THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No. 9D

Date of Meeting November 2, 2021

DATE: October 11, 2021

TO: Managing Members

FROM: John Wolfe, CEO

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

Project Manager: Jennifer Maietta, Director NWSA Real Estate

SUBJECT: Second Reading – General Construction Company at Terminal 103

A. ACTION REQUESTED

Request Managing Members of the Northwest Seaport Alliance (NWSA) authorization for the Chief Executive Officer or their delegate to execute a new lease agreement with General Construction Company at Terminal 103.

B. SYNOPSIS

General Construction Company (GCC) wishes to enter into a term lease with the NWSA with the understanding that the Aquatic lands will be incorporated into the Port Management Agreement (PMA) by amendment and that GCC will become responsible for the dock structure and all required upgrades for its use and its future removal under the Lease. The incorporation of the Aquatic lands into the PMA will allow GCC to apply for review and approval by the Washington State Department of Natural Resources (DNR) to make the required structural upgrades for its continued use which is pertinent for GCC to conduct its business.

C. BACKGROUND

Port of Seattle (POS) purchased Terminal 103 (T-103) from Fletcher General in June 1997, which included leases with both General Construction Company and Northwest Aggregates (NW Ag). GCC provides maritime construction services and is a water-dependent maritime business. This 1997 purchase did not include the Aquatic lands, nor the dock structure located within the Aquatic lands currently used by GCC. There is no historical or municipal record of who installed the dock, and it was in place at the time POS acquired T-103. Thus, DNR is requiring the POS to

take responsibility for the dock (which is in a deteriorated state) and its future removal through the incorporation of the Aquatic lands by amendment to the PMA. Both tenants are dependent upon and access the Aquatic lands adjacent to the uplands for their business operations and both leases have continued on holdover status while the negotiations of the Aquatic lands for incorporation into the PMA is completed.

GCC has had a lease in effect at T-103 since 1996 which originated with the prior owner of the property, Fletcher General. GCC's lease then transferred to the POS upon the property being purchased in 1997 and subsequently transferred to the NWSA as a licensed property in 2015.

Negotiations for incorporation of the Aquatic lands with DNR and a lease with GCC preceded the transition of T-103 into the NWSA. Historically, POS negotiations for incorporation of the Aquatic lands with DNR commenced in 2011 as well as lease negotiations with GCC (and NW Ag). In 2012 the base terms for the draft amendment to the PMA were agreed upon except for formalizing the site plan with DNR. In 2014 the initial base terms were agreed upon with GCC except GCC did not agree to take full responsibility for the dock. POS negotiations were put on hold in 2015 due to the management of T-103 being transferred to the NWSA as a licensed property. Subsequently, due to a number of factors, momentum in resolving complexities of these negotiations was lost and negotiations commenced in earnest again with both GCC and DNR in May 2019 after the completion of the North Harbor Strategy (April 2019).

Negotiations to incorporate the Aquatic lands into the PMA have proven to be problematic primarily due to the dock structure. Early on, GCC was very concerned with the potential environmental ramifications of the removal/replacement of the dock. Additionally, approximately forty feet of the dock extends northward past the T-103 adjacent uplands and adjacent to the BNSF right of way. Attempts had been made by POS to incorporate the additional forty feet of dock as part of the Aquatic lands because of DNR requiring POS being responsible for its removal through the proposed PMA amendment and with the understanding that GCC used this portion of the dock. DNR had priorly considered this proposal, but within recent months formally declined the proposed boundary.

Additionally, the dock is located within the Duwamish waterway and coordination for structural upgrades or replacement of the dock (and future removal) has to take into consideration existing environmental conditions and non-disturbance of contaminated sediments or risk major contaminant clean-up requirements. Due to the dock's current condition, GCC has engaged POS Environmental to coordinate structural upgrades to stabilize the dock without disturbing the waterway sediments to be completed by GCC. This will allow GCC the additional time to design the long-term structural dock replacement for submission to DNR for review and approval,

address potential environmental impacts and any tribal concerns as needed. GCC intends to investigate the best option to remove the existing dock without disturbing the sediments and potentially installing a sheet-pile wall dock which will allow more width for vessels to berth or the best alternative agreeable to DNR.

Concerted efforts between the NWSA, POS, GCC and DNR including a recent site visit were conducted to come to an agreeable resolution. The Parties have agreed to: 1) the Aquatic lands boundary being contiguous with the T-103 uplands and 2) that GCC will remove the north 40' of dock which is actually a metal platform extension that is not mandatory for GCC's operations and will not affect the remaining dock in place. In the immediate future, GCC will make structural upgrades to stabilize the dock. Once the site plan with DNR is finalized, the amendment to the PMA will be presented to POS for review and signature, which is anticipated within the next couple of months. Finalizing the GCC lease in tandem with the incorporation of the Aquatic lands into the PMA will allow GCC the time required to complete design, DNR review and approval, and permitting to complete the removal of the existing dock and construction of a new dock alternative to amortize these costs during the primary term of the lease.

The GCC lease has continued in holdover status since June 2011 at the then current rate, while resolving issues with DNR as agreed upon by the parties in writing. The transition to the NWSA occurred and the lease continued to be on holdover status as agreed by the Parties. Negotiations with GCC continued as well as working with DNR to resolve issues related to the Aquatic lands. The current rental rate is $.15 psf/mo. An appraisal was conducted in 2019, which appraised the T-103 GCC portion of the property to have a fair market rental value of $.30 to $.31 psf/mo.

Since the appraisal was initially performed in 2019, a number of issues in the area have adversely impacted the valuation of this location, including: closure of the West Seattle Bridge; anticipated increased traffic due to T-5's opening; potential impacts of the southernmost Sound Transit Ballard to West Seattle light rail link route; and a potential new bike lane on W Marginal Way. With these impacts negatively affecting the valuation of the property and in consideration of GCC agreeing to take responsibility for the dock and invest in structural upgrades thereto during the term of the lease staff recommends that the base rent increase by pre-set step increases for the first five years then increase by CPI thereafter. It is agreed that doubling the rent from $.15 to $.30 psf/mo in one year would be fiscally burdensome and that the proposed step increase approach is reasonable. As mentioned above, initial proposed lease terms were negotiated with GCC in 2014, included a base rental rate of $.16 psf/mo. Had the 2014 lease terms been finalized and estimating a 2.5% annual increase the rental rate would be $.19 psf/mo in 2021 and if continued to be escalated by 2.5% annually the average rental rate would be $.21 psf/mo in 2025. The proposed negotiated starting rental rate for this lease is $.20 psf/mo factoring

the step increases the rental rate will increase to $.32 psf/mo in 2025. as shown in the following table:

GENERAL CONSTRUCTION LEASE RATE COMPARISON

2014 Negotiated Rate			Proposed Current Rate		
Year	2.5% Increase		Year	Step-Incrase	
2021	$	0.19	2021	$	0.20
2022	$	0.19	2022	$	0.23
2023	$	0.20	2023	$	0.26
2024	$	0.20	2024	$	0.29
2025	**$**	**0.21**	**2025**	**$**	**0.32**

Additionally, upon incorporation of the Aquatic lands into the PMA, GCC will be paying rent for the use of the Aquatic lands calculated in accordance WAC 332-30-123. GCC does not currently pay rent for the use of the dock and/or Aquatic lands. Thus, this will increase their monthly rental rate by an additional $1,022 per month to be increased by CPI annually. This is equal to $.06 psf/mo for their portion of the Aquatic lands area (17,703 sf).

New Lease Terms

- Premises**:** 178,000 SF of Upland Yard and 17,703 SF of Aquatic lands.
- Term**:** 10 years commencing Nov. 1, 2021 and terminating Oct. 31, 2031.
- Conditional Option to Extend: If Lessee completes the installation of the New Dock within the ten-year Term, Lessee will have two (2) five (5) Year Options to extend the Term at Lessee's discretion. If Lessee is unable to replace the Current Dock with a similar dock structure, despite its use of commercially reasonable efforts to do so, within the ten-year Term, each of the two (2) five (5) Year Options to extend shall then be conditioned solely upon Lessor approval.
- Upland Yard Rent:
  $.20/SF effective Nov. 1, 2021 ($35,600 per month)
  $.23/SF effective Nov. 1, 2022 ($40,940 per month)
  $.26/SF effective Nov. 1, 2023 ($46,280 per month)
  $.29/SF effective Nov. 1, 2024 ($51,620 per month)
  $.32/SF effective Nov. 1, 2025 ($56,960 per month)
  Effective Nov. 1, 2026 Upland Yard Rent will be escalated by CPI-U each year through the end of the Lease Term.
- Aquatic lands Rent: Upon inclusion in the Port Management Agreement (PMA) with WA State Dept. of Natural Resources, the Aquatic lands Rent will be calculated per WAC 332-30-123 currently estimated to be $1,022 per

month. Rent for the Aquatic lands will be escalated by CPI-U each Nov. 1st through the Term of the Lease.

- Market Rate Adjustment: Rent for both the Upland Yard and Aquatic lands will be adjusted to Fair Market Value prior to any Term Extension at Lessor discretion.
- Security: Lessee will provide a Security Deposit equal to 12 months' Rent plus WA State Leasehold Excise Tax, initially $482,052. Security for the Aquatic lands will be added after they are included in the PMA.
- Use of Premises: Lessee shall use the Premises for materials and equipment storage and administration and construction activities related to Lessee's business.
- Utilities & Taxes: Lessee is responsible for all utilities and taxes.
- Alterations: Lessor is not responsible to make any Alterations. Lessee intends to replace the Dock within the Aquatic lands at Lessee cost. If Lessee is unable to replace the Dock, after making good faith efforts, Lessee may terminate the lease upon 180 days written notice.
- **Dock Structure: Upon the commencement of the lease acknowledges that the current dock structure is Lessee's responsibility and any liability arising from the presence of the dock or from Lessee's activities on or around the dock shall be Lessee's sole responsibility.**
- Maintenance & Repair: Lessee is responsible for all maintenance and repair. Lessor has no maintenance & repair responsibility.
- Insurance: Lessee will provide proof of all insurance in compliance with NWSA Risk Management policy. $5M General Liability, $3M Business Auto, $5M Protection and Indemnity.
- Major Capital Improvement: Lessor may terminate the Lease upon 18-months' notice for a Major Capital Improvement Project. Lessor will reimburse Lessee for the unamortized cost of the Dock.
- Stormwater: Lessee is responsible for all Stormwater Management issues.

D. FINANCIAL IMPLICATIONS

Source of Funds

No capital investment or additional expense is needed to execute this agreement.

Net book value

The value of the revenue over 10 years is $4.5M including the combined rent for the uplands and Aquatic lands. If both the 5-year options are exercised, for a total term of 20 years, the value of that revenue is $7.3M.

E. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

- **Recommended Action:** At the November 3, 2021 meeting, request the Managing Members of the NWSA advance authorization for the Chief Executive Officer or their delegate to execute a new Lease with General Construction Company for a 10-year Term at Terminal 103.

F. ATTACHMENTS TO THIS REQUEST

- PowerPoint presentation.
- Proposed lease agreement
- Copy of Draft Amendment to Port Management Agreement
- Timeline of negotiations with General Construction Company

G. PREVIOUS ACTIONS OR BRIEFINGS

- First Reading of Commission Meeting dated October 2, 2021

- Commission Memorandum dated May 22, 1997 approved during the Jun 10, 1997 Port of Seattle Commission Meeting for the purchase an 8.06 Acre parcel, formerly a part of Terminal 105 and subsequently subdivided, currently known as Terminal 103.