



**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
HILARY S. FRANZ, Commissioner of Public Lands**

**SECOND AMENDMENT TO PORT MANAGEMENT AGREEMENT
Terminal 103**

Agreement No. 22-080031

This Agreement to amend (“the Amendment”) to Port Management Agreement No. 22-080031 (“the PMA”) is made between the PORT OF SEATTLE (the “Port”), a Government Agency, whose address is 2711 Alaskan Way, Seattle, Washington 98121, and the STATE OF WASHINGTON (“State”), acting through the Department of Natural Resources (the “DNR”), whose address is 1111 Washington Street SE, Olympia, Washington 98504-7027.

BACKGROUND

- A. DNR and the Port entered into the PMA on November 1, 1997 and amended the PMA effective August 24, 2009 (First Amendment).
- B. RCW 79.105.420 provides that a port may request a parcel of state-owned aquatic land be added to the PMA if the land is abutting and used in conjunction with land controlled by the Port.
- C. On June 30, 1997, the Port acquired uplands known as Terminal 103 located at 3838 West Marginal Way S.W. in Seattle (Terminal 103), and has exercised control over Terminal 103 since that date. Based on the Port’s control of Terminal 103, the State has determined that certain state-owned aquatic lands more particularly described in Exhibit 1, which abut Terminal 103 (“the Property”), meet criteria for inclusion in the PMA.
- D. A wharf structure is attached to Terminal 103 and extends across the inner harbor line onto the Property in the State Harbor Area. The Property has been used in conjunction with the upland operations without authorization since at least 1991.

The Port does not hold title to the portion of the wharf structure located on the Property and it has not been authorized by DNR.

- E To facilitate inclusion of the Property in the PMA, the Port is agreeing to be responsible for maintenance and removal of improvements including the wharf structure on the Property.
- F. The Port has requested that the Property be added to the PMA.
- G. The Port has commissioned a survey of the Property. The legal description for the Property is provided in the record of survey recorded with King County under Auditor's File Number _____, a copy of which is attached hereto as Exhibit 1.
- H. DNR believes that it is in the best interests of the State of Washington to grant the Port's request to add the Property to the PMA.

IT IS THEREFORE AGREED that the PMA is hereby amended as follows:

SECTION 1 PMA AMENDMENTS

Exhibit A to the PMA, which provides the legal descriptions for the state-owned aquatic lands under Port management pursuant to the PMA, is hereby amended to include the Property. The legal description for the Property is contained in the record of survey of the Property recorded in King County under Auditor's File Number _____ which is fully incorporated herein. A copy of the record of survey for the Property is attached to this Amendment as Exhibit 1.

SECTION 2 NO RELEASE

This Amendment does not alter or affect whatever Liability or responsibility either party may have for Hazardous Substance releases, or threatened releases, that occurred prior to the date of this Amendment under the Comprehensive Environmental Response, Compensation, and Liability Act, the Model Toxics Control Act, or other laws that create cleanup obligations. The Port acknowledges that to the extent allowed by law it has the obligation 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 to be added to the PMA by the Port or anyone acting under authority of the Port from the PMA Application Date through the end of the Term of the PMA in accordance with Section 8(d) of the PMA and that nothing in this Amendment affects the Port's obligation.

SECTION 3 PMA EXHIBITS

In the First Amendment to the PMA, the Port agreed to submit to DNR for approval a complete revised Exhibit A to the PMA including all amendments no later than [INSERT DATE]. This

Amendment, which is the second PMA amendment, extends the date of that commitment until [INSERT DATE]. To comply with the requirements of this Section 3, the Port must submit records of survey for all parcels of state-owned aquatic land managed under the PMA. The records of survey submitted by the Port must contain a legal description for each parcel and comply with state standards, including, but not limited to, the standards and guidelines set forth in RCW 58.09 and WAC 332-130. The Port must also submit to DNR for approval a complete Exhibit B to the PMA identifying current and planned improvements and state-owned improvements, and Exhibit C identifying ownership of all fill material for all parcels in the PMA, by [INSERT DATE].

Exhibit 2 to this Amendment contains a preliminary Exhibit A to the PMA, which provides the preliminary common description, legal description, planned use, and map identifying each parcel of property managed by the Port under the PMA. Exhibit 3 to this Amendment contains a preliminary Exhibit B to the PMA, which provides a preliminary identification of all state-owned improvements on the Property managed by the Port under the PMA. State accepts Exhibit 1 and Exhibit 2 as preliminary Exhibit A and Exhibit B to the PMA, respectively. The Port will provide DNR final Exhibits A, B, and C for the PMA no later than [INSERT DATE]. Upon approval by DNR, the final Exhibits A and B of the PMA shall supersede the preliminary exhibits provided herewith in their entirety.

SECTION 4 REPORTING

The Port acknowledges that it continues to have an ongoing obligation to report to the State through DNR any of the following:

- a) Changes in Port ownership of uplands abutting PMA parcels.
- b) Changes in planned or actual uses of PMA property.
- c) Documentation of water-dependent / nonwater-dependent use areas and classifications.
- d) Development of Improvements.
- e) Development of authorized Fills, Confined Aquatic Disposal Sites, or Mitigation Sites.
- f) Creation of an easement through PMA Property.

SECTION 5 WARRANTIES

The Port represents and warrants to DNR that (1) the PMA is in full force and effect; (2) the Port is not in default or breach of the PMA; (3) the Port has no knowledge of any claims, offsets, or defenses of the Port under the PMA; and (4) to the best of the Port's knowledge, the property managed under the PMA is in full compliance with all applicable federal, state, and local governmental permits, rules, ordinances, and laws.

SECTION 6 CONFIRMATION OF PMA

All other terms and conditions of Port Management Agreement No. 22-080031 not inconsistent with this Amendment are hereby affirmed and ratified.

SECTION 7 REMOVAL OF IMPROVEMENTS

The Port must remove all improvements including but not limited to the wharf structure identified in Paragraph D on the Property before returning management of the Property to DNR unless DNR agrees in writing to allow the improvements to remain. Removal of improvements will be completed on or before the earlier of (a) the expiration or termination date of the PMA, including any extension or renewal thereof or (b) the date the Port no longer has operating management, lease, or ownership of Terminal 103 for purposes of managing the Property pursuant to RCW 79.05.420. Port shall provide notice to DNR of Port's intent to transfer any interest of the Port in the operating management, lease, or ownership of Terminal 103 no less than 90 days before the date set for such transfer. The PMA Section 2 Delegation requires the State to assume a lease entered into by the Port with third parties during the period of Port management under the PMA. If the Property is no longer managed under the PMA but is subject to a lease between the Port and a third party, the Port shall enter into a Lease with the State for management of the Property for the balance of the term of the Port's Third-Party lease. Unless otherwise agreed in writing, the Port will remove all structures on the Property at the end of any such lease with DNR.

SECTION 8 SETTLEMENT OF CLAIM FOR RENT

Without admitting any liability or responsibility to pay rent, the Port agrees to pay the sum of Ten Thousand Dollars (\$10,000.00) to DNR in full and final satisfaction of DNR's claim for rent against the Port or any Port tenants arising out of the use of the Property since the Port purchased the abutting property on June 30, 1997, and before the date of this Amendment. The Port must make the payment due under this Section 9 no later than [INSERT DATE]. Acceptance of the payment required under this section by DNR shall not constitute a release or waiver of any claim related to the use or occupancy of the Property other than DNR's claim for payment of rent for the period before the date of this Amendment.

SECTION 9 THIRD PARTIES

This Amendment is intended solely for the benefit of DNR and the Port and does not benefit, or create rights for, third parties, including, but not limited to, General Construction Company. This Amendment affects no right, claim, immunity, or defense DNR or the Port may have against third parties, including, but not limited to General Construction Company, and the Parties expressly reserve all such rights, claims, immunities, and defenses.

THIS AMENDMENT requires the signature of all parties and is effective as of the date of the last signature below.

PORT OF SEATTLE

Executed this ____ day of _____, 20 ____.

Stephen Metruck
Executive Director
2711 Alaskan Way
Seattle, WA 98121
206-728-3000

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Executed this ____ day of _____, 20 ____.

Hilary S. Franz
Commissioner of Public Lands
1111 Washington Street SE
Olympia, WA 98504
360-902-1000

