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FEDERAL MARITIME COMM

**FIRST AMENDMENT  
TO INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE PORT OF PORTLAND  
AND  
PORT OF VANCOUVER**

THIS FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT ("First Amendment") effective as of May 3, 2006 ("Effective Date"), is entered into by and between the Port of Vancouver, USA, a Washington Port District ("Vancouver") and the Port of Portland, an Oregon Port District ("Portland"). Portland and Vancouver are hereinafter collectively referred to as the "Parties."

**RECITALS**

A. The Parties executed an Intergovernmental Agreement dated August 11, 1993 (Port Agreement No. 1993-117) (the "Agreement") to jointly develop a floating dock facility for the nonexclusive use of Subaru of America.

B. The Parties desire to amend the Agreement to (a) extend the Term of the Agreement to coincide with the renewal term of the Subaru of America contract with Vancouver; and (b) to permit Vancouver to market the floating dock independently from Portland, subject to the terms and conditions of this First Amendment.

NOW, THEREFORE, the Parties, intending to be legally bound by the terms and conditions contained in this First Amendment and in consideration of the mutual covenants set forth below, agree as follows:

**AGREEMENT**

**1. TERM, MODIFICATION AND TERMINATION**

Section 1 (a) shall be deleted in its entirety and replaced with the following Section 1 (a):

(a) This Agreement shall be effective upon approval by the Commissions of both Parties and shall continue through December 31, 2015 and, unless terminated as provided for in this agreement, the Parties may renew the agreement for additional five (5) year terms, provided however, that both Parties must agree to such renewal in writing at least thirty (30) days prior to expiration of the then current Term.

**2. SCOPE OF RESPONSIBILITIES/COMMITMENTS**

Section 2 (c) (1) shall be deleted in its entirety and replaced with the following Section 2 (c) (1):

1 - Amendment No. 1 \\popfs\propdev-pvt\legal\igas\first amendment to pop-pov iga #93-117 final.doc

(c) Joint Portland/Vancouver Commitments

(1) Vancouver and Portland may jointly market the use of the floating dock facility by businesses other than Subaru of America to the extent the use does not unreasonably interfere with the use of the floating dock facility by Subaru of America. Vancouver may also market the floating dock facility independently from Portland, provided that Vancouver shall not market the floating dock facility independently, without the prior written consent of the Port in its sole discretion, to any automobile account (Toyota Motor Sales, U.S.A., Inc.; American Honda Motor Co., Inc.; Hyundai Motor America; or Auto Warehousing Co.) which, at the time of such proposed marketing, is a current tenant of Portland or other user of real property owned by Portland.

3. SAVINGS CLAUSE

Except as expressly modified by this First Amendment, the Agreement shall remain in full force and effect according to its terms.

4. WARRANTY OF AUTHORITY

The individuals executing this First Amendment warrant they have full authority to execute this First Amendment on behalf of the entity for whom they are acting herein.

IN WITNESS WHEREOF, the Parties have executed this First Amendment to be effective as of the date set forth above.

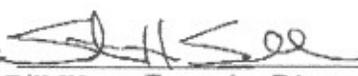
PORT OF VANCOUVER, USA

By:

  
Lawrence L. Raulson  
Executive Director

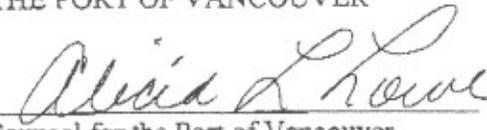
PORT OF PORTLAND

By:

  
Bill Wyatt, Executive Director

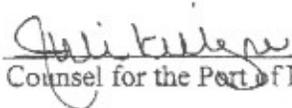
APPROVED AS TO LEGAL SUFFICIENCY  
FOR THE PORT OF VANCOUVER

By:

  
Counsel for the Port of Vancouver

APPROVED AS TO LEGAL SUFFICIENCY  
FOR THE PORT OF PORTLAND

By:

  
Counsel for the Port of Portland

INTERGOVERNMENTAL AGREEMENT  
PORT OF PORTLAND / PORT OF VANCOUVER

This Agreement is entered into as of this 11 day of August 1993 by and between The Port of Portland, Oregon ("Portland") and the Port of Vancouver, Washington ("Vancouver"):

RECITALS:

A. Portland and Vancouver wish to jointly develop a floating dock facility for the nonexclusive use of Subaru of America.

B. Portland has possession of a floating dry-dock section, known as AFDB-4 section E ("Hull"), that is capable of being converted into a floating dock facility and the joint development of such a floating dock facility promotes the maritime and shipping interests of Portland.

C. Portland is authorized to enter into this agreement pursuant to ORS 190.410 to ORS 190.470.

D. Vancouver is authorized to enter into this agreement pursuant to RCW 53.08.240.

E. Portland and Vancouver may wish to explore further opportunities for joint development and operation of maritime facilities.

NOW, THEREFORE, the parties agree as follows:

1. Term, Modification and Termination.

(a) This Agreement shall be effective upon approval by the Commissions of both ports and shall continue until December 31, 2009 and, unless terminated as provided for in this agreement, the parties intend to renew the Agreement for additional five (5) year periods, provided however, that both parties must agree to any such renewal in writing.

(b) This Agreement may be modified, amended or altered from time to time, but these modifications, amendments, or alterations may be done only in writing and only with the consent of both parties.

(c) This Agreement may be terminated at any time with the written consent of both parties.

(d) This Agreement is contingent upon the approval of the Oregon Department of General Services, the Oregon Attorney General and the federal General Services Administration. Failure to obtain the approval of any or all of the above agencies shall void this Agreement.

## 2. Scope of Responsibilities / Commitments

### (a) Portland's Responsibilities.

(1) Portland shall provide the Hull to be converted for use as a floating dock to be located at Vancouver, Washington, and to be operated by Vancouver. Portland retains all ownership interest in the Hull, before, during, and after its modification pursuant to this Agreement.

(2) Portland will provide technical and engineering assistance as to modifications to the Hull and dock design, if so requested by Vancouver.

### (b) Vancouver's Responsibilities.

(1) Vancouver shall take possession of the Hull at Portland's Berth 412 and shall be responsible for safely moving the Hull as necessary for modifications and to its final destination in Vancouver. Vancouver will be able to take possession of the Hull at any time after the execution of this agreement by the parties and all approvals required in 1(d) have been obtained.

(2) Vancouver agrees to accept the Hull as is and where is. Vancouver acknowledges that asbestos is present in the interior of the Hull. It is the intent of the parties that the asbestos shall remain in the Hull so long as it does not create any exposure or danger to employees, the public health or unless its removal is mandated by the appropriate regulatory authorities.

(3) Upon the effective date of this Agreement, Vancouver shall assume and perform all of Portland's duties under "Vessel Conditional Transfer Document for AFDB-4 Section E to the Port of Portland" ("Transfer Agreement") dated September 8, 1992, including but not limited to reporting duties. The Transfer Agreement in its entirety is hereby incorporated into this Agreement. Vancouver's duties under this paragraph shall include but not be limited to putting the Hull to and keeping it in a use authorized pursuant to

the terms of the Transfer Agreement.

(4) Vancouver shall make all modifications to the Hull necessary for its use as a floating dock. Vancouver shall provide Portland with plans and specifications at least 30 days before modifications are to be made. Portland may require reasonable changes to the plans and specifications in order to preserve the value and utility of the Hull.

(5) Vancouver shall make all improvements necessary for an efficient floating dock facility, including but not limited to improvements necessary for mooring and operating the modified Hull as a floating dock. The floating dock facility shall be located at Vancouver's Terminal 4, Berth 10, as shown on Exhibit 1.

(6) Vancouver shall put the Hull to an approved use no later than December 31, 1994. Vancouver shall take no action that will interfere with the ownership of Portland in the Hull.

(7) Vancouver shall provide hull and machinery insurance on the Hull in the amount of \$500,000, prior to taking possession of it. Upon completion of the modifications to the Hull, Vancouver shall cause a condition and valuation survey to be made to establish the value of the modified Hull, and shall adjust the amount of hull and machinery insurance to equal the replacement value of the Hull. Prior to taking possession of the Hull and throughout the term of this Agreement, Vancouver shall provide and maintain hull and machinery insurance as described above, protection and indemnity insurance, and pollution insurance that covers responsibilities under the Oil Pollution Act of 1990.

(8) Vancouver shall cause Portland to be named as an additional insured on all insurance required under this Agreement. All insurance under this Agreement shall be with one or more insurance companies acceptable to Portland. Vancouver shall cause the insurance companies to issue to Portland certificates evidencing the insurance required under this Agreement, and shall cause the insurance companies to give Portland not less than 30 days written notice prior to cancellation or material modification of a policy provided under this Agreement.

(c) Joint Portland/Vancouver Commitments.

(1) Portland and Vancouver may jointly market the use of the floating dock facility by businesses other than Subaru of America to the extent the use does not unreasonably interfere with the use of the floating dock facility by Subaru of America. In the event Subaru of America leaves Vancouver, Washington, Portland and

Vancouver may continue to jointly market the use of the floating dock facility by businesses other than Subaru of America.

(2) The joint marketing of the facility shall not be construed as an obligation imposed on either Vancouver or Portland to market the facility and they may continue to market their separate facilities as they deem appropriate under the circumstances.

(3) In all events, the parties shall share dockage fees from the floating dock facility as they are set forth in the Port of Vancouver Terminal Tariff No. 4 and all revisions, additions and amendments thereto. Vancouver shall receive sixty percent (60%) of all dockage fees and Portland shall receive forty percent (40%) of all dockage fees.

(4) When all requirements of the Transfer Agreement have been satisfied, the parties may choose to negotiate a sale of the Hull to Vancouver. However, this provision creates no obligation on the part of Portland to sell the Hull nor on the part of Vancouver to purchase it.

### 3. Payment

Vancouver agrees to pay Portland on a vessel-by-vessel basis, payable within thirty (30) days of each vessel's departure from Vancouver, Washington. Any amount remaining unpaid for a period of more than thirty (30) days after the date of the vessel's departure may be deemed delinquent and thereafter subject to delinquency charges set out in Portland's Terminal Tariff No. 6 and all revisions, additions and successors thereto. Along with each payment, Vancouver will supply a copy of the vessel call log plus such other documents deemed by Portland to be sufficient to support the calculation of the payment.

### 4. Indemnification.

To the full extent permitted by law, Vancouver and Portland agree to defend, hold harmless, and indemnify the other for liability that arises from the negligence or other fault of the indemnifying party or the indemnifying party's officers, employees, or agents.

### 5. Future Activities.

Portland and Vancouver agree to explore the possibility of future opportunities for joint development and operation of

maritime facilities and agree to share equally in any costs incurred to explore such possibilities. Neither party shall incur any costs without the advance written approval of the other.

6. General Provisions.

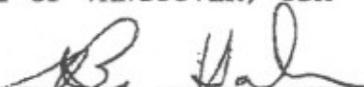
(a) This Agreement shall be effective when it has been executed by both parties. This Agreement includes the parties' entire Agreement regarding the same subject and supersedes all prior and contemporaneous communications or agreements regarding the same subject.

(b) The individuals signing below on behalf of each party represent that they are fully authorized to sign this Agreement on behalf of the party for which they sign.

IN WITNESS WHEREOF, Portland and Vancouver have executed this Agreement as of the day first written above.

PORT OF VANCOUVER, USA

PORT OF PORTLAND

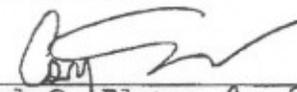
By   
Byron Hanke  
Executive Director

By   
Mike Thorne  
Executive Director

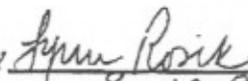
APPROVED AS TO LEGAL SUFFICIENCY

APPROVED AS TO LEGAL SUFFICIENCY

By   
Counsel, Port of Vancouver

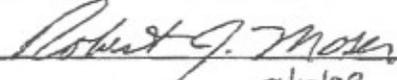
By   
~~Paul C. Elmer~~ Cory Streisinger  
~~Assistant~~ General Counsel

APPROVED AS TO LEGAL SUFFICIENCY

By   
8-12-93  
Oregon Attorney General

APPROVED BY COMMISSION:

APPROVED BY COMMISSION:

  
8/10/93

8/11/93

