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COMMISSION

AGENDA MEMORANDUM Item No. 10a

ACTION ITEM Date of Meeting January 24, 2023

DATE : January 18, 2023

TO: Stephen P. Metruck, Executive Director

FROM: Dave Soike, Chief Operating Officer

Aaron Pritchard, Commission Chief of Staff

SUBJECT: Adoption of Resolution No. 3810: A Resolution Repealing Resolution Nos. 3605, 3628, 3704, and All Preceding Resolutions Pertaining to the Commission's 'Delegation of Responsibility and Authority to the Executive Director' Policy Directive, and Adopting a New Policy Directive as Set Forth in Exhibit A of this Resolution.

Amount of this request: n/a

ACTION REQUESTED

Request Commission adoption of Resolution No. 3810, a resolution repealing Resolution Nos. 3605, 3628, 3704, and all preceding resolutions pertaining to the Commission's 'Delegation of Responsibility and Authority to the Executive Director' policy directive, and adopting a new policy directive as set forth in Exhibit A of the resolution.

This policy directive increases the previously delegated Commission authority to the Executive Director and provides clarity in delegated process directives to Port staff.

EXECUTIVE SUMMARY

This memo and action is in follow-up to the Commission discussion and memo of November 29, 2022, where Resolution No. 3810 was introduced unanimously. At that time, the Commission asked questions/requested additional information to inform their decision-making process in preparation of the second reading of the proposed resolution.

The November 29, 2022, Commission presentation is attached to this memo for ease in access and reference to the data provided there, and includes project background information; survey data gathered; analysis conducted; key findings of the project team; and staff recommendation to the Commission based on that body of work.

Template revised January 10, 2019.

COMMISSION AGENDA – Action Item No. 10a Page 2 of 9

Meeting Date: January 24, 2023

A package of amendments, based on Commission feedback received since the November 29, 2022, meeting, is included as Attachment (4) to this memo. The summary of proposed changes to the Delegation Policy and a corresponding table of monetary levels, as introduced at the November 29, 2022, Commission meeting, is provided later in this action memorandum, also for reference.

ADDITIONAL INFORMATION

Questions from the Commission Meeting, November 29, 2023

(1) Referral to Commission Action Process. What is the threshold/how is it determined what items come before the Commission if falling within any new level of delegated authority?

- Parameters are already established in the Delegation Policy. This policy specifies responsibilities and authority of both the Commission and the Executive Director.
- Discussions frequently take place between the Commission President (representing the Commission voice), the Executive Director, and the Commission Chief of Staff regarding items of interest and import to the Commission, port customers, and the community.
- An Executive Director delegation process is being built such that all items requesting Executive Director approval are discussed and checked with: Commission Chief of Staff, External Relations, Finance, Legal, Procurement, OEDI, Diversity in Contracting, and the Executive Chief of Staff prior to Executive Director approval. Each item is reviewed and if/when identified as 'high Commissioner interest, high community interest, potential Commission Policy, or potential Commission or of Executive Director strategic interest' - those items will be moved to the Commission for action. ...
- An amendment is proposed to be added to the Delegation Policy as follows: "The Executive Director shall be empowered to execute projects, contracts and all other funding mechanisms as listed in the following sections, at the funding thresholds listed below,

except in the subject matter areas where the Commission has spoken in the form of Policy Directives and Orders. In the subject matter areas where Commissioners have spoken, the Executive Director shall refer to the Policy Directive and/or Order to determine whether the Commission has expressed the clear intent to have that subject matter brought before the Commission in public session or other manner determined to be appropriate in consultation with the Commission President.”

(2) Public Access to Records. Will records be available to the public regarding items approved under the Executive Director’s delegated authority?

- Port records are subject to RCW 42.56, the Public Records Act. All public records are preserved for the legal retention established by the WA State Archives and are available for production upon request in accordance with RCW 42.56.
- The Delegation System being built to facilitate Executive Director delegations will help enable production of those public records. Records are kept in a database and are available for viewing and production as needed.
- Monthly reporting to the Commission will occur in the public business meeting process/on the agenda which will give the Commission and the public visible review of Template revised June 27, 2019 (Diversity in Contracting).

COMMISSION AGENDA – Action Item No. 10a Page 3 of 9

Meeting Date: January 24, 2023

authorizations by the Executive Director within his delegated authority limits of \$1M or greater.

- Further, the Port may choose to place open data for public viewing on the Port’s website for reporting of Executive Director authorizations to enhance transparency and access to the information.

(3) Are there any Near-Term Sustainable Airport Master Plan (SAMP) Projects Below the Proposed New Delegation Level?

- There are no SAMP projects that would come through the delegation system being built, as SAMP projects have already been identified by the Commission as a high Commission and Community item of interest.

- The delegation limits would automatically place SAMP items before the Commission.

(4) A List of Categories/Types of Items for Authorizations that Fall within a New Proposed Delegation Level?

- Attached is 2.5 years of Commission actions reviewed (July 2018 through December 2020), by category of authorization and the number of authorizations that fell within each of those categories. (See Attachment 1)

(5) An Outline of Safeguards to Prevent Abuse of the Delegated Authority.

- Who will watch the watchers? The Port has a robust Internal Audit Department, who has previously, and can continue to actively engage in the auditing process of the Delegation Policy as needed. An amendment is proposed to the resolution to provide express instruction for that review. (See Attachment 4) The 2020 Internal Audit Report (See Attachment 2) identified that delegation procedures were being followed and operating as intended. This amendment will provide for another future audit.

- Established state, local, and federal laws and regulations related to purchasing, contracting, real estate, public works and other projects, financing, etc., provide legal and operating parameters. Internal controls also exist in Executive and procurement policies for all staff to follow. Training is provided to staff regarding these policies and procedures.

- Reporting on delegated responsibilities is a requirement of the Executive Director in the existing Delegation Policy.

- The Commission has requested specific reporting from the Executive Director and departments through its adopted Policy Directives, Resolutions, and Orders on items of import to the Commission and the Community.

- Priority projects are identified, discussed, and approved in the annual budget development process and provides a roadmap for the coming year of action items.

(6) A Deeper Dive into Comparative Agency Information.

- Comparative agency data was provided at the time of introduction for the proposed resolution. Data was provided for King County, City of Seattle, UW, and Sound Transit, as these are comparative regional agencies of similar size and responsibility as the Port. Comparative data was also provided by the Port Internal Auditor for San Diego

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COMMISSION AGENDA – Action Item No. 10a Page 4 of 9

Meeting Date: January 24, 2023
airport/seaport and city, as well as for the Maryland Aviation Administration, Tampa
airport, and others.

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COMMISSION AGENDA – Action Item No. 10a Page 5 of 9
Meeting Date: January 24, 2023

- The project team has since compiled additional data from the American Association of Port Authorities, the Washington Public Ports Association, ports' sites, and ports' staff. Additional data is provided from six of the largest US Ports and eight of the largest WA Ports. This information is available through the Commission Clerk.
- A review of the comparative agency data shows that no two ports are alike. There is not an apples to apples comparison. The data shows that ports are different sized; differently situated with respect to scope of operations; are formed under different government structures; are governed by differently organized bodies; have vastly different budgets based upon their operations and structures; and have set delegation thresholds to match the priorities and preferred role in the organization that each respective governing body chooses to assume. This review underscores the best comparator agencies for the Port, as originally identified by the Port Audit Department, remain our local agencies of similar size, structure, and depth of operations – King County, the City of Seattle, Sound Transit, and the University of Washington.
- The Washington Public Ports Association provides guidance around the adoption of delegation policies in Washington State; noting that a Commission, in granting this delegation, chooses the "...role of focusing on the port's overall, long-term strategic direction, priorities, and vision, rather than the day-to-day management of the port. This is the governance role of defining the port's core mission and overall direction and setting its course for the future." The Commission, through its Delegation Policy, set its core mission and overall direction in the Port's Century Agenda. Delegation policies for agencies are set based on what the correct fit is for each agency, determined by its governing body.

(7) Assurances against project segmentation under delegated thresholds to avoid actions coming forward to Commission, with a particular focus on sole sourcing implications.

- Section 3.2.2 of the Delegation Policy specifically prohibits splitting Projects into units.
- RCW 53.19.020 is the statutory provision specifying that all personal services shall be entered into pursuant to competitive solicitation, and provides that, "Ports shall not structure contracts to evade these requirements."

(8) An amendment to create a periodic review of the Delegation Policy Directive.

- An amendment is prepared to require periodic review of the Delegation Policy and is included in the proposed package of amendments. (See Attachment 4)

(9) A redline of the original policy directive.

- The 'redline' (appearing in green track-changes) of the existing Delegation Policy Directive was not provided during the November 29 introduction of the new Delegation Policy because (1) this is a complete recodification effort to clean-up and re-organize the

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COMMISSION AGENDA – Action Item No. 10a Page 6 of 9

Meeting Date: January 24, 2023

document; and (2) the redline is very difficult to read in areas as a result. It has, however, been provided as requested. (See Attachment 3)

• Procedural reminder from the Clerk – this is not an amendment of the existing policy, this is a repeal of the existing policy and a recodification of a new document. This new policy directive is presented as Exhibit A to the Resolution.

BACKGROUND AND JUSTIFICATION

An updated delegations policy will improve the Port's efficiency and maintain our high bar for accountability and transparency. The updated policy directly addresses the Port's Century Agenda Goal to be a Highly Effective Public Agency and will assist the Commission and staff in focusing efforts towards the Port's highest priorities, projects, goals, and objectives established in the Century Agenda.

If approved, the action to create a leaner operational strategy regarding the Delegation Policy directive and Commission Memo process will assist Port stakeholders in reaching a higher level of efficiency – Port staff, Commissioners, the Executive Director, and some firms or persons doing business with, or receiving services from, the Port of Seattle.

Summary of Changes

Section 1 and Other General Changes

- Removed outdated references and language not necessary to the delegation (for example other existing policies) that may be updated separately in the future.
- Revised language to delegate other agreements related to permits, including contracts to expedite permits, restrictive covenants and hold harmless agreements.
- Added mitigation credits to Port property that can be conveyed.
- Added back insurance and surplus delegations from previous delegations.
- Updated Definitions, including Interlocal Agreements and Projects, while removing definitions that are no longer referenced in the delegation.
- Included a specific delegation for Non-Disclosure Agreements.

Real Estate and Real Property Delegations

- Durational Delegation for Real Property Agreements will remain the same at five years or less, but the monetary limit is increased from \$300,000 to \$1,000,000.
- Clarified that amendments for leases over five years are only delegated if term is not extended, square footage does not exceed a 10% change, rates and environmental provisions are not changed, security deposit is not decreased, and monetary obligations do not exceed \$1,000,000.
- Delegations related to Easements were streamlined to permit the Executive Director to execute easements that do not deprive the Port of substantial use of the property or are less than 1000 square feet, and monetary obligations do not exceed \$1,000,000.

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COMMISSION AGENDA – Action Item No. 10a Page 7 of 9

Meeting Date: January 24, 2023

• Leasing, easements or otherwise using the property of others is delegated so long as payments are less than \$1,000,000 with no durational limit. The existing delegation limited leases, easements or other uses of the property of others to five years and payments of less than \$300,000.

• Added a specific delegation for aviation easements.

Legal Delegations

- Updated the monetary limit for Claims and Settlements from \$300,000 to \$1,000,000.
- Reporting frequency requirements have been consolidated from quarterly, as issues arise, or no required frequency to reporting annually.
- Updated and clarified language throughout the section, including the supervision of legal services; the retention of counsel and experts, including an update to the definition of "litigation" to limit the delegated authority to retain an attorney to represent an individual employee or commissioner to litigation matters, but not allow such retention for responding to a Port inquiry about workplace conduct or ethics; and the standards for settling litigation and claims.

Delegations related to Projects

- Delegations for agreements relating to Projects have been consolidated from three

separate sections into a single section and streamlined.

- Defined the term "Project" and updated the monetary limits for procurements and other agreements in furtherance of Projects from \$300,000 to \$10,000,000.
- Added delegation for agreements and amendments to agreements involving an exchange of goods or services with public or private entities that are not covered by any other specific delegation but are less than \$10,000,000 and promote operational or logistical efficiency, such as reimbursement agreements with entities like TSA or CBP.
- Monetary limit for Preliminary work on Projects is increased from \$300,000 to \$2,000,000, and the definition of Preliminary work is updated.
- Updated the threshold for Critical Work from \$500,000 to \$15,000,000 for work requiring immediate action to avoid significant adverse consequences to public health, safety or property.
- Updated the Project Changes sections to allow amendments and change orders if the changes are within the approved Project budget.
- Removed sections related to bid irregularities, non-public work projects, and other areas that were consolidated.
- Updated language relating to Alternative Public Works contract delivery methods, reporting requirements, competition waivers, small works and job order contracts.

Other Monetary Increases to Delegations

- Updated monetary limit for Budget Transfers from \$300,000 to \$10,000,000 so long as budget funds are for transferring scope of work from one executed contract to another. Template revised June 27, 2019 (Diversity in Contracting).

COMMISSION AGENDA – Action Item No. 10a Page 8 of 9

Meeting Date: January 24, 2023

- Updated monetary limit for Airport Tenant Reimbursements from \$200,000 to \$10,000,000.
- Updated monetary limit for Utilization of Port Crews from \$300,000 to \$10,000,000.
- Monetary limit for Street Vacations delegation is increased from \$300,000 to \$10,000,000.
- A summary of the updates to monetary limits are shown in the Table below:

Monetary Limits 2009 2022

Real Estate Agreements	\$300,000	\$1,000,000
Claims and Settlements	\$300,000	\$1,000,000
Preliminary Work	\$300,000	\$2,000,000
Capital Projects and Contracts	\$300,000	\$10,000,000
Utilization of Port Crews	\$300,000	\$10,000,000
Airport Tenant Reimbursement	\$200,000	\$10,000,000
Street Vacations	\$300,000	\$10,000,000
Budget Transfers	\$300,000	\$10,000,000
Critical Work	\$500,000	\$15,000,000

Other Information

The Washington Public Ports Association provides time guidance to governing bodies establishing and/or reestablishing their delegations of authority policy directives in its 'Port Governance and Management Guide.'

FINANCIAL AND TIME IMPLICATIONS

Up to 8 weeks in time savings per Commission authorization (memo/action); and a total estimated annual savings of approximately 16,600 hours per year which is conservatively equivalent to a range of 6-8 FTEs.

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COMMISSION AGENDA – Action Item No. 10a Page 9 of 9

Meeting Date: January 24, 2023

ATTACHMENTS TO THIS REQUEST

- (1) Authorization Categories Document
- (2) 2020 Audit Committee Report on Delegation of Responsibility and Authority

- (3) Redline of Existing Delegation Policy
 - (4) Package of Amendments
 - (5) Draft Resolution No. 3810
 - (6) Exhibit A (Policy Directive)
 - (7) Presentation Slides
 - (8) November 29, 2022, Commission Presentation (for reference)
- PREVIOUS COMMISSION ACTIONS OR BRIEFINGS
- December 10, 2020 – Audit Committee Meeting
 - March 16, 2021 – Governance Committee Meeting
 - July 28, 2022 – Governance Committee Meeting
 - October 17, 2022 – Governance Committee Meeting
 - November 29, 2022 – Commission Meeting, introduction of Resolution No. 3810

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