

AQUATIC LANDS MANAGEMENT AGREEMENT

Washington State Department of Natural Resources

And

Public Port Districts of the State of Washington

1984
MODEL

SAMPLE

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MANAGEMENT AGREEMENT

No. _____
Port of _____

This Management Agreement, made as of the ____ day of _____, 1985, by and between the State of Washington, Department of Natural Resources, (hereinafter referred to as "DNR"), and the Port of _____, a Washington municipal corporation, (hereinafter referred to as "the Port").

Witnesseth:

Whereas, DNR is directed by law to manage aquatic lands owned by the State of Washington; and

Whereas, Section 6, Chapter 221, Laws of 1984, authorizes DNR and the port district, upon request of a port district, to enter into an agreement to manage state-owned aquatic lands as set forth in said law; and

Whereas, the Port has requested such an agreement; and

Whereas, DNR has determined that it is in the best interest of the State of Washington to enter into such an agreement with the Port,

Now, therefore, the parties hereto hereby agree as follows:

1. Term. This Management Agreement shall commence as of the date first written above and shall continue in full force and effect so long as the laws of the State of Washington allow management of aquatic lands by port districts.
2. Delegation. DNR hereby delegates management to the Port, and the Port hereby accepts the delegation and agrees to manage the parcels of state-owned aquatic lands listed on Exhibits A, which are attached hereto and incorporated by reference, (hereinafter referred to as the "Property"), as of the date of this Management Agreement in accordance with the provisions hereof.

The parties intend that this Management Agreement encompass all authority required for the Port to effectively manage the Property as contemplated by Chapter 221, Laws of 1984. However, if future circumstances indicate that additional authority is required to effectively manage the Property, the Port may request such authority from DNR, which approval shall not be unreasonably withheld.

The Port is hereby granted exclusive authority to enter into leases or other use authorization, including leases or use authorizations to itself, for the Property or portions thereof, except as otherwise provided herein. All such agreements shall be subject to this Management Agreement and shall have a copy of the Management Agreement attached thereto. Said leases shall survive this Management Agreement; PROVIDED,

that any such lease by the Port shall contain a clause which states that upon termination of the Management Agreement, or removal of the leased property therefrom, the lessor of said lease shall become DNR. The Port shall furnish a copy of any lease to DNR upon request.

3. Property. Any parcel which meets the criteria established by law shall, upon requested of the Port, be covered by this Management Agreement and included on Exhibits A. Any parcel hereafter meeting those criteria shall be added to this Management Agreement, upon request of the Port, by amending Exhibits A.

Any parcel which no longer meets these criteria shall cease to be covered by this Management Agreement and the management thereof shall return to DNR upon six (6) months written notice. Any parcel may be deleted from this Management Agreement at any time by mutual agreement or by the Port upon six (6) months written notice to DNR. If all subject property is deleted from this Management Agreement, and if the Port requests, this Management Agreement shall terminate. If any parcel is no longer included in this Management Agreement for any reason, upon cessation the Port shall promptly remit to DNR its pro rata share of any prepaid rent received for that parcel.

4. Access. It is not the intent that any parcel owned by the State which is not covered by this Management Agreement, or any property owned by the Port should be left without access as a result of the Port's management of the Property. Provisions for access to such parcels shall be listed on Exhibits A or its amendments.

5. Acceptance of the Property. Except as otherwise agreed in writing the Port hereby accepts management of the Property listed on Exhibits A and any amendments in its present condition, and agrees, at its sole expense, to conform to federal, state, and local laws and regulations applicable to the holding or use of the Property.

6. Standard of Management. Management of the Property shall be consistent with the aquatic land policies of Chapters 79.90 through 79.96 RCW, as amended, and the implementing regulations adopted by DNR. These laws now state, in Sect. 2, Chapter 221, Laws of 1984 (RCW 79.90.455): "The manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all." The administrative procedures for management of the Property shall be those of Title 53 RCW.

7. Use. The Port may use the Property for port purposes as authorized in Title 53 RCW so long as said use is consistent with the Washington State Constitution and laws of the State of Washington.

8. Port Regulations. The Port may adopt written policies and regulations to implement this Management Agreement and to direct the management of the Property. All such policies and regulations shall be submitted to DNR for review and comment prior to becoming effective. Any such policies or regulations must be consistent with this Management Agreement.

9. Planning for Aquatic Land Use. The parties recognize that long-range planning for aquatic land use involving the Property, developed through consultation between the parties in cooperation with the planning authorities of appropriate local jurisdictions, is a desirable management objective. In the event the parties develop and agree upon a long-range plan for aquatic land use for the Property, the Port may enter into leases for nonwater dependent uses consistent with that plan without DNR approval.

In the absence of a long-range plan for aquatic use of a portion of the Property, if the Port contemplates the possible lease or use of that portion of the Property for nonwater-dependent uses, it shall give DNR notice of its intentions at the earliest practicable time. DNR shall promptly meet with the Port to review the proposal for its consistency with the aquatic land policies of Chapters 79.90 through 79.96 RCW, as amended, and the implementing regulations adopted by DNR.

10. Rent. The following shall apply:

(a) The Port shall pay DNR no rent for the Port's use of any portion of the Property, provided, in the event the Port engages in a significant nonwater-dependent use on other than a temporary basis which produces substantial income, 85% of the revenue attributable to the rent of the state-owned aquatic land only shall be paid to DNR.

(b) If the use of any portion of the Property involves a lease or other use authorization to a third party, rent for such portion shall be collected and distributed according to law. In the event the use is nonwater-dependent, the Port shall establish the fair market rental in dollars and shall remit, in dollars, to DNR that portion required by law.

11. Security. If the Port leases any portion of the Property to a third party, the Port shall require security as provided by law.

12. Removal of Natural Resources. Other as than provided by RCW 79.90.150 no natural resources shall be removed from any parcel subject to this Management Agreement without the prior written approval of DNR. If any approved removal requires payment to DNR for the value of the natural resources removed, such payment shall be made within 90 days of the removal.

13. Improvements.

(a) State-Owned Improvements. Any state-owned improvements existing on the Property shall be listed on Exhibit B. These improvements shall remain the property of the State and shall be maintained at the Port's sole expense in a good condition and state of repair. Upon the cessation or termination of this Management Agreement as to any portion of the Property, the Port shall return said portion, together with the state-

owned improvements, to DNR in a condition as good as when received, normal wear and tear excepted.

At the time any portion of the Property with state-owned improvements becomes subject to Management Agreement, the Port and DNR shall determine whether, in view of the character and value of the improvements, the financial condition of the Port, the likelihood of risk of loss or damage, and other relevant factors, fire and extended coverage insurance on state-owned improvements shall be obtained by the Port.

The current agreed fair market value of the existing state-owned improvements on the Property, is listed on Exhibit B. The Port agrees to pay for the use of these improvements an amount equal to that which would be charged lessees by DNR for the use of those improvements, as the same is billed to the Port by DNR from time to time during the term of this Management Agreement.

(b) **Other Improvements.** Other improvements existing on the Property, or subsequently installed on the Property, shall be owned by the Port or any third party contractually entitled thereto. If any parcel is not substantially continuously subject to this Management Agreement or a lease, then, upon the termination of the Management Agreement or such lease, such improvements shall become the property of the State, unless DNR elects to have the improvements removed, in which case they shall be removed by the Port at its sole expense. If the Port fails to so do, DNR may have them removed, and the Port agrees to pay for the total cost of that removal.

14. **Easements.** DNR may grant permanent easements across any portion of the Property. DNR shall obtain the Port's written approval prior to making such grants, which approval shall not be unreasonably withheld. Any request to DNR by the Port and its Lessee for a permanent easement across any portion of the Property shall be promptly considered and approval shall not be unreasonably withheld.

The Port may grant non-permanent easements without DNR approval so long as the term of such grant does not exceed the maximum term allowed by statute for leases of the burdened portion of the Property.

15. **Local Improvement Districts.** The Port shall have the exclusive authority to consent or withhold consent to the inclusion of any portion of the Property in any local improvement district (LID) The Port shall be responsible for all assessments levied against any portion of the Property after the date of this Management Agreement, whether installment payments are due during the term of this Management Agreement or otherwise. The Port shall be responsible, during the term of this Management Agreement, for installments due on pre-existing LID assessments.

16. **Taxes.** Except for taxes and other governmental charges imposed by law on third parties, the Port shall be responsible for, and shall pay when due, all taxes, fees, licenses, and other governmental charges of whatever character or arising out of, or

attributable to, the Property or to the Port's management, use and/or leasing thereof during the term of this Management Agreement.

17. Entry. DNR shall have right of entry to the Property at reasonable times for any lawful purposes.

18. Audits. The Port shall make all records concerning the management of any portion of the Property available to DNR upon request.

19. Liens and Encumbrances. The Port shall keep the Property free from liens and other encumbrances (other than leases and other use authorizations authorized in Paragraphs 2 Delegation, 14 Easements and 15 Local Improvement Districts). Nothing in this Management Agreement shall be construed as authorizing the Port to obligate DNR, directly or indirectly, to any costs, expenses, or financial liability on account of the management, use, lease, or other actions taken by the Port with respect to the Property.

20. Indemnification. DNR shall not be liable for any injury or death to any persons, or for damage to any property occurring on or about any portion of the Property, regardless of how such injury or damage be caused other than through the negligence of DNR. The Port agrees to indemnify and to hold and save DNR harmless from all liability and expense, including the expense of litigation, in connection with any such actual or alleged injury or damage.

The Port shall indemnify and hold and save DNR harmless from all contractual liability and expense, including the expense of litigation arising by virtue of Port management of the Property.

21. Eminent Domain. If at any time during term of the Management Agreement the Property or any part thereof is taken or condemned by any authority having the power of eminent domain, the Port, DNR, and any other person having a legal interest shall have the right to appear in such proceedings and be represented by their respective counsel, and each may claim just compensation for its respective loss or damage sustained by the taking or condemnation. Any award, compensation, damages, or payment by reason or such taking shall be apportioned within such proceeding and each party shall take such amount, if any, as may be awarded to it.

22. Non-Waiver.

The failure of either party to insist upon the strict performance of any of the covenants or conditions of this Management Agreement in any one or more instances shall not be construed to be a waiver thereof. If the event that a default is for other than the payment of money, the acceptance by either party of payments required under the Management Agreement shall not be deemed as a waiver of such default.

23. Dispute Resolution.

a. Dispute: means that whenever the Port and DNR cannot agree on the factual circumstances necessary to interpret this Management Agreement, or whenever the Port and DNR cannot agree on the application of any operative sections of this Management Agreement, either party may declare that a dispute exists concerning the Management Agreement.

b. Dispute Resolution:

1. If either party declares the existence of dispute concerning this Management Agreement, the declaring party shall so notify the other party and shall provide a written statement of the facts, its interpretation of the Management Agreement, and its position concerning such dispute. Within 15 days the other party shall provide to the declaring party a written statement addressing those same three elements. Within 15 days after the declaring party has received the other party's written statement, the parties shall meet and try to resolve the dispute. In the event the dispute is not resolved within 60 days after the first meeting the matter may be referred to the Disputes Resolution Panel by either party.

2. Disputes Resolution Panel. The Disputes Resolution Panel shall consist of the following member:

a) The Chairman of the Board of Natural Resources (or some other member of the Board of Natural Resources designated by the chairman);

b) The Supervisor of the Department of Natural Resources;

c) The president of the port commission of the Port (or some other member of the port commission designated by the president);

d) The chief administrative officer of the Port. (In the event the Port has no chief administrative officer, then such person shall be designated by the port commission.)

3. Consideration by Disputes Resolution Panel:

Within 60 days after the dispute is referred to the Disputes Resolution Panel it shall meet and attempt to resolve such dispute. In the event it is unable to resolve the dispute within said 60 day period either party may petition the Superior Court for resolution of the dispute.

24. Termination for Default. DNR may cancel this Management Agreement or remove any portion of the Property therefrom for any failure by the Port to perform its obligations under this Management Agreement on six months written notice to the Port, unless, within that time, the Port cures such default. DNR's decision whether to cancel the Management Agreement or to remove any portion of the Property shall be reasonably exercised. If the default is of a character which cannot be remedied within six months, the Port shall so notify DNR and the parties shall agree on a reasonable period to remedy the default. In the event the parties cannot agree on a period, that shall be referred to arbitration as provided in Paragraph 23. Failure to cure the default within such period may result in cancellation or removal of any portion of the Property upon notice. The decision by DNR to give notice of its intention to cancel this Management Agreement, or to remove a portion of the Property for default after expiration of the period for cure, shall constitute a dispute and shall be appropriate for resolution under Paragraph 23 herein.

25. Notices

All notices required by law or this Management Agreement shall be in writing and may be personally served or sent by registered or certified mail, return receipt requested. If such notice is served personally, service shall be conclusively deemed made at the time of service. If service is by registered or certified mail, service shall be conclusively deemed made three (3) days after the deposit thereof in the United States mail, postage prepaid, addressed to the parties to whom such notice is to be given. Any notice may be given at the following address (or such other address as either party may notify the other, in writing):

DNR Department of Natural Resources
 Division of Marine Lands
 Mail Stop QW-21
 Public Lands Building
 Olympia, WA 908504

Port Port of _____
Mailing Address
City, State Zipcode

26. Attorney Fees. In the event either party shall be required to bring any action to enforce any of the provisions of this Management Agreement or shall be required to defend any action brought by the other with respect to this Management Agreement the prevailing party in such action shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.

27. Assignment. No part of this Management Agreement may be assigned or otherwise transferred.

Signed this _____ day of _____, 19 __.

STATE OF WASHINGTON
DEPARTMENT OF NATURAL
RESOURCES

By _____
Department Supervisor

Signed this _____ day of _____, 19 __.

APPROVED BY _____ PORT
COMMISSION:

President

ATTESTED TO:

Secretary

PORT OF _____
PO BOX _____
_____, WA 98_____