

RESOLUTION NO. 03-13-14

A RESOLUTION OF THE COMMISSION OF THE
PORT OF WALLA WALLA ADOPTING A REAL ESTATE
BROKER COMPENSATION POLICY AND SUPERSEDING
AND REPLACING THE 1991 REAL ESTATE BROKER
COMPENSATION POLICY

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

WHEREAS, the Port of Walla Walla adopted a Real Estate Broker Compensation Policy at its commission meeting of August 13, 1991; and

WHEREAS, the Port of Walla Walla now desires to update the 1991 Real Estate Broker Compensation Policy; and,

WHEREAS, this Resolution No. 03-13-14 supersedes and replaces the 1991 Real Estate Broker Compensation Policy, and

NOW THEREFORE, the Commission of the Port of Walla Walla 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 Walla Walla, 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 Walla Walla. This written confirmation must (i) include acknowledgement 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 lease or sale 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.

In the event, a valid Buyer Agency Broker Agreement exists prior to Prospective Customer contacting the Port, said agreement shall be provided to the Port. This agreement, can then be modified, if necessary, to incorporate the above requirements.

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, defined as six months, 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 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 Broker's Fee shall be due. In said event, the Prospective Customer shall provide the Port with written notice along with supporting documents that the Broker businesss relationship has been terminated and is no longer in effect. 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 the Broker's Fee shall be due and payable as provided in Sections 2.1 and 2.2 below.

2. **Fee Paid to Broker.** The Executive Director shall negotiate with the Brokers the amount of Brokerage Fees to be paid to licensed real estate Brokers. The Brokerage Fee Agreement negotiated for each transaction shall be in writing and shall be signed by the Port and the Broker. The Brokerage Fees negotiated by the Executive Director shall not exceed the following maximum amounts:

2.1 Lease Transactions. A Brokerage Fee shall be paid to the Broker who is the procuring cause of the lease of Port real estate and who has registered in accordance with this policy. The Brokerage Fee shall not exceed five percent (5%) of the net annual base rent (excluding Washington State Leasehold Tax, any triple-net charges, any common area maintenance charges, any percent of gross receipts or other similar fees or charges) for the initial term of the lease or a maximum period of the first five (5) consecutive years of the lease term, whichever is less, without the prior approval of the Port Commission. 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 Lessee to terminate the lease; and (ii) the remaining one-half within thirty (30) days after the Lessee occupies the leased property.

2.2 Sale Transactions. A Brokerage Fee shall be paid to the Broker who is the procuring cause of the sale of Port real estate and who has registered in accordance with this Policy. The Broker Fee shall 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 the existing commercial market commission rates in Walla Walla County, Washington. The Broker shall receive payment of the Broker Fee upon closing. If the sale is an installment sale, payment terms for the Broker Fee will be negotiated between the Port and the Broker and set forth in the Broker Fee Agreement or by written addendum thereto signed by the Port and the Broker.

2.3 Transactions Not Included. No Broker Fees shall be paid on sale options, new leases or sales with existing Port lessees, options to extend current leases, renewals of existing leases, expired leases or on the expansion of currently leased areas. No Broker Fees shall be paid on leases that generate less than \$5,000 annual rental to the Port excluding taxes and utilities. No Broker Fees shall be payable if the Broker has any interest in the sale or lease transaction or the property involved therein.

2.4 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.** All Broker Fees in excess of 5% shall be subject to the prior 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 Walla Walla, its commissioners or employees to collect any Broker Fee or other compensation except to the extent the Port fails to pay a 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 the formal action of the Port Commission at a regular or duly called special meeting of the Commission.

ADOPTED by the Commission of the Port of Walla Walla in an open meeting this 13 day of March 2014, and duly authenticated by signatures of the Commissioners voting in favor thereof.

PORT OF WALLA WALLA COMMISSIONERS

Absent
RONALD W. DUNNING, PRESIDENT


MICHAEL FREDRICKSON, VICE PRESIDENT


PETER D. SWANT, SECRETARY