

**SECOND ADDENDUM / AMENDMENT
TO MEMORANDUM OF UNDERSTANDING
REGARDING SPECIAL EVENTS ADMINISTRATION
BETWEEN THE PORT OF KENNEWICK AND THE CITY OF KENNEWICK**

THIS AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING ("Amendment") is entered into as of this 17th day of November, 2022, between the **PORT OF KENNEWICK** hereinafter referred to as ("PORT"), and **CITY OF KENNEWICK** hereinafter referred to as ("CITY").

WITNESSETH

PORT and CITY are parties to a **MEMORANDUM OF UNDERSTANDING**, dated April 25, 2019, for Special Events Advertising Agreement as described in the **MEMORANDUM OF UNDERSTANDING** referenced herein.

NOW THEREFORE, in consideration of the foregoing, of the covenants, promises and undertakings set forth herein, and for good and valuable consideration, the receipt and sufficiently of which is hereby acknowledged, PORT and CITY mutually agree to amend the aforesaid contract as follows:

RECITALS

1. Section 5.5, AGREEMENT TERM: The term shall be extended to December 31, 2024 by mutual agreement between the PORT and the CITY.

All other terms and conditions of said **MEMORANDUM OF UNDERSTANDING** dated April 29, 2019 shall remain the same and continue in full force and effect.

PORT OF KENNEWICK
A Washington Municipal Corporation

Dated: 11/17/2022

DocuSigned by:
By: Tim Arntzen
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Tim Arntzen, CEO

CITY OF KENNEWICK

Dated: 11/17/2022

DocuSigned by:
By: Marie Mosley
AECA5F6F30494FF...

Marie Mosley, City Manager

MEMORANDUM OF UNDERSTANDING
REGARDING
SPECIAL EVENTS ADMINISTRATION

I. PARTIES

This Memorandum of Understanding (MOU/Agreement) is entered into this 25 day of April, 2019, between the PORT OF KENNEWICK, a Washington municipal corporation (“Port”), and the CITY OF KENNEWICK, a Washington municipal corporation, (“City”) referred to collectively as the “Parties”. The Parties agree as follows:

II. RECITALS

- 2.1 Economic Development Authority. 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.
- 2.2 Project Area. The Port owns approximately 14 acres of land in East Kennewick which it is developing into an urban wine village with assistance from the City. The Parties recognize that successful economic development of the Project Areas benefits the economic and social welfare of the City and the surrounding area.
- 2.3 Port Duties. Under the Special Events Advertising Agreement (Exhibit “A”), the Port will provide advertising funding assistance to Project Area tenants planning special events (small concerts, markets, festivals, cook-offs, barbeques, art shows and other public interest events) which will create vibrant social, educational and recreational experiences in the Project Area.
- 2.4 City Duties. The City agrees to provide City staff to administer the Special Events Advertising Agreement on behalf of the Port. In particular, the City agrees to:
 - a. On or before May 1 of each year of this agreement, schedule a pre-season meeting with Project Area tenants to discuss potential special events for the upcoming season and the requirements for project funding as set forth in the Special Events Advertising Agreement;
 - b. Receive, evaluate and select special events which will receive Port advertising assistance funding;
 - c. Coordinate with funding recipients to create and maintain a master Special Events Calendar, which may be amended from time to time as new events are approved;
 - d. Provide periodic reports and funding accounting to Port staff;
 - e. Promote the events through available City marketing and advertising sources and materials; and
 - f. Provide post event financial, accounting and attendance reports as reasonably required by the Port.

IV. ADMINISTRATION

- 4.1 **Responsibilities.** This Agreement shall be administered by the City Manager or her designee and the Port Chief Executive Officer or his designee. Working in partnership and on behalf of their respective agencies these individuals shall be responsible for:
- a. Establishing policies for implementing this Agreement;
 - b. Providing periodic progress reports;
 - c. Monitoring progress of the Parties and other entities in the fulfillment of their respective responsibilities; and
 - d. Following applicable City and Port bid and prevailing wage law policies and procedures when awarding contracts for this project.
- 4.2 **Document Review.** The Parties shall cooperate by sharing all relevant information, including planning, financial and environmental documents, to the extent allowed by law.
- 4.3 **Expenses and Financial Contingency.** Except as otherwise provided, the obligations of each Party shall be performed at the sole expense of said Party.

V. GENERAL

- 5.1 **Amendment.** This Agreement shall not be altered except in writing signed by each Party.
- 5.2 **Governing Law.** Each of the Parties has independent authority to contract; and, this Agreement is pursuant to that authority and shall be governed by, construed and enforced in accordance with the substantive laws of the State of Washington.
- 5.3 **Venue.** The venue for any action arising out of this Agreement shall be the Superior Court for Benton County.
- 5.4 **Non Waiver.** Nothing in this Agreement and no actions taken pursuant to this Agreement shall constitute a waiver or surrender of any rights, remedies, claims or causes of action a Party may have against the other Party or others under any provision of this Agreement or any provision of law.
- 5.5 **Agreement Term.** The term of this Agreement shall commence on its execution by both Parties and end December 31, 2020 ("Agreement Term"). By mutual agreement, the Parties may elect to renew the Agreement on mutually agreeable terms and conditions.
- 5.6 **Inspection of Records and Filing.** 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 or listed pursuant to RCW 39.34.040.


- 5.7 **No Separate Legal Entity.** It is not the intention that a separate legal entity be established to conduct the cooperative undertaking nor is the joint acquisition, holding or disposing of real or personal property anticipated.
- 5.8 **Severability.** In the event any term or condition of this Agreement or application thereof to any person, entity or circumstance is held invalid, such invalidity shall not affect any other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared severable.
- 5.9 **Defense and Indemnity.** Each party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs or expense (including attorneys' fees and witness costs) arising from or in connection with or caused by any act, omission, or negligence of such indemnifying party.
- 5.10 **Breach.** In the event of a breach of this Agreement, the non-breaching Party shall retain all legal and equitable remedies against the breaching Party.

VI. EXECUTION AND APPROVAL

- 6.1 **Warranty of Authority.** Each Party to this Agreement warrants that it has the authority to enter into this Agreement.
- 6.2 **Execution.** The person executing for a respective Party has been duly authorized to and does execute the Agreement on behalf of that respective Party.

PORT OF KENNEWICK

Date: 4-25-2019

By: 
TIM ARNTZEN, Chief Executive Officer

Approved as to Form:


LUCINDA LUKE
Attorney for Port of Kennewick

CITY OF KENNEWICK

Date: 3/29/19

By: Marie E. Mosley
MARIE E. MOSLEY, City Manager

Approved as to Form:

Lisa Beaton, ACA for
LISA BEATON, City Attorney

**PORT OF KENNEWICK
SPECIAL EVENTS ADVERTISING ASSISTANCE AGREEMENT**

1. **Background.** The Port owns approximately 14 acres of land in East Kennewick which it is developing into an urban wine village with assistance from the City of Kennewick (the “Project Area”).
2. **Opportunity for Collaborative Development.** The Port seeks to collaborate with Project Area tenants desiring to plan and promote special events such as small concerts, markets, festivals, cook-offs, barbeques, art shows and other public interest events, all of which are intended to assist in creating vibrant social, educational and recreational experiences at the Project Area year-round.
3. **Opportunity for Advertising Assistance.** The Port has established a fund to assist tenants with advertising special events that will help build vibrancy in the Project Area. Each year, the Port will notify its Columbia Gardens Wine & Artisan Village tenants by e-mail of its intention to provide advertising assistance for qualifying special events. Tenants seeking funding assistance shall submit the following for EACH EVENT: a brief description of the event (including event dates, event times, and any pre- or post-event common-area impacts); an explanation of the advertising partnership (see 4.f below); and the amount of funding requested by event. Funding requests are to be submitted by e-mail on or before the date indicated and to the contact identified in the annual event-funding notice. Applications may identify one or more events. Applicants shall seek to avoid event dates that conflict with other, previously scheduled events to be held in or near the Project Area. Funding priority may be given to shoulder-season (early spring/late fall) or off-season (winter) events. Port funding shall not exceed \$1,000 per event, and is dependent on the quality of the application (proposed advertising partnership) and the Port’s available funds. Port funding will be made available on a reimbursement basis following each event.
4. **Recipient Obligations.** Applicants receiving Port funding shall *for each event*:
 - a. Submit a detailed event description and funding request (attached);
 - b. Plan, promote, and manage the special event as described in its event funding request;
 - c. Implement parking and crowd management plans;
 - d. Provide trash collection and post event site cleanup;
 - e. Provide on-site support, including appropriate temporary event staff and management;
 - f. Promote the Columbia Gardens Wine & Artisan Village through event marketing and advertising plans (utilizing the port’s/wine village name/logo to demonstrate the advertising partnership);
 - g. Obtain all necessary licenses and permits to ensure compliance with applicable laws, ordinances and regulations; and
 - h. Provide a post-event invoice with documentation of the advertising partnership and an attendance count for the event.

IV. ADMINISTRATION

- a. Pre-event, the Parties shall meet as needed to develop an event schedule and marketing plan.
- b. Post-event, the Parties shall meet to discuss suggested improvements and ideas to enhance the quality and success of future event.
- c. Except as otherwise provided, the obligations of each Party shall be performed at the sole expense of said Party. The Port may contract with the City of Kennewick to administer its obligations under this agreement.
- d. This Agreement shall not be altered except in writing signed by each Party.
- e. Each party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs or expense (including attorneys' fees and witness costs) arising from or in connection with or caused by any act, omission, or negligence of such indemnifying party; and
- f. In the event of a breach of this Agreement, the non-breaching Party shall retain all legal and equitable remedies against the breaching Party.