

COMMISSION AGENDA

Item No: 4D

Meeting: 06/15/17

DATE: June 8, 2017

TO: Port Commission

FROM: John Wolfe, Chief Executive Officer

Sponsor: Tong Zhu, Chief Commercial Officer, Container & Real Estate

Project Manager: Scott Francis, Director of Real

Legal Counsel: Carolyn Lake, Goodstein Law Group PLLC

SUBJECT: Commission Authorization to Commence Litigation

A. ACTION REQUEST

Authorize the Chief Executive Officer or his designee to commence litigation to enforce terms of a Temporary Easement and recover damages owed, based on Temporary Easement dated July 27, 2005 between Port of Tacoma (Grantor) and Sonatore Port Holdings, LLC (Grantee) for use of the privately owned portion of Marc Avenue lying southerly from Lincoln Avenue (Tax Parcel No. 0320031019) in Pierce County WA.

Under the most recently amended Master Policy Delegation of Authority, Commission authorization is required for the Port to initiate litigation as a party Plaintiff.

B. BACKGROUND

The Port granted a temporary easement in July 2005 to Grantee Sonatore Port Holdings, currently landlord to tenants Tri Pak, Inc. and Dry Box, Inc., to utilize Marc Street. The purpose of the grant of Temporary Easement was to allow time sufficient for Grantee to process their own access from the City of Tacoma onto Loop road.

Paragraph 6 of the Temporary Easement agreement provided that Grantee will pay "consideration" of \$100 per month starting July 1, 2012 for use of Marc Street.

Pursuant to paragraphs 1 and 2 of the Temporary Easement agreement, Grantee is responsible for costs to repair that portion of Marc Street used by Grantee and its tenants.

On April 20, 2017, the Commission considered this request in open session and set the matter over 60 days to allow parties the opportunity for dialogue. The Port met with the property owner's representative. The matter is unresolved. Port Staff requests the Commission proceed with delegating to the CEO the authority for litigation. Further discussions can proceed in parallel with the requested authorized action.

C. BASIS FOR THE REQUESTED LITIGATION AUTHORIZATION

The Port maintains that Grantee has:

- Failed to timely pay amounts due under the terms of the easement
- Failed to maintain the road as the temporary easement required
- Caused flooding and or discharges off its property onto roadways causing damages

The Port's attempts to obtain compliance have been unsuccessful. The Port terminated the Temporary Easement on March 1, 2017, and now seeks authorization to pursue legal remedies in court.

D. FINANCIAL SUMMARY

The purpose of the litigation is to seek past amounts owed and recover for damages resulting from Grantee's failure to maintain the Marc Street Roadway as required under the terms of the temporary easement.

E. ECONOMIC INVESTMENT/JOB CREATION

- N/A.

F. ENVIRONMENTAL IMPACTS/REVIEW

The Port believes that Grantee's actions include unlawful stormwater discharges, waste disposal, trespass and failure to maintain the roadway, which created a stormwater problem on Marc Street.

G. NEXT STEPS

Upon Commission approval of the requested action, the Port Chief Executive Officer or his designee will instruct Port Legal Counsel to pursue all available legal remedies, pursuant to the terms of the temporary easement and Washington law. Further discussions can continue in parallel with the authorized action.