

3. Policy and Legal Oversight, including implementation of a new Fraud Governance policy and revision to the Port's existing Ethics policy, as well as recommending changes to Resolution; and
4. Planning for further follow-on audit activities using Internal Audit resources, and in some cases, external resources.

*The agenda was returned to New Business as follows:*

**(03:26:36) Commissioner Creighton proposed, and read into the record, the following motion:**

**The Port of Seattle Commission does hereby create a Special Investigative Committee whose objective will be to undertake an investigation of the findings of the State Auditor's 2007 Performance Audit of the Port of Seattle with respect to certain contracting policies, procedures and practices at the Port being vulnerable to fraud or with respect to which fraud may have occurred. Of specific concern are those findings suggesting:**

1. Possible altering of invoices in circumvention of the Commission's authority and state law (Finding 1E);
2. Possible awarding of contracts without competition or in circumvention of competition requirements (Findings 2A, B, C&D);
3. Possible circumvention of the Small Works Roster Program (Finding 2F);
4. Possible procurement violations and concealment of "unusual procurement" from the Commission (Finding 3A); and
5. Possible project management and contract awarding conflicts (Finding 3D).

**The Committee will be comprised of Commissioners Tarleton and Bryant; Commissioner Bryant will chair the committee.**

- **The Committee may hire independent legal counsel and an independent fraud investigator. The Committee may hire a staff person for the duration of the investigation.**
- **The Committee, the fraud investigator, legal counsel and staff will fully cooperate with federal authorities or any other agency investigating the Port.**
- **The Committee may, as a result of this investigation, recommend to the full Commission how the Port should strengthen controls in areas deemed vulnerable to fraud and may recommend control mechanisms designed to deter, prevent and detect fraud.**
- **The Committee shall provide the full Commission with a proposed budget and timeline within thirty days of the passage of this motion, and shall keep the full Commission and the Chief Executive Officer apprised of the Committee's progress in public session of the Commission. At the conclusion of the investigation, the Committee shall report its findings and the conclusions to the Commission. The Committee will disband upon completion of its objective.**

**Motion carried by the following vote:**

**In Favor: Bryant, Creighton, Davis, Hara, Tarleton (5)**

**(03:43:52) Commissioner Hara introduced the following motion:**

**The Commission does hereby create and fund a new staff position to support the Commission and is initially assigned to support the Audit Committee, and to act as a budget analyst during Port budget deliberations. The Human Resources Director will consult with the Audit Committee Chair and the Commission President regarding the job description and position posting.**

**Following Commission discussion, Commissioner Creighton offered a revised (amended) motion as follows:**

**The Commission does hereby authorize a new staff position to support the Commission and is initially assigned to support the Audit Committee, and to act as a budget analyst during Port budget deliberations, subject to the Human Resources Director consulting with the Audit Committee Chair and the Commission President and the new Director of Commission Services regarding the job description and position posting.**

**Motion for approval of amended motion carried by the following vote:**

**In Favor: Bryant, Creighton, Tarleton (3)**

**Opposed: Davis, Hara (2)**

*The agenda was returned to Marine Items as follows:*

**b. (04:06:38) Authorization for Terminal 25 South Redevelopment Project in the amount of \$250,000.**

Request Document: Commission Agenda Memorandum dated January 4, 2008 from Michael Burke, Director, Container Operations and Tim Leonard, Seaport Capital Construction Manager.

Presenters: Mr. Burke and Mr. Leonard

**Motion for approval of Item 7b – Davis**

**Motion carried by the following vote:**

**In Favor: Bryant, Creighton, Davis, Hara, Tarleton (5)**

**Motion for approval of the appointment of Steven G. Miller as the public member of the Commission Audit Committee – Hara**

**Motion carried by the following vote:**

**In Favor: Bryant, Creighton, Davis, Hara, Tarleton (5)**

Commissioners Hara and Tarleton also reported on the first meeting of the Commission Audit Committee, which was held on February 7, 2008.

**b. Commission Investigation Committee Update and Recommendation**

Commissioner Bryant noted the following actions taken since the State audit report:

- The audit committee has been augmented;
- We have increased the transparency of Executive Sessions;
- We have increased the reporting on change orders and contracts;
- We have increased the independent staff, and are likely to continue to increase the independent staff of the Commission;
- We have put a moratorium on all project-wide authorizations until we're confident that the staff is implementing the audit findings;
- We are re-asserting our authority that has previously been ceded to the CEO;
- We are having a public hearing on the staff's audit action plan; and
- We have launched an internal investigation

Commissioner Bryant commented that the Special Investigative Committee would like to recommend that the services of Mr. Mike McKay, of McKay Chadwell, be retained to assist in the ongoing audit investigation.

Commissioner Bryant noted that the committee's next step will be to issue an RFP for an independent forensic auditor or investigator.

**Motion to retain the services of Mike McKay – Bryant**

**Motion carried by the following vote:**

**In Favor: Bryant, Creighton, Davis, Hara, Tarleton (5)**

Public Testimony was received from the following individual:

- Will Knedlik, Eastside Rail Now. A copy of a document provided by Mr. Knedlik to the Commission is by reference, made a part of these minutes, is marked Exhibit 'B', and is on file in Port offices.

McKAY CHADWELL, PLLC  
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(206) 233-2800

## FEE AGREEMENT

This Fee Agreement, dated 12 February 2008, is between the Port of Seattle Commission (collectively the "Client") and McKAY CHADWELL, PLLC (the "Firm") for services performed and sets forth the parties' understandings concerning the Firm's billing procedures and the Client's obligations.

**Services Provided.** The Firm is retained to support the Client's Special Committee established by motion on January 22, 2008. The Firm's fees for legal services are based upon hourly rates for actual time spent and are not contingent upon any particular event or outcome. The Firm generally charges for all time expended with the Client or on the Client's behalf, including telephone conversations, personal conferences, strategy development and planning, document preparation and review, research, drafting, negotiating, court appearances, and travel. The Firm's fees might be increased beyond the hourly rates depending upon the difficulty of the issues or upon time limitations imposed either by the Client or by unforeseen circumstances. In such event, the Firm will discuss those circumstances with the Client in order to arrive at a fair alternative; which alternative should, so far as is practicable, be agreed to in writing by the Client and the Firm.

Each attorney and legal assistant is assigned an hourly billing rate, which may be adjusted to reflect changing economic conditions or the increasing expertise of the individual. The attorney signing below presently bills at an hourly rate of \$395.00 (this reflects a public service courtesy discount from our regular hourly rate of \$425.00). For efficiency or other purposes, an attorney or paralegal with lower rates may be utilized.

The Firm will prepare a work plan and budget for the review and approval of the Client. The budget will include monetary "benchmarks" above which the Firm will not go without Client approval.

**Costs and Expenses.** In addition to legal fees, the Client will be charged for in-house expenses incurred on the Client's behalf, including photocopying, document binding, document preparation, terminal time for computerized legal research, long distance telephone, facsimile, postage, special mailing or courier service and staff overtime.

There may be other third-party expenses such as travel expenses, filing fees, and fees and expenses of independent professionals such as court reporters, architects, investigators, engineers, and other experts, which are reasonably incurred in connection with work performed on the Client's behalf and which are the Client's responsibility. The Client will be obligated to pay these expenses directly to the third party unless the Firm, in its sole discretion, advances payment to streamline administrative efforts.

**Fees Not Contingent.** The Firm's charges are not contingent upon the outcome of the matter for which it is representing the Client, or upon any other outcome. Although it is possible that the Firm's charges may be reimbursed to the Client or paid to the Firm directly through a third party, the Firm nevertheless looks directly to the parties comprising the Client, jointly and severally, for payment, and the Client's obligation to pay the Firm's charges in a timely manner will not be dependent or contingent upon the obligation of any other party.

**Billing and Payment.** The Firm bills on a monthly basis, with all invoices rendered and payable in U.S. dollars. The invoices briefly describe the matter and services performed and separately identify expenses and fees for legal services. The invoices also identify any credits by reason of overpayment or prepayment, and any unapplied retainer amount. The period covered by each invoice will typically be the calendar month prior to the date of the bill. Some expense charges, such as long distance telephone calls, may not be billed until a few months after the date on which the expense was incurred because of delays in receiving the amounts of charges from the service providers and the time required for the Firm to allocate the charges to the appropriate clients.

All invoices are due and payable within 30 days of the invoice date. A late payment charge (currently 1% per month) may be added to account balances not paid within 30 days of the invoice date.

**Advance Fee Deposit.** The Client agrees to deposit \$ 0 into the Firm's trust account before N/A. This deposit will be applied to the final billing statement or to any delinquent statement. Should funds be applied to a delinquent statement, the client agrees to replenish the trust deposit in full. The Client understands that at some point it may be necessary for the Client to deposit



additional funds into the Firm's trust account in order for the Firm to continue representation of the Client. In such event, the Client agrees to make such deposit within 10 days of the Firm's request.

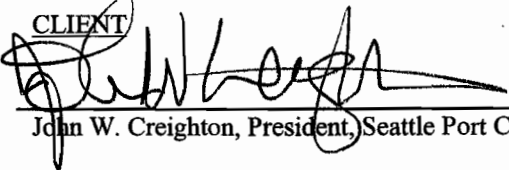
**Delinquent Accounts.** Legal fees and expenses that are more than 30 days past due are considered delinquent. Interest on the unpaid, delinquent balance will be charged at the rate of ONE (1%) PERCENT per month. In the event of a delinquency or breach of this Agreement by the Client, the Firm shall be entitled immediately to institute collection procedures against the Client, including, at its sole option, the acceptance of promissory notes, security interests, and/or payment schedules on terms acceptable to the Firm. The Firm shall also be entitled to recover from the Client all fees, including interest and costs of collection, including reasonable attorneys' fees and costs of appeal. The Client agrees that, in the event a lawsuit between the parties to this Agreement, venue shall lie, at the Firm's option, in either Seattle District Court or King County Superior Court.

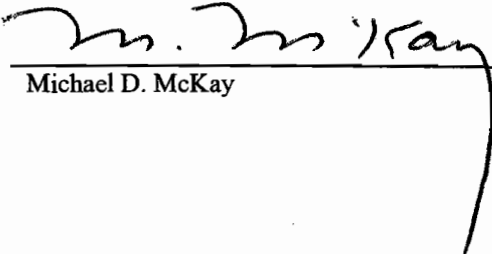
**Termination of Services.** The Firm retains the right to cease performing legal services on the Client's behalf and to terminate its legal representation of the Client for any reason consistent with the applicable ethical rules, including unanticipated conflicts of interest or delinquent legal fees and expenses. The Client acknowledges that if the Firm withdraws, or if the Client terminates the Firm's representation, the Client will promptly pay all charges, including subsequent charges relating to dealing with successor counsel or otherwise relating to this engagement.

**Questions.** The Client should direct any questions or concerns about billings, payments or legal services within 30 days of their delivery or the Client's receipt of the invoice to the attorney responsible for the account.

**Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

By signing below, the Client acknowledges that the Client has received and read a copy of this Agreement, and that the Client understands its terms and conditions and agrees to abide by them. There are no other oral or written fee arrangements or agreements between the Client and the Firm.

CLIENT  
  
John W. Creighton, President, Seattle Port Commission

FIRM  
  
Michael D. McKay



## Special Investigative Committee Budget/Timeline

	Rate	February Hours	March Hours	April Hours	May Hours	June Hours	July Hours	Total Hours	Total Dollar Amount
<b>McKay Chadwell</b>									
Member	\$395								
Associate	\$250								
Paralegal	\$120								
<b>Contractor No. 1</b>									
Member									
Associate									
Clerk									
<b>Contractor No. 2</b>									
Member									
<b>Total Each Month</b>									
<b>Tasks Each Month</b>		1. Attend initial meetings of Special Investigative Committee (SIC). 2. Develop scope, budget and timeline. 3. Prepare and issue RFP for forensic accountant and investigator.	1. Review RFP's and recommend selections to SIC. 2. Complete budget and timeline. 3. Gather and review documents.	1. Continue review of documents. 2. Identify areas in need of deeper investigation; adjust work plan accordingly. 3. Prepare interview schedule.	1. Conduct interviews. 2. Identify new areas of investigation. 3. Gather/review documents relating to new areas. 4. Prepare Working Chronology.	1. Continue interviews. 2. Conduct any necessary legal analysis. 3. Begin to prepare report.	1. Complete report. 2. Attend public meeting(s).		