

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 5e

ACTION ITEM

Date of Meeting March 27, 2012

DATE: March 16, 2012

TO: Tay Yoshitani, Chief Executive Officer

FROM: Linda Styrk, Managing Director Seaport
Michael McLaughlin, Director, Cruise and Maritime Operations

SUBJECT: Cruise Terminals of America (CTA) Settlement Agreement

Total One-Time Payment to the Port: \$773,815.50

ACTION REQUESTED:

Request Commission authorization for the Chief Executive Officer to enter into a settlement agreement with Cruise Terminals of America LLC (CTA) for certain unpaid rent of leased premises of Port cruise terminals.

SYNOPSIS:

This proposed settlement agreement resolves all claims between the Port and CTA. CTA has agreed to pay the Port \$773,815.00, which includes all of the unpaid rent plus related leasehold tax and the full cost of the internal audit, within 30 days of full execution of the agreement, and to report all future revenues and allowable expenses consistent with the lease language as defined by the Port through the end of the lease. The Port has agreed to waive all interest and late fee penalties.

BACKGROUND AND JUSTIFICATION:

The current lease agreement with CTA that commenced in 2006 includes the premises of the cruise terminal facility formerly located at Terminal 30, the current Pier 66 Bell Street Pier Cruise Terminal and Smith Cove Cruise Terminal located at Terminal 91. CTA manages the day-to-day operations of the Port's cruise terminals.

As a result of a recent internal audit of the lease and concession agreement between the Port of Seattle and CTA for the period of January 1, 2009, through December 31, 2010, it was discovered that CTA underpaid the percentage fee rent due to the Port as a result of incorrectly reporting gross parking revenues derived from operations at Smith Cove Cruise Terminal.

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The internal audit report, presented to the Port's Audit Committee on January 10, 2012, recommended staff review the entire term of the lease for the correct reporting of gross revenues and recover underpaid fees. At the public meeting of January 10, 2012, CTA presented a letter and requested that it be part of the public record regarding the findings of internal audit. The letter described CTA's position as having a different interpretation of the lease than was stated in the audit report regarding how parking revenues were to be reported and thus disputed the claim of underpaid fees.

The Audit Committee directed staff to review the entire period of the lease regarding the revenue reporting process and to work towards reaching a fair settlement with CTA.

Port staff completed a thorough review of parking revenue reporting for the completed term of the current agreement through 2011, which confirmed actual unpaid rent of \$718,419.25 as the collective total for all years of the lease resulting from reporting of parking revenues and related parking operation expenses not in accordance with the lease language.

The proposed settlement agreement resolves all of the potential claims between the Port and CTA regarding the problem identified by internal audit regarding past revenue reporting and the disagreement of interpretation of the lease. Under the settlement agreement, CTA agrees to pay the Port 100% of the unpaid rent plus related leasehold tax and the full cost of the internal audit effort for a total one-time payment of \$773,815.00 due to the Port within 30 days of full execution of this agreement. CTA also agrees to report all future revenues and allowable expenses consistent with the lease language as defined by the Port through the remaining term of the agreement and any future lease extensions that may be executed. The Port agrees to waive all interest and late fee penalties related to the unpaid rent.

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

- Proposed settlement agreement

ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS:

Do Nothing: The Port will be required to commence suit to collect the unpaid rent. This is not the recommended alternative.

Approve the Settlement with CTA: This settlement agreement with CTA resolves all claims between the Port and CTA related to the rent to be paid for T-30, P-66 and T-91 cruise terminals for the period of the current lease commencing January 2006 through December 2012.

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

None.