PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA | **Item No.** 6b
Date of Meeting April 14, 2009

DATE: March 17, 2009

TO: Tay Yoshitani, Chief Executive Officer

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

SUBJECT: The Customer Support Package and the Clean Air Program.

ACTION REQUESTED:

Authorization for 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.

BACKGROUND:

Shockwaves from the current global economic crisis are rippling through the port industry. Shippers, carriers, terminal operators, longshore workers, and truck drivers alike have been impacted by the sudden drop in consumer spending. The jobs created by cargo are more crucial than ever, and port authorities across the US are taking steps to remain competitive. Southern California ports are creating incentive packages to attract intermodal rail cargo from the Pacific Northwest.

Port container tenants need temporary cost reductions while the Port needs their cooperation to implement the Port's clean truck and other environmental programs. Port staff is therefore proposing a program that combines these customer recovery efforts with the implementation of Port environmental initiatives. Port staff is requesting two separate but integrated Commission actions today: Adoption of a customer recovery program that will be added to the container leases in consideration for the Port's new environmental language and authorization to transfer $2.3 million to the Puget Sound Clean Air Agency (PSCAA).

As terminal leases are modified to include the measures that will maintain our competitiveness, the Port is including language that:

- Requires terminal operators to implement and enforce the proposed clean truck program;

- Formalizes the emissions reductions in cargo handling equipment that terminal operators have already begun implementing voluntarily;
- Establishes protocols for Port and marine terminal operators to meet regarding continued progress on environmental practices.

The following questions and answers further describe these integrated programs:

When cargo returns to previous levels, will the Port attempt to "make up" the lost revenue?

No. The Southern California ports have enacted incentive programs aimed directly at attracting intermodal cargo from other ports, such as Seattle. Our Customer Recovery Program will help our container terminal tenants retain business in these tough economic times. Attempting to recover lost revenue from this program at a later date will create additional costs for cargo in the future, potentially leading to diversion of cargo to other ports. To our knowledge, no other port has sought or received any considerations in exchange for the financial support they've given their customers during these difficult economic times.

What environmental requirements beyond those already required under state law and permits may be added to the leases?

The major elements of the draft lease amendments that go beyond regulatory requirements include:

- Implementation by the terminal operators of the Port's truck program standards for 2011 and beyond.
- Acknowledgment by the terminal operators to meet the goals of the Northwest Ports Clean Air Strategy (NWPCAS) for cargo handling equipment by 2011, something the terminals are on track to do.
- Annual meeting to discuss operations and to look for ways to reduce environmental impacts and implement the goals of the Port's air program.

What monitoring and enforcement mechanisms would be attached to these new lease requirements?

The Port will have several mechanisms for ensuring that these new lease requirements are met.

- Port staff, PSCAA, and the terminal operators will work together to develop a system of periodic audits of the entrance records and ensure that the program is implemented and enforced thoroughly and consistently.

- Equipment lists for cargo handling equipment are submitted to the Port annually for review. This will allow us to determine compliance with the NWPCAS standard.

How much money is needed to implement the proposed truck buy-back and scrapping program?

Enrollees in the buy-back program will receive the fair market value of their truck or $5,000, whichever is greater, for participation in the program. Using the PSCAA's estimate of 300 pre-1994 trucks remaining in the fleet, approximately $1.5 million will fund the initial buy-back and scrapping program.

How will the program ensure that Port of Seattle dollars are spent on the trucks that service our terminals?

PSCAA will require a document summarizing the truck's port drayage activity during the previous year, verifying that the truck is part of the Seattle drayage fleet. Requiring this information should eliminate trucks that are not part of the drayage fleet or that are no longer used for drayage due to the economic downturn.

What criteria or certification or registry will be used to distinguish compliant from non-compliant trucks?

The Port will work with terminal operators and the PSCAA to develop a registry verification system once the Commission has approved a clean truck program. Only trucks that have been confirmed as compliant will be registered initially. Ideally, verification will use RFID or some other automated technology. If automated technologies are not in place by Dec. 31, 2010, we will begin with a simpler verification method, such as a registration and sticker system.

How will POS ensure that terminal operators are only permitting the entry of trucks that are certified or on the registry?

Port staff, PSCAA and the terminal operators will work together to develop a system of periodic audits of the entrance records. The audits may include visual checks of VIN numbers to ensure that they match registered trucks.

How much money would the Port give to the Puget Sound Clean Air Agency (PSCAA)?

Port staff is requesting authorization to transfer $2.3 million total to PSCAA to support the agency's air emissions reduction programs between 2009 and 2010. Of that $2.3 million, $800,000 has already been approved by the Commission and is in the Port's 2009 budget. PSCAA anticipates using an additional $1.5 million would be used by PSCAA to support a buy-back and scrapping program for pre-1994 drayage trucks. PSCAA is a longstanding, reliable partner with a solid track record of results in projects with the Port and other partners.

We do not yet know what funding will be required or available via grants, WSDOE or PSCAA beyond our current request. The current focus is on meeting the 2010 NWPCAS goals; once that is accomplished, Port staff will determine what resources are required to meet goals established for 2015 and 2017.

How will PSCAA be accountable to the Port for the use of the funds?

The Port will provide funding to PSCAA in quarterly installments. Any unused funding will be returned to the Port at the end of the agreement, unless otherwise agreed to by the Port in writing, once all reimbursements and administrative costs are covered.
PSCAA will provide Port with a written report every three months showing how the agency spent the Port funds transmitted under the agreement. The Port can terminate the agreement on 30-days notice.

How would the proposed program incorporate the Northwest Ports Clean Air Strategy (NWPCAS) 2015 goals?

On average, drayage trucks are replaced every ten years. The truck standards and timelines in the NW Ports Clean Air Strategy were designed to work with the natural turnover of trucks in the drayage industry. In addition, the CSS program would put $100 per month from truckers' lease payments into a savings account to go toward the purchase of a 2007 truck. If the trucker chooses to withdraw from the program, the money will be his or hers (along with the interest). If the driver chooses to stay with the program, by 2015, he or she will have accumulated a significant down payment toward the cost of a 2007 or newer truck.

On January 22, 2008, the Port of Seattle Commission adopted the Northwest Ports Clean Air Strategy ("Strategy"), a voluntary and collaborative effort of the Ports of Seattle, Tacoma and Vancouver (B.C.) to reduce maritime and port-related emissions that affect air quality and climate change in the Pacific Northwest.

On March 31, 2009, Port staff briefed the Commission on the proposed lease amendments for T-46, T-25/30, T-18 and T-5 to incorporate the Customer Support Package and the Clean Air Program into our container terminal leases. A copy of that presentation is attached.

MAJOR ELEMENTS OF THE PROPOSED AMENDMENTS:

The four proposed lease amendments have some items that are similar in all the leases and some items that are specific to each individual terminal lease. The following are items that are the same for each proposed lease amendment:

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 these amendments.

2. Once a 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 be extended by 30 days. At Terminal 18 this condition will be subject to bond insurer approval because of the special financing conditions for the T-18 expansion.

4. The Terminal Operators agree to the conditions of the Environmental Attachment, a copy of which is included with this memo.

5. As part of the Environmental Attachment, the Port and the Terminal Operators agree to work on energy saving projects. An example of this is the Seattle City Light program to upgrade terminal lighting to save energy. The Port, Seattle City Light, and our tenants may share in the costs to implement this lighting improvement to take advantage of City Light's incentive program.

6. The Terminal Operators agree to implement the Port's truck program by requiring all trucks entering the terminal on Jan. 1, 2011 or later be 1994 or newer trucks.

7. Port will waive the Intermodal Yard ("IY") lift fee once any minimum guarantee is met for one year following execution of this amendment. The IY lift fee relates to on-dock rail operations at either Terminal 5 or Terminal 18. Terminal 5 has a minimum guarantee of 50,000 lifts per year; Terminal 18 has no minimum guarantee.

The following are specific terms for each terminal that would be part of the specific amendment for that terminal:

- At Terminal 5, the Eagle Marine lease boundaries will be adjusted by swapping approximately 9.75 acres of existing terminal for an equivalent amount of property from the Terminal 5 option area, making this exchange of land revenue neutral to the Port. The site of the existing CFS building, and it's rail and road access will be removed from the Eagle leasehold. In addition enough area at the north end of the terminal will be removed from the existing lease to give the Port an independent access road to the unleased option property, required for the Port to make any revenue generating use of that area. Finally, Eagle Marine agrees to give up its option committing the Port to a dock extension, due to expire at the end of this year.

- At Terminal 25/30, the premises will be reduced by five acres for one year following completion of T-30 expansion, expected to be May 2009. The Port will have the ability to try to rent the five acre site during that one year period.

- At Terminal 46, for the next four years, TTI will owe the Port $600,000 each year if they do not achieve 320,000 TEU annual through-put, per the agreement in the Ninth Amendment to the lease. This agreement would defer this obligation, giving TTI up to 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. Also the Port will 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. 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.

ENVIRONMENTAL BENEFITS:

Puget Sound Clean Air Agency has identified reduction of diesel particulate matter (DPM) emissions as one of its top priorities because of the public health and environmental impacts. In 2005, the Port conducted the Puget Sound Maritime Air Emissions Inventory (EI), which located and quantified DPM from maritime sources in the greater Puget Sound region. Based on the results of the EI, in 2005 Port operations accounted for 9% of all of the DPM emitted in the four county Puget Sound Clean Air Agency region (ocean-going vessel hotelling: 44%, cargo-handling equipment: 32%, rail: 12%, ocean-going vessel maneuvering: 9%, trucks: 3%, fleet vehicles <1%, harbor vessels <1%).

The expected environmental benefits of implementation of the Northwest Ports Clean Air Strategy truck performance measures is a reduction in pollutants of DPM, oxides of nitrogen (NOx), and volatile organic compounds (VOCs), as well as a reduction in fuel consumption. A truck that meets 1994 U.S. EPA particulate matter (PM) emission standards is 6 to 2.5 times cleaner than a truck built before 1994. Similarly, a truck that meets 2007 U.S. EPA PM standards is 10 times cleaner than a truck built between 1994 and 2006, and 5 to 60 times cleaner than a truck built before 1994.

FINANCIAL ANALYSIS:

Source of Funds

The Terminal 46 lighting program is a capital project and was not included in the 2009 Draft Plan of Finance. The $600,000 required to fund 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.

The remaining components of the one-year customer savings program are operating items and will reduce amounts available from the general fund.

Financial Analysis Summary

<table>
<tr><td>CIP Category</td><td>N/A</td></tr>
<tr><td>Project Type</td><td>N/A</td></tr>
<tr><td>Risk adjusted Discount rate</td><td>N/A</td></tr>
<tr><td>Key risk factors</td><td>Amendment to the Terminal 18 lease is subject to approval by MBIA, per terms of the special facility financing for the Terminal 18 expansion.
The proposed rebates and deferred payments in the one year customer savings program may not provide enough incentive in the current economic climate to significantly increase cargo volumes.
Other Port tenants may request similar discounts/rebates.</td></tr>
<tr><td>Business Unit (BU)</td><td>Container Operations</td></tr>
<tr><td>Cash Flow Impacts</td><td>An estimate of the impact to the Port’s cash flow from the one year customer savings program is shown below. These cash flow impacts include both temporary deferrals of rent payments (for which payment is due in full at the end of the one year program), and specific rebates/fee waivers which permanently reduce the amount of rent owed to the Port during the one year program. Estimates are based on the 2009 Operating Budget and the 2010 NOI Forecast, and are shown here on a <u>cash flow</u> basis. The NOI impact of the one year customer savings program is shown in the “Effect on Business Performance” section below.
<table>
<tr><th colspan="4">Customer Savings Program</th></tr>
<tr><th>Cash Flow (in $000's)</th><th>2009</th><th>2010</th><th>Total</th></tr>
<tr><td>25% Crane Rent Rebate</td><td>(1,008)</td><td>(813)</td><td>(1,821)</td></tr>
<tr><td>50% Crane Rent Rebate</td><td>0</td><td>0</td><td>0</td></tr>
<tr><td>Space Rent - 30 day deferral</td><td>(4,623)</td><td>4,623</td><td>0</td></tr>
<tr><td>IY Fee Waiver above annual min</td><td>0</td><td>(145)</td><td>(145)</td></tr>
<tr><td>Terminal 25/30 - rent abatement</td><td>(302)</td><td>(216)</td><td>(518)</td></tr>
<tr><td>Terminal lighting program (capital)</td><td>(600)</td><td>0</td><td>(600)</td></tr>
<tr><td>Terminal 46 - defer min volume</td><td>0</td><td>0</td><td>0</td></tr>
<tr><td></td><td>(6,533)</td><td>3,449</td><td>(3,084)</td></tr>
</table>
Note: The reconfiguration of 9.75 acres of the Terminal 5 leased facilities is not reflected in the cash flow impacts above. This acreage swap is revenue neutral to the Port and does not impact cash flow.</td></tr>
<tr><td>Effect on Business Performance</td><td>Customer Savings Program
The estimated impact on Net Operating Income (NOI) and NOI after Depreciation resulting from the one year customer savings program is shown below. The one year program is expected to begin on June 1, 2009 and end on May 31, 2010.</td></tr>
</table>

Customer Savings Program					
NOI (in $000's)	**2009**	**2010**	**2011**	**2012**	**2013**
NOI	($1,310)	($1,174)	$0	$0	$0
Depreciation	($6)	($12)	($12)	($12)	($12)
NOI After Depreciation	($1,316)	($1,186)	($12)	($12)	($12)

Notes: The extension of payment terms by 30 days for terminal space rent represents a timing difference in cash flows, but does not impact NOI.

PREVIOUS COMMISSION ACTION:

- On January 22, 2008, the Port of Seattle Commission adopted the Northwest Ports Clean Air Strategy ("Strategy"), a voluntary and collaborative effort of the Ports of Seattle, Tacoma and Vancouver (B.C.) to reduce maritime and port-related emissions that affect air quality and climate change in the Pacific Northwest.

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