MEMORANDUM

TO:	Commissioners	**DATE:**	March 25, 2024
FROM:	Holly Stafford	**COPIES:**	Rob Fix
SUBJECT:	Lease Termination Agreement with ABC Recycling		

ACTION REQUESTED

Motion to approve authorizing the Executive Director to execute a Lease Termination Agreement with A.B.C. Recycling Operations Corp. and A.B.C. Recycling Holdings Corp. (collectively, "ABC").

BACKGROUND

The Port entered into a lease agreement dated June 21, 2022, with ABC for the property located at the Bellingham Shipping Terminal, including both Exclusive and Non-Exclusive Use Property (the "Terminal Lease"). The Port entered into a lease agreement dated May 25, 2022, with ABC, which was subsequently amended a number of times, for property located at 629 Cornwall Avenue, Bellingham (the "Office Lease"). The Port issued default notice to ABC on February 21, 2024, alleging certain violations under the Terminal Lease. These defaults were for ABC (1) berthing a barge to berth in an unauthorized location in the Whatcom Waterway; (2) failing to comply with stormwater management requirements; and (3) failing to comply with the Terminal Lease provisions regarding maintenance of comprehensive general liability insurance. ABC disputed the defaults. On March 11, 2024, the Port issued a separate notice of default to ABC under the Terminal Lease for failing to comply with laws and regulations and not allow waste and refuse connected with scrap metal dropped into the Whatcom Waterway. ABC disputed that violation as well. Although the Port did not issue ABC a default notice under the Office Lease, the Office Lease and Terminal Lease contain cross-default provisions.

On March 21, 2024, the Port Executive Director and legal counsel engaged in a discussion with representatives of ABC and its legal counsel. The Lease Termination Agreement presented herewith is the result of the discussions between the parties that day and in the days that followed.

FISCAL IMPACT

Under the Terminal Lease, ABC pays the Port Two Thousand Seven Hundred Seventy Dollars ($2,770) per acre, per month for approximately six (6) acres, for the first five (5) years for the Exclusive Use Property, amounting to approximately One Hundred Ninety-Nine Thousand Four Hundred Forty Dollars ($199,440) annually. Under the Office Lease, ABC pays the Port One Thousand Seven Hundred Sixty-Seven Dollars and Thirty-Three Cents ($1,767.33) per month. ABC also pays the Port charges applicable to the Port's Tariff No. 800, with the modification of Two Dollars and Seventy-Five Cents ($2.75) per MT Throughput Charge and Seventy-Five Cents ($0.75) per MT Stormwater Management Charge under both Leases, and a charge of Five Dollars ($5.00) per truck trip as a Truck Scale Charge under the Office Lease. Upon termination of the Leases, which shall occur on or before September 30, 2024, the Port will no longer receive this revenue.

By settling the dispute, the Port will avoid incurring further legal fees and costs for litigation concerning the defaults.

STRATEGIC PURPOSE

The purpose of this Lease Termination Agreement is to resolve pending defaults under the Terminal Lease without proceeding with litigation and terminate ABC's lease on or before September 30, 2024.

RECOMMENDATION

Staff Recommends Approval.

Attachment: Lease Termination Agreement