

## RESOLUTION NO.1306

### A RESOLUTION OF THE COMMISSION OF THE PORT OF BELLINGHAM ADOPTING A REAL ESTATE BROKER COMPENSATION POLICY AND SUPERSEDING AND REPLACING THE 1997 REAL ESTATE BROKER COMPENSATION POLICY

**WHEREAS**, the Port of Bellingham desires to use all available resources to market Port real estate, either for sale or lease, to its maximum potential; and,

**WHEREAS**, the Commission of the Port of Bellingham finds cooperation with licensed real estate Brokers will foster more industrial and commercial development; and

**WHEREAS**, the Port of Bellingham adopted a Real Estate Broker Compensation Policy at its commission meeting of October 21, 1997; and,

**WHEREAS**, the Port of Bellingham now desires to update the 1997 Real Estate Broker Compensation Policy; and,

**WHEREAS**, this Resolution 1306 supersedes and replaces the 1997 Real Estate Broker Compensation Policy; and,

**NOW THEREFORE**, the Commission of the Port of Bellingham adopts the following policy with regard to the payment of real estate broker compensation (the "**Policy**").

1. **Registration of a Licensed Real Estate Broker.** In order to qualify for receipt of a broker fee (the "**Broker Fee**") from the Port of Bellingham, a real estate broker must be licensed in the State of Washington (the "**Broker**") and must register as the "procuring cause" of the sale or lease of Port-owned land or buildings. For a Broker to be considered the "procuring cause" of the sale or lease of Port land or buildings the Broker and tenant or purchaser (collectively the "**Prospective Customer**") must both agree in writing in a form acceptable to Port staff that the Broker is representing the client in the proposed transaction with the Port of Bellingham. This written confirmation must (i) include acknowledgment that this Policy has been received, (ii) specific acknowledgement of Section 4 of this Policy and (iii) be received before any substantial discussions have occurred between the Prospective Client and Port staff. The term "substantial discussions" shall mean that point in the negotiations where price and terms for a specific parcel are being negotiated. It is the intent of this Policy that Port staff is made aware of any Broker involved in a transaction before price and terms are negotiated.

1.1. **Multiple Brokers.** Multiple brokers may register with regard to a Prospective Customer under this Policy. In such an event Port staff will only negotiate one Broker Fee and the Commission will only consider approval of one Broker Fee. Prior to disbursement of any approved Broker Fee the brokers and the Prospective Customer will provide a written agreement, acceptable to the Port and signed by all parties, indicating the exact division of the Broker Fee.

1.2. Prospective Client's Discretion Concerning Brokers. It is the Prospective Customer's sole decision, prior to the point of substantial discussion, whether or not a Broker is representing the Prospective Customer in a Port real estate transaction. If a lengthy period of time (as determined by Port) has passed since the initial registration with no recent activity from the Broker and/or Prospective Customer on the transaction, then updated written confirmation of the brokerage relationship will be requested from Broker and Prospective Customer.

1.3. Termination of Broker by Prospective Customer. If a Prospective Customer informs the Port, in writing, that the Prospective Customer has terminated the business relationship with the Broker prior to the execution of a binding and definitive lease or sale agreement then no compensation shall be due. If a Prospective Customer informs the Port, in writing, that the Prospective Customer has terminated the business relationship with the Broker after the execution of a binding and definitive lease or sale agreement then compensation shall be reasonably determined by the Port.

2. **Fee Paid to Broker.** Port real estate staff shall negotiate the amount of Brokerage Fees to be paid to licensed real estate Brokers. The agreement shall be negotiated for each transaction prior to the closing and in writing and signed by the Port and the Broker. The amount of such brokerage fee shall not exceed the following maximum amounts.

a. *Lease transactions:* A Brokerage Fee of not to exceed five percent (5%) of the net annual base rent for the initial term of the lease, not to exceed five (5) years (without the necessity of Commission approval) shall be paid to the licensed real estate Broker who is the procuring cause of the lease of Port real estate and who has registered in accordance with this Policy. The Broker shall receive (i) one-half the Brokerage Fee within thirty (30) days after the lease is fully executed between the Port and the Lessee and all contingency periods have expired which would allow the tenant to terminate the lease and (ii) the remaining one-half within thirty (30) days after the Lessee occupies the leased property.

b. *Sale transactions:* A Brokerage Fee will be paid to the licensed Broker who is the procuring cause of the sale and has registered in accordance with this Policy. The Brokerage Fee will be negotiated for each transaction, will not exceed five percent (5%) of the total sales price, and will be based upon, but not limited to, the following factors: the dollar size of the transaction, the due diligence period, the length of time to close, the financial terms, and existing market commission rates. The Broker shall receive payment of the commission within thirty (30) days after the sale closes and all funds from the sale are received by the Port. If the sale is an installment sale, payment terms for the commission will be negotiated between the Port and the Broker.

2.1. Items Not Included: No rent or free rent periods, Washington State leasehold tax, triple net charges, common area maintenance charges, gross receipts or any other fees or charges shall not be subject to Broker Fees. No Broker Fees shall be paid on sale options, options to extend leases, renewals, or expired leases or on expansion of lease areas.

2.2. Calculation of Broker Fee. Calculations of Broker Fees for lease transactions shall be on the net annual base rent (not including the items mentioned in section 2.1) for the original term of the lease, not to exceed five (5) years. The Port's reasonable determination of the amount owed shall be final and binding.

2.3. Variations May Be Considered: In special circumstances, including transactions of unusual magnitude of size or value, Port staff may recommend variations from the policies set forth herein.

3. **Approval By Commission.** The amount of all Broker Fees paid to licensed Brokers shall be subject to the approval of the Commission and expressly stated in the real estate transaction. The decision of the Commission shall be within the sole discretion of the Commission.

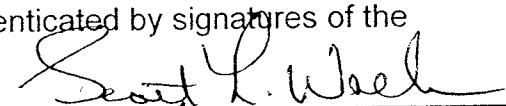
4. **Claims Against the Port.** By registering pursuant to this Policy the Broker and the Prospective Client understand and agree that no claim, action, cause of action or proceeding, administrative or judicial, can be maintained against the Port of Bellingham, its commissioners or employees to collect any Broker Fee or other compensation except to the extent the Port fails to pay an Broker Fee authorized under this Policy.

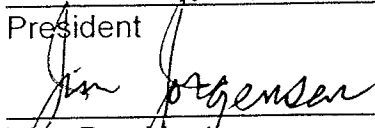
4.1. Broker Registration Acknowledgement and Agreement. Each Broker registration shall include an acknowledgement that (i) the Broker and the Prospective Customer have received a copy of this Policy and (ii) a specific acknowledgement and agreement as to the terms and conditions of this Section 4.

5. **No Alteration of this Policy.** This Policy may only be amended by a written agreement approved by the Commission and executed by the Port.

6. **Annual Report to Commission.** Port real estate staff shall report annually to the Port Commission the results of this Policy and make recommendations on whether this Policy should be amended from time to time.

**ADOPTED** by the Commission of the Port of Bellingham in an open meeting this 1<sup>st</sup> day of May, 2012, and duly authenticated by signatures of the Commissioners voting in favor thereof.

  
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President

  
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Vice President

  
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Secretary