

**PORT MANAGEMENT AGREEMENT
(SAMPLE)**

TABLE OF CONTENTS

SECTION	PAGE
1. <u>Term</u>	1
2. <u>Delegation</u>	2
3. <u>Property</u>	3
4. <u>Access</u>	3
5. <u>Acceptance/Relinquishment of the Property Management</u>	3
6. <u>Standard of Management</u>	4
7. <u>Use/Planning</u>	4
8. <u>Hazardous Substances</u>	4
9. <u>Port Regulations</u>	6
10. <u>Rent</u>	6
11. <u>Insurance and Performance Security</u>	6
12. <u>Removal of Valuable Materials</u>	7
13. <u>Fills</u>	7
14. <u>Confined Disposal of Contaminated Sediments</u>	8
15. <u>Improvements</u>	8
16. <u>Easements</u>	9

17. Local Improvement Districts.....9

18. Taxes.....9

19. Entry.....10

20. Audits.....10

21. Liens and Encumbrances.....10

22. Eminent Domain.....10

23. Non-Waiver.....10

24. Dispute Resolution.....10

25. Termination for Default.....11

26. Notices.....12

27. Attorney Fees.....12

28. Assignment.....12

29. Severability.....12

30. Amendments/Supplemental Provisions.....12

31. Survival.....13

32. Entire Agreement.....13

Port Management Agreement
No. (SAMPLE)
PORT OF _____

This Port Management Agreement ("Agreement"), effective as of the day of, ("the Effective Date"), by and between the state of Washington ("the State"), through the Department of Natural Resources ("DNR"), and the PORT OF _____, a ("the Port"),

WITNESSETH:

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

Whereas, RCW 79.90.475 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, this agreement is in the form of the Model Port Management Agreement approved by the Washington Board of Natural Resources pursuant to RCW 79.90.475 and the implementing regulations; 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.

a. Term. This Agreement shall commence on the effective date, inclusive, and shall continue in full force and effect until the day of _____, _____, (Expiration Date), inclusive, a period of thirty (30) years referred to as the "Term."

b. New Port Management Agreement.

(1) If either party desires to enter into a new Port Management Agreement following the Expiration Date, the parties will meet (as often as necessary) during the two years prior to the Expiration Date to determine the feasibility of entering into a new Port Management Agreement. The parties may at that time, based on the laws of the state of Washington and in the form of the Model Port Management Agreement in effect as of that date, negotiate a new management agreement.

(2) If either party decides it is not in its best interest to enter into a new agreement, the parties shall decide on the fair and reasonable allocation of the leasehold revenues for those Port leases that are in existence on the Property as of the Expiration Date. Consideration will be given to the Port's need to receive a fair return on capital invested by the Port on the Property. If the parties are unable to agree on a reasonable allocation of leasehold revenues as stated above, then either party may invoke the dispute resolution procedures under Section 24(b) below. In this event this agreement will be extended until such time as the dispute resolution regarding allocation has been concluded.

2. Delegation. DNR hereby delegates management to the Port, and the Port hereby accepts this delegation and agrees to manage the parcels of state-owned aquatic lands listed on Exhibit A, which are attached hereto and incorporated by reference, (hereinafter referred to as the "Property"), as of the Effective Date of this Agreement in accordance with the provisions hereof.

The parties intend that this Agreement encompass all authority required for the Port to effectively manage the Property as contemplated by RCW 79.90.475. The parties acknowledge that the delegation by DNR and the management by the Port contemplated by this Agreement is subject to and in accordance with State Law and regulations, including but not limited to applicable provisions of the Washington Administrative Code, the State Environmental Policy Act, the Aquatic Lands Act, the Shoreline Management Act, and the Growth Management Act. DNR retains the authority to set state-wide aquatic lands policy through administrative code provisions or adoption of policy by the Board of Natural Resources, as provided by law. The Port is responsible for implementation of that policy.

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 authorizations, including leases or use authorizations to itself, for the Property or portions thereof, except as otherwise provided herein. All such leases and use authorizations shall be subject to this Agreement and shall have a copy of the Agreement attached thereto and incorporated by reference. Said leases and use authorizations shall survive this Agreement. Any such lease by the Port shall contain a clause which states that upon termination of this Agreement (or successors thereof), or removal of the leased property therefrom, the lessor of said lease shall become DNR. The Port shall furnish to DNR copies of new leases, lease renewals, lease modifications, and surrender of leaseholds on parcels included in this Agreement upon execution of said lease documents.

The Port may not execute a lease or use authorization with itself for the Property to the extent the term of the lease or use authorization extends beyond the term of this Agreement.

DNR's delegation to the Port does not include the authority to bind the State or DNR to any financial obligations, to any environmental remediation of the Property, or to any habitat mitigation involving the Property without DNR's written consent.

3. Property.

Exhibit A contains a common description, legal description, planned use (if known, or if not, so stated), and map identifying each parcel of the Property. The Port may request management of any additional parcel of state-owned aquatic lands which meets the criteria established by law. Additional parcels approved by DNR for Port management shall be added to this Agreement by amending Exhibit A. DNR's approval for such requests shall be timely made and shall not be unreasonably withheld; however, DNR may consider whether the Port is meeting its current management obligations; whether DNR has invested in, planned for, or is legally committed to, a specific use which is inconsistent with the Port's proposed use for the requested parcel; whether Port acquisition would operate to release prior lessees or users to the detriment of the State; or whether litigation is pending or threatened concerning the parcel.

DNR shall respond to the Port in writing within forty-five (45) days of request either (i) approving or denying the request or (ii) identifying that additional information is needed for a decision. Once that additional information has been provided DNR shall respond to the Port in writing within forty-five (45) days, either approving or denying the request. If the DNR denies a request, DNR shall submit in writing its reasons for denial of the request. If DNR fails to submit such written responses as provided herein, the Port shall have the right to appeal to the Supervisor of the Department of Natural Resources for a decision. If DNR fails to submit a written response within ten (10) days (excluding weekends and state holidays) of receipt of appeal, then request shall be deemed approved and Exhibit A shall be amended.

Any parcel which no longer meets the criteria established by law shall cease to be covered by this Agreement and the management thereof shall return to DNR. Any parcel may be deleted from this Agreement at any time by mutual agreement. The Port shall promptly notify DNR of such parcel no longer meeting the criteria and such notice shall be deemed to amend Exhibit A. If all subject property is deleted this Agreement shall terminate. If any parcel is no longer included in this 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 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 Exhibit A or its amendments.

5. Acceptance/Relinquishment of the Property Management. Except as otherwise agreed in writing the Port hereby accepts management of the Property listed on Exhibit A in its condition existing as of the Effective Date of this Agreement, or with respect to parcels added to Exhibit A in the future, the date such parcel(s) becomes listed on Exhibit A, and agrees, at its sole expense, to conform to federal, state, and local laws and regulations governing and regulating the use of the Property. DNR has disclosed to the Port all conditions known to DNR which would adversely affect the use of the Property

and the Port acknowledges that neither DNR nor DNR's agent has made any warranty as to the suitability of the Property for conduct of the Port's business.

At the termination of this Agreement the Port shall relinquish management of the Property which shall be in its condition existing as of the date identified in the paragraph above, or in a reasonable condition which would result from prudent management, except normal wear and tear as to improvements; provided, this section is not intended to address damages caused by contamination which shall be addressed under Section 8, Hazardous Substances, below.

6. Standard of Management. Management of the Property shall be consistent with Chapters 79.90 through 79.96 RCW, as amended, which state in pertinent part that: "[t]he manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all citizens of the state." Management shall also be consistent with the implementing regulations adopted by the DNR or the Board of Natural Resources, and policies adopted by the Board of Natural Resources. Adoption of such policies shall be preceded by ninety (90) days notice to the Washington Public Ports Association, or its successor, with adequate opportunity for comment before the Board of Natural Resources. The DNR and the Washington Public Ports Association, or its successor, shall meet annually to review statutes, regulations and policies.

The administrative procedures for management of the Property shall be those of Title 53 RCW.

7. Use/Planning. 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. In the event the parties develop and agree in writing 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.

8. Hazardous Substances.

a. Definitions.

(1) Hazardous Substances. For purposes of this Agreement, a Hazardous Substance is any substance that is or may be in the future:

(a) Designated as, or that contains components designated as, hazardous, dangerous, toxic, or harmful by applicable federal, state, or local law, regulation, statute or ordinance; and/or

(b) Subject to regulation by such laws.

(2) Application Date. For purposes of this Agreement, the Application Date is the date on which application was first made by the Port for entry into this Agreement, unless the parties agree in writing that control of properties subject to this Agreement is assumed by the Port at a later date.

(3) Liability. As used in this Section 8, "Liability" means any obligation or cost of any kind arising from the release or threatened release of Hazardous Substances, or from any alleged violation of or failure to comply with any law referenced in Subsection 8(b), where the release, threatened release, alleged violation, or failure to comply is related to or arises out of the use or control of the Property. Liability includes damages (including natural resource damages), claims, governmental investigations, proceedings or requirements, attorney fees in any investigation, administrative proceeding, trial or appeal, or witness or consultant costs.

b. Compliance. During the term of this Agreement, the Port shall comply, at its own expense, with all applicable governmental laws, regulations, permits, orders or requirements regarding the proper and lawful use, sale, transportation, generation, treatment, and disposal of Hazardous Substances related to or arising out of the Port's use or control of the Property. The Port, the lessees, and sublessees shall correct and remediate, if necessary, in accordance with applicable laws at their own expense any failure of compliance which occurs during the term of this Agreement.

c. Notice of Environmental Action.

(1) The Port shall promptly notify DNR, upon discovery of all spills, discharges or releases of any Hazardous Substances affecting the Property which are required to be reported to any federal, state, or local regulatory agency.

(2) DNR and Port shall promptly notify each other, upon discovery of any failure to comply with federal, state, or local laws or regulations with respect to the Property. Each shall promptly notify the other, upon discovery of any inspections on the Property by any regulatory entity, any fines, any regulatory orders for response or interim cleanup actions (actual or proposed), or any negotiations with any regulatory entity for a consent decree under any herein mentioned authority, or concerning any plans for any independent cleanup or mitigation and restoration of natural resources on the Property. This provision shall apply to orders issued to DNR or the Port or any third party concerning the Property.

d. Indemnity. To the extent permitted by law, the Port agrees to defend, indemnify, and hold the State, as the owner of aquatic lands, and DNR, as manager of aquatic lands, harmless from any imposition or attempted imposition of Liability upon the State or DNR related to or arising out of the use and control of the Property by the Port or anyone acting under authority of the Port from the Application Date through the end of the Term. This indemnity shall not apply to any imposition or attempted imposition of Liability that is related to or arises out of the use and control of the Property by the State or anyone acting under the authority of the State, other than the Port or anyone acting under the authority of the Port. This indemnity applies to the State solely in its capacity as the owner of aquatic lands and to DNR in its capacity as the manager of aquatic lands and does not extend to other units of state government or to the State in any capacity other than as owner of aquatic lands. Notwithstanding this provision or any other provision of this Agreement, the Port shall not be precluded

from seeking relief from any other agency of state government other than DNR under the State Model Toxics Control Act, CH. 70.105D RCW ("MTCA"), the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et. seq. ("CERCLA"), other similar statutes, or common law, for contribution, cost recovery, damages or other reimbursement for remediation of Hazardous Substance releases.

e. Pre-existing Contamination. The parties intend that this Agreement not alter or affect whatever Liability or responsibility either party may have for Hazardous Substance releases, or threatened releases, that occurred prior to the Application Date ("Pre-existing Contamination") under CERCLA, MTCA, or other laws that create cleanup obligations. In order to effectuate this intent, the parties agree that this Agreement will not be construed to be an indemnification or assignment of liability for any Pre-existing Contamination. Any determination of liability or responsibility for addressing Pre-existing Contamination shall be undertaken without regard to this Agreement.

9. Port Regulations. The Port may adopt written policies and regulations to implement this 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 Agreement.

10. Rent. The following shall apply:

a. Port Use. The Port shall pay to DNR no rent for use of any portion of the Property or any state-owned improvements. In the event the Port engages in a nonwater-dependent use of any portion of the Property or any state-owned improvements, the Port shall establish the full fair market rental in dollars according to WAC 332-30-125 and shall remit, in dollars, to DNR eighty-five percent (85%) of that amount.

b. Third Party Uses. 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. Insurance and Performance Security. When the Port uses or leases any portion of the Property (including state-owned improvements) to a third party, the Port shall require the following:

a. Insurance.

(1) Liability. Bodily injury liability, including death, and property damage liability in an amount of not less than one million dollars (\$1,000,000) or such lesser amount approved by DNR, which approval shall not be unreasonably withheld. If the Port makes a written request for a lower insurance amount, DNR has forty-five (45) days following receipt of the request to respond in writing either approving or rejecting the request. If DNR fails to respond within forty-five (45) day period, the Port shall have the right to appeal to the Supervisor of the Department of Natural Resources for a decision. If DNR fails to submit a written response within ten (10) business days (excluding weekends and state holidays) of receipt of appeal, the request shall be deemed approved.

(2) Casualty. Fire and extended coverage for the insurable replacement cost of any state-owned improvements identified in Exhibit B. DNR shall provide the Port with the replacement cost value within sixty (60) days of the Port's request.

(3) In each of the cases above the State shall be named as an additional insured.

b. Performance Security.

(1) Rent Security. For those portions of the Property leased to third parties the Port shall require the third party to provide to the Port a bond, rent insurance, or other security in accordance with the requirements of RCW 53.08.085; provided, the Port commission shall not waive the rent security requirement or lower the amount of such requirement.

(2) Other Security. In addition, as is appropriate for the use occurring on the Property, the Port may require security for the performance of other lease terms including removal of improvements, trade fixtures, personal property, and hazardous substances.

c. Interim Use. When the Port leases any portion of the Property (including state-owned improvements) to a third party for a period of ninety (90) days or less, the third party shall not be required to provide insurance and performance security as stated in this Section 11 if the Port has its own insurance in the same amounts on the Property and the State is named as an additional insured.

12. Removal of Valuable Materials. Except as permitted by RCW 79.90.150 no valuable materials as referred to in Chapters 79.90 - 79.96 RCW shall be removed from any parcel subject to this Agreement without the prior written approval of DNR. If any approved removal requires payment to DNR for the value of the valuable materials removed, such payment shall be made within ninety (90) days of the removal.

13. Fills.

a. "Fill" defined. For the purposes of this Agreement, the term "Fill" means any material which has been added to increase the elevation of State-owned aquatic lands and includes rip rap, bulkheads, drainage systems or paving. "Fill" does not include confined disposal of contaminated sediments which is addressed under Section 14.

b. Adding or Removing Fill. If the Port or any of the Port's tenants proposes adding fill or removing fill from any portion of the Property, the Port shall give DNR notice of such intention at the earliest practical time. DNR shall promptly meet with the Port to review the proposal. If the proposed fill is consistent with Chapters 79.90 through 79.96 RCW, as amended, and implementing regulations, DNR shall issue written approval, which approval shall not be unreasonably withheld.

c. Rent. Except as provided for below in Subsection 13(d), rent for state-owned aquatic lands underlying the fill will be determined by the use occurring on the fill and distribution of rent will be in accordance with Section 10 of this agreement.

d. Fills with Upland Characteristics. The Port and DNR disagree as to whether filled state-owned aquatic lands with the characteristics of uplands are a nonwater-dependent use of the underlying aquatic lands. Until and unless the legislature or a court of competent jurisdiction interprets RCW 79.90.480(6) to indicate the contrary, the Port and DNR agree that the following principles control the establishment and distribution of rent between the Port and DNR for filled state-owned aquatic lands:

(1) The aquatic lands policies of RCW 79.90 control the establishment and distribution of rent for filled state-owned lands.

(2) As provided in statute, rent for state-owned aquatic lands that have been filled to the point of having the characteristic of uplands will be the full fair market rental value of the filled land pursuant to WAC 332-30-125, or as amended, if the State owns the fill and has a right to charge for the fill.

(3) Rents for filled state-owned aquatic lands which have the characteristics of uplands will be distributed according to the use of the filled state-owned aquatic lands. Rents for water-dependent uses shall be paid to the Port. Rents for nonwater-dependent uses shall be divided between the Port and DNR. These understandings are set forth in detail in Section 10 of this Agreement.

e. Owner of Fill Identified. Fills placed on the Property prior to the Effective Date of this agreement and during the term of this Agreement shall be listed on Exhibit C. The owner of any fill which remains severed from the aquatic land shall be identified. Otherwise the fill shall be considered part of the aquatic lands, and shall be so identified.

14. Confined Disposal of Contaminated Sediments.

a. Definition. Confined Disposal of Contaminated Sediments means containment or isolation of contaminated sediments. This includes nearshore confined disposal, multi-user confined disposal, deep water confined aquatic disposal, and capping of contaminated sediments.

b. Exclusion from Agreement. Confined Disposal of Contaminated Sediments is not covered under this Agreement, and is not considered a Fill for the purposes of Section 13.

c. Agreement with DNR. A separate written agreement addressing Confined Disposal of Contaminated Sediments may be negotiated between the Port and DNR.

15. Improvements.

a. State-Owned Improvements. All state-owned improvements located on the Property are listed on Exhibit B. Improvements that become the property of the State during the term of this Agreement 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 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.

b. Non-State Owned Improvements. A management agreement or lease shall be deemed continuous from one term to the next (even after the expiration date) so long as the Port or the third party controls physical possession of the improvements and is diligently pursuing issuance of a new Agreement or lease.

(1) At any time during the continuous term of this, or any successor, Agreement(s), the Port shall determine whether improvements placed on the Property during the term of any lease are to be removed, and no compensation shall be due to the State for any such removal. DNR shall make such determination as to then existing improvements on final expiration or termination of this Agreement. The Port or the third party owner shall bear all costs of removal and of returning the parcel to the condition existing prior to placement of the improvements.

(2) Title to Improvements.

(a) Title to Port-constructed improvements shall remain with the Port so long as the parcel upon which they are located is continuously subject to a management agreement or lease with the State. Thereafter, title shall pass to the State.

(b) Title to third party-constructed improvements shall remain with the third party so long as the parcel upon which they are located is subject to a continuous lease. Thereafter, title shall pass to the State; provided, the Port may purchase the improvements from the third party for value; and further provided, the Port shall give notice to DNR if said improvements are being purchased from a bankruptcy trustee.

16. Easements.

a. Easements Granted by DNR.

(1) DNR may grant permanent easements across any portion of the Property. For purposes of this Agreement, outfalls of any type and sediment impact zones are considered permanent easements. DNR shall obtain the Port's written approval prior to making such grants, which approval shall not be unreasonably withheld. The Port has forty-five (45) days following receipt of the request to respond in writing either approving or rejecting the request. If the Port fails to respond within the forty-five (45) day period, the State shall have the right to appeal to the Port Commission for a decision. If the Port fails to submit a written response within ten (10) business days (excluding weekends and state holidays) of receipt of appeal, the request shall be deemed approved.

(2) 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 or delayed.

(3) If DNR grants any easements, DNR shall require the grantee to indemnify the Port to the same extent that the grantee indemnifies the State.

b. Easements Granted by Port. The Port may grant non-permanent easements without DNR approval so long as the term of each grant does not exceed the maximum term allowed by statute for leases of the burdened portion of the Property. Under no condition shall the term of any non-permanent easement exceed the Term of this Agreement unless approved by DNR.

17. Local Improvement Districts. Pursuant to RCW 79.44.040, the Commissioner of Public Lands (Commissioner) 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 Commissioner shall not withhold consent if the Port agrees to pay any assessment against the Property by such LID, regardless of when levied. The Port shall be responsible, during the term of this Agreement, for installments due on pre-existing LID assessments.

18. 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 Agreement.

19. Entry. Upon reasonable notice DNR shall have right of entry to the Property at reasonable times for any lawful purposes. Such entry, however, will be subject to reasonable security and safety regulations and shall not unreasonably interfere with the use of the Property.

20. Audits. DNR may periodically review the management of the Property by the Port for consistency with the Agreement, all applicable laws, chapters 79.90 through 79.96 RCW, policies adopted by the Board of Natural Resources, and administrative code provisions. DNR will promptly notify the Port if it believes the Port is not complying.

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

21. Liens and Encumbrances. The Port shall keep the Property free from liens and other encumbrances (other than leases and other use authorizations authorized in Sections 2 Delegation, 16 Easements, and 17 Local Improvement Districts). Nothing in this Agreement shall be construed as authorizing the Port to obligate the State, 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.

22. Eminent Domain. If at any time during the term of the 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 of such taking shall be apportioned within such proceeding and each party shall take such amount, if any, as may be awarded to it.

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

24. Dispute Resolution.

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

b. Dispute Resolution.

(1) If either party declares the existence of a dispute concerning this Agreement, the declaring party shall so notify the other party and shall provide a written statement of the facts, its interpretation of the Agreement, and its position concerning such dispute. Within fifteen (15) days the other party shall provide to the declaring party a written statement addressing those same three elements. Within fifteen (15) days after the declaring party has received the other party's written statement, the parties shall meet and try to resolve the dispute.

(2) If the parties fail to resolve the dispute as provided in Subsection 24(1) above, then either party may request further review within fifteen (15) days by giving notice to the other party. Thereafter, the Supervisor of the Department of Natural Resources and the Port's Chief Administrative Officer (in the event the Port has no Chief Administrative Officer, then such person shall be designated by the Port Commission) shall meet within thirty (30) days of the request and try to resolve the dispute.

(3) In the event the dispute is not resolved within sixty (60) days after their first meeting as provided by Subsection 24(2) above, either party may request a meeting between the Commissioner of Public Lands and a member of the Port Commission empowered to represent the Port. Within sixty (60) days after such request, said two individuals shall meet and attempt to resolve such dispute. In the event they are unable to resolve the dispute within said sixty (60) day period, either party may petition the Superior Court for resolution of the dispute.

(4) During dispute resolution arising under Section 1(b)(2), the parties agree to extend the existing Agreement, as provided for in Section 1(b)(2).

25. Termination for Default. DNR may cancel this Agreement or remove any portion of the Property therefrom for any failure by the Port to perform its obligations under this Agreement on six (6) months written notice to the Port, unless, within that time, the Port cures such default. DNR's decision whether to cancel the 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 (6) months, the Port shall 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 resolution as provided in Section 24, Dispute Resolution. 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 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 Section 24, Dispute Resolution, herein.

26. Notices. All notices required by law or this Agreement shall be in writing and may be personally served or sent by first class mail. If such notice is served personally, service shall be conclusively deemed made at the time of service. If service is by first class 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
Aquatic Resources Division
Ports Program
1111 Washington Street SE
PO Box 47027
Olympia, WA 98504-7027

PORT: PORT OF _____

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

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

29. Severability. If any provision of this Agreement or its application to any person, or circumstance is held invalid, the remainder of the Agreement or the application of the provision to other persons or circumstances is not affected.

30. Amendments/Supplemental Provisions.

a. If, during the term of this Agreement, the Board of Natural Resources approves amendments to the Model Port Management Agreement pursuant to RCW 79.90.475, DNR shall give notice of that fact to the Port. Either party may request that this Agreement be amended to conform to the newly approved Model Port Management Agreement.

b. If unique conditions relating to management of the Property arise during the term of this Agreement, either party may request that a supplemental provision be added to this Agreement to accommodate those unique conditions. Such supplemental provisions shall not address issues of general port industry interest or interest to any other Washington port district, as determined by the Washington Public Ports Association (WPPA), or its successor organization. WPPA shall be given sixty (60) days to review the terms of any supplemental provision. WPPA shall give notice to DNR if WPPA determines the proposed terms are of general port district interest or of interest to any other Washington port district.

c. Acceptance of a subsequent Model Port Management Agreement or inclusion herein of a supplemental provision must be by mutual agreement of the parties.

31. Survival. All obligations of the parties to be performed under the terms and conditions of this Agreement, including but not limited to, obligations occurring after the termination of this Agreement or removal of any portion of the Property from this Agreement shall not cease upon termination or removal, and shall continue as obligations until fully performed.

32. Entire Agreement. This is the entire agreement between the parties. There are no other agreements, either oral or written, that have not been incorporated into this Agreement. No amendments to this Agreement shall be binding unless the amendment is in writing and signed by the parties.

Signed this _____ day of _____, 20_____.

STATE:

STATE OF WASHINGTON
DEPARTMENT OF NATURAL
RESOURCES

DOUG SUTHERLAND
Commissioner of Public Lands

Signed this _____ day of _____, 19_____.

PORT:
PORT OF _____

Commissioner

SAMPLE

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
County of Thurston)

I certify that I know or have satisfactory evidence that DOUG SUTHERLAND is the person who appeared before me, and is the Commissioner of public lands of the STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES. I further certify that said person acknowledged the foregoing to be the free and voluntary act of the STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES for the uses and purposes mentioned in the instrument, and on oath stated that he is duly authorized to execute and acknowledge said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

DATED: [_____]

SEAL

[_____]

(Type/Print Name)

Notary Public in and for the State of Washington
residing at _____
My Commission Expires _____

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
County of Thurston)

I certify that I know or have satisfactory evidence that DOUG SUTHERLAND is the person who appeared before me, and is the Commissioner of public lands of the STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES. I further certify that said person acknowledged the foregoing to be the free and voluntary act of the STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES for the uses and purposes mentioned in the instrument, and on oath stated that he is duly authorized to execute and acknowledge said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

DATED: [_____]

SEAL

[_____]

(Type/Print Name)

Notary Public in and for the State of Washington
residing at _____
My Commission Expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF (_____)

I certify that I know or have satisfactory evidence that [_____] is the person who appeared before me, and is the Port Commissioner of [_____] ("Port"). I further certify that said person acknowledged the foregoing instrument to be the free and voluntary act of the Port for the uses and purposes mentioned in the instrument, and on oath state that [he/she] is duly authorized to execute and acknowledge said instrument.

DATED: [_____]

SEAL

[_____]

(Type/Print Name)

Notary Public in and for the State of Washington

Residing at

My Commission Expires

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