

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.	<u>7F</u>
Date of Meeting	<u>September 8, 2021</u>

DATE: September 1, 2021

TO: Managing Members

FROM: Dana Henderson, General Counsel
Sponsor: Dana Henderson, General Counsel

Project Manager: Dana Henderson, General Counsel

SUBJECT: Increase Authorization for Terminal 5 Outside Legal Services

A. ACTION REQUESTED

Request Managing Members of the Northwest Seaport Alliance (NWSA) authorize the Chief Executive Officer or delegate to increase the contract amount and spending authorization with the Stokes Lawrence law firm for legal services to resolve a dispute with the Terminal 5 tenant and to draft and negotiate any agreements related thereto and/or relating to T5 initial operations.

B. SYNOPSIS

NWSA Master Policy on Delegation of Authority at Section 10.a.ii provides in part: “[c]onsistent with Section 8(g)(i)(1) herein, the Managing Members reserve to themselves the authority to approve Personal Services Contracts for Legal Services where the contract amount exceeds \$300,000, initially or as a result of any amendment. Any such request for Legal Services should include the concurrence of the Alliance General Counsel, who shall confirm to the Managing Members the basis for the request.”

The Stokes Lawrence law firm has been retained to assist in-house counsel in responding to dispute resolution triggered by the Terminal 5 tenant SSA and to assist in completing related agreements regarding to Terminal 5 operations. CEO Wolfe has previously authorized up to \$300,000 for these legal services.

As this matter has developed, however, in addition to responding to the initial dispute, the parties have: amended the Lease to address interim issues relating to crane delivery; expanded the scope of the litigated dispute to include certain project items; worked through the Intermodal Yard Use Agreement to allow for rail operations; drafted a number of interim letter agreements relating to the project to be incorporated into a future lease amendment subject to Managing Member approval; and engaged in repeated efforts to try to resolve disputed items and prepare for arbitration. The amount previously authorized by the CEO is

now insufficient to complete the remaining work and protect NWSA's interests through arbitration.

C. BACKGROUND

An additional \$150,000 in legal fees and costs is requested to allow counsel to fully prepare for arbitration of the ongoing dispute NWSA has in with tenant SSA at Terminal 5.

Briefly, SSA triggered the dispute resolution provisions of the Terminal 5 lease due to claims and defenses relating to the condition of the West Seattle Bridge. In response, NWSA denied the tenant's claims relating to the bridge, and responded by bringing forward elements of the Terminal 5 project for determination of financial responsibility between the parties. The parties have been engaged in the dispute resolution discussions since April of 2020, and the formal alternative dispute resolution process was commenced in November, 2020. Despite multiple conferences between the parties and a mediation, the parties have not yet come to a resolution. The final step in the dispute resolution process is arbitration, for which NWSA has prepared, but arbitration has been postponed indefinitely to allow the parties to continue to attempt to reach resolution.

Regardless of whether the parties ultimately settle their dispute (subject to approval of the NWSA Managing Members), or proceed through arbitration, additional legal support will be needed. Outside counsel at the Stokes Lawrence law firm have been lead on handling the dispute resolution and preparing for arbitration, and relatedly, drafted and finalized the First Amendment to the Terminal 5 Lease which was approved by the Managing Members in June of 2021 and other related correspondence and agreements relating to commencement of Terminal 5 operations.

The request for additional legal expense authority is to fund arbitration of these issues if needed, or alternatively, to prepare a Second Amendment to the Terminal 5 lease, a settlement agreement and release, and related documents stemming from the dispute resolution or as otherwise needed to prepare final agreements for the Terminal 5 operations. NWSA General Counsel puts forth and concurs with this request for additional funding for legal services.

D. FINANCIAL IMPLICATIONS

Prior executive authorizations for this work total \$300,000. This amount had been set with the expectation that this matter could be resolved quickly. However, the scope of the parties' dispute has expanded, and a great deal of additional work has been and is needed to prepare for arbitration. Since the parties have not resolved all issues in dispute, it is likely that additional funds will be needed to further the NWSA's interests through arbitration.

Project costs associated with this dispute will be expensed as incurred.

E. KEY POTENTIAL RISKS

The Terminal 5 lease is a thirty-year lease. The issues at play in the parties' dispute resolution are of great financial significance. In-house counsel is not staffed to litigate the full scope of

this dispute, and therefore the services of the Stokes Lawrence firm, including both litigators and commercial real estate specialists, are needed in order to fully protect NWSA's interests at Terminal 5.

F. ATTACHMENTS TO THIS REQUEST

None.

G. PREVIOUS ACTIONS OR BRIEFINGS

In addition to attorney-client privileged communications which have been provided to the Managing Members, for which privilege is specifically reserved and is not waived, the following prior actions have occurred at the executive level:

Date	2020 ISGP Appeal Action	Amount
6/29/20	Executive Authorization – Stokes Lawrence for T5 legal services support	\$100,000
1/8/21	Executive Authorization – amendment to Stokes contract	\$150,000
6/10/21	Executive Authorization – amendment to Stokes contract	\$50,000
	Total previous authorizations	\$300,000
February 2, 2021	This Request	\$150,000
	Total Authorized Amount	\$450,000