

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.	9A
Date of Meeting	July 6, 2022

DATE: June 21, 2022
TO: Managing Members
FROM: John Wolfe, CEO

Sponsor: Don Esterbrook, Deputy CEO, NWSA

Project Manager: Michael Reilly, Sr. Manager, Business Development, NWSA

SUBJECT: BNSF Railway Company Lease and Operating Agreement

A. ACTION REQUESTED

This is the second reading of the BNSF Railway Company Lease and Operating Agreement (“BNSF Lease”). Request authorization for the Chief Executive Officer or their delegate to execute the BNSF Lease and Operating Agreement (“BNSF Lease”). Adoption of this new lease will require minor modifications to the existing PRS Operating Agreement. This related action will also be presented at this meeting.

B. SYNOPSIS

The NWSA and BNSF have negotiated a Lease and Operating Agreement for 16 acres of Parcel 69 (Lot M) in the Tacoma Harbor to develop a domestic intermodal facility. BNSF currently operates a domestic intermodal facility at its South Seattle (Tukwila) location and seeks to expand its domestic intermodal service capacity by adding this new facility in the NWSA’s South Harbor. Growing the NWSA’s domestic intermodal volume is a priority for the NWSA and the proposed BNSF Lease

supports this goal by increasing the volume of transloaded international containers on to domestic intermodal container equipment at NWSA facilities.

C. BACKGROUND

During the early years of containerization, the Ports of Tacoma and Seattle built their business models and facilities to efficiently accommodate a large percentage of intact intermodal container moves. Under this model, most import containers arrived by vessel and departed by rail. Export loads and empty containers followed the reverse path. This operating concept became commonly known as “land bridge,” or “mini-land bridge” depending on the length of the rail movement. Its emergence provided a significant competitive advantage for our two discretionary ports. Key to this advantage was the fact that our region was served by not one, but two main line railroads, now operating as the Union Pacific Railroad (UP) and the BNSF Railway.

More recently, e-commerce and other factors have reduced the importance of land bridge services as local transloading of containers became a more standard operating model. The transload model allows BCOs and other importers to customize and accelerate order delivery. Under this model, a sizable percentage of the containers depart the terminals via local dray truck and are taken to one of the many transload facilities which now populate the Puget Sound region. As with other port related activities, these transload facilities generate additional jobs in our local communities. Today, there are 40 transload facilities located an average of less than 10 miles from the Tacoma Tidelands. This market shift has been accompanied by significant private capital investment and continues to grow in importance. Domestic rail has grown 45% over the last five (5) years while intact intermodal volumes have remained flat and thus now represent a diminishing percentage of overall cargo volumes.

This lease and operating agreement has been a long time coming. The proposed BNSF Lease follows a longstanding similar lease with the Union Pacific Railroad and further enables the NWSA to recapture cargos moving to and from the Midwest and other inland markets. If this lease is approved by the Managing Members, the NWSA will be directly served by two mainline railroads in the domestic movement of containers. Approval of this action will add additional jobs to the NWSA-licensed facilities. And, because many of these transloaded containers are currently being taken overland by truck, this action to expand the NWSA’s domestic rail services will reduce overall truck miles, fuel consumption and emissions associated with the carriage of goods to and from inland markets.

The terms of the proposed BNSF Lease are modeled after the existing similar lease with the Union Pacific. These terms are summarized as follows:

- **Term:** Approximately three (3) years. The Lease effective date is July 7, 2022. Rent commencement is August 1, 2022. Termination is August 31, 2025. The Lease may be extended for three (3) additional terms of two (2) years each, subject to the mutual agreement of the parties.
- **Premises:** 16 acres of domestic container storage yard on Lot M directly across from the South Intermodal Yard (SIM), and use of SIM Yard and SIM Support Yard.
- **Rent:** Effective August 1, 2022, the rental rate will be \$6,896 per acre, or \$110,336 per month. Rent will escalate by prior 12 month's CPI-U every year on February 1st and thereafter during the Lease Term. Lessee is expected to be exempt from WA State Leasehold Excise Tax.
- **Security Deposit:** 12 months of rent, initially \$1,324,032 and increasing with rent escalations.
- **Permitted Use:** Domestic intermodal cargo staging and related supporting operations.

Maintenance: Lessee is responsible for facility maintenance as defined in the Maintenance Matrix of the lease and operating agreement. In general, the NWSA will perform all work and the Lessee will pay the NWSA for its costs of services.

- **Alterations and Improvements:** Lessor will paint existing parking blocks, restripe the yard and make fence and gate modifications prior to Rent commencement. Lessee is responsible for any additional alterations after the Rent commencement date. The NWSA's startup costs are estimated to be approximately \$250,000.
- **Utilities & Taxes:** Lessee is responsible for all utilities and taxes.
- **Stormwater:** Lessor will hold the MS4 stormwater permit (which is required, and typical in all NWSA leases). Lessee is obligated to comply with all stormwater regulations and NPDES stormwater permits, must provide its stormwater pollution prevention plan (SWPPP) to NWSA and will maintain best practices, and comply with its SWPPP. Lessor will conduct annual inspections and maintain the treatment systems with responsibility for costs allocated in Exhibit F Maintenance Matrix. Lessee's responsibility for stormwater is defined in Exhibit D and the Maintenance Matrix. Lessee to defend and indemnify Lessor for claims or cost arising out of Lessee's stormwater discharge or violation of applicable regulations.

- Insurance: The BNSF will provide evidence of insurance coverage per below. The NWSA and Port of Tacoma will be listed as Additional Insureds, where applicable.
 - Commercial General Liability: \$5M per occurrence/\$10M in the aggregate
 - Business Automobile Liability: \$2M
 - Pollution Legal Liability: \$2M
 - Personal property Insurance on a replacement cost basis
 - Employers Liability Insurance and Workers Compensation Insurance combined with Federal Employers’ Liability Act (FELA) insurance – as required by law.

- Minimum Annual Volume Guarantees:

BEGINNING	THROUGH	RAIL LIFTS
9/1/2022	12/31/2022	8,333
1/1/2023	12/31/2023	27,500
1/1/2024	12/31/2024	30,000
1/1/2025	8/31/2025	21,667

- Facility Fee: \$27.50 per container. The Facility Fee is subject to annual CPI increases beginning February 2023.

- Lift Fee:

BEGINNING	THROUGH	LIFT FEE
08/01/2022	9/30/2022	\$65
10/01/2022	9/30/2023	\$66
10/01/2023	9/30/2024	\$67
10/01/2024	8/31/2025	\$68

- Gate Fee: Gate fee for loaded containers is \$17.50 and an empty container is \$8.75.

PRS is the 3rd party hired by the NWSA to load and unload the UP, and if this lease is approved, the BNSF domestic containers in the SIM and the associated yards. The proposed BNSF Lease will require minor modifications to the existing PRS operating contract. This related action will also be presented for Managing Members’ consideration in July 2022.

D. FINANCIAL IMPLICATIONS

Except as noted under Section C, Alterations and Improvements (above), no capital project investment is required in this Agreement. Any additional site improvements after the Commencement Date will be accomplished by the Lessee at its sole cost. The financial model includes all expected expenses associated with moving the auto line of business from the property. Estimated startup costs are approximately \$250,000. The estimated annual revenue, depending on volume, is expected to be between \$4 million and \$6 million. Net income will vary depending on actual intermodal and auto volumes but is positive in all scenarios and provides not less than a 19% operating margin. At forecasted volumes for 2023, the estimated Net Income is approximately \$1.5 million or 25% operating margin.

E. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

- **No Action Alternative:** Do not enter into a Lease with BNSF. The lease area will remain available for auto storage, but the opportunities for growth of domestic intermodal volume through the NWSA Gateway will be limited. Truck miles, fuel consumption and emissions will remain as-is.
- **Seek Alternative Means for Expanding the NWSA Domestic Rail Services:** The existing South Intermodal Yard operations in the South Harbor (supported by a stand-alone agreement with the ILWU) are unique, tailored to the domestic rail operating mode and cannot be easily replicated. Alternative locations for siting a new BNSF domestic rail yard have been investigated, but none proved viable.
- **Recommended Action:** Grow the domestic rail services of the NWSA by authorizing the NWSA Chief Executive Officer or their delegate to execute this Lease and Operating Agreement with BNSF Railway Company (BNSF). Adoption of this new lease will require minor modifications to the existing PRS Operating Agreement. This related action will also be presented at this meeting.

F. ATTACHMENTS TO THIS REQUEST

- Slide presentation.
- The proposed BNSF Lease and Operating Agreement, the subject of this request.

G. PREVIOUS ACTIONS OR BRIEFINGS

- 9/8/21 Briefing
- 6/7/22 First Reading