

**PORT OF SEATTLE**  
**MEMORANDUM**

**COMMISSION AGENDA**

**Item No.** 5b

**ACTION ITEM**

**Date of Meeting** June 14, 2011

**DATE:** June 8, 2011

**TO:** Tay Yoshitani, Chief Executive Officer

**FROM:** Paul Binting, Senior Port Counsel

**SUBJECT:** Ratification of Agreement with Puget Sound Dispatch

**Amount of This Request: \$0.00**

**Source of Funds: N/A**

**State and Local Taxes Paid: \$0.00**

**Jobs Created: N/A**

**ACTION REQUESTED:**

Port Commission ratification of the Chief Executive Officer's exercise of authority pursuant to the previous Port Commission's December 15, 2009 direction and delegation of authority.

**SYNOPSIS:**

The Port of Seattle is still a party to litigation arising out of the request for proposals, December 15, 2009 commission award and resultant agreement for on-demand taxi services at Seattle-Tacoma International Airport. A claim related to Chief Executive Officer (CEO) Yoshitani's authority to execute the agreement with Puget Sound Dispatch remains pending in the King County Superior Court. That claim alleges that CEO Yoshitani exceeded the authority delegated to him by the Port Commission when it directed the award to Puget Sound Dispatch on December 15, 2009. Trial of that claim is scheduled for early August 2011.

In an effort to bring clarity and conclusion to this issue and limit court costs, Port legal counsel is asking the Port Commission to ratify CEO Yoshitani's exercise of authority and the resultant agreement as in conformance with the Port Commission's December 15, 2009 direction and delegation of authority. The Port Commission is not, by this item, asked to revisit the request for proposals process or decision to award the on-demand taxi concession that was made by the previous Port Commission on December 15, 2009. These items are addressed only so much as necessary to understand the background for this request.

**BACKGROUND:**

On September 25, 2009, the Port issued a request for proposals for on-demand taxi service at Seattle-Tacoma International Airport. On November 6, 2009, six proposals were received. Proposers included Puget Sound Dispatch, LLC (doing business as Yellow Taxi Association) and the incumbent provider, Seattle Tacoma International Taxi Association ("STITA"). Following detailed review and evaluation of those proposals, Port staff recommended an award to Puget Sound Dispatch. On December 15, 2009,

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the Port Commission was formally presented with staff's recommendation, received public testimony, confirmed the selection of Puget Sound Dispatch, and authorized the Chief Executive Officer to award the contract to Puget Sound Dispatch. Pursuant to that delegation of authority, Port staff proceeded to negotiate final terms with Puget Sound Dispatch, and CEO Yoshitani executed a final agreement on August 6, 2010.

STITA was dissatisfied with the RFP process and award and commenced suit against the Port. STITA has asserted claims against the Port in two separate legal actions. In the first lawsuit,<sup>1</sup> STITA's primary claim was that the Port exceeded its authority under Section 14.08.120 of the Revised Code of Washington. In that case, STITA obtained a stay from the Court of Appeals that prevented the Port from signing a contract with Puget Sound Dispatch. The Port ultimately prevailed in the Court of Appeals, and the injunction was lifted on August 5, 2010, by order of the Supreme Court of Washington when it refused to accept review of the claim. In the second case,<sup>2</sup> STITA has leveled a variety of additional claims. Among them, STITA alleges that CEO Yoshitani exceeded the authority delegated by the Port Commission on December 15, 2009. As a result of several summary judgment orders in that case, the allegations related to the CEO's authority are all that remain for decision in the trial court.

Those allegations center on the differences between a draft agreement attached to the request for proposals for on-demand taxi service and the final, executed concession agreement. A document reflecting all of the changes between that draft agreement and the agreement executed by the Chief Executive Officer is attached as Exhibit A.

In negotiating with Puget Sound Dispatch following the December 15, 2009 award and delegation of authority, Port staff was guided by the principles outlined in the memo requesting commission action and during the presentation on December 15, 2009:

- Maintain safe, efficient service with maximum five-minute wait times.
- Operate an environmentally superior fleet and reduce deadheading.
- Provide economic benefit to taxi associations, operators, drivers and the Port.
- Standardize taxi rules and regulations within the Region to the greatest extent possible.

Port staff, including the Chief Executive Officer, believe that none of the changes to the agreement were material to these principles or the RFP award. Indeed, the revenue, wait-time, green fleet, and deadheading commitments made by Puget Sound Dispatch – which commitments formed the basis for its award – remain in place and in full force under the contract as executed.

Without going through the executed agreement line-by-line, the changes from the draft agreement generally fall into two categories: (i) those requested by Puget Sound Dispatch in response to the Port's invitation for comment on the draft agreement in the request for proposals<sup>3</sup> and (ii) those necessitated by the injunction obtained by STITA.<sup>4</sup> Port counsel has been consistent in this position since the argument was first raised by STITA in June 2010.

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<sup>1</sup> The lawsuit was captioned *Seattle-Tacoma International Taxi Association v. Port of Seattle, et al.* Although the Court of Appeals previously issued a decision in the Port's favor on June 4, 2010, the case is again before the Court of Appeals on an issue of whether the Port is entitled to bond damages from the injunction. That appeal will not be affected by this action.

<sup>2</sup> The lawsuit is captioned *Rainier Dispatch, LLC v. Port of Seattle, et al.*

<sup>3</sup> These primarily include the changes in Sections 3.I., 4.B., 4.G., 6.C., 7.E. and 9 of the executed agreement.

<sup>4</sup> These primarily include the changes in Sections 1, 2.J., 4.A. of the executed agreement and Section 6.C. of the Operating Instructions attached to the agreement.

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As part of the request for proposals, the Port made clear that the agreement would only be “substantially” in the form attached to the RFP. The Port specifically solicited (and received) comments on the form of the agreement, and all proposers specifically acknowledged the Port’s right to negotiate the final terms. A copy of the comments specifically submitted by Puget Sound Dispatch as part of its proposal is attached as Exhibit B.

In addition, the injunction obtained by STITA substantially delayed the parties’ ability to implement the new taxi concession. The schedule reviewed with the Port Commission<sup>5</sup> reflected eight to nine months between execution of the agreement and commencement of operations on September 1, 2010, to prepare for the transition. However, the Port was enjoined from signing an agreement with Puget Sound Dispatch until August 5, 2010. As a result, Puget Sound Dispatch was deprived of nearly seven months of time to prepare. Consequently, a number of the dates set forth in the draft agreement were shifted backwards, but in no event was Puget Sound Dispatch provided more time between contract execution and contract deadline than originally provided in the schedule.

Although not directly relevant to the requested action before the Port Commission, Puget Sound Dispatch has so far met or exceeded all of its commitments in the executed agreement.

- Puget Sound Dispatch timely provided the required security deposit.
- Puget Sound Dispatch has made timely, monthly payments of the \$3.67 million minimum annual guarantee.
- Overcoming some initial difficulty dispatching cabs from the holding lot to the Ground Transportation Center, Puget Sound Dispatch is meeting or beating the five-minute service level requirement.
- As of March 1, 2010, Puget Sound Dispatch had converted over half (54.7%) of its fleet to “green” vehicles.
- Puget Sound Dispatch is currently ahead of its year-to-date projection (and on track for its annual commitment) for deadhead reductions, having matched 4.42% of outbound trips with an inbound trip as of the end of April 2011.
- Taxi trips are up almost twenty percent (20%) annually over the prior year.
- Puget Sound Dispatch has set a very high standard for vehicle maintenance and cleanliness, requiring operators to clean the interior and exterior of the cabs every two days.

In short, Puget Sound Dispatch – guided by the agreement executed by CEO Yoshitani – has so far succeeded in delivering on the principles outlined with the Port Commission on December 15, 2009.

### **ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS:**

In the event that the Port Commission elects not to ratify the agreement as executed as requested here, there will be a trial in early August 2011 to determine, as a matter of fact, whether the agreement executed by CEO Yoshitani with Puget Sound Dispatch conformed to the Port Commission’s December 15, 2009 direction and delegation of authority. This will entail significant legal fees<sup>6</sup> as well as a likely requirement for the Chief Executive Officer, current and former Port Commissioners and current and former Port employees to testify at trial. The expectation is that ratification of the agreement will (in legal terms) moot the need for trial of these issues and conclusively resolve that the Chief Executive

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<sup>5</sup> At the November 30, 2009 Port Commission meeting the schedule was reviewed in detail.

<sup>6</sup> Legal fees are broadly estimated in the range of \$50,000 - \$100,000 for trial in this matter.

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Officer and the resultant agreement conformed with the Port Commission's direction and delegation of authority.

### **OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:**

Exhibit A – Document reflecting all of the changes between the draft form of agreement attached to the RFP and the final agreement executed by the Chief Executive Officer.

Exhibit B – Comments specifically submitted by Puget Sound Dispatch as part of its proposal.

### **PREVIOUS COMMISSION ACTION:**

December 15, 2009, the previous Port Commission authorized the Chief Executive Officer to award the contract for On-Demand Taxi Services to Puget Sound Dispatch.