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**APPROVED MINUTES
COMMISSION REGULAR MEETING FEBRUARY 14, 2012**

The Port of Seattle Commission met in a regular meeting Tuesday, February 14, 2012, at Port of Seattle Headquarters, Commission Chambers, 2711 Alaskan Way, Seattle, Washington. Commissioners Albro, Bryant, Creighton, Holland, and Tarleton were present.

1. CALL TO ORDER

The regular meeting was called to order at 12:09 p.m. by Gael Tarleton, Commission President.

2. EXECUTIVE SESSION pursuant to RCW 42.30.110

The regular meeting was immediately recessed to an executive session estimated to last approximately 50 minutes to discuss matters relating to the Chief Executive Officer's performance evaluation. Following the executive session, which lasted approximately 45 minutes, the regular meeting reconvened in open public session at 1:10 p.m.

PLEDGE OF ALLEGIANCE

3. APPROVAL OF MINUTES

None.

4. SPECIAL ORDER OF BUSINESS

None.

5. (00:01:35) UNANIMOUS CONSENT CALENDAR

5a. Approval of [claims and obligations](#) for the period of January 1 through January 31, 2012, in the amount of \$46,366,332.02.

5b. Authorization for the Chief Executive Officer to execute contracts for the purchase of additional runway snow removal equipment at Seattle-Tacoma International Airport for a total authorization of \$2,000,000 (CIP #C800498).

Request document(s): Commission agenda [memorandum](#) dated February 6, 2012, provided by John Christianson, General Manager Aviation Maintenance.

5c. Authorization for the Chief Executive Officer to purchase one truck-mounted, high-pressure water, rubber, and paint removal system for Seattle-Tacoma International Airport for a total authorization of \$600,000 (CIP #C800482).

Request document(s): Commission agenda [memorandum](#) dated February 6, 2012, provided by John Christianson, General Manager Aviation Maintenance.

5d. Authorization for the Chief Executive Officer to complete the design and proceed with construction for the Doug Fox Storm Drainage Improvements project at Seattle-Tacoma International Airport; and to use Port Construction Services crews for the construction work. The total project cost is \$1,028,000. This request is time-sensitive and seeks a single Commission authorization to perform the design and construct the drainage improvements before the issuance of a request for proposals for a new operator of the parking lot during the second quarter of 2012 (CIP #C800451).

Request document(s): Commission agenda [memorandum](#) dated February 7, 2012, provided by James Schone, Director, Aviation Business Development; and George England, Program Leader, Aviation Project Management.

Motion for approval of consent items 5a, 5b, 5c, and 5d – Creighton

Second – Albro

Motion carried by the following vote:

In Favor: Albro, Bryant, Creighton, Holland, Tarleton (5)

PUBLIC TESTIMONY

As noted on the agenda, public comment was received from the following individuals:

- Stefan Moritz, Director of Strategic Affairs for Unite Here Local 8. Mr. Moritz spoke in opposition to the Commission's concessions program policy direction proposed under agenda item 6a due to lack of worker retention provisions and stated the proposed policy would ensure labor disputes during the upcoming concessions transition. He recommended the policy direction motion include explicit provision for a 70/30 split of large-to-small leasing packages in the Airport concessions program and offered several critiques of the proposed motion.
- David Mendoza, Policy Analyst for Puget Sound Sage. Mr. Mendoza concurred in Mr. Moritz's criticism of agenda item 6a, which he stated provides no firm commitment to the 1500 workers at the Airport. He commented on recent lease concessions made to SSA Marine by the Port and urged quality, living-wage jobs for workers at Port facilities, including a mandatory worker retention program. He stated that minority-owned businesses have thrived in airports with worker retention programs across the country and urged defeat of the motion in agenda item 6a.

- Cecilia Cordova, legal counsel for BF Foods/Filo Foods. Ms. Cordova spoke in favor of agenda item 6a and noted that the current Airport concessions program's increase of small businesses resulted in the increase of employees in the program from 700 to 1500. She stated a labor disruption during the upcoming concessions transition was unlikely and spoke in opposition to limiting small business participation in the concessions program to 30 percent.
- David Freiboth, Executive Secretary, Martin Luther King County Labor Council, AFL-CIO. Mr. Freiboth spoke in opposition to agenda item 6a and stated he was concerned about the manner of development of the proposal. He said the Port is not doing enough to protect living-wage jobs at the Airport and stated there is no point in creating low-wage jobs with no benefits at the Airport.
- Will Knedlik, President, Eastside Rail Now. Mr. Knedlik commented on Eastside Rail Now's support of the Port's purchase of the Eastside Rail Corridor and the Port's mission to ensure freight mobility. He stated his concern that the agreement to sell a portion of the Corridor to the City of Kirkland does not protect the Port's interest in freight mobility.
- Robert Scheuerman, representing Eastside Rail Now. Mr. Scheuerman commented on a tourist street car as a possible use of the portion of the Eastside Rail Corridor proposed to be transferred to the City of Kirkland and its compatibility with other Corridor uses.
- Fred Felleman, Northwest Consultant for Friends of the Earth. Mr. Felleman commented on agenda item 7a, stating that over 1300 people have commented in support of a cruise memorandum of understanding proposal advocated by Friends of the Earth, Puget Soundkeeper Alliance, and People for Puget Sound. He commented on a goal to have one cruise line no longer discharge wastewater in Puget Sound. Mr. Felleman submitted a copy of a letter from Friends of the Earth and Puget Soundkeeper Alliance to the Washington Department of Ecology dated February 13, 2012. A copy of the letter is, by reference, made a part of these minutes, is marked [exhibit A](#), and is available for inspection in Port offices.
- Katelyn Kinn, Legal Affairs Coordinator for the Puget Soundkeeper Alliance. Ms. Kinn commented in support of proposed amendments to the cruise memorandum of understanding to ban discharge of wastewater in Puget Sound. She commented on similar regulations to protect the Olympic Coast National Marine Sanctuary and along the coast of California.

6. DIVISION, CORPORATE, AND COMMISSION ACTION ITEMS

- 6a. (00:22:29) Adopt a motion giving policy direction to the Chief Executive Officer as the staff creates a "Concessions Master Plan" to guide the successful re-development of the Airport concessions program in 2015 through 2017.**

Request document(s): Commission agenda [memorandum](#) dated February 10, 2012, [motion](#), [letter](#) of January 23, 2012, and December 13, 2011, [motion](#) to retain outside counsel provided by Mary Gin Kennedy, Commission Services Director.

Presenter(s): Ms. Kennedy and Craig Watson, General Counsel.

Ms. Kennedy reported that the Commission has examined the issue of the Airport concessions program, and the topic of a worker retention policy, for well over a year, receiving input from various stakeholders and delineating values to promote in the concessions program, including job security, job creation, fair wages, workers' rights, inclusion of national and local companies, provision of meaningful opportunities for disadvantaged and small, local businesses, strengthening a Pacific Northwest sense of place, generation of non-aeronautical revenue, and provision of a superior travel experience for travelers using the Airport's concessions program. She stated the proposed motion attempts to operate within the legal constraints applicable to the Airport concessions program.

Mr. Watson commented on the legal risks associated with a worker retention component in the concessions renewal program. He stated that independent review by four attorneys had been conducted and resulted in similar recommendations, namely that a worker retention policy would likely result in litigation with significant risk that the outcome would not favor the Port. He noted considerations relating to National Labor Relations Act preemption, the Successorship Doctrine, equal protection claims, and contract clause claims, and pointed out a lack of rulings that correlate to the Port's situation and the conditional nature of existing rulings on future actions of the National Labor Relations Board and the Supreme Court.

Mr. Watson reported that previous actions by Commissioners no longer in office resulted in issuance in 2000 by a federal judge of a permanent injunction, referred to as the *CityIce* injunction, preventing the Port from interfering in the labor relations of third parties. He commented on the additional legal risks posed by Commission action on worker retention in view of the *CityIce* injunction and the potential for Commissioners to be found in contempt of the injunction.

Commissioner Albro commented on the importance for all interested parties that the Port Commission iterate its position on development of the Airport concessions program. He noted the need for the Airport concessions program to reflect the Port's commitment to the shared values of equal opportunity and non-discrimination, economic security, and entrepreneurial initiative, as stated in the proposed motion.

Motion for approval of item 6a, a motion to adopt a statement of policy direction, as presented, to the Chief Executive Officer as the staff creates a "Concessions Master Plan" to guide the successful re-development of the Airport concessions program in 2015 through 2017 – Albro

Second – Creighton

Commissioner Creighton commented that the Commission is dedicated to job security and job protection in the Airport concessions program and stated that finding a legal way to provide worker retention was the Commission's direction to the independent legal counsel retained to review the subject. He commented on the use of a point system in the request for proposals (RFP) process as an alternative for including worker retention without making worker retention a requirement of the RFP and noted the inclusion in the motion of retaining independent counsel to review the *CityIce* injunction.

AMENDMENT

At the request of Commissioner Creighton, without objection, the motion was amended to direct staff to develop a request for proposal based on the principles in the statement and return to the Commission for review and discussion of the request for proposal prior to its publication.

The motion now reads as follows:

The Commission adopts this statement as its policy direction to the Chief Executive Officer as the staff creates a “Concessions Master Plan” to guide the successful re-development of the Airport concessions program in 2015 through 2017 and directs staff to develop a model request for proposal based on the principles in the statement and return to the Commission for review and discussion of the model request for proposal prior to its implementation.

Commissioner Holland commented on the effort and careful consideration expended crafting the motion and stated his belief that the *City/ce* injunction places broad constraints on the Commission's ability to pursue worker retention and labor harmony in the Airport concessions program, in view of which he announced he would abstain from the vote on the motion. He added that he would like to see increased participation for Airport Concessions Disadvantaged Business Enterprises (ACDBEs) to as much as 30 percent of gross sales in conjunction with maintaining the concessions program as a majority union operation.

Commissioner Tarleton commented on job creation, employment opportunities represented by the Airport concessions program, and the success of the program over the past eight years. She stated worker retention is the anchor that provides the needed security for all the concessions programs to flourish. She commented on her desire to develop an open system that addresses the barriers that prevent small contractors from participating in a system dominated by larger companies with competitive advantages without discriminating against any party.

Commissioner Tarleton remarked on the timing of the proposed motion, noting a request to postpone consideration of the motion from Jeffrey Johnson, President of the Washington State Labor Council, AFL-CIO, and assurances given to the members of the State Legislature that the Port Commission would act on the issue of worker retention before the close of the Legislature's regular session.

Commissioner Creighton commented on the benefit of retaining outside counsel to advise on revisiting the breadth of the *City/ce* injunction, which Commissioner Tarleton acknowledged was not a reflection on any deficiency on the part of the Port's General Counsel.

The question recurred on the motion by Commissioner Albro, seconded by Commissioner Creighton, for approval of agenda item 6a, as amended.

Motion carried by the following vote:

In Favor: Albro, Bryant, Creighton, Tarleton (4)

Abstaining: Holland (1)

At the discretion of the Chair, the following agenda item –

- 6b. First Reading and Public Hearing of Resolution No. 3659: A Resolution of the Port Commission of the Port of Seattle declaring certain real property located in the City of Kirkland and the City of Bellevue (a portion of the Woodinville Subdivision) and any improvements located thereon surplus and no longer needed for Port purposes, authorizing its transfer to the City of Kirkland and authorizing the Chief Executive Officer to execute all documents related to such transfer. The Port will receive \$5 million (minus closing costs) from the City of Kirkland for the sale of this property, which is also known as the Eastside Rail Corridor.**

– was postponed to a special Commission meeting to be held February 28, 2012, in the City of Kirkland, Washington.

- 6c. (00:53:20) Authorization for the Chief Executive Officer to design, advertise, award, and construct the relocation of several Port utilities in advance of and to accommodate Sound Transit's South Link project for a total estimated cost of \$950,000. All costs associated with this work will be reimbursed in full by Sound Transit. This request seeks a single Commission authorization for the entire project to expedite Sound Transit's delivery of the South Link project to the public (WP #104665).**

Request document(s): Commission agenda [memorandum](#) dated February 6, 2012, December 14, 2010, [intergovernmental agreement](#), and December 30, 2011, [design agreement](#) provided by Wayne Grotheer, Director, Aviation Project Management Group; and Elizabeth Leavitt, Director, Aviation Planning and Environmental Programs.

Presenter(s): George England, Program Leader, Aviation Project Management; and Ron Lewis, South Link Project Director, Sound Transit.

Mr. England described the purpose of the authorization to relocate Port utilities to accommodate construction of elevated columns proposed for the Sound Transit South Link project to extend Link light rail south of the Airport station to South 200th Street. He explained the combined request for design and construction is intended to expedite the removal at the request of Sound Transit, which will reimburse the Port for the costs associated with the authorization. Mr. England stated the Commission would be asked to approve a memorandum of agreement after April 2012 and that removal of the utilities would be complete not later than April 2013.

In response to Commissioner Tarleton, Mr. England explained that further Commission action would be requested if the project exceeds \$950,000 and that staff would coordinate with Sound Transit to ensure agreement on any overage and commitment to reimburse it.

Motion for approval of item 6c – Albro

Second – Creighton

Motion carried by the following vote:

In Favor: Albro, Bryant, Creighton, Holland, Tarleton (5)

- 6d. (00:58:55) Second Reading and Final Passage of Resolution No. 3657: A Resolution of the Port Commission of the Port of Seattle declaring certain real property located in the City of SeaTac, Washington, to be surplus and no longer needed for Port District purposes and authorizing the Chief Executive Officer to execute all documents necessary for transfer of the title to certain road improvements and real property to the City of SeaTac and the State of Washington and to transfer title to certain utility improvements to the City of Seattle. The value of the improvements and real property being transferred is estimated at \$19,484,500.**

Request document(s): Commission agenda [memorandum](#) dated February 6, 2012, and [Resolution No. 3657](#) provided by W. Allan Royal, Real Estate Development Manager.

Presenter(s): Mr. Royal.

Mr. Royal reported that this is the second reading of [Resolution No. 3657](#), which was read previously and discussed on February 7, 2012.

Motion for approval of item 6d – Creighton

Second – Holland

Motion carried by the following vote:

In Favor: Albro, Bryant, Creighton, Holland, Tarleton (5)

- 6e. (01:00:46) Second Reading and Final Passage of [Resolution No. 3658](#): A Resolution of the Port Commission of the Port of Seattle authorizing the issuance and sale of intermediate lien revenue refunding bonds in one or more series for the purpose of refunding certain outstanding revenue bonds of the Port; delegating authority for the sale of the bonds by negotiated sale, the negotiation, approval and execution of the bond purchase contract and the preparation and dissemination of a preliminary official statement and final official statement; authorizing the appointment of an escrow agent and execution of an escrow agreement; providing for continuing disclosure; and providing for a negotiated sale of the bonds to J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, Barclays Capital Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Backstrom McCarley Berry & Co., LLC and Drexel Hamilton, LLC. The issuance and sale of the Intermediate Lien Revenue Refunding Bonds is in an amount not to exceed \$730,000,000.**

Request document(s): Commission agenda [memorandum](#) dated February 3, 2012, and [Resolution No. 3658](#) provided by Elizabeth Morrison, Senior Manager Corporate Finance.

Presenter(s): Ms. Morrison.

In response to Commissioner Creighton, Ms. Morrison reported that market conditions are still favorable to the bond refunding and that staff is attempting to accelerate the bond sale prior to an imminent \$2 billion bond sale by the State of California.

Commissioner Albro thanked Ms. Morrison for responding to his questions on first reading, noting that the bond refunding would not increase the Port's indebtedness, delay repayment of principle, or lengthen the term of indebtedness.

Motion for approval of item 6e – Albro

Second – Bryant

Motion carried by the following vote:

In Favor: Albro, Bryant, Creighton, Holland, Tarleton (5)

7. STAFF BRIEFINGS

7a. (01:04:14) Briefing on the Proposed Amendments to Memorandum of Understanding on Cruise Operations in Washington State.

Presentation document(s): Commission agenda [memorandum](#) dated February 6, 2012, and November 21, 2011, [letter](#) provided by Stephanie Jones Stebbins, Director Seaport Environmental and Planning; and Michael McLaughlin, Director, Cruise and Maritime Operations.

Presenter(s): Mr. McLaughlin and Ms. Jones Stebbins.

Commissioner Tarleton commented that the Commissioners have received over 500 emails during the preceding week regarding amendments to the cruise ship memorandum of understanding. She read the text that is the basis of the messages, noting that some contributors had modified it slightly with various personalizations. A copy of the message read is, by reference, made a part of these minutes, is marked [exhibit B](#), and is available for inspection in Port offices. Commissioner Tarleton added that over 950 similar messages were submitted at the Commission regular meeting of January 10, 2012, in digital form, and that over 350 additional comments identical to the January 10, 2012, set were received today from the public. A copy of this latter message is included as an exhibit to the January 10, 2012, minutes, and is additionally, by reference, made a part of these minutes, is marked [exhibit C](#), and is available for inspection in Port offices.

Mr. McLaughlin reported that the briefing today is preliminary to a March request for action on the topic of amendments to the cruise memorandum of understanding (MOU). He explained that the MOU is a voluntary agreement between the Port of Seattle, the Washington State Department of Ecology, and the North West and Canada Cruise Association, representing all the cruise lines that do business at the Port of Seattle. He said the MOU provides a forum for voluntary actions aimed at improving treatment of waste discharges from cruise ships operating in Washington waters and exceeds other existing regulatory requirements for such discharges. He explained the process applicable to MOU amendments proposed by non-parties to the MOU, such as the current amendments under consideration.

Ms. Jones Stebbins presented two proposed amendments, noting that they are provided by the proposers in priority order or in combination, the first being the more restrictive and the proposers' preferred alternative. The amendments read as follows:

- Ban the discharge of gray water and black water in MOU waters; or

- Ban the continuous discharge of gray water and sewage (black water), limiting to only discharge while the ship is greater than 1 mile offshore and traveling at least 6 knots or more.

Ms. Jones Stebbins explained that the MOU currently prohibits solid waste discharge, including untreated graywater and blackwater and discharge from marine sanitation devices, but allows discharge of treated graywater and blackwater if the vessel is equipped with an advanced wastewater treatment system, is a stipulated distance from shore, and has submitted a seasonal request to discharge with the Department of Ecology, which carries additional applicable conditions. She stated that vessels can apply for continuous discharge at berth or while moving or for permission to discharge only when one nautical mile from shore and when moving at a speed of at least six knots. Ms. Jones Stebbins reported that the current MOU prevents discharge within a half-mile of shellfish beds and prevents discharge of residual solids within the MOU waters.

[Clerk's Note: "Graywater" refers to wastewater generated by such typical household activities as laundry, dishwashing, and bathing and contains no human waste; "blackwater" refers to wastewater that includes human waste.]

Ms. Jones Stebbins noted that for the last two cruise seasons, no cruise lines requested permission to discharge while at berth and one cruise line has requested to discharge at least one mile from berth and while moving at least six knots. In response to Commissioner Tarleton, Ms. Jones Stebbins stated that she would confirm that the cruise line requesting permission to discharge one mile from shore does exercise its option to discharge according to the permit.

Commissioner Creighton requested clarification of what waters are included in the definition of MOU waters.

Commissioner Albro commented on the public process for amending the cruise MOU and proposed that as a party to the MOU, the Port might deviate from the exact language of the proposed amendments in order to address the amendments' underlying concerns. He asked for additional information on the environmental impact of wastewater discharge while underway, particularly the difference between treated discharges while underway and King County's deep water discharge and other opportunities to improve the waters of Puget Sound.

Ms. Jones Stebbins stated that public comment is still under review and noted that while the Department of Ecology sponsored the amendments, it is not clear whether they will support them. She outlined next steps, including an annual meeting of MOU parties on February 16, 2012, and following establishment of the Port's official position, the parties will meet again to dispose of the proposed amendments. She noted that the amendment language could change following the meeting of the MOU parties and that the Commission would have an opportunity to vote on a final version of the amendment language.

Commissioner Albro asserted that as a party to the MOU, the Port should not be restricted in proposing MOU amendments to only those that have undergone public comment.

Ms. Jones Stebbins noted receipt of a letter dated February 13, 2012, from People for Puget Sound. A copy of the letter is, by reference, made a part of these minutes, is marked [exhibit D](#), and is available for inspection in Port offices.

In response to Commissioner Creighton, Ms. Jones Stebbins described a third amendment that would have required observers to report on vessel sanitation operations while in MOU waters to the Department of Ecology. She explained that this amendment posed logistical challenges and did not meet the criteria set forward by the MOU participants for consideration of a third-party amendment.

8. NEW BUSINESS

(01:28:55) Truck Safety Comments

In response to Commissioner Creighton, Chief Executive Officer Tay Yoshitani reported that he intends to follow up with Commissioners on the issue of truck safety at the Port on a one-on-one basis. Commissioner Creighton stated the drivers have a valid perspective on the economics of the trucking business and that safety is an important focus for the Port despite pressures to compromise safety to increase freight volumes and speed.

9. POLICY ROUNDTABLE

None.

10. ADJOURNMENT

There being no further business, the regular meeting was adjourned at 2:40 p.m.

Tom Albro
Secretary

Minutes approved: April 10, 2012.