

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No.	<u>6a</u>
Date of Meeting	<u>September 28, 2010</u>

DATE: August 18, 2010

TO: Tay Yoshitani, Chief Executive Officer

FROM: Isabel Safora, Deputy General Counsel

SUBJECT: Resolution No. 3642, As Amended and Restated, First Reading. Amending Unit 20 of the Comprehensive Scheme of Harbor Improvements Related to the Surplus and Transfer of Title of Certain Real Property to the Washington State Department of Transportation

Net Proceeds of Sale: Approximately \$6,387,116, including interest and initial payment.

ACTION REQUESTED

First Reading of Resolution No. 3642, As Amended and Restated, amending Unit 20 of the Comprehensive Scheme of Harbor Improvements of the Port of Seattle by declaring certain real property surplus and no longer needed for Port district purposes; deleting said property from Unit 20 of the Comprehensive Scheme of Harbor Improvements; and authorizing the Chief Executive Officer (CEO) to execute all documents necessary to transfer title of the property to the State of Washington Department of Transportation (WSDOT). The Port will receive \$6,320,021.00 plus interest of approximately \$67,095.00 in total compensation for the sale of this property.

On August 24, 2010, the Port Commission conducted amended Resolution No. 3642 to add the proceeds of the sale of the transferred property to the Port's Transportation and Infrastructure Reserve. Because the amendment is inconsistent with Port bond covenants providing that the proceeds of a sale or condemnation of any Port real property that contributes to the Port's gross revenues must be applied to capital expenditures upon or for the property which will contribute in some measure to the Port's gross revenues or to the retirement of bonds then outstanding, Port staff is requesting that the Port Commission amend and restate Resolution No. 3642 to eliminate the August 24, 2010 amendment.

SYNOPSIS:

In 2009, the Port agreed to sell a portion of Port-owned real property, known as Terminal 46, which had been leased to Total Terminals International LLC (TTI), to WSDOT. On February 10, 2009, the Commission authorized the CEO to execute a Possession and Use Agreement between the Port, WSDOT and TTI for the partial taking of T-46. The Commission also authorized the CEO to amend the Possession and Use Agreement with WSDOT on July 14, 2009, and on March 9, 2010, to execute the Eleventh Amendment to the Lease with TTI, which in part deleted the area in the Possession and Use Agreement from TTI's lease.

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The Possession and Use Agreement and this sale allowed WSDOT to proceed with the S. Holgate to S. King Street Project, which is one of the “Moving Forward” projects associated with the Alaskan Way Viaduct and Sewall Replacement program. The S. Holgate to S. King Street project is already underway and will replace the south end of the viaduct, which accounts for about 40 percent of the entire structure.

The Port and WSDOT have been in negotiations to determine the final compensation the Port will receive for the property. The Port’s compensation is \$6,320,021 for the value of the land, which is the Port’s full-appraised value. The Port will also receive estimated interest amounting to \$67,095 due to the difference in value between WSDOT’s original offer of \$5,670,000, which WSDOT paid to the Port under the Purpose and Use Agreement, and the final agreed upon compensation of \$6,320,021. The Port will not be paid for its improvements to the property (asphalt, fence and crushed rock improvements valued at \$261,852). The Port’s total compensation for transferring this land to WSDOT is estimated to be \$6,387,116. This resolution declaring the property surplus for Port requirements and authorizing the CEO to transfer title is the last step in the process to sell the property to WSDOT.

In addition, TTI will receive \$1,674,824 from WSDOT for temporary construction easements and \$560,000 in parking lot reconfiguration costs. The parking lot reconfiguration, allowing TTI to retain the existing number of parking spaces within a smaller footprint, will eliminate the only possible negative impact on the operation of the terminal due to the sale of the property.

BACKGROUND:

The S. Holgate Street to S. King Street Viaduct Replacement Project is one of the “Moving Forward” projects associated with replacing the Alaskan Way Viaduct with a bored tunnel along the central waterfront and is critical to public safety because the viaduct is at risk of failure from earthquakes. This project replaces the south end of the viaduct, which accounts for about 40 percent of the entire structure. It also improves freight and traffic mobility by providing new on-and-off ramps for SR-99 near S. King Street to improve access to downtown; by creating an overpass for freight coming to and from the Port; and by relocating the existing BNSF Seattle International Gateway (SIG) Yard tail track to the west.

A portion of Port owned real property known as Terminal 46, and which had been leased to TTI, is required by WSDOT for the S. Holgate Street to S. King Street Project. On February 10, 2009, the Port of Seattle Commission granted approval to the Chief Executive Officer to execute a Possession and Use (P&U) Agreement between WSDOT, the Port, and TTI, granting WSDOT possession and use rights to the property. (A copy of the February 10, 2009, Commission memo explaining the Possession and Use Agreement in detail is attached.). On July 14, 2009, the Commission granted approval to the Chief Executive Officer to execute the First Amendment to the Possession and Use Agreement to accommodate WSDOT project design changes resulting in modifications to the area required by WSDOT.

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The Possession and Use Agreement enabled WSDOT to have possession of the property, allowing WSDOT to advertise for bidders for the construction of Phase I of the project in February 2009 before WSDOT acquired the real property from the Port under the threat of or by condemnation. Otherwise, the project would have been delayed.

WSDOT took possession of the required property effective August 1, 2009, and compensated the Port the amount of \$5,760,900 for property to be acquired in fee and TTI the amount of \$1,237,800 for temporary construction easement areas within their leased premises. On March 9, 2010, the Commission granted approval to the Chief Executive Officer to execute the Eleventh Amendment to the TTI Lease, which deleted from the lease the area covered under the Possession and Use Agreement to be transferred to WSDOT under this requested commission action.

PROPERTY VALUE EVALUATION:

Following full execution of the Possession and Use Agreement, the Port and WSDOT have been in negotiations with respect to final compensation to the Port pending this action to fully transfer the deed to the property.

The Port completed an independent appraisal of the subject property and determined the fair market value to be \$6,581,873 (fee land and site improvements) versus the amount WSDOT had offered and paid to the Port of \$5,670,900. The Port appraisal is broken down as follows:

Fee Land:	\$6,320,021
Improvements (Asphalt, Fence & Crushed Rock)	<u>\$ 261,852</u>
Total	\$6,581,873

In addition to the above difference in the opinion of value, the Port and WSDOT had a difference of opinion with respect to costs to cure the damages associated with the required modifications to the Terminal 46 parking area within the TTI leasehold as a result of the WSDOT project. WSDOT initially estimated that cost at \$20,000. These parking lot modifications within TTI's leasehold are required to prevent any negative impact on their overall terminal operations. The issue was resolved when WSDOT agreed to work directly with TTI and compensate them directly for the costs to cure the damages to their facility. Accordingly, WSDOT and TTI agreed to a cost of \$560,000 for which TTI will be paid to complete the necessary parking lot modifications.

WSDOT has agreed to pay the Port's full appraised value of \$6,320,021 for the fee property with the understanding that the value for the asphalt, fence and crushed rock improvements be

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included in the fee value. The Port will not be paid for any costs associated with the parking area modifications. However, the Port will be paid interest at 12% per annum for the \$559,121.00 difference in value between the original WSDOT offered amount of \$5,670,900 paid on August 1, 2009 and the final agreed upon compensation amount of \$6,320,021. The estimated accumulated interest amount to be paid to the Port is \$67,095.00. The elimination of the improvements value in the amount of \$261,852 from the Port's total appraised value amount of \$6,581,873 equates to a difference in value of 3.98%.

Port staff believes this to be a reasonable compromise and results in total compensation to the Port of \$6,320,021.00 plus interest of approximately \$67,095.00.

A breakdown of the compensation difference between the original Possession and Use Agreement, as amended, and the final compensation, as proposed, is as follows:

	Original Possession and Use Agreement (per Commission Memo dated February 10, 2009, as amended per Commission Memo dated July 14, 2009)	Final Compensation and Execution of Final Documents
Fee Area	87,159 Square Feet	Same
Fee Area Purchase Offer payable to the Port	\$5,920,350 (reduced by deduction for Special Benefits below)	\$6,320,021.00
Temporary Construction Easement Area	113,540 Square Feet	Same
Removal & Installation of Security Cameras to TTI	\$10,000	Same
Temporary Construction Easement Offer payable to TTI	\$1,227,800	\$1,674,824
Asphalt Paving and Chain-link fence improvements to Port	\$13,550	\$0
Parking Lot Reconfiguration and restriping costs to Port	\$20,000	\$0
Parking Lot Reconfiguration costs to TTI		\$560,000
Deduction to fee purchase offer for Special Benefits to the Port (removal of railroad spur and landscape easements from property remaining in the Port's ownership)	\$193,020	\$0

FINANCIAL IMPLICATIONS

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Source of Funds

The Port will receive \$6,320,021 in compensation from WSDOT for this property. The Port received an initial payment of \$5,760,900 in August 2009 when WSDOT took possession of the property. The remaining balance of \$559,121, plus interest, is payable at transfer of title.

Financial Analysis Summary

CIP Category	N/A		
Project Type	N/A		
Risk adjusted Discount rate	7.5%		
Key risk factors	No remaining risk factors are identified. The title transfer documents related to this land sale have been finalized.		
Project cost for analysis	N/A		
Business Unit (BU)	Seaport Container Operations		
Effect on business performance	<p>Execution of the final title transfer documents will have no effect on business performance.</p> <p>All components of this land sale which impact rental income have already been implemented, based on Commission approval on 2/10/09 and 7/14/09 to execute and amend the WSDOT Possession and Use Agreement.</p> <p>The gain on the sale of the land will be recorded as Non-Operating Revenue.</p>		
NPV	<p>The final sales proceeds of \$6.3 M reflects current fair market value for the 2.0 acre parcel, as determined by independent appraisal.</p> <p>1.24 acres of that 2.0 acre parcel was within the TTI leasehold area at Terminal 46, generating revenue at the current blended eagle rate. The remaining 0.76 acres to be sold to WSDOT was not under lease or generating revenue to the Port.</p> <p>The NPV of expected cash flows is shown below and reflects lost future lease payments within the TTI leasehold area, offset by sales proceeds for the entire parcel.</p> <table border="1"><tr><td>NPV (in \$000's)</td><td>\$2,691</td></tr></table>	NPV (in \$000's)	\$2,691
NPV (in \$000's)	\$2,691		

PREVIOUS COMMISSION ACTION

- On February 10, 2009, the Commission authorized the Chief Executive Officer to execute a Possession and Use Agreement between WSDOT, the Port of Seattle and TTI for the

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partial taking of Terminal-46 for the S. Holgate Street to S. King Street Viaduct Replacement Project.

- On July 14, 2009, the Commission authorized the Chief Executive Officer to execute the First Amendment to the Possession and Use Agreement between the WSDOT, the Port of Seattle and TTI for the partial taking of Port of Seattle Terminal 46 for the S. Holgate Street to S. King Street Viaduct Replacement Project.
- On March 9, 2010, the Commission authorized the Chief Executive Officer to execute the Eleventh Amendment to the Lease with TTI, which in part deleted from the lease the area covered under the Possession and Use Agreement with WSDOT.
- August 10, 2010, First Reading of Resolution No. 3642 and public hearing.
- August 24, 2010, Second Reading and Final Passage of Resolution No. 3642, as amended, to add the proceeds of the sale of said property to the Port's Transportation and Infrastructure Reserve.

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

- Resolution No. 3642, As Amended and Restated.
- Aerial View of the area to be transferred.