

# RESOLUTION 2018-1023

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 "VISTA FIELD REDEVELOPMENT – PHASE 1A" 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" (RCCF) for said economic development activities, and has reserved a portion of the RCCF for possible disbursement to cities and ports within the County who request County participation with qualified capital development projects that comport with both State law and County policy; and,


**WHEREAS**, the Port of Kennewick has submitted an application for disbursement of funds to be used toward development of a project upon the Port's property and within the city of Kennewick known as the "Vista Field Redevelopment – Phase 1A"; and,

**WHEREAS**, this request from the Port is unusual when compared with other recent RCCF-funded projects in that funds will be drawn from the *County's own* allocation of the RCCF and provided to the Port for their project, rather than using funds from the Port's allocation; and,

**WHEREAS**, the County and the Port have mutually agreed to terms on a *Disbursement Agreement for use of Rural County Capital Funds*; **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 Port of Kennewick for the disbursement of up to \$500,000.00 for participation in the "Vista Field Redevelopment – Phase 1A" project.

Dated this 18 day of Dec, 2018.

  
Chairman of the Board

  
Member

  
Member

Constituting the Board of Commissioners  
of Benton County, Washington.

Attest.....  
Clerk of the Board

## **DISBURSEMENT AGREEMENT FOR USE OF RURAL COUNTY CAPITAL FUNDS**

This Agreement, among and between Benton County (hereinafter "County"), and the Port of Kennewick (hereinafter "Port"), shall be effective upon execution by both 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 County and the Port 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 103 acres at Vista Field, an underutilized area formerly used as an airfield that the Port desires to develop for economic development purposes; and,

WHEREAS, the Port has undertaken an extensive public process to gain input on the public's desired use for the acreage, and has determined to develop the area into a walkable, bike-able, pedestrian friendly, and transit-oriented town center; and,

WHEREAS, Phase IA of the "Vista Field Redevelopment" project includes nearly 20 acres and consists of constructing a water system, sewer system, and storm water drainage system for those 20 acres ("the Project") among other improvements that will create opportunities for subsequent private sector development; and,

WHEREAS, full build-out of the 103-acre Vista Field site could lead to as many as 3,380 jobs, \$460 million in private sector investment, \$51 million in new infrastructure, and \$408 million in new buildings; and,

WHEREAS, the funds requested by the Port are critical in allowing commencement of the Project, and will foster sitewide vibrancy, leverage private sector development, and help transform the vacant, underutilized former airfield into an urban town center dotted with retail, commercial, residential, civic buildings, and public facilities that will foster tourism spending, attract young professionals, and provide balance to the regional economy; and,

WHEREAS, commercial redevelopment of Vista Field will positively impact sales, business & occupation, and property tax revenues for the local governments; and,

WHEREAS, the Port has requested \$500,000.00 for the Project from that portion of the Fund allocated by the County; to be used to reimburse the Port for Project expenses, with such funds being in addition to the contribution of other funds for the Project from other sources;

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

1. Based on the Port's request for reimbursement from the Fund, the County agrees to reimburse the Port for up to Five Hundred Thousand Dollars (\$500,000.00) of qualified direct costs incurred by the Port for the Project *after* the execution of this Agreement; contingent upon: (i) such funds being less than the unspent amount of the Fund allocated to the Port; and (ii) that each reimbursement is consistent with the County's Rural County Capital Fund Disbursement Policy, dated January 31, 2017, which is incorporated herein by reference.
2. The Port represents that the use of revenues from the Fund for the Project is and will be consistent with RCW 82.14.370.
3. 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.
4. The estimated Project schedule and a disbursement schedule are attached hereto as Exhibit A. 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 changes to the schedule as the Project progresses.
5. 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

6. All approved reimbursement payments will be made via check mailed directly to the Port at the following address:

Port of Kennewick  
ATTN: Finance Director  
350 Clover Island Drive Ste. 200  
Kennewick, WA 99336

7. The Port 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.

8. 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 is responsible for following applicable bid and prevailing wage law policies and procedures when awarding bids for the Project contemplated by this Agreement.
9. The Port agrees to provide the County 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.
10. If Rural County Capital Funds are applied by the Port toward non-eligible expenditures, the County may cease all disbursements and the Port shall repay to the County all monies inappropriately expended.
11. 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.
12. 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.
13. The Port agrees 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.
14. 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.
15. 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 thirty-six (36) months or more behind the schedule set forth in Exhibit A. 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 thirty (30) months or more behind schedule and that the Agreement will terminate in six months' time thereafter under this provision; 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.
16. This Agreement contains the entire, complete, and integrated statement of each and every term agreed-to by and between the Port and the County, and this Agreement supersedes any and all prior written and unwritten agreements and understandings pertaining to the Project.

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

**BENTON COUNTY**

  
\_\_\_\_\_  
Jerome Delvin, Commission Chairman

Date: 12-18-18

**PORT OF KENNEWICK**

  
\_\_\_\_\_  
Tim Arntzen, Chief Executive Officer

Date: 12/11/18


ATTEST:

  
\_\_\_\_\_  
Clerk to the Board


ATTEST:

  
\_\_\_\_\_  
Nick Kooiker, Chief Financial Officer & Auditor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Chief Deputy Prosecuting Attorney

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Lucinda J. Luke, Port Counsel

**EXHIBIT A**

**ESTIMATED PROJECT COMPLETION AND FUND DISBURSEMENT SCHEDULE  
FOR VISTA FIELD PHASE 1A CONSTRUCTION**

Phase 1A is construction of a new roadway grid with all supporting utility infrastructure, including water delivery systems, sewerage systems, and a storm water relief drainage system. Benton County's participation will be in the form of contribution toward the costs of these three task areas as listed below in the table.

PHASE 1A CONSTRUCTION OF ROADS & UTILITIES TASKS	DISBURSEMENT					TASK TOTALS
	PROGRESS BILLING DATE					
	05/01/2019	06/01/2019	07/01/2019	08/01/2019	09/01/2019	
<i>Construction of Storm Water Drainage System</i>	\$50,000	\$50,000				\$100,000
<i>Construction of Sewer System</i>		\$50,000	\$50,000	\$100,000		\$200,000
<i>Construction of Water System</i>			\$50,000	\$50,000	\$100,000	\$200,000
<i>Cumulative RCCF Contribution</i>	\$50,000	\$100,000	\$100,000	\$150,000	\$100,000	\$500,000