

**TENTH AMENDMENT TO LEASE  
BETWEEN  
PORT OF SEATTLE AND TOTAL TERMINALS INTERNATIONAL, LLC  
TERMINAL 46**

THIS TENTH AMENDMENT TO LEASE made as of \_\_\_\_\_, 20\_\_\_\_, by and between the PORT OF SEATTLE, a Washington municipal corporation, hereinafter called "the Port," and TOTAL TERMINALS INTERNATIONAL, LLC, a Delaware corporation, hereinafter called "Lessee,"

**W I T N E S S E T H :**

WHEREAS, the parties entered into a lease agreement dated March 26, 1991, hereinafter called "Basic Lease," covering certain premises and activities by Lessee at Terminal 46, Seattle, Washington, which lease was subsequently amended by First Amendment dated January 11, 1994, to increase the leased premises by 4 acres for one year; Second Amendment dated April 11, 1994, to amend the rental; Third Amendment dated May 24, 1994, to adjust the Premises and amend the rental accordingly; Fourth Amendment dated November 22, 1994, to amend the preferentially assigned equipment provisions; Fifth Amendment dated September 10, 1996, to document the January 1, 1996 rental renegotiation stipulated in the Basic Lease; countersigned letters dated June 12, 1998 and January 21, 2000, amending the premises and rental; Sixth Amendment dated March 28, 2001, to extend lease term, add to Premises, adjust rental and fees, and provide for Premises expansion, renovation, and three new container cranes; Seventh Amendment dated January 10, 2002, to add lease provisions transferring maintenance and repair responsibilities for container cranes from Port to Lessee; Eighth Amendment dated December 30, 2003 to handle minimum container shortfalls; and Ninth Amendment dated January 20, 2005 to extend the lease term; add a lease term option; add an option to expand the Premises; make capital improvements to the Premises; and adjust the rental and fees; and

WHEREAS, the parties now wish to further revise the Basic Lease as previously amended, by reducing the crane hourly rate on Port owned cranes by twenty-five (25) percent for a period of twelve (12) months and by fifty (50) percent if Lessee has reached the previous 12 month volumes, effective upon execution of this amendment; and

WHEREAS, the parties wish to defer the 320,000 minimum Twenty-foot equivalent unit ("TEU") obligation for an additional three (3) years; and

WHEREAS, the parties wish to extend the terms of rent payment by thirty (30) days for a period of twelve (12) months upon execution of this amendment; and

WHEREAS, the Port is willing to contribute \$650,000 for Seattle City Light lighting upgrade program; and

WHEREAS, the parties intend that after the Crane 54 removal, the Box Risk Premium fee applied to volumes between 180,000-220,000 TEUs remains the same; and

WHEREAS, Lessee is willing to agree to the environmental conditions referenced in the attached Port Exhibit D; and

NOW THEREFORE, in consideration of their mutual promises, the parties hereby agree as follows:

1. The Port of Seattle Crane Tariff will include a provision for hourly crane rates associated with the Port's Customer Support package.

2. Pursuant to paragraph 3 of the Ninth Amendment to lease and Letter Agreement dated October 31, 2005, the Port invested \$3,000,000 for the purpose of increasing container volume capacity and the efficiency of the Premises ("Port Investment"). Lessee shall reimburse the Port for the Port Investment annually on a straight-line basis (\$600,000 per year) with no interest over five years commencing in 2008. Each annual \$600,000 payment is due within 30 days after the expiration of each calendar year in which an annual payment is due. No annual payment will be due to the Port if Lessee meets the minimum TEU per acre volume (described in paragraph 3 of the Ninth Amendment) ("Volume Requirement") for the annual period in which a payment is due. The parties acknowledge that Lessee has met the Volume Requirement for 2008. Lessee may defer the annual \$600,000 payment for any of the remaining four years (2009-2012) to subsequent years (up to 2015) if Lessee fails to meet the annual Volume Requirement in any of the years between 2009-2015. In no event may Lessee defer more than three (3) payment years.

3. Payment terms referenced in the Basic Lease Paragraph 3 (a), PAYMENTS, is extended by thirty (30) days from the date due on the invoice for a twelve (12) month period effective upon execution on this amendment. The extension will apply to all invoices received within the twelve (12) month period.

4. Effective upon execution of this lease amendment, Crane 54 shall no longer be available for Lessee's use under the Basic Lease. Lessee's Box Risk Premium included in PBR1 shall not double as covered in item 5 of the Ninth Amendment to the Basic Lease.

5. Consistent with the Customer Support Program, effective upon execution of this amendment and throughout the term of this Lease, Lessee agrees to the environmental conditions in attached Exhibit D, which is incorporated as part of this Lease.

6. The Port shall purchase new yard lighting fixtures in the not to exceed amount of \$680,000 to upgrade the Terminal 46 yard lighting system to improve its energy efficiency per the Seattle City Light lighting upgrade program. Port purchase costs shall include all costs related to the lighting purchase including design, inspection, overhead and sales tax. Lessee shall work with the City of Seattle and be responsible for all costs associated with the installation of the yard lights. Prior to the installation of the light fixtures, Lessee will provide the Port, for Port review and approval, an electrical design and electrical load calculation supporting installation of the new fixtures and City of Seattle electrical permit for the work. The contractor completing the installation shall be licensed, bonded and insured.

7. This lease is subject to the applicable provisions of the Shipping Act of 1984, the Shipping Act of 1916, the Ocean Shipping Reform Act of 1998 and their respective implementing regulations. No future amendment or modifications to this lease shall become effective until the appropriate procedures, if any, have been completed in accordance with the procedures of the appropriate federal agency that has jurisdiction.

8. Except as expressly amended herein, all provisions of the Basic Lease (as previously amended) shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Tenth Amendment as of the day and year first above written.

ATTEST:

PORT OF SEATTLE

a municipal corporation

By \_\_\_\_\_  
Secretary  
(CORPORATE SEAL)

By \_\_\_\_\_  
President  
LESSOR

SIGNATURE FOR  
LESSEE IF  
UNINCORPORATED

TOTAL TERMINALS INTERNATIONAL, LLC

By \_\_\_\_\_  
LESSEE



**EXHIBIT D  
PORT OF SEATTLE  
ENVIRONMENTAL PRACTICES**

**I. General**

- A. Lessee and the Port acknowledge the benefits resulting to the environment and to the parties from environmentally sound practices at the Premises. The Port has a stated goal to be the cleanest, greenest, most energy efficient port in the country and Lessee has shown commitment to the environment by reducing emissions from diesel equipment and in other ways. The Port and Lessee hereby state their mutual intent to reasonably continue to cooperate on key environmental initiatives as described in this Exhibit.
- B. The parties agree to meet annually to review and discuss the operations and other activities at the Premises, the parties' relevant experiences regarding environmental matters, any changes in applicable laws, any changes in applicable technologies, and new procedures and technologies available to reduce environmental impacts from operations at the Premises.
- C. All capitalized terms not defined in this Exhibit are from the Lease and apply to this Exhibit.

**II. Cargo Handling Equipment and Drayage Truck Emission Control Standards**

- A. Lessee agrees to implement the following specific standards to reduce overall diesel emissions from terminal operations:
  - 1. Lessee will provide information to the Port for and participate in periodic reviews of the Northwest Ports Clean Air Strategy ("Strategy") and work with the Port to help develop plans to meet the goals of the Strategy.
  - 2. The Port agrees to participate in the implementation of the Strategy by providing assistance with signage, education, information systems, pursuing grants as they may be available, and other assistance as mutually agreed upon to help the industry reduce environmental impacts.
- B. Lessee agrees to implement the following emissions standards for cargo handling equipment by December 31, 2010: Use ultra-low sulfur diesel fuel of 15 parts per million of sulfur or lower, or alternate clean fuels such as biodiesel blend with equivalent sulfur levels, in all container yard equipment, and promote early implementation of these requirements between now and December 31, 2010. Exceptions will be allowed if there is no reasonable supply of these fuels, or if extreme low temperatures prohibit the use of these fuels. Alternatively, Lessee will meet the same emission goals by upgrading all terminal cargo handling equipment to

meet Tier 2 emission standards as established by U.S. Environmental Protection Agency, or equivalent.

- C. Lessee agrees to reasonably implement the provisions of Port of Seattle Terminals Tariff No. 5, Section 9000, as promulgated on September 1, 2009, applicable to terminal operators.
- D. Any additional costs to implement the truck program, such as RFID tags, readers and data management, will be borne or guaranteed by the Port and not the terminal operators. The Port will defend, indemnify, and hold Lessee harmless against all claims arising from Lessee's enforcement of drayage truck access regulations established by the Port in its Port Tariff or Schedule, including but not limited to any enforcement or civil penalty action brought by a federal agency with jurisdiction over the Port's truck-related regulations. Provided, however, the Port has no obligation to defend, indemnify, or hold Lessee harmless under this Exhibit to the extent Lessee's claims arise from Lessee's negligence, recklessness, or willful misconduct.
- F. Lessee will provide the Port with the following information on its cargo handling equipment:
  - 1. A current inventory of all cargo handling equipment in use at the Premises showing the equipment make and model, and any emission reduction or energy saving devices installed. Lessee also agrees to provide an updated inventory to the Port on an annual basis within sixty (60) days after the end of each calendar year of the lease term.
  - 2. Lessee, upon the Port's request, will provide fuel expenditure receipts for the prior year confirming the purchase/use of fuels that meet the standards as set out in this exhibit. Lessee will provide this information within sixty (60) days of the Port's request.
- G. Lessee agrees to post anti-idling signs and to develop and implement, as feasible and practicable, an anti-idling policy for all equipment on the Premises. The Port and Lessee will mutually explore technical anti-idling solutions and funding

### **III. Clean Energy**

Lessee agrees to consider use of fuel saving equipment or other energy saving improvements where practical and feasible. Lessee agrees to cooperate with Port efforts to conduct energy audits when grants or other funding can be provided. Energy audits will be subject to advance Lessee approval and be carried out in a manner that does not disrupt the operation of the terminal. The Port and Lessee agree to work together to reach mutually acceptable approaches for implementation of energy conservation improvements such as improvements to container terminal lighting.

#### **IV. Low Impact Development**

Lessees will consider adopting low impact practices including LEED Certification and sustainable building practices for all Lessee-directed improvements.

#### **V. Water Quality Protection**

- A. Lessee acknowledges that the Premises are subject to the requirements of the City of Seattle ("City") ordinance regarding stormwater drainage, source control, and other applicable City requirements as well as Washington State Department of Ecology ("Ecology") stormwater regulations and permits.
- B. Lessee and its customers agree to have an effective spill response plan in accordance with all state and federal regulations. Lessee will include the Seaport Environmental Incident Notification telephone number into their call list during any incident or event.
- C. In order to avoid exceeding zinc standards, or other metals, in storm water runoff, Lessee agrees that un-coated galvanized metals will not be used on new structure surfaces (e.g. roofs) exposed to natural elements. Lessee agrees that such metals will be factory-coated with baked-on enamel, or equivalent, protective coating.

#### **VI. Environmental Stewardship**

- A. Lessee agrees to consider the use of renewable energy and electric powered equipment where practical and feasible.
- B. Lessee agrees to permit the Port access to the Premises at any time upon reasonable request, for the purpose of conducting environmental testing, monitoring, and or assessments at the Port's expense. Such activities shall be conducted in such a way that they do not interfere with normal terminal business activities. Testing, monitoring and assessment results and conclusions shall be shared with the Tenant.
- C. If any areas within the Premises are Environmental Protection Agency (EPA) long-term monitoring sites, the Port agrees to clearly define such areas, and Lessee agrees to provide access for investigation and monitoring upon proper notification and request.
- D. In accordance with pertinent regulatory requirements, Lessee agrees to provide recycling facilities and to implement reasonable hazardous material management practices.



**SECTION SIX, PART 1 – EQUIPMENT RENTAL AND LABOR RATES  
Equipment Rental Conditions and Rates**

**ITEM 6000  
EQUIPMENT RENTAL CONDITIONS**

**(G) CRANE RENTAL REDUCTION ON PORT OWNED CRANES**

The crane hourly rate reduction applies only to users, renters, or operators who are part of the Customer Support Package approved by the Port Commission on April 14, 2009. The reduction in rates referenced hereto shall apply for each container terminal for a 12-month period commencing the first full month after execution of the required lease amendment. Once the 12-month period ends, the rate should revert to the most current Port tariff rate for that year.

- (A) A 25% reduction on the Rate per Hour will apply for each container terminal for a 12-month period. After the 12-month period, the rate should revert to the most current Port tariff rate for that year.
- (B) A 50% reduction on the Rate per Hour will apply once a container terminal has reached its previous 12-month volumes, defined as paying the same revenues (prior to the 25% reduction) as the previous 12-months for crane rental.

**ITEM 6000  
EQUIPMENT RENTAL RATES**

<u>Type</u>	<u>Rate per Hour</u> <u>Except as Noted</u>
Equipment performing a specific customized service not otherwise provided in normal Port activities will be subject to quotation	
<b><u>CRANES, FULLY AUTOMATED WITH LIFTING BEAMS:</u></b> Bridge-type container crane, with 20-ft thru 40-ft variable lifting beam, rates do not include fuel or power, (see <u>Item 6020</u> , or maintenance labor.	
Subject to Note .....	\$647.00

**Note 1:** Crane rental time will be computed and charged as provided in Item 6000(B).

**Note 2:** Crane rental rate per hour will be charged as provided in Item 6000 (G).

## SECTION 9 – MARINE TERMINAL TRUCK PROGRAM

### ITEM 3000

#### DRAYAGE TRUCK OPERATIONS

In accordance with the Port's desire to achieve the air quality goals described in the Northwest Ports Clean Air Strategy, the Port seeks to reduce diesel emissions from drayage truck operations at its international container terminals ("Container Terminal" or "Container Terminals"). All Container Terminal tenants ("Tenants") that have incorporated by reference this tariff item in their leases or use agreements agree to abide by the following provisions:

- (1) Effective on January 1, 2011, all trucks entering a Tenant's Container Terminal for the purposes of draying containers ("Drayage Trucks") to or from the Container Terminal must be model year 1994 or newer. Tenants will bar non-compliant Drayage Trucks from entering the Container Terminals. Tenants may allow limited exemptions for non-compliant trucks, so long as the rules and procedures for such exemptions are in this tariff.
- (2) The Port desires that by January 1, 2016, 80% of all Drayage Trucks entering a Tenant's Container Terminal will be model year 2007 or newer. Tenants will cooperate with the Port in collecting information regarding the progress being made to achieve the 80% goal.
- (3) Effective on January 1, 2018, all Drayage Trucks entering a Tenant's Container Terminal must be model year 2007 or newer. Tenants will bar non-compliant Drayage Trucks from entering the Container Terminals. Tenants may allow limited exemptions for non-compliant trucks, so long as the rules and procedures for such exemptions are in this tariff.