

MINUTES OF EVERETT PORT COMMISSION REGULAR MEETING

August 14, 2012

PRESENT:

Troy McClelland	President
Michael Hoffmann	Vice President
Tom Stiger	Secretary
John Mohr	Executive Director
Karen Clements	Chief Finance Officer
Brad Cattle	Port Attorney

CALL TO ORDER: The meeting of August 14, 2012 was called to order at 5:10 p.m. by Commission President Troy McClelland.

Commissioner McClelland announced that due to technical difficulties with the Port's recording system, there will be no pod cast of the August 14, 2012 Commission meeting.

CONSENT AGENDA:

- Approval of Combined Meeting Minutes of July 10, 2012, and Special Meeting Minutes of July 31, 2012
- Approval of Bills for July 2012

Commissioner Tom Stiger moved to approve the items of the Consent Agenda for August 14, 2012. Commissioner Michael Hoffmann seconded the motion. A vote was called for:

Vote: 3-0

Yes: Stiger, Hoffmann, McClelland

No: None

Abstained: None

Motion carried.

1. EXECUTIVE DIRECTOR'S REPORT

**September Meetings**

Executive Director John Mohr reminded the Commission and public that the September 4<sup>th</sup> Work Session meeting has been cancelled and is rescheduled for September 11, 2012 at 5:00 p.m. The Port will hold a Special Commission meeting on September 18, 2012 at 5:00 p.m. Both meetings will be held in the Blue Heron Room of the Waterfront Center Facility.

**Marina District Master Plan Public Meeting**

The Port is holding a public meeting on September 6, 2012 at 5:30 p.m. to present to the public the planning efforts to date for the Marina District Master Plan. The public meeting will be held in the Blue Heron Room of the Waterfront Center Facility.

**Mission Statement Workshop**

On September 25, 2012 from 9 a.m. to 3 p.m., the Port will hold a Workshop for discussion of the Port's Mission Statement. This meeting will also be held in the Blue Heron Room. Appropriate notice will be published for the Workshop.

**Release of Rail Easement – Riverside Business Park Purchase & Sale Agreement**

Port attorney Brad Cattle reported that on July 31, 2012, the Port Commission authorized the Executive Director to sign the Purchase and Sale Agreement with Snohomish County to sell the Intermodal Site which is Lot 8 of the Riverside Business Park.

In conducting the American Land Title Association (ALTA) survey of Lot 8 of the Riverside Business Park, a 20-foot wide rail easement located along the eastern edge of Lot 8 (the "Rail Easement") was identified as a remnant of a prior historic use. The Rail Easement was depicted on the 2010 Boundary Line Adjustment (the "2010 BLA") for the Riverside Business Park. The 2010 BLA does not name any person or parcel as the beneficiary of the Rail Easement, nor does the 2010 BLA address any terms or conditions pursuant to which the Rail Easement would be used or maintained. In a recent 2012 Boundary Line Adjustment (the "2012 BLA"), the Rail Easement was not depicted as it was thought to be insignificant and no longer in existence. Because of the conflict between the two Boundary Line Adjustments as they relate to this Rail Easement, in

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order to clarify the status of title, it is recommended by the Title Company that a Release of Rail Easement be executed to clarify that the easement no longer exists.

Brad Cattle recommended that the Port Commission authorize the Executive Director to sign the Release of Rail Easement so that it may be recorded with the Snohomish County Auditor.

Commissioner Michael Hoffmann moved to authorize the Executive Director to sign the Release of Rail Easement for recording with the Snohomish County Auditor. Commissioner Stiger seconded the motion. A vote was called for:

Vote: 3-0

Yes: Hoffmann, Stiger, McClelland

No: None

Abstained: None

Motion carried.

#### **Environmental Reserve Account**

Executive Director John Mohr reported that Port staff is continuing its review of the Environmental Reserve Account that was created in 1995 whereby 10 percent of the tax levy proceeds are placed in a reserve fund for projects that are environmental in nature. No resolution was memorialized in 1995. A draft resolution was located but was not adopted by the Commission. Staff will continue their review to see if further information is available.

#### **Port Staff**

John Mohr announced that Lisa Lefeber was going out on family leave and that tonight's meeting is her last Commission meeting until next year. The Port wishes Lisa all the best and will look forward to her return in January 2013.

#### **Executive Sessions**

Port attorney Brad Cattle provided an overview of Executive Sessions held during the month of July, 2012. On July 10, the Port Commission recessed into Executive Session at 6:03 p.m. for approximately 30 minutes for consideration of the minimum price at which real property would be offered for sale when public knowledge would disadvantage the Port in the negotiations. At the conclusion of the Executive Session, no action was taken by the Commission and no announcements were made. The meeting was adjourned at 6:30 p.m.

On July 31, the Port Commission recessed into Executive Session at 5:22 p.m. (to conclude by 6:30 p.m.) to discuss with legal counsel the acquisition of real estate for which public discussion could disadvantage the Port's negotiations. At 6:30 p.m., at the direction of Port Commission President Troy McClelland, Port legal counsel, Brad Cattle, announced in the public meeting area that the Executive Session would be extended to 7:00 p.m. At the conclusion of the Executive Session, no action was taken by the Commission and no announcements were made. The meeting was adjourned at 7:00 p.m.

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#### **CHIEF ADMINISTRATIVE OFFICER'S REPORT**

##### **Personal Services Contract for Cushman & Wakefield**

Chief Administrative Officer Les Reardanz presented a Personal Services Agreement with Cushman & Wakefield for real estate advice to assist the Port in its due diligence and, if subsequently authorized by the Commission, real estate negotiations in regards to acquiring the Kimberly Clark site.

The key terms of the agreement are as follows:

Term: The agreement would become effective upon signature and last through either the property transaction closing or until terminated sooner.

Termination: Either party may terminate for any reason upon 90 days written notice. Additionally, either party can put the agreement "on hold" if services are not needed for a period of time. This preserves flexibility to maintain the relationship despite the starts/stops that may occur during this activity but without payment.

Price: The Port would pay Cushman & Wakefield a monthly retainer of \$2,958 per month. There is also a “success fee” clause included. This success fee is a \$200,000 fee that Kimberly Clark is paying as an outside broker fee if the transaction successfully closes. The Port would not pay that success fee unless Kimberly Clark declined to pay it, in which case the Port would agree to pay it to Cushman & Wakefield minus the retainer amounts the Port has already paid and any reimbursed expenses the Port has paid. The remainder of the contract includes the Port’s standard terms and conditions.

Staff is requesting that the Commission find that a competitive selection process is not appropriate or cost effective in this situation, as authorized under RCW 53.19.020. The nature of this type of transaction requires the Port to quickly have a seasoned advisor in place. A competitive selection process would necessitate at least a four to six week process which would remove the Port’s flexibility and could put the Port at a competitive disadvantage. Also, Cushman & Wakefield were the real estate consultants to the Port’s appraiser McKee & Schalka. Contracting with Cushman & Wakefield saves the Port money as they do not need to have a ramp-up time. Cushman & Wakefield have the quality experience in these types of complex transactions to successfully advise the Port. Based on the foregoing, staff believes the Commission has the basis under RCW 53.19.020 to find a competitive selection process in this situation is not appropriate or cost effective.

Les Reardanz recommended that the Commission find a competitive selection process is not appropriate or cost effective and authorize the Executive Director to enter into a Personal Services Agreement with Cushman & Wakefield.

Commissioner Michael Hoffmann moved that a competitive selection process is not appropriate or cost effective for this matter and authorized the Executive Director to enter into a Personal Services Agreement for real estate advice regarding the purchase of the Kimberly Clark Property. Commissioner Stiger seconded the motion. A vote was called for:

Vote:	3-0
Yes:	Hoffmann, Stiger, McClelland
No:	None
Abstained:	None

Motion carried.

3. PRELIMINARY CAPITAL IMPROVEMENT PLAN 2013 - 2017  
Senior Accountant Bob Marion provided an overview of the preliminary budget for the 2013 – 2017 Capital Improvement Plan (CIPs). The preliminary budget represents projects previously approved and new capital project plans that will be presented for Commission consideration in November as part of the consolidated budget process. Prior to seeking approval of any new projects, Staff will be providing the Commission with relevant analysis during the November meetings to give the Commission sufficient information to make any decisions on the proposed projects.

In November, 2012, Port Staff will present the Consolidated Budget to the Commission on November 6, the Preliminary Budget to the Commission on November 13, and will hold the Public Hearing on the Budget and Tax Levy and final adoption on November 27, 2012.

The 2013 – 2017 Preliminary Capital Improvement Plan is available for review on the Port’s Web site at [www.portofeverett.com](http://www.portofeverett.com). Public comments will be taken at the Commission meeting on November 27, 2012.

4. DEPARTMENT REPORTS  
**Operations - Marine Terminal Report**

Marine Terminals Director Dave Madill provided Marine Terminal statistics through July 2012. For Port calls, staff had set a goal of 166 calls for 2012 and the Port is currently at 53 percent of reaching its goal. Tonnage was set at 168,295 short tons and the Port is currently at 48 percent of reaching its goal. On the container side, the goal was established at 8,885 units and the Port is at 36 percent of goal. The month of August is already scheduled to be a busy month at the terminals and the statistics should reflect increases all across board.

## **Projects Update**

### **Ameron / Hulbert Cleanup – Environmental Engineering Contract**

Environmental Specialist Erik Gerking reported that the Port is under two agreements for completing the cleanup work on the Ameron / Hulbert site. One agreement is an Agreed Order with the Department of Ecology (Ecology) for completing the Remedial Investigation and Feasibility Study (RI/FS) and Draft Cleanup Action Plan (DCAP). The Agreed Order identifies the scope of work and the potentially liable parties (PLPs) that are obligated to carry out the work as directed by Ecology. The second agreement is a legal agreement with the PLPs, including the Port, Ameron International, the Hulberts, and Oldeastle. It identifies the participation and cooperation requirements between the parties and identifies the Port as being responsible for leading the process.

The proposed modification to the professional services agreement (PSA) with the consultant engineer is needed to cover unanticipated services that were completed over the last year, and services that are needed to accomplish future tasks, including:

### **Past Services**

- Greater than anticipated requirements by the PLPs for document preparation and Ecology coordination;
- Greater than anticipated requirements by Ecology for field sampling and document preparation;

### **Future Services**

- Stormwater system cleanout, design and construction phase services
- Ongoing PLP coordination through RI/FS report.

The modification for these services is estimated at \$152,800, which includes a contingency budget for unanticipated activities of \$6,100 (less than 5 percent). The contingency budget would only be utilized under careful review, consideration and written approval by Port staff.

The existing PSA for this project has a current limitation of \$853,700. The requested modification to Landau Associates agreement will add an additional \$152,800, for a new total of \$1,006,500. The Port costs for this work are reimbursed at a rate of 50 percent through grant funds from the Department of Ecology. Sufficient grant funds are currently allocated for this project in the Port's grant agreement. Further, these costs are eligible for future PLP cost recovery.

Staff believes that the competitive solicitation process would not be cost effective as the current scope of services will build upon the previous work completed by Landau Associates conducted under Port direction. Further, Port staff completed a thorough due diligence process, including a detailed internal review of the modification request and a third party peer review. The basic conclusion of this process is that Landau Associates Modification No. 5 request is appropriate and necessary.

Staff recommends that the Commission approve the modification to the existing PSA. Further, Staff recommends that the Commission approve an exemption from the competitive solicitation process for the work identified in the modification.

Upon discussion, Commissioner Michael Hoffmann moved to approve an exemption from the competitive solicitation process for the proposed services, and approval of a modification to the Professional Services Agreement with Landau Associates in the amount of \$152,800. Commissioner Tom Stiger seconded the motion. A vote was called for:

Vote: 3-0

Yes: Hoffmann, Stiger, McClelland

No: None

Abstained: None

Motion carried.

### **ARRA Marine Terminal Lighting Improvements**

Chief of Engineering & Planning John Klekotka provided a project status update on the ARRA Marine Terminal Lighting Improvements. In September 2009, the Port was awarded a \$1.5 million grant from the Department of Homeland Security for lighting

improvements to ensure security and safety at the Marine Terminals. Port staff solicited bids in December 2011 and they were opened in January 2012. In February, 2012 the Port Commission awarded the construction project to High Mountain Electric and on-site work began in April, 2012.

Once the work began, the contractor discovered a large amount of contaminated soil, debris and underground obstructions which have resulted in two change orders to date for a total amount of \$59,938. Additional work remains to be done and Staff wanted to apprise the Commission that depending on the amount of remaining debris and obstructions, future change orders may be required in order to finish the work. The original base bid was \$1,299,171, current change orders total \$59,938 and estimated remaining changes are in the amount of \$75,000, including Washington State Sales Tax. If the estimated remaining changes are greater than 10 percent of the base, Port staff will come back to the Commission for approval. Project close-out is expected in October 2012.

#### **COMMISSION PRESIDENT'S REPORT**

Commissioner Troy McClelland reported that a delegation from Nagoya Japan, key trading partners with the Port, recently met with Port staff and it was a very productive meeting. To follow up on this visit, representatives from the Port are planning to travel to Japan during the month of October 2012.

#### **COMMISSION DISCUSSION**

Commissioner Stiger commented that the recent inspection by the Department of Ecology at the Marina was very positive.

Commissioner McClelland commented that after reviewing the Marina statistics that were recently provided, it is very clear that while going through the planning process for the Marina District Master Plan, the Commission and Port staff need to fully understand the demographics in order to come up with a solid long-term use for the Marina.

#### **CITIZEN COMMENTS**

Marina tenant customers Dick and Carol Massey introduced themselves and commented that they were new to the Port and their boat is moored at I-Dock. Mr. Massey said if they had questions about the facility, they would present them to the Marina Director.

THE COMMISSION MEETING was recessed into Executive Session at 7:13 p.m. for approximately 30 minutes (to conclude by 7:35 p.m.) to discuss the strategy to be taken by the Port Commission during the course of collective bargaining that is currently in progress. At 7:37 p.m., at the direction of Commission President Troy McClelland, Chief Administrative Officer Les Reardanz announced in the public meeting area that the Executive Session would be extended to 8:00 p.m.

At the conclusion of the Executive Session, no action was taken by the Commission and no announcements were made.

THE REGULAR COMMISSION MEETING WAS ADJOURNED at 8:00 p.m.

APPROVED: this 18<sup>th</sup> day of September, 2012. EVERETT PORT COMMISSION

By:



Troy McClelland, President



Michael Hoffmann, Vice President



Tom Stiger, Secretary



Port of Everett

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**Port of Everett  
Voucher Approval List  
for the month of  
JULY  
2012**

We, the undersigned Commissioners of the Port of Everett, Snohomish County, Washington, do hereby certify the following vouchers/warrants have been certified and approved for payment this the 14th day of August, 2012:

Claims Voucher Nos	63122 - 63419	<b>Total</b>	\$3,482,871.46
Claims Wire Transfers:			
7/2, 7/16	Wire Transfer - IRS	\$	142,657.31
7/17	Wire Transfer - Hirofumi Oshio	\$	1,618.23
7/24	Wire Transfer - Wa St Dept of Rev	\$	48,651.21
7/16, 7/30	Wire Transfer - Union Bank	\$	21,817.25
	<b>Total Claims</b>		<b>\$3,697,615.46</b>
Payroll Voucher Nos.	38627 - 38834	\$	384,576.12
Payroll Wire Transfers:			
7/3, 7/10, 7/17, 7/24, 7/31	PMA Payroll (Longshore Labor)	\$	395,264.22
	<b>Total Payroll</b>		<b>\$ 779,840.34</b>

**Total Expenditures**

**\$ 4,477,455.80**

 \_\_\_\_\_ President  
 \_\_\_\_\_ Vice President  
 \_\_\_\_\_ Secretary

Attest: Karen RA Clements Port Auditor