MANAGING MEMBERS
ACTION ITEM

Item No. 7C
Date of Meeting November 2, 2021

DATE: October 14, 2021

TO: Managing Members

FROM: John Wolfe, CEO

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

Project Manager: Erin DeBroux, Real Estate Manager

SUBJECT: Terminal 10 Aquatic Lands Outfall Easement Renewal

A. ACTION REQUESTED

Request Managing Members of The Northwest Seaport Alliance ("NWSA") authorization to approve payment of a renewal fee in the total amount of $103,686 required to enter into an Easement Renewal Agreement for the Terminal 10 Aquatic Lands Outfall Easement for the first of two potential ten (10) year renewal terms for use of state-owned aquatic land at Terminal 10 for the purpose of maintaining and operating a stormwater outfall structure in order for Terminal 10 to be leased for specific uses including, but not limited to, its current use for drayage support parking.

Jointly request the Commissioners of the Port of Seattle authorization for the Executive Director or their delegate to enter into an Easement Renewal Agreement for the Terminal 10 Aquatic Lands Outfall Easement for the first of two potential ten (10) year renewal terms for use of state-owned aquatic land at Terminal 10 for the purpose of maintaining and operating a stormwater outfall structure.

B. SYNOPSIS

The Port of Seattle authorized a Terminal 10 utility improvement project on June 22, 2010. In part, this project involved installation of a connection to a new stormwater conveyance system, improving an existing upland cap, and installation of an outfall structure (the "Improvements"). The Improvements required utilization of approximately 0.09 acres of state-owned aquatic lands (the "Easement Premises"). The State of Washington, acting through the Department of Natural Resources ("State"), granted an easement (the "Easement") to the Port of Seattle for the Easement Premises allowing completion of the Improvements. The Easement

commenced December 1, 2011 for an initial term of ten (10) years with two potential renewal terms of ten (10) years each. The initial term of the Easement expires November 30, 2021, and the NWSA and Port of Seattle wish to enter into the first of two renewal terms to ensure continued utilization of the outfall structure which is a critical component of the site's stormwater infrastructure. The renewal fee is $98,686 for use of the Easement Premises plus a $5,000 administrative fee in accordance with RCW 79.110.240(1). The total cost for the ten (10) year term is $103,686 to be paid by the NWSA in order to continue to lease Terminal 10 for drayage support parking or other approved site uses.

C. BACKGROUND

Terminal 10 is an approximate 13.1-acre site located on the west side of Harbor Island. Prior to being purchased by the Port of Seattle in 1997, this site was operated as a shipbuilding facility by Lockheed Shipbuilding Company from the 1930s to 1988. Such use resulted in site contamination, and among other agreements, Lockheed Martin Corporation ("Lockheed") entered into a 2003 Consent Decree with the Environmental Protection Agency "EPA", and a 2004 Use Authorization Agreement with the State for state-owned aquatic lands.

In accordance with the Use Authorization Agreement and Consent Decree, Lockheed constructed a sediment cap designed to isolate contaminated sediments from the surrounding environment. The Easement Premises are subject to the Use Authorization Agreement, and the State required approval of the Improvements contemplated in the easement by Lockheed. The Port of Seattle coordinated its plans for the Improvements with Lockheed and the EPA and obtained a waiver from Lockheed for any claims against the State for granting an easement for the outfall. It was additionally determined that the Improvements would help avoid recontamination of the sediment cap by migration of contaminated groundwater.

In reliance on this waiver, the State granted the Easement for construction and operation of a stormwater outfall and an approximately 2,968 square foot area of paved fill supported by a remediation bulkhead. The Port of Seattle Commission approved the Easement November 8, 2011, and the Improvements were completed allowing Terminal 10 to be utilized as a facility for truck and chassis storage. Since 2011, Terminal 10 has been used for this purpose and is currently leased to seven (7) different trucking companies. The stormwater infrastructure is a critical element for continued use of Terminal 10 for truck and chassis storage and other potential uses. It replaced an existing non-functional conveyance system and protects the cap area from recontamination.

The initial ten-year term of the Easement expires November 30, 2021, and NWSA and Port of Seattle staff support entering into the first of two potential ten (10) year renewal terms which will commence December 1, 2021. Renewal will ensure

Terminal 10 remains suitable for its current use while also ensuring the cap remains protected. Renewal will be upon the same terms and conditions as the initial easement term, except for an increase in the use fee, as described below. The fee for the renewal term was calculated using the same methodology as was utilized to calculate the fee for the initial term, which applies the King County appraised value of comparable land on Harbor Island against the square footage of the filled land supported by the bulkhead (2,968 square feet). An additional administrative fee of $5,000.00 is also applicable.

As Port of Seattle was the original easement Grantee, and all terms and conditions of the renewal (fee excepted) must remain unchanged, the Port of Seattle is listed as the Grantee in the Easement Renewal Agreement, and Port of Seattle Commission approval is requested to execute the Easement Renewal Agreement. While the renewal fee is within the authority of the Chief Executive Officer, Managing Member approval is requested due to the term of the easement in accordance with Section 7 of the Master Policy Resolution.

Easement Renewal Agreement Terms:

- Parties: The agreement is made by and between the State of Washington, acting through the Department of Natural Resources, as landlord and Port of Seattle, a municipal corporation, as Grantee.
- Term: Easement is renewed for one ten (10) year term, beginning December 1, 2021 and ending November 30, 2031.
- Easement Property: Approximately 0.09 acres of state-owned aquatic lands.
- Use: Construction (completed) and operation of a stormwater outfall and an approximate 2,968 square foot area of paved fill supported by a bulkhead.
- Fees: The State may charge fees for renewal terms if authorized by law. The fee for the renewal term is $98,686, plus an administrative fee of $5,000 in accordance with RCW 79.110.240(1).
- Renewal: Effective upon and if approved by the State, this Easement may be renewed for one additional term of ten (10) years. Renewal is contingent upon Grantee's demonstrated progress to reduce discharges on state-owned aquatic lands and associated biological communities.
- Termination: Upon termination of the easement, the Port of Seattle is responsible for removing all improvements on state-owned aquatic lands.

D. FINANCIAL IMPLICATIONS

The existing easement fee was paid by the Port of Seattle ten years ago and the amortized cost has been charged to Terminal 10 since then. The new easement fee will be paid for by the NWSA using operating funds and will be amortized over ten years.

Financial Impact

The total fee to renew the Easement is $103,686 as itemized below. Payment of this fee by NWSA is required prior to December 1, 2021. Annual expense will be approximately $10,400 as the total fee will be amortized over the ten-year term of the agreement.

Easement Use Fee	$98,686
Administrative Fee	$5,000
Total	**$103,686**

E. ATTACHMENTS TO THIS REQUEST

- Easement Renewal Agreement
- Terminal 10 Aquatic Lands Outfall Easement

F. PREVIOUS ACTIONS OR BRIEFINGS

- November 8, 2011 approval by the Port of Seattle Commission to enter into the Terminal 10 Aquatic Lands Outfall Easement.