

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

THIS SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT ("Second Amendment") effective as of DEC 31, 2015 ("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) to jointly develop a floating dock facility for the nonexclusive use of Subaru of America, and amended the Agreement under a First Amendment dated May 30, 2006 (collectively, the "Agreement").

B. The Parties desire to amend the Agreement to renew the agreement for an additional five (5) year term as provided by Section 1(a) of the First Amendment.

NOW, THEREFORE, the Parties, intending to be legally bound by the terms and conditions contained in this Second 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, as approved by the Port of Vancouver and Port of Portland Commissions on August 10, 1993 and August 11, 1993 respectively, shall continue through December 31, 2020 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. SAVINGS CLAUSE


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

3. WARRANTY OF AUTHORITY

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

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


THE PORT OF VANCOUVER

By: 
Todd M. Coleman
Executive Director/CEO
Date: 1.5.16

**APPROVED FOR LEGAL SUFFICIENCY
FOR THE PORT OF VANCOUVER:**

By: 
Alicia L. Howe
Counsel for Port of Vancouver

THE PORT OF PORTLAND

By: 
Print Name: BILL WYATT
As Its: EXECUTIVE DIRECTOR
Date: 12/21/15

**APPROVED FOR LEGAL SUFFICIENCY
FOR THE PORT OF PORTLAND:**

By: 
Counsel for Port of Portland

**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):

(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.

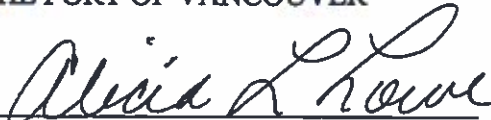
PORT OF VANCOUVER, USA

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: 
Alicia L. Howe
Counsel for the Port of Vancouver

APPROVED AS TO LEGAL SUFFICIENCY
FOR THE PORT OF PORTLAND

By: 
J. Wittgen
Counsel for the Port of Portland

INTERGOVERNMENTAL COOPERATION AGREEMENT

THIS AGREEMENT is entered into this 12th day of October, 2004, by and between THE PORT OF PORTLAND, an Oregon Port District ("Portland") and THE PORT OF VANCOUVER, USA, a Washington Port District ("Vancouver"). Portland and Vancouver are hereinafter collectively referred to as the "Parties".

RECITALS

A. The Parties entered into an agreement as of August 11, 1993 ("Auto Agreement;" Portland No. 93-117), by which they agreed to pursue the cooperative development of an automobile import facility at the Port of Vancouver, and to explore the possibility of future opportunities for joint development and operation of maritime facilities and of sharing equally in the costs of the exploration.

B. The Parties have a common interest in facilitating the efficient movement of cargo in the Portland harbor and in the lower Columbia River, in recognition of which the Parties' respective governing bodies met in joint session on December 6, 1995 and adopted separate resolutions providing for discussion of ways to cooperate and to facilitate the movement of cargo through their facilities.

C. The Parties entered into the "Port of Portland/Port of Vancouver Discussion Agreement" ("Discussion Agreement;" FMC No. 224-200978; Portland No. 96-029) effective May 14, 1996, by which the Parties agreed to the exchange of information to facilitate proposals for joint action, including without limitation the cooperative marketing and development of the Parties' facilities.

D. Portland is authorized to enter into this agreement by ORS 190.410 to 190.440.

E. Vancouver is authorized to enter into this agreement by RCW 53.08.240.

F. The Parties wish to expand upon the progress made under the Discussion Agreement and the Auto Agreement, and pursue the cooperative marketing and development of their facilities, including without limitation Vancouver's Columbia Gateway Project, and other undeveloped or under-developed facilities in both Portland and Vancouver.

AGREEMENT

1. TERM

A. The term of this Agreement shall be for one year, commencing when it has been fully executed by the parties and has become effective in accordance with 46 App. USC 1705. This Agreement shall **automatically be renewed for additional 1-year terms** unless one party has provided the other with notice of termination.

B. Either party may terminate this Agreement upon 90 days written notice to the other. Upon either party giving notice of termination as provided for herein, future performance obligations of the Parties shall be suspended until such time as the Parties further agree or until the Agreement terminates.

C. In the event that either party elects to terminate this Agreement pursuant to this Section, the Parties shall conclude their current activities relating to the Agreement and return all documents evidencing shared information to the originating party.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Section shall not relieve the Parties of liability for any obligation previously incurred

2. SCOPE

The purpose of this agreement is to promote cooperation through openness and joint action. To that end, the Parties will engage in joint marketing activities, seek opportunities for joint facility development and sharing of the related development costs and revenue, and share relevant information necessary to accomplish joint marketing and joint facility development

3. PROJECT MANAGERS

A. To provide for consistent and effective communication, the Parties, not later than five (5) days after execution of this Agreement, shall each appoint a named senior representative as a Project Manager. Thereafter, the Project Managers shall meet regularly until the termination of the Agreement. The Project Managers shall meet at least four times per year.

B. Until termination of this Agreement, the Project Managers shall:

- i. Agree upon the goals, targets, and priorities for accomplishing joint marketing activities and joint facility development;
- ii. Agree upon what information should be shared by the Parties to accomplish specific goals; and
- iii. Develop and implement agreed upon strategies for accomplishing the established goals and targets.

C. The Project Managers shall also generally oversee the coordination of efforts being made pursuant to this Agreement. Oversight shall be consistent with the agreed upon goals developed by the Project Managers.

D. Each Project Manager may make recommendations the Project Manager deems warranted to the Executive Director of the Party the Project Manager represents on matters that

the Project Managers generally oversee, including suggestions to avoid potential sources of dispute.

E. Neither party shall make proposals to prospective clients regarding development on property owned by the other party without the other's prior written consent.

4. JOINT DEVELOPMENT AGREEMENTS

The Parties acknowledge that joint development and joint marketing beyond the cooperative exploration of opportunities under this Agreement may require approval from one or both of the Parties' respective boards of commissioners. The Parties contemplate entering into joint development agreements before undertaking joint development projects. Joint development agreements would address a panoply of issues, including without limitation, the sharing of costs and revenues, disposition upon expiration of a joint development agreement, and dispute resolution.

5. COST AND REVENUE SHARING

Costs and revenues related to a joint development project shall be shared in accordance with the following formulae:

ANNUAL NET REVENUE = (GROSS REVENUE) – (OPERATING AND MAINTENANCE COSTS)

$(EA_{POP} + NI_{POP} - RV_{POP}) \div (EA_{POP} + EA_{POV} + NI_{POP} + NI_{POV} - RV_{POP} - RV_{POV}) = POP \text{ Share of Annual Net Revenue}$

Where:

EA_{POV} = existing assets contributed by the Port of Vancouver

EA_{POP} = existing assets contributed by the Port of Portland

NI_{POV} = new investment contributed by the Port of Vancouver, including capital and services

NI_{POP} = new investment contributed by the Port of Portland, including capital and services

RV_{POV} = residual, post-development value of assets contributed by the Port of Vancouver

RV_{POP} = residual, post-development value of assets contributed by the Port of Portland

1 – POP Share of Annual Net Revenue = POV Share of Annual Net Revenue

The Parties on a case-by-case basis shall determine residual values and other formula factors. If the Parties cannot agree on a residual value, they shall have the residual value determined by a qualified appraiser agreed upon by the Parties, and the appraiser's determination shall be used for the purposes of this section.

6. SHARED INFORMATION

A. The Parties recognize that the cooperation contemplated by this Agreement will require the exchange of information, including without limitation marketing information, and that some of that information will be sensitive or proprietary. Each party agrees to limit the use of shared information to cooperative activities under this Agreement, and to avoid using the information to compete with the other party. Each party agrees to limit the distribution of shared information to those employees who have a need to know the information in order to carry out the purposes of this Agreement, and to instruct those employees to comply with the confidentiality requirements of this Agreement.

B. If any person or entity requests or demands by subpoena or otherwise any information or materials obtained by a party pursuant to this Agreement, that party or its counsel will immediately notify the counsel who supplied, or whose client supplied, the requested information or materials. The Parties shall take all reasonable steps necessary and appropriate to permit the assertion of all applicable rights and privileges with regard to the information and/or materials requested and/or demanded. The parties shall instruct their respective employees to do the same.

C. If a party believes it is required by law to disclose any privileged or protected information or documents, that party shall provide prompt written notice to the other party so that the other party may seek legal protection for the information. That party required by law to disclose will cooperate with the other party and will use its best efforts to assist in obtaining such protection. If the other party is unable to obtain or fails to seek such protection, that party required to disclose may disclose the information, but only to the extent required by law.

7. NOTICES

A notice required or permitted under this Agreement may be delivered by any commercially reasonable means, including without limitation fax and e-mail, to

The Port of Portland at: Attn: Executive Director
The Port of Portland
121 NW Everett
Portland, Oregon 97209

The Port of Vancouver at: Attn: Executive Director
The Port of Vancouver, U.S.A.
3103 Lower River Road
Vancouver, Washington 98660

8. DISPUTE RESOLUTION

As a condition precedent to either party bringing any suit for breach of this agreement, the complaining party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. During the dispute resolution process, the Parties shall suspend future performance obligations pursuant to this agreement.

9. INTEGRATION AND MODIFICATION

This Agreement constitutes the Parties' entire agreement regarding the cooperative marketing and development of their facilities, and supersedes all prior and contemporaneous communications and agreements on that subject, provided that the Auto Agreement and Discussion Agreement shall remain in full force and effect. To the extent that this Agreement is in conflict with the Auto Agreement or the Discussion Agreement, the terms and conditions of this Agreement shall control. This Agreement may be modified only by a written amendment signed by the authorized representative of each party.

10. AUTHORITY OF SIGNERS

The individuals signing below each warrants that he or she is authorized to sign for and contractually bind the party for which he or she signs.

PORT OF VANCOUVER

By: Lawrence H. Paulson
(signature)

Name: Lawrence H. Paulson
(print)

Its: Executive Director
(title)

Date: October 12, 2004

Approved as to Legal Sufficiency for the Port of Vancouver

Alicia L. Howe
Counsel for the Port of Vancouver

PORT OF PORTLAND

By: Bill Wyatt
(signature)

Name: Bill Wyatt
(print)

Its: Executive Director
(title)

Date: October 13, 2004

Approved as to Legal Sufficiency for the Port of Portland

W. J. Kelley
Counsel for the Port of Portland



Office of the Secretary

FEDERAL MARITIME COMMISSION800 North Capitol Street, N.W.
Washington, D.C. 20573-0001Phone: (202) 523-5725
Fax: (202) 523-0014

December 9, 2004

Paul D. Coleman, Esquire
Hoppel, Mayer & Coleman
1000 Connecticut Avenue NW
Washington, DC 20036Re: Port of Portland/Port of Vancouver Intergovernmental
Cooperation Agreement
FMC Agreement No. 201163
Effective Date: December 8, 2004

Dear Mr. Coleman:

This is to advise you that the Commission has granted the parties' request for expedited review of the subject agreement for good cause. Accordingly, the agreement became effective on the date indicated above.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryant L. VanBrakle".
Bryant L. VanBrakle
Secretary



Bureau of Trade Analysis
Office of Agreements

FEDERAL MARITIME COMMISSION

800 North Capitol Street, N.W.
Washington, D.C. 20573-0001

Phone: (202) 523-5793
Fax: (202) 523-4372

November 12, 2004

Paul D. Coleman, Esq.
Hoppel, Mayer & Coleman
1000 Connecticut Avenue, NW
Washington, DC 20036

Re: Port of Portland/Port of Vancouver
Intergovernmental Cooperation Agreement
FMC Agreement No. 201163
Date Received: November 8, 2004
Date Effective: December 23, 2004

Dear Mr. Coleman:

This acknowledges receipt of the subject agreement filed with the Commission under section 5(a) of the Shipping Act of 1984. A copy of the agreement with its assigned agency number is enclosed for your records. Please refer to the assigned number when corresponding with the Commission.

Notice of the filing of the agreement was published in the Federal Register. The agreement will become effective on the date shown above unless (1) it is rejected by the Commission, (2) the Commission formally requests additional information, or (3) the agreement is enjoined by a U.S. District Court.

If you requested expedited review, you will be notified by a subsequent letter whether your request is granted or denied.

Sincerely,

Robyn M. Smith
Office of Agreements

Enclosure

