COMMISSION
AGENDA MEMORANDUM | **Item No.** 6g

ACTION ITEM | **Date of Meeting** June 23, 2020

DATE: June 5, 2020

TO: Stephen P. Metruck, Executive Director

FROM: Melinda Miller. Director, Portfolio & Asset Management
Dave McFadden, Managing Director, Economic Development Division

SUBJECT: First Amendment to Lease with Mad Anthony's, Inc. at Pier 66

Amount of this request:	$0
Total estimated project cost:	$0

ACTION REQUESTED

Request Commission authorization for the Executive Director to execute the first amendment to the lease with Mad Anthony's, Inc., substantially similar to the attached draft amendment and on the following terms, effective June 1, 2020: 1) remove Minimum Rent requirement for two years; 2) increase percentage rent from 6% to 6-1/2% for two years; 3) effective June 1, 2022, increase percentage rent permanently from 6% to 6-1/4% for the remainder of the lease term.

EXECUTIVE SUMMARY

Due to the significant economic impact of COVID-19 on the restaurant industry in general and Anthony's at Pier 66 specifically, staff is proposing to amend this lease. The lease adjustments being proposed for Anthony's are consistent with relief offered across the Port during this public health crisis.

The intent is to provide this tenant with the flexibility to respond to ongoing economic uncertainty due to COVID-19 and help them weather the crisis. We propose to temporarily remove the Minimum Rent (similar to the Minimum Annual Guarantee (MAG) at the airport) and have them pay percentage rent only for two years. During this period, the percentage rent amount will increase from 6% to 6-1/2%, effective June 1, 2020. After two years, effective June 1, 2022, the terms will revert to current lease terms and Anthony's will again pay Minimum Rent against 6-1/4% percentage rent, whichever is greater. This is an increase of 1/4% in percentage rent through the remainder of the lease term. The lease expires in December 2041.

JUSTIFICATION

Economic Development and Maritime Division landside tenants have been affected in some manner by the ongoing Covid-19 pandemic, the broader economic crisis, and the mandates from various regulatory agencies including the Governor, Mayor, and most recently, the Seattle City

Council. Some sectors, particularly the restaurant and hospitality sector, have been severely affected through direct closure, starting on March 23, 2020.

Following on the Commission's policy direction and the Executive Director's guidance, the Port offered a deferred payment plan to all tenants who were directly affected by the various mandates made by the Governor, Mayor, and Seattle City Council. Rent and other charges are being deferred for four months (April through July) without finance charges and re-payment plans begin on October 1, 2020, in most cases. Most agreements give the tenant twelve months to repay the deferred rent. This payment plan does not change the terms and conditions of the lease.

Out of 190+ tenants, 74 tenants were deemed to be directly affected and invited to apply. 59 tenants applied for the program and 45 agreements have been executed to date. During this period, the Commission also authorized lease adjustments to Aviation Dining and Retail tenants that included waiving the Minimum Annual Guarantee and providing lease extensions.

Anthony's is a family-owned, local company that was established in 1969 and currently operates restaurants in nineteen locations in Washington, Oregon and Idaho, including Chinook's Restaurant at Fishermen's Terminal. All operations were shut-down by the Governor's first mandate in March. This week, King County now allows partial re-opening for restaurants with many operating constraints including occupancy limits between 25-50% of permitted occupancy.

Recent polls, as reported in the LA Times article of May 23, have stated that "much of the country remains unlikely to venture out to bars, restaurants, theaters, or gyms anytime soon, despite state and local officials…allowing businesses to reopen…" It is widely held that the recovery for the restaurant industry will be long and shallow.

The Port of Seattle and Anthony's have both made significant investments in the building and operations of the restaurant at Pier 66. As an anchor tenant, Anthony's banked on the development of the cruise business at Pier 66 and depends on the seasonal influx of cruise passengers and visitors to support the financial success of this large, multi-floor restaurant. The closing of the 2020 cruise season and uncertainty of the 2021 season are additional blows to their survival.

Should Anthony's at Pier 66 fail, the Port would be saddled with a very large and virtually unleasable facility in the current restaurant market.

Diversity in Contracting

Staff have contacted the Diversity in Contracting Department to discuss this request and found no opportunity for WMBE participation as it is an amendment to an existing lease.

DETAILS

Staff proposes to amend the following terms:

CURRENT	PROPOSED
22,000+ SF, three restaurants Built by Port 1995, Lease expires 2041	Same as current lease
Minimum Rent: Greater of $31K+/month rent or 6% of gross sales	No Minimum Rent, Two years 6-1/2% of gross sales only
	After two years through expiration: Greater of Minimum Rent or 6-1/4% gross sales

Note: They have regularly paid percentage rent annually over the last ten years.

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Anthony's management approached the Port with a proposal to help them survive the effects of the first Governor's mandate that closed all their restaurants and the uncertain dining market. Staff discussed the proposal at length and proposed a revised structure which Anthony's has accepted, contingent on Commission authorization.

Alternative 1 – Reject Anthony's proposal for lease amendment

Cost Implications: None, unless tenant abandons the lease

Pros:
(1) If tenant remains, continues monthly revenue.
(2) Maintains continuity of lease terms

Cons:
(1) Exposes tenant to significant financial risk from COVID-19 economic impact
(2) Tenant may abandon lease thus provoking legal action
(3) Exposes Port to costly legal action, lost revenue, and renovation expenses

This is not the recommended alternative.

Alternative 2 – Agree to terms as initially proposed by Anthony's

Cost Implications: **Three years** waiver of Minimum Rent, increase percentage Rent **from 6% to 6-1/2%,** after three years return to lease terms

Pros:
(1) Accepts tenant's proposal thus strengthening relationship
(2) Provides revenue to Port in an uncertain economy
(3) Gives tenant flexibility to weather impact of Public health crisis

Cons:
(1) Reduced revenue during two years of Minimum Rent waiver
(2) Excessive term of Minimum Rent waiver
(3) Less likely to recover waived rent over three years

This is not the recommended alternative.

Alternative 3 – Accept negotiated terms proposed by staff

Cost Implications: **Two years** waiver of Minimum Rent, increase percentage Rent **from 6% to 6-1/2%,** after two years return to lease terms but increase percentage from 6% to 6-1/4% for remaining term. Lease expires in December 2041.

Pros:
(1) Provides reasonable term to tenant and revenue to Port in an uncertain economy
(2) Gives tenant significant flexibility to weather impacts of Public health crisis
(3) More likely to recover Minimum rent deferred during waiver period, with possible upside if economy recovers faster than projected

Cons:
(1) Reduced revenue during two years of Minimum Rent waiver
(2) If economy does not improve, may not recover all waived Minimum Rent

This is the recommended alternative.

Financial Analysis and Summary

Project cost for analysis	No incremental costs to the Port for this request
Business Unit (BU)	Portfolio Management
Effect on business performance (NOI after depreciation)	This amended lease agreement will generate the Total Cash Flow of $11,110,597 for the remainder of the lease term until December 31, 2041.
IRR/NPV (if relevant)	Total Effective Rent: $11,110,597, an increase of $75K as compared to the current lease agreement Discounted Effective Rent at 4.5%: $6,775,770, a marginal NPV of ($81K) as compared to the current lease agreement
CPE Impact	N/A

Future Revenues and Expenses (Total cost of ownership)

Future revenues will be generated based on lease rates and terms stated above in the amendment.

ATTACHMENTS TO THIS MEMO

(1) Presentation slides

(2) Draft Lease Amendment

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

February 14, 1995 – Commission approved the lease.

January 12, 2016 – The Commission authorized reimbursement of costs related to the installation of heating and hot water systems necessitated by the termination of Seattle Steam service to the facility.