

**PORT OF HOOD RIVER  
REAL ESTATE TRANSACTION POLICY**

Adopted: February 5, 2013

The Port of Hood River ("Port" or "Commission") has real estate holdings that are important strategic assets for the Port District and the region. To carry out its mission and achieve community objectives, the Port engages in acquisition, disposition and leasing of real property on a regular basis. This Real Estate Transaction Policy ("Transaction Policy") is intended to guide the Port's efforts in these activities.

The Port shall carry out the following consistent with its Strategic Plan and mission:

- Purchase, lease, develop and sell real property, and manage a portfolio of real estate assets, that supports employment growth and economic development;
- Maintain a portfolio of real estate assets sufficient to actively market and recruit new business to the Port District and for existing businesses to expand;
- Realize a return on investment that balances financial and public policy objectives; and
- Capture revenues sufficient to cover the costs associated with property management, operations and development whenever possible.

**I. GENERAL POLICIES**

All real estate transactions shall conform to applicable federal, state, and local laws, Port ordinances and policies, the Port's Strategic Plan, existing bond, grant or loan covenants, area development plans or other plans as adopted by the Commission.

The Port shall generally seek to pursue development opportunities which are uneconomic for the private sector to carry out but which are consistent with the Port's mission, capabilities and public policy objectives.

In determining land values, lease rates, tenant allowances and other property valuation issues the Port will consider market comparables, appraisals when available or necessary and shall generally seek to be competitive with local private market terms and conditions in structuring its real estate transactions. However, if the Commission determines that a specific transaction can accomplish public policy goals consistent with its mission it may deviate from this goal.

The Port will not subordinate its interest in real property except in exceptional circumstances. The Port will typically not encumber its property other than to finance a Port project, to achieve a Port goal, or as a participant in a Local Improvement District or other improvement process of benefit to the property.

All real property sales and leases shall be approved by the Port Commission unless an exception is made in Section II below. All transaction agreements shall be reviewed and approved by the Port's legal counsel before Port execution.

## **II. TYPES OF AGREEMENTS**

The Port may utilize a variety of agreements to carry out real estate transactions. The specific type of agreement used in any individual transaction will usually be determined by the Port Commission after recommendation by the Executive Director except under specific circumstances. Real estate agreements that are approved for use by the Port are:

### **A. Disposition and Development Agreements**

The Port will usually sell properties that are of significant size, prominently located or capable of achieving significant public objectives, only after execution of a Disposition and Development Agreement (DDA). A DDA will typically include identification of the development team, description of the project to be completed, cost estimates, financing plan, development schedule, public objectives and other information as may be determined. A DDA must be approved by the Commission.

### **B. Options**

Requests by outside parties for options to lease or purchase Port property will be considered on a case-by-case basis. Criteria to be used to evaluate options will include, but not be limited to determining whether: (1) the option will be in the Port's best interest; (2) the party requesting the option has the financial capability to complete the transaction; (3) there is a high degree of assurance that the transaction is consistent with the Port's economic development mission; and (4) whether the public interest would be better served by marketing the property more generally to the public. The Commission must approve any option to lease or sell Port property.

The Executive Director may execute an option for the Port to purchase property. However, at minimum, the option must state that the purchase is contingent upon Commission approval and subject to completion and review of an appraisal. In most cases the Executive Director will consult with the Commission before executing an option.

### **C. Letter of Intent/Memorandum of Understanding**

Letters of Intent (LOI) or Memoranda of Understanding (MOU) to purchase, sell, or lease real property may be entered into by the Executive Director to demonstrate the shared intent to enter into a binding commitment to sell or lease property. The Executive Director will typically inform the Commission and obtain direction prior to proceeding with such agreements although in some instances this prior consultation may not be possible. LOI and MOU shall explicitly state that the agreement is non-binding and that any contemplated transaction is contingent upon approval of the Commission.

### **D. Short-term Property Use Agreements**

A private business, public agency or non-profit entity may seek to enter into an agreement for the short term use of Port property for a specific activity. If the contemplated activity is consistent with the Port's mission the Executive Director may enter into a use agreement, rental agreement or concession agreement so long as the term does not exceed 180 days and the agreement is reviewed and approved by the Port's legal counsel prior to execution. The Executive Director will

typically consult with the Commission before executing such an agreement, but is not required to do so. The Executive Director shall notify the Commission after executing any Property Use Agreement.

#### **E. Leases**

The use of Port property greater than 180 days shall typically require execution of a Lease Agreement. Leases shall be reviewed by legal counsel and approved by the Port Commission before execution by the Executive Director. However, the Executive Director may execute renewal options when the original lease, including a renewal option, was approved by the Commission.

#### **F. Easements**

The Port may seek to convey or acquire a property right in the form of an easement, either appurtenant or in gross. Easements of any kind must be approved by the Port Commission.

### **III. BROKER COORDINATION**

The Port will usually hold a variety of properties within its real estate portfolio. At any time the Port may initiate efforts to sell specific properties in order to achieve defined economic development objectives. At other times, the Port may receive unsolicited interest to buy or lease its property. In both circumstances the Port welcomes the involvement and assistance of real estate professionals to help achieve community goals and the Port's mission.

#### **A. Broker Offers to Buy or Lease Port Property**

The Port may describe properties on its website and carry out other efforts to advertise the availability of properties for sale or lease. Brokers may contact the Port to inquire about specific properties or to determine generally if properties are available to purchase or lease. In instances where a real estate broker licensed in Oregon contacts the Port on behalf of a client about the purchase or lease of Port property the Port will usually represent itself in the transaction. In such cases the Port will pay real estate commissions to real estate brokers if they are the procuring cause ("Procuring Cause") of the sale or lease of Port real property.

The Port will recognize a real estate broker as the Procuring Cause only after a potential purchaser or lessee signs an acknowledgement letter prior to the start of negotiations stating that:

- The broker is the primary reason the potential purchaser or lessee has identified Port property for sale or lease;
- The broker is the agent of the purchaser or lessee not the agent of the Port;
- The broker will be the primary party to represent the potential purchaser or lessee throughout negotiations.

After receipt of the acknowledgement letter and after consultation with the Port Commission the Executive Director shall issue a letter to the real estate broker stating that the Port intends to pay the broker a commission including any specific terms and conditions of payment and appropriate references to this real estate transaction policy. To be entitled to receive a commission the real estate broker must agree in writing to such terms and conditions. If the Port issues a broker

commission letter that is agreed to by the broker, the Port's offer to pay a commission will expire six months after the letter date unless that date is extended by written agreement between the Port and the broker.

The Port Commission, or Executive Director if authorized by this policy, must approve a real estate transaction for the broker's commission to be obligated.

In the event of a conflict among brokers arising with respect to the right to a commission, the Port will expect the brokers to resolve the issue. If the dispute is not promptly resolved to the Port's satisfaction, the Port may pay a reduced commission or no commission to any of the brokers involved in the dispute, in the Port's discretion.

No representation by a real estate broker to their client shall be binding on the Port.

### **B. Listing Agreements to Sell or Lease Port Property**

The Port may seek to retain a real estate broker to represent the Port to sell or lease property. This approach will usually be considered for multiple or high profile properties that are being marketed or for complex transactions when additional real estate expertise is sought. When seeking broker representation, the Port will usually carry out a public solicitation similar to that used for personal services contracts. The solicitation process will seek proposals from real estate brokers that describe the firm's background, qualifications, staffing, proposed fee and approach to the assignment among other factors. Port staff will manage the solicitation and make a recommendation to the Commission. Following Commission approval the Port will negotiate an Exclusive Sales Agreement with the selected broker. The Commission may designate a second broker to negotiate with, if negotiations with the selected broker are not concluded in a satisfactory manner.

## **IV. BROKER COMMISSIONS**

Commissions payable to brokers bringing unsolicited offers to the Port or responding to information about available Port properties shall be calculated as follows:

### **A. Land and/or Building**

For brokers who are recognized as the Procuring Cause of a property sales transaction:

- Three Percent (3%) of the gross sales price

Commissions will be payable at closing after transfer of the deed.

### **B. Leases**

For brokers that are the Procuring Cause of a transaction to lease a Port building or land area:

## **1. Net Leases**

- Three Percent (3%) of the anticipated lease revenue payable to the Port for the first three years of the lease term or less; and
- Two percent (2%) of the anticipated lease revenue for the balance of the term, up to ten years.

## **2. Gross Leases**

- Two and One-Half Percent (2.5%) of the anticipated lease revenue payable to the Port for the first three years of the lease term; and
- One and one-half percent (1.5%) of the anticipated lease revenue payable to the Port for the balance of the term, up to ten years.

The commission shall be paid after Commission approval, mutual execution of the lease and sixty (60) days after the tenant's full time occupancy and compliance with all lease terms.

Commissions will not be paid for lease renewals, expansion of a leased area or for options to extend a lease term, whether or not they are identified in the original lease.

## **C. Purchase Options**

Purchase Options will be infrequently used by the Port. If they are used, a commission may not be applicable. If the Port determines that a broker is the Procuring Cause of a Purchase Option, 6% of the option consideration paid for the future right to purchase Port property may be payable after Commission approval and mutual execution of the Purchase Option Agreement. A commission based on the schedule listed above in Section IV.A. will be paid if an option is exercised within the time period defined by the Option Agreement. The total commission paid, including the commission on the initial transaction plus the commission on the option, shall not exceed the commission schedule defined in Section IV.A. above.

## **D. Listing Agreements**

When the Port has taken steps to select a broker to market Port properties for sale or lease it will generally enter into an Exclusive Sales Agreement. In such cases the Port may negotiate a specific commission schedule based on the property being listed, anticipated tasks and other factors.

## **E. Short Term Use Agreements**

Commissions will not be paid on Short-term Use Agreements.

## **V. LIMITATIONS**

These policies are not an obligation of the Port enforceable by a real estate broker or other person. These policies are Port guidelines the Port may use in determining whether to pay a real estate commission, and commission amounts. The Port of Hood River reserves the right to follow, not follow, withdraw or amend these policies at any time as may be required in its sole discretion.