

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 6a

Date of Meeting November 10, 2009

DATE: October 22, 2009

TO: Tay Yoshitani, Chief Executive Officer

FROM: Scott Pattison, Manager, Industrial Properties
Mike McLaughlin, Director, Cruise and Industrial Properties

SUBJECT: 11th Amendment to Louis Dreyfus Lease at Terminal 86 Grain Terminal

REQUESTED ACTION:

Request Commission authorization for the Chief Executive Officer to execute the 11th Amendment to the Lease between the Port of Seattle (Port) and Louis Dreyfus Corporation (Lessee) at the Terminal 86 Grain Terminal. This amendment would revise the date when Lessee may elect to exercise its next (5) five year option to extend the Lease term, providing an additional (6) six month decision period from November 14, 2009 to May 14, 2010. This amendment would also revise the date when the Port must respond to Lessee's notice from February 14, 2010 to August 14, 2010. This will give both parties the opportunity to negotiate a longer-term alternative which would be beneficial to each side.

SYNOPSIS:

The Terminal 86 Grain Terminal has been in operation for nearly 40 years under the current lease agreement, presently in its 10th amendment. The Lease was assigned from Cargill to Louis Dreyfus in 2000. Louis Dreyfus has actively marketed and operated the terminal since that time. In 2004, the Lease was amended to reduce base (fixed) rent and eliminate dockage revenue – in exchange the Port receives payment based upon tonnage volume with a market share component. Financial performance has improved for the Port as a result of these changes.

The current agreement provides the Lessee an option to extend the lease term for two additional five (5) year terms. The first 5 year option period would become effective November 14, 2010, provided Lessee notifies the Port on or before November 14, 2009.

Options to extend are subject to Port approval, which shall not be unreasonably withheld. The current agreement requires the Port to respond to Lessee's notice to extend the Lease term on or before February 14, 2010. We believe there are no significant downsides, and

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significant potential benefits, to the Port in extending the Lease term by providing the Lessee an additional six-month decision period from November 14, 2009, to May 14, 2010, to exercise the option, and by revising the date of the Port's response to August 14, 2010.

When the terminal was new, provisions adequately addressed needs for keeping the terminal operational. However the Lease was silent about responsibility for replacement of systems that have simply worn out due to age (despite proper maintenance and repair over their serviceable lives), nor does the Lease speak to upgrades and enhancements to increase productivity, improve efficiency, or keep up with technology and systems related to safety and the environment. These are the types of issues to be negotiated.

BACKGROUND AND JUSTIFICATION:

The parties began discussions in January 2009 to address the current and future needs of the grain terminal. These discussions have been ongoing, with a target of negotiating a "Terminal Upgrade Amendment" to the Lease prior to November 14, 2009, the date when Lessee must either exercise its option to extend the term, or allow the option to lapse.

The base component to negotiating a Terminal Upgrade Amendment is to reach a clear understanding of what scopes of work need to be performed and to determine the value of the future improvements. Accordingly, the Port retained an engineering firm with expertise in grain terminals to perform a condition survey of Terminal 86, and to recommend scopes of work with order-of-magnitude costs. This report was just completed in October – which does not provide adequate time to properly negotiate a Terminal Upgrade Amendment prior to the lapsing of Lessee's date of decision to exercise its option.

There is mutual understanding by both parties that a six-month extension on the decision to exercise the option would provide needed time and the proper negotiation environment to allow both parties to bring a mutually beneficial alternative to our respective boards for final approval. We believe there are no significant downsides and significant potential benefits to the Port in extending the Lease term.

BUSINESS PLAN OBJECTIVES:

Through collaborative efforts with our customer, identify the upgrades and needed improvements for the aging facility which were not contemplated or provided for under the current Lease agreement.

Future upgrades and improvements would be aimed at preserving the competitiveness of the grain terminal by enhancing structural, mechanical, electrical and/or control systems and protection of the environment.

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Apportion such investments between the Port and Lessee to better ensure an efficient, reliable, safe and environmentally-sound facility as a going-concern.

This Amendment, if approved, would provide additional time to identify, consider and negotiate scopes of work under a shared investment scenario which would be presented to the Commission in a future proposed Terminal Upgrade Amendment or a new lease proposal.

FINANCIAL IMPLICATIONS:

Not applicable. There are no direct financial impacts. This amendment would afford additional time prior to the Lessee exercising or waiving its option to extend the Lease term for the upcoming five (5) year option. It would not affect the dates of the option, if exercised.

STRATEGIC OBJECTIVES:

Make needed capital improvements in Terminal 86 to extend its useful life, and to optimize its financial performance now and over time by incorporating some of these investments into a longer term commitment with the current tenant.

ALTERNATIVES CONSIDERED / RECOMMENDED ACTION:

1. Amend the Lease to include upgrades and improvements prior to November 14, 2009. Amending the Lease by this date would not allow time to thoroughly evaluate the terminal and is therefore not recommended.
2. Do not provide an extension for Lessee to exercise its option beyond the current decision date of November 14, 2009. This alternative could reduce incentives for Lessee to participate in meaningful negotiations with the Port to upgrade and improve the facility.
3. Defer by six months the decision dates for the Lessee to notify the Port of its election to extend the Lease term, and for the Port to respond to this notice. This would allow time to more thoughtfully consider prospective upgrades and improvements to the grain terminal not contemplated under the current lease agreement. **This is the recommended alternative.**

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

No prior Commission Action has been taken relating to the extension of the decision dates relating to exercising the next five-year Lease option.

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July 28, 2009 –Terminal 86 Grain Facility Briefing – Staff presented an overview of the Grain Terminal and proposed process going forward with the tenant, Louis Dreyfus, to the Commission in public session.

October 12, 2004 – Commission approved the 10th Amendment to this Lease.