

**EXECUTIVE DIRECTOR
EMPLOYMENT AGREEMENT**

This **EMPLOYMENT AGREEMENT** (the "Agreement") is made effective as of the day of _____ by and between the **PORT COMMISSION OF THE PORT OF SEATTLE**, a municipal corporation of the State of Washington ("Commission" and Adm. Stephen Metruck (Ret.) ("Executive Director") and collectively, The Parties.

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 Executive Director 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 Four Hundred Seventy-Four thousand Two Hundred Thirty Dollars (\$474,230)per year.

(b) **Performance Evaluation.** The Commission shall annually review and evaluate the performance of the Executive Director in accordance with the goals and objectives developed jointly by the Commission and the Executive Director prior to March 1 of each calendar year. The Executive Director shall be eligible for Base Salary increases and other compensation based on the Commissioners' evaluation of Executive Director's performance. The Executive Director shall be eligible for a performance base pay increase effective March 1 of each calendar year consistent with the performance review cycle and common review date of non-represented Port employees. Any performance-based increases and/or compensation shall be set by the Commission in public session and subject to public disclosure.

(c) **Standard Benefits.** In addition to the salary and other specifically described benefits payable to Executive Director hereunder, the Executive Director shall receive such benefits as are available to employees through the Salary and Benefits Resolution as approved by the Port of Seattle Commission, including, without limitation, life insurance, long term disability insurance, health coverage including medical, vision, pharmacy and dental, and sick 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. In addition to standard benefits provided in this section, the Port shall also provide benefits as described in Attachment A and incorporated into this Agreement.

(d) **Salary & Benefits Resolution.** The Executive Director is subject to the terms and conditions of the Port's current Salary and Benefits Resolution and all subsequent salary and benefits resolutions; however, any terms, conditions, and adjustments to pay or salary range for the Executive Director adopted in open session and set forth in this Agreement and any attachment shall prevail over relevant conflicting or inconsistent terms and conditions in the applicable salary and benefits resolution.

2. **Executive Director's Services.**

Except as provided in this Agreement, the Executive Director shall (a) devote his entire professional time, attention, and energies to his position with the Port, (b) use his best efforts to promote the interests of Port, (c) perform faithfully, loyally, and efficiently his responsibilities and duties, and (d) refrain from any endeavor outside of his Port employment which interferes with his ability to perform his Port obligations. The Commission encourages the Executive Director to be involved consistent with this section in national and local non-profit organizations, trade associations or civic organizations associated with the business of the Port and for which the Port shall pay all reasonable dues and charges. Accordingly, during the term of this Agreement the Executive Director may on his own time and expense (e.g. after close of business or during Paid Time Off), serve as a member of a board of directors of a non-profit or civic entity unrelated to the Port's business, provided that prior to accepting or continuing any such appointment, the Executive Director shall obtain approval of the Commission. Notwithstanding the foregoing, under no circumstances shall the Executive Director participate as a member of any private board, regional or otherwise, or a position on a board that is inconsistent with the requirements of Section 4 (Port Values, Code of Conduct and Conflicts of Interest) of this Agreement provided, however, that the Executive Director may continue serving on or with the United States Defense Science Board at his own expense.

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

(a) **Term.** The term of this Agreement shall commence on February 1, 2024, (the "Effective Date") and shall end on January 31, 2027, unless extended by written agreement, or terminated earlier. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Commission by a majority vote to terminate the services of Executive Director at any time, without notice, subject only to the provisions set forth in Section 3(b)(i) of this Agreement. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Executive Director to resign at any time from his position, subject only to the provisions set forth in Section 3(b)(ii) of this

Agreement. The Port's policies and procedures regarding discipline and termination of this Agreement are not intended to and will not apply to the Executive Director's employment and this Agreement. The Executive Director's employment is at the will of a majority of the Commission.

(b) Termination and Severance Pay.

(i) In the event the Executive Director's employment is involuntarily terminated by action of the Commission at any time before January 31, 2024, and if the Executive Director is willing and able to perform his duties under this Agreement, the Port shall pay the Executive Director any payments or benefits pursuant to Section 1 above which have been earned but have not been provided through the date of termination and a lump sum separation payment in the amount of nine (9) months' salary; provided, however, that if the Executive Director's employment is terminated for "Good Reason," the Commission shall have only the obligation to provide payments or benefits pursuant to Section 1 above which have been earned but have not been provided through the date of termination. "Good reason" shall mean (i) the Executive Director's willful and continued failure to substantially perform the duties and obligations under this Employment Agreement, other than because of disability, which failure, if curable within the reasonable discretion of the Commission, is not cured to the reasonable satisfaction of the Commission within thirty (30) days after receipt of written notice from the Commission of such failure; (ii) Executive Director's failure or refusal to comply with reasonable and lawful written policies, standards and directives established by the Commission which failure or refusal, if curable, is not cured to the reasonable good faith satisfaction of the Commission within thirty (30) days after receipt of written notice of such failure or refusal from the Commission; (iii) any act of "gross misconduct" which shall mean conduct by the Executive Director amounting to criminal conduct, fraud, dishonesty, malfeasance, or conduct by the Executive Director that demonstrates a flagrant and wanton disregard of and for the rights, title or interest of the Port or the Executive Director's fellow employees; (iv) the Executive Director's violation of a federal or state law or regulation applicable to the Port's operations, which violation was or is reasonably likely to be materially injurious to the Port; (v) the Executive Director's conviction of, or a plea of nolo contendere or guilty to, a felony under the laws of the United States or any state; or (vi) the Executive Director's material breach of the terms of this Agreement if such breach is not cured (if capable of cure) within thirty (30) days after receipt of written notice of such breach from the Commission. "Good reason" shall also include resignation by the Executive Director because of material breach of the terms of the Agreement by the Commission if such breach is not cured (if capable of cure) within thirty (30) days after receipt from the Executive Director of written notice of breach.

(ii) In the event the Executive Director elects to resign his position, the Executive Director shall provide the Commission a minimum of forty-five (45) days' notice, and he shall not be entitled to any severance pay.

(iii) In the event the Commission and the Executive Director reach agreement upon the circumstances and timing of resignation by the Executive Director, the Port shall pay the Executive Director any payments or benefits pursuant to Section 1 above which have been earned but have not been provided through the date of termination and a lump sum separation payment in the amount of two month's salary.

(iv) The parties acknowledge and agree that any and all disputes arising under this Section 3(b) shall be resolved as provided in Section 6(a) of this Agreement (Dispute Resolution).

(v) The Executive Director shall cooperate with the Port after termination of his employment with respect of any claim, defense, investigation or other civil or criminal proceeding in which his cooperation is requested by the Port. The Port shall arrange a reasonable time and place for such cooperation. In such events, the Port shall pay his reasonable expenses and for his time in excess of two hours in any one event, such payment to be at his regular daily rate of salary as of termination of his employment.

4. **Port Values, Code of Conduct and Conflicts of Interest.** The Executive Director 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. The Executive Director represents and warrants that upon the signing of this Agreement, he is not in violation of the Port's Code of Conduct and its ethics policies.

5. **Protective Covenants.**

Confidentiality. The Executive Director will have access to information that is considered confidential and/or proprietary. "Confidential Information" includes all information not subject to disclosure under applicable law and that (i) is treated by the Port as confidential or proprietary; (ii) would reasonably be viewed as confidential; (iii) would reasonably be viewed as having value to a competitor; or (iv) the Port is under an obligation to a third party to keep confidential whether or not disclosed in writing, or other fixed media or disclosed in any other manner (including oral, visual, or electronic disclosure). All Confidential Information is the property of the Port and the Executive Director shall exercise the highest degree of care in safeguarding Confidential Information against loss, theft, or other inadvertent disclosure, and take all steps reasonably necessary to maintain the

confidentiality of the Confidential Information subject to the requirements of the state of Washington's Public Records Act. Executive Director shall not, without the prior written permission of the Port, directly or indirectly, disclose to any person or use in his own or in any other person's business or for the benefit of any person or entity other than the Port, any Confidential Information. This obligation continues after the Executive Director leaves employment with the Port. The restrictions on disclosure of Confidential Information do not apply to any information that is generally available to the public (provided the Executive Director played no role in its entering the public domain). If the Executive Director becomes legally obligated to disclose any Confidential Information (such as by a court subpoena), the Executive Director shall give the Port prompt written notice so that it may obtain a protective order or other appropriate remedy and shall disclose only such information as the Executive Director is legally required to disclose.

(a) **Return of Property.** Unless otherwise agreed, all equipment, records, files, manuals, forms, data, materials, supplies, computer programs, tangible property, assets and all other information or materials furnished by the Port or used on the Port's behalf, or generated or obtained during the course of the Executive Director's employment, shall remain the property of the Port (collectively "Port Property"). Upon termination of employment or at any time upon the Port's request, the Executive Director shall return to the Port all Port Property. The Executive Director shall certify in writing as of the date of termination that none of the Port's Property remains under his control or has been transferred to any third person.

(b) **Agreement Not to Compete.** Upon the expiration or other termination of this Agreement and the Executive Director's employment, the Executive Director agrees that for eighteen months thereafter, he will not accept employment with another port located on the west coast of North America. 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.

(c) **Indemnity.** The Port will indemnify, defend and hold the Executive Director harmless from and against any and all allegations, suits, claims, legal proceedings or other actions arising out of his performance of duties for or with the Port as set forth in RCW 53.08.208.

6. **Miscellaneous.**

(a) **Dispute Resolution.** All disputes arising under the provisions of this Agreement or the Executive Director's employment shall be resolved by binding arbitration in accordance with American Arbitration Association rules governing employment disputes. The arbitrator may award any remedy allowed under Washington law. The Arbitrator shall

have authority to resolve 'gateway disputes' such as the scope of this arbitration provision. The Port shall pay for all fees and charges of the Arbitrator. The arbitration shall occur in Seattle, King County, Washington. An arbitration award may be filed in an appropriate court for enforcement.

(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 Commission of any breach of this Agreement by Executive Director 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 parties hereunder shall be determined in accordance with the laws of the State of Washington other than those relating to conflicts of law.

(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.

IT IS SO AGREED, as evidenced by the signatures below:

Executive Director

Port of Seattle Commission

Date _____

By _____

Its _____

Date _____

ATTACHMENT A

BENEFITS

Benefits shall generally be governed by the terms and conditions of the Port's 2018 Salary and Benefits Resolution and all subsequent salary and benefits resolutions; however, any terms, conditions and adjustments to pay or salary range for the Executive Director adopted in open session shall prevail over relevant conflicting or inconsistent terms and conditions in the applicable salary and benefits resolution, In addition to the benefits listed in Section 1(c) of this agreement, the Port shall also provide the following benefits to the Executive Director.

1. **Paid Time Off/Sick Leave** - The Executive Director will accrue PTO at the rate specified in the Port's Leave Policy provided, however, the cap on accrued PTO in that policy shall not apply. However, during the first year of employment, he will have 19.6 days (156.8 hours) added to his PTO bank on his first day of employment. Beginning with the second year of employment, the Executive Director will accrue PTO per the Port's standard PTO accrual rate. All other provisions of the Port's PTO plan will apply to the Executive Director. The Executive Director will also accrue seven (7) days (.027 hours per hour paid) of Sick Leave each year.
2. **Public Employment Retirement System** - If eligibility requirements are met, the Executive Director will participate in a Washington State Department of Retirement Systems (DRS) PERS plan in accordance with the regulations that govern that plan. Both the Port and the Executive Director will contribute to the Executive Director's PERS plan, subject to the limitations on salary eligible for PERS contributions specified by the IRS.
3. **Deferred Compensation** - The Executive Director will be eligible to participate in the Port's 457 Deferred Compensation plan. This plan is a voluntary plan fully funded by the Executive Director. If the Executive Director elects to participate in the 457 Deferred Compensation plan, he will also be eligible to participate in the Port's 401(a) Supplemental Savings Plan that provides limited Port contributions as a match to the 457 plan contributions.
4. **Parking** - The Executive Director will have an assigned parking place on the Pier 69 apron as well as a parking access card with access to parking at the airport parking garage to use for commuting, business and personal purposes. The Port will impute income for the value of any parking access that exceeds the IRS tax free fringe benefit limit. The Executive Director will have a choice in what type of airport parking garage access he will have, and that choice will determine how much income will be imputed. Additionally, the Executive Director will have the same vacation parking benefits as other Port employees and access to the airport parking garage.

5. **Electronic Devices** - Because the Executive Director is likely to work extended hours, including nights and weekends, the Port will provide him for the term of this Agreement such equipment and supplies, including a smart phone and lap-top, as may be necessary to equip his home office. The Port shall be responsible for payment of reasonable repair and maintenance charges and costs attributable to such devices. Use of Port equipment will be consistent with Port policies as they may be modified from time to time. Upon termination of this Agreement, Port equipment will be promptly returned to it.

6. **Legal Fees** - The Port shall reimburse the Executive Director for reasonable fees associated with negotiation and ratification of this Agreement.

7. **Travel** - The Port shall pay reasonable travel expenses for the Executive Director incurred with respect of Port business consistent with the Port's travel policies. For any airplane flights of four hours or more in duration, Executive Director may choose to have business class or equivalent fare.

In the event there is a conflict between the terms of this Agreement and the Commission's standard employee benefits, the terms of this Agreement shall govern.