

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item 9B

April 4, 2023

Date of Meeting _____

DATE: March 20, 2023

TO: Managing Members

FROM: John Wolfe, CEO

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

Project Manager: Jennifer Maietta, Director Alliance Real Estate

SUBJECT: Terminal 115 4th Amendment to the Lease Agreement with Northland Services, Inc.

A. ACTION REQUESTED

Request Managing Members of The Northwest Seaport Alliance (NWSA) authorization for the Chief Executive Officer or their delegate to execute a Fourth Amendment to the Terminal 115 Northland Services, Inc. (Northland) Lease Agreement extending the “Required Dock Work Deadlines” and incorporation of future Clean Truck Program requirements for domestic marine cargo terminals.

B. SYNOPSIS

The purpose of the Fourth Amendment is to extend the timeframe of the required “Required Dock Work” provision whereby Northland is to provide structural restoration or removal of the asphalt and ballast deck as specified in the Third Amendment to the Terminal 115 Northland Lease Agreement. This provision in the Third Amendment required Northland to obtain a qualified structural engineer to perform a detailed condition assessment before performing the work. The condition assessment has been completed and concluded that the Required Dock Work was not imminent and instead the structural engineer recommended biennial inspections to evaluate and monitor the condition of the areas of concern. Based upon these recommendations and Port of Seattle Engineering's review, the NWSA and

Northland propose to amend the lease to adopt the biennial inspection approach until such time it is determined that repairs are recommended.

Additionally, the NWSA intends to require domestic marine cargo terminals to be compliant with the NWSA Tariff 300. Item No. 800.00 Clean Truck Program, currently required by international marine cargo terminals, by 2025. Thus, language is proposed to be incorporated to the Northland lease to incorporate the Clean Truck Program in the future.

C. BACKGROUND

Northland Services, Inc. is a terminal operator conducting domestic terminal operations at Terminal 115 providing barge services to Alaska through its vessel carrier affiliate Alaska Marine Lines. Northland has been a tenant in the port since 2003. Northland uses the Terminal 115 dock for its Alaska barge services and other ancillary uses.

A condition assessment was performed in November 2013 by Harbor Consulting Engineers of the overall condition of Terminal 115 dock. This assessment noted concerns and recommended further inspection of the asphalt and ballast in portions of the dock and that assessments be performed every three years. The 2013 condition assessment along with cursory inspections by Port of Seattle Engineering formed the basis of the Required Dock Work for “unimproved sections of the dock” as defined and required by the Third Amendment to the Northland Services lease dated December 6, 2019. The Third Amendment incorporated lease provisions for Northland to either 1) remove asphalt and ballast from the unimproved sections of the dock; or 2) provide structural restoration of the unimproved sections of the dock (Required Dock Work). The Third Amendment further obligated Northland to engage a qualified structural engineer to perform a comprehensive condition assessment. Additionally, a rent abatement in the amount of approximately \$765K was provided to Northland to put towards one of the two options (Rent Abatement). As part of the consideration for the Rent Abatement under the Lease, Lessee completed the Biennial Inspection at a cost to Lessee of approximately \$200,000 in 2021 and Lessee will continue to be responsible for Biennial Inspections as an ongoing Lessee expense.

As part of the Required Dock Work Northland engaged PND Structural Engineers (PND) to perform the comprehensive condition assessment (Condition Assessment). The Condition Assessment dated July 15, 2021, advised that the dock repairs were not imminent and recommended that the dock be inspected on a biennial basis and not allow live loads (i.e., bulk, vehicles, containers) in these areas until such time repairs become necessary. However, in accordance with the Third Amendment

Northland provided timely written confirmation to proceed with the structural restoration of the unimproved sections of the dock with the scope of work to be substantially completed by February 28, 2022, or double rent would be charged until substantial completion.

In June of 2021 Northland advised the NWSA that due to an expansion of their marine freight services between Seattle and Hawaii in 2020 resulted in a much higher cargo volume through T-115 along with heavier inbound trucking and rail car traffic; and at the same time the West Seattle Bridge issue has severely impacted the traffic flow to T-115 with their focus being on the emergent cargo and traffic issues, rather than the broader facility reinvestment planned. At that time Northland requested to change options to remove asphalt and ballast from the unimproved sections of the dock with the double rent penalty suspended through March 2022. In January of 2022, Northland ultimately, due to continued constraints, requested that the NWSA consider extending the Required Dock Work options subject to the biennial inspection approach first recommended in the Condition Assessment. Subsequently, in light of this request, the PND report was reviewed by Port of Seattle engineering which agreed that the biennial inspection approach was reasonable.

In a letter dated January 7, 2022, the NWSA confirmed that together with Northland that both would proceed in good faith to enter into a Fourth Amendment to the lease, pending Managing Member review and approval, for the purposes of extending the Required Dock Work options and deadlines with the requirement that Northland provide biennial inspections to the NWSA for Port of Seattle Engineering's review. At that time, it was further agreed to defer billing the double rent penalty pending the execution of the Fourth Amendment with the condition that should the Managing Members not approve the amendment or good faith efforts to complete the Fourth Amendment cease, the double rent would be billed retroactively to March 1, 2022. The Fourth Amendment will require Northland to perform the Required Dock Work as a result of the biennial inspections on or before December 31, 2032, which may be extended by written mutual agreement but shall not exceed the base term of the Basic Lease (Required Dock Work Deadline). Should Northland not complete the Required Dock Work by the Required Dock Work Deadline, Northland will be required to reimburse the full rental abatement, escalated by CPI.

Additionally, the NWSA intends to require domestic marine cargo terminals to be compliant with the NWSA Tariff 300. Item No. 800.00 Clean Truck Program,

currently required by international marine cargo terminals, by 2025. Thus, language is being incorporated to the Northland lease to incorporate the Clean Truck Program.

Terms:

Section 6 of the Third Amendment amending subparagraph 9 (d) (3) of the Basic Lease is deleted in its entirety and replaced with the following:

Term	Description
Biennial Dock Inspections	Beginning July 1, 2021 Lessee shall conduct Biennial Dock Inspections by June 30 th of every other year with a report provided no later than 30-days after each inspection.
Biennial Dock Repairs	<p>Lessee to conduct repairs to stabilize Unimproved Sections of the Dock in accordance with the biennial inspections at Lessee’s sole cost and expense.</p> <p>These repairs shall not be considered part of the Required Dock Work.</p>
Required Dock Work Deadline	<p>Lessee to provide written notice to Lessor of the commencement of Required Dock Work as a result of Biennial Inspections with substantial completion of Required Dock Work to be completed on or before December 31, 2032.</p> <p>The Parties may extend the December 31, 2032 deadline by mutual written agreement contingent upon the biennial inspections but shall not in any case exceed the base term of the Basic Lease.</p>
Required Dock Work	<p>Pending the results of the biennial inspections, Lessee may either:</p> <ol style="list-style-type: none"> 1) Remove the asphalt and ballast from the Unimproved Sections; OR 2) Restore the structural strength to all of the Unimproved Sections to not less than 250 p.s.f. with a design life of not less than 50 years, as determined by a qualified structural engineer licensed to practice in Washington state.

Rent Abatement	In the event Lessee does not perform the Required Dock Work by the Required Dock Work Deadline, Lessee shall refund the full rent abatement (\$756,136.80) plus CPI escalation as of January 1, 2020, within 60-days after the deadline.
Clean Truck Program	Upon Tariff 300 Item No. 800.000 Clean Truck Program being amended incorporating the domestic marine cargo terminals, Lessee shall comply with the Clean Truck Program.

D. FINANCIAL IMPLICATIONS

No changes to the financials as last presented for the Third Amendment.

E. ATTACHMENTS TO THIS REQUEST

- Fourth Amendment to Lease – Terminal 115 Northland Services, Inc. including PND Engineers, Inc. report as Exhibit B-4
- Copy of January 7, 2022 letter from NWSA to Northland Services, Inc.