



Commission Regular Meeting

December 10, 2024

Pier 69, Chambers



COMMISSION REGULAR MEETING AGENDA

December 10, 2024

To be held virtually via MS Teams and in person at Port of Seattle Headquarters Building, Commission Chambers, located at 2711 Alaskan Way, Seattle Washington. You may view the full meeting live at meetings.portseattle.org. To listen live, call in at +1 (206) 800-4046 or (833) 209-2690 and Conference ID 360 625 278#

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 p.m. – PUBLIC SESSION

Reconvene or Call to Order and Pledge of Allegiance

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

4. SPECIAL ORDERS OF THE DAY

5. EXECUTIVE DIRECTOR'S REPORT

6. COMMITTEE REPORTS

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

During the regular order of business, those wishing to provide public comment (in accordance with the Commission's bylaws) on Commission agenda items or on topics related to the conduct of Port business 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. Written comments are accepted three days prior to the meeting and before 9 a.m. on the day of the meeting. Late written comments received after the meeting, but no later than the day following the meeting, will be included as part of the meeting record.

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 agenda item or topic related to the conduct of Port business you wish to speak to by 9:00 a.m. PT on Tuesday, December 10, 2024. **(Please be advised that public comment is limited to agenda items and topics related to the conduct of Port business only.)** You will then be provided with instructions and a link to join the Teams meeting.

3) Deliver public comment in person by signing up to speak on your arrival to the physical meeting location: To take advantage of this option, please arrive at least 15 minutes prior to the start of any regular meeting to sign-up on the public comment sheet available at the entrance to the meeting room to speak on agenda items and topics related to the conduct of Port business.

For additional information, please contact commission-public-records@portseattle.org.

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

- 8a. Approval of Minutes of the Regular Meeting of November 19. **(no enclosure)**
- 8b. Monthly Notification of Prior Executive Director Delegation Actions November 2024. **(memo enclosed)** – For Information Only.
- 8c. Authorization for the Executive Director to Design and Construct the Common Use Self Service Kiosk Replacement Project at Seattle-Tacoma International Airport in the Requested Amount of \$5,480,000 and an Estimated Project Cost of \$5,800,000. (CIP #C801315) **(memo and presentation enclosed)**
- 8d. Number Not Used.
- 8e. Authorization for the Executive Director to Approve Design Authorization to Complete Design Development and Permitting for the West Waterway High Spots Dredging Project (N99969), in the Requested Amount of \$300,000, and a Total Estimated Project Cost of \$7,000,000. **(memo and presentation enclosed)**
- 8f. Authorization for the Executive Director to Renew the King County Jail Interlocal Agreement 2025 – 2029 for Booking Services. **(memo, agreement, and letter enclosed)**
- 8g. Authorization for the Executive Director to Advertise, Award, and Execute a Construction Contract for the Variable Frequency Drives Replacement Phase 2 Project; to Authorize Use of Port Crews for Abatement Work, and to Include a Project Labor Agreement for the Contract, for a Total Requested Amount of \$7,885,000 and a Project Total Authorization of \$10,500,000. (CIP #C800978) **(memo and presentation enclosed)**
- 8h. Authorization for the Executive Director to Increase the Project Budget for the Maritime Industrial Center Electrical Infrastructure Replacement Project in the Amount of \$3,500,000, for a Total Project Authorization of \$15,908,000. (CIP #C801241) **(memo and presentation enclosed)**
- 8i. Commission Adoption of the Port’s 2025 State Legislative Agenda and Authorization for Staff to Advocate on the Agenda During the 2025 Legislative Session. **(memo and presentation enclosed)**
- 8j. Authorization for the Executive Director to Execute an Interlocal Agreement with the Cities of Des Moines and SeaTac for Continuation of the Des Moines Creek Basin Plan Restoration Projects for a Period of 20 Years in the Amount of \$89,304 Per Year. **(memo, agreement, and presentation enclosed)**

- 8k. Authorization for the Executive Director to Approve Design Authorization to Complete Design and Permitting for the Terminal 5 Southeast Habitat Restoration Project and to Award and Execute a Preconstruction Services Contract in the Requested Amount of \$1,500,000 and a Total Project Authorization of \$1,715,000. (CIP# C801246) **(memo and presentation enclosed)**
- 8l. Authorization for the Executive Director to Increase the Authorized Total Project Budget by \$16,800,000 and to Increase the Tenant Reimbursement Agreement Budget from \$112,248,000 to \$121,723,439, for a Total Estimated Project Cost of \$143,307,000, for the Concourse A Building Expansion for Lounges Project. (CIP# C801205) **(memo and presentation enclosed)**
- 8m. Commission Authorization to Renew the SeaTac Municipal Court and Public Defender Interlocal Agreement 2025 – 2026, and to Provide Funding for the Agreement through December 31, 2026, in the Amount of \$1,800,000. **(memo and agreement enclosed)**
- 8n. Authorization for the Executive Director to Take All Necessary Steps to Approve and Execute a Lease Extension of the SeaTac Office Center (AKA International Place); to Authorize \$350,000 in Additional Funds to Support Costs Associated with the Extension through February 28, 2025; and to Increase the Authorized Funding for Contract Payments through the Extension. **(memo and agreement enclosed)**
- 8o. Authorization for the Executive Director, or Designee, to Execute 2025-2034 Signatory Lease and Operating Agreements (“SLOA V”) Between the Port and Various Airlines for the Use of Facilities at Seattle-Tacoma International Airport. **(memo, agreement, letter, and presentation enclosed)**
- 8p. Authorization for the Executive Director to Execute a Settlement Agreement with the Design-Builder (Clark Construction Group, LLC), to Pay the Port \$28,000,000 to Settle the Remainder of the Port’s Claims Against Clark Construction in the Pending International Arrivals Facility Litigation. **(memo enclosed)**
- 8q. Authorization for the Executive Director to Execute a New Project Labor Agreement Between the Port of Seattle and the Seattle County Building and Construction Trades Council, and Western States Regional Council of Carpenters, Covering the Period of December 10, 2024, to December 31, 2029. **(memo and agreement enclosed)**

10. NEW BUSINESS

- 10a. Order No. 2024-14: An Order to Examine How Enhanced Healthcare Benefits for SEA Workers Impact Worker Safety, Attraction, Retention, and/or Other Business-Related Outcomes at the Airport. **(order enclosed)**
- 10b. Number Not Used.

- 10c. Authorization for the Executive Director to Execute a Memorandum of Understanding that Establishes a Strategic Relationship Between the Port of Seattle and the Friends of the Waterfront and Committing Port Funding of \$5,000,000 Over Five Years for the Activation of Port Facilities From Pier 66 to Pier 69, Plus Two Signature Sponsorships Annually. **(memo, agreement, presentation 1, presentation 2 enclosed)**

- 10d. Authorization for the Executive Director to Approve a Contract with State of Washington Tourism Designated for Collaborative International Tourism Marketing Efforts in the Amount of \$1,500,000. **(memo and presentation enclosed)**

11. PRESENTATIONS AND STAFF REPORTS

- 11a. Maritime Habitat Program Briefing. **(memo and presentation enclosed)**

- 11b. 2024 Port of Seattle Affirmative Action Program Briefing. **(memo and presentation enclosed)**

12. QUESTIONS on REFERRAL to COMMITTEE and CLOSING COMMENTS

13. ADJOURNMENT



**COMMISSION
AGENDA MEMORANDUM**

Item No.

8b

FOR INFORMATION ONLY

Date of Meeting

December 10, 2024

DATE: December 10, 2024

TO: Stephen P. Metruck, Executive Director

FROM: Karen R. Goon, Deputy Executive Director

SUBJECT: Monthly Notification of Prior Executive Director Delegation Actions November 2024

APPROVAL SUMMARY

Notification of the following Executive Director delegated approvals that occurred in November 2024

Category of Approval	Request#	Description of Approvals November 2024	Category Amount
Projects & Associated Contracts	1536-2024	State Government Advocacy Services	\$450,000.00
Non-Project Procurement of Goods & Purchased Service Contracts, Other Contracts, & Tenant Reimbursement	1506-2024	NREL Alternative Marine Fuel Policy Technical Analysis	\$115,000.00
Non-Project Procurement of Goods & Purchased Service Contracts, Other Contracts, & Tenant Reimbursement	1477-2024	Inspection, Testing, and Reporting of Water-Based Fire Protection Systems	\$1,250,000.00
Real Property Agreement		No Approvals in November	\$0.00
Utilization of Port Crews		No Approvals in November	\$0.00
Sale of Surplus Port Property	1426-2024	Disposition and Sale of 19 Fleet Vehicles and Tools 10-24	\$37,000.00
Total Value of Executive Director Approvals			\$1,852,000.00

TRANSPARENCY:

In approving the delegations for the Executive Director, the Commission requested that staff ensure transparency is built into the process. As a result, staff will make approvals visible to the public in two ways. First, these types of approvals will be made visible in public Commission meetings via monthly reporting like this one. Approvals are both timed and designed to be visible in a similar manner to the monthly Claims and Obligations reporting. Second, staff will publish these delegations in a PeopleSoft formatted report on the Port

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website in the same manner that all procurements, contracts, and other opportunities are made available to public communities.

BACKGROUND:

On January 24, 2023, the Commission approved and adopted Resolution No. 3810 that repealed related prior resolutions and increased the previously delegated Commission authority to the Executive Director and provided clarity in process directives to port staff. The approval made the Delegation of Responsibility and Authority to the Executive Director (DORA) effective on April 3, 2023.

The foundation for Resolution No. 3810 included significant data analysis, employee surveys, and internal audit recommendation. Resolution No. 3810 also aligns with the Port Century Agenda in that it helps make the Port a more effective public agency. Considerations and checks and balances have been built into the associated processes of Executive Director approvals including a high bar of transparency.

Following significant analysis and multiple Commission reviews, the Commission approved the DORA on January 24, 2023. That reporting memo is available for review on the Port website under the January 24, 2023, Commission public meeting, and it provides detailed reasoning and explanation of Resolution No. 3810.



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8c

ACTION ITEM

Date of Meeting December 10, 2024

DATE: November 25, 2024

TO: Stephen P. Metruck, Executive Director

FROM: Eileen Francisco, Director, Aviation Project Management
Laurel Dunphy, Director, Airport Operations

SUBJECT: Common Use Self Service Kiosk Removal and Replacement (CIP# 801315)

Amount of this request: \$5,480,000

Total requested project cost: \$5,800,000

ACTION REQUESTED

Request a single Commission authorization for the Executive Director to design and construct the Common Use Self Service Kiosk Replacement project at Seattle-Tacoma International Airport. The total project estimated cost is \$5,800,000.

EXECUTIVE SUMMARY

This project will replace forty-three (43) aging and in some cases non-functioning Common Use Self Service kiosks (kiosks) to better meet customer demand and reduce ticketing area congestion. The kiosks run airline Common Use Self Service applications to allow airline customers to check-in for flights, verify passport credentials, and print boarding passes and baggage tags. Some airlines use the kiosks to speed customer processing and supplement customer service staff.

JUSTIFICATION

The Common Use Self Service kiosks were procured from the company ARINC in 2007, last updated in 2015 and in need of replacement. Most of the hardware components are 15 years old with challenging software upgrade issues. The kiosks reduce congestion at ticket counter lines and eliminate the higher cost of assisted check in.

Diversity in Contracting

The project is utilizing an existing Indefinite Delivery Indefinite Quantity (IDIQ) Contract (P00320886) that has an established 25% WMBE aspirational commitment associated with the design. In partnership with the Diversity in Contracting department, this project will look for opportunities to further increase the established commitment under this service directive. The project intends to use Job Order Contracting with existing WMBE goal for construction and will work in partnership with the Diversity in Contracting department.

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DETAILS

The project intends to demolish 47 kiosks and replace 43. As part of the project planning, the project team evaluated kiosk usage and changing airline operational demand and determined that fewer kiosks would serve the customer service needs in the terminal building and parking garage. Along with these replacements, the project will upgrade and install the necessary electrical and communication infrastructure to support the installation and operation of the new kiosks. These modifications will ensure seamless functionality and integration

Scope of Work

- (1) Demolish forty-seven (47) existing kiosks.
 - Main Terminal (35 kiosks)
 - Parking Garage (8 kiosks)
 - Rental Car Facility (4 kiosks)
- (2) Install forty-three (43) new kiosks and associated conduit and cabling to support the new kiosks.
 - Main Terminal (31 replacement and 2 new kiosks)
 - Parking Garage (6 replacement kiosks)
 - Rental Car Facility (4 replacement kiosks)

Schedule

Activity

Design start	2024 Quarter 4
Construction start	2025 Quarter 4
In-use date	2026 Quarter 2

Cost Breakdown

	This Request	Total Project
Design	\$270,000	\$590,000
Construction	\$5,210,000	\$5,210,000
Total	\$5,480,000	\$5,800,000

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Demolish 55 and replace 51 kiosks in new locations.

Cost Implications: \$6,320,000

Pros:

- (1) Replaces kiosks that have exceeded expected life cycle
- (2) Provides a consistent kiosk model across the platform

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Cons:

- (1) Exceeds Status 2 approved budget
- (2) New locations will have high infrastructure costs
- (3) Kiosks in this alternative may have a shorter useful life due to changes in the Airline Business Operations.

This is not the recommended alternative.

Alternative 2 – Continue to upgrade/patch and replace kiosks when they fail completely.

Cost Implications: \$11,000,000 (Expense)

Pros:

- (1) Capital dollars available for other projects

Cons:

- (1) Customer service negatively impacted when trying to use broken kiosks
- (2) Replacing individually with expense dollars is less efficient use of resources, and overall, more expensive.

This is not the recommended alternative.

Alternative 3 – Demolish 47 and replace 43 kiosks.

Cost Implications: \$5,800,000

Pros:

- (1) Stays within the Project budget
- (2) Continues to provide relief for congestion at common use ticket counters where SEA is space constrained

Cons:

- (1) Does not provide consistent model across the platform
- (2) May need a future project to replace the remaining kiosks if it is determined that they need to remain in operation in the future.

This is the recommended alternative.

FINANCIAL IMPLICATIONS

<i>Cost Estimate/Authorization Summary</i>	Capital	Expense	Total
COST ESTIMATE			
Original estimate	\$5,800,000	\$0	\$5,800,000
AUTHORIZATION			
Previous authorizations	\$320,000	0	\$320,000
Current request for authorization	\$5,480,000	0	\$5,480,000
Total authorizations, including this request	\$5,800,000	0	\$5,800,000
Remaining amount to be authorized	\$0	\$0	\$0

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Annual Budget Status and Source of Funds

The Common Use Self Service Kiosk Removal and Replacement project (C801315) was included in the 2024-2028 capital budget and plan of finance with a budget of \$5,800,000. The funding sources are Airport Development Fund (ADF), revenue bonds, and approximately \$600,000 from the Customer Facility Charge (CFC).

Financial Analysis and Summary

Project cost for analysis	\$5,800,000
Business Unit (BU)	Terminal Building and Rental Car Facility
Effect on business performance (NOI after depreciation)	NOI after depreciation will increase due to inclusion of capital (and operating) costs in airline rate base.
IRR/NPV (if relevant)	\$600,000 of capital cost would be funded with the CFC fund.
CPE Impact	\$0.01 in 2027

Future Revenues and Expenses (Total cost of ownership)

This project will not alter the maintenance and repair costs for the kiosks. The system will continue to receive support through the existing support contracts and Port Maintenance staff, retaining the same service levels as those for the current kiosks. The current annual maintenance and repair cost is approximately \$8,750 per kiosk.

ATTACHMENTS TO THIS REQUEST

- (1) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

None

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Common Use Self Service Kiosk Removal and Replacement

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Action Requested

Request Commission authorization for the Executive Director to:
Authorize completion of design and construction for the
Common Use Self Service Kiosk Removal and Replacement
project.

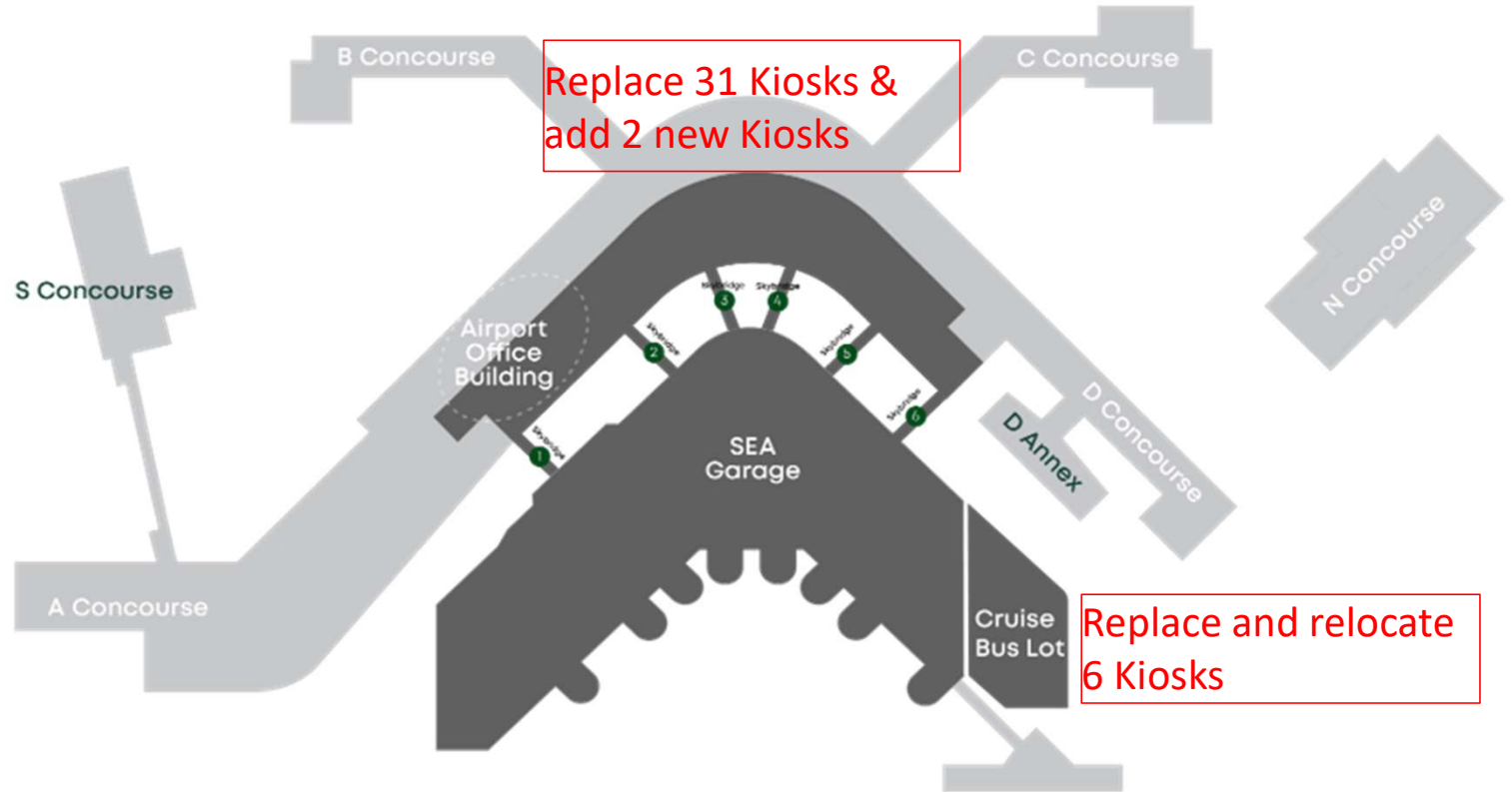
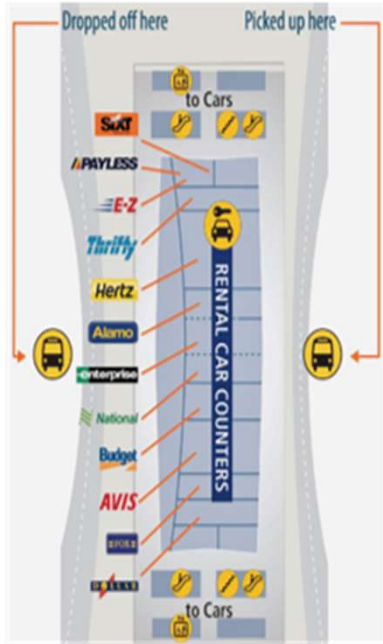
Project Estimated Cost: \$5,800,000

Project Justification and Purpose

- **Justification:** Customer Service. Common Use Self Service kiosks were procured in 2007, last updated in 2015 and in need of replacement. Most of the hardware components are 15 years old with challenging software upgrade issues. The kiosks reduce congestion at ticket counter lines and eliminate the higher cost of assisted check in.
- **Purpose:** The kiosks run the airline Common Use Self Service applications for use by airline customers to check in for flights, read passports, print boarding passes, and print baggage tags. Hawaiian Airlines uses the kiosks exclusively as a two-step check-in process, which increases throughput.

Project Locations

Replace and relocate
4 Kiosks



Replace 31 Kiosks &
add 2 new Kiosks

Replace and relocate
6 Kiosks

Existing Kiosks



New Kiosks



Project Photos

Project Risks / Opportunities

Type	Description	Prob.	Impact	Mitigation / Implementation Plan
Risk	Market Conditions – Kiosk Delivery. There is a long lead time associated with kiosks.	Med	High	This has been built into the schedule to mitigate this risk. Order kiosks early to avoid delays.
Risk	Existing kiosks may have inadequate connectivity and may need data cabling replacement.	Med	High	Mitigated this by including it in the project schedule and cost estimates.
Risk	Further unforeseen site conditions (behind walls) .Possible hazardous materials and may need abatement in Zones 2-5	Med	High	Include and retain sufficient contingency to address
Opportunity	Future proof new kiosks.	Med	High	During design, evaluate biometric capability and organizational readiness to adopt this capability.

Project Budget and Schedule

- Total project estimated cost: \$5,800,000
- The kiosks are anticipated to go into service in Q3 2026

Thank You!



SEA

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**COMMISSION
AGENDA MEMORANDUM**

Item No. 8e

ACTION ITEM

Date of Meeting December 10, 2024

DATE: November 8, 2024

TO: Stephen P. Metruck, Executive Director

FROM: Stephanie Jones Stebbins, Managing Director Maritime
Arthur Kim, Capital Project Manager

SUBJECT: West Waterway High Spots Dredging – Design and Pre-construction Services Authorization

Amount of this request: \$300,000

Total project cost: \$7,000,000

ACTION REQUESTED

Request Commission authorization for the Executive Director to approve design authorization to complete design development and permitting for the West Waterway High Spots Dredging project (N99969). The total request for this action is \$300,000 for a total design authorization of \$400,000. The estimated total project cost is \$7M.

EXECUTIVE SUMMARY

The Puget Sound Pilots can only navigate the largest container ships into Terminal 5 (T5) during specific windows due to high spots in the Duwamish West Waterway’s federal navigation channel. This project is driven by the following objectives:

1. Remove approximately 20,000 cubic yards of material in designated high spots to a depth of -50 feet mean lower low water.
2. Address the urgent needs of the high spots 17+ months ahead of the West Waterway Deepening Project.

This project will be delivered through the Major Construction Unit Price Procurement Methodology. This alternate delivery method was selected to ensure the construction completion by Q1 of 2026. The project will return to Commission for Construction Authorization.

JUSTIFICATION

Due to multiple high spots in the federal navigation channel between T5 and Harbor Island (The West Waterway), the Puget Sound Pilots must wait for specific windows to safely navigate

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larger container vessels to T5 which can cause delays to operations and last-minute shuffling of resources.

Though the West Waterway Deepening Project will address these high spots, construction is not scheduled to start until Q3 of 2027 and complete in Q1 of 2029. The high spots need to be addressed sooner to ensure the Port of Seattle remains competitive in the regional shipping market.

Diversity in Contracting

This project will utilize consultants on an existing IDIQ to develop design. The project team will work with the Diversity in Contracting Department to determine participation opportunities and appropriate aspirational goals for WMBE in the construction phase of the project.

DETAILS

Scope of Work

This project will utilize the Major Construction Unit Price Contract alternative delivery method. Pursuing this delivery will allow for early procurement of the contractor and enables construction to begin in Q4 of 2025. Though other high spots in the navigation channel were identified (A, D, & E), the Puget Sound Pilots did not identify them as a priority and not included in this project.

The scope of this project includes the following elements:

- (1) Maintenance dredged the designated high spots at locations B & C to a depth of -50’ mean lower low water as recommended by the Puget Sound Pilots.
- (2) Dispose of all sediment at an approved uplands facility.

Schedule

A design consultant will lead the design, and this project anticipates construction across one in-water work window (2025-2026).

Activity

Commission design authorization	2024 Quarter 4
Design start	2025 Quarter 1
Commission construction authorization	2025 Quarter 1
Construction start	2025 Quarter 4
In-use date	2026 Quarter 1

Cost Breakdown

	This Request	Total Project
Design	\$300,000	\$400,000
Construction	\$0	\$6,600,000
Total	\$300,000	\$7,000,000

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ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Wait for the West Waterway Deepening Project

Cost Implications: No additional expenses spent beyond current West Waterway Deepening Project.

Pros:

- (1) Retain Port resources for other priority projects and financial initiatives.
- (2) Defer temporary construction impacts.

Cons:

- (1) The Puget Sound Pilots will continue to face delays in navigating the largest ships into T5.
- (2) Container vessel operators may choose other Ports due to restrictions on vessel size.

This is not the recommended alternative.

Alternative 2 – Maintenance Dredge Designated High Spots A, B, C, D, E.

Cost Implications: Allocation of \$10,000,000 in expense funds.

Pros:

- (1) Clears all the major high spots including the lesser priority ones.

Cons:

- (1) High costs to dredge areas that includes non-priority high spots in the federal navigation channel.
- (2) Temporary construction impacts to operations.

This is not the recommended alternative.

Alternative 3 – Maintenance Dredge Designated High Spots B & C.

Cost Implications: Allocation of \$7,000,000 in expense funds.

Pros:

- (1) Addresses the highest priorities high spots identified by the Puget Sound Pilots.

Cons:

- (1) Requires allocation of resources that could be used to fund other Port projects.
- (2) Temporary construction impacts to operations.

This is the recommended alternative.

FINANCIAL IMPLICATIONS

Cost Estimate/Authorization Summary

Capital

Expense

Total

COST ESTIMATE			
Original estimate	\$0	\$7,000,000	\$7,000,000

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AUTHORIZATION			
Previous authorizations	\$0	\$100,000	\$100,000
Current request for authorization	\$0	\$300,000	\$300,000
Total authorizations, including this request	\$0	\$400,000	\$400,000
Remaining amount to be authorized	\$0	\$6,600,000	\$6,600,000

Annual Budget Status and Source of Funds

As the Homeport, POS may use Harbor Maintenance Tax (HMT) funds for this project. This decision is pending a NWSA Managing Member resolution for joint use of HMT funds across both North and South Harbors and eligibility of this project to use the funds. In the event HMT funds are not used, the project will be funded by the tax levy or general fund as a homeport expense.

Financial Analysis and Summary

Project cost for analysis	\$7,000,000
Business Unit (BU)	Joint Venture (JV)
Effect on business performance (NOI after depreciation)	This project will increase non-operational expenses in 2025 and 2026.
IRR/NPV (if relevant)	NA
CPE Impact	NA

Future Revenues and Expenses (Total cost of ownership)

Though the Port will pay the initial costs to maintenance dredge the high spots, future maintenance dredging will be the responsibility of the United States Army Corps of Engineers (USACE) once the West Waterway Deepening Project is completed.

ADDITIONAL BACKGROUND

The West Waterway Deepening Project led by the USACE is not scheduled to begin construction until Q3 of 2027 with a substantial completion date of Q1 2029. This project will address the urgent needs of the high spots.

ATTACHMENTS TO THIS REQUEST

- (1) Diagram of high spots locations
- (2) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

N/A



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8e

ACTION ITEM

Date of Meeting December 10, 2024

DATE: November 8, 2024

TO: Stephen P. Metruck, Executive Director

FROM: Stephanie Jones Stebbins, Managing Director Maritime
Arthur Kim, Capital Project Manager

SUBJECT: West Waterway High Spots Dredging – Design and Pre-construction Services Authorization

Amount of this request: \$300,000

Total project cost: \$7,000,000

ACTION REQUESTED

Request Commission authorization for the Executive Director to approve design authorization to complete design development and permitting for the West Waterway High Spots Dredging project (N99969). The total request for this action is \$300,000 for a total design authorization of \$400,000. The estimated total project cost is \$7M.

EXECUTIVE SUMMARY

The Puget Sound Pilots can only navigate the largest container ships into Terminal 5 (T5) during specific windows due to high spots in the Duwamish West Waterway’s federal navigation channel. This project is driven by the following objectives:

1. Remove approximately 20,000 cubic yards of material in designated high spots to a depth of -50 feet mean lower low water.
2. Address the urgent needs of the high spots 17+ months ahead of the West Waterway Deepening Project.

This project will be delivered through the Major Construction Unit Price Procurement Methodology. This alternate delivery method was selected to ensure the construction completion by Q1 of 2026. The project will return to Commission for Construction Authorization.

JUSTIFICATION

Due to multiple high spots in the federal navigation channel between T5 and Harbor Island (The West Waterway), the Puget Sound Pilots must wait for specific windows to safely navigate

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larger container vessels to T5 which can cause delays to operations and last-minute shuffling of resources.

Though the West Waterway Deepening Project will address these high spots, construction is not scheduled to start until Q3 of 2027 and complete in Q1 of 2029. The high spots need to be addressed sooner to ensure the Port of Seattle remains competitive in the regional shipping market.

Diversity in Contracting

This project will utilize consultants on an existing IDIQ to develop design. The project team will work with the Diversity in Contracting Department to determine participation opportunities and appropriate aspirational goals for WMBE in the construction phase of the project.

DETAILS

Scope of Work

This project will utilize the Major Construction Unit Price Contract alternative delivery method. Pursuing this delivery will allow for early procurement of the contractor and enables construction to begin in Q4 of 2025. Though other high spots in the navigation channel were identified (A, D, & E), the Puget Sound Pilots did not identify them as a priority and not included in this project.

The scope of this project includes the following elements:

- (1) Maintenance dredged the designated high spots at locations B & C to a depth of -50’ mean lower low water as recommended by the Puget Sound Pilots.
- (2) Dispose of all sediment at an approved uplands facility.

Schedule

A design consultant will lead the design, and this project anticipates construction across one in-water work window (2025-2026).

Activity

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In-use date	2026 Quarter 1

Cost Breakdown

	This Request	Total Project
Design	\$300,000	\$400,000
Construction	\$0	\$6,600,000
Total	\$300,000	\$7,000,000

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ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Wait for the West Waterway Deepening Project

Cost Implications: No additional expenses spent beyond current West Waterway Deepening Project.

Pros:

- (1) Retain Port resources for other priority projects and financial initiatives.
- (2) Defer temporary construction impacts.

Cons:

- (1) The Puget Sound Pilots will continue to face delays in navigating the largest ships into T5.
- (2) Container vessel operators may choose other Ports due to restrictions on vessel size.

This is not the recommended alternative.

Alternative 2 – Maintenance Dredge Designated High Spots A, B, C, D, E.

Cost Implications: Allocation of \$10,000,000 in expense funds.

Pros:

- (1) Clears all the major high spots including the lesser priority ones.

Cons:

- (1) High costs to dredge areas that includes non-priority high spots in the federal navigation channel.
- (2) Temporary construction impacts to operations.

This is not the recommended alternative.

Alternative 3 – Maintenance Dredge Designated High Spots B & C.

Cost Implications: Allocation of \$7,000,000 in expense funds.

Pros:

- (1) Addresses the highest priorities high spots identified by the Puget Sound Pilots.

Cons:

- (1) Requires allocation of resources that could be used to fund other Port projects.
- (2) Temporary construction impacts to operations.

This is the recommended alternative.

FINANCIAL IMPLICATIONS

Cost Estimate/Authorization Summary

Capital

Expense

Total

COST ESTIMATE			
Original estimate	\$0	\$7,000,000	\$7,000,000

Meeting Date: December 10, 2024

AUTHORIZATION			
Previous authorizations	\$0	\$100,000	\$100,000
Current request for authorization	\$0	\$300,000	\$300,000
Total authorizations, including this request	\$0	\$400,000	\$400,000
Remaining amount to be authorized	\$0	\$6,600,000	\$6,600,000

Annual Budget Status and Source of Funds

As the Homeport, POS may use Harbor Maintenance Tax (HMT) funds for this project. This decision is pending a NWSA Managing Member resolution for joint use of HMT funds across both North and South Harbors and eligibility of this project to use the funds. In the event HMT funds are not used, the project will be funded by the tax levy or general fund as a homeport expense.

Financial Analysis and Summary

Project cost for analysis	\$7,000,000
Business Unit (BU)	Joint Venture (JV)
Effect on business performance (NOI after depreciation)	This project will increase non-operational expenses in 2025 and 2026.
IRR/NPV (if relevant)	NA
CPE Impact	NA

Future Revenues and Expenses (Total cost of ownership)

Though the Port will pay the initial costs to maintenance dredge the high spots, future maintenance dredging will be the responsibility of the United States Army Corps of Engineers (USACE) once the West Waterway Deepening Project is completed.

ADDITIONAL BACKGROUND

The West Waterway Deepening Project led by the USACE is not scheduled to begin construction until Q3 of 2027 with a substantial completion date of Q1 2029. This project will address the urgent needs of the high spots.

ATTACHMENTS TO THIS REQUEST

- (1) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

N/A



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8f

ACTION ITEM

Date of Meeting December 10, 2024

DATE: October 24, 2024

TO: Stephen P. Metruck, Executive Director

FROM: Kyle Yoshimura, Police Commander
Mark Thomas, Deputy Chief of Police

SUBJECT: King County Jail Public Safety Interlocal Agreement 2025-2029

Amount of this request: \$480,000

Total estimated project cost: \$480,000 (Total for 5 year-term)

ACTION REQUESTED

Request Commission authorization for the Executive Director to renew a King County Jail Interlocal Agreement (ILA.) This will extend booking service for the King County Jail ILA that expires December 31, 2024. The Port of Seattle Police Department (POSPD) is not seeking additional funding for approval of this ILA.

EXECUTIVE SUMMARY

The POSPD currently utilizes jail services under an ILA between the Port of Seattle and King County. Pursuant to this agreement, individuals who are arrested by POSPD Officers are processed and screened to determine whether they will be released at the scene or booked into King County Jail. Several factors are used to determine the final disposition of arrestees, including severity of the crime they are suspected of committing, danger to the public, or a warranted mandate to book the suspect into jail.

We ask that the Commission authorize the renewal of the King County Jail ILA in the furtherance of public safety by maintaining the POSPD’s ability to book suspects it is unable to book into the South Correctional Entity (SCORE).

JUSTIFICATION

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

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

Meeting Date: December 10, 2024

The POSPD strives to support the mission of the Port of Seattle. In its role, the POSPD strives to provide safe facilities for Port employees and its customers. Renewal of the ILA with King County will reduce the amount of time waterfront officers are away from the facilities during the booking process and provide them a second option for booking individuals when beds are not available at SCORE.

Diversity in Contracting

Both King County Jail and SCORE are public entities and do not adversely or positively impact Diversity in Contracting goals.

DETAILS

POSPD seeks to renew this ILA and maintain the option of booking at King County Jail for its Seaport units, or for extraordinary circumstances. With continued booking restrictions at King County Jail, and the addition of the ILA with SCORE, the POSPD average daily bookings and cost have decreased significantly.

Table 1: Proposed rates effective January 1, 2025, through December 31, 2025

Other Cities	2024 Base Rate ¹	Annual Increase ²	Est. CPI W ²	Base Rate Before Debt Svc.	ISP ³	2025 Final Rate
Daily Maintenance	\$259.14	1.50%	4.00%	\$273.39	\$5.21	\$278.60
Booking - Standard	\$277.99	1.50%	4.00%	\$293.28	\$-	\$293.28
Booking - Reduced	\$189.39	1.50%	4.00%	\$199.81	\$-	\$199.81
Psych Unit (Acute + Psych Other)	\$450.98	1.50%	4.00%	\$478.34	\$-	\$478.34
Acute Psych Housing	\$322.78	1.50%	4.00%	\$340.53	\$-	\$340.53
Psych Other ⁴	\$128.20	3.00%	4.00%	\$137.81	\$-	\$137.81
Infirmery	\$418.16	3.00%	4.00%	\$447.43	\$-	\$447.43
1 on 1 Guarding Hrly	\$92.52	1.50%	4.00%	\$97.60	\$-	\$97.60

¹Prior year’s base rate, before the inclusion of the Courthouse Seismic Stabilization Project (CSSP) and Integrated Security Project (ISP) fees.

²Exhibit III Section 5 Inflatons and Re-Sets of Fees and Charges.

³Exhibit III Section 1, Maintenance Charge and Capital Expenditure Charge.

⁴Acute Psychiatric Care (Psych Unit) is comprised of the Acute Psychiatric Housing Surcharge and the Psych Other Surcharge.

Schedule

Upon approval of the ILA by the Commission, service utilization will commence/continue January 1, 2025.

Meeting Date: December 10, 2024

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Using only SCORE Jail for booking services.

Cost Implications: There are several differences in the pricing structure between King County Jail and SCORE. Psychological and Medical may differ significantly. KCPAO does not provide teleconference court appearance services.

Pros:

- (1) SCORE is closer to the airport than King County Jail reducing travel time.

Cons:

- (1) Extended travel time for seaport units.
- (2) Significant impact on patrol resources transporting suspects between SCORE, Southwest District Court in Burien and returning them to SCORE.
- (3) Officers will be unable to book individuals arrested outside of City of SeaTac jurisdictional boundaries. *Note: Individuals who will not be charged through SeaTac Municipal Court must be booked into King County Jail, as POSPD lacks capacity to physically transport individuals from SCORE to King County Courts for their appearances, and King County does not support virtual court.*

This is not the recommended alternative.

Alternative 2 – Stop booking misdemeanor arrestees.

Cost Implications: Less expensive overall. Potential costs both in dollar amounts and in future crimes prevented is impossible to estimate.

Pros:

- (1) Highest cost savings overall.

Cons:

- (1) Misdemeanor offenders would quickly determine there are no consequences for committing low level crimes in our jurisdiction, quickly increasing our offender population.
- (2) Significant rise in criminal offenses within our jurisdiction.

This is not the recommended alternative.

Alternative 3 – Usage of both King County Jail under the existing-proposed-for-renewal ILA, and SCORE under the existing ILA.

Cost Implications: With majority of bookings overall occurring at SCORE, booking and housing charges from King County Jail have decreased over 75% from 2021 to 2024 (2021 costs \$173,814.79, 2024 costs YTD \$31,894.)

Meeting Date: December 10, 2024

Pros:

- (1) Bridges the gap in booking alternatives while working with KCPAO.
- (2) Provides more efficient booking options for both Airport and Seaport Police Units.

Cons:

- (1) None noted.

This is the recommended alternative.

FINANCIAL IMPLICATIONS

We expect King County Jail costs to be considerably lower than in the past, due to our primary utilization of SCORE Jail.

ATTACHMENTS TO THIS REQUEST

- (1) 2025-2029 King County Interlocal Housing Agreement
- (2) 2025 Rate Letter

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

December 13, 2022 – The Commission approved King County Public Safety ILA 2023-2024
December 15, 2020 – The Commission approved King County Public Safety ILA 2021-2022

Attachment A

Interlocal Agreement Between King County and The Port of Seattle for Jail Services

THIS AGREEMENT is effective as of January 1, 2025 ("Effective Date"). The Parties to this Agreement are King County, a Washington municipal corporation and legal subdivision of the State of Washington (the "County") and The Port of Seattle, a Washington municipal corporation (the "Port").

WHEREAS, this Agreement is made in accordance with the Interlocal Cooperation Act (RCW Chapter 39.34) and the Port and County Jails Act (RCW Chapter 70.48);

NOW THEREFORE, in consideration of the promises, payments, covenants and agreements contained in this Agreement, the parties agree as follows:

1. Definitions: Unless the context clearly shows another usage is intended, the following terms shall have these meanings in this Agreement:
 - 1.1 "Agreement" means this Interlocal Agreement by and between King County and the Port for Jail Services and any amendments to this Agreement.
 - 1.2 "Booking" means registering, screening and examining persons for confinement in the Jail or assignment to a King County Community Corrections Division (CCD) program; inventorying and safekeeping personal property of such persons; maintaining all computerized records of arrest; performing warrant checks; Jail Health Services (JHS) health screening; and all other activities associated with processing a person for confinement in Jail or assignment to a CCD program.
 - 1.3 "Booking Fee" means the fee incurred for booking Port Jail Residents, as further described in Section 4 and Exhibit III, Section 2.
 - 1.4 "Business Day" means Monday through Friday, 8:00 a.m. until 5:00 p.m., except holidays and County-designated furlough days.
 - 1.5 "Port Detainee" means a person booked into or housed in a Secure Detention facility such as the Jail but also including any other Secure Detention facility not operated by or on behalf of the County, which individual would, if housed in the Jail, qualify as a Port Jail Resident.
 - 1.6 "Port Jail Resident" means a person booked into or housed in the Jail when a Port charge is the principal basis for booking or confining that person.
 - A. A Port charge is the principal basis for booking or confining a person where one or more of the following applies, whether pre-trial or post-trial. (See Exhibit I for further billable charge rules.):

- 1.6.1 The person is booked or confined by reason of committing or allegedly committing a misdemeanor or gross misdemeanor offense within the Port's jurisdiction, and:
 - 1.6.1.1 The case is referred to the Port, through its Port Attorney or contracted attorney, for a filing decision; or
 - 1.6.1.2 The case is referred to the Port, through its Port Attorney or contracted attorney, who then refers the case to the County Prosecutor for a filing decision per section 1.6.2; or
 - 1.6.1.3 The case is filed by the Port, through its Port Attorney or contracted attorney, whether filed under state law or Port ordinance.
 - 1.6.2 The person is booked or confined by reason of committing or allegedly committing a misdemeanor or gross misdemeanor offense, whether filed under state law or Port ordinance, within the Port's jurisdiction and the case is referred by the Port, through its Port attorney or contracted attorney, to the County prosecutor and filed by the County prosecutor as a misdemeanor in district court due to a conflict or other reason but excluding a case filed in a regionally-funded mental health court as described in Section 1.6.10.
 - 1.6.3 The person is booked or confined by reason of a Court warrant issued either by the Port's Municipal Court or other court when acting as the Port's Municipal Court;
 - 1.6.4 The person is booked or confined by reason of a Court order issued either by the Port's Municipal Court or other court when acting as the Port's Municipal Court; or,
 - 1.6.5 The person is booked or confined by reason of subsections 1.6.1 through 1.6.4 above in combination with charges, investigation of charges, and/or warrants of other governments, and the booking or confinement by reason of subsections 1.6.1 through 1.6.4 above is determined to be the most serious charge in accordance with Exhibit I.
 - 1.6.6 The person has been booked or confined for reasons other than subsections 1.6.1 through 1.6.5 and would be released or transferred but for the Port having requested that the County continue to confine the person.
- B. A Port charge is not the principal basis for confining a person where:
- 1.6.7 The person is booked or confined exclusively or in combination with other charges by reason of a felony charge or felony investigation.
 - 1.6.8 ~~The person has been confined exclusively to the jail facility operated by the Port because of a charge of misdemeanor or gross misdemeanor.~~
 - 1.6.9 The Port has requested the transfer of the person to another jail facility not operated by King County and the County denies the request, unless one or more of the transfer exception criteria listed in Attachment I-2 are met, in which case the person remains a Port Jail Resident. The billing status of the person will change to no longer be the Port's responsibility effective the calendar day following the day that the County denies the transfer request. If the County thereafter determines that it no longer needs to detain the person and the person would as a result become a Port Jail Resident, then the County will provide notice to the Port that it will become billable for the Jail Resident. For details on notice and billing, see Attachment I-2.

- 1.6.10 The person is booked or confined by reason of committing a misdemeanor or gross misdemeanor offense, whether filed under state law or Port ordinance, within the Port's jurisdiction and the case is referred by the Port attorney or contracted attorney to the County prosecutor and filed by the County prosecutor as a misdemeanor in the mental health court (or successor) for so long as the operations of such court are substantially funded by special regional funds (for example, Mental Illness and Drug Dependency sales tax levy) or other regional funding as the County may determine. The County shall provide the Port thirty (30) days Notification before changing the status of a regionally-funded mental health court to local funding status. The Port is not billed for cases filed by the County prosecutor into mental health court prior to changing to local funding status.
- 1.7 “Community Corrections Programs” means programs designed as alternatives to, or as rehabilitation or treatment in lieu of, Secure Detention, operated by or on behalf of the King County Department of Adult and Juvenile Detention (DAJD) Community Corrections Division, or its successor. Upon the date of the execution of this Agreement, Community Corrections Programs include Electronic Home Detention and Community Center for Alternative Programs (CCAP).
- 1.8 “Continuity of Care Records” means a Jail Resident’s diagnosis, list of current medications, treatments, PPD (tuberculosis screening test) results and scheduled appointments or follow-ups.
- 1.9 “Contract Cities” mean cities that are signatory to an agreement in substantially similar form to this Agreement. Contract Cities do not include cities who are a party to the 2012-2030 Agreement.
- 1.10 “Contract Cities Jail Residents” means all Contract Cities' Port Jail Residents.
- 1.11 “County Jail Resident” means any Jail Resident that is not a Port Jail Resident.
- 1.12 “DAJD” means the King County Department of Adult and Juvenile Detention or its successor agency.
- 1.13 “Fees and Charges” are the Fees and Charges imposed as described in Section 4 and Exhibit III.
- 1.14 “Force Majeure” means war, civil unrest, and any natural event outside of the party’s reasonable control, including pandemic, fire, storm, flood, earthquake, or other act of nature.
- 1.15 “Jail Resident” means a person booked into or housed in the Jail.
- 1.16 The first "Jail Resident Day" means confinement for more than six (6) hours measured from the time such Jail Resident is first presented to and accepted by the Jail for housing in the Jail until the person is released, provided that an arrival on or after six (6) o'clock p.m. and continuing into the succeeding day shall be considered one day. The second and each subsequent Jail Resident Day means confinement for any portion of a calendar day after the first Jail Resident Day. For persons confined to the Jail for the purpose of mandatory Driving Under the Influence (DUI) sentences, "Jail Resident Day" means confinement in accordance with Exhibit II.

- 1.17 “Jail” means a place owned or operated by or under contract to the County primarily designed, staffed, and used for the housing, in full confinement, of adults charged or convicted of a criminal offense; for the punishment, correction, and rehabilitation of offenders charged or convicted of a criminal offense; for confinement during a criminal investigation or for civil detention to enforce a court order, all where such place is structured and operated to ensure such individuals remain on the premises 24-hours a day (excluding time for court appearances, court approved off-premises trips, or medical treatment). Jail Residents housed in the Jail are considered to be in Secure Detention as defined in Section 1.26. Upon the date of the execution of the Agreement, Jail includes the King County Correctional Facility and the detention facility at the Maleng Regional Justice Center.
- 1.18 “Maintenance Charge” is the daily housing charge incurred for Port Jail Residents housed in Jail as further described in Section 4 and Exhibit III, Section 1.
- 1.19 “Medical Jail Resident” means a Jail Resident clinically determined by the Seattle-King County Department of Public Health, or its successor charged with the same duties, as needing the level of services provided in the Jail’s infirmary. If a Jail Resident is moved to the general population, then the Jail Resident is no longer considered a Medical Jail Resident.
- 1.20 “Notification” means provision of written alert, confirmation of information or request meeting the requirements of Section 11.11. In contrast, a “notice” means providing alert or confirmation of information or request in writing to the individuals identified in Section 11.11, or their designee (as may be specified through a formal Notification) through means less formal than required by Section 11.11, including but not limited to electronic mail or facsimile.
- 1.21 "Official Daily Population Count" is an official count of Jail Residents in the custody of the Jail made at a point in time in a 24-hour period for, among other purposes, security and population management. It is not used for billing purposes.
- 1.22 “Offsite Medical Care Charges” means those pass-through charges for treatment of a Port Jail Resident where that Jail Resident is clinically determined by the Seattle-King County Department of Public Health, or its successor charged with the same duties, as needing services provided from offsite medical institutions, as further defined in Exhibit III Section 4. A Jail Resident may receive Offsite Medical Care that triggers an Offsite Medical Care Charge without being otherwise classified as a Medical Jail Resident or Psychiatric Jail Resident (e.g., some Jail Residents held in the general population receive offsite medical care that will result in Offsite Medical Care Charges being incurred).
- 1.23 “Psychiatric Jail Resident” means either an Acute Psychiatric Jail Resident or a Non-Acute Psychiatric Jail Resident, as defined below.
- 1.23.1 A “Non-Acute Psychiatric Jail Resident” is a Jail Resident clinically determined by the Seattle-King County Department of Public Health, or its successor charged with the same duties, as needing Psychiatric Care Services (as further described in Exhibit III and Attachment III-1) and housed outside the Jail’s acute psychiatric housing units.

- 1.23.2 An “Acute Psychiatric Jail Resident” is a Jail Resident clinically determined by the Seattle-King County Department of Public Health, or its successor charged with the same duties, as needing the level of services provided in the Jail’s acute psychiatric housing units (as further described in Exhibit III and Attachment III-1). If a Jail Resident is moved to housing outside the Jail's acute psychiatric housing units, then the Jail Resident is no longer considered an Acute Psychiatric Jail Resident.
- 1.24 “Parties” mean the Port and County, as parties to this Agreement.
- 1.25 “Secure Bed Cap for Contract Cities” means the maximum total number of beds in Secure Detention in the Jail available on a daily basis to house Contract Cities Jail Residents in the aggregate. The Secure Bed Cap for Contract Cities is based on the Official Daily Population Count and is established in Section 6.
- 1.26 “Secure Detention” refers to a facility structured and operated for the full confinement of Port Detainees to ensure such individuals remain on the premises 24-hours a day (excluding time for court appearances, court approved off-premises trips, or medical treatment), such as the Jail but also including other similar facilities that the Port may elect to house Port Detainees. Secure Detention excludes Port Jail Residents enrolled in Community Corrections Programs.
- 1.27 “Surcharge” means any of the following special charges, defined in Exhibit III, Section 3 and further described in Attachment III-1: Infirmarium Care Surcharge; Psychiatric Care Surcharge; Acute Psychiatric Care Surcharge; and 1:1 Guarding Surcharge.
- 1.28 “2012-2030 Agreement” means the agreement executed by the County and the Port of Seattle effective on January 1, 2012 together with any other interlocal agreement in substantially the same form of said agreement executed by the County and another Port.
- 1.29 “Base Year” refers to the year in which the base fees, charges and surcharges are set.
2. Term. This Agreement shall commence on the Effective Date and shall extend through December 31, 2029. This Agreement shall supersede all previous contracts and agreements among the Parties relating to the Jail and any other jail services, except that any obligations contained in these previous contracts or agreements which expressly survived termination or expiration of these previous contracts or agreements shall remain in effect.
3. Jail and Health Services. The County shall accept Port Jail Residents for confinement in the Jail, except as provided in Sections 5.4, and 6 of this Agreement. Additionally, the County is not obligated to accept a Port Jail Resident for confinement in the Jail if the County has booking restrictions in place on the charge for which the Port Jail Resident is proposed to be held. The County shall also furnish the Port with Jail facilities; booking; transportation among facilities, as determined necessary in the County’s sole discretion, including the various Jail facilities, Harborview Medical Center and Western State Hospital; custodial services; and personnel for the confinement of Port Jail Residents at least equal to those the County provides for confinement of County Jail Residents. However, the County reserves the right to operate specific programs and/or facilities exclusively for County Jail Residents or persons sentenced or assigned to Community Corrections Programs. The County shall furnish to Port Jail Residents in Secure Detention all medical, dental, and other health care services required to be provided pursuant to federal or state law. Also, the County shall make every reasonable effort to release a Port Jail Resident as expeditiously as possible after the County has received notice of a court order to

release. Nothing in this section shall be deemed to limit the County's right to refuse to accept Port Detainees for confinement in Jail when they are deemed by the County to be in need of urgent medical or psychological care, nor to return custody of such Jail Residents back to the Port if the Port Detainee is admitted to the hospital or psychiatric facility.

4. Port Compensation. The Port will pay the County a Booking Fee, Maintenance Charge, Surcharges, and Offsite Medical Charges as follows (together with such other charges as may be applicable in accordance with this Agreement):

4.1 Booking Fee. The Booking Fee shall be assessed for the booking of Port Jail Residents by or on behalf of the Port into the Jail as further described in Exhibit III, Section 2. The Booking Fee will be inflated annually effective January 1, 2026 and each January 1 thereafter through the term of the agreement.

4.2 Maintenance Charge. The Maintenance Charge shall be assessed for a Port Jail Resident for each Jail Resident Day as provided in Exhibit III, Subsection 1. The Maintenance Charge will be inflated effective January 1, 2026 and each January 1 thereafter through the term of the agreement.

4.2.1 The County will provide notice to the Port after booking a Port Jail Resident in order to give notice that the Port Jail Resident has been booked and to provide the opportunity for release to the Port if the Port so desires. Such action will take place as soon as reasonably possible but no later than the next business day after booking. A Port Jail Resident released within six hours of booking will result in no Maintenance Charges.

4.2.2 The County will provide notice to the Port of the billing status of its Jail Residents for the prior calendar day in cases where confinement is the result of multiple warrants or sentences from two or more jurisdictions. As of the date of this Agreement, this notice is provided to the Port once each business day when applicable. The intent of this program is to allow the Port to take custody of a Port Jail Resident if they so desire after the other jurisdictional warrants are resolved and thereby prevent unnecessary Maintenance Charges.

4.2.3 The Parties may amend the notice requirements of Sections 4.2.1 and 4.2.2 by administrative agreement signed by both the Chief Executive Officer of the Port and the King County Executive.

4.3 Access to and Charges for Port Jail Resident Use of Community Corrections Programs. The Parties agree to discuss in good faith the ability for the Port to access Community Corrections Programs, and to negotiate charges for such access. Any agreement between the Parties with respect to access and charges for Community Corrections Programs shall be enacted through an amendment to this Agreement.

4.4 Surcharges and Offsite Medical Charges. In addition to the Booking Fee, Maintenance Charge, and any other charges agreed to per Section 4.3, the Port will be charged for Offsite Medical Charges and Surcharges as detailed in Exhibit III, Section 3 and 4.

Proposed Notice of Certain Surcharges. The County intends to provide or make available to the Port timely notice of occurrences when a Port Jail Resident is admitted to Harborview Medical Center or other offsite medical institution or is receiving infirmary care or psychiatric care that will subject a Port to Surcharges. Notice provided or made available will be based on information known to DAJD at the time (since billing status of a Jail

Resident may be changed retroactively based on new information or other factors). The County intends to provide or make available this notice within two (2) business days following the day in which the chargeable event occurs and will make good faith efforts to provide notice sooner if practicable. The County will make good faith efforts to try to institute a means to provide notice to the Port within twenty-four (24) hours of the admittance of a Port Jail Resident to Harborview Medical Center or other offsite medical institution. The County's failure to provide or make available notice or develop quicker means to provide notice to the Port as detailed above shall not excuse the Port from financial responsibility for related Offsite Medical Charges or Surcharges and shall not be a basis for imposing financial responsibility for related Offsite Medical Charges or Surcharges on the County.

5. Billing and Billing Dispute Resolution Procedures.

5.1 The County shall transmit billings to the Port monthly. Within forty-five (45) days after receipt, the Port shall pay the full amount billed or withhold a portion thereof and provide the County written notice meeting the requirements of Section 5.2.1, specifying the total amount withheld and the grounds for withholding such amount, together with payment of the remainder of the amount billed (if any amount remains). Notwithstanding the foregoing, the County shall bill the Port for Offsite Medical Charges as such charges are periodically received by the County from third party medical institutions or other offsite medical providers. Offsite Medical Charges shall be due within such time and subject to such withholding and dispute resolution procedures as otherwise provided in this Section 5.

5.2 Withholding of any amount billed or alleging a violation related to billing provisions of this Agreement shall constitute a dispute, which shall be resolved as follows:

5.2.1 The County shall respond in writing to billing disputes within sixty (60) days of receipt of such disputes by the DAJD billing offices. To ensure the soonest start to the sixty (60)-day timeline, the Port should electronically mail scanned billing disputes directly to the DAJD billing office, or by fax, or U.S. mail rather than to any other County office or officer. The DAJD billing office contact information as of the date of this Amendment is:

KC DAJD
DBISINFO.DAJD@kingcounty.gov
Attn: Finance – Jail Resident Billing
500 Fifth Avenue
Seattle, WA 98104

5.2.2 In the event the parties are unable to resolve the dispute, either Party may pursue the dispute resolution mechanisms outlined in Section 9.

5.3 Any amount withheld from a billing, which is determined to be owed to the County pursuant to the dispute resolution procedure described herein, shall be paid by the Port within thirty (30) days of the date of the resolution.

5.4 If the Port fails to pay a billing within forty-five (45) days of receipt, the County will provide the Port with a notice of its failure to pay and the Port shall have ten (10) days from receipt of such notice to cure nonpayment. Any undisputed billing amount not paid by the Port within sixty (60) days of receipt of the billing, and any amounts found to be owing to the County as a result of the billing dispute resolution procedure that are not paid

within thirty (30) days of resolution, shall be conclusively established as a lawful debt owed to the County by the Port, shall be binding on the Parties, and shall not be subject to legal question either directly or collaterally. In the event the Port fails to cure its nonpayment, the Port shall be deemed to have voluntarily waived its right to house Port Jail Residents in the Jail and, at the County's request, will remove Port Jail Residents already housed in the Jail within thirty (30) days. Thereafter, the County, at its sole discretion, may accept no further Port Jail Residents until all outstanding bills are paid. This provision shall not limit the Port's ability to challenge or dispute any billings that have been paid by the Port.

- 5.5 The County may charge an interest rate equal to the interest rate on the monthly County investment earnings on any undisputed billing amount not paid by the Port within forty-five (45) days of receipt of the billing, and any amounts found to be owing to the County as a result of the billing dispute resolution procedure. Interest on amounts owed begin accruing on the forty-sixth (46) day after payment was due.
- 5.6 Each Party may examine the other's financial records to verify charges. If an examination reveals an improper charge, the next billing statement will be adjusted appropriately. Disputes on matters related to this Agreement which are revealed by an audit shall be resolved pursuant to Section 5.2.

6. Jail Capacity.

- 6.1 The Contract Cities may house Contract Cities Jail Residents in the Jail at an aggregate number, calculated based on the Jail's Official Daily Population Count, equal to or less than the Secure Bed Cap for Contract Cities established in Sections 6.1.1.
 - 6.1.1 The Secure Bed Cap for Contract Cities in the aggregate is fifty (50) beds. These fifty (50) beds shall be available on a first-come, first-served basis measured at the time of the Jail's Official Daily Population Count.
- 6.2 In the event the number of Contract Cities Jail Residents exceeds the Secure Bed Cap for Contract Cities described in Section 6.1, the County will notify the Contract Cities by phone or electronic mail. The County may then decide to continue to house Contract Cities Jail Residents in excess of the Secure Bed Cap for Contract Cities. Alternatively, the County may refuse to accept bookings from the Port until such time as the aggregate number of Contract Cities Jail Residents is reduced below the Secure Bed Cap for Contract Cities. If the aggregate number of Contract Cities Jail Residents is reduced below the Secure Bed Cap for Contract Cities through removal of Contract Cities Jail Residents from the Jail, then the County will be obligated to accept new Port bookings. The notice required by the first sentence of this Section 6.2, will be made to the person designated in Section 11.11 of this Agreement, and will inform the Port whether the County intends to continue to house Contract Cities Jail Residents in excess of the Secure Bed Cap for Contract Cities described in Section 6.1, or whether the County will refuse to accept bookings from the Port until such time as the aggregate number of Contract Cities Jail Residents is reduced below the Secure Bed Cap for Contract Cities described in Section 6.1.
- 6.3 At the end of the last day of this Agreement, the Contract Port agrees to reduce the number of Contract Port Jail Residents in the Jail to zero (0), with the exception that Jail Residents whose status has changed to Contract Port Jail Resident, will not be included in the

calculation of the number of Contract Port Jail Residents, if such individuals are removed from the Jail within seventy-two (72) hours of such change in status.

For the purpose of determining the number of Contract Cities Jail Residents only, and not for billing purposes, Jail Residents held on multiple warrants or sentences by the County which include one or more Port warrants or sentences in addition to a County and/or state warrant or sentence, and Contract Cities Jail Residents that have been booked into the Jail and the Contract Port has not been notified of such booking shall not be considered a Contract Cities Jail Resident. Also, Contract Cities Jail Residents housed in the Jail will not be considered Contract Cities Jail Residents for the purpose of determining the number of Port Jail Residents.

- 6.4 The Jail's capacity limit for Medical Jail Residents is thirty (30). The Jail's capacity limit for Psychiatric Jail Residents is one-hundred-fifty-one (151). For the purpose of this Section the Medical and Psychiatric Jail Resident population will be determined following the definitions in Sections 1.21 and 1.25 at the time of the Jail's Official Daily Population Count.
- 6.5 When the Jail has reached its capacity limit for either Medical or Psychiatric Jail Residents as set forth in Section 6.4, the County will provide notice to the Port by phone or electronic mail. Such notification will be made to the person designated in Section 11.11 of this Agreement. At the time this notification is made the County may request that the Port take custody of a sufficient number of its Medical or Psychiatric Jail Residents to reduce the number of Medical or Psychiatric Jail Residents to the capacity limits detailed in Section 6.4, or the County may inform the Port that the County is willing to continue to house these Jail Residents.
- 6.6 County requests under Section 6.5 will be made as follows. The billable Port (under this Agreement or other jail service agreements between the County and cities that have identical provisions as this Section) with the Jail Resident most recently admitted as Medical or Psychiatric Jail Resident will be asked to take custody of that Jail Resident. This process will be repeated until such time as the Medical and Psychiatric populations are reduced below capacity limits, or the Jail is willing to house these Jail Residents.
- 6.7 If the County, pursuant to Sections 6.5 and 6.6, requests that the Port take custody of Medical or Psychiatric Jail Residents, the Port shall comply with the County's request. The Port shall take custody of its¹ Medical or Psychiatric Jail Residents by picking them up no later than twenty-four (24) hours after the County's request. If the Port has not picked-up the Medical or Psychiatric Jail Resident within twenty-four (24) hours of the County's request, the County shall deliver the Medical or Psychiatric Jail Resident to the Port's designated drop-off location or backup location. In either case, the Port's designee

¹ Within eight (8)-hours of the County's request notification, the Port may provide the County with the names of other Medical Jail Residents to substitute for the Medical Jail Residents identified by the County for pick-up. In the event the Port identifies substitute Medical Jail Residents that are Port Jail Residents, the provisions of Section 6 will continue to apply. In the event the Port identifies substitute Medical Jail Residents that are the responsibility of a different City (Substitute City) that is party to this Agreement or a jail services agreement with the King County containing these same provisions, and the Substitute City agrees to remove its Medical Jail Residents, then the Substitute City will be responsible for picking-up the substitute Medical Jail Residents within 24-hours of the County's initial request notification for pick-up. In the event the Substitute City fails to pick-up its Medical Jail Residents within 24-hours of the County's initial request notification to the Port, the County may deliver the Medical Jail Residents named in the original request notification to the Port's designated drop-off location or backup location. The procedures outlined in this footnote will also apply to Psychiatric Jail Residents.

must accept the Medical or Psychiatric Jail Resident from the County and must be available to do so seven (7) days a week, twenty-four (24) hours a day. In all cases, the County shall provide the receiving entity with Continuity of Care Records, in a sealed envelope, at the time custody is transferred. The Port will ensure that the Port and the receiving entity comply with all applicable confidentiality laws and rules. Similarly, the Port will ensure that Continuity of Care Records are provided to the County at the time custody of a Port Jail Resident receiving the level of care consistent with a Medical or Psychiatric Jail Resident is transferred to the County.

- 6.8 If the County, in its sole discretion, decides to transport Medical or Psychiatric Jail Residents to the Port's designated drop-off location or backup location within King County, Washington, the County will do so without charge. Should the County agree to a drop-off location or backup location outside of King County, Washington, the Port will pay all transportation costs for Medical or Psychiatric Jail Residents taken to the designated drop off location or backup location. In no case will the County be obligated to transport a Medical or Psychiatric Jail Resident out-of-state.

7. Jail Planning.

- 7.1 Jail Planning. The County and the Port recognize the value of sharing information about their respective Jail Resident populations and anticipated use of Secure Detention and alternative means of detention. The Parties agree to make good-faith efforts to share this information regularly. Furthermore, should the County begin planning for potential changes in jail space or models, the County will make good-faith efforts to provide notice to the Port that such planning is underway, so that the Port has an opportunity to participate in planning efforts.

8. Indemnification.

- 8.1 The County shall indemnify and hold harmless the Port and its officers, agents, and employees, or any of them, from any, and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any negligent action or omission of the County, its officers, agents, and employees, or any of them. In the event that any suit based upon such a claim, action, loss, or damage is brought against the Port, the County shall defend the same at its sole cost and expense; provided, that, the Port retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the Port and its officers, agents, and employees, or any of them, or jointly against the Port and the County and their respective officers, agents, and employees, or any of them, the County shall satisfy the same.
- 8.2 The Port shall indemnify and hold harmless the County and its officers, agents, and employees, or any of them, from any, and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any negligent act or omission of the Port, its officers, agents, and employees, or any of them. In the event that any suit based upon such a claim, action, loss, or damage is brought against the County, the Port shall defend the same at its sole cost and expense; provided that the County retains the right to participate in said suit if any principle of governmental or public laws is involved; and if final judgment be rendered against the County, and its officers, agents, and employees, or any of them, or jointly against the County and the Port and their respective officers, agents, and employees, or any of them, the Port shall satisfy the same.
- 8.3

In executing this agreement, the County does not assume liability or responsibility for or
Interlocal Agreement: Jail Services – Port of Seattle

in any way release the Port from any liability or responsibility, which arises in whole or in part from the existence or effect of Port ordinances, rules, or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such Port ordinance, rule or regulation is at issue, the Port shall defend the same at its sole expense and if judgment is entered or damages are awarded against the Port, the County, or both, the Port shall satisfy the same, including all chargeable costs and attorney's fees.

8.4 The terms of this Section 8 "Indemnification" shall survive the termination or expiration of this Agreement.

9. Dispute Resolution. In the event the Parties are unable to resolve a dispute, then either Party may pursue the dispute resolution provisions of this Section 9.

9.1 Either Party may give Notification to the other in writing of a dispute involving the interpretation or execution of the Agreement. Within thirty (30) days of this Notification, the King County Executive and the Chief Executive Officer of the Port, or their designees, shall meet to resolve the dispute. If the dispute is not resolved, then at the request of either Party it shall be referred to non-binding mediation. The mediator will be selected in the following manner: The Port shall propose a mediator and the County shall propose a mediator; in the event the mediators are not the same person, the two proposed mediators shall select a third mediator who shall mediate the dispute. Alternately, the Parties may agree to select a mediator through a mediation service mutually acceptable to both Parties. The Parties shall share equally in the costs charged by the mediator or mediation service.

9.2 Each party reserves the right to litigate any disputed issue in court, *de novo*.

10. Termination. Either Party may initiate a process to terminate this Agreement as follows:

10.1 Ten (10)-Day Notification of Intent to Terminate. Any Party wishing to terminate this Agreement shall issue a written Notification of intent to terminate, not less than ten (10) days prior to issuing a ninety (90) day termination Notification under Section 10.2 of this Agreement. Upon receipt of the written Notification of intent to terminate, the parties will meet to confer on whether there are steps that the non-terminating party can take, in order to, avoid a ninety (90) day termination Notification notice under Section 10.2 of this Agreement.

10.2 Ninety (90)-Day Termination Notification. After the ten (10) day period has run under Section 10.1 of this Agreement, the party desiring to terminate this Agreement may provide the other party ninety (90) days written termination Notification, as provided in RCW 70.48.090.

11. General Provisions.

11.1 Other Facilities. This Agreement reserves in each party the power to establish a temporary holding facility during a pandemic, riot, civil disobedience or natural disaster, to establish group homes or other care or rehabilitation facilities in furtherance of a social service program, to temporarily transfer Jail Residents to alternative detention facilities in order to respond to Jail overcrowding, a public health directive, or to comply with a final order of a federal court or a state court of record for the care and treatment of Jail Residents.

- 11.2 Grants. Both Parties shall cooperate and assist each other toward procuring grants or financial assistance from the United States, the State of Washington, and private benefactors for the Jail, the care and rehabilitation of Jail Residents, and the reduction of costs of operating and maintaining Jail facilities.
- 11.3 Law Enforcement Intake Portal. The County offers the use of a web-based Subject Intake Portal via its LEA Jail Management System Portal. The tool allows law enforcement officers to log onto the system and enter all arrest, case/charge, victim, probable cause, and drug crime certificate information. This method is the County’s preferred method of intake and booking. LEO User Access to the JMS Portal is managed by the LEA who must designate one, or more, Group Administrator(s) who will be responsible for creating, managing, and deleting its users via the County’s Login.KC system.
- 11.4 Severability. If any provision of this Agreement shall be held invalid, the remainder of this Agreement shall not be affected thereby.
- 11.5 Remedies. No waiver of any right under this Agreement shall be effective unless made in writing by the authorized representative of the party to be bound thereby. Failure to insist upon full performance on any one or several occasions does not constitute consent to or waiver of any later non-performance nor does payment of a billing or continued performance after Notification of a deficiency in performance constitute an acquiescence thereto. The Parties are entitled to all remedies in law or equity.
- 11.6 Exhibits. This Agreement consists of several pages plus the following attached exhibits, which are incorporated herein by reference as fully set forth:
- | | |
|-------------|--|
| Exhibit I | Method of Determining Billable Charge and Agency |
| Exhibit II | Exception to Billing Procedure |
| Exhibit III | Calculation of Fees, Charges and Surcharges |
- 11.7 Not Binding on Future Agreements. This Agreement does not bind the Parties as to the terms, fees, or rate formulas to be included in any future jail services agreements.
- 11.8 Entire Agreement. This Agreement, including all exhibits and attachments hereto, represents the entire understanding of the Parties and supersedes any oral representations that are inconsistent with or modify its terms and conditions.
- 11.9 Modifications. The provisions of this Agreement may only be modified and amended with the mutual written consent of the King County Executive and the Chief Executive Officer of the Port and the approval of their respective legislative bodies, excepting that, certain modifications to the notice requirements in Sections 4.2.1 and 4.2.2 as reflected in 4.2.3, and Attachment I-2 may be approved administratively by signature of both the Chief Executive Officer of the Port and King County Executive as specified herein.
- 11.10 Force Majeure. In the event either party’s performance of any of the provisions of this Agreement become impossible due to Force Majeure, that party will be excused from performing such obligations until such time as the Force Majeure event has ended and all facilities and operations have been repaired and/or restored.

- 11.11 Notifications. Except as otherwise provided in this Agreement, any Notification required to be provided under the terms of this Agreement, shall be delivered by certified mail, return receipt requested or by personal service to the following person:

For the Port of Seattle:

Or his/her successor, as may be designated by written Notification from the Port to the County.

For the County:

Chief of Administration
Dept. of Adult and Juvenile Detention
500 Fifth Avenue
Seattle, WA 98104

Or their successor, as may be designated by written Notification from the County to the Port.

- 11.12 Council Approval. The Parties' obligations under this Agreement are subject to official Port and County Council approval.
- 11.13 Filing. As provided by RCW 39.34.040, this Agreement shall be filed with the King County Department of Records and Elections.
- 11.14 Assignment/Subcontracting. The Port may not assign or subcontract any portion of this Agreement or transfer or assign any claim arising pursuant to this Agreement.
- 11.15 No-Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement. No person or entity other than a party to this Agreement shall have any rights hereunder or any authority to enforce its provisions, and any such rights or enforcement must be consistent with and subject to the terms of this Agreement.
- 11.16 Execution in Counterparts. This Agreement and any amendments thereto, shall be executed on behalf of each party by its duly authorized representative and pursuant to an appropriate motion, resolution, or ordinance. The Agreement may be executed in any number of counterparts, each of which shall be an original, but those counterparts will constitute one and the same instrument.

King County:

Port of Seattle:

Director of Department of Adult and
Juvenile Detention

Executive Director

Date

Date

Approved as to Form:

Approved as to Form:

King County

Port Official

Date

Date

EXHIBIT I
Method of Determining Billable Charge and Agency

Process Overview

The application of all billing rules in conjunction with Section 1.6 of this Agreement comprises the method for determining the principal basis for booking or confining a person. The County’s billing system examines all open and active charges and holds for each calendar day and applies the billing priority rules and tie breaker rules as set forth below. Then the billable agency is determined from the billable charge(s) or hold(s) and the application of exception rules, for example, the special DUI sentencing rule or the special six-hour rule.

Billing Priority Rules

The Billing Priority Group is determined in the following order:

1. Local felony charge(s)	A local felony charge is filed by the King County Prosecuting Attorney into a King County court.
2. Investigation holds from King County agencies or pursuant to a contract	An investigation hold is one that has been referred to the King County Prosecutor and includes King County investigation holds.
3. Department of Corrections (DOC) charge(s) pursuant to contract with DOC	Felony and misdemeanor charges adjudicated by DOC hearing examiner. Cases heard by a local court are considered local misdemeanors even if DOC is the originating agency.
4. Local misdemeanor charge(s) and city court appearance orders	Includes King County misdemeanors.
5. Other holds (contract and non- contract)	

Tie Breaker Rules

Tie breaker rules are applied in the following order to the Local Misdemeanor Priority Group (Number 4 above) when there are charges with multiple billable agencies. The first rule that applies determines the billable charge(s). The billable agency for the selected charge(s) is the billable agency.

1. Longest or only sentenced charge rule	This rule selects the charge(s) with an active sentenced charge or, if there is more than one active sentenced charge, the rule selects the charge with the longest imposed sentence length.
2. Earliest sentence rule	This rule selects the charge(s) with the earliest sentence start date.
3. Lowest sentence charge number rule	This rule selects the sentenced charge(s) with the lowest charge number as given in the DAJD booking system.
4. Arresting agency rule	This rule selects the charge(s) or hold(s) with a charge billable agency that matches the arresting agency for the booking.
5. Accumulated bail rule	This rule selects the agency with the highest total bail summed for all of the charge(s) and hold(s) for which the agency is the billable agency.
6. Lowest charge number rule	This rule selects the charge or hold with the lowest charge number as given in the DAJD booking system.

Attachment I-1: Port and County Jail Charges Clarification

This document contains several examples consistent with Section 1.6 of this Agreement.

#	Situation	Jail Costs associated with these cases are:
1	Jail Resident <i>booked by a city on a felony investigation, whose case is filed by the Prosecutor initially as a felony in Superior Court but subsequently amended to a misdemeanor charge (for evidentiary reasons, or entry into mental health court, or for other reasons)</i>	County responsibility
2	Jail Resident <i>booked by a city on a felony investigation and whose case is initially filed by the Prosecutor as a felony in District Court as part of a plea bargain effort (so called “expedited cases”)</i>	County responsibility (including the expedited cases to be filed under the new Prosecutor Filing Standards).
3	Jail Resident <i>booked by a city on a felony investigation, whose case is initially filed by the County Prosecutor as a misdemeanor in district court (i.e., mental health, domestic violence <u>or</u> in regular district court)</i>	County responsibility
4	Jail Resident <i>booked by a city on a felony investigation. The County prosecutor declines to file the case and refers it to a city prosecutor or law enforcement for any further action.</i>	County responsibility prior to release of felony investigation by the County prosecutor; Port responsibility from and after release of felony investigation
5	Misdemeanor or felony cases <i>originated by state agencies (i.e., WSP)</i>	County responsibility
6	Jail Residents <i>booked by a city on a juvenile charge who are held in adult detention or become adults during the pendency of their charge or sentence.</i>	County responsibility

Attachment I-2

Jail Resident Transfers: Transfer Request Exemption Criteria, Notice and Billing (Relating to Section 1.6.9)

- A. In the event of one or more of the following transfer exception criteria are met, a transfer may be denied by the County, in which case the person for whom the Port has sought a transfer remains a Port Jail Resident:
- (1) Jail Resident has medical/health conditions/treatments preventing transfer.
 - (2) Transfer location refuses Jail Resident.
 - (3) Jail Resident refuses to be transported and poses a security risk.
 - (4) Jail Resident misses transport due to being at court or other location.
 - (5) Port refuses to sign transfer paperwork requiring the Port to arrange transportation for Jail Resident back to King County, if needed, when Port sentence ends.
- B. If the County has refused a transfer request and thereafter determines that it no longer needs to detain the person and the person would as a result become a Port Jail Resident, then the County will provide notice to the Port that it will become billable for the Jail Resident. The Port will not incur a Maintenance Charge on the day of notice. If the Port transfers the Jail Resident during the six calendar days immediately following the day of notice, it will not incur a Maintenance Charge for the first calendar day following notice but will incur a Maintenance Charge for each subsequent calendar day until the Jail Resident is transferred. If the Port does not transfer the Jail Resident from the Jail during this six-day period, the Port is billable beginning the calendar day following the day of notice from the County.
- C. The terms of this Attachment I-2 may be amended by administrative agreement evidenced by execution in writing by the Chief Executive Officer of the Port and King County Executive.

EXHIBIT II
Exception to Billing Procedure

For persons serving the one- and two-day commitments pursuant to the mandatory DUI sentence grid who report directly from the community to the Jail for incarceration, Jail Resident Day shall not be defined according to Section 1.16 of the Agreement. Instead, Jail Resident Day shall be defined as a twenty-four-hour period beginning at the time of booking. Any portion of a twenty-four-hour period shall be counted as a full Jail Resident Day. The number of days billed for each sentence shall not exceed the sentence lengths specified on the court commitment.

Two examples are provided for illustration:

Two-day sentence served on consecutive days:

John Doe	Booked 7/1/23 0700	Released 7/3/23 0700
	Number of Jail Resident days = 2	

Two-day sentence served on non-consecutive days:

John Doe	Booked 7/1/23 0700	Temporary Release 7/2/23 0700
	Return to Jail 7/8/23 0700 Number of Jail Resident days = 2	Released 7/9/23 0700

The Department of Adult and Juvenile Detention will apply this definition of Jail Resident Day to the Port's direct DUI one and two-day Jail Residents by adjusting the Port's monthly bill before it is sent to the Port. If the changes are not made for some reason, the Port will notify the Department of Adult and Juvenile Detention, which will make the necessary adjustments.

EXHIBIT III
Calculation of Fees, Charges and Surcharges

Starting on the Effective Date of this Agreement, the Port shall pay the fees, charges, and surcharges with such annual adjustments for inflation as described below. Starting on the Effective Date of this Agreement, the Port shall also pay offsite medical care charges as detailed below

2025 is the Base Year for fees, charges, and surcharges and is the basis from which the fees, charges, and surcharges are to be annually adjusted by applying the inflators set forth in Subsection 5.a. of this Exhibit III.

1. MAINTENANCE CHARGE AND CAPITAL EXPENDITURE CHARGE

The Maintenance Charge shall be calculated as described below.

- a. The **Maintenance Charge** starting **January 1, 2025**, and for the remainder of the calendar year 2025, **excluding** any adjustments for Capital Expenditure Charges, will be **\$XXX**. When combined with the Capital Expenditure Charges, the Maintenance Charge for calendar year 2025 is **\$XXX**. The Maintenance Charge shall be inflated in 2026 as described in Section 5, and annually thereafter throughout the term of the agreement. The Port will not be charged a Maintenance Charge for a Port Jail Resident where the Jail Resident has been offsite (e.g. housed outside of the Jail) for all twenty-four (24) hours of a Surcharge Day and subject to 1:1 Guarding Surcharge for the entirety of such twenty-four (24)-hour period.
- b. In addition to the annual adjustment to the Maintenance Charge described above, King County will increase the Maintenance Charge to capture the cost of **Capital Expenditures**. Capital Expenditures are defined as the cost of repairing and renovating current jail capacity and facilities and support and administrative facilities that benefit Jail operations. Additional Capital Expenditures will be included in the Maintenance Charge if such expenditures benefit Port Jail Residents. Any Capital Expenditure that solely benefits County Jail Residents will not be charged to the Port. Capital Expenditures do not include Jail Bed Expansion Projects. Capital Expenditures do not include Major Maintenance.
 - i. Capital Expenditures will be calculated in proportion to the square footage that benefits adult detention. Cities will be billed their proportionate share based on the total number of Jail Resident Days (as defined in Section 1.16). By August 15 of 2025, and each August 15 through 2028, DAJD will estimate the total number of Jail Resident Days for the following year and will provide notice to the Port of the Capital Expenditure Charge to be included in the Maintenance Charge for the following year.
 - ii. Upon request of the Port, the County shall provide its six (6)-year CIP and its six (6)-year major maintenance plan to the Port. The County will provide a detailed line-item budget of each Capital Expenditure. If the Port disputes that the Capital Expenditure benefits Port Jail Residents or otherwise disputes the inclusion of the Capital Expenditure or any portion of the Capital Expenditures' budget in the maintenance fee, the matter will be resolved under the dispute resolution processes described herein. Capital Expenditures will not be charged to the Port to the extent such Capital Expenditures are covered by federal grants, state grants, insurance proceeds, capital maintenance reserves or voter approved capital funding for jail related improvements.
 - iii. Capital Expenditures, if debt financed, shall begin being charged when debt service payments begin for the permanent financing of the Capital Expenditure and shall

continue until the end of the debt amortization unless the debt amortization is less than fifteen (15) years, in which case the charges to the Port will be amortized over fifteen (15) years. If the Capital Expenditure is not debt financed, Capital Expenditure charges shall be based on actual expenditures. The County will make available documentation evidencing such expenditures.

- iv. Beginning January 1, 2025, and continuing through calendar year 2025, the Capital Expenditure Charge for ISP for the Port is \$XXX and the Capital Expenditure Charge for the CSSP is \$XXX, for a combined total Capital Expenditure Charge of \$XXX to be added to the Maintenance Charge set forth in subparagraphs a and b above.

2. BOOKING FEE

- a. The booking fee shall be based on whether or not the Port is using the County's Personal Recognizance (PR) screeners for individuals it brings to a County jail facility to be booked. The two booking fees starting January 1, 2025, and for the remainder of the calendar year 2025 will be initially set as follows:
 - i. The **Base Booking Fee** shall be \$XXX. This is the booking fee payable by Contract Cities that are **not** using the County's PR screeners. This Booking Fee shall include **XXX%** of the total Budgeted Jail Costs associated with booking (including Jail Health Intake Services); this percentage of booking costs to be included in the Booking Fee shall remain fixed through the term of this Agreement.
 - ii. The **Standard Booking Fee** shall be \$XXX. This is the booking fee payable by Contract Cities using the County's PR screeners. This booking fee is composed of the Base Booking Fee plus the fee associated with the County's PR screeners.
- b. If the Port has a court order on file as of the Effective Date, confirming that the Port and not the County will have authorization to provide PR screening for Port Jail Residents, then the Port will be qualified for the Base Booking Fee as of the Effective Date. To qualify for the Base Booking Fee in subsequent years, the Port must either provide a court order no later than July 1 of the prior year, confirming that the Port and not the County will have authorization to provide PR screening for Port Jail Residents, or a previously issued court order must remain in effect. If an authorizing court order is revoked or expires and is not renewed, the Port will no longer qualify for the Base Booking Fee.

The Booking Fee shall be inflated in 2026 and annually thereafter as described in Section 5 below.

3. SURCHARGES

In addition to payment of the Maintenance Charge and the Booking Fees, the Port shall pay Surcharges associated with services provided to Port Jail Residents as described below. The types of services provided to a Jail Resident associated with each Surcharge, and a general description of each Surcharge, is set forth in Attachment III-1.

The initial Surcharge amounts described in paragraphs (a) – (d) below shall apply from January 1, 2025, through December 31, 2025, and shall be inflated for 2026 as described in Section 5 below, and annually each year thereafter.

- a. **Infirmiry Care.** For Medical Jail Residents, the Port shall pay an Infirmiry Care Surcharge of \$XXX for each Surcharge Day.

- b. **Psychiatric Care.** For Non-Acute Psychiatric Jail Residents, the Port shall pay a Psychiatric Care Surcharge of \$XXX for each Surcharge Day.
- c. **Acute Psychiatric Housing.** For Acute Psychiatric Jail Residents, the Port shall pay an Acute Psychiatric Care Surcharge of \$XXX for each Surcharge Day.
 - i. The **Acute Psychiatric Surcharge** for each Surcharge Day shall be \$XXX
 - ii. The **Psychiatric Care Surcharge** for each Surcharge Day of \$XXX is added to the Acute Psychiatric Housing surcharge for a total Acute Psychiatric Care Surcharge of \$XXX.
- d. **1:1 Guarding Surcharge.** The 1:1 Guarding Surcharge is the charge imposed when the County dedicates an individual officer to guard a Port Jail Resident. The Surcharge shall be \$XXX per guard *for each hour* or portion thereof, and as further described in Attachment III-1.
- e. A **Surcharge Day** is defined as a 24-hour period from midnight to midnight, or any portion thereof, in which a Jail Resident receives any of the services within the Surcharges listed in subparagraphs (a) – (c) above; *provided that* with respect to the Infirmarium Care Surcharge, Psychiatric Care Surcharge and Acute Psychiatric Surcharge, a maximum of one (1) charge may be imposed within the twenty-four (24)-hour period for a single Jail Resident, and the charge imposed shall be the highest applicable charge. For example, if a Jail Resident is placed in Acute Psychiatric Care, released to the general population, and then again placed in Acute Psychiatric Care all within the same twenty-four (24)-hour period (midnight to midnight), a single Acute Psychiatric Care Surcharge will be imposed. Similarly, if a Jail Resident is placed in Acute Psychiatric Care and then in Non-Acute Psychiatric Care within the twenty-four (24)-hour midnight to midnight period, then a single Acute Psychiatric Care charge will be imposed.

4. OFFSITE MEDICAL CARE CHARGES

In addition to the Maintenance Charge, the Booking Fee, and the Surcharges detailed above, the Port shall be responsible for payment of all Offsite Medical Care Charges incurred by a Port Jail Resident.

5. INFLATORS AND RE-SETS OF FEES CHARGES, AND SURCHARGES

- a. **Inflators.** Beginning January 1, 2026, and effective every January 1 through the term of the agreement, all fees, charges, and surcharges, excluding: (1) Offsite Medical Care Charges and, (2) the Capital Expenditure Charge components of the Maintenance Charge, shall be inflated by the percentage rates described below.

Non-Medical Charges: The following fees and charges are subject to an annual inflator of the Seattle-Tacoma-Bremerton CPI-W (covering the twelve (12)-month period ending in June) plus 1.5% but shall in no event be lower than 1.5%:

- i. Maintenance Charge
- ii. Booking Fee
- iii. Acute Psychiatric Housing Surcharge
- iv. 1:1 Guarding

Medical Charges: The following fees and charges are subject to an annual inflator of the Seattle-Tacoma-Bremerton CPI-W (covering the twelve (12)-month period ending in June) plus three (3) percent, but shall in no event be lower than three (3) percent:

- i. Infirmiry Care Surcharge
 - ii. Psychiatric Care Surcharge
- b. Final Fee, Charge and Surcharge Notice for Following Calendar Year. No later than August 15, the County will provide notice to the Port of the final fees, charges and surcharges listed in this Subsection 5.a. reflecting the application of the June-June CPI index in the manner prescribed in Subsection 5.a above.
- c. Inflation Re-sets. Notwithstanding the terms of Subsections 5.a and 5.b to the contrary, in the event the Seattle-Tacoma-Bremerton CPI-W (June-June) exceeds eight (8) percent then, as part of the August 15, final fee and charge notice, the County will include information demonstrating whether, based on factors affecting the DAJD Budgeted Jail Costs including but not limited to personnel costs, food, utilities and pharmaceuticals, the County’s reasonably expected inflation experience for the DAJD Budgeted Jail Costs in the next calendar year (the “Expected Inflation Rate”) is *less than or greater than* said CPI-W (June-June) rate. If the Expected Inflation Rate is lower than the CPI-W (June-June) rate, the County will apply the lower of the two rates to the fees and charges listed in this Subsection 5.c for the following calendar year.

**Attachment III-1
Summary Description of Medical Cost Model Surcharges and Pass-Through Charges**

	Surcharge	Description
1.	1:1 Guarding	Cost to guard a Jail Resident in a 1:1 situation. Most common occurrence is at hospital or at off-site medical appointments. If more than one guard is required, then the rate would be the multiple of guards.
2.	Acute Psychiatric Care (two components) – billed by location	
	a. Psychiatric Care Surcharge	Costs for Jail Health Services (JHS) treatment team for services listed below for Psychiatric Care.
	b. Acute Psychiatric Housing Surcharge	Costs for additional officer staffing for: 15-minute checks, assistance with feeding, emergency responses, escorts, and other necessary services to provide for a Jail Resident who poses a potential danger to him or herself.
3.	Psychiatric Care (one component)	
	a. Psychiatric Care Surcharge	Costs for JHS Psychiatric treatment team for services listed below for Psychiatric Care.
4.	Infirmary Care	Costs for JHS Infirmary care, services listed on reverse.

	Pass-Through Charge	Description
5.	Off-Site Medical Charges	Costs for Jail Residents to receive services from outside medical providers (services not available from JHS). Examples include: <ul style="list-style-type: none"> ❖ Hospital care ❖ Dialysis ❖ Cancer treatment (chemotherapy, radiation) ❖ Specialized transport to medical appointments (wheelchair bound Jail Residents)

JHS Psychiatric Care

Services Provided:	Criteria:
<ul style="list-style-type: none"> ❖ Psychiatric Treatment & Management ❖ Psychiatric Treatment Team Monitoring ❖ Medication Administration ❖ Mental Health Crisis Counseling ❖ Psychiatric Therapy Groups 	<i>Jail Residents with severe or unstable mental health conditions are placed in psychiatric housing units and receive a level of monitoring and care based on the acuity of their mental illness. Jail Residents in psychiatric housing are evaluated upon admission and then re-evaluated on a regular basis by a multi-disciplinary treatment team.</i>

JHS Infirmery Care

Services Provided:	Criteria:
<ul style="list-style-type: none"> ❖ 24-hour Skilled Nursing Care ❖ Daily Provider Rounds ❖ Treatment and Management of Complex Disease States ❖ Medication Administration ❖ Activities of Daily Living Assistance ❖ Alcohol Detoxification 	<p><i>Jail Residents who meet diagnostic criteria that require 24-hour skilled nursing care are housed in the KCCF Infirmery. Examples include but are not limited to:</i></p> <ul style="list-style-type: none"> ❖ <i>Patients requiring medical detoxification/withdrawal management;</i> ❖ <i>Individuals with non-stable medical conditions such as: need for kidney dialysis, wired jaws, newly started on blood thinning medication;</i> ❖ <i>Individuals who are mobility impaired and/or not independent in activities of daily living;</i> ❖ <i>Individuals requiring IV therapy or with central lines in place;</i> ❖ <i>Individuals who are acutely ill, post-surgical, who require convalescent care, and those with conditions requiring extensive treatment and frequent monitoring; and</i> ❖ <i>Individuals with severe respiratory problems requiring nebulizer treatments, oxygen and close observation.</i> <p><i>Jail Residents are formally admitted to infirmery care following assessment by a physician or nurse practitioner and then monitored daily by provider and nursing staff. Discharge from the infirmery occurs either at the time of release from jail or as the patient's condition improves and can be safely managed in general population housing. Some individuals remain in infirmery care for the duration of their incarceration.</i></p>



King County

Department of Adult and Juvenile Detention

Directors Office
 500 Fifth Avenue
 Seattle, WA 98104

October 22, 2024

Port of Seattle
 PO Box 68727
 Seattle, WA 98168

On December 31, the term of the Interlocal Agreement for Jail Services between King County and your city will end. Our Department of Adult and Juvenile Detention (DAJD) has created a new Jail Services Agreement (JSA) template, which the County Executive has approved and transmitted for approval by the King County Council.

The proposed new JSA is substantially similar to the agreement that expires this year. DAJD is proposing a five-year term. While the King County Council has final authority on the proposed template, we have collaborated with Council staff on preliminary reviews and are not anticipating significant changes to the draft version attached to this letter. DAJD will reach out to you directly for signature on a new JSA once approved.

Should the proposed JSA be approved by Council, DAJD will apply the same annual inflator used in the current contract to create the 2025 rates. **The following are the proposed rates effective January 1, 2025, through December 31, 2025.**

Other Cities	2024 Base Rate ¹	Annual Increase ²	Est. CPI W ²	Base Rate Before Debt Svc.	ISP ³	2025 Final Rate
Daily Maintenance	\$259.14	1.50%	4.00%	\$273.39	\$5.21	\$278.60
Booking - Standard	\$277.99	1.50%	4.00%	\$293.28	\$-	\$293.28
Booking - Reduced	\$189.39	1.50%	4.00%	\$199.81	\$-	\$199.81
Psych Unit (Acute + Psych Other)	\$450.98	1.50%	4.00%	\$478.34	\$-	\$478.34
Acute Psych Housing	\$322.78	1.50%	4.00%	\$340.53	\$-	\$340.53
Psych Other⁴	\$128.20	3.00%	4.00%	\$137.81	\$-	\$137.81
Infirmary	\$418.16	3.00%	4.00%	\$447.43	\$-	\$447.43
1 on 1 Guarding Hrly	\$92.52	1.50%	4.00%	\$97.60	\$-	\$97.60

¹Prior years base rate, before the inclusion of the Courthouse Seismic Stabilization Project (CSSP) and Integrated Security Project (ISP) fees.

²Exhibit III Section 5 Inflatos and Re-Sets of Fees and Charges.

³Exhibit III Section 1, Maintenance Charge and Capital Expenditure Charge.

⁴Acute Psychiatric Care (Psych Unit) is comprised of the Acute Psychiatric Housing Surcharge and the Psych Other Surcharge.

The Exhibit III Calculation of Fees, Charges and Surcharges, in the JSA specifies the fees, charges and surcharges as well as the Offsite Medical Charges, that the City shall pay. In 2025, the debt service for the Integrated Security Project (ISP) is \$5.21.

Please call me at 206-263-2769 if you have any questions.

Sincerely,

Diana Joy

Diana Joy
Chief of Administration
King County Department of Adult and Juvenile Detention

Attachment: Proposed 2025 Jail Services Agreement

cc: Tami Schackman, DAJD Chief Financial Officer
Ladna Farah, DAJD Budget and Finance Manager
Kayleen Keating, DAJD Fiscal Specialist



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8g

ACTION ITEM

Date of Meeting December 10, 2024

DATE: November 22, 2024

TO: Stephen P. Metruck, Executive Director

FROM: Keri Stephens, Director, Aviation Facilities and Capital Programs
Eileen Francisco, Director, Aviation Project Management

SUBJECT: Variable Frequency Drives (VFD) Replacement Phase 2 (CIP #C800978)-Construction Authorization

Amount of this request: \$7,885,000

Total estimated project cost: \$10,500,000

ACTION REQUESTED

Request Commission authorization for the Executive Director to (1) advertise, award, and execute a construction contract for Variable Frequency Drives Replacement Phase 2 project, (2) authorize use of Port crews for abatement work, and (3) include a Project Labor Agreement for the contract. Total request for this action will be \$7,885,000 for a project total authorization of \$10,500,000.

EXECUTIVE SUMMARY

Variable Frequency Drives (VFD) are a motor control device that, for this application, modulate the Heating, Ventilation, and Air Conditioning (HVAC) fans, pumps, etc. allowing for better occupancy comfort. VFD Replacement Phase 2 project has identified 68 critical VFDs across the airport facilities that need to be replaced at an urgent priority since they are beyond their useful lives and prone to failure. These are old and obsolete VFDs with no replacement parts available and no longer supported by the manufacturer. Failure of a VFD will cause HVAC or plumbing systems to become non-operational, resulting in loss of proper ventilation, air flow, temperature, water flow, an increase in energy consumption, and poor passenger comfort.

JUSTIFICATION

Sporadic VFD failures have occurred in the past and since replacement parts are no longer provided by the manufacturer, shops need to search for parts to keep VFDs operational. Repair parts will be salvaged from the replaced VFDs and added to the Port’s spare parts inventory. Preventing VFD failure will avoid manual HVAC control that leads to poor passenger comfort and increased energy consumption. VFD failure can also lead to security issues if building pressurization affects door operation. The new VFDs will save electricity and natural gas by

Meeting Date: December 10, 2024

modulating motor speeds to meet the real-time demands. The recently completed and approved project drawings and specifications identified 68 VFDs in critical condition and in need of immediate replacement. There has been no change to the project budget of \$10.5M which was approved by airport leadership in Q1, 2023.

Diversity in Contracting

Through the Diversity in Contracting program, a Women and Minority Business Enterprise (WMBE) aspirational goal was evaluated and established at 8% which will be included in the procurement of the construction contract.

DETAILS

A Project Labor Agreement will be used for this project based on the importance of labor continuity and the need to minimize any risk of impact to operations during construction.

Scope of Work

The project will be replacing 68 critical VFDs that are beyond their useful lives and are subject to failure. These VFDs are located at multiple locations at the SEA such as parking garage, fuel farms, cooling towers, north toll plaza, concourses A, B, C, D, NSAT, SSAT, and main terminal.

The key elements of the project’s scope of work include, but are not limited to, the following:

- (1) Replacement of 68 VFDs per the phasing schedule.
- (2) Connection of VFDs to Port’s Building Automation System (BAS).
- (3) Provide wiring, testing, commissioning, and associated equipment for a fully functional system.
- (4) Replacement of electrical line and load conductors per electrical plans.
- (5) Salvage components from these existing VFDs and add those to Port’s spare parts inventory for use in other obsolete VFDs.

Schedule

Activity

Construction start	2025 Quarter 2
In-use date	2026 Quarter 3

Cost Breakdown

	This Request	Total Project
Design	\$0	\$2,615,000
Construction	\$7,885,000	\$7,885,000
Total	\$7,885,000	\$10,500,000

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ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Status Quo. Do not proceed with the project.

Cost Implications: Expenses incurred for notebook and design development approximately \$1,000,000 will need to be expensed.

Pros:

- (1) Capital investment won't be required.

Cons:

- (1) Obsolete VFDs are no longer supported by the manufacturer.
- (2) In case of a failure, the VFD will have to be controlled manually, resulting in poor passenger comfort and increased energy consumption.
- (3) Inventory for spare parts will be depleted.

This is not the recommended alternative.

Alternative 2 – Replace only 30 to 35 VFDs in order reduce the project budget.

Cost Implications: Capital investment of \$5,000,000.

Pros:

- (1) Lower capital cost due to reduction in scope of work.

Cons:

- (1) The cost per VFD will be higher.
- (2) This approach still leaves SEA vulnerable to VFD failures that may cause HVAC outages.
- (3) This approach doesn't provide a planned and sustainable asset management schedule.
- (4) The availability of spare parts will be lower.

This is not the recommended alternative.

Alternative 3 – Replace all of the proposed 68 VFDs.

Cost Implications: Capital investment of \$10,500,000.

Pros:

- (1) The cost per VFD will be lower.
- (2) The risk of VFD failure leading to system outages will be significantly lower.
- (3) The availability of spare parts will be higher.
- (4) Maintain passenger comfort

Cons:

- (1) Capital cost.

This is the recommended alternative.

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FINANCIAL IMPLICATIONS

<i>Cost Estimate/Authorization Summary</i>	Capital	Expense	Total
COST ESTIMATE			
Original estimate	\$4,300,000	\$0	\$4,300,000
Previous changes – net	\$6,200,000	\$0	\$6,200,000
Current change	\$0	\$0	\$0
Revised estimate	\$10,500,000	\$0	\$10,500,000
AUTHORIZATION			
Previous authorizations	\$2,615,000	\$0	\$2,615,000
Current request for authorization	\$7,885,000	\$0	\$7,885,000
Total authorizations, including this request	\$10,500,000	\$0	\$10,500,000
Remaining amount to be authorized	\$0	\$0	\$0

Annual Budget Status and Source of Funds

The Variable Frequency Drives (VFD) Replacement Phase 2 C800978 was included in the 2024-2028 capital budget and plan of finance with a budget of \$10,500,000. The funding source includes Airport Development Fund (ADF) and revenue bonds.

Financial Analysis and Summary

Project cost for analysis	\$10,500,000
Business Unit (BU)	Terminal Building
Effect on business performance (NOI after depreciation)	NOI after depreciation will increase due to inclusion of capital (and operating) costs in airline rate base.
IRR/NPV (if relevant)	N/A
CPE Impact	\$0.03 in 2027

Future Revenues and Expenses (Total cost of ownership)

The scope of the project is to replace existing equipment which is beyond useful life and not to introduce any additional assets. Replacement of the equipment will require a similar level of maintenance; therefore, AVM anticipates it will not have a material impact on O&M costs. The new VFDs will result in energy efficiency and reduction in greenhouse gas emissions as compared to the older technology VFDs. The calculations to determine the exact percentages will be performed during the commissioning phase.

ADDITIONAL BACKGROUND

47 critical VFDs were replaced in Phase 1 project which achieved substantial completion in Q4 2020. These were replaced using a phasing schedule where VFDs were grouped into summer, winter, and shoulder season for replacement. VFD locations included IWTP, Main Terminal, A & C Concourse, Central Plant, Cooling Tower, and Boiler Room. In addition to the 68 VFDs proposed

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in Phase 2 project, there are an additional 125 VFDs slated for replacement in Phase 3 project. The Phase 3 project (M03541) was approved for Status 2 by the Investment Committee on October 30, 2024. This project is estimated to finish in Q3 2028 and will complete the renewal and replacement of all the remaining Robicon VFDs.

ATTACHMENTS TO THIS REQUEST

- (1) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

June 27, 2023 – The Commission authorized for the Executive Director to (1) prepare design and construction bid documents for the Variable Frequency Drives (VFD) Replacement Phase 2 project; (2) utilize Port of Seattle crews to support design and pre-construction activities.

Variable Frequency Drives (VFD) Replacement Phase-2 C800978 | N06567

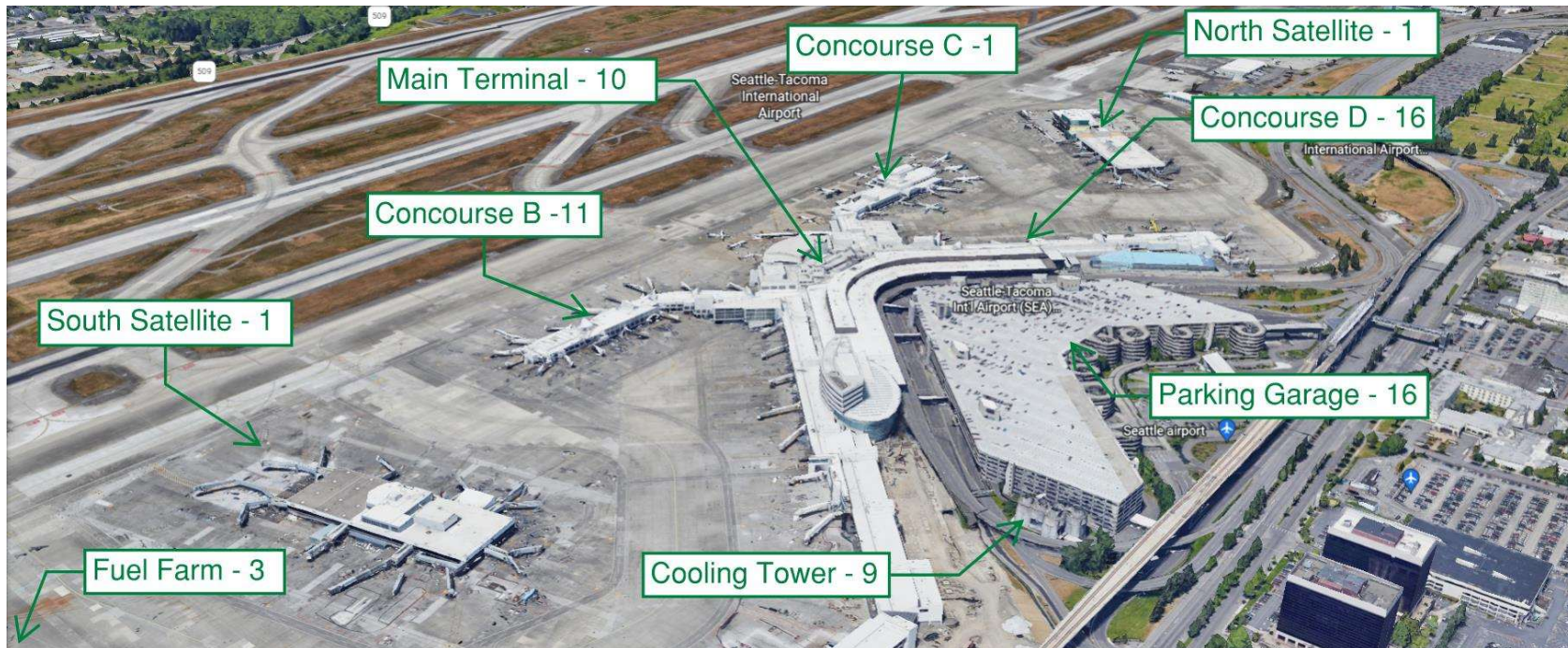
Trevor Emtman
AV-PMG

Item No. 8g
December 10, 2024



Project Scope

Replacement of the oldest and obsolete VFDs that are beyond their useful lives.



VFD (Variable Frequency Drive) is an energy conservation device that modulates the HVAC fans, pumps, cooling towers, etc. and allows for better occupancy comfort.

Project Justification

- The VFDs are obsolete and are no longer supported by the manufacturer.
- Failure of a VFD will cause HVAC or plumbing system to become non-operational, resulting in loss of ventilation air flow, temperature control, or water flow.
- Manual HVAC control (VFD failure) will result in poor passenger comfort and increased energy consumption, as well as security issues if building pressurization affects door operation.
- The VFDs with the highest risk of failure have been prioritized for this project.
- VFDs save energy by modulating motor speeds to meet real-time demand.

Schedule

	2022				2023				2024				2025				2026		
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
PLANNING																			
SD EXECUTED																			
DESIGN																			
CONSTRUCTION																			

Cx Design

Cx Construction

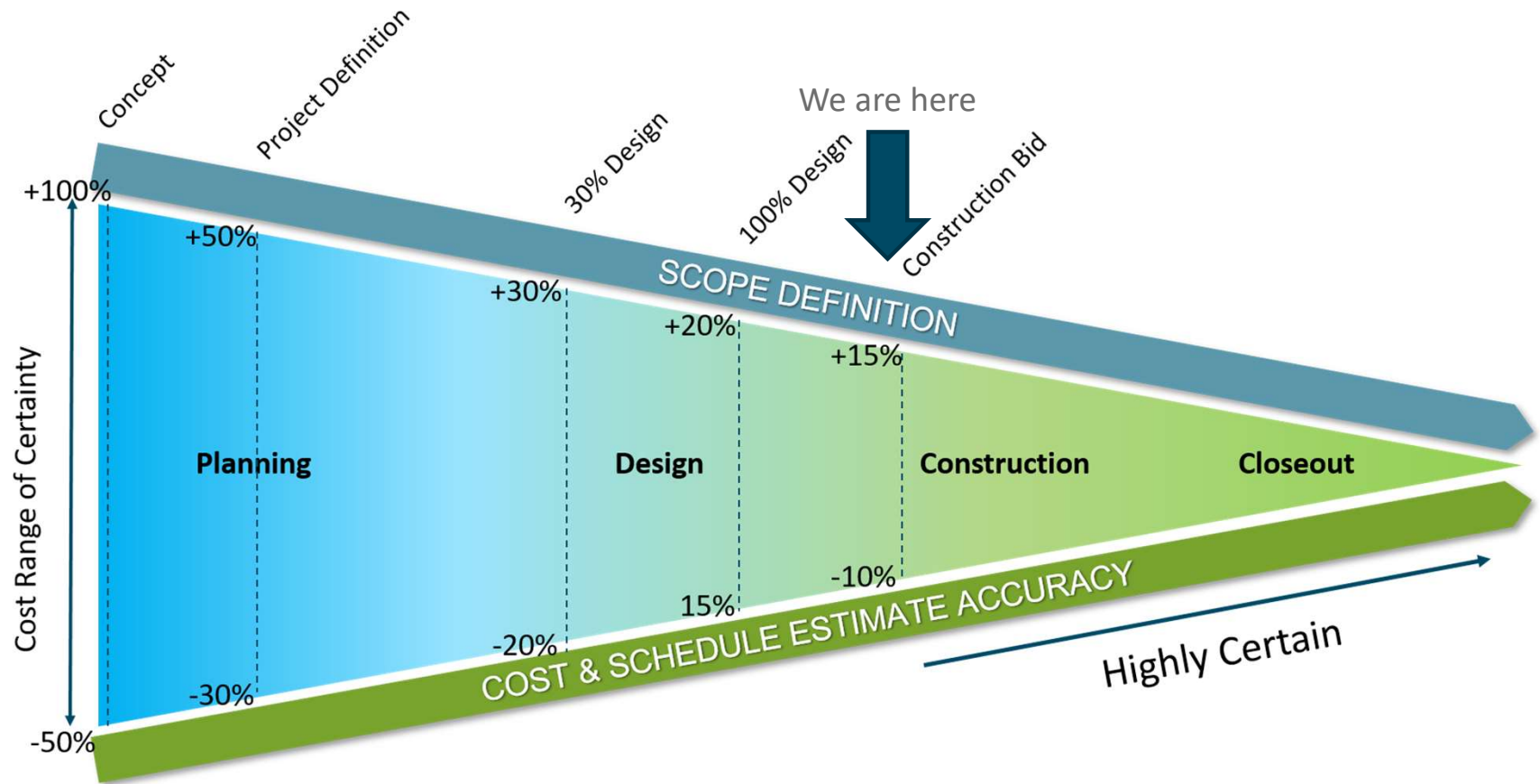
Substantial Completion

Requested Authorization

Authorization	Project Phase	Amount
Previous Authorizations	Notebook + Design	\$2,615,000
Current request for Authorization	Construction + Closeout	\$7,885,000
Total authorizations, including this request	Notebook + Design + Construction + Closeout	\$10,500,000
Remaining amount to be authorized	N/A	\$0

Note: There has been no change to the project budget since design authorization (06/27/2023)

Cone of Certainty



Requesting

- Commission authorization for \$7,885,000 to execute construction contract and use PORT crews for abatement work.
- Approval to increase the total project authorization to a total estimated \$10,500,000.

QUESTIONS?





**COMMISSION
AGENDA MEMORANDUM**

Item No. 8h

ACTION ITEM

Date of Meeting December 10, 2024

DATE: November 8, 2024
TO: Stephen P. Metruck, Executive Director
FROM: Kelly Purnell, Capital Project Manager
Jennifer Maietta, Director, Real Estate Asset Management

SUBJECT: Maritime Industrial Center Electrical Infrastructure Replacement (C801241)

Amount of this request: \$ 3,500,000
Total estimated project cost: \$ 15,908,000

ACTION REQUESTED

Request Commission authorization for the Executive Director to increase the project budget for the Maritime Industrial Center (MIC) Electrical Infrastructure Replacement project in the amount of \$3,500,000 for a total project authorization of \$15,908,000.

JUSTIFICATION

The project will include necessary upgrades to the electrical system by replacing current equipment that is dangerous to work on and at risk of failure. This investment will increase the asset value of the MIC by ensuring that the site facilities are functioning well and efficiently, removing dangerous water intrusion into electrical areas, and increasing the reliability of power to the Port’s tenants. Additionally, the upgraded electrical equipment will provide the flexibility to utilize electrical capacity for additional future sustainable EV charging capabilities and potential additional shore power that is not currently possible with the existing equipment.

Additional funding authorization is needed to proceed with awarding and executing a design-build construction contract to complete the critical upgrades provided by the MIC Electrical Infrastructure Replacement project. Both proposals that were received in response to the Request for Proposal (RFP) exceeded the Engineers Estimate by 49% or greater. Since both proposals exceeded the Engineer’s Estimate, the selection team followed the procedure outlined in the RFP and awarded the contract to the proposer that received the highest technical score and has offered a fair and reasonable price.

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The selected team scored Acceptable, Good, or Outstanding in each of the selection criteria and provided improvements to the infrastructure scope. The proposal shows an early completion of approximately one (1) month, and a solution that significantly reduces operational impacts to the MIC property tenants and fishermen that will utilize the piers during construction.

Additionally, this request authorizes additional funds for the electrical equipment Contract No. C-00321766 to provide additional budget for temporary storage of the equipment and a scope change to include code required changes.

Diversity in Contracting

There are multiple elements within the scope of this project that will provide WMBE business opportunities. The Design Build effort has a goal of 12% WMBE participation rate. The selected team has committed to exceeding this goal with a total inclusion commitment of 13.78%. This commitment is split between seven (7) companies.

DETAILS

Scope of Work

The project consists of demolishing existing switchboards, structural concrete pads, and a 1940's era steel oil shed; decommissioning conduits and wire; and replacing all with new structural infrastructure, conduits, wires, switchboards, and associated equipment. The switchboards will be upsized from existing capacity of between 400 and 600 amps to 2000 amps for the smaller switchboards and from 2500 Amps to 4000 Amps for the main switchboard for future capacity needs (e.g., EV chargers, shore power). This project will not increase the electrical load at the site at this time.

The following electrical equipment will be replaced (owner furnished equipment procured under Contract No. C-00321766):

1. Switchboard 4SP and 2SPN (service entry to site)
2. Switchboard 4W and 2W (Mooring Pier) installed as make-ready only due to bulkhead wall conditions
3. Switchboard 4P and 2P (wharf - NE side of Building A-1)
4. Switchboard EY4 (east side of Building A-1)
5. Switchboard SEY4 (lighting connection for east lot)
6. Switchboards EY4 and SEY4 will be consolidated with 4P and 2P in one location that has better access. Additionally, this will eliminate a stormwater intrusion point at EY4.

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Site work:

1. Provide new conduits and conductors from Seattle City Light to new MIC main distribution switchgear.
2. Provide new conduits and conductors from new MIC main distribution switchgear to:
 - a. New electrical switchboard at Mooring Pier
 - b. New electrical switchboard at Wharf
3. Provide new electrical vaults.

Schedule

Activity

Commission design authorization	October 11, 2022
Design start	October 21, 2022
Commission authorization for major electrical equipment procurement	March 28, 2023
Commission authorization for additional electrical equipment procurement funds	November 14, 2023
Commission construction authorization for Design-Build contract	March 28, 2024
Commission authorization for additional funds to award and execute Design-Build contract – this request	December 10, 2024
Construction Start	2025 Quarter4
In-Use Date	2026 Quarter 2

Cost Breakdown

	This Request	Total Project
Design	\$0	\$1,738,000
Electric Equipment Procurement – C801241	\$150,000	\$3,760,000
Construction	\$3,350,000	\$10,410,000
Total	\$3,500,000	\$15,908,000

Previous authorizations included estimated design costs and procurement costs of the major electrical equipment. This authorization includes \$150k for the electrical equipment contract to cover a small change order in the equipment, and to provide previously excluded contingency to mitigate risk of issues during manufacturing and potential need for temporary storage. This authorization also includes \$3.35M for design and construction to award and execute a Design-Build contract to the successful bidder. Increased costs are due to on-going construction market volatility and increased awareness and inclusion of costs for risks associated with subsurface excavation on industrial waterfront properties. Higher than anticipated costs for deep excavation of trenching in a highly constrained site likely contributed to the higher costs. Design-Build is more efficient and mitigates construction risk, but upfront costs are often higher due to designer

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fee allowances, costs to develop the Basis of Design (BOD) and the RFQ/RFP documents, and inclusion of the cost of anticipated risks that the contractor must own.

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Cancel or defer the project.

Cost Implications: Approximately \$2.4M would need to be expensed. It is also likely cost recovery would not be feasible for remaining value of \$2.17M owed on owner-furnished electrical equipment due to the equipment currently being in manufacturing.

Pros:

- (1) Retain Port capital for other priority projects and financial initiatives.

Cons:

- (1) The equipment cannot currently be serviced safely.
- (2) The equipment is already in a state of advanced disrepair due to the proximity to maritime environment and areas of stormwater intrusion.
- (3) If the equipment fails, a long-term diesel generator will be required to provide power to the tenants. This will impact air quality and cost significantly more over time, in large part due to high fuel costs.
- (4) Major electrical equipment is on order and would need to be stored long-term until project is built.
- (5) Does not allow for streamlining of design and construction of the of the project. Creates more risk for change orders during construction.

This is not the recommended alternative.

Alternative 2 – Rebid the project with scope reduction.

Cost Implications: \$200,000 to \$1,000,000

Pros:

- (1) Will meet Century Agenda goals of investing in maritime industries.

Cons:

- (1) This will delay the project another 4-6 months due to scope reduction, revision of procurement documents, and re-advertising the project, and completing all required components of the Design-Build procurement process.
- (2) Unlikely to result in a cost reduction and could increase project costs overall due to schedule delay, rework of procurement documents, and potential construction market volatility impacts.

This is not the recommended alternative.

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Alternative 3 – Continue with the current proposal.

Cost Implications: Increase of \$3.5M to the current budget

Pros:

- (1) Advances Century Agenda goals and Maritime Division strategic goals.
- (2) Upgrades and replaces degraded electrical infrastructure that is not safe to maintain and does not meet current National Electrical Code (NEC) standards.
- (3) Reduces potential construction escalation costs due to market volatility.
- (4) Will provide for a stronger tenant experience by increasing power reliability and resiliency.
- (5) Will provide for additional electrical capacity for additional future EV charging and possible increased shore power.
- (6) Streamlines construction logistics between for the electrical replacement and provides construction risk mitigation due to complex site conditions and operational constraints.
- (7) Minimizes operational impacts by having a Design-Build contractor engage earlier in the project to plan the best construction methodology prior to construction.
- (8) Maintains construction schedule that avoids operational impacts during fishing season.
- (9) Exceeds WMBE aspirational goal.

Cons:

- (1) Additional capital investment.

This is the recommended alternative.

FINANCIAL IMPLICATIONS

Cost Estimate/Authorization Summary

COST ESTIMATE	Capital	Expense	Total
Original estimate	\$1,500,000	\$0	\$1,500,000
Previous Changes - Net	\$10,908,000	\$0	\$10,908,000
Current Change	\$3,500,000	\$0	\$3,500,000
Revised estimate	\$15,908,000	\$0	\$15,908,000
AUTHORIZATION			
Previous authorizations	\$12,408,000	\$0	\$12,408,000
• Design	\$850,000	\$0	\$850,000
• Electrical Equipment Procurement	\$3,610,000	\$0	\$3,610,000
• Design-Build Funding	\$7,948,000		\$7,948,000
Current request for authorization	\$3,500,000		\$3,500,000
• Design-Build Funding	\$3,350,000		\$3,350,000
• Electrical Equipment Procurement	\$150,000	\$0	\$150,000

Meeting Date: December 10, 2024

Total authorizations, including this request	\$15,908,000	\$0	\$15,908,000
Remaining amount to be authorized	\$0	\$0	\$0

Annual Budget Status and Source of Funds

This project was included in the 2024 Capital Plan under Maritime Industrial Center Electrical Infrastructure Replacement (C801241) at an estimated total project cost of \$7,179,000. The project has been included in the draft 2025 Capital Plan under C801241 with a total project cost of \$9,640,000. Additional funding for the project will be provided from C800002 Maritime Reserve.

This project will be funded by the General Fund.

Financial Analysis and Summary

Project cost for analysis	\$15,908,000
Business Unit (BU)	Maritime Portfolio Management, and Ship Canal Fishing & Commercial
Effect on business performance (NOI after depreciation)	Annual depreciation will increase by approximately \$514K based on estimated 30-year service life, thereby reducing the NOI by the same amount.
IRR/NPV (if relevant)	NA
CPE Impact	NA

Future Revenues and Expenses (Total cost of ownership)

This project will provide for reliable and resilient electrical power to the MIC facilities for the next 25-30 years. These upgrades will provide protection of Port assets and extend their useful life, provide for additional future electrical capacity to support Port sustainability goals, and increase economic development potential. Maintaining existing assets will preserve the economic vitality of our operations and serve the Port, tenants, and their customers well by providing a safe and sustainable working environment.

ADDITIONAL BACKGROUND

N/A

ATTACHMENTS TO THIS REQUEST

None.

Meeting Date: December 10, 2024

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

October 11, 2022 – The Commission authorized design for design-bid-build.

March 28, 2023 – The Commission authorized procurement of the electrical equipment for \$1,800,000.

November 14, 2023 – The Commission authorized additional funds for the electrical equipment procurement in the amount of \$1,810,000.

March 26, 2024 – The Commission authorized Design-Build funds in the amount of \$7,948,000

Maritime Industrial Center Electrical Infrastructure Replacement

Design-Build Additional Funds Authorization

Kelly Purnell – Capital Project Manager

Jennifer Maietta– Director, Real Estate Asset Management (Sponsor)

CIP # C801241



Action Requested

Request Commission authorization for the Executive Director to:

1. Increase the project budget for the Maritime Industrial Center (MIC) Electrical Infrastructure Replacement project in the amount of \$3,500,000. This request includes:
 - a. \$3,350,000 for design and construction;
 - b. \$150,000 for the electrical equipment procurement Contract No. C-00321766 for temporary storage of the equipment and a code required change order.

Amount of this Request: \$3,500,000

Total Estimated Project Cost: \$15,908,000

Overview

- Design-Build project delivery
 - Design-Build will allow for cost certainty earlier and provide for more informed decisions before going to construction
 - Minimizes risks associated with site, operational constraints and other projects early through early contractor engagement.
 - Two (2) qualified bidders
 - Bidder candidate #1 – 49% over Engineers Estimate (Selected)
 - Best value proposal
 - Scored the highest during proposal evaluation
 - Proposal exceeds requirements of basis of design
 - Offers solution that significantly reduces operational impacts during construction
 - Lowest price proposal
 - Bidder candidate # 2 – 98% over Engineers Estimate

Project Scope – Electrical Replacements

- Demolition of (4) existing switchboards and associated equipment
 - Scope to replace the 5th switchboard (mooring pier) has been deferred due to risk associated with proximity to degraded bulkhead walls
- Demolition of oil shed
- Install (5) new switchboards and associated equipment
 - Replace primary switchboards 2SPN and 4SP
 - Install as make-ready only due to proximity to degraded bulkhead walls. Maintain operability of existing equipment.
 - Replace wharf switchboards 4W and 2W
 - Replace switchboards 2P, 4P, EY4, SEY4
- Install new conduit duct banks and vaults
- Potential for contaminated soil remediation

Cost Increase

- Continued construction market volatility
- Risks associated with significant subsurface excavation work

Funding

Cost Estimate/Authorization Summary	Capital	Expense	Total
COST ESTIMATE			
Original estimate	\$1,500,000	\$0	\$1,500,000
Previous changes - Net	\$10,908,000	\$0	\$10,908,000
Current change	\$3,000,000	\$0	\$3,000,000
Revised estimate	\$15,408,000	\$0	\$15,408,000
AUTHORIZATION			
Previous authorizations <ul style="list-style-type: none"> • Design • Electrical Equipment Procurement • Design-Build Funding 	\$12,408,000 \$850,000 \$3,610,000 \$7,948,000	\$0	\$12,408,000 \$850,000 \$3,610,000 \$7,948,000
Current request for authorization <ul style="list-style-type: none"> • Electrical Equipment Procurement • Design-Build Funding 	\$3,500,000 \$150,000 \$3,350,000	\$0	\$3,500,000 \$150,000 \$3,350,000
Total authorizations, including this request	\$15,908,000	\$0	\$15,908,000
Remaining amount to be authorized	\$0	\$0	\$0

Preliminary Schedule

Commission design authorization	October 11, 2022
Authorization for major electrical equipment procurement	March 28, 2023
Authorization for additional electrical equipment procurement funds	November 14, 2023
Construction authorization for Design-Build contract	March 28, 2024
Authorization for additional funds to award and execute Design-Build contract – this request	December 10, 2024
Construction Start	2025 Quarter 4
In-Use Date	2026 Quarter 2

Current Tenant Mix

- Building A-1:
 - Mix of storage, warehouse, repair and maintenance shops, silk screen printing
- Building A-2, yard and moorage:
 - Boat yard and marine services (metal fabrication, woodwork, heating and cooling, electronics)
- Building A-3, A-4, A-5, yard and moorage:
 - Fishing vessel support operations

Current Tenants

MIC Tenant	Space Type	Industry/Use
Bristol Wave Seafoods, LLC	Industrial	Boatyard, fishing industry
Alliant Marine Group, LLC	Industrial	Boatyard, recreational vessels
Biely & Shoaf Co.	Warehouse and office	Distribution logistics
Three By Three, Inc	Warehouse	Distribution logistics
Washington State Dept. of Fish & Wildlife	Offices and storage	Law enforcement and biology
Silver Bay Seafoods, LLC	Industrial	Fishing operations
DC Diesel, LLC	Industrial	Marine engine repair
Oxford Screen Printing	Industrial	Commercial printing
Shelford's Boat, Ltd	Storage	Fishing operations
International Pacific Halibut Commission	Storage	Maritime non-profit
Alaskan Leader Fisheries LLC	Storage	Fishing operations

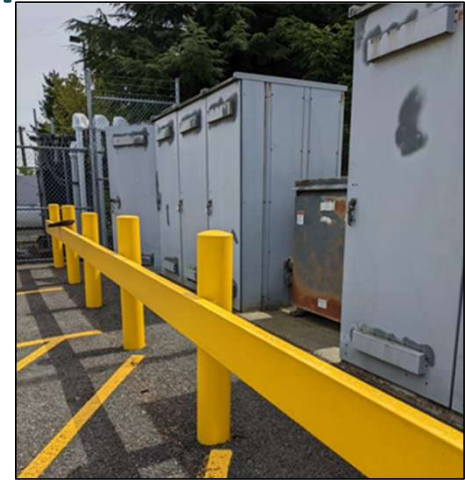
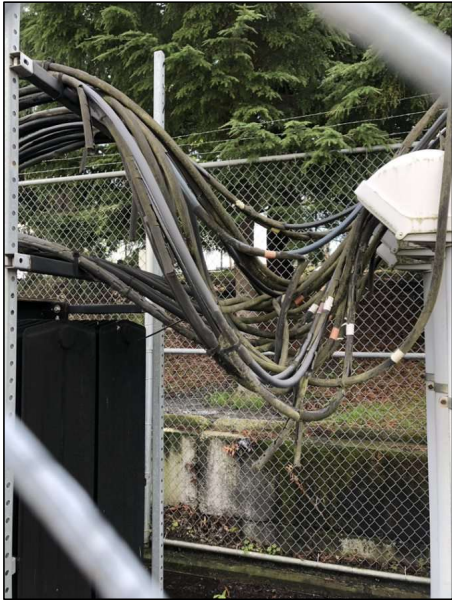
Project Location



2700 W Commodore Way, Seattle, WA 98199

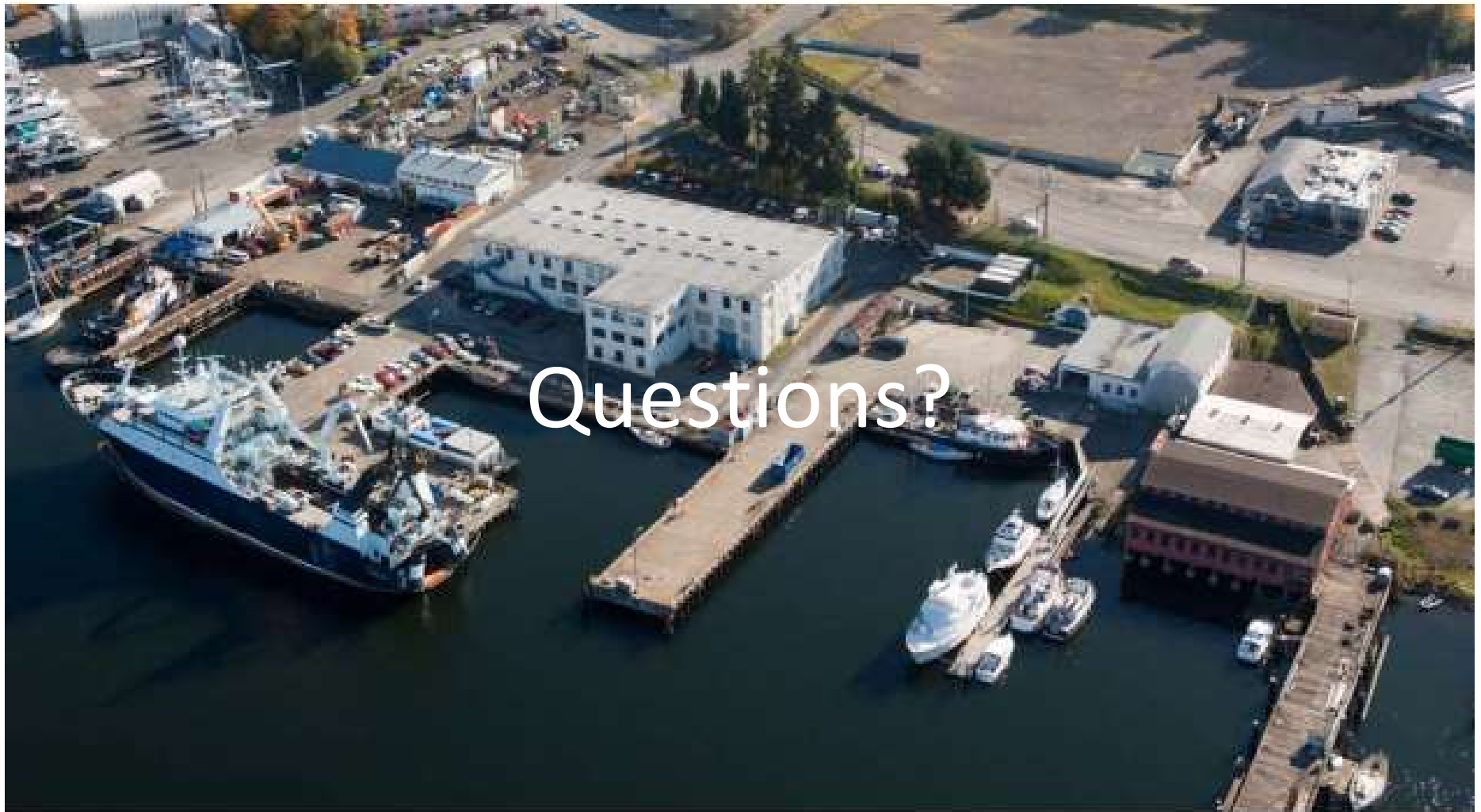
Current Condition - Electrical

- Significant corrosion
- Stormwater intrusion
- Degraded protective coatings
- Decaying structural pads



Project Risks

RISKS	DESCRIPTION	PROBABILITY	IMPACT	MITIGATION
Operational Constraints	Impacts to tenants, fishing fleet, and Port operations at the site during construction are likely due to very constrained site access and operating space.	Med ●	High ●	Transition project to Design-Build to incorporate construction methodology early
Power interruptions to buildings/operations	Power will need to be interrupted at the site when installing and switching over to new equipment.	High ●	Med ●	Transition project to Design-Build to incorporate construction methodology and temporary power logistics early.
Long lead equipment procurement delays	Electrical equipment supply chain has been impacted for years due to high demand and lingering Covid disruptions. Procurement lead times are 65-80 weeks. Delays could impact construction.	Med ●	High ●	Port is acquiring equipment in advance to mitigate additional delays that would occur by waiting for contractor. Delivery and transfer of equipment to contractor will be included in RFP documents for Design-Build.
1940's and 1950's era sea wall	Two of the sea walls at the property are past typical lifespans for category of structures. Trenching must occur in proximity and risk of damage exists	Med ●	High ●	Avoidance of sea wall tie-backs in locating equipment, and minimize trenching as feasible. Transition project to Design-Build to incorporate construction methodology early.
Other projects on-site	Other projects (stormwater improvements, EV Charger) are scheduled on the property and could cause more complexity in constructing electrical, impacting schedule and cost.	Med ●	High ●	Transition project to Design-Build to incorporate construction methodology early. Close coordination with other project design and construction teams.
Unforeseen environmental costs	Site is an old Coast Guard Facility and is across the street from an old petroleum company. Unknown soil contamination may exist that was not captured in geotechnical analysis.	Low ●	Med ●	Contingency budget associated with unanticipated soil remediation.
Permitting	Delays in permitting due to design issues	Med ●	Med ●	Submit for shoreline and SEPA exemptions before project goes to a Design-Build contractor. Have contractor obtain grading/building permits.





**COMMISSION
AGENDA MEMORANDUM**

Item No. 8i

ACTION ITEM

Date of Meeting December 10, 2024

DATE: December 10, 2024
TO: Stephen P. Metruck, Executive Director
FROM: John Flanagan, Senior State Government Relations Manager
SUBJECT: Adoption of 2025 State Legislative Agenda

ACTION REQUESTED

Request Commission adoption of the Port’s 2025 State Legislative Agenda and authorization for staff to advocate on the agenda during the 2025 Legislative Session.

EXECUTIVE SUMMARY

Since the end of the 2024 state legislative session in Olympia, staff from the Government Affairs team has been working with subject-matter experts across the Port, members of the Executive Leadership Team, staff from the Commission office, and the Commissioners themselves to develop a legislative agenda for the 2025 legislative session.

An initial staff briefing for commissioners was conducted on November 19th. Following that briefing, the Port’s Sr. State Government Relations Manager has been working to integrate suggestions from Commission and staff, which are included in this document.

2025 State Legislative Agenda

In general, and across the entirety of our state-level advocacy, the Port will seek to support state-level action that preserves local values. Those values include, but are not limited to:

- Respect for Tribal Sovereignty;
- Protection of the environment and natural resources;
- Adherence to established labor standards;
- Creating equitable economic opportunity; and
- The preservation of human rights.

Where possible, Port staff will seek opportunities for joint advocacy and collaboration with the Northwest Seaport Alliance, the Washington Public Ports Association, and individual port districts espousing the same values.

Priority Agenda Items

Economic Development & Workforce

Encouraging Tourism

- Support industry-endorsed legislation allowing the establishment of Tourism Improvement Districts (TIDs) and establishing a process for assessed businesses to enact self-assessment fees. In addition to revenue generated within TIDs, advocate for an ongoing operating budget allocation to support a sustainable and competitive State Tourism Program in Washington.
- Monitor the rollout of the Department of Natural Resources' 'Safe and Sustainable Recreation' program and support agency requests related to implementation.
- As necessary, pursue funding to get the region 'World Cup ready', and support joint efforts to pursue legacy projects that will benefit the region long after the games are over.

Green Jobs

- Advocate for additional and ongoing funding to support the State's 'Green Jobs & Infrastructure' Program.

Childcare Access

- Support policies and programming that increase access to and improve affordability of childcare for parents that work primarily at a Port-owned or Port-controlled facility.

Support for Business & Innovation

- Advocate for the continuation or establishment of programs that champion innovation, aid the global competitiveness of the region, and provide critical support to international business. This includes support for pre-application services and other programming designed to assist overburdened and underserved communities in accessing resources.
- Work with the incoming Ferguson administration to create or enhance programs supporting economic development and domestic manufacturing. Support the creation of additional tools to empower the State's economic development agencies to increase equitable economic opportunity, including direct support for business and manufacturing.

Aviation

Shared Advocacy: StART Communities & the Port

Support the full set of shared State Policy Priorities developed by Port staff and the community representatives of the SEA Stakeholder Advisory Round Table (StART) Committee. That list includes:

- Effective implementation of the Noise Insulation Repair and Replacement Program;

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- Making tangible progress towards identifying additional regional airport capacity;
- Sustaining existing State programs to enhance air quality;
- Maintaining and expanding sustainable aviation fuel (SAF) production and use in Washington; and
- Decarbonizing ground transportation, reducing airport emissions, and supporting electrification.

Sustainable Aviation Fuels

Similarly, support the full set of updated legislative recommendations from the WSU Alternative Jet Fuel Work Group. Those recommendations include:

- Preservation of existing SAF incentives;
- Enacting new Property / Leasehold Tax Exemptions for SAF Facilities;
- Creating a SAF Infrastructure Grant Program;
- Amending an existing Construction Sales Tax Deferral program to include SAF facilities; and
- Streamlining permitting processes for SAF facilities.

Sustain funding for WSDOT’s **Sustainable Aviation Grant Program**.

Continue to monitor any changes to the State’s **Clean Fuel Standard** to ensure that those changes do not improperly disadvantage SAF production and use.

Aviation & Environment

Pursue inclusion of language in the biennial budget to direct the use of **previously diverted Aviation Fuel Sales Tax Revenue** towards environmental cleanup efforts at airport facilities.

Continue to advocate for improvements to statewide **sustainable waste management** standards, including by establishing new extended producer responsibility for packaging policy, elevating minimum post-consumer recycled content requirements, and supporting organics management and composting system improvements.

Transportation

Revenue & Funding Models

Given major funding challenges across the entirety of the Transportation Budget, the Legislature is likely to introduce several competing proposals aimed at addressing shortfalls this session. Generally, the Port has supported transportation revenue and funding models that:

- Benefit freight mobility;
- Enhance competitiveness of the gateway;
- Prioritize multimodal transportation; and
- Continue the work of decarbonizing our transportation system and reducing local transportation-related emissions.

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In the coming session, the Port will advocate for well-balanced revenue proposals that create funding capacity without impairing other priorities.

The Port will also support legislation to:

- Enable the use of **‘public-private partnership’ (P3) models** to fund transportation projects;
- Create a **‘supply chain competitiveness’ funding program** benefitting ports; and
- Enable effective **implementation of the Port’s Order to Expand Alternative Transportation Options** for Airport Workers. This is likely to include:
 - Extending the existing commute trip reduction incentive program;
 - Amending existing definitions to allow the Port’s program to qualify for incentives;
 - Ensuring that the Port is eligible for existing grant programs (like the Regional Mobility Grant Program);
 - Seeking clarification from the Utilities and Transportation Commission regarding provision of transportation services by similarly situated entities.

Major Transportation Projects

The Port will advocate for:

- Any legislative or budgetary changes that are necessary to ensure completion of the **Puget Sound Gateway Project** without additional delays;
- Small, but meaningful, investments in projects recommended by the joint WSDOT/Port of Seattle Corridor Study on **SR 518** that was completed in 2020;
- Funding to support mitigation efforts related to the ongoing **‘Revive I-5’** project; and
- Preservation of existing transportation investments in **high-speed rail**.

Environment & Energy

Clean Energy Siting

The Port will:

- Continue to broadly support statewide efforts to site clean energy facilities, and will seek to assess the feasibility of constructing and maintaining clean energy production facilities for its own use;
- Seek to participate in legislative proposals related to the Department’s ‘Considerations for Consolidating Clean Energy Permits and Applications’ report as well as the ‘Clean Energy Siting Council’s Annual Legislative Report Draft Recommendations’ to reinforce formal comments submitted to the State Department of Ecology in July;
- Ensure that funding is available for the work of the Blue Wind Collaborative to assess and support the offshore wind supply chain;
- Advocate broadly for policy and budgetary solutions that benefit the construction of transmission infrastructure and grid modernization and resiliency; and

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Sustainable & Decarbonized Maritime

Secure additional investment in the work of the **Sustainable Maritime Fuels Collaborative**, and in close coordination with partner organizations, support all efforts to incentivize the production and use of Sustainable Maritime Fuels (SMFs) in Washington. The Port will monitor existing and emerging clean fuels policies to ensure that SMFs are broadly included.

Request additional and ongoing funds for the **Port Electrification Grant Program** (including a set-aside benefitting shore power for cruise operations) and enacted Zero-emission Medium and Heavy-Duty Truck (**MHD ZEV**) incentives and programming.

Stormwater

In partnership with the Northwest Seaport Alliance and the Port of Tacoma, support legislation to establish a less onerous compliance pathway that affords protection from legal liability in certain situations for regulated entities under the updated **Industrial Stormwater General Permit (ISGP)**.

Public Safety

The Port will continue to participate in discussions with the State Auditor’s office as they seek to update the State’s system for **civil asset forfeiture** proceedings and outcomes. As in prior years, the Port will continue to pursue legislation that gives the Port additional flexibility in the use of revenue from civil asset forfeiture proceedings.

In partnership with relevant state agencies, the Port will assess, and pursue as necessary, legislation to **enable additional enforcement authority** on roadways that are jointly monitored and controlled by the Port and State.

Tax & Revenue

Support efforts by partner local governments to reform the state and local property tax, including efforts to **raise or eliminate the local property tax levy cap**.

Continue to seek improvements to the state’s **Tax Increment Financing (TIF)** framework with the overall goal of diminishing the Port’s possible exposure to revenue diversion.

Governance

Support joint efforts by the Public Ports Association, Association of Cities, and Association of Counties to **limit Public Records Act violations** by local governments and special purpose districts that are engaged in ‘good faith efforts’ to respond to records requests.

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In direct response to the recent cyber-attack that continues to impact port operations, explore opportunities to **update emergency powers statutes** to grant the Port expanded authority comparable to other local government entities.

Pursue administrative changes to allow public employees that are already accessing **PERS benefits** to continue accruing service hours if they are elected to serve as a Port Commissioner.

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Legacy Agenda Items

Legacy Issue Area 1: Economic and Workforce Development

Continue to support economic and workforce development proposals that are consistent with Goals 1, 2, 3, 5, and 6 of the Port’s Century Agenda with a focus on policies and programs that prioritize equity, foster innovation, and create quality and sustainable jobs in the region.

Advocacy will include support for:

- Partnerships that benefit the growth of port-related industries and expansion of state-level worker training programs in those industries;
- Career-connected learning and work-based learning programs that seek to expose K-12 students to professions in port-related industries, including ongoing support for CORE PLUS programming;
- Continuation and expansion of pre-apprentice and apprenticeship programs in a responsible manner;
- Efforts to expand the trucking and logistics workforce, including increasing the supply of Commercial Driver’s License (CDL) holders and drivers, with a specific focus on those serving port operations;
- Programs that prioritize equitable recruitment, training, and retention of workers representing diverse populations;
- Policy solutions that connect port-adjacent communities to economic opportunity and ‘prosperity-in-place’;
- The continued enforcement of responsible labor standards;
- Increased state-level investments to promote and grow the tourism industry in Washington;
- Investments in broadband infrastructure and digital equity programming, including the use of state funds as ‘match dollars’ for federal programs;
- Rural economic development initiatives, including those that benefit small manufacturers and domestic manufacturing generally, investments in freight corridors serving rural areas, rural tourism, and support for associate development organizations;
- Proposals that reduce structural barriers, prioritize equitable working conditions, promote the success of small businesses, and benefit minority and women-owned enterprises;
- The repeal of I-200, efforts to implement Executive Order 22-02, and outcomes resulting from the ongoing work of the Governor’s Statewide Diversity, Equity, and Inclusion Council;
- Statewide contracting practices and programs that increase flexibility for public owners while also supporting small, minority, and women-owned businesses, and increasing opportunity and access for those businesses;
- Creating state-level programs geared towards assisting businesses owned by woman, minority, and veteran populations and rural small businesses that traditionally struggle to access available public resources.

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The Port will continue to monitor and engage in legislative efforts that address emerging trends in labor relations.

Legacy Issue Area 2: Energy, Climate, Environment, and Habitat

Continue to support state-level policies regarding energy, environment, sustainability, climate, and habitat that serve Goals 4 and 5 of the Port’s Century Agenda. Advocate for policy and budgetary solutions that promote the adoption and implementation of clean energy, phase-down the State’s reliance on fossil fuels, reduce emissions, and improve environmental outcomes.

Advocacy will include support for:

- Promotion of the use of low- and zero-carbon fuels for transportation, providing low or zero emission transit options, and otherwise aiding the continued reduction in the cost of low- and zero-carbon energy sources;
- Technologically neutral strategies that lower emissions and ensure that clean fuels regulations do not frustrate their own purposes;
- Policies that promote the use of clean energy technology, promote the development of in-state renewable energy, build energy efficiency, and support a statewide reduction in greenhouse gas emissions while enforcing statewide goals for clean power, and that can be implemented in ways that leverage our state’s competitiveness, maintain the efficient operation of essential public facilities such as airports and seaports, and support social equity in the private sector;
- Proliferation of sustainable aviation fuels, including support for SAF infrastructure programs and any necessary adjustments to existing incentives;
- Likewise, programs to support the proliferation of sustainable maritime fuels and other non-emitting maritime technologies, including support for all necessary storage, bunkering, and other infrastructure;
- On-dock decarbonization programs and incentives;
- Programs and policies geared towards ‘Scope 3 emissions’;
- Programs benefitting Puget Sound health, including water quality, habitat restoration, cleanups, stormwater, underwater noise reduction, and programs related to Southern Resident Killer Whale (SRKW) recovery, including support for additional Quiet Sound funding;
- Maintaining funding for programs associated with the Model Toxics Control Act (MTCA) that assist the Port in its efforts to promote environmental stewardship, including cleanup grants, public participation grants to community organizations, and benefitting voluntary, expeditious cleanup of habitat restoration and/or shoreline public access projects in underserved communities;
- Streamlining and providing robust state funding for the Department of Ecology’s wetland mitigation banking program so that cost-effective and large-scale compensatory mitigation projects can be built in advance of permitted impacts;

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- Programs and legislative solutions to address derelict vessels on port and port-adjacent properties;
- Efforts to increase climate resiliency, including through implementation of recommendations in the State’s recently published Climate Resilience Strategy and investments in resilience in the transportation network serving ports, in collaboration and partnership with local governments;
- Policies that reduce air emissions and pollution for passengers and employees traveling to and from Port facilities, including promoting and improving the efficiency of public transportation and public transit;
- Continuing state partnerships to reduce emissions from waterfront operations while maintaining an international competitive edge, including partnerships to support electric transmission infrastructure development, regarding innovation in the clean maritime sector, and in the State’s ongoing Maritime Blue 2050 initiative;
- Responsible and thoughtful implementation of statewide environmental justice standards, including support for state-agency efforts to build intersectionality directly into programming, advocacy to ensure that state agencies adhere to standards for investment in overburdened communities and vulnerable populations that are set in current law, establishing adequate enforcement mechanisms, and providing necessary resources; and
- the Washington Conservation Corps (WCC) program, including creating opportunities to integrate WCC staff into Port operations and programs.

Legacy Issue Area 3: Transportation

Support transportation policy that is consistent with Goals 1, 2, and 4 of the Port’s Century Agenda, emphasizing the importance of proposals supporting freight mobility, enhancing competitiveness, aiding multimodal transportation, and continuing to decarbonize.

Advocacy will include support for:

- Investments in transportation networks serving essential public facilities with specific emphasis on funding needed for upgrades to near-port facilities;
- Proposals speeding the movement of freight and passengers from origin to destination through seaport and airport facilities, and improving trade competitiveness of the state and the Port’s gateway;
- Ongoing efforts to address the major deficit of truck parking in the region and to expand the number of areas set aside for the needs of commercial truck operators;
- Continued promotion of Washington as an international trading partner, including support for the state’s exporters and ensuring that transportation facilities supporting trade are modern, world-class, and operate efficiently;
- Proposals to clarify and affirm the authority of the Port Commission to control access to port facilities by all transportation modes (including private vehicle access, commercial ground transportation providers, and public transportation providers), and promoting fairness and equity among transportation service providers, in support of responsible

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operation in all areas of regulation, including insurance, monitoring, safety, and environmental standards;

- State engagement relating to increasing passenger vessel routes operating in Puget Sound, provided that any increased vessel traffic is accompanied by mitigation;
- Regional conversations related to innovative transportation partnerships that will help alleviate congestion on roadways and in airports, and reduce emissions associated with the transportation sector;
- Continuation of programs that incentivize the adoption and use of electric vehicles;
- Coordinated approaches to regional transportation planning, including aviation planning;
- Continued progress regarding airport siting or expansion and the efforts of the Commercial Aviation Work Group (CAWG);
- State-level actions to advance planning for major transportation projects, provided that planning efforts account for impacts to the broader transportation network and consider effects to adjacent areas;
- Investments in multimodal and active transportation infrastructure that prioritize safety, increased choice, and efficient movement of freight and all users; and
- Promotion of state agency efforts benefitting REAL ID compliance.

Participate in, and monitor, conversations regarding transportation revenue and revenue-generating policies, advocating that policies prioritize and uphold economic competitiveness and do not disadvantage the efficient movement of goods. Likewise, the Port will continue to advocate that broader transportation implications continue to be a central consideration of major transportation projects.

Legacy Issue Area 4: Land Use

Continue to advocate for land use policies benefitting goals 1, 3, 4, and 5 of the Port’s Century Agenda, with a specific focus on zoning issues that may affect port competitiveness.

Advocacy will include support for:

- Proposals that reflect the “Guiding Principles: Stewardship, Enhancement, and Protection of Maritime and Manufacturing Lands” document that was adopted by the Northwest Seaport Alliance on November 1, 2016;
- Proposals that aim to reduce pressure on critical industrial lands by focusing dense residential development into existing residential areas that have typically been characterized by low-density single-family development;
- Economic and workforce development in the region facilitated by streamlining of permitting and increases to overall development opportunity;
- Efforts to acknowledge and define Manufacturing and Industrial Centers (MICs) as resource lands of statewide economic significance;
- Proposals that recognize the role industrial resource lands play in global port competitiveness and in supporting job retention in diverse economic sectors;
- Policies that give the Port flexibility in the conveyance of surplus property; and

Meeting Date: December 10, 2024

- Proposals that seek to strengthen the Container Ports Element of the Growth Management Act.

Monitor actions related to the Department of Commerce’s Interbay Public Development Advisory Committee, and any other legislative changes that may impact the efficient functioning of statewide essential public facilities.

Ensure that ongoing efforts to update the Growth Management Act do not inadvertently result in the imposition of new or expanded planning requirements for Ports without providing adequate resources to implement.

Other Legacy Issue Areas: Tax, Revenue, Governance, Technology, Trafficking, Civil Asset Forfeiture

Taxation:

Support state-level tax policies that foster the economic health of port-related businesses and activities, including:

- Policies that promote the efficient movement of freight and support communities that contain warehousing and distribution infrastructure, especially those facilities and communities benefitting agriculture, manufacturing, and trade sectors; and
- Policies that reduce manufacturing costs in port-related sectors, including businesses that support the efficient functioning of SEA International Airport, and incentivizing construction of fishing vessels within Washington State.

Pending action by the Department of Revenue, consider legislative solutions to clarify the application of Leasehold Excise Tax to certain port-related businesses, and continue to monitor stalled Leasehold Excise Tax rule making.

Additionally, the Port will continue monitoring developments around programs that divert Port revenues to other uses, opposing changes that further increase diversion of Port revenue, or are otherwise inconsistent with underlying tax law.

Revenue:

Continued support for grant & loan programs that aim to maximize the use and availability of federal resources for Port infrastructure and initiatives.

Governance:

- Oppose legislation that would create an imbalance of representatives between the two homeports in the governance of the Northwest Seaport Alliance.
- Monitor legislative proposals that would alter the governance structure of either NWSA homeport, and if proposed, advocate for ratification by citizen vote within the respective homeport district(s).

Meeting Date: December 10, 2024

Technology:

- Monitor proposals related to the use of biometric technology, such as facial recognition, with particular attention to those that address protection of individual privacy, equity, and compliance with federal and state regulations.
- Continue to monitor proposals related to establishing a Washington State Digital ID intended for general use including at airport facilities.
- Monitor state-level regulation of artificial intelligence (AI), and seek to form relevant partnerships with state and local government agencies regarding the use of AI.

Trafficking:

- Continue to engage state agencies, the legislature, and external partners in Port-sponsored efforts to combat human trafficking and forced labor at port facilities, including the airport, seaport, cruise terminals, and marina properties. Explore additional opportunities to deepen partnerships and align ongoing efforts happening elsewhere. As the region hosts major large-scale events (like the World Cup), ensure that the State supports anti-trafficking programs.

ATTACHMENTS TO THIS BRIEFING

- (1) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

November 19, 2024 – The Commission was briefed on the Draft 2025 State Legislative Agenda

January 9, 2024 – The Commission voted to adopt the Final 2024 State Legislative Agenda

December 12, 2023 – The Commission was briefed on the Draft 2024 State Legislative Agenda

2025 State Legislative Agenda

Seeking Commission Adoption | December 10, 2024

John Flanagan, Sr. State Govt. Relations Manager



Requested Updates

'Values statement'

Tourism

World Cup

Support for
Business and
Innovation

SAMP

CTR / Port Order to
Expand
Transportation
Options

Clean Energy Siting

PERS

Clean Trucks &
Clean Fuels

Land use

OVERVIEW



Preview – What to expect

Long (105-day) session
Biennial budget
'Challenging' fiscal outlook for
Operating & Transportation
Budgets



Agenda Development Process

Successes from 2024 session
'*Unfinished business*'
Ongoing work & core priorities



Next Steps

Incorporate feedback
Seek adoption of Final Agenda

PRIORITY ITEMS | Economic Development & Workforce

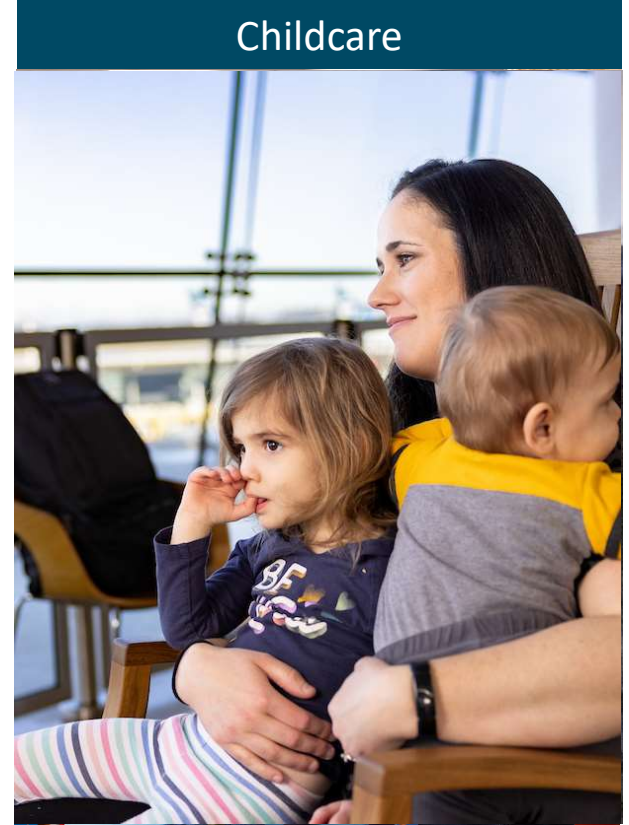
Tourism



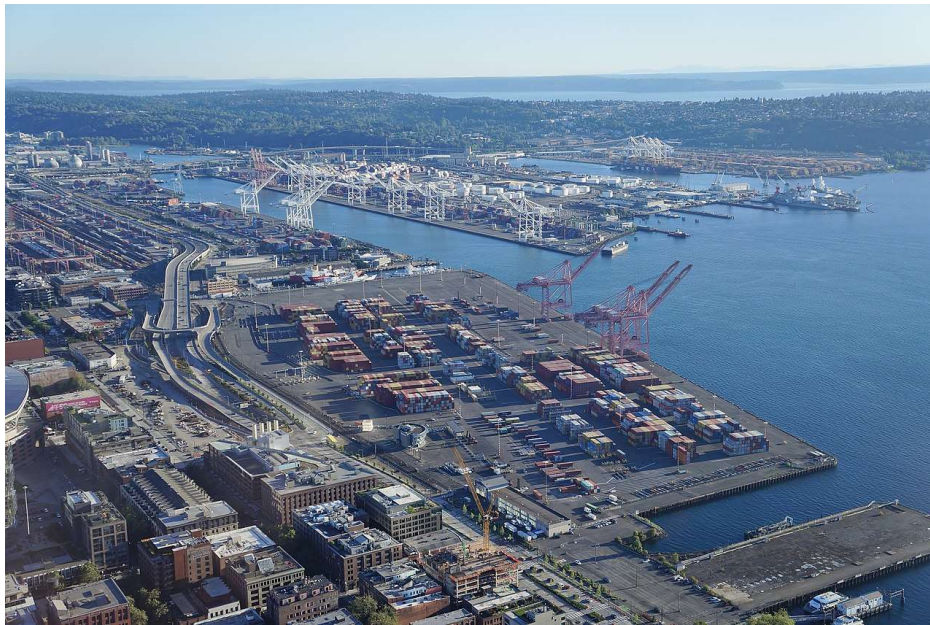
Green Jobs



Childcare



PRIORITY ITEMS | Economic Development & Workforce



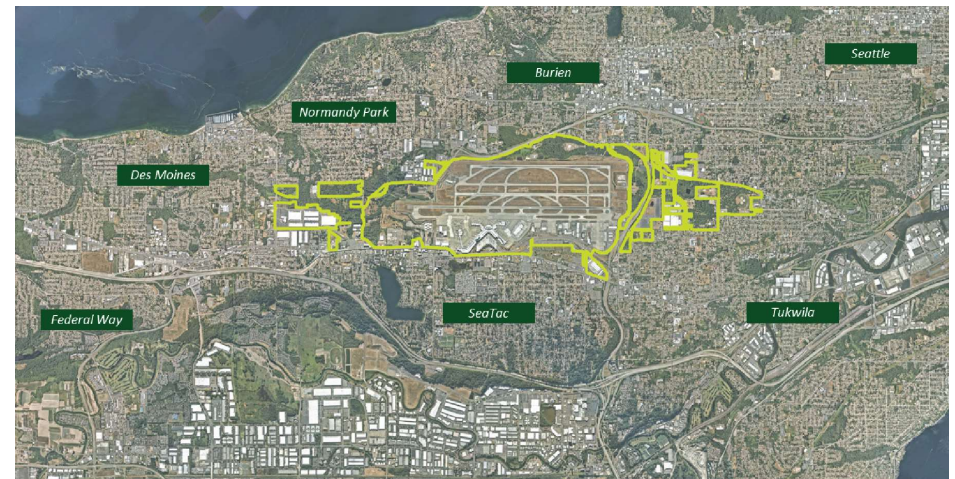
Support for Business & Innovation

- State Dept. of Agriculture
 - Promoting WA Food & Agriculture
- State Dept. of Commerce
 - Circular Economy Accelerator
 - Small Business Disaster Grants
 - Industry Sector Development Funds
 - International Economic Development
 - Small Business Capital Access

PRIORITY ITEMS | Aviation

SEA Stakeholder Advisory Round Table (StART) Shared Policy Priorities

- Effective implementation of the Noise Insulation Repair and Replacement Program
- Making tangible progress towards identifying additional regional airport capacity
- Sustain existing State programs to enhance air quality
- Maintain and expand sustainable aviation fuel (SAF) production and use in Washington
- Decarbonizing ground transportation, reducing airport emissions, and electrification



PRIORITY ITEMS | Aviation



WSU Alternative Jet Fuel (SAF) Work Group Recommendations

- Preservation of the State's existing SAF incentive program
- Property / Leasehold Tax Exemptions for SAF Facilities
- SAF Infrastructure Grant Program
- Construction Sales Tax Deferrals
- Permitting
- Ongoing Clean Fuel Standard rulemaking

Aviation and Environment

- Use of Aviation Fuel Sales Tax Revenue / PFAS
- Sustainable Waste Management (ReWRAP Act)

PRIORITY ITEMS | Transportation

Revenue & Funding

P3 | Supply Chain | TDM & CTR

Major Projects

Gateway | SR 518 | Revive I-5 | HSR



PRIORITY ITEMS | Environment & Energy

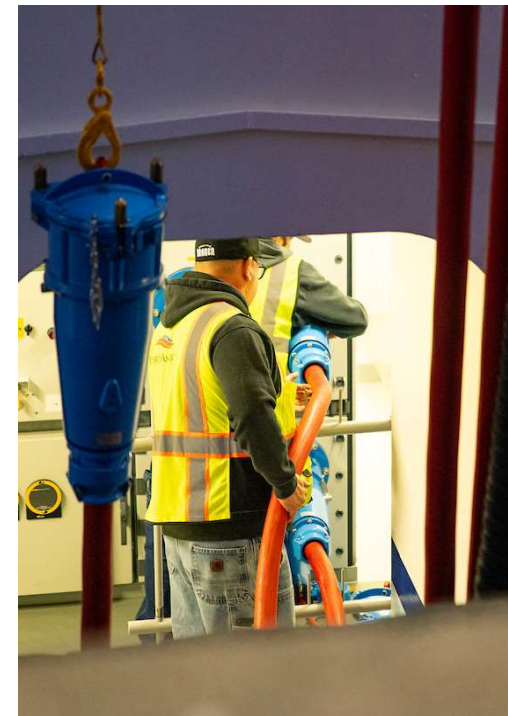
Clean Energy Siting



Sustainable Maritime Fuels



Waterfront Electrification



PRIORITY ITEMS | Environment & Energy

Industrial Stormwater
General Permit



Zero Emission Medium and
Heavy-Duty Truck Incentives



PRIORITY ITEMS | Public Safety, Governance, and Tax



Civil Asset
Forfeiture
Enforcement
Authority

Public Records Act

Emergency Powers

Property Tax
Reform
Tax Increment
Financing

Legacy Issue Area 1

Economic & Workforce Development

Worker training programs in port-related industries

- Career-connected and work-based learning programs for K-12
- Pre-apprentice and apprenticeship programs
- Trucking, increasing supply of CDL holders
- Equitable recruitment, training, and retention of a diverse workforce

Connecting port-adjacent communities to economic opportunity ('prosperity in place')

Responsibly enforcing labor standards

Promote and grow tourism in Washington

Broadband and ending the 'Digital Divide'

Rural initiatives (manufacturing, rural freight, rural tourism, support for ADOs)

Repeal I-200 and addressing structural barriers

Promoting success of SMWBEs (Contracting, Capacity Building, etc.)

Flexibility in contracting to public owners

Continuing to monitor legislation regarding PLAs, prompt pay, and other emerging trends

Legacy Issue Area 2

Energy, Climate, Environment, and Habitat

Promote low- and zero-carbon fuels in transportation & transit

Development and use of clean energy, renewables, increasing energy efficiency, reducing emissions, and supporting goals for use of clean power

Growth of sustainable aviation and maritime fuels

Waterfront electrification, and decarbonization of on-dock infrastructure

Reducing 'Scope 3 Emissions'

Climate Corps Network

Puget Sound health

- Water quality, underwater noise, habitat restoration, Southern Resident Killer Whale recovery, and Quiet Sound

Programs funded through the Model Toxics Control Act (MTCA)

- Stormwater, cleanups, public participation, and Remedial Action Grants

Wetland mitigation banking

Climate resilience

- Including resilience in transportation networks & implementing State's resilience strategy

Environmental justice

- Near-port communities and adhering to existing regulations and standards for investment in overburdened communities and benefitting vulnerable populations

Legacy Issue Area 3

Transportation

Invest in transportation networks serving essential public facilities

Speed movement of freight and passengers from origin to destination including increased access to transit

Truck parking and benefits for operators

Improve trade competitiveness of the State and the Port's gateway

Promotion of Washington as an international trading partner

Affirm Port's authority to control access to port facilities by all transportation modes

REAL ID compliance

Progressive transportation revenue

Passenger vessel operations in Puget Sound (and commensurate mitigation)

Regional partnerships and use of emerging technologies to alleviate overall congestion

Coordinated regional transportation planning (including aviation)

Continued progress on airport siting or expansion

Planning for future major transportation projects

- Account for impacts to broader transportation network, consider effects to adjacent areas

Multimodal and active transportation

- Safety and efficient movement of freight

Legacy Issue Area 4 Land Use

Proposals that reflect the NWSA document “Guiding Principles: Stewardship, Enhancement, and Protection of Maritime and Manufacturing Lands”

Spur dense residential development in existing areas to reduce pressure on industrial lands

Acknowledge that Manufacturing and Industrial Centers (MICs) are resource lands of statewide economic significance

Flexibility in conveyance of surplus property

Recognition of the contribution of industrial lands towards global competitiveness

Strengthening the Container Port Element of the GMA

Interbay Public Development Advisory Committee

Discourage creation of new or expanded planning requirements under the Growth Management Act

Other Legacy Issue Areas: Tax, Governance, Technology, Trafficking, Asset Forfeiture

Taxation

- Promote efficient movement of freight
- Benefit communities where warehousing and distribution infrastructure is located
- Reduce manufacturing costs in port-related sectors
- Clarify the application of Leasehold Excise Tax for certain port-related businesses
- Prevent diversions from underlying Port revenues

Governance

- Oppose legislation that would create an imbalance of representatives between the two homeports in the governance of the Northwest Seaport Alliance

Trafficking

- Combat human trafficking at port facilities and during large-scale regional events

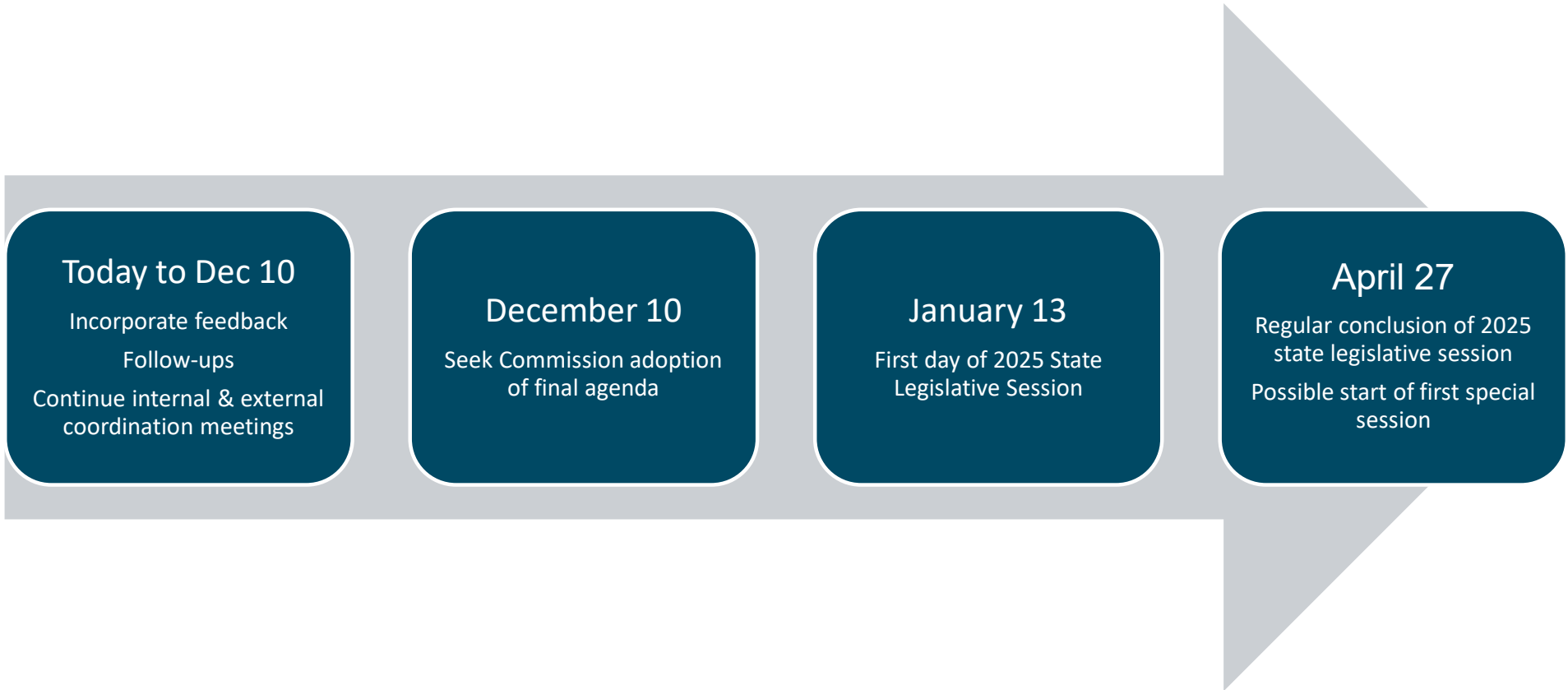
Revenue

- Use state resources to maximize use and availability of federal resources

Technology

- Biometrics, privacy, equity, and compliance with federal and state regulations
- Washington State Digital ID
- Regulation of artificial intelligence (AI)

NEXT STEPS



Today to Dec 10
Incorporate feedback
Follow-ups
Continue internal & external coordination meetings

December 10
Seek Commission adoption of final agenda

January 13
First day of 2025 State Legislative Session

April 27
Regular conclusion of 2025 state legislative session
Possible start of first special session



Questions?

Thank you for your engagement in our expansive advocacy work



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8j

ACTION ITEM

Date of Meeting December 10, 2024

DATE : November 1, 2024

TO: Stephen P. Metruck, Executive Director

FROM: Sarah Cox, Director Aviation Environment and Sustainability
John Evered, Senior Manager, Aviation Environment and Sustainability

SUBJECT: **Authorization of Interlocal Agreement V, Des Moines Creek Basin Plan**

Amount of this request: \$0

Total project cost: \$89,304 per year

ACTION REQUESTED

Request Commission authorization for the Executive Director to execute Interlocal Agreement (ILA) number V with the Cities of Des Moines and SeaTac for continuation of the Des Moines Creek Basin Plan for a period of 20 years with a financial contribution of \$89,304 per year.

EXECUTIVE SUMMARY

The Port, the Cities of Des Moines and SeaTac, and previously King County and the Washington State Department of Transportation have participated in four prior Interlocal Agreements to design and permit projects to address drainage, flooding erosion, fish habitat and water quality issues in Des Moines Creek from a regional, basin-wide approach. During the 4th ILA (executed April 2004) the Basin Committee completed construction of a Regional Detention Facility (RDF), High Flow Bypass Pipeline, Habitat Enhancement Basin Plan Restoration Projects, replacement of a Culvert on Marine View Drive to improve fish passage, and a low flow augmentation project to provide adequate flow in Des Moines Creek during low flow periods. This ILA also identified respective jurisdiction operations and maintenance and funding contributions.

The 5th ILA will provide the means to continue to fund Basin restoration activities such as ongoing operation and maintenance (O&M), replacement and improvement of existing projects including adaptive management activities, ongoing monitoring of existing projects for permit compliance and effectiveness, invasive vegetation monitoring and control, education and outreach and a needs assessment to further address surface water and fish habitat issues within the basin.

JUSTIFICATION

The Basin Plan supports the operation of Seattle Tacoma International Airport and follows the environmental priorities of the Aviation Environment and Sustainability Program. Completed

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projects will continue to stabilize the flow regime and reduce erosion in Des Moines Creek from the airport property and surrounding jurisdictions to the Puget Sound. The regional detention facility mitigates high flows, and routes base flow away from Des Moines Creek subsequently lowering in stream erosion. As a result of the Des Moines Creek Basin Detention Standard, the surface area needed to mitigate new development within the basin is approximately 40% to 60% less than usually required. Several habitat improvements will continue to be monitored, such as the placement of large wood and rock in Des Moines Creek that increased channel and habitat complexity, reduced erosion, and reconnected floodplain-wetland habitats.

The new ILA will also continue to allow for collaboration to solve cross jurisdictional problems with the other parties, and due to the annual contributions from the Cities of Des Moines and SeaTac, O&M and replacement costs for facilities on Port property will be lower.

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Do not approve the 5th ILA and terminate participation in the Des Moines Creek Basin Committee.

Cost Implications:

Pros:

- (1) No annual requirement for annual contributions.

Cons:

- (1) This option would negatively impact local community partnering and increase the Port's and other participants costs of individual efforts to protect Des Moines Creek.
- (2) This would remove the Port from regional efforts to develop solutions to environmental issues facing local jurisdictions. The Port would not receive contributions from other committee members and would have to perform O&M and replacement and improvement projects on its own.

This is not the recommended alternative.

Alternative 2 – Approve the 5th ILA and continue participation on the Basin Committee

Cost Implications:

Pros:

- (1) This option would allow for continued participation in a cooperative effort to mitigate cross jurisdictional problems.
- (2) This is the most cost-effective option to perform required O&M and replacement and improvement tasks due to contribution from other local jurisdictions.
- (3) The flood control and detention facilities governed by the ILA are critical to SEA stormwater management in addition to the Des Moines Creek basin. The facilities

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mitigate high flows and route water to Ponds for detention. This ensures that the facilities are maintained and continue to meet basin plan condition requirements.

Cons:

- (1) Required annual contribution.

This is the recommended alternative.

FINANCIAL IMPLICATIONS

Annual Port contributions are calculated based on percent impervious surfaces with the basin; 37.21% by the Port, 46.14% by the City of SeaTac and 16.65% by the city of Des Moines. The calculation used impervious surface data from a 2017 analysis and excludes approximately 249 acres of STIA’s Industrial Wastewater System that drains directly to the Puget Sound. Annual Port O&M Fund and Replacement and Improvement Fund contributions will be \$22,236 and \$66,978 respectively, for a total of \$89,304 per year.

ADDITIONAL BACKGROUND

The following activities are planned to be accomplished under the direction of the Basin Committee during ILA V:

1. Ongoing project O&M including routine operation and maintenance activities, permit compliance actions, optimization of Project operations to maximize environmental benefits, and response to emergency conditions. O&M activities will include but not be limited to maintenance and operation of constructed structures, maintenance and replanting of wetland plantings, maintenance and replanting of streamside vegetation, bank protection activities, maintenance of aquatic habitat structures, preparation and implementation of emergency action plans, and control of wildlife hazards in the vicinity of the projects.
2. Capital Replacement and Improvement Activities consisting of minor and major maintenance in response to ageing and unforeseen circumstances impacting constructed projects. This may include but is not limited to repairs to the RDF pond spillway and flow control structures, repairs and/or replacement of the bypass pipe and structure, habitat structure repair and/or replacement, in-stream sediment management, replacement or planting of vegetation associated with habitat restoration projects, and weir replacement. Capital replacement and improvement is also intended to adaptively manage projects to meet design goals and optimize overall project performance in response to unforeseen changing of conditions such as modified basin hydrology, physical site changes, climate change, regulatory changes and unanticipated aquatic habitat stressors.
3. Project monitoring will document compliance with permitting conditions, support O&M, address any ongoing O&M issues, quantify effectiveness of the projects in meeting hydrologic and engineering design goals, and serve as the basis for any changes proposed to the projects as a result of adaptive management. Project monitoring may also include monitoring and inspection of flow control structures, hydraulic conveyance systems, arsenic containment cap, vegetation, RDF berms and damn structures, wildlife, aviation

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wildlife hazards and controls, stream flow, wetland fluctuations, groundwater stream banks, and habitat structures.

4. Invasive vegetation monitoring and control will reduce the spread of harmful species with the potential to outcompete native plants in areas where stream restoration projects have been implemented. Nonnative plants will be removed and replaced with native plants in the Des Moines Creek stream corridor.
5. Education and outreach may be performed to support local stewardship activities for the purpose of educating community members about aquatic habitat within Des Moines Creek and restoration activities completed by the Committee. The Committee may provide resources to non-profit and local watershed or environmental groups for watershed activities that support Committee goals.
6. A basin needs assessment will continue the evaluation of quality and quantity of habitat and water quality conditions in Des Moines Creek needed to continue preservation and protection of aquatic life. New projects may be identified that build upon the Basin Plan restoration projects already implemented to further the Committee’s commitment to Des Moines Creek Basin improvement.
7. Ongoing management of an O&M fund to collect and manage funds necessary to pay for the operation of projects and normal maintenance activities.
8. Ongoing management of a replacement and improvement fund to collect and manage funds to pay for any required replacements or improvements deemed necessary as a result of monitoring or adaptive management.

ATTACHMENTS TO THIS REQUEST

- (1) Interlocal Agreement V, Des Moines Creek Basin Plan Restoration Projects
- (2) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

April 13, 2004, the Commission authorized the Chief Executive Officer to execute Interlocal Agreement IV with the Cities of Des Moines and SeaTac, King County and Washington Department of Transportation to implement the Basin Plan, construct a suite of projects and designate the Port of Seattle as project manager for the Regional Detention Facility. The cost to the Port was \$11,983,000. The agreement was signed by all parties on June 11, 2004.

November 28, 2000, the Commission authorized the Chief Executive Officer to execute an Interlocal Agreement III between the Port of Seattle, King County, and the Cities of SeaTac and Des Moines. The Port’s share of the costs was \$170,000, which was included in the 2001 operating budget. The agreement was signed July 30, 2001.

February 24, 1998, the Commission authorized execution of Interlocal Agreement II to prepare a Preliminary Design Report. The Port’s share of the costs was \$78,000, funded by the Airport Development Fund. The agreement was signed by all four jurisdictions on June 17, 1998.

January 15, 1997, by Executive approval, the Managing Director of Aviation signed an amendment to Interlocal Agreement I to include an additional task to develop pilot projects and continue the program.

October 2, 1995, by Executive approval, Interlocal Agreement I with the Cities of Des Moines and SeaTac and King County was authorized to prepare a Basin Plan for the Des Moines Creek. The Port's share of the costs was \$80,000 which was included in the 1995 and 1996 expense budgets. It was signed by all four jurisdictions on January 16, 1996.

Des Moines Creek Restoration Projects Interlocal Agreement

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8

Des Moines Creek Basin Plan Restoration Projects
Interlocal Agreement V

This Agreement is entered into by the City of Des Moines, hereinafter referred to as "Des Moines," the City of SeaTac, hereinafter referred to as "SeaTac," and the Port of Seattle, hereinafter referred to as the "Port", and collectively referred to as the "Parties", for the purpose of operating and maintaining several projects and completing other activities to implement the Des Moines Creek Basin Plan and has been jointly prepared by the Parties ("Agreement").

WHEREAS, Des Moines, SeaTac, and the Port share jurisdiction and services within the Des Moines Creek Basin ("Basin") and recognize that it contains an extensive natural resource system, the stability and function of which, are threatened by conditions related to development; and

WHEREAS, the Parties have worked collaboratively over the years through previous interlocal agreements (see Attachment 1) forming the Des Moines Creek Basin Plan ("Basin Plan"), wherein the Parties have acknowledged that a cooperative effort is the most effective and efficient way to protect and preserve the Basin's natural resource system, promote aquatic life, and address surface water-related problems across jurisdictions; and

WHEREAS, the Parties' Basin Plan Restoration Projects since 1996 are and have been, an integral part of the stormwater strategy for the SR 509 Completion Project and were submitted by Washington State Department of Transportation (hereinafter, "WSDOT") to meet requirements imposed on the SR 509 project by permit and/or by law; and

WHEREAS, the Basin Committee secured permits to authorize construction of the Basin Plan Restoration Projects and applied for other necessary permits and subsequently completed

Des Moines Creek Restoration Projects Interlocal Agreement

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1 construction of the Regional Detention Facility (RDF), High Flow Bypass Pipeline, Habitat
2 Enhancement Basin Plan Restoration Projects, and Marine View Drive Culvert; and

3 WHEREAS, in April 2007, the Midway Sewer District (District) agreed to transfer
4 ownership of the District's abandoned sewer Trunk Line and Outfall to the Parties to serve as the
5 High Flow Bypass Outfall; and

6 WHEREAS, in July 2015, the Parties were issued an Aquatic Lands Easement for the
7 High Flow Bypass Outfall from the Washington State Department of Natural Resources allowing
8 the discharge of excess stream flows for a period of 30 years; and

9 WHEREAS, each Party has provided easements to facilitate the operation and
10 maintenance of the Projects; and

11 WHEREAS, the Basin Committee funded and managed ongoing operation and
12 maintenance (O&M) of the Basin Plan Restoration Projects; and

13 WHEREAS, the Basin Committee conducted ongoing monitoring of the Basin Plan
14 Restoration Projects to document compliance with permit conditions and project effectiveness;
15 and

16 WHEREAS, the Parties created and maintained a Replacement and Improvement Fund, a
17 Capital Construction Fund, and an Operation and Maintenance Fund to provide for collection
18 and distribution of funds necessary for construction and ongoing operation and maintenance of
19 the Projects; and

20 WHEREAS, the Parties desire to continue to operate and maintain, and replace and
21 improve the Basin Plan Restoration Projects as needed to ensure design goals are met, project
22 performance is optimized, and respond to changing conditions; and

Des Moines Creek Restoration Projects Interlocal Agreement

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1 WHEREAS, the Parties desire to identify and evaluate potential future actions and projects
2 to address drainage, flooding, erosion and sedimentation, fish habitat degradation, and water
3 quality problems throughout the Basin that may be jointly implemented by the Committee to
4 further protect and enhance Des Moines Creek beyond that provided by the existing Basin
5 Restoration Projects; and

6 WHEREAS, the Parties desire to support education and outreach activities in the Des
7 Moines Creek Basin; and

8 WHEREAS, pursuant to RCW Chapter 39.34, the Interlocal Cooperation Act, the Parties
9 are each authorized to enter into an agreement for cooperative action.

10 NOW THEREFORE, the Parties agree as follows:

11 **I. PURPOSE**

12 The purpose of this Agreement is to provide the means by which the Parties, acting through a
13 joint board under the authority of RCW 39.34.030(4)(a), hereinafter referred to as “the Basin
14 Committee” or the “Committee”, will cooperate to continue to fund and conduct the following
15 Basin Restoration Activities (“Activities”) listed below and more fully described in Section III
16 (Activities):

- 17 A. Ongoing operation and maintenance (O&M) of constructed Basin Plan Restoration
18 Projects, (hereinafter referred to as “Projects”). Projects include the Des Moines Creek
19 Regional Detention Facility (“RDF”), the Des Moines Creek High-flow Bypass Pipeline
20 (“Bypass Pipeline”) and the Des Moines Creek Habitat Enhancement and Restoration
21 Projects (“Habitat Enhancements”).
- 22 B. Replacement and Improvement of the Projects including adaptive management activities.
- 23 C. Ongoing monitoring of the Projects for permit compliance and effectiveness.

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- 1 D. Invasive Vegetation Monitoring and Control.
- 2 E. Education and Outreach.
- 3 F. Basin Needs Assessment to further address surface water and fish habitat issues within
- 4 the Basin.
- 5 G. O&M Fund and a Replacement and Improvement Fund management.
- 6 H. Basin Committee administration with the mechanisms needed to manage and implement
- 7 the Activities.

8 Basin Restoration Activities performed under this Agreement are intended to implement those
9 actions providing joint benefit to all Parties interests and shall not be used solely to meet the
10 requirements of one Party's NPDES permit.

11 **II. PROJECT ADMINISTRATION AND COORDINATION**

12 All Activities shall be performed under the management of the Des Moines Creek Basin
13 Committee.

14 A. Basin Committee Organization

- 15 1. Overall project management and direction will be performed by the Committee.
- 16 2. The Committee will be composed of one voting member each from SeaTac, Des
17 Moines, and the Port. A quorum for a meeting is representation or a proxy from all
18 Committee voting members.
- 19 3. Each Party shall appoint one representative to serve on the Committee who shall be
20 empowered as their jurisdiction shall direct. The SeaTac and Des Moines
21 representatives shall be appointed by the City Manager, and the Port representative
22 shall be appointed by the Deputy Executive Director. Additional staff persons from the
23 Parties may attend Basin committee meetings to support Committee activities.

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- 1 4. The Committee shall continue to operate as a project management team, reaching
2 decisions by consensus with all parties, except when a Committee decision is held in
3 abeyance for two or more regularly scheduled meetings due to consecutive absences of
4 one Party and in the case of emergency meetings. Should a Committee decision be
5 held in abeyance for two or more regularly scheduled meetings due to consecutive
6 absences of one Party, the Committee may at their discretion choose to proceed with
7 decision-making for any or all of the issues held in abeyance by the absences. Given
8 the inherent time-sensitive nature of emergency meetings, decisions shall be made by
9 consensus of the Parties in attendance. Consensus shall mean a unanimous agreement
10 of all the voting Parties to proceed in a specified manner. Issues that cannot be decided
11 by consensus of the Basin Committee will be referred as needed to each of the officials
12 appointing the representatives for resolution. Should two or more Parties request,
13 professional mediation services will be retained to assist these officials in reaching a
14 decision. In the event that these officials do not reach agreement within 60 days, the
15 issue shall be submitted to binding arbitration.
- 16 5. The Committee may elect a Chairperson from among the voting members to represent
17 the Committee as described in Attachment 2 (“Administrative Duties”).
- 18 6. The Committee may establish a Basin Committee Coordinator to manage
19 administrative duties and coordinate activities as described in Attachment 2
20 (“Administrative Duties”). The Chairperson may serve as Basin Committee
21 Coordinator or the Committee may, at its discretion, authorize a Party to hire a single
22 individual or an entity to serve as Basin Committee Coordinator. The Basin
23 Coordinator shall serve a term of one year and may be reauthorized annually.

Des Moines Creek Restoration Projects Interlocal Agreement

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1 7. The Committee shall appoint one Party to serve as Treasurer, which may be a single
2 individual or an entity. A Scope of Work and Budget for the duties of Treasurer shall
3 be developed and approved by the Committee, and the Committee is hereby
4 authorized to approve funding for this position, which funding shall be included in
5 the Operations and Maintenance Fund. Such funding shall not exceed the actual costs
6 incurred in performing the duties of this position. The Treasurer for the Committee
7 shall be SeaTac, until such time as the Committee appoints another Party to serve as
8 Treasurer. The duties and responsibilities of the Treasurer is be described in
9 Attachment 2 (“Administrative Duties”).

10 B. Committee Powers and Responsibilities

11 1. The Committee shall meet four times each year or as otherwise scheduled to authorize,
12 oversee, and review Basin Restoration Activities and to consider issues relating to the
13 Activities.

14 2. The Committee shall regularly review and approve changes as needed to the Des
15 Moines Creek Regional Detention Facility Operations and Maintenance Manual (Port of
16 Seattle revised April 2021) and the Des Moines Creek Bypass Pipe System Operations
17 and Maintenance Manual (King County August 2010) (hereinafter referred to as the
18 “O&M Manuals”), emergency action plans, and other planning, design and operational
19 documents related to the Projects and Activities. A list of current Committee-approved
20 manuals and design documents is provided in Attachment 3.

21 3. The Committee shall review and approve scopes of work and budgets for Activities.

Des Moines Creek Restoration Projects Interlocal Agreement

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- 1 4. The Committee shall authorize the Basin Committee Coordinator to enter into
- 2 contracts, as more fully set forth below, to accomplish specific Activities as outlined
- 3 further in this Agreement.
- 4 5. The Committee or a Committee authorized Party shall hold all permits for the
- 5 Activities.
- 6 6. The Committee shall serve as the final authority for any proposed Activity changes.
- 7 7. The Committee shall establish an annual charge for each Party's contribution to the
- 8 Operation and Maintenance Fund. The Committee shall establish or suspend the
- 9 annual charge for each calendar year by September 1st of the preceding year.
- 10 8. The Committee shall establish an annual charge for each Party's contribution to the
- 11 Replacement and Improvement Fund. The Committee shall establish or suspend the
- 12 charge for each calendar year by September 1st of the preceding year.
- 13 9. The Committee shall authorize the Treasurer to transfer funds from the Capital
- 14 Construction Fund to the O&M Fund to provide funding for Invasive Vegetation
- 15 Monitoring and Control, Education and Outreach, Monitoring, and Basin Needs
- 16 Assessment.
- 17 10. The Committee shall authorize the Treasurer to make payments for approved activities
- 18 as described in Attachment 2 (Administrative Duties - Treasurer).
- 19 11. The Committee shall review and approve the scope of work and budget for the Basin
- 20 Committee Coordinator, which funding shall be included in the Operations and
- 21 Maintenance Fund.

22 C. Committee Member Duties

Des Moines Creek Restoration Projects Interlocal Agreement
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- 1 1. The Committee member of each Party shall make every effort to attend all regular
2 meetings of the Basin Committee.
- 3 2. When an appointed member cannot attend a Committee meeting, the appointing Party
4 may send a substitute fully authorized to act on behalf of the Party or provide another
5 Party with a proxy vote for any decisions before the Committee. To exercise a proxy,
6 the absent Party must notify the Basin Committee Coordinator orally or in writing
7 prior to the meeting of their intended absence, the Party to which they have assigned
8 their proxy, and any limits on that proxy. The Basin Committee Coordinator may be
9 designated as proxy. No member may vote for more than one proxy.
- 10 3. The Parties shall make every effort to support timely decision-making by the
11 Committee.

12 D. Committee Staffing

- 13 1. The Parties hereby authorize one or more of the Parties to act on their behalf to
14 accomplish specific Activities as described herein and authorize the Committee to
15 compensate those Parties for their activities on behalf of the Committee. The Parties so
16 authorized may, on behalf of all the Parties, under the Committee's management and
17 direction, provide staff and issue contracts as necessary to carry out the specific activities
18 assigned.
- 19 2. Project Managers
 - 20 a) The Parties hereby authorize Project Managers, under the direction and management
21 of the Committee, to enter contracts for Activities performed under the Project
22 Manager's authority, provided such contracts adhere to the Committee-approved
23 O&M Manuals, Design Manual and Scope and Budget for their Activities.

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- 1 b) Project Managers shall be responsible for the administration of contracts and
2 agreements necessary to accomplish the Activities performed under the Project
3 Manager's authority in a timely fashion.
- 4 c) Project Managers shall work in cooperation with the Basin Committee Coordinator to
5 ensure that contracts and agreements for their Activity are consistent with permit
6 requirements and other agreements, are within the Committee-approved O&M
7 Manuals and Scope and Budget for the Project Activity and are consistent with the
8 Committee's design goals.
- 9 d) Project Managers shall work in cooperation with the Basin Committee Coordinator to
10 ensure that project inspections and testing are uniform and reliable across all Projects
11 and are performed in a timely manner.
- 12 e) Project Managers shall work in cooperation with the Basin Committee Coordinator to
13 ascertain that Committee staff and their representatives (to include contractors) have
14 the necessary access to the site to confirm that specific Projects are being operated
15 and maintained in compliance with approved O&M Manuals, permit conditions,
16 monitoring needs, design goals, and contract plans and specifications.
- 17 f) Project Managers shall perform or arrange for appropriate inspection and testing as
18 called for by approved O&M Manuals and Design Manuals.
- 19 g) All work shall be performed by the Project Manager shall be in accordance with
20 budgets approved by the Committee. Committee is hereby authorized to approve the
21 funding for work performed by the RDF Manager, and which shall not exceed the
22 actual costs incurred in performing the duties of this position.

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- 1 h) The Committee shall appoint an RDF Project Manager, which may be a single
2 individual or an entity. The RDF Project Manager shall complete Activities specified
3 in Attachment 4.
- 4 i) The RDF Project Manager shall be the Port until such time as the Committee appoints
5 another Party to serve as RDF Project Manager. Other Parties may complete RDF
6 Activities including contracted services in coordination with the Basin Committee
7 Coordinator and the RDF Project Manager.
- 8 j) The Committee shall appoint a Bypass Pipe Project Manager, which may be a single
9 individual or an entity. The Bypass Pipe Project Manager shall complete Activities
10 specified in Attachment 4.
- 11 k) The Bypass Pipe Project Manager shall be SeaTac until such time as the Committee
12 appoints another Party to serve as Bypass Pipe Project Manager. Other Parties may
13 complete Bypass Pipe Activities including contracted services in coordination with
14 the Basin Committee Coordinator and the Bypass Pipe Project Manager.
- 15 l) The Committee shall appoint a Habitat Enhancement and Restoration Project
16 Manager, which may be a single individual or an entity. The Habitat Enhancement
17 and Restoration Project Manager shall complete Activities specified in Attachment 4.
- 18 m) The Habitat Enhancement and Restoration Project Manager shall be Des Moines until
19 such time as the Committee appoints another Party to serve as Habitat Enhancement
20 and Restoration Project Manager. Other Parties may complete Habitat Enhancement
21 and Restoration Activities including contracted services in coordination with the
22 Basin Committee Coordinator and the Habitat Enhancement and Restoration Project
23 Manager.

1 **III. ACTIVITIES**

2 The following activities will be accomplished under the direction and management of the
3 Committee:

4 A. Ongoing Project O&M will include routine operations and maintenance activities, permit
5 compliance actions, optimization of Project operations to maximize environmental benefits,
6 and response to emergency conditions. O&M activities will include but not be limited to
7 maintenance and operation of constructed structures, maintenance and replanting of wetland
8 plantings, maintenance and replanting of streamside vegetation, bank protection activities,
9 maintenance of aquatic habitat structures, preparation and implementation of emergency
10 action plans, and control of wildlife hazards in the vicinity of the projects.

11 B. Capital Replacement and Improvement Activity consists of minor and major maintenance in
12 response to aging and unforeseen circumstances impacting constructed projects, including
13 but not limited to, repairs of the RDF Pond spillway and flow control structures, repairs
14 and/or replacement of the bypass pipe, bank stabilization associated with the bypass pipe,
15 bypass pipe structure repairs and/or replacement, habitat structure repair and/or replacement,
16 in-stream sediment management, replacement or new vegetation associated with habitat
17 restoration projects, and weir replacement. Capital Replacement and Improvement is also
18 intended to adaptively manage Projects to meet design goals and optimize overall Project
19 performance in response to unforeseen changing conditions including but not limited to
20 modified basin hydrology, physical site changes, climate change, regulatory changes and
21 unanticipated aquatic habitat stressors. Adaptive management may include changes to
22 operational procedures, physical changes to the existing Projects and/or new construction
23 directly supporting the Projects. All plans, specifications and cost estimates shall be

Des Moines Creek Restoration Projects Interlocal Agreement

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1 prepared in accordance with the current State of Washington Standard Specifications for
2 Road, Bridge and Municipal Construction, and amendments thereto, and adopted design
3 standards, unless otherwise noted.

4 C. Project Monitoring is intended to document compliance with permitting conditions, support
5 O&M and address ongoing O&M issues, quantify effectiveness of the projects in meeting
6 hydrologic and engineering design goals, and serve as the basis for any changes proposed to
7 the Projects as part of an adaptive management program. Project Monitoring may include
8 but is not limited to monitoring and inspection of flow control structures, hydraulic
9 conveyance systems, arsenic containment cap, vegetation, RDF berms and dam structures,
10 wildlife, aviation wildlife hazards and controls, stream flow, wetland fluctuations,
11 groundwater, stream banks, and habitat structures.

12 D. Invasive Vegetation Monitoring and Control is intended to reduce the spread of invasive
13 vegetation species that can outcompete native plants in the riparian areas where stream
14 restoration projects have been implemented. Non-native plants will be removed and
15 replaced with native plants in the Des Moines Creek stream corridor. The area of
16 responsibility for invasive vegetation monitoring and control shall be within Des Moines
17 Creek riparian zone, areas outside the riparian zone could impact riparian conditions, and
18 other areas delineated within the Project O&M manuals. The Scope of Work for Invasive
19 Vegetation Monitoring and Control is contained in Attachment 5.

20 E. Education and Outreach to support local stewardship activities is for the purpose of
21 educating the community about aquatic habitat within Des Moines Creek and gaining
22 support for restoration efforts. The Committee may provide resources to non-profit and local
23 watershed or environmental groups for watershed activities that support Committee goals,

Des Moines Creek Restoration Projects Interlocal Agreement
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1 and development of electronic outreach materials that promote the work of the Committee
2 and provide resources to link to the work of others. The Committee may create a website to
3 be hosted by a Committee member that is a repository for Committee work and resources.

4 The Scope of Work for Education and Outreach is contained in Attachment 6.

5 F. The Basin Needs Assessment will continue evaluation of the quality and quantity of habitat
6 and water quality conditions in Des Moines Creek needed to continue preservation and
7 protection of aquatic life in Des Moines Creek. New projects may be identified that build
8 upon the Basin Plan Restoration Projects already implemented to further the committee's
9 commitment to Des Moines Creek Basin improvement. The Basin Needs Assessment will
10 also support Adaptive Management of existing Projects. The Scope of Work for Basin
11 Needs Assessment is contained in Attachment 7.

12 G. Ongoing management of an Operation and Maintenance Fund to collect and manage funds
13 necessary to pay for the ongoing operation of the Projects and to fund normal maintenance
14 activities for the Projects.

15 H. Ongoing management of a Replacement and Improvement Fund to collect and manage
16 funds to pay for replacement of Project feature and to pay for improvements found
17 necessary as a result of monitoring and adaptive management.

18 **IV. PARTY RESPONSIBILITIES**

19 A. SeaTac shall:

- 20 1. Provide a representative to serve on the Basin Committee and any necessary staff
21 support needed by the Committee member.

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1 2. Provide water quality, fisheries and stream flow data that is collected in the normal
2 course of business and that is relevant to the design, construction or ongoing operations
3 and maintenance of the Projects and Activities.

4 3. Maintain previously issued easements at no cost for the operation and maintenance of
5 the projects identified in Attachment 8. Title for all property associated with
6 Committee constructed projects and associated issued easements remains with the
7 original owner. Should any Party withdraw from this agreement, all easement rights
8 granted to that Party shall terminate and be void. A withdrawing Party may not
9 terminate easements granted to other Parties for construction, operation and
10 maintenance of the Projects.

11 4. Provide Committee approved staff to fulfill the duties of Treasurer for the Basin
12 Committee.

13 5. Provide Committee approved staff to fulfill the duties of Bypass Pipe Project Manager.

14 B. Des Moines shall:

15 1. Provide a representative to serve on the Basin Committee and any necessary staff
16 support needed by the Committee member.

17 2. Provide water quality, fisheries and stream flow data that is collected in the normal
18 course of business and that is relevant to the design, construction or ongoing operations
19 and maintenance of the Projects and Activities.

20 3. Maintain previously issued easements at no cost for the operation and maintenance of
21 the projects identified in Attachment 8. Title for all property associated with
22 Committee constructed projects and associated issued easements remains with the
23 original owner. Should any Party withdraw from this agreement, all easement rights

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1 granted to that Party shall terminate and be void. A withdrawing Party may not
2 terminate easements granted to other Parties for construction, operation and
3 maintenance of the Projects.

- 4 4. Provide Committee approved staff to fulfill the duties of Habitat Enhancement and
5 Restoration for the Basin Committee.

6 C. Port shall:

- 7 1. Provide a representative to serve on the Basin Committee and any necessary staff
8 support needed by the Committee member.
- 9 2. Provide water quality, fisheries and stream flow data that is collected in the normal
10 course of business and that is relevant to the design, construction, or ongoing operations
11 and maintenance of the Projects or Activities.
- 12 3. Maintain previously issued easements at no cost for the operation and maintenance of
13 the projects identified in Attachment 8. Title for all property associated with
14 Committee constructed projects and associated issued easements remains with the
15 original owner. Should any Party withdraw from this agreement, all easement rights
16 granted to that Party shall terminate and be void. A withdrawing Party may not
17 terminate easements granted to other Parties for construction, operation and
18 maintenance of the Projects.
- 19 4. Provide Committee approved staff to fulfill the duties of Regional Detention Facility
20 Project Manager.
- 21 5. Prepare updates to the Emergency Action Plan as required by the Washington State
22 Department of Ecology Dam Safety Office and oversee the implementation of the
23 Emergency Action Plan. All updates to the Emergency Action Plan shall be reviewed

1 by the Committee prior to implementation. The Port shall work with the Basin Plan
2 Coordinator and appropriate local public works, and fire and safety officials to perform
3 emergency response training events as required by the Dam Safety Office.

4 **V. COSTS**

5 The Parties agree to share costs incurred by the Committee for the ongoing operation and
6 maintenance of the Des Moines Creek Restoration Projects as described below:

7 **A. Operations and Maintenance Costs**

- 8 1. The anticipated O&M tasks and budget are described in Attachment 9. The Committee
9 shall review tasks and costs each year and approve an annual Operation and
10 Maintenance budget, which shall identify the funds necessary to fund ongoing O&M of
11 the Basin Plan Restoration Projects.
- 12 2. The Port, SeaTac and Des Moines shall be responsible for funding the annual O&M
13 budget. Costs for the operation and maintenance of the Projects shall be paid 37.21%
14 by the Port, 46.14% by SeaTac and 16.65% by Des Moines based on percent
15 impervious surface as summarized in Attachment 11. Funding for the Operations and
16 Maintenance budget shall be subject to any necessary authorization by each Party's
17 legislative authority.
- 18 3. Committee shall review the supporting documentation that determines the amount of
19 the annual charge for Operation and Maintenance funding annually and shall consider
20 such changes as are necessary. All funds remaining at the end of each year shall remain
21 in the O&M Fund and shall be carried forward for use on O&M activities in future
22 years.

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1 4. Ongoing O&M and Replacement and Improvement funding by the Cities of the Basin
2 Plan Restoration Projects shall be deemed to be eligible for compliance with RCW
3 Chapter 90.03.525, which requires jurisdictions to annually report on the use of
4 WSDOT surface water fees. Funds for annual O&M activities and funds for the
5 Replacement and Improvement costs for the Projects, at the discretion of the Cities,
6 may be considered to be from WSDOT surface water fees paid to the Cities, and
7 successful ongoing operation and annual maintenance of the Projects is considered to
8 show valid and appropriate use of the WSDOT's surface water fees for roadway
9 impacts.

10 5. Funds will be paid to the Treasurer and will be deposited in the O&M Fund account, to
11 be disbursed at the direction of the Committee.

12 B. Replacement and Improvement Costs

- 13 1. The anticipated Replacement and Improvement tasks and budget are described in
14 Attachment 10. The Committee shall review tasks and costs each year and establish an
15 annual charge for the purpose of accumulating a Replacement and Improvement Fund.
- 16 2. The Parties shall be responsible for funding the annual contribution to the Replacement
17 and Improvement Fund. Costs for the Replacement and Improvement Fund shall be
18 paid 37.21% by the Port, 46.14% by SeaTac and 16.65% by Des Moines based on
19 percent impervious surface as summarized in Attachment 11. Funding for the
20 Replacement and Improvement Fund shall be subject to any necessary authorization by
21 each Party's legislative authority.
- 22 3. Committee shall review the supporting documentation that determines the amount of
23 the annual charge for Replacement and Improvement funding every 5 years and shall

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1 consider such changes as are necessary to provide ongoing protection to Des Moines
2 Creek and its biological community.

- 3 4. Funds will be paid to the Treasurer and will be deposited in the Replacement and
4 Improvement Fund account, to be disbursed at the direction of the Committee.

5 **C. Grants**

- 6 1. Should grants for any of the work become available, the Committee is authorized to
7 include and expend the funds and reduce the overall costs of the affected Projects and
8 Activities.

9 **VI. BILLING AND PAYMENT**

10 **A. Operation and Maintenance Costs**

- 11 1. The Treasurer shall bill SeaTac, Port and Des Moines 100% of their annual contribution
12 to the Operation and Maintenance Fund by April 30th of each year.
13 2. SeaTac, Port and Des Moines shall forward payment to the Treasurer within 60 days of
14 receipt of the invoice.
15 3. The first payment shall be made in calendar year 2025.

16 **B. Replacement and Improvement Costs**

- 17 1. The Treasurer shall bill SeaTac, Port and Des Moines 100% of their annual contribution
18 to the Replacement and Improvement Fund by April 30th of each year.
19 2. SeaTac, Port and Des Moines shall forward payment to the Treasurer within 60 days of
20 receipt of the invoice.
21 3. The first payment shall be made in calendar year 2025.

VII. DURATION, TERMINATION AND AMENDMENT

A. This Agreement is effective upon signature by the Parties and remains in effect until December 31, 2044.

B. A Party may not end its participation in the Project and withdraw from this Agreement without the written consent of all other parties, and such consent shall not be unreasonably withheld. To end participation a Party shall provide one year notice and remains responsible for paying all unpaid funding amounts that have been committed through the 20-year duration of this Agreement. Should a Party withdraw the remaining members shall decide whether to continue with the implementation of this Agreement or renegotiate this Agreement.

C. This Agreement may be amended, altered, clarified, or extended only by the written agreement of the Parties hereto. An equitable adjustment in cost or period of performance or both may be made if required by the change.

D. This Agreement is not assignable by any Party, either in whole or in part.

E. This Agreement is a complete expression of the terms hereto and any oral or written representations or understandings not incorporated herein are excluded. The parties recognize that time is of the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the parties which shall be attached to the original Agreement.

VIII. COUNTERPARTS

This Agreement may be executed in counterparts.

IX. INDEMNIFICATION AND HOLD HARMLESS

The Parties agree to the following:

To the maximum extent permitted by law, each Party shall defend, indemnify and hold harmless the other Parties and all of its officials, employees, principals and agents from all claims, demands, suits, actions, and liability of any kind, including injuries to persons or damages to property which are connected with, or are attributable to any negligent acts or omissions of the indemnifying Party, its contractor, and/or employees, agents, and representatives in performing the Party's responsibilities and other work referred to in this Agreement; provided however, that if the provisions of RCW 4.24.115 apply to any work under this Agreement and any such damages and injuries to persons or property are caused by or result from the concurrent negligence of two or more of the Parties or those Parties' contractors or employees, agents, or representatives, the indemnification applies only to the extent of the negligence of each Party, its contractor or employees, agents, or representatives. Each Party specifically assumes potential liability for actions brought by its own employees against the other Parties and for that purpose the indemnifying Party specifically waives, as respects the other Parties only, any immunity under the Worker's Compensation Act, RCW Title 51; and each Party recognizes that his waiver was the subject of mutual negotiation and specifically entered pursuant to the provision of RCW 4.24.115, if applicable.

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1 IN WITNESS WHEREOF, the Parties hereto have executed this amendment on the

2 _____ day of _____, 2004.

3 Approved as to Form

City of Des Moines

4 By: _____

By: _____

5 Title: _____

Title: _____

6

7 Approved as to Form

City of SeaTac

8 By: _____

By: _____

9 Title: _____

Title: _____

10

11 Approved as to Form

Port of Seattle

12 By: _____

By: _____

13 Title: _____

Title: _____

14

15

16

ATTACHMENTS

- 1
- 2 Attachment 1 – Previous Interlocal Agreements
- 3 Attachment 2 – Administrative Duties
- 4 Attachment 3 - Committee-Approved Manuals and Design Documents
- 5 Attachment 4 – Project Activities and Managers
- 6 Attachment 5 - Invasive Vegetation Monitoring and Control Scope of Work
- 7 Attachment 6 – Education and Outreach Scope of Work
- 8 Attachment 7 - Basin Needs Assessment Scope of Work
- 9 Attachment 8 - Basin Plan Projects Map
- 10 Attachment 9 – O&M Fund Budget
- 11 Attachment 10 – Replacement and Improvement Fund Budget
- 12 Attachment 11 - Contribution Amounts Based on Impervious Surface Calculations
- 13

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Attachment 1

Previous Interlocal Agreements

Des Moines Creek Basin Plan Development Interlocal Agreement (I) – Executed 1/16/96

- Development of the Basin Committee
- Development of hydrologic model
- Analysis of current and future conditions
- Analysis of alternatives responses
- Development of Basin Plan Conceptual Design

Amendment to Agreement I - Executed 1/15/97

- Continuation of Basin Committee
- Change in Cost Sharing Agreement
- Preliminary Engineering

Des Moines Creel Basin Plan Implementation Interlocal Agreement (II) - Executed 06/17/98

- Continuation of Basin Committee
- Ongoing Project Management
- Development of Preliminary Engineering and Design Financing Plan

Des Moines Creel Basin Plan Implementation Interlocal Agreement (III), GCA-2712 - Executed 06/17/98

- Continuation of Basin Committee
- Development of Final Engineering and Design
- Preparation of Plans and Specifications
- Initial Permitting

Des Moines Creel Basin Plan Implementation Interlocal Agreement (IV), GCA-3921 - Executed 06/11/2004

- Continuation of Basin Committee
- Construction of Basin Plan Projects
- Operations and Maintenance of Projects
- Replacement and Improvement of Projects

Amendment to Agreement IV – Executed April 2007

Documented Project changes including scopes of work, construction costs, costs of ongoing operation, maintenance, and replacement.

Attachment 2

Administrative Duties

Committee Chairperson

- The Chair of the Committee, when appointed by the Committee, shall serve as the primary contact person for the Committee for communications relating to the Activities or issues related to the Basin Plan Restoration Projects and Activities.
- The Chairperson may serve as the Basin Committee Coordinator unless the Committee authorizes a Party to hire a single individual or an entity to serve as Basin Committee Coordinator.
- The Chair's term shall be determined by the Committee.
- The Chair is authorized to sign documents on behalf of the Committee.
- The Chair may assign additional staff coordinator roles, as necessary, to implement Activities.

Basin Coordinator

- The Basin Committee Coordinator shall serve as a meeting facilitator for the Committee, prepare agenda and meeting notes, prepare issue papers and other documents as needed to assist the Committee in analyzing issues and reaching decisions.
- The Basin Committee Coordinator shall schedule regular meetings of the Committee and shall communicate the time and location of the scheduled meetings to other Parties and affected staff at least two weeks prior to any regular meeting.
- The Basin Committee Coordinator shall call emergency meetings whenever an emergency calls for rapid decisions by the Committee. Emergency meetings may be called with 24-hour notice.
- The Basin Committee Coordinator shall set the agenda for regular and emergency meetings and shall prepare minutes for all meetings of the Committee.
- The Basin Committee Coordinator shall recognize the proxy of any Party which has requested proxy representation prior to the start of a meeting.
- The Basin Committee Coordinator shall serve as the recipient of mail and other forms of communication intended for the Committee and shall provide copies of such communications in a timely manner to the appropriate Parties and staff.
- The Basin Committee Coordinator's term shall be 2 years and may be extended annually as authorized by the Committee.
- The Basin Committee Coordinator shall manage and oversee Project Monitoring, Invasive Vegetation Monitoring and Control, Needs Assessment, Education and Outreach Activities and provide the Committee with timely advice on the status of these Activities.
- The Basin Committee Coordinator shall develop an annual budget and scope of work addressing all Activities for the following year, which shall be submitted to the Committee for approval prior to July 1st each year. The budget shall include the estimated Operation & Maintenance budget and Replacement and Improvement budget, estimated annual contributions for each Party, forecasted expenditures for current year and any remaining balance from previous years. These budgets shall be forwarded to each of the Parties for review and for appropriation action, if required by the legislative or administrative processes and procedures of that Party.

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- The Basin Committee Coordinator shall adhere to the approved Scope and Budget for annual Activities.
- The Parties hereby authorize the Basin Committee Coordinator, under the direction and management of the Committee, to enter into the contracts necessary to accomplish ongoing Activities. The Basin Committee Coordinator shall obtain committee approval of a Scope and Budget for each contract, and the management and oversight conditions of specific contracts needed to carry out the purposes of the Committee.
- The Basin Committee Coordinator shall prepare annual recommendations on the number of contracts, the tasks within each contract, and the management and oversight of specific contracts needed to perform the Activities.
- The Basin Committee Coordinator shall bring all proposed changes in Activities to the Committee for their approval prior to implementation, excepting emergency actions which may be implemented immediately providing the changes in emergency activities adhere to the adopted Emergency Action Plan whenever possible.
- The Basin Committee Coordinator shall oversee all Adaptive Management efforts associated with the ongoing operation and maintenance of the Projects and shall prepare a report to the Committee at no more than 5-year intervals with specific recommendations for any changes to Project O&M suggested by the results of the adaptive management program.
- The Basin Committee Coordinator shall prepare an annual report for the Committee detailing the status of Projects, any suggested operational changes, and a record of maintenance activities undertaken in the year. The report shall be submitted as part of the annual O&M budget review.
- The Basin Committee Coordinator shall serve at the discretion of the Committee.
- The Basin Committee Coordinator shall perform other duties as assigned by the Committee.

Treasurer

- The Treasurer shall transfer funds from the Capital Construction Fund to the O&M Fund.
- The Treasurer shall manage and oversee the Replacement and Improvement Fund and the O&M Fund.
- The Treasurer shall provide the Committee with a semi-annual update of the status of the Replacement and Improvement Fund and the O&M Fund.
- The Treasurer shall bill the Parties for their annual contributions to the O&M Fund and the Replacement and Improvement Fund as described in Section V (Costs) of this agreement.
- The Treasurer shall hold moneys collected for each Fund in separate accounts. Any interest collected shall remain in that account for that Fund.
- The Treasurer shall issue payments to Parties or their contractors for O&M work and work performed in accomplishing the duties and responsibilities identified by an approved project Scope of Work, provided such payment requests are within the approved project Budget and for work within the scope of the contract. Approval of payments shall be certified by the Committee Chair or the Basin Committee Coordinator.
- The Treasurer shall issue payments within 30 days of receiving an approved invoice. The Treasurer shall maintain records and reports sufficient to satisfy state audits, and shall retain records for at least six years after completion of each contract.

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Attachment 3

Committee-Approved Manuals and Design Documents

Des Moines Creek Regional Detention Facility Operation and Maintenance Manual, King County, revised Port of Seattle April 2021.

Des Moines Creek High Flow By-Pass Pipe System Operation and Maintenance Manual, King County, August 2010.

Des Moines Creek Basin Restoration Projects Design Report, King County, 2010.

Hydrologic Analysis of the Des Moines Creek Regional Detention Facility (RDF) Using the HSPF Model, MGS Engineering Consultants, Inc., December 2002

Dam Break Inundation and Spillway Design Analysis of the Des Moines Creek Regional Detention Facility (RDF), MGS Engineering Consultants, Inc., April 2004.

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Attachment 4

Project Activities and Managers

RDF Management	Port
RDF Operations and Maintenance	Port
RDF Replacement and Improvements	Port
Wetland Plant Monitoring and Maintenance	Port
RDF Dam Safety and Emergency Actions	Port
Wildlife Management	Port
Berm Mowing	SeaTac
By-Pass Pipe Management	SeaTac
By-Pass Pipeline Operations and Maintenance	SeaTac
By-Pass Pipeline Replacement and Improvements	SeaTac
Marine Outfall Replacement and Improvements	SeaTac
Habitat Enhancement and Restoration Management	Des Moines
Habitat Monitoring	Basin Committee Coordinator
Habitat Replacement and Improvement North 200th Street	Des Moines
Habitat Replacement and Improvement North 200th Street	Port
Project Monitoring	Basin Committee Coordinator
Invasive Vegetation Monitoring and Control Management	Basin Committee Coordinator
Control North 200 th Street	Port
Control South 200th Street	Des Moines
Education and Outreach Management	Basin Committee Coordinator
Needs Assessment Management	Basin Committee Coordinator

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Attachment 5

Scope of Work for Des Moines Creek Invasive Vegetation Monitoring and Control

PURPOSE

The purpose of this document is to generally describe the Activity goals and the major tasks required for invasive species monitoring and control. This is not intended to be a detailed scope of work.

PROJECT GOAL

The goal of this Activity is to monitor and control invasive species within the Des Moines Creek riparian zone.

BACKGROUND

Basin Restoration Project Monitoring including the survey most completed recently by Parametrix in 2022, has identified invasive species in Des Moines Creek in the vicinity of the implemented in-stream projects, including vegetation classified as noxious weeds or weeds of concern (i.e., spotted jewelweed, nightshade, Japanese knotweed, Himalayan blackberry, reed canary grass, and English ivy). Invasive species can outcompete native plant species and result in degraded aquatic habitat conditions. Assessment of the extent of invasive vegetation, subsequent removal of invasive plants, and replacement with native plants is needed to restore degraded aquatic habitat and functional needs in Des Moines Creek. In accordance with Committee-approved work between 2007 and 2012, King County controlled approximately 12 acres of invasive weeds in the Des Moines Creek corridor. Additionally, over 18 acres of the Des Moines Creek corridor were also re-planted with native vegetation. King County directed volunteers, Washington Conservation Corps crews and a private contractor to complete the activities.

Invasive vegetation is present in the entire stream corridor from S. 200th St to the mouth of Des Moines Creek in the Puget Sound, and on the northwest side of the Des Moines Creek Trail. In a recent exploratory corridor-wide stream-walk, invasive vegetation was noted through-out the stream corridor, but most between the Midway Sewer Treatment Plant and Des Moines Memorial Drive. Additionally, invasive vegetation was observed to be very dense on the northwest side of the Des Moines Creek trail throughout the stream corridor. It is evident that previous weeding and planting work has been somewhat successful. Young cedar and fir trees were observed, and in most areas adjacent to the stream, there was noticeably less ivy compared to locations on the other side of the trail.

WORK DESCRIPTION

This Activity will involve assessing the current extent of invasive species in the Des Moines Creek riparian zone (only the Basin Restoration Projects have been recently assessed by the Committee, however, King County mapped a proposed work program for 2012 [see attached figure showing future proposed work]). A detailed corridor-wide stream-walk and vegetation assessment will be conducted to note approximate locations, areal extent, types, and densities of invasive vegetation requiring removal in the riparian zone of the Des Moines Creek stream corridor and area outside the riparian zone that could impact the stream corridor. Invasive vegetation will be removed, and native plants will be selected for replacement and subsequent

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planting based on locations of removal and environmental conditions. Replacement native plants will be selected for their ability to contribute to short- or long-term to the aquatic habitat needs in Des Moines Creek. Following the initial inspection, invasive plant removal, and replacement of removed invasive vegetation with native plants, the Des Moines Creek riparian zone will be monitored annually to determine Activity success and need for follow-up maintenance (i.e., additional invasive vegetation removal and native plantings). The following is a general summary of tasks that will need to be accomplished to implement Invasive Vegetation Monitoring and Removal.

YEAR 1 and 10

Project Planning

- Review existing documentation and build upon work program recommended in 2012 by King County.
- Plan for initial data collection to support invasive species control, removal, and replacement.
- Develop monitoring and maintenance plan to facilitate Activity success for reaching long-term vegetation goals.

Initial Data Collection

- Des Moines Creek corridor riparian zone reconnaissance.
- Maps, notes, photos, and measurements of approximate locations, areal extents, and types and densities of invasive plants.
- Observations of native plant assemblages.

YEARS 2 – 4 (Assume 3 areas of activity) and 11 - 13

Vegetation Control

- Design removal methods (assumed to be hand-equipment), equipment needs, estimated time and personnel needed to complete removal, best season to complete the project, transportation to dispose of debris, and disposal options.
- Arrange work parties, crews, or volunteer groups to conduct vegetation removal. Identify potential leaders familiar with techniques to train personnel that are less familiar.
- Coordinate equipment delivery to site(s).
- Coordinate removal and disposal of vegetation.
- Coordinate site safety.

Native Plant Restoration

- Develop native plant list appropriate for Des Moines Creek riparian area that will complement existing native plants and have best chance of being established.
- Arrange to purchase and store native plants prior to planting.
- Develop list of other planting needs, such as mulch, weed barrier (if needed), stakes, and other materials and arrange for purchase and/or storage prior to planting.
- Arrange work parties, crews, or volunteer groups to plant native plants where invasive vegetation has been removed. Identify potential leaders familiar with planting techniques for selected plants to train personnel that are less familiar.
- Coordinate equipment delivery to site(s).

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- Coordinate site safety.

YEARS 3 and ON

Restoration Monitoring

- Monitor newly planted areas bi-annually to evaluate plant establishment, die-off, and need for potential replacement. To be conducted with invasive species monitoring.

Replacement Plants

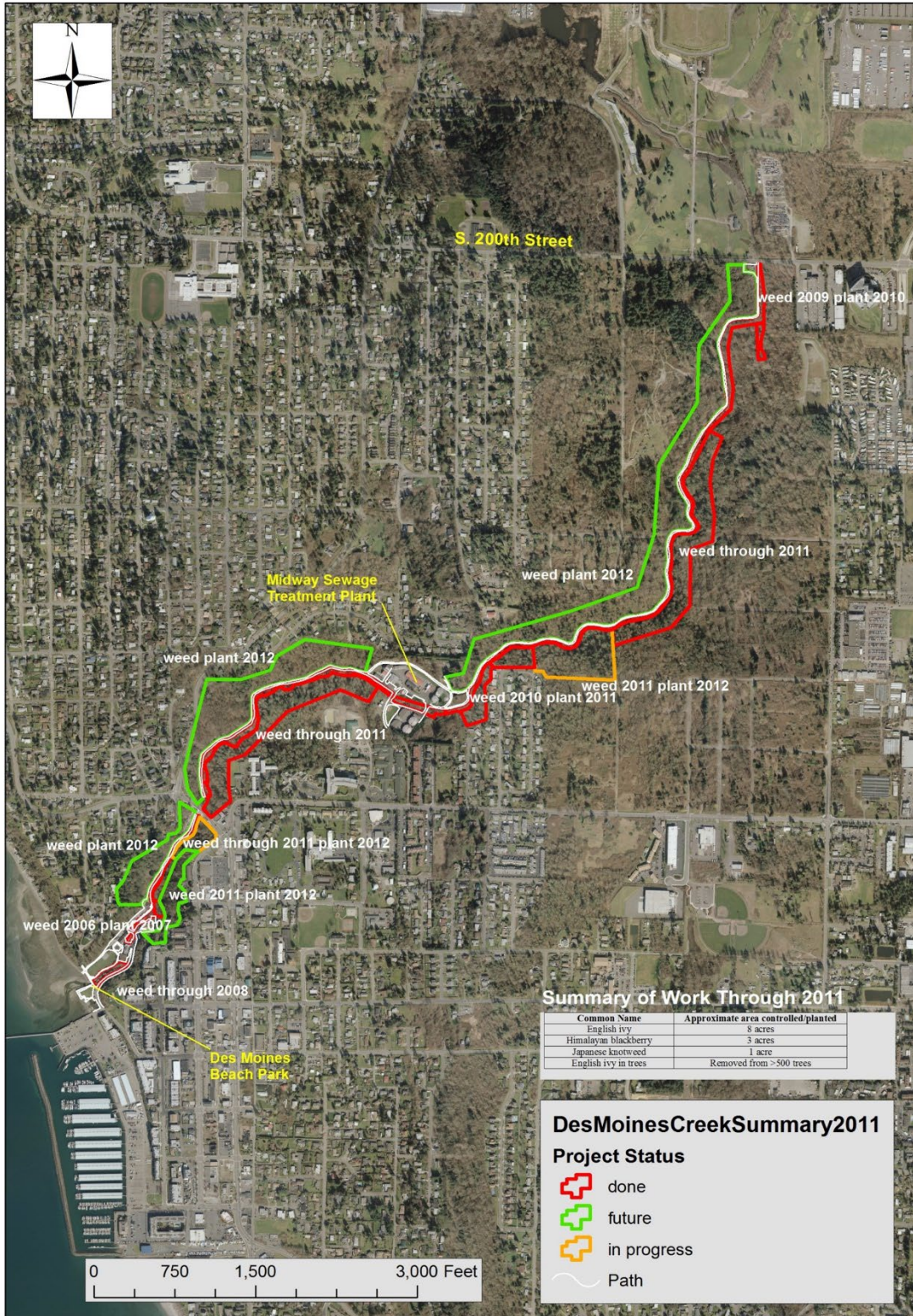
- If monitoring indicates more than 50% of the plants did not survive, trouble-shoot reason and evaluate whether replacement planting should occur.

ESTIMATED TOTAL COST (OVER 30 YEARS)

\$253,000 (in 2024 dollars)

Detailed costs are provided in Attachment 9.

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Des Moines Creek Summary of Work Completed and Proposed 2007-2014

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Attachment 6

Scope of Work for Des Moines Creek Education and Outreach

PURPOSE

The purpose of this document is to generally describe the Activity goals and the major tasks required for education and outreach. This is not intended to be a detailed scope of work.

PROJECT GOAL

The goal of this Activity is to support education and outreach activities in the Des Moines Creek Basin, including but not limited to (1) providing resources to non-profit and local watershed or environmental groups for watershed activities that support Committee goals for improvements to aquatic habitat and/or water quality, and (2) development or support of electronic outreach materials that promote the work of the Committee and provide resources that link to efforts by others in the community and region to improve the Des Moines Creek Basin. This will be accomplished by providing funds to organizations that are doing work in the basin that furthers the goals of the Committee, and developing a platform for dispersal of information, electronically. Education and outreach activities in the basin should also emphasize reaching underserved populations such as non-English speaking communities through translation.

BACKGROUND

The Des Moines Creek Basin Committee provides an opportunity to centrally locate and promote watershed activities in the basin. There is no Committee presence on-line to promote and centrally located materials for public transparency and potential coordination with non-profit organizations that are focused on Des Moines Creek watershed recreation and aquatic health.

WORK DESCRIPTION

This Activity will create a website that features Des Moines Creek Basin Committee Activities and links to other restoration activities conducted by outside groups, provide support for local community groups and non-profits doing work in the basin, and develop engagement activities that support water quality, flow control, and habitat enhancements in Des Moines Creek.

The following are general tasks to implement Education and Outreach.

YEAR 1

Project Planning

- Develop Education and Outreach Plan, including the following:
 - Goals
 - Community partners
 - Methods (website, updated kiosks/signs in watershed, work parties, support to other groups)

Website Development

- Identify host for website (Committee member or other organization).

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- Development content including educational information, links to relevant community organizations working in the watershed, information about the Committee, web map with searchable geographic information and photos of restoration sites and documents, community events calendar, etc.
- Determine frequency of website updates.

YEAR 2 and ON

Implement community outreach support and/or Committee-led outreach events including the following:

Support for Community Events

- Develop criteria for supporting community and non-profit watershed events that the Committee might support, including:
 - Funding
 - Application(s) for support
 - In-kind Contributions or Materials (for work parties)

Committee-led Outreach/Engagement

- Develop types of engagement the Committee might pursue and reason for doing so, including:
 - Volunteer work parties to remove invasive plants or plant native plants to improve aquatic stream health
 - Debris and trash pick-up along stream corridor to prevent pollution
 - Naturalist-led corridor walks to engage public about Des Moines Creek functions, improvements made, and plant and animal species.
- Identify options for staffing and coordinating Committee-led outreach, including:
 - Earth Corps or other organization for in-person volunteer work parties
 - Consultant- or contractor-led events
 - Committee-led events with representatives from jurisdictions contributing time and expertise.

ESTIMATED TOTAL COST (OVER 30 YEARS)

\$218,000 (In 2024 Dollars)

Details are provided in Attachment 9.

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Attachment 7

Scope of Work for Des Moines Creek Basin Needs Assessment

PURPOSE

The purpose of this document is to generally describe the Activity goals and the major tasks required to conduct a basin needs assessment. This is not intended to be a detailed scope of work.

PROJECT GOAL

The goal of this Activity is to identify potential future actions and projects that may be jointly implemented by the Committee to further protect and enhance Des Moines Creek beyond that provided by the existing Basin Restoration Projects.

BACKGROUND

The Des Moines Creek Basin Committee was established to implement the 1997 Des Moines Creek Basin Plan and complete identified capital projects designed to address high flows, erosion, seasonal low flow, habitat loss and water quality, which were identified then as basin deficiencies. Many of the projects identified in the Basin Plan were completed, however, flow augmentation and projects to address water quality deficiencies such as non-point source pollution were not implemented. All of the reaches of Des Moines Creek are on Ecology's 303(d) list for water quality impairment one or more parameters, including temperature, bacteria, and dissolved oxygen. Water quality monitoring was last conducted in 2012. Likewise, a pre-spawn mortality survey of coho salmon was also conducted in 2012. That study showed greater than 50% pre-spawn mortality of adult females. In the last few years, a new compound, 6 PPD-quinone, which originates from tire dust, has been identified in stormwater run-off and a contributing factor to coho salmon pre-spawn mortality. This is an evolving problem for which researchers are working to identify viable stormwater treatment solutions. Other storm and surface water issues may arise in the future. This Activity will give the Committee flexibility to address new issues as they evolve.

WORK DESCRIPTION

This Activity will implement water quality, biological monitoring, or other assessments and studies necessary to identify potential future actions and projects that address current and future basin needs, including evolving or new problems identified over the life of this agreement. It is assumed that up to 3 basin needs assessments will be completed over the period of the ILA. Potential projects and actions that address current and future basin needs will be defined by the following criteria:

- Provides a net-benefit to the Des Moines Creek Basin by improving a noted deficiency identified by collected data (i.e., water quality, habitat condition, or other aquatic health parameter).
- Meets one or more of the collective goals of the Committee to address drainage, flooding, erosion and sedimentation, fish habitat degradation, and water quality problems throughout the Basin.

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- Is better addressed by the Committee than by an individual jurisdiction because of shared responsibility for the issue, shared resources for the solution, or other factors.
- May be jointly implemented by the Committee through amendments to this agreement or other means to further protect and enhance Des Moines Creek.

Project Planning

- Review existing documentation.
- Identify data gaps and questions that need to be answered to address basin needs (i.e., water quality conditions, biological conditions).
- Plan for data collection, and identify data collection methods, analyses, locations, and frequency.

Data Collection

- Water quality sampling, including biologic index of biotic integrity (B-IBI).
- Biological surveys, including fish presence and/or spawning surveys.
- Maps, notes, photos, observations, and measurements.

Data Evaluation

- Quality Assurance/Quality Control for all data collected.
- Assess seasonal, or geographical data trends.
- Evaluate data anomalies and potential causes.
- Comparison of results to historical data.
- Comparison to standards, if applicable (i.e., water quality, beneficial uses, etc.).

Evaluate pollution sources and/or causes for deficiencies, if applicable, including whether the issue is basin-wide problem, or associated within an individual jurisdiction.

Basin Needs

- Develop preliminary alternative Activities and Projects. Activities and Projects could include the following:
 - In-stream habitat restoration
 - Bank stabilization
 - Water quality treatment facilities (retrofit of existing Basin Plan Restoration Projects, or new facilities)
 - Targeted education and outreach to address an identified issue
- Evaluate preliminary alternatives against project definition criteria to determine if Committee should consider implementation. Criteria include:
 - Provides a net-benefit to the Des Moines Creek Basin by improving a noted deficiency identified by collected data (i.e., water quality, habitat condition, or other aquatic health parameter).
 - Meets one or more of the collective goals of the Committee to address drainage, flooding, erosion and sedimentation, fish habitat degradation, and water quality problems throughout the Basin.
 - Is better addressed by the Committee than by an individual jurisdiction because of shared responsibility for the issue, shared resources for the solution, or other factors.
- Develop scopes and cost estimates for feasible Committee projects and actions.

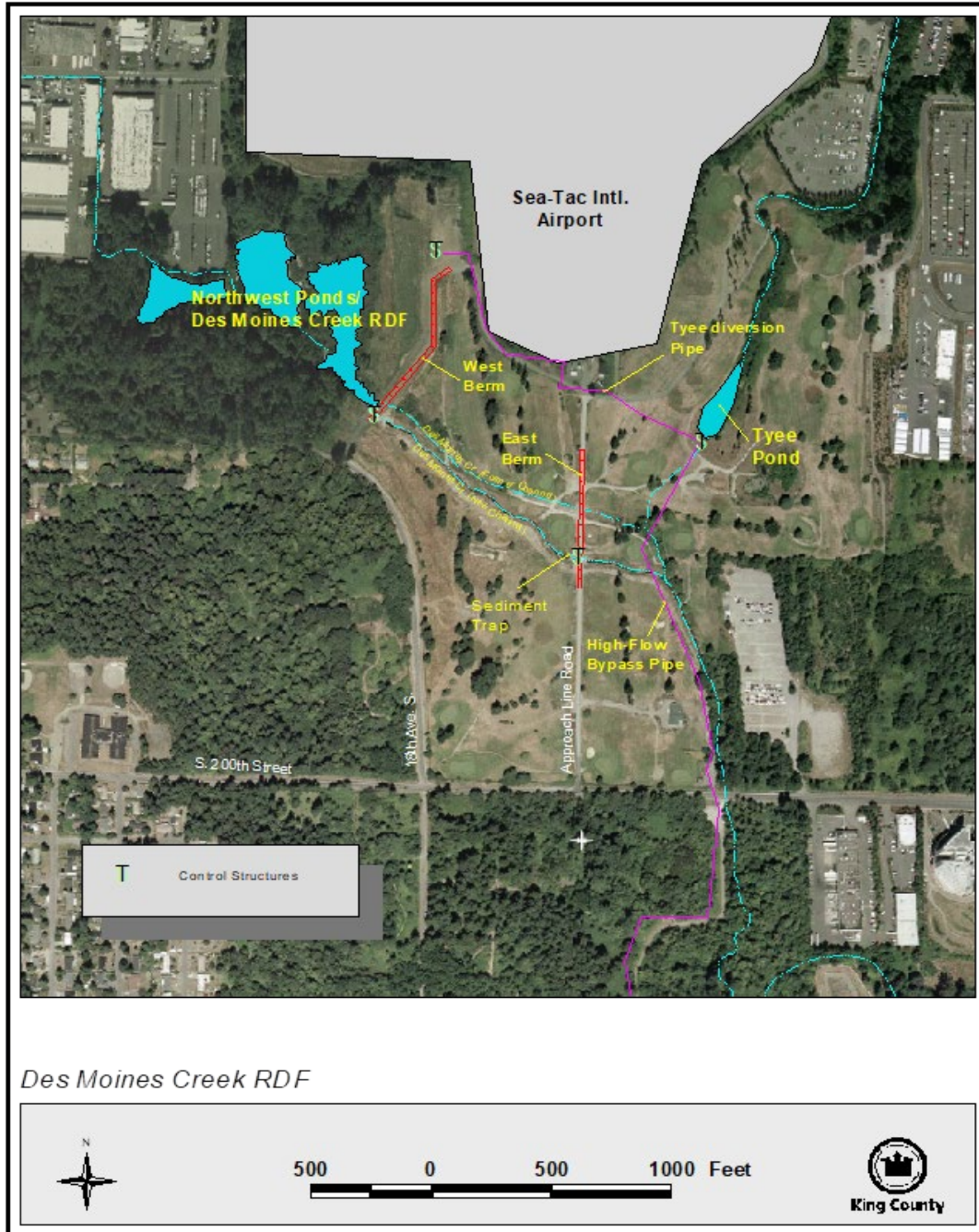
Des Moines Creek Restoration Projects Interlocal Agreement V

ESTIMATED TOTAL COST OVER 30 YEARS

\$300,000 (In 2024 dollars)

Details are provided in Attachment 9.

Attachment 8
Basin Plan Projects Map



Des Moines Creek Restoration Projects Interlocal Agreement V



Des Moines Creek In-Stream Habitat Projects: 2007 - 2012

Des Moines Creek Restoration Projects Interlocal Agreement V

**Attachment 9
O&M Fund Budget**

Task	Task Description	Estimated Task Frequency**	Total occurrences in 30 years	Cost per occurrence	Total 30-Year Cost in 2024 dollars
Evaluate RDF performance	Assess RDF storm overflow frequency at 25-year and 100-year events and evaluate maintenance and orifice sizing as needed.	Once in years 5, 10, 15, 20, 25, 30	6	\$240	\$1,440
Hydraulic Conveyance Systems	Remove debris from RDF trash racks	Twice-monthly	720	\$240	\$172,800
Hydraulic Conveyance Systems	Clean FCV 1 and 2	Annually	30	\$240	\$7,200
Hydraulic Conveyance Systems	Inspect (as needed) East Berm sediment trap and test for arsenic. Costs included in Annual Inspection.	Inspect in years 5, 10, 15, 20, 25, 30	6	N/A	
Hydraulic Conveyance Systems	Clean (as needed) East Berm sediment trap and test for arsenic	Inspect in years 5, 10, 15, 20, 25, 30	6	\$240	\$1,440
Hydraulic Conveyance Systems	Visually inspect RDF Conveyance System and other Structures (pipes, channels, energy dissipators, sediment traps, etc.). Costs included in Annual Inspection.	Annually	30	N/A	

Des Moines Creek Restoration Projects Interlocal Agreement V

Task	Task Description	Estimated Task Frequency**	Total occurrences in 30 years	Cost per occurrence	Total 30-Year Cost in 2024 dollars
Hydraulic Conveyance Systems	Clean (as needed) RDF Conveyance System and other Structures (pipes, channels, energy dissipators, sediment traps, etc.) of debris	Assume cleaning needed every 5 years	6	\$960	\$5,760
Arsenic Containment Cap	Inspect gabions and drainage ditch for erosion. Costs included in Annual Inspection.	Annually	30	N/A	
Arsenic Containment Cap	Inspect cap for eroded soil cap, exposed steel wool or fabric- channels and berm slopes	Once in years 5, 10, 15, 20, 25, 30	6	\$3,000	\$18,000
RDF and Stream Vegetation Management	Assess vegetation- RDF and creek buffers	Annually	30	\$6,000	\$180,000
RDF and Stream Vegetation Management	Remove invasive vegetation	One week a year	30	\$9,600	\$288,000
RDF and Stream Vegetation Management	Remove trees within flight safety corridor and replant with appropriate species. Completed by the Port of Seattle.	Once in years 5, 10, 15, 20, 25, 30	6	NA	
Flow Diversion System	Remove sediment and debris from inflow structure	Monthly	360	\$240	\$86,400
Annual RDF Inspections	Inspect grates, control orifices, control manholes and vaults, overflow grates, outfalls, spillways, berm sideslope, signs of extensive erosion, slumping/ cracking of dam, signs of seepage or failure of appurtenance structures and fill out Dam Inspection Safety Inspection Form- Dam Safety Inspections	Annually	30	\$2,400	\$72,000

Des Moines Creek Restoration Projects Interlocal Agreement V

Task	Task Description	Estimated Task Frequency**	Total occurrences in 30 years	Cost per occurrence	Total 30-Year Cost in 2024 dollars
Emergency Inspections	Complete all annual elements and assess spillway stilling basin and outlet energy dissipater, test moving parts, survey settlement monuments and review EAP.	3 times per 30 years	3	\$1,600	\$4,800
Dam Engineering Evaluation	Survey measurement of the settlement points	Annually	30	\$1,000	\$30,000
Maintain berm vegetation	Mow east and west berms	Twice per year	60	\$3,100	\$186,000
Inspect By-Pass Pipe, Tyee Diversion Pipe & Outfall Interior	CCTV inspection	Once in years 8, 16, 24,	3	\$20,000	\$60,000
Inspect outfall	Video inspection of the Puget Sound outfall diffuser exterior - Assumes using King County assets	Once every 10 years beginning year 2	3	\$10,000	\$30,000
Inspect By-pass and Diversion Pipes	Open and Inspect Interior of Manholes, vaults and overflow grates	Annually	30	\$1,850	\$55,500
Stream Bank	Inspect bank to ensure erosion does not encroach pipeline	Annually	30	\$650	\$19,500
Maintain Kiosk Signs	Repair for vandalism and as otherwise needed (Assumes 16 manhours to accomplish, crew of 2)	Once in years 5, 10, 15, 20, 25, 30	6	\$925	\$5,550

Des Moines Creek Restoration Projects Interlocal Agreement V

Task	Task Description	Estimated Task Frequency**	Total occurrences in 30 years	Cost per occurrence	Total 30-Year Cost in 2024 dollars
Creek Habitat Monitoring-Creek Reach	Evaluate effectiveness of constructed improvements, assess creek geometry health and recommend improvements. Assumes contracted work. Includes creek reach in RDF.	Once in years 5, 10, 15, 20, 25, 30	6	\$20,000	\$120,000
Flow Gage Monitoring	Monitor and report flow from 4 gages	Annually	30	\$10,000	\$300,000
Vegetation Monitoring and Control Plan	Conduct reconnaissance, map invasives, identify replacement plant assemblages	Once in yr 2	1	\$30,000	\$30,000
Vegetation Control	Remove invasive plants- assumes WCC crew, one week per occurrence	Once in years 3, 4, and 5.	3	\$6,500	\$19,500
Vegetation Restoration	Replant native plants in areas where invasives were removed, one week per occurrence (\$6500 labor, \$5000 Plants)	Once in years 3, 4, and 5.	3	\$11,500	\$34,500
Restoration Monitoring	Document success of invasive control and restoration efforts	Biannually starting yr 5	13	\$10,000	\$130,000
Restoration Adaptation	Remove invasives and replant, where monitoring indicates	Every 4 yrs starting yr 7	6	\$6,500	\$39,000
Develop Education and Outreach Plan	Identify outreach goals, criteria for committee funded activities, and website content. (\$1,600 costs included with Basin Coordinator funding)	Once	1	NA	NA
Website Development	Prepare content and design Des Moines Creek Basin website	Once	1	\$10,000	\$10,000

Des Moines Creek Restoration Projects Interlocal Agreement V

Task	Task Description	Estimated Task Frequency**	Total occurrences in 30 years	Cost per occurrence	Total 30-Year Cost in 2024 dollars
Website Updates	Update website annually	Annually starting yr 2 after Task 31	29	\$2,000	\$58,000
Committee Funded Education and Outreach Event	One community funded event to be determined each year.	Annually	30	\$5,000	\$150,000
Basin Needs Assessment	Review, plan, identify gaps, collect and evaluate data, and propose project actions to address basin deficiencies identified by the data.	Every 7 years starting in yr 7	4	\$75,000	\$300,000
O&M Coordinator	Staff functions as described in ILA	Annually	30	\$32,000	\$960,000
Treasurer	Staff functions as describer in ILA	Annually	30	\$3,500	\$105,000
Total Operations and Maintenance					\$3,480,390

Des Moines Creek Restoration Projects Interlocal Agreement V

Attachment 10

Replacement and Improvement Fund Budget

Task	Task Description	No. Events in 30 Years	Estimated Task Frequency	Unit	Quantity Per Event	Cost Per Unit (2024)	Total Cost 2024 Dollars
Regional Detention Facility							
East Berm and West Berm Spillway Repair	Minor grading, add surface material with compaction and repair bank erosion	3	10, 20, 30	ea	1	\$32,400	\$97,200
East Berm and West Berm Embankment Restoration	Install riprap, make miscellaneous repairs	3	10, 20, 30	ea	1	\$2,000	\$6,000
Replace Dam Filter Diaphragm over RDF and Channel outfall pipes	Not included in ILA Cost estimates	3	10, 20, 30	ea	1	\$10,000	\$30,000
Tyee Diversion Pipeline Gabion Outfall Pad Repair/Replacement	Submerged gabions in outfalls to ponds- Tyee Diversions outfall to RDF	1	10	ea	1	\$12,500	\$12,500
Energy Dissipator Replacement at RDF Outfalls	downstream of RDF (west berm) and channel(east berm) outfalls	3	10,20,30	ea	1	\$18,261	\$54,783
Flow Control Vault w/ Baffle Repair	Flow Control Vaults #1 and #2	2	10, 20	ea	1	\$50,000	\$100,000
Trash rack replacements		3	10, 20, 30	ea	10	\$4,330	\$129,900
East berm trash rack replacement		1	10	ea	1	\$65,000	\$65,000
Total RDF							\$495,383

Des Moines Creek Restoration Projects Interlocal Agreement V

Task	Task Description	No. Events in 30 Years	Estimated Task Frequency	Unit	Quantity Per Event	Cost Per Unit (2024)	Total Cost 2024 Dollars
Bypass							
Replace Lined Corrugated PE Storm Sewer Pipe - 18 in.	Tyee Pond Inlet to MH7	1	20	lf	20	\$364	\$7,273
Replace Lined Corrugated PE Storm Sewer Pipe - 24 in.	MH6 to MH11, MH53 to MH59	1	20	lf	372	\$419	\$156,028
Replace Lined Corrugated PE Storm Sewer Pipe - 30 in.	MH11 to MH21	1	20	lf	694	\$437	\$303,486
Replace Lined Corrugated PE Storm Sewer Pipe - 36 in.	MH21 to MH24	1	20	lf	165	\$520	\$85,727
Replace Reinforced Concrete Sewer Pipe - 24 in.	MH 24-52	1	15	lf	1411	\$520	\$733,099
Construct 4,700 LF New Pressurized Bypass Line/Replace Old Line	30" line, incl. new MH	1	20	ls	1	\$3,067,700	\$3,067,700
Repairs to Bypass Inlet at Tyee Pond, trash rack replacement		1	15	ea	1	\$5,000	\$5,000
Install Manholes for access to (Historic) Pressurized Bypass Pipeline reach Downstream of MH#59, Midway Sewer		1	5	ea	16	\$15,700	\$251,200
Refurbish existing access to (Historic) Pressurized Bypass Pipeline reach Downstream of MH#59, Midway Sewer		1	5	ea	4	\$5,000	\$20,000
Replace manholes	Assume A-1	1	10	ea	2	\$15,700	\$31,400

Des Moines Creek Restoration Projects Interlocal Agreement V

Task	Task Description	No. Events in 30 Years	Estimated Task Frequency	Unit	Quantity Per Event	Cost Per Unit (2024)	Total Cost 2024 Dollars
Remove/ replace marine outfall	Not included in ILA Cost Estimates. To be funded through separate agreement as needed.	0		ls	0		
Repair gabion at base of pipe outflow mid-reach		2	15,30	ea	1	\$2,000.00	\$2,000
Total Bypass							\$4,664,914
Stream							
Replace Bed Control Logs		1	10	ea	1	\$20,725	\$20,725
Replace Channel Bank Support Logs	Run parallel to stream bed	1	10	ea	1	\$20,725	\$20,725
Replacement of trail kiosks		1	10	ls	1	\$5,000	\$5,000
New stream LWD stream structures per survey recommendations	Not included in ILA Cost Estimates. To be funded through separate capital project agreement as needed.						
Total Stream							\$46,450
Total Replacement and Improvement							\$5,206,747

Des Moines Creek Restoration Projects Interlocal Agreement V

Attachment 11

Contribution Amounts Based on Impervious Surface Calculations

Basin Areas, Percent Impervious Surfaces and Contribution Amounts						
Jurisdiction	Total Basin Area (acres)	Impervious Area (acres)	Percent Impervious	O&M Fund Annual Contributions	Replacement and Improvement Fund Annual Contributions	Total Contribution Amounts
SeaTac	1423.2	730.9	46.14%	\$27,685	\$83,054	\$110,739
Des Moines	746.6	263.7	16.65%	\$9,989	\$29,968	\$39,957
Port of Seattle	1250.3	589.4	37.21%	\$22,326	\$66,978	\$89,304
Total	3420.1	1584.0		\$60,000	\$180,000	\$240,000

1. Impervious surface areas based on 2017 Forterra landcover with analysis provided by the City of SeaTac.
2. SeaTac and Des Moines areas exclude properties owned by the Port of Seattle.
3. Port of Seattle area excludes approximately 249 acres of the Airport's Industrial Wastewater System which drains directly to the Puget Sound.
4. Total basin area excludes approximately 146 acres within the Cities and Burien and Normandy Park.

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Authorization of Interlocal Agreement V, Des Moines Creek Basin Plan

Presenter:
John Evered, Senior Manager
Aviation Environment & Sustainability



Requested Action

Request Commission authorization for the Executive Director to execute Interlocal Agreement (ILA) number V with the Cities of Des Moines and SeaTac for continuation of the Des Moines Creek Basin Plan Restoration Projects for a period of 20 years with a financial contribution of \$89,304 per year.

History of Des Moines Creek Basin Plan ILA

- **1995:** ILA I with Cities of Des Moines and SeaTac and King County to prepare a Basin Plan for Des Moines Creek.
- **1997:** Amendment to ILA I to include and additional task to develop pilot projects and continue program.
- **1998:** ILA II to prepare a Preliminary Design Report.
- **2000:** ILA III with Cities of Des Moines and SeaTac and King County to continue coordination.
- **2004:** ILA IV with Cities of Des Moines and SeaTac, King County and Washington Department of Transportation to construct a suite of projects and designate Port as project manager for the Regional Detention Facility.

Des Moines Creek Basin Projects

- Regional Detention Facility and By-Pass
 - High flows are mitigated. High flows from Tyee are routed to NW Ponds for detention.
 - Base flows are routed away from Des Moines Creek in by-pass. Overall flows to Des Moines Creek are reduced.
 - In-stream erosion in Des Moines Creek from high flows is reduced.
- Habitat Improvements
 - Replacement of Marine View Drive culvert improved fish passage.
 - Large wood and rock placement in Des Moines Creek increased channel and habitat complexity, reduced and repaired areas of erosion, and reconnected floodplain-wetland habitats.

Basin Plan Projects – RDF and Habitat Improvements



Regional Detention Facility (RDF) Projects and Elements

Des Moines Creek In-stream Project 2007 - 2012



ILA V – Scope and Average Annual Costs*

*Costs in 2024 dollars. Annual average of expected 20-year projected costs. Actual yearly costs will vary depending task schedule and program needs

ILA V Future Annual Contributions *

	O&M Fund	Replacement and Imp.	TOTAL
Port of Seattle	\$22,326	\$66,978	\$89,304
SeaTac	\$27,685	\$83,054	\$110,739
Des Moines	\$9,989	\$22,968	\$39,957
TOTAL	\$60,000	\$180,000	\$240,000

* Annual contributions may increase with inflation subject to Basin Committee approval.

Questions?

ILA IV Construction Costs

	Project Costs	Basin Committee Cost**
• Regional Detention Facility Project	12,848,064	12,848,064
• Stream Bypass Project	1,943,174	1,943,174
• Flow Augmentation Project *	540,370	135,093
• Habitat Restoration and Enhancement	938,848	157,200
• Marine View Drive Culvert Replacement	8,731,628	7,706,271
• Subtotal – Project-Specific Costs	25,002,084	22,789,802
• Other Non-Project Specific Cost	2,688,090	2,688,090
• Total Costs	27,690,174	25,477,892

* Flow Augmentation Project not completed.

** Basin Committee costs augmented by grants



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8k

ACTION ITEM

Date of Meeting December 10, 2024

DATE: November 22, 2024

TO: Stephen P. Metruck, Executive Director

FROM: Julie Yun (YOON), Capital Project Manager

Jon Sloan, Senior Manager, Environmental Programs

SUBJECT: Terminal 5 Southeast (T5SE) Habitat Restoration – Design and Pre-construction Services Authorization (CIP# C801246)

Amount of this request: \$1,500,000

Total estimated project cost: \$8,900,000

ACTION REQUESTED

Request Commission authorization for the Executive Director to approve design authorization to 1. Complete design and permitting for the Terminal 5 Southeast Habitat Restoration project, and 2. Award and Execute of a Preconstruction Services Contract via Heavy-Civil General Contractor/Construction Manager (GC/CM) delivery method. The total request for this action is \$1,500,000 for a project total authorization of \$1,715,000.

EXECUTIVE SUMMARY

The Terminal 5 Southeast (T5SE) Habitat Restoration project was identified as a priority action site through systematic bank line assessments conducted as part of the Sustainable Shorelines Program. This project is the first of many future capital projects to come from this program. This project is driven by the following objectives:

1. Stabilize actively eroding shoreline using sustainable alternative stabilization techniques.
2. Remove the structurally compromised and condemned T5SE building (Mission to Seafarers Building, 1011 SW Klickitat Way #209, Seattle, WA 98134).
3. Optimize use of underutilized real estate. Port Real Estate has confirmed that no other revenue-generating opportunity is available through this property.
4. Protect against possible exposure to contaminated soils and impact to utilities.
5. Generate Natural Resource Damages (NRD) and/or Endangered Species Act credits.

This project will be delivered through the Heavy-Civil General Contractor/Construction Manager (HC GC/CM) Procurement Methodology. This alternate delivery method was selected to ensure successful delivery based on the following benefits: early engagement of the Contractor to

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provide constructability and pricing input in front-end design/permitting development, and qualification-based contractor selection. Following completion of the preconstruction phase and successful negotiation of the Maximum Allowable Construction Cost, the Project will return to Commission for Construction Authorization.

JUSTIFICATION

This project will stabilize the rapidly eroding shoreline at T5SE and eliminate the risks of uncontrolled or reactive failure of the “Mission to Seafarer’s” building. This building has been condemned, vacated, and continues to deteriorate as it stands on the eroding bankline at the project site. The building demolition will be required to occur as a precursor to any regrading and habitat restoration work.

This project supports the following Century Agenda and Maritime Division priorities:

- (1) Restore, create and enhance 40 additional acres of habitat in the Green/Duwamish watershed and Elliott Bay.
- (2) Manufacturing and industrial districts are protected and enhanced, to prevent sprawl to outlying undeveloped sites.
- (3) Reduce air pollutants and carbon emissions.

Further, this project supports the Sustainable Shorelines Program which includes systematic bankline assessments to monitor and identify eroding shorelines that require repair and stabilization actions in short- and long-term horizons. The program identifies opportunities to soften Port-owned banklines using sustainable alternative shoreline stabilization techniques and incorporate habitat components. Monitoring inspections and assessments have provided evidence of continuing shoreline erosion and corresponding sinkholes in the T5SE uplands that require preventative action now. Port staff aims to maximize habitat generation to the extent possible in rebuilding the shoreline in good stewardship of the land and of public funds.

Diversity in Contracting

This project will utilize internal Port Engineering staff to develop design. The project team will work with Diversity in Contracting Department to determine participation opportunities and appropriate WMBE aspirational goals in the construction phase of the project.

DETAILS***Scope of Work***

This project will utilize a Heavy-Civil GC/CM alternate delivery method. Pursuing this method of delivery will allow for early engagement of the general contractor (GC) for more reliable scope definition, and in turn reliable cost and permitting certainties. Port staff will leverage recent Lessons Learned documented from a directly comparable project at Duwamish River People’s

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Park (DRPP). Like the T5SE Habitat Restoration project, the DRPP project utilized in-house design and the use of Heavy-Civil GC/CM to deliver a successful outcome.

The scope of this project includes the following elements:

- (1) Demolish “Mission to Seafarers” building
- (2) Remove existing shoreline armor and debris, utilities, fencing, and pavement within project area
- (3) Install shoreline stabilization using nature-based techniques to provide erosion control and regrade the project site to include off-channel marsh, structural anchored wood, riparian edge, and berm.
- (4) Restore fencing, signage, paving per easement negotiation.

This project anticipates creating and enhancing 1.72 acres of estuarine habitat. The Port team will collaborate with the Elliott Bay Natural Resource Damage Assessment (NRDA) Trustee Council (Trustees) to develop a final design that will generate habitat credits. Similar to DRPP, the habitat credits generated from this project can be used by the Port. Surplus credits can be sold to a third party to generate Port revenue. Currently, this project has been informally initiated with the Trustees for an evaluation of the estimated credit value.

Schedule

This project anticipates construction across two in-water work windows (2026-2027 & 2027-2028).

This project will proceed per the “Natural Resource Restoration and Enhancement Credit Protocol” for pre- and post-construction phases. This project is currently undergoing the first step of the pre-construction protocol to verify the project’s potential for habitat restoration credit generation and arrive at a preliminary estimate of habitat credits. Following this step, each design milestone (30%/60%/90%/100%) will undergo a review cycle to receive Trustee input, ideally within 60 days of request.

The project team anticipates project milestones as reflected below, pending duration of each design milestone review cycle with the Trustees, as well as the timeline for permitting agency and tribal approvals.

Activity

Commission design authorization	2024 Q4
Design start	2024 Q4
Commission construction authorization	2026 Q4
Construction start	2027 Q1
In-use date	2027 Q4

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Cost Breakdown	This Request	Total Project
Design	\$1,500,000	\$1,650,000
Construction	0	7,250,000
Total	\$1,500,000	\$8,900,000

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Defer action.

Cost Implications: No additional capital spent beyond current authorization.

Pros:

- (1) Retain Port capital for other priority projects and financial initiatives.
- (2) Defer temporary construction impacts.

Cons:

- (1) Continued erosion may result in uncontrolled failure of the shoreline, which may impact building foundation and parking areas shared with easement neighbors.
- (2) Financial risk of escalated costs to design and construct project at a deferred timeline.

This is not the recommended alternative.

Alternative 2 – Pursue bankline stabilization without habitat restoration through NRDA coordination.

Cost Implications: Allocation of \$2,500,000 in capital funds.

Pros:

- (1) Preserve longevity of the shoreline at T5SE.
- (2) Benefit asset preservation efforts of surrounding easement owners through collaboration.

Cons:

- (1) Upfront cost.
- (2) Temporary construction impacts.
- (3) Missed opportunity for habitat generation in good stewardship of public funds and lands.

This is not the recommended alternative.

Alternative 3 – Proceed with design & permitting of the project as requested.

Cost Implications: Allocation of \$1,500,000 in capital funds.

Pros:

- (1) Preserve longevity of the shoreline at T5SE.
- (2) Maximize habitat generation in good stewardship of public funds and lands.
- (3) Generate Port revenue via habitat credit generation through the NRDA process.

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- (4) Benefit surrounding easement owners’ operations through collaborative asset preservation.

Cons:

- (1) Upfront cost.
- (2) Temporary construction impacts.

This is the recommended alternative.

FINANCIAL IMPLICATIONS

Cost Estimate/Authorization Summary

	Capital	Expense	Total
COST ESTIMATE			
Original estimate	\$7,100,000	\$1,800,000	\$8,900,000
AUTHORIZATION			
Previous authorizations	\$215,000	\$0	\$215,000
Current request for authorization	\$1,500,000	\$0	\$1,500,000
Total authorizations, including this request	\$1,715,000	\$0	\$1,715,000
Remaining amount to be authorized	\$5,385,000	\$1,800,000	\$7,185,000

Annual Budget Status and Source of Funds

This project was included in the 2024 Capital Plan under C801246 with a total project cost of \$2.1 million. The additional cost will be covered by C800002 Maritime Reserve.

This project is funded by the General Fund.

Financial Analysis and Summary

Project cost for analysis	\$8,900,000
Business Unit (BU)	Maritime Environmental - Habitat Initiatives
Effect on business performance (NOI after depreciation)	The project will require performance monitoring for 10 years, estimated to cost \$75,000 annually starting in 2028. The project may generate sellable credits to be sold to a third party. An estimate of potential revenue will be provided at Construction Authorization.
IRR/NPV (if relevant)	TBD
CPE Impact	NA

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Future Revenues and Expenses (Total cost of ownership)

The cost for performance monitoring is anticipated to be approximately \$75,000 in 2028 and will be required annually for 10 years. It will then be incorporated into the Port’s long-term stewardship program. The project may generate sellable surplus NRD credits pending mitigation bank evaluation with the Trustees.

ADDITIONAL BACKGROUND

None.

ATTACHMENTS TO THIS REQUEST

- (1) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

None.

Item No.: 8k_Supp

Date: December 10, 2024

Terminal 5 Southeast Habitat Restoration: Design Authorization and Preconstruction Services Request (CIP# C801246)

Julie Yun – Capital Project Manager, Waterfront Project Management

Jon Sloan – Senior Manager, Environmental Planning, Permitting, & Compliance



Agenda

- Commission Request
- Project Background
- Project Scope
- Timeline

Action Requested

Commission Authorization Request:

- ➔ Request Commission authorization for the Executive Director to approve design authorization to (1) complete design and permitting, and (2) Award and Execute a Pre-construction Services Contract via Heavy-Civil General Contractor/Construction Manager (GC/CM) delivery method. The total request for this action is in the amount of \$1,500,000 (total authorization \$1,715,000).

Project Objectives

- Stabilize eroding shoreline using sustainable alternative stabilization techniques.
- Remove structurally compromised and condemned T5SE building (Mission to Seafarers building).
- Optimize use of underutilized real estate with no revenue-generating opportunity.
- Protect against possible exposure to contaminated soils and impact to utilities.
- Generate Natural Resource Damages (NRD) and/or Endangered Species Act credits.



Current/Future State of Project

CURRENT



FUTURE



Project Schedule

Item	Anticipated Date
Commission – Design Authorization	Q4 2024
Heavy Civil GC/CM Procurement start	Q1 2025
Preconstruction Services Contract Execution	Q3 2025
Design & Permitting Complete**	Q4 2026
Commission – Construction Authorization	Q4 2026
Construction Start	Q1 2027
Substantial Completion	Q4 2027

**Pending Trustee design review and permitting schedule.

Questions?



**COMMISSION
AGENDA MEMORANDUM**

Item No. 81

ACTION ITEM

Date of Meeting December 10, 2024

DATE: November 25, 2024

TO: Stephen P. Metruck, Executive Director

FROM: Rick Duncan, Director, Aviation Business & Properties
Eileen Francisco, Director, Aviation Project Management Group

SUBJECT: Concourse A Building Expansion for Lounges – CIP C801205

Amount of this request: \$16,800,000

Total estimated project cost: \$143,307,000

ACTION REQUESTED

Request Commission authorization for the Executive Director to (1) increase the authorized total project budget by \$16,800,000 and (2) increase the Tenant Reimbursement Agreement (TRA) budget from \$112,248,000 to \$121,723,439. This results in a total estimated project cost of \$143,307,000 for the Concourse A Building Expansion project.

EXECUTIVE SUMMARY

Under the TRA, the Port contracted Delta Airlines Inc. (Delta), to complete the design and construction of an approximate 52,000 square-foot Concourse A building expansion. The project is currently 75% complete with a targeted lounge opening of Q2 2025 and a substantial completion of Q3 2025.

From June 2023 to present, the project encountered substantial varying site conditions, additional unanticipated regulatory requirements, and multiple impacts resulting in schedule delays. These circumstances have accelerated the need to expend project contingency earlier than anticipated and extended the overall project duration. Additional funds are needed to reach substantial completion.

JUSTIFICATION

Upon completion, this expansion will resolve the increased passenger demand for viable lounge space on Concourse A and add two new premier lounge experiences, a two-story Delta passenger lounge (with a Delta One experience) and a new Port common use lounge (Club SEA).

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Over the last 16 months, the project has worked to mitigate two formidable challenges 1) the varying site conditions associated with underground utility work and, 2) the resolution of numerous design discrepancies. First, the severity of these varying site conditions has required substantial redesign efforts to accurately as-built the underground conditions and relocate existing critical infrastructure to alleviate utility conflicts for the new building. Secondly, these design discrepancies resulted in a considerable amount of rework and resequencing of critical path construction activities. While these mitigation measures have focused on solutions that prioritized reducing impacts, the project has incurred both schedule delays and increased costs associated with the necessary Change Orders (CO) to address these challenges.

It is important to note, the project has yet to exceed the current authorized budget; however, if the ongoing analysis determines all proposed COs are eligible for reimbursement under the terms of the TRA, it will fully commit both the TRA (\$3.8M) and (\$5M) project contingencies and still require additional funds to reach substantial completion.

The project is at a pivotal stage in construction where forward progress is needed to maintain both the preferred Delta lounge opening in 2025 and the projected Club SEA opening for FIFA World Cup 2026. As such, the Port is requesting to secure the necessary funds to cover all anticipated cost increases in advance of completing our detailed analysis. Currently, the Port does not dispute the validity of COs associated with varying site conditions or those pertaining to discretionary changes; however, the Port has informed Delta of potential disputes regarding COs associated with design discrepancies, constructability issues, or items for which the Port and Delta are still negotiating responsibility.

Under this scenario, any funds associated with disputed items or items needing further evaluation would be held under a Port-controlled allowance until the evaluation of eligibility has been determined. Per the terms outlined in the TRA, Delta must provide sufficient proof of eligibility, demonstrate all items are Port responsibility, and/or seek recovery from their designer/General Contractor (GC) for any items resulting from insufficient designs and/or constructability issues thereof, before any funds are transferred from the allowance into the TRA.

Diversity in Contracting

This project is currently exceeding all Diversity in Contracting goals as follows:

- Women & Minority Business Enterprise | 10% goal, currently reporting 11%
- Female Apprentice Hiring | 12% goal, currently reporting 16.6%
- People of Color Apprentice Hiring | 21% goal, currently reporting 39.1%.

DETAILS

Since construction commenced, the predominant risk threatening the overall project budget has been CO management. From June 2023 to September 2024, the project reached nearly 75% construction completion. During that period, the Port received over 220 COs. These COs

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addressed: relocating existing underground utilities, removal of contaminated soil, a building redesign to accommodate existing underground utilities that couldn’t be relocated, design development for critical smoke control systems that were deferred at permit, and discretionary changes. The impact of these circumstances is a six-month schedule delay and cost increases.

This request is to increase the overall project budget to incorporate additional project funding needed to resolve the current and forecasted COs, complete a necessary discretionary change that would alleviate future impacts to the newly constructed Delta lounge, and provide the project with sufficient funds to reach substantial completion.

The table below outlines the type, percentage of COs, value, and are not categories disputed by the Port.

Category	% of COs	Value
Varying Site Conditions	33%	\$4.1M
Redesign Efforts/Regulatory Requirements	12%	\$1.5M
Discretionary Changes to Date	13%	\$1.7M
Club @ SEA Ductwork Discretionary Change	33%	\$4.0M
WSST	9%	\$1.2M
TOTAL		\$12.5M

One notable element of this budget increase is a \$4M discretionary change for the Club SEA. This addition provides specific necessary HVAC infrastructure for the new Club SEA that will be housed within this building. Waiting to install that infrastructure as part of the Club SEA contract will have a significant negative impact, requiring the Delta Club to close in the future while the HVAC infrastructure is installed and potentially delaying the opening of the Club SEA. This is work that is outside the original scope of work for the Concourse A Building Expansion for Lounges but will benefit both projects if executed now, prior to the opening of the Delta Club.

Port soft costs will increase by \$3.3M for continued project management and support due to the six-month schedule extension.

Additionally, the project team completed a reconciliation of currently authorized contingencies to offset both construction and soft cost increases because of the quantity COs and schedule extension. As part of this request, the project team is required to notify Commission when previously authorized project funds are transferred to the TRA. As such, the project team intends to transfer \$1.7M of the \$5M existing contingency into the TRA to cover forecasted Eligible TRA cost increases. The Port will use the remaining \$3.3M to cover forecasted Port soft cost increases.

Of the 220 current COs, a total of \$6.3M remains in negotiation between the Port and Delta and requires further evaluation to determine eligibility, per the terms outlined in the TRA. If approved by commission, these funds would be withheld from the TRA under a Port-controlled allowance strictly for this purpose and utilized only for those items deemed eligible.

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Lastly, the project is requesting an additional \$3.5M of new program reserve to secure a reasonable level of cost certainty for the project moving forward.

The table below provides the full breakdown of the requested \$16.8M by category and allocation of existing contingencies.

Item	Value
Construction Costs Increases	\$12.5M
Soft Costs Increases	\$3.3M
Contingency Reconciliation	\$1.0M
<i>TRA Contingency</i>	<i>\$(3.8M)</i>
<i>Existing Contingency</i>	<i>\$(5.0M)</i>
<i>New Program Reserve</i>	<i>\$3.5M</i>
<i>New Port-Controlled Allowance</i>	<i>\$6.3M</i>
TOTAL REQUESTED INCREASE	\$16.8M

If Commission approves this request to increase the total project budget by \$16,800,000, the value of the TRA will be increased from the previously authorized amount of \$112,248,000 to \$121,723,439. If approved, the Port will issue Delta a revised reimbursement letter that reflects an updated maximum reimbursement.

Scope of Work

- (1) Construct a building addition of approximately 52,000 SF that will provide shell space for two lounges (one for DL, one for the Port) and associated building systems.
- (2) Reconfigure approximately 13,500 SF of existing space to provide additional leasable office area, an entry foyer, a replacement restroom, and vertical circulation.
- (3) Demolish an existing airport building deemed unfit to renovate and construct a new 3,000 SF standalone building in its place to house the relocated Aviation Maintenance Department Passenger Loading Bridge shop that was displaced by this project. The expense cost to move the shop is included in the budget. Construction was completed in 2023.
- (4) Provide temporary restrooms for the Port common-use lounge to keep the lounge operational during construction of the building expansion. Construction was completed in 2023

Schedule

Below is the revised project schedule based on the six-month delay noted earlier.

Activity

Commission design authorization	2021 Quarter 2
Design start	2021 Quarter 2
Commission construction authorization	2021 Quarter 4

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Construction start	2022 Quarter 3
In-use date	2025 Quarter 2
Substantial completion	2025 Quarter 3

Cost Breakdown	This Request	Total Project
Design	\$0	\$6,300,000
Construction	\$16,800,000	\$137,007,000
Total	\$16,800,000	\$143,307,000

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Do not increase the total project budget or TRA value.

Cost Implications: Approximately \$126,507,000 (current authorized budget).

Pros:

- (1) Avoids additional \$16,800,000 cost to the Port.
- (2) Port already received new Aviation Maintenance PLB Shop and new concourse restrooms on concourse level, as part of the project’s enabling work.

Cons:

- (1) Tenant would have to choose to pay for base building scope beyond the agreed-upon TRA amount or walk away and not complete the Project.

Alternative 2 – Increase the project budget by \$10,500,000. Increase the TRA value to \$121,723,439. Under this alternative, the project would not receive additional funds for the \$6.3M under negotiations until the final amount and all eligibility has been determined.

Cost Implications: An additional \$10,500,00. Total estimated costs \$137,007,000

Pros:

- (1) Lower total project budget and reduced Commission request.
- (2) Cost increases account for all known and forecasted cost exposure, excluding items under negotiation.

Cons:

- (1) May require additional Commission asks for final resolution of disputed items pending final determination of eligibility.
- (2) Additional funding requests would delay project schedule and further increase soft costs to manage the project.

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Alternative 3 – Increase the project budget by \$16,800,000 for the project. Increase the TRA value to \$121,723,439.

Cost Implications: An additional \$16,800,000. Total estimated costs \$143,307,000

Pros:

- (1) Passenger lounge spaces will be expanded to accommodate passenger demand.
- (2) New lounge will support Delta’s operations on Concourse A.
- (3) Expanded lounges (Delta’s and the Port’s common use) will provide passengers an alternative to waiting for flights in crowded hold rooms and the existing Club at SEA.

Cons:

- (1) Additional contingency funds are unavailable for other uses, until the Project is complete, and the true cost is known. Contingency funds not required to be spent would ultimately be returned for other uses if it is determined to not be needed to complete the Project.
- (2) This is the higher cost alternative.

This is the recommended alternative.

FINANCIAL IMPLICATIONS

<i>Cost Estimate/Authorization Summary</i>	Capital	Expense	Total
COST ESTIMATE			
Original estimate	\$60,000,000	\$0	\$60,000,000
Previous changes – net	\$65,774,131	\$732,869	\$66,507,000
Current change	\$16,800,000	0	\$16,800,000
Revised estimate	\$142,574,131	\$732,869	\$143,307,000
AUTHORIZATION			
Previous authorizations	\$125,774,131	\$732,869	\$126,507,000
Current request for authorization	\$16,800,000	0	\$16,800,000
Total authorizations, including this request	\$142,574,131	\$732,869	\$143,307,000
Remaining amount to be authorized	\$0	\$0	\$0

Annual Budget Status and Source of Funds

This project, CIP C801205, was included in the 2024-2028 capital budget and plan of finance with a budget of \$125,774,131. A budget increase of \$16,800,000 will be transferred from the

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Aeronautical Allowance¹ CIP (C800753) resulting in zero net change to the Aviation capital budget. The funding sources will include the Airport Development Fund and revenue bonds. This project was approved by Majority-In-Interest (MII) with the airlines on December 7, 2021. With the budget increase, Port management elected to utilize the MII Management Reserve² provision within the Signatory Lease Operating Agreement (SLOA) without requiring additional MII approval from the airlines.

Financial Analysis and Summary

This project is an investment in additional terminal space that is intended to be used for both aeronautical and non-aeronautical purposes. As a hybrid project, the financial analysis looks at the project as both a standalone non-aero investment and a terminal investment that flows through airline rates and charges.

Aeronautical Rate Base Impacts

Airlines rates and charges impact	(\$000s)	2026		
		Aero	Non-aero	Total
Rentable sqft without Conc A sqft		76.55%	23.45%	100%
Rentable sqft WITH Conc A sqft		77.09%	22.91%	100%
Project cost	\$	109,910	\$ 32,664	\$ 142,574
Incremental Revenues WITHOUT Conc A SF	\$	9,522		
Terminal distribution		<u>68</u>		
Incremental Revenues WITH Conc A SF		9,590		
Incremental Debt Service		9,590	2,850	12,439
Incremental Amortization		2.9	0.9	3.7
Incremental CPE				0.35
Incremental Terminal Rental Rate				6.79

With the Concourse A expansion, the net terminal square footage distribution has a minor impact on the analysis as the existing project space allocation is reasonably close to the existing allocations.

The table above shows that before Concourse A expansion, 76.55% of the terminal costs are allocated to the aeronautical rate base, which equates to incremental revenue of \$9,522,000. After adding the incremental square footage of this project, the percentage of terminal costs

¹ The Aeronautical Allowance is included in the Capital Improvement Plan to ensure funding capacity for unspecified projects, cost increases for existing projects, new initiatives, and unforeseen needs. This ensures funding capacity for unanticipated spending within the dollar amount of the Allowance CIP.

² The Signatory Lease and Operating Agreement (SLOA) requires airline’s approval for New Projects meeting the Majority-In-Interest (MII) threshold. The Port may increase the budgets of New Projects up to an aggregate additional \$210,000 million dollars in Management Reserve without further MII review.

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increases to 77.09%; this reflects an \$68,000 increase to Aeronautical revenue. Thus, in 2026 the net impact of the Concourse A expansion project is to contribute \$9,592,900 in incremental revenue to the aeronautical rate base.

Terminal rents are established based on the total cost center costs. The project would be completed in Q2 2025. The full year of debt service and equity amortization begins in 2026. The incremental terminal rent would be \$6.79 and CPE of \$0.35 in 2026.

Non-aeronautical Investment Analysis

The purpose of this section is to demonstrate that the Port has a compelling business case as a non-aero investment. The non-aeronautical investment includes both the cost of new space included in this authorization request and cost of the interior build-out and furnishings (\$29.6 million) included in CIP C801207.

The table below shows the allocation of capital costs based on rentable square footage. For non-aero purposes, 18.17% of the rentable square footage, equating to \$55.6 million in capital cost, establishes the basis of the non-aero portion of the project. The lower part of the table identifies an incremental revenue increase of \$7.4 million in 2031. This new revenue, attributed to the airport lounge which generates the negative Net Present Value of \$10.4M. Given that the existing space is currently generating revenues, the NPV is netted against a base case (do nothing).

Non-aero Investments	Non-aero	Aero	Total
Concourse A rentable sqft	6,499	29,264	35,763
Concourse A rentable sqft %	18.17%	81.83%	
	\$ in 000s		
Base Building, C801205	\$ 25,909	\$ 116,665	\$ 142,574
Furnishings, C801207, assumed 20% cost increase	\$ 29,671	\$ -	\$ 29,671
Total Capital	\$ 55,580	\$ 116,665	\$ 172,245
Non-Aero Analysis			
Payback (years from opening)	10		
NPV (through 2043)	\$ 26,550		
NPV Incremental to Base	\$ (10,380)		
	2026	2031	2036
Incremental Non-aero Revenue	\$ 974	\$ 7,436	\$ 11,398
Incremental Non-aero O&M	\$ 64	(2,376)	(4,126)
Debt service TERMB to Non-aero	\$ (2,850)	(2,850)	(2,850)
Debt Service Furnishing 100% Non-aero	\$ (2,451)	(2,451)	(2,451)
Non-aero Net Cashflow	\$ (4,262)	\$ (240)	\$ 1,972

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Future Revenues and Expenses (Total cost of ownership)

The tenants would pay operating and maintenance annual costs in their space since maintenance of exclusive premises is the responsibility of the lessee. Those costs are not included in the amount shown below. This project provides 29,264 SF of aeronautical rentable space, as well as 6,499 SF of rentable non-aeronautical space.

Facility elements outside of or supporting the exclusive premises, such as custodial services, domestic water, power, and HVAC will generate some additional demand for Aviation Maintenance services, and those annual operating and maintenance costs for the new space are estimated to be \$340,000, according to the cost breakdown below:

Custodial services	\$275,000
Facilities services	30,000
Electrical systems	18,000
Mechanical systems	17,000

ATTACHMENTS TO THIS REQUEST

- (1) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

June 27, 2023 – The Commission authorized a budget increase for the project and an increase to the reimbursement amount to Delta.

May 10, 2022 – The Commission authorized a budget increase for the project and an increase to the reimbursement amount to Delta.

December 14, 2021 – The Commission authorized construction and reimbursement to Delta Air Lines and utilization of Port crews for construction and support.

April 27, 2021 – The Commission authorized design and execution of a TRA for this project.

Budget Increase Request Concourse A Building Expansion for Lounges (C801205)

December 10, 2024



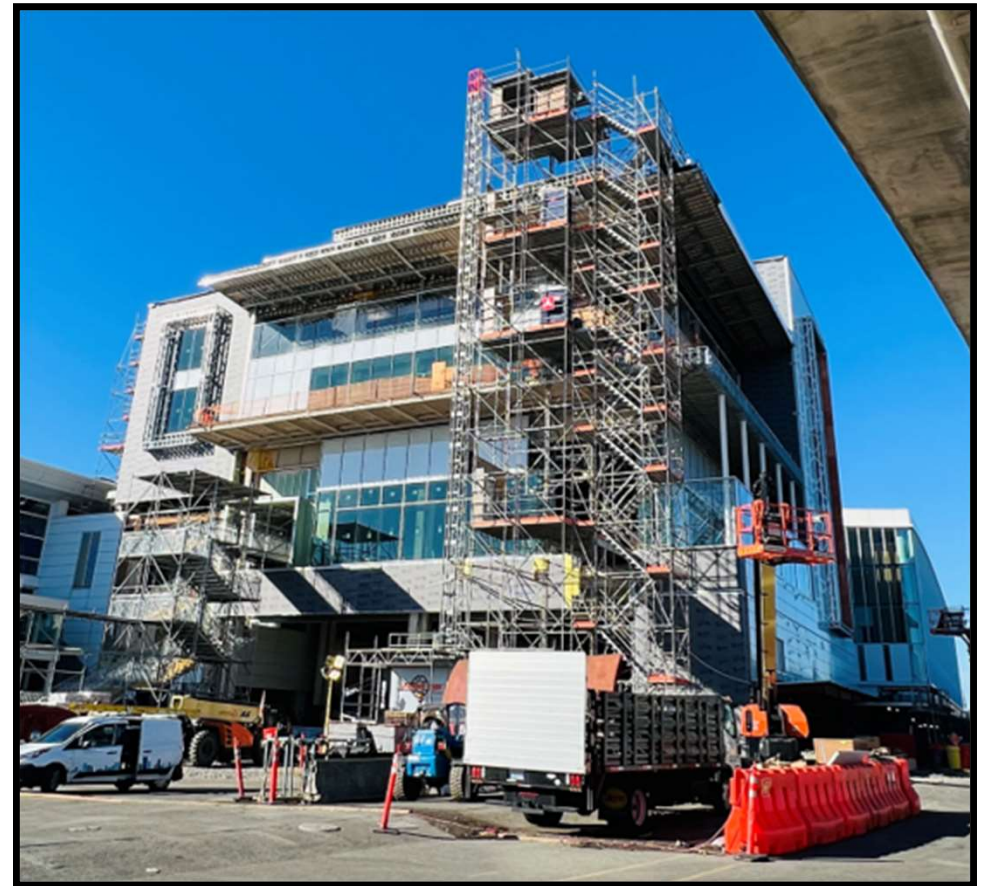
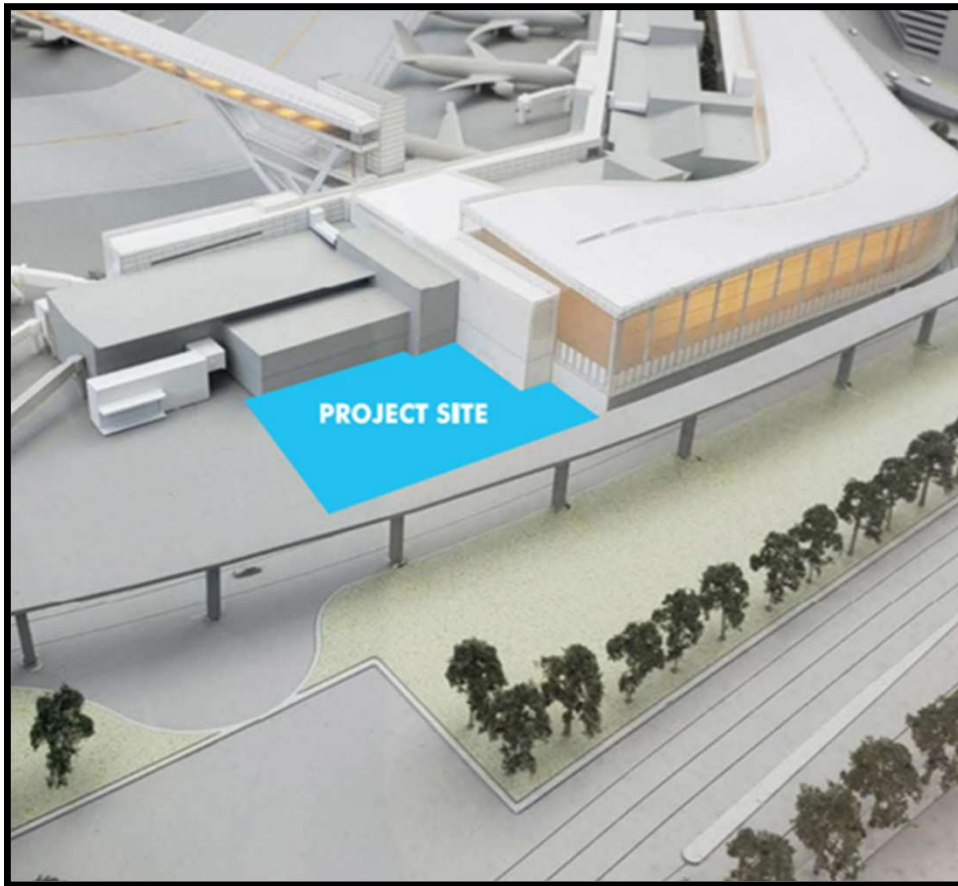
Background

- The Port contracted Delta Airlines to complete the design and construction of an approximate 52,000 square-foot Concourse A building expansion.
- Construction is currently 75% complete with a targeted lounge opening of Q2 2025.
- Project will provide two new premier lounge experiences:
 - A two-story Delta passenger lounge (w/ Delta One experience)
 - A new Port common use lounge (Club SEA).

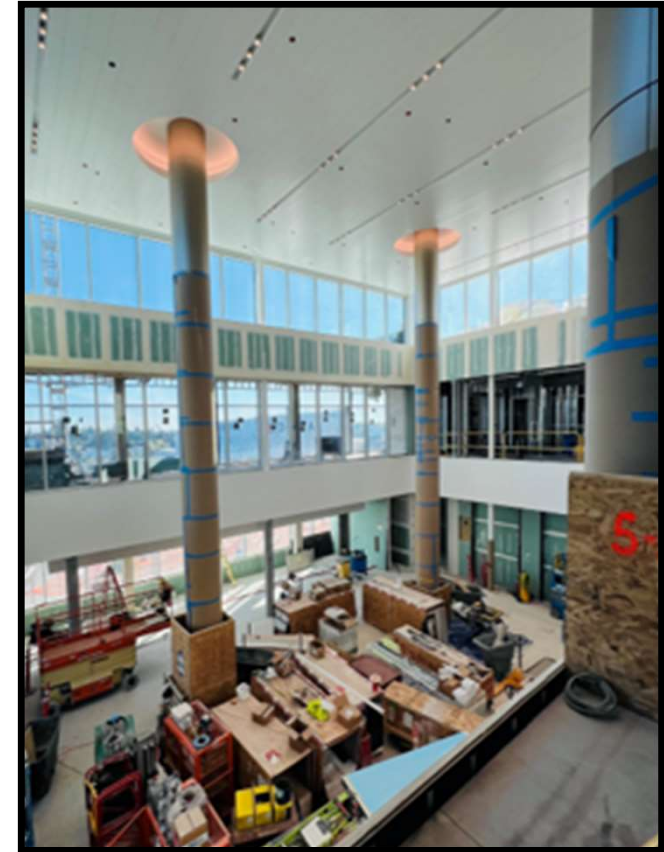
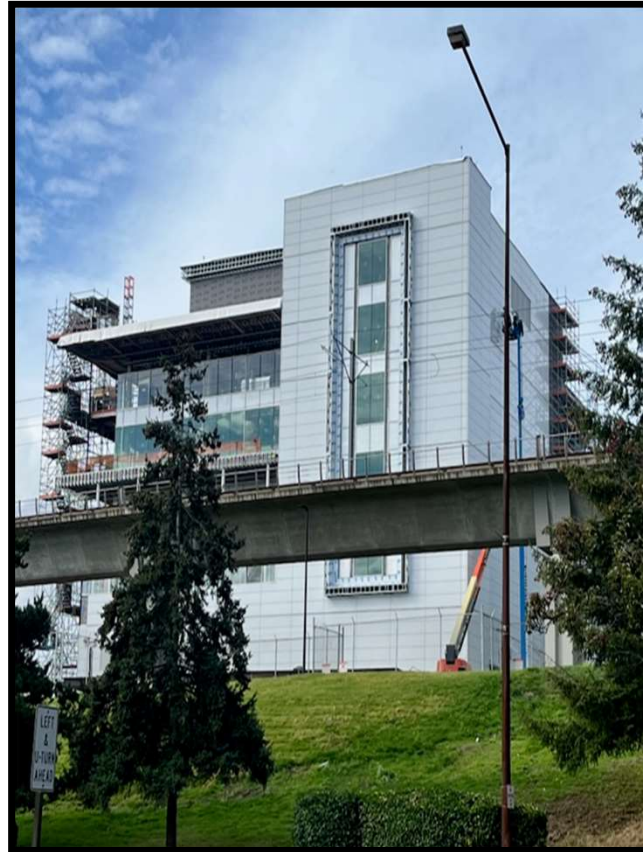
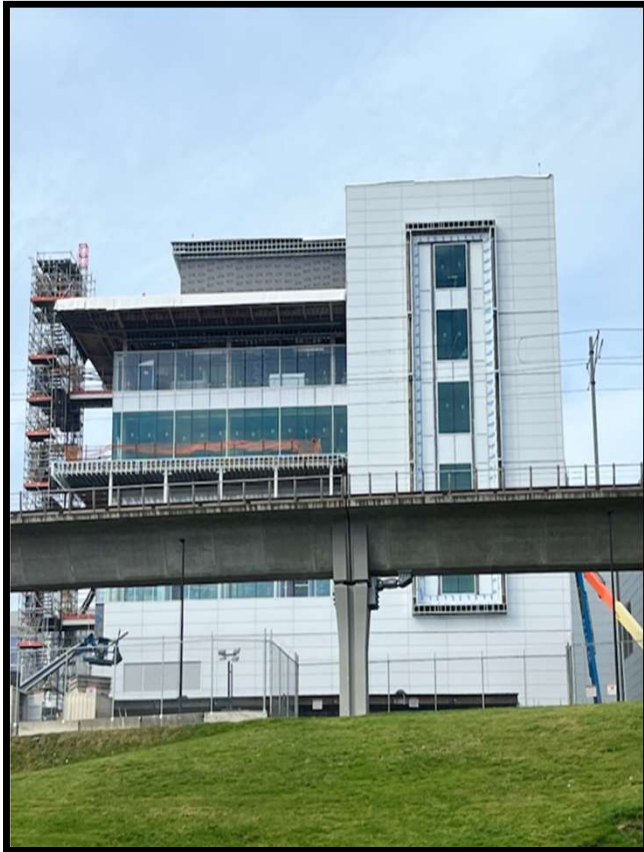
Justification

- Project is currently within authorized budget, but is trending to exceed authorized contingencies and require additional funds to reach substantial completion due to:
 - Varying site conditions associated with underground utility work.
 - Resolution of the large quantity of Change Orders (CO) to address numerous design discrepancies, resequencing of critical construction work, and discretionary changes.

Concourse A Building Expansion for Lounges



Concourse A Building Expansion for Lounges



Cost Breakdown

Requested Budget Increase	Value
Construction Cost Increases	\$12.5M
Soft Cost Increases	\$3.3M
Contingencies	\$1.0M <i>TRA Contingency \$(3.8M)</i> <i>Existing Contingency \$(5.0M)</i> <i>New Program Reserve \$3.5M</i> <i>Port-controlled Allowance \$6.3M</i>
TOTAL REQUESTED INCREASE	\$16.8M

Request

- 1) Increase the authorized total project budget by \$16,800,000, and
- 2) Increase the TRA budget from \$112,248,000 to \$121,723,439.

This results in a total estimated project cost of \$143,307,000.

An architectural rendering of a modern, multi-story building with a prominent grid-like facade. The building features large glass windows and a complex, angular structure. The word "Questions?" is overlaid in a dark blue font on the central part of the building. The background is a light blue sky, and the foreground shows a paved area and a green and blue decorative bar at the bottom.

Questions?



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8m

ACTION ITEM

Date of Meeting December 10, 2024

DATE: November 22, 2024

TO: Stephen P. Metruck, Executive Director

FROM: Mark Thomas, Deputy Chief of Police

SUBJECT: SeaTac Municipal Court and Public Defender Funding 2025-2026

Amount of this request: \$1,800,000

Total estimated project cost: \$4,125,000

ACTION REQUESTED

Commission authorized additional funding that includes the renewal two years (2025-2026) of the Sea-Tac Municipal Court Services and Public Defender ILA. The contract authorized an automatic renewal for the next two years (2025-2026), so we are seeking authorization for funding through the remainder of this contract set to expire December 31, 2026. Funding for 2025 is already included in the Police budget, and for 2026 will be included in our regular yearly budget request.

EXECUTIVE SUMMARY

In September of 2021, the Port of Seattle Commission approved \$1.5 million for a three-year interlocal agreement for court services provided by SeaTac Municipal Court. This includes misdemeanor cases and civil infractions at the airport. Services provided by SeaTac include judicial officers, court staff, probation services, performance reports, prosecutions services, and domestic violence advocates.

ILA terms include a requirement for us to independently contract for public defender services. The law firm Stewart, Nichols, Harmell, Inc. was hired by the port to fulfill the Public Defender portion of the ILA.

In November 2023, \$825,000 of additional funding was approved by the commission.

The ILA terms included an automatic renewal for two years unless there was notice by one of the parties six months before it expired. The ILA automatically renewed in July and is now set to expire December 31, 2026.

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We are requesting additional authorized funding of \$1,800,000 to take us through the end of the renewal years of 2025-2026. The costs for the court services and public defender have been in the police department’s annual budget every year starting in 2022, including 2025.

Approvals, yearly costs, and projected future expenditures are as follows:

FUNDING	2021 Initial Approval	2023 Approval	This Request	TOTAL
SeaTac Municipal Court	\$1,200,000	\$475,000	\$1,450,000	\$3,125,000
Public Defender	\$300,000	\$350,000	\$350,000	\$1,000,000
Total	\$1,500,000	\$825,000	\$1,800,000	\$4,125,000

EXPENDITURES	2021	2022	2023	2024 (estimated)	2025 (estimated)	2026 (estimated)	Total
SeaTac Municipal Court Expenditures	\$3,091	\$403,513	\$329,301	\$729,095	\$780,000	\$860,000	\$3,105,000
Public Defender Expenditures	\$7,695	\$99,015	\$212,800	\$190,490	\$240,000	\$270,000	\$1,020,000
Total	\$10, 786	\$502,528	\$542,101	\$919,585	\$1,020,000	\$1,130,000	\$4,125,000

BACKGROUND

The ILA was necessary, as booking arrestees at King County Jail was no longer an option due to booking restrictions, which were enacted during the COVID-19 pandemic. Booking restrictions have eased somewhat but have not been reversed to pre-COVID booking guidelines. An ILA was approved and executed with the South Correctional Entity (SCORE) to book suspects from the airport. To book at SCORE, however, we had to find court services that were cohesive with SCORE. The City of SeaTac had an existing relationship with SCORE, and once both ILAs were approved, the Port of Seattle Police Department could provide enhanced protection to our community.

The Port hired public defender law firm Stewart MacNichols Harmell, Inc. to represent defendants when a prosecution occurs.

Funds for Public Defender services in the 2024 budget are \$210,000, and \$240,000 for 2025. The ILA with SeaTac requires the port to independently contract for Public Defender services. Under the Delegation of Authority (dated June 13, 2017), the legal department has the authority to execute a contract for public defender services for the police department under Section 9. Legal

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Services, Claims and Other Representation. Costs exceeding the budgeted amounts in 2024-2026 will be absorbed in the POSPD budget.

Costs for SeaTac Municipal Court services have continued to rise each year. The number of cases we have sent to the court have been higher than anticipated throughout the contract period. Our costs in 2024 have grown with our high caseloads and the introduction of body worn cameras (which also creates additional work for the courts). SeaTac hired two additional administrative employees to help with the caseload specific to our department

Funds for SeaTac Municipal Court in the 2024 budget are \$400,000 and for 2025 are \$421,000. Costs exceeding the budgeted amounts in 2024 and 2025 budgets will be absorbed in the POSPD budget.

JUSTIFICATION

The Interlocal Agreement continues to support the Century Agenda goals:

1. Goal 2, objective 3: Continuously improve the operational efficiency and customer experience at SEA.
2. Goal 6, Objective 16: Advance the Port’s dedication to employee safety.
3. Goal 6, Objective 18: Partner and engage with external stakeholders to build healthy, safe, and equitable communities.

When the Port of Seattle Police Department initially requested approval for the ILA with SeaTac Municipal Court, The Port of Seattle adjudicated misdemeanor cases and infractions utilizing the King County Prosecuting Attorney’s Office (KCPAO) and King County District Court. By state statute, we can adjudicate misdemeanor and civil infraction cases through the county court system or may do so through a municipal court where the offense occurred. The King County Prosecutor’s Office continued to decrease the number of cases they would file due to decreased capacity and prioritization of violent crimes over property and disorder-related crimes. Most crimes committed at SEA properties are property crimes, such as thefts, or disorder crimes such as trespassing. In 2019, pre-COVID, only 48% of cases referred to KCPAO were filed. In 2020, only 21% of cases were filed. As of June 30, 2021, 199 cases were referred to the KCPAO. Only 26 cases, 13%, were filed.

For additional context, the below stats compare SeaTac Municipal Court filings and declines and show the large increase in cases charged between 2022 and 2023 year-to-date.

In 2022, there were 495 referrals with 44 declines. So far in 2023, there have been 567 referrals and 44 declines. Comparing similar periods (January through September), there were 344 referrals with 33 declines in 2022. This represents a 40% increase in referrals from 2022 to 2023. Lastly, declines represent 7.7% of referred cases, compared to an 87% decline rate by King County in 2021.

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Additionally, when referring in-custody cases to KCPAO we were required to book the defendant into the King County Jail. Due to King County Jail policy changes enacted during 2020 and 2021, we were severely limited in when we could book an in-custody arrest. Therefore, many offenders at SEA are arrested, escorted off property, released, and returned soon thereafter to the airport. Some offenders have over 40, 50 or even 60 trespass admonishments. Some have returned after leaving and have committed more serious crimes.

An interlocal agreement with SeaTac Municipal Court enabled the Police Department to refer misdemeanor cases for prosecutorial and court services and will enable the department to book in-custody arrests into South Correctional Entity (SCORE).

SeaTac contracts with SCORE. The Commission approved a contract with SCORE in 2020. Unlike King County Jail, SCORE will accept and then hold most defendants until their first appearance, and officers will not have to release arrestees where they can walk right back onto Port properties. Since we contract with SeaTac for court services, we must also pay for defense attorney services.

Safety and security of all those at the airport is our highest priority.

DETAILS

The ILA terms included an automatic renewal for two years unless there was notice by one of the parties six months before it expired. The ILA automatically renewed in July 2024 and is now set to expire December 31, 2026.

We are requesting additional authorized funding of \$1,800,000 to take us through the end of the renewal years of 2025-2026. The costs for the court services and public defender have been in the police department's annual budget every year starting in 2022, including 2025.

Scope of Work

Scope of work for which we are requesting additional funds is for SeaTac Municipal Court services that include judicial officers, court staff, probation services, performance reports, prosecutions services, and domestic violence advocates. The scope also includes an independent contract for Public Defender services via Stewart MacNichols Harmell, Inc.

ALTERNATIVES AND IMPLICATIONS CONSIDERED

The alternative is to resume filing cases at the King County Prosecuting Attorney's Office and utilize the King County Public Defender's Office. This alternative is not recommended as we would no longer be able to book individuals at SCORE jail, and we would have no options for booking repeat offenders at SEA, as King County Jail booking restrictions continue to be in effect. This option does not further the Century Agenda and Aviation Division Goals regarding customer experience and public safety.

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Alternative 1 – Use King County Prosecuting Attorney’s Office

Cost Implications: There is no budgetary cost to this alternative.

Pros:

- (1) No cost

Cons:

- (1) Low rate of prosecution
- (2) Limited ability to book in-custody and repeat offenders
- (3) Less officer productivity as they continue to respond to repeat offenders
- (4) Higher rate of criminal activity at SEA properties
- (5) Decreased Customer Experience
- (6) Decreased safety at SEA

This is not the recommended alternative.

Alternative 2 – Continue ILA with SeaTac for prosecutorial, public defender, and court services

Cost Implications: Approximate average \$1,000,000/year for services.

Pros:

- (1) Ability to maintain higher rate of prosecution
- (2) Ability to book in-custody misdemeanor offenders into SCORE
- (3) Reduction of repeat offenses from the same offenders
- (4) Increase in officer productivity
- (5) Improved customer experience at SEA
- (6) Improved public safety at SEA

Cons:

- (1) Cost of services

This is the recommended alternative.

FINANCIAL IMPLICATIONS

This request is for additional authorization for funds to continue using SeaTac Municipal Court and public defender services. We are requesting authorization to spend an additional \$1,800,000 to fulfill our current ILA, which renewed for two additional years in July 2024 and now expires December 31, 2026.

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Capital Expense Additional Request

Cost Estimate/Authorization Summary

AUTHORIZATION			
Current request for authorization			
SeaTac Municipal Court		\$1,450,000	
Public Defender		\$350,000	
Total authorizations, including this request	\$0	\$4,125,000	
Remaining amount to be authorized	\$0		

Annual Budget Status and Source of Funds

The funds for the services have been approved in the police department’s 2025 budget. The police department will request funds be included for 2026 in the police department’s regular budget process.

ATTACHMENTS TO THIS REQUEST

- (1) Interlocal Agreement Between the Port of Seattle and the City of SeaTac for the Provision of Municipal Court and Prosecutorial Services

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

November 21, 2023 – The Commission authorized \$825,000 of additional funds for the Interlocal Agreement Between the Port of Seattle and the City of SeaTac for the Provision of Municipal Court and Prosecutorial Services, and for Public Defender Services

September 28, 2021 – The Commission authorized an Interlocal Agreement Between the Port of Seattle and the City of SeaTac for the Provision of Municipal Court and Prosecutorial Services and authorized \$1,500,000 that included public defender services

**AN INTERLOCAL AGREEMENT BETWEEN THE PORT OF SEATTLE,
AND THE CITY OF SEATAC FOR THE PROVISION OF MUNICIPAL COURT
AND PROSECUTORIAL SERVICES**

THIS INTERLOCAL AGREEMENT, (“Agreement”) is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington, on this 15th day of October, 2021, by and between the PORT OF SEATTLE (“Port”), a Washington municipal corporation, and the CITY OF SEATAC (“City”), a Washington municipal corporation, collectively referred to herein as the “Parties.”

WHEREAS, the City is a municipal corporation organized under the laws of the State of Washington; and

WHEREAS, the SeaTac Municipal Court pursuant to RCW 3.50.020 has exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of ordinances duly adopted by the City and shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes; and

WHEREAS, the Port owns and operates Seattle-Tacoma International Airport and owns other real property located within the boundaries of the City; and

WHEREAS, the City has the capacity to provide municipal court and prosecutorial services, and all related services to the Port in a manner beneficial to both parties, and the Port desires to use these services; and

WHEREAS, the Port and the City wish to cooperate and enter into this Agreement for the orderly and efficient processing of all misdemeanor and traffic violations occurring within the jurisdiction of the Port which shall rightly be adjudicated within the jurisdiction of the City’s municipal court; and

WHEREAS, the term “misdemeanor” or any conjugation thereof shall be construed to include those offenses which can be classified as a “gross misdemeanor”; and

WHEREAS, the Interlocal Cooperation Act, codified in RCW 39.34, permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities based on mutual advantage; and

WHEREAS, the Parties have previously contracted for, historically abided by, amended, and currently abide by an existing interlocal agreement (“ILA”); and

WHEREAS, the above-referenced ILA exists as Agreement No. 18-A001 with the effective controlling term of February 17, 2018 through February 17, 2028; and

WHEREAS, the Port and the City have, through their respective authorities and jurisdictions, established their own police forces to provide police services in their own jurisdictions; and

WHEREAS, the above referenced ILA No. 18-A001, Chapter VII, Sections 7.1-7.3, established that the Port and the City Police Departments are authorized to engage as outlined in the Mutual Aid Police Powers Act, Chapter 10.93 RCW to provide emergency assistance to each other based on need; and

WHEREAS, the Parties agree that provision of services as detailed in this Agreement are in the best interest of the citizenry and administration of both public entities named herein.

NOW, THEREFORE, pursuant to Chapter 39.34 RCW, and in consideration of the mutual benefits and covenants described herein, the Port of Seattle and the City of SeaTac agree as follows:

- A. Purpose.** The purpose of this Interlocal Agreement is to make necessary arrangements for the prosecution and adjudication of misdemeanor offenses and civil infractions filed by the Port of Seattle Police that occur on SeaTac International Airport property that are within the boundaries of the City.
- B. City Services.** The City, through this Agreement shall provide the following services to the Port:
 - 1. Municipal Court Services.** The City shall provide municipal court services and facilities for the processing of the Port of Seattle cases in the same manner and at the same level as the City provides for the same type of cases originating in SeaTac and as required by state statute, court rule, city ordinance, or other regulations now existing or hereafter amended. These services include, as applicable, the filing, processing, adjudication, and penalty enforcement of all misdemeanor offenses filed on October 15, 2021 or any date thereafter for the duration of this Agreement.
 - 1.1. Judicial Officers.** The City has appointed judicial officers by whom the inherent jurisdictional authority of such office shall be vested in them to adjudicate misdemeanor or traffic violations occurring within the concurrent jurisdictions of the Port and the City of SeaTac, issue search and arrest warrants, set procedures of establishing bail, arraignments and plea hearing, pretrial motions and evidentiary hearings, address matters related to discovery materials, preside in bench and jury trials, order presentence investigations, sentencing, pretrial motions, probation services, review hearings, and all other court functions as they relate to municipal court actions.
 - 1.2. Court Staff.** Except as the Port may elect hereinafter, the City shall provide court staff, including clerks and court administrator, to process and adjudicate all criminal and civil citations filed by the Port. Processing shall include filing, issuance of summons, maintenance of court cases, processing all fines and forfeitures for municipal cases, notification and

subpoenaing of witnesses and parties. SeaTac Court shall have discretion in case flow management and schedule.

- 1.3. Probation Services. The City shall provide probation services for Port cases, including overseeing community service work to be performed in the City or as ordered by the Municipal Court Judge.
- 1.4. Performance Reports. The City will provide to the Port of Seattle a monthly caseload report. The caseload report shall include the following information: filings by case type, dismissals, number and type of hearings, trial settings, number of cases disposed during the reporting period and type of disposition (*i.e.*, Stipulated Order of Continuance, Deferred Prosecution and Guilty Pleas).

2. **Prosecution Services**. All criminal and infraction cases covered by this Agreement shall be reviewed, filed, and fully prosecuted by the City's Legal Department and staff. The City shall have final case disposition authority on all cases submitted to the City by the Port for prosecution. The Port shall support the City's prosecution of Port cases fully by responding to subpoenas, attending court hearings, production of evidence and police reports and coordination with the assigned prosecutor as needed to properly process each case.

- 2.1. Domestic Violence Advocate. The City shall provide Domestic Violence Advocate services as required by state law and as needed on a case-by-case basis. The Domestic Violence advocate and the Port Police shall coordinate in providing such services to ensure victim welfare and safety.
- 2.2. Appeals. If a defendant files an appeal on a Port case, the City prosecutor will prepare the case for the appeal and will be the attorney of record on the appeal. The Port will be charged the fee to file a notice of appeal and the cost for preparing and/or copying any court recordings. The Port shall be responsible for any associated cost including Public Defender cost on a RALJ appeal.
- 2.3. Reporting. The City Attorney's office shall provide the Port with access to information related to the status of cases referred to the City by the Port for prosecution.

3. **Police Reports and Evidence**. The Port shall be responsible for gathering, collecting and providing police reports and evidence to the City Attorney's office in timely and expeditious manner. Any costs associated with gathering, collecting, or maintaining the chain of custody shall be the responsibility of the Port, including appropriate mechanisms for delivery of evidence to the City.

C. **Term.** The Full-Service Term for this Agreement shall be from January 1, 2022 through December 31, 2024. However, a Partial-Service Term as outlined below shall initiate upon the Parties' mutual assent to this Agreement.

1. **Partial-Service Term.** A Partial-Service term shall be entered into upon the signing of the Agreement, on this the 15th day of October, 2021. Under said Partial-Service Term, the City agrees to accept cases classified by the Port as High Repeat Offenders.
2. **Full-Service Term.** The Full-Service Term of this Agreement is for three (3) years and shall commence on January 1, 2022, and conclude on December 31, 2024. The Parties shall consult on a regular basis to establish necessary amendments to ensure the best results for both Parties. Without six (6) months notice from the Parties herein, this Agreement automatically renews for another two (2) years.

D. **Financial Provisions.** In consideration of the services provided in the Agreement, the Parties agree to the following:

1. **Court Mandated Payments.** The City shall accept and track court mandated payments in criminal and infraction cases and bail or other forfeitures for the Port and deliver these payments to the Port on a monthly basis. The use of a collection agency by the City to collect court-mandated payments is permitted. The Port should receive one hundred percent (100%) of local revenues associated with Port of Seattle cases. Such revenues shall be accounted for by the SeaTac Municipal Court personnel in accordance with statues and procedures governing such duties. Local court revenues include all fines, forfeited bail, penalties, parking tickets and other court cost recoupment and payments received as a result of Port of Seattle cases.
2. **Payment of State and County Assessments.** The Port of Seattle shall be responsible for the payment of all state and county fees and collections costs associated with Port of Seattle cases.
3. **Witness Fees.** Port of Seattle shall reimburse all fees for witnesses requested by the prosecutor in Port of Seattle cases.
4. **Jury Fees.** Port of Seattle shall reimburse City of SeaTac for all jury fees for Port of Seattle court cases.
5. **Interpreter Services.** Port of Seattle shall reimburse City of SeaTac for all language interpretation services required for defendants in Port of Seattle court cases.
6. **Public Defender Services.** The Port of Seattle shall independently contract for indigent defense services and pay all associated costs.

7. **Jail Costs.** Port of Seattle shall be responsible for incarceration arrangements for its defendants and costs for such incarceration, including reimbursement of medical providers as required by RCW 70.48.130 for all Port of Seattle defendants. Port of Seattle shall be responsible for prisoner transports to and from SeaTac Municipal Court.
 8. **Set-up Costs.** City of SeaTac will be reimbursed a one-time fee of \$20,000 to cover the actual set-up costs for new staff members (office suite, phones and computers). This cost will be spread over the quarterly invoices beginning January 1, 2022
 9. **Service Fee - 2021.** The Parties agree to a service fee based on actual costs. This includes actual personnel hours of the judge, prosecuting attorney, judicial support specialist and probation counselor; as well as costs for contract services including interpreter services. Other fees include jury costs and witness costs from the effective date of this Agreement through the remainder of the 2021 calendar year to be billed by the City by January 31 and due thirty (30) days after the date of the invoice.
 10. **Service Fee - 2022.** The Parties agree to a total fee of \$376,240 for the first twelve (12) months of this Agreement (January 1, 2022 through December 31, 2022) to be paid at a rate of \$94,060 per quarter.
 11. **Payment of Fees.** Invoices for contract services fees, including actual costs for contract fees and other fees, shall be issued quarterly no later than April 30, July 31, October 31, and January 31 and due thirty (30) days after the date of the invoice.
- E. **Periodic Adjustments.** During the Full-Service Term, the Parties shall engage in a financial analysis to ensure that the City's costs are fully recovered, and no additional revenues accrue from the Port to the City for providing court services, as required by State Law. That analysis will include the following considerations:
1. **Changes to Mandates.** In the event that the City of SeaTac's municipal court duties and accompanying costs for the Port of Seattle are expanded or contracted due to state or federal mandates, the Parties agree to negotiate a reasonable increase or decrease in the fees to be reflected in the reconciliation process below.
 2. **Annual Reconciliation.** By April of each year, a reconciliation of personnel costs for the previous calendar year shall be performed and applied to the first quarter invoice for that year. The reconciliation shall consider position vacancies and any costs associated with that position (training, overhead, cost-of-living increases, etc.). The Probation Counselor and Prosecuting Attorney shall also be reconciled based on actual work performed and services provided to the Port.

- F. Agreement Administration.** The City will provide prosecutorial services on behalf of the Port in the pursuit of justice. Interested Port employees or designees thereof are to be invited to interdepartmental meetings regarding prosecutorial process, court process, or any matters relevant to the purpose of this ILA.
- G. Dispute Resolution.** Any disputes or questions of interpretation of this Agreement that may arise between the Parties shall be governed by the Dispute Resolution provisions herein. If a dispute arises, staff from each of the Parties shall endeavor to resolve the dispute at the staff level. If the dispute remains unresolved, then the Chief of the Port Police Department and the City Attorney, or their designees shall attempt to reach resolution in a timely manner. In the event the dispute survives the two-preliminary dispute resolution processes above, the Parties agree to binding arbitration of the matter. A neutral arbitrator shall be selected and mutually agreed upon by the Port and the City. The laws of the State of Washington shall control any disputes arising from this Agreement. At all times during the dispute resolution process, the Parties shall continue to carry out their responsibilities under this Agreement.
- H. Indemnification.** Both Parties shall indemnify, defend, and hold harmless the other party, its commissioners, officials, officers, agents, and employees from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatever, including costs and attorneys' fees in defense thereof, for injuries, sickness, or death of persons, or damage to property, or the violation of a person's civil rights, which is caused by or arises out of either party's acts, errors, or omissions with respect to the subject matter of this Agreement, or any act or omission of any agent retained by or contracted with by the Parties to provide services covered by this Agreement.
- I. Termination.** Both Parties shall reserve the right to terminate this Agreement, provided that the terminating party notifies the other party six (6) months prior to such termination.
- J. Amendment.** The Parties may make an amendment to this ILA provided it is minor. A minor amendment is one that does not change the substance or intent of the existing Agreement. The ILA may be amended by a Letter of Agreement (LOA) executed by the Port of Seattle Executive Director and the City Manager. All LOA's will be attached to this Agreement. Any substantive amendments to the ILA shall be approved by the Parties' legislative bodies.

SIGNATURE PAGE

DATE effective on the last signature below.

DATED: October 11, 2021

PORT OF SEATTLE, a Washington
municipal corporation



By: Stephen P. Metruck
Its: Executive Director

APPROVED AS TO FORM:



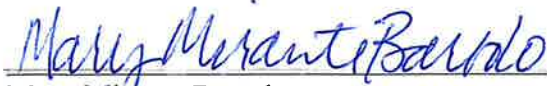
Tom Tanaka
Tom Tanaka
Port of Seattle Counsel

DATED: _____

CITY OF SEATAC, a Washington
municipal corporation

By: Carl C. Cole
Its: City Manager

APPROVED AS TO FORM:



Mary Mirante Bartolo
Mary Mirante Bartolo
City of SeaTac, City Attorney



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8n

ACTION ITEM

Date of Meeting December 10, 2024

DATE: December 10, 2024
TO: Stephen P. Metruck, Executive Director
FROM: Kyra Lise, Director Real Estate Development
Rick Duncan, Director, AV Business & Properties

SUBJECT: STOC Lease Amendment 9 Contract Extension and Increase

Amount of this request: \$350,000
Total estimated project cost: \$350,000

ACTION REQUESTED

Request Commission authorization for the Executive Director to take all necessary steps to approve and execute the lease extension of the SeaTac Office Center (AKA International Place), and the authorization for \$350,000 in additional funds to support costs associated with the extension of the current Port of Seattle lease. Majority of the funds have already been approved within the 2025 Budget and now require additional Commission authorization to extend the lease contract to February 28, 2025, and to increase the authorized funding for contract payments through the extension.

EXECUTIVE SUMMARY

Since 2015, the Port of Seattle has leased approximated 47,000 sf of office space (non-contiguous) at SeaTac Office Center (AKA International Place) an office property opposite the SEA Terminal property currently owned by STOC OWNER, LLC. The office and related parking supply leased by the Port has supported various Aviation related capital projects, mainly for Airport Building Department, Aviation Project Management, Port Construction Services, Central Procurement Office, Engineering teams and Port contractors. This leased location allows the Port to provide a flexible, near-terminal accommodation for employees and contractors supporting Aviation project delivery. The original lease term was for 5 years and included provisions for both rent on a per square foot basis as well as Common Area Maintenance (CAM) costs of which the Port was responsible for its pro-rata share.

The Port has authorized rent and CAM expenditures at STOC over the years in various annual budgets and has also renewed and modified the original the lease terms under various amendments; currently under an 8th amendment to the original 2015 lease.

Meeting Date: December 10, 2024

The term of the Lease is scheduled to expire on December 31, 2024. Landlord and Tenant desire to modify the Amended Lease to extend the Term of the Lease to February 28, 2025, and make certain other changes on the terms and conditions set forth in this Ninth Amendment. This request for \$350,000 is a one-time request to increase the total authorization for lease contract payments until we close on the purchase of this asset. This extension and funding authorization will enable the Port to pay lease obligations through February 28, 2025. Without authorization, our contract will end on December 31, 2024, and our budgeted lease payments will be depleted on December 31, 2024 – at the end of our existing lease term.

JUSTIFICATION

Over the years of this lease, the Port pursued some time extensions in leased space within the building, as well as a modest increase in additional parking usage. This incremental funding authorization request will enable the Port to pay our lease obligations through the end February 2025.

Diversity in Contracting

No new contracting opportunity applies to this request.

DETAILS

Not Applicable

Scope of Work

Execute Lease Amendment 9.

Schedule

Q1 2025

Approving this request will have no incremental impact to the 2025 Budget. This funding request is needed to allow the Port to extend the term of the existing lease obligations under the remaining lease term.

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Extend Lease for this facility

Cost Implications: \$350,000

Pros:

- (1) The Port intends to continue their occupancy of the STOC property past the current term and potential extension, under a new lease. This extension through the end of February 2025 provides the Port with more time to negotiate terms to better meet our long term needs.

Meeting Date: December 10, 2024

- (2) Extending the lease allows our Port departments that currently work at the STOC to continue uninhibited and without interruptions in achieving their departmental goals.

Cons:

- (1) The Port intends to continue its occupancy of the STOC property past the current term provision under a new lease. Were we to delay an extension, this might scuttle ongoing discussions of the Port’s new lease.
- (2) Will leave existing departments that work in the lease without existing office infrastructure and will have to engage in a costly move.

This is the recommended alternative.

Alternative 2 – Do Not extend the lease at this facility

Cost Implications: Save \$350,000

Pros:

- (1) Preserves funds for other uses and office conversion projects among other port owned facilities.

Cons:

- (1) Requires Port to seek other office options, causing delays, unforeseen expenses and interruptions to operations.
- (2) No lease extension may require the port to lease elsewhere.
- (3) No extension will remove leasable area that the port currently has under its control, hampering its ability to hire and grow within the departments that operate out of the STOC.

This is not the recommended alternative.

FINANCIAL IMPLICATIONS

Dept	Description	Jan-25	Feb-25	2025 Total
AV/PMG, ENG, PCS, CPO	OPEX	\$44,823	\$44,823	\$89,646
AV/PMG, ENG, PCS, CPO	Rent	\$68,194	\$68,194	\$136,388
ABD	OPEX	\$4,262	\$4,262	\$8,524
ABD	Rent	\$6,295	\$6,295	\$12,590
Parking (7th Amendment)	Rent	\$24,500	\$24,500	\$49,000
2025 OPEX increase and Misc costs	OPEX	\$26,926	\$26,926	\$53,852
Total		\$175,000	\$175,000	\$350,000

Meeting Date: December 10, 2024

ATTACHMENTS TO THIS REQUEST

- (1) Lease (Fully Executed, dated 7-1-2015; this is the main body of the current lease agreement which currently has 8 amendments in it's current form, however all lease issues referenced in this authorization are contained herein.)

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

July 23, 2024- The Commission authorized an additional \$525K to support costs associated with the lease to meet lease obligations due to the lease extension to Dec 31, 2024.

February 27, 2024 – The Commission authorized an additional \$700,00 to support costs associated with the lease to meet lease obligations due to cost escalation higher than originally estimated.

August 1, 2023 – The Executive Director approved, under delegated authority, a \$294,000 amendment to the existing STOC lease agreement for the lease of additional parking stalls for employee parking through August 31, 2024

November 14, 2017 – The Commission authorized the Executive Director to approve a lease amendment for office space for two additional departments to move into the SeaTac Office Center (STOC) for \$6,829,000

October 24, 2017 – The Commission was briefed on a proposal to execute a lease amendment for office space for two additional departments to move into the SeaTac Office Center (STOC) for \$6,829,000

April 28, 2015 – The Commission was briefed on, and authorized, a request to execute a four-year lease agreement to provide office space for the IAF Program Management Group in the SeaTac Office Center (STOC) for \$1,995,285

NINTH AMENDMENT TO LEASE

THIS NINTH AMENDMENT TO LEASE (“**Ninth Amendment**”) is made as of Effective Date (defined on the signature page), by and between STOC OWNER, LLC, a Delaware limited liability company and successor-in-interest to Second Landlord (defined in Recital A below) (“**Landlord**”), and PORT OF SEATTLE, a Washington municipal corporation (“**Tenant**”).

RECITALS

A. Landlord and Tenant are parties to the Triple Net Lease Agreement dated May 6, 2015, between SeaTac Venture 2010 LLC (“**First Landlord**”) and Tenant (“**Initial Lease**”), as amended by the First Amendment to Lease dated October 8, 2015 between the First Landlord and Tenant, the Second Amendment to Lease dated November 11, 2016 between STOC, LLC (“**Second Landlord**”) and Tenant, the Third Amendment to Lease last executed on August 21, 2017 between Second Landlord and Tenant, the Fourth Amendment to Lease last executed on November 29, 2017 between Second Landlord and Tenant, the Fifth Amendment to Lease dated July 16, 2019 between Second Landlord and Tenant, the Sixth Amendment to Lease dated November 4, 2019 between Second Landlord and Tenant, the Seventh Amendment to Lease dated August 21, 2023 between Second Landlord and Tenant, and the Eighth Amendment to Lease dated August 22, 2024 between Landlord and Tenant, for Suites 400, 401, 401C, and 407, consisting of 46,726 rentable square feet of space in the aggregate (“**Premises**”), at the building located at 17900 International Blvd., SeaTac, Washington (“**Building**”). As used herein, “**Amended Lease**” means the Initial Lease as modified by the amendments listed above and “**Lease**” means the Amended Lease as modified by this Ninth Amendment.

B. The Term of the Lease is scheduled to expire on December 31, 2024. Landlord and Tenant desire to modify the Amended Lease to extend the Term of the Lease and make certain other changes on the terms and conditions set forth in this Ninth Amendment.

AGREEMENT

In furtherance of the Recitals set forth above, which are incorporated herein by reference, and in consideration of the mutual promises and covenants set forth below, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties acknowledge and agree to the following:

1. **Capitalized Terms.** Except as otherwise specifically defined herein, all capitalized terms shall have the meanings assigned to such terms in the Amended Lease.
2. **Ninth Amendment Term.** The Term of the Lease is hereby extended beyond the Eighth Amendment Term for a period of two (2) months (“**Ninth Amendment Term**”), commencing on January 1, 2025 and expiring on February 28, 2025 (“**Expiration Date**”).
3. **Base Rent.** During the Ninth Amendment Term, Tenant shall pay Base Rent to Landlord according to the following schedule:

Period	Annual Base Rent Per RSF	Monthly Base Rent
Jan. 1, 2025 – Feb. 28, 2025	\$18.62	\$72,503.18

4. **Additional Rent.** In addition to Base Rent, Tenant shall continue to pay all Additional Rent owing under the Lease during the Ninth Amendment Term, including without limitation Tenant's Proportionate Share of Operating Expenses.

5. **Condition of Premises.** Tenant accepts the Premises from Landlord in its existing "AS-IS," "WHERE-IS" and "WITH ALL FAULTS" condition, and acknowledges and agrees that Landlord has not agreed to perform any work in the Premises or elsewhere and shall have no obligation to refurbish or otherwise improve the Premises throughout the Ninth Amendment Term.

6. **Brokers.** Tenant represents and warrants to Landlord that Tenant has not dealt with any real estate broker, agent, finder, or other person in connection with the negotiation or execution of this Ninth Amendment. Tenant shall indemnify, defend, and hold Landlord harmless from and against all costs, expenses, attorney fees, liens, and other liability for commissions or other compensation claimed by any real estate broker, agent, finder, or other person claiming the same by, through, or under Tenant. The foregoing indemnity shall survive the expiration or earlier termination of the Lease.

7. **Entire Agreement.** This Ninth Amendment and the Amended Lease constitute the entire agreement between Landlord and Tenant with respect to the subject matter of this Ninth Amendment.

8. **Full Force and Effect.** Except as specifically set forth herein, the Amended Lease is and remains in full force and effect and binding on the parties. Tenant confirms that Landlord is not now and has not in the past been in default under the Lease, and that Tenant has no claim against Landlord for damages or offset of any kind.

9. **Authority.** Landlord and Tenant each represents and warrants to the other that the party signing below on its behalf has the full power, capacity, authority and legal right to execute and deliver this Ninth Amendment and to fully bind it to the terms hereof.

10. **Counterparts; Electronic Signatures.** This Ninth Amendment may be executed in one or more facsimile or PDF counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Furthermore, this Ninth Amendment may be executed by original signature and/or electronic signature made in compliance with the ESIGN Act of 2000 (as the same may be amended), and may be delivered via facsimile, electronic mail, or other method, and any counterpart so executed and delivered shall be deemed to have been duly and validly executed and delivered for all purposes.

[Signature page on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Ninth Amendment as of dates set forth below, to be effective as of the later of such dates (“**Effective Date**”).

LANDLORD:

STOC OWNER, LLC,
a Delaware limited liability company

By: STOC Investor Holdings, LLC,
a Delaware limited liability company
Its: Sole Member

By: URG STOC Investors (2.0) LLC,
a Washington limited liability company
Its: Managing Member

By: Urban Renaissance Group LLC,
a Delaware limited liability company
Its: Manager

By: _____

Name: Shawn Jackson

Its: Authorized Signatory

Date: _____

TENANT:

PORT OF SEATTLE,
a Washington municipal corporation

By: _____

Name: _____

Its: _____

Date: _____



**COMMISSION
AGENDA MEMORANDUM**

Item No. 80

ACTION ITEM

Date of Meeting December 10, 2024

DATE: December 10, 2024

TO: Stephen P. Metruck, Executive Director

FROM: Lance Lyttle, Managing Director, Aviation Division
Rick Duncan, Director, AV Business & Properties

SUBJECT: 2025 – 2034 Signatory Lease and Operating Agreement between the Port and the Airlines operating at Seattle-Tacoma International Airport (“SEA” or “Airport”)

Total Estimated SLOA V Lease Revenue (10-year): **\$8,424,000,000**

Previously authorized total SLOA IV Lease Revenue (6-year): **\$2,900,000,000**

ACTION REQUESTED

Request Commission authorization for the Managing Director, Aviation Division to execute 2025-2034 Signatory Lease and Operating Agreements (“SLOA V”) between the Port and various airlines for the use of facilities at the Airport.

EXECUTIVE SUMMARY

A signatory lease and operating agreement will memorialize the conditions under which airlines use Airport facilities and the methodologies the Airport employs to charge airlines for use of the space and facilities. The purpose of this request is to approve SLOA V as the successor lease agreement to the 2018-2024 Signatory Lease and Operating Agreement (“SLOA IV”) which expires on December 31, 2024. The Commission Motion of September 13, 2022, amended the SLOA IV agreement to extend it to December 31, 2024, to provide time for the airport and airlines to get a better understanding of the industry and its trends as the recovery of the COVID-19 Pandemic continued. This agreement will secure airline commitments at SEA until December 31, 2034.

JUSTIFICATION

A multi-year lease agreement provides a greater degree of certainty to the Airport and the airlines than shorter-term alternatives. The only practical alternative to a new lease agreement would be for the Port to implement rates by resolution. Resolution 3677, as amended, describes the methodologies the Port would use to charge airlines in the absence of a lease agreement. The Port and the airlines agreed that a negotiated lease agreement is preferable to implementing rates by resolution.

Meeting Date: December 10, 2024

Diversity in Contracting

No new contracting opportunity applies to this request.

DETAILS

COMPARISON OF KEY LEASE TERMS

Provision	SLOA IV (2018 – 2024)	SLOA V (2025-2034)
Term	5-year plus extension	10 Years
Definition of a gate	Distinction and weighting difference between a passenger loading bridge gate (1.0) and a ground boarded gate (0.5)	No change
Ticket Counters	Any signatory carrier can have pref ticket counters	A carrier must have a pref gate to qualify for pref ticket counters
Minimum number of common use gates as designated by the Port	2019: 16 2022: 21 2020: 18 2023: 22 2021: 18 2024: 22	None; fixed number of preferential gates with a Minimum Use Requirement (“MUR”) to retain preferential assignment
Minimum Use Requirements	None	A pref carrier must annually average 6X flights per day per gate (Feb 1- Oct 31) to maintain their gate count
Preferential gate allocation formula • Threshold • Months of seats data	6.0x average daily weighted turns to enter pref pool 9: 6 months of actual (February – July) and 3 months of forecast (August - October) Gates re-allocation January 1 of each calendar year.	2024 gate allocation “frozen” at 67 gates allocated for preferential use, with the MUR to maintain allocation in future years.
Gates out for construction or unanticipated repair	<ul style="list-style-type: none"> Port to make “pref airlines whole” by providing a 1:1 NB gate from the common use pool of gates when a pref gate is out for construction (OFC) No limit to gates OFC 	POS will target maximum of 2 contact gates out for construction at any time and will make up to 2 common use gates available at any given time to replace preferential use gates taken out of service for this purpose, exclusive of gates taken out of service through the completion of the Sout Satellite Renovation project.
Newly Constructed Gates	Newly constructed gates will go into common pool, but could then be allocated, at Airport’s discretion, for preferential use.	Newly added gates will be allocated or withdrawn on an alternating basis between the preferential and common use pools.
<ul style="list-style-type: none"> Majority-in-Interest threshold Implications of MII vote 	Yes \$10.0 million for aeronautical rate base costs No change Pre-approved up to \$300 million for planning and design for projects needed to construct new gates on north side of the Airport.	MII eliminated and replaced with CIP Collaboration protocol
CIP Collaboration protocol	No reference	High level collaboration language to be included in SLOA with specific processes to be defined outside of SLOA <ul style="list-style-type: none"> Checkpoint meetings integrated with SEA existing process Escalation process that can be activated by SEA or Signatory Airline vote

Meeting Date: December 10, 2024

Rented space takeback	Airport can take back space due to capital project, must provide like-for-like	Airport can take back space if needed for any commercial reason, provide like-for-like if available but not required
Mid-term space adjustment	None	Airlines may reduce its space by up to 20% at the 5-year mark
Revenue Sharing	Port will share with airlines a percent of net revenues in excess of 1.25x debt service as follows: <ul style="list-style-type: none"> • 2018: 40% • 2019: 20% • 2020-22: 0% 	0%
Financial Reopener	Not addressed	Airport may reopen financial model negotiations by mutual agreement with airlines under specific conditions
Airfield Rate-making methodology	<ul style="list-style-type: none"> • Airfield residual rate structure where all net airfield costs are paid by airlines • Allows debt service coverage “charge-up” mechanism to minimum of 125% airport-wide (charge coordinated with terminal cost center) • Mid-year adjustments if deemed necessary • Annual adjustments to actual 	No Change
Terminal Rate-making methodology	<ul style="list-style-type: none"> • Terminal compensatory rate structure (cost allocated to rentable space pursuant to Sect. 8.3.2) • Mid-year adjustments may be implemented if variance of 10+% is forecast versus budget • Annual adjustments to actual • Airport has vacancy risk on publicly accessible aeronautical and non-aeronautical space only. Other rates are set over rented space vs. rentable. 	No Change
Employee Parking	No reference	Memorialize employee parking stabilization plan to phase in increasing parking rates associated with the expanded employee parking operation for all users of the lots (airline and non-airline employees)
Cruise baggage	Include 50% of cost for baggage handling from ship to airport in rate base for Bag Makeup.	No Change
Eligibility for Signatory status	Airline must offer regularly scheduled service	No Change
Debt service coverage	Allows debt service coverage “charge-up” mechanism to minimum of 125% airport-wide (charge coordinated with terminal cost center)	No change from SLOA IV but defines method/timing for airlines to recover extraordinary coverage charges, if triggered, in future periods after coverage requirements are met.
Insurance	\$500M aviation liability per occurrence; \$10M commercial general liability per occurrence.	
Security Deposit/ Security Fund	No surety required for carriers operating in good financial standing at the Airport for at least 24 months.	No change

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Reject approval of SLOA V and implement rates in accordance with Resolution 3677, as amended.

Pros:

- (1) No limit on the number of common gates the Port can withhold
- (2) Port has flexibility to determine the optimal gate allocation methodology
- (3) Airport retains potential for marginally higher revenues that may be collected under a commercial compensatory agreement
- (4) No MII, airport has control of its capital program with minimal administrative burden for collaboration processes

Cons:

- (1) Failure to reach agreement indicates airport and its major airline customers are not in alignment
- (2) Rate methodology does not offer economies of scale to benefit airlines with multiple flights per day (most fees are based on a per use basis), reducing benefits of operations of scale for SEA's largest airlines, including the hub airlines.
- (3) While the rate methodology incorporated into Resolution 3677, as amended, was designed to conform to federal Department of Transportation requirements and thus withstand a legal challenge, airlines at Sea-Tac could still elect to mount a legal challenge, which could be expensive and administratively burdensome.
- (4) Added financial protection from extraordinary coverage will not be available to the Port.
- (5) Airline revenues would be reduced in certain cost centers.
- (6) No obligation for airlines to maintain presence at SEA, introducing potential for future vacancy risk.
- (7) Viewed less favorably by the rating agencies compared to having an agreement.

Meeting Date: December 10, 2024

This is not the recommended alternative.

Alternative 2 – Approve SLOA V

Pros:

- (1) Agreement on a ten-year lease provides level of certainty for both the Airport and the airlines through 2034.
- (2) Airlines contractually “back” the airport’s aeronautical revenues for the term of the lease, reducing vacancy risk.
- (3) Improved processes agreed to by airlines to improve collaboration on capital project delivery, increasing efficiency and decreasing cost.
- (4) No MII, airport has control of its capital program
- (5) MUR (minimum use requirements) incentivizes airline efficiency with their operations or at the risk of having preferentially assigned gates converted to common use gates.
- (6) Control over real estate is still maintained, allowing for flexibility during the massive capital program and construction.

Cons:

- (1) Port is limited in the number of gates it can allocate for as common use, thus potentially limiting the Port’s direct control over use of a portion of its gates.
- (2) Port agrees to meter employee parking rate escalations for all employees over a multi-year period.

This is the recommended alternative.

FINANCIAL IMPLICATIONS

The lease provisions of SLOA govern over \$550 million per year of aeronautical revenues and is expected to increase to \$1.05 billion per year over the next ten years. The passenger airline cost per enplaned passenger (CPE) is estimated between \$20.57 and \$37.76 for the 10-year term. The debt service coverage trigger permits the Airport to include in the airline rate base debt service coverage up to 25% of debt service as needed to bring total Airport debt service coverage up to 1.25x. This ensures that the Airport will maintain at least 1.25x debt service coverage. This provision is the same as in SLOA IV.

Additionally, SLOA V will memorialize the Employee Parking Rate Stabilization Plan, which will diversify the cost of acquiring new real estate and infuse \$27 million over the first six years amongst various aviation non-aeronautical cost centers to phase in the parking rates to a forecasted average increase of ~10% per year.

Meeting Date: December 10, 2024

ATTACHMENTS TO THIS REQUEST

- (1) 2025 – 2034 Signatory Lease and Operating Agreement (SLOA V)
- (2) Letter to airlines regarding hold-over for SLOA V execution
- (3) Presentation

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

- October 10, 2017 – Commission motion to extend SLOA III to March 31, 2018
- November 28, 2017 – Commission guidance to restart negotiations
- December 19, 2017 – Commission motion regarding sustainable aviation fuels
- February 13, 2018 – Commission motion to extend SLOA III to May 31, 2018, to facilitate approval and implementation of SLOA IV by June 1, 2018 (retroactive to January 1, 2018).
- February 27, 2018 – Commission motion to execute SLOA IV
- September 13, 2022 – Commission motion to execute SLOA IV extension

November 30, 2024

[Airline Name]

Attn: [Airline Contact Name]

[Address]

[City], [State] ZIP

RE: 2018 – 2024 Signatory Lease and Operating Agreement [Agreement No.] (“SLOA IV”)
Seattle-Tacoma International Airport

Dear [Salutation] [Airline Contact Name],

We are on the home stretch of the negotiations for a replacement to the existing SLOA IV. Our current timeline for the replacement 2025 -2034 Signatory Lease and Operating Agreement (“SLOA V”) has us requesting approval of the lease template from our Commission on December 10, 2024. Upon obtaining Commission authorization, the Port will be issuing execution copies of SLOA V to you for your signature. Our intention is to send these execution copies as close to the end of December as possible. However, this is dependent on system access that is currently unavailable due to the cyberattack.

Because of this, we are building additional time into the schedule. Under this revised schedule, to avoid paying non-Signatory premiums in 2025, you must return your executed SLOA V to the Port by no later than **March 10, 2025**. If you meet this deadline, the effective date of your SLOA V will be January 1, 2025.

If you do not execute a SLOA V by March 10, 2025, then you will be treated as a Non-Signatory Airline. If you wish to continue operating at SEA, you must deliver an executed Operating Permit by no later than April 1, 2025 and you will be charged the Non-Signatory Airline premium effective January 1, 2025. If you elect this route, please reach out to [Property Manager Name] at [Property Manager email] to request those documents.

To facilitate this extended schedule, we will place all current Signatory Airlines into holdover status under your SLOA IV agreement until April 1, 2025. We will implement the 2025 rates that were uploaded to the SEA AAAC website on [date] so that rates and charges

continue to be invoiced and collected in this interim period where we are awaiting signatures of the SLOA V documents. Currently Signatory Airlines that become Non-Signatory Airlines in 2025 will be assessed Non-Signatory premiums for the period January 1-March 31, 2025 through a reconciliation conducted by the Port after April 1, 2025.

This letter shall serve as notice under Article 22 of SLOA IV that you will be in holdover from January 1, 2025 through March 31, 2025.

If you have any questions or concerns about this, please contact me at johnson.jason@portseattle.org.

Sincerely,

PORT OF SEATTLE

Jason Johnson
Assistant Director, Airline Affairs and Aviation Properties

Draft for Submission to Port Commission – 11.14.24

PORT OF SEATTLE
SIGNATORY LEASE AND OPERATING AGREEMENT
2025 – 2034

AIRLINE:
<Airline Legal Name>

SEATTLE-TACOMA INTERNATIONAL AIRPORT

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PORT OF SEATTLE

SEATTLE-TACOMA INTERNATIONAL AIRPORT

2025 – 2034

SIGNATORY LEASE AND OPERATING AGREEMENT

Airline: <Airline Legal Name>

This SIGNATORY LEASE AND OPERATING AGREEMENT (this “Agreement”) is made by and between the PORT OF SEATTLE (the “Port”), a Washington municipal corporation, and <Airline Legal Name>, <Company Type and State> (the “Airline”).

RECITALS

The Port owns and operates the Seattle-Tacoma International Airport (the “Airport”) and has the authority to grant to Airline rights and privileges concerning the occupancy and use of the Airport.

The Airline desires to occupy or use certain Airport premises and facilities and to acquire from the Port certain rights and privileges in connection with its use of the Airport.

In consideration of the terms and conditions described below, the Port and Airline agree as follows:

ARTICLE 1

DEFINITIONS AND EXHIBITS

1.1 Basic Data.

Each reference in this Agreement to any of the following subjects shall incorporate the information specified below:

Port: Port of Seattle.

Port’s Overnight Delivery and Street Address: Attn: Manager, Aviation Properties, Mezzanine Level, 17801 Pacific Highway So. Seattle, WA 98158.

Port’s Payment Address: P. O. Box 24507, Seattle, WA 98124-0507

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Port's Post Office Address: Attn: Senior Manager, Aviation Properties, PO Box 68727, Seattle, WA 98168

Airline: <Airline Legal Name>

Airline's Overnight Delivery Address: <Address>

Airline's Post Office Delivery Address: <Address>

Effective Date: _____

Term: The period of time beginning on the Effective Date and ending on the Expiration Date, unless earlier terminated as provided in this Agreement; *provided*, however, that this Agreement shall not commence for any Air Carrier unless three (3) or more Air Carriers that are currently performing scheduled passenger or cargo operations at the Airport and that also collectively account for at least sixty-six and two-thirds (66-2/3) percent of the Terminal Rents and Landing Fees paid by all Air Carriers at the Airport during Fiscal Year 2023, deliver to the Port by March 10, 2025 duly executed Agreements in this form to the Port. If these conditions are satisfied, the Effective Date for a duly executed Agreement in this form delivered to the Port by any Air Carrier by March 10, 2025 shall be January 1, 2025, and the Effective Date for a duly executed Agreement in this form that is delivered to the Port after March 10, 2025 by any Air Carrier shall be the first day of the next month beginning no less than thirty (30) days after the date the duly executed Agreement is delivered to the Port, and until such Effective Date any such Air Carrier utilizing the Airport shall be deemed to be a Non-Signatory Airline from January 1, 2025 until the Effective Date for such Air Carrier.

Expiration Date: December 31, 2034.

Permitted Uses: As provided in Article 3.

Premises and Legal Description: As provided in Article 2.

Security Deposit: _____

1.2 Additional Defined Terms.

The following terms shall have the following meanings wherever used in this Agreement:

“2018 SLOA” means the Signatory Lease and Operating Agreement between Airline or other Air Carriers and the Port dated <DATE>, as amended.

“AAAC” means the Airline Airport Affairs Committee established by the Signatory Airlines operating at the Airport.

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“Affiliate” means any Air Carrier that is (a) flying in or out of the Airport solely for the benefit of a Contracting Carrier(s) and providing transportation of property or passengers for the Contracting Carrier under the name of the Contracting Carrier, (b) if flying under its own name, not selling any seats in its own name and all seats are being sold in the name of the Contracting Carrier or (c) a wholly-owned subsidiary of the Contracting Carrier or a subsidiary of the same corporate parent as the Contracting Carrier.

“Air Carrier” means a carrier certificated by the Secretary of Transportation as a Passenger Carrier under 49 U.S.C. § 41102 or a Cargo Carrier under 49 U.S.C. § 41103.

“Airfield” means the total area comprised of the Airfield Apron Area, Airfield Movement Area and Airfield Commercial Area.

“Airfield Apron Area” or “Apron” means the paved areas surrounding the Terminal used by Passenger Carriers, including taxi lanes used for circulation and ramp areas used for parking of aircraft and ground service equipment and the remote parking areas designated for Airlines, not including Airfield Commercial Area ramps and taxi lanes.

“Airfield Commercial Area” means the land, taxi lanes, ramps and facilities outside the Airfield Movement Area, Aprons and Terminal used primarily for cargo activities and aircraft maintenance.

“Airfield Movement Area” means all landing areas, runways, taxiways, adjacent field areas and related support facilities (e.g. field lighting, navigational aides and cart roads).

“Airline Rate Bases” means the rate bases used to calculate Landing Fees or Terminal Rents as provided in Article 8.

“Airline Rented Space” means all Exclusive Premises and Preferential Use Premises leased to any Signatory Airline, plus all Common Use Premises.

“Airline Rate-Based Capital Costs” means the portion of costs of a Capital Improvement that is reasonably attributable or allocable to the Airfield Movement Area, Airfield Apron Area or the Terminal, net of any PFCs or federal or state grants.

“Airline Support Systems and Equipment” shall mean various systems and equipment provided by the Port to support Airline operations at the Airport including but not limited to Common Use Baggage Claim and Baggage Make up Systems, passenger loading bridges and utility systems and services, airport information technology systems, and electric ground service equipment (“EGSE”) charging stations used for airline vehicles.

“Airline Support Systems and Equipment Costs” means all the Capital Costs and O&M Expenses allocable to Airline Support Systems and Equipment.

“Airline Technical Representative” means the technical consultant(s) retained to provide advice to all Air Carriers and coordinate with the Port on Very Large Projects and other Capital

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Improvements, operational issues and other Air Carrier services and issues, all in accordance with Section 6.5.

“Airport” means the realty and improvements generally known and designated as the “Seattle-Tacoma International Airport.” The improvements on the realty consist of the runways, aircraft taxiways and parking aprons, the passenger and freight terminal buildings, hangars, vehicle roadways and parking facilities, and all other improvements on such realty. The term “Airport” shall also include any adjacent or nearby realty hereafter acquired for purposes of the Airport by the Port and all improvements hereafter constructed on such realty.

“Airport Development Fund” means the operating fund at the Airport that receives operating revenues from all Airport sources and funds debt service payments, Operations and Maintenance Expenses and other Airport-related costs and expenses.

“Baggage Claim Areas” means the areas located in the Terminal where inbound baggage is unloaded and/or delivered to and claimed by arriving passengers.

“Baggage Make up Areas” means the areas located in the Terminal where outbound baggage is sorted for delivery to departing aircraft.

“Baggage Make up Circulation Space” means the areas within the Terminal that are associated with the movement of bags from Baggage Make up devices to aircraft.

“Baggage Make up System” means all equipment owned, operated and maintained by the Port associated with the transportation of baggage from Ticket Counters to baggage make up devices.

“Baggage Make up System Space” means the footprint of the Baggage Make up devices plus adjacent circulation space sufficient to accommodate the parking of tugs and carts required during operations of the devices.

“Baggage System Costs” means all Capital Costs and O&M Expenses allocable to the Baggage Make up System and the Common Use Baggage Claim System.

“Capital Costs” means all capital costs of the Airport, including the following:

- (a) Debt service (net of PFC’s) allocable to revenue bond-funded Capital Improvements.
- (b) Amortization allocable to Capital Improvements funded with airport revenue expended on or after January 1, 1992, based on the economic life for each Capital Improvement and calculated using an interest rate set to equal comparable published average borrowing costs for debt financings by comparable public entities during the calendar year when such Capital Improvement is put in service.
- (c) Debt Service Coverage Charges, if any.

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A copy of the current Airport debt service schedule is attached as **Exhibit H** to this Agreement.

“Capital Improvement” means a single addition or improvement to the Airport’s physical plant or equipment consistent with the Port’s Capitalization Guidelines attached as **Exhibit G**, as may be amended by the Port.

“Cargo Carrier” means a carrier certificated by the Secretary of Transportation as a Cargo Carrier under 49 U.S.C. § 41103.

“Chair of the AAAC” means the representative of the Signatory Airlines designated as such by the members of the AAAC.

“Common Use Baggage Claim Areas” means the space in the Terminal (excluding the FIS Area) designated by the Managing Director to be used in common with other Airlines for the delivery of inbound baggage to arriving passengers, including the areas where Common Use Baggage Claim Systems are located.

“Common Use Baggage Claim System” means equipment owned, operated and maintained by the Port that delivers inbound baggage to arriving passengers.

“Common Use Baggage Make up System” means equipment owned, operated and maintained by the Port that sorts outbound baggage for delivery to departing aircraft.

“Common Use Baggage Make up System Space” means the space in the Terminal designated by the Managing Director to be used in common with other Airlines for the transportation and sorting of outbound baggage for delivery to departing aircraft.

“Common Use Baggage System Costs” means all the Capital Costs and O&M Expenses allocable to the Common Use Baggage Claim System and the Common Use Baggage Make up System.

“Common Use Gates” means the space in the Terminal designated by the Managing Director to be used in common with other Airlines for passenger holdrooms and gate areas and does not include any Preferential Use Gates.

“Common Use Hardstands” means an aircraft parking position not contiguous to the Terminal and not exclusively leased to any Air Carrier.

“Common Use Passenger Loading Bridge” means a passenger loading bridge and related equipment owned and maintained by the Port and serving a Common Use Gate.

“Common Use Premises” means those areas within the Terminal including Common Use Baggage Make up System Space, Common Use Gates, Common Use Ticket Counters, and Common Use Baggage Claim Areas that are made available by the Port to Airline and to one or more other Air Carriers, as more fully described in the Premises Notice.

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“Common Use Ticket Counters” means the space in the Terminal designated by the Managing Director to be used in common with other Airlines for ticket counters and associated queuing space.

“Construction Cost Index” means the Construction Cost Index for Seattle, Washington published by the Engineering News-Record, or in the event that the Engineering News-Record ceases to publish such an index, a similar construction cost index selected by the Managing Director after consultation with the Signatory Airlines.

“Contracting Carrier” means a Signatory Airline who contracts with another Air Carrier that is an Affiliate.

“Date of Beneficial Occupancy” means the date when a project or a phased element of a project has been completed and the Managing Director determines that it is available for use by Air Carriers.

“Debt Service Coverage Charges” means, for any given Fiscal Year, charges to the Airline Rate Bases to maintain total Airport debt service coverage at no less than 1.25 times the sum of debt service for that Fiscal Year.

“Deplaned Domestic Passengers” means passengers (including non-revenue passengers) disembarking from a domestic flight and pre-cleared passengers disembarking from an international flight at the Terminal, but does not include the flight crew.

“Deplaned International Passengers” means passengers (including non-revenue passengers) disembarking from an international flight at the Terminal, but does not include pre-cleared passengers or the flight crew.

“Domestic Common Use Gate” means a Common Use Gate that is a Domestic Gate.

“Domestic Gate” means a Gate that is not an International Gate.

“Exclusive Premises” means any office space, storage area, VIP Lounge, employee break room, baggage service office, or other areas of the Terminal designated for the exclusive use by Airline in the Premises Notice, and includes any Shared Exclusive Premises.

“FAA” means the Federal Aviation Administration or successor agency.

“FIS Facility” means the Federal Inspection Services Facility located in the Terminal and is sometimes referred to as the “International Arrivals Facility.”

“FIS Fees” means the fees charged by the Port for Airline’s use of the FIS Facility, as described in Article 8.

“Fiscal Year” means a year beginning January 1 and ending December 31.

“Gate” means an in service PLB Gate or a Ground-boarded Gate.

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“Gate Ramp” means the ramp area associated with each Gate.

“Gross Revenues” means the selling price, whether for cash or credit, of all alcoholic beverages or other beverages, and any related food service items sold at a VIP Lounge, but shall exclude any sales or other excise tax imposed upon the purchaser and collected by the Airline as agent for the taxing body imposing the tax and billed to the purchaser as a separate item.

“Ground-boarded Gate” means those portions of the Terminal and Airfield Apron Area individually comprised of a passenger hold room with American with Disabilities Act compliant access to an adjacent aircraft parking position from the ground and no such access from a passenger loading bridge.

“International Gate” means a Gate that provides aircraft direct access to the FIS Facility.

“Landing Fees” means the fees described in Article 8.

“Managing Director” means the Managing Director, Aviation Division, of the Port or his/her successor.

“Maximum Gross Landed Weight” means the maximum weight in thousand pound units at which each aircraft operated by Airline is authorized by the FAA to land at the Airport.

“Net Revenue” means Airport net operating income plus (a) interest income on the Airport Development Fund plus (b) grants treated as non-operating revenues used to fund operating expenses, less (c) the customer facility charge surplus, if any, and less (d) other non-operating expenses paid out of the Airport Development Fund.

“Non-Airline Support Systems and Equipment” shall mean various systems and equipment, if any, provided by the Port to support operations at the Airport by tenants other than Air Carriers.

“Non-Airline Support Systems and Equipment Costs” means all the Capital Costs and O&M Expenses allocable to Non-Airline Support Systems and Equipment.

“Non-Signatory Airline” means any Air Carrier that is not a Signatory Airline.

“Open Storage Space” means unimproved, not fully-enclosed space.

“Operations and Maintenance Expenses” or “O&M Expenses” means operations and maintenance expenses of the Airport.

“Other Airfield Movement Area Revenue” means revenue derived from fees charged for the use of the Airfield Movement Area other than Landing Fees such as badge fees and land rent.

“Outbound Checked Bags” means the actual number of outbound bags or other checked items (including bags transferred aircraft-to-aircraft if the bags entered the outbound baggage system) delivered on the Baggage Make up System.

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“Passenger Airline Apron Fee” means the fees charged by the Port for Airline’s use of the Airfield Apron Area, as described in Article 8.

“Passenger Carrier” means an air carrier certificated by the Secretary of Transportation under 49 U.S.C. § 41102.

“Passenger Facility Charges” or “PFCs” means charges authorized by 49 U.S.C. § 40117 and applicable implementing regulations adopted by the FAA, as they may be amended from time to time.

“PLB Gate” means those portions of the Terminal individually comprised of a passenger loading bridge and a passenger hold room with access to an adjacent aircraft parking position.

“Port Passenger Processing Equipment” means equipment owned and installed by the Port for use in passenger processing, which may include all or some of, equipment casework, gate information displays (“GIDS”), boarding gate readers, passenger processing workstations, seating and self-service kiosks (for boarding passes and bag tagging).

“Preferential Use Baggage Make up System Space” means the space in the Terminal assigned by the Port as Preferential Use Premises as set forth in Article 5 to be used by Airline for the transportation and sorting of outbound baggage for delivery to departing aircraft.

“Preferential Use Gate” means a Gate assigned by the Port for Preferential Use by a Signatory Airline as set forth in Article 4.

“Preferential Use Domestic Gate” means a Domestic Gate assigned by the Port for Preferential Use by a Signatory Airline as set forth in Article 4.

“Preferential Use International Gate” means an International Gate assigned by the Port for Preferential Use by a Signatory Airline as set forth in Article 4.

“Preferential Use Premises” means those areas designated as such in the Premises Notice that are within the Terminal, including Preferential Use Baggage Make up System Space, Preferential Use Gates and Preferential Use Ticket Counters and to which Airline has a higher priority of use over all other Air Carriers.

“Preferential Use Ticket Counter” means a Ticket Counter assigned by the Port as Preferential Use Premises to a Signatory Airline as set forth in Article 5.

“Premises” means any: (a) Exclusive Premises, (b) Preferential Use Premises; and (c) Common Use Premises; *provided*, however, that in the case of Common Use Premises, such areas will only constitute “Premises” during the period of time for which Airline has the right to use such areas.

“Premises Notice” means the notice described in subsection 2.3.1.

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“Public Areas” means sidewalks, concourses, corridors, lobbies, passageways, restrooms, elevators, escalators and other similar space made available by the Port from time to time for use by passengers, Port and Airline employees and other members of the public.

“Ramp Tower Fees” means the fees charged by the Port to Airline for costs associated with the ramp tower, as described in Article 8.

“Ramp Tower Revenues” means all revenues received by the Port from payments of Ramp Tower Fees.

“Rentable Space” means any areas in the Terminal that are available for use by Airlines, other aeronautical users, concessionaires or Port or other governmental users on an exclusive, preferential or common use basis, as designated by the Managing Director, and shall include Security Checkpoint Areas, but shall not include Open Storage Space.

“RON Parking Revenues” means all revenues received by the Port from payments for the use of remote parking areas for RON Parking.

“Scheduled Airline” means an Air Carrier performing scheduled passenger service operations at the Airport.

“Scheduled Operation” means a Scheduled Airline’s operation (arrival or departure) that occurs pursuant to a schedule that is published in the Official Airline Guide (OAG), FlightGlobal or equivalent publication and that is also made available to the Port at least ninety (90) days prior to the commencement of such operation.

“Security Checkpoint Area” means an area used for passenger security screening and associated queuing space as designated by the Managing Director.

“Shared Exclusive Premises” means Exclusive Premises assigned to Airline pursuant to a Premises Notice that are also assigned by the Port to other Signatory Airlines on an equal percentage basis pursuant to a lease agreement, and designated as Shared Exclusive Premises in the Premises Notice.

“Signatory Airline” means any Air Carrier that has entered into an agreement with the Port substantially similar to this Agreement and that provides regularly scheduled service at the Airport.

“Terminal” means Gates, Ticket Counters, Baggage Claim Areas, Baggage Make up Areas, Security Checkpoint Areas, office space, storage areas, concourses, lobbies, VIP Lounges, the FIS Facility, employee break rooms and Public Areas located within the “drip-line” of the passenger terminal buildings at the Airport. For purposes of this definition, the “drip-line” means the footprint (improved or unimproved) inside the outer limits of the passenger terminal building, which in all cases should not extend beyond the roof-drip line.

“Terminal Rents” means the rents and fees charged by the Port for Airline’s use of the Terminal, as described in Article 8.

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“Ticket Counter Space” means all the space available for assignment as either Preferential Use Ticket Counters or Common Use Ticket Counters.

“Ticket Counters” means those areas made available by the Port for use by Airline for ticketing passengers and similar activities, including curbside check-in positions, and associated queuing space.

“Total Project Costs” means the total costs of planning, designing and constructing a Capital Improvement, including enabling projects and property acquisitions.

“Total SLOA V Project Costs” means (a) the estimated Total Project Costs of Capital Improvements (excluding financing costs) funded or expected to be funded by the Port in whole or in part as determined in the Port’s reasonable discretion, as measured from January 1, 2025 through the end of the Term plus (b) [\$1,750,000,000; **NTD: Replace with updated total for execution**] in estimated Total Project Costs expended prior to January 1, 2025.

“Turn” means the active arrival and departure of an aircraft from a Gate and may be measured in halves. The movement of an empty aircraft to or from a Gate shall not constitute half a “Turn.”

“Very Large Project” means a Capital Improvement that meets the criteria specified in Section 6.2.1. A list of Very Large Projects as of the Effective Date of this Agreement is attached as **Exhibit E**.

“Very Large Project Process” means the Port/Airline engagement procedures for Very Large Projects as further specified in Section 6.2.2.

“VIP Lounge” means those Exclusive Premises used by Airline to provide premium services to its passengers.

1.3 Exhibits.

Exhibit A: Airport Legal Description and Drawing

Exhibit B: Premises Notice

Exhibit C: Gate Use, Assignment and Scheduling Procedures

Exhibit D: Gate Allocations

Exhibit E: Pre-determined List of Very Large Projects

Exhibit F: Very Large Project Process Description

Exhibit G: Port’s Capitalization Guidelines

Exhibit H: Debt Service Schedule

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Exhibit I: Article 8 Airfield Fee Calculations

Exhibit J: Article 8 Terminal Rent Calculations

Exhibit K: Article 8 FIS Fee Calculations

ARTICLE 2

GRANT OF RIGHTS TO USE AIRPORT

The Port grants to Airline the rights of occupancy and use in certain areas located within the Airport as provided in this Article, subject to the terms of this Agreement. The legal description of the Airport is attached hereto as **Exhibit A** and incorporated herein by this reference.

2.1 Rights to Use Airfield.

The Port grants to Airline a nonexclusive license to use the Airfield, in common with others, subject to the terms and conditions of this Agreement.

2.2 Rights to Use Public Areas.

The Port grants to Airline a nonexclusive license to use the Public Areas within the Terminal, in common with others, subject to the terms and conditions of this Agreement. Port shall have the right to relocate, change or discontinue the use of any such area from time to time during the Term, subject to terms and conditions of this Agreement.

2.3 Rights to Use Premises.

2.3.1 Premises Notice. On or before the Effective Date, the Port will issue to Airline a Premises Notice, attached hereto as **Exhibit B** and incorporated herein by this reference, that will designate which areas of the Airport, if any, will be made available by the Port for use by Airline as: (a) Exclusive Premises, including Shared Exclusive Premises; (b) Preferential Use Premises; and (c) Common Use Premises (all, collectively, the “Premises”). Airline acknowledges and agrees that the Premises Notice will be revised by the Port and issued to Airline from time to time during the Term to reflect assignment and reallocation rights pursuant to this Agreement. The parties agree that, upon issuance by the Port, the revised Premises Notice shall be attached and incorporated to the Agreement and shall update and replace the last issued **Exhibit B** without further amendment of the Agreement. In addition to, but not in lieu of, other forms of delivery specified in Section 24.20, the Port may issue a revised Premises Notice by email.

2.3.2 Exclusive Premises. The Port grants to Airline the exclusive right to use the Exclusive Premises, including Shared Exclusive Premises, identified in the Premises Notice.

2.3.3 Preferential Use Premises. The Port grants to Airline, subject to Articles 4 and 5 of this Agreement, the right to use, on a preferential use basis, the Preferential Use Premises identified in the Premises Notice.

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2.3.4 Common Use Premises. The Port grants to Airline, subject to Articles 4 and 5 of this Agreement, the right to use, on a common use basis, the Common Use Premises identified in the Premises Notice. Subject to the provisions of Articles 4 and 5 of this Agreement, the Port reserves the right to revise Airline's right to use such Common Use Premises by sending to Airline a revised Premises Notice.

ARTICLE 3

USE OF AIRPORT

3.1 Limitations and Prohibitions on Use.

Airline shall not use the Premises or cause or permit its employees or others to use the Premises for any other purpose than specified in this Agreement.

3.2 Terminal.

Use of the Terminal by Airline shall be limited to the following activities:

3.2.1 The operation of an air transportation business for the carriage of persons, property, baggage, cargo, express and mail, including but not limited to the following categories of flights: revenue, training, test, inspection, emergency, charter and sightseeing.

3.2.2 The hiring and training of personnel in the employ of or to be employed by Airline, and the training of Airline's contractors.

3.2.3 The use alone or in conjunction with other Air Carriers, for any and all purposes in connection with or incidental to the operation of an air transportation business, including the handling of reservations, the handling, ticketing and billing of passengers, and the operation of passenger clubs and lounge rooms, and, to the extent permitted by law, the serving of food and beverages in such passenger clubs and lounge rooms.

3.2.4 The installation and operation, at Airline's expense, of identification signs advertising the business of Airline, which shall be substantially uniform in size, type and location with those of other Air Carriers, the number, type, size, design and location of which shall be consistent with Port standards and subject to the approval of the Port, which shall not be unreasonably withheld, conditioned or delayed.

3.3 Gates.

Subject to Article 4 (Assignment and Use of Gates), the use of Gates by Airline shall be limited to:

3.3.1 The ticketing, boarding, unboarding and billing of passengers, the use of the passenger holding areas as waiting areas for such passengers and the use of the Gate Ramp while the Gate is used by Airline.

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3.3.2 The Port and the Signatory Airlines will form a joint “Ramp Congestion Task Force” that will provide a recommendation to reduce ramp congestion by January 1, 2026. If the Port adopts the recommendation, it will be incorporated into Airport Rules and Regulations, subject to Section 13.2. The recommendation may include, without limitation, restrictions on the number of licensed third-party ground service providers at the Airport for operational, safety and security reasons, and may, in such case, require all Air Carriers that wish to contract with a third-party ground service provider to choose from a pool of pre-qualified third-party service providers. This Section 3.3.2 shall not preclude Airline from performing self-service of ground handling with its own employees, a wholly owned subsidiary, or a subsidiary of the same corporate parent as Airline.

3.3.3 Operational staging of equipment for fueling, servicing, loading, or unloading and line maintenance of aircraft that can be completed during the time period associated with a Scheduled Operation, *provided*, however, that:

(a) Nothing in this subsection shall be implied or construed to grant to Airline the right to store or park equipment on the Gate Ramp (other than as required for the regular servicing of aircraft at Gates); and

(b) In addition to the line maintenance permitted under subsection 3.3.3 above, at the Port’s sole discretion and so long as it does not interfere with another Air Carrier’s Scheduled Operations, the Port may permit Airline to perform emergency line maintenance of aircraft on the Gate Ramp.

3.4 Airfield.

The use of the Airfield and related facilities by Airline shall be limited to the following activities:

3.4.1 The servicing by Airline or others of Airline’s aircraft, including Airline’s servicing of its code-share partners and affiliates, and other equipment by truck or otherwise, with gasoline, fuel, or other propellants, de-icing or other supplies including food and beverages required by Airline.

3.4.2 The landing, taking off, flying, taxiing, towing, parking, loading or unloading of Airline’s aircraft or the aircraft of any other Air Carrier.

3.4.3 The loading and unloading of any property, cargo, mail, and carriage of employees, in properly designated facilities, by such motor vehicles or other manner of conveyance as Airline may require in the operation of an air transportation business.

3.4.4 The installation, maintenance and operation by Airline of aircraft air-conditioning equipment, auxiliary power, start-up and miscellaneous support equipment reasonably necessary for Airline’s operations and not otherwise provided by the Port. Any such equipment not reasonably required shall be promptly removed by Airline.

ARTICLE 4

ASSIGNMENT AND USE OF GATES

4.1 No Exclusive Use Gates.

All Gates within the Terminal will be either Common Use Gates or Preferential Use Gates. Airline's use of all Gates shall at all times be subject to the Port's Gate Use, Assignment and Scheduling Procedures, which may be amended from time to time after consultation with the Signatory Airlines. A copy of the Port's current Gate Use, Assignment and Scheduling Procedures is attached as **Exhibit C** to this Agreement.

4.2 Definitions.

For the purposes of this Article 4, the following terms shall have the following meanings:

4.2.1 "Average Weighted Turns" means:

(a) the sum of a Signatory Airline's: (i) Turns on its Preferential Use Ground-boarded Gates multiplied by 0.5; (ii) Non-Widebody Aircraft Turns on its Preferential Use PLB Gates multiplied by 1.0, and (iii) Widebody Aircraft Turns on its Preferential Use PLB Gates multiplied by 1.7.

4.2.2 "Non-Widebody Aircraft Turns" means a Turn that is not a Widebody Aircraft Turn.

4.2.3 "Period of Use" means the time periods for the arrival and departure of a Scheduled Operation as further defined in **Exhibit C. Airline will not receive scheduling preference for a Period of Use if it fails to provide the Port with the published schedule for a Scheduled Operation at least ninety (90) days prior to the commencement of the Scheduled Operation.**

4.2.4 "Preferential Use" of a Gate means scheduling preference, over similar operations by another Scheduled Airline, given to a Signatory Airline for the use of a Gate during applicable Periods of Use for its Scheduled Operations.

4.2.5 "Requesting Airline" means a Scheduled Airline without adequate Gate access desirous of operating from the Airport.

4.2.6 "Weighted Preferential Use Gates" means the sum of (i) the number of Ground-boarded Gates assigned to Signatory Airline as Preferential Use Gates multiplied by 0.5 and (ii) the number of PLB Gates assigned to Signatory Airline as Preferential Use Gates multiplied by 1.0.

4.2.7 "Widebody Aircraft Turn" shall mean the Turn of a dual-aisle aircraft.

4.3 Initial Allocation and Assignment of Gates on Effective Date.

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The initial allocation and assignment of Common Use Gates and Preferential Use Gates at the Airport on the Effective Date are shown on **Exhibit D**. The number of Preferential Use Gates assigned to Airline and the number of Common Use Gates retained by the Port may change over the Term of the Agreement in accordance with this Article 4.

4.4 Gate Assignments After the Effective Date.

The Port and Airline acknowledge the importance of reasonable maintenance of operations during construction of Capital Improvements. The Port and Airline recognize, however, that operational challenges are likely to occur during construction. In order to facilitate the continued operations of all Passenger Carriers at the Airport and to serve the traveling public, it will be necessary from time to time for the Port, in its reasonable discretion, to reassign space assigned to Airline and other Signatory Airlines, including Gates, on an interim, transitional basis during the construction. With respect to the reassignment of Gates, Airline acknowledges the following gate management rights of the Port are necessary to facilitate construction:

4.4.1 From the Effective Date through December 31, 2025, the Port shall have the right, after consultation with Airline, to reassign the location of one or more of Airline's Preferential Use Gates to accommodate construction at the Airport, provided that Airline's total number of Weighted Preferential Use Gates as reflected in **Exhibit D** may not be decreased without Airline's consent unless otherwise recaptured under Section 4.5.

4.4.2 In addition to the Port's recapture rights under Section 4.5, from January 1, 2026 through the end of the Term, the Port shall have the right, after consultation with Airline, to reassign the location of or recapture (without immediate replacement) one or more of Airline's Preferential Use Gates to accommodate construction at the Airport subject to the following restrictions:

(a) At any given time, the Port will use up to two (2) Domestic Common Use Gates as replacements for Preferential Use Gates that are recaptured under this Section 4.4.2. The Port does not intend to use more than two (2) Domestic Common Use Gates or any International Common Use Gates as replacement Gates. However, the Managing Director may waive this restriction in its sole discretion; and

(b) the Port shall use commercially reasonable efforts to limit the number of Domestic Gates out for construction at the same time to no more than two (2) Domestic Gates. However, in the event the Port determines that more than two (2) Domestic Gates will be out for construction at the same time, the Port shall have the right to recapture a Preferential Use Gate from Airline without immediate replacement. In the event that the Port recaptures a Preferential Use Gate from Airline under this Section 4.4.2, the Port shall return the Preferential Use Gate to Airline when that Gate is placed back into service by the Port.

4.4.3 In reassigning or recapturing Preferential Use Gates under this Section 4.4, the Port shall in its sole discretion determine the locations of any such reassignment or recapture after taking into consideration the desirability of assigning contiguous Gates for Preferential Use by Signatory Airlines and, where practicable, reducing the frequency of changes in the locations

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of Preferential Use Gates, as well as any recommendations by the Common Use Facilities Advisory Committee (defined in Section 4.10 below).

4.4.4 The reasonable costs of relocating Airlines' furniture, equipment and signage in connection with a Preferential Use Gate reassignment under Sections 4.4.1 and 4.4.2 plus the reasonable costs of Airline's non-proprietary tenant improvements to the relocated Preferential Use Gate when constructed with the Port's consent under Section 12.3.1 of this Agreement, shall be paid by the Port and included in Terminal Building Requirement calculated in accordance with Section 8.3.1 of this Agreement. The costs of IT systems and communications systems shall be considered proprietary tenant improvements that are not eligible for reimbursement from the Port.

4.4.5 *Assignment of Newly Constructed Gates.* In the event that a new Gate is constructed during the Term, the Port shall alternate between retaining the Gate as a Common Use Gate and assigning the Gate as a Preferential Use Gate. Any Gate assigned for Preferential Use shall be offered to Signatory Airlines in accordance with the priorities specified in **Exhibit D**.

4.4.6 Airline's Premises Notice will be updated to reflect the assignment, reassignment or recapture of any of Airline's Preferential Use Gates in accordance with this Section 4.4 and the Port will post an updated Exhibit D to the AAAC sharepoint site reflecting the changes.

4.5 The Port's Right to Recapture Preferential Use Gates.

4.5.1 To meet the "Minimum Utilization Requirement" applicable to this Section 4.5, Airline's Average Weighted Turns per day per Weighted Preferential Use Gate from the period of February 1-October 31 of the then-current year must be equal to or greater than 6.0. The Turns of Affiliates and other Passenger Carriers voluntarily accommodated by Airline shall count towards Airline's activity for calculating the Minimum Utilization Requirement. If a Requesting Airline is accommodated by Airline pursuant to Section 4.6 and that results in moving Airline's Scheduled Operation from Airline's Preferential Use Gates to a Common Use Gate or the Preferential Use Gate of another Signatory Airline, then Airline's moved Scheduled Operation shall count towards Airline's activity for calculating the Minimum Utilization Requirement.

4.5.2 If the Port determines that Airline has failed to meet the Minimum Utilization Requirement for that year, the Port may, in its sole discretion, initiate the process to recapture one or more of Airline's Preferential Use Gates in accordance with the provisions in this Section 4.5. Any Gates recaptured by the Port shall be retained as Common Use Gates.

4.5.3 The Port shall have the right to recapture, in its sole discretion, up to the number of Preferential Use Gates that would bring Airline into compliance with the Minimum Utilization Requirement based on Airline's activity over the period used to assess the Minimum Utilization Requirement. For example, if Airline leases eight Preferential Use Gates and the Port would need to recapture three Preferential Use Gates for Airline to meet the Minimum

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Utilization Requirement based on activity from February 1-October 31, the Port may recapture up to three Preferential Use Gates.

4.5.4 If the Port elects to recapture Preferential Use Gates, the Port will provide Airline by December 31 of the year in which it has failed to meet the Minimum Utilization Requirement with 90 days' written notice specifying the initial number and proposed location of the Gate(s) to be recaptured ("Recapture Notice").

4.5.5 If requested by Airline within 10 days of the Port's issuance of the Recapture Notice, the Port will discuss alternative locations for the recaptured Gate(s) with Airline.

4.5.6 The Port will make the final determination on the location of the recaptured Gates in its sole discretion within 30 days of issuing the Recapture Notice. In making the final decision, the Port will take the following factors into account: (a) minimizing split operations and maximizing adjacency of Preferential Use Gates and Common Use Gates; (b) the location of the operational space of Passenger Carriers that may use the recaptured Gate(s); (c) the efficient operation of Passenger Carrier schedules; (d) Airline's stated preference, if any; and (e) the SEA passenger experience.

4.5.7 Airline's Premises Notice will be updated to reflect the change in Preferential Use Gates. At the Port's request at any time after the Port makes a final decision to recapture Gates, Airline shall be responsible for removing its proprietary gate equipment from any recaptured Preferential Use Gates in a timely manner and at Airline's sole cost.

4.5.8 If Airline's Preferential Use Gates are recaptured pursuant to this Section 4.5, the Port may also terminate, upon 90 days' written notice to Airline, those portions of its Premises that are no longer necessary, as determined in the Port's sole discretion, to support the Airline's operations at its remaining Preferential Use Gates; provided that such reduction in Airline's Premises is in reasonable proportion to the reduced number of Preferential Use Gates and the remaining Premises is reasonably sufficient to maintain Airline's operations as determined by the Port in its sole discretion. Airline shall be responsible for removing its property and equipment from any such terminated leased premises in a timely manner and at the Airline's sole cost.

4.5.9 The Port shall have the right but not the obligation to temporarily suspend or modify the Minimum Utilization Requirement in the situation where the Federal Aviation Administration restricts use of the Airport due to an extraordinary event that directly and substantially impairs the ability of all Signatory Airlines to meet the Minimum Utilization Requirement.

4.6 Port Scheduling Rights at Preferential Use Gates.

4.6.1 The Port shall have the right, upon reasonable notice to Airline, to schedule at a Preferential Use Gate arrivals and departures by a Requesting Airline at all periods of time other than Airline's Periods of Use of that Preferential Use Gate, provided that the Requesting Airline cannot accommodate the flight on its own Preferential Use Gate(s), if any. In

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accommodating the Port in its right to schedule such operations, Airline shall allow and provide for use of its facilities or equipment (not including ground service equipment) at the Preferential Use Gate, or permit use of Port equipment and podiums, as may be required for the efficient use of the Preferential Use Gate by a Requesting Airline, subject to Section 4.8.

4.6.2 The Port shall have the right, upon reasonable notice to Airline, when no International Gate is available to schedule at Airline's Preferential Use International Gate arrivals by a Requesting Airline that require use of an International Gate even if it would displace Airline's Scheduled Operation that does not require use of such International Gate for arrival. In accommodating the Port in its right to schedule such operations, Airline shall allow and provide for use of its facilities or equipment (not including ground service equipment) at the Preferential Use International Gate, or permit use of Port equipment and podiums, as may be required for the efficient use of the Preferential Use International Gate by a Requesting Airline, subject to Section 4.8. Airline's displaced Scheduled Operation shall be accommodated in accordance with **Exhibit C**. To ensure the efficient use of Preferential Use International Gates to accommodate international flights, any Signatory Airline that is assigned both Preferential Use International Gate(s) and Preferential Use Domestic Gate(s) must first accommodate all of its domestic flights on its Preferential Use Domestic Gates before it may (a) schedule a domestic flight on its Preferential Use International Gate or (b) request accommodation on a Common Use International Gate. Except for International Gates assigned as Preferential Use on January 1, 2025, no International Gates shall be assigned for Preferential Use during the Term; however, the Managing Director may waive this restriction in its sole discretion.

4.6.3 In the event that the Port cannot accommodate a Requesting Carrier at a Common Use Gate due to aircraft size and the Gate Ramp for a Scheduled Operation at a Preferential Use Gate can accommodate an aircraft larger than that used in the Scheduled Operation, the Port shall have the right, upon reasonable notice to Airline, to schedule at a Preferential Use Gate arrivals and departures by a Requesting Airline with a large size aircraft even if it would displace another Scheduled Operation. In accommodating the Port in its right to schedule such operations, Airline shall allow and provide for use of its facilities or equipment (not including ground service equipment) at the Preferential Use Gate, or permit use of Port equipment and podiums, as may be required for the efficient use of the Preferential Use Gate by a Requesting Airline, subject to Section 4.8. Airline's displaced Scheduled Operation shall be accommodated in accordance with **Exhibit C**.

4.6.4 The Port shall, consistent with the priorities set forth in Exhibit C, attempt to accommodate Requesting Airlines at Common Use Gates before scheduling Requesting Airline arrivals and departures at any Preferential Use Gates.

4.6.5 If, in the exercise of its rights under subsection 4.6.2 and 4.6.3, the Port is unable to accommodate Airline's displaced Scheduled Operation at one of Airline's Preferential Use Gates, the Port shall accommodate Airline's displaced Scheduled Operation in accordance with **Exhibit C** without additional cost. The Port shall consider Airline's preference for a specific Common Use Gate prior to accommodating Airline's displaced Scheduled Operation under this subsection 4.6.5.

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4.6.6 Notwithstanding the foregoing and any other provision of this Article 4, the Port shall have the right, upon reasonable notice to Airline, to schedule at a Preferential Use Gate arrivals and departures by a Requesting Airline during Airline's Periods of Use of that Preferential Use Gate, if Airline is not utilizing that Preferential Gate at any time during the Period of Use for a Scheduled Operation.

4.7 Accommodation During Construction.

Notwithstanding anything to the contrary in this Agreement, in order to accommodate the needs of all Passenger Carriers for reasonable access to required Terminal facilities, it is anticipated that the Port may from time-to-time require Signatory Airlines to accommodate other Passenger Carriers, including other Signatory Airlines, on Airline's Preferential Use Gates, in accordance with and subject to special construction accommodation protocols adopted by the Port after consultation with the Common Use Facilities Advisory Committee, but such accommodation will not impact Airline's Periods of Use on Preferential Use Gates.

4.8 Charges for Use of Gate by Another Carrier.

Any Requesting Airline that is a Signatory Airline or has executed another agreement with the Port for operations at the Airport, may be accommodated at any of Airline's Preferential Use Gates and shall pay the Port directly for the use of such Gate at the Common Use Gate rate. Airline may not demand any payments from the Requesting Airline on account of its use of the Gate, other than pursuant to an agreement solely between Airline and the Requesting Carrier for the use of Airline's Gate equipment. As a condition of accommodation on any of Airline's Preferential Use Gates, the Requesting Airline shall have executed an agreement providing indemnification and insurance obligations reasonably satisfactory to Airline, but no broader than the indemnification and insurance obligations Airline has given to the Port under Article 14. The Port shall credit Airline on a monthly basis the full amount of any Gate fees, if any, collected from Requesting Airlines for the use of Airline's Preferential Use Gates under this Section 4.

4.9 Port's Control of Common Use Gates.

The Port shall retain exclusive control over the scheduling of flights on all Common Use Gates and Common Use Hardstands.

4.10 Common Use Facilities Advisory Committee.

The Port shall establish a Common Use Facilities Advisory Committee ("Committee"), composed of representatives designated by the Port and representatives of the Signatory Airlines designated by the AAAC. The Committee shall review and make recommendations to the Port about the locations within the Terminal of Common Use Gates and Preferential Use Gates. The Committee shall consider both the operational efficiency (from the perspectives of the Port, the Signatory Airlines and any Non-Signatory Airlines) and the customer service implications of its recommendations. The locations of all Common Use and Preferential Use Gates, however, shall be determined by the Managing Director's sole discretion, after taking account of the recommendations, if any, of the Committee. The Committee shall also periodically review the Port's Gate Use, Assignment and Scheduling Procedures and make recommendations to the Port

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for revising the Gate Use, Assignment and Scheduling Procedures to enhance operational efficiency, fairness and competition.

4.11 Port Passenger Processing Equipment.

The Port reserves the right to install Port Passenger Processing Equipment (including the right to install or replace related millwork) at all Common Use and Preferential Use Gates, *provided*, however, that Airline must be able to also install or retain its proprietary gate counter equipment and boarding equipment at its Preferential Use Gates. The Port shall maintain Passenger Processing Equipment the Port installs under this Section 4.11 consistent with standards published by the Port in its Airport Rules and Regulations.

4.12 Designation of Hardstands.

After the Effective Date, the Port does not intend to make hardstand positions available as Preferential Use Gates, however, the Managing Director may assign hardstand positions as Preferential Use Gates after consultation with affected Signatory Airlines and further provided that when exercising its rights under Section 4.4 the Port will not reassign Airline's Preferential Use Gate from a PLB Gate to a hardstand position without Airline's consent. Any preferential use hardstand positions will be treated as Ground-boarded Gates.

ARTICLE 5

ASSIGNMENT AND USE OF OTHER TERMINAL FACILITIES

5.1 General.

The Port and Airline agree that facilities within the Terminal are limited and that the availability and use of certain facilities in the Terminal during the Term is expected to change.

5.2 The Port's Right to Alter Airline's Premises (Other Than Gates).

5.2.1 Notwithstanding any other provision of this Article 5 to the contrary, from time to time during the Term of this Agreement, part or all of Airline's Premises (other than Gates) may be required (1) for implementation of improvements at the Airport; (2) for accommodation of the traveling public; (3) to maximize the use of the Terminal and related facilities by Air Carriers (including Airline) and other tenants, permittees, and other users; or (4) for use by the Port for any operationally or commercially reasonable and lawful purpose. In said event, the Port may, in the sole discretion of the Managing Director and upon one hundred and eighty (180) days' advance written notice to Airline, require the demolition or reconstruction of certain portions of Airline's Premises (other than Gates), or the recapture or relocation, in whole or part, of Airline's Premises (other than Gates). Airline may request that the Port reconsider its determination within fifteen (15) calendar days of receipt of the Port's notice and, if it does so, Airline shall provide in its request reasonable documentation of its need for the Premises that are the subject of the Port's notice. If the Port, after reconsidering its determination, elects to proceed, the Port shall give Airline not less than one hundred and eighty (180) calendar days' notice to vacate such Premises.

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5.2.2 In the event the Port exercises its rights under Section 5.2.1, the Port will make commercially reasonable efforts to provide, to the extent available (as determined in the Port's sole discretion) and requested by Airline, a comparable location and facility in terms of size, condition and proximity to Airline's operations at the Airport.

5.2.3 The Port shall consult with Airline regarding the number of square feet of Airline's Premises to be demolished, reconstructed, recaptured or relocated under this Section 5.2.

5.2.4 If the Port exercises its rights under Section 5.2.1 without replacement of any kind of recaptured Premises, the Port shall reimburse Airline for the unamortized costs of Airline's tenant improvements within the recaptured Premises that were paid for by Airline and the costs of any such reimbursement shall be allocated to the Terminal Building Requirement. To qualify for reimbursement, unamortized costs must be documented to the reasonable satisfaction of the Port. The costs of IT systems and communications systems shall be considered proprietary tenant improvements that are not eligible for reimbursement from the Port. Trade fixtures and other movable property of Airline shall not be eligible for reimbursement from the Port. Airline shall not be entitled to reimbursement for any costs under this Sections 5.2.4 for any improvements to any portion of Premises, or associated costs, that are undertaken after the Port has notified Airline that the Premises will be demolished.

5.2.5 If the Port exercises its rights under Section 5.2.1 and provides Airline with replacement Premises in accordance with Section 5.2.2, the Port will reimburse Airline for (a) the reasonable costs of relocating Airlines' movable tenant improvements plus (b) the reasonable costs of non-proprietary tenant improvements to the relocated Premises that were constructed with the Port's consent under Section 12.3.1. The costs of any such reimbursement will be included in Terminal Building Requirement calculated in accordance with Section 8.3.1 of this Agreement. The costs of IT systems and communications systems shall be considered proprietary tenant improvements that are not eligible for reimbursement from the Port.

5.2.6 The Port shall revise the Premises Notice issued to Airline under subsection 2.3.1 of this Agreement to reflect any changes to Airline's Premises made by the Port under this Section 5.2 and shall issue such a revised Premises Notice to Airline when any such changes take effect.

5.3 Airline's One-Time Right to Reduce the Premises.

5.3.1 At any time after January 1, 2030, Airline shall have the one-time right to reduce its Premises by up to twenty-five percent (25%) of the aggregate square footage of its Premises. Airline may reduce its Premises by more than twenty five percent (25%) with the Port's written approval, which may be withheld in the Port's sole discretion.

5.3.2 In order to exercise its rights under this subsection to surrender Preferential Use Premises, Airline shall be required to also surrender to the Port all Exclusive Premises associated with Airline's operations of such Preferential Use Premises, as determined by the Port, unless the Port, in its reasonable discretion, determines that the surrender of Exclusive Premises is not required; provided, however, Airline may not terminate its assignment

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of a Preferential Use Gate unless it is adjacent to either a Common Use Gate or a Preferential Use Gate assigned to an Air Carrier other than Airline.

5.3.3 Until the Port reassigns to other Air Carriers the Premises surrendered by Airline under this subsection 5.3, the costs assigned to such surrendered Premises under subsection 8.3.2 shall be evenly redistributed among all of the rented space in the corresponding Group under subsection 8.3.2. If the Port determines that the resulting reduction of Premises would cause the Terminal Rents under Article 8 of the Agreement to vary substantially from the Terminal Rents then in effect, the Port may, in its sole discretion, make mid-year adjustments to the existing Terminal Rents as provided in Section 8.17.

5.3.4 All Premises surrendered by Airline under this Section 5.3 shall be subject to the provisions of Article 21.

5.3.5 Airline's request to reduce Premises under this Section 5.3 shall be delivered in writing to the Port. The Port shall approve Airline's request within sixty (60) days if the request meets the requirements of this Section 5.3. The resulting reduction in Premises shall take effect one hundred and eighty (180) days after the Port's approval of the request.

5.3.6 The Port shall revise the Premises Notice issued to Airline under subsection 2.3.1 of this Agreement to reflect any reductions in the Premises.

5.4 Accommodation.

5.4.1 **Priorities for Accommodation.** If the Port receives a request for access to preferential use space in the Terminal (other than Gates, which are subject to the provisions of Article 4 of this Agreement) from any Air Carrier seeking to commence or expand Scheduled Operations at the Airport ("Requesting Airline"), the Port shall, whenever possible, accommodate such a request by providing access to existing common use space under the Port's control. If such common use space is unavailable or inadequate to meet the reasonable requirements of the Requesting Airline, as determined by the Port, the Port shall encourage Signatory Airlines voluntarily to accommodate the Requesting Airline, by subletting or otherwise making space available for use by the Requesting Airline within the Terminal that is subject to their preferential use. The Port will notify the Chair of the AAAC in writing when the Port has determined that a Requesting Airline cannot be accommodated in common use space, and the Signatory Airlines will have fifteen (15) calendar days from the receipt of such notice by the Chair of the AAAC to voluntarily agree to accommodate the Requesting Airline. Any such agreements to accommodate a Requesting Airline must be in writing and are subject to approval by the Port under Article 18 of this Agreement. If a Requesting Airline is unable to meet its reasonable requirements, as determined by the Port, by using common use space made available by the Port or by using space voluntarily made available by Signatory Airlines, the Port shall have the right, upon sixty (60) calendar days notice to Airline, to require Airline to accommodate the Requesting Airline in space designated by the Port by allowing the Requesting Airline to use Airline's Preferential Use Premises, subject to Section 5.4.2, below; *provided*, however, that if the Requesting Airline is a Signatory Airline, the Requesting Airline must show, to the Port's satisfaction, that it cannot reasonably accommodate its own expanded service within the Terminal space already subject to its exclusive or preferential use.

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5.4.2 Accommodation in Preferential Use Premises. The Port shall not require Airline to accommodate a Requesting Airline in Airline’s Preferential Use Premises (other than Gates) if such accommodation would require Airline to reschedule a scheduled arrival or departure during Airline’s Periods of Use as defined in Article 4 of this Agreement. Airline shall, consistent with its rights to preferential use, accommodate such Requesting Airline as directed by the Port by providing access to and use of its Preferential Use Premises; Airline may, however, require as a condition of accommodation that the Requesting Airline provide (a) indemnification reasonably satisfactory to Airline (although Airline may not require indemnification that is broader than the indemnification Airline has given to the Port under Article 14 of this Agreement) and (b) proof of insurance of the types and with the limits of coverage required to be carried by Airline under Article 14 of this Agreement.

5.5 Charges for Use of Facilities by Another Carrier.

Any Requesting Airline that is accommodated at any facilities (other than Gates) used by Airline on an exclusive or preferential use basis shall, in the absence of an agreement with Airline, be required (a) to pay Airline the same charges for use of the space that it would have been required to pay the Port for use of such a facility on a common use basis, (b) to reimburse Airline for any additional Port charges Airline incurs as a result of its accommodation of the Requesting Airline and (c) a fifteen percent (15%) administrative fee. Airline shall not demand any additional payments from the Requesting Airline on account of its use of such a facility.

5.6 Ticket Counters.

5.6.1 The Port shall only assign Preferential Use Ticket Counters to Airline if Airline is assigned at least one Preferential Use Gate.

ARTICLE 6

CAPITAL IMPROVEMENTS

6.1 Airline Consultations on Capital Improvement Program.

As part of the annual consultation on proposed rates and charges required in accordance with Section 8.1.2, the Port shall provide the then-current plan of finance for Capital Improvements, identify any new Very Large Projects, provide the then-current estimate of Total SLOA V Project Costs, and provide the then-current relevant Airport financial target metrics.

6.2. Airline Engagement on Very Large Projects. The Port shall engage with Signatory Airlines on Very Large Projects in accordance with this Section 6.2.

6.2.1. Determination of Very Large Projects. The following Capital Improvements shall qualify as Very Large Projects and shall be subject to the Very Large Project Process as further specified in Section 6.2.2:

- (a) Pre-determined Very Large Projects listed on **Exhibit E**;

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(b) Capital Improvements that include both (i) any Airline Rate-Based Capital Costs and (ii) an estimated Total Project Cost of at least three hundred million dollars (\$300,000,000), as escalated from January 1, 2025 by the then-current Construction Cost Index; and

(c) Capital Improvements that the Chief Development Officer of the Airport or its successor and the Chair of the AAAC mutually agree in writing should be included in the list of Very Large Projects. If the Chief Development Officer or its successor and the Chair of the AAAC cannot agree on the inclusion of a Capital Improvement in the list of Very Large Projects, the inclusion of such Capital Project will be determined by the Managing Director, in their sole discretion.

6.2.2. Very Large Project Process. Very Large Projects shall be subject to the Port's Very Large Project Process. A general description of the Very Large Project Process is attached as **Exhibit F**. The Port may amend any element of the Very Large Project Process except that the following elements cannot be modified without providing notice to the Signatory Airlines and obtaining the written approval of at least three (3) Signatory Airlines that collectively account for at least sixty-six and two-thirds (66-2/3) percent of the Terminal Rents and Landing Fees paid by all Air Carriers at the Airport during the immediately prior Fiscal Year: (a) the number and timing of checkpoints (Exhibit F, Section I.A); (b) the provision of project definition and scope information (Exhibit F, Section I.B.1); (c) an opportunity for Signatory Airlines to provide feedback and receive a response from the Port (Exhibit F, Section I.B.3-4); (d) airline option to trigger the escalation process (Exhibit F, Section II.A); and the right of the Managing Director to make all final determinations on escalated issues (Exhibit F, Section II C.5). The Port shall provide written notice to all Signatory Airlines of any amendments to the Very Large Project Process approved in accordance with this section.

6.3. Procedures for the Renegotiation of Rates and Charges.

6.3.1. Thresholds for Initiating Renegotiation.

(a) If after January 1, 2030 both (a) the Port's then-current estimate of Total SLOA V Project Costs exceeds eight billion dollars (\$8,000,000,000) as escalated from January 1, 2025 by the then-current Construction Cost Index, and (b) the Port determines that its then-current financial forecasts, as presented in the annual rates and charges consultation required under Section 8.1.2, will result in the Port not meeting its then-current Airport financial target metrics at any time within the remaining Term of the Agreement, then either the Port or the Signatory Airlines (subject to paragraph (b) below) have a one-time right to initiate renegotiation of Article 8 in accordance with the procedures in Section 6.3.2.

(b) The Signatory Airlines may only initiate renegotiation if at least three (3) Signatory Airlines that collectively account for at least sixty-six and two-thirds (66-2/3)

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percent of the Terminal Rents and Landing Fees paid by all Air Carriers at the Airport during the immediately prior Fiscal Year deliver written requests to the Chair of the AAAC to initiate renegotiation.

6.3.2. Renegotiation Process. If the thresholds and requirements in Section 6.3.1 are met and the Port or the Signatory Airlines elect to exercise their one-time right to initiate a renegotiation of Article 8, the following procedures shall apply:

(a) Within thirty (30) days of the annual consultation under Section 8.1.2, either the Port or the Chair of the AAAC shall provide written notice to the Signatory Airlines (if initiated by the Port) or to the Port (if initiated by the Signatory Airlines) to initiate renegotiation of Article 8. The written notice shall explain why an amendment is being sought and specify the proposed amendments to Article 8.

(b) Within thirty (30) days of delivering the written notice in paragraph (a), the Port and the Signatory Airlines shall meet at least once a month to negotiate amendments to Article 8 and to any portions of the Agreement that require amendment due to amendments to Article 8.

(c) The Signatory Airlines, including Airline, shall be deemed to accept an amendment if the Port and at least three (3) Signatory Airlines that collectively account for at least sixty-six and two-thirds (66-2/3) percent of the Terminal Rents and Landing Fees paid by all Air Carriers at the Airport during the immediately prior Fiscal Year execute an amendment negotiated under this Section 6.3. Airline hereby agrees that any such amendment shall be legally binding on Airline even if Airline does not execute the amendment.

(d) Any amendment executed by the Port and the Signatory Airlines shall take effect on January 1 of the year following the date the amendment is executed by the Port, unless otherwise agreed to between the Port and at least three (3) Signatory Airlines that collectively account for at least sixty-six and two-thirds (66-2/3) percent of the Terminal Rents and Landing Fees paid by all Air Carriers at the Airport during the immediately prior Fiscal Year.

(e) If after twelve months of negotiation the Port and the Signatory Airlines fail to reach agreement on an amendment, then the Port and Airline shall no longer be obligated to continue negotiations and shall continue to abide by the terms of this Agreement until the end of the Term or until the Agreement is otherwise lawfully terminated.

6.4. Tenant Reimbursement Agreements. Airline acknowledges and agrees that the Port may elect, in its sole discretion, to deliver Capital Improvements, in whole or in part, through a reimbursement agreement with an Air Carrier. Any such reimbursement agreement will be negotiated between the Port and the Air Carrier and shall address, at a minimum, the scope, budget, maximum Total Project Costs and schedule of the work proposed to be performed

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by the Air Carrier, the terms of reimbursement for costs incurred by the Air Carrier on the work, and such other required terms and conditions of a tenant reimbursement agreement in a form suitable to the Port in its sole discretion. The Port shall allocate any costs reimbursed to the Air Carrier to the appropriate cost center(s), including without limitation Airline Rate Bases, as determined in the Port's sole discretion.

6.5. Airline Technical Representative.

6.5.1. One or more Airline Technical Representatives may be retained by the Port or a consortium formed by Signatory Airlines. In the event that an Airline Technical Representative is retained by the Port, the Port will allow the AAAC Chair or its designee to observe the process to the extent allowed under the Port's procurement requirements. In the event that an Airline Technical Representative is retained by a Signatory Airline consortium and the Signatory Airlines request the Port to reimburse the Signatory Airline for the costs of the Airline Technical Representative, the Port shall have the right to review and approve any agreements between the Signatory Airline consortium and the Airline Technical Representative and, subject to the Port's approval, which shall not be unreasonably withheld, conditioned or delayed, the Port shall reimburse the Signatory Airline consortium for the costs of the Airline Technical Representative incurred by the Signatory Airline consortium under any such agreements.

6.5.2. Any costs incurred by the Port that are associated with the Airline Technical Representative, including without limitation costs related to any liability, damages, losses, expenses, claims, judgments, demands, penalties or fines, including without limitation reasonable attorneys' fees and court costs, associated with the acts or omissions of the Airline Technical Representative shall be allocated by the Port to the Airline Rate Bases, as determined in the Port's sole discretion.

ARTICLE 7

AIRLINE REPRESENTATIONS AND WARRANTIES

Airline represents and warrants to the Port that:

7.1 **Corporate Structure.** Airline (a) is a corporation, partnership or limited liability company duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, and (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to execute, deliver and perform its obligations under this Agreement.

7.2 **Duly Authorized** The execution, delivery and performance by Airline of this Agreement has been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of Airline's organization documents, or (b) conflict with or result in any breach or contravention of any contractual obligation to which

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Airline is a party, or any order, injunction, writ or decree of any governmental authority or any arbitral award to which Airline or its property is subject.

7.3 Approvals Unnecessary Except as otherwise required pursuant to Section 7.5, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any governmental authority or any other person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Airline of this Agreement.

7.4 Duly Executed This Agreement has been duly executed and delivered by Airline. This Agreement constitutes a legal, valid and binding obligation of Airline, enforceable against Airline in accordance with its terms.

7.5 No Litigation On the date it becomes a Signatory Airline, either (a) Airline is not the subject of a case or proceeding described in subsection 20.1.4, or (b) if Airline is the subject of a case or proceeding described in subsection 20.1.4, Airline has obtained entry in such case or proceeding of a final order in form reasonably satisfactory to the Port as to which the appeal period has expired authorizing Airline to execute, deliver and perform its obligations under this Agreement.

ARTICLE 8

CALCULATION OF RATES AND CHARGES.

8.1 Generally.

The fees and rents to be charged by the Port and paid by Airline (and by all other Signatory Airlines) for its use of the Airport from the Effective Date until the expiration or earlier termination of this Agreement shall be calculated using the compensatory rate-setting methods set forth in this Article 8. In calculating the revenue requirements used to derive each of these kinds of rates and charges, the Port shall exclude any cost (net of the cost of collection) that (a) has been reimbursed or covered by government grants or PFC's, (b) has been reimbursed or covered by any insurance recovery, condemnation proceeds or other third-party payment, or (c) has been reimbursed or is required to be reimbursed to the Port by an individual Airline in connection with projects undertaken by the Port at the request and for the benefit of an individual Airline. The Port may add to such revenue requirements any bad debt caused by the failure of any Air Carrier to pay fees and rents charged by the Port under this Article 8, but only after the Port has made commercially reasonable efforts to recover any such bad debt under a Security Deposit required by this Agreement. In the event that unforeseen circumstances outside of the control of the Port and Air Carriers occur and have a material impact on rates and charges calculated under this Article 8, the Port shall have the right but not the obligation, to utilize non-aeronautical revenues to offset costs allocated to Airline Rate Bases in amounts and on a schedule to be determined in the sole discretion of the Port. The Capital Costs (including capitalized interest) of any Capital Improvement project allocated to the Airline Rate Bases shall not be included in the Airline Rate Bases until its Date of Beneficial Occupancy. Illustrative calculations displaying how rates and charges will be calculated under the methodology set forth in this Article 8 are attached as **Exhibits I, J and K.**

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8.1.1 Airline Consultations on Proposed Airport Budget. Each year, the Port shall consult with the AAAC over the Airport budget as follows:

(a) No later than April 1 the Port shall provide the AAAC with a schedule for the budget development process, including the following steps, to be used in determining the following year's budget.

(b) At the start of the budget process, the Port shall consult with the AAAC to discuss the Port's goals and objectives for the following year's budget. At the consultation meeting, the Port will also brief the AAAC on any significant changes to the Port's allocation of central services costs to the Airport. No later than fourteen (14) days after the consultation meeting, the Chair of the AAAC may submit written comments to the Port providing the AAAC's priorities for the following year's budget.

(c) The Port shall provide the AAAC with the budget requests and preliminary budget summary documents for the following year's budget. The Port will provide Signatory Airlines at least seven (7) days to review and provide input on the budget requests, which input will be provided to Airport senior leadership prior to their final approval of the budget.

(d) Prior to submitting the final Airport proposed budget to the Port Commission, the Airline Technical Representative will have the opportunity to consult with the Airport senior leadership on strategic budget decisions. All final Airport proposed budget recommendations will be made at the sole discretion of the Managing Director and all final Airport budget decisions will be made by the Port Commission.

8.1.2 Airline Consultations on Proposed Rates and Charges. No later than November 1 of each year, the Managing Director shall provide each Signatory Airline then currently operating scheduled passenger or cargo service at the Airport with a complete copy of the then proposed rates and charges, calculated in accordance with this Article 8, for the succeeding Fiscal Year. The Managing Director shall consult with the AAAC concerning the then proposed rates and charges. No later than December 1 of each year, after giving due consideration to the comments provided by the AAAC, the Managing Director shall make any revisions to the proposed rates and charges as the Managing Director determines, in his or her sole discretion, to be warranted as a result of consultation with the AAAC or otherwise, and shall provide notice to each Signatory Airline then currently operating scheduled passenger or cargo service at the Airport of the new rates and charges to be effective on January 1 of the following calendar year by posting the new rates and charges on the Port's website.

8.1.3 Airline Consultation on Fiscal Year 2025 Rates and Charges. Airline acknowledges that the Port complied with the consultation requirements of Section 8.1.1 for rates and charges for Fiscal Year 2025.

8.2 **Calculation of the Landing Fee** Each year the Port shall calculate the estimated Landing Fee for the following Fiscal Year as follows:

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8.2.1 The Airfield Movement Area Requirement shall be computed as the total of budgeted Capital Costs and O&M Expenses allocable to the Airfield Movement Area, less budgeted Other Airfield Movement Area Revenue and less any Non-Signatory Premiums paid in Landing Fees under Section 8.21, for the following Fiscal Year.

8.2.2 The estimated Landing Fee shall then be calculated by dividing the Airfield Movement Area Requirement by the estimated total Maximum Gross Landed Weight (“MGLW”) for the following Fiscal Year. The Port may use the most recent available historical MGLW or forecasts of MGLW that reflect reasonable Port management judgment in calculating the estimated Landing Fee. The calculation of the Landing Fee shall exclude non-revenue landings that are timely and accurately reported by Air Carriers in monthly Activity Reports submitted under Section 8.20.2.

8.3 **Calculation of Terminal Rental Rates.** Each year the Port shall calculate estimated Terminal Rental Rates for the next Fiscal Year as follows:

8.3.1 The Terminal Building Requirement shall be computed by multiplying (a) the total of the budgeted Capital Costs and O&M Expenses allocable to the Terminal for the following Fiscal Year by (b) the ratio of Airline Rentable Space to total Rentable Space; less any Non-Signatory Premiums paid in Terminal Rents under Section 8.21. The Terminal Building Requirement shall not include Common Use Baggage System Costs, Passenger Loading Bridge Costs, Airline Support Systems and Equipment Costs or Capital Costs and O&M Expenses allocated to the FIS Facility, nor shall the Terminal Building Requirement include Non-Airline Support Systems and Equipment Costs, if any.

8.3.2 The Port will distribute the aggregate Terminal Building Requirement calculated in accordance with subsection 8.3.1 into four cost assignment groups: Group A (consisting of Gates); Group B (consisting of Ticket Counters, Baggage Claim, Baggage Make up, Publicly-accessible Offices, Security Checkpoint Areas and VIP lounges); Group C (consisting of Non-publicly-accessible Offices); and Group D (consisting of closed storage space). The costs assigned to the rentable space within each of these four groups shall bear the following relativities to each other on a square foot basis:

Group A:	2.00
Group B:	1.00
Group C:	0.50
Group D:	0.25

For rate-setting purposes, the cost per square foot of space in each of these four groups will be normalized so that the aggregate costs assigned to all four groups will equal the Terminal Building Requirement.

8.3.3 The Port shall calculate the Baggage Make up Circulation Rate by (a) multiplying Baggage Make up Circulation Space by the normalized cost per square foot of Group B Space and then (b) dividing this product by the estimated total amount of Airline Rented Space.

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8.3.4 The Port shall calculate estimated Terminal Rental Rates for each space group as the sum of (a) the normalized cost per square foot of space in each such group, and (b) the Baggage Make up Circulation Rate; *provided*, however, that Terminal Rental Rates for Preferential Use and Common Use Ticket Counters, Non-Publicly Accessible Office Space and Closed Storage Space shall be calculated in accordance with Sections 8.9 through 8.12.

8.4 **Calculation of the FIS Fee.** Each year the Port shall calculate the estimated FIS Rate for the next Fiscal Year as follows:

8.4.1 The estimated FIS Requirement shall be computed as the sum of (a) the total of the budgeted Capital Costs and O&M Expenses allocable to the FIS Facility; (b) the total of the budgeted Capital Costs and O&M Expenses allocable to the Common Use Baggage Claim Area serving the FIS Facility; and (c) the Capital Costs and O&M Expenses of the Baggage Make up System and Common Use Baggage Claim System allocable to the FIS Facility; less (d) any estimated revenue from the rental of space in the FIS Facility to governmental agencies, for the following Fiscal Year.

8.4.2 The estimated FIS Fee shall be calculated by dividing the FIS Requirement by the estimated total number of Deplaned International Passengers for the following Fiscal Year. The Port may use the most recent available historical number of Deplaned International Passengers or forecasts that reflect reasonable Port management judgment in calculating the estimated FIS Fee.

8.4.3 If, during the Term, the Port constructs a new FIS Facility, the Capital Costs and O&M Expenses of such new FIS Facility shall be recovered through the FIS Fee and the FIS Facility shall continue to be treated as a separate cost center. During the Term, there will only be a single FIS cost center.

8.4.4 At any time, the Port may use non-aeronautical revenues to offset the FIS Requirement and reduce the FIS Fee.

8.5 **Calculation of Gate Rates and Fees.** Each year the Port shall calculate the estimated Preferential Use Gate Rate and Common Use Gate Turn Fee as follows:

8.5.1 Calculation of Average Gate Cost. Each year the Port shall calculate the estimated Average Gate Cost for the next Fiscal Year as follows:

(a) The estimated Total Gate Requirement shall be computed as (1) the sum of (a) the product of the estimated Terminal Rental Rate for Group A times the total square footage of all Gate space; (b) the product of the estimated Terminal Rental Rate for Group B times the total square footage of the Security Checkpoint Area; (c) the total of the Capital Costs and O&M Expenses allocable to Airline Support Systems and Equipment other than Baggage Systems and passenger loading bridges; and (d) the Capital Costs and O&M Expenses allocable to airline realignment projects, for the next Fiscal Year.

(b) The Average Gate Cost shall then be calculated by dividing the Total Gate Requirement by the number of Gates.

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8.5.2 Preferential Use Gate Rental Rate. The Port shall calculate the estimated Preferential Use Gate Rental Rate for the next Fiscal Year as follows:

(a) The estimated Preferential Use Gate Requirement shall be computed by first multiplying the Average Gate Cost calculated in accordance with Section 8.5.1(b) by the number of Preferential Use Gates and then either adding the Unrecovered Common Use Gate Requirement calculated in accordance with Section 8.5.4, below, or subtracting the estimated Common Use Gate Surplus calculated in accordance with Section 8.5.4.

(b) The Preferential Use Gate Rental Rate for PLB Gates shall be calculated by dividing the Preferential Use Gate Requirement by the number of Preferential Use Gates.

(c) The Preferential Use Gate Rental Rate for Ground-boarded Gates shall be calculated by multiplying the rate from Section 8.5.2.(b) above by 0.5.

8.5.3 Common Use Gate Turn Fees. Each year the Port shall calculate estimated Common Use Gate Turn Fees for the next Fiscal Year as follows:

(a) The estimated Common Use Gate Requirement shall be computed by multiplying the number of Common Use Gates multiplied by the Average Gate Cost calculated in accordance with Section 8.5.1(b).

(b) For rate setting purposes only, the Port shall assume that each Common Use Gate will have no less than 4 Turns and no more than 6 Turns per day, 365 days per year.

(c) The Port will then calculate separate Common Use Gate Turn Fees for use of Common Use Gates by the three different classes of aircraft: Class 1 (Wide Body [dual-aisle aircraft]); Class 2 (Narrow Body [single-aisle aircraft, over 100 seats]); and Class 3 (Regional and Commuter [aircraft with 100 or fewer seats]) to be levied on the basis of the total number of turns made in each class of aircraft. The charges for use of Common Use Gates by aircraft within each of these classes shall bear the following relativities to each other:

Class 1: 2.00
Class 2: 1.00
Class 3: 0.50

For rate-setting purposes, the charges per Turn for each of these three classes of aircraft will be normalized so that expected aggregate Common Use charges, assuming no less than 4 Turns and no more than 6 Turns per day, equal the Common Use Gate Requirement.

8.5.4 The Port shall estimate the Unrecovered Common Use Gate Requirement by subtracting the estimated Common Use Gate Turn Fees to be paid for actual Turns on Common Use Gates from the Common Use Gate Requirement. If the average Turns per day on Common Use Gates exceeds 6 Turns, the Port shall estimate the Common Use Gate Surplus by

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calculating the Common Use Turn Fee in Section 8.5.3 based on 6 Turns per day and subtracting the Common Use Gate Requirement from the Common Use Gate Turn Fees paid for actual Turns on Common Use Gates.

8.5.5 For the purpose of determining the number of Gates in this Section 8.5, a PLB Gate shall be the equivalent of one (1.0) Gate and a Ground-boarded Gate shall be the equivalent of one-half (0.5) Gate.

8.5.6 The Port reserves the right to develop, in consultation with the Common Use Facilities Advisory Committee, a cap on Common Use Gate Turn Fees paid by Signatory Airlines that have not been assigned a Preferential Use Gate.

(a) Any such cap shall be set at the Average Gate Cost calculated in accordance with Section 8.5.1.

(b) To qualify for the cap, the Signatory Airline must demonstrate that if its actual daily Turns over the course of the year were gated on a single Gate (applying Periods of Use as defined in Section 4.2.3), the Signatory Airline would average at least 6 Turns per day on that Gate. The Signatory Airline must, prior to January 15 of the following year, provide to the Port the information necessary to make this demonstration for one or more Gates.

(c) The cap shall only apply to the Turns used to make the demonstration. All other Turns shall be counted in determining the Common Use Gate Turn Fee and shall be charged a separate Common Use Gate Turn Fee.

8.6 Calculation of Baggage Claim Rate. Each year the Port shall calculate the estimated Baggage Claim Rate for the next Fiscal Year as follows:

8.6.1 The estimated Baggage Claim Requirement shall be computed as the sum of (a) the product of the estimated Terminal Rental Rate for Group B times the total square footage of the Baggage Claim Area; and (b) the Capital Costs and O&M Expenses allocable to the Common Use Baggage Claim System (excluding the Capital Costs and O&M Expenses of the Common Use Baggage Claim System allocable to the FIS Facility).

8.6.2 Charges for the use of Baggage Claim Areas shall be calculated by allocating ten percent (10%) of the Baggage Claim Requirement equally among all Signatory Airlines with scheduled domestic service, and ninety percent (90%) of the Baggage Claim Requirement shall be divided by the expected number of Deplaned Domestic Passengers arriving during the Fiscal Year to determine the Baggage Claim charge per deplaned passenger.

8.7 Calculation of Baggage Make up System Space Rate and Fees. Each year the Port shall calculate the estimated Preferential Use Baggage Make up System Space Rate and the Common Use Baggage Make up System Space Fee for the next Fiscal Year as follows:

8.7.1 Preferential Baggage Make up System Space Rent. The Port shall calculate Airline's annual rent for the use of Preferential Use Baggage Make up System Space by

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multiplying the square footage of such space assigned to the Airline by the Terminal Rental Rate for Group B.

8.7.2 Common Use Baggage Make up System Space Fee. The Port shall calculate the estimated Common Use Baggage Make up System Space Fee as follows:

(a) The Common Use Baggage Make up System Space Requirement shall be calculated by multiplying the total square footage of such space by the Terminal Rental Rate for Group B.

(b) The Port shall calculate the Common Use Baggage Make up System Space Fee by dividing the Common Use Baggage Make up System Space Requirement by the estimated number of Outbound Checked Bags processed on Common Use Baggage Make up Systems. The Port may use the most recent available historical number of Outbound Checked Bags or forecasts that reflect reasonable Port management judgment.

8.8 **Calculation of Baggage Make up System Fees.** Each year the Port shall calculate the Baggage Make up System Fees for the next Fiscal Year as follows:

(a) The estimated Baggage Make up System Requirement shall consist of the Capital Costs and O&M Expenses allocable to the Baggage Make up System *plus* fifty percent (50%) of the costs incurred by the Port to handle baggage transferred from cruise ships to the Airport.

(b) Charges for the use of the Baggage Make up System shall be calculated by allocating ten percent (10%) of the Baggage Make up System Requirement equally among all Signatory Airlines and ninety percent (90%) of the Baggage Make up System Requirement shall be divided by the estimated annual number of Outbound Checked Bags processed on Baggage Make up Systems during the Fiscal Year to determine the Baggage Make up Equipment Rate.

8.9 **Calculation of Preferential Use Ticket Counter Rental Rate.** Each year the Port shall calculate the estimated Preferential Use Ticket Counter Rental for the next Fiscal Year as follows:

8.9.1 The Ticket Counter Requirement shall be computed by as the sum of (a) the normalized cost per square foot for Group B space from Section 8.3.2 multiplied by the estimated total square footage of rentable Ticket Counter Space and (b) the Baggage Makeup Circulation Rate from Section 8.3.3 multiplied by the estimated total square footage of rented Ticket Counter Space.

8.9.2 The Preferential Use Ticket Counter Rental Rate shall be calculated by dividing the Ticket Counter Requirement by the estimated total square footage of rented Ticket Counter Space.

8.10 **Calculation of Common Use Ticket Counter Rate.** Each year the Port shall calculate the estimated Common Use Ticket Counter Rate for the next Fiscal Year as follows:

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8.10.1 The Common Use Ticket Counter Requirement shall be calculated by multiplying the Preferential Use Ticket Counter Rental Rate computed in accordance with Section 8.9.2 by the estimated total square footage of rented Common Use Ticket Counter Space.

8.10.2 The estimated Common Use Ticket Counter Rate shall then be calculated by dividing the Common Use Ticket Counter Requirement by the estimated total annual number of hours of use of Common Use Ticket Counters. The Port may use the most recent available historical numbers of hours of use of Common Use Ticket Counters or forecasts that reflect reasonable Port management judgment in calculating the estimated Common Use Ticket Counter Rate.

8.11 **Calculation of Non-Publicly-Accessible Office Space Rental Rate.** Each year the Port shall calculate the estimated Non-Publicly-Accessible Office Space Rental Rate for the next Fiscal Year as follows:

8.11.1 The Non-Publicly-Accessible Office Requirement shall be computed as the sum of (a) the normalized cost per square foot for Group C space from Section 8.3.2 multiplied by the estimated total square footage of rentable Non-Publicly Accessible Office Space and (b) the Baggage Makeup Circulation Rate from Section 8.3.3 multiplied by the estimated total square footage of rented Non-Publicly-Accessible Office Space.

8.11.2 The Non-Publicly-Accessible Office Rental Rate shall be calculated by dividing the Non-Publicly-Accessible Office Requirement by the estimated total square footage of rented Non-Publicly-Accessible Office Space.

8.12 **Calculation of Closed Storage Space Rental Rate.** Each year the Port shall calculate the estimated Closed Storage Space Rental Rate for the next Fiscal Year as follows:

8.12.1 The Closed Storage Requirement shall be computed by as the sum of (a) the normalized cost per square for Group D space from Section 8.3.2 multiplied by the estimated total square footage of rentable Closed Storage Space and (b) the Baggage Makeup Circulation Rate from Section 8.3.3 multiplied by the estimated total square footage of rented Closed Storage Space.

8.12.2 The Closed Storage Rental Rate shall be calculated by dividing the Closed Storage Requirement by the estimated total square footage of rented Closed Storage Space.

8.13 **Rent for Publicly-Accessible Offices and VIP Lounges.** The Rental Rate for use of Publicly-Accessible Offices and VIP Lounges shall be the Terminal Rental Rate for Group B space.

8.14 **Calculation of Passenger Loading Bridge Fees.**

8.14.1 Calculation of Average Passenger Loading Bridge Cost. Each year the Port shall calculate the estimated Average Passenger Loading Bridge Cost for the following Fiscal Year by dividing the sum of the budgeted Capital Costs and O&M Expenses allocable to Port-owned passenger loading bridges by the number of Port-owned passenger loading bridges.

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8.14.2 Preferential Passenger Loading Bridge Fee. The annual fee for the use of any Port-owned passenger loading bridge serving a Preferential Use Gate shall equal the Average Passenger Loading Bridge Cost.

8.14.3 Common Use Passenger Loading Bridge Rate. The Common Use Passenger Loading Bridge Rate for the use of any Port-owned passenger loading bridge serving a Common Use Gate shall be calculated by multiplying the Average Annual Passenger Loading Bridge Cost by the total number of Port-owned passenger loading bridges serving Common Use Gates and then dividing by the estimated total number of Turns on Common Use Gates with Port-owned passenger loading bridges. The Port may use the most recent available historical numbers of Turns on such Gates or forecasts that reflect reasonable Port management judgment in calculating the estimated Common Use Passenger Loading Bridge Rate.

8.15 Calculation of the Ramp Tower Fee.

8.15.1 Each year the Port shall calculate the estimated Ramp Tower Fee for the next Fiscal Year by dividing the budgeted Capital Costs and O&M Expenses allocable to the ramp tower by the estimated total number of landings for the following Fiscal Year. The Port may use the most recent available historical number of landings or forecasts that reflect reasonable Port management judgment in calculating the estimated Ramp Tower Fee.

8.16 Calculation of the Passenger Airline Apron Fee. Each year the Port shall calculate the estimated Passenger Airline Apron Fee for the next Fiscal Year as follows:

8.16.1 The Airfield Apron Area Requirement shall be computed as the total Capital Costs and O&M Expenses allocable to the Airfield Apron Area, less Ramp Tower Revenues, less any Non-Signatory Premium paid in Apron Fees under Section 8.21, and less RON Parking Revenues in the Airfield Apron Area.

8.16.2 The estimated Passenger Airline Apron Fee shall then be calculated by dividing the Airfield Apron Area Requirement by the estimated total MGLW for Passenger Carriers for the following Fiscal Year. The Port may use the most recent available historical MGLW or forecasts of MGLW that reflect reasonable Port management judgment in calculating the estimated Apron Fee.

8.17 Mid-year Adjustments.

If it appears to the Port on the basis of information it is able to accumulate during the course of any Fiscal Year that the budgeted Capital Costs or O&M Expenses or projected levels of Air Carrier activity it has used to calculate the rates and charges set forth in this Article 8 are likely to vary significantly (higher or lower) from actual results, the Port may make adjustments to such rates and charges at mid-year or at such other time during the calendar year (a) as the need for such an adjustment becomes apparent to the Port or (b) the variance between the budgeted Capital Costs or O&M Expenses or projected levels of Airline activity and actual results is expected to be ten percent (10%) or more. The Port shall provide the AAAC with at least thirty (30) days advance written notice (“Mid-Year Adjustment Notice”) of any adjustments to be made under this Section 8.17. The AAAC may, within fifteen (15) days of receipt of the

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Mid-Year Adjustment Notice, request a meeting with the Port to review the information that the Port used as the basis for an adjustment under this Section 8.17 and if the AAAC does so, the Port shall meet with the AAAC within fifteen (15) days of the AAAC's request.

8.18 Annual Adjustments-to-Actual.

8.18.1 Within sixty (60) days after completion of the audit for the preceding Fiscal Year, the Port shall recalculate the rates and charges as set forth in this Article 8 on the basis of actual Capital Costs and O&M Expenses, Air Carrier activity and other factors affecting the prescribed calculations and shall determine the amount of any overpayment (credit) or underpayment (debit) due to or from Airline. Any resulting credit will be issued to Airline, and any resulting debit will be invoiced to and payable by Airline.

8.18.2 If the Port levies Debt Service Coverage Charges in any given Fiscal Year, the Port shall in subsequent Fiscal Years as part of the annual adjustments-to-actual process credit each Signatory Airline with its proportionate share of such charges as soon as, and to the extent, the Airport's Net Revenue exceeds 125% of its annual debt service for a given Fiscal Year. Credits for past Debt Service Coverage Charges can only be used by a Signatory Airline, including Airline, as an offset against amounts due to the Port in the following order of priority: first, against any amounts due to the Port for Terminal Rents; second, against any Landing Fees due to the Port; and third against any other any other fees, rents or charges due to the Port, except for PFC remittance. Credits for past Debt Service Coverage Charges will not be issued in cash. Such credits must be used within twelve (12) months after they are issued and expire immediately if Airline ceases operations at the Airport for any reason other than the closure of the Airport. Any unused credits that expire shall be applied by the Port against any outstanding amount due on account of Airline's use of Terminal space or use of the airfield at the Airport, except for PFC remittance.

8.18.3 For Fiscal Year 2034, the final year of the Term, the Port shall make an adjustment-to-actual in accordance with Section 8.18.1, and any resulting credit will be issued to Airline and any resulting debits will be invoiced to payable by Airline notwithstanding the termination of the Agreement on December 31, 2034.

8.19 Airport Employee Parking Stabilization. The Port is planning to expand airport employee parking at the Airport. Parking fees for use of airport employee parking lots are based on cost recovery. To stabilize airport employee parking rates that are expected to increase as a result of any expansion of airport employee parking, the Port agrees to the following in the event the Port acquires, by purchase or lease, real estate after September 30, 2024 that is used for expanded airport employee parking:

(a) The Port will exclude the lease payments or purchase price for the acquisition of such real estate from the costs that that would otherwise be allocated to the airport employee parking cost center and recovered through airport employee parking fees by up to a maximum amount of approximately \$6.8 Million annually (escalated by 3% annually) over the Term of the Agreement; and

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(b) The Port will also exclude a total of \$26.8 Million from the costs that may otherwise be recovered through airport employee parking fees during the first six (6) years of this Agreement in order to stabilize increases in the employee parking rate. The Port will determine the amount to apply each year based on the Port's then-current forecast of employee parking rates through Fiscal Year 2030 and the Port's goal of minimizing substantial increases in year-to-year airport employee parking rates, but in any event utilize the entire \$26.8 Million by the end of Fiscal Year 2030.

Any costs excluded from recovery through airport employee parking fees under (a) and (b) above will not otherwise be recovered by the Port by charging the costs to Airline Rate Bases.

8.20 Activity Reports.

8.20.1 Flight Information Management System. Airline shall provide the Port with the information for the Port's Flight Information Management System ("FIMS") by providing *real time* data output from Airline's internal flight information display system, computer reservations system, cargo load message transmission, ARINC or SITA transmissions, or other information systems (including commercial information systems) on a per flight basis. Airline flight information shall be in a format prescribed by the Port and shall include, at least, the following information about the Airline's operations and activities at the Airport. For each *arriving* flight: (a) flight number and Airport Gate utilized, (b) aircraft registration number and aircraft type, (c) actual time of arrival at the Airport (wheels-on) and actual time of arrival at the Gate (aircraft parked at the Gate), (d) baggage claim number, (e) scheduled time of arrival, (f) estimated time of arrival, (g) aircraft parking position, (h) international or domestic flight indicator, (i) pre-cleared flight indicator, (j) code share information if applicable and (k) flight routing. For each *departing* flight: (a) flight number and Airport Gate utilized, (b) aircraft registration number and aircraft type, (c) actual time of departure from Gate (aircraft pushback) and actual time of departure from Airport (wheels-off), (d) scheduled time of departure, (e) estimated time of departure, (f) aircraft parking position (g) code share information if applicable and (h) flight routing.

8.20.2 Airline Reporting. Airline shall provide to the Port, on or before the 10th day of each and every month, an accurate summary report of Airline's operations at the Airport during the preceding month ("Monthly Activity Report"). Airline's Monthly Activity Report shall be in a format prescribed by the Port and shall include at least the following information: (a) the aircraft make, model and series, Maximum Gross Landed Weight ("MGLW"), seating capacity and configuration of every aircraft type operated by Airline at the Airport during the preceding month; (b) the total MGLW of all passenger aircraft and, separately, all cargo aircraft landing at the Airport by Airline; (c) the total number of domestic and international enplaned and deplaned passengers served by Airline at the Airport (including the breakdown of FIS Facility and non-FIS Facility deplaned passengers and revenue and non-revenue passengers); (d) the total amount (in pounds or kilograms) of domestic and international cargo and mail enplaned and deplaned by Airline at the Airport; (e) the total number of revenue and non-revenue aircraft operations by Airline; and (f) total Airline use of Common Use Gates by date and time, including gate, aircraft type and registration (tail) number.

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8.20.3 **Failure to Report.** If Airline fails timely to furnish the Port with any Monthly Activity Report under subsections 8.20.1, 8.20.2 or Section 9.1, whichever may be applicable, Airline's Landing Fees, Terminal Rents and any other charges due under this Agreement shall be determined by assuming that Airline's activity in any month for which Airline has failed to report its activity equaled the Airline's maximum activity during any of the previous twelve (12) months for which Airline submitted a Monthly Activity Report to the Port. Any necessary adjustments in the Airline's charges shall be calculated after an accurate report is delivered to the Port by Airline for the month in question. Resulting credits or debits shall be applied to the appropriate invoices in the next billing period.

8.21 **Non-Signatory Premium.** Non-Signatory Airlines shall pay a twenty-five percent (25%) premium on all rates and charges set forth under this Article 8.

8.22 **Air Service Incentive Program.** Notwithstanding any other provision in this Agreement and, in order to enhance and attract new air service to the Airport, the Port reserves the right to adopt and implement a program of air service incentives at the Airport, consistent with applicable federal requirements, which may include rates and charges incentives and marketing support ("Air Service Incentive Program"). The Air Service Incentive Program, if implemented, shall be offered to all eligible Air Carriers on a nondiscriminatory basis. The Port will use non-aeronautical Airport revenues or Airfield Commercial Area revenues to fund the Air Service Incentive Program and any fee waivers will not adversely impact Airline Rate Bases. Notwithstanding the foregoing, Airline agrees that any airline incentive agreements that are in effect on January 1, 2025 and for which the Port is recovering the costs through Airline Rate Bases, shall remain in effect until the earlier of (a) the expiration of that agreement or (b) January 1, 2027, and the Port will continue to recover the costs through Airline Rate Bases through that period of time.

8.23 **Affiliates.** In the event Airline contracts with an Affiliate, it shall be considered a Contracting Carrier, and all of the following provisions applicable to Contracting Carriers shall apply to Airline:

8.23.1 Airline may not use an Affiliate without first notifying the Port that it intends to designate an Affiliate and ensuring that the Affiliate must enter into an Affiliate Operating Permit with the Port, and that Airline also signs that agreement as the Contracting Carrier. Airline is also responsible to notify the Port when it ceases to use the Affiliate. Affiliates signing a Signatory Lease and Operating Agreement will be bound by that Agreement for its entire term.

8.23.2 All Affiliates using the Airport must enter into an Affiliate Operating Permit with the Port. The Contracting Carrier must also sign the Affiliate's Operating Permit with the Port. An Affiliate shall be considered an agent of the Contracting Carrier.

8.23.3 All Landing Fees, Terminal Rents and other charges and fees due from the Affiliate and all reports required to be made for payment of Landing Fees and Terminal Rents shall be made by the Contracting Carrier. The Contracting Carrier will remain liable to the Port for the payment of all Landing Fees and Terminal Rents due from the Affiliate, and any such past due payments (including PFCs) will be subtracted from any reimbursement due to the

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Contracting Carrier by the Port. Notwithstanding the foregoing, the Affiliate shall directly report and pay to the Port all PFCs that it collects. If the Contracting Carrier fails to make payment or submit reports on behalf of the Affiliate, the Affiliate remains fully responsible and liable to the Port for both reporting and payment. As long as the Contracting Carrier is making all payments of Landing Fees and Terminal Rents, and submitting the activity reports for the Affiliate, then that Affiliate activity will count toward the Contracting Carrier's activity.

8.23.4 Any Air Carrier who operates under its own name and sells any seats in its own name will not be deemed an Affiliate. An Affiliate may work for more than one (1) Signatory Airline at a time, or from time to time, but any Signatory Airline for whom the Affiliate is working must sign the Affiliate's Operating Permit, agreeing to be responsible for reporting and paying for the Affiliate's operations on its behalf. Notwithstanding anything to the contrary, an Air Carrier's status as Affiliate of the Airline at the Airport may be terminated by the Airline upon not less than thirty (30) days written notice to the Port. Any Affiliate who sells any seats in its own name will be required to sign a Signatory Lease and Operating Agreement, or will be deemed a Non-Signatory Airline, and Section 8.23 shall not apply.

8.23.5 Because the Affiliate is operating on behalf of a Signatory Airline(s) who reports and pays for all Terminal Rents and Landing Fees associated with the Affiliate's operations, the Affiliate will not be required to pay a Non-Signatory premium on its Landing Fees and Terminal Rents, except as provided in this Section 8.23. The Landing Fees and Terminal Rents paid by the Contracting Carrier on behalf of its Affiliate(s) are subject to all the provisions of Article 8.

8.23.6 If an Affiliate chooses to lease space directly from the Port, the Affiliate must become a Signatory Airline or a Non-Signatory Airline, but in either case relinquishes its status as an Affiliate.

8.24 **Airfield Commercial Area.** The Port shall treat the Airfield Commercial Area as a separate, compensatory cost center.

8.25 **Space Determinations.** Each Fiscal Year during the Term, at the time the Port reviews the Airport budget with the AAAC (in July or September each year), the Port shall, if requested by the Chair of the AAAC, provide Airline and the AAAC with the Port's annual space update, displaying the Port's then-current determinations of the characterization, locations and measurements of each type of Terminal space leased to any Air Carrier or otherwise affecting the calculation of rates and charges under this Article 8. If Airline believes in good faith that the Port's space determinations are erroneous, Airline may bring its concerns and any supporting information to the attention of the Port by written notice to the Port's Aviation Property Manager. If the Port's Aviation Property Manager and Airline's property representative are unable to resolve such concerns within fifteen (15) days of Airline's written notice to the Port, the matter shall be presented to the Managing Director, whose decision shall be binding. Any error in the Port's determination of space identified by the Managing Director shall be adjusted by the Port for the Fiscal Year in which the error is acknowledged. The Managing Director may, after consultation with the Chair of the AAAC, appoint a Terminal Space Review Committee, with representatives of the Port and the AAAC, to provide

recommendations about the characterization, locations or measurements of space within the Terminal or the resolution of particular concerns about space determinations raised by any Airline.

ARTICLE 9

PAYMENTS

9.1 Payment of Landing Fees and Terminal Rents.

Airline shall pay to the Port Landing Fees and Terminal Rents calculated in accordance with Article 8 as follows. Beginning on the Effective Date, Airline shall pay to the Port on a monthly basis the Landing Fee and Terminal Rents established by the Port in accordance with this Agreement.

9.1.1 All payments of Terminal Rents (except rentals for use of Common Use Premises and the FIS, for which Airline shall pay as noted below) shall be made in advance no later than the first (1st) day of the month without awaiting an invoice from the Port. If Airline received a revised Premise Notice from the Port for prior month(s), any adjustment invoice arising from the revised Premise Notice shall be due and payable within 30 days of the Port's adjustment invoice date.

9.1.2 Airline shall provide to the Port by no later than the tenth (10th) day of each and every month Airline's Monthly Activity Report for the preceding month. Airline shall pay to the Port the Landing Fees due for the preceding month by no later than the thirtieth (30th) day of each and every month (or, for February, the last day) without awaiting an invoice from the Port. In the event Airline fails to provide to the Port the Monthly Activity Report required under this Section and subsection 8.20.2, the Port shall determine the Landing Fee payment due in accordance with the provisions of subsection 8.20.3 of this Agreement.

9.1.3 The Port shall invoice Airline as of the thirtieth (30th) day of each month (or, for February, the last day) for the actual rentals associated with Airline's use of Common Use Premises and the FIS during the prior month. Airline's payment of actual rentals for the Common Use Premises and the FIS shall be due and payable within thirty (30) days of the Port's invoice date.

9.1.4 All payments of both Terminal Rents (including rentals for use of Common Use Premises and the FIS) and Landing Fees shall be made to the Port at its Payment Address or at such other place as the Managing Director may from time to time designate in writing. All amounts shall be paid in lawful money of the United States, and all payments must be made by electronic funds transfer, check or credit card. Credit card payments shall be inclusive of any associated service fee, which is subject to change. All amounts paid shall be free from all claims, demands, fees, expenses, set-offs or counterclaims of any kind. Any amounts owed under this Section 9.1 that are not paid when due, and following a ten (10) day grace period thereafter, shall be subject to an interest charge equal to the rate of one and one-half percent (1½%) per month, with a minimum of Five Dollars (\$5.00). The Port's acceptance of any payment under this Agreement shall not constitute a waiver of Airline's default on the

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overdue amount or prevent the Port from exercising any of its rights and remedies under this Agreement.

9.2 Passenger Facility Charges.

9.2.1 The Port expressly reserves the right to impose passenger facility charges (“PFCs”) in accordance with 49 U.S.C. § 40117 and applicable implementing regulations adopted by the FAA, 14 CFR Pt. 158, as they may be amended from time to time (the “PFC Regulations”).

9.2.2 Airline shall hold in trust for the Port the net principal amount of all PFCs that are collected by Airline or its agents on behalf of the Port pursuant to 49 U.S.C. § 40117 and the PFC Regulations. For purposes of this Section 9.2, net principal amount shall mean the total principal amount of all PFCs that are collected by Airline or its agents on behalf of the Port, reduced by any amount that Airline is permitted to retain pursuant to § 158.53(a) of the PFC Regulations. PFCs collected by the Airline shall be remitted to the Port at its Payment Address or at such other place as the Managing Director may from time to time designate in writing. For PFCs not timely remitted to the Port as of the date due, and following a ten (10) day grace period thereafter, the Port will assess an interest charge against the unpaid PFCs at the rate described in Section 9.1.4, from the date remittance of PFCs was first due through the date PFCs are paid in full.

9.3 Payment of VIP Lounge Percentage Fees.

On or before the fifteenth (15th) day of each calendar month, each Airline shall pay to the Port the following percentage fees on the sale of all alcoholic beverages or other beverages, and any related food service items sold at or within the VIP Lounge: ten percent (10%) of the Gross Revenues received by Airline from beer and wine sales, ten percent (10%) of the Gross Revenues received by Airline from all liquor sales and fourteen percent (14%) of the Gross Revenues received by Airline from all other (if any) sales, excluding sales of day passes or fees to other Air Carriers, incurred during said preceding month. Airline shall submit to the Port, together with the required payment, a detailed statement showing Gross Revenues received by Airline from all alcoholic beverages or other beverages, and any related food service items sold at or within the VIP Lounge during the preceding calendar month. The monthly statements shall show such reasonable detail and breakdown as may be required by the Port.

9.4 Payment of Invoices for Damage Caused by Airline.

In the event the Port invoices Airline for cost incurred by the Port related to damage at the Airport caused by Airline for which Airline did not receive prior notice and an opportunity to review and respond, Airline shall have 45 days to review, investigate, and make payment to the Port or dispute the charge. During this 45-day period interest charges shall not accrue.

ARTICLE 10

AUDIT

Airline shall maintain separate and accurate daily records of Airline's operations at the Airport for a period of three (3) years after the close of each calendar year throughout the Term, *provided*, however, that in the event the Port gives Airline written notice of a claim for payment under this Agreement, Airline shall retain all of its records relating to its daily operations at the Airport that might pertain to the claim until the claim has been finally resolved. This record-keeping obligation shall survive the expiration or termination of this Agreement. All such books and records, including current and detailed records of all receipts in connection with items sold at the VIP Lounge which are material or relevant in computing and verifying the percentage fees provided for in subsection 9.3, shall be kept in accordance with generally accepted accounting principles, consistently applied, showing in detail all business done or transacted in, on, about or from or pertaining to the Airport, and shall be sufficient to permit the Port to calculate and verify the Landing Fees, Terminal Rents and other charges due under this Agreement. Upon the Managing Director's written request, Airline shall make available to the Port or its auditors any and all books, records and accounts pertaining to its operations under this Agreement. If the requested books, records and accounts are not made available at the Airport, and the Port or its auditors are required to travel elsewhere to review them, the Port may require that Airline reimburse the Port for the reasonable costs of such review of Airline's books, records and accounts, provided that the Port demonstrates an underpayment of five percent (5%) or more.

ARTICLE 11

PIPELINES AND UTILITIES

11.1 Reservations by Port.

It is understood and agreed that the Port reserves and retains the right with reasonable advance written notice to Airline to construct, reconstruct, install, repair, remove, renew, operate and use pipelines, utility lines, copper wire, fiber-optic and/or high-speed wireless networks, roadways or structures for Airport purposes anywhere within the Airport, provided that any such activities by the Port shall not have a substantial and material adverse effect on Airline's operations at the Airport or its rights hereunder.

11.2 Relocation of Pipelines.

In the event that any pipeline, utility line or appurtenance installed by Airline is so located that it shall be necessary to change, alter, relocate or reconstruct it in order to allow the Port, or an independent party through an arrangement with Port, to install sewer or drain lines or other utility lines, such change, alteration, relocation or reconstruction shall be made by Airline as requested by the Port at the Port's sole cost and expense.

11.3 Utilities.

11.3.1 The Port shall provide the following utility services to the Premises in reasonable amounts and at pressures appropriate for airline operations: water, electricity, fire suppression systems, sewage outlets, heating, ventilation and air conditioning. The Port shall determine the points in the Premises where such services will be made available to Airline. In the event Airline desires to change the points of supply by Port, the expense of making such changes or alterations shall be at the sole cost of Airline. Any additional utility services requested by Airline and not otherwise provided by the Port shall be provided only with the Port's approval and shall be subject to separate tariffs.

11.3.2 Except where, and to the extent, caused by the negligence or intentional wrongdoing of Port, its agents, employees, contractors, officers, directors or predecessors in interest, Airline expressly waives any and all claims against the Port for damages arising or resulting from failures or interruptions of utility services or any failure of performance by an independent party providing utility services to the Premises, including electricity, gas, water, plumbing, sewage, telephone, communications, heat, ventilation, air conditioning, or for the failure or interruption of any public or passenger conveniences.

ARTICLE 12

DEVELOPMENT, MAINTENANCE AND REPAIR OF AIRPORT

12.1 Port Right to Alter Airport.

Subject to the terms of this Agreement, Airline acknowledges and agrees that the Port shall have the right at all times to change, alter, expand or contract the Airport and that the Port has made no representations, warranties or covenants to Airline regarding the design, construction, pedestrian traffic, or views of the Airport.

12.2 Condition of Premises and Janitorial Services.

Airline agrees to keep the Premises, including the fixtures and equipment in Premises, in a clean, neat, safe, and sanitary condition, and in good order, at all times, except for damages or loss due to reasonable wear and tear, fire or other casualty or other cause beyond Airline's control. Airline shall not store nor allow accumulation of trash or debris on any portion of the Premises, nor use Port's trash containers without the Managing Director's prior consent. Airline agrees to arrange for the daily disposal, at its own expense, of all waste material. All lawful requirements of the State of Washington relating to health or sanitation adopted by any legal authority with jurisdiction, including the Port, shall be fully met by Airline, and Airline upon request shall give access for inspection purposes to any duly authorized representative of any such legal authority or of the Port. The Port shall provide pest control services to all Premises and Airline agrees to provide Port with reasonable access to the Premises, upon reasonable notice from the Port, for pest control activities, including Premises inspections under subsection 12.6. Janitorial services, carpet cleaning, maintenance and repair and window washing on the Premises will be furnished by the Port or its designee except for Exclusive Premises, if any, assigned to Airline. Airline shall be

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responsible for janitorial services, carpet cleaning, maintenance and repair and window washing in Exclusive Premises, if any, assigned to Airline.

12.3 Airline Improvements.

12.3.1 General Provision. Airline shall make no alterations or improvements upon the Premises or install fixtures without first obtaining the written consent of the Port. In no event may Airline make any alterations or improvements to any Common Use Premises. In the event any alterations or improvements shall be made or fixtures (other than trade fixtures) shall be installed by Airline, they shall at once become part of the realty and become the property of the Port. Moveable furniture, equipment and all trade fixtures shall be and remain the property of the Airline, and the Airline, at its expense, upon the expiration or prior termination of this Agreement, shall promptly remove any such furniture and trade fixtures and, at the Port's request, shall restore the Premises to its condition prior to the installation of any such property.

12.3.2 Visual Artists Rights Act. With respect to construction or installation of any improvements at the Premises 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"), Airline agrees that it shall 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. Airline 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.

12.4 Repair.

12.4.1 Except as otherwise expressly provided herein, Airline specifically acknowledges and agrees that the Port is permitting the use of the Premises by Airline on an "as is with all faults" basis and that Airline is not relying on any representations or warranties of any kind whatsoever, express or implied, from the Port, as to any matters concerning the Premises.

12.4.2 In all Exclusive Premises assigned to Airline, Airline shall at its own expense redecorate and paint the interior of the space and replace electric light bulbs, worn carpeting, or other floor coverings, curtains, draperies, blinds or other furnishings and equipment as their conditions may require. Airline may paint Preferential Use Ticket Counters back wall assigned to it after first obtaining the Port's approval of the paint color and back wall graphics, and Airline shall be responsible for all associated maintenance.

12.4.3 The Port agrees to keep, operate and maintain the Terminal, including its foundation, structure, outside walls, roof and utility systems. The Port will also keep and maintain (i) all Port-standard fixtures, furnishings, light bulbs, equipment, paint and carpeting or other floor coverings located in the Terminal (except those in Airline's Exclusive Premises) and in Airline's Preferential Premises, in a neat, clean and operating condition replacing all Port-standard worn-out fixtures, furnishings, carpeting and other floor coverings, machinery and equipment as may be required; *provided*, however, that, if Airline requests that the Port install

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non-Port standard fixtures, furnishings, equipment, carpeting or other floor covering in Airline's Preferential Use Premises, Airline shall be responsible for all associated maintenance and repair costs throughout the Term of this Agreement and, consistent with the provisions of subsection 12.4.2, for painting Airline's Preferential Use Premises.

12.4.4 Gate Ramp Maintenance. The Port agrees to provide striping and maintain the industrial waste system on the Gate Ramp. The Port shall also keep, operate and maintain the concrete infrastructure and structural integrity of the Gate Ramp.

12.5 Damage or Destruction.

12.5.1 Damage. If any portion of the Terminal in which Airline occupies Premises under this Agreement is damaged by fire, earthquake or other casualty, but is not rendered unfit for use by Airline, the damage shall be repaired by the Port. If the damage renders the Premises unfit for use by Airline, and if the damage is repairable using reasonable diligence within four months from the date of the occurrence, the Premises shall be repaired by the Port.

12.5.2 Destruction. If any portion of the Terminal in which Airline occupies Premises under this Agreement is completely destroyed by fire, earthquake or other casualty, or damaged to such extent that such damage cannot be repaired within four months from the date of the occurrence, the Port shall have the option to terminate this Agreement to the extent that it shall apply to the particular Premises. The Port shall within thirty (30) days of such occurrence provide written notice to Airline that it intends to (i) terminate the Agreement or (ii) repair or reconstruct the Premises. If the Port elects to repair or reconstruct the Premises, it shall begin any work necessary to do so and shall use reasonable efforts to provide the Airline with temporary substitute space while the repairs are being completed. If the Port elects to terminate this Agreement, such termination shall be effective as to the Premises, sixty (60) days after the occurrence of the damage, *provided*, however, that before electing to terminate, upon request of Airline the Port shall use reasonable efforts to provide Airline with substitute space for the remaining Term.

12.5.3 Rent Abatement. For the period from the occurrence of any damage to the Premises to the date of completion of the repairs to the Premises (or to the date of termination of the Agreement as to such portions of the Premises if the Port shall elect not to restore them), the rental allocable to the particular Premises involved shall be abated in the same proportion as the unusable portion of the Premises bears to the whole, or, if the damage or destruction has rendered the entire Premises unusable, said rental shall be abated entirely, and upon termination of the Agreement as to such damaged or destroyed Premises, the Airline shall have no further obligation to pay the rental allocable thereto. The costs assigned to such unusable Premises under subsection 8.3.2 shall be evenly redistributed for the duration of such rent abatement among all of rented space in the corresponding Group under subsection 8.3.2. The Port may charge a reasonable rental for any temporary substitute space it furnishes. In the event that the Port shall elect to terminate the Agreement as to the portion of the Premises damaged or destroyed as provided above, and in the event the loss of use thereof by the Airline will have a substantial adverse effect on Airline's use of the remainder of the Premises and its business and operations at the Airport, the Airline may within thirty (30) days after receipt of the Port's notice of termination, terminate this Agreement in its entirety by giving the Port written notice thereof.

12.6 Inspections.

The Port may, upon reasonable notice to Airline, cause the Premises and Airline's operations at the Airport to be inspected and may conduct an inspection of Airline's operations at the Airport, including pest inspections pursuant to subsection 12.2, to confirm that such operations comply with the requirements set forth in this Agreement. The Port shall use reasonable efforts not to interfere with Airline's operations during any such inspection, and Airline shall cooperate with such inspection. In the event such inspection shows that Airline is not substantially complying with such requirements, without limiting the Port's ability to call a default hereunder, the Port may require that Airline reimburse the Port for the reasonable costs of such inspection. Airline shall promptly remedy any noncompliance shown in any such inspection.

12.7 Future Airline Consortia.

The Port acknowledges that from time to time during the Term, a group of Air Carriers may seek to provide airport services currently provided by the Port through an airline consortium. Any such group may present its proposal to the AAAC and request that the Chair of the AAAC submit a written proposal to the Port. The written proposal to the Port must specify the proposed services, the business case for providing the services through an airline consortium, the estimated costs of providing the service, the mechanism for recovering costs including recovery through rates and charges (which may be approved by the Port without amendment to this Agreement), an operational plan and any other information reasonably requested by the Port. The Port will review the proposal and the Managing Director will provide a written response within sixty (60) days that (a) directs Port staff to proceed with discussions on agreements and other documentation necessary to establish the airline consortium, which shall be subject to review and approval by Managing Director and the Port Commission in their sole discretion, (b) rejects the proposal or (c) requests additional information.

ARTICLE 13

COMPLIANCE WITH LAW

13.1 General Laws.

At all times, Airline shall, with respect to its operations at the Airport, comply with all applicable present and future federal, state and local laws, rules, regulations and ordinances, as they may be amended from time to time, whether foreseen or unforeseen, ordinary as well as extraordinary, including without implied limitation those relating to (i) health and safety; (ii) the environment; and (iii) disabled access, including the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*

13.2 Airport Rules and Regulations.

The use by Airline of the Premises, the Public Areas, the Airfield and all other areas 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 not conflict with applicable provisions of state or federal law and do not directly conflict with any express provision of this

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Agreement. Except in the case of changes required to comply with regulations or other legal obligations or to address safety concerns or an emergency, the Port shall present to the AAAC any proposed Rules and Regulations that would affect Air Carrier operations at the Airport before any such proposed Rules and Regulations are adopted by the Port. The Port will distribute the proposed changes in writing at the AAAC meeting. Within thirty (30) calendar days after the Port's presentation to the AAAC, the Chair of the AAAC or their designee (and not Airline individually), shall submit to the Port, in writing, objections to or concerns about the proposed Rules and Regulations on behalf of objecting Air Carriers and the Port will host a meeting with the AAAC within fifteen (15) calendar days after the Port's receipt of the AAAC's objections and concerns to discuss them. If the AAAC's objections and concerns are not resolved or addressed, the Port shall provide the proposed Rules and Regulations and the AAAC's objections to the Port Commission prior to implementation, and the AAAC shall have twenty (20) days to comment to the Port Commission on its objections. After the AAAC comments to the Port Commission on its objections, or if the AAAC fails to comment to the Port Commission during the allotted twenty (20) day period, the Port shall implement the proposed Rules and Regulations after consideration of any Air Carrier comments. This Agreement shall not be interpreted as a waiver of any right of Airline to challenge any future Rules and Regulations of the Port on the basis of the Airline Deregulation Act, 49 U.S.C. § 41713.

ARTICLE 14

INDEMNIFICATION - LIABILITY INSURANCE

14.1 Indemnification of Port by Airline.

Except where, and to the extent, caused by the negligence or intentional wrongdoing of Port, its agents, employees, contractors, officers, directors or predecessors in interest, the Port and 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 may be caused, sustained or alleged to have been sustained by Airline or by others, including but not limited to all persons directly or indirectly employed by Airline, or any agents, contractors, subcontractors, licensees and invitees of Airline, 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 the Premises or the areas adjacent thereto or related in any way to Airline's use or occupancy of the Premises and of areas adjacent thereto. Airline agrees to defend (with counsel reasonably acceptable to the Port) and hold and save the Port harmless from all liability and expenses (including attorney's fees, costs, and all expenses of litigation) in connection with any such actual or alleged injury or damage, except where, and to the extent, caused by the negligence or intentional wrongdoing of the Port, its agents, employees, contractors, officers, directors or predecessors in interest. All indemnities provided in this Agreement shall survive the expiration or any earlier termination of this Agreement. Any final judgment rendered against the Port for any cause for which Airline is liable hereunder shall be conclusive against Airline as to liability and amount upon the expiration of the time for appeal therefrom.

14.1.1 Industrial Insurance Laws. Airline shall comply with the statutory requirements of Chapter 51 of the Revised Code of Washington ("RCW") regarding workers

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compensation coverage for its employees. In any and all claims against the Port by an employee of Airline, the indemnification obligation of Section 14.1 of this Agreement shall not be limited in any way by any limitation on the amount or type of damages or compensation benefits payable by or for the Airline under applicable worker's or workmen's compensation, benefit, or disability laws (including but not limited to RCW 51 Industrial Insurance). Airline expressly waives any immunity Airline might have under such laws and, by agreeing to enter into the Agreement, acknowledges that the foregoing waiver has been mutually negotiated by the parties.

14.2 Liability Insurance.

During the Term, Airline shall provide to the Port at the address set forth in Section 1.1, pay for and maintain with companies, reasonably satisfactory to Port, aircraft liability insurance on each aircraft, including all owned, non-owned and hired aircraft, and commercial general liability insurance covering bodily injury, personal injury, property damage, product/completed operations, premises liability and contractual liability. Insurance liability limits shall not be less than \$750 million per occurrence for each passenger aircraft with 150 or more seats and \$500 million per occurrence for (i) each passenger aircraft with fewer than 150 seats or (ii) each aircraft used for cargo operations only, and not less than \$10 million per occurrence for commercial general liability insurance. Insurance shall be placed with companies reasonably satisfactory to the Port in terms of financial strength, rating and solvency. The Port shall be named as an additional insured (using ISO Form 20 26 11 85 or equivalent endorsement acceptable to the Port), and shall be furnished with appropriate written evidence to establish that Airline's insurance obligations as required by this Section have been and continue to be met, and that the insurance coverage required by this Section is not subject to cancellation, nonrenewal or material reduction in coverage without at least thirty (30) days' advance written notice to the Port. The inclusion of the Port as an additional insured shall not create any premium liability for the Port. In addition to the foregoing, Airline shall provide the Port's Risk Management Department, within ten (10) days of the Port's written request, contact information for the claims department of the insurer(s) that issued policies under which the Port is an additional insured if insurer contact information has not been previously provided by the required certificate of insurance. The liability insurance required by this Section 14.2 shall not contain a deductible or self-insured retention in excess of \$1.5 Million without the prior written approval of the Port. This defense and coverage shall be primary and noncontributory from any coverage the Port has from any of its insurance policies. All deductibles and self-insured retentions shall be paid by, assumed by, for the account of, and at Airline's sole risk. To the extent that Airline relies on excess or "umbrella" policy of insurance to satisfy the requirements of this Section, any such policy shall be no less broad than the underlying policy and shall include a drop-down provision.

14.3 Automobile Liability Insurance.

During the Term, Airline shall provide to the Port at the address set forth in Section 1.1, pay for and maintain with companies reasonably satisfactory to Port, commercial automobile liability insurance covering all owned, non-owned and hired automobiles, trucks and trailers in the minimum single limit of \$5 million for operations outside the Airfield Movement Area but within the Air Operations Area and \$10 million for operations inside the Airfield Movement Area and hereafter in such increased amounts or on such revised terms and conditions as the Port may from

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time to time specify. As used herein, “Air Operations Area” shall mean any area enclosed by the Airport security fence, including ramps, aprons, runways, taxiways, gate positions, airport parking areas, and FAA facilities. The policy shall specifically be endorsed to cover all “mobile equipment” utilized by Airline at the Airport. The Port shall be named as an additional insured using an appropriate policy form or endorsement, and shall be furnished with appropriate written evidence to establish that Airline’s insurance obligations as required by this Section have been and continue to be met, and that the insurance coverage required by this Section is not subject to cancellation, nonrenewal or material reduction in coverage without at least thirty (30) days’ advance written notice to the Port. In addition to the foregoing, Airline shall provide the Port’s Risk Management Department, within ten (10) days of the Port’s written request, contact information for the claims department of the insurer(s) that issued policies under which the Port is an additional insured if insurer contact information has not been previously provided by the required certificate of insurance. The inclusion of the Port as an additional insured shall not create any premium liability for the Port. The liability insurance required by this Section shall not contain a deductible or self-insured retention in excess of \$1.5 Million without the prior written approval of the Port. All deductibles and self-insured retentions shall be paid by, assumed by, for the account of, and at Airline’s sole risk. To the extent that Airline relies on excess or “umbrella” policy of insurance to satisfy the requirements of this Section, any such policy shall be no less broad than the underlying policy, and shall include a drop-down provision.

14.4 Other Forms of Insurance.

Airline shall also obtain all other forms of insurance required for its particular use of the Airport or as required by law.

14.5 Termination, Renewal and Additional Insurance.

Should any insurance required under this Agreement be terminated, cancelled, or not renewed, Airline will have five (5) business days to obtain replacement insurance from the date of termination, cancellation, or non-renewal notice Airline receives from its insurer(s). In the event the insurance is not replaced within the five (5) business days, the Port reserves the right, after consultation with Airline, to provide additional insurance and charge the cost of any premiums for such coverage to the Airline. The Port’s right under this Section 14.5 includes, but is not limited to, the Port purchasing higher limits for its own insurance program to account for erosion in limits by Airline.

14.6 No Representation of Adequacy.

The Port makes no representation that limits or forms of insurance coverage specified or required under this Agreement are adequate to cover Airline’s property or Airline’s liabilities or obligations under this Agreement.

14.7 Port’s Right to Request Information from Insurance Company.

If at any time the Port requests a written statement from the insurance company as to any impairments to the aggregate limit, Airline shall promptly authorize and have delivered such statement to the Port. Airline authorizes the Port and its insurance consultant to confirm with

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Airline’s insurance agents, brokers and insurance companies all information furnished the Port, as to Airline’s compliance with the Port’s insurance requirements.

14.8 Primary Coverage.

All insurance policies required under this Agreement shall be endorsed to state that Airline’s policy is primary and not contributory with any insurance carried by the Port.

ARTICLE 15

WAIVER OF SUBROGATION

The Port and Airline (for themselves and on behalf of anyone claiming through or under them by way of subrogation or otherwise) hereby release each other from liability and waive all right of recovery against each other for any loss to real or personal property located anywhere on or about the Airport from perils which can be insured against under a standard form commercial property or fire insurance policy (specifically including hull insurance or the like) with extended perils coverage endorsements generally available in Washington at the time the loss occurs. The effect of the release and waiver of the right to recover damages shall not be limited by whether the party incurring the loss has actually obtained such insurance, by the amount of insurance carried, or by any deductibles applicable thereto. If a party’s applicable insurance policies do not allow the insured to waive the insurer’s rights to recovery, the party shall cause each insurance policy to be endorsed to allow the waiver of subrogation required by this section.

ARTICLE 16

INCREASE IN COST OF INSURANCE

Airline shall not use the Premises in any manner not contemplated by this Agreement so 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, shall be paid by Airline to the Port. Conversely, the Port shall not use the Public Areas in any manner not contemplated by this Agreement so as to increase the existing rates of insurance applicable to the Airline’s Premises. If it nevertheless does so, then, at the option of the Airline, the full amount of any resulting increase in premiums paid by the Airline with respect to the buildings or structures of which the Premises are a part, and to the extent allocable to the Term, shall be paid by Port to the Airline.

ARTICLE 17

FEDERAL CIVIL RIGHTS AND OTHER FEDERAL OBLIGATIONS

For the purposes of this Article 17 only, the use of the word “Contractor” shall mean Airline, the use of the words “Sponsor” and “Owner” shall mean the Port and “FAA” shall mean the Federal Aviation Administration.

17.1 General Civil Rights Provisions.

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. If Contractor transfers its obligation to another, the transferee is obligated in the same manner as Contractor. The above provision obligates Contractor for the period during which the Premises is owned, used or possessed by Contractor and the Airport remains obligated to the Federal Aviation Administration.

17.2 Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program.

The Contractor for itself and its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Contractor will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

17.3 Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

The Contractor for itself and its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Contractor will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

17.4 Compliance with Nondiscrimination Requirements.

During the performance of this Agreement and to the extent applicable, Contractor, for itself, its assignees, and successors in interest agrees as follows:

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17.4.1 Compliance with Regulations. Contractor will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

17.4.2 Nondiscrimination. Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

17.4.3 Solicitations for Subcontracts, including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding, or negotiation made by 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 Contractor of Contractor's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

17.4.4 Information and Reports. Contractor will provide all reasonably requested information and reports required by the Title VI List of Pertinent Nondiscrimination Acts and Authorities and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to the Sponsor or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

17.4.5 Sanctions for Noncompliance. In the event of a Contractor's noncompliance with the nondiscrimination provisions of this contract, the Sponsor 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.

17.4.6 Incorporation of Provisions. Contractor will include the provisions of paragraphs 17.4.1 through 17.4.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Title VI List of Pertinent Nondiscrimination Acts and Authorities, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor 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

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litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17.5 Title VI List of Pertinent Nondiscrimination Acts and Authorities.

During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

17.5.1 Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

17.5.2 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

17.5.3 The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

17.5.4 Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;

17.5.5 The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);

17.5.6 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);

17.5.7 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);

17.5.8 Titles II and III of the Americans with Disabilities Act of 1990, 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 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

17.5.9 The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

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17.5.10 Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination 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;

17.5.11 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, Contractor must take reasonable steps to ensure that LEP persons have meaningful access to Contractor's programs (70 Fed. Reg. at 74087 to 74100);

17.5.12 Title IX of the Education Amendments of 1972, as amended, which prohibits Contractor from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).

17.6 Subordination to Agreements with the United States.

This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between the Port and the United States, including without limitation the terms of any "Sponsor's Grant Assurances" or like agreement, the execution of which is required to enable or permit the transfer of rights or property to the Port for airport purposes, or the expenditure of federal grant funds for Airport improvement, maintenance, or development. Airline shall reasonably abide by the requirements of agreements entered into between the Port and the United States and shall consent to amendments and modifications of this Agreement to the extent required by such agreements or to the extent required as a condition of the Port's entry into such agreements.

17.7 PFC Act and Assurances.

17.7.1 Notwithstanding anything to the contrary in this Agreement, no provision of this Agreement shall impair the authority of the Port to impose a Passenger Facility Charge or to use the Passenger Facility Charge revenue as and to the extent provided in the Aviation Safety and Capacity Expansion Act of 1990, 49 U.S.C. § 40117 (the "PFC Act").

17.7.2 Airline acknowledges that the Port has given to the United States of America, acting by and through the FAA, certain assurances set forth in the PFC Act and implementing regulations at 14 C.F.R. Part 158 ("PFC Assurances"), and Airline agrees that this Agreement shall be subordinate and subject to the PFC Assurances.

17.7.3 In the event that the FAA or its successors require any modifications or changes in this Agreement as a condition precedent to the collection of PFCs or otherwise complying with the PFC Act, Airline shall not withhold its consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may reasonably be required to collect PFCs or comply with

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the PFC Act. The Port agrees to provide Airline with advance written notice of any provisions that would adversely modify material terms of this Agreement.

17.8 Security and Payment of Fines for Violation of Federal Regulations

17.8.1 Airline acknowledges that security is of primary importance at the Airport and that security requirements are likely to change during the Term. Airline, its officers, employees, representatives, agents, servants, subtenants, consultants, contractors, successors, assigns and suppliers and those under its control, shall comply with security measures (a) required of Airline by the FAA or the TSA or by the Port in accordance with applicable requirements of the FAA or the TSA or their authorized successor(s) or (b) contained in any Airport master security plan approved by the FAA or the TSA or their authorized successor(s). Airline shall comply, at its own expense, with the TSA's security requirements applicable to Airline at the Airport including, but not limited to, employee security training, badging, criminal background checks, access control, screening and inspections. Airline shall cooperate with the TSA on all security matters.

17.8.2 Compliance with such security measures and requirements shall not relieve Airline of its responsibility for maintaining proper security for the above-noted items, nor shall it be construed as limiting in any manner Airline's obligations with respect to all Applicable Laws and its duty to undertake reasonable action to establish and maintain secure conditions at and around the Premises. To comply with any applicable TSA requirements for areas under Airline's exclusive control, Airline hereby agrees to execute a reasonable exclusive area agreement pursuant to 49 C.F.R. 1542.111 with the Port in form and substance which is reasonably acceptable to the parties. Airline accepts security responsibility to use commercially reasonable efforts to prevent unauthorized access to or from the Premises. Airline shall be responsible for preventing unauthorized persons from gaining access to the restricted areas of the Airport through the Premises during times and to the extent that Airline has control of the Premises.

17.8.3 Airline understands and agrees that security requirements may affect Airline's air transportation business operations and costs. Airline shall be strictly liable for the payment of any fines assessed by the Port or the payment of (or reimbursement of Port for any payments of) any civil penalties assessed against Port or Airline relating to security and resulting from the negligence or intentional acts of omission or commission of Airline's officers, employees, representatives, agents, servants, subtenants, consultants, contractors, successors, assigns and suppliers and those under its control, and Airline shall be solely and fully responsible for any and all breaches of security and the consequences thereof resulting from the negligence or intentional acts of omission or commission of its officers, employees, representatives, agents, servants, subtenants, consultants, contractors, successors, assigns and suppliers and those under

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its control; provided, however, that Airline shall have the right to contest, protest, or negotiate any such fines or civil penalties.

17.8.4 The Port may impose and Airline agrees to pay a reasonable non-discriminatory cost-based user fee, if any, for the privilege of using identification cards or badges to gain access to the Airport security access control system.

ARTICLE 18

ASSIGNMENT AND SUBLETTING

Airline shall not assign or transfer this Agreement or any interest therein nor sublet the whole or any portion of the Premises without first obtaining the Port's written consent, nor shall this Agreement or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise without the consent of the Port first had and obtained, which consent shall not be unreasonably withheld, conditioned or delayed. Airline further agrees that if at any time during the Term more than one-half (1/2) of the outstanding shares of any class of stock of Airline's corporation shall belong to any stockholders other than those who own more than one-half (1/2) of the outstanding shares of that class of stock at the time of the execution of this Agreement or to members of their immediate families, such change in ownership of the stock of Airline shall be deemed an assignment of this Agreement within the meaning of this Section (unless Airline is a corporation whose stock is listed on the New York Stock Exchange or other major stock exchange, in which case such an event will not be considered an assignment of this Agreement). Airline's entering into any operating agreement, license or other agreement whereunder a third party, other than a subsidiary, affiliate, or code share partner of Airline is given rights or privileges to utilize portions of the Premises shall be considered an attempted assignment or subletting within the meaning of this Section.

ARTICLE 19

SECURITY DEPOSIT

19.1 Required Deposit.

If Airline has operated at the Airport for less than twenty-four (24) consecutive months prior to the Effective Date of this Agreement, or Airline does not meet the criteria set forth in Section 19.2 for exemption from the Security Deposit requirement, then Airline shall obtain and deliver to the Port at the address set forth in Section 1.1, a Security Deposit to secure Airline's full performance of this Agreement, including but not limited to all rates, charges and rents now or in the future payable to the Port under this Agreement, including fees for services subject to tariffs such as utilities and parking, and damages for breach or rejection of this Agreement. The amount of the Security Deposit for Passenger Carriers shall be equivalent to: (i) three (3) months of estimated rental charges for Airline's use of its Preferential Use Premises and Exclusive Premises, plus (ii) three (3) months estimated rental charges for Airline's use of Common Use Premises and the FIS, plus (iii) three (3) months of Airline's estimated Landing Fees. The amount of the Security Deposit for Cargo Carriers shall be equivalent to (i) three (3) months of Airline's estimated Landing Fees, plus (ii) three (3) months of estimated charges for Airline's use of Common Use

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Hardstands. The amount, form, provisions and nature of the Security Deposit, including if appropriate the identity of the surety or other obligor thereunder, shall at all times be subject to the Port's approval. The Security Deposit shall be made in advance by cash, letter of credit, surety bond or other instrument acceptable to the Port and shall remain in place at all times throughout the Term and throughout any holdover period. The Port shall not pay interest on the Security Deposit, and the Port shall not be required to keep the Security Deposit separate from its other accounts. No trust relationship is created with respect to the Security Deposit. The Security Deposit is a part of the consideration for execution of this Agreement. If Airline shall have fully performed all terms and conditions of this Agreement, any cash deposit shall be paid to Airline within thirty (30) days following the termination or expiration of this Agreement, 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 the Security Deposit. The Port may apply all or part of the Security Deposit to any unpaid sum due under this Agreement or to cure other Events of Default (defined in Article 20) except that Events of Defaults shall include any event that would constitute an Event of Default upon the giving of written notice and the passage of time even if the notice and passage of time has not occurred. If the Port depletes the Security Deposit in this way, Airline shall restore the Security Deposit within ten (10) days after the receipt of the Port's written request to do so. Notwithstanding the foregoing, in the event the Port depletes the Security Deposit and an unpaid sum remains due under this Agreement, the Port shall have the right to recover the total of such unpaid sum through the rates and charges mechanism set forth in Article 8; *provided*, however, this shall not release nor in any way affect the liability of Airline for such unpaid sums.

19.1.1 If, Airline maintains the Security Deposit required by Section 19.1 for a period of twenty-four (24) consecutive months, during which period Airline has provided continuous service to and from the Airport, and Airline does not commit an Event of Default under Section 20.1 then, at the end of said twenty-four (24) month period, the Port shall return the Security Deposit to Airline, and Airline will be exempt from providing a Security Deposit. *Notwithstanding the foregoing*, if at any time after Airline is exempt from the Security Deposit requirement, Airline commits an Event of Default under Section 20.1, Airline shall once again be subject to the Security Deposit requirement in accordance with Section 19.3.

19.2 Exemptions.

The Port shall not require a Security Deposit where Airline meets all of the criteria in subsections (a) *or* (b) of this Section 19.2 as of the Effective Date. Airline shall have the burden of proving, to the Port's reasonable satisfaction, that Airline is not required to provide a Security Deposit pursuant to this Section. Airline further acknowledges and agrees that in the event of a default by a Signatory Airline that does not have a Security Deposit pursuant to this Section, Airline and all other Signatory Airlines shall be responsible for the payment of any costs, losses, amounts associated with the default or breach by any Signatory Airline in accordance with Article 8 of this Agreement.

(a) Airline is in good standing without any uncured Event of Default under Section 20.1 of the 2018-2024 Signatory Lease and Operating Agreement; Airline is not in bankruptcy; and Airline has been operating at the Airport for a minimum of twenty-four (24) consecutive months as of the Effective Date; *or*

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(b) Airline has not provided service to and from the Airport for a period of twenty-four (24) consecutive months prior to the Effective Date, *and* Airline provides written certified proof to the Port that: (i) Airline has provided such service to at least ten (10) other airports in the United States during the twenty-four (24) consecutive months prior to the Effective Date; *and* (ii) Airline has not been delinquent in payment of PFCs, landing fees, terminal rents or any other rate or charge due at any of such other airports during said twenty-four (24) consecutive months.

19.3 Events of Default – Security Deposit Required.

If, at any time during the Term of this Agreement, Airline shall commit an Event of Default under Section 20.1 that is not fully cured in accordance with the applicable provisions of Section 20.1, then the Port shall have the right to immediately impose or reimpose the Security Deposit requirements of Section 19.1, and shall provide Airline with notice thereof. In such event, Airline shall provide the Port with the required Security Deposit no later than ten (10) calendar days after receipt of the Port's notice imposing the Security Deposit requirement. Airline shall maintain such Security Deposit for the remainder of the Term of this Agreement. The Port's rights under this Section shall be in addition to all other rights and remedies provided to the Port under this Agreement or otherwise provided by law.

ARTICLE 20

TERMINATION

20.1 Airline Defaults.

20.1.1 The occurrence of any one or more of the following events shall constitute a breach of this Agreement and an "Event of Default" under this Agreement:

20.1.2 Airline shall fail duly and timely to pay any Landing Fees, Terminal Rent or any other rate or charge due under this Agreement, when due to Port, and such failure shall continue for five (5) days beyond Airline's receipt, pursuant to Section 24.20, of a written notice of such breach or default from the Managing Director. Notwithstanding the foregoing, in the event there occur two (2) defaults in the payment of Landing Fees, Terminal Rent or other rate or charge due under this Agreement in any twelve (12) month period, thereafter Airline shall not be entitled to, and Port shall have no obligation to give, notice of any further payment defaults. In such event, there shall be deemed to occur an "Event of Default" immediately upon Airline's failure timely to pay Landing Fees, Terminal Rent or other payment due under this Agreement.

20.1.3 Airline shall fail duly and timely to remit to the Port passenger facility charges ("PFCs") collected by Airline from its passengers in accordance with 49 U.S.C. § 40117 and applicable implementing regulations adopted by the FAA, 14 CFR Pt. 158, as they may be amended from time to time.

20.1.4 Airline shall become insolvent, take the benefit of any present or future insolvency statute, make a general assignment for the benefit of creditors, file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement for its reorganization or

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the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any state, or consent to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property, or petition under any part of the federal bankruptcy laws, or an action under any present or future insolvency law or statute shall be filed against Airline and shall not be dismissed within ninety (90) days after the filing thereof.

20.1.5 There shall occur a transfer subject to Article 18 without the prior approval of the Port.

20.1.6 Airline shall abandon, desert, or vacate the Premises.

20.1.7 Any lien shall be filed against the Premises as a result of an act or omission of Airline, and shall not be discharged within sixty (60) days after receipt of notice by Airline.

20.1.8 Airline shall fail to obtain and maintain the insurance required by this Agreement, or provide copies of the policies or certificates to Port as required.

20.1.9 Airline shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Agreement, and such failure shall continue for a period of more than five (5) days after delivery by the Managing Director of a written notice of such failure or if satisfaction of such obligation requires activity over a period of time, if Airline fails to commence the cure of such failure within five (5) days after receipt of such notice, or thereafter fails to diligently prosecute such cure, or fails to actually cause such cure within thirty days after the giving of such notice.

20.2 Port Remedies.

20.2.1 General Remedies – Applicable to All Portions of the Premises.

(a) Whenever any default shall occur (other than a default pursuant to subsection 20.1.4 upon which termination of this Agreement, at the Port's option, shall be effective immediately without further notice), this Agreement and all of Airline's rights thereunder shall terminate if the written notice of default so provides. The Port shall be entitled to recover from Airline all unpaid rent and fees and damages incurred because of such default, including, but not limited to, attorneys fees and costs ("Termination Damages"), together with interest on all Termination Damages at the rate of 18% per annum, or the maximum rate permitted by applicable law, whichever is lower, from the date such Termination Damages are incurred by the Port.

(b) In addition to Termination Damages, and notwithstanding termination, Airline's liability for all rent and fees which, but for termination of the Agreement, would have become due over the remainder of the Agreement ("Future Charges") shall not be extinguished and Airline agrees that the Port shall be entitled, upon termination for default, to collect as additional damages a Rental Deficiency. As used in this subsection 20.2.1, a "Rental Deficiency" shall mean: an amount or amounts equal to Future Charges less the amount or amounts of rental, if any, which the Port shall receive during the remainder of the Term from

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others to whom the Premises may be rented, in which case such Rental Deficiency shall be computed and payable at Port's option either: (i) in an accelerated lump sum payment or (ii) in monthly installments, in advance, on the first day of each calendar month following termination of the Agreement and continuing until the date of which the 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.

(c) The Port's action pursuant to this subsection 20.2.1 shall not in any way limit the Port in the pursuit of any other additional right or remedy available to the Port in law or in equity by reason of Airline's default.

20.2.2 Additional Remedies for Exclusive Premises.

(a) Whenever any default shall occur (other than a default pursuant to subsection 20.1.4 upon which termination of this Agreement, at the Port's option, shall be effective without further notice), this Agreement and all of Airline's rights thereunder shall terminate if written notice of the default so provides. In the event such default involves space occupied by Airline on an Exclusive Use basis, in addition to those remedies for default set forth in subsection 20.2.1, above, upon termination the Port may re-enter and take exclusive possession of any such Exclusive Premises and remove all persons and property from such Exclusive Premises, without Port being liable to Airline for damage or loss thereby sustained by Airline. The Port shall be entitled to recover from Airline, in addition to Termination Damages, additional damages incurred because of such default, including but not limited to the costs of removing or storing any personal property from the Exclusive Premises, the cost of re-letting the Exclusive Premises and the costs of any necessary renovations or repairs and related expenses ("Additional Termination Damages"), together with interest on all Additional Termination Damages at the rate of 18% per annum, or the maximum rate permitted by applicable law, whichever is lower, from the date such Additional Termination Damages are incurred by the Port. Airline shall have no right to or claim upon any improvements that may have been previously installed by Airline in or on the Exclusive Premises.

(b) If this Agreement terminates as a result of Airline's default, the Port shall use reasonable efforts to relet the Exclusive Premises or any part thereof, alone or together with other Exclusive Premises, for such term or terms and for such use or uses as the Port in its sole discretion may determine. Airline's obligations hereunder shall not be discharged by reason or failure of Port to relet the Exclusive Premises.

(c) The Port's actions pursuant to this subsection 20.2.2 shall not in any way limit the Port in pursuant of any other additional right of remedy available to the Port in law or in equity by reason of Airline's default.

20.3 Termination. This Agreement may be terminated in advance of its Expiration Date in the following events:

20.3.1 In the event the Port, in its sole discretion, shall require the use of the Premises or any substantial portion of the Premises for a major capital improvement for public or

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private use in connection with the operation of the business of the Port, this Agreement may be terminated by the Port by written notice delivered or mailed by the Port to Airline not less than one (1) year before the termination date specified in the notice; or

20.3.2 In the event that any federal, state or local government or agency or instrumentality thereof shall, by condemnation or deed or conveyance in lieu thereof, take title, possession or the right to possession of the Premises or any substantial portion of the Premises, the Port may, at its option, terminate this Agreement as of the date of such taking; or

20.3.3 In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will permanently or for a substantial period of time prevent the performance by the Port of any of its material obligations under this Agreement, then either party hereto may terminate this agreement by written notice. This right of termination shall be and remain effective whether or not the Port, by taking affirmative action or by inaction, could have prevented the rendering of the decision or could have caused the decision to be vacated before it became final.

20.3.4 Reserved.

20.3.5 In the event of termination of this Agreement under any of the above subsections, all rights and obligations of the parties (with the exception of any undischarged rights and obligations that accrued prior to the effective date of such termination) shall terminate, and if Airline is not in default under any of the provisions of this Agreement on the effective date of termination, any rent prepaid by Airline shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Airline.

20.3.6 In the event of termination of this Agreement under subsection 20.3.1, the Port shall reimburse Airline for the unamortized costs of any improvements to the Terminal constructed by Airline with the Port's consent during the Term, *provided*, however, that the costs of any such improvements shall be amortized on such reasonable basis as the Port may specify in writing when the Port's consent for the improvement is given to Airline under subsection 12.3.1 of this Agreement unless Airline has previously been reimbursed by the Port for the costs of such improvements.

20.4 **[Intentionally Omitted]**

20.5 **[Intentionally Omitted]**

20.6 **Port's Right to Perform.** All agreements and obligations to be performed by Airline under any of the terms of this Agreement shall be at its sole cost and expense and without any abatement of Terminal Rent or Landing Fees. If Airline shall fail to make any payment or perform any act on its part to be performed hereunder and such failure shall continue for ten (10) days (or such longer period of time as is expressly provided under this Agreement), after written notice, Port may, but shall not be obligated to do so, and without waiving or releasing Airline from any obligations of Airline, make any such payment or perform any such other act on Airline's part to be made or performed as provided in this Agreement. All sums so paid by Port and all necessary incidental costs shall be deemed additional rent hereunder and shall be payable

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to Port on demand, and Port shall have (in addition to any other right or remedy of Port) the same rights and remedies in the event of the nonpayment thereof by Airline as in the case of default by Airline in the payment of Terminal Rent or Landing Fees.

20.7 Rights Related to Termination. In the event of any termination based on any breach by Airline of the covenants, terms and conditions contained in this Agreement, all rights, powers and privileges of Airline under this Agreement shall cease, and Airline shall immediately vacate any portions of the Premises occupied by it under this Agreement. Airline shall have no claim of any kind whatsoever against Port by reason of such termination or by reason of any act by Port related to such termination.

ARTICLE 21

SURRENDER OF POSSESSION

Airline agrees to yield and deliver to Port possession of the Premises or, as applicable, a portion of the Premises as a result of: (i) the termination of this Agreement; (ii) the reallocation, recapture or reduction of Premises under Article 4 and/or Article 5; or (iii) the termination of any holdover period. Upon surrender, all Premises shall be in good condition in accordance with Airline's obligations under this Agreement, except for damage or loss due to reasonable wear and tear, fire or other casualty, or other cause beyond Airline's control, and Airline shall have the obligation within thirty (30) days after the surrender of said Premises to remove all furniture, equipment and trade fixtures; subject, however, to any valid lien which Port may have thereon for unpaid rentals or fees. For the avoidance of doubt, Port shall have no rights to a lien on or a right to sell Airline's aircraft. Such removal shall not damage the Premises. If damage results from such removal, Airline shall restore the Premises to as good condition as they were prior to removal, normal wear and tear excepted.

ARTICLE 22

HOLDING OVER

If Airline shall, with the consent of Port, hold over after the expiration or sooner termination of this Agreement, the resulting tenancy shall, unless otherwise mutually agreed, be on a month-to-month basis and may be terminated by the Port or Airline at any time on thirty (30) days written notice to the other party. During such month-to-month tenancy, Airline shall continue to pay Terminal Rent and Landing Fees and shall be bound by all of the provisions of this Agreement, insofar as they may be pertinent, unless different terms and conditions shall be agreed upon.

ARTICLE 23

ENVIRONMENTAL STANDARDS

23.1 Definitions. For purposes of this Article 23, the following terms shall have the following meanings:

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23.1.1 “Environmental Law” means any environmentally related state or federal law, regulation, ordinance, permit or order (including without limitation any final order of any court of competent jurisdiction), now or hereafter in effect.

23.1.2 “Hazardous Substances” means any substance or material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant by any Environmental Law.

23.1.3 “Release” means any spilling, leaking, pumping, pouring, emitting, discharging, leaching, dumping or disposing into or on any property or the environment. Petroleum spills of less than five (5) gallons are excluded unless water or soil are impacted.

23.2 Restriction on Hazardous Substances. Airline shall not allow the presence or Release on the Airport of any Hazardous Substance that is in violation of any Environmental Law. Airline shall not allow any Hazardous Substances first Released during the Term to migrate off the Airport or allow the Release of any Hazardous Substances into adjacent surface waters, soils, underground waters or air in violation of any Environmental Law. At the reasonable written request of the Port, Airline shall provide the Port with Airline’s USEPA Waste Generator Number. Airline shall immediately notify the Port in writing should Airline become aware of: (1) any Release of any Hazardous Substances or the occurrence of any other environmental problem or liability with respect to the Airport or any real property adjoining or in the vicinity of the Airport; (2) any notice given to Airline from any third party with respect to any Release or threat of Release of any Hazardous Substances; or (3) the commencement of any litigation or any information relating to any threat of litigation relating to any alleged unauthorized Release of any Hazardous Substances or other environmental contamination, liability or problem with respect to the Airport. In addition to any remedy provided in this Agreement, the Port shall be entitled to full reimbursement from Airline whenever the Port incurs any reasonable costs directly attributable to Airline’s use or management of Hazardous Substances at the Airport, including but not limited to, costs of clean-up or other remedial activities, fines or penalties assessed directly against the Port, and injuries to third persons or other properties.

23.3 Compliance and Remediation. Airline shall at all times conduct its business at the Airport in compliance with all applicable Environmental Laws and if Airline or the Premises is in violation of any Environmental Law concerning the presence, use, Release or threat of Release of Hazardous Substances or any other Environmental Law (whether or not pertaining to Hazardous Substances), Airline shall promptly take such action as is reasonably necessary to remedy and cure the violation.

23.4 Port Remedies. If Airline, or the Premises because of actions that occur during the Term, is in violation of any Environmental Law concerning Hazardous Substances and Airline does not act promptly to take such action as is reasonably necessary to remedy and cure the violation, the Port has the right, but not the obligation, to come onto the Premises, to act in place of the Airline (Airline hereby appoints the Port as its agent for such purposes) and to take such action reasonably necessary to cure the violation. If the Port has a reasonable belief that Airline’s actions or inactions present a threat of violation or a threat of damage to the Premises,

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the Port reserves the right to enter onto the Premises and take such corrective or mitigating action as the Port deems reasonably necessary. All reasonable costs and expenses incurred by the Port in connection with any such actions shall become due and payable by Airline thirty (30) days after presentation of an invoice to the extent caused by Airline's violation of Environmental Law.

23.5 Access to Premises. At the forty eight (48) hour advance request of the Port, the Airline shall grant access to the Premises to conduct an annual environmental inspection. The Port shall conduct the inspection in a manner that does not unduly interfere with Airline's operation. In addition, Airline shall permit the Port access to the Premises at any reasonable time upon reasonable notice for the purpose of conducting environmental testing. Prior to conducting environmental testing, the Port shall provide written notice to Airline concerning the planned testing procedures and locations. The results of such testing shall be provided to Airline as well. In the event of an emergency, Airline shall immediately grant the Port access to the Premises for any necessary environmental response activities, including environmental testing needed in response to the emergency.

23.6 Vacating of Premises. Prior to vacating the Premises, in addition to all other requirements under this Agreement, Airline shall remove any Hazardous Substances placed on the Premises during the Term by Airline, or as a result of Airline's use or occupancy of the Premises and shall demonstrate such removal to the Port's reasonable satisfaction. This reasonable removal and demonstration shall be a condition precedent to the Port's return of any portion of the Security Deposit, if any, to Airline upon termination or expiration of this Agreement.

23.7 Environmental Indemnity. Without limiting any indemnities provided in this Agreement for other than environmental matters, and except for Excluded Environmental Claims, as hereinafter defined, Airline 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 clean-up or other remedial costs (and including actually incurred reasonable 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 at the Airport, or the Release of any Hazardous Substance from the Premises to other properties or into the surrounding environment or from any other violation of Environmental Law, whether made, commenced or incurred during the Term, or made, commenced or incurred after the expiration or termination of this Agreement, directly attributable to Airline's actions during the Term or any holdover period. For purposes of this Section 23.7, "Excluded Environmental Claims" shall mean, any claims, causes of action, demands, liabilities, fines, penalties, costs, expenses or any other liabilities, to the extent caused by or arising from (A) the migration of Hazardous Substances not first Released during the Term; and (B) the movement of Hazardous Substances first Released outside the Premises onto or under the Premises due to leaching or the flow of groundwater, provided that Airline is not otherwise responsible for the off-Premises Release that introduced the migrating Hazardous Substances into the environment.

ARTICLE 24

MISCELLANEOUS PROVISIONS

24.1 No Personal Liability.

No director, officer, agent or employee of either party shall be charged personally or contractually liable by or to the other party under any term or provision of this Agreement or because of any breach of this Agreement or because of their execution or attempted execution of this Agreement.

24.2 Governing Law.

This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of, the State of Washington.

24.3 No Waiver.

No waiver of default of any of the terms, covenants and conditions of this Agreement to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions of this Agreement to be performed, kept and observed by the other party.

24.4 No Exclusive Remedy.

No remedy provided by this Agreement shall be deemed to be exclusive.

24.5 SEC Rule 15c2-12.

Airline, upon request by the Port, shall provide the Port with such information as the Port may reasonably request in writing to comply with the Port's continuing disclosure requirements under SEC Rule 15c2-12 as it may be amended from time to time, *provided*, however, that Airline may in lieu of providing the requested information direct the Port to an Airline or SEC website where the requested information is then currently available.

24.6 Force Majeure.

Neither the Port nor Airline shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations under this Agreement by reason of strikes, boycotts, labor disputes subject to the provisions of Section 24.21, embargoes, shortages of material, pandemic or epidemic, acts of terrorism, riots, rebellion, sabotage or any other casualty which is not within its control; *provided*, however, that these provisions shall not excuse Airline from payment of the Landing Fees, Terminal Rents and other rates and charges specified in Article 8.

24.7 Severability.

In the event any covenant, condition or provision in this Agreement is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision

shall in no way affect any other covenant, condition or provision in this Agreement, provided the invalidity of any such covenant, condition or provision does not materially prejudice either the Port or Airline in their respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

24.8 Headings.

The headings of the several sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions, of or the interpretation or construction, of this Agreement.

24.9 Exclusiveness of Airline's Rights.

Nothing contained in this Agreement shall be deemed to grant to Airline any exclusive right or privilege within the meaning of 49 U.S.C. § 40103(e) with respect to activity on the Airport, except that, subject to the terms and provisions of this Agreement, Airline shall have the right to exclusive possession of any Exclusive Premises made available to Airline under the provisions of this Agreement.

24.10 Withholding Required Approvals.

Whenever the approval or consent of the, Port or Airline is required by this Agreement, no such approval or consent shall be unreasonably refused, withheld or delayed.

24.11 Successors and Assigns.

All of the terms, provisions, covenants, stipulations, conditions and considerations in this Agreement shall extend to and bind the legal representatives, successors, and assigns of each party to this Agreement.

24.12 Taxes.

Airline recognizes and understands that this Agreement may create a possessory interest subject to property taxation, including state leasehold tax, and that Airline may be subject to the payment of property taxes levied on such interest. Airline shall be liable for, and shall pay throughout the Term, all taxes payable for, or on account of, the activities conducted by Airline on the Airport and all taxes on the personal property of Airline on the Premises and any taxes on the Premises or on any property interest created by this Agreement and any taxes levied in lieu of a tax on any such property interest and any taxes levied on, or measured by, the Terminal Rents and other charges payable under this Agreement, whether imposed on Airline or on the Port. Airline shall reimburse the Port for all such taxes paid or payable by the Port. With respect to any such taxes payable by the Port that are levied on, or measured by, the Terminal Rents or other charges payable under this Agreement, Airline shall pay to the Port with each payment an amount equal to the tax levied on, or measured by, that particular payment. All other tax amounts for which the Port is or will be entitled to reimbursement from Airline shall be payable by Airline to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved, provided that

Draft for Submission to Port Commission – 11.14.24

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

24.13 Exhibits.

All exhibits referred to in this Agreement and which may, from time to time, be referred to in any duly executed amendment to this Agreement are (and with respect to future amendments, shall be) by such reference incorporated in this Agreement and shall be deemed a part of this Agreement as fully as if set forth within it.

24.14 Entire Agreement.

This Agreement supersedes the 2018 SLOA, if any, between Airline and the Port; *provided*, however, that any approvals obtained from either party under the provisions of the 2018 SLOA shall survive its termination. The parties intend that this Agreement shall be the final expression of their agreement with respect to its subject matter and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of the Agreement) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

24.15 Amendments.

Except as specifically provided herein, neither this Agreement, nor any of its term or provisions, may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought.

24.16 No Third-Party Beneficiaries.

There are no third-party beneficiaries to this Agreement.

24.17 No Joint Venture.

It is expressly agreed that the parties are not, in any way or for any purpose, partners and therefore do not assume any responsibilities for one another.

24.18 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 pay all of the prevailing party's reasonable costs and reasonable attorneys fees as determined by the court. In the event the Port or Airline is represented by in-house attorneys in such action, such attorneys' fees shall be computed at hourly rates charged by attorneys of comparable experience in private practice in Seattle; *provided*, however, that Airline

Draft for Submission to Port Commission – 11.14.24

shall only be required to pay to the Port the difference between the total attorneys fees owed by Airline and the amount direct billed to the Port by its in-house counsel.

24.19 Liens and Encumbrances.

Airline shall keep the Premises free and clear of any liens and encumbrances arising or growing out of Airline's use and occupancy of the Premises or activities at the Airport. Airline agrees to fully indemnify and defend the Port in connection with any such liens filed against the Premises. At the Port's request, Airline shall furnish the Port with written proof of payment of any item that would or might constitute the basis for such a lien on the Premises if not paid.

24.20 Notices.

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 provided in Section 1:

For any notice directed to Airline, the address shall be as set forth in Section 1.1 of this Agreement. Either party may, however, designate a different address from time to time by providing written notice thereof. 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.

Notices hereunder may also be delivered by electronic mail (email) with acknowledgment of receipt requested to the email address (a) in the case of the Port, of the Director of Aviation Business and Properties, the Assistant Director of Airline Affairs and Aviation Properties, or such other email address as hereinafter provided by the Port in writing, or (b) in the case of Airline, to the email address or addresses hereinafter provided by the Airline in writing. Notices by email shall be deemed delivered when dispatched by the sender to the email address specified by the recipient prior to 5:00 p.m. (local time at the Airport) on any business day, or, if after 5:00 p.m. (local time at Airport), on the next business day. Provided, however, if the sender of the email notice receives a machine-generated message that delivery failed, or if the sender does not receive an acknowledgement of receipt within twenty four (24) hours of sending the email notice, the email notice will nevertheless be deemed to have been received when originally dispatched, as provided above, if no more than five (5) business days after the date of dispatch the sender delivers a tangible copy of that notice via mail or overnight courier as set forth in Section 24.20.1 above.

24.21 Labor Disputes.

Airline agrees to use reasonable efforts to avoid disruption to the Port, its tenants or members of the public, arising from labor disputes involving Airline, and in the event of a strike, picketing, demonstration or other labor difficulty involving Airline, to use its good offices,

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including the utilization of available legal remedies, to minimize or eliminate any disruption to the Port, its tenants or members of the public, arising from such strike, picketing, demonstration or other labor difficulty.

24.22 Agreement Not to Grant More Favorable Terms.

During the Term, the Port agrees not to enter into any lease, contract or other agreement with any other Air Carrier conducting operations at the Airport that contains rates and charges more favorable to such Air Carrier than the rates and charges payable by Airline under this Agreement, unless the Port also makes those more favorable terms available to Airline. The provisions of this Section 24.22 shall in no way limit, impair or interfere with the Port's ability to charge or establish such rates and charges as the Port may deem applicable when entering into any lease, contract or other agreement with any party that is not an Air Carrier.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the Effective Date.

PORT OF SEATTLE

a municipal corporation

By: _____

Name: _____

Title: _____

AIRLINE: <Airline Legal Name>

<Company Type and State>

By: _____

Name: _____

Title: _____

Draft for Submission to Port Commission – 11.14.24

STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ of the PORT OF SEATTLE, a municipal corporation of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 202_.

Notary Public in and for the State of Washington,
residing at: _____
My Commission Expires: _____

STATE OF _____)

) ss.

COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ of _____, a _____, of the State of _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 202_.

Notary Public in and for the State of _____,
residing at: _____
My Commission Expires: _____

Item No.	8o_supp
Date of Meeting	December 10, 2024



SLOA V Overview



Signatory Lease and Operating Agreement (SLOA)

- SLOA is a contractual relationship between the airlines and the Port of Seattle (POS)
- The existing SLOA IV with air carriers at SEA expires Dec. 31, 2024
- Today, SLOA represents over **\$559 million in annual** revenue to the Port (60% of total Port revenues) and is forecast to increase to nearly **\$1.05 billion in annual revenue** by 2034
- There are currently 42 active signatory airlines and four non-signatory airlines (non-signatory airlines must sign an operating agreement and pay a 25% premium)
- Non-terminal real estate (e.g., hangars, cargo facilities) are addressed in separate bi-lateral leases
- SLOA V negotiations with the airlines focused on 3 primary areas
 - Financial and business terms
 - CIP collaboration and implementation
 - SEA gate rights and use

Port SLOA V Goals and Objectives

Goals

- Manage and develop SEA, in alignment with the Port of Seattle mission and vision, for the benefit of the Puget Sound and greater Washington State region.
- Maintain the authority to control limited facilities and rebuild the aging airport while still maintaining competitive costs with peer airports.
- Sustain the important and mutually beneficial partnership between the Port and the airlines operating at SEA

Objectives

- ✓ Ability to expand and/or upgrade existing facilities to achieve an optimum level of service at SEA, consistent with its brand, NW sense of place and architectural vision
- ✓ Maintain the authority to operate SEA in the most efficient and financially responsible way possible
- ✓ Progress SEA's environmental sustainability and social responsibilities
- ✓ Provide a fair playing field regarding access to facility resources while enhancing the competitive position of SEA

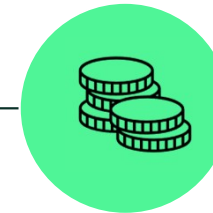
Financial and Business Terms

Key Points

- 10-year agreement
- Port retains control over use of its non-aeronautical revenues
- Continued cost recovery rate setting needed to produce key financial metrics and maintain high credit ratings
- Airline provide SEA a financial “backstop”, ensuring payment of all Airport debt obligations
- Parking rate stabilization and phase-in plan



Advances initial \$8+ billion in SEA investment over term of SLOA



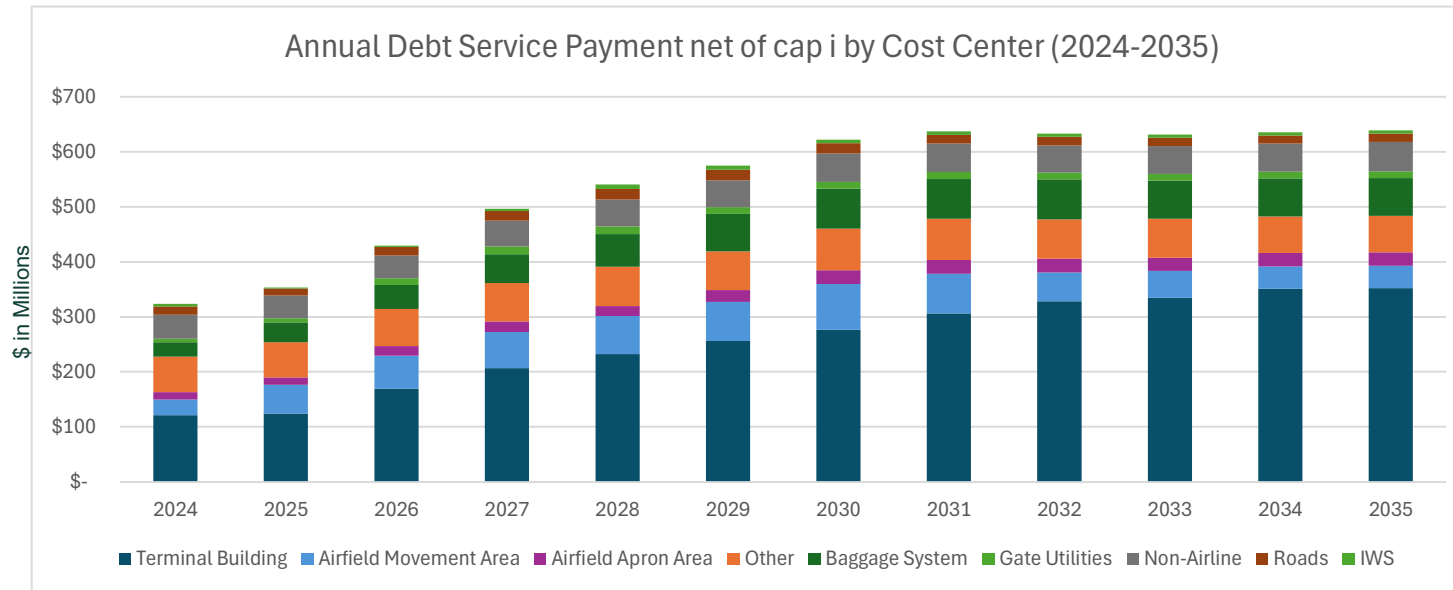
Airlines pay fair share of Airport costs



Airline backstop and financial metrics support POS bond ratings

SEA Forecast Annual Debt Service Before Offsets

Annual Debt Service Payment net of cap i by Cost Center (2024-2035)



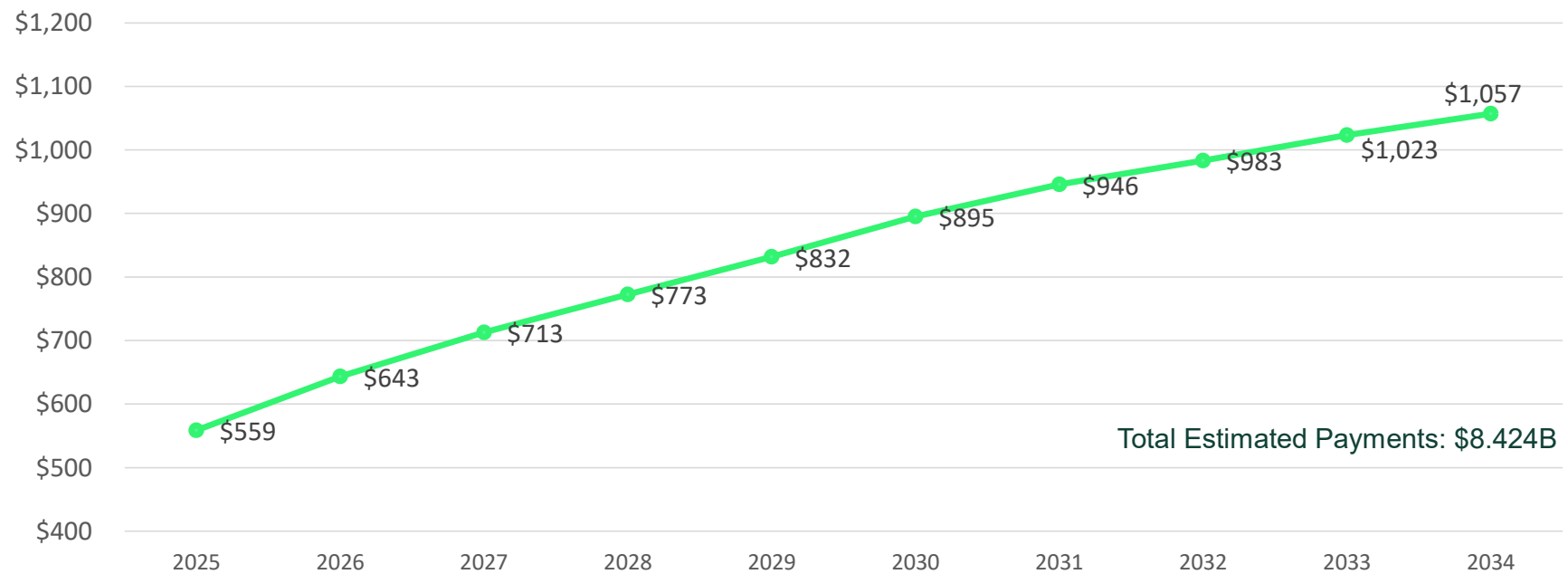
Estimated Costs of Major 10-year CIP Projects

Main Terminal (MTIP)	\$800M
SCE (SoCoEvo)	\$1.8B
STS Replace	\$1.0B
CCE	\$394M
North Main Terminal	\$545M
Airfield Pavement	\$569M
Baggage Optimization	\$954M
HVAC Replacement	\$255M
Utility Master Plan	\$204M
Airline Realignment	\$153M
Concourse A Improvements	\$125M
MT Low voltage	\$105M

Annual debt service payments will rise substantially over the next ten years as CIP projects are included in the airline rate base, increasing airline costs.

Airline Payments - 10-year Forecast

Projected Airline Payments (millions)



CIP Collaboration & Implementation

Establishes collaboration and escalation protocols between the Port and the airlines when planning and implementing major capital projects at SEA

- Expedite project delivery through early engagement and issue resolution
- Removes Airline Majority-in-Interest rights for dis-approval of CIP projects
- Stronger collaboration structure that delivers high value projects benefiting SEA and Airlines

New Checkpoint Engagement

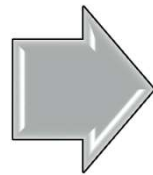
- Major project briefings to receive airline feedback during project development
- 360 review of airline concerns by SEA executives across all major airport disciplines



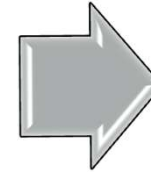
New Issue Escalation/Resolution

- Agreed upon escalation process for resolving specific issues
- Review and recommendation by committee with SEA and airline representatives for Managing Director consideration

Collaboration/
Engagement



Issue
Resolution



Efficient
Project
Delivery

SEA Gate Rights and Use

SLOA V maximizes passenger airline gate-use during South Concourse construction to maintain airline existing schedules

Fixed 67 preferential gates with MUR

- Enhanced gate use protocols will **improve gate efficiency** and **maintain existing flight schedules** while the South Concourse is under construction
- Introduction of a gate Minimum Use Requirements (MUR) gives the Port the right to **take back underutilized preferential gates**
- All **South-Concourse** gates will be designated for common-use once the South Concourse project starts
- Newly constructed gates will be allocated for preferential use and common use
- Two gates will remain available to preferential-use carriers to backfill gates that are out for construction

New Minimum Use Requirements (MUR)

- Airlines using preferential use gates must average at least 6 turns per day on each gate
- Airlines will lose preferential use gates that fall below the minimum for the remainder of the agreement, making them available for common use



Thank you

Q&A



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8p

ACTION ITEM

Date of Meeting December 10, 2024

DATE : December 3, 2024

TO: Stephen P. Metruck, Executive Director

FROM: Eileen Francisco, Director, Aviation Project Management
Loren Armstrong, Senior Port Counsel
Pete Ramels, General Counsel

SUBJECT: Commission Authorization to Execute a Settlement Agreement related to the International Arrivals Facility (IAF) Litigation

Amount payable to the Port: \$28,000,000

ACTION REQUESTED

Request Commission authorization for the Executive Director to execute a settlement agreement with the Design-Builder (Clark Construction Group, LLC), which will pay the Port \$28,000,000 to settle the remainder of the Port’s claims against Clark Construction in the pending IAF litigation.

EXECUTIVE SUMMARY

The International Arrivals Facility (IAF) at Seattle-Tacoma International Airport has been in use since May 2022. However, before completion of the project, the Design-Builder filed a lawsuit against the Port seeking delay and other damages. The Port filed counterclaims against the Design-Builder in the litigation for, among other things, liquidated damages for unexcused late completion, miscellaneous non-conforming and defective work, and a failure by the Design-Builder to design and build four of the twenty gates on the IAF project to simultaneously accommodate widebody aircraft usage.

The parties previously executed a partial settlement agreement (approved by the Commission on May 28, 2024, in Item 8h) that resolved all of the Design-Builder’s claims against the Port arising out of the IAF project, and it resolved most, but not all, of the Port’s counterclaims against the Design-Builder.

The Port’s counterclaims that were not resolved by the previous partial settlement agreement and that were still pending in the ongoing litigation included the Port’s counterclaims related to the Design-Builder’s failure to design and build four of the twenty gates in the IAF to

Meeting Date: December 10, 2024

simultaneously accommodate widebody aircraft. The current action will approve a settlement of the Port's counterclaims that were not resolved by the previous partial settlement agreement. The resolution is for the Design-Builder to pay the Port \$28,000,000.

Commission was briefed on the settlement agreement in executive session.

There are no attachments to this memo.



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8q

ACTION ITEM

Date of Meeting December 10, 2024

DATE: December 10, 2024
TO: Stephen P. Metruck, Executive Director
FROM: Matthew Bullock, Labor Relations Manager

SUBJECT: Project labor Agreement Between the Port of Seattle and the Seattle County Building and Construction Trades Council (SBT), and Western States Regional Council of Carpenters

ACTION REQUESTED

Request Commission authorization for the Executive Director to execute a new project labor agreement (PLA) between the Port of Seattle and the Seattle County Building and Construction Trades Council (SBT), and Western States Regional Council of Carpenters, covering the period from December 2024, through December 2029.

EXECUTIVE SUMMARY

Good faith bargaining between the Seattle County Building and Construction Trades Council, and Western States Regional Council of Carpenters, and the Port of Seattle resulted in a fair bargaining agreement consistent with the Port’s priorities.

The Port of Seattle Commission Policy Directive on Construction Labor Practices for Projects located on Port of Seattle Property (Policy Directive), established in October 2016, provides policy direction for construction labor for projects on Port property. The purposes of the policy directive are to expand access to construction jobs; ensure fair treatment of workers; promote labor harmony and uninterrupted work progress; and improve safety at construction sites. It also chartered the Projects and Procurements Committee to work with staff and stakeholders to develop standard language to be used in project labor agreements (PLAs). In the course of five-months negotiations in 2024, Port staff, Seattle County Building and Construction Trades Council, and Western States Regional Council of Carpenters, have agreed on such standard language. Application of the PLA will continue to be authorized by the Commission on a project-by-project basis. The agreed language is to remain in force for 5-years, through December 2029.

The negotiations were wide-ranging but, in the end, resulted in a document largely consistent with Port PLAs in the past five years of outcome. Modifications include clarification of relation between the PLA and Collective Bargaining Agreements; enhancing diversity in contracting provisions and small business outreach and participation; clarifying grievance and dispute

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resolution procedures; apprentice utilization goals; preferred entry standards; zip-code priority hiring standards; removing gender specific language; and general clean-up of language for clarity. The standard language resolves and clarifies several items at issue in recent individual PLA discussions. It continues to relieve the administrative burden of reopening negotiations for each separate project. Either the Port, SBT, or Carpenters can propose changes or request that the 5-year effective time be curtailed or extended, but any such action must be by mutual agreement.

DETAILS

The policy directive established PLA decision criteria, established procedures for applying labor standards to different categories of construction contracts on Port property, and directed the following:

The Projects and Procurements Committee is hereby chartered to work with staff and stakeholders to develop standard language to be included in Port PLAs unless otherwise authorized by the Commission.

During the period of August - December 2024, Port staff from Labor Relations, Capital Development, Workforce Development, and Diversity of Contracting negotiated the PLA language with leaders from SBT, Carpenters, and member unions. The negotiating team received input from the Seattle chapter of the Associated General Contractors and Port staff including Central Procurement Office, Diversity in Contracting Programs and Workforce Development.

In general, in return for commitment to no work stoppages or slowdowns, the PLA requires that except for named exceptions, all craft labor will be dispatched from union halls and employers will pay into the benefit funds of the respective trade unions. The PLA document is incorporated into the contract between the Port and the general contractor and by extension to subcontractors. Highlights of the current agreement include:

- Reference to the Construction Labor Practices policy directive.
- Conflicts with Collective Bargaining Agreements (CBAs) have been minimized and the precedence of the CBAs affirmed.
- Unions and contractors commit to outreach to Small Business Enterprises with training and assistance and to facilitate entry into the building and construction trades of military veterans.
- Compliance checklist to confirm subcontractor met PLA expectations.
- Dispute and grievance resolution procedures have been clarified.
- Memorialized pre-job conference waiver procedure.
- Consistent with State law, the apprenticeship utilization goal remains at 15 percent, but the aspirational goals for the share of minority and women apprentices are 21 percent and 12 percent, respectively.
- The agreement clarifies procedures for preferred entry from any certified WSATC approved pre- apprenticeship programs into union apprenticeship.

Meeting Date: December 10, 2024

- Subcontractors who are not party to CBAs may request by name the referral of up to 3 “core” workers and up to 2 apprentices.
- Incorporated zip-code priority hiring provision on projects at the Port’s discretion.

ATTACHMENTS TO THIS REQUEST

(1) Proposed PLA Standard Language

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

None.



Project Labor Agreement

BETWEEN

The Port of Seattle

AND

Seattle/King County Building and
Construction Trades Council

Western States Regional Council of
Carpenters

December 3, 2024

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**Signatory Unions/Port of Seattle
Project Labor Agreement**

ARTICLE 1

It is the intent of the Parties to set out uniform standard working conditions for the efficient performance of construction; herein to establish and maintain harmonious relations between all parties to this Agreement; to secure optimum quality and productivity, and to eliminate strikes, lockouts or delays in the performance of the work undertaken by the Contractor.

This commitment includes the Port of Seattle, Contractors and Unions who become signatory to this Agreement.

PURPOSE

This Agreement is entered into by and between the Port of Seattle (Port), its successors or assigns, the Project Contractor(s), and the Seattle Building Trades and Western States Regional Council of Carpenters, hereinafter collectively called the “Union or Unions,” with respect to the Project Labor Agreement.

This agreement will cover construction projects and/or contracts as approved by the Port Commission per Resolution 3725, 3726, and 3746, as cited in Port resolution with “the assumption will be in favor of employing an agreement for construction contracts that are anticipated to be in excess of \$5 million” in cost. Such approved construction projects are hereafter referred to as “Covered Projects”. The Port shall notify the Seattle Building Trades and Western States Regional Council of Carpenters of Commission approved construction projects. The Port will maintain a current list of all Covered Projects.

The term “Contractor” shall include all construction contractors and all sub-contractors of whatever tier engaged in onsite construction work within the scope of this Agreement. The term “Prime Contractor” is the general contractor awarded the initial Project bid.

The Parties recognize the need for the timely completion of Port of Seattle Covered Projects without interruption or delay. This Agreement is intended to enhance this cooperative effort through the establishment of a framework for labor-management cooperation and stability. The Parties agree that the timely construction of this Project will require substantial numbers of workers from construction and supporting crafts possessing skills and qualifications that are vital to its completion. They will work together to furnish skilled, efficient craft workers for the construction of the Project.

Further, the Parties desire to mutually establish and stabilize wages, hours and working conditions for the craft workers to encourage close cooperation between the Contractor(s) and the Unions to the end that a satisfactory, continuous and harmonious relationship will exist between the Parties to this Agreement.

Therefore, to maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement, the Parties agree to abide by the terms and conditions in this Agreement, and to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise. Further, the Contractor(s) and all of its Sub-contractors of whatever tier, agree not to engage in any lockout, and the Unions agree not to engage in any strike, slow-down, interruption, or other disruption of or interference with the onsite work covered by this Agreement.

ARTICLE 2 **SCOPE OF AGREEMENT**

Section 1.

This Project Labor Agreement (PLA) shall apply and is limited to the recognized and accepted historical definition of construction work as described in the PLA Contract performed by the Prime Contractor and those Sub-contractors of whatever tier which have contracts with the Prime Contractor for such work, all of which is herein described as the “Project”. Except for the activities covered by Section 5 of this Article, any onsite construction work defined in RCW 39.12 will be subject to the PLA (Covered Work). Such work shall include site preparation work and dedicated off-site work including transporting materials to the site, when applicable.

It is understood by the Parties that the Port may, at its sole discretion, add to a specific project covered by this Agreement. In so doing, the Port will notify the Unions of their intended changes.

It is agreed that the Prime Contractor shall require all Contractors and their Sub-contractors of whatever tier who have been awarded contracts for work covered by this PLA, to accept and be bound by the terms and conditions of this Project Labor Agreement by executing the Letter of Assent (Appendix A) and PLA Compliant Contractor Checklist prior to commencing work. The Port shall assure compliance with this PLA by the Contractors. The signatory Unions agree to assist the Port with Contractor compliance.

When a subject is covered by the provisions of a Collective Bargaining Agreement (CBA) and is not covered by this PLA, the local CBA shall prevail. It is further agreed that, where there is a conflict, the terms and conditions of this Project Labor Agreement shall supersede and override terms and conditions of any and all other national, area, or local Collective Bargaining Agreements, except for all work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Article 6, 7, and 8 of this Project Labor Agreement, which shall apply to such work.

It is understood that this is a self-contained, stand alone, Agreement and that by virtue of having become bound to this Project Labor Agreement, neither the Prime Contractor nor the Contractors shall be obligated to sign any other local, area, or national agreement.

Section 2.

Nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any other operation, work, or function which may occur at the Project site or be associated with the development of the Project.

Section 3.

This PLA shall only be binding on the signatory Parties hereto and shall not apply to their parents, affiliates or subsidiaries.

Section 4.

The Port and/or the Prime Contractor and all of its Sub-contractors regardless of tier have the absolute right to select any qualified and responsible bidder for the award of contracts on this Project without reference to the existence or non-existence of any agreements between such bidder and any party to this PLA; provided, however, only that such bidder is willing, ready and able to become a party to, signs a letter of assent and complies with this PLA.

Section 5.

“PLA Compliant Contractor” means a Sub-contractor that meets all of the following requirements at time of entry into a contract for performance of Covered Work:

- (a) Is a registered training agent with a program, covering the scope of work to be performed, registered with the Washington State Apprenticeship and Training Council, with this requirement waived for any Sub-contractor that is bidding on a subcontract with an estimate at time of bid to have a value of \$100,000 or less and/or if the subcontract does not include Covered Work for an apprenticeable trade;
- (b) Holds current licenses that businesses or service professionals operating in the State of Washington must hold in order to undertake or perform the work specified in the contract;
- (c) Has not been cited by state or federal authorities for a willful safety violation or failure to abate violation within the three years prior to submitting a bid on the Project; citations currently being contested or that were vacated upon review do not affect Contractor eligibility;
- (d) Is not listed on any Washington state debarment list; and
- (e) if a Subcontractor of any tier, commits to self-performing at least 30% of the contract work awarded.

Section 6.

Items specifically excluded from the scope of this PLA include but are not limited to the following:

- (a) The excluded employees contained in this PLA shall at no time perform bargaining unit work covered by the trades signatory to the PLA. Work of non-manual employees, including but not limited to, superintendents, supervisors, assistant supervisors, staff engineers, inspectors, quality control and quality assurance personnel, timekeepers, mail carriers, clerks, office workers, including messengers, guards, safety personnel, emergency medical and first aid technicians, engineering, administrative, community relations or public affairs, environmental compliance, supervisory and management employees, specialty testing, architectural/engineering design, suppliers, and other professional services.
- (b) Equipment and machinery owned or controlled and operated by the Port or by any of the airlines or airport concessionaires or tenants.
- (c) Non-manual work by employees of a manufacturer or vendor necessary to maintain such manufacturers or vendor's written warranty or guarantee or the on-site supervision of such work.
- (d) Laboratory for specialty testing or inspections not ordinarily done by the signatory Local Unions.
- (e) Non-construction services contracted by the Owner in connection with this Project.
- (f) Survey work performed by the Owner or prior to 'notice to proceed' is excluded.
- (g) All work performed or contracted by airport tenants, defined by contract documents to be constructed within a defined area of new construction or facility improvement work covered by the PLA, will be exempt. The Port agrees to provide the Unions notification of defined airport tenant work prior to construction. The Unions recognize that during the term of this PLA improvements will be contracted directly by airport tenants and performed by contractors outside the scope of this PLA.
- (h) All work performed by Port employees is exempt.

Section 6.

The provisions of this PLA shall apply to the Port and any of its small works contractors when doing covered work. Nothing contained herein shall be construed to prohibit or restrict the Port or its employees from performing work not covered by this PLA on the Project site.

Section 7.

It is understood that the Port, at its sole option, may terminate, delay and/or suspend any or all portions of the Project at any time.

Section 8.

It is understood that the liability of any Contractor and the liability of the separate Unions under this PLA shall be several and not joint. The Unions agree that this PLA does not have the effect of creating any joint employer status between or among the Port, Contractor(s) or any Sub-contractor.

ARTICLE 3 **UNION RECOGNITION**

The Contractors recognize the Seattle Building Trades, Western States Regional Council of Carpenters and other signatory Unions as the sole and exclusive bargaining representatives of all craft workers within their respective historical jurisdictions working on the Project within the scope of this PLA.

ARTICLE 4 **MANAGEMENT'S RIGHTS**

The Prime Contractor, and all of their Sub-contractors of whatever tier retain full and exclusive authority for the management of their operations. Except as otherwise limited by the terms of this PLA, the Contractors shall direct their working forces at their prerogative, including, but not limited to hiring, promotion, transfer, lay-off or discharge for just cause. No rules, customs, or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of workers. The Contractors shall utilize the most efficient method or techniques of construction, tools, or other labor saving devices. There shall be no limitations upon the choice of materials or design, or any limit on production by workers or restrictions on the full use of tools or equipment. There shall be no restriction, other than may be required by safety regulations, on the number of workers assigned to any crew or to any service.

ARTICLE 5 **UNION REPRESENTATIVES/SHOP STEWARDS**

Section 1.

Authorized representatives of the Union shall have reasonable access to the Project site, provided that such representatives do not interfere with the work of the workers, and further provided that such representatives fully comply with posted visitor, security and safety rules and the environmental compliance requirements of the Project. It is understood that because of the scope of the Project, the type of work being undertaken on the Project site and the continuous operation of the airport during construction, visitors may be limited to certain times, or areas, or to being escorted at all times if said representative does not have a Security Identification Display Area (SIDA) Badge while on the Project site; in such circumstances, however, Project workers shall be allowed to confer privately with their authorized Union representatives. The Contractor recognizes the right of access set forth in the Section and such access will not be unreasonably withheld from an authorized representative of the Union.

Section 2.

(a) Each signatory Local Union shall have the right to designate a working journeyman as a steward for the Prime Contractor and Sub-Contractors of whatever tier and for each shift being worked and shall notify the Contractor in writing of the identity of the designated steward or stewards prior to the assumption of such person's duties as steward. Such designated steward or stewards shall not exercise any supervisory functions, such as hiring or termination of fellow workers or the direction of the work. There will be no non-working stewards. Stewards will receive the regular rate of pay for their respective crafts.

(b) A steward for each craft of the signatory Unions employed on the Project shall be permitted on the Project site at all times when work is being performed. Stewards shall not be subject to discrimination or discharge on account of proper union activities. The Unions agree that such activities shall not unreasonably interfere with the steward's work for the Contractor.

(c) In addition to their work as an employee, the steward shall have the right to receive, but not solicit, complaints or grievances and with local Union representative approval may discuss and assist in the adjustment of the same with the employee's appropriate supervisor. Each steward shall be concerned with the workers of the steward's craft. The Contractor will not discriminate against the steward in the proper performance of their union duties.

(d) When a Contractor has multiple, non-contiguous work locations on the site, the Union may appoint additional working stewards to provide independent coverage of one or more such locations. In such cases, a steward may not service more than one work location without the approval of the Union.

(e) The stewards shall not have the right to determine when overtime shall be worked or who shall work overtime. Provisions of any Collective Bargaining Agreement, giving the steward the option of working all reasonable overtime within their craft and shift shall be recognized, provided they are qualified to perform the task assigned.

Section 3.

The Contractor agrees to notify the appropriate Union, in writing twenty-four (24) hours prior to the layoff of a steward, except in the case of disciplinary discharge for just cause. If a steward is protected against such layoff by the provisions of any Collective Bargaining Agreement, such provisions shall be recognized to the extent that the steward possesses the necessary qualifications to perform the work remaining. In any case in which a steward is discharged or disciplined for just cause, the appropriate Union shall be notified immediately by the Contractor.

Section 4.

Personnel of the Port will be working in close proximity to the construction activities. The Union agrees that the Union representatives, stewards, and individual workers will not interfere with the Port personnel, or with personnel employed by any other Employer not a party to this PLA.

ARTICLE 6

WORK STOPPAGES AND LOCKOUTS

Section 1.

During the term of this PLA there shall be no strikes, picketing, work stoppages, slowdowns or other disruptive activity for any reason by the Union, its applicable Local Union or by any employee at the Covered Project site, and there shall be no lockout by the Contractor on Covered Projects. Failure of any Union, Local Union or employee to cross any picket line established at the Covered Project site is a violation of this Article.

Section 2.

The Union and its applicable Local Union shall not sanction aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Covered Project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of not less than ninety (90) days.

Section 3.

Neither the Union nor its applicable Local Union shall be liable for acts of workers for whom it has no responsibility. The International Union General President or Presidents will immediately instruct order and use the best efforts of their office to cause the Local Union or Unions to cease any violations of this Article. An International Union complying with this obligation shall not be liable for unauthorized acts of its Local Union. The principal officer or officers of a Local Union will immediately instruct, order and use the best efforts of their office to cause the workers the Local Union represents to cease any violations of this Article. A Local Union complying with this obligation shall not be liable for unauthorized acts of workers it represents. The failure of the Contractor to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

Section 4.

If any Party to this PLA believes a violation of this Article has occurred, that Party may submit their claim as a grievance under Article 7, Step 4, for expedited arbitration. The sole issue at the arbitration hearing shall be whether or not a violation of this Article occurred. The arbitrator shall have no authority to consider any justification, explanation or mitigation for such violation. The arbitrator's award shall be issued in writing within 24 hours after the close of the hearing, and may be issued without an opinion. If any Party desires an opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the award. The arbitrator may order cessation of the violation, and any other appropriate relief, including, but not limited to liquidated damages in the following amounts: For the first shift in which the violation occurred, \$10,000; for the second shift, \$10,000; for the third shift, \$10,000; for each shift thereafter in which the craft has not returned to work, \$10,000 per shift. Such award shall be final

and binding on all parties. The fees and expenses of the arbitrator shall be equally divided between the moving Party or Parties and the Party or Parties respondent. If the arbitrator determines that a violation of this Article has occurred the Union(s) shall, within eight (8) hours of receipt of the award, direct all of the workers they represent on the Project to immediately return to work. If the arbitrator determines that a lockout has occurred in violation of this Article, they shall be empowered to order the Contractor to bring the employee(s) in question back to work, and award back pay to the workers who were locked out. The arbitrator shall retain jurisdiction to determine compliance with this Article.

ARTICLE 7 **DISPUTES AND GRIEVANCES**

Section 1.

This PLA is intended to provide close cooperation between the Port, Contractor, and Labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Covered Project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.

Section 2.

The Port, Contractors, Unions, and the workers, collectively and individually, realize the importance to all Parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.

Section 3.

Any question or dispute arising out of and during the term of this PLA (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following procedures:

Step 1.

(a) When any employee subject to the provisions of this PLA feels they are aggrieved by a violation of this PLA, they, through their local Union business representative or designated Union Representative, shall, within fourteen (14) calendar days, excluding PLA recognized holidays, after the occurrence, or had knowledge of or should have known of the alleged violation, give notice to the work-site representative of the involved Contractor stating the provision(s) alleged to have been violated. The business representative of the local Union or the designated Union Representative and the work-site representative of the involved Contractor and the Owners Port of Seattle Representative shall meet and endeavor to adjust the matter within three (3) calendar days, excluding weekends and PLA recognized holidays, after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing and the Port of Seattle Representatives at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2

of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the PLA alleged to have been violated.

(b) Should the Local Union(s) or the Prime Contractor or any Sub-Contractor of whatever tier have a dispute with the other Party and, if after conferring, a settlement is not reached within three (3) calendar days, excluding weekends and PLA recognized holidays, the dispute may be reduced to writing and proceed to Step 2 within forty-eight (48) hours in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2.

The International Union Representative and the involved Contractor shall meet within seven (7) calendar days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the Parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

Step 3.

Expedited Alternative Dispute Resolution

In the event no resolution is reached by the Union and the Contractor at Step 2, upon mutual agreement the parties may agree to submit the grievance to a mediator appointed by Federal Mediation and Conciliation Services (FMCS) or another mutually agreed upon mediator for mediation. If mediation fails to resolve the issue(s) or if both Parties do not agree to submit the grievance to mediation, either party may request that the grievance be submitted to an arbitrator in accordance with the provisions of Step 4. Nothing done or said by the Parties or the mediator during the grievance mediation can be used in the arbitration proceeding.

Step 4.

(a) If the grievance has been submitted but not adjusted under Step 2 or Step 3, either Party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Contractor and Sub-Contractor of whatever tier and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request the Federal Mediation and Conciliation Services (FMCS) to provide them with a list of arbitrators from which the Arbitrator shall be selected. The rules of the (FMCS or whoever we designate) shall govern the conduct of the arbitration hearing. The decision of the Arbitrator shall be final and binding on all Parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Local Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented to them. Also they shall not have authority to change, amend, add to or detract from any of the provisions of this PLA.

Section 4.

The Prime Contractor, Sub-tier contractor, the Port and the Union representatives shall be notified of all actions at Steps 2, and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

ARTICLE 8 **JURISDICTIONAL DISPUTES**

Section 1.

(a) The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the “Plan”) or any successor Plan and shall be based upon the appropriate agreements of record, decisions of record and previously provided local written agreements between or among the Unions and established trade practice prevailing in the locality. Locality is defined as the Seattle/King County Building Trades geographical jurisdiction. Such assignments shall be disclosed by the Contractor at a pre-job conference held in accordance with industry practice, which pre-job conference will include a representative of the Prime Contractor.

Section 2.

All jurisdictional disputes on Covered Project, between or among the Building and Construction Trades Unions, the NCA II and Contractors, parties to this PLA, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this PLA.

Section 3.

All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature and the Contractor’s assignment shall be adhered to until the dispute is resolved. Individuals violating this Section shall be subject to immediate discharge.

Section 4.

Each Contractor will submit to the Port a proposed trade assignment and attend a pre-job conference, scheduled by the Port, with the Unions a minimum of 2 weeks prior but not more than 90 days prior to commencing work. The Prime Contractor shall submit a copy of each executed Letter of Assent and the PLA Compliant Contractor Checklist for the Prime and each Subcontractor presenting at the pre-job conference.

Each Contractor will submit to the Port a final trade assignment one (1) week after attending the pre-job conference and prior to starting work. The Port will send copies of the trade assignments to the Unions.

Section 5: Request for Waiver of Pre-Job Attendance

Contractors who have performed or are performing work on any Port PLA Covered Project may be eligible for a waiver of the pre-job conference. If the waiver request is denied, the Contractor is required to attend a pre-job conference prior to starting work according to the process stated above. Upon request, the Seattle Building Trades will notify the PLA Administrator of the reason for the denial.

ARTICLE 9 **SUBCONTRACTING**

Section 1.

The Prime Contractor agrees that no Contractor shall subcontract any Covered Project work except to a person, firm or corporation party to this PLA.

Section 2.

If a Building Trades Union that traditionally represents construction workers in the geographic area of the Project chooses not to become signatory to this PLA, the Prime Contractor and the signatory Unions shall utilize one or both of the following options to ensure that work that may be claimed by the non-signatory Union (“claimed work”) is completed without disrupting the Covered Project:

- (a) The signatory Unions will provide the Prime Contractor and all other Sub-tier contractors who become signatory to this PLA with the appropriate workforce to perform the claimed work.
- (b) The Prime Contractor may utilize any Contractor or Subcontractor to perform claimed work, except that if such Contractor is party to an agreement with the non-signatory Union, such Union must agree in writing to abide by Article 8, Jurisdictional Disputes, and Article 6 Work Stoppages and Lockouts for the contractor to be awarded work under this PLA. Such Contractor may utilize its existing workforce and wage and benefit package. Such Contractors shall be required to agree in writing to be bound to and abide by this Article, Article 6 Work Stoppages and Lockouts, and Article 8 Jurisdictional Disputes. No other provision shall apply to such Contractors unless required by the Prime Contractor.

The names and physical business addresses of all Subcontractors on work covered by this PLA shall be transmitted to the Seattle Building Trades and Western States Regional Council of Carpenters by the Contractor.

Section 3: Diversity in Contracting and Small Business Outreach.

The Port has a Diversity in Contracting Program to increase recruitment, retention and promotion of Small Business Contractors in the construction industry. The Port, Prime Contractor and the Unions commit to conduct small business outreach to companies who self-identify or are certified as a Small Business through OMWBE. The Port and Unions agree to meet with

contractors to provide training and assistance about working under Collective Bargaining Agreements and this PLA.

ARTICLE 10
HELMETS TO HARDHATS

Section 1.

The Contractors and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter “Center”) and the Center’s “Helmets to Hardhats” program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the Parties.

Section 2.

The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on the Covered Project, and of apprenticeship and employment opportunities for the Covered Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE 11
APPRENTICESHIP UTILIZATION

The Parties agree to set a minimum Washington State Apprenticeship Training Council (WSATC) Apprenticeship Utilization Goal of fifteen percent (15%) per craft. The goal established for minority apprentice training is twenty-one percent (21%) of the total apprentice training hours. The goal established for female apprentice training is twelve percent (12%) of the total apprentice training hours. The Prime Contractor will be responsible for all Contractors and Sub-contractors of whatever tier submit an Apprenticeship Utilization Plan to the Port to be presented at the pre-job conference and all Contractors shall submit Electronic Payroll Information (EPI) while performing work on site to the Port identifying all WSATC registered apprentices.

The Parties agree to maximize the use of Washington State Apprenticeship Training Council [WSATC] apprentices on the Project and to facilitate the participation of people of color, women and other disadvantaged persons in such apprenticeship programs, and increase the opportunities for participation by low-income people of color and women. The Parties should identify training and hiring goals and reduce barriers to employment and training.

ARTICLE 12
PREFERRED ENTRY

Section 1.

The Parties agree to construct and expand pathways to living wage jobs and careers in the construction industry for community members through collaborative workforce development systems involving community-based training providers and WSATC apprenticeship programs. The purpose of this program is to facilitate a workforce reflective of the diversity of the region's population.

Section 2.

The Parties agree to work in cooperation to provide pre-qualified applicants access to apprenticeship opportunities generated by the construction contracts under the PLA. Preferred Entry candidates shall be placed with Contractors working on the Project, subject to an interview if requested by the Contractor. Selected Preferred Entry candidates who are not already first year apprentices shall become first period apprentices.

To give preferred entry apprentices an opportunity to become established in their apprenticeship training, Contractors must employ Preferred Entry candidates for 700 hours, in order to count that candidate toward the Preferred Entry requirement. The Port may reduce the number of required hours to a minimum of 350 hours on any Project that has insufficient total apprentice hours to support placements of a 700 hour duration.

Section 3.

The Parties agree that given the apprenticeship utilization goal of 15% on the Project, the goal for Preferred Entry Apprentices shall be one (1) of each five (5) of those apprentices who have worked at least 350 or 700 hours from a WSATC recognized Washington State Certified Pre-Apprenticeship programs.

Section 4.

The Unions and Prime Contractor agree to ensure hiring of Preferred Entry apprentices during the early start of work on the Project. The Port, Unions and Contractors recognize Preferred Entry Apprentices that are within any steps or years of their apprenticeship program.

ARTICLE 13 **PRIORITY HIRE**

Section 1.

The Priority Hire Program seeks to support dispatch of workers to achieve the obligations and aspirational goals set forth pursuant to Port of Seattle Resolution No. 3736 dated November 28, 2017, which directs development of a program which is designed to prioritize the recruitment and placement of economically disadvantaged local workers on Covered Projects. The Priority Hire Program is intended to help address construction workforce shortages, diversify the construction workforce, and improve the well-being of individuals who live in geographical areas of economic distress, while focusing on participation by Apprentices and Journey level construction workers who have been historically underrepresented in the construction industry, including minorities, women, and veterans for a specified share of total hours worked on covered projects. The purpose of Resolution No. 3736 is to provide good family wage jobs to qualified

construction workers from Economically Distressed Areas of King County, or as designated by the Port, by increasing access to the Port's Covered Projects for those workers.

The Parties recognize that public agencies are working together as regional partners to better understand the workforce demand-supply gap for regional public infrastructure projects; to enhance access opportunities and to increase the diversity of pre-apprentices, apprentices and journey-level workers entering into the trades workforce; to support retention programs for current trades workers; and to improve performance data and systems of reporting for monitoring regional goals and initiatives.

Section 2.

The Port Designee will set a requirement for each project that directs the Prime Contractor to utilize workers from economically distressed ZIP codes for a specified share of total hours worked on the project by apprentices and journey-level workers. It is agreed that classifications of work performed under the selected PLA projects will be subject to the following additions and stipulations:

- (a) The Designee will set a requirement for ~~this~~ each project that directs the Prime Contractor to utilize workers from an Economically Distressed area ("Priority Workers") for a specified share of total hours worked on the project by apprentices and journey-level workers. Workers that qualify towards those requirements shall be identified as "Priority Worker(s)." A Priority Worker is defined in Port of Seattle Resolution No. 3736 dated November 28, 2017, as an individual prioritized for recruitment, training and employment opportunities because the individual is a resident of an Economically Distressed Area.
- (b) The first month following issue of the notice to proceed and until the Contractor obtains written final acceptance from the Port, the Contractor shall submit a monthly report for itself and all Subcontractors to the Port. Contractors shall request and Unions shall dispatch Priority Workers who are residents of an Economically Distressed Area as defined by King County's Finance and Business Operations Division and published at <https://www.kingcounty.gov/council/news/2018/March/03-05-hiring.aspx> .
- (c) Contractors and Subcontractors must also report on employee demographics and other pertinent information requested by the Port. Labor hours performed by workers living outside of Washington will be excluded from priority worker calculations that the Port performs when calculating whether required percentages of total Priority Worker hours were achieved.

The Contractor's failure to allow adequate time to comply with the requirements and processes of the PLA including Priority Hire are non-excusable delays. If a Contractor is not in compliance with the Priority Hire requirements, they must submit documentation to the Port that supports its best efforts for meeting Priority Hire requirements and an action plan detailing methods and/or steps to be taken to achieve said requirements.

ARTICLE 14
BI-MONTHLY LABOR/MANAGEMENT MEETINGS

The Parties to this PLA recognize the necessity for cooperation and communication between the Unions, the Port, and the Prime Contractor, the elimination of disputes and misunderstandings and the resolution of unfair practices on the part of any party. To this end, the Parties agree to participate in bi-monthly Union/Port/Prime Contractor meetings to address pre-apprenticeship preferred entry goals, apprenticeship utilization, priority hire requirements if applicable, job progress, administration and progress of overall PLA program, and any other relevant issues that will affect the Project and promote harmonious and stable labor/management relations. The Port shall facilitate and distribute copies of reports to the committee, including a bi-monthly discussion of projects reviewed for application of the PLA and future projects. If a union receives notice from a Trust of an alleged contractor delinquency on trust payments, the Union will endeavor to timely notify the PLA Administrator.

ARTICLE 15
WAGE SCALES AND FRINGE BENEFITS

Section 1.

In consideration of the desire of the the Port and Unions for all construction work to proceed efficiently and economically and with due consideration for protection of labor standards, wages and working conditions, all Parties agree that:

The wage rates to be paid to all laborers, workers and mechanics who perform any part of this PLA within King County shall be in accordance with the current local craft labor agreement as identified in their individual Collective Bargaining Agreement.

Contractors will recognize the current State Prevailing Wage Rate established and required by Chapter 39.12 of the Revised Code of Washington, as amended, as the minimum rates to be paid to all craft workers, including pre-fabrication performed in Washington State, during the life of the program. This requirement applies to laborers, workers and mechanics, employed by the Contractors or any other person who performs a portion of the work contemplated by this PLA within the State of Washington.

The Contractors shall adopt and agree to be bound by the written terms of the applicable Trust Agreements, any present or future amendments, and to successor Trust Agreements, for the trust funds or their successors as identified in the respective applicable local collective bargaining agreements for all craft workers, core and union, and payments shall be made by the Contractors for all craft workers during the life of the Covered Project.

The Contractor shall pay the current increased wage rates and increased contribution rates to the relevant trust funds pursuant to any Collective Bargaining Agreements negotiated by the Unions during the work performed on the Covered Project, effective when the relevant Collective Bargaining Agreement goes into effect. Further, the Contractor(s) and its Sub-contractors will

recognize all changes of wages and fringes on the effective date(s) of the individual craft local collective bargaining agreement. In accordance with RCW 39.12.015(3)(a) if there is more than one craft local collective bargaining agreement for any craft, the higher wage rate shall be paid. Any retroactive increases will be recognized provided it is part of the negotiated settlement.

If any Subcontractor is delinquent in any Trust Fund contributions, the Union or the Trust Fund shall first make every effort to resolve the delinquency. After all efforts have been exhausted, the Union or Trust Fund shall provide timely notification to the Owner and the Contractor(s), together with all documentary evidence of the delinquency endorsed by the Fund. Upon such notification, the Contractor(s) will attempt to resolve the delinquency among its Subcontractor, the Union and the Fund. If the delinquency is not resolved within ten (10) calendar days excluding weekends and PLA recognized holidays thereafter, the Contractor(s) shall withhold an amount to cover the delinquency from any retained funds otherwise due and owing to the Subcontractor and shall not release such withholding until the Subcontractor is in compliance. If the delinquent amounts are undisputed in whole or in part between the Fund and the delinquent Subcontractor, the Contractor(s) shall issue a joint check to the Fund and the Subcontractor in the amount of the undisputed delinquency.

Copies of the Union Trust Agreements are available upon request.

Section 2. Prefabrication and Assembly

It is our intention that any and all off-site fabrication, customization, assembly or pre-assembly work will be performed within the local region of the State of Washington.

The provision for wage rates in Article XIII shall also apply to offsite fabrication/customization, assembly or pre-assembly of parts or components for installation related to new construction on the Covered Project, if such off site fabrication/customization work is performed in the State of Washington.

The payment of the applicable rate of wage to said offsite fabrication/customization, assembly or pre-assembly shall not be construed as applying the following requirements of the Agreement Article 10 (Helmets to Hardhats), Article 11 (Apprenticeship Utilization), Article 13 (Monthly Labor Management Meetings), or Article 15 (Substance Abuse Program). However, the provisions of Article 9 (Subcontracting), Article 6 (Work Stoppages and Lock Outs), and Article 8 (Jurisdictional Disputes) shall apply to such off site fabrication/customization work.

ARTICLE 16 **REFERRAL PROCEDURES**

Section 1.

For Local Unions now having a job referral system as contained in their Collective Bargaining Agreement, the Contractor agrees to utilize such system and it shall be used exclusively by such Contractor, except as it may be modified by this Article. Referrals shall not be affected by obligations of Union membership or the lack thereof. Where airport security clearance requirements apply to work to be performed, the Contractor shall inform the Union's hiring hall

dispatcher of those requirements when requesting workers. For those Local Unions having a Book system as part of their Collective Bargaining Agreement, such system will be honored in regards to lay-off of workers from covered projects.

Section 2.

In the event that Local Unions are unable to fill any request for workers within forty-eight (48) hours, excluding weekend and holidays, the Contractor may employ applicants from any other available source. Contractor shall inform the Union of the name of any applicants hired from other sources and shall refer the applicant to the Local Union for dispatch to the Covered Project prior to the commencement of work, and make trust fund contributions for every hour worked.

Section 3.

There shall be no discrimination against any employee or applicant for employment because of their membership or non-membership in the Union or based upon race, creed, color, sex, age or national origin, or any other legally protected class of such employee or applicant.

Section 4.

No worker covered by this PLA shall be required to join any Union as a condition of being employed on the Covered Project. The Contractor agrees to deduct union dues or representation fees, whichever is applicable, from the pay of any workers who executes a voluntary authorization for such deductions and to remit the dues to the Union or Council.

Nothing in this Section is intended to eliminate or affect the right of any workers to join the Union or the right of any union to collect full dues from its member.

Section 5.

The Parties agree that where a Contractor is not party to a Collective Bargaining Agreement with any Union signatory to this PLA, the Contractor may request by name, and the Local will honor, referral of up to a maximum of three (3) persons per each contractor (“core” workers), and up to two Apprentices enrolled in a WSATC program, provided that the ratio of Apprentices to Journey level workers is in compliance with the applicable Apprenticeship program standards and provided that the Contractor can demonstrate that those persons possess the following qualifications:

- (1) Any license required by state or federal law for the Project work to be performed;
- (2) Have worked a total of at least one thousand two hundred (1,200) hours in the construction craft during the prior two (2) years;
- (3) Were on the Contractor’s active payroll for at least sixty (60) out of the ninety (90) calendar days prior to the contract award;
- (4) Have the ability to perform the work safely.

- (5) OMWBE certified subcontractors that have been in business for three (3) years or less shall be exempt from the minimum hours and active payroll requirements in subsections 2 and 3. Such subcontractors shall not have performed the project contracted scope of work under any name or under a past or related license in Washington or any other State.

Core workers who meet the aforementioned qualifications will be dispatched as follows:

The Contractor may elect to hire its first “core” worker to be a foreman. After the Contractor hires up to three (3) core workers, all additional workers in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor’s work the ratio of “core” workers to hiring hall referrals shall be maintained and when the Contractor’s workforce is reduced, workers shall be reduced in the same ratio as was applied in the initial hiring.

Contractors requesting dispatch of a JATC registered apprentice must demonstrate to the satisfaction of the JATC program that it complies with all apprenticeship standard requirements to supervise apprentices.

All workers, core and union, shall be dispatched from the appropriate union. Trust benefits shall be paid on all workers, core and union.

Section 6.

Upon referral or dispatch from a Union, “turnaround” or refusal of any worker by the Contractors, requires written explanation from the Contractor that shall be communicated through the Prime Contractor to the Port and affected Union within 48 hours.

Section 7.

Individual seniority will not be recognized or applied to workers working on the Project. This provision will not interfere with or supersede the use by individual Contractors of “call lists” maintained by such Contractor pursuant to addenda to the local Collective Bargaining Agreement between such Contractor and a Union signatory to this PLA.

Section 8.

The selection of craft foreperson and/or general foreperson and the number of such foreperson and/or general foreperson required shall be entirely the responsibility of the Contractor. Craft foreperson shall be designated working foreperson at the request of the Contractor. Craft workers covered by this PLA will, in the normal day- to-day operations, take their direction and supervision from their foreperson.

ARTICLE 17 **WORK RULES**

Section 1.

Parking shall be provided within 3 city blocks or 1500 feet from the Covered Project site, whichever is shorter. Parking at or near the Covered Project site will be provided to the workers at no cost. If parking cannot be provided within 3 city blocks or 1500 feet of the Covered Project site, transportation between the parking area(s) and the work site shall be provided by the Contractor. Workers shall be paid at their straight-time hourly rate for time spent in travel from the work site to the parking area at the end of their shift. Compensated time spent in transit between the work site and the parking area shall not be considered time worked for overtime purposes.

Section 2.

Security procedures for control of tools, equipment and materials are the responsibility of the Contractor. Workers having any company property or the property of another employee in their possession without authorization is subject to immediate discharge. The Contractor will be responsible for the establishment of reasonable security measures for the protection of personal, company and owner property.

Section 3.

Any employee who willfully damages the work of any other employee, or any material, equipment, apparatus, or machinery shall be subject to immediate termination.

Section 4.

In the interest of the future of the construction industry in the Seattle area, of which labor is a vital part, and to maintain the most efficient and competitive posture possible, the Unions pledge to work with management on the Covered Project to produce the most efficient utilization of labor and equipment in accordance with this PLA.

ARTICLE 18 **HOURS OF WORK, OVERTIME, SHIFTS AND HOLIDAYS**

Section 1: Work Day and Work Week.

Hours of work shall refer to local collective bargaining agreements

Section 2: Starting Times.

Workers shall be at their place of work at the starting time and shall remain at their place of work (as designated by the Contractor) performing their assigned functions until quitting time. The place of work shall be defined as the gang or toolbox, or equipment at the employee's assigned work location or the place where the foreperson gives instructions. The Parties reaffirm their policy of a fair day's work for a fair day's wage. There shall be no pay for time not worked unless the employee is otherwise engaged at the direction of the Contractor.

Section 3: Overtime.

Overtime shall refer to local collective bargaining agreements

Section 4: Shifts.

Shift work shall refer to local collective bargaining agreements

Section 5: Holidays.

(a) **Holidays.** Recognized holidays on the Covered Project shall be New Year's Day, Martin Luther King's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day. Recognized holidays under this PLA shall be celebrated on the date the holiday is celebrated by the Port. Work may be performed on Labor Day when circumstances warrant, such as for the preservation of life and/or property. There shall be no paid holidays. If workers are required to work on a holiday, they shall receive the appropriate overtime rate outlined in the applicable Collective Bargaining Agreement. All overtime shall be in compliance with applicable State prevailed wage requirements.

Section 6: Reporting Pay.

(a) **Reporting Pay.** Workers reporting for work and for whom no work is provided, except when given notification not to report to work, and shall receive four (4) hours pay at the regular straight-time hourly rate. Workers, who work beyond four (4) hours, shall be paid for actual hours worked. When an employee is sent to the jobsite from the union referral facility in response to a request from the Contractor for an employee for one (1) day and starts work at the designated starting time for their shift, the employee will be paid a minimum of eight (8) hours for that day.

Four (4) hour show-up time is contingent upon successfully completing the drug testing procedure, if required.

(b) **Make- up Day.** Should the Contractor be unable to work forty (40) hours in any workweek due to weather or other conditions over which the Contractor has no control, the Contractor may, to the extent permitted by the applicable collective bargaining agreement, schedule a make- up day (Saturday for 5/8 schedule; Friday or Saturday for 4/10 schedule). All hours worked on a make-up to complete the forty (40) hours for the standard workweek shall be paid at the straight time rate of pay, if permitted by the State prevailed wage requirements. Any hours in excess of the standard workweek worked on Saturday shall be paid at time and one-half the straight time rate of pay. For make- up day work, the full crew must be scheduled. The make-up day may not be utilized on an individual employee basis, or to make up holidays. Make-up days are voluntary and should a crew member decline the make-up day work, the Contractor may select a member of another crew as a replacement, or allow the crew to work without the regular crew member. All make-up day work will be scheduled for a full work day. All overtime shall be in compliance with applicable State and Federal prevailed wage requirements.

(c) **Call Out Pay.** Any employee called out to work outside of their shift shall receive a minimum of four hours pay at the appropriate rate, including any applicable premium. This does not apply to time worked as an extension (before or after) of the employee's normal shift.

(d) **Discharge/Departure.** When an employee leaves the job or work location of their own volition or is discharged for cause or is not working as a result of the Contractor's invocation of Safety concerns, the employee shall be paid only for the actual time worked.

(e) **Premium Rate Day.** In all cases, if the employee is reporting on a day on which a premium rate is paid, reporting pay shall be calculated at that rate.

Section 7: Meal Period.

Workers shall not be required to work more than five (5) hours from the start of the shift without at least a one-half (1/2) hour unpaid break for lunch. This lunch period shall not begin earlier than three and one-half (3 ½) hours after the start of the shift.

In the event that Contractor establishes a ten (10) hour shift, the meal periods shall be at mid-shift. Workers meals may be staggered during the period of three and one-half (3 ½) to five (5) hours from the start of their shift to cover necessary work of a continuous nature.

Missed Meals and Additional Meal Periods:

- a. If a craft worker is required or allowed to work past five hours, they shall be paid one-half (1/2) hour at the applicable overtime rate and shall eat their lunch on company time.
- b. By mutual agreement between the Union and the Employer an additional hour of overtime/penalty pay may be provided in lieu of the above.
- c. Craft Workers required to work more than two (2) hours after the end of an eight (8) hour shift and one (1) hour after a ten (10) hour shift shall be furnished a meal and paid one-half (1/2) hour at the applicable wage rate and every five (5) hours thereafter, a Craft Worker shall be given time for a meal. Mealtime shall be paid at the applicable overtime rate and adequate lunch shall be provided by the Employer at the job site.
- d. By mutual agreement between the Union and the Employer an additional hour of overtime/penalty pay may be provided in lieu of the above.

Section 8: Security.

The Parties acknowledge that some work within the scope of this PLA will occur in restricted security areas of an operating airport and seaport and that workers who will be required to work in such areas will, as a condition of employment on the Covered Project, be subjected to a 10-year personal background check and security clearance and will be required to comply with regulations imposed by the Port, the Department of Homeland Security (including sub-agencies such as the Transportation Security Administration and Customs and Border Patrol), and the Federal Aviation Authority governing access and conduct in such areas. The Unions acknowledge that such conditions will be imposed and that application and enforcement of such requirements may be

grounds to terminate or deny an employee work on the Covered Project or to deny access of their representatives to the Covered Project's areas.

ARTICLE 19 **SAFETY AND HEALTH**

Section 1.

The Parties to this PLA will hold a regular Joint Labor/Management Safety Committee meeting to discuss safety programs and procedures to maintain the highest level of occupational safety on the Covered Project site.

Section 2.

(a) It shall be the responsibility of each Contractor to ensure safe working conditions and employee compliance with any safety rules contained herein or established by the Port, or the Contractor. It is understood that the workers have an individual obligation to use diligent care to perform their work in a safe manner and to protect themselves and the property of the Contractor and the Port.

(b) Workers shall be bound by the safety, security and visitor rules and environmental compliance requirements established by the Contractor, and the Port. These rules will be published and posted in conspicuous places throughout the work site. An employee's failure to satisfy their obligations under this Section will subject them to discipline, including discharge.

(c) The use, sale, transfer, purchase and/or possession of a controlled substance, including Marijuana, and/or alcohol while on the Port's premises at any time during the work day is prohibited. Accordingly, the Parties have agreed to follow the guidelines for substance abuse and alcohol testing as stipulated in the Substance Abuse Policy (See Appendix A).

(d) These Procedures outline the safeguards set forth for the testing of workers for prohibited or controlled substances, adulterants and alcohol. It is agreed, with respect to such testing procedures, that: (i) no person referred from the Union hiring hall shall be allowed on-site as an employee until such person has completed and passed any test(s) required under the program; (ii) a person who is put to work immediately after having passed the tests shall be paid starting at the time they reported for the test(s); and (iii) where a Contractor requests a person to report for purposes of a pre-employment substance abuse and alcohol test, and does not intend to place him/her in an active work position on that day, the person shall receive four (4) hours of pay at the regular straight-time hourly rate if the test is negative.

(e) The unauthorized use or possession of firearms, weapons, explosives or incendiary materials on or near the Covered Project premises, including Port owned or leased parking lots, is prohibited. Any employee who violates this provision will be subject to discipline including discharge and/or removal from the Covered Project.

(f) The Parties acknowledge that the environmental and safety restrictions governing conduct at the Covered Project site prohibit smoking at any time in any location or facility. Violation of this restriction by any person will constitute grounds for removal from the site and may result in termination.

Section 3.

A Contractor may suspend all or a portion of the job to protect the life and safety of an employee. In such cases, workers will be compensated only for the actual time worked; provided, however, that where the Contractor requests workers to remain at the site and be available for work, the workers will be compensated for the standby time at their appropriate hourly rate of pay.

Section 4.

The Contractor shall furnish warm, dry changing rooms of ample size for drying clothes, and benches and tables for lunch. The Contractor shall supply sanitary toilet facilities, including hand-wash facilities with warm running water, and sanitary drinking facilities (cool in summer) and sanitary drinking cups.

Section 5.

Separate toilet facilities shall be provided close to the site of work and in equally accessible locations for both men and women. The facilities shall be clearly marked “Men” and Women.” The women’s facilities shall have a lock on the outside with keys to provided to women for access. All facilities shall be cleaned at least once daily and shall be examined prior to the start of each shift to ensure they are clean and that sanitary toilet paper, soap, and paper towels are stocked. The women’s facilities shall maintain a support of appropriate hygiene products.

ARTICLE 20
SAVINGS AND SEVERABILITY

Section 1.

It is not the intention of either the Contractor or the Union parties to violate any laws governing the subject matter of this PLA. The Parties hereto agree that in the event any provisions of the PLA are finally held or determined to be illegal or void as being in contravention of any applicable law, the remainder of the PLA shall remain in full force and effect unless the part or parts so found to be void are wholly inseparable from the remaining portions of this PLA.

Section 2.

The occurrence of events covered by Sections 1 above shall not be construed to waive the work stoppage prohibitions of Article 6.

ARTICLE 21
DURATION OF AGREEMENT

Section 1.

This Agreement shall commence upon December 10, 2024 and shall continue in full force for a period of five (5) years. The parties may mutually agree to amendments or modifications of this PLA.

Section 2.

The PLA shall continue in full force and effect for each covered project throughout the duration of each covered project and until the last of the Covered Projects concludes. Either party desiring to extend this PLA beyond the intended five (5) year term shall make such intentions known to the other party by written notice as soon as practical, which may be as early as six months prior to the otherwise effective expiration date of this agreement.

Section 3.

(a) **Turnover.** Construction of any phase, portion, section or segment of the Project shall be deemed complete when such phase, portion, section or segments has been turned over to the Owner by the Contractor, and the Owner has accepted such phase, portion, section or segment. As areas and systems of the Project are inspected and construction tested and/or approved by the Construction Manager and accepted by the Owner or third parties with the approval of the Owner, the PLA shall have no further force or effect on such items or areas, except when the Contractor is directed by the Construction Manager or Owner to engage in repairs or modifications required by its contract(s) with the Owner.

(b) **Notice.** Written notice of each final acceptance received by the Contractor will be provided to the Union with a description of what portion, segment, etc. has been accepted. Final acceptance may be subject to a "punch list", and in such case, the PLA will continue to apply to each such item on the list until it is completed to the satisfaction of the Owner and Notice of Acceptance is given by the Owner to the Contractor.

(c) **Termination.** Final termination of all obligations, rights and liabilities and disagreements shall occur upon receipt by the Union of a written notice from the Owner saying that no work remains within the scope of the PLA.

PORT OF SEATTLE:

Signature: _____
Stephen P. Metruck
Executive Director
Port of Seattle

Date: _____

UNIONS:

Seattle/King County Building & Construction Trades Council, AFL-CIO

Signature: _____
Monty Anderson
Executive Secretary

Date: _____

Western States Regional Council of Carpenters

Signature: _____
Antonio Acosta
Regional Manager

Heat & Frost Insulators & Allied Workers Local 7

Signature: _____
Todd Mitchell
Business Manager

BAC Local 1 Washington/Alaska

Signature: _____
Lowell Glodowski
President/Business Manager

Boilermakers Local 502

Signature: _____
Tracey Eixenberger
Business Manager

Cement Masons & Plasterers Local 528

Signature: _____
Eric Coffelt
Business Manager

IBEW Local 46

Signature: _____
Sean Bagsby
Business Manager

Elevator Constructors Local 19

Signature: _____
Patrick Strafer
Business Manager

Iron Workers Local 86

Signature: _____
Bob Korth
Business Manager

Laborers Local 242

Signature: _____
Dale Cannon
Business Manager

Sheet Metal Workers Local 66

Signature: _____
Devin Leingang
Business Manager

Teamsters Local 174

Signature: _____
Carl Gasca
JC-28 Construction Chair

Operating Engineers Local 302

Signature: _____
Daren Konopaski
Business Manager

IUPAT District Council 5

Signature: _____
Todd Springer
Business Manager

UA Plumbers & Pipefitters Local 32

Signature: _____
Jeffrey J. Owen
Business Manager

Roofers Local 54

Signature: _____
Eddy Ramos
Business Manager

Sprinkler Fitters Local 699

Signature: _____
Scott Peterson
Business Manager

APPENDIX A

**PORT OF SEATTLE
LETTER OF ASSENT**

MC- 03Enter Number Here

Project Name: Enter Name Here

General/Prime Contractor: Enter Name Here

The undersigned, as a Contractor(s) or Subcontractor(s) on the **Enter Project Name Here Project**, for and in consideration of the award of a Contract to perform work on said Project, agrees to be a party to and be bound by the Project Labor Agreement (PLA) and in further consideration of the mutual promises made in the PLA, a copy of which was received and is acknowledged, hereby:

- (1) On behalf of itself and all its workers, accepts and agrees to be bound by the terms and conditions of the PLA, together with any and all amendments and supplements now existing or which are later made thereto, and understands that any act of non-compliance with all such terms and conditions, including but not limited to **;** : evidence of compliance with the pre-employment controlled substance testing, will subject the non-complying Contractor or employee(s) to being prohibited from the Project Site until full compliance is obtained.
- (2) The undersigned accepts and agrees that the scope of the no-strike clause of the Project Labor Agreement does not apply to offsite activities other than dedicated fabrication facilities.
- (3) Certifies that it has no commitments or agreements which would preclude its full compliance with the terms and conditions of said PLA.
- (4) Agrees to secure from any Contractor(s) (as defined in said Project Labor Agreement) which is or becomes a Subcontractor(s) (of any tier), a duly executed Letter of Assent in form identical to this document prior to commencement of any work.

Date: Choose Date	Company Name: Enter Company Name Here
Prime/General Contractor: <input type="checkbox"/>	Name and Title: Enter Name and Title Here
Subcontractor: <input type="checkbox"/>	Business Address: Enter Business Address Here
<input type="checkbox"/> Tier 1: Subcontractor to Name	Telephone Number: Enter Number Here Choose a Type
<input type="checkbox"/> Tier 2: Subcontractor to Name	
<input type="checkbox"/> Tier 3: Subcontractor to Name	
<input type="checkbox"/> Tier 4: Subcontractor to Name	

Type Name Here

(Typed Name May Substitute for Signature)

APPENDIX B

PORT OF SEATTLE PLA COMPLIANT CONTRACTOR CHECKLIST

- A. Is a registered training agent with a program, covering the scope of work to be performed, registered with the Washington State Apprenticeship and Training Council, with this requirement waived for any Sub-contractor that is bidding on a subcontract with an estimate at time of bid to have a value of \$100,000 or less and/or if the subcontract does not include Covered Work for an apprenticeable trade;
- B. Holds current licenses that businesses or service professionals operating in the State of Washington must hold in order to undertake or perform the work specified in the contract;
- C. Has not been cited by state or federal authorities for a willful safety violation or failure to abate violation within the three years prior to submitting a bid on the Project; citations currently being contested or that were vacated upon review do not affect Contractor eligibility;
- D. Is not listed on Washington state debarment list; and
- E. if a Subcontractor of any tier, commits to self-performing at least 30% of the contract work awarded.

I certify as ___ Title _____ of _____ Contractor _____ that

_____ Contractor _____ meets all of these requirements.

Date

Contractor

Prefabrication Side Letter
Project
Project Labor Agreement

On-site fabrication and installation of components that are traditionally the work of members of the various building trades Unions signatory to this Agreement will continue to be recognized as such. If done off-site, it is the Parties' intent that such fabrication will be performed whenever possible by fabricators located in the Puget Sound area who pay their workers not less than the current King, Snohomish or Pierce County Washington prevailing wage for the appropriate classification.

The Unions, signatory to this Agreement, recognize that the timely completion of this Project is vital to the Port of Seattle and the Community it is intended to serve. Therefore, if the nature of the work, the Project schedule, or contracting circumstances make it necessary to obtain fabrication under conditions different than those described above, the Union(s) affected agree to meet and confer with the Contractor to discuss the reasonable needs of the Project. The Contractor and the Union(s) affected agree to discuss any other circumstances affecting off-site fabrication contracting purchases, and any reasons making it necessary to depart from the intention set forth above. The Union(s) affected agree to install on-site any components fabricated pursuant to the terms of this letter without limitation. The Parties will make every effort to keep an open channel of communication to insure that both parties are fully informed of the facts affecting the substance of this letter.

Date and Signature:

Stephen P. Metruck
Executive Director
Port of Seattle

Signatory Unions:

Letter of Understanding
Between
Teamsters Local Union No. 174
And
The Port of Seattle for
Project Labor Agreement

Whereas: The work of truck drivers is unique in the execution of the Project Labor Agreements (PLA) in that much of the work is performed off site, and;

Whereas: It is the intent of the Parties through this LOU to address owner operators performing truck driving work in the execution and within the scope of this PLA:

Therefore: It is agreed that classifications of work performed by truck drivers that are within the jurisdiction of Teamsters Local Union No. 174 (“Local 174”) and performed in the execution and within the scope of this PLA, is to be paid the current prevailing wage subject to the following additions and stipulations:

1. Article 2, applies with full force and effect to all Contractors and Subcontractors of whatever tier who have been awarded contracts related to the work of truck drivers that is performed in the execution and within the scope of this PLA. Thus, all such Contractors and Subcontractors must, among other things, comply with the requirement set forth in Article 16, Section 1, 2, 3 and 4, all truck drivers who perform work within the scope of this PLA shall be dispatched by Teamsters Local 174, except insofar as limited by the other provisions of Article 16.
2. The term “employee,” as used in Article 16, is defined for the purposes of this Letter of Understanding to include any person who is performing the work of a truck driver in the execution and within the scope of this Project, unless modified by the terms of this LOU.
3. At the request of any Contractor or Subcontractor, that Contractor or Subcontractor may choose to utilize as persons performing the work of truck drivers on this Project persons who are already in possession of or who wish to provide their own vehicles (hereafter, “owner-operators”). Use of owner-operators is governed by the following rules:
 - 3.1. Pursuant to the requirements of Article 16, Section 1, 2, 3 and 4, owner-operators working on the Project must be dispatched by Teamsters Local 174.

Project Labor Agreement

- 3.2. Owner-operators will receive a compensation package equivalent to the prevailing wage that is applicable to all other workers who are dispatched by Local 174 to the Contractor or Subcontractor regardless of tier. Owner-operators will also be reimbursed at the rates established by Local 174 and approved by the Port for the use of owner-operator vehicles such rates shall be based on and shall not exceed the area standard for fair market value for the use of the equipment.
- 3.3. For the purposes of this Letter of Understanding, an owner-operator is defined by WAC 296-127-026.
- 4. For the purpose of clarification of this document, if an Owner Operator should expand their business opportunities and acquire workers working on the Project, apprenticeship goals contained in the PLA will apply.

Port of Seattle

Teamsters Local 174

Stephen P. Metruck
Executive Director
Port of Seattle

Carl Gasca
JC-28 Construction Chair

Date

Date

1
2
3
4 **ORDER NO. 2024-14**
5 **AN ORDER OF THE PORT OF SEATTLE COMMISSION**

6
7 ...to examine how enhanced healthcare benefits for SEA
8 workers impact worker safety, attraction, retention, and/or
9 other business-related outcomes at the airport.

10
11 **PROPOSED**
12 **DECEMBER 10, 2024**

13 **INTRODUCTION**

14
15
16 This order aims to examine how enhanced healthcare benefits for non-government SEA workers
17 contributes to improved safety, better worker retention, smoother airport operations, world-class
18 customer service, and other positive business outcomes, thereby advancing the airport's goal of
19 achieving a five-star Skytrax rating and otherwise increasing the airport's competitiveness.

20
21 The order follows a phased approach designed to first study the effects of healthcare benefits on
22 business outcomes (Phase 1). If this study finds that enhanced healthcare benefits are beneficial to
23 these business outcomes, Phase 2 would be the development of a Commission policy directive for
24 implementing requirements to ensure that these non-government SEA workers have access to
25 family health insurance as required by the policy.

26
27 This is a significant undertaking. As of December 2023, 21,321 non-government badged workers
28 were employed at the airport. Attracting and retaining entry-level workers remains a significant
29 challenge nationwide, and SEA Airport is no exception. To achieve its business goals in spite of
30 this ongoing issue, the Port of Seattle has made it a priority to ensure that SEA jobs spanning from
31 airport dining and retail to baggage handling and customer service are quality jobs.

32
33 The origins of this order can be traced to previous Commission and stakeholder input, including
34 insights from a May 2023 Roundtable on Employee Recruitment and Retention, where healthcare
35 benefits were highlighted as a critical factor in worker recruitment and retention, and April and
36 May 2024 Airport Workforce Conditions Ad Hoc Committee discussions on healthcare benefits
37 at the airport. The Committee's guidance is currently being advanced by a dedicated staff working
38 group.

39
40 **TEXT OF THE ORDER**

41
42 The Port Commission hereby orders the Executive Director to complete the following tasks in a
43 phased approach:

44 Phase 1: Study and Analysis (Q4 2024 – Q2 2025)

- 45 1. Review airport worker healthcare benefit policies at major airports across the country, identify
46 key trends, outcomes, and best practices. This review shall identify the scope and impact of
47 other airports’ practices and policies, and any exemptions or special provisions to their policies,
48 as well as applicability of those practices at SEA.
49
- 50 2. Survey healthcare benefits currently provided to SEA workers in Q1 2025. This survey shall
51 engage both SEA workers and employers and shall include questions related to how these
52 healthcare benefits may impact business outcomes.
53
- 54 3. Determine any correlation between levels of healthcare benefits and worker retention and
55 attraction, safety, and other business outcomes at SEA.
56
- 57 4. Provide a comprehensive report on the findings above to the Commission by Q2, 2025.
58

59 The Executive Director is authorized to hire a qualified consultant to assist in the completion of
60 any of the above tasks.

61 Phase 2: Development of a Commission Policy Directive to Guide Implementation of Healthcare
62 Access Program (Q3 2025 – Ongoing)
63

- 64 1. Contingent on findings regarding the impact of health care on business outcomes at SEA, the
65 Port Commission shall develop a Commission Policy Directive to guide the Executive
66 Director’s development and implementation of healthcare requirements. This policy directive
67 may include consideration of the relative size of airport employers, healthcare requirements
68 adopted by other airports, and reporting requirements.
69

70 The Commission also authorizes a budget of up to \$60,000 for outside legal counsel guidance in
71 the development and implementation of this Commission Order and any follow-up Commission
72 Policy Directive.
73

74 **STATEMENT IN SUPPORT OF THE ORDER**
75

76 It is the intent of the Commission to take a phased approach in exploring whether and how
77 enhanced healthcare benefits may contribute to improved worker retention, safety, operational
78 efficiency and customer satisfaction at SEA. Phase 1 will gather the necessary data and analysis
79 to inform the Commission’s decision on whether to move forward with Phase 2, where the Port of
80 Seattle would develop a Commission Policy Directive to develop and implement healthcare
81 requirements for airport employees.

82 This exploration will draw on both local data and national best practices. By evaluating the impacts
83 of these benefits on key business outcomes such as safety, worker retention, operational efficiency
84 and customer satisfaction, the Commission aims to make informed decisions that will strengthen
85 SEA’s position as a leading airport both in terms of passenger service and worker quality.



COMMISSION

AGENDA MEMORANDUM

ACTION ITEM

Item No.	10c
Date of Meeting	<u>December 10, 2024</u>

DATE: December 3, 2024

TO: Stephen P. Metruck, Executive Director

FROM: Pearse Edwards, Senior Director, External Relations
Rosie Courtney, Senior Manager, Maritime Engagement

SUBJECT: Port of Seattle - Friends of the Waterfront Park Memorandum of Understanding Authorization

Amount of this request: \$5.0 million

ACTION REQUESTED

Request Commission to direct the Executive Director to execute a Memorandum of Understanding that establishes a strategic relationship between the Port of Seattle (“Port”) and the Friends of the Waterfront (“Friends”) and commits Port funding of \$5,000,000 over five years for the activation of Port facilities from Pier 66 to Pier 69, plus two signature sponsorships annually. The agreement with Friends presents a generational opportunity for the Port to partner with Friends in the re-development of the central waterfront to highlight the Port’s innovative programs that underscore the importance of the maritime industry and maritime career opportunities, as well as promoting awareness of the Port’s tourism-facing facilities along with youth training and workforce opportunities in the maritime economy. The agreement aligns with and supports the Port’s Century Agenda values and goals of increasing tourism, training, job creation, and equity, diversity, and inclusion.

EXECTUTIVE SUMMARY

The Port has invested in Seattle’s central waterfront for decades. In the late 1990s, as part of its economic development strategy and mission to foster maritime uses, the Port’s waterfront planning included moving its headquarters from its original address at Pier 66 to a former cannery at Pier 69 in 1994. Pier 66 then became the focus of an 11-acre mixed-use development that spanned the waterside and uplands. The waterside complex with its recreational marina, international conference center, museum, restaurants, cruise terminal, public plaza and rooftop viewpoint was named Bell Street Pier in tribute to the Port’s first wharf. The Port-developed uplands included office and retail space with the World Trade Center Seattle as its anchor and two parking garages. To spur private development in the corridor, the Port offered additional

Meeting Date: December 10, 2024

uplands parcels which resulted in the Waterfront Landings residential units and the Seattle Waterfront Marriott Hotel.

The Port’s leadership to create a thriving waterfront continued as the community rallied to remove the Alaskan Way Viaduct and create a world-class shoreline connected to the Port’s development at the north end. In August 2013, the Port and the Washington State Department of Transportation (WSDOT) entered into an agreement for a Port contribution of \$281 million to the Viaduct Replacement Program to achieve the best balance of retaining and creating jobs, sustaining regional economic vitality, and benefiting the environment. Other direct funding to the waterfront redevelopment includes the Port’s investment in the Seattle Aquarium’s Ocean Pavilion featuring the Port Sound exhibit. Visitors learn about the unique features of Puget Sound and the connections the Pacific Ocean provides between people, commerce and communities. Visitors also learn about the impacts of underwater noise and how the Port is working to address these challenges through policy and innovation.

Major Port investments in the central waterfront include:

\$281 million	Viaduct Replacement Program (2013)
\$5 million	Seattle Aquarium Ocean Pavilion with Port exhibit (2024)

In August 2023, a private donation of \$45 million driven by Melinda French Gates and MacKenzie Scott established the Elliott Bay Connections project to connect, restore and revitalize public parks along the Elliott Bay waterfront from Pier 62 (just north of the Seattle Aquarium) to The Beach at Expedia Group.

Earlier this year, Friends approached the Port about being a partner in their work to revitalize Seattle’s waterfront. Port staff, under the direction of Executive Director Metruck, worked with Friends to ensure any Port investment in the waterfront revitalization project, focus on the north end of the waterfront at Port properties between Pier 66 and Pier 69 and including World Trade Center Seattle

PORT-FRIENDS STRATEGIC PARTNERSHIP AGREEMENT

The Memorandum of Understanding between the Port and Friends to activate the north end of Seattle’s waterfront is focused on four core areas:

Meeting Date: December 10, 2024

1. Economic Development – Friends will support the Port’s workforce development work by promoting events through its platforms and networks (e.g. job fairs) and support small business and vendor opportunities, and educational opportunities for youth, tribes, and diverse communities as part of activations at Pier 66, Pier 69 and World Trade Center Seattle.
2. Marketing Port Properties – Inclusion of Port properties in Friends marketing materials and marketing of events on Port properties.
3. Development and execution of events – Friends will collaborate with the Port to curate and produce at least three events per year to activate the Pier 66 rooftop plaza, central plaza, pier apron and other Port properties along the waterfront. Friends shall provide in-kind service to plan, market, and produce the events. One event will be a family-friendly winter activation.
4. Sponsorships – Friends will collaborate with the Port to identify two significant Port sponsorships per year for signature waterfront events. Sponsorships will provide the Port with public visibility through logo placement, speaking opportunities and an agreed upon number of tickets to each event. Sponsorships include a \$100,000 Bronze Level Grand Opening Season Partner Sponsorship beginning in Spring 2025 through Spring 2026 and a \$25,000 Pier Party sponsorship slated for July 2025.

Annual work plans and reports will be created by Friends for the Port. The Port and Friends will establish an internal work group to create, manage and deliver on elements of the Memorandum of Understanding. In addition, Friends commits to a Port representative on the Marketing and Communication Board Committee and a Port representative that will serve on the CEO Advisory Committee.

FINANCIAL IMPLICATIONS

The funding for the Port’s work with Friends is sourced from tax levy. The budget request of \$5 million for the next five years (2025 – 2029) will be distributed in the following tranches:

<u>DELIVERABLE</u>	<u>PAYMENT AMOUNT</u>	<u>INVOICE DELIVERY DATE</u>	<u>INVOICE DUE DATE</u>
Work Plan, due no later than December 20, 2024, with implementation of the plan no later than February 28, 2025	\$2,000,000	Delivered by Friends to the Port upon delivery of the Work Plan.	Paid by the Port to the Friends within 30 days of receipt of invoice.

Meeting Date: December 10, 2024

Progress Report on the first Work Plan, due no later than February 1, 2026	\$2,000,000	Delivered by Friends to the Port on or before February 1, 2026	Paid by the Port to the Friends within 30 days of receipt of invoice.
Final Report on the first Work Plan and draft of the second Work Plan, due no later than February 1, 2027	\$750,000	Delivered by Friends to the Port on or before February 1, 2027	Paid by the Port to the Friends within 30 days of receipt of invoice.
Progress Report on the second Work Plan, due no later than November 1, 2027		N/A	N/A
Final Report on the second Work Plan, due February 1, 2028	\$250,000	Delivered by Friends to the Port on or before February 1, 2028	Paid by the Port to the Friends within 30 days of receipt of invoice.

ATTACHMENTS TO THIS REQUEST

- 1) Memorandum of Understanding between the Port of Seattle and Friends of the Waterfront
- 2) Port of Seattle Presentation
- 3) Friends of the Waterfront Presentation

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

June 25, 2024 – Commission Briefing on waterfront projects including Friends of the Waterfront, City of Seattle redevelopment projects, and Elliott Bay Connections.

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE PORT OF SEATTLE AND FRIENDS OF WATERFRONT PARK
REGARDING A STRATEGIC RELATIONSHIP**

FOR THE FUTURE DEVELOPMENT AND ACTIVATION OF SEATTLE’S WATERFRONT

This Memorandum of Understanding (the “Agreement”) is made and entered into by and between the Port of Seattle, a municipal corporation of the State of Washington, hereinafter referred to as “the Port,” and Friends of Seattle Waterfront d/b/a Friends of Waterfront Park, a public benefit 501(c)(3) non-profit corporation of the State of Washington, hereinafter referred to as “Friends.” The Port and Friends are also referred to in this Agreement collectively as “the Parties,” and individually as a “Party.”

BACKGROUND

WHEREAS, The Seattle waterfront is undergoing a major transformation associated with the removal of the Alaskan Way Viaduct and the City’s Waterfront Seattle Program, which includes construction of a new Waterfront Park, a new Alaskan Way, and related amenities and improvements (collectively, referred herein as the “Waterfront Seattle Program”), which will attract increased visitors; and

WHEREAS, in 2012, Friends was incorporated as a non-profit organization to champion the Waterfront Seattle Program through outreach initiatives; to raise funds necessary for the City to complete construction of the Waterfront Seattle Program elements; and to ensure the Central Waterfront’s long-term success as a vibrant public destination through Friends’ ongoing operation, activation, and programming under separate agreements with the City; and

WHEREAS, The Port and Friends are building a collaborative partnership as the Waterfront Park is scheduled to open in 2025 as a major destination for tourists and residents alike, providing an opportunity to activate the Port’s Pier 66 with Friends highlighting the waterfront and the role of the Port in our city.

WHEREAS, On December 10, 2024, the Port of Seattle Commission adopted Order Number 10c, which directs the Port’s Executive Director to develop and execute an Agreement that establishes a strategic relationship between the Port and Friends, and commits Five Million Dollars (\$5,000,000) from the Port to be applied toward the cost of supporting Friends’ operation and management of the Waterfront Park and implementation of the Pier 66 activation

WHEREAS, The Port of Seattle has authority under Title 53 of the Revised Code of Washington (“RCW”), including RCW 53.08.245, RCW 53.08.255, and other federal, state, and local laws, including to engage in tourism, promotion of Port facilities, and economic development and workforce development programs in Port-related industries; and

WHEREAS, Encouraging tourism is an important component of the Port’s economic development strategy; and

WHEREAS, The Port and Friends share values that include attracting tourism, expanding economic development, workforce development, and equity; and

WHEREAS, The Port operates facilities in close proximity to the Seattle Aquarium and the new Waterfront Park, including the Bell Harbor International Conference Center, public marina, and cruise ship terminal at Pier 66, which attract significant public interest and are visited by thousands of residents from throughout the region and visitors from around the country and internationally; and

WHEREAS, An increase in tourism will have a direct benefit to Port facilities and businesses; and

WHEREAS, The ongoing implementation of the Waterfront Seattle Program presents a generational opportunity for the Port to partner with Friends in the re-development of the central waterfront to highlight the Port’s innovative programs that underscore the importance of the maritime industry and maritime career opportunities, as well as promoting awareness of the Port’s tourism-facing facilities and future youth training and workforce opportunities in the maritime economy; and

WHEREAS, The Port adopted its Century Agenda in 2012 and updated it in 2017 and 2020 to establish its strategic vision for its future. This Agreement and the relationship it establishes among Friends and the Port supports the Port’s Century Agenda values and goals of increasing tourism, training, job creation, and equity, diversity, and inclusion.

AGREEMENT

NOW, THEREFORE, in light of the foregoing recitals, which are fully incorporated into this Agreement, and in consideration of the mutual covenants of the Parties contained herein, the Parties agree as follows:

1. PURPOSE

This Agreement establishes an agreement between the Port and Friends to develop a strategic relationship that focuses on matters of common interest including: 1) tourism and economic development; 2) workforce development; 3) equity, diversity, and inclusion; and 4) development and curation of programming by Friends including marketing, which will, among other things, highlight the Port’s innovative programs to enhance and protect the maritime environment and promote awareness of the Port’s maritime facilities.

2. SCOPE OF WORK

The Parties agree to perform the work described in this Section 2:

A. Biennial Work Plans—The Parties, under Friends’ direction and leadership and with the Parties’ mutual approval, will create and implement at least two biennial work plans (each, a “Work Plan”) on matters of common interest related to the Parties’ missions and values with respect to the Waterfront. A Work Plan may include a variety of projects, including but not limited to, waterfront events, development of promotional materials, community outreach, job fairs, and waterfront placemaking and activation. The first Work Plan will be developed by December 20, 2024, and will

be implemented between February 28, 2025 and December 31, 2026. The second Work Plan will be developed during 2026 and implemented between January 1, 2027 and the expiration of the Term. Except as otherwise provided for in this Agreement, Friends shall convene the Parties to create the Work Plans and Friends shall promote the activities that result from said Work Plans.

B. Organizational Updates, Work Group, Marketing and Communications Board Committee, and CEO Advisory Committee.

i. Organizational Updates. Upon fourteen (14) days' notice by either Party, but no more than one time per quarter per Party, each Party will make a representative available to attend the requesting Party's internal meeting to provide updates on matters related to this Agreement, including Port of Seattle Commission and/or Friends board of directors briefings as appropriate.

ii. Work Group. Each Party will assign representatives, to sit on a Work Group, which will meet no more than three times per year (unless additional meetings are mutually agreed upon) to determine opportunities to partner and implement the agreed-to projects. In addition, the Work Group will collaborate on an annual briefing with leadership from each Party to review progress and deliverables and provide an opportunity for leadership to review the overall strategic partnership.

iii. Marketing and Communications Board Committee. The Port shall assign a representative to the Friends' Marketing and Communications Board Committee, which shall meet at least five times a year.

iv. CEO Advisory Committee. Friends will convene a CEO Advisory Committee that will meet twice a year starting in 2025. The Port shall have one representative on this committee.

C. Economic Development— Friends and the Port will explore opportunities to expand workforce development opportunities, such as job fairs, that promote transportation careers, small businesses and vendor opportunities along the waterfront, and educational opportunities for youth, tribes, and diverse communities.

D. Port-Related Marketing Materials—Friends will identify Port facilities on the waterfront, including Pier 66, Pier 69, Bell Harbor Marina, the World Trade Center in public presentations and materials produced by Friends describing the waterfront. In addition, Friends will promote all Events on Port Waterfront Property (as hereinafter defined) identified in the adopted Work Plans on its website and other digital outlets, including social media sites. Friends' obligations in this Section 2.D. will be performed with commercially reasonable efforts and when feasible and appropriate, as determined in consultation with the Port, and through the Friends' Marketing and Communications Board Committee.

E. Waterfront Activations—

i. Beginning with the Work Plan developed on December 20, 2024, and continuing during each full calendar year during the Term, Friends will collaborate with the Port to activate the Pier 66 rooftop plaza, Pier 66 public plaza, the Pier 66 apron, and other Port property along the Seattle downtown waterfront ("Port Waterfront Property")

by planning, marketing, and producing at least three events per year (each, a “Pier 66 Activation Event”) and a family friendly winter activation (collectively, “Events”).

- ii. Friends will use commercially reasonable efforts to curate each Event to provide experiences appropriate to diverse communities. Friends shall provide in-kind services to plan, market, and produce the Events. Friends will draft an event plan for each Event describing (i) the Event, (ii) the marketing plan, and (iii) the production responsibilities and scope of work (each an “Event Plan”). Friends will submit a draft of the Event Plan to the Port and the Port will timely review and approve or state its reasons for disapproval and inform Friends thereof. The Event Plan will indicate whether the Event will allow member of the public to use the applicable portion of the Port Waterfront Property without charging a fee of any kind or whether there will be a charge for tickets or other access rights. The Event Plan also will describe any plans by Friends to generate and retain revenue therefrom.
- iii. In connection with the development of each Event Plan, the Port will grant Friends a license to use the relevant portions of the Port Waterfront Property for the Events. Such licenses shall be on the Port’s standard license form, and will be customized to account for the specific details associated with each Event. Each such license shall also stipulate the insurance coverage requirements for Friends and its vendors associated with that particular event.
- iv. The Port shall fund all direct Event costs, including but not limited to, artist and contractor fees, production equipment rentals, utilities, event labor and permits. Friends shall contract with artists, contractors, and other vendors, which may include CHI, directly and shall pay such contract obligations directly. Friends shall timely submit invoices to the Port and the Port shall timely reimburse such costs.
- v. Friends may earn revenue from the Events provided that the generation and retention of such revenue is consistent with the Port’s legal obligations and regulations. The Port will promptly inform Friends whether Friend’s plan to generate and retain revenue from Event, as described in the Event Plan, is consistent with the Port’s legal obligations and regulations. Friends and the Port shall each cover the costs of its employees to plan and produce the Events alongside each other
- vi. Friends acknowledges that the Port has contracted with Columbia Hospitality, Inc. (“CHI”) to provide food, beverage, and/or other hospitality services at events at Port properties such as the Events for a period of time that includes the Term of this Agreement. Furthermore, the Port contract with CHI names CHI as the exclusive food and beverage provider at the Pier 66 roof top deck, Pier 66 public plaza, and Pier 66 apron. As such, all food and beverage needed to support Events at the aforementioned locations must first be offered to CHI to manage. The Port will notify CHI in a timely manner of each the Events and the opportunity to provide hospitality

services at such Event. The Port will subsequently notify Friends in a timely manner if CHI, elects, pursuant to its contract with the Port, not to provide such hospitality services. In such event, Friends may provide, or seek vendors to provide, such hospitality services and may retain any net revenues resulting therefrom.

F. Sponsorships –

Friends will provide the Port with a \$100,000 Bronze Level Grand Opening Season Partner Sponsorship for the period beginning in Spring 2025 and ending Spring 2026. (This sponsorship relates the opening of the Waterfront Park generally and is not limited to the Events on the Port’s Waterfront Property described in the Agreement.) This sponsorship includes exclusive recognition and benefits for one of four programs and activation categories to be determined collaboratively by Friends and the Port. This sponsorship also includes a sponsorship of a Pier Party slated in July 2025 and 10 tickets to that Pier Party. (This feature of the Bronze Level Sponsorship is valued alone at \$25,000). This July 2025 Pier Party will be the largest Friends event to celebrate the opening year of Waterfront Park, raising funds and awareness about the critical work of the Friends. Bronze Level Sponsorship includes recognition and select logo placement on marketing and promotion efforts, including but not limited to: newsletter (approximately 11,000 subscribers), website, social media (approximately 30,000 followers), press releases, and any print materials related to the categories of sponsorship, in addition to Pier Party promotions.

3. PERIOD OF PERFORMANCE

The Term of this Agreement (“Term”) shall be five years commencing from the last signature date of the Agreement unless terminated earlier in accordance with this Agreement. The Parties will submit and/or present a project status report to their respective governing bodies annually at a time of mutual agreement if determined to be necessary by the Parties.

4. FUNDING AND DELIVERABLE SCHEDULE

The Port shall contribute \$5,000,000 to the Friends of Waterfront Park Capital Campaign, in accordance with the payment schedule to provide biennial work plans, expand workforce development activities, develop Port-related marketing materials, activate Port properties along the waterfront, and provide sponsorship opportunities. The Parties shall deliver the Deliverables identified below pursuant to the schedule below. The Port’s payment obligations under this Section 4 are subject to the Port’s review and approval of the associated Deliverables.

<u>DELIVERABLE</u>	<u>PAYMENT AMOUNT</u>	<u>INVOICE DELIVERY DATE</u>	<u>INVOICE DUE DATE</u>
Work Plan, due no later than December 20, 2024, with implementation of the plan to commence no later than February 28, 2025	\$2,000,000	Delivered by Friends to the Port upon delivery of the Work Plan.	Paid by the Port to the Friends within 30 days of receipt of invoice.

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Work Plan progress and final reports will include a narrative describing the Parties’ progress on projects included in the current Work Plan since the last report.

Under no circumstances shall the Port’s total payment to Friends under this Agreement, except for direct expense reimbursements as described in 2.E Waterfront Activations, exceed \$5,000,000.

5. RECORDS RETENTION AND AUDIT

During the progress of the work on the Project and for a period not less than six (6) years from the date of the completion of the Project or final payment by the Port to Friends, whichever is later, the records and accounts pertaining to the Project and accounting thereof are to be kept available for inspection and audit by the Port and Friends, and each Party shall provide the other Party with copies of all records, accounts, documents, or other data pertaining to the Project upon the such other Party’s request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claims, or audit findings have been resolved, even though such litigation, claim, or audit continues past the typical six-year retention period. This provision is not intended to alter or amend records retention requirements established by applicable state and federal laws.

6. INDEPENDENT CAPACITY; LIMITATIONS

The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party.

7. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

8. TERMINATION FOR CONVENIENCE

This agreement is not terminable by any Party for convenience.

9. TERMINATION FOR CAUSE

If a Party does not fulfill in a timely and proper manner its material obligations under this Agreement, or if any Party materially violates any of these terms and conditions, the aggrieved Party will give the other Party written notice of such failure or violation. The responsible Party will be given the opportunity to correct the violation or failure within fifteen (15) business days. If such violation or failure is not reasonably curable within 15 business days, then the responsible party will be given the opportunity to commence such cure within 15 business days and shall diligently proceed to complete the cure within a reasonable time. If failure or violation is not corrected to the aggrieved Party's reasonable satisfaction in a timely fashion as described in the preceding sentence, then this Agreement may be terminated immediately by written notice of the aggrieved Party to the other Party.

Notwithstanding anything in this Agreement to the contrary, in no event shall a Party be liable to any other Party for breach of this Agreement as a result of a failure to perform or for delay in performance of any provision of this Agreement if such performance is delayed or prevented by a force majeure event. The term "force majeure event" means any event reasonably beyond the affected Party's control, whether unforeseen, foreseen, foreseeable, or unforeseeable and without the fault or negligence of the affected Party, including, but not limited to, events of nature, labor or civil disruption, orders of any court or governmental agency having jurisdiction of the Party's actions, pandemics or epidemics (including, without limitation, the COVID-19 pandemic), acts of war or terrorism, civil or military disturbances, or acts of God. The affected Party shall make all reasonable efforts to promptly resume performance of this Agreement and, when able, to resume performance of its obligations and give the other Party written notice to that effect.

10. DISPUTES

The designated representatives under Section 18, NOTIFICATION, shall use their commercially reasonable best efforts to resolve disputes between the Parties. If the designated representatives are unable to resolve a dispute, then the matter shall be reviewed by the senior executive officer of each Party or his or her designee. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

11. GOVERNANCE

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The King County Superior Court in Seattle, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

12. ASSIGNMENT AND THIRD-PARTY BENEFICIARIES

This Agreement is not assignable or delegable by any Party in whole or in part, without the express prior written consent of the other Party. Nothing in this Agreement is intended to, nor shall be construed to give any rights or benefits in the Agreement to anyone other than the Parties, and all

duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Parties and not for the benefit of any third party.

13. INDEMNIFICATION

Each Party to this Agreement will be responsible for the negligent acts or omissions of its own employees, officers, or agents in the performance of this Agreement. No Party will be considered the agent of the other Party and no Party assumes any responsibility to the other Party for the consequences of any act or omission of any person, firm, or corporation not a party to this Agreement. To the maximum extent allowed by law, each Party shall protect, defend, indemnify, and save harmless each other Party, their officers, officials, employees, and agents, while acting within the scope of their duties, employment, or agency from any and all costs, claims, judgments, penalties, and/or awards of damages, to the extent arising out of or in any way resulting from that Party's own negligent acts or omissions in connection with performance of activities under the terms of this Agreement.

The Port and Friends agree that their respective obligations under this Section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the Parties, by mutual negotiation, hereby waive, with respect to the other Party only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW, and all other applicable Industrial Insurance/Worker's Compensation Acts or their equivalent in the applicable jurisdiction. Further, the indemnification obligations under this Agreement shall not be limited in any way by any limitations on the amount or type of damages, compensation, or benefits payable to or for any third party under Worker's Compensation Acts, Disability Benefit Acts, or other Employee Benefit Acts.

Each party's obligation to defend and indemnify the other parties under this Section 13 shall not operate as a waiver of any party's right to assert immunity from liability for any claim under the Outdoor Recreational Land Use Immunity Statute, RCW 4.24.210, as currently existing or hereafter amended, and each Party reserves the right to assert immunity from liability. If the immunity is determined by a court of competent jurisdiction to be inapplicable, then the provisions of this Section 13 shall remain in full force.

In compliance with RCW 4.24.115 or any successor provision, all provisions of this Agreement pursuant to which any Party ("Indemnitor") agrees to indemnify the other Party (each an "Indemnitee") against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate (a) shall not apply to damages caused by or resulting from the sole negligence of the Indemnitee, its agents, contractors or employees, and (b) to the extent such damages are caused by or resulting from the concurrent negligence of Indemnitee's agents, contractors or employees, such agreement to indemnify shall apply only to the extent of the Indemnitor's negligence.

If the Port or Friends incurs any reasonable fees, expenses, and costs arising with respect to a judgment and/or award enforcing this Agreement, including attorneys' fees, then all such reasonable fees, expenses, and costs shall be recoverable by the prevailing Party.

Notwithstanding anything to the contrary contained herein, and except for the third-party indemnification obligations set forth above, no Party shall be responsible for payment to the other Party for consequential, special, or punitive damages in any way arising from this Agreement or any claim of breach or failure under this Agreement.

This indemnification shall survive the termination of this Agreement.

14. WAIVER

A failure by a Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the waiving Party and duly acknowledged by the other Party.

15. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

16. ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

17. CONSENT OR APPROVAL

Whenever a Party's consent or approval in writing to any act to be performed by the other Party is required under this Agreement, (a) the Party must obtain a consent or approval in writing expressly for purposes of this Agreement, regardless of whether a consent or approval shall have been granted by the a Party in its regulatory, public utility, or other capacity; and (b) unless otherwise expressly stated herein, such consent or approval may not be unreasonably withheld, conditioned or delayed.

18. NOTIFICATIONS

Any notice required or permitted to be given pursuant to this Agreement shall be in writing, and shall be sent postage prepaid by U.S. Mail, return receipt requested, to the following addresses unless otherwise indicated by the Parties to this Agreement:

To the Port:	Attn: Executive Director Stephen P. Metruck Port of Seattle 2711 Alaskan Way
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Seattle, Washington 98121

To Friends

Attn: President & CEO, Friends of Waterfront Seattle
Joy Shigaki
1201 Alaskan Way, Suite 200
Seattle, WA 98101

19. TIME IS OF THE ESSENCE. Time is of the essence in the performance of this Agreement.

[Signatures on next page]

EXECUTED BY THE UNDERSIGNED PARTIES effective as of the last date below.

Port of Seattle

Signature

Signature

Date

Date

Stephen P. Metruck
Executive Director

Friends of Waterfront Park

Signature

Date

Joy Shigaki
President & CEO

Item No. 10c
Meeting Date: Dec. 10, 2024



Friends of the Waterfront Park MOU

Pearse Edwards, Sr. Director, External Relations
Joy Shigaki, CEO, Friends of the Waterfront Park



Overview

A community partnership transforms Seattle's central shoreline and creates new downtown connections.

Elliott Bay Connections
Pier 62 – Expedia Campus

Seattle Aquarium
Ocean Pavilion



Removal of the
Alaskan Way
Viaduct



New roadway, waterfront promenade and new
East-West connections



Port Inspired Waterfront Change

1994 | Pier 69

Port Headquarters moved from P-66 to P-69 after restoring a former cannery.



1996 | Bell Street Pier

Former Port HQ since 1915, Port opened a new 11-acre mixed use development.

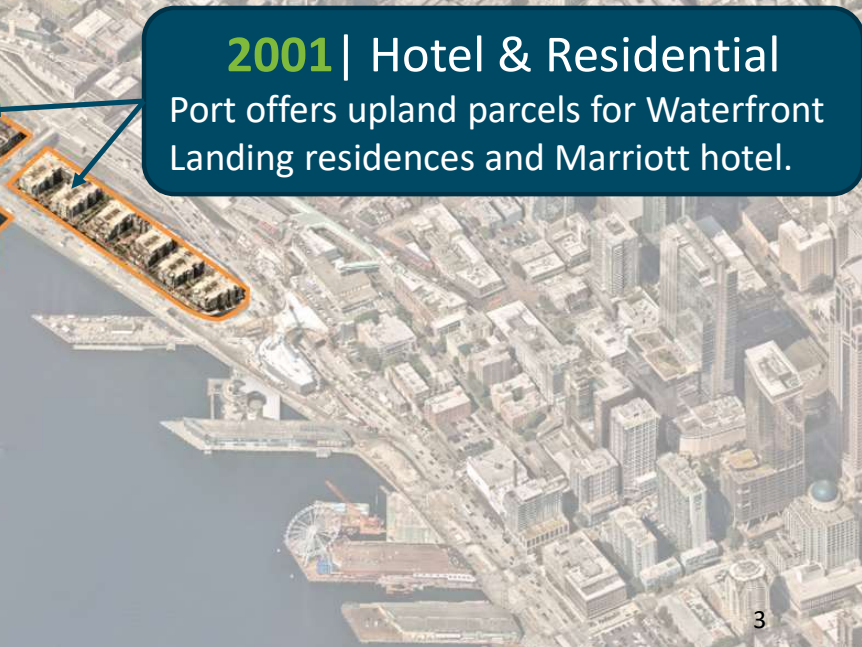


1998 | World Trade Center Seattle

Bell Street uplands developed into conference center, retail, parking garages and office space.

2001 | Hotel & Residential

Port offers upland parcels for Waterfront Landing residences and Marriott hotel.



200'

Bell Street Pier & Uplands Today



Port Supports Waterfront Partnerships



\$281 MILLION

Viaduct Replacement Program (2013)



\$5 MILLION

Seattle Aquarium includes a Port exhibit within Ocean Pavilion (2022)



PRIVATE DONATION

\$45 MILLION

Elliott Bay Connections project (2023)

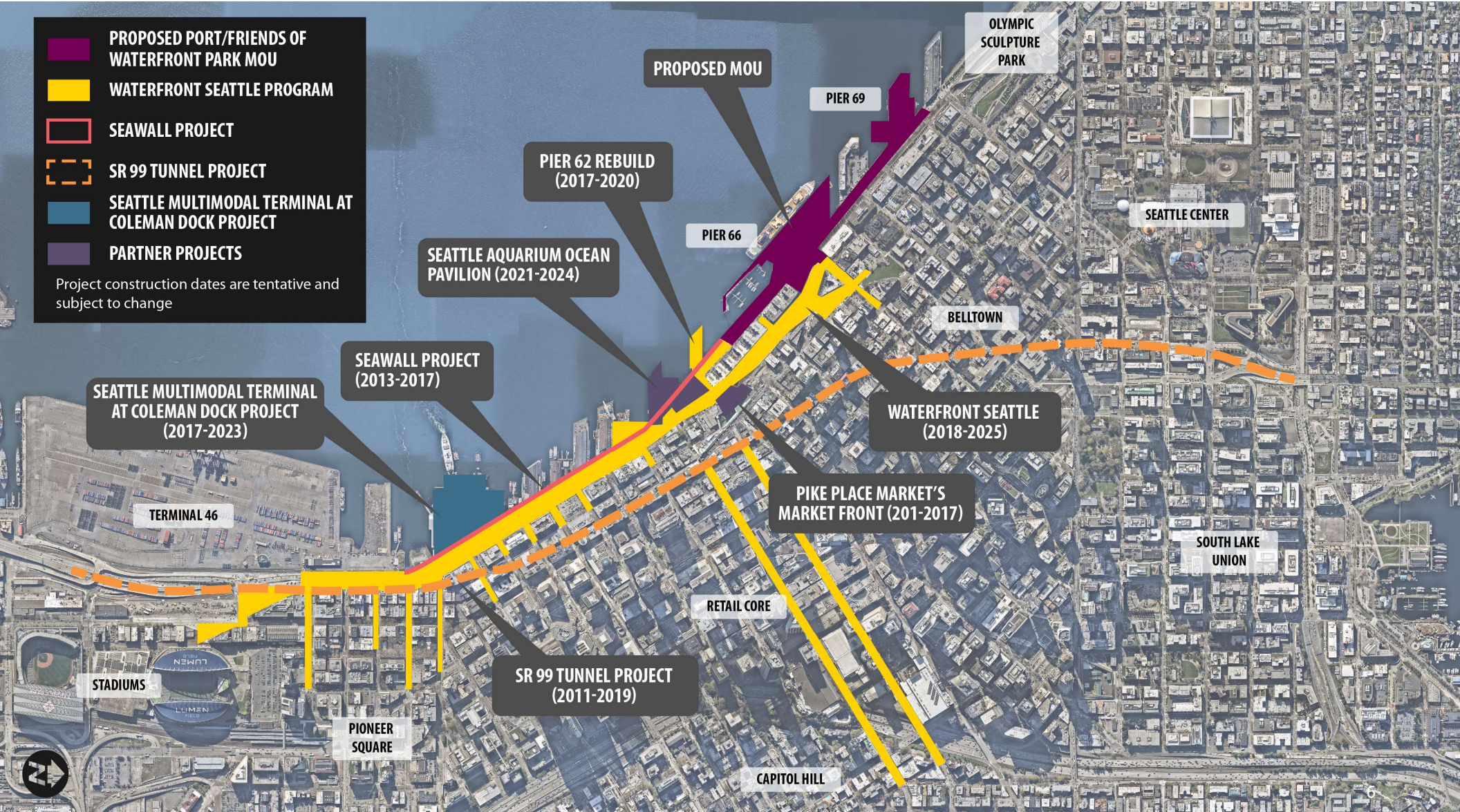


\$5 MILLION (PROPOSED)

Friends of Waterfront Park (2024)

- PROPOSED PORT/FRIENDS OF WATERFRONT PARK MOU
- WATERFRONT SEATTLE PROGRAM
- SEAWALL PROJECT
- SR 99 TUNNEL PROJECT
- SEATTLE MULTIMODAL TERMINAL AT COLEMAN DOCK PROJECT
- PARTNER PROJECTS

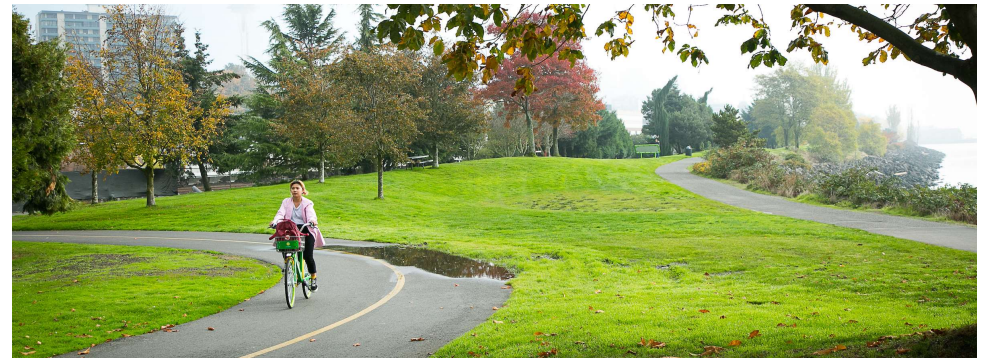
Project construction dates are tentative and subject to change



MOU Creates a Strategic Partnership



WORKFORCE DEVELOPMENT



MARKETS PORT PROPERTIES



NORTH WATERFRONT ACTIVATION



SIGNATURE SPONSORSHIPS

Pier 66 Activation



Maritime Festival at Pier 66, May 2013



Clipper Around the World Race

Waterfront Park: A World Class Civic Space for Seattle

Port of Seattle
December 2024



Friends of
Waterfront
Park

20 Acres Connecting City & Sound



Railroad Way

A tree-lined pathway connecting the waterfront to the stadiums.

Pioneer Square

Lush, green east-west connections to a historic neighborhood and peaceful Habitat Beach where visitors can touch the water.

Transit Piers

A link from the downtown core to ferries, water taxis, and Puget Sound.

Historic Piers

Featuring the Seattle Great Wheel, restaurants and shops, the historic piers offer year-round opportunities to eat, drink and play.

Central Public Space

The cultural hub of the waterfront ties together two iconic waterfront destinations, Pike Place Market and the Seattle Aquarium, with added space for activities and sweeping views.

Belltown

Connecting the waterfront to Olympic Sculpture Park, Bell Street Park, and an active neighborhood brimming with shopping, food, and nightlife.



Overlook Walk Opening in October 2024

Welcomed 12,000+ visitors opening day and over 50,000 visitors opening weekend

Friends of
Waterfront
Park

About Friends of Waterfront Park

Friends is a non-profit started in 2012.

Through a **dynamic private public partnership**, Friends is the organizational leader managing programming and activation, fundraising, park experience, and stewardship at Waterfront Park now and for generations to come.

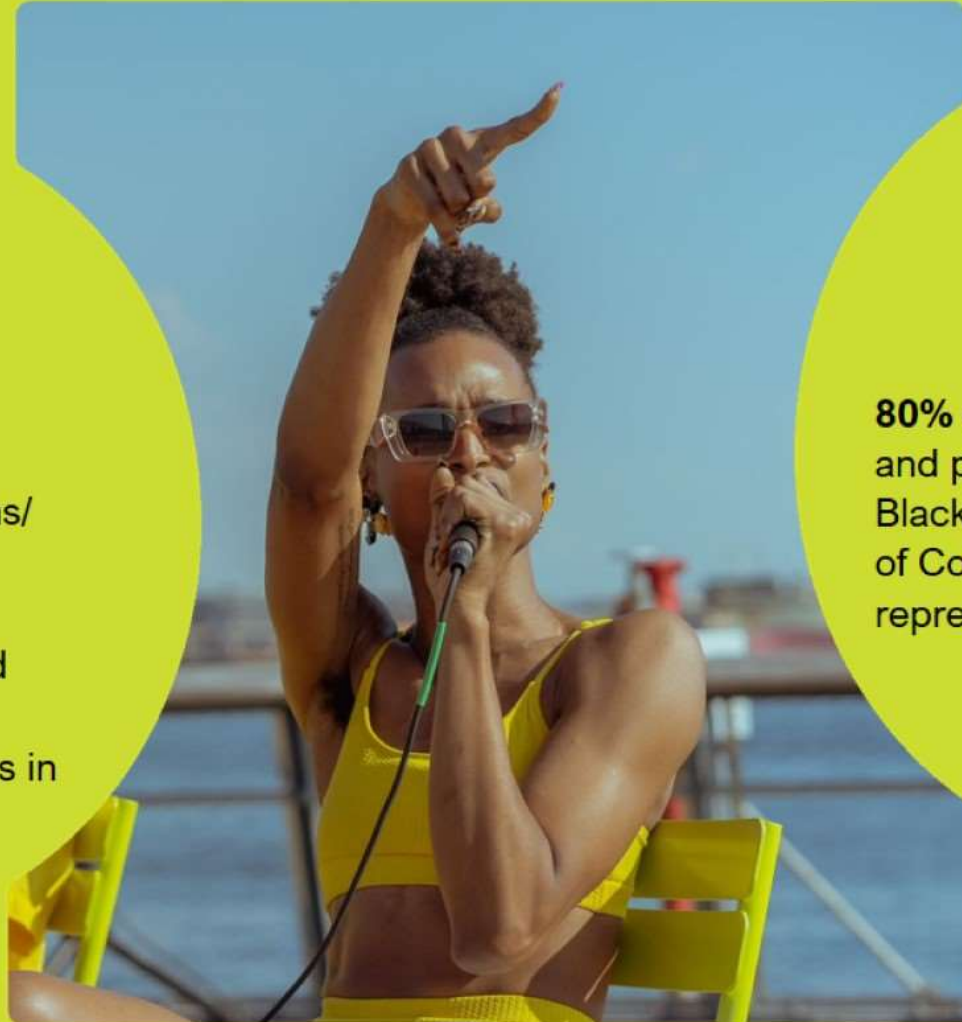
Our Approach: Working in partnership with the city, individuals, businesses, community organizations, donors, and institutions.

Friends of
Waterfront
Park



Programs & Impact

- **Over 200,000** in-person FREE program attendance
- **1.7 million visitors** since 2020
- **600+** total events and activations/
- **350+** artists, performers, & organizations
- **210** vendors (>65% women and minority owned)
- **1,298** visitor experience surveys in 2023/ 94% guests satisfied
- **New Cultural Masterplan** for Waterfront Park



80% of artists, performers, and program partners had Black, Indigenous, People of Color (BIPOC) representation

Campaign Progress

- Raised **\$160M (94%)** of the \$170M goal. All private funding
- Only **\$10M** left to raise by June 2025!
- Inviting the **FULL community** to be part of campaign
- In 2025, Friends move to **annual fundraising** and **earned revenue** to sustain the organization
- Funding goes directly to park
- **Partnership are critical** to manage, program and activate, resource and fundraise, and ensure a safe, clean and accessible park experience for all

Friends of
Waterfront
Park





Waterfront Park Grand Opening

- Grand Opening Weekend in **Spring 2025**. **250,000 estimated**
- **Historic moment** for the city and the region
- A **season of welcome** for residents and visitors to rediscover downtown. Include programs, activations, and tours
- **15 million** visitors estimated annually
- **Elevating partnership** - Port of Seattle
- **Bronze Level Grand Opening Season Sponsor** includes recognition and select logo placement on marketing and promotion efforts (*not limited to e-newsletter, website, social media press releases, and print materials*)



ON-GOING PARTNERSHIP PORT + FRIENDS

Year Round

- Waterfront Park will bring a world class experience
- **New destination** for residents and visitors
- Brings **year-round activations** along waterfront
- **Leverages Port's** assets and spaces
- Integrates our overall efforts

Ways to engage:

- **Holiday season activations and events** at Pier 66
(*eg: multicultural market, family roller skating*)
- Summer **recreation programs** at Pier 66
- Elevating and promoting **Port workforce development** fairs



**COMMISSION
AGENDA MEMORANDUM**

Item No. 10d

ACTION ITEM

Date of Meeting December 10, 2024

DATE: November 1, 2024
TO: Stephen P. Metruck, Executive Director
FROM: Nick Leonti, Director of Tourism Development
SUBJECT: **International Tourism Marketing Initiative**

Amount of this request: \$1,500,000
Total estimated project cost: \$1,500,000

ACTION REQUESTED

Request Commission authorization for the Executive Director to approve a contract with State of Washington Tourism designated for collaborative international tourism marketing efforts. This is a new version of a similar contract which expires at the end of 2024.

Request Commission authorization for the Executive Director to execute a joint marketing agreement with State of Washington Tourism (SWT), a state government agency, to promote international tourism to Seattle and Washington state in selected international markets for three years at the rate of \$500,000 per year for a total not to exceed \$1,500,000 and that the commission determine a competitive process is not appropriate or cost effective and exempt this contract from a competitive process consistent with RCW 53.19.020.

EXECUTIVE SUMMARY

This agreement bolsters the Port’s efforts to drive increased visitor-spending in connection with the Port’s aviation and cruise businesses as outlined in the Century Agenda. International tourism is a top priority for the Port of Seattle and its partner, State of Washington Tourism (SWT). Dollars spent in international markets return exponentially to the region to support jobs, businesses and the livelihoods of our communities.

Compared to its main competition for visitor-related dollars, Washington’s post-pandemic recovery has proven to be lagging behind. Regional tourism won’t fully recover until international travel fully recovers. SWT has one of the lowest-funded tourism offices in the entire country and the Port’s partnership allows our region to compete on a global scale. A strong partnership between these organizations is vital to achieve shared common goals in international tourism and boosts the region’s brand awareness in an increasingly competitive market.

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Not only do international visitors stay longer and spend more than their domestic counterparts, but they tend to visit during off-peak seasons including midweek dates which helps provide a more consistent stream of visitation. Plus, they explore both urban and rural destinations to help deliver the positive impacts of tourism across the region. We also target visitors who share Washington’s passion for its natural beauty and who will visit in a responsible fashion. Reestablishing and expanding Washington’s share of the international tourism market in is a top motivation for enhancing the Port/SWT partnership.

The Port and SWT share a vision and goals for driving international visitation through SEA to our region. Over the past two years, the international tourism marketing agreement between the two organizations has established a strong foundation upon which to continue to strengthen our presence in key markets.

REQUEST FOR COMPETITION WAIVER

As Washington’s official destination marketing organization, State of Washington Tourism (SWT) provides unique services and global positioning for the outlined international marketing activities. The Port and SWT have worked collaboratively to promote the region on a global scale with previous Port-funded initiatives (e.g., 2020’s Tourism Recovery Initiative and 2023’s International Tourism Marketing Agreement) which have helped establish the region’s tourism brand. There is no other statewide organization that can collaborate on this scale. Due to this unique relationship, we are requesting a competition waiver for this initiative.

JUSTIFICATION

This initiative supports Goal 2 of the Port’s Century Agenda: **Advance this region as a leading tourism destination and business gateway.** Through our international marketing efforts, we will increase brand awareness of our region, drive visitation, and strengthen SEA Airport’s global positioning.

The initiative will also support the Port’s EDI values by driving economic impact throughout the state, embracing responsible/sustainable practices and supporting WMBE both locally and abroad.

DETAILS

By working together on international marketing, the Port and SWT (in addition to Visit Seattle) maximize tourism’s positive impact in Seattle and the state of Washington. Cooperation between these organizations helps create more opportunities, reduce duplication of efforts and increase the ROI of our global marketing efforts.

The strength of the partnership is reflected in more impactful sales events, increased quality of fam tour attendees, further reach, more positive representation in the media and – ultimately – more passengers through SEA and more visitor-related spending throughout the state.

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The partnership brings value to all of Washington’s destinations by impacting the global tourism market in a much more significant way than the state’s industry partners could do on their own.

The organizations will work together to prioritize international markets. Key criteria to consider while analyzing a market’s potential include:

- Non-stop flights to SEA
- Impact of B2B travel trade marketing in market
- Visitor profile: vacation time, disposable income, responsible travelers
- Strength of cruise market
- Affinity for US travel
- Visa waiver status

International Marketing Strategy and Plan

Port of Seattle tourism staff is in constant contact with State of Washington Tourism to develop collective plans and strategies for generating international travel to Washington State. We evaluated our current efforts and used the criteria above to prioritize countries for international marketing efforts. Currently, the Port is represented by way of this agreement in Japan/South Korea, the UK/Ireland, Germany, Australia and France/Benelux.

The partnership with SWT provides a path to conduct sales missions, host familiarization tours, place advertising, attend trade shows, conduct trainings, promote responsible tourism and more in an effective and impactful manner.

As the three organizations with international reach, The Port, SWT and Visit Seattle have regular meetings to discuss strategies and opportunities. The organizations strongly hold the belief that no matter which organization takes the lead on a specific project, that the results benefit the entire partnership and – in turn – all of Washington. The previous version of this contract established a strong global foundation, this new version allows us to follow through on that potential and build upon that foundation.

Markets

The Port is currently represented via the SWT agreement with in-market agencies in:

- Japan
- South Korea
- United Kingdom/Ireland
- Germany
- France/Benelux
- Australia

The Port has its own marketing efforts in the Nordic region which SWT also collaborates on.

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Other potential markets for growth include:

- China
- India
- Mexico

Budget

The previous version of this agreement provided \$800k over two years. This new version expands the scope and increases the contract to \$1.5 million over three years – a \$100k per year increase. Through the first couple years of this contract, we learned how we can best work together and the \$100k increase is – essentially – the result of reassigning Port-only advertising funds into the contract so that we can work on those items together.

These marketing efforts include B2B marketing through tour operator co-ops, paid content, in-market activations, trainings, trade shows, fam hosting, media trips, and more.

The above totals will be further enhanced by Visit Seattle’s projected spend in international markets in 2025.

Industrywide ROI on tourism marketing has shown that the more you put in, the more you get out. For example, Brand USA reported an ROI of over \$23 per dollar invested in international tourism marketing pre-pandemic.

Scope of Work

The Port of Seattle (Port) and State of Washington Tourism (SWT) agree to work cooperatively and jointly to market Washington state as a destination for international travelers with a focus on driving the economic impact of SEA and cruise. The Port and SWT agree to work and coordinate efforts in order to achieve maximum possible benefits from the respective resources invested in tourism promotion. Based upon actual costs of proposed programs, market conditions or other marketing opportunities that arise in the year, actual projects may be adjusted. Agreed upon adjustments will be authorized by the Port.

The partnership will aim to:

- Educate the travel trade on Washington destination experiences, itineraries and new content.
- Prioritize increasing the economic impact of the Port’s aviation and cruise businesses.
- Build relationships that create loyalty among travel trade, media and other tourism producers.
- Inspire consumers to choose Washington as their vacation destination and SEA as their gateway.
- Promote the principles of responsible tourism especially as it relates to outdoor recreation.

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- Reflect the diversity and inclusivity of Washington throughout the program of work.
- Establish the partnership as the expert source for quality, reliable content.
- Support the full diversity Washington destinations and experiences to make the tourism economy work for all Washingtonians.
- Maintain a global presence to keep Washington at top-of-mind for the travel trade and consumers.
- Attract international visitors who will contribute to sustaining Washington’s infrastructure and resources.

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1) Do not approve an agreement with SWT.

Pros:

- Reduces specific budget request by up to \$1,500,000.

Cons:

- Eliminates the possibility of leveraging the collaborative efforts with SWT to drive visitor-related economic impact to Washington state.
- Erodes the Port’s leading role as a tourism advocate and economic asset for our region
- Negatively impacts visitor-related economic impact to the region

This is **not** the recommended alternative.

Alternative 2) - Work with SWT to implement a tourism promotion plan will increase international visitor travel and positively impact statewide tourism while promoting SEA International airport as a major US gateway. Total dollar amount, \$1,500,000.

Pros:

- No other organization has the ability, breadth or capability to deliver a national tourism marketing project for all of Washington state.
- By aligning with SWT, the POS will be leveraging both organizations’ funding which will allow for a stronger marketing plan and increased ROI.

Cons:

- Not applicable as no other organization has the ability, breadth or capability to deliver a national tourism marketing project for all of Washington state.

This is the recommended alternative.

FINANCIAL IMPLICATIONS

\$1,500,000

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<i>Cost Estimate/Authorization Summary</i>	Capital	Expense	Total
COST ESTIMATE			
Original estimate	\$0	\$1,500,000	\$1,500,000
AUTHORIZATION			
Previous authorizations	0	0	0
Current request for authorization	0	0	0
Total authorizations, including this request	0	0	0
Remaining amount to be authorized	\$0	\$1,500,000	\$1,500,000

ATTACHMENTS TO THIS REQUEST

- (1) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

March 14, 2023 – The Commission authorized \$800k International Tourism Marketing Agreement with State of Washington Tourism and provided the competition exception.

July 28, 2020 – The Commission authorized \$1.5 million joint marketing agreement with Washington Tourism Alliance to promote tourism recovery.

A large cruise ship named "Wyland" is docked in Seattle harbor. The ship's hull is painted with a vibrant blue and white design featuring marine life, including dolphins and whales. The Seattle skyline, including the Space Needle, is visible in the background under a clear blue sky.

Tourism Development

Port & State of Washington Tourism
International Tourism Marketing Agreement

International Tourism Marketing Agreement

Background

Since 2023, the Port has had a contract with State of Washington Tourism (SWT) to partner on international tourism marketing efforts. That agreement expires at the end of 2024.

Today's Presentation

- Overview of tourism goals
- Washington tourism stats and international outlook
- Highlights of the work done under current agreement
- A look to the future with the new agreement

Commission Action

Seeking authorization on CATIII agreement with SWT for \$1.5million dollars over three years in addition to a competition waiver as per exemption 3.2.2

Goals

Port of Seattle Century Agenda Goal #2: *Advance this region as a leading tourism destination*

- Increase the visitor-related economic impact of the Port's aviation and cruise businesses by promoting the region through the global tourism industry.
- Promote SEA Airport as a premier US gateway.
- Keep Seattle and Washington state top-of-mind as a top travel destination throughout the tourism industry and with potential visitors.
- Promote responsible and inclusive tourism growth.
- Deliver value and support to Washington's destination marketing organizations (DMOs) and other tourism-related businesses.

Partnership with State of WA Tourism

State of Washington Tourism (SWT) is the official Destination Marketing and Management Organization for the State of Washington and a vital partner in international marketing. The benefits of the Port's official marketing agreement with SWT include:

- Shared priorities including driving visitor-related spending connected to SEA and cruise business.
- Greater reach and amplified messaging in key markets.
- Shared in-market representation agencies around the globe.
- Network of statewide destination and tourism partners.
- Maximizing ROI on marketing dollars
- Alignment on strategies, key projects and events.
- Avoiding duplication of efforts.
- Expanded global tourism industry network.
- Enhanced reporting on all marketing efforts.

International Tourism Marketing

The Port's presence in international tourism allows it to do what its statewide partners cannot do for themselves – reach key markets that bring visitors who stay longer, spend more, visit urban and rural areas, explore the less-visited regions, and share Washington's passion for responsible, inclusive travel.

Potential markets are assessed for:

- Direct flights into SEA
- Population
- Interest in US
- Disposable income and travel spending
- Influence of B2B marketing and travel media
- Available time off
- Travel motivations
- Travel readiness and ability (e.g. visa wait times, travel restrictions)

Current Markets

Primary Markets: USA, UK/Ireland, Germany, Australia, Japan, South Korea

Secondary Markets: France, Benelux, Nordics

Prospective Markets: China, India, Mexico



2024 SWT INTERNATIONAL ACTIVITY

Global In-Market Agencies

The SWT/Port International Tourism Marketing Agreement enables the partnership to contract with tourism marketing agencies in key markets to establish, maintain and expand our presence as we drive international visitation. These agencies work closely with our local team to deliver results through various channels:

- **Industry Communication** – Regular contact with industry contacts in all activated markets through newsletters, press releases, etc. to share the diverse tourism product of the region.
- **Co-ops and Advertising** – Including ads/advertorials on cruise, tour operator, and media websites and print media.
- **Familiarization Tours & Press Trips** – Hosting clients on-the-ground in Washington to provide firsthand experience that will help them sell and share the destination.
- **Sales Missions & In-market Activations** – Sharing our story with key industry partners in their offices and in their cities, building long-term relationships that will drive future visitation.



Global In-Market Agencies

- **Trainings** – Educating the sales staffs of major tour operators and other sales channels to keep our region top-of-mind and help them send visitors our way.
- **Trade Shows & Industry Events** – Meeting face-to-face with clients that have powerful influence over traveler choices.
- **Destination Stewardship** – Thinking globally and acting regionally to protect our destination and Washington’s natural assets to maximize the positive effects of tourism while minimizing the negative impacts.
- **Local Partnerships** – Providing opportunities for tourism partners throughout the state to help build an impactful global brand.



International Visitation to Seattle

VISITS BY COUNTRY 2019, 2022, 2023 & 2024 ('000s)

Country	2019	2022	2023 (Estimate)	2023 v. 2022 Percent Change	2023 v. 2019 Percent Change	2024 Projected	2024 v. 2023 Percent Change
Canada	1,740.0	1,179.7	1,655.2	40%	-5%	1,665.2	1%
China	166.0	29.7	57.8	95%	-65%	100.1	73%
South Korea	76.4	62.4	47.9	99%	-37%	62.6	31%
United Kingdom	75.5	24.1	62.7	0%	-17%	60.7	-3%
Japan	53.2	18.6	32.2	73%	-39%	43.3	35%
India	48.7	48.6	60.7	25%	25%	48.4	-20%
Germany	47.2	30.6	43.5	42%	-8%	40.6	-7%
Australia	36.8	21.3	26.0	22%	-29%	30.0	15%
Taiwan	23.2	18.4	15.4	161%	-34%	18.5	20%
France	21.2	11.2	20.2	10%	-5%	19.7	-3%
Total Overseas	548.2	259.5	366.5	41%	-33%	424.0	16%
Total International	2,288.2	1,439.2	2,021.7	40%	-12%	2,089.1	3%

2024 INTERNATIONAL REPORT: UK

In Market Representative: Black Diamond

- 5 FAM Tours to WA: 1 Media, 4 Trade
- 3 New tour packages developed in WA from top tour operators
- 476 Travel agents trained on WA
- 52 Media meetings
- 5 Individual media trips
- 135 Travel publications supported including 10 Tier 1 publications resulting in \$156,854 in earned media



2024 INTERNATIONAL REPORT: GERMANY

In Market Representative – Get It Across

- 5 Trade FAM Tours to WA
- 82 Sales calls or meetings
- 3 New tour packages developed in WA from top tour operators
- 60 Media meetings
- 6 Individual media trips to WA
- 20 Tier 1 Travel publications supported resulting in \$157,052 in earned media



COMPETITIVE ANALYSIS: OVERVIEW

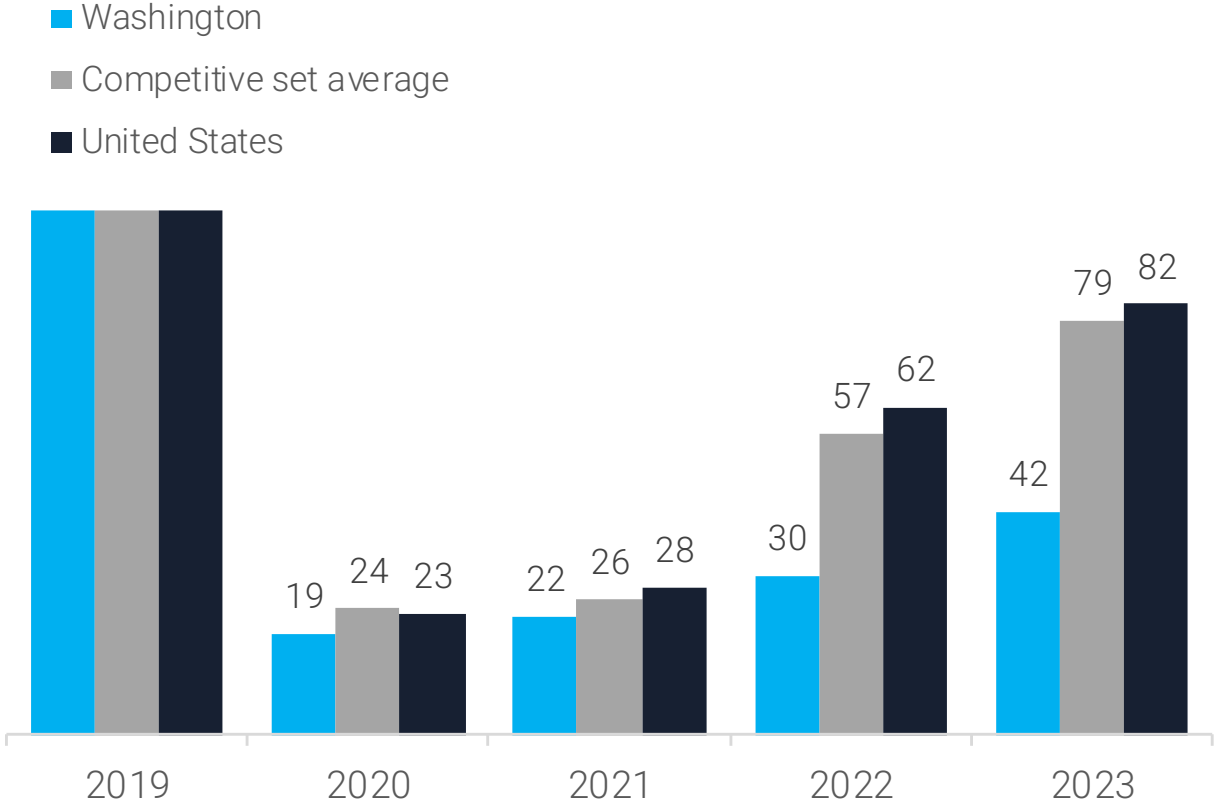
Washington ranked 5th in lodging industry size and last in tourism office funding

	DMO Budget	Room Revenue	Budget Share of Revenue	Budget Share Rank
Montana	\$37.5	\$1,109.3	3.4%	1
Oregon	\$38.3	\$2,166.4	1.8%	2
Utah	\$29.6	\$2,134.3	1.4%	3
Idaho	\$10.9	\$834.0	1.3%	4
Arizona	\$44.0	\$4,745.1	0.9%	5
California	\$164.1	\$26,401.7	0.6%	6
Nevada	\$47.3	\$10,263.9	0.5%	7
Colorado	\$20.5	\$5,053.8	0.4%	8
Washington	\$7.0	\$3,733.8	0.2%	9

Source: State of Washington Tourism, U.S. Travel Association, STR

COMPETITIVE ANALYSIS: INTERNATIONAL MARKETS

International visitation recovery in Washington trailed competitive set by 37%



Source: Tourism Economics



BENCHMARK STATE TOURISM STUDY

- SWT ROI: 29:1
- WA significantly under-funded relative to market size
- WA stands to gain \$14.6 billion in next decade with budget comparable to competing western states

Partnership with SWT



CLIA
CRUISE360
AUSTRALASIA



Trade Shows/Events

ITB, Berlin

IPW, Los Angeles

Brand USA Travel Week, London

Sales Missions/Events/Trainings

UK Sales Mission

“Frameless” Washington Wine Event

Los Angeles Receptive Operator office visits

Cruise360 Australia and sales mission

AerLingus Roadshow

Travel Weekly Webinar

IITA “Steps to Success” Training

Cruise Challenge UK

Total Trade/Media Appointments: 202

Total Educational Training Attendees: 850

Partnership with SWT

Familiarization Tours

Icelandair Fam

Australia Product Manager Fam

Brand USA Korea Megafam Event

Influencer Hosting

UK Voyageurs du Monde

TourMappers

Riksja Travel

American Affair

2024 Total Fam Attendees: 75



Partnership with SWT

Media Coverage

Wanderlust

American Trails

The Week

World of Cruising

Business Insider

RBB Media

NZZ am Sonntag

360 ° Nordamerika

TravelMole

Mail Online UK



Continuing the Partnership

Approval of the agreement with SWT allows the Port to drive visitor spending to our region by building on the global foundation we've built since 2023.



- Strengthening and expanding global industry relationships
- Partnering on Upcoming Events
 - Japan/South Korea Sales Mission
 - IPW 2025 – Chicago
 - AerLingus Roadshow 2025
 - Icelandair MATS Conference
- Leveraging FIFA Hosting
- Hosting high-level fam trips
- Aligning priorities with Visit Seattle
- Organizing activations & events in key markets



**COMMISSION
AGENDA MEMORANDUM**

Item No. 11a

BRIEFING ITEM

Date of Meeting December 10, 2024

DATE: October 30, 2024

TO: Stephen P. Metruck, Executive Director

FROM: Sarah Ogier, Director-Maritime Environment & Sustainability
Kathleen Hurley, Sr. Env. Program Mgr, Environmental Planning, Permit & Compliance

SUBJECT: **Maritime Habitat Program Briefing**

EXECUTIVE SUMMARY

The briefing will provide an overview of the Maritime Habitat and Natural Resources program. The current areas of work include habitat restoration in support of the Port’s Century Agenda goal; sustainable shorelines that focus on pilot projects and research partnerships, as well as smaller restoration sites; and habitat stewardship and community engagement. The briefing will provide information on current initiatives and future opportunities in each area of work.

ADDITIONAL BACKGROUND

This briefing is being provided in response to a request from the Commission for an update on programs and initiatives in the Maritime Habitat Program.

ATTACHMENTS TO THIS BRIEFING

- (1) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

N/A

Item No. 11a supp

Meeting Date: December 10, 2024

Maritime Environment & Sustainability Habitat Program Overview

December 10, 2024

Kathleen Hurley, Senior Environmental Program Manager



Our team is focused on revitalizing the health of aquatic environments in and around the Port through stewardship, habitat restoration, and community engagement.



Habitat Program Areas of Work

Engagement



Sustainable Shorelines



Habitat Line of Business



Engagement

- Stewardship and site maintenance
- Internships and fellowships
- Event support
- Community-based science
- Education and outreach

2024

22 Stewardship events

23 Outreach events



Sustainable Shorelines Program



**Underwater
Noise**



**Wetland
Islands**



**Green
Shoreline
Stabilization**



**Blue Carbon
and Kelp**

Proposed Habitat Sites

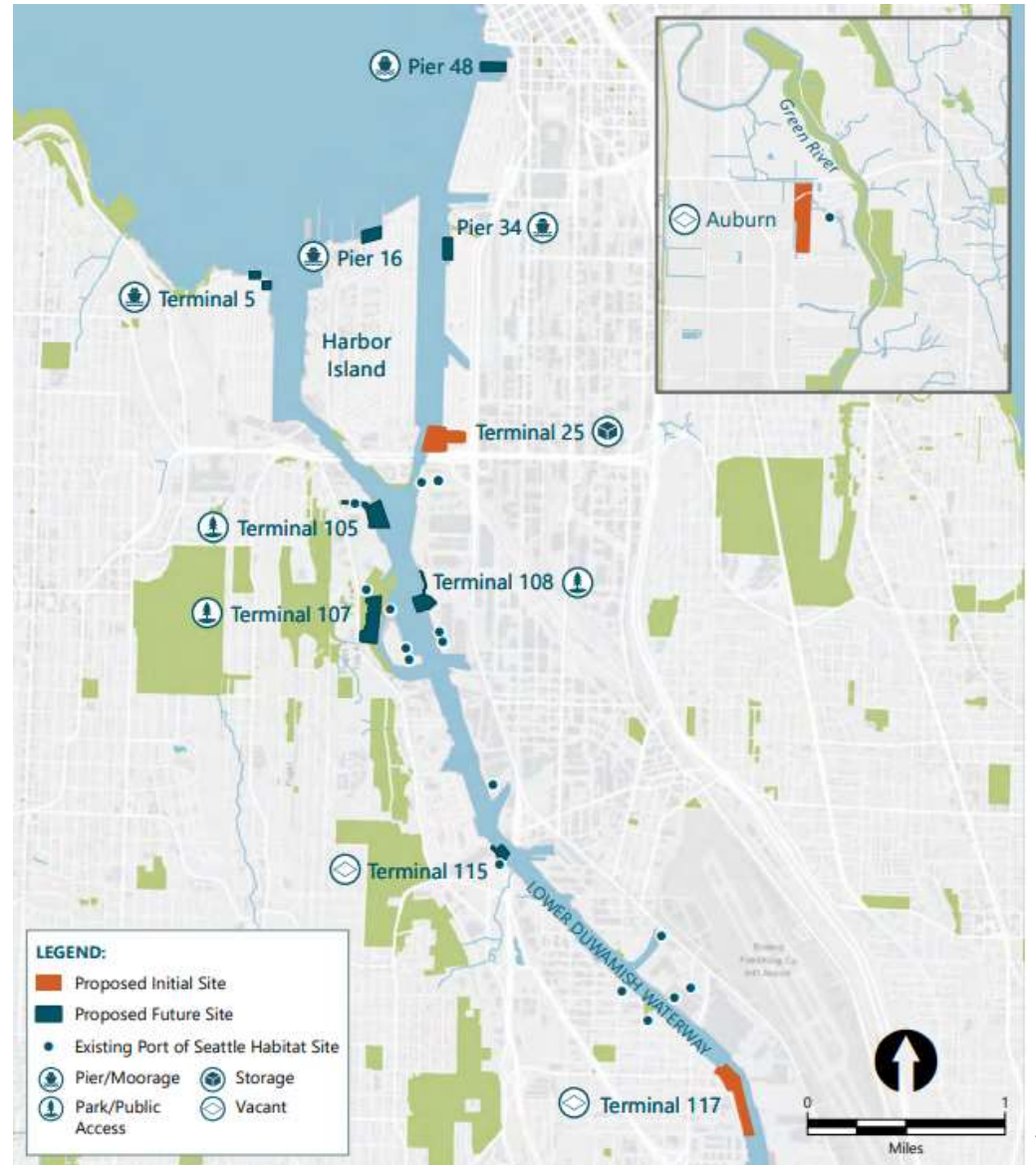


July 2020

Wetland Mitigation and Habitat Conservation

UMBRELLA BANK PROSPECTUS

Prepared by



2025 and Beyond

- T25, T5 SE, and Centennial Park projects
- Mitigation bank sites
- Stewardship of habitat sites
- Partnerships and policy
- Species-specific projects
- Underwater noise
- GIS and data management

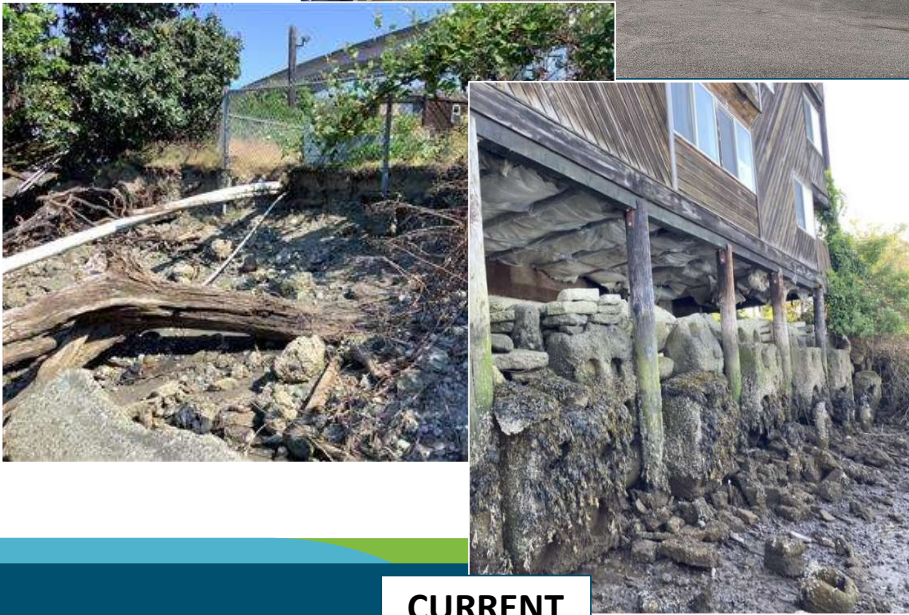
RESTORING CRITICAL HABITAT AT T-25



THE SOUTH T-25 PROJECT WILL RESTORE:

- Riparian Buffer
- Emergent Marsh
- Mudflat
- Channel Networks
- Kelp Beds
- Shallow Subtidal Habitat
- Intertidal Beach

Terminal 5 Southeast Habitat Project

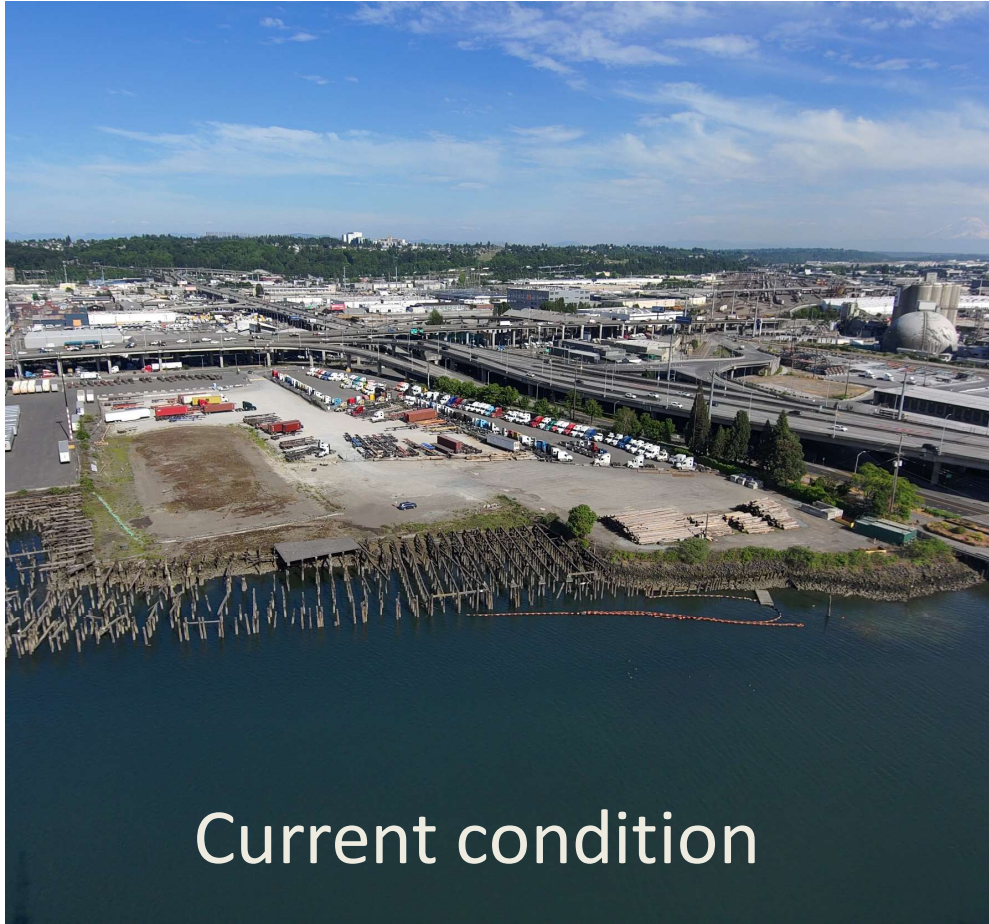


CURRENT



CONCEPTUAL DESIGN

Terminal 25 Habitat Project (anticipated construction 2029)



Maritime Habitat Team

Kathleen Hurley
Sr. Env. Program
Manager



George Blomberg
Sr. Env. Program Manager



Jon Sloan
Sr. Manager



Jenn Stebbings
Env. Program Manager



Olive the Orca
Habitat Conservation
Ambassador

Thank you.

Kathleen Hurley

Sr. Environmental Program Manager

Hurley.k@portseattle.org



Goose exclusion fencing in the marsh basin at Duwamish River People's Park



**COMMISSION
AGENDA MEMORANDUM**

Item No. 11b

BRIEFING ITEM

Date of Meeting December 10, 2024

DATE: November 15th, 2024

TO: Stephen P. Metruck, Executive Director

FROM: George Gianacakos, Affirmative Action Program Manager, Human Resources
Cynthia Alvarez, Director EEO & Professional Standards, Human Resources

SUBJECT: 2024 Port of Seattle Affirmative Action Program

EXECUTIVE SUMMARY

The purpose of this briefing is to present the Port Commission the key results of the Port of Seattle’s 2024 Affirmative Action (AA) Program.

2024 Key Highlights:

- To meet the Office of Federal Contract Compliance Programs (OFCCP) AA reporting requirements, the Port creates annual AA plans for Women & Minorities (Executive Order 11246), Individuals with Disabilities (Section 503 of the Rehabilitation Act) and Protected Veterans (VEVRAA - The Vietnam Era Veterans' Readjustment Assistance Act).
- Women at the Port of Seattle represent 32.57% of the workforce which is a .57% increase from 2023.
- Minorities at the Port of Seattle represent 38.4% of the workforce, which is a 4.4% increase from 2023.
- In the 2024 AA Plan for Women & Minorities, 18.4% of employees did not self-identify race in HCM. This number increased from 13.3% in our 2023 AA Plan for Women & Minorities.
- The Port’s AA Plan for Individuals with Disabilities includes an aspirational goal of 7% set by OFCCP for the representation of individuals with disabilities within each of the Port’s 23 EEO Job Group. The Port increased the overall representation of individuals with disabilities to 9.98% a 0.98% increase from last year. 17 out of our 23 EEO Job Groups align with the 7% aspirational goal.
- OFCCP set a 5.4% benchmark for the representation of VEVRAA-protected Veterans within each EEO Job Group. Port-wide, the overall representation of VEVRAA-protected Veterans is 8.87%, which is consistent with last year’s overall representation. 16 of the Port’s 23 EEO Job Groups meet or exceed the 5.4% benchmark.
- During the 2024 plan year, the Affirmative Action Program Manager audited the Port’s EEO Job Groups. As a result, the job groups were edited and expanded. The Port moved from 17 EEO Job Groups to 23. Positions were moved for more accurate alignment of

Meeting Date: December 10, 2024

work nature and pay similarity. Represented and non-represented jobs were separated to avoid pay scale philosophy conflicts.

- The 2024 AA Plan for Women and Minorities identified underutilization in the Technicians 2, Service Maintenance Represented, and Professional Group Represented EEO Job Groups. As we have done in previous years with the underutilization, Talent Acquisition and Talent Connections will conduct targeted outreach and recruitment of women for vacant positions within these Job Groups. Additionally, Talent Acquisition will continue to utilize the EEO Job group tracking system that was implemented in 2023 in their workflow.
- The Port's 2024 EEO Compensation Analysis showed salary differences of more than 7.5% amongst some employees holding the same job. These differences impact employees regardless of race and gender. Human Resources is currently working on finalizing implementation of the compensation project. Following the application of the pay equity analysis implementation, we will create a plan to address discrepancies.
- AA Program Manager conducted a program audit to ensure full compliance with CFR 41 requirements of AA Programs as well as implement improvements in data collection for the 2024 plan year.
- All Port job announcements include a statement on diversity, equity, and inclusion and Port Values. Additionally, all interviews include an equity, diversity, and inclusion question.

ADDITIONAL BACKGROUND

As a federal contractor, the Port of Seattle is required meet OFCCP's AA reporting requirements, which includes the following:

- Develop annual AA Plans for Women & Minorities, VEVRAA-Protected Veterans, and Individuals with Disabilities.
- Conduct an annual EEO Compensation Analysis.
- Monitor the effectiveness of the Port's AA Program on a continuing basis through the development and implementation of an internal audit and reporting system that measures the program effectiveness.
- Provide annual AA compliance training to employees involved in the recruitment, selection, promotion, performance management and related processes to include review of the three AA Plans, and their roles and responsibilities in its implementation to ensure women and minorities, individuals with disabilities, and protected veterans are treated in a non-discriminatory manner in all employment practices and business decisions.

HOW RESULTS ARE MEASURED

In accordance with OFCCP guidelines, on October 31st of each year the Port extracts employee data from our HRIS/Payroll system to compare the percentages of women and minorities in each of our 23 EEO Job Groups to the percentages of qualified women and minorities within the Port's relative recruitment area (King, Pierce, Snohomish, Thurston, and Kitsap counties). This type of review, comparing incumbency to availability (internal and external), is called a Utilization Analysis, and is required for only the AA Plan for Women & Minorities.

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An underutilization exists when the Utilization Analysis shows the percentage of women or minorities within an EEO Job Group is less than would be reasonably expected given the availability of qualified women and minorities within the employer's workforce and externally within the employer's recruitment area. Placement goals are set when an employer has an underutilization within an EEO Job Group. A placement goal serves as target, not a quota or set-aside, that employers make good faith efforts to meet.

MOVING FORWARD

The Port of Seattle's Affirmative Action Program is aligned with our Port-wide Goals to Demonstrate Strong Commitment to Equity, Diversity, and Inclusion at the Port and Across the Region and to Operate as a Highly Effective Public Agency.

The Port of Seattle will continue to improve its AA Program by doing the following:

1. Continue to ask employee to self-identify race, gender, disability status, and veteran status to reflect our workforce demographics more accurately within our 3 AA Plans.
2. Continue to partner with our colleagues in Talent Acquisition and Talent Connections to identify recruitments for positions within the Technicians 2, Service Maintenance Represented, and Professional Group Represented EEO Job Groups. Once identified, we will conduct targeted outreach and recruitment of women to ensure diverse applicant pools.
3. Continue targeted recruitment of women & minorities, individuals with disabilities, and Protected Veterans to ensure diverse applicant pools by attending job fairs and community events, offering internships/Vet-fellowships, and evaluating job descriptions to remove requirements which create artificial barriers.
4. Continue with Human Resources' Compensation Project to address and resolve systemic pay equity issues.
5. Conduct annual audits of the three AA Plans to measure the program effectiveness.
6. Provide annual AA compliance training to employees to ensure women and minorities, individuals with disabilities, and protected veterans are treated in a non-discriminatory manner in all employment practices and business decisions.
7. Refresh Port-wide EEO compliance trainings, in consultation with ERGs and D&D Council, to ensure they are current with all applicable laws and regulations.
8. Continue to update HR and Code of Conduct policies to include a review of policies through an equity lens.

Human Resources will continue to partner with Office of Equity, Diversity, and Inclusion (OEDI) to address institutional racism within the Port and to infuse equity in all our programs and business practices. The important work underway with the Compensation Project and Human Resources-related work stemming from the Equity Assessment and Women of Color Assessment serves and supports the fundamental purpose of affirmative action, which is to attract, hire,

Meeting Date: December 10, 2024

develop and retain a workforce that reflects the diversity of our community at all levels of the Port.

ATTACHMENTS TO THIS BRIEFING

- (1) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

September 12, 2023 AAP Commission Briefing
October 10, 2022 – 2022 AAP Commission Briefing
January 4, 2022 – 2021 AAP Commission Briefing
September 8, 2020 – 2020 AAP Commission Briefing

2024 Affirmative Action Program Key Results

Commission Briefing

Affirmative Action (AA) Program Purpose

- As a federal contractor, the Port is required to create annual AA Plans for Women & Minorities, Individuals with Disabilities, and VEVRAA-Protected Veterans.
- Ensure good faith efforts are taken to recruit, hire and retain qualified women, minorities, individuals with disabilities, and VEVRAA-protected veterans.
- Ensure representation of women, minorities, individuals with disabilities, and VEVRAA-protected veterans meet standards set by Office of Federal Contract Compliance Programs (OFCCP).

2024 Affirmative Action Program Highlights

- No underutilization of minorities in any of our 23 EEO Job Groups.
- No underutilization of women in 20 of our 23 EEO Job Groups.
- Audited the Port's EEO Job Groups.
 - The Port moved from 17 EEO Job Groups to 23.
- Audited HR employment lifecycle programs
- The Port continues to take affirmative steps through good faith efforts to attract, hire, develop and retain a workforce that reflects the diversity of our community at all levels of the Port.

2024 Affirmative Action Program Highlights

Cont.

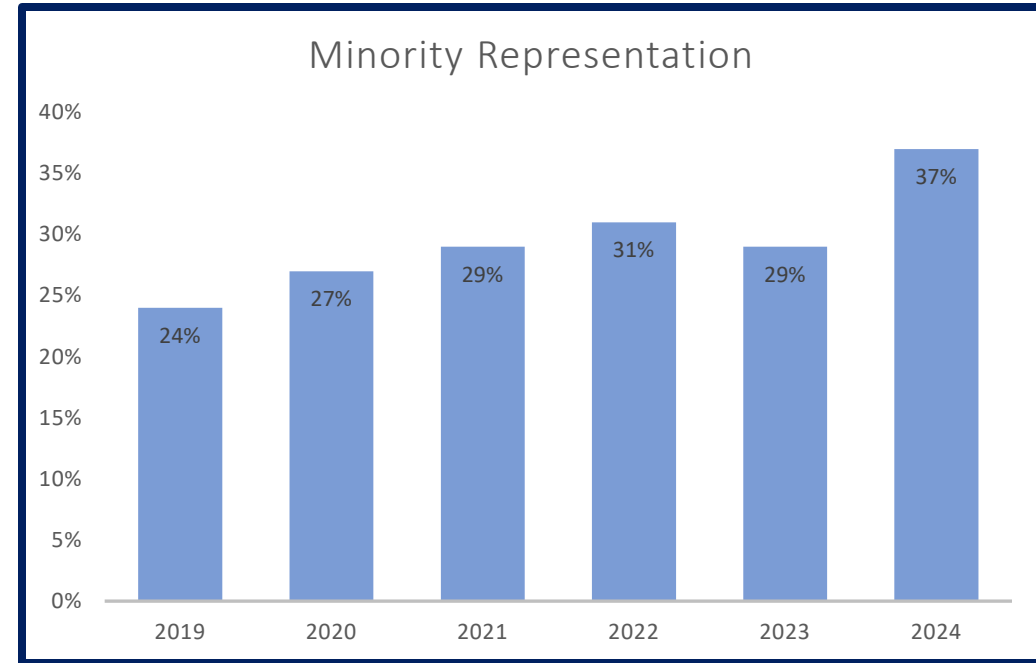
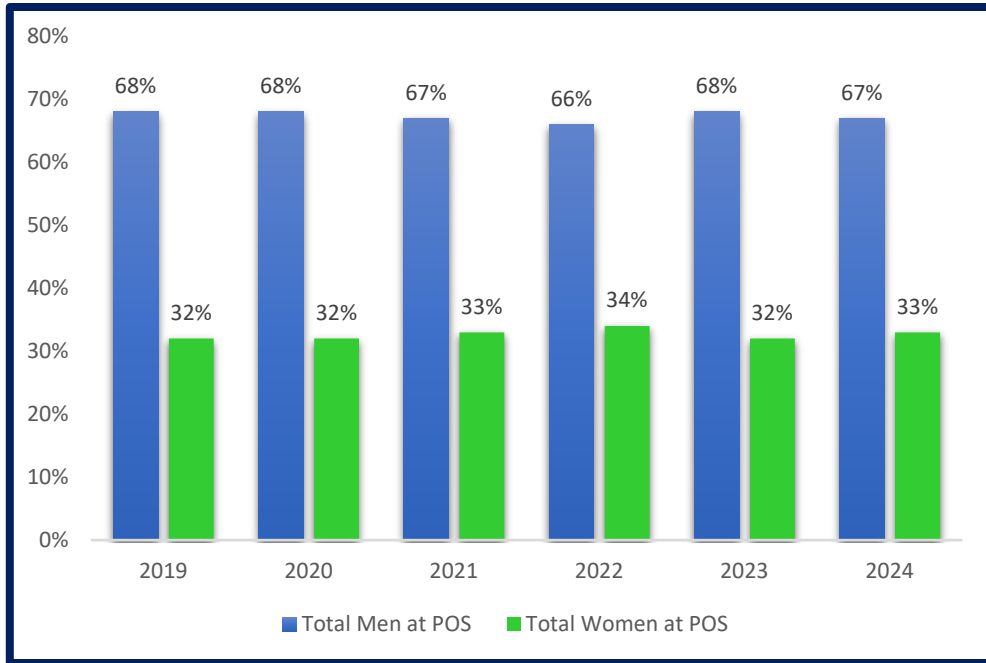
	OFCCP Goal	2023	2024	Change
Individuals with Disabilities	7%	9%	9.98%	+0.98%
VEVRAA-Protected Veterans	5.4%	8.86%	8.87%	+0.01%

2024 Underutilization

EEO JOB GROUP	Class	Gap
Professional Group R <ul style="list-style-type: none"> • Airport Duty Managers • Operations Controller SR • Airfield Ops Specialists 	Female	-7.16
Service Maintenance R <ul style="list-style-type: none"> • Bus Drivers • Parking Services & Revenue • Aviation Security Trainer 	Female	-12.88
Technicians 2 <ul style="list-style-type: none"> • ICT Tech Support • ICT Specialists • Technicians 	Female	-14.95

The Port at a Glance

Demographic Representation over past five years:



Good Faith Efforts

- Talent Development attended over 90 career and internship hiring events.
 - Over one hundred high school and Post-Secondary interns.
- Job openings advertised on local minority, women, veteran, and disability job boards.
- OEDI, ERGs, and D&D Council initiatives and work
- Interview panelist required training “Countering bias in the hiring process.”
- Compensation project implementation aligned with Port RAISE values

Opportunities Moving Forward

- Partner with Talent Acquisition and Emerging Talent to identify recruitments for positions within the Technicians 2, Service Maintenance Represented, and Professionals Represented EEO Job Groups. Once identified, we will conduct targeted outreach and recruitment of women to ensure diverse applicant pools.
- Continue to update HR and Code of Conduct policies to include a review of policies through an equity lens.
- Re-evaluate EEO Job groups and EEO Compensation Analysis after HR's implementation of new pay range structure as part of the Compensation Project.
- Hold employee information sessions sharing Affirmative Action Program Highlights.

Questions?