

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 6a

Date of Meeting August 10, 2010

DATE: August 2, 2010

TO: Tay Yoshitani, Chief Executive Officer

FROM: Michael Burke, Sr. Manager Container Leasing and Operations

SUBJECT: Inter-Local Agreement between the Port of Seattle and the Muckleshoot Indian Tribe relating to Treaty fishing.

Amount of This Request: \$1,260,000 estimated **Source of Funds:** General Fund/Operating Budget

ACTION REQUESTED:

Request Port Commission authorization for the Chief Executive Officer to enter into and implement a three-year Interlocal Agreement with the Muckleshoot Indian Tribe for services to assist with coordination of Treaty fishing and commercial vessel access at the Port's marine terminal facilities. The total cost to implement this agreement is an estimated range of \$978,000 to \$1,260,000.

SYNOPSIS:

The Port and the Muckleshoot Indian Tribe (Tribe) have negotiated a three-year interlocal agreement (ILA) covering Treaty fishing activities and commercial vessel access at marine cargo facilities. The proposed ILA is a continuation of letters of agreement that were exchanged annually between the Port and the Tribe. The Muckleshoot Indian Tribe and the Port agree that continued successful Treaty fishing and marine terminal operations are mutually beneficial.

Under the proposed Agreement, during the fishing season for each year of the three-year term, the Muckleshoot Indian Tribe would provide staff on-site at the locations of chinook, coho, pink and chum fishing activities in Elliott Bay, the East and West Waterways, and the Duwamish Waterway to coordinate fishing activity with vessel movements, such that vessel and fishing gear conflicts are managed and minimized. Coordination activities would include exchange of harvest activity and vessel arrival and departure information between the Tribe and Port, personnel tasked with alerting fishers and Port operators concerning potential vessel/net conflicts, and coordination with fishers regarding movement of fishing gear to allow for vessel arrivals and departures, where appropriate.

In addition, the Port would be obligated to a) provide moorage at Harbor Island Marina for two monitoring vessels used by the Tribe to provide the coordination services; b) compile and transmit to the Tribe information about the schedule of vessel arrivals and departures; c) compensate Treaty fishers directly for movement of treaty fishing gear when changes in vessel arrival and/or departure may conflict with Treaty fishing; d) replace fishing gear damaged by cargo vessel operations and compensate Treaty fishers directly for lost fishing time. Experience during the past fifteen years indicates that coordination activities to avoid conflicts between Treaty fishing activities and vessels serving Port

COMMISSION AGENDA

T. Yoshitani, Chief Executive Officer

August 4, 2010

Page 2 of 5

facilities improves safety, reduces damage to fishing gear, and allows for orderly harvest, while reducing the potential for delays in cargo vessel arrivals and departures.

The proposed ILA includes a fixed annual coordination program cost of \$256,000, adjusted annually based on the Consumer Price Index, and an additional anticipated annual cost that will vary depending on fishing season and vessel operating conditions, making the total estimated cost for the three-year agreement \$1,260,000. The estimated cost for each year of the ILA will be included in the Commission approved Container Leasing and Operations' annual budget.

LEGAL AUTHORITY:

Under RCW 39.34.080, public agencies may contract with each other to perform any governmental service, activity or undertaking so long as each public agency entering into the contract has legal authority to perform said service, activity or undertaking. Both the Port and the Tribe have legal authority to engage in coordination activities to avoid conflicts between Treaty fishing activities and vessel access at the Port's marine terminal facilities.

Under RCW 53.08.020, port districts are specifically authorized to operate a system of harbor improvements and rail and water transfer and terminal facilities. The Legislature's intent in authorizing the establishment of port districts was to attract, encourage and develop industry and promote trade. The Port has the authority to engage the Tribe's services to coordinate Treaty fishing and vessel access because such services and coordination activities help secure the Port's ability to maintain and grow revenues from operation of the Port's marine terminal facilities by ensuring timely vessel access to berths, thereby supporting and facilitating the operation of the Port's facilities.

As a federally recognized Indian tribe, the Tribe owns property, develops and maintains facilities, and manages programs for the benefit of Tribe members. With regard to fishing activities, the Tribe is a successor in interest to tribes and bands that were parties to the Treaty of Point Elliott and the Treaty of Medicine Creek in which the Indian signatories reserved the right to fish at usual and accustomed grounds and stations. The Tribe manages and regulates the exercise of these treaty reserved fishing rights at its usual and accustomed fishing grounds and stations which have been determined to include the Duwamish Waterway, the East and West Waterways and portions of Elliott Bay. The Tribe has asserted that it has authority under its laws to enter into contracts with municipalities to provide services benefiting its interests.

BACKGROUND:

Beginning as an element of the Terminal 5 Redevelopment Project and as a result of more recent Port development projects in the East Waterway (including: Terminal 18, South and North Apron Improvement Projects; Terminal 25/Terminal 30 connecting bridge project; and Terminal 30/Terminal 91 cruise vessel relocation project) and in the Duwamish Waterway (Terminal 115 barge cargo pier rehabilitation), the Port has agreed to compensate the Tribe for adverse effects on Treaty fishing due to physical expansion of marine cargo facilities, in-water construction, and changes in operations at port marine terminal facilities. The Port's long-term commitment to the Tribe relates to maintenance of usual and accustomed treaty fishing access adjacent to Port marine terminal sites throughout the East and

COMMISSION AGENDA

T. Yoshitani, Chief Executive Officer

August 4, 2010

Page 3 of 5

West Waterways and adjacent to other port marine facilities in south Elliott Bay and the Duwamish Waterway.

The most recent agreements with the Tribe have related to in-water construction at Terminal 30/Terminal 91, necessary to relocate cruise vessel operations to Terminal 91 and re-establish container cargo operations at Terminal 30. In addition, the Tribe and the Port agreed to a harbor-wide Treaty fishing/vessel service coordination program through 2009. These recent agreements, describing the Port's commitment to avoid and minimize the negative effects of new and redeveloped marine cargo facilities on usual and accustomed Treaty fishing area and coordination of Treaty fishing and cargo vessel access during harvest periods, would be continued by the proposed ILA.

Responsibilities of Parties:

In addition to the obligation to compensate the Tribe for coordination services as described above in the Synopsis, the proposed agreement assigns the following responsibilities to the Port:

1. Moorage for two monitoring boats, used by Tribe coordination staff, at Harbor Island Marina, Terminal 102, during the Chinook, coho, pink and chum salmon harvest periods. Moorage at Terminal 102 allows for efficient movement to fishing areas extending from south Elliott Bay upstream in the Duwamish Waterway, including approximately 7.5 miles of waterway.
2. Compilation by the Port and transmission by Sunday noon of each week during the fishing season, anticipated vessel activity information to Tribe fishing monitors, including detailed vessel arrival, departure, and berth location information.
3. Compensation from the Port for movement of Treaty fishing gear when changes in time and berth location information may conflict with Treaty fishing. The Port would directly compensate affected fishers \$350 for moving a set or drift-net to accommodate the arrival or departure of a vessel at a Port facility.
4. Replacement of fishing gear damaged by cargo vessel operations and compensation to Treaty fishers for lost fishing time. The Port would replace set and drift net gear and any other gear damaged as a result of cargo vessel operations headed to or originating at Port facilities. The Port would also directly compensate affected fishers for two lost days of fishing time. The compensation for lost fishing time would be based on the value of the average of the three highest catches recorded for the open fishing area during the period of concern, i.e. the day of the net damage or loss and the following day.

COMMISSION AGENDA

T. Yoshitani, Chief Executive Officer

August 4, 2010

Page 4 of 5

FINANCIAL IMPLICATIONS:

Source of Funds

Tribal mitigation costs were included in the 2010 Operating Budget in the amount of \$200,000. The estimated interlocal agreement costs for 2010 are expected to be between \$326,350 and \$406,350, and will accordingly create an unfavorable operating expense variance between \$126,350 and \$206,350 in 2010. A portion of the \$500,000 Seaport Division contingency budget will be used to offset the increased costs of tribal mitigation in 2010. The estimated annual costs for this multi-year interlocal agreement will be included in the Operating Expense Budgets for each applicable future year during the term of the agreement.

The program costs will be funded from the General Fund.

Financial Analysis Summary:

CIP Category	N/A
Project Type	N/A
Risk adjusted Discount rate	N/A
Key risk factors	<ul style="list-style-type: none">• The <u>variable</u> cost component of the interlocal agreement is likely to be volatile and is impacted by a variety of factors not controlled by the port, including: the length and quality of the annual fishing season (volume of fish), market price of fish, and the frequency of cargo vessels.• Accurate payment of variable program costs will require continued monitoring by port staff to ensure requests for reimbursement are in compliance with the requirements of the agreement.
Project cost for analysis	N/A
Business Unit (BU)	Container Operations

COMMISSION AGENDA

T. Yoshitani, Chief Executive Officer

August 4, 2010

Page 5 of 5

Effect on business performance	Payments under the interlocal agreement are an operating expense, and will reduce NOI before Depreciation in the year in which they are incurred. There is no Depreciation Expense associated with this proposed agreement. Annual Cost Estimate for the inter-local agreement: <ul style="list-style-type: none">• <u>Fixed annual payment</u> of \$256,350 for fishing coordination services, adjusted for CPI annually.• <u>Additional variable annual payments</u> for net moves, net replacements, and lost fishing time. These variable costs will fluctuate each year based on the length of the fishing season, quality of fishing season, market price of fish, and the frequency of cargo vessels. Annual variable costs are estimated to range from \$70,000 to \$150,000 per year.• Total annual program costs are estimated to be between \$326,000 and \$420,000 per year during the term of the agreement.
IRR/NPV	N/A

DOCUMENTS ASSOCIATED WITH THIS REQUEST:

Attached is the proposed three-year interlocal agreement.

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

- August 3, 2010 – The Commission was briefed on this Interlocal Agreement