

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.	<u>5A</u>
Date of Meeting	<u>January 5, 2021</u>

DATE: December 15, 2020

TO: Managing Members

FROM: John Wolfe, CEO

Sponsor: Tong Zhu, Chief Commercial and Strategy Officer

Project Manager: Jennifer Maietta, Sr. Manager Real Estate
Curt Stoner, Sr. Manager Real Estate

SUBJECT: Associated Petroleum Products, Inc. Lease at Terminal 115

A. ACTION REQUESTED

Request, at second reading, authorization for the Chief Executive Officer or their delegate to sign the Lease with Associated Petroleum Products, Inc. (APP) to operate an automated commercial vehicle fueling facility at Terminal 115 to commence January 1, 2021.

B. SYNOPSIS

Associated Petroleum Products, Inc. has been the tenant at Terminal 115 since March 14, 2014. The five-year lease went into holdover status on March 1, 2019 pending renegotiating new lease terms. The Premises consists of approximately 42,980 square feet of yard area and a 1,250 square foot building. In order to establish a fair market lease rate, NWSA hired SH&H Valuation and Consulting to appraise the facility and provide a determination of fair market rent for the subject property. SH&H concluded that a fair market rent range for the yard area was \$0.22 to \$0.26 per square foot per month. SH&H also concluded that a fair market rent range for the building was \$1.33 to \$1.50 per square foot per month.

The Lease initially went into Holdover status March of 2019 due a number of factors. The property was transitioned to another real estate manager, just as the lease was expiring and prior to lease negotiations commencing, due to the retirement of the real estate manager overseeing the APP lease, and during the time the entire NWSA Real Estate Team was totally engaged in intensive work on the implementation of the North Harbor Commercial strategy, which included 7

agreements. Lease negotiations with APP commenced immediately after the North Harbor Commercial Strategy was implemented in April 2019. Negotiations hit an impasse regarding fair market rental rates which prompted a decision to obtain a market appraisal to determine fair market rent. Subsequent negotiations over environmental language due to the nature and history of this site were prolonged and included engagement of the Port of Seattle environmental team.

APP and the NWSA agreed to final lease terms in February 2020. In March 2020, just prior to the Lease being brought to the April 2020 Managing Members meeting, APP requested a rental rate reduction due to their business being negatively impacted by the COVID 19 pandemic and WA State's Stay at Home policy. NWSA Real Estate declined a rental rate reduction but did offer to delay moving forward with the new lease and new rental rate as we interpreted APP's request as potentially falling within Governor Inslee's April 16, 2020 Proclamation 20-19.1 as prohibiting rent increases for commercial tenants when tenants were "materially impacted by the COVID-19, . . . whether the business itself was not deemed essential pursuant to Proclamation 20-25 or otherwise lost staff or customers due to the COVID-19 outbreak."¹ APP agreed to recommence negotiations in September 2020. Lease drafts were exchanged, and the parties agreed to a final Lease on December 11, 2020. Based on the feedback received from the first reading, staff followed up and attempted to negotiate back rent at a higher rate for the twenty-two-month holdover period but was unsuccessful in doing so.

To address Managing Members' concerns regarding how tenant funded "major infrastructure improvements" should be identified and evaluated when fair market rent is determined for future lease terms, the parties have agreed to modify the lease language to only exclude buildings, canopies and fuel distribution equipment constructed and/or installed during APP's tenancy when determining fair market rent. The issue of how best to define tenant-funded "major infrastructure improvements" for purposes of valuation in our template lease provisions is under legal review.

C. BACKGROUND

The new lease consists of the following proposed terms:

Premises: 42,980 square feet of exclusive use ground area, a 1,250 square foot building and 1,859 square feet of common use sidewalk area.

¹ This prohibition on rent increases was subsequently modified on June 2, 2020 by the Governor's amendment to Proclamation 20-19.2 which clarified that the "prohibition does not apply to commercial rental property if rent increases were included in an existing lease agreement that was executed prior to February 29, 2020 pre-COVID state of emergency."

Term: Five years commencing January 1, 2021 ending December 31, 2025.

Term Extension: Three each five-year extension options subject to the mutual agreement of the parties.

Rent: 42,980 square foot yard area at \$0.24 per square foot per month (\$10,315 per acre per month). 1,250 square foot building at \$1.40 per square foot per month. Subject to WA State Leasehold Excise Tax.

Rent Escalation: Rent will be escalated by CPI annually on January 1. Rent will be adjusted to Fair Market Rent at the end of the first and second five-year extensions.

Security Deposit: Six months' rent plus WA State Leasehold Excise Tax. Initial Security Deposit is \$81,686.

Permitted Use: Automated commercial vehicle fueling facility.

Maintenance: All maintenance and associated costs are the responsibility of Associated Petroleum Products.

Premises Security: Premises Security is the responsibility of Associated Petroleum Products.

Alterations & Improvements: NWSA has no obligation to make any alterations & improvements. Any Lessee alterations & improvements are subject to the NWSA Tenant Improvement Process.

Utilities & Taxes: Associated Petroleum Products is responsible for all utilities and taxes.

Insurance: General Liability \$5M, Business Auto \$2M, Pollution \$2M, Workers Comp per WA State Law.

Assignment: Associated Petroleum Products may assign the Lease to its corporate parent or wholly controlled subsidiaries upon 30-day notice to NWSA.

Subleasing: Associated Petroleum Products may sublease to the existing Subway restaurant and DC Portside Coffee via a separate Conditional Consent to Sublease Agreement.

Termination for Major Capital Improvement: NWSA may terminate the Lease for a major capital improvement upon one-year written notice to Associated Petroleum Products.

D. FINANCIAL IMPLICATIONS

Source of Funds

Not applicable.

Financial Impact

Based on the market rate appraisal, negotiations have resulted in an annual revenue of approximately \$145,000, about \$43,000 higher than the amount included in the 2021 budget. The budget was based on a conservative increase of 2%.

A holdover was implemented due to continued lease negotiations and other impending factors as specified above. The holdover implemented in March 2019 continued through December 2020 for the reasons explained in the early section of this memo. The current monthly rent is \$8,307.89 and the negotiated rent is \$12,065.20 for a monthly difference of \$3,757.31 per month for a total of \$82,660.82 delta. Please note that the current rent is based upon an appraised amount obtained during lease negotiations and the current rental value may have been less had an appraisal not been obtained.

E. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

- **No Action Alternative:** Allow the current Lease to Terminate. Identify another fuel distribution tenant to lease the Premises or repurpose the Premises for another use.
- **Recommended Action:** Authorize the NWSA CEO to sign the new Lease with Associated Petroleum Products, Inc.

F. ENVIRONMENTAL IMPACTS / REVIEW

The Premises have been the subject of environmental impairment first identified in the mid-90s. Subsequent investigations have revealed that there were most likely two separate events that released petroleum hydrocarbons at or near the Premises prior to Associated Petroleum Products, Inc. 2014 tenancy. A "Final Assessment of Prior Contamination Report" was produced by Environmental Associates in February 2015. As part of this new Lease, Associated Petroleum Products, Inc. has agreed to perform groundwater sampling at the Premises to determine if there have been any material changes to the contamination identified in 2015. Associated Petroleum Products, Inc. has been an excellent environmental steward of the Premises during their current tenancy.

Stormwater Permit: NWSA will continue to hold the MS4 permit. A separate Industrial Stormwater General Permit is not required for this Permitted Use.

Associated Petroleum Products, Inc. is responsible to submit a Storm Water Pollution Prevention Plan and perform all required source control and Best Management Practices.

G. ATTACHMENTS TO THIS REQUEST

- Computer slide presentation.
- Draft Lease

H. PREVIOUS ACTIONS OR BRIEFINGS

First Reading December 1, 2020



Item No.: 5A_Supp
Date of Meeting: January 5, 2021

Associated Petroleum Products, Inc. Lease at Terminal 115 Second Reading

Presenter: Curt Stoner
Senior Real Estate Manager

Action Requested

Request the Managing Members authorize at this second reading, the Chief Executive Officer or their delegate to sign the Lease with Associated Petroleum Products, Inc. to operate an automated commercial vehicle fueling facility at Terminal 115.



Background

- Associated Petroleum Products, Inc. has been the tenant at Terminal 115 since March 2014.
- This lease renewal rate is based on a formal appraisal which established fair market rent as \$0.22 - \$0.26 s.f./month for the yard and \$1.33 - \$1.50 s.f./month for the building.

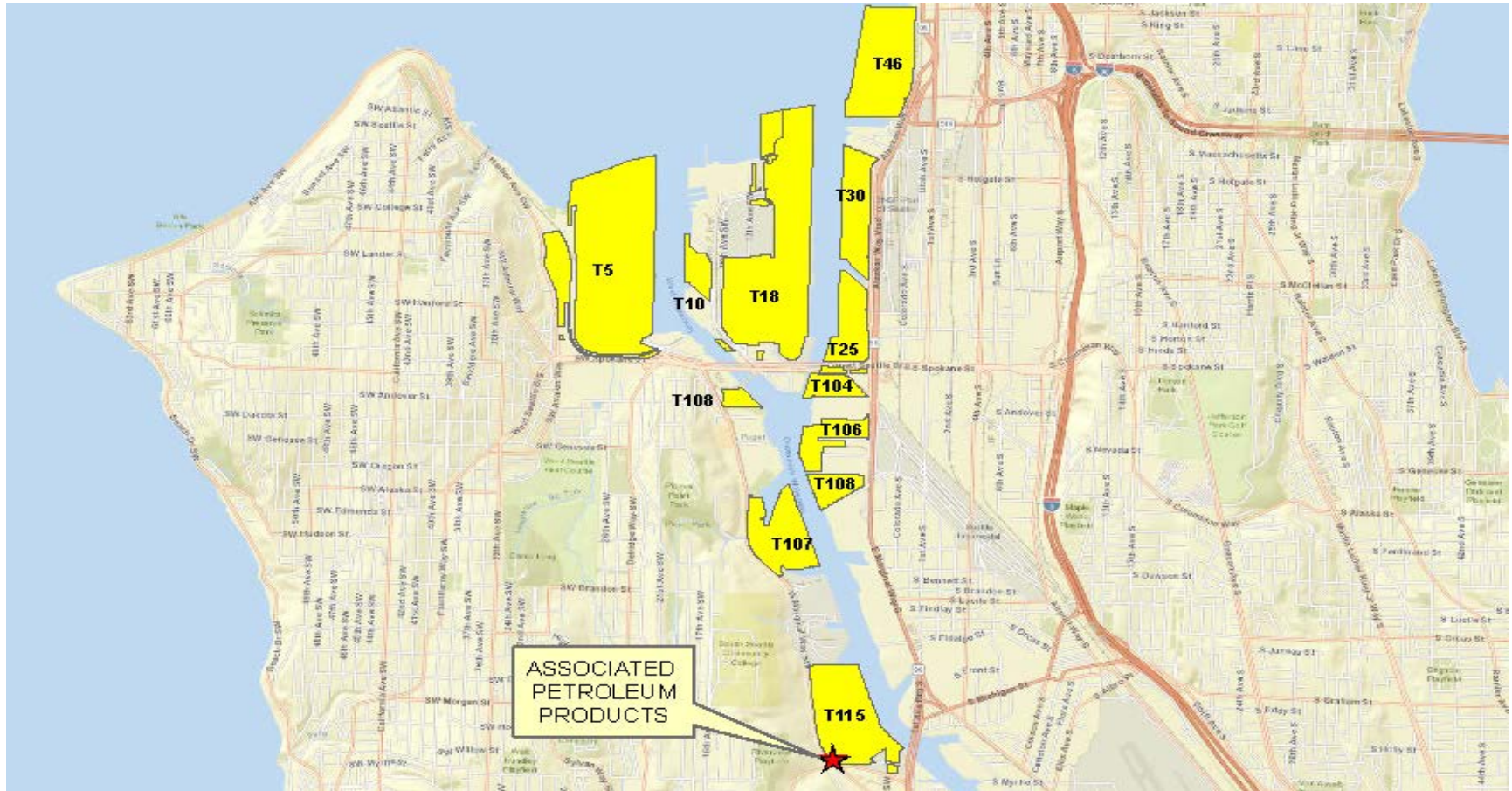


Questions Raised At the First Reading

- Hold Over Status
- Request for Back Rent
- Valuing Tenant Improvements when determining Fair Market Rent in the future



Parcel Location in the North Harbor



Parcel Layout



Parcel Layout



Proposed Lease Terms

- Premises: 42,980 square feet of exclusive use ground area, a 1,250 square foot building and 1,859 square feet of common use sidewalk area.
- Term: Five years commencing January 1, 2021 ending December 31, 2025.
- Term Extension: Three each five year extensions subject to the mutual agreement of the parties.
- Rent: 42,980 square foot yard area at \$0.24 per square foot per month (\$10,315 per acre per month). 1,250 square foot building at \$1.40 per square foot per month. Subject to WA State Leasehold Excise Tax.
- Rent Escalation: Rent will be escalated by CPI annually and adjusted to Fair Market Rent at the end of the first and second term extension.



Proposed Lease Terms

- Security Deposit: Six months rent plus WA State Leasehold Excise Tax. Initial Security Deposit is \$81,686.
- Permitted Use: Automated commercial vehicle fueling facility.
- Maintenance: All maintenance and cost is the responsibility of Associated Petroleum Products.
- Premises Security: Premises Security is the responsibility of Associated Petroleum Products.
- Alterations & Improvements: NWSA has no obligation to make any alterations & improvements. Any Lessee alterations & improvements are subject to the NWSA Tenant Improvement Process.



Proposed Lease Terms

- Utilities & Taxes: Associated Petroleum Products is responsible for all utilities and taxes.
- Insurance: General Liability \$5M, Business Auto \$2M, Pollution \$2M, Workers Comp per WA State Law.
- Assignment: Associated Petroleum Products, Inc. may assign the Lease to its corporate parent or wholly controlled subsidiaries upon 30-day notice to NWSA.
- Subleasing: Associated Petroleum Products, Inc. may sublease to the existing Subway restaurant and DC Portside Coffee via a separate Conditional Consent to Sublease Agreement.
- Termination for Major Capital Improvement: NWSA may terminate the Lease for a major capital improvement upon one-year written notice to Associated Petroleum Products.



Financial Implications

- Based on the market rate appraisal, negotiations have resulted in an annual revenue of approximately \$145,000, about \$43,000 higher than the amount included in the 2021 budget. The budget was based on a conservative increase of 2%.



Alternatives Considered and Their Implications

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Environmental Impacts / Review

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- Storm Water Permit: NWSA will continue to hold the MS4 permit. Associated Petroleum Products, Inc. is responsible to submit a Storm Water Pollution Prevention Plan and perform all required source control and Best Management Practices.



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