THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.: 10B
Meeting Date: September 1, 2026

DATE: August 27, 2026

TO: Managing Members

FROM: John Wolfe, CEO

SUBJECT: Deferral of Shortfall Lift Fee under APL Modification Agreement

A. ACTION REQUESTED

Request the Managing Members of The Northwest Seaport Alliance (NWSA) authorize a deferral of the deadline to pay the Shortfall Lift Fee for CMA CGM/APL under the parties' October 28, 2021 Modification Agreement, to December 31, 2026 during which deferral period, the Shortfall Lift Fee shall accrue 4.0% interest.

B. BACKGROUND

Prior to formation of the NWSA, the Port of Seattle entered into a Lease Termination Agreement with Eagle Marine Services (EMS) & APL for the Terminal 5 lease, which was signed in June 2014. Related agreements imposed certain obligations as conditions to the Port of Seattle's consent, including an annual payment by APL of $9 million ("Sublease Consent Fees") on August 1st of each year for 10 years, continued presence in the Seattle harbor, and a volume minimum annual guarantee (MAG). APL paid several of the Sublease Consent Fees, but failed to meet several of the requirements of the Termination Agreement, primarily due to lift or vessel shortfalls.

Thereafter, a First Amendment to the Termination Agreement was approved by the NWSA Managing Members on May 5th, 2020 to resolve outstanding shortfall issues and in exchange for a waiver of interest charges to increase and extend volume requirements to 2026. In October of 2021, the NWSA Managing Members authorized a Modification Agreement to fully address past due and future Sublease

Consent Fees in consideration of CMA CGM's expressed interest in a continued and expanded presence in NWSA's gateway.

In connection with the Modification Agreement, APL has paid $17,915,100 in MAG payments and interest from July 2021 through June 2025; and $10,041,677 in a Sublease Consent Fee in December of 2021.

Key terms of the Modification Agreement include that in return for forgiveness of Sublease Consent Fees in the amount of $22.6 million, the parties agreed to the following:

- Minimum lift requirements (MAG) extended and increased through 2031
- Failure to meet the MAG > assessed a Shortfall Lift Fee of $75/lift at the end of the year.
- Failure to pay Shortfall Lift Fee when due triggers a $2.26 million Late Shortfall Lift Fee penalty for late payment (each year), which is secured and may be called immediately
- If APL defaults prior to contract year ending July 1, 2026, NWSA could elect to terminate and seek a Breach Damages Penalty of $22.6 million.
- Applicable interest for late payments (contractual interest rate) is 12%.

NWSA is recommending a deferral of the Shortfall Lift Fee of $9,703,050, for the Contract Year ending June 20, 2026. If this action request is approved by the Managing Members, the Shortfall Lift Fee would instead be due December 31, 2026, with simple interest of 4.0% applied from the date of confirmation or resolution of the shortfall as that process is described in the Modification Agreement until that date. Note that this would be a lower interest rate than provided for in the Modification Agreement. The effect of the deferral would be that a delay in payment would not be a default under the Modification Agreement, and NWSA would not collect the Late Shortfall Lift Fee of $2.26M.

This deferral is recommended by NWSA leadership because CMA CGM is a valued customer of the Gateway, and the additional time would allow the parties the opportunity to evaluate options for cargo volume growth for CMA CGM.

C. FINANCIAL IMPLICATIONS

Shortfall Lift Fee of $9,703,050 was invoiced on August 14th and would be due in 30 days. A deferral at the proposed 4.0% simple interest is lower than the contractual rate of 12%. This proposed 4.0% interest rate is based on rates the NWSA could earn on invested cash.

If this deferral is approved, payment of the Shortfall Lift Fee and interest would now be due in full on December 31, 2026, unless an alternate agreement is reached by the parties (subject to Managing Members' approval).

Total interest due on December 31, 2026: approximately $115,904.

Total payment due on December 31, 2026: approximately $9,818,954.

NWSA would not exercise on secured Late Shortfall Lift Fee Penalty of $2.26 million.

D. PREVIOUS ACTIONS OR BRIEFINGS

- March 6, 2026 – 100 day deferral request
- September 9, 2025 – 90 deferral request
- October 28, 2021 - Approval of the Modification Agreement
- May 5, 2020 – First Amendment to Termination Agreement

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Consideration of Deferral of Shortfall Lift Fee – under APL Modification Agreement of 10/28/21

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SEATTLE + TACOMA

David Morrison, CFO

1

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That the Managing Members of The Northwest Seaport Alliance authorize a deferral of the deadline to pay the Shortfall Lift Fee for CMA CGM/APL under the parties' October 28, 2021 Modification Agreement, to December 31, 2026 during which deferral period, the Shortfall Lift Fee shall accrue 4.0% interest.

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2

2

Background

- Lease Termination Agreement with Eagle Marine Services (EMS) & APL for T5 Lease was signed June 2014.
- Related agreements imposed certain obligations as conditions to the Port of Seattle's consent, including an annual payment by APL of $9 million ("Sublease Consent Fees") on August 1st of each year for 10 years, continued presence in the Seattle harbor, and a volume Minimum Annual Guarantee (MAG)
- APL paid several of the Sublease Consent Fees, but failed to meet several of the requirements of the Termination Agreement, primarily due to lift or vessel shortfalls.

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3

3

Background

- First Amendment to the Termination Agreement was approved by the NWSA Managing Members on May 5th, 2020 to resolve outstanding shortfall issues and in exchange for a waiver of interest charges to increase and extend volume requirements to 2026.
  - Net cost to NWSA of approximately $4.5 million, net cost to POS of approximately $1 million
- In October of 2021, the NWSA Managing Members authorized a Modification Agreement to fully address past due and future Sublease Consent Fees in consideration of CMA CGM's expressed interest in a continued and expanded presence in NWSA Gateway.
- In connection with the Modification Agreement, APL has paid $17,915,100 in MAG payments and interest from July 2021 through June 2025; and $10,041,677 in a Sublease Consent fee in December of 2021.

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4

4

Modification Agreement – Relevant Terms

In return for forgiveness of Sublease Consent Fees in the amount of $22.6 million, the parties agreed to the following:

- Minimum lift requirements (MAG) extended and increased through 2031
- Failure to meet the MAG > assessed a Shortfall Lift Fee of $75/lift at the end of the year.
- Failure to pay Shortfall Lift Fee when due triggers a $2.26 million Late Shortfall Lift Fee Penalty for late payment (each year), which is secured and may be called immediately
- If APL defaults for a Contract Year prior to July 1, 2026, NWSA may elect to terminate and seek a Breach Damages Penalty of $22.6 million
- Applicable interest for late payments (contractual interest rate) is 12%.

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5

5

Financial Implications of Proposed Deferral and Action Request

- Shortfall Lift Fee of $9,703,050.
- Regarding the proposed deferral at 4.0% simple interest:
  - This proposed interest rate is based on the rates the NWSA could expect to earn on invested cash.
  - The Modification Agreement's interest rate is 12%, but this rate would not be used if this action request is approved.
  - Interest will start from invoice date of August 14th plus 30 days (September 13th).
- Payment and interest would now be due in full on December 31, 2026, unless the parties reach an alternate agreement (subject to Managing Members' approval).
- Total interest due on December 31, 2026: approximately $115,904.
- Total payment due on December 31, 2026: approximately $9,818,954
- NWSA would not exercise on secured Late Shortfall Lift Fee Penalty

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6

6

ACTION REQUESTED

That the Managing Members of the Northwest Seaport Alliance authorize a deferral of the deadline to pay the Shortfall Lift Fee for CMA CGM/APL under the parties' October 28, 2021 Modification Agreement, to December 31, 2026 during which deferral period, the Shortfall Lift Fee shall accrue 4% interest.

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