

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

**COMMISSION AGENDA**

**Item No.** 5d

**Date of Meeting** August 2, 2011

**DATE:** July 25, 2011

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

**FROM:** Michael Burke, Director, Leasing and Asset Management  
Mike Kriston, Seaport Real Estate Specialist

**SUBJECT:** Transfer Agreement between the Port of Seattle and General Recycling of Washington relating to vacation of West Marginal Way S.W. and S.W. Idaho Street.

**ACTION REQUESTED:**

Request Commission authorization for the Chief Executive Officer (CEO) to execute an agreement (Transfer Agreement) with General Recycling of Washington, LLC (GRW) wherein the Port will agree to transfer to GRW the right the Port of Seattle (Port) has to a reduced-cost street vacation of West Marginal Way S.W. (West Marginal) and S.W. Idaho Street (Idaho), diligently pursue and satisfy any remaining conditions relating to obtaining the street vacation, pay administrative costs in the amount of \$300, and pay escrow fees estimated to be \$3,000 in exchange for GRW's payment of \$500,000.

**SYNOPSIS:**

Port staff is in the process of finalizing a number of pending street vacations with the City of Seattle (City) dating from terminal developments in the 1990s. Petitions are pending with the City to vacate various streets at Terminal 5 (T-5), Terminal 18 (T-18), Terminal 25 (T-25), and the Port's former Terminal 105 (T-105). Additionally, public shoreline access issues need to be resolved at Terminal 108.

This memo requests Commission authorization for the CEO to execute a Transfer Agreement wherein the Port will transfer its right to a reduced-cost street vacation to GRW in exchange for GRW's payment of \$500,000 less fees and costs estimated to be \$3,300.

In the coming months, Port staff expects to return to the Commission to seek approval of 10 to 12 additional street vacation related agreements.

## **COMMISSION AGENDA**

T. Yoshitani, Chief Executive Officer

July 25, 2011

Page 2 of 5

### **HISTORY AND BACKGROUND:**

In July of 1980, the Port entered into the West Seattle Freeway Bridge Agreement (1980 Agreement) with the City wherein the Port agreed to convey to the City \$10 million in cash as well as land and easements valued at \$1.3 million for the construction of the new West Seattle Bridge. At the time, the Port envisioned development of marine cargo operations in the lower Duwamish River area.

In order to provide consideration for the Port's contribution, the City agreed that the Port would not have to pay fair market value for the vacation of streets as long as the City Council decided to grant the street vacation. The street areas identified in the 1980 Agreement included a portion of West Marginal and Idaho near T-105.

The Port and the City entered into another agreement dated December 27, 1989, (1989 Agreement) wherein the Port paid the City \$2.9 million for land the Port needed to complete its Central Waterfront Project.

The 1989 Agreement also contained a provision that allowed the Port to vacate certain identified streets that included West Marginal and Idaho at "no cost to the Port except for the City's Administrative costs only," and would "not include any payment based on the fair market value of the area vacated ..."

In 1996, the Port and the City terminated the 1980 Agreement with the understanding that both parties had received fair value. The Port would be allowed, however, to petition the City and complete the vacation of streets at T-105 as well as streets at T-5 and T-18. Once the City issues a final ordinance based on the original or an amended petition for the vacation of streets at these properties, then its obligations to the Port, under the 1980 Agreement and the 1989 Agreement regarding street vacations, ends.

On June 22, 1995, the Port and Birmingham Steel (Birmingham) entered into an agreement (1995 Exchange Agreement) wherein the Port conveyed to Birmingham the south portion of T-105 and agreed to finalize its petition with the City to have West Marginal and Idaho vacated for the benefit of Birmingham. The value of the T-105 property plus the value of the vacated street area contained in West Marginal and Idaho was exchanged for a parcel of land owned by Birmingham that the Port needed for the expansion of T-5.

The Port petition to vacate West Marginal and Idaho for the benefit of Birmingham also included S.W. Dakota Street (Dakota), which is needed to complete sales transactions with two other parties.

West Marginal, Idaho and Dakota have not yet been vacated by the City.

## **COMMISSION AGENDA**

T. Yoshitani, Chief Executive Officer

July 25, 2011

Page 3 of 5

In June 2002, Birmingham filed for Chapter 11 bankruptcy protection. In connection with the bankruptcy, GRW obtained title to all of Birmingham's assets including title to T-105 and the rights to streets adjoining T-105 when vacated, and the 1995 Exchange Agreement became unenforceable against the Port thereby freeing the Port of its obligation to seek the vacation of West Marginal and Idaho for the benefit of Birmingham.

However, in reliance on the City's cooperation under the 1980 Agreement and the 1989 Agreement, the Port has acted to derive a benefit from the City to initiate vacation of specified streets without paying fair market value for the vacated area in the following ways: a) by exchanging the value of a vacated street for other land needed by the Port (as was done in the 1995 Exchange Agreement); and b) by negotiating the amount of monetary compensation for the value of the Port's right to petition the City to vacate a street without the requirement that the abutting owner pay fair market value for the vacated area (as is contemplated in the proposed Transfer Agreement).

### **LEGAL REVIEW AND APPROVAL:**

Based upon a legal review of the Agreements, the Port has an enforceable contract right with the City to have West Marginal and Idaho vacated for an abutting owner without the owner having to pay fair market value for the vacated street area.

Also based on legal review, and as a matter of clarification, the proposed Transfer Agreement does not involve a real estate transaction and is not subject to the Port's real estate policies or requirement for surplusing or appraisal.

The proposed Transfer Agreement, with final terms reviewed and approved by legal, has been signed by GRW and is attached to this memorandum.

### **FINANCIAL ANALYSIS SUMMARY:**

<b>CIP Category</b>	NA
<b>Project Type</b>	Transfer Agreement
<b>Risk adjusted Discount rate</b>	N/A
<b>Key risk factors</b>	<ul style="list-style-type: none"><li>• City does not approve Port's petition for West Marginal and Idaho street vacations. Under the terms of the agreement, the Port would be required to refund the \$500,000 to GRW.</li><li>• City charges GRW a fee, and/or seeks to recover the fair market value for the vacation of the streets. Under the terms of the agreement, the Port would be required to refund the \$500,000 to GRW.</li><li>• The potential for GRW to default on payment is mitigated by the</li></ul>

## **COMMISSION AGENDA**

T. Yoshitani, Chief Executive Officer

July 25, 2011

Page 4 of 5

	requirement that GRW transfer the funds into an escrow fund within ten business days of the execution of the “Transfer Agreement.”
<b>Project cost for analysis</b>	See “Effect on business performance.”
<b>Business Unit (BU)</b>	Container Operations
<b>Effect on business performance</b>	<u>Revenue</u> Upon the passage of the ordinance by the City of Seattle granting the street vacations, expected to occur in first quarter 2012, the Port will receive payment of \$500,000 from the escrow agent less applicable escrow fees. As the payment reflects consideration for transfer of a right, the amount will be recorded as non-operating revenue. <u>Expenses</u> The primary cost of finalizing the street vacations has been and is staff time and related overhead. Since 2007, when the Port began tracking costs related to securing these street vacations separately, operating staff costs and related overhead charged to these street vacations plus the related Dakota Street vacation, have amounted to approximately \$90,000 (through June 2011). The incremental staff costs and overhead associated with successfully completing these street vacations is expected to amount to an additional \$12,000.
<b>IRR/NPV</b>	N/A

## **ANALYSIS AND RECOMMENDATION**

The Port still possesses the right it received from the City, under the terms of the 1980 and 1989 Agreements, to petition the City to vacate West Marginal and Idaho without the obligation requiring an abutting property owner to pay fair market value for the vacated area. The Port’s petition to the City to vacate West Marginal, Idaho and Dakota has not been amended or withdrawn.

By virtue of its ownership of T-105, GRW is the only party that can benefit from the Port’s right to vacate West Marginal and Idaho at a reduced cost.

GRW has offered to pay the Port \$500,000 for this right, provided the Port completes the requirements of the vacation petition and causes the City to issue a final ordinance granting vacation of West Marginal and Idaho.

Because GRW is the abutting property owner, upon vacation GRW will acquire ownership of the vacated streets subject to utility easements.

## **COMMISSION AGENDA**

T. Yoshitani, Chief Executive Officer

July 25, 2011

Page 5 of 5

Since the Port has already completed all of the requirements needed for the vacation of West Marginal and Idaho, except for one easement with Seattle Public Utilities and one with King County Metro, the Port would benefit from completing the street vacation process in exchange for a fee from GRW.

Accepting GRW's offer will enable the Port to recover \$500,000 of the funds it provided the City under the 1980 Agreement.

If the Port rejects GRW's offer, it must amend its petition with the City to vacate streets at T-105 by excluding West Marginal and Idaho and proceed to vacate only Dakota to meet the contractual obligations it has with two parties that own property adjacent to this street.

Once the petition is amended and the City passes a final ordinance for the vacation of Dakota, the Port's right to petition the City to vacate West Marginal and Idaho at no cost for the abutting property owner will terminate.

Port staff recommends accepting the GRW's offer of \$500,000 on the terms as proposed in the attached Transfer Agreement.

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

- Transfer Agreement between Port and GRW, including Exhibit A.

### **PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:**

- February 9, 2010 – Staff briefed the Commission on background and status of street vacations at various facilities.
- June 1, 2010 – Commission authorized Chief Executive to execute consultant services contracts or service directives, to advertise and award small works contracts, and to employ Port staff for a total of up to \$1,500,000 for street vacations at Terminals 5, 18 and 105.
- October 5, 2010 – Commission authorized Chief Executive to execute three perpetual nonexclusive easements with the City of Seattle to meet certain conditions imposed by the City of Seattle for the vacation of submerged South Forest Street at Terminal 25.
- May 3, 2011 – Commission authorized Chief Executive to execute a Public Access Easement Agreement with the City of Seattle to partially meet conditions imposed by the City for the vacation of streets on Harbor Island related to the expansion of Terminal 18.