

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No. 5E
Date of Meeting October 6, 2020

DATE: September 29, 2020
TO: Managing Members
FROM: John Wolfe, CEO
Sponsor: Kurt Beckett, Deputy Chief Executive Officer
SUBJECT: Terminal 5 Letter of Agreement Amendment with the Suquamish Tribe confirming commitments regarding construction activities

A. ACTION REQUESTED

Request dual action approval by the Port of Seattle Commission and the Northwest Seaport Alliance Managing Members of the First Amended Letter of Agreement between Suquamish Tribe and the Northwest Seaport Alliance and Port of Seattle for Terminal 5 Cargo Wharf Rehabilitation, Berth Deepening, and Improvements Project.

B. SYNOPSIS

The Terminal 5 modernization project provides improvements necessary to serve newer, larger vessels that will help maintain the NWSA's competitive position, preserve and grow jobs and support a healthy economy for the region and state. The improvements include crane rail strengthening, berth deepening, slope stabilization, electrical supply/distribution upgrades, new fender system and structural rehabilitation of the dock.

In August 2017, the Managing Members authorized the execution of two separate Letters of Agreement between the NWSA and Port of Seattle with the Muckleshoot Indian Tribe and with the Suquamish Tribe ("Tribes"), confirming commitments regarding construction activities related to Terminal 5 ("Agreements"). The essence of the Agreements provides for in-water construction to occur in one berth while tribal fishing is maintained in the other berth. The original agreement required notice to the tribes for any potential changes to the construction sequence and such notice of change to the construction sequence (north to south) was provided to the Tribes in May 2019. Mitigation payments for construction seasons which are completed or currently underway have already been transferred.

Subsequently, the T5 Berth Modernization program phasing was adjusted, and additional in-water site conditions, commercial considerations and COVID-19 have increased construction risks and further modifications to construction sequence and timeline. These factors lead to the need for maintaining north berth construction for the 2020-21 in-water work window rather than shifting to south berth construction. Current construction activities,

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and management of future construction risks, require amendment of the 2017 Agreements to ensure the construction program is completed.

The essence of the proposed First Amendment to the Agreements (“Amendment”) provides a third, full in-water work window in 2021-22 and supports 2020 construction and fishing activities.

More specifically, the Amendment provides:

- Continuation of north berth in-water construction in 2020-21.
- Collaboration in the 2020 fishing season to identify fishing sites in the north berth where feasible, and support in-water construction activities where feasible in the south berth that do not disrupt fishing operations. This collaboration provides mutual benefit of additional fishing sites in 2020 and enhances the ability to complete major construction in three in-water windows.
- A third full in-water work window in 2021-22 (approximately August 15-Feb 15).
- Acknowledges the potential for a fourth full, in-water work window if construction cannot be completed in the first three.

The agreed additional compensation of \$520,000 to each tribe for a total authorized amount of \$1,040,000 is based upon the mutually agreed value utilized in the original Letter of Agreement. The Managing Members authorized the First Amendment to the Muckleshoot Indian Tribe Agreement at the September 1, 2020 Managing Members meeting and is expected to be executed shortly. Upon authorization, the Amendment will be forwarded to the Suquamish Tribe for final approval and signature.

C. BACKGROUND

Terminal 5 began operating as a container terminal in 1964. Since that time, the Port of Seattle invested in significant environmental cleanup and facility improvements to consolidate properties and create a 182-acre international container terminal, which was completed in 1997. Until July 2014, the site was leased and operated by Eagle Marine Services, a subsidiary of American President Lines.

The Terminal 5 project provides improvements necessary to serve newer, larger vessels. The improvements include crane rail strengthening, berth deepening, slope stabilization, electrical supply/distribution upgrades, new fender system and structural rehabilitation of the dock. Multiple requests for funding authorizations reflect stages and changes in both the design and the environmental review process, including separate requests for preliminary studies, progressively higher stages of design, addition of a test pile program and shifting from a determination of non-significance to a determination of significance.

US Army Corps of Engineers (USACE) authorization of in-water construction actions necessary for Terminal 5 cargo wharf rehabilitation required approval from participating federal agencies, in this instance the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the Environmental Protection Agency. In addition, an essential federal

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requirement includes avoiding and minimizing potential negative effects on tribal treaty fishing access, requiring consultation and resolution of potential project conflicts with federally recognized Tribes, native sovereign nations. The Port of Seattle and the Northwest Seaport Alliance have worked with the Muckleshoot Indian Tribe and the Suquamish Tribe in past years to maintain general usual and accustomed treaty fishing access throughout Elliott Bay and the Duwamish Waterway, balanced with commercial access to marine terminal, cargo, passenger, and marina facilities.

Due to the potential for three years of extensive in-water construction activity, the Terminal 5 wharf rehabilitation project required site-specific treaty fishing access negotiations – and subsequent discussions following the adjustments to the construction approach. The Port, NWSA, the Muckleshoot Indian Tribe, and the Suquamish Tribe determined actions and compensation terms for avoiding and minimizing potential negative treaty fishing effects expected from the Terminal 5 project, including in-water construction and subsequent cargo operations. As with the Letter of Agreement with the Muckleshoot Indian Tribe, Managing Member approval to execute and fund Letter of Agreement with the Suquamish Tribe was required in order to confirm Port and NWSA roles and responsibilities with the Tribes – and hence Managing Member authorization is required for the Amendment to that agreement.

The original T5 tribal Agreements were approved on August 1, 2017 among a total of eight separate actions by the Managing Members:

DUAL VOTE: NWSA / PORT OF SEATTLE / PORT OF TACOMA:

- (1) Project authorization and funding in the amount \$5,200,000 (\$2,600,000 from each Port) for planning, design, and construction of railroad quiet zone for a total authorized amount of \$25,400,000.*
- (2) Project authorization and funding in the amount of \$450,000 (\$225,000 from each Port) for construction impacts and pilot program as part of the agreements with tribal entities.*

NWSA ONLY VOTE:

- (3) Execution of Agreement with City of Seattle to establish a railroad quiet zone near Terminal 5;*
- (4) Execution of an Agreement with City of Seattle for W Marginal Way SW street closure;*
- (5) Execution of an Agreement with Puget Sound Clean Air Agency to establish an Air Quality Management Program at Terminal 5 consistent with objectives established in City of Seattle shoreline land use permit;*
- (6) Execution of Agreement with Muckleshoot Tribe confirming commitments regarding construction activities related to Terminal 5.*
- (7) Execution of Agreement with Suquamish Tribe confirming commitments regarding construction activities related to Terminal 5.*

All seven items were approved and the implementation of the two tribal Agreements began in summer 2019 as the T5 modernization project broke ground for construction.

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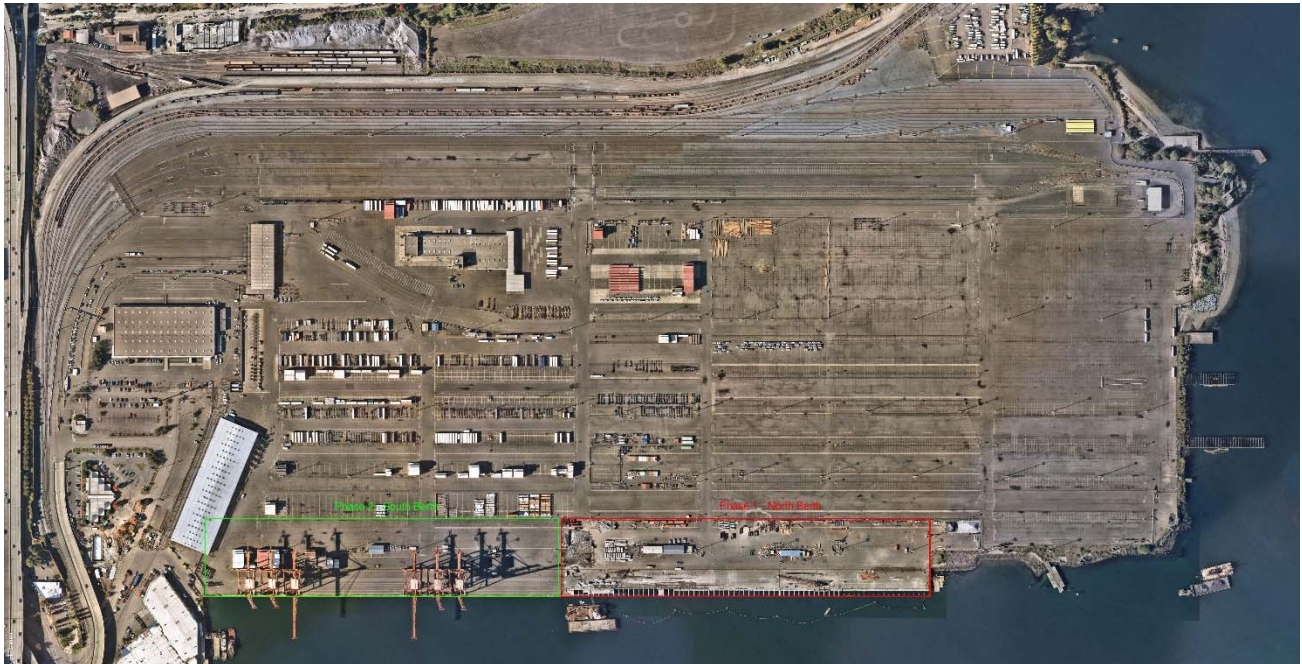
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D. ATTACHMENTS TO THIS REQUEST

- Draft First Amended Letter of Agreement between Suquamish Tribe Northwest Seaport Alliance and Port of Seattle for Terminal 5 Cargo Wharf Rehabilitation, Berth Deepening, and Improvements Project
- Project Original action item memo (August 2017 – includes five other action requests in addition for authorization for execution of both tribal agreements)
- Executed 2017 Letter of Agreement between Muckleshoot Indian Tribe, NWSA, and Port of Seattle for Terminal 5 Cargo Wharf Rehabilitation, Berth Deepening, and Improvements Project
- Executed 2017 Letter of Agreement between Suquamish Tribe, NWSA, and Port of Seattle for Terminal 5 Cargo Wharf Rehabilitation, Berth Deepening, and Improvements Project



T5 Wharf Phases – Phase 1 North Berth (red) and Phase 2 South Berth (green)

--AMENDMENT NO. 1--
LETTER OF AGREEMENT
BETWEEN SUQUAMISH TRIBE,
NORTHWEST SEAPORT ALLIANCE, AND PORT OF SEATTLE

Terminal 5 Cargo Wharf Rehabilitation, Berth Deepening, and Improvements Project

This Amendment No. 1 to the Letter of Agreement modifies the Parties' prior Letter of Agreement dated September 18, 2017. All portions of the Letter of Agreement dated September 18, 2017, not modified in this Amendment remain valid and in full-effect.

The Tribe, the NWSA, and the Port agree as follows:

- (1) Paragraph numbered (2) of the Letter of Agreement dated September 18, 2017, shall be replaced with the following:

In-water construction for the Project is expected to take place during four consecutive years. The Parties acknowledge and agree that the Project requires additional construction time in order to both comply with fish and wildlife habitat protection regulatory requirements and address construction challenges that stem from difficult site conditions, commercial considerations and other impacts from COVID-19. Wharf rehabilitation construction activities have occurred and will take place from August 15 through February 15 of the first three construction seasons (2019-20, 2020-21, and 2021-22), subject to state and federal agency in-water construction timing requirements. The first and second construction seasons (2019-2020 and 2020-2021) will work on the Phase I North Berth of the Terminal, and the third construction season (2021-2022) will work on the Phase 2 South Berth of the Terminal (see Updated Attachment A). The fourth construction season (2022-2023) is expected to be limited solely to vessel berth dredging, conducted in the late fall and winter months for the purpose of avoiding potential disruption of the Tribe's Treaty fishing access.

The Parties acknowledge the potential need for in-water construction (August 15 through February 15) during the fourth construction season (2022-2023) due to challenges with construction progress during the second and third seasons. If a fourth in-water construction season (2022-2023) is needed, whether a full or partial season, NWSA and/or the Port will provide the Tribe notice of this need within sixty (60) days of the end of the third construction season (2021-2022). If a fourth full or partial in-water construction season (2022-2023) is needed that conflicts with the Tribe's Treaty fishing access due to additional in-water construction activities at either the North or South Berth, the Tribe agrees to allow such access for a fourth in-water construction season (2022-2023) provided that notice by NWSA and/or the Port is timely provided and additional fishing impact mitigation compensation is paid as described in Paragraph numbered (3) of this Amendment No. 1. The Parties agree to collaborate during the second season (2020-2021) to identify fishing site opportunities in the North Berth that do not impede construction operations and, if possible, identify South Berth in-water construction opportunities that do not negatively impact fishing operations. During each construction season, in-water Project work will be stopped during prescribed Chinook

Treaty fishing periods. The Tribe will provide notification of the dates for opening and closure of the Chinook fishing periods.

- (2) Paragraph numbered (3) of the Letter of Agreement dated September 18, 2017, shall be replaced with the following:

Construction activities include multiple crane equipment barges and materials barges, accompanied by tug-assisted barge movements to and from Terminal 5. Wharf rehabilitation construction activities for Phase 1 North Berth are from August 15 through February 15 in the first and second seasons (2019-2020 and 2020-2021) of construction. Wharf rehabilitation activities for Phase 2 South Berth will take place from August 15 through February 15 in the third season of construction (2021-2022), other than as allowed in Numbered Paragraph 1 of this Agreement. The Tribe agrees to close the Phase 1 North Berth work area (as depicted in Updated Attachment A) to tribal fishing for one full fish window (August 15 through February 15) of the first two construction seasons (2019-2020 and 2020-2021), subject to state and federal agency in-water construction timing requirements, with the exclusion of any potential Chinook fisheries in August. Following that closure, the Tribe agrees to close the Phase 2 South Berth work area (as depicted in Updated Attachment A) to tribal fishing for the third construction season (2021-2022) for one full fish window (August 15 through February 15), with the exclusion of any potential Chinook fisheries in August.

The NWSA and the Port agree that net moves, gear damage and associated lost fishing time claims due to the Project will be compensated consistent with the Suquamish Tribe, Port of Seattle, and Northwest Seaport Alliance, Maritime Access and Impact Mitigation Agreement that is in effect at the time (“Existing Agreement”). However, the tribe will invoice the Port and NWSA for net moves, gear damage and lost fishing time claims related to this project separately from the Existing Agreement.

- (3) Paragraph numbered (4) of the Letter of Agreement dated September 18, 2017, shall be replaced with the following:

The NWSA and the Port have collectively transmitted \$1,028,000 to the Tribe for the purpose of establishing a Fisheries Mitigation Fund in response to potential Project construction-related Treaty fishing disruptions pertaining to the first 2 construction seasons (2019-2020 and 2020-2021). In addition to the \$1,028,000 that has already been paid to the Tribe for the Fisheries Mitigation Fund, the NWSA and Port will pay the Tribe additional compensation of \$520,000 (“Additional Payment”) within fifteen (15) days of all parties signing Amendment No. 1. This Additional Payment is in consideration for the third full construction season (2021-2022) which will require in-water construction work at a level greater than previously anticipated by the parties. As discussed in Paragraph numbered (2) of this Agreement, as amended by Amendment No. 1, if a fourth in-water construction season (2022-2023) is needed that conflicts with the Tribe’s Treaty fishing access due to in-water construction needs at either the North or South Berth, the Tribe will allow such access. If a full fourth in-water construction season (2022-2023) is needed, additional fishing impact mitigation compensation in the amount of \$520,000 in 2020 dollars will be due within fifteen days of written notification of this need from the Port and Seaport Alliance. If a partial fourth in-water construction season (2022-2023) is needed, the parties will reach an agreement on a reasonable and appropriate amount of additional fishing impact mitigation compensation for a partial season, and payment will

be due within fifteen days of the parties' agreement on the amount of compensation for a partial fourth in-water construction season. These Fisheries Mitigation Funds will be managed solely by the Tribe. Expenditures from the fund shall be made at the sole discretion of the Tribe. If additional compensation is due related to a fourth in-water construction season, the Fisheries Mitigation Fund payment will be inflation- adjusted to reflect any increase in the Seattle Urban Area Consumer Price Index published by the U.S. Department of Labor Statistics effective as of the date of notification compared to September 1, 2020. The check(s) for the Fisheries Mitigation Fund will be made payable to the Tribe, shall include the reference "Payment Regarding Amendment No. 1, Letter of Agreement between MIT, NWSA, the Port of Seattle regarding the Terminal 5 Cargo Wharf Rehabilitation, Berth Deepening, and Improvements Project," and mailed to:

Greg Trueb, Finance Director
Suquamish Tribe
P.O. Box 498
Suquamish, Washington 98392

SUQUAMISH TRIBE

PORT OF SEATTLE

Tribal Council Chair

Executive Director, Port of Seattle

Date: _____

Date: _____

THE NORTHWEST SEAPORT ALLIANCE

Chief Executive Officer, The Northwest Seaport Alliance

Date: _____



T5 Wharf Phases – Phase 1 North Berth (red) and Phase 2 South Berth (green)

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No. 5C
Date of Meeting August 1, 2017

DATE: July 10, 2017
TO: Managing Members, The Northwest Seaport Alliance (NWSA)
FROM: **Sponsor:** Tong Zhu, Chief Commercial Officer, Container & Real Estate, NWSA
Project Manager: Anne Porter, POS Capital Project Manager
SUBJECT: Terminal 5 Berth Modernization: Additional Funding and Agreements (5)

A. ACTION REQUESTED

Resolution No. 2015-06, delegation of Authority Master Policy, paragraph 8.a.1. requires Managing Member authorization for all Agreements with other public agencies, and paragraph 8.b.iv. requires Managing Member authorization for all projects where the estimated total project cost exceeds \$300,000.

These actions pertain to Terminal 5 Berth Modernization, Master Identification No. C800132.

Requested actions:

DUAL VOTE: NWSA / PORT OF SEATTLE / PORT OF TACOMA:

- (1) Project authorization and funding in the amount \$5,200,000 (\$2,600,000 from each Port) for planning, design, and construction of railroad quiet zone for a total authorized amount of \$25,400,000.
- (2) Project authorization and funding in the amount of \$450,000 (\$225,000 from each Port) for construction impacts and pilot program as part of the agreements with tribal entities.
- (3) Revised total project authorization of \$25,850,000.

NWSA ONLY VOTE:

- (4) Execution of Agreement with City of Seattle to establish a railroad quiet zone near Terminal 5;
- (5) Execution of an Agreement with City of Seattle for W Marginal Way SW street closure;
- (6) Execution of an Agreement with Puget Sound Clean Air Agency to establish an Air Quality Management Program at Terminal 5 consistent with objectives established in City of Seattle shoreline land use permit ;
- (7) Execution of Agreement with Muckleshoot Tribe confirming commitments regarding construction activities related to Terminal 5.
- (8) Execution of Agreement with Suquamish Tribe confirming commitments regarding construction activities related to Terminal 5.

B. SYNOPSIS

The Terminal 5 modernization project provides improvements necessary to serve newer, larger vessels that will help maintain the NWSA's competitive position, preserve and grow jobs and support a healthy economy for the region and state. The improvements include crane rail strengthening, berth deepening, slope stabilization, electrical supply/distribution upgrades, new fender system and structural rehabilitation of the dock.

The project team has completed 100 percent design documents and is now waiting for final permit approvals before requesting authorization to advertise construction of the project. Three agreements are required prior to issuance of the City of Seattle, Master Use Permit / Shoreline Substantial Development Permit. Conditions of permit issuance include:

- 1) Agreement with Seattle Department of Transportation to plan, design, and fund improvements that will permanently close surface W Marginal Way SW north of SW Spokane Street;
- 2) Agreement with Seattle Department of Transportation (SDOT) to work together to establish a railroad quiet zone between train bridge and gate of terminal;
- 3) Agreement with Puget Sound Clean Air Agency (PSCAA) to implement an Air Quality Management Program.

In addition, the US Army Corps of Engineers' permit is subject to concurrence with affected tribal entities. The Muckleshoot and Suquamish Tribes will not oppose the project subject to these agreements with the Tribes that:

- 1) Identify commitments to minimize access conflicts with tribal fishers;
- 2) Establish a Fisheries Mitigation Fund for construction impacts;
- 3) Provide for a new pilot program to compensate tribal fishers displaced from productive net set locations;
- 4) Documents an interest in discussions to extend the existing Fisheries Mitigation Fund for ten years upon completion of the current 2015-2020 agreement term. The uses of funds for the agreements are contingent upon the project construction schedule, but are required prior to occupancy of the completed project.

C. BACKGROUND

Terminal 5 began operating as a container terminal in 1964. Since that time, the Port of Seattle invested in significant environmental cleanup and facility improvements to consolidate properties and create a 182-acre international container terminal, which was completed in 1997. Until July 2014, the site was leased and operated by Eagle Marine Services, a subsidiary of American President Lines.

Vessels calling at the Northwest Seaport Alliance and the Port of Seattle have grown in size from 4,800 TEUs in 1997 to 10,000 TEUs today with 19,000+ TEUs currently operating globally. To stay relevant in the shipping industry and maintain the Alliance's competitive position and preserve jobs, dock and infrastructure upgrades are needed to modernize the terminal for handling current and future classes of container vessels including the capability for installing larger dual-hoist cranes.

The Terminal 5 project provides improvements necessary to serve newer, larger vessels. The improvements include crane rail strengthening, berth deepening, slope stabilization, electrical supply/distribution upgrades, new fender system and structural rehabilitation of the dock. Multiple requests for funding authorizations reflect stages and changes in both the design and the environmental review process, including separate requests for preliminary studies, progressively higher stages of design, addition of a test pile program and shifting from a determination of non-significance to a determination of significance.

Project permitting and environmental review require multiple agency approvals at federal, state and local levels. Community and City of Seattle interest in the project as a potential long-term, major impact to noise, air and traffic required detailed analyses to establish project parameters that would avoid, minimize and mitigate project effects. Several of the

mitigation elements, required as a result of the environmental analyses, are listed as conditions of approval for the Shoreline Substantial Development Permit application. Commission approval for the request to execute agreements with SDOT and PSCAA will lead to issuance of the permit.

US Army Corps of Engineers (USACE) authorization of in-water construction actions necessary for Terminal 5 cargo wharf rehabilitation requires approval from participating federal agencies, in this instance the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the Environmental Protection Agency. In addition, an essential federal requirement includes avoiding and minimizing potential negative effects on tribal treaty fishing access, requiring consultation and resolution of potential project conflicts with federally recognized Tribes, native sovereign nations. The Port of Seattle and the Northwest Seaport Alliance have worked with the Muckleshoot Indian Tribe and the Suquamish Tribe in past years to maintain general usual and accustomed treaty fishing access throughout Elliott Bay and the Duwamish Waterway, balanced with commercial access to marine terminal, cargo, passenger, and marina facilities. Due to the potential for three years of extensive in-water construction activity, the Terminal 5 wharf rehabilitation project required site-specific treaty fishing access negotiations. The Port, NWSA, the Muckleshoot Indian Tribe, and the Suquamish Tribe have determined actions and compensation terms for avoiding and minimizing potential negative treaty fishing effects expected from the Terminal 5 project, including in-water construction and subsequent cargo operations. Commission approval to execute and fund letters of agreement with the Muckleshoot Indian Tribe and the Suquamish Tribe is required in order to confirm Port and NWSA roles and responsibilities with the tribes. The approved agreements will be forwarded to the Tribes for final approval and signature. The Tribes will then provide written approval of the Terminal 5 project to the USACE. The USACE will then be able to issue the permits.

D. PROJECT DESCRIPTION AND DETAILS

The request before the Managing Members is limited to funds to execute and fund two agreements with SDOT, one with PSCAA, and two with the Tribes; with the exception of the railroad quiet zone, construction funds will be sought separately at a later date.

Project Objectives

Project objectives include a wharf that is capable of handling two EEE class vessels, with an approximate length of 1300 feet, 23 containers wide, with a capacity of approximately 18,000 twenty foot equivalent units (TEUs), by mid-2020. The improved wharf will support up to 12 cranes capable of servicing EEE class vessels. Additionally the wharf will be capable of providing ship-to-shore power for vessels berthed at the facility. The proposed capital improvements will maintain the economic and job benefits from the cargo business at Terminal 5.

Scope of Work

The additional funds are needed for planning, design, and installation of the improvements specified in the proposed agreements.

The proposed project consists of modifications to existing marine cargo facilities, including cargo wharf rehabilitation, berth deepening, electrical service capacity improvements, and

upland improvements, with the potential for increased cargo volume at the site. Although not in the current project scope of work, future project plans may eventually include reconfigured marine cargo marshalling area, re-organized intermodal rail facilities, cargo area lighting modifications, pavement repair and maintenance, maintenance and repair buildings improvements, and evaluation of entrance/exit gates and heavy vehicle access points. Any future plans would require additional environmental review once sufficient information is available about a potential tenant's operations.

Schedule

Remaining permits are expected by late 2017. Authorization from Managing Members would be sought at a later date to advertise for construction.

E. FINANCIAL IMPLICATIONS

Project Cost Details

Project Element Description	This Request	Total Project Cost	Cost To Date	Remaining Cost
Design and Permits	\$0	\$14,100,000	\$13,111,000	\$989,000
Seattle City Light (Public Expense*)	\$0	\$6,100,000	\$60,000	\$6,040,000
Railroad Quiet Zone (Public Expense*)	\$5,200,000	\$5,200,000	\$0	\$5,200,000
Tribal Agreements	\$450,000	\$2,450,000	\$0	\$2,450,000
Construction	\$0	\$235,000,000	\$0	\$235,000,000
Future Permit Conditions and Scope Changes	\$0	\$37,150,000	\$0	\$37,150,000
Total	\$5,650,000	\$300,000,000	\$13,171,000	\$286,829,000
Previously Authorized	\$20,200,000			
Revised Total Authorization	\$25,850,000			

*Public Expense budget accounts for capital assets to be owned by other public agencies (i.e., City of Seattle and BNSF)

Source of Funds

The 2017-2021 Capital Improvement Plan Budget allocates \$7,578,000 for this project, of which \$900,000 has been spent. The request for \$5,650,000 is an incremental request in addition to the \$7,578,000 included in the Capital Improvement Plan. Both homeports' staff have identified funding mechanisms for the additional investment expense.

Financial Impact

SDOT and BNSF costs of \$5,200,000 will be a public expense that is paid out as incurred. The use of the construction funds for the agreement with the City (Seattle Department of Transportation) for the railroad quiet zone is contingent upon the implementation of project construction.

Tribal fishing mitigation pilot and construction impact program costs of \$450,000 will be expensed annually in the amount of \$150,000 in 2017, 2018 and 2019. NWSA staff have

identified 2017 funds within the NWSA operating budget and will include 2018 and 2019 in the operating budget for those years.

An additional \$2,000,000 for construction mitigation will be included in the Terminal 5 construction authorization and funding request and will be payable at the time of that authorization.

F. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

Alternative 1) Do Nothing. Reduce the investment in Terminal 5 to maintenance levels and lease the terminal as-is to an operator. Operations would be restricted to non-containerized cargo or other industrial water-dependent activity. This would not likely increase the utilization of the terminal nor would it increase volume of containerized cargo, making it more difficult to reach strategic goals of 70% terminal utilization and 6M TEU's.

Alternative 2) Authorize the agreements with the City of Seattle, Puget Sound Clean Air Agency and tribes, but delay funding authorization of the quiet zone. The railroad and federal application, design, approval and construction process would likely require approximately two to three years to complete. The City's permit condition requires the quiet zone to be in place in order to receive the occupancy permit, so it is recommended the quiet zone authorization be granted now in order to ensure this permit condition is met when the tenant is ready to occupy and operate Terminal 5. A majority of the quiet zone funding will be spent on construction, which will not occur until after Terminal 5 construction authorization has been acted upon.

Alternative 3) This request. Invest additional funds in meeting permit condition related to railroad quiet zone for Terminal 5 modernization; execute agreements with City of Seattle for railroad quiet zone and closure of W. Marginal Way SW; execute agreement with Puget Sound Clean Air Agency for Air Quality Management Plan, execute agreement with Muckleshoot Tribe confirming commitments, and execute agreement with Suquamish Tribe confirming commitments. This alternative supports strategic goals to achieve 70% utilization and 6M TEU's, as well as takes into consideration other investments being considered by competitor gateways.

G. ENVIRONMENTAL IMPACTS / REVIEW

A Final Environmental Impact Statement (FEIS) for the Terminal 5 Berth Modernization project was completed in October 2016. Permits for the project are currently being reviewed by the appropriate regulatory agencies.

H. ATTACHMENTS TO THIS REQUEST

1. Draft Agreement with City of Seattle (subject to change as the parties negotiate the specific terms) for railroad quiet zone.
2. Draft Agreement with City of Seattle (subject to change as the parties negotiate the specific terms) for closure of W Marginal Way SW north of S Spokane Street.
3. Draft Agreement with Puget Sound Clean Air Agency (subject to change as the parties negotiate the specific terms) for Air Quality Management Program.

4. Draft Agreement with Muckleshoot (subject to change as the parties negotiate the specific terms)
5. Draft Agreement with Suquamish (subject to change as the parties negotiate the specific terms)
6. Computer Slide Presentation

I. PREVIOUS ACTIONS OR BRIEFINGS

DATE	ACTION	AMOUNT
October 4, 2016	Additional Funding, Seattle City Light Agreement, and Project Labor Agreement	\$8,200,000
June 7, 2016	DEIS Briefing	\$0
November 4, 2015	Additional SEPA and Design Funding	\$2,000,000
October 13, 2015	Test Pile Bids Exceeded Engineer's Estimate	\$0
July 14, 2015	Additional Design Authorization	\$5,000,000
June 3, 2014	Initial Design Authorization	\$4,700,000
May 13, 2014	T5 Berth Modernization Briefing	\$0
March 12, 2014	Additional Pre-Design Authorization*	\$150,000
November 27, 2013	Initial Pre-Design Authorization*	\$150,000
TOTAL		\$20,200,000

*Pre-Design Authorizations were approved at the Division level per delegation authority allowed by Port of Seattle policy.

**LETTER OF AGREEMENT BETWEEN
MUCKLESHOOT INDIAN TRIBE, NORTHWEST SEAPORT ALLIANCE,
AND PORT OF SEATTLE**

Terminal 5 Cargo Wharf Rehabilitation, Berth Deepening, and Improvements Project

This letter of agreement (“Agreement”) confirms the understanding and commitments between the Muckleshoot Tribe (“Tribe”), a federally recognized sovereign Indian Tribe, the Northwest Seaport Alliance (“NWSA”), a port development authority, and the Port of Seattle (“Port”), a Washington State port district, regarding construction activities relating to rehabilitating the Terminal 5 Cargo Wharf Rehabilitation, Berth Deepening, and Improvements Project (“Project”) in Seattle. The Project activities include in-water piling demolition, installing pier-strengthening and slope-stabilization piling, and berth-deepening dredging. The Project affects an existing 2900 feet long marine cargo pier, located in southwest Elliott Bay, at the west margin of the West Waterway. The Port and NWSA recognize the Tribe’s rights to fishing reserved in the Treaty of Point Elliott, 12 Stat. 927, and the Treaty of Medicine Creek, 10 Stat. 1132 (collectively, “Treaty”).

The Tribe, the NWSA, and the Port agree as follows:

- (1) There will be no in-water Project construction activities during the time periods designated by local, state, and federal agencies for protection of salmon fisheries in Elliott Bay and the lower Duwamish River. The Project will be subject to all other permit conditions and permit approval requirements relating to fish and wildlife habitat protection.
- (2) In-water construction for the Project is expected to take place during three consecutive years. Wharf rehabilitation construction activities will take place from August through February of the first two construction seasons, subject to state and federal agency in-water construction timing requirements. The third construction season is expected to be limited to vessel berth dredging, conducted in the late fall and winter months for the purpose of minimizing potential disruption of the Tribe’s Treaty fishing access. During each construction season, in-water Terminal 5 wharf rehabilitation project work will be stopped during prescribed Chinook Treaty fishing periods. The Tribe will provide notification of the dates for opening and closure of the Chinook fishing periods.
- (3) Construction activities will include multiple crane equipment barges and materials barges, accompanied by tug-assisted barge movements to and from Terminal 5. The NWSA identified work areas for Phase 1 to be the southern half of the wharf rehabilitation project area while Phase 2 is the northern half of the wharf rehabilitation. Wharf rehabilitation construction activities for Phase 1 will take place from August through February in the first year of construction. Wharf rehabilitation activities for Phase 2 will take place from August through February in the second year of construction. The Port and NWSA will notify the tribe 60 days in advance of the start of construction if in the unlikely event that the timing for Phase 1 and Phase 2 are swapped. The Tribe agrees to close the Phase 1 work area (as depicted in Attachment A) to tribal fishing for one full fish window (August through February) of the first two construction seasons,

subject to state and federal agency in-water construction timing requirements (August 15 through February 15), with the exclusion of any potential Chinook fisheries in August. Following that closure, the Tribe agrees to close the Phase 2 work area (as depicted in Attachment A) to tribal fishing the following year for one full fish window (August 15 through February 15), with the exclusion of any potential Chinook fisheries in August. The NWSA and the Port agree that net moves, gear damage and associated lost fishing time claims due to the Project will be compensated consistent with the existing Muckleshoot Indian Tribe, Port of Seattle, and Northwest Seaport Alliance, Maritime Access and Impact Mitigation Agreement. (“Existing Agreement”) However, the tribe will invoice the port and NWSA for net moves, gear damage and lost fishing time claims related to this project separately from the existing agreement.

- (4) The NWSA and the Port will collectively transmit \$1,000,000 in 2017 dollars to the Tribe for the purpose of establishing a Fisheries Mitigation Fund in response to potential Project construction-related Treaty fishing disruption. The Fisheries Mitigation Fund will be managed solely by the Tribe. Expenditures from the fund shall be made at the sole discretion of the Tribe. Notice will be provided of construction authorization to the tribes and funds will be transferred to the Tribe within 10 days of the construction authorization of the Project. If notice of construction authorization is provided after December 31, 2017, the \$1,000,000 contribution to the Fisheries Mitigation Fund will be inflation-adjusted to reflect any increase in the Seattle Urban Area Consumer Price Index published by the U.S. Department of Labor Statistics effective as of the date of notification. The check for the Fisheries Mitigation Fund will be made payable to the Tribe and mailed to:

Jeff Songster, Comptroller
Muckleshoot Indian Tribe
39015 172nd Avenue Southeast
Auburn, Washington 98092

- (5) The NWSA and the Port will collectively provide \$75,000 per year for three fishing seasons (2017-2019) for use in establishing a new pilot program (“Pilot Program”) to compensate tribal members who are displaced from a productive net set location by a vessel movement in or out of a Port or NWSA facility in Elliott Bay, the East and West Waterway, and Duwamish Waterway who subsequently cannot establish a similarly productive set elsewhere. The Pilot Program will begin within 10 days of the execution of this Agreement when \$75,000 for the 2017 season is transmitted to the Tribe.
- (6) Pilot Program Funding. The NWSA and Port agree to replenish funds as needed to fully cover all valid claims. The Tribe will notify the NWSA and Port if and when the fund balance reaches \$20,000 or less, so that the NWSA and Port can provide sufficient funds to replenish the fund to its original account balance. Any unspent funds remaining after all documented withdrawals have been made for annual fishing season shall carry-over for the next fishing season for this same purpose up to the end of the Pilot Program. At the conclusion of the annual fishing season, the Tribe will notify the NWSA and Port of any additional funds needed to replenish the initial account balance to \$75,000 prior to the beginning of the next annual fishing season. Any balance of funds established for

claims processing that remains after addressing any incidents through December 31, 2019 will be returned to the NWSA and the Port unless the term of this Agreement has been extended by mutual agreement. The funds for the Pilot Program will be managed solely by the Tribe. Expenditures from the fund shall be made at the sole discretion of the Tribe.

- (7) **Summary Reporting of Incidents to the NWSA and Port.** As part of this Pilot Program, the Tribe agrees to provide a monthly summary report of claims made during the fishing season that includes the number of net relocation claims associated with each NWSA and Port marine terminal and the lost productivity claims of tribal members from relocating net set locations as described in Section 5 above. As part of this Pilot Program, NWSA and the Port will meet yearly with the Tribe to discuss the overview of the basis of compensation and benefits associated with the program.
- (8) The parties will review the Pilot Program after completion of the term of the program to determine efficacy of the program and discuss the continuation of the Pilot Program after December 31, 2019.
- (9) The Existing Agreement has a five-year term (2016-2020) that may be extended for an additional five-year period. The parties will revise the Existing Agreement to replace the five-year extension with a ten-year extension, at the close of the Existing Agreement's original term, subject to the parties' discussion and approval of an amendment to the Existing Agreement.
- (10) The Tribe will transmit a letter to the U.S. Army Corps of Engineers, referencing the Terminal 5 Cargo Wharf Rehabilitation, Berth Deepening, and Improvements Project (U.S. Army Corps of Engineers Reference Number NWS-2015-0269-WRD), stating that the Tribe does not oppose the issuance of federal permit approval for the Project. This letter will be sent no later than 10 business days following execution of this Agreement by all parties.

This Agreement relates solely to the Terminal 5 Cargo Wharf Rehabilitation, Berth Deepening, and Improvements Project (U.S. Army Corps of Engineers Reference Number NWS-2015-0269-WRD). The ten elements of this Agreement represent the entire scope of the agreement of the parties with respect to its subject matter. This Agreement does not preclude the Tribe from pursuing any violations of local, state, or federal authorizations applicable to the Project. The Tribe is not precluded from commenting on or challenging any modification of the Project with the potential to alter the scope of potential adverse effects on the Tribe. The Tribe, the NWSA, and the Port further agree that nothing in this Agreement is intended to or should be construed to define the nature and scope of Treaty fishing rights.

DATE: 10-6-17

MUCKLESHOOT INDIAN TRIBE

by Virginia Owa
Its _____

DATE: 9/18/17

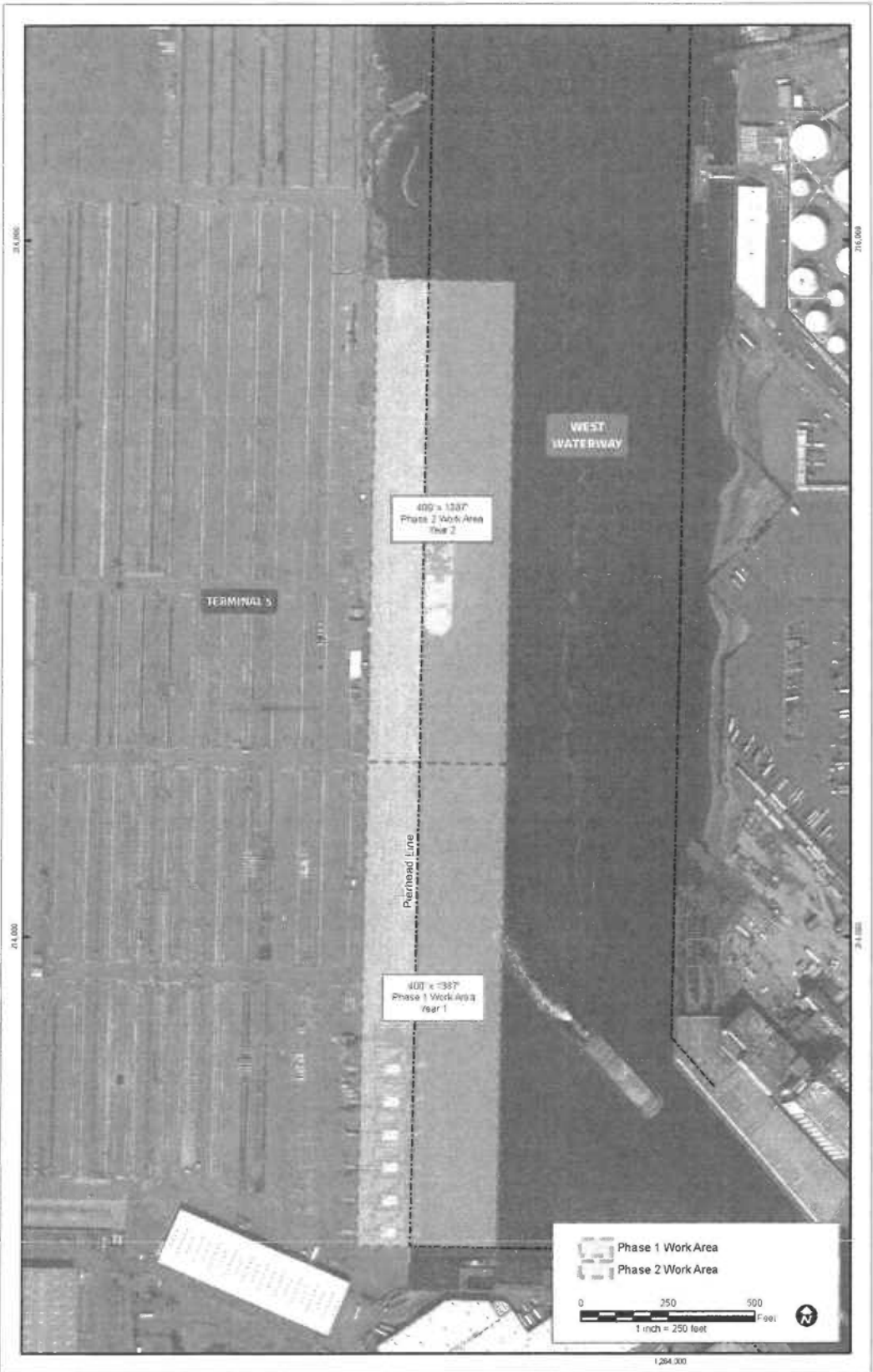
THE NORTHWEST SEAPORT ALLIANCE

by [Signature]
Its CEO

DATE: 9/18/17

PORT OF SEATTLE

by Daniel Seiby
Its Interim Exec. Dir.



Attachment A
Terminal 5 Construction Areas

**LETTER OF AGREEMENT BETWEEN
SUQUAMISH TRIBE, NORTHWEST SEAPORT ALLIANCE,
AND PORT OF SEATTLE**

Terminal 5 Cargo Wharf Rehabilitation, Berth Deepening, and Improvements Project

This letter of agreement (“Agreement”) confirms the understanding and commitments between the Suquamish Tribe (“Tribe”), a federally recognized sovereign Indian Tribe, the Northwest Seaport Alliance (“NWSA”), a port development authority, and the Port of Seattle (“Port”), a Washington State port district, regarding construction activities relating to rehabilitating the Terminal 5 Cargo Wharf Rehabilitation, Berth Deepening, and Improvements Project (“Project”) in Seattle. The Project activities include in-water piling demolition, installing pier-strengthening and slope-stabilization piling, and berth-deepening dredging. The Project affects an existing 2900 feet long marine cargo pier, located in southwest Elliott Bay, at the west margin of the West Waterway. The Port and NWSA recognize the Tribe’s rights to fishing established by the Treaty of Point Elliott, 12 Stat. 927, (“Treaty”).

The Tribe, the NWSA, and the Port agree as follows:

- (1) There will be no Project construction activities during the time periods designated by local, state, and federal agencies for protection of salmon fisheries in Elliott Bay and the lower Duwamish River. The Project will be subject to all other permit conditions and permit approval requirements relating to fish and wildlife habitat protection.
- (2) In-water construction for the Project is expected to take place during three consecutive years. Wharf rehabilitation construction activities will take place from August through February of the first two construction seasons, subject to state and federal agency in-water construction timing requirements. The third construction season is expected to be limited to vessel berth dredging, conducted in the late fall and winter months for the purpose of minimizing potential disruption of the Tribe’s Treaty fishing access. During each construction season, Terminal 5 wharf rehabilitation project work will be stopped during prescribed Chinook Treaty fishing periods. The Tribe will provide at least one month prior notification of the dates for opening and closure of the Chinook fishing periods.
- (3) Construction activities will include multiple crane equipment barges and materials barges, accompanied by tug-assisted barge movements to and from Terminal 5. The Port and NWSA identified work areas for Phase 1 to be the southern half of the wharf rehabilitation project area while Phase 2 is the northern half of the wharf rehabilitation project (Project Phase 1 and Phase 2 work areas are depicted in Attachment A). Wharf rehabilitation construction activities for Phase 1 will take place from August through February in the first year of construction. Wharf rehabilitation for Phase 2 will take place from August through February in the second year of construction. The Port and NWSA will notify the Tribe 60 days in advance of the start of construction if in the unlikely event that the timing for Phase 1 and Phase 2 are swapped. The Tribe agrees to close the Phase 1 work area to Tribal fishing for one full fish window (August through February of

the first two construction seasons, subject to state and federal agency in-water construction timing requirements of August 15 through February 15), with the exception of any potential Chinook fisheries in August. Following that closure, the Tribe agrees to close the Phase 2 work area to Tribal fishing the following year for one full fish window (August 15 to February 15), with the exception of any potential Chinook fisheries in August. The NWSA and the Port agree that potential disruption of Treaty fishing activities will be caused by the Project. This Agreement is consistent with Paragraph 3 of the existing Suquamish Tribe, Port of Seattle, Northwest Seaport Alliance Maritime Access and Impact Mitigation Agreement. ("Existing Agreement"). In addition, the Tribe will invoice the Port and NWSA for net moves, gear damage or loss, and/or lost fishing time claims related to this Project.

- (4) The NWSA and the Port will collectively transmit \$1,000,000 to the Tribe for the purpose of establishing a Fisheries Mitigation Fund in response to potential Project construction-related Treaty fishing disruption. The Fisheries Mitigation Fund will be managed solely by the Tribe. Expenditures from the fund shall be made at the sole discretion of the Tribe. Notice will be provided of construction authorization to the Tribe and funds will be transferred to the Tribe within 10 days of the construction authorization of the Project. If notice of construction authorization is provided after December 31, 2017, the initial \$1,000,000 contribution to the Fisheries Mitigation Fund will be adjusted to reflect any increase in the Seattle Urban Area Consumer Price Index published by the U.S. Department of Labor Statistics effective as of January 1, 2018. The check for the Fisheries Mitigation Fund will be made payable to the Tribe and mailed to:

Greg Trueb, Finance Director
Suquamish Tribe
P.O. Box 498
Suquamish, WA 98392

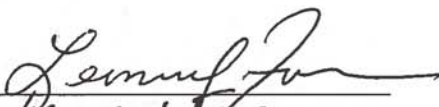
- (5) The NWSA and the Port will collectively provide \$75,000 per year for three fishing seasons for use in supplementing Paragraph 2 of the Existing Agreement. The NWSA and the Port will transmit \$75,000 to the Tribe within 30 days prior to the start of each of the three consecutive Project construction periods.
- (6) Any potential additional compensation to mitigate Tribal fishing impacts associated with T-5 operations not set forth in this Agreement shall be consistent with Paragraph 9 of the Existing Agreement.
- (7) The Existing Agreement has a five-year term (2016-2020) that may be extended for an additional five-year period. The parties will revise the Existing Agreement to replace the optional five-year extension with a ten-year extension, at the close of the Existing Agreement's original term, subject to the parties' discussion and approval of an amendment to the Existing Agreement.
- (8) The Tribe will transmit a letter to the U.S. Army Corps of Engineers, referencing the Terminal 5 Cargo Wharf Rehabilitation, Berth Deepening, and Improvements Project

(U.S. Army Corps of Engineers Reference Number NWS-2015-0269-WRD), stating that the Tribe does not oppose the issuance of federal permit approval for the Project. This letter will be sent no later than 10 business days following execution of this Agreement by all parties.

This Agreement relates solely to the Terminal 5 Cargo Wharf Rehabilitation, Berth Deepening, and Improvements Project (U.S. Army Corps of Engineers Reference Number NWS-2015-0269-WRD). The eight elements of this Agreement represent the entire scope of the agreement of the parties with respect to its subject matter. This Agreement does not preclude the Tribe from pursuing any violations of local, state, or federal authorizations applicable to the Project. The Tribe is not precluded from commenting on or challenging any modification of the Project with the potential to alter the scope of potential adverse effects on the Tribe. The Tribe, the NWSA, and the Port further agree that nothing in this Agreement is intended to or should be construed to define the nature and scope of Treaty fishing rights.


DATE: 8/28/2017

SUQUAMISH TRIBE


by Leonard Forsman
Its Chairman


DATE: 9/18/17

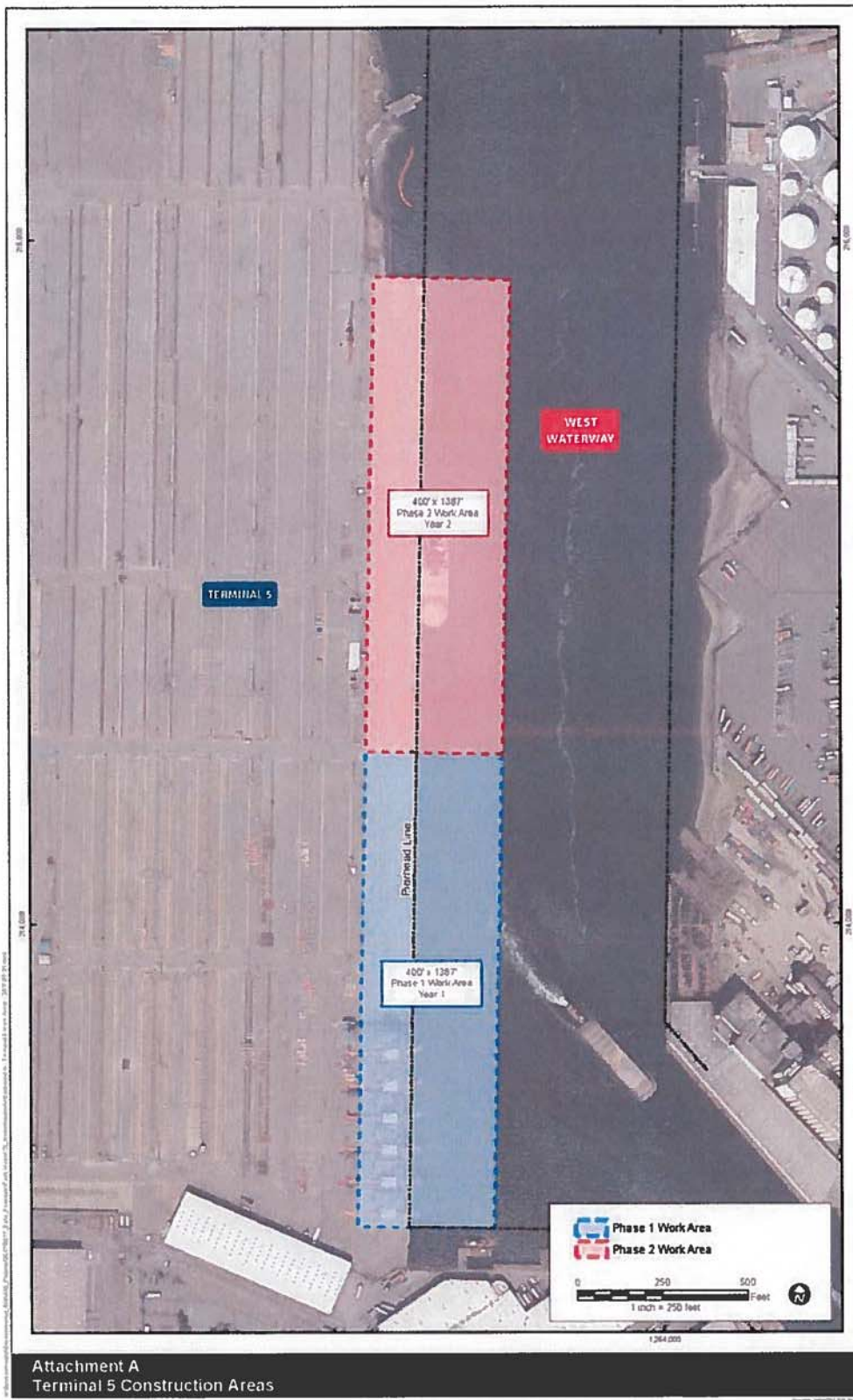
THE NORTHWEST SEAPORT ALLIANCE


by Jerald Moore
Its CEO

DATE: 9/18/17

PORT OF SEATTLE


by David Soike
Its Interim Exec. Dir.



Attachment A
Terminal 5 Construction Areas