

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

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| Item No. | 6e |
| Date of Meeting | August 25, 2009 |

DATE: August 18, 2009

TO: Tay Yoshitani, Chief Executive Officer

FROM: Michael Burke, Senior Manager, Container Leasing and Operations

SUBJECT: Revision to Proposed Tenth Amendment to the lease with Total Terminals, Inc. for Terminal 46.

ACTIONS REQUESTED

1. Request for authorization for the Chief Executive Officer to execute revised Customer Support Package/Port's Clean Air Program lease amendment with Total Terminals, Inc.
2. Authorization for the Port to purchase energy efficient light fixtures and related equipment for Terminal 46 for an amount not to exceed \$680,000.

BACKGROUND

On April 14, 2009, the Commission authorized lease amendments with all of our container terminal tenants to incorporate the Customer Support Package and Clean Air Program. As part of that authorization for Terminal 46, leased to Total Terminals Inc. (TTI), the Commission authorized the Port to contribute up to \$600,000 to Seattle City Light for the lighting upgrade program for Terminal 46, to improve the energy efficiency of that lighting system.

Unfortunately, the Port and Seattle City Light (SCL) have not been able to work out a mechanism for the Port to make that contribution through SCL. As an alternative, staff is now recommending that the Commission amend the authorization to allow the Port to purchase the energy efficient lighting fixtures and related equipment, and to verify the lighting design meets required standards and is structurally safe, for an amount not to exceed \$680,000. The tenant will be responsible for the costs and risks to install the improved lighting system. Until the engineering is complete, there is some risk that the lighting upgrade will not be feasible. If that were to happen, the Port and TTI would have to work out some alternative and staff would bring any revised plan back to Commission for authorization. The Port will work with the light fixture supplier to minimize light spillover beyond the terminal boundaries but some spillover is inevitable in order for the lighting system to meet minimum required lighting levels on the terminal, including the dock.

In addition, staff is also requesting the TTI amendment be modified to give TTI 30 days additional time to pay all rent included in their box rate for one year. The original authorization was to give the additional 30 days for land rent only, but TTI's lease converts both land and

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crane rent into a box rate. The Port's automated billing process cannot accommodate the segregation of the box rate at Terminal 46 into two separate components. Segregation of the T-46 box rate into two separate billing components would require manual invoicing for the 12-month customer support program duration, and would result in an increased risk of billing errors. In addition, the Port's CCCS billing system, used for the Terminal 46 lease, does not retain information on manual billings so the integrity of the audit trail for this lease would be reduced.

TERMS OF THE LEASE AMENDMENT

On April 14, 2009, the Commission authorized the Chief Executive Officer to execute lease amendments with Total Terminals, Inc. for Terminal 46, SSAT (Seattle) for Terminal 25/30, SSA Terminals for Terminal 18, and Eagle Marine for Terminal 5 to incorporate the Customer Support Package and the Ports Clean Air Program into those leases. The major elements of the proposed lease amendment with Total Terminals, Inc. are:

1. The Port will reduce the crane hourly rate on Port owned cranes, currently at \$647/hour, by 25% and remit reduction savings for one year from the date of execution of the amendment.
2. Once the terminal has reached the previous 12 month volumes, defined as paying the same revenues (before the 25% rebate) as the previous 12 months for crane use, then the Port will reduce crane hourly rate to 50% and remit reduction savings for the remainder of the 12 month period established in item 1. This item is aimed at giving an incentive for new cargo volumes.
3. For a one-year period, tenant terms of payment for space rent will extend by 30 days. Due to the complication of the box rate rent which TTI pays for Terminal 46 volumes, which includes land and crane rent as well as all applicable taxes, this request proposes that TTI get the 30 day extension for all rent used to calculate their box rate per lift.
4. The TTI agrees to the conditions of the Environmental Attachment. The Environmental Attachment commits the tenant to Port's truck program, to using either upgraded yard equipment or cleaner fuels, and to cooperate with the Port on improved environmental standards. The Port's truck program will require all trucks entering the terminal on Jan. 1, 2011, or later be model year 1994 or newer.
5. As part of the Environmental Attachment, the Port and the TTI agree to work on energy saving projects. An example of this is the Seattle City Light program to upgrade terminal lighting to save energy.
6. At Terminal 46, for the next four years, TTI will owe the Port \$600,000 each year if it does not achieve a 320,000 TEU annual throughput, per the agreement in the Ninth Amendment to the lease. This agreement would defer this obligation, giving TTI up to

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three more years to achieve that volume level. In other words, TTI would need to achieve the 320,000 TEU annual volume level in four of the next seven years to meet the obligation and avoid any payment.

7. In addition, the Box Risk Premium fee, which applies to volumes between 180,000 TEUs and 220,000 TEUs and which doubles with the removal of Crane 54 per current lease language, will remain at the current rate. The Box Risk Premium fee is currently at \$3.46 per lift.
8. In addition, the Port was to contribute up to \$600,000 to Seattle City Light for the lighting upgrade program for Terminal 46, improving the energy efficiency of that lighting system. The Port and Seattle City Light have been unable to work out a mechanism to do this so staff now proposes that the Port fund the purchase of light fixtures and related equipment to accomplish this lighting upgrade, including verification of lighting levels and structural condition of poles. The estimated cost for this purchase and related engineering work is \$680,000. TTI will be responsible for all costs to install (which include permitting, design, construction and performance) the lighting system upgrade.

PROJECT SCOPE OF WORK

- Overall project scope is to prepare purchasing package for the energy efficient lighting fixtures and related equipment based on approved design documents.
- Review and approve tenant's design package, which include scopes of work, design drawings, and calculation with professional engineer stamp which demonstrate code compliance for the tenant's lighting replacement project.
- Review manufacturer's shop drawings, demolition, and installation plans.
- Ensure industry and code compliance, and Port requirements.
- Final inspection and approval of completed work.

ALTERNATIVES CONSIDERED/RECOMMENDED ACTION

Alternatives considered in addition to the recommended action:

1. The Port could take on the lighting upgrade as a Port project including installation. This would increase the delivery time for the upgraded lighting system and possibly increase the costs. TTI's benefits from reduced energy and maintenance costs would be delayed and the Port would have to pay any increased costs resulting from this approach.

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2. Not changing the 30-day extension in payment terms to include the entire box rate would mean that staff would have to generate separate manual invoices the each month for the land and crane components of the box rate. This would be a labor-intensive effort increasing Port costs, expose the Port to increased risk of mistakes, and reduce the integrity of accounting records related to this lease.
3. Not making the lighting improvements would mean that TTI would not support the amendment and the Port would not achieve the benefits of the truck program and green lease language.

FINANCIAL ANALYSIS:

Budget/Authorization Summary

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|--|-----------|
| Previous Authorizations | \$600,000 |
| Current Request for Authorization | \$80,000 |
| Total Authorizations, Including this Request | \$680,000 |
| Remaining Budget to be Authorized (estimated) | \$0 |

Project Cost Breakdown

| | |
|--|-----------|
| Engineering Services Support | \$80,000 |
| Purchase of Lighting Fixtures, Related Equipment, and Sales Tax | \$600,000 |
| Total | \$680,000 |

Source of Funds

The Terminal 46 lighting program is a capital project and was not included in the 2009 Draft Plan of Finance. The additional \$80,000 in funds needed for this capital project is available due to anticipated timing delays in other 2009 Draft Plan of Finance committed projects, such as purchase of container support yard land. This project will be funded from the general fund. No other funds are needed for the Terminal 46 Customer Support Plan.

Financial Analysis Summary

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|------------------------------------|---|
| CIP Category | N/A |
| Project Type | N/A |
| Risk adjusted Discount rate | N/A |
| Key risk factors | The risks associated with the overall Customer Support Package are neither increased nor reduced by this requested modification to the Terminal 46 lease amendment. |
| Business Unit (BU) | Container Operations |

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| Cash Flow Impacts | <p>An estimate of the impact to the Port's cash flow from the one-year customer savings program at <u>Terminal 46 only</u> is shown below. The difference in cash flow impact for Terminal 46, when compared to the prior Commission Memo dated 4/14/09, is due to the inclusion of the entire box rate in the 30-day payment deferral terms.</p> <table border="1" data-bbox="508 489 1239 678"><thead><tr><th colspan="4">Customer Savings Program - Terminal 46 only</th></tr><tr><th>Cash Flow (in \$000's)</th><th>2009</th><th>2010</th><th>Total</th></tr></thead><tbody><tr><td>Commission Memo - dated 4/14/09</td><td>(751)</td><td>751</td><td>0</td></tr><tr><td>Commission Memo - revised estimate</td><td>(978)</td><td>978</td><td>0</td></tr><tr><td>Change in cash flow by year:</td><td>(227)</td><td>227</td><td>0</td></tr></tbody></table> | Customer Savings Program - Terminal 46 only | | | | Cash Flow (in \$000's) | 2009 | 2010 | Total | Commission Memo - dated 4/14/09 | (751) | 751 | 0 | Commission Memo - revised estimate | (978) | 978 | 0 | Change in cash flow by year: | (227) | 227 | 0 |
|--|--|--|--------------|--|--|-------------------------------|-------------|-------------|--------------|---------------------------------|-------|-----|---|------------------------------------|-------|-----|---|------------------------------|-------|-----|---|
| Customer Savings Program - Terminal 46 only | | | | | | | | | | | | | | | | | | | | | |
| Cash Flow (in \$000's) | 2009 | 2010 | Total | | | | | | | | | | | | | | | | | | |
| Commission Memo - dated 4/14/09 | (751) | 751 | 0 | | | | | | | | | | | | | | | | | | |
| Commission Memo - revised estimate | (978) | 978 | 0 | | | | | | | | | | | | | | | | | | |
| Change in cash flow by year: | (227) | 227 | 0 | | | | | | | | | | | | | | | | | | |
| Effect on Business Performance | <p>The extension of payment terms by 30 days for the entire box rate at Terminal 46 represents a timing difference in cash flows, but does not affect NOI.</p> <p>The \$100,000 increase in the cost of the Terminal 46 lighting project will increase depreciation expense for this capital asset to \$14,000 annually, from the \$12,000 annually previously reported.</p> | | | | | | | | | | | | | | | | | | | | |

PREVIOUS COMMISSION ACTION

On April 14, 2009, the Commission authorized the Chief Executive Officer to execute lease amendments with Total Terminals, Inc. for Terminal 46, SSAT (Seattle) for Terminal 25/30, SSA Terminals for Terminal 18, and Eagle Marine for Terminal 5 to incorporate the Customer Support Package and the Ports Clean Air Program into those leases.