

Item No.: 5A
Date of Meeting: August 6, 2019



**THE NORTHWEST
SEAPORT ALLIANCE**
Gateway to Solutions

Terminal 46 Litigation Settlement Agreement

Presenter: Elizabeth Black
Title: Senior Port Counsel, Port of Seattle

Action Requested

As referenced in NWSA Resolution No. 2018-01, Exhibit A, Delegation of Authority Master Policy, Section 10(d)(ii): Settlement of litigation matters with a potential claim by or against the Alliance greater than \$300,000 requires Managing Member authorization.

- Request authorization from the NWSA Managing Members to enter into the Consent Decree, which may entail future costs in excess of \$300,000 if it becomes necessary to upgrade or replace the existing stormwater treatment system at Terminal 46. Any future spending pursuant to the Consent Decree, if any, will be brought back for Managing Member consideration as appropriate.
- Request authorization from Port of Seattle Commissioners for Port of Seattle Executive Director Stephen Metruck to sign the proposed Consent Decree.



Background

- April 12, 2018 – Soundkeeper filed suit against TTI.
- October 31, 2018 – Soundkeeper amended its complaint to add the Port of Seattle.
- November 15, 2018 – The Port filed its motion to dismiss for lack of jurisdiction.
- March 4, 2019 – The court denied the Port’s motion to dismiss.
- March 29, 2019 – Managing Members approved the lease termination agreement between TTI and NWSA.
- TTI provided notice of its intent to cease operations at Terminal 46 on August 31, 2019



Synopsis

- The settlement agreement includes the following provisions:
 - Cruise operations: Port of Seattle will be obligated to perform certain best management practices if a new cruise terminal operates at Terminal 46;
 - Cargo operations: NWSA is obligated to perform certain best management practices and may be required to upgrade the existing stormwater treatment system for cargo operations; and
 - Financial payments: TTI will make a \$___ donation to the Rose Foundation as a payment in lieu of penalty and will pay \$___ in Soundkeeper's attorneys' fees. Pursuant to the lease termination agreement, NWSA will reimburse \$300,000.
 - Term: The consent decree, including a covenant not to sue, extends for three years.



Financial Summary

| <u>Date</u> | <u>Action</u> | <u>Amount</u> |
|----------------|--|------------------|
| August 2018 | Executive authorization – legal fees | \$250,000 |
| March 29, 2019 | Commission authorization – lease termination agreement | \$300,000 |
| May 7, 2019 | Commission authorization – legal fees | \$350,000 |
| TOTAL | | \$900,000 |



Alternatives Considered and Implications

- No Action Alternative: Continued litigation entails certain risks and costs. This is not the preferred alternative.
- Recommended action: Approve settlement agreement as memorialized in the Consent Decree.



Environmental Impacts/Review

- Permitting: No Impacts.
- Remediation: No Impacts.
- Water Quality: This settlement obligates the Port to perform certain best management practices with regarding to stormwater at Terminal 46 up to and potentially including new treatment.
- Air Quality: No impacts.



Financial Impact

- No significant new costs are associated with this settlement. In the event a future tenant triggers an obligation to construct stormwater improvements on the facility with costs exceeding \$300,000, project staff will seek Managing Members funding authorization.



Action Requested

Port of Seattle Commission: Requesting authorization for Port of Seattle Executive Director Stephen Metruck to sign the proposed Consent Decree.

NWSA Managing Members: Requesting authorization to carry out the requirements of the Consent Decree, which may entail costs in excess of \$300,000 if it becomes necessary to upgrade or replace the existing stormwater treatment system at Terminal 46.

