

PORT OF BENTON

SPECIAL COMMISSION MEETING MINUTES

March 23, 2020

- A. CALL TO ORDER:** The regular monthly meeting was called to order at 8:30 a.m. at Port of Benton Commission Meeting Room, 3250 Port of Benton Boulevard, Richland, Washington.

Present: Commissioners Jane F. Hagarty, Commissioner Roy D. Keck and Commissioner Robert D. Larson. Executive Director, Diahann Howard, PPM; Director of Real Estate, Teresa Hancock; Port Counsel, David Billetdeaux; Interim Director of Finance, Karen Schmidt (via remote telecommunication); Interim Director of Economic Development & Gov. Affairs, Miles Thomas (via remote telecommunications); Airport Manager, Joe Walker (via remote telecommunications); and Facilities Manager, Ron Branine (via remote telecommunications).

Others: Stuart Dezember, and Wendy Culverwell, Tri-City Herald (participated via telephone).

The Special Commission Meeting was conducted using the CDC (Centers for Disease Control) recommended social distancing protocols for COVID-19 with Commissioners meeting in-person; public attendees attending in-person or remotely, and port staff members participating in-person or remotely, and said meeting was noticed as required by RCW 42.30.070.

- B. PLEDGE OF ALLEGIANCE:** Commissioner Robert Larson led those present in reciting the Pledge of Allegiance.

C. CONSENT ITEMS:

- 1. A motion was made by Commissioner Robert Larson, seconded by Commissioner Roy Keck and unanimously passed by the Commission approving the March 11, 2020 Commission Meeting Minutes, and Resolution(s) 20-14, 20-15 and 20-16 to Cancel 3 Warrants.**

D. CURRENT BUSINESS (Discussion Items):

- 1. RESOLUTION 20-17 (RCW 39.04.280 "DECLARING AN EMERGENCY"):** Port Counsel discussed the importance of the port district "Declaring an Emergency" under RCW 39.04.280 of the port district, to ensure the health and safety of employees and the public in response to daily changes to the novel Coronavirus COVID-19. On January 31, 2020, the United States Department of Public Health and Human Services Secretary Alex Azar declared a public emergency and confirmed person-to-person transmission of the COVID-19 virus and dangerous risks of exposure and infection. Port Counsel further stated that on February 29, 2020, Governor Jay Inslee declared by signed proclamation into effect of a state of emergency within all counties in the State of Washington due to the number of confirmed and growing cases of COVID-19; on March 17, 2020, the Benton County Board of County Commissioners proclaimed a state of emergency within Benton County and the Benton-Franklin County Health District recommended social distancing measures to prevent the continuing spread of illness; and by enacting this declaration, allowing port staff to respond to emergencies posed by the staff, tenants and public effectively; and apply for federal funding opportunities associated with the pandemic of COVID-19.

motion was made by Commissioner Robert Larson, seconded by Commissioner Roy Keck and unanimously passed by the Commission approving Resolution, 20-17, declaring an emergency under RCW 39.04.280 of the port district, allowing port staff to respond to emergencies posed by staff, tenants and the public in response to COVID-19.

2. RESOLUTION 20-18 (AUTHORIZING EMERGENCY POWERS AND DELEGATING AUTHORITY TO THE EXECUTIVE DIRECTOR IN RESPONSE TO THE OUTBREAK COVID-19): Port Counsel discussed the rapidly changing environment requires the Executive Director to have authority to respond quickly to execute contracts and fulfill staffing requirements, implement social distancing protocol, both internally and external for the organization in means necessary to preserve public health, public property and assets, and protect the health and life of staff and the public.

Pursuant to RCW 38.52 and 53.19, the port is subject to public advertising and competitive procurement requirements of state law and port policies, for contract expenditures affecting purchases, leases, tangible personal property, consulting and personnel contracts, and public works services and authorize overtime or extended leave for personnel, obtain permitting and funding as further defined under RCW 39.04.010.

In order to properly delegate and authorize the Executive Director to prepare, address, manage, prevent and respond to or remediate an emergency, the Executive Director may require exception to the delegation of authority.

Port Counsel further advised, in response to the severity of COVID-19 and executive orders, a Temporary Telecommuting Agreement Policy was enacted to allow staff to work remotely, as approved by the Executive Director, with port equipment to perform necessary work during this emergency period.

Port counsel suggested implementing temporary (1 year) emergency powers outside the standard delegation of authority powers for the Executive Director to respond quickly to personnel needs and enter into emergency procurement, waiving the state and port policy requirements (Chapter 39.28 RCW Emergency Public Works), to maintain the day to day operations necessary for protection of life and property, in response to COVID-19.

Commissioner Keck restated the powers are limited to the emergency period or one year in duration. Port Counsel confirmed the emergency powers may be terminated at any time by the commission, would not automatically renew annually, and limited to the one year duration serving the COVID-19 purposes.

The Executive Director stated that she will report to the commission, any action taken, whether personnel or vendor contracts, upon confirming with port counsel and the Finance Director, that the action is necessary and within the parameters of the emergency powers.

A motion was made by Commissioner Roy Keck, seconded by Commissioner Robert Larson and unanimously passed by the Commission approving Resolution, 20-18, authorizing Emergency Powers and Delegating Authority to the Executive Director in response to the outbreak of COVID-19, allowing the Executive Director to exercise any powers and authority delegated under this Resolution to respond to emergency matters and maintain the daily operations in a safe, efficient manner.

3. UPCOMING MEETING CANCELLATIONS – COVID 19: The discussion related to meeting cancellations community and state in response to the Governor's order and social distancing requirements in response to COVID-19 protocols.

Commissioner Hagarty commented that with the 2-person limitation, business meetings may become more remote. She proposed the April 8th meeting be cancelled unless a time sensitive approval is required to continue day-to-day operations, a Special Commission Meeting could be scheduled.

The Executive Director stressed the port is experiencing unprecedented times and will continue to operate as fluid as the governor mandates. In effort to protect staff, public, tenants and commissioners, the port has setup remote capabilities through laptops, iPads and software (Microsoft Teams, Zoom and phone conference). Several staff were able to participate in this meeting remotely in their offices or offsite through these capabilities, to adhere to social distancing mandates.

The Executive Director discussed the port calendar is in progress of updates due to meeting cancellations, postponements. The WPPA Spring Conference is cancelled and staff can further assist commissioners and staff with any other travel related cancellations necessary during this time.

Commissioner Keck commented he recently attended the TRIDEC Board Meeting via conference phone.

Commissioner Larson thanked Kelly Thompson, former long-time administrative assistant for doing a great job and asked if there were plans for filling this position. The Executive Director stated that the position would become an administrative/accounts payable role, combining two positions into one, as Veronica Serna's role absorbs the duties performed by the previous Deputy Auditor. The position will continue to manage Commissioner schedules, travel, provide customer service, as well as, accounts payable. An ideal candidate with extended qualifications and immediate availability has been identified. Although the Port office is closed, this candidate is willing to participate in an appropriately structured interview process, which will occur on a timely basis.

4. TEMPORARY TELECOMMUTING AGREEMENTS – COVID 19: Port Counsel discussed a proposed Temporary Telecommuting Agreement for full-time and part-time employees in response to Novel Coronavirus (COVID-19). The agreement does not constitute a change in employment, and an overview of the conditions was provided. The office is closed to public but operating internally with plans in place for staff to observe social distancing measures, including rotating maintenance schedules as needed for smooth operations.

5. FAMILIES FIRST CORONAVIRUS RESPONSE ACT – COVID 19: Port Counsel provided an overview of Families First Coronavirus Response Act signed into law by President Trump on March 18, 2020, which goes into effect on April 2, 2020. For employees unable to go to work due to state, federal or local quarantine orders, the Act provides for the first 80 hours paid in full, up to a maximum of \$511 per day (\$5,100 maximum) under the Emergency Paid Sick Leave provision without using PTO. Employees may then begin using accrued PTO (Paid Time Off) and once exhausted, may take Washington's FMLA for up to 12 weeks, whether required to self-quarantine over COVID-19 concerns or seeking a medical diagnosis of symptoms.

Employees caring for young children or those affected by school closures, will receive the first 80 hours paid at 2/3 of their regular pay rate, up to a maximum of \$200 per day (\$2,000 maximum), prior to having to use accrued PTO, and is unable to work or telecommute due to minor child's school or daycare closure. This also applies to employees caring for an individual who is subject to the to a federal, state, or local quarantine order.

Employees who worked for an employer 30 days and unable to work or telecommute due to a minor's school or daycare closure, may begin using any accrued PTO or eligible for 12 weeks of paid leave under the Act. The first 10 days of FMLA are unpaid, thereafter paid at 2/3 of their regular pay rate, up to a maximum of \$200 per day (\$10,000 maximum).

When the 12 weeks of federal leave are exhausted, employees may then use any remainder PTO.

Port Counsel discussed that ports in Washington are reviewing existing employment assistance policies to the Act. He offered that this information will be provided to Port Staff and Port Counsel will be available to help answer questions.

6. CLIFTON LARSON ALLEN CONTRACT – FINANCE DIRECTOR POSITION: Port Counsel advised that Karen Schmidt is serving as the temporary Interim Director of Finance until the role of Director of Finance is filled. Karen's services are contracted by Clifton Larson Allen. Clifton Larson Allen (CLA) has agreed to conduct a search by "Request for Qualifications", (RFQ) to fill the position permanently.

The Executive Director thanked Karen Schmidt for providing ongoing support and guidance for a smooth transition in all financial matters.

Commissioner Keck inquired whether the contract with CLA was competitive with other headhunter agencies. He was advised that it was proposed by CLA was competitive and would be compensated through a percentage of the successful candidate's salary.

The Executive Director stated the contract would be within her Delegation of Authority, however candidates and employment packages would be brought before the Commission for consideration and approval prior to hiring.

A motion was made by Commissioner Robert Larson, seconded by Commissioner Roy Keck and unanimously passed by the Commission approving the Executive Director or her designees to enter into a contract with Clifton Larson Allen to conduct an RFQ, to begin a search to hire a permanent Director of Finance.

7. DIRECTOR OF ECONOMIC DEVELOPMENT & GOVERNMENTAL AFFAIRS POSITION: The Executive Director opened discussions thanking the Interim Director of Economic Development & Governmental Affairs for his support and the tremendous amount of work he has performed for the Port. Miles Thomas administers the Tri-Cities Research District and his qualifications include community partnerships (city, private, TRIDEC, WSU), a Master's Degree in Urban Planning and he is working on completion of his IEDC Certified Economic Development Professional. Mr. Thomas also intends to be a licensed broker by the fall. The Executive Director has offered full-time employment effective April 1, 2020 as he is a great fit with the Team.

Commissioner Keck congratulated and extended a warm welcome to Miles Thomas as the Director of Economic Development & Governmental Affairs.

8. INTERIM DIRECTOR OF FINANCE COMMENTS: The Interim Director of Finance, Karen Schmidt, discussed current business matters and market adjustments to COVID-19. In addition, the Interim Dir. of Finance informed the Commission that the 2019 Annual Report remains due on May 29th. While under discussion, the State Auditor's Office has not confirmed an adjustment to the due date. The Port has also engaged in segregation and identification of expenses related to COVID-19. This included employee and contract hours, in addition to equipment and materials. Tracking of COVID-19 expenditures is ongoing, in order to provide documentation for potential future cost recovery, (e.g. additional laptops to implement a strategic WFH plan, remote software applications, extra cleaning services, supplies etc.). The Finance Team WFH plan will maintain necessary workflow, including cash disbursements related to accounts payable, lessee invoicing, cash receipts, payroll and related financial reporting requirements. In the event of future meeting cancellations, the Interim Director of Finance shared that special meetings may be required, to accommodate timely Commission review and approval of financial transactions.

9. RESOLUTION 20-19 (APPOINTING THE FINANCE DIRECTOR AS THE PORT AUDITOR): The Executive Director discussed the recommendation of appointing the Interim Finance Director as the Port Auditor.

A motion was made by Commissioner Roy Keck, seconded by Commissioner Robert Larson and unanimously passed by the Commission approving the appointment of Interim Finance Director Karen Schmidt to Port Auditor.

10. EXECUTIVE FIDUCIARIES: Port Counsel discussed the financial fiduciaries require updating to protect and lawfully serve the Port. Fiduciaries are associated with authorizing payments, working with the treasury, bank accounts, loans and all financial matters important to the port. Changes cannot be made to a fiduciary account or signature card without a letter and an approval motion authorized by the Commissioners. Port legal counsel proposed the fiduciaries be changed to: (1) Karen Schmidt, Port Auditor; (2) Diahann Howard, Executive Director, and (3) David Billetdeaux, Legal Counsel.

The Executive Director and Port Auditor further thanked Stuart Dezember for his participation with transition.

E. EXECUTIVE SESSION: The regular Commission Meeting was recessed at 9:30 a.m. and an Executive Session was convened to discuss on-going and Potential Litigation pursuant to RCW 42.30.110 (1)(i) and Personnel Matters pursuant to RCW 42.30.110 (1)(g). The Commission announced the Executive Session would last no longer than fifteen (15) minutes. At 9:45 a.m. the Commission announced the Executive Session would last an additional (5) minutes. At 9:50 a.m. the Commission announced the Executive Session would last an additional (5) minutes. At 9:55 a.m. the Commission announced the Executive Session would last an additional (5) minutes. The Executive Session was adjourned at 10:00 a.m. and the regular Commission Meeting was reconvened.

The Commission (determined?) no motion was needed and directed Port Counsel to continue negotiations with Tri-City Railroad relating to possible settlement options.

F. ADJOURNMENT: With no further business, the meeting was adjourned at 10:01 a.m.



Roy D. Keck
Commission Secretary