

**THE NORTHWEST SEAPORT ALLIANCE**  
**MEMORANDUM**

**MANAGING MEMBERS**  
**ACTION ITEM**

**Item No.** 5D  
**Date of Meeting** September 1, 2020

**DATE:** August 19, 2020

**TO:** Managing Members

**FROM:** John Wolfe, CEO

**Sponsor:** Tong Zhu, Chief Commercial and Strategy Officer

**Project Manager:** Mike Campagnaro, Director Alliance Real Estate

**SUBJECT:** Second Amendment to the Lease Termination Agreement between the Port of Seattle (POS) and Eagle Marine Services, Ltd. (EMS)

**A. ACTION REQUESTED**

Request Managing Members of The Northwest Seaport Alliance (NWSA) for the NWSA Chief Executive Officer (CEO) or his delegate to execute a Conditional Second Amendment to the Terminal 5 (T5) Lease Termination Agreement with Eagle Marine Services, LTD. (EMS) and its parent company American President Lines, LTD.(APL)

**B. BACKGROUND**

On July 22, 2014, The Port of Seattle Commission authorized a Lease Termination Agreement with EMS and its parent company APL for their Terminal 5 Lease. The Termination Agreement is a combination of annual termination payments and a vessel call and volume guarantee in Port of Seattle (Port) North Harbor. The intent of the agreement was to secure volume commitment for the Seattle Harbor. In addition, this agreement facilitated the Port in being able to upgrade the dock and related infrastructure at Terminal 5 so that the terminal could handle the largest ships expected to call the harbor and it eliminated the Port's obligation to provide five functional cranes. As part of the termination agreement, EMS entered into a sublease agreement at Terminal 18 (T18) to handle the vessel calls and cargo volumes required by the volume guarantee.

On April 7<sup>th</sup> of this year, the NWSA Managing Members approved the First Amendment to the Lease Termination Agreement which addressed certain outstanding amounts under the lease termination agreement and increased the

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cargo volume guarantees under the Lease Termination Agreement. Staff has been in further negotiations with APL/ CMA CGM to further increase and extend their volume commitment to the Gateway.

Accordingly, to acknowledge this continued negotiation, the parties are proposing a conditional Second Amendment to the Terminal 5 Lease Termination Agreement. This conditional Second Amendment will reduce the annual \$9,000,000 payment for 2020 (due August 1, 2020) to \$4,500,000. This payment will be made by August 30, 2020. Additionally, the late payment interest charge (12% per annum) on the \$4,500,000 balance will be deferred until December 31, 2020. Staff will return to NWSA Managing Members prior to December 31, 2020 with terms and conditions of a proposed Third Amendment to the Termination Agreement that will address the expanded volume commitment for the Gateway. If the parties are not able to reach agreement on the terms and conditions of a Third Amendment, this proposed Second Amendment will be null and void and the \$4,500,000 payment balance will be due along with all accumulated interest charges.

**C. FINANCIAL IMPLICATIONS**

The \$9,000,000 is for the time period of August 1, 2020 through July 31, 2021 and was included in the 2020 budget. Since the annual payment is recognized evenly over 12 months, the reduction in annual payment will reduce 2020's revenue by \$1,875,000, and 2021's revenue by \$2,625,000 for a total reduction of \$4,500,000. The 2020 reduction was not included in the 2020 Forecast provided in June. These reductions will be reflected in the new 2020 forecast and the 2021 budget if approved.

**D. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS**

- **Alternative 1:** Do nothing and hold APL/CMA CGM to its lease termination obligations of \$9,000,000 plus a late fee of 12% interest per annum effective as of August 1, 2020.
- **Alternative 2:** Negotiate a conditional agreement with APL/CMA CGM to provide additional time to negotiate an amendment to the Lease Termination Agreement for the purpose of increasing container volume to the NWSA Gateway. This conditional alternative will reduce APL annual \$9,000,000 payment to \$4,500,000 and defer late fee charges until December 31, 2020. If the parties are not able to

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reach agreement on terms and conditions of a Third Amendment (as explained above) to the Lease Termination Agreement by December 31, 2020, this proposed conditional Second Amendment will become null and void and the \$4,500,000 balance will become due along with the accumulated late payment interest.

- **Recommended Action:** Alternative 2. Authorize the CEO to commence negotiations on a Third Amendment to Termination Agreement to incentivize and encourage EMS/APL/CMA CGM to direct additional volume to the Gateway.

**E. ENVIRONMENTAL IMPACTS / REVIEW**

None

**F. ATTACHMENTS TO THIS REQUEST**

- PowerPoint presentation.
- Draft conditional Second Amendment to Terminal 5 Lease Termination

**G. PREVIOUS ACTIONS OR BRIEFINGS**

- April 7, 2020 1<sup>st</sup> Amendment to Terminal 5 Lease Termination Agreement



**Item No.: 5D**

**Date of Meeting:** September 1, 2020

# **Second Amendment to the Lease Termination Agreement between the Port of Seattle and Eagle Marine Services, Ltd. and its parent company American President Lines, LTD**

Presenter: Mike Campagnaro  
Director, Alliance Real Estate

## Action Requested

Request Managing Members of The Northwest Seaport Alliance (NWSA) for the NWSA Chief Executive Officer (CEO) or his delegate to execute a Conditional Second Amendment to the Terminal 5 (T5) Lease Termination Agreement with Eagle Marine Services, LTD. (EMS) and its parent company American President Lines, LTD.(APL)

# Background

- On July 22, 2014, The Port of Seattle Commission authorized a Lease Termination Agreement with EMS and its parent company APL for their Terminal 5 Lease. The Termination Agreement is a combination of annual termination payments and a vessel call and volume guarantee in Port of Seattle (Port) North Harbor. The intent of the agreement was to secure volume commitment for the Seattle Harbor. In addition, this agreement facilitated the Port in being able to upgrade the dock and related infrastructure at Terminal 5 so that the terminal could handle the largest ships expected to call the harbor and it eliminated the Port's obligation to provide five functional cranes. As part of the termination agreement, EMS entered into a sublease agreement at Terminal 18 (T18) to handle the vessel calls and cargo volumes required by the volume guarantee.

# Background

- On April 7<sup>th</sup> of this year, the NWSA Managing Members approved the First Amendment to the Lease Termination Agreement which addressed certain outstanding amounts under the lease termination agreement and increased the cargo volume guarantees under the Lease Termination Agreement. Staff has been in further negotiations with APL/CMA CGM to further increase and extend their volume commitment to the Gateway.



# Background

- Accordingly, to acknowledge this continued negotiation, the parties are proposing a conditional Second Amendment to the Terminal 5 Lease Termination Agreement. This conditional Second Amendment will reduce the annual \$9,000,000 payment for 2020 (due August 1, 2020) to \$4,500,000. This payment will be made by August 30, 2020. Additionally, the late payment interest charge (12% per annum) on the \$4,500,000 balance will be deferred until December 31, 2020. Staff will return to NWSA Managing Members prior to December 31, 2020 with terms and conditions of a proposed Third Amendment to the Termination Agreement that will address the expanded volume commitment for the Gateway. If the parties are not able to reach agreement on the terms and conditions of a Third Amendment, this proposed Second Amendment will be null and void and the \$4,500,000 payment balance will be due along with all accumulated interest charges.



# Financial Implications

- The \$9,000,000 is for the time period of August 1, 2020 through July 31, 2021 and was included in the 2020 budget. Since the annual payment is recognized evenly over 12 months, the reduction in annual payment will reduce 2020's revenue by \$1,875,000, and 2021's revenue by \$2,625,000 for a total reduction of \$4,500,000. The 2020 reduction was not included in the 2020 Forecast provided in June. These reductions will be reflected in the new 2020 forecast and the 2021 budget if approved.



# Alternatives Considered and Their Implications

- **Alternative 1:** Do nothing and hold APL/CMA CGM to its lease termination obligations of \$9,000,000 plus a late fee of 12% interest per annum effective as of August 1, 2020.
- **Alternative 2:** Negotiate a conditional agreement with APL/CMA CGM to provide additional time to negotiate an amendment to the Lease Termination Agreement for the purpose of increasing container volume to the NWSA Gateway. This conditional alternative will reduce APL annual \$9,000,000 payment to \$4,500,000 and defer late fee charges until December 31, 2020. If the parties are not able to reach agreement on terms and conditions of a Third Amendment (as explained above) to the Lease Termination Agreement by December 31, 2020, this proposed conditional Second Amendment will become null and void and the \$4,500,000 balance will become due along with the accumulated late payment interest.

# Alternatives Considered and Their Implications

- **Recommended Action:** Alternative 2. Authorize the CEO to commence negotiations on a Third Amendment to Termination Agreement to incentivize and encourage EMS/APL/CMA CGM to direct additional volume to the Gateway



## Action Requested

Request Managing Members of The Northwest Seaport Alliance (NWSA) for the NWSA Chief Executive Officer (CEO) or his delegate to execute a Conditional Second Amendment to the Terminal 5 (T5) Lease Termination Agreement with Eagle Marine Services, LTD. (EMS) and its parent company American President Lines, LTD. (APL)