

**THE NORTHWEST SEAPORT ALLIANCE**  
**MEMORANDUM**

**MANAGING MEMBERS**  
**ACTION ITEM**

|                        |                    |
|------------------------|--------------------|
| <b>Item No.</b>        | <u>5E</u>          |
| <b>Date of Meeting</b> | <u>May 5, 2020</u> |

**DATE:** May 4, 2020

**TO:** Managing Members

**FROM:** John Wolfe, CEO

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

**Project Manager:** Jennifer Maietta, Sr. Real Estate Manager

**SUBJECT:** Second Amendment of the Termination Agreement with Total Terminals International, LLC (TTI)

**A. ACTION REQUESTED**

Request Managing Members of The Northwest Seaport Alliance (NWSA) to Authorize the Chief Executive Officer or their delegate to enter into a Second Amendment to the Termination Agreement with Total Terminals International, LLC (TTI) at Terminal 46 provided that TTI pays its outstanding balances (approximately \$330,000) in full by May 15, 2020. The amendment shall be limited to include a new provision that the late removal fees and any liquidated damages charges for crane storage will be held in abeyance between May 1, 2020 and September 30, 2020 and waived only if the cranes are removed by September 30, 2020, all other terms and conditions to remain the same.

**B. SYNOPSIS**

As part of the North Harbor Commercial Strategy, the Managing Members approved the early termination of the Terminal 46 Lease with Total Terminals International, LLC on April 2, 2019. The Lease Termination Agreement was signed in conjunction with the Terminal 5 Term Lease with the Terminal 46 Lease terminating no later than December 31, 2019. Terminal International Limited (TIL), the parent company of TTI, has extended their commitment to our gateway through 2051 for the Terminal 5 Term Lease via a joint venture partnership with SSA Terminals, LLC (SSAT). TTI has realigned its container business with other cargo at Terminal 18 in 2019.

Terminal 46 has been repurposed for other NWSA water-dependent marine industrial uses such as project cargo, roll-on roll-off cargo, breakbulk cargo, lay berth for vessels and barges, and a chassis support yard for international cargo operations. The NWSA has a non-exclusive Master License Agreement with Foss Maritime Company, LLC to operate Terminal 46 (T46) in effect since July 26, 2019.

## **C. BACKGROUND**

The Lease Termination Agreement dated April 2, 2019, allows for a “grace period,” in which Total Terminals International, LLC (TTI) is charged \$5,000 per crane per month for the cranes owned by TTI from January 1, 2020 through June 30, 2020; effective July 1, 2020 fee increases to a liquidated damages charges of \$150,000 per crane per month until removed. The purpose of the grace period is to allow for a potential sale, planning and logistics of the removal of cranes from the Premises. TTI has represented that they have a pending sale for the two PACECO cranes with the government of El Salvador. However, due to the unforeseen circumstances of COVID-19 the finalization of the sale has been delayed. TTI has requested an extension of the grace period in order to finalize the sale and schedule removal of the cranes by barge.

Additionally, TTI has a current amount balance owing in the amount of approximately \$330,000, of which approximately \$237,000 is for a stormwater cleaning invoice for the entire terminal required under Section 6 of the Lease Termination Agreement. The stormwater cleaning invoice and other balances relative to maintenance billings and dock work abatement have been in dispute. A reconciliation and supporting documentation for all the charges have been provided to TTI for review and payment. TTI will need to pay the outstanding amount due in full no later than May 15, 2020 as a condition for the proposed amendment. Please note that this balance includes the cranes grace period fees in the amount of \$40,000 between January and April 2020.

If approved by the Managing Members, the proposed amendment would include a new provision that all crane grace period fees and liquidated damages charges (May 1, 2020 through September 30, 2020) will be waived if the cranes are removed by September 30, 2020, all other terms and conditions of the Termination Agreement to remain in place. There would be no change to the crane grace period fee rate structure, including the liquidated damages charge of \$150,000/crane/month after June 30, 2020 and those fees and charges would continue to accrue. If TTI fails to remove the cranes by September 30, 2020, the full amount of the accrued grace period fees and liquidated damages going back to May 1, 2020 will be due.

## **D. FINANCIAL IMPLICATIONS**

### ***Financial Impact***

This amendment has no budgetary impact.

## **E. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS**

- **No Action Alternative:** If no action is taken, the grace period under the Lease Termination Agreement would continue to be in full force and effect requiring Total Terminals International, LLC to remove their two PACECO cranes no later than June 30, 2020 or the monthly liquidated damages fee increase to \$150,000 per crane per month until they are removed. TTI has received proposals to demolish the cranes on-site for removal and would likely move forward with the proposal for demolition. Due to the age of the cranes there is lead paint, which provides for additional environmental risks upon demolition.
- **Recommended Action:** Recommend that the Managing Members of The Northwest Seaport Alliance (NWSA) to Authorize the Chief Executive Officer or their delegate to enter into a Second Amendment to the Termination Agreement with Total Terminals International, LLC (TTI) at Terminal 46 provided that TTI pays its outstanding balances (approximately \$330,000) in full by May 15, 2020. The amendment shall be limited to include a new provision that the late removal fees and any liquidated damages charges for crane storage will be held in abeyance between May 1, 2020 and September 30, 2020 and waived only if the cranes are removed by September 30, 2020, all other terms and conditions to remain the same.

## **F. ENVIRONMENTAL IMPACTS / REVIEW**

Due to the age of the two PACECO cranes, they have lead paint and will require special provisions for removal. For this reason, demolishing the cranes on-site provides for higher environmental risks.

## **G. ATTACHMENTS TO THIS REQUEST**

- PowerPoint presentation

## **H. PREVIOUS ACTIONS OR BRIEFINGS**

April 2, 2019: North Harbor Strategy – inclusive of Lease Termination Agreement dated effective April 2, 2019.

December 2019: First Amendment to the Lease Termination Agreement – amending lessee’s obligations to remove cranes and Port’s option to purchase cranes 80, 81, 82 dated effective December 27, 2019



**THE NORTHWEST  
SEAPORT ALLIANCE**  
Gateway to Solutions

**Item No.: 5E**  
**Date of Meeting: May 5, 2020**

## **Second Amendment to Termination Agreement with Total Terminals International, LLC**

Jennifer Maietta, Sr. Real Estate Manager

## Action Requested

- **Request Managing Members of The Northwest Seaport Alliance (NWSA) to Authorize the Chief Executive Officer or their delegate to enter into a Second Amendment to the Termination Agreement with Total Terminals International, LLC (TTI) at Terminal 46 provided that TTI pays its outstanding balances (approximately \$330,000) in full by May 15, 2020. The amendment shall be limited to include a new provision that the late removal fees and any liquidated damages charges for crane storage will be held in abeyance between May 1, 2020 and September 30, 2020 and waived only if the cranes are removed by September 30, 2020, all other terms and conditions to remain the same.**

## Background

- **The Lease Termination Agreement allows for a “grace period”**
  - \$5,000 per crane per month January 1, 2020 through June 30, 2020;
  - July 1, 2020 fee increases to a liquidated damages charges of \$150,000 per crane per month until removed.
  - The purpose of the grace period is to allow for a potential sale, planning and logistics of the removal of cranes from the Premises.
- **TTI has represented that they have a pending sale for the two PACECO cranes with the government of El Salvador.**
  - Due to the unforeseen circumstances of COVID-19 the finalization of the sale has been delayed. TTI has requested an extension of the grace period in order to finalize the sale and schedule removal of the cranes by barge.

## Background

- **Additionally, TTI has a current amount balance owing in the amount of approximately \$330,000**
  - A reconciliation and supporting documentation for all the charges have been provided to TTI for review and payment. TTI will need to pay the outstanding amount due in full no later than May 15, 2020 as a condition to enter into the proposed amendment.
  - Please note that this balance includes the crane grace period fees in the amount of \$40,000 between January and April 2020.

## Background

- **Upon the Managing Members approval and receipt of payment of the outstanding balance in full, the proposed amendment would include:**
  - A new provision that all crane grace period fees and liquidated damages charges will be waived if the cranes are removed by September 30, 2020,
  - There would be no change to the crane grace period fee rate structure, including the liquidated damages charge of \$150,000/crane/month after June 30, 2020 and those fees would continue to accrue.
  - If TTI fails to remove the cranes by September 30, 2020, the full amount of the accrued grace period fees going back to May 1, 2020 will be due.
  - All other terms and conditions of the Termination Agreement to remain in place.



## Alternatives Considered and Their Implications

- **No Action Alternative:** If no action is taken, the grace period under the Lease Termination Agreement would continue to be in full force and effect requiring Total Terminals International, LLC to remove their two PACECO cranes no later than June 20, 2020 or the monthly liquidated damages fee increases to \$150,000 per crane per month until they are removed. TTI has received proposals to demolish the cranes on-site for removal and would likely move forward with the proposal for demolition. Due to the age of the cranes there is lead paint, which provides for additional environmental risks upon demolition.

## Alternatives Considered and Their Implications

- **Recommended Action:** Recommend that the Managing Members of The Northwest Seaport Alliance (NWSA) to Authorize the Chief Executive Officer or their delegate to enter into a Second Amendment to the Termination Agreement with Total Terminals International, LLC (TTI) at Terminal 46 provided that TTI pays its outstanding balances (approximately \$330,000) in full by May 15, 2020. The amendment shall be limited to include a new provision that the late removal fees and any liquidated damages charges for crane storage will be held in abeyance between May 1, 2020 and September 30, 2020 and waived only if the cranes are removed by September 30, 2020, all other terms and conditions to remain the same.

## Environmental Impacts / Review

- Due to the age of the two PACECO cranes, they have lead paint and will require special provisions for removal. For this reason, demolishing the cranes on-site provides for higher environmental risks.

## Action Requested

- **Request Managing Members of The Northwest Seaport Alliance (NWSA) to Authorize the Chief Executive Officer or their delegate to enter into a Second Amendment to the Termination Agreement with Total Terminals International, LLC (TTI) at Terminal 46 provided that TTI pays its outstanding balances (approximately \$330,000) in full by May 15, 2020. The amendment shall be limited to include a new provision that the late removal fees and any liquidated damages charges for crane storage will be held in abeyance between May 1, 2020 and September 30, 2020 and waived only if the cranes are removed by September 30, 2020, all other terms and conditions to remain the same.**