CHIEF EXECUTIVE OFFICER RETENTION AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made effective as of the 1st day of January, 2011, by and between the PORT COMMISSION OF THE PORT OF SEATTLE, a municipal corporation of the State of Washington ("Commissioners") and TAY YOSHITANI ("CEO").

WHEREAS, the Commissioners employed CEO as Chief Executive Officer of the Port of Seattle ("Port") effective March 1, 2007; and

WHEREAS, the Commissioners desire to retain CEO in the position on the terms and conditions set forth below, and CEO desires to continue his employment on such terms and condition to ensure the CEO's continuing employment for at least three and one-half (3 1/2) years from the effective date of this Agreement; and

WHEREAS, providing for continuity of leadership through the duration of this Agreement and a reasonable transition to period is of great importance to the continuing successful operation of the Port;

WHEREAS, Port Commission Resolution No. 3609 ("Resolution"), provides that any terms and conditions of a negotiated agreement between the Commissioners and CEO shall prevail over any relevant conflicting or inconsistent terms and conditions in the Resolution;

NOW, THEREFORE, in consideration of the continued employment of CEO by the Commission and the mutual agreements hereinafter set forth, receipt, adequacy and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Compensation, Benefits and Reimbursements.**

(a) **Annual Base Salary.** In consideration for his service under the terms of this Agreement, the Port shall pay to CEO an annual base salary ("Base Salary"), which amount shall be paid in installments in accordance with the normal payroll payment practices of the Port and shall be subject to such deductions and withholding as are required by law and by the policies of the Port, from time to time in effect. The Base Salary shall be at the rate of Three Hundred Sixty-six Thousand Eight Hundred Twenty-five Dollars ($366,825.00) per year.

(b) **Pay for Performance Based Increases.** CEO shall be eligible for future annual base salary increases derived from the Commissioners' evaluation of CEO's performance consistent with the Port's Pay for Performance policy and annual Pay for Performance matrix.

CEO shall receive the maximum increase available under the matrix for the applicable performance rating established by the Commissioners at the beginning of each year.

(c) **<u>Post Agreement Retainer</u>**. CEO, at the conclusion of his service to the Port as its CEO, shall render ongoing advice and counsel to his successor and the Commissioners for a period of one (1) year. In return CEO shall be paid four (4) quarterly installments of Twenty-five Thousand Dollars ($25,000.00) paid at the end of each quarter for a total payment of One Hundred Thousand Dollars ($100,000.00), subject to such deductions and withholding as are required by law and by the policies of the Port, from time to time in effect; ***provided that,*** if this agreement is terminated for "gross misconduct" or by mutual agreement pursuant to Section 3 of this Agreement prior to June 30, 2014 (or the Renewal Date if applicable), this retainer provision is null and void unless otherwise agreed upon in writing by CEO and Commission.

(d) **<u>Vacation Leave</u>.** CEO shall have two additional weeks per year of Paid Time-off ("PTO") in addition to his regularly accrued PTO.

(e) **<u>Standard Benefits</u>.** In addition to the salary and other specifically described benefits payable to CEO hereunder, CEO shall receive such benefits as may be made available to employees generally by the Commissioners from time to time, including, without limitation, life insurance, medical insurance, dental insurance, long-term disability insurance, short-term disability insurance, and extended illness leave; ***provided, however***, that to the extent there is a conflict between the terms of this Agreement and the Commission's standard employee benefits, the terms of this Agreement shall govern; and ***provided further***, CEO has waived Port provided medical insurance. For as long as CEO continues to waive Port provided medical insurance he shall be paid the Port's cost per employee for the Port medical plan most closely equivalent to CEO's non-Port medical insurance in addition to all other compensation received, which amount shall be paid in installments in accordance with the normal payroll payment practices of the Port and shall be subject to such deductions and withholding as are required by law and by the policies of the Port, from time to time in effect. In the event CEO's coverage under his current medical insurance plan terminates for any reason, immediately upon CEO's notification to the Port's Human Services Director, CEO shall become enrolled at the earliest opportunity in a Port provided medical insurance plan and payment to CEO of the equivalent value of said coverage shall immediately cease.

(f) **<u>No Other Modifications</u>**. Other than as specifically provided in this Agreement, the terms and conditions of CEO's total compensation package at the time of CEO's initial hire, attached hereto as <u>Exhibit A</u> and incorporated herein by this reference, shall remain the same.

2. **<u>Participation as a Member of a Private Sector board of Directors.</u>** During the term of this Agreement, CEO may on his own time (e.g. after close of business or while on Paid

Time-Off), participate as a member of a Board of Directors for a private entity; ***provided,*** that prior to accepting such appointment, the Port's General Counsel determines that CEO's participation would not create or appear to create a conflict of interest, or is contrary to any other provision of the Port's Code of Ethics for Employees.

3. **Term and Termination of Agreement.**

(a) **Term.** The initial term of this Agreement shall commence on January 1, 2011 (the "Effective Date") and shall end on June 30, 2014, unless sooner terminated as provided in Section 3(b) below. The term of this Agreement shall automatically renew (the "Renewal Term") for an additional one (1) year term (following the initial three and one-half (3 1/2) year term) unless written notice of non-renewal is submitted by either party to the other, no less than one-hundred eighty (180) days prior to the end of the initial three and one-half (3 1/2) year term.

(b) **Termination.** This Agreement and CEO's employment by the Commissioners hereunder may be terminated: (i) by the mutual written agreement of CEO and the Commissioners; (ii) by the Commissioners for "gross misconduct" (as defined, and pursuant to the procedures set forth, below); and (iii) by one-hundred eighty days written notice by either party of non-renewal of the Agreement for a fourth year.

For purposes of this Agreement, "gross misconduct" shall mean conduct by CEO amounting to criminal conduct, fraud, dishonesty, malfeasance, or conduct by CEO that demonstrates a flagrant and wanton disregard of and for the rights, title or interest of the Port or CEO's fellow employees, including but not limited to repeated public conduct by CEO contrary to the policies and direction of the Commissioners; or a material breach by CEO of this Agreement, if such breach is not cured within sixty (60) days after written notice thereof from the Commissioners to CEO.

(c) **Effect of Termination.** Upon the termination of CEO's employment hereunder, the Commissioners shall have no further obligation to CEO or his agents, representatives, heirs, or estate with respect to this Agreement or his employment by the Commissioners, except as provided in Section 3(d) below.

(d) **Termination Payment.** Except as otherwise provided herein, the compensation and termination payments provided pursuant to this Section 3 shall be paid at such times and in such manner as payments normally would be made under Section 2 above and shall be subject to deductions and withholding as provided in Section 2(a) above.

(i) In the event this Agreement and CEO's employment hereunder are terminated by mutual agreement pursuant to Section 3(b)(i) above, CEO's termination payments, if any shall be as mutually agreed in writing by CEO and the Commissioners.

(ii) In the event this Agreement and CEO's employment hereunder are terminated for gross misconduct pursuant to Section 3(b)(ii) above, the Commissioners' sole obligation to CEO shall be the provision of any payments or benefits pursuant to Section 2 above which have been earned but have not been provided through the date of termination.

(iii) In the event either party elects with proper notice not to exercise the renewal term no additional termination payment shall be due. Non-renewal shall not relieve CEO nor the Commissioners of their respective obligations under Section 1(c), Post Termination Retainer, unless otherwise agreed upon in writing.

(iv) In the event the Commissioners wrongfully terminate CEO under the provisions of this Agreement (as may be determined pursuant to the dispute resolution provisions in paragraph 6.(a) below) and such termination occurs before June 30, 2014 (or prior to the end of the Renewal Term if applicable), CEO shall be paid a lump sum amount representing the prorated balance owed under the contract (unpaid base salary, and deferred or other unpaid compensation) from the date of termination to June 30, 2014 (or the end of Renewal Term is applicable); and in addition shall be paid one additional year of compensation (base salary, earned bonus, plus $50,000.00). Said lump sum shall be paid to CEO no later than fifteen (15) days after a finding that CEO was wrongfully terminated.

4. **Conflicts of Interest.** CEO shall be subject to the provisions of the Port's Code of Conduct and the ethics policies for current and former employees incorporated therein and hereby incorporated by reference into this Agreement.

5. **Protective Covenants.**

(a) **Confidentiality.** In the course of his employment by the Commission CEO will have access to confidential information. CEO agrees to maintain the strict confidentiality of all confidential information during the term of this Agreement and thereafter, subject to the requirements of the state of Washington's Public Records Act. This provision shall survive the termination of this Agreement indefinitely.

(b) **Agreement Not to Compete.** Upon the expiration or other termination of this Agreement, CEO agrees that for two years thereafter, CEO will not accept employment with another Washington State port. The provisions of this Section 5 are in addition to the provisions of Section CC-3 (Former Employees) of the Port's Code of Conduct.

6. **Miscellaneous.**

(a) **Dispute Resolution.** All disputes arising under the provisions of this Agreement shall be resolved by binding arbitration in accordance with American Arbitration Association rules or any other method of arbitration mutually agreed to by the parties.

(b) **Warranties.** Each party hereto covenants, warrants and represents that it shall comply with all laws and regulations applicable to this Agreement, and that it shall exercise due care and act in good faith at all times in performance of its obligations under this Agreement.

(c) **Headings.** Titles or captions of sections or paragraphs contained in this Agreement are intended solely for the convenience of reference, and shall not serve to define, limit, extend, modify, or describe the scope of this Agreement or the meaning of any provision hereof.

(d) **Waiver.** A waiver by the Commissioners of any breach of this Agreement by CEO shall not be effective unless in writing, and no such waiver shall constitute a waiver of the same or another breach on a subsequent occasion.

(e) **Governing Law and Jurisdiction for Dispute Resolution.** All questions with respect to the construction of this Agreement or the rights and liabilities of the parities hereunder shall be determined in accordance with the laws of the State of Washington.

(f) **Severability.** All provisions of this Agreement are severable. If any provision or portion hereof is determined to be unenforceable in arbitration or by a court of competent jurisdiction, then the remaining portion of the Agreement shall remain in full force and in effect.

(g) **Force Majeure.** Neither party shall be liable for failure to perform its obligations under this Agreement due to events beyond that party's reasonable control, including, but not limited to, strikes, riots, wars, fire, acts of God, and acts in compliance with any applicable law, regulation or order (whether valid or invalid) of any governmental body.

(h) **Counterparts.** This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one (1) and the same instrument

(i) **Entire Agreement and Amendment.** This Agreement: (i) constitutes the entire agreement between the parties with respect to the subject matter hereof; (ii) supersedes and replaces all prior agreements, oral and written, between the parties relating to the subject matter hereof; and (iii) may be amended only by a written instrument clearly setting forth the amendment(s) and executed by both parties.

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IN WTINESS WHEREOF, the Commissioners and CEO have each executed and delivered this Agreement as of the Effective Date.

Chief Executive Officer

By: ______________.

(Print Name) T. YOSHITANI.

(Date) 3/1/2011.

Port of Seattle Commission

By: ______________.

(Print Name) William L. Bryant.

(Title) President, Port Commission.

(Date) March 1, 2011.