Lot in the Property and shall not merge into the Deeds.
 - 5.4 Definition of Knowledge. For purposes of this Agreement, the Seller's knowledge is limited to the actual knowledge of the Chief Executive Officer and the Director of Planning and Development.
 - 5.5 Opportunity to Cure. If any of the Seller's representations become untrue before Closing, the Seller shall take all commercially reasonable actions to make such representations true and correct before Closing
 - 5.6 No Seller Liability for Exceptions Known to Purchaser. The Seller shall have no liability (and Purchaser waives all claims against the Seller) for a breach of any representation or warranty of the Seller made in this Agreement if the breach in question constitutes or results from a condition, state of facts or other matter that was known to Purchaser prior to a Closing and Purchaser elected to proceed with the Closing despite such breach.
 - 5.7 Purchaser's Representations and Warranties. Purchaser represents and warrants to the Seller that this Agreement and all documents executed by Purchaser that are to be delivered to Seller at Closing are, or at the time of Closing will be, (i) duly authorized, executed and delivered by Purchaser, (ii) legal, valid and binding obligations of Purchaser, and (iii) in compliance with all provisions of all agreements and judicial orders to which Purchaser is a party or to which Purchaser is subject. The individual signing this Agreement on behalf of Purchaser is fully authorized and empowered to sign this Agreement on the entity's behalf and, upon execution thereof, this Agreement shall be fully binding upon Purchaser. For purposes of this Agreement, the knowledge of Purchaser is limited to the actual knowledge of Benjamin Paulus and Levi Holmes. Purchaser shall have no liability (and the Seller waives any claim against Purchaser) for a breach of any representation or warranty of Purchaser made in this Agreement for any Phase if the breach constitutes or results from a condition, state of facts, or other matter that was known to the Seller prior to Closing and the Seller elects to proceed with Closing despite such breach.
6. **RISK OF LOSS.** Risk of loss or damage to the Property or any part thereof prior to Closing shall be assumed by the Seller. If such loss or damage occurs prior to Closing this Agreement shall terminate and the Deposit shall be returned to the Purchaser unless Purchaser elects, in its sole discretion, to waive such loss or damage and proceed with Closing.
7. **CLOSING.**

7.1 Closing Agent. This transaction shall be closed by Benton Franklin Title Company ("**Closing Agent**").

7.2 Closing Costs. Closing costs shall be allocated as follows:

Seller	Purchaser
Excise Tax	Recording Fees
Title Insurance Premium	Extended Coverage Premium
One-Half Closing Fee Costs	One-Half Closing Fee Costs

Other incidental closing costs shall be paid and/or allocated in accordance with local practice.

7.3 Items to be Prorated. Taxes and assessments for the current year. If applicable, water and other utilities constituting liens shall be prorated as of date of Closing.

7.4 Closing Date - Possession. Provided all contingencies have been satisfied or waived, the Closing of Lots shall occur in accordance with the take down schedule set forth in this Section 7.4 and otherwise in the order designated in the Approved Development Plan. "**Closing**" or "**Closing Date**" shall be the date on which all documents are recorded and funds are available for disbursement for the sale of Lots included in the Closing. Seller shall deliver possession of the Lots to Purchaser on the applicable Closing Date.

[The PSA will need to be amended after Approved Development Plan (where lot sequence is established) and again after Final Plat (when PTN's are assigned).]

7.5 Conveyance. At Closing, Seller shall deliver to Purchaser a Statutory Warranty Deed for the Lots included in such Closing, free of any encumbrance or defect except the Permitted Exceptions. The Property will be subject to the Declaration of Covenants, Conditions & Restrictions for Vista Field attached hereto as Appendix B (the "**CC&Rs**").

7.6 Seller's Escrow Deposits. On or before each Closing Date, Seller shall deposit into escrow the following for Lots included in such Closing:

- a. a duly executed and acknowledged statutory warranty deed conveying title to the Lots subject only to the Permitted Exceptions; and
- b. a duly executed and acknowledged Real Estate Tax Affidavit; and
- c. a duly executed and acknowledged affidavit that the Seller is not a "foreign person", as defined in Section 1445 of the Internal Revenue Code and the regulations promulgated thereunder; and

- d. an assignment of and any all permits the Seller may have acquired for final plat approval that are required for construction or completion of the homes by Purchaser (e.g. grading permits, storm water discharge permits, etc.); and
 - e. any other documents, instruments, records, correspondence and agreements called for hereunder that have not previously been delivered.
- 7.7 Purchaser's Escrow Deposits. On or before each Closing Date, Purchaser shall deposit into escrow the following for Lots included in such Closing:
- a. cash or other immediately available funds in an amount sufficient to pay the Purchase Price for such Lots and Purchaser's share of closing costs, less the Deposit allocated to such Lots; and
 - b. a duly executed and completed Real Estate Excise Tax Affidavit; and
 - c. any other documents or instruments Purchaser is obligated to provide pursuant to this Agreement (if any) in order to close this transaction.
- 7.8 Additional Instruments and Documentation. Seller and Purchaser shall each deposit any other instruments and documents that are reasonably required by Escrow Agent or otherwise required to close the escrow and consummate the purchase and sale of the Property in accordance with this Agreement.
- 7.9 Foreign Investment in Real Property Tax Act. To the extent applicable, the Parties agree to comply in all respects with Section 1445 of the Internal Revenue Code and the regulations issued thereunder.

8. REPURCHASE OPTION.

- 8.1 Obligation to Construct. The Parties agree that the Purchaser will construct one or more dwelling units on each Lot acquired under this Agreement (collectively, the "**Improvements**") in accordance with the following requirements.
- 8.1.1 Application for a building permit on each Lot shall be submitted no later than forty-five (45) days from the date the deed is recorded transferring the Seller's title to such Lot to Purchaser and, subject to the force majeure provisions contained in Section 10.12 below, construction must be concluded, including all landscaping, within twelve (12) months from such date;
 - 8.1.2 Commencement of construction will be evidenced by issuance of all required building/construction permits and approvals for the Improvements together with actual commencement of on-site construction; completion of construction shall be evidenced by issuance of a Certificate of Occupancy by the applicable governmental authorities.
 - 8.1.3 All construction shall be in accordance with the Vista Field Covenants,

Conditions and Restrictions, a copy of the CC&Rs is attached hereto as **Appendix B** and incorporated herein by reference;

- 8.1.4 All construction shall be in accordance with the Vista Field Design Standards and approved by the Town Architect prior to Closing, a copy of which is attached hereto as **Appendix C** and incorporated herein by reference;
- 8.1.5 No material changes in plans or specifications may be made by Purchaser without prior review and approval of the Town Architect's written approval;
- 8.1.6 The Town Architect shall have the right to approve the building design in accordance with the provisions of the CC&Rs and the Vista Field Design Standards, which approval shall not be unreasonably withheld or delayed.

8.2 Failure to Construct and Right to Repurchase. Subject to the force majeure provisions contain in Section 10.12 below, the Parties agree that in the event construction of the Improvements described in 8.1 above, or some other mutually agreed upon utilization of the Lots, has not concluded as required under Section 8.1.1 above, Seller shall have the right to repurchase those Lots on which construction has not commenced at the same Purchase Price paid by Purchaser, with all closing costs and real estate excise taxes paid by the Purchaser in cash or immediately available funds at Closing. Seller must give Purchaser written notice of its intent to repurchase the Property within eighteen (18) months of the date the deed is recorded transferring the Seller's title to the Lots. In the event this repurchase provision is invoked, payment for improvements made to the site by the Purchaser which benefit the future development of the Lots shall be made by Seller. Value of improvements which benefit the Property shall be established, unless otherwise agreed by the Parties, from the average of two appraisals (one obtained by Seller and one obtained by Purchaser) performed to determine the residual value of site improvements made by the Purchaser. Any dispute regarding the value of such improvements shall be resolved by arbitration in accordance with the procedures described in Section 10.2 of this Agreement.

Closing for the repurchase of the Lots shall occur in accordance with the terms of Section 7 above, except that Purchaser shall bear all closing costs unless otherwise agreed between the Parties, and Closing shall occur no later than thirty (30) days after delivery of the Seller's written notice. Upon Closing, Purchaser shall immediately vacate and redeliver possession of the Lots to the Seller. At Closing, the Purchaser will execute a statutory warranty deed re-conveying the applicable Lots to Seller and this Agreement shall be void and of no further force or effect with respect to the Lots repurchased.

Notwithstanding the foregoing, if Seller exercises its right to repurchase Lots under this Section, Purchaser may elect to structure such repurchase as a rescission of the original acquisition in accordance with the requirements of WAC 458-61A-209.

8.3 Assignment. Except for an assignment to a wholly owned subsidiary of BlueChart or a related entity in which BlueChart, Benjamin Paulus, and/or Levi Holmes hold a majority ownership interest, BlueChart shall not have the right to assign this Agreement or any of its rights or obligations hereunder to any persons, corporations or other entity without the written approval of Port, which approval may be arbitrarily withheld by Port, it being specifically understood and agreed that the Port has entered into the subject contract with BlueChart solely and only because it is familiar with, knowledgeable about and desirous of permitting only BlueChart's key principals, Benjamin Paulus and/or Levi Holmes, to construct dwelling units within the subdivision contemplated by this Agreement. The Port shall not have the right to assign any or all of its rights under the subject Agreement.

8.4 Hold Harmless. Further and in consideration of the terms hereof, in the event the Seller repurchases any portion of the Property, Purchaser shall release and hold Seller harmless and shall indemnify and defend Seller from any and all claims, demands, liens, or encumbrances on the Lots arising from Purchaser's ownership of or activities on the Property.

8.5 Subordination to Financing. Notwithstanding anything to the contrary contained herein, Seller's repurchase rights under this Section 8 shall be subordinate in all respects to the rights of any acquisition and development lender providing financing for the Property. The subordination granted herein relates solely to Seller's repurchase rights, and thus all other rights and obligations of Purchaser as described in this Purchase and Sale Agreement or the incorporated Take Down Agreement (except for the separately-granted right of first refusal rights) shall be applicable to any lender exercising said subordination rights to acquire the Property. Within ten (10) days of request, Seller shall execute a subordination agreement in the form required by Purchaser's lender provided Seller shall not be obligated to assume the loan or incur any costs of Purchaser in connection with such subordination.

9. **NOTICES.** All notices required by this Agreement shall be considered properly delivered when (1) personally delivered, (2) transmitted by email showing date and time of transmittal, (3) delivered by regular overnight courier, or (4) delivered or mailed by U.S. registered or certified mail, return receipt requested, and if mailed, shall be considered delivered three (3) business days after deposit in such mail. The addresses to be used in connection with such correspondence and notices are the following, or such other address as a Party shall from time to time direct:

Purchaser: Blue Chart, LLC
c/o Blue Fern Development I, LLC
18300 Redmond Way, Ste 120
Redmond, WA 98052-5183
Attn: Ben Paulus
Phone: (425) 629-3854
Email: ben@bluefern.com

and

c/o Chartwell Building Company LLC
307 Bayshore Dr NW, Suite 307,
Silverdale WA 98383
Phone: (360) 265-8701
Email: levi@chartwellland.com

Seller: Port of Kennewick
350 Clover Island Drive, Suite 200
Kennewick, Washington 99336
Attn: Tim Arntzen, Chief Executive Officer
Phone: (509) 586-1186
Email: amber@portofkennewick.org

With copy to: Witherspoon Brajcich McPhee, PLLC
601 W. Main Ave, Suite 1400
Spokane, WA 99201
Attn: Taud Hume, Port Counsel
Phone: (509) 455-9077
Email: thume@workwith.com

10. MISCELLANEOUS.

10.1 Default and Remedies.

10.1.1 Opportunity to Cure. Failure to close without legal excuse shall constitute an immediate default under this Agreement. For the breach of any other covenant, representation or warranty under this Agreement, a party shall only be entitled to declare a default and pursue its rights and remedies for breach and default under this Agreement if notice of the breach has been given to the breaching party and the breaching party fails to cure such breach within ten (10) business days after receiving such notice.

10.1.2 Purchaser Remedies. If this transaction fails to close due to default by Seller without legal excuse, Purchaser may elect to pursue the following remedies: (a) terminate this Agreement, in which event the Deposit shall be immediately returned to Purchaser; (b) maintain an action for specific performance or other injunctive relief; and/or (c) if an action for specific performance is not available due to the wrongful acts or omissions of Seller, bring an action for damages provided that punitive damages, lost profits or other consequential damages are prohibited and may not be claimed and the Seller's maximum reimbursement obligation for actual damages shall not exceed Five Hundred Thousand and 00/100 Dollars (\$500,000).

10.1.3 Seller's Remedy/Liquidated Damages. In the event of any uncured default by Purchaser without legal excuse, Seller shall be entitled to terminate this

Agreement and retain the Deposit as liquidated damages. The foregoing shall be Seller's sole and exclusive remedy for any breach or default by Purchaser, and Seller's receipt of the Deposit shall constitute a waiver of any other rights or remedies that Seller may have at law or in equity. THE PARTIES ACKNOWLEDGE AND AGREE THAT ACTUAL DAMAGES IN THE EVENT OF PURCHASER'S DEFAULT WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE. THE PARTIES AGREE THAT, CONSIDERING THESE DIFFICULTIES, THE EARNEST MONEY DEPOSIT THEN HELD BY THE CLOSING AGENT IS THE BEST ESTIMATE OF THE SELLER'S DAMAGES AND IS THE COMPENSATION TO WHICH THE SELLER SHALL BE ENTITLED. IN NO EVENT SHALL THE SELLER BE ENTITLED TO SUE PURCHASER FOR SPECIFIC PERFORMANCE OR DAMAGES. NOTHING IN THIS SECTION IS INTENDED TO, NOR DOES, RESTRICT THE SELLER'S ABILITY TO (I) ENFORCE ANY OBLIGATION OF PURCHASER TO PAY ATTORNEY'S FEES UNDER THIS AGREEMENT, (II) ENFORCE ANY INDEMNIFICATION OBLIGATION OF PURCHASER UNDER THIS AGREEMENT, OR (III) PURSUE ANY REMEDIES THE SELLER MAY HAVE FOR FRAUD OR OTHER BAD FAITH ACTION BY PURCHASER.

- 10.2 Dispute Resolution and Attorney's Fees. In the event of any claim or dispute arising under Section 8.2 of this Agreement, the Parties agree to submit the same to binding arbitration 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, and upon seven (7) days' notice from, any Party. The arbitrator so appointed shall be a retired superior court judge or an attorney having at least ten years' experience in matters similar to the subject of the claim or dispute. The court may establish the ground rules by which the initial arbitrator fees are to be paid. The mandatory arbitration rules, as implemented in Benton County Superior Court, shall be binding as to procedure. The arbitrator shall determine an award of reasonable attorney's fees and costs and expenses to the substantially prevailing Party. If any suit or other proceeding is instituted by either Party that is alleged not to come within the foregoing agreement for arbitration, the substantially prevailing Party as determined by the court or in the proceeding shall be entitled to recover its reasonable attorney's fees and all costs and expenses incurred.
- 10.3 Time is of the Essence. Time is of the essence of this Agreement.
- 10.4 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m., Pacific Daylight or Standard Time (as applicable).

- 10.5 Governing Law and Venue. This Agreement shall be governed by and construed according to the laws of the State of Washington. Venue for any dispute arising out of or related to this Agreement shall be exclusively in Benton County, Washington.
- 10.6 Authority to Execute Agreement. Each of the undersigned represents and warrants that, if not signing on his/her own behalf, he/she has the authority to bind the entity for which he/she is executing this Agreement.
- 10.7 Entire Agreement. There are no verbal or other agreements which modify or affect this Agreement, and Purchaser and Seller acknowledge that this Agreement together with the Take Down Agreement constitutes the full and complete understanding between Purchaser and Seller.
- 10.8 Amendments. This Real Estate Purchase and Sale Agreement may be amended or modified only by a written instrument executed by Seller and Purchaser.
- 10.9 Broker Compensation. Neither Party has had any contact or dealings regarding said property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee as a procuring cause of the purchase and sale contemplating this Agreement.

If any broker or finder perfects a claim for a commission or finder's fee based upon any other contract, dealings or communication, the Party through whom the broker or finder makes his or her claim will be responsible for that commission or fee and shall indemnify, defend and hold harmless the other Party from and against any liability, cost or damages, including attorney's fees and costs, arising out of that claim.

Commissions will only be paid to licensed real estate brokers. In order to be paid, the broker must submit a signed bona fide offer plus a signed appointment from the potential purchaser authorizing the broker to negotiate for the potential purchaser in order to claim the commission. The broker authorization must include the name of the proposed purchaser and the date of their first contact with said purchaser. Unless this provision is strictly complied with, the Seller will not pay any claimed commission.

- 10.10 Obligations to Survive Closing. The obligations in Section 8 of this Agreement and as otherwise specifically provided herein shall survive Closing.
- 10.11 Termination. Unless otherwise agreed between the Parties, this Agreement shall terminate unless signed by Purchaser and returned to Seller before 5:00 p.m. the 3rd business day following the Port of Kennewick's next scheduled Commission meeting.
- 10.12 Force Majeure. Except as otherwise specifically provided in this Agreement, in the event either Party is delayed or prevented from performing any of its respective

obligations under this Agreement by reason of acts of God, governmental order or requirement, epidemic, pandemic, fire, floods, strikes, cyber attack, or due to any other cause beyond the reasonable control of such Party, then the time period for performance such obligations shall be extended for the period of such delay.

- 10.13 Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the Parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.
- 10.14 Waiver. Neither Seller's nor Purchaser's waiver of the breach of any covenant under this Agreement will be construed as a waiver of a subsequent breach of the same covenant.
- 10.15 Electronic Signatures. The Parties acknowledge and agree that execution of this Agreement, and amendment hereto, and the Feasibility Waiver Notice may be accomplished by electronic signature utilizing DocuSign or any other mutually acceptable similar online, electronic, or digital signature technology. The Parties agree that this Agreement may be transmitted by facsimile machine or by electronic scanning and email, and the Parties intend that faxed, scanned, and electronic signatures shall constitute original signatures. A facsimile or scanned copy or any counterpart or conformed copy of this Agreement, including use of Adobe PDF technology to merge pages and create a conformed copy of this Agreement, with the signature (original, faxed, or scanned signature or permitted electronic signature) of all the Parties shall be binding on the Parties.
- 10.16 Counterparts. This Agreement may be executed simultaneously or in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 10.17 Exhibits. The following Exhibits are attached hereto and made a part of this Agreement by reference:

Appendix A: Legal Description of Phase

Appendix B: Port of Kennewick Vista Field Covenants, Conditions and Restrictions

Appendix C: Port of Kennewick Vista Field Design Standards

Appendix D: Approved Development Plan

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date first written above.

SELLER: Port of Kennewick
A Washington Municipal Corporation
By Authority of its Board of Commissioners

By: _____
Tim Arntzen, Chief Executive Officer

Approved:

Approved as to form:

Nick Kooiker, Port Auditor/CFO

Taud Hume, Port Counsel

PURCHASER: BlueChart, LLC

By: _____
Levi Holmes

Its: Member _____

By: _____
Ben Paulus

Its: Member _____

ACKNOWLEDGEMENTS

State of Washington)
)ss
County of Benton)

On this day personally appeared before me **Tim Arntzen** to me known to be the **Chief Executive Officer** of the **Port of Kennewick**, the municipal corporation that executed the foregoing instrument, and acknowledged the 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 he is authorized to execute the said instrument.

GIVEN under my hand and official seal this ____ day of _____, 20__.

Notary Public in and for the State of Washington
Residing at: _____
My Commission Expires: _____

State of Washington)
)ss
County of _____)

On this day personally appeared before me _____ to me known to be the _____ of **BlueChart, LLC**, a Washington limited liability company that executed the foregoing instrument, and acknowledged the 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 he is authorized to execute the said instrument.

GIVEN under my hand and official seal this ____ day of _____, 20__.

Notary Public in and for the State of Washington
Residing at: _____
My Commission Expires: _____

APPENDIX A

(Legal Description of the Phase)

APPENDIX B

(Port of Kennewick Vista Field Covenants, Conditions, and Restrictions)

APPENDIX C

(Port of Kennewick Vista Field Design Standards)

APPENDIX D

(Approved Development Plan for the Phase)

EXHIBIT D

(Infrastructure Improvements)

Promptly after receipt of an earnest money deposit for a phase, the Port shall commence and diligently pursue the completion of all Infrastructure Improvements needed to deliver a residential building lot to BlueChart in buildable condition and ready for issuance of building permits for the construction of residential dwellings (and, upon completion of such dwellings, certificates of occupancy), all in accordance with engineering drawings, plans and specifications, land division processes, and all entitlement approvals acceptable to BlueChart, acting reasonably. As used in this Agreement, the term “***Infrastructure Improvements***” shall mean the Port’s completion, at its sole expense, of the following work within each phase prior to the sale of lots in such Phase:

1. Common Amenities. All streets, roads, street signs, street lights, utilities and all other improvements required under the final engineering plans for the phase shall be installed in accordance with the requirements of the applicable governmental authorities and utility companies. The Port shall complete, repair, and maintain all improvements and landscaping required as a condition of final plat approval. Installation of all required landscaping may be bonded up to six (6) months.
2. Collaborative Design Process. The Port shall not submit any official submittal documents to any governmental authority or utility company without BlueChart’s prior approval of such document, acting reasonably. Such information shall include, without limitation, any and all proposed engineering drawings, plans and specifications, permit applications, subdivision applications, entitlements, and other official submittals for each Phase. BlueChart shall review and provide feedback on all proposed submittals received from the Port within seven (7) business days of receipt.
3. Roads and Sidewalks. All roads, curbs and sidewalks within the phase shall be completed. All sidewalks shall have been completed with curb cut locations agreed to by BlueChart and the Port. BlueChart to repair any roads, curbs or sidewalks damaged as a result of BlueChart construction activities.
4. Bonds. The Port’s contractor shall deliver all required maintenance and repair bonds required in connection with final plat approval to the applicable governmental authorities. The Port’s contractor shall complete all maintenance/repair within the applicable warranty period. Release of such maintenance bonds shall be conclusive evidence of the Port’s satisfactory performance of this condition. The Port’s contractor shall obtain the release of any and all bonds it posts.
5. Utility Deposits/Acceptance Letter. If applicable, the Port shall promptly pay any deposit required by utility companies prior to their commencement of engineering work and/or construction of utility systems for the phase. The Port is responsible for delivering all required utility system approvals and street acceptance necessary to obtain building permits for residential lots within each phase.
6. Warranty Periods. Upon expiration of all periods applicable to the maintenance and/or performance bonds posted by the Port, the Port shall assign to BlueChart all guarantees, warranties and other assurances received by the Port with respect to completion and on-going maintenance of all site improvements to the extent such guarantees, warranties and other assurances exist at that time and are assignable.

7. Utility Lines. All utility lines serving the applicable phase shall have been installed, complete and in place, stubbed to each Lot and available for connection and ready for the intended use upon BlueChart's payment of any required connection or hookup fees. All utility lines shall be installed in utility easements or within the public right of way. Sanitary sewer service shall be extended into each lot a distance of five (5) feet beyond the edge of any utility easement or right of way. Sewer service connections shall be of adequate depth to serve all lots by gravity however service shall be no more than fifteen (15) feet below finished grade at the street or alley. All service stubs shall be marked with a 2" X 4" wood stake, clearly marked in accordance with the requirements of the applicable governmental agency, if any. The Port is not responsible for installing the service lines from each dwelling to the boundary line of its lot.
8. Access. Access to each lot shall be provided by streets dedicated to the public, or set aside in common area tracts specifically created for ingress, egress, and utility service to the developed lots and installed in accordance with the applicable requirements of the governmental authorities. For streets and utility services contained within a tract, such tract shall be dedicated to the Vista Field owners association for ownership and maintenance.
9. Grading. All lots shall be graded in accordance with the grading plans approved by the governmental authorities and acceptable to BlueChart, acting reasonably. Any fill placed on any lot shall be either native material or structural fill, which is sufficiently compacted and acceptable for construction of single-family residences on normal spread footings. The elevation of bearing soil shall be sufficient to allow for gravity flow drainage of the storm sewer (footing drains and roof drains). The Port shall provide BlueChart with original copies of all geo-technical reports pertaining to the phase.
10. Compaction on Lots. The building envelopes for each lot where fill has been placed shall be compacted to ninety-five percent (95%) Standard Proctor or greater. The Port shall provide proof of 95% compaction on all lot fills in the form of a written certification from its soils engineering consultant as to the compaction together with field inspection reports regarding the composition of such fill and filling procedures. All lot fill shall be reviewed and tested by a commercial testing laboratory and such tests approved in writing by BlueChart, which approval shall not be unreasonably withheld, conditioned or delayed. If the Port fills any area without obtaining such testing, the Port shall be responsible to pay any and all costs incurred by BlueChart resulting from unsuitable soils used as fill. All grading within each phase shall be certified by a Geotechnical Engineer, registered in the State of Washington.
11. Debris. The Port will deliver the lots free, both above and below ground, of all stumps, six man or larger boulders as described in the Washington State Department of Transportation's Standard Specifications for Road, Bridge, and Municipal Construction manual and located within four (4) feet of the surface, pavement, cement, concrete, asphalt, buildings, construction debris, stock piled material, chip piles, trash, refuse and rubbish. All lots shall be staked and pinned for all lot and/or tract boundaries.
12. Amenities. The Port shall design, permit, and construct all parks, trails, entry monuments, and recreational amenities in accordance with all applicable plans, specifications and governmental approvals and otherwise in compliance with the Approved Development Plan.

13. Final Plat Approval. The Port shall achieve Final Recording of each phase. As used herein “Final Recording” means that a final plat of each phase creating legal lots therein has been approved by governmental authorities and recorded in Benton County, Washington, with lot configurations and approval conditions satisfactory to BlueChart, in its sole discretion, with all appeal periods having run and any and all appeals submitted resolved in a matter satisfactory to BlueChart.

EXHIBIT E

(Promissory Note for ROFR Consideration)

_____, 2025

_____, Washington

FOR VALUE RECEIVED, [Blue Chart] (“Maker”) hereby promises to pay the Port of Kennewick (“Holder”) the sum of TEN THOUSAND AND 00/100 DOLLARS (US Currency) (\$10,000.00) which shall become payable on the date Maker acquires the final single-family residential lot within Phase 5 of Vista Field in accordance with Section 1.5 of the Builder Reservation and Take Down Agreement executed by Maker and Holder but in any event on or before _____.

Maker promises to pay to the Holder on demand all costs and other expenses (including, without limitation, reasonable attorneys’ fees) paid or incurred by the Holder in collecting this Note or enforcing or in exercising any of its rights, remedies, powers, or privileges created by, connected with, or provided for in this Note, regardless of whether or not a lawsuit is filed, and regardless of whether in connection with a lawsuit of original jurisdiction or any appeal.

This Note shall be governed by and construed in accordance with the laws of the State of Washington.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

Date: _____.

By: _____
Levi Holmes

Its: Member _____

By: _____
Ben Paulus

Its: Member _____

EXHIBIT F

(Promissory Note for Initial Earnest Money Deposit)

_____, 2025

_____, Washington

FOR VALUE RECEIVED, [Blue Chart] (“Maker”) hereby promises to pay Benton Franklin Title Company (“Holder”) the sum of TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (US Currency) (\$250,000.00) which shall become payable within three (3) business days after Maker’s delivery of the Feasibility Waiver Notice in accordance with Section 4.1.1 of the Real Estate Purchase and Sale Agreement executed by Maker and Port of Kennewick, a Washington municipal corporation (“Holder”) on or about the date hereof.

Maker promises to pay to the Holder on demand all costs and other expenses (including, without limitation, reasonable attorneys’ fees) paid or incurred by the Holder in collecting this Note or enforcing or in exercising any of its rights, remedies, powers, or privileges created by, connected with, or provided for in this Note, regardless of whether or not a lawsuit is filed, and regardless of whether in connection with a lawsuit of original jurisdiction or any appeal.

This Note shall be governed by and construed in accordance with the laws of the State of Washington.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

Date: _____.

By: _____
Levi Holmes

Its: Member _____

By: _____
Ben Paulus

Its: Member _____

PORT OF KENNEWICK

RESOLUTION No. 2025-11

***A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE PORT OF KENNEWICK
APPROVING THE PORT'S OFFICE SPACE REPORT***

WHEREAS, the commission has established a goal for the CEO to develop a plan to accommodate staffing/office needs long term; and

WHEREAS, the commission recognizes the importance of such a report in order to accommodate future growth and projects at the Port; and

WHEREAS, the port CEO, in furtherance of a commission goal, has submitted a report (the Report) to accommodate staffing and office needs at the Port; and

WHEREAS, the commission approves of and accepts the Report as presented; and

NOW, THEREFORE, BE IT RESOLVED that the Port of Kennewick Board of Commissioners hereby ratifies and approves the Office Space Analysis Report.

BE IT FURTHER RESOLVED that the Commissioners hereby approve and accept the Report for 2025-2026 CEO Goal #4.

BE IT FURTHER RESOLVED that the Port of Kennewick Board of Commissioners hereby ratify and approve all action by port officers and employees in furtherance hereof; and authorize the Port Chief Executive Officer to take all action necessary in furtherance hereof.

ADOPTED by the Board of Commissioners of Port of Kennewick on the 25th day of March 2025.

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

By: _____

SKIP NOVAKOVICH, President

By: _____

KENNETH HOHENBERG, Vice President

By: _____

THOMAS MOAK, Secretary



OFFICE ANALYSIS

Prepared for:
Port of Kennewick

Prepared by:
Strategic Construction Management

TABLE OF CONTENTS

1. Project Information
 - a. Executive Summary
 - b. Scope of Work
2. Director of Operations & Maintenance Office
3. Existing Port of Kennewick Office Revisions
4. Vista Field Opportunities
5. VFDF Buildings
6. Conclusion
7. Qualifications
8. Appendix

EXECUTIVE SUMMARY

The Port of Kennewick commissioned a staff needs assessment in late 2024 that identified up to three new staff positions needed to support the growing workload. The assessment suggested these staff join the team within two to five years.

Since the existing Port of Kennewick office is currently at or exceeding capacity for staff, the Port of Kennewick executive team noted that a barrier to hiring the additional staff members would be finding suitable workspace in the existing building. The team requested Strategic Construction Management perform a review of existing spaces and provide options that could be implemented in the next three months to five years to accommodate the anticipated growth.

The Strategic Construction Management team conducted the following in order to develop the opportunities identified in this report:

- Interviews with every Port of Kennewick staff member to learn what works and/or does not work with the individual's existing workspace, positives and negatives of the overall Port of Kennewick office space, and follow up questions based on staff feedback.
- Tour of the existing Port of Kennewick offices.
- Tour of the VFDF site with Tim Arntzen, Nick Kooiker, Amber Hanchette, Mike Boehnke, and Jesse Briones from Bouten Contraction.
- Tour of the existing maintenance office at the Oak Street Industrial Park site.
- Tour of the Oak Street Industrial Park site.

This report will provide the following for the Port of Kennewick's review:

- Suggested location for Director of Operations office and maintenance staff office/break room
- Suggested changes for the existing Port of Kennewick office building
- Suggested disposition of the VFDF building for near-term and long-term benefit of the Port of Kennewick

SCOPE OF WORK

OBJECTIVES

The Port of Kennewick enlisted Strategic Construction Management to develop options to enable the Commissioners and Executive Team to make both short and long-term decisions regarding staffing and workspace. This will be particularly important for determining how to accommodate new staff with suitable workspace while maintaining the existing budget, and it will also provide a basis for planning needs in the next budget cycle.

Strategic Construction Management with the assistance of the Port of Kennewick toured available, existing spaces owned by the Port of Kennewick. This included requests for floorplans and other details from each building including leasing and/or sale opportunities. These tours were made with Jesse Briones from Bouten Construction to ensure potential impacts due to existing building codes were considered.

To further refine the understanding of options, the team provided staff members with a brief list of questions and spent at least 30 minutes interviewing each staff member regarding workspace and office conditions. This invaluable step ensures that impacts are broadly considered for future planning.

EVALUATION RESOURCES

David L. Robison, CCM, LEED AP Principal, Strategic Construction Management, Inc.

Jesse Briones, Bouten Construction

Tim Arntzen, Port of Kennewick

Nick Kooiker, Port of Kennewick

Amber Hanchette, Port of Kennewick

Mike Boehnke, Port of Kennewick

Port of Kennewick staff

David Robison and Kim Harvey of Strategic Construction Management served as point of contact for the project.



**Director of
Operations &
Maintenance
Office**

Director of Operations & Maintenance Office

OVERVIEW

The Director of Operations—Mike Boehnke—currently offices out of a shared cubicle in the open area at the Port of Kennewick office building on Clover Island, a building at the Oak Street Industrial Park, a temporary facility at Vista Field, and his truck. The maintenance staff use the building at Oak Street Industrial Park, but more frequently, they will meet truck to truck due to the lack of viable space in the Oak Street Industrial Park location currently in use. Additional facilities used by the Port of Kennewick maintenance team include:

- Shop buildings at Oak Street Industrial Park
- Hangar building for equipment at Vista Field

The staffing assessment identified the need for a full time position supporting the Director of Operations. This position would manage day to day requirements of the maintenance workforce and projects to make the Director of Operations available for the large projects and strategic planning for the Port of Kennewick.

ASSUMPTIONS

- The existing shop buildings remain available at Oak Street Industrial Park for the next 3 – 5 years.
- The existing hangar building at Vista Field remains available to provide storage space for equipment needed to maintain Vista Field.

RECOMMENDATION

The operations team needs a location central to the majority of their efforts to begin the day, store files, meet as required, and both store and maintain equipment. This space must be large enough to accommodate the existing operations team with room for growth in the next three to five years as requirements to maintain Vista Field are added to the scope.

Director of Operations & Maintenance Office

OPTIONS TO ACHIEVE RECOMMENDATION

1. OAK STREET INDUSTRIAL PARK OFFICE & SHOP

Opportunity: Convert space B120 to an office and shop for the operations team.

Benefits

- Centrally located to all of the Port of Kennewick's projects requiring maintenance
- Located nearby both Port of Kennewick main office and City of Kennewick Frost Building
- Sufficient size for shop, office space, break room, and meeting area for the operations team.
 - Lockable space for Port of Kennewick equipment
 - Ability to house entire operations team in one facility
- Secure parking for all maintenance vehicles
- Low cost opportunity. Space requires:
 - Set up for Port of Kennewick intranet
 - Desks, chairs, and storage cabinets for files

Challenges

- Loss of rent at \$4,000 per month.
 - This space is currently vacant.
 - The space has been vacant since June 2023.



Ample office space and warehouse space to accommodate Operations and maintenance requirements.

Director of Operations & Maintenance Office

OPTIONS TO ACHIEVE RECOMMENDATION (cont.)

2. VFDF A OFFICE SPACE

Opportunity: Use Suite 7 of VFDF A as an office space for the Operations Director and maintenance staff.

Benefits

- Located near Vista Field
- Sufficient parking for all maintenance vehicles
- Low cost opportunity. Space requires:
 - Set up for Port of Kennewick intranet
 - Desks, chairs, and storage cabinets for files
- This would occupy a space in a Port owned building that has been vacant since June 2022.

Challenges

- No space for shop or secure storage for vehicles, equipment, etc.
- Not centrally located to the remainder of the majority of sites requiring maintenance
- The VFDF set of buildings and land could be sold to support the greater vision of the Port of Kennewick in developing further infrastructure for Vista Field



Director of Operations & Maintenance Office

OPTIONS TO ACHIEVE RECOMMENDATION (cont.)

3. REMAIN IN EXISTING SPACES

Opportunity: Continue to occupy house located at Oak Street Industrial Park as a maintenance office, shop at Oak Street Industrial Park, mobile meeting sites, and Director of Operations shares office space at Port of Kennewick main office.

Benefits

- No changes required

Challenges

- Existing maintenance office requires extensive remodeling that would be cost prohibitive.
 - Any renovation would require bringing all elements of the building up to code.
 - Based on observation, any renovation would require asbestos abatement and further study to determine other abatement requirements.
- This does not create a permanent office location for the Director of Operations.
- This does not create space for a Maintenance Manager.
- Inefficiencies due to mobile meetings and no central location for the operations team to plan and execute each day.

**Existing
Port of
Kennewick
Office
Revisions**

Existing Port of Kennewick Office Renovations

OVERVIEW

The Port of Kennewick offices located on Clover Island are enjoyed by staff and visitors alike for the architecture and layout. Since COVID, the executive team adopted a hybrid model where all staff report to the office Tuesday and Thursday but largely work from home Monday, Wednesday, and Friday.

The staff is largely happy with the office spaces with the most common concern stemming from noise in the office—particularly for staff members in the center cubicles. The Port of Kennewick reviewed options during the remodel in 2014 to add a cap above these center cubicles; however, due to both the architecture and HVAC this is not a viable option physically or financially.

Additionally, the staff assessment resulted in a recommendation of two additional staff persons within two to five years.

ASSUMPTIONS

- Up to two new, full-time staff members added to the team in the next two to five years
- Staff continues to largely work from home Monday, Wednesday, and Friday with all staff expected in office on Tuesdays and Thursdays

RECOMMENDATION

Modifications to the existing office space as well as reconfiguration of up to two offices can not only meet but exceed the Port of Kennewick's needs to accommodate current and future staff. These modifications can be accomplished in stages to minimize disruption to the staff as well as maintain fiscal responsibility.

Existing Port of Kennewick Office Renovations

OPTIONS TO ACHIEVE RECOMMENDATION

1. SOUND PANELS

Opportunity: Noise is one of the most significant concerns staff expressed regarding the ability to accomplish their tasks. Enlisting a sound engineer and strategically placing sound panels throughout the office has the potential to reduce the noise.

Benefits

- Sound panels can be created to match the aesthetic of the Port of Kennewick offices
- Noise reduction for those working in the center cubicles

Challenges

- Cost of a sound engineer to assess and recommend placement.
- Cost of sound panels.



High ceilings, hard surfaces, and large open spaces allow sound to travel.

Cubicle spaces allow less opportunity to escape a loud environment to concentrate or conduct Port business.



Existing Port of Kennewick Office Renovations

OPTIONS TO ACHIEVE RECOMMENDATION (cont.)

2. OFFICE RECONFIGURATION

Opportunity: This is a multi-prong option where all or part of the choices may be implemented to meet staff needs. Due to the number of options, each option is listed in bold below with a list of benefits and challenges below it.

Relocate Tim Arntzen to Lower Level Conference Room

- **Benefits**
 - Mr. Arntzen spends a significant portion of his time in on-site meetings or out in the field visiting Port of Kennewick properties. This location provides greater space and accessibility for his requirements.
 - Opens a large space on the main office floor that could accommodate up to two individual staff members. Finance team members typically work closely together, so consideration regarding clustering finance in this area may be advantageous.
 - No cost opportunity to open space.
 - The majority of staff are comfortable with Mr. Arntzen officing out of the lower level.
 - Since the entry door is locked and visitors are buzzed in, this limits security risks.
- **Challenges**
 - Office staff proceed downstairs and/or call to reach Mr. Arntzen

Maximize Utilization of Council Chambers

- **Benefits**
 - This space is well-equipped technologically for use as a conference space when not occupied by commissioners.
 - Team members office in the center cubicles could sign up for use of this space when participating in webinars or conducting other Port business that requires focus or privacy.
- **Challenges**
 - Only available when not in use by commissioners.
 - Not a traditional desk setup.
 - A mobile conference room table may need to be purchased to accommodate traditional conference meetings in this space.



Existing Port of Kennewick Office Renovations

OPTIONS TO ACHIEVE RECOMMENDATION (cont.)

2. OFFICE RECONFIGURATION (cont.)

Convert Tana Bader-Inglima's Office to Shared Office Space

- Benefits
 - Use this shared space or divide into two offices based on the needs of the staff at the time of Ms. Bader-Inglima's retirement.
 - Potential use for Office Assistant / Marina Manager—Kandy Yates—when reconciling receipts or conducting marina business.
- Challenges
 - Additional cost for remodel if this path is chosen.

Create Space at the Entrance for Reception

- Benefits
 - Offers a convenient location for customer service to assist and direct guests while minimizing noise upstairs.
 - Utilizes and unused space for a to-be-hired staff member in the next 12 to 18 months.
- Challenges
 - Climate control will need to be addressed for this lobby area.
 - An appropriate desk with internet will need to be added to the area.



The lower level of the Port Office presents opportunities for utilizing space in a different way.

Existing Port of Kennewick Office Renovations

OPTIONS TO ACHIEVE RECOMMENDATION (cont.)

2. OFFICE RECONFIGURATION (cont.)

Remodel the Reception Area to Accommodate Additional Center Cubicles

- Benefits
 - Since the entrance doors are now locked, this area does not serve the same guest functions as it once did.
 - Creates space for current and future team members.
- Challenges
 - Costs to reconfigure and add cubicles in a way that does not detract from the grandeur of the commission entrance.



3. RELOCATE PAPER FILES TO OFF-SITE STORAGE

- Benefits
 - Alleviates congestion areas throughout the main level.
 - Potentially offers additional options/locations for sound engineer to utilize.
 - File cabinets could be repurposed for operations team use.
- Challenges
 - Additional cost for storage anticipated at offsite location would need to be confirmed.



4. OTHER SUGGESTIONS FROM STAFF TO CONSIDER FOR ENHANCING THE WORKPLACE

- Stand Up Desks – the full stand up rather than the type that sits on top of an existing desk
- Noise cancelling headphones
- Requesting office doors closed for webinars and meetings to reduce noise in the common area
- Review the location of the thermostat that is located near reception for an alternate location that is not directly impacted by the heat of the sun which alters the overall temperature of the building.
- Add sunshade to the deck to create a usable outdoor space.
- Add option on the deck to offer storage while not impacting the aesthetic of the building.





Vista Field Opportunities

Vista Field Opportunities

OVERVIEW

The Vista Field development is growing. In 2025, the first developers are expected to open doors for a restaurant, eye clinic, and more. In 2026, the Vista Field Pavilions will open for community events including private rentals.

As staff meet with developers, more than one developer shared plans—in the spirit of the Master Plan—to incorporate additional spaces in each building available for lease to other tenants. To date, these buildings are slated to accommodate 1,000 to 4,000 square feet of rental space.

At this time, there is not a need for a satellite at Vista Field because most visits are site tours only, and the majority of the meeting time is spent at the Port of Kennewick's office where all of the plans and documents can be shared.

ASSUMPTIONS

- Building construction by a developer and/or community stakeholder with a workable floor plan complete in two to five years.
- Port of Kennewick continues to support the Vista Field Master Plan by only permitting buildings that meet all of the criteria.

RECOMMENDATION

Development sites typically house a construction trailer or other small satellite office if on-site meeting space is required; however, these types of structures do not support the overall Vista Field Master Plan. Additionally, a building that supports the Master Plan could cost in excess of \$2 million, and as the developer, it would better serve the Port of Kennewick to invest that funding into continuing to build out the infrastructure to support more development of the site.

By 2026, the Port of Kennewick may need 1,000 to 4,000 square feet of space in Vista Field to support pavilion activities, maintenance, and on-site construction meetings. The Port of Kennewick can support Vista Field by renting secondary space—with an entrance off the main street or on the second floor of a building—from an existing site.

VFDF Building Opportunities

VFDF Building Opportunities

OVERVIEW

The Port of Kennewick has a long history of changing its business model to support the community it serves. For a number of years, that support involved building then leasing spaces for businesses to get a foothold in the Tri-Cities, create jobs, and more.

In 1990, the VFDF buildings were one example of that process. The buildings were constructed to support an engineering or research and development tenants. In 2021, long time tenant Bruker moved its operations overseas, and the VFDF A building has not been occupied to capacity since that time. The VFDF B building has one tenant expected to leave after the lease expires while the other tenant is expected for the longer term.

Due to the age of the VFDF buildings, any renovations require bringing the buildings up to code as well as mitigating any hazardous materials. At a minimum, this would require structurally evaluating the roof's ability to support a full sprinkler system, possible asbestos abatement, HVAC dampers, and plumbing adjustments.

RECOMMENDATION

Several years ago, the Port of Kennewick Commissioners and Executive Team saw that development would be the next significant way to impact the community, and plans for Vista Field began. Over these years, staff time has largely shifted to support of this significant project while continuing to support development of Clover Island, Oak Street Industrial Park, and Columbia River Gardens.

Consider appraising and selling the VFDF buildings to a developer with a vision and funding to create the next opportunity in this area that is nearby Vista Field.

The Port of Kennewick can use the funds from the sale to begin the next phase of infrastructure work to support Vista Field while continuing to look to the future.

CONCLUSIONS

CONCLUSIONS

The Port has changed as the community has changed to serve the community to the highest level. At this time, that change is a move further away from leasing into development at Vista Field. As a result, opportunities exist within the current portfolio of buildings to create needed space for staff and fund future infrastructure at Vista Field.

The operations team needs a permanent location for all team members and equipment. The ideal location is space B210 in the Oak Street Development Park. This meets all of the current needs as well as the anticipated needs for the next two to five years.

The Port of Kennewick offices seem to have the ability to accommodate additional staff with only minor, low-cost renovations. This report contains several additional low-cost opportunities to enhance the existing work environment for specific staff members and overall performance of the team.

Finally, a review of the long-term need of the VFDF buildings and their best use for the Port of Kennewick is needed to determine if they should remain in the Port's portfolio or be divested to fund future infrastructure for development.



QUALIFICATIONS

QUALIFICATIONS

Strategic Construction Management, Inc. has been building a reputation of excellence and success across the west coast since 2000. In 2010, the company expanded to serve the growing Pacific Northwest with an office in Kennewick, Washington. Founded in Santa Cruz, California, a small seaside community just minutes from Silicon Valley, Strategic Construction Management, Inc. draws upon the energy and innovation that characterizes these two areas and leverages our time-tested approach of forming strategic partnerships to offer a unique line of project development and construction management services.

One element that separates us from our competitors is our ability to combine big-company competency and expertise with small-company responsiveness. Our expertise covers the full range of project development and construction services, allowing us to oversee a project from inception to occupancy. One of the keys to a successful long range capital plan and the individual projects that comprise it is to maximize the capital projects budget. Our experience and knowledge will be used to ensure that the Port of Kennewick's project meets all of the appropriate deadlines and maximizes the return on the community's investment.

Our focus begins and ends with you—your expectations and objectives, budget considerations and deadlines—whether it's a \$1 million project or a \$500 million program. We succeed through proactive communication, close collaboration, extraordinary attention to detail, field proven techniques, and an unsurpassed work ethic.

APPENDIX



**Staff Feedback
Regarding
Existing
Port of
Kennewick
Workspace**

Over the course of four days, the Strategic Construction Management team met with all staff members to ask the following questions:

- For the office space you've been assigned, what works and/or does not work for you?
- If you could change anything about the office environment as a whole, what would it be?
- Where do you spend most of your time? In the office, working from home, in meeting, etc?
- Would you have any concerns if the Executive Director's office moves to the first floor?

Below are the responses from the team that were used in forming the recommendations for this report.

For the office space you've been assigned, what works and/or does not work for you?

- Office space next to my team – that's important
- No issues with my office, not attached to it
- Office works well because it can double as a small gathering space due to its size.
- I just need a computer, so I don't need as much office space. It could be cut in half.
- Love being on the island.
- Great culture.
- The quality in the space is top notch.
- I get to talk to everyone. It's nice because it's a big family here.
- The front desk area is loud with no privacy. It makes it difficult to work on tasks where concentration is needed.
- The front desk area is very large, and the space could be used more effectively for something else.
- The door in the middle of the cubicle offices could be eliminated.
- On Tuesdays and Thursdays when everyone is in office, it's loud and difficult to hear anything from the cubicle offices.
- Prefer a standup desk (not the type that sit on top of the desk and need to be lifted).
- Need better ergonomics.
- Office is noisy, and it's still possible to hear some team members when their doors are closed.
- Lighting is too bright.
- Office is either too hot or too cold.
- Space is fine – no negatives

If you could change anything about the office environment as a whole, what would it be?

- Multiple team members expressed that finding a permanent location for Mike's office would be more productive for him. Of note, he alternates between the lower-level conference room, a shared space with Tammy, the maintenance shop, and the field currently.
- Ideal for maintenance shops in future to be closer to the purpose-built real estate.
- Need storage.
- As people have been placed in the existing downstairs conference room to office (eg the marina office), they felt disconnect from the rest of the Port team.
- Not having everyone in the same workspace can create the silo effect and hinder synergy.
- Sound proofing. We need something because Bridgette sits next to the restroom, and you can hear everything when in her office.
- Kitchen space is nice to be able to use, and I appreciate the remodel.
- Chattering at the kitchen space could be disruptive to people in the cubicle offices.
- The patio space isn't used because it's too hot in the summer; it's dead space that could be reclaimed for something or possibly repurposed for storage without impacting the aesthetic.
- I get to talk to everyone. It's nice because it's a big family here.
- Heating and cooling. The thermostat location impacts the overall office when the sun shines directly on it, and the fans and space heaters inside the offices effect the overall office temperature making it hot or cold.
- Kandy needs a space to go periodically to do work (part time area) – important at year-end or when working on other financial projects.
- All of the files could be sent to records because files are electronic now. This could free up space. Might increase storage bill to \$600/mo.
- For staff members officing in the open spaces, the commission chambers could be used when they need to participate in webinars or complete tasks that require concentration, if available.
- Operations manuals would need to stay at Clover Island Office.
- Meeting space with maintenance team with desks for five people, the ability to print/scan, file storage.
- A home base for the operations director.
- Need all of the files in his new space
- Need a space at the Clover Island office on Tuesday / Thursday that's community for those who come in/out of the office.
- Maintenance needs to be part of the new Vista Field eventually.
- Maintenance shop needs to be centrally located to the majority of the projects.
- Costs a lot of money to have a seat in the office for people who are only here two days a week.
- Do we need all of the office space?
- Most of the properties that need to be maintained are in Clover Island / Columbia Gardens currently.
- Some staff could office in satellites if space is needed in future. For example, David Phongsa could be at the VFDF building if needed near Vista Field when pavilion events begin to support programming.
- If the Port divests any buildings, spend the additional funds to build more roads / infrastructure for Vista Field rather than spending \$3 - \$4 million on a building that's housing people. Invest in infrastructure that will provide development.
- The sun hits the thermostat at the front of the office, so it makes the back offices really cold.
- Would it be possible to form a partnership with another location for Port Commission meetings – possibly the TC Visitor & Convention Bureau if meetings near Vista Field are a desired option.
- Maintenance spends significant amount of hours on the island right now ... later when pavilions open anticipate more time at Vista Field.
- Could the lobby be remodeled since there are not a significant number of visitors any longer?
- Kandy has taken on a lot of duties, so would it be helpful to bring on a true receptionist?
- Consider returning some staff members to independent contractors or permanent work from home.
- Sound carries for the people in the middle.
- Need headphones for the people in the middle.

Where do you spend most of your time? In the office, working from home, in meeting, etc?

- The Port currently operates with a hybrid work environment. Staff are in office Tuesdays and Thursdays with the option to work remotely on Monday, Wednesday, and Friday.
- Customers have not expressed dissatisfaction with service levels.
- Spend two days in the office, but I spend a lot of time out in the field.
- Half of the office time is spent in the conference room or meetings.
- Satellite office could be OK.

Would you have any concerns if the Executive Director's office moves to the first floor?

- 75% of the team noted no concern with no additional comment. The additional comments are below.
- No concerns, and it might give him a little separation.
- It could give him more privacy.
- It might make more sense to have him in that location.
- We will need more people as we continue to grow to continue to maintain the properties at the level.
- It might be weird.



**Oak Street
Development
Building B**



Port of Kennebec

OAK STREET INDUSTRIAL PARK Development Building B

1426 East 3rd Avenue, Kennebec Washington



Lease Plan

<u>Suite No.</u>	<u>Office Sq. Ft.</u>	<u>Warehouse Sq. Ft.</u>	<u>Total Sq. Ft.</u>
B110	1,885	3,280	5,165
B120	2,615	3,830	6,445
B130	1,890	3,100	4,990

Building Features

- Generous office space
- Warehouse Height 16'
- 3 Phase Power
- 5" Cement/Steel Reinforced Floors
- 14' Loading Door at Grade
- Ample Parking
- Light Industrial Zoning
- Multi-Tenant Building
- Bullpen Storage – subject to availability

Asking Lease Rate

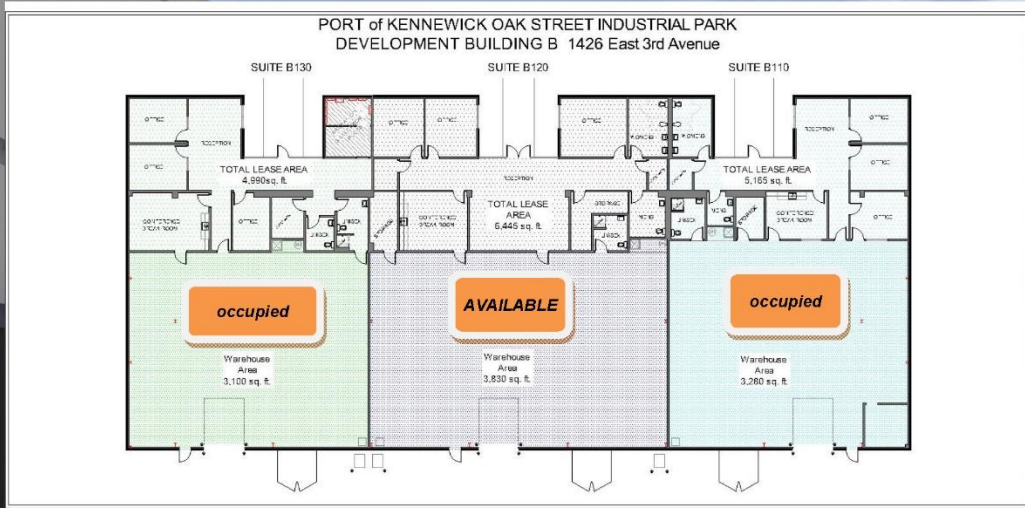
- \$.67 psf/mo
- Leasehold Tax 12.84%

For more information

Amber Hanchette

509.586.8596

Amber@PortOfKennebec.org





AGENDA REPORT

TO: Port Commission

FROM: Larry Peterson

MEETING DATE: 03/25/25

AGENDA ITEM: Resolution 2025-09 Contract with Place Landscape Architecture, LLC

I. REFERENCE(S): Resolution 2025-09, Partially Executed Contract with Place Landscape Architecture, LLC and DPZ CoDesign generated design concepts

II. FISCAL IMPACT: \$200,000

III. DISCUSSION: The adopted Vista Field Master Plan identified a public open space in the center of the project, which is now bounded by Crosswind and Grandridge Boulevards and is known as Daybreak Commons. The Port's adopted 2023-2024 Work Plan identified and funded Daybreak Commons landscape design work and the 2025-2026 Work Plan and Budget contains \$1,500,000 for Daybreak Commons Phase #1 improvements. *{pursuit of design work was paused to allow for collaboration with buyers in Vista Field, primary BlueChart LLC}*

The Professional Services Roster was reviewed and Place Landscape Architecture LLC, (Place LA) was deemed the best firm to complete the task of developing biddable construction documents. Place LA proposed to complete all design work to produce biddable construction documents and providing bidding assistance, in an amount not to exceed \$200,000. This proposal represents approximately 13% of the anticipated construction costs and is reasonable, especially when the complexity of the task is understood.

IV. ACTION REQUESTED OF COMMISSION:

Motion: I move approval of Resolution 2025-09 authorizing the Port's Chief Executive Officer to execute the contract with Place Landscape Architecture, LLC for landscape architecture services for the Daybreak Commons public open space in the Port's Vista Field Phase #1 project, for a sum not to exceed \$200,000.

PORT OF KENNEWICK

RESOLUTION No. 2025-09

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF
THE PORT OF KENNEWICK AUTHORIZING THE PORT CHIEF
EXECUTIVE OFFICER TO EXECUTE A CONTRACT WITH
PLACE LANDSCAPE ARCHITECTURE, LLC TO
PERFORM LANDSCAPE ARCHITECTURE WORK FOR THE DESIGN OF
DAYBREAK COMMONS PUBLIC OPEN SPACE IMPROVEMENTS**

WHEREAS, the 2023-2024 Port Work Plan and Budget identified and funded the design work for public open space improvements of the Vista Field Daybreak Commons area and such funds were transferred to the Port's approved 2025-2026 capital budget; and

WHEREAS, the Port desires to contract with a landscape architecture firm for design services for the Port's Vista Field Daybreak Commons, and staff has reviewed qualifications of three civil engineering firms; and

WHEREAS, Place Landscape Architecture, LLC has assembled a team of professionals necessary to produce biddable construction documents with a focus on constructability and quality; and

WHEREAS, Place Landscape Architecture, LLC has presented a proposal to perform the desired service for the sum of \$200,000, which represents approximately thirteen percent (13%) of the estimated construction cost of the project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Port of Kennewick does hereby approve the proposal by Place Landscape Architecture, LLC to provide the design work for public open space improvements of the Vista Field Daybreak Commons, in an amount not to exceed \$200,000.

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 and to pay all expenses necessary in furtherance hereof.

ADOPTED by the Board of Commissioners of Port of Kennewick on the 25th day of March 2025.

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

By: _____

SKIP NOVAKOVICH, President

By: _____

KENNETH HOHENBERG, Vice President

By: _____

THOMAS MOAK, Secretary

CONSULTANT/SERVICE AGREEMENT

THIS AGREEMENT is made on the 25 day of March, 2025, between the **Port of Kennewick** (hereinafter referred to as the “Port”) and **Place Landscape Architecture, LLC** (hereinafter referred to as the “Contractor”) (collectively referred to as the “Parties”). The Parties, in consideration of the mutual promises contained herein, agree as follows:

ARTICLE 1. Purpose.

The purpose of this agreement is to:
provide phased landscape architectural design, consultation services and construction plans for Vista Field Daybreak Commons.

ARTICLE 2. Scope of Work.

2.1. Relationship of the Parties. It is understood by both Parties that the Contractor is an independent contractor, and not an employee of the Port. The Port will not provide the Contractor with any fringe benefits, including but not limited to health insurance benefits, paid vacation, or any other employee benefit. The Contractor shall be solely responsible for any and all local, state, or federal withholding taxes, social security, or self-employment taxes, business or occupation taxes, or any other tax obligation which arises from compensation received pursuant to this Agreement.

2.2. Contractor Responsibilities. The Contractor will provide services, staff, equipment, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:
As included in the CONTRACTOR’S Proposal dated 2/20/2025 attached hereto as Exhibit “A”.

2.3. Standard of Care. The Contractor shall perform its work to conform to generally accepted professional standards. The Contractor shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all work conducted under this Agreement. The Contractor shall, without additional compensation, correct or revise any errors or omissions in such work. The Port’s approval or acceptance of Contractor’s work shall not relieve the Contractor of responsibility for the adequacy or accuracy thereof. The Contractor shall remain liable for damages and costs incurred by the Port arising from the Contractor’s errors, omissions or negligent performance of services furnished under this Agreement.

ARTICLE 3. General Requirements.

3.1. Compliance With Codes and Regulations. The Contractor shall comply with all federal, state, and local laws, ordinances, and regulations, including standards for licensing, certifications, and operation of facilities and programs.

3.2. Progress Reports. At the Port's option, the Port may require the Contractor to provide a monthly (or other time increment depending upon length of project) progress report on the various phases and the order of performance of the work in sufficient detail as deemed by the Port so that the progress of the work can easily be evaluated.

3.3. Port Materials. All Reports, Port materials, and other data furnished to the Contractor by the Port shall be returned no later than thirty (30) days after completion of the work.

3.4. Ownership of Work. The services to be performed by the contractor shall be deemed instruments of service for purposes of the copyright laws of the United States. The Port has ownership rights to the work products prepared by the Contractor in performing these services. The Contractor shall not be responsible for changes made in the work products by anyone other than the Contractor. The Contractor shall have free right to retain, copy and use any tangible materials or information produced but only for its own internal purposes. Use of documents or other materials prepared under this Agreement for promotional purposes shall require the Port's prior written consent. In the event this contract is for intellectual property such as artwork or system designs for software programs the Contractor will assign to the Port an irrevocable license to use and reuse for any lawful purpose the work products created by the Contractor in the course of performing these services.

3.5. Records and other Tangibles. Until the expiration of six years after the term of this Agreement, the Contractor agrees to maintain accurate records of all work done in providing services specified by the Agreement and to deliver such records to the Port upon termination of the Agreement or otherwise as requested by the Port.

3.6. Disclosure. All information developed by the Contractor and all information made available to the Contractor by the Port, and all analyses or opinions reached by the Contractor shall be confidential and shall not be disclosed by the Contractor without prior written consent of the Port, except as may be required by the Washington State Public Records Act.

3.7. Indemnification/Hold Harmless. With respect to claims other than professional liability claims, the Contractor agrees to defend, indemnify and hold harmless the Port, its appointed and elected officers and employees from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and all claims and demands on it, its officers and employees, arising from the negligent acts, errors or omissions by the Contractor in the performance of the Contractor's services.

With respect to professional liability claims only, and not commercial general liability claims, the Contractor agrees to indemnify and hold harmless the Port, its appointed and elected officers and its employees from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and

all claims and demands on it, its officers and employees, arising from the negligent acts, errors or omissions by the Contractor in the performance of the Contractor's services.

ARTICLE 4. Term of Agreement.

Term of Agreement. The period of performance under this Agreement will be from 3/26/2025, or date of execution, whichever is later, through 6/30/2026.

4.1. Cancellation. Either party may cancel this Agreement on 30 days' written notice to the other party, by certified mail, return receipt requested.

ARTICLE 5. Compensation and Payment.

5.1. Compensation for Services. The Contractor will be paid for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of work. Contractor's compensation for services rendered shall be based on the following rates or in accordance with the following terms:

By task order as set forth in "Exhibit "B" not to exceed \$ 200,000.00 during the term of this agreement unless authorized in writing by the Port.

The Port will not reimburse the Contractor for any costs or expenses incurred by Contractor while undertaking work required by this Agreement.

5.2. Billing Procedures. The Port will pay Contractor upon receipt of properly completed and Port approved invoices, which shall be submitted to the Port not more often than monthly. The invoices shall describe and document to the Port's satisfaction a description of the work performed, the progress of the project, and fees. **If expenses are invoices, provide a detailed breakdown of each type. Any single expense in the amount of \$25.00 or more must be accompanied by a receipt in order to receive reimbursement.** Payment shall be considered timely if made by the Port within thirty (30) days after receipt of properly completed and Port approved invoices. Payment shall be sent to the address designated by the Contractor.

The Contractor shall send invoices to the Port's electronic invoice processing system at accountspayable@portofkennewick.org. If access to that system is desired by Contractor, it will be provided at the time the Agreement is signed by all parties. It provides them access to see the status of pending invoices. The Port reserves the right to change its invoice processing method at any time during the term of this Agreement.

The Port has timely financial reporting requirements. Therefore, the Contractor shall submit invoices for work performed no later than sixty (60) days from the date work is completed in order to ensure prompt payment. If Contractor fails to submit invoices within sixty (60) days from the date work is completed, the Port may charge an administrative fee of \$25 per day for each day the invoice is late or the Port may, in the Port's sole discretion, determine the work performed by the Contractor was donated to the Port due to the Contractor's failure to timely invoice the Port.

The Port may, at its sole discretion, terminate the Agreement or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Agreement. No payment in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by the Port.

5.3. Waiver of Claims. The acceptance of the final payment by the Contractor shall constitute a waiver of all claims, of whatever sort or nature, by the Contractor against the Port.

ARTICLE 6. Insurance.

The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the Port should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Contractor or its agents, while performing under the terms of this Agreement.

The Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this Agreement, as follows:

A. Commercial General Liability Insurance Policy. Contractor shall provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantify to protect against legal liability arising out of the activity/ies contemplated by this Agreement but no less than \$1,000,000 per occurrence, \$2,000,000 aggregate. Additionally, the Contractor is responsible for ensuring that, if any subcontract has been authorized by the Port, that any such subcontractor provides adequate insurance coverage for the activities arising out of the subcontract.

B. Automobile Liability. In the event that services delivered pursuant to this Agreement involve owned, unowned or hired vehicles by the Contractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 combined single limit per accident.

C. Professional Liability. For Agreements involving amounts of \$50,000 or more, certain professional Contractors shall be required to maintain professional liability insurance of not less than \$1,000,000 per claim and in the aggregate. Insurance shall have an effective date prior to the effective date of this Agreement and coverage shall remain in effect for the term of this Agreement plus three years. These professional contractors subject to this provision include but are not limited to Architectural and Engineering firms or consultant firms where potential construction of improvements exceeds \$500,000.

D. All policies shall be issued by a company having an A.M. Best rating of A:VI or better. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled or reduced in coverage or limits except after 45 days prior written notice has been given to the Port. Except for professional liability, the Port shall be named as an additional insurance on all policies. The Contractor shall submit to the Port within fifteen (15) days of the Agreement effective date a certificate of insurance that outlines the coverage and limits defined in this Section.

ARTICLE 7. General Provisions.

7.1. Time Is Of The Essence. All time limits stated in the agreement documents are of the essence to the agreement.

7.2. Commitments. The Contractor is not authorized to make any agreements or other commitments for or on behalf of the Port without the written consent of the Port.

7.3. Severability. If any part, section or provision of this Agreement is adjudged to be invalid by a court of competent jurisdiction, such paragraph, section or provision shall be read out of this Agreement and shall not affect the validity of any remaining sections, parts, or provisions of this Agreement, nor give rise to any cause of action by either party against the other, and the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

7.4. Waiver. Any failure by the Port to enforce strict performance of any provision of the Agreement will not constitute a waiver of the Port's right to subsequently enforce such provision of any other provisions of the Agreement.

7.5. Assignment. Neither the Agreement nor any of the rights or obligations of the Contractor arising under the Agreement may be assigned or transferred, directly or indirectly, (including subcontracting) without the Port's prior written consent. The Port shall have sole discretion in determining if it will approve any such assignment or transfer. Subject to the foregoing, the Agreement will be binding upon, enforceable by, and inure to the benefit of, the Parties and their successors and assigns.

7.6. Counterparts. The Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one and the same document.

7.7. Disputes. If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the Parties agree to endeavor to settle the dispute through a mediation firm acceptable to both Parties, the cost of which shall be divided equally. The Port reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum, and the Contractor agrees to such joinder, so that all disputes related to the project may be consolidated and resolved in one forum. Venue for any litigation shall be the Benton County Superior Court of the State of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees.

7.8. Entire Agreement. The Parties agree that this Agreement is the complete expression of the terms and conditions hereto, and any oral representations or understandings not incorporated herein are excluded. The Parties agree that any modification of this Agreement must be in writing and signed by both Parties.

7.9. Notices. Except as otherwise provided, any notice required under this Agreement shall be made by written notice and sent to the other party by first class mail, postage paid, at the addresses below, or to any agent designated in writing by either party. Notices shall be sent to the parties as follows:

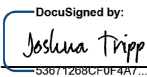
Port of Kennewick
350 Clover Island Drive, Suite 200
Kennewick, WA 99336

Place Landscape Architecture, LLC
1325 W. 1st Ave. Ste. 204
Spokane, WA 99201
Email Address: josh@place-la.com
Washington State UBI# 603 603 875
EIN# 81-2140756

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date set forth above.

Place Landscape Architecture, LLC

PORT OF KENNEWICK

By:  _____
53671268CF0F4A7...

By: _____
Tim Arntzen, CEO

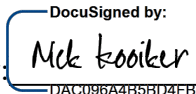
Printed Name: Joshua Tripp
Title: Principal Landscape Architect
Date: 3/20/2025

Date: _____

Approved as to form:

Approved by CFO or Designee:

By: _____
Port Counsel/Date

By:  _____
DAC096A4B5B04FB
Nick Kooiker, CFO

Date: _____

Date: 3/20/2025

Attachments:

- Exhibit A – Scope of Work
- Exhibit B – Compensation Schedule



February 07, 2025

Mr. Larry Peterson
 Director of Planning & Development
 Port of Kennewick
 350 Clover Island Drive, Suite 200
 Kennewick WA 99336
 (509) 430-9736 [cell]
 (509) 586-1188 [direct]
 (509) 586-1186 [main office]
 lpeterson@portofkennewick.org

RE: Landscape Architectural Design and Consultation Services for Vista Field – Daybreak Commons, Phase One.

Dear Mr. Peterson:

It was a pleasure to speak with you recently about landscape architectural design and consultation for the Vista Field – Daybreak Commons Project. We understand that the project site is approximately 2.2 (1.8 excluding existing water feature) acres of undeveloped land bordered by street and frontage improvements by Parametrix, 2021. We also understand the aquatic elements are to be protected in place. The design principal embraces the creation of an urban gathering place, creating an overall experience that builds from the previous work, restroom & concession (future), mobile performance stage/area, area/equipment for children, NO active sports field.

PLACE LA Anticipates the following delivery timelines (by Major Task)

Task Name/Description	Begin	Target Completion
Phase One (Design 2025 & Construction 2026)		
Task 1 – Project Validation & Schematic Design	Mar 01, 2025	Apr 30, 2025
Task 2 – Design Development	May 15, 2025	Jul 31, 2025
Task 3 – Permit & Construction Documents	Aug 15, 2025	Nov 30, 2025
Task 4 – Bidding Assistance & CA	Jan 15, 2026	Nov 30, 2026

Phase One – Design Directive

The MACC (Maximum Allowable Construction Cost) for this project is 1.5m, allowing for approximately \$1,100,000.00 of pre-tax improvements. The project will include phased construction plans and contingencies to ensure the budget is not exceeded. Additive alternates (no more than 2) will provide flexibility of final project decisions by the Port of Kennewick. Design will commence immediately upon award of project to PLACE LA. November 2025 is the timeframe to complete design. Construction is planned to commence Q1 2026; targeted completion Q4 2026.

PLACE LA will hire sub-consultants as needed for specific project needs (ie. geo-technical engineering, soils testing, civil, electrical, structural engineering, and playground safety compliance). The design phase will be as follows:

1. 10% Layout concept with Preliminary Budget
2. Presentation to Port Commission at daytime public meeting
3. 30% Design Drawings
4. 60% Design drawings with updated Budget Estimate
5. 100% Biddable Construction drawings, Specifications Manual & Bid Estimate

The Port of Kennewick will provide the following support:

1. “Front End” documents (Contract, General Conditions, etc.)
2. Community engagement
3. Notification, plan distribution, opening, bid tab, coordinates & conducts Pre-Con and issue Notice to Proceed
4. Respond to Bidder questions & clarifications using input/guidance from PLACE LA.
5. Provide bid results recommendation letter

Mr. Larry Peterson
February 07, 2025

Permitting:

1. City of Kennewick grading permit
2. City of Kennewick building permit for structures
3. Utilize Final EIS issued March 2013
4. Utilize Cultural Resources Assessment by SWVA May 2017
5. SEPA is complete

Assumptions:

1. Topographic survey will be provided by Port of Kennewick.
2. Coordinate location of future well with port of Kennewick. No other work is part of the park.
3. Concepts from prior consultants will be used to guide schematic design as budget allows.

As you requested, PLACE Landscape Architecture is very pleased to offer you the following services for the project:

SERVICES

1. The provision of pre-design services for the proposed landscape improvements. 10% Pre-design services include reviewing project specific design documents, survey, utilities, etc., and photography/inventory of existing site conditions. We understand that a preliminary schematic site plan has been developed for the project by Parametrix. We will review the existing site plan concept and work with your office to build on the work that has been completed to date to create a vignette style design alternatives for the site. We will also provide a narrative of the proposed irrigation system and a first opinion of probable cost to confirm the landscape and irrigation budget for the project. A 10% site plan and public meeting are part of this phase. (Proposed Fee: \$34,000.00)
2. The provision of schematic design including 30% landscape site, planting, structures, and amenities plans. Produce 3D illustrative renderings of the project for client use in approval and funding efforts. We understand that our plans and specifications will be part of the progress submittal package for your review and approval. (Proposed Fee: \$46,000.00)
3. The provision of design development including 60% landscape site, planting, irrigation, structures/shelters, electrical, and civil utility plans, details, and specifications as well as an updated opinion of probable cost. Update 3D illustrative renderings. We understand that our plans and specifications will be part of the progress submittal package for your review and approval. (Proposed Fee: \$30,000.00)
4. The provision of permit/construction documents, 100% landscape site, planting, irrigation, structures/shelters, electrical, and civil utility plans, details, and specifications as well as an updated opinion of probable cost. We understand that our plans and specifications will be part of the final submittal package for your review and approval. Our 100% plans will include the Specifications Manual (Contract, General Conditions, etc. by Port of Kennewick), and Estimate of Probable Cost. (Proposed Fee: \$55,000.00)
5. The provision of construction phase services, including responding to bidder questions, clarifications, substitution requests during the bid process, providing a letter of recommendation regarding the lowest responsive bidder, site observation, submittal reviews, issuing drawing clarifications or amendments as needed, pay request review, and preparing as-built drawings. We will provide a maximum of sixteen (16) site visits to the project site as part of our basic services. Additional site observation for the project can be provided at your request for a per trip fee as outlined in Task 6 below. Please note that our site observer will act as an advisor or adjunct to your or the Owner's own site observer or inspector. The landscape contractor for the project will be responsible for paying for construction observation time for retesting of any irrigation lines or system components that fail initial pressure or performance tests; we will include this provision in the construction irrigation specifications. In the event construction does not move forward, this provision will not be billed to Client. (Proposed Fee: \$35,000.00)
6. The provision of additional construction observation and site visits, only upon your request. Our fee for this task includes travel to the project site, on-site observation time, and preparation of a field report documenting our findings. Please note that our site observer will act as an advisor or adjunct to your or the Owner's own site observer or inspector. (Proposed Fee: \$825.00 per trip)

Mr. Larry Peterson
February 07, 2025

ASSUMPTIONS AND EXCLUSIONS

Please note that our scope of services as outlined above specifically excludes the following:

1. Final design of major vertical elements requiring structural or architectural engineering will be part of Phase Two.
2. Design and detailing for a new irrigation water service or active water harvesting system (cistern), irrigation booster pump system design and specification.
3. Application, processing, permitting, and review fees associated with the project.
4. Reproduction costs (upon client request) shall be billed at cost +10%

FEES, SHEETS OR DRAWINGS, AND ESTIMATED HOURS

We would propose lump sum fees for the work as follows, payable upon presentation of a monthly statement as design and construction progresses:

Phase One Fee for items 1-5 above: \$200,000.00 (\$165,000 Design & \$35,000 CA)

Our monthly statements would reflect the percentages of completion indicated in items 1-5 above. We usually send out invoices on or about the first of each month and would request payment within 30 days. Please note that we reserve the right to assign, factor, or otherwise collect accounts that are 90 days or more overdue.

If the overall scope of work were to change substantially for the project (i.e., by more than 10%), we would appreciate your consideration of a renegotiation of our fee.

If these terms are agreeable to you, please sign a copy of this letter and send it back to us via email or US mail. We will be pleased to begin work promptly upon receipt of our signed copy.

Thank you again for thinking of us for this important project. We look forward to working with you, Port staff, and rest of the design team in the months to come.

Yours truly,

PLACE Landscape Architecture



Joshua Tripp, PLA, ASLA
Principal Landscape Architect

This proposal is covered by our General Liability and Professional Practice Insurance Program.

Acceptance of Proposal: I have read the above prices, scope of work, and Exhibit "A"; it is satisfactory and hereby accepted. PLACE is authorized to commence work as specified and agreed to herein. Please sign below and return to our office. We will begin work immediately upon receipt of the signed agreement and the AutoCAD files. A retainer of 0% is required to begin work; services will be billed monthly upon completion.

The undersigned accepts the above agreement.

ACCEPTABLE:

Signature of Authorized Agent

Date of Acceptance

Exhibit B

The Port shall pay consultant for services as follows: Not-To-Exceed Sum:

Not to exceed: \$200,000.00

DAYBREAK COMMONS

Concept Design

Overall Plan



February 2025



DAYBREAK COMMONS

Concept Design
Design Element Plan



February 2025



Buffers of native grasses and wildflowers, possible low berms



Covered walkways: architectural roof, trellis or tents

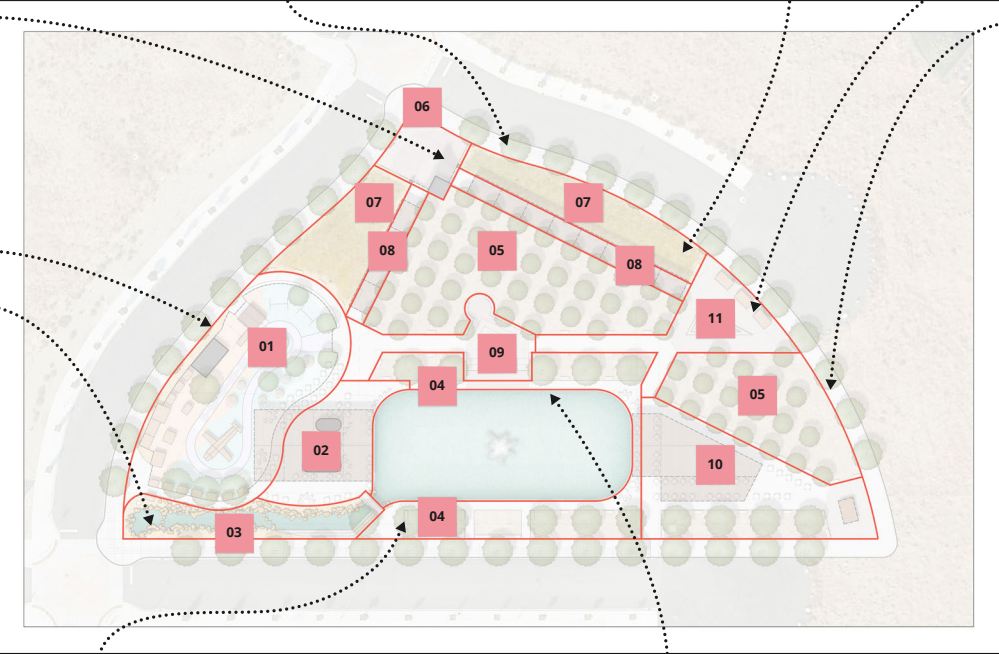
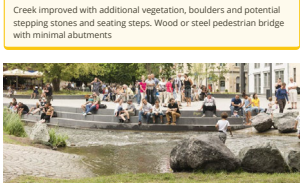


Sculptural seating & potential vending stalls (swing / hammock seating could occur throughout the park)

Iconic tower / gateway sign & entry plaza



Destination playground & pavilion (see following page)



Tree farm organized like traditional "arid grove garden"- opportunities for hidden follies & intimate seating areas within



Pavers or "accent" gravel path surrounding existing pond edge, bounded by formal tree arrangement



Steps down to water's edge in amphitheater seating configuration. Informal stages double as seating areas. Possibility for floating stage / projection screen

