

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA
ACTION ITEM

Item No.	<u>6a</u>
Date of Meeting	<u>January 12, 2016</u>

DATE: January 6, 2016
TO: Ted Fick, Chief Executive Officer
FROM: Michael Ehl, Director, Airport Operations
Paul Binting, Senior Port Counsel
SUBJECT: Settlement Agreement and First Amendment to Concession Agreement with Puget Sound Dispatch, LLC

ACTION REQUESTED

Request Commission authorization for the Chief Executive Officer to execute a Settlement Agreement and First Amendment to Concession Agreement, both with Puget Sound Dispatch, LLC, related to its operation of outbound, on-demand taxi operations at Seattle-Tacoma International Airport.

SYNOPSIS

Staff seeks authorization to execute both a Settlement Agreement and a First Amendment to Concession Agreement with Puget Sound Dispatch, LLC, dba Yellow Taxi ("PSD") to address certain internal audit findings. PSD currently holds the concession for outbound, on-demand taxi service from the Airport. A recent Internal Audit Report identified the likelihood of under-reporting of gross receipts by PSD and a consequent underpayment of concession fees. As recommended by the Internal Audit Report, Port management has worked with PSD to quantify the underpaid concession fees, seeks to execute a Settlement Agreement memorializing the amount of the underpayment, and also recommends a First Amendment to the Concession Agreement to mitigate the risk of under-reporting until the concession agreement ends.

BACKGROUND

PSD was selected as the exclusive provider of outbound, on-demand taxi service from the Airport in a request for proposals process conducted in 2009. PSD started providing outbound, on-demand taxi service beginning November 1, 2010. PSD is obligated to pay the Port the greater of a minimum annual guarantee of \$3.67 million or thirteen percent (13%) of its annual gross receipts. However, under the terms of the Concession Agreement executed by PSD, the parties recognized that outbound, on-demand taxi service would be provided by independent contractors and, as a result, PSD may not have complete visibility into the gross receipts generated by those independent contractors. The parties thus agreed to utilize the best information available to PSD to determine an average fare, which would then be multiplied by the reconciled number of outbound trips to determine the total gross receipts.

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Since commencement of its operations, PSD has paid the minimum annual guarantee in equal monthly amounts. PSD has also provided monthly reports of its gross receipts. Those reports identified an average fare and specific number of trips for a variety of locations. The reports reflected that the amount of the minimum annual guarantee exceeded 13% of PSD's extrapolated gross receipts; as a result, no separate concession fee was paid by PSD.

However, questions about PSD's gross receipts began to surface in mid-2015. PSD implemented a new computer system in the second quarter of 2015 that captured, albeit incompletely, more detailed information about the outbound, on-demand trips from the airport. More specifically, the system captured dates, times, locations, and the metered fare for a majority of the trips from the airport. In addition, other stakeholders began to question whether PSD's revenue reporting was correct. As a result, the Managing Director of the airport asked the Port's Internal Audit department to conduct an audit of PSD's concession agreement to determine whether PSD had complied with the terms of the agreement.

As requested, the Internal Audit department completed an audit of the concession agreement between the Port and PSD. Internal Audit sought to determine, among other things, whether the Port management's monitoring controls were adequate to ensure compliance with the agreement as well as whether PSD appropriately reported gross receipts and properly calculated concession fees. Internal Audit Report No. 2015-13 was issued December 1, 2015 and is scheduled to be presented to the Port's Audit Committee prior to the January 12, 2016 Commission meeting. The Internal Audit Report concluded that Port management's monitoring controls were inadequate to address the unique risk presented by "average fare" methodology for determining gross receipts set forth in the concession agreement. The Internal Audit Report further concluded that PSD inaccurately and incompletely reported its gross receipts. However, the Internal Audit Report noted that key information necessary to calculate the precise extent of under-reporting were not available. As a result, the Internal Audit Report recommended that Port management work with PSD to determine the impact of under-reported gross receipts on the concession fee.

Consistent with the Internal Audit Report's recommendation, Port staff has met and communicated with PSD staff repeatedly over the months of November and December 2015. Leveraging the work undertaken by the Internal Audit team as well as the new information available through PSD's recently implemented computer system, the Port and PSD have been able to agree on a current average fare for outbound, on-demand trips from the Airport – \$38.58. This average rate has then been regressed backwards in time to account for two fare increases approved by King County since the commencement of operations under the concession agreement. The Port and PSD have also been able to agree on an appropriate, historical adjustment to the total number of outbound trips from the Airport, as measured by the Port's automated vehicle identification (AVI) system, to account for non-revenue trips. Combining this information, the parties agree that under-reported concession fees total \$879,535.00.

Port staff now seeks Commission authorization to execute a Settlement Agreement with PSD memorializing this amount. The full amount due will be payable on or before January 31, 2016. If PSD is unable to pay the full amount, the Port intends to draw upon the security provided by

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PSD to support the concession agreement. Given the Internal Audit Report's conclusions about the failures on both the Port's and PSD's sides, however, Port staff is recommending that the Port waive late fees, interest and audit costs that would otherwise be due under the terms of the concession agreement.

Port staff also seeks approval to execute a First Amendment to Concession Agreement with PSD. The purpose of the First Amendment is two-fold. First, recognizing the difficulty of accurately accounting for PSD's gross receipts, Port staff seeks to convert PSD's financial obligation under the Concession Agreement to a per-trip fee for the period November 1, 2015 through the end of the agreement. The amount of the proposed per-trip fee is \$5.01, or 13% of the \$38.58 average fare identified as the basis for the proposed settlement. Second, Port staff seeks to extend the term of the concession agreement until June 30, 2016 – the term necessary for the Port to complete a request for proposals process for a successor operator and conduct an orderly transition. A separate Commission request seeks permission to proceed with this process. By its terms, the concession agreement expired on October 31, 2015. While the agreement has continued on a month-to-month basis, the Port seeks to introduce more certainty around the remaining term for the benefit of both taxi operators and those who would compete for the new opportunity.

STRATEGIES AND OBJECTIVES

The proposed Settlement Agreement and First Amendment resolve questions and reduce risk around the current outbound, on-demand taxi concession and permits the Port to move forward with a new request for proposals process. This concession generates critical non-aeronautical revenue and will help the Port to meet region's air transportation needs at Seattle-Tacoma International Airport for the next 25 years.

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1) – Do not approve either the Settlement Agreement or the First Amendment to Concession Agreement.

Pros:

- None.

Cons:

- This will leave the issue of under-reporting unresolved with no clear path to resolution. Port staff has worked with PSD to identify the best-available data in order to determine an average fare, as required by the terms of the concession agreement. It is unclear what additional information may be used to make a better determination of this value.
- The failure to approve the First Amendment continues to leave the Port exposed to continued problems around the determination of gross receipts.

This is not the recommended alternative.

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Alternative 2) – Approve the Settlement Agreement but not First Amendment.

Pros:

- Approval of the Settlement Agreement will address the issue of previous under-reporting.

Cons:

- Failure to approve the First Amendment will leave Port exposed to the problem of future under-reporting.

This is not the recommended alternative.

Alternative 3) – Approve both the Settlement Agreement and the First Amendment.

Pros:

- This alternative addresses all of the concerns identified in the Internal Audit Report.

Cons:

- None.

This is the recommended alternative.

ATTACHMENTS TO THIS REQUEST

- Draft Settlement Agreement
- Draft First Amendment to Concession Agreement

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

- December 15, 2009 – The Port Commission authorized the Chief Executive Officer to award the contract for on-demand taxi services to Puget Sound Dispatch, LLC.
- June 14, 2011 – The Port Commission ratified the Chief Executive Officer's exercise of delegated authority related to the terms of the August 6, 2010 Concession Agreement with Puget Sound Dispatch, LLC.
- October 6, 2015 Audit Committee Meeting – The Audit Committee approved an addition to 2015 Internal Audit Work Plan to undertake an audit of the Puget Sound Dispatch, LLC concession agreement.
- January 6, 2015 Audit Committee Meeting – The Internal Audit department presented its Audit Report No. 2015-13 related to Puget Sound Dispatch, LLC to the Audit Committee.