

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.	9C
Date of Meeting	February 1, 2022

DATE: January 20, 2022

TO: Managing Members

FROM: John Wolfe, CEO

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

Project Manager: Jennifer Maietta, Director, Real Estate

SUBJECT: Second Reading – Terminal 103 Northwest Aggregates Lease Renewal

A. ACTION REQUESTED

Request Managing Members of The Northwest Seaport Alliance (NWSA) authorization for the Chief Executive Officer or their delegate to execute a new lease agreement with Northwest Aggregates Company at Terminal 103.

B. SYNOPSIS

Northwest Aggregates Company (NWAC) wishes to enter into a term lease with the NWSA with the understanding that the Aquatic lands adjacent to the terminal will be incorporated into the Port Management Agreement (PMA) at which time will be included as part of their lease premises. The NWAC lease continued on holdover while negotiations related to the aquatic lands were resolved so that both the NWAC lease and General Construction Company (GCC) lease, who share the terminal, could be co-terminus in an effort to keep the property whole for potential future uses.

C. BACKGROUND

Port of Seattle (POS) purchased Terminal 103 (T-103) from Fletcher General in June 1997, which included leases with both NWAC and GCC. NWAC provides crushed aggregates via barge to its customers and is a water-dependent maritime business. This 1997 purchase did not include the Aquatic lands, nor the dock structure located within the Aquatic lands currently used by GCC. There is no historical or municipal record of who installed the dock, and it was in place at the time POS acquired T-103. Thus, Washington State Department of Natural Resources (DNR) is requiring the POS to take responsibility for the dock (which is in

a deteriorated state) and its future removal through the incorporation of the Aquatic lands by amendment to the PMA. Both tenants are dependent upon and access the Aquatic lands adjacent to the uplands for their business operations and both leases have continued on holdover status while the negotiations of the Aquatic lands for incorporation into the PMA is completed.

NWAC has had a lease in effect at T-103 since December 1996 which originated with the prior owner of the property, Fletcher General. NWAC's lease then transferred to the POS upon the property being purchased in 1997 and subsequently transferred to the NWSA as a licensed property in 2015.

Negotiations for incorporation of the Aquatic lands with DNR and a lease with NWAC preceded the transition of T-103 into the NWSA. Historically, POS negotiations for incorporation of the Aquatic lands with DNR commenced in 2011 in relation to the GCC lease. However, NWAC's lease did not go into holdover until 2016. Negotiations with NWAC commenced at that time and the lease remained in holdover related to the negotiations to incorporate the aquatic lands as part of their lease premises and so that the NWAC and GCC leases would be co-terminus in order to keep the property whole for potential future uses.

Negotiations to incorporate the Aquatic lands into the PMA have proven to be problematic primarily due to the dock structure. In 2012 the base terms for the draft amendment to the PMA were agreed upon except for formalizing the site plan with DNR and GCC did not agree to take full responsibility for the dock located within the aquatic lands further complicating negotiations. Subsequently, POS negotiations with DNR were put on hold in 2015 due to the management of T-103 being transferred to the NWSA as a licensed property. Additionally, due to a number of factors, momentum in resolving complexities of these negotiations was lost and negotiations commenced in earnest again with DNR in May 2019 after the completion of the North Harbor Strategy (April 2019).

Furthermore, approximately forty feet of the dock extends northward past the T-103 adjacent uplands and adjacent to the BNSF right of way. Attempts had been made by POS to incorporate the additional forty feet of dock as part of the Aquatic lands because of DNR requiring POS being responsible for its removal through the proposed PMA amendment and with the understanding that GCC used this portion of the dock. DNR had priorly considered this proposal, but within recent months formally declined the proposed boundary.

Concerted efforts between the NWSA, POS and DNR including a recent site visit were conducted to come to an agreeable resolution. The Parties have agreed to: 1) the Aquatic lands boundary being contiguous with the T-103 uplands and 2) that GCC will remove the north 40' of dock which is actually a metal platform extension and will not affect the remaining dock in place. Once the site plan with DNR is

finalized, the amendment to the PMA will be presented to POS for review and signature. This is due to occur within the next couple of months allowing finalization of the NWAC and GCC leases concurrently with the incorporation of the Aquatic lands into the PMA.

The NWAC lease has continued in holdover status since November 2016 at the then current rate of \$.12 psf/mo with no rental increases through 2018 due to DNR negotiations. The base rent was subsequently adjusted in 2019 escalated by CPI from the year of the last increase and escalated annually by CPI going forward in attempt to move NWAC's base rent closer to market rates while resolving issues with DNR. The base rent is currently \$.13 psf/mo. An appraisal was conducted in 2019, which appraised the T-103 NWAC portion of the property to have a fair market rental value of \$.25 to \$.28 psf/mo. being an unimproved yard.

Since the appraisal was initially performed in 2019, a number of issues in the area have adversely impacted the valuation of this location, including: closure of the West Seattle Bridge; anticipated increased traffic due to T-5's opening; and potential impacts of a potential new bike lane on W Marginal Way. With these impacts negatively affecting the valuation of the property during the term of the lease staff recommends that the base rent increase by pre-set step increases for the first five years then increase by CPI thereafter. It was agreed that doubling the rent from \$.13 to \$.30 psf/mo, current market rate for unimproved yard space, in one year would be fiscally burdensome and that the proposed step increase approach would be reasonable.

Additionally, upon incorporation of the Aquatic lands into the PMA, NWAC will be paying rent for the use of the Aquatic lands calculated in accordance WAC 332-30-123. NWAC does not currently pay rent for the use of the Aquatic lands. Thus, this will increase their monthly rental rate by an anticipated \$.03 per month for the area of the Aquatic Lands (21,233 sf) to be increased by CPI annually. This is equal to approximately \$557 per month.

For business planning purposes NWAC requested that the initial lease term be five (5) years, in instead of the 10-years required by GCC to amortize anticipated dock improvement costs, and since NWAC would not be making any major improvements to their premises. However, during the renegotiation the tenant accepted a 10-year term due to the rental rate increase and commence the lease and rent January 1, 2022. Although the length of the term and options is consistent with the GCC lease the leases would commence two months apart. However, both the NWAC and GCC leases state that upon 18-months' notice for a Major Capital Improvement Project the NWSA could terminate the leases. Thus, the terminal could be used for potential maritime support purposes in the future as a whole.

The following is added as a result of the First Reading of the Northwest Aggregates Lease held December 7, 2021 Managing Member Meeting. The step-increase rental rate presented the First Reading, as described above, was re-negotiated with NWAC to a market rate of \$.29 psf/mo rate for the Upland Yard Rent (plus approximately \$.03 psf/mo for the aquatic lands) and the term extended from a 5-year term a 10-year term (with no change to the two 5-year options and aquatic lands rate), and the lease commencement date changed from November 1, 2021 to January 1, 2022. Upon approval of the Managing Members these base terms will be incorporated into the revised lease terms.

New Lease Terms: The bolded terms represent the renegotiated terms as amended from the First Reading of the Northwest Aggregates Lease.

- Premises: 173,638 SF of Upland Yard and 21,233 SF of Aquatic lands
- **Term: 10-years commencing January 1, 2022 and terminating December 31, 2031.**
- Conditional Option to Extend: Lessee will have two (2) five (5) Year Options at Lessor's sole consent.
- **Upland Yard Rent: \$.29/sf/mo equal to \$50,355.02 per/mo (\$604,260.24 per/yr) escalated annually by CPI-U.**
- Aquatic Lands Rent: Upon inclusion in the Port Management Agreement (PMA) with WA State Dept. of Natural Resources, the Aquatic lands Rent will be calculated per WAC 332-30-123 currently estimated to be \$557.37 per month or \$6,688.44 per year. Rent for the Aquatic lands will be escalated by CPI-U each Nov. 1st through the Term of the Lease.
- Market Rate Adjustment: Rent for both the Upland Yard and Aquatic lands will be adjusted to Fair Market Value prior to any Term Extension at Lessor discretion.
- **Security: Lessee will provide a Security Deposit equal to 6 months' Rent plus WA State Leasehold Excise Tax, initially \$340,923.** Security for the Aquatic lands will be added after they are included in the PMA.
- Use of Premises: Lessee shall use the Premises for the sales, storage, transport, and offloading of rock, gravel, and sand, and administration and other legal uses related thereto. Lessor will not permit use of the adjacent parcels as a rock yard for the storage, offloading, or sale of rock, currently as conducted by Lessee.
- Utilities & Taxes: Lessee is responsible for all utilities and taxes.
- Alterations: Lessor is not responsible to make any Alterations.
- Maintenance & Repair: Lessee is responsible for all maintenance and repair. Lessor has no maintenance & repair responsibility.
- Insurance: Lessee will provide proof of all insurance in compliance with NWSA Risk Management policy. \$5M General Liability, \$3M Business Auto, \$5M Protection and Indemnity.

- Major Capital Improvement: Lessor may terminate the Lease upon 18-months' notice for a Major Capital Improvement Project. (Consistent with General Construction Lease)
- Stormwater: Lessee is responsible for all Stormwater Management issues.

D. FINANCIAL IMPLICATIONS

Source of Funds

No capital investment or additional expense is needed to execute this agreement.

Original proposed values: [The value of the revenue over 5 years is \$2.3M NPV including the combined rent for the uplands and Aquatic Lands. If both the 5-year options are exercised, for a total term of 15 years, the value of that revenue is \$5.9M NPV.]

The value of the renegotiated lease terms as specified herein is:

The re-negotiated value of revenue over 10 years is \$4.8M NPV including the combined rent for the uplands and Aquatic Lands. If both 10-year options are exercised, for a total term of 20 years, the value of that revenue is \$7.6M NPV.

For comparison between the renegotiate rent vs the initial proposed rent:

- **First 5-Years: \$3.2M (vs \$2.8M) = \$900K NPV increase**
- **First 15 Years: \$6.4M (vs \$5.9M) = \$500K NPV increase**
- **Total Term: \$7.6M/20-yrs (vs. \$5.9M/15-yrs) = \$1.7M increase**

E. ATTACHMENTS TO THIS REQUEST

- PowerPoint presentation.
- Proposed lease agreement
- Copy of Draft Amendment to Port Management Agreement
- Timeline of negotiations with NWAC

F. PREVIOUS ACTIONS OR BRIEFINGS

- Commission Memorandum dated May 22, 1997 approved during the Jun 10, 1997 Port of Seattle Commission Meeting for the purchase an 8.06 Acre parcel, formerly a part of Terminal 105 and subsequently subdivided, currently known as Terminal 103.