

## **PORT OF NEWPORT MINUTES**

March 5, 2018

### Commission Executive Session & Special Meeting

#### **I. CALL TO ORDER**

Commission President Patricia Patrick-Joling called the Commission Special Meeting of the Port of Newport Board of Commissioners to order at 12:00 noon at the South Beach Activities Room, 2120 SE Marine Science Drive, Newport, Oregon.

**Commissioners Present:** Walter Chuck (Pos. #1); Sara Skamser (Pos. #2); and Jeff Lackey (Pos. #4), Vice President. Patricia Patrick-Joling (Pos. #5), President, participated by phone. Stewart Lamerdin (Pos. #3), Secretary/Treasurer, was excused.

**Management and Staff:** Aaron Bretz, General Manager Pro Tem; Mark Harris, Staff Accountant; Don Moon, NIT Supervisor; and Karen Hewitt, Administrative Assistant.

**Members of the Public and Media:** Heather Mann, Midwater Trawlers Cooperative; Tracy Burchett, ILWU; Pat Ruddiman, ILWU; Jim Cline, Rogue Brewery; Jack Waibel, Rogue Brewery; Mark Newell, Fisherman/Buyer; Keith Kaminski, ILWU; Rex Capri; Robert Smith; and Calley Hair, Newport News-Times.

#### **II. EXECUTIVE SESSION**

**A motion was made by Lackey and seconded by Chuck to enter into EXECUTIVE SESSION PURSUANT TO ORS 192.660(2)(f) AND ORS 192.660(2)(h) TO CONSIDER INFORMATION OR RECORDS THAT ARE EXEMPT FROM DISCLOSURE BY LAW, INCLUDING WRITTEN ADVICE FROM THE PORT'S ATTORNEY, AND TO CONSULT WITH THE PORT'S ATTORNEY REGARDING LEGAL RIGHTS AND DUTIES IN REGARD TO CURRENT LITIGATION OR LITIGATION THAT IS MORE LIKELY THAN NOT TO BE FILED, RESPECTIVELY, and PURSUANT TO ORS 192.660(2)(a) – TO CONSIDER THE EMPLOYMENT OF AN OFFICER, EMPLOYEE, STAFF MEMBER OR AGENT. The motion passed 4 – 0.**

**Commissioners Present:** Walter Chuck (Pos. #1); Sara Skamser (Pos. #2); and Jeff Lackey (Pos. #4), Vice President. Patricia Patrick-Joling (Pos. #5), President, participated by phone. Stewart Lamerdin (Pos. #3), Secretary/Treasurer, was excused.

**Management and Staff:** Aaron Bretz, General Manager Pro Tem; Mark Harris, Staff Accountant; and Karen Hewitt, Administrative Assistant. Richard Stellner, Human Resource Management Consultant and Pete Gintner, Port Attorney, participated by phone.

**Members of the Public and Media:** Calley Hair, Newport News-Times.

No decisions were made in Executive Session.

**A motion was made by Skamser and seconded by Chuck to end the Executive Session. The motion passed 4 – 0.**

Executive Session was adjourned at 12:26 pm.

#### **III. CALL TO ORDER**

Commission President Patricia Patrick-Joling reconvened the Special Meeting of the Port of Newport Board of Commissioners at 12:28 pm, at the South Beach Activities Room, 2120 SE Marine Science Drive, Newport, OR, 97365.

#### IV. GENERAL MANAGER CONTRACT REVIEW

**A motion was made by Lackey and seconded by Skamser to accept the General Manager contract as presented and authorize the President to sign the contract with Doug Parsons for General Manager. The motion passed 4 – 0.**

A copy of the contract is appended to the minutes. Patrick-Joling directed Bretz to let Stellner know the contract was approved.

#### V. PORT VEHICLE FOR NIT

Bretz introduced the staff report, included in the meeting packet. He said that three vehicles were considered, but the Ford Ranger provided what was minimally required on a daily basis. Patrick-Joling asked if the vehicle was too small, and Bretz replied that the Port has larger trucks at the Commercial Marina that could be used if needed. Lackey asked if the Commission should wait until the new General Manager was seated to make the decision. Skamser proposed that it would be good to take this off his plate. Chuck said the Ranger looked like a good deal.

**A motion was made by Chuck and seconded by Skamser to authorize the General Manager Pro Tem to purchase a truck for the International Terminal Manager not to exceed \$10,000 . The motion passed 4 – 0.**

#### VI. TERMINAL HOIST LIVE CATCH CRITERIA

Bretz referred to the drafts included in the meeting packet, in response to the discussion at the last meeting. Bretz said the draft on page 5 was his, and the draft on page 6 was submitted by Skamser. Skamser suggested more specific reference to unloading Dungeness crab for this season only. Bretz had also sent the document for review by Gintner. This would not be policy, but something that would give the General Manager Pro Tem some leeway. He suggested using the language from Skamser's draft but changing "sole discretion" to "discretion", so that management can answer for what is done by the Commercial Harbormaster and the NIT Supervisor. The new General Manager will be busy and making this option through August only will allow him to get up to speed. Bretz said this would show a good faith response to the Commercial Fishing Users Group Committee. He suggested he could put this in a letter to be distributed. There was consensus from the Commission to direct Bretz to proceed.

#### VII. PUBLIC COMMENT

There was no public comment.

#### VIII. ADJOURNMENT

Having no further business, the meeting adjourned at 12:40 pm.

ATTESTED:

  
Patricia Patrick-Joling, President

  
Stewart Lamerdin, Secretary/Treasurer

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# **Employment Agreement**

## **Introduction**

This Employment Agreement (hereinafter "Agreement") is made and entered on the day set out above the signatures below by and between the **Port of Newport**, an Oregon port district, (hereinafter "Port") and **Douglas J. Parsons**, (hereinafter "General Manager" or "Manager") to set out the terms and conditions of Port's employment of General Manager.

## **Section 1: Term**

The term of this Agreement shall be for a period of one (1) year from the start date of employment of March 14, 2018 (hereinafter the "Start Date"). The General Manager's initial one-year anniversary date (hereinafter the "First Anniversary Date") will be March 14, 2019.

Thereafter, this Agreement can be renewed, amended or modified, on or before March 14, 2019, upon mutual agreement in writing between the Port and the General Manager unless or until terminated by either Port or Manager as provided herein.

## **Section 2: Duties and Authority**

Port agrees to employ Douglas J. Parsons as its General Manager to perform the functions and duties specified in Port policies, resolutions, and ordinances and to perform other legally permissible and proper duties and functions of that office as may be assigned him by the Port Commission, and Manager agrees to accept said employment.

The Port Commission agrees to the principle of noninterference in the administration as necessary to the orderly and efficient implementation of Port Policy. The Port Commission agrees to direct their concerns about all matters involving Port staff through the General Manager. The General Manager agrees to respond promptly to all inquiries from the Commission whether made individually or collectively.

## **Section 3: Relocation Reimbursement**

The Port agrees to reimburse Port Manager up to \$2,000 for actual receipted costs (including fuel, meals, lodging, and equipment rentals) associated with moving and temporary living expenses incurred between the date of this Agreement and his Start Date.

## **Section 4: Compensation**

The Port agrees to pay Manager a gross monthly base salary of nine-thousand-eight-hundred-forty dollars (\$9,840.00) for the first six months of the initial term of this Agreement. The General Manager's employment by the Port is Fair Labor Standards Act (hereinafter "FLSA") exempt, and not eligible for overtime.

During the one-month period before the first six month anniversary for the General Manager (on or before September 14, 2018), the Port Commission will review the performance of the General Manager. Upon satisfactory review, the General Manager's monthly base salary, at the discretion of the Port Commission, may increase up to the amount of ten-thousand dollars (\$10,000) per month, effective September 14, 2018.

Should this contract be extended by mutual agreement between the Port and the General Manager beyond the First Anniversary Date, changes in the General Manager's salary shall be negotiated on an annual basis and memorialized in a written addendum to this Agreement.

The Port agrees to pay the General Manager in equal installments at the same time as other employees of the Port are paid.

**Section 5: Dues, Subscriptions and Professional Development**

Port will pay the professional dues and subscriptions of General Manager as appropriate for his continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement and to improve his performance in his duties as General Manager, subject to reasonable limitations by the Port Commission.

Port will pay for travel and expenses of General Manager for meetings, conferences, courses and other occasions related to the continued professional development of General Manager, including visits to other west coast ports, subject to reasonable limitations by the Port Commission.

**Section 6: Health, Disability and Life Insurance Benefits**

The Port agrees to provide and to pay premiums for health, dental and life insurance benefits for the General Manager in the same manner as provided to other full time Port employees.

**Section 7: Paid Time Off**

The General Manager shall accrue on-going paid time off [PTO] at the same rate accorded to other full time Port employees.

The General Manager shall be credited with an initial bank of eighty (80) hours of PTO upon his Start Date. The General Manager will be allowed to take PTO for pre-scheduled personal travel for his daughter's college graduation around May 11, 2018.

In the event of termination, either voluntarily or involuntarily, the General Manager shall be compensated for accrued and unused PTO as of the date of termination at the same rate for other full time Port employees.

**Section 8: Automobile Usage and Reimbursement**

The Port will make a Port owned vehicle available for General Manager's work related use, if one is available. If a Port owned vehicle is not available, or in situations where the General Manager elects to use his personal vehicle, the Port will reimburse the General Manager for actual mileage incurred for work related travel at the appropriate Internal Revenue Service rate.

**Section 9: Cell Phone Stipend**

The General Manager shall be entitled to a cell phone stipend in the same manner afforded to other full time Port employees.

**Section 10: Retirement**

General Manager will be enrolled in the Oregon Public Employees Retirement System and Port will pay costs relating to same in the same manner as afforded other full time Port employees.

**Section 11: Termination**

Termination without Cause. This Agreement may be terminated by either the Port or Manager for any reason whatsoever upon giving not less than thirty (30) calendar days written notice to the other or if either party chooses not to renew this Agreement.

Termination for Cause. For the purpose of this agreement, termination for cause shall occur when:

1. Manager knowingly fails or refuses to comply with the written policies, standards and regulations of the Port now in existence or as are from time to time established; and/or
2. the Port has reasonable cause to believe Manager has knowingly misappropriated Port funds, goods or services to his own or some other private third party's benefit or other acts of misconduct which the Port Commission believes in good faith is detrimental to the Port and/or its interests.

**Section 12: At Will Status; Severance Payment**

It is understood by all parties that the employment relationship between the Port and General Manager is employment at will and the only employment rights the General Manager has are those set out in this Agreement.

No severance compensation shall be paid nor earned by the General Manager if she/he is terminated for cause as defined in Section 11 above or he voluntarily resigns in writing under Section 13.

If Manager is involuntarily terminated by Port before expiration of this Agreement (or any extension thereof) albeit Manager is ready, willing and able to perform his duties as General Manager, then in that event, Manager shall be entitled to and Port will pay a graduated severance payment equal to the value of one (1) month's salary for each two months (or portions thereof) of completed service to the Port as General Manager. This right begins on the Start Date. The maximum payment Manager may accrue is payment equal to the monetary value of six (6) months' salary.

Payment of severance shall be made monthly, each payment being the value of one month's salary (less appropriate and lawful deductions) consistent with the graduated schedule. The right to said payment shall cease if, during the period of the scheduled payments, Manager accepts employment with another employer (other than self-employment). Manager has an affirmative obligation to notify the Port in writing upon acceptance of other employment.

Regardless of whether the Manager is terminated for cause or otherwise, he shall be compensated for his accrued and unused PTO time in the same manner as full time Port employees.

The Manager shall, if terminated for reasons other than "for cause" as set out in Section 11, be entitled to receive from Port a COBRA subsidy to continue in the Port's health insurance plan for the duration of the severance benefit.

In the event the Manager is incapacitated or otherwise unable to perform his duties for a period of ninety (90) successive calendar days, Commission may suspend the salary and subsequent PTO accruals of this Agreement until the General Manager is able to return to work or the Agreement is terminated.

**Section 13: Resignation**

In the event that the General Manager voluntarily resigns his position with the Port, the General Manager shall provide a minimum of thirty (30) calendar days written notice unless the parties agree otherwise in writing.

**Section 14: Performance Evaluation**

Port shall review the performance of the General Manager on or before September 14, 2018 in accordance with Section 4 of this Agreement, and then not less than annually thereafter and consistent with ORS 192.660(2)(i). The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a summary of the evaluation results. Consistent with ORS 192.660(2)(i), the Port Commission may conduct this review in an executive session unless General Manager requests the review to occur in an open session.

**Section 15: Hours of Work**

It is recognized that the General Manager must devote a great deal of time outside the normal office hours on business for the Port, and to that end the General Manager shall be allowed to establish an appropriate work schedule that meets the Port's needs consistent with the General Manager's duties.

**Section 16: Indemnification**

The Port agrees to defend, hold harmless and indemnify Manager from any and all demands, claims, suits, actions and legal proceedings brought against Manager in his individual or official capacity as agent and General Manager of the Port, consistent with the terms of the Oregon Tort Claims Act (ORS 30.260 to 30.300).

Port agrees to pay General Manager a reasonable consulting fee and travel expenses should General Manager serve as a witness, advisor or consultant to Port regarding pending or active litigation following the termination of his employment.

**Section 17: Bonding**

Port shall bear the full cost of any fidelity or other bonds required of the General Manager.

**Section 18: Other Terms and Conditions of Employment**

Except as otherwise provided in this Agreement, General Manager shall be entitled to the level of benefits enjoyed by other full time Port employees.

**Section 19: General Provisions**

A. Integration. This Agreement sets forth and establishes the entire understanding between the Port and the General Manager relating to the employment of the General Manager by the Port. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement.

B. Modification. Nothing shall restrict the ability of the Port and Manager to mutually amend or adjust the terms of this Agreement. However, no amendment or adjustment shall be valid unless in writing and signed by both the Port and Manager.

C. No assignment. This agreement is personal to General Manager and is not subject to assignment or transfer but shall be binding upon, and inure to the benefit of the heirs and executors of General Manager.

D. No Third-Party Beneficiaries. This Agreement does not create or grant any rights or benefits to or for any party other than Port and General Manager.

E. Effective Date. This Agreement shall be effective as of the State Date of March 14, 2018.

F. Mediation. Should any dispute arise between the parties regarding the terms of this Agreement or work or services covered thereby, it is agreed that such dispute is required to be submitted to a mediator prior to arbitration. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Newport, Oregon, unless both parties agree otherwise in writing. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If one party requests mediation and the other party fails to respond within ten (10) calendar days, or if the parties fail to agree on a mediator within ten (10) calendar days, a mediator shall be appointed by the presiding judge of the Lincoln County Circuit Court upon request of either party.

G. Arbitration. In the event the parties have a dispute concerning the terms of this Agreement or the terms and conditions of the employment relationship (and they have not otherwise resolved the matter within thirty (30) calendar days through the mediation process set out in subsection (F) above) then the dispute shall be resolved by submitting it to binding arbitration.

1. Within thirty (30) calendar days of a notice by either party to the other requesting arbitration, Port and Manager shall select an arbitrator from a list of three (3) obtained from Arbitration Services of Portland, Inc. (hereinafter "ASP"). The arbitrator shall for

purposes of the arbitration proceedings. apply the rules of mandatory arbitration as adopted by the ASP in effect at the time of the arbitration.

2. Within sixty (60) calendar days of the selection or appointment of the arbitrator, both Port and Manager shall concurrently submit to the arbitrator (supplying a copy to each other) a written statement of their respective legal and factual positions on the dispute. The arbitrator shall determine, after a hearing on the merits and within forty-five (45) calendar days after receipt of the statements, the determination of the dispute which determination shall be final and binding.

3. Each party shall bear equally the expense of the arbitrator. Each party shall bear its own expenses for witnesses, depositions and attorneys in any arbitration or any other action arising out of or related to this Agreement.

H. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

IN WITNESS WHEREOF, the Port of Newport has caused this agreement to be signed and executed in its behalf by the President and General Manager has signed and executed this agreement, both in duplicate, this 5th day of March, 2018.

  
Patricia Patrick-Joling, President

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Douglas J. Parsons, General Manager