

PORT OF KENNEWICK

RESOLUTION 2019-04

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK APPROVING AN INTER-LOCAL (DISBURSEMENT) AGREEMENT WITH BENTON COUNTY AND CITY OF KENNEWICK RELATED TO SECURING RURAL COUNTY CAPITAL FUNDS FOR THE USACE 1135 CLOVER ISLAND SHORELINE TRANSFORMATION

WHEREAS, the Port is working with the Army Corps of Engineers to move the Clover Island 1135 Shoreline project forward; and

WHEREAS, City of Kennewick has determined they would like to partner on the project and realizes the benefit the project will have to the entire City; and

WHEREAS, Benton County and City of Kennewick have agreed to utilize \$1,000,000 from the City of Kennewick's allocation of Rural County Capital Funds to support the shoreline improvements; and

WHEREAS, this collaboration serves the public interest by leveraging county, city, state and federal funds for significant economic benefit; and

WHEREAS, the attached disbursement agreement has been reviewed by Port legal counsel.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Port of Kennewick hereby adopts the attached Disbursement Agreement between the Port of Kennewick, City of Kennewick and Benton County related to Rural County Capital Funds for Clover Island Shoreline Transformation, and authorizes the Port's Chief Executive Officer to execute the agreement and instructs the CEO to take all action necessary to implement such agreement.

ADOPTED by the Board of Commissioners of the Port of Kennewick this 26th day of February, 2019.

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

By: 

THOMAS MOAK, *President*

By: 

DON BARNES, *Vice President*

By: 

SKIP NOVAKOVICH, *Secretary*

RESOLUTION 2019 218

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF THE RURAL COUNTY CAPITAL FUND, DISBURSEMENT TO THE PORT OF KENNEWICK FOR THE "CLOVER ISLAND SHORELINE TRANSFORMATION" PROJECT

WHEREAS, RCW 82.14.370, adopted by the Washington State Legislature in 1997, authorizes certain qualified counties like Benton County to impose a "sales and use tax for public facilities", the revenue from which is intended to support "economic development activities" through the construction of "public facilities" by the cities, ports, and the County itself for the purposes of job creation and tax revenue generation; and,

WHEREAS, Benton County has established the "Rural County Capital Fund" for said economic development activities, and has reserved a portion of the Fund for disbursement to cities and ports within the County who request County participation with qualified capital development projects; and,


WHEREAS, the City of Kennewick and the Port of Kennewick have submitted a joint application for disbursement of funds – with the Port as the project manager and fiscal agent – to be used toward development of a project within the city known as "Clover Island Shoreline Transformation"; and,

WHEREAS, the County, the City, and the Port have mutually agreed to terms on a *Disbursement Agreement for use of Rural County Capital Funds*, with the City assigning a portion of its allocation of the Fund to be disbursed directly to the Port; **NOW THEREFORE**,

BE IT RESOLVED, by the Board of County Commissioners that the Chairman is hereby authorized to sign the *Disbursement Agreement for use of Rural County Capital Funds* with the City of Kennewick and the Port of Kennewick for the disbursement of up to \$1,000,000.00 of the City of Kennewick's Fund allocation for development of the "Clover Island Shoreline Transformation" project.


Dated this 12 day of March, 2019.


Chairman of the Board


Member


Member

Constituting the Board of Commissioners
of Benton County, Washington.

Attest.....
Clerk of the Board

orig: Sustainable Development
cc: City of Kennewick, Port of Kennewick, Auditor

Prepared by: A.J. Fyall

DISBURSEMENT AGREEMENT

FOR USE OF RURAL COUNTY CAPITAL FUNDS

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

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

WHEREAS, the Port and the City are authorized, including under Chapters 39.33 and 39.34 of the Revised Code of Washington, to contract with each other and other public agencies in order to effectively and efficiently operate, administer and carry out their programs and public projects; and

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

WHEREAS, the Port’s economic development project referenced above is known as “Clover Island Shoreline Transformation”, and consists of the Port’s improvement of public infrastructure and preparation of commercial building sites in the form of shoreline stabilization, extension of certain utilities, construction of trails, installation of drainage infrastructure, and landscaping to support the shovel-ready preparation of three parcels totaling 3.24 developable and marketable acres shown in the aerial photograph in Exhibit A (the “Project”), for food service, lodging, tourism, and other related businesses; and

WHEREAS, the Project will develop underused but high-value riverfront property on Clover Island and near the upgraded Columbia Gardens area and downtown Kennewick for use by new businesses, and is expected to result in over 140 permanent jobs and positively impact sales, B&O, and property tax revenues; and

WHEREAS, the subject properties referenced herein are currently unbuildable because they are encumbered by the degraded and unstable shoreline in certain areas of Clover Island that needs to be remedied through the Project before the Port will be allowed to develop the properties; and

WHEREAS, the City has agreed to assign \$1,000,000.00 from its allocation of the Fund to the Port for this Project; and

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

1. The City agrees to assign up to \$1,000,000.00 of its allocation from the Fund to the Port so that the Port may be reimbursed for expenses the Port incurs for expenses related to the Project.
2. Based on the above assignment and the Port's request for reimbursement from its allocation, the County agrees to reimburse the Port for up to \$1,000,000.00 of qualified direct costs incurred by the Port for the Project *after* the execution of this Agreement; contingent upon funds being available in the City's allocation, and that each reimbursement is consistent with the County's Rural County Capital Fund Disbursement Policy.
3. The Port and City represent that the use of said Fund for the Project is consistent with RCW 82.14.370.
4. The Port agrees to use all funds allocated by this Agreement solely for the purpose of financing the Project and warrants that all expenditures by the Port for which it seeks reimbursement will comply with RCW 82.14.370.
5. The anticipated disbursement schedule is attached hereto as Exhibit B. The parties agree that funds will be disbursed only as reimbursement for actual, direct costs incurred by the Port in connection with the Project. The Port will keep the County informed of any changes to the schedule as the Project progresses.
6. The Port shall invoice the County at the end of each calendar month for all Project costs incurred by the Port in the prior month that are eligible for and for which reimbursement is sought. All invoices shall be mailed to the County at the following address:

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

12. The records and documents with respect to all matters covered by this Agreement shall be subject to inspection by the Parties during the term of this Agreement and for three years after its termination. This Agreement shall be filed by the Port with the Benton County Auditor.
13. It is not the intention that a separate legal entity be established with respect to the Project, nor is the joint acquisition, holding, or disposing of real or personal property anticipated.
14. The Port and City agree to indemnify the County from and against any claims, actions, losses, costs, penalties, damages, attorneys' fees, and all other liabilities and costs of defense of any nature arising out of the County's agreement to disburse Funds under this Agreement.
15. The Port shall not have the right to assign the rights under this Agreement nor to terminate its obligations hereunder without first securing the written consent of the County and the City.

Remainder of page left blank.

16. This Agreement shall terminate and the County's obligation to disburse funds under this Agreement shall cease at any time that any aspect of the Project falls twelve (12) months or more behind the schedule set forth in Exhibit B. In such case, the County's rights under this Agreement shall continue, but the County may use the funds previously allocated under this Agreement for any purpose allowable under state law. The County will make a good faith effort to notify the Port whenever it believes any aspect of the Project is six (6) months or more behind schedule; provided that maintaining the Project on schedule is the Port's responsibility and the Port shall have no recourse against the County if such notice is not provided.

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

BENTON COUNTY


Shon Small, Chairman
Board of Commissioners

Date: 3-12-2019

ATTEST:


Clerk to the Board

APPROVED AS TO FORM:


Deputy Prosecuting Attorney

PORT OF KENNEWICK

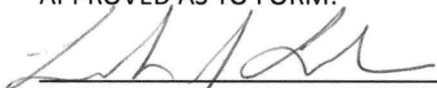

Tim Arntzen, Chief Executive Officer

Date: 2/26/19

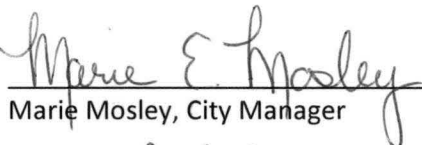
ATTEST:


Chief Financial Officer & Auditor

APPROVED AS TO FORM:


Lucinda J. Luke, Port Counsel

CITY OF KENNEWICK


Marie Mosley, City Manager

Date: 2-21-2019

ATTEST:



Terri L. Wright, City Clerk
Christina Palmer, Deputy City Clerk

EXHIBIT A

PROJECT AREA

The Project work will be completed in and upon the three shaded areas totaling 3.24 acres on the west end (left side) of the map below labeled “NW Corner 1.62 acres”, “Notch 0.92 acres”, and “Gathering Place 0.70 acres”, respectively; and not including the fourth shaded area on the east end (right side) titled “Clover Island Inn 2.38 acres”.



EXHIBIT B

ESTIMATED PROJECT COMPLETION AND FUND DISBURSEMENT SCHEDULE

Projected schedule and expenses, in dollars. Disbursement schedule is depicted quarterly through the middle of 2021.

CLOVER ISLAND SHORELINE TRANSFORMATION CONSTRUCTION & DISBURSEMENT SCHEDULE					
PROJECT PHASES	DISBURSEMENT				
	2020		2021		TOTAL
	06/01 - 09/30	10/01 - 12/31	01/01 - 03/31	04/01 - 06/30	
<i>Construction (Shoreline Stabilization & Restoration)</i>	\$250,000	\$400,000			\$650,000
<i>Extension of Utilities</i>		\$100,000			\$100,000
<i>Drainage, Site Preparation, & Landscaping</i>			\$150,000		\$150,000
<i>Construction (Trail)</i>				\$100,000	\$100,000
<i>RCCF Contribution</i>	\$250,000	\$500,000	\$150,000	\$100,000	\$1,000,000