

## **RESOLUTION NO. 3624**

**A RESOLUTION** of the Port Commission of the Port of Seattle amending and restating Resolution 3599, and imposing a Customer Facility Charge on customers of rental car companies accessing Seattle-Tacoma International Airport for the purposes of financing, designing, constructing, operating, and maintaining a Consolidated Rental Car Facility and common use transportation equipment and facilities, and repealing all former Commission Resolutions pertaining to the Customer Facility Charge that are inconsistent with the terms hereof.

**WHEREAS**, the Port of Seattle (“the Port”) owns and operates the Seattle-Tacoma International Airport pursuant to Title 53 and Chapters 14.07 and 14.08 of the Revised Code of Washington; and

**WHEREAS**, growth at the Airport, including increases in air passengers and rental car customers, has placed a strain on the Airport’s public parking facilities, rental car facilities, roadways and terminal curb space; and

**WHEREAS**, the Port Commission has, to help alleviate this strain, authorized the Airport to proceed with full design and construction of a Consolidated Rental Car Facility with a scheduled in use date of April 2012; and

**WHEREAS**, the Port Commission has authorized and the Airport has executed Lease Agreements with the rental car companies that will operate from the new Consolidated Rental Car Facility; and

**WHEREAS**, the Port Commission, pursuant to Chapter 76 of the Laws of 2005 and Section 14.08.120(7) of the Revised Code of Washington, adopted Resolution 3542 on June 14,

2005, which Resolution imposed a Customer Facility Charge on customers of rental car companies accessing the Airport to provide funding to finance, design, construct, operate and maintain the Consolidated Rental Car Facility, related road improvements and Common Transportation System equipment and facilities;

**WHEREAS**, the Port Commission, pursuant to Chapter 76 of the Laws of 2005 and Section 14.08.120(7) of the Revised Code of Washington, adopted Resolution 3599 on July 1, 2008, which Resolution amended and restated Resolution 3542, in anticipation of the issuance and sale of special facility revenue bonds authorized by Resolution 3600;

**WHEREAS**, the Port was unable to sell the special facility revenue bonds authorized by Resolution 3600 but has now developed a new plan of finance, which includes short term note financing and revenue bonds, for the purpose of paying the costs of designing, constructing and equipping the Consolidated Rental Car Facility, related road improvements and Common Transportation System equipment and facilities (“the Project”);

**WHEREAS**, the Lease Agreements require the Port to pay certain costs associated with the operation and maintenance of the Consolidated Rental Car Facility as well as the Common Transportation System for transporting rental car customers between the Airport terminals and the Consolidated Rental Car Facility; and

**WHEREAS**, the Port Commission has determined it is necessary to amend and restate Resolution 3599 (which previously amended and restated Resolution 3542) to both conform to the requirements of the Port’s current financing plan for the Project and provide for payment of the Port’s costs and obligations under the Lease Agreements;

**NOW, THEREFORE, BE IT RESOLVED** by the Port Commission of the Port of Seattle that Resolution 3599 (which previously amended and restated Resolution 3542) are hereby amended and restated as follows:

Section 1. The following terms shall have the meanings specified in this Section, unless otherwise specifically provided. Other terms may be defined in other parts of the Resolution.

“Airport” means the Seattle-Tacoma International Airport. Airport specifically includes the Consolidated Rental Car Facility.

“Airport Customer” means: (i) any person who comes to the Airport by any means of transportation and enters into a motor vehicle rental agreement with a Rental Car Company at the Airport; and (ii) any person who flies into the Airport and within twelve (12) hours thereafter, enters into a motor vehicle rental agreement with a Rental Car Company at any of the Rental Car Company’s rental car operations located within a three (3) mile radius of the Airport’s boundary line. “Airport Customer” will also include any person who flies into the Airport and within twelve (12) hours thereafter, enters into a motor vehicle rental agreement with a Rental Car Company at any of the Rental Car Company’s rental car operations located outside a three (3) mile radius of the Airport’s boundary line if, but only if, a Rental Car Company has diverted such person from the Consolidated Rental Car Facility by arranging for, coordinating or otherwise providing transportation for that person to the Rental Car Company’s operations located outside the three (3) mile radius.

“Chief Executive Officer” means the Chief Executive Officer of the Port of Seattle, or his or her designee.

“Common Transportation System” means the system of equipment and associated improvements by which rental car customers will be transported to/from the Airport terminals from/to the Consolidated Rental Car Facility as more specifically described in Article 12 of the Lease Agreements.

“Consolidated Rental Car Facility” means the consolidated rental car facility to be constructed by the Port at the northwest corner of South 160<sup>th</sup> Street and International Boulevard that will consist of a multi-level structure together with all associated environmental, off-site roadway and other infrastructure improvements. The Consolidated Rental Car Facility will include a centralized customer lobby area, office and employee support space, ready/return spaces, and quick-turn-around facilities including washing, cleaning and fueling equipment.

“Customer Facility Charge” means the fee imposed by this Resolution and used to finance, design, construct, operate and maintain the Consolidated Rental Car Facility and Common Transportation System.

“Lease Agreements” means those certain lease agreements between the Port and the several Rental Car Companies for the lease of space within the Consolidated Rental Car Facility, together with the exhibits to the lease agreements and all agreements supplemental to or modifying the lease agreements, regardless of when made.

“Port Investment” means any funds – other than proceeds from the Customer Facility Charge or the proceeds of any Project Financing – used by the Port to fund, or refund, the costs of designing, constructing and equipping the Consolidated Rental Car Facility, related road improvements and Common Transportation System equipment and facilities. The terms of any Port Investment will generally be established by the Port at or around the time the Port invests its

own funds. The Port shall be entitled to a rate of return on the funds used by the Port, in accordance with the limitations established by Chapter 124 of the Laws of 2009 and Section 14.08.120(7) of the Revised Code of Washington, and the term “Port Investment” shall include such rate of return. Unless otherwise established by the Port Commission, the rate of return charged by the Port shall be equal to the rate of return the Chief Executive Officer reasonably determines the Port is, for the period of time corresponding to the investment, receiving on Temporarily Idle Port Funds.

“Project Financing” means any indebtedness incurred by the Port to fund, or refund, the costs of designing, constructing and equipping the Consolidated Rental Car Facility, related road improvements and Common Transportation System equipment and facilities.

“Rental Car Company” means a rental car company having executed a lease and concession agreement for the operation of a rental car concession at the Airport, specifically including a Lease Agreement for operation from Consolidated Rental Car Facility following its opening. For the period of time prior to the opening of the Consolidated Rental Car Facility, Rental Car Company specifically includes: (i) any rental car company holding a Full Service Rental Car Concession (as defined under the current lease and concession agreement), whether or not the particular company has executed a Lease Agreement; (ii) any rental car company holding a Limited Service Rental Car Concession (as defined under the current lease and concession agreement), whether or not the particular company has executed a Lease Agreement; and (iii) any rental car company holding an Off-Airport Concession Agreement but only if, and from such time, the company has also executed a Lease Agreement.

“Transaction Day” means, with respect to any vehicle available for rent by any Rental Car Company, up to a twenty five (25) hour period (or fraction thereof) for the first Transaction Day and successive twenty four (24) hour periods (or fractions thereof) for each successive Transaction Day.

Section 2. Effective February 1, 2006, a Customer Facility Charge shall be charged to and assessed on each Airport Customer. The amount of the Customer Facility Charge shall initially be four dollars and no cents (\$4.00) per Transaction Day and shall increase to five dollars and no cents (\$5.00) per Transaction Day on July 1, 2008. The Chief Executive Officer shall, however, have the authority to adjust the amount of the Customer Facility Charge from time to time thereafter to pay the costs and expenses of financing, designing, constructing, operating and maintaining the Consolidated Rental Car Facility and the Common Transportation System as follows:

- a. The Chief Executive Officer shall, from time to time and without restriction, adjust the Customer Facility Charge to a level sufficient to meet the Port’s financial obligations with respect to the Project Financing and any Port Investment, both according to their terms.
- b. The Chief Executive Officer may, from time to time but subject to the restrictions set forth below, further adjust the Customer Facility Charge to a level sufficient to meet all of the Port’s non-financial obligations and/or covenants related to or arising out of the Project Financing as well as any obligations and/or covenants arising under the Lease Agreements. This specifically includes the authority to establish and fund any reserve accounts authorized under the Lease Agreements.

The Chief Executive Officer shall not, however, adjust the Customer Facility Charge under this subsection b. to a level that will exceed those set forth in the table below without further Commission authorization.

Year	Customer Facility Charge Level
2008 – 2013	\$8.00 per Transaction Day
2014 – 2020	\$10.00 per Transaction Day
2021 – 2030	\$12.50 per Transaction Day
2031 – 2040	\$15.00 per Transaction Day

Further Commission authorization shall be required to adjust the Customer Facility Charge to pay any other costs and expenses of financing, designing, constructing, operating and maintaining the Consolidated Rental Car Facility and the Common Transportation System that are not included within, or otherwise required by, the Project Financing or arising under the Lease Agreements.

Section 3. The Chief Executive Officer shall report the expected amount of the Customer Facility Charge to the Commission on an annual basis during the Port’s regular budget process. If one or more mid-year adjustments to the Customer Facility Charge are necessary, staff will promptly advise the Commission of the reason for and amount of each such adjustment. The Chief Executive Officer shall always set the Customer Facility Charge at a level sufficient to repay the Port Investment and meet the Port’s financial obligations and/or covenants related to or arising out of the Project Financing. If at any time the Chief Executive Officer is required (as a result of any restrictions in Section 2) or should elect to set the Customer Facility Charge at a level below that reasonably sufficient to meet: (i) the repayment terms for any Port Investment, (ii) all of the Port’s financial obligations under any Project Financing, (iii) the non-financial

obligations and/or covenants related to or arising out of any Project Financing, or (iii) the Port's obligations and/or covenants arising under the Lease Agreements, the Chief Executive Officer shall inform the Commission of the reason for this and the intended source of funds to meet those obligations and/or covenants.

Section 4. To the extent provided in the resolutions authorizing any Project Financing or other revenue obligations of the Port, Customer Facility Charges may be used and pledged to the repayment of the Project Financing and shall be used and applied in the priority and for the purposes set forth therein and as permitted by Section 14.08.120(7) of the Revised Code of Washington, as the same may be amended from time to time. Notwithstanding any restrictions on the authority of the Chief Executive Officer to raise, without further Port Commission action, the level of the Customer Facility Charge set forth in Section 2, the Port Commission acknowledges that it may, if other funds are not available, be obligated to raise the Customer Facility Charges above those levels set forth in Section 2 in order to meet all of the Port's obligations and/or covenants related to or arising under the Project Financing.

Section 5. Pursuant to either the Lease Agreements or rules and regulations promulgated by the Chief Executive Officer under this Resolution, the Rental Car Companies shall collect the Customer Facility Charge from each Airport Customer at the time payment is first made by an Airport Customer under any agreement with the Rental Car Company. Each Rental Car Company shall further remit the full amount of the Customer Facility Charge to the Port or to an agent appointed by the Port not less frequently than monthly, regardless of whether or not the full amount of such Customer Facility Charge was actually collected from the Airport Customer.



Section 6. All Customer Facility Charges collected by any Rental Car Company on behalf of the Port shall be held in trust for the beneficial interest of the Port until they are remitted to the Port. The Rental Car Companies shall have no legal or equitable interest in the Customer Facility Charges they collect and shall segregate, separately account for and characterize any Customer Facility Charges in their possession as trust funds in financial statements. Pursuant to either the Lease Agreements or rules and regulations promulgated by the Chief Executive Officer under this Resolution, the Rental Car Companies shall maintain adequate records, in full conformance with generally accepted accounting principles, that account for all Customer Facility Charges charged, collected and remitted, and these records shall be available to the Port for review, inspection and audit. The Rental Car Companies shall not be entitled to compensation for collection of the Customer Facility Charge, but they may – subject to the terms of the Lease Agreements and any otherwise applicable legal requirements – retain any interest earned on the Customer Facility Charge between the time of collection by the Rental Car Company and remittance to the Port.

Section 7. The Customer Facility Charge shall be separately identified by the Rental Car Companies on any rental agreement with an Airport Customer. In addition, the Chief Executive Officer shall, pursuant to either the Lease Agreements or rules and regulations promulgated under this Resolution, require the Rental Car Companies to clearly and conspicuously disclose the existence and amount of the Customer Facility Charge in: (i) any advertisement intended to generate customers at the Airport (or in any advertisement intended to generate customers at multiple airports, the existence of and range of customer facility charges), and (ii) any quotation (regardless of form) to a potential Airport Customer.

Section 8. The Port Commission specifically authorizes the Chief Executive Officer to make, amend, and rescind such tariffs and/or rules and regulations as may from time-to-time be necessary to carry out the provisions of this Resolution. Any previous actions or agreements implementing any provision of this Resolution are, to the extent consistent with the terms of the Resolution, expressly ratified.

Section 9. If any provision of this Resolution is held to be invalid or unenforceable by any court of competent jurisdiction, then such provision shall be severed from this Resolution and the remainder of this Resolution shall not be affected thereby. Nothing in this Resolution shall be construed as a limitation on the Port Commission to amend this Resolution at any time in the future or otherwise revise the Customer Facility Charge in any manner consistent within the authority granted to it by the Washington State Legislature.

Section 10. Any previous Commission resolutions pertaining to the Customer Facility Charge that are inconsistent with the terms hereof are hereby superseded and repealed.

**ADOPTED** by the Port Commission of the Port of Seattle at a regular meeting thereof, held this \_\_\_\_\_ day of \_\_\_\_\_, 2009 and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission.

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Port Commission