

**Port of Skamania County
Minutes of the Board of Commissioners
May 19, 2016, Special Meeting 3:30 pm**

Call to Order: Commissioner Gail Collins called the meeting to order at 3:30 pm.

Attendance: Commissioners Gail Collins and Todd Kingston; Attorney Ken Woodrich, Executive Director John McSherry, Finance Manager Randy Payne, Auditor Monica Masco, Philip Watness (*The Pioneer*).

The purpose of the meeting was to review a Separation Agreement with Executive Director John McSherry (attached).

Ken Woodrich mentioned Commission Breeding could only call in at 4:00 pm and this special meeting is confined to the one topic on the agenda. He explained he is okay with the changes to the agreement that were requested by John and his attorney: Section 15 Non-Disparagement and Section 17. Remedies for Breach of Covenants were made reciprocal and the effective date changed from July 1, 2016 to June 1, 2016. John is waiving the 21-day "Review Period" but by law cannot waive the 7-day "Revocation Period." At the next Port meeting the commissioners can discuss retaining John as a consultant.

Commissioner Todd Kingston stated the last public motion had July 1, 2016 as the effective date that was goodwill on the Port's part and now it's 2 weeks. He hoped to have John around.

Commissioner Gail Collins said he feels okay with what John wants.

Commissioner Todd Kingston asked if the accrued vacation will be paid out by the Personnel Manual policy of maximum of 240 hours. Ken stated John will get the policy's amount of 240 maximum or less if what is accrued is less than 240 hours.

Ken Woodrich said he is comfortable with the Separation Agreement and he has used it in the past. Commissioner Collins stated he had read it 2 or 3 times.

---MOTION--- Commissioner Kingston moved to accept John's resignation effective June 1, 2016 and the Separation Agreement as presented and to authorize Gail Collins to sign it. Commissioner Gail Collins stepped down to second the motion; the motion carried.

Two originals were signed.

Executive Session: None.

Adjournment: The Chairperson adjourned the meeting at 3:45 pm.

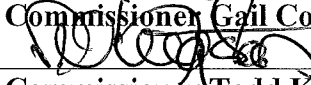
Next Meeting: The next regularly scheduled meeting of the Board of Port Commissioners is May 24, 2016 at 3:00 pm at the Port office conference room: 212 SW Cascade Avenue, Stevenson, Washington.

APPROVED BY:

Commissioner Fran Breeding, Secretary (District 1)

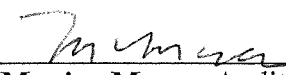


Commissioner Gail Collins, President (District 2)



Commissioner Todd Kingston, President (District 3)

ATTEST:



Monica Masco, Auditor

SEPARATION AGREEMENT

This separation agreement ("Separation Agreement") is entered into by and between Port of Skamania County, a Washington Municipal Corporation ("PORT") and John McSherry ("MCSHERRY").

For good and valuable consideration, the parties agree as follows:

1. Separation of employment. MCSHERRY's last date of employment with PORT shall be June 1, 2016 (the "Separation Date").
2. Severance Pay. PORT agrees to pay MCSHERRY eighteen (18) months of severance pay at his current regular rate of pay. Such severance pay shall be paid by check in a lump sum payment; provided, however, that the severance and cash payments shall not be made until after MCSHERRY has returned the executed Separation Agreement to PORT and the Revocation Period specified in Paragraph 8 below has expired, or has been waived. The severance payment made under this Separation Agreement shall be paid on Wednesday, June 1, 2016, and shall be subject to all withholdings required by state and federal law. The parties agree that the separation pay described in this Paragraph 2 is designed to aid MCSHERRY's transition to alternative employment, and that the specified benefits do not constitute benefits to which he would otherwise be entitled upon separation under existing employee benefit plans provided by PORT or under any pre-existing agreement between MCSHERRY and PORT.
3. Health Insurance. McSHERRY shall be entitled to Health Care and VEBA benefits through June 30, 2016. If MCSHERRY makes timely application and remains eligible for such benefits, PORT will provide MCSHERRY and his dependents with continued medical, dental and vision benefits under its current health insurance policies for 18 months following the Separation Date ("COBRA" benefits). It is the intent of the parties that MCSHERRY's COBRA rights begin to run on the Separation Date. After June 30, 2016, the cost of the health insurance premium will be at MCSHERRY's sole expense.
4. Accrued Vacation and Floating Holidays. PORT agrees to pay MCSHERRY for vacation that he has accrued but not used, if any, as of the Separation Date.
5. Release. MCSHERRY accepts the benefits contained in this Separation Agreement in full satisfaction of all his rights and interests relating to his employment with and separation from PORT and, in consideration therefore, MCSHERRY hereby releases PORT, its affiliates, successors, predecessors, past and present officers, directors, agents, and employees from all claims (other than claims for the payments provided for under this Separation Agreement), causes of action or liabilities, suspected or unsuspected and irrespective of any present lack of knowledge of any possible claim or of any fact or circumstance pertaining thereto, which MCSHERRY may have or claim to have against PORT arising from or during his employment, or as part of any public records requests made by MCSHERRY or on his behalf, or as a result of his separation from employment. This release specifically covers, but is not limited to, any workers' compensation or disability claims under state law; any claims of discrimination based on race, color, national origin, sex, marital status, age (including claims under the Age Discrimination in Employment Act) or physical or mental disability under any federal, state, or

local law, rule, or regulation; any contract or tort claims arising under federal, state, or local law; any claims arising under violations of federal, state or other governmental statutes (including, but not limited to, Title VII of the 1964 Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family and Medical Leave Act and/or the Washington Law Against Discrimination, all as amended, or any other rights arising under federal, state or local laws prohibiting discrimination on the basis of sex, color, race, national origin, age, mental or physical disability, ancestry, creed, religion, sexual orientation, marital status or any other basis prohibited by law, federal, state or local law based on promises made or allegedly made by PORT to MCSHERRY; and any claims under any express or implied contract or legal restrictions on PORT's right to terminate its employees. MCSHERRY hereby covenants not to assert any such claims or causes of action. MCSHERRY also releases any claims under the Washington Open Public Meetings Act and the Washington Public Records Act.

6. Other Claims or Lawsuits. Both parties represent that as of the date they execute this Separation Agreement, they have not filed any complaints, charges or lawsuits against each other with any governmental agency or any court.

a. The PORT holds MCSHERRY harmless against any negligence claims made by tenants, employees, contractors and invitees against the Port as of the date of this agreement.

7. No Admission. Nothing in this Separation Agreement shall be construed as any indication that PORT has acted wrongfully towards MCSHERRY.

8. Review and Revocation. MCSHERRY acknowledges that:

a. Pursuant to applicable law, he has been offered the opportunity to review a copy of this Separation Agreement for a period of twenty-one (21) days (the "Review Period") and has waived the Review Period;

b. PORT advised MCSHERRY at the beginning of the Review Period to consult with an attorney concerning the terms and conditions of this Separation Agreement, including without limitation the release set forth in this Separation Agreement. MCSHERRY has consulted an attorney and is represented by Mark O McSherry, Attorney at Law. The parties agree to bear their own attorney fees and costs in this matter; and

c. The terms and conditions of this Separation Agreement have not been amended, modified, or revoked during the Review Period. PORT and MCSHERRY agree that MCSHERRY shall have seven (7) calendar days (the "Revocation Period") following the date on which MCSHERRY signs this Separation Agreement to revoke his acceptance of the Separation Agreement and the release set forth in this Separation Agreement, and this Separation Agreement shall not become effective until the Revocation Period has expired.

9. Confidential Information. MCSHERRY acknowledges that while employed by PORT, he had access to certain confidential information relating to the business of PORT, which constitutes trade secrets of PORT under the Uniform Trade Secrets Act, RCW 19.108. MCSHERRY acknowledges that under the Uniform Trade Secrets Act, he has an obligation to maintain the confidentiality of such trade secrets of PORT.

10. Return of Property. MCSHERRY warrants that on the Separation Date he shall leave with the Port President any equipment, supplies, or documentation that is owned by or belongs to the Port, along with all keys, passwords and other access to Port facilities, and that he has retained no such documentation, either in paper or electronic form.

11. Voluntary Execution. MCSHERRY represents that he has read, considered, and fully understands this Separation Agreement and all its terms with the advice of counsel, and executes it freely and voluntarily.

12. Construction of Agreement Governing Law. Each party has had a full and complete opportunity to review this Separation Agreement, and has been given the opportunity to have counsel review it. Accordingly, the parties agree that the common law principles of construing ambiguities against the drafter shall have no application to this Separation Agreement. Interpretation of this Separation Agreement shall be under Washington law. If any such action is necessary to enforce the terms of this Separation Agreement, the substantially prevailing party shall be entitled to receive reasonable attorneys' fees and costs.

13. No Representations. MCSHERRY represents that in entering into this Separation Agreement, he does not rely and has not relied upon any representation or statement made by PORT or any of its employees or agents concerning this Separation Agreement except as contained herein.

14. Confidentiality. MCSHERRY agrees to keep the terms of this Separation Agreement confidential, except for communications about it with his immediate family, attorney or accountants or other professional financial advisors. PORT agrees to keep the terms of this Separation Agreement confidential, except it shall be entitled to comply with any lawful request for information. MCSHERRY further agrees to cooperate with PORT regarding the investigation of any claim or charge against the PORT or its employees, agents or elected officials if called upon to testify.

15. Non-Disparagement. Each party to this agreement agrees that he/it will not make, or cause to be made, any statements, observations or opinions, or communicate any information (whether oral or written) that disparages or is likely in any way to harm the reputation of either party or its board members and employees. PORT agrees to provide MCSHERRY with a favorable letter of recommendation to be presented to prospective employers.

16. Taxes. MCSHERRY specifically acknowledges and agrees that PORT has not made any representations to MCSHERRY regarding the tax or legal consequences of any consideration due to MCSHERRY or for his benefit pursuant to this Agreement and Release. Moreover, MCSHERRY understands and agrees that any tax consequences and/or liability arising from the separation payment shall be his sole responsibility.

17. Remedies for Breach of Covenants. In the event of a breach or threatened breach by either party of any covenants herein, the breaching party agrees that non-breaching party shall be entitled to a temporary restraining order or a preliminary injunction (without the necessity of the non-breaching party posting any bond in connection therewith) restraining the breaching party from such breach or threatened breach. Nothing herein shall be construed as prohibiting the non-

breaching party from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of damages.

18. Complete Agreement. This Separation Agreement constitutes a full and final resolution of all matters in any way related to MCSHERRY's employment with and separation from PORT. This Separation Agreement supersedes any and all other agreements between the parties.

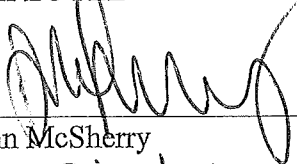
19. Amendment. The parties agree that no modification, change or amendment of this Separation Agreement or any of its provisions shall be valid, unless in writing and signed by the party against whom such claimed modification, change or amendment is sought to be enforced.

20. Severability. If any provision of this Separation Agreement, or portion thereof, shall be held invalid or unenforceable by a court of competent jurisdiction or in any arbitration proceeding, such invalidity or unenforceability shall attach only to such provision or portion hereof, and shall not in any way affect or render invalid or unenforceable any other provision of this Separation Agreement or portion thereof, and this Separation Agreement shall be carried out if any such invalid or unenforceable provision or portion thereof were not contained herein. In addition, any such invalid or unenforceable provision shall be deemed, without further action required of the parties, modified, amended or limited to the extent necessary to render the same valid and enforceable.

21. Titles. The titles of the paragraphs of this Separation Agreement are inserted merely for convenience and ease of reference and shall not affect or modify the meaning of any of the terms, covenants or conditions of the Separation Agreement.

IN WITNESS WHEREOF, the parties have executed this Separation Agreement as their free and voluntary act on the dates set forth below.

EMPLOYEE




John McSherry
Date: 5/19/16

APPROVED AS TO FORM:

Via email attached
Mark O. McSherry, Attorney at Law
Counsel for Employee

EMPLOYER

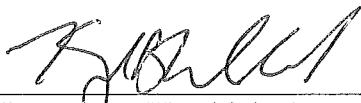
PORT OF SKAMANIA COUNTY
A Washington Municipal Corporation



by Gail Collins, its President
Date: 5/19/2016

Approved by the Board of Commissioners
At the May 19, 2016 special meeting

APPROVED AS TO FORM:



Kenneth B. Woodrich, Attorney at Law
PORT Attorney

John McSherry

From: Mark Mcsherry
Sent: Thursday, May 19, 2016 9:28 AM
To: Ken Woodrich
Cc: John McSherry
Subject: Re: SEPARATION AGREEMENT McSherry 5_18_16 (JMCS).doc

Ken and John ,

Looks good.

Mark

Sent from my iPhone

On May 18, 2016, at 8:29 PM, Ken Woodrich <kenwoodrich@gmail.com> wrote:

Thanks, John. I have no objections to the revisions. The revised version is attached in a clean format. We'll see you tomorrow.

Thanks, Ken

From: John McSherry [<mailto:john@portofskamania.org>]
Sent: Wednesday, May 18, 2016 4:43 PM
To: Ken Woodrich <kenwoodrich@gmail.com>
Cc: mcsherryesq@yahoo.com
Subject: SEPARATION AGREEMENT McSherry 5_18_16 (JMCS).doc

Ken,

I have consulted with my attorney (my brother Mark) and have some comments per attached. Mark does not have access to a computer at the moment, so I made the track changes to the document. Please feel free to call me or Mark at (508) 414-9664. Mark is on the east coast; so please take in consideration the 3 hour time difference.

Thanks,

John

<SEPARATION AGREEMENT McSherry 5_18_16 (Clean).doc>

AGENDA

Port of Skamania County, Board of Commissioners

May 19, 2016, 3:30 pm

SPECIAL Meeting

Call to Order

- Review and approve a Separation Agreement with Executive Director John McSherry.

Executive Session Per RCW 42.30.110

Adjournment

Next Meeting: May 24, 2016 3:00 pm Regular Meeting