

**RESOLUTION NO. 3230**

**A RESOLUTION** of the Port Commission of the Port of Seattle adopting a Deferred Compensation Plan for the Port of Seattle Executive Director.

**WHEREAS**, Chapter 99, Laws of 1973 of the State of Washington (RCW 41.04.250), authorizes a port district acting through its governing body to contract with a port district employee to defer a portion of that employee's income and to invest that deferred portion as provided in the statute; and,

**WHEREAS**, the Port of Seattle Commission desires that the current Executive Director remain at the Port of Seattle for the next five years in order to complete the orderly implementation of organizational programs and restructuring now underway; and,

**WHEREAS**, 26 U.S.C., Sec. 457(f) permits the adoption of a deferred compensation plan by a public agency employer which would permit a key executive to defer compensation instead of receiving the compensation as taxable income in the year services are rendered, subject to certain conditions; and,

**WHEREAS**, it is the intent of the Port of Seattle Commission to establish and maintain a supplemental deferred compensation plan for its Executive Director;

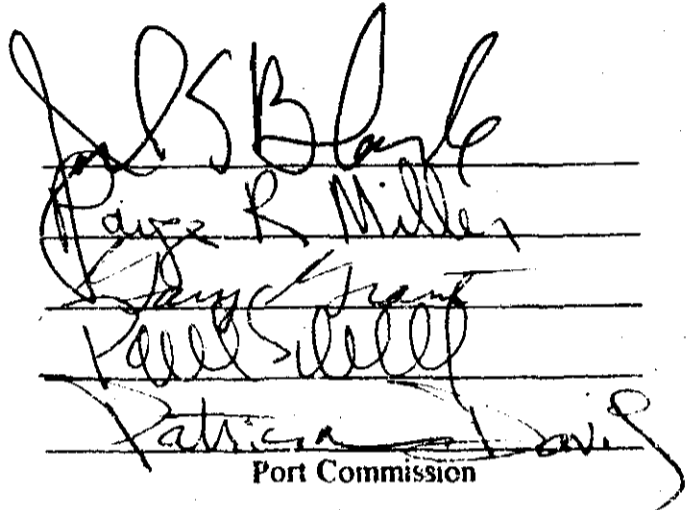
**NOW, THEREFORE, BE IT RESOLVED** by the Port Commission of the Port of Seattle as follows:

**SECTION 1** Pursuant to RCW 41.04.250 and 26 U.S.C., Sec. 457, the Port of Seattle hereby establishes a deferred compensation plan for the Port's Executive Director to operate in accordance with the provisions of the attached Deferred Compensation Plan for Port of Seattle Executive Director (the "Plan") (Exhibit A hereto).

**SECTION 2** The Port of Seattle is hereby authorized to invest deferred compensation held in accordance with the Plan in investments authorized by RCW 41.04.250 as may be selected by the Finance Committee designated in paragraph 4 of the Plan. In accordance with paragraph 4.2 of the Plan, the Finance Committee shall adopt rules and regulations relating to the selection and investment of funds as provided in the Plan. The Commission shall have the full power and authority to alter, amend or revoke any rules and regulations so adopted by the Finance Committee in accordance with paragraph 4.2 of the Plan.

SECTION 3. The Finance Committee is authorized to seek a Ruling/Request from the Internal Revenue Service as to the legality of the Plan and compliance with the provisions of 26 U.S.C., Sec. 457. The Finance Committee is further authorized to do all acts, not expressly provided for in Exhibit A which are reasonably necessary and required to implement and administer the Plan, provided, however, all such acts shall be in accordance with all applicable provisions of federal and state law and regulations.

ADOPTED by the Port Commission of Seattle this 22nd day of October, 1996, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the Seal of the Commission duly affixed.

  
Port Commission

3.3 Administrator means the chief financial officer of the Port of Seattle acting in accordance with Paragraph 4.

3.4 Allocation Date means March 31, June 30, September 30, and December 31 of each Plan year or such additional date as the Administrator shall designate from time to time.

3.5 Anniversary Date means the last day of the Plan year.

3.6 Beneficiary or Beneficiaries means those Beneficiaries and contingent Beneficiaries designated from time to time by the Participant to receive death benefits under the Plan pursuant to Paragraph 7.5; or, if no such Beneficiary or Beneficiaries are designated, the estate of the Participant.

3.7 Commission means the Commission of the Port of Seattle, or other governing body, as constituted from time to time.

3.8 Compensation or Includable Compensation means W-2 compensation and amounts not taxable under Internal Revenue Code Sections 457(b) and 125 paid by the Port of Seattle to such Participant for services rendered to the Port of Seattle from and after the effective date of the deferred Compensation agreement executed in conjunction with this Plan until the date of termination of the Participation Agreement or the date the Plan terminates.

3.9 Deferred Compensation means the amount of Compensation, as mutually agreed to by the Participant and the Port of Seattle, not yet earned which shall be reduced in return for the benefits offered under this Plan.

3.10 Determination date means the last day of the Plan year.

3.11 Finance Committee means the Finance Committee made up of the General Counsel of the Port of Seattle, the Chief Financial Officer of the Port of Seattle, and the President of the Commission of the Port of Seattle. These three members of the Finance Committee may select two additional members to serve on the Finance Committee.

3.12 Participant means the Executive Director of the Port of Seattle.

3.13 Participation Agreement means a document completed and executed by the Participant and the Port of Seattle, whereby the Participant enrolls in the Plan and the parties thereto agree to be bound by the terms and provisions of this Plan.

3.14 Plan means the Port of Seattle Deferred Compensation Plan for the Executive Director, as set forth herein, and any amendments hereto.

3.15 Plan Year means the period from January 1 through December 31 of each year, except for the first Plan Year which shall begin November 1, 1996.

3.16 Separation From Service means the termination, either voluntary or involuntary, of the Participant's employment as Executive Director of the Port of Seattle, including termination because of death, disability, or normal retirement.

3.17 Spouse or Surviving Spouse means the spouse or surviving spouse of the Participant, provided that a former spouse will be treated as the spouse or surviving spouse to the extent provided under a qualified domestic relations order as described in Section 414(p) of the Internal Revenue Code.

**PORT OF SEATTLE  
SUPPLEMENTAL DEFERRED COMPENSATION PLAN  
FOR THE EXECUTIVE DIRECTOR**

THE PORT OF SEATTLE, pursuant to action of the its Commission, has adopted this Supplemental Deferred Compensation Plan effective as of the 1st day of November, 1996.

**1. RECITALS**

1.1 The Port of Seattle is an instrumentality of the State of Washington.

1.2 The Port of Seattle hereby establishes this Port of Seattle Supplemental Deferred Compensation Plan for the Executive Director (the Plan), the purpose of which is to retain the services of the Executive Director by permitting him to defer Compensation.

1.3 This Plan is created and maintained for the Executive Director and his Beneficiaries (as defined herein), and is intended for their exclusive benefit as a Plan which satisfies the requirements of Section 457(f) of the Internal Revenue Code<sup>1</sup> and regulations promulgated thereunder as a noneligible deferred compensation plan.

1.4 This Plan is not intended to modify the terms of any employment agreements the Executive Director has with the Port of Seattle.

**2. GENERAL**

2.1 Name. The name of this Plan is "The Port of Seattle Supplemental Deferred Compensation Plan for the Executive Director."

2.2 Effective Date. The effective date of this Plan is November 1, 1996.

2.3 Limitation on Provisions. Nothing contained in this Plan shall be deemed to give the Participant any right, or to acquire or exercise any rights other than those specified in this Plan.

**3. DEFINITIONS**

3.1 Account means a bookkeeping Account maintained for the Participant which shall include amounts deferred by the Participant pursuant to Paragraph 5.3.2, amounts contributed by the Port of Seattle pursuant to Paragraphs 5.3.3. and 5.3.4, all adjusted by income, expenses, realized and unrealized gains and losses attributable thereto, and any withdrawals therefrom.

3.2 Account Balance means the balance in the Participant's Account at any Allocation Date.

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<sup>1</sup> Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder.

#### **4. ADMINISTRATION OF THE PLAN**

**4.1 Administrative Responsibility.** This Plan shall be administered by the Finance Committee of the Port of Seattle Commission and the Chief Financial Officer of the Port of Seattle. The Chief Financial Officer of the Port of Seattle shall be the Administrator of the Plan.

**4.2 Power, Authority, and Duties of Finance Committee.** The Finance Committee shall adopt rules and regulations for the administration of the Plan, including rules and regulations relating to the selection and monitoring of one or more investment funds, the performance of which will be used to measure the benefits that the Executive Director will be entitled to recover under the Plan, provided, however, that such rules and regulations shall not be inconsistent with any term or provision of this Plan. The Commission shall have the full power and authority to alter, amend, or revoke any rules and regulations so adopted by the Finance Committee except that the Commission shall neither allow for, nor cause nor permit the substitution of a previously selected investment fund whose performance is then being used to measure benefits under the Plan, provided, however, that nothing herein shall prevent the Commission from authorizing the substitution of one of the investment funds if authorized by the Participant in accordance with the terms of the Participation Agreement and approved by the Finance Committee.

**4.3 Power, Authority, and Duties of Chief Financial Officer.** The Chief Financial Officer of the Port of Seattle, as Administrator of the Plan, shall be responsible for the day-to-day administration of the Plan. The Administrator is authorized to expend such reasonable amounts, either as direct Plan expenses or pursuant to independent contracts, as may be necessary to administer the Plan. The cost of solely administering the Plan shall be borne by the Port of Seattle, but the costs incurred in connection with the investment activities pursuant to Paragraph 8, including statement costs, shall be charged to the Participant's Account(s). Notwithstanding the foregoing, the Administrator is authorized to reserve up to one-half of one percent (.5%) of Plan assets for legal expense which may be charged to the Participant's Account(s).

#### **5. PARTICIPATION IN THE PLAN**

**5.1 Eligibility.** Only the Executive Director of the Port of Seattle shall be eligible to participate in the Plan.

**5.2 Participation.** To become the Participant, the Executive Director must first execute the Participation Agreement, in a form approved by the Administrator, and such other instruments as may be required by the Administrator. By becoming the Participant, the Executive Director agrees to be bound by all terms, conditions, and covenants of this Plan as then in effect or thereafter amended.

##### **5.3 Enrollment Procedures and Contributions.**

**5.3.1 Enrollment Procedures.** The Executive Director within 30 days prior to the Effective Date of this Plan may enroll in the Plan and become the Participant by executing a Participation Agreement, agreeing to defer Compensation to be earned in the future. Such enrollment shall be effective only as to Compensation earned commencing as soon as administratively possible after receipt for such Participation Agreement by the Administrator and shall remain effective for the remainder of the Plan Year. Unless revoked prior to the start of the following Plan Year(s), the enrollment shall be irrevocable for the remainder of such year(s).

**5.3.2 Salary Deferrals.** The Executive Director may elect to defer Compensation at the time he enrolls in the Plan, agreeing to voluntarily defer Compensation to be earned in the future. Such enrollment shall be effective only as to Compensation earned commencing at the beginning of the first month which begins at least fifteen (15) days after receipt of such Participation Agreement by the Administrator and shall remain effective for the remainder of the Plan Year. Unless revoked prior to the start of the following Plan Year(s), the

enrollment shall be irrevocable for the remainder of such year(s). The maximum amount of Salary Deferral which may be credited to the Participant's Account under this Plan may not exceed, in the aggregate, the lesser of 40% of the Participant's Compensation for any Plan year, or the applicable limitations of Internal Revenue Code Section 457.

**5.3.3 Port of Seattle Contribution.** Once the Participation Agreement is executed, the Port of Seattle shall annually credit to the Executive Director's Account an amount equal to 4% of the annual rate of the Executive Director's Compensation measured at the beginning of each Plan Year. The Executive Director's Account shall be credited with this contribution ratably on each Allocation Date.

**5.3.4 Port of Seattle Matching Contribution.** In addition to the Port of Seattle Contribution credited under Paragraph 5.3.3, the Port of Seattle shall credit to the Participant's Account one dollar for each dollar of Salary Deferral under Paragraph 5.3.2. The Port of Seattle Matching Contribution shall equal 4% of the Executive Director's annual rate of Compensation at the beginning of each Plan Year. The Executive Director's Account shall be credited with this contribution ratably on each Allocation Date.

**5.4 Modification of Amount; Minimum Deferral.** The Participant who enters into a Participation Agreement to defer Compensation may not modify such agreement or change the amount deferred during that calendar year except as provided in Paragraph 5.5 hereof. The Administrator may adopt rules as to whether a minimum deferral per year will be required.

**5.5 Revocation of Deferral.** The Participant may at any time revoke his agreement to defer Compensation by notifying the Administrator in writing. Such revocation shall become effective on the first day of the Plan Year which commences at least fifteen (15) days after receipt of such notice.

**5.6 Re-Entry into the Plan.** The Participant who has revoked the Participation Agreement to defer under Paragraph 5.5 above may again become the Participant by executing a new Participation Agreement to defer Compensation under this Plan. However, such agreement will only be effective beginning on the first day of the next Plan year which begins at least fifteen (15) days after receipt of such new Participation Agreement by the Administrator.

**5.7 Determination of Deferred Compensation.** The Administrator shall have the authority to determine the amount of contribution under Paragraphs 5.3.3 and 5.3.4 to be allocated and credited to the Account of the Participant. In the event of a dispute, the Finance Committee shall review such information as may be supplied by the Participant, his or her representative, or Beneficiary and make a recommendation to the Commissioner. The Commissioner has the sole discretion to decide all issues of fact and all decisions of the Commissioner shall be conclusive and shall be binding on all Participants and their Beneficiaries and shall not be subject to further review in any manner.

**5.8 Plan is Unfunded; Assets of the Port of Seattle.** The Plan shall be unfunded. If the Port of Seattle shall acquire any contract of insurance or annuity, mutual fund, or other investment in connection with the liabilities assumed by it hereunder, it is expressly understood and agreed that neither the Participant nor any Beneficiary of the Participant shall have any right with respect to, nor any claim against, any such investment. Such investment shall not be held in any way as collateral security for the fulfillment of the obligations of the Port of Seattle under this Plan; and no trustee/Beneficiary relationship shall exist or is intended with respect to them. All amounts of Compensation deferred under this Plan; all assets and rights purchased with such amounts; and all income attributable to such amounts, assets, rights, or income shall remain solely the property and property rights of the Port of Seattle, subject only to the claims of the Port of Seattle's creditors for all lawful corporate purposes, without restriction.

## 6. FORFEITURE

6.1 Forfeiture of Deferred Compensation. Except as otherwise provided under the Plan, the Participant's Account Balance shall be forfeited if the Participant voluntarily ceases to render services to the Port of Seattle.

6.2 Forfeiture of Part of Account Balance for Just Cause. If the Participant is terminated for just cause arising out of Participant's misconduct, the Participant shall forfeit benefits otherwise payable to the Participant or the Participant's beneficiary under this Plan equal to the contributions made by the Port of Seattle plus any interest imputed to such contributions, but shall be entitled to any remaining balance in the Participant's Account.

## 7. BENEFITS

7.1 Payment of Account Balance. The Participant's Account Balance shall become payable to the Participant only upon one of the following events:

(a) When the Participant (1) dies; (2) becomes disabled; or (3) separates from service with the Port of Seattle.

(b) Upon a determination by the Administrator that the Participant has suffered an "Unforeseeable Emergency" as defined in Paragraph 7.6.

(c) Upon the termination of the Plan as provided in Paragraph 9.4

7.2 Method of Payment of Benefits. Upon the occurrence of any event specified in Paragraph 7.1, the Administrator shall determine the Participant's Account Balance, based on the next Allocation Date:

(a) If the Participant's Account Balance is Three Thousand Five Hundred Dollars (\$3,500) or less, the benefits shall be paid in a single lump sum cash distribution;

(b) If the Participant's Account Balance is greater than Three Thousand Five Hundred Dollars (\$3,500), then the benefits shall be paid in monthly installments of substantially equal designated amounts or of a designated percentage of the value of the Participant's Account, payable over a five (5) year term; provided, however, payment is conditioned upon the Participant entering into a covenant of non-competition with the Port of Seattle. Any payment not made due to the Participant's failure to sign the covenant of non-competition shall be forfeited.

7.3 Commencement of Payment of Benefits. Benefits shall be paid (or if over a period of years, benefits shall commence) no later than the sixtieth (60th) day after the end of the Plan Year in which the latest of one of the events specified in paragraph 7.1 occurs, in accordance with the Participant's election specified in the Participation Agreement.

7.4 Death Benefits. Upon the death of the Participant, his Beneficiary shall be entitled to one hundred percent (100%) of such deceased Participant's Account Balance as of the Allocation Date next following the Participant's death.

### 7.5 Designation of Beneficiary

7.5.1 Written Designation and Consent. The Participant shall have the right to designate, on forms provided by the Administrator, a Beneficiary or Beneficiaries to receive his death benefits and, unless the Participant is married, shall have the right at any time to revoke such designation or to substitute another such designation without the consent of any Beneficiary, provided, however, that a married Participant's Spouse

must consent, in a manner approved by the Administrator, to the designation of any non-spouse Beneficiary or to any subsequent change of Beneficiary other than a designation or a change of designation which names a Spouse as sole Beneficiary. The Administrator shall prescribe the form for the written designation of Beneficiary and, upon the filing of the form with the Administrator, it shall revoke all designations filed prior to that date by the same Participant.

**7.5.2 Absence of Valid Designation.** If, upon the death of the Participant, former Participant, or Beneficiary, there is no valid designation of Beneficiary on file, the Administrator shall designate as the Beneficiary the Participant's estate.

#### **7.6 Unforeseeable Emergency.**

**7.6.1 Petition.** In case of an "Unforeseeable Emergency," as defined in Paragraph 7.6.2, the Participant may apply to the Administrator for distribution prior to the occurrence of one of the events specified in Paragraph 7.1. If such application for distribution is approved by the Administrator, the distribution will be made on the date selected in the Participant's application or the date of approval by the Administrator, whichever is later. Upon approval by the Administrator, the Port of Seattle will pay such benefit or benefits as are necessary to meet the unforeseeable emergency described in such Participant's application for withdrawal.

**7.6.2 Unforeseeable Emergency.** As the term is used in this Paragraph 7.6, "unforeseeable emergency" shall mean a hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or of a dependent (as defined in Section 152(a) of the Internal Revenue Code) of the Participant; or loss of the Participant's property due to casualty or other similar extraordinary and enforceable circumstances arising as a result of events beyond the control of the Participant. The circumstances that will constitute an enforceable emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is relieved:

(a) through reimbursement or Compensation by insurance or otherwise;

(b) by liquidation of the Participant's assets, to the extent the liquidation of such asset would not itself cause severe financial hardship; and

(c) by cessation of deferrals under the Plan.

The Participant shall submit such proof of hardship as the Administrator in his or her discretion shall deem to be sufficient.

#### **7.7 Miscellaneous Distribution Provisions.**

**7.7.1 Substantially Equal Installments.** Installment payments shall be deemed to be substantially equal if such installments are represented by two or more payments, the amount of which is determined by dividing the fair market value of the Participant's Account on a distribution date by the number of installments established for the distribution periods selected.

**7.7.2 Minimum Installment Payments.** If a monthly installment to be distributed is less than \$250, the Administrator may require the distributee to receive his or her benefit distributions in equal quarterly, semiannual, or annual installments.

**7.7.3 Distribution to Incapacitated Participants.** If the Participant or Beneficiary who is entitled to a payment under the Plan is deemed incapable of personally receiving the payment, the Administrator may make all benefit distributions to the persons or institutions which are providing for the care and maintenance of the distributee and continue to make distributions to them until a duly appointed legal representative of the



distributee makes a claim for the payment. Payments made pursuant to the terms of this Paragraph shall constitute a distribution to the Participant or Beneficiary entitled thereto, and shall immediately discharge the Administrator, the Port of Seattle, and the Plan of any further liability therefor.

**7.7.4 Certificates of Distribution.** The Administrator shall prepare and furnish to the Participant or Beneficiary a certificate of distribution setting forth the distributee's retirement benefits payment schedule.

**7.7.5 No Guaranty.** The Port of Seattle does not guarantee any Participant, any former Participant, or any Participant's or former Participant's Beneficiary against loss of or depreciation in value of any right or benefit that any of them may acquire under the terms of this Plan. All of the benefits payable hereunder shall be paid or provided for solely from the general assets of the Port of Seattle.

## **8. INVESTMENTS**

**8.1 Contingent Future Payments.** In order to meet its contingent deferred obligation hereunder, the Port of Seattle shall set aside funds on its books in an amount equal to the Account Balance of the Participant subject to the limitations of Paragraph 8.6.

**8.2 Form of Investments; Discretion of Finance Committee.** Investments of funds set aside or earmarked to meet the Port of Seattle's deferred obligations hereunder shall be made in one or more investment funds selected by the Finance Committee and approved by the Commission in accordance with Paragraph 4.2. In the exercise of these investment powers, the Finance Committee may engage investment counsel and, if it so desires, may delegate to such counsel full or limited authority to select the investment funds in which the Plan assets are to be invested.

**8.3 Participant Investment Direction.** Each Participant shall, subject to a procedure established by the Finance Committee and approved by the Commission, direct investment of a portion of the funds set aside by the Port of Seattle equal to the Participant's Account Balance in any one or more of the investment funds selected by the Finance Committee pursuant to Paragraph 8.2. Notwithstanding the foregoing, any such funds shall remain the property of the Port of Seattle, subject to its general creditors, and the Participant shall have no right, title, or interest in any particular asset or fund.

**8.4 Allocation of Income, Gains and Losses.** The income, gains and losses, both realized and unrealized, from investments made pursuant to Paragraph 8.3, net of any expenses properly chargeable thereto, shall be determined as of each Allocation Date according to procedures established by the Finance Committee and approved by the Commission. An amount equal to the net income or loss so determined shall be credited (or debited) to the Account of each Participant.

**8.5 Statement of Account.** At regular intervals, but not less frequently than quarterly, the Administrator shall see that each Participant is issued a statement of the Participant's Account, which shall reflect the Account Balance as of the date of commencement of the calendar quarter; the net effect of the income, gains and losses, realized and unrealized, adjusted by administrative expenses, payments, distributions and receipts of deferred Compensation; and the Account Balance as of the end of the calendar quarter for which the statement of Account has been issued.

**8.6 Claim Against Funds.** Nothing contained in this Paragraph 8 shall be deemed to create a trust of any kind or any other funding arrangement, nor shall it create any fiduciary relationship. Funds invested hereunder shall continue for all purposes to be a part of the general assets of the Port of Seattle, and no person other than the Port of Seattle shall, by virtue of the provisions of this Plan, have any interest in such funds. To the extent that any person acquires a right to receive payments from the Port of Seattle under this Plan, such right shall be no greater than the right of an unsecured general creditor of the Port of Seattle.

**8.7 Liability for Investment Management.** No member of the Finance Committee or of the Commission of the Port of Seattle, and no officer or employee of the Port of Seattle, shall be liable to any person for any action undertaken in good faith, or for any failure to take action unless the omission is in bad faith in connection with the investment or management of the funds, which are the property of the Port of Seattle and which are set aside or earmarked pursuant to this Paragraph 8, nor shall any member, officer or employee be liable to any person for any action related to the administration of the Plan, done in good faith.

## **9. AMENDMENT AND TERMINATION**

**9.1 Amendment of Plan Provisions.** Amendments to the Plan shall be adopted by the Finance Committee. Notice of the adoption of amendments shall be given to the then-current Participants and each of the Port Commissioners.

**9.2 Amendments in Writing.** Any amendment to the Plan shall be made by means of a written instrument identified as an amendment of the Plan, effective as of a specified date, and shall be in a form consistent with the terms, provisions, and format of this Plan document. Oral representations are ineffective to modify the terms of this Plan.

**9.3 No Amendment to Reduce Prior Earned Benefits.** The Port of Seattle shall not have the right to modify or amend the Plan retroactively in such manner as to deprive any Participant or Beneficiary of any benefit to which he or she was entitled under the Plan by reason of contributions made prior thereto, unless such modification or amendment is necessary to conform the Plan to, or to satisfy the conditions of, any law, governmental regulations or rulings, and to permit the Plan to meet the requirements of Section 457(f) of the Internal Revenue Code, or any similar statute enacted in lieu thereof, or has been approved by the Internal Revenue Service.

**9.4 Plan Termination.** The Port of Seattle expects to continue the Plan through December 31, 2001, but reserves the right in its sole discretion to terminate the Plan for any reason at any time. Before the Plan is to be terminated, the Port of Seattle and the Participant may agree to extend the Plan for another five year term. Failure of the Port of Seattle to retain the status of the Plan as governed by Section 457(f) of the Internal Revenue Code shall be deemed to be termination of the Plan. Upon termination of the Plan, the Port of Seattle shall distribute to the Participant his Account Balance, in accordance with the terms hereto.

**9.5 Bankruptcy.** If the Port of Seattle shall at any time be judicially declared bankrupt or insolvent, or in the event of dissolution, merger, or consolidation, without any provisions being made for the continuance of the Plan, the Plan shall be deemed to have terminated and the provisions of Paragraph 9.4 shall become operative, subject to the rights of other creditors of the Port of Seattle.

**9.6 Merger, Transfer of Assets.** If the Port of Seattle merges or consolidates with or into an entity, or transfers substantially all of the assets of the Port of Seattle to another entity, or dissolves, the Plan shall terminate on the effective date of such merger, consolidation, transfer or dissolution, and the provisions of Paragraph 9.4 shall become operative. However, if the surviving corporation resulting from such merger or consolidation, or the entity to which the assets have been transferred, adopts this Plan, the Plan shall continue and said entity shall succeed to all rights, powers and duties of the Port of Seattle hereunder. In the event of any merger or consolidation with, or the transfer of assets or liabilities to, any other plan, each Participant under the Plan shall (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he or she would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan terminated).

9.7 Suspension of Deferral. The Port of Seattle shall have the right at any time to limit or suspend Salary Deferrals for a period of time or permanently. If the suspension is permanent, the provisions of Paragraph 9.4 shall apply.

## 10. MISCELLANEOUS PROVISIONS

10.1 Limitation of Rights: No Employment Relationship. Neither the establishment of the Plan, nor any modifications thereof, nor the creation of any fund or Account, nor the payment of any benefits, shall be construed as giving to any Participant or any other person any legal or equitable right against the Port of Seattle.

10.2 Release from Liability. Any payment to any Participant or to his legal representative or Beneficiary, in accordance with the provisions of the Plan, shall to the extent thereof be in full satisfaction of all claims hereunder against the Plan and the Port of Seattle either of whom may require such Participant, his legal representative, or Beneficiary, as a condition precedent to such payment, to execute a receipt and release therefor in such form as shall be determined by the Administrator.

10.3 Arbitration. Any dispute, controversy, or claim arising out of or in connection with, or relating to this Plan or any breach or alleged breach thereof, and any allegation of a violation of a federal or state securities law, shall, upon the request of any party involved, be submitted to, and settled by, arbitration in the City of Seattle, State of Washington, or any other venue mutually agreed upon by the parties, pursuant to Chapter 7.04 RCW as amended from time to time (the "Arbitration Act"), or under any other form of arbitration mutually acceptable to the parties so involved. Said dispute, controversy or claim shall be submitted to a single arbitrator appointed by the judge as provided in the referenced Arbitration Act. Any award rendered shall be final and conclusive upon the parties and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The expenses of the arbitration, including the cost of experts, evidence and reasonable attorneys' fees, if any, in the discretion of the arbitrator, shall be included in the award to the prevailing party.

10.4 Inalienability of Benefits. No benefit or interest available hereunder will be subject to assignment or alienation, either voluntarily or involuntarily, by the Participant or Beneficiary. The preceding sentence shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to the Participant pursuant to a domestic relations order unless such order is determined to be a qualified domestic relations order, as defined in Section 414 (p) of the Internal Revenue Code.

10.5 Applicable Law; Severability. The Plan shall be construed, administered, and governed in all respects by the laws of the United States of America, to the extent applicable; otherwise, by the laws of the State of Washington. If any provision of this instrument shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions hereof shall continue to be fully effective.

10.6 Counterparts. The Plan may be executed in an original and any number of counterparts, each of which shall be deemed to be an original of one and the same instrument.

ADOPTED this 22nd day of October, 1996, by the Commission of the Port of Seattle.

**JACK BLOCK**

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Signature

**JACK BLOCK PRESIDENT**

\_\_\_\_\_  
[Print Name], Commission President

**GARY GRANT**

\_\_\_\_\_  
Signature

**GARY GRANT SECRETARY**

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[Print Name], Secretary

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