



Port of Vancouver USA

**AGENDA
PORT OF VANCOUVER USA
BOARD OF COMMISSIONERS
REGULAR MEETING AGENDA**

April 12, 2016 Regular Meeting: Clark College Gaiser Student Center, Gaiser Hall
1933 Fort Vancouver Way
Vancouver, WA 98663

April 15, 2016 Regular Meeting (Continued): Port of Vancouver USA
3103 NW Lower River Road
Vancouver, WA 98660

Tuesday, April 12, 2016

- A) CALL TO ORDER (9:30 a.m.)**
- B) EXECUTIVE SESSION**
None
- C) OPENING REMARKS (9:30 a.m.)**
 - 1) Opening Remarks – Pledge of Allegiance, etc.
 - 2) Approve and Sign Minutes of the March 22, 2016 Regular Meeting
- D) OPEN FORUM**
None
- E) ACTION ITEMS**
 - 1) Amendment to Ground Lease between the Port of Vancouver USA and Tesoro Savage Petroleum Terminal LLC d/b/a Vancouver Energy (**Action Item will be taken up as last order of business**)
- F) UNFINISHED BUSINESS**
- G) NEW BUSINESS**
- H) ACCOUNTS PAYABLE**
None
- I) EXECUTIVE DIRECTOR REPORT**

J) **COMMISSIONERS REPORTS**

K) **UPCOMING EVENTS**
None

L) **SIGN DOCUMENTS**

M) **WORKSHOP**
None

N) **ADJOURNMENT**

Agenda Item No. C-2

REQUEST FOR COMMISSION ACTION	PORT OF VANCOUVER USA	
REVIEWED BY: <i>Betsy Rogers</i>	Administrative Supervisor	04/12/2016
Betsy Rogers	Title	Date
APPROVED BY:		
	Title	
SUBJECT:	Minutes of the March 22, 2016 Regular Meeting	

BACKGROUND:

Please see attached minutes.

Additional Information Attached: Minutes of 03/22/16 Regular Meeting

RECOMMENDATION:

That the Port of Vancouver USA Board of Commissioners adopts and executes the minutes of the March 22, 2016, Port of Vancouver USA Board of Commissioners Regular Meeting as presented.

Submitted by: <i>Juliana Harlow</i>	CEO/Executive Director
Date Action Taken _____	Motion By: _____
Approved: _____	Seconded By: _____
Deferred To: _____	Unanimous: Yes ___ No ___

Agenda Item No. E-1

**REQUEST FOR COMMISSION ACTION
REVIEWED BY:**

PORT OF VANCOUVER USA

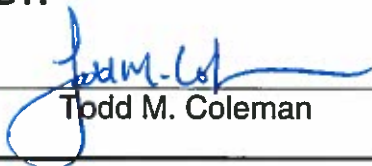


Alastair Smith

Chief Marketing/Sales
Officer

Title

APPROVED BY:



Todd M. Coleman

Chief Executive Officer April 12, 2016

Title

Date

SUBJECT: Amendment to Ground Lease between the Port of Vancouver USA and
Tesoro Savage Petroleum Terminal LLC d/b/a Vancouver Energy

BACKGROUND:

The Port of Vancouver Strategic Plan has goals to maximize marine business and development, maximize industrial business and development, develop and preserve multi-modal transportation access, and generate and sustain diversified revenues.

On October 22, 2013 the Board of Commissioners approved a lease with Tesoro Savage Petroleum Terminal LLC, hereinafter referred to as Vancouver Energy, for the loading, unloading, transfer and storage of petroleum products (The Lease). The Lease contains Conditions Precedent which required the Lessee to obtain all necessary licenses, permits and approvals for the permitted use. Under the Lease, the Port has agreed to work diligently and in good faith with Vancouver Energy to pursue its permits. The Lease further provides that either party may terminate the Lease on or before the Conditions Precedent Outside Date (CPOD), which is August 1, 2016, if Lessee has not obtained the necessary approvals.

Vancouver Energy has been pursuing licenses, permits and approvals for the permitted use through the Energy Facilities Siting Evaluation Council (EFSEC). To date EFSEC has completed public scoping, released a draft Environmental Impact Statement (DEIS), received comments regarding the DEIS and has currently scheduled the adjudicative proceedings for June 27 through July 29, 2016. The Port of Vancouver has and continues to support Vancouver Energy in its processes to obtain licenses, permits and approvals.

It is unlikely that Vancouver Energy will have obtained the necessary approvals for the permitted use on or before the CPOD. Therefore, Vancouver Energy has submitted a request to amend the Lease with the following key terms:

- Extend the Conditions Precedent Outside Date to August 1, 2018, with interim milestones.
- Increase the Contingency Period fee from \$50,000 to \$100,000 per month as of August 1, 2016.
- Eliminate the opportunity for Vancouver Energy to operate a second petroleum-by-rail facility at the Port.

- Provide Vancouver Energy 30 months to resolve any appeals if licenses, permits or approvals are granted and appealed.
- Allow the Port to use the Premises during the extended contingency period.

Contingency Period revenue of \$50,000 per month is included in the 2016 Budget.

Additional Information Attached? Yes

RECOMMENDATION: That the Board of Commissioners decline the Amendment to Ground Lease between the Port of Vancouver USA and Tesoro Savage Petroleum Terminal LLC and further direct Port staff to continue to work diligently and in good faith with Tesoro Savage Petroleum Terminal LLC's efforts to pursue the necessary approvals required under the Ground Lease.

Submitted by: *Juliana Marler* ^{for}, CEO/Executive Director

Date Action Taken _____ **Motion By:** _____

Approved: _____ **Seconded By:** _____

Deferred To: _____ **Unanimous:** Yes ___ No ___

AMENDMENT TO GROUND LEASE

This Amendment to Ground Lease (this "Amendment") is entered into as of April __, 2016, by and between the PORT OF VANCOUVER, a municipal corporation organized and existing under the laws of the State of Washington, as Lessor, and TESORO SAVAGE PETROLEUM TERMINAL LLC, a Delaware limited liability company, as Lessee.

RECITALS

- A. Lessor and Lessee have entered into that certain Ground Lease dated August 1, 2013 (the "Lease").
- B. Lessor and Lessee desire to amend the Lease as provided in this Amendment.

WITNESSETH

That the Parties do mutually agree as follows:

- 1. **Defined Terms:** Capitalized terms used in this Amendment without definition will have the meanings given them in the Lease.
- 2. **Amendment:**
 - A. The definition of "Conditions Precedent Outside Date" in Exhibit "E" to the Lease is deleted in its entirety and replaced with the following:

"Conditions Precedent Outside Date" means December 31, 2016. Lessee is granted the option to extend the Conditions Precedent Outside Date for one year, to December 31, 2017. Lessee shall exercise this option by giving written notice to Lessor of its intent to extend the Conditions Precedent Outside Date no later than December 1, 2017. In addition, upon mutual agreement of both Lessee and Lessor, the parties may further extend the Conditions Precedent Outside Date for an additional seven (7) months, until August 1, 2018.

- B. The third paragraph of Section 1C is deleted in its entirety and replaced with the following:

Early Termination:

If any or all of the conditions precedent set forth in Paragraph 2.D has not been satisfied or waived on or before the Conditions Precedent

Outside Date, as may be extended, either Lessor or Lessee may terminate this Lease on or before the Conditions Precedent Outside Date as may be extended by written notice of termination to the other Party, without further cost or obligation, except as set forth expressly herein. The security instrument required by the first paragraph of Paragraph 1.G hereof will be retained by Lessor until all outstanding expenses owed to Lessor are reimbursed in full by Lessee.

C. The first two paragraphs of Section 1.D are deleted in their entirety and replaced with the following:

During the Contingency Period: Thirty Thousand Dollars (\$30,000.00) per month during the first eighteen (18) months of the Contingency Period, and thereafter, until August 1, 2016, Fifty Thousand Dollars (\$50,000.00) per month, and thereafter until the Conditions Precedent Expiration Date, as may be extended, One Hundred Thousand Dollars (\$100,000.00) (“Contingency Period Fees”).

During the Construction Period: One Hundred Thousand Dollars (\$100,000.00) per month until the Rent Commencement Date (“Construction Period Fees”).

D. Section 2.C is deleted in its entirety and replaced with the following:

C. Lessor and Lessee acknowledge that portions of the Premises and portions of the areas to which Lessee may be granted an easement pursuant to a Pipeline Agreement are subject to the Consent Decree, in which the previous land owner agreed to remediate the Premises. Portions of the Premises and portions of the areas to which Lessee may be granted an easement pursuant to a Pipeline Agreement also are subject to the Restrictive Covenants, which require capping of residual contamination and restrict activities that would disturb the contamination. Lessee’s possession, including but not limited to Lessee’s use and operations, throughout the Term(s) of the Lease, shall be consistent with all requirements of the Consent Decree and Restrictive Covenants, which are incorporated by reference in this Lease. Lessor shall be responsible for proper management of all Existing Environmental Conditions, including in connection with the pre-occupancy construction of improvements on the Premises, all as set forth in Paragraph 11.B hereof. Lessor, with Lessee’s cooperation, will obtain the necessary approvals to allow Lessor or Lessee to modify any monitoring well

location or cap, including modifications to conduct baseline and geotechnical testing, for pre-occupancy construction of improvements and pre-occupancy construction of the tenant improvements necessary for the Permitted Use (provided Lessee presents a reasonable design which is consistent with the Consent Decree and Restrictive Covenants, as well as the other terms and conditions of this Lease) of the Premises under this Lease. Lessee (with Lessor's reasonable cooperation, but at no cost to Lessor) shall be responsible for obtaining any other licenses, permits and approvals needed for its operations on the Premises, and shall cooperate reasonably with Lessor to ensure that the scope and breadth of such licenses, permits and approvals are adequate for completion of any work to be performed by Lessor under such licenses, permits and approvals.

E. The last paragraph of Section 2.D is deleted in its entirety and replaced with the following:

D. During the Contingency Period, Lessor and Lessee shall work diligently and in good faith to: develop and approve depictions and legal descriptions of the Final Premises (the cost of preparation thereof to be borne by Lessor), and such depictions and legal descriptions shall, prior to the Conditions Precedent Expiration Date, be substituted into this Lease as replacement Exhibits "A", "B-1", "B-2" and "B-3" by a mutually executed amendment to this Lease; and develop and mutually approve milestones and preliminary engineering and construction plans, specifications and designs (to be submitted by Lessee to Lessor for Lessor's review and approval), and rail track plans and specifications, for the development, construction, and operation of the Facility. Except for periods of time (not exceeding 30 months) that all required approvals have been granted but one or more such approvals is being appealed or otherwise challenged by petition for declaratory judgment or writ in one or more State of Washington or federal courts or administrative tribunals, if Lessor is not reasonably satisfied that Lessee is prepared to, and intends to, commence construction within four (4) months after the Conditions Precedent Expiration Date, Lessor may terminate this Lease without any further obligations on the part of either Party hereto, except as expressly set forth herein, and all Contingency Period Fees and other sums paid by Lessee to Lessor pursuant to this Lease shall be retained by Lessor. The rights and limitations set forth in the preceding

paragraph shall not operate to modify or limit any other rights or remedies of Lessor.

F. Section 2.F is deleted in its entirety and replaced with the following:

F. During the Contingency Period, Lessor may use the Premises, and allow third parties to use the Premises, for any and all purposes other than the Permitted Use, so long as such use does not unreasonably change the condition of the Premises in such a way that would inhibit Lessee's development of the Facility following the Conditions Precedent Expiration Date. Such use shall be subject to the rights of Lessee to conduct inspections, testing, and site visits at the Premises pursuant to the other express terms of this Lease.

G. The second paragraph of Section 8.E is deleted in its entirety, and the first paragraph of Section 8.E is deleted in its entirety and replaced with the following:

E. During the MGA Term, so long as Lessee has, by the date that is thirty (30) full months following the Rent Commencement Date (measured, at such time, based on a rolling 6-month average commencing on the second anniversary of the Rent Commencement Date), and each month thereafter, based on a rolling 6-month average, achieved and sustained an average throughput volume of one hundred twenty thousand (120,000) barrels per day of Petroleum Products (such period of time during the MGA Term with sustained throughput over 120,000 bpd being referred to herein as the "Exclusive Period"), Lessor agrees not to lease any premises (other than the Premises that are subject to this Lease) located within the Port to a third party that will be permitted (directly or indirectly) to operate a crude oil by Rail Facility for Unit Trains (the "Exclusive Use"), it being the intention of the Parties that Lessee shall during the Exclusive Period have the exclusive right in the Port to operate and conduct on the Premises a business for the Exclusive Use. If, thereafter, Lessee fails to maintain such throughput volume for a period of twelve (12) months or longer, the Exclusive Period shall automatically terminate, and the Exclusive Use shall be of no further force and effect.

H. Section 16.D is deleted in its entirety and replaced with the following:

D. Lessor shall indemnify and hold harmless Lessee and its Related

Parties (“Lessee Indemnitee” or “Lessee Indemnitees”) from and against any and all third party claims for bodily injury and/or property damage arising from or in connection with: (i) any accident, injury or damage whatever occurring in, at or upon the Common Areas; (ii) any act, omission, or negligence of Lessor or its or their officers, agents, employees, invitees or contractors; (iii) any use of the Premises by Lessor during the Contingency Period; and/or (iv) any breach or Default by Lessor in the full and prompt performance of Lessor’s obligations under this Lease; together with all costs, expenses and liabilities incurred or in connection with each such claim or action or proceeding brought thereon, including, without limitation, all attorneys’ fees and expenses at trial and upon appeal, except that (1) Lessor’s Indemnity shall not apply to bodily injury, death and/or property damage to the extent attributable to the negligence or intentional misconduct of Lessee or Lessee Indemnitee(s) (provided, however, that in such event the indemnity shall remain valid for all other Lessee Indemnitees); (2) if and to the extent that this Lease is subject to Section 4.24.115 of the Revised Code of Washington, it is agreed that where liability for damages arising out of bodily injury to persons or damage to property is caused by or results from the concurrent negligence of (a) a Lessee Indemnitee or Lessee Indemnitees, and (b) the Lessor or the Lessor’s agents or employees, Lessor’s obligations of indemnity under this paragraph shall be effective only to the extent of the Lessor’s negligence; (3) liability for any loss, claim, fine or penalty arising from the Release of Petroleum Products or Hazardous Substances or any violation of Environmental Laws shall be governed by the terms of Paragraph 11.H of this Lease and not by this Paragraph 16.D; and (4) liability for property damage arising from a fire or other casualty shall be governed by Paragraph 17 of this Lease and not by this Paragraph 16.D.

I. Section 26 B is deleted in its entirety and replaced with the following:

B. In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by Lessor of any of its obligations under this Lease, or if, after Lessee has commenced Construction of the Facility, any court having jurisdiction in the matter renders a decision which has become final and which will prevent the performance by Lessee of any of its obligations under this Lease, then either Party hereto may terminate this Lease by written notice, and all rights and

obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination and any rights and obligations intended to survive the expiration or termination of this Lease) shall thereupon terminate. If Lessee is not in Default under any of the provisions of this Lease on the effective date of such termination, any Rent or Additional Charges prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of termination, be promptly refunded to Lessee.

3. **No Other Amendment.** Except as expressly provided herein, the lease remains in full force and effect.

In Witness Whereof, the Parties hereto have signed this Amendment as of the ____ day of April, 2016.

PORT OF VANCOUVER, Lessor

TESORO SAVAGE PETROLEUM
TERMINAL LLC, Lessee

By: _____
President

By: _____
Title: _____

By: _____
Vice President

By: _____
Secretary

Approved as to form:

SCHWABE, WILLIAMSON & WYATT

By: _____
Alicia L. Lowe, Port Counsel

STATE OF WASHINGTON)
) ss.
County of Clark)

On this day personally appeared before me _____, _____, and _____, all Commissioners of the PORT OF VANCOUVER, and to me known to be the individuals that executed the foregoing instrument and acknowledged the instrument to be the free and voluntary act and deed of said Port of Vancouver for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this ____ day of _____, 2016.

Printed Name Here: _____
NOTARY PUBLIC in and for the State of Washington
residing at Vancouver
My Commission Expires: _____

STATE OF _____)
) ss.
County of _____)

On this day personally appeared before me _____, to me known to be the _____, respectively of TESORO SAVAGE PETROLEUM TERMINAL LLC that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument on behalf of said Lessee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this ____ day of _____, 2016.

Printed Name Here: _____
NOTARY PUBLIC in and for the State of Washington
residing at Vancouver
My Commission Expires: _____