



# **Port of Seattle Commission**

## **Delegation of Responsibility and Authority to the Executive Director (DORA)**

**April 3, 2023**

*(Resolution No. 3810, Adopted January 24, 2023)*

# **Port of Seattle Commission Delegation of Responsibility and Authority to the Executive Director**

## **Preamble**

The Port of Seattle’s (“Port”) mission is to create jobs by advancing trade and commerce, promoting industrial growth, and stimulating economic development. The Century Agenda, adopted by the Port Commission, sets out strategies, objectives, and regional initiatives that guide the Port’s efforts in pursuit of this mission.

The Port was established under Washington law as a public agency and engages in commercial enterprises that sustain a healthy economy. It is therefore endowed with both governmental and commercial powers. These dual capabilities require institutional frameworks that foster public accountability and empower direct conduct of commercial activity. The Commission aligns this Delegation of Responsibility and Authority to the Executive Director policy directive (‘General Delegation’) to the Century Agenda.

The Port is committed to create economic opportunity for all, steward the environment responsibly, partner with surrounding communities, promote social responsibility, conduct itself transparently, and hold itself accountable.

All authority of the Port of Seattle is vested with the Commission in its actions as a public body. Through this delegation policy, the Commission subsequently and hereby vests authority with the Executive Director and delineates Commission and Executive Director responsibilities. It sets expectations and lays the basis for the respective efforts of the Commission and Executive Director to be aligned, complementary, and effective.

The Executive Director shall be empowered to execute projects, contracts and all other funding mechanisms as listed in the following sections, at the funding thresholds listed below, except in the subject matter areas where the Commission has spoken in the form of Policy Directives and Orders. In the subject matter areas where Commissioners have spoken, the Executive Director shall refer to the Policy Directive and/or Order to determine whether the Commission has expressed the clear intent to have that subject matter brought before the Commission in public session or other manner determined to be appropriate in consultation with the Commission President.

## **Section I: Objectives of this General Delegation:**

- A. Create Clarity and Alignment: This General Delegation clearly delineates the responsibility and authority of the Commission and the Executive Director:
  - 1. The Commission governs the Port, directs all intergovernmental policy functions, and oversees the Executive Director.
  - 2. Together, the Commission and Executive Director develop the Port’s overall vision, strategies, objectives, Policy Directives, long-range plans, major programs and budgets.

3. The Executive Director executes the long-range plans and major programs, oversees all enterprises and supporting functions, and advises the Commission.
- B. Provide Transparency and Accountability: This General Delegation specifically allows for the development and adoption of Policy Directives to guide the Port's efforts in pursuit of its strategic objectives. Policy Directives:
1. Provide high-level guidance about how the Port does its work based on public values and applicable laws, rules and regulations.
  2. Inform operational policies regarding specific functions at the Port and set appropriate limits.
  3. Deliver standards that support the effective use of the internal audit function to verify compliance.
- C. Pursue the Century Agenda: This General Delegation emphasizes the use of Century Agenda ("CA") Goals and Objectives as a means of pursuing the highest strategic aspirations for the Port of Seattle. Through review of Key Performance Indicators ("KPIs") that measure progress towards CA Objectives as well as Executive Director Priorities, the Commission and Executive Director ensure alignment of the Port's mandate, its aspirational and operational goals. The Century Agenda Goals, set by the Commission, set the long-term goals for all divisions and Centers of Expertise. The CA Objectives, set by the Executive Director and Executive Leadership Team (ELT) and approved by commission every 5 years, describe the mid-term objectives and activities that align to the CA Goals. Finally, the Executive Director Priorities describe the annual initiatives and programs that operationalize the CA Objectives. At all levels, KPIs and metrics are employed to monitor and track progress and performance.
- D. Empower for Concerted Action: Clear responsibilities and authorities will enable the Commission and Executive Director to work in concert and be effective.

## **Section II. Delegation of Responsibility and Authority**

- A. Governing the Port of Seattle as its elected body, the Commission shall:
1. Represent the Port to the citizens of King County and to other government bodies.
  2. Establish the Port's positions regarding public policy, legislation, and regulation.
  3. Appoint the Executive Director.

4. Conduct the annual performance review of the Executive Director and provide input to the Executive Director regarding the performance of those employees that report directly to the Executive Director.
  5. Set the Port's annual property tax levy.
  6. Oversee the internal audit function. Consider and authorize any Port borrowed debt, as required by law.
  7. Reserve to itself all authority not herein delegated.
- B. Guiding the Port of Seattle and together with the Executive Director, the Commission shall:
1. Develop, adopt, and refine the long-term goals of the Port and review mid-term CA objectives and their KPIs.
  2. Develop, adopt, and amend Policy Directives.
  3. Direct the Port's advocacy regarding public policies, legislation, and regulation.
  4. Consider and authorize new enterprises and initiatives.
  5. Consider, authorize, and modify major programs and projects.
  6. Consider and approve the settlement of any legal claim except as delegated to the Executive Director and General Counsel.
  7. Consider and adopt annual operating and capital budgets.
  8. Consider and adopt annual salary and benefit resolutions.
  9. Consider and approve collective bargaining agreements.
  10. Consider and authorize Interlocal Agreements.
  11. Consider and authorize the acquisition and sale of real property and other capital assets except as delegated to the Executive Director.
  12. Consider and establish industrial development districts and utilities.
  13. Consider and approve assignment of defense counsel for any officer, employee or agent of the Port as authorized by law, except as delegated in Section 7.2.1.

- C. Serving the Port of Seattle and the Commission, the Executive Director shall:
1. Prepare the Port's reporting on Century Agenda Objectives and set Executive Director Priorities in strategic alignment with the objectives.
  2. Evaluate promising new enterprises and initiatives; prepare proposals as warranted.
  3. Develop major programs and projects and updates to major programs and projects.
  4. Prepare operating and capital budgets.
  5. Negotiate collective bargaining agreements.
  6. Manage and supervise all legal services, litigation, engagement of outside legal counsel and other experts (subject to the limitations of RCW 53.08.208), settlements and claims filed for and against the Port, or cause such activities to be carried out by the General Counsel.
  7. Evaluate possible acquisitions and sales of real property and other capital assets; prepare proposals as warranted.
  8. Evaluate possible establishment of industrial development districts and utilities; prepare proposals as warranted.
  9. Report regularly to the Commission on delegated responsibilities, industry trends, and economic developments.
- D. Managing the Port of Seattle in keeping with the above, the Executive Director shall:
1. Represent the Port to customers and industry stakeholders.
  2. Carry out all policy directives, long-range plans, major programs, and implement projects.
  3. Execute contracts and other necessary documents.
  4. Select and manage all staff and outside resources necessary to carry out long-range plans, major programs and projects, maintain facilities, and provide supporting functions.
  5. Determine the organizational structure of enterprises and their supporting functions.
  6. Administer collective bargaining agreements.

7. Administer Interlocal Agreements, and execute where authorized.
8. Administer the payment of short-term liabilities and other expenses.
9. Establish operational, administrative, monetary, and contractual policies, delegations, rules, tariffs, regulations and procedures in accordance with this Delegation, adopted Policy Directives and all applicable law and regulation.
10. Establish and regularly report to the Commission on CA Objectives, CA KPIs and Executive Director Priorities, as necessary.
11. Approve travel by employees and other authorized representatives.
12. Apply for and accept grants and other funds from federal, state or local governments.
13. Prepare and submit applications for permits, regulatory approvals, entitlements, and other authorizations associated with facilities and projects, agree to permit conditions and mitigation, and fulfill permit requirements and obligations. Execute permit-related documents in furtherance of the implementation of permits, including restrictive covenants and hold harmless agreements and agreements for expediting processing for permits.
14. Carry out additional responsibilities as may be further delegated.
15. Determine, sell and convey Port personal, tangible, and intangible property, including mitigation credits, in accordance with any limits set by law.
16. Provide resources for the preparation for and management of Port borrowed debt.
17. Negotiate and obtain appropriate policies of insurance to cover Port property, liability, employee coverages, and other areas appropriately included within a comprehensive insurance program. The Executive Director is authorized to approve changes or modifications within that program or individual policies including provisions for self-insurance or deductibles.

## **Section 1. REAL PROPERTY AGREEMENTS**

1.1 Types of Agreements: The directives in this Section 1 apply to all agreements or transactions for use of Port real property, including but not limited to leases, concession agreements, rental agreements, operating agreements, berthing agreements, tenant reimbursement agreements, licenses, easements, permits, rights of entry and other use agreements (all referred to collectively as "Real Property Agreements" or at times referred to as "Agreements") or to agreements for the Port's use of real property owned by others.

### 1.2 General Real Property Agreement Policies

1.2.1 Except as otherwise provided in this General Delegation, all real property of the Port shall be used pursuant to an appropriate written Agreement approved and executed as authorized by the Port Commission or Executive Director and accompanied by a security deposit in accordance with applicable law and Port Real Estate Policies and Procedures.

1.2.2 Prior to the execution of Agreements, the Executive Director shall have authority to negotiate such Agreements; obtain appropriate appraisals where necessary; provide for appropriate security deposit; submit Agreements to the Port's General Counsel's office for approval in writing; and follow all other applicable laws and Port Real Estate Policies and Procedures.

1.2.3 Real property conveyances between the Port and other governmental entities. Notwithstanding any other provision herein, delegation authority for agreements between the Port and other governmental entities, where the primary purpose of the agreement is the conveyance of real property, by deed, easement, lease, license or similar instrument, shall be governed by the provisions of this Section 1.

1.3 Real Property Agreement Procedures. The Executive Director is authorized to perform the following actions, including executing agreements incidental to such actions, without Commission approval:

1.3.1 Agreements with a term of five years or less: Any Agreement having a term (including any tenant or Port options) of five years' duration or less may be approved and executed by the Executive Director provided that: (i) the Port's standard Agreement form is used or, if no standard form exists, the form used has been approved by the Port's General Counsel's office; (ii) the Agreement provisions conform to the Port's real estate policies and procedures; and (iii) the Agreement includes no Port obligation to make a specific, noncontingent monetary payment or reimbursement exceeding One Million Dollars (\$1,000,000).

1.3.2 Assignments, subleases, consents to assignments and subleases, amendments, approvals, or options for Agreements with a term of five years or less: Assignments,

subleases, consents, amendments, approvals or options for Agreements with a term of five years or less may be approved and executed by the Executive Director, but only if (a) any new term extension, option or options do not result in an extension of the original term of the Agreement (including original tenant or Port options) beyond five years; (b) any rental adjustments (increases or decreases) consistent with the Port's real estate policies and procedures are made; and (c) there is no Port obligation to make a specific, noncontingent monetary payment or reimbursement cumulatively exceeding One Million Dollars (\$1,000,000).

1.3.3 Assignments, subleases, consents to assignments and approvals, amendments or approvals for Agreements with a term in excess of five years. Such Assignments, subleases, consents, amendments or approvals are authorized to be executed by the Executive Director, but only if (a) the term, rental rates, environmental provisions, and the square footage of the premises under the Agreement (excluding increases or decreases to the square footage of the premises not exceeding 10% of the original square footage) remain unchanged; (b) the required security is not decreased (excluding pro rata decreases resulting from permissible decreases in square footage); and (c) there is no Port obligation to make a specific, noncontingent monetary payment or reimbursement exceeding One Million Dollars (\$1,000,000). Consents to Assignments and Subleases, and amendments to correct administrative errors may be approved and executed by the Executive Director.

1.3.4 Easements, licenses, access permits or other rights of entry or use agreements over Port property. Where the easements, licenses, permits or other rights of entry or use agreements: (a) either relate to or benefit the Port's operations, or do not have a term exceeding five years; and (b) do not obligate the Port to make a specific, noncontingent monetary payment or reimbursement exceeding One Million Dollars (\$1,000,000) and do not deprive the Port of substantial use of the property. Permanent easements which deprive the Port of substantial use of Port property require Port Commission approval (unless previously approved as part of a larger action) and must comply with the appraisal requirements of Section 2.

1.3.5 Permanent easements over Port property for installation or construction of utilities or street improvement infrastructure. The Executive Director may approve and execute permanent easements over Port property for installation or construction of utilities (including stormwater, sewer, electrical or gas) or for street improvement infrastructure (including sidewalks, signage or signaling) provided the permanent easement either (a) does not deprive the Port of substantial use of Port property; or (b) consists of Port property not exceeding 1,000 square feet and complies with the appraisal requirements of Section 2.

1.3.6 Easements over the property of others. The Executive Director may approve and



execute easements in favor of the Port over the property of others, provided such easements either (a) are avigation easements in support or protection of airport operations or (b) include no Port obligation to make a specific, noncontingent monetary payment or reimbursement exceeding One Million Dollars (\$1,000,000).

1.3.7 Agreements (other than easements) for the Port's use of the property of others, including leases, rental agreements, operating agreements, licenses, access permits, street use permits, rights of entry and other use agreements. The Executive Director may approve and execute Agreements (other than easements) where the Agreement includes no Port obligation to make a specific, noncontingent monetary payment or reimbursement exceeding One Million Dollars (\$1,000,000).

1.4 Executive Director to ensure compliance. The Executive Director is charged with the responsibility to ensure that all Agreement terms are complied with and is authorized to take necessary measures to ensure compliance or to protect the Port's legal position, including but not limited to subjecting Agreements to Port internal audits, termination of Agreements and the giving of all notices provided for in Agreements.

1.5 Real property agreement security and insurance. The Executive Director is authorized to take all necessary actions in connection with Agreement surety bonds, letters of credit, cash deposits or other legal security ("Agreement Security") and insurance coverage required pursuant to any Agreements of the Port, including, but not limited to, the following:

1.5.1 Release Agreement Security: (i) where adequate substitute Agreement Security has been provided, and the Agreement is not in default; or (ii) when an Agreement has expired or is terminated (for other than a default).

1.5.2 Approve terms of any Agreement Security or insurance submitted in fulfillment of the requirements of any Agreement, including substitute or replacement Agreement Security or insurance coverage.

1.5.3 Approve (i) substitutions, replacements and modifications of Agreement Security or insurance coverage that are not inconsistent with Agreement terms, and (ii) release any insurance company, bonding company or financing institution when acceptable substitute or replacement insurance coverage has been provided.

## **Section 2. REAL PROPERTY ACQUISITIONS AND SALES; STREET VACATIONS**

2.1 Appraisals. The Executive Director is authorized to obtain appropriate appraisals for use in evaluating or negotiating any proposed Port acquisition, sale, lease, permanent easement or other interest in real property.

2.2 Acquisitions. After the Commission authorizes the Port's acquisition of real property by negotiated purchase or condemnation, the Executive Director is authorized to take all necessary steps, including executing all required closing documents, to secure title of such property for the Port. The acquisition price (i) of individual properties and

(ii) of several properties under the same ownership (when acquired in the same transaction), shall in no case exceed the Port's appraisal by more than ten percent (10%) without further specific Commission approval.

- 2.3 Sales. When the Commission authorizes the sale of Port real property in accordance with State law and Commission policy, the Executive Director is authorized to take all other necessary steps, including executing all required closing documents and executing and delivering conveyance instruments, to finalize the sale.
- 2.4 Street Vacations. The Executive Director is authorized to make application for vacation of city or county streets or roads and to take all other steps necessary to acquire a fee interest in streets or roads ancillary to Port development, if the estimated acquisition costs are less than or equal to Two Million Dollars (\$2,000,000).

### **Section 3. PROJECTS**

- 3.1 Projects shall be authorized utilizing the procedures outlined below. Projects may be either capital or expense.
- 3.2 Project Authorization
  - 3.2.1 Preliminary Project Work. Preliminary project work includes, but is not limited to, such activities as planning, programming, concept design up to 30% design, surveys, geotechnical investigations, and/or market analyses. The Executive Director is authorized to perform such preliminary project work up to Two Million Dollars (\$2,000,000) without prior Commission approval, even if the budget of the Project is expected to exceed Two Million Dollars (\$2,000,000).
  - 3.2.2 Total Project Cost Less than \$2 Million. For Projects where the estimated total project budget is less than or equal to Two Million Dollars (\$2,000,000), the Executive Director is authorized to take all steps necessary, including the execution of all contracts, including Public Works, Alternative Public Work procedures in accordance with RCW 39.10, Goods and Services, Personal Services, Professional Services, other consulting services, and any other types of contracts or agreements in furtherance of the Project. If the Project cannot be completed for a total of Two Million Dollars (\$2,000,000) or less, Commission authorization, as set forth more specifically below, shall be required before exceeding the Two Million Dollar (\$2,000,000) threshold. Projects shall not be broken into units or accomplished in phases in order to avoid the requirement for Commission authorization that would otherwise apply to Projects more than Two Million Dollars (\$2,000,000).
  - 3.2.3 Total Project Cost More than \$2 Million. For Projects where the estimated total Project budget is more than Two Million Dollars (\$2,000,000), Commission approval of the Project budget is required except for preliminary project work under Section 3.2.1 above. The Executive Director is authorized to take all steps necessary, including the execution of all contracts, including Public Works,

Alternative Public Work procedures in accordance with RCW 39.10, Goods and Services, Personal Services, Professional Services, other consulting services, and any other types of contracts or agreements in furtherance of a Commission approved Project budget.

3.2.4 Project Changes. Additional Commission authorization shall be required if a Project cannot be completed for less than or equal to Two Million Dollars (\$2,000,000), or within the amount authorized by Commission (including contingency), prior to exceeding either Two Million Dollars (\$2,000,000) or the approved budget. Project changes, including amendments and change orders, within budget shall comply with CPO policies.

3.2.5 Authorization for Emergency Work. When any emergency requires the immediate execution of a contract for work, the Executive Director is authorized to make a finding of the existence of such emergency and execute any contracts necessary to respond to the existing emergency. For purposes of this section "emergency" means unforeseen circumstances beyond the control of the municipality that either: (a) presents a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. The Executive Director shall comply with any legal requirements related to any contracts or agreements issued under the declaration of the emergency and otherwise keep the Commission informed of the development of the emergency situation and the progress of any contracts and agreements executed to remedy the emergency. The Executive Director shall provide notice of this Emergency Work to the public.

3.2.6 Authorization for Critical Work. Under circumstances not constituting a legally-defined emergency, but otherwise requiring immediate action to avoid significant adverse consequences to public health, safety or property, the Commission authorizes the Executive Director to spend up to Two Million Dollars (\$2,000,000) to prevent potentially significant adverse consequences to public health, safety or property. The Executive Director shall have authority to spend the funds if: (i) the circumstances are such that a true emergency as defined by RCW 39.04.280 is substantially likely to develop unless action is taken; or (ii) any delay in addressing the situation will likely result in significant cost increases or adverse schedule impacts to the Port, other public agencies or private property owners; and (iii) where prior Commission authorization cannot, even on an expedited basis, be obtained. When the Executive Director authorizes Critical Work to be undertaken, he or she shall notify the Commission as soon as practicable of his or her action, the amount of money spent and obtain Commission ratification at the next public meeting. The Executive Director shall also provide notice of this Critical Work to the public.

3.2.7 Budget Transfers. The Executive Director is authorized to transfer budget funds for transferring scope of work from one executed contract to another for Projects that have been authorized under the following conditions:

(i) If all Projects affected have been previously approved by the Commission or the Executive Director; and

(ii) If the amount of transfer is less than or equal to \$2,000,000; and

(iii) If doing so results in a cost or time savings, or other tangible benefit to the Project.

All such transfers will be reported to the Commission as soon as is practicable. All budget transfers more than \$2,000,000 must be approved by the Commission.

Any transfer not meeting all of the above conditions will require Commission approval.

3.2.8 Small Works Construction Contracts and Job Order Contracts. The Executive Director may, without Commission approval, take all action to execute and administer these contracts in compliance with RCW 53.08.120, RCW 39.10.420-460, and Port policies and procedures.

#### **Section 4. CONTRACT AND PROCUREMENT ADMINISTRATION**

4.1 Subject to the requirements of this Section, the Executive Director is authorized to negotiate, manage and execute all aspects of Port contract administration and procurement activities in order to conduct the Port's business, provided that all applicable laws and Port policies are met.

4.2 Bid/proposal protests shall be resolved in accordance with the administrative procedure in the Port's standard contract specifications or as established by Port policies and procedures from time to time.

4.3 The Executive Director is authorized to approve competition waivers consistent with applicable federal and state laws and internal Port policies.

#### **Section 5. GOODS, SERVICES, AND OTHER AGREEMENTS**

5.1 Personal Services.

5.1.1 The Port of Seattle's procurement policy for personal services contracts, as adopted in accordance with RCW 53.19.090, promotes full and open competition, transparent procurement practices, and compliance with all laws. All Port of Seattle personal service policies and procedures shall specifically conform to Chapter 53.19 RCW.

- 5.1.2 In accordance with RCW 53.19.060, substantial changes in the scope of work specified in the contract or which are substantial additions to the scope of work specified in the formal solicitation document shall be submitted to the Commission for a determination as to whether the change warrants the work to be awarded as a new contract. An amendment or amendments to personal service contracts, if the value of the amendment or amendments, whether singly or cumulatively, exceeds fifty percent (50%) of the value of the original contract must be filed with the Commission and made available for public inspection prior to the proposed starting date of services under the amendments. The Executive Director is authorized to execute any amendments which meet the requirements of this Section 5.1.2.
- 5.2 Contracts. The Executive Director shall have the responsibility for following all requirements and procedures in connection with all contracts. Goods and purchased services may be acquired on the open market, pursuant to published tariffs, or by competitive bidding when required, for the normal maintenance and operations of the Port without prior Port Commission approval so long as, where appropriate, such acquisitions shall be approved as a part of normal monthly expenses. The Executive Director may execute contracts that are not associated with a Project, including Public Works, Alternative Public Work procedures in accordance with RCW 39.10, Goods and Services, Personal Services, Professional Services, other consulting services, and any other types of contracts or agreements so long as the total price of contracts under a single procurement does not exceed Two Million Dollars (\$2,000,000).
- 5.3 Other Agreements. The Executive Director may execute any other agreements involving an exchange of goods or services with public or private entities that do not fall within any other specific delegation, and that promote operational and/or logistical efficiency, and amendments to such agreements, so long as any cumulative Port noncontingent monetary obligation under the agreement is less than or equal to Two Million Dollars (\$2,000,000) and the General Counsel has reviewed and approved such agreement.
- 5.4. Non-Disclosure Agreements. The Executive Director may execute Non-Disclosure Agreements.
- 5.5 Reimbursements to Airport Tenants. The Executive Director may approve reimbursements to Airport tenants for work performed by such tenants to improve Airport premises so long as the total reimbursement amount is less than or equal to Two Million Dollars (\$2,000,000). The Executive Director shall implement procedures for the reimbursement of Airport tenant improvements. Such procedures must include allowable cost categories and provide for their consistent application among all tenants.

## **Section 6. UTILIZATION OF PORT CREWS**

- 6.1 The Executive Director is authorized to use necessary Port and other workers for operations and maintenance of facilities pursuant to Commission approved labor agreements and the Pacific Coast Longshoremen's and Warehousemen's, Clerks', and Foremen's agreements (provided longshore labor may be hired through stevedoring contractors to provide services offered in Port tariffs.) The Executive Director is authorized to apply for and maintain Port membership in the Pacific Maritime Association.
- 6.2 The Executive Director shall be responsible for obtaining prior Commission approval for work projects which are new construction or major modifications of Port facilities to be carried out by Port crews when the total estimated cost is more than Two Million Dollars (\$2,000,000).
- 6.3 The Executive Director may authorize expense maintenance projects that are not new construction projects or contracts or that in any way add to the capacity or function of a facility, whether performed by Port crews or by contractors, up to a value of Two Million dollars (\$2,000,000).

## **Section 7. LEGAL SERVICES, CLAIMS AND OTHER REPRESENTATION**

- 7.1 Management Authority. The Executive Director and the General Counsel shall be responsible for management and supervision of all legal services retained by the Port, except for legal services directly engaged by the Commission, and for all litigation in which the Port has an interest, direct or indirect. For purposes of this section, "litigation" shall mean the assertion of any position, right or responsibility by or against the Port (or in which the Port may have an interest) which has been filed in any court or tribunal external to the Port with jurisdiction, be it state or federal, international or any quasi-judicial, administrative or arbitration forum.
- 7.2 Legal Services. The Executive Director is authorized to retain, or to cause to be retained by the General Counsel, attorneys or law firms, or other appropriate legal representatives as necessary, to provide (or assist in the provision of) legal services without limitations otherwise prescribed in Sections 3 or 5 above.
  - 7.2.1 Subject to the limitations of RCW 53.08.208, counsel may be retained whenever any litigation is instituted against any person who is or was an officer, employee, or agent of the Port arising out of the performance or failure of performance of duties for, or employment with the Port; provided that, if any such litigation includes allegations of fraud or criminal activity, retention of counsel shall be subject to Commission approval. All such retentions shall be reported annually by the General Counsel to the Commission.
  - 7.2.2 Payment for legal or related services generally shall be by fixed annual retainers or by reimbursement not-to-exceed established hourly rates plus expenses. Fixed annual retainers shall be set by the Executive Director, or caused to be set

by the General Counsel, based on the level of services required and the current cost of legal services in this area; provided that any such annual retainer or total annual payment for services in any legal matter which is more than One Million Dollars (\$1,000,000) shall be reported annually by the General Counsel to the Commission.

7.3 Engagement of Experts. The Executive Director may engage, or cause to be engaged through the General Counsel, such experts as may be necessary to the orderly preparation of litigation or evaluation or support of legal matters in which the Port has a direct or indirect interest, without limitations otherwise prescribed in Sections 3 or 5 above. Such engagement shall be upon authorization given by the General Counsel after having been satisfied that such expenditure is necessary to the adequate evaluation, support, preparation or representation of the Port's position in such litigation or other legal matters.

7.4 Settlement. Any matter which is the subject of litigation may be compromised and settled by the Executive Director, or caused to be settled by the General Counsel, provided that the settlement amount paid by the Port (or, in the case of a claim being pursued by the Port, the amount of the claim to be waived, released or compromised by the Port) is less than or equal to One Million Dollars (\$1,000,000) and that the General Counsel shall provide an opinion to the Executive Director that such compromise and settlement is justified on the basis of the following:

7.4.1 Litigation against the Port.

- (i) The likelihood that a judgment rendered in litigation would be in the amount claimed or higher than the amount claimed, or that there is reasonable cause to believe that there is considerable exposure of liability for the Port; or
- (ii) The likelihood that the expenses involved in litigation would be unnecessarily high in relation to the amount claimed, or the likely result.

7.4.2 Litigation on behalf of the Port.

- (i) That the determination to settle the claim outweighs the risks of litigation or other alternatives; or
- (ii) That the settlement of the claim would provide prompt payment to the Port and eliminate extensive delays; or
- (iii) That the proposed offer of settlement is reasonable in light of the claim asserted.

7.5 Adjustment and Settlement of Claims. Except for claims which are in litigation, the Executive Director shall be responsible for, or shall cause the General Counsel to be

responsible for, the observance of necessary procedures whereby the adjustment and final settlement of all claims, either against or on behalf of the Port, shall be carried out. For purposes of this section, "Claim" shall mean the assertion of any position, right or responsibility by or against the Port, but not including:

- (i) Accounts receivable to the extent covered in Section 8, or
- (ii) Claims asserted by or against the Port which are in litigation as that term is defined in Section 7.1. above.

7.5.1 No claims against the Port shall be considered unless and until proper notice and credible evidence of loss or damage has been provided by the claimant to the Port.

7.5.2 Claims which in the opinion of the General Counsel have the potential to exceed One Million Dollars (\$1,000,000) shall be reported annually by the General Counsel to the Commission.

7.5.3 Any single claim less than or equal to One Million Dollars (\$1,000,000) to be paid or waived, released or compromised by the Port may be adjusted and settled by the Executive Director, or caused to be adjusted and settled by the General Counsel provided that all of the following conditions are met:

7.5.3.1 That the General Counsel shall provide an opinion to the Executive Director that payment of the claim is justified on the basis of the following:

(i) Claims against the Port:

(a) The likelihood that the Port is or could be found liable; or

(b) The likelihood that a judgment rendered in litigation would be in the amount claimed, or higher than the amount claimed, or that there is reasonable cause to believe that there is considerable exposure of liability for the Port; or

(c) The likelihood that the expenses involved in litigation would be unnecessarily high in relation to the amount claimed, or the likely result.

(ii) Claims on behalf of the Port:

(a) That the determination to settle the claim outweighs the risk of litigation or other alternatives; or

(b) That the settlement of the claim would provide prompt payment



to the Port and eliminate extensive delays; or

- (c) The proposed offer of settlement is reasonable in light of the claim asserted.

### **Section 8. ADJUSTMENT AND WRITE-OFF OF ACCOUNTS RECEIVABLE**

- 8.1 The Executive Director is authorized to establish procedures to: (i) make adjustments to accounts receivable for valid operational reasons which do not constitute a gift of public funds; or (ii) to write off any uncollectible account which is less than or equal to Three Hundred Thousand Dollars (\$300,000).
- 8.2 Prior to adjusting or writing off of any account receivable or uncollectible debt, the Executive Director shall be satisfied that every reasonable effort has been made by the staff to resolve or accomplish the collection of the account. For those accounts that fail to make payment, the Executive Director shall authorize the General Counsel to bring action in courts of law, or if more appropriate, authorize the Chief Financial Officer, to assign the same to collection agencies in an attempt to collect such accounts. If, after attempting all normal account collection procedures, the account is still uncollectible after 180 days or more, the Executive Director shall be authorized to provide for writing off such an account.
- 8.3 Any amount in an account in excess of Three Hundred Thousand Dollars (\$300,000) which is deemed to be uncollectible shall be referred to the Commission for final approval of writing off that account.

### **Section 9. SALE OF PERSONAL PROPERTY**

- 9.1. Section 53.08.090 of the Revised Code of Washington authorizes the Commission to delegate to the Executive Director, by Commission resolution, the authority to sell and convey Port personal property up to an annual limit updated each year. State law requires that this authority be renewed from year to year by Resolution. The Executive Director or their delegate must itemize and list the property to be sold or conveyed and make written certification to the Commission that the listed property is no longer needed for port district purposes prior to any such sale or conveyance. The Commission must authorize the sale of Port property over the allowed statutory amount.
- 9.2. In no case shall surplus personal property of the Port be sold to any Port Commissioner or Port employee or to members of their immediate families without the specific approval of the Commission.

## **Section 10. GENERAL INTERPRETATION**

10.1 Statutory References. All statutory references in this Resolution shall mean the cited statute as it existed on the date of adoption of this Resolution or as such statute may be hereafter amended, succeeded, modified or legally construed from time to time.

10.2 Dollar Limits. All dollar limits included in this delegation or inclusive of all charges and taxes, including sales tax.

10.3 Definitions. The Executive Director is authorized to modify, edit, add and delete definitions within this Resolution. The Commission shall be notified of any changes in writing.

10.3.1 "Goods and Services" means natural resources; equipment; materials; supplies; or other finished goods or products; utilities and utilities-related services (including services provided by public agencies); and maintenance, security and other miscellaneous services (excluding services provided by employees covered by collective bargaining agreements to which the Port is signatory).

10.3.2 "Interlocal Agreement" means an agreement in accordance with RCW 39.34 for joint or cooperative action between public agencies.

10.3.3 "Personal Services" means those services as defined in RCW 53.19.010(6), as that law may in the future be amended or superseded.

10.3.4 "Professional Services" means those services within scope of Section 39.80.020(5) of the Revised Code of Washington, as the same may in the future be amended or superseded.

10.3.5 "Project" means requirements undertaken to provide a product or service. Projects do not, however, include regular, recurring, or routine work associated with the day-to-day management and normal operations of the Port.

10.3.6 "Public Work" means construction, alteration, repair and improvement meeting the definition set forth in Section 39.04.010(4) of the Revised Code of Washington, as that law may in the future be amended or superseded.

10.3.7 "Purchased Services" means those services as defined in RCW 53.19.010(8), as that law may in the future be amended or superseded.

10.3.8 "RCW" means the Revised Code of Washington.

Revision History

January 24, 2023

Resolution No. 3810 Adopted. Repeals Resolution Nos. 3605, 3628, 3704, and all preceding resolutions pertaining to the Commission's 'Delegation of Responsibility and Authority to the Executive Director' policy directive and adopts the new delegation policy directive as set forth in Exhibit A of Resolution No. 3810. The re-codified policy directive of the Commission generally increases delegation authority from \$300,000 to \$2,000,000, with exceptions as outlined, and makes other changes.