

RESOLUTION NO. 2839

A RESOLUTION of the Port Commission of the Port of Seattle providing for amendment to the voluntary Deferred Compensation Plan for Port Employees adopted pursuant to Resolution 2592

WHEREAS, under the authority of Chapter 99, Laws of 1973 of the State of Washington (RCW 41.04.250), and Port Commission Resolution No. 2592 adopted August 15, 1975, the Port adopted a voluntary Deferred Compensation Plan for Port Employees (the "1975 Plan") and related Deferred Compensation Plan Joinder Agreement and Initial Administrative Guidelines; and

WHEREAS, Resolution 2592 authorized the Administrative Committee designated in paragraph 4 of the 1975 Plan to invest deferred compensation moneys held in accordance with the 1975 Plan and to take all other acts reasonably necessary and required to implement and administer the 1975 Plan, subject to the requirement that all such acts be in accordance with all applicable provisions of federal and state law and regulations as interpreted by Bogle & Gates as counsel for the Port; and

WHEREAS, that legal counsel has advised that Public Law 95-600, Section 131 (1978), amended Section 457 of the Internal Revenue Code of 1954 effective January 1, 1979 to require certain changes to be made in the 1975 Plan not later than December 31, 1981. However, Internal Revenue Service to date has only issued proposed Regulations, IRC Regulation Section 1.457 (Federal Register Volume 45, No. 249, page 85077), to implement amended Code Section 457 with the final form of the Regulations unlikely to be issued until after December 31, 1981; and

WHEREAS, the 1975 Plan Administrative Committee, with advice from legal counsel, has prepared the revised form of Deferred Compensation Plan dated as of December 8, 1981 (the

"1981 Plan") (attached as Exhibit A hereto), based upon their best judgment as to the requirements of amended Code Section 457 and of the eventual final form of the implementing Regulations;

BE IT RESOLVED by the Port Commission of the Port of Seattle as follows:

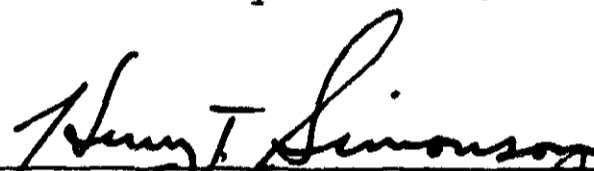
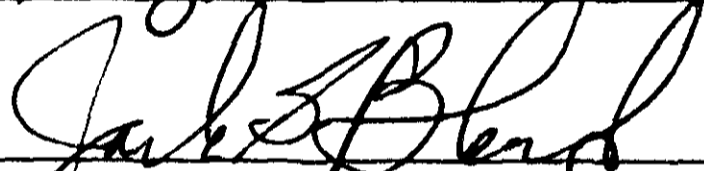
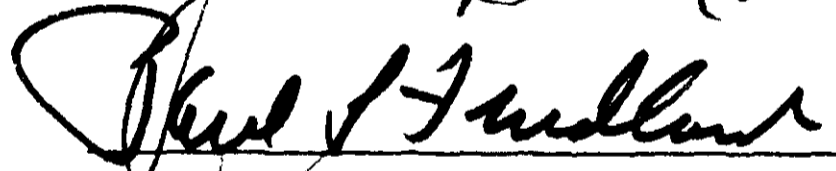

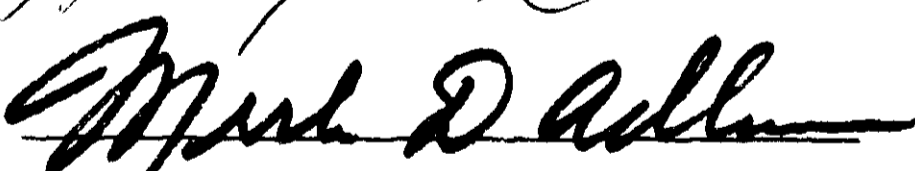
SECTION 1. The 1981 Plan attached as Exhibit A hereto is hereby approved in its current form as an amendment superseding the 1975 Plan and the Administrative Committee established by the 1981 Plan described in Section 2 below is hereby authorized and directed, in consultation with Bogle & Gates, to make any and all revisions and amendments to Exhibit A deemed by them reasonably necessary in order to comply with the requirements from time to time of final Regulations issued by Internal Revenue Service implementing Internal Revenue Code Section 457 as amended from time to time.

SECTION 2. The Administrative Committee for purposes of this Resolution means the committee comprised of the Chief Financial Officer, Director of Human Resources, Director of Labor Relations, President of the Port of Seattle Employees Association, and a wage employee selected by the Executive Director as specified in Section 2.1(b) of Exhibit A. That Committee is hereby authorized to administer the 1981 Plan and in consultation with Bogle & Gates to have full power and authority to adopt rules, regulations, and ancillary forms superseding the Joinder Agreement, Administrative Guidelines, and other documents prepared in connection with the 1975 Plan, which are necessary for the administration of the 1981 Plan, and to interpret, alter, amend or revoke any rules, regulations and ancillary forms so adopted. All such rules, regulations, ancillary forms, and amendments thereof shall at all times be consistent with the provisions of the 1981 Plan as also expressly provided in Section 2.1(b) thereof.

SECTION 3. The Administrative Committee on behalf of the Port is hereby authorized to invest deferred compensation held in accordance with the 1981 Plan in all investments authorized by RCW 41.04.250 as may be selected by said Administrative Committee.

SECTION 4. The Administrative Committee is further authorized to do all acts not expressly provided for in this Resolution and Exhibit A hereto which are reasonably necessary and required to implement and administer the 1981 Plan, provided, however, that all such acts shall be in accordance with all applicable provisions of federal and state law and regulations from time to time as interpreted by Bogle & Gates.

ADOPTED by the Port Commission of Seattle this 8th day of December, 1981 and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission duly affixed.

  
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Port Commissioners

THE PORT OF SEATTLE

DEFERRED COMPENSATION PLAN

Revised

as of

December 8, 1981

Exhibit "A"  
To Resolution No. 2839

## Section 1. Introduction and Purpose of Plan

1.1 Establishment of Plan. This Plan shall be known as the Port of Seattle's Deferred Compensation Plan (the "1981 Plan") and is established under the authority of the Port Commission's Resolution Number 2839 in accordance with section 457 of the Internal Revenue Code of 1954, as amended (the "Code"), and in accordance with the Internal Revenue Service's proposed regulations. This Plan constitutes an amendment and restatement of the Port of Seattle's Deferred Compensation Plan, approved and adopted by the Port Commission of the Port of Seattle on August 15, 1975 (the "1975 Plan").

1.2 Purpose of the Plan. The purpose of this Plan is to allow employees to designate a portion of their compensation to be withheld each month by the Port of Seattle and invested at the discretion of and in a manner approved by the Committee. Any compensation deferred by the Employees may be invested by the Committee, but there is no requirement for the Committee or the Port of Seattle to do so. Participation in this Plan shall not be construed to establish or create an employment contract between the Employee and the Port of Seattle.

## Section 2. Definitions

2.1 Definitions. Whenever used in the Plan, the following terms shall have the meanings as set forth below unless otherwise expressly provided, and when the defined meaning is intended, the term is capitalized:

(a) "Beneficiary" means the person, persons or legal entity entitled to receive any undistributed Deferred Compensation which becomes payable in the event of the Participant's death, as designated by the Participant or provided for in accordance with Section 5.4 of the Plan.

(b) "Committee" means a committee comprised of the Chief Financial Officer, Director of Human Resources, Director of Labor Relations, President of the Port of Seattle Employees Association, and a wage employee selected by the Executive Director. Pursuant to the Port Commission's Resolution Number 2839, the Committee shall administer the Plan and shall have full power and authority to adopt rules, regulations and ancillary forms which are necessary for the administration of the Plan, and to interpret, alter, amend or revoke any rules, regulations and ancillary forms so adopted; provided that, they are legally consistent with the provisions of the Plan, and apply

the law and regulations as interpreted by Bogle and Gates.

(c) "Code" means the Internal Revenue Code of 1954, as amended.

(d) "Compensation" means straight-time or overtime salaries or wages, paid each year for normal services rendered by the Participant to the Employer.

(e) "Deferred Compensation" means that portion of the Participant's Compensation which the Participant and the Employer mutually agree to defer under this Plan.

(f) "Disability" means a physical or mental condition which permanently prevents a Participant from satisfactorily performing his or her usual duties for the Employer.

(g) "Employer" means the Port of Seattle.

(h) "Includible Compensation" means the portion of the Participant's Compensation each year that is currently includible in his or her gross income under the Code.

(i) "Participant" means any permanent employee of the Employer whose salary or wage is paid directly by the Employer and who fulfills the eligibility and enrollment requirements of Section 3 of the Plan; provided that, a wage earning employee is covered by a collective bargaining agreement with the Employer which provides such employee with the option of participating in the Plan.

(j) "Pay Period" means a regular accounting period established by the Port of Seattle for measuring and paying compensation earned by employees.

(k) "Plan" means the Port of Seattle's Deferred Compensation Plan as set forth herein and as it may be amended from time to time.

(l) "Projected Retirement Date" means a date established according to the provisions of Section 3.4(b).

(m) "Normal Retirement Age" means either of the following dates:

(1) The normal retirement age for the employee specified in any other retirement plan maintained for the employee by the Employer, or, if no such age is so specified;

(2) The date the employee attains age sixty-five (65).

(n) "Termination of Service" shall mean the severance of the Participant's employment with the Employer for any reason including retirement, discharge, resignation, death and disability.

2.2 Gender and Number. Except when otherwise indicated by the context, any masculine terminology herein shall also include the feminine and neuter and vice-versa, and the definition of any terms herein in the singular may also include the plural.

### Section 3. Participation in the Plan

3.1 Eligibility. Any employee as described and limited in Section 2(i) who has completed six consecutive months of employment with the Employer and who is regularly scheduled to work at least 21 hours per week or 90 hours per month for the Employer is eligible to participate.

3.2 Enrollment. An eligible employee as defined in Section 3.1 may become a Participant by agreeing in writing, in a form to be provided by the Committee, to a deferment of his or her compensation in accordance with Section 3.3 and 3.4. The deferment will commence with the first Pay Period, or no later than the first Pay Period of the next month, beginning after the receipt by the Employer of a properly completed enrollment form which is accepted by the Committee.

3.3 Minimum Deferment. At the time of any agreement hereunder, a Participant must agree to defer a minimum amount of \$10.00 per week for each investment option selected.

3.4 Maximum Deferment. The total amount of Deferred Compensation during any calendar year for each Participant shall not exceed the limits provided in subsection (a) or (b) below:

(a) 33 1/3% of Includible Compensation or \$7,500 whichever is less, or;

(b) Each Participant may designate a Projected Retirement Date to be on or after Normal Retirement Age. For each of the three calendar years preceding

his or her Projected Retirement Date, a Participant may defer an amount equal to the limits set forth in 3.4(a) plus an additional amount equal to the difference between the amount of Compensation which could have been deferred under this Plan while the Participant was an employee after January 1, 1979, and the amount which was actually deferred during that time.

In no event, however, can the deferral under 3.4(b) exceed \$15,000 for any taxable year or under either 3.4(a) or (b) exceed an employee's Compensation less deductions for FICA, any other taxes, pension contributions and other mandatory deductions.

3.5 Modifications to Amount Deferred. The Employer shall adjust the Participant's Compensation, on a Pay Period basis, by the Deferred Compensation amount indicated on the Participant's election to defer. That amount, subject to the limits of Sections 3.3 and 3.4, may be increased or decreased only by proper application to the Committee. The change shall take effect the first Pay Period of the month following receipt and approval of the application by the Committee. Only one modification (other than a revocation of participation as provided in Section 3.6) may be made each calendar quarter.

3.6 Revocation of Deferral. Any Participant may revoke his or her election to have Compensation deferred by so notifying the Committee in writing. The Participant's full Compensation on a nondeferred basis will then be restored as soon as possible but not later than the Pay Period occurring thirty (30) days after the receipt of the notice, and any other required forms, by the Committee; however, the Participant's deferred compensation amounts shall be paid only as provided in Section 5.3 of this Plan.

3.7 Duration of Election to Defer Compensation. Once an election to have Compensation deferred has been made by the Participant, the election shall continue in effect until the Participant's Termination of Service, unless the Participant modifies the amount in accordance with Section 3.5, or revokes the Deferred Compensation in accordance with Section 3.6. The deferral will automatically cease when a Participant's Compensation during a Pay Period is less than the amount to be deferred. Once the deferral is stopped, the earliest that the Participant may reinstate his or her deferral is the first Pay Period of the month which is six full months following the last month during which there was a deferral of such Participant's Compensation under this Plan; provided that, if the deferral ceased because of insufficient Compensation on



account of an approved medical leave of absence, reinstatement will be allowed when employment is resumed by such Participant.

#### Section 4. Financial Hardship Withdrawal.

A distribution of all or a portion of the Participant's deferred amounts shall be permitted in the event the Participant experiences serious financial hardship which is beyond his or her control and which would cause the Participant severe hardship if such distribution were not authorized. Serious financial hardship may include, but is not limited to, a disability or unexpected and unreimbursed major expense resulting from illness or accident and shall be determined in accordance with any applicable criteria established in the Code. For purposes of this Section, a Beneficiary shall have all rights of a Participant to request a distribution or change in the method of distribution in the event of hardship.

Any Participant desiring a distribution by reason of serious financial hardship must apply to the Committee and demonstrate that the circumstances being experienced were not under the Participant's control and constitute a real emergency which is likely to cause the Participant great financial hardship. The Committee shall have the authority to require such medical or other evidence as it may need to determine the necessity for Participant's withdrawal request.

If an application is approved, the distribution shall be limited to an amount sufficient only to meet the emergency.

Following a withdrawal of funds under this section, a Participant's Compensation will be thereupon restored to its full level and such Participant may not reinstate his or her deferral earlier than six months after the effective date of the withdrawal.

#### Section 5. Benefits Under the Plan

5.1 Unsecured General Creditor. As required by Internal Revenue Code Section 457, title to, and beneficial ownership of, any assets, whether in cash or investments which the Employer may earmark to pay or measure any Deferred Compensation hereunder, shall, at all times, remain as a part of the general assets of the Employer. The Participant and his or her Beneficiary shall not have any property interest whatsoever in any specific asset of the Employer on account of his or her election to defer any Compensation under this Plan. To the extent that any person acquires a right to receive payments from the Employer under the terms of this Plan, such right shall be no greater than the right of any unsecured general creditor of the Employer. The Employer shall not be

responsible for any loss due to investment or failure of investment of funds and assets in this Plan nor shall the Employer be required to replace any loss whatsoever which may result from said investments.

5.2 Distribution Events. A Participant's deferred amounts will be distributed in accordance with Section 5.3 at a date which is thirty (30) days from the day on which one of the following events occurs:

- (a) Termination of Service,
- (b) Determination of Hardship by the Committee under Section 4, or
- (c) Delayed Distribution Date as elected by the Participant or Beneficiary (as applicable) within thirty (30) days of the occurrence of (a) above. The Delayed Distribution Date may be a specific future date, the attainment of a specific age by the Participant, or the attainment of Normal Retirement Age. A Participant and each Beneficiary (if applicable) may elect a Delayed Distribution Date only once. The right to elect a Delayed Distribution Date is subject to the limits of Section 5.3.

Notwithstanding anything to the contrary, payment of the Participant's deferred amounts will commence not later than the latest of the following times:

- (d) Sixty days after the close of the Participant's calendar year in which the Participant reaches Normal Retirement Age;
- (e) The close of the calendar year in which the Participant has a Termination of Service; or
- (f) The close of the calendar year in which the Participant attains age 70 1/2.

5.3 Election of Method of Distribution. At a time at least 30 days prior to the date distributions are to commence (except for Hardship Distributions, which shall be made in the method directed by the Committee, as provided in Section 4) a Participant may elect one or more of the following methods by which his or her deferred compensation amounts shall be distributed:

- (a) A lump sum cash payment of all or a portion of the balance.

(b) In a series of payments on an annuity basis as if an annuity contract was purchased which is based upon the life expectancy of the Participant, or, if married, the life expectancy of the Participant and his or her spouse.

(c) In a series of installments based upon a fixed period which is not longer than the life expectancy of the Participant, or, if married, the life expectancy of the Participant and his or her spouse.

(d) The Participant or, if deceased, the Beneficiary has a right to request alternate methods of benefit payments by asking the Committee in writing for their approval. Such approval shall be based on the Committee's discretion and may be made only if the request is in conformance with the Code and Washington state law.

Life expectancies are to be determined at the time distributions are to commence according to any applicable Internal Revenue Service Table.

Notwithstanding anything to the contrary, a Participant's deferred amounts will be distributed in a lump sum within ninety days following a Termination of Service if any of the following occur: the Participant's deferred amounts are less than \$2000, the Participant's deferred amounts are insufficient to provide payments of \$100 per month, or the Participant does not make a distribution method election.

Should the Participant die at any time prior to or after a Termination of Service, whether prior to or after distribution of his or her deferred amounts have commenced, or if payment has commenced to the Participant's surviving spouse and such surviving spouse dies before the entire amount is paid, the Participant's designated Beneficiary or Beneficiaries shall be entitled to receive the balance remaining of the deferred amounts. The deferred amounts shall be paid in a lump sum, or, if the Beneficiary(ies) request it, such other mode of payments as is approved by the Committee equal to the current value of the deferred amounts at such time. The entire amount payable under this paragraph shall be paid within five years after the Participant's death (or the death of the surviving spouse).

5.4 Designation of Beneficiary. A Participant may designate a Beneficiary or Beneficiaries who will receive the balance of the Participant's total deferred amounts in the event of his or her death in accordance with the following:

(a) A designation of a Beneficiary shall be effective when received by the Committee and made on a form approved by the Committee for that purpose which has been signed by the Participant.

(b) No Beneficiary shall have any rights under this Plan until the death of the Participant. A Participant may, at any time, change his or her Beneficiary(ies) in accordance with Section 5.4(a).

(c) Participants may designate primary and contingent Beneficiaries. Contingent Beneficiary(ies) will become effective only after the death of any and all primary Beneficiaries.

(d) If more than one Beneficiary is named in either category, benefits will be paid according to the following rules:

(1) Beneficiaries can be designated to share equally or to receive specific percentages.

(2) If a Beneficiary dies before the Participant, only the surviving Beneficiaries will be eligible to receive any benefits in the event of death of the Participant. If more than two Beneficiaries are originally named to receive different percentages of the benefits, surviving Beneficiaries will share in the same proportion to each other as indicated in the original designation.

(e) A person, trust, estate, or other legal entity may be designated as a Beneficiary.

(f) If a Beneficiary has not been designated, or a designation is ineffective due to the death of any and all Beneficiaries prior to the death of the Participant, or the designation is ineffective for any reason, the estate of the Participant shall be the Beneficiary.

(g) Upon the death of the Participant, any Beneficiary entitled to the value of the deferred amounts under the provisions of this Section shall become a "Vested Beneficiary" and have all the rights of the Participant with the exception of making any deferrals.

(h) In the event of a conflict between the provisions of this Section and the terms of an annuity

distribution which has commenced under Section 5.3(b), the latter shall prevail.

## Section 6. Miscellaneous

6.1 Nonassignability. The contract entered into between the Employer and a Participant through this Plan and the benefits, proceeds or payments thereunder cannot be sold, assigned, pledged, commuted, transferred or otherwise conveyed by any employee, Participant or Beneficiary. Any attempt to assign or transfer shall not be recognized and shall impose no liability upon the Employer.

The Employer shall be the owner of all deferred amounts hereunder and shall be the sole beneficiary of any investment contract entered into pursuant to this Plan. The Committee shall be the custodian of any investment contracts and shall take the steps necessary to provide a place of safekeeping for them.

Except as otherwise required by law, any deferred amounts withheld pursuant to this Plan shall not be subject to attachment, garnishment, or execution, or to transfer by operation of law in the event of bankruptcy or insolvency of the Participant or otherwise.

6.2 Payments to Minors and Incompetents. If the Committee shall receive evidence satisfactory to it that a Participant or Beneficiary entitled to receive any benefit under this Plan is, at the time when such benefit becomes payable, a minor, or, as adjudicated by a Court of Law, is mentally incompetent to receive such benefit and to give a valid release therefore and that another person or an institution is then maintaining or has custody of such Participant or Beneficiary, and that no guardian of the person or other representative of the estate of such Participant or Beneficiary shall have been duly appointed, the Committee may authorize payment of such benefit to such other person or institution, including a custodian under any State Gifts to Minors Act (who shall be an adult, a guardian of the minor or a trust company), or to a Court of Law for distribution pursuant to that Court's order, and the release of such other person or institution shall be a valid and complete discharge for the payment of such benefit.

6.3 Missing Persons. If the Committee is unable, after any benefit becomes due under the Plan to any person, to authorize payment because the identity or whereabouts of such person cannot be ascertained, and after notice by certified mail has been sent to the last known address of such person, the Committee may direct that such benefit and all other

benefits with respect to such person be paid to a Court of Law for distribution pursuant to that Court's order.

6.4 Headings and Subheadings. The headings and subheadings in this Plan are inserted for the convenience of reference only and are to be ignored in any construction of the provisions hereof.

6.5 Severability. If any provision of this Plan shall be for any reason invalid or unenforceable, the remaining provisions shall, nevertheless, continue in effect and shall not be invalidated thereby.

6.6 Plan Year. The Plan Year shall be the calendar year, beginning January 1 and ending on December 31.

6.7 Days and Dates. Whenever a time limit is expressed in terms of a number of days, they shall be consecutive calendar days, including weekends and holidays, provided however, that if the last day of a period of days would occur on a weekend or a holiday recognized by the State of Washington, the last day of the period shall be the next business day following.

6.8 Termination or Amendment of Plan. The Employer may at any time terminate this Plan. Upon such termination, the Participants in the Plan will be deemed to have withdrawn from the Plan as of the date of such termination. The Participant's deferred amounts will be thereupon restored, and the Employer agrees to liquidate the Participant's accounts in a manner determined by the Committee to be necessary (and reasonable) in accordance with legal requirements.

The Employer may at any time amend this Plan; provided however, no such amendment shall deprive a Participant of or reduce any benefit accrued through the effective date of such amendment.

6.9 Applicable Law. This Plan shall be construed, administered and governed in all respects under and by the laws of the State of Washington and the Code.

IN WITNESS WHEREOF, the Employer has caused this Agreement to be signed by its duly authorized officer, and member of the Committee, on the \_\_\_\_\_ day of \_\_\_\_\_, 1981.

By \_\_\_\_\_  
Port of Seattle

Under authority of the Port  
Commission's Resolution Number 2839