

A RESOLUTION superseding Resolution No. 2021-08-PT and all prior Resolutions adopting Master Policy directives, except as provided herein.

WHEREAS, pursuant to provisions of RCW 53.12.270, the Port Commission is authorized to delegate to the managing official of a port district such administrative powers and duties as it may deem proper for the efficient and proper management of port district operations; and

WHEREAS, the Port Commission delegates authority to the Executive Director via a Master Policy Directive; and

WHEREAS, the Port Commission adopts this Resolution delegating authority to the Executive Director, establishing associated guidelines, and repealing all prior resolutions dealing with the same subject matter, except as specifically provided herein.

NOW, THEREFORE, BE IT RESOLVED BY THE PORT OF TACOMA COMMISSION:

That the Master Policy Directive attached as **Exhibit "A"** and by this reference incorporated herein, is adopted for the purpose of establishing the administrative authority of the Executive Director.

That inasmuch as state law requires that this authority be renewed or reviewed from time to time, the Port Commission is authorized to accomplish the same by motion; provided, however, in the event this authority is amended in any fashion or repealed, such amendment or repeal must be by resolution or motion passed by the Port Commission.

That the Executive Director shall bring the Master Policy Directive forward to the Port Commission annually for the purpose of renewing the delegated authority contained herein, or to allow any Commissioner to then request that reconsideration of the Master Policy Directive be placed on the agenda of the next regular meeting.

That upon adoption this Resolution supersedes Resolution 2021-08-PT; provided, however, any actions approved under Resolution 2021-08-PT or prior Resolutions adopting Master Policy Directives remain in effect.

ADOPTED by a majority of the members of the Port of Tacoma Commission at a regular meeting held on the **21st day of April 2022**, a majority of the members being present and voting on this Resolution and signed by the Commission Officers in authentication of its passage this 21st day of April, 2022.

PORT OF TACOMA COMMISSION

Donald Meyer, President

Deanna M. Keller, Vice-President

Kristin Ang, Secretary

John McCarthy, 1st Assistant Secretary

Richard Marzano, 2nd Assistant Secretary

MASTER POLICY DIRECTIVE CONTENTS

CONTENTS	1
I. OVERVIEW OF THE ADMINISTRATIVE AUTHORITY TO THE EXECUTIVE DIRECTOR	1
A. Roles and Responsibilities of the Executive Director	1
B. General Provisions	2
C. Planning and Budget Implementation	2
II. DEFINITIONS	3
A. Advance Mitigation Site	3
B. Alliance	3
C. Annual Capital Investment Plan	3
D. Approval	3
E. Authorization	3
F. Executive Director	3
G. Claim	4
H. Emergency	4
I. Filed with Commission	4
J. Goods and Services	4
K. Unit Priced Contract	4
L. Interlocal Agreement	4
M. Management Services Agreement	4
N. Material Scope Change	4
O. Mitigation Bank	4
P. Mitigation Bank Credit	5
Q. Municipal Research and Services Center (MRSC)	5
R. Normal Operating Expense	5
S. Normal Port Operations	5
T. Ongoing Environmental Activities	5
U. Operating Agreements	5
V. Personal Services	5
W. Project	6
X. Professional Services	6

Exhibit A

Y. Public Work	6
Z. Service Agreements	6
AA. Vessel Service Agreement	6
III. POLICY GOVERNING PORT REAL PROPERTY	6
A. General Provisions for Port Real Property Agreements	7
B. Rental/Leasing Agreements of Port Property (Port as Lessor)	7
C. Agreements for the Port Use of Real Property Owned by Others (Port as Lessee)	8
D. Port Grants of Covenants and Easements	8
E. Easements for the Port Use of the Property of Others	8
F. Acquisitions of Real Property	9
G. Sale of Real Property	9
H. Payment of Real Estate Commissions	9
IV. POLICIES GOVERNING AUTHORIZATION FOR CONTRACTING, PROJECTS, PROCUREMENT & EMERGENCIES.....	10
A. Interlocal & Non-Binding Agreements	10
B. Projects	10
C. Project and Contract Reporting	12
D. Professional Services Contracts	12
E. Personal Services Contract	13
F. Purchased Goods and Services	14
G. Declaration of Emergency	15
V. POLICIES GOVERNING FINANCIAL ACTIVITIES	15
A. Management of Port Funds	15
B. Port Expenditures for Travel, Hosting and Memberships	16
C. Managing Uncollectible Accounts	16
D. Acceptance of Grant Funding	17
E. Insurance Programs	17
F. Surplus or Sale of Personal Property	17
G. Annual Budgeting Activities	18
H. Payment of Statutory Expenditures	18
VI. POLICIES GOVERNING LEGAL ACTIVITIES	18
A. Retaining Independent Counsel/Experts/Investigators	19

B.	Settlement of Claims	19
C.	Settlement of Litigation	19
D.	State and Federal Environmental Remediation Agreements	20
E.	Policies and Procedures	21
F.	Non-Discrimination and Equal Opportunity	21
VII.	POLICIES GOVERNING THE USE AND SALE OF MITIGATION CREDITS.....	21
A.	Scope.....	21
B.	Use of Mitigation Credits.....	21
C.	Sale of Mitigation Bank Credits.....	22
D.	Use of Advance Mitigation Site Credits.....	22

Exhibit A

I. OVERVIEW OF THE ADMINISTRATIVE AUTHORITY TO THE EXECUTIVE DIRECTOR

The following policy is adopted by the Commission of the Port of Tacoma for the purpose of establishing the administrative authority of the Executive Director, who is responsible for Normal Port Operations, as defined herein. The statutory provision for the delegated authority in this Master Policy Directive is [RCW 53.12.270](#) and this Master Policy Directive is expressly subject to provisions governing port district operations. The phrase “Normal Port Operations,” as used herein, means the regular day- to-day business transactions involving personnel, materials, facilities, real and personal property, money, and other assets. Unless specifically noted, delegated authorization amounts are exclusive of applicable local, state, and federal taxes.

A. Roles and Responsibilities of the Executive Director

- (1) The Executive Director derives authority from the Port Commission acting as the governing body and is responsible for carrying out Port Commission policies. The Commission delegations to the Executive Director are given with the assurance that authorization of expenditures will be managed within the authorized operating budget.
- (2) Serves as the primary spokesperson for management.
- (3) Retains professional staff, and delegates to appropriate staff such administrative authority or reporting requirement as is necessary and advisable for the efficient exercise of such authority.
- (4) Interacts with and supports the Alliance as necessary to enhance operations for both entities.
- (5) The Executive Director will promulgate policies and procedures that create administrative, monetary, and contractual delegations and other documents as may be appropriate to include Commission Agenda action item Memos identifying financial, economic, and environmental impacts.
- (6) Subject to the limitations identified in this Master Policy Directive, the Executive Director shall be responsible for:
 - (a) *Operation, maintenance, administration, and use of the Port’s facilities, and other properties not licensed to the Alliance;*
 - (b) *Development of industrial districts;*
 - (c) *Implementation of construction work, alterations and improvements to the Port’s terminals, facilities, and other properties not licensed to the Alliance;*
 - (d) *Administration of day-to-day “Normal Port Operations,” which include personnel, financial and accounting, legal and all other administrative matters that are excluded from the Management Services agreement with the Alliance;*
 - (e) *Execution of contracts and other documents related to Normal Port Operations, not licensed to the Alliance, that are related to or pursuant to a project or matter approved by the Commission, or otherwise authorized in this Master Policy Directive;*

Exhibit A

- (f) *Applications for permits associated with Port facilities or projects not licensed to the Alliance;*
- (g) *Applications for and acceptance of grants or other funds from federal, state, and local governments, consistent with actions described in this Master Policy Directive;*
- (h) *Delivery of services essential to the Port's mission; financial and accounting related matters; legal matters; and all other administrative matters;*
- (i) *Responsible fiscal management, financial accountability, and budgeting;*
- (j) *Developing strategies to ensure Port is successful and competitive in meeting customer and community expectations; and*
- (k) *In his/her/their absence, the Executive Director has the authority to assign a delegate with his full delegation.*

B. General Provisions

- (1) Regardless of the provisions and delegations contained in this Master Policy Directive, the Executive Director shall bring forward to the Commission for consultation or approval any action of a sensitive nature as identified by the Commissioners or the Executive Director.
- (2) The Executive Director shall provide financial, economic, and environmental analysis for real estate transactions and planned investments to Port-managed properties.
- (3) This Delegation of Authority Master Policy shall be reviewed annually by the Commission.

C. Planning and Budget Implementation

- (1) **Long-Range Business Plans** - The Commission-approved Strategic Plan shall be the basis for the development of all Port programs, Projects, initiatives, the Capital Investment Plan, and Annual Operating Budgets, and further is used to prioritize Port spending, and which shall be coordinated with the Alliance's Capital Investment Plans and Strategic Business Plans. The Commission-approved Strategic Plan shall be reviewed not less than annually by the Commission to include prioritization of Port programs, Projects, initiatives, and capital spending.
- (2) **Administering Normal Port (Day-to-Day) Operations** - In administering day-to-day Port operations, the Executive Director may reallocate amounts within and otherwise incur variances from the annually approved Operating Budget so long as such reallocations are consistent with the Commission's established policies, financial limits, and delegated authorities.
- (3) **Funding of Projects** - When seeking the Commission's authorization for any Project, the Executive Director shall clearly indicate whether such Project was within the Capital Investment Plans and/or the Commission's approved Strategic Plan and, if not, how it is to be funded, and why the proposed Project has reached a higher priority over other approved Projects.

Exhibit A

II. DEFINITIONS

A. Advance Mitigation Site

An Advance Mitigation Site is a wetland mitigation site established pursuant to Washington State Department of Ecology guidelines prior to a permitted wetland impact occurring, which is designed to compensate for future expected impacts. An Advance Mitigation Site generates value (in the form of credits) over time until it reaches its maximum potential. Credits from advance mitigation can only be used by the permittee that developed the advance site unless it is certified as a Mitigation Bank. The Port of Tacoma currently has two advance mitigation sites: Place of Circling Waters and Lower Wapato Creek Habitat Project.

B. Alliance

Refers to the Port Development Authority (The Northwest Seaport Alliance) created pursuant to RCW 53.57 by the Ports of Tacoma and Seattle to manage and operate marine cargo operations under Interlocal Agreement dated August 4, 2015, with delegated powers pursuant to the port joint powers statute (RCW 53.08.240).

C. Annual Capital Investment Plan

Means the five-year projection of capital and major expense projects and associated expenditures which is developed and maintained as a planning tool for Port capital investment, which sets the priority for Port funding, and which is reviewed by the Commission annually as part of the five-year Plan of Finance and budget review process, or as subsequently amended by the Commission during the budget year. Capital project funding should be prioritized to address non-discretionary projects first. "Non-discretionary" for purposes of this Section includes but is not limited to environment projects carried out pursuant to regulatory or other binding commitment, and maintenance projects needed to maintain the operational capacity of the Port and/or which are carried out pursuant to lease obligations or other binding commitment. In recommendations to the Commission, Staff should identify which proposed capital projects are non-discretionary.

D. Approval

A recommendation to move work forward for analysis and development of data and documents to support potential authorization. Approval does not denote authority to expend funds (see "Authorization" below).

E. Authorization

Authorizes spending, entering agreements, administrative actions, and real estate actions, and other items as outlined in this Master Policy Directive. Authorization is given by the Commission to the Executive Director pursuant to this Master Policy Directive. Authorization implies an action item in public session if the required level is beyond the Executive Director delegation level pursuant to this Master Policy Directive.

F. Executive Director

The person hired by the Port of Tacoma Commission to manage and oversee day-to-day operations of the Port of Tacoma not licensed to the Alliance.

Exhibit A

G. Claim

“Claim” means the assertion of any position, right or responsibility by or against the Port, excluding “uncollectible accounts” and any claims asserted by or against the Port that have or may reasonably become the subject of litigation.

H. Emergency

Unforeseen circumstances beyond the control of the Port that either present a real, immediate threat to the proper performance of essential functions; or may result in a material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. (See RCWs 39.04.020, 39.04.280 and 53.19.010(04)). Emergencies allow for the waiver of state procurement requirements.

I. Filed with Commission

Delivery to the Executive Assistant to the Commission for distribution to each Commissioner.

J. 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), maintenance, security, and other miscellaneous services.

K. Unit Priced Contract

A competitively bid contract in which public works are anticipated on a recurring basis to meet the business or operational needs of a port district, under which the contractor agrees to a fixed period indefinite quantity delivery of work, at a defined unit price, for each category of work.

L. Interlocal Agreement

A binding agreement between the Port and other local governmental agencies pursuant to RCW 39.34 that allows for the provision of services or facilities between those agencies.

M. Management Services Agreement

An Interlocal Agreement between the Port of Tacoma and the Alliance for the Alliance to provide leadership personnel that will directly manage day-to-day work of Port of Tacoma staff who provide support to the Alliance.

N. Material Scope Change

Work that was not previously included in the project authorization and substantially changes the intent of the project.

O. Mitigation Bank

A Mitigation Bank can be a “wetland mitigation bank” and/or a “conservation mitigation bank”. A “wetland mitigation bank” is a site established pursuant to Washington State Department of Ecology guidelines where wetlands are restored, created, enhanced, or preserved for the express purpose of providing compensatory mitigation in advance of unavoidable impacts to wetlands or other aquatic resources. A “conservation mitigation

Exhibit A

bank” is a site established pursuant to federal agency guidelines that permanently protects lands that contain natural resource values for species that are endangered, threatened, candidates for listing as endangered or threatened, or are otherwise species-at-risk under the federal Endangered Species Act. The Port currently has one Mitigation Bank, the Upper Clear Creek Mitigation Bank, which is certified as both a wetland mitigation bank and a fish conservation mitigation bank.

P. Mitigation Bank Credit

A unit of mitigation credit within a Mitigation Bank which is purchased or used to offset the unavoidable impacts of a development project. A mitigation credit is considered intangible personal property for legal and accounting purposes.

Q. Municipal Research and Services Center (MRSC)

The Municipal Research and Services Center (MRSC) is a nonprofit organization that serves all cities and towns in Washington, all counties, and hundreds of special purpose districts, state agencies, and other government partners. MRSC has operated as a private nonprofit since 1969 under the auspices of RCW 43.110.030. Firms can register their businesses by following the instructions at <https://mrscrosters.org/businesses/registrationinstructions>.

R. Normal Operating Expense

Means the Port budgeted operations and non-operating revenues and expenses reviewed, approved, and authorized by the Commission as part of the budget process, or as subsequently amended by the Commission during the budget year.

S. Normal Port Operations

Administration of day-to-day Port operations and the regular day-to-day business transactions involving personnel, materials, facilities, real and personal property, money, and other assets.

T. Ongoing Environmental Activities

Means groundwater monitoring; supplemental compliance or repair; cleanup action plan (CAP) inspections; habitat and vegetation monitoring and replacement; trash and invasive species removal; site inspections and report writing required by post construction permit conditions, agreed orders, consent decrees, the Municipal Stormwater Permit (MS4), or similar permits and/or regulatory requirements.

U. Operating Agreements

An agreement between the Port and a third party to provide operating services as part of a Port business activity.

V. Personal Services

Personal services are generally professional or technical expertise that are necessary to accomplish a specific study, project, task, or other work statement, which may not reasonably be required in connection with a public works project meeting the definition of RCW 39.04.010(4). Personal services do not include purchased services as defined in

Exhibit A

RCW 53.19.010(8) or professional services procured using the competitive selection requirements in Chapter 39.80 RCW (A&E).

W. Project

For the purposes of this Master Policy, a “Project” creates or modifies a capital asset or creates a cost outside of Normal Port Operating Expenses. A Project may be classified as a capital or expense.

- (1) Public Works Projects – As defined in RCW 39.04.010, public work projects include construction, alteration, repair, or improvement other than ordinary maintenance executed at the cost of the Port. Work associated with public work projects includes planning, scoping, engineering, design, permitting, environmental assessment, construction and contract solicitation and administration.
- (2) Non-Public Works Projects – Generally includes defined work that the ED has determined will be managed as a Project. Projects do not, however, include regular, recurring, or routine work associated with normal Port operations. This category also includes projects by the Information Technology department that may require a major upgrade or replacement of an information or communication hardware or software system.
- (3) Environmental Projects – Include pollution investigations, cleanups, and habitat restoration. Environmental projects may also involve regulatory direction, oversight, and agreements, extended periods of investigation and study prior to construction, and continuing monitoring and maintenance after clean-up and construction.

X. Professional Services

Those services within scope of RCW 39.80.020(5) or professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement which is reasonably required in connection with public work projects.

Y. Public Work

Construction, alteration, repair, and improvement other than ordinary maintenance meeting the definition of RCW 39.04.010.

Z. Service Agreements

An agreement, such as an Interlocal Agreement between the Port and the Alliance, that allows for the provision of services related to normal Port or Alliance operations or projects.

AA. Vessel Service Agreement

An agreement between the Port and vessel steamship lines or their subsidiaries.

III. POLICY GOVERNING PORT REAL PROPERTY

The Executive Director is authorized to take all necessary actions in connection with agreements or transactions for real property owned, used, and not licensed to the Alliance by the Port as designated herein. The Commission’s delegation of authority to the Executive Director will extend to all types of transactions and agreements including acquisitions, divestitures, rental agreements,

Exhibit A

leases, operating agreements, easements, franchises, permits, rights of entry and other user agreements as provided herein. Except where otherwise provided in this Master Policy Directive, all real property transactions will be subject to an appropriate written agreement executed by the Executive Director and authorized by the Port Commission.

A. General Provisions for Port Real Property Agreements

- (1) The final terms of the agreement will conform to the Port's Real Estate policies and procedures and be approved as to form by Port General Counsel.
- (2) The Executive Director is authorized to accept a bond, secure CD, or other rental security for real property agreements in compliance with RCW 53.08.085 and Port policy. Other rental security may be cash or cash equivalent such as Letter of Credit, Lease Bond, or other prior approved rental security instruments, in a form approved by Port General Counsel together with necessary certificates of insurance; provided, however, no security is required for real property agreements entered into with certain governmental entities as provided in RCW 53.08.140.
- (3) The Executive Director is authorized to take all necessary actions on behalf of the Port Commission and its officers in connection with lease surety bonds, lease surety, rental insurance, or other insurance coverage required pursuant to any leases of the Port.

B. Rental/Leasing Agreements of Port Property (Port as Lessor)

- (1) The Executive Director is authorized to enter into month-to-month real property rental/lease agreements when the associated expenditures of the Port do not exceed \$300,000. These agreements shall require a minimum-security deposit equal to three months' rental (plus leasehold tax amounts) to be posted in advance of the occupancy, and to be held by the Port as a rental security for the full duration of a month-to-month occupancy and to ensure compliance with the terms of the lease agreement. Adjustments or modifications which decrease the minimum required security rental deposit will require Commission authorization, provided, however that adjustments to the security deposit which result from periodic automatic adjustments/escalators to the Base Rent equating to less than \$200 shall be deferred until the security deposit adjustment equals or exceeds \$200.00.
- (2) The Executive Director is authorized to enter into real property rental/leasing agreements with a term not to exceed one year when the associated expenditures of the Port do not exceed \$300,000. Commission authorization is required for real property rental/leasing agreements with a term greater than one year. The intended use of leased real property must be expressly stated in writing. All leases requiring Commission authorization, except Fabulich Building office leases, shall be subject to a first and second reading prior to final authorization. The Commission reserves the right to waive first reading and proceed to adoption by a vote in public session.
- (3) Rental/lease rates shall be based upon market rates established for the specific use under consideration and the condition of such facility.
- (4) A public briefing of available properties will be provided to the Commission at least twice annually to include a summary of new leases, properties available, including

Exhibit A

how available properties are being marketed and those properties that have an expression of interest.

- (5) All real property rental/leasing agreements one year or greater shall require a minimum-security deposit equal to twelve months rent (plus leasehold tax amounts) to be posted in advance of occupancy and held by the Port as security for the full duration of the occupancy and to ensure compliance with all terms and conditions of the lease agreement and in accordance with RCW 53.08.085. Adjustments or modifications which decrease the minimum required security deposit will require Commission authorization; provided, however, that adjustments to the security deposit which result from periodic automatic adjustments/escalators to the Base Rent equating to less than \$200 shall be deferred until the security deposit adjustment equals or exceeds \$200.00.
- (6) Where the Commissioners have approved a real property rental/leasing agreement, which contains one or more extension period(s) to extend the lease term, the Executive Director is authorized to exercise that option when the associated expenditure of the Port does not exceed \$300,000 cumulatively.

C. Agreements for the Port Use of Real Property Owned by Others (Port as Lessee)

- (1) The Executive Director is authorized to enter into agreements for the use of real property owned by others if the term of the use is one year or less and the charge to the Port does not exceed \$300,000.

D. Port Grants of Covenants and Easements

- (1) The Executive Director is authorized to enter into agreements for easements, licenses, access permits, and other rights of entry up to two years in duration where the impairment does not substantially interfere with the Port's intended use or reasonable future intended use. "Substantially interfere" shall mean when Fair Market value is not reduced more than an estimated \$300,000 in any one year. The form of any easement, license, access permit, or other right of entry shall be approved by the Port General Legal Counsel.
- (2) Easements, licenses, access permits, other rights of entry and covenant agreements beyond two years shall require Commission authorization. Utility easements required for utility service, access, and/or maintenance on Port property shall not require Commission authorization and may be approved by the Executive Director.

E. Easements for the Port Use of the Property of Others

- (1) The Executive Director is authorized to enter into easements for the Port use of the real property owned by others for agreements up to one year provided that the cost to the Port does not exceed \$300,000 annually.
- (2) Real property easements, excluding utility easements, for Port use that are greater than one year require the authorization of the Commission.

Exhibit A

F. Acquisitions of Real Property

- (1) Prior to the Port Commission authorizing the acquisition of real property, the Executive Director will take all necessary steps, including when appropriate and necessary to establish a fair property valuation, the securing of appraisals, and the securing of fee title and such interest in the property as required for the benefit of the Port.
 - (a) Port staff shall be required to document and present all known and suspected environmental liabilities associated with the property in question to the Commission as part of the acquisition authorization.
- (2) Acquisition price of real properties shall in no case exceed the appraised value by ten percent (10%), nor shall the total price paid exceed the estimates provided to the Port Commission in securing its authorization without further specific Commission authorization.

G. Sale of Real Property

- (1) Any sale of real property which is part of the Port's Comprehensive Scheme of Harbor Improvements (CSHI) requires a public hearing and authorization by the Commission to first amend the Port's CSHI and to declare the property to be surplus. The Port's Comprehensive Scheme of Harbor Improvements shall be modified only after public notice and hearing pursuant to RCW 53.20.010 and RCW 53.08.090.
 - (a) *Any sale of real property that includes continued Port environmental liabilities/expenditures shall be documented and presented to the Commission as part of the authorization to surplus.*
 - (b) *Per RCW 53.25.140 for any property located within the boundaries of an Industrial Development District (IDD) the sale price must not be less than fair market value of the property which shall be determined by an average of at least two independent appraisals performed by licensed real estate brokers or professionally designated real estate appraiser as defined in RCW 74.46.020. The Port shall comply with all other applicable requirements of Chapter 53.25 RCW for the sale of properties located within the boundaries of a Port IDD.*

H. Payment of Real Estate Commissions

- (1) The Executive Director is authorized to retain licensed real estate brokers for the purpose of marketing for sale and/or lease Port properties.
- (2) Commissions may be paid to licensed real estate brokers that actually initiate bona fide transactions for the Port upon satisfactory proof being submitted to the Port Real Estate department that the broker actually initiated and completed the transaction for which they claim commission. In addition thereto, the broker shall file with the Port Real Estate department within ten days from broker's appointment as their client's agent for the purpose of aiding in the leasing of the Port property a statement under oath that the broker actually initiated the bona fide transaction together with the name of the broker's client and the date of their first contact with said client.

Exhibit A

Unless this provision is strictly complied with, the Port will not pay a claimed commission.

- (3) For properties the Port “exclusively lists” with brokers to sell or lease, a maximum commission of five percent (5%) of the total sale price or Net Rent to the Port for up to five (5) years of the approved lease agreement shall be paid. Commissions on sales will be paid via a one-time payment. For approved leases for properties not listed with a broker, which are initiated and completed by licensed brokers a maximum commission equal to three percent (3%) of Net Rent shall be paid. “Net Rent” shall mean rent net to the Port with Lessee paying taxes, utilities, maintenance, and insurance. Costs for Port paid tenant improvements, utilities, and other services specific to the lease will be subtracted from the Net Rent amount for calculations of commissions paid. The Executive Director shall disclose, as part of the Commission approval of the underlying lease, the amount of the commission should that be projected to be paid if over \$300,000. A summary of all Real Estate commissions will be reported semi-annually.
- (4) Commissions shall not be paid on leases involving existing tenants for new leases, expansions, new space rentals, renewals or options exercised or repayment to the Port for tenant improvements made by the Port on behalf of the Tenant, payments made to the Port from security deposits, or any escalation of the Net Rent.
- (5) Commissions shall be paid as the net rents are collected by the Port.

IV. POLICIES GOVERNING AUTHORIZATION FOR CONTRACTING, PROJECTS, PROCUREMENT & EMERGENCIES

The Executive Director is authorized to control and direct all necessary activities that require contracting and procurement of goods and services associated with carrying out Normal Operations of the Port not licensed to the NWSA. Contracting and Procurement activities for the Port will be in compliance with applicable laws and regulations and the policies and delegation of authority set forth in this Master Policy Directive. The Port shall endeavor to use a variety of firms (including small business firms) based on the nature of the work and the expertise of the firms.

A. Interlocal & Non-Binding Agreements

- (1) Commission authorization is required to approve Interlocal Agreements with other public agencies, including Service Agreements between the Port and the Alliance. Interlocal Agreements shall comply with the requirements of RCW 39.34.
- (2) The Executive Director is authorized to enter into agreements with other governmental agencies and non-governmental entities in situations where the agreement does not create a financial obligation or impair any Port owned assets and have been reviewed and approved in writing by Port legal counsel.

B. Projects

- (1) The Executive Director may authorize Projects where the estimated Project cost, inclusive of all costs related to the work, does not exceed \$300,000.
- (2) Commission authorization shall be required for Projects where the total estimated Project costs will exceed \$300,000 or when actual costs of a previously approved

Exhibit A

Project exceed \$300,000, including Projects previously authorized by the Executive Director.

- (a) *The Executive Director may authorize spending up to \$300,000 for Project work where the total estimated Project costs may exceed \$300,000.*
 - (b) *Port presentations which request Commission authorization will disclose Project spending previously authorized by the Executive Director and spending previously authorized by the Commission, if any. Depending on the overall estimated costs and complexity of the Project, the Executive Director may request Commission authorization at key stages of the project (i.e., design, execution of work, remediation).*
 - (c) *Projects shall not be broken into units or accomplished in phases to avoid Port Commission authorization.*
 - (d) *Where personal, professional, or purchased goods and services are part of a Project, authorization of expenditures will be managed as part of the project authorization.*
 - (e) *Public work contracts not part of a Project and not part of Normal Operating Expense follow the same authorization process as Projects.*
 - (f) *For Small Public Works projects up to \$300,000 in value, the Port may use the Municipal Research and Services Center (MRSC) Contractor Roster as authorized by RCW 39.04.155.*
- (3) Projects with an estimated cost that exceeds \$300,000 and have a change in the scope, schedule or budget require the following actions:
- (a) *Commission authorization will be required if a Material Scope Change occurs in the Project.*
 - (b) *The Commission will be notified if a Project schedule delay has an anticipated financial impact on a customer or other affected stakeholders.*
 - (c) *Commission notification and follow-up Commission authorization is required as soon as it is determined that the Project cannot be completed for the previously authorized amount and Project costs incurred will be limited to the minimum amount necessary to allow the Project to proceed until Commission approval is obtained for the additional amounts.*
 - (i) *In situations where the public works component of a remediation Project determines that additional contamination or an unforeseen condition is found which impacts the budget of a Project beyond the Project authorization, staff shall notify the Commission and continue with the required work.*
- (4) Authorization for Alternative Public Works Contracting Procedures. Commission authorization is required to perform public work under procedures alternative to design-bid-build, as defined in RCW 39.10, for design-build and general contractor/construction manager. For such contracts, staff will propose for Commission's approval a sequence of authorization steps.

Exhibit A

- (5) Unit contracts for Public Works and job order contracts (authorized in RCW 39.10) may be approved by the Executive Director and all work falling under the unit priced contract or job order contract is to be authorized pursuant to this Master Policy Directive as a Project.
- (6) The Executive Director may resolve all claims through the mediation phase of a dispute resolution arising from public works contracts up to an advance of \$300,000. Commission will be notified of potential settlements which may exceed the previously authorized Project amount and additional authorization will be requested in accordance with the requirements for Project changes contained herein. Port operations, maintenance, monitoring, and stewardship activities, where the costs of normal operating expenses, require only outside services to be authorized.
- (7) Ongoing Environmental Activities shall be authorized annually through the budget approval process.

C. Project and Contract Reporting

- (1) The Executive Director shall report semi-annually to the Commissioners all Projects authorized by the Commissioners. The report shall include project schedule, current estimate, authorized amount, cost to date, summary of any changes to scope, and any other significant developments with respect to the Project. Selected environmental Projects that have moved into long-term (5 years plus) monitoring (or maintenance) programs shall be exempt from Project reporting.
- (2) The Executive Director shall report quarterly to the Commissioners all Project and contract authorizations equal to or greater than \$50,000 authorized through the delegated authority contained in this Master Policy Directive. The report shall include the type of authorization, a brief description of the authorization, and the amount of the authorization. All new Professional and Personal Services Contracts as well as settlement of Claims, including litigation, regardless of the amount, will be reported quarterly.
- (3) At the Commissioners' direction, the Executive Director shall report on any Project of a sensitive or critical nature.

D. Professional Services Contracts

- (1) The Executive Director is authorized to approve Professional Services Contracts associated with Normal Port Operations with a cost for each contract not exceeding \$300,000, cumulative with amendments.
- (2) Unit priced contracts for professional services may be approved by the Executive Director and all work falling under the Unit priced contract is to be authorized pursuant to the applicable Master Policy Directive as a Project or contract subject to the limits set forth herein.
- (3) For Professional Services contracts up to \$200,000 in value, the Port may use the MRSC Consultant Roster as authorized by RCW 39.80.

Exhibit A

E. Personal Services Contract

- (1) The Executive Director is authorized to approve personal services contracts in the conduct of normal Port operations not licensed to the Alliance when the following conditions exist:
 - (a) *The cost of the proposed personal service contract shall not exceed the amount of \$300,000, cumulative with amendments.*
 - (b) *The specific contract or class of contract has been formally waived by resolution of the Commission from competitive solicitation process; or is exempt by RCW 53.19.020 or unrestricted by RCW 53.19.070.*
- (2) When an amendment to a contract, individually or cumulatively, which was approved by the Executive Director pursuant to Section IV.E.(1) hereinabove will exceed 50% of the original contract amount for the agreement and that amended cumulative amount remains less than \$300,000.00, the amendment must be filed with the Commission and made available for public inspection prior to the proposed starting date of services under the amendments. Substantial changes in contract scope or substantial additions to the scope specified in the formal solicitation documents shall be authorized by the Commission. The Commission shall determine whether the change warrants the work to be awarded as a new contract.
- (3) Any amendment to a Personal Services Contract must be approved by the Commission by a vote in public session and be made available for public inspection prior to the proposed starting date of services under the amendment if the Personal Services Contract:
 - (a) *was approved by the Executive Director pursuant to Section IV.E.(1) hereinabove, and the amendment(s) individually or cumulatively will exceed 50% of the contract amount and that amended cumulative amount exceeds \$300,000, or*
 - (b) *was previously approved by the Commission because the contract's initial amount exceeded \$300,000.*
- (4) All Personal Services Contracts will be entered into pursuant to competitive solicitation as required by law, except for the following; provided, however, this procurement modification does not change the requirements for any applicable Commission or ED approvals based on costs amounts as provided herein:
 - (a) *Emergency contracts in compliance with Section IV.E.(4).below.*
 - (b) *Sole source contracts; provided, however, that sole source service contracts, regardless of the amount, shall be filed with the Commission for three days and made available to the public prior to starting the work pursuant to RCW 53.19.040.*
 - (c) *Any other specific contract or classes as exempted by RCW 53.19.070 as it now exists or may be in the future amended, and which currently exempts the following:*
 - (i) *Contracts specifying a fee of less than fifty thousand dollars;*

Exhibit A

- (ii) *Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;*
- (iii) *Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof;*
- (iv) *Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants;*
- (v) *Contracts for services that are necessary to the conduct of collaborative research if prior approval is granted by the funding source;*
- (vi) *Contracts for professional services which are entered into under Chapter 39.80 RCW;*
- (vii) *Contracts for the employment of expert witnesses for the purposes of litigation or legal services to supplement the expertise of port staff;*
- (viii) *Other specific contracts or classes or groups of contracts exempted from the competitive solicitation process by the Commission when the Commission has determined that a competitive solicitation process is not appropriate or cost effective pursuant to RCW 53.19.020; and*
- (ix) *The Executive Director is authorized to approve competition waivers consistent with applicable federal and state laws and internal Port policies in accordance with RCW 39.04.280.*
- (x) *Notification of all such waivers shall be provided to the Commission prior to the proposed starting date of the contract or purchase and will include a written justification of the reason for the waiver.*

F. Purchased Goods and Services

- (1) The Executive Director has the responsibility for compliance with statutory procedures, where applicable, in connection with all contracts for the acquisition of utilities, materials, equipment and services. Following competitive bidding, if required, the Executive Director may authorize purchased goods and services where the following condition has been met:
 - (a) *The total contract or purchase order price does not exceed \$300,000 cumulatively.*
- (2) Contracting Authority for Entering Agreements with Utilities and Annual Software Fees and Licenses:
 - (a) *The Executive Director is authorized to enter into contracts with utility providers in order to establish connections, conduct repair or maintenance*

Exhibit A

and to purchase utility services as needed that are part of Normal Operating Expenses; and

- (b) *The Executive Director is authorized to enter into contracts with providers for annual software fees and licenses that are part of Normal Operating Expenses.*

G. Declaration of Emergency

- (1) The Executive Director is authorized to make a finding of the existence of an emergency, to authorize spending of Port resources and funds, to waive competitive bidding requirements and to execute any contracts necessary to respond to the emergency in accordance with RCW 39.04.020, 39.04.280, 53.19.010 and 53.19.030, and subject to the following:
 - (a) *The Commission shall be notified within 24 hours of the declaration of the emergency.*
 - (b) *If a public works or purchased goods or services contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency shall be filed with the Commission and made public on the Port's website no later than two weeks following the award of the contract.*
 - (c) *If a personal services contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency shall be filed with the Commission and made public on the Port's website within seven working days following the commencement of work or execution of the contract, whichever occurs first. Documented justification for emergency contracts shall be provided to the Commission when the contract is filed.*

V. POLICIES GOVERNING FINANCIAL ACTIVITIES

The Executive Director is authorized to oversee the financial matters for the Port of Tacoma in accordance with applicable laws and subject to the Commission delegations in this Section.

A. Management of Port Funds

- (1) The Port Treasurer, who must be appointed by the Commission pursuant to RCW 53.36.010, may designate one or more Deputy Treasurer(s) without Commission action. The Treasurer is accountable for all financial transactions executed by Deputy Treasurer(s).
- (2) The Port Treasurer and Deputy Treasurer(s) are authorized to oversee the investment of Port funds in accordance with applicable law relating to the type of investments authorized pursuant to RCW 39.59, RCW 43.84.080, and referenced RCWs within, including sale of such investments and necessary inter-fund transfers.
- (3) The Port Treasurer is authorized to oversee the management of the Port's cash reserves. Minimum cash reserve has been established as six months' direct operating expenses and any reserves required by agreements or associated with maintaining bond covenants.

Exhibit A

B. Port Expenditures for Travel, Hosting and Memberships

- (1) Travel Expenditures for Employees and Other Authorized Representatives of the Port.
 - (a) Pursuant to RCW 53.08.176, the Executive Director is authorized to establish Port policies and procedures to regulate and audit travel expense and reimbursement.
 - (b) The Executive Director is authorized to approve travel and other reimbursable expenses, excluding Commissioners, incurred on behalf of the Port.
 - (c) Commissioner international travel requires prior authorization by the full Commission.
 - (d) The Port's Auditor will be responsible for ensuring the full compliance with applicable statutes, regulations and Port policies and procedures governing expense reimbursement by employees, Port Commissioners, and representatives of the Port.
- (2) Expenditures for Trade Promotion and Promotional Hosting.
 - (a) The Executive Director will report proposed expenditures covering industrial development, trade promotion, and promotional hosting as provided in RCW 53.36.120 to Commission as part of the annual budget adoption. Expenditures proposed for promotional hosting shall be limited as provided in RCW 53.36.130.
 - (b) Port staff and representatives responsible for industrial development, promotional hosting, and trade promotion, and authorized to host under the Master Policy Directive, are authorized to make expenditures for promotional hosting of all appropriate Port activities subject to all of the provisions of the promotional hosting policy.
 - (c) Commission hosting requires prior authorization by the full Commission.
- (3) The Executive Director is authorized to approve membership in port authority, economic development, regional trade, tourism, industrial associations, facility, trade promotion organizations, and professional organizations up to \$10,000 pursuant to organization or individual membership. Memberships greater than \$10,000 shall be approved by the Commission as a Normal Operating Expense through the annual budget process. A list of all memberships of the Port will be reported semi-annually to the Commission.

C. Managing Uncollectible Accounts

- (1) The Executive Director is authorized to establish policies and procedures to write off any uncollectible accounts. The Port's aging account report and/or list of delinquent and uncollectible accounts shall be provided to the Commission quarterly.

Exhibit A

- (2) Prior to writing off any accounts receivable, the Executive Director shall be satisfied that every reasonable effort has been made by the Port to accomplish the collection of the account.
- (3) If appropriate, the Executive Director shall authorize the Port's General Counsel to bring action in courts of law or, if more appropriate in the case of small amounts, to assign the same to collection agencies for the purpose of attempting to finally collect such accounts.
- (4) If after attempting all normal account collection procedures the account is still uncollectible after 180 days or more, the Executive Director is delegated the authority to provide for the writing off of such account; provided, however, Commission approval is required if the amount of any one account to be written off exceeds \$50,000.00.
- (5) Any account in excess of \$50,000 which is deemed to be uncollectible shall be reported to the Port Commission.

D. Acceptance of Grant Funding

- (1) The Executive Director is authorized to apply for grant funds for the Port.
- (2) The Executive Director will provide notification to the Commission prior to submitting an application for any grants that may obligate the Port to a cash match greater than \$300,000 or if expected associated expenses exceed \$300,000.
- (3) The Executive Director is authorized to accept grants where the grant award obligates the Port to provide a cash match of no more than \$300,000.
- (4) In cases where the grant award obligates or has the potential to obligate the Port to provide a cash match greater than \$300,000, Commission authorization is required prior to grant acceptance, unless as noted in V.D.(5) below.
- (5) The Executive Director is authorized to accept and manage any grant funding that is secured for Projects that have previously been authorized by the Commission. In this case, if a grant is received, the Executive Director shall notify the Commission.

E. Insurance Programs

- (1) The Executive Director shall be authorized to work with the Port's designated insurance broker(s) to negotiate and obtain appropriate policies of insurance to manage the Port's property and casualty risks, provide employee benefits, and other coverage appropriately included within a comprehensive insurance program. All related contracts shall be authorized consistent with the delegations included in this Master Policy Directive.

F. Surplus or Sale of Personal Property

- (1) With the exception of Mitigation Bank Credits, the Executive Director is authorized, pursuant to RCW 53.08.090, to sell and convey surplus personal property of the Port subject to the following conditions:

Exhibit A

- (a) *When the net book value of such personal property does not exceed \$10,000.00, the Executive Director will itemize the property to be sold and will certify that such property is no longer needed for Port District purposes.*
- (b) *Commission authorization is required when the net book value of such personal property exceeds \$10,000.00. The Executive Director will itemize the property to be sold and will certify that such property is no longer needed for Port District purposes and seek Commission authorization.*
- (c) *Personal property will be disposed of in accordance with RCW 53.08.090.*
- (d) *No large block or lot of personal property having a net book value in excess of \$10,000.00 will be broken into components of lesser value. These items can be disposed of after Commission authorization is obtained.*
- (e) *The sale of surplus personal property to Port officials, employees, or their family members will be restricted to public auctions, or consignment for bid, where the process is managed by a third-party vendor and all interested parties have equal opportunity in the bidding process.*
- (f) *The Executive Director will report the results of surplus personal property sales to the Commission no less than once per year.*

G. Annual Budgeting Activities

- (1) The Executive Director will annually develop a budget for the Port.
 - (a) *Commission approval shall be required, pursuant to RCW 53.35 for the next year's statutory cash budget.*
 - (b) *With the adoption of the statutory cash budget, the Commission also approves expenditures for Ongoing Environmental Activities. The Commission shall review and confirm the five-year Plan of Finance and Capital Investment Plan in conjunction with the statutory cash approval.*

H. Payment of Statutory Expenditures

- (1) The Executive Director is authorized to approve statutory expenditures incurred during Normal Port Operations. Types of expenditures include, but are not limited to, election expenses, excise, payroll and leasehold taxes, and State Auditor's audit(s).

VI. POLICIES GOVERNING LEGAL ACTIVITIES

The Executive Director, together with Port General Counsel as appropriate, shall be responsible for the Port policies and procedures necessary to oversee all legal services and litigation, in which the Port has an interest, direct or indirect; provided, however, the Executive Director shall first seek Commission approval prior to the Port initiating litigation as a party plaintiff or petitioner in state or federal court. For purposes of this Section, "litigation" shall mean the assertion of any position, right or responsibility by or against the Port which may reasonably lead to or has been filed in any court of general jurisdiction, be it state or federal, or any quasi-judicial or administrative forum, including arbitration.

Exhibit A

A. Retaining Independent Counsel/Experts/Investigators

- (1) The Executive Director may engage legal representation for the Port and such experts, investigators and/or independent counsel as may be necessary to the orderly preparation of potential and/or actual litigation in which the Port has a direct or indirect interest, without the procurement limitations otherwise prescribed in Section IV.E. of this Master Policy Directive.
- (2) Consistent with Section IV.E.(1) herein, the Commission reserves to itself the authority to approve Personal Services Contracts for Legal Services where the contract amount exceeds \$300,000, initially or as a result of any amendment. Any such request for Legal Services should include the concurrence of the Port General Legal Counsel, who shall confirm to the Commission the basis for the request and provide such other information requested by the Commission, which consultation may be provided in Executive Session if consistent with state law, RCW 42.30.110(1)(i); provided, however, any Commission approval of that Contract shall take place by vote at a meeting open to the public.

B. Settlement of Claims

- (1) The Executive Director is delegated to oversee Port policies and procedures for adjusting the final settlement of all Claims either against or on behalf of the Port.
- (2) Any Claim arising from Normal Port Operations and not exceeding \$150,000 for a single Claim may be adjusted and settled by the Executive Director without prior review with the Commission. Claims arising from Public Works Contracts shall be settled pursuant to Section IV.B.(6); provided, however, any settlement that imposes upon the Port any affirmative duty (non-monetary obligation), injunctive relief, and/or which is memorialized by a federal Consent Decree or other regulatory enforceable Order shall require Commission approval.
- (3) The Port's General Legal Counsel shall be consulted prior to settlement of any Claim in excess of \$50,000 paid by the Port. Claims exceeding \$150,000 to be paid by the Port shall be approved by Commission; claims exceeding \$50,000 paid by the Port shall be reported to the Commission.
- (4) The Executive Director may approve settlements made by the Port's insurers of Claims by or against the Port, where such settlement is payable by such insurer.

C. Settlement of Litigation

- (1) The Executive Director and/or Port General Counsel is authorized to oversee any matter which is the subject of litigation, including engaging in settlement negotiations and/or reaching settlement, without prior Commission review under the following conditions:
 - (a) *The amount in controversy as stated in the pleadings or as reasonably estimated by Port General Legal Counsel does not exceed \$150,000; provided, however, any settlement that imposes upon the Port any affirmative duty (non-monetary obligation), injunctive relief, and or which is memorialized by a*

Exhibit A

federal Consent Decree or other regulatory enforceable Order shall require Commission approval; and

- (b) The Port's General Counsel concurs with the proposed settlement terms.*
- (2) Settlement of litigation matters by or against the Port greater than \$150,000 require Commission authorization.
 - (a) Regular Updates. At any stage of litigation where the potential claim by or against the Port is greater than \$300,000, the Commission shall receive regular and substantive updates on the status of any proposed settlement discussion and terms and no later than three business days prior to the date of any Commission Executive session briefing.*
 - (b) Timing. The Commission shall be informed of any proposed final litigation settlement terms no later than seven business days prior to the date Commission approval is sought.*
 - (c) Form of Request. The request for final litigation settlement approval shall be reduced to writing and include the concurrence of the Port Legal Counsel, who shall confirm to the Commission the basis for the request and provide such other information requested by the Commission. Consistent with state law, RCW 42.30.110(1)(i), Litigation settlement consultation between the Commission and Legal Counsel may be provided in Executive Session; provided, however, any Commission litigation settlement approval shall take place by vote at a meeting open to the public.*

D. State and Federal Environmental Remediation Agreements

- (1) State and Federal environmental remediation agreements (“Agreements”) can include: Consent decrees, agreed orders, administrative orders issued by Ecology, orders on consent and voluntary cleanup program agreements but typically do not include MTCA grant applications, potential liable party notices or other general governmental notifications or project management documentation. These Agreements may involve advanced work; examples include research, soil and groundwater sampling and legal review which will inform the scope of work and schedule in the Agreement.
- (2) The Executive Director may authorize new Agreements if the estimated project costs, excluding any grant or other recovery funding but including any advanced work to implement the terms of the agreement and past remediation expenditures, are less than \$300,000.
 - (a) An estimate or range of estimated costs for the overall future environmental remediation associated with the agreement and future anticipated Agreements will be reviewed at the time of the request for authorization.*
- (3) Commission authorization is required for Agreements where the estimated project costs to implement the terms of the Agreement, excluding any grant or other recovery funding but including any advanced work and past remediation expenditures, exceed \$300,000.

Exhibit A

- (a) *An estimate or range of estimated costs for the overall future environmental remediation associated with the Agreement and future anticipated Agreements will be reviewed at the time of the request for authorization.*
- (4) Project spending associated with Agreements shall be subject to the requirements set forth in Section IV.B.(2) pertaining to Projects.

E. Policies and Procedures

The Executive Director is authorized to adopt any administrative policies and procedures necessary to implement the delegations contained in this Master Policy Directive.

F. Non-Discrimination and Equal Opportunity

It is the basic policy of the Port to provide equal opportunity to the users of all Port services and facilities and all contracting entities. Specifically, the Port will not tolerate discrimination against persons on grounds of age, race, color, national origin/ancestry, ethnicity, religion, disability, use of protected sick or family medical leave, pregnancy, sex/gender, sexual orientation, whistleblower status, marital status, workers' compensation use, gender expression or identity, political beliefs, military or veteran status, or any other protected status, as guaranteed by local, state, and federal laws. The equal opportunity principles described in this policy shall apply to the Port's employees, customers, consultants, contractors, and vendors to the extent possible and as required by law. This policy is to be implemented by the Executive Director as specifically set forth in Port policies, equal employment opportunity and small business, women, minority, and disadvantaged business participation in Port contracts. The Executive Director shall annually report to the Commission on the implementation of this policy.

VII. POLICIES GOVERNING THE USE AND SALE OF MITIGATION CREDITS

A. Scope

The Port of Tacoma currently has one certified Mitigation Bank (Upper Clear Creek Mitigation Bank) and two Advance Mitigation Sites (Place of Circling Waters and Lower Wapato Creek Habitat Project). The policies in this section govern the sale of Mitigation Bank credits to third parties and the use of Advance Mitigation Site credits for Port and/or Alliance projects.

B. Use of Mitigation Credits

- (1) The preferred use of Mitigation Bank and Advance Mitigation credits is to provide a source of mitigation for unavoidable impacts of current and future Port and Alliance development and/or redevelopment Projects.
- (2) The Port Commission will only consider authorizing the sale of Mitigation Bank credits to third parties as provided for in Section C below if such credits are determined to be surplus to the Port's needs pursuant to RCW 53.08.090 within a ten (10)-year planning horizon.

Exhibit A

C. Sale of Mitigation Bank Credits

- (1) Sale to Third Parties.
 - (a) Mitigation Bank credits will only be sold to third parties upon Commission approval of a resolution which both declares the credits to be surplus to the Port's needs pursuant to RCW 53.08.090 and authorizes the sale.
 - (b) The Commission shall only approve a resolution authorizing the sale of surplus Mitigation Bank credits to third parties where the proposed sale meets all of the following criteria:
 - i. The credits to be purchased are being used to support a public or private project which furthers the Port's mission and goals as expressed in the Port's current Strategic Plan. These types of projects include, but may not be limited to, cargo, logistics, and transportation.
 - ii. The proposed credits will be sold at fair market value, or at the Port's anticipated replacement cost, whichever is greater. Fair market value shall be established through an appraisal or equivalent analysis considering the market demand for credits within the relevant mitigation bank service area and within the nearby region, as of the time of the sale. The anticipated replacement cost is the anticipated cost to replace mitigation credits in the future calculated based on net present value of past projects and/or cost estimates for future projects with appropriate contingency.
- (2) Sale to the Alliance. Subject to Commission approval, Mitigation Bank credits may be sold to the Alliance on the terms and conditions provided for in Article 3.2(f)(iii) of the Second Amended Alliance Charter for "Future Mitigation Sites".

D. Use of Advance Mitigation Site Credits

- (1) Use for Port Projects. Use of Advance Mitigation Site credits for Port Projects is subject to Commission approval. Commission approval for the use of Advance Mitigation Site credits may be provided in conjunction with a Project Authorization or through a separate Commission action.
- (2) Use for Alliance Projects. The Port may offer the Alliance the opportunity to use Advance Mitigation Site credits on the terms and conditions provided for in Article 3.2(f)(iii) of the Second Amended Alliance Charter for "Future Mitigation Sites". Use of Advance Mitigation Site credits by the Alliance is subject to Commission approval.