



COMMISSION REGULAR MEETING AGENDA

September 14, 2021 **(AMENDED – Attachments 1 and 2 added to Item 8f)***

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 796 177 907#**

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

4a. Proclamation in Recognition of Latino Heritage Month (September 15 - October 15, 2021)
([proclamation](#) enclosed) (p.4)

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 September 14, 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, September 14, 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 of July 29, 2021, and the Regular Meeting of August 10, 2021. **(no enclosure)** (p.6)
- 8b. Approval of the Claims and Obligations for the Period August 1, 2021, through August 31, 2021, Including Accounts Payable Check Nos. 940681 through 940958 in the Amount of \$2,200,783.55; Accounts Payable ACH Nos. 037556 through 038338 in the Amount of \$66,139,446.46; Accounts Payable Wire Transfer Nos. 015664 through 015683 in the Amount of \$12,483,118.62, Payroll Check Nos. 199334 through 199635 in the Amount of \$70,056.74; and Payroll ACH Nos. 1037211 through 1041562 in the Amount of \$11,679,514.07 for a Fund Total of \$92,572,919.44. **(memo enclosed)** (p.17)
- 8c. Order No. 2021-08: An Order Appointing Lara Behnert, Fulgencio Lazo, and Jim Suehiro to the Port Commission's Portwide Arts and Culture Board **(memo, proposed order, and 2019 policy directive enclosed)** (p.20)
- 8d. Authorization for the Executive Director to Enter into an Annual Maintenance Service Agreement with adbSafeGate Systems, Inc., for up to Five Years with an Estimated Total Cost of \$650,000. **(memo enclosed)** (p.28)
- 8e. Authorization for the Executive Director to Execute a Temporary Lease and Concession Agreement for Duty-Free Operations between the Port of Seattle and Dufry-Seattle JV for Space at Seattle-Tacoma International Airport. **(memo and agreement enclosed)** (p.29)
- *8f. Authorization for the Executive Director to Amend the Scope of an Existing Interlocal Agreement (ILA) with the National Renewable Energy Laboratory (NREL) to Include Transportation Modeling to Support SEA's Ground Transportation Goals and Century Agenda Environmental Goals. **(memo, amendment, previously adopted agreement, and presentation enclosed)** (p.135)
- 8g. Authorization for the Executive Director to Execute a Change Order to Contract MC-0319902 Elevator Shafts and Vestibules to Add 233 Calendar Days to the Contract Duration to Reconcile the Contractual Completion Date to the Actual Completion Date. (CIP #C800789) **(memo enclosed)** (p.166)
- 8h. Authorization for the Executive Director to Advertise and Execute a South King County Community Capacity Building Contract to Support Near-airport Communities and Develop Equity-based Partnerships with the Port through the South King County Fund (SKCF); and Authorize the Expenditure of the Contract in an Amount Not-to-Exceed \$400,000 from the South King County Fund. **(memo and presentation enclosed)** (p.169)

9. UNFINISHED BUSINESS**10. NEW BUSINESS**

- 10a. Order No. 2021-09: An Order Supporting the Delivery of a Plan to Inventory the Ecological, Land Use (Including Zoning), and Recreational Site Conditions of the 55 Acres of Port-owned Land within North SeaTac Park within 30 Days. **(proposed order enclosed)** (p.183)

- 10b. Authorization for the Executive Director to Set 2022 Marine Stormwater Utility Rates with an Increase of 4.6 Percent. ([memo](#), [utility strategic plan](#), and [presentation](#) enclosed) (p.185)

11. PRESENTATIONS AND STAFF REPORTS

- 11a. Equity Index Briefing. ([memo](#) and [presentation](#) enclosed) (p.231)
- 11b. Port Policing Assessment Final Report. ([memo](#), [report summary](#), [report](#), and [presentation](#) enclosed)

12. QUESTIONS on REFERRAL to COMMITTEE and CLOSING COMMENTS

(p.252)

13. ADJOURNMENT



PROCLAMATION OF THE PORT OF SEATTLE COMMISSION

WHEREAS, Hispanic and Latino communities were nationally recognized for their histories, cultures, and influence when President Lyndon Johnson proclaimed “National Hispanic Heritage Week” on September 17, 1968; and

WHEREAS, observance was expanded by President Ronald Reagan to cover a 30-day period starting on September 15 and ending on October 15, on August 17, 1988, and on September 14, 1989, President George H.W. Bush became the first president to declare the 31-day period from September 15 to October 15 as National Hispanic Heritage Month; and

WHEREAS, September 15 was chosen as the first day of observance because it coincides with the Independence Day celebrations of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. It also coincides with Mexico’s independence on September 16 and Chile’s on September 18 - all who declared their independence from Spain in 1821 and Belize who declared their independence from Great Britain on September 21, 1981; and

WHEREAS, the theme for 2021’s observance is “Esperanza: A Celebration of Hispanic Heritage and Hope.” The theme invites us to celebrate Hispanic Heritage and to reflect on how great our tomorrow can be if we hold onto our resilience and hope. It encourages us to reflect on all of the contributions Hispanics have made in the past and will continue to make in the future. It is also a reminder that we are stronger together; and

WHEREAS, the term “Hispanic” generally refers to the way that Latin Americans are united through their connection to Spain and their links to Spanish culture and tradition. “Latino” is used to refer to the way that Latin Americans are connected to one another via their common history and culture; and

WHEREAS, in 1997, “Latino” officially appeared on government documents as an option alongside “Hispanic.” Since 1980 and 2000, “Hispanic” and “Latino” have also become part of the U.S. Census, respectively; and

WHEREAS, according to 2020 US Census, Latinos remain the largest minority group in the United States, and Latinos drove the country’s demographic growth to 62.1 million, and Latinos accounted for 51.1 percent of the country’s growth, rising to 18.7 percent of the U.S. population. That means the Hispanic population grew by 23 percent from 2010 to 2020; and

WHEREAS, the employee Resource Group (ERG) Latinos Unidos at the Port of Seattle has embraced the use of “Latino” to describe the unity of their culture, history and their future. The Office of Equity Diversity at the Port has also made an intentional decision to use “Latino” in place of “Hispanic;” and

WHEREAS, Latinos of all generations and recent immigrants continue to make great contributions to our nation, our region, and our Port; and

WHEREAS, the Port continues to take proactive steps to increase diversity at the Port of Seattle amongst all diverse populations; and

WHEREAS, once a year, all Port employees are asked to voluntarily self-identify their race. According to current data, 5.7% of employees self-identify as Hispanic/Latino; and

WHEREAS, this data reflects that the Port has work to do to increase the representation of Latino employees. The Port continues to review and revise policies and practices through an equity lens, partnering with Workforce Development to build talent pipelines, increasing recruitment and outreach efforts to Latino professionals in the Communities we serve, and providing recognition, training and learning activities to managers and employees about the importance of diversity, equity and inclusion; and

WHEREAS, representation matters.

NOW, THEREFORE, the Port of Seattle Commission hereby recognizes September 15 - October 15 as Latino Heritage Month at the Port of Seattle.

Proclaimed by the Port of Seattle Commission this 14 day of September, 2021.

Port of Seattle Commission



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Seattle, Washington 98111
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APPROVED MINUTES COMMISSION SPECIAL MEETING JULY 29, 2021

The Port of Seattle Commission met in a special meeting Thursday, July 29, 2021. The meeting was held remotely in accordance with Senate Concurrent Resolution 8402 and in accordance with Governor Inslee's Proclamation 20-28. Commissioners Bowman (*joining at 1:33 p.m.*), 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 1:00 p.m. to conduct a 2022 Budget planning retreat session.

Attendees

- Seattle Port Commissioners Stephanie Bowman, Ryan Calkins, Sam Cho, Fred Felleman, and Peter Steinbrueck
- Executive Director Metruck and the Executive Leadership Team
- Elizabeth Morrison, Corporate Finance
- Commission Staff: Barb Wilson, Aaron Pritchard, Pete Mills, LeeAnne Schirato, David Yeaworth, Erica Chung, Michelle Hart, Aubree Payne, Tyler Emsky, Patti Ward, James Rolph, and Marycruz Talavera

Goals & Objectives

- State of the Port
- Maritime and Economic Development Capital Improvement Plan Overview
- Capital Improvement Plan Funding Capacity Analysis
- Port Economic Recovery Discussion
- 2022 Commission Budget Priorities

Executive Director – State of the Port

Executive Director Metruck provided an overview of the state of the Port with respect to the financial look forward; budget considerations for 2021; 2022 budget guiding principles; and 2022 budget strategies.

Maritime and Economic Development Capital Improvement Plan

Executive Director Metruck continued the presentation by addressing the Maritime and Economic Development Capital Improvement Plan – the current environment; the preliminary 2022- 2026

Capital Improvement Plan key projects and improving capital project delivery; capital capacity; delivery recommendations including additional resources; and future considerations.

Commissioner Felleman expressed his desire for guiding principles to include environmental concerns and standards.

Discussion ensued regarding:

- the T46 agreement;
- profitability of cruise overall; and
- holding a future potential study session on marina and recreational boating lines of business and also on the Northwest Seaport Alliance agreement for T46.

CIP Funding Capacity Analysis and Tax Levy Scenarios

Elizabeth Morrison, Corporate Finance Director, provided a report addressing:

- inflation continuing to erode purchasing power;
- preliminary non-airport capital and funding;
- background on the tax levy;
- 2020 uses of the tax levy;
- discretionary levy spending;
- options to increase funding capacity;
- potential tax levy scenarios;
- taxpayer impacts; and
- potential changes to the CIP and funding capacity

Discussion ensued regarding:

- adjusting the tax levy rate for next five years to account for inflation and the planning recommendation to continue the levy funding plan through 2026;
- accounting for inflation where needed in certain categories;
- knowing the results of the initial levy plan from almost five years ago before the Commission votes to continue the tax levy beyond the current plan;
- the need to review escalations each year;
- accounting for taxable units per year; and
- growing priority hire because there are not enough people in the pipeline in the construction trades.

Economic Development and 2022 Recovery Investments

Members of staff and the Commission discussed:

- the financial look forward;
- key takeaways from the 13 listening sessions and 101 voices of the Commission's Economic Recovery Listening Sessions;
- issues identified and actions;
- the Port's role in helping to drive equitable economic recovery;
- SEA's passenger volume forecast;

- the status of Alaska cruising underway;
- rent deferral program status;
- capital project investments;
- five-year capital budget summary;
- equitable recovery investments made in 2021;
- 2022 recovery investments;
- additions to existing Port community programs, memberships, and sponsorships;
- community engagement;
- the total of unsubscribed funds in the Economic Development program and Commissioner Bowman's desire to see the option to increase grants to the cities;
- growing priority hire;
- the effect of the tax increment financing bill passed by the Legislature and its impact, if any, of the Port's economic development grant process and levy; and
- addressing areas of unincorporated King County that are being missed in the grant process.

(The special meeting recessed at 2:42 p.m. and reconvened at 2:55 p.m.)

Commission Budget Priorities Overview

Members of the Commission discussed their individual budget priorities for the 2022 budget.

3. ADJOURNMENT

There being no further business, the meeting adjourned at 4:59 p.m.

Prepared:

Attest:

Michelle M. Hart, Commission Clerk

Sam H. Cho, Commission Secretary

Minutes approved: September 14, 2021.



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**APPROVED MINUTES
COMMISSION SPECIAL MEETING AUGUST 10, 2021**

The Port of Seattle Commission met in a special meeting Tuesday, August 10, 2021. The meeting was held remotely in accordance with Senate Concurrent Resolution 8402 and in accordance with Governor Inslee's Proclamation 20-28. Commissioners Bowman (12:25 p.m.), Calkins, Cho, Felleman, and Steinbrueck were present.

1. CALL to ORDER

The meeting was convened at 10:00 a.m. by Commission President Fred Felleman.

2. EXECUTIVE SESSION pursuant to RCW 42.30.110

The public meeting recessed into executive session to discuss three matters relating to litigation/potential litigation/legal risk (RCW 42.30.110(1)(i)) for approximately 90 minutes, with the intention of reconvening the public session at 12:00 p.m. Following the executive session, the public meeting reconvened at 12:00 p.m. Commission President Felleman led the flag salute.

3. APPROVAL of the AGENDA

Without objection, the Presentations and Staff Reports section of the agenda was reordered prior to New Business.

4. SPECIAL ORDERS OF THE DAY – None.

5. EXECUTIVE DIRECTOR'S REPORT

Executive Director Metruck previewed items on the day's agenda and made announcements.

6. COMMITTEE REPORTS

There were no committee reports at this time.

7. PUBLIC COMMENT

Public comment was received from the following individual(s):

- The following person spoke regarding Agenda Item 10d, thanked the Port for moving forward with the program, and asked the Port to provide updates and encourages the Port to continue efforts to reduce greenhouse gas emissions from airlines: city of Des Moines Councilmember JC Harris.

- The following person spoke regarding wildfires and climate change: Jordan Van Voast (corresponding written testimony submitted).
- The following person spoke in support of cruise and economic recovery: Patti Mackey, President and CEO of Ketchikan Visitors Bureau.
- The following people spoke in opposition to cruise operations and climate impacts: Iris Antman; Marcie Keever; Katie McKenna; Carolyn Brotherton; Stacy Oaks; Peggy Printz; Kendra Ulrich; and Neal Anderson.
- In lieu of spoken comment, Ernest Thompson, Normandy Park City Council Member, submitted written comments in support of a landscape masterplan document documenting the percentage of plants which are native species.
- In lieu of spoken comment, Alexa Fay, submitted written comments regarding her health and environmental concerns relate to the return of cruise ships to the Port.
- In lieu of spoken comment, Laura Gibbons, submitted written comments speaking to a study of 46 US airports and surrounding schools, and data contained therein regarding the effects of noise on education and health.
- In lieu of spoken comment, Shaun Hutchins, submitted written comments asking the Commission to discuss and share plans for creating multi-story parking and shifting SEA and the community away from ground level surface lot parking.

[Clerk's Note: All written comments are combined and attached here as Exhibit A.]

8. CONSENT AGENDA

[Clerk's Note: Items on the Consent Agenda are not individually discussed. Commissioners may remove items for separate discussion and vote when approving the agenda.]

- 8a. Approval of the Minutes of the Regular Meeting of July 27, 2021.**
- 8b. Approval of the Claims and Obligations for the Period July 1, 2021, through July 31, 2021, including Accounts Payable Check Nos. 940234 through 940680 in the Amount of \$3,391,011.72; Accounts Payable ACH Nos. 036722 through 037555 in the Amount of \$46,636,189.17; Accounts Payable Wire Transfer Nos. 015644 through 015663 in the Amount of \$11,344,239.69, Payroll Check Nos. 199024 through 199333 in the Amount of \$93,999.45; and Payroll ACH Nos. 1032936 through 1037210 in the Amount of \$11,887,618.04 for a Fund Total of \$73,353,058.07.**

Request document(s) included an agenda memorandum.

- 8c. Authorization in the Amount of \$820,000 for the Executive Director to (1) Proceed with the Wireless Network (WIFI) Replacement Project; (2) Prepare Design and Construction Bid Documents for the Replacement of WIFI Technology and Supporting Equipment at the Port of Seattle Headquarters (P69); and (3) Procure Required Hardware, Vendor Services, Licensing, and Maintenance Services in Support of WIFI and Network Services at P69. The Total Estimated Project Cost is \$2,500,000 (CIP #C801063).**

Request document(s) included an agenda memorandum.

- 8d. Authorization in the Amount of \$6,300,000 Out of a Total Estimated Project Cost of \$46,200,000 for the Executive Director to (1) Complete Design and Prepare Construction Documents for the Airfield Utilities Infrastructure (AUI) Project at Seattle-Tacoma International Airport (SEA) and (2) Enter into Reimbursable Agreements with the Federal Aviation Administration. (CIP #C801177).**

Request document(s) included an agenda memorandum and presentation slides.

- 8e. Authorization in the Amount of \$6,901,000 for an estimated total project cost of \$9,901,000, for the Executive Director to (1) Advertise, Award, and Execute a Major Works Construction Contract for the Building Controls Upgrade Project at Seattle-Tacoma International Airport, and (2) Use Port of Seattle Crews for Construction Activities. (CIP #C800944).**

Request document(s) included an agenda memorandum and presentation slides.

- 8f. Authorization for the Executive Director to Execute a Service Agreement for Maintenance Services for the Airport's (SEA's) Direct Digital Control System for Up to Five Years, 2022-2026, for a Total Dollar Value Estimated at \$4,800,000.**

Request document(s) included an agenda memorandum.

- 8g. Authorization for the Executive Director to Prepare, Advertise, Award, and Execute Appropriate Contract Documents to Procure a Chiller Maintenance Service Agreement for 14 Chillers at Seattle-Tacoma International Airport. The Agreement is for a Two-year Contract with Three One-year Service Options to be Determined Annually by the Port. Total Contract Cost Over the Requested Five-year Period is Not-to-Exceed \$600,000.**

Request document(s) included an agenda memorandum.

- 8h. Authorization in the Amount of \$65,000 for the Executive Director to Proceed with Completion of Fisherman's Terminal Lighting Upgrades and to Use Port Crews to Complete the Installations, for a Total Project Cost of \$365,000. (CIP #C800816)**

Request document(s) included an agenda memorandum and presentation slides.

- 8i. Authorization for the Executive Director to Execute a New Collective Bargaining Agreement (CBA) Between the Port of Seattle and the International Brotherhood of Teamsters, Local 117, Representing Police Specialists at the Port of Seattle, Covering the Period from July 1, 2021, through June 30, 2022.**

Request document(s) included an agenda memorandum and agreement.

- 8j. Authorization for the Executive Director to Advertise and Award a Major Public Works Contract to Replace the North Runway Protection Zone Culvert (NRPZ Culvert), a Year 2022 Component of the 2021 to 2025 Airfield Pavement and Supporting Infrastructure Replacement Program. This Construction Authorization is for \$3,800,000 for a Total Program Authorization to-date of \$55,195,000. (CIP #C800930).**

Request document(s) included an agenda memorandum and presentation slides.

- 8k. Request Commission Determination that a Competitive Process is not Reasonable or Cost Effective in Accordance with Chapter 53.19 RCW; and Authorization for the Executive Director to Execute an Agreement for Procurement Consulting Support Services, with The Le Flore Group, in the Amount Not-to-Exceed \$450,000, for a Contract Period of One Year, to Assist with Contracting Processes Including Opportunity Youth Initiative Procurement(s), Economic Recovery, and for Recommendations for Improvements to Community Engagement (Grant/Non-profit) Processes.**

Request document(s) included an agenda memorandum.

**The motion for approval of consent agenda items 8a, 8b, 8c, 8d, 8e, 8f, 8g, 8h, 8i, 8j, and 8k carried by the following vote: In favor: Calkins, Cho, Felleman, Steinbrueck (5)
Opposed: (0)**

- 9. UNFINISHED BUSINESS – None.**

11. PRESENTATIONS AND STAFF REPORTS

- 11a. Q2 2021 Financial Performance Briefing.**

Presentation document(s) included an agenda memorandum, report, and presentation slides.

Presenter(s):

Dan Thomas, Chief Financial Officer, Finance & Budget
Borgan Anderson, Director, Aviation Finance & Budget
Kelly Zupan, Director, Maritime Finance
Michael Tong, Director, Finance & Budget

Commission Clerk Michelle Hart read Item 11a into the record.

Executive Director Metruck introduced the item and presenters.

The presentation addressed:

- Aviation Division;
 - Passenger growth rebounding
 - Keys to financial results – increased federal relief
 - Operating expenses;
 - Aero rate base revenue requirements

- Aeronautical revenue
- Non-aero revenue concessions grant impact
- Non-aeronautical revenues
- Strategic use of federal relief grants to achieve debt service coverage target
- 2021 capital spending: 93 percent of budget
- Federal relief bolstering key financial metrics
- 2021 airport development fund balance
- 2021 bond issue
- Seaport;
 - Seaport performance summary
- Maritime Division;
 - financial summary and business highlights
 - cruise
 - second quarter maritime financials
 - stormwater utility tracking to budget
 - NWSA summary
 - joint venture second quarter financials
- Economic Development Division;
 - financial summary and business highlights
- Central Services; and
 - financial summary and business highlights
- Portwide
 - financial summary
 - capital spending.

Members of the Commission and staff discussed:

- the total amount due to the Port from deferred rent relief;
- Port assets generating revenue to the NWSA;
- portfolio management; and
- leveraging operations in the container business.

10. NEW BUSINESS

10a. Introduction of Resolution No. 3791, Amending Resolution No. 3770, which Adopted the Charters of the Commission's Standing Committees, by Further Amending the Energy and Sustainability Committee Charter to Change the Name of the Committee to the Sustainability, Environment, and Climate Committee.

Request document(s) included an agenda memorandum and draft resolution..

Presenter(s):

Erica Chung, Commission Specialist, Commission Office

Commission Clerk Michelle Hart read Item 10a into the record.

Executive Director Metruck introduced the item and presenters.

The presentation addressed the recommendation of the Energy and Sustainability Committee to change its name. Committee Members spoke on behalf of the recommendation.

**The motion, made by Commissioner Steinbrueck, to Suspend the Rules to consolidate readings of the Resolution in order to take action at the meeting, carried by the following vote: In favor: Bowman, Calkins, Cho, Felleman, Steinbrueck (5)
Opposed: (0)**

Commissioner Steinbrueck moved to adopt Resolution No. 3791.

**The motion, made by Commissioner Felleman, to amend Resolution No. 3791 to insert a Whereas clause noting the establishment of the committee, carried by the following vote: In favor: Bowman, Calkins, Cho, Felleman, Steinbrueck (5)
Opposed: (0)**

**The main motion, as amended, carried by the following vote: In favor: Bowman, Calkins, Cho, Felleman, Steinbrueck (5)
Opposed: (0)**

10b. Authorization for Executive Director to Sign an Interlocal Agreement (ILA) with University of Washington's Sea Grant Program for the Port to Host One (1) 12-month Hershman Fellowship Position.

Request document(s) included an agenda memorandum, draft agreement, and presentation slides.

Presenter(s):

Jon Sloan, Senior Manager Environmental Programs, Maritime Environment & Sustainability

Commission Clerk Michelle Hart read Item 10b into the record.

Executive Director Metruck introduced the item and presenters.

The presentation addressed:

- the request for the Executive Director to sign an Interlocal Agreement with the University of Washington;
- funding authorized in 2021-22 expense budget (\$39,975);
- Fellow is a UW employee embedded within Maritime Environment & Sustainability Department for 12 months;
- Start date September 20, 2021.

Members of the Commission and staff discussed credit for marine habitat restoration.

**The motion, made by Commissioner Bowman, carried by the following vote: In favor: Bowman, Calkins, Cho, Felleman, Steinbrueck (5)
Opposed: (0)**

10c. Sound Insulation Program Briefing (For information only.)

Request document(s) included an agenda memorandum and presentation slides.

Presenter(s):

Stephen St. Louis, Capital Project Manager V, AV Project Management Group
Julie Kinzie, Noise Program Manager, Sound Insulation
Hanh Nguyen, Senior Manager, Aviation Finance & Budget

Commission Clerk Michelle Hart read Item 10c into the record.

Executive Director Metruck introduced the item and presenters.

A presentation was provided addressing the program's accelerated overview; program status updates; funding, estimates, and schedule; risks and challenges; and next steps for the program.

Commission and staff discussion ensued regarding:

- the number of homes which will be addressed annually;
- participation in the program;
- program completion in 2026;
- negotiation for the investment of dollars as part of the SLOA agreement;
- reviewing contours;
- the status of homes previously insulated where mitigation efforts failed and doing something to address those homes separate and apart from FAA grants;
- possible internship efforts; and
- calculating the energy savings from the mitigation efforts.

Members of the Commission thanked Commissioner Bowman for pushing the program forward.

10d. Authorization for the Executive Director to Plan, Design, and Prepare Construction Documents for the Apartment Sound Insulation Program Located within the Current Noise Remedy Boundary Near the Seattle-Tacoma International Airport in an Amount Not-to-Exceed \$34,386,000 of a Total Apartment Program Cost of \$133,515,000. (CIP #C200096)

Request document(s) included an agenda memorandum and presentation slides.

Presenter(s):

Stephen St. Louis, Capital Project Manager V, AV Project Management Group
Julie Kinzie, Noise Program Manager, Sound Insulation

Commission Clerk Michelle Hart read Item 10d into the record.

Executive Director Metruck introduced the item and presenters.

The presentation addressed:

- apartment design authorization;

- high level apartment milestones; and
- noise remedy boundaries.

Commission and staff discussion ensued regarding:

- prioritizing apartment complexes where large concentrations of people live and their location to the airport;
- applying equity index measures; and
- gaining efficiencies in the permitting process in order to accelerate the work.

**The motion, made by Commissioner Bowman, carried by the following vote: In favor: Bowman, Calkins, Cho, Felleman, Steinbrueck (5)
Opposed: (0)**

12. QUESTIONS on REFERRAL to COMMITTEE and CLOSING COMMENTS

Commissioner Calkins spoke regarding the ICC Report and climate action and efforts the Port can take to reduce impacts, including working towards zero emission cruise vessels at the ports. Discussion ensued around studying the question at the Sustainability, Environment, and Climate Committee. Commissioner Steinbrueck requested that the discussion be expanded beyond cruise and to look at emerging technologies toward new carbonless energy.

Commissioner Steinbrueck recognized and congratulated Delmas Whittaker for his promotion to Director of Marine Maintenance.

13. ADJOURNMENT

There was no further business and the meeting adjourned at 3:17 p.m.

Prepared:

Attest:

Michelle M. Hart, Commission Clerk

Sam H. Cho, Commission Secretary

Minutes approved: September 14, 2021

RETURN TO AGENDA



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8b

ACTION ITEM

Date of Meeting: September 14, 2021

DATE: September 2, 2021
TO: Steve Metruck, Executive Director
FROM: Duane Hill, AFR Senior Manager Disbursements
SUBJECT: **Claims and Obligations – August 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 August 1 through 31, 2021 as follows:

Payment Type	Payment Reference Start Number	Payment Reference End Number	Amount
Accounts Payable Checks	940681	940958	\$ 2,200,783.55
Accounts Payable ACH	037556	038338	\$ 66,139,446.46
Accounts Payable Wire Transfers	015664	015683	\$ 12,483,118.62
Payroll Checks	199334	199635	\$ 70,056.74
Payroll ACH	1037211	1041562	\$ 11,679,514.07
Total Payments			\$ 92,572,919.44

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 Effective

COMMISSION AGENDA – Action Item No. 8b

Meeting Date: September 14, 2021

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 August 2021, over \$80,823,348.63 in payments were made to nearly 618 vendors, comprised of 1,790 invoices and over 6,186 accounting expense transactions. About 91 percent of the accounts payable payments made in the month fall into the Construction, Employee Benefits, Payroll Taxes, Contracted Services, NWSA Equity, Insurance, Environmental Remediation, Utility Expenses, Janitorial Services and Sales Taxes. Net payroll expense for the month of August was \$11,749,570.81.

Top 15 Payment Category Summary:	
Category	Payment Amount
Construction	45,082,474.14
Employee Benefits	9,825,812.07
Payroll Taxes	4,466,778.07
Contracted Services	3,322,461.33
SPA Equity	2,782,000.00
Insurance	2,526,311.93
Environmental Remediation	2,168,286.82
Utility Expenses	1,749,445.89
Janitorial Services	1,644,326.53
Sales Taxes	1,126,756.25
Legal	1,038,979.70
Software	856,757.50
Maintenance Inventory	852,514.32
Parking Taxes	548,264.93
Bond Fees	484,350.18
Other Categories Total :	2,347,828.97
Net Payroll	11,749,570.81
Total Payments :	\$92,572,919.44

COMMISSION AGENDA – Action Item No. 8b

Meeting Date: September 14, 2021

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 September 14, 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



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8c

ACTION ITEM

Date of Meeting September 14, 2021

DATE: August 26, 2021

TO: Stephen P. Metruck, Executive Director

FROM: Tommy Gregory, Senior Art Program Manager

SUBJECT: Affirmation of Port-wide Arts and Culture Board Members

ACTION REQUESTED

Request Commission appointment of three (3) members of the public to the Port-wide Arts and Culture Board.

SUMMARY

Per the Arts and Culture Policy Directive adopted by the Port Commission in 2019, the Port-wide Arts and Culture Board (Board) is to provide guidance, leadership and support to the Port of Seattle in its policy to procure, commission and incorporate high-quality art which reflects the Pacific Northwest's diverse culture, history and environment, as well as develop cultural programming showcases and public engagement opportunities. The Board is comprised of nine (9) members of which four (4) members of the public shall be appointed by the Port Commission (Commission).

The professional public members are integral to the work done by the Board and represent expertise and experience in fine arts, museum management, architecture and/or design. Therefore, the Commission is asked to confirm the following appointments to the Board:

1. Lara Behnert
2. Fulgencio Lazo
3. Jim Suehiro

Recommendations for the fourth public position on the Board will be made to the Commission later this year for appointment.

Attachments

1. Arts and Culture Policy Directive - November 2019

EXHIBIT A: PORT-WIDE ARTS AND CULTURAL PROGRAM POLICY DIRECTIVE

SECTION 1. Purpose.

The Port of Seattle has been an active proponent of art since the late 1960s as the first public airport to establish a civic art collection. The purpose of this policy directive is to establish a Port-Wide Arts and Cultural Program which returns the Port of Seattle to its position as a national leader among its peers for art and cultural programming, promotes art and cultural programming throughout all Port and Port-related facilities, and engages the public with the Port. This policy directive replaces the 2009 Port of Seattle Art Program Policy and Guidelines, approved by Commission on December 15, 2009.

SECTION 2. Definitions.

When used in this policy directive, the following words and phrases shall have the meanings given below unless the context in which they are included clearly indicates otherwise:

“Art Pools” refers to the Aviation Art Pool and the Non-Aviation Art Pool, to be used to fulfil the Port’s vision of art integration into facilities port-wide. These pools are funded by capital construction project budgets’ art allocations of one-percent (one percent).

“Capital Construction Projects” refers to any capital construction project Port-wide that meets the threshold for Commission review identified in the Delegation of Responsibility and Authority to the Executive Director.

“Cultural Programming” refers to methods which showcase the spirit of the Pacific Northwest through performing arts and public engagement activities.

“Port-Wide Arts and Cultural Program Guidelines” (the Guidelines) refers to the document which outlines specific guidance and direction for art, cultural programming, and the functions of the Port-Wide Arts and Culture Board.

“Port-Wide Arts and Cultural Program” refers to the Port of Seattle’s program to integrate art and cultural programming throughout its facilities through the curation of art, development of cultural showcases, and engagement of the public.

“Port-Wide Arts and Culture Board” (the Board) refers to the board (formerly the Art Oversight Committee) established by the Port-Wide Arts and Cultural Program which provides guidance, leadership and support to the Port of Seattle in its policy to procure, commission and incorporate high-quality art which reflects the Pacific Northwest’s diverse culture, history and environment, as well as develop cultural programming showcases and public engagement opportunities.

“Spirit of the Pacific Northwest” refers to the elements that make the region distinct and unique in character and encapsulates its essence.

SECTION 3. Scope and Applicability.

This policy directive applies to the Port-Wide Arts and Cultural Program, which includes adequate staffing, operational needs and expenses, applicable projects, art acquisition, installation and conservation, cultural programming, public engagement and other related activities.

SECTION 4. Responsibilities.

The Executive Director or their delegate shall:

A. Develop a five-year strategic plan which conveys the Port’s vision of art and cultural programming integration throughout the Port and Port-related facilities.

Develop annual workplans which outline yearly goals for the Port-Wide Arts and Cultural Program, including art activities, cultural programming activities, and budget estimates.

- (1) Develop strategies to engage the public with art and cultural programming throughout the Port and Port-related facilities.
- (2) Develop the Port-Wide Arts and Cultural Program Guidelines which reflect the Port’s equity diversity and inclusion principles and best practices.
- (3) Collaborate with heritage and cultural institutions and community organizations.
- (4) Create and maintain an internal and external collections database to be updated annually or as changes occur.
- (5) Direct the relevant Executive Leadership Team member to appoint three (3) members to the Port-Wide Arts and Culture Board, representing one each from divisions contributing to the percentage from capital construction for art: Maritime; Economic Development; and Aviation.

B. Direct the appropriate resources, including fiscal resources and staff, to adhere to best practices for art maintenance and conservation and to meet the needs of the Port-Wide Arts and Cultural Program.

- C. Provide an annual report and update to the Commission on the status of the Port-Wide Arts and Cultural Program.

SECTION 5. Policy.

- A. The Port shall allocate one percent of all capital construction projects in the authorized capital improvement plan for capital costs associated with art acquisition, installation and capital services:
- B. Specific projects are excluded from the Port-Wide Arts and Cultural Program including:
 - (1) Aviation division projects: airfield paving and associated airfield components; fuel hydrant systems; baggage systems in the bagwell which are not in the public bag claim area; and underground utilities.
 - (2) Maritime division projects: fishing-related docks; berths; dolphins; piles; electrical; and sewage.
- C. Art funds shall be allocated from Aviation capital projects to the Aviation Art Pool and from non-aviation capital projects to the Non-Aviation Art Pool.
- D. Art pool fund expenditures shall be reviewed by the Port-Wide Arts and Culture Board, and only be used for art acquisition and related capital expenditures.
- E. The dollar amount equal to one percent for Art shall be a line item identified in the final commission construction authorization.
- F. Changes in capital construction project budgets shall include a proportional change to the project's one-percent (one percent) allocation for art.
- G. The Executive Director shall include adequate operational funding for ongoing art conservation, maintenance, cultural programming, public engagement and related staffing needs in their recommended annual budget.
- H. The Port-Wide Arts and Culture Board shall provide guidance, leadership, and support to the Commission in its policy to procure, commission and incorporate high-quality art that engages the public.
 - (1) The Board will review art selections and placement.
 - (2) The Board shall be comprised of nine (9) members:
 - a. Two (2) commissioners appointed by the Commission President;

b. Three (3) members of the Executive Leadership Team appointed by the Executive Director:

i. Maritime Managing Director or designee,

ii. Economic Development Director or designee,

iii. Airport Managing Director or designee; and

c. Four (4) members of the public recommended by the Board and Sr. Art Manager and appointed by the Commission.

(3) Public members of the Board should be selected representing a diverse background and extensive experience with fine arts, museum management, architecture or design.

(4) The Board's membership application process, meeting frequency and protocol, rules of order, and other specific duties shall be delineated by the Port-Wide Arts and Cultural Program Guidelines.

(5) The Board shall explore and recommend collaborations, sponsorships and partnership opportunities with regional government entities and other institutions, with the goal of stimulating regional economic development, increasing visibility of the Port and connecting the Port and its activities to the community.

I. The Port-Wide Art and Cultural Program Guidelines shall

(1) Direct that Port's art collection and cultural programming to represent the diversity of the people living in King County including indigenous and those historically marginalized.

(2) Direct the protocol for the procurement, commission, selection, conservation and maintenance, relocation, deaccession, sale and lease of artwork.

(3) Include protocols for all temporary art exhibits, rotating exhibits and programming.

(4) Incorporate Port equity, diversity and inclusion principles throughout the entire program and execution.

(5) Include should also include the following considerations:

a. Complement the overall aesthetic of the surrounding area;

- b. Encapsulate and reflect the spirit of the Pacific Northwest;
- c. Coordinate with signage and way-finding when possible;
- d. Elevate the Airport's rating on internationally-recognized airport-rating systems;
- e. Adhere to industry practice around conservation and maintenance.

- f. generally allocate funds to the project that generated the specific funds, when recommended.

SECTION 6. Program Evaluation.

- A. Benchmarks and metrics to evaluate the Port-Wide Arts and Cultural Program shall include:
 - (1) The Executive Director shall provide a briefing to the Commission as art acquisition is executed. The briefing shall inform the Commission of the art acquired, the cost of acquisition, and the location of where the art will be placed.
 - (2) Port staff shall provide an annual report and update to the Commission on the Port-Wide Arts and Cultural Program by June 30th that shall include; include:
 - a. Budget-versus-actual-costs basis for all art projects;
 - b. Status of the art pools funds;
 - c. Summaries of art acquisition, cultural programming, art conservation and maintenance efforts, including deferred conservation and maintenance of existing art; and
 - d. Incorporation of equity, diversity and inclusion principles into the program and program execution.

- J. By September 30, 2020, update the Port-Wide Art and Cultural Program Guidelines to include direction from this policy and other public and internal sources.

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ORDER NO. 2021-08
AN ORDER OF THE PORT OF SEATTLE COMMISSION

Appoint Lara Behnert, Fulgencio Lazo and Jim Suehiro to each serve a three-year term as members of the Port Commission’s Portwide Arts and Culture Program Board, effective immediately.

PROPOSED
SEPTEMBER, 14, 2021

INTRODUCTION

Per the Arts and Culture Policy Directive adopted by the Port Commission in November 2019, the Portwide Arts and Culture Board (Board) shall be comprised of nine (9) members of which four (4) members of the public shall be appointed by the Port Commission (Commission).

TEXT OF THE ORDER

The Port Commission hereby appoints Lara Behnert, Fulgencio Lazo, and Jim Suehiro to each serve a three-year term as members of the Port Commission’s Portwide Arts and Culture Program Board, effective immediately.

STATEMENT IN SUPPORT OF THE ORDER

The professional public members are integral to the work done by the Board and represent expertise and experience in fine arts, museum management, architecture and/or design. Therefore, the Commission is asked to confirm the following appointments, establishing the first members of the Board:

Lara Behnert:

Lara leads the global art program for Starbucks Coffee Company, helping to evolve store designs and develops the company's brand expression. Ms. Behnert’s background is in creative direction and design for magazines, brands, and worthy causes. She loves solving problems beautifully, and with meaning. Lara is a proud graduate of Rhode Island School of Design and Juneau-Douglas High School in her hometown of Juneau, Alaska. She spent many years in New York City, and currently lives in Seattle.

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Fulgencio Lazo:

Fulgencio was born in Oaxaca, Mexico and studied at the Fine Arts School at the University of Benito Juárez of Oaxaca, under Professor Shinzaburo Takeda, where he specialized in printmaking. In 1990, Fulgencio came to Seattle to study lithography at Cornish College of the Arts. Despite his intentions of returning to his native Oaxaca, he fell in love and initiated his bi-national career, dividing his time between Seattle and Oaxaca.

Jim Suehiro

Also, an active advocate for diversity in architecture, Jim served as the American Institute of Architects (AIA) Seattle President in 1988-89, and on the AIA National Board of Directors 2008-09 representing the AIA Northwest and Pacific Region.

Mr. Suehiro is the owner of Suehiro Architecture, which focuses on airport design and is an active advocate for diversity in architecture. Mr. Suehiro served as the AIA Seattle President and on the Board of Directors representing the AIA Northwest and Pacific Region, in the past. He also served as the Director of the University of Washington of Built Environments Institute for Built Environment Innovation, where through his leadership in the development of integrated practice methods positively influenced project delivery transformation within the building industry. Additionally, Jim Suehiro has experience working as a project designer for McKinley Architects, as an airport design principal, as well as a principle working with NBBJ.

RETURN TO AGENDA



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8d

ACTION ITEM

Date of Meeting September 14, 2021

DATE: September 14, 2021

TO: Stephen P. Metruck, Executive Director

FROM: Stuart Mathews, Director, Aviation Maintenance

SUBJECT: Request Commission Authorization for the Executive Director to Enter into an Annual Maintenance Service Agreement with adbSafeGate Systems, Inc

Amount of this request: \$650,000

Total estimated project cost: \$650,000

ACTION REQUESTED

Request Commission authorization for the Executive Director to enter into an annual maintenance service agreement with adbSafeGate Systems, Inc., for up to five years with an estimated total cost of \$650,000.

SUMMARY

The SafeDock system assists aircraft and pilots in safe and efficient docking, which may save fuel and can reduce taxi-lane congestion. SafeDock will provide the Port and airlines with real on-gate and off-gate information to better utilize the limited gate facilities as well as provide real-time video for gate scheduling and airline asset tracking. Furthermore, the advanced SafeDock units, connected to the Gate Operating System (GOS), provide automatic Ramp Information Display (RIDS) capability that allows airlines to display critical flight information to ramp workers.

The SafeDock system was procured through a competitive process under project No. C800779 and is under construction, with gates coming on-line throughout 2021. This maintenance service agreement will allow the Port to seek assistance from the company SafeGate to maintain and operate this system when additional resources are needed beyond that which on-site Airport staff can provide.

There are no attachments to this memo.

RETURN TO AGENDA



**COMMISSION
AGENDA
MEMORANDUM**

ACTION ITEM	Item No. Date of Meeting	<u>8e</u> <u>September 14, 2021</u>
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DATE: June 11, 2021
TO: Stephen P. Metruck, Executive Director
FROM: Dawn Hunter, Director, Aviation Commercial Management
 Khalia Moore, Interim Sr. Manager, Airport Dining and Retail
SUBJECT: **Interim Lease and Concession Agreement for Duty-Free Operations**

ACTION REQUESTED

Request Commission authorization for the Executive Director to execute a Temporary Lease and Concession Agreement for Duty-Free Operations between the Port of Seattle and Dufry-Seattle JV for space at Seattle-Tacoma International Airport.

EXECUTIVE SUMMARY

On September 11, 2012, the Port of Seattle Commission (Commission) authorized the Chief Executive Officer to release a Request for Proposal (RFP) and execute a seven-year agreement with a Duty-Free Operator. Dufry-Seattle JV (Dufry) was the successful respondent. The current term of the Lease and Concession Agreement between the Port of Seattle (Port) and Dufry expired in October 2019 and has continued on a month-to-month holdover status. This agreement included units in South Satellite, Central Terminal, Concourse A and Concourse D at the Seattle-Tacoma International Airport (Airport).

The COVID-19 pandemic had a great impact on the entire aviation industry. The loss of international passengers during the pandemic has severely and adversely impacted the overall duty-free operations and sales at the Airport. International travel has not returned in a meaningful way to support improved sales. In an effort to preserve the viability of its business and to protect the investments of its Airport Concessions Disadvantaged Enterprise (ACDBE) partners, Dufry has requested to re-negotiate the terms of its expired contract.

Approval of this temporary agreement will continue provide the additional services for the passengers, sustain revenues for the Airport, and continue the financial viability of the concession’s operator until the complete Expanded Duty-Free plan is fully developed. On the contrary, if Aviation Commercial Management (AVCM) was unable to partner with Dufry for

Meeting Date: September 14, 2021

mutually favorable terms, the Airport could possibly lose an important and valuable passenger amenity for international passengers.

JUSTIFICATION

After the award of the Duty-Free Agreement in 2012, the Airport embarked on Airport Dining and Retail (ADR) Master Planning initiative, which the Port Commission authorized staff to move forward with, in 2014. The ADR Master Plan revamps the concessions program, by staggering the lease expiration dates, and diversifying the program from a mainly “master concessions” to right size of the number of small and minority owned businesses who are eligible to participate in the program. However, the ADR Master Plan does not include certain airport wide passenger amenities like Duty Free, Currency Exchange and Vending, therefore these services would need to be considered separately.

In 2019, staff identified the need for additional Duty-Free space in the airport. Once adequate space was identified, the Airport collaborated with multiple stakeholders to research and plan for the Expanded Duty-Free project on Concourse A and the South Satellite (SSAT) upgrade; these projects are currently in the planning phase. To prepare a comprehensive package for a Request for Proposal (RFP), the Airport will need to fully develop the Concourse A and SSAT projects. Information such as square footage and scope of work, delineating between base building and tenant responsibility, are primary for a proposer to provide the best financial projections and overall response to the RFP. With this in mind, Duty Free Planning will happen in three phases. As stated above the first phase is the evaluation of our current duty-free footprint to develop a plan of integration with the new and updates spaces. Phase two is the Concourse an Expanded Duty Free that will be brought to Commission on October 26th for approval to move the Project Delivery Document (PDD) forward. Phase three is moving in tandem with the other phases as ADR is working with AV Planning to develop the new SSAT upgrade plan.

As the Airport further develops the scope associated with the Expanded Duty-Free planning, staff recommends Commissioner approval of a temporary agreement with Dufry. Once the Expanded Duty-Free planning is complete, a comprehensive Duty-Free plan and subsequent RFP will be communicated, and staff will return to Commission for approval.

DETAILS

Key Terms of the Agreement are:

- Agreement Term:
 - Commence on January 1, 2021 to December 31, 2024
- Payments as Percentage Rent:
 - Under \$5 million - 16%
 - Between \$5 million and \$10 million - 18%
 - Over \$10 million - 20%
- Airport Concessions Disadvantage Business Enterprise (ACDBE) Participation
 - Concessionaire will maintain a minimum participation 12.5% ACDBE.

Meeting Date: September 14, 2021

ATTACHMENTS TO THIS REQUEST

- (1) Draft of Duty-Free Temporary Agreement

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

September 11, 2012 – The Commission authorized the Chief Executive Officer to release a Request for Proposal (RFP) and execute a seven-year agreement with a Duty-Free Operator.

LEASE AND CONCESSION AGREEMENT
FOR
DUTY FREE OPERATIONS

Between

PORT OF SEATTLE

And

DUFY-SEATTLE JV

SUMMARY OF KEY LEASE TERMS

(This page is for quick reference only, please refer to the Agreement for the full detail)

Agreement Date									
Concessionaire:	Ms. Courtney M. Thornton Executive Vice President DUFRY-SEATTLE JV One Meadowlands Plaza, 11 th Floor East Rutherford, NJ 07073								
Notice to Open Date	January 1, 2021								
Expiration Date:	Unless earlier terminated, pursuant to any provision of this Agreement, the term shall commence on January 1, 2021 and continue for a period of three (3) years December 31, 2023 the Expiration Date. Said Agreement may be extended for two (1) additional options period, by mutual consent from both the Port and Concessionaire, so long as both parties have provided to each other written notice consenting to the option not less than one hundred eighty (180) calendar days' prior to the Expiration Date and/or Option Expiration Date.								
Premises:	Units: CA-11 CT-07 SS-08 As more fully defined in Sections 1.35, 3.1 and Exhibit B								
Use of Premises:	For the purpose of Duty-Free concessions with an approved for Duty-Paid concessions within the space.								
Rent Commencement Date:	January 1, 2021								
Minimum Annual Guarantee Amount:	Beginning on January 1, 2022 Concessionaire shall begin to pay a Minimum Annual Guarantee, as more fully defined in Section 5.2.								
Percentage Fees:	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;"><i>Annual Gross Sales</i></th> <th style="text-align: center;"><i>Percentage of Gross Sales</i></th> </tr> </thead> <tbody> <tr> <td>Annual Gross Sales less than \$5,000,000</td> <td style="text-align: center;">16%</td> </tr> <tr> <td>Annual Gross Sales between \$5,000,001 and \$10,000,000</td> <td style="text-align: center;">18%</td> </tr> <tr> <td>Annual Gross Sales equal to or greater than \$10,000,000</td> <td style="text-align: center;">20%</td> </tr> </tbody> </table>	<i>Annual Gross Sales</i>	<i>Percentage of Gross Sales</i>	Annual Gross Sales less than \$5,000,000	16%	Annual Gross Sales between \$5,000,001 and \$10,000,000	18%	Annual Gross Sales equal to or greater than \$10,000,000	20%
<i>Annual Gross Sales</i>	<i>Percentage of Gross Sales</i>								
Annual Gross Sales less than \$5,000,000	16%								
Annual Gross Sales between \$5,000,001 and \$10,000,000	18%								
Annual Gross Sales equal to or greater than \$10,000,000	20%								
Security Deposit	One Million One Hundred Eighty Thousand and 00/100 (\$1,180,000.00) Dollars								
Airport Concession Disadvantaged Business Enterprise Participation	Airport Concessions Disadvantage Business Enterprise participation 12.5%								
Remittance Address For Payments Only:	Port of Seattle PO Box 24507 Seattle, WA 98124-0507								

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THIS LEASE AND CONCESSION AGREEMENT (“Agreement”) is made as of the _____ day of _____, 2021 by and between the PORT OF SEATTLE (“Port”), a Washington municipal corporation, and **DUFREY-SEATTLE JV** (“Concessionaire”). For and in consideration of the mutual promises, covenants and conditions set forth in this Agreement, the parties agree:

WITNESSETH;

WHEREAS, the Port owns and operates Seattle-Tacoma International Airport (“Airport”), located on property as legally described in Exhibit A; and

WHEREAS, the Port has agreed to lease to Concessionaire, and Concessionaire has agreed to lease from the Port, certain Premise(s) within the Airport for Concessionaire’s conduct of commercial activity, subject to the terms and conditions of this Agreement; and

NOW, THEREFORE, Port and Concessionaire, for and in consideration of the covenants and conditions and agreement provided hereinafter, do agree as set forth herein.

ARTICLE I

SECTION 1: DEFINITIONS

For purposes of this Agreement, the following terms have the following meanings:

- 1.1 **Additional Rent.** “Additional Rent” shall mean other rents due to the Port, including but not limited to, maintenance, repairs, and utility charges, as specified in this Agreement.
- 1.2 **Agreement.** “Agreement” shall mean this Lease and Concession Agreement, including amendments agreed to in writing by the parties.
- 1.3 **Airport.** “Airport” shall mean the Seattle-Tacoma International Airport, a legal description of which is attached as Exhibit A.
- 1.4 **ACDBE.** “Airport Concessions Disadvantaged Business Enterprise” and “ACDBE” shall mean a business, whether it is a corporation, sole proprietorship, partnership or joint venture certified as an ACDBE by the State of Washington, of which at least fifty-one percent (51%) of the interest is owned and controlled by one or more socially and economically disadvantaged individuals as defined in the Airport and Airways Safety and Capacity Expansion Act of 1987 and the regulations promulgated pursuant at 49 CFR Part 23.
- 1.5 **Alterations.** “Alterations” shall mean following the Build-Out Deadline, any non-structural changes, additions, substitution, or improvements.
- 1.6 **Annual Report.** “Annual Report” shall mean a report that reflects the amount of Gross Sales for the preceding calendar year, subject to the provisions of Section 6.3 of this Agreement.
- 1.7 **Build-Out Deadline.** Not Applicable

- 1.8 **Concessionaire.** “Concessionaire” shall mean and refer to the party executing this Agreement with the Port, as identified in the preamble of this Agreement and referenced in the Summary of Key Lease Terms.
- 1.9 **Day.** “Day” or “Days” shall, unless otherwise specified, mean and refer to calendar day(s), not business day(s).
- 1.10 **Default Rate.** “Default Rate” shall mean the rate set forth in Section 5.11 and referenced in the Summary of Key Lease Terms or the maximum rate provided by law for a transaction of this nature, whichever is less.
- 1.11 **Delay Damages.** Not Applicable
- 1.12 **Display Allowances.** “Display Allowances” shall mean the total of all display allowances, placement allowances, special purpose allowances, or other promotional incentives received by Concessionaire (or Concessionaire’s subtenant, licensee or concessionaire) from vendors, suppliers or manufacturers and any other revenue of this type, and further, if such allowances are received as a part of non-differentiated sales by Concessionaire (or Concessionaire’s subtenant, licensee or concessionaire) operating at multiple airports, Concessionaire shall, subject to the Port’s review, reasonably allocate the allowances between the airports and designate the amount to be allocated to the Airport for the calculation of Percentage Fees due. Display Allowance shall not include any manufacturer’s or supplier’s rebates and/or volume discounts that are properly considered, under general accepted accounting principles, credits against the cost of goods sold.
- 1.13 **Enplaned Passenger.** “Enplaned Passenger” shall mean all those passengers boarding flights at the Airport from scheduled or chartered flights, whether domestic or international, including non-revenue passengers (but excluding airline crew for the flight), and including those passengers connecting from arriving flights of the same or another airline. Enplaned Passengers shall generally be measured for the entire Airport and separately for Concourse A, Concourse B, Concourse C, Concourse D, the North Satellite and the South Satellite.
- 1.14 **Expiration Date.** “Expiration Date” shall have the meaning set forth in Section 2.1 and referenced in the Summary of Key Lease Terms.
- 1.15 **First Full Year.** “First Full Year” shall mean the first, full calendar year of the Agreement term.
- 1.16 **First Partial Year.** “First Partial Year” shall mean that portion of the calendar year commencing on the Rent Commencement Date and ending December 31 of the year in which the Rental Commencement Date falls.
- 1.17 **Franchise Agreement.** “Franchise Agreement” shall mean granted rights to use any trade name that may be used at the Premises for the entire term of the Agreement, pursuant to a franchise or license agreement.
- 1.18 **Gross Sales.** “Gross Sales” shall mean the total dollar amount derived from the sale or delivery of any food, beverages, or merchandise or the performance of any services from, in, upon or arising out of the Premises, whether by Concessionaire, any subtenants, licensees or

cessionaires of Concessionaire, or any other person on Concessionaire's behalf, whether at wholesale or retail, and whether for cash, check, credit (including charge accounts), exchange or in kind (specifically including the amount of credit allowed for any trade-ins). No deduction shall be permitted for credit card fees (e.g., interchange or processing fees) or thefts, and for uncollected or uncollectible credit or charge accounts. No deduction shall be permitted for sales discounts (such as prompt-payment discounts) that are not specifically reflected on the original invoice/receipt at the time of the sale. Gross Sales shall, without limiting the generality of the foregoing, also include:

- 1.18.1 Orders that originate or are accepted at the Premises, even if delivery or performance is made from or at any other place. All sales made and orders received at the Premises shall be deemed as made and completed therein, even though payment of account may be transferred to another office/location for collection.
- 1.18.2 Orders that result from solicitation off the Premises, but which are delivered or performed from the Premises, or by personnel either operating from the Premises or reporting to or under the control or supervision of any employee employed at the Premises.
- 1.18.3 Mail, catalog, computer, internet, telephone, or other similar order received at, ordered from, or billed from the Premises.
- 1.18.4 Sales originating from whatever source, and which Concessionaire (or Concessionaire's subtenants, licensees or concessionaires) in the normal and customary course of Concessionaire's (or Concessionaire's subtenant's, licensee's or concessionaire's) operations would credit or attribute to Concessionaire's (or Concessionaire's subtenant's, licensee's or concessionaire's) business conducted in the Premises;
- 1.18.5 Display Allowances, whether received by Concessionaire or its subtenant, licensee or concessionaire; and
- 1.18.6 All monies or other things of value received by Concessionaire (or Concessionaire's subtenant, licensee or concessionaire) from Concessionaire's (or Concessionaire's subtenant's, licensee's or concessionaire's) operations at, upon or from the Leased Premises which are neither included in nor excluded from Gross Sales by the other provisions of this definition, including without limitation, finance charges, late fees, and all deposits not refunded to customers.
- 1.18.7 Gross Sales shall not include, and may be adjusted to exclude, the following when properly recorded and accounted for:
 - A. Tips and gratuities paid directly to employees;
 - B. The exchange of merchandise between stores of Concessionaire (or Concessionaire's subtenant, licensee's or concessionaire's) where such exchanges are made solely for the convenient operation of Concessionaire's (or Concessionaire's subtenant's, licensee's or concessionaire's) business and not

for the purpose of consummating a sale which has been made at, upon or from the Premises;

- C. Returns to shippers or manufacturers with no mark-up;
- D. Allowances or refunds allowed by Concessionaire to customers because of unacceptable or unsatisfactory goods or services to the extent such allowance or refund was actually granted and adjustment actually made;
- E. Complimentary meals, the amount of any employee discount on meals, and any meals provided by Concessionaire to its employees without cost as a benefit;
- F. The amount of any sales tax or other excise tax imposed upon the customer and collected by Concessionaire as agent for the taxing body imposing the tax and billed to the customer as a separate item;
- G. Revenue from the sale of uniforms or clothing to Concessionaire's employees where it is required that such uniforms or clothing be worn by the employees;
- H. Any sums that represent discounts so long as the amount of the discount is shown on the face of the receipt issued to the customer; and
- I. Any item, such as the cost of third-party shipping, for which the Concessionaire is reimbursed at actual cost therefor; provided, however, in the event that Concessionaire charges a customer more than the actual cost of such item (specifically including through the inclusion of a "handling" or similar charge by Concessionaire), the entire amount shall be includable with Gross Sales and shall not be subject to exclusion.

1.19 **Initial Improvements.** Not Applicable

1.20 **Initial Improvement Amount.** Not Applicable

1.21 **Last Full Year.** "Last Full Year" shall mean the last, full calendar year of the Agreement term.

1.22 **Last Partial Year.** "Last Partial Year" shall mean that portion of the calendar year commencing on January 1 following the Last Full Year and ending on the Expiration Date (or earlier termination date); provided, however, (a) in the event that the Rent Commencement Date falls on January 1, there shall be no First Partial Year, and (b) in the event that the Expiration Date falls on December 31, there shall be no Final Partial Year.

1.23 **Legal Requirements.** "Legal Requirements" shall mean and refer to all laws, statutes and ordinances including building codes and zoning regulations and ordinances and the orders, rules, regulations and requirements of all federal, state, county, city or other local jurisdiction departments, agencies, bureaus, offices and other subdivisions thereof, or any official thereof, or of any other governmental, public or quasi-public authority, including the Port, which may be applicable to or have jurisdiction over the Premises.

- 1.24 **Lien.** “Lien” shall mean and refer to any mortgage, lien, security interest, encumbrance, charge on, pledge of, conditional sale or other encumbrance on the Premises or the Initial Improvements, Midterm Refurbishment, any Alteration, fixture, or improvement.
- 1.25 **Midterm Deadline.** Not Applicable
- 1.26 **Midterm Refurbishment.** Not Applicable
- 1.27 **Minimum Annual Guarantee.** “Minimum Annual Guarantee” shall mean the minimum annual payment amount by Concessionaire to the Port as described in Section 5.
- 1.28 **Net Book Value of Leasehold Improvements.** “Net Book Value of Leasehold Improvements” shall mean and refer to the dollar amount generated through application of rules established in Section 19.5.
- 1.29 **Notice to Proceed.** Not Applicable
- 1.30 **Notice to Open Date.** “Notice to Open Date” shall mean the date in which the Concessionaire shall begin operations within the Premises (January 1, 2021).
- 1.31 **Operating Standards.** “Operating Standards” shall have the meaning set forth in Section 18.4.1, and shall include, without limitation, the ADR Concessions Operating Standards, as defined in Section 4.3.3.
- 1.32 **Percentage Fee.** “Percentage Fee” shall mean the percentage fee paid by Concessionaire on Gross Sales according to the Proposal and this Agreement.
- 1.33 **Port.** “Port” shall mean the Port of Seattle, a Washington municipal corporation.
- 1.34 **Port Standards.** “Port Standards” shall include, without limitation, the Airport Rules and Regulations, the Regulations for Airport Construction, the Tenant Design and Construction Process Manual, Seattle Tacoma International Airport Construction General Requirements, the Safety Manual, the CAD Standards Manual, the Concession Design Guidelines, the Port’s mechanical, electrical, water and waste, and industrial waste and storm drainage standards and any other, similar document establishing requirements and/or standards for design and construction at the Airport as more fully defined in Exhibit E.
- 1.35 **Premises.** “Premises” shall have the meaning set forth in Section 3 and in the Summary of Key Agreement Terms; provided, however, in the event that the Premises include any units the precise boundaries of which have not, as of the date of execution of this Agreement, been determined, the parties agree that they may – without the need for a formal amendment of this Agreement – substitute a revised lease outline drawing accurately identifying the location and boundaries of the particular unit when the same has been finally determined. This ministerial revision shall be reflected by a countersigned letter that reflects that parties’ agreement on the revised lease outline drawing, and upon such written agreement the revised lease outline drawing shall automatically supersede any such drawing originally included as an exhibit to this Agreement.

For the purpose of this Agreement, Premises shall also include any office or storage space leased by Concessionaire. These Premises may be added or deleted by either the Port or Concessionaires by a countersigned letter that reflects the change in Premises. Concessionaire shall be charged the going rental rate for the area added to the Premises in accordance with similar rates charged for Airport Dining and Retail tenants.

- 1.36 **Proposal.** Not Applicable
- 1.37 **Removable Fixtures.** “Removable Fixtures” shall have the meaning set forth in Section 10.4.
- 1.38 **Rent.** “Rent” shall mean and refer collectively to sums denominated as either Minimum Annual Guarantee, Percentage Fee, Additional Rent or any other sums or charges otherwise payable by Concessionaire under the terms of this Agreement. Failure by Concessionaire to pay any sum denominated as Rent shall entitle the Port to pursue any or all remedies specified in this Agreement as well as remedies specified in RCW Chapter 59.12 or otherwise allowed by law.
- 1.39 **Rent Commencement Date.** “Rent Commencement Date” shall mean the date on which Concessionaire first opens for business. For the purpose of this Agreement the Rental Commencement Date shall be set as January 1, 2021.
- 1.40 **Security Deposit.** “Security Deposit” shall mean a good and sufficient corporate surety company bond, irrevocable stand-by letter of credit, or other security in a form approved by the Port in the amount set forth in the Section 7 and referenced in the Summary of Key Lease Terms.
- 1.41 **Summary of Key Lease Terms.** “Summary of Key Lease Terms” shall mean the cover page to the Agreement that identifies certain key terms of this Agreement.

SECTION 2: TERM

- 2.1 **Agreement Term.** Unless earlier terminated, pursuant to any provision of this Agreement, the term shall commence on **January 1, 2021** and continue for a period of **three (3) years December 31, 2024** the Expiration Date. Said Agreement may be extended for two (1) additional options period, by mutual consent from both the Port and Concessionaire, with one hundred eighty (180) calendar days’ notice prior to the Expiration Date and/or Option Expiration Date.
- 2.2 **Holding Over.** If Concessionaire, with the written consent of the Port, holds over after the expiration or sooner termination of this Agreement, the resulting tenancy will, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-month basis. Any holding over by Concessionaire after the expiration or earlier termination of the Agreement with the express, written consent of the Port shall not, in any manner, constitute a renewal or extension of the Agreement or give Concessionaire any rights in or to the Premises.

In order to facilitate transition from Concessionaire’s tenancy to that of another Concessionaire at the expiration of the term of the Agreement, the Port may request, and Concessionaire shall agree, to extend its tenancy as to some or all of the Premises on a month-to-month basis. No later than nine (9) months before expiration of the Agreement, the parties shall meet to discuss

the process for transitioning occupancy of the Premises in order to minimize disruption of service to the traveling public at the Airport.

During such month-to-month tenancy, Concessionaire shall, unless otherwise mutually agreed, pay to the Port the same Rent that was in effect immediately prior to the month-to-month tenancy. Concessionaire will continue to be bound by all of the additional provisions of this Agreement insofar as they may be pertinent.

SECTION 3: LEASED PREMISES

- 3.1 **Premises.** Commencing on the Notice to Open Date, the Port hereby leases to Concessionaire and Concessionaire hereby leases from the Port, the Premises. In the event that there is different Notice to Open Dates for different portions of the Premises, the lease for each portion of the Premises shall commence on its respective Notice to Open Date. Concessionaire may with Port approval operate a temporary operation on the Premises during any construction and/or midterm refurbishment. Such operations will be subject to payment of Rent as identified in Section 5.

Space ID	Approximate Square Footage	Exhibit
CA-11	2,455	B
CT-07	875	B
SS-08	3,728	B

- 3.2 **Acceptance of the Premises.** Concessionaire shall promptly examine the Premises no later than ninety (90) days from the date the Premises are turned over to Concessionaire for build-out. Unless Concessionaire provides the Port with written notice of any defect or problem within ten (10) working days of the examination, Concessionaire shall have accepted them in their present, “as-is” condition, and agrees to make any changes in the Premises necessary to conform to federal, state and local law applicable to Concessionaire’s use of the Premises and obtain necessary permits therefor.
- 3.3 **Quiet Enjoyment.** So long as Concessionaire is not in default under this Agreement and subject to the specific provisions, covenants and agreements contained in this Agreement, the Port covenants and agrees that the quiet and peaceful possession and enjoyment of the Premises by Concessionaire shall not be disturbed or interfered with by the Port or by any other party claiming by or through the Port.
- 3.4 **No Warranty.** The Port makes absolutely no warranty, promises or representations as to the economic viability of any concession location, including the Premises. Passenger counts, passenger flows and other customer traffic are for the most part products of airline schedules and gate utilization. Further, Federal Aviation Administration and Transportation Security Administration rules and regulations governing security and emergency situations may restrict access to the Airport or portions thereof. Except as specifically set forth in this Agreement,

Concessionaire shall not be entitled to any relief in the event passenger counts, passenger flow, customer traffic, or Gross Sales are other than Concessionaire predicted or projected.

- 3.5 **Office and/or Storage Space.** At Concessionaire's request, the Port may add or delete office and/or storage space to this Agreement through an Office/Storage Rider. Concessionaire agrees and acknowledges that it shall be responsible for any rentals and fees associated with such request. Rentals and fees shall be modified from time to time.
- 3.6 **Lease Outline Drawing (LOD).** Concessionaire agrees that the Port may make modifications to the Lease Outline Drawing (LOD) provided in Exhibit B, to reflect final build-out conditions. Such modifications shall be made through a Premise Notice.
- 3.7 **Annual Review.** At the Port's discretion on or about the anniversary of the Rent Commencement Date, the Port and Concessionaire shall tour the Premises and jointly agree upon what, if any, routine refurbishment is required to maintain the Premises in a First Class Manner, as required by Section 4.3, and Concessionaire shall, except to the extent any such work is the responsibility of the Port under Section 11.1, promptly undertake any necessary repair, maintenance, or Alterations at Concessionaire's expense. If the Port and Concessionaire cannot jointly agree upon the type and extent of refurbishment necessary, the Port may, as set forth in Section 4.3, determine the refurbishment required. For purposes of this Section, "refurbishment" shall generally be limited to the routine repainting or redecoration of concession space within the Premises, including the replacement or repair of worn carpet, tile, furnishings, fixtures, finishes, or equipment. Nothing in the requirement for an annual review, however, shall relieve Concessionaire from the obligation to maintain Premises in a First Class Manner on an ongoing basis as required by Section 4.3, and Concessionaire shall specifically perform maintenance and refurbishment as needed to continuously comply with that standard. The failure to timely undertake required refurbishment shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F.

SECTION 4: USE OF PREMISES

- 4.1 **Use of Premises.** Concessionaire shall use the Premises for:
- 4.1.1 **Duty Free Merchandise.** Duty Free Merchandise shall be sold to international ticketed passengers in accordance with the 19 CFR §§ 19.35 – 19.39, where a duty and/or tax is applied. Merchandise includes but is not limited to, tobacco, alcohol, fashion, electronics, luggage, cosmetics, perfume, confectionary, etc.
- 4.1.2 **Duty Paid Merchandise.** Duty Paid Merchandise shall be merchandise that a ticketed domestic passenger may purchase and shall have all duties and/or taxes applied. Merchandise includes but is not limited to, fashion, electronics, luggage, cosmetics, perfume, confectionary, etc.

as referenced in the Summary of Key Lease Terms and further described in the Proposal, and Concessionaire shall not use the Premises for any other purpose without the written consent of the Port. Concessionaire recognizes that its specific limited use is a material consideration to the Port in order that the Airport will, in the Port's sole discretion, maintain an appropriate tenant mix so as to efficiently serve the traveling public and to produce the maximum Gross Sales possible for all tenants.

4.2 **Rights.** Concessionaire's rights and privileges in the Agreement are:

4.2.2 **Non-Exclusive.** Concessionaire's [Merchandise as more fully defined in Section 4.1.2](#) rights and privileges in this Agreement are non-exclusive, and nothing in this Agreement precludes the Port from entering into an agreement with any other parties during the term of this Agreement for the sale in any part of the Airport of the same or similar food, beverages, merchandise or service which Concessionaire is permitted to sell or offer, whether such agreements are awarded competitively or through negotiations and regardless of whether the terms of such agreements are more or less favorable than the terms of this Agreement.

4.3 **Port Standards.**

4.3.1 **First-Class Operations.** In addition to, and not in lieu of, any other more specific Port Standards that may be set forth in this Agreement, Concessionaire shall maintain a first class standard of service equivalent to the highest standards within the food and retail service industry ("First Class Manner"). For the purposes of this Agreement, "First Class Manner" shall mean the standard of products, cleanliness, and customer service that would be reasonably expected in upscale shopping malls and other similar high-quality airport and non-airport retail and food service facilities. The Port desires to provide the air travelers and the public with facilities, service, food, beverages and retail merchandise of first-class quality. For food and beverage operations, Concessionaire must ensure that the air travelers and the public are provided first class quality foods with adequate portions, comparable to or better, than that offered for sale in similar food service operations in the greater Seattle-Tacoma region offering like products. Unless the Port's determination is shown to be arbitrary and capricious by "clear, cogent and convincing evidence," the Port shall be the final arbiter of what constitutes a First-Class Manner and Concessionaire's compliance or noncompliance with this Section 4.3.1. The failure to comply with this standard shall be grounds for the imposition of Liquidated Damages as provided in Section 18.4 and Exhibit F.

4.3.2 **General Operating Standards.** Concessionaire shall not use or occupy or permit the Premises or any part thereof to be used or occupied, in whole or in part, in a manner which would in any way: (i) violate any present or future Legal Requirements or Port Standards, (ii) violate any of the covenants, agreements, provisions and conditions of this Agreement, (iii) violate the certificate of occupancy then in force with respect to the Agreement, (iv) constitute a public or private nuisance, (v) impair, in the Port's reasonable judgment, with the character, reputation or appearance of the Airport or the Port, or (vi) occasion discomfort, inconvenience or annoyance to either the Port or its adjoining tenants. Without limiting the foregoing, Concessionaire specifically agrees to

comply with all applicable rules and regulations of the Port, whether now in existence or hereafter promulgated, pertaining to (a) the Airport and its terminals, which exist for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public, and (b) the common food and beverage areas located within the Airport. The failure to comply with this standard shall be grounds for the imposition of Liquidated Damages as provided in Section 18.4 and Exhibit F.

- 4.3.3 **Specific Operating Standards.** Concessionaire shall, at all times, comply with the specific operating standards set forth on Exhibit C, as from time to time amended by the Port (the “ADR Concessions Operating Standards”). Concessionaire expressly acknowledges and agrees that its Premises and operations are subject to inspection as set forth on Exhibit C. The failure to comply with the operating standards shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F. The Port reserves the right, in the Port’s sole and absolute discretion, upon thirty (30) days written notice to Concessionaire, to amend, substitute, supplement and/or extend the ADR Concessions Operating Standards set forth on Exhibit C, including the terms and conditions set forth therein, and upon written notice to Concessionaire of any such modification(s), such modified ADR Concessions Operating Standards shall be complied with by Concessionaire, without need for formal amendment to this Agreement.
- 4.3.4 **Food Handling Standards.** Without limiting any other requirements of this Agreement, Concessionaire shall comply with all local health department and HACCP standards regarding the proper and safe receiving, storage, preparation and serving of all food and beverage items as more fully defined in the ADR Concessions Operating Standards. The failure to comply with these standards shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F.
- 4.3.5 **Unified Pest Control Standard.** Without limiting any other requirements of this Agreement, Concessionaire shall comply with the Port’s unified pest control standard as more fully outlined in Exhibit C. The failure to comply with this standard shall be grounds for the imposition of Liquidated Damages as provided in Section 18.4 and Exhibit F.
- 4.3.6 **Street Pricing Policy.** Concessionaire shall, at all times, comply with the street pricing policy set forth on Exhibit D. Without limiting any other rights that may exist under this Agreement, Concessionaire acknowledges that the failure to adhere to the policy shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F.
- 4.3.7 **Franchise Standards.** Without limiting or otherwise reducing any of the standards otherwise imposed under this Agreement, Concessionaire shall also meet or exceed all franchise standards that are imposed on Concessionaire by any Franchisor. Copies of those franchise standards and performance audit forms shall be sent to the Port prior to the Notice to Open Date. Copies of inspections conducted by the Franchisor or any mystery shopper service hired by the Franchisor shall be sent to the Port within ten (10) days of receipt by Concessionaire or any subtenant.

- 4.3.8 **Employment Standards.** It is the stated expectation of the Port of Seattle Commission that Airport employers, including Concessionaires, provide quality jobs for its employees. To this end Concessionaire shall comply with all, applicable federal, state, and local laws and ordinances related to wages and benefits as well as Concessionaire's specific commitments regarding wages and benefits made as part of its Proposal. The Port also expects Concessionaire to participate in, and otherwise provide documentation relevant for, an employment continuity pool established by the Port. Likewise, Concessionaire shall comply with its specific commitments regarding hiring from the employment continuity program made as part of its Proposal. Concessionaire shall, as required by Section 6, provide such reports as may be requested by the Port to document Concessionaire's compliance with these requirements.
- 4.3.9 **Small Business Standards.** It is also the policy of the Port of Seattle Commission to encourage Airport businesses, including Concessionaire, to make every reasonable effort to maximize the contracting opportunities for small business (including ACDBEs, as addressed below in Section 25) in the construction and operation of the concession. To this end, Concessionaire shall comply with its specific commitments regarding use and inclusion of small business that it made as part of its Proposal. Concessionaire shall, as required by Section 6, provide such reports as may be requested by the Port to document Concessionaire's compliance with these requirements.
- 4.3.10 **Airport Rules and Regulations.** The use by Concessionaire of the Premises, the public area and all other area of the Airport shall be subject to such Airport Rules and Regulations as are now or may in the future be adopted by the Port, provided that such Rules and Regulations do no conflict with applicable provisions of state or federal law.

Except in the case of emergency Rules and Regulations, the Port shall give Concessionaire written notice and opportunity to comment on any proposed Rules and Regulations that would affect Concessionaire's operation at the Airport before such proposed Rules and Regulations are adopted by the Port. Within twenty (20) calendar days after receipt of the Port's notice if such proposed Rules and Regulations, Concessionaire may submit in writing, objections to the proposed Rules and Regulations. The Port shall have fifteen (15) calendar days after receipt of the objection to meet and discuss the proposed Rules and Regulations. If the Concessionaire's objections are not resolved, the Port shall provide the proposed Rules and Regulations and the Concessionaire's objections to the Port Commission prior to implementation, and Concessionaire shall have twenty (20) calendar days to comment to the Port Commission on its objections.

After the Concessionaire comments to the Port Commission of its objections, or if the Concessionaire fails to comment to the Port Commission during the allotted twenty (20) calendar day period, the Port shall implement the proposed Rules and Regulations. Exhibit E provides the most current link to the Airport's Rules and Regulations.

- 4.3.11 **Conflict.** Whenever a conflict arises between state or local law, ordinances or regulations and federal law or regulations, the Rules and Regulations, any operating standards of the Port (including, without limitation, the ADR Concessions Operating

Standards set forth on Exhibit C), the most stringent law, regulations rule or standard applicable to this Agreement and Concessionaire's performance shall control.

- 4.4 **Franchise.** If the Premises are operated under a franchise or license arrangement, Concessionaire represents and warrants to the Port that Concessionaire has been granted the right to use any trade name, concept or brand that may be used at the Premises for the entire term of this Agreement, pursuant to a franchise or license agreement (the "Franchise Agreement") with the trade name owner (a "Franchisor"). At the Port's request, Concessionaire agrees to provide the Port with a copy of the Franchise Agreement, or a certification from Franchisor that such Franchise Agreement exists, and reasonable evidence that such agreement remains in full force and effect. Concessionaire agrees that the termination of Concessionaire's right to use the licensed trade name, concept or brand at the Premises or to conduct an operation at the Premises of the type then conducted by or under license from Franchisor under Concessionaire's trade name (whether due to modification or termination of the Franchise agreement or otherwise), shall constitute a material breach of Concessionaire's obligations under this Agreement. Concessionaire agrees that if such Franchise Agreement is terminated, the Port shall have the right to exercise any or all of its remedies pursuant to Section 18 of this Agreement.
- 4.5 **No Liens.** Concessionaire will not directly or indirectly create or permit to be created and/or to remain, a Lien upon the Premises, including any Initial Improvements, Midterm Refurbishment, Alterations, fixtures, improvements or appurtenances, except those Liens expressly permitted in writing by the Port. In the event any such Lien(s) have been created by or permitted by Concessionaire in violation of this provision, Concessionaire shall immediately discharge as of record, by bond or as otherwise allowed by law, any such Lien(s). Concessionaire shall also defend (with counsel approved by the Port), fully indemnify, and hold entirely free and harmless the Port from any action, suit or proceeding brought on or for the enforcement of such lien(s). As used in this Section, "Lien" shall mean and refer to any mortgage, lien, security interest, encumbrance, charge on, pledge of, conditional sale or other encumbrance on the Premises, any Alteration, fixture, improvement or appurtenance to the Premises, or any larger building and/or property of which the Premises may be a part.
- 4.6 **Copyright Clearance.** Concessionaire and Concessionaire's Subtenants are responsible for obtaining permission to transmit any copyrighted music, including but not limited to, radio broadcasts, recorded music, and television broadcasts, in their Leased Premises at the Airport in compliance with Federal Copyright Law found in Title 17 of the United States Code, or as amended.
- 4.7 **Signs.** No signs, promotions or other advertising matter, symbols, canopies or awnings (collectively "Signs") shall be attached to or painted on within, or outside the Premises, including the walls, windows and doors thereof, without the prior written approval of the Port. Any permitted Sign shall be professionally prepared. The Port may, without notice and without any liability therefore, enter the Premises and remove any items installed or maintained by Concessionaire in violation of the provisions of this Section 4.7. At the termination or sooner expiration of this Agreement, Concessionaire shall remove all such Signs attached to or painted by Concessionaire at its own expense, and Concessionaire shall repair any damage or injury to

the Premises and correct any unsightly condition caused by the maintenance and removal of its Signs.

If Concessionaire fails to comply with the requirements of this Section 4.7, the Port shall have the right to require Concessionaire to restore the Premises to the condition existing immediately prior to the unauthorized installation or modification of the Sign. In the event that Concessionaire fails to restore the Premises within three (3) days following notice by the Port, Concessionaire shall, in addition to (and not in lieu of) any other rights or remedies the Port may have (whether under this Agreement or in law or in equity), pay the Port liquidated damages as provided in Section 18.4 and Exhibit F until Concessionaire has restored the Premises. Concessionaire and the Port agree that the Port will incur damages as a result of the failure to restore the Premises, which damages are impractical or impossible to determine, and that this amount is a reasonable forecast of the damages to be suffered by the Port.

- 4.8 **Mandatory Programs.** Concessionaire understands that, from time to time, the Port may institute certain programs that the Port believes, in its sole judgment, will be in the best interests of the Airport or its tenants. Such programs shall include, but not be limited to, trash recycling, composting, concession use of durable table ware or compostable/recyclable to-go service ware, commuter trip reduction, and Aircraft Operations Area (AOA) Clean Surface Program for Foreign Object Debris (FOD). Concessionaire agrees to promptly comply with and carry out all obligations issued by the Port under such programs, as the same may exist from time to time.

The Port shall, at Concessionaire's cost as set forth in the then-current Airport tariff, provide pest control services to the Premises as part of the Port's Unified Pest Management Program. Such charges to Concessionaire shall commence with the start of services provided under the Unified Pest Management Program at the Premises.

SECTION 5: RENT AND FEES PAYABLE TO THE PORT

- 5.1 **Calendar Year Accounting.** For the convenience of the Port, this Agreement will generally be administered financially on a calendar year basis. Consequently, in the event that the Rent Commencement Date falls on anything other than January 1 or the Expiration Date falls on anything other than December 31, the Agreement term will include partial calendar years at the beginning and end of the Agreement term.
- 5.2 **Minimum Annual Guarantee.** Beginning on **January 1, 2022**, Concessionaire will begin to pay a Minimum Annual Guarantee (MAG). The MAG will be eighty-five percent (85%) of the total paid in Percentage Fee by Concessionaire to the Port for the previous calendar year. Said MAG will be recalculated on annual basis.
- 5.2.1 **Payment.** The Minimum Annual Guarantee amount shall be divided into equal monthly payments. The Minimum Annual Guarantee shall be payable monthly, in advance, without notice from the Port and without abatement, setoff, or deduction, beginning on the first day of the month after the Rent Commencement Date and thereafter on or before the first day of each and every month during the Agreement term.
- 5.2.2 **Relief for Exceptional Circumstances.**

If the total number of International Enplaned Passengers for any calendar month decreases by more than twenty percent (20%) from the same calendar month of the prior year (the “Reference Month”), then:

- (a) the Minimum Annual Guarantee payment due for the next month (or such later month immediately following the date on which the number of Enplaned Passengers can reasonably be determined) shall automatically be adjusted downward by the percentage decrease in the number of Enplaned Passengers for the month experiencing the decrease;
- (b) the Minimum Annual Guarantee for the Year in which the reduced monthly payment amount falls shall also be reduced by a like dollar amount; and
- (c) the adjustments in (a) and (b) shall be referred to as “Exceptional Enplanement Adjustments.”

If the Reference Month was a month that previously triggered Exceptional Enplanement Adjustments, the Reference Month above shall instead mean the same calendar month of the most recent year that did not trigger Exceptional Enplanement Adjustments for that calendar month.

5.3 **Percentage Fees.** Commencing on the Rent Commencement Date, Concessionaire shall also pay the Port a percentage fee (the “Percentage Fee”) according to the following schedule and referenced in the Summary of Key Lease Terms and the Proposal, to the extent the Percentage Fee is higher than the monthly payment of the Minimum Annual Guarantee paid to the Port pursuant to Section 5.3.

<i>Annual Gross Sales</i>	<i>Percentage of Gross Sales</i>
Annual Gross Sales less than \$5,000,000	16%
Annual Gross Sales between \$5,000,001 and \$10,000,000	18%
Annual Gross Sales equal to or greater than \$10,000,001	20%

For the First Partial Year and the Final Partial Year, any breakpoints identified in the schedule for payment of a higher Percentage Fee shall be pro-rated based on the number of *days* in the partial year.

5.4 **Contract Rent.** The Port and Concessionaire agree that the first seven percent (7%) of Concessionaire’s Gross Sales paid to the Port (whether paid as part of the Minimum Annual Guarantee or as Percentage Fees) shall be the contract rent for the Premises for purposes of the Leasehold Excise Tax Payable pursuant to Chapter 82.29A of the Revised Code of Washington, unless the Washington State Department of Revenue imposes a different percentage allocation. All amounts in excess of the amount deemed subject to Leasehold Excise Tax shall be consideration for the concession rights granted under this Agreement.

- 5.5 **Additional Rent.** During the term of this Agreement, Concessionaire shall also pay to the Port, within thirty (30) days of invoice, any maintenance and repair charges required by Section 11, any utility charges required by Section 12, any Unified Pest Management charges required by Section 4.8, and such other amounts as may be owing by Concessionaire to the Port pursuant to the terms of this Agreement.
- 5.6 **Payments; Automatic Transfer.** All Rent due under this Agreement shall be paid in lawful money of the United States of America. Concessionaire may not pay any Rent due under this Agreement utilizing a credit card or other, similar instrument for which the Port must pay a commission or discount on the gross funds remitted; all payments shall be made by check, ACH credit transfer, or other form of payment approved by the Port. In the event the Concessionaire delivers a dishonored check or draft to the Port in payment of any obligation arising under this Agreement, Concessionaire shall pay a service charge in the amount established by the Port from time to time, along with interest thereon at eighteen percent (18%) per annum from the original due date of such dishonored check or draft without further demand. In such event, the Port may require that future payments be made by cashier's check or other means acceptable to the Port.

Instead of requiring Concessionaire to pay Rent or other charges in a manner pursuant to Section 5.8, the Port may, at its sole option, upon not less than sixty (60) days prior notice to Concessionaire, require Concessionaire to promptly execute and deliver to the Port any documents, instruments, authorizations, or certificates required by the Port to give effect to an automated debiting system, whereby any or all payments by Concessionaire of whatsoever nature required or contemplated by this Agreement shall be debited monthly or from time to time, as provided in this Agreement, from Concessionaire's account in a bank or financial institution designated by Concessionaire and credited to the Port's bank account as the Port shall designate from time to time.

Concessionaire shall promptly pay all service fees and other charges connected with its use of an automated debiting system, including, without limitation, any charges resulting from insufficient funds in Concessionaire's bank account or any charges imposed on the Port.

In the event that Concessionaire elects to designate a different bank or financial institution from which any fees or other charges under the Agreement are automatically debited, notification of such change and the required documents, instruments, authorizations, and certificates specified in Section 5.6 must be received by the Port no later than thirty (30) days prior to the date such change is to become effective.

Concessionaire agrees that it shall remain responsible to the Port for all payments of Rent and other charges pursuant to the Agreement, even if Concessionaire's bank account is incorrectly debited in any given month. Such fees and other charges shall be immediately payable to the Port upon written demand.

Concessionaire's failure to properly designate a bank or financial institution or to promptly provide appropriate information in accordance with this Section 5.8 shall constitute a default of this Agreement.

5.7 **Late Charges.** Concessionaire hereby acknowledges that late payment by Concessionaire to the Port of Rent, or any portion thereof, or any other sums due hereunder will cause the Port to incur costs not otherwise contemplated by this Agreement. Accordingly, if any installment of Rent, or any portion thereof, or any other sum due from Concessionaire shall not be received by the Port within ten (10) days after such amount shall be due, then, without any requirement for notice by the Port to Concessionaire, Concessionaire shall pay the Port a late charge equal to five percent (5%) of such overdue amount unless such late charge is specifically waived by the Port in writing. The parties agree that such late charge represents a fair and reasonable estimate of the costs the Port will incur by reason of late payment by Concessionaire. Acceptance of such late charge by the Port shall in no event constitute a waiver of Concessionaire's default with respect to such overdue amount, nor prevent the Port from exercising any of the other rights and remedies in this Agreement.

In addition to the late charges provided for in this Section, interest shall accrue on any unpaid Rent and/or other remuneration, or any other sums due, at the Default Rate of Eighteen Percent (18%) per annum from the date due until paid.

Notwithstanding anything to the contrary in this Section, interest and late charges shall be subject to a minimum, monthly charge of Five Dollars (\$5.00).

5.8 **Accounting Procedures.**

5.8.1 **Records.** Concessionaire will establish and maintain an accounting system (specifically including all books of account and records customarily used in the type of operation permitted by this Agreement) in full accordance with generally accepted accounting principles and otherwise reasonably satisfactory to the Port for the determination of any Rent or other computations, which may be necessary or essential in carrying out the terms of this Agreement. Concessionaire shall maintain its records relating to the operation permitted by this Agreement for a period of at least three (3) years after the end of each calendar year (or until the close of any ongoing audit thereof being conducted by, or on behalf of, the Port); provided, however, that the Port may request that any such records be retained for a longer period of time, in which case Concessionaire, at its option, may deliver such records into the custody of the Port

5.8.2 **Monthly Sales Reporting.** With thirty (30) days written notice from the Port, Concessionaire agrees to submit all monthly sales electronically using the Port provided link. The failure to timely provide the reports required by this Section shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F.

5.8.3 **Cash Handling.** Without limiting any more general requirements of this Section 5, Concessionaire shall observe the cash handling and point-of-sale requirements set forth below.

A. **Establish Procedures.** Concessionaire shall at all times observe cash and record handling policies and procedures and maintain cash and record handling systems in accordance with reasonable written policies and procedures adopted by Concessionaire. Concessionaire may revise those procedures from time to time

upon the advent of generally accepted technological changes and shall provide the Port notification in the event that it does so. All of Concessionaire's cash and record handling policies and procedures shall be subject to review and approval by the Port upon request.

- B. **Point of Sale Equipment.** Concessionaire's point-of-sale equipment or devices shall properly, accurately and reliably record all information pertaining to each and every transaction entered into between Concessionaire and its customers. The required information includes but is not limited to, the time and date of the transaction; payment method; the sales amount or amounts for all goods or services purchased; the transaction location and operating name; and all other information obtained from the customer or other sources as pertaining to each transaction.
- C. **Sequentially Numbered Transactions.** Concessionaire agrees to sequentially number all transactions and agrees to provide upon request by the Port a list of transactions that were initiated, but which were eventually voided or cancelled, or for which Concessionaire received no sales or other revenue.
- D. **Changes in Operations.** Concessionaire agrees to notify the Port of any changes in business operations that change or alter the accounting processes or procedures or information storage or data retrieval for Concessionaire's business operations covered under this Agreement.

5.9 **Audit.**

5.9.1 **Right to Audit.** The Port shall have the right to time to inspect and audit, through its accountants or representatives, Concessionaire's records with reference to the determination of any matters relevant to this Agreement, and Concessionaire shall make or cause to be made the records readily available for such examination. The Port may undertake such inspection and/or audit at any reasonable time and from time to time. In the event that Concessionaire's records are not maintained in the Puget Sound region, they shall be made available for audit locally within twenty (20) business days of a request by the Port, or Concessionaire shall pay in full, any travel and related expenses of Port representative(s) to travel to the location outside the Puget Sound region. In addition, the Port shall have the right to conduct a "surprise" audit not more frequently than twice every twenty-four (24) months, and, in the event that Concessionaire's books and records are not maintained locally, Concessionaire shall further pay in full, any travel and related expenses of the Port representative(s) to travel to the location outside the Puget Sound region for such "surprise" audit(s).

5.9.2 **Right to Review Records of Concessionaire's Other Stores.** In connection with the audit, the Port or its representative will have the right to inspect the records from any other store operated by Concessionaire, but only if such inspection is reasonably necessary to verify Concessionaire's reportable Gross Sales.

- 5.9.3 **Right to Copy Concessionaire's Records.** The Port or its representatives shall have the right to copy any records of Concessionaire supporting Gross Sales or any other matter the determination of which is relevant to this Agreement.
- 5.9.4 **Concessionaire Must Reconstruct Insufficient Documentation.** If upon examination or audit the Port's accountant or representative determines that sufficient documentation is not maintained, retained, or available to verify Concessionaire's actual Gross Sales or any other matter the determination of which is relevant to this Agreement, Concessionaire shall pay for the cost of such visit, and in addition, should the Port deem it necessary, Concessionaire shall reconstruct, at its sole cost and expense, all records for the determination of Gross Sales or any other matter the determination of which is relevant to this Agreement for any period being audited. If, in the Port's determination, Concessionaire fails to reasonably reconstruct all records in accordance with this Section, then in addition to any remedies under this Agreement or at law, the Port shall be entitled to collect as Additional Rent an amount equal to the greater of: (i) the difference between one hundred twenty five percent (125%) of the Minimum Annual Guarantee for the period in question and the Percentage Fees actually paid for the period in question, or (ii) five percent (5%) of the Percentage Fees actually paid for the period in question.
- 5.9.5 **If Gross Sales Are Under-Reported.** If any such audit discloses that the actual Gross Sales exceed those reported:
- A. Concessionaire shall forthwith pay the Percentage Fee due along with interest at the Default Rate; and
 - B. If the audit reveals a discrepancy of more than two percent (2%) of the Percentage Rent reported in accordance with Section 5.7 above for any twelve (12) month period, Concessionaire shall forthwith pay the cost of such audit along with interest at the Default Rate; and
 - C. The Port shall have, in addition to the foregoing rights to costs and any other rights and remedies available to the Port under this Agreement or at law, the right to terminate this Agreement, if such audit discloses that actual Gross Sales exceeded those reported by more than ten percent (10%).
- 5.9.6 **If Gross Sales Are Over-Reported.** If Concessionaire over-reports its Gross Sales and is due a refund, Concessionaire will be granted a credit toward future rents after first deducting the cost of the audit. In the event the cost of the audit exceeds the refund due, Concessionaire shall not be responsible for the balance of the cost of the audit but shall not be entitled to any refund/credit associated with the over-report of Gross Sales.
- 5.9.7 **Subtenant's Records.** If Concessionaire subleases, licenses, or in any manner allows the Premises to be used by another party, Concessionaire is responsible for ensuring that all of such party(ies) records conform to the requirements of this Agreement. The failure of any such party to maintain its records as required under this Agreement, or correctly

report gross sales, will be deemed a failure on the part of Concessionaire to conform to the requirements of this Agreement.

SECTION 6: METHOD OF PAYMENTS AND REPORTS

- 6.1 **Reporting and Payment.** On or before the fifteenth (15th) of a month, Concessionaire shall submit to the Port a detailed statement showing the Gross Sales generated from the concession during the preceding month (the “Monthly Report”) and shall simultaneously pay to the Port the Percentage Fee due for that preceding month less the monthly payment of Minimum Annual Guarantee already paid by the Concessionaire for that month. The Monthly Report shall be filed using the technology and procedures designated by the Port and shall show such reasonable detail and breakdown as may be required by the Port. If the Port instructs Concessionaire to file the Monthly Report or any other report by computer, e-mail, or internet website, the Port shall not be obligated to furnish Concessionaire with the equipment or systems necessary to do so. The failure to timely provide the reports required by this Section shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F.
- 6.2 **Annual Reconciliation.** The Percentage Fees shall be subject to annual reconciliation by the Port at the end of each calendar year following receipt of the Annual Report. Under/over payments of less than Forty Dollars (\$40.00) shall not be subject to adjustment. In the event that Concessionaire has underpaid the Rent by Forty Dollars (\$40.00) or more, Concessionaire shall remit the entire amount of the underpayment together with the Annual Report. In the event Concessionaire has overpaid the Rent by Forty Dollars (\$40.00) or more, the Port will issue Concessionaire a credit that shall be utilized against future Rent payment obligations (or, following the expiration or earlier termination of this Agreement, issue Concessionaire a refund).
- 6.3 **Annual Report.** Concessionaire shall provide the Port with a report (the “Annual Report”), due by the deadline set forth in the Summary of Key Lease Terms, that reflects the amount of Gross Sales for the preceding calendar year; provided, however, in the event the First Partial Year is less than six months in duration, the Annual Report for the First Partial Year may be combined with the Annual Report for the First Full Year. The Annual Report shall be accompanied by a signed certificate of an independent Certified Public Accountant (CPA), Concessionaire’s Chief Financial Officer (CFO) or Chief Executive Officer (CEO) stating specifically that (a) he/she has examined the Annual Report, (b) his/her examination included such tests of Concessionaire’s books and records as he/she considered necessary or appropriate under the circumstances, (c) such report presents fairly the information reflected for the preceding calendar year (or, in the case of a report combining the First Partial Year with the First Full Year, from the period from the Rent Commencement Date until the end of the First Full Year), (d) the information reflected conforms with and is computed in compliance with the definitions set forth in this Agreement, and (e), if the certificate is submitted by a CPA, the standards observed by the CPA in its audit are such that it planned and performed the audit to obtain reasonable assurances that Concessionaire’s report is free from material misstatement.

Notwithstanding the foregoing, in the event that the Port conducts an audit of Concessionaire’s operations pursuant to Section 5.9 and that audit reveals a discrepancy of more than two percent (2%) of the Percentage Rent reported in accordance with Section 5.3 above for any twelve (12)

month period, Concessionaire's Annual Report must thereafter be accompanied by a signed certificate of an independent Certified Public Accountant; Concessionaire's CEO and CFO may not certify the report.

The Annual Report shall be provided in writing and/or electronic format as reasonably specified by the Port, and in addition to such other detail as the Port may reasonably require, the Annual Report shall breakdown Gross Sales by month, location, and product category. Any additional or unpaid Rent or fees due for the prior calendar year shall be submitted with the Annual Report. The failure to timely provide the report required by this Section shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F.

In the event that the Annual Report makes a substantial adjustment in Concessionaire's Gross Sales for the preceding calendar year, the Port reserves the right to adjust the amount of the Minimum Annual Guarantee established pursuant to Section 5.2. While the Port will not generally adjust the amount of monthly payment of the Minimum Annual Guarantee unless the adjustment in the prior year's Gross Sales is likely to result in significant over/under payment by Concessionaire, the Port and Concessionaire will specifically take account of any adjustment in the Minimum Annual Guarantee in connection with the annual reconciliation and Concessionaire's submission of the Annual Report for the calendar year following the one for which the adjustment was made.

- 6.4 **Other Reports.** In addition to any reports otherwise required under the terms of this Agreement, Concessionaire shall provide the Port with: (i) a statement, due within thirty (30) days of any request by the Port, of Net Book Value of Concessionaire's Leasehold Improvements (the "NBV Report"), calculated in conformance with the rules set forth in Section 19.5; and (ii) such other and further reports, on such frequency as the Port may reasonably require from time to time, all without any cost to the Port. All such reports shall be provided in writing and/or electronic format as reasonably specified by the Port from time to time. The failure to timely provide the reports required by this Section shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F.
- 6.5 **Quality Jobs and Small Business Reporting.** Concessionaire shall provide the Port, upon reasonable request, one or more reports that document Concessionaire's compliance with, and efforts to further, the Port's quality jobs and small business initiatives. Reports relating to quality jobs will generally encompass information about Concessionaire's employee pool, wage rates, benefits (including time-off and Affordable Care Act compliance), and hiring practices. Reports relating to small business will generally encompass information about Concessionaire's inclusion of small businesses within its day-to-day operations, specifically including as suppliers. Without limiting the generality of the foregoing, the Port shall specifically have the right to request a report that documents Concessionaire's compliance with any commitments made by Concessionaire during any competitive process (whether request for proposals or competitive evaluation process) under which Concessionaire was selected to operate a concession at the Airport; provided, however, nothing in this Section shall require Concessionaire to disclose as part of any report any sensitive personally identifiable information about its individual employees.

- 6.6 **Improvement Reports.** Within one hundred twenty (120) days of the completion of the Initial Improvements, Midterm Refurbishment, and all Alterations for which the Port's consent is required, Concessionaire shall provide the Port with: (a) a certified statement (subject to verification, audit and approval by the Port) specifying the total construction cost (including architectural, engineering and permitting costs) in such detail as reasonably necessary to ascertain the costs of all leasehold improvements, furniture, fixtures and equipment constructed or installed by Concessionaire in the Premises; (b) a certification that the improvements have been constructed in accordance with the approved drawings and specifications and in strict compliance with all Legal Requirements and the Port Standards; (c) a certified proof in writing demonstrating that no liens exist on any or all of the construction; and (d) a reproducible final copy of the plans as-built for all improvements along with computer discs as electronic files in a format compatible with the Port's CAD Standards Manual, to enable the Port to upgrade its existing files to reflect the as-constructed changes made by Concessionaire. The failure to timely provide the reports, statements and certifications required by this Section shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F.

SECTION 7: SECURITY DEPOSIT

- 7.1 **Security Deposit.** Concessionaire shall, prior to the Notice to Open Date, obtain and deliver to the Port a good and sufficient corporate surety company bond, irrevocable stand-by letter of credit, or other security in a form approved by the Port in the amount of **One Million One Hundred Eighty Thousand and 00/100 (\$1,180,000.00) Dollars** as referenced in the Summary of Key Lease Terms to secure Concessionaire's full performance of this Agreement, including the payment of all fees and other amounts now or hereafter payable to the Port hereunder. In the event that a late charge is payable under Section 5.7 (whether or not collected) for three (3) installments of Rent in any twelve (12) month period, the amount of the Security shall, at the Port's election, be doubled.

The amount, form, provisions and nature of the Security, and the identity of the surety or other obligor thereunder, shall at all times be subject to the Port's approval. The Security shall remain in place at all times throughout the full term of this Agreement and throughout any holdover period. If the Security is in a form that periodically requires renewal, Concessionaire must renew the Security not less than forty-five (45) days before the Security is scheduled to expire. No interest shall be paid on the Security and the Port shall not be required to keep the Security separate from its other accounts. No trust relationship is created with respect to the Security.

- 7.2 **Return of Security Deposit.** The Security is a part of the consideration for execution of this Agreement. If Concessionaire shall have fully performed all terms and conditions of this Agreement, any cash deposit security shall be paid to Concessionaire within sixty (60) days following the termination (or expiration) date without interest; otherwise the Port shall, in addition to any and all other rights and remedies available under this Agreement or at law or equity, retain title thereto.
- 7.3 **Application of Security Deposit.** The Port may apply all or part of the Security to unpaid Rent or any other unpaid sum due hereunder, or to cure other defaults of Concessionaire. If the Port uses any part of the Security during the term of the Agreement, Concessionaire shall restore the Security to its then-currently required amount within fifteen (15) days after application of the

Security by the Port. The retention or application of such Security by the Port pursuant to this Section does not constitute a limitation on or waiver of the Port's right to seek further remedy under law or equity.

SECTION 8: MARKETING PROGRAM

- 8.1 **Program.** The Port has established a marketing program ("Program") to promote the concessions at the Airport. The Program generally includes advertising, media placements, special events, promotional events, social media, brochures, videos and catalogs, etc., promotion and monitoring as appropriate. Annually, the Port will, in consultation with interested Airport concession tenants, develop and establish the Program's annual business plan, objectives, evaluation methodology, and budget for the calendar year based in part on an analysis of the effectiveness of each previous year's Program elements.
- 8.2 **Funding.** The Program will be funded by contributions from the Concessionaire and other concessionaires at the Airport (the "Program Fund"). Concessionaire will contribute to the Program Fund an amount up to one half of one percent (0.5%) of its monthly Gross Sales, but no more than Thirty Thousand Dollars (\$30,000.00) per concession facility, per calendar year (pro-rated based on the number of months in the term for any partial year), to fund the Program; provided, however, in the event the Port assesses a lower percentage rate for other in-line, non-temporary Airport concession tenant's contribution to the Program Fund, Concessionaire's contribution rate will automatically be adjusted to the lowest percentage rate assessed by the Port for any Airport concession tenant. Concessionaire recognizes that certain kiosk tenants and temporary (two years or less) locations will not be required to participate in the Program (or may pay a lesser rate if they elect to participate), and these tenants shall not affect the rate paid by Concessionaire. All contributions to the Program Fund may only be expended for the promotion of concessions and marketing-related staff activities at the Airport and for no other purposes. Concessionaire shall make its contributions to the Program Fund monthly in arrears concurrently with its payment of the Percentage Fee under this Agreement.
- 8.3 **Right to Discontinue.** The Port reserves the right at any time to terminate the Program and thereafter, continue to provide marketing and promotional services as described in Section 8.1 until the balance remaining in the Program Fund is exhausted.

SECTION 9: COMMON AREAS

- 9.1 **Control of Common Areas by Port.** The Port shall at all times have the exclusive control and management of the roof, walls, parking areas, access roads, driveways, sidewalks, concourses, loading docks, washrooms, elevators, escalators, stairways, hallways and other areas, improvements, facilities and/or special services provided by the Port for the general use, in common, of Airport users and tenants ("common areas and facilities"). Without limiting the Port's right of control and management, the Port specifically reserves the right to: (i) use the same for any purpose, including the installation of signs for directional, advertising or other purposes, (ii) change the area, level, location and arrangement of the common areas and facilities; (iii) provided Concessionaire is not deprived of reasonable access to its Premises, close all or any portion of the common areas and facilities; and (iv) do and perform such other acts in and to the common areas and facilities as the Port shall determine to be advisable with a

view to the improvement of the convenience and use thereof by the Port and tenants of the Airport.

- 9.2 **Common Area Maintenance.** The Port shall have the right to institute and charge a monthly maintenance fee to offset the costs of maintenance and repair of common areas (whether or not public) from which Concessionaire and other concession tenants benefit. The specific amount will be established based on the specific concession type and location reasonably determined by the Port (e.g. retail, service or food & beverage). However, the Port shall have no right to charge Concessionaire, and Concessionaire shall have no obligation to pay, such amount until such time as not less than fifty percent (50%) of other concessions tenants, both in number and total Gross Sales for the particular concession type and location, are subject to payment of such amount.
- 9.3 **License.** All common areas and facilities that Concessionaire is permitted to use and occupy are used and occupied under a revocable license. If the amount of such areas or facilities is revised or diminished, such revision or diminution shall not be deemed a constructive or actual eviction, and the Port shall not be subject to any liability, nor shall Concessionaire be entitled to any compensation or reduction or abatement of Rent.
- 9.4 **Parking.** While the Port may provide parking facilities to the Concessionaire's employees in common with employees of other tenants and users of the Airport, it retains the right to impose a reasonable charge for the privilege of utilizing these parking facilities. The Port has no obligation to provide parking facilities to Concessionaire's employees.
- 9.5 **Centralized Receiving and Distribution.** The Port reserves the right to develop and manage a Centralized Receiving and Distribution Facility (CRDF) to be used by Concessionaire and other parties receiving deliveries for the Airport terminals, which CRDF may be located at a location off the Airport with regular deliveries to the Airport. The Port may also select a single entity to manage receiving and deliveries and to handle product distribution within the Airport terminals. If the Port chooses to select a delivery and distribution management entity, Concessionaire will be required to use the CRDF and the services of such manager and pay its respective costs of the program, at the then-current rate set forth in Seattle-Tacoma International Airport Tariff No. 1, as the same may be revised or replaced from time-to-time. Upon implementation of a CRDF, do direct deliveries will be allowed to Concessionaire in the Airport terminals.

SECTION 10: IMPROVEMENTS

- 10.1 **Improvements by the Port.** The Port shall have no obligation to make any improvements to the Premises whatsoever. It is, however, understood that the Port may from time to time elect to alter, improve or remodel other portions of the Airport, and Concessionaire agrees that the portion of the Premises, if any, which is visible to the general public may be altered, remodeled or improved at the Port's expense in connection with any such work. The Port shall further have the right, at its sole discretion, to make minor modifications to the Premises to accommodate Airport operations, renovations, maintenance, or other work to be completed on or about the Airport, which modifications will not generally involve the recapture or disruption of more than fifty (50) square feet of the Premises. In the event of any such modifications, the Port will revise

the Premises through a written notice to Concessionaire rather than a formal amendment to the Agreement. Concessionaire agrees that any inconvenience resulting from any such work or modifications by the Port or its contractors and agents shall not be grounds for reduction of rent or fee if the same shall not unreasonably interfere with Concessionaire's use of the Premises.

10.2 **Other Alterations.** Concessionaire, after completion of the Initial Improvements, may from time to time during the term make such changes, alterations, additions, substitutions or improvements (collectively referred to as "Alterations") to the Premises, of a non-structural nature, as Concessionaire may reasonably consider necessary and desirable to adapt or equip the Premises for Concessionaire's use and occupancy, provided, however, Concessionaire shall make no Alterations (including as part of the Midterm Refurbishment) that will (a) cost in excess of Fifteen Thousand Dollars (\$15,000), (b) involve structural work or changes, or (c) involve work or changes to the electrical, plumbing, heating, ventilation and air conditioning systems of the Premises without the Port's prior written consent, which shall not be unreasonably withheld or delayed.

10.3 **Standards for Alterations and Improvements.**

10.3.1 **Requirements.** The Initial Improvements, Midterm Refurbishment, and all other Alterations shall be done at Concessionaire's sole cost and expense and at such times and in such manner as the Port may from time to time designate. Initial Improvements, Midterm Refurbishment, and all Alterations shall: (i) be of high quality, (ii) conform to the design criteria approved by the Port, (iii) be of fireproof construction according to the standards of the local rating organization, (iv) be constructed in good and workmanlike manner, (v) be in full and complete accordance with all Legal Requirements and Port Standards, and (vi) be performed in a manner that will not unreasonably interfere with or disturb the Port or other tenants of the Port.

10.3.2 **Permits.** Before commencing the Initial Improvements, Midterm Refurbishment, or any Alterations for which the Port's consent is required, Concessionaire shall prepare plans and specifications and otherwise comply with the Port Standards. Except as otherwise specifically provided in this Agreement, Concessionaire shall obtain all necessary permits, including any discretionary permits. In the event the Port is required or has obtained any of the necessary permits, Concessionaire will reimburse the Port for any permit fees and associated costs in obtaining those permits.

10.3.3 **Coordination.** Concessionaire understands that the Airport is undergoing extensive remodeling. At all times during construction and installation of the Initial Improvements, the Midterm Refurbishment, any Alterations and any furniture, trade fixtures and/or equipment by Concessionaire, Concessionaire, its agents, employees and independent contractors shall cooperate with and coordinate activities and work with the Port construction managers and other concessionaires at or near the Premises.

10.3.4 **Liquidated Damages.** The failure to complete the Initial Improvements, Midterm Refurbishment, and any permitted Alterations in connection therewith, shall subject Concessionaire to such Liquidated Damages as identified in Exhibit F.

- 10.3.5 **Port Resolution 3725.** Concessionaire shall comply with Port Resolution 3725, attached hereto as Exhibit I, in connection with all Initial Improvements and Midterm Refurbishment, and any other Alterations made by Concessionaire to the Premises.
- 10.4 **Ownership of Alterations and Improvements.** Other than those leasehold improvements which are installed and become such a part of the Premises that they cannot be removed without substantial injury to the Premises, said improvements shall immediately become the property of the Port following installation, Concessionaire shall retain ownership of all furniture, trade fixtures and equipment from time to time installed in the Premises by Concessionaire at its sole expense (the “Removable Fixtures”). Concessionaire may remove any of the Removable Fixtures at any time during the term and shall remove all thereof prior to the expiration of the term. Any Removable Fixtures or other property of Concessionaire not removed at the expiration of the term shall, at the election of the Port, become the property of the Port without payment to Concessionaire, or be deemed abandoned and removed by the Port, at Concessionaire’s expense. Upon any removal of such property, Concessionaire shall promptly repair all damage to the Premises caused thereby and reimburse the Port for its costs and expenses in removing any such property not removed by Concessionaire and repairing any such damage not repaired by Concessionaire; this covenant shall survive the termination of this Agreement.
- 10.5 **Visual Artists Rights Act.** With respect to construction or installation of any improvements at the Premises (whether Initial Improvements, Midterm Refurbishment, any Alterations or otherwise) that might implicate the requirements of the federal Visual Artists Rights Act of 1990, 17 U.S.C. §§ 106A and 113, as they may be amended from time to time (“VARA”), Concessionaire agrees that it will not (i) hire any artist or permit any sublessee to hire any artist for the purpose of installing or incorporating any work of art into or at the Premises, or (ii) permit the installation or incorporation of any work of art into or at the Premises, without the prior written approval of the Port. Concessionaire shall provide such reasonable documentation as the Port may request in connection with any such approval, and the approval of the Port may be conditioned upon the execution by the artist of a waiver of the provisions of the VARA, in form and substance acceptable to the Port.

SECTION 11: MAINTENANCE AND REPAIR

- 11.1 **Maintenance and Repair by Port.** The Port shall keep and maintain the foundations, roof, common areas and common utilities up to the point of Concessionaire’s connection, and structural portions of the exterior walls of the Premises (excepting any walls which are installed by or on behalf of Concessionaire) in good order, condition and repair. The Port shall perform this work at its sole cost and expense, except to the extent that any such repairs may be required as a result of damage caused by negligence of Concessionaire or its agents, employees, invitees or licensees, in which event the work shall be at the cost or expense of Concessionaire. The Port shall perform such repair or maintenance work called to its attention by Concessionaire within a reasonable period of time after receipt of such notice by Concessionaire. There shall be no abatement or reduction of Rent, and the Port shall not be

responsible for any loss or damages to Concessionaire's business, arising by reason of the Port making any repairs, alterations or improvements.

- 11.2 **Maintenance and Repair by Concessionaire.** Subject only to the specific obligations of the Port set forth in Section 11.1, Concessionaire shall, at its sole cost and expense, keep the Premises, and every part thereof and any fixtures, facilities or equipment contained therein, in good order, condition and repair at all times. Concessionaire shall likewise comply with any preventative maintenance practices established by the Port and listed in the Airport Dining & Retail Preventative Maintenance Program Manual, as modified from time to time. The manual is available for download on the Port of Seattle's website and Concessionaire is responsible to keep a copy of the most up-to-date version of the manual. Concessionaire shall make all repairs and replacements (ordinary as well as extraordinary, foreseen and unforeseen) which may be necessary or required so that at all times the Premises are in good order, condition and repair. Without limiting the generality of the foregoing, Concessionaire shall keep the heating, air conditioning, electrical, plumbing and sewer systems, floors, doors, security grilles, interior walls, ceilings, window frames, glass and all portions of the storefront area in a good state of repair. Concessionaire shall perform all maintenance, repairs, or replacements using quality materials equal to the original, and, if materially changed from the original, shall be subject to the prior written approval of the Port.

Concessionaire shall also keep the Premises neat, clean and in sanitary condition and follow best practices for hygiene to keep the Premises free from infestation of pests and conditions which might result in harborage for, or infestation of, pests. Concessionaire shall reimburse the Port for the pest control services provided by the Port pursuant to Section 4.8 at the then-current rate set forth in Seattle-Tacoma International Airport Tariff No. 1, as the same may be revised or replaced from time-to-time. In the event that Concessionaire otherwise contracts for the provision of pest control services, any such services shall be supplemental to those provided by the Port under Section 4.8, and Concessionaire and its pest control contractor shall specifically coordinate its services with the Port's selected Unified Pest Management Program contractor.

Concessionaire shall perform all maintenance, repairs, or replacements using quality materials equal to the original, and, if materially changed from the original, shall be subject to the prior written approval of the Port. In the event fixtures and/or equipment are installed in, affixed to, or served by, roof vents or other similar air openings serving the Premises, Concessionaire shall keep such vents and openings free from the accumulation of grease, dirt, and other foreign matter, and shall furnish and service all filters or similar equipment considered necessary by the Port, monthly or as often as necessary.

The failure to perform the maintenance and repair required by this Section shall be grounds for the imposition of liquidated damages as provided in Section 18.4 and Exhibit F.

SECTION 12: UTILITIES

- 12.1 **Utilities.** Concessionaire shall be liable for and shall pay throughout the term of this Agreement, all charges for all utility services furnished to the Premises, including, but not limited to, light, heat, electricity, gas, water, cable television, grease interceptor, sewerage, fire protection, recycling, garbage disposal and janitorial services. For any utility services furnished by the Port,

Concessionaire shall pay the Port for such services at the then-current rate set forth in Seattle-Tacoma International Airport Tariff No. 1, as the same may be revised or replaced from time-to-time.

- 12.2 **Connections and Meters.** Without limiting the generality of the language set forth in Section 12.1, the following additional requirements related to utility services for the Premises shall apply unless otherwise expressly agreed by the Port in writing:
- 12.3 **HVAC.** Concessionaire shall – at its cost – furnish, install and maintain any ductwork and other connections within or leading into the Premises, and shall connect and complete the heating, ventilating and air conditioning (HVAC) from the Airport’s central system. Thereafter, the Port shall, without charge, furnish normal and reasonable quantities of central air from the central HVAC system to the Premises and all necessary power and electricity for such central air circulation. Subject to conditions beyond its control, the Port shall maintain under normal conditions a temperature adequate for comfortable occupancy according to the season; provided, that Concessionaire properly maintains the ductwork and other connections within or leading into the Premises and complies with the recommendations of the Port regarding reasonable occupancy and use of the Premises.
- 12.4 **Electricity and Lighting.** Concessionaire shall – at its cost – furnish, install and maintain an electric meter for the Premises at a location and of a type specified by the Port. Concessionaire shall also – at its cost – furnish, install and maintain all lighting fixtures and wiring for general illumination of the Premises. Levels of illumination and wattage requirements shall be subject to the approval of the Port.
- 12.5 **Water, Natural Gas, and Sewerage.** To the extent water or natural gas is required by Concessionaire for its operations, Concessionaire shall – at its cost – furnish, install and maintain a water and natural gas meter for the Premises at a location and of a type specified by the Port.
- 12.6 **Cabling and Communications.** Concessionaire shall use the Port’s cabling and communications system for its operations at the Airport when such cabling and communications system has been installed by the Port, and Concessionaire shall pay a user fee as will be determined by the Port. In the event Concessionaire is allowed to install communication equipment, any such installation shall be subject to the Port regulation.
- 12.7 **Garbage and Recycling.** Concessionaire shall use the garbage, composting, and recycling system provided by the Port. Concessionaire is required to participate in all garbage and recycling programs. This includes, but is not limited to, composting, mixed cardboard, paper, plastic, metal, and glass recycling, bulk grease recycling and such other programs that may from time to time be adopted by the Port.
- 12.8 **Utility Interruptions.** The Port shall have the right to shut down electrical energy to the Premises (or portions thereof) when necessitated by safety, repairs, alterations, connections, upgrades, relocations, reconnections, or for any other reason, with respect to the Airport’s electrical system (singularly or collectively, “Electrical Work”), regardless of whether the need for such Electrical Work arises in respect of the Premises or elsewhere in the Airport. Whenever

possible, the Port shall give Concessionaire no less than two (2) days prior notice for such electricity shutdown. The Port shall use all reasonable efforts to not shut down Concessionaire's electrical energy for such Electrical Work during business hours unless such Electrical Work shall be: (a) required because of an emergency; or (b) required by the electricity company servicing the Airport or by any governmental or quasi-governmental law, rule, code, directive, or order.

Concessionaire further acknowledges that interruptions in utility services (including, without limitation, electrical service) are not uncommon in facilities such as the Airport, and Concessionaire acknowledges that it will, at its cost and expense, protect any sensitive electronic equipment which may be used in the Premises from utility service interruptions through the use of backup power supplies, surge protectors, and other appropriate safety systems as Concessionaire deems reasonable and necessary. Concessionaire acknowledges that it has taken or will take all precautions it deems necessary to protect its equipment in, on and around the Airport, including the acquisition of insurance.

The Port shall not be liable to Concessionaire for any damages or losses (including, without limitation, indirect or consequential damages or attorneys' fees) sustained to any equipment installed by Concessionaire or otherwise caused by any utility service shut downs, interruptions or failures, nor shall the same constitute an eviction or disturbance of Concessionaire's use or possession of the Premises or a breach of the Port's obligations hereunder. However, if any utility interruption is within the control of the Port, the Port shall use reasonable efforts to restore utility service to Concessionaire promptly. If the Port fails to use such reasonable efforts and such interruption or failure continues for more than two (2) days, then as Concessionaire's sole and exclusive remedy, the Minimum Annual Guarantee shall equitably abate until utility service is resumed.

- 12.9 **Utility Conservation.** The Port shall have the right to institute such reasonable policies, programs and measures as may be necessary or desirable, in the Port's discretion, for the conservation and/or preservation of water, energy or energy related services, or as may be required to comply with any applicable codes, rules and regulations, whether mandatory or voluntary.

SECTION 13: TAXES

- 13.1 **Payment of Taxes.** Concessionaire shall be liable for, and shall pay throughout the term of this Agreement, all license fees and all taxes payable for, or on account of, the activities conducted on the Premises and all taxes on the property of Concessionaire on the Premises and any taxes on the Premises and/or on the leasehold interest created by this Agreement and/or any taxes levied in lieu of a tax on said leasehold interest and/or any taxes levied on, or measured by, the rentals payable hereunder, whether imposed on Concessionaire or on the Port. With respect to any such taxes payable by the Port which are on or measured by the Rent payments hereunder, Concessionaire shall pay to the Port with each Rent payment an amount equal to the tax on, or measured by, that particular payment. All other tax amounts for which the Port is or will be entitled to reimbursement from Concessionaire shall be payable by Concessionaire to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved; provided,

that Concessionaire shall be entitled to a minimum of ten (10) days' written notice of the amounts payable by it.

- 13.2 **Personal Property Taxes.** Concessionaire shall pay or cause to be paid, prior to delinquency, all taxes and assessments levied upon all trade fixtures, inventories and other real or personal property placed or installed in and upon the Premises by Concessionaire. If any such taxes on Concessionaire's personal property or trade fixtures are levied against the Port or the Port's property, and if the Port pays the taxes based upon such increased assessment, Concessionaire shall, upon demand, repay to the Port the taxes so levied.

SECTION 14: INDEMNITY

- 14.1 The Port, its officers, employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage be caused, sustained or alleged to have been sustained by Concessionaire or by others, including but not limited to all persons directly or indirectly employed by Concessionaire, or any agents, contractors, subcontractors, licensees or invitees of Concessionaire, as a result of any condition (including existing or future defects in the Premises) or occurrence (including failure or interruption of utility service) whatsoever related in any way to Concessionaire's use or occupancy of the Premises and adjacent areas.
- 14.2 To the maximum extent permitted by law, Concessionaire shall defend (with counsel approved by the Port), fully indemnify, and hold entirely free and harmless the Port and its Commissioners, officers, agents and employees from any and all claims, loss, damages, expenses, attorneys' fees, consultants' fees, court costs and other costs arising, directly or indirectly, from: (a) the condition of the Premises or out of the occupancy by the Concessionaire or any subtenant, licensee, concessionaire, or contractor of Concessionaire; and (b) any accident, injury, death or damage, however caused, to any person or property on or about the Premises; and (c) any fault or negligence by Concessionaire or any subtenant, licensee, concessionaire or contractor of the Concessionaire or of any officer, agent, or employee of any such person; and (d) any failure on Concessionaire's part to comply with any of the covenants, terms and conditions contained in this Agreement; *provided, however*, nothing herein shall require Concessionaire to indemnify the Port from any accident, injury, death or damage arising out of the sole negligence of the Port or its Commissioners, officers, agents and employees. Concessionaire agrees that the foregoing indemnity specifically covers actions brought by its own employees, and thus Concessionaire expressly waives its immunity under industrial insurance, Title 51, as necessary to effectuate this indemnity. Such waiver shall not, however, prevent Concessionaire from asserting such immunity against any other person or entity.
- 14.3 Notwithstanding anything to the contrary in Section 14, in the event of the concurrent negligence of Concessionaire, its subtenants, licensees, concessionaires, contractors, or any officer, agent, or employee of any such person on the one hand and the negligence of the Port, its agents, employees or contractors on the other hand, which concurrent negligence results in injury or damage to persons or property of any nature and howsoever caused, and relates to the construction, alteration, repair, addition to, subtraction from, improvement to or maintenance of the Premises such that RCW 4.24.115 is applicable, Concessionaire's obligation to indemnify the Port as set forth in this Section shall be limited to the extent of Concessionaire's negligence

and that of Concessionaire's subtenants, licensees, concessionaires, contractors, and any officers, agents, and employees of any such person, including Concessionaire's proportional share of costs, court costs, attorneys' fees, consultants' fees and expenses incurred in connection with any claim, action or proceeding brought with respect to such injury or damage.

- 14.4 **CONCESSIONAIRE AND PORT ACKNOWLEDGE AND AGREE THAT THE PROVISIONS OF THIS SECTION 14 ARE THE PRODUCT OF MUTUAL NEGOTIATION.** Concessionaire's obligations under this Section 14 shall survive the expiration or earlier termination of this Agreement.

SECTION 15: INSURANCE

- 15.1 **Required Policies.** Concessionaire shall obtain and keep in force, at its sole cost and expense the following types of insurance, in the amounts specified and in the form hereinafter provided for:

- 15.1.1 **General Liability Insurance.** Concessionaire shall obtain and keep in force a commercial general liability policy of insurance, written on ISO Form CG 00 01 10 01 (or equivalent), that protects Concessionaire and the Port, as an additional insured using ISO Form 20 26 (either 11 85 or 07 04 revision) or equivalent, against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the tenancy, use, occupancy or maintenance of the Premises and all areas appurtenant thereto, and specifically including the action/inaction of any subtenant, licensee or concessionaire. Such insurance shall be on occurrence basis providing single limit coverage in an amount not less than Two Million Dollars (\$2,000,000) per occurrence. The policy shall not contain any intra-insured exclusions as between insured persons or organizations. The policy shall contain a minimum One Hundred Thousand Dollars (\$100,000) sub-limit that covers damage to premises rented or leased to Concessionaire, including fire damage. This limit shall be identified on the Certificate of Insurance. The Port shall be submitted upon Agreement inception, a copy of the additional insured endorsement, that validates the Port has been added as an additional insured. Additional endorsements shall include one to validate the Concessionaire's insurance is primary and non-contributory and a waiver of the transfer of the rights of recovery.

Concessionaire shall purchase coverage or add coverage by endorsement to the commercial general liability coverage policy for any liquor, beer, or wine operations by Concessionaire in which liquor, beer, or wine is sold, purchased, distributed, or served on the Premises. Coverage shall be on a per occurrence bases with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and cover liability as it relates to property injury and bodily injury. The Port of Seattle shall be an additional insured on this policy or coverage enhancement.

- 15.1.2 **Automobile Liability Insurance.** Concessionaire shall obtain and keep in force a commercial automobile liability policy of insurance, written on ISO Form CA 00 01 07 97 (or equivalent), that provides coverage for claims for bodily injury and property damage based upon, involving or arising out of motor vehicle operations. Concessionaire shall provide a Waiver of Subrogation on this policy in favor of the Port.

Such insurance shall cover any “Auto” (i.e. owned, hired and non-owned) and shall be on an occurrence basis providing single limit coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence. The policy shall not contain any intra-insured exclusions as between insured persons or organizations. Driving on the non-movement side of the airfield at STIA will require limits of Five Million Dollars (\$5,000,000) per occurrence.

15.1.3 **Property Insurance.** Concessionaire shall obtain and keep in force property insurance using an ISO CP 10 20 Cause of Loss Broad Form (or an equivalent manuscript form) insuring Concessionaire’s personal property and Alterations (specifically including “betterments and improvements”) made by or for Concessionaire against physical damage, including loss of use of the Premises. The policy shall include coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of damaged property including any undamaged sections of the Premises required to be demolished or removed by reason of the enforcement of any Legal Requirement as the result of a covered cause of loss. The amount of such insurance shall be procured on a replacement cost basis (or the commercially reasonable and available insurable value thereof if, by reason of the unique nature or age of the improvements involved, such latter amount is less than full replacement cost). The policy shall also contain an agreed valuation provision in lieu of any coinsurance clause. The Port of Seattle shall be included as an Additional Insured and Loss Payee on Concessionaire’s property insurance policy with respect to the Port’s interest in Alterations.

15.1.4 **Other Insurance.** Concessionaire shall further obtain and keep in force such other and further insurance as the Port may from time to time reasonably request for the protection by insurance of its interest in the Premises.

The limits of insurance specified in this Section shall be subject to periodic adjustment to reflect changes in insuring practices for similar properties in the same geographic area and changes in insurance products.

15.2 **Insurance Policies.**

15.2.1 **Insurance Companies.** Insurance required hereunder shall be in companies duly licensed to transact business in the State of Washington, and maintaining during the policy term a General Policyholders Rating of ‘A-’ or better and a financial rating of ‘IX’ or better, as set forth in the most current issue of “Best’s Insurance Guide.”

15.2.2 **Deductibles.** No insurance required herein shall contain a deductible or self-insured retention in excess of Two Hundred Thousand Dollars (\$200,000) without the prior written consent of the Port.

15.2.3 **Cancellation/Non-Renewal.** Insurance is to remain current throughout the term of the Agreement. The Port shall receive documentation annually to include a certificate of

insurance and any applicable endorsements to validate the insurance required herein has been purchased and is compliant with the Agreement requirements within ten (10) days of each insurance renewal. Should any insurance required herein be terminated, cancelled, or not renewed, the Concessionaire will have five (5) days to obtain replacement insurance from the date of the termination, cancellation or non-renewal notice Concessionaire receives from their insurer(s). In the event the insurance is not replaced within the five (5) days, the Agreement shall – notwithstanding any other notice period provided for – be in Default under 18 and the Port shall have the right, under Section 21.5, to procure such insurance as the Port considers reasonable to protect its interests without further notice to Concessionaire.

- 15.2.4 **Evidence of Insurance.** Concessionaire shall deliver, or cause to be delivered, to the Port, certificates of insurance, additional insured endorsements, loss payee endorsements for property insurance, waivers of subrogation and any other documentation or endorsement that provides evidence of the existence and amounts of such insurance, the inclusion of the Port as an insured as required by this Agreement, and the amounts of all deductibles and/or self-insured retentions. Upon request by the Port, Concessionaire shall deliver or cause to be delivered to the Port, certified copies of the policies of insurance that Concessionaire has purchased in order for the Port to verify insurance coverage, limits, and endorsements or view any exclusions to the Concessionaire’s insurance policies.
- 15.2.5 **Subtenants.** The Port may require all subtenants, at subtenant’s sole cost and expense, to maintain additional insurance coverage, during the subtenant’s occupancy of the Premises, and Concessionaire shall cause to be delivered to the Port, certificates which shall include but not be limited to the following: Worker’s Compensation as required by Washington State law, Comprehensive General Liability Insurance, Property Insurance, Business Automobile Liability Insurance, Product and/or Liquor Liability Insurance.
- 15.2.6 **No Limitation of Liability.** The limits of insurance required by this Agreement or as carried by Concessionaire shall not limit the liability of Concessionaire nor relieve Concessionaire of any obligation hereunder.
- 15.3 **Waiver of Subrogation.** Without affecting any other rights or remedies, Concessionaire (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waives any rights it may have against the Port, its officers, agents and employees (whether in contract or in tort) on account of any loss or damage occasioned to Concessionaire arising out of or incident to the perils required to be insured against under this Agreement. Accordingly, Concessionaire shall cause each insurance policy required by Section 15 to be further endorsed to provide a waiver of subrogation in favor of the Port. The effect of such release and waiver of the right to recover damages shall not be limited by the amount of insurance carried or required, or by any deductibles applicable thereto.
- 15.4 **Increase in Port’s Cost of Insurance.** Concessionaire shall not use the Premises in such a manner as to increase the existing rates of insurance applicable to the buildings or structures of which the Premises are a part. If it nevertheless does so, then, at the option of the Port, the full amount of any resulting increase in premiums paid by the Port with respect to the buildings or

structures of which the Premises are a part, and to the extent allocable to the term of this Agreement, may be added to the amount of Rent and shall be paid by Concessionaire to the Port upon the monthly rental day next thereafter occurring.

SECTION 16: DAMAGE OR DESTRUCTION

- 16.1 **Duty to Repair.** If the Premises or any buildings or structures of which the Premises are a part are damaged by fire, the elements, earthquake, accident or other casualty (collectively, “Casualty”), the Port shall, except to the extent either party has the right to terminate this Agreement under Section 16.2, use reasonable efforts to repair and restore the Premises and/or the buildings or structures of which the Premises are a part to substantially their former condition to the extent permitted by then-applicable Legal Requirements; *provided, however*, the Port’s obligation to repair and restore shall not extend to any Initial Improvements, Midterm Refurbishment, Alterations or any of Concessionaire’s personal property, specifically including the Removable Fixtures.
- 16.2 **Right to Terminate.** The Port may elect to terminate this Agreement in the event that the Port in its sole judgment, concludes that the damage to the Premises or any buildings or structures of which the Premises are a part cannot be repaired within thirty (30) days of the Casualty (with the repair work and the preparations therefor to be done during regular working hours on regular work days). In the event that the Port elects to terminate this Agreement, the Port shall advise Concessionaire of that fact within thirty (30) days of the date of the Casualty and notify Concessionaire of the date, not more than ninety (90) days after the Casualty, on which the Agreement will terminate.
- 16.3 **Abatement of Rent.** Unless the casualty results from Concessionaire’s negligence or breach of the terms of this Agreement, the Minimum Annual Guaranty (if any) shall be abated in the same proportion that any portion of the Premises that is rendered untenable or inaccessible bears to the whole thereof from the period from the date of the Casualty through the date of substantial completion of the repairs to the Premises (or to the date of termination of the Agreement if either party shall elect to terminate the Agreement). Percentage Fees shall not abate. The Port shall not otherwise be liable to Concessionaire for any loss of the use of the whole or any part of the Premises (including loss of business) and/or any inconvenience or annoyance occasioned by the Casualty, by any damage resulting from the Casualty, or by any repair, reconstruction or restoration.
- 16.4 **Concessionaire’s Duty to Repair.** Except to the extent the Port elects to terminate this Agreement under Section 16.2, Concessionaire shall, at its sole cost and expense, be responsible for all repairs or restoration of any Initial Improvements, Midterm Refurbishment, Alterations or any Removable Fixtures, which repair or restoration may be necessary as a result of any casualty.
- 16.5 **Waiver.** Except as specifically set forth in this Agreement, Concessionaire hereby waives any right that Concessionaire may have, under any applicable existing or future law, to terminate this Agreement in the event of any damage to, or destruction of, the Premises or any buildings or structures of which the Premises are a part.

SECTION 17: ASSIGNMENT AND SUBLEASE

17.1 **Prohibition.** Concessionaire shall not, in whole or in part, assign, sublet, license or permit occupancy by any party other than Concessionaire of all or any part of the Premises, without the prior written consent of the Port in each instance. Concessionaire shall at the time the Concessionaire requests the consent of the Port, deliver to the Port such information in writing as the Port may reasonably require respecting the proposed assignee, subtenant or licensee including, without limitation, the name, address, nature of business, ownership, financial responsibility and standing of such proposed assignee, subtenant or licensee together with the proposed form of assignment, sublease or license. Within thirty (30) days after receipt of all required information, the Port shall, in its sole discretion, elect one of the following: (i) to consent to such proposed assignment, sublease or license, (ii) buyout Concessionaire's interest in the Agreement as provided in Section 17.3, or (iii) disapprove the assignment, sublease or license, setting forth the grounds for doing so.

17.1.1 As a condition for the Port's consent to any assignment, sublease or license, the Port may require that the assignee, sublessee or licensee remit directly to the Port on a monthly basis, all monies due to Concessionaire by said assignee, sublessee or licensee (except with respect to excess rentals otherwise due Concessionaire pursuant to Section 17.2). In addition, a condition to the Port's consent to any assignment, sublease or license of this Agreement or the Premises shall be the delivery to the Port of a true copy of the fully executed instrument of assignment, sublease or license and an agreement executed by the assignee, sublessee or licensee in form and substance satisfactory to the Port and expressly enforceable by the Port, whereby the assignee, sublessee or licensee assumes and agrees to be bound by the terms and provisions of this Agreement and perform all the obligations of Concessionaire hereunder.

17.1.2 In the event of any assignment, Concessionaire and each respective assignor, waives notice of default by the tenant in possession in the payment and performance of the Rent, covenants and conditions of this Agreement and consents that the Port may in each and every instance deal with the tenant in possession, grant extensions of time, waive performance of any of the terms, covenants and conditions of this Agreement and modify the same, and in general deal with the tenant then in possession without notice to or consent of any assignor, including Concessionaire; and any extensions of time, indulgences, dealings, modifications or waivers shall be deemed to be made with the consent of Concessionaire and of each respective assignor.

17.1.3 Concessionaire agrees that any sublease or license will contain a provision in substance that if there be any termination whatsoever of this Agreement or the Port should buy out Concessionaire's interest pursuant to Section 17.3, then the subtenant or licensee, at the request of the Port, will attorn to the Port and the sublessee or licensee, if the Port so requests, shall continue in effect with the Port, but the Port shall be bound to the subtenant or licensee in such circumstances only by privity of estate. The Port may, in its sole discretion, accept or reject the attornment.

17.1.4 No assignment, subletting or license by Concessionaire shall relieve Concessionaire of any obligation under this Agreement, including Concessionaire's obligation to pay Rent

or any other sum hereunder. Any purported assignment, subletting or license contrary to the provisions hereof without consent shall be void. The consent by the Port to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting.

Concessionaire shall reimburse the Port in the sum of Five Hundred Dollars (\$500.00) plus any reasonable professionals' fees and expenses incurred by the Port in connection with any request by Concessionaire for consent to an assignment, subletting or license.

- 17.2 **Excess Rental.** If in connection with any assignment, sublease or license, Concessionaire receives rent or other monetary consideration, either initially or over the term of the assignment or sublease, in excess of the Rent called for hereunder, or in case of the sublease of a portion of the Premises, in excess of such Rent fairly allocable to such portion, after appropriate adjustments to account for any improvements or alterations made by Concessionaire and to assure that all other payments called for hereunder and out-of-pocket expenditures, operating costs or concessions incurred by Concessionaire in connection with such assignment, sublease or license, are appropriately taken into account, Concessionaire shall pay to the Port seventy-five percent (75%) of the excess of each such payment of rent or other consideration received by Concessionaire after its receipt.
- 17.3 **Buyout.** Within the time provided by Section 17.1, the Port shall notify Concessionaire whether it is interested in negotiating a buy-out of Concessionaire's interest in this Agreement. The Port shall have no right to buy-out Concessionaire's interest in this Agreement in the event that a proposed assignment is directly as a result of a proposed merger, acquisition or sale of substantially all of the assets of Concessionaire. If the Port is interested in a buy-out of Concessionaire's interest, the Port shall have sixty (60) days from the date of its notice to Concessionaire to enter into an agreement to buy out Concessionaire's leasehold interest in this Agreement upon substantially the same terms and conditions as proposed between Concessionaire and the third party. The purchase price to be paid by the Port under this buy-out right shall be the proposed transaction purchase price as set forth in the letter of intent or proposed agreement between Concessionaire and the third party.

If the Port and Concessionaire fail to enter into a written agreement for such a purchase within the period of time provided by Section 17.3 then the Port shall be deemed to have waived its buy-out right. Subject to the other provisions of this Section 17, Concessionaire may then transfer its interest in this Agreement, but only upon the same terms and conditions as reviewed by the Port.

If the proposed terms and conditions of any transfer by Concessionaire to a third party are at any time materially altered from the proposed terms and conditions of such sale that were presented to and reviewed by the Port, the Port's buy-out right shall be deemed applicable to the altered transfer terms, and the Port shall have sixty (60) days after the date it receives notice of the material alteration to consider and enter into a written agreement for the purchase of Concessionaire's interest in this Agreement. It is further understood that, in the event that the Port does not exercise this buy-out right, this provision shall nevertheless be applicable to any further or future transfer, which is subject to this provision.

- 17.3 **Scope.** The prohibition against assigning or subletting contained in this Section 17 shall be construed to include a prohibition against any assignment or subletting by operation of law. Furthermore, for purposes of this Section 17, any sale, transfer or other disposition in the aggregate of fifty percent (50%) or more of the equity ownership in Concessionaire (i.e. stock with respect to tenant corporation, partnership interests with respect to a tenant partnership, etc.) shall be deemed an assignment. If this Agreement be assigned, or if the underlying beneficial interest of Concessionaire is transferred, or if the Premises or any part thereof be sublet or occupied by anybody other than Concessionaire, the Port may collect Rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved and apportion any excess Rent so collected in accordance with the terms of Section 17.2, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Concessionaire from the further performance by Concessionaire of covenants on the part of Concessionaire herein contained. No assignment or subletting shall affect the continuing primary liability of Concessionaire (which, following assignment, shall be joint and several with the assignee), and Concessionaire shall not be released from performing any of the terms, covenants and conditions of this Agreement.
- 17.4 **Concessionaire's Responsibility for Subtenants.** In the event that Concessionaire subleases any portion of the Premises, Concessionaire shall be responsible for managing all of its subtenants and for ensuring that all its subtenants adhere to the terms of this Agreement. Concessionaire is responsible for ensuring all of its subtenants adhere to proper cash-handling techniques, including without limitation any point-of-sale system and cash-handling criteria required by the Port hereunder. If a subtenant fails to open its unit or goes out of business, Concessionaire is responsible to put up appropriate temporary storefront barriers, curtains, display boxes or signage as directed by the Port. And if Concessionaire fails to comply with this paragraph in the time period specified by the Port, Operator agrees to pay the Port liquidated damages as provided in Section 18.4 and Exhibit F until such temporary installation is complete. Concessionaire is responsible for terminating any sublease and/or license with subtenants, locking out a subtenant (if legally permissible), instituting suit for rent or for use or occupancy or proceedings for recovery of possession when (a) subtenant defaults; or (b) Concessionaire is entitled to terminate the subtenant's sublease and/or license. All legal expenses incurred in bringing such action are Concessionaire's sole responsibility. The Port agrees not to terminate this Agreement under 18 if the event of default is a result of an action or omission of a subtenant if and only if; (i) after notification to the Port, Concessionaire has taken or is taking all legally permissible corrective action, including initiation of termination actions with respect to its sublease/subcontract with the defaulting subtenant; and (ii) Concessionaire has made the Port financially whole.

SECTION 18: DEFAULT

- 18.1 **Defaults.** The occurrence of any one or more of the following events constitutes a default of this Agreement by Concessionaire with or without notice from the Port:

18.1.1 The vacating or abandonment of the Premises by Concessionaire.

18.1.2 The failure by Concessionaire to make any payment of Rent, or any other payment required by this Agreement, when due.

18.1.3 The failure by Concessionaire to observe or perform any covenant, condition, or agreement to be observed or performed by Concessionaire in this Agreement.

18.1.4 The discovery by the Port that any required report, financial statement or background statement provided to the Port by Concessionaire, any successor, grantee, or assignee was materially false.

18.1.5 The filing by Concessionaire of a petition in bankruptcy, Concessionaire being adjudged bankrupt or insolvent by any court, a receiver of the property of Concessionaire being appointed in any proceeding brought by or against Concessionaire, Concessionaire making an assignment for the benefit of creditors, or any proceeding being commenced to foreclose any mortgage or other lien on Concessionaire's interest in the Premises or on any personal property kept or maintained on the Premises by Concessionaire.

18.2 **Remedies.** Whenever any default (other than a default under Section 18.1.5 above, upon which termination of this Agreement shall, at the Port's option, be effective immediately without further notice) continues un-remedied, in whole or in part, for: (i) ten (10) days after written notice is provided by the Port to Concessionaire in the case of default for failure to pay any Rent, or other required payment when due, or (ii) thirty (30) days after written notice is provided by the Port to Concessionaire for any non-monetary default, this Agreement and all of Concessionaire's rights under it will automatically terminate if the written notice of default so provides. Upon termination, the Port may reenter the Premises using such force as may be necessary and remove all persons and property from the Premises. The Port will be entitled to recover from Concessionaire all unpaid Rent or other payments and damages incurred because of Concessionaire's default including, but not limited to, the costs of re-letting, including tenant improvements, necessary renovations or repairs, advertising, leasing commissions, and attorney's fees and costs ("Termination Damages"), together with interest on all Termination Damages at the Default Rates from the date such Termination Damages are incurred by the Port until paid.

In addition to Termination Damages, and notwithstanding termination and reentry, Concessionaire's liability for all Rent or other charges which, but for termination of the Agreement, would have become due over the remainder of the Agreement term ("Future Charges") will not be extinguished and Concessionaire agrees that the Port will be entitled, upon termination for default, to collect as additional damages, a Rental Deficiency. "Rental Deficiency" means, at the Port's election, either:

An amount equal to Future Charges, less the amount of actual rent and concession fees, if any, which the Port receives during the remainder of the Agreement term from others to whom the Premises may be rented, in which case such Rental Deficiency will be computed and payable at the Port's option either:

18.2.1 In an accelerated lump-sum payment discounted to present value; or

18.2.2 In monthly installments, in advance, on the first day of each calendar month following termination of the Agreement and continuing until the date on which the Agreement term would have expired but for such termination, and any suit or action brought to collect any portion of Rental Deficiency attributable to any particular month or months, shall not in any manner prejudice the Port's right to collect any portion of Rental Deficiency by a similar proceeding; or

18.2.3 An amount equal to Future Charges less the aggregate fair rental value of the Premises over the remaining Agreement term, reduced to present worth. In this case, the Rental Deficiency must be paid to the Port in one lump sum, on demand, and will bear interest at the Default Rate until paid. For purposes of this subparagraph, "present worth" is computed by applying a discount rate equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank in, or closest to, Seattle, Washington.

18.3 **Termination For Default by Concessionaire.** If this Agreement is terminated for default as provided in this Agreement, the Port shall use reasonable efforts to re-let the Premises in whole or in part, alone or together with other premises, for such term or terms (which may be greater or less than the period which otherwise would have constituted the balance of the Agreement term), for such use or uses and, otherwise on such terms and conditions as the Port, in its sole discretion, may determine, but the Port will not be liable for, nor will Concessionaire's obligations under this Agreement be diminished by reason for any failure by the Port to re-let the Premises or any failures by the Port to collect any rent due upon such re-letting.

In addition to the rights granted by Section 10.4, if upon any reentry permitted under this Agreement, there remains any personal property upon the Premises, the Port, in its sole discretion, may remove and store the personal property for the account and at the expense of Concessionaire. In the event the Port chooses to remove and store such property, it shall take reasonable steps to notify Concessionaire of the Port's action. All risks associated with removal and storage shall be on Concessionaire. Concessionaire shall reimburse the Port for all expenses incurred in connection with removal and storage as a condition to regaining possession of the personal property. The Port has the right to sell any property that has been stored for a period of thirty (30) days or more, unless Concessionaire has tendered reimbursement to the Port for all expenses incurred in removal and storage. The proceeds of sale will be applied first to the costs of sale (including reasonable attorneys fees), second to the payment of storage charges, and third to the payment of any other amounts which may then be due and owing from Concessionaire to the Port. The balance of sale proceeds, if any, will then be paid to Concessionaire.

If the Port elects to terminate this Agreement, it will in no way prejudice the right of action for Rents arrearages owed by Concessionaire.

18.4 **Liquidated Damages.** This Agreement provides for the imposition of liquidated damages in a variety of circumstances, specifically include the Delay Damages and the schedule of liquidated damages set forth on Exhibit F. The following provisions shall apply to any such amounts.

18.4.1 **Noncompliance.** The Port's ADR Manager or the ADR Manager's authorized representative shall have the right to make reasonable objections to Concessionaire's

failure to create and maintain a vibrant first-class concession at the Airport in accordance with all of the terms of this Agreement, including, without limitation, the standards set forth in Section 4.3 (and any requirement or standard imposed by any Exhibit to this Agreement) (collectively, the “Operating Standards”) and to operate its business in a manner satisfactory to the ADR Manager or the ADR Manager's authorized representative. Concessionaire agrees to promptly discontinue or remedy any objectionable practice or condition within the cure period stated in any written notice issued by the ADR Manager or the ADR Manager’s authorized representative. “ADR Manager” shall mean the Airport’s Senior Manager, Airport Dining and Retail, or the ADR Manager’s successor in function.

- 18.4.2 **Reasonable Forecast of Harm to Port.** Concessionaire’s failure to adhere to the Agreement (specifically including any requirement imposed by any Exhibit) is reasonably anticipated to result in inconvenience to the public, adverse effects on the overall business of the Airport, a reduction in the amount of Rent to be paid to the Port, and a significant expenditure of Port resources to address the failure. The parties agree that the damages sustained by the Port for violations of the provisions of the Agreement and these Port Standards will be difficult to determine and track. Therefore, the parties agree that the amounts set forth in the Agreement and its exhibits are reasonable estimates of the damages anticipated to be suffered or incurred by the Port.
- 18.4.3 **Notice and Opportunity to Cure.** The Port may assess liquidated damages immediately, and without opportunity to cure, for the Delay Damages and for violations pertaining to (i) minimum hours of operation, (ii) failure to remove a product deemed objectionable by the Port within the time provided for removal, (iii) fire safety, (iv) health and human safety, and (v) for any other violation if the Port has previously provided Concessionaire notice of such violation two or more times in the past twelve months (whether or not liquidated damages were actually imposed). For any other violation, the Port will not assess liquidated damages unless the violation continues for more than three (3) days following written notice thereof. If the violation is such that it cannot reasonably be corrected within three days, the Port will refrain from imposing liquidated damages so long as Concessionaire shall, within the three days, commence the correction, identify the timeframe reasonably necessary to complete the correction and, thereafter, diligently proceed to complete the correction within the stated timeframe.
- 18.4.4 **Failure to Cure.** The failure to promptly address or cure any violation for which liquidated damages are payable may, itself, also be cause for continued assessment of liquidated damages.
- 18.4.5 **Payment.** Concessionaire shall pay all liquidated damages within thirty (30) days of the imposition thereof. The failure to pay liquidated damages shall represent a separate default under this Agreement.
- 18.4.6 **No Waiver; No Obligation.** The Port’s failure to impose sanctions for any violation shall not waive any right, or prohibit the Port from doing so for subsequent violations. The Port shall have no obligation, whether to Concessionaire or any third party, to

impose fines on or otherwise take action against any party at the Airport for violation of the Agreement or any Operating Standards.

18.4.7 **Other Fines.** Other fines and liquidated damages amounts may be set forth in the Port Standards, and nothing in this Agreement is intended to limit the ability of the Port to impose those fines and amounts as specifically provided by the Port Standards.

18.5 **Remedies Cumulative.** All rights, options and remedies of the Port contained in this Agreement shall be construed and held to be distinct, separate and cumulative, and no one of them shall be exclusive of the other, and the Port shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Agreement. Furthermore, payment of any liquidated damages amount shall not relieve Concessionaire of its responsibility for physical damage, personal injury, or any other harm caused by Concessionaire, its employees, agents, contractors, tenants and licensees. Concessionaire may, in its discretion, assess a subtenant or other licensee for any fines imposed with respect to that subtenant's or licensee's unit.

SECTION 19: RELOCATION OR TERMINATION OTHER THAN FOR DEFAULT

19.1 **Relocation for Performance.** In the event that Concessionaire either (a) experiences a decrease in its sales per Enplaned Passenger of more than twenty percent (20%) for the Premises, or any discrete portion thereof, for two (2) quarters in any twelve (12)-month period, (b) loses the franchise rights under which the concession for the Premises, or any discrete portion thereof, was operated, or (c) experiences a decline in Gross Sales for the Premises, or any discrete portion thereof, for two (2) consecutive years without a corresponding decrease in the number of Enplaned Passengers for the same two-year period, the Port may initiate a discussion with Concessionaire about termination of this Agreement or the discrete portion of the Premises to which such issue pertains. If the parties mutually agree, then a termination agreement shall be executed under which the Port shall agree to remarket the space and the Concessionaire shall agree to terminate the lease and vacate the space if and when a new tenant lease for the space is executed and the new tenant design for the space is approved by the Port.

19.2 **Airport Operational Needs.** If at any time (whether before or after Concessionaire commences operations at the Premises) the Port determines that the Premises (or any portion thereof) are necessary for the operation, safety, security or convenience of the Airport, the Port may require Concessionaire to close, reduce or relocate (to a location designated by the Port) the Premises, or any discrete portion thereof. In such event, the Port shall provide Concessionaire at least sixty (60) days advance written notice. Concessionaire shall have the right to accept or reject any proposed reduction or relocation of the Premises. If accepted, the Port and Concessionaire shall negotiate, in good faith, for the payment of any costs associated with such change. If Concessionaire rejects the reduction/relocation, or if the parties are unable to reach agreement regarding the payment of costs associated with such change, the Port may, at the Port's election, terminate this Agreement. If Concessionaire is not in default under any of the provisions of this Agreement on the effective date of termination, the Port shall refund any Rent prepaid by Concessionaire, to the extent allocable to any period subsequent to the effective date of the termination and, as applicable, reimburse Concessionaire the Net Book Value of Leasehold

Improvements. Concessionaire shall not be entitled to any compensation at termination for the bargained-for value of the leasehold or any relocation expenses.

- 19.3 **Condemnation.** In the event that any federal, state or local government or any agency or instrumentality thereof shall, by condemnation or otherwise, take title, possession or the right to possession of all or a portion of the Premises, the Port may, at its option, terminate this Agreement as of the date of such taking, and if Concessionaire is not in default under any of the provisions of this Agreement on the effective date of termination, the Port shall refund any Rent prepaid by Concessionaire, to the extent allocable to any period subsequent to the effective date of the termination. In addition, Concessionaire shall be entitled to participate in any compensation paid in the event of a taking, not to exceed the Net Book Value of Leasehold Improvements. Concessionaire shall not be entitled to any compensation at termination for the bargained-for value of the leasehold or any relocation expenses, except to the extent such relocation expenses may be awarded to Concessionaire as part of any condemnation proceeding.
- 19.4 **Court Decree.** In the event that any court having jurisdiction in the matter renders a decision which has become final and which will prevent the performance by the Port of any of its obligations under this Agreement, then either party may terminate this Agreement by ten (10) days' written notice, and all rights and obligations of this Agreement (except for any undischarged rights and obligations that accrued prior to the effective date of termination) shall terminate. If Concessionaire is not in default of this Agreement on the effective date of termination, the Port shall refund any Rent prepaid by Concessionaire, to the extent allocable to any period subsequent to the effective date of the termination, and reimburse Concessionaire the Net Book Value of Leasehold Improvements. Concessionaire shall not be entitled to any compensation at termination for the bargained-for value of the leasehold or any relocation expenses.
- 19.5 **Net Book Value of Leasehold Improvements.** As used in this Agreement, "Net Book Value of Leasehold Improvements" shall mean the dollar amount generated through application of the following rules:
- 19.5.1 **Eligible Improvements.** "Eligible Improvements" shall mean any permanently affixed alterations or improvements made to the Premises and to cabinetry and display fixtures that were custom designed by Concessionaire for the Premises and have no practical use or value outside the Premises: (a) for which the Port's consent has been sought and obtained in writing, (b) for which any and all information required by Section 6.6 or any Port consent has been timely submitted, and (c) consistently appearing on any NBV Report requested by the Port pursuant to Section 6.4, and (d) then currently in use and in such condition as would warrant its continued use. Eligible Improvements shall, however, specifically exclude the Removable Fixtures (other than custom designed cabinetry and display fixtures set forth above) and any inventory maintained by Concessionaire.
- 19.5.2 **Cost of Eligible Improvements.** The "Costs of Eligible Improvements" shall mean the direct costs expended by Concessionaire for any Eligible Improvements, including the cost for the demolition of any existing improvements necessary for the installation of such Eligible Improvements. The Costs of Eligible Improvements shall not, however,

include any of the Excluded Costs. The Costs of Eligible Improvements” shall be determined from the information timely submitted by Concessionaire pursuant to Section 6.6 or any Port consent, subject to verification by the Port. “Excluded Costs” shall mean the (i) financing costs; (ii) interest; (iii) inventory; (iv) office equipment and furnishings; (v) pre-opening expenses; (vi) intra-Concessionaire charges related to construction; (vii) professional fees and costs related to design and engineering of Eligible Improvements in excess of twelve percent (12%) of the initial minimum investment; and (viii) professional fees and costs related to the design and engineering of Leasehold Improvements in excess of twelve percent (12%) of the minimum mid-term refurbishment.

19.5.3 **Calculation of Net Book Value of Leasehold Improvements.** For each Eligible Improvement that does not become the Port’s property under Section 10.4, the Cost of that Eligible Improvement shall be amortized over the useful economic life of such Eligible Improvement. The useful economic life shall in no instance exceed the period of time commencing on the date such Eligible Improvement is installed and terminating on the expiration of this Agreement, or any lesser period that may be specified in any consent, sublease or other writing, on a straight-line basis with no salvage value. The “Net Book Value of Leasehold Improvements” shall be the sum of the unamortized portion (as of the effective date of the applicable termination) of the Cost of Eligible Improvements for each Eligible Improvement directly affected by such deletion or termination. As used in this Section, “useful economic life” shall specifically be determined with respect to the initial investment in the Eligible Improvement, Concessionaire’s repair and maintenance of the Eligible Improvement, and Concessionaire’s custom and usage for assets similar to the Eligible Improvements, both at the Airport and elsewhere.

SECTION 20: ACCESS; EASEMENTS

20.1 **Access to Premises.** The Port may, at any time, enter upon the Premises to ascertain the condition of the Premises or whether Concessionaire is observing and performing its obligations under this Agreement, all without hindrance or molestation from the Concessionaire. The Port shall also have the right to enter the Premises for the purpose of making or performing any necessary maintenance and repair work, for providing pest control services, for performing any work that may be necessary by reason of Concessionaire’s failure to make any such repairs or perform any such work, or for any other reasonable purpose. The above-mentioned rights of entry shall be exercisable upon request made on reasonable advance oral or written notice to Concessionaire (except that no notice shall be required in the event of an emergency) or an authorized employee of Concessionaire at the Premises.

20.2 **Easements.** The Port hereby reserves such continuous access and utilities easements within the Premises, as may in the opinion of the Port from time to time are desirable for the purpose of enabling it to exercise any right or reservation or to perform any obligation contained in this Agreement or in connection with the Port’s ownership or operation of the Airport. If the Port exercises this reservation of easement in any manner which substantially and negatively impacts Concessionaire, the Port agrees to negotiate an equitable adjustment in the Rent, or to bear reasonable costs of any permanent modifications to the Premises necessary to permit

Concessionaire to continue to operate its business. In no event, however, shall the Port be responsible for any reduced efficiency or loss of business.

SECTION 21: NONWAIVER; RIGHT TO PERFORM

- 21.1 **Receipt of Monies Following Termination.** No receipt of monies by the Port from Concessionaire after the termination or cancellation of this Agreement in any lawful manner shall (i) reinstate, continue or extend the term of this Agreement; (ii) affect any notice previously given to Concessionaire; (iii) operate as a waiver of the rights of the Port to enforce the payment of any Rent and fees then due or falling due later; or (iv) operate as a waiver of the right of the Port to recover possession of the Premises by proper suit, action, proceeding or remedy; it being agreed that after the service of notice to terminate or cancel this Agreement, or after the commencement of suit, action or summary proceedings, or any other remedy, or after a final order or judgment for the possession of the Premises, the Port may demand, receive and collect any monies due, or falling due later, without in any manner affecting such notice, proceeding, suit, action or judgment; and any such monies collected shall be deemed to be payments on account of the use and occupation and/or Concessionaire's liability under this Agreement.
- 21.2 **No Waiver of Breach.** The failure of the Port to insist in any one or more instances, upon a strict performance of any of the covenants of this Agreement, or to exercise any option, shall not be construed as a waiver of or relinquishment for the future of the performance of such covenant, or the right to exercise such option, but the covenant and option shall remain in full force and effect. The receipt by the Port of the Rent or fees, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Port of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Port. The consent or approval of the Port to or of any act by Concessionaire requiring the Port's consent or approval shall not be deemed to waive or render unnecessary the Port's consent or approval to or of any subsequent similar acts by Concessionaire.
- 21.3 **No Waiver of Rent.** The receipt by the Port of any installment of Rent or of any amount shall not be a waiver of any Rent or other amount then due.
- 21.4 **Application of Payments.** The Port shall have the right to apply any payments made by Concessionaire to the satisfaction of any debt or obligation of Concessionaire to the Port, in the Port's sole discretion and regardless of the instructions of Concessionaire as to application of any such sum, whether such instructions be endorsed upon Concessionaire's check or otherwise, unless otherwise agreed upon by both parties in writing. The acceptance by the Port of payments by other parties shall in no way affect Concessionaire's liability hereunder nor shall it be deemed an approval of any assignment of this Agreement or subletting by Concessionaire.
- 21.5 **Port's Right to Perform.** Upon Concessionaire's failure to perform any obligation or make any payment required of Concessionaire under the Agreement, the Port shall have the right (but not the obligation) to perform such obligation on behalf of Concessionaire and/or to make payment on behalf of Concessionaire. Concessionaire shall reimburse the Port the reasonable cost of the Port's performing such obligation on Concessionaire's behalf, including

reimbursement of any amounts that may be expended by the Port, plus interest at the Default Rate.

SECTION 22: SURRENDER

- 22.1 **Surrender.** At the expiration or sooner termination of this Agreement, Concessionaire shall promptly surrender possession of the Premises to the Port broom-clean, in their improved condition, wear and tear consistent with Section 11.2 excepted, remove all its Removable Fixtures and other property, and shall deliver to the Port all keys that it may have to any parts of the Premises. If the Premises are not surrendered as provided in this Section, Concessionaire shall indemnify and hold the Port harmless against loss or liability resulting from the delay by Concessionaire in so surrendering the Premises, including, without limitation, any claims made by any succeeding occupant founded on such delay.
- 22.2 **Removal of Wires.** Within ten (10) days following the expiration or earlier termination of this Agreement, the Port may elect by written notice to Concessionaire to either:
- 22.2.1 Retain, without necessity of payment, any or all wiring, cables, conduit, risers and similar installations installed by Concessionaire (“Wiring”), whether in the Premises or the larger building of which the Premises are a part. In the event that the Port elects to retain the wiring, Concessionaire covenants that: (i) it is the sole owner of the assets transferred or passing to the Port, (ii) it shall have right to surrender the assets transferred or passing to the Port, (iii) the Wiring transferred or passing to the Port are free from all liens and encumbrances, (iv) the Wiring transferred or passing to the Port is in good condition, working order, in safe condition and comply with the requirements of this Agreement, and (v) that all wiring or cables included within the Wiring transferred or passing to the Port is properly labeled at each end, in each telecommunications/electrical closet and junction box, and otherwise as may be required by Port regulations. OR
- 22.2.2 Remove, or require Concessionaire to remove, all such Wiring and restore the Premises and any larger property of which the Premises are a part to their condition existing prior to the installation of the Wiring, all at Concessionaire’s sole cost and expense.

This Section shall survive the expiration or earlier termination of this Agreement.

SECTION 23: AIRPORT SECURITY

- 23.1 **Airport Security.** Concessionaire covenants that it will, at all times, maintain the integrity of the Airport Security Plan and Transportation Security Administration (TSA) Regulations currently in effect or as may be implemented or modified from time to time, and that it will always maintain the security of the Airport and/or any access which Concessionaire maintains. Concessionaire also hereby agrees that it shall also be responsible for any and all actions of its employees, subcontractors, suppliers, agents, and/or representatives, and shall provide any and all necessary escorts as outlined in the Airports Security Plan, at all times. Concessionaire covenants that it will always maintain the security of any airfield access which Concessionaire maintains. Should Concessionaire allow unauthorized access to the Airport Operations or Security Area, and/or should the Port be cited for a civil penalty, Concessionaire agrees to

reimburse Port from any monetary civil penalty which may be imposed by the Federal Aviation Administration, the TSA, or any appropriate agency.

- 23.2 **Airport Security Program.** Concessionaire shall be responsible for obtaining and coordinating any TSA required and Port administered criminal history record checks, security threat assessments, badging, and/or other activities required to ensure Concessionaire is in compliance with Port Rules and Regulations and TSA Regulations 49 CFR Parts 1500, 1520, 1540, 1542, 1544, 1546, 1548, and 1550, as promulgated, and the terms and conditions of this Agreement.
- 23.3 **Background Checks.** Concessionaire shall be responsible for the proper preliminary background checks for its employees, vendors, etc., for which it requests and/or obtains an Airport Security badge. Such checks include those in support of TSA required criminal history record checks, and security threat assessments. In the event Concessionaire fails in its responsibilities for proper certifications, background checks or to return such Airport-issued badges upon cessation of employment or other circumstances, as described in Section 23.6, and/or any cause of action that either singularly or collectively would require the Port to be in violation of TSA Regulations, Port-TSA approved Airport Security Program, and applicable Part 1543 security directives, Concessionaire shall bear the tot cost of such TSA-issued monetary civil penalties and/or the re-badging process.
- 23.4 **Security Regulations.** Concessionaire covenants that it will at all times preserve the integrity of the Airport's Security program and TSA Regulations 49CFR Part 1500, 1520, 1540, 1542, 1544, 1546, 1548, and 1550, as promulgated, and that it will always preserve the security of any Secure Areas/SIDA access which the Concessionaire maintains. Concessionaire agrees that it shall be responsible for any and all actions of its employees, subcontractors, suppliers, agents, and/or representatives and shall provide any and all escorts as outlined in the Airport's Security Program, at all times. Concessionaire agrees that it shall be responsible for its employees, subcontractors, suppliers, agents, and/or representatives shall adhere to all Airport and TSA security policies, procedures and rules.
- 23.5 **Compliance.** Should Concessionaire, its employees, subcontractors, suppliers, agents, and/or representatives cause any TSA Letter-of-Investigation (LOI) or TSA monetary civil penalty to be assessed against the Port, Concessionaire agrees to reimburse the Port for all costs which may be imposed by TSA. Concessionaire may have badge/access privileges immediately suspended and/or revoked by the Aviation Managing Director or designee for failure to adhere to the Airport Security Program or for failure to return all badges within the timeframes specified herein. In the event of a severe incident, such actions may also result in the immediate suspension and/or termination of this Agreement, at the sole discretion of the Aviation Managing Director.
- 23.6 **Badging.** In accordance with the Airport Security Program, Concessionaire must obtain Airport security badging and fingerprinting for its eligible employees, subcontractors, suppliers, agents, and/or representatives, and pay any and all related costs associated with this privilege. Note at the sole discretion of the Aviation Managing Director or designee, the rates may be subject to change. Said badges will only be valid for the term of this Agreement and must be returned to

the Credential Center Office within twenty-four (24) hours or the next business day after expiration or suspension and/or termination of this Agreement. Concessionaire is responsible to return the badges of employees and representatives that are no longer employees by Concessionaire. Concessionaire agrees to pay any associated fees and/or penalties for all badges not returned within this time frame. Concessionaire will be required to comply with all security requirements currently in effect or as may be implemented from time to time, including but not limited to background checks for each badge requested.

Concessionaire will be required to have each employee continuously display any issued Airport security badge while on Airport property. Failure to do so may result in the immediate suspension and/or termination of badge access and this Agreement.

If the badge holder's Airport access is deactivated due to badge expiration, termination, suspension and/or other cessation of employment and/or termination of this Agreement, or such other terms as may be designated by the Aviation Managing Director or designee, Concessionaire must immediately report such information to the Port. Concessionaire is responsible for ensuring all Airport-issued badges are returned to the Port for any circumstances as described above.

Concessionaire will have some or all badge/access privileges immediately suspended and/or revoked as appropriate in the sole discretion of the Director Aviation Security for failure to adhere to the Airport Security Plan or for failure to return all badges within the time frames specified herein, and issue Liquidated Damages as provided in Section. Such actions may result in the immediate termination of this Agreement, at the sole discretion of the Port.

SECTION 24: ENVIRONMENTAL STANDARDS

- 24.1 **Definitions.** "Law" or "Regulation" as used in this Agreement shall mean any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction), now or hereafter in effect. "Hazardous Substances" as used in this Agreement shall mean any substance or material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant, by any Law or Regulation.
- 24.2 **Hazardous Substances.** Concessionaire shall not allow the presence in or about the Premises of any Hazardous Substance in any manner that could be a detriment to the Premises or in violation of any Law or Regulation. Concessionaire shall not allow any Hazardous Substances to migrate off the Premises, or the release of any Hazardous Substances into adjacent surface waters, soils, underground waters or air. Upon request from the Port, Concessionaire shall provide the Port with Concessionaire's USEPA Waste Generator Number, and with copies of all Material Safety Data Sheets (MSDS) or Generator Annual Dangerous Waste Reports/ Concessionaire shall provide the Port with all environmentally related regulatory permits or approvals (including revisions or renewals) and any correspondence Concessionaire receives from, or provides to, any governmental unit or agency in connection with Concessionaire's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on the Premises.

- 24.3 **Violation of Environmental Law.** If Concessionaire, or the Premises, is in violation of any Law or Regulation concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Concessionaire shall promptly take such action as is necessary to mitigate and correct the violation. If Concessionaire does not act in a prudent and prompt manner, the Port reserves the right, but not the obligation, to come onto the Premises, to act in place of the Concessionaire (Concessionaire hereby appoints the Port as its agent for such purposes) and to take such action as the Port deems necessary to ensure compliance or to mitigate the violation. If the Port has a reasonable belief that Concessionaire is in violation of any Law or Regulation, or that Concessionaire's actions or inactions present a threat of violation or a threat of damage to the Premises, the Port reserves the right to enter onto the Premises and take such corrective or mitigating action as the Port deems necessary. All costs and expenses incurred by the Port in connection with any such actions shall become immediately due and payable by Concessionaire upon presentation of an invoice therefor.
- 24.4 **Inspection; Test Results.** The Port shall have access to the Premises to conduct an annual environmental inspection. In addition, Concessionaire shall permit the Port access to the Premises at any time upon reasonable notice for the purpose of conducting environmental testing at the Port's expense. Concessionaire shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Port's written consent. Concessionaire shall promptly inform the Port of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises whenever the same becomes known to Concessionaire, and Concessionaire shall provide copies to the Port.
- 24.5 **Removal of Hazardous Substances.** Prior to vacation of the Premises, in addition to all other requirements under this Agreement, Concessionaire shall remove any Hazardous Substances placed on the Premises during the term of this Agreement or Concessionaire's possession of the Premises, and shall demonstrate such removal to the Port's satisfaction. This removal and demonstration shall be a condition precedent to the Port's payment of any Security to Concessionaire upon termination or expiration of this Agreement.
- 24.6 **Remedies Not Exclusive.** No remedy provided under this Agreement shall be deemed exclusive. In addition to any remedy provided above, the Port shall be entitled to full reimbursement from Concessionaire whenever the Port incurs any costs resulting from Concessionaire's use or management of Hazardous Substances on the Premises, including but not limited to, costs of clean-up or other remedial activities, fines or penalties assessed directly against the Port, injuries to third persons or other properties, and loss of revenues resulting from an inability to re-lease or market the property due to its environmental condition (even if such loss of revenue occurs after the expiration or earlier termination of this Agreement).
- 24.7 **Environmental Indemnity.** In addition to all other indemnities provided in this Agreement, Concessionaire agrees to defend, indemnify and hold the Port free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substance on the Premises, or the migration of any Hazardous

Substance from the Premises to other properties or into the surrounding environment, whether (1) made, commenced or incurred during the term of this Agreement, or (2) made, commenced or incurred after the expiration or termination of this Agreement if arising out of events occurring during the term of this Agreement.

SECTION 25: ACDBE REQUIREMENTS; NON-DISCRIMINATION

25.1 **Airport Concessions Disadvantaged Business Enterprises.** It is the policy of the Port to support participation of Airport Concessions Disadvantaged Business Enterprises (ACDBE), as defined in 49 CFR, Part 23, in concession activities at the Airport. To the extent Concessionaire is required to operate the Premises as an ACDBE, Concessionaire agrees to submit to the Port, upon execution of this Agreement, certification from the State of Washington that Concessionaire is a certified ACDBE. Likewise, at all times during the term of this Agreement, Concessionaire shall be and remain certified as an ACDBE in accordance with all applicable federal, state and local laws, rules and regulations and shall timely file all applications, together with all supporting documentation, necessary to maintain such certification. In the event that Concessionaire is certified as an ACDBE and that certification is necessary to satisfy the requirements of this Section, prior to any change in ownership, control or organization of Concessionaire, Concessionaire shall (in addition to any requirements that may be imposed by Section 17.1) similarly obtain ACDBE certification for Concessionaire as so changed and provide the Port with proof of the same. If Concessionaire shall at any time cease to be so certified, the Port may, at its sole option, terminate this Agreement on not less than ninety (90) days advance written notice to Concessionaire. So long as Concessionaire in good faith sought certification, reasonably complied with all requirements and deadlines necessary to maintain certification, and nonetheless ceased to be so certified, the Port shall pay to Concessionaire the Net Book Value of Leasehold Improvements in the event of such termination.

It is the policy of the Port to ensure that ACDBE and other small businesses have an equal opportunity to receive and participate in U.S. Department of Transportation (DOT)-assisted contracts. The Port encourages Concessionaire to make every reasonable effort to maximize the contracting opportunities for ACDBE and other small businesses in the architectural, engineering and construction of the Premises, and in the procurement of goods and services necessary for the operation of the concession at this Airport.

Concessionaire shall submit quarterly ACDBE participation reports to the Port starting on the first day of the second month after the commencement of this Agreement. Concessionaire shall submit such reports as may be required by the Port, for the purpose of demonstrating compliance with 49 CFR Part 23.

As part of the Proposal, Concessionaire has committed to maintain a **Twelve and One Half Percent (12.5%)** ACDBE participation level throughout the term of this Agreement.

25.2 **Nondiscrimination.** This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 and the DOT's regulations, 49 CFR Part 21. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, subcontract, purchase or lease agreement or other agreement covered by

49 CFR Part 21. Furthermore, during the performance of this Agreement, Concessionaire, for itself, its assignees, and successors in interest (for purposes of this Section and its referenced exhibits only, "contractor") agrees to both (i) comply with the covenants set forth on Exhibit G and (ii) comply with the non-discrimination statutes and authorities set forth on Exhibit H.

SECTION 26: MISCELLANEOUS

26.1 **Notice.** Each provision of this Agreement or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivery of any notice or the making of any payment by one party to the other shall be deemed to be complied with when and if made in compliance with this Section 26.1.

Notice to the Port. All notices hereunder shall be in writing and shall be delivered personally, by certified or registered mail, or by recognized overnight courier.

For any notice directed to the Port, the address shall be as follows:

Street Address:

Port of Seattle
Seattle-Tacoma International Airport
17801 International Blvd.
Seattle, WA 98158
Attn: Aviation Commercial Management

Mailing Address:

Port of Seattle
Seattle-Tacoma International Airport
P. O. Box 68727
Seattle, WA 98168
Attn: Aviation Commercial Management

For payments only as referenced in the Summary of Key Lease Terms, the address shall be as follows:

Port of Seattle
P.O. Box 24507
Seattle, WA 98124-0507

Notices to Concessionaire. All notices hereunder shall be in writing and shall be delivered personally, by certified or registered mail, or by recognized overnight courier.

For any notice directed to Concessionaire, the address shall be as follows:

Legal Notices:

Ms.. Courtney Thornton
Executive Vice President
DUFY-SEATTLE JV
One Meadowlands Plaza, 11th Floor
East Rutherford, NJ 07073

Either party may, however, designate a different address from time to time by providing written notice. Notices shall be deemed delivered (i) when personally delivered; (ii) on the third day

after mailing when sent by certified or registered mail and the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing; or (iii) on the first business day after deposit with a recognized overnight courier if deposited in time to permit overnight delivery by such courier as determined by its posted cutoff times for receipt of items for overnight delivery to the recipient. Payments may be made in the manner provided for notice or may be delivered by regular mail (postage prepaid); provided, payments made by regular mail (postage prepaid) shall be deemed delivered when actually received by the Port.

- 26.2 **Agreements with the United States.** This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the Port and the United States, including any FAA grant assurances to which the Port is subject, the execution of which or compliance with has been or may be required as a condition precedent to the transfer of federal rights or property to the Port for Airport purposes and the expenditure of federal funds for the extension, expansion or development of the Airport or airport system.
- 26.3 **Right to Develop Airport.** Concessionaire agrees that the Port reserves the right to further develop or improve the Airport and all landing areas and taxiways as the Port may see fit, regardless of the desires or views of Concessionaire and without any interference or hindrances from Concessionaire.
- 26.4 **Agreement Subject to Aviation Priority.** Concessionaire's right to use the Premises for the purposes as set forth in this Agreement shall be secondary to, and subordinate to, the operation of the Airport. Concessionaire acknowledges that because of the location of the Premises at the Airport, noise, vibrations, fumes, debris and other interference with Concessionaire's permitted use of the Premises will be caused by Airport operations. Concessionaire hereby waives any and all rights or remedies against the Port arising out of any noise, vibration, fumes, debris and/or interference that is caused by the operation of the Airport. The Port specifically reserves for itself, and for the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport together with the right to cause in said airspace such noise, vibration, fumes, debris, and other interference as may be inherent in the present and future operation of aircraft.
- 26.5 **Modifications Required by FAA.** In the event that the FAA or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to satisfy the FAA requirements, subject to the provisions of this Agreement.
- 26.6 **Brokers.** The Port and Concessionaire each warrant to the other that it has had no discussions, negotiations and/or other dealings with any real estate broker or agent and that it knows of no other real estate broker or agent who is or may be entitled to any commission or finder's fee in connection with this Agreement. The Port and Concessionaire each agree to indemnify and hold the other harmless from and against all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, attorneys' fees and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of such party's discussions, negotiations and/or dealings with any real estate broker. No commission(s) or

finder's fee(s) shall be paid to Concessionaire, employee(s) of Concessionaire or any unlicensed representative of Concessionaire.

- 26.7 **Force Majeure.** In the event that either party shall be delayed or hindered in or prevented from performing any act required under this Agreement by reason of strikes, lockouts, inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, fire or other casualty or other reason of a similar nature beyond the reasonable control of the party (and not caused by the act or neglect of Concessionaire), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Delays or failures to perform resulting from lack of funds shall not be deemed delays beyond the reasonable control of a party; and after the Rent Commencement Date, the provisions of this Section shall not operate to excuse Concessionaire from the prompt payment of Rent as required by this Agreement and shall not extend the term of this Agreement.
- 26.8 **Labor Peace.** Concessionaire acknowledges that the Port has a significant proprietary interest in the success of the ADR program and so it is in the Port's economic interest to eliminate disruptions to its tenants' operations due to labor disputes that can also negatively impact customers using the Airport as well as airline operations.
- 26.9 **Consent.** Whenever the Port's prior consent or approval is required by this Agreement, the same shall not be unreasonably delayed but may, unless otherwise specifically provided by this Agreement, be granted or denied in the Port's sole and absolute discretion.
- 26.10 **Wireless Devices.** Concessionaire shall not install any wireless devices and/or transmitters on or about the Premises without the prior written consent of the Port and subject to all conditions in such consent. Concessionaire specifically grants to the Port the power to regulate and control the use of unlicensed frequency bands (including, but not limited to, FCC Part 15 Subpart C, FCC Part 15 Subpart D (both asynchronous and Isochronous), IEEE 802.11 and Bluetooth (ISM), and FCC UNII 1 and UNII 2 (IEEE 802.11a)) on or about the Premises.
- 26.11 **Relationship to the Port and Concessionaire.** Nothing in this Agreement shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture partners, and no provision contained in this Agreement nor any acts of Concessionaire and the Port shall be deemed to create any relationship other than that of landlord and tenant.
- 26.12 **Time.** Time is of the essence of each and every one of Concessionaire's obligations, responsibilities and covenants under this Agreement.
- 26.13 **Recording.** Concessionaire shall not record this Agreement or any memorandum thereof without the Port's prior written consent.
- 26.14 **Joint and Several Liability.** Each and every party who signs this Agreement, other than in a representative capacity, as Concessionaire, shall be jointly and severally liable hereunder. It is understood and agreed that for convenience the word "Concessionaire" and verbs and pronouns in the singular number and neuter gender are uniformly used throughout this Agreement,

regardless of the number, gender or fact of incorporation of the party who is, or of the parties who are, the actual lessee or lessees under this agreement.

- 26.15 **Captions.** The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.
- 26.16 **Governing Law; Venue.** This Agreement shall be construed under the laws of Washington. Exclusive jurisdiction and venue for any action relating to this Agreement shall be in the state or federal courts located in King County, Washington.
- 26.17 **Attorneys' Fees.** In the event that either party shall be required to bring any action to enforce any of the provisions of this Agreement, or shall be required to defend any action brought by the other party with respect to this Agreement, and in the further event that one party shall substantially prevail in such action, the losing party shall, in addition to all other payments required therein, pay all of the prevailing party's actual costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorneys' fees in the trial court and in any appellate courts. For purposes of calculating attorneys' fees, legal services rendered on behalf of the Port by public attorneys shall be computed at hourly rates charged by attorneys of comparable experience in private practice in Seattle, Washington.
- 26.18 **Washington Public Records Act.** Concessionaire acknowledges that the Port is subject to the provisions of the Washington Public Records Act, Chapter 42.56 RCW et seq. ("PRA"), and all documents and information prepared or provided by Concessionaire under this Agreement may be subject to the provisions of the PRA. The Port may disclose any such documents, information or other materials as required: (i) to comply with the PRA; (ii) to comply with orders of governmental entities that have jurisdiction over it; and/or (iii) as otherwise required by law. In the event of a request for disclosure under the PRA, any obligation to keep materials confidential shall be subject and subordinate to the Port's obligation to comply with law. In the event of a request to the Port for disclosure of such documents, information or other materials, time and circumstances permitting, the Port will make a good faith effort to advise Concessionaire of such request in order to give Concessionaire the opportunity to object to the disclosure of any of materials Concessionaire may consider confidential, proprietary or otherwise exempt from disclosure. Concessionaire shall be solely responsible for and will bear the full costs of taking legal action to prohibit disclosure of documents, information or other materials. If Concessionaire elects to commence suit to oppose disclosure of any such materials, Concessionaire agrees to defend, indemnify, and save and hold harmless the Port, its commissioners, officers, agents, and employees, from any claim, damages, expense, loss or costs arising out of Concessionaire's intervention including, but not limited to, prompt reimbursement to the Port of all reasonable attorney fees, costs and damages that the Port may incur directly or may be ordered to pay in connection with any such suit.
- 28.19 **Invalidity of Particular Provisions.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or enforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

- 26.20 **Survival of Indemnities.** All indemnities provided in this Agreement shall survive the expiration or any earlier termination of this Agreement. In any litigation or proceeding within the scope of any indemnity provided in this Agreement, Concessionaire shall, at the Port’s option, defend the Port at Concessionaire’s expense by counsel satisfactory to the Port.
- 26.21 **Entire Agreement; Amendments.** This Agreement, together with any attached exhibits, shall constitute the whole agreement between the parties. There are no terms, obligations, covenants or conditions other than those contained in this Agreement. No modification or amendment of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.
- 26.22 **Exhibits.** The exhibits referenced in this Section and listed in the Summary of Key Lease Terms are attached to this Agreement after the signatures and by this reference incorporated as a part of this Agreement.

Exhibits to Agreement:	A – Legal Description of Airport B – Premises C – ADR Concessions Operating Standards D – Street Pricing Policy E – Links to key Ports Standards F – Schedule of Liquidated Damages G – Additional Non-Discrimination Covenants H – Pertinent Non-Discrimination Authorities I – Resolution 3725
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SECTION 27: SIGNATURES

IN WITNESS WHEREOF the parties hereto have signed this Agreement as of the day and year first above written.

PORT OF SEATTLE

DUFREY – SEATTLE JV

By: _____
Its: _____

By: _____
Its: _____

ACKNOWLEDGMENT FOR CONCESSIONAIRE

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 20____, before me, personally appeared _____ to me known to be the _____ of _____, a _____ corporation, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of _____
Residing at: _____
My commission expires: _____

ACKNOWLEDGMENT FOR THE PORT

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 20____, before me, personally appeared _____ to me known to be the _____ of the PORT OF SEATTLE, a Washington municipal corporation, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of _____
Residing at: _____
My commission expires: _____

EXHIBIT A

– Legal Description –

Main Terminal

THE WEST 2125 FEET OF THE EAST 3300 FEET OF THE NORTH 1850 FEET ALONG WITH THE NORTH 700 FEET OF THE WEST 600 FEET OF THE EAST 1775 FEET OF SECTION 33 AND THE WEST 2125 FEET OF THE EAST 3300 FEET OF THE SOUTH 675 FEET OF SECTION 28, ALL IN TOWNSHIP 23 NORTH, RANGE 4 EAST W.M., KING COUNTY, WASHINGTON.

North Satellite

THE NORTH 900 FEET OF THE SOUTH 1500 FEET OF THE EAST 400 FEET OF THE SOUTHWEST QUARTER AND THE NORTH 1550 FEET OF THE WEST 600 FEET OF THE SOUTHEAST QUARTER, ALL IN SECTION 28, TOWNSHIP 23 NORTH, RANGE 4 EAST W.M., KING COUNTY, WASHINGTON.

South Satellite

THE NORTH 200 FEET OF THE WEST 900 FEET OF THE SOUTHEAST QUARTER; THE NORTH 200 FEET OF THE EAST 250 FEET OF THE SOUTHWEST QUARTER; THE SOUTH 800 FEET OF THE WEST 900 FEET OF THE EAST 250 FEET OF THE NORTHWEST QUARTER, ALL IN TOWNSHIP 23 NORTH, RANGE 4 EAST W.M., KING COUNTY, WASHINGTON.

EXHIBIT B

– Premises –

EXHIBIT C

– Operating Standards –

**Operating Standards for Concessionaires
at
Seattle-Tacoma International Airport**

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1. DEFINITIONS & ACRONYMS

- “ACC” is short for the Airport Communications Center
- “ADA” is short for the Americans with Disabilities Act
- “ADM” is short for an Airport Duty Manager
- “ADR” is short for Airport Dining and Retail
- “Agreement” means and refers to the Lease and Concession Agreement.
- “Airport” means the Seattle-Tacoma International Airport, which is owned and operated by the Port of Seattle (the Port).
- “COOP” is short for Continuity of Operations Plan
- “Music Program” means the live performances and overhead music heard throughout the Airport.
- “Concessionaire” means the Concessionaire identified in the Agreement.
- “Port Representative” means any Port employee with the authority to act regarding these standards or the Lease and Concession Agreement (to which these standards are attached). Port Representatives will generally be identified in writing, but if the Concessionaire has any questions regarding whether a particular person has authority to act, the Concessionaire should contact their Airport Dining and Retail Business Manager for clarification.
- “Premises” means the unit spaces, either individually or collectively, as identified in the Agreement.

2. GENERAL OVERVIEW

The Airport Dining and Retail Program (ADR) at Seattle-Tacoma International Airport places a significant importance on creating an exceptional passenger experience, which is one of the key strategic goals of the Airport.

This manual identifies requirements for the ADR Program that match the expectations and needs of our passengers. It outlines customer service standards for all Concessionaires, facility and maintenance standards for ADR locations, as well as general operations and security standards for the airport. We expect every Concessionaire to refer to the standards outlined in this manual in addition to any supplemental documents provided by ADR, to

ensure compliance. Provided the revisions do not materially increase the cost of Concessionaire's operations at the Airport, these standards are subject to modification from time-to-time to address the ever-changing Airport environment. Failure to comply with these standards may subject Concessionaire to liquidated damages and/or default under the terms of Concessionaire's Agreement.

3. FIRST CLASS STANDARDS

The Port desires to provide air travelers, Airport employees, and the public with facilities, service, food, beverages and retail merchandise in First Class Manner. As defined in the Agreement, a First Class Manner refers to a standard of products, cleanliness, and customer service that would be reasonably expected in upscale shopping malls and other similar high-quality airport and non-airport retail and food service facilities.

To ensure compliance, the Port requires that all concessionaires provide a detailed plan of operations including Preventative Maintenance Schedules for all equipment, Emergency Evacuation Plans, and Sanitation Checklists for each location to the ADR Business Manager, no later than ninety (90) days prior to the opening of the space.

3.1 On-Site Manager

To ensure that this standard is met at all times, all of Concessionaire locations must be under the supervision and direction of an active, qualified, competent, and experienced on-site Manager, who will at all times be authorized to represent and act for the Concessionaire on all management, maintenance, and operations issues. The on-site Manager should have a designated duty station or office inside one (or more) of the Concessionaire's units where he or she will be available during business hours. If or when that manager is absent for whatever reason, the Manager or other Concessionaire Management Representative must assign one or more qualified assistant managers to assume and be directly responsible for carrying out the on-site Manager's supervisory duties. Concessionaire will provide (and update) contact information for Concessionaire's Managers so that a Port Representative may contact them in emergencies or during non-business hours.

3.2 Cleanliness

The Port is responsible for providing maintenance and janitorial services in common-use areas only. Janitorial and maintenance deficiencies observed in common areas of the Airport should be reported by calling the Airport Communications Center (ACC) at (206) 787-5406. Concessionaires are responsible for providing janitorial services within their Premises as well as the storefront and any attached signage. The following general requirements detail specific guidelines for Concessionaire's locations:

- Units must always appear clean, uncluttered, organized, well maintained, and free of debris and of unpleasant odors.

- Excess stock, merchandise, and products must be stored neatly out of view of the customer.
- Aisles and hallways (both inside and outside the unit) must be free of carts, pallets, dollies, crates, boxes, trash, equipment, etc. per the fire code.
- All seating must be clean and well maintained.
- Employee personal belongings must not be stored in the public view.
- Windowsills must be clean and free of dirt, debris and dust.
- Windows, display cases and all other glass must be clean, free of smudges/food/dirt, noticeable streaks and dust both inside and out.
- Trash receptacles and wastebaskets must be cleaned inside and out, odor free, and continually emptied to avoid overflow; trash receptacles must contain approved trash liners at all times.
- Walls/columns must present a freshly painted or clad appearance and be free of dirt, marks, chips and graffiti.
- Carpet, rugs and/or mats must be:
 - Free of all dirt, debris, and loose or embedded gum.
 - Thoroughly vacuumed in all areas every day
 - Free of all spots, stains, rips, or cracks.
 - Free of dust build-up at or around carpet edges, corners, chair bases, stanchions or other objects that are placed on the carpet.
 - Carpet maintenance must include the removal of surface and embedded sand, soil, stains, spots and bacteria on a regular and frequent schedule in order to ensure an acceptable appearance and to remove soil that would shorten the useful life of the carpet.
- Hard surface floors must be:
 - Free of all dirt, debris and loose or embedded gum.
 - Free of all deep surface scratches and abrasions that haze the floor's appearance.
 - Free of spots and finish discoloration due to previous cleaning or lack of addressing spills in a timely manner.
 - Free of dust or grime build-up at, or around, floor surface edges, corners, chair bases, stanchions, or other objects that are placed on the floor.
 - When liquid is spilled, appropriate signs must be provided until clean up occurs. Janitorial services must be notified.
 - Floor grout must be in good repair, free of water, dirt and grime buildup.
- Ceilings, grids and tiles must be dust, cobweb free and unsoiled. Ceiling tiles must be present, positioned in place to provide a clean appearance and without any gaps or tears
- Fans, grills, vents, light fixtures, & assemblies must be clean and dust free.
- Railings, gates and fencing must be tightened, clean and free of dust and grime.
- All structures must be free of dirt, dust and graffiti.

3.3 Condition

- Seating must be clean and free of rips, tears, and broken parts. Seating that is ripped, torn or broken must be replaced immediately or removed from the area. If damage occurs and will require an extended period to repair or replace, Business Manager must be notified within 48 hours of damage occurring. Furniture must be decommissioned until repair or replacement can take place; duct tape, paper or similar temporary repair materials are not allowed
- Point of sale and cashier areas must appear neat, organized and clean.
- All equipment must be operational and be clean and free of dust and dirt.
- Fans, light fixtures, assemblies, and bulbs must be operational, clean and free of dust.
- Carpets must not be worn or frayed; tile and stone flooring must be free of large cracks or gouges and broken pieces.
- Tile, terrazzo, and all flooring must be free of cracks, gouges and broken pieces.
- Physical facilities, such as counters, booths, display fixtures, coolers, and kiosks must be in good repair and like new condition.
- All locations must have a pleasant atmosphere and present an inviting appearance, which is free of clutter and debris.
- Apparel and accessories must be neatly folded or hung in appropriate areas with pricing clearly labeled.
- Trash, packaging, shipping materials, debris and delivery carts/totes must be stored out of the public view or removed promptly from the public areas.
- Furniture, display cases, fixtures, and shelving must be in a like-new condition with no deep cuts, scratches, graffiti, or broken pieces. Concessionaires must immediately remove any damaged furnishing that will pose a safety hazard to the customer. Furnishing placement must comply with all applicable codes to ensure appropriate width for persons with disabilities and permit free movement by customers with carry-on-baggage. All furnishings must remain aligned with the permitted layout approved previously approved by the Port.
- Roll gates and other types of entry security equipment must be in working condition. Concessionaire must take immediate measures to ensure repairs are completed and notify the Port when repairs are completed; yearly maintenance is required.
- Fire extinguishers/fire protection/life safety systems including CO2 tanks must have current certification, be operational and properly mounted per fire code.
- Concessionaire's areas must be free of any signs of insects or rodents.
- Consistent issues with the maintainability of the Concessionaire's Premises may result in liquidated damages.

3.4 Functionality

- Customer comment cards must be readily available. In lieu of comment cards, a customer comment line/email must be provided on all receipts.
- All doors/gates must be maintained, in good working order and must comply with applicable codes. Doors/gates must be free of noticeable smudges, dirt, grime and obstacles that would impede the public's path or employees' ingress/egress.
- Music audible to customers within individual units must be provided by the Concessionaire's audio system and approved in writing by the Port; approved music must be at a level appropriate for customer enjoyment within the Premise and must be appropriate content for all audiences (must not contain any vulgarity or graphic language or undertones)
- Music systems must be clear/audible and in good working condition with appropriate volume levels that do not to interfere with the Airport address system, cause annoyance to Airport patrons, or conflict with the Music Program.
- Seating must not be removed from designated areas. All tables, fixtures, chairs, kick rails, and table bases must be free of debris, dirt build-up, and scuff marks.
- Refrigerators and coolers must be in good working condition and free of odor and spills.
- Trash receptacles and wastebaskets must be in good working condition, sufficient in number, cleaned nightly and must not obstruct the path of the public.
- Counters and cash wrap areas must be neat and clean in appearance.
- Lighting must be adequate in all areas and in compliance with applicable codes and design standards.
- Contractors' or vendors' supplies and equipment must be stored out of customers view when not in use. A complete concession cleaning kit containing supplies for dust, glass, and wood cleaning products must be maintained in all units and stored out of public view.
- Television monitors must be in good working condition; to ensure compliance with the Americans with Disabilities Act (ADA) the closed captioned feature must be enabled at all times.
- All Premises must adhere to the Americans with Disabilities Act (ADA) requirements, providing unobstructed, and code compliant pathways.
- Fire extinguishers/fire protection/life safety systems must be operational and checked/inspected annually and properly mounted as appropriate per code.
- Mop, mop bucket, strainer, and mop sink must be maintained and clean at all times.
- All merchandise and areas that hold store merchandise must be free of dust and spilled product. All cabinetry, shelves, display units, and wall bays must be free of marks, dust, and spilled product.

- All menu boards, cash wraps, nesting tables, fixtures, and condiment bars must be free of dust, stains, residue, spills, trash and clutter.
- All windows, lighting, non-glass doors, glass areas, brass, and chrome surfaces must be free of dust, spills, handprints, scuffmarks, and splashed product.
- The Point-of-Sale (POS) systems and surrounding area, as well as other equipment must be organized, clean, free of marks, and dust.
- No freestanding or mobile signs, fixtures, display carts, merchandise display units, or racks of any kind are allowed outside of the lease line without prior written approval from the Senior Manager of ADR.
- Storefronts must be open, inviting and clutter-free.
- Auction, fire, bankruptcy, close out, distress, liquidation, going-out-of-business sales or operating as an outlet/surplus store are not allowed in the Premises; Periodic seasonal, promotional or clearance sales are not precluded and must be approved in writing by the Business Manager.
- Any national or locally-branded operation must accept company-branded “cash cards” or “gift cards” for purchase at all of Concessionaire’s Airport locations, unless Concessionaire can demonstrate to the satisfaction of the Port Representative that in order to enable such acceptance additional equipment or systems would be required to be installed and are not viable for the operation.
- Concessionaire must accept traveler’s checks and at least three (3) nationally recognized credit or debit cards (e.g., American Express, Master Card, VISA or as designated by the Port Representative) for any purchase amount.
- Concessionaire is not permitted to add a “tip,” “gratuity,” “service charge,” “concession recovery charge” or other similar charge to customer invoices. The only exception to this is locations with table service. In such cases, for parties of eight (8) customers or more, the Concessionaire may add a gratuity of no greater than eighteen percent (18%), so long as it is noted on the menu that such charge will be added, the server informs the party that such charge will be added to the bill for the table, and the Concessionaire pays the entire amount collected to the server and/or appropriate staff. Concessionaire may provide a business case for the insertion of “concessions recovery charge” or “service charge” language to be added to menus for locations with table service to the Port. Written approval from the Senior Manager of ADR must be provided in advance of enacting such charge or printing of menus.
- Placement of a tip jar or container in public view (i.e. on counters in counter service locations, etc.) is only allowed in coffee concept units and must be professionally made. No handwritten notes requesting “tips” will be allowed.
- “Take-a-penny/leave-a-penny”, fundraiser and charitable donation cups are prohibited.

- Written approval by the Port Representative must be obtained by the Concessionaire prior to the installation of sound systems, radios, televisions, or other similar devices.

3.5 Products

- The Port Representative reserves the right to approve or disapprove all products, prices, and product displays.
- The Port Representative has the right to require Concessionaire to discontinue the sale of any product he/she, deems unsatisfactory, distasteful, or inappropriate for any reason and to require Concessionaire to modify product displays for any reason. Concessionaire will comply with any such direction within twenty-four (24) hours following notice. Failure to comply with such direction may result in liquidated damages.
- At the Port Representative's written request, the Concessionaire will provide for the sale of any merchandise or the furnishing of any reasonable services that may be determined necessary for increased sales and passenger satisfaction.
- Concessionaire will keep in stock and have ready for sale at all times of operation, a sufficient supply of current-season merchandise, articles, and goods, as may be appropriate to the operation, to meet the demand of customers at the Airport.
- Concessionaire must ensure that product variety is adequate at each location.
- Concessionaires will use durable (i.e. washable) service ware where feasible at restaurants with sit-down dining.
- A list of approved compostable and recyclable service ware (i.e. plates, bowls, cups, lids, straws, cutlery, clamshells, etc.) by the Airport's compost and recycling service providers can be found in the Rules and Regulations. Concessionaires may request exemptions in writing to the Port Representative for specific food service ware items (e.g. plastic spoons, foil wraps) for which compostable/recyclable alternatives are not readily available or suitable for use.
- All food and beverage menu items should be made available "to go" for customers if they so request. The carry out or "to go" containers and service ware should be either compostable or recyclable and of high quality and substantial enough for the customer to take on an airplane. Expanded polystyrene foam ("Styrofoam") service ware is strictly prohibited.
- Concessionaire will develop and implement creative merchandising techniques to entice customers to purchase food, beverages, and retail merchandise, including without limitation, food and beverage displays; retail merchandise displays; display cases; promotional displays; attractive and durable packaging; menu boards or tabletop menus; and pictures of food and beverages or retail merchandise. All additional display fixtures must be approved in writing by the Port Representative.

- Alcoholic Beverages
 - All Concessionaires will be required to obtain their own liquor licenses and permit through the proper procedures with the Washington State Liquor and Cannabis Board and any other required government agency.
 - The legal drinking age in the State of Washington is 21 or older and must be **strictly** enforced by all concessionaires.
 - All alcoholic beverage consumption will be restricted within the concessionaire’s Premise in an enclosed and clearly defined dining space and closely monitored by concessionaires employees, manager, Airport Police and TSA.

3.6 Prohibited Items

PROHIBITED ITEMS:

For any kind of knife (including box cutters), tools or other items prohibited by the TSA (see <https://www.tsa.gov/travel/security-screening/prohibited-items> for latest list of items), the following procedures must be adhered to:

Prohibited items fall into to two (2) categories (Sharps and Tools). Examples can be found below HOWEVER this is not limited or restricted to these items shown below:

Sharp Objects	Tools
Knives (except for plastic and/or round bladed butter knives)	Drills and Drill bits; including portable power drills
Meat Cleavers	Tools greater than seven (7) inches in length
Blades	• Screwdrivers/Wrenches/Pliers
Scissors pointed tips and blades greater than four (4) inch from the fulcrum)	Saws; including portable power saws
Box Cutters	Crowbars
Razors types blades, Utility Knives	Hammers
Ice Axes/Ice Picks	Axes and Hatchets

All Concessions/Lounges operating in the Sterile Area at Sea-Tac International Airport must adhere to the Aviation Security Prohibited Items Policy in order to maintain consistency in all Concessions locations and comply with current regulations. This policy will help Concessions better manager the security of the “Tools of Trade” and the safety of the travelling public. Each Concession must agree to the following:

1. Submit a “**Prohibited Items Safety Plan**” describing:
 - a. The need and purpose of the Prohibited Items
 - b. Accountability during the hours of operation
 - c. Responsibility; Who check them in/out
 - d. Secure storage inside the facility

- e. Training employees received

***Concessions/Lounges who do not have Prohibited Items within their location or Storage Unit in the Sterile Area must submit a letter stating that fact.**

2. Sign the **Acknowledgement and Accountability Form**. By signing this document, Concessions will agree to abide by the rules and regulations put in place ensure Safety and Security in the Sterile area.
3. Submit a detailed inventory, listing the type and quantity of Prohibited Items within each Concession. This will serve as a benchmark for future inspections and audits.

3.6.1 Prohibited Item Procedures:

- Any changes in the number of Prohibited Items must be documented on the company's Prohibited Inventory List
- All Prohibited Items must be brought in through the Airfield Operation Area and not through the Checkpoint
- You are responsible to secure Prohibited Items which are job-related and allowed to be brought into the Sterile/Restricted Area for performing your job.
- All items should be visibly labeled for accountability purposes. Best practice is to engrave the blade or the handle.
- All items must be accounted for at all times.
- All items must be stored in a locked container (safe, cabinet, and drawer) or office
- The Manager or Designated individual opening the location at the start of the business day should be the only individual who will inventory these items and issue the items at the start of the day.
- At the close of the business day, the Manager or Designated individual will collect the Prohibited Items and account for them being returned.
- The items will then be stored in the designated safe, cabinet, or container.
- Any missing or unaccounted items should be reported immediately to the Airport Security Department.
- **AT NO TIME** should Prohibited Items be left unattended. When an employee leaves a work station, knives must be secured. Knives in view of the public must be secured or inaccessible at all times.
- The Prohibited Items Log must be posted and completed at the beginning and end of each business day.
- Each location must start a new Prohibited Items Log at the beginning of each month
- The Prohibited Items Log must be turned in to the Compliance Coordinator no later than the 5th of the following month to bakam.h@portseattle.org, waterton.a@portseattle.org or faxed to (206) 787-6120.

3.6.2 Enforcement

Aviation Security Personnel will conduct monthly audits of Concessions operating in the Sterile Area to ensure that they are in compliance with the regulations. Audit points include (but are not limited to) the following:

- The Prohibited Items Log will be checked to ensure it is properly completed
- The Inventory Log will be checked to ensure all items are accounted for
- The audits will ensure that Concessions are not selling Prohibited Items to the travelling public and that items in use are not accessible to passengers.

Each stores management/supervisors/employees will ultimately be held responsible for any violations to the above described policy. Any violations to the above Prohibited Items procedures will be documented and will be treated as a default of the Unit Concession Agreement under Section 23.01 and are subject to any and all local, state and federal penalties of Prohibited Items within the Sterile Area of the Airport.

Violation notices will be issued to the alleged violators within five (5) business days of an incident. Notices will be delivered either by email, certified mail, or in person. It is the responsibility of every airport ID badge holder to ensure the correct email address and/or mailing address is on file in the Port of Seattle Credential Center.

Some examples of possible violations related to Prohibited Items are:

- Leaving Prohibited Items unattended
- Failure to inventory a Prohibited Item
- Failure to log a Prohibited Item

All infractions will be to penalties from the Airport Security Department. Infractions will be subject to the following penalties:

- **First Offense:** Confiscation of ID badge for three (3) days, a fine of \$200 and the offender will be required to retake the SIDA training.
- **Second Offense:** Confiscation of IS badge for seven (7) days, a fine of \$400 and the offender and the Store Manager/Supervisor will be required to retake the SIDA training.
- **Third Offense:** Permanent confiscation of ID badge/access cancelled

Federal violations fall under:

49 Code of Federal Regulations (CFR) § 1540.105(a) (1) and (2).

50 § 1540.105 Security responsibilities of employees and other persons.

(a) No person may:

(1) Tamper or interfere with, compromise, modify, attempt to circumvent, or cause a person to tamper or interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure implemented under this subchapter.

(2) Enter, or be present within, a secured area, AOA, SIDA or sterile area without complying with the systems, measures, or procedures being applied to control access to, or presence or movement in, such areas.

*An appeal process is available to those who receive a violation. The Airport Security Appeals Board (ASAB) convenes at least once a month. Please contact the Port of Seattle Aviation Security Department for additional details and to schedule a hearing. If a person chooses to use the appeals process, decisions made by the ASAB are binding and final.

3.7 Hours of Operations

The Premises must be open to the public seven (7) days per week, three hundred sixty-five (365) days per year to adequately serve the traveling public. The Port determines the minimum hours of service based on traveling public demand and the Airport's flight schedules.

- Unless otherwise approved by the Senior Manager of of ADR, all Concessionaires must adhere to the minimum hours of operations as stipulated by the Port. The minimum hours of operation are: All Concessionaires are to be open two (2) hours before the first flight and must remain open until the last flight within the concourse. Concessionaire may request a deviation of hours by providing an analysis of the optimum arrangement, but the final determination of minimum hours of operation will be made by the Senior Manager of ADR.
- Store hours will be extended to accommodate passengers due to flight delays.
- Stores must be staffed to accommodate the operations from opening to closing. Deviation maybe approved by the Port Representative for inventory or other circumstances; however, all requests must be submitted at least 48 hours before the event to allow for processing and approval.
- No concession locations will be blocked off or closed at any time during the designated minimum hours of operation.

3.7.1 Holiday Reduced Hours

- Requests for reduced hours for the Thanksgiving Day and Christmas Day must be submitted 30 days prior to the Thanksgiving or Christmas holiday. Reduced hours of operations will be approved at the discretion of the Senior Manager of ADR based on the flight schedules within the areas adjacent to each proposed space. Concessionaires must inform all employees that approved reduced hours may change due to operational issues, delays or situations that mandate adjusting the prior approved schedule.

3.8 Delivery Schedule

Concessionaires are responsible for their operational delivery and distribution system whether it is on-site or off-site. The Airport recognizes the following activities as a delivery:

- Deliveries from off Airport sites to the Concessionaire's unit.
- Deliveries from off Airport sites to the Concessionaire's storage space.
- Concessionaire moving items from a storage location to the unit.
- Deliveries to the Airport's main terminal load dock must occur between:

DAY	HOURS
Monday	7:00 AM – 3:00 PM
Tuesday through Friday	7:00 AM – 4:00 PM
Saturday	5:30 AM – 2:00 PM

All deliveries should observe assigned delivery times to better utilize parking spaces and freight elevators. The load dock hours are subject to change at any time without advance notice.

- **Deliveries to the units must be made between 9.a.m.-11.a.m. and 2:00 p.m. and 6:00 p.m. all days of the week.**

3.9 Delivery Standards

- Concessionaires and/or their vendors/contractors will be responsible for reporting any problems with the freight elevators and will work with the Airport to maintain safe and efficient elevators. Costs to repair elevators damaged by Concessionaires (or their vendors/contractors) will be billed to the Concessionaire found responsible for the damage. To report elevator problems call ACC at (206) 7878-5406.
- Cart wheels and hand trucks must have non-marring/pneumatic tires and be silent.
- Carts must be in like-new condition. No maintenance of carts, dollies, hand trucks, etc. is allowed in the terminal on the concourse level at any time. All damaged or non-operable carts, etc. must be removed from the area immediately.
- Weight loads must not exceed the maximum limits specified by the transporting equipment's manufacturer.
- Merchandise and products must be delivered to Concessionaire's locations without interfering with public traffic in the Terminal.
- Daytime deliveries are not authorized without prior approval of the Port.
- Deliveries must not be transported on the passenger elevators, moving sidewalks, or the train system. In the event that train service is needed, the

Concessionaire must coordinate the use of the train in advance with Aviation Maintenance at (206)787-7930.

- The number of vehicles on the Airport ramp is limited during normal hours of operation by delivering the majority of products and merchandise during the night and early morning hours. Airport safety is our primary concern and every Concessionaire will cooperate with all Airport Rules & Regulations (which can be found at <http://www.portseattle.org/Business/Airport-Tenants/Pages/default.aspx>).
- Concessionaires will ensure the restocking of the unit occurs during non-peak hours as specified in the Deliveyr Standards
- The load dock supervisors will monitor all daytime activity. Parking is at a premium during the day, and coordination for extended use of parking spaces is vital. Delivery drivers should inform the loading dock supervisor of the estimated duration of time for the escort or delivery.
- Concessionaires may request authorization from the ADR Port Representative to receive and restock newspapers and magazines during daytime hours; however, the product totes or containers are not allowed to remain in the unit unless they are actively being restocked.
- Concessionaires and their vendors are not allowed to deliver, store or stage boxes, cartons, barrels, or other similar items, in an unsightly or unsafe manner, on or about the Premises or in the common areas.
- Pallet jacks are not allowed on the granite flooring.

3.10 Storage Standards

- Unless otherwise provided for in the Agreement, no persons may use any area of the Airport for storage of equipment, product, or other property without first obtaining formal written permission from a Port Representative.
- All Concessionaire storage is located within designated areas per the Agreement or a Supplement to the Agreement
- Storage areas are to remain clean, with a clear path of travel , at all times.
- Storage is not to be used to house trash or recyclables under any circumstances
- All inventory must be placed within the designated storage areas within 90 minutes of delivery
- All pallets must be stacked horizontally, in the designated areas and picked up within 24-hours of delivery by the vendor. Pallets may not be stacked vertically, in walkways, or against cages.
- All crates must be stacked in a single row against the designated storage cage for pick up by the vendor within 24-hours of delivery. Crates may not block the path of travel at any time.

- All wrapping for pallets, crates, boxes etc., must be broken down and disposed in the designated trash areas immediately following delivery break down.

3.11 Premise Signage

- All signs internal and external, signage stand holders, menu boards, and blade signs must be clean, free of dust, and in good working condition.
- Pictures, displays, and frames (whether art or advertising) must be clean and free of tears, scratches and dust.
- All illuminated signs must be in proper working condition. Tubular or neon lighting is not preferred; and must be approved by a Port Representative before installation.
- Unauthorized postings are not permitted.
- **Handwritten and/or unprofessional signs are strictly prohibited. No exceptions will be allowed.**
- Signs must not obstruct any life safety devices, AED machines, smoke detectors, or fire sprinklers.
- Signs must not impede the functionality of light fixtures or air conditioning grills.
- Exit doors must be operational, illuminated, and clearly signed.
- Enforcement/warning signs must be appropriately posted.
- Dynamic signs must operate properly and display the correct information.
- No Concessionaire will make any alterations of any nature whatsoever to signage on any building, ramp, wall, or other Airport space.
- Signs must be visible and illuminated (if applicable) and in proper working condition.
- Store policies regarding credit cards, returns/refunds, etc. must be clearly displayed in the unit preferably near the checkout areas.
- Prices must be clearly displayed (either item or category priced).
- **Flashing or blinking signs are strictly prohibited.**
- Evacuation routes must be clearly posted for customers and employees. For Food & Beverage locations, evacuation plans must be posted in both the kitchen and available in the front of house.
- During flight delays, hours of operation may be extended to accommodate passengers at the discretion of the ADR Senior Manager.
- **“Going Out of Business”, “Store Closing”, “Liquidation” and similar signage is strictly prohibited.**

3.11.1 Advertising and Promotional Signage

- Concessionaires must receive written approval from a Port Representative prior to the installation of any promotional banners or signage.

- Menus, signs and/or graphics on counter back walls must receive written approval from a Port Representative in advance of installation.
- Flashing, laser, or blinking signs are strictly prohibited.
- No persons without written authorization from a Port Representative may post commercial signs, banners, or distribute advertisements, literature, circulars, pictures, sketches, drawings, handbills, or any other form of printed or written commercial matter or material at the Airport.
- Retail advertisements can/must be displayed within the leased premises.
- **Handwritten signs are strictly prohibited.**

3.12 Promotional Events and Prohibited Activities

All promotional activities or events must obtain prior written approval from a Port Representative. All promotional activities in the Terminal, with the exception of the Airport's promotions and advertising contracts, will be of limited duration and will be subject to the discretion of the Port Representative. Such promotional activities may be permitted only where they do not interfere with normal operations of the Terminal. Promotional activities will be limited to the following:

- Approved art and displays that provide public service messages
- Promotions conducted within the limits of the leased areas unless otherwise approved in writing by a Port Representative.
- Approved advertising conducted under the terms of the Airport's advertising contract.

Promotional activities requiring tents, cooking facilities, pyrotechnics or events where the number of people will exceed the normal occupancy of the designated area will require approval by the Fire Marshal and Port Representative. The Fire Marshal may require permits or a fire watch as applicable.

- With the exception of concession promotions, the sale/or give away of food and beverages associated with a promotion is prohibited.
- Literature and promotional items cannot be distributed outside of the location lease line unless otherwise approved by the ADR Senior Manager.
- Banners to promote new services and/or awards in the Terminal must first be approved in writing by the Port Representative and may only be displayed for a period not to exceed two weeks unless otherwise approved.
- Clean up activities associated with any promotion, unless otherwise specified are the responsibility of the entity organizing the promotion.
- Requests to conduct promotional activities in the terminal must be made in writing to the ADR Senior Manager for written approval.
- Concessionaire is prohibited from offering/selling the following items in their Premises: vending machines, pay telephones, advertisements not pertaining to Concessionaire's operations; coin-operated amusement machines, ATMs; hotel, motel, or ground transportation reservation information; liquor, beer, and bottles of wine for off-premises consumption (unless otherwise approved as part of the

concept); Wi-Fi services; or helium-filled balloons. This is not a comprehensive list and all items are subject to approval by the Port Representative.

3.13 Repairs and Preventative Maintenance

The Concessionaire has the sole responsibility for maintenance and facility upkeep within the unit. Without in any manner limiting the specific requirements of your Lease and Concession Agreement, this includes HVAC system, floors, walls, equipment (i.e. cooler, registers), and other non-Airport maintained devices. Concessionaire must keep the premises and all improvements in good repair and in a clean, neat, safe and sanitary condition at all times. If damage is determined to come from the building roof or exterior, contact ACC at (206) 787-5229 to address the source of the problem. As determined by the Port Representative, the Concessionaire will repair, replace and/or repaint fixtures, furnishings and/or equipment that is damaged, worn or in disrepair if it becomes reasonably necessary during the term of the Lease and Concession Agreement other than in the midterm. It is mandatory that all maintenance issues and repairs be identified and repaired immediately to keep the operation compliant with First Class Concessions Standards. The following inspections are required to be performed throughout the year at varying intervals. Concessionaires are required to provide proof of completed inspections for the following systems:

- Type 1 Hood Systems (Grease Hood)
- Type 2 Hood Systems (Steam Hood)
- Ansul Systems
- Fire Extinguishers
- Make Up Air Units
- Remote Refrigeration Lines/Systems
- Grease Cooking Equipment
- Floor Drains, Sanitary and Grease Waste Lines
- Gas Connections
- Backflow Prevention system(s)
- Flushing Beer Lines
- Hot Water Tanks

Specifics for systems cleaning and maintenance procedures can be found in the Preventative Maintenance (PMP) Manual located on the ADR website at <https://www.portseattle.org/sea-tac/dining-retail>.

3.14 Parking

Employee parking is available for purchase either by Concessionaire or by individual employee. Price and information can be found on the Port's website at: <http://www.portseattle.org/employee-services/employee-parking/Pages/default.aspx>

4. FIRST CLASS CUSTOMER SERVICE STANDARDS

The Port expects First Class, customer-focused service by all Concessionaires at all times. Without limiting any of the more specific requirements set forth in these Operating Standards, service will be timely, attentive, and friendly. In order to accomplish this, Concessionaire must employ a sufficient number of properly trained personnel to manage and operate the Premises at its maximum capacity and efficiency. A sufficient number is one that consistently provides customers with no unreasonable delay or inconvenience in moving through point of sale or selecting products or service. At a minimum, customers will be promptly attended to in a friendly and courteous manner. Self-service elements will be easily seen and accessible by customers. Processing of payments will be prompt with receipts properly itemized, reflecting precisely the products and services purchased, and will present individual prices, total and taxes. In addition, all customers will be thanked for their patronage. Other expectations of all Airport employees include, but are not limited to the following:

- Guarantee a quality product or service that meets or exceeds a customer's expectations.
- Have an overall understanding of the layout of the Airport and be willing to offer assistance as needed.
- Have responsibility for uncompromising levels of cleanliness.
- Maintain a positive workplace image (ex. appropriate in-store conversation between employees)
- Provide customers their full attention during the interaction and address concerns immediately.
- Respond to customer questions or complaints within three business days whether verbal or written.
- Provide a friendly and professional, verbal audible greeting within 10 seconds of a customer entering an establishment, thanking them for their business and inviting them to return as they exit.
- Maintain a well-groomed, neat, professional clean appearance at all times.
 - Uniforms will be clean and appropriately fitted at all times. In the absence of Concessionaire standardized uniform standards, the requirement will be to wear black shirts with black pants.
 - Hair will be neatly groomed and pulled away from the face at all times.
 - Airport ID badges and Concessionaire nametags must be appropriately displayed at all times.
 - Employees must maintain eye contact while conversing with customers and fellow employees.
- Employees will refrain from using foul or inappropriate language at any time in the workplace, in the Airport, or while traveling to/from work via employee shuttles or public transportation and while wearing the company's uniform and/or Airport ID badge.
- Employees will refrain from eating, drinking, chewing gum, or talking on the

phones in the presence of customers. Personal electronic devices or ear phones/buds are not permitted at any time while employees are on duty.

- Employees will refrain from taking breaks in the corridors, hallways, and gate lobbies.
- Employees are not allowed to use or move furniture or equipment anywhere or anytime for the purpose of sitting or eating during their breaks.

4.1 ADR Employee Customer Service Standards

The ADR Staff holds every Concessionaire accountable to the Airport Dining and Retail Program and the Airport's customer service standards. Every Concessionaire's customer service program must meet or exceed the Airport's service standards. To achieve a first class level of service throughout the ADR Program, the Port has implemented additional service standards above those stated in the Concessionaire's Agreement that will help ensure a positive customer experience. For this reason, each Concessionaire's employees must also comply with the following:

- Greet all customers in a friendly and professional manner with a sincere smile.
- Always be properly identifiable as an Airport concessions employee by making sure to wear both their Airport ID and Concessionaire provided nametag at all times.
- Display a positive attitude toward all customers and be sensitive to special needs of passengers.
- Speak clearly; enunciate fully to clearly communicate with customers.
- Listen carefully, and show empathy when encountering an upset customer. Resolve problems quickly and effectively in the most equitable way possible.
- Use a courteous tone of voice and proper vocabulary with customers. For example, use words such as "please," "yes," "hello", and "thank you."
- While working indoors, remove sunglasses to facilitate eye contact. This standard does not apply to employees prescribed to wear sunglasses indoors by a doctor.
- Respond appropriately to customers' needs or refer them to another person who might be better suited to provide assistance.
- Be well informed, capable of providing directions, and know where and how to obtain requested items, services or information for customers even when language barriers arise.
- Ensure the customer's question(s) have been answered before walking away or completing the transaction.
- Obtain the facts, state any applicable policy clearly and politely, and be able to offer a solution or an alternative to a difficult customer.
- Do not leave a customer in your establishment unattended unless it is deemed an official emergency.
- Resolve complaints promptly and maintain records for Port Representative follow-up.
- Employees must provide a receipt and correct change with every transaction.
- Staffing levels must be high enough to greet customers within the 10 seconds standard and prevent wait times longer than 2 minutes at the cash registers. It

is highly recommended that there be at least (2) employees staffed in each store at all times.

- Provide all services to customers on a fair, equal, and nondiscriminatory basis and charge fair, reasonable, and nondiscriminatory prices; except when giving such reasonable and nondiscriminatory discounts or other similar price reductions to its and other Airport employees.

4.1 Customer Service Training

Customer service training is essential in establishing consistent guidelines for employees to ensure that all Concessionaires are addressing the customers' demands appropriately. Concessionaires are required to provide Customer Service training to all of their employees throughout the year. All Concessionaires and their employees are required to attend the Port Customer Service and Preventative Maintenance Trainings; Concessionaires and their employees must fully participate and pay its share of any costs associated with such program(s).

5. QUALITY ASSURANCE PROGRAM

5.1 Reports and Rating System

The Quality Assurance Program and Reports is managed by the Port Representative to record periodic audits and inspections of all ADR locations. The primary focus of these audits and inspections is to: (1) evaluate the level of customer service, first class concessions complaints and make recommendations to correct concerns, (2) improve customer service by identifying critical areas of focus; and, (3) create a historical record of the Concessionaire's performance for future reference.

Audit and inspections include a detailed observation and evaluation of the following areas:

- Facility Appearance and Preventative Maintenance Management
- Customer Service
- Merchandise Quality and Food Safety
- First Class Concessions Compliance

Each evaluation is scored from 1 to 7 (with 1 being the lowest and 7 as the highest), which translates to one of four ratings – Unacceptable, Needs Improvement, Acceptable, Excellent.

The following is the rating system equivalent based on a 100%:

<u>Rating</u>	<u>Scoring Equivalent</u>	
Excellent	100 - 95%	(Score of 7)
Acceptable	94 - 85%	(Score of 6)
Needs Improvement	84 - 79%	(Score of 4 - 5)
Unacceptable	78% and Below	(Score of 1 - 3)

To ensure all Concessionaires' locations meet and exceed the customer service standards outlined, Concessionaires must score at least an acceptable rating of 6. Outlined below is the standard for the rating system.

Unacceptable Rating 1-3

Any Concessionaire who receives an Unacceptable rating of 1 through 3 did not meet a majority of the acceptable customer service or, first class concessions standards or they failed to meet a significant level of performance. Additionally, any ratings of 1 through 3 are unacceptable and the Concessionaire must take corrective actions within 48 hours of notification and provide a written response to the Port Representative within three (3) business days with an action plan addressing deficient areas to prevent reoccurrence.

Needs Improvement Rating 4 – 5

Any Concessionaire who receives a Needs Improvement rating of 4 or 5 did not meet the minimum acceptable customer service standards or first class concessions standards. Any rating of 4 or 5 requires corrective action within 5-7 days and Concessionaire must provide a written response to the Port Representative within three (3) business days addressing the infractions with solutions to prevent further reoccurrences.

Acceptable 6

A Concessionaire who receives an Acceptable rating of 6 has satisfactorily met the minimum acceptable customer service or first class concessions standards. An acceptable rating of 6 does not require a written response; however, the Concessionaire should address all noted problem areas.

Excellent 7

A Concessionaire who receives an Excellent rating of 7 has exceeded the minimum acceptable customer service of first class concessions standards. This rating requires no action on the part of the Concessionaire.

5.2 Comments and Complaints

Passengers may record comments of their Airport experience by utilizing any one of the following methods: comment cards that are accessible throughout the Airport, the Port's/Airport's website, comment/complaints sent to the King County Public Health Office, and/or letters, emails or phone calls sent to the Port or Aviation Division's main office. These comments (or complaints) are tracked and compiled through the Airport's Customer Service Group in Airport Operations. The Customer Service group forwards all complaints relating to Concessionaires to the Port Representative. The Port Representative will in turn forward the customer complaint to the respective Concessionaire within three (3) business days of receipt. The Concessionaire must respond to all customer complaints within three (3) business days and forward a copy of all correspondence to the Port Representative.

6. FOOD HANDLING

All Concessionaires are required to comply with all local health department and HACCP standards regarding the proper and safe receiving, storage, preparation, and serving of all food and beverage items. Concessionaire shall also ensure that all appropriate kitchen personnel are ServSafe certified (or equivalent) and that the kitchen work force maintains a

minimum of two ServSafe instructors (or equivalent). In the event that the Concessionaire is found to be non-compliant with the safe food handling practices per the public health department, or similarly empowered public agency, the Concessionaire must immediately notify the Port and provide the Port with a written incident report and subsequent action plan to remedy the issues within 48-hours' notice of the violation. Failure to comply with these standards will result in the imposition of liquidated damages as provided in Section 18, Table of Liquidated Damages. The Health Department and the Port Supplemental Health Standards are provided in Exhibit F.

7. PEST CONTROL/UNIFIED PEST MANAGEMENT (UPM)/SANITATION

The standard for cleanliness at the Airport has been set at an optimal level, this includes pest control activities, facility and equipment maintenance, housekeeping and best practices. Concessionaire must implement and maintain aggressive internal controls that will ensure total compliance with sanitation standards and the Unified Pest Management Program implemented by the Airport.

Therefore, all Concessionaires must adhere to the following:

- Each Concessionaire is required to participate in the Unified Pest Management Program (UPM) as designated by the Port.
- Each Concessionaire is required to participate in Sanitation Best Practices training as designated by the Port.
- Recommendations provided by the Unified Pest Management Program on monthly reports including Sanitation Audits, Quality Assurance Audits and Pest Control provider Audits must be addressed immediately.
- UPM and Sanitation Audit findings may be provided via email to the local and regional operations contacts for Concessionaires.
- Depending on the severity of the offense, the Port may assess liquidated damages and/or shut down the location for a period of time. Approval to reopen can only be provided by the Senior Manager.
- Supplemental Pest Control programs, paid for by the Concessionaire, must be approved in advance by the Port Representative. Supplemental service treatments must comply with the Port's mandated application methods.
- Self-treatment or treatment by unlicensed personnel is prohibited.
- Concessionaires must comply with all rules, regulations and directives provided by the Port, the Pest Management Program, or Health Department authorities.
- Concessionaire must maintain the standard of cleanliness required by the Port at all times. Violations associated with cleanliness and sanitation standards will be subject to liquidated damages as reflected on the fee schedule as outlined in Section 18, Table of Liquidated Damages.

8. ENVIRONMENTAL AND WASTE REMOVAL

Concessionaires must separate and dispose of their trash, recycling, composting and used cooking oil. Costs for this program are published in the Tariff and will be invoiced directly to the Concessionaire. Concessionaire must request trash keys to access compactor areas from the Port Representative at AVUTil@portseattle.org. In the event of a change to this process, a written notification will be provided to the Concessionaire.

Disposal containers for trash, recycling, and composting and other Concessionaire-generated waste materials are located at compactor rooms and loading docks throughout the Airport. Trash build-up and/or compactor outages are to be reported immediately to ACC at (206) 787-5229. If Concessionaire is responsible for the mess/spill/damage, or the cross-contamination of recyclable or compostable collection containers, it is the Concessionaire's duty to clean it up immediately. In the event that other clean up, repairs or damage to compactors/containers/bins/used cooking oil tanks or surrounding areas are caused by the Concessionaire or Concessionaire Representative and the repairs are remedied by the Port, the Concessionaire will be invoiced directly. Trash violations are a serious issue both for safety and Foreign Object Debris (FOD) on the airfield. Violations will result in liquidated damages per Section 18, Table of Liquidated Damages.

At no time are Concessionaires permitted to transport or pile bags, boxes, cartons, or other similar waste items, in an unsightly or unsafe manner.

8.1 Trash

- All trash must be contained in appropriate bags and moved through the Airport in covered receptacles. These receptacles must be cleaned daily. Concessionaires are responsible for keeping all service corridors, hallways, storage areas and elevators neat, clean and safe.
- Stocking of pallets, crates, boxes, trash, shipping equipment, staging equipment, etc. in hallways, pathways, or on the exterior of the premises is strictly prohibited.
- Concessionaires are responsible for sorting trash inside the proper trash bags: Trash (Black Bags), Recyclables (Clear Bags), Food and Compostable Products (Green Bags) as required by the Port. Concessionaires should not fill the trash bags to capacity. Thin trash bags and bags filled beyond capacity will tear thus creating a mess and unsanitary conditions. When an unsanitary condition exists, the Concessionaire responsible will be required to correct the problem and/or be invoiced for the clean-up services if performed by the Port.

8.2 Recycling

- Recyclables include clean and/or empty cardboard, cartons, paper, cups, plastic containers and lids at least 3" in diameter, bagged plastic bags, cans, bottles and jars (plastic, aluminum, or glass). Cardboard **must** be flattened prior to depositing in Airport recycling compactors.
- Glass bottles and jars must be rinsed and deposited in designated glass recycling containers. Glass **does not** need to be in bags. Broken beverage glasses are not recyclable.

8.3 Composting

Composting materials include food, uncoated food-soiled paper, napkins, cardboard, coffee grounds, coffee filters, tea bags, and any approved compostable packaging.

Composting materials must be deposited directly in the composting bins or in compostable bags approved by the Airport's compost service provider and then placed in composting bins.

8.4 Waste Collection and Signage

Concessionaires providing food for consumption on or off premises using recyclable or compostable "to-go" food service ware shall:

- Provide conveniently located and clearly marked recycling, compost, and garbage containers in back-of-house areas for employee use and in front-of-house dining areas where customers may discard compostable or recyclable food service ware and garbage.
- Provide signage visible to patrons when picking up their orders or where self-service customers pickup service ware, and on discard bins in dining areas clearly identifying which service ware is recyclable, which is compostable (including food scraps), and which is garbage.
- Food and beverage concessionaires are encouraged to use signage best practices and bins and labels provided by the Port of Seattle.

8.5 Used Cooking Oil (UCO)

The Concessionaire must purchase and utilize Port-designated containers to collect and transport UCO to designated collection tanks located in the compactor rooms and loading docks. Concessionaires must promptly clean any spills or leaks that occur during transport including areas near UCO collection tanks. Concessionaires are not to tamper with the functions of the collection tanks under any circumstance. Training on proper use of the collection tanks is available for all Concessionaire employees.

8.6 Hazardous Materials/Waste

Concessionaires are responsible for properly managing the disposal, off Airport property, of any hazardous materials or waste generated through their operations, maintenance and construction activities. This includes, but is not limited to all types of batteries, florescent light tubes, refrigerants, paints, stains, and other hazardous chemicals.

Dumping of hazardous waste, construction materials, electronic scrap, universal waste, and CFC containing appliances are not accepted at the Port. The Concessionaire is responsible for scheduling the removal of these items. Violations associated with improper dumping will be subject to liquidated damages as reflected on the fee schedule as outlined in Section 18, Table of Liquidated Damages.

8.7 Training

Concessionaires are expected to participate in current and future recycling or other environmental programs. Participation in these programs is coordinated through the Airport's Environmental and Solid Waste Departments. Initial training, education/outreach materials, and recycle bins for back-of-house areas in each Concessionaire's units. Concessionaires are responsible for training their employees on the proper use, sorting and disposal of all waste removal items at least annually or as part of new employee orientation (depending on job function). The Port will offer training on a quarterly basis as well as offer a train-the-trainer program for all Concessionaires to ensure coverage for all new employees.

8.8 Food Donation Programs

The Port facilitates a Food Donation Program in partnership with the Airport's local food bank and encourages Concessionaires to donate unsold food through this program. Concessionaires desiring to find out more about participating in this program can contact the Airport's Environmental Dept.

9. SAFETY AND SECURITY

Safety and security is everyone's business. All Airport tenants are required to follow the Airport Rules and Regulations, Safety and Emergency requirements and procedures. This information can be found at <http://www.portseattle.org/Business/Airport-Tenants/Pages/default.aspx>. The following sections are in addition to and not in lieu of the safety and security requirements:

9.1 Emergency Evacuation Plans

The Concessionaire is required to submit an individual Emergency Evacuation Plan and Map at the opening of their location(s). Every Premise location is required to have a site specific evacuation plan separate from the General Evacuation Map provided by the Port.

- All maps must detail the evacuation path from the unit space and storage areas a Concessionaire designated evacuation assembly point.
- A written evacuation plan including emergency procedures must accompany the map and be placed in both the back and front of house.
- Front of House placement may be within a binder and all employees must be trained on the evacuation process.

9.2 Secured Units

Concessionaires are responsible for locking gates and doors when a unit is closed for business or construction. If the gates or doors are found open by any Airport personnel, the Concessionaire is subject to the fines (as outlined in Section 18, Table of Liquidated Damages).

9.3 Prohibited Items Log

Concessionaires are responsible for adhering to the guidelines set forth from the Airport's Security department for the tracking and reporting, and addition or disposal of prohibited items (knives, box cutters, large scissors, etc.).

9.4 Lost and Found

All items found in the Airport must be turned into the Airport's Lost and Found Office within 24 hours. If occurrence happens after the Lost and Found Office's normal business hours, then the return attempt must be made by the following business day.

9.5 Maintenance and Mid-Term Refurbishment Construction and Repairs

The Port has established standards for separating construction sites from other portions of facilities that must continue in operation while construction is underway, as well as for controlling potential negative effects of construction operations on normal business. These standards are found in several locations including, but not necessarily limited to, the Concessionaire Concept/Project Submittal, Design Submittal and Construction Process, and the ADR Design Guidelines. Their applicable requirements must be incorporated into all project construction documents and must be strictly adhered to by all Concessionaires, their contractors, subs, and personnel and are supplemental to all security and safety protocols enforced throughout the Airport.

- All necessary and required life and health safety measures must be in place and maintained to protect customers and employees as well as construction personnel.
- All necessary and required security measures must be in place and maintained to protect essential operations.
- All necessary and required measures must be in place to minimize the negative impacts of construction, of all types, on adjacent, ongoing operations and those customers and employees involved in them.
- All necessary permanent and temporary signage must be in place and maintained to inform customers and employees about the construction that is occurring and how it may impact their activities.
- All proposals for construction or modifications to facilities or leased areas must be submitted to the Port Representative for written approval.
- All construction and modifications being requested must have proper permits obtained.
- All construction work within the Airport's property shall be ADA compliant.
- Strict adherence to all applicable Airport procedures is mandatory on the part of all parties, whether they are Airport staff, tenants, customers, passengers, design professionals, contractors, vendors, etc.
- Wet paint signs must be affixed while painting and removed prior to re-opening the store for business. Handwritten signs are strictly prohibited in public view.
- All construction waste including, excess chemicals or other hazardous materials damaged equipment, fixtures and furnishings, must be removed from the site as part of the project.

9.5.1 Construction and Repairs Safety Protocols

No construction-related operations, inside or outside of the project's vicinity, must expose either customers or employees to hazardous conditions that could cause them to slip, fall or be hit by protruding or falling debris or construction materials.

- Temporary walls/barricades at the storefront will be installed by the Port. Concessionaire and its contractors must keep them in good physical condition with no holes, dents, marks, graffiti, unauthorized postings, tears or other aspects, which are unsightly, compromise the intended purpose, or could be hazardous to human contact. Any damage will be at a cost to the Concessionaire.
- New, temporary evacuation plans must be provided by the contractor and posted in appropriate locations to replace existing plans at any time that existing paths of egress are changed temporarily by construction.
- Life safety systems that are affected by demolition and construction must be maintained in operation at all times. Otherwise, appropriate fire watches or other approved procedures/measures must be maintained until such systems are tested, found to be acceptable by the Fire Department and returned to full service.
- Floors within and adjacent to construction sites must be maintained dry and free of liquid spills and water to prevent slipping and falling, throughout the course of construction.
- No shutdowns of any systems shall be permitted unless an approved Shutdown Request Form has been obtained from Facilities & Infrastructure, Maintenance and/or the Engineering Department.

9.5.2 Construction and Repairs Security Protocols

- Door installations in temporary walls/barricades will be limited to the minimum possible number, be as inconspicuous as possible, and will have appropriate locks approved by the Airport in order to maintain safe, secure conditions and prevent unauthorized access to construction sites and construction traffic into non-construction areas.
- No existing security measures shall be modified or otherwise compromised without the prior establishment of alternate security measures approved by all the affected parties.
- Construction workers must be required to possess and display the appropriate SIDA badges and wear required PPE at all times.

10. INFORMATION SYSTEMS AND TELECOMMUNICATIONS

The Port owns and operates the Airport's free Wi-Fi system and fiber network consisting of voice and data. The Concessionaire is responsible for installing their own telecommunications (data and communication) systems inside the unit from the Port demarcation box.

11. EMPLOYEE SERVICES

11.1 ID Badges

All Concessionaires and third party contractors will need to go through the badging process to operate at the airport. The Credential Center is open Monday-Thursday from 6am-3:30pm and Friday from 6am-10:30am and 11:30am-3pm. Each employee will be required to complete Airport Security Training prior to receiving their badge. The Badge Training Center hours are Monday-Thursday from 8am-4pm.

To schedule badge appointments, training, and additional information regarding the badging process, please visit the Credential Center website at

<http://www.portseattle.org/Employee-Services/ID-Badges/Pages/default.aspx>.

*It is important to check the website for any changes in the hours of operations for both offices as they are subject to change.

11.2 Parking

Concessionaires are allowed one complimentary parking passes per lease agreement for the Airport Parking Garage. These passes are ordered through Employee Parking Department. Monthly parking passes as well as employee transportation options can be found at <http://www.portseattle.org/employee-services/employee-parking/>

As of January 1, 2018, the employee shuttle bus runs 24 hours a day, seven days a week (including holidays).

11.3 Employment Opportunities

HELP WANTED signs are not allowed to be posted within or outside your Premises at any time.

For new employment facilitation please contact Airport Jobs at (206) 787-7501 to assist with job fairs, outreach and job postings for your company. Please reference Exhibit C, Employee Continuity Pool Overview, for additional information regarding the assistance that Airport Jobs provides.

EXHIBIT D

– Pricing Policy –

Pricing Policy for Concessionaires
at
Seattle-Tacoma International Airport

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It is the policy of The Port of Seattle (the “Port”) to require “street pricing” by all Concessionaires at Seattle-Tacoma International Airport (“Sea-Tac”). The purpose of this policy is to ensure that prices charged to Sea-Tac travelers for food, beverages, products and services are comparable to those charged at similar non-airport locations and establishments.

SECTION 1 STREET PRICING

Definition Generally

The “street price” of an item is the price charged for an equivalent item at comparable business locations in the Seattle-Tacoma area. In determining the “street price” for an item sold at Sea-Tac, the Port will be guided by the following considerations:

- For any menu items, products and/or services offered by a Concessionaire with a trade name commonly recognized by the public (e.g., Burger King, TCBY and Subway Sandwich), the price charged at the Sea-Tac location shall be within the range of prices charged for such items at up to three comparable business locations operating under the same trade name in the Seattle-Tacoma area.
- For any menu items, products and/or services offered by a Concessionaire that does *not* operate under a trade name commonly recognized by the public, the price charged at Sea-Tac shall be within the range of prices charged for equivalent items at up to three comparable business locations in the Seattle-Tacoma area.
- For any menu item, product or service offered by a Concessionaire that is not readily available from or sold by any comparable business locations in the Seattle-Tacoma area, the price charged shall be within the range of prices charged for either similar items sold from up to three comparable business locations in the Seattle-Tacoma area or equivalent items sold from up to three comparable business locations outside the Seattle-Tacoma area.

In all cases, the equivalent items and comparable business locations shall be subject to the mutual agreement of the Port and the Concessionaire; however, if the parties are unable to reach an agreement for the comparable locations or prices provided, the Port shall have the right to identify the equivalent items, select the comparable locations, and/or establish the price.

Equivalent Items

For the purposes of establishing the street price of an item, comparisons will be made with products or services of the exact same size and quality. Differences in size or quality of a product or service will, all other things being equal, be considered a price differential.

Comparable Business Locations

Comparable business locations are establishments selling similar products or services in active and robust retail locations like shopping centers or commercial districts. Businesses and locations that are partially or fully protected from competition (such as hotel lobby shops or sports arenas) or that operate using an off-price or discount pricing structure are *not* comparable locations.

SECTION 2 POLICY ADMINISTRATION

Enforcement of this policy falls to the Aviation Business Development Department. In administering this policy, the Department is responsible for:

- Disseminating information about the policy to both current and interested Concessionaires
- Monitoring compliance with the policy
- Enforcing compliance with the policy

SECTION 3 ESTABLISHMENT OF STREET PRICES

Baseline Pricing

No later than sixty (60) days prior to the expected Rent Commencement Date, each Concessionaire must submit to the Port for its approval a list of at least three (3) comparable business locations in the Seattle-Tacoma area from which comparable pricing information will be obtained. Concessionaire should ensure that there is a comparable product or service among the comparable business locations for each product or service provided at Sea-Tac. Once approved, these locations will be used as a basis for price comparisons for equivalent items.

Concessionaire shall also submit to the Port by the same deadline a list of: (i) all menu items, products and/or services to be offered from Concessionaire's premises, (ii) the price that Concessionaire proposes to charge for each item, product or service, and (iii) the equivalent item, product, or service and its price from the comparable business location(s) on which Concessionaire relied to establish the street price.

This list shall specifically be subject to the Port's review and approval. However, the Port is not required to review every line item in the list, and the failure to object to the price proposed for a particular item at the time the list is originally submitted shall not prevent the Port from later objecting to a price that it reasonably determines is not a street price.

Pricing Adjustments

If the Concessionaire proposes to change any of its items or prices, Concessionaire must submit to the Port, for its prior review and approval, the proposed changes. Concessionaire may also propose to change its comparable business locations if, for example, the establishment is no longer comparable or closes. Concessionaire must submit a justification for any proposed change. The justification for the street price should generally follow the list format required for Concessionaire's initial price approval. Concessionaire may not change its prices without prior written approval from the Port.

Annual Reporting

Each Concessionaire must submit an annual Pricing Report that provides evidence of its ongoing compliance with this Pricing Policy. The annual pricing report must include a price comparison for each concession unit operated by the Concessionaire. However, prices do not need to be

submitted for all menu items, products and/or services. Instead, the annual Pricing Report only needs to contain price information for the following items:

Type of Concession	Items for Annual Price Comparison
Specialty Retail	Top 25 products sold
Convenience Retail/Newsstand	Top 10 newspapers/magazines/books sold Top 10 gifts/souvenirs/toys sold Top 10 packaged snacks/candy sold Top 5 health & beauty aids sold Top 5 travel/business accessories sold
Duty Free/Duty Paid Shop	Top 5 liquor products sold Top 5 accessories sold Top 5 souvenir/gift/confectionary sold Top 10 perfume/cosmetics sold
Financial Services and Foreign Currency Exchange	Top 5 products sold
Food Service	Top 25 food items sold Top 5 non-alcoholic beverages sold Top 10 alcoholic beverages sold (if applicable)

The Port will generally establish a due date for the annual Pricing Report relative to the date on which the initial pricing is approved; however, in the absence of an agreement on such date, Concessionaire shall submit the annual Pricing Report by December 31 of each calendar year. The Port will generally perform price checks within 30 days of the report due date.

Pricing Review

The Port may perform periodic price reviews at its discretion at any time by either Port employees or third parties (e.g., “secret shoppers”). In addition, the Port may require Concessionaire to submit a comprehensive pricing report at any time on fifteen (15) days’ notice, and Concessionaire agrees to submit such report to the Port.

SECTION 4 ADDITIONAL PRICING GUIDELINES

The Port has separate pricing guidelines for certain branded goods and pre-priced books and periodicals.

Branded Goods.

If Concessionaire operates a branded concept where prices are set by the brand, Concessionaire must use the prices set by the brand. Concessionaire must provide evidence of the brand pricing. If a brand changes prices, Concessionaire must provide the new prices to the Port prior to changing prices in the Airport location.

Pre-Priced Books and Periodicals.

The prices for newspapers, books, and periodicals that have a publisher's suggested retail price in U.S. dollars printed on the outside of the item do not need to be verified through the comparable pricing process. Concessionaire should charge the publisher's suggested retail price as marked at Sea-Tac.

Auctions, bankruptcy, close out, distress, liquidation, or going-out-of-business sales.

There shall be no auction, fire bankruptcy, close out, distress, liquidation or going-out-of-business sales conducted in the Premises; provided, however, that the Port may not preclude periodic seasonal, promotional or clearance sales, nor shall the Premises operate as an outlet/surplus store. In no event shall Concessionaire conduct any insolvency sales from the Premises.

SECTION 5 PRICING PROMOTIONS

If the Concessionaire operates under a national or local brand, and this national or local brand is promoting a "special" product or price promotion that is advertised through audio, video, or print media in the Seattle-Tacoma MSA, then the Concessionaire shall offer that promotional product or price at the Premises during the same promotional period. If the Concessionaire operates under a national or local brand and offers a "value menu" (or other such similar program that promotes a number of items at a reduced price), the Concessionaire shall offer a similar promotion at Sea-Tac. Notwithstanding the foregoing, the Concessionaire may request the written approval of the Port to "opt-out" of a national or local promotion if it believes in good faith that participation in the promotion is not economically feasible due to certain required equipment or facilities not being available without a further investment by the Concessionaire, which is not required by this Agreement. The Port will determine, in its sole discretion, whether to allow the Concessionaire to opt-out, and Concessionaire agrees to be bound by the decision made by the Port.

SECTION 6 POSTING PRICES

Prices and charges for all items sold or offered from the Premises shall be conspicuously displayed in a manner approved by the Port. In no event shall the price charged exceed an advertised price or the price marked on the item being sold.

SECTION 7 POLICY COMPLIANCE

The Port will monitor Concessionaire's operations for compliance with the Pricing Policy. If the Port determines that a Concessionaire is not complying with the policy, the Port will provide written notice of the non-compliance. Concessionaire will have 72 hours from receipt of the notice to correct the prices and bring them into compliance. If Concessionaire does not correct the prices within the time provided, Concessionaire will be subject to liquidated damages as provided in the Lease and Concession Agreement.

If, in the opinion of the Port the prices or product quality does not meet the requirements of this Pricing Policy, the prices, serving portions or product quality shall be adjusted accordingly.

Addendum to Pricing Policy for Concessionaires

Street Pricing Plus

Notwithstanding anything to the contrary in the Pricing Policy to which this addendum is attached, the Port Commission approved a temporary, conditional increase to Concessionaire's pricing on November 24, 2015 as revised on June 11, 2019. This short-term amendment to the Port's street pricing policy allows Airport Dining and Retail (ADR) tenants to increase their prices over the otherwise applicable street price as follows from December 1, 2015 through December 31, 2019:

12/01/2015 – 12/31/2016: up to 10% over street prices
01/01/2017 – 12/31/2017: up to 7.5% over street prices
01/01/2018 – 12/31/2018: up to 5% over street prices
01/01/2019 – 12/31/2019: up to 2.5% over street prices
01/01/2020 – 12/31/2020: up to 5% over street prices
01/01/2021 – forward: up to 10% over street prices

Concessionaires will only be allowed to increase prices if they meet certain criteria. The criteria Concessionaires must satisfy are set forth in the attached Frequently Asked Questions document published by the Port in December 2015.

If a Concessionaire seeks to implement "street pricing plus" as allowed by this addendum, the Concessionaire shall, in connection with any required submissions under the Port's Pricing Policy, specifically identify the street price for the particular menu item(s), product(s) and/or service(s) and separately identify the amount the Concessionaire proposes to charge based on this short-term, conditional increase over street prices.

EXHIBIT E

- Links to Key Port Standards -

Leasing & Tenant Resources: <https://www.portseattle.org/sea-tac/leasing-tenant-resources>

Click on:

Tenant Construction and Design References for

ADR Preventative Maintenance Program Manual

Tenant Design and Construction Process Manual

Design Guidelines

Design Standard

Airport Tariffs

Rules and Regulations for Sea-Tac

Airport Tenants, Sea-Tac Environmental Resources

EXHIBIT F

– Schedule of Liquidated Damages –

Schedule 1 Liquidated Damages		Schedule 2 Liquidated Damages	
First Occurrence	\$250.00	First Occurrence	\$500.00
Second Occurrence	\$500.00	Second Occurrence	\$1,000.00
Third and Subsequent Occurrence	\$750.00	Third and Subsequent Occurrence	\$1,500.00

The specified liquidated damages amounts are in addition to, and not in lieu of, any other charge or amount that may be due for the conduct giving rise to the violation. Without limiting the generality of the foregoing, this includes late fees and interest as well as fines set forth in the Sea-Tac Rules and Regulations or other Port Standards.

Schedule 1 Violations	Schedule 2 Violations
Reporting Standards, including: <ul style="list-style-type: none"> • Monthly Reports • Annual Report • Post Construction Reports Storage Standards ² Signage Standards ² Other Operating Standards ² Pricing Standards ²	Food Handling Standards ¹ Maintenance & Repair Standards ² Pest Control Standards ² Safety & Security Standards ¹ “First Class” Standards ² Customer Service Standards ² Hours of Operation Standards ¹ Delivery & Distribution Standards ² Environmental & Waste Removal Standards ²

¹ Subject to assessment per day for each day of the same occurrence (i.e. for a continuing violation, the first day and each additional day thereafter that the violation is not remedied).

² Subject to assessment per day for continuing violation that is not remedied within three (3) days of the date on which liquidated damages are first assessed (i.e. for a continuing violation, the first day and each additional day on or after the fourth day that the violation is not remedied).

EXHIBIT G

– Additional Non-Discrimination Covenants –

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the acts and the regulations (“Acts and Regulations”) relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Aviation Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and Regulations relative to non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts and Regulations, and related directives and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Aviation Administration to be pertinent to ascertain compliance with the Acts and Regulations and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as

the Recipient or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

EXHIBIT H

– Pertinent Non-Discrimination Authorities –

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

RETURN TO AGENDA



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8f

ACTION ITEM

Date of Meeting September 14, 2021

DATE: August 27, 2021

TO: Stephen P. Metruck, Executive Director

FROM: Adrian Down, Environmental Program Manager, AV Environment and Sustainability
Peter Lindsay, Operations Program Manager

SUBJECT: Request to Amend Agreement with the National Renewable Energy Laboratory to Include Transportation Modeling

Amount of this request: \$200,000

Total estimated project cost: NA

ACTION REQUESTED

Request Commission authorization for the Executive Director to amend the scope of an existing interlocal agreement (ILA) with the National Renewable Energy Laboratory (NREL) to include transportation modeling to support SEA’s ground transportation goals and Century Agenda environmental goals.

EXECUTIVE SUMMARY

The Port has an existing ILA with NREL, a not-for-profit, federally funded agency. The ILA was approved by Commission on April 27, 2021. This action is for approval to amend this existing agreement with NREL to add \$200,000 of work to be carried out over an approximate 1-year period.

Airports and seaports look to NREL for decision support and actionable insights to inform their long-term facility, infrastructure, and energy planning efforts. NREL has helped other major transportation airports and seaports like Los Angeles World Airports, Dallas Fort Worth International Airport, the Port Authority of New York and New Jersey, and the Port of Long Beach understand the full range of options for achieving ambitious energy-saving goals, improving regional air quality, and optimizing the movement of people and goods.

JUSTIFICATION

This ILA amendment will allow the Port to work with NREL to develop transportation modeling essential for SEA’s Ground Transportation Access Plan (GTAP) and help meet the Port’s Century Agenda goals to reduce carbon emissions and objectives established in Commission’s SEA ground transportation (GT) policy directive (Policy Resolution No. 3759).

Meeting Date: September 14, 2021

This partnership provides access to world-leading technology and transportation integration that isn't available elsewhere. In addition, NREL explicitly does not offer its services where commercial consultants or engineering firms can do the work.

The Port recognizes that the Policy Resolution goal of reducing low-occupancy private vehicle trips to the airport may require new approaches in SEA's GT operations, policies, and facilities, all of which can influence how passengers and employees chose to get to the Airport. Ground transportation initiatives can have complex tradeoffs between revenue generation, environmental performance, cost, and customer service. As a result of this complexity, NREL expertise is warranted to understand the range of ground transportation options and their potential impacts on Port revenue, emissions, and customer service.

Diversity in Contracting

Given that NREL is uniquely positioned to provide this service, we did not set aspirational goals but will leverage NREL's expertise to evaluate equity in the transportation analyses. NREL is committed to being a world-class leader in workforce diversity, equity, and continues to develop numerous studies that identify equitable and economic local solutions to the climate crisis. For example, their LA100 study demonstrates how the City of Los Angeles will meet its renewable electricity goals with specific environmental justice actions.

DETAILS

If approved, this ILA modification will enable the Port to develop a partnership with NREL's Athena team. Athena specializes in using data-driven statistical modeling to help airports adapt to transformative technologies that support ambitious energy goals. Athena has worked with Dallas Fort Worth International Airport to develop sophisticated models of current and future mobility requirements.

The primary goal of this work with the Athena team is to create a model that predicts changes in passenger behavior in response to potential changes in the Port's GT operations, policies, and infrastructure. This model is essential for evaluating the potential implications of implementing access fees on private vehicles accessing SEA roadways, one of the key priority strategies identified in the GTAP report.

The resulting passenger mode choice model will also be used to identify impacts beyond access fees, such as:

- Analyzing the effects of potential changes to fee structures for parking or other GT products to maximize revenue
- Helping to identify opportunities to influence passenger behavior to achieve the goals included in Resolution 3759 and the Port's Century Agenda of limiting private vehicle curbside use to 30% of passengers and reducing greenhouse gas emissions from all sources, including GT, 50% by 2030.

Meeting Date: September 14, 2021

Scope of Work

The primary goal of this project is to create a price-based, ground transportation model that can predict SEA passengers’ mode choice changes in response to changes in pricing, travel time, or other aspects of airport trips. Passengers will be segmented into groups to account for differences in travel behavior between resident and non-resident travelers as well as business and leisure travelers. The model will initially be based on existing data sources, including SEA’s enplaning passenger survey, and will be updated as new information becomes available. The model will be structured so that it can easily be updated with additional survey information in the future if the Port chooses to conduct additional passenger surveys.

The scope will follow these general tasks and deliverables:

- (1) Data gathering and review
- (2) Model construction and testing
- (3) Develop policy evaluation tool
- (4) Analyze policy scenarios
- (5) Final report

Schedule

Task/Deliverable	Date
Commission ILA modification authorization	Q3 2021
Data Gathering	Q4 2021
Model construction and testing	Q4 2021-Q1 2022
Policy scenario analysis	Q2-Q3 2022
Final report	Q4 2022

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Do not support an NREL partnership.

Cost Implications: \$0

Pros:

- (1) Cost savings.

Cons:

- (1) If this model is not constructed, the Port will not be able to preemptively evaluate potential GT program options including access fees. This makes the risk of implementing new or modified GT programs much greater and reduces the likelihood of success.
- (2) The Port may miss opportunities to increase revenue that the model could identify
- (3) Port will not meet Century Agenda or Policy Resolution 3759 goals.

This is not the recommended alternative.

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Alternative 2 – Work with a private consultant to construct a passenger mode choice model

Cost Implications: \$350,000

Pros:

- (1) Work could be completed under existing Port contracting mechanisms, although additional funding would still be required.

Cons:

- (1) Product may not be comparable and would not utilize NREL’s industry-leading expertise and innovative research background.
- (2) Likely higher cost than NREL alternative.
- (3) May require delaying model construction one or more years until additional passenger surveys can be conducted.

This is not the recommended alternative.

Alternative 3 – Leverage the existing NREL partnership and expertise to conduct the work

Cost Implications: \$200,000

Pros:

- (1) This work will create a model that will analyze options for reducing vehicle trips and greenhouse gas emissions at SEA Airport and is essential for moving forward with other priority areas identified in GTAP.
- (2) Supports Century Agenda and Commission Policy Resolution 3759 goals
- (3) Potential to identify opportunities to increase non-aeronautical revenue

Cons:

- (1) Financial cost

This is the recommended alternative.

FINANCIAL IMPLICATIONS

Annual Budget Status and Source of Funds

The 2021 budget for the addition to the ILA requested here is \$75,000 and was approved as a contingent budget request in 2021. The remaining \$125,000 is requested as part of the 2022 Aviation Environment and Sustainability operating budget. The total for this project is \$200,000.

The budget for the existing, previously approved ILA (to analyze energy and technology alternatives for Port facilities) is \$127,000 from the Energy and Sustainability Committee Fund, and \$23,000 from the Environment and Sustainability Center of Expertise operating budget, for a total of \$150,000.

ATTACHMENTS TO THIS REQUEST

- (1) Cover page and appendices to be added to ILA

Meeting Date: September 14, 2021

- (2) Existing ILA signed by Commission on April 27, 2021
- (3) Presentation

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

April 27, 2021 – The Commission authorized the Executive Director to enter into an interlocal agreement with NREL to analyze energy and technology alternatives for both aviation and maritime facilities to help meet Century Agenda environmental and energy goals.

Strategic Partnership Projects
Funds-In Agreement No. FIA-21-17442
Modification No. 1

Contractor: Alliance for Sustainable Energy, LLC
Operator of the National Renewable Energy Laboratory

Sponsor: Port of Seattle

Period of Performance: 5/11/21 through 8/11/22
This modification adds scope and \$200,000 to the value of the agreement.

Except as stated herein, all terms and conditions of the Funds-In Agreement shall remain in full force and effect without change. In the event of any conflict between the terms of the subject Agreement and this Modification, the provisions of this Modification shall take precedence.

Block 3, Financial is hereby amended as follows:

Cost Estimate Modification No. 1	\$200,000.00
DOE Administrative Charge Modification No. 1	<u>\$0.00</u>
TOTAL Modification No. 1	\$200,000.00
Prior Cost Estimate:	\$150,000.00
Prior DOE Administrative Charge	<u>\$0.00</u>
Total Cost to Sponsor	\$350,000.00

Block 6, Agreement Terms and Conditions is modified to reflect the addition of “Appendix A – Statement of Work for Modification 1 to Funds-In Agreement No. FIA-21-17442” and “Appendix C-1 – Rights in Technical Data for Modification 1”

“**Funds-In Agreement–FIA-2117442 Appendix A – Statement of Work for Modification 1**” is hereby added to the Agreement.

“**Funds-In Agreement-FIA-21-17442-1 Appendix C-1 – Rights in Technical Data for Modification 1**” is hereby added to the Agreement. This Appendix C-1 is only applicable to the work under Modification 1. Appendix C-3 of the original agreement remains applicable to the original scope of work.

The parties have indicated their acceptance of this Modification between Sponsor and Contractor by signature below.

Accepted: Sponsor	Accepted: Contractor
By: _____	By: _____
Name: _____	Name: <u> Anne Miller </u>
Title: _____	Title: <u> Director Technology Transfer </u>
Date: _____	Date: _____

Alliance for Sustainable Energy, LLC
manager and operator of the
National Renewable Energy Laboratory

Strategic Partnership Projects
Funds-In Agreement—FIA-21-17442

Appendix A – Statement of Work for Modification 1

Notice: By signing this Agreement, the Sponsor acknowledges in advance that its entity name and the title and non-proprietary description of the project are available for public release by the Contractor without further notice.

I. Project Title:

Passenger travel mode choice modeling

II. Non-Proprietary Description of Project:

Provide technical assistance to develop a mode choice simulator for passenger travel to and from Seattle-Tacoma International Airport.

III. Background:

Parties to this agreement are:

Contractor: Alliance for Sustainable Energy, operator of the National Renewable Energy Laboratory under Prime Contract No. DE-AC36-08GO28308 for the U.S. Department of Energy (DOE). Contractor has a facility at 15013 Denver West Parkway, Golden, CO 80401.

Sponsor: Port of Seattle (Port). Sponsor has a facility at 2711 Alaskan Way, Seattle, WA 98121. The Seattle-Tacoma International Airport (SEA) is a facility of the Port of Seattle.

IV. Statement of Work - Task Descriptions, Deliverables, and Estimated Completion Dates:

Task 1 – Mode Choice Modeling

The Ground Transportation Access Plan (GTAP) is SEA's programmatic planning initiative that seeks to balance and address policy challenges related to ground transportation at SEA, namely (a) greenhouse gas emission reduction, (b) congestion reduction, (c) ground transportation revenues, (d) customer choice and (e) equity. These policy priorities were formally adopted by Commission in June 2019 (Resolution 3759).

One of the priority strategies in the 2021 and 2022 GTAP work plans is to study the potential implications of implementing access fees on private vehicles accessing SEA roadways. To accurately predict and measure the potential effects of access fees on

passenger mode choice, it is necessary to develop a passenger survey-based Mode Choice Simulator model (MCS).

A robust passenger MCS could have benefits beyond consideration of access fees, such as:

- Analyzing the effects of potential changes to fee structures for parking or other ground transportation (GT) products to maximize revenue
- Helping to identify opportunities to influence passenger behavior to achieve the goals included in Resolution 3759 and the Port's Century Agenda of limiting private vehicle curbside use to 30% of passengers and reducing greenhouse gas emissions from all sources, including GT, 50% by 2030.

Project Description

The primary goal of this project is to create a model that can predict SEA passengers' mode choice changes in response to changes in the pricing, travel time, or other aspects of airport trips. Passengers will be segmented into groups to account for differences in travel behavior between resident and non-resident travelers as well as business and leisure travelers. The model will initially be based on existing data sources, including SEA's enplaning passenger survey. The model will be structured so that it can easily be updated with additional survey information in the future if the SEA chooses to conduct additional passenger surveys.

To this end, NREL will:

- 1.1. Data Preparation: communicate with SEA on the data sources needed for the mode choice modeling work, i.e., the relevant variables collected by the enplane passenger surveys (EPS), and then acquire/process supplemental data required alongside the survey data for modeling. This will include travel times for all modes available to each respondent, and the collation of relevant cost and headway data for airport access modes.
- 1.2. Model Specification: develop segmented models by trip purpose and resident status (e.g., resident business, resident non-business, non-resident business, non-resident non-business) and determine the appropriate model format based on prior modeling efforts and model fit based on input data. The models will include primary attributes such as time and cost and may include additional explanatory variables such as bags, party size, age, income, etc.
- 1.3. Review of Model Fit and Iteration: review the model output and consider viability of the results for practical applications and policy testing. This is an iterative process through which any issues or anomalies in the statistical model can be debugged. Multiple model specifications and frameworks will be tested and the one with the best performance will be recommended for use.
- 1.4. Model Sensitivity Analyses: calibrate the resultant model to any available recent, accurate mode share data from the airport and perform various sensitivity analyses and discuss with the SEA team on the intuitive interpretations of the model estimates.
- 1.5. Interfaces with Other Models: advise the SEA staff on the integration of the access mode choice models with other SEA specific modeling tools and PSRC regional travel demand models.
- 1.6. Model dashboard: develop a dashboard based on the model developed in tasks 1.1 through 1.4 and any other relevant data sources that allows the SEA to analyze how potential changes in policies, operations, or capital projects could affect passenger mode split in the future.

- 1.7. Passive and Future Survey Advising: advise on the sampling and data collection along with the specific questionnaire design of the passive survey, should the SEA team decide that the mode-choice related passive data collection is necessary. The NREL team will advise the SEA on modifications to existing/future relevant surveys to maximize future modeling opportunities.

Data Requirements

- Enplaning passenger survey data
- Pricing information for GT modes (e.g., airporters, taxis, etc.)
- Data on ground truth mode share, for example aggregate volume and average vehicle occupation monthly or quarterly for 2019 for services such as Transportation Network Companies (TNC), taxi, rental car and airport shuttle
- Total enplaned passenger volume, monthly or quarterly for 2019
- Data on business/leisure travel ratio

Task 1 Deliverables Table

Task	Deliverable	Schedule
1.1 Data preparation	List of data requested	Month 1
1.2 Model specification	a) Model scripts	Month 2
	b) Demonstrate model to SEA staff	Month 2
1.3 Model fit and iteration	Model methodology memo	Month 3
1.4 Model sensitivity analyses	Brief memo describing: a) goodness of fit metrics, including uncertainty range b) summarizing model fit methodology and results c) Model sensitivity analysis	Month 5
1.5 Interfaces with other models	N/A	TBD
1.6 Model dashboard	Model dashboard	TBD
1.7 Survey advising	N/A	TBD

Task 2: Sustainable Infrastructure Advisory Support

Project Description

In parallel to technical tasks, NREL will be available for consultation in an advisory role for discussions related to sustainable infrastructure and long-term planning related to the integration of energy-efficient and renewable energy technologies.

To this end, NREL will:

- 2.1. Work with SEA staff to identify an advisory mechanism and meeting framing suitable for informing ongoing discussions at the Port.
- 2.2. Support SEA staff with references and connections to research staff able to advise on particular technical integration and planning questions.
- 2.3. Attend meetings, as needed quarterly, in support of long-term planning discussions at the SEA.

Task 3: Policy Evaluation Tool

Project Description

Leveraging the SEA access mode choice models developed in Task 1, a policy evaluation tool with a friendly user interface will be developed under this task. This tool will allow flexible inputs, primarily featuring an access mode choice simulator, and will generate outputs in formats that are intuitive to the users at the SEA and that allow SEA staff to evaluate various ground transportation policies.

SEA and NREL agree that NREL will publish any software created under Task 3 under an open-source software license.

To this end, NREL will:

- 3.1. Design Plan: draft a tool design plan based on discussion with SEA staff on needs, requirements, software preferences, maintainability, existing solutions, and other issues. The SEA will review the plan and work with NREL to finalize the plan. Once finalized, the tools will be posted on an easily accessible repository such as GitHub for future access and maintainability.
- 3.2. Multi-Criteria Evaluation (MCE) benefits calculator: investigate potential solutions for a multi-criteria evaluation cost benefit analysis calculator, including attributes such as cost, environmental impact, and equity elements. NREL will design the calculator in such a way that it will leverage the predicted mode choice decisions whenever appropriate and discuss with the SEA staff on the assumptions for other additional inputs, such as the capital/maintenance cost for the system on curbside access fee. NREL will also leverage variables on sociodemographic characteristics in the EPS to develop indicators on equity evaluation, to answer questions such as whether subsidizing TNC will only benefit the high-income group and whether implementing the access fee will impact different demographic groups to the similar extent.
- 3.3. User Interface/Dashboard: develop a user interface and analysis dashboard for this policy evaluation tool that allows the user to define policy inputs, run the models, and review outputs in tabular and visual form. This policy evaluation tool will be in a format of either a standalone application based in R/Python or a web interface and it will enable long-term usability and maintainability. NREL will discuss with the SEA on the preferable format for the SEA staff.
- 3.4. Tool Validation and Calibration: test the tools to ensure they predict ground access behavior in ways that are intuitive and reasonable to SEA staff. As part of this work, tools will be calibrated as necessary to enplanements and other metrics.

Data Requirements

- Current and anticipated future flight schedule
- SEA dwell time distribution for departing and arriving passengers

Task 3 Deliverables Table

Task	Deliverable	Schedule
3.1 Design plan	Policy evaluation tool design plan memo	TBD
3.2 Multi-Criteria Evaluation benefits calculator	a) Model scripts (software)	TBD
	b) Demonstrate model to SEA staff	TBD

3.3 User interface/dashboard	Standalone model application (software)	TBD
3.4 Tool validation and calibration	Brief memo describing goodness of fit metrics, including uncertainty range	TBD

Task 4: Policy Scenarios

Project Description

Utilizing the policy evaluation tool developed in Task 3, NREL will evaluate a fixed number of policy/infrastructure scenarios and train the SEA staff to use the tool. This part of the work will focus initially on airport roadway access fee scenarios. However, there are many other policy levers that this model will be used to evaluate, including improvements in existing transit options, new transit or other ground access services, policy incentives (e.g., expedited security for HOV users), operational changes (e.g., relocating TNCs pickup), and other pricing beyond access fees (e.g., TNCs, parking, taxis, transit, etc.)

To this end, NREL will:

- 4.1. Scenario Development: work with SEA staff to define several policy scenarios. This will include helping to develop and define data inputs and assumptions, as well as output performance measures.
- 4.2. Scenario Implementation: configure and run the scenarios in the tools and provide results to SEA staff. The scenario interface / dashboard will allow SEA staff to run scenarios themselves as well.
- 4.3. Training: provide training to allow SEA staff to run additional policy scenarios independently.

Task 4 Deliverables Table

Task	Deliverable	Schedule
4.1 Scenario development	Policy scenario descriptions	TBD
4.2 Scenario implementation	a) Summary technical memo, including all study methodology and results	TBD
4.3 User interface/dashboard	a) Port staff training session	TBD
	b) Documentation memo/reference guide	TBD

Task 5 Other work

Other work at the direction of the SEA, consistent with the scope and subject to the availability of funding.

V. Schedule:

The anticipated period of performance for the work under this modification is 5 months.

Alliance for Sustainable Energy, LLC,
manager and operator of the
National Renewable Energy Laboratory

Strategic Partnership Projects
Funds-In Agreement—FIA-21-17442-1

Appendix C-1 – Rights in Technical Data for Modification 1
(Alternative I - unlimited rights/nonproprietary - software)

1. The following definitions shall be used.
 - A. "Generated Information" means information produced in the performance of this Agreement or any Contractor's subcontract under this Agreement.
 - B. "Proprietary Information" means information which is developed at private expense, is marked as Proprietary Information, and embodies (1) trade secrets or (2) commercial or financial information which is privileged or confidential under the Freedom of information Act (5 USC § 552 (b)(4)).
 - C. "Unlimited Rights" means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.
 - D. "Computer Software" means (i) computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and (ii) recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.
2. For work performed at the DOE facility, the Sponsor agrees to furnish to the Contractor or leave at the facility that information, if any, which is (1) essential to the performance of work by the Contractor personnel or (2) necessary for the health and safety of such personnel in the performance of the work. Any information furnished to the Contractor shall be deemed to have been delivered with Unlimited Rights unless marked as Proprietary Information. The Sponsor agrees that it has the sole responsibility for appropriately identifying and marking all documents provided containing Proprietary Information
3. The Sponsor, Contractor, and the Government shall have Unlimited Rights in all Generated Information, except for information which is disclosed in a Subject Invention disclosure being considered for patent protection.
4. The Government and Contractor agree not to disclose properly marked Proprietary Information without written approval of the Sponsor, except to Government employees who are subject to the statutory provisions against disclosure of confidential information set forth in the Trade Secrets Act (18 USC § 1905).
5. The Sponsor is solely responsible for the removal of all of its Proprietary Information from the facility by or before termination of this Agreement. The Sponsor may request the Contractor to return or destroy all of the Sponsor's Proprietary Information subject to paragraph (2) above. The Government and Contractor shall have Unlimited Rights in any information which is not removed

from the facility by termination of this Agreement. The Government and Contractor shall have Unlimited Rights in any Proprietary Information which is incorporated into the facility or equipment under this Agreement to such extent that the facility or equipment is not restored to the condition existing prior to such incorporation.

6. The Sponsor agrees that the Contractor will provide to the Department of Energy a nonproprietary description of the work performed under this Agreement.
7. COPYRIGHT: The Parties may assert Copyright in any of their Generated Information. Subject to the other provisions of this clause including Computer Software generated by the Contractor below, and to the extent copyright is asserted, the Government reserves for itself and others acting in its behalf, a paid-up, world-wide, irrevocable, non-exclusive license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, prepare derivative works, and perform any such copyrighted works.

For Computer Software generated by the Contractor under this agreement, the Contractor grants to the Sponsor a royalty-free, nontransferable, non-exclusive, irrevocable worldwide copyright license for its own use.

When the Contractor asserts copyright in its Computer Software developed under this Agreement, the Government has for itself and others acting on its behalf, a royalty-free, nontransferable, nonexclusive, irrevocable worldwide copyright license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government (narrow-license). After the Contractor abandons or no longer commercializes the Copyrighted Computer Software, the Government has for itself and others acting on its behalf, a royalty-free, nontransferable, nonexclusive, irrevocable worldwide copyright license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government (broad-license).

A separate copyright license may be necessary in Contractor Computer Software developed outside of this Agreement and used to perform the work in this Agreement, such as creating derivative works.

8. The terms and conditions of this Clause shall survive the Agreement, in the event that the Agreement is terminated before completion of the Statement of Work.

Alliance for Sustainable Energy, LLC
operator of the
National Renewable Energy Laboratory

Strategic Partnership Projects
Funds-In Agreement—Nonfederal Sponsor

Standard Agreement Face Page

<p>1. Sponsor Name & Address Port of Seattle 2711 Alaskan Way Seattle, WA 98121</p>	<p>4. Funds-In Agreement Number FIA-21-17442-0</p>						
<p>2. Estimated Performance Period (in months) 15</p>	<p>5. Project Title Central Mechanical Plant and Waterfront Clean Energy Strategic Plan</p>						
<p>3. Financial</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">Contractor Cost</td> <td style="text-align: right;">\$ 150,000</td> </tr> <tr> <td>DOE Administrative Charge</td> <td style="text-align: right;">\$ 0</td> </tr> <tr> <td>Total Not-to-Exceed Cost to Sponsor</td> <td style="text-align: right;">\$ 150,000</td> </tr> </table> <p>Amount of first 90-day advance \$ 0 See attached invoice for advance payment instructions.</p>	Contractor Cost	\$ 150,000	DOE Administrative Charge	\$ 0	Total Not-to-Exceed Cost to Sponsor	\$ 150,000	<p>6. Agreement Terms and Conditions This agreement consists of (1) this Standard Agreement, (2) Terms and Conditions, and (3) the following:</p> <ul style="list-style-type: none"> a. Appendix A—Statement of Work b. Appendix B—Patent Rights c. Appendix C—Rights in Technical Data
Contractor Cost	\$ 150,000						
DOE Administrative Charge	\$ 0						
Total Not-to-Exceed Cost to Sponsor	\$ 150,000						

<p>7. Sponsor—Representatives</p> <p>Technical representative Stephanie Meyn Port of Seattle 2711 Alaskan Way Seattle, WA 98121 206.787.3678</p>	<p>9. Contractor—Representatives</p> <p>Technical representative Scott Cary National Renewable Energy Laboratory 15013 Denver West Parkway, MS RSF 401 Golden, CO 80401 303.384.7169</p>
<p>8. Contract representative Stephanie Meyn Port of Seattle 2711 Alaskan Way Seattle, WA 98121 206.787.3678</p>	<p>10. Contract representative Katheryn Lennon National Renewable Energy Laboratory 15013 Denver West Parkway, MS RSF 450-6 Golden, CO 80401 303.384.7378</p>

<p>11. Sponsor Acceptance Stephen P. Metruck Executive Director Port of Seattle 2711 Alaskan Way Seattle, WA 98121</p>	<p>12. Contractor Acceptance Anne Miller, Director Technology Transfer Alliance for Sustainable Energy, LLC Operator of the National Renewable Energy Laboratory 15013 Denver West Parkway Golden, CO 80401</p>		
<p>Signature:</p>	<p>Date:</p>	<p>Signature:</p>	<p>Date:</p>

Alliance for Sustainable Energy, LLC
operator of the
National Renewable Energy Laboratory

Strategic Partnership Projects
Funds-In Agreement—Nonfederal Sponsor

General Terms and Conditions

(together with the face page and appendices, hereinafter referred to as "Agreement")

Article I. Parties to the Agreement. The U.S. Department of Energy facility contractor, Alliance for Sustainable Energy, LLC, manager of the National Renewable Energy Laboratory under Contract No. DE-AC36-08GO28308 ("Prime Contract") and hereinafter referred to as the "Contractor" or "NREL," has been requested by the "Sponsor," as identified in Block 1 on page 1 of this Agreement, to use best efforts to perform the work set forth in the Statement of Work, attached hereto as Appendix A. Sponsor is a municipal corporation under Title 53 of the Revised Code of Washington ("RCW"), with authority to enter into this agreement pursuant to RCW 39.34. The Contractor and Sponsor are hereinafter collectively referred to as the "Parties" or individually as a "Party." It is understood by the Parties that the Contractor is obligated to comply with the terms and conditions of its facility Prime Contract with the United States Government (hereinafter called the "Government") represented by the United States Department of Energy (hereinafter called the "Department" or "DOE") when providing goods, services, products, materials, or information to the nonfederal Sponsor under this Agreement.

Article II. Term of the Agreement. The Contractor's estimated period of performance for completion of the Statement of Work is included in Block 2 on page 1 of this Agreement. The term of this Agreement shall be effective as of the later date of (1) the date on which it is signed by the last of the Parties thereto or (2) the date on which funds are received and allocated to this Agreement. Unless terminated earlier, this Agreement shall terminate on December 31, 2022.

Article III. Costs.

1. The Contractor estimated cost for the work to be performed under this Agreement is stated in Block 3 on page 1 of this Agreement.
2. The Contractor has no obligation to continue or complete performance of the work at a cost in excess of the original estimated cost or any subsequent amendment.
3. The Contractor agrees to provide at least thirty (30) days' notice to the Sponsor if the actual cost to complete performance will exceed its estimated cost.

Article IV. Funding and Payment. The Parties acknowledge that in its capacity as the Port of Seattle Washington, the Sponsor is prohibited by the Revised Code of Washington 42.24.080, Article VIII sections 5 and 7 of the Washington State Constitution and/or other laws, constitutional prohibitions or regulations from advancing funds for this reimbursable Funds-In-Agreement. In lieu of advance funding, Contractor intends to use the DOE Cost of Strategic Partnership Projects Program under the Departmental Administration appropriation. The Sponsor shall pay to the Contractor the actual costs incurred in performance of the work described in this Agreement and the Contractor shall have no obligation to perform in the absence of payment of such actual costs. At the end of the first month the Contractor will invoice the Sponsor in an amount sufficient to pay the first month's actual incurred costs and thereafter invoice the Sponsor monthly for actual incurred costs until termination or completion of the performance of work under this Agreement.

The Contractor will invoice the Sponsor each billing cycle. Sponsor's payment shall be due no later than thirty (30) days after receipt of Contractor's invoice. Payment shall be made directly to the Contractor who will then notify the DOE as appropriate. Upon termination or completion, any excess funds shall be refunded by the Contractor to the Sponsor.

Article V. Source of Funds. The Sponsor hereby represents that, if the funding it brings to this Agreement has been secured through other agreements, such other agreements do not have any terms and conditions (including

intellectual property terms and conditions) that conflict with the terms and conditions of this Agreement.

Article VI. Tangible Personal Property. Upon termination of this Agreement, tangible personal property or equipment produced or acquired in conducting work under this Agreement shall be owned by the Sponsor. Tangible personal property or equipment produced or acquired as part of this Agreement will be accounted for and maintained during the term of the Agreement in the same manner as DOE property or equipment. Costs incurred for disposition of property shall be the responsibility of the Sponsor and included in costs allocated in Article III or paid separately by the Sponsor.

Article VII. Publication Matters. The publishing Party shall provide the other Party a 60-day period in which to review and comment on proposed publications that disclose any of the following: technical developments and/or research findings generated in the course of the Agreement or identify Proprietary Information (as defined in Appendix C). The publishing Party shall not publish or otherwise disclose Proprietary Information identified by the other Party, except as mandated by law.

The Sponsor will not use the name of Contractor, the Government, or their employees in any promotional activity, such as advertisements, with reference to any product or service resulting from this Agreement, without prior written approval of the Government and Contractor.

Article VIII. Legal Notice. The Parties agree that the following legal notice shall be affixed to each report furnished to the Sponsor under this Agreement and to any report resulting from this Agreement which may be distributed by the Sponsor:

DISCLAIMER

This report may contain research results which are experimental in nature. Neither the United States Government, nor any agency thereof, nor Facility Contractor, nor any of their employees, makes any warranty, express or implied, or assumes any legal responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference to any specific commercial product, process, or service by its trade name, trademark, manufacturer, or otherwise, does not constitute or imply an endorsement or recommendation by the United States Government or any agency thereof, or by the Facility Contractor. The United States Government reserves for itself a royalty-free, worldwide, irrevocable, non-exclusive license for Governmental purposes to publish, disclose, distribute, translate, duplicate, exhibit, prepare derivative works, and perform any such data included herein. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof, or by the Facility Contractor and shall not be used for advertising or product endorsement purposes.

Article IX. Disclaimer. THE GOVERNMENT AND THE CONTRACTOR MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. NEITHER THE GOVERNMENT NOR THE CONTRACTOR SHALL BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO SUCH RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS AGREEMENT.

Article X. General Indemnity. [Reserved]

Article XI. Product Liability Indemnity. To the extent permitted by Washington State law and except for any loss, liability, or claim resulting from any willful misconduct or negligent acts or omissions of the Government, the Contractor, or persons acting on their behalf (“Indemnified Parties”), the Sponsor agrees to hold harmless and

indemnify the Indemnified Parties against any losses, liabilities, and claims, including all damages, costs, and expenses, including attorney's fees, arising from personal injury or property damage occurring as a result of the making, using, or selling of a product, process, or service by or on behalf of the Sponsor, its assignees, or licensees, which was derived from the work performed under this Agreement.

For the purposes of this Article, neither the Government nor the Contractor shall be considered assignees or licensees of the Sponsor, as a result of reserved Government and Contractor rights. This Article shall apply only if the Sponsor was:

1. informed as soon and as completely as practical by the appropriate Indemnified Party of the allegation or claim;
2. afforded, to the maximum extent by applicable laws, rules, or regulations, an opportunity to participate in and control its defense; and
3. given all reasonably available information and reasonable assistance requested by the Sponsor.

No settlement for which the Sponsor would be responsible shall be made without the Sponsor's consent unless required by final decree of a court of competent jurisdiction.

Article XII. Intellectual Property Indemnity—Limited. [Reserved]

Article XIII. Notice and Assistance Regarding Patent and Copyright Infringement. Each Party shall report to the other Party, promptly and in reasonable written detail, each claim or allegation of infringement of any patent, copyright, trade secret or other intellectual property right based on the performance of this Agreement of which a Party has knowledge. In the event of any claim or suit against a Party based on such alleged infringement, the other Party shall furnish to the Party, when requested by the Party, all evidence and information in the possession of the other Party pertaining to such suit or claim.

Article XIV. Patent Rights. Terms and conditions regarding patent rights are set forth in Appendix B attached hereto and incorporated herein.

Article XV. Rights in Technical Data. Terms and conditions regarding rights in technical data are set forth in Appendix C attached hereto and incorporated herein.

Article XVI. Background Intellectual Property. Each Party may use the other Party's Background Intellectual Property identified in an appendix of this Agreement solely in performance of the Statement of Work. This Agreement does not grant to either Party any option, grant, or license to commercialize, or otherwise use the other Party's Background Intellectual Property. Licensing of Background Intellectual Property, if agreed to by the Parties, shall be the subject of separate licensing agreements between the Parties.

Each Party shall use reasonable efforts to list all relevant Background Intellectual Property in the appendix titled "Background Intellectual Property;" however, neither Party shall be liable to the other Party because of failure to list its Background Intellectual Property.

Article XVII. Assignment and Notification. Neither this Agreement nor any interest therein or claim thereunder shall be assigned or transferred by either Party, except as authorized in writing by the other Party to this Agreement, provided, however, the Contractor may transfer it to the Department, or its designee, with notice of such transfer to the Sponsor, and the Contractor shall have no further responsibilities except for the confidentiality, use, and/or non-disclosure obligations of this Agreement. The obligations of the Contractor set forth in this Agreement shall apply to any successor in interest continuing the operation of the National Renewable Energy Laboratory.

If the Sponsor intends to assign or transfer any interest in this Agreement to a third party or the Sponsor is merging or being acquired by a third party, the Sponsor shall notify the Contractor with details of the pending action for a determination. The Contractor shall reply in writing whether such transfer is acceptable or invoke the termination

clause.

Article XVIII. Similar or Identical Services. The Government and/or Contractor shall have the right to perform similar or identical services in the Statement of Work for other sponsors as long as the Sponsor's Proprietary Information is not utilized.

Article XIX. Export Control. Each Party is responsible for its own compliance with laws and regulations governing export control.

Article XX. Disputes. The Parties shall attempt to jointly resolve all disputes arising from this Agreement. In the event a dispute arises under this Agreement, the Sponsor is encouraged to contact Contractor's Technology Partnerships Ombudsman in order to resolve such dispute before pursuing third-party mediation or other remedies. If the Parties are unable to jointly resolve a dispute within 60 days, the Parties agree to submit the dispute to a third-party mediation process that is mutually agreed upon by the Parties.

Article XXI. Entire Agreement and Modifications.

1. This Agreement with its appendices contains the entire agreement between the Parties with respect to the subject matter hereof, and all prior representations or agreements relating hereto have been merged into this document and are thus superseded in totality by this Agreement.
2. Any agreement to materially change any terms or conditions of this Agreement or the appendices shall be valid only if the change is made in writing, executed by the Parties hereto, and approved by DOE.

Article XXII. Termination. This Agreement may be terminated by either Party, following thirty (30) days written notice to the other Party. If Article IV provides for advance funding, this Agreement may also be terminated by the Contractor in the event of failure by the Sponsor to provide the necessary advance funding. In the event of termination, either by the Sponsor or the Contractor (e.g. for lack of advance funding), the Sponsor shall be responsible for the Contractor's costs (including closeout costs), but in no event shall the Sponsor's cost responsibility exceed the total cost to the Sponsor as described in Article III, above.

It is agreed that any obligations of the Parties regarding Proprietary Information or other intellectual property will remain in effect, despite early termination of the Agreement.

Article XXIII. Public Records Act. Sponsor is a public agency subject to the Washington State Public Records Act, Chap. 42.56 RCW. Sponsor and Contractor shall each be responsible for fulfilling public records requests received by it under RCW 42.56 or the Freedom of Information Act (5 USC § 552), respectively, provided that the Parties shall cooperate and assist one another if needed. For clarity, such cooperation and assistance does not obligate either Party to provide records to the other Party. In the course of this Agreement, the Parties may exchange or share records that are confidential, sensitive, or otherwise exempt from public disclosure. The Parties shall treat confidential and security-sensitive records with the utmost care, and shall provide notice to one another of records requests to which confidential or security-sensitive records may be responsive. Each Party shall independently assert legally-applicable exemptions in response to records requests, provided that if the Parties disagree about whether exemptions are applicable to particular records, each Party shall have the option to provide the other Party notice and an opportunity to seek an injunction. Because the Parties are engaged in a joint undertaking, the common interest privilege shall apply to records that are exempt as attorney/client privileged or prepared in anticipation of litigation.

Article XXIV. Records Maintenance. The Parties to this Agreement shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services. These records shall be subject to inspection, review or audit by personnel of both Parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the Parties shall have full access and the right to examine any of these materials during this period.

Alliance for Sustainable Energy, LLC
operator of the
National Renewable Energy Laboratory

Strategic Partnership Projects
Funds-In Agreement—FIA-21-17442-0

Appendix A – Statement of Work

Notice: By signing this Agreement, the Sponsor acknowledges in advance that its entity name and the title and non-proprietary description of the project are available for public release by the Contractor without further notice.

I. Project Title:

Central Utility Plant Redesign Optimization & Waterfront Clean Energy Electrification Study

II. Non-Proprietary Description of Project:

Provide technical assistance to assist in the Port of Seattle’s net zero/carbon neutral/carbon negative 2050 goals.

III. Background:

Parties to this agreement are:

Contractor: Alliance for Sustainable Energy, operator of the National Renewable Energy Laboratory under Prime Contract No. DE-AC36-08GO28308 for the U.S. Department of Energy (DOE). Contractor has a facility at 15013 Denver West Parkway, Golden, CO 80401.

Sponsor: Port of Seattle (Port). Sponsor has a facility at 2711 Alaskan Way, Seattle, WA 98121

IV. Statement of Work - Task Descriptions, Deliverables, and Estimated Completion Dates:

a. Task Descriptions

Task 1-Central Utility Plant (CUP)

Seattle-Tacoma International Airport (SEA) is a top-ten U.S. airport, serving 51.8 million passengers and 453,549 metric tons of air cargo in 2019. The facility, part of the Port of Seattle is in one of the fastest growing metropolitan areas in the nation. The airport was one of the first airports in the nation to develop a comprehensive greenhouse gas inventory (2006) and begin setting goals to become carbon neutral by 2050.

The Port of Seattle has a net zero emission target for 2050 and has already been able to reach its 2030 emission reduction goal of 50% through the use of zero carbon electricity, low carbon fuels, and primarily due to renewable natural gas. With work progressing on these goals, legacy systems operating on fossil fuels are significant barriers to the Port meeting its emissions reduction targets. SEA Airport’s aggressive emissions reduction goals require actions to be addressed years in advance to most cost effectively align with scheduled maintenance and facility upgrades.

The Port of Seattle has committed to addressing all new energy demand through conservation and renewable energy sources and the airport’s Central Mechanical Plant natural gas usage is a

significant load that is being considered for optimization along with other emission sources at the Port.

Project Description

The primary goals of this project are to identify opportunities for reducing emissions for the airport while expanding the thermal generation capacities for the primary central mechanical plant supporting the majority of terminal loads.

An existing central plant has four natural gas boilers that produces steam from natural gas for heating and eight electric chillers plus three water side economizing plate frame heat exchangers that produce chilled water for cooling. The plant has been in its current location approximately 50 years, with maintained, rebuilt, upgraded and replaced equipment over its lifetime. Three of the boilers are approximately 50 years old, 1 boiler 13 years old, 1 chiller 30 years old, 3 chillers 20 years and 4 chillers 15 years. As part of the Sustainable Airport Master Plan (SAMP), the airport is evaluating the ability to expand by approximately 24 gates to the north and expects to build a utilidor to the new facility. The existing system distributes steam to multiple terminal concourses via steam piping utilidors to hot water heat exchangers. Additional load on the facility is generated via the pre-conditioned air (PCA) heating system which is part of the highly efficient PCA cooling/heating system plant. Projected heating demand, with the addition of the 24 gates appears to exceed available capacity, based on peak demand. Concepts under consideration include expanding the existing central plant for heat generation, installing a new facility to service additional square footage or some other combination of solutions.

To this end, NREL will:

1. Provide feedback on any existing studies and guidance for future utility planning, including the Utility Master Plan (Mechanical Books from SD-4, SD-3, and SD-11)
2. Review existing plant operations, performance, loads and level of utilization.
3. After review of available data, review assumptions with SEA that will influence potential alternatives. Initial assumptions include low cost of electrical energy, aspirational goals for carbon reduction, limited space, and meeting future energy needs through conservation. Energy resiliency, the ability to recover from disruptive but infrequent events, will be evaluated as a potential assumption.
4. Develop conceptual-level concepts for the future state of the CMP. Technologies that may be considered include but are not limited to conversion of heating system from steam to hot water, geothermal ground source heat pumps, heat pump based central plant using heat recovery chillers, thermal storage, battery storage, combined heat and power, wastewater heat recovery, and other potential solutions regarding long term energy needs as requested.
5. Review potential concepts for the future state of the CMP with SEA key staff for refinement. This will include obtaining additional feedback on facility space limitations.
6. Assess proposed alternatives in relation to any existing overall energy strategy and potential reductions in emissions.
7. For the preferred solution, utilize the NREL REopt tool to provide a techno-economic analysis for the proposed mix of power and/or heat generation, existing and potential energy sources, thermal and electric storage, and demand optimization for primary loads of the central mechanical plant. Effort will include a preliminary review of assumptions with SEA, review of draft results of analysis and final results of efforts.

Data Requirements

- Recent and 2021 Utility Master Plan documents
- Copies of relevant previous studies, including long range energy needs at the facility

- CMP process schematic with system specifications, operation requirements, constraints, and costs at a fidelity sufficient to perform the technoeconomic assessment
- CMP loads (hourly for year) and energy and water use and associated costs
- Projected future CMP loads under 3 different growth scenarios provided by SEA (no new terminals, SAMP near-term and long-term projects)
- Facility space limitations and analysis for future space use conducted as part of the SAMP

Task 1 Deliverables Table

Task	Deliverable	Schedule
1. Data Review	a) Kick-off meeting	Upon agreement effective date
	b) Data Collection	2 months
	c) Review Available Data Related to CMP	1 month after receipt of all necessary data
	d) Review Assumptions related to CMP with SEA	1 month after data review
2. Develop Alternatives	a) Develop Alternatives	1 month following receipt of comments regarding assumptions
	b) Review Alternatives with SEA, refine alternatives	2 months following receipt of comments
3. Run Re-Opt Tool	Techno-economic analysis – Draft results	4 months after receipt of all necessary data
4. Final Report	a) A draft report as described above	Within 1 month of receipt of Port comments on draft results
	b) A final report as described above	Within 1 month of receipt of Port comments on draft report
5. General	General Advisory Services and Technical Assistance related to the airport’s CMP evaluation	As needed.

Task 2-Waterfront Clean Energy Electrification Study

In the Strategic Objectives section of the Century Agenda, the Port of Seattle has committed to addressing all new energy demand through conservation and renewable energy. In addition, the Port of Seattle has committed to reducing air pollutants and GHG in a stepwise function to eventually meet the goal of carbon neutral or carbon negative by 2050 for all ground and maritime transportation needs.

Under this mandate, the Port of Seattle has undertaken the Seattle Waterfront Clean Energy Strategic Plan (SWCESP) initiative. The Port of Seattle has retained a consultant to develop various components of this strategic plan (e.g., project planning, vision/goals, current/forecasted energy needs, planning scenarios, and implementation strategy). To complement this analysis, the Port of Seattle would like to utilize NREL’s unique modeling, analysis, and facilities in certain areas to provide a greater understanding and knowledge of potential scenarios to achieve these ambitious

goals. NREL recommends a phased approach for their assistance based on current financial limitations and study needs of the Port.

Phase I would focus on providing an optimal set of energy asset combinations for the Port of Seattle to make preliminary pathway decisions for Pier 46 and 91. Future phases of collaboration could utilize the various models and tools at NREL to provide a holistic operational optimization if needed in the future by the Port of Seattle.

Project Description

The goal of this project is to identify energy asset combinations (e.g., on-site renewable generation, energy storage, and other considerations such as transportation vehicle loads or on-site generation of renewable fuels) to address energy costs, network constraints (as determined by others), and sustainability initiatives. In coordination with the Port of Seattle, NREL can technically validate and financially evaluate options for the SWCESP.

To this end, NREL will provide:

- 1. Coordination and Management.** NREL will engage as a stakeholder and advisor to the Port in 1) evaluating current energy demand, load and capacity profiles, 2) forecasting demands and planning scenarios, and 3) analysis of alternatives. It is expected that NREL will collaborate with the Port and their designated representatives for approximately 100 hours in support of the evaluation of current and forecasted energy demands and clean energy planning scenarios, participating in working groups, advising on data collection efforts to increase efficiency for all parties, reviewing documents and providing industry insights into emerging technologies.
- 2. Techno-economic assessment.** Upon completion of the current inventories and forecasted scenarios, NREL will assess the technical and economic viability of several renewable energy and energy storage technologies with a focus on Terminal 91 using NREL's Renewable Energy Optimization (REopt) tool. NREL will consider current and proposed future energy consumption, energy cost, renewable energy resource, technology cost, space available, and distribution system constraints as defined in the Port's planning efforts. This analysis will be informed by any existing studies such as conceptual site planning, microgrid evaluations, and future load profile development. NREL will work with Port of Seattle, its consultant, and other key stakeholders in the development of several load profiles that bracket Pier redevelopment and offer operational flexibility. The analysis will be performed for up to three different existing facility meters and/or aggregation of similar meters, up to 3 load scenarios, and up to 3 RE targets. The recommended system sizes and economics (initial cost, O&M cost, lifecycle cost, and net present value) for each meter will be provided. While Pier 46 will not be evaluated in the REopt model, the results from Pier 91 analysis will be summarized and can be used to inform Pier 46 decisions.

Data Requirements:

Inclusion in Port data collection and planning processes; coordination and access to relevant data and deliverables including:

- Detailed inventory of Port energy uses and demand profiles by location.
- Criteria for and prioritized list of locations, study areas and/or uses for continued analysis.
- Detailed raw data collected necessary for techno-economic analysis.

- Access to any other relevant deliverables from related studies.
- Future energy forecast, evaluation of energy supply constraints, and identification and analysis of clean energy planning scenarios and impacts.

A full list of data requirements for the techno-economic assessment (e.g., current energy bills for past year, tariffs, natural gas usage, cost of capital, etc.) will be provided for the Port of Seattle to start the data gathering process.

Task 2 Deliverables Table

Task	Deliverable	Schedule
Project Management & Coordination	Kick-off meeting, data requirements	Upon agreement effective date
Technical Advisory Services	Collaboration and technical assistance with Waterfront Clean Energy Strategic Plan planning process	6 months
REopt Analysis	Techno-economic analysis – Draft results	4 months after receipt of all necessary data
	Techno-economic analysis – Final results	2 months following receipt of comments on Draft Results
Final Report	NREL will provide a written report (~5 pages) or slide deck (~20 slides) summarizing analysis assumptions and results. The report will provide a prioritized list of options to meet varying levels of renewable energy generation.	1 month following tecno-economic analysis

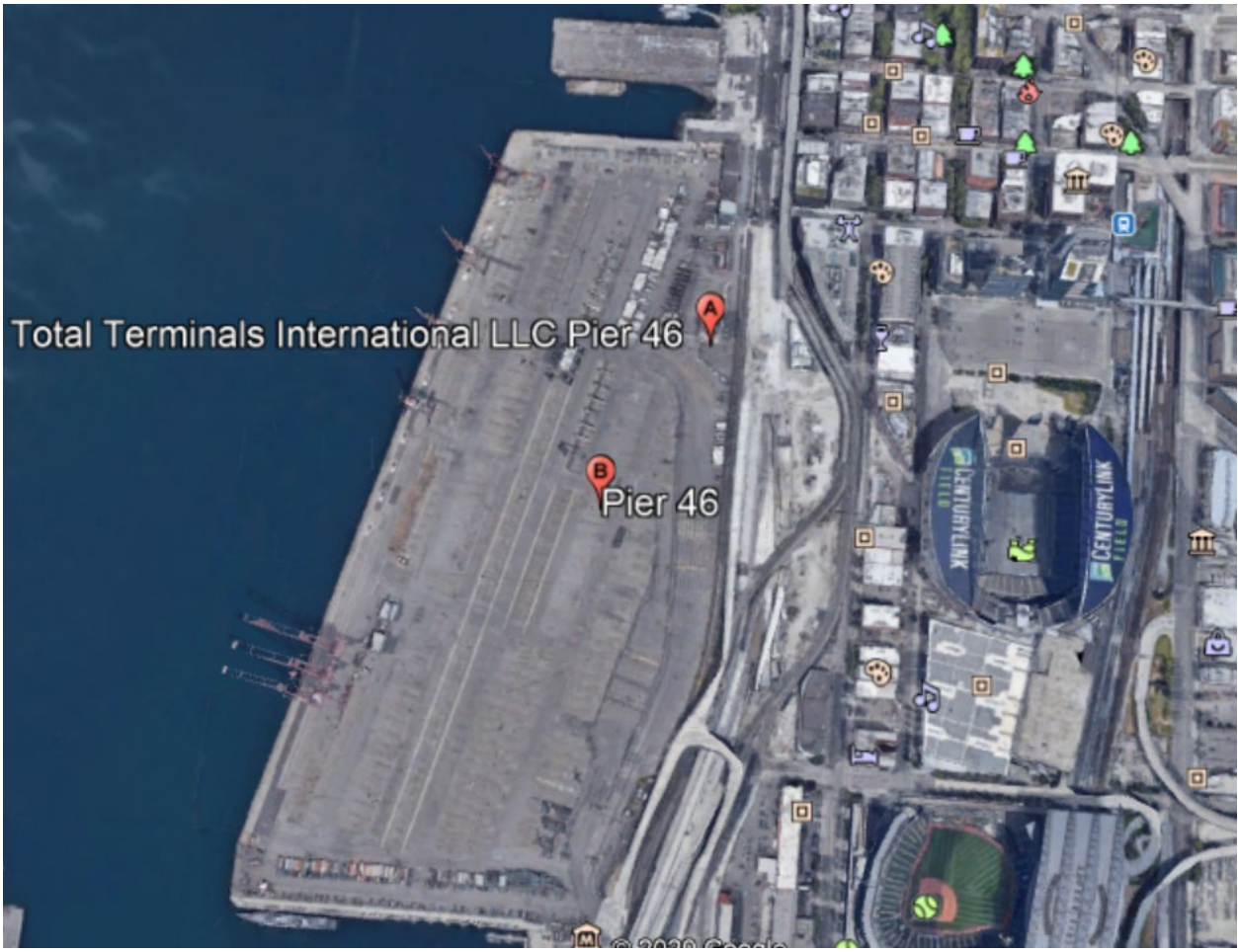


Figure 1 - Pier 46 Vicinity



Figure 2 - Pier 91 Vicinity - Google Earth

V. Schedule:

It is anticipated work will be complete 15 months from Agreement effective date.

Alliance for Sustainable Energy, LLC
operator of the
National Renewable Energy Laboratory

Strategic Partnership Projects
Funds-In Agreement—FIA-21-17442-0

Appendix B-5 – Patent Rights
(Alternative III - no R&D performed)

[RESERVED] – No research, development, or demonstration is to be conducted in the performance of the Statement of Work.

Alliance for Sustainable Energy, LLC
operator of the
National Renewable Energy Laboratory

Strategic Partnership Projects
Funds-In Agreement—FIA-21-17442-0

Appendix C-3 – Rights in Technical Data

(Alternative IV - facility services agreement or federal funds/nonproprietary)

1. The following definitions shall be used.

- A. "Generated Information" means information produced in the performance of this Agreement or any subcontract under this Agreement.
- B. "Proprietary Information" means information which is developed at private expense, is marked as Proprietary Information, and embodies (1) trade secrets or (2) commercial or financial information which is privileged or confidential under the Freedom of information Act (5 USC § 552 (b)(4)).
- C. "Unlimited Rights" means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

2. Generated Information shall not be marked as Proprietary Information. If the Sponsor provides Proprietary Information to the Contractor to perform the work, such Proprietary Information will be destroyed or returned to the Sponsor as directed by the Sponsor in writing. The Government and Contractor shall have Unlimited Rights in any information which is not removed from the facility by termination of this Agreement. Subject to the provisions of this Clause, Sponsor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced under this Agreement. The DOE and the Contractor shall have the right to publish and use any data generated by Contractor and any data provided by the Sponsor to the Contractor (unless such provided data is marked as Proprietary Information by the Sponsor), and to permit others to do so, The Government and the Contractor agree not to disclose properly marked Proprietary Information to anyone other than the Sponsor without written approval of the Sponsor, except to Government employees who are subject to the statutory provisions against disclosure of confidential information set forth in the Trade Secrets Act (18 USC 1905). The Sponsor agrees that the Facility Contractor may provide to the DOE a non-proprietary description of the work to be performed under this Agreement.

Alliance for Sustainable Energy, LLC
operator of the
National Renewable Energy Laboratory

Strategic Partnership Projects
Funds-In Agreement—FIA-21-17442-0

Appendix D – Background Intellectual Property
Patents, Patent Applications, and Record of Inventions

Project Title: Central mechanical Plant and Waterfront Clean Energy Strategic Plan

The Contractor and the Sponsor have identified and agreed that the following Background Intellectual Property may be used in the performance of work under this Agreement and may be needed to practice the results of this Agreement.

Contractor:

NREL SWR-12-19: “REopt® (Renewable Energy Optimization)”

Sponsor:

None Expected

“Intellectual Property” means patents, trademarks, copyrights, mask works, and other forms of comparable property rights protected by Federal Law and foreign counterparts, except trade secrets.

“Background Intellectual Property” means the Intellectual Property identified by the Parties that was in existence prior to or is first produced outside of this Agreement, except that in the case of inventions in those identified items, the inventions must have been conceived outside of this Agreement and not first actually reduced to practice under this Agreement to qualify as Background Intellectual Property.

Each Party may use the other Party’s identified Background Intellectual Property solely in performance of research under the Statement of Work detailed in Appendix A of this Agreement. This Agreement does not grant to either Party any option, grant, or license to commercialize, or otherwise use the other Party’s Background Intellectual Property outside of this Agreement. Licensing of Background Intellectual Property, if agreed to by the Parties, shall be the subject of separate licensing agreements between the Parties.

The Parties understand that Background Intellectual Property may control or dominate a Subject Invention generated under this Agreement. For any such Subject Invention controlled by Contractor Background Intellectual Property, Contractor agrees to negotiate in good faith with the Sponsor to establish terms of the nonexclusive, commercial license. It is understood by the Sponsor that the Contractor shall have no obligation to grant such a license to the Sponsor and may grant exclusive or nonexclusive commercial licenses to others or sell or assign all or part of the rights in the Background Intellectual Property to any third party(ies), subject to any pre-existing rights held by the Government and obligations to others.

The Parties agree to maintain all unpublished Background Intellectual Property as confidential. Upon termination of this Agreement, each Party agrees to promptly discontinue its use of the other Party’s Background Intellectual Property and will, at the other Party’s request, return or destroy all remaining Background Intellectual Property. In the event the Contractor terminates this Agreement (1) for breach with respect to any material provision thereof; or (2) pursuant to the Termination Article of this Agreement, the Sponsor’s rights to all NREL Background Intellectual Property will automatically terminate.

Each Party has used reasonable efforts to list all relevant Background Intellectual Property, but Intellectual Property may exist that is not identified. Neither Party shall be liable to the other Party because of failure to list Background Intellectual Property.

Agreement with National Renewable Energy Laboratory (NREL)

September 14, 2021

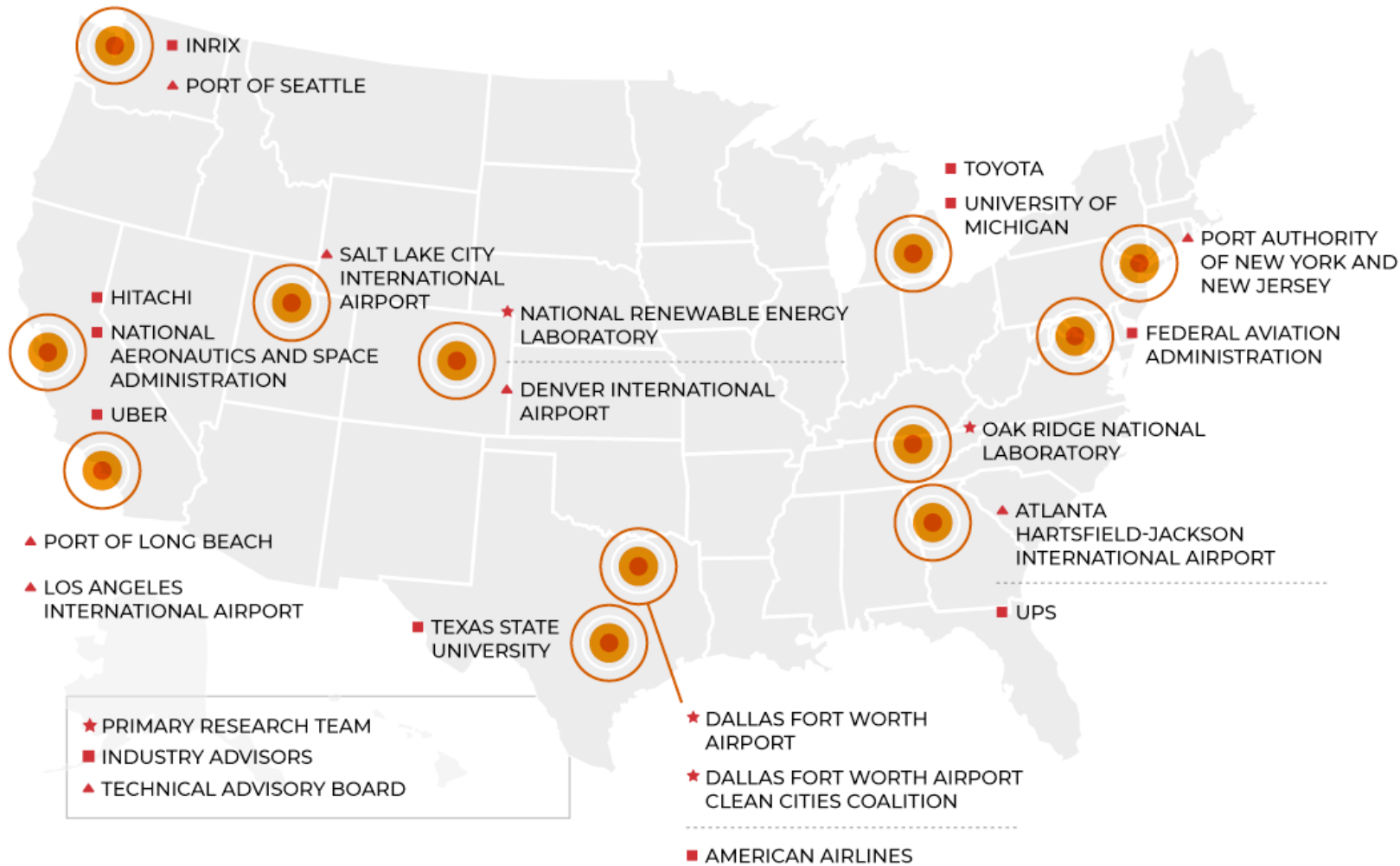
Adrian Down

Peter Lindsay

NREL Athena

- Innovative transportation team that uses data science to evaluate and change travel patterns
- Partner with airports including DFW to analyze:
 - Access fees
 - Shuttle bus optimization
 - Traffic volumes
 - New infrastructure

Athena Partners



[RETURN TO AGENDA](#)





**COMMISSION
AGENDA MEMORANDUM**

Item No. 8g

ACTION ITEM

Date of Meeting September 14, 2021

DATE: August 27, 2021

TO: Stephen P. Metruck, Executive Director

FROM: Tina Soike, Director Engineering Services
Janice Zahn, Assistant Engineering Director, Construction Services

SUBJECT: Elevator Shafts & Vestibules (MC-0319902/WP#U00434/CIP#C800789) Change Order Over 60 Days

ACTION REQUESTED

Request Commission authorization for the Executive Director to execute a change order to Contract MC-0319902 Elevator Shafts & Vestibules to add 233 Calendar days to the Contract duration to reconcile the contractual completion date to the actual completion date.

EXECUTIVE SUMMARY

This change order requires the addition of 233 calendar days to the Contract duration. Commission action is required under the General Delegation of Authority because the Change Order includes a time extension of more than sixty days. No additional project funding is required with this request.

Description of Change Order

This change order revises the contract completion date and establishes the amount of liquidated damages to be collected from the Contractor.

Background

The intent of the Elevator Shafts & Vestibules project was to fully weatherize the parking garage elevator towers above the 8th floor deck in the B and C sections of the garage prior to the installation of new elevators in the B and C shaft towers under a subsequent project. Prior to this project, during periods of heavy or prolonged rain, water penetrating the towers could be seen 4 to 5 floors below. The project also installed fall protection rails on the roof of the B and C towers, eliminated slip/trip hazards, and improved the customer experience in the elevator lobbies.

On June 9, 2020, the Port executed a construction contract with Swinerton Builders in the amount of \$1,838,838.92. The Contract has experienced both cost growth and schedule delays due to design changes and varying site conditions. The contractor also had issues scheduling critical work by subcontractors to meet the required completion date. With the schedule challenges, the Port and the Contractor mutually agreed to suspend the project for 95 days to

avoid poor installation outcomes when installing traffic coating in the winter months and allows the required time to procure materials that had longer than anticipated lead times.

These issues have extended the current Contract completion 233 days beyond the contract specified date of January 5, 2021 to the new contract completion date of August 26, 2021. The Port will issue a change order to include the 95 days of mutually agreed to suspension time. The change order will also include 66 Non-Excusable and Non-Compensable Days and 72 Excusable and Non-Compensable Days. The Change Order also includes Liquidated Damages in the amount of \$85,800.00 for the 66 days of Non-Excusable and Non-Compensable Days. The contractor has not agreed to accept the Liquidated Damages being assessed and they have not yet submitted information which the Port finds compelling justification to support any relief from the assessment of liquidated damages. The current value of the Contract is \$1,967,040.05.

FINANCIAL IMPLICATIONS

There is no additional funding being requested with this action.

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Do not authorize the issuance of the Change Order, continue further negotiations.

Pros:

- (1) Further negotiations may result in a bi-lateral agreement with the Contractor.

Cons:

- (1) Does not start the timelines in the contract to begin the contractually established tiered dispute resolution process. Delays project closeout and increase Port costs to continue negotiations.
- (2) Will require the project to return to Commission for approval of a future change order to resolve the contract days in excess of 60 days.

This is not the recommended alternative.

Alternative 2 – Authorize the issuance of the Change Order to extend the Contract duration by 233 days.

Pros:

- (1) The Port staff has analyzed the schedule delays and established the change order amount and time extension that is fair and reasonable.
- (2) Puts the Contractor on a contractual timeline for providing any additional information which might support relief from Liquidated Damages from being assessed.

Cons:

- (1) Contractor may dispute this change order and it will proceed through the contractual Dispute Resolution process which may result in additional staff time on the project and potential legal expenses.

This is the recommended alternative.

ATTACHMENTS TO THIS REQUEST

None

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

May 8, 2018 – The Commission authorized \$595,000 to design and prepare construction documents for the initial phase of the Parking Garage Elevators Modernization project at the Seattle-Tacoma International Airport.

January 14, 2019 – The Commission authorized \$4,251,500 to prepare design and construction bid documents for Phase 2 of the Parking Garage Elevator Modernization project at Seattle-Tacoma International Airport and use Port of Seattle crews and small works contracts for preliminary work if required.

October 14, 2019 – The Commission authorized \$2,155,000 to advertise and execute a construction contract for the first phase of the Parking Garage Elevator Modernization project at the Seattle-Tacoma International Airport.

RETURN TO AGENDA



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8h

ACTION ITEM

Date of Meeting September 14, 2021

DATE : September 7, 2021

TO: Stephen P. Metruck, Executive Director

FROM: Andy Gregory, Sr. Program Manager, Community Engagement
Ilays Aden, Program Coordinator, Community Engagement

SUBJECT: South King County Fund Community Capacity Building Contract

Amount of this request: \$400,000

Total estimated project cost: \$400,000

ACTION REQUESTED

Request Commission authorization for the Executive Director to advertise and execute a South King County Community Capacity Building Contract to support near-airport communities and develop equity based partnerships with the Port through the South King County Fund (SKCF); and authorize the expenditure of the contract in an amount not-to-exceed \$400,000 from the South King County Fund.

EXECUTIVE SUMMARY

In 2018, the Commission authorized the South King County Fund (SKCF), a \$10 Million program to develop equity-based partnerships with near-airport communities. The original intent of the SKCF was to address airport noise, environmental health, and sustainability. In 2020 in the wake of COVID-19 and the ensuing economic crisis, economic development was added as an approved use.

The goal of the SKCF is to develop equity-based partnerships with near-airport communities. Due to historical practices such as redlining, and the increasing gentrification of South Seattle, these communities have high populations of Black, Indigenous, and People of Color (BIPOC) as well as low-income populations who continue to be pushed farther and farther south. Additionally, near-airport communities of color experience environmental and social injustice, having disproportionately less access to parks and open spaces, increased exposure to pollution, and fewer economic opportunities. COVID-19 has had both severe health and economic impacts on these communities, many of whom work at the airport or in Port-related industries.

Meeting Date: September 14, 2021

The Port is working hard to lead an equitable recovery and where possible, begin to right these historical injustices. The SKCF is a powerful tool to directly address the needs of near-airport BIPOC communities through direct community investment in environmental improvements and paths to equitable economic opportunities. Critical in the success of these investments is developing meaningful and equitable partnerships with non-profits and community groups that serve the diverse South King County communities.

The SKCF invests in communities through three programs- the Environmental Grants Program, Economic Recovery Grants, and WMBE Small Business Development Programs such as Port Gen. These three tracts provide opportunities for a full range of investment, from community improvement projects to non-profit workforce development, and small business assistance. Key to the success of the programs is developing authentic community partnerships and providing the technical assistance needed for organizations to navigate Port procurement processes. Port staff from External Relations, OEDI, Economic Development, and CPO have worked with the support of outside consultants to develop the framework for equitable engagement, application process, and contracting. As consultant contracts are set to expire in December of 2021, staff need a sustaining mechanism of support to continue and expand this critical work.

The Community Capacity Building contract will build upon the formative community engagement work that has been done in the first two years of the SKCF and expand essential services designed to improve access and equity within the fund. The contract will fund the continuation of the Community Liaison program, supporting community members to advise the fund and actively participate in outreach opportunities. In the first year of the fund, community liaisons generated nearly 1/3 of the total applications received for the Environmental Grants Program, 100% of which went to BIPOC-led groups. *It is important to note that the Port cannot directly fund stipends to community liaisons or community grant reviewers and hiring a third-party consultant is critical to the continuation of both of these programs.*

Additionally, the Community Capacity Building contract will fund essential equity and access services including translation, interpretation, wrap-around services for participation in meetings, as well as stipends for community grant reviewers.

Finally, the contract will provide support for capacity building for grassroots non-profits and community groups to help better position them to receive SKCF awards and other contracting opportunities with the Port. Through the development of a mentorship model and a series of annual events, the consultant will provide grant writing, technical assistance, and other administrative supports to build the capacity of community-led grassroots nonprofits to compete for Port and other funding opportunities.

This contract will run from the beginning of 2022 through the end of 2024 and service the remaining three years of the SKCF.

Meeting Date: September 14, 2021

JUSTIFICATION

The work proposed in this contract supports essential functions of the South King County Fund and furthers several Port goals, strategies, and policies including those found in the Century Agenda and several Commission policy directives forming the South King County Fund.

Century Agenda:

Goal 5: Become a Model for Equity, Diversity and Inclusion, (Objective 14: Ensure that all internal and external programs, structures and practices provide equitable opportunities for all)

Ensuring equitable access to the SKCF for diverse, multicultural, multilingual communities is at the heart of this Community Capacity Building contract. While Port staff has some capacity to provide basic language access and community engagement support for the SKCF, near-airport communities are so widespread and diverse, that it is critical we have outside support to do this work well.

Goal 3: Responsibly Invest in the Economic Growth of the Region and all its Communities, (Objective 6: Increase business opportunities for local communities in all port-related industries).

A key component of the Community Capacity Building contract will be supporting grassroots nonprofits from South King County to better position themselves for funding through the SKCF Economic Recovery Program which provides contracts for workforce and small business development in port-related industries.

Motion 2019-10

South King County Fund Principles

2. Prioritize community input to inform Port decision making.

The Community Capacity Building contract will provide funding for Community Grant Reviewers who participate in the grant evaluation process by reading grant materials, participating in applicant interviews, and providing the Port evaluation team with a list of project strengths and weaknesses. Additionally, this work will fund the continuation and expansion of the Community Liaison Program, which helps to guide the development of grant materials, and provides critical community perspectives.

3. Support Port equity policies and practices (Gives underrepresented communities access to opportunities, and uses equity policies to evaluate potential initiatives and establish desired outcomes)

The Community Capacity Building contract will be a direct mechanism to ensure equity in the outreach, engagement, materials development, recruitment and selection of projects both by providing language access through interpretation and translation services as well as prioritizing equitable community engagement with diverse South King County communities.

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Statement in Support of the Motion- develop a long-term equitable engagement mechanism (4. Establish a mechanism for equitable engagement with underrepresented near-airport communities, 5. Build community capacity for engagement with the Port through leadership development, 6. Be responsive and supportive of community interests, 7. Maintain communications with engaged stakeholders through regular communications.)

The Community Capacity Building contract will be the primary implementation model for conducting all the work described above. This work was started by A/V Consulting through a contract that is set to expire in December 2021. Currently, we have an established Community Liaison Model and a group of deeply engaged liaisons that are poised to carry this work into the next phase. Critical in the success of this program is the external support of a consultant who can provide direct liaison support and a contracting mechanism for the project stipends.

Diversity in Contracting

Staff will be contacting the Diversity in Contracting department to develop robust WMBE goals. It is vitally important the successful firm can demonstrate deep cultural competency, connections to BIPOC-led South King County grassroots nonprofits, and be able to provide a variety of language and other access support services. Additionally, they will be responsible for contracting with community members who serve as liaisons to multi-lingual, multi-cultural community groups that have high populations of immigrants and refugees.

DETAILS

Scope of Work

The Port seeks an organization that can provide capacity-building support to diverse near-airport communities to advance the SKCF goal of building equity-based partnerships with the Port. The organization must have deep community ties in South King County, have demonstrated experience in providing culturally competent support to multi-lingual, multi-cultural communities, and have the capacity to support community members through small contracts to provide services to the Port.

Task 1 – Community Liaison and Grant Reviewer Support and Contracting

- Assist Port staff in implementing community liaison program to engage multicultural and multilingual communities in soliciting ideas, developing project plans, and applying for grants.
- Develop individual small sub-contracts for community liaisons and community grant reviewers who provide services to the Port for the South King County Fund.
- Assist the Port in the recruitment of community participants from near-airport multi-cultural, multi-lingual communities.
- Provide mentorship, coaching, skills building, and trainings that support liaison capacity to engage in project related activities. Community-desired skills training topics may include, but are not limited to meeting facilitation, racial equity and anti-oppression,

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project management, budgeting, communications, evaluation, reporting, and navigating Port-specific governance processes.

Task 2 – Grassroots Community Based Organization (CBO) Capacity Building in South King County

- Facilitate recruitment, support, and mentorship for South King County-based grassroots CBOs to be better positioned to partner with the Port.
- Help to connect community projects generated through the liaison process with fiscal sponsors or CBO partners.
- Create opportunities for mentorship with emerging grassroots CBOs and other regional non-profits.

Task 3 – Events Support and Logistics

- Support the planning and execution of networking events and peer to peer learning events to connect prior grant recipients with emerging or grassroots CBOs.
- Organize annual South King County Environmental Forum to support exchange of project ideas and shared learning.
- Organize and facilitate an annual South King County Economic Recovery informational session that helps education CBOs:
 - Port Related Industries
 - Contracting with the Port

Task 4 – Wrap-Around Services for Community and CBO Engagement and Grant Administration

- Identify and coordinate interpreters to provide language support for grant applicants and liaisons.
- Arrange logistics that support liaison, grant review, and CBO partnerships with the Port, including but not limited to coordination and management of participation and meeting logistics such as catering, childcare, notetaking, facilitation, and other tasks associated with equitable engagement best practices.

Task 5 – Materials Development and Translation

- Support SKCF outreach and engagement through the development of communications materials.
- Assist Port staff and community liaisons in the review and co-creation of culturally relevant outreach materials.
- Work with Port communications staff to develop multi-media materials that promote prior projects and future opportunities.
- Develop a virtual interactive story map that visually and geospatially depicts projects funded by SKCF
- Coordinate the translation and community review of all grant and project-related materials.

Meeting Date: September 14, 2021

Schedule

Advertise procurement Q4, 2021
 Hire Firm Q1, 2022
 Contract Completion Q4 2024

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Do not fund Community Capacity Building for SKCF

Cost Implications: \$0

Pros:

- (1) None

Cons:

- (1) Break commitments made to community through the first two years of the SKCF
- (2) Reduce equity and access to the fund without a meaningful model for implementing the Community Liaison and Community Grant Reviewer programs.

This is not the recommended alternative.

Alternative 2 – Approve and execute contract with SKC based consultant or non-profit to conduct the work described above, using funds from the South King County Fund.

Cost Implications: \$400,000

Pros:

- (1) Continue and expand vital community capacity building and equity work for the SKCF
- (2) Provide direct resources and support to South King County communities through stipends and increased access to funding

Cons:

- (1) None

This is the recommended alternative.

Cost Estimate/Authorization Summary

Capital

Expense

Total

	Capital	Expense	Total
COST ESTIMATE			
Original estimate	\$0	\$400,000	\$400,000
AUTHORIZATION			
Previous authorizations	0	0	0
Current request for authorization	0	\$400,000	\$400,000
Total authorizations, including this request	0	\$400,000	\$400,000
Remaining amount to be authorized	\$0	\$0	\$0

Meeting Date: September 14, 2021

Annual Budget Status and Source of Funds

Source of funds is Tax Levy.

Financial Analysis and Summary

Project cost for analysis	\$400,000
Business Unit (BU)	N/A
Effect on business performance (NOI after depreciation)	N/A
IRR/NPV (if relevant)	N/A
CPE Impact	None (as this will be funded by tax levy)

ATTACHMENTS TO THIS REQUEST

- (1) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

June 25, 2019 – Motion 2019-10 South King County Fund Guiding Principles

South King County Fund Community Capacity Building

Andy Gregory, Sr. Program Manager
Community Engagement

Ilays Aden, Program Coordinator
Community Engagement



SKCF Community Goals

- Develop equity-based partnerships
- Create opportunities for BIPOC communities
- Direct resources to under-represented populations
- Improve economic and environmental conditions



Work Done So Far

- Piloted liaison model
- Implemented Community Grant Reviewers
- Translated into multiple languages
- Funded many BIPOC-led community groups



Next Steps

- Continue and expand liaison work
- Continue Community Grant Review
- Build grassroots non-profit capacity
- Create equitable pathways for opportunities in Port-related industries



Proposal

- \$400,000 over 3 years to support community capacity building
- Contracting mechanism for liaisons and grant reviewers
- Essential language interpretation and translation services
- Support capacity building for grassroots non-profits and community groups in South King County
- Events support and logistics
- Wrap-around services
- Materials development

Justification for Spending from SKCF

- The dollars spent on this contract will go directly to the community through stipends and increased access to resources
- Recruitment will target SKC-based BIPOC non-profits and WMBE consultants
- Capacity-building support helps to better position SKC grassroots non-profits to access SKCF and other Port opportunities
- Including translation, interpretation and events support saves ER and OEDI budget dollars and ensures continued funding for these essential support services

Questions?

[RETURN TO AGENDA](#)

ORDER NO. 2021-09
AN ORDER OF THE PORT OF SEATTLE COMMISSION

To support the delivery of a plan to inventory the ecological, land use (including zoning), and recreational site conditions of the 55 (fifty-five) acres of Port-owned land within North SeaTac Park within 30 (thirty) days of this order.

PROPOSED
SEPTEMBER 14, 2021

INTRODUCTION

The Port of Seattle and the city of SeaTac ('SeaTac') have a long history of collaboration on North SeaTac Park. The Port began acquiring the property for noise and safety mitigation starting in 1970. The idea of a park was originally proposed by the Greater Highline Parks Board in 1976. The initial lease with SeaTac for the 195 acres of recreational land was signed in 1994 and, with an agreed-upon extension, will expire in 2070. Since then, the park has become a significant asset and an important airport operational buffer to the surrounding community. Based on amendments to the original lease with SeaTac, 55.58 acres is designated for redevelopment; of those, approximately 44 acres are leased to SeaTac under a 180-day lease revocation clause.

The Joint Advisory Committee (JAC) also intends to participate in the review of North SeaTac park. The JAC is comprised of three SeaTac council members and two Port commissioners that meet regularly, and exchange information related to the 2018 Interlocal Agreement (ILA) between the City of SeaTac and the Port of Seattle, as designated in the ILA. The JAC met in August 2021 and discussed a review of background materials surrounding North SeaTac Park including jurisdiction, leases, and other matters.

As part of the Sustainable Airport Master Plan (SAMP) planning process, an approximate 11-acre portion at the south end of North SeaTac Park was identified for Project L06 (a surface employee parking lot). This portion of North SeaTac Park is largely forested with heavy concentrations of invasive plant species and a system of trails used by bicyclists, runners, and walkers. The Federal Aviation Administration (FAA) recently stated that "...L06 has been removed from the (Port of Seattle's Sustainable Airport Master Plan)," which means this portion of North SeaTac Park is no longer in consideration to become a parking lot. This order requires an inventory of the 55.85 acres of North SeaTac Park habitat and community uses, as well of a review of other background history and related documents. The order requires that no planned actions be taken regarding the future disposition of the park and leased properties until the inventory has been completed.

TEXT OF THE ORDER

The Port of Seattle Commission supports the delivery of a plan by the Executive Director to inventory the attributes of the 55.58-acre parcel within the North SeaTac Park lease, including

environmental (trees, wildlife, habitat), community, and recreational attributes of the 55.58 acres of North SeaTac Park.

The inventory plan should be coordinated in partnership with the city of SeaTac and the Joint Advisory Committee and should reference recent materials developed by the Port and the City, and their contractors, related to uses within the park.

The Port of Seattle Commission also supports the recommendations of the Joint Advisory Committee to restart the “Working Group,” comprised of staff from the city of SeaTac and the Port and to review and confirm the background and jurisdictional materials related to North SeaTac Park.

The Executive Director shall report to the Commission within 30 days with a plan that includes a work program, a timeline, and a cost estimate to complete the inventory and review of background materials, along with partnership terms with SeaTac. No actions shall be taken by the Port in regard to lot L06 until such plan is delivered.

STATEMENT IN SUPPORT OF THE ORDER

Port of Seattle Commissioners are aware that community members’ use North SeaTac Park for biking, running, leisure, and walking. The community also participates in land stewardship efforts by removing invasive plant species and maintaining the landscaping. Community leaders want to further steward the area and groom it for outdoor recreation purposes and as a healthy forest.

Through the Airport Communities Ecology (ACE) Fund, the Port has a precedent of working with airport-communities, nonprofit organizations, and researchers to produce assessments of tree-canopies and forest health conditions in parks and natural areas, as well as to develop plans to restore forests and increase tree canopy. In a similar way, the inventory of resources and uses of North SeaTac Park will help the Port, SeaTac, and local community members gain a better sense of the lay-of-the-land and inform future management decisions.

Producing an inventory of resources and uses within this portion of North SeaTac Park will also help guide the Port in meeting its goals and objectives found in the Century Agenda:

Goal 4: Be the greenest and most energy-efficient port in North America

- Objective 11: Reduce air pollutants and carbon emissions

Goal 6: Be a Highly Effective Public Agency

- Objective 17: Foster an environment of transparency, accountability, respect, leadership, and fairness to give Port staff the tools to be exceptional public servants
- Objective 18: Partner and engage with external stakeholders to build healthy, safe, and equitable communities

RETURN TO AGENDA



**COMMISSION
AGENDA MEMORANDUM**

Item No. 10b

ACTION ITEM

Date of Meeting September 14, 2021

DATE: August 27, 2021

TO: Stephen P. Metruck, Executive Director

FROM: Jon Sloan, Interim Director, Maritime Environment & Sustainability
Jane Dewell, Senior Manager, Marine Stormwater Utility
Srini Pendikatla, Program Manager, Marine Stormwater Utility

SUBJECT: Adoption of 2022 Marine Stormwater Utility Rates

ACTION REQUESTED

Request Commission authorization for the Executive Director to set 2022 Marine Stormwater Utility rates with an increase of 4.6 percent.

EXECUTIVE SUMMARY

The requested authorization will provide a 2022 rate structure to be adopted by the Marine Stormwater Utility (Utility), in support of Utility obligations to protect water quality, rehabilitate Port of Seattle (Port) stormwater assets, and support property managers and tenants in compliance with stormwater permit conditions. The proposed rate is a 4.6 percent increase from 2021. This rate is in line with the previous forecast presented to commission on October 27, 2020.

JUSTIFICATION

A rate increase at the proposed level of 4.6 percent allows the Utility to improve water quality to meet the Port's Century Agenda environmental goals by:

1. meeting all regulatory requirements;
2. investing in streamlining processes to improve efficiency and reduce costs of meeting regulatory obligations; and
3. maintaining significant level of investment to rehabilitate the stormwater system and increase the performance of the system to protect water quality in the Puget Sound.

DETAILS

The Utility was formed in 2014 to enable the Port to provide services, facilities, systems, and programs for surface water and stormwater management and pollution control. The Utility collects stormwater fees from the Port of Seattle, Northwest Seaport Alliance (NWSA), and tenants and reinvests the income into maintaining and upgrading the stormwater infrastructure. Prior to creating the Utility, the stormwater fees paid by the Port and its tenants to the City of Seattle (City) were used to address City priorities and not stormwater needs at

Meeting Date: September 14, 2021

Port facilities. Benefits of Utility work include water quality protection in the Puget Sound as well as providing stormwater infrastructure that better supports Port tenants' stormwater investments.

The Utility rates apply to all Port-owned maritime (non-aviation) property, which includes land managed by the NWSA. Tenants pay stormwater fees based on the area of their leaseholds. The stormwater fees for the remaining unleased land at a facility are paid by the operating business. The operating business is either the NWSA or the specific Port business (Economic Development, Maritime Operations, Cruise, etc.) that oversees the unleased property. Rates are set to recover the cost of operation and maintenance.

The Port Utility rates continue to be on average 20-25 percent lower than the City stormwater rates pending final adoption of City rates by the City Council later this year.

The Utility rates are approved annually by the Commission. The Utility advisory committee reviews and approves rate recommendations before final Commission approval. Projections last year showed a need for a 4.6 percent increase in 2022 which is the recommended change.

Scope of Work

The Utility completed a full system assessment to obtain baseline conditions of the existing stormwater infrastructure at the end of 2019. Over 60 urgent repairs of stormwater infrastructure have been completed since 2016, reducing hazards and allowing the conveyance system to function properly, which benefits overall water quality. Twenty-five tide gates have been installed preventing the flow of tidal waters into the conveyance system, which is both a safety and an infrastructure improvement. Other completed work includes administrative efforts for policy creation, billing, and assisting tenants and Port business units to comply with stormwater regulations.

Several capital projects have been completed to replace poorly functioning stormwater infrastructure and to purchase large equipment (e.g., closed-circuit television truck, vacuum truck) that supports this work. In 2020, the Utility began work on a strategic plan, soliciting feedback from internal Port and external tenant stakeholders, and hosting a two-day workshop with 20 Port participants. The Utility completed the strategic plan in 2021 that is the culmination of effort by staff, stakeholders and customers to establish a vision and mission for the Utility to prioritize our work for the next five years. This plan is intended to help better serve customers and ensure a resilient Utility while supporting the Maritime industry. There are six goals with 17 strategies each with specific tasks to support the guiding principles defined in the mission and vision statements.

The projected expense and capital budgets in 2022 total approximately \$7 million, which will be used to:

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- Perform system assessments to monitor known conditions and be proactive in asset management, i.e. monitor and repair before failure;
- Repair damaged stormwater pipes and infrastructure;
- Perform required regulatory stormwater management activities such as catch basin inspections and sweeping;
- Perform additional stormwater management activities, that enhance water quality protection, such as dock cleaning and plaza washing;
- Evaluate and implement innovations such as green stormwater infrastructure;
- Implement technology to support mobile field inspection solutions;
- Create dashboard for real-time data analysis of Stormwater Infrastructure Asset Management System (SIAMS)
- Create scoring matrix including equity, diversity and inclusion considerations to prioritize infrastructure work
- Implement year 2 of the strategic plan;
- Complete the current capital program portfolio including pipe rehabilitation and drainage improvements; and
- Cover operational and administrative expenses including staff costs, utility taxes and Port allocations.

Rate Criteria

The following criteria were used in considering the proposed 2022 rate:

1. Maintain adequate budget to meet all stormwater regulatory requirements and the Port's Environmental Long-Range Plan and Utility Charter responsibilities including rehabilitation of stormwater infrastructure.
2. Continue adequate funding to maintain and improve a high functioning stormwater system to benefit the water quality of the Puget Sound.
3. Maintain a six-month operations and maintenance expense reserve for financial prudence consistent with Port policy and best practices.
4. Maintain consistent rate over the 5-year projection

Schedule

The Utility advisory committee reviewed and approved the rate recommendation in early August 2021. This committee consists of Port and NWSA operations leaders, real estate/property management leaders and Port finance leaders. The Utility does not explicitly seek external input, consistent with other public drainage utilities, but relies on the committee's expertise. The public notice for Commission approval effectively seeks public input similar to the City Council approval process for municipal utilities. If approved by the Commission, the 2022 rates will be adopted by the Utility effective January 1, 2022. The Utility will notify tenants of the upcoming rate change following adoption. Tenants can dispute billing

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fees at any time by contacting Utility staff. A decision will be made within 60 days of receipt of the dispute.

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Increase rates by 3 percent, the same rate change as for 2021

Cost Implications: Projected revenue in 2022 will be \$6.67M

Pros:

- (1) Lowest impact to tenants, NWSA and Port business units in 2022 than preferred alternative.
- (2) Continue lower rate to support economic recovery.

Cons:

- (1) Higher average rate change path over the next five years compared to preferred alternative, projecting an average of 5.2 percent, estimated at 6.5 percent between 2023 and 2025 and 3.5 percent in 2026 to meet increased capital spending in 2025.
- (2) Not a consistent annual change which may make it more difficult for customers to budget.

This is not the recommended alternative.

Alternative 2 – Increase rates by 4.6 percent per 2020 forecast to Commission

Cost Implications: Project revenue in 2022 will be \$6.77M

Pros:

- (1) Lowest average rate change path over the next five years, projecting an average of 4.6 percent, estimated at 4.6 percent annually through 2026.
- (2) Steady projected rate change over the next five years, consistent with 2020 forecast, allows customers to better plan for budget changes.

Cons:

- (1) Slightly higher fees for tenants, NWSA and Port business units in 2022 than alternative.

This is the recommended alternative.

FINANCIAL IMPLICATIONS

All revenue collected by the Utility is separate from the Port’s general funds and must be spent on or for the benefit of the Port stormwater system. The proposed rate increase has several positive implications including:

- Maintain funding for critical stormwater infrastructure improvements,
- Build a six-month reserve as sound fiscal policy consistent with standard Port procedure,
- Reduce operating costs funded by the Port by funding all stormwater related maintenance activities from business units and select tenants, and
- Keep stormwater Utility rates lower than the City of Seattle.

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ADDITIONAL BACKGROUND

The Utility maintains a separate accounting fund, known as the stormwater utility fund, to conduct all business. This fund is separate from the Port general funds and cannot be used for any purpose other than administering, operating, maintaining, and improving the Port’s stormwater system. The Utility may borrow money from the Port funds as needed, provided that such funds are paid back in full to the originating funds.

ATTACHMENTS TO THIS REQUEST

- (1) Marine Stormwater Utility Strategic Plan 2021-2025
- (2) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS [*\[For information and examples, follow this link.\]*](#)

- October 27, 2020 – The Commission approved Marine Stormwater Utility Rates for 2021.
- October 8, 2019 – The Commission approved Marine Stormwater Utility Rates for 2020.
- October 9, 2018 – The Commission approved Marine Stormwater Utility Rates for 2019.
- November 14, 2017 – The Commission approved Marine Stormwater Utility Rates for 2018.
- November 18, 2014 – Commission approved Resolution No. 3696, as amended, Authorizing Stormwater Utility Formation, included utility rates for 2015 through 2017.

Item No. 10b – attach 1

Meeting Date: September 14, 2021



PORT OF SEATTLE

MARINE STORMWATER UTILITY STRATEGIC PLAN

2021-2025



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ACRONYMS & ABBREVIATIONS

BMP	best management practice
CCTV	closed caption television video
CIP.	capital improvement project
FT	Fishermen’s Terminal
GNET	GraniteNet
GSI.	green stormwater infrastructure
ISGP	Industrial Stormwater General Permit
LMS	Learning Management System
MIC	Maritime Industrial Center
MMPMG	Marine Maintenance Project Management Group
MM SWU	Marine Maintenance Stormwater Utility
MS4	Municipal Separate Storm Sewer System
NWSA.	Northwest Seaport Alliance
O&M.	operation & maintenance
OEDI.	Office of Equity, Diversity and Inclusion
PM.	preventative maintenance
Port	Port of Seattle
SIAMS.	Stormwater Infrastructure Asset Management System
SOP	standard operating procedure
SPMG	Seaport Project Management Group
SPU	Seattle Public Utilities
Utility	Marine Stormwater Utility

EXECUTIVE SUMMARY

The Marine Stormwater Utility (Utility) of the Port of Seattle (Port) was created in 2014 to support meeting or exceeding regulatory requirements for stormwater leaving Port facilities. The Utility operates under a cost recovery model with all revenue used for the stormwater program associated with Port Maritime properties managed by the Port and by the Northwest Seaport Alliance (NWSA). The first five years of Utility work, 2014 to 2019, focused on building the program's financial backbone, creating policies to document and guide the work, and assessing stormwater infrastructure to obtain baseline data and prioritize future work. During these early years, the Port created a cost-effective, innovative, and award-winning utility.

The year 2020 provided an opportunity to reflect on our brief history and plan for the Utility's future. This strategic plan is the culmination of effort by staff, stakeholders and customers to define guiding principles and prioritize our work for the next five years. This plan is intended to move us forward to better serve customers and ensure a resilient Utility while supporting the Maritime industry.

To support our guiding principles, defined in mission and vision statements, this strategic plan includes six goals with 17 strategies, each with specific tasks.

Mission

Supporting a sustainable Maritime Industry with innovative stormwater management that benefits local communities and marine life.

Vision

Leading the way to a clean, healthy and sustainable Puget Sound.

Goals:

The goals provide focus and efficiency for Utility work to benefit customers and the region while bringing financial stability to future rate changes:

1. Maintain and improve stormwater infrastructure
2. Reduce stormwater pollution leaving Port properties
3. Pursue innovation and new technologies
4. Strengthen communications with customers, stakeholders and the community
5. Achieve or exceed compliance related to federal, state and local stormwater regulations and legal agreements
6. Improve processes within the current financial system

We intend to revisit this plan each year as the basis for annual business plans that track our progress, and to review the plan every five years to update or change strategies in furtherance of Utility goals.



INTRODUCTION

The Port of Seattle (Port) is a special purpose government district founded in 1911 to promote economic opportunities and quality of life in the Puget Sound region by advancing trade, travel, commerce, and job creation in an equitable, accountable and environmentally responsible manner. The Port owns and operates properties along the Duwamish waterway, Elliott Bay and the Puget Sound, with some portions managed by the Northwest Seaport Alliance (NWSA). The Port’s vision is to add 100,000 jobs through economic growth, for a total of 300,000 Port-related jobs in the region, while reducing its environmental footprint.

The Marine Stormwater Utility (Utility) was initiated in 2014 under a cost recovery model to support the Port in meeting stringent and expanding Washington State and local stormwater regulations while benefiting regional water quality. The Utility provides services to customers to meet strict local, state and federal stormwater regulations in support of the Maritime industry. Utility staff completed a full assessment of the stormwater infrastructure system in 2019 to obtain baseline data. This information is used to prioritize infrastructure improvements to meet changing needs and add resiliency in an aging system. The Utility installs green stormwater infrastructure where feasible to reduce the impact of stormwater on water quality while adding habitat and beautifying spaces.

In developing this Strategic Plan, the Utility incorporated other Port-wide efforts and priorities associated with core values and equity. For example, the Port created an Office of Equity, Diversity and Inclusion (OEDI) in 2019 to deepen current Port equity efforts and further catalyze organization-wide, systemic change. These efforts were formalized in the Century Agenda to “become a Model for Equity, Diversity, and Inclusion.” The OEDI created a strategic plan to implement these changes, and the Utility includes equity into our decision making and work practices.

In 2020, Utility staff created this Strategic Plan with input from customers and stakeholders to focus future efforts and support the Port as “the Greenest, and Most Energy Efficient Port in North America.”



Tide gate inspection at Terminal 10 outfall

Core Values

In addition to the Port’s values¹, the Utility adds the following as core values for our specific work:

Collaboration	Work jointly and cooperate with stakeholders
Efficiency	Work effectively to save effort and money
Innovation	Create unique stormwater treatment, practices and controls
Integrity	Adhere to a code of conduct that supports high standards
Safety	Ensure staff work in ways that avoid harm, injury and loss

1 Port of Seattle Values www.portseattle.org/careers/who-we-are

FIRST FIVE YEARS, 2014 – 2019

The idea of creating the Utility began in the late 2000s, was actively discussed by Port leadership in 2012 to 2014, and resulted in the official creation on November 25, 2014, by Commission Resolution No. 3696. Much of the foundational work involved finances, legal issues, and coordinating with the City of Seattle (Seattle Public Utilities, SPU) on the separation of what was to become two stormwater systems: one managed by the Port's Utility, and the other by SPU. While the separation was not physical (i.e., the assets are still connected and discharge to local waterbodies), significant time was spent identifying where one system meets the other, resulting in connection points. There are over 120 connections between the two systems, and additional points are added when identified through infrastructure assessments or other means. We meet with SPU annually to review these connections, highlight changes to stormwater systems including necessary legal agreements, and discuss permit issues associated with regional water quality.

One of the first tasks in forming a Utility was creating a financial system to bill and collect revenue so that budgets could be developed to perform the work of improving water quality from Port Maritime properties. Our rate categories mirror SPU's, but at a lower fee and are similar to categories across the industry. The Utility endeavors to provide essential stormwater services to customers at a better value than when our system was a small part of the much larger SPU system. This is possible because we now have dedicated funding for the Port stormwater system's upkeep and operation and maintenance.

A second task of the new Utility was to hire staff to run the program. While Port departments and systems existed to support the stormwater program, subject matter experts in stormwater and utilities were hired to lead the program. Existing field staff from the Port's Marine Maintenance department, who were already performing stormwater regulatory and operation and maintenance inspections, became part of the new Utility team. Utility office and field staff now total 17 (four office staff and 13 field staff). The Utility office staff work closely with Utility field staff to determine and prioritize the Utility's work, which includes performing baseline assessments of the stormwater pipes to better understand the extent and conditions of the system, and building upon existing stormwater work to meet or exceed stormwater regulations.



Stormwater Utility Team, February 2020

STORMWATER UTILITY BY THE NUMBERS

999.6 acres of drainage area

71 miles/374,877 ft of stormwater pipe

2,875 catch basins

223 outfalls

197 tenants (Port & NWSA)

881 manholes

3,455 drains, filters, vaults, etc.

Port of Seattle Properties



1. Salmon Bay Marina
2. Maritime Industrial Center
3. Smith Cove Cruise Terminal
4. World Trade Center
5. Bell Harbor Marina
6. Harbor Island Marina

ACCOMPLISHMENTS

Since the Utility's inception in 2014, the focus has been on improving water quality leaving Port Maritime properties. From meeting regulatory requirements, to maintaining over 70 miles of stormwater pipe assets of various condition, to advancing green stormwater infrastructure projects, the Utility has many accomplishments in its brief history. The Utility is proud of its successes in such a short time including:

- Strong and consistent regulatory compliance
- Complete system condition assessments
- Effective repair, maintenance and capital improvement program
- Innovative water quality techniques and green stormwater infrastructure projects
- Strong education, outreach and operational partnerships
- Financial stewardship and stability



Regulatory - Achieve full compliance year after year

The Port holds a Phase I municipal separate storm sewer system (MS4) permit for Maritime properties that includes facilities managed by the Northwest Seaport Alliance (NWSA) and by tenants. Some tenants hold other types of stormwater permits to cover specialized operations, such as Industrial Stormwater General Permits (ISGPs), boat yard and individual stormwater permits, but are universally covered under the Port's MS4 permit. The Port also holds an ISGP for the Marine Maintenance North Operations site, where vehicle maintenance and equipment cleaning are conducted. The Utility supports work to meet requirements for the MS4 permit, including updating stormwater pollution prevention plans, training staff, educating customers and general public outreach, inspecting and maintaining the MS4 and annual reporting. Utility staff support water quality monitoring for the Port's ISGP-permitted facility. The Washington State Department of Ecology issues these stormwater permits and oversees and inspects sites covered under stormwater permits. The City of Seattle stormwater codes also apply to Port properties within city limits; King County code applies to those not within a city jurisdiction. With a bevy of regulations to follow, we work with customers and review internal operations and projects to ensure regulatory compliance.

The Port's illicit discharge detection and elimination system addresses illicit connections and discharges to the MS4, and spill response and reporting is supported by Marine Maintenance Dispatch 24-hour response line with assistance from Port environmental staff. Utility staff has equipment and expertise to respond to and cleanup spills to the MS4 system.

System Assessment - Completed full condition assessment of stormwater system

Upon inception, a top priority of the Utility was to understand the condition of our assets. To accomplish this, equipment was purchased to conduct closed caption television video (CCTV) recording for all 70 plus miles of stormwater pipes between 2016 and 2019. Every condition found, from a small crack, break or root growing through the pipe wall to a full collapse of the pipe, was assigned a score. The pipe asset then received an overall score based on all the conditions found across the length of the pipe. We completed this system assessment at the end of 2019 and now have baseline condition data for all pipe assets, which provides the basis for prioritizing future work to rehabilitate the stormwater system. Some assets have already met the criteria for rehabilitation, attaining a specific subset of scores from the condition assessment, without any work performed. Some assets will need to be cleaned only while other assets will also need a point repair, say to fix a 10-foot break in a 100-foot long pipe, or entirely replaced to meet the criteria for rehabilitation.



Camera used for pipe assessments



CCTV truck cockpit

Pipe Repair - Over 60 critical pipe repairs completed

As a result of assessments, over 60 pipe segments were identified as requiring immediate repair (score of 90 or above) because they were unusable for conveying stormwater or created safety risks from potential holes forming above voids. Utility staff excavated and repaired these assets as soon as feasible under an urgent repair program. In total, we completed these urgent repairs between 2017 and 2020 to ensure continual and safe Port operations.



Screenshot from assessment video showing full pipe collapse

Outfall Rehabilitation - Installed 21 tide gate valves to protect the system from inundation

Because our stormwater conveyance system directly discharges through outfalls into regional waters, outfall rehabilitation became another important focus of initial work. Some outfalls lie below high tide, and as tides rise, river, bay and sound waters can enter the stormwater system. This causes two major concerns: the system can flood parts of a facility, and corrosion and biological growth increases within the pipes. To limit tidal influence on the stormwater system, the Utility installed tide gate valves (or tide valves) on outfalls. A tide valve remains closed, keeping receiving waters from entering the system, and only opens when pressure builds from upstream flows. Through 2020, we installed 21 tide valves throughout the stormwater system.



Pipe repair

Green Stormwater Infrastructure – Delivering resiliency to stormwater management

The Utility strives to go above and beyond stormwater regulations by incorporating green stormwater infrastructure and treatment systems in areas where they are not required by regulation or codes. The Port also participates in Salmon-Safe third-party certification for Maritime parks and public access areas and has been certified since 2008. Stormwater and habitat projects are two important elements in maintaining Salmon-Safe certification, a leading movement to help Pacific salmon thrive.



Installing tide valve

Terminal 86 Bio-filtration Facility – The Utility’s first bio-filtration facility

A ponding problem on the Centennial Park bike and pedestrian trail near Terminal 86 provided the opportunity to develop the Utility’s first in-ground bio-filtration (rain garden) facility. Rather than simply re-grading and altering a stormwater pipe to reduce ponding at a busy junction in the trail, the Utility evaluated and installed a small rain garden to remove potential pollutants. This added bio-filtration treatment to the stormwater infrastructure, and since it is in a busy public area, provides a visible location for educational signage about rain garden functions.



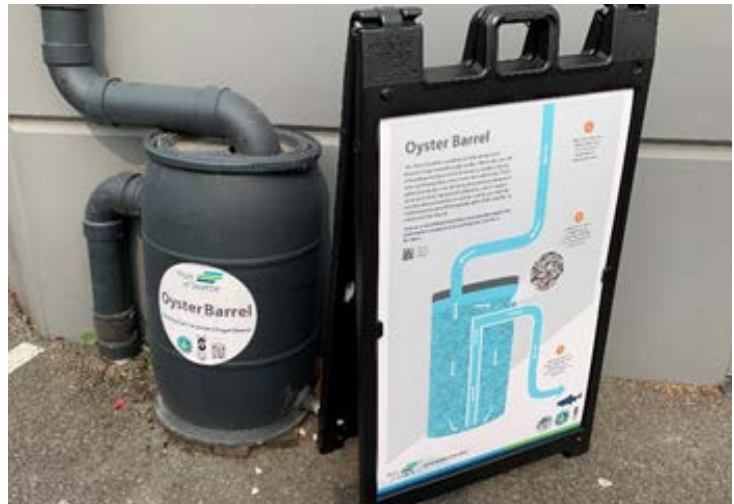
Bio-filtration facility along Centennial Park



Signage posted adjacent to Rain garden explaining benefits to the environment

Terminal 102 Downspout Oyster Shell Treatment Barrels – Innovative solution to treat stormwater pollution

Oyster shells, which bind heavy metals such as zinc and copper, are used to treat stormwater from roof runoff at Terminal 102 commercial buildings. Zinc and copper are detrimental to aquatic life, particularly endangered salmon. The oyster shells are contained in barrels connected to roof downspouts, and as stormwater flows through, heavy metals and sediment are captured. The oyster shells are changed out each year since effectiveness decreases over time. Typically, newly purchased shells are used, but in September 2020, oyster shells that had been in the barrels were ‘refreshed,’ employing a media washing machine invented by Utility staff and built by Marine Maintenance. To evaluate treatment effectiveness, water samples are collected, and pollutant levels analyzed from water that enters and leaves the barrels. Data show a 30% to 50% reduction in metal concentrations.



Oyster Barrel and sign at T102

In addition to Terminal 102, oyster shells are used in stormwater treatment at Terminal 46, Marine Maintenance North Operations and Terminal 5 Transit Shed. The media washing machine helps reduce the amount of new oyster shells purchased and increases longevity of the shells in use.

Splash Boxx – Portable planter boxes for commercial and industrial locations

In 2014, the Port installed two ‘Splash Boxx’® systems at Terminal 91 to treat runoff from a building with a galvanized roof. Galvanized metal may leach zinc. The Splash Boxx bio-retention system was initially studied as part of a King County Conservation District funded ‘Moving Green Infrastructure Forward Project.’ In 2019, the Port moved these boxes to treat stormwater at two locations: a roof at Maritime Industrial Center (MIC), and the Marine Maintenance Horton Street south parking lot. This placement of the two systems allows comparison of bio-retention media treatment from different use areas. The soil media is a custom mix of sand, wood chips, and biochar and planted with native, drought tolerant plants. The inflows and outflows are monitored to determine removal effectiveness of zinc, copper, and turbidity. Initial Splash Boxx results reflect 60 to 70% reductions in copper and 85 to 90% reductions in zinc. Average reductions in turbidity for the longer established system were 70%.



Flowers growing in the Splash Boxx



Splash Boxx at MIC

Awards

The Utility won two American Association of Port Authority environmental awards in 2017 and 2019. In 2017, we won the Comprehensive Environmental Management award for the “Formation and Operation of the Marine Stormwater Utility,” which summarized the efforts to create the Utility and the first few years of work. In 2019, we won the Environmental Enhancement category award of excellence for the “Innovative Stormwater Operations and Treatment Techniques.” This application detailed three techniques developed by the Utility, and by the Port before the Utility was created, including a dock scrubber that recovers wash water with a vacuum, oyster shell treatment barrels to treat roof runoff, and the media washing machine that refreshes used oyster shells for reuse in stormwater treatment systems.

The media washing machine also won an internal port-wide innovation award for 2019 quarters one and two, and the annual 2019 award and the people’s choice award by Port employees.



Dock scrubber



Media washing Machine



PRIORITIES

The primary focus of the Utility has been to improve water quality in support of the Port's Century Agenda strategy to be the greenest, and most energy efficient port in North America. Our vision and mission continue with and align with this aspirational goal. In order to be the greenest Port, the Utility has prioritized five key areas: Infrastructure; Sustainability; Climate Change; Equity, Diversity and Inclusion; and Habitat.



Infrastructure

One basic function of the Utility is to move stormwater runoff from facilities through conveyance systems to receiving waters. A complex infrastructure of pipes and structures performs this essential function throughout Port facilities. The first step was to understand the details of the system, including pipe locations, characteristics and conditions, from our completed assessment program. The next step will be to rehabilitate the aging system over time to continue this function but also add components such as green stormwater infrastructure and innovative treatment to remove pollutants and continually improve regional water quality. As a core value, innovation is at the root of our work and helps to meet our vision of leading the way to a clean, healthy and sustainable Puget Sound.

To rehabilitate our stormwater system as guided by the Port's Century Agenda, we will need to repair or replace many existing stormwater pipes through excavation or trenchless technologies, install new stormwater systems, add treatment systems, install green stormwater infrastructure and continue innovating. This work will continue for years to come but prioritization using the data from the assessment program, as well as continuing reassessments will be the key to proactively upgrade the infrastructure.

Sustainability Framework

In 2019, the Port developed a sustainable project framework to evaluate all Port capital improvement projects. The framework includes lifecycle consideration for energy, habitat, waste, and stormwater. Capital projects are screened and placed into three different categories that apply increasing levels of effort to maximize sustainability and environmental benefit. Stormwater is one of eight categories in the framework and Utility staff help evaluate projects and participate on project review teams to ensure compliance with regulations and approve of changes to the stormwater system.

Climate Change/Resilience Planning

Climate change and resilience are complex and emerging issues, and the Port has identified this as a high priority for the future. The Port drafted a climate adaptation plan in 2015² to address rising sea levels and intensifying storms and fulfill the Port's role as a steward of the environment and maritime industry. One key result is that the stormwater system is not currently capable of handling sea level rise. The Utility will update the plan to address specific elements for stormwater infrastructure adaptation and resilience considering regional efforts by the City of Seattle, King County, and Washington state. Another element of the Port's climate change planning is greenhouse gas reduction targets that align with the Paris Climate Agreement. These targets include an interim goal to cut emissions in half by 2030. The targets also entail a long-range commitment to deeply "decarbonize" maritime activity and make Port operations carbon neutral or carbon negative by 2050.

Evaluating how climate change will impact our stormwater infrastructure, water quality, and other Port concerns and to plan accordingly is a long-term endeavor. Phasing in system resilience will require in-depth analysis and access to data being compiled by other local, state, federal and international entities. We will collaborate with other Ports and government organizations grappling with this to maximize efforts in addressing the impacts of climate change on coastal communities and the maritime industry. We don't have the answers on climate change or sea level rise, but we can ensure our system is built to adapt to changes to continue to serve our customers and the maritime industry.

2 Port of Seattle. June 19, 2015. Climate Change Adaptation Plan for Port of Seattle Waterfront Properties.

Equity, Diversity and Inclusion

Understanding how the Utility can address the needs of diverse and historically marginalized communities, from underfunded neighborhoods in the Duwamish Valley to Indigenous peoples who have treaty rights to lands and waters that the Port abuts, is a long-term endeavor. Water quality and pollution prevention are important issues for the region, and Black, Indigenous, and other communities of color often suffer disproportionately from pollution. The University of Washington Department of Environmental and Occupational Health Sciences has created a map³ showing health disparities based on living and economic conditions. Identifying opportunities to improve water quality for these communities will involve direct community engagement, some of which is occurring through the Port’s habitat, energy and community enhancement projects.

The Port’s OEDI is developing an equity tool to look at historically marginalized communities within the King County region. This tool evaluates the entire region and provides a score for each census block group. This score gives a numeric value to the disparities within the community. Utility staff will collaborate with the OEDI team to ensure that equity continues to develop as an underlying principle of the work we do.

Habitat Collaboration

While the Port has a dedicated habitat team working to restore degraded sites, address habitat and remediation mitigation requirements, and create shared spaces to benefit people and the environment, there are potential interconnections between habitat and stormwater efforts. The Utility and habitat teams collaborate on ongoing and new opportunities that include Salmon-Safe recertification and potential for stormwater-habitat interface and benefits at Port facilities.



ṭuṖəlalɥ Village Park and Shoreline Habitat before



after

3 <https://deohs.washington.edu/washington-environmental-health-disparities-map-project>



Duwamish River People's Park and Shoreline Habitat Restoration



Replacing stormwater treatment media in vaults at Terminal 46

UTILITY RATES

The Utility operates on a cost recovery model, and the revenues fund the entirety of the stormwater regulatory and infrastructure program. Bills paid by customers are invested in infrastructure and services to improve water quality, including daily operations, regulatory maintenance, infrastructure assessment and repair, and capital projects including green infrastructure.

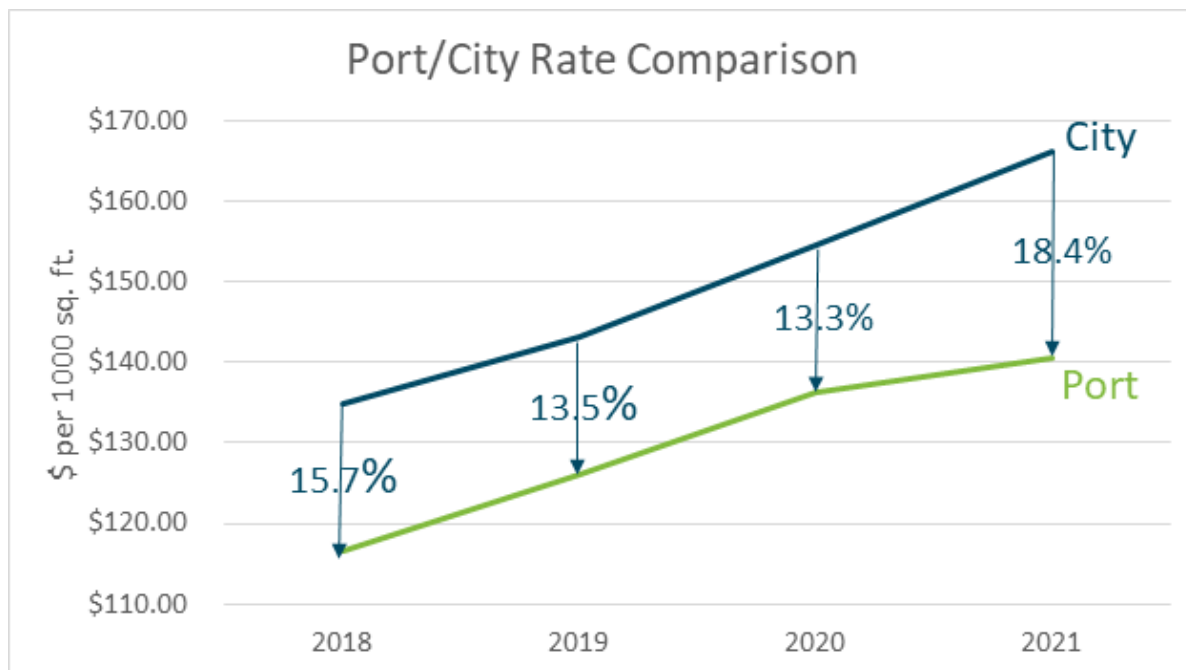


Rates are adjusted each year by reviewing the baseline budget against forecasted spending, typically five years out, and anticipating revenue for the current year. Planning work for the coming year includes new capital projects, increased levels of service to benefit customers, and cost reductions from streamlining operations. A new rate is calculated for this total expenditure. The forecast budget is presented to the Utility’s Rate Advisory Committee, which includes Port and NWSA executives, who provide valuable insight and represent Maritime business operations and tenant interests. The Committee provides recommendations for a proposed Utility rate, which is then presented to the Port Commission for final approval before adopting new rates for the coming year.

The table below shows the projected rate path approved in 2020 for the next five years. The rates are subject to Port of Seattle Commission approval annually.

RATE PATH	2021	2022	2023	2024	2025	AVERAGE
SWU Rate Increase	3%	4.6%	4.6%	4.6%	4.6%	4.28%

Since the inception of the Utility, it is a priority to keep our rates lower than SPU to provide customers financial savings while delivering additional services such as proactive infrastructure assessment and repair. The Utility is now able to maintain and improve stormwater infrastructure, which benefits regional water quality, at a lower rate than we previously paid SPU. The graph below shows a comparison of the drainage rates for the “very heavy” rate category for the Port’s Utility and SPU.



GOALS AND STRATEGIES

The Utility began work on a strategic plan in late 2019. The effort evolved over six months with assistance from a consultant, Veda Environmental, and a core team that planned and developed material for an internal workshop. The purpose of the workshop was to engage stakeholders in creating the strategic vision, mission, and to identifying priority goals to guide the work during the lifetime of this plan in support of the vision and mission for the future.



To gather information and lay groundwork for the workshop, two surveys were developed to gather input from stakeholders: one for Port Utility and environmental staff, and another for external customers and Port real estate staff. The overall response rate was 45% and this information provided key input for workshop materials. The workshop was convened virtually in August 2020 and involved two three-hour sessions on separate days. The workshop included 16 internal stakeholders from across the Port discussing all aspects of the Utility, and ultimately provided the basis for this document.

In developing the Utility goals, considerations included overall sustainability and tie-in with the Port's Sustainability Framework and Climate Change planning and adaptation. Common themes included innovation and importance of a skilled and knowledgeable team with thorough understanding of stormwater infrastructure and regulations. During the workshops, Port staff contributed to defining six goals in four categories: 1. Operations, Infrastructure & Innovation; 2. Relationships, Collaboration & Communication; 3. Regulatory; and 4. Financial. Seventeen strategies with associated tasks were identified to support each goal. The six goals with 17 strategies are listed below, with detailed tasks, measures and timeframes in the following table. The timeframe refers to the year the associated task will be started with items listed as "annually" starting in 2021. Outcome is included with the intention of revisiting this plan annually to update progress against the measure in addition to directing and/or adding new tasks.

1. Operations, Infrastructure & Innovation

Asset management is a crucial Utility tool for improving water quality. Three goals and six strategies focus on infrastructure maintenance, repair and installation while highlighting sustainability and innovation. Applying a sustainability lens to our work and building resilient infrastructure can support the Utility and the Port in adapting to climate change.

1. Maintain and improve stormwater infrastructure

Strategies:

1. Bring all infrastructure to rehabilitated status
2. Develop robust asset management program including continual assessment and reassessment of infrastructure
3. Build a resilient system and plan for future climate change adaptation

2. Reduce stormwater pollution leaving Port properties

Strategies:

4. Increase awareness of best management practices (BMPs) across all Maritime properties
5. Expand use of BMPs across all Maritime properties
6. Streamline process to more rapidly respond to spills

3. Pursue innovation and new technologies

Strategies:

7. Support piloting and advancing new technology and creative solutions

2. Relationships, Collaboration & Communication

We cannot operate effectively without relationships with customers, community members, the broader Port and NWSA staff and stakeholders.

4. Strengthen communications with customers, stakeholders and the community

Strategies:

8. Improve outward facing communication
9. Improve public and tenant access to information
10. Improve internal Port and NWSA communications

3. Regulatory

Meeting regulatory requirements is foundational to our work, and exceeding permit requirements supports our mission.

5. Achieve or exceed compliance related to federal, state and local stormwater regulations and legal agreements

Strategies:

11. Ensure compliance with permit conditions
12. Streamline tracking and reporting processes for permit compliance
13. Expand Port staff awareness of regulations
14. Pursue activities that exceed permit compliance, serve customer needs and protect water quality

4. Financial

We strive to provide reliable and efficient services to our customers to meet regulations while investing in infrastructure to ensure future compliance. One hundred percent of Utility revenue is used to fund Utility programs.

6. Improve processes within the current financial system

Strategies:

15. Increase transparency in billing and spending
16. Improve accountable and fiscally responsible programs
17. Simplify Utility financial reporting structure

Category 1. Operations, Infrastructure & Innovation			
Goal 1. Maintain and improve stormwater infrastructure			
Strategy #1: Bring all infrastructure to rehabilitated status			
Tasks	Measure	Timeframe	Outcome
Increase coordination with SPMG and MMPMG on projects relating to storm-water	Streamlined processes to improve coordination with projects that involve storm-water infrastructure changes – 100% of proposed projects reviewed	Annually	
Rehabilitate 75% of stormwater system by 2035, annual goal	33% rehabilitated (GNET score of less than 30 and cleaned with a month)	2021	
Complete infrastructure upgrade CIP work	Complete T18 outfall project	2021	
	Complete projects in other CIPs	Annually	
Complete contracting for Cure-In-Place Pipe work to support rehabilitation	Executed contract	2021	
Create priority list for infrastructure work including capital program and expense repairs	Priority list in use	2021	
Obtain the grout trailer for repair work	Available and ready to use	2021	
Create dashboard for real-time data analysis of Stormwater Infrastructure Asset Management System (SIAMS)	Dashboard in use	2022	
Create scoring matrix including equity, diversity and inclusion considerations to prioritize infrastructure work	Matrix in use	2022-2023	
Create specification for pipe abandonment	Complete specification	2023-2024	
Implement abandoned pipe protocol per specification	Conduct pipe lateral sealing	2025	
Strategy #2: Develop robust asset management program including continual assessment and reassessment of infrastructure			
Tasks	Measure	Timeframe	Outcome
Create and implement policy to address pipe reassessments	Create initial preventative maintenance (PM) schedule	2021	
Complete SIAMS plan	Full plan document	2021-2022	
Reroute infrastructure and add cleanouts to improve accessibility to infrastructure	Identify locations needing improved accessibility	2023	
Complete assessment of complex, inaccessible areas	CCTV video of 100% of pipes	2025	

Strategy #3: Build a resilient system and plan for future climate change adaptation			
Tasks	Measure	Timeframe	Outcome
Conduct study to evaluate impact of climate change on system	Complete study	2023	
Integrate climate resiliency findings into SIAMS	Updated SIAMS plan with climate change planning impact	2024-2025	
Collaborate with municipalities and stakeholders on regional actions	Initiate partnerships and participate in annual meetings	2025	
Goal 2. Reduce stormwater pollution leaving Port properties			
Strategy #4: Increase awareness of BMPs across all Maritime properties			
Tasks	Measure	Timeframe	Outcome
Assess gaps in current BMP training process	Identify target audiences	Annually starting in 2021	
Determine priority list of facilities for BMP training rollout	Create annual list of priority facilities	Annually starting in 2022	
Conduct staff education workshops on BMPs	Complete Staff Brownbag(s)	Annually starting in 2022	
Create scoring matrix for tenants with equity, diversity and inclusion considerations and use to prioritize tenant BMP training	Create annual list of priority tenants	Annually starting in 2022	
Conduct tenant education workshops on BMPs	Complete Tenant Workshop(s)	Annually starting in 2023	
Strategy #5: Expand use of BMPs across all Maritime properties			
Tasks	Measure	Timeframe	Outcome
Provide tenant access to storage BMPs	Secondary containment, tents, covers, etc. available for rent	2021-2022	
Increase maintenance schedules	Additional PMs to perform work	2023	
Identify facilities for additional BMP implementation	List of facilities and appropriate BMP(s) for each	2024	
Strategy #6: Streamline process to more rapidly respond to spills			
Tasks	Measure	Timeframe	Outcome
Train staff in spill reporting protocols	Complete training for relevant staff	Annually	
Develop plan for funding spill investigations, cleanup and reporting	Complete funding plan for spill response and cleanup	2021	
Create uniform procedures for spill reporting across all Port properties	Complete SOP for spill reporting	2021	

Goal 3. Pursue innovation and new technologies

Strategy #7: Support piloting and advancing new technology and creative solutions

Tasks	Measure	Timeframe	Outcome
Collaborate on innovations with other stakeholders, municipalities and ports	Share information with stakeholders	Annually	
Develop production line for oyster shell use and reuse	Completed and working production line in use	2022	
Select and test (pilot program) technologies identified by Pure Blue	1 - 2 technologies in place	2022	
Identify areas for innovative/green stormwater treatment opportunities on Port properties & facilities	Identify 2-3 high priority opportunities	2022	
Tie into WA Maritime Blue (innovation center at FT) accelerator program	Collaboration with new businesses	2023	
Install new GSI CIP project(s)	Complete installation	2024	



Bell Harbor Marina at Pier 66

Category 2. Relationships, Collaboration & Communication

Goal 4. Strengthen communications with customers, stakeholders and the community

Strategy #8: Improve outward facing communication

Tasks	Measure	Timeframe	Outcome
Continue Salmon-Safe parks and public access areas certification	Meet annual milestones	Annually	
Apply for environmental awards	Complete applications	Bi-annually	
Present at conferences to enhance visibility	Completed presentation	Bi-annually	
Demonstrate the work / benefits of the Utility to near-port neighbors/community	Exhibit at community events	Annually starting in 2022	
Sponsor art project to paint Splash Boxxes	Completed art project	2022	
Enhance visibility of the benefits of SWU in local communities	Social media posts	Quarterly starting in 2022	
	New signage installed	2024	
	Stormwater and water quality integrated in Port communications	2024	

Strategy #9: Improve public and tenant access to information

Tasks	Measure	Timeframe	Outcome
Update webpage with SWU info	Updated website live	Annually	
Identify equity, diversity and inclusion benefits of stormwater program	List of elements that may benefit BIPOC and underrepresented populations	2022	
Outreach and education on stormwater programs to Duwamish community	1 - 2 events per year	Annually starting in 2023	

Strategy #10: Improve internal Port and NWSA communications

Tasks	Measure	Timeframe	Outcome
Attend other department meetings to describe SWU work	Attend 1 - 2 departments per year	Annually	
Coordinate with NWSA stakeholders	Quarterly meetings	Annually	
Coordinate with MM SWU crews	Monthly meetings	Annually	
Coordinate with consultant team(s)	Monthly meetings	Annually	
Expand/improve current tenant move in-move out agreement system	Create and implement checklist for tenant turnover	2021	
Habitat and stormwater collaboration	T25 habitat project coordination	2021-2022	
	Other habitat opportunities	2024	

Category 3. Regulatory			
Goal 5. Achieve or exceed compliance related to federal, state and local stormwater regulations and legal agreements			
<i>Strategy #11: Ensure compliance with permit conditions</i>			
Tasks	Measure	Timeframe	Outcome
Conduct all required inspections and actions for MS4 permit	All requirements completed and documented in annual report	Annually	
Fulfill all requirements for Industrial permit	All requirements completed and documented in annual report	Annually	
<i>Strategy #12: Streamline tracking and reporting processes for permit compliance</i>			
Tasks	Measure	Timeframe	Outcome
Finalize and configure electronic field data collection software	Purchase and configuration of software	2021	
Implement electronic field data collection software	Field crews use new software	2022	
<i>Strategy #13: Expand Port staff awareness of regulations</i>			
Tasks	Measure	Timeframe	Outcome
Develop onboarding plan for new staff	New staff complete training within first 3 months	Annually	
Develop online/LMS training for staff	Training launched in LMS	2021	
Track stormwater trainings for all required staff	Annual training taken by 100% of all required staff	2021	
<i>Strategy #14: Pursue activities that exceed permit compliance, serve customer needs and protect water quality</i>			
Tasks	Measure	Timeframe	Outcome
Define activities that exceed compliance with MS4 permit	Checklist of elements that exceed permit compliance	2021	
Develop craft specific handbooks that go beyond O&M manual requirements	Finalize handbooks to each craft	2021	
Implement craft specific orientation to new handbook	Complete 30-min craft specific overviews of handbook	2022	

Category 4. Financial

Goal 6. Improve processes within the current financial system

Strategy #15: Increase transparency in billing and spending			
Tasks	Measure	Timeframe	Outcome
Quarterly summary report of SWU work performed	Quarterly summary completed	Annually starting in 2022	
Develop Utility Rate table for 2022 with 5-year forecast	Complete table	2021	
Determine if credits can be given to tenants for stormwater improvements	Complete research; if feasible, complete policy	2021	
Create dashboard for real-time data analysis of billing information	Dashboard in use	2021	
Monthly billing report out to BU	Monthly report completed	Annually starting in 2022	
Strategy #16: Improve accountable and fiscally responsible programs			
Tasks	Measure	Timeframe	Outcome
Create auditable revenue system	Updated revenue system with simplified connection to Business Unit expense	2022	
Incorporate equity, diversity and inclusion elements into contract decisions	Meet Port goals	2021	
Develop contingency for allocations	Cash balance available in stormwater fund	2022	
Build 6-month O & M reserve per Port policy	Cash balance available in stormwater fund	2023	
Develop capital reserve	Cash balance available in stormwater fund	2025	
Strategy #17: Simplify Utility financial reporting structure			
Tasks	Measure	Timeframe	Outcome
Evaluate subclass structure	Recommend changes to Finance	2022	
Eliminate subclasses	Reduce and/or combine subclasses	2023	
Automate and simplify rate model	Embedded rate model in budget system	2023	



**PORT OF SEATTLE
COMMISSIONERS**

Stephanie Bowman

Ryan Calkins

Sam Cho

Fred Felleman

Peter Steinbrueck

EXECUTIVE DIRECTOR

Stephen P. Metruck

Port of Seattle

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Marine Stormwater Utility 2022 Rate Adoption

September 14, 2021

Jane Dewell, Senior Manager, Marine Stormwater Utility

Srini Pendikarla, Program Manager, Marine Stormwater Utility

Stormwater Utility Rate Recommendation

- Recommend 4.6% rate increase in 2022 guided by Advisory Steering Committee (same as 2020 forecast)
- Rate criteria includes:
 - Maintain adequate budget to meet Port's Long-range Plan and Utility Charter responsibilities
 - Continue investment to maintain and improve a high functioning stormwater system to protect water quality
 - Maintain a 6-month operations and maintenance reserve consistent with Port policy and best practices
 - Maintain consistent rate over the 5-year projection

Stormwater Utility Operating Budget

\$ in 000's	2020 Actual	2021 Approved Budget	2021 Forecast	2022 Proposed Budget
Revenue	6,374	6,464	6,464	6,768
Expenses				
SWU Admin	2,353	2,453	2,144	2,647
Maintenance	1,696	3,635	2,726	3,302
Total Expense	4,234	6,088	4,870	5,949
Capital Program	326	1,400	1,114	1,000

2022 Proposed Annual Rates

Stormwater Rate Category	City 2022 <i>Rates are shown as</i>	Port 2022 <i>\$ per 1000 sq. ft.</i>	Port rate % lower than City
Undeveloped (0 – 15% Impervious)			
Regular Impact	\$53.75	\$41.23	30.35%
Low Impact	\$31.98	\$24.14	32.48%
Light (16 – 35% Impervious)			
Regular Impact	\$80.28	\$63.76	25.91%
Low Impact	\$62.85	\$50.15	25.32%
Medium (36 – 65% Impervious)			
Regular Impact	\$114.19	\$92.61	23.31%
Low Impact	\$92.31	\$74.49	23.92%
Heavy (66 – 85% Impervious)	\$151.14	\$124.25	21.64%
Very Heavy (86 – 100% Impervious)	\$180.07	\$146.97	22.52%

Appendix

Action Requested

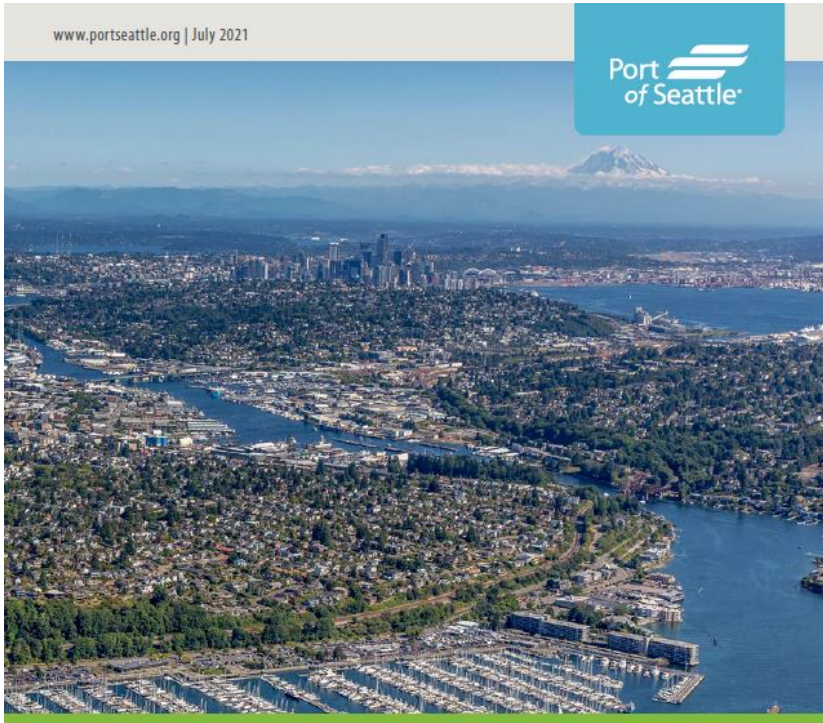
- Request Commission authorization for the Executive Director to set 2022 Marine Stormwater Utility rates with an increase of 4.6 percent



Utility History & Highlights

- 2014 – Stormwater Utility Charter adopted by Commission
- 2016-2021 – Completed 60 urgent repairs and installed 25 tide gates
- 2019 – Completed full stormwater system assessment - 70 mi
- 2020 – Utility funds all stormwater regulatory work
- 2021
 - Completed infrastructure projects: T18 outfalls, T25 oil-water separator, pipe replacements
 - Completed first strategic plan identifying guiding principles and future work for 2021-2025

Strategic Plan



PORT OF SEATTLE

MARINE STORMWATER UTILITY STRATEGIC PLAN 2021-2025

Mission

Supporting a sustainable Maritime Industry with innovative stormwater management that benefits local communities and marine life.

Goals:

The goals provide focus and efficiency for Utility work to benefit customers and the region while bringing financial stability to future rate changes:

1. Maintain and improve stormwater infrastructure
2. Reduce stormwater pollution leaving Port properties
3. Pursue innovation and new technologies
4. Strengthen communications with customers, stakeholders and the community
5. Achieve or exceed compliance related to federal, state and local stormwater regulations and legal agreements
6. Improve processes within the current financial system

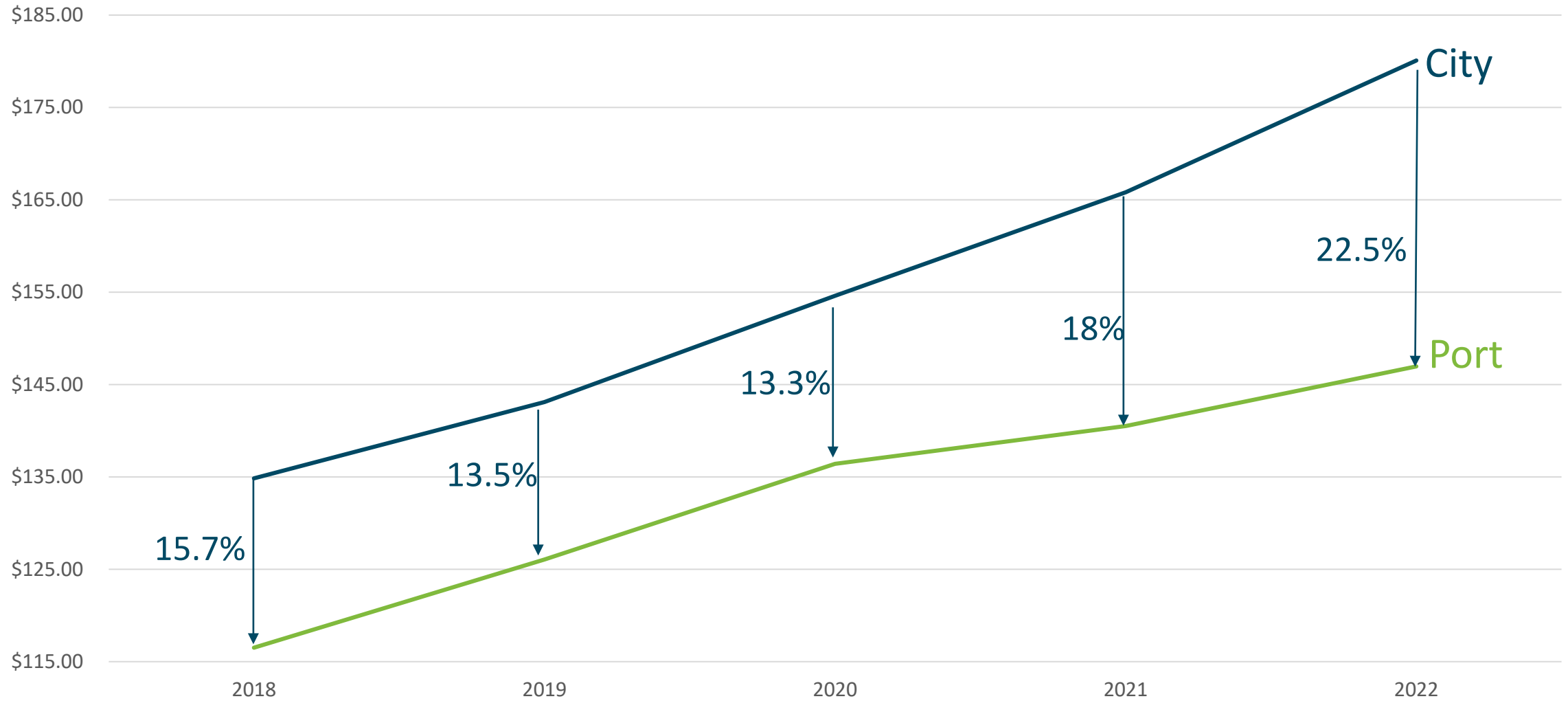
Vision

Leading the way to a clean, healthy and sustainable Puget Sound.

2022 Proposed Budget Summary

- Capital Budget of \$1M
 - Pipe rehabilitation (replacement and cure-in-place lining)
 - Drainage improvements
- Administrative budget of \$2.6M
 - Staff costs
 - Consultant support
 - Utility taxes
 - Allocations and overhead
- Maintenance Budget of \$3.3M
 - Pipe re-assessments and repair
 - Dock and plaza cleaning
 - Catch basin inspections and clean out
 - Roof inspections
 - Inspections of tide gates and municipal permit treatment systems
 - Sweeping municipal permit properties

Port Rates Continue Below City Rates



Tenant Monthly Impact of 4.6% Increase

- Commercial Tenant
 - Suite within Fishermen's Terminal Center Building (2,260 sq ft)
 - Increase of \$1.06 per month on a \$25.66 bill
- Industrial Tenant
 - Large container facility (2 million sq ft)
 - Increase of \$1,109 per month on a \$24,112 bill

Request Adoption of 2022 Rate

Questions?





COMMISSION
AGENDA MEMORANDUM

Item No. 11a

BRIEFING ITEM

Date of Meeting September 14, 2021

DATE: September 14, 2021
TO: Stephen P. Metruck, Executive Director
FROM: Alison Beason, Senior Policy Data Analyst, Office of Equity, Diversity, and Inclusion
SUBJECT: **Equity Index Briefing**

EXECUTIVE SUMMARY

The Port of Seattle’s Equity Index is an open-source interactive map that displays a visual representation of social and environmental disparities across King County. Using 21 indicators within four categories, the Equity Index illustrates the degree to which different communities experience pollution burden and social inequities. The categories were selected in alignment with Century Agenda Goals and the indicators within each category were identified by a cross-departmental working group.

Across the region there are significant variations in pollution exposure, access to economic opportunities, and the overall standard of living. The Equity Index was created as a tool for the Port to understand the variations that exist within the region and use that information to direct resources towards the areas of greatest need. The Index will be used by staff to equitably guide funding decisions and broadly inform policy decisions.

BACKGROUND

The Equity Index was created with the initial intent to equitably guide funding decisions for the South King County Fund, serving as a component of the criteria for applications. Beyond the South King County Fund, the Index will be used to visualize variations in exposure to pollution, access to economic opportunity, and health outcomes to direct resources towards the areas of greatest need. The first Equity Index will be published in September and will be updated annually to provide the accurate data.

Categories and Indicators

There are four categories of indicators there were selected in alignment with Century Agenda Goals. The definitions for these categories were created by a cross-departmental working group. The following are the category definitions and Century Agenda Goals they are aligned to:

Economy	Definition	Indicators that demonstrate the opportunity for the creation, retention, transfer, and accumulation of wealth within a community for residents, businesses, and community stakeholders (e.g. poverty rate, median household income, educational attainment).
	Century Agenda Goal	Goal #3 Responsibly invest in the economic growth of the region and all its communities.
Livability	Definition	Indicators that demonstrate a safe and healthy standard of living (e.g. housing cost burden, home ownership rate, transit access).
	Century Agenda Goal	Goal #6 Be a highly effective public agency. Objective #18 Partner and engage with external stakeholders to build healthy, safe, and equitable communities.
Accessibility	Definition	Indicators that are not necessary for survival but advance the standard of living in a community so that people of all abilities can fully access and participate in public life (e.g. proximity to parks and open space, access to healthy food, pedestrian and bike facilities).
	Century Agenda Goal	Goal #5 Become a model for equity, diversity, and inclusion.
Environment	Definition	Indicators that represent the health of the environment, including human-made impacts and bio-physical elements, and thus the vitality of the community (e.g. diesel emissions, risk of toxic release from facilities, traffic density).
	Century Agenda Goal	Goal #4 Be the greenest and most energy efficient port in North America.

The Equity Index consists of 21 indicators within each of these four categories. The indicators examine variations in pollution, access to economic opportunity, and a healthy standard of living across King County. The internal working group selected indicators based on an assessment of data availability from relevant equity tools created by state and regional governments and the needs of the Port. The following are the 21 indicators.

Economy	Livability	Accessibility	Environment
<ul style="list-style-type: none"> • Poverty rate • Unemployment rate • Median household income • Educational attainment • Jobs density 	<ul style="list-style-type: none"> • Life expectancy • High school graduation rate • Transit access • Access to jobs by transit • Crime index • Housing cost • Home ownership rate 	<ul style="list-style-type: none"> • Proximity to parks and open space • Access to healthy food • Pedestrian and bike facilities • Internet access • Voter participation 	<ul style="list-style-type: none"> • Diesel emissions and NOx emissions • Average annual particulate matter index (PM_{2.5} index) • Risk of toxic releases from facilities index • Traffic density

For each of the indicators, a literature review was conducted identifying research that connects the indicator to equity.

Ranking Methodology

The Equity Index displays and ranks individual and combined environmental health and social indicators. The map shows how a census block group in King County ranks for each indicator for each of the four categories and for all indicators combined. The individual and combined indicators are ranked from very low to very high. Communities with the least access to opportunities and resources are ranked very low (lighter colors on the map), while communities with the most access to opportunities and resources are ranked very high (darker colors). The rankings are relative to each other and the comparison is within King County.

The methodology used to score census block groups is directly leveraged from the Washington State Environmental Healthy Disparities Map and Kirwan Institute, Ohio State University. Each indicator is ranked very low to very high corresponding to percentiles. Indicators were then averaged to result in a score for each of four categories (economy, livability, accessibility, and environment).

Implementation

The Equity Index will be introduced to all Port staff at the September Office of Equity, Diversity, and Inclusion Town Hall and will be introduced to the King County community through a public webinar shortly after. Teams at the Port will be trained on how to use the tool. As the Index is used for projects, case studies will be developed. The Office of Equity, Diversity, and Inclusion will support staff and the community in using the tool by providing a comprehensive user guide and opportunities to ask questions about the tool.

ATTACHMENTS TO THIS BRIEFING

- (1) Presentation slides

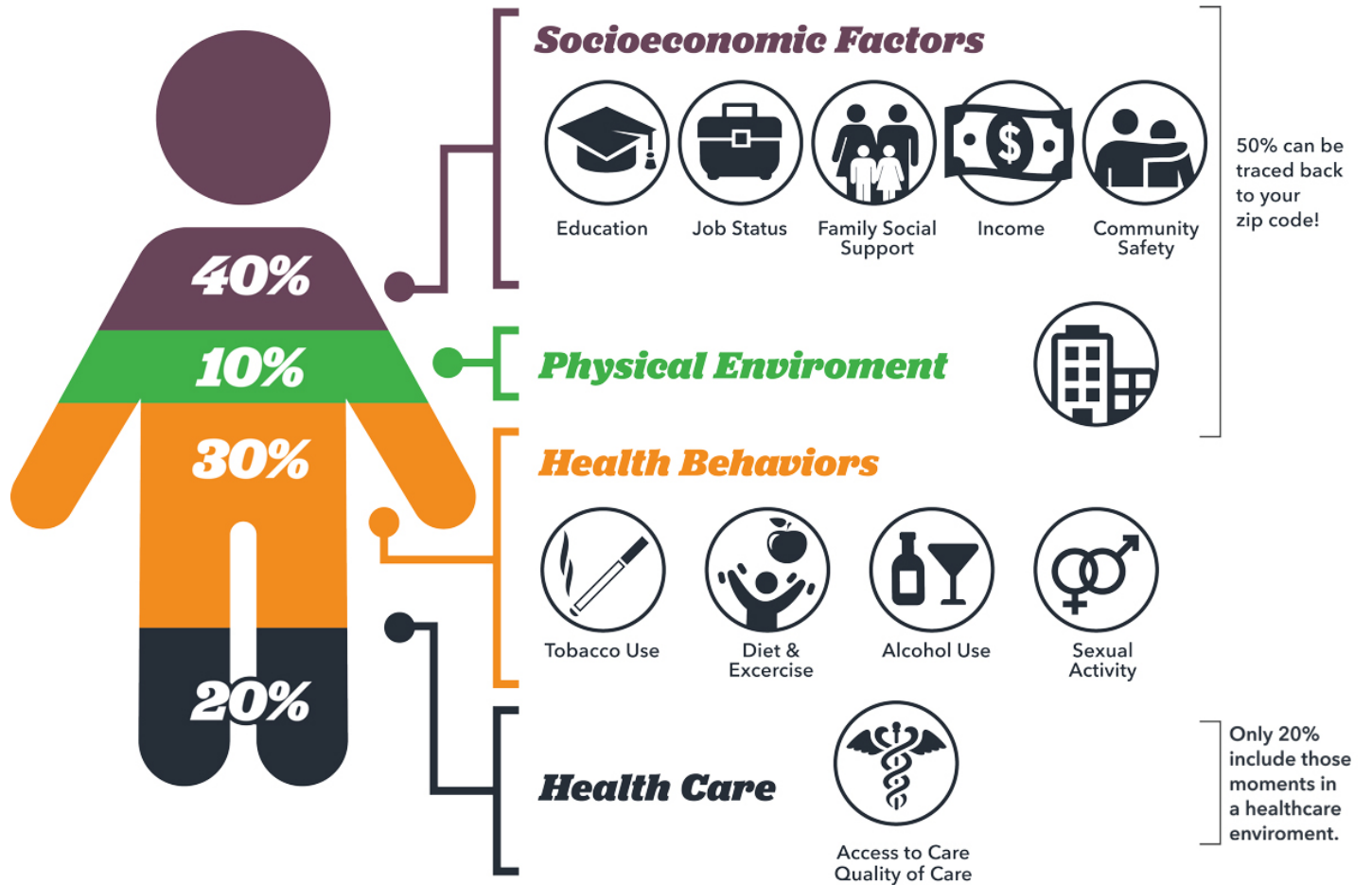
PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

None.



Office of Equity, Diversity & Inclusion Port of Seattle®

What influences health & well being?



Source: Institute for Clinical Systems Improvement, Going Beyond Clinical Walls: Solving Complex Problems (October 2014)


What is an Index?

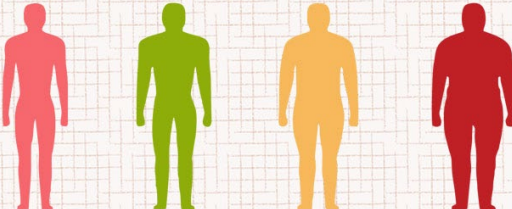
What is Your Body Mass Index (BMI)

Formula

$BMI = \frac{\text{Weight in Kilograms}}{\text{height in meters} \times \text{height in meters}}$

$BMI = \frac{\text{Weight in Lbs} \times 703}{\text{height in inch} \times \text{height in inch}}$





BMI Chart

- BMI less than 18.50 → Underweight
- BMI 18.50 - 24.99 → Healthy weight
- BMI 25.00 - 29.99 → Overweight
- BMI 30 or more → Obese

www.TheHealthScienceJournal.com



The Science of Wind Chill

NO WIND

98.6°F
Average temperature of the human body.

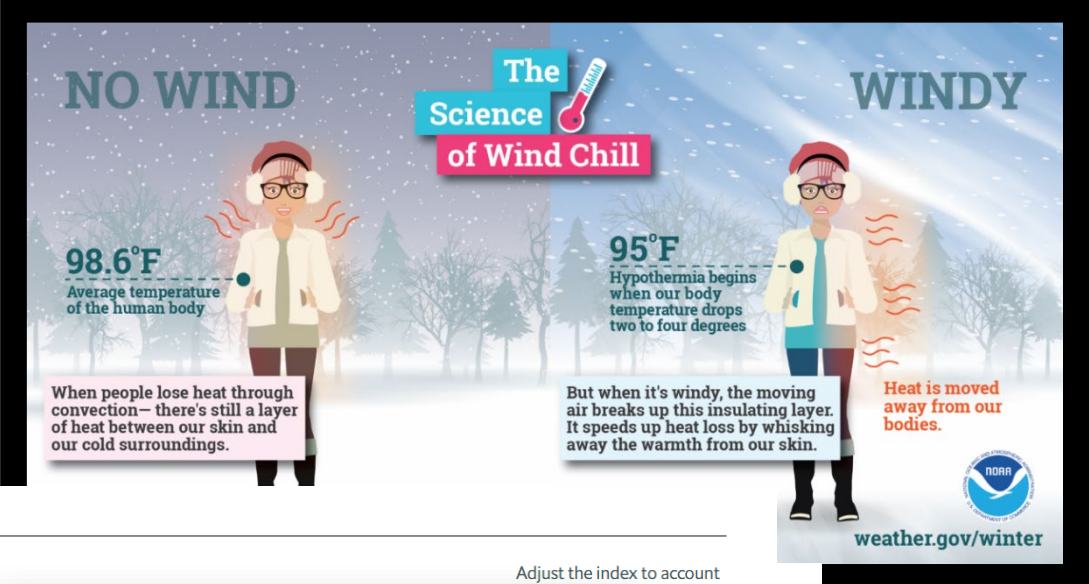
When people lose heat through convection – there's still a layer of heat between our skin and our cold surroundings.


WINDY

95°F
Hypothermia begins when our body temperature drops two to four degrees.

But when it's windy, the moving air breaks up this insulating layer. It speeds up heat loss by whisking away the warmth from our skin.

Heat is moved away from our bodies.





weather.gov/winter

The Big Mac index

Country	2000 — 2018	Under/over valued, %
Switzerland	Franc	18.8
Sweden	Krona	5.8
United States	US\$	BASE CURRENCY
Norway	Krone	-5.2
Canada	C\$	-8.0
Euro area	Euro	-14.1
Denmark	Krone	-14.4
Israel	Shekel	-15.1
Australia	A\$	-18.1
Uruguay	Peso	-18.8
Brazil	Real	-20.1

Choose a base currency Show index at Adjust the index to account for GDP per person



P-adjusted

July

20%

plied e rate,

What is an Equity Index

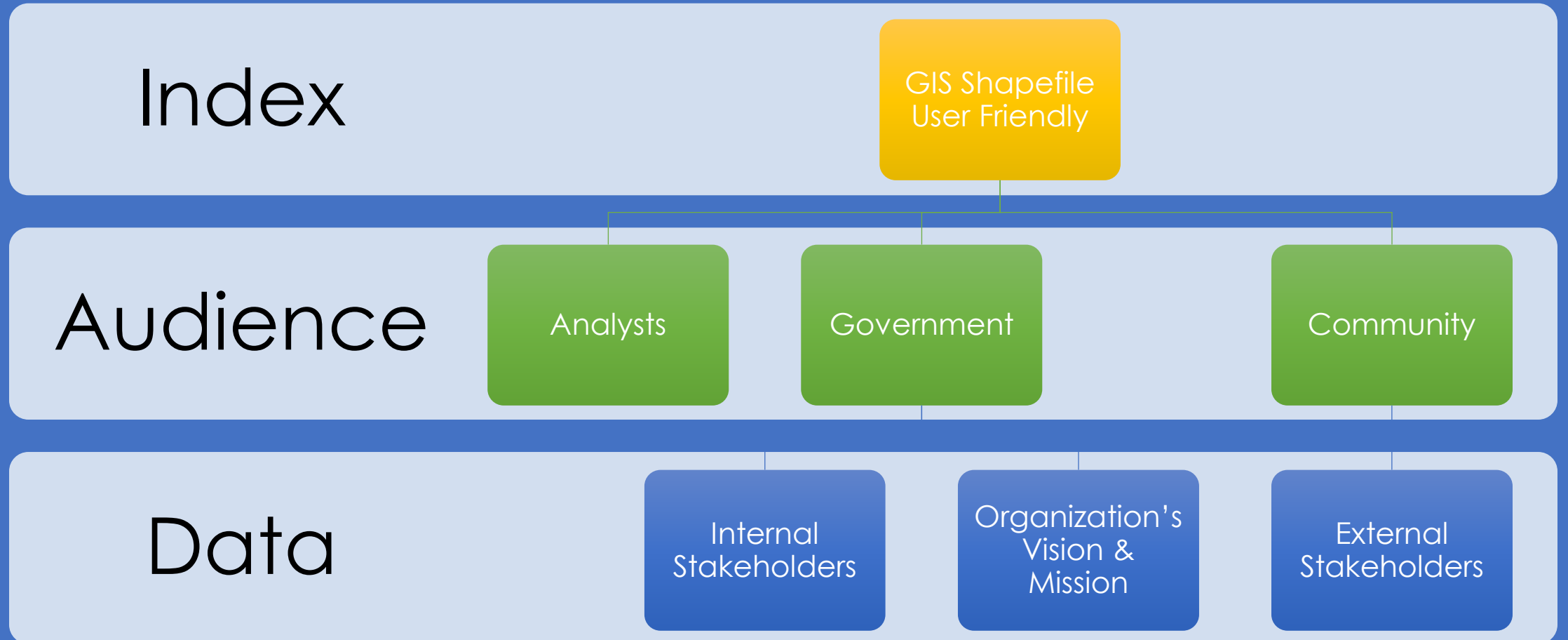
Mapping Tool

Helps leverage
limited
resources

Identifies
Opportunity

**Using Data to
Help Advance
Equity**

Starting Points:



The Do's and Don'ts

Don't
Blame

Do Identify
YOUR Faults

Don't
Shame

**Do Use
Accurate
Data**

Port's Equity Index?

- Aggregated by Census Blocks Groups
- 4 Equally Weighted Determinant Categories
- 21 Indicators
- Racial Demographic Overlay

All sources were authoritative, accurate and reliable data; collected by block group or census tract.

Established all calculations and data within ArcGIS **First**

Categories | Century Agenda | Definitions

Accessibility

Goal #5 Become a model for equity, diversity, and inclusion.

Indicators that are not necessary for survival but advance the standard of living in a community so that people of all abilities can fully access and participate in public life (e.g. proximity to parks and open space, access to healthy food, pedestrian and bike facilities).

Economy

Goal #3 Responsibly invest in the economic growth of the region and all its communities.

Indicators that demonstrate the opportunity for the creation, retention, transfer, and accumulation of wealth within a community for residents, businesses, and community stakeholders (e.g. poverty rate, median household income, educational attainment).

Environment

Goal #4 Be the greenest and most energy efficient port in North America.

Indicators that represent the health of the environment, including human-made impacts and bio-physical elements, and thus the vitality of the community (e.g. diesel emissions, risk of toxic release from facilities, traffic density).

Livability

Goal #6 Be a highly effective public agency.
Objective #18 Partner and engage with external stakeholders to build healthy, safe, and equitable communities.

Indicators that demonstrate a safe and healthy standard of living (e.g. housing cost burden, home ownership rate, transit access).

Methodology

Accessibility

- Proximity to Parks and Open Space
- Access to Healthy Food
- Pedestrian and Bike Facilities
- Internet Access
- Voter Participation

Environmental

- Diesel Emissions and NOx Emissions
- Average Annual PM 2.5
- Risk of Toxic Releases from Facilities
- Traffic density



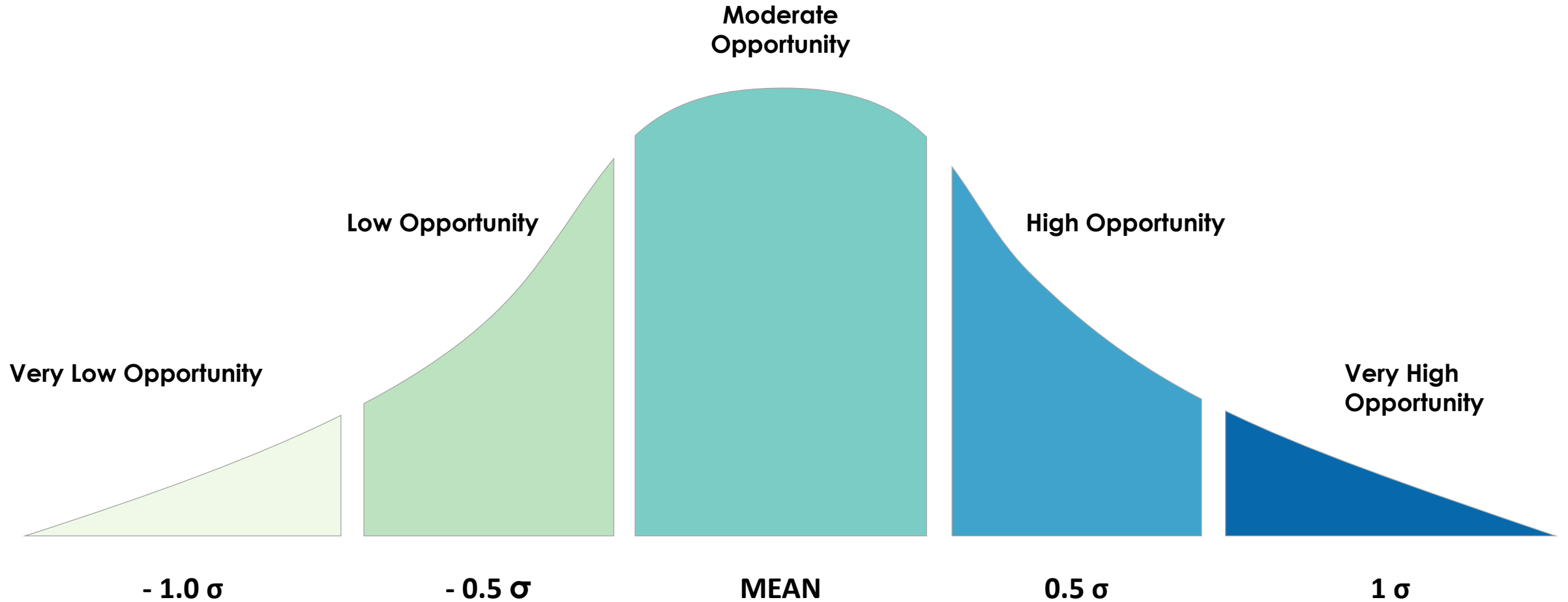
Livability

- Housing Cost Burden
- Transit Access
- Access to Jobs by Transit
- Crime Index
- Life Expectancy
- High School Graduation Rate

Economy

- Poverty Rate
- Unemployment Rate
- Median Household Income
- Educational Attainment
- Job Density

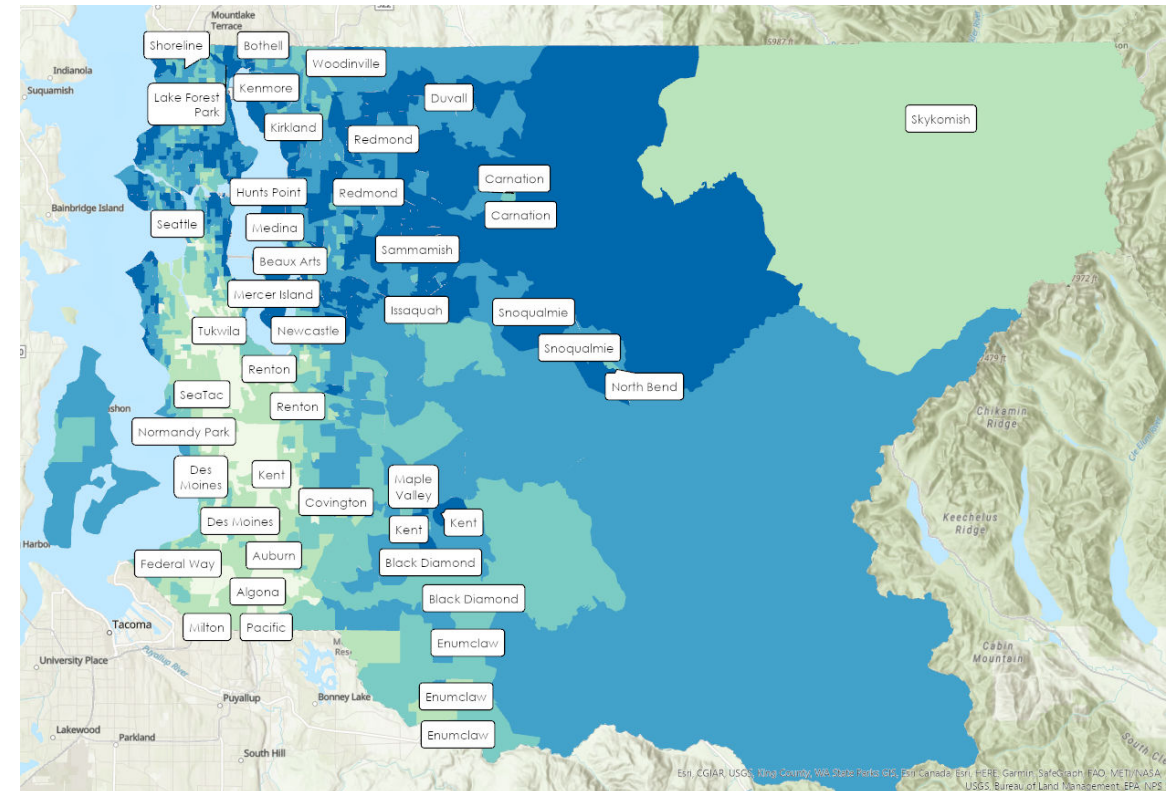
Distribution of Data

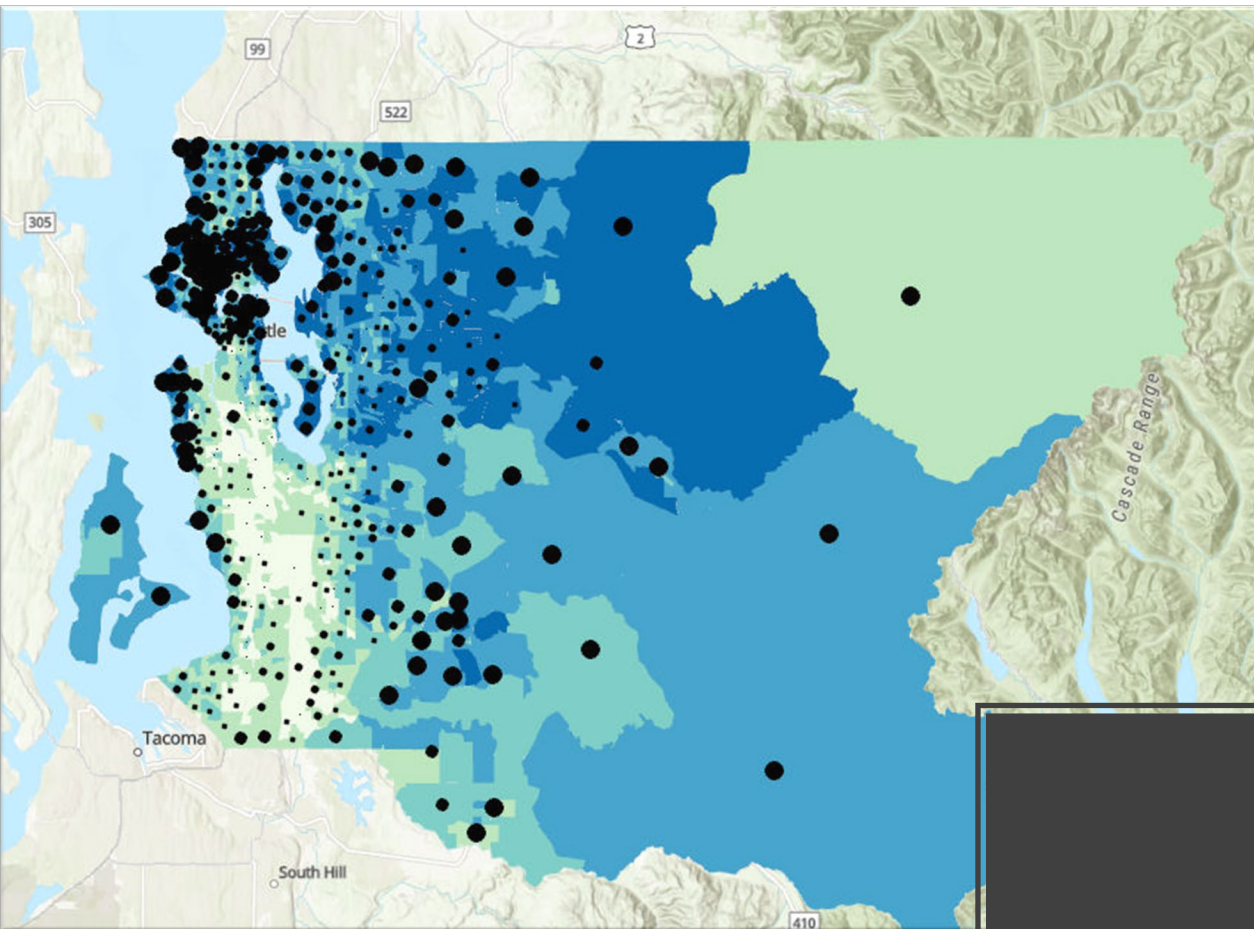


Port Equity Index

Port of Seattle Index

Equity Value





Port of Seattle Index

Equity Value



Port Equity Index

Race

Percent of Population that is White alone, Non-Hispanic

- 9.1% - 35.9%
- 35.9% - 52.9%
- 52.9% - 66.8%
- 66.8% - 78.1%
- 78.1% - 95.7%

Des Moines (Placeholder)

Heavy Traffic

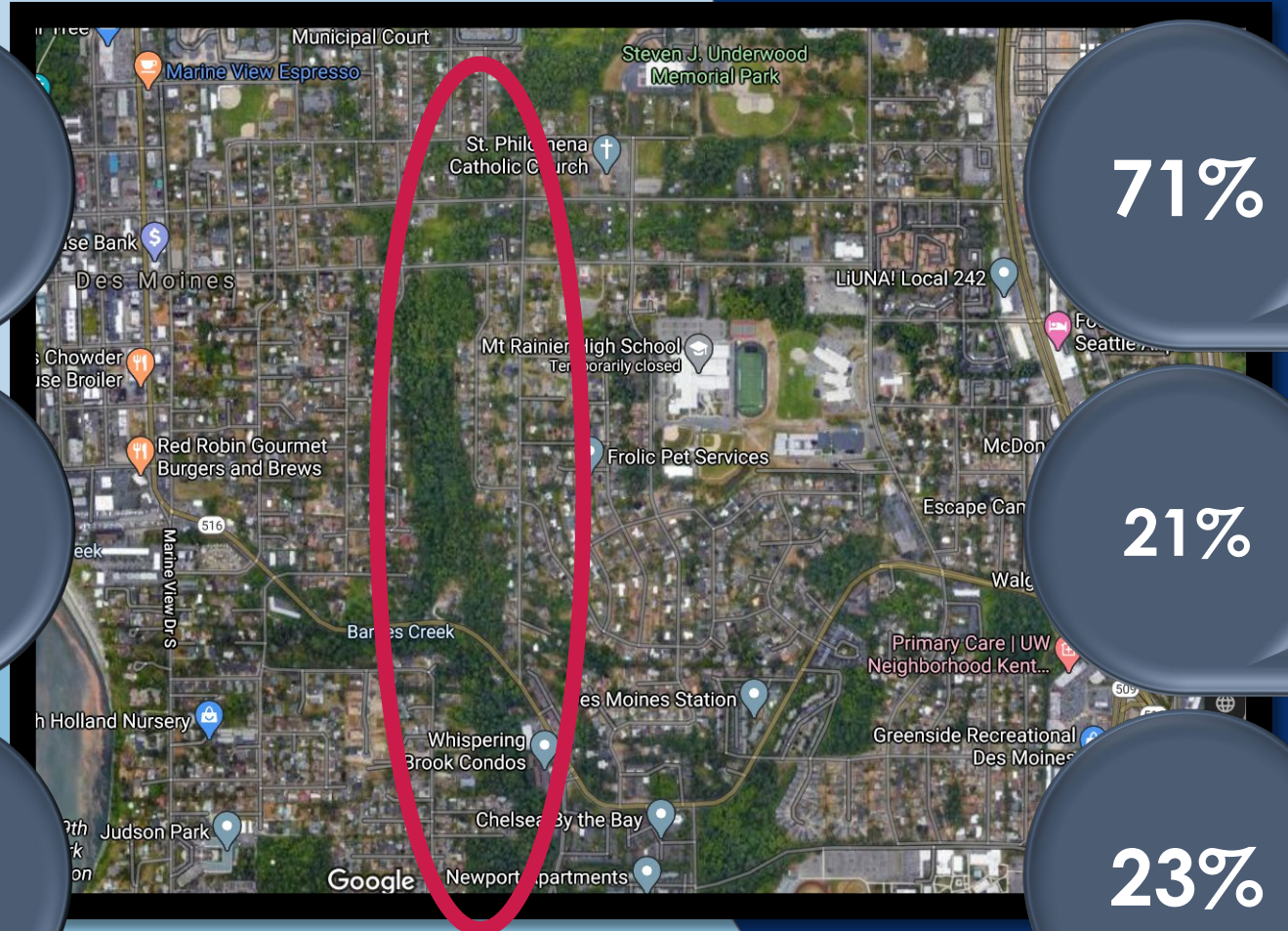
0%

Food Desert

0%

No High School Diploma

9%



71%

21%

23%

Heavy Traffic

Food Desert

No High School Diploma

48% White Non Hispanic

28% White Non Hispanic

Online Tool

Port of Seattle Equity Index

The Port of Seattle's Equity Index is an interactive map that displays a visual representation of social and environmental disparities in King County. It uses 21 indicators in four categories to determine pollution burden and social inequalities in communities across the region. This index serves as a tool for the Port to integrate equity data into decisions about programs, policies, and resources.

[Explore Map](#)

- Economy**
Indicators related to creation, retention, transfer, and accumulation of wealth within a community
- Livability**
Indicators that demonstrate a safe and healthy standard of living
- Accessibility**
Indicators that advance the standard of living in a community so that people can fully access and participate in public life
- Environment**
Indicators that represent the health and vitality of the environment

cai community attributes, inc.
Data analysis and application by Community Attributes, Inc.

King County, Washington

Overview Economy Livability Accessibility Environment

Overall Combined Index Value for the Selection Area:
Equity Index
★★★ Moderate

Population 2.2 m
Disabled 9%

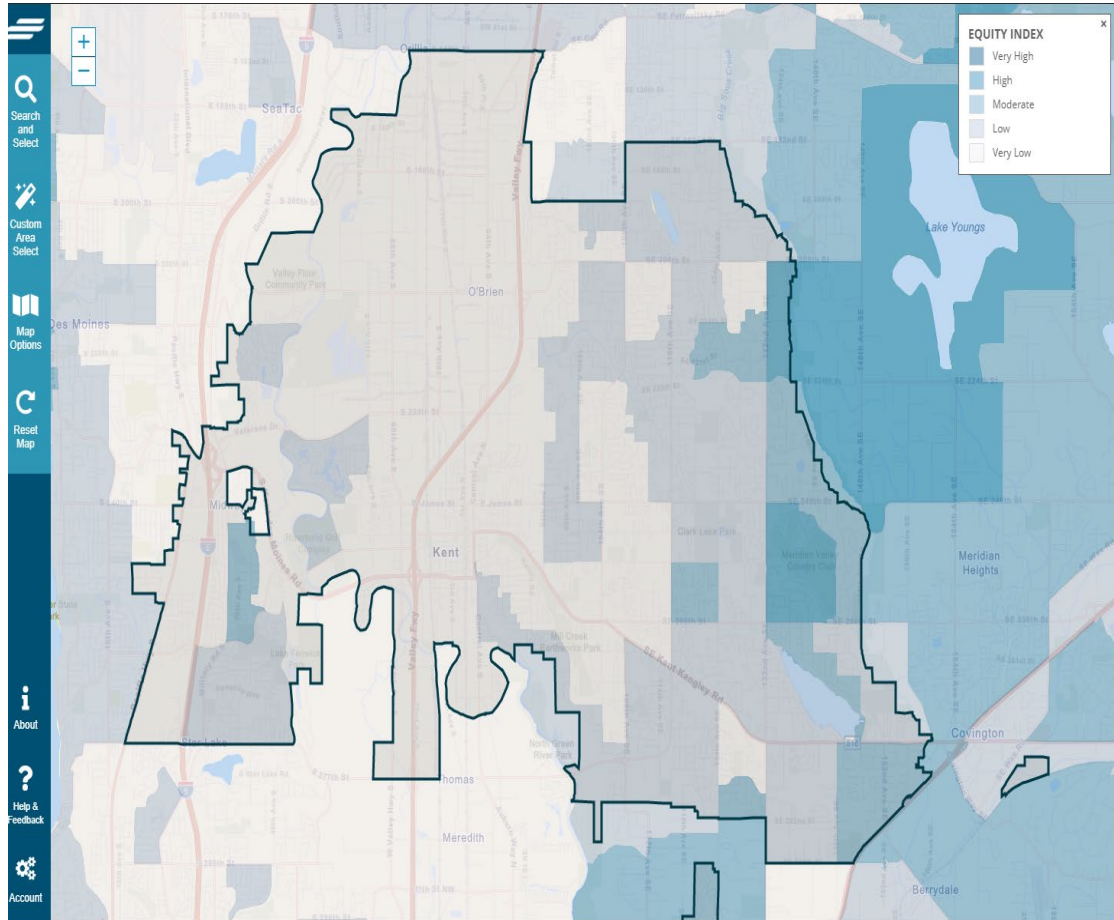
Race & Ethnicity

Asian	10%	205,404
Black	6%	141,790
Native American	1%	15,057
Other	4%	89,377
Pacific Is.	1%	16,944
Two or More Races	6%	140,006
White	54%	1,404,324
Hispanic	10%	212,241
Non-Hispanic	90%	1,983,261

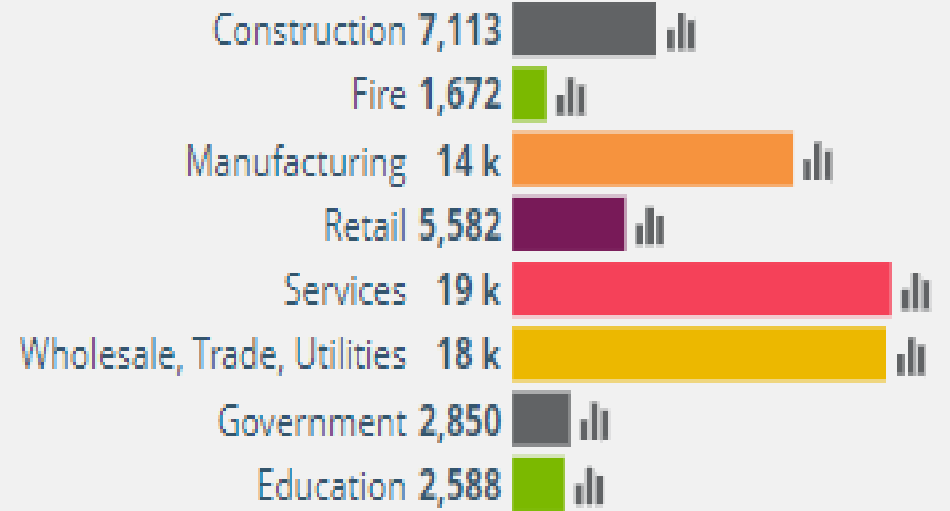
Foreign Pop. 23%
English Language Learners 3%

247

Sources: US Census Bureau, American Community Survey (ACS) 5-year dataset, 2015-2019.



Estimated Jobs Total



Sources: US Census Bureau, American Community Survey (ACS) 5-year dataset, 2015-2019. PSRC - 2019 Covered Employment Estimates.

City of Kent

Next Steps

Case Studies

Internal
Presentation

External
Presentation

Story Maps

Questions?

Alison Beason
Beason.A@PortSeattle.org

Thank You

[RETURN TO AGENDA](#)





**COMMISSION
AGENDA MEMORANDUM
BRIEFING ITEM**

Item No.	<u>11b</u>
Date of Meeting	<u>September 14, 2021</u>

DATE: September 14, 2021
TO: Stephen P. Metruck, Executive Director
FROM: Bookda Gheisar, Senior Director, Equity, Diversity & Inclusion
Delmas Whittaker, Director, Marine Maintenance
SUBJECT: Port Policing Assessment Final Report

EXECUTIVE SUMMARY

In response to the Port of Seattle Commission’s Motion 2020-15 creating a Task Force on Port Policing and Civil Rights, staff have been actively working to implement a comprehensive assessment of the Port of Seattle Police Department’s (POSPD) policies, protocols and procedures impacting issues of diversity, equity and civil rights. With the help of a wide range of external stakeholders and a consulting team, Port staff have achieved the Commission’s goal of identifying opportunities for the POSPD to meet the highest nationwide standards achievable for public safety and protection of civil rights, equity, accountability and oversight.

The briefing on September 14 will provide a summary of key findings and recommendations for potential Commission or Executive action, as well as a proposed plan for implementation over the coming year.

BACKGROUND

Upon the passage of Motion 2020-15, the Task Force on Port Policing and Civil Rights hired 21CP Solutions (21CP) as its consultant and formed a Task Force composed of key internal and external stakeholders to guide the process and provide input on key issues. In addition, the structure of the policing assessment was divided into subcommittees that include both Task Force members and other Port and external participants.

In addition to supporting the work of the subcommittees and integrating their feedback into the assessment, 21CP also interviewed stakeholders, reviewed documents, surveyed POSPD employees and drawn on their expertise to develop their recommendations. The results of this work are found in 21CP’s report which is included in the public materials for the September 14 Commission meeting.

Motion 2020-15 states that the Executive Director and Commission will “review the report within 90 days of receipt” and will “respond to the recommendations within six (6) months”. The Task Force Co-chairs and staff will work with Commissioners, the Executive Director and the POSPD during this period to facilitate this review and response, as well as any subsequent implementation.

SUMMARY OF FINDINGS

The 21CP final report and the summary of the final report – both of which provided as attachments to this memo – highlight two main conclusions:

- 1) First, the Port of Seattle Police Department is in a strong position and already operating to a great extent in alignment with the Commission’s goals as articulated in Motion 2020-15. POSPD has good policies and procedures, a robust training program and a clear commitment to mission and goals. Use of force is infrequent and, with few exceptions, reasonable, necessary, and proportional. The relatively few POSPD misconduct complaints were investigated in a timely and objective manner. Forward thinking appears typical of POSPD leadership and was observed in supervisors and officers providing day-to-day policing services, the POSPD training program, and through participation in the work of the Task Force.
- 2) Second, as with any organization, there are opportunities for growth and change that will bring POSPD even closer to the Commission’s vision of a world-class police force that not only sets a high standard for performance and community service, but also centers equity and civil liberties as core values in its work. To that end, 21CP’s full report offers a wide variety of recommendations in each of the nine areas for assessment outlined by the Commission.

In particular, 21CP’s recommendations focus on three priority areas:

- How increased organizational transparency can improve perceptions about the POSPD;
- Supporting the POSPD’s move away from a traditional police response on homelessness; and
- The need for the POSPD to focus on internal procedural justice to address a perception of inequity experienced by many, but particularly Non-White employees.

Overall, 21CP offers a full list of more than 50 recommendations based on the work of the subcommittees as well as its engagement efforts with the POSPD, other Port staff, and external stakeholders. Those recommendations are listed in the summary report document, and are further explained in the full report document.

ATTACHMENTS TO THIS PRESENTATION -

- (1) 21CP Final Policing Assessment Report Summary
- (2) 21CP Final Policing Assessment Report
- (3) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

- April 27, 2021 – The Commission heard a progress report from the Task Force co-chairs.
- November 17, 2020 – The Commission heard a progress report from the Task Force co-chairs.

Meeting Date: September 14, 2021

- July 14, 2020 – The Commission approved the Port Policing Assessment Motion.
- June 30, 2020 – The Commission held a study session on the draft Port Policing Assessment Motion.



Executive Summary

of the Recommendations for the Port of Seattle Task Force on Policing and Civil Rights

I. EXECUTIVE SUMMARY

Early in their support of the Port of Seattle Commission (Commission) Task Force on Policing and Civil Rights (Task Force), 21CP Solution consultants (21CP) went for a ride-along with two Port of Seattle Police Department (POSPD) sergeants to gain perspective on the Port’s geographical layout and to learn more about POSPD officers’ daily work. At one of the POSPD outstations, an officer commented, “I am glad you are here. This is a great department and I think you will see that. I hope you don’t find anything broken; but I do hope you find things to fix.”

Unlike many of 21CP’s engagements, this assessment of the POSPD was not precipitated by any seminal event or community outrage directly involving POSPD. In fact, 21CP found that few outside the Port have much awareness of the POSPD, what they do, or how they differ from the many other law enforcement agencies – including the U.S. Transportation Security Administration (TSA), US Customs and Border Protection (CBP), Washington State Patrol (WSP), the Seattle Police Department (SPD) and others – that operate within and/or proximate to the Port’s jurisdiction. Instead, this review was inspired by the national moment of reflection about policing, and the Commission’s vision of a world-class police force that not only sets a high standard for performance and community service, but also centers equity and civil liberties as core values in its work.

After a thorough process that involved document review, listening sessions and interviews with many internal and external stakeholders, engagement with the Task Force and subcommittees, an internal POSPD climate study, engagement at training, and review of use of force incidents and misconduct complaint investigations, 21CP found ample evidence of a good department that can get even better with key changes.

On the positive side, POSPD regularly updates its policies and procedures to stay current with promising practices, supports a robust training program, and has a clear commitment to mission and goals. Use of force is infrequent and, with few exceptions, reasonable, necessary, and proportional. The relatively few POSPD misconduct complaints were investigated in a timely and objective manner. Forward thinking appears typical of POSPD leadership and was observed in supervisors and officers providing day-to-day policing services, the POSPD training program, and through participation in the work of the Task Force. Notably, the POSPD has taken on a regional leadership role in crafting new policies and procedures in response to recent

Washington State legislation to ensure that agencies are operating from the same set of standards.

However, as with any organization, there is room for improvement. As such, this report aims to provide specific guidance, and practical recommendations, for POSPD and the Port based on its unique needs, values, and experiences, and drawing from the vast experience of the many volunteers that donated their time and energy to think through the questions posed to the Task Force. Overall, this report offers 52 discrete recommendations covering each of the nine areas of assessment outlined by the Commission; a majority of the recommendations capture feedback specifically provided by the members of the Task Force and subcommittees.

While this report provides many recommendations, some broad and some more discrete, three priority areas stood out in our analysis:

- 1) the need for the POSPD to focus on internal procedural justice to address a perception of inequity experienced by many, but particularly Non-White employees,
- 2) how increased organizational transparency can improve perceptions about the POSPD, and
- 3) supporting the POSPD's move away from a traditional police response on homelessness.

The first two priority areas – internal procedural justice and transparency – were highlighted during the subcommittee process and by the results of the climate survey and officer interviews, in which 21CP heard frequent concerns, most often expressed by employees of color, about fairness in departmental opportunities, even though most did not specifically attribute the perceived unfairness to race, ethnicity, or gender. In all, over 25% of 21CP's recommendations focus on increasing internal procedural justice and fairness¹. The third – police response to homelessness – is the single most important step that will help reduce external disparities around uses of force.

¹ See Recommendations 2, 7, 34 – 44, 49.

The Port is not alone in confronting significant issues and concerns surrounding the role, actions, and performance of police in its community. 21CP has conducted similar reviews for other jurisdictions addressing many of the same issues and challenges, and in some cases offered similar recommendations to what is outlined here based on the same types of best and emerging, promising practices. Again, however, this set of recommendations was strongly shaped by the input of the Task Force and the subcommittees, as well as the unique nature of the POSPD, feedback from community members and direction from the Port Commission.

Finally, while this executive summary focuses specifically on the list of recommendations, the full report contains important details, key nuances and additional background on the process and participants that resulted in these conclusions. For example, the internal POSPD climate study and the follow-on interviews with individual officers provided essential insights into not only perceptions of fairness but also the potential reasons behind those perceptions; anonymous quotes from the interviews are included in that section to help with context and interpretation of the survey results. Similarly, there are a number of issues raised in the Commission Motion that 21CP reviewed, but that did not result in specific recommendations – such as use of military-grade equipment or how “qualified immunity” does or doesn’t play a role in POSPD discipline and accountability processes. For those that do not have time to read the full report, it also may be worthwhile to at least review the part of the report that shares descriptions of each of the recommendations, which provide both explanation for how the conclusions were arrived at as well as specific details related to implementation.

II. TABLE OF RECOMMENDATIONS

General Recommendations

RECOMMENDATION NO. 1. POSPD SHOULD CONTINUE TO SCRUTINIZE THE INTENT AND LANGUAGE OF EVERY LEXIPOL POLICY AND MODIFY THE POLICIES TO ENSURE THAT THEY MEET BEST PRACTICES AND NOT JUST LEGAL MINIMUMS.

RECOMMENDATION NO. 2. AS THE POSPD GATHERS MORE DATA ON OFFICER ACTIVITY, THE DEPARTMENT SHOULD CONTINUE TO SCRUTINIZE THAT DATA FOR ANY DISPARITIES IN USE OF FORCE AND WORK TO ENSURE THAT POSPD'S DEPLOYMENT STRATEGIES AND APPROACH TO POLICING MINIMIZE THOSE DISPARITIES.

RECOMMENDATION NO. 3. THE PORT SHOULD CONSIDER CREATING A QUARTERLY PORT SAFETY COMMITTEE TO BRING INTERESTED STAKEHOLDERS TOGETHER.

RECOMMENDATION NO. 4. THE PORT SHOULD CONDUCT A STUDY OF THE INTERNAL ORGANIZATIONAL STRUCTURE AND COMMUNICATIONS INVOLVING THE POSPD TO DETERMINE HOW TO BEST ACCOMPLISH THE GOAL OF ENHANCING POSPD TRANSPARENCY THROUGH REGULAR ENGAGEMENT WITH PORT LEADERSHIP.

RECOMMENDATION NO. 5. CUSTOMER SERVICES AND THE POSPD SHOULD DEVELOP OR REFINE PROTOCOLS ON THE HANDLING OF COMPLAINTS AND COMPLIMENTS ABOUT PORT POLICE OFFICERS.

RECOMMENDATION NO. 6. PORT LEADERSHIP SHOULD SUPPORT THE POSPD BY DEVELOPING FIRST RESPONDER ALTERNATIVES TO INCIDENTS INVOLVING THE HOMELESS THAT DO NOT INVOLVE ARMED POSPD OFFICERS AND INCREASE ACCESS TO HOLISTIC RESOURCES.

RECOMMENDATION NO. 7. THE POSPD SHOULD COMMENCE A CAMPAIGN OF INTERNAL PROCEDURAL JUSTICE TRAINING FOR ALL

LEVELS OF THE DEPARTMENT TO HELP ADDRESS THE BROAD-BASED SENSE OF INEQUITY, ESPECIALLY WITH EMPLOYEES OF COLOR.

Use of Force Recommendations

RECOMMENDATION NO. 8. THE DEPARTMENT SHOULD CONSIDER RESTRUCTURING THE USE OF FORCE POLICIES INTO A UNIFIED POLICY.

RECOMMENDATION NO. 9. THE MISSION AND VISION STATEMENTS IN THE POLICY MANUAL SHOULD MORE CLEARLY INDICATE THE DEPARTMENT'S COMMITMENT, IN ALL OF ITS ACTIVITIES, TO VALUING AND UPHOLDING EQUITY AND FAIRNESS, DE-ESCALATION, THE SANCTITY OF HUMAN LIFE, AND ACHIEVING THE BEST POSSIBLE OUTCOME FOR ALL INVOLVED.

RECOMMENDATION NO. 10. THE DE-ESCALATION POLICY SHOULD BE UPDATED TO MAKE DE-ESCALATION ATTEMPTS MANDATORY, WHEN POSSIBLE TO DO SO, AND TO ADD DE-ESCALATION TACTICS.

RECOMMENDATION NO. 11. THE USE OF FORCE POLICY SHOULD EXPRESSLY REQUIRE THAT ANY USE OF FORCE BE OBJECTIVELY REASONABLE, NECESSARY, AND PROPORTIONAL.

RECOMMENDATION NO. 12. THE USE OF FORCE POLICY SHOULD REQUIRE OFFICERS TO PROVIDE A WARNING, WHEN SAFE AND FEASIBLE, BEFORE USING ANY FORCE.

RECOMMENDATION NO. 13. THE USE OF FORCE POLICY SHOULD REQUIRE OFFICERS TO PROVIDE MEDICAL CARE WITHIN THE SCOPE OF THEIR TRAINING AND IMMEDIATELY SUMMON MEDICAL AID TO THE SCENE.

RECOMMENDATION NO. 14. POLICY SHOULD BE REVISED TO REQUIRE OFFICERS TO REPORT AND DOCUMENT ALL FORCE THEY USE AND/OR WITNESS.

RECOMMENDATION NO. 15. THE USE OF FORCE REPORTING POLICY SHOULD REQUIRE THAT A SUPERVISOR RESPOND TO ALL APPLICATIONS OF REPORTABLE FORCE, NOT JUST THOSE THAT RESULT IN “VISIBLE INJURY.”

RECOMMENDATION NO. 16. THE POSPD SHOULD CONSIDER HAVING OFFICERS ENTER USE OF FORCE REPORTS DIRECTLY INTO BLUETEAM, RATHER THAN HAVING A SUPERVISOR GATHER AND PRESENT FACTS. THE SUPERVISOR’S INVESTIGATION AND ALL SUPPORTING MATERIALS SHOULD BE CONSOLIDATED IN BLUETEAM AND ROUTED TO THE CHAIN OF COMMAND THROUGH THE SYSTEM.

RECOMMENDATION NO. 17. THE POSPD SHOULD MAXIMIZE ITS TRANSPARENCY BY PUBLISHING DATA AND REPORTS ON ITS WEBSITE AND REGULARLY REPORTING THE INFORMATION TO THE COMMISSION.

RECOMMENDATION NO. 18. VIDEO EVIDENCE SHOULD BE DOWNLOADED AND INCLUDED IN BLUETEAM OR LINKED WITHIN THE SYSTEM.

RECOMMENDATION NO. 19. POSPD SHOULD CREATE A STANDING USE OF FORCE REVIEW COMMITTEE, TO INCLUDE A TRAINING OFFICER, THE IA OFFICER, AND COMMAND STAFF, EXCLUSIVE OF THE CHIEF, AND TASKED WITH REVIEWING EVERY USE OF FORCE.

Mutual Aid Recommendations

RECOMMENDATION NO. 20. THE POSPD SHOULD CONTINUE TO TAKE THE LEAD ON UPDATING CURRENT MUTUAL AID AGREEMENTS TO DRIVE BEST PRACTICES REGIONALLY AND ALIGN WITH THE NEW STATE POLICING LAWS.

RECOMMENDATION NO. 21. AFTER ENGAGING IN MUTUAL AID DEPLOYMENTS, AT THE PORT OR IN OTHER JURISDICTIONS, POSPD SHOULD ACTIVELY ENGAGE IN AFTER-ACTION ASSESSMENTS AND TRACK ALL RESULTING RECOMMENDATIONS.

RECOMMENDATION NO. 22. THE POSPD SHOULD DEVELOP ITS OWN CROWD MANAGEMENT POLICY OUTLINING THE POSPD TERMS OF ENGAGEMENT, FACILITATION OF FIRST AMENDMENT ACTIVITIES, AND WHICH SPECIFICALLY SETS FORTH THE POSPD ENGAGEMENT STRATEGY WITH DEMONSTRATION LEADERSHIP.

RECOMMENDATION NO. 23. THE PORT SHOULD ADD SPECIFIC APPROVAL CRITERIA AND PROCESSES REQUIRED BEFORE DEPLOYING RESOURCES FOR MUTUAL AID.

Oversight, Accountability, Equity and Civil Rights Recommendations

RECOMMENDATION NO. 24. POSPD SHOULD ADOPT THE PORT OF SEATTLE CODE OF CONDUCT INTO POLICY.

RECOMMENDATION NO. 25. POSPD POLICY SHOULD MAKE EXPLICIT THE TYPES OF COMPLAINTS THAT SHOULD BE PURSUED INTERNALLY VERSES THOSE THAT SHOULD BE HANDLED THROUGH PORT OF SEATTLE HUMAN RESOURCES, WORKPLACE RESPONSIBILITY, OR OTHER AVENUES OF COMPLAINT, WITH EXPLICIT PROTOCOLS BETWEEN COMPONENTS DEVELOPED, INCLUDING TIMELINES FOR COMPLETING INVESTIGATIONS OF EMPLOYEE COMPLAINTS.

RECOMMENDATION NO. 26. THE COMPLAINT CLASSIFICATION SCHEME (INQUIRY AND MINOR, MODERATE. OR MAJOR COMPLAINT) SHOULD BE REVISED AS IT IS UNNECESSARILY TECHNICAL, THE TERMS USED ARE NOT CONSISTENTLY WELL DEFINED, AND USE OF A METHODOLOGY TO ASSIST IN COMPLAINT CLASSIFICATION WILL PROMOTE OBJECTIVITY AND CONSISTENCY.

RECOMMENDATION NO. 27. WHEN AN ON-DUTY SUPERVISOR HANDLES COMPLAINT INTAKE AND THE INVESTIGATION OF AN INQUIRY OR MINOR COMPLAINT, THEIR INVESTIGATION MEMO SHOULD INDICATE THE RATIONALE BEHIND THE CLASSIFICATION DECISION, THE COMPLAINT CLASSIFICATION SHOULD BE EXPLICITLY APPROVED BY THE COMMANDER, AND COMPLAINT CLASSIFICATION DECISIONS SHOULD BE

REGULARLY AUDITED TO CHECK FOR CONSISTENCY IN APPLICATION OF POLICY AND OTHER CLASSIFICATION GUIDANCE.

RECOMMENDATION NO. 28. THOUGH THERE WAS NO EVIDENCE OF MISSED TIMELINES FOR COMPLETING INVESTIGATIONS, BEST PRACTICE WOULD BE TO SET TIMELINES FOR EACH STEP IN THE PROCESS, FROM COMPLAINT INTAKE THROUGH A FINAL DISPOSITION, INCLUDING NOTICE TO THE NAMED OFFICER AND COMPLAINANT, AND THE TIMELINES SHOULD BE REFLECTED IN AN UPDATED COMPLAINT INTAKE FLOWCHART, AND POLICY SHOULD BE CLARIFIED AS TO ACCEPTABLE REASONS FOR EXTENDING TIMELINES, IDENTIFY WHO HAS AUTHORITY TO GRANT AN EXTENSION, AND NOTE ANY LIMITS ON THE LENGTH OF AN EXTENSION.

RECOMMENDATION NO. 29. THE POSPD SHOULD DEVELOP POLICY THAT IDENTIFIES POTENTIAL CONFLICTS OF INTEREST AND PROTOCOLS TO ADDRESS ACTUAL OR PERCEIVED CONFLICTS RELATED TO MISCONDUCT COMPLAINT HANDLING AND DISCIPLINE MATTERS.

RECOMMENDATION NO. 30. THE PORT SHOULD EXPLORE ALTERNATIVE DISPUTE RESOLUTION (ADR) OPTIONS FOR RESOLVING SOME COMPLAINTS, WHETHER OR NOT THEY INVOLVE THE POLICE DEPARTMENT, AS ADR DOES NOT APPEAR TO BE AN OPTION FOR CASE PROCESSING IN THE POSPD, HUMAN RESOURCES, OR WORKPLACE RESPONSIBILITY.

RECOMMENDATION NO. 31. THERE ARE A NUMBER OF WAYS TO MAKE THE POSPD AND COMPLAINT FILING SYSTEM MORE ACCESSIBLE TO STAKEHOLDERS, INCLUDING MODIFYING THE COMPLAINT FORM, CHANGING THE ON-LINE SEARCH SYSTEM, AND IDENTIFYING POLICE FACILITIES ON SEA-TAC AIRPORT MAPS.

Diversity in Recruitment and Hiring Recommendations

RECOMMENDATION NO. 32. THE PORT SHOULD COORDINATE WITH THE POLICE DEPARTMENT, HUMAN RESOURCES, AND OTHER PORT COMPONENTS TO CONSOLIDATE DATA SOURCES WITH THE GOAL OF

DEVELOPING A ROBUST DATA COLLECTION AND ANALYTIC APPROACH TO BETTER UNDERSTAND THE RECRUITMENT AND HIRING OF POLICE DEPARTMENT PERSONNEL, INCLUDING AT WHICH STAGE WOMEN AND/OR APPLICANTS OF DIVERSE ETHNIC AND RACIAL BACKGROUNDS HAVE HIGH FAIL RATES, AND IDENTIFY OPPORTUNITIES FOR IMPROVEMENT.

RECOMMENDATION NO. 33. THE PORT SHOULD DEVELOP CLEAR GUIDANCE ON THE BENCHMARKS TO BE USED IN ASSESSING THE AVAILABILITY AND UTILIZATION OF PERSONS IDENTIFYING WITH DIFFERENT ETHNIC AND RACIAL GROUPS, INCLUDING THE RATIONALE FOR USING CENSUS DATA FROM SPECIFIC AREAS.

RECOMMENDATION NO. 34. THE PORT SHOULD EXPLORE THE REASONING BEHIND THE SIGNIFICANT PERCENTAGE (20-25%) OF EMPLOYEES WHO DO NOT REPORT THEIR RACE/ETHNICITY AND CONSIDER THE IMPACT OF THIS MISSING DEMOGRAPHIC INFORMATION ON EMPLOYEE DEMOGRAPHIC DATA ANALYSIS FOR IDENTIFYING AND ADDRESSING ANY DISPARITIES IN HIRING AND OTHER EMPLOYMENT OPPORTUNITIES.

RECOMMENDATION NO. 35. THE PORT AND POLICE DEPARTMENT SHOULD CONSIDER USING NON-BINARY GENDER DESIGNATIONS.

RECOMMENDATION NO. 36. DEVELOP A RECRUITMENT PLAN AIMED AT INCREASING THE NUMBER OF HISPANIC/LATINO INDIVIDUALS APPLYING TO BE A POLICE OFFICER AT THE POSPD.

RECOMMENDATION NO. 37. CONSIDER A VARIETY OF RECRUITMENT SUGGESTIONS MADE BY THE DIVERSITY IN RECRUITMENT AND HIRING SUBCOMMITTEE TO GATHER INFORMATION AND TO REACH OUT TO YOUTH AND OTHER COMMUNITIES TO GARNER INTEREST IN POLICING AND IN THE POSPD.

RECOMMENDATION NO. 38. FOLLOW-UP WITH PUBLIC SAFETY TESTING TO EXPLORE WHY FEMALE APPLICANTS TO THE PORT OF SEATTLE POLICE DEPARTMENT FAIL THE WRITTEN TEST AT A HIGHER LEVEL THAN MALE APPLICANTS AND WHETHER THE PORT IS RECEIVING ALL DATA

ANALYTICS NEEDED TO ASSESS APPLICANT AND HIRING PATTERNS AND GIVE FOLLOW-UP CONSIDERATION AS TO WHY THERE HAVE BEEN NO FEMALE ENTRY-LEVEL HIRES IN THE PAST THREE YEARS.

RECOMMENDATION NO. 39. INCREASE THE NUMBER OF CIVILIANS, PULLING FROM DIVERSE EMPLOYEE GROUPS SUCH AS EMPLOYEE RESOURCE GROUPS (ERGS), TO BE TRAINED AND AVAILABLE TO SERVE ON ORAL BOARDS, SO THAT THEY CAN ROTATE IN WHEN AVAILABLE TO ASSIST WITH THIS STEP OF THE HIRING PROCESS AND CONSIDER WAYS TO ASSESS WHETHER THE TRAINING PROVIDED TO MINIMIZE THE IMPACT OF IMPLICIT BIAS HAS POSITIVE IMPACTS.

RECOMMENDATION NO. 40. REVIEW ORAL BOARD QUESTIONS TO DETERMINE IF THEY ARE ELICITING RESPONSES THAT ADDRESS THE SUBJECT AREA BEHIND EACH QUESTION, SUCH AS ASSESSING CHARACTER, AND CONSIDER WHETHER THE ORAL BOARD SHOULD INCLUDE QUESTIONS DIRECTLY ASKING APPLICANTS ABOUT INVOLVEMENT IN EXTREMIST GROUPS, ABOUT AN ENCOUNTER WITH SOMEONE OF A DIFFERENT RACE, SEXUAL ORIENTATION, ETC., WHETHER THEY HAVE EVER BEEN THE SUBJECT OF DISCRIMINATION THEMSELVES, OR THE COMMUNITY GROUPS THEY BELONG TO.

RECOMMENDATION NO. 41. CONSIDER WHETHER SOME LIMITED FOLLOW-UP QUESTIONS BY ORAL BOARD MEMBERS SHOULD BE PERMITTED.

RECOMMENDATION NO. 42. BRING REPRESENTATIVES OF ALL ERGS INTO THE RECRUITMENT AND HIRING PROCESS AT ALL STEPS, NOT JUST FOR ORAL BOARDS, SO THAT A VARIETY OF PERSPECTIVES AND IDEAS ARE SHARED WITH THE POLICE DEPARTMENT AND THE PORT THROUGHOUT THE PROCESS.

RECOMMENDATION NO. 43. WHILE POINTS CAN BE ADDED TO AN APPLICANT'S SCORE IF THEY SPEAK A SECOND LANGUAGE, CONSIDER A PAY INCENTIVE OR HIRING PREFERENCE FOR THE ABILITY TO SPEAK MORE THAN ONE LANGUAGE, ENCOURAGING MULTILINGUALISM FOR APPLICANTS AND CURRENT EMPLOYEES.

Training and Development Recommendations

RECOMMENDATION NO. 44. THE POSPD SHOULD CONSIDER RANKING APPLICANTS FOR SPECIAL TEAM ASSIGNMENTS TO INCREASE TRANSPARENCY IN THOSE PROCESSES.

RECOMMENDATION NO. 45. THE POSPD SHOULD CONTINUE TO TRAIN DE-ESCALATION AS A CORE ENGAGEMENT PHILOSOPHY.

RECOMMENDATION NO. 46. THE POSPD SHOULD CONTINUE TO STRESS A “GUARDIAN MENTALITY” IN ITS TRAININGS.

RECOMMENDATION NO. 47. THE POSPD SHOULD PROVIDE POSITIVE EXAMPLES TO REINFORCE GOOD POLICE TACTICS RATHER THAN STRESSING POOR OUTCOMES IN TRAINING.

RECOMMENDATION NO. 48. THE POSPD SHOULD CONTINUE TO UTILIZE NATIONAL AND LOCAL LEADERSHIP DEVELOPMENT OPPORTUNITIES, BUT WITH TRANSPARENT SELECTION CRITERIA.

RECOMMENDATION NO. 49. THE POSPD SHOULD CONSIDER INCORPORATING EXISTING COMMUNITY ENGAGEMENT OPPORTUNITIES AS PART OF TRAINING TO BETTER UNDERSTAND CULTURAL DIFFERENCES.

Advocacy Recommendations

RECOMMENDATION NO. 50. POSPD SHOULD CONTINUE TO INCORPORATE THE NEW LEGISLATIVE REQUIREMENTS INTO POLICY AND REINFORCE THOSE CHANGES THROUGH TRAINING.

RECOMMENDATION NO. 51. THE PORT SHOULD CONTINUE TO ENGAGE WITH KEY STAKEHOLDERS AND ELECTED OFFICIALS ON EMERGING STATE AND FEDERAL LEGISLATION.

Budget, Roles, and Equipment Recommendation

RECOMMENDATION NO. 52. AS BODY WORN CAMERA PROGRAM IS DEVELOPED, THE POSPD SHOULD CONSIDER POLICY CHOICES AROUND WHEN CAMERAS SHOULD BE ACTIVATED, WHAT ARE ACCEPTABLE USES FOR BWC FOOTAGE, WHEN OFFICERS MAY VIEW FOOTAGE, AND HOW THE BWC PROGRAM CAN SUPPORT OVERALL TRANSPARENCY.



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Recommendations for the Port of Seattle Task Force on Policing and Civil Rights

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I. INTRODUCTION

Early in their support of the Port of Seattle Commission (Commission) Task Force on Policing and Civil Rights (Task Force), 21CP Solution consultants (21CP) went for a ride-along with two Port of Seattle Police Department (POSPD) sergeants to gain perspective on the Port’s geographical layout and to learn more about POSPD officers’ daily work. At one of the POSPD outstations, an officer commented, “I am glad you are here. This is a great department and I think you will see that. I hope you don’t find anything broken; but I do hope you find things to fix.”

Unlike many of 21CP’s engagements, this assessment of the POSPD was not precipitated by any seminal event or community outrage directly involving POSPD. In fact, 21CP found that few outside the Port have much awareness of the POSPD, what they do, or how they differ from the many other law enforcement agencies – including the U.S. Transportation Security Administration (TSA), US Customs and Border Protection (CBP), Washington State Patrol (WSP), the Seattle Police Department (SPD) and others – that operate within and/or proximate to the Port’s jurisdiction. Instead, this review was inspired by the national moment of reflection about policing, and the Commission’s vision of a world-class police force that not only sets a high standard for performance and community service, but also centers equity and civil liberties as core values in its work.

After a thorough process that involved document review, listening sessions and interviews with many internal and external stakeholders, engagement with the Task Force and subcommittees, an internal POSPD climate study, engagement at training, and review of use of force incidents and misconduct complaint investigations, 21CP found ample evidence of a good department that can get even better with key changes.

On the positive side, POSPD regularly updates its policies and procedures to stay current with promising practices, supports a robust training program, and has a clear commitment to mission and goals. Use of force is infrequent and, with few exceptions, reasonable, necessary, and proportional. The relatively few POSPD misconduct complaints were investigated in a timely and objective manner. Forward thinking appears typical of POSPD leadership and was observed in supervisors and officers providing day-to-day policing services, the POSPD training program, and through participation in the work of the Task Force. Notably, the POSPD has taken on a regional leadership role in crafting new policies and procedures in response to recent Washington State legislation to ensure that agencies are operating from the same set of standards.

However, as with any organization, there is room for improvement. As such, this report aims to provide specific guidance, and practical recommendations, for POSPD and the Port based on its unique needs, values, and experiences, and drawing from the vast experience of the many volunteers that donated their time and energy to think through the questions posed to the Task Force. Overall, this report offers 52 discrete recommendations covering each of the nine areas of assessment outlined by the Commission; a majority of the recommendations capture feedback specifically provided by the members of the Task Force and subcommittees.

While this report provides many recommendations, some broad and some more discrete, three priority areas stood out in our analysis:

- 1) the need for the POSPD to focus on internal procedural justice to address a perception of inequity experienced by many, but particularly Non-White employees,
- 2) how increased organizational transparency can improve perceptions about the POSPD, and
- 3) supporting the POSPD's move away from a traditional police response on homelessness.

The first two priority areas – internal procedural justice and transparency – were highlighted during the subcommittee process and by the results of the climate survey and officer interviews, in which 21CP heard frequent concerns, most often expressed by employees of color, about fairness in departmental opportunities, even though most did not specifically attribute the perceived unfairness to race, ethnicity, or gender. In all, over 25% of 21CP's recommendations focus on increasing internal procedural justice and fairness¹. The third – police response to homelessness – is the single most important step that will help reduce external disparities around uses of force.

The Port is not alone in confronting significant issues and concerns surrounding the role, actions, and performance of police in its community. 21CP has conducted similar reviews for other jurisdictions addressing many of the same issues and challenges, and in some cases offered similar recommendations to what is outlined here based on

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the same types of best and emerging, promising practices. Again, however, this set of recommendations was strongly shaped by the input of the Task Force and the subcommittees, as well as the unique nature of the POSPD, feedback from community members and direction from the Port Commission.

II. SCOPE & APPROACH

A. Scope of the Assessment

The Port of Seattle (“the Port”) engaged 21CP Solutions (“21CP”) to assess the Port of Seattle Police Department’s (“POSPD” or “the Department”) current “policies, practices and oversight” to ensure alignment with the Port’s Century Agenda goal to “Become a Model for Equity, Diversity, and Inclusion.” This engagement was framed by the July 14, 2020, Port Commission (“the Commission”) Motion to conduct a comprehensive assessment of the POSPD’s policies, protocols and procedures impacting issues of diversity, equity, and civil rights (Motion 2020-15).

In Motion 2020-15, the Commission authorized the creation of a Task Force on Port Policing and Civil Rights, with the scope of work comprising review of issues including: Diversity in Recruitment and Hiring, Training and Development, Equity, Use of Force, Oversight and Accountability, Police Union Participation, Budget, Roles, and Equipment, Mutual Aid, and Advocacy. As the Task Force leadership developed a structure and process for addressing issues identified in Motion 2020-15, it determined that police union representatives would be included in each subcommittee as a means to address the topic “Police Union Participation;” that the topic “Equity” would be addressed in the Oversight, Accountability, Racial Equity, and Civil Rights Subcommittee; and in conducting the assessment of all topics, each subcommittee was “to consider impacts on diversity, equity and civil rights.”

The overall assessment design was created by the Port and was divided into three phases, with considerable overlap, consisting of an initial assessment of the department; facilitation of the Task Force meetings and subcommittees; stakeholder outreach (internal and external to the Port); drafting of interim reports, updates, and this final assessment; and presentation to Port leadership, including the Commission and Executives.

Process and roles for Task Force staff and 21CP were discussed at length, and it was determined that 21CP would take the lead in suggesting areas of exploration to each committee, with the goal of focusing on the most critical issues and ensuring that any

“mission creep” be intentional and transparent. The Task Force recognized that inevitably, as this project progressed, there would be many areas that could be included in the assessment, but that the priority would be on depth, not width, in keeping with the areas outlined in Motion 2020-15 creating the Task Force.

To this end, 21CP worked in collaboration with subcommittee co-chairs to set the substance for subcommittee agendas, facilitated the subcommittee meetings, and created minutes reflecting the subcommittee work, while preserving the anonymity of subcommittee members to encourage open dialogue. Placing this body of work on 21CP ensured visibility across subcommittees, allowing 21CP to help deconflict any overlapping issues.

As is the case in most projects, the assessment required agility to explore additional related areas of the department as issues emerged. In some cases, additional areas for review were selected by the subcommittees; others were identified by 21CP or the Task Force leadership. Modifications to the project included:

- 21CP was asked to conduct an internal “climate survey” of the department to assess perceptions of equity and fairness.
- The Advocacy Subcommittee and associated legislative work evolved substantially during this project due to the large slate of police-related bills passed in the Washington State Legislature’s 2021 legislative session. As such, the Advocacy Subcommittee work was replaced by implementation of a “kitchen cabinet” of experts to provide Task Force support for the Port’s legislative engagement in real time.
- The Budget Subcommittee was subsumed within the other subcommittees as budgetary decisions regarding state law mandates from the 2020-2021 legislative session overlapped with 21CP recommendations. In short, it was determined that triaging the costs of legislation and recommendations could be done more efficiently outside a subcommittee structure.

B. Approach to this Assessment

21CP’s assessment and recommendations are based on an analysis of three primary sources of information or raw “data”: paper, performance, and people.

First, 21CP requested and received an array of written materials and information about and relating to POSPD's operations. This included policies, procedures, protocols, training curricula, annual reports, and other similar materials. These were evaluated in light of an array of emerging and best practices and national standards and where relevant, presented to the subcommittees for consideration and discussion.

Second, 21CP endeavored to evaluate POSPD's performance in practice by examining how use of force and complaints were processed at the case level. Similarly, 21CP sought to understand the POSPD's performance in the aggregate and collected data around officer activities to better understand the volume and type of work the department engages in. 21CP also audited three days of training (one with the co-chairs of the Training and Development Subcommittee) to ensure that the training presentations supported the values and information set forth in the training curricula.

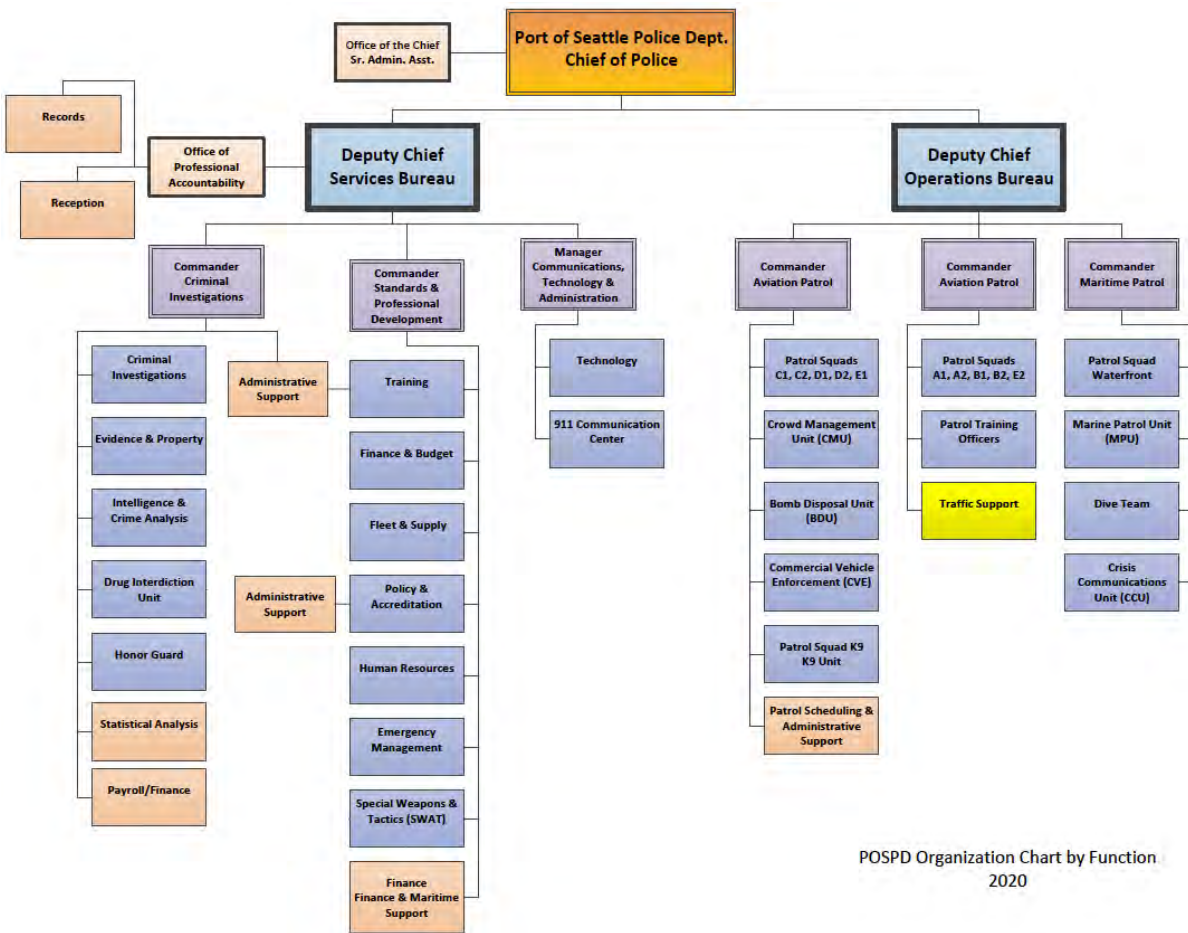
Third, and importantly, 21CP conducted conversations, focus groups, and interviews with stakeholders, both internal and external to the Port. In total, 21CP spoke with hundreds of people about the POSPD. At the heart of this engagement was the subcommittee work, which included many stakeholders, internal and external to the Port, who worked to deeply understand the complex issues in their assigned subtopics. If the subcommittee work alone was the sum total of work accomplished in this project, the project would still be valuable. Just the exchange of information and the education of stakeholders – especially those within the Port about their own police department – was important work. Reciprocally, the POSPD subcommittee members were likewise exposed to a wide range of perspectives.

We also approach this report, as we endeavored to approach our work at the Port and our interactions with stakeholders, with humility. Although we believe that our review of Department policies and protocols, examination of aggregate and specific types of POSPD performance, and engagement with community and Department stakeholders provides a sufficient and accurate foundation for recommendations grounded in best practices, the implementation of these recommendations will undoubtedly be “flavored” by the Port and the POSPD. Because of the ongoing public health situation, we were unable to spend the type of on-the-ground time with stakeholders from which we have typically derived tremendous benefit. It is possible that the limits of our approach, as with any approach of assessing the disparate functions of this organization, mean that this report overlooks some details, misses some nuance, or bypasses additional areas of importance.

III. ABOUT THE POSPD

The Port of Seattle Police Department is a general authority law enforcement agency that provides specific policing services for the Port community and the communities the Port touches, spanning several jurisdictions. At the time of this writing, there were 151 POSPD employees (113 commissioned and 38 civilian).²

A. Organizational Chart



² Note that for the demographic data, which is available as of April 2020, there were 123 commissioned and 44 noncommissioned employees.

B. Jurisdictional Map

The Port of Seattle jurisdictions are not contiguous and span a long corridor along Puget Sound.



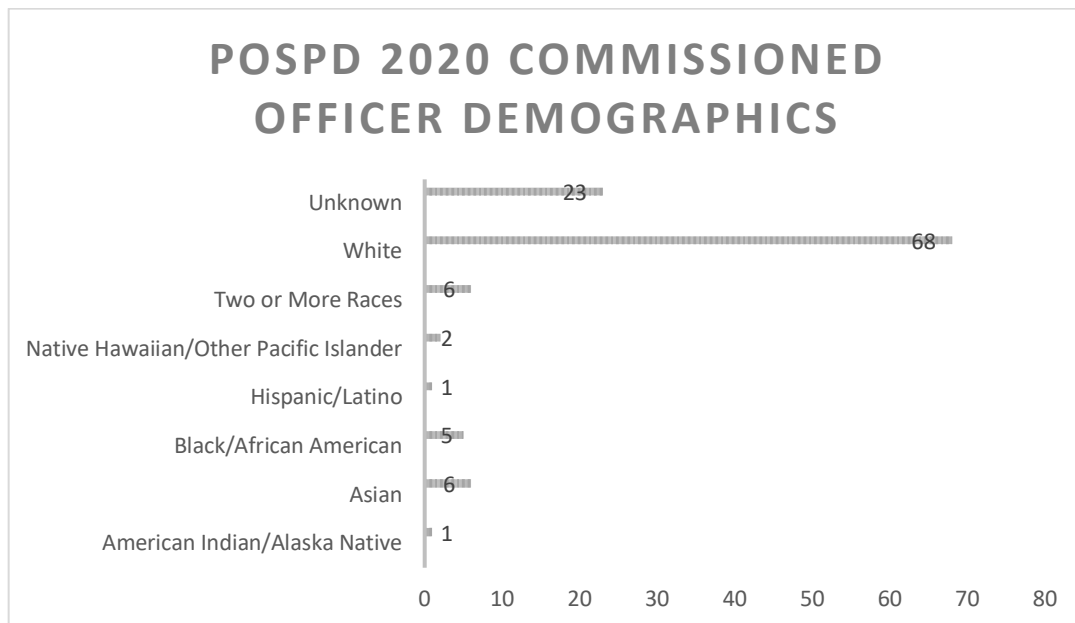
C. Officer Activities

Through Computer Aided Dispatch (CAD) records and the Record Management System, basic information about POSPD officer activities is available and which are presented below.

Year	Calls for Service (CFS)	Case Reports	Arrests	Field Interview Reports (FIRs)	Traffic Stops
2018	90,098	3,147	712	1,200	4,618
2019	106,463	3,915	826	1,526	5,175
2020	92,186	2,257	454	683	1,652

D. Demographics of Department

Based on April 2020 data, there were 123 commissioned and 44 noncommissioned POSPD employees.³ Of the commissioned officers, there were 103 males (84%) and 20 females (16%). Racial/ethnic demographics for commissioned employees in 2020 are shown in the chart below.



³ Note that the current number of commissioned employees at POSPD is 113, or 10 fewer than in 2020. Because officers have been hired while others retired or left POSPD for other reasons, the officer demographics represented in the chart above will have changed.

E. CALEA Accreditation

POSPD has been accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA) since 2011. The most recent published CALEA report online is from 2018, however the POSPD underwent a CALEA re-accreditation during the time period of this assessment. While CALEA is an excellent program for ensuring that policies and protocols in critical areas *are addressed*, the work of the Task Force and 21CP was focused on *how those areas are addressed*, with particular focus on national best practices and using an equity lens. In addition, CALEA does not provide an agency with policies, procedures, or protocols – instead, it provides a mechanism for the Department to assess itself along many dimensions and for CALEA representatives to verify compliance with standards. Many CALEA standards relate to organizational, managerial, and administrative concerns like “personnel administration,” “detainee and court-related services,” and “auxiliary and technical services.”⁴

Accreditation is not necessarily widespread across law enforcement. Departments must initiate the process, and they pay to proceed through accreditation. Consequently,

[o]nly 2 percent of police agencies across the country can claim CALEA bragging rights, and only eight of 269 public safety agencies in Washington have earned accreditation.⁵

While research studies have come to mixed conclusions about the benefits of CALEA⁶, CALEA accreditation is important to POSPD, with the Department’s Policy manual including running references beside various policy sections to the relevant CALEA

⁴ Jim Burch, National Police Foundation, “CALEA Accreditation – A Platform for Excellence and Reform,” <https://www.policefoundation.org/calea-accreditation-a-platform-for-excellence-and-reform/> (last visited Mar. 8, 2021).

⁵ “Should Tacoma Police Keep National Bragging Rights? You Have a Say In That,” *New Tribune* (June 16, 2020), <https://www.thenewtribune.com/opinion/editorials/article243566112.html>.

⁶ See e.g., R.L. Snow, “Accreditation: A 21st Century Necessity?,” 40 *Law and Order* 84, 84 (1992); Manuel P. Teodoro & Adam J. Hughes, “Socializer or Signal?: How Agency Accreditation Affects Organizational Culture,” 72 *Public Administration Review* 583, 583 (2012); Stephen A. Baker, *Effects of Law Enforcement Accreditation: Officer Selection, Promotion, and Education* (1995); G.W. Cordner & G.L. Williams, “Community Policing and Accreditation: A Content Analysis of CALEA,” in *Quantifying Quality in Policing* (Larry T. Hoover, ed.) (1996)).

standards that the Department believes that the section satisfies. POSPD’s takeaways from CALEA’s mandates are significant and the values espoused are commendable. Additionally, to the extent that the CALEA framework and requirements help the Department focus and organize its operations, there is clear significance.

Ultimately, however, “CALEA provides agencies with a blueprint for ‘what, not how’”⁷ – leaving police departments to determine for themselves the best ways for *how* to precisely address issues for their communities. The body does not certify the *effectiveness* of what a department like POSPD is doing to realize the *outcomes* that its community wants. CALEA is a framework, not a prescription. A department’s assertion that something has been “CALEA-certified” does not necessarily mean that it aligns with best practices; that it is effectively in realizing positive outcomes; or that it aligns with the values and needs of the community.

As such, while the accreditation process adds value, it is not a ceiling for POSPD’s efforts to provide its community with just, fair effective, and equitable public safety services. Therefore, this report looks to best practices, the promising experiences of peer departments, research, evidence, data, and experiences in other communities, rather than assuming CALEA accreditation provides all of the answers.

F. LEXIPOL

The POSPD and many of its neighboring departments⁸ use the Lexipol policy subscription to keep current on changing mandates. Lexipol is a private subscription company that provides “a full library of customizable, state-specific law enforcement policies that are updated in response to new state and federal laws and court decisions.”⁹ The advantage to such a service is regular updates based on changing laws at the state and federal level, which can help smaller jurisdictions like the Port of Seattle keep current on policy. Lexipol has already started providing provided its subscribers with policies updated based on the Washington 2020-2021 legislation; given some of the concerns raised by WASPC and other agencies, the POSPD will need to examine the policies provided and refine them as needed. This

⁷ Jim Burch, National Police Foundation, “CALEA Accreditation – A Platform for Excellence and Reform,” <https://www.policefoundation.org/calea-accreditation-a-platform-for-excellence-and-reform/> (last visited Mar. 8, 2021).

⁸ Kent, Federal Way, Auburn, Tukwila, Des Moines, and Renton Police Departments appear to use Lexipol.

⁹ <https://www.lexipol.com/industries/law-enforcement/>

service, combined with the CALEA mandates, undoubtedly focuses the department on developing and maintaining policies. Additionally, when other regional agencies subscribe to the service, as is the case here, mutual aid engagements and cooperation between agencies are improved due to the common operational policies.

In contrast, there are significant downsides to using Lexipol. Even though Lexipol purports to provide policies that accord with best practices, there has been developing scholarship identifying Lexipol as “a barrier to reform.”¹⁰ Certainly, as discussed below, the fact that Lexipol did not update the Use of Force policy to include the concept of de-escalation *until 2020* drives home the point that the company is out of touch with modern policing practices. While an assessment of the overall policy manual is beyond the scope of this project, as a general note, 21CP finds Lexipol designed policies to be overly complex and technical, hard to comprehend, disjointed, and poor at providing clear guidance to officers.

However, this is not an “either-or” situation and many of the potentially deficient policies can be modified – and the POSPD reports that 45% of their policies *are* modified – to incorporate more progressive policing practices.

Recommendation No. 1. POSPD should continue to scrutinize the intent and language of every Lexipol policy and modify the policies to ensure that they meet best practices and not just legal minimums.

Additionally, as POSPD modifies its policies, the department should ensure that policies are clearly stated and easily accessible to the public, which will help to maintain transparency.

¹⁰ Lexipol’s Fight Against Police Reform, Ingrid V. Eagly and Joanna C. Schwartz, FORTHCOMING, 96 IND. L.J. (2021)(“Lexipol has refused to incorporate common reform proposals into the policies it writes for its subscribers, including a use-of-force matrix, policies requiring de-escalation, or bright-line rules prohibiting certain types of behavior—like chokeholds and shooting into cars. Lexipol has also taken an active advocacy role in opposition to proposed reforms of police use-of-force standards, pushing, instead, for departments to hew closely to *Graham v. Connor*’s ‘objectively reasonable’ standard. Finally, when use-of-force reforms have been enacted, Lexipol has attempted to minimize their impact.”); *Lexipol, the Privatization of Police Policymaking*, Eagly, Ingrid, Schwartz, Joanna C., Texas Law Review Volume 96, Issue 5.“

G. POSPD Transparency and Critical Self-Analysis

Annual Biased Policing Reviews

As noted in the 2020 Annual Biased Policing Review (dated April 5, 2021), the POSPD:

operates within a unique population demographic in that most of the population is transitory in nature...comprised of passengers arriving or departing through the airport or those assisting in this endeavor. However, the majority of our department's enforcement related citizen contacts are with citizens who are not part of our traveling public, but rather members of the local population that access our airport facility for reasons other than travel.

In the Review, the Department analyzed field contacts, citations, and arrests in the context of City of SeaTac and King County demographics, finding no evidence of biased policing on the part of POSPD officers.

Recommendation No. 2. As the POSPD gathers more data on officer activity, the department should continue to scrutinize that data for any disparities in use of force and work to ensure that POSPD's deployment strategies and approach to policing minimize those disparities.

Annual Use of Force Reviews

Similarly, in the 2018 Use of Force Review¹¹, the POSPD grappled with the issue of disparity in use of force applications. Noting that "42% of the subjects on which our officers used force were black appears to be disproportionate when compared to our State and County population demographics," "a 2012 King County study described SeaTac as 'Among the county's most diverse cities, with 61% persons-of-color and 31% foreign-born.'" Additionally, "[t]he 2010 census indicates that some neighborhoods near the entrances of the airport consist of black populations ranging from 25% to 49%."¹² This same information is repeated in the 2019 Use of Force Review; in 2020, while racial characteristics were presented, there was no analysis.¹³

¹¹ <https://www.portseattle.org/documents?tid=191&primary=191>

¹² *Id.*

¹³ *Id.*

The struggle in finding meaning in a disparity between the police activity, in this case use of force rates, and the representation of any group in the population is widespread.¹⁴ As noted by the Center for Policing Equity:

Population benchmarks provide only a crude method for estimating disproportionality. They allow for an inference that force is being used in a manner that is disproportionate to presence in the general population, but do not allow for a clear inference as to whether the force is disproportionate to presence in any particular area or to legitimately provocative behavior.¹⁵

Additionally, the POSPD sample is small, with approximately 30 uses of force annually. As such, every use of force carries an outsized impact on the overall percentages that can be compared to representation in the population. Looking at 2019, the department reports that 30% of its force was on Black subjects, 60% on White subjects, and 10% Other. The department noted that the percentage of force on Black subjects decreased from 42% in 2018 to 30% in 2019. However, the raw numbers show that in 2018, force was used on 14 Black suspects; in 2019, force was used on nine Black suspects. Each Black subject of force in both 2018 and 2019 counted for approximately three percent of the total.

The primary recommendation to reduce racial disparity in use of force is modifying the approach to homelessness at the Port, which has already begun and is discussed in more detail throughout this report.

Communication with Port Community

Motion 2020-15 required the POSPD to post their policies publicly and during this process there have been requests for information and data relating to use of force, bias, and general police activities from the Port Commission.

¹⁴ *The Science of Justice: Race, Arrests, and Police Use of Force*, The Center for Policing Equity, 2016. (“Despite an elaborated literature on how to assess racial bias in police stops, there has been relatively little research on the appropriate distribution of coercive force by law enforcement (Bayley, 1994).”) https://policingequity.org/images/pdfs-doc/CPE_SoJ_Race-Arrests-UoF_2016-07-08-1130.pdf

¹⁵ *Id.* at 16-17.

As discussed throughout this report, the “community” of the POSPD is primarily the Port itself. Many of the Port staff who participated in the subcommittee work commented that they learned a lot about their Police Department and that previously they had not really understood what the POSPD police did. Additionally, several mentioned that they were able to gain a better understanding of policing generally by hearing from the POSPD presenters.

Recommendation No. 3. The Port should consider creating a quarterly Port Safety Committee to bring interested stakeholders together.

An internal Port Safety committee could serve as an idea generator, a backstop to vet police innovations, and a forum for the POSPD to present reports and information updates. It could also serve as an on-going forum to continue the work of cross-educating Port employees on the work of the POSPD. Additionally, there are several recommendations in this report suggesting that different aspects of the Port collaborate with the POSPD to provide better service – for example in the area of homelessness and crisis – and those interests could be accomplished here. 21CP is *not* suggesting that a civilian oversight entity is needed or would be advantageous at the Port. Rather, to capitalize on the work of Port employees over the past year as they have learned about POSPD policing services and have become invested in the POSPD’s success, and to continue that effort with other Port employees, a Port Safety Committee that is advisory in nature is recommended. While this recommendation envisions an internal Port committee, if there are other stakeholders that wish to participate – such as homelessness advocates – that should be welcomed. Finally, a Port Safety Committee provides an opportunity to involve and educate representatives of Port Employee Resource Groups (ERGs), facilitating the identification of ERG representatives who would be interested in participating on hiring or promotion oral boards or in other capacities when Port employee input is sought.

Recommendation No. 4. The Port should conduct a study of the internal organizational structure and communications involving the POSPD to determine how to best accomplish the goal of enhancing POSPD transparency through regular engagement with Port leadership.

As is discussed throughout this report, it is vital that POSPD leadership be proactive and transparent in keeping the Commission, the Executive Leadership Team, the Port community, and other key stakeholders informed about its activities. To this end, the 2020 Annual Report includes a goal to increase POSPD transparency in 2021

and several steps are taking place towards that end, which is in line with other police agencies recognizing the value of communicating more proactively with the public on a more expansive set of issues.¹⁶

Fostering organizational transparency involves more than simply an increase in public information, however. “Transparency refers to the degree to which decisions are being made in a manner that is visible to those inside and outside the organization. The focus is not simply on seeing the decision that was made but having an understanding of the process by which it was reached and the rationale for that choice. Transparency encompasses the extent to which decisions that have been made are subject to scrutiny and review by others.”¹⁷ This level of transparency develops through on-going exchanges of information, a mutual appreciation of factors important to decision-making, and relationship building which fosters trust. The study that is recommended should consider how the Port organizational structure and communication protocols foster or inhibit transparency between the POSPD and Port leadership.

Given the many ways the role of policing at the Port has been elevated over the past year – including the Task Force process itself that involved so many individuals from throughout the Port which has resulted in a Port community that is better educated about policing and more committed to positive outcomes for the POSPD; the complexity of police operations; the ever-present potential for a high-profile policing event; and the commitment to support POSPD’s efforts to continually improve in the changing law enforcement environment – it is recommended that a study be conducted to determine what changes might foster greater transparency.

As recommendations growing out of the assessment are considered, it will be important to have direct communication between the POSPD and Port leadership to ensure that the POSPD incorporates the interests of other Port components and to provide a forum for the POSPD to routinely share information on implementation. Regular involvement with the Executive Leadership Team could facilitate communications and decision making when significant events involving the POSPD arise, though other changes to the reporting structure and communications might serve similar purposes.

¹⁶ Chanin, J. & Espinosa, S. (2015). Examining the Determinants of Police Department Transparency: the view of Police Executives. *Criminal Justice Policy Review*, 1-22, citing Chermak, S. & Weiss, A. (2005). Maintaining Legitimacy Using External Communication Strategies: An Analysis of Police-media Relations. *Journal of Criminal Justice*, 33, 501-512.

¹⁷ *Id.*, at 133.

IV. ENGAGEMENT

Identifying and speaking with communities that come into contact with the POSPD on a day-to-day basis was challenging. In fact, many of those that 21CP contacted could not identify the POSPD, complained specifically and only about other law enforcement agencies, or simply did not want to spend time meeting to discuss the POSPD, presumably because they had no specific issues with the POSPD.

Additionally, the views of participants in community conversations may or may not be reflective of the POSPD community as a whole.

Finally, this report cites, characterizes, and sometimes quotes stakeholder and subcommittee participants. To ensure candid discussions and to preserve the confidentiality of participants who sometimes shared sensitive experiences, 21CP did not log the identities of who said what during the stakeholder engagement process – only their affiliations and the specific contents of what they said. Accordingly, this report refers to particular stakeholders in generic ways – such as “a POSPD officer,” “a community member,” or the like.

A. External Stakeholders

21CP appreciates the importance of getting input from the range of stakeholders who have interactions with the Port Police and a potential interest in providing input to the assessment. The Task Force structure itself was predicated on the value of stakeholder inclusion, with Port employees, Police Department Officers, union representatives, and subject matter experts involved in the work of the subcommittees throughout the engagement. Because Port policing services are provided in the airport, on the waterfront, and in cities surrounding these and other Port properties through mutual aid agreements, seeking input from stakeholders external to the Port was a priority goal of the Task Force and 21CP.

Task Force leaders introduced the 21CP consultants to the Port’s Community Engagement Department for help in identifying external community groups and others who might have experience with the POSPD they could share. The Community Engagement Team created an initial list of ten entities across all of the communities where the Team is engaged that potentially had involvement with the Port Police Department, and then refined that list to those groups most likely to have experiences relevant to the assessment.

21CP conducted listening sessions with the following:

- **Drayage Truck Drivers:** Drayage truck drivers are independent truck owners who convey cargo to and from the Port of Seattle. To help facilitate meetings with these truck drivers, a Community Engagement Team member introduced 21CP to the African Chamber of Commerce President/CEO and a regional operations manager who hires independent drayage drivers up and down the west coast, who were instrumental in setting up these meetings. Two meetings were held, with about eight drivers in each group. As the drivers spoke, it became clear that their concerns were not with the Port Police so much as with Port Terminal Security and the Washington State Patrol¹⁸. Examples of complaints raised include:
 - There is no scale to weigh trucks before leaving the terminal and drivers incur a \$500 fine if the truck is overweight. The problem could be avoided with scales in Terminal 18 and 30 loading areas.
 - Private security personnel at the Terminals are disrespectful, curse, and need communications training. Fear of retaliation for complaining was expressed, particularly for being banned from operating in the Terminals.
 - Rules, including those that could result in being banned if violated, are not clearly articulated and there is no process to appeal.
 - There are too many trucks at Terminals 18 and 30.
 - In the one incident in which the Port of Seattle Police¹⁹ may have been involved, a driver was in an accident with a longshoreman and felt that the officer who responded sided with the Terminal.
- **Georgetown Open Space Committee:** The Georgetown Open Space Committee (GOSC) works to provide greenspace access for the Duwamish Valley, including on Port property. One member commented that the Port Police should have an outreach engagement plan and coordinate efforts. The GOSC helped clear out a homeless encampment and would not want the Port Police to do the clearing but would like help keeping it clear. While fencing has been put up, it's not clear if it's to keep the area clear or for a construction project. While the group noted the Port Police could help address drug dealing

¹⁸ Specifically, the drivers complained that the Commercial Vehicle Enforcement by the Washington State Patrol was overzealous and that a policy of issuing violations, not tickets, meant that there was no apparent due process to fight the violation.

¹⁹ The driver was not sure whether Seattle Police or Port of Seattle Police responded.

taking place near the Duwamish River and the Port, they did not want police intervention for the prostitution activity also occurring. Finally, one person said she'd been told that the police are responsive to fights in the South Park area and de-escalate well.

- Local Government Relations:** Discussions took place with the Port of Seattle's Government Relations Department and one of the four surrounding cities where the Port has property – SeaTac, Burien, Des Moines, and Auburn. The two primary ways the Port Police interface with these four cities is in mutual aid incidents (through the Valley SWAT or Valley Civil Disturbance Unit) and around homelessness or other similar concerns. While King County Sheriff's Office has contracts to provide policing services in many of these South King County cities, a King County Charter amendment in 2020 was predicted to potentially change local control in the contracting relationship. As such, there also could be impacts when the Port engages in mutual aid on Port property or elsewhere. For example, the City of SeaTac voted to end its King County contract, and the Port pays a mitigation fee for using SeaTac property, which funds seven Officers.

B. External Stakeholders Identified through the Port of Seattle Customer Service Bureau

In exploring avenues for getting external stakeholder feedback about interactions with the POSPD, 21CP contacted the airport's Customer Service Department, which provided a demonstration of their Salesforce system (which they use to manage and track contacts), including how matters are categorized, whether a potential threat is involved, whether the incident was reported to the POSPD or other responder, whether a complaint is involved, and the like. The chart below provides a summary of contacts made with Customer Service in 2019, 2020, and through mid-April 2021.

	Commis..	Email	Facebo..	Instagr..	Letter	Phone	SEA Employee	Text	Twitter	Voicem..	Web Chat	Web Form	Grand Total
Positive		124	370	124	3	51	68	2	3,138	4		490	4,374
Negative	41	731	761	52	5	607	76	15	7,626	57		1,042	11,013
Question	4	2,011	600	18		744	35	205	886	575	2	3,085	8,165
Neutral	1	1,904	48	5		40	18	9	265	20	2	13	2,325
Grand Total	46	4,770	1,779	199	8	1,442	197	231	11,915	656	4	4,630	25,877

These contacts received by Customer Service are categorized in a variety of ways and 21CP was provided a compilation of customer comments/questions that had a nexus to the Department during the same time. There were 246 entries with an apparent

nexus to the POSPD, less than 1%, out of a total of 25,877 contacts.²⁰ Comments and questions originated in a variety of ways, such as by email, voicemail, or over social media. The entries referenced a variety of topics, with some very general and others more specific. Examples include:

- Questions that might best be handled by POSPD, such as:
 - Can a person fly to another state to take care of an outstanding warrant?
 - How can someone get a copy of any security video footage in parking area that might have recorded a break-in or car damage?
 - How can someone get a copy of an incident report?
- Requests for help that may or may not be something where the POSPD can help, such as:
 - Missing person last seen at airport or expected to arrive at airport
 - Help enforcing custody agreement or protective order
 - Lost/stolen items discovered after going through TSA security or from shipped luggage
- General complaints not involving an immediate incident, such as:
 - Panhandling
 - Homeless camping out
 - Cell lot parking and shoulder parking
 - Traffic enforcement, including that there was not enough enforcement or too much enforcement
 - People not wearing masks
 - Police officers carrying rifles/AR-15s
 - Not providing public information when part of the airport is closed for security purposes
 - Rowdy passengers returning from January 6 attack on the Capitol
 - Too many dogs
 - Bikes not a good idea in large crowds
- Compliments about POSPD officers:
 - Officers helping locate misplaced handbags
 - Officers helping after car hit by bus on Airport Expressway

²⁰ The relatively low number of Customer Service contacts with a nexus to the POSPD and the even smaller number of complaints is consistent with customer satisfaction surveys done on the POSPD. Respondents indicated an “Excellent” or “Above Average” experience as follows: 89% in 2018, 92% in 2019, and 84% in 2020.

- Officer M.'s "extraordinary service"
- Traffic support: 6 compliments for Officer T.
- Returned lost cell phone
- Officers helped elderly person

- Complaints about POSPD officers:
 - Officers accused mother of having tracking device on phone that had been stolen; they were rude and did not apologize
 - Assault by someone in "parking department"
 - 3 Officers and sergeant claimed narcotics in bags – officers were disrespectful, rude, searched bags in front of everyone
 - Sexual assault by police
 - Told to limit time in meditation room
 - Discriminated against in traffic enforcement
 - Harassment by traffic control
 - Officer not informed about service animals, though acknowledge trespassing and officers were respectful
 - White officers profiling and harassing a black in Muslim gears (sic)
 - Traffic enforcement officer did not make white people in nice cars move but yelled at us

The data compilation provided to 21CP did not include information on how matters were handled, and it's disconcerting to not have confirmation that the most serious complaints, such as the claim of sexual assault or racial/religious profiling, were handled appropriately. However, Customer Service staff indicated that they follow up with the customer if more information is needed and will use Port resources to check into relevant details. There are protocols staff follow when a safety threat is involved or when other matters call for an immediate response from police, fire, or others. On occasion, the Customer Service staff person will consult with the Sergeant heading up the Office of Professional Accountability (OPA), to confer on a comment or question received. But staff indicated that there was a lot of individual discretion involved with their work and there are no written protocols about how to handle complaints involving POSPD officers.

Recommendation No. 5. Customer Services and the POSPD should develop or refine protocols on the handling of complaints and compliments about Port Police officers.

After initially drafting this report, 21CP was provided a document titled, “Reporting Practices for Customer Complaints,” dated July 27, 2021, that may address some of the concerns raised. As 21CP did not have capacity at that point to assess the procedures captured in the document, the Task Force should be aware of the document when it is considering implementation of recommendations.

Ultimately, the OPA Sergeant and others at the Department are in the best position to judge whether a complaint should be fully investigated or can be resolved through other means. Conducting intake assessment on complaints involving alleged police misconduct can be complicated by factors such as the need to preserve perishable evidence, and the OPA Sergeant has the expertise and resources to handle such cases. Further, where an officer’s name has not been provided in the message left for Customer Services, the OPA Sergeant has the means to identify the person more readily, provided enough other detail is available. Finally, the POSPD tracks all commendations and complaints it receives, including non-meritorious misconduct allegations. Regularly receiving information from Customer Service on contacts that involve Port Police officers will promote department-wide accountability.

The best course of action would be to automatically and immediately refer all complaints received by Customer Services to OPA. Regardless of the threshold used, however, all information on compliments and complaints should regularly be shared with the POSPD. This recommendation is included below in the discussion on the need for developing protocols with Human Resources and Workplace Responsibility on handling complaints involving the POSPD.

Finally, Customer Service has begun tagging terms associated with human trafficking as part of the Port’s anti-human trafficking initiative and there was a discussion about the advantages of capturing whether a comment or question raises a concern related to discrimination. Regardless of whether the contact involves the POSPD, having the means to query how often comments or questions raise issues of race or other discrimination would help in identifying potential problems of prejudice or unfairness in Port operations, facilitate an intentional approach to tracking such issues, and serve the Port’s interest in promoting equity, diversity, and inclusion.

C. External and Internal Stakeholders Working on Issues of Homelessness

Individuals who do not have airport business but are in the facility and appear to be homeless are regularly reported to POSPD Officers, who make contact to clarify the person's reason for being in a Port facility.²¹ If the Officer confirms that the person does not have any legitimate airport business, the Officer provides information on social services available and may or may not issue a Criminal Trespass Admonishment, depending on the individual's willingness to leave voluntarily and their history of prior contacts by the Port Police²². The resources compiled for the Task Force were reviewed and prioritized by 21CP and listening sessions were arranged with representatives of a Homelessness Coalition and a mental health expert working with the homeless and training first responders on effective interactions, including Port Police Officers.

The Homelessness Coalition representatives indicated that, during the pandemic, more people sought shelter at the airport because libraries and other facilities had closed and there was public transportation available for an easy trip to Sea-Tac. They reported that POSPD Officers were not giving citations to these individuals and that the airport had provided office space and was coordinating with the mobile crisis team to provide alternative resources to those seeking shelter. It apparently is difficult to discern a reliable estimate of the numbers of homeless persons at the airport or seaport, though the mobile crisis team that responds on-site has had "very positive" outcomes. From a racial equity in policing perspective, the Seattle waterfront is key, because shelters have been closed and there is lack of public restrooms. However, the Seattle Police Department is more likely to be involved on the waterfront, rather than POSPD. Finally, the Homelessness Coalition representatives noted they were impressed with a recent presentation on the POSPD response to homelessness issues given by Acting Chief Villa and Commander Minnehan.

The licensed mental health professional who provided input to 21CP is someone who has worked extensively with law enforcement around the Puget Sound area, both to co-respond to people in crisis and to train police on appropriate and helpful ways to interact during these incidents. She teaches at the Criminal Justice Training Academy and does ride-alongs with officers to role model effective response

²¹ 21CP was informed that the POSPD currently does not track whether individuals who are contacted in these circumstances are "homeless," though are considering such tracking moving forward.

²² As reported in the Use of Force review, 58% of POSPD uses of force are in trespass cases.

approaches. She has had POSPD members in her Training Academy classes and has done presentations and been present on-site at the airport to observe officers' interactions with the homeless. It is important to integrate classroom and online training with field experience and she noted that POSPD Officers reliably know what resources are available and how to transfer someone to the hospital if needed, and that some POSPD Sergeants have good insight on the complexity of issues involved.

The mental health professional observed that individuals experiencing homelessness often have mental health and substance abuse problems, and sometimes demonstrate extreme psychological stress that also can turn volatile. In such situations, handcuffing the individual might be necessary for the safety of everyone, even if they are to be transported to a hospital. She noted that they demonstrate "incredible survival skills" in finding shelter and other resources and believes that with proper training, law enforcement can respond to some of the most challenging behaviors and not use force.

Government Relations for the Port was involved in discussions with the Homelessness Coalition representatives and researched the possibility of 21CP meeting with individuals from the Lived Experience Coalition (LEC) to learn more from those who personally had encountered homelessness and sought shelter at the airport. However, because Sea-Tac has been piloting a coordinated effort to prevent non-traveling visitors to the airport and 21CP could not identify a time when they would likely encounter a person seeking shelter at Sea-Tac, meeting with someone with lived experience of homelessness who had previous interactions with the Port Police would have been very difficult to arrange.

Recommendation No. 6. Port leadership should support the POSPD by developing first responder alternatives to incidents involving the homeless that do not involve armed POSPD officers and increase access to holistic resources.

POSPD launched a six-month pilot Crisis Coordinator position on August 1, 2021, with an officer who has extensive training and experience in crisis response serving in the unarmed role. The job description notes that the Crisis Coordinator will be the point of contact internally and externally for issues relating to crisis, will be familiar with outreach services, have an understanding of mental illness manifestations, track crisis services and laws, build and maintain necessary relationships, and generally serve as a focused resource on this issue.

Running a six-month trial of the Crisis Coordinator position is appropriate, allowing the POSPD to assess whether the position as described meets the needs of the Port and whether the Coordinator acting as the first responder in most instances will have positive impacts, such as reducing the need for trespass citations and frequency of use of force. Whether a permanent Crisis Coordinator or similar position ultimately is recommended, homelessness should not be approached primarily as a policing problem.

In addition, the SEA Cares Steering Committee – composed of airport staff and other stakeholders – has been working to identify additional Port Resources or external partners to supplement the Port’s capacity to address homelessness. In discussions with 21CP, the Committee identified the very real concerns around assigning untrained, unprepared, and especially unwilling staff to handle interactions with homeless people in the airport, especially given the potential for hostile or violent encounters. Additionally, the committee is working with the developing King County Regional Homelessness Authority and is attempting to identify available homelessness resources in the South Sound Region.

Ultimately, the Committee identified the very same problems that other jurisdictions are encountering despite the interest and the will to engage with alternative response models - the lack of identified resources to address crisis and homelessness issues presents a very real barrier. However, Port should not simply default to a police response to homelessness and crisis interactions but bring together other aspects of the Port to bear on the issue. That appears to be happening. And, as discussed elsewhere, a Port Safety Committee could help support this effort.

D. Internal Stakeholder Engagement and Equity

POSPD Engagement

To get input on perspectives and concerns of those working at the POSPD, 21CP spoke with POSPD employees and conducted a “climate survey” in the Department to gather information anonymously. 21CP conducted listening sessions with over 25 commissioned and noncommissioned members of the POSPD, hearing from individuals of all ranks, and a variety of positions and assignments. Sessions were held both virtually and, as the state of the pandemic allowed, ultimately in-person. The survey and listening sessions focused primarily on issues of equity – whether employees experienced themselves and observed for others a level playing field when it came to assignments, promotions, and other workplace events. Highlights from the

survey are summarized below, including instances where similar themes were heard in the listening sessions. However, before discussing these themes and to put the survey and listening sessions in perspective, it is important to understand the various ways that equity in policing has been approached.

Equity

While the term “racial equity” can be ascribed different meanings in the context of policing, the term often focuses on whether police enforcement activities are fair, impartial, and objective. The Center for Policing Equity exemplifies this approach, with research scientists and others working with law enforcement organizations to identify activities that produce inequity by collecting and analyzing operational data.²³ For example, traffic stops, arrests, use of force incidents, and other police contacts might be analyzed to determine if there is evidence that Blacks or other racial/ethnic groups are the subjects of police enforcement at a disproportionate rate given their representation in the relevant population. Where activities resulting in disproportionate impacts are identified, police agencies can adopt strategies to lessen inequitable results, such as seen when New York City Police Department stop-and-frisk practices were challenged as being unconstitutional.²⁴

Although disparate impact and treatment may stem from explicit bias and racism, not all disparities necessarily arise from intentional or conscious bias. Research has increasingly confirmed that, even among individuals with an express commitment to treating people equally, “attitudes or stereotypes . . . [may] affect our understanding, actions, and decisions . . . involuntarily and without an individual’s awareness or intentional control.” Indeed, everyone – from lawyers and judges to physicians and teachers – appears to have implicit, or subconscious, biases to some extent because, in the same way that the brain is hard-wired to identify patterns and associate certain characteristics with certain phenomena.²⁵

Research into implicit bias, or our unconscious associations about groups of people based on their culture, identity, and larger societal biases, has increased for law enforcement and in many other arenas. However, while many police departments are offering implicit bias training, evidence that it reduces biased behavior in police activities with the public is lacking.²⁶ Nonetheless, even those who criticize implicit

²³ <https://policingequity.org>

²⁴ <https://ccrjustice.org/home/what-we-do/issues/discriminatory-policing>

²⁶ <https://counciloncj.foleon.com/policing/assessing-the-evidence/vii-implicit-bias/>

bias training conclude that if it helps law enforcement to begin thinking about the role of bias, such training is still worthwhile.²⁷ Also, it has been observed that implicit bias training might pair well with duty to intervene and mandatory reporting policies, both of which are required by recently enacted Washington State legislation and help to address the underlying culture of policing.²⁸

It may also be the case that some explanation for disparity with respect to law enforcement activity is related to disparities across the criminal justice system and broader social life. Systemic racism and enduring bias in education, housing, employment, the courts, public health, and other foundational areas of American life may be reflected in data on those with whom police departments interact, arrest, and the like.

Regardless of the web of reasons for why there are disparities, police departments occupy a singular place in helping to consider and implement solutions that might address and affect disparate outcomes. A critical part of addressing disparities in law enforcement is ensuring that a department has the policies, procedures, training, and processes for critical self-analysis in place that can identify disparities and work with the community to determine if it might adopt different approaches that would reduce disparity.

Policing equity also is used by some to focus on aspects of the police-civilian interaction that are tied up in social and cultural norms about authority, politeness, and body language that guide how both the officer and the citizen should interact.²⁹ Inequities can manifest in how officers communicate, which can undermine community members' perceptions of procedural justice and police legitimacy.³⁰ For example, one study found that Blacks were more likely involved with stops where officers communicated indifference, were dismissive, or showed an air of superiority.³¹ Given the racial and ethnic diversity of many jurisdictions, the challenge is for police officers to be "both professional with each community member they encounter, 'blindfolded' like Lady Justice, and simultaneously to see every

²⁷ <https://www.npr.org/2020/09/10/909380525/nypd-study-implicit-bias-training-changes-minds-not-necessarily-behavior>

²⁸ *Id.*

²⁹ Charles M. Katz and Edward R. Maguire, editors, *Transforming the Police – Thirteen Key Reforms* (Waveland Press: 2020), p. 97 (citations omitted).

³⁰ *Id.*

³¹ Travis L. Dixon, Terry L Schell, Howard Giles, and Kristin L. Drogos, "The Influence of Race in Police-Civilian Interactions: A Content Analysis of Videotaped Interactions Taken During Cincinnati Police Traffic Stops," *Journal of Communication* 58, no.3 (2008): 530-549.

person as an individual with clear, current cultural expectations of law enforcement.”³²

In assessing matters of racial equity at the Port of Seattle Police Department, 21CP reviewed POSPD contact and subject demographic data, reviewed the Department’s reports on biased policing complaints, and learned about POSPD’s approach to implicit bias and other training that is intended to reduce any unintended inequities. 21CP also facilitated discussions in each of the subcommittees on equity in the context of the subcommittee’s topic focus. In addition, equity in the Police Department’s workplace was assessed through employee listening sessions and a climate survey of employees. Of the various approaches to assessing racial equity in policing, the focus on internal stakeholder experiences yielded the greatest concerns 21CP has regarding equity and the POSPD.

Recommendation No. 7. The POSPD should commence a campaign of internal procedural justice training for all levels of the department to help address the broad-based sense of inequity, especially with employees of color.

Procedural justice training can be effective in improving the attitudes and behaviors of officers and may result in reductions in arrests and the use of force.³³ The four practices of procedural justice also cultivate legitimacy across cultures: treating people in the intercultural environment with dignity and respect, listening and giving voice to subjects of enforcement activities, displaying transparency in decision-making, and conveying trustworthiness in motives.³⁴

While much of the procedural justice focus has been on the officer/civilian interaction, researchers also have looked at the internal climate and culture of police departments to assess the degree of transparency and equity within an agency as perceived by its

³² Marcus Paxton and Robert Strauss, “Cultural Diversity and Cultural Competency for Law Enforcement,” *Police Chief Magazine*, <https://www.policechiefmagazine.org/cultural-diversity-and-competency/>

³³ CCJ Task Force on Policing. Procedural Justice Training. *Policy Assessment* (March 2021), <https://counciloncj.foleon.com/policing/assessing-the-evidence/vi-procedural-justice-training/>

³⁴ Captain Marcus Paxton and Robert Strauss, PhD. Cultural Diversity and Cultural Competency for Law Enforcement. *Police Chief Magazine*, <https://www.policechiefmagazine.org/cultural-diversity-and-competency/>

officers, using the term “internal procedural justice.”³⁵ Studies have found a close relationship between officer perceptions of organizational justice and their commitment to their department, compliance with departmental policies, and adherence to community policing principles.³⁶ “Internal procedural justice refers to officers’ perceptions that their colleagues’ actions – particularly those of their supervisors – are fair and understandable, which demonstrates a key level of respect....officers who feel respected by their supervisors are more likely to understand why decisions were made; more likely to accept, support, and voluntarily comply with those decisions, including departmental policies; and less likely to challenge the decisions.”³⁷

As discussed in detail throughout the next section, drawing clear conclusions based on the climate survey to “prove” or “disprove” bias at the department proved difficult due to insufficient data and conflicting narratives. Importantly, the survey data shows that in all measured categories, Non-White respondents were generally less satisfied - they felt less valued,³⁸ said they had less access to opportunities³⁹, felt less heard⁴⁰, and were more concerned about fairness at the department.⁴¹ On the other hand, when narrative survey responses identified inequities and unfairness, all but one respondent explained their concerns as being based on cronyism⁴² or being part of an “in-group,” rather than pointing to race, ethnicity, or gender as the root cause. This is the same theme we heard throughout our interviews with employees – while the so-called “in-group” was predominantly white, most employees essentially said that racial disparity is the *effect* of the cronyism but stopped short of saying that racial bias was the *cause*.

³⁵ See, e.g., R. Trinkner, T.R. Tyler, & P.A. Goff. Justice from Within: The Relations Between a Procedurally Just Organizational Climate and Police Organizational Efficiency, Endorsement of Democratic Policing, and Officer Well-Being. *Psychology, Public Policy, and Law*, 22(2), 158 (2016).

³⁶ See Footnote 12, p. 3 (citations omitted).

³⁷ Organizational Change through Decision Making and Policy: A New Procedural Justice Course for Managers and Supervisors. *The E-Newsletter of the COPS Office*, Vol. 8, Issue 4, April 2015, p. 1-2, *citing*, Nicole Haas, Maarten Van Craen, Wesley, Skogan, and Diego Fleitas. Explaining Officer Compliance: The Importance of Procedural Justice and Trust Inside a Police Organization. *Criminology and Criminal Justice* (January 2015).

³⁸ 8/23 Non-White vs. 6/63 White Respondents.

³⁹ 11/23 Non-White vs. 8/63 White Respondents.

⁴⁰ 10/24 Non-White vs. 6/63 White Respondents.

⁴¹ 8/23 Non-White vs. 2/63 White Respondents.

⁴² We note that allegations of cronyism and favoritism are not unique to the POSPD.

What is clear, however, is that there are a significant number of employees – and especially employees of color – who perceive unfairness in opportunities and outcomes at the POSPD. POSPD needs to respond to both employee perceptions of inequity, whatever the root cause, and all ways disparity is manifested. This is likely best accomplished globally through comprehensive procedural justice training. Additionally, a quarter of all recommendations in this report are designed to address fairness and equity – both real and perceived – in a variety of targeted areas.

E. Climate Survey

Introduction

An organization’s capacity to evolve depends in large part on the “health” of the organization as reflected in the perspectives of its most important assets – its personnel. “Climate surveys” are tools frequently used to measure the range of employees’ experiences, attitudes, and concerns in order to better understand the workplace culture and identify any areas for leadership to focus attention in working towards change. As part of its overall assessment of the Port of Seattle Police Department, 21CP Solutions was asked to conduct a climate survey of POSPD employees, highlighting perceptions of equity in the department.

The survey instrument was designed in collaboration with the Task Force and was reviewed by members of the Port executive and legal departments and POSPD command staff. The questions were designed to explore fairness and procedural justice as experienced by POSPD employees and to identify additional steps that the POSPD might take to maximize equity and inclusion at the POSPD.

First, as we attempt analysis by race/ethnicity in the report, we are limited by not knowing the complete demographics of our sample. Thirty percent of respondents did not provide demographic information. This gap in information is compounded by the 25 percent of POSPD employees that did not identify race in human resources records. This means that any percentages presented are a percentage of the known sample, not the total samples. As such, we are careful to present the number of responses and the “N,” or sample size to provide context. Furthermore, as the number of respondents in some categories is very low, comparing percentages for those categories against the overall results to test for disparities is challenging and we only use percentages sparingly and intentionally.

Similarly, while 21CP identifies and discusses potential disparities at a higher level of generality – White vs. Non-White; Male v. Female/Other; Supervisor v. Non-Supervisor – they are provided for purposes of noting areas for additional study, rather than suggesting calculated findings supported by any level of statistical confidence. That being said, this limitation should in no way serve to undermine the importance of these observations.

Second, this survey tested perceptions of equity during a complicated time in the POSPD’s history. There are several publicly known Equal Employment Opportunity (EEO) processes currently underway that challenge issues of equity that were explored in the survey.⁴³ Additionally, the full-time Chief has been on administrative leave for over a year, which undoubtedly influences employee perceptions of fairness and equity. Many employees commented during listening sessions and in the survey that they did not understand how Chief Covey could be on leave for such a long time without any explanation or expected timeline from Port leadership.⁴⁴ While the actual impact of these issues is unknown, they are important to note as part of the atmosphere in which this survey and listening sessions were conducted and in the overall context of this report.

Last, there is no current data to clarify whether these results are unique to the POSPD or reflect instead a microcosm of the overall Port culture. Additional work is underway to conduct a comprehensive climate survey of the Port, in whole, which may provide further insight on this point.

Demographic Information for Survey Respondents

To account for the low number of respondents who identified within several of the racial/ethnic categories and the difficulty in providing meaningful comparison between very different sample sizes, respondents are grouped as either White or Non-white for purposes of many analyses in this report. After controlling for the duplication of multiple responses (*i.e.*, the double count that would result when

⁴³ POSPD employees have filed nine EEO complaints since 2017 based on allegations of race discrimination, disability discrimination, retaliation, and employee ethics, as outlined in Section VII, and it is unclear which of these employees participated in the survey or listening sessions and the impact of a substantiated or unsubstantiated finding on their current experiences in the department also is unknown.

⁴⁴ 21CP did not have any access to the investigation into the Chief or the results that recently have been the focus of media attention. As such, none of the information relating to that investigation could be incorporated into this analysis.

respondents selected more than one race), there were 27 respondents that identified as Non-white. Sixty-eight respondents identified as White; the remainder were “Other” or did not respond.

The identified gender breakdown of respondents was 63 male, 28 female, and three Other.

Seventy-three respondents were commissioned employees; twenty-five were non-commissioned. This breakdown is almost precisely representative of the department as a whole.

Seventy-two respondents were non-supervisory and 24 holding a supervisory position up to and including the command or executive level.

Respect for Individual Differences

Twelve of the survey questions were designed to examine the culture of respect around individual employee differences. These questions were intended to elicit perceptions of fairness, respect, the extent to which employees feel valued as individuals, and the department’s overall commitment to diversity, equity, and inclusion. In addition to the low number of responses on some questions making it difficult to draw firm conclusions, there also were competing narratives throughout, with examples provided from open-ended responses to the survey and listening sessions with POSPD employees.

Consistent with the Task Force focus on equity, we frame the survey results as best we can from the perspective of Non-White respondents first as compared to the majority. Fundamentally, across every category, Non-White employees had more concerns and these disparities call for further exploration by the Port and the POSPD. Additionally, while we do provide some results about gender, commission and supervisory status that help to provide context, those categories did not drive recommendations in the same way as racial differences in perception.⁴⁵

⁴⁵ One employee expressed direct criticism of the survey instrument and the survey itself:

If the intent of this survey is, in fact, to learn more about the experiences and perspectives of those working at this department, it is poorly constructed. This survey is filled with leading questions designed to illicit a particular response from participants which will serve the apparent personal agendas of those leading this task force.

Non-White employees had far more concerns about fairness, but survey narratives and interviews did not consistently attribute these issues to race.

Eleven percent of the survey participants (10 respondents) indicated a concern about racial fairness and equity inside the POSPD. Of those 10 respondents, eight identified as Non-White. Perhaps more importantly, eight of all 27 Non-White respondents identified concerns as opposed to 2/63 of the total White respondents.

However, while ten respondents indicated there is unfairness related to race, their written comments in the survey provided a different narrative. For example, one employee stated: “There does seem to be special treatment within our walls but not what may you think...cronyism runs deep. This cronyism is not race or gender related but is all about picking your buddy.” This sentiment was echoed by another employee, who said: “[t]here is an inequity issue. Can't say that the inequity is based on race, gender, sexual orientation, etc., but it exists.” This narrative – that fairness is an issue but is not necessarily driven by racial or other bias - is consistent with what officers said during the employee interviews. For example, an employee told us that “some people can do and say what they want, and others get in trouble...might not be race or gender, but it’s still an equity issue.”

Half (11/22) of Non-White respondents reported not feeling valued as an individual by the Department.

Of the sixteen respondents who indicated they did not believe the department valued them as an individual, 11 were Non-White. Importantly, half of all Non-White respondents (11/22) reported not feeling valued by the department.

There were no comments in the survey related directly to “feeling valued,” although some of the comments regarding fairness and opportunity likely relate. During listening sessions, comments regarding alleged mistreatment in other areas, such as training, might also tie into whether employees felt valued or not.

While we clearly do not share the perspective that the survey was biased or leading, this criticism misses the point of the work 21CP was asked to do. Of course, there were questions in a climate survey directed at determining perceptions based on race and gender – that is an important part of ascertaining climate. Additionally, as should be apparent, we take great pains to explain the limits of the data and the conflicting narratives to help prevent an over-focus on apparent disparities that we do not fully understand.

Of the 13 respondents that that did not feel treated with respect by Command Staff, the majority were Non-White.

Fifteen percent (13/88) of respondents reported that the treatment of employees with respect by command staff is a problem. Of the thirteen who expressed concerns with respectful treatment by command staff, eight identified as Non-White and six as White. Another way to consider responses to this question is that 8 Non-White respondents out of a total of 27 said they did not feel treated with respect by Command Staff. Of the 13 total Non-White and White respondents indicating concern, three quarters were male, with one quarter female/other.

One respondent claimed direct retaliation by the Chief and command staff; another noted that “under Chiefs Covey and Villa, I can honestly say our agency has never been healthier.” Some respondents complained about double standards or, as one respondent noted, that some “commanders can do and say whatever they want.” Several spoke of cronyism, including command staff “holding vacant spots in their special teams for their like-minded friends.”

The issue of special teams assignments also came up during listening sessions with some commissioned employees and this issue is addressed in detail below in the Training and Development section.

Ninety-three percent of the department did not identify concern with the system for hiring new employees.

Seven percent (6 respondents) expressed concern with the system for hiring new employees. Of the six respondents who expressed concern, four were Non-White.

One respondent noted a fairness issue related to hiring lateral officers in particular: “[t]his department is focused on hiring lateral officers from other agencies. Instead of hiring lateral officers, internal [Port] employees should be given the opportunity to get hired as an Entry-level.” While not contradictory to the previous statement, others spoke highly of the hiring standards: “[t]he Port of Seattle Police Department has the highest background standards I have seen in the area and is committed to recruiting officers who have a shared commitment to its core values, regardless of their background and experience” and “[i]n my experience we also have one of the most difficult background checks in law enforcement. I believe this high standard has protected the department from troubles that other departments have experienced.”

Hiring issues are discussed in more detail in the section on Diversity in Recruitment and Hiring.

More than half of respondents (8/15) that indicated concerns with the promotions process were employees of color.

Seventeen percent (15/88) of respondents indicated concerns with the promotions process. Of the 15 concerned employees, eight were Non-White and seven were white. Twelve were commissioned employees and only one respondent was a supervisor.

While no comments were directed specifically at promotions, as discussed elsewhere, a few spoke to cronyism in the selection of special teams, and the lack of opportunity in joining special teams. One noted: “certain people are allowed to stay in highly regarded and prestigious specialty assignments (SWAT, K9, BDU, Detectives) for 20 years or more, hoarding specialty training, assignments, schedules, and incentives like pay and days off.” Others said that the selection process for special teams was not fair as: “[w]e do the assessment and rank the applicants and then pick from a ‘pool’. I’ve personally heard Command Staff say I don’t like (fill in the blank) and pick another person.”

Again, almost half (11/23) of Non-White respondents indicated that they did not have the opportunity to grow and develop as much as their peers.

Those that said that they did not have the opportunity to grow and develop as much as their peers included 11/23 Non-White employees and 8/63 White employees. Fourteen commissioned employees and four non-commissioned employees saw this as an issue. Additionally, some supervisors (4) and non-supervisors (14) said there was a problem with growth and development. These results would seem to fit with the perception discussed above that there is unfairness, though it’s difficult to say if it’s based on race, gender, or “being part of the in-crowd.”

Ninety-one percent of respondents said the department has a strong commitment to diversity, equity, and inclusion, although that perception is less strong among Non-White employees.

The vast majority of respondents (91%) reported that they believe POSPD has a strong commitment to diversity, equity, and inclusion, including 17/24 Non-White respondents and 61/63 White respondents. This perspective was consistent across gender categories.

In contrast, however, twenty-three respondents felt the department places *too much* emphasis on diversity, equity, and inclusion.

Of those indicating that the POSPD places too much emphasis on diversity, equity, and inclusion, 17/62 were White, 6/23 were Non-White, and all were commissioned.

There were few comments in the survey about this topic, but one respondent expressed concern for favoritism of protected classes: “[a]t POSPD and the port of Seattle as a whole, more favoritism is reserved for non-white, female, and/or LGBT employees. It creates an environment where it seems like the value of white male employees is less.” While this perception was expressed and is reported here, it does not seem to coincide with any other data.

In officer interviews, we did hear allegations that more progressive Human Resources policies, such as not allowing discipline for officers being late because it wasn’t “culturally accommodating,” was undermining the department’s ability to maintain order in the ranks. We do not know whether these perceptions help explain the number of people who are concerned with too much emphasis in this area, but it seems plausible.

Accountability

A separate set of questions focused on issues relating to accountability and whether employees knew how to file a complaint, believed that complaints were taken seriously, or feared retaliation when making complaints about race discrimination, gender discrimination, filing union grievances, or taking job-protected leave. Additionally, the survey and listening sessions with employees explored perceptions of fairness in the disciplinary system and consistency at the supervisory level. White and Non-White employees alike expressed concern about uneven accountability, though some indicated they thought people of color were targeted for discipline more often.

As discussed below in Section VII., a sample of misconduct complaints filed against POSPD officers were reviewed to determine if investigations appeared to be handled in an objective, thorough, and timely manner. However, it was beyond the scope of this assessment to examine whether these complaints and any discipline that resulted demonstrated uneven treatment between officers for the same behavior. Further, the complaints reviewed did not necessarily capture all incidents of counseling, training, or other less formal interventions by supervisors with officers,

nor all the specifics involved with EEO complaints that have been filed regarding alleged unequal treatment. Rather, the survey and listening session feedback noted below speaks to perceptions of uneven accountability.

The vast majority – ninety-five percent – of respondents say they know their options with respect to bringing complaints about working conditions, but half of all Non-White respondents (11/23) indicated concern that those complaints were not treated seriously.

Respondents overall indicated they were knowledgeable about complaint filing options. However, fourteen respondents out of a total of 87, with the majority (11) being Non-White, said complaints about working conditions were not treated seriously. Thus, considering all Non-White respondents, 11/23 had concerns in this area. Nearly all White and Non-White respondents who expressed concern about whether working condition complaints were treated seriously were Commissioned employees. Perhaps unsurprisingly, all supervisors believed that complaints are taken seriously.

Respondents overall were most fearful of retaliation for filing a union grievance, with half of those concerned identified as Non-White, and Non-Whites also expressed more concern for retaliation following a race or sex discrimination complaint.

Respondents (27/87) were most concerned with potential retaliation for filing a union grievance. Of the 27 who feared retaliation for filing a union grievance, half were Non-White (13), which also represents about half of total Non-White respondents. Men (21/58) were far more concerned than women (3/26), with the majority of respondents indicating a concern being commissioned.

Overall, 14 out of sixty-six (14/66) respondents (all but one being commissioned) reported fears about retaliation in response to a complaint of race discrimination. Nine of the fourteen with these concerns were Non-White, representing over a third (9/23) of all Non-White respondents. No supervisors reported concern about fear of retaliation for filing a race discrimination complaint.⁴⁶

Only five respondents said fear of retaliation for filing a complaint about sex discrimination was a concern, though no respondent indicated this concern was

⁴⁶ As noted previously, one respondent complained vigorously about retaliation and victimization by the command staff and supervisors.

strongly felt. Of the five, three identified as male and two as female, while four out of the five were Non-White.

More Non-White respondents (7/24) than White respondents (4/63) feared retaliation for taking job-protected leave; all were commissioned personnel.

Overall, fourteen percent of all respondents (11/87) did not trust that they would not encounter retaliation from higher ups in the department if they took job-protected leave for any reason. Again, the majority of those concerned (7/11) were respondents of color.

Over a quarter (22/85) of all respondents and well over a half of Non-White respondents (13/23) did not believe discipline was applied fairly.

A significant number of all respondents, regardless of whether White or Non-White, indicated they did not believe discipline was applied fairly. Looking just at Non-White respondents, over half (13/23) expressed concern. Men were more likely to perceive discipline as unfair (17/58) than women/other (4/25).

As with matters of equity discussed above, during listening sessions, some employees thought Non-Whites were targeted for discipline more than Whites, while most indicated nepotism or being part of a favored group was most significant in discipline matters.

Some supervisors expressed fear of having a retaliation complaint filed against them for imposing discipline, while others thought Human Resources was interfering with their ability to correct performance issues. For example, one respondent indicated that this perceived unfairness was not at the department level, but at the Port level:

“I chose "disagree" on the question if a misconduct complaint results in discipline is it applied fairly. This is because the Port HR will not allow the department to discipline officers who are lazy, don't handle their calls appropriately, fail to qualify or who have substandard work performance.”

As is seen in other jurisdictions where the Human Resources function is located outside the police department, misunderstandings related to roles and process between the department and Human Resources can arise. A recommendation for clarifying protocols between the POSPD, Human

Resources, and other components involved in complaint processing is included below in Section VII.

Over a third of all respondents (30/83) indicated that some supervisors in the department do not handle employee complaints according to policy expectations, while 19 respondents said supervisors were not consistent in enforcing POSPD standards of conduct.

Over a third of respondents (30/83) said that some supervisors in the department do not handle employee complaints according to policy expectations. Of those, equal proportions of White respondents (22/59) and Non-White (7/23) had concerns. All who reported such concern were commissioned employees. Nineteen out of 83 respondents indicated supervisors are not consistent in enforcing standards of conduct, with 11 Non-Whites in that group, representing nearly half (11/23) of all Non-White respondents.

One respondent noted: “[o]ne set of rules apply to the majority of the department, while for a small group of ‘people’, those rules don't apply. Those ‘people’ are protected. When things are brought up to the chain of command, things are not addressed and appear to be swept under the rug.” Another said, “Accountability is selective and does not seem to go above a certain level.”

Another respondent placed concern at the Port level: “certain individuals are allowed to break policy or safety procedures time and time again because their speed dial connects to HR.”

Supervision

The supervision questions in the survey were designed to explore perceptions of supervision and leadership by asking about integrity, relationships, support, and performance evaluations. Overwhelmingly, respondents reported high praise for supervisors and mostly for supervision as a whole. This is clearly very encouraging and empirically rare in any organization. Still, the slight dissatisfaction in this area was primarily with respondents of color.

Regarding supervisors:

- All respondents reported that their supervisor treats them with respect and treats them fairly.

- All but one respondent (White) said their supervisor has personal integrity.
- All but one respondent (Non-White) said they have a good relationship with their supervisor.

Most (81/86) respondents said their performance evaluations accurately reflect their performance.

Of these five, two were White and two Non-White; three were commissioned and two non-commissioned; all were non-supervisory. With a sample this small, there is little to discern here, but, unlike other organizations in our experience, this does not seem to be a significant issue at the POSPD.

Only three respondents indicated that their supervisor does not help them be successful in their job, but all were Non-White.

Despite the disparity, the concerns are still very few.

Only one respondent (Non-White) reported that their supervisor does not encourage them to take initiative in performing their job duties.

One employee disagreed; no one strongly disagreed.

Work Climate

The last section of the survey was designed to query the overall work climate, including how employees work collaboratively, whether there is a culture of excellence at POSPD, whether there is departmental pride, and how internal communications are perceived.

Opinions about co-workers were remarkably positive.

Ninety-eight percent of respondents liked the people they work with and reported that the people with whom they work most closely are committed to producing top quality work; out of all respondents, only one White male and one Non-White male disagreed.

Eight percent of respondents (7) said their co-workers do not consistently strive to perform their jobs well; three were White and four Non-White.

Ninety-four percent of respondents agreed that they are encouraged to work together to solve problems. Three Non-White and three White employees disagreed.

More than half of Non-White respondents (12/23) and a third of respondents overall did not agree there is a climate of trust in the department.

Twenty-six respondents, 12 of whom were Non-White, did not feel that there is a climate of trust⁴⁷. The concern over trust was almost exclusively expressed by commissioned employees.

Of the sixteen respondents that said their perspective is not heard and considered, ten were respondents of color.

Eighteen percent of respondents (16) did not feel that their perspective is heard and considered. Of those, 10 were Non-White employees and, perhaps more importantly, 10/23 (almost half of Non-White respondents) did not feel their perspective was heard and considered.

A quarter of respondents expressed concern about communication within the department.

Twenty-three percent of the department disagreed with the proposition that there is good communication within the department. This included eight Non-White employees and 10 White employees.

Eighty-nine percent of the department agreed that they received the information they need from the department in a timely way. There was no appreciable difference between employees' opinions on this. Therefore, while a quarter of respondents had concerns about overall communication, most felt they were provided the information that they need to do their jobs.

Departmental Pride

Ninety-four percent of respondents reported they were proud of their department. Only three Non-White and two White respondents did not agree.

One respondent summarized pride in the department very well:

⁴⁷ Climate of trust was not defined in the survey and, as such, may have different meanings to different people.

We are police officers. Some say we hold the most powerful position in society, because we have a gun and a badge. We must keep the standard high. We can't afford to abuse that power the people have given us. Public trust is everything. Initially, I was upset with this entire process. I felt the Port of Seattle was on a witch hunt. But then I realized we have nothing to hide. We do good work. We have good people. I think once people look closer, they'll agree. I know people are mad about what happened to George Floyd. I am too. ***But there wasn't a Port of Seattle Police Officer there. If there had been no one would know George Floyd's name and he would still be alive.***

Only one employee said that compared to other law enforcement agencies, POSPD is not a good place to work. The rest of the department believed that it was.

The pride in the POSPD that employees expressed through the survey and in listening sessions will provide an excellent foundation for exploring ways to enhance internal procedural justice. Efforts to improve communication, give voice to all employees, consistently demonstrate dignity and respect for employees, and increased transparency in decision-making will enhance feelings of trust among POSPD employees and help address other concerns noted here, particularly among Non-White employees. While the data raises as many questions as it answers, an approach involving employees in better understanding the complexities and problem solving will help POSPD provide an experience of equity for all employees.⁴⁸

V. USE OF FORCE

A. Motion 2020-15 and the Use of Force Subcommittee

Motion 2020-15 directed the assessment of Use of Force to include a review of policy, specifically whether changes are needed to policies, practices, or protocols regarding the use of weapons and tactics used to manage and disperse crowds, lethal force/restraint, and crisis situations. Additionally, the assessment was tasked to

⁴⁸ Tanya Meisenholder and Monica Brooker, "Fostering an Inclusive Work Environment," *Police Chief* (August 2021), provides an overview of an approach taken in the New York Police Department (NYPD) to facilitate discussions about racial identity and race relations in the workplace, along with lessons learned during NYPD's experience.

examine current training and opportunities to improve training to provide officers with alternative options to the use of force across contexts.

B. Use of Force Subcommittee Members and Workflow

The Use of Force Subcommittee was Co-Chaired by Sam Pailca, former Director of the Seattle Police Department Office of Professional Accountability, former board member of National Association for Civilian Oversight of Police and current board member of the ACLU and Veronica Valdez, a Commission staff member and former U.S. Department of Defense (DoD) employee, which provided a strong background for analysis of use of force issues. During the Task Force timeline, Veronica left the Port to return to the DoD, and was replaced by Eric Schinfeld, another Port staff member.

Subcommittee C – Use of Force	
Chairs:	Sam Pailca and Veronica Valdez (Eric Schinfeld)
Name	Organization
Sam Pailca	External Subject Matter Expert
Eric Schinfeld	Port of Seattle Federal and International Government Relations
Veronica Valdez	Port of Seattle Commission Office
Corey Guilmette	External Subject Matter Expert
Sgt. Tygh Hollinger	Port of Seattle Police Department
Monisha Harrell	External Subject Matter Expert
Kenny Lyles	Port of Seattle, Employee Resource Group, Blacks In Government
Isaac Ruiz	External Subject Matter Expert
Jess Sanford	Port of Seattle Subject Matter Expert
Anita Simmons	Port of Seattle Diversity and Development Council
Michelle Woodrow	Union representative

The subcommittee met five times between 10/15/2020 and 1/21/21, covering a wide range of issues, including de-escalation, crowd management, crisis response, and force review. To bring the subcommittee up to speed on the law, and emerging practices in use of force policies, and the current state of POSPD policy, 21CP provided an introduction and overview. This was supported by many presentations from POSPD to inform the subcommittee about current practices, each of which led to spirited debate and discussion. Sgt. Bram Urbauer presented on Use of Force/De-escalation training. Commander Jeff Selleg presented on the department’s efforts in

crisis intervention and briefly on the Lateral Vascular Neck Restraint (LVNR), but the subcommittee declined to revisit the Port Commission's decision to prohibit all forms of chokeholds and carotid restraints⁴⁹. Sgt. Jason Coke presented on Use of Force in crowd management situations, which necessarily overlapped with the work of the Mutual Aid subcommittee. 21CP also reported out on the review of Use of Force cases as they emerged and observations on use of force and de-escalation training.

C. Use of Force Case Review Methodology

The use of force case review was designed to serve as a backstop to the policy review and work of the Use of Force subcommittee exploring use of force generally. 21CP was not contracted to complete a comprehensive review of force; however, the infrequency of use of force by the POSPD lent itself to a deeper dive than was originally contemplated and this expansion of scope was important to understand how the policies and training play out in practice. 21CP reported out to the Use of Force Subcommittee on these review findings.

For most assessments, 21CP requests a random, statistically significant sample of a department's uses of force over a material time period to ensure that, at a 95% confidence level, the use of force cases reviewed would fairly represent the overall population of use of force. However, as the POSPD has relatively few uses of force, 21CP requested all cases for 2018-2020, which included all of 2018 and 2019, and the year to date for 2020 cases. In all, 21CP was provided 90 cases, all of which were reviewed. Typically, these cases included officer reports, a sergeant's review, a case disposition, and a Chief's letter back to the officer(s) about the results of the internal review.

No files included video, audio, or other material, although many cases indicated that the force was captured on video through airport or seaport security cameras. 21CP elected not to include a video assessment of these cases because (1) the time and effort

⁴⁹ During these discussions, the POSPD did not advocate for the return of the LVNR to an intermediate use of force but inquired whether there was any place in policy for reviewing the LVNR as a use of deadly force. The Port Motion prohibited all forms of neck and carotid holds; recent state law is unclear whether LVNR *could* be permitted in deadly force situations. *Compare* Section 3 (3) of Chapter 324, Laws of 2021 ("A peace officer may not use any force tactics prohibited by applicable departmental policy, this chapter, or otherwise by law, except to protect against his or her life or the life of another person from an imminent threat.") with Section 2 of Chapter 320, Laws of 2021 ("A peace officer may not use a chokehold or neck restraint on another person in the course of his or her duties as a peace officer.").

it would take to do a comprehensive independent review of video was beyond the scope of this engagement and (2) because security cameras do not capture sound, which is needed for any real insight into tone and demeanor of both officers and subjects, such review would not likely have been sufficiently helpful. As discussed in other sections, if the Department decides to develop a body-worn camera program, the audio and video captured from those cameras would be critically important for future force reviews.

Additionally, many departments conduct interviews for high level uses of force, rather than having officers create written reports. While this is true for the POSPD for investigations into in-custody deaths by the Valley Independent Investigative Team (IIT), there does not appear to be an internal process for interviewing officers in high level uses of force that do not result in death. However, 21CP did not identify any high level uses of force that would generally qualify for such interviews.

The lack of video, audio, or other evidence means that 21CP's reviewers could only evaluate cases based on the representations of POSPD officers in reports and official materials. 21CP could not look "behind the curtain" or compare independent evidence against the officer statements. Consequently, the resulting analysis is, in some regards, only as deep as the reporting was accurate.

Although the POSPD provided 90 case files, 21CP identified some cases that involved more than one incident of force (when, for example, there were multiple subjects). As such, 21CP uses incidents, rather than cases, for this review. Additionally, 11 cases (with many incidents) in 2020 occurred on May 30 and May 31, 2020, were attributable to mutual aid engagements in Seattle or Tukwila as part of the demonstrations around the Derek Chauvin murder of George Floyd in Minneapolis. Analyzing the use of force in this context, which included the use of pepper spray (OC), tear gas (CS), and less-lethal launcher deployments, would require a much deeper investigation and is well beyond the scope of this assessment. As such, those 11 cases have been excluded from the use of force assessment, and the recommendations relating to such mutual aid crowd control events are contained in the Mutual Aid recommendations section.

Finally, for the following sections, there were some cases in which information was not readily discernable. Therefore, while there were 80 incidents within the review, some questions have a lower "n" due to missing information. The total number of incidents are provided with sufficient information within each section for context.

Use of Force Case Review Findings

Three-quarters (75%) of uses of force occurred at the airport facility, with an additional four percent occurring at seaport facilities and ten percent on other Port properties. The remaining 11 percent of incidents occurred on non-port properties, often in the context of assisting other agencies.

POSPD officers routinely used de-escalation strategies. There were only five incidents that involved solo officers using force. As discussed in the section on de-escalation, summoning appropriate resources, whether additional officers, medical personnel, or crisis response personnel is a key part of reducing the need to use force in any given situation. There were several cases where port police appropriately called additional units initially but reduced the number of officers on-scene once the scene had been assessed. This shows good use of personnel and excellent modulation of police presence, which can be perceived as overwhelming when too many officers are present. In two-thirds of incidents that eventually resulted in a use of force, two or three officers responded.

The racial breakdown of subjects on whom force was used is as follows; the vast majority (91%) of subjects were male.

Value	Percent	Count
White	50.7%	37
Black/AA	37.0%	27
Hispanic	2.7%	2
Asian	2.7%	2
Other	6.8%	5
	Totals	73

As discussed above in detail, methodologies to determine whether there exists a disparity of use of force in relation to representation in the population are generally unsatisfactory. Here, for the POSPD, when the subjects of force are predominantly local and not members of the travelling public, it becomes even more difficult to determine an appropriate denominator for determining disparity.

Regardless, it makes more sense to simply accept the disparity and just take steps to decrease the disparity.

To that end, looking at cases in response to cases that ended as a trespass or an involuntary commitment, the percentage of Black suspects increased to 45%, and subjects of color overall became the majority. This suggests, within the available data, that finding alternatives to respond to addiction, mental illness, and homelessness-driven concerns would go a long way not only in reducing force overall but reducing the disparity in the use of force on people of color within those populations.

It is also worth noting that, in the 12 cases where it was possible to identify that the subjects of force were members of the traveling public, 11 (or 92%) of those uses of force were on White subjects, either intoxicated, in crisis, or both, who were either removed from planes or in conflict with airline or airport staff.

By far, hands-on engagement and controlled takedowns to the ground for the purpose of forcible handcuffing were the most common uses of force. Less lethal tools were rarely used.

The five Taser deployments were used on an actively aggressive suspect who stole water and gum from Hudson News; on a suicidal person threatening to jump from the Light Rail platform; against a violently resisting subject with a warrant; on a female subject with a knife in her hand; and against a man who threw a metal stanchion at officers and assumed a fighting stance. 21CP’s reviews found all these Taser applications to be reasonable, necessary, and proportional.

Value	Percent	Count
Hands on	84.8%	67
Takedown	83.5%	66
Strikes (kicks/punches)	6.3%	5
Pepper Spray	1.3%	1
Taser	6.3%	5
Firearm pointing	7.6%	6
Other (add to description)	20.3%	16
	Totals	166

There were 12 uses of the Lateral Vascular Neck Restraint (LVNR) in the reviewed cases, six of which 21CP found to be either unreasonable, not necessary, or not proportional. To be clear, at the time these uses of the LVNR were in accordance with POSPD policy, which permitted the use of LVNR as an intermediate use of force. This was not uncommon in Washington State prior to the passage of E2HB 1054 prohibiting the technique altogether. National best practices, however, increasingly either abolish the LVNR and all neck holds completely or allow an exception when deadly force is required,⁵⁰ and 21CP cannot support the use of the technique at any lower level of threat. As such, the elimination of this technique by the Port and subsequently by Washington State should resolve this issue.

Thirty-nine percent of cases resulted in identifiable subject injury; in contrast, medical assistance was requested for subjects in fifty-three percent of cases, due to either behavioral crisis needs or pre-existing medical needs.

Value	Percent	Count
Yes	39.0%	30
No	61.0%	47
	Totals	77

Determining whether a subject was in crisis – defined as an episode of mental and/or emotional distress in a person that is creating significant or repeated disturbances and is considered disruptive by the community, friends, family or the person themselves – or intoxicated is not an exact science, especially because medical reports are often not provided to law enforcement. As such, reviewers attempted to categorize persons in crisis and intoxicated individuals based on the known information in the reports. Thirty-nine percent of individuals were clearly in behavioral crisis and thirty-two percent of people were intoxicated. There is significant overlap between these two categories.

Officer injury occurred in 22 percent of cases, the most serious of which appeared to be a fractured nose and a bite to the hand, but mostly injuries were contusions or abrasions. Again, the review was limited to the information contained in the use of

⁵⁰ See e.g., International Association of Chiefs of Police, “National Consensus Policy and Discussion Paper on Use of Force,” October 2017, [https://www.theiacp.org/resources/document/national-consensus-discussion-paper-on-use-of-force- and-consensus-policy](https://www.theiacp.org/resources/document/national-consensus-discussion-paper-on-use-of-force- and-consensus-policy;);

force reporting; 21CP did not review any additional officer injury reports that might provide more detail.

Reviewers were able to identify de-escalation efforts in two-thirds of cases, based on what was documented by the officer. The remaining one-third predominantly involved circumstances where de-escalation was not feasible because the subject became assaultive. The de-escalation efforts frequently included communication, trying to explain the officer's purpose, slowing the incident down, requesting additional officers or resources, or trying to help the subject figure out a way home.

In one case, an officer was dispatched to a suicidal subject at the light rail station who was threatening to jump from the platform. While a Taser ultimately became necessary in order to take the individual into custody, the officer's de-escalation tactics were successful in bringing the subject to a less precarious position where the Taser could be used without subjecting the person to the very fall officers were trying to prevent.).

In another case, officers spent a substantial amount of time engaging with a person in mild crisis to identify family members or a case worker but took no enforcement action as the person was not a threat to themselves or others (predicate criteria for involuntary commitment). Officers continued to monitor the person, who continued to behave in irrational, but lawful, behaviors. Officers ultimately were required to take her into custody when she entered the roadway, presenting a danger to herself and others, which resulted in a low-level use of force.

In 90 percent of cases, the reported use of force was found to be reasonable, necessary, and proportional. In eight cases, 21CP identified issues with the use of force. Six of these cases involved the LVNR in circumstances that did not call for a use of deadly force; again, although within policy at that time, these applications were flagged by our reviewers for the reasons discussed above. Two other instances involved cases in which subjects were prevented from voluntarily leaving the airport premises and force was used to take them into custody. In both of these cases, had the subjects simply been allowed to leave, no force would have been required. We recognize that POSPD officers are asked to manage trespass cases with homeless individuals or persons in crisis, many of whom they know to have previously been given trespass warnings or arrested for trespass. We acknowledge very real policy considerations at play in these circumstances: a person has been warned and/or arrested previously and knows they are not supposed to be in the airport terminal, at what point should an officer take enforcement action as opposed to simply prompting them to leave? As

discussed throughout this report, bringing additional resources to bear on the homeless and mentally ill population at the airport terminal would greatly alleviate these conflicts.

Misconduct was only identified by the department's review (and 21CP's review) in one case. However, counseling and mandated training was also appropriately required in several cases. In two cases, officers were counseled for taking law enforcement action without backup, which either increased the severity of the use of force or put the officer and subject at increased risk of harm. In another case, an officer was properly counseled for simply pointing a firearm but not otherwise taking any proactive action to stop an assault in progress. Because the officer chose to rely on a firearm, he was unable to physically intervene because he was holding a gun, which limited his options.

D. Use of Force Recommendations

Policies that guide the consistent and accountable application of force, including de-escalation and the use of alternatives to force, advance equity and fairness by bringing clarity to expectations. When officers know what, when, and how to use and report force, any disparities in application are more easily analyzed. As such, the recommendations below, although in large part technical, will better promote principles of equity around the use of force.

At the outset, the POSPD use of force policies have several elements that many departments fail to include and are often the subject of recommendations by 21CP. The POSPD policy properly sets forth:

- That force may only be used for a lawful purpose. 300.2.2.
- Clear and comprehensive criteria to determine reasonableness of force that goes beyond the objectively reasonable language of *Graham v. Connor*. 300.3.2
- That all neck holds are prohibited. 300.3.4
- Restrictions on shooting at a moving vehicle. 300.4.1
- Requirement that Tasers are mandatory equipment. 308.3
- Weapon-specific prohibitions for Taser, OC, Batons, and Pepper ball launchers 308.5 *et seq.*

Recommendation No. 8. The department should consider restructuring the Use of Force policies into a unified policy.

Use of Force policies are distributed across several chapters that are nonsequential and thus difficult to follow. They include:

- POSPD 300 – Use of Force
- POSPD 302 – Use of Force Review Boards
- POSPD 306 – Handcuffing and Restraints
- POSPD 308 - Control Devices and Techniques
- POSPD 309 – TASER Device Guidelines
- POSPD 310 – Officer-Involved Shootings and Deaths
- POSPD 312 – Firearms
- POSPD 313 – Edged Weapons
- POSPD 314 – Vehicle pursuits
- POSPD 318 - Canines
- POSPD 431 – Patrol Rifles

As such, the department should consider restructuring the Use of Force policies into a unified policy, and the POSPD should take the time to develop a public-facing explanation of its policies around the use of force, not only to aid the public's understanding of POSPD tactics and procedures but which could serve as an internal handbook for officers as well.

Recommendation No. 9. The Mission and Vision Statements in the policy manual should more clearly indicate the Department's commitment, in all of its activities, to valuing and upholding equity and fairness, de-escalation, the sanctity of human life, and achieving the best possible outcome for all involved.

In addition to the Mission and Vision Statement, there are other areas of the manual, including the Law Enforcement Code of Ethics, the Oath of Office, the Canons of Police Ethics, and the Use of Force Policy itself, that should be reconciled. Overall, manual appears to patch together too many competing sets of values that in some instances are inconsistent and, thus, potentially confusing.

Importantly, current POSPD policy is clear in its value statement:

The department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare

requires monitoring, evaluation and a careful balancing of all interests.”⁵¹

Policy language that follows, however, can be read as undercutting that commitment: “Although the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.”⁵² While this is likely an appropriate statement, any “possible physical injury” is insufficiently precise. Best practices could connect the two concepts:

Police Officers have the responsibility to use force, when necessary, to protect life and safety, to effect an arrest and/or keep the peace. It is the policy of the Port of Seattle Police Department to value and preserve human life when using lawful authority to use force. Therefore, officers of the Port of Seattle Police Department shall use only the amount of necessary and proportional force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others. Members are advised that this Department places restrictions on officer use of force that go beyond the restrictions set forth under the Constitution or state law.⁵³

Recommendation No. 10. The De-Escalation Policy should be updated to make de-escalation attempts mandatory, when possible to do so, and to add de-escalation tactics.

The totality of the guidance on de-escalation in the policy reads:

When circumstances reasonably permit, officers should use non-violent strategies and techniques to decrease the intensity of a situation, improve decision-making, improve communication, reduce the need for force, and increase voluntary compliance (e.g., summoning additional resources, formulating a plan, attempting verbal persuasion).

⁵¹ POSPD 300.2.

⁵² POSPD 300.3.

⁵³ Derived from a combination of the New Orleans and Las Vegas Metropolitan Police Department Use of Force policies.

The term “should” is permissive – the policy should unequivocally require de-escalation – “will” or “shall.” While there are certainly times when de-escalation is not possible, the phrase “when circumstances reasonably permit” does not provide clear guidance. The policy should use “when possible⁵⁴” instead.

This recommendation is consistent with:

- **IACP National Consensus Policy on Use of Force** – “An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training wherever possible and appropriate before resorting to force and to reduce the need for force.”⁵⁵
- **American Law Institute Principles on Use of Force.** – “Agencies should require, through written policy, that officers actively seek to avoid using force whenever possible and appropriate by employing techniques such as de-escalation.”⁵⁶
- **Seattle Police Department** – “When safe, feasible, and without compromising law enforcement priorities, officers shall use de-escalation tactics in order to reduce the need for force.”⁵⁷
- **New Orleans Police Department** – “When feasible based on the circumstances, officers will use de-escalation techniques, disengagement; area containment; surveillance; waiting out a subject; summoning reinforcements; and/or calling in specialized units such as mental health and crisis resources, in order to reduce the need for force, and increase officer and civilian safety. Moreover, the officers shall de-escalate the amount of force used as the resistance decreases.”⁵⁸

⁵⁴ Although many departments use “when safe and feasible,” Chapter 324, Laws of 2021 (SB 1310) mandates that “When possible, exhaust available and appropriate de-escalation tactics prior to using any physical force....”

⁵⁵ IACP Consensus Policy at 3.

⁵⁶ Principles of the Law: Policing §5.04 (Am. Law. Inst. Revised Tentative Draft No. 1, 2017), available at https://www.ali.org/media/filer_public/f2/80/f2804962-6431-4535-9649-34c5f872140e/policing-uof-online.pdf.

⁵⁷ Seattle Police Department Manual, Section 8.100: Using Force (rev. Sep. 15, 2019), <https://www.seattle.gov/police-manual/title-8---use-of-force/8100---de-escalation>.

⁵⁸ New Orleans Police Department Use of Force Policy, at 5, available at <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-1-3-Use-of-Force.pdf/>.

Additionally, while the POSPD policy suggests a few tactics, E2SHB 1310 requires de-escalation considerations “such as: creating physical distance by employing tactical repositioning and repositioning as often as necessary to maintain the benefit of time, distance, and cover; when there are multiple officers, designating one officer to communicate in order to avoid competing commands; calling for additional resources such as a crisis intervention team or mental health professional when possible; calling for back-up officers when encountering resistance; taking as much time as necessary, without using physical force or weapons; and leaving the area if there is no threat of imminent harm and no crime has been committed, is being committed, or is about to be committed.”

The internally developed de-escalation training, which supports this policy, is discussed in the Training and Development Section below. However, briefly, that training properly instructs officers to use time, distance, shielding, and communication, which are the hallmarks of de-escalation. After the passage of E2SHB 1310, new recruits should also be receiving de-escalation training supporting the mandates of the new law.

De-escalation Defined in WAC

- (a) Patrol tactics, actions and communication methods that de-escalate situations when appropriate to reduce the likelihood of injury to all parties involved, avoid unnecessarily escalating situations that may lead to violence, and avoid unnecessarily placing officers in situations that require or lead to deadly force by:**
 - (i) Managing the distance between the officer and the persons involved;
 - (ii) Utilizing shielding to protect the officer and others from a threat;
 - (iii) Managing the pace of an interaction; and
 - (iv) Engaging in communication to increase options for resolving the incident and reduce the likelihood of injury to all parties involved.

These concepts should be provided to officers in policy along with the requirements of SB1310 set forth above – they are not just training considerations.

Recommendation No. 11. The Use of Force Policy should expressly require that any use of force be objectively Reasonable, Necessary, and Proportional.

POSPD 300.3 states that “Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.” The policy does not appear to define necessary, though RCW 9A.16.010 provides the following definition: “‘Necessary’ means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.” This definition is also used in POSPD department training⁵⁹. As the language in RCW 9A.16.010 already incorporates the “no reasonably effective alternative to the use of force language,” it appears that “reasonably necessary” is likely redundant.

Many departments’ force policies specifically require that the nature or severity of the force that an officer uses be proportional to, or consistent with, the nature of the threat posed by the subject. As such, the best force policies expressly require that all force must be reasonable, necessary, and proportional.

“Proportionality requires that any use of force correspond to the risk of harm the officer encounters, as well as to the seriousness of the legitimate law-enforcement objective that is being served by its used.”⁶⁰ The “requirement of proportionality operates in addition to the requirement of necessity” and “means that even when force is necessary to achieve a legitimate law-enforcement end, its use may be impermissible if the harm it would cause is disproportionate to the end that officers seek to achieve.”⁶¹

The POSPD added “proportionality” during this assessment, based on a Lexipol policy update, however the concept is easily overlooked. The policy begins clearly with a

⁵⁹ Chapter 324, Laws of 2021 (SB 1310) provides a different definition in the deadly force context: “Necessary” means that, under the totality of the circumstances, a reasonably effective alternative to the use of deadly force does not exist, and that the amount of force used was a reasonable and proportional response to the threat posed to the officer and others.

⁶⁰ Principles of the Law: Policing §5.05 cmt. a (Am. Law. Inst. Revised Tentative Draft No. 1, 2017), available at https://www.ali.org/media/filer_public/f2/80/f2804962-6431-4535-9649-34c5f872140e/policing-uof-online.pdf.

⁶¹ Principles of the Law: Policing §5.05 cmt. a (Am. Law. Inst. Revised Tentative Draft No. 1, 2017), available at https://www.ali.org/media/filer_public/f2/80/f2804962-6431-4535-9649-34c5f872140e/policing-uof-online.pdf.

directive: “Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.”⁶² Then the policy discusses how reasonableness will be judged and then states: “Given no policy can realistically predict every possible situation an officer might encounter, *officers are entrusted to use well-reasoned discretion in determining the appropriate, and proportional, use of force in each incident.*”⁶³ This policy does not equivocally state that officers should only use reasonable, necessary, and proportional force, which is best practice.

A 2017 survey found that over half of the country’s fifty largest police departments have a proportionality requirement.⁶⁴ Some policies specifically use the term “proportional”; others describe the concept in different ways.

- Seattle Police Department – “Officers shall use only the degree of force that is objectively reasonable, necessary under the circumstances, and proportional to the threat or resistance of a subject The level of force applied must reflect the totality of circumstances surrounding the situation, including the presence of imminent danger to officers or others The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be objectively reasonable and necessary to counter it.”⁶⁵
- New York Police Department – “Only the amount of force necessary to overcome resistance will be used to effect an arrest or take a mentally ill or emotionally disturbed person into custody All members of the service at the scene of a police incident must . . . use minimum necessary force.”⁶⁶

⁶² POSPD 300.3

⁶³ *Id.*

⁶⁴ Brandon L. Garrett & Seth W. Stoughton, “A Tactical Fourth Amendment,” 103 *V. L. Rev.* 211 (2017).

⁶⁵ Seattle Police Department Manual, Section 8.000: Use of Force Core Principles, *available at* <https://www.seattle.gov/police-manual/title-8---use-of-force/8000---use-of-force-core-principles>.

⁶⁶ New York Police Department, General Regulations, Procedure No. 203-11: Use of Force at 1 (Aug. 1, 2013), http://www.nyc.gov/html/oignypd/assets/downloads/pdf/oig_nypd_use_of_force_report_-_oct_1_2015.pdf.

Recommendation No. 12. The Use of Force Policy should require officers to provide a warning, when safe and feasible, before using any force.

The United States Supreme Court has predicated the use of deadly force against felony suspects fleeing escape on, “where feasible, some warning ha[ving] been given” by the officer.⁶⁷ This is consistent with United Nations Basic Principles on the Use of Force and Firearms and its provision that “when law enforcement is faced with an imminent threat of death or serious bodily injury, officers must,” among other things, “give a clear warning” unless doing so “would unduly place the law enforcement officers at risk,” would create a risk of death or serious harm to others, or would be “clearly inappropriate or pointless in the circumstances.”⁶⁸

21CP observes here that some organizations and departments focus exclusively on the provision of warnings before the use of deadly force.⁶⁹ The importance and reasoning behind this requirement easily extends, however, to the application of all types of force – especially considering that the use of less-lethal force will typically correspond to less-severe threats and circumstances in which an officer has more time and ability to provide a warning and to determine whether the subject is complying with the warning before applying force. In other words, the feasibility of providing a warning may be substantially greater or more likely in situations involving less-significant applications of force than circumstances involving deadly force. Consequently, a more general rule that requires officers to issue a warning, whenever feasible, before using *any* force provides simpler and more straightforward guidance to officers and, ultimately, allows for such warnings to become more automatic in practice.

⁶⁷ *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985).

⁶⁸ Amnesty International, “Deadly Force: Police Use of Lethal Force in the United States” at 23 (2015) (summarizing UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990)).

⁶⁹ See, e.g., Campaign Zero, Model Use of Force Policy, Section II, <https://static1.squarespace.com/static/56996151cbced68b170389f4/t/5deffb38594a9745b936b64/1576009651688/Campaign+Zero+Model+Use+of+Force+Policy.pdf> (last accessed Jan. 13, 2021) (offering warnings as an alternative to physical force and requiring verbal warnings before deadly force but not expressly mandating warnings before the use of non-deadly force); Lexipol, *Police Use of Force: Safer Communities Through Sound Policies*, <https://useofforce.lexipol.com/law-enforcement/> (last visited Jan. 13, 2021) (noting a July 2020 amendment to Lexipol model policies seeking “to clarify that warnings should be used whenever reasonable before deploying deadly force”).

Indeed, a number of police departments require a warning before any force is used, whether that force is lethal or less-lethal, severe, or comparatively less severe:

- **Cleveland Division of Police** – “Where feasible, and to do so would not increase the danger to officers or others, officers shall issue a verbal warning to submit to their authority prior to the use of force.”⁷⁰
- **Northampton (Mass.) Police Department** – “When feasible, an officer will allow the subject an opportunity to comply with the officer’s verbal commands. A verbal warning is not required in circumstances where the officer has to make a split-second decision, or if the officer reasonably believes that issuing the warning would place the safety of the officer or others in jeopardy.”⁷¹

Even where departments do not have a blanket requirement to provide a warning before any use of force, warnings are typically required before the use of less-lethal instruments like Tasers and OC spray:

- **Philadelphia Police Department** – “A verbal warning shall be given to a person prior to activating the ECW unless to do so would place any other person at risk.”⁷²
- **Sonoma County Sheriff’s Office** – “A verbal warning of the intended use of the Taser should precede its application, unless it would otherwise endanger the safety of Deputies or when it is not practicable due to the circumstances.”⁷³

⁷⁰ Cleveland Division of Police, Use of Force: General, *available at* <https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/582c54ac59cc685797341239/1479300270095/Dkt.+83--Use+of+Force+Policies+with+Exhibits.pdf>.

⁷¹ Northampton (MA) Police Department, AOM Chapter 0-101.

⁷² Philadelphia Police Department, Directive 10.3: Use of Lethal Force: The Electronic Control Weapon (ECW), *available at* <https://www.phillypolice.com/assets/directives/PPD-Directive-10.3.pdf>.

⁷³ Sonoma County Sheriff’s Office, Office-Wide Policy and Procedure Manual, Taser Use, *available at* <https://static1.squarespace.com/static/542ec317e4b0d41ade8801fb/t/590a3284be6594e6a30b30b/1493840516709/Taser+Use.pdf>.

- **Seattle Police Department** – “Officers shall issue a verbal warning to the subject, fellow officers and other individuals present prior to using OC spray.”⁷⁴

Recommendation No. 13. The Use of Force Policy should require officers to provide medical care within the scope of their training and immediately summon medical aid to the scene.

POSPD 300.6 requires: “Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious.” Similarly, the updated draft Lexipol policy states “Once it is reasonably safe to do so, medical assistance shall be obtained for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or was rendered unconscious.” Other policies, such as POSPD 309.7 (Taser) and 308.6.2 (OC Spray), provide additional guidance for medical treatment following deployment of these tools.

In contrast, POSPD 466, which is not included as part of the Use of Force policies, provides that “[w]henver practicable, members should take appropriate steps to provide initial medical aid (*e.g.*, first aid, CPR, and use of an automated external defibrillator (AED) in accordance with their training and current certification levels.” As such, one section of policy imposes upon officers a general duty to provide medical treatment, but that duty is confused by conflicting guidance in the Use of Force policy that limits the requirement to summoning aid. The language in POSPD 466 is exactly the language that should be considered for incorporation into the use of force policy (or cross-referenced). Again, this may be another example where the department policy when read in full context addresses necessary points but loses clarity in the complexity and incongruity of the manual overall. Aligning the language of POSPD 466 in the use of force policies would, additionally, meet the requirement of the Valley IIT interlocal agreement concerning the provision or facilitation of medical care.

⁷⁴ Seattle Police Department Manual, Section 8.300: Use of Force Tools, *available at* <https://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-tools> (also requiring verbal warning before deployment of beanbag shotgun, canine, taser, and firearm deployment).

Recommendation No. 14. Policy should be revised to require officers to report and document all force they use and/or witness.

As noted above, the policy requires officers to “articulate the factors perceived and why they believed the use of force was reasonable under the circumstances.” In concert with the above recommendation, the policy should provide clarity on what information should be documented and by whom and ensure that the department continues to gather and track demographic information. The policy does not tell officer how to document force or require officers to document force used by other officers. In practice, officers do this more times than not, and often fill out separate witness statements if they did not use force. Therefore, the policy should reflect practice and mandate that all officers report force used, and force witnessed. While this policy should be tailored for POSPD, a good example for consideration is:

- **New Orleans Police Department** – “Depending on the level of reportable use of force, as set forth below, an Involved Officer (IO) and/or Witness Officer (WO) may be required to prepare a Force Statement. The officer shall independently prepare his or her Force Statement and include facts known to the officer, to include:
 - (a) A detailed account of the force incident from the officer’s perspective;
 - (b) The reason for the initial police presence, e.g.: response to (nature of) call,
on-view suspicious activity (describe the suspicious activity), flagged by a
citizen (nature of citizen’s concern), shots fired, or screams heard, etc.;
 - (c) A specific description of the acts that led to the use of force;
 - (d) The specific description of resistance encountered;
 - (e) A description of every type of force used or observed;
 - (f) Names of all assisting officers and supervisors participating in the
actions
leading up to the use of force;
 - (g) The name of the supervisor the involved officer notified, and the
time of the
notification;
 - (h) The name of the supervisor who responded to the scene;
 - (i) Names, if known, of any civilian witnesses;

- (j) A description of any injuries suffered by the officer, subject, or witnesses;
- (k) Whether a body-worn camera was activated and its identifiable file location;
- (l) Whether a vehicle camera was activated and its identifiable file location;
- and
- (m) Whether a CEW activation occurred, even if the CEW was not discharged.”

Recommendation No. 15. The Use of Force Reporting policy should require that a supervisor respond to all applications of reportable force, not just those that result in “visible injury.”

Current POSPD requires that “A supervisor should respond to a reported application of force resulting in visible injury, if reasonably available.”⁷⁵ Given the relatively few uses of force annually and the current actual practice – in every use of force case that was reviewed, a supervisor responded to the scene – the policy should be changed to require a supervisor to respond to the scene of every use of force to investigate as set forth in POSPD 300.7.

Recommendation No. 16. The POSPD should consider having officers enter use of force reports directly into BlueTeam, rather than having a supervisor gather and present facts. The supervisor’s investigation and all supporting materials should be consolidated in BlueTeam and routed to the chain of command through the system.

Current POSPD policy instructs officers that “[a]ny use of force by a member of this department shall be documented promptly, completely and accurately in the applicable case report. The officer should articulate the factors perceived and why they believed the use of force was reasonable under the circumstances.”⁷⁶ This open question format does not mandate the collection of necessary information, which apparently falls to the supervisor.

Once the officer completes the case report, a supervisor completes a Blue Team entry (Blue Team/IA Pro is a relatively rudimentary but standard, widely used administrative investigation tracking database) when the officer uses reportable

⁷⁵ POSPD 300.7

⁷⁶ POSPD 300.5

force. Having the supervisor complete data entry on behalf of the officer requires a game of “telephone” rather than having the officer, with first-hand information, document the required information.

Additionally, E2SSB 5259 creates an advisory group that will make implementation recommendations on reporting, collecting, and publishing of use of force data reports, as well as “traffic stops, pedestrian stops, calls for services, arrests, vehicle pursuits, and disciplinary actions, as well as demographic information including race, ethnicity, and gender of a crime victim or victims.”

While the final requirements have not been developed, the law sets forth significant data collection requirements, including, at a minimum:

The date and time of the incident	The location of the incident
The agency or agencies employing the law enforcement officers	The type of force used by the law enforcement officer
The type of injury to the person against whom force was used, if any	The type of injury to the law enforcement officer, if any
Whether the person against whom force was used was armed or unarmed	The type of weapon the person against whom force was used was armed with, if any
Whether the person against whom force was used was believed to be armed	The age, gender, race, and ethnicity of the person against whom force was used, if known
The tribal affiliation of the person against whom force was used, if applicable and known	Whether the person against whom force was used exhibited any signs associated with a potential mental health condition or use of a controlled substance or alcohol based on the observation of the law enforcement officer
The name, age, gender, race, and ethnicity of the law enforcement officer, if known	The law enforcement officer's years of service
The reason for the initial contact between the person against whom force was used and the law enforcement officer	Whether any minors were present at the scene of the incident, if known
Whether dashboard or body worn camera footage was recorded for an incident	The number of officers who were present when force was used

The number of suspects who were present when force was used	
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The upcoming state requirements and the Port’s interest in more comprehensive metrics around use of force require that uses of force be documented in a more systematic manner, rather than open narratives. It may be that the state develops a Use of Force data collection portal similar to the SECTOR system used for traffic ticketing, but in the meantime the POSPD should use Blue Team/IA Pro to its fullest. This is best accomplished by adding data fields to Blue Team and having the officer directly enter the information.

Recommendation No. 17. The POSPD should maximize its transparency by publishing data and reports on its website and regularly reporting the information to the Commission.

As the POSPD increases its data gathering, it should strive to increase its transparency by putting out more granular data on officer activity, to include use of force and crisis contacts. This is an increasingly common practice nationally.⁷⁷

Additionally, as the department publishes Annual Reports, Use of Force Annual Reports, Bias Policing Reviews, and reviews of misconduct complaint trends, the POSPD should continue to ensure those are communicated formally to the Commission and publicly available on its website.⁷⁸

Recommendation No. 18. Video evidence should be downloaded and included in BlueTeam or linked within the system.

While 21CP did not have direct access to BlueTeam/IA Pro, we were informed that video evidence – such as airport security and civilian cell-phone video – is not routinely linked in the system. Especially if the POSPD implements a BWC program, all relevant evidence should be linked in the electronic case file for easy access for reviewers.

⁷⁷ See e.g., New Orleans Police Department <https://nola.gov/nopd/data/>; Baltimore Police Department, <https://www.baltimorepolice.org/transparency/overview>; Seattle Police Department, <https://www.seattle.gov/police/information-and-data/use-of-force-data/use-of-force-dashboard>

⁷⁸ <https://www.seattle.gov/police/information-and-data/crisis-contacts/crisis-contact-dashboard>
<https://www.portseattle.org/documents?tid=191&primary=191>

Recommendation No. 19. POSPD should create a standing Use of Force review committee, to include a training officer, the IA officer, and Command Staff, exclusive of the Chief, and tasked with reviewing every use of force.

Ultimately, any use of force review process should entail a comprehensive, 360-degree inquiry – one that looks squarely at whether the force was consistent with the Department’s policy but also at the extent to which the force, regardless of whether consistent with policy, suggests any tactical, training, policy, or other issues.

Currently, the POSPD reviews every use of force as follows:

“Each completed Blue Team entry and accompanying reports shall be forwarded to the commander of the involved officer(s). The affected commander shall review all documentation and, if needed, cause additional investigation or documentation to be completed. The commander shall also ensure the appropriate Blue Team entries are made and have been submitted. Once the commander has ensured all needed information has been compiled, the commander shall brief the applicable deputy chief or present the Command Team with the facts of the incident for further review and discussion.

The Professional Development Sergeant, along with an appropriate department trainer (dependent on the type of force used), may also participate in this discussion to provide subject matter guidance, answer questions and address concerns. Final dispositions will be determined by a member of the Executive Team.”

While the process only calls for a briefing to the deputy chief or presentation to the Command Team, in practice the command staff reviews every use of force, but without the input of Internal Affairs or training unless requested. Also, currently the Chief is part of this review, which could compromise the Chief’s ability to be the final arbiter of discipline should the Chief approve a use of force that later results in a disciplinary complaint.

Additionally, policy calls for convening a Review Board “when the use of force by a member results in very serious injury or death to another” or at the discretion of the Chief of Police.⁷⁹

⁷⁹ POSPD 302.4.

The POSPD is already working on implementing this recommendation, which was included in previous status reports. The draft policy divides force into “lower threshold” and “upper threshold” force but also appears to preserve the prior Review Board process for serious injury or death. This structure approximates the Type (or Level) I, II, III distinctions drawn by many departments, and there is no apparent need for the POSPD to draft this policy from scratch.

- **Cleveland Division of Police**

Level 1 Use of Force: Force that is reasonably likely to cause only transient pain and/or disorientation during its application as a means of gaining compliance, including pressure point compliance and joint manipulation techniques, but that is not reasonably expected to cause injury, does not result in an actual injury and does not result in a complaint of injury. It does not include escorting, touching, or handcuffing a subject with no or minimal resistance. Un-holstering a firearm and pointing it at a subject is reportable as a Level 1 use of force.

Level 2 Use of Force: Force that causes an injury, could reasonably be expected to cause an injury, or results in a complaint of an injury, but does not rise to the level of a Level 3 use of force. Level 2 includes the use of a CEW, including where a CEW is fired at a subject but misses; OC Spray application; weaponless defense techniques (e.g., elbow or closed-fist strikes, kicks, leg sweeps, and takedowns); use of an impact weapon, except for a strike to the head, neck or face with an impact weapon; and any canine apprehension that involves contact.

Level 3 Use of Force: Force that includes uses of deadly force; uses of force resulting in death or serious physical harm; uses of force resulting in hospital admission due to a use of force injury; all neck holds; uses of force resulting in a loss of consciousness; canine bite; more than three applications of a CEW on an individual during a single interaction, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different officers; a CEW application for longer than 15 seconds, whether continuous or consecutive; and any Level 2 use of force against a handcuffed subject.

- **Baltimore Police Department**

Level 1 Use of Force — Includes:

- Using techniques that cause Temporary Pain or disorientation as a means of gaining
- compliance, hand control or escort techniques (e.g., elbow grip, wrist grip, or shoulder grip), and pressure point compliance techniques. Force under this category is not reasonably expected to cause injury,
- Pointing a firearm, Less-Lethal Launcher, or CEW at a person,
- “Displaying the arc” with a CEW as a form of warning, and
- Forcible takedowns that do not result in actual injury or complaint of injury.

Level 2 Use of Force — Includes:

- Force that causes or could reasonably be expected to cause an injury greater than Temporary Pain or the use of weapons or techniques listed below — provided they do not otherwise rise to a Level 3 Use of Force:
- Discharge of a CEW in Drive-Stun or Probes Deployment, in the direction of a person, including where a CEW is fired at a person but misses,
- Use of OC spray or other Chemical Agents,
- Weaponless defense techniques including, but not limited to, elbow or closed fist strikes, open hand strikes, and kicks,
- Discharge of a Less-Lethal Launcher/Munitions in the direction of a person,
- Canine-inflicted injuries that do not rise to a Level 3 Use of Force,
- Non-weapon strikes to the head, neck, sternum, spine, groin, or kidney area, and
- Striking of a person or a vehicle with a vehicle that does not rise to Level 3 Use of Force.

Level 3 Use of Force — Includes:

- Strikes to the head, neck, sternum, spine, groin, or kidney area with an impact weapon,
- Firearm discharges by a BPD member,
- Applications of more than three (3) CEW cycles in a single encounter, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different members,
- CEW application for longer than 15 seconds whether the application is a single continuous application or from multiple applications,

- Uses of Force resulting in death, Serious Physical Injury, loss of consciousness, or requiring hospitalization, and
- Uses of Deadly Force/Lethal Force.

Additionally, given that POSPD averages only 30 uses of force per year, there does not seem to be a need to bifurcate the review of cases. POSPD should simply review every use of force holistically.

VI. MUTUAL AID

The term “mutual aid” generally refers to assistance under RCW 10.93, the Washington Mutual Aid Peace Officers Powers Act and agreements defined by RCW 39.34, the Interlocal Cooperation Act. 21CP has reviewed POSPD policies and agreements governing cooperation with other law enforcement agencies. However, the subcommittee was also interested in understanding the “*ad hoc*” engagements where POSPD provided backup or assistance to other jurisdictions.

Law enforcement has long understood that multi-agency cooperation can benefit efforts to address activities which cross jurisdictional boundaries. It is also widely acknowledged that a single police department cannot staff, prepare for, or respond to large-scale natural or human-initiated emergencies which may occur in their jurisdiction. For these reasons, public safety agencies enter into mutual aid agreements with other agencies to obtain support and resources when such emergencies occur. The idea is straightforward, but many agencies have learned – through some difficulties – that successful mutual aid requires careful, advance attention to the details of management, command and control, planning and joint training.⁸⁰

A Mutual Aid Agreement is the first step in a successful mutual aid arrangement. The Agreement should govern the nature of the support, conditions under which the support is provided, and roles and responsibilities of agencies and their personnel. The purposes of Mutual Aid agreements include:

- Coordination of planning;
- Multiplying the response resources available to any one jurisdiction;
- Ensuring timely arrival of aid;
- Arranging for specialized resources; and

⁸⁰ International Association of Chiefs of Police, *Mutual Aid: Concepts and Issues Paper* (2008)

- Minimizing administrative conflict and litigation post-response.⁸¹

Mutual Aid Agreements are formal agreements, entered into under authorization of state and (often) local law, that require a formal request for assistance. Such agreements generally cover a larger geographic area than generic, blanket aid agreements. Agreements may be with neighboring jurisdictions, regional, statewide, or even inter-state partners. Regardless of the level, current best practice calls for arrangements to be memorialized in a written document signed by all participating parties, supplemented by a deployment-specific operational plan that covers the specific resources, tasks, personnel, asset allocations, roles, responsibilities, integration, and actions that mutual aid participants execute respective to their assignments.⁸²

POSPD has granted all general authority law enforcement agencies the authority to operate within Port jurisdictions, and has been granted reciprocal authority in most, if not all, other jurisdictions.⁸³ POSPD is a party to three formal interlocal agreements under RCW 10.93 and RCW 39.34:

1. The Interlocal Cooperative Agreement Valley Special Response Team (Valley SWAT), which includes with the cities of Auburn, Kent, Renton, and Tukwila, and makes available “enhanced use of personnel, equipment, budgeted funds, and training” to respond to high-risk incidents such as “civil disobedience, barricaded subjects, hostage situations, gang member arrests, high risk felony arrests, and narcotic/high risk search warrants;”⁸⁴
2. The Valley Independent Investigative Team, which includes the cities of Auburn, Des Moines, Federal Way, Kent, Renton, and Tukwila and serves to “independently, thoroughly and objectively investigate the most serious incidents involving police officers,” including but not limited to:
 - Officer-involved uses of deadly force that result in death, substantial bodily harm, or great bodily harm;
 - In-custody deaths or life-threatening injuries;

⁸¹ Federal Emergency Management Agency, Best Practices: Mutual Aid Agreements – Types of Agreements, Lessons Learned Information Sharing, <https://www.hsd.org/?view&did=765559> (last accessed June 30, 2021)

⁸² N.C.G.S § 160-A-288.

⁸³ <https://www.waspc.org/police-officers-powers-act>

⁸⁴ Interlocal Cooperative Agreement Valley Special Response Team.

- Death or life-threatening injuries of a police employee;
 - Other matters as directed by the Executive Board”⁸⁵; and
3. The Valley Civil Disturbance Unit, which includes the cities of Auburn, Federal Way, Kent, Renton, and Tukwila, and provides “South King County Cities with well-trained and equipped police response for effective crowd control and quelling civil disturbances.”⁸⁶

A. Motion 2020-15 and the Mutual Aid Subcommittee

The motion required the assessment to include an exploration of how and when POSPD engage in mutual aid, the protocols for that engagement to ensure alignment with Port values and policing policies, and the formal agreements in place to ensure compliance with Port standards when engaged in mutual aid. This assessment was also tasked to examine whether and how the Port and partner agencies review these mutual aid agreements on a regular basis, as well as the risks and benefits of mutual aid in the various scenarios in which it is provided. Similarly, the Task Force was asked to review the scenarios in which the Port calls for mutual aid from other jurisdictions, what accountability measures are in place during those mutual aid situations, and how POSPD protocols are enforced during those instances.

⁸⁵ Valley Special Response Team Operational Agreement.

⁸⁶ The Valley Civil Disturbance Unit (VCDU) Tactical Standard Operating Procedures.

B. Subcommittee Workflow

Subcommittee F – Mutual Aid	
Chairs:	Milton Ellis and Captain John Hayes
Name	Organization
Captain John Hayes (Ret.)	Seattle Police Department
Milton Ellis	Port of Seattle, Labor/Represented Employees
Loren Armstrong	Port of Seattle, Legal
Lukas Crippen	Port of Seattle, Diversity and Development Council
Sergeant Ryan Leavengood	Union Representative
Efrain Lopez	Port of Seattle, Employee Resource Group
Marco Milanese	Port of Seattle, Community Relations
Keri Pravitz	Port of Seattle, External Affairs
Aaron Pritchard	Port of Seattle, Commission Office
Jim Pugel	External Subject Matter Expert
Mian Rice	Port of Seattle, Employee Resource Group
Commander Jeff Selleg	Port of Seattle Police Department
Amy Tsai	External Subject Matter Expert
Shaunie Wheeler	Union Representative

The MA subcommittee met four times between 10/14/20 and 2/12/21 to discuss the types of MA engagement by the POSPD, the coordination of MA in the areas of SWAT, crowd management, and *ad hoc* engagements. The Mutual Aid Subcommittee focused on understanding the operational agreements with jurisdictions contiguous to Port properties and with the three primary task forces of which POSPD is a member (Valley SWAT, Valley IIT, and the Valley Civil Disturbance Unit). The subcommittee considered state law and POSPD policy concerning mutual aid and defined the scope of mutual aid for purposes of this review. The group also reviewed pro-immigration demonstrations in late January 2017 that involved mutual aid from other jurisdictions and the after-action review by POSPD related to the event.

A substantial portion of subcommittee discussion concerned nuances of crowd management, especially in light of the demonstrations of 2020 related to the murder of George Floyd. Members distinguished between noticed events – which are often permitted and allow for engagement organizers and planning – and non-noticed, spontaneous events, which require a quick response.

C. Mutual Aid Recommendations

Recommendation No. 20. The POSPD should continue to take the lead on updating current Mutual Aid agreements to drive best practices regionally and align with the new state policing laws.

Based on FEMA guidelines, a Mutual Aid agreement should contain key elements like purpose, benefits, authorities, definitions, governance structure and operations oversight, licensure and certifications, interoperable communications, tort liability and indemnification, insurance, worker’s compensation, deployment notification, reciprocity and reimbursement, termination, dispute resolution, modification and amendment management, operational plan and procedures requirements, and supplemental information.⁸⁷ Additionally, based on discussions in the subcommittee and on 21CP’s experience in other jurisdictions, the POSPD should ensure that all agreements provide:

- Pre-emption by home agency policies – POSPD personnel remain bound by the Port’s policies while engaging in Mutual Aid.
- Use of Force
 - Required de-escalation
 - Permitted less-lethal tools and use
 - Required provision of medical care within training
- Prohibition on immigration enforcement
- Consistent with Washington law, prohibition of pre-text stops when working with federal law enforcement.

During this assessment, the POSPD (and specifically Acting Chief Villa) has shown strong leadership in response to the 2020-2021 legislative session, which passed many new laws concerning law enforcement. The POSPD funded legal support for meetings of the Valley Chiefs (and other regional departments) to begin coordination on policy development incorporating new law and discussion of any implementation concerns. 21CP attended a meeting in Kent, WA, that was well-attended and observed the regional departments working collaboratively to consider the mandates of recent legislation.

At that meeting, several Chiefs suggested that there was already common ground as most of the departments were Lexipol agencies and therefore crafting updates to

⁸⁷ Federal Emergency Management Agency, National Incident Management System Guideline for Mutual Aid (2017).

policy – especially Use of Force policies – would be relatively easy and would benefit all of the agencies. However, some said that the laws are unclear and translating the mandates of the legislation into clear policy could be difficult. At a follow-up meeting in Renton, different Valley departments were considering different responses to the recent legislation, but the POSPD took the lead on drafting revisions to the Use of Force policy to hopefully drive towards consensus. And again, by providing legal support to the group, the POSPD is helping to intelligently frame the response.

Recommendation No. 21. After engaging in mutual aid deployments, at the Port or in other jurisdictions, POSPD should actively engage in after-action assessments and track all resulting recommendations.

Specifically, POSPD should:

- Participate fully in after-action assessments with involved agencies
- Independently assess each engagement
- Track recommendations to ensure they are addressed (for example, recommendations can be tracked in IA Pro).

While POSPD is already fully participating in after-action discussions regarding specific incidents, the drafting of any report is left to the primary agency and reports are not always provided (or kept in a retrievable manner). As such, this recommendation would not only support inter-agency after-action dialogue but would also require POSPD to examine any mutual aid engagements against its own policies. Any lessons learned from either process should be triaged and tracked to ensure those lessons are not lost and that feasible changes are implemented in practice.

Recommendation No. 22. The POSPD should develop its own Crowd Management policy outlining the POSPD terms of engagement, facilitation of First Amendment activities, and which specifically sets forth the POSPD engagement strategy with demonstration leadership.

Although the Valley Civil Disturbance Unit (CDU) has a policy manual addressing command structures, use of force principles, permitted equipment, training, event planning, deployment, mass arrests, and record keeping, as well as standard operating procedures that support that policy manual, the POSPD does not have its own Crowd Management policy that would apply to those situations where the POSPD staffs demonstrations that do not require mutual aid. POSPD reports that they follow the same protocols as Valley CDU, but that is not documented anywhere. As such, the POSPD should craft its own policy, which will serve two important

purposes: (1) to provide policy support for how POSPD engages in Crowd Management and (2) the process of crafting such a policy can inform potential changes to the Valley CDU policy manual and standard operating procedures as recommended above.

Recommendation No. 23. The Port should add specific approval criteria and processes required before deploying resources for Mutual Aid.

This two-part recommendation addresses both the approval process chain of command and considerations for the chain of command in evaluating mutual aid requests. In subcommittee presentations, POSPD explained that requests for mutual aid from external agencies are vetted at the Deputy Chief level and on occasion elevated to the Chief. The primary consideration for approval hinges on whether there remain sufficient resources to cover Port jurisdictions – in other words, the POSPD apparently defaults to “yes” to requests for mutual aid unless it would be left with insufficient resources.

Instead, 21CP suggests that the approval level be assigned based on the urgency of the deployment and the potential for liability or reputational damage to the POSPD or Port, and suggest the following:

- Any Valley CDU involvement should be approved by the Chief.
- Any Valley SWAT engagement should be approved by the SWAT commander w/notification to the Chief.
- Any Valley IIT engagement should require notification to the Chief.

For any event, including crowd management, POSPD should specifically consider:

- Any impact on Port operations
- The values of the Port on whether Mutual Aid support should be provided for any particular event
- Whether there has been sufficient planning and engagement (when feasible) to support POSPD involvement

VII. OVERSIGHT, ACCOUNTABILITY, RACIAL EQUITY & CIVIL RIGHTS

A. Motion 2020-15 and Oversight, Accountability, Racial Equity & Civil Rights

The Motion included a significant number of directives related to these topics. First, it directed the assessment to look at how complaints by members of the public or other Port employees are handled; in particular, the assessment is required looking at how civilians are able to submit complaints, and how those complaint mechanisms are publicized. The assessment should also include a review of internal reporting mechanisms for police officers who want to report alleged misconduct of other officers – including racially-motivated misconduct – without fear of reprisal or retaliation.

In addition, the assessment should review when additional Commission, Port leadership and/or external oversight is needed to facilitate accountability and transparency to the community, including any recommendations for ongoing reporting of progress toward approved metrics and notifications to Commission and Executive leadership of relevant complaints and reports.

Finally, the Task Force should review the Port Police disciplinary process and how civil lawsuits brought against a Port Police officer are considered during that process. The Task Force should consider how the Port Commission and Executive Director are made aware of such civil lawsuits, particularly where “qualified immunity” is invoked. The assessment should identify what protocols and oversight are in place to ensure all officers – in particular, Black officers, other officers of color and other underrepresented demographics in the police force – are treated respectfully, equally, and equitably. The assessment should determine what protocols are in place for police employees to identify and report any mistreatment experienced or observed that are contrary to the Port’s high standards expected of law enforcement, without fear of retaliation or reprisal. In conducting the assessment, consider impacts on diversity, equity, and civil rights.

B. Oversight, Accountability, Racial Equity & Civil Rights Subcommittee Members and Workflow

Subcommittee D – Oversight, Accountability, Racial Equity & Civil Rights	
Chairs:	Anne Levinson and Marin Burnett
Name	Organization
Marin Burnett	Port of Seattle, Strategic Initiatives
Judge Anne Levinson (Ret.)	External Subject Matter Expert
Deborah Ahrens	External Subject Matter Expert
Cynthia Alvarez	Port of Seattle, Human Resources
Officer Arman Barros	Port of Seattle Police Department/Union Representative
Nate Caminos	Port of Seattle, External Affairs
Jay Doran	Port of Seattle Office of Equity, Diversity and Inclusion
Oris Dunham	Port of Seattle Police Civil Service Commission
Glenn Fernandes	Port of Seattle, Audit
Officer Herb Gonzales	Union Representative
Duane Hill	Port of Seattle, Employee Resource Group
Mikel O'Brien	Port of Seattle, Labor Relations
LeeAnne Schirato	Port of Seattle Commission Office
Sgt. Kyle Yoshimura	Port of Seattle Police Department
Michelle Woodrow	Union representative

The Oversight, Accountability, Equity, and Civil Rights (Oversight) Subcommittee met five times between October 9, 2020, and January 26, 2021. 21CP worked closely with Co-chairs Judge Anne Levinson (Ret.) and Marin Burnett to refine and adjust the proposed workplan as the subcommittee moved through different aspects of the Police Department’s misconduct complaint handling process. Anne Levinson provided her expertise on oversight and accountability best practices and Marin Burnett provided insight on the role of various Port components that can be involved in the complaint processing system. Subcommittee members offered their own perspectives and experiences to, contributing to robust discussions and useful input to the final recommendations outlined below.

Note that the topic of protocols to ensure officers are treated respectfully, equally, and equitably are addressed below, but are covered more thoroughly in the discussion

above on officers' perceptions on equity and the need to enhance the experience of internal procedural justice. The issue of "qualified immunity" is addressed below in Section X. Advocacy.

C. Oversight and Accountability Generally and at the Port of Seattle Police Department

Law enforcement officers must follow high ethical standards and a code of conduct established by federal and state law and delineated in an agency's policy manual, directives, and other governing documents which embody an agency's values and mission. The goal is that police officers have a clear understanding of agency conduct expectations, both on and off duty.

To ensure that police services meet the high standards of integrity community members expect and that law and policy demand, there must be a means to identify and investigate allegations of police misconduct, with discipline or retraining meted out as appropriate and recognition for officers who meet conduct expectations. For the majority of medium or large police departments, this complaint handling function resides in Internal Affairs or an Office of Professional Standards (or a similarly named departmental unit). Sometimes this function is external to the agency or shared with civilian oversight entities. Regardless of where the misconduct complaint handling function resides, to be considered legitimate in the eyes of complainants and officers, the process must be timely, thorough, and objective, and include appropriate documentation and regular communication with the individuals involved. Allegations of misconduct are investigated against agency conduct expectations as detailed in relevant agency policy and protocols.

With input from the subcommittee, 21CP considered the POSPD's misconduct complaint handling system, guided by the goals of understanding and enhancing:

- Accountability – who investigates and how is that decision made, who reviews the investigation, how are complaints and investigations tracked, what internal and external mechanisms exist to provide oversight or checks and balances
- Transparency – is there ready access to the process by stakeholders

The following charts and tables provide an overview of the complaint intake process, how complaints are classified, and alternative disposition outcomes. The number and classification of complaints received at the POSPD 2015 – 2020 and the disposition

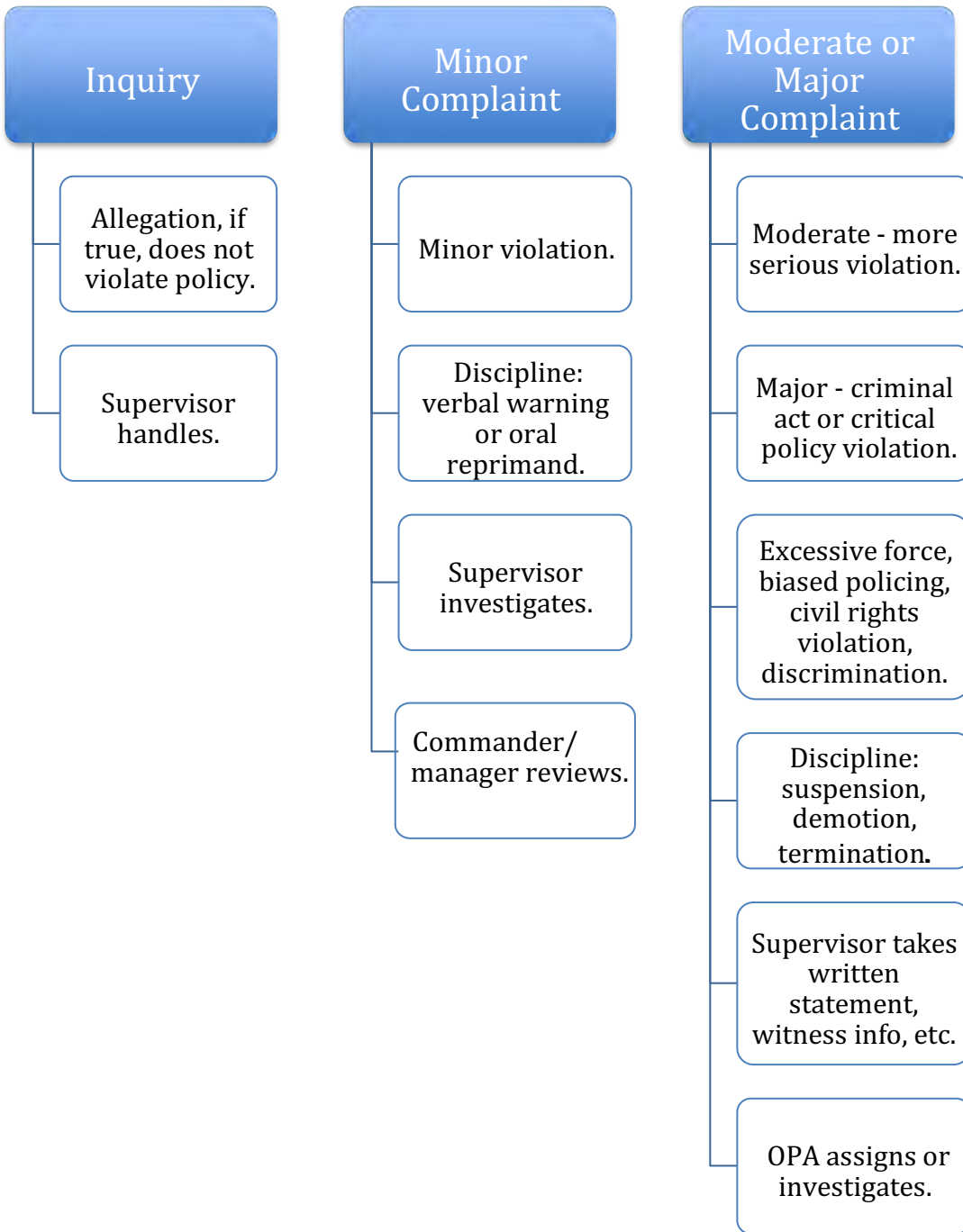
of complaints 2017 – 2020 are also summarized, along with a brief description of the allegations involved and discipline imposed for cases that were sustained 2017 – 2020.

Misconduct Complaint Handling Process at POSPD

Complaint Intake



Complaint Classification



Six Year Overview of Complaint Intake and Classification

Port of Seattle Police Department Misconduct Complaint Intake and Classification								
	2015	2016	2017	2018	2019	2020	TOTAL	6-YEAR AVG
INQUIRIES	32	24	18	21	18	10	123	20.5
MINOR COMPLAINTS	8	9	4	5	6	2	34	5.7
MODERATE/MAJOR COMPLAINTS	2	5	2	----	3	3	15	2.5
TOTAL	42	38	24	26	27	15	172	28.7

Complaint Dispositions

- Unfounded: Alleged act did not occur.
- Exonerated: Alleged act occurred but was justified, lawful, and proper.
- Not Sustained: Insufficient evidence to sustain or exonerate.
- Performance Issue: Failed to meet expectations, but not rise to sustained policy violation.
- Sustained: Alleged act occurred and violates policy.

Four Year Overview of Complaint Disposition

Port of Seattle Police Department Moderate/Major Complaint Investigation Dispositions										
Disposition	Year									
	2017		2018		2019		2020		TOTAL	
	Mod/ Major	Minor	Mod/ Major	Minor	Mod/ Major	Minor	Mod/ Major*	Minor	Mod/ Major	Minor
Unfounded				2		5				7
Exonerated										
Not Sustained		2		1	1			2	1	5
Performance Issue										
Sustained	2	1	1	1	2		2		7	2
Administrative Closure		1								

Discipline Process and Appeals

Verbal Warning or Oral Reprimand

- Minor/informal infractions
- May document in Blue Team
- Supervisors authorized to immediately provide counseling, training, verbal warning, and oral reprimand.

Written Reprimand

- Formal censure of conduct with warning similar misconduct may result in more severe discipline.
- Requires approval of Human Resources prior to serving written reprimand.⁸²
- Employee may serve written rebuttal.

Written Reprimand, Suspension, Punitive Transfer, Demotion, Reduction in Pay or Step, Termination

- Right to appeal - handle in accord with collective bargaining agreement, Civil Service rules, and Port of Seattle policy.⁸³
- Document in personnel file and Blue Team.

Allegations and Discipline for Sustained Cases

Port of Seattle Police Department Moderate/Major Complaint Investigations Allegations and Discipline for Sustained Cases	
Year	Allegations and Discipline
2017	
Moderate/Major	2 Sustained: (1) Letter of Reprimand for Job Performance (2) Termination for Criminal Act/Conduct Unbecoming
Minor	1 Sustained: Letter of Reprimand for Conduct Unbecoming
2018	
Moderate/Major	1 Sustained: Termination for Criminal Act/Conduct Unbecoming
Minor	1 Sustained: Letter of Reprimand for Disrespect Toward Citizen and Failure to Follow Supervisory Direction
2019	
Moderate/Major	2 Sustained: (1) Dismissal from K9 and Last Chance Agreement for Conduct Unbecoming, Unethical Conduct, Disrespect Toward Employee, Threatening Behavior, Disparaging Remarks Against a Supervisor (2) Letter of Reprimand for Conduct Unbecoming
Minor	-----
2020	
Moderate/Major	2 Sustained: (1) Letter of Reprimand for Insubordination with Supervisor (2) Termination for Conduct Unbecoming, Prohibited Speech, and Insubordination
Minor	-----

In addition to considering four years of summary information on complaint intake, categorization, and disposition, 21CP was provided the files underlying inquiry and complaint investigations. An initial check was conducted to verify the various steps involved with misconduct complaint handling by the POSPD, from intake through

disposition and discipline, as appropriate. 21CP then reviewed a random selection of the investigation files more closely, to determine if complaint receipt and other steps were properly documented, whether witnesses were interviewed and relevant evidence was gathered, if appropriate notices and letters to the complainant and named officer were sent, and whether the analysis and disposition were well founded.

It was evident from the cases that were reviewed that the POSPD has a process in place to treat misconduct complaints objectively, thoroughly, and in a timely manner. While 21CP, like any reviewer, could almost always find something they would have handled differently regarding the underlying incident or the complaint investigation, there appeared to be a consistent effort to investigate and document what occurred and to explain to the complainant in person and in writing the reasoning behind POSPD's disposition.

Furthermore, 21CP was informed that if a complaint is sustained and discipline is under consideration, prior misconduct allegations against the officer are reviewed, whether sustained or not, and any related litigation comes to light during that process. Depending on the seriousness of the discipline involved, Human Resources and Legal Counsel will be consulted, regardless of a specific concern about related lawsuits. However, litigation involving POSPD officers related to alleged misconduct is infrequent, as seen in the discussion below on qualified immunity.

Where officers receive follow-up counseling related to a complaint, sergeants provided a memorandum with an overview of the incident and what was said to the officer by way of counseling. Even where a complaint lacked merit, one situation reviewed pointed to the need for training more broadly in the Department, which was documented. Identifying and following up on policy and training recommendations regardless of the outcome of a related complaint reflects best practices in this area.

All of these elements serve the goals of enhanced accountability and transparency, which contributes to complainants, officers, witnesses, and others perceiving the overall complaint handling system at the POSPD as legitimate. As with other internal and external aspects of policing that have been discussed, to the extent that those involved in complaints perceive that the process is fair, they are given an opportunity to be heard, there is transparency during the process and with outcomes, and the final disposition is determined on an objective basis, they will experience a sense of procedural justice and trust in the complaint handling system.

While 21CP did not review complaint investigations involving EEO concerns and handled through Human Resources or Workplace Responsibility, data concerning these complaints was provided as seen below.

POS Police Code of Conduct Individual Complaints Workplace Responsibility⁸⁸

2017 – 1 Complaint

1. Race Discrimination - Unsubstantiated

2018 – No Complaints

2019 – 3 Complaints

1. Race Discrimination -Unsubstantiated/Retaliation - Substantiated
2. Disability Discrimination - Unsubstantiated
3. Retaliation – Unsubstantiated

2020 – 4 Complaints

1. Race Discrimination /Retaliation – Open
2. Race Discrimination/Retaliation – Unsubstantiated
3. Retaliation – Unsubstantiated
4. Employee Ethics/Conflicts of Interest – Closed for Police Department Internal Affairs Investigation

2021 – 1 Complaint

1. Race Discrimination - Open

POSPD employees expressed concern about the amount of time involved with complaints investigated by Human Resources or Workplace Responsibility. Staff indicated that efforts were being made to complete investigations more expeditiously.

⁸⁸ Human Resources staff indicated that this information was up to date as of April 13, 2021.

D. Oversight, Accountability, Equity and Civil Rights Subcommittee Recommendations

Relationship between POSPD Standards of Conduct and the Port's Code of Conduct, including Avenues of Complaint

As with some other policies, POSPD Policy 340/Standards of Conduct is confusing to read, internally disorganized, and does not consistently serve the goal of articulating conduct standards in a way that promotes clear understanding by employees. In contrast, the Port of Seattle Code of Conduct is plainly written and well organized, clearly stating the Port's values that employees:

- Conduct business with the highest of standards
- Honor their commitments to one another, the community, and the Port's customers
- Recognize that employees are capable, high performing people who appreciate the privilege of public service
- Encourage employees to embrace the richness of a diverse workplace and support employee development.

These values are then individually delineated without unnecessary repetition and with clear guidance on where to direct questions concerning the conduct standards and the complaint investigation process when the conduct code is allegedly breached.

However, while the Port's Code of Conduct offers easily understood guidance for employee conduct expectations, it is still necessary that the POSPD have a set of standards complimenting the Port's, but one that incorporates the unique values and ethics associated with police services.

Recommendation No. 24. POSPD should adopt the Port of Seattle Code of Conduct into policy.

To promote a shared understanding of conduct expectations among all Police Department commissioned and non-commissioned staff and to further align the Department with the Port organization, POSPD should adopt the Port of Seattle Code of Conduct, including the clear guidance provided on where to direct questions and the complaint investigation process, and then revise the current set of conduct standards in the Policy Manual so that it complements the Port's, but incorporates the unique values and ethics associated with police service.

This policy should also articulate how its unique standards of conduct relate to the Port's Code of Conduct, collective bargaining agreements, MOUs, and other relevant governing documents.

Recommendation No. 25. POSPD policy should make explicit the types of complaints that should be pursued internally versus those that should be handled through Port of Seattle Human Resources, Workplace Responsibility, or other avenues of complaint, with explicit protocols between components developed, including timelines for completing investigations of employee complaints.

To understand conduct expectations for Police Department officers and rules related to misconduct investigations, discipline, and appeals, reference must be made to applicable sections of the POSPD Policy Manual, the applicable collective bargaining agreement, the Police Officers' Bill of Rights and Code of Conduct/Workplace Responsibility Handbook appendices attached to some collective bargaining agreements, Port of Seattle Police Civil Service Rules, and the Port of Seattle Code of Ethics & Workplace Conduct. With new Washington State legislation enacted in 2021 that creates additional conduct expectations – e.g., the duty to intervene – reference will need to be made to the legislation and Department training bulletins, as policy on point is developed.⁸⁹

While the survey results indicate that the vast majority of survey respondents know their options for filing complaints, the alternatives are not clearly stated in POSPD policy and can require reference to a number of documents. The OPA Sergeant indicated that Human Resources is consulted as needed when it is not clear whether a matter should be handled internally or referred to Human Resources or Workplace Responsibility. While it is very helpful to have an established relationship that facilitates such a discussion, more clarity in policy could obviate the need to consult with Human Resources. The types of complaints to be handled by POSPD (and OPA), Human Resources, and Workplace Responsibility should be made explicit, as should the protocols for referring matters between entities, the timelines set for each entity to complete an investigation, the types of issues requiring input from higher level authority in each entity, and the types of information that can be shared between entities, with the parties involved, and with others. Discussions with representatives from POSPD/OPA, Human Resources, and Workplace Responsibility that occurred

⁸⁹ See, e.g., POSPD Departmental Directives 03-2021 (Duty to Intervene and Report Unreasonable Force) and 04-2021 (Duty to Report External Agency Wrongdoing).

during subcommittee meetings pointed to the need for explicit protocols and interest was expressed in working towards clarification.

While the focus above is on complaints that come to the attention of the POSPD, Human Resources, or Workplace Responsibility, there also was discussion earlier about complaints against POSPD officers received by Customer Services and the need to establish protocols about referring such complaints to the POSPD. As previously recommended, it would be useful to set up a working committee involving representatives from the POSPD, Human Resources, Workplace Responsibility, and Customer Services to review the issues raised here and to develop a responsive set of preferred protocols to make the process more transparent and accountable.⁹⁰

Complaint Intake and Classification

Recommendation No. 26. The complaint classification scheme (inquiry and minor, moderate, or major complaint) should be revised as it is unnecessarily technical, the terms used are not consistently well defined, and use of a methodology to assist in complaint classification will promote objectivity and consistency.

POSPD classifies complaints alleging policy violations as either a Minor, Moderate, or Major Complaint. A complaint, even if proven true, that would not establish a policy violation is called an Inquiry.⁹¹ The scheme of categorizing complaints as Minor, Moderate, or Major appears unnecessarily technical, given the relatively few complaints handled by the POSPD. If the primary distinction is between relatively minor complaints that can be handled by a supervisor and those alleging serious misconduct or involve more complex facts should be investigated by OPA, then a two-tiered approach might be all that is needed.

The definitions used in the classification scheme do not always explain the technical distinctions intended. For example, note the circular nature of the definition used for “Minor Complaints”:

Complaints involving allegations against department members when the actions or behavior of the employee constitutes violations of

⁹⁰ As noted previously, Customer Services provided 21CP with a set of protocols dated July 27, 2021, after the report had been drafted and too late in the assessment process to evaluate and provide feedback. Regardless, working with other Port components on similar concerns regarding the handling of complaints would be beneficial.

⁹¹ POSPD 1020.3.

department policy that are minor in nature. Discipline resulting from a sustained finding involving minor complaints will generally not result in any property loss... (i.e. suspension, demotion, termination, etc.). Minor complaint allegations may include...[complaints about courtesy, minor service issues, minor traffic violations], and complaints of actions committed by a department member deemed to be minor policy violations.”

Defining a “minor complaint” as one that involves a minor policy violation does not provide helpful guidance to POSPD officers, supervisors, and other staff, or for other Port employees and public stakeholders, and thus does not serve the goal of transparency and undercuts accountability.

A complaint classification scheme should be easy to understand and administer and usually only two or three options – what the POSPD calls “inquiry,” or low-level allegations that might not implicate a POSPD policy or are not likely to result in discipline and more serious allegations involving more complex facts and potential discipline requiring a formal investigation with procedural safeguards. A third option could involve referral to another agency, ADR, or some other mode of resolution. It is not unusual for lower-level complaints to be handled by a supervisor, but they should be thoroughly documented and reviewed, as is the case for such complaints reviewed by 21CP.

Given limited resources and competing demands on time, complaints are typically triaged to ensure that the most serious allegations are prioritized for investigation and that potentially perishable evidence is collected as early as possible. It is helpful to set up triaging protocols, such as providing that all complaints involving misuse of force or biased policing be referred for a formal investigation. The rationale is that, if shown to have merit, these complaints can have serious consequences for the involved officer, can negatively impact the community’s view of the Department, and elevating such allegations can communicate respect to the complainant and help build trust in investigation outcomes.

POSPD policy sets up a complaint intake scheme that provides for different processes depending on whether a complaint is submitted in writing or made in person or over the phone. Accountability is served by the requirement that both avenues result in Blue Team documentation.

POSPD provides that complaints are, at least initially, processed differently depending on whether they are in writing or oral.⁹² Written inquiries and complaints are first forwarded to the administrative specialist of the Chief of Police, who confirms receipt with the complainant and then refers the matter to OPA for classification and assignment. In-person or telephoned complaints are forwarded to an on-duty supervisor for intake, and then the supervisor determines how to classify the complaint. It appears that the on-duty supervisor either handles or refers to the first-line supervisor any investigation of complaints deemed to be minor. If a moderate or major complaint is involved, they are to be referred to “the affected commander” for review, who then forwards it to OPA for assignment.

While an approach that sets up different processes based on whether a complaint is made in writing, in-person, or over the telephone presumably encourages thorough information gathering while a complainant is more immediately available and provides for up-front feedback to a complainant submitting a written complaint, the system appears unnecessarily complicated and confusing, given the relatively few complaints involved. While inquiries and complaints are entered and tracked through BlueTeam by the OPA Sergeant, a regular review, such as every quarter or biannually, of intake and classification decisions will help ensure accountability and consistency in the process.

Recommendation No. 27. When an on-duty supervisor handles complaint intake and the investigation of an inquiry or minor complaint, their investigation memo should indicate the rationale behind the classification decision, the complaint classification should be explicitly approved by the Commander, and complaint classification decisions should be regularly audited to check for consistency in application of policy and other classification guidance.

As noted above, when there is an in-person or telephoned complaint, it is referred to the Sergeant serving as the on-duty supervisor who determines how to classify the complaint, after gathering information relevant to the allegations involved. If the matter is classified as an inquiry or minor complaint and investigated by the on-duty supervisor or referred to a line supervisor, the rationale behind the classification decision should be made explicit in the investigation memo that details the complaint, evidence, analysis, and outcome, and the classification should be considered and approved during review by the Commander. This will help ensure that supervising Sergeants and Commanders are using the same classification criteria and allows for

⁹² 1020.4.

learning opportunities and discussion where there might have been a close call about a classification decision, or the complaint presented issues that might have benefited from review by OPA or a Commander prior to classification and investigation.

Timelines

Recommendation No. 28. Though there was no evidence of missed timelines for completing investigations, best practice would be to set timelines for each step in the process, from complaint intake through a final disposition, including notice to the named officer and complainant, and the timelines should be reflected in an updated complaint intake flowchart, and policy should be clarified as to acceptable reasons for extending timelines, identify who has authority to grant an extension, and note any limits on the length of an extension.

POSPD policy states that administrative investigations should not extend over ninety (90) calendar days, which can be extended if needed, with notice to the subject employee.⁹³ The policy does not address reasons for extending timelines, does not identify who has authority to grant an extension, and does not set any limits on the length of an extension. Department policy does not appear to set other timelines for completing the various steps involved with complaint intake, investigation, and disposition, which is a surprising omission. The team was referred to the POSPD Police Officers' collective bargaining agreement for deadlines related to complaint processing. Though the 21CP team has by no means assimilated the entire collective bargaining agreement, the only complaint related timeline evident was a requirement in Appendix B, Police Officer Bill of Rights, that an employee be notified within five (5) days if they are subject to an investigation by the Internal Investigations Section (presumably OPA). Other governing documents may reference specific timeline requirements such as seen regarding appeals and hearings under the Police Civil Service Rules.

The subcommittee was provided a copy of the "Complaint Intake Flowchart" used by the POSPD. The OPA Sergeant acknowledged that it was not up to date, as reference is made to "Internal Affairs" and there is no Internal Affairs unit or function outside of OPA. Other issues identified with the flowchart are discussed above, such as the lack of review of the initial complaint classification and the absence of other quality control checks during complaint handling. The flowchart should be revised to bring it up to date, should include all applicable timelines for steps throughout the process,

⁹³ 1020.6.4.

and should build in review of decisions made between complaint intake and a final determination on the allegations made.

Conflicts of Interest

Recommendation No. 29. The POSPD should develop policy that identifies potential conflicts of interest and protocols to address actual or perceived conflicts related to misconduct complaint handling and discipline matters.

Because officers handling police misconduct complaints internally, through an Internal Affairs Unit or POSPD’s Office of Professional Accountability, naturally will have worked with and have relationships with officers who are named in complaints, it is easy for real or perceived conflicts of interest to arise. The POSPD policy that sets out guidelines for reporting and investigating misconduct complaints does not include a provision addressing such potential conflicts. 21CP was told of one potential conflict that was elevated for review, but with no policy on point, it might not be obvious to some how to handle such matters. POSPD does have a policy on Nepotism and Conflicting Relationships, with the purpose defined as, “to ensure equal opportunity and effective employment practices by avoiding actual or perceived favoritism, discrimination, or actual or perceived conflicts of interest by or between members of this department.”⁹⁴ The policy includes “discipline” among the list of employment practices that are covered. However, there is no explanation in this policy or elsewhere concerning the identification of and protocols to address specific conflict of interest concerns in the complaint handling or discipline processes.

In all departments where sworn members are tasked with investigating complaints against other members in the same organization, unique issues of perceived or actual conflict of interest can crop up. Furthermore, since even those who have engaged in criminal activity should have an avenue to complain about officer misconduct, those engaged in investigating complaints cannot be swayed by any underlying alleged criminal behavior by the complainant. The goal is to ensure that everyone involved in the investigation and review process is capable of being objective, fair, and unbiased with regards to the subject officer, complainant, witnesses, and issues raised. Where there are questions of perceived or actual conflict of interest, the policy should explicitly state the steps to be taken to resolve any concerns.

⁹⁴ POSPD 1050.1.

Alternative Dispute Resolution

Recommendation No. 30. The Port should explore alternative dispute resolution (ADR) options for resolving some complaints, whether or not they involve the Police Department, as ADR does not appear to be an option for case processing in the POSPD, Human Resources, or Workplace Responsibility.

While the number of complaints filed against POSPD officers might not justify the time and expense of setting up an alternative dispute resolution (ADR) program, if Human Resources and Workplace Responsibility were interested in offering ADR options, it would be useful to consider dispute resolution programs that could be available regardless of where a complaint is lodged or where in the Port organization the named employee works.

Access to the Police Department and Information on Filing Complaints

Clearly communicating to all stakeholders that the POSPD takes complaints seriously and offering a user-friendly complaint filing system with regular status updates to the involved parties provides transparency and will help build trust by complainants and officers alike that disputes will be handled objectively, thoroughly, and in a timely manner.

Recommendation No. 31. There are a number of ways to make the POSPD and complaint filing system more accessible to stakeholders, including modifying the complaint form, changing the on-line search system, and identifying police facilities on Sea-Tac airport maps.

- The form available on the POSPD webpage refers to “inquiry, commendation, complaint, suggestions, and area of concern,” is unnecessarily specific and should be limited to “concern or complaint.”
- The online complaint form should provide directions, including for third party complaints, information on what to expect for next steps, an overview of the investigation process, and how a complainant can follow up (i.e., provide a tracking number or contact information for investigator), along with providing confirmation once the complaint is received by the Department.
- A search for “police complaint” on the Port of Seattle website should take the searcher directly to the complaint form page.
- The location of POSPD headquarters and the substation should be more clearly identified on Sea-Tac airport maps.

VIII. DIVERSITY IN HIRING AND RECRUITING

A. Motion 2020-15 and the Diversity in Recruitment and Hiring Subcommittee

Motion 2020-15 provided that the assessment of the POSPD was to include a review of how potential officers are vetted during the testing and hiring process, including how an officer’s background is reviewed and evaluated as well as how an applicant’s physical, mental, and emotional fitness for the duty is assessed. Building on the Executive Director’s executive action that would “disqualify applicants based on substantiated instances of excessive use of force or racial discrimination,” the motion provided that the assessment should more clearly define how such instances would be identified and the types of misconduct that would be prohibited. The assessment also required assessment the diversity of the POSPD in terms of demographics and other aspects, such as languages spoken, and identify what additional efforts could be made to increase diversity in those areas. The assessment was to include areas such as increased outreach during the recruitment process, internships and youth training opportunities, community-focused hiring programs or incentives, changes to the use of lateral postings for frontline officers, hiring panel diversity, and removal of disqualifications that disproportionately impact people of color. Consistent with the focus on equity to be applied to this assessment in full, 21CP was asked to consider in this section impacts on diversity, equity, and civil rights.

B. Diversity in Recruitment and Hiring Subcommittee Members and Workflow

Subcommittee A – Diversity in Recruitment and Hiring	
Chairs:	Jessica Sullivan & Ericka Singh (Derek Bender)
Name	Organization
Derek Bender	Port of Seattle, Human Resources
Ericka Singh	Port of Seattle, Human Resources
Jessica Sullivan	External Subject Matter Expert
Ilays Aden	Port of Seattle, Community Relations
Sgt. Darrin Benko	Port of Seattle Police Department
Sgt. Molly Kerns	Port of Seattle Police Department
Efrain Lopez	Port of Seattle, Diversity & Development Council
Luis Navarro	Port of Seattle, Office of Equity, Diversity & Inclusion
Bessie Scott	External Subject Matter Expert

Michelle Woodrow

Union Representative (Proxy: LeLand Allen)

The Diversity in Recruitment and Hiring Subcommittee met six times between February 26 and May 21, 2021. Port of Seattle Human Resources Talent Acquisition Manager/Co-chair Erika Singh and Talent Acquisition Lead/Substitute Co-chair Derek Bender were instrumental in gathering information relevant to the work of the subcommittee, along with Sgt. Molly Kerns and Sgt. Darrin Benko from the POSPD, who helped provide perspective and context on current recruitment and hiring practices. Co-chair Jessica Sullivan, a former King County Sheriff’s Office Captain and currently the Director of REI Corporate Security, provided insight on best practices, along with her knowledge of successful approaches to recruitment and hiring being used by local law enforcement agencies. Members of the subcommittee actively participated during meetings, asking questions of the presenters, sharing observations about the material reviewed, and requesting more information, as needed. The recommendations below were developed with significant input from the DRH Subcommittee.

Overview of Recruitment and Hiring of Police Officers Generally and at the Port of Seattle Police Department

A survey of 411 police departments conducted by the Police Executive Research Forum (PERF) found that 63% experienced a reduction in the number of applicants in 2019.⁹⁵ Police recruitment continues to be challenging in 2021 after a year of widespread racial justice protests and calls for police reform, along with a much higher than usual rate of retirements and resignations that some attribute to officers’ low morale.⁹⁶ Applicant shortages are occurring in departments of all sizes and all regions of the country. At the same time, agencies are working to meet their goals of building a workforce that reflects the diversity of the communities they serve. However, recruitment for applicants of color face additional challenges, including a long history of discrimination in the profession, high levels of mistrust of the police in underrepresented communities, lack of awareness of career opportunities in law enforcement, and difficulties in passing background and credit checks.⁹⁷ “Whereas departments have had historical difficulties recruiting women and minority

⁹⁵ Police Executive Research Forum.2019. “The Workforce Crisis and What Police Agencies Are Doing About It.” Washington, DC: Police Executive Research Forum.

⁹⁶ See, e.g., <https://www.axios.com/police-morale-suffers-recruiting-down-fb25f81e-b423-41fe-9d5f-242d43ebf337.html> and <https://www.npr.org/2021/06/24/1009578809/cops-say-low-morale-and-department-scrutiny-are-driving-them-away-from-the-job>

⁹⁷ CCJ Task Force on Policing, “Recruitment, Diversity, and Retention,” Policy Assessment, May 2021 (citations omitted).

applicants, their inability to grapple with generational differences has shown the profession to be underprepared for the rapidly changing and uncertain economic and social landscape.”⁹⁸

There are relatively few rigorous studies on effective recruitment strategies. The studies done have focused on making it easier to apply or making the position more attractive to desired candidates, such as sending reminder emails and texts and postcards with messages about “being up for the challenge” of serving and emphasizing career opportunities in the profession.⁹⁹ A recent guidebook out of the U.S. Department of Justice COPS Office provides a useful overview of existing resources for promoting workforce diversity, intended to “highlight publications that are unique, particularly insightful, or considered foundational.”¹⁰⁰

Against this backdrop, the Diversity in Recruitment and Hiring (DRH) Subcommittee considered POSPD’s approach to hiring new officers, recruitment strategies, and data available to assess where minority and female candidates fall out during the application process. Port of Seattle Police officers are hired through three pathways – as an entry officer, lateral officer, or internal entry officer with overlapping and distinct steps in the application and testing process for each. Officers hired from all three pathways must meet the minimum requirements of being at least 21 years of age, a U.S. citizen or a lawful permanent resident with the ability to read and write in the English language, hold a high school diploma or GED certificate, have or obtain a WA State driver’s license prior to hire, and successfully pass a background investigation that includes a complete criminal records check, a polygraph examination, a medical examination, and a psychological examination. Also, regardless of the pathway used in applying to the Port Police Department, there are factors that will automatically disqualify an applicant, including:

- Drug use prohibitions
- Criminal activity, including any adult felony conviction, conviction of any offense classified as a felony under WA State law while employed in any capacity at a law enforcement agency, admission of having committed any act

⁹⁸ Jeremy M. Wilson, “Strategies for Police Recruitment: A Review of Trends, Contemporary Issues, and Existing Approaches,” *Law Enforcement Executive Forum*, 2014, 14(1), p. 79.

⁹⁹ *Id.*

¹⁰⁰ *Recruitment and Retention for Workforce Diversity – Resource Guidebook – 2021*; CRI-TAC Spotlight, U.S. Department of Justice, Office of Community Oriented Policing Services; <https://cops.usdoj.gov/RIC/Publications/cops-w0962-pub.pdf>

amounting to a felony under WA State law, as an adult, within five years prior to application or while employed as a peace officer (including military police officers), any conviction under a domestic violence statute, and unlawful sexual misconduct

- Certain driving related offenses
- Employment related experiences including dishonorable discharge from armed forces, lying during any stage of the hiring process, falsification of application or related forms, previous revocation or denial of any certified status, any substantiated finding of the use of excessive force or a substantiated finding of racial discrimination or corrupt acts against another employee or member of the public.

Additionally, financial issues, such as poor credit history, including excessive credit card debt or unresolved accounts in collections, are thoroughly assessed and may be grounds for disqualification.¹⁰¹ Applicants are required to sign a waiver allowing backgrounders to see applicants' personnel files, misconduct investigations, and all other relevant documents. Information regarding minimum requirements and automatic disqualifiers are posted on the Port Police Careers webpage.¹⁰²

For those who meet the minimum qualifications and are not automatically disqualified based on the factors noted above, the application process is dependent on the hiring pathway being followed. Though the Port is currently using a strategy focused on hiring experienced officers applying through the lateral pathway and is not accepting applications for entry-level officers, the subcommittee reviewed the steps involved for each of the hiring pathways. Entry-level applicants must pass written and physical ability tests administered by Public Safety Testing and an oral board interview to then be merged onto a Civil Service Eligibility list, with the highest candidates moving to background investigations if there are entry-level officer openings. Lateral applicants must pass a physical ability test administered by the Exercise Science Center. After passing the physical fitness examination, a lateral

¹⁰¹ Under E2SSB 5051, as a condition of continued employment, peace officers must obtain and maintain CJTC certification, which includes release of their personnel files, termination papers, criminal investigation files, and other material. The new legislation sets out the grounds for certification denial or revocation, which includes factors not currently listed as disqualifying by the Port Police Department, though might have had a disqualifying impact as more information about an applicant was discovered during the background check and otherwise. The legislation also sets out additional backgrounding requirements that must be complied with.

¹⁰² <https://www.portseattle.org/page/port-seattle-police-department-careers>

candidate must complete a written exercise and an oral board interview, followed by the background investigation, polygraph examination, potentially be interviewed by the Chief of Police, and must pass psychological and physical exams. Finally, the internal entry-level pathway is open exclusively to Port of Seattle employees who must follow the steps outlined for entry-level applicants, though the physical ability test is administered by Port staff. Concerns about some aspects of the application process are reflected in the recommendations below.

POSPD Employee Demographics

Note that the information provided on POSPD employee demographics was sourced from different data sets compiled at different points in time, and thus, the total number of employees or number within a subgroup may differ between charts and tables.

2020 Affirmative Action Utilization & Availability Chart
POSPD Commissioned Employees

EEO JOB GROUP	TOTAL	FEMALE					MINORITY				
		Utilization		Avail. ¹⁰³		D ¹⁰⁴	Utilization		Avail.		D
Commissioned Police	89	1 1	12.35	1 4	15.96	-3	14	15.73	18	20. 11	- 4
Commissioned Police - Command	26	4	15.38	3	13.20	+ 1	7	26.92	4	16. 34	+ 3

¹⁰³ Availability is an aggregation of external candidates with requisite skills and internal employees who can move between jobs.

¹⁰⁴ D = Difference between Utilization and Availability

Gender Identification for Commissioned/Non-Commissioned Employees

Job Group Description	Gender	#	%¹⁰⁵
Commissioned Police – Command ¹⁰⁶	Male	19	79%
Commissioned Police – Command	Female	5	21%
Commissioned Police	Male	79	90%
Commissioned Police	Female	9	10%
Total Commissioned Police - Male		98	88%
Total Commissioned Police - Female		14	12%
Non-Commissioned Protected Services	Male	3	14%
Non-Commissioned Protected Services	Female	19	86%

Race/Ethnicity Identification for Commissioned Employees

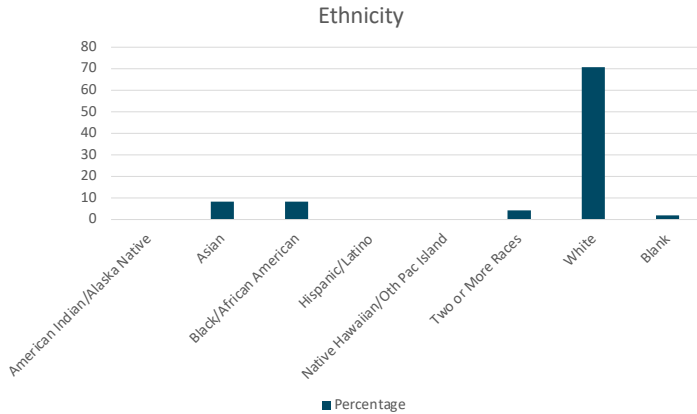
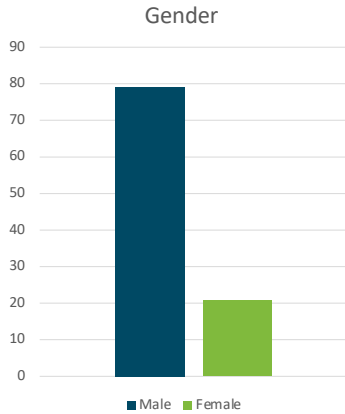
Job Group Description	Race/Ethnicity	#	%
Commissioned Police – Command	American Indian/Alaska Native	0	0%
	Asian	2	8%
	Black/African American	2	8%
	Hispanic/Latino	0	0%
	Native Hawaiian/Other Pacific Islander	0	0%
	Two or More Races	1	4%
	White	17	71%
	Unknown	2	8%
Commissioned Police - Officers	American Indian/Alaska Native	1	1%
	Asian	4	5%
	Black/African American	3	3%
	Hispanic/Latino	1	1%
	Native Hawaiian/Other Pacific Islander	2	2%

¹⁰⁵ Percentages rounded off.

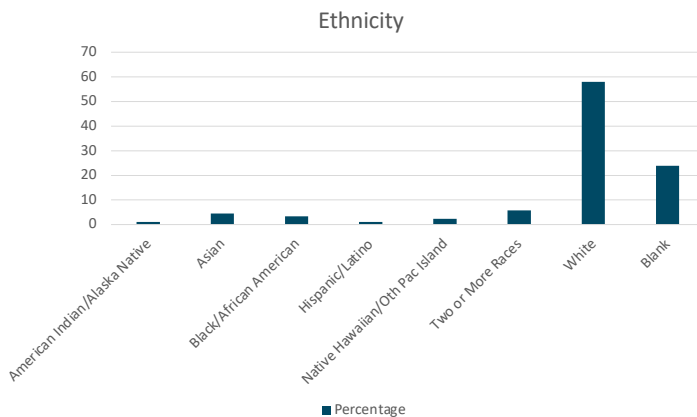
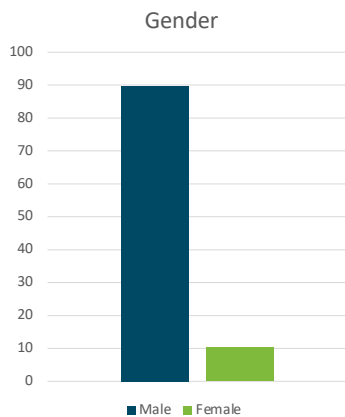
¹⁰⁶ Commissioned Police – Command includes Sergeants

	Two or More Races	5	6%
	White	51	58%
	Unknown	21	24%

Commissioned Command Demographics



Commissioned Patrol Demographics

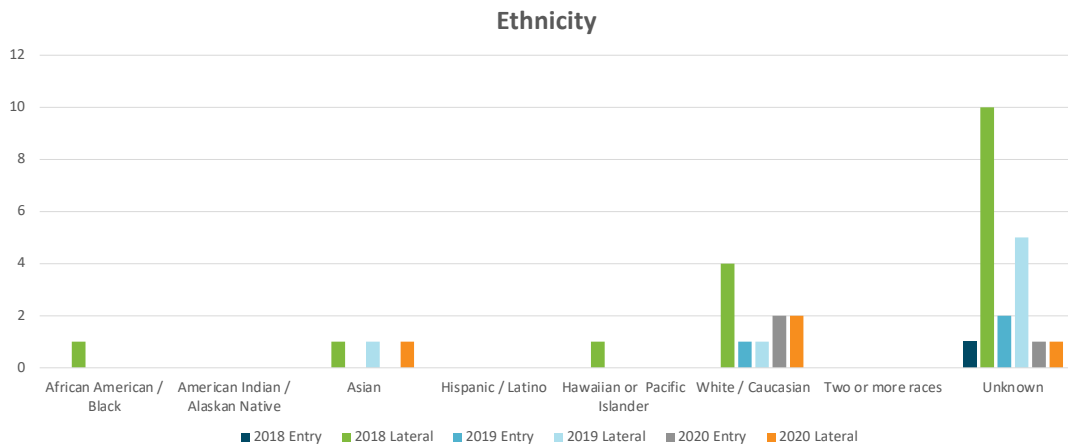


Demographics for POSPD Hired 2018 – 2020

Of a total of 35 POSPD officers hired during the years 2018 - 2020, 80% (28) were lateral and 20% (7) were entry-level. In addition to three officers hired from the Honolulu Police Department and one from the Washington State Patrol, lateral hires represented police agencies in the following Washington State cities:

- Seattle (10)
- Tukwila (4)
- Gig Harbor (2)
- Auburn (1)
- Federal Way (1)
- Issaquah (1)
- Kent (1)
- Mercer Island (1)
- Pacific (1)
- Redmond (1)
- Renton (1)

Entry vs Lateral Hires



Of the 35 officers hired since 2018, 23 laterals were male, 5 laterals were female, and all seven entry-level hires were male.

Demographic information for lateral and entry-level applicants was provided by the Port's Human Resources Office and an effort made to analyze the application process to better understand the points at which women and minorities fell out. However, due to subcommittee time constraints and data that was not immediately available, it was difficult to reach insights on this front.

The Department has relied heavily on lateral hires the past few years because laterals can be assessed on their actual performance as police officers, it is less expensive to on-board lateral hires (estimated as \$55,816.40, as compared to the \$87,717.80 estimated cost of entry level hires), and, because lateral hires do not need to repeat academy training they have previously completed, they are available for patrol assignment much more quickly. An entry-level officer typically requires 45 weeks of training before handling calls solo (six weeks of pre-academy training, 18 weeks for the academy, six weeks post-academy, and 15 weeks of field training) as compared to a lateral officer who on average needs 18 weeks of training before being assigned to patrol (six weeks of pre-field training and 12 weeks of field training).

C. Diversity in Recruitment and Hiring Recommendations

Recommendations relating to Data Collection, Demographics and Self-Identification

While representatives from the Port's Office of Human Resources and Police Department provided information summarizing a range of data points relevant to consideration of officer recruitment and hiring trends at the POSPD, there were limitations to the information immediately available using internal and external data sources. For example, with entry-level hires, the Port must rely on Public Safety Testing's willingness and availability to provide certain categories of data that would be useful in analyzing the pass/fail data points for these candidates. For different types of analyses, the Port uses different benchmarks, which may look to the entire population of an area or specifically to the population of qualified law enforcement applicants.

A significant proportion of POSPD commissioned officers do not self-identify when asked about their race/ethnicity affiliation. While this information is usually provided during the application phase, once hired, 20-25% of officers do not provide racial/ethnic information in the personnel system. This reluctance to self-identify is found Port-wide at similar levels and severely limits analysis of trends in recruitment and hiring from the perspective of meeting race/ethnic hiring goals.

Recommendation No. 32. The Port should coordinate with the Police Department, Human Resources, and other Port components to consolidate data sources with the goal of developing a robust data collection and analytic approach to better understand the recruitment and hiring of Police Department personnel, including at which stage women and/or applicants of diverse ethnic and racial backgrounds have high fail rates, and identify opportunities for improvement.

Individuals from the Port's Human Resources Office and the POSPD provided an abundance of information on the recruitment and hiring process for police officers. When the DRH Subcommittee asked for even more data, they worked internally and with IT and external sources to pull as much information as possible in a short amount of time. While more analysis would be useful, as discussed below, it is important that data sources be consolidated or coordinated to allow for a robust data set and more sophisticated data analytics. The subcommittee was told that efforts are being made towards this end.

Recommendation No. 33. The Port should develop clear guidance on the benchmarks to be used in assessing the availability and utilization of persons identifying with different ethnic and racial groups, including the rationale for using census data from specific areas.

In analyzing POSPD recruitment and hiring data, the EEO job groupings used for federal affirmative action reporting purposes grouped commissioned employees into either commanders or officers, with sergeants included with commanders. As the role of sergeants who supervise falls between command staff and officers and differs significantly from a commander's role, it is confusing to include them with commanders and it's important to consider the demographics of supervisors as a separate group.

Affirmative action utilization and availability information also did not always clearly identify the benchmarks being used, which can impact outcomes. For example, in considering the availability and utilization of African American/Blacks, looking to African American/Black police officer applicants for the POSPD verses the percentage of applicants in the Pacific Northwest or as compared to King County or Washington State census data yields different results, though the percentage of African American/Black police officer applicants seeking a position at the POSPD is higher than all three other metrics. In considering Hispanic/Latino applicants, the percentage of Hispanic/Latino officers applying to the POSPD is less than half of the average percentage of the three comparators, indicating that the Port is having

difficulty attracting Hispanic/Latino police officer applicants. The impact is reflected in the race/ethnic identification data presented above, showing only one POSPD office identifies as Hispanic/Latino, with the significance of the gap dependent on the specific benchmark used.

Police Officer Applicants January 2019 – July 2020¹⁰⁷

	Pacific Northwest Police Applicants 1/1/2020 to 2/28/2021	Port of Seattle Police Applicants 1/1/2019 to 7/16/2020	King County 2019 US Census	State of Washington 2019 US Census
African American/Black	6.2%	10.6%	7.0%	4.4%
Hispanic/Latino	10.8%	5.4%	9.9%	13.0%

Clearly identifying benchmarks is vital for setting recruitment and hiring goals and for measuring the Port’s success rate in meeting those goals.

Recommendation No. 34. The Port should explore the reasoning behind the significant percentage (20-25%) of employees who do not report their race/ethnicity and consider the impact of this missing demographic information on employee demographic data analysis for identifying and addressing any disparities in hiring and other employment opportunities.

During subcommittee discussions, many assumed that POSPD employees who do not report their race/ethnicity are likely White and fear identifying their race will impact their employment opportunities in the face of diversity goals. It is also possible that some believe that since race is a social construct, it is not productive to perpetuate the idea that any distinction is meaningful.¹⁰⁸ Staff from Human Resources suggested that it is simply an oversight made by employees who are asked to complete a variety of forms when initially hired, including those asking for race/ethnicity data, and that employees have no incentive to correct or complete the information when Port-wide

¹⁰⁷ This data was taken from a Public Safety Testing chart dated April 8, 2021, that was included in a slide deck presented to the subcommittee titled, “Recruiting and Hiring Data, Pt. 2, Police Task Force Subcommittee, 5/7/2021. The full chart includes similar comparison points for other race/ethnic groups and for females.

¹⁰⁸ <https://www.scientificamerican.com/article/race-is-a-social-construct-scientists-argue/>

or department-wide requests are made to update personnel files. Whatever the explanation for the high rate of employees who do not identify their race/ethnicity, the lack of complete data makes it very difficult to assess the POSPD's diversity progress.

Recommendation No. 35. The Port and Police Department should consider using non-binary gender designations.

Given the increasing numbers of individuals identifying as non-binary or gender-fluid, it is important to consider the limitations inherent in only using binary gender identification options when collecting demographic information from applicants and employees and should consider how to incorporate non-binary gender options into all practices and systems.¹⁰⁹

Advertising and Recruitment

As was noted during the work of this subcommittee, it is important to separate out advertising from recruitment, as the latter requires a more strategic approach. The Port advertises police officer hiring opportunities through a variety of means, including:

- LinkedIn
- Indeed
- PoliceOne
- National Association of Black Law Enforcement Officers (NOBLE)
- Multiple Diversity/Military outlets

The Port is instituting a new system to more readily analyze which advertising sites lead individuals to apply to the POSPD and, of those sites, which are most productive. Information from the system will be useful in considering whether which advertising avenues should continue to be used and where new audiences should be sought.

¹⁰⁹ In June 2021, Attorney Generals from 20 states, including Washington, joined together to urge the FBI to create the gender category of “X” for nonbinary individuals in the Uniform Crime Reporting system, which is used to study, analyze, and react to crime. See, e.g., <https://www.nj.com/politics/2021/06/nj-asks-fbi-to-add-x-gender-to-represent-nonbinary-residents-in-crime-stats.html>. Also, the American Medical Association now recommends removing sex labels entirely from birth certificates, as explained in this Opinion piece in the Seattle Times. <https://www.seattletimes.com/opinion/listen-to-the-ama-and-remove-sex-labels-from-birth-certificates-in-washington-state/>

As for recruitment efforts, the POSPD developed a series of thoughtful, engaging recruitment videos that are posted on its Port Police Careers webpage, featuring officers of different genders and ethnic/racial backgrounds talking about why they came to the POSPD and ways in which police work at the Port is unique. The videos are diverse and engaging and seem to be a useful tool for visitors to the website and in reaching out to various community and professional groups.

Recommendations Related to Advertising and Recruitment

Recommendation No. 36. Develop a recruitment plan aimed at increasing the number of Hispanic/Latino individuals applying to be a police officer at the POSPD.

The Port is acquiring a software program that will allow it to more closely analyze where applicants learn about POSPD police officer hiring opportunities, to maximize advertising approaches that yield the best outcomes and to identify where efforts might need to be increased. While more robust data and clear benchmarks are needed, as discussed above, information that is available shows that the number of Hispanic/Latino police officer applicants and hires at the POSPD falls well below what is expected. A recruitment plan aimed at increasing the number of Hispanic/Latino individuals applying to the POSPD is recommended. One step to consider towards this end is to consult with the Port's Hispanic/Latino Employee Resource Group for input on effective ways to reach out to the broader Hispanic/Latino community. It also might be helpful to evaluate whether to seek funding for advertising with the National Latino Peace Officers Association and similar groups.¹¹⁰

An idea suggested by a subcommittee member for increasing interest in policing, particularly among Hispanics/Latinos and those who are bilingual, was to advertise openings inside the airport at baggage claim and other places where international travelers, some of whom are bilingual, will be exposed to the information and might

¹¹⁰ While there are problems with the data related to the number of female applicants and hires that make it difficult to determine if the POSPD meets expectations regarding employment of female officers, advertising through the National Association of Women in Law Enforcement and similar law enforcement and non-law enforcement organizations might be useful.

develop an interest in pursuing a policing career, such as baggage carousels for flights arriving from Mexico City. It was also suggested that information be sought from current Hispanic/Latino officers to better understand their interest in the POSPD for use in recruiting others.

Recommendation No. 37. Consider a variety of recruitment suggestions made by the Diversity in Recruitment and Hiring Subcommittee to gather information and to reach out to youth and other communities to garner interest in policing and in the POSPD.

The DRH Subcommittee offered a variety of suggestions aimed at learning more about what attracts individuals to want to work as a police officer at the POSPD and to garner interest in policing and the POSPD among youth and other community groups. These suggestions include:

- Seek more information from current lateral hires to determine if there is a typical point in their career they sought to transfer and whether that informs how the Port approaches recruitment and hires with this demographic.
- Consider encouraging POSPD Officers representing diversity in the Department to spend time serving as ambassadors to minority communities, to develop relationships and interest in law enforcement.
- Use internships at the POSPD to encourage youth interest in law enforcement generally and the POSPD in particular.
- Collaborate with other law enforcement agencies throughout Washington to develop strategies for encouraging youth to pursue a career in policing, such as bringing together difference groups of current and former Latino, African American, and female Chiefs of Police to record them talking about their backgrounds and journey into policing for televised programs to be aired in select communities. Look for financial support for the project from organizations such as the Latino Civic Alliance, which might be particularly interested if other police departments experience a low rate of applications from Hispanic/Latino like that seen at the POSPD.
- Explore the idea of identifying “Community Ambassadors” who can work in communities to help identify people with an interest in law enforcement careers, educate them about preparation and opportunities, and facilitate

connections with the POSPD, the Washington State Criminal Justice Training Commission, and similar resources.

A final recommendation included in the list of recruitment suggestions was to explore a collaboration with police departments in other communities to partner on Community Policing Academies and Explorer Programs, reducing time and resources required by any one agency. DRH Subcommittee Co-chair Jessica Sullivan was in touch with the Burien Police Department Chief while this idea was being discussed in the subcommittee and the Chief was open to the idea of collaborating.

Female Entry-Level and Lateral Applicants

Recommendation No. 38. Follow-up with Public Safety Testing to explore why female applicants to the Port of Seattle Police Department fail the written test at a higher level than male applicants and whether the Port is receiving all data analytics needed to assess applicant and hiring patterns and give follow-up consideration as to why there have been no female entry-level hires in the past three years.

As part of the application process, entry-level applicants are required to take a written test administered by Public Safety Testing (PST), which is not required of lateral applicants. Females fail the written test at a higher rate than males; for example, in 2019, the failure rate on the written test for female applicants was 7%, as compared to 5% for males. While 26% of entry-level POSPD applicants failed the physical test administered by PST, only 9.1% (all male) of lateral applicants failed the physical test administered by the Exercise Science Center (ESC) since 2018. The different pass rates could be a function of the type of physical test involved in each setting, or a reflection of the fact that at least in-state lateral candidates must have already completed the PST test to have been certified to work as an officer in Washington State. Since no female lateral candidates failed the ESC physical test, the test eliminated disparate impact for females, an important equity consideration. Also, the pool of female lateral applicants was slightly larger than that for entry-level female applicants – 14.9% lateral versus 12.2% entry-level. However, because data on failure rates by gender available through PST was limited, it is not clear why POSPD has not hired any female entry-level applicants in the past three years.

Oral Boards

Oral board interviews are required of all officer applicants. Entry-level applicants are called in order (top down) of their written scores. Lateral candidates are contacted to

participate in an oral board in the order of completion of all pre-oral board requirements. All Internal Entry-level applicants are interviewed if qualified and pass the physical agility test. Oral board questions differ for lateral versus entry-level applicants, with a copy of each set of questions provided to the DRH Subcommittee. While it was beyond the subcommittee's capacity to review all the questions used, and confidentiality requirements prohibit any detailed discussion of the questions, some observations were made as noted below.

Recommendations Related to Oral Boards

Recommendation No. 39. Increase the number of civilians, pulling from diverse employee groups such as Employee Resource Groups (ERGs), to be trained and available to serve on oral boards, so that they can rotate in when available to assist with this step of the hiring process and consider ways to assess whether the training provided to minimize the impact of implicit bias has positive impacts.

Each oral board is made up of a diverse group of individuals, with a goal to have a demographic mix in terms of gender and race, along with a mix of commissioned and noncommissioned employees, and civilians outside of the POSPD. There was a sense among some that there are a handful of oral board regulars, those who are more likely to be available to assist when needed. However, the subcommittee did not analyze oral boards over time to determine the demographics of those who served. Without a basis for determining if there's an issue with the make-up of oral boards, it is nonetheless advantageous to consider ways to expand the number and diversity of individuals in the pool used to appoint oral boards and to develop a strategy for assessing oral board participation in the future.

Recommendation No. 40. Review oral board questions to determine if they are eliciting responses that address the subject area behind each question, such as assessing character, and consider whether the oral board should include questions directly asking applicants about involvement in extremist groups¹¹¹, about an encounter with someone of a different race, sexual orientation, etc., whether they have ever been the subject of discrimination themselves, or the community groups they belong to.

As previously noted, it was beyond the capacity of the DRH Subcommittee to conduct an in-depth analysis of oral board questions. However, a review of the questions and responses in light of the underlying value at issue would be worthwhile. Also, POSPD

¹¹¹ E2SHB 5051 now requires inquiry into involvement in extremist organizations as part of the backgrounding process.

should consider adding or substituting more direct questions to explore an interviewee's biases.

Recommendation No. 41. Consider whether some limited follow-up questions by oral board members should be permitted.

While it is understandable that Human Resources wants to ensure the integrity of the oral board process by prohibiting any deviation, there is potential for miscommunication or misunderstanding when no follow-up questions are permitted. The Port should consider whether vital information might be lost in the process and if there are ways to allow for limited follow-up without sacrificing standardization in the process.

Equity Issues

As the DRH Subcommittee used an equity lens in assessing recruitment and hiring efforts for the POSPD, ideas intended to enhance equity are incorporated throughout these recommendations. However, a few suggestions were aimed very specifically at enhancing police equity in recruitment and hiring.

For example, because the background check includes a review of economic factors, there was a concern that some economically disadvantaged applicants would be excluded, despite the fact that they might not impose an integrity risk if hired. The subcommittee was assured that where it is apparent that an applicant fell into financial difficulty but is working to pull out of the situation, that experience alone would not exclude them from consideration.

Recommendation No. 42. Bring representatives of all ERGs into the recruitment and hiring process at all steps, not just for oral boards, so that a variety of perspectives and ideas are shared with the Police Department and the Port throughout the process.

Recommendation No. 43. While points can be added to an applicant's score if they speak a second language, consider a pay incentive or hiring preference for the ability to speak more than one language, encouraging multilingualism for applicants and current employees.¹¹²

¹¹² Given the wide range of languages spoken by people traveling through SeaTac, having officers who can speak more than one language serves the Port's broader interests in being able to respond to customer needs.

Finally, a suggestion to make POSPD demographics more transparent by regularly reporting the information to the Commission was realized in the POSPD Annual Report for 2020, which included demographics and presumably will continue to include such information, and which was presented to the Commission and is available on the POSPD web page.

IX. TRAINING AND DEVELOPMENT

A. Motion 2020-15 and the Diversity in Recruitment and Hiring Subcommittee

Motion 2020-15 stated that the assessment should include a comprehensive review of the police training curriculum, including whether existing training promotes a “guardian mentality” approach to policing as well as what training is provided to officers as alternative or intermediate approaches to avoid excessive use of force. In addition, the assessment should review whether officers are developed and advanced throughout the organization in a way that ensures equitable outcomes for officers of color; the assessment should identify whether barriers to advancement exist for officers of color and recommend ways to overcome those barriers. The assessment should also review current community engagement activities by the Port of Seattle Police Department in communities of color and economically distressed zip codes.

B. Training and Development Subcommittee Members and Workflow

Subcommittee B – Training and Development	
Chairs:	Deborah Jacobs & Tracy Patterson
Name	Organization
Tracy Patterson	Port of Seattle, Human Resources
Deborah Jacobs	External Subject Matter Expert
Milton Ellis	Port of Seattle, Labor/Represented Employees
Detective Steve Ivey	Port of Seattle Police Department
Anika Klix	Port of Seattle, Diversity and Development Council
Patricia Ly	Port of Seattle, Aviation division; Rep of Blacks in Government
Sgt. Bram Urbauer	Port of Seattle Police Department
Shaunie Wheeler	Union Representative

Jo Woods	Port of Seattle, Maritime division; Rep of Blacks in Government
Jerrell Wills	External Subject Matter Expert
Neil Woodruff	External Subject Matter Expert
Janice Zahn	Port of Seattle, Priority Hire

The Training and Development Subcommittee met three times in the Spring. The subcommittee primarily examined training – including, but not limited to, use of force, de-escalation, crisis intervention, and professional development, including barriers to advancement for people of color. All aspects of this assessment were viewed through an equity lens.

Training

The Co-Chairs of the Training and Development subcommittee joined 21CP in attending the 2021 use of force training for POSPD. Additionally, 21CP attended the 2020 de-escalation training and legal in-service updates, including 40mm Less Lethal, Taser, ground control, and search and seizure training.

The subcommittee began with an explanation of the current training program by the POSPD. The Training Section includes a commander, a sergeant, and an officer. They are responsible for all in-service training. Due to the demands of the cruise ship season and redeployment of resources, the POSPD training year is October – April, which limits the available months to deliver trainings to the department.

The State of Washington, through the Criminal Justice Training Commission (CJTC), requires 24 hours of annual in-service training for every officer; the POSPD union contract sets a minimum of 40 hours. In reality, training hours are over 60 for most officers and specialty units have even more.

New recruits receive the 720-hour Basic Law Enforcement Academy (BLEA) through CJTC. The Port provides a pre-BLEA (a mini-police academy) to “set them up for success.” Following BLEA, the Port has another six weeks of training before the Patrol Training Officer (PTO) program. Members of the subcommittee discussed the primary distinctions between Field Training Officer (FTO) programs (focused on checking off practical skills) as opposed to PTO programs (which are problem-solving based, and train more thoughtful approaches to policing). As noted in the Final Report of President Obama’s Task Force on 21st Century Policing, the “Reno Model,” developed in collaboration with the United States Department of Justice’s

Community Oriented Policing Services (“COPS”) Office and the Police Executive Research Forum (“PERF”), “use[s] adult learning theory and problem solving tools to encourage new officers to think with a proactive mindset, enabling the identification of and solution to problems within their communities.”¹¹³ The Reno Model established the foundation of the PTO model¹¹⁴.

Lateral hires (from other agencies) receive 13 weeks of training.

The POSPD developed a five-year training plan and maintains training files to ensure the department knows what has been trained and who has received the training.

¹¹³ *Final Report of the President’s Task Force on 21st Century Policing* 60 (2015).

¹¹⁴ Hoover Group of Reno, *History of Field Training (Reno Model PTO Program)* (2006); see also Community Oriented Policing Services, United States Department of Justice, *A Problem-Based Learning Manual for Training and Evaluating Police Trainees*, <https://www.policeforum.org/assets/docs/Free Online Documents/FTO/trainee%20manual.pdf> (last accessed Mar. 2, 2021)

Five Year Training Plan

HANDS ON TRAINING				
2018	2019	2020	2021	2022
SPRING/FALL FIREARMS	SPRING/FALL FIREARMS	SPRING/FALL FIREARMS	SPRING/FALL FIREARMS	SPRING/FALL FIREARMS
LEGAL UPDATES	LEGAL UPDATES	LEGAL UPDATES	LEGAL UPDATES	LEGAL UPDATES
40mm	40mm	40mm	40mm	40mm
TASER	TASER	TASER	TASER	TASER
FIT TESTING	FIT TESTING	FIT TESTING	FIT TESTING	FIT TESTING
RBT/Patrol Skills	RBT/Patrol Skills	RBT/Patrol Skills	RBT/Patrol Skills	RBT/Patrol Skills
DT	DT	DT	DT	DT
Rapid Deployment	Rapid Deployment	Rapid Deployment	Rapid Deployment	Rapid Deployment
LESS LETHAL WEAPONS		LESS LETHAL WEAPONS		LESS LETHAL WEAPONS
SLOW/MEDIUM SPEED EVOC	HIGH SPEED EVOC	SLOW/MEDIUM SPEED EVOC	HIGH SPEED EVOC	SLOW/MEDIUM SPEED EVOC
STOP STICK REFRESHER	HIGH RISK STOPS	STOP STICK REFRESHER	HIGH RISK STOPS	STOP STICK REFRESHER
FIRST AID/ CPR/ AED		FIRST AID/ CPR/ AED		FIRST AID/ CPR/ AED

ONLINE TRAINING				
2018	2019	2020	2021	2022
PURSUIT, USE OF FORCE, DEADLY FORCE POLICY	PURSUIT, USE OF FORCE, DEADLY FORCE POLICY	PURSUIT, USE OF FORCE, DEADLY FORCE POLICY	PURSUIT, USE OF FORCE, DEADLY FORCE POLICY	PURSUIT, USE OF FORCE, DEADLY FORCE POLICY
BLOOD BOURNE PATHOGEN TRNG (ONLINE)	BLOOD BOURNE PATHOGEN TRNG (ONLINE)	BLOOD BOURNE PATHOGEN TRNG (ONLINE)	BLOOD BOURNE PATHOGEN TRNG (ONLINE)	BLOOD BOURNE PATHOGEN TRNG (ONLINE)
HEAT EXPOSURE (ONLINE)	HEAT EXPOSURE (ONLINE)	HEAT EXPOSURE (ONLINE)	HEAT EXPOSURE (ONLINE)	HEAT EXPOSURE (ONLINE_
HAZMAT REFRESHER (ONLINE)	HAZMAT REFRESHER (ONLINE)	HAZMAT REFRESHER (ONLINE)	HAZMAT REFRESHER (ONLINE)	HAZMAT REFRESHER (ONLINE)
CIT	CIT	CIT	CIT	CIT
BIAS BASED POLICING (ONLINE)	BIAS BASED POLICING (ONLINE)	BIAS BASED POLICING (ONLINE)	BIAS BASED POLICING (ONLINE)	BIAS BASED POLICING (ONLINE)
			TEMPORARY DETENTION FACILITY	

ANNUAL
BIANNUAL
TRIENNIAL

The overall training is driven by state law, the administrative code, and policy. Additionally, the Commission on Accreditation for Law Enforcement Agencies (CALEA) training requirements prioritize training delivery in order to meet the accreditation standards. The following courses are mandated by the CALEA certification process:

- CALEA training requirements:
 - o 1.1.2 Code of Ethics
 - o 1.2.9 Bias Policing
 - o 4.1.2 Use of Deadly Force
 - o 4.3.3: Annual/Biennial Proficiency Training
 - o 33.1.5: Remedial Training
 - o 33.1.6: Employee Training Record Maintenance
 - o 33.4.1: Recruit Training Required
 - o 33.4.2: Recruit Training Program
 - o 33.4.3: Field Training Program
 - o 33.5.1: Annual In-Service Training Program
 - o 33.5.3: Accreditation Training
 - o 33.6.2: Tactical Team Training Program
 - o 33.8.2: Skill Development Training Upon Promotion
 - o 41.2.2: Pursuit of Motor Vehicles
 - o 41.2.7: Mental Health Issues
 - o 46.1.9: All Hazards Plan Training
 - o 46.3.2: Hazardous Awareness Training
 - o 71.2.1: Training of Personnel
 - o 72.1.1: Training User Personnel

The State mandates eight hours of crisis intervention training for officers but offers a 40-hour certification. Approximately 50% of officers have had the 40-hour course; only four have not received the eight-hour course, but they are slated for training according to POSPD.

Development

The subcommittee also received POSPD briefings about the evaluation system at POSPD and opportunities for development. Evaluation forms (WPR or work performance review) are completed by supervisors and are approved up the chain of command. Supervisors also have access to a data dashboard of officer activity, which is viewable by officer or squad.

Promotional processes, like the hiring processes, occur in partnership with Public Safety Testing. The third-party vendor mechanisms are supposed to help prevent bias in promotions. The overall promotional process at POSPD was described by Port HR as “the most focused of any Port promotional process.” The design stage for a promotional exam includes surveying the people doing the work and collecting the competencies they believe are most valuable. Some of the previously identified competencies include oral communication, written, interpersonal insight, problem solving, judgment, planning and organizing, delegation/sphere of control. This design attempts to control for trends and influences and consciously attempts to avoid creating a process that puts a disadvantage on officers that have never been in a leadership role.

The design is then assessed by a committee of managers (civilian airport duty, emergency preparedness facility manager) and numerous external law enforcement professionals in an effort to reduce bias and the influence of established relationships in assessment process.

Some subcommittee members noted that under the current civil service rules, the Chief has a lot of leeway in final decisions. Additionally, the subcommittee discussed that if the test questions are drawn from current institution, there is potential to simply perpetuate the current thought system.

POSPD reported that the WPR is the most important promotional element, as current department leadership philosophy is to promote not solely the best test takers, but rather balance the test day with performance evaluations over the last few years.

Engagement with Communities of Color

The subcommittee discussed the value of community outreach as part of training in order for officers to find out about the people they serve. While POSPD currently does annual night out events (particularly at Shilshole Marina), coffee with a cop, and have engagements with the Puget Sound Center and in high schools, there are no community engagement programs identified that directly connect officers with communities of color.

C. Training and Development Subcommittee Recommendations

Recommendation No. 44. The POSPD should consider ranking applicants for Special Team assignments to increase transparency in those processes.

As discussed elsewhere, 21CP consistently heard concerns about the fairness of assignments to specialty units, such as K9, SWAT, Hostage negotiation, Dive Team, Boat Team, PTO, Bomb Disposal, Honor Guard, Peer Support, and the Crowd Management Unit. The current process involves testing, but applicants are not ranked by test scores. Instead, applicants qualify for the unit based on their testing and the Chief or head of the relevant unit select the people they want for the unit. While Command Staff reports that in actuality, people are selected by test score in almost every case, the inherent discretion in choosing from a pool creates the perception of inequities.

Additionally, while 21CP was not provided any data about who has applied for Special Teams in the past and not selected, the end demographics of Special Teams raise concerns. SWAT is all white, and all male.¹¹⁵ The Boat Team and Dive Team are all white and male. The Bomb Disposal Unit and PTO include one female each but are all white. K9 includes one female, two Asian, and one African American officer. Hostage Negotiation includes one female officer, one Asian, and one Pacific Islander. Honor Guard is all white, but evenly split between men and women. Peer Support has two females and one Pacific Islander. Finally, the Crowd Management Unit, with 20 officers, is all male and has one Asian and one American Indian officer. The lack of apparent diversity in these teams can only reinforce skepticism about the fairness of the process, especially as applied to race. Because special assignments, depending on type, are either considered permanent or can be extended where a time limitation is set, many perceive this as further limiting participation opportunities. Again, 21CP does not have a way of determining whether the process has been fair, but the perception of unfairness alone is problematic.¹¹⁶

¹¹⁵ Recent budget decisions resulted in the one female SWAT officer being removed; the department hopes to reinstate her when budgets allow.

¹¹⁶ To the extent testing emphasizes work experience and knowledge, the POSPD might consider emphasizing skill sets and ability to learn instead. This can help level the playing field and increase diversity. See, e.g., <https://hbr.org/2021/06/you-need-a-skills-based-approach-to-hiring-and-developing-talent>

¹¹⁶ Melissa Bradley, Katherine Holihen, and Charlene Moe. *Procedural Justice*. Office of Community Oriented Policing Services. (2015).

Given these perceptions of inequity expressed by commissioned personnel from different corners of the POSPD, it is important that leadership create the conditions necessary to build a sense of internal procedural justice. “[P]rocedural justice implementation must begin with an internal structural commitment from executive leadership and an understanding among supervisors who carry out processes, policies, and procedures within the department.”¹¹⁷ Procedural justice “speaks to four principles, often referred to as the four pillars: fairness in the processes, transparency in actions, opportunities for voice, and impartiality in decision making.”¹¹⁸ POSPD leadership can build a sense of internal procedural justice as they “demonstrate that assignments, training, promotions and discipline are fairly awarded based on merit, qualifications and need...”¹¹⁹ Operating primarily from a relational leadership approach that fosters and facilitates relationships up and down and across the Department, POSPD leadership can enhance internal procedural justice with a focus on developing collaborative decision-making, team-building, employee inclusivity and empowerment, transparency, and effective internal communication. As the Department considers implementation of this recommendation (and others), involving POSPD members in the process to better understand their concerns and get input on setting priorities and problem solving, such as with alternative approaches for Special Teams assignments, will itself demonstrate a commitment to procedural justice.¹²⁰

Recommendation No. 45. The POSPD should continue to train de-escalation as a core engagement philosophy.

As the International Association of Chiefs of Police (IACP) has observed, “[t]he term de-escalation can be viewed as both an overarching philosophy that encourages officers to constantly reassess each situation to determine what options are available to effectively respond, as well as the grouping of techniques designed to achieve this

¹¹⁷ Melissa Bradley, Katherine Holihen, and Charlene Moe. *Procedural Justice*. Office of Community Oriented Policing Services. (2015).

¹¹⁸ *Id.*

¹¹⁹ Brian N. O’Donnell. *How Internal Procedural Justice Impacts External Behaviors: The Implications Officer Perception of Leadership and Leadership Behaviors Have for Organizational Culture*. *Police* 1 (2021), citing M. Kool and D. Van Dierendonck. *Servant Leadership and Commitment to Change, the Mediating Role of Justice and Optimism*. *Journal of Organizational Change Management* (2012), 25(3), 422-433.

¹²⁰ Note that the *Accelerating Reform: Transforming Police Culture* training that some POSPD members have attended ties procedural justice concepts into its leadership training. If other POSPD members will be attending the training, a capstone project focused on building internal procedural justice might provide further structure for moving forward on this recommendation.

goal.”¹²¹ Generally, de-escalation and de-escalation philosophy is well-integrated into POSPD trainings.

The core principles of time (pace), distance, shielding, and communication resurfaced in all use of force related trainings. The department trains that “De-escalation requires not only effective patrol tactics to decrease the intensity of an event, but also knowledge about mental illness, communication techniques, and available resources and tools,” with the goal of “control[ing] the pace of the event whenever possible by using sound patrol tactics.”

POSPD also includes specific instruction on communication, including “tactical, investigative, conversational techniques.” Additionally, the training stresses emotional intelligence, including:

Self-Awareness- Recognize one’s own emotions as they are occurring to help guide your decision making.

Self-Management- The ability to control and manage your emotions in the moment and adapt to rapidly changing circumstances (self-control).

Social Awareness – The ability to recognize emotions in others (empathy, “seeing through the eyes of another”).

Relationship Management – The ability to inspire, influence, connect, and contribute to healthy conflict resolution (rapport building).

These concepts are well-developed and POSPD trainers should continue to seek out new methods for delivering this material.¹²²

Recommendation No. 46. The POSPD should continue to stress a “guardian mentality” in its trainings.

As set forth by the Criminal Justice Training Commission and quoted by the POSPD, “The Heart and Mind of the Guardian is a career long education process designed to ensure the development of a highly evolved police officer who is prepared at any moment to reflect the best of what policing demands. POSPD fosters a culture of

¹²¹ International Association of Chiefs of Police, *National Consensus Policy and Discussion Paper on Use of Force* 6 (Oct. 2017), http://www.theiacp.org/Portals/0/documents/pdfs/National_Consensus_Policy_On_Use_Of_Force.pdf [hereinafter “IACP Consensus Policy”].

¹²² See e.g., <https://www.policeforum.org/icat-training-guide>

leadership, character, and service in the spirit of what democratic policing promises its citizenry. It is a process aimed at developing the right: Heartset, Mindset, Skillset and Toolset, enabling officers to meet the demands of modern policing.”

All of the recent training included discussion of the value of the guardian mindset, which necessarily incorporates readiness to take action in order to “guard,” but deemphasizes militaristic attitudes.¹²³ The concept was specifically stressed in the 2021 Use of Force in-service training.

However, all trainings prior to 2020 contained some form of admonition similar to the below, suggesting that the concept is still developing at POSPD.

The “warrior mindset” needs to be constantly reinforced throughout training. This will assist the officer in maintaining composure during a critical incident and greatly enhance their ability to react.

Recommendation No. 47. The POSPD should provide positive examples to reinforce good police tactics rather than stressing poor outcomes in training.

Although the POSPD trainings stressed the positive outcomes that can be achieved through more thoughtful police engagements, the video examples presented to the classes were almost exclusively violent and lessons in what “not to do.” POSPD should seek out the success stories in which officers successfully de-escalated or communicated with subjects to set positive examples of what “to do.”¹²⁴

Recommendation No. 48. The POSPD should continue to utilize national and local leadership development opportunities, but with transparent selection criteria.

In the past, leadership development programs, such as West Point Leadership, the Senior Management Institute for Police, the FBI National Academy, and Leadership in Police Organizations, a three-month program, have been successful options for POSPD. Additionally, the Port’s Leadership Tomorrow program was cited as an excellent development opportunity, especially with its focus on “understanding race

¹²³ Kyle McLean, Scott E. Wolfe, Jeff Rojek, Geoffrey P. Alpert & Michael R. Smith (2020) *Police Officers as Warriors or Guardians: Empirical Reality or Intriguing Rhetoric?*, Justice Quarterly, 37:6, 1096-1118, DOI: [10.1080/07418825.2018.1533031](https://doi.org/10.1080/07418825.2018.1533031)

¹²⁴ <https://slate.com/news-and-politics/2015/05/police-shootings-the-grim-videos-cops-watch-of-their-colleagues-being-killed-in-the-line-of-duty.html>

and racism in this country.” However, there are no established internal selection criteria and some officers complained that selection was not transparent, often based on connections, and sometimes wasted on officers late in their career when the leadership knowledge could not benefit the department before that officer’s retirement. In 21CP’s experience, these types of programs impart meaningful skills and techniques for emerging Departmental leaders and, critically, allow officers to gain a national perspective on policing and on best and emerging practices in the profession. Graduates of these programs often return to their agencies with broader perspectives and new ideas that help to reinvigorate their departments’ everyday cultures.

Recommendation No. 49. The POSPD should consider incorporating existing community engagement opportunities as part of training to better understand cultural differences.

Jurisdictions the size of POSPD do not always have the bandwidth to recreate external community engagements focused on the many diverse communities with whom the departments interact. However, several noted existing opportunities, such as engagement with the NW Immigrants’ Rights Project and the Seattle Police Demographic Advisory Councils, such as the African American Police Advisory Council.¹²⁵ As these entities are already established, providing the encouragement and support for POSPD officers to attend would help develop the department’s overall cultural competency.

X. ADVOCACY

A. Motion 2020-15 and Advocacy

The Motion indicated that the Task Force assessment should include a review of potential state and federal legislation and reforms, such as changes to federal “qualified immunity” provisions or the creation of state or federal misconduct tracking databases, for the Port to include in its advocacy efforts.

This work was redesigned mid-project to allow members of the Task Force and 21CP to engage in real time with the Port’s legislative efforts around police reform during the Washington State Legislature’s 2021 legislative session. This “kitchen cabinet” of Port and external advisors helped to evaluate state legislation and inform the Port’s

¹²⁵

<https://www.seattle.gov/police/community-policing/demographic-advisory-councils/african-american-community-advisory-council>

advocacy strategy. At the heart of these discussions was the work of the relevant subcommittee, which helped provide a better understanding of POSPD operations and policy.

B. Qualified Immunity

While Motion 2020-15 specifically references Qualified Immunity, this is a policy/legal matter and 21CP is not providing legal advice on what the Port should do *vis a vis* Qualified Immunity.

Qualified Immunity is at the forefront of national debates on how to improve policing¹²⁶ but is apparently poorly understood both in concept and in practice. It is also one of the most contentious parts of the George Floyd Justice in Policing Act that, at the time of this writing, is stalled in the United States Senate after being passed by the House of Representatives. Qualified Immunity is a limited defense for government officials – not only police¹²⁷ – who are sued in their individual capacity in civil lawsuits under Title 42 U.S.C. for money damages for allegations of violations of federal law, primarily the United States Constitution. It does not apply in criminal cases, in disciplinary matters, in lawsuits seeking to require changes to how policing is done (also called injunctive relief), in lawsuits against the Port itself, or in negligence cases brought under state law.

42 U.S.C. § 1983 was enacted in 1871 as part of the Ku Klux Klan Act and provides civil remedies for Constitutional deprivations by a “person” acting under “color of law.” State and local officials must be sued in their individual capacity, not in their official capacity. *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989). Therefore, police officers sued under § 1983 are individually liable, not the Port of Seattle.

Qualified Immunity is a doctrine designed to temper this individual liability by protecting “all but the plainly incompetent or those who knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335, 341 (1986). “[T]he protection of qualified immunity applies regardless of whether the government official’s error is ‘a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.’” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009).

¹²⁶ <https://www.nytimes.com/2021/03/08/us/supreme-court-qualified-immunity.html>

¹²⁷ The Port of Seattle asserted Qualified Immunity in King County Superior Court Cause No. 20-2-10720-4 SEA, which is currently pending, and involves non-police Port employees.

The doctrine asks two questions. The first question (also called a First Prong Analysis) is whether there was a Constitutional violation. If the Court finds there was no violation, then the case is dismissed on the merits. However, if the Court cannot make that finding (or simply chooses not to address the First Prong), the Court considers whether the Constitutional right was clearly established such “that every reasonable officer” would know that the conduct was unlawful. *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011). This does “not require a case directly on point, but existing precedent must have placed the statutory or constitutional question *beyond debate*.” *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

It is this Second Prong analysis that causes concern about Qualified Immunity as there have been a host of Court decisions stretching the analysis to the point of absurdity¹²⁸. However, a 2017 national study found that qualified immunity was only granted in 3.9% of the cases during 2011-2012, across five federal circuits, in which the defense could have been raised¹²⁹ and concluded, therefore, that the doctrine does not have a major impact on the outcome of civil litigation. In contrast, Federal District Court Judge Carlton W. Reeves, Southern District of Mississippi, recently authored a scathing indictment of the doctrine of Qualified Immunity, complete with its historical context in law.¹³⁰

21CP requested “Section 1983 lawsuits filed against the Port/Port employees for the last five years and any information on whether Qualified Immunity was raised and if so, whether it was successful” from the Port. Additionally, 21CP undertook a docket search of the Western District of Washington for “Port of Seattle Police Department,” which revealed some earlier cases. Noting that this may not encompass all litigation brought against the Port of Seattle for actions of its police officers, two points stand out. First, litigation alleging constitutional violations by

¹²⁸ See *Jamison v. McClendon*, 16-CV-595-CWR*31 (Southern District of Mississippi 2020)(“Our courts have shielded a police officer who shot a child while the officer was attempting to shoot the family dog; prison guards who forced a prisoner to sleep in cells “covered in feces” for days; police officers who stole over \$225,000 worth of property; a deputy who body- slammed a woman after she simply “ignored [the deputy’s] command and walked away”; an officer who seriously burned a woman after detonating a “flashbang” device in the bedroom where she was sleeping; an officer who deployed a dog against a suspect who “claim[ed] that he surrendered by raising his hands in the air”; and an officer who shot an unarmed woman eight times after she threw a knife and glass at a police dog that was attacking her brother.”)(citations omitted).

¹²⁹ <https://www.yalelawjournal.org/article/how-qualified-immunity-fails>

¹³⁰ <https://cdn.cnn.com/cnn/2020/images/08/04/jamison-v-mcclendon.pdf>

Port of Seattle Police Officers is empirically rare and the defense of these cases very successful. Second, 21CP did not identify any case that was dismissed based on the Second Prong of Qualified Immunity.

Cause Number	Allegation	Resolution
17-1873-MJP	Port of Seattle Police Officers present during secondary TSA screening	Dismissed by Court on Summary Judgment finding no Constitutional violation; not based on Qualified Immunity
16-cv-00483-JCC	Port of Seattle Officers falsely arrested plaintiff and used excessive force during the arrest.	Settled; not resolved on Qualified Immunity
12-0966 RSM	Port of Seattle Officers falsely arrested plaintiff and failed to provide him with his anti-seizure medications.	Dismissed by Court on Summary Judgment finding probable cause for arrest and that officers properly called EMTs to administer medication; not based on Qualified Immunity ¹³¹
13-1708-JCC	Port of Seattle Detective negligently investigated her allegations of sexual assault by TSA.	Dismissed by Court on Summary Judgment finding no Constitutional violation; not based on Qualified Immunity
15-0038-RSM	Port of Seattle Officer stopped plaintiff's vehicle twice and subjected him to arrest without probable cause.	Dismissed by Court on Summary Judgment finding no Constitutional violation as officer had reasonable suspicion to stop and probable cause to arrest; not based on Qualified Immunity

¹³¹ This order is somewhat confusing as it does analyze both claims under the Qualified Immunity standards. However, because the Court found probable cause and that the officers properly managed plaintiff's need for medication, the case was dismissed because there was no Constitutional violation (First prong of Qualified Immunity) and the Court never reached whether the law was clearly established, which is the controversial aspect of Qualified Immunity.

C. Ongoing Legislative Efforts

Recommendation No. 50. POSPD should continue to incorporate the new legislative requirements into policy and reinforce those changes through training.

As discussed throughout this report, the 2021 legislative session introduced many significant and sweeping changes to the landscape of policing. These laws address a wide range of topics including, use of force, mandatory de-escalation, duty to intervene, Brady reporting, requirements to record Miranda warning given to juveniles, certification (and de-certification) changes, background investigation requirements, and how use of deadly force will be investigated. Many of the new legislative requirements were already part of the POSPD policy manual, but there is much work to be done to ensure complete alignment of policy and law and then to train officers on those changes. POSPD has taken a regional leadership role in advancing new policies that may be adopted by other agencies and is currently working to update its operations. POSPD should continue on that path.

Recommendation No. 51. The Port should continue to engage with key stakeholders and elected officials on emerging State and Federal legislation.

The 2020 - 2021 legislative session was comprehensive, but some reform approaches did not make it into law. Bills that did not pass this session addressed subjects such as granting authority to the Attorney General to prosecute officer deadly force cases, making community oversight boards mandatory, new methods of suing individual officers that would bypass federal qualified immunity, and restrictions on the powers of police unions. As these state bills are reintroduced in a similar or different form, other state police reform legislation is advanced, or as federal legislation is proposed, such as the George Floyd in Policing Act, the Port should remain proactive in understanding the significance of changes under consideration and determine whether particular provisions are right for the Port, its employees, and its community. The Port should share its unique perspectives to help shape those pieces of legislation that are particularly relevant.

XI. BUDGET, ROLES, AND EQUIPMENT

A. Motion 2020-15 and Budget, Roles, and Equipment.

The Motion states that the assessment should examine whether certain non-emergency situations could be better responded to by the deployment of non-uniformed officers, and whether investments in community-focused programs could decrease the prevalence of such situations. In addition, the assessment should review Port Police equipment and supplies used to conduct routine police work, including mass events and crowd management, and determine if any are excessive or unnecessary; in particular, the assessment should look at how military-grade equipment is procured and used, as well as the role of body cameras as a potential accountability measure for Port policing.

Similar to the Advocacy Committee, and in part due to emerging state law, the Task Force agreed that this portion of the assessment was better addressed with technical advice from 21CP on specific topics, along with identification of budget consequences for the recommendations in this report.

B. Reducing the Police Role in Responding to Homelessness and Persons in Crisis

As previously raised in the Use of Force section, the Port’s response to homelessness and persons in crisis would be well-served by reducing the role of police and switching to an unarmed, service-oriented approach. A lack of mental health services – coupled with the often-co-occurring conditions of substance use disorder, homelessness, and other conditions of despair – has led to jurisdictions nationwide increasingly relying on police officers to serve as first responders to incidents of behavioral crisis. In nearby Seattle, a December 2018 report found that nearly 3 percent of all calls to police – some approximately 15,000 over an 18-month period – involved an individual in behavioral or emotional crisis.¹³² Some studies suggest that as many as ten percent of officer-public contacts overall involve a person in a serious mental health crisis.¹³³

¹³² Seattle Police Department, Use of Force in Crisis-Involved Incidents (Dec. 2018), https://www.seattle.gov/Documents/Departments/Police/Publications/Crisis_UoF%20Report%20SPD%20Final.pdf.

¹³³ Martha W. Deane, “Emerging Partnerships Between Mental Health and Law Enforcement,” 50 *Psychiatric Services* 99 (1999).

As discussed above, while the POSPD does not track crisis calls or responses to people experiencing homelessness, 58% of uses of force are in trespass cases, which appear to be a reasonable proxy for homelessness cases.

The POSPD has taken the lead at directing resources towards this issue by drafting a job description for a Crisis Coordinator to be the point of contact internally and externally for issues relating to crisis. The Coordinator would be familiar with outreach services, have an understanding of mental illness manifestations, track crisis services and laws, build and maintain necessary relationships, and generally serve as a focused resource on this issue.

C. Military Style Equipment

Regarding military equipment, HB1054, Chapter 320, Laws of 2021, Sec. 5, states that “A law enforcement agency may not acquire or use any military equipment. Any law enforcement agency in possession of military equipment as of the effective date of this section shall return the equipment to the federal agency from which it was acquired, if applicable, or destroy the equipment by December 31, 2022.” This prohibition applies to “firearms and ammunition of .50 caliber or greater, machine guns, armed helicopters, armed or armored drones, armed vessels, armed vehicles, armed aircraft, tanks, long range acoustic hailing devices, rockets, rocket launchers, bayonets, grenades, missiles, directed energy systems, and electromagnetic spectrum weapons.” In response, the Port of Seattle Police identified that two .50 caliber rifles meet this restriction and are taking appropriate action to dispose of those weapons¹³⁴. The concern of the Port Commission in this area appears to have been resolved based on this legislation.

¹³⁴ This change is mandated by law and therefore we do not debate the wisdom of disposing of these weapons. POSPD reported that they were obtained as an option for shooting through plane windows in the event of a hijacking, which seems different in kind than the need most departments would have for a weapon of this caliber. Additionally, some departments have raised concerns over HB 1054, which on its face would prohibit 40mm Less Lethal Launchers as they are technically greater than .50 caliber, we understand that the POSPD has elected to keep those less lethal force options, which the bill drafter has indicated was the original intent. See <https://www.q13fox.com/news/local-law-enforcement-has-concerns-over-new-police-reform-laws-going-into-effect>.

D. Body Cameras

The use of body-worn cameras has dramatically accelerated across the policing profession in recent years. By the end of 2018, “about 10,500 agencies, or 58 percent of all law enforcement departments in the U.S., used body cameras.”¹³⁵

Body-worn cameras have been associated with a number of benefits. First, a number of jurisdictions that deploy them have experienced decreases in officer use of force, officer misconduct, and civilian complaints about officer conduct.¹³⁶ Body-worn cameras may result in better transparency and accountability and thus may improve law enforcement legitimacy.¹³⁷ Indeed, cameras “may lead to a faster resolution of citizen complaints and lawsuits” by resolving issues and factual disputes effectively and efficiently.¹³⁸ Of course, “[f]ootage captured may be used as evidence in arrests or prosecutions.”¹³⁹ At the same time, body-worn camera footage also provides opportunities for the department to better learn from actual officer performance.¹⁴⁰ Finally, “[b]ody-worn cameras may also result in higher rates of citizen compliance to officer commands during encounters,” with civilians and police officers alike changing their behavior when they know that they are being recorded.¹⁴¹

Others remain skeptical about whether body worn cameras improve police-community relationships in any meaningful way. One study in Baltimore found that:

Black residents are unimpressed by body-worn camera initiatives; can be traumatized by the constant violent reminders that the footage often brings; and feel like they are in a “special kind of hell” when

¹³⁵ Ben Miller, “Just How Common Are Body Cameras in Police Departments?,” *Government Technology* (June 28, 2019), <https://www.govtech.com/data/Just-How-Common-Are-Body-Cameras-in-Police-Departments.html>

¹³⁶ See, e.g., Michael D. White, Office of Justice Programs Diagnostic Center, U.S. Dept. of Justice, *Police Officer Body-Worn Cameras: Assessing the Evidence* 21 (2014); Brett Chapman, “Body-Worn Cameras: What the Evidence Tells Us,” 280 *NIJ Journal* 3 (Jan. 2019), <https://www.ncjrs.gov/pdffiles1/nij/252035.pdf>.

¹³⁷ Brett Chapman, “Body-Worn Cameras: What the Evidence Tells Us,” 280 *NIJ Journal* 2 (Jan. 2019), <https://www.ncjrs.gov/pdffiles1/nij/252035.pdf>.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

faced with the perceived inaction following even the most damning of camera footage evidence.¹⁴²

Most calls for the adoption of BWC programs stem from concerns about use of force and resolution of complaints¹⁴³. Given 21CP’s review of the POSPD’s use of force policies (ninety use of force cases from 2018-2020), the work of the Use of Force Subcommittee (which unanimously agreed not to recommend development of a BWC program given the relatively infrequent use of force and costs involved with BWCs), the work of the Oversight Subcommittee and 21CP’s review of the relatively few complaints about POSPD activities, 21CP was not intending to issue a recommendation that POSPD develop a BWC program. The POSPD use force approximately 30 times per year, two-thirds of which occur in the airport facility, which has an extensive network of security cameras. In 21CP’s case review, video evidence was easily available in 57 percent of cases but that number is likely even higher. Given the infrequency of use of force and the already available video evidence, body-cameras did not rise as a priority, especially given the high costs. Most police departments in Washington State do not have BWC programs, primarily due “to the long-term costs of managing, storing and releasing body-worn camera and dash-camera video to the public.”¹⁴⁴

However, the landscape was changed by Substitute House Bill 1223, which passed into the Session Law of 2021 in Chapter 329, and which requires (subject to exceptions) that:

...a custodial interrogation, including the giving of any required warning, advice of the rights of the individual being questioned, and the waiver of any rights by the individual, must be recorded electronically in its entirety if the interrogation subject is a juvenile or if the interrogation relates to a felony crime.

¹⁴² Erin M. Kerrison, Jennifer Cobbina & Kimberly Bender (2018) Stop-gaps, lip service, and the perceived futility of body-worn police officer cameras in Baltimore City, *Journal of Ethnic & Cultural Diversity in Social Work*, 27:3, 271-288, DOI: [10.1080/15313204.2018.1479912](https://doi.org/10.1080/15313204.2018.1479912)

¹⁴³ U.S. Department of Justice, Office of Community Oriented Policing Services, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* 34 (2014) (noting use of cost-benefit analysis “when exploring whether to implement body-worn camera” technology); Police Executive Research Forum, *Citizen Perceptions of Body-Worn Cameras: A Randomized Controlled Trial* (2017).

¹⁴⁴ <https://www.king5.com/article/news/investigations/police-body-cameras-not-a-priority-for-washington-lawmakers-in-2021-session/281-f189f3ce-f565-4b8c-955a-308f67c0e01e>

Based on these requirements and the infeasibility of recording and tracking such electronic records outside of a BWC program, the POSPD has begun implementing body-worn cameras.

Recommendation No. 52. As a body worn camera program is developed, the POSPD should consider policy choices around when cameras should be activated, what are acceptable uses for BWC footage, when officers may view footage, and how the BWC program can support overall transparency.

1. *When should the cameras be activated?*

Most departments require BWCs to be activated when “law enforcement action is taken.” Typically, this occurs when officers are dispatched to a call or take proactive enforcement action based on reasonable suspicion or probable cause. Communities in many jurisdictions throughout the nation have raised concerns about the privacy implications of police deploying body camera technology. Unlike other types of surveillance cameras or in-car video systems, body-worn cameras can “give officers the ability to record inside private homes and to film sensitive situations that might emerge during calls for service.”¹⁴⁵ However, there are very real privacy considerations in First Amendment contexts, in hospitals or other care facilities, in sexual assault cases¹⁴⁶, and when entering a home. Given the body of work POSPD officers engage in, some of these circumstances will arise less frequently than in other municipal departments. Nonetheless, clarity for officers on what discretion they have when activating cameras is critically important – nothing damages the legitimacy of a BWC program then officers not turning on the cameras when required.¹⁴⁷

¹⁴⁵ Police Executive Research Forum/Community Oriented Policing Services, U.S. Department of Justice, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* 11 (2014).

¹⁴⁶ See National Sexual Violence Resource Center, SART Toolkit Section 5.6, <https://www.nsvrc.org/sarts/toolkit/5-6> (last visited June 30, 2021); Pennsylvania Coalition Against Rape, *The Use of Body-Worn Cameras with Victims of Sexual Violence* (2017), https://pcar.org/sites/default/files/resource-pdfs/body_worn_cameras_factsheet.pdf; Mary D. Fan, “Privacy, Public Disclosure, Police Body Cameras: Policy Splits,” 68 *Alabama L. Rev.* 395 (2016), <https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=1059&context=faculty-articles>

¹⁴⁷ <https://www.policingequity.org/newsroom/blog/police-body-cameras-are-pointless-unless-cops-use-them-correctly>

But discretion is not a bad thing, when backed by clear policy and accountability. For example, the Salt Lake City Police Department allows officers to suspend recording in particular instances, including “during a conversation with a sensitive victim of a crime, a witness of a crime, or an individual who wishes to report or discuss criminal activity” if certain conditions are met, as well as “during a significant period of inactivity.”¹⁴⁸ When video is discontinued, “[t]he officer shall also document the reason for placing the body cameras into Privacy Mode in a written report.”¹⁴⁹ Similarly, the Seattle Police Department allows discretion in recording in sensitive areas (“jails and the interiors of medical, mental health, counseling, or therapeutic facilities unless for a direct law enforcement purpose”), residences and private areas, to protect privacy and dignity (“natural death scenes, death notifications, child or sexual assault victim interviews, cultural or religious objections to being recorded, and when the use of BWV would impede or limit the cooperation of a victim or witness”), as long as “[e]mployees who stop recording during an event will state on the recording their intention to stop recording and explain the basis for that decision. Employees will also document the reason(s) in the Report and/or CAD update.”¹⁵⁰

2. What are the acceptable uses for body-worn cameras within the department?

A BWC program policy should set out the purposes of the video within department, who may access the video, and under what circumstances. May video be used for training purposes? What happens if policy violations are discovered when reviewing video? Again, clarity is paramount.

3. When may officers view their BWC evidence before writing a report?

One highly debated issue is when officers may view video prior to writing a report.

According to many police executives, the primary benefit to officer review is that it allows officers to recall events more clearly, which helps get to the truth of what really happened. Some police executives, on the other hand, said that it is better for an officer’s statement to

¹⁴⁸ Police Executive Research Forum, Executive Guidebook: Practical Approaches for Strengthening Law Enforcement’s Response to Sexual Assault 69–70 (May 2018).

¹⁴⁹ *Id.* at 70.

¹⁵⁰ <https://www.seattle.gov/police-manual/title-16---patrol-operations/16090---in-car-and-body-worn-video>

reflect what he or she perceived during the event, rather than what the camera footage revealed.¹⁵¹

However, both police reform advocates and some police defense attorneys argue that capturing a perceptual statement before an officer views any evidence, including video, is best practice. For example, in the Seattle Federal Consent Decree, the Federal Court-approved policy allows officers to view video prior to writing criminal or low-level use of force reports, but prohibits review prior to being interviewed in serious use of force cases, thereby striking a balance between efficiency and accuracy in reporting and the benefits of capturing an officer’s “perception of what occurred.”¹⁵² However, the Court expressly recognized that “there will inevitably be inconsistencies between reports written before and after review of BWV due to the inherent limits of human perception and memory.”¹⁵³ As such, any policy restricting officer’s ability to review BWC evidence should include a clear statement that inconsistencies are expected and that not all discrepancies between video and officer recall and reporting implies dishonesty.

4. How can the program support transparency?

Nationally, there is a movement towards greater and timely transparency at the state level. California requires release of body worn camera recordings within 45 days of the incident¹⁵⁴. Governor Lamont of Connecticut issued an executive order requiring release of state police body worn camera evidence within four days¹⁵⁵. Colorado requires video evidence to be released within 21 days¹⁵⁶. Municipalities and police departments have also moved towards greater transparency with video evidence. As examples, the D.C. Metro Police release video evidence within five days of the

¹⁵¹ Police Executive Research Forum/Community Oriented Policing Services, U.S. Department of Justice, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* 29 (2014).

¹⁵² 12-cv-1282 (JLR), Dkt. No. 390.

¹⁵³ *Id.* at 7.

¹⁵⁴ Cal. A.B. 748 (2018), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB748.

¹⁵⁵ Press Release, Governor Ned Lamont, Governor Lamont Signs Executive Order Modernizing Police Strategies and Programs (June 15, 2020), <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2020/06-2020/Governor-Lamont-Signs-Executive-Order-Modernizing-Police-Strategies-and-Programs>

¹⁵⁶ Colo. S.B. 20-217, https://leg.colorado.gov/sites/default/files/2020a_217_signed.pdf.

incident¹⁵⁷; the Seattle Police Department requires release of objective evidence within 72 hours¹⁵⁸.

There are many logistical concerns and the specific information release policy that applies to any jurisdiction must be specifically tailored, but what is important is that the protocols are developed ahead of time and not during a crisis. In 21CP's experience, the increased legitimacy and trust that occurs with transparency far outweighs any logistical concerns of releasing objective evidence in matters of public concern as soon as possible. Providing objective evidence fills the speculative gaps for members of the public and can help alleviate social unrest around critical incidents. To be fair, POSPD has relatively few "critical events" and does not spend much time defending its actions in the press. That being said, a clear media policy stating what will be released and when is critical to the development of a BWC program, including:

- Specific timing of release of information, regardless of whether the objective evidence appears favorable or dis-favorable to the department or the Port;
- Clear parameters for any statements by any member of the department to ensure that the statements are factual and do not pre-judge the incident¹⁵⁹;
- A prohibition on releasing the criminal background of the subject of the critical incident, except as specifically relevant to the incident itself; and
- A commitment to regularly update the public on developments in the investigation.

¹⁵⁷ D.C. Act 23-336 (2020), https://lims.dccouncil.us/downloads/LIMS/45307/Signed_Act/B23-0825-Signed_Act.pdf.

¹⁵⁸ <https://www.seattle.gov/police-manual/title-1---department-administration/1115---media-release-officer-involved-shooting>

¹⁵⁹ <https://deborahjacobs.medium.com/stop-police-false-narratives-about-officer-involved-deaths-d34cb539ee25> (Article by Training & Development Co-Chair, Deborah Jacobs).

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Item No. 11b supp

Meeting Date: September 14, 2021

Commission Task Force on Policing and Civil Rights Final Report

September 14, 2021



BACKGROUND, GOALS & PROCESS

Commission Motion 2020-15

- Directed a comprehensive assessment of the Port of Seattle Police Department
 - Established a Commission Task Force on Port Policing and Civil Rights to lead the assessment and develop recommendations for action
- Nine Areas for Assessment:
 1. Diversity in Recruitment and Hiring
 2. Training and Development
 3. Equity
 4. Use of Force
 5. Oversight and Accountability
 6. Police Union Participation
 7. Mutual Aid
 8. Advocacy
 9. Budget, Roles, and Equipment

Task Force Work & Goals

- Engaged over 50 internal and external stakeholders in Task Force, subcommittees; conducted a POSPD employee survey & interviews
 - Most of the recommendations are the direct result of stakeholder engagement
- Task Force worked not only to identify areas for improvement, but also serve as an example of how to productively engage in a thorough review of police practices, protocols and internal processes.
- Goal was to help POSPD achieve the highest nationwide standards for public safety, protection of civil rights, equity, accountability and oversight.

Key Next Steps

- Finish gathering/incorporating feedback from stakeholders on the final report to ensure transparency/alignment with Task Force contributions.
 - Co-chairs will provide an addendum of additional suggestions not incorporated into final report based on stakeholder feedback.
- Advance the Port's Implementation Plan, which will prioritize recommendations and provide proposed timelines, budget and other details.
 - ED and Task Force Co-chairs will present that plan to Commissioners at a future meeting; potential for Commission Order codifying the plan at that time
- POSPD is already working to incorporate substantive changes required through legislation passed during the Washington State Legislature's 2021 session

Policing Assessment Findings

POSPD Has Strong Foundation For Success

- Clear commitment to mission and goals
- Good policies and procedures
- Robust training program
- Use of force is infrequent and, with few exceptions, reasonable, necessary, and proportional.
- Few POSPD misconduct complaints; all investigated in a timely and objective manner.
- Forward thinking leadership

Opportunities For Improvement Exist

- More than 50 recommendations based on the work of the subcommittees as well as additional engagement efforts
- Focus on three priority areas:
 - How increased organizational transparency can improve external perceptions about the POSPD;
 - Supporting the POSPD's move away from a traditional police response on homelessness on Port property; and
 - The need for the POSPD to focus on internal procedural justice to address a perception of inequity experienced by many, but particularly Non-White employees.
- Over 25% of recommendations focus on increasing equity through internal procedural justice trainings and processes.

Select Recommendations Include:

Use of Force

- De-escalation policy should be updated to make de-escalation attempts mandatory, when possible, and to add de-escalation tactics
- Create a standing use of force review committee

Oversight & Accountability

- ***Create a quarterly public safety committee to bring interested stakeholders together***
- Enhance internal procedural justice at the POSPD
- Develop protocols between POSPD, Customer Services, and Human Resources on the handling of complaints and compliments about police officers

Select Recommendations, Con't.

Mutual Aid

- Take the lead on updating current mutual aid agreements
- Add levels of approval required before deploying resources for mutual aid

Budget, Roles and Equipment

- *Develop first responder alternatives to homelessness that do not involve armed POSPD officers*
- Implement recommended policies to guide the use of body-worn cameras

Advocacy

- Incorporate new legislative requirements into policy and training
- Continue to engage with key stakeholders and elected officials on emerging state and federal legislation.

Select Recommendations, Con't.

Diversity in Recruitment & Hiring

- Develop a police officer recruitment plan aimed at increasing the number of Hispanic/Latinx police officers
- Update race/ethnic identification data for employees, benchmarks to use for assessing availability and utilization, and consolidate data sources

Training & Development

- Increase transparency around promotional and special team processes
- ***Commence a campaign of internal procedural justice training; continue to train de-escalation as a core engagement philosophy; continue to stress a “guardian mentality” in trainings***

Task Force Members

1. **Marin Burnett** – Port of Seattle, Strategic Initiatives, Strategic Planning Manager
2. **Milton Ellis** – Port of Seattle, Labor Relations, Labor Relations Manager
3. **Sean Gillebo** – Port of Seattle Police Department, Commander
4. **Monisha Harrell** – Equal Rights Washington, Chair
5. **John Hayes** – Seattle Police Department, Captain
6. **Jesse Johnson** – Washington State Representative
7. **Deborah Jacobs** – Consultant, Police Accountability
8. **Anne Levinson** – Retired Judge, Deputy Mayor, and police accountability Oversight Auditor
9. **Sofia Mayo** – Port of Seattle, Central Procurement Office, Senior Manager Service Agreements
10. **Sam Pailca** – Microsoft, Associate General Counsel, Office of Legal Compliance; Board Member of ACLU Washington
11. **Eric Schinfeld** – Port of Seattle, External Affairs, Senior Manager, Federal and International Government Relations
12. **Ericka Singh** – Port of Seattle Human Resources, Talent Acquisition Manager
13. **Jessica Sullivan** – REI, Corporate Security and Emergency Manager; retired Captain, King County Sheriff's Office
14. **Veronica Valdez** – Port of Seattle, Commission Office, Commission Specialist
15. **Michelle Woodrow** – Teamsters, Local 117, President and Executive Director
16. **Shaunie Wheeler** – Teamsters, Local 117, Political & Legislative Director Joint Council of Teamsters No. 28

Questions?

APPENDIX

Engagement Activities

Outreach to Community Groups

Shilshole Bay Marina residents and Dock Captains

Duwamish Valley Stakeholders

Harbor Island Stakeholders

Drayage Truck Companies and Drivers

Aviation Community Stakeholders

Airport Customer Service/Pathfinders

Homelessness advocates/service providers

City of Sea-Tac government

POSPD Survey / Engagement

111 surveys received out of approximately 151 employees

Remote listening sessions for officers, sergeants, commanders, and non-commissioned employees.

Identified Processes That Support Equity Goals

- De-escalation
- Procedural Justice
- Recognition of the sanctity of human life
- Accountability system that provides checks and balances
- Acknowledge value of continuous improvement

Task Force Leadership

Task Force Co-Chairs

- Bookda Gheisar, Senior Director of Equity, Diversity and Inclusion
- Delmas Whittaker, Senior Manager of Fishing Vessel Services; President of the Port's chapter of Blacks in Government (BIG)

Task Force Commissioners:

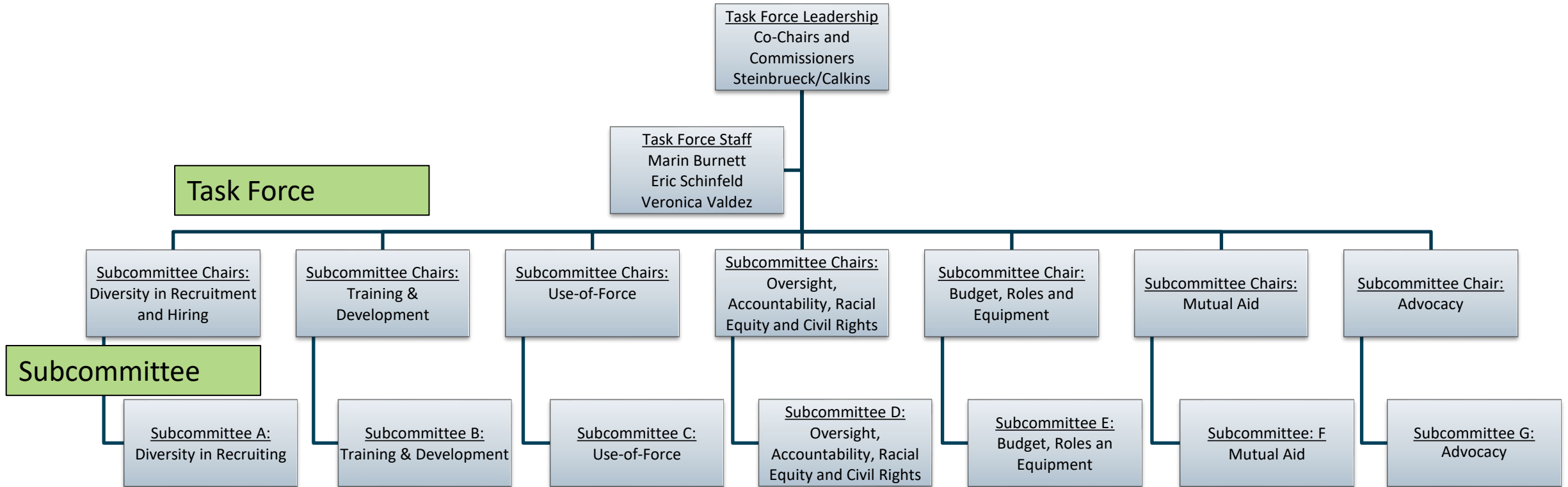
- Commissioner Peter Steinbrueck
- Commissioner Ryan Calkins

Consultant

21CP Solutions

- Selected through a rigorous RFP process, 21CP was formed by members of President Obama's Task Force on 21st Century Policing
- 21CP Solutions “helps cities and communities effectively tackle the challenges of delivering safe, effective, just, and constitutional public safety services in the 21st Century.”
- Role of consultant:
 - Conduct analysis of police department policies, practices and programs
 - Facilitate subcommittee meetings
 - Prepare reports, minutes and recommendations

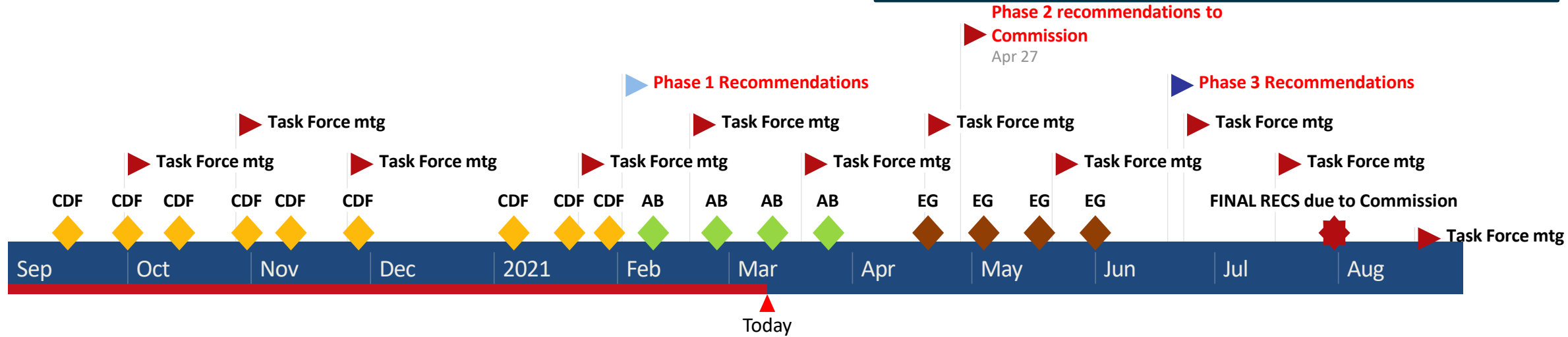
Task Force Structure



- Each member of the Task Force (excluding Commissioners, Co-Chairs and staffers) will lead a subcommittee

UPDATED (12.9.20) Policing Motion Subcommittee Meeting structure

Phase 1	Phase 2	Phase 3
Subcommittees C,D,E,G	Subcommittees A,B	Subcommittees F,H
18 weeks	9 weeks	6 weeks
7-9 meets	3-5 meets	3-5 meets
Sept-Jan	Feb-Apr	Apr-May



SubCom C - Use-of-Force	Sep 8 - Jan 29
SubCom D - Oversight, Accountability & Civil Rights	Sep 8 - Jan 29
SubCom F - Mutual Aid	Sep 8 - Jan 29
SubCom A - Div & Hiring	Feb 8 - Apr 2
SubCom B - Training & Dev	Feb 8 - Apr 2
SubCom E - Budget, Roles & Equip	Apr 19 - May 31
SubCom G - Advocacy	Apr 19 - May 31

Note: Due to anticipated variances in the complexity of certain issues, subcommittees have varying numbers of meetings. All timelines/dates are tentative. Subcommittees are activated at their allotted start time but may be disbanded before or after the estimated dates depending on necessity.