

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.	<u>9E</u>
Date of Meeting	<u>July 6, 2022</u>

DATE: June 27, 2022

TO: Managing Members

FROM: John Wolfe, CEO

Sponsor: Tong Zhu, Chief Commercial and Strategy Officer

Project Manager: Jennifer Maietta, Director, NWSA Real Estate

SUBJECT: Second Reading – United States Coast Guard Short-Term Lease Agreement at Terminal 46

A. ACTION REQUESTED

Request Managing Members of The Northwest Seaport Alliance (NWSA) authorization for the Chief Executive Officer or their delegate to authorize a short-term lease with the United States Coast Guard (USCG) for a portion of Terminal 46 in support of their Base Seattle Pier 36 basin dredging and environmental clean-up project, which is entirely separate from and shall not be in anyway construed or deemed precedential for the future long-term lease use of Terminal 46.

B. SYNOPSIS

The purpose of this short-term lease is to allow USCG to remain operational while relocating existing PSCs and displacing staff to complete the work necessary to accommodate the arrival of the Coast Guard's new PSC fleet.

The USCG will be receiving a new class of polar ice breaking ships, known as Polar Security Cutters (PSC), to replace the majority of the existing USCG ice breaker fleet, with the first of three new vessels anticipated to arrive in Seattle in late 2025/2026. The width and depth of the new PSCs requires deepening and widening of USCG's existing Pier 36 basin and slip. The dredging required to deepen the Pier 36 basin will necessitate relocation of the USCG vessels currently homeported at Base Seattle. The widening of the pier slip will require demolition of an adjoining building which currently houses approximately 500 USCG staff. In general, this project is focused on environmental clean-up of the basin and related structures.

C. BACKGROUND

Terminal 46

The Hanjin Shipping Company first entered a lease with the Port of Seattle in the early 1990s to use the facility for marine cargo. In 2003, Hanjin continue to operate at the facility, but the lease was assigned to Total Terminals International, LLC (TTI). When NWSA was formed in 2015, T46 became an NWSA-licensed property and we assumed responsibilities of the terminal from the Port of Seattle. In 2016, Hanjin declared bankruptcy with significant implications to the cargo industry around the world. At T46, Terminal Investment Limited, the terminal operating and investment arm of MSC, took over Hanjin's financial obligations and TTI was able to continue operating the terminal into 2019.

The planned shift away from T46 was in response to the market demand at the time and taken to consolidate cargo volumes at Terminal 18 and Terminal 30 and in preparation for the rebuilding and redeployment of Terminal 5. The NWSA managing members authorized a lease termination agreement for T46 in April 2019 and the last international cargo vessel call was June 2019.

As part of the comprehensive Seattle (North) Harbor commercial strategy and around the same time, the Port of Seattle (POS) and NWSA entered an Interlocal agreement, essentially leasing the northern end of T46 – the agreement officially commenced January 2020. POS had intended to develop a new cruise facility and began that process, but the development was indefinitely put on hold later the same year as the global pandemic put the world on pause.

NWSA issued an RFP for use of the south 53-acres of T46 in August 2019 for marine cargo related operations. While we received four proposals, including one from the U.S. Coast Guard, all were deemed insufficient in responding to the RFP and/or complying with the requested use. The RFP was discontinued in March 2020 and subsequently marketed for long-term and short-term uses resulting in several leases including a 10-year lease with Pacific Maritime Associate for a labor training facility.

The global pandemic and induced cargo surge have had implications on all U.S. port operations. Both Tacoma and Seattle in the NWSA gateway have been impacted by the global supply chain disruptions. In Seattle, there has been a renewed cargo interest in utilizing Terminal 46 as an international container terminal, starting with the opening of an off-dock cargo storage yard in the spring of 2021. The NWSA continues to field interest in reopening the facility to international cargo movement and are exploring the opportunity to open a one-berth cargo facility in early 2023.

United States Coast Guard Short-Term Lease

The U.S. Coast Guard has been a leader in maritime safety, security, and environmental stewardship in the Puget Sound region since the arrival of the first Revenue Cutter in the Pacific Northwest in 1854. U.S. Coast Guard Base Seattle (Base Seattle) mission and support activities contribute directly to the long-term prosperity of the Ports of Seattle and Tacoma and the greater Pacific Northwest maritime community to ensure a secure marine transportation system. Additionally, Base Seattle contributes directly and substantially to Homeland Security and our National Defense, as well as has positive economic impacts on the local economy.

As has been described to us by USCG, the state of Washington has historically hosted six large cutters – three polar icebreakers and three multi-mission cutters. Base Seattle will eventually have only one in operation because of past and planned decommissioning of older ice breakers. Two of the existing ice breakers will be decommissioned, but the USCGC Healy will remain. The introduction of PSCs to Base Seattle is intended to replace two older heavy polar icebreakers and add one vessel to the fleet.

The receipt of the new PSCs will continue to support the USCG's mission and support activities conducted through Base Seattle. The replacement of current ageing ice breakers with new PSCs, necessitates the Pier 36 basin dredging and environmental clean-up project. The current configuration of the Base at Pier 36 has remained largely unchanged since its establishment nearly 50 years ago, and it is insufficient to support modern cutters.

The US Coast Guard has shared that they are working with EPA Region 10 under an Administrative Settlement and Order on Consent (ASAOC) for an environmental removal action within CG Base Seattle, Slip 36. The EPA Region 10 is the lead agency for any work that occurs within the Harbor Island Superfund Site (including Slip 36) which will require in-water work to be completed within State directed in-water work windows. The Coast Guard has identified an operational need to dredge the slip to accommodate the draft of the PSCs, to remove the environmental liability associated with the contaminants within the Slip; and to comply with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

USCG has explained that Pier 36B (approx. 550 lineal feet) interferes with removal activities and is structurally deficient and it does not meet their requirements for a PSC pier. Hence, this portion of the Pier will be demolished. Existing Building 3 is approximately 69,000 square feet was built in 1950 and sits on top of Pier 36B. Building 3 houses 500 USCG staff is scheduled to be demolished as a part of this project. The existing CG Base Seattle piers were designed to a depth of -40 ft at MLLW and the Coast Guard requires -42 ft at MLLW. Exact depths of sediment

removal will be determined in coordination with EPA based on contaminant levels. Other required work within Slip 36 is: structural support and strengthening of the Pier 36A underwater sea wall; modernizing the ship fendering system of all four Slip 36 ship berths; modernizing the utility systems that support the PSC Slip 36 berths; demolition and reconstruction of the Slip 36 small boat basin; and other associated environmental clean-up work.

This environmental clean-up effort requires the Coast Guard to completely vacate Slip 36 to accomplish the work efficiently and effectively. Vacating Slip 36 requires temporarily relocating the Coast Guard ice breakers HEALY and POLAR STAR (until the latter is decommissioned) as close to Base Seattle as possible. USCG has expressed their intention is for the two existing ice breakers to be relocated along the first 1,100 linear feet at the south end of Terminal 46 wharf; and temporarily relocate many of the Building 3 tenants to Terminal 46. The temporary facilities will be fabric tensile structures (tents), modular trailers, and storage containers. A portion of the leased land will be used as a laydown area and related parking for the project. NWSA staff understands that USCG has independently engaged the City of Seattle for any necessary accommodations to support the short-term presence on T46.

The length of the lease is dependent on the timelines required to complete these projects. Some of this work requires working within in-water work windows. The USCG is under the Elliot Bay in-water work window restrictions. The timing and coordination of this work is crucial to meet these work windows anticipated to occur July or October 2024 to February 2025 and July or October 2025 to February 2026. The USCG's basin project is scheduled to be completed during the initial lease term and one 9-month option period within these in-water work windows. This is assuming that there are no delays with the in-water work. The "Conditional Option to Extend" allows for completion of the in-water work should there be delays beyond USCG's control. This would allow USCG to finish any remaining in-water work July or October 2026 through February 2027. All in-water work must be completed to receive the new PSCs. The USCG is committed to complete the basin project in a timely manner without unreasonable delays.

The USCG has worked with NWSA staff to make accommodations to ensure that the remainder of the terminal can continue to support marine cargo operations. USCG has agreed to:

- Make the required footprint as small as functionally possible reducing the initial approximate 20-acre footprint to approximately 17 acres.
- Coordinate with the NWSA and any potential marine cargo terminal operation to share a bollard at the 1090' mark that ensure positioning of a container vessel to use the existing crane rail and cranes to service a vessel.
- Modify the premises footprint to ensure access in and around the two on-dock buildings and vendor gate entrance.

- Provide ingress and egress through Base Seattle rather than creating a new entrance through the southeast corner of T46.
- Consider marine cargo layberth within USCG's leased portion of the wharf related to marine terminal operations.

USCG has expressed its willingness to continue to work together and accommodate where possible marine terminal operations at Terminal 46.

In response to the Managing Member questions during the First reading of the proposed US Coast Guard lease on June 7, 2022, the USCG responded directly to questions asked by the Managing Members provided in a separate document to the Managing Members prior to this Second Reading. In addition, the Managing Members requested clarification about the License Agreement between the Port of Seattle and United States Government (USCG) dated April 2002. The purpose of this agreement is for the installation and maintenance of a security barrier comprised of ecology blocks on a 4' x 1,200' strip of land terminal side. The ecology blocks provide an offset and protect the USCG installed fence line between Terminal 46 and the USCG owned Pier 37.

Key Lease Terms: Please note that in addition to the basic terms of the lease, the lease also includes reference to and incorporation of text of a number of federal laws and regulations, some of which have been modified by the NWSA and USCG to accommodate particular conditions of the Lease. These provisions are unique to NWSA's standard leases and would not be used with non-federal agency tenants. Additionally, the lease was negotiated in compliance with the Anti-Deficiency Act (31 USC 1341 as amended) which requires that nothing in the Lease shall constitute an obligation of funds of the United States in advance of appropriation thereof.

ITEM	DESCRIPTION
Premises	The Premises is a total of 17-acres (740,520 sf) plus, 1,100 linear feet of berth.
Term	<p>The length of the lease (initial term plus the mutual option) is 4-years. The conditional option to extend would add up to an additional 8 months and require an Amendment.</p> <p>Initial term: three (3) years and 3-months commencing July 7, 2022, terminating September 30, 2025</p> <p>Options:</p> <ul style="list-style-type: none">• One 9-month mutual option to extend upon 90-day advance notice, commencing October 1, 2025 and terminating June 30, 2026• One-conditional option to extend upon 120-day advance notice, at Lessor's sole discretion terminating the sooner of

	<p>the completion of the in-water work or the end of the in-water work window anticipated to be no later than Feb 2027.</p> <ul style="list-style-type: none"> ○ Additional in-water work window required at no fault of USCG ○ Term of this option to be negotiated and ratified by Amendment ○ USCG to reduce Premises to have least impact to Lessor's tenants, any marine terminal operations and terminal improvement projects ○ Rate to be a current Market Rate, not to exceed the then-current federal prospectus level.
Base Rent	<p>The Base Rent would be at a set rate for the initial term except that the initial option can be renegotiated at Market rate with 18-months prior notification in the amount of:</p> <p>\$3,037,500/yr = \$4.1018/psf/yr = \$.3418 sf/mo = \$253,125/mo</p> <p>Options:</p> <ul style="list-style-type: none"> • The initial option base rent may be increased to market rate not to exceed the then-current federal prospectus level, upon 18-months prior notification by Lessor to USCG. • The conditional option to extend may be increased to market rate during negotiations not to exceed the then-current federal prospectus level (120 days advance notice). <p>Note: USCG is exempt from Washington State Leasehold Excise Tax.</p>
Security Deposit	Not applicable – federal agency
Permitted Use	Government use for the purposes of the dockage of two cutters (ice breakers) along the wharf, the addition of temporary support temporary mobile units and tents along with the set-up of utilities to support the temporary mobile structures for the accommodation of displaced USCG staff related to the dredging and remediation of Basin 36 and widening of Pier 36.
Insurance	Not Applicable – federal agency
Indemnity	<p>To the fullest extent and manner allowed by Federal Law, including the Federal Torts Claims Act the United States of America agrees to be liable for property damage, personal injury, or death arising out of the Lessee's use of Premises.</p> <p>Note: This is not NWSA's standard or expected indemnity clause, but constrained due to tenant being federal agency USCG prohibited by law from providing indemnity. USCG cannot commit</p>

	to any provision which provides open-ended financial obligation to the landlord per federal appropriations law.
Maintenance & Repair	Lessee responsible for maintenance and repair of premises related to its use of the property.
Premises Security	Lessee to install a TWIC fence around Premises at Lessee's sole cost and expense; and provide alternative entrance to the Premises through the USCG Base.
Alterations & Improvements	All alterations and improvements to be approved by the NWSA prior to installation and to be completed at USCG's sole cost and expense.
Operating Costs	USCG will be responsible for performance and payment of all operating costs including, but not limited to, utilities (electricity, water/sewer, stormwater), general repair and maintenance, if any.
Stormwater	Basic term lease "Environmental Standards" language included with the exception that USCG cannot provide indemnity. USCG shall not engage in any activity that would trigger additional NPDES coverage. Premises is currently covered under the Port of Seattle's municipal stormwater permit.
Default	Allows NWSA to terminate the lease in the event of an uncured default, unless default is contested by USCG, in which case goes through federal Contract Disputes Act.
Vessel Coordination	Lessee agrees to coordinate its vessel movements and vessel calls with those of other T46 Tenants.
Shared Use of Bollard	Lessee shall share the bollard located at the 1090' mark within Lessee's Premises with Lessor, its marine terminal operator and/or layberth operator.
48 CFR 552 270-19 Progressive Occupancy	Allows USCG to occupy premises incrementally and pay rent pro-rata. USCG would seek this if the premises is not cleared of containers on commencement of lease.
48 CFR 552.270-22 Default by Lessor	Allows USCG to terminate lease and seek damages in event of Lessor's failure to perform. Less problematic as USCG is managing the premises.
48 CFR 552 270-28 Mutuality of Obligations	Would allow USCG to set off any payment due to Lessor for any USCG Claim. Modified to allow NWSA 60-day cure period before offset of rent.

D. FINANCIAL IMPLICATIONS

There are no tenant improvements funds required by the NWSA.

Financial Impact

The proposed rate of \$0.3418 per square foot per month is greater than the current container yard terminal rates (specific to marine terminal operations for the movement of cargo) in the gateway. The total value of the 4-years (including mutual option) is \$10.8M. The USCG lease will provide unbudgeted income of approximately \$1.52 million for 2022. The 2023 budget and forecast will include the forecasted revenue for 2023 and outer years.

E. ENVIRONMENTAL IMPACTS / REVIEW

The US Coast Guard operations, at this time, do not include activities that trigger NPDES Permit coverage at T-46. The USCG will implement the same BMPs at T-46 as they employ on T-36 and consistent with the Port of Seattle's municipal stormwater permit.

F. ATTACHMENTS TO THIS REQUEST

- PowerPoint presentation
- Draft Term Lease
- USCG letter dated October 27, 2021, USCG's expressed interest in leasing a portion of Terminal 46.

G. PREVIOUS ACTIONS OR BRIEFINGS

- None.