



## MEMORANDUM

September 8, 2023

**TO:** MEMBERS, PORT COMMISSION  
Hon. Kimberly Brandon, President  
Hon. Willie Adams, Vice President  
Hon. Gail Gilman  
Hon. Ed Harrington  
Hon. Steven Lee

**FROM:** Elaine Forbes   
Executive Director

**SUBJECT:** Informational presentation on a proposed new lease with Recology San Francisco for approximately seventy-four (74) months for operation of a single stream mixed materials recycling center at Pier 96.

**DIRECTOR'S RECOMMENDATION:** Information Only – No Action Required

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### EXECUTIVE SUMMARY

Recology San Francisco (“Recology”), originally West Coast Recycling, Inc., has been a Port tenant at Pier 96 since 1998, leasing property for a recycling facility under Lease L-12540. The existing lease commenced on August 1, 1998 and expired on July 31, 2023.

Prior to lease expiration, Recology approached staff about a new lease for continued operations with a proposed term in excess of 10 years, however, no capital improvements were proposed to justify the need for a long-term agreement. Recology and Port staff are negotiating a potential new lease for 74 months that would require Recology to complete a seismic study and a facility conditions assessment as part of the compensation to be received by Port. The information from these two studies could be used to identify future capital improvements that justify a possible extended term. This is being brought to the Port Commission because the lease will generate more than \$1 million in revenues over the term. Under Charter Section 9.118, the lease will also require approval by the Board of Supervisors.

### STRATEGIC OBJECTIVE

**THIS PRINT COVERS CALENDAR ITEM NO. 10C**

If approved, the proposed lease will support the following objectives of the Port's Strategic Plan:

Economic Recovery:

Managing the real estate portfolio to maximize value and income to the Port and to retain a tenant that can perform through economic cycles.

Resilience:

The seismic study required under the agreement will provide recommended improvements to improve the Port's resiliency to earthquakes.

Engagement

Help meet the city's zero waste goals by providing a location where recyclable materials can be sorted and diverted from landfills.

**BACKGROUND**

The Port and Recology, originally operating as West Coast Recycling, Inc. entered into Port Lease No. L-12540 dated January 22, 1998, which currently covers approximately 195,281 square feet of shed, outbuilding, and loading dock space and 201,626 square feet of paved yard space for sorting, compaction, containerization (loading shipping containers), storage, and transshipment of recyclable, paper, cardboard, fiber, plastic, metal and other dry waste products, for transport by ocean-going vessels, truck and rail, vehicle storage, employee parking and directly related general administrative functions at Pier 96. The Lease was subsequently amended on five occasions (see Attachment A for lease amendment history).

The original lease was for a term of five (5) years commencing on August 1, 1998, and was to expire on July 31, 2003. Because of the level of expenditure required to convert the former Lighter Shed into a modern recycling facility, the Tenant requested a longer-term lease.<sup>1</sup>

The Second Amendment to and Restatement of Lease extended the term from five (5) to twenty-five (25) years (Resolution 99-20). In consideration of the extended term, the Tenant agreed to certain minimum throughputs of containerized cargo generated at the Pier 96 recycling facility through the Port's container terminals. If Tenant fell short of the minimum throughputs and failed to make up the transfers in the subsequent year, Tenant was required to pay a Maritime Deficiency Fee; additional rent in an amount equal to twice the amount of the wharfage that would have been paid on the minimum number of transfers. The throughput commitment was as follows:

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<sup>1</sup> Pursuant to Port Commission Leasing Policy adopted August 22, 1979, amended by subsection 10 of Resolution 80-95 adopted on September 10, 1980, the Port may enter into leases without competitive bid when competitive bid is impractical or impossible and when the property is to be used for maritime purposes. This policy is summarized in Exhibit B to the Fiscal Year 2023-2024 Monthly Rental Rate Schedule, Monthly Parking Stall Rates, and Special Event Rates (Parameter Rates), most recently approved by the Commission on July 11, 2023 in Resolution 23-36.

By the end of the Third Lease Year: 4,800 TEUs per year;  
By the end of the Fifth Lease Year: 5,700 TEUs per year; and  
By the end of the Tenth Lease Year: 7,600 TEUs per year

The recycling facility was to receive pre-sorted deliveries of recyclables from the company's commercial and curbside recycling programs. These recyclables would be further sorted and compacted in the Pier 96 Lighter Shed where they would be loaded into 20- and 40-foot ocean shipping containers. These loaded containers would be shipped to recycling process centers in the Far East. To the extent that space was not available on container cargo ships calling at the Port of San Francisco, these loaded containers were to be transferred by barge or other vessel from Pier 80 to other Bay Area ports for shipment to their ultimate destination.

In June 2002, the 4<sup>th</sup> Amendment to and Restatement of Lease increased the Lease Premises to include approximately 32,097 sq. ft. of non-exclusive stringer space. The stringer space was to be used for outdoor containerization and transshipment of glass, and loading of shipping containers, rail cars, and truck trailers with bailed, compacted, and non-bailed processed recyclable materials for subsequent transport to off-site vendors. Port retained the right to access the stringer space at all times to access the dock and the adjacent water area including the right to secure vessels to the dock and service said vessels.

In 2005, the Port stopped handling container traffic at Pier 80. Following the closure of Pier 80 as a container facility, under the Fifth Amendment to Lease dated June 29, 2009, the Port agreed to revise the Maritime Deficiency Fee provision. At the Port's option, with an evidentiary showing by the tenant, the Port could waive one-half of the Maritime Deficiency Fee when the Port is not served by one or more container shipping lines that move at least 10,000 TEU Container Units per month, with a minimum of four departures each month from the Port to destinations in Asia utilizing Port berths (Port Commission Resolution 09-41). The Maritime Deficiency Fee paid to Port following waiver is approximately \$312,000 per annum which is paid in arrears.

## **CURRENT FACILITY CONDITION**

The property that Recology occupies is an industrial maritime facility. The site is not served by a municipal storm drain system and is subject to storm surge and stormwater runoff that results in periodic flood risk, leading to an interruption of surface operations. During the episodic storm event which occurred on December 31, 2022, the site experienced 2' - 3' of flooding.

The site is reclaimed with fill-over bay mud and a perimeter sand dike and bulkhead. Earthquake liquefaction of the fill is expected along with lateral spreading within about 200' of the shoreline. The soil conditions of the balance of the filled site cannot support additional vertical development without extensive engineering. The stringer space has been subject to "blowouts" where the seawall has failed, and wave action has undermined the pavement forcing repairs. Given these conditions, it was concluded through appraisal that the highest and best use of the property is for a continuation of the existing use.

## **POTENTIAL NEW LEASE**

Prior to the expiration of its current lease, Recology initiated a request for a new, long-term lease that did not include water transport of recyclables so the requested lease would be a non-maritime lease. The Waterfront Plan prioritizes maritime uses at this location and contemplates interim uses that are not water-oriented for up to 10 years. Port staff believe the length of a non-maritime lease at this location should relate to a reasonable amortization of the costs of new capital improvements on site that benefit the Port and the tenant.

### Seismic Study and Facility Condition Assessment

Recology did not propose physical improvements to justify a longer-term lease at the site but has negotiated with Port staff to obtain formal studies to assess seismic risk and facilities assessment that could inform future physical improvements to the site. Port staff disclosed all known information about seismic hazards and potential vulnerability to Recology, and in a potential new lease, Recology has agreed to complete at its sole cost and expense an ASCE 41 Seismic Assessment, including (1) an American Society of Civil Engineers 41-17 (ACSE 41-17) Seismic Evaluation and Retrofit Strategy Report, and (2) a Facility Condition Assessment (together referred to as the “Studies”).

The ASCE 41-17 Seismic Evaluation and Retrofit Strategy Report will include an assessment of the building and foundation system inclusive of the tieback sheet pile bulkhead wall with consideration of subsurface hazards such as ground shaking, liquefaction, lateral spreading, and differential settlement. The report will provide an understanding of seismic deficiencies and conceptual retrofit strategies to address identified deficiencies. The report will also include a narrative and sketches that clearly identify the technical scope of work for the retrofit, as well as a Class 4 cost estimate per the Association for the Advancement of Cost Engineering (AACE) standards. Baseline assumptions for the ASCE 41-17 Evaluation including Risk Category and Seismic Performance Objective will be agreed to by the Port’s Chief Harbor Engineer before commencement of the evaluation.

The Facility Condition Assessment will document the existing condition of the building structure, foundation elements, tieback sheet pile bulkhead wall, tie rods, and any other load-resisting structure. The assessment will be supported by photographs, field observations, measurements, and a narrative description that summarizes the current condition of the facility.

Both the ACSE 41-17 Seismic Evaluation and Retrofit Strategy Report and Facility Condition Assessment are required to be prepared by a licensed Civil Engineer with substantial experience performing similar engineering services. The seismic evaluation would be provided to Port within the first two years of a new lease term, and the Facilities Condition Assessment before the end of year five.

The Studies would inform possible future use of the site after the potential new lease with Recology. The Port anticipates negotiating a scope of work and construction schedule for seismic or other improvements to be constructed upon the Premises that extend the life of

the facility and provide additional measures to reduce seismic risk with any long-term tenant. The Studies will be used as guidance in determining the scope of any new improvements but it will not commit the Port to any future action. The estimated cost of procuring the Studies is One Million Dollars (\$1,000,000).

### Rent Determination

The Premises were surveyed by Meridian Survey in May 2023 for the preparation of a new lease exhibit. Prior to the survey, the Premises was considered as:

- Parcel A: Approximately 195,281 sf of shed space, outbuilding, loading dock, and canopy space; and
- Parcel B: Approximately 201,626 sf pf paved yard space, including non-exclusive rail access

As part of the survey process, it was determined that a concrete berm had been constructed which limits water access and reduces the amount of stringer space available from 32,097 sq. ft. to 28,760 sq. ft. The lease exhibit was also revised to incorporate the premises boundary at the southeast corner of the site. The new square footage under the new agreement will be as follows:

- Parcel A: Approximately 196,369 sq. ft. of shed, docks and outbuilding and loading dock space; and
- Parcel B: Approximately 223,559 sq. ft. of paved land and yard space; and
- Parcel C: Approximately 28,760 sq. ft. of paved land (the “stringer space”)

Based on the current inability to ship containerized cargo from this location, Port staff concludes it is unreasonable to require a maritime throughput commitment in a new agreement. Use of the stringer spaced in the existing lease was previously non-exclusive, causing no payment to be required. With the shipping constraints at this location, it is appropriate to offer the area exclusively to one tenant. As part of the new lease use of the stringer space will be exclusive to Tenant with Tenant required to pay fair market rent.

The property was appraised in October 2021 as part of a 5-year market rent adjustment which was effective January 1, 2022, and resulted in increasing Base Rent by 11.33% to \$322,214.00 per month. Base Rent was subject to a CPI adjustment on January 1, 2023, increasing the rent to \$337,938.04 per month (a 4.65% increase). Recognizing we would not be able to enter a new lease before lease expiration, the property was again appraised in May 2023 to determine the base rent during holdover pursuant to the terms of the existing Lease and account for the modified lease premises. This resulted in the rent being increased to \$369,500 per month effective August 1, 2023, which is an increase of \$31,561.96 per month (a 2.44% increase) or \$378,743.52 annually. This increase would exceed the loss in revenue from the Maritime Deficiency Fee that would no longer apply in a new, non-maritime lease. Base rent will be subject to a 3% annual increase each subsequent year based on the proposed terms of the lease.

### Summary Lease Terms

Below are the key terms of the proposed agreement:

<i>Lease Number:</i>	L-17035			
<i>Tenant:</i>	Recology San Francisco, a California corporation			
<i>Premises:</i>	Parcel A - Approximately 196,369 sq. ft. of Shed, Outbuilding, and Loading Dock Space; and Parcel B – Approximately 223,559 sq. ft. of paved land and yard space; and Parcel C – Approximately 28,760 sq. ft. of paved land (the “ <b>Stringer Space</b> ”)			
<i>Facility:</i>	Pier 96, San Francisco, California 94124			
<i>Length of Term:</i>	Approximately seventy-four (74) months; however, the lease will terminate on September 30, 2029.			
<i>Commencement Date:</i>	Upon: 1. Resolution of Approval by Port Commission; and 2. Resolution of Approval by the Board of Supervisors and Mayor; and Full Execution by Port			
<i>Rent Commencement Date:</i>	Upon Commencement Date			
<i>Anniversary Date:</i>	October 1			
<i>Expiration Date:</i>	September 30, 2029			
<i>Monthly Base Rent:</i>	Months	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
	Commencement – 9/30/24	448,688	\$0.823	\$369,500.00
	10/1/24-9/30/25	448,688	\$0.848	\$380,585.00
	10/1/25-9/30/26	448,688	\$0.874	\$392,002.55
	10/1/26-9/30/27	448,688	\$0.90	\$403,762.63
	10/1/27-9/30/28	448,688	\$0.927	\$415,875.51
	10/1/28-9/30/29	448,688	FMR	FMR

<i>Security Deposit:</i>	The Security Deposit shall at all times be equal to two (2) times the then-applicable Monthly Base Rent.
<i>Environmental Requirements:</i>	Tenant shall abide by the “Transfer/Processing Report for Recology San Francisco, Recycle Central @ Pier 96 Facility, San Francisco, California – April 2022”. Tenant shall provide to Port, any revisions to this document annually.
<i>Permitted Use:</i>	The Premises shall be used solely for the operation of a single-stream mixed materials recycling center and public buyback operations to include delivery, sorting, compaction, storage, and transshipment of not more than 2,100 tons per day of source-separated and non-source-separated residential and commercial recyclable material (“Recyclable Materials”); employee parking and various general administrative functions and for no other purpose. The Recyclable Materials shall consist primarily of recyclable waste products, including, but not limited to, paper, cardboard, fiber, plastic, metals, glass, and wood.
<i>Additional Prohibited Uses:</i>	Tenant shall be prohibited from using the Premises for processing of construction and demolition waste and source-separated food wastes.
<i>Maritime:</i>	Port shall not assess against Tenant any maritime deficiency fee (as described in the Prior Lease) but will be required to pay any amounts owed under the Prior Lease before lease expiration. Tenant and Port staff will continue to actively explore opportunities to ship products to or from the Premises via the Bay. Maritime Tariff rates pertaining to dockage and wharfage shall apply to the extent any such maritime activities are conducted from the Premises.
<i>Maintenance and Repair:</i>	<p>Tenant shall be responsible for all maintenance and repairs of the Premises, including all improvements thereon, at its sole cost and expense, including the HVAC system serving the shed/warehouse, the roof and exterior walls of the shed/warehouse, and the paving of the exterior yard area.</p> <p>The Port shall be responsible for the maintenance and repair of the domestic water and sewer systems.</p> <p>Tenant will be under no obligation to perform Capital Repairs (defined below); but may pursue Capital Repairs in Tenant’s sole discretion however and notwithstanding Tenant’s election, under no circumstances shall Tenant be entitled to a</p>

	<p>Rent decrease based on the physical condition of the Premises, or otherwise offset the value of any improvement thereon without further written approval by Port in its sole and absolute discretion.</p> <p>“Capital Repairs” are: (a) major repairs or replacement (as opposed to regular or routine repairs and maintenance) to the Premises due to their physical condition, whether related to age, regular wear and tear, or any combination thereof, and (b) any repair or replacement of the Premises, if the estimated cost thereof, when added to (i) all other costs actually incurred by Tenant for repairs to or replacement of the Premises in the immediately preceding 12-month period, exceeds One Hundred Fifty Thousand Dollars (\$150,000), or (ii) all other costs actually incurred by Tenant for repairs to or replacement of the Premises during the Term, exceeds Nine Hundred Thousand Dollars (\$900,000).</p> <p>In the event a Capital Repair is required, the Tenant and the Port shall meet and confer to discuss mutually agreeable options for the Capital Repair.</p>
<i>Canopy Roof above the Stringer Space:</i>	<p>Upon termination of Port’s Memorandum of Understanding between Port and the San Francisco Public Utilities Commission (SFPUC), Port proposes to add approximately 28,000 square feet of the canopy roof over the southwest corner of the Stringer Space on the shed building to the Premises. The portion of the roof currently leased to the SFPUC (known as the “canopy roof above the Stringer Space”) may be included in the Premises upon: (1) removal of the solar panels, and (2) mutual written agreement between Port and Tenant.</p>
<i>Utilities:</i>	Tenant's sole responsibility
<i>Seismic Study:</i>	At its sole cost and expense, Tenant will procure an American Society of Civil Engineers 41-17 (ACSE 41-17) Seismic Evaluation and Retrofit Strategy Report.
<i>Southern Waterfront Community Benefits and Beautification:</i>	<p>Consistent with the latest adoption of Parameter Rates, 6.5% of lease revenues will be set aside in the Port’s Southern Waterfront Community Benefits and Beautification fund. Over 60 months of the lease term, this equates to approximately \$1.5M.</p> <p>Among the 8 areas of community benefits and beautification contained in Port’s Southern Waterfront Community Benefits and Beautification Policy, Tenant’s operations have</p>

	<p>supported key areas during the term of the Prior Lease including: (1) supporting local hiring, sourcing new hires residing in the 94124, 94134 and 94107 zip codes; (2) using community businesses; (3) regular litter pick-up on Cargo Way; (4) providing school tours of the facility; (5) providing education on recycling; and (6) supporting an artist residence program. Tenant commits to continuing its efforts in these areas. Tenant agrees that Port staff and Tenant will work collaboratively to present these areas of benefits to the public and to consider community members' comments and proposals in the context of Tenant's operations and to document enhancements, requirements, and constraints in this Lease.</p>
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**LEASING POLICY**

The Port must keep its facilities productive to generate the revenues necessary to fund ongoing operations and finance capital improvements. Under the Waterfront Plan, Port lands may be leased for a wide range of short-term, interim uses (up to 10 years) pending the lands' ultimate development or improvement to achieve long-term public trust benefits. Interim uses are therefore essential in supporting the Port's financial stability.

The Tenant is in good standing and Port staff has determined the proposed use is consistent with the Port's Waterfront Plan.

**NEXT STEPS**

Port staff will finalize negotiations with Recology on the final form of a new, short-term lease. The Port's Southern Advisory Committee ("SAC") will be informed of the proposed continued use at the next SAC meeting scheduled for September 27, 2023. Port staff then intends to return to the Port Commission to seek authorization to enter into a new lease with Recology San Francisco on such terms and conditions as described in this staff report. If the Port Commission approves, the Lease would then be subject to approval by the Board of Supervisors.

Prepared by: Kimberley Beal, Acting Deputy Director  
Real Estate and Development

Attachment A: History of Lease Amendments  
Attachment B: Proposed Lease Premises

## ATTACHMENT A

### History of Lease No. L-12540 Lease Amendments

<b>AMENDMENT</b>	<b>DATE</b>	<b>TERMS AMENDED</b>	<b>RESOLUTION NO.</b>
First Amendment	6/30/1998	Commencement Date, Termination Date, and Rent Commencement Date	
Second Amendment to and Restatement of Lease	12/17/1998	Extended the term from five (5) to twenty-five (25) years, adding wharfage payments and making other changes	99-20
Third Amendment to Original Lease	7/9/2001	Amended the Premises, Base Rent, and other provisions	
Fourth Amendment to and Restatement of Lease	6/12/2002	Modified the Permitted uses, Base Rent, and Security Deposit provisions, adding square footage to the premises, revising certain maintenance obligations, and making other updates	02-21
Fifth Amendment to Lease	6/29/2009	Amend Lease to accelerate the dates rent is adjusted to market rates and allow flexibility in the timing of future cost of living increases to correspond with the market rate adjustments; 2) add circumstances under which Port must waive one-half (1/2) of Tenant's payment of the Maritime Deficiency Fee; 3) delay Tenant's right to unilaterally terminate until January 1, 2012 and add other provisions	09-41

# ATTACHMENT B

## Proposed Lease Premises

