



COMMISSION REGULAR MEETING AGENDA

July 13, 2021

To be held in virtually via MS Teams in accordance with Senate Concurrent Resolution 8402 and in accordance with Governor Inslee's Proclamations 20-05 and 20-28 et seq. You may view the full meeting live at meetings.portseattle.org. **To listen live, call in at +1 (425) 660-9954 and Conference ID 382 304 939#**

ORDER OF BUSINESS

10:30 a.m.

1. CALL TO ORDER

2. **EXECUTIVE SESSION** – *if necessary, pursuant to RCW 42.30.110 (executive sessions are not open to the public)*

► 12:00 noon – PUBLIC SESSION

Reconvene or Call to Order and Pledge of Allegiance

3. **APPROVAL OF THE AGENDA** (*at this time, commissioners may reorder, add, or remove items from the agenda*)

4. SPECIAL ORDERS OF THE DAY

5. EXECUTIVE DIRECTOR'S REPORT

6. COMMITTEE REPORTS

7. **PUBLIC COMMENT** – *procedures available online at <https://www.portseattle.org/page/public-comment-port-commission-meetings>*

DUE TO SENATE CONCURRENT RESOLUTION 8402 AND THE GOVERNOR'S PROCLAMATION 20-28 there will be no physical location for this meeting and the

PORT WILL NOT ACCEPT in-person, verbal comments during the regular meeting of July 13, 2021. Alternatively, during the regular order of business, those wishing to provide public comment will have the opportunity to:

1) Deliver public comment via email: All written comments received by email to commission-public-records@portseattle.org will be distributed to commissioners and attached to the approved minutes.

2) Deliver public comment via phone or Microsoft Teams conference: To take advantage of this option, please email commission-public-records@portseattle.org with your name and the topic you wish to speak to by 9:00 a.m. PT on Tuesday, July 13, 2021. You will then be provided with instructions and a link to join the Teams meeting.

This process will be in place until further notice. For additional information, contact commission-public-records@portseattle.org.

8. **CONSENT AGENDA** (*consent agenda items are adopted by one motion without discussion*)

- 8a. Approval of the Minutes of the Special Meeting/Study Session of June 8 and the Regular Meeting of June 22, 2021. **(no enclosure)**
- 8b. Approval of the Claims and Obligations for the Period June 1, 2021, through June 30, 2021, Including Accounts Payable Check Nos. 939948 through 940233 in the Amount of \$5,043,370.29; Accounts Payable ACH Nos. 036048 through 036721 in the Amount of \$49,851,576.73; Accounts Payable Wire Transfer Nos. 015620 through 015643 in the Amount of \$10,698,463.83, Payroll Check Nos. 198817 through 199023 in the Amount of \$56,512.91; and Payroll ACH Nos. 1028705 through 1032935 in the Amount of \$11,662,990.13 for a Fund Total of \$77,312,913.89. **([memo enclosed](#)) (p. 7)**
- 8c. Authorization for the Executive Director to Execute a Contract for External Audit Services for the Financial Periods 2022 to 2026 in an Estimated Amount Not-to-Exceed \$3,000,000 for the Full Contract Term. The Base Contract is Three Years with the Option to Extend for Two Additional One-year Terms. **([memo enclosed](#)) (p. 10)**
- 8d. Authorization for the Executive Director to Approve the King County Public Safety Answering Point Interlocal Agreement 2021-2023. No additional funding is Associated with this Request. **([memo and draft agreement enclosed](#)) (p. 12)**
- 8e. Authorization for the Executive Director to Advertise, Award, and Execute a Construction Contract for the Construction of the Building 161G AV Facility Upgrade Project at Seattle-Tacoma International Airport. The Amount of this Request is \$1,993,000 for a Total Estimated Project Cost Not-to-Exceed \$2,972,000. (CIP # C800924) **([memo and presentation enclosed](#)) (p. 32)**

9. UNFINISHED BUSINESS

10. NEW BUSINESS

- 10a. Order No. 2021-06: Directing the Executive Director to Develop and Implement Executive Policies Banning Port and Private Sector Uses of Public-facing Biometrics for Mass Surveillance, and for Law Enforcement and Security Functions; Developing and Implementing Port Policies – Within the Limitations of State and Federal Law – Related to Port, Federal and Private-sector Uses of Public-facing Biometrics at Port Facilities for Traveler Functions; and Endorsing Federal Legislation Implementing a Moratorium on Federal Uses of Biometrics not Explicitly Approved by the United States Congress. **([proposed order](#), [letter 1](#), [letter 2](#), [letter 3](#), and [presentation enclosed](#)) (p. 49)**
- 10b. Authorization for the Executive Director to Acquire Indigenous Art of the Pacific Northwest Region for Display in the International Arrivals Facility (IAF) at the Seattle-Tacoma International Airport, in the Amount of \$475,000. **([memo and presentation enclosed](#)) (p. 91)**
- 10c. Order No. 2021-07: Supporting the Executive Director's Authority to Negotiate and Execute a Lease Agreement for the Property Known as Tsubota with the City of Seattle. **([proposed order](#) and [map enclosed](#)) (p. 99)**

11. PRESENTATIONS AND STAFF REPORTS

11a. Executive Director Performance Review (**no enclosure**)

11b. Maritime Blue Annual Report ([memo](#) and [presentation](#) enclosed) (p. 102)

11c. Ocean Acidification Action Plan and Case Study Briefing ([memo](#) and [presentation](#) enclosed) (p. 135)

12. QUESTIONS on REFERRAL to COMMITTEE and CLOSING COMMENTS

13. ADJOURNMENT



P.O. Box 1209
Seattle, Washington 98111
www.portseattle.org
206.787.3000

APPROVED MINUTES COMMISSION SPECIAL MEETING JUNE 8, 2021

The Port of Seattle Commission met in a special meeting Tuesday, June 8, 2021. The meeting was held remotely in accordance with Senate Concurrent Resolution 8402 and the Governor's Proclamation 20-28. Commissioners Bowman, Calkins, Cho, Felleman, and Steinbrueck were present.

1. CALL TO ORDER

Pursuant to RCW 42.30 and Article IV, Section 8, of the commission bylaws, the meeting convened at 9 a.m. to conduct a study session regarding on ground transportation.

2. PRESENTATIONS AND DISCUSSION

Presenters

Steve Metruck, Executive Director
Lance Lyttle, Managing Director, Aviation
Arlyn Purcell, Director, Aviation Environment & Sustainability
Peter Lindsay, Airport Ops Development Manager, Landside Operations
Adrian Down, Environmental Program Manager, AV Environmental Programs Group
Tom Hooper, Program Manager, Aviation Planning
Keri Pravitz, East King County Community Government Relations Manager,
External Relations

Presentation Materials

Ground Transportation Presentation

Members of the Commission received a presentation from Executive Director Metruck and staff. The presentation addressed:

- Ground transportation framework;
 - Guiding principles
 - Resolution goals
 - Strategies and tactics
- Ground transportation accomplishments;
- Impacts from Covid-19;
- Mode share and program emphasis;
- Ground transportation revenue;
- Greenhouse gas emissions and program emphasis;

Digital recordings of the meeting proceedings and meeting materials are available online – www.portseattle.org.

- Regional transit services to SEA;
- Promoting transit;
- Status update: 2020 work program;
 - evaluate Express Bus service and remote baggage check
 - form a Transportation Management Association
 - restructure Airport Tenant Employee Parking
 - explore and implement Airport Access Fees
 - establish incentives for ride share and transit use
- express bus and remote baggage check service;
- SEA Eastside engagement;
- Restructure airport tenant employee parking;
- Transportation Management Association;
 - key features
 - 2020 workplan
 - Covid-19 impacts
 - progress in 2021
 - looking forward
- airport access fees
- partners;
- incentives for rideshare and transit use;
- 2018 SEA passenger ground transportation emissions;
- options to “green-up” ground transportation providers;
- options to incentivize behavior change;
- options to incentivize long-term parking;
- upcoming milestones; and
- key takeaways
 - there are competing priorities across ground transportation programs
 - substantial effects from COVID on program implementation and our partners
 - transit and electrification are a key part of our long-term strategy
 - seek solutions that balance our needs and minimize unintended consequences
 - engage and assess new opportunities to meet ground transportation goals.

Members of the Commission, Executive Director Metruck, and staff discussed:

- employee trip reduction (data collected and specific numbers); how often collected?;
- the number of employee parking stalls currently provided;
- employee parking in the main garage;
- promoting transit;
- making a difference in greenhouse gas emissions and addressing low barriers to transit for passengers, lowering passenger single-car trips;
- possible incentivization for TNCs, like taxis;
- creating a high level, measurable goal for social equity;
- improvements needed to bus service to and from the airport;
- restarting conversations regarding remote baggage check-in at the convention center;
- making it clearer where in the process of SAMP the Port is;
- the use of partnerships in ground transportation;
- alignment in ranking transportation modes and incentives;
- addressing externalized costs – access fee;

- incentivizing tenant employee parking, such as including it as part of a compensation package;
- the number of employers required to produce trip reduction plans at SEA;
- moving forward with a budget request in 2022 for a Transportation Management Association;
- attaining consistency in tracking change based on the implementation of different strategies to lower passenger greenhouse gas emissions; and
- coordinating with other for-profit parking lots.

Executive Director Metruck and Members of the Commission appreciated the work of staff in bringing forward the study session information. Executive Director Metruck also thanked everyone who participated in relevant focus groups in 2020, keeping the conversations going in spite of the pandemic.

3. ADJOURNMENT

There being no further business, the meeting adjourned at 11:01 a.m.

Prepared:

Attest:

Michelle M. Hart, Commission Clerk

Sam H. Cho, Commission Secretary

Minutes approved: July 13, 2021



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8b

ACTION ITEM

Date of Meeting July 13, 2021

DATE: July 1, 2021
TO: Steve Metruck, Executive Director
FROM: Duane Hill, AFR Senior Manager Disbursements
SUBJECT: **Claims and Obligations – June 2021**

ACTION REQUESTED

Request Port Commission approval of the Port Auditor’s payment of the salaries and claims of the Port pursuant to RCW 42.24.180 for payments issued during the period June 1 through 30, 2021 as follows:

Payment Type	Payment Reference Start Number	Payment Reference End Number	Amount
Accounts Payable Checks	939948	940233	\$ 5,043,370.29
Accounts Payable ACH	036048	036721	\$ 49,851,576.73
Accounts Payable Wire Transfers	015620	015643	\$ 10,698,463.83
Payroll Checks	198817	199023	\$ 56,512.91
Payroll ACH	1028705	1032935	\$ 11,662,990.13
Total Payments			\$ 77,312,913.89

Pursuant to RCW 42.24.180, “the Port’s legislative body” (the Commission) is required to approve in a public meeting, all payments of claims within one month of issuance.

OVERSIGHT

All these payments have been previously authorized either through direct Commission action or delegation of authority to the Executive Director and through his or her staff. Detailed information on Port expenditures is provided to the Commission through comprehensive budget presentations as well as the publicly released Budget Document, which provides an even greater level of detail. The Port’s operating and capital budget is approved by resolution in November for the coming fiscal year, and the Commission also approves the Salary and Benefit Resolution around the same time to authorize pay and benefit programs. Notwithstanding the Port’s budget approval, individual capital projects and contracts exceeding certain dollar thresholds are also subsequently brought before the Commission for specific authorization prior to commencement of the project or contract—if they are below the thresholds the Executive Director is delegated authority to approve them. Expenditures are monitored against budgets monthly by management and reported comprehensively to the Commission quarterly.

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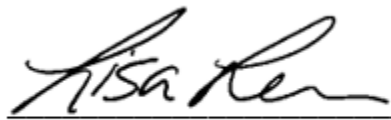
Effective internal controls over all Port procurement, contracting and disbursements are also in place to ensure proper central oversight, delegation of authority, separation of duties, payment approval and documentation, and signed perjury statement certifications for all payments. Port disbursements are also regularly monitored against spending authorizations. All payment transactions and internal controls are subject to periodic Port internal audits and annual external audits conducted by both the State Auditor’s Office and the Port’s independent auditors.

For the month of June 2021, over \$65,593,410.85 in payments were made to nearly 606 vendors, comprised of 1,820 invoices and over 6,279 accounting expense transactions. About 93 percent of the accounts payable payments made in the month fall into the Construction, Employee Benefits, Payroll Taxes, Contracted Services, Utility Expenses, Janitorial Services, Environmental Remediation and Sales Tax, expense categories. Net payroll expense for the month of June was \$11,719,503.04

Top 15 Payment Category Summary:	
Category	Payment Amount
Construction	37,060,676.71
Employee Benefits	8,448,796.81
Payroll Taxes	6,706,020.97
Contracted Services	3,775,996.26
Utility Expenses	1,672,088.58
Janitorial Services	1,439,874.19
Environmental Remediation	1,270,009.03
Sales Taxes	877,307.82
Maintenance Inventory	678,714.02
Software	648,081.51
Bond Fees	637,102.04
Other Liabilities	388,679.00
Parking Taxes	375,638.78
Legal	313,462.51
Computers & Telephone	161,147.54
Other Categories Total :	1,139,815.08
Net Payroll	11,719,503.04
Total Payments :	\$77,312,913.89

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Appropriate and effective internal controls are in place to ensure that the above obligations were processed in accordance with Port of Seattle procurement/payment policies and delegation of authority.



Lisa Lam/Port Auditor

At a meeting of the Port Commission held on July 13, 2021 it is hereby moved that, pursuant to RCW 42.24.180, the Port Commission approves the Port Auditor’s payment of the above salaries and claims of the Port:

Port Commission

RETURN TO AGENDA



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8c

ACTION ITEM

Date of Meeting July 13, 2021

DATE: June 21, 2021
TO: Stephen P. Metruck, Executive Director
FROM: Lisa Lam, Assistant Director, Accounting & Financial Reporting
Rudy Caluza, Director, Accounting & Financial Reporting
SUBJECT: **Solicitation of External Audit Services for the Port’s 2022 to 2026 Financial Periods**

Amount of this request: Not-to-Exceed \$3,000,000

ACTION REQUESTED

Request Commission authorization for the Executive Director to execute a contract for external audit services for the financial periods 2022 to 2026 in an estimated amount not-to-exceed \$3,000,000 for the full contract term. The base contract is three years with the option to extend for two additional one-year terms.

JUSTIFICATION:

Annual independent audits are required for the financial statements of the Port’s Enterprise Fund and the Warehousemen’s Pension Trust Fund for purposes of obtaining an independent auditor’s opinion as to the fairness in presentation of the financial results and position. Independent audits are also required for the Port’s administration of Federal grants and Passenger Facility Charge (PFC) revenues in accordance with applicable regulations. The audits covered under the existing external audit services contract (P-00318441) are expiring in May 2022 once the audit services for the Port’s 2021 Financial Period are completed.

The annual external audit services include the following deliverables:

- Independent Audit and Opinion – Financial Statements of the Port’s Enterprise Fund
- Independent Audit and Opinion – Financial Statements of the Port’s Fiduciary Fund
- Independent Audit and Opinion – Net Revenues Available for Revenue Bond Debt Service
- “Single Audit”(Federal grants regulatory compliance) and Report of Federal Grants Awarded
- Passenger Facility Charge (PFC) Program Audit and Report

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- Agreed Upon Procedures Report for Washington State Department of Ecology
- Agreed Upon Procedures Report for Environmental Protection Agency

Per Port policy, this contract will be openly and competitively procured. The solicitation process from drafting, advertising, to evaluation will be led by the Central Procurement Office (CPO) with the guidance from a member of the Internal Audit Department, who will also participate on the evaluation panel. Diversity in Contracting Program is also incorporated in this solicitation.

The solicitation timeline is scheduled to begin around mid July 2021 and have an external auditor selected by the end of 2021.

SOURCE OF FUNDS:

The total audit fee estimated for all five years is expected to be under \$3,000,000. The audit services fee for the 2022 financial period, which is conducted during latter 2022 and the first half of 2023, will be included in the Accounting & Financial Reporting (AFR) department’s 2022 and 2023 proposed operating budgets, and in non-operating budgets as appropriate. The funding sources are approximately split 55% and 45% between operating and non-operating expense, respectively. For audit services related to each of the financial periods following, 2023 through 2026, the requirements will be similarly split and included in the Port’s proposed annual budgets.

STRATEGIC OBJECTIVES:

Be a highly effective public agency: To be transparent and accountable over the stewardship of public funds/assets, to be in full compliance with prescribed industry accounting & financial reporting standards and Federal regulations, and to timely and accurately report on the Port’s financial results and position.

ATTACHMENTS:

None

PREVIOUS COMMISSION ACTIONS OR BRIEFING:

6/17/2021 – Audit Committee approved proceeding with the external audit services solicitation

12/10/2020 – External audit services contract extension for the Port’s 2021 financial period

RETURN TO AGENDA



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8d

ACTION ITEM

Date of Meeting July 13, 2021

DATE: June 7, 2021

TO: Stephen P. Metruck, Executive Director

FROM: Mark Thomas, Deputy Chief of Police
Stacy Wassall, Manager 911 Communications

SUBJECT: Interlocal Agreement between the Port of Seattle and the King County Public Safety Answering Point

Amount of this request: \$0

Total estimated project cost: \$0

ACTION REQUESTED

Request Commission authorization for the Executive Director to approve the King County Public Safety Answering Point Interlocal Agreement 2021-2023. The Port of Seattle Police Department is not seeking additional funding for approval of this ILA.

EXECUTIVE SUMMARY

Entering into this Interlocal Agreement between the Port of Seattle Public Answering Point (PSAP) and King County will allow the Port of Seattle to continue to participate in the statewide emergency services communications network including an Enhanced 911 system which provides rapid public access for coordinated dispatching services for police, fire, and medical emergency services. The County provides certain communication services to facilitate the E-911 System and in support of the PSAP and in providing such services, installs, operates and maintains systems at the PSAP, the costs of which the County is responsible. King County utilizes the 911 excise tax to fund this program.

JUSTIFICATION

This ILA supports the following Long-Range Plan strategies and objectives for a High-Performance Organization and the Century Agenda:

1. Improve Customer Service and Public Engagement (Long Range Strategy 1, Objective 1)
2. Improve Process Efficiencies and Effectiveness (Long Range Strategy 1, Objective 2)

The Port of Seattle 911 Center strives to support the mission of the Port of Seattle Police Department and Port of Seattle to ensure public safety by providing customer service and

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essential communications between our customers, our community, stakeholders and emergency personnel. This ILA will continue the agreement, equipment, and support from King County necessary to accomplish this mission.

Diversity in Contracting

King County E911 Office is a public entity and does not adversely or positively impact Diversity in Contracting goals.

DETAILS

The state of Washington emergency services communication system is a multicounty or county-wide communications network including an enhanced 9-1-1 (911) system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for police, fire, medical, or other emergency services. WAC 118-66-030 (22). The state of Washington 911 Network is a system of circuits, networks and/or equipment managed and maintained by the Washington state E-911 office to provide 911 communications from a 911 demarcation point to the PSAP demarcation point. WAC 118-66-030 (3). The PSAP demarcation point is where the 911 network accesses the PSAP’s equipment to receive and process 911 communications. WAC 118-66-030 (62), (18).

King County E-911 Program Office uses the 911 excise tax revenue funds to pay for system network, components and equipment related to receipt of 911 calls from the State Emergency Services IP Network (ESInet) and delivery to the public safety answering points (PSAPs). In addition, funds are used to support other PSAP 911 costs for the delivery, receipt and processing of 911 calls at the PSAP.

Schedule

Upon approval of the ILA by the Commission, service utilization will commence immediately.

ALTERNATIVES AND IMPLICATIONS CONSIDERED

No viable alternatives exist within King County and the state of Washington for providing 911 emergency services to include Enhanced 911 systems and services to PSAP.

FINANCIAL IMPLICATIONS

The department is not requesting any additional funds for this ILA.

ATTACHMENTS TO THIS REQUEST

- (1) Interlocal Agreement Between King County PSAP and Port of Seattle, which includes the King County funding policy as related to the 911 excise tax disbursement.

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

None

INTERLOCAL AGREEMENT BETWEEN
PUBLIC SAFETY ANSWERING POINT
AND KING COUNTY

**INTERLOCAL AGREEMENT BETWEEN
PUBLIC SAFETY ANSWERING POINT (PSAP)
AND KING COUNTY**

This Agreement (“Agreement”) is entered into between King County (“County”), and Port of Seattle Police Department, a Public Safety Answering Point (“PSAP”). The County and the PSAP are each a “Party” and collectively the “Parties” to this Agreement. In consideration of the payments, covenants, and agreements set forth herein to be made and performed by the County and the PSAP, the Parties agree as follows.

RECITALS

A. The state of Washington emergency services communication system is a multicounty or county-wide communications network including an enhanced 9-1-1 (911) system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for police, fire, medical, or other emergency services. WAC 118-66-030 (22). The state of Washington 911 Network is a system of circuits, networks and/or equipment managed and maintained by the Washington state E-911 office to provide 911 communications from a 911 demarcation point to the PSAP demarcation point. WAC 118-66-030 (3). The PSAP demarcation point is where the 911 network accesses the PSAP’s equipment to receive and process 911 communications. WAC 118-66-030 (62), (18).

B. In accordance with RCW 38.52.510 (Statewide enhanced 911 service – Funding by counties), the County implements the countywide enhanced 911 (E-911) emergency communications system so E-911 is available throughout the state. King County must provide funding for the E-911 system in an amount equal to the amount the maximum tax under RCW 82.14B.030(1) would generate in the County less any applicable administrative fee charged by the Department of Revenue or the amount necessary to provide full funding of the E-911 system in the County.

C. King County E-911 Program Office uses the 911 excise tax revenue funds to pay for system network, components and equipment related to receipt of 911 calls from the State Emergency Services IP Network (ESInet) and delivery to the public safety answering points (PSAPs). In addition, funds are used to support other PSAP 911 costs for the delivery, receipt and processing of 911 calls at the PSAP.

D. The PSAP, together with other PSAPs, are the public’s direct link to the dispatchers of emergency services, and who thereby directly link police, fire and medical first responders to members of the public requesting aid, protection or rescue.

E. The County provides certain communication services to facilitate the E-911 System and in support of the PSAP and in providing such services, installs, operates and maintains systems at the PSAP, the costs of which the County is responsible.

F. The Parties desire that a portion of the funding described in paragraph B above continues to be provided to the PSAP for its provision of dispatch services consistent with state law.

G. The purpose of this Agreement is to describe the services to be provided by the County and the PSAP, and the rights and responsibilities of the Parties to each other.

DEFINITIONS

- 1.1 **Attachment** means any software or hardware added to the Call Processing System that is not provided by the original manufacturer or vendor.
- 1.2 **Call** means traditional telephony voice, text or any emerging next generation 911 technology.

- 1.3 **E-911 Program Office** means the section of the Regional Services Division within the King County Department of Information Technology that administers E-911 service in King County.
- 1.4 **E-911 System** means a public communications system consisting of a network, database, and on-premises equipment that is accessed by dialing or accessing 911 and that enables reporting police, fire, medical, or other emergency situations to a public safety answering point.
- 1.5 **National Emergency Number Association or NENA** is a standard-setting body for 911 related technology and operations.
- 1.6 **Next Generation 911 or NG911** means the transition of the E-911 System from analog to digital technology.
- 1.7 **Public Safety Answering Point or PSAP** as used in this Agreement refers to the Party to this Agreement that is the call answering location for 911 calls in a given area. The term is intended to incorporate any different term adopted by NENA and the Parties to describe the PSAP. In the context of this Agreement PSAP is also intended to include the Association of Public-Safety Communication Officials (APCO) term for an emergency communications center or ECC.
- 1.8 **Regional Advisory Governing Board or RAGB** is the governing board of the King County regional E-911 System established by Ordinance 18695 to inform and advise the King County E-911 Program Office, the King County Executive, and the King County Council on the King County regional E-911 System.
- 1.9 **State** means Washington State unless otherwise indicated.
- 1.10 **Virtualize** means the process of creating a software-based virtual version of something, including virtual computer hardware platforms, storage devices, and computer network resources.

2. CONFLICTS

- 2.1 Strategic Plan. In the event of a conflict between this Agreement and the King County E-911 Strategic Plan as amended (“Strategic Plan”), the Strategic Plan will control.
- 2.2 Laws and Regulations. In the event of a conflict between this Agreement and laws or regulations including but not limited to the Revised Code of Washington (RCW) or the Washington Administrative Code (WAC), the law(s) or regulation(s) shall take precedence. All provisions of this Agreement shall be interpreted and enforced in a manner that fully complies with applicable law and regulations as they now exist or are hereafter amended.

3. TERM AND TERMINATION.

- 3.1 Term. This Agreement shall commence upon execution by the County and the PSAP. The Agreement shall include an initial term beginning on the effective date and running through December 31, 2023. The Agreement may be extended upon mutual agreement of the Parties for consecutive renewal terms of five years each, or as agreed to by the Parties as provided herein.

3.2 Termination.

3.2.1 Convenience. This Agreement may be terminated by either Party without cause upon providing the other with twelve (12) months' notice of the termination. If the Agreement is terminated pursuant to this section, the PSAP will be eligible for reimbursement of Eligible Expenditures up to the date of termination.

3.2.2 Default. If either Party fails to materially perform its obligations under this Agreement, the other Party may terminate the Agreement for default as follows:

3.2.2.1 A "notice to cure" shall be served on the defaulting Party by personal delivery or certified registered mail, return receipt requested. The defaulting Party shall have no more than one-hundred eighty (180) business days from the date of receipt to cure the default or to provide a detailed written plan for review and acceptance by the other Party. The detailed written plan shall be served by personal delivery or certified registered mail, return receipt requested.

3.2.2.2 If the defaulting Party has not cured the default or provided a detailed written plan to cure, or if the written plan to cure is not acceptable to the other Party, either Party may pursue dispute resolution under Section 8. Provided, however, that during a period of dispute resolution, the Parties will continue to fulfill their obligations under this Agreement.

3.2.2.3 If the default is not resolved at the conclusion of the dispute resolution process under Section 8, either Party may terminate the Agreement with thirty (30) business days' notice.

4. **ROLES, RESPONSIBILITIES, SERVICES AND STAFFING.**

4.1 County. In addition to the County's services required by state law and regulation, the County's roles, responsibilities and services under this Agreement are as follows:

4.1.1 Unless and until the State provides network and service from telecommunication providers to the PSAP demarcation point, the County shall fund and provide this network and the following services:

4.1.1.1 Call and data delivery systems and equipment to connect the State 911 network to PSAP; Call handling equipment; E-911 telephone maps; aggregated location and GIS data; network and system security.

4.1.1.2 Operations and maintenance for network security, telephony equipment and databases; asset tracking; software licensing, updates, upgrades, fixes; vendor and PSAP coordination.

4.1.1.3 Project and vendor management project planning, budget and management; vendor delivery oversight and compliance.

4.1.1.4 System access and social marketing strategies; education campaigns, events, training and materials; language interpretation services.

4.1.1.5 Administration and finance program, vendor, and asset management; policies; staffing; data analysis; communications; budget; finance; strategic planning.

- 4.1.1.6 A standalone Uninterrupted Power Supply (UPS) system for protection of the E-911 System in the event the PSAP is unable to provide a building UPS system.
- 4.1.2 The County shall adopt policies and procedures following national, state and local standards and best practices to provide sufficient control and auditing mechanisms for the ongoing security of mission critical systems and operations necessary to protect PSAP-owned equipment and systems at or used by the County.
- 4.1.3 The County shall not allow County personnel to access the PSAP systems without permission from the PSAP.
- 4.1.4 The County shall not interact with the PSAP's contractor(s) to request service which would create a financial obligation for the PSAP.
- 4.1.5 The County will provide the PSAP with prior notice of any service impacting maintenance as required by law or contract, or if no law or contract applies, then the notice shall be reasonable under the circumstances. In the event of emergent or unplanned outages, the County will provide notice to the PSAP as soon as reasonably possible.
- 4.1.6 The County will follow the Strategic Plan providing review and modification of the Strategic Plan as needed.
- 4.1.7 In the event the County becomes aware of a cyber-security breach of the call answering system/s, the County will notify the PSAP as soon as required by law or contract, or if no law or contract applies, then as soon as reasonably possible.
- 4.2 PSAP. In addition to the PSAP's services required by state law and regulation, the PSAP's role, responsibilities and services under this Agreement ("PSAP Services") are as follows:
 - 4.2.1 Process calls for service received at the PSAP on County E-911 equipment.
 - 4.2.2 Adhere to the call answer standards as defined by NENA 56-005. The E-911 Program Office will provide a common and consistent report for measuring the PSAP call answer standard on a monthly basis.
 - 4.2.3 Provide such services to County-owned and operated projects, equipment and systems at the PSAP as may be requested by County and agreed to by the PSAP.
 - 4.2.4 Upon reasonable notice by the County, provide access to its facilities for County personnel or approved contractor support staff for the purpose of E-911 System support, maintenance, updates installation or removal of E-911 hardware and software. The PSAP shall not be responsible for costs incurred by the County should access be denied due to lack of notice.
 - 4.2.5 Adopt policies and procedures following national, state and local standards and best practices to provide sufficient control and auditing mechanisms for the ongoing security of mission critical systems and operations necessary to protect County-owned equipment and systems at or used by the PSAP.
 - 4.2.6 Provide secure facilities and space for E-911 equipment supporting the receipt and delivery of 911 calls and data.

- 4.2.7 Provide the County with verification and certification of the accuracy and completeness of street address data within its service areas.
 - 4.2.7.1 PSAP shall be responsible for maintaining an up-to-date definition of its service area and for verifying the accuracy of street address data and/or responding agency information when requested by the County.
 - 4.2.7.2 PSAP shall provide the County any and all identified Automatic Location Identification (ALI) discrepancy reports within 24 hours of creation of the report.
 - 4.2.7.3 Once the PSAP becomes aware of any annexations or incorporations within its service area, it shall, within ten (10) calendar days, provide the County with notice to allow sufficient time for the County and the vendor to process the changes prior to the effective date of the annexation or incorporation.
- 4.2.8 Be responsible for billable charges the County incurs due to PSAP initiated events for:
 - 4.2.8.1 Unique system configuration requirement changes.
 - 4.2.8.2 E-911 System and/or equipment moves due to facility remodel/renovation/cleaning.
 - 4.2.8.3 E-911 System power up/down due to PSAP facility or infrastructure test or changes.
 - 4.2.8.4 E-911 System relocation.
- 4.2.9 The PSAP shall not:
 - 4.2.9.1 Allow PSAP personnel access to the E-911 System without permission from the County, which permission may be granted on an ongoing basis.
 - 4.2.9.2 Create a financial obligation with the County's contractor(s) without the County's agreement and/or authorization.
 - 4.2.9.3 Interact with the County's contractor(s) to request service in which a County financial obligation is created.
 - 4.2.9.4 Add any Attachments to the E-911 System provided by the County.
- 4.2.10 In the event the PSAP becomes aware of a cyber-security breach of any system that could affect the call answering system/s, the PSAP will notify the County as required by law or contract, or if no law or contract applies, then as soon as reasonably possible.
- 4.2.11 The PSAP will provide the County with prior notice of any service impacting maintenance as required by law or contract, or if no law or contract applies, then the notice shall be reasonable under the circumstances. In the event of emergent or unplanned outages, the PSAP will provide notice as soon as reasonably possible.

5. FUNDING POLICY

- 5.1 Funding Policy. The Funding Policy attached to this Agreement as Exhibit A is incorporated into this Agreement and is directed by the Strategic Plan - 10 Year Sustainable Financial Plan

section f. The Funding Policy establishes procedures and guidance for the King County E-911 Program Office and the PSAP for the following:

- 5.1.1 The Program Office disbursement of excise tax revenue through an established escrow account to reimburse the PSAP for basic service operating expenses, equipment and staff support expenses identified in RCW 38.52.545, WAC 118-66-050, and WAC 118-66-060; and
- 5.1.2 PSAP use of excise tax revenue to support the costs of equipment, operational, technical, and staffing needs related to answering and handling of 911 calls.
- 5.2 Funding Policy Review and Amendment. In conjunction with RAGB, the Funding Policy will be reviewed and/or modified annually following the King County biennial budget calendar timeline. Amendments to the Funding Policy shall be incorporated into this Agreement by amendment of Exhibit A as provided in Section 10.

6. LEGAL RELATIONS; INDEMNITY AND INSURANCE.

6.1 Independent Status and No Third-Party Beneficiaries.

- 6.1.1 In the performance of this Agreement, the County and the PSAP act in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The PSAP is responsible for all federal and/or state tax, industrial insurance, wages, benefits, or other compensation by or on behalf of the PSAP and its employees. The County is responsible for all federal and/or state tax, industrial insurance, wages, benefits, or other compensation by or on behalf of the County and its employees.
- 6.1.2 It is understood and agreed that this Agreement is solely for the benefit of the Parties and gives no right to any other person or entity.

6.2 Indemnification and Hold Harmless.

- 6.2.1 To the maximum extent permitted by law and except to the extent caused by the negligence of the County or the County's employees, agents, or contractors, the PSAP shall indemnify and hold harmless the County, its officers, officials, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incident to negligent acts or omissions of the PSAP, its employees, agents, or contractors. In addition, the PSAP shall assume the defense of the County and its officers and employees in all legal or claim proceedings arising out of, in connection with, or incidental to this Agreement; shall pay all defense expenses, including reasonable attorney's fees, expert fees and costs incurred by the County on account of such litigation or claims. It is further specifically and expressly understood that the indemnification provided herein constitutes the PSAP's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement. In the event the County incurs any judgment, award and/or cost including attorney's fees arising from the provisions of this section or to enforce the provisions of this section, any such judgment, award, fees, expenses and costs shall be recoverable from the PSAP. In the event of litigation between the County and the PSAP to enforce the rights under this section, reasonable attorney fees shall be allowed to the substantially prevailing Party.

6.2.2 To the maximum extent permitted by law and except to the extent caused by the negligence of the PSAP or the PSAP's employees, agents or contractors, the County shall indemnify and hold harmless the PSAP, its officers, officials, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incident to negligent acts or omissions of the County, its employees, agents or contractors. In addition, the County shall assume the defense of the PSAP and its officers and employees in all legal or claim proceedings arising out of, in connection with, or incidental to this Agreement; shall pay all defense expenses, including reasonable attorney's fees, expert fees and costs incurred by the PSAP on account of such litigation or claims. It is further specifically and expressly understood that the indemnification provided herein constitutes the County's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement. In the event the PSAP incurs any judgment, award and/or cost including attorney's fees arising from the provisions of this section, or to enforce the provisions of this section, any such judgment, award, fees, expenses and costs shall be recoverable from the County. In the event of litigation between the PSAP and the County to enforce the rights under this section, reasonable attorney fees shall be allowed to the substantially prevailing party.

6.3 Insurance Requirements.

6.3.1 Each Party shall obtain and maintain the minimum insurance set forth below, either through contracts of insurance or a fully funded self-insurance program for all of its liability exposures for this Agreement, including but not limited to injuries to persons and damage to property. Each Party agrees to provide the other Party with: (i) at least thirty (30) days prior written notice of any material change in its insurance program; and (ii) a certificate of insurance and additional insured endorsements, or, if self-insured, a letter of self-insurance as adequate proof of coverage on or prior to the commencement of Term and at any time during the Term of this Agreement upon receipt of other Party's written request.

6.3.2 Minimum Scope and Limits of Insurance

Each Party shall maintain the following insurance coverage and limits no less than:

6.3.2.1 General Liability: \$10,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$10,000,000 aggregate limit. CG 00 01 current edition, or its substantive equivalent, including coverage for, but not limited to, Premises/Ongoing Operations, Contractual Liability, Products and Completed Operations. Such limits may be satisfied with the use of an umbrella or excess liability policy, which is at least as broad as the underlying policy.

6.3.2.2 Professional Liability, Errors and Omissions Coverage: In the event that services pursuant to this Agreement either directly or indirectly involve or require professional services, Professional Liability, Errors and Omissions coverage shall be Provided with minimum limits of \$10,000,000 per claim and in the aggregate.

6.3.2.3 Workers' Compensation: Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar

coverage required for this Work by applicable federal or “Other States” State Law.

6.3.2.4 Employers Liability or “Stop Gap”: \$1,000,000 each occurrence and shall be at least as broad as the protection provided by the Workers Compensation Policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the “Stop Gap” endorsement to the General Liability policy.

6.3.2.5 Cyber Liability or Technology Errors and Omissions: Coverage with a minimum limit of \$5,000,000 per occurrence or claim and in the aggregate. Coverage shall include loss resulting from data security/privacy breach, cyber extortion, unauthorized access, denial of service attacks, introduction of virus and malicious code, dissemination or destruction of electronic data, business interruptions, privacy law violations. Coverage shall include notification and other expenses incurred in remedying a privacy breach as well as costs to investigate and restore data. If the PSAP is a member of the Washington Cities Insurance Authority risk pool, the following language shall apply: Notwithstanding the Cyber Liability insurance requirements described above, Cyber Liability sub-limits and deductibles required by the Washington Cities Insurance Authority risk pool shall be acceptable in meeting such limits required for this coverage.

6.3.2.6 Other Insurance Provisions

The insurance policies required in this Agreement are to contain, or be endorsed to contain the following provisions:

- a. Liability Policies (except Workers’ Compensation and Professional Liability):
 - i. The County, its officers, officials, employees and agents are to be covered as additional insureds, for full policy limits, as respects liability arising out of activities performed by or on behalf of the PSAP in connection with this Agreement. (CG 20 10 current edition or its substantive equivalent).
 - ii. To the extent of the PSAP’s negligence, PSAP’s insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with the insurance or benefit PSAP in any way.
 - iii. PSAP’s insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer’s liability.

6.3.3 Deductibles and Self-Insured Retentions. Any deductibles and/or self-insured retentions of a Party shall not limit or apply to a Party’s liability to the other Party.

6.3.4 Workers’ Compensation and Work Site Safety. Each Party shall provide insurance as required by the Industrial Insurance Act of the State of Washington. Each Party shall bear the sole responsibility for its job site conditions and job site safety, and for a Party’s

work at the other Party's job site and locations. Each Party shall comply with all applicable federal, state and local safety regulations governing a job site, employees and Subcontractors. Each Party shall be responsible for its Subcontractor's compliance with these provisions.

7. RECORDS AND AUDITS.

7.1 Retention of Records, Audit Access and Proof of Compliance with Agreement.

7.1.1 Retention of Records. Each Party shall maintain books, records and documents of its performance under this Agreement in accordance with generally accepted accounting principles and applicable law including RCW 40.14.060 and the relevant records retention schedules adopted thereunder (Washington State Local Government Common Records Retention Schedule (CORE) and the Emergency Communications (911) Records Retention Schedule).

7.1.2 Audit Access. The PSAP shall provide access to its facilities, including those of any Subcontractors the state and/or federal agencies or officials at all reasonable times to monitor and evaluate the use of E-911 excise taxes provided under this Agreement. If the County is required to pay the state for any reimbursements that an audit finds the PSAP did not spend in compliance with the Funding Policy attached as Exhibit A and any amendments to the policy, the PSAP shall be responsible for reimbursing the County for the full amount the County was required to pay the state.

7.1.3 County Audit. Following a state audit of the King County E-911, RAGB members will be invited to review the auditor's Summary of Findings with the County.

7.2 Public Records Requests.

7.2.1 This Agreement is a public document and will be available for inspection and copying in accordance with the Public Records Act, chapter 42.56 RCW ("PRA").

7.2.2 Each Party shall be responsible for responding to public disclosure requests addressed to it in accordance with the PRA. Nothing in this Agreement waives any rights or privileges of a Party under the PRA, including the withholding of records when authorized by the PRA or other law.

7.3 Data Management. The County is solely responsible for the security, integrity and completeness of all call data or other data it receives from the state of Washington 911 Network or other sources, and for transferring same to the Call Answering Equipment. The PSAP is not responsible for the security, integrity or accuracy of any data prior to it reaching the PSAP Call Answering Equipment. The County shall not be responsible for call data and other data not directly processed, transmitted, or provided by the County.

7.4 Data Ownership. PSAP acknowledges it has no property interest in and may assert no lien on or right to withhold from the County, any data it receives from, receives addressed to, or stores on behalf of the County. All records, data and files stored by the PSAP as archives of the County's data, including the media on which they are stored, are the exclusive property of the County, and PSAP may assert no lien on or right to any of the same. The PSAP will conspicuously mark all such archival storage media as King County's property whenever possible. Once the call record data is delivered from the County's Call Processing Equipment to the PSAP systems, the ownership and responsibility for said data transfers to the PSAP.

7.5 Nondisclosure of Data. Data provided by the County either before or after this Agreement is fully executed shall only be used for its intended purpose.

8. DISPUTES.

8.1 Dispute Resolution. If a dispute arises out of or relates to this Agreement, the Parties shall endeavor to resolve the dispute through direct negotiations between them. If the Parties are unable to resolve the dispute within sixty (60) days of its occurrence, either Party may refer the dispute to the executive director of the PSAP (or equivalent officer if the PSAP does not have an executive director) and the director of the E-911 Program Office with notice to the other Party. If the dispute is not resolved by the executive director and the E-911 Program Office director within sixty (60) days of referral, either Party may refer any dispute within the purview of the Strategic Plan to the decision making and dispute resolution process under the Strategic Plan. If the dispute resolution process under the Strategic Plan does not resolve the dispute to the Parties' satisfaction, and for each dispute outside the purview of the Strategic Plan, either Party may refer the dispute to non-binding mediation. Referral of the dispute to the executive officer and E-911 Program Office director, to the decision making and dispute resolution process under the Strategic Plan (as applicable), and to mediation shall be conditions precedent to a Party's pursuit of other available legal remedies.

8.2 Continued Performance. At all times during periods of dispute resolution under this Agreement, the PSAP and the County will proceed diligently with the performance of this Agreement unless otherwise provided by law or court order.

8.3 Applicable Law and Forum. This Agreement shall be governed by and construed according to the laws of the State of Washington. Any claim or suit between the County and the PSAP arising out of this Agreement may only be filed and prosecuted in King County Superior Court.

9. NOTICE. Unless otherwise specified in this Agreement, all notices or documentation required or provided pursuant to this Agreement shall be in writing and shall be deemed duly given when received at the addresses first set forth below via certified or registered first class mail, return receipt requested, personal delivery or electronic mail. Either Party may give written notice of another or different person or office to receive notice under this Agreement.

KING COUNTY	PSAP
Department of Information Technology E-911 Program Office Ben Breier	Port of Seattle Police Department 911 Communications Manager Stacy Wassall
20811 84 th Ave South, Suite 105	PO Box 68727
Kent, WA. 98032	Seattle, WA 98168
206.477.4911	206-787-6623
bbreier@kingcounty.gov AND kcE911managers@kingcounty.gov	Wassall.S@portseattle.org

10. AMENDMENT. All changes to this Agreement shall be made in writing through an Amendment, signed by the King County Executive and the executive director of the PSAP (or equivalent officer if the PSAP does not have an executive director), or their designees. No oral statement or other conduct by either Party shall change or modify the Agreement. If laws, regulations, policies or administrative practices established after

the effective date of this Agreement apply to the Agreement, then the Parties agree to implement those laws, regulations, policies or administrative practices through an amendment as provided in this Section.

11. FORCE MAJEURE. The term “force majeure” shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, terrorism, fire, accidents, shut-downs for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Agreement. If any Party is rendered unable, wholly or in part, by a force majeure event to perform or comply with any obligation or condition of this Agreement, upon giving notice and reasonably full particulars to the other Party, such obligation or condition shall be suspended only for the time and to the extent practicable to restore operations. The Parties acknowledge the E-911 System is a significant priority during periods of force majeure and shall attempt to restore operations as soon as practicable.

12. GENERAL.

- 12.1 Successors and Assigns. This Agreement is binding on the successors and assignees of the Parties, including but not limited to such successors and assignees as are necessary for the PSAP, at its election, to participate in consolidation, regionalization and/or sharing services, or the adding of fire, police or medical agencies to be served on the PSAP. For purposes of this Section 12.1, consolidation, regionalization or resource sharing includes two or more PSAPs combining some or all operations and services to form a new PSAP or one or more PSAPs merging or sharing some or all operations and services with an existing PSAP including another PSAP that has entered into an agreement with the County similar to this Agreement. If the PSAP elects to consolidate, regionalize, Virtualize or share resources or services in partnership with another PSAP under agreement with the County, the PSAPs’ agreements will be modified to the degree necessary to achieve their overall purpose and terms. The PSAP shall notify the County in writing of a planned consolidation, regionalization, resource change or other change in status not less than one hundred twenty (120) days prior to the effective date of such consolidation or change in status.
- 12.2 Compliance with Laws. During the term of this Agreement, the Parties agree to comply with all federal, state, and local laws as necessary to carry out the terms of this Agreement. Further, to the extent that any services involve the retention, security, confidentiality or other handling of certain “protected” health information under the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing regulations thereunder by the U.S. Department of Health and Human Services and other applicable laws including chapter 70.02 RCW, the Washington Uniform Health Care Information Act, as amended, the Parties agree to comply with such laws and execute documents as necessary to implement the requirements under such laws.
- 12.3 Severability. Whenever possible, each provision of this Agreement shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified by the Parties to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.
- 12.4 Non-Waiver of Breach. No action or failure to act by a Party shall constitute a waiver of any right or duty afforded to the other Party under the Agreement; nor shall any such action or failure to act by a Party constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the Party in writing.

12.5 Complete Agreement. The Agreement constitutes the entire agreement and understanding between the Parties and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

13. ACKNOWLEDGEMENT, EXECUTION AND AUTHORITY.

13.1 Each Party acknowledges that it consulted with its respective attorneys who had the opportunity to review this Agreement. Therefore, the Parties expressly agree that this Agreement shall be given full force and effect according to each and all of its express terms and provisions and the rule of construction that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

13.2 Each Party's representative executing this Agreement represents and warrants that the representative has the authority to sign and bind the Party to this Agreement.

PSAP

KING COUNTY



Authorized Signature

Authorized Signature

Steve Metruck, Executive Director
Name and Title (Print or Type)

Dow Constantine, King County Executive
Name and Title (Print or Type)

Date
Accepted:

Date 5/24/21
Accepted:

Exhibit A to ILA between PSAP and King County King County E-911 Program Office PSAP Funding Process Policy

I. Overview

In accordance to RCW 38.52.510 'Statewide enhanced 911 service – Funding by counties', King County is responsible to implement a countywide enhanced 911 (E911) emergency communications system so enhanced 911 is available throughout the state. King County must provide funding for the E911 system in the county in an amount equal to the amount of the maximum tax under RCW 82.14B.030(1) would generate in the county less any applicable administrative fee charged by the Department of Revenue or the amount necessary to provide full funding of the system in the county¹.

King County E-911 Program Office uses the 911 excise tax revenue to pay for system network, components, equipment, and staff support related to the receipt of 911 calls from the State Emergency Services IP Network (ESInet) and delivery to the PSAP. In addition, excise tax revenue may be used to support PSAP 911 technical, operational and staffing costs to ensure the delivery, receipt and processing of 911 calls at the PSAP.

II. Intent

This policy is directed by the King County Regional E-911 Strategic Plan - 10 Year Sustainable Financial Plan and establishes procedures and guidance for the King County E-911 Program Office (PO) and King County PSAPs for the following.

1. The Program Office disbursement of excise tax revenue through an established escrow account to reimburse King County PSAPs for basic service operating expenses, equipment and staff support expenses identified in RCW 38.52.545, WAC 118-66-050, and WAC 118-66-060. PSAPs will not be considered eligible for excise tax revenue disbursements of WAC eligible expenses unless they have entered into a contract with the PO. Disbursements will be made, contingent upon available E-911 Program Office excise tax revenue.
2. PSAP use of excise tax revenue to support the costs of equipment, operational, technical, and staffing needs related to answering and handling of 911 calls.

III. Responsibility

A. E-911 Program Office:

1. Use E-911 excise tax revenue to support network, key operational functions, and equipment purchases and maintenance used in receipt of 911 calls from the State ESInet and delivery to the PSAP as defined in WAC 118-66-060.
2. Hire and train an appropriate level of staff to manage and maintain the E-911 Program and equipment.

B. PSAPs:

1. To purchase and maintain equipment for operations after the call is delivered to the PSAPs.

¹ RCW 38.52.510, King County Code Title 4A, Sections 4A.200.280, 4A.200.2805, 4A.510.220

2. To hire and train staff to answer 911 calls and support 911 services in the PSAP. 911 excise tax revenue may only be used to support the 911 system² and may not be used for dispatch costs.
3. Ensure use of excise tax revenue are within current policy guidelines and disbursement requests do not exceed their escrow account balance.
4. Ensure all records related to purchases are accurate and available for year-end reporting. PO and PSAPs will work together to reallocate PSAP costs identified as RCW & WAC eligible items if, through the year-end reporting process, it is determined the PSAP spent excise tax revenue outside the terms of the policy or guidelines.
5. Submit a year-end spending category report to the Program Office on a form to be provided by the Program Office.
6. Upon request, provide data to the PO in support of State 911 funding deliverables.

IV. Program Office Available Funds³

Based on available funds, the Program Office will:

1. Fund the 911 system and the Program Office⁴
2. Maintain a minimum fund balance of 10% of operating expenses
3. Maintain a capital reserve of \$1million
4. In cooperation with RAGB, determine annual escrow distribution amount
5. In cooperation with RAGB, review and/or modify this policy following the King County biennial budget calendar.

V. Escrow Fund Disbursement Procedure

A. Distribution Formula:

1. Each PSAP shall receive a \$100,000 baseline disbursement amount per year
2. Following the baseline disbursement, remaining PSAP excise tax revenue will be distributed using call volume:
 - a) The distribution formula shall be based on the PSAPs percentage of 9-1-1 calls answered over a trailing two year rolling average (e.g. for 2021 distribution, the number of 9-1-1 calls answered in 2018 and 2019 will be averaged; 2022 will use the average of 2019 and 2020).
 - b) The PowerMetrics (ECaTS) "Top PSAP Metrics – Answer Time" report shall be used to determine the number of 911 calls answered.

B. Funding disbursement process:

1. Excise tax revenue disbursements to escrow will occur no later than the last business day of the months of March, June, September, and December.

² RCW 38.52.540 & WAC 118-66-060 (3)

³ RAGB approved items 2, 3, and 4 on June 10, 2020

⁴ RCW 38.52.545

2. Excise tax revenue reimbursement requests will be due to the Program Office no later than the 15th of January, April, July and October. Requests will be processed and distributed by the end of that same month.
 - a. Requests may be submitted in any or all of the months listed above and may be for any amount not less than \$500 and up to the full balance.
 - b. Requests must be submitted using the provided Escrow Reimbursement Request Form.

C. Year-end review process:

PSAPs will be required to submit an annual report by February 15th, listing all items or staff time where excise tax revenue was used, including warrant numbers, warrant dates, item description, purchase date, justification and any related approval documents, including back up materials and receipts where appropriate.

VI. Escrow Account Rollovers

PSAPs may be asked to provide a plan to spend down their escrow accounts if future laws, codes, or rules could impact the funds remaining in an escrow account.

VII. Equipment Ownership

Equipment purchased with excise tax revenue will become a PSAP asset. However, King County reserves the right to audit the equipment usage to ensure the equipment is used in compliance with established guidelines. In the event a PSAP is decommissioned or the asset is to be sold, the PSAP must notify the Program Office. King County may want the option to take ownership of the equipment. All equipment purchased with excise tax revenue must be tracked by PSAPs and information (e.g. an asset tag number, location, etc.) must be available to the Program Office for audit purposes.

VIII. Equipment Maintenance

Any equipment purchased with excise tax revenue will be the financial and operational responsibility of the PSAP, including maintenance, support, licenses, repairs and overall operational costs.

IX. PSAP Call Receivers

Call Receivers⁵ are defined as a person(s) whose primary function (at least 50 percent of their time) is sitting at a console, hired, trained/in training and prepared or available to answer 911 calls. This can include part-time employees, as well as supervisor and dispatcher classifications that include call taking as part of their duties.

X. Unspent or Additional Revenue

A. Unspent/Unencumbered Funds

At the close of a biennium and Program office budget commitments are fulfilled, in conjunction with evaluation of strategic objectives for future investments, available unspent funds may be shared with PSAPs if:

1. Fund balance and operational reserves are within policy guidelines

⁵ State Emergency Coordination Office (SECO) County Contract Policy 07-01-2019

2. Strategic objectives identified during the strategic planning process have a sufficient funding plan

Unspent funds will become part of the fund balance after the biennium closes. During the budget preparation cycle for the next biennium, a portion of the unspent funds may be appropriated to increase the total PSAP distribution amount.

B. Additional Revenue

When additional revenue becomes available through taxation:

1. Evaluate Program Office needs and future investments
2. Consider adjustment of the distribution amount for PSAPs

XI. PSAP Decommission or Governance Change

A. Definitions

1. Decommission of a PSAP shall mean the closing of the PSAP and Program Office partnership and the dismantling of the PSAP concluding the PSAPs operation of answering 911 calls.
2. PSAP governance change shall mean the change of authority and/or governance of a PSAP wherein the PSAP and Program Office partnership remains intact and the PSAP operation of 911 continues.
3. 911 equipment shall mean items purchased with 911 funds, directly from the Program Office or indirectly through escrow reimbursements and may include but not limited to items such as furniture, equipment, and networking.
4. Escrow Distribution shall mean the moving of 911 excise tax revenue to an established account by the county for PSAP use at the end of the quarter in which revenue was incurred.
5. PSAP reimbursements shall mean the act of moving funds from the Escrow account to the PSAP for WAC eligible items.

B. Decommission of PSAP

1. 911 excise tax revenue will continue to be earned, on a prorated basis, until the PSAP ceases to answer 911 calls, at which time the fund balance will be frozen.
2. A PSAP may request reimbursement of earned escrow funds within 90 days of when the PSAP ceases to answer 911 calls.
3. Program Office will pay transition costs of 911 networking and equipment for the receiving PSAP to answer 911 calls. The Program Office will not pay transition costs of non-911 lines and equipment.
4. Program Office will be responsible for removing 911 networking and equipment from the decommissioned PSAP.
5. The receiving PSAP's capacity to receive and process the additional 911 calls and/or workload will be reviewed, and funding of corresponding network and equipment additions and changes will be addressed in the transition planning process.
6. Program Office staff will work with the affected PSAPs, ensuring all financial variables are addressed and there is a smooth transition and transfer of 911 calls.

C. Unused Escrow Funds

Upon completion of the decommissioned PSAP's reimbursement process, remaining unused escrow funds will be transferred to the receiving PSAP's escrow accounts on the next distribution cycle. Methodology of the distribution for multiple PSAPs will be determined in conjunction with RAGB prior to the decommission date.

1. Remaining Appropriated Revenue Distributions

The Program office, with advisory guidance from the RAGB, will determine the best method of distribution given the specific circumstances. Possible options may include, but not limited to, the following:

Option 1:

- Remaining escrow revenue distributions, within the year a Non-Primary Wireless PSAP is decommissioned, shall be shared with the remaining PSAPs according to their previously determined call volume percentage.
- Remaining revenue distributions for a decommissioned Primary Wireless PSAP will be decided in conjunction with RAGB prior to decommission date.

Option 2:

- Remaining escrow revenue distributions within the year from a decommissioned Non-Primary Wireless PSAP shall be distributed to the receiving PSAP.
- Remaining revenue distributions for a decommissioned Primary Wireless PSAP will be decided in conjunction with RAGB prior to decommission date.

Option 3: Remaining escrow revenue distributions from a decommissioned PSAP will return to the Program Office fund balance.

2. Future Revenue Distributions

The Program office, with advisory guidance from the RAGB, will determine the best method of distribution given the specific circumstances. Consider mirroring the logic based on options listed above until such time as the decommissioned PSAP's call volume is no longer included within the '2 year rolling average' period.

3. PSAP Governance Change

The Program Office will provide transitional support to the PSAP and to insure the escrow account remains intact and follows the PSAP.

During the transition period for a PSAP, either by decommission or governance change, remaining funds in an escrow account must be used based on current RCW and WAC rules.

XII. Policy Review

This funding policy will be reviewed and/or modified annually.

RETURN TO AGENDA



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8e

ACTION ITEM

Date of Meeting July 13, 2021

DATE: July 2, 2021
TO: Stephen P. Metruck, Executive Director
FROM: Eileen Francisco, Acting Director, Aviation Facilities and Capital Programs
Wayne Grotheer, Director, Aviation Project Management
SUBJECT: Building 161G AVM Facility Upgrade (CIP# C800924) Construction

Amount of this request: \$1,993,000
Total estimated project cost: \$2,972,000

ACTION REQUESTED

Request Commission authorization for the Executive Director to (1) advertise, award, and execute a construction contract for the construction of the Building 161G AVM Facility Upgrade project at Seattle-Tacoma International Airport (Airport). The amount of this request is \$1,993,000 for a total estimated project cost not to exceed \$2,972,000.

EXECUTIVE SUMMARY

The 161G Aviation Maintenance (AVM) Facility (known as Air Cargo 4) at the Airport is a 50-year-old former mail sorting facility that has had minimal updates and modifications. This project will replace obsolete and failing Heating, Ventilation, and Air Conditioning (HVAC) systems, new energy efficient lighting, and provide essential communication connections to the building and offices. These upgrades will provide a reliable working space for the approximately 120 Port maintenance staff that operate from this critical facility.

JUSTIFICATION

The 161G AVM facility is the operational base to approximately 120 Port maintenance staff. The maintenance groups housed in this facility operate 24 hours a day, 365 days a year, and perform critical maintenance work to keep the airport and runways operational. This work includes winter runway and airport drive snow operations; servicing of the Port’s fleet vehicles, police cars, and airport shuttle buses; repairs & maintenance to runways, taxiways, ramps, and airfield lighting; and carpentry, painting, and striping work throughout the airport’s property. For the last 20+ years this facility has been on the list for potential tear-down and replacement, as a result, the building improvements have been delayed. This project addresses the facility’s most critical needs.

Meeting Date: July 13, 2021

Failing HVAC, insufficient communication and connectivity infrastructure, outdated analog phone line, and inadequate office lighting are contributing factors in making this a deficient and functionally poor-working facility. This project will install new HVAC equipment in two highly used areas. The existing phone and data communication connections are still on a copper network with no digital backbone to support the increased data use. A new fiber backbone will be installed to the facility and the obsolete copper removed. The lighting in the break rooms and other areas are fluorescent fixtures, the project will replace these fixtures (approx. 190) with more energy efficient LED assemblies. Port Construction Services (PCS) support may be required for relocation and demolition of furniture and equipment as needed.

The project work has been scaled to meet the minimum improvements needed to keep the facility operational and to improve the working environment given the expected remaining life of the building. This building has been on the list for eventual demolition and replacement for many years as a part of the Sustainable Airport Master Plan. During that time some of these systems have failed or degraded and need to be replaced. Further delay of the work could cause disruption in the service affecting the maintenance personnel operating out of the facility.

Diversity in Contracting

The project staff, in coordination with the Diversity in Contracting Department, have set a 12% woman and minority business enterprise (WMBE) aspirational goal for the Building 161G AVM Facility Upgrade project. The goal is based upon the project's scopes of work and baseline availability of certified WMBE businesses to perform the work.

DETAILS***Scope of Work***

Communication & Connectivity Infrastructure Upgrade:

- (1) New/additional fiber optic and copper cabling
- (2) Installation of new high-grade Wireless Access Point (WAP) units
- (3) Installation of new telephone/data wall units

Facility Upgrade:

- (1) Spot abatement
- (2) Demolition and removal of obsolete HVAC equipment
- (3) Installation of new HVAC equipment in two highly used spaces
- (4) New energy efficient LED light fixtures and occupancy sensors
- (5) New acoustical ceiling grid panels
- (6) Installation of new breakroom exhaust fan

Meeting Date: July 13, 2021

Schedule

The project schedule reflects that this facility operates 24/7, year-round. Most of the required work will be performed during the evening shift when there is minimal crew on-site, for a moderate but manageable impact to the facility and employees during construction. One potential risk to the schedule is significant weather events that may require the construction schedule to be adjusted to not impact snow or maintenance operations.

Activity

Commission design authorization	2019 Quarter 4
Design start	2019 Quarter 4
Commission construction authorization	2021 Quarter 3
Construction start	2021 Quarter 4
In-use date	2023 Quarter 1

Cost Breakdown

	This Request	Total Project
Design	\$	\$979,000
Construction	\$1,993,000	\$1,993,000
Total	\$1,993,000	\$2,972,000

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Do not proceed with construction, and cancel the project

Cost Implications: approximately \$450,000 would need to be expensed.

Pros:

- (1) No additional capital funding would be required.

Cons:

- (1) Failing infrastructure and communication & connectivity limitations will remain a concern.
- (2) The 120+ employees who work here will have to continue to operate in a deficient, less-than-ideal work environment.

This is not the recommended alternative.

Alternative 2 – Proceed with Construction

Cost Implications: \$2,972,000

Pros:

- (1) Addresses the most pressing needs of the facility.
- (2) Creates a better functioning facility and increased workstation efficiency.

Meeting Date: July 13, 2021

- (3) Provides a more comfortable work environment, fostering increased employee satisfaction.

Cons:

- (1) Requires capital investment.
- (2) Moderate but manageable impacts to facility operations during construction.
- (3) This building could potentially be targeted for tear down (in an estimated 5-10 years) in support of the Sustainable Airport Master Plan (SAMP.)

This is the recommended alternative.

FINANCIAL IMPLICATIONS

Cost Estimate/Authorization Summary

	Capital	Expense	Total
COST ESTIMATE			
Original estimate	\$4,566,000	\$	\$4,566,000
Previous changes – net	(\$1,632,000)	\$66,000	(\$1,566,000)
Art (Transfer to Art CIP)	(\$28,000)	0	(\$28,000)
Revised estimate	\$2,906,000	\$66,000	\$2,972,000
AUTHORIZATION			
Previous authorizations	\$979,000	0	\$979,000
Current request for authorization	\$1,927,000	\$66,000	\$1,993,000
Total authorizations, including this request	\$2,906,000	\$66,000	\$2,972,000
Remaining amount to be authorized	\$0	\$0	\$0

Annual Budget Status and Source of Funds

This project, CIP C800924, was included in the 2021-2025 capital budget and plan of finance with a budget of \$2,931,000. A budget decrease was transferred to the Aeronautical Reserve CIP (C800753) resulting in zero net change to the Aviation capital budget. The funding source will be 2021 revenue bond.

Financial Analysis and Summary

Project cost for analysis	\$2,972,000
Business Unit (BU)	Administration which allocates to airfield, terminal, and landside
Effect on business performance (NOI after depreciation)	NOI after depreciation will increase due to inclusion of capital (and operating) costs in airline rate base
IRR/NPV (if relevant)	N/A
CPE Impact	\$.01 in 2024

Future Revenues and Expenses (Total cost of ownership)

This project is a renewal and replacement project, as such, Aviation Maintenance does not anticipate any increase, and may even realize a slight reduction in long-term maintenance costs.

ATTACHMENTS TO THIS REQUEST

- (1) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

November 12, 1999 – The Commission authorized Design

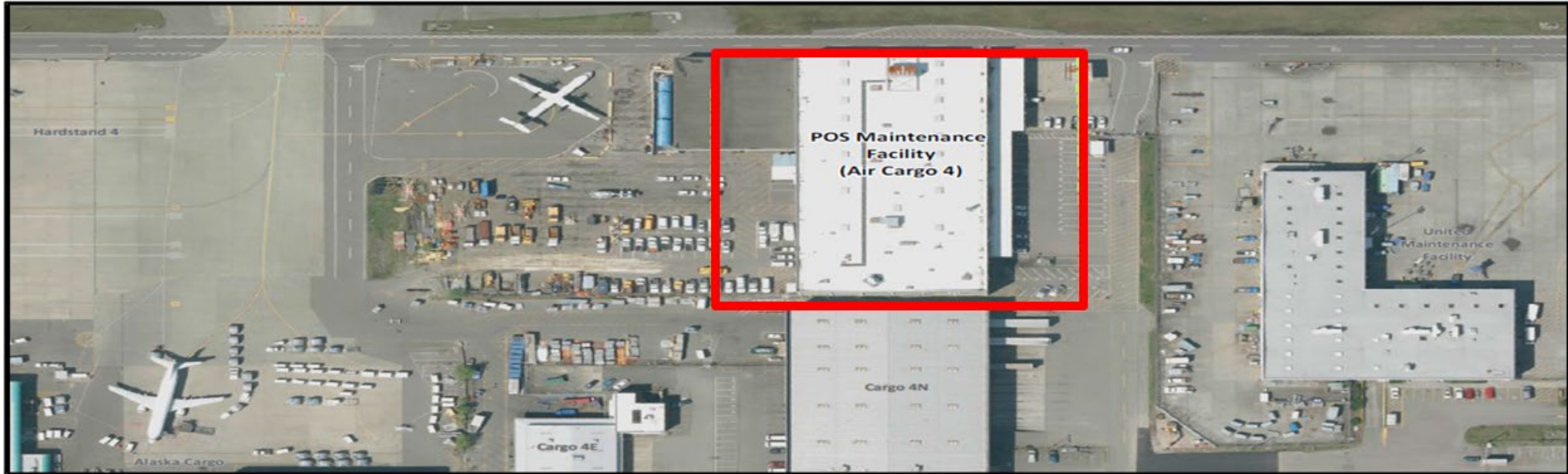
Building 161G AVM Facility Upgrade

Project Location



Building 161G AVM Facility

(aka Air Cargo 4)



Project Scope

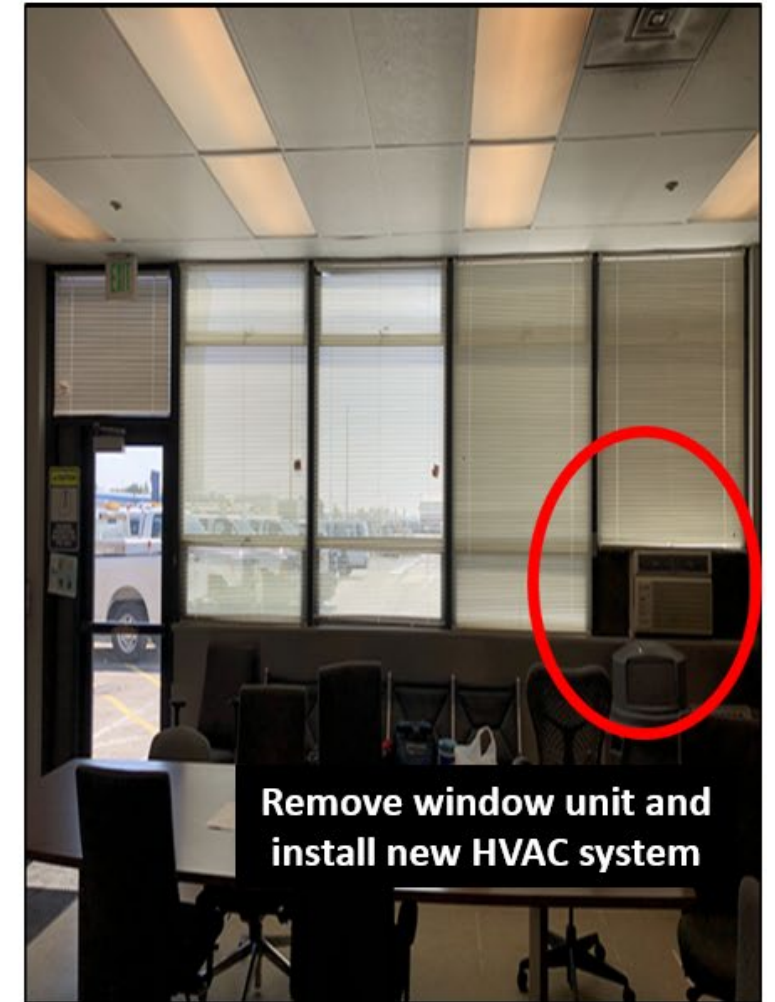
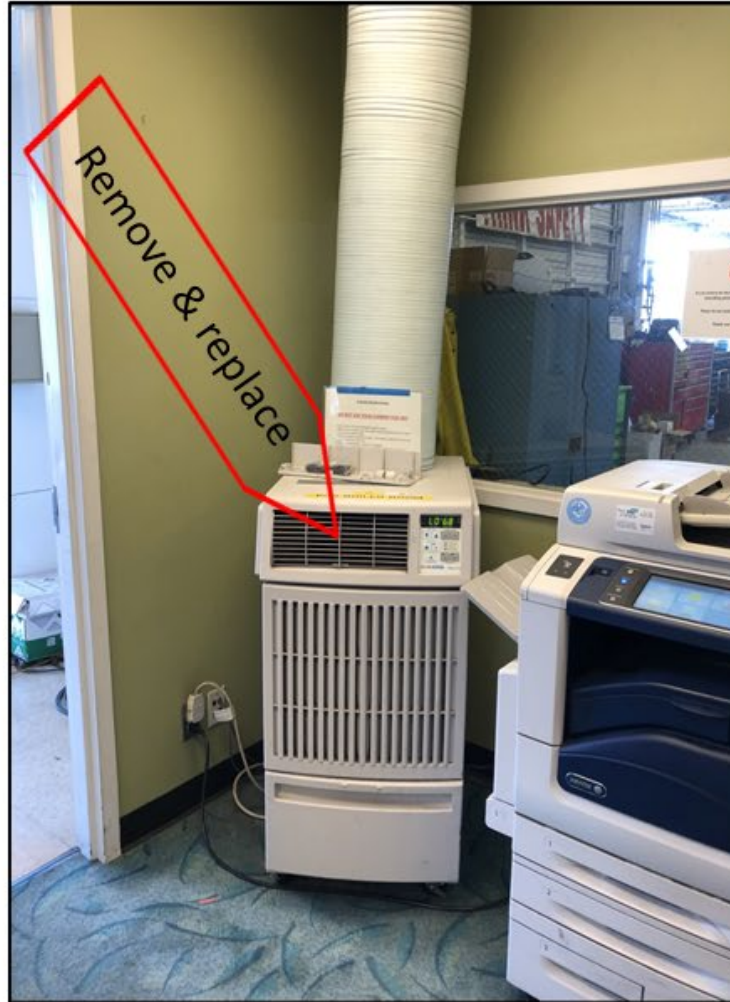
❖ Facility Upgrades:

- Installation of new HVAC in two highly used spaces
- Replace approximately 190 fluorescent light fixtures with new energy efficient LED fixtures
- Installation of new daylight harvesting and occupancy sensors
- Replacement of approximately 5,000 sf of acoustical ceiling grid
- Installation of new exhaust fan in breakroom.

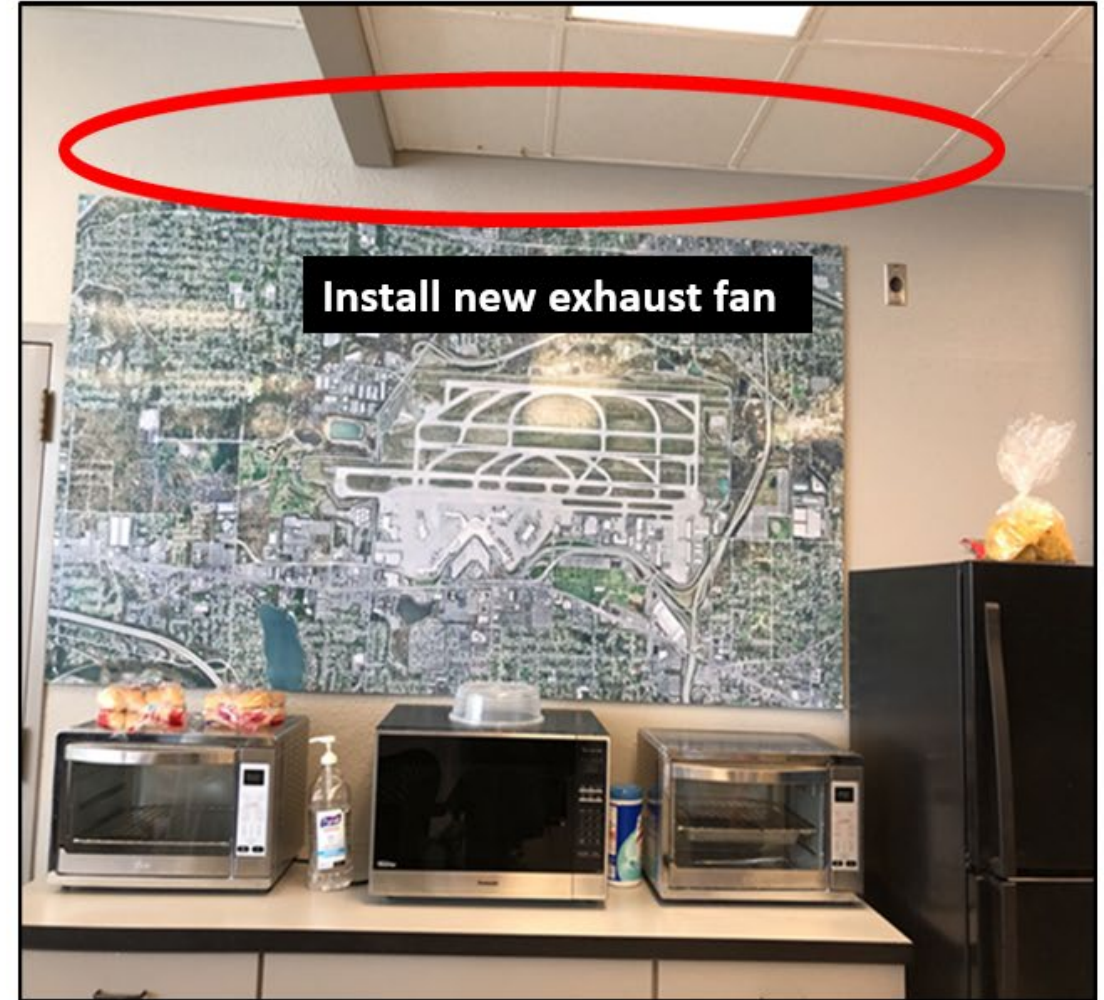
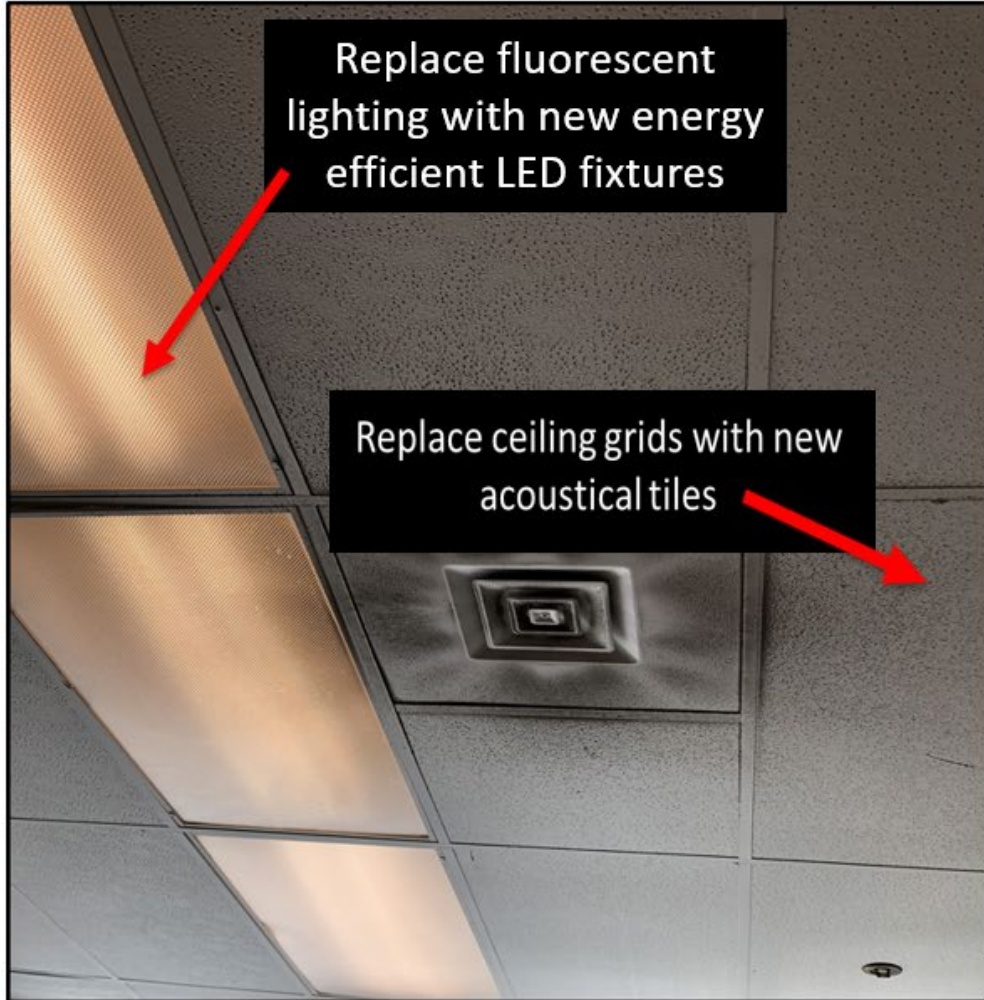
❖ Communications and Connectivity Infrastructure Upgrades:

- New/additional fiber optic and copper cabling
- Installation of new high-grade WAP (Wireless Access Point) units.
- Installation of approximately 50 new telephone/data wall units

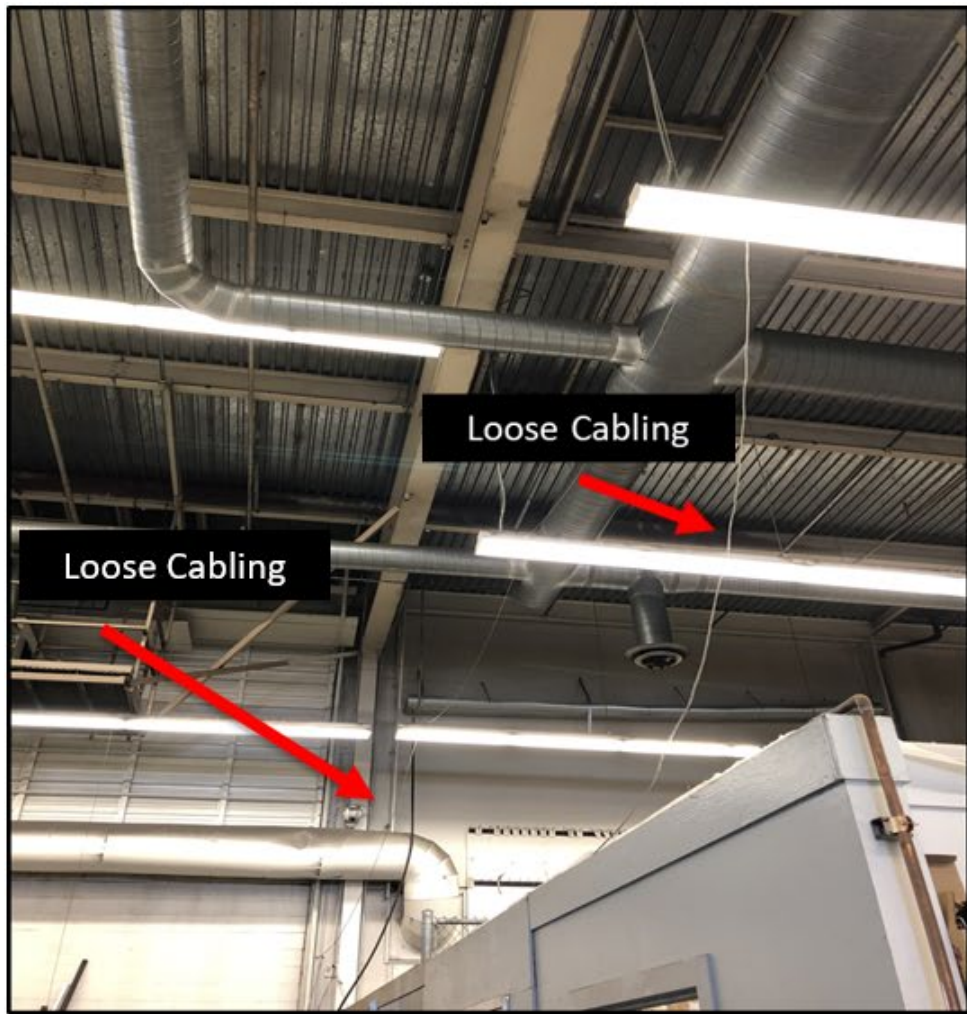
Facility Upgrades: New and Replacement HVAC Systems



Facility Upgrades: New LED Lighting and Ventilation



Connectivity & Communication Infrastructure Upgrades:



Requesting Budget Authorization

Authorizations	Project Budget
Original Budget	\$4,566,000
Previous Budget Reduction	(\$1,566,000)
Current Authorized Budget	\$3,000,000
Art (Transfer 1% Art CIP)	(\$28,000)
Revised Authorized Budget	\$2,972,000
Requested Authorization	\$1,993,000

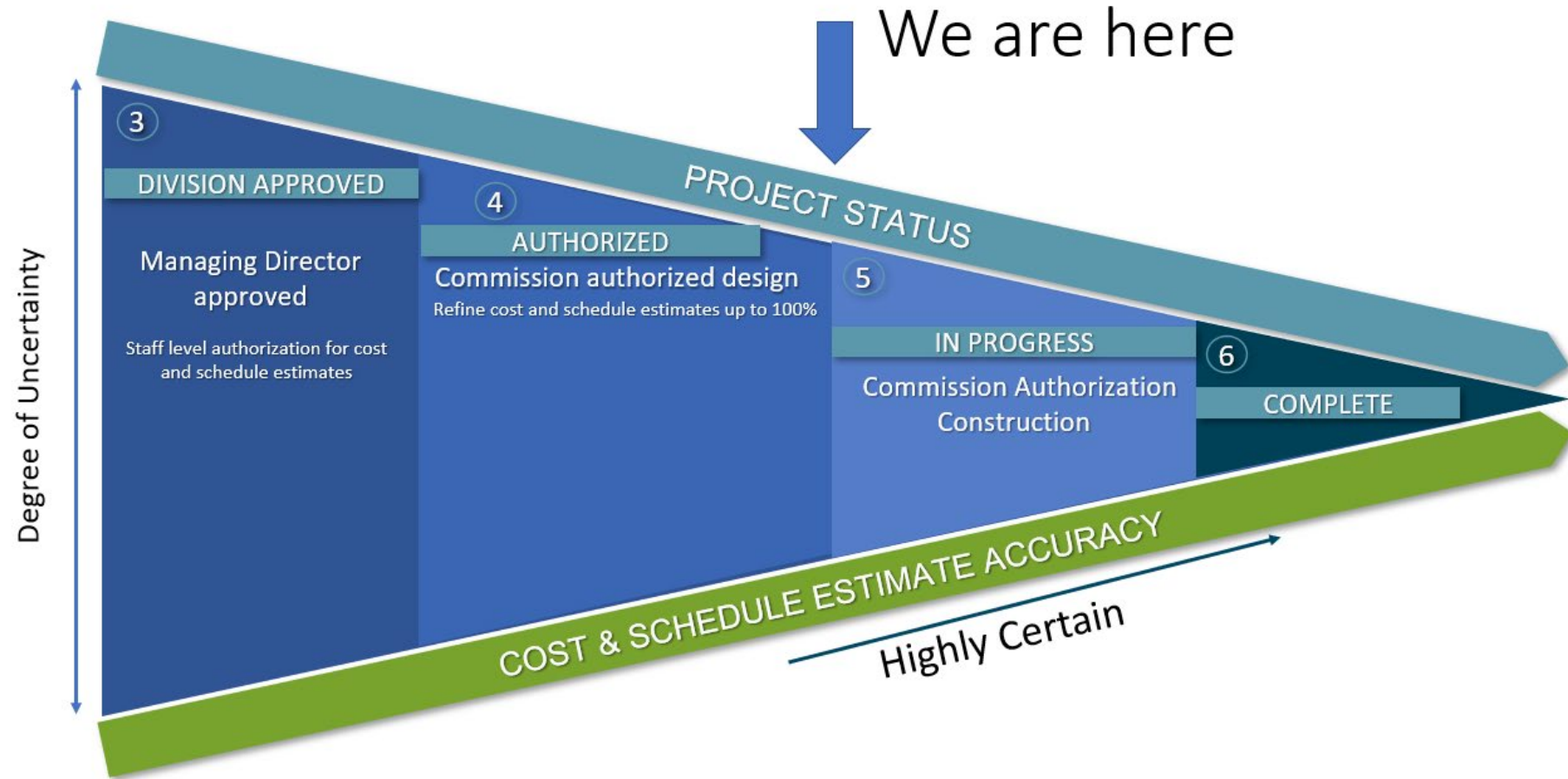
Project Completion – Q1 2023

Commission Authorization for Design	November 12, 2019
Commission Authorization for Construction	Q3 - 2021
Issue Notice to Proceed	Q4 - 2021
Construction Complete	Q1 - 2023

Project Risks

RISK	DESCRIPTION	PROBLEM	IMPACT	MITIGATION PLAN
No As-built drawings/unforeseen conditions	There are no current As-built drawings available. This is a 50+ year-old facility, we may encounter unforeseen conditions	High	Low	Thorough investigation, coordination, and collaboration with ICT during design phase and implementation. Sufficient contingency is being carried in the budget to address design development and unforeseen conditions during construction.
Planning/ Schedule Delays	Significant weather such as snow, may require the construction schedule to be adjusted so as not to impact snow or maintenance operations	Low	Medium	Coordination and collaboration with the facility managers to determine best time of year/day/time for construction with least impact to employee's workflow.
Higher Construction Bids	Due to facility's 24/7 operational mode; construction will likely need to be done on graveyard shift. Coupled with the small contract value, this may result in less contractor or subcontractor interest, less competition, and fewer bids.	Medium	Medium	An additional 5% budget for difficult construction phasing has been included in the project estimate.

Cone of Certainty



Questions?

[RETURN TO AGENDA](#)

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**ORDER 2021-06:
AN ORDER OF THE PORT OF SEATTLE COMMISSION**

to direct the Executive Director to develop and implement executive policies banning Port and private sector uses of public-facing biometrics for mass surveillance, and for law enforcement and security functions; developing and implementing Port policies – within the limitations of state and federal law – related to Port, federal and private-sector uses of public-facing biometrics at Port facilities for traveler functions; and endorsing federal legislation implementing a moratorium on federal uses of biometrics not explicitly approved by the United States Congress.

**PROPOSED
JULY 13, 2021**

INTRODUCTION

On December 10, 2019, the Port of Seattle Commission passed Motion 2019-13 – instituting guiding principles for the public-facing use of biometric technology at Port facilities and by Port employees; for the purposes of the Motion, “public-facing” was defined as any areas of Port facilities where visitors, travelers and other non-employees might reasonably be.

This action was both in response to the rapid implementation of biometric technology throughout the country – particularly the use of facial recognition technology in aviation and maritime settings – as well as because of limited state and federal policy guidance on biometrics to protect individual liberties, equity, and privacy. The Motion directed Port staff to develop tangible, enforceable policy recommendations based on these principles in collaboration with a Biometrics External Advisory Group and with the oversight of a Port of Seattle Commission Biometrics Special Committee.

Aviation and maritime uses of public-facing biometrics have potential operational, customer service and public health benefits but also create risks and concerns related to privacy, equity and civil liberties. To balance these interests, it is appropriate for the Port to regulate – within the bounds of its authority and to the extent permissible under state and federal law – the public-facing use of this technology at Port facilities and by Port employees. After more than a year and a half of work and approximately twenty public meetings, Port staff have developed policy recommendations for multiple “use cases” for public-facing biometrics at Port facilities. Already, one set of use case policy recommendations – regarding “Biometric Air Exit”, which is the federally-prescribed use of facial recognition technology for the boarding of departing international flights – was passed by the Port of Seattle Commission in March 2020.

45 As part of this policymaking process, the Port recognizes certain limitations on its authority to
46 regulate all public-facing biometrics at Port facilities. For example, the federal government has
47 authority to implement its own systems, particularly in federally controlled areas of Port facilities
48 such as the U.S. Transportation Security Administration (TSA) security checkpoints at the airport
49 and U.S. Customs and Border Protection (CBP) customs processing areas at airport and cruise
50 facilities. Similarly, the federal Airline Deregulation Act (ADA) prevents the Port from exercising
51 broad control over airlines’ implementation of certain customer-facing systems and processes at
52 airports. Regardless, the Port can take significant steps with all Port stakeholders – including
53 federal agency partners and airline tenants – to pursue alignment with the Commission’s
54 biometrics principles.

55
56 In December 2020, the Commission Biometrics Special Committee recommended full
57 Commission consideration of the remaining use case policy recommendations, as well as
58 Commission action on other policies that align with Motion 2019-13. This Order would direct the
59 Executive Director to implement executive policies aligned with the recommendations endorsed
60 by the Special Committee.

61
62 **TEXT OF THE ORDER**
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64 The Port Commission hereby directs the Executive Director to develop and implement executive
65 policies to:

- 66 1) Extend the Port’s existing ban on Port and private-sector use of public-facing biometrics
67 for mass surveillance¹ at Port facilities, and by Port employees overall.
68
- 69 2) Extend the Port’s existing ban on Port and private-sector use of public-facing biometrics
70 to perform real time or near-real time law enforcement and security functions at Port
71 facilities, and by Port employees overall.
72
- 73 3) Ensure, to the greatest extent permissible under state and federal law, that all uses of
74 public-facing biometrics at the Port’s aviation and maritime facilities for traveler functions
75 are in alignment with the Port’s biometric principles and policies.
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77 In addition, the Executive Director shall include in the Port’s Federal Legislative Agenda support
78 for legislation that institutes a moratorium on federal government use of public-facing biometrics
79 except for uses explicitly authorized by the United States Congress, and shall direct staff to
80 advocate for this policy to the Washington Congressional delegation and relevant members of
81 the Biden-Harris Administration.

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¹ Defined as “the use of public-facing biometrics without the awareness and active participation of the individual.”

STATEMENT IN SUPPORT OF THE ORDER

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Biometrics is the use of technology to identify an individual through analysis of that person’s physical and behavioral characteristics. Examples of physical characteristics include the unique features of an individual’s face or their fingerprint, while examples of behavioral characteristics include an individual’s voice, signature, or how they walk.

Due to technological advances, perceived customer benefits and federal requirements, there has been a significant increase in public-facing biometric technology deployment by public and private sector users, including in airport and seaport settings. In fact, public-facing biometrics are already being used at dozens of U.S. airports and cruise terminals by those who see the technology as a major benefit to travelers – both because of the potential for a faster and more efficient travel experience, as well as the belief that it offers a more accurate security process than human review of documents. In addition, the COVID-19 pandemic has increased interest in “touchless technologies” as a way to reduce potential transmission of disease; facial recognition biometrics could potentially reduce direct interactions like handing documents back-and-forth or touching screens.

Public-facing biometrics are already used in various forms at the Port of Seattle’s aviation and maritime facilities, such as 1) CLEAR, a private company providing an option to those customers who want expedited screening at TSA checkpoints to voluntarily supply their biometric data in order to verify their identities, 2) CBP use of biometrics at Seattle-Tacoma International Airport (SEA) to validate arriving international traveler identities, and 3) use of biometrics to validate the identities of disembarking passengers from Norwegian Cruise Line ships docked at Pier 66.

However, many members of the public and various advocacy organizations have expressed concerns about the rapidly expanding use of biometrics. These stakeholders have raised issues around privacy, equity and civil liberties, as well as the potential for unregulated “mass surveillance.” To that end, after holding two Study Sessions, conducting stakeholder outreach and doing multiple site visits, the Port Commission passed Motion 2019-13 on December 10, 2019 – adopting seven “biometrics guiding principles,” and directing staff to translate those principles into tangible, enforceable policies.

Since the start of 2020, a working group of Port staff has collaborated with an external advisory group of key stakeholders to accomplish that task. One of the key findings from this process is that the various use cases of biometrics require separate analysis as to how the Port should (consistent with local, state and federal requirements) apply the biometrics guiding principles to develop policy. One unified set of policies is not practical because of key differences from one use case to another, such as who manages the data, requirements imposed by state or federal law, and the benefits and risks associated with each use.

131 One key limitation on the Port’s policymaking process is the federal law and regulations that
132 govern federal agency and airline activities at Port facilities. Regardless, the Port can take
133 significant steps to ensure alignment with the Commission’s biometrics principles and believes
134 that all proposed policies are consistent with the preemptive limitations on the Port’s authority
135 posed by state and federal law.
136

137 As a result of its process, the Port staff has proposed multiple use case policy recommendations:

- 138 • Policies governing Port actions and rules regarding Biometric Air Exit, which is the use of
139 biometrics (specifically facial recognition technology) to verify the identity of departing
140 international air passengers using CBP’s Traveler Verification System (TVS).²
- 141 • Policies governing Port actions in response to CBP’s use of biometrics (including facial
142 recognition) to confirm the identities of arriving international passengers as they exit
143 aircraft or cruise ships, as well as future federal government use of biometrics for other
144 traveler functions.³
- 145 • Policies governing Port actions and rules regarding the use of biometrics (including facial
146 recognition) to perform real time or near-real time public-facing law enforcement and
147 security functions at Port facilities.
- 148 • Policies governing Port actions and rules regarding a variety of uses of biometrics for
149 traveler functions by Port staff and/or private-sector entities.

150
151 This Order would direct the Executive Director to implement executive policies aligned with the
152 remaining use cases (in addition to the already-approved Biometric Air Exit policies), and would
153 also direct the creation of an overarching executive policy banning Port and private-sector uses
154 of public-facing biometrics for mass surveillance – as defined by Motion 2019-13. That Motion
155 defines mass surveillance as the use of public-facing biometrics without the awareness and active
156 participation of the individual; more concisely, no one at a Port facility should fear that the Port
157 or a private sector tenant is actively tracking them with near time or near real time biometric
158 technology as they traverse a Port facility.
159

160 Almost as important as the proposed public-facing biometrics policies themselves is the process
161 used to achieve these recommendations. The Port Commission has held multiple public meetings
162 and study sessions on this topic, and the Port hired an outside facilitation firm to manage the
163 advisory group process – to ensure full and equal participation from all stakeholders. Below is a
164 list of all public and advisory group meetings that helped inform Port staff efforts to develop
165 these recommendations.
166

- 167 • September 10, 2019: First Commission Study Session on Biometric Technology
- 168 • October 29, 2019: Second Commission Study Session on Biometric Technology

² The policy recommendations for this use case were approved by the Port Commission on March 10, 2020, and implemented as Executive Policy (EX-23).

³ The Port has no jurisdiction over these activities, but can still play an important transparency and accountability role.

- 169 • December 10, 2019: Commission Public Meeting action on Biometrics Principles
- 170 Motion 2019-13
- 171 • January 17, 2020: External Advisory Group meeting #1
- 172 • February 7, 2020: External Advisory Group meeting #2
- 173 • February 18, 2020: Commission Biometrics Special Committee meeting
- 174 • February 25, 2020: Commission Public Meeting briefing on Biometric Air Exit policy
- 175 recommendations
- 176 • March 6, 2020: External Advisory Group meeting #3
- 177 • March 10, 2020: Commission Public Meeting action on Biometric Air Exit policy
- 178 recommendations
- 179 • March 31, 2020: Commission Biometrics Special Committee meeting
- 180 • April 14, 2020: Commission Public Meeting action to extend deadlines for policy
- 181 recommendations
- 182 • July 10, 2020: External Advisory Group meeting #4
- 183 • July 24, 2020: External Advisory Group meeting #5
- 184 • August 7, 2020: External Advisory Group meeting #6
- 185 • August 21, 2020: External Advisory Group meeting #7
- 186 • September 25, 2020: External Advisory Group meeting #8
- 187 • October 8, 2020: Commission Biometrics Special Committee meeting
- 188 • December 11, 2020: Commission Biometrics Special Committee meeting
- 189

190 In addition, all meeting materials – including External Advisory Group meetings – were made
191 publicly available via the Port’s Biometrics External Advisory Group webpage at
192 <https://www.portseattle.org/page/biometrics-external-advisory-group>.

193
194 It is important to note that not all members of the Biometrics External Advisory Group agree with
195 the policy recommendations being submitted, for a wide range of reasons: from some
196 stakeholders who see these recommendations as overly limiting and proscriptive, to other
197 stakeholders believe the current state of facial recognition technology is incompatible with the
198 Commission’s Biometric Principles and should be banned for all uses at Port facilities; however,
199 several participants believe the technology has enormous value and promise but requires
200 regulation to protect against bias or infringement on individuals’ privacy or civil rights. To that
201 end, all stakeholder concerns are being submitted as part of the Commission materials to provide
202 full transparency – outlining changes they think should be made to the specific use case
203 recommendations and/or reasons they think the entire approach should be different.

Governing Public-Facing Biometrics at Port Facilities

Eric Schinfeld, Sr. Manager, Federal
Government Relations

BACKGROUND

Biometrics Motion 2019-13 (Adopted 12/10/19)

- 1. Adopted seven (7) guiding principles** for public-facing biometrics at Port facilities:
1) Justified, 2) Voluntary, 3) Private, 4) Equitable, 5) Transparent, 6) Lawful, 7) Ethical
- 2. Established a Port working group** to translate guiding principles into tangible & enforceable policy recommendations by the end of Q1 2020, for Commission passage by Q2 2020
- 3. Established an external advisory group** to provide feedback on proposed Port working group policy recommendations
- 4. Recommended the creation of an ad hoc, limited term commission committee** to oversee these efforts (Special Biometrics Committee)
- 5. Put a hold on any new or expanded uses of biometrics at Port facilities until after Commission approves of policy recommendations and adopts policies**

Focus on Transparency

- **Commission Engagement:**
 - Two (2) Commission Study Sessions: Sep 10, 2019 and Oct 29, 2019
 - Commission Action adopting Motion: Dec 10, 2019
 - Commission Briefing: Feb 25, 2020
 - Commission Actions: Mar 10, 2020 and Apr 14, 2020
- **Development/Review of Recommendations:**
 - Port Working Group meetings/review: Dec 2019 – Aug 2020
 - Eight (8) External Advisory Group Meetings facilitated by consultants: Jan 17, 2020 – Sep 25, 2020
- **Biometrics Special Committee:**
 - Four (4) Commission Biometrics Special Committee: Feb 18, 2020; Mar 31, 2020; Oct 8, 2020; and Dec 11, 2020

Multiple Use Case Recommendations

1. **Policy recommendations by “use case” rather than one comprehensive policy**
2. **Port Working Group identified “use cases” for public-facing biometrics at Port facilities and drafted policy recommendations for each use case:**
 - Biometric Exit (Submitted and Approved)
 - Biometrics for Traveler Functions: Port, non-airline tenant, airline and federal government
 - Biometrics for Law Enforcement & Security Functions
3. **External Advisory Group reviewed policy recommendations and provided feedback during facilitated meetings**
4. **Biometrics Special Committee reviewed and recommended policy recommendations**

Observations

- Not “consensus” recommendations
 - All stakeholder concerns are being submitted along with the staff recommendations to provide full transparency
- Recommendations are not meant to suggest that the Port *should* implement public-facing biometrics, but rather how to do so in alignment with our guiding principles

Biometrics Special Committee Recommendations

- Continue the Commission ban on Port and private sector use of public facing biometrics for “mass surveillance”
- Continue the Commission moratorium on Port and private sector law enforcement and security uses of public facing biometrics
- Regulate biometrics for traveler functions to the degree possible: Port, tenant, airline and federal
- Recommend the Port share its support for US Representative Jayapal’s federal biometrics moratorium legislation

EXECUTIVE POLICIES

Ban on Mass Surveillance

- Applies to Port employees AND private sector tenants
- Defines “mass surveillance” as any use of biometric technology to identify individuals without both their awareness and active participation
- All Port policies related to the public-facing use of biometric technology will require use of the technology to be fully voluntary and “opt-in”, where legally possible:
 - The system only includes the biometric data of those individuals who have actively opted-in to the system for that explicit purpose;
 - Does not include biometric data purchased from a third-party or public galleries without the individual’s explicit consent;
 - Only scans those individuals who have actively opted-in and only when they are purposefully and actively participating in that particular moment;
 - Comprehensive, clear, and accessible notice is provided at the time of enrollment (i.e. – “informed consent”);
 - Standards for cancelling a subscription/removing an individual’s biometric data from the system;
 - Standards to avoid unintended image capture;
 - Immediate deletion of biometric data accidentally collected; and
 - Does not scan large groups to identify those individuals who have opted in.

Ban on Law Enforcement & Security Uses

- Bans use of biometrics to perform public-facing law enforcement and security functions by Port personnel or private sector tenants, including:
 - Direct use of biometric technology at Port facilities
 - Use of biometrics as part of a collaboration with a federal agency or on a mutual aid assignment in another local jurisdiction
 - Not allowed to create or contribute to a biometric database for law enforcement or security functions unless required
- Does not apply to traditional collections of biometrics that are used in law enforcement, such as the use of fingerprinting or DNA
- Port must comply with relevant state and federal laws

Biometrics for Traveler Functions by Port & Non-Airline Tenants

- The Port *should not allow* public-facing biometrics for traveler functions unless:
 - **Justified:** The relevant Managing Director first seeks feedback from the Technology Ethical Advisory Board and considers set criteria in deciding whether or not to approve the implementation.
 - **Voluntary:**
 - The proposed application is “opt-in” and not “mass surveillance”.
 - The operator agrees to the Port’s standards and training protocols regarding avoiding unintended image capture, how to deal with mismatching issues with sensitivity and discretion, and how to minimize mismatch likelihood.
 - **Private:** The proposed technology meets and/or exceeds the Port’s minimum biometric data security and privacy standards.
 - **Equitable:** The technology demonstrates high levels of accuracy both overall and between various characteristics.

Biometrics for Traveler Functions by Port and Tenants (con't)

- **If the Port approves such an application, it should:**
 - **Transparent:**
 - Develop a comprehensive communications plan that includes rights with regard to the program, how to be removed from the program, and recourse in case of violations of those rights and/or data breaches.
 - Work with the Technology Ethical Advisory Board to produce an annual accountability report that includes all approved, publicly available information.
 - **Ethical:**
 - Conduct performance evaluations to ensure that Port staff and/or private sector operators are following all Port policies, including those related to privacy, customer service, communication and unintended image capture.
 - **Lawful:**
 - Advocate for state and federal laws and regulations that codify the goals of the Port's biometric principles.
 - **Equitable:**
 - Develop an engagement plan to educate local immigrant and refugee communities about the technology and their rights – in multiple languages and in culturally appropriate ways – as well as resources for sharing concerns about any incidents in which they do not feel they have been afforded their full legal rights and/or their treatment has not been fully respectful.

Biometrics by Federal or Airline Partners

- Port has no jurisdiction over CBP or TSA activities, and limited control over airline traveler functions due to Airline Deregulation Act, ***but can still play an important transparency and accountability role*** by:
 - Requesting notification, and information on how systems meet Port’s Biometric Principles
 - Developing a comprehensive communications plan that notifies the general public of the implementation and all related information;
 - Producing an annual accountability report that includes all approved, publicly available information on related topics;
 - Advocating for federal laws and regulations that support the Port’s biometric principles;
 - Developing an engagement plan to educate local immigrant and refugee communities about the technology, their rights, and resources for sharing concerns
- Port will also develop recommendations for suggested implementation:
 - Guidelines for avoiding unintended image capture;
 - Guidelines to help cruise line employees educate disembarking passenger about CBP rules regarding opt-out;
 - Guidelines for how to deal with mismatching issues with sensitivity and discretion

Related Policies

- State of Washington regulation of public sector use of facial recognition biometrics (March 2020)
- King County ban on facial recognition use by King County employees (June 2020)
- Biometrics for traveler functions in use at dozens of port authorities (airports, cruise terminals) by Ports, tenants and federal agencies
 - *Port of Seattle would be the only port authority to-date to regulate this technology*

Questions?

Public-Facing Biometrics Guiding Principles

Justified	Should be used only for a clear and intended purpose and not for surveillance on large groups without a lawful purpose
Voluntary	Should be voluntary and reasonable alternatives should be provided for those who not wish to participate through an opt-in or opt-out process
Private	Should be stored for no longer than required by applicable law or regulations, and should be protected against unauthorized access
Equitable	Should be reasonably accurate in identifying people of all backgrounds, and systems should be in place to treat mismatching issues
Transparent	Should be communicated to visitors and travelers
Lawful	Should comply with all laws, including privacy laws and laws prohibiting discrimination
Ethical	Should act ethically when deploying technology or handling biometric data

Biometrics Working Group

- Matt Breed, Chief Information Officer
- Julie Collins, Director, Customer Experience
- Commander Lisa Drake, Port of Seattle Police Department
- Laurel Dunphy, Director, Airport Operations
- Marie Ellingson, Manager, Cruise Operations
- Eric ffitich, Manager of State Government Relations, External Relations
- Bookda Gheisar, Senior Director, Office of Equity, Diversity and Inclusion
- James Jennings, Director, Airline Relations
- Ron Jimerson, Chief Information Security Officer
- John McLaughlin, Senior Port Counsel
- Anne Purcell, Senior Port Counsel
- Russ Read, Manager, Maritime Security
- Wendy Reiter, Director, Aviation Security
- Kathy Roeder, Director of Communications, External Relations
- Eric Schinfeld, Senior Manager of Federal Government Relations, External Relations
- Deputy Chief Mark Thomas, Port of Seattle Police Department
- Veronica Valdez, Commission Specialist
- Todd VanGerpen, Manager, Aviation Innovation
- Dave Wilson, Director, Aviation Innovation

Biometrics External Advisory Group

- Ian Baigent-Scales, Airport Customer Development Manager - Airport Operations, Virgin Atlantic Airways
- Sasha Bernhard, Legislative Assistant, Office of US Representative Suzan DelBene
- Dana Debel, Managing Director, State and Local Government Affairs, Delta Air Lines
- Adele Fasano, Director, Field Operations, Seattle Field Office, US Customs & Border Protection
- Eric Holzapfel, Deputy Director, Entre Hermanos
- Suzanne Juneau, Executive Director, Puget Sound Business Travel Association
- Scott Kennedy, State and Local Government Affairs Manager, Alaska Airlines
- Jennifer Lee, Technology & Liberty Project Director, ACLU
- Maggie Levay, Director Guest Port Services, Royal Caribbean
- McKenna Lux, Policy Manager, CAIR-WA
- Yazmin Medhi, Outreach Director, Office of US Representative Pramila Jayapal
- Nina Moses, Stakeholder Relations Manager, US Transportation Security Administration
- Irene Plenefisch, Government Affairs Director, Microsoft Corporation
- Sheri Sawyer, Senior Policy Advisor, Office of Washington State Governor Jay Inslee
- Victoria Sipe, Director Shore Operations, Holland America Group
- Rich Stolz, Executive Director, One America
- Elizabeth Tauben, Manager Port Guest Services & Clearance, Norwegian Cruise Line Holdings
- Jennifer Thibodeau, Public Policy Manager - Western States, Amazon Web Services
- Jevin West, Director, Center for an Informed Public, University of Washington

Biometric Air Exit

- Use of biometrics, specifically facial recognition technology, to verify the identity of **departing international air passengers** using US Customs & Border Protection's (CBP) Traveler Verification System (TVS).
 - First use case reviewed
 - Policy recommendations were reviewed by the Biometrics Special Committee on Feb 18, 2020
 - Policy recommendations were approved by the Commission on Mar 10, 2020
 - Executive Policy developed EX-23 on Apr 3, 2020
 - Review by the External Advisory Group was expedited due to Commission Action in March. Some stakeholders felt they did not have enough time to fully vet the recommendations

Biometric Air Exit Communications Plan



Website

Website information page –
flagged on airport passenger
pages



SEA APP Alert



Outreach






Outreach through working
group and stakeholders



External Relations Media Notices

As a passenger, when at the airport...

I will encounter several forms of communication about Biometric Air Exit

-  1. Signs at ticketing/baggage drop
-  2. Signs at the check-in podium of the gate
-  3. Signs in the hold room
-  4. Signs at the entry of the boarding queue
-  5. Audio announcements regarding Biometric Air Exit

Biometric Air Exit Signage

Optional Boarding with Facial Recognition

Your photograph can be taken as you board your flight today as a touchless way to verify your identity.

See an airline representative prior to boarding to opt out of this process.

If you choose this touchless option:

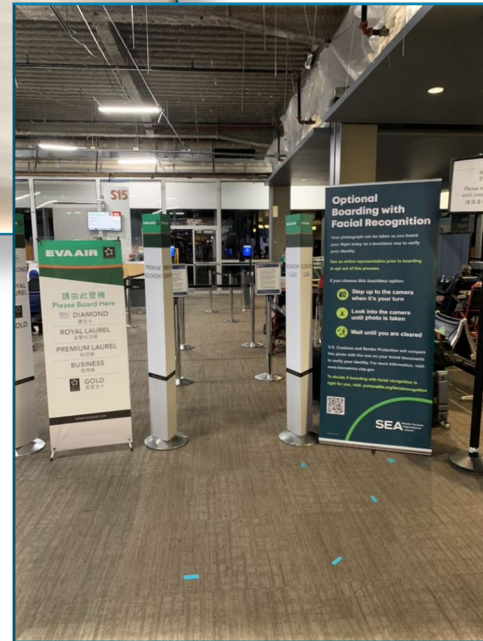
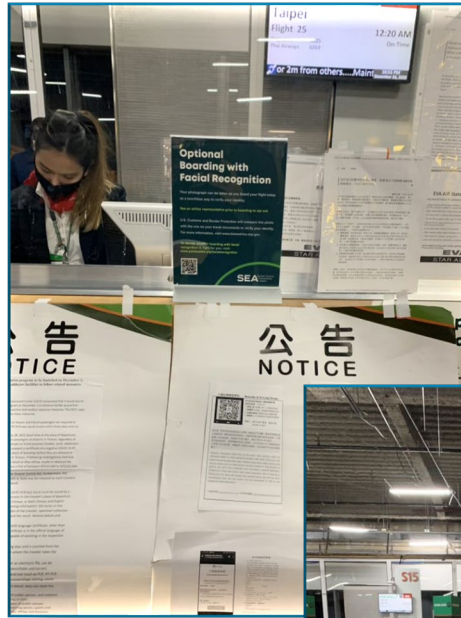
-  Step up to the camera when it's your turn
-  Look into the camera until photo is taken
-  Wait until you are cleared

U.S. Customs and Border Protection will compare this photo with the one on your travel documents to verify your identity. For more information, visit: www.biometrics.cbp.gov

To decide if boarding with facial recognition is right for you, visit: portseattle.org/facialrecognition



SEA Seattle-Tacoma International Airport



VS.



HOUSE COMMITTEE ON THE JUDICIARY

VICE CHAIR, SUBCOMMITTEE ON
IMMIGRATION AND CITIZENSHIP

MEMBER, SUBCOMMITTEE ON ANTITRUST,
COMMERCIAL, AND ADMINISTRATIVE LAW

HOUSE COMMITTEE ON THE BUDGET

HOUSE COMMITTEE ON
EDUCATION AND LABOR

MEMBER, SUBCOMMITTEE ON
HIGHER EDUCATION AND WORKFORCE INVESTMENT

MEMBER, SUBCOMMITTEE ON
WORKFORCE PROTECTIONS

Congress of the United States
House of Representatives
Washington, DC 20515-4707

Item No. 10a_attach_1
Meeting Date: July 13, 2021

September 29, 2020

To the Port of Seattle Commission:

Thank you for inviting my office to serve on the Port's Biometrics External Advisory Group. As the Congresswoman representing Washington's 7th district—home to several Port facilities, and countless employees and customers—I too am committed to ensuring our constituents' interests are heard and represented. For that reason, I am writing to express deep concern for the Port's use of facial recognition technology for any discretionary purpose. Algorithmic bias against people of color, women, children, and seniors presents significant and consequential justice and equity problems for anyone who uses or works at a Port of Seattle facility. Further, there are broad civil liberties concerns as Federal law currently provides no privacy safeguards or standards for the use of facial recognition, or other biometric surveillance technology. What my staff has learned while serving on the Advisory Group coupled with the evolution of my own thinking prompt me to suggest that the Port Commission consider a moratorium on the use of biometrics technology in all Port activities under its purview except for voluntary programs like CLEAR.

Facial recognition technology is plagued with significant bias, as numerous reports have found that this technology has difficulty recognizing people of color, transgender individuals, and people wearing masks.¹ Specifically, a December 2019 National Institute of Standards and Technology report found that false positives are up to 100 times more likely for Asian and Black faces, with American Indians having the highest rates of being falsely identified.² This bias has, at times, grave implications. Earlier this year Robert Julian-Borchak Williams, a Black man in Detroit, Michigan was wrongfully arrested and imprisoned due to a flawed match from a facial recognition algorithm.³ This is the first *known* case of wrongful arrest due to false match, and exemplifies the danger of law enforcement reliance on a technology that is rife with bias.

¹ Rebecca Heilweil, *Masks Can Fool Facial Recognition Systems, But the Algorithms Are Learning Fast*, Vox (Jul. 28, 2020) <https://www.vox.com/recode/2020/7/28/21340674/face-masks-facial-recognition-surveillance-nist>

² NIST, *NIST Study Evaluates Effects of Race, Age, Sex on Face Recognition Software* (Dec. 19, 2019) <https://www.nist.gov/news-events/news/2019/12/nist-study-evaluates-effects-race-age-sex-face-recognition-software>

³ Kashmir Hill, *Wrongfully Accused by an Algorithm*, New York Times (June 24, 2020) <https://www.nytimes.com/2020/06/24/technology/facial-recognition-arrest.html?auth=login-email&login=email>

The lack of federal regulation on the use of facial recognition technology also presents civil liberties concerns about the widespread implications of its use and the associated data that is collected. Private companies have begun to respond to the lack of regulation on government use of FRT. In 2019, Axon, the country's largest supplier of police body cameras banned face recognition systems on its technology.⁴ Recently, Microsoft, IBM and Amazon banned police use of their facial recognition technology, citing lack of federal law on the matter to ensure ethical use.⁵ These concerns about ethical use are compounded when taken in conjunction with the longstanding concerns regarding a lack of accountability and ineffective planning and management within Customs and Border Protection.⁶ Just this month, the Department of Homeland Security Office of Inspector General found that CBP did not adequately safeguard sensitive data on an unencrypted device used during its facial recognition technology pilot, resulting in a massive data breach that allowed hackers to steal approximately 184,000 facial recognition images and post some on the dark web.⁷

I recognize that the reason the Port Commission is where it is today, deliberating the use of this fraught technology, is because of Customs and Border Protection's (CBP) federal mandate to expedite biometric entry-exit in the wake of 9/11. I further recognize that the Commission is having to do this despite its visible and concerted efforts to make Port facilities welcoming and open to people of all colors and ethnicities and statuses. However, under this administration particularly, CBP has less interest in these same considerations. In fact, under current law, CBP could use an opt-in framework for the technology, but it has instead chosen to make it opt-out.

Because of these concerns, I introduced the Facial Recognition and Biometric Technology Moratorium Act in the House. This bill would:

- Place a prohibition on the domestic use of facial recognition technology by federal entities, which can only be lifted with an act of Congress;
- Place a prohibition on the use of other biometric technologies, including voice recognition, gait recognition, and recognition of other immutable physical characteristics, by federal entities, which can only be lifted with an act of Congress;

⁴ Charlie Warzel, *A Major Police Body Cam Company Just Banned Facial Recognition*, New York Times (June 27, 2019) <https://www.nytimes.com/2019/06/27/opinion/police-cam-facial-recognition.html>

⁵ Jay Greene, *Microsoft Won't Sell Police Its Facial Recognition Technology, Following Similar Moves by Amazon and IBM*, The Washington Post (June 11, 2020)

<https://www.washingtonpost.com/technology/2020/06/11/microsoft-facial-recognition/>

⁶ Department of Homeland Security Office of Inspector General, *CBP Needs a Comprehensive Process for Conducting Covert Testing and Resolving Vulnerabilities* (July 28, 2020)

<https://www.oig.dhs.gov/sites/default/files/assets/2020-07/OIG-20-55-Jul20.pdf>

Daniel E. Martínez, Ph.D., Guillermo Cantor, Ph.D. and Walter Ewing, Ph.D., *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse*, American Immigration Council (May 4, 2014)

<https://www.americanimmigrationcouncil.org/research/no-action-taken-lack-cbp-accountability-responding-complaints-abuse>

⁷ Department of Homeland Security Office of Inspector General, *Review of CBP's Major Cybersecurity Incident During a 2019 Biometric Pilot* (Sept. 21, 2020) <https://subscriber.politicopro.com/f/?id=00000174-bc62-dc18-a57d-be63f54f0000&source=email>

- Condition federal grant funding to state and local entities, including law enforcement, on those entities enacting their own moratoria on the use of facial recognition and biometric technology;
- Prohibit the use of federal dollars for biometric surveillance systems;
- Prohibit the use of information collected via biometric technology in violation of the Act in any judicial proceedings;
- Includes a private right of action for individuals whose biometric data is used in violation of the Act and allows for enforcement by state Attorneys General; and
- Allow states and localities to enact their own laws regarding the use of facial recognition and biometric technologies.

Given the current landscape, without the guidance of a federal moratoria or even regulations on basic civil liberties protections, I understand that the Port must move forward with setting its own guidance. I commend your efforts to focus on civil liberties concerns, and I applaud your own moratorium on the use of biometrics by Port of Seattle Police. I also support the intention to retain some level of control over CBP's actions by managing use of facial recognition technology for air exit.

With respect to all non-mandated, discretionary uses, I have concerns about any government or private entity use. For that reason, while I agree the Port's guiding principles provide strong guidance for evaluating the use of the technology, I believe we must more seriously consider the fundamental question of *if* the technology should be used at this time. Considering the impacts of facial recognition technology on vulnerable communities and the preserving civil rights and liberties should be the main drivers in the decision-making process regarding this technology. When we act in the best interest of the most vulnerable, with an eye to upholding the rights of all, we are acting in the best interest of everyone.

I understand that in those cases where the Port decides to allow facial recognition technology, the guiding principles are intended to act as safeguards for community members, travelers, and customers. Protections should stay focused on these populations, rather than providing pathways to justify business use. The "justified" principle, for instance, should more critically ask what promise facial recognition technology has in moving us toward a more just society. Currently, facial recognition technology and its uses do not advance justice for people of color, women, children, and seniors and I strongly oppose the use of any tool that further marginalizes vulnerable communities. Each guiding principle should center these communities in use case consideration. Efficiency or cost to businesses cannot be equal to or more important than civil liberties.

As a member of the Port's Biometrics External Advisory Group, I urge you to center the concerns of civil liberties advocates and communities of color in your decisions on the use of facial recognition at the Port of Seattle. I am hopeful that community input will continue to be prioritized to ensure the voices of customers, immigrants, and travelers are heard.

Once again, I commend you on doing all that you can to elevate civil liberties concerns through this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Pramila Jayapal". The signature is fluid and cursive, with the first name "Pramila" written in a larger, more prominent script than the last name "Jayapal".

PRAMILA JAYAPAL
Member of Congress

September 29, 2020

Port of Seattle Commission
2711 Alaskan Way
Seattle, WA 98121

We, as members of the Biometrics External Advisory Group and organizations dedicated to protecting people's rights and civil liberties, urge the Port of Seattle Commission to reject the use of invasive face surveillance technology at Seattle-Tacoma International Airport.

On December 10, 2019, the Commission adopted seven principles to guide its decision-making on if and how biometrics should be used at the Port. These principles are: justified, voluntary, private, equitable, transparent, legal, and ethical.¹

We do not believe that either the current or the proposed uses of biometrics to identify travelers on Port property can be implemented in a manner consistent with these principles. Port staff state that its recommendations “are not meant to suggest that the Port should implement public-facing biometrics, but rather how to do so in alignment with our guiding principles.”² The only action that would be aligned with those principles would be to ban the use of facial recognition technology to identify members of the public by the Port, as well as by the Port's tenants and contractors.

We respectfully but strongly disagree with the Port's interpretation and application of each of these principles. For example, the Port states that using facial recognition is “equitable”³ if it is “accurate in identifying people of all backgrounds”⁴ and is “justified”⁵ if doing so fulfills a “specific operational need.”⁶ The undersigned members of the Biometrics External Advisory Group have repeatedly voiced our concerns with such interpretations, noting that even if facial recognition tools were accurate (which they are not), accuracy does not create equity and that increasing efficiencies at the Port does not mean that the use of invasive surveillance technology is justified.

We urge reevaluation of the principles, which should lead to reconsideration of the recommendations that justify the procurement and implementation of facial recognition technology at Seattle-Tacoma International Airport. We have shared that the Port should *not* collaborate with U.S. Customs and Border Protection (CBP) and other entities to implement invasive face surveillance systems.⁷ We reiterate that by working with government and private entities to legitimize facial recognition technology, the Port will be facilitating the infrastructural

¹ *December 10, 2019 – Port of Seattle Commission Regular Meeting*, PORT OF SEATTLE (Dec. 10, 2019),

² *Biometrics Policy Recommendations Cover Memo*, PORT OF SEATTLE, at 1 (Sept. 25, 2020).

³ *Motion 2019-13: A Motion of the Port of Seattle Commission*, PORT OF SEATTLE, at 1 (Dec. 10, 2019),

https://www.portseattle.org/sites/default/files/2019-12/Motion%202019-13__Biometrics%20Principles.pdf.

⁴ *Id.*

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *Open Letter to Port of Seattle Commission*, ACLU OF WASH. (Apr. 8, 2020), <https://www.aclu-wa.org/docs/open-letter-port-seattle-commission>.

expansion of powerful and racially biased face surveillance systems that threaten our constitutionally protected rights and civil liberties.⁸

Face surveillance systems should not be used by government agencies such as CBP. In announcing a recent lawsuit against CBP and the Transportation Security Administration (TSA), the ACLU stated, “Unlike other forms of identity verification, facial recognition technology can enable undetectable, persistent, government surveillance on a massive scale. As this technology becomes increasingly widespread, the government can use it to track individuals’ movements and associations, posing grave risks to privacy and civil liberties. When such a technology is placed in the hands of agencies like CBP and TSA—which have been caught tracking and spying on journalists, subjecting innocent travelers to excessive and humiliating searches, and targeting and interrogating individuals because of their national origin, religious beliefs, or political views—we should all be concerned.”⁹

We emphasize that face surveillance systems power systemic racism and injustice—whether or not these systems operate accurately. There is a long and ugly history of government use of surveillance tools to target specific communities. To highlight just a few examples, our government used IBM’s Hollerith punched card machines to illegally surveil and incarcerate Japanese-Americans during WWII.¹⁰ More recently, law enforcement used automated license plate readers (ALPR) to religiously profile the Muslim community in a decade-long surveillance program that was eventually struck down as illegal.¹¹ Today, U.S. Immigration and Customs Enforcement (ICE) is using ALPR and facial recognition technology to track and deport immigrants.¹² It is clear that facial recognition technology provides government agencies with unprecedented surveillance power.

An increasing number of cities across the U.S. including Portland,¹³ Boston,¹⁴ and San Francisco,¹⁵ have banned public and private¹⁶ uses of facial recognition technology,

⁸ Jennifer Lee, *Tell the Port Commission to Push Back Against Face Surveillance*, ACLU OF WASH. (Mar. 9, 2020), <https://www.aclu-wa.org/story/tell-port-commission-push-back-against-face-surveillance>.

⁹ Ashley Gorski, *The Government Has a Secret Plan to Track Everyone’s Faces at Airports. We’re Suing*, ACLU (Mar. 12, 2020), <https://www.aclu.org/news/privacy-technology/the-government-has-a-secret-plan-to-track-everyones-faces-at-airports-were-suing/>.

¹⁰ Matthew Wills, *WWII and the First Ethical Hacker*, JSTOR DAILY (Feb. 14, 2017), <https://daily.jstor.org/wwii-and-the-first-ethical-hacker/>.

¹¹ Dia Kayyali, *Third Circuit to the City of New York: Being Muslim is not Reasonable Suspicion for Surveillance*, ELEC. FRONTIER FOUND. (Oct. 15, 2015), <https://www.eff.org/deeplinks/2015/10/third-circuit-city-new-york-being-muslim-not-reasonable-suspicion-surveillance>.

¹² Catie Edmonson, *ICE Used Facial Recognition to Mine State Driver’s License Databases*, N.Y. TIMES (July 7, 2019), <https://www.nytimes.com/2019/07/07/us/politics/ice-drivers-licenses-facial-recognition.html>.

¹³ Portland, Oregon Municipal Code § 34.10. Available at https://cdn.vox-cdn.com/uploads/chorus_asset/file/21868277/704_Sep_9_2TC_TW_Ord_BPS_2__1_.pdf; Press Release, City of Portland, *City Council approves ordinances banning use of facial recognition technologies by City of Portland bureaus and by private entities in public spaces* (Sept. 9, 2020), <https://www.portland.gov/bps/news/2020/9/9/city-council-approves-ordinances-banning-use-facial-recognition-technologies-city>.

Note: Setting an example that we believe that the Port of Seattle Commission should follow, the Portland City Council considered and rejected a request from the Port of Portland for an exception to the ban to allow use of facial recognition for passenger processing at the Portland International Airport. See The Identity Project., *Portland bans facial recognition by city agencies or in places of public accommodation*, PAPERS PLEASE (Sept. 9, 2020), <https://papersplease.org/wp/2020/09/09/portland-bans-facial-recognition-by-city-agencies-or-in-places-of-public-accommodation/>.

¹⁴ Boston, Massachusetts Municipal Code § 16-62. Available at <https://www.documentcloud.org/documents/6956465-Boston-City-Council-face-surveillance-ban.html>.

¹⁵ San Francisco, California Administrative Code - Acquisition of Surveillance Technology. Available at <https://www.eff.org/document/stop-secret-surveillance-ordinance-05062019>

recognizing that face surveillance tools not only fuel discriminatory surveillance but also threaten everyone’s privacy and civil liberties. Recent state¹⁷ and federal proposals¹⁸ to ban facial recognition technology have garnered widespread support as legislators and the public have become increasingly concerned about the harmful impacts of face surveillance.

The Port of Seattle Commission has a choice to:

- (1) *Reject* collaboration with CBP, a sister agency of ICE, and *not* fund CBP’s surveillance systems.
- (2) *Prohibit* use of facial recognition technology and *not* facilitate the infrastructural expansion of powerful and racially biased face surveillance technology.
- (3) *Reevaluate* the Port’s interpretation of and compliance with its principles so that they align with the concerns of marginalized communities.

1. We urge the Port of Seattle Commission to reject participation in, and funding of, CBP’s facial recognition exit and entry programs.

On March 10, 2020, Port Commissioners voted unanimously to collaborate with CBP in procuring and implementing its facial recognition program for biometric air exit, and did not take adequate account of the many privacy, civil liberties, and community organizations that urged the Port to reject participation.¹⁹ Instead of listening to serious constituent concerns about the Port participating in CBP’s mass collection of biometric data, Commissioners voted to authorize a \$5.7 million Request for Proposal (RFP)²⁰ to procure and implement a “shared-use” facial recognition system at Seattle-Tacoma International Airport.²¹

Though Port Commissioners stated that they had no choice but to vote yes to collaborate with CBP,²² the Commission did have a choice to say no. Airports and airlines are not mandated to participate in or contribute financially to either CBP’s biometric air exit or biometric air entry programs,²³ and furthermore, Congress has never authorized the biometric collection of U.S. citizen data.²⁴ Without explicit authorization, CBP should not be scanning the faces of Americans as they depart or arrive on international flights, and the Port should not be facilitating this unauthorized scanning.

¹⁶ Portland, Oregon Municipal Code § 34.10, *supra* note 13.

¹⁷ H.B. 2856, 66th Leg., Reg. Sess. (Wash., 2020). Available at <http://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/House%20Bills/2856.pdf#page=1>

¹⁸ Press Release, Ed Markey, Senators Markey And Merkley, And Reps. Jayapal, Pressley To Introduce Legislation To Ban Government Use Of Facial Recognition, Other Biometric Technology (June 5, 2020), <https://www.markey.senate.gov/news/press-releases/senators-markey-and-merkley-and-reps-jayapal-pressley-to-introduce-legislation-to-ban-government-use-of-facial-recognition-other-biometric-technology>.

¹⁹ *March 10, 2020 – Port of Seattle Commission Regular Meeting*, PORT OF SEATTLE (Mar. 10, 2020), https://meetings.portseattle.org/index.php?option=com_meetings&view=meeting&Itemid=358&id=1894&active=play.

²⁰ *Solicitation Detail: SEA Airport Biometric Air Exit System*, PORT OF SEATTLE (Mar. 16, 2020), <https://hosting.portseattle.org/sops/#/Solicitations/Detail/c1451f2a-7544-ca11-8141-005056bd5ab4>.

²¹ *March 10, 2020 – Port of Seattle Commission Regular Meeting*, *supra* note 19, at Item 8a Biometric Air Exit Memo.

²² *Feb 25, 2020 – Port of Seattle Commission Regular Meeting*, PORT OF SEATTLE (Feb. 25, 2020), https://meetings.portseattle.org/index.php?option=com_meetings&view=meeting&Itemid=358&id=1892&active=play.

²³ Marc Rotenberg et al., *Comments of the Electronic Privacy Information Center to the Department of Homeland Security Data Privacy and Integrity Advisory Committee*, EPIC (Dec. 10, 2018), <https://www.epic.org/apa/comments/EPIC-Comments-DHS-DPIAC-Face-Rec-ReportDec-2018.pdf>.

²⁴ See Harrison Rudolph et. al, *Not Ready for Takeoff: Face Scans at Airport Departure Gates*, GEO. L. CTR ON PRIV. & TECH. (Dec. 21, 2017), <https://www.airportfacescans.com/>.

Additionally, we disagree with the Port’s conclusion that the Port’s participation in CBP’s face surveillance program will give the Port greater control over the program’s implementation. Commissioners state that by owning and operating the facial recognition systems in use, the Port will be able to provide the public with clear signage, increasing the opportunity for informed consent and mitigating harm from CBP’s activities.²⁵ Unfortunately, the Port’s decision to work with CBP will have exactly the opposite effect. By voting to authorize the RFP on March 10, 2020, Commissioners agreed to comply with CBP’s “Biometric Air Exit Business Requirements,” which require the Port to install only CBP-approved signage, even if the signage is misleading or incorrect.²⁶ The Port would have more power to mitigate harm and provide the public with clear signage by rejecting participation in CBP’s facial recognition program.

Our state has sent a clear message against Washington’s collaboration with CBP. Over the past two years, Washington’s state legislature has passed the Keep Washington Working Act and the Courts Open to All Act, which together prohibit state agencies, local law enforcement, and court stakeholders from collaborating with CBP.²⁷ The Port of Seattle Commission would be better aligned with statewide work in Washington by rejecting collaboration with CBP in its procurement and implementation of face surveillance systems.

We urge the Port of Seattle Commission to reverse its decision to participate in CBP’s biometric air exit program. Additionally, we urge the Commission to vote no and reject participation in CBP’s biometric air and cruise entry program.

2. We urge the Port of Seattle Commission to prohibit use of facial recognition technology by private entities.

The Port of Seattle should prohibit business tenants such as airlines from integrating with CBP’s Traveler Verification Service (TVS)—the agency’s “Identity as a Service” biometrics system.²⁸ The Port should not enable private industry to aid the Department of Homeland Security (DHS) and CBP (DHS’s largest law enforcement agency) by allowing it to implement biometrics using CBP’s TVS. When Port tenants integrate with CBP’s TVS architecture, it is impossible to separate “private” or non-federal surveillance from federal government surveillance of travelers. Travelers may think that they are having their photo taken at a self-service kiosk solely for use by the airport or airline. But in reality, that photo will also be shared with DHS and CBP.

The Port, airlines, and contractors should not obscure the role of DHS and CBP by collecting facial images on their behalf. The Privacy Act,²⁹ as discussed further below, *requires* that if an individual’s personal information is to be used by a federal agency, it must be collected by that

²⁵ March 10, 2020 – Port of Seattle Commission Regular Meeting, *supra* note 19.

²⁶ *Biometric Air Exit Business Requirements Version 2.0*, U.S. CUSTOMS AND BORDER PROTECTION, at 9, Item 8 (Jan. 2020), https://www.cbp.gov/sites/default/files/assets/documents/2020-Jul/Exit%20BRD2__Redacted_0.pdf.

²⁷ See Keep Washington Working, E.2.S.S.B 5497, 66th Leg., Reg. Sess. (Wash., 2019). *Available at* [http://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5497-S2.SL.pdf?q=20200401125832](http://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5497-S2.SL.pdf?q=20200401125832;);

See Courts Open to All, S.H.B. 2567, 66th Leg., Reg. Sess. (Wash., 2020). *Available at* <http://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/House/2567-S.SL.pdf?q=20200401094053>.

²⁸ *Biometric Air Exit Business Requirements Version 2.0*, *supra* note 26.

²⁹ 5 U.S.C. § 552a (2010). *Available at* <https://www.govinfo.gov/content/pkg/USCODE-2018-title5/pdf/USCODE-2018-title5-partI-chap5-subchapII-sec552a.pdf>.

agency directly from that individual. The best way to provide travelers with clear notice that facial images are being passed on to DHS is to require that any such images be collected by identifiable, uniformed DHS staff, using DHS equipment, at DHS's expense.

The Port has significant control over whether and how private companies can implement biometrics at Port facilities, and it should exercise this control to prohibit private entity collaboration with DHS and CBP.

Additionally, the Port should prohibit private entities from using private-sector proprietary facial recognition systems at Port facilities. We are alarmed that the recommendations from Port staff highlight potential use of facial recognition for purposes including, but not limited to, targeted advertising using dynamic signage, payment at retail stores or restaurants, access to rental cars or airline passenger lounges, ticketing and bag check, and boarding of departing flights and cruise ships.³⁰ The Port should reject the infrastructural expansion of face surveillance—not invite it in.

We emphasize that use of face surveillance systems will inevitably have disparate impacts on marginalized groups, whether or not the technology operates accurately. However, it is important to recognize that inaccurate and biased facial recognition systems have in many cases, life-or-death consequences. Use of face surveillance has implicated people in crimes they have not committed, as in the case of Robert Julian-Borchak Williams, a Black man who was wrongly arrested and jailed due to a false facial recognition match.³¹ Indeed, multiple expert studies have found facial recognition technology to be less accurate at identifying women, youth, trans and gender non-conforming people, and people of color, increasing the risk of false matches. A December 2019 study from the National Institute of Standards and Technology on Face Recognition Software found that false positives are up to 100 times more likely for Asian and African faces when compared to white faces.³² We underscore that facial recognition causes disparate impacts when it is inaccurate, and it will also lead to harm even if perfectly accurate, as the technology will continue to be deployed disproportionately to surveil marginalized communities.

Finally, it is important that the Port prohibit its tenants from using proprietary facial recognition systems because private surveillance often fuels government surveillance. With companies frequently building and equipping government agencies with face surveillance tools, as well as with the information gathered from such tools, it has become increasingly difficult to distinguish between private and government surveillance. For example, companies such as Clearview AI have provided facial recognition services to thousands of companies as well as to government agencies like ICE.³³ Allowing private entities to use proprietary facial recognition systems at Port facilities will bolster both private and government use of invasive face surveillance technology.

³⁰ *Port of Seattle Public-Facing Biometrics Policy: Biometrics For Traveler Functions by Private Sector Entities Using Proprietary Systems Recommendations*, PORT OF SEATTLE, at 6 (July 24, 2020), https://www.portseattle.org/sites/default/files/2020-08/Public_Facing_Biometrics_for_Traveler_Functions_Using_Private_Proprietary_Systems_DRAFT_200724.pdf.

³¹ Kashmir Hill, *Wrongfully Accused by an Algorithm*, N.Y. TIMES (Aug. 3, 2020), <https://www.nytimes.com/2020/06/24/technology/facial-recognition-arrest.html>.

³² Patrick Grother et al., *Face Recognition Vendor Test (FRVT) Part 3: Demographic Effects*, U.S. DEPT. OF COM., NAT'L INST. OF STANDARDS & TECH. (Dec. 2019), <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf>.

³³ Kim Lyons, *ICE just signed a contract with facial recognition company Clearview AI*, THE VERGE (Aug. 14, 2020) <https://www.theverge.com/2020/8/14/21368930/clearview-ai-ice-contract-privacy-immigration>.

Many people are recognizing that private uses of face surveillance are as concerning as government uses. Recently, Portland became the first jurisdiction to ban private entity use of facial recognition technologies in places of public accommodation—which includes airports.³⁴ The Port of Seattle should follow suit and ban private entity use of facial recognition technologies at Seattle-Tacoma International Airport.

3. We urge the Port of Seattle to reevaluate its interpretation of and compliance with its principles.

The undersigned members of the Biometrics External Advisory Group have repeatedly raised serious concerns with the Port’s interpretation of the seven principles it has adopted to guide its decision-making on biometrics.

I. Justified

The Port states that facial recognition use is “justified” if the technology is used only for a clear intended purpose, it furthers a specific operational need or benefit, and it is not used for “mass surveillance.”³⁵

First, use of a surveillance tool is not justified just because it is used for a clear and intended purpose. Even if the intended purpose is ostensibly innocuous, use of powerful surveillance technologies can pose risks to people’s civil rights and civil liberties. For example, recently in San Diego, police looked for Black Lives Matter protesters by searching records of smart streetlights. These streetlights were originally pitched as a way to gather pedestrian and vehicle data for the purpose of city planning. However, these streetlights have increasingly served the purpose of law enforcement, as evidenced by San Diego Police Department using this footage to surveil and prosecute protesters.³⁶

Second, the Port’s definition of “justified” conflates operational benefit and operational need. For some use cases, such as biometric air and cruise entry, the recommendations state that “justified” means meeting an operational need,³⁷ and in other use cases such as for private proprietary systems, the recommendations state that “justified” means creating an operational benefit.³⁸ However, all use cases, including the use of facial recognition for air exit, air and cruise entry, and targeted advertising are apparently benefit-based rather than operationally necessary. “Operational need” implies that facial recognition is essential to operations. This is not the case for any of the use cases proposed.

Third, the Port states that use of facial recognition is justified if it is not used for “mass surveillance.” However, the Port has too narrowly defined “mass surveillance” as “scanning

³⁴ See San Francisco, California Administrative Code - Acquisition of Surveillance Technology, *supra* note 15.

³⁵ *Motion 2019-13: A Motion of the Port of Seattle Commission*, *supra* note 3, at 1-2.

³⁶ Jesse Marx, *Police Used Smart Streetlight Footage to Investigate Protesters.*, *Voice of San Diego* (June 29, 2020), <https://www.voiceofsandiego.org/topics/government/police-used-smart-streetlight-footage-to-investigate-protesters/>

³⁷ *Biometrics Policy Recommendations Cover Memo*, *supra* note 2, at 57.

³⁸ *Id.* at 15.

large groups of people without lawful purpose, rather than use on one person at a time with their active participation.”³⁹ Logging of individuals’ movements and when, where, how and with whom they travel, whether by air or sea or otherwise, is *per se* surveillance. “Surveillance,” or “the act of observing persons or groups,”⁴⁰ does not depend on whether or not it is done overtly or covertly—both can constitute an invasion of privacy. The Port’s proposed use of facial recognition for biometric entry/exit and its proposal to allow private entities to use both government and proprietary facial recognition systems would be considered “mass” or “bulk” surveillance as defined by academics,⁴¹ technical experts,⁴² and governmental entities.⁴³ Mass surveillance can in some cases be lawful and overt, but still pose threats to people’s privacy and civil liberties.

II. Voluntary

The Port states that facial recognition use is “voluntary” if an “opt-in or “opt-out” procedure is provided and unintended image capture is prevented.⁴⁴

However, as previously noted, the Port’s participation in CBP’s biometric air exit program expressly prohibits the Port from having control over signage to notify people of their right to not have their face surveilled. Even though U.S. citizens technically have the right to opt out of CBP’s face surveillance programs, CBP has frequently failed to provide accurate information to travelers regarding their opt-out rights.

A recent report by the Government Accountability Office (GAO) found that CBP’s privacy notices—which are intended to provide travelers with information on procedures to opt out—“were not always current or complete, provided limited information on how to request to opt

³⁹ *Id.* at 31.

⁴⁰ *Surveillance: Definition from Nolo’s Plain-English Law Dictionary*, LEGAL INFO. INST., <https://www.law.cornell.edu/wex/surveillance> (last visited Sept. 24, 2020).

⁴¹ Seda Gürses, Arun Kundnani, and Joris Van Hoboken, *Crypto and Empire: The Contradictions of Counter-surveillance Advocacy*, 38 MEDIA, CULTURE & SOC’Y 576 (2016). Available at <https://journals.sagepub.com/doi/abs/10.1177/0163443716643006>.

⁴² “Based in part on briefings from the IC [Intelligence Community], the committee adopted a definition better suited to understanding the trade-off between civil liberties and effective intelligence: If a significant portion of the data collected is not associated with current targets, it is bulk collection; otherwise, it is targeted.” From National Research Council, *Bulk Collection of Signals Intelligence: Technical Options 2* (2015). Available at <https://www.microsoft.com/en-us/research/uploads/prod/2019/09/Bulk-Collection-of-Signals-Intelligence.pdf>.

⁴³ “On 9 March 2004, the European Parliament (2004) declared that any form of mass surveillance was unjustified and that only targeted measures were justifiable. Targeted surveillance refers to the surveillance of a specific individual (or individuals) on a case-by-case basis, based on reasonable suspicion (or probable cause). This type of surveillance was only authorized if it included appropriate safeguards such as the requirement of search warrants or court orders. Any measure that did not meet these requirements of surveillance is - and in the case of the European Parliament was - considered unjustified.” ... “Shortly after the Madrid bombings (which occurred on 11 March 2004), however, this view changed. The European Council (2004)’s statement, in the Declaration on Combating Terrorism (adopted on the 25th of March 2004), on the urgency and necessity to adopt measures of mass surveillance clearly attests to this. In particular, the Declaration on Combating Terrorism called for the creation of “passenger name record” (PNR) checks on all flights in and out of the European Union (whereby the personal information of passengers is recorded, stored and transferred to authorities in the United States upon request), IDs, visas, and passports with biometric identifiers (e.g. digital fingerprints and retinal scans), and the wide retention of communications data. The mass surveillance of movement (PNR and biometric IDs) and of communications (data retention) were now all said to be justified.” From Marie Helen Maras, *The social consequences of a mass surveillance measure: What happens when we become the ‘others’?*, 40 INT’L JOURNAL OF LAW, CRIME, AND JUSTICE 65 (2012). Available at <https://www.sciencedirect.com/science/article/abs/pii/S175606161100070X>.

⁴⁴ *Motion 2019-13: A Motion of the Port of Seattle Commission*, *supra* note 3, at 2.

out of facial recognition, and were not always available.”⁴⁵ The GAO also found that some of CBP’s privacy notices were outdated and contained wrong or inconsistent information.⁴⁶ Moreover, there have been documented cases where individuals have been denied their right to opt-out. For example, in December 2019, a CBP officer incorrectly told an ACLU attorney crossing from Mexico into the U.S. that he did not have the right to opt out of biometric air entry.⁴⁷

Furthermore, some academics argue that valid consent is not even possible in the context of face surveillance. Researchers Selinger and Hartzog have stated that “[o]ne reason consent to facial recognition is highly suspect is that people do not and largely cannot possess an appropriate level of knowledge about the substantial threats that facial recognition technology poses to their own autonomy... Even if some people withhold consent for face surveillance, others will inevitably give it. Rules that facilitate this kind of permission will normalize behavior, entrench organizational practices, and fuel investment in technologies that will result in a net increase of surveillance. Expanding a surveillance infrastructure will increase the number of searches that occur which in itself, will have a chilling effect over time as law enforcement and industry slowly but surely erode our collective and individual obscurity.”⁴⁸

III. Private

The Port states that facial recognition is “private” if data collected by facial recognition technology are stored only if needed, for no longer than required by law, and protected from unauthorized access.⁴⁹

However, abiding by minimum data protection standards does not mean that the Port’s use of facial recognition technology provides people with adequate privacy. In Biometrics External Advisory Group meetings, the Port has admitted that it has no control over what CBP does with the data it collects and with whom it shares the data.

CBP claims that airlines will be restricted in their retention and use of facial images by contracts with CBP. But none of those contracts have been disclosed, even when requested pursuant to the Freedom Of Information Act.⁵⁰ According to the aforementioned GOA report, “as of May 2020, CBP had audited only one of its more than 20 commercial airline partners and did not have a plan to ensure that all partners are audited for compliance with the program’s privacy requirements.”⁵¹ It does not appear that the Port has audited, or would have any way to audit, compliance with contracts between airlines and CBP. Additionally, such contracts would be enforceable only by CBP itself, not by the Port or third parties.

⁴⁵ *Facial Recognition: CBP and TSA are Taking Steps to Implement Programs, but CBP Should Address Privacy and System Performance Issues*, U.S. GOV’T ACCOUNTABILITY OFFICE, at 39 (Sept. 2020), <https://www.gao.gov/assets/710/709107.pdf>.

⁴⁶ *Id.* at 39- 40

⁴⁷ Shaw Drake, *A Border Officer Told Me I Couldn’t Opt Out of the Face Recognition Scan. They Were Wrong*, ACLU (Dec. 5, 2019), <https://www.aclu.org/news/immigrants-rights/a-border-officer-told-me-i-couldnt-opt-out-of-the-face-recognition-scan-they-were-wrong/>

⁴⁸ Evan Selinger and Woodrow Hartzog, *The Inconsentability of Facial Surveillance*, 66 LOYOLA LAW REVIEW 101 (2020), Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3557508.

⁴⁹ *Motion 2019-13: A Motion of the Port of Seattle Commission*, *supra* note 3, at 2.

⁵⁰ See Edward Hasbrouck, Unanswered FOIA request to CBP, PAPERS PLEASE (July 16, 2018), <https://papersplease.org/wp/wp-content/uploads/2018/07/biometric-partnership-FOIA.pdf>.

⁵¹ *Facial recognition: CBP and TSA are Taking Steps to Implement Programs, but CBP Should Address Privacy and System Performance Issues*, *supra* note 46.

Given all of the above, it cannot be said that the recommendations for the proposed uses of facial recognition will protect people's privacy.

IV. Equitable

The Port states that facial recognition use is "equitable" if it is "reasonably accurate at identifying people of all backgrounds," and if systems are in place to treat mismatching issues.⁵²

First, we reiterate that equity cannot be simplified as accuracy. Face surveillance systems fuel systemic racism and discriminatory policing, whether or not these systems operate accurately.

Second, under the Port's definition of "equitable," it is unclear at what level of accuracy it will be acceptable to use facial recognition. Relative differences in accuracy rates between different groups may lead to discrimination, even if the system is "highly accurate," on average.

V. Transparent

The Port states that facial recognition use is "transparent" if use of biometric technology for passenger processing at Port facilities is communicated to visitors and travelers and if individuals are notified about any collection of their biometric data and how that data may be used. The Port also states that reports on the performance and effectiveness of the technology should be made public.⁵³

However, facial recognition use cannot be truly transparent unless the Port knows and can share with the public with which entities people's data are being shared and for what purposes people's data are being used. Unfortunately, because the Port cannot know what CBP does with people's data and with which third parties the data are shared, the Port cannot guarantee transparency.

VI. Lawful

The Port states that facial recognition is lawful if use complies with all laws including privacy laws and laws prohibiting discrimination or illegal search against individuals or groups.⁵⁴

The Port or the Port's airline tenants collaborating with CBP would likely violate the Privacy Act, a federal law mandating that data be collected directly from individuals by a federal agency if the data are used as part of the basis of making decisions about access to federal rights and privileges (such as federally-licensed air travel).⁵⁵

The Privacy Act also prohibits collection of information concerning the exercise of rights protected by the First Amendment without *explicit* statutory authorization. The First Amendment protects "the right of the people peaceably to assemble"⁵⁶ and records of when,

⁵² *Motion 2019-13: A Motion of the Port of Seattle Commission*, *supra* note 3, at 2.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ 5 U.S.C. § 552a (2010), *supra* note 29.

⁵⁶ U.S. Const. amend. I. Available at <https://constitution.congress.gov/constitution/amendment-1/>.

where, and with whom we travel are records of how we exercise rights protected by the First Amendment. Neither CBP nor TSA has explicit statutory authority to collect facial images of U.S. citizens or domestic travelers, and thus, collection of this information is prohibited by the Privacy Act.

By collecting facial images and sending them to CBP, the Port or airlines operating at the Port would potentially be complicit in CBP's violation of federal law. The Port should not facilitate CBP's unlawful outsourcing of personal data collection.

VII. Ethical

The Port states that facial recognition use is "ethical" if actions respect key moral principles that include honesty, fairness, equality, dignity, diversity, and individual rights.

Respectfully, there are serious ethical questions regarding collaboration with CBP, an agency with a long history of abuse,⁵⁷ to build a powerful surveillance system. Face surveillance systems violate everyone's privacy, and especially violate the dignity and rights of communities that continue to be targeted by law enforcement. Expanding face surveillance systems will exacerbate systemic racism. In order to abide by this principle, the Port should refuse to collaborate with CBP and reject facilitating the growth of both private and government face surveillance infrastructure.

We urge the Port of Seattle Commission to reject collaboration with CBP, prohibit all use of facial recognition technology at Seattle-Tacoma International Airport, and reevaluate its interpretation of and compliance with the aforementioned principles guiding decision-making on if and how biometrics should be used at the Port.

Signed,

ACLU of Washington
Advocacy for Principled Action in Government
Asia Pacific Cultural Center
Asian Counseling and Referral Service (ACRS)
Casa Latina
Church Council of Greater Seattle
Coalition of Seattle Indian-Americans
Council on American Islamic Relations Washington (CAIR-WA)
Densho
Eastside for All
El Centro de la Raza
Electronic Privacy Information Center (EPIC)
Entre Hermanos
Faith Action Network (FAN)
Fight for the Future

⁵⁷ *US: Stop Using Untrained, Abusive Agencies at Protests*, HUMAN RIGHTS WATCH (June 5, 2020), <https://www.hrw.org/news/2020/06/05/us-stop-using-untrained-abusive-agencies-protests>.

Freedom to Read Foundation
Indivisible Eastside
Indivisible Plus Washington
Indivisible Whidbey
InterIm Community Development Association (InterIm CDA)
Japanese American Citizens League (JACL) – Seattle Chapter
John T. Williams Organizing Committee
La Resistencia
Latino Community Fund of Washington
Legacy of Equality Leadership & Organizing (LELO)
MAPS-AMEN (American Muslim Empowerment Network)
MediaJustice
Mijente
Northwest Immigrant Rights Project
OneAmerica
Planned Parenthood Votes Northwest and Hawai'i
Puget Sound Sage
Real Change
The Identity Project
Transit Riders Union
Urban League of Metropolitan Seattle
Washington Association of Criminal Defense Lawyers (WACDL)
Washington Defender Association (WDA)

Port of Seattle
Commission Special Committee on Biometrics
2711 Alaskan Way
Seattle, WA 98121

Dear Commissioners Calkins and Cho,

On behalf of Alaska Airlines, I want to thank the Port of Seattle for its work to thoughtfully address the subject of biometrics and its potential uses at Port facilities, including at Sea-Tac International Airport (SEA).

Alaska Airlines is committed to ensuring the safety, security, privacy and respect for all guests who travel with us, and we applaud the Port's work to establish a set of guiding principles to ensure that any implementation of new biometric technology is done in a way that is voluntary, lawful, ethical and transparent, and ensures privacy, equity, and respect for all guests. These values are important to Alaska Airlines, and we have appreciated the opportunity to participate in the Port's Biometrics External Advisory Group and help inform elements of the policy recommendations that are before you for consideration.

As you know well, the onset of COVID-19 has had a dramatic impact on the commercial airline industry. In response to this crisis, Alaska has established a strategy to ensure the health and safety of our guests, employees and partners that relies on a layered approach to safety, involving more than 100 different measures across our operation. We see similar promise in certain biometric technologies, including facial recognition, that can not only decrease touchpoints and contact between guests and employees, but also increase efficiencies in our operation.

As the airline serving the most passengers at SEA, we believe that technology and innovation can and should drive significant improvements to the guest experience and our operation, while protecting the privacy, choice, and dignity of our guests. We support the principles and the process the Port has put in place for determining the right next steps for implementation of biometrics at SEA. As the Commission considers next steps, we encourage you to ensure that any policies governing the use of public-facing biometrics allow for the efficient application and administration of biometrics programs at SEA, with flexibility and room to evolve as needs and technologies change.

Alaska appreciates the opportunity to participate and inform the Port's work on this important issue, and we look forward to continuing to collaborate with the Port to ensure that the infrastructure at SEA can support the needs of our operation and ensure the protection of privacy, choice and dignity for our guests.

Sincerely,



Vikram Baskaran
Vice President, Information Technology Services



COMMISSION
AGENDA MEMORANDUM

Item No. 10b

ACTION ITEM

Date of Meeting July 13, 2021

DATE: June 25, 2021

TO: Stephen P. Metruck, Executive Director

FROM: Jeffrey Brown, Aviation Chief Operating Officer
Tommy Gregory, Sr. Art Program Manager

SUBJECT: International Arrivals Facility Indigenous art procurement (CIP C102066)

Amount of this request: \$475,000

Total estimated project cost: \$475,000

ACTION REQUESTED

Request authorization for the Executive Director to acquire Indigenous Art of the Pacific Northwest region for display in the International Arrivals Facility (IAF) at the Seattle-Tacoma International Airport. This request is in the amount of \$475,000.

SUMMARY

The Port of Seattle's Public Art Program is proposing to conduct an invitational call aimed to acquire Native artwork to be put on exhibit within the Airport's International Arrivals Facility (IAF). The artwork will focus on Pacific Northwest American Indians/Alaska Natives, exploring contemporary ideas within the realm of history, craft, landscape, and the future of Tribes. The work must consider the aesthetic of the facility and proposed artworks must be thoughtful regarding long term maintenance and conversation.

Other Key Points

- This action is in alignment with the Art Program goals and recommended for approval by the Art Committee
- There is enough in the existing budget from the art pool for the costs to cover this endeavor
- The intent is to procure the new artwork before the grand opening of the IAF
- Is in support of local and regional artists
- Airport customers will benefit in experiencing contemporary art from PNW Native artists

Attachments

- PowerPoint Presentation



Indigenous Art in the International Arrivals Facility

July 13, 2021

Art Program Vision

"To return the Port of Seattle to its position as a national leader among its peers, as an internationally acclaimed regional arts center. To promote art and culture through curatorial excellence, modern and contemporary art holdings, and innovative programming."

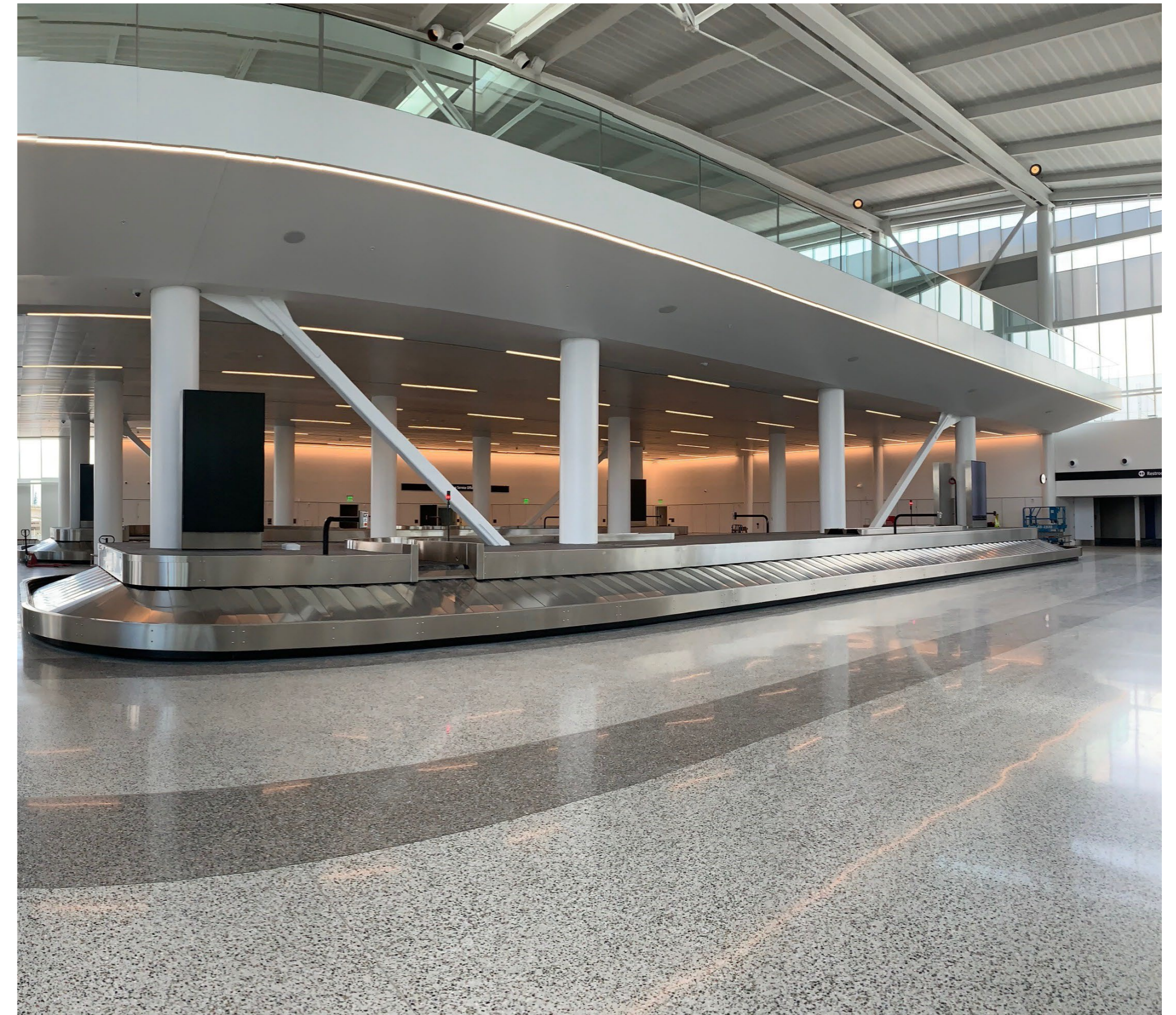
Request

Approval for the Port of Seattle to acquire Indigenous Art of the Pacific Northwest region for display in the International Arrivals Facility at the Seattle-Tacoma International Airport. The total amount of this request is \$475,000.

Purpose

- Create a visual representation of a Land Acknowledgement to welcome international travelers to the region
- Support local and regional artists potentially impacted by the pandemic
- Meet the 2019 strategic plan goal to build a Portable Permanent Collection

Potential Locations



Acknowledgement

The concept of incorporating Indigenous art and culture into SEA originated with the Fall 2020 class of high school interns, presenting *South Satellite Concepts*.

Katelyn Forde

Priscilla Jansen

Simon Kamau

Olivia Korndorfer

Jordan Mathias

Leila Sam

Kalani Thompson

Thank You!



SEA

Seattle-Tacoma
International
Airport

Operated by the
Port of Seattle

FlySEA.org



[RETURN TO AGENDA](#)

ORDER 2021-07:
AN ORDER OF THE PORT OF SEATTLE COMMISSION

To support the Executive Director's negotiation and execution of a lease agreement for the property known as Tsubota with the City of Seattle.

PROPOSED
JULY 13, 2021

INTRODUCTION

Since November 2017 the City of Seattle has leased a portion of the Port's Tsubota site at 1601 15th Avenue West for the purposes of housing approximately 60 people in 43 units annually in a tiny house village on slightly more than 17,994 sf of land. The City and Port are considering a new lease to increase the size of the leased lot for the purposes of adding up to 29 new units and a comfort station on a total of approximately 35,000 sf of land. The parties are also considering a three-year term with a subsequent one-year option. The negotiation and execution of this lease is within the authority of the Executive Director under the Port's Delegation of Authority.

TEXT OF THE ORDER

The Port Commission hereby supports the Executive Director's negotiation and execution of a lease with the City of Seattle, for the property known as the Tsubota site at 1601 15th Avenue West, on terms the Executive Director deems appropriate.

STATEMENT IN SUPPORT OF THE ORDER

As an economic development agency, the Port of Seattle is responsible for spurring our regional economy, sustaining and creating family-wage jobs by supporting small businesses, workforce development, tourism, and leveraging real estate development to create jobs. As part of this responsibility, the Port recognizes two distinct issues with which our entire community has concern: 1) Emergency needs of the current homeless population; and 2) Affordable housing in our communities. The Port is interested in playing a helpful role in addressing homelessness in our community by leasing property for which the Port has no near-term plans.

The Commission received a briefing from representatives from the City of Seattle (the City) and King County (the County) on August 8, 2017, during which they highlighted that their most pressing need to address homelessness is property for sanctioned homeless encampments.

In collaboration the Low Income Housing Institute (LIHI), the City has had great success with the tiny house village model, which typically obtains a 37 percent exit rate to permanent overall

45 housing (compared to an average 4 percent successful exit rate of traditional shelters.) In 2019
46 the successful exit rate for the Tsubota Village was 46 percent.

47
48 The following data points illustrate the City’s results regarding tiny house villages and at the
49 Tsubota Village:

- 50
- 51 • Number of villages in Seattle: 8
 - 52 • Number of total tiny houses in Seattle: approximately 300
 - 53 • Successful exit rate of tiny house occupants in Seattle: 37 percent
 - 54 • Number of tiny houses at Tsubota Village: 43
 - 55 • Successful exit rate of Tsubota Village occupants: 46 percent
- 56

57 LIHI representatives who manage the numerous villages explain that the maximum optimal size
58 of a village is 70 to 80 units. This range matches well with hygiene equipment and on-site case
59 managers’ caseloads. The City of Seattle is considering expanding the Tsubota lot to include up
60 to 29 additional units, which will bring the full count to between approximately 70 to 74 units.

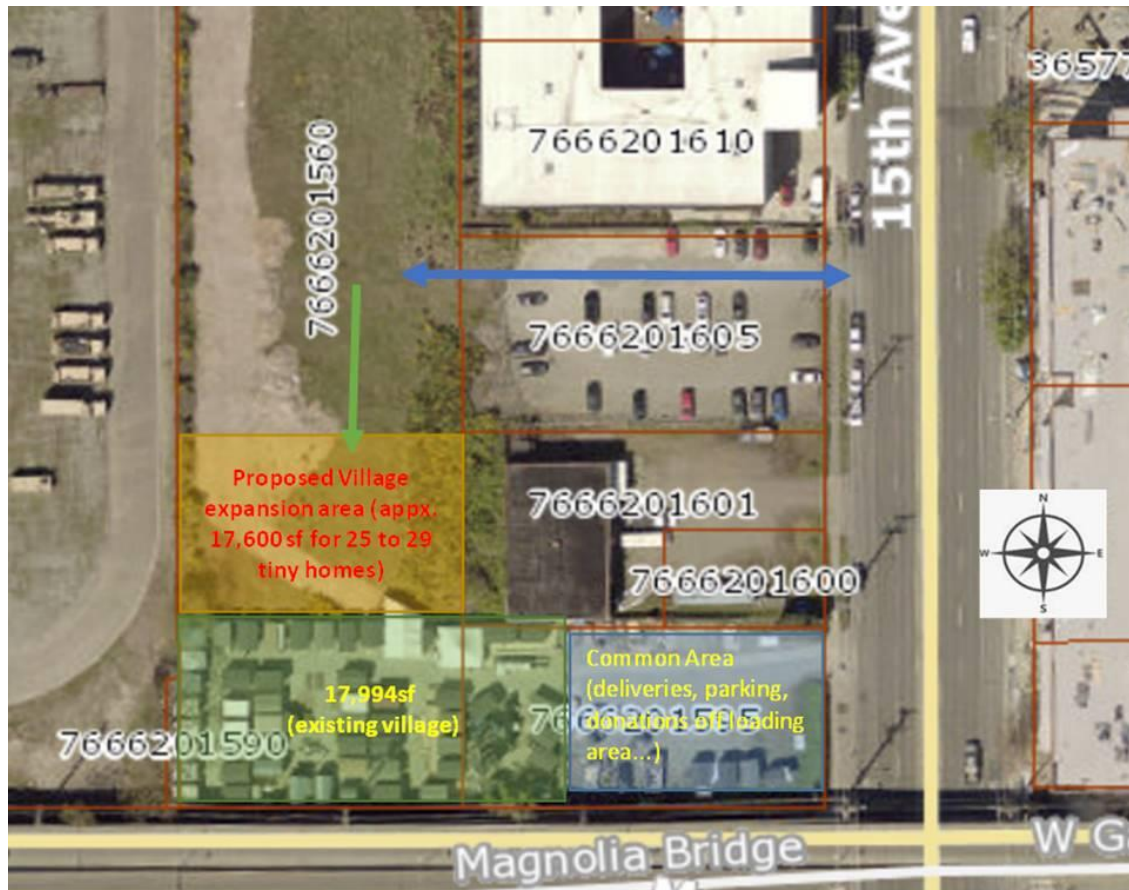
61
62 **ADDITIONAL INFORMATION ATTACHED**

- 63 • Site Plan of Tsubota Village

EXHIBIT B

– PREMISES –

Approximately 35,594 (?) sf of Lease Area on Port's Tsubota Site on 15th Ave West



RETURN TO AGENDA



**COMMISSION
AGENDA MEMORANDUM**

Item No. 11b

BRIEFING ITEM

Date of Meeting July 13, 2021

DATE: July 1, 2021
TO: Stephen P. Metruck, Executive Director
FROM: David McFadden, Managing Director, Economic Development Division
SUBJECT: **Maritime Blue Annual Report**

EXECUTIVE SUMMARY

Two years ago, the Port of Seattle executed a memorandum of understanding (MOU) with Washington Maritime Blue (MB), the new nonprofit organization charged with implementing Washington State’s Strategy for the Blue Economy. The Memorandum of Understanding laid out general areas of cooperation and subsequent service contracts have formalized the Port’s partnership with MB on maritime innovation and workforce initiatives.

The MOU and Port service agreements with MB has yielded an effective partnership that is advancing development of Washington’s Blue Economy. Over the past year we have jointly launched another successful maritime innovation accelerator, expanded the Youth Maritime Collaborative workforce development initiative, and initiated other efforts to advance sustainability within the maritime industry.

The partnership to build a Blue Economy is working. Over the next year our priorities include:

- Advancing a third round of the maritime innovation accelerator program
- Expanding Youth Maritime Collaborative internship opportunities
- Starting Quiet Sound initiative to reduce the impacts to Southern Resident Killer Whales from large commercial vessels
- Collaborate on greenhouse gas reduction initiatives that positively impact Port operations
- Diversify funding sources and developing MB Board capacity and expertise

This work will be supported in part by a two-year \$300,000 contract Port Commissioners authorized last year. Separately, we will also be requesting authorization for continued funding of the Youth Maritime Collaborative as that contract (also currently held by Maritime Blue) ends this fall.

MARITIME BLUE PROGRESS AND RESULTS

In 2019, the Port of Seattle helped Washington State develop a compelling long-term strategy for a Blue Economy. It outlined goals to modernize the maritime industry by accelerating its path towards sustainability. By advancing innovation, growing maritime gateways, reducing

Meeting Date: July 13, 2021

greenhouse gas emissions, and investing in workforce development, Washington’s maritime industries and communities could prosper.

Maritime Blue, a new cluster-based organization was born to implement the Blue Economy Strategy. The organization reflects a partnership between private industry, government, education, and community-based organizations. Maritime Blue has grown significantly over the last two years. It now has 80+ members from national research labs to startups to global technology providers, and community-based workforce partners.

The Port of Seattle has played a pivotal role in the growth and development of Maritime Blue. The Port and Maritime Blue signed a Memorandum of Understanding in July 2019 that formalized our support for the organization and its work to advance the Blue Economy. Subsequent service agreements with Maritime Blue have supported the Maritime Blue Innovation Accelerator and the Maritime Youth Collaborative workforce development initiative (with a contract pending to support the new Quiet Sound initiative designed to protect Southern Resident Killer Whales).

Maritime Blue Innovation Accelerator

MB just finished running its second maritime innovation accelerator. The program was completely virtual, but the cohort nonetheless thrived and connected with one another effectively. Over 100 startups applied to the program and 11 companies were ultimately chosen for four-month immersive training program. Seven of these startups were from Washington state. Three companies featured women founders and two ventures were led by people of color.

Initial results from the accelerator are promising:

- Silverback Marine landed large contract with Port of Lopez w/ 1st wave company, Pure Watercraft;
- Allosense secured non-dilutive funding from DoD;
- MM-Seas launched their platform during the program; and
- Puget Buoy won Alaska Airlines Innovation Challenge.

Maritime Blue’s cadre of mentors expanded for the second accelerator and helped guide participating companies. The second accelerator featured weekly CEO roundtables with industry experts and hundreds of hours of individual meetings with each company.

With the success of the first two maritime accelerator cohorts, Maritime Blue plans to run a third accelerator early next year. This accelerator will complement the Port of Tacoma’s incubator and Bellingham’s WA Clean Tech/Blue Tech program. Over time Maritime Blue hopes the accelerator program will serve as a hub for broader innovation programs like Tacoma and Bellingham’s efforts.

Meeting Date: July 13, 2021

Youth Maritime Collaborative

Efforts to orient young women, low-income youth, and youth of color have progressed because of Maritime Blue’s work on the Youth Maritime Collaborative, YMC.

Over the past year, MB implemented its Youth Maritime Accelerator Project (YMAP). Eleven interns from diverse backgrounds participated in eight-week paid internships and received a stipend at the end of their experiences. Youth were able to work with six maritime employers and participate in several experiential learning events as part of the YMAP.

MB supported 12 interns from Seattle Public School’s Launch 206 project. Participating youth completed a four-week internship, received high school credit, and a \$1000 stipend.

As the YMC’s initiatives like the YMAP gain momentum there are expanding opportunities for youth to experience on-the-water programming and maritime/ocean learning activities. Funding partners like the City of Seattle and the Workforce Development Council of Seattle and King County have joined the Port to support broader maritime workforce programming for young women and people of color. More recently, Maritime Blue received a \$350,000 grant from the Builders Initiative, to further advance its career connected learning initiatives.

Joint Industry Projects/Quiet Sound

MB supports several Joint Innovation Projects (JIP) in partnership with government agencies and private maritime companies. As an example, MB is working closely with Washington State, Vigor industries and other partners on electric ferry development. More recently MB launched a joint industry project to develop a whale report alert system. This “Quiet Sound” initiative is just getting off the ground and will tackle noise and vessel disturbance issues that impact the survival of the Southern Resident Killer Whale population.

Public Forums

In addition to advancing maritime innovation, workforce development and key partnerships, MB typically organizes events, workshops, and public forums on key topics impacting Washington’s maritime industry. The pandemic has put a damper on many of these vents but as Washington reopens there are good opportunities to gather again and host critical discussions using MB member expertise and outside thought leaders. Some potential topics could include:

- Equity in a 21st Century Maritime Workforce
- Offshore Wind Development Opportunities
- Smart Ports: Shipping Terminal Digitization

Organization Growth and Development

Maritime Blue has made tremendous strides over the last two years since our Memorandum of Understanding was executed to help jumpstart this new cluster association. The organization

Meeting Date: July 13, 2021

has secured significant new grants and private funding to supports its key projects and overall mission. Maritime Blue’s annual budget is \$1.94 million of which \$250,000 comes from the Port of Seattle.

With more stable funding, the organization has filled several new staff positions and formalized Joshua Berger’s position as MB’s President and CEO. New staff include:

- Jennifer States, VP of Projects and Strategy
- Josh Carter, Program Director, Blue Ventures/Innovation Accelerator
- Veasna Hoy, Program Director, Youth Maritime Collaborative
- Karina Marija-Harris, Community and Events Coordinator

This continued partnership between the Port and Washington Maritime Blue helps galvanize the Port’s commitment to the values of the State’s Strategy for the Blue Economy; A growing maritime and ocean economy, healthy ocean and marine ecosystems, and equitable and resilient communities. The original MOU, coupled with committed funding allows Maritime Blue to utilize its growing network of private industry, public sector, research & academic institutions, and community & workforce organizations deliver our strategic goals to create herein Washington a:

- Thriving Low-Carbon Maritime Industry through Deep Decarbonization
- Global Innovation Hub through Joint Innovation and Entrepreneurship
- Green Gateway through Working Waterfronts that create safe jobs support climate & environmental action.
- Diverse and Equitable 21st Century Maritime Workforce
- World Class Cluster through a Strategic Alliance for Maritime Innovation and Sustainability

ATTACHMENTS TO THIS REQUEST

- (1) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

August 4, 2020 – The Commission authorized two-year contract with Maritime Blue to support innovation accelerator and other key Blue initiatives

July 14, 2020 – The Commission was briefed on Maritime Blue’s inaugural innovation accelerator and other Blue initiatives

July 23, 2019 – The Commission authorized one-year contract with Maritime Blue to implement priorities established in Memorandum of Understanding

July 9, 2019 – The Commission authorized executive of Memorandum of Understanding with Washington Maritime Blue to clarify partnership opportunities and responsibilities

Meeting Date: July 13, 2021

May 14, 2019 – The Commission authorized design funding for the Maritime Innovation Center (Historic Ship Supply Building)

January 8, 2019 – Commission received a briefing regarding Maritime Blue Plan and the Maritime Innovation Center.

Item No.	11b_supp
Date of Meeting	July 13, 2021

Maritime Blue Annual Report

Advancing Washington State's Maritime Industry



Building a Blue Economy: A Progress Report

Port of Seattle has strong partnership with Washington Maritime Blue:

- Maritime innovation accelerator
- Maritime Youth Collaborative
- Joint Industry Projects
- Organizational Development and Leadership





A Strategic Alliance for Maritime Innovation and a Sustainable Blue Economy

- *Washington Maritime Blue is a non-profit, strategic alliance formed to accelerate innovation and sustainability in support of an inclusive blue economy. With a mission to implement Washington State's Strategy for the Blue Economy delivered by Governor Jay Inslee's Maritime Innovation Advisory Council, we are a partnership between industry, public sector, research & training institutions, and community organizations. Maritime Blue works to create a world-class, thriving, equitable and sustainable maritime and ocean industry through knowledge sharing, joint innovation, entrepreneurship, commercialization, business and workforce development*



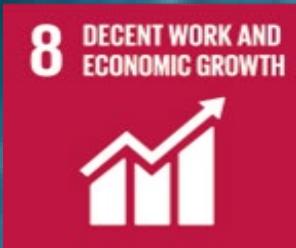
Thriving,
Low
Carbon
Industry

Global
Innovation
Hub

Growing
Gateways

21st
Century
Workforce

World-
Class
Cluster



Washington State's Strategy for the Blue Economy

The first, and only, US statewide strategy for the Blue Economy was delivered in January 2019 by Governor Inslee's Maritime Innovation Advisory Council and Washington State Dept. of Commerce after 18 months of stakeholder engagement.

Industry Members



Organizational Partners



Startups



Research Institutions



Public Partners





Maritime Blue Innovation Programs

- 4 Month Mentor-based Innovation Accelerator (no equity)
- One Year Innovation Incubator in Partnership with Port of Tacoma (focus on Port Operations)
- Hub and Spoke Model Creating Partnership Programs with PNW Organizations in Newport, OR and Bellingham, WA





Innaugural Cohort Wins, Deals, & Stats

115 Startups applies - 11 Chosen

- 10 from US, 9 from WA State, 7 from King County
- 4 Women, 4 POC founders/co-founders

Wins and Deals

- \$73M in Private Capital Investments
- \$12M in Business Sales
- Several Demonstration Projects & Customer Acquisitions
- Combined reports of over %500 increase in revenue
- At least 50 jobs created



The Seattle Times

**Port of Seattle partners with coworking company
WeWork on maritime business incubator**

The Maritime Executive
INTELLECTUAL CAPITAL FOR LEADERS

**Washington Maritime Blue Picks
First Innovation Accelerator
Cohort**



Second Wave Notable Events/Stats

100+ Startups Applied

- 60% from WA State, 40% from King County
- 11 startups chosen
- 9 from US, 7 from WA State, 5 from King County
- 3 women founders, 2 POC founders

Wins and Deals

- Silverback Marine landed large contract with Port of Lopez w/ 1st wave company, Pure Watercraft
- Allosense secured non-dilutive funding from DoD
- MM-Seas launched their platform during the program
- Puget Buoy won Alaska Airlines Innovation Challenge
- Pending results of current funding rounds

The Seattle Times Editorial Board

Editorials

Taking the lead to advance Washington's maritime economy

May 12, 2021 at 3:15 pm | Updated May 12, 2021 at 4:54 pm



Robert Brown, Jocelyn Daniels and Karina Martija-Harris of the Youth Maritime Collaborative, which creates awareness about maritime career and... (Youth Maritime Collaborative) [More](#) ✓



Mentors Make This Program Special!

- Weekly CEO roundtable with industry leading experts
- HUNDREDS of hours of individual mentor meetings
- Shared contextual experiences



Where do we go from here?

- Third Wave of the Maritime Blue Innovation Accelerator Q1 of 2022
- Rolling Admission into Maritime Blue Innovation Incubator in Partnership with the Port of Tacoma
- Launch of Bellingham, WA Clean Tech/Blue Tech program
- Building Collaborative Programming with Alaska and Oregon in 2021/2022





**Blue
Force**

Enable an equitable and diverse 21st century workforce of the future through coordination, funding, and public forums for industry-driven, career connected learning opportunities.

Providing organizational support, resources and an employer - agency network for the **Youth Maritime Collaborative**.



Youth Maritime Collaborative



- A partnership between service providers, educational institutions, and employers to make maritime an accessible option for young women, low-income youth, and youth of color. The YMC creates career pathways through experiential events, mentorship and internships.



Strategic Vision & YMC Partners



We aspire for the Youth Maritime Collaborative to be a partnership that makes maritime an appealing career option for low-income youth and youth of color. To achieve this, we propose a system that is grounded in career connected learning and equity. By guiding today's youth toward career pathways, experiential events, internships and apprenticeships, the Collaborative works to connect employers with the next generation of skilled workers.

WASHINGTON MARITIME **blue** Internships

Youth Maritime Accelerator Project (YMAP)

11 diverse interns, ages 18-24 from South King County
6 Maritime Employers (Fishtail, TOTE Marine, Pacific Marine Group, MMSEAS, YMC, WA Maritime Blue)
8-week paid internship
\$2,000 stipend
Includes curriculum and experiential learning events

Launch206

12 interns from Seattle Public Schools
4 Maritime Employers (Argosy, Western Towboat, Boat Setter, CETS LLC, Center for Wooden Boats)
4-week paid internship and .5 HS credit
\$1,000 stipend
Includes class instruction and experiential learning events





Expanded Cohort Model

Increase opportunities for youth to experience on-the-water programming and maritime/ocean learning activities, education and training with YMC program partners

Expand partnerships with community-based organizations

Provide wrap-around support for both youth and employers





Funding Model Structure

2019 – 2021

Port of Seattle: \$199,999

Port of Seattle, South King County Fund: \$99,995

City of Seattle, Office of Economic Development: \$50,000

Workforce Development Council of Seattle & KC: \$10,000

2021-2023

Private Funding Match: The Builders Initiative: \$350,000

Seeking further match funding for full program planning





Blue Forward

Members come together through **Joint Innovation Projects (JIPs)** and collaboration to implement key demonstration projects and strategic planning for growth in the Blue Economy

- Washington State Ferry Electrification
- Seattle Waterfront Decarbonization Strategy
- JIP: Zero-emission Foiling Fast Ferry
- JIP: Green Hydrogen for Tacoma Maritime
- JIP: Early Covid-19 Detection for Maritime and Fisheries
- JIP: Quiet Sound– Whale Report Alert System (WRAS)



Quiet Sound is a collaborative program to better understand and reduce the cumulative effects of acoustic and physical disturbance from large, commercial vessels on Southern Resident Killer Whales in Washington waters.





Blue Focus

Creating a world-class cluster through a sustainable organization rooted in values of equity and resilience.

- Growing membership and leadership
- International recognition and speaking engagements
- Cluster to Cluster relationships

Part of a Global Enterprise for the Blue Economy





Organizational Development & Leadership

Founded in October 2018, the organization has taken significant steps towards organizational sustainability by diversifying revenue, increased operational capacity and Board leadership. Current Board of Directors include:

President/CEO - Joshua Berger, Maritime Blue

Vice-Chair - Lauren Offenbecher, SSA Marine

Vice-Chair - Eleanor Kirtley, Green Marine

Secretary - Simon Geerlofs, PNNL

Treasurer - Deloitte Wolfe, Impact Washington

Joe Allen, Jamestown S'klallam EDA

Ann Avary, NW Center of Excellence for Marine

Comm. Fred Felleman, Port of Seattle

Jason Jordan, Northwest Seaport Alliance

Cosmo King, ioCurrents

Vesa Koivumaa, Wärtsilä

Dennis McLerran, Cascadia Law Group

Bob Miyamoto, University of WA - APL

Barbara "b.g." Nabors Glass, Seattle Goodwill

Patty Rubstello, Washington State Ferries

Andy Stewart, Amazon

2019 – 2020 Sponsors

Catalytic Sponsors



Impact Sponsors



Sustaining Sponsors



KONGSBERG



Funding Facts and Figures

Projected 2020-21 Revenue



- Membership/Sponsorship 10%
- Program Revenue (JIPs) 7.7%
- Philanthropy 7.7%
- Events 6.4 %
- Federal 31%
- State (18% PoS) 19%
-

Annual Budget = \$1.94M

Port Funding = \$250,000

Appendix



Joint Innovation Program (JIP) Zero Emission Fast Foil Ferry

Development of an innovative Hydrofoil craft



CHALLENGE

A zero-emission, clean transit concept for a high-speed hydrofoil craft using lightweight carbon fiber hull construction. Vision is to help relaunch the “Mosquito” fleet & reduce vehicle traffic. A collaborative approach is needed to identify & solve the challenges related to technical, safety, operational risks & financial feasibility.

SCOPE

This collaborative JIP will advance through feasibility & demonstration phases with project tasks that may run in succession/parallel. These include:

- Advance design spiral from concept to preliminary design, to contract design for construction.
- Economic & environmental benefits & impacts
- Terminal & shoreside infrastructure requirements
- Materials & construction
- Routing analysis & operations
- Advance detection & avoidance strategies
- Regulatory, testing & permitting
- Hybrid funding model for first demonstration

BENEFITS

More efficient vessel, reduced emissions, improved commuter & transit options, quieting & strike avoidance to reduce marine mammal impacts, platform for WA manufacturing, innovation & economic development.

VALUE

A zero-emission high speed waterborne transportation alternative in the Puget Sound. The foil ferry can offer a safe, reliable & cost-effective option, while minimizing the environmental impact on air & water quality as well as marine life. Washington companies to develop state of the art technology & competence to support our region as a center of excellence for maritime decarbonization.

Partners



Glosten

BIEKER BOATS



Kitsap Transit
Connecting Communities



PORT OF BELLINGHAM
Washington State
Building A Strong Community

Port of Skagit

EDASC
Economic Development Alliance
of Skagit County



Joint Innovation Project (JIP) - DRAFT

Zero-Carbon Maritime Hydrogen Ecosystem through Formic Acid Storage Pathways

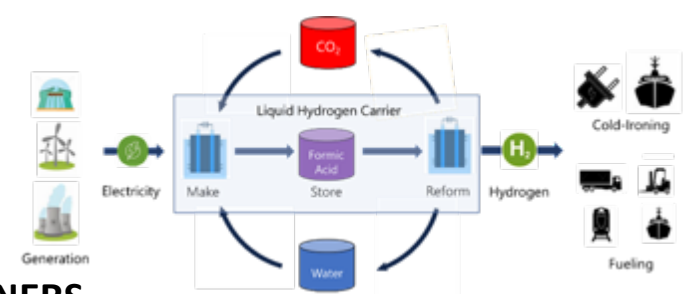
CHALLENGE

Alternative fuels and energy are needed to reduce emissions from transportation and port operations. Hydrogen shows great promise, if it can be generated at scale in our region from renewable energy, as well as stored and transported in a safe manner. Tacoma Power has excess clean hydropower generation that can be utilized to make Green Hydrogen. They also need to provide energy for cold-ironing services to berthed vessels, which have large variances in power demand and timing.

SOLUTION

- Build and scale a Maritime hydrogen ecosystem through a project at the Port of Tacoma that demonstrates the concept of a port-based hydrogen (H₂) solution utilizing Formic Acid for lower cost and safer storage and movement.
- This demonstration features a system that creates a liquid H₂ carrier, formic acid, directly from green renewable electricity, water and recycled CO₂. This unique technology is provided by two of the partners: OCO Inc., whose electrolyzer technology creates the formic acid as a liquid H₂ carrier and the Pacific Northwest National Laboratory, that provides a reformer technology to decompose and release the H₂ from formic acid when needed.
- A Tacoma Power will provide the green electricity, which comes primarily from hydroelectricity and is 97% carbon free. They will also be the end user of the H₂, to generate energy on demand for cold-ironing services to berthed vessels.
- DNV GL will provide techno-economic modeling so that this demo can be used to provide the anchor application for scaling-out hydrogen use in other maritime applications like hydrogen fueling for trucks, trains, vessels and a wide variety of cargo handling applications.

PARTNERS



VISION

Regional collaboration to make Tacoma, WA the production and distribution nerve center for scaling up the use of clean hydrogen for port and maritime applications.

BENEFITS

This approach provides a large-scale local production and use for Hydrogen in maritime ports that can be stored as a liquid carrier in the form of Formic Acid, overcoming some of the key storage and movement challenges. This demonstration has the potential to show ports, utilities, and numerous maritime end-users what can be achieved when H₂ is used at scale



Joint Innovation Project (Proposed)

Support and Scale the Whale Report Alert System for



CHALLENGE

As a relatively new tool in Washington State, the Whale Report Alert System (WRAS) requires more robust participation from various user groups to improve the data input for cetacean sightings. As such, the challenge is to work with various entities to garner data, facilitate smooth implementation of WRAS, and evaluate WRAS efficacy in Washington State based on how alerts impact mariner actions on the water.

SOLUTION

Recruit and train users:

- Education and outreach
- Implementation Planning w/ operators
- Develop and deliver trainings

Implement WRAS:

- Work with end-users to operationalized
- Aggregate visual sightings networks data
- Provide ongoing support to users
- Monitor data input

Efficacy and Adaptive management:

- Plan for and develop usage analysis
- Continued implementation support and data monitoring

Integration of Data sources:

- Expand coordination of data cross-boarder and sector
- Assessment of hydrophone networks
- Continued improvement and long-term recommendations

Proposed PARTNERS



VISION

Support and scale use of Whale Reporting and Alert System (WRAS) in Washington waters.



Joint Innovation Project

COVID-19 Early Detection System for Fisheries & Maritime

CHALLENGE

Every summer 10,000 plus people go to work in the Alaska based fisheries through Washington State. Most of the fishing and processing companies are based in WA as well as the workforce. The entire fishery contributes more that \$10 Billion dollars to our economy and is a vital part of our food security supply chain. However - How do we support and enable this activity and workforce in a way that is safe and not contributing to the spread of COVID-19, threatening small communities throughout Alaska and hence, the entire fishery itself? How can we monitor and track the health of the workforce who is particularly high risk due to the nature of the work?

SOLUTION

A partnership between Maritime Blue, the Institute for Health Metrics and Evaluation (IHME) and Discovery Health MD (DHM) will build, implement and scale an early detection system to prevent the spread of COVID-19 in this high risk workforce.

- IHME will build a survey, provide data analysis, and dashboard for early detection
- Survey results will inform and support businesses internal data collection needs
- DHM will work with the Fishing and Maritime industry to support operationalization
- Engage in further technology partnership to ensure efficient and safe data transfer to and from vessels
- Scale the solution in concert with other contact tracing efforts to be utilized in other high risk workforce sectors and eventually to whole communities, regions and states.

[RETURN TO AGENDA](#)

PARTNERS



Institute for
Health Metrics
and Evaluation



VISION

Provide the technology and communications platform to allow the fishing and maritime sector to return to work safely and build a pilot that can be scaled to other sectors and regions.

BENEFITS

The overall goal for this Program is prevent the spread of COVID-19 as industries are implementing back to work initiatives, while maintaining the health of employees and the communities in which they live or operate. Strategic analyses that utilize the survey and testing data will allow us to look for a potential for resurgence, protect jobs and protect the global food supply chain

COMMISSION
AGENDA MEMORANDUM

Item No. 11c

BRIEFING ITEM

Date of Meeting July 13, 2021

DATE: June 3, 2021

TO: Stephen P. Metruck, Executive Director

FROM: Sandy Kilroy, Sr. Director-Environment, Sustainability & Engineering
Kathleen Hurley, Sr. Environmental Program Manager

SUBJECT: Briefing on the Ocean Acidification Action Plan and Case Study

EXECUTIVE SUMMARY

In 2020, the Port of Seattle was the first port globally to join the International Alliance to Combat Ocean Acidification (OA Alliance) and by joining the alliance, the Port recognizes the many ways in which ocean acidification (OA) impacts the maritime sector. In order to fulfill our commitment as a member in good standing, the Port was required to develop an Ocean Acidification Action Plan and a Case Study that demonstrates how the Port is taking action on OA and how the Port will continue to take action on OA.

OA threatens marine life in the Salish Sea by making it more difficult for organisms with calcium carbonate shells, like crabs and oysters, to develop these protective structures and by disrupting the foraging habits of marine wildlife, which impacts mortality and reproduction. OA threatens key natural resources and associated industries that are core to the Port's mission and operations. Thus, addressing OA aligns with the Port's [mission](#) and [Century Agenda](#) goals. All three Port operating divisions are represented in the initiatives described in this document.

This action plan summarizes current Port initiatives and efforts to combat OA and includes general recommendations for further action. Each of the current initiatives is connected to at least one of the six action goals of the OA Alliance, as listed below.

1. Reduce atmospheric emissions of CO₂
2. Advance scientific understanding of climate-ocean impacts, locally and globally
3. Reduce local pollutions that exacerbate OA
4. Protect the environment and coastal communities
5. Expand public awareness
6. Sustain international support

Initiative	Goal 1	Goal 2	Goal 3	Goal 4	Goal 5	Goal 6
Century Agenda	•	•	•	•	•	
Sustainable Aviation Fuels	•		•			
Northwest Port Clean Air Strategy	•	•	•	•		•
Maritime Climate & Air Action Plan	•	•	•	•	•	
Seattle Waterfront Clean Energy Strategic Plan	•			•		
Sustainable Aviation Fuels	•		•		•	
SEA Emissions Reduction Initiatives	•		•		•	
Habitat Restoration Program Initiatives		•	•	•	•	
Smith Cove Blue Carbon Pilot Project		•	•	•	•	
Duwamish River Floating Wetlands Projects		•			•	
Stormwater Initiatives		•	•	•	•	
Exhaust Gas Cleaning Discharge Ban			•	•		
Alternative Bankline Stabilization Program			•	•		
Duwamish Valley Community Benefits Commitment				•	•	
Duwamish River Green Jobs Program				•	•	

ATTACHMENTS TO THIS BRIEFING

- (1) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

None.

Ocean Acidification Action Plan

A Commitment to the International Alliance to Combat Ocean Acidification

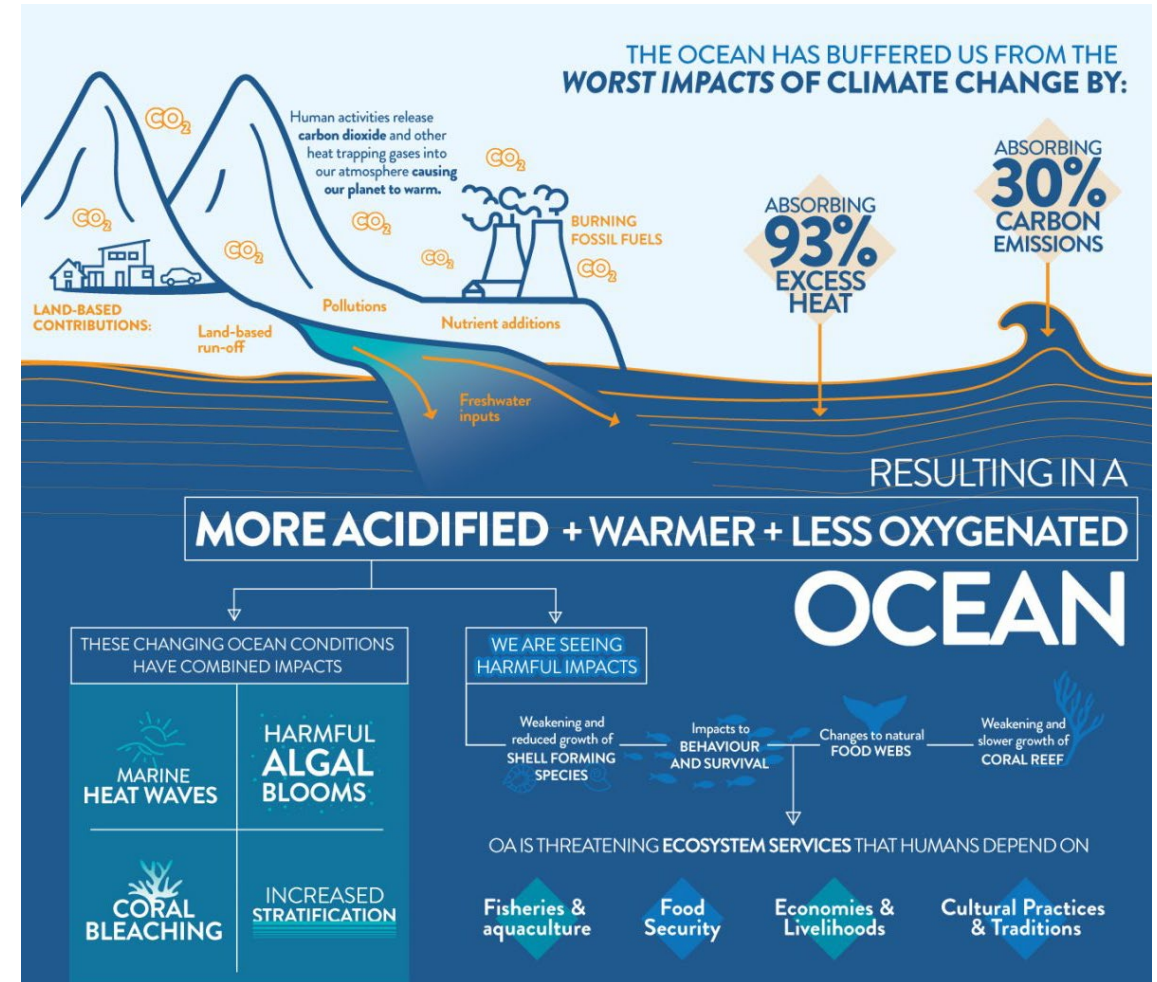
Commission Briefing

July 13, 2021



Overview

- Provide an overview of the Ocean Acidification (OA) Action Plan and Case Study
- Key elements in the action plan
- Summary of Port-wide efforts on OA
- Recommendations
- Next steps



About the Action Plan



- Plan summarizes existing Port-wide initiatives addressing OA
- Concludes with *voluntary* recommendations to advance OA work at the Port
- First Port to join the International Alliance to Combat Ocean Acidification (the Alliance)
- Development of an action plan is a requirement for Alliance membership

OA Goals and Associated Port Initiatives



Reduce atmospheric emissions of CO2

- Century Agenda
- Northwest Ports Clean Air Strategy
- Charting the Course to Zero: Port of Seattle's Maritime Climate and Air Action Plan
- Seattle Waterfront Clean Energy Strategic Plan
- Renewable Natural Gas Agreement
- Use of electric ground support equipment
- Options for greener transportation to and from SEA
- Ground power for aircrafts
- Sustainable aviation fuel (part of Sustainable Airport Master Plan)



Advance scientific understanding of climate-ocean impacts, locally and globally

- Habitat Restoration Program Initiatives
- Smith Cove Blue Carbon Pilot Project
- Duwamish River Floating Wetlands Projects

OA Goals and Associated Port Initiatives



Reduce local pollution that exacerbates OA

- Stormwater initiatives
- Cruise Exhaust Gas Cleaning System Discharge Ban at Berth



Protect the environment and coastal communities

- Habitat restoration, such as the Mitigation Bank, Alternative Bankline Stabilization Program
- Salmon Safe Program
- Floating wetlands

OA Goals and Associated Port Initiatives



Expand public awareness

- Duwamish Valley Community Benefits Commitment
- Green Jobs Program



Sustain international support

- Commitment to join the OA Alliance
- Presentations at OA Alliance events
- Northwest Ports Clean Air Strategy

Existing Port Programs that Support OA Goals

Initiative	Goal 1 (Reduce CO2)	Goal 2 (Advance Science)	Goal 3 (Reduce local pollutants)	Goal 4 (Protect envr)	Goal 5 (Public awareness)	Goal 6 (Int'l support)
Century Agenda	•	•	•	•	•	
Northwest Port Clean Air Strategy	•	•	•	•		•
Maritime Climate and Air Action Plan	•	•	•	•	•	
Seattle Waterfront Clean Energy Strategic Plan	•			•		
Sustainable Aviation Fuels	•		•			
SEA Emissions Reduction Initiatives	•		•		•	
Habitat Restoration Program Initiatives		•	•	•	•	
Smith Cove Blue Carbon Pilot Project		•	•	•	•	
Duwamish River Floating Wetlands Projects		•			•	
Stormwater Initiatives		•	•	•	•	
Exhaust Gas Cleaning Discharge Ban			•	•		
Alternative Bankline Stabilization Program			•	•		
Duwamish Valley Community Benefits Commitment				•	•	
Duwamish River Green Jobs Program				•	•	

Voluntary Recommendations

1. Expand public awareness of OA & Port actions
2. Integration of OA into relevant community engagement efforts
3. Continue implementation of existing efforts to combat OA
4. Continue exploring opportunities for additional studies on carbon sequestration and associated OA benefits
5. Initiate an Elliott Bay kelp restoration limiting factors analysis
6. Incorporate OA metrics into future habitat restoration monitoring plans



Next Steps

- Submit the OA Action Plan and case study to the OA Alliance for publication on their website
- Public communications aligned with the July 2021 Smith Cove oyster enhancement event and kelp expedition
- Planning for implementation of recommendations
- Pursue opportunities to amplify the work the Port and others are undertaking on OA, for example with the Seattle Aquarium, state-level kelp initiatives

[RETURN TO AGENDA](#)