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Anchorage Port Commission Meeting Agenda
Date: October 24, 2022
Time: 12pm – 2pm

I. **Call to Order and Roll Call**

II. **Pledge of Allegiance**

III. **Port Safety Minute**

IV. **Approval of Agenda**

V. **Approval of Meeting Minutes from September 28, 2022**

VI. **New Business**
   A. Marathon Speaking Opportunity (15 minutes)
   B. Petrostar Speaking Opportunity (15 minutes)

VII. **Old Business –** PAMP Surcharge Discussion (Continued) – Mr. Ross Risvold

VIII. **Public Comments**

IX. **Port Director's Closing Comments**

X. **Commissioner Comments**

XI. **Meeting Schedule**

XII. **Adjourn**

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October 18, 2022

TO: Port Commission

FROM: Cheryl Beckham, Port of Alaska Finance & Admin Manager

SUBJ: September 2022 Port Commission Financial Report

Please see the attached reports for the month of September budget to actuals in revenue and expenses. Also included are the tonnage reports year to date total tonnage and tonnage through September 30, 2022 compared over four years.

The investment income earned continues to track significantly below budget due to the ongoing market performance. Revenues are projected to exceed budget by year end and expenses are expected to track below or right on budget at 12/31/2022. Total year to date tonnage shows a slight increase of 3.25% over 2021 as of 9/30/2022 with increases recorded in all commodities.

I am available to answer any questions you may have.

Port of Alaska
Budget to YTD Actual Comparison - Unaudited
@ 9/30/2022

	2022 Budget	2022 Actuals	2022 Budget vs Actual % Target 75%
Revenues			
Cruise Ship Head Tax	-	66,755.00	-
Reimbursed Cost	20,000.00	23,093.56	115%
Dockage	1,110,413.00	1,039,343.59	94%
Wharfage, Bulk Dry	109,709.62	158,078.06	144%
Wharfage, Bulk Dry - Debt Service	62,319.38	89,666.41	144%
Wharfage, Bulk Liquid	1,893,143.00	2,108,996.01	111%
Wharfage Bulk Liquid - Debt Service	791,924.00	1,198,846.53	151%
Wharfage, General Cargo	4,031,278.00	3,288,398.48	82%
Miscellaneous	233,025.00	89,878.99	39%
Office Rental	40,000.00	37,893.52	95%
Utilities, Water	44,704.00	30,253.41	68%
Crane Rental	56,500.00	94,897.60	168%
Pipe ROW Fee	173,000.00	162,427.19	94%
POL Value Yard Fee	291,696.00	307,345.26	105%
Security Fees	1,477,975.00	1,162,357.34	79%
Industrial Park Lease	4,273,135.00	3,942,528.68	92%
Ind Park Rental/Storage	697,781.00	238,050.48	34%
Gains & Losses on Investments	100,000.00	28,864.64	29%
Cash Pools Short-Term Int	(6,000.00)	(313,962.51)	5233%
Total Operating/Non-Operating Revenue:	15,400,603.00	13,753,712.24	89%
MOA Property Sales	-	21,281.24	
Total Revenue (Operating/NonOperating):	15,400,603.00	13,774,993.48	89%
Expenses			
Personnel Services	2,933,524.00	1,873,609.51	64%
Non-Labor	4,798,165.00	3,252,404.39	68%
Total Operating Expenses:	7,731,689.00	5,126,013.90	66%
Legal Services - General (PIEP Litigation)	1,617,462.00	203,393.85	13%
MESA & Dividend payments	2,126,920.00	1,772,235.50	83%
Debt Service	2,675,000.00	1,561,027.55	58%
Depreciation and Amortization	7,937,791.00	5,953,343.25	75%
Total Non-Operating Expenses:	14,357,173.00	9,490,000.15	66%
Charges from Depts (IGC)	1,426,255.00	1,069,691.25	75%
Total Operating/Non-Operating Expenses:	23,515,117.00	15,685,705.30	67%
*Net Income:		(1,910,711.82)	
Depreciation - Non Cash Item (Add back):		5,953,343.25	
*Available Cash Flow @ 9/30/22		4,042,631.43	

(* Unaudited)

Cash Balance @ 9/30/2022	12,446,741.12

Miscellaneous Revenue Detail	
Equipment Rental (Crane, Yokohama Fenders, Manbasket, Dumpster):	37,400
Water & Water Truck:	10,903
Sanding & Snow Removal Services:	30,300
Annual Fees (ORL Agreement Fee):	10,000
Ship Creek Boat Launch Fees:	1,276
	89,879

TONNAGE REPORT - Year-over-Year Comparison @ September 30

Commodity Classification	2022	2021	2020	2019
Freight NOS	182	36	689	1,167
Dry Bulk Goods	85,429	54,376	75,233	79,862
Petroleum, NOS (vessel fueling)	29,680	42,445	42,280	141,181
Vans/Flats/Containers	1,274,220	1,267,955	1,249,234	1,279,731
Petroleum, Shoreside	923,266	816,730	652,217	617,604
Petroleum, Bulk - Dockside	1,594,064	1,602,435	1,417,344	994,279
Total Tonnage @ September 30:	3,906,840	3,783,976	3,436,997	3,113,825

TONNAGE REPORT - Annual Comparison (2022 @ Sept 30, 2022)

Commodity Classification	2022 - YTD	2021	2020	2019
Freight NOS	182	36	689	1,167
Dry Bulk Goods	85,429	87,692	101,854	109,956
Petroleum, NOS (vessel fueling)	29,680	47,888	58,728	222,536
Vans/Flats/Containers	1,274,220	1,638,486	1,642,547	1,655,612
Petroleum, Shoreside	923,266	1,061,821	902,712	802,093
Petroleum, Bulk - Dockside	1,594,064	2,151,883	1,997,845	1,474,399
Total Tonnage:	3,906,840	4,987,806	4,704,374	4,265,763

MUNICIPALITY OF ANCHORAGE

M E M O R A N D U M

DATE: October 19, 2022

TO: Port Commission

FROM: John Daley PE PAMP Engineering Manager

CC: Steve Ribuffo Port Director

SUBJECT: Port of Alaska Modernization Program Monthly Status

Petroleum Cement Terminal:
Construction complete. A few lingering warrantee items are outstanding. Final change order reconciliation ongoing.

There is a surplus MARAD budget of approximately $12.6 million. Projects are being considered (outside of PPM contract) for use of these funds. These include:

1. Fuel flushing (ITB is on the street)
2. Paving uplands
3. Misc. safety and security features.

The above will require Assembly approval but should be fully funded

POA Administration Building:
65% design complete. 95% deign due December 12. Foundation work scheduled to begin in October.

Three outstanding design issues include:

1.) I.T. needs for security and communications must be further defined.
2.) FM Global (insurance agent) has requested addition fire protection for the parking area.
3.) A furniture plan is being considered. RIM architects will be asked to survey existing furniture to be reused and to outline new furniture to be purchased

No budget increases are requested at this time. The above three items could involve additional funds.

North Extension Stabilization Phase 1. (NES 1):
Proposals have been received and evaluated. Contract negotiations have been completed. Buy America issues were favorably resolved in terms of cement. Recommendation for award has gone to MOA purchasing. Anticipate placing the recommendation on Consent Agenda for 9 Nov Assembly Meeting.

No additional funds are anticipated to be needed at this time.

Terminal 1 Designer of Record:
Draft RFP being evaluated. Anticipate sending to MOA purchasing soon. Selection of designer anticipated in January 2023. Award with required Assembly approval anticipated in February 2023.

Personnel:
Project Controls for PAMP has been approved. Final process of posting under municipal system is anticipated to be completed this week. ETA new hire January 2023.

New developments since last we met:

- PCT closeout complete and contractor has left the site.
- NES1 contractor has been selected and recommendation for award prepared.
- Terminal 1 and 2 15% design review completed.
- Terminal 1 designer of record RFP created.
- Admin building 65% building and 95% foundation design review completed. Construction mobilization has commenced.
- PAMP rebaselined budget and schedule plan reviewed and ongoing.
- Meeting with GAC members scheduled for October 25.

Look ahead:

- PCT additional funding use (fuel flushing, paving, and safety features.)
- PCT opening
- NES1 contract issued
- Terminal 1 designer of record advertised.
- Foundation construction for admin building

K&L GATES

MEMORANDUM

TO: Municipality of Anchorage

FROM: Cynthia Weed

DATE: October 11, 2022

RE: Port of Alaska Rates and Charges

SUMMARY

We have been requested to do a broad survey of the business practices of other ports in the United States in rate setting and charges imposed or revenues otherwise collected to support their operations. In sum, based on our experience, there is a wide variety of business practices among the ports, because ports are not all similarly structured and each has different operating histories. We can advise the Municipality on its options, but there is no single business model that is regularly followed by United States ports. Furthermore, we observe that the Federal Maritime Commission accords substantial deference to ports in their management of operations. We understand that the Municipality is proposing to establish a uniform tariff surcharge initially (a) before the final cost and design of the cargo berths and (b) in order to support the substantial long term bond obligations that the Municipality anticipates may be necessary to accomplish its Port of Alaska Modernization Program. The Municipality is not obligated to set tariffs or surcharges to ensure that a particular carrier earns a rate of return on its capital investment. We have not located multiple or <u>any</u> circumstances under which the Federal Maritime Commission has found a uniform tariff to be discriminatory.

DISCUSSION

Introduction

The Municipality owns and operates the Port of Alaska ("Port") and is contemplating the issuance of additional long term bond issues for the purposes of implementing (together with other funds) the balance of the Port of Alaska Modernization Program ("PAMP"). The Municipality will want to obtain a credit rating from one or more of the national rating agencies (as high as reasonably possible) in order to achieve the best (lowest) interest rate on its long term bonds. In general, the rating agencies utilize criteria to determine the credit ratings which are essential to provide to potential investors in the bonds. Accordingly, the Municipality's municipal advisor has advised that the Municipality should consider implementing a plan to provide consistent and predictable future revenues. A reasonable projection of consistent future revenues is one factor used by the rating agencies. The Anchorage Port Commission (the

"Commission") has held informational meetings and heard presentations on the proposed methodology of raising sufficient revenue to meeting its long term needs. During the course of one of these presentations, a speaker suggested that the Port was not operating like other ports). Accordingly, Ron Ward, the Chair of the Port Commission requested a 50 state type survey about the business practices of ports. As our firm has worked with and for ports and port operations for decades, it may appear to be practical for us to undertake that survey.

Port Operations Differ Widely Within the United States

Ports differ in ownership structure. Ports may be privately owned (the land is privately owned), or publicly owned (the land is owned by a governmental entity). Publicly owned ports may be owned by the state (e.g., Baltimore (State of Maryland), Hawaii), by a unit of local government (e.g., Los Angeles, Anchorage) or may be independent political subdivisions (e.g., Seattle, Tacoma, Portland). Accordingly, the governance and operating structure will be different, particularly between private ports and public ports.

Public ports also differ in their historical and current operational models. Public ports may be (a) landlord ports, (b) operating ports or (c) some combination of both. A landlord port owns the property and for the most part, leases it under long term leases with private operators. Accordingly, their revenue is derived primarily through the revenues received under the long term leases. Operating ports, not only own the land, they do not (generally) have long term leases with private operators. Accordingly, their revenue is derived primarily through rates and tariffs. Ports that use a combination of these two business models, will have some long term leases and also construct, maintain (and in some instances, operate) docks and berths. In some cases, the port may operate them with their own longshoremen as employees. Some of these docks and berths also may be subject to preferential use agreements with particular carriers. This has become more prevalent in the "just in time" international supply chain practice. Shippers want to know that when their carriers arrive in port, that the particular carrier has preferential rights to access to certain berths in order to meet shipper's supply chain demands. These operational models result, generally, in some combination of revenues, tariffs, surcharges, access revenues and lease revenues for the port. Rates and charges also differ by the types of freight that moves across the docks, commodities, equipment and/or general cargo.

Also, depending on their respective geographic location, a number of ports experience substantial competitive pressure. Competitive pressure may also shape a port's revenue structure in ways that may not appear logical when comparing a port's pricing structure. Given its location in comparison with the lower 48 states, the Port may appear to be closely aligned with Hawaii from a competitive and geographic perspective. However, even that is not a perfect alignment, given the types of cargo moving over their docks.

Ports may make their own investments in terminals (generally through the issuance of port revenue bonds) and thereafter lease the terminal to an ocean carrier or terminal operator under terms which (hopefully for the port) recover the cost of the terminal. Carriers also may enter into leases of terminals (long term leases) in which the carriers make very substantial capital investment, e.g., the Port of Baltimore where Ports America invested in the Port's infrastructure (Seagirt Terminal). Ports America, in turn, negotiated a lease (a 50 year lease) to recover its capital investment. The long term bonds that were issued for the Seagirt Terminal in

Baltimore were not “port bonds”, they were payable solely from payments made by Ports America. With respect to the PAMP, neither Matson nor TOTE is investing its capital to undertake PAMP or replace Terminals 1-3. The bonds that will be issued will not be the long term payment obligations of either carrier. The return on the Municipality’s investment in PAMP is not measured as a profit (or loss) to either carrier; this is an investment by the Municipality (and all the other public entities that provide grants and support to the PAMP) to build a terminal that will serve the needs of Alaska (not to ensure a rate of return to a particular carrier).

A further consideration for the Municipality is the need for two separate berths. One carrier has a container operation (referred to as LOLO), which is used for the vast majority of cargo world wide. In fact, LOLO started in the Pacific Northwest. In 1949, an engineer in Spokane, Washington designed a 30-foot aluminum box for barges chugging to Alaska. That company may have sold only 200, but by 1953, the Alaska Steamship Company was regularly moving its freight in boxes (some wood, some steel) between the States of Washington and Alaska. Currently, the other carrier which serves Alaska utilizes a different shipping model. Its noncontainer operating fleet does not use cranes and its shipping method is referred to as roll on, roll off (RORO). Since the two ocean carriers that currently serve the cargo needs of the Port have determined that they need to arrive and depart on the same dates (Sunday and Tuesday), the Municipality will be required to construct two separate berths, substantially increasing the cost of the PAMP.

The Port maintains an operating tariff. The Port also has leases with each of the two cargo carriers. The terms of the leases provide for rental payments, currently based on measured fair market value of the leased property. In addition, the Port has preferential use agreements with each carrier. The agreements have different terms and different start and end dates, although both have five year initial terms, with options to negotiate for two additional five year extensions on terms to be negotiated in the future.

The modernization and rebuilding of Port facilities is a matter of extreme priority for the State given the age of the facilities and seismic risk (which is not just an existential threat). Design and, therefore, final costs are currently preliminary numbers. The overall cost, which may currently be $1.8 billion, is only a current estimate. While the Municipality expects to seek as many federal and state grants as can be achieved, with the help of as many advocates as can be located, it is almost certain that the Municipality will need to issue substantial long term debt in the public bond markets. In order to access the bond markets, the Municipality will need to gain investor confidence as well as debt ratings from national rating agencies that help achieve the lowest interest rates possible. The Municipality’s municipal advisor has advised that the Port’s existing revenue sources are not substantial enough, either in duration or amount to achieve these goals.

The plan of finance currently proposed for the PAMP is intended to (a) generate sufficient funds to pay and support debt service on the Municipality’s long term revenue bonds, (b) set aside funds that will be used for future upgrades and replacements to facilities to meet continued safety and security for the Port, and (c) generate funds that will be available when future seismic events occur to maintain freight access into the State. The Municipality’s municipal advisor is recommending that the Municipality initiate a plan of finance at this time in order to demonstrate the Municipality's commitment to the financial markets prior to the next upcoming bond issue. The current proposal is to establish a tariff surcharge on all terminal users. This surcharge is initially proposed to be a uniform charge on the two cargo carriers. The initial surcharge will, of course, be reviewed and analyzed annually to take into account final design and actual costs.

Another factor to be considered by the Municipality is government regulation. The Shipping Act of 1984 ("Shipping Act") imposes standards of conduct on marine terminal operators ("MTO") engaged in the "business of furnishing, wharfage, dock, warehouse or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to the sub-chapter 11 of chapter 135 of title 49, US Code." The Federal Maritime Commission ("FMC") enforces the Act and also serves as a forum for the resolution of private complaints against MTO. Under this definition, the Port is an MTO.

An MTO may not "fail to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property." 46 U.S.C. section 41102(c) (former Section 10(d)(1)). Although the resolution of claims under these general standards tends to be very fact bound, there are general principles. There is a recognition that leases and other contractual arrangements are not required to be undertaken with identical terms or conditions. *Maher Terminals, LLC v. Port Auth. Of N.Y. and New Jerseyl, 33 S.R.R. 349 (ALJ 2014).* Case settled on appeal. An MTO is "not required to tally and compare exactly what benefits were received by the relevant parties," as only unreasonable preferences and prejudices are prohibited. *Seacon Terminals v. Port of Seattle,* 26 S.R.R. 886, 899 (FMC 1993). In other words, and MTO is not obligated to set tariffs in order meet the profitability requirements of a carrier nor is an MTO obligated to set tariffs for use of a facility based on a port's cost for a particular facility.

When differentiation in overall charges to be paid by carriers is in the "contract" context (leases and preferential berthing contracts), differentiation is often the norm. In the context of tariffs/surcharges, uniformity is customary. Tariffs (including surcharges on tariffs) are generally expected to be uniform for similar access.

The Commission's analysis is "informed by the deference it shows to public port authorities, especially in the context of their leasing decisions." *Maher Terminals, LLC v. Port Auth. of N.Y. & N.J.*, FMC No. 08-03 (FMC October 26, 2016, *on remand from Maher Terminals v. FMC*, 816 F.3d 888 (D.C. Cir 2016). The FMC will "continue to consider all the relevant factors in its unreasonable preference analysis," including "the situation and circumstances of the respective customers, as competitive or otherwise." In the case of marine terminal leases it will look to "market conditions, available locations and facilities, and the nature and character of potential lessees," and "the need to assure adequate and consistent service to a port's carriers or shippers, to ensure attractive prices for such services, and generally to advance a port's economic well-being." *See* http://www.fmc.gov/assets/1/Documents/08-03_12-02_FNL_ORDR.pdf. Accordingly, we recognize that it would be customary for the FMC to defer to differential business arrangement with carriers in the context of leasing decisions and preferential berthing arrangements.

Given our review of existing principles announced in published FMC rulings, the examination of a large survey of the business models of ports would be almost as irrelevant as examining (if only we could) the business models of ocean carriers themselves. The issue facing the Port Commission and the Municipal Assembly is <u>not</u> whether carriers negotiate different contractual deals with ports. In fact, ports (including the Port) do negotiate different contractual arrangements with carriers. For financial stability and bond marketability reasons, there has been an initial recommendation to establish a uniform surcharge on cargo carriers. With respect to tariffs, we have not located any FMC case law that fails to uphold uniform tariffs. The question is whether the establishment of a uniform tariff surcharge at this time for the support of long term debt service of the Municipality's port revenue bonds and future capital projects, including emergency needs of the Port (serving the vital needs of the State of Alaska) is reasonably within the authority and discretion of the Port Commission and the Municipal Assembly.