

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.	5F
Date of Meeting	April 7, 2020

DATE: April 7, 2020

TO: Managing Members

FROM: John Wolfe, CEO

Sponsor: Tong Zhu, Chief Commercial Officer and Chief Strategy Officer

Project Manager: Mike Campagnaro, Director Alliance Real Estate

SUBJECT: Amendment to Lease Termination Agreement for Terminal 5 and resolution of interest amount past due for 2019 Annual Payment

A. ACTION REQUESTED

- Request Managing Members of The Northwest Seaport Alliance (NWSA) and Commissioners of the Port of Seattle authorization for the NWSA Chief Executive Officer (CEO) or their delegate to execute an Amendment to the Terminal 5 Lease Termination Agreement with Eagle Marine Services, LTD. (EMS) and its parent company American President Lines, LTD. (APL) in substantially the same form as presented provided that APL has paid \$286,086 to settle a past due interest amount.
- Request Managing Members of the NWSA authorization for the NWSA CEO to settle the outstanding interest payment owed to the NWSA by applying 6% interest to the 2019 Annual Payment for a total of \$286,086 to be paid by April 21, 2020.

B. BACKGROUND

On July 22, 2014, The Port of Seattle Commission authorized a Lease Termination Agreement with EMS and its parent company APL for their Terminal 5 Lease. The Termination Agreement is a combination of annual termination payments and a vessel call and volume guarantee in Port of Seattle (Port) North Harbor. The intent of the agreement was to secure volume commitment for the Seattle Harbor. In addition, this agreement facilitated the Port in being able to upgrade the dock and related infrastructure at Terminal 5 so that the terminal could handle the largest ships expected to call the harbor and it eliminated the Port's obligation to provide five functional cranes. As part of the termination agreement, EMS entered into a

sublease agreement at Terminal 18 to handle the vessel calls and cargo volumes required by the volume guarantee.

The following is a summary of the Lease Termination Agreement:

1. 10-Year volume guarantee of 150,000 lifts per year for APL and its affiliated carriers with penalties of \$75 per lift for the first 50,000 lifts to \$100 per lift for shortfall volumes above 50,000 lifts.
2. 50 vessel calls per year of a vessel size of 7,500 TEUs or greater with a penalty of \$100,000 per shortfall vessel call.
3. Vessel shortfall penalty would not apply if container lifts exceed 250,000 during the same Annual Commitment Period.
4. Additionally, APL under the above reference Terminal 18 (T18) sublease arrangement, is required to make an annual \$9 million payment to the NWSA. This commitment started in August of 2014. The last annual payment is due on August 1, 2023.

EMS and APL failed to meet their volume requirements in the first and second years of the volume guarantee and did not remit the required penalty payments as explained above. Furthermore, EMS/APL was late on their annual \$9 Million under the sublease agreement for 2017 and 2018 and 2019 which resulted in accrued interest charges of 12% per annum on both the shortfall amounts and the late annual payments.

A summary of the outstanding amounts are as follows:

Port of Seattle Shortfall (2015 – prior to formation of the NWSA)

1. 2015 Container Volume Shortfall Charges	\$ 713,775
2. 2015 Container Volume Interest Charges	\$ 181,631

The Northwest Seaport Alliance

1. 2016 Container Volume Shortfall Charges	\$ 2,310,900
2. 2016 Container Volume Interest Charges	\$ 588,045
3. 2017 - 2018 Late Termination Payment Interest Charges	\$1,069,001

The Northwest Seaport Alliance – Disputed Interest Charge

2019 Late Termination Payment Interest Charges	\$572,173
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NWSA staff has been in negotiations over these outstanding amounts for some time. The proposed resolution from APL is in two related parts:

- NWSA apply 6% interest to the 2019 Annual Payment which would adjust the amount due for that Annual Payment from \$572,173 to \$286,086 to be paid by April 21, 2020.
- NWSA agrees to an Amendment to the Termination Agreement moving forward, which is for a longer term (would expire in July of 2026) and has higher volume guarantees.

The negotiations with EMS/APL on an Amendment to the Termination Agreement have resulted in a proposal that would relieve EMS/APL of the above outstanding amounts in return for increased and extended (2 years) volume commitment to the NWSA Gateway (North and South Harbor) as follows:

Year	North Harbor Lift Guarantee	Additional Lift Guarantee (North or South Harbor)	Total Lift Guarantee
8/1/2018 - 7/31/2019	150,000	60,000	210,000
8/1/2019 - 7/31/2020	150,000	65,000	215,000
8/1/2020 - 7/31/2021	150,000	70,000	220,000
8/1/2021 - 7/31/2022	150,000	75,000	225,000
8/1/2022 - 7/31/2023	150,000	80,000	230,000
8/1/2023 - 7/31/2024	150,000	85,000	235,000
8/1/2024 - 7/31/2025	150,000	90,000	240,000
8/1/2025 - 7/31/2026	150,000	95,000	245,000
TOTAL	1,200,000	620,000	1,820,000

1. APL is released of shortfall payment of \$713,775.00 due to the Port of Seattle in year 2015 and \$2,310,900.00 due to the NWSA in year 2016 plus related late payment interest charges of \$181,631.00 due the Port of Seattle and \$588,045.00 due the NWSA through March 31, 2020.
2. APL is released of interest charge of \$1,069,001.00 for the late annual payment on \$9 million via the Terminal 18 sublease in 2017 and 2018.
3. Staying consistent with the current agreement, a late charge of 12% will be assessed for any future shortfall or late payments under the Terminal 18 sublease.

4. All APL and CMA CGM S.A. (APL Parent Company) volumes moving on APL or CMA CGM vessels or moving on vessels operated by third party operators under terms of alliance, slot charter, vessel sharing or similar FMC filed agreements, as well as feeder vessels and barges during a Commitment Period will be counted towards APL's Guaranteed Lifts requirement through the NWSA Gateway (North and South Harbors).
5. In the event of a shortfall during any single one (1) year period, APL shall be able to make up the difference in volumes during the following one (1) year period without penalty. If there is an excess of guaranteed lifts in any given one (1) year period, the excess may not be used to make up any shortfall in any subsequent one (1) year periods.
6. A Shortfall, if any, in the last year of this agreement will be due upon expiration of the agreement.
7. This agreement will result in an additional commitment by APL of 920,000 lifts over the original 1,500,000 lifts which was originally agreed upon under the base Termination Agreement.
8. All other terms remain the same.

Relatedly, but in a separate settlement agreement, the NWSA would agree to a reduced interest rate at 6% per annum for the 2019 annual \$9M payment that was not paid timely in 2019.

C. FINANCIAL IMPLICATIONS

The NWSA and the Port of Seattle have fully reserved for the shortfall and interest charges in previous years. This request will authorize staff to formally write-off the outstanding receivables and corresponding reserve for potential uncollectable accounts on the respective balance sheets but will have no impact on the NWSA or Port of Seattle income statement.

The Amended Agreement offsets the 2015 and 2016 shortfalls and withholding of interest on the Annual Payments for 2017 and 2018 by wrapping those past shortfalls into a future increased lift guarantee and a longer-term agreement. APL volumes exceeded their minimum requirements in 2017 and 2018, resulting in additional revenue at T18 totaling \$3.7 million. The financial value of the \$3.7 million from T18 additional revenue, plus the two-year extension, and anticipated additional lift fees associated with the increase minimums, has the potential to exceed the write-off of the past short fall and interest due. Regarding a reduction in the applicable interest rate on the 2019 Annual Payment from 12% to 6%, applying an annual interest rate of 6% for the purposes of settling the disputed interest payment

provides a reasonable assurance that the charges would be in excess of each Homeport's cost of capital. If either Homeport was required to borrow funds to support the NWSA, the anticipated borrowing rate or cost of capital would not exceed 6%.

D. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

- **Alternative 1:** Do nothing and hold APL to its lease termination obligations. APL will continue be billed monthly for interest that is owed to the Port of Seattle and the NWSA. They will be billed annually for the termination payment in the amount of \$9,000,000 until 2024. Staff would then seek authorization to resort to legal action.
- **Alternative 2:** Settle the past-due interest for the 2019 annual payment at 6% and once that payment has been made, amend the Termination Agreement to incentivize EMS/APL to increase volume to the Gateway.
- **Recommended Action:** Alternative 2. Authorize a settlement of the outstanding interest payment owed to the NWSA for the 2019 annual payment at 6% interest rate for a total of \$286,086, to be paid by April 21, 2020 and provided that payment has been made, amend the Termination Agreement to incentivize and encourage EMS/APL to direct additional volume to the Gateway

E. ENVIRONMENTAL IMPACTS / REVIEW

None

F. ATTACHMENTS TO THIS REQUEST

- PowerPoint presentation.
- Draft Amendment to Terminal 5 Lease Termination



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Amendment to Lease Termination Agreement for Terminal 5 and proposed settlement of interest amount past due for 2019 Payment

Mike Campagnaro
NWSA Real Estate Director

Action Requested

Request Managing Members of The Northwest Seaport Alliance (NWSA) and Commissioners of the Port of Seattle authorization for the NWSA Chief Executive Officer or their delegate to:

1. Execute an Amendment to the Terminal 5 Lease Termination Agreement with Eagle Marine Services, LTD. (EMS) and its parent company American President Lines, LTD. (APL) provided that APL has paid \$286,086 to settle a past due interest amount; and
2. Settle the outstanding interest payment owed to NWSA by applying 6% interest to the 2019 Annual Payment for a total of \$286,086 to be paid by April 21, 2020.



Background

Summary of the Lease Termination Agreement:

- 10-Year volume guarantee of 150,000 lifts per year with penalties of \$75 per lift for the first 50,000 lifts to \$100 per lift for shortfall volumes above 50,000 lifts.
- 50 vessel calls per year of a vessel size of 7,500 TEUs or greater with a penalty of \$100,000 per shortfall vessel call.
- Vessel shortfall penalty would not apply if container lifts exceed 250,000 during the same Annual Commitment Period.
- Additionally, APL under the above reference Terminal 18 sublease arrangement, is required to make an annual \$9 million payment to the NWSA for 10 years. This commitment started in August of 2014. The last annual payment is due on August 1, 2023.



Background

Summary of Outstanding Balances

Port of Seattle Shortfall (prior to formation of the NWSA)

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| 1. 2015 Container Volume Shortfall Charges | \$ 713,775 |
| 2. 2015 Container Volume Interest Charges | \$ 181,631 |

Northwest Seaport Alliance

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| 1. 2016 Container Volume Shortfall Charges | \$ 2,310,900 |
| 2. 2016 Container Volume Interest Charges | \$ 588,04 |
| 3. 2017/2018 Late Termination Payment Interest Charges | \$ 1,069,001 |
| 4. 2018/2019 Late Termination Payment Interest Charges | \$ 572,173 |



Proposed Amendment Extended Annual Volume Commitment

Year	North Harbor Lift Guarantee	Additional Lift Guarantee (North or South Harbor)	Total Lift Guarantee
8/1/2018 - 7/31/2019	150,000	60,000	210,000
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TOTAL	1,200,000	620,000	1,820,000



Alternatives Considered and Their Implications

- No Action Alternative: Do nothing and hold APL to its lease termination obligations. APL will continue be billed monthly for interest that is owed to the Port of Seattle and the NWSA. They will be billed annually for the termination payment in the amount of \$9,000,000 until 2024. Staff would then seek authorization to seek legal action.
- Recommended Action: Settle the past-due interest for the 2019 annual payment at 6% and once that payment has been made, amend the Termination Agreement to incentivize and encourage EMS/APL to increase their volume through the gateway and extend their commitment by two (2) years.



Financial Impact

- The lease amendment includes increased lift minimums and two additional years to the agreement. The anticipated financial value of this amendment has the potential to offset the requested write-off of the lift shortfalls and interest payments dues.
- Reduction in the interest rate for the 2019 Annual Payment to 6% provides a reasonable assurance that the charges would be in excess of each Homeport's cost of capital. If either Homeport was required to borrow funds to support the NWSA, the anticipated borrowing rate or cost of capital would not exceed 6%.
- Authorization of both requests will not have an impact on the income statement for the NWSA or Port of Seattle as all balances have been previously reserved as potential uncollectable balances.

Action Requested

Request Managing Members of The Northwest Seaport Alliance (NWSA) and Commissioners of the Port of Seattle authorization for the NWSA Chief Executive Officer or their delegate to:

1. Execute an Amendment to the Terminal 5 Lease Termination Agreement with Eagle Marine Services, LTD. (EMS) and its parent company American President Lines, LTD. (APL) provided that APL has paid \$286,086 to settle a past due interest amount; and
2. Settle the outstanding interest payment owed to the NWSA by applying 6% interest to the 2019 Annual Payment for a total of \$286,086 to be paid by April 21, 2020.