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**APPROVED MINUTES
COMMISSION SPECIAL MEETING SEPTEMBER 11, 2012**

The Port of Seattle Commission met in a special meeting Tuesday, September 11, 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 special meeting was called to order at 10:59 a.m. by Gael Tarleton, Commission President.

2. EXECUTIVE SESSION pursuant to RCW 42.30.110

The special meeting was immediately recessed to an executive session estimated to last approximately two hours to discuss matters relating to legal risk, potential litigation, and sale or lease of real estate. Following the executive session, which lasted approximately 87 minutes, the special meeting reconvened in open public session at 1:16 p.m.

PLEDGE OF ALLEGIANCE

(00:01:20) Moment of Silence

The Commission observed a moment of silence in remembrance of the attacks on the United States on September 11, 2001.

3. (00:02:30) APPROVAL OF MINUTES

Special meeting of July 31, 2012.

Motion for approval of minutes for the special meeting of July 31, 2012 – Albro

Second – Creighton

Motion carried by the following vote:

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

4. SPECIAL ORDERS OF BUSINESS

4a. (00:03:46) Commission Activities Report.

Presentation document(s): Commission agenda [memorandum](#) dated September 5, 2012, provided by Mary Gin Kennedy, Director of Commission Services.

There was no presentation at this time; however, the Port Commissioners received for review the presentation documents, which were made available to the public, prior to the meeting of September 11, 2012.

4b. (00:04:11) Acknowledgment of Congressman Adam Smith's Recognition of the Port of Seattle for Receiving the 2012 Secretary of Defense Employer Support Freedom Award.

Presentation document(s): Commission agenda [memorandum](#) dated August 30, 2012, Congressional Record [excerpt](#), and [letter](#) of August 9, 2012, from Congressman Smith provided by Mary Gin Kennedy, Director of Commission Services.

Presenter(s): Gary Buchanan, Director, Human Resources and Development.

Mr. Buchanan reported that the Port was one of five public employers chosen from among 3,200 nominees nationwide. He commented on the Port's reputation for its exemplary treatment of National Guard and Reserve personnel and Congressman Smith's acknowledgment of the Port for achieving the Employer Support Freedom Award on August 2, 2012, in the Congressional Record.

5. (00:07:38) UNANIMOUS CONSENT CALENDAR

[Clerk's Note: Items on the Unanimous Consent Calendar are considered routine and are not individually presented or discussed; however, the Port Commissioners receive the request documents for review prior to the meeting and have an opportunity to remove items from the Consent Calendar for separate discussion and vote in accordance with the Commission bylaws.]

5a. Approval of the [claims and obligations](#) for the period of August 1, 2012, through August 31, 2012, in the amount of \$40,862,162.54.

5b. Authorization for the Chief Executive Officer to authorize \$1,179,000 of tenant reimbursement budget associated with the relocation of Alaska Airlines from Concourse D ramp spaces to Concourse C as part of the Airline Realignment Tenant Improvement Program and to execute an airline reallocation agreement with Alaska Air Group. The total estimated project cost for the entire realignment is \$23,285,000.

Request document(s): Commission agenda [memorandum](#) dated August 30, 2012, provided by Michael Ehl, Director, Airport Operations; Wayne Grotheer, Director, Aviation Project Management Group; and James Jennings, Manager, Aviation Properties.

5c. Authorization for the Chief Executive Officer to: (1) advertise and execute a construction contract for regulated materials management (RMM) abatement for the Zone 2 Ticket Counter and Offices; (2) use Port crews for construction to support RMM

abatement; and (3) execute a contract for moving services to relocate airline tenants, all associated with the Airline Realignment Tenant Improvements Project at Seattle-Tacoma International Airport. The cost of the RMM and moving services is \$730,000 (expense).

Request document(s): Commission agenda [memorandum](#) dated September 7, 2012, provided by Michael Ehl, Director, Airport Operations, and Wayne Grotheer, Director, Aviation Project Management.

- 5d. Authorization for the Chief Executive Officer to issue Change Order No. 113 for Contract MC-0316677, Centralized Pre-Conditioned Air Project at Seattle-Tacoma International Airport in the amount of \$776,910 for changes to the pipe routing at D Concourse.**

Request document(s): Commission agenda [memorandum](#) dated August 31, 2012, provided by Ralph Graves, Managing Director, Capitol Development, and Janice Zahn, Assistant Engineering Director.

[Clerk's Note: The contract number in the action request and in the signed agenda memorandum for agenda item 5d was listed incorrectly as "MC-036677" and published as such prior to the Commission meeting of September 11, 2012. The correct number, which is shown above, should have been "MC-0316677." A corrected agenda memorandum was prepared and posted on the Port's website on October 17, 2012.]

- 5e. Authorization for an additional project budget authorization of \$75,000 for the Pier 69 Cooling Tower Replacement project. The additional budget authorization of \$75,000 will increase the total authorized project cost to \$415,000.**

Request document(s): Commission agenda [memorandum](#) dated August 31, 2012, provided by Rees Robinson, Senior Marine Maintenance Project Manager.

- 5f. Authorization for the Chief Executive Officer to execute an amendment to add \$2,000,000 to the AECOM professional service contract to support the investigative work required for the Lower Duwamish Superfund Site (P-00314929) for a total contract value of \$15,500,000. In addition, this memo provides notification to the Port of Seattle Commission in accordance with RCW 53.19.060 that the amendment for AECOM exceeds 50% of the original contract value. (The contract will expire on December 31, 2014.)**

Request document(s): Commission agenda [memorandum](#) dated September 4, 2012, [memorandum of agreement](#), and [administrative order on consent](#) provided by Kathy Bahnick, Manager, Seaport Environmental and Planning, and Doug Hotchkiss, Senior Environmental Program Manager.

- 5g. Authorization for the Chief Executive Officer to execute up to two indefinite delivery, indefinite quantity consulting contracts for graphic design services to maintain the Port's graphic identity, support brand standards and messages, and support marketing and communications strategies, internal communications and signage needs for a**

period of one year, with two one-year options, for a total not-to-exceed contract value of \$1,000,000.

Request document(s): Commission agenda [memorandum](#) dated September 4, 2012, and computer slide [presentation](#) provided by Patricia Akiyama, Director, Public Affairs, and Nancy Blanton, Manager, Business and Corporate Communications.

5h. Authorization for the Chief Executive Officer to execute a contract to provide natural gas for Seattle-Tacoma International Airport. The contract will be structured as a one-year agreement with up to four years of additional service.

Request document(s): Commission agenda [memorandum](#) dated August 30, 2012, provided by David Soike, Director, Aviation Facilities and Capital Program.

5i. Acceptance of the settlement offer from Puget Sound Energy (PSE) dated August 22, 2012, and authorization for the Chief Executive Officer to execute a settlement agreement with PSE resolving all claims in litigation related to the Port's claims as an interested party against PSE in the Pacific Northwest Refund action. The settlement agreement will be negotiated with PSE pursuant to the terms of the settlement offer and may include additional matters involving mutual cooperation between the Port and PSE. In exchange for agreeing to settle the litigation, the Port would be required to dismiss all actions against PSE currently pending before Federal Energy Regulatory Commission.

Request document(s): Commission agenda [memorandum](#) dated September 4, 2012, provided by David Soike, Director, Aviation Facilities and Capital Program; Trevor Emtman, Senior Systems Engineer/Utility Business Manager; and Traci Goodwin, Senior Port Counsel.

5j. Authorization of the revised Commission 2012 international travel plan.

Request document(s): Commission agenda [memorandum](#) dated August 30, 2012, provided by Mary Gin Kennedy, Director of Commission Services.

**Motion for approval of consent items 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, and 5j – Bryant
Second – Holland**

Motion carried by the following vote:

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

(00:08:35) PUBLIC TESTIMONY

As noted on the agenda, public comment was received from the following individual(s):

- Joe Mizrahi, Political Action Coordinator for the United Food and Commercial Workers (UFCW) Union Local 21. Mr. Mizrahi spoke in opposition to agenda item 6d, a lease and concession agreement to operate three duty-free/duty-paid concession locations at the Airport.
- Cindy Richardson, Lead Organizer and Vice President of Unite Here Local 8. Ms. Richardson spoke in opposition to agenda item 6d.

- Genevieve Aguilar, Port Campaigns Director for Puget Sound Sage. Ms. Aguilar spoke in opposition to agenda item 6d.
- Dan Eberhardt, Owner and Managing Member, Concourse B Quiznos at the Airport. Mr. Eberhardt spoke in support of the motion contained in agenda item 6e regarding Airport Concessions Disadvantaged Business Enterprises (ACDBEs).
- Sandy Sun, Operator of Manchu Wok on the Airport's Concourse A. Ms. Sun spoke in support of the motion in agenda item 6e and commented on the difficulties faced by many of the businesses on Concourse A.
- Genevieve Aguilar, Port Campaigns Director for Puget Sound Sage. Ms. Aguilar commented on the Chief Executive Officer's position on the Board of Directors of Expeditors International, and criticized the Airport's free-speech policies.
- Michael Sotelo, President of the Hispanic Chamber of Commerce. Mr. Sotelo commented on the Chief Executive Officer's election to the Expeditors International Board of Directors and spoke in support of Mr. Yoshitani's leadership at the Port, noting the importance to encourage qualified candidates to serve in the public sector.
- Michael Crutcher, 5240 40th Avenue West, Seattle. Mr. Crutcher commented on his experience as a lawyer and businessman and his opinion that the CEO's participation on the Expeditors International Board of Directors constitutes a conflict of interest.
- Seyoum Abraham, 13053 30th Avenue Northeast, Seattle. Mr. Abraham commented on the Port CEO's large salary compared with conditions for Port truck drivers.
- Henry Noble, National Committeeman for the Freedom Socialist Party. Mr. Noble commented on the difficulties for workers at the Airport and Seaport and spoke in opposition to additional compensation for the CEO from Expeditors International and stated that the Port is squelching free speech at the Airport.
- LeeAnn Subelbia, Owner of Filo Foods/BK Foods. Ms. Subelbia commented on the fallacy that lack of a worker retention requirement results in loss of jobs at the Airport and stated that ACDBE businesses provided equal or better benefits compared to other Airport concessions employers, including those hiring represented employees.
- James Yoo, Owner of Ace Metal Company. Mr. Yoo commented on the need for greater minority representation in jobs in the construction and service industries and at the Port of Seattle. He submitted a copy of a letter to the Port Office of Social Responsibility dated September 10, 2012. A copy of the document is, by reference, made a part of these minutes, is marked [exhibit A](#), and is available for inspection in Port offices.
- Gerry Pollett, Washington State Representative, 46th Legislative District. Representative Pollett urged public disclosure of all facts relative to conflict of interest considerations of the CEO's election to the Board of Directors of Expeditors International. He criticized the Port's response to a request for disclosure of public records on this topic that indicated the records would be made available in 14 business days and stated that the public should be provided the documents without agency claim of attorney-client privilege.
- Alex Popescu, aircraft fueler affiliated with Working Washington. Mr. Popescu criticized the amount of money earned by the Port CEO including compensation for his position on the Board of Directors for Expeditors International. He noted low wages earned by unrepresented employees at the Airport, including veterans like him.
- Sarah Bright, 12242 Evanston Avenue North, Seattle, submitted written comments regarding the need for worker retention in lease agreements and the need to remove the

Port CEO due to conflict of interest in his election to the Board of Directors of Expeditors International. A copy of the document is, by reference, made a part of these minutes, is marked [exhibit B](#), and is available for inspection in Port offices.

At the discretion of the Chair, the Commission advanced to consideration of –

8. NEW BUSINESS

8a. (00:43:05) The Chief Executive Officer's Election to the Expeditors International Board of Directors.

Presentation document(s): [text of motion](#) relating to review of the Chief Executive Officer's board membership, [motion to waive attorney-client privilege](#) on certain legal opinions, [legal opinion](#) by Timothy G. Leyh and Katherine Kennedy dated September 10, 2012, [letter](#) from State Representatives dated August 24, 2012, [letter](#) to State Representative Zack Hudgins dated August 28, 2012, [letter](#) from Speaker of the Washington House of Representatives Frank Chopp dated September 5, 2012, and [summary](#) of internal Port communications.

Commissioner Tarleton commented on the value of government transparency and public confidence. She noted the CEO's retention agreement was approved by a majority vote of the Port Commission, although she voted against it, and that the agreement allows the CEO to sit on outside boards. She commented on the responsibility of the Port CEO to protect the public trust and to avoid the appearance of a conflict of interest. She stated analysis of potential conflict of interest should be performed prior to decisions being made about board participation by the CEO and that the public should have access to the conflict-of-interest analysis, which she said should be performed by outside counsel. She noted that it was her duty to provide a voice for the public who oppose the CEO's election to the Expeditors International Board of Directors. Commissioner Tarleton stated she would pursue waiver of attorney-client privilege and release for public view of all outside counsel and Port counsel analysis of conflict of interest in the case of this board election; additional outside counsel and State Auditor's Office assistance in protecting the Port from future conflicts of interest; and consideration of a return of a structure in which the Port is operated under an officer with the title "Executive Director" rather than "Chief Executive Officer."

[Clerk's Note: The approval of the Port Chief Executive Officer's current retention agreement was made by a vote of the Port Commission in public session on March 1, 2011, and the key terms are described in the approved minutes of that meeting.]

MOTION

Commissioner Creighton commented on his opinion that the CEO's outside board position with Expeditors International does not present a conflict of interest but spoke further on the possibility that it might present the appearance of a conflict of interest. He noted his agreement to consult with outside counsel on the subject. Commissioner Creighton offered the following motion, which he read into the record as follows:

- 1. The Commission hereby authorizes the reasonable expenditure of funds and directs a temporary committee of the Commission to be established as**

provided by Section III, Clause 6, of the Commission's Bylaws to oversee the hiring of independent counsel and ethics experts as described below.

2. The Commission shall retain outside legal counsel to provide an independent review and analysis of the legal basis for a finding of no actual, potential or apparent conflict of interest with respect to the CEO's outside board position detailed above, and compliance with all applicable state and federal laws.
3. The Commission shall also retain an expert to:
 - a. Provide a timeline of pertinent events from the time Mr. Yoshitani's Retention Agreement was approved on March 1, 2011, to September 10, 2012, with respect to the approval process regarding the Expeditors board position. Event descriptions will minimally include individuals involved and matters addressed and any other relevant facts.
 - b. Review and provide guidance with respect to the Port's ethics policies on conflict of interest, with recommendations for any general improvements and/or changes specific to the CEO, Port staff and the Commission.
4. The reports called for in Sections 2 and 3 shall be presented to the full Commission in public session no later than October 23, 2012.
5. Commissioners Tom Albro and Rob Holland shall represent the Commission on a temporary committee of the Commission in interviewing and choosing both outside legal counsel and outside experts.

Commissioner Albro seconded the motion and commented in support of public transparency despite his own opinion that there is no conflict of interest on the part of the Port CEO with respect to serving on the Expeditors International Board of Directors.

Commissioner Holland spoke of the public nature of the Port of Seattle and its efforts on behalf of the public, which he stated had been well served by Mr. Yoshitani. He emphasized that the Commission reports to the public and has to be responsive to the public.

AMENDMENT

Commissioner Bryant commented on recent increased transparency at the Port of Seattle since 2008 and agreed that the public should be able to review the legal assessments that have been made on the CEO's participation on the Expeditors International Board of Directors. He opined that disclosure should be made now rather than postponed until October 23, 2012. He stated his concerns over spending funds to obtain an additional outside legal opinion on the subject, given that the Port had already received an outside legal opinion on the subject, and offered the following amendment to strike and insert as follows [*text to be stricken is lined through; text to be inserted is underlined*]:

1. The Commission hereby waives attorney-client privilege on legal opinions prepared by the General Counsel, Craig Watson, and by Timothy Leyh and Katherine Kennedy related to the Chief Executive Officer's appointment to the Expeditors International Board of Directors and authorizes staff to post those

- opinions on the website for public view. authorizes the reasonable expenditure of funds and directs a temporary committee of the Commission to be established as provided by Section III, Clause 6, of the Commission's Bylaws to oversee the hiring of independent counsel and ethics experts as described below.
2. ~~The Commission shall retain outside legal counsel to provide an independent review and analysis of the legal basis for a finding of no actual, potential or apparent conflict of interest with respect to the CEO's outside board position detailed above, and compliance with all applicable state and federal laws.~~
 3. ~~The Commission shall also retain an expert to:~~
 - a. ~~Provide a timeline of pertinent events from the time Mr. Yoshitani's Retention Agreement was approved on March 1, 2011, to September 10, 2012, with respect to the approval process regarding the Expeditors board position. Event descriptions will minimally include individuals involved and matters addressed and any other relevant facts.~~
 - b. **The Commission retains outside counsel and works with the SAO to Rreview and provide guidance with respect to the Port's ethics policies on conflict of interest, with recommendations for any general improvements and/or changes specific to the CEO, Port staff and the Commission.**
 4. ~~The reports called for in Sections 2 and 3 shall be presented to the full Commission in public session no later than October 23, 2012.~~
 5. ~~Commissioners Tom Albro and Rob Holland shall represent the Commission on a temporary committee of the Commission in interviewing and choosing both outside legal counsel and outside experts.~~

The amendment failed for lack of a second.

Discussion ensued on considerations and potential risks associated with waiver of privilege by releasing transcripts of executive sessions and confidentiality and privacy concerns attached to topics discussed in executive sessions under RCW 42.30.110. Also discussed were implications of a waiver of attorney-client privilege on disclosure of analysis from outside legal counsel as well as Port counsel.

The question recurred on the motion as read into the record by Commissioner Creighton and seconded by Commissioner Albro as follows:

Motion carried by the following vote:

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

Abstaining: Bryant (1)

MOTION

Commissioner Bryant offered the following motion:

The Commission hereby waives attorney-client privilege on the legal opinion prepared by Timothy G. Leyh and Katherine Kennedy related to the Chief Executive Officer's appointment to the Expeditors International Board of Directors and authorizes staff to post the opinion on the Port's website for public view.

Second – Albro

Motion carried by the following vote:

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

Following consideration of agenda item 8a, the Commission returned to consideration of –

6. DIVISION, CORPORATE, AND COMMISSION ACTION ITEMS

- 6a. (01:34:15) Request (1) Second Reading and Final Passage of Resolution No. 3666: A Resolution of the Port Commission of the Port of Seattle declaring certain personal property surplus (Port of Seattle Cranes No. 51, 52, and 53) for Port of Seattle purposes and authorizing its sale or disposal; and (2) authorization of disposal cost of said cranes in an amount not to exceed \$1,500,000, provided the cranes are not able to be sold.

Request document(s): Commission agenda [memorandum](#) dated August 31, 2012, [Resolution No. 3666](#), and computer slide [presentation](#) provided by Steve Queen, Container Operations Manager, and Curtis Stahlecker, Project Manager.

There was no presentation at this time. First reading of Resolution No. 3666 was approved on August 14, 2012, and the request documents were distributed for review prior to the meetings of August 7 and 14, 2012, and September 11, 2012.

Motion for approval of item 6a – Albro

Second – Holland

[Motion carried](#) by the following vote:

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

- 6b. (01:35:52) Special meeting of the Industrial Development Corporation (IDC) of the Port of Seattle.

Request document(s): [IDC notice](#), [IDC agenda memorandum](#) dated August 31, 2012, regarding issuance and sale of special facilities revenue refunding bonds, and [IDC Resolution No. 80](#). A copy of the [minutes of the September 11, 2012, IDC meeting](#) and the [resolution](#) will be made available for inspection in Port offices following their approval.

The special meeting of the Port of Seattle Commission was recessed at 2:51 p.m. to hold a special meeting of the Industrial Development Corporation of the Port of Seattle. The special meeting of the Port of Seattle Commission reconvened at 2:56 p.m., chaired by Commissioner Tarleton.

- 6c. (01:41:40) First and Second Reading and Final Passage of Resolution No. 3667: A Resolution of the Port Commission of the Port of Seattle approving the issuance by the Industrial Development Corporation of the Port of Seattle of its Special Facilities Revenue Refunding Bonds, Series 2012 (Delta Air Lines Inc. Project) in a principal amount not to exceed \$75,000,000 for the purpose of refunding the Development Corporation's Special Facilities Revenue Bonds, 2001 (Northwest Airlines Inc. Project); and approving the resolution of said Development Corporation authorizing said bonds and other documentation in connection with the issuance of said bonds. The Resolution also authorizes the Chief Executive Officer or the Chief Financial and Administrative Officer to execute documents related to the 2012 bonds on behalf of the Port.**

Request document(s): Commission agenda [memorandum](#) dated August 31, 2012, [Resolution No. 3667](#), and [letter](#) of August 20, 2012, from Delta Air Lines provided by Elizabeth Morrison, Senior Manager Corporate Finance.

There was no presentation at this time. The Port Commissioners received a briefing on Resolution No. 3667 during the August 14, 2012, Commission meeting, and the request documents were distributed for review prior to the meeting of September 11, 2012.

Motion to combine first and second readings of Resolution No. 3667 – Albro

Second – Creighton

Motion carried by the following required unanimous vote of all Port Commissioners:

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

Motion for first and second readings and final passage of [Resolution No. 3667](#) – Creighton

Second – Albro

Motion carried by the following vote:

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

The special meeting was recessed at 3:00 p.m. and reconvened at 3:10 p.m., chaired by Commissioner Tarleton.

At the discretion of the Chair, as noticed on the meeting agenda, the Commission advanced to consideration of –

7. STAFF BRIEFINGS

- 7a. (01:45:02) Airport Concessions Master Plan Update.**

Presentation document(s): Commission agenda [memorandum](#) dated August 28, 2012, [motion](#) concerning the Airport concessions program adopted on February 14, 2012, and computer slide [presentation](#) provided by James R. Schone, Director, Aviation Business Development, and Deanna Zachrisson, Manager, Aviation Concessions Business.

Presenter(s): Ms. Zachrisson.

The Commission received a briefing on the status of the Airport Concessions Master Plan, including information on economic performance of the concessions program and estimates for passenger spending in 2013, both of which are trending toward increases. Risks to customer service and revenue posed by the transition of the concessions program in 2015 were noted and a diagram was presented showing when and where leases would expire for concessionaires between 2014 and 2017. A summary of master plan components and the timing of master planning activities underway and yet to be executed was provided, with an emphasis on the need for a sustainable, comprehensive approach to concessions planning at the Airport that includes staggered lease terms, recommendation of concept mixes and targets for ACDBE composition in the concessions program, and consideration for supporting infrastructure.

In response to Commissioner Tarleton, Ms. Zachrisson indicated that information would be provided relating to development of economic projections, and that the information would be correlated to jobs at the Airport.

Following consideration of agenda item 7a, as noticed on the meeting agenda, the Commission returned to consideration of –

6. DIVISION, CORPORATE, AND COMMISSION ACTION ITEMS

- 6d. (01:56:01) Authorization for the Chief Executive Officer to negotiate and execute a lease and concession agreement with the proposer selected in the Port's current request for proposal process to operate three duty free/duty paid locations for a term of seven years. The draft lease (Exhibit A) is not necessarily the final version and is subject to negotiation within the stated parameters provided in the memorandum.**

Request document(s): Commission agenda [memorandum](#) dated August 28, 2012, lease and concession [agreement](#), [diagram](#) of duty-free concession locations, and computer slide [presentation](#) provided by James R. Schone, Director, Aviation Business Development, and Deanna Zachrisson, Manager, Concessions Business.

Presenter(s): Ms. Zachrisson; Wayne Grotheer, Director, Aviation Project Management Group; Ralph Graves, Managing Director, Capital Development Division; Mark Reis, Managing Director, Aviation Division; and Kurt Beckett, Chief of Staff.

The Commission was provided information relating to the action request, including history of the operation of the duty-free concession at the Airport by HMSHost between 1966 and 2011, increasing trends in international passengers, recent challenges in issuing a request for proposals (RFPs) for a new duty-free concession, infrastructure challenges affecting duty-free locations, concessions program guidance from the Port Commission, the need to temporarily lease the duty-

free concession to Hudson Group, and the resulting increases in sales and employment associated with the concession. New opportunities for distribution of locally supplied products and potential for continued revenue and job growth were noted.

The schedule for completion of a new duty-free location in the South Satellite was presented showing a goal of opening the South Satellite duty-free location in June 2013. The phasing of the construction was described and the goal of avoiding construction during the busy summer season was explained.

In response to Commissioner Tarleton, Ms. Zachrisson stated that all of the duty-free concessions proposals have thoroughly addressed the issue of coordinating with employees regarding transitions and construction phasing.

Commissioner Creighton stated he would oppose the request due to the lack of resolution of questions regarding establishment of a comprehensive worker retention policy for Airport concessions.

In response to Commissioner Tarleton, Ms. Zachrisson stated that the City of SeaTac benefits from sales tax and a portion of the leasehold excise tax collected by the Port from concessionaires. Commissioner Albro stated that moving forward on a duty-free lease would create jobs, which is a priority for the Port. In response to Commissioner Holland, Ms. Zachrisson explained that the proposals include large companies with various relationships with organized labor.

Commissioner Tarleton recommended reinforcing the objectivity of the RFP review process by obtaining review of the work of the selection committee by an independent steering group. Mr. Graves proposed formation of a board of review for this purpose, to make proposals as necessary, report any irregularities to the Commission, and to conduct a final review to ensure adequate documentation of the bid selection. The board would be composed of Mr. Graves; Joe McWilliams, Managing Director, Real Estate Division; and Nora Huey, Chief Procurement Officer.

In response to Commissioner Holland, Ms. Zachrisson explained various factors affecting the urgency of executing the duty-free lease, including obstructions from nearby infrastructure improvements, the airline realignment, and customer service concerns.

Commissioner Tarleton acknowledged the competing needs recognized in the Commission's policy direction on worker retention and the importance that the selection process for the duty-free concession be fair and well documented.

In response to Commissioner Holland, Mr. Reis explained that the interim duty-free operator is Hudson Group, which had continued to use the staff previously employed by HMSHost, and that the RFP encourages retention of existing employees. Commissioner Holland stated he would oppose the proposal until he could get clarification from staff and representatives of UFCW. Mr. Beckett explained that worker retention was encouraged rather than required in the RFP process due to constraints imposed by the federal injunction in the matter of *CityIce Cold Storage v. the Port of Seattle*.

Motion for approval of item 6d – Albro

Second – Bryant

Motion carried by the following vote:

In Favor: Albro, Bryant, Tarleton (3)

Opposed: Creighton, Holland (2)

6e. (02:34:40) Motion Regarding Relief for Airport Concessions Disadvantaged Business Enterprises and Other Small Business at Seattle-Tacoma International Airport.

Request document(s): [text of motion](#) as presented prior to convening and [text of substitute](#) motion offered and amended during the meeting of September 11, 2012.

MOTION

The motion as posted for the public prior to convening read as follows:

(1) As the Airport Concessions Program undergoes changes from 2015 to 2017, the ACDBE participation goal shall be consistent with the federal regulations in 49 CFR Part 23. The Airport shall make good faith efforts to meet or exceed this goal.

(2) The Commission supports an aspirational goal that thirty percent (30%) of the concessions units shall be leased by ACDBEs and/or small and local business as current leases expire and new leases are negotiated.

(3) The Commission directs the CEO to provide an opportunity to current ACDBEs and other small businesses that operate as sub-tenants and lease and operate three or fewer food and beverage units at the Airport to enter into negotiations directly with the Airport to extend current leases or enter into new leases for some period of time provided that they meet either of the following criteria (a or b):

(a) Such business: (i) operates and leases a concession unit located in a concessions zone of the Airport that has experienced a sustained drop in enplanements; and

(ii) (x) has suffered a greater percentage decline in sales than the average percentage decline in sales suffered by concessionaires throughout the Airport during the term of their leases (as a proportion of, and taking into account differentials in, build-out costs, original lease term lengths and any other extenuating factors); or (y) has incurred a substantial comparative disadvantage in sales or build-out costs due to placement/location issues during their lease terms.

(b) Alternatively, such business completed its initial build-out after January 1, 2004.

(4) The Commission directs the CEO to develop procedures for determining whether the above-referenced criteria are met and determining the appropriate term length of any lease extension or new lease. The Commission shall form a temporary committee to work with the CEO in developing these procedures in accordance with Article III, Section 6, of the Commission's Bylaws. This motion

serves to establish this temporary committee. The procedures will include the following requirements:

- (a) Submission of sales records, build-out costs and other data or analysis by the ACDBE or small business necessary to the determination of whether the above-referenced criteria are met; and
 - (b) Use of a third party consultant to review the submission of records and analysis.
- (5) The Commission directs the CEO to negotiate in good faith any new leases or lease extensions with businesses deemed eligible and that are found to meet the criteria referenced above in Section 3, with the goal of completing new lease agreements or extensions no later than December 31, 2012. Provided, however, this motion shall not be interpreted as providing a guarantee of a lease or lease extension. The terms and conditions of any leases or lease extensions negotiated pursuant to this motion shall not exceed eight (8) years and shall be substantially consistent with other such terms and conditions of concession leases awarded since 2008 for the same type of concession.

SUBSTITUTE MOTION

Commissioner Albro offered the following substitute motion:

- (1) As the Airport Concessions Program undergoes changes from 2015 to 2017, the ACDBE participation goal shall be consistent with the federal regulations in 49 CFR Part 23. The Airport shall make good faith efforts to meet or exceed this goal.
- (2) The Commission supports an aspirational goal that at least thirty percent (30%) of the concessions units shall be leased by ACDBEs and/or small and local business as current leases expire and new leases are negotiated.
- (3) To accelerate progress toward this aim, the Commission directs the CEO to focus leasing efforts on increasing the number of direct tenants, especially small locally owned businesses. As permitted by Federal Regulations, Airport staff will enter into direct negotiation with current ACDBEs and other small businesses that operate as sub-tenants and lease and operate three or fewer food and beverage units at the Airport in an effort to extend current leases or enter into new leases for some period of time provided the terms are competitive and doing so does not impede the ability to attract additional small businesses as direct tenants.
- (4) The Commission directs the CEO to develop criteria and procedures for determining whether the above-referenced criteria are met and determining the appropriate term length of any lease extension or new lease. The Commission shall form a temporary committee to work with the CEO in developing these procedures in accordance with Article III, Section 6, of the Commission's Bylaws. This motion serves to establish this temporary committee.
- (5) The Commission directs the CEO to negotiate in good faith any new leases or lease extensions with businesses deemed eligible and that are found to meet the criteria referenced above in Section 3, with the goal of completing new lease agreements or extensions no later than December 31, 2012. Provided, however,

this motion shall not be interpreted as providing a guarantee of a lease or lease extension. The terms and conditions of any leases or lease extensions negotiated pursuant to this motion shall not exceed eight (8) years and shall be substantially consistent with other such terms and conditions of concession leases awarded since 2008 for the same type of concession.

Motion to substitute the text above for the motion, as distributed prior to convening, regarding Airport concessions disadvantaged business enterprises and other small business at Seattle-Tacoma International Airport – Albro

Second – Holland

Motion to substitute carried by the following vote:

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

AMENDMENT

Commissioner Creighton offered the following amendment to the substitute motion, which was adopted without objection, to include the following text:

(6) The temporary committee of the Commission shall seek guidance from the Federal Aviation Administration as to the terms allowable under Section 5 and may hire outside counsel at reasonable expense to advise them on discussions with the Federal Aviation Administration.

The substitute motion now reads as follows:

(1) As the Airport Concessions Program undergoes changes from 2015 to 2017, the ACDBE participation goal shall be consistent with the federal regulations in 49 CFR Part 23. The Airport shall make good faith efforts to meet or exceed this goal.

(2) The Commission supports an aspirational goal that at least thirty percent (30%) of the concessions units shall be leased by ACDBEs and/or small and local business as current leases expire and new leases are negotiated.

(3) To accelerate progress toward this aim, the Commission directs the CEO to focus leasing efforts on increasing the number of direct tenants, especially small locally owned businesses. As permitted by Federal Regulations, Airport staff will enter into direct negotiation with current ACDBEs and other small businesses that operate as sub-tenants and lease and operate three or fewer food and beverage units at the Airport in an effort to extend current leases or enter into new leases for some period of time provided the terms are competitive and doing so does not impede the ability to attract additional small businesses as direct tenants.

(4) The Commission directs the CEO to develop criteria and procedures for determining whether the above-referenced criteria are met and determining the appropriate term length of any lease extension or new lease. The Commission shall form a temporary committee to work with the CEO in developing these procedures in accordance with Article III, Section 6, of the Commission's Bylaws. This motion serves to establish this temporary committee.

(5) The Commission directs the CEO to negotiate in good faith any new leases or lease extensions with businesses deemed eligible and that are found to meet the criteria referenced above in Section 3, with the goal of completing new lease agreements or extensions no later than December 31, 2012. Provided, however, this motion shall not be interpreted as providing a guarantee of a lease or lease extension. The terms and conditions of any leases or lease extensions negotiated pursuant to this motion shall not exceed eight (8) years and shall be substantially consistent with other such terms and conditions of concession leases awarded since 2008 for the same type of concession.

(6) The temporary committee of the Commission shall seek guidance from the Federal Aviation Administration as to the terms allowable under Section 5 and may hire outside counsel at reasonable expense to advise them on discussions with the Federal Aviation Administration.

Commissioner Holland noted that it is not uncommon for the Port to extend leases as described in the motion under consideration.

The question recurred on the substitute motion, as amended.

Substitute motion regarding Airport concessions disadvantaged business enterprises and other small business at Seattle-Tacoma International Airport, as amended and detailed above – Albro

Second – Holland

Substitute motion, as amended, carried by the following vote:

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

Commissioner Tarleton announced that the temporary committee authorized in the substitute motion adopted above would include Commissioners Creighton and Holland.

6f. (02:46:25) Authorization to increase the previous project authorization by the amount of the American Recovery and Reinvestment Act grant in the amount of \$2,875,171 received after Commission authorization on March 24, 2009, resulting in the total project authorization of \$53,575,171.

Request document(s): revised Commission agenda [memorandum](#) dated September 7, 2012, provided by Geri Poor, Manager Regional Transportation, and Gary Wallinder, Capital Project Manager. Also provided was an animation of the project's revised traffic flow, which is available upon request at Port offices.

Presenter(s): Ms. Poor and Mr. Wallinder.

[Clerk's Note: The agenda memorandum for item 6f dated August 31, 2012, was revised on September 7, 2012, at which time a revised notice was posted on the Port of Seattle website.]

The Commission received a combined presentation on agenda items 6f and 6g that included identification of the subject project as the East Marginal Way Grade Separation (EMWGS) Project,

description of the project as a Freight Action Strategy (FAST) Corridor project stemming from expansion of Port Terminals 5 and 18, and the project's implications for improved on-dock rail service at those terminals with reduced neighborhood impact. It was explained that the Port has committed over \$40 million to FAST projects over the past 20 years, which has been used to leverage over \$500 million in investment by other parties, and that American Recovery and Reinvestment Act (ARRA) funds were obtained subsequent to Commission's approval of the EMWGS project. It was noted that the Freight Mobility Strategic Investment Board will redesign the SR-99 trestle replacement so as to provide facilitated access to the Argo freight yard for trucks.

Funding sources and local, state, federal, and private partnerships for various aspects of the project were presented. An animation of the project's improvement of traffic flow prepared by Seaport Graphics Specialist Devlin Donnelly was presented.

Motion for approval of item 6f – Bryant

Second – Creighton

Motion carried by the following vote:

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

6g. (03:03:52) Authorization for the Chief Executive Officer to: (1) obligate the Port to pay Washington State Department of Transportation a not-to-exceed amount of \$500,000 for work associated with SR-99 Trestle Replacement to allow East Marginal Way Grade Separation (EMWGS) Phase II and Argo Yard Access Road projects to proceed; and (2) direct staff to develop design and prepare bidding documents for EMWGS Phase II in the amount of \$350,000.

Request document(s): revised Commission agenda [memorandum](#) dated September 4, 2012, and computer slide [presentation](#) provided by Geri Poor, Manager, Regional Transportation, and Gary Wallinder, Capital Project Manager.

There was no presentation at this time. The presentation made for agenda item 6f incorporated material relevant to both items 6f and 6g, and the request documents were distributed for review prior to the meeting of September 11, 2012.

Commissioner Creighton read into the record of the meeting a letter from Karen Schmidt, Executive Director of the Freight Mobility Strategic Investment Board dated September 10, 2012, supportive of the requested action. A copy of the letter is, by reference, made a part of these minutes, is marked [exhibit C](#), and is available for inspection in Port offices.

Motion for approval of item 6g – Bryant

Second – Albro

Motion carried by the following vote:

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

6h. (03:10:37) Authorization for the Chief Executive Officer to: (1) approve the scope and \$6 million budget for the creation of an airport sustainability master plan (SMP) at Seattle-Tacoma International Airport; and (2) advertise and execute a contract for

consulting services for the Airport SMP, with a total estimated value of \$6.0 million. Authorization to complete the environmental review of the master plan will be requested in 2015 once the scope of the master plan projects is defined and the level of environmental review required is determined.

Request document(s): revised Commission agenda [memorandum](#) dated September 5, 2012, and computer slide [presentation](#) provided by Elizabeth Leavitt, Director, Aviation Planning and Environmental, and Dave Tomber, Aviation Planning Program Manager.

There was no presentation at this time. The Port Commissioners received a briefing on the Airport Sustainability Master Plan during the August 14, 2012, Commission meeting, and the request documents were distributed for review prior to the meeting of September 11, 2012.

Commissioner Creighton stated he had concerns including the \$6 million cost of the request and that he would oppose the requested action.

Motion for approval of item 6h – Bryant

Second – Holland

Motion carried by the following vote:

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

Opposed: Creighton (1)

6i. (03:14:14) Authorization for the Chief Executive Officer to execute the Second Amendment to the Cruise Facility Lease Agreement between the Port of Seattle and Cruise Terminals of America to exercise the “Extension Period” set forth in Article 3.

Request document(s): revised Commission agenda [memorandum](#) dated September 4, 2012, and [amendment](#) provided by Michael McLaughlin, Director, Cruise and Maritime Operations.

Presenter(s): Mr. McLaughlin.

It was reported that according to a survey conducted by the Cruise Lines International Association, the cruise industry represents approximately 18,000 jobs in the state of Washington and Seattle is the seventh busiest cruise port in the U.S. Additional economic performance indicators for the cruise industry were presented including number of jobs, annual revenue, and passenger capacity measures. Key terms of the lease extension and requested lease amendment were described, including provisions for reserves for future cruise terminal maintenance.

In response to Commissioner Albro, Mr. McLaughlin explained the risks associated with extending the lease with Cruise Terminals of America versus initiating a new competitive bidding process. He added that eliminating the allowable expense discrepancy that was the subject of a lease and concession audit earlier in the year has the effect of returning the revenue to the tenant to the target levels of the original lease.

Although supportive of the current request, Commissioner Tarleton recommended that the lease not be extended again and that a competitive procurement be issued in the future.

Motion for approval of item 6i – Holland

Second – Creighton

Motion carried by the following vote:

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

7. STAFF BRIEFINGS

Agenda item 7a having been disposed of previously, the Commission advanced to consideration of –

7b. (03:29:33) Briefing on the Port Liability Insurance Renewal for the Policy Year Beginning on October 1, 2012.

Presentation document(s): Commission agenda [memorandum](#) dated September 4, 2012, and computer slide [presentation](#) provided by Jeff Hollingsworth, Risk Manager.

Presenter(s): Mr. Hollingsworth.

An update on renewal of the Port's liability insurance was provided, including information about the coverage period, listing of coverages, factors affecting premiums, modest premium increases compared to increases of Port revenue, issues contributing to the decision not to carry aviation terrorism insurance or excess workers compensation insurance, maintenance of overall per-occurrence Airport limits at \$500 million, liability considerations associated with continued ownership of the Eastside Rail Corridor and maintenance responsibilities for the East Marginal Way Grade Separation project, estimated renewal cost of \$780,000 to \$800,000, and the process for renewing coverage prior to September 30, 2012.

8. NEW BUSINESS

Agenda item 8a having been disposed of previously, no additional new business was considered.

9. POLICY ROUNDTABLE

None.

10. ADJOURNMENT

There being no further business, the special meeting was adjourned at 5:06 p.m.

Tom Albro

Secretary

Minutes approved: November 6, 2012.