

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.	3C
Date of Meeting	November 13, 2018

DATE: November 5, 2018

TO: Managing Members

FROM: John Wolfe, CEO

Sponsor: Jason Jordan, Director, Environmental and Planning Services

Contract Manager: Deanna Seaman, Environmental Senior Project Manager

SUBJECT: Increase Legal Contract with Tupper Mack Wells for the Soundkeeper / APMT Clean Water Act Lawsuit

A. ACTION REQUESTED

As referenced in NWSA Resolution No. 2018-01, Exhibit A, Delegation of Authority Master Policy, Paragraph 8.c.iii., states contract costs exceeding \$300,000 require approval from Managing Members.

Request contract authorization in the amount \$261,105 for a total authorized contract amount of \$612,230, for legal work associated with the Soundkeeper / APMT Clean Water Act Lawsuit, Master Identification No. 201046.01.

B. SYNOPSIS

This request is to enable NWSA to extend the consultant and legal contract through the discovery and trial phases of litigation for the Puget Soundkeeper Alliance v. APM Terminals Tacoma, LLC, Port of Tacoma, and SSA Marine, Inc. (et al) with Tupper Mack Wells.

C. BACKGROUND

Soundkeeper sent a notice of intent to sue letter to APMT on November 2, 2016 and filed its lawsuit on January 2, 2017. Soundkeeper provided the Port with notice of its intent to sue on July 20, 2017. On October 2, 2017, the Port obtained Permit coverage for the West Sitcum Terminal. On October 23, 2017, Ecology and the Port signed an Agreed Order modifying the schedule for the Port's implementation of a stormwater treatment system under its Permit. During October 2017 the Port made significant efforts to come into full compliance with the Permit. Soundkeeper filed a complaint on November 29, 2017 adding the Port of Tacoma to the lawsuit.

Pending motions before the Court are Soundkeeper's motion for leave to add SSA Terminals (Tacoma), LLC; APMT's Motion to Dismiss the Port's cross claim; SSA Marine, Inc.'s and SSA Terminals, LLC's Motion to Dismiss Soundkeeper's claims; Soundkeeper's motion for an extension of its deadline to file expert disclosures relating to APMT; and a joint motion by Soundkeeper and APMT for entry of a consent decree that would settle Soundkeeper's allegations against APMT.

D. CONTRACT DESCRIPTION AND DETAILS

The scope of work includes:

- Consultant and legal services through discovery and trial phases as well as potential settlement discussions

E. FINANCIAL IMPLICATIONS

Contract Cost Details

	This Request	Total Project Cost	Cost to Date	Remaining Cost
Legal and Consulting	\$ 261,105.00	\$ 612,230.00	\$ 362,230.00	\$ 250,000
Total	\$ 261,105	\$ 612,230	\$ 362,230	\$ 250,000

Source of Funds

The current Capital Investment Plan (CIP) Budget does not allocate funds for this effort.

Financial Impact

Legal costs will be collected and expensed based on the timing and outcome of final settlement.

F. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

Alternative 1) Do Nothing.

Alternative 2) Proceed with the current course of action, prepare for trial, and remain amenable to settlement should those discussions prove fruitful.

Alternative 2 is the recommended course.

G. ENVIRONMENTAL IMPACTS/REVIEW

Permitting:

There are no permitting implications right now. The outcome of the lawsuit has the potential to change how we permit Terminals and facilities.

Remediation:

There are no remediation impacts.

Stormwater:

This lawsuit directly impacts how the Port will manage and respond to stormwater permits and the Clean Water Act.

Air Quality:

There are no identified impacts to air quality.

H. ATTACHMENTS TO THIS REQUEST

- Computer slide presentation.

I. PREVIOUS ACTIONS OR BRIEFINGS

<u>Date</u>	<u>Action</u>	<u>Amount</u>
December 19, 2017	Executive Authorization	\$80,000
March 30, 2018	Executive Authorization	\$60,230
June 1, 2018	Executive Authorization	\$40,000
June 27, 2018	Executive Authorization	\$150,000
<i>November 13, 2018</i>	<i>Request Commission Authorization</i>	<i>\$261,105</i>
Consultant Budget	On-call task order	\$20,895
<i>Contract Subtotal</i>		612,230
Estimated Staff Time		\$90,000
TOTAL		\$702,230

J. NEXT STEPS

Move forward with litigation preparation related activities per the below schedule.

<u>Action</u>	<u>Date</u>
Disclosure of expert testimony	11/5/2018
Disclosure of rebuttal expert testimony	12/5/2018
Filing deadline for motions related to discovery	12/17/2018
Deadline for discovery	1/14/2019
Deadline for dispositive motions	2/13/2019
Deadline for motions in limine	4/8/2019
Pretrial order filing	4/22/2019
Trial briefs, proposed findings and conclusions, and deposition designations	4/23/2019
Pretrial conference	4/29/2019
Ten Day Bench Trial	5/14/2019

