


City and Borough of Sitka

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Coast Guard City, USA

MEMORANDUM

To: Mayor Eisenbeisz and Assembly Members

From: John Leach, Municipal Administrator 

Date: March 15, 2021

Subject: Marine Services Center Leaseholder Compliance

Background

On January 14, 2020, the Assembly held a Work Session to discuss issues surrounding the Marine Services Center. The meeting resulted from an Assembly Action Plan that was adopted in July 2019.

Public testimony at the Work Session generally ran in favor of the City retaining ownership of the cold storage and the sea wall. Independent fishing businesses rely upon the sea wall and the crane to transfer fish products from their boats to the Sitka road system or into the cold storage.

There are also public users of the cold storage who are concerned about losing access if the facility is sold to a private entity.

Analysis

Facility Information

The Marine Services cold storage was constructed in 1991. Funding included a Federal EDA grant in the amount of \$1M and a State grant in the amount of \$1.5M. Neither funding agency has a lien against the property, both mandatory lien periods have expired.

The gross area of the building is 21,000 square feet. About 16,500 square feet are leased to two fish processors. The remaining area consists of mechanical and refrigeration equipment rooms, a small office, and a restroom.

Public cold storage is currently being provided and managed by Seafood Producers Cooperative (SPC) but is not available at North Pacific Seafoods (NPS). SPC has recently reached capacity for public storage in their portion of the building and has

started denying further public access per their rights granted in section 3.4(i) of their lease.

The property is named Tract A Port Development, a portion of ATS 15. The land area is about 72,774 square feet. Of this area about 33,200 square feet is a level, gravel lot located on the NW side of the cold storage. The property is zoned Waterfront District.

The seaward side of the property is supported by a steel sheet pile retaining wall that was built in 1976. It is approximately 356 feet long. The wall has significant deferred maintenance needs. Costs to reconstruct the wall range from \$7M to \$8M.

In December 2016, the Assessor valued the property at \$3,975,000 which was broken down as follows:

- \$3,225,000 for the building and
- \$750,000 for the land (includes a 30% devaluation for the condition of the seawall)

Lease Terms and Compliance Measures

1. The SPC lease was amended and approved by the Assembly on May 14, 2013. Revenue from the SPC lease is about \$110,880 per year. Their lease expires June 20, 2023 with no remaining options to extend per section 1.2 of the lease.

Per section 3.4(b) – SPC shall provide a summary record of all cold storage activity by customer. All product into and out of the facility will be weighed and cold storage services and charts documented by customer. These records are to be retained for a minimum of three years and are to be made available to the City at a reasonable time and location so that City can verify public use according to the terms of this agreement. An annual report of this business is required and is due by 31 July of each year.

Compliance Finding: No record of required annual reports having been prepared and submitted to the Municipality has been found. Multiple Municipal employees who would have received such records have been personally queried and have no knowledge of such reports.

Per section 3.4(g) – SPC will charge cold storage customers rates currently in use. Rates will be clearly posted and will be uniformly charged for all cold storage service provided at the facility. Rate changes will require prior approval of the City. Rate adjustments can be proposed by either SPC or the City. Adjustments will be made to keep rates current with prevailing rates in the Puget Sound area.

Compliance Finding: A physical inspection of the Marine Service Center on March 12, 2021 found no evidence of rates being posted.

Per section 3.4(i) – Subject to the storage rights granted to SPC, cold storage will be made available to the public without discrimination to all customers that meet operating requirements of the facility.

Compliance Finding: A meeting with SPC on March 12, 2021 determined that the public is afforded an ability to utilize SPC's cold storage through a separate affiliated business of SPC. Such use must, however, conform to SPC's requirements. It was specifically mentioned that SPC requires food placed into cold storage to already be frozen; SPC will not allow fresh food to be frozen in the facility, as it is not designed for freezing.

Per section 3.4(j) – Sitka may sell the building in the future and all agreements regarding the Subject Property, including this Lease Agreement, between Sitka and Tenant shall be completely transferable to said owner. A transfer of the property to any such entity shall not create any restrictions upon use of the Subject Property in addition to those hereunder.

2. The NPS lease was established on May 29, 2019 and is month to month at a rate of \$10,627.69 per month with annual CPI adjustments.

Per section 1.2 – The “Term” is Month to Month, commencing upon March 1, 2019, of this Lease. This Lease Agreement may be terminated by thirty (30) day or more notice by either party, without cause, or as otherwise provided in this Lease Agreement.

Per section 3.4(b) – NPS shall provide a summary record of all cold storage activity by customer. All product into and out of the facility will be weighed and cold storage services and charts documented by customer. These records are to be retained for a minimum of three years and are to be made available to the City at a reasonable time and location so that City can verify public use according to the terms of this agreement. An annual report of this business is required and is due by 31 July of each year.

Compliance Finding: No record of required annual reports having been prepared and submitted to the Municipality has been found. Multiple Municipal employees who would have received such records have been personally queried and have no knowledge of such reports.

Per section 3.4(g) – NPS will charge cold storage customers rates currently in use. Rates will be clearly posted and will be uniformly charged for all cold storage service provided at the facility. Rate changes will require prior approval of the City. Rate adjustments can be proposed by either NPS or the City. Adjustments will be made to keep rates current with prevailing rates in the Puget Sound area.

Compliance Finding: A physical inspection of the Marine Service Center on March 12, 2021 found no evidence of rates being posted.

Per section 3.4(i) – Subject to the storage rights granted to NPS, cold storage will be made available to the public without discrimination to all customers that meet operating requirements of the facility.

Compliance Finding: In conjunction with a physical inspection of the Marine Service Center and a brief meeting with NPS management at the Marine Service Center on March 12, 2021, we did not find that cold storage was being made available to the public by NPS. A walk-through of the NPS side of the facility did not reveal any public storage taking place.

Per section 3.4(j) – Sitka may sell the building in the future and all agreements regarding the Subject Property, including this Lease Agreement, between Sitka and Tenant shall be completely transferable to said owner. A transfer of the property to any such entity shall not create any restrictions upon use of the Subject Property in addition to those hereunder.

Each tenant pays its share of the utilities.

“Public” is not defined in either lease. However, “public,” as defined by Black’s Law Dictionary, is the “whole body politic, or the aggregate of the citizens of a . . . municipality.” It is reasonable to assume that when the lease states “cold storage will be made available to the public without discrimination to all customers that meet operating requirements of the facility,” that cold storage will be made available to persons and entities in Sitka seeking cold storage.

Both SPC and NPS have the obligation to provide cold storage to the public. However, that obligation is “Subject to the storage rights granted to [SPC/NPS].” With no defined amount of public access cold storage in the lease;

- Can the obligation be entirely superseded by the storage rights of the lessee?
- Can minimums (total)/maximums (per customer) be imposed?
- Must each lessee have an equal obligation?

Compliance Finding: The public storage obligation should be defined by direction of the Municipal Administrator or agreement of the parties in terms of minimum space available for all public customers with a maximum limit for each public customer. Such obligations shall be included into a lease modification, and other parameters should be defined, as necessary.

Both leases have applicable default provisions in sections 14.1 through 14.3, under which the City could give notice of an “event of default” on any of the applicable sections of the lease, and within 30 days, if no timely compliance is met, the City may terminate the lease and/or seek other remedies available under the lease.

Fiscal Note

The seawall generates about \$30,000 per year in moorage revenue that includes freighters, various work boats, and small cruise vessels.

The seawall has a small electric/hydraulic hoist that generates about \$4,000 in revenue per year.

The average annual operating cost of the facility is \$106,000. This amount varies significantly from year to year depending upon the amount of maintenance work that is required. The facility is maintenance intensive.

Public Works has identified about \$400,000 in needed repairs over the next four fiscal years.

The Marine Services Center is owned and operated by the City of Sitka under an Enterprise Fund financial model. At the present time, the Fund has about \$1.9 million in Working Capital.

Recommendation

Since the decision was already made to maintain ownership of the building, I will be taking the following actions:

1. A Lease Manager will be assigned to the leases at the Marine Services Center.
2. Notice of default letter will be issued to current tenants.
3. Lease modifications will be negotiated to specify minimum public storage space and rate adjustments.
4. An RFP will be issued to competitively bid for a long-term lease of the portion of the cold storage building that is currently under a month-to-month agreement.