

RESOLUTION NO. _____

**A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE _____ DELEGATING
ADMINISTRATIVE POWERS AND DUTIES OF THE
EXECUTIVE DIRECTOR AND DESIGNEES,
REPEALING ALL PRIOR RESOLUTIONS DEALING
WITH THE SAME SUBJECT MATTER.**

WHEREAS, RCW 53.12.270 authorizes the Commission to delegate administrative powers and duties to the Executive Director, and

WHEREAS, the Commission of the _____ has in the past adopted policy directives delegating administrative powers and duties to the Executive Director and designees for the purpose of expeditious administration of the Port, and

WHEREAS, the Commission has from time to time found it necessary to amend and revise such directives due to changes in law and/or operations of the Port, and

WHEREAS, the Commission now wishes to provide an updated master policy directive on the delegated administrative powers and duties of the Executive Director and designees and to repeal all prior resolutions dealing with the same subject matter;

NOW, THEREFORE, BE IT RESOLVED by the Port Commission of the _____ as follows:

Section 1. The master policy directive of the Commission of the _____ as set forth herein, is adopted for the purpose of establishing the delegated administrative powers and duties of the Executive Director and designees. This policy directive will remain in effect until _____, unless it is extended prior to that date.

Section 2. All portions of resolutions heretofore approved by the Commission pertaining to the subject matters contained in this resolution are hereby repealed.

Section 3. The Revised Code of Washington 53.08.090 authorizes the Commission to delegate by resolution to the Executive Director the authority to sell and convey Port personal property.

Section 4. The following policy directive on the delegated administrative powers and duties of the Executive Director is hereby adopted.

I. PREAMBLE:

A. The following policy is adopted by the Commission of the _____ for the purpose of establishing the administrative powers and duties of the Executive Director who is responsible for Port operations. The Executive Director may delegate to Port personnel

such administrative authority or reporting requirements herein established as is necessary and advisable in the efficient exercise of the Executive Director's powers and duties.

B. This policy sets forth specific delegations of power and duties from the Commission to the Executive Director. This policy shall not be interpreted to limit the duties or responsibilities of the Executive Director as those duties are determined from time-to-time by the Commission. In case of absence, the Executive Director may designate one or more senior Port staff to act in the place of the Executive Director with regard to the powers and duties herein. Subject to the limits within this delegation, the responsibility for all administration and Port operations of the Port rests with the Executive Director.

C. To implement delegations of authority to Port personnel, the Executive Director shall promulgate policy and procedural manuals, monetary and budgetary directives, and other such documents as personnel position descriptions, affirmative action plans, safety manuals, etc. which shall provide a clear span of authority and responsibility to the designees of the Executive Director.

D. Any Commission directives or initiatives shall be made through the Executive Director and shall be made only by the Commission acting as a body of the whole. Those directives include, but are not limited to, the separately adopted travel policy, tariff schedules, financial guidelines, promotional hosting policy, and standard rental rates/practices.

E. The phrase "administration and Port operations", as used herein, means the regular day-to-day business of the Port, including, but not limited to, operating, maintaining, and administering all of its properties, leasehold properties, facilities services and programs; including the implementation of construction work, alterations, repairs, maintenance, and improvements of the Port's real estate and physical facilities; and, the necessary planning incidental thereto; the conduct of financial accounting and legal matters as they relate to the Port's operation; the administration of all other operations which include personnel administration (*i.e.*, hiring, firing, salary and benefits, training, grievance procedures, task and project assignments, employee training and incentive programs, etc.); the execution and administration of contracts; publish legal notices; and, all other pertinent functions.

F. The Executive Director shall inform the Commission regarding significant information, incidents, and business transactions by methods agreeable to the Commission. The Executive Director shall report to the Commission those actions as within this delegation. The Executive Director is the managing official of the Port, appointed by the Commission, and holds office as their representative. Nothing herein should be construed in any way as abrogating the duties and the responsibilities of the Commission.

II. POLICY GOVERNING REAL PROPERTY AND THE TERMINAL:

A. Lease Arrangements: All real property when available for leasing shall, except as otherwise provided herein below, be leased only under an appropriate written lease instrument, executed by the Commission, and accompanied by a lease bond or other form of security in accordance with law. However, the Executive Director may execute short term leases (terms less than five years) subject to all of the following conditions:

1. The appropriate lease surety must be in place consistent with statutory requirements and the Port's standard form of lease, with the exception of State and Federal leases that require the use of the tenant's lease form as long as the content of the lease form does not materially change the Port's intent in its standard lease form.

2. The arrangements for short term occupancy shall be evidenced by the Port's standard form of lease (except that any clearly inapplicable provision or provisions inconsistent with the policy herein set out shall be deleted from the standard form).

3. The amount of the rental shall be in accordance with the rental revenue standards adopted by the Commission for similar Port property of the same or similar class and type and devoted to similar uses.

4. The use to which the property may be put by the tenant shall be expressly stated and shall be in accordance with the standards of use adopted by the Commission for the same or similar Port property or properties.

5. The lease may not be renewed or otherwise extended beyond five years without Commission approval.

B. Sublease Procedures: Leases, concession agreements, operating agreements, and related contracts between the Port and its tenants, concessionaires, and other parties shall include restrictions on the subleasing and require at a minimum the prior written consent of the Port to such subleases. Subject to the provisions of the lease or agreement, the Executive Director is authorized to grant consents to subleases, which for the purposes hereof shall include suboperating agreements and subconcession agreements.

C. Other Lease Documents: The Executive Director is authorized to execute the following property instruments, subject to the terms specified herein:

1. Temporary and permanent easements for purposes of utility installments only.

2. Business Licenses and Licenses to Operate.

3. Aquatic land leases with the Washington State Department of Natural Resources to accommodate leasehold property leases consistent with the Port Management Agreement.

4. Binding site plans and short plats consistent with Port master plans in order to activate leasehold interests.

5. Changes in name of responsible party to the lease if all other conditions, including primary ownership, remain the same.

6. Lease assignments for purposes of collateral and lease assignments for purposes of a single condominium unit conveyance (change of ownership) where there is an established condominium association as the Lessee.

7. Response to estoppels and attornments.

D. Lease Renewals: The Executive Director is authorized to renew leases for terms less than five years provided such renewals are provided for in the basic lease; all other substantive terms of the lease remain unchanged; rental adjustments provided for in the lease are made; and, the lease is in good standing.

E. Lease Enforcement and Lease Terminations: The Executive Director is authorized to enforce all terms and conditions of Port leases. The Executive Director is authorized to issue all appropriate notices of default and/or notices of termination with regard to Port leases. The Executive Director is authorized to terminate any lease under the terms and conditions therein. Upon termination, the Executive Director is authorized to take all steps necessary to retake possession of the leasehold and recover for the Port all sums due the Port pursuant to the lease and the law. The Executive Director shall keep the Commission informed with respect to lessees that are issued default notices or termination notices.

F. Realtors Compensation Program: The Executive Director is authorized to make payments for real estate services consistent with the Commission adopted Realtors Compensation Program and within the lease authority of Section II, A.

G. Lay Berth Agreements: The Executive Director is authorized to execute Lay Berth Agreements for a term not to exceed one year to allow a vessel to berth on a daily or monthly basis at the Bellingham Shipping Terminal. The Executive Director shall keep the Commission informed with respect to these agreements.

H. Cargo Throughput Agreements: The Executive Director is authorized to negotiate terms, conditions, and charges for services related to moving cargo across the Bellingham Shipping Terminal which deviate from the published Tariff when (i) in the course of business it is necessary to deviate from the Tariff to capture new revenue or retain

RESOLUTION NO. _____

existing business relationships, and (ii) such agreements will not require the expenditure of any unbudgeted capital improvements or operating funds, and (iii) the term of the agreements shall not exceed one year. The Executive Director shall keep the Commission informed with respect to these agreements.

III. POLICY GOVERNING CONTRACTS FOR PERFORMANCE OF PUBLIC WORK:

A. Public Work Contract Awards: The Executive Director shall have the responsibility for following all required statutory procedures in connection with all public work contracts. The Executive Director is authorized to carry out all procedures required by applicable statutes preliminary to the acts required to be performed by the Commission at an open meeting. The Executive Director may, without prior Commission approval, execute on behalf of the Port public work contracts for \$_____ or less so long as the expenditure is within the limits of overall budgetary authority. In addition, the Executive Director may, without prior Commission approval, execute on behalf of the Port, public work contracts for public work identified in a specific budgetary line item and where the contract price and all other charges do not exceed the amount authorized in that specific budgetary line item by ten percent (10%), but in no case in excess of \$_____.

B. Emergency Public Work Contracts: When any emergency shall require the immediate execution of a public work contract, the Executive Director, pursuant to the procedures of RCW 39.04.020 (and as amended), is authorized to make a finding of the existence of such emergency and execute any public work contract necessary to respond to the existing emergency, provided that the Executive Director shall, at the first Commission meeting following the Executive Director's finding of the existence of an emergency, request Port Commission ratification of the finding of an emergency and any contract awarded or executed pursuant to this authority. From the inception of any such emergency, the Executive Director shall continuously advise the Commission of the status of the emergency situation and the progress of any such public work contracts executed to remedy the emergency. Emergency public work contracts executed pursuant to the authority herein shall contain a clause which states that the contract is subject to ratification by the Commission and that if ratification does not follow, the contract shall terminate, and the Contractor shall be compensated for his work and materials used to the time of termination.

C. Change Orders: In the instances where public work contracts have been awarded and under which the work is in progress, and individual changes in plans and/or specifications are necessitated in order to properly accomplish the work, the Executive Director is authorized, without prior Commission approval, to execute individual change orders to the contract if the following conditions are met:

1. The estimated cost of the aggregate changes in plans and/or specifications and all other charges will not exceed the specific budgetary line item, or, in cases requiring Commission approval for public works contracts, the authorized amount.

2. The contract provides for issuance of change orders.

IV. POLICY GOVERNING CONTRACTS FOR ACQUISITION OF MATERIALS, EQUIPMENT AND SUPPLIES

A. Items Acquired for Normal Maintenance and Operation in the Open Market: The Executive Director shall have the responsibility for following all required statutory procedures, where applicable, in connection with all contracts for the acquisition of utilities, materials, equipment, and supplies; provided, however, that where utilities, materials, equipment, and supplies are acquired on the open market or pursuant to published tariffs and used or are necessary in normal maintenance and operations of the Port, no prior approval shall be required but shall where appropriate be approved as a part of normal monthly expenses, and further, provided that in all cases where a statutory requirement exists for award of contracts following competitive bidding.

B. Budgeted Acquisitions or Acquisitions of \$25,000, or less: The Executive Director may, without prior Commission approval, execute on behalf of the Port, contracts for materials, equipment, and supplies (where the acquisition does not meet the criteria of Section A above) for \$25,000.00 or less so long as the expenditure is within the limits of overall budgetary constraints. In addition, the Executive Director may, without prior Commission approval, execute on behalf of the Port, contracts for materials, equipment, or supplies identified in a specific budgetary line item and where the contract price does not exceed the amount authorized in that specific budgetary line item by ten percent (10%).

C. Emergency Contracts for Acquisition of Materials, Equipment, Supplies, and Services: When an emergency shall require the immediate acquisition of materials, equipment, supplies, and services, the Executive Director is authorized to make a finding of the existence of such emergency and execute any contract for acquisition of materials, equipment, supplies, and services (subject to the Port of Bellingham Personal Service Agreement and Contracting Policy) necessary to respond to the existing emergency, provided that the Executive Director shall, at the first Commission meeting following the Executive Director's finding of the existence of an emergency, request Port Commission ratification of the finding of an emergency and any contract awarded or executed pursuant to this authority. From the inception of any such emergency, the Executive Director shall continuously advise the Commission of the status of the emergency situation and the progress of any such public work contracts executed to remedy the emergency. Emergency acquisition contracts executed pursuant to the authority herein shall contain a clause which states that the contract is subject to ratification by the Commission and that if ratification does not follow, the

contract shall terminate, and the Contractor shall be compensated for his work and materials used to the time of termination.

V. POLICY GOVERNING ADJUSTMENT AND SETTLEMENT OF CLAIMS AND PENALTIES EXCEPTING THOSE COVERED BY PARAGRAPH XIV BELOW:

A. Procedure for Settling Claims: The Executive Director shall be responsible for the implementation of necessary procedures for the settlement of all claims, either against or on behalf of the Port. Procedures in the handling of such claims shall, at a minimum, include the following:

1. For purpose of this Paragraph V, “claim” shall mean the assertion of any position, penalty, right, or responsibility by or against the Port, its Commissioners, or employees, but not including uncollectible accounts only to the extent as covered in Paragraph X herein.

2. No claims against the Port shall be considered unless and until proper written notice has been provided to the Port.

3. All claims for or against the Port may be processed in all respects (except for their final approval and payment) by the Executive Director or Legal Counsel.

4. Except as provided under Section B below, no claims shall be finally approved for settlement except by the Commission and no claim shall be paid except as authorized by the Commission.

B. Executive Director’s Authority to Settle Claims: The Executive Director may, with the written concurrence of legal counsel, negotiate and settle claim(s) asserted against the Port or claims asserted by the Port for an amount not to exceed \$_____ for a single incident; provided that the claim(s) seek only money damages and do not personally name or assert a claim against a Commissioner. The Executive Director may settle claims against the Port or claims asserted by the Port arising from operations for an amount not exceeding \$_____ without consultation of Legal Counsel. All claims when settled shall be reported to the Commission.

VI. POLICY GOVERNING ARRANGEMENTS FOR PROFESSIONAL AND CONSULTANT SERVICES:

A. Procedure: The Executive Director shall be responsible for the Port’s compliance with the _____ Personal Service Agreement and Contracting Policy as adopted by the Commission pursuant to Resolution No. ____ and RCW 53.19.090 and RCW 53.19.080 and the initiation of appropriate procedures to obtain professional services specified RCW 39.80 (*i.e.*, architectural, engineering, landscape architects, and land surveyors) where deemed necessary in carrying out Port operations.

B. Executive Director's Authority: When necessary in the conduct of Port operations, the Executive Director may, without prior Commission approval, execute on behalf of the Port, contracts for professional and consultant services for \$_____ or less so long as the expenditure is within the limits of overall budgetary constraints in compliance with the _____ Personal Service Agreement and Contracting Policy as adopted by the Commission pursuant to Resolution No. _____. In addition, the Executive Director may, without prior Commission approval, execute on behalf of the Port, contracts for professional services specified in RCW 39.80 identified in a specific budgetary line item and where the contract price does not exceed the amount authorized in that specific budgetary line item by ten percent (10%), but in no case in excess of \$_____.

VII. POLICY GOVERNING TRAVEL OF EMPLOYEES AND OTHER AUTHORIZED REPRESENTATIVES OF THE PORT:

A. Executive Director's Authority: The Executive Director is authorized to approve travel within the United States by employees and/or other authorized representatives of the Port in order to effectuate necessary Port operations, in conformity to the travel policy adopted by the Commission, provided that the travel expenses are within the annual budget approved by the Commission. The Commission shall approve all requests for and prior to any travel outside the United States (excluding Canada) by employees and/or other authorized representatives of the Port.

VIII. POLICY GOVERNING STAFF AND EMPLOYEE ADMINISTRATION:

A. Executive Director's Authority: The Executive Director shall have the authority to manage all personnel matters for Port employees and staff which includes hiring, firing, training, grievance procedures, employee benefits, and administration of the employee salary schedule and incentive programs. The Executive Director shall carry out these responsibilities according to guidelines and policies to be established by the Executive Director and within overall budgetary constraints.

IX. POLICY GOVERNING EXECUTIVE DIRECTOR'S AUTHORITY FOR PROPERTY ACQUISITIONS AND SALES:

A. Authority of the Executive Director for Acquisitions Authorized by the Commission: When the Port Commission authorizes the acquisition of real property by purchase or condemnation, the Executive Director shall take all necessary steps, including the securing of appraisals, to secure title of such property for the Port. Acquisition price of individual properties (or ownerships) shall in no case exceed the Port's appraisal by ten percent (10%), nor shall the total price paid for all properties exceed the estimates of the Port Commission's authorization without further specific Commission authorization.

B. Execution of Documents of Sale: The sale of real property is reserved to the specific Commission authorization. When the Commission authorizes the sale of real property, the Executive Director shall take all necessary steps to complete the transaction, including, but not limited to, accepting deposits, opening escrow, and signing all necessary documents.

X. POLICY GOVERNING DISPOSITION OF UNCOLLECTIBLE ACCOUNTS:

A. Definition of "Write-off": The term "write-off" means the adjustment of the accounting records of the Port to reflect the fact that the account is uncollectible in the normal course of operations. The Executive Director may authorize Legal Counsel to initiate or continue with legal action to collect an account without regard to whether the account has been written off the accounting records of the Port.

B. Procedures: The Executive Director is authorized to establish procedures for and to write off any uncollectible account in the amount of . \$ _____ (or % of operating revenues of the last complete fiscal year) or less subject to the following general guidelines:

1. Prior to writing off any account receivable or uncollectible, the Executive Director shall be satisfied that every reasonable effort has been made by the Port to accomplish the collection of the account.

2. Any account in excess of \$ _____ which is deemed to be uncollectible shall be referred to the Port Commission for final write-off.

XI. POLICY GOVERNING LEASE SURETY, SURETY BONDS, RENTAL DEPOSITS, AND INSURANCE POLICIES:

A. Authority of the Executive Director: The Executive Director or his designee is authorized to take all necessary actions on behalf of the Commission in connection with lease surety, lease surety bonds, assignments of accounts, rental deposits, or insurance coverage required pursuant to any leases of the Port, including any of the following actions:

1. Where the lease is not in default, to release any surety, surety bond, or rental deposit where an adequate substitute surety or rental deposit has been provided.

2. To approve any surety, surety bond, rental deposit, certificate of insurance, or insurance policies submitted in fulfillment of the requirements of any lease, including substitute or replacement coverage for any terminated bond, surety, or rental insurance.

3. To approve any substitute or modifications of surety or insurance coverage, and to release any surety or insurance company when substitute or replacement insurance coverage has been provided in connection with any outstanding lease of the Port.

XII. POLICY GOVERNING SALE OF PERSONAL PROPERTY:

A. Sale of Property Pursuant to RCW 53.08.090: The Executive Director or his designee is authorized, pursuant to RCW 53.08.090, to sell and convey surplus personal property of the Port subject to the following conditions:

1. that the market value of such personal property does not exceed \$10,000; and

2. that prior to any such sale or conveyance, the Executive Director shall itemize and list the property to be sold and make written certification to the Commission that the listed property is no longer needed for Port purposes; and

3. that offers for purchase are solicited from at least three (3) parties whenever possible; and

4. that any large block of such property having a value in excess of \$10,000 shall not be divided into components of a lesser value and sold unless done so by public competitive bid; and

5. that no property which is part of the comprehensive plan of improvement or modification thereof shall be disposed of until the comprehensive plan has been modified pursuant to RCW 53.20.010 and until such property is found to be surplus to Port needs; and

6. that in no case shall surplus personal property be sold to any Port official or employee or members of their families without the specific approval of the Commission.

B. The Executive Director shall develop and implement policies and practices regarding the circumstances in which Port officials, employees, or members of their families, may participate in the purchase of surplus personal property.

XIII. POLICY GOVERNING INVESTMENT OF TEMPORARILY IDLE PORT FUNDS:

A. Authority of the Executive Director: For purposes of this paragraph, "Temporarily Idle Port Funds" shall mean those funds which are not required for immediate expenditure. In accordance with applicable law relating to the investment of public funds, the Executive Director is authorized to direct the investment of temporarily idle Port funds. These directives shall permit, but shall not be limited to, investments in authorized government securities, sale of such investment and necessary interfund transfers. A summary report of all investments, sales, and interfund transfers shall be provided to the Commission quarterly.

XIV. LITIGATION:

A. Management and Supervision of Litigations: The Executive Director and the Port's Legal Counsel (appointed by the Commission) shall be responsible for the procedures necessary for management and supervision of all litigation in which the Port has an interest, direct or indirect. For purposes of this section, "litigation" shall mean the assertion or potential assertion of any position, right, or responsibility by or against the Port, including actions which have been filed in any court or any *quasi*-judicial or administrative forum.

B. Special Legal Services: The Executive Director, on consultation with the Port's Legal Counsel, is authorized to retain other such special counsel at fees as may be negotiated to assist in the handling of any claims, litigation, or other matters necessary to attend to the legal affairs of the Port, within overall budgetary constraints.

C. Engagement of Experts: The Executive Director may engage or cause to be engaged through Legal Counsel, such experts as may be necessary for the orderly support of claims or litigation in which the Port has a direct or indirect interest, without limitations otherwise prescribed in Paragraph X of this resolution. Such engagement shall be upon authorization given by Legal Counsel after having satisfied himself that such expenditure is necessary to the adequate preparation and representation of the Port's position in such litigation or claim and shall, wherever practicable, include evaluation of the litigation or claim and an estimate of the probable cost of such experts

D. Consultation with Commission: In instances of litigation in which the value has, or is likely to \$ _____ (exceed ___% of annual operating revenues of the last complete fiscal year), the Executive Director will, in conjunction with the Port's Legal Counsel, consult with the Commission regarding strategy and the economic impact of litigation.

XV. POLICY GOVERNING INTERLOCAL AGREEMENTS FOR USE OF PORT PROPERTY FOR TRAINING PURPOSES AND EVENT SITE USE AGREEMENTS FOR ONE DAY EVENTS:

A. Executive Director's Authority: The Executive Director is authorized to execute agreements with other public agencies for purposes of conducting training exercises related to police, fire, and public health and safety issues.

B. Executive Director's Authority: The Executive Director is authorized to execute event and site use agreements with organizations for one-day events conducted by the organizations on Port property.

ADOPTED by the Board of Commissioners of the _____ this ____ of _____, and duly authenticated in open session by signatures of the Commissioners voting in favor thereof and the seal of the Commission duly affixed.

_____ **COMMISSION**